

EXHIBIT 25

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,)
)
Plaintiff/)
Counterclaim-Defendant,)
)
vs.)
)
NOVELL, INC.,)
)
Defendant/)
Counterclaim-Plaintiff.)

2:04CV00139

COPY

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Friday, March 23, 2007
Elizabeth, New Jersey
10:01 a.m.

Videotaped Deposition of BURT LEVINE,
taken by Defendant/Counterclaim-Plaintiff, pursuant
to Notice, held at the Sheraton Four Points Hotel,
901 Spring Street, Elizabeth, New Jersey, on Friday,
March 23, 2007 at 10:01 a.m. before Josephine H.
Fassett, a Certified Shorthand Reporter and Notary
Public of the State of New York.

SHARI MOSS & ASSOCIATES
Certified Shorthand Reporters
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Burlingame, California 94010
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12 A L S O P R E S E N T :

13

RYAN E. TIBBITTS, ESQ.
The SCO Group General Counsel

14

15 LAURA S. JOHNSON, Boies Case Manager

16

SHELLY RUSTEN, Videographer

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1 (So I take it today 12 . . . s after
2 the fact you would strike this reference to all
3 copyrights and trademarks except for the
4 trademarks UNIX and UnixWare; is that right?

5 MR. NORMAND: Objection to form and
6 foundation.

7 A Or would have tried to have the
8 agreement reformed or amended, yeah.

9 Q You wouldn't have left it in,
10 correct?

11 MR. NORMAND: Objection to form.

12 A No, I wouldn't have left it in.

13 Q In fact, Mr. Levine, you did review
14 Schedule 1.1(b) prior to the execution of this
15 Asset Purchase Agreement on September 19th, 1995,
16 didn't you?

17 MR. NORMAND: Objection to form.

18 A I don't recall.

19 (September 18, 1995 Fax Transmission
20 with attached Draft Document marked as
21 Exhibit 202, as of this date.)

22 Q I'm going to hand you what's been
23 marked as Exhibit 202.

24 A Thank you.

25 Q For the record this is a fax from

1 you, Mr. vine, to an attorney name Iron Alter
2 at the Wilson Sonsini firm that was representing
3 Novell.

4 A Okay.

5 Q Do you see that?

6 A I see.

7 Q Okay. And this fax cover from you
8 is dated September 18th, 1995, do you see that?

9 A Correct.

10 Q In fact, there's a fax transmission
11 line up at the top, it says September 18, 5:20
12 a.m. USL Legal Department, do you see that?

13 A I see it.

14 Q Okay. This is a fax that you sent;
15 isn't that correct?

16 A I'll accept that I did, I have no
17 reason to think I didn't, but I don't recall it.

18 Q Turning to page 2 you write a note
19 to Aaron Alter and it says "Aaron: Attached are
20 copies of the following:

21 "A. Suggested markups of certain
22 pages in Schedules 1.1(a) and 1.1(b)." Do you see
23 that?

24 A Yes.

25 Q Okay. And then turning you to page

1 3 of th document there's a draft c schedule
2 1.1(a), do you see that?

3 A Yes.

4 Q Okay. Do you recognize this as the
5 schedule, a draft of the Schedule 1.1(a) that we
6 were just looking at?

7 A Yes.

8 Q And do you see some handwriting
9 about halfway down the page and then on a few of
10 the subsequent pages of Schedule 1.1(a), that's
11 your handwriting; isn't that right?

12 A Yes.

13 Q Okay. You reviewed Schedule 1.1(a)
14 prior to the execution of this September 19th,
15 1995 contract; isn't that right?

16 A It seems that way, yeah.

17 Q And you provided some comments on
18 this Schedule 1.1(a) draft?

19 A Yes.

20 Q And if you turn to Roman V of this
21 Schedule 1.1(a), do you see that page?

22 A Yes.

23 Q And up in the left you've written in
24 your handwriting "from Schedule 1.1(a)"?

25 A Yes.

1 And then do you see you made some
2 comments on Roman V relating to intellectual
3 property?

4 A Yes.

5 Q Okay. And you made one change
6 adding the phrase "and to the extent" in between
7 the phrase "trademarks UNIX and UnixWare as," and
8 the phrase, quote, held by seller, do you see
9 that?

