

EXHIBIT 15A

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,)
) Case No. 2:04CV-00139
Plaintiff/)
Counterclaim Defendant,) Videotaped Deposition of:
) ROBERT J. FRANKENBERG
NOVELL, INC.,)
)
Defendant/)
Counterclaim Plaintiff.)

COPY

February 10, 2007
10:00 a.m.

Fillmore & Spencer
3301 N. University avenue
Provo, UT 84604

Sharon Morgan, CSR, RPR, CRR
Notary Public in and for the State of Utah
Job: 191635

1 object. Hopefully less frequently than more, but, in
2 any event, if you understand a question, you should
3 still seek to answer it. The objections are for the
4 record and before a judge, if necessary, to rule upon
5 at some future time.

6 A. Uh-huh (affirmative).

7 Q. Are you represented by counsel here in
8 connection with this deposition?

9 A. I am, yes. Bill Fillmore is my attorney.

10 Q. I would like to begin by asking you to
11 briefly summarize your educational background.

12 A. I have a bachelor's degree in computer
13 engineering from San Jose State University, and I'm an
14 SEP graduate of the Stanford Graduate School of
15 Business.

16 Q. Can you briefly summarize your employment
17 background prior to coming to Novell?

18 A. I was in the U.S. Air Force from 1965 to
19 1969, joined Hewlett-Packard out of the Air Force as a
20 manufacturing technician, and stayed there nearly 25
21 years, just a few months short of 25 years. And when
22 I left, I was the vice president responsible for
23 Hewlett-Packard's networking in personal computer
24 businesses.

25 Q. When did you leave Hewlett-Packard?

1 A. In April of 1994.

2 Q. Where did you go?

3 A. To Novell.

4 Q. And what position did you assume at Novell?

5 A. I became the CEO and president of Novell and
6 shortly thereafter also became chairman.

7 Q. What was the date, Mr. Frankenberg, that you
8 assumed the office of chief executive officer of
9 Novell?

10 A. It would have been in late March of 1994, or
11 early April. I can't remember. It was right at the
12 boundary.

13 Q. Could you briefly describe the different
14 lines, major lines, of Novell's business at that
15 point?

16 A. Novell's largest single business was NetWare.
17 The second largest business was training people in the
18 use, installation and application of NetWare. After
19 that we had a number of smaller businesses including
20 UNIX, UnixWare, DR-DOS, and a range of much smaller
21 businesses having to do with document management and
22 so forth.

23 Q. Can you briefly describe what the NetWare
24 business was?

25 A. The NetWare business, as I said, was the

1 largest single business. It provided the ability to
2 connect personal computers to shared resources such as
3 disks and printers and also, through those shared
4 resources, to connect to other networks.

5 Q. Did there come a --

6 A. It also provided the capability to write
7 applications on that shared resource and make further
8 use of it.

9 Q. Did there come a time when you decided, as
10 CEO of the board, to explore divesting certain of the
11 business lines of the company?

12 A. Excuse me, I misspoke. At about the same --
13 at about the same time that I joined, Novell had just
14 purchased WordPerfect and the associated products
15 there. So at the moment I was there it hadn't been
16 completed, but shortly thereafter those were added. I
17 don't know whether that was the intent of your
18 question or not.

19 Q. Well, it helps to add that to the picture.
20 WordPerfect, as a lot of people will be familiar with,
21 had a word processing program --

22 A. Correct.

23 Q. -- of the same name?

24 A. Uh-huh (affirmative).

25 Q. And did there come a time after you became

1 Q. And they did that with your authority?

2 A. Yes.

3 Q. And you understood when they were doing that
4 negotiation that it was consistent with the Asset
5 Purchase Agreement that you had directed them --
6 directed your APA negotiators to execute?

7 A. Correct. Yes.

8 Q. And, in fact, one of the things that you
9 understood during the Asset Purchase Agreement
10 negotiations with this change structure now, the mixed
11 structure we've described, was that retaining the UNIX
12 copyrights would facilitate Novell's exercise of
13 rights with respect to capitalizing the SVRX revenue
14 stream?

15 MR. SINGER: Objection to the form of the
16 question. Misstates testimony and is leading.

17 MR. FILLMORE: Do you understand the
18 question?

19 A. Will you repeat it, please? I'm sorry, can I
20 have the court reporter read that?

21 Q. Please.

22 (The question was read as follows:

23 "QUESTION: And, in fact, one of the things
24 that you understood during the Asset Purchase
25 Agreement negotiations with this change structure now,

1 the mixed structure we've described, was that
2 retaining the UNIX copyrights would facilitate
3 Novell's exercise of rights with respect to
4 capitalizing the SVRX revenue stream?"")

