

**ORIGINAL**

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Brent O. Hatch (5715)  
Mark F. James (5295)  
HATCH, JAMES & DODGE  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101  
Telephone: (801) 363-6363  
Facsimile: (801) 363-6666

Robert Silver (admitted pro hac vice)  
Edward Normand (admitted pro hac vice)  
Sean Eskovitz (admitted pro hac vice)  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, New York 10504  
Telephone: (914) 749-8200  
Facsimile: (914) 749-8300

DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

Stuart H. Singer (admitted pro hac vice)  
BOIES, SCHILLER & FLEXNER LLP  
401 East Las Olas Boulevard – Suite 1200  
Ft. Lauderdale, Florida 33301  
Telephone: (954) 356-0011  
Facsimile: (954) 356-0022

Stephen N. Zack (admitted pro hac vice)  
BOIES, SCHILLER & FLEXNER LLP  
Bank of America Tower – Suite 2800  
100 Southeast Second Street  
Miami, Florida 33131  
Telephone: (305) 539-8400  
Facsimile: (305) 539-1307

*Attorneys for The SCO Group, Inc.*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.  
Plaintiff/Counterclaim-Defendant

v.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,  
Defendant/Counterclaim-Plaintiff

**UNSEALED EXHIBITS TO  
MEMORANDUM IN OPPOSITION TO  
DEFENDANT INTERNATIONAL  
BUSINESS MACHINES' MOTION  
FOR SUMMARY JUDGMENT ON ITS  
TENTH COUNTERCLAIM FOR  
DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT**

[Docket No. 206]

Case No. 2:03CV0294DAK  
Honorable Dale A. Kimball  
Magistrate Judge Brooke C. Wells

# **EXHIBIT S-2**

**In The Matter Of:**

*THE SCO GROUP, INC., v.*  
*INTERNATIONAL BUSINESS MACHINES CORPORATION*

---

**DAVID P. RODGERS**

*June 10, 2004*

---

***LEGALINK MANHATTAN***  
*420 Lexington Avenue - Suite 2108*  
*New York, NY 10170*  
*PH: 212-557-7400 / FAX: 212-692-9171*

**RODGERS, DAVID P.**



DAVID P. RODGERS

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

-oO-

THE SCO GROUP, INC., )  
 )  
Plaintiff/ )  
Counterdaim-Defendant, )  
 ) Case No.  
-against- ) 203CV-0294 DAK  
 )  
INTERNATIONAL BUSINESS )  
MACHINES CORPORATION, )  
 )  
Defendant/ )  
Counterdaim-Plaintiff. )

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DEPOSITION OF  
DAVID P. RODGERS

---

Thursday, June 10, 2004  
Volume 1 (Pages 1 - 216)

REPORTED BY: ANA M. DUB, RMR, CRR, CSR 7445 (03-351091)

Page 3

A P P E A R A N C E S

1  
2  
3 FOR THE PLAINTIFF AND COUNTERCLAIM DEFENDANT THE SCO  
GROUP, INC.:

4 BOTES SCHILLER & FLEXNER LLP  
5 BY: MARK J. HEISE, ATTORNEY AT LAW  
100 Southeast Second Street, Suite 2800  
6 Miami, Florida 33131  
Telephone: (305) 539-8400  
7 E-Mail: mhaise@bsflip.com

8 and  
9 HATCH, JAMES & DODGE, P.C.  
10 BY: MARK F. JAMES, ATTORNEY AT LAW  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101  
11 Telephone: (801) 363-6363  
E-Mail: mjames@hjdllaw.com

12  
13 FOR THE DEFENDANT AND COUNTERCLAIM PLAINTIFF  
14 INTERNATIONAL BUSINESS MACHINES CORPORATION AND THE  
DEPONENT:

15 CRAVATH, SWAINE & MOORE LLP  
16 BY: CHRISTOPHER KAO, ATTORNEY AT LAW  
Worldwide Plaza  
825 Eighth Avenue  
17 New York, New York 10019-7475  
Telephone: (212) 474-1342  
18 E-Mail: ckao@cravath.com  
19 -oO-

20 ALSO PRESENT:

21 VIDEO SOLUTIONS, A Legalink Company  
22 PATRICK MURRAY, VIDEOGRAPHER  
50 First Street, Suite 507  
San Francisco, California 94105-2415  
23 Telephone: (415) 546-6400  
24 -oO-  
25

Page 2

I N D E X  
INDEX OF EXAMINATIONS

	Page
4 EXAMINATION BY MR. KAO .....	6
5 EXAMINATION BY MR. HEISE .....	52
6 FURTHER EXAMINATION BY MR. KAO .....	178
7 FURTHER EXAMINATION BY MR. HEISE .....	201
8 FURTHER EXAMINATION BY MR. KAO .....	210
9 FURTHER EXAMINATION BY MR. HEISE .....	214

