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FILED
U.S. DISTRICT COURT
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BRENT O. HATCH

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March 9, 2010

By Email

Honorable Ted Stewart
United State District Court
District of Utah

Re: Jack Messman Deposition Designations

Your Honor:

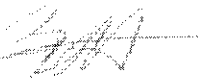
Over the next two days, SCO intends to present by deposition video the testimony of Jack Messman, James Wilt, Alok Mohan, and Douglas Michels. With respect to the latter three witnesses, the parties are in agreement as to SCO's designations and Novell's counter-designations. With respect to the deposition of Mr. Messman, the following two issues remain for the Court to resolve:

- Novell objects to SCO's designation at 97:05-98:24 on the grounds of hearsay, relevance, and personal knowledge.
- SCO objects to Novell's counter-designations at 26:16-28:24 and 41:19-42:07, on the grounds of hearsay.

SCO understands that the parties will be prepared to argue these objections in Court tomorrow morning, with the Court's permission. Attached, for the Court's convenience, are the disputed excerpts.

SCO will also provide to the Court in the morning its designations for Messrs. Wilt, Mohan, and Michels, and SCO understands that Novell will submit its corresponding counter-designations at that time.

Respectfully yours,



Brent Hatch

c: Sterling Brennan, Daniel Muino

Volume I
Pages 1 to 183
Exhibits 1026-1034

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

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THE SCO GROUP, INC., a :

Delaware corporation, :

Plaintiff/Counterclaim :

Defendant, : Case No.

: 2:04CV00139

vs. :

:

NOVELL, INC., a Delaware :

corporation, :

Defendant/Counterclaim :

Plaintiff. :

:

-----X

VIDEOTAPED DEPOSITION OF JACK L. MESSMAN,
a witness called on behalf of the Plaintiff/
Counterclaim Defendant, taken pursuant to the
Federal Rules of Civil Procedure, before Anne H.
Bohan, Registered Diplomate Reporter and Notary
Public in and for the Commonwealth of Massachusetts,
at the Offices of Ropes & Gray LLP, One
International Place, Boston, Massachusetts, on
Wednesday, February 7, 2007, commencing at 9:59
a.m.

1 Q. In fact, if you go back to the "Recitals,"
2 Paragraph A, do you recognize that that is what
3 defines the business?

4 A. Um-hum.

10:24:29 5 Q. That it is "...the business of developing a
6 line of software products...known as UNIX and
7 UnixWare, the sale of binary and source code
8 licenses to various versions of UNIX and UnixWare,
9 the support of such products and the sale of other
10:24:44 10 products which are directly related to UNIX and
11 UnixWare" which constitute the business that was
12 being sold?

13 A. Yes, and in that definition is the
14 reference to the assets you'll see here. No, I'm
10:25:05 15 sorry, I had the wrong one there.

16 Q. Now, was it your understanding in 2003 that
17 any copyrights were being transferred under this
18 agreement by Novell to Santa Cruz?

19 A. It was my understanding that they were not
10:25:30 20 being -- they were not part of the assets being
21 sold.

22 Q. When did you first come to that
23 understanding?

24 A. Upon reading the Asset Purchase Agreement.

1 Q. Did you have any understanding one way or
2 the other before reading the Asset Purchase
3 Agreement?

4 A. I think in the board presentation they made
10:25:47 5 to us in, whenever it was, '81 or so. '83? No.
6 Whatever that board presentation was, they basically
7 said to us that the copyrights and the patents were
8 not being sold.

9 Q. Who said that?

10:26:04 10 A. Well, I think David Bradford, who was the
11 general counsel, was making the presentation.

12 Q. He was the general counsel at the time of
13 Novell?

14 A. Yes.

10:26:15 15 Q. And you have a distinct recollection of
16 this board meeting, which would have been 1995, not
17 1981 or 1983?

18 A. '95, right. Okay.

19 Q. You have a distinct recollection now in
10:26:28 20 2006 that at this board meeting in 1995 the board
21 was told the copyrights and patents were not being
22 sold?

23 A. Yes.

24 Q. Do you recall anything else that Mr.

1 Bradford said with respect to assets being sold and
2 not sold?

3 A. No.

4 Q. Just the issue about the copyrights?

10:26:53 5 A. He explained the entire transaction, and it
6 was a structured transaction, not a straightforward
7 buy and sell. And it was complicated, and therefore
8 we took time to understand what was being sold and
9 what wasn't being sold. We were concerned about SCO

10:27:08 10 and its viability, and we wanted to protect
11 ourselves, because we had these royalty agreements
12 out there, and therefore that was an issue that we
13 were concerned about.