5 A. Well, I recall discussing that, and I have a
6 vague recollection of that, but I don't -- I can't say
7 that I charged the team with doing that.

8 Q. (By Mr. Jacobs) But if the team had done
9 that, in fact, that would have -- and believing that
10 that was a way to facilitate and protect Novell's
11 interests, that would not have been inconsistent with
12 your understanding of the structure of the
13 transaction?

14 MR. SINGER: Object to the form of the
15 question, leading, misstates the witness's prior
16 testimony.

17 A. Let's see. I think it would have been
18 inconsistent with selling UNIX to SCO. They wouldn't
19 hold the copyrights, and so that wouldn't be
20 consistent. And, furthermore, there wouldn't be a
21 necessity for a license back of the technology because
22 we would have owned it.

23 Q. (By Mr. Jacobs) So when you met with
24 Mr. Brakebill and Mr. Lundberg, did you explain to
25 them that you thought Novell wanted to retain, among

1 other things, the UNIX copyrights in order to
2 facilitate negotiation of SVRX License buyouts?

3 MR. SINGER: Before you answer that, let me
4 ask Mr. Jacobs, are you waiving any assertion of
5 privilege with respect to such a meeting?

6 MR. JACOBS: No.

7 MR. SINGER: Then I object to your taking a
8 position asking the witness to testify about a meeting
9 that at the same time you're going to be asserting
10 privilege to. So which way do you want it?

11 MR. JACOBS: I would like the witness to
12 answer the question.

13 MR. SINGER: We view that as a waiver of
14 privilege if you ask the witness the question.

15 MR. JACOBS: We reserve all rights.

16 MR. SINGER: It's his privilege.

17 THE WITNESS: You're having fun, but I don't
18 understand what I --

19 MR. SINGER: It's Novell's privilege. I
20 understand that --

21 MR. JACOBS: Our record is clear with respect
22 to each other. You and I did that very economically.
23 Now let's turn to the witness, and would you read back
24 the question, please.

25 "QUESTION: So when you met with

1 Mr. Brakebill and Mr. Lundberg, did you explain to
2 them that you thought Novell wanted to retain, among
3 other things, the UNIX copyrights in order to
4 facilitate negotiation of SVRX License buyouts?")

5 A. I said that I had a memory, and I think I
6 called it a vestigial memory, of that topic and I
7 thought that might be an explanation of why I was
8 remembering that.

9 Q. (By Mr. Jacobs) As Mr. Singer elicited from
10 you, you signed the Asset Purchase Agreement, correct?

11 A. Yes.

12 Q. At the time you signed it, were you signing
13 it essentially on the basis of the recommendation from
14 your team that you execute the agreement as opposed to
15 going through it on a detailed basis yourself?

16 A. On the basis of the recommendation of the
17 team. I did not review every item in it.

18 Q. At the time you signed it, you understood
19 that it reflected Novell's intentions with respect to
20 its subject matter?

21 A. That's what the team told me, yes.

22 Q. And you've done a lot of transactions in the
23 course of your career as an executive with computer
24 companies?

25 A. At least hundreds, if not more, yes.

1 Q. And in those transactions, you tend to rely,
2 especially as you've moved into senior positions,
3 you've relied on negotiating teams to effectuate the
4 parties' intent, correct?

5 A. Negotiating teams and the lawyers
6 representing us, yes.

7 Q. Actually, just to be clear, when I say
8 negotiating teams, I include the lawyers.

9 MR. SINGER: Are you waiving the
10 attorney/client privilege between Novell and its
11 counsel with respect to this transaction?

12 Q. (By Mr. Jacobs) Mr. Frankenberg, did you
13 have confidence in your negotiating team that
14 represented you with respect to --

15 Mr. Singer, I'm not going to answer that
16 question. I'm asking Mr. Frankenberg --

17 MR. SINGER: Well, the fact that you're not
18 answering the question I can't deal with, but I just
19 want the record to be clear that we view, to the
20 extent you asked Mr. Frankenberg about communications
21 with lawyers on the negotiating team, directly or
22 indirectly, that that constitutes a waiver of the
23 attorney/client privilege and we have every right,
24 then, to depose those lawyers on that same subject.

25 Q. (By Mr. Jacobs) Mr. Frankenberg, did you

1 have confidence in the negotiating team representing
2 you on the SCO transaction?