10  
11

12 DEPOSITION EXHIBITS MARKED FOR IDENTIFICATION

No.	Description	Page
13 100	Declaration of David P. Rodgers .....	12
14 101	Letter on the Letterhead of AT&T Dated .....	163
	August 5, 1985 to Sequent Computer Systems, 16 Inc., from AT&T Information Systems	
17 102	Letter on the Letterhead of AT&T Dated .....	163
	June 24, 1986 to Sequent Computer Systems, 18 Inc., from AT&T Information Systems	
19 103	Letter on the Letterhead of AT&T Dated .....	163
	July 27, 1987 to Sequent Computer Systems, 20 Inc., from AT&T Information Systems	

21  
22  
23  
24  
25

Page 4

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

-oO-

4 THE SCO GROUP, INC., )  
 )  
5 Plaintiff/ )  
Counterdaim-Defendant, )  
6 ) Case No.  
-against- ) 203CV-0294 DAK  
7 )  
8 INTERNATIONAL BUSINESS )  
MACHINES CORPORATION, )  
 )  
9 Defendant/ )  
Counterdaim-Plaintiff. )

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-oO-

12 BE IT REMEMBERED that, pursuant to Subpoena,  
13 and on Thursday, June 10, 2004, commencing at 8:06 a.m.  
14 thereof, at the Doubletree Hotel, 2050 Gateway Place,  
15 Santa Clara, California, before me, Ana M. Dub, a  
16 Certified Shorthand Reporter, Registered Merit Reporter,  
17 and Certified Realtime Reporter, personally appeared  
18 DAVID P. RODGERS  
19

20 called as a witness by the Defendant and Counterdaim  
21 Plaintiff International Business Machines Corporation,  
22 who, having been first duly sworn, was examined and  
23 testified as follows:  
24  
25

DAVID P. RODGERS

Page 5

1                    --p00--  
 2                    P R O C E E D I N G S  
 3                    THE VIDEOGRAPHER: Here begins Videotape No. 1  
 4 in the deposition of David Rodgers, in the matter of The  
 5 SCO Group v. IBM, in U.S. District Court, District of  
 6 Utah, Case No. 2:03CV-0294 DAK.  
 7                    Today's date is June 10th, 2004. The time on  
 8 the video monitor is 8:06.  
 9                    The video operator today is Patrick Murray, a  
 10 notary public, contracted by LegaLink New York of  
 11 New York, New York.  
 12                    This video deposition is taking place at 2050  
 13 Gateway Place, San Jose, California, and was noticed by  
 14 Christopher Kao of Cravath, Swaine & Moore.  
 15                    Counsel, please voice-identify yourselves and  
 16 state whom you represent.  
 17                    MR. KAO: Chris Kao, with Cravath, Swaine &  
 18 Moore LLP, on behalf of defendant IBM and the witness  
 19 here today, Mr. Rodgers.  
 20                    MR. HEISE: Mark Heise, from Boies Schiller,  
 21 on behalf of The SCO Group; and here with me today is  
 22 Mark James, also on behalf of The SCO Group, from Hatch,  
 23 James & Dodge.  
 24                    THE VIDEOGRAPHER: The court reporter today is  
 25 Ana Dub of LegaLink.

Page 6

1                    Will the reporter please swear in the witness.  
 2                    DAVID P. RODGERS,  
 3 sworn by the Certified Shorthand Reporter,  
 4 testified as follows:  
 5                    EXAMINATION BY MR. KAO  
 6                    MR. KAO: Q. Good morning. Can you please  
 7 state your full name for the record, Mr. Rodgers.  
 8                    A. Yes. I'm David Parran Rodgers.  
 9                    Q. And can you please state your full address.  
 10                    A. 21359 Toll Gate Road, Saratoga, California.  
 11                    Q. Can you review your educational history with  
 12 me, for the record, after high school?  
 13                    A. Okay. I attended Carnegie-Mellon University,  
 14 Pittsburgh, Pennsylvania. I graduated in 1968 with a  
 15 Bachelor of Science in electrical engineering.  
 16                    Q. Did you do any studies after that?  
 17                    A. I did an incomplete M.B.A. program at Clark  
 18 University in Worcester, Massachusetts.  
 19                    Q. Now, can you review your -- briefly review  
 20 your employment history for me after graduating from  
 21 Carnegie-Mellon?  
 22                    A. Right. I worked for a time for  
 23 Carnegie-Mellon University. After Carnegie-Mellon, I  
 24 joined Digital Equipment Corporation in Maynard,  
 25 Massachusetts. After Digital Equipment, I joined

