

# **EXHIBIT 2**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC., a Delaware )  
corporation, )  
)  
)  
Plaintiff and Counterclaim- )  
Defendant, )  
)  
)  
vs. )  
)  
NOVELL, INC., a Delaware )  
corporation, )  
)  
)  
Defendant and Counterclaim- )  
Plaintiff. )  
\_\_\_\_\_ )

Case No. 2:04-CV-139 dak

COPY

BEFORE THE HONORABLE DALE A. KIMBALL

DATE: APRIL 29, 2008

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TRIAL TRANSCRIPT

Reporter: REBECCA JANKE, CSR, RMR

KELLY BROWN HICKEN, CSR, RMR

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A P P E A R A N C E S

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1           The second point I'd like to turn to, which, if  
2 we turn to slide 19 in the binder of materials -- and  
3 hopefully we'll put it on the screen momentarily here.  
4 And it is a follow-up of a statement Mr. Jacobs made here  
5 today, where he said the focus of SCOsource is SVRX. And  
6 that's really similar to a statement which was filed in  
7 Novell's memorandum in support of its motion for summary  
8 judgment on its fourth claim, which is, from start to  
9 finish, Novell said, SCO never claimed SCOsource had  
10 anything to do with SCO's UNIX derivative rights and any  
11 attempt by SCO to recast SCOsource now should fail.

12           So they are feeling the Court in its papers and  
13 now in open court, that SCOsource had nothing to do with  
14 UnixWare. That is simply not so. If one turns to what  
15 the documents the Court will see during this week of  
16 trial will show, and the very next slide -- it's the  
17 December 2002 press release. SCO's shared libraries --  
18 and it talks about UnixWare and OpenServer licensing  
19 agreements did not allow those UNIX libraries to be  
20 separated from the operating systems.

21           The January 2003 announcement, which talks  
22 about SCO's UnixWare and OpenServer license agreements,  
23 the February 2003 sales guide, which says precisely that  
24 with respect to the shared library, the document  
25 repeatedly refers to SCO's concern that UnixWare and

1 OpenServer technology have been improperly used in Linux.  
2 In the July 2003 press release, where it says the company  
3 also announced it will offer UnixWare licenses to support  
4 one-time binary use of Linux for all commercial users of  
5 Linux based upon certain terms.

6 So the evidence will show that in fact  
7 SCOsource, at its inception and throughout remained  
8 concerned with technology that was in UnixWare and  
9 OpenServer.

10 And the third point I'd like to observe comes  
11 off of a chart which Mr. Jacobs used which tries to draw  
12 this distinction. It's the chart that was the timeline  
13 where on the left-hand side you had SVRX and, on the  
14 right-hand side, you had SCO UnixWare. And it suggests  
15 that these are two different universes, that SVRX and SCO  
16 UnixWare are somehow distinct and, if you're referring to  
17 SVRX, you're not including UnixWare, and vice-versa.

18 The reality is, is that there is not a  
19 dichotomy in terms of the technology between UnixWare and  
20 System V. UnixWare is System V technology. It is the  
21 latest evolution of that. It is UnixWare -- UNIX System  
22 V, 4.2 MP. And this dichotomy that Novell seeks to draw  
23 between UnixWare and System V, with respect to the  
24 technology, is simply not the case. And that's shown,  
25 for example, by documents such as Novell's own sales

1 binders for UnixWare, which says that this is the latest  
2 implementation of UNIX System V, Release 4.2 MP  
3 technology and repeats that many times as being the  
4 latest generation of that use, that this is powerful,  
5 scalable, reliable UNIX System V, Release 5.

6           Thus, when we talk about our UnixWare rights,  
7 when we talk about the System V license in the context of  
8 SCOSource, that doesn't mean something other than  
9 UnixWare, that includes UnixWare. And that will be  
10 important as we look at the fact that UnixWare has within  
11 it the critical System V technology, and SCO obtained the  
12 right to license that technology and do other things with  
13 that technology with third parties through the Sun  
14 agreement, the Microsoft agreement and the SCOSource  
15 agreement.

16           The question is valuation of -- for the  
17 purposes of the APA, what is the value on the SVRX  
18 rights, as defined in the APA, for that portion on which  
19 that has to flow through to Novell.

20           Now, if I can put that -- and let me, before  
21 leaving that issue, refer to a couple of the documents  
22 that Mr. Jacobs referred to. He refers to a letter that  
23 was sent out to a lot of people with respect to SCOSource  
24 licensing and it talked about are UNIX System V, but that  
25 does not exclude UnixWare, which is part of System V

1 for those products, therefore Novell is entitled only to  
2 a de minimus royalty with respect to its residual rights.

3 THE COURT: Thank you, Mr. Singer.

4 You may call your first witness.

5 MR. JACOBS: We do, Your Honor. We call  
6 Mr. Joe LaSala.

7 THE COURT: Come forward and be sworn, please  
8 right up here in front of the clerk of the Court.

9 JOSEPH LA SALA,

10 the witness hereinbefore named, being first  
11 duly cautioned and sworn or affirmed to tell the truth,  
12 the whole truth, and nothing but the truth, was examined  
13 and testified as follows:

14 THE CLERK: Please state your name and spell it  
15 for the record.

16 THE WITNESS: My name is Joseph A. LaSala, Jr.  
17 My last name is spelled L-a, capital S-a-l-a.

18 THE CLERK: Thank you.

19 THE COURT: Go ahead, Mr. Jacobs.

20 DIRECT EXAMINATION

21 BY MR. JACOBS:

22 Q. Good morning, Mr. LaSala. Could you briefly  
23 introduce yourself and your background to the Court.

24 A. Yes. Good morning. My name is Joe LaSala. I  
25 was the general counsel at Novell from July of 2001

1 through mid-January, 2008. Today I am, and since that  
2 time, I have been the general counsel of Discovery  
3 Communications.

4 Q. Were you involved in the dispute and the  
5 relationship between SCO and Novell as the SCOSource  
6 campaign unfolded?

7 A. Yes, I was.

8 Q. Can you characterize the level of your  
9 involvement, please?

10 A. Well, as general counsel of the company, I was  
11 made aware of virtually all of the important activities  
12 in connection with the litigation and in connection with  
13 SCO's launch of the SCOSource campaign, our company's  
14 reaction to that, the various public and private  
15 communications that occurred between the companies at the  
16 time and the engagement of counsel and overall the  
17 strategy with respect to our company's response to those  
18 activities.

19 Q. Could you look at the first exhibit in your  
20 binder, please, Novell Exhibit 215?

21 A. Yes.

22 Q. What is that?

23 A. This is a June 24, 2003 letter from me to  
24 Mr. McBride, and I think it constitutes one of the first  
25 letters that Novell sent to SCO, and the principal



1 purpose of this letter was to request that SCO provide us  
2 with copies of two SCOSource licenses that it had  
3 recently announced that it had entered into; one with  
4 Microsoft and one with an unnamed party.

5 MR. JACOBS: Your Honor, offer Exhibit 215 into  
6 evidence.

7 THE COURT: I thought we were going to put all  
8 these in by stipulation.

9 MR. JACOBS: This one, I believe SCO has  
10 objected to, Your Honor.

11 MR. SINGER: We have no objection, Your  
12 Honor.

13 THE COURT: 215 is received.

14 (Novell Exhibit 215 received in evidence.)