3 A. Yes.

4 Q. Have you ever had any reason to doubt the
5 confidence you placed in them?

6 A. No.

7 Q. Do you know who Tor Braham is?

8 A. Yes.

9 Q. Who is Tor Braham?

10 A. Tor Braham is -- he was a member of the team
11 from outside counsel at Wilson Sonsini involved in
12 drafting the agreement.

13 Q. Did you have confidence in Tor Braham?

14 A. I did, yes.

15 Q. Based on your knowledge and experience in the
16 software industry, how important is studying the
17 actual text of an agreement of the sort that the Asset
18 Purchase Agreement represents in understanding the
19 parties' intent?

20 MR. SINGER: Object to the form of the
21 question.

22 A. It's important.

23 Q. (By Mr. Jacobs) Is the best evidence, in
24 your view, of the parties' intent in entering into the
25 Asset Purchase Agreement the terms of the Asset

1 Purchase Agreement itself?

2 MR. SINGER: Object to the form of the
3 question.

4 A. To the extent that it's drafted well, yes.

5 Q. (By Mr. Jacobs) Do you have any reason to
6 believe that the Asset Purchase Agreement is not
7 drafted well?

8 A. I think --

9 MR. FILLMORE: Are you asking at the time or
10 in retrospect?

11 MR. JACOBS: Well, that's a fair
12 clarification.

13 Q. (By Mr. Jacobs) At the time that you
14 executed it, do you believe that it had been drafted
15 well?

16 A. Did I believe at the time I executed it?
17 Yes, I did believe it was.

18 Q. And then you're aware that there was a
19 three-month period in which kind of a cleanup
20 amendment could be prepared if there were any bugs in
21 the drafting?

22 A. Correct.

23 Q. And you actually -- that was part of the
24 understanding going into the execution that there
25 would be that kind of cleanup period, correct?

1 A. I believe so yes.

2 Q. And so when you take the asset agreement plus
3 a three-month period to review it and enter into an
4 amendment that clarifies it, if you take those two
5 together at the time the amendment No. 1 was executed,
6 did you believe that the combined agreements very
7 likely were highly accurate reflections of the
8 parties' intent in entering into the Asset Purchase
9 Agreement?

10 MR. SINGER: Object to the form of the
11 question, vague as to -- and leading.

12 A. Are you -- can I ask for the same
13 clarification that Phil asked for last time? At the
14 time or now?

15 Q. (By Mr. Jacobs) At the time.

16 MR. SINGER: Same objections.

17 A. I do.

18 Q. (By Mr. Jacobs) Were you CEO when the Tuxedo
19 buyout was effectuated?

20 A. Yes, I was.

21 Q. Are you aware that in -- would you say that
22 Novell sold Tuxedo to BEA?

23 A. Yes.

24 Q. Are you aware that Novell retained the
25 copyrights in Tuxedo in that transaction?

1 A. I'm not, no.

2 Q. Would it surprise you if that were the
3 structure of the transaction?

4 MR. SINGER: Object to the form.

5 A. Yes, it would.

6 Q. (By Mr. Jacobs) Do you have an understanding
7 that the copyrights were transferred to BEA at that
8 time?

9 A. I don't recall.

10 Q. In general, were the intellectual property
11 provisions of agreements like that something that,
12 from your vantage point as CEO, you left to the
13 lawyers and day-to-day negotiators of the agreements
14 to resolve?

15 MR. SINGER: Object to the form.

16 A. After charging them to make sure that the
17 intellectual property was appropriately protected,
18 yes.

19 Q. (By Mr. Jacobs) In general, taking a look at
20 Exhibit 2, the board minutes from the --

21 MR. FILLMORE: September 18th.

22 MR. JACOBS: Yes.

23 Q. (By Mr. Jacobs) -- from the September 18th,
24 1995 meeting. Let me ask you about the -- if you look
25 at the heading Proposed Sale of UnixWare Business and

1 Equity Investment in SCO, do you see that?

2 A. Yes.

3 Q. And then it states that you provided an
4 overview of several business transactions the company
5 was negotiating with Santa Cruz Operation, Inc. and
6 Hewlett-Packard for the purpose of strengthening UNIX
7 on the Intel platform. Do you see that?

8 A. Yes, I do.

9 Q. And then, just to read the whole thing, the
10 next sentence, "He described one of the key steps in
11 this process as the sale of a portion of Novell's
12 UnixWare business to SCO." Do you see that?