Page 7

1                    Sequent Computer Systems in Portland, Oregon. After  
 2 Sequent, Compaq Computer Systems in Houston, Texas.  
 3                    After Compaq, I joined Brightlink Networks in Sunnyvale,  
 4 California. And after Brightlink, IP Unity in Milpitas,  
 5 California, where I'm currently employed.  
 6                    Q. Can you tell me approximately the years that  
 7 you were at Digital?  
 8                    A. I was employed by Digital from 1973 to 1983.  
 9                    Q. And what years were you employed at Sequent?  
 10                    A. From 1983 to 1996.  
 11                    Q. Can you review the positions that you held at  
 12 Sequent from 1983 to 1996?  
 13                    A. Yes. I joined the company as the  
 14 vice president of engineering. After vice president of  
 15 engineering, I was the chief information officer.  
 16 During a posting in France, I was responsible for remote  
 17 development sites in Europe and in Japan. And when I  
 18 returned to the United States, I was head of the  
 19 professional services organization.  
 20                    Q. While you were the vice president of  
 21 engineering, you were based in the --  
 22                    A. In --  
 23                    Q. -- United States?  
 24                    A. -- Portland, Oregon.  
 25                    Q. And when was your posting overseas?

Page 8

1                    A. From 1991 to 1993.  
 2                    Q. And when you returned in 1993, you were then  
 3 in professional services?  
 4                    A. Yes.  
 5                    Q. And what responsibilities did you have while  
 6 you were in the professional services group?  
 7                    A. It was principally interacting with customers  
 8 and go-to-market partners around solution creation,  
 9 systems engineering, helping customers to architect  
 10 large-scale enterprise business applications.  
 11                    Q. And from approximately 1986 -- or excuse me --  
 12 1983 to 1991, you were the vice president of  
 13 engineering?  
 14                    A. That's correct.  
 15                    Q. Can you describe for me the responsibilities  
 16 that you had while you were the vice president of  
 17 engineering?  
 18                    A. Right. My -- the product of Sequent at the  
 19 time consisted of a hardware platform, an operating  
 20 system, and some additional application software to make  
 21 that system useful. My responsibilities were to  
 22 supervise the hardware development, the software  
 23 development, the documentation, and the testing of those  
 24 two products.  
 25                    Q. By the "two products," you mean the

DAVID P. RODGERS

Page 9

1 operating --  
 2 A. The hardware and the software.  
 3 Q. -- system?  
 4 A. The operating system and the hardware.  
 5 Q. Okay. And sorry. Maybe I'm getting confused.  
 6 I think you mentioned that there was a hardware  
 7 platform, operating system software, and then  
 8 application software.  
 9 A. Right.  
 10 Q. So as the vice president of engineering, you  
 11 were responsible for what with respect to those three  
 12 categories?  
 13 A. I supervised the individuals doing the work.  
 14 Q. After leaving Sequent in 1996, I believe you  
 15 said you went to Compaq.  
 16 A. That's correct.  
 17 Q. How many years were you employed at Compaq?  
 18 A. Approximately three years. Two of the years I  
 19 was posted in Houston, and the third year I was posted  
 20 in California, Cupertino.  
 21 Q. And can you briefly describe for me what your  
 22 responsibilities were at Compaq?  
 23 A. Right. I joined Compaq as vice president of  
 24 business applications, which was both an engineering and  
 25 a marketing responsibility that comprised relationships

Page 10

1 with key application providers like SAP, Baan,  
 2 PeopleSoft, Oracle, Microsoft, and some others.  
 3 And the engineering component of that job was  
 4 to create configuration tools and go-to-market aids for  
 5 the Compaq indirect sales channel.  
 6 Q. And approximately what year did you leave  
 7 Compaq?  
 8 A. It was in 1999, right at the end.  
 9 Q. And you went to Brightlink Networks?  
 10 A. I went to Brightlink Networks, yes.  
 11 Q. How long were you at Brightlink?  
 12 A. About two years. The company ceased  
 13 operations.  
 14 Q. In approximately 2001?  
 15 A. It ceased operations in, I think, April of  
 16 2001. Might have been a little later. The winding down  
 17 took some time.  
 18 Q. And after that, you went to IP Unity?  
 19 A. Yes.  
 20 Q. And what is it you currently do at IP Unity?  
 21 A. I'm responsible for hardware and software  
 22 development of an enhanced services product for  
 23 telephony; "enhanced services" meaning voice mail,  
 24 conferencing, other applications such as find-me,  
 25 follow-me, caller screening.