15 Q. Mr. LaSala, could you explain to the Court,  
16 please, what led up to the sending of -- or to the  
17 transmittal of this letter?

18 A. Well, the precipitating event was a securities  
19 filing SCO had recently made just prior to this letter  
20 being sent, parts of which are quoted in this letter,  
21 where it became apparent to us that SCO had entered into  
22 these two SCOSource licenses.

23 But, really, the letter was a combination of  
24 events of the past or previous six months or so, where we  
25 had come to a -- we had concerns that what SCO was doing

1 with its SCOSource campaign may implicate rights that  
2 Novell had under the Asset Purchase Agreement, and  
3 through their public statements, their press releases,  
4 their securities filings, some private communication, a  
5 May 12 letter that they had sent to, I think, the Fortune  
6 1000 companies in the United States, all of those things  
7 led us to believe that things that SCO was doing with the  
8 SCOSource campaign may implicate certain rights that  
9 Novell had under the Asset Purchase Agreement.

10 Q. Could you look at the bottom of page 2 of the  
11 letter, the second half of page 2, please?

12 A. Yes.

13 Q. And what, exactly, was Novell asking SCO to do?

14 A. Well, here Novell was specifically asking SCO  
15 to provide it with copies of the two agreements in  
16 question and any other agreements that SCO may have  
17 entered into which purported to amend any SVRX  
18 licenses.

19 Q. And in paragraph B?

20 A. In paragraph B, we were asking SCO that they  
21 not enter into any further agreements in which SCO  
22 purports to amend these licenses or to enter into any new  
23 SVRX licenses.

24 Q. And in paragraph C?

25 A. In paragraph C, we were requesting that SCO

1 comply with its obligations under amendment number 2 to  
2 the Asset Purchase Agreement with respect to the  
3 management of potential buyouts of a licensee's royalty  
4 obligation.

5 Q. Could you please turn to Novell Exhibit 220,  
6 the second tab in your binder?

7 A. Yes.

8 Q. What is Novell Exhibit 220?

9 A. Well, Novell Exhibit 220 is a letter dated July  
10 11, 2003, from Mr. Mike Brady, who is an employee at  
11 Novell who, at the time, ran the contract management  
12 group, to the CFO of SCO, Mr. Robert Bench, advising  
13 Mr. Bench of two things. First, that it had been more  
14 than six months since Novell had received its -- any  
15 royalty reports or royalty payments from SCO and that we  
16 were demanding that we receive those payments and reports  
17 in a manner consistent with the Asset Purchase Agreement  
18 which, I think, required that they be provided quarterly.

19 And the second thing that the letter does is it  
20 notifies SCO that Novell intended to conduct an audit of  
21 SCO concerning the royalties and other payments due under  
22 the SVRX licenses and the Asset Purchase Agreement.

23 So the letters served those two purposes.

24 Q. Did you work with with Mr. Brady on the  
25 transmittal of this letter?

1 A. I don't recall specifically, but I'm quite sure  
2 that I did.

3 MR. JACOBS: Your Honor, we offer Novell  
4 Exhibit 220 in evidence.

5 MR. SINGER: No objection.

6 THE COURT: 220 is received.

7 (Novell Exhibit 220 received in evidence.)

8 Q. Now 220, Mr. LaSala, is dated July 11, 2003.

9 A. Yes.

10 Q. And 215 is dated June 24, 2003. Between the  
11 June 24 letter and the July 11 letter, had you received a  
12 response to 215, your letter to Darl McBride?

13 A. No.

14 Q. And why did Novell decide to audit SCO's  
15 compliance with the the Asset Purchase Agreement?

16 A. Well, again, Novell had concerns that SCO's  
17 activity with respect to its SCOSource campaign may be  
18 resulting in monies being paid to SCO that rightfully  
19 belonged to Novell. So the right to audit is very clear  
20 in the Asset Purchase Agreement, and we thought, given  
21 this body of evidence that had been accumulating over the  
22 previous six months or so, we thought the wise course of  
23 action would be to notify SCO of our intention to conduct  
24 an audit.

25 Q. Would you turn to the next tab, please, Novell

1 Exhibit 222?

2 A. Yes.

3 Q. 222 is a letter dated July 17, from Mr. Bench  
4 at SCO to Mr. Bready at Novell?

5 A. Yes, it is.

6 Q. And what did you understand Mr. Bench to be  
7 responding to?

8 A. Well, Mr. Bench, in his letter, notes that he's  
9 responding to Mr. Bready's July 11 letter, where we made  
10 the request -- the demand for an audit, and in this  
11 letter, he notifies Novell that payment, current payment  
12 due to Novell, has been or is being made. He references  
13 that Novell was withholding its payments to -- or excuse  
14 me -- SCO was withholding payments to Novell based upon a  
15 review that SCO was conducting on Novell's activities  
16 with respect to our Linux announcements and that they  
17 were evaluating the scope of Novell's Linux-related  
18 activities for compliance.

19 And they also notified -- the letter also  
20 notifies Mr. Bready that SCO reserves the right to  
21 further withhold royalty payments owed to Novell in its  
22 discretion if it believes that Novell is violating its  
23 obligations under the Asset Purchase Agreement.

24 Q. What was your reaction when you read this  
25 letter?

1 A. Well, somewhere between furious and bemused. I  
2 guess I would say it that way.

3 Q. Why?

4 A. Well, furious because, in our view, SCO was a  
5 fiduciary to Novell and had a duty and an obligation to  
6 collect those royalty payments and to pass them through  
7 to Novell. Plain and simple. It didn't have any right  
8 in the an Asset Purchase Agreement or anywhere else,  
9 under any rule or law that I'm familiar with, to offset  
10 or withhold payments due to Novell, for any reason, and  
11 so the assertion that SCO was withholding payments,  
12 pending its review of Novell's Linux-related activities  
13 was absurd on its face, as far as we were concerned.

14 And it was somewhat frustrating but, as I say  
15 somewhat amusing as well because we thought it was  
16 totally without foundation.

17 Q. Could you turn to the next exhibit, 234?

18 A. Yes.

19 Q. What is Novell Exhibit 234?

20 A. This is a letter from me to Mr. McBride dated  
21 August 7, 2003, where I essentially conveyed to  
22 Mr. McBride, Novell's position with regard to Mr. Bench's  
23 assertion in the previous letter, those that I just  
24 outlined for you, and pointed out to Mr. McBride that,  
25 you know, SCO was without any right or foundation to

1 withhold any royalty obligations that were owed to  
2 Novell.

3 MR. JACOBS: We offer 234 into evidence, Your  
4 Honor.

5 MR. SINGER: No objection, Your Honor.

6 THE COURT: 234 is received.

7 (Novell Exhibit 234 received in evidence.)

8 Q. Now, this letter is dated August 7, 2003, this  
9 being 234. And your initial letter to SCO about the  
10 Microsoft and unnamed third-party license, the other  
11 license, is dated June 24. By this time have you  
12 received a response to your June 24 letter?