13 A. Yes.

14 Q. And then next sentence which is what I'm
15 going to ask you about, in fact, "He then described a
16 proposed structure under which Hewlett-Packard would
17 take a leadership position in the development of
18 64-bit UNIX technology and under which Hewlett-Packard
19 would license Novell networking services as a core
20 component of future 64-bit UNIX." Do you see that?

21 A. Yes.

22 Q. Can you explain how, based on your
23 recollection of the Hewlett-Packard and SCO
24 transactions, how the two related to each other?

25 A. Yes. At the time, Hewlett-Packard was in

1 Q. (By Mr. Jacobs) All right. Then in the top
2 of page 2 it looks like there's a recitation of the
3 particular contents of the agreement that were
4 discussed, such as board seats, right of first
5 refusal. Do you see that?

6 A. Yes.

7 Q. And the minutes indicate that it was a fairly
8 detailed discussion of the terms of the Asset Purchase
9 Agreement. Is that consistent with any recollection
10 you have of the meeting itself?

11 A. It could have been, but it's a long time ago.
12 I'm not sure I remember how extensive the discussion
13 was.

14 Q. Now, if you look at the -- under the
15 resolution after the paragraph in which Novell
16 determines that it's in its best interest. Do you see
17 that?

18 MR. SINGER: There's several resolutions on
19 page 2. Is there a particular one you're referring
20 to?

21 Q. (By Mr. Jacobs) Let me start over. Do you
22 see that there's a first resolved?

23 A. Yes.

24 Q. And then there's a paragraph under it which
25 starts describing the terms of the Asset Purchase

1 Agreement. Do you see that?

2 A. Yes.

3 Q. And it says that pursuant to the Asset
4 Purchase Agreement, Novell will transfer to SCO its
5 UNIX and UnixWare technology assets. Do you see that?

6 A. Yes.

7 Q. And then in the boxed portion -- Mr. Singer
8 is correct, that was boxed by us when we submitted
9 under this declaration. It says, "Novell will retain
10 all of its patents, copyrights and trademarks." Do
11 you see that?

12 A. I do.

13 Q. And I guess my question to you is when it
14 says "Novell will retain all of its patents,
15 copyrights and trademarks except for the trademarks
16 UNIX and UnixWare, as you sit here today and you read
17 this, do you believe that it's erroneously reporting
18 what was discussed at the board meeting?

19 A. Looking back at it, I think what happened was
20 that we -- that our biggest concern were copyrights
21 and trademarks having to do with NetWare, and in no
22 way did those get blurred or sent anywhere else. So I
23 think that that was what was meant to be described but
24 it isn't described here properly.

25 Q. So your best --

1 A. Nor is it described properly in the
2 agreement.

3 Q. So it may be that this -- that as you sit
4 here today and you look at this boxed paragraph, it's
5 accurately describing what was in the agreement, but
6 you think that the agreement may not have accurately
7 reflected your personal intent?

8 A. Correct.

9 Q. So setting aside your personal intent, is it
10 your testimony that the negotiating team acted outside
11 of its authority in drafting an exclusion to the Asset
12 Purchase Agreement that was broader than just network
13 copyrights?

14 A. That's possible.

15 Q. It's a possibility?

16 A. It's a possibility.

17 Q. What other possibilities are there?

18 A. A drafting error is another possibility.

19 Q. And does the fact that there was the
20 three-month period in which Amendment No. 1 had a
21 chance to be prepared in the wake of the signature of
22 the Asset Purchase Agreement and before the closing,
23 does that affect your estimate of the probability that
24 it was a drafting error?

25 MR. SINGER: Object to the form.

1 A. I only said that both of those things were
2 possible. I think it's still possible it was a
3 drafting error or that they acted outside of their
4 scope. I think either of those are possible.

5 Q. (By Mr. Jacobs) Are there any other
6 possibilities?

7 A. Not that I can think of.

8 Q. Well, we discussed one, which was that you
9 gave them direction to try to make sure that they
10 could protect their right to do buyouts, correct?

11 A. Correct.

12 Q. Is it possible that they effectuated that
13 direction by obtaining the UNIX copyrights?

14 MR. SINGER: Object to the form.

15 A. I guess that's possible as well, yes.

16 Q. (By Mr. Jacobs) When you were asked about
17 Amendment No. 2, were you -- did you have any
18 contemporaneous -- sorry, strike that. Let's turn to
19 Amendment No. 2, Exhibit 10.

20 A. Okay.

21 Q. You were asked about the paragraph under A,
22 "All copyrights and trademarks except for the
23 copyrights required for SCO," et cetera. Do you see
24 that?