10 A I see it.

11 Q You left in place "trademarks UNIX
12 and UnixWare" as a type of intellectual property
13 to be an included asset; is that right?

14 A Yes.

15 Q Okay. And you did not add any other
16 types of intellectual property to this list of
17 included assets, did you?

18 MR. NORMAND: Objection to form.

19 A No.

20 Q You didn't add copyrights?

21 A Not as a specific item, no.

22 Q Okay. You did not add UNIX
23 copyrights?

24 A No.

25 Q You did not add UnixWare copyrights?

1 A No.

2 Q You did not add patents?

3 MR. NORMAND: Objection to form and
4 foundation.

5 A No.

6 Q Now your cover memo to Mr. Alter of
7 Wilson Sonsini says that you also were attaching
8 suggested markups of certain pages in Schedule
9 1.1(b), correct? And this is page 2 of the fax.

10 A (Reviews.)

11 1.1(a) and 1.1(b), yes.

12 Q And turning your attention to the
13 excluded asset draft which is on the page ending
14 613 of this fax number in the lower right-hand
15 corner, are you there?

16 A Okay, yeah.

17 Q Do you see that up in the left-hand
18 corner you've handwritten "from Schedule 1.1(b)"?

19 A Yes.

20 Q And do you see that this is your
21 markup of a portion of Schedule 1.1(b) of the
22 excluded assets?

23 A That's what it appears to be, yeah.

24 Q And you actually reviewed the
25 Intellectual Property section of the Excluded

1 Assets ; ision of Schedule 1.1(b) . re the
2 Asset Purchase Agreement was executed on September
3 19th, 1995; isn't that correct?

4 MR. NORMAND: Object to the form.

5 A Yeah. Yes.

6 Q And specifically looking at and
7 commenting on intellectual property you deleted a
8 reference to patent licenses, do you see that?

9 A Yes.

10 Q Okay. And do you see that in
11 reviewing a draft Schedule 1.1(b) prior to the
12 execution of the agreement you specifically looked
13 at and commented on the exclusion of all
14 copyrights and trademarks except for the
15 trademarks UNIX and UnixWare?

16 A Yes.

17 Q Okay. And do you see that you made
18 only one comment on that line item?

19 A Yes.

20 Q Okay. And the comment that you
21 added was at the very end a phrase, quote, as and
22 to the degree held by Seller, quote; is that
23 right?

24 A That's true.

25 Q Okay. When you looked at the

1 Exclude asset provision prior to the execution of
2 the Asset Purchase Agreement, you left intact the
3 exclusion of all copyrights and trademarks except
4 for the trademarks UNIX and UnixWare; isn't that
5 correct?

6 MR. NORMAND: Objection to form.

7 A Yes.

8 Q And you also left in the exclusion
9 of all patents as being a transferred asset; isn't
10 that right?

11 MR. NORMAND: Same objection.

12 A Yes.

13 Q And again you passed your comments
14 on to the outside lawyers of Wilson Sonsini who
15 were representing Novell in the negotiation and
16 drafting of this contract between Novell and Santa
17 Cruz, correct?

18 A That's correct.

19 Q I'm going to hand to you what we'll
20 mark as Exhibit 203, Mr. Levine.

21 (September 18, 1995 Telecopy Cover
22 Sheet with attached Draft Documents marked
23 as Exhibit 203, as of this date.)

24 BY MR. BRAKEBILL:

25 Q Mr. Levine, this is a -- Exhibit 203

1 is a fax from a Wilson Sonsini lawyer to yourself
2 dated September 18th, 1995 at 6:23 a.m., do you
3 see that?

4 A I see it.

5 Q Okay. And do you see on page 2
6 there's actually a series of fax transmission
7 lines?

8 A Yes.

9 Q Okay. This document represents a
10 nine-page fax that was sent to you by Novell's
11 outside lawyers on September 18, 1995 concerning
12 this asset purchase transaction, correct?