Page 11

1 Q. Forgive me. I think I skipped over this  
 2 earlier, but of course, at any time during this  
 3 deposition if you need to take a break, just let me know  
 4 and we'll take a break. And if I ask you any questions  
 5 that you don't understand, let me know and I'll try to  
 6 rephrase so you understand what I'm asking.  
 7 I guess I should also ask if you've ever been  
 8 deposed before.  
 9 A. Yes, I have.  
 10 Q. Can you tell me in what circumstance you were  
 11 deposed before?  
 12 A. I was a party in an automobile accident case,  
 13 and I gave my deposition as a result of that suit, and  
 14 the case was eventually settled.  
 15 Q. You did not end up testifying at trial in that  
 16 case?  
 17 A. I did not.  
 18 Q. And how long ago was that?  
 19 A. It was in -- I don't remember the date of the  
 20 deposition, but it was in 2001 that the accident took  
 21 place.  
 22 Q. Did that accident occur around here?  
 23 A. It occurred very near my home.  
 24 MR. KAO: Okay. For the record, at the  
 25 Frasure deposition, I screwed up and we didn't use

Page 12

1 consecutive numbering; but at -- my understanding is  
 2 today at the Wilson deposition, they're going to pick up  
 3 where Sontag left off --  
 4 MR. HEISE: Okay.  
 5 MR. KAO: -- which I believe was 74. So  
 6 they're going to start with 75.  
 7 MR. HEISE: Okay.  
 8 MR. KAO: So I'm going to start -- we'll just  
 9 have this marked as 100. That should give enough  
 10 space --  
 11 MR. HEISE: That's fine.  
 12 MR. KAO: -- I think.  
 13 And I'm sorry about the --  
 14 MR. HEISE: We knew it was going to happen.  
 15 It was just a matter of when.  
 16 MR. KAO: So this will be Exhibit 100.  
 17 (Whereupon, Defendant's Exhibit 100 was  
 18 marked for identification.)  
 19 MR. KAO: Q. You've been handed by the court  
 20 reporter, Mr. Rodgers, what's been marked as Exhibit 100  
 21 in this case. And I'll ask you to review this exhibit,  
 22 and my first question, after you've had a chance to  
 23 review it, is whether or not you recognize what  
 24 Exhibit 100 is.  
 25 A. Yes. This is my deposition, prepared last

DAVID P. RODGERS

Page 13

1 year.

2 Q. Declaration?

3 A. I'm sorry. Declaration. Sorry.

4 Q. Just to clarify, have you been deposed in this

5 case --

6 A. I have not been deposed --

7 Q. -- apart from today?

8 A. -- In this case before today. I'm sorry.

9 Q. And if you look at page 6 of this declaration,

10 is that your signature, Mr. Rodgers?

11 A. Yes, it is.

12 Q. Now, without -- as your counsel, I instruct

13 you not to reveal any communications you had -- direct

14 communications you've had with me. But without doing

15 so, can you describe how it is that this declaration,

16 Exhibit 100, came to be prepared?

17 A. Certainly. I was contacted by your office, I

18 think by you personally, to ask if I recalled the fact

19 situation around some contracts between AT&T and

20 Sequent. And after some discussion and some question

21 and answer, a draft declaration was prepared by your

22 offices. I received that draft, edited it, corrected

23 it, made it conform to my recollection. And then a

24 final form was prepared for my signature. I executed it

25 and returned it to you.

Page 14

1 Q. Do you have in your possession any of the

2 markups that you did --

3 A. I do not.

4 Q. -- on the draft?

5 A. I do not.

6 Q. I'll ask you to take your time to review each

7 of the paragraphs in your declaration, and after you've

8 done so, can you let me know?

9 A. Certainly.

10 I'm ready.

11 Q. Do you believe everything that you've stated

12 in your declaration to be true and accurate --

13 A. Yes.

14 Q. -- to the best of your knowledge?

15 Is there anything about -- anything in this

16 declaration that you wish to change?

17 A. No. It's an accurate statement.

18 Q. Okay. Now, turning back just to the page

19 that's marked page 2, I'll ask you to look now at some

20 specific paragraphs within your declaration.

21 First, as to paragraph 1, is everything

22 contained in paragraph 1 true and accurate?

23 A. Yes.

24 Q. Okay. Looking at paragraph 2, is everything

25 contained in paragraph 2 true and accurate?

Page 15

1 A. Yes.

2 Q. Now, in paragraph 2 you state that you

3 executed several agreements with AT&T Technologies for

4 the licensing of Unix software. Do you see that?