25 A. Uh-huh (affirmative).

1 Q. And you were asked some questions about it by
2 Mr. Singer. Do you recall that?

3 A. I do.

4 Q. Was your answer to his questions based on
5 anything other than sitting in this deposition and
6 reading the provision and applying your understanding
7 of the words?

8 A. I did state that I saw this before, so --
9 before the deposition, so nothing other than what I
10 read before the deposition and sitting in this
11 deposition and reading it.

12 Q. So you don't have any -- just to say that
13 slightly differently, you don't have any information
14 from the actual negotiators of Amendment No. 2 about
15 what their actual intent was?

16 A. I don't, because I had left prior to this.

17 Q. Now, have you noted to yourself when you read
18 paragraph A that it doesn't say all copyrights and
19 trademarks owned by Novell as of the date of the
20 agreement in the UNIX and UnixWare technologies, or to
21 put it differently, it doesn't say that it is now
22 including in the Asset Purchase Agreement all UNIX and
23 UnixWare copyrights?

24 MR. SINGER: Object to the form of the
25 question.

1 A. Could I ask you to say that again, please?

2 Q. (By Mr. Jacobs) Have you noted to yourself
3 as you read this that this paragraph does not say that
4 SCO -- in simple language that SCO gets all UNIX and
5 UnixWare copyrights?

6 MR. SINGER: Object to the form.

7 A. It doesn't say that. What it says here is
8 that it gets those rights that are needed to exercise
9 its rights with respect to the acquisition of UNIX and
10 UnixWare technologies.

11 Q. (By Mr. Jacobs) And does that -- did that
12 have any -- the fact that that's the language in
13 Amendment No. 2, does that have any bearing on your
14 expectation that the Asset Purchase Agreement would
15 have, in your judgment, simply have transferred the
16 UNIX and UnixWare copyrights to SCO?

17 A. Could you restate that?

18 Q. I think you've testified that it was your
19 expectation that the Asset Purchase Agreement would
20 transfer the UNIX and UnixWare copyrights to SCO?

21 A. Yes.

22 Q. Does the fact that this language does not
23 simply say we're amending the APA to transfer the UNIX
24 and UnixWare copyrights to SCO have any bearing on
25 your assessment of what happened during the

1 granting rights that are different than had the
2 language said SCO grants to Novell a royalty for
3 perpetual, worldwide license to all the copyrights
4 included in UNIX?

5 MR. SINGER: Object to the form.

6 A. Yes. It could be more, yes, if that's what
7 your question was.

8 Q. (By Mr. Jacobs) So if Novell was retaining
9 the copyrights, the grant of the license to technology
10 could be a grant of different rights that were not
11 included in Novell's retaining copyright rights?

12 MR. SINGER: Objection, assumes facts
13 contrary to those in evidence.

14 A. I guess what you're asking is since
15 technology is broader than copyrights, could it be
16 more than just the copyrights, or are you saying
17 because technology is broader than copyrights, would
18 it exclude the copyrights? I'm confused as to which
19 of those --

20 Q. (By Mr. Jacobs) Would it make sense to
21 you -- because technology is more than copyrights,
22 would it not make sense to you to have a license back
23 of technology even if Novell was retaining the
24 copyrights?

25 MR. SINGER: Object to the form, assumes

1 facts contrary to those in evidence.

2 A. You're asking me to speculate, so I guess it
3 could.

4 Q. (By Mr. Jacobs) Well, were you doing
5 anything more than speculation when you explained that
6 you thought it didn't make sense to have the TLA if
7 Novell retained the copyrights?

8 MR. FILLMORE: Are you asking him to
9 interpret the contract or express his intent on the
10 deal?

11 Q. (By Mr. Jacobs) When you were -- let me
12 strike that question to start over. When you were
13 explaining your view about the relationship between
14 the question whether Novell retained the copyrights
15 and the fact that there is a Technology License
16 Agreement --

17 A. Right.

18 Q. -- were you sitting here trying to make your
19 best sense of these various documents as opposed to
20 having a clear recollection in 1995 of what was going
21 on?

22 A. That's a very different question than the
23 earlier one. As I recall, what I said was it didn't
24 make sense to me that if Novell had retained the
25 copyrights, that it would need a license back.

1 Q. And is that not making sense -- reminds me of
2 a talking headstone. Is that not making sense
3 something that you basically came up with as you were
4 thinking about this in 2006, 2007?