13 A I assume.

14 Q And if you turn to the third page of
15 this document you'll see that what is being
16 enclosed is another document which is a fax from a
17 Wilson Sonsini lawyer, again who represented
18 Novell, to an individual named Jeffrey Higgins at
19 the law firm of Brobeck Phleger & Harrison, do you
20 see that?

21 A Yes.

22 Q Do you understand that Brobeck
23 Phleger & Harrison was the outside law firm
24 representing Santa Cruz in the asset purchase
25 transaction?

1 No, I didn't, I didn't call that.

2 Q The message listed in the fax from
3 Wilson Sonsini to the Brobeck firm says, quote,
4 Attached please find Schedule 1.1(a) and Schedule
5 1.1(b) marked to show changes requested by Burt
6 Levine at Novell. Please feel free to call me at
7 415-493-9300 if these changes generate questions.
8 Do you see that?

9 A I do.

10 Q You were being sent by the Wilson
11 Sonsini firm a copy of a letter and corresponding
12 comments that you had made on the list of excluded
13 assets and the list of included assets; isn't that
14 correct?

15 A Looks that way.

16 Q And you're specifically copied, if
17 you'll see on page 3 of this, the page ending in
18 407 in the lower right-hand corner, you're copied
19 on the Wilson Sonsini letter to the Brobeck law
20 firm, do you see that?

21 A Yes.

22 Q And again what is attached here is a
23 transmission of your comments on the assets in
24 Schedule 1.1(a) and the excluded assets in
25 Schedule 1.1(b); is that correct?

1 A 1.1(a), yeah, that's t.

2 Q And your changes are particularly
3 called out to the Brobeck law firm, correct?

4 MR. NORMAND: Objection to form.

5 A Excuse me?

6 Q As indicated in this fax cover, the
7 changes that you wanted to make to Schedules
8 1.1(a) and 1.1(b) were called out to the Brobeck
9 law firm, correct?

10 MR. NORMAND: Same objection.

11 A Yes, if it's -- I'm assuming it
12 refers to this.

13 MR. NORMAND: When you say "this,"
14 what do you mean, Mr. Levine?

15 THE WITNESS: What we've marked here
16 as Exhibit 202.

17 MR. BRAKEBILL: Right.

18 BY MR. BRAKEBILL:

19 Q Just so the record is clear, Mr.
20 Levine, I believe that you were confirming that
21 the changes that you had made in Exhibit 202 which
22 is your fax to Aaron Alter including your
23 handwritten edits to Schedules 1.1(a) and 1.1(b)
24 are being transmitted in this Exhibit 203 from the
25 Wilson Sonsini firm to the Brobeck law firm,

1 correct

2 A Yes, I haven't compared the actual
3 typed version to what I suggested but I think
4 we're referring to the same document.

5 Q And let's just -- on Exhibit 203 --
6 do you have that in front of you?

7 A Yes.

8 Q This is the fax from transmitting
9 your changes to the schedules to the Brobeck firm.
10 If you turn to page 410 in the lower right-hand
11 corner.

12 A Yes.

13 Q Do you see that this is a page of
14 the Schedule 1.1(a) Assets?

15 A Yes.

16 Q Okay. And do you see the Roman V on
17 Intellectual Property?

18 A I do.

19 Q All right. And do you see that the
20 change that you had added from the earlier
21 document, quote, and to the extent, quote --

22 MR. TIBBITTS: Time for Jazzercise.

23 BY MR. BRAKEBILL:

24 Q Let me start again, I'm sorry.

25 In looking at Roman V of this

1 document schedule 1.1(a), do you see that this
2 incorporates the, quote, and to the extent, quote,
3 language that you had added by a handwritten
4 comment in the earlier document that you
5 transmitted to Aaron Alter of the Wilson Sonsini
6 firm?

7 A Yes, I think it's the same.

8 Q And turning to page 413 in the lower
9 right-hand corner the Schedule 1.1(b), do you see
10 the Roman V on Intellectual Property?