5 A. Yes.

6 Q. And attached as Exhibit 1 there is a document

7 titled "AT&T Technologies, Inc., Software Agreement."

8 Do you see that?

9 A. Mm-hmm, yes.

10 Q. Can you look at that exhibit? Do you

11 recognize this document?

12 A. Yes, I do.

13 Q. Can you tell me what it is?

14 A. This particular document gives Sequent the

15 right to access the source code for AT&T software and

16 essentially to use it to produce additional works on the

17 Sequent hardware.

18 Q. And do you recall what particular software

19 this software agreement related to?

20 A. It was a version of AT&T System V. I don't

21 actually remember which edition of AT&T System V it was.

22 I think it was 5.2, but I don't recall.

23 Q. Unix System V?

24 A. Unix System V.

25 Q. And at the bottom of the page on this

Page 16

1 agreement, there's a signature there. Is that your

2 signature?

3 A. It is.

4 Q. And you executed this software agreement on

5 behalf of Sequent?

6 A. I did.

7 Q. If you can look at the document behind Tab 2,

8 which is titled "AT&T Technologies, Inc., Sublicensing

9 Agreement."

10 A. Yes.

11 Q. Do you see that?

12 A. Mm-hmm.

13 Q. Do you recognize this agreement?

14 A. Yes, I do.

15 Q. Can you tell me what this agreement is?

16 A. This agreement gives Sequent the right to

17 distribute the work, based on the AT&T System V source

18 code that was previously licensed, to its customers,

19 both directly and indirectly.

20 Q. And at the bottom of the first page, there's a

21 signature there. Is that your signature?

22 A. It is.

23 Q. And did you execute this sublicensing

24 agreement on behalf of Sequent?

25 A. I did.

DAVID P. RODGERS

Page 17

1 Q. And if you can look with me at the document  
 2 behind Tab 3, which is titled "AT&T Technologies, Inc.,  
 3 Substitution Agreement," do you recognize this  
 4 agreement?  
 5 A. I do.  
 6 Q. Can you tell me what this is?  
 7 A. I don't recall the precise terms that were  
 8 being modified, but it essentially was an agreement  
 9 between the companies to change certain specific terms  
 10 of the earlier agreement.  
 11 Q. And is that your signature at the bottom of  
 12 the page?  
 13 A. It is.  
 14 Q. And did you execute this agreement on behalf  
 15 of Sequent?  
 16 A. I did.  
 17 Q. And turning back to your declaration itself,  
 18 at paragraph 2 of your declaration, are the three  
 19 agreements that we just looked at the agreements that  
 20 you discuss in paragraph 2 of your declaration?  
 21 A. Yes, they are.  
 22 Q. Now, if you can turn to page 3 of your  
 23 declaration, I'll refer you to paragraph 5; and I'll ask  
 24 you, for the record, just to read your statement in  
 25 paragraph 5.

Page 18

1 A. Yes.  
 2 "Although I did not personally negotiate the  
 3 Sequent Agreements with representatives of  
 4 AT&T Technologies, I carefully reviewed the  
 5 agreements myself and with other Sequent  
 6 employees before executing them and have  
 7 personal knowledge of the parties'  
 8 understanding of, and intent behind, the  
 9 terms and conditions of the agreements."  
 10 Q. Is that a true and accurate statement?  
 11 A. It is.  
 12 Q. And can you explain to me what your  
 13 involvement was with the negotiation and execution of  
 14 the agreements that you executed on behalf of Sequent?  
 15 A. Yes. At the time, Sequent had need to extend  
 16 its basic product offering, the Dynix operating system,  
 17 to allow additional applications that were built for the  
 18 AT&T System V operating environment, which is different  
 19 than the Unix BSD 4.2 environment that the Sequent  
 20 product was built upon. And so Sequent needed to have  
 21 access to the source code in order to make that  
 22 possible. Roger Swanson and others in the software  
 23 development team worked with people at AT&T to secure a  
 24 license to that source code so that the work could  
 25 begin.

Page 19

1 And my role in that was to review the  
 2 documents and to ascertain the intent of the parties,  
 3 make sure that we were getting what we needed and that  
 4 it was a fair deal.  
 5 Q. During the course of the negotiations with  
 6 AT&T, did you have any personal interactions with anyone  
 7 from AT&T?  
 8 A. From time to time, I participated in  
 9 conference calls. I don't recall -- it's possible, but  
 10 I don't recall that we ever met face to face. I think  
 11 they were all telephone interactions.  
 12 Q. And on these conference calls, were the terms  
 13 of the licensing agreements discussed?  
 14 A. Yes, they were.  
 15 Q. Do you remember who from AT&T was on these  
 16 conference calls?  
 17 A. I do not. The one thing I do remember is that  
 18 it wasn't the guy who signed the agreement. It wasn't  
 19 Mr. Wilson. It was another guy, but I don't remember  
 20 who it was.  
 21 Q. Do you -- have you ever had any interactions  
 22 with Mr. Wilson?  
 23 A. I might have since. I mean, I might have met  
 24 him at some conference or something like that, but not  
 25 during this time.