5 A. Yes.

6 Q. As opposed to -- this was really your
7 lawyer's question -- as opposed to having a
8 recollection as you sit here today of specific
9 thoughts you had in 1995?

10 A. Well, if I go back to my intent, the intent
11 was to sell the whole business, including the
12 technology and the copyrights.

13 Q. That was your original intent, correct?

14 A. Right.

15 MR. SINGER: Object to the form of the
16 question.

17 Q. (By Mr. Jacobs) And then the intent changed?

18 MR. SINGER: Object to the form of the
19 question.

20 A. The intent changed because the buyer couldn't
21 afford to pay for the whole thing in cash, yes.

22 Q. (By Mr. Jacobs) And one of the things that
23 that meant was that now instead of you getting the
24 capitalized revenue stream from the SVRX licenses all
25 up front in a single buyout transaction, sort of a

1 grand buyout transaction by buyer, you had to
2 anticipate a bunch of little buyout transactions going
3 forward?

4 MR. SINGER: Object to the form of the
5 question.

6 A. Correct. In other words, we agreed to retain
7 the royalty stream and look at that as partial payment
8 or part of the payment for the deal, yes.

9 Q. (By Mr. Jacobs) And you anticipated trying
10 to achieve the capitalized value of that royalty
11 stream on a go-forward basis with the rights that you
12 retained under the Asset Purchase Agreement?

13 A. Correct.

14 Q. If you turn to Schedule 1.1(a), and you look
15 at item V, Intellectual Property --

16 A. Yes.

17 Q. -- so just to -- having taken a look at that
18 provision, I want to refresh your recollection that
19 Mr. Singer asked you about Section 1, "All rights" --
20 which starts out with this broad language, "All rights
21 and ownership of UNIX and UnixWare." Do you see that?

22 A. Yes, I do.

23 Q. Now we have a specific provision governing
24 intellectual property? Do you see that?

25 A. Yes.

1 A. Yes.

2 Q. And if you go to Attachment D, there's
3 patents affecting the business. Do you see that?

4 A. There we are. Yes.

5 Q. And then if you go to E, it states "Selling
6 copyrights and products of the business." Do you see
7 that?

8 A. Yes.

9 Q. And it refers to a bunch of UNIX copyright
10 registrations. Do you see that?

11 A. Yes.

12 Q. So a reviewer of the entirety of the Asset
13 Purchase Agreement sees a list of UNIX copyrights that
14 under Section 2.10 are referred to as covering
15 products relating to the Business, and then C is an
16 exclusion for all copyrights in the list of excluded
17 assets, and C has no reference to copyrights in the
18 intellectual property section of included assets,
19 correct?

20 A. Yes, except it says "Selling copyrights in
21 Product(s) of Business" is the title on Attachment E.

22 Q. So that suggests to you what?

23 A. I don't know. It just seems that selling
24 would mean -- I'm not a lawyer, so I don't know what
25 selling copyrights means, but it seems to me that that

1 would be ones that were being sold.

2 Q. And so then --

3 A. Maybe that's not a correct interpretation,
4 because I'm not a lawyer.

5 Q. So then that would -- but my point is a
6 reviewer of the Asset Purchase Agreement would see a
7 lot of discussion of copyrights, wouldn't that
8 reviewer?

9 A. Yes.

10 Q. And you signed the Asset Purchase Agreement?

11 A. Yes.

12 Q. But as you sit here today, you don't have a
13 recollection of whether you looked carefully at the
14 schedules of included and excluded assets for the
15 disclosure schedules that we just discussed?

16 A. I don't have a specific recollection, no.

17 Q. Now, if you look at Amendment No. 1 at page
18 7, it looks like, although on mine it's a little
19 obscured --

20 A. Is this K? Is that what you're referring to?

21 Q. Correct. Exactly.

22 MR. SINGER: On Amendment 1?

23 MR. GONZALEZ: Yes.

24 Q. (By Mr. Jacobs) At K there is an amendment
25 to Schedule 1.1(a). Do you see that?

1 A. I do, yes.

2 Q. And 1.1(a) was the Schedule of Excluded
3 Assets, correct -- or Included Assets?

4 A. Included.

5 Q. I misspoke. Let me say it again. Schedule
6 1.1(a) is the Schedule of Included Assets? Do you see
7 that?

8 A. Yes, I do.

9 Q. So does that indicate to you that during the
10 period of September to December between the execution
11 of the Asset Purchase Agreement and the execution of
12 Amendment No. 1, the parties' teams focused on whether
13 Schedule 1.1(a) was appropriately inclusive?