11 A Yes.

12 Q And do you see that per your edit
13 what had been the provision on patent licenses has
14 been taken out?

15 A I have to check that against the --

16 Q Sure. Referring you back to
17 Exhibit 202.

18 A Right. At what page?

19 Q Page 613 in the lower right-hand
20 corner.

21 A Okay.

22 Q Do you see that where you had
23 stricken patent licenses -- do you see that? Do
24 you see that this --

25 A Yes.

1 \ -- has now --

2 A Yes.

3 Q -- per your edit come out of
4 Schedule 1.1(b)?

5 A Yes.

6 Q And do you see that where you
7 continued to leave in the exclusion for "all
8 copyrights and trademarks except for the
9 trademarks UNIX and UnixWare" that that line item
10 has been kept in the Excluded Assets Schedule in
11 this draft that was being transmitted from the
12 Wilson Sonsini firm to the Brobeck law firm?

13 A Yes.

14 Q And do you see that where you've
15 left in all patents from your review of Schedule
16 1.1(b) that that line item has also been retained
17 in the draft Schedule 1.1(b) that was transmitted
18 from the Wilson law firm to the Brobeck law firm?

19 A Yes.

20 Q If I were to represent to you that
21 the Brobeck law firm was the outside law firm that
22 represented the Santa Cruz Operation in connection
23 with this Asset Purchase Agreement, would you
24 agree with me that your edits to Schedule 1.1(a)
25 and 1.1(b) were transmitted to SCO's counsel

1 during negotiations?

2 MR. NORMAND: Objection to form.

3 A Per the exhibits we've just
4 discussed?

5 Q Yes.

6 A It looks that way.

7 Q And your inclusion of "all
8 copyrights and trademarks except for the
9 trademarks UNIX and UnixWare" was also transmitted
10 to Santa Cruz during the negotiations, correct?

11 A This is on Schedule 1(a)?

12 Q 1.1(b).

13 A (Reviews.)

14 I'm sorry, then please repeat the
15 question.

16 Q And your inclusion of "all
17 copyrights and trademarks except for the
18 trademarks UNIX and UnixWare" in the Excluded
19 Assets provision of Schedule 1.1(b) was also
20 transmitted to Santa Cruz during the negotiations,
21 correct?

22 A Okay. My --

23 MR. NORMAND: Object to form.

24 A -- inclusion it wasn't modified "all
25 copyrights and trademarks," yeah.

1 Q You did not modify the e item
2 "all copyrights and trademarks except for the
3 trademarks UNIX and UnixWare," correct?

4 A No.

5 Q And so when your comments on
6 Schedule 1.1(b) were transmitted to Santa Cruz the
7 line item "all copyrights and trademarks" was
8 included as an excluded asset, correct?

9 A It was included.

10 MR. NORMAND: Take a lunch break,
11 please.

12 THE VIDEOGRAPHER: Going off the
13 record?

14 MR. BRAKEBILL: Yes.

15 THE VIDEOGRAPHER: Going off the
16 record at 12:08 p.m.

17 (Whereupon, off the record.)

18 (Whereupon, lunch recess)

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1 T E R N O O N S E S S I O N

2 (Whereupon, resumed.)

3 THE VIDEOGRAPHER: Going back on the
4 record at 1:32 p.m.

5 BY MR. BRAKEBILL:

6 Q Good afternoon, Mr. Levine.

7 A Good afternoon.

8 Q To take us back to this morning, do
9 you recall that there was a Schedule 1.1(b) that
10 listed a series of exclusions?

11 A Yes.

12 Q And do you recall that one of the
13 types of intellectual property that was excluded
14 was all patents?

15 A Yes.

16 Q As you sit here today, do you have
17 any understanding as to whether SCO as part of the
18 Asset Purchase Agreement in 1995 got a license to
19 practice the UNIX patents or any other IP that
20 Novell retained?

21 MR. NORMAND: Objection to the form.

22 Objection to the extent it calls for a
23 legal conclusion.

24 A Yes, I do.

25 Q And what is your understanding

1 today?

2 A My understanding is similarly to my
3 stand on copyrights that the grant of the whole
4 business carries with it at least licenses under
5 the patents needed to carry on the business to the
6 extent that Novell had them.