13 A. No. No, we have not.

14 Q. Could you turn, please, to Novell Exhibit 267?

15 A. Yes.

16 Q. What is 267?

17 A. Well, 267 is a November 21, 2003 letter from  
18 Mr. Bready to Mr. Bench, again, and pretty much most of  
19 the fall has passed by this time. And, in this letter,  
20 Mr. Bready points out to Mr. Bench that there are certain  
21 requests that Novell has made with respect to the audit  
22 that have not been fulfilled, and he lays out in some  
23 detail the basis of those requests and asks, again,  
24 specifically for copies of the two agreements in  
25 question.

1 Q. So, had the audit been conducted by this time?

2 A. Well, I'm really not clear -- the audit  
3 certainly had not been conducted and completed. Whether  
4 or not it had commenced, I think it had, and Mr. Bready  
5 references in his letter that, you know, the purpose of  
6 the letter is to request further information and  
7 information that had previously been requested to assist  
8 Novell with the conduct of the audit.

9 Q. If you look at paragraph 1.4 or 1.5 of this  
10 letter, what, exactly, are -- was Novell requesting of  
11 SCO in this letter?

12 A. Well, again, quite specifically, Novell was  
13 requesting that SCO provide Novell with copies of the  
14 Sun -- by this time we knew that this second agreement  
15 was the Sun agreement -- copies of the Sun and Microsoft  
16 agreements to verify SCO's compliance with 4.16B of the  
17 Asset Purchase Agreement. In addition, Novell was  
18 requesting copies of any similar agreements that SCO may  
19 have entered into. Of course, we had not known whether  
20 they had or not.

21 And, finally, Novell was requesting that SCO  
22 identify any potential buyout transactions that it might  
23 be aware of, so that Novell could be properly put on  
24 notice if any such types of transactions existed.

25 Q. If you look at paragraph 2.2 and 2.3?



1 A. Yes.

2 Q. What was Novell asking for there?

3 A. In 2.2 and 2.3, Novell references a new license  
4 called SCO Intellectual Property License for Linux and  
5 requested copies of any licenses for Linux that SCO may  
6 have entered into under that new license regime that it  
7 had established.

8 MR. JACOBS: Your Honor, offer 267 into  
9 evidence.

10 MR. SINGER: No objection.

11 THE COURT: 267 is received.

12 (Novell Exhibit received 267 in evidence.)

13 Q. Let's turn to the next tab, Mr. LaSala, of  
14 Exhibit 280, Novell Exhibit 280. What is 280?

15 A. 280 is a December 29, 2003 letter from  
16 Mr. Bready to Mr. Bench, essentially reminding Mr. Bench  
17 of Novell's repeated requests for the information that  
18 Novell needed to conduct its audit and expressing a view  
19 that it would like to have a response no later than  
20 January 12, 2004.

21 MR. JACOBS: Your Honor, offer Novell Exhibit  
22 280 into evidence, Your Honor.

23 MR. SINGER: No objection.

24 THE COURT: 280 is received.

25 (Novell Exhibit 280 received in evidence.)

1 Q. Let's turn to the next tab, 293. What is 293?

2 A. 293 is yet another letter from Mr. Bready to  
3 Mr. Bench which reiterates or references the November 21  
4 letter for information that Novell thought it needed to  
5 conduct its audit and reiterates the request for the  
6 information contained in that November 21 letter. And  
7 again, it -- and in the second paragraph of that letter,  
8 it makes note that, you know, Novell had sent you the  
9 November 21 letter and sent you a second letter on  
10 December 29 asking that you comply with the request.

11 Q. Let's turn to 294.

12 A. Okay.

13 Q. Novell Exhibit 294, which has been  
14 pre-admitted.

15 THE COURT: Are you going to offer 293?

16 MR. JACOBS: I'm sorry. Thank you, Your Honor.  
17 Offer 293 into evidence.

18 THE COURT: Are you going object?

19 MR. SINGER: No.

20 THE COURT: 293 is received.

21 MR. JACOBS: Thank you, Your Honor.

22 (Novell Exhibit 293 received in evidence.)

23 Q. Let's look at 294, Mr. LaSala.

24 A. Yes.

25 Q. 294, now, is the letter from Mr. Tibbitts at

1 the general counsel of SCO to you?

2 A. Yes, it is. It's dated February 5, the next  
3 day after the February 4 letter from Mr. Bready. And  
4 this letter outlines various -- makes several points to  
5 Novell from SCO. The first was that it expresses SCO's  
6 view that many of the questions that were asked in the  
7 November 21 letter were outside the scope of Novell's  
8 audit rights. It asserts that the scope of the other  
9 points and questions raised in the body of the November  
10 21 letter were the result of cooperation that we  
11 allegedly had entered into with IBM in the course of this  
12 litigation with SCO and then proceeds to respond, with  
13 some specificity, to a couple of the points that were  
14 raised in Mr. Bready's November 21 letter.

15 Essentially, Mr. Tibbitts is telling us that  
16 whatever rights Novell may have under Section 4.16 of the  
17 Asset Purchase Agreement, with respect to the revenue  
18 stream from the SVRX licenses that were in existence at  
19 the time of the APA, those rights do not extend, he says,  
20 to either the Sun or the Microsoft agreements. And he  
21 calls the Sun agreement a new contract, and he calls the  
22 Microsoft agreement a new agreement not covered by the  
23 APA in this letter.

24 Q. And then, what was his response on intellectual  
25 property licenses for Linux?

1           A.    With respect to our request that SCO identify  
2 potential intellectual property licenses entered into  
3 under the new SCO IP license for Linux, he says that --  
4 he says that that was not a new SVRX license.

5           Q.    Did -- at any point, in your back and forth  
6 with SCO leading up to this letter, did SCO ever, first  
7 of all, give you copies of the Microsoft and Sun  
8 agreements?

9           A.    No.

10          Q.    And did SCO ever say to you that those  
11 agreements are not the subject of your rights under the  
12 Asset Purchase Agreement because they only incidentally  
13 license SVRX?

14          A.    No.

15          Q.    Let's turn to 297.  What is 297, Novell Exhibit  
16 297?

17          A.    297 is a March 1, 2004 letter from me to  
18 Mr. Tibbitts where I write, in response to the February 5  
19 letter that we just talked about, and I point out what I  
20 think is the blindingly -- I make the blindingly obvious  
21 point that it appears that the question at issue here is  
22 whether or not the Sun and Microsoft agreements are SVRX  
23 licenses.

24                   And I refer Mr. Tibbitts to the fact that  
25 Novell has reviewed SCO's intellectual property license

1 from its web site and made a conclusion that licenses  
2 taken under that agreement would be SVRX licenses because  
3 of the definition of SCO IP that's included in that  
4 license, and then I make the point that we would expect  
5 the same to be true for the Sun and Microsoft agreements  
6 but, of course, we could not be sure of that because they  
7 hadn't yet been shown to us, and I reiterate Novell's  
8 desire that SCO provide those agreements and any other  
9 intellectual property licenses for Linux agreements that  
10 SCO may have entered into.