14 MR. SINGER: Object to the form of the
15 question. Speculative.

16 A. Could you ask your question again?

17 Q. (By Mr. Jacobs) So does that indicate to you
18 that during the period of September to December,
19 between the execution of the Asset Purchase Agreement
20 and the execution of Amendment No. 1, the parties'
21 teams focused on whether Schedule 1.1(a) was
22 appropriately inclusive?

23 MR. SINGER: Same objection.

24 A. I don't know. It's hard for me to say that.
25 They made a number of changes, presumably because

1 waive breaches of the UNIX System V source code
2 agreements that may have occurred years after Novell
3 sold those UNIX source assets to Santa Cruz." Is that
4 a correct statement that comports with your
5 understanding?

6 A. Yes, with the exception that I already cited,
7 being able to do support.

8 Q. But you're not -- that's to deal with the
9 existing customer relationships where Novell would
10 take certain action to make sure those customers'
11 source code worked with the equipment that they were
12 selling?

13 A. This says unequivocally that it waived
14 breaches, and one point of disagreement with that
15 would be the ability of existing SVRX licensees to
16 support products by making change in source codes
17 where it was necessary.

18 Q. Okay.

19 A. So other than that, I agree.

20 Q. Right. A few -- and I think this question
21 may have been one that was objected to earlier before
22 we worked out this issue with the -- regarding the
23 scope of this, but I would like now to pose it. Did
24 Novell ever seek in connection with these discussions
25 between you and Mr. Mohan and Santa Cruz regarding the

1 IBM agreement in 1995 and 1996 to exercise rights
2 under 4.16(b) to force Santa Cruz to take a certain
3 position in regard to the IBM agreement?

4 MR. JACOBS: Objection, lacks foundation,
5 calls for speculation.

6 Q. (By Mr. Singer) To the extent of your
7 knowledge.

8 A. To the extent of my knowledge, no.

9 Q. You were asked questions about your
10 recollection at the time of the transaction as to
11 whether the APA was well drafted. At the present
12 time, now that you've had a chance to see a variety of
13 issues that have arisen, would you be of the view that
14 certain provisions could have been drafted better and
15 more clearly?

16 A. I think they could have been drafted better
17 and more clearly, yes.

18 Q. And you were asked some questions about the
19 fact that there was some concern that SCO was a
20 company of limited cash assets and was a smaller
21 company, correct?

22 A. Yes.

23 Q. Now, one of the reasons for concern about
24 SCO's finances and viability, would it be because you
25 were taking six plus million shares of SCO stock in

1 consideration for the sale?

2 A. That would have been one of the reasons for
3 concern, yes.

4 Q. All right. The concerns -- where you said
5 there were positive and negative concerns, those were
6 resolved by Novell deciding to go forward and enter
7 into a transaction with Santa Cruz, correct?

8 A. Correct.

9 Q. With respect to the Technology Licensing
10 Agreement, you were asked some questions about whether
11 hypothetically it could have involved some technology
12 greater than copyrights. Do you recall that line of
13 questioning?

14 A. Yes, I do.

15 Q. Is it nonetheless your view that the
16 Technology Licensing Agreement reflects the fact that
17 all of the rights in UNIX and UnixWare, including
18 copyrights, were being licensed -- were being sold to
19 Santa Cruz and that Novell needed a license back for
20 those copyrights and technology?

21 MR. JACOBS: Objection, form, leading.

22 A. Yes.

23 Q. (By Mr. Singer) With respect to the
24 noncompete provision which you were asked about, and I
25 think the question was stated in terms of Novell not

1 CERTIFICATE

2 STATE OF UTAH)

:SS

3 COUNTY OF SALT LAKE)

4 THIS IS TO CERTIFY that the deposition of
 5 ROBERT J. FRANKENBERG, the witness in the foregoing
 6 deposition named, was taken before me, Sharon Morgan,
 7 Certified Shorthand Reporter and Notary Public in and
 8 for the State of Utah, residing in Salt Lake City.

9 That the said witness was by me, before
 10 examination duly sworn to testify the truth, the whole
 11 truth, and nothing but the truth in said cause.

12 That the testimony of said witness was by me
 13 reported in Stenotype, and thereafter caused to be
 14 transcribed into typewriting, and that a full, true,
 15 and correct transcription of said testimony so taken
 16 and transcribed is set forth in the foregoing pages,
 17 numbered from 4 to 175, inclusive, and said witness
 18 deposed and said as in the foregoing annexed
 19 deposition.