7 Q And would that be the case with any
8 other IP that was retained?

9 MR. NORMAND: Objection to form.

10 A Could you be more specific, please?

11 Q As you sit here today, do you have
12 an understanding as to whether SCO as part of the
13 Asset Purchase Agreement in 1995 got a license to
14 practice any intellectual property that Novell
15 retained as part of the transaction?

16 MR. NORMAND: Objection to form.

17 A This is a superset of the previous
18 questions on patents, it would be any intellectual
19 property right?

20 Q Correct.

21 A Yes.

22 Q And what is that understanding?

23 A That as far as the patents are
24 concerned, which is really outside the actual
25 ownership right, that it's an exclusionary right,

1 then an actual license would be needed. y possibly
2 to practice the IP. With respect to things like
3 copyrights, which is inherent in my view in the
4 actual property, no external license is needed.

5 Q Assume with me for a moment that the
6 UNIX copyrights were excluded in the September
7 19th, 1995 transaction, is it your testimony that
8 the license would be inherent for SCO?

9 A I think if it were --

10 MR. NORMAND: Object to form.

11 A -- excluded with that proviso, yeah,
12 then at the very least anything necessary to
13 practice the copyright in the transferred asset
14 would be inherent in there. Assuming --

15 Q A license would be inherent to the
16 copyrights?

17 A The license would be inherent.
18 Assuming they were proper, you know, that the
19 ownership was excluded.

20 Q Assuming that the copyrights had
21 been retained by Novell --

22 A Yeah --

23 Q -- in the transaction --

24 A -- that's what I mean.

25 Q -- SCO would have had a license to

1 use those copyrights in the business correct?

2 A Absolutely. Absolutely.

3 Q And we were kind of speaking over
4 each other, so I'm just going to repeat the
5 question and answer.

6 A Okay.

7 Q Assuming that the copyrights had
8 been retained by Novell in the transaction, SCO
9 would have had a license to use those copyrights
10 in the business, correct?

11 A Correct.

12 MR. NORMAND: I'm going to object to
13 the form and to the extent it calls for a
14 legal conclusion.

15 BY MR. BRAKEBILL:

16 Q Now, Mr. Levine, do you have
17 Exhibit 1 in front of you which is the September
18 1995 Asset Purchase Agreement?

19 A I do.

20 Q If you could please turn to that.

21 A (Complies.)

22 Q Do you recall as you sit here today
23 that there were Seller Disclosure Schedules
24 prepared in connection with the Novell-Santa Cruz
25 transaction?

1 Q And what type of work do you do for
2 Darby & Darby?

3 A Patent prosecution.

4 Q I take it you probably had
5 experience prosecuting patents for AT&T or USL or
6 Novell?

7 A Yeah, in the early days.

8 Q And then you continued to work as a
9 patent prosecutor at Darby & Darby until mid 2002
10 or you --

11 A Yes. Yes.

12 Q Okay.

13 A Yes.

14 Q And then in mid 2002 what work were
15 you doing two days a week?

16 A And I'm still doing, I'm a teacher
17 at Union County College here in Elizabeth.

18 Q What do you teach?

19 A English as a second language.

20 MR. NORMAND: Like the APA?

21 BY MR. BRAKEBILL:

22 Q And I take it you're represented by
23 the Boies Schiller firm that represents SCO; is
24 that correct?

25 A Yes.

1 And when did you begin be
2 represented by counsel for SCO?

3 A It would have been in the summer of
4 2004 I believe.

5 Q And are you a paid consultant of
6 SCO?

7 A I was.

8 Q Beginning in the summer of 2004 when
9 you initially retained them you were a paid
10 consultant?

11 A Yes, right.

12 Q And how long did you remain a paid
13 consultant?

14 A Until sometime in the beginning of
15 2005 I believe.

16 Q And did the representation conclude
17 at that point in time in 2005 or was it terminated
18 or how did it -- you say it went until early 2005,

19 I'm trying to figure out what you mean by that.

20 A You mean between then and now?

21 Q Correct. Have you been
22 represented -- maybe this is an easier way to put
23 it: Have you been represented by Boies Schiller
24 the law firm representing SCO since the summer of
25 2004?