11 Q. And did you -- and what kind of time frame did  
12 you put on that request?

13 A. Well, I asked that they be provided  
14 immediately.

15 MR. JACOBS: I offer 297 into evidence.

16 THE COURT: Any objection?

17 MR. SINGER: No objection.

18 THE COURT: 297 is received.

19 (Novell Exhibit 297 received in evidence.)

20 Q. Let's turn to the next tab in the binder,  
21 Mr. LaSala, Novell Exhibit 303.

22 A. Yes. Novell Exhibit 303 is another letter from  
23 me to Mr. Tibbitts, this one dated April 2 or roughly  
24 about one month later, and in it I simply point out to  
25 Mr. Tibbitts that Novell has received no response to the

1 March 1 letter regarding the agreements which SCO has  
2 entered into and express to him the view that Novell  
3 believes that we are deserving of a response and we would  
4 urge that he provide one promptly.

5 Q. And then, at the end of the letter, you say:  
6 If we do not hear from you shortly, we will infer that  
7 SCO has nothing to say in response.

8 Do you see that?

9 A. I do.

10 Q. What were you inferring at that point from  
11 SCO's non-response about whether the Sun and Microsoft  
12 agreements represented SVRX licenses under the Asset  
13 Purchase Agreement?

14 A. Well, we were beginning to try, in an  
15 appropriate way, to put SCO on notice that, you know, we  
16 were of the firm conclusion -- that we were trying to  
17 verify that these licenses were SVRX licenses, and we  
18 were essentially saying that, if you're not going to  
19 respond, you know, further, you don't really have  
20 anything to say about that.

21 MR. JACOBS: I offer 303 into evidence.

22 THE COURT: 303 is received.

23 MR. SINGER: No objection.

24 (Novell Exhibit 303 received in evidence.)

25 Q. Let's turn to the last exhibit in your binder,

1 Mr. LaSala, Novell Exhibit 317.

2 A. Yes.

3 Q. What is 317?

4 A. So, 317 is a November 17, 2004 letter to  
5 Mr. Tibbitts from me. By this time, many months have  
6 gone by, and I point out to Mr. Tibbitts that we have had  
7 numerous communications with SCO regarding their handling  
8 of UNIX licenses and point out that we think that our  
9 audit rights under the Asset Purchase Agreement entitle  
10 us to these agreements and remind him that we sent him  
11 letters about this.

12 And I point out to him, really for the first  
13 time, that we had noted recently that Sun had confirmed  
14 its plans to open source its Solaris operating system,  
15 and we knew, of course, that its Sun Solaris operating  
16 system was based on SVRX, the code, and we took note of  
17 the fact of Sun's announcement to open source its Solaris  
18 operating system.

19 And we outlined for Mr. Tibbitts, again, the  
20 rights that we believed that we had with respect to UNIX  
21 licenses in Section 4.16 and that, you know, SCO had no  
22 authority to amend the license that existed with Sun,  
23 which was a 1994, I believe it was, buyout of Sun's  
24 royalty obligations to Novell at the time. And we wanted  
25 to make SCO aware of that.

1           And then, finally, we asked, yet again, that  
2 SCO provide us with copies of any of the agreements,  
3 particularly the Sun agreement in this case, and somewhat  
4 fruitlessly, I included a deadline of Friday, December 3,  
5 2004.

6           Q.    Now, in this letter you also cc'd the Senior  
7 Vice President and General Counsel at Sun Microsystems?

8           A.    I did.  And in the last paragraph of the  
9 letter, I notified Mr. Tibbitts that we would be doing  
10 that, and, of course, on its face, we have done that.  
11 And we also separately corresponded with Sun, advising  
12 them of our point of view on these matters and requesting  
13 that Sun might be able to cooperate with us and provide  
14 us a copy of the Sun/SCO agreement.

15          Q.    And then, in the last paragraph of this letter,  
16 you say -- you refer to putting Sun on notice of  
17 potential issues?

18          A.    Yes.

19          Q.    What were you driving at?

20          A.    We wanted to to make sure that Sun was aware of  
21 what Novell's rights were with respect to the Asset  
22 Purchase Agreement and our view that SCO lacked the  
23 authority to enter into an amendment to the buyout  
24 agreement, and we thought it was important, since Sun had  
25 undertaken this initiative to open source its Solaris



1 operating system that they be aware of Novell's  
2 position.

3 Q. Did you have -- aside from the legal concerns  
4 that you have referred to, did Novell have a business  
5 concern about Sun's open sourcing plans?

6 A. Very much so. By this time, Novell's  
7 intentions to enter into the Linux marketplace were well  
8 known, and Novell's business was up and running, and we  
9 had completed a major acquisition of an open source  
10 company. We had established ourselves, we think, in the  
11 marketplace as one of the leading providers of Linux and  
12 open source technology.

13 And the fact that Sun would take upon itself to  
14 open source its Solaris operating system caused us some  
15 business concerns, sure.

16 Q. Did you ever receive a response to your  
17 November 17, 2004 letter to Novell, Exhibit 317?

18 A. No.

19 Q. So, over the -- and then, at some point, the  
20 Sun and Microsoft agreements are produced in discovery.  
21 That happens. I'll just set the chronology. That  
22 happens in the winter of 2006. So, up until that point,  
23 did SCO ever comply with your request under these letters  
24 that it supply Novell with the Sun and Microsoft  
25 agreements?

1 A. No.

2 Q. Did it ever comply with the request pursuant to  
3 the audit provisions of the Asset Purchase Agreement that  
4 Novell be allowed to audit SCO's compliance with the  
5 Asset Purchase Agreement as it related to the Sun and  
6 Microsoft agreements?

7 A. No.

8 Q. Did SCO ever tell you in any communications  
9 outside litigation pleadings in the last year and a half  
10 or so, that its theory was: These agreements were not  
11 SVRX licenses as to which it owed you a payment  
12 obligation because the SVRX was only incidental?

13 A. No.

14 MR. JACOBS: Thank you very much, Mr. LaSala.

15 THE COURT: Are you going to offer 317?

16 MR. JACOBS: Yes, Your Honor, 317, please.

17 THE COURT: Any objection?

18 MR. SINGER: No, Your Honor.

19 THE COURT: 317 is received.

20 (Plaintiff's Exhibit 317 received in evidence.)

21 THE COURT: Thank you.

22 Mr. Singer, you may cross examine.

23 CROSS EXAMINATION

24 BY MR. SINGER:

25 Q. Good morning, Mr. LaSala.

1 A. Good morning, .

2 Q. You had testified about the June 24, 2007  
3 letter that you wrote Mr. McBride which has been  
4 introduced as Exhibit 215, the first exhibit you were  
5 asked about this morning. Do you recall that?

6 A. Yes.

7 Q. Is it true, though, that you were aware of  
8 SCO's plans to engage in what we have referred to as  
9 SCOSource licensing going back into late 2002?

10 A. I don't think my awareness went back quite that  
11 far. Certainly not by the name of SCOSource.

12 Q. Well, maybe not by the name of SCOSource, but  
13 do you recall that, in late 2002, there were  
14 conversations between representatives of SCO and  
15 representatives of Novell that -- where SCO indicated its  
16 interest in licensing UNIX technology for use in Linux?