Page 20

1 Q. Do you remember what other Sequent  
 2 representatives were on the conference calls with AT&T?  
 3 A. Usually, it would have been Roger Swanson, who  
 4 is the director of software engineering. We may have  
 5 included some of the key software engineers at the time  
 6 that we were discussing particular technical issues.  
 7 Q. Do you remember who those individuals were?  
 8 A. I don't remember precisely. It probably would  
 9 have been Bob Beck, who was the principal software  
 10 architect for the Dynix operating system. Might have  
 11 been Bob Kasten, who was also a principal software  
 12 engineer. But I don't have a precise recollection.  
 13 Q. You've mentioned in your testimony the Dynix  
 14 operating system. Can you just explain --  
 15 A. Yes.  
 16 Q. -- what you're referring to when you say that?  
 17 A. Yes. Sequent -- the principal product, as I  
 18 mentioned earlier, of Sequent was a hardware platform  
 19 that consisted of multiple microprocessors sharing a  
 20 common memory structure, and the operating environment  
 21 was a variant of Unix that was derived from the Berkeley  
 22 Standard Distribution 4.2 code. So Dynix was a variant  
 23 adapted to the multiple microprocessor architecture of  
 24 the Sequent hardware.  
 25 Q. Did you have any involvement in developing the



DAVID P. RODGERS

Page 21

1 Dynix operating system?  
 2 A. I wouldn't claim architectural or any  
 3 authorship. Yes, of course I wrote programs and  
 4 reviewed plans, and I had a direct involvement in the  
 5 development of the Dynix operating system, but I would  
 6 not consider myself an author of the software.  
 7 Q. Do you recall approximately when the first  
 8 version of the Dynix operating system was created?  
 9 A. The first working version probably was created  
 10 sometime in early 1984.  
 11 Q. And do you specifically recall that the Dynix  
 12 operating system was based on the Berkeley -- the BSD  
 13 4.2 release, or is that --  
 14 A. No. That's --  
 15 MR. HEISE: Objection to form.  
 16 You may answer.  
 17 MR. KAO: Q. Oh, I should also note that  
 18 during the course of the deposition, counsel may object.  
 19 So you should give -- before answering any of my  
 20 questions, you should pause and allow counsel to  
 21 interpose an objection.  
 22 A. Shall I answer?  
 23 Q. Yeah, you can answer if you --  
 24 A. Yes, the Dynix operating system was based on  
 25 the Berkeley Standard Distribution 4.2 version.

Page 22

1 Q. Going back to the conference calls you  
 2 discussed being a part of with AT&T, what was the  
 3 purpose of those calls, to the best you can recall?  
 4 A. The licensing agreement is somewhat vague, and  
 5 so we wanted to understand the meaning or the intent of  
 6 some of the paragraphs.  
 7 Q. Let's turn back to your declaration. And  
 8 looking at paragraph 6, I'll ask you to read paragraph 6  
 9 for the record, if you could.  
 10 A. Yes.  
 11 "It was my understanding that the licensing  
 12 agreements that I executed were standard form  
 13 agreements used by AT&T Technologies to  
 14 license Unix software products to its users.  
 15 The Software Agreement granted Sequent the  
 16 right to use Unix software products,  
 17 including source code, for its internal  
 18 business purposes. The agreement further  
 19 granted Sequent the right to modify Unix  
 20 software products and to prepare" --  
 21 THE COURT REPORTER: Excuse me.  
 22 MR. KAO: You may need to read a little slower  
 23 so the court reporter can get everything down.  
 24 THE WITNESS: Oh, excuse me. Where shall I  
 25 pick up?