1 A Yes.

2 Q And did you say that your role as a
3 paid consultant ever ceased?

4 A Yes.

5 Q When did that role cease?

6 A January, February of 2005.

7 Q And do you know why that role
8 ceased?

9 A Well, it was a question of getting
10 work, you know, from time to time and whatever I
11 had contributed was -- was sufficient. I hadn't
12 heard about any further work since then.

13 Q Were you doing legal work for SCO?

14 A You mean aside from my job?

15 Q No, no, in your role as a paid
16 consultant --

17 A As a paid consultant?

18 Q -- were you doing legal work for
19 SCO?

20 MR. NORMAND: Objection to form.

21 A I didn't consider it legal work, it
22 was essentially using my good offices to, you
23 know, aid in contacts and knowledge and things
24 like that of the AT&T practices, people, and
25 things like that.

1 Q I'm not trying to inquire into --

2 A No, no, no.

3 Q -- your privileged communications,
4 I'm just trying to understand generally.

5 A No, that's all right.

6 Q Is it fair to say you were
7 consulting them on with issues concerning the
8 ongoing litigation, SCO litigation against IBM?

9 A Yes, I think you could say that.

10 Q And are you being paid for your
11 testimony today?

12 A No.

13 Q Do you still maintain any personal
14 relationships with anyone at Santa
15 Cruz/Caldera/SCO?

16 A I have to ask you what that means.

17 Q Since the time that you left --

18 A Yeah.

19 Q -- Santa Cruz in 2000 --

20 A 2000.

21 Q -- have you stayed in touch with any
22 of the people that you worked with at Santa Cruz?

23 A Yes.

24 Q Who have you stayed in touch with?

25 A Very, very occasionally with Bill

1 Well --

2 MR. NORMAND: Object to the form.

3 A -- I was talking specifically of the
4 copyright.

5 THE REPORTER: Talking specifically?

6 THE WITNESS: Specifically of the
7 copyright.

8 BY MR. BRAKEBILL:

9 Q Is it your testimony here today that
10 any UNIX patents were transferred to Santa Cruz as
11 part of the Asset Purchase Agreement?

12 A No, that's not my testimony.

13 Q So your testimony today is that part
14 of Schedule 1.1(b) is accurate, the part dealing
15 with the exclusion of patents; is that right?

16 MR. NORMAND: Object to the form.

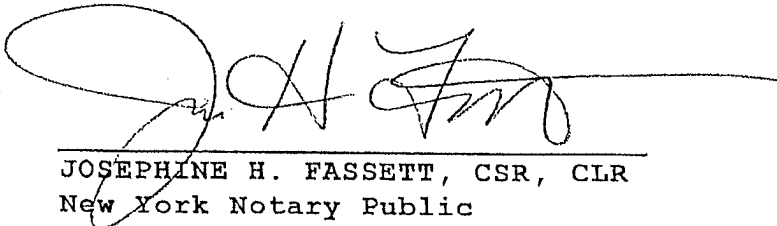
17 A That is accurate as far as it goes,
18 but if I may supplement it, that I think I also
19 testified that a grant of this breadth of an asset
20 transfer, if it does not convey the patents per
21 se, will at least convey enough of a patent
22 license under Novell's patents that would be
23 necessary for SCO to conduct its business.

24 Q And I think we agreed this morning
25 that assuming the copyrights had been excluded by

1
2 C E R T I F I C A T E
3

4 I, JOSEPHINE H. FASSETT, a Certified
5 Shorthand Reporter and Notary Public within and
6 for the State of New York, do hereby certify that
7 the witness, JOHN MACIASZEK, whose videotaped
8 deposition is hereinbefore set forth, was sworn by
9 me on the date indicated, and that the foregoing
10 videotaped deposition is a true and accurate
11 record of the testimony given by such witness.
12

13 I FURTHER CERTIFY that I am not employed
14 by nor related to any of the parties to this
15 action by blood or marriage, and that I am in no
16 way interested in the outcome of this matter.
17

18 
19 _____
20 JOSEPHINE H. FASSETT, CSR, CLR
21 New York Notary Public
22
23
24
25