17 A. Yes. I'm aware of those conversations.

18 Q. Okay. And, at any time between those  
19 conversations and late 2002, and June 24, 2003, did you,  
20 as general counsel, ever directly or by directing others,  
21 tell SCO that it could not engage in SCOSource  
22 licensing?

23 A. No. I don't believe we did because we weren't  
24 sure exactly what the nature of the the SCOSource  
25 licensing program was, and we were trying to get a

1 Q. And unlike the prior releases, this press release,  
2 Exhibit 173, was actually released to the public; right?

3 A. I don't recall if the previous one had also been  
4 released or not. I know we briefed analysts and so on about  
5 the concepts in the previous release, but I know that this  
6 press release was released.

7 Q. And we can take a look at the highlighted portion  
8 in the middle under the highlighted SCOSource.

9 Again, when SCO announced the SCOSource program to  
10 the public in January of 2002, you again told the public what  
11 it was; right?

12 A. January of 2003?

13 Q. Excuse me. January 2003. You told the public what  
14 it was; right?

15 A. Yes.

16 Q. And what you said was, again:

17 SCO's patents, copyrights and core technology  
18 date back to 1969 when Bell Laboratories created  
19 the original UNIX source code. SCOSource  
20 will manage the licensing of this software  
21 technology.

22 Correct?

23 A. Yes. And basically we're saying we're providing  
24 licenses of SCO's intellectual property including our UNIX  
25 intellectual property as well as other patents that SCO had

1 related to other technologies within the company.

2 Q. And that technology dates back to Bell Laboratories  
3 in 1969; correct?

4 A. Not all of the technology.

5 Q. But some of it does; correct?

6 A. Yes.

7 Q. And that was with SCOsource?

8 A. Yes.

9 Q. And that's what SCOsource sought to license in  
10 SCOsource program; correct?

11 A. Well, in general we were licensing the most recent  
12 versions of SCO's intellectual property mostly in the form of  
13 UnixWare licenses, source code UnixWare licenses as well as  
14 developing an intellectual property licensing program related  
15 to customers who were concerned about intellectual property  
16 issues with their use of Linux, such as the runtime libraries  
17 and OpenServer UNIX.

18 Q. But you wanted to mine this entire body of  
19 intellectual property; right? That was the plan.

20 A. That was my understanding of the intellectual  
21 property body that we had rights to license.

22 Q. Going back to 1969; right?

23 A. Correct.

24 Q. And this was what you hoped you would make millions  
25 of dollars licensing; correct?

1           A.    Well, mostly around the latest versions of the  
2 intellectual property.  But the whole body at work is part of  
3 the buildup and legacy of that intellectual property and  
4 library.

5           Q.    Now, if you take a look -- let me go back, I'm  
6 sorry, to Exhibit 173.

7                    Take a look down at the bottom, if you would, sir,  
8 173.  Under the SCO System V for Linux.  Do you see that?

9           A.    Yes.

10          Q.    And we have it up on the screen now.

11                    SCO told the public you were announcing this in  
12 January of 2003:

13                    In the past SCO's UnixWare and OpenServer  
14 license agreements did not allow these UNIX  
15 libraries to be used outside of SCO's operating  
16 systems.

17                    Correct?

18          A.    Yes.

19          Q.    With this announcement, customers can now run  
20 these libraries from SCO for use with Linux without  
21 having to license the entire SCO operating system.

22                    Correct?

23          A.    Yes.

24          Q.    So that means you get access to this core UNIX  
25 technology that SCO believed it owned without having to

1 A. Yes.

2 Q. You were asked by Mr. Acker, paraphrasing,  
3 whether, to your understanding, SCO had the right to  
4 license the prior System V products with the UnixWare  
5 license. Do you recall that question?

6 A. Yes.

7 Q. Mr. Sontag, I want to show you language from,  
8 again, amendment 1 to the APA, which provides as follows:

9 Buyer, Santa Cruz, shall have the right to  
10 enter into amendments of the SVRX licenses as may be  
11 incidentally involved through its rights to sell and  
12 license UnixWare software.

13 Do you see that?

14 A. Yes.

15 Q. And then, at the bottom, it says:

16 Buyer shall not enter into new SVRX licenses  
17 except in the situation specified in little "i."

18 Do you recall reviewing this language during  
19 your tenure at SCO?

20 A. Yes.

21 Q. Do you recall forming a view as to what it  
22 meant for SCO to have the right to license SVRX material  
23 incidentally to licensing UnixWare?

24 A. That was the basis of my belief that SCO had  
25 that right.

1 Q. You were shown this language earlier,  
2 Mr. Sontag -- well, the first paragraph, the letter in  
3 which Mr. Luehs, I think it is, says that the agreement  
4 between Santa Cruz and Novell requires prior written  
5 approval from Novell for all new agreements or changes to  
6 current agreements relating to System V.

7 Do you see that language?

8 A. Yes.

9 Q. Is it your understanding that if Santa Cruz was  
10 executing a Unixware license that it didn't need to get  
11 Novell's approval to license SVRX material with that  
12 UnixWare license?

13 A. That was my understanding.

14 Q. Now, this document is dated May 20, 1996,  
15 correct?

16 A. Yes.

17 Q. This is a letter from Novell three days later,  
18 May 23, 1996, in which Novell says that it has  
19 transferred to SCO Novell's existing ownership interest  
20 in UNIX system-based offerings and related products. Do  
21 you see that language?

22 A. Yes.

23 Q. Was it your understanding, during your tenure  
24 at SCO, that SCO could license UnixWare however it  
25 wanted?



1 A. Yes. That was my understanding.

2 Q. And was it your understanding that SCO could  
3 license System V products with UnixWare? Was that your  
4 understanding?

5 A. Yes.

6 Q. You were asked about the Microsoft agreement.  
7 Do you recall that?

8 A. Yes.

9 Q. And, again, in summary, can you tell me how it  
10 came to be that you ended up in negotiations with  
11 Microsoft regarding that agreement?

12 A. In early 2003, we came in contact with  
13 Microsoft representatives who were interested in pursuing  
14 a possible license to UnixWare technologies to use in  
15 some of their, what they called UNIX-compatibility  
16 products within Microsoft Windows. It started a set of  
17 negotiations that occurred through the early part of 2003  
18 culminating in the UnixWare license agreement with  
19 Microsoft.

20 Q. Now, in the time leading up to the beginning of  
21 those negotiations, had SCO made any public statements or  
22 assertions that there was any SCO IP in any Microsoft  
23 products?

24 A. I believe there had been some, you know, broad  
25 discussion that there might be IP issues, and not only in

1 under its standard commercial license for UnixWare,  
2 whether SCO licensed prior System V products?

3 A. I know that in the UnixWare source code  
4 agreement that was provided, up until the most recent  
5 versions of the UnixWare source code agreement, that the  
6 prior versions were specifically listed. In the most  
7 recent version of the UnixWare license, that was omitted  
8 only for the purpose of reducing the size of the  
9 agreement, but my understanding is that it was still  
10 provided to a customer if they requested it, and it was  
11 implicitly included.