Page 23

1 (Record read.)  
 2 THE WITNESS: "The agreement further  
 3 granted Sequent the right to modify Unix  
 4 software products and to prepare derivative  
 5 works based upon such products."  
 6 MR. KAO: Q. Are your statements in  
 7 paragraph 6 true and accurate?  
 8 A. Yes.  
 9 Q. And can you explain what you mean by the  
 10 statement that it was your understanding that the  
 11 licensing agreements were standard form agreements?  
 12 A. Yes. If I may give you some context, AT&T's  
 13 interest at this point in time was to create a broader  
 14 following for the System V variation of Unix, and so  
 15 the -- they had a kind of a proselytizing or marketing  
 16 program going on to get people signed up to use the A T&T  
 17 Unix variant.  
 18 As a consequence of that, there were  
 19 applications written for the System V variant of Unix  
 20 that Sequent wanted to have access to; and so we needed  
 21 to license from AT&T the specific elements, the specific  
 22 APIs that were necessary to allow those -- those  
 23 applications to run.  
 24 That meant that we needed to look at the  
 25 source code, take those little elements of the source

Page 24

1 code that were System V specific, and weld them into the  
 2 Dynix operating system environment.  
 3 Q. When you say "APIs," what do you mean by that?  
 4 A. Application programming interfaces.  
 5 Q. Do you remember, sitting here today, what  
 6 specific elements of the Unix System V program Sequent  
 7 wanted access to?  
 8 A. I don't recall a specific -- I mean, I can say  
 9 generally that it was the system calls of System V,  
 10 which are somewhat different than the system calls of  
 11 Berkeley, but I don't remember precisely which  
 12 application needed which system call.  
 13 Q. And can you just describe for me what a system  
 14 call is?  
 15 A. Right. An operating system generally is a  
 16 resource allocation piece of programming. And things  
 17 that the operating system allocates are pieces of  
 18 memory, access to a processor, access to a storage  
 19 device such as a disk, access to a terminal device. The  
 20 system calls are the way the software expresses the need  
 21 to access one of those resources.  
 22 Q. I guess, going back to a question that I  
 23 asked, I'm not sure -- maybe I asked it unclearly --  
 24 about your -- that you answered the question earlier  
 25 that I had asked about what it is you meant by the fact

DAVID P. RODGERS

Page 25

1 that you executed standard form agreements used by AT&T  
 2 Technologies.  
 3 A. Yes. AT&T provided a document, and -- which  
 4 is the document that's here under Tab 1, and they  
 5 represented it as the form that they used routinely with  
 6 all of their customers, all of their partners, to  
 7 provide access to the source code.  
 8 Q. Did anyone from AT&T at any point ever  
 9 communicate to you that they intended to treat their  
 10 licensees for Unix System V the same way?  
 11 MR. HEISE: Objection to form.  
 12 You may answer.  
 13 THE WITNESS: I don't recall that particular  
 14 content.  
 15 MR. KAO: Q. Turning now to paragraph 7 of  
 16 your declaration, can you read paragraph 7 --  
 17 A. Yes.  
 18 Q. -- for me, please.  
 19 A. "Section 2.01 of the Software Agreement  
 20 states that Sequent's right to use includes  
 21 the right to modify such SOFTWARE PRODUCT and  
 22 to prepare derivative works based on such  
 23 SOFTWARE PRODUCT, providing that the  
 24 resulting materials are treated hereunder as  
 25 part of the original SOFTWARE PRODUCT." I

Page 26

1 did not understand this language to give AT&T  
 2 Technologies the right to assert ownership or  
 3 control over modifications or derivative  
 4 works prepared by Sequent, except to the  
 5 extent that the licensed Unix software  
 6 product was included in such modifications or  
 7 derivative works. I would never have signed  
 8 an agreement that would grant ownership or  
 9 control to AT&T Technologies over  
 10 modifications or derivative works prepared by  
 11 Sequent to the extent those modifications or  
 12 derivative works contained no part of the  
 13 Unix software product licensed from AT&T  
 14 Technologies."  
 15 Q. Are the statements that you make in  
 16 paragraph 7 of your declaration true and accurate?  
 17 A. They are.  
 18 Q. Can you -- well, first, let's look at the  
 19 document behind Tab 1, at the software agreement.  
 20 A. Yes.  
 21 Q. Is the language that you read from in your  
 22 declaration contained in Section 2.01 of this agreement  
 23 that's attached as Tab 1?  
 24 A. Yes, it is.  
 25 Q. And can you explain to me -- well, strike

Page 27

1 that.  
 2 You state that you did not understand this  
 3 language to give AT&T Technologies the right to assert  
 4 ownership or control over modifications or derivative  
 5 works prepared by Sequent, except to the extent that the  
 6 licensed Unix software product was included in such  
 7 modifications or derivative works.  
 8 Do you see that?  
 9 MR. HEISE: Objection; form.  
 10 You may answer.  
 11 MR. KAO: Q. Do you see that in your  
 12 declaration?  
 13 A. Yes, I do see that.  
 14 Q. Can you explain to me what you mean by that?  
 15 A. It would have been foolish of me, as an  
 16 officer of a venture finance start-up company, to give  
 17 away the rights to the company's core products in  
 18 perpetuity. I mean, I certainly would not have done  
 19 that. So my understanding -- and this was confirmed in  
 20 some phone calls -- my understanding was that what AT&T  
 21 wanted to hold private was their contribution, their  
 22 source code contribution, and that that work which had  
 23 already been created by Sequent and any work that in the  
 24 future was created by Sequent, not based upon that  
 25 source code, remained the property of Sequent.