20 I further certify that the reading copy of
 21 the same was delivered to Mr. Fillmore for reading and
 22 signature, signing before a Notary Public, and to be
 23 returned within 30 days of the date hereon.

24 I further certify that I am not of kin or
 25 otherwise associated with any of the parties to said
 cause of action, and that I am not interested in the
 event thereof.

WITNESS MY HAND and official see at Salt
 Lake City, Utah, this 15th day of February, 2007.

20

21

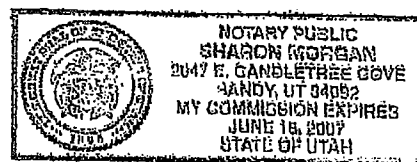
Sharon Morgan
 Sharon Morgan, CSR, RPR, CRR

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23 My Commission Expires:
 24 6-16-2007

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KEN BRAKEBILL

April 4, 2007

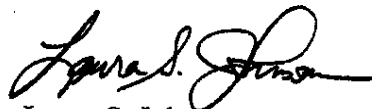
Micah Adelstein
Operations Manager
Esquire Deposition Services
220 West 42nd Street
13th floor
New York, NY 10036

Re: The SCO Group, Inc. v. Novell, Inc., Case No.: 2:04 CV 00139DAK

Dear Micah:

Enclosed please find the original signed errata sheet for the February 10, 2007 deposition of Robert J. Frankenberg taken in the above-referenced matter. Please let me know if you have any questions regarding the enclosed.

Sincerely,



Laura S. Johnson
Case Manager

Enclosure

cc w/ enc.: William L. Fillmore, Esq.
Kenneth W. Brakebill, Esq. ✓

1 Case: SCO Group vs. Novell
 Case No.: 2:04CV00139
 2 Reporter: Sharon Morgan
 Date Taken: 2/10/07

3
 W I T N E S S C E R T I F I C A T E

4 STATE OF UTAH :
 5 : ss.
 6 COUNTY OF Utah :

I HEREBY CERTIFY that I have read the
 7 foregoing testimony consisting of 170 pages, numbered
 from 4 to 175 inclusive, and the same is a true and
 8 correct transcription of said testimony, with the
 exception of the following corrections listed below,
 9 giving my reasons therefor.

10	Page	Line	Change/Correction	Reason
11	6	23	"in" s/b "and"	wrong word
12	8	10	"board" s/b "company"	I was not CEO of the Board but of the Company.
13	10	15	(is blank) s/b "it"	missing
14	10	20		I don't believe Mr. Fillmore asked me this question.
15	13	6	"opened" s/b "offered"	wrong word
16	25	18	"product" s/b "products"	more than one product involved
17	58	13	"In content" s/b "Encanto"	misspelled
18	59	3	(blank)s/b "Broad Weave Networks"	Recalled and added here
19	72	13	"Phil" s/b "Bill"	Wrong name for my attorney

20
 21
 22 ROBERT J. FRANKENBERG

23 Subscribed and sworn to at _____,
 Utah, this _____ day of _____, 2007.

24
 25 My commission expires: _____

NOTARY PUBLIC

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Esquire De

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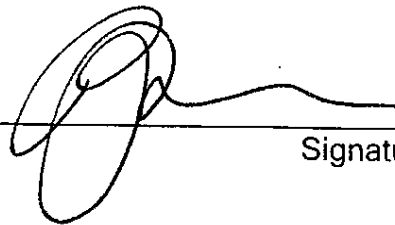
ERRATA SHEET FOR THE TRANSCRIPT OF:

Page 176(c)

Case Name: SCO Group v Novell
 Dep. Date: February 10, 2007
 Deponent: Robert J. Frankenberg

CORRECTIONS:

Pg.	Ln.	Now Reads	Should Read	Reasons Therefore
6	23	and ⁱⁿ	and	WRONG WORD
8	10	board	company	I WAS NOT CEO of the Board but of the company
10	15	(blank)	it	winning
20	20			I don't believe Mr. Filmore asked this question
13	6	opened	offered	WRONG WORD
25	18	product	products	MORE THAN ONE PRODUCT INVOLVED
58	13	In content	ENCANTO	MISSPELLED
59	3	blank	BroadWeave Networks	Recalled & Added here
72	13	Phil	Bill	Wrong Name for my ATTORNEY
81	8	liability	viability	WRONG WORD & meaning
124	9	IBM	NOVELL	Referred to WRONG COMPANY
134	17	HOUSE	HOUSE	MISSPELLED



Signature of Deponent

Kathy E. Anderson
 Witness