12 Q. Do you have an understanding as to why that  
13 was?

14 A. Because that was the standard practice of SCO  
15 and its predecessors in terms of licensing the UNIX  
16 software, that source code licensees of different  
17 versions could interact with each other or share code in  
18 certain cases, if they were of a similar licensing level,  
19 and that was enabled by the fact that they would be  
20 licensed to all prior versions, depending on the version  
21 they licensed at that point.

22 So, that was a standard practice that had been  
23 used by SCO, by Novell, by AT&T, USL and part of the  
24 licensing of the UNIX code, and it continued with  
25 UnixWare.

1 Q. You were shown a series of agreements towards  
2 the end of Mr. Acker's questions, and I think we can  
3 safely lump those together and call them SCOSource  
4 agreements. Do you recall doing that?

5 A. Yes.

6 Q. How did you come about arriving at a price for  
7 these SCOSource agreements?

8 A. I -- we determined that we wanted to price it  
9 basically at the same price as UnixWare, so a comparable  
10 capability of UnixWare, if it was a 1-CPU system, was  
11 priced at, you know, \$1400, which was the same price for  
12 UnixWare.

13 Q. And who did you speak with on that issue?

14 A. Oh, I had gotten input from John Maciaszek and  
15 also from Jeff Hunsaker, who were more familiar with the  
16 UnixWare price list than I was.

17 Q. Now, was there any source code given to a  
18 licensee under a SCOSource license?

19 A. No, there was not.

20 Q. Could you describe, to the best of your view,  
21 what the license was in the SCOSource license?

22 A. It was primarily a release, aspects of a  
23 covenant not to sue and a Unixware license and SCO IP  
24 license.

25 Q. Now, you were shown the phrase in several of

1 the agreements, quote, SCO's IP rights. Do you recall  
2 that?

3 A. Yes.

4 Q. In these SCOSource agreements, did SCO purport  
5 to release anything other than its rights?

6 A. No, we did not.

7 Q. Did SCO purport to license anything other than  
8 its rights?

9 A. No.

10 Q. You were shown Novell Exhibit 227. This is the  
11 Jeff Hunsaker e-mail. Do you recall that?

12 A. Yes.

13 Q. And in that e-mail, Mr. Hunsaker's says that  
14 this is not a Unixware 7.13 SKU. Do you recall that?

15 A. Yes.

16 Q. Do you know what SKU is?

17 A. Stock-keeping unit or -- a box of UnixWare  
18 software, in this case.

19 Q. Were these SCOSource agreements simply UnixWare  
20 licenses for purposes of stock keeping?

21 A. No. They were a separate package and agreement  
22 and separate SKU.

23 Q. Now, you were asked further about  
24 Mr. Hunsaker's statement that --

25 If we could pull it up.

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STATE OF UTAH.)

) ss.

COUNTY OF SALT LAKE )

I, KELLY BROWN HICKEN, do hereby certify that I am a certified court reporter for the State of Utah;

That as such reporter, I attended the hearing of the foregoing matter on April 29, 2008, and thereat reported in Stenotype all of the testimony and proceedings had, and caused said notes to be transcribed into typewriting; and the foregoing pages number from 77 through 144 constitute a full, true and correct report of the same.

That I am not of kin to any of the parties and have no interest in the outcome of the matter;

And hereby set my hand and seal, this 29<sup>th</sup> day of April 2008.

Kelly Brown Hicken  
KELLY BROWN HICKEN, CSR, RPR, RMR

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REPORTER'S CERTIFICATE


STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

I, REBECCA JANKE, do hereby certify that I am a  
Certified Court Reporter for the State of Utah;

That as such Reporter I attended the hearing of  
the foregoing matter on April 29, 2008, and thereat  
reported in Stenotype all of the testimony and  
proceedings had, and caused said notes to be transcribed  
into typewriting, and the foregoing pages constitute a  
full, true and correct record of the proceedings  
transcribed;

That I am not of kin to any of the parties and  
have no interets in the outcome of the matter;

And hereby set my hand and seal this 29th day  
of April, 2008.

  
REBECCA JANKE, CSR, RPR, RMR



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A P P E A R A N C E S

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1 MAY 1, 2008

SALT LAKE CITY, UTAH

2 P R O C E E D I N G S

3 \* \* \*

4 THE COURT: Good morning.

5 ALL ATTORNEYS: Good morning.

6 THE COURT: You may call your next witness.

7 MR. NORMAND: Yes, Your Honor. William

8 Broderick

9 MR. NORMAND: May I approach, Your Honor?

10 THE COURT: Yes.

11 Come forward and be sworn, please, right here  
12 in front of the clerk of the Court.

13 WILLIAM BRODERICK,

14 the witness hereinbefore named, being first  
15 duly cautioned and sworn or affirmed to tell the truth,  
16 the whole truth, and nothing but the truth, was examined  
17 and testified as follows:

18 THE CLERK: Please state your name and spell it  
19 for the record.

20 THE WITNESS: William Broderick.

21 B-r-o-d-e-r-i-c-k .

22 DIRECT EXAMINATION

23 BY MR. NORMAND:

24 Q. Good morning, Mr. Broderick.

25 A. Good morning.

1 Q. What is your current position with the SCO  
2 Group?

3 A. I'm the Director of Software Licensing.

4 Q. And how long have you held that position?

5 A. Since -- with SCO, since Caldera bought the  
6 business from the Santa Cruz Operation.

7 Q. And could you briefly describe your  
8 responsibilities in that position?

9 A. I'm responsible for all contract and licensing  
10 activities.

11 Q. And how long have you had those  
12 responsibilities at SCO?

13 A. Since I moved over to SCO from the Santa Cruz  
14 Operation.

15 Q. What did you do at Santa Cruz?

16 A. I did contracts and licensing.

17 Q. How did your responsibilities there compare to  
18 your responsibilities at SCO?

19 A. They are exactly the same. I just continued to  
20 do the same work with the same people.

21 Q. And what did you do before you were at Santa  
22 Cruz?

23 A. I was at Novell.

24 Q. And what were your responsibilities at Novell?

25 A. At Novell, when Novell first merged or bought

1 the UNIX business from USL, I was Manager of Sales  
2 Operations, but it was a month or two after Novell bought  
3 us, I moved to the contracts group, and then I was the  
4 contracts manager.

5 Q. And what were your responsibilities at  
6 Novell?

7 A. Contracts and licensing of the UNIX business.

8 Q. What did you do before you went to Novell?

9 A. I was at the UNIX Systems Labs.

10 Q. What did you do there?

11 A. I was Manager of Sales Operations.

12 Q. And what were your responsibilities there?

13 A. I reported to the Vice President of Sales, and  
14 I handled the sales compensation plan forecasting; sales  
15 compensation plan, forecasting. If issues came up with  
16 the sales force, a lot of times I was directed to try and  
17 solve those.

18 Q. How have your responsibilities in all those  
19 positions pertained to UNIX?

20 A. It was all UNIX.

21 Q. Why is that?

22 A. Well UNIX System Laboratory owned the UNIX  
23 technology and the business, and when they merged with  
24 Novell, Novell bought that business from Santa Cruz, and  
25 we worked in Novell's -- I'm not sure of the exact title.