Page 28

1 Q. Did you understand Section 2.01 of the  
 2 software agreement to impose any restrictions on  
 3 Sequent's use of code that Sequent developed on its own?  
 4 A. No, I did not.  
 5 Q. Even if that code was contained in a Dynix  
 6 product that had Unix System V code in it?  
 7 MR. HEISE: Objection to form.  
 8 You may answer.  
 9 THE WITNESS: Yes. My understanding of the  
 10 license is that the Unix System V code had to be  
 11 maintained as the AT&T private property and withheld  
 12 from disclosure but, if there were other elements of the  
 13 software product created by Sequent, that those were  
 14 Sequent's to dispose of as it chose.  
 15 MR. KAO: Q. If you can turn to page 4 of  
 16 your declaration, I'll have you read paragraph 8 of your  
 17 declaration, if you could. I guess, for the court  
 18 reporter's benefit and for the jury's benefit, if you  
 19 could take your time and read it slowly.  
 20 A. Certainly.  
 21 "As I understood the Software Agreement  
 22 between Sequent and AT&T Technologies,  
 23 Sequent was free to use, copy, distribute or  
 24 disclose any modifications or derivative  
 25 works developed by Sequent, provided that it

DAVID P. RODGERS

Page 29	Page 31
<p>1 did not copy, distribute or disclose any 2 portion of the licensed Unix software product 3 source code (except as otherwise permitted by 4 the licensing agreements)." 5 Q. Are the statements that you make in 6 paragraph 8 of your declaration -- 7 A. They are. 8 Q. -- true and accurate? 9 And can you tell me what you base your 10 understanding of the software agreement on? 11 A. A combination of reading of the document and 12 conversations with my staff and the AT&amp;T parties to the 13 agreement. 14 Q. And when you say "my staff," can you -- 15 A. Principally, Roger Swanson and Bob Beck and 16 others. 17 Q. And is that the understanding you had when you 18 executed these agreements? 19 A. Yes, it is. 20 Q. I'll ask you to now read paragraph 9 into the 21 record, if you could. Take your time. 22 A. "It is my understanding that Sequent's 23 Dynix products might include some small parts 24 of the licensed Unix System V source code, 25 although I don't [sic] personally know</p>	<p>1 .A. I do not. 2 Q. Do you have any personal knowledge as to what 3 BSD Unix code is contained in Dynix? 4 A. A substantial portion, but I couldn't claim to 5 know what proportion. 6 Q. What is your understanding of what the term 7 "derivative work" means? 8 A. A derivative work is something that contains 9 all or part of some other piece of work. 10 Q. Do you have an understanding of what the term 11 "modifications" mean? 12 A. "Modifications" means either an augmentation, 13 meaning an additional function, or a change to 14 accommodate some other factor. 15 Q. And by "augmentation," do you mean adding -- 16 well, how do you augment something? 17 MR. HEISE: Objection; form. 18 You may answer. 19 MR. KAO: Q. You could answer. 20 A. "Augmentation" means an additional function. 21 If I can use an example, based on the earlier 22 description, the Unix operating environment, as 23 conceived both by Berkeley and by AT&amp;T, had no notion of 24 multiple processors and the need to preserve the content 25 of a cache memory system in order to improve</p>
<p>1 whether it does or not. I also do not know 2 whether Dynix is so similar to Unix System V 3 that it may be" -- "may properly be viewed as 4 a 'derivative work' based on Unix System V, 5 particularly in light of the fact that Dynix 6 was originally created using Berkeley 7 Software Design" -- parenthetically -- 8 ("BSD) Unix as a base and not AT&amp;T 9 Technologies' Unix System V. In any event, 10 as I understood the Sequent Agreements, 11 Sequent was free to use, copy, distribute, or 12 disclose Dynix (including source code), 13 provided that it did not copy, distribute or 14 disclose any Unix System V source code that 15 might be contained therein (except as 16 otherwise permitted by the licensing 17 agreements)." 18 Q. Mr. Rodgers, are the statements that you make 19 in paragraph 9 of your declaration true and accurate? 20 A. Yes, they are. 21 Q. Now, in paragraph 9 you discuss the fact 22 that -- well, strike that. 23 Do you know -- do you have any