14 Q. Did you have an understanding based on what

10:27:21 15 Mr. Bradford had said that Novell was going to
16 retain certain rights to receive royalties on
17 existing licenses in order to -- to actually be part
18 of the payment for the company?

19 MR. BRAKEBILL: Foundation.

10:27:38 20 A. Yes. We were selling certain of the assets
21 that we had bought from AT&T but not all of them,
22 and we were not selling the existing royalty
23 agreements, and we were not selling the copyrights
24 and the patents.

1 to you any communications he had had with SCO
2 regarding these UNIX copyrights?

3 A. I had no communication with Mr. Jones.

4 Q. Prior to the eventual -- we're getting
10:44:12 5 to in May of 2003, did you have discussions with
6 any employees at Novell regarding the UNIX
7 copyrights?

8 A. Well, I don't know exactly the timing, but
9 we were at the time aware of SCO's assertions with
10:44:38 10 regard to their being UNIX in Linux. And I don't
11 know exactly the timing of that, but as soon as
12 those assertions came up, I probably talked to
13 somebody about that issue.

14 Q. Do you have any specific recollection of
10:44:53 15 such conversation?

16 A. No. Because it came up, I'm sure I
17 addressed it and talked to people, but I don't know
18 the specifics.

19 Q. Do you recall in the latter part of 2002
10:45:02 20 and the early part of 2003 any discussions regarding
21 SCO asking for clarification from Novell that in
22 fact the copyrights had been transferred?

23 A. I think Chris Stone mentioned to me that
24 Darl had approached him several times with regard to

1 transferring the copyrights. And he also mentioned
2 to me that he had a meeting with -- I think his name
3 was Ralph Yarro, but I'm not sure -- whoever it was
4 that was the CEO of SCO at the time with regard to
10:45:48 5 the copyrights.

6 Q. What was Mr. Stone's position at the time?

7 A. "Why would we do that?"

8 Q. That answered my question, but I was asking
9 for his official position with the company. What
10:46:01 10 was Mr. Stone's --

11 A. Oh, I'm sorry.

12 Q. A different definition of the word
13 "position."

14 A. Yeah. He was -- I think his title was
10:46:08 15 executive VP, and he was functioning as the -- he
16 ran the technology side of the house, the
17 engineering side of the house. I don't think he was
18 COO, but I think he was executive VP in charge of
19 the engineering and development side of Novell.

10:46:26 20 Q. Did Mr. Stone indicate that he had had some
21 personal involvement with SCO on this issue or
22 whether he was relaying communications from yet
23 other people at the company?

24 A. He didn't clarify that for me.

1 A. No. Or any other assets, for that matter,
2 it's just not covered here.

3 (Document marked as Exhibit 1030
4 for identification)

12:20:43 5 Q. I'd like to show you a Wall Street Journal
6 article as the next exhibit. This is Exhibit 1030,
7 a Wall Street Journal article back on September 20,
8 1995. Do you recall whether you've ever seen this
9 before?

12:21:27 10 A. I don't recall it.

11 Q. And you were on the board of Novell; you
12 may have read it in The Wall Street Journal back
13 then?

14 A. I may have read it, yes.

12:21:38 15 Q. Do you see where in this Wall Street
16 Journal article it states in the second paragraph,
17 "The deal includes the purchase by Santa Cruz
18 Operation of most trademarks and intellectual
19 property associated with Unix software, one person
12:22:16 20 familiar with the situation said"? Do you see that?

21 A. I see it.

22 Q. Now, if your position is correct, no
23 intellectual property transferred to SCO, right?

24 A. That's correct.

1 Q. Do you know if Novell ever took any steps
2 to correct The Wall Street Journal's
3 characterization to the public of what had been
4 sold?

12:22:42 5 MR. BRAKEBILL: Form.

6 A. I don't know of any steps they took.

7 Q. Are you aware of any public statement made
8 by Novell after 1995, after the APA was signed,
9 where Novell publicly stated it owned the copyrights
10 up until the time, of course, of your press release
11 of March of 2003 -- May of 2003?

12 A. I don't know of any such thing, but they
13 did do another transaction similar to this with BEA,
14 and they may have made some comments then, but I
15 don't know for sure.

16 Q. Certainly as you sit here today, you're not
17 aware of any public statement made during that
18 eight-year period between the closing of the Asset
19 Purchase Agreement in 1995 and the press release
20 which we've been looking at on May 28th of 2003
21 where Novell had ever asserted ownership of the UNIX
22 copyrights?

23 MR. BRAKEBILL: Form.

24 A. I'm not aware of any of that.