1 It was the Novell UNIX Group. And then when Novell sold  
2 the business to Santa Cruz, we moved into Santa Cruz's  
3 legal department and worked contracting UNIX.

4 Q. You were part of the UNIX Group --

5 A. Yes.

6 Q. -- at Novell? What happened to the UNIX Group  
7 after the transfer of assets from Novell to Santa Cruz in  
8 1995?

9 A. What happened to the UNIX Group?

10 Q. What happened to the UNIX Group?

11 A. The UNIX Group, I think in its entirety, went  
12 to Santa Cruz.

13 Q. How did your responsibilities change, if at  
14 all, when you went from Novell to Santa Cruz?

15 A. Santa Cruz was doing -- at that time, we were  
16 doing more of the packaged product, the binary business,  
17 so we were working with not only OEMs that were licensing  
18 source code, but we were dealing with distributors, a lot  
19 of resellers of the packaged products, and we were doing  
20 agreements for those also.

21 Q. What are OEMs?

22 A. OEMs are original equipment manufacturers.  
23 They are the computer manufacturers, Hewlett-Packard,  
24 IBM, Compac. The people that build the computers are  
25 OEMs.

1 Q. How did your responsibilities change, if at  
2 all, when the assets went from Santa Cruz to Caldera in  
3 2001?

4 A. Well, at Santa Cruz, there were a number of  
5 people that did contracts related to the UNIX business,  
6 and when I went to Caldera, I won it all.

7 Q. And, at some point, Caldera changed its name to  
8 The SCO Group, Inc.; is that right?

9 A. Yes.

10 Q. How did your responsibilities change, if at  
11 all, upon that name change?

12 A. Not at all. But there was a period from  
13 August, 2002, until April of 2003 where I wasn't an  
14 employee of Santa Cruz, I went to another company, but I  
15 continued to do consulting with SCL on the contracts, but  
16 essentially my responsibilities changed not at all.

17 Q. You mentioned OEMs earlier. What kind of fees  
18 or payments did OEMs make for the UNIX products that you  
19 have been describing?

20 A. The source code products?

21 Q. Yes.

22 A. There was a one-time fee, right to use fee that  
23 paid for the source code, and that gave them the right to  
24 put it on an initial designated CPU. And a designated  
25 CPU, that's a computer. So they could put the source

1 referring to?

2 A. Yes.

3 MR. NORMAND: Could we go to Bates number  
4 1299956.

5 Have you seen that document before,  
6 Mr. Broderick?

7 A. Yes.

8 Q. It's a memo, attention to Steve Sabbath. Who  
9 was Steve Sabbath, as of November 22, 1995, what was his  
10 position?

11 A. Steve Sabbath was General Counsel for Santa  
12 Cruz Operation.

13 Q. And who was Kelly Hicks?

14 A. Kelly Hicks was the controller for Santa Cruz  
15 Operation.

16 Q. Would you go to the next page. Signed by Lou  
17 Ackerman. Who was Lou Ackerman?

18 A. Lou Ackerman was my manager when I was at  
19 Novell as a contract manager. He was Manager of the  
20 Contracts Group.

21 Q. Do you see this language at the bottom of the  
22 first page in the memo from Mr. Ackerman:

23 Would you also please confirm that SCO intends  
24 to use the standard software agreement and sublicensing  
25 agreement currently used by Novell, with exception to the

1 necessary name and address changes for any new customers.

2 Do you see that language?

3 A. Yes.

4 Q. How does that language compare to your  
5 understanding of what Santa Cruz was going to be doing in  
6 the transition?

7 A. Well, in the transition, all documents went  
8 from Novell to Santa Cruz. We kept all of our computers.  
9 We had all of the agreements in word processing on our  
10 computers, and all we did was go in and do a global  
11 change, Novell to Santa Cruz.

12 Q. I won't read those out loud, Mr. Broderick.  
13 You can see them. How do those directives from  
14 Mr. Ackerman compare to your understanding of what was to  
15 be done on the transition?

16 A. Again, it was the same idea. We had a UnixWare  
17 2.0 schedule with Novell, with Novell's name in it, and  
18 we did a global change with the name from Novell to Santa  
19 Cruz and changed nothing else.

20 Q. Do you recognize this document, Mr. Broderick,  
21 SCO Exhibit 71?

22 A. Yes.

23 Q. What is the document?

24 A. It's amendment number 1 to the Asset Purchase  
25 Agreement.

1 Q. If we could go to page 6. This is the  
2 language, Mr. Broderick, in which the parties state that  
3 buyer shall have the right to enter into amendments of  
4 the SVRX licenses as may be incidentally involved to its  
5 rights to sell and license UnixWare software.

6 Do you see this language?

7 A. Yes.

8 Q. This provision goes on to state that buyer  
9 shall not -- shall have no right to enter into new SVRX  
10 licenses, except in the situation specified in little "i"  
11 of the preceding sentence or as otherwise approved.

12 Do you see that language?

13 A. Yes.

14 Q. Do you recall discussing this language during  
15 the transition period from Novell to Santa Cruz?

16 A. Yes.

17 Q. And what do you recall about that?

18 A. Well, in the transition team, we were told that  
19 Novell was selling the business, but, as part of the  
20 purchase price, they were going to get the ongoing stream  
21 of royalties for what was defined as the SVRX products  
22 that were transferred from Santa Cruz to Novell. We  
23 couldn't do anything that jeopardized that revenue  
24 stream. It was essentially money in the bank for Novell.

25 And we couldn't enter into new licenses for the



1 SVRX products. And what that meant was -- what they  
2 didn't want Santa Cruz to do was -- you had a licensee  
3 who had an SVRX product from Novell. What we couldn't do  
4 is go to that licensee and say: You know, you're paying  
5 a hundred-dollar-royalty-per-copy fee. If you execute a  
6 new license with us, Santa Cruz, we'll charge you a  
7 \$50-per-copy fee.

8 We couldn't do anything that took away that  
9 royalty stream that Novell was to get. What they said is  
10 but we could license the SVRX incidentally. And we said:  
11 Well, what's "incidentally?"

12 And they said: Well, the major part of this,  
13 if you take a look, if you license the source code, the  
14 source code license fees, from when they first started  
15 being used, always included prior products of the legacy  
16 products. You will continue to use those same types of  
17 licenses. You'll continue to include that legacy prior  
18 products. And that's an example of an incidental right

19 Q. And did, in fact, Santa Cruz continue to  
20 license prior products with its UnixWare licenses?

21 A. Yes, we did, because what we did is we changed  
22 the name from Novell to Santa Cruz. The rest of the  
23 license was to remain the same, and the licenses had  
24 prior products, and it's the way source code was licensed  
25 from the early '80's.

1 Q. When was this transition period completed?

2 A. I believe we became Santa Cruz employees on  
3 February 1, '96.

4 Q. Do you recognize this document, SCO Exhibit  
5 141, Mr. Broderick?

6 A. Yes.

7 Q. And could you describe what the document is.

8 A. It's -- again, it's a supplement licensing  
9 order form, NCR Corporation, licensed UnixWare 2.1 source  
10 code from SEL, Santa Cruz.

11 Q. And if we go to page 24. And do you recognize  
12 this part of the document, Mr. Broderick?

13 A. Yes.

14 Q. And what is it?

15 A. It's the listing of the prior products where we  
16 granted rights to access the legacy products that  
17 UnixWare was ultimately built on.

18 Q. What supplement number is this, Mr. Broderick?

19 A. 112.

20 Q. And have you had occasion to go back and  
21 consider some of the other types of supplements that  
22 predated this supplement?

23 A. In my 15 years of doing licensing, I'm aware of  
24 how the supplements are numbered, how they worked.

25 Q. Specifically to NCR, have you had occasion to

1 Q. So with respect to, say, the libraries just as an  
2 example, the traditional type of UnixWare license would allow  
3 you to use those libraries in what context?

4 A. Well, you would use those libraries on a Linux  
5 deployment for those customers that were trying to migrate  
6 UNIX applications to Linux. So they would purchase a license  
7 in order to run those Linux -- those applications, UNIX  
8 applications on Linux.

9 Q. And just to clarify that, what was allowed under  
10 the SCO source license?

11 A. Correct.

12 Q. And under a pre-SCOsource license, UnixWare  
13 license, would that be allowed?

14 A. No. No. Once again, you couldn't unbundle the  
15 technology. And so that's why we developed the SCOsource IP  
16 license.

17 Q. I believe you characterized these agreements in  
18 your answer, a couple of answers ago, as types of UnixWare  
19 licenses. Was that always your understanding of the SCOsource  
20 agreements?

21 A. Yes.

22 Q. I'd like to show you what's been marked as  
23 SCO Exhibit 236. And again, it's in your binder and will be  
24 on the screen in a moment.

25 Do you recognize SCO Exhibit 236?

1           A.    Yes.  A press release that we issued in July  
2 regarding UNIX and our copyrights and so forth.  Yes.

3           Q.    And again, were you involved in issuing these press  
4 releases or creating or reviewing these press leases?

5           A.    Primarily reviewing the press releases for content.  
6 Did not author every word of the documents, no.

7           Q.    I'd like to zoom in on the bottom third of the  
8 press release that begins:

9                   Following the distribution of our letter.

10          A.    Uh-huh (affirmative).

11          Q.    And press release quotes Mr. McBride saying:

12                   Today we're delivering a very clear message to  
13 customers regarding what they should do.

14                   Intellectual property is valuable and needs to be  
15 respected and paid for by corporations who use it  
16 for their own commercial benefits.  The new  
17 UnixWare license accomplishes that objective in a  
18 fair and balanced way.

19                   Is that an accurate reading?

20          A.    Yes.

21          Q.    And does the language of that press release, is  
22 that consistent with your recollection that you had always  
23 termed this UnixWare license?

24          A.    Yes, absolutely.  The SCOSource program was all  
25 built on our UnixWare licenses built around a UnixWare

1 license.

2 Q. Now, Mr. Hunsaker, you had testified -- well, I  
3 think you said it was UnixWare license. It was different from  
4 the traditional UnixWare license. Can you elaborate on the  
5 specific difference between the UnixWare license, traditional  
6 UnixWare license and the SCOsource UnixWare license?

7 A. Well, one is the target audience, I mean, for the  
8 traditional UnixWare license, it was sold to SCO customers and  
9 other SCO customers and new SCO customers that we wanted to  
10 run our UnixWare technology on, our OpenServer technology on  
11 their hardware. And it included a packaged product. It  
12 included a manual. It included CDs. It included  
13 registration, cards. It included a license agreement. And so  
14 it was physically a packaged product that was delivered and  
15 installed and it was ready to use.

16 On the other hand, a SCOsource IP license, while  
17 it's based on the same technology of UnixWare, it was focussed  
18 for Linux customers that just wanted to be made clean and one  
19 against ensured them that we were not going to sue them. And  
20 it didn't have anything to install. There was nothing  
21 physical to it. It was simply a license that allowed them to  
22 run this in that instance. There was no manual or other  
23 things that I've talked about.

24 Q. Let me direct you to Novell, what we've marked as  
25 Novell Exhibit 227. And if you'll briefly review that.

1 Do you recognize this document?

2 A. Yes.

3 Q. And the document appears to be a series of e-mail  
4 exchanges that involved either you sending or receiving  
5 e-mails?

6 A. Correct.

7 Q. Could you turn to Page 2, please, of the document,  
8 Novell 227. And I'd like to focus in on the e-mail that you  
9 sent on July 31st of '03. Do you see that second half of the  
10 page?

11 A. Yes.

12 Q. And if you can specifically look at the line that  
13 begins, Item 1.

14 A. Okay.

15 Q. You were the author of this e-mail?

16 A. Yes. It says my name. Yes.

17 Q. And, Mr. Hunsaker, you wrote on July 31st of '03:

18 The official name of this program will be the  
19 SCO UNIX IP compliance license program. This is  
20 not a UnixWare 7.1.3 SKU.

21 A. Yes.

22 Q. Mr. Hunsaker what's an SKU?

23 A. SKU or SKU is defined as a stock keeping unit.  
24 It's more of a manufacturing operational term designed to  
25 categorize or name a particular product. It's a unique

1 STATE OF UTAH )  
2 ) ss.  
3 COUNTY OF SALT LAKE )

4 I, KELLY BROWN HICKEN, do hereby certify that I am  
5 a certified court reporter for the State of Utah;

6 That as such reporter, I attended the hearing of  
7 the foregoing matter on May 1, 2008, and thereat reported in  
8 Stenotype all of the testimony and proceedings had, and caused  
9 said notes to be transcribed into typewriting; and the  
10 foregoing pages number from 503 through 636 constitute a full,  
11 true and correct report of the same.

12 That I am not of kin to any of the parties and have  
13 no interest in the outcome of the matter;

14 And hereby set my hand and seal, this 1<sup>st</sup> day of  
15 May 2008.

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20 Kelly Brown Hicken  
21 KELLY BROWN HICKEN, CSR, RPR, RMR  
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REPORTER'S CERTIFICATE

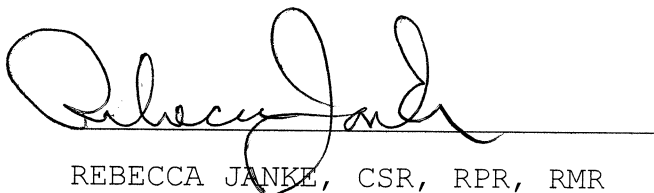
STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

I, REBECCA JANKE, do hereby certify that I am a  
Certified Court Reporter for the State of Utah;

That as such Reporter I attended the hearing of  
the foregoing matter on May 1, 2008, and thereat reported  
in Stenotype all of the testimony and proceedings had,  
and caused said notes to be transcribed into typewriting,  
and the foregoing pages numbered 420 through 499  
constitute a full, true and correct record of the  
proceedings transcribed.

That I am not of kin to any of the parties and  
have no interets in the outcome of the matter;

And hereby set my hand and seal this May 1,  
2008.

  
REBECCA JANKE, CSR, RPR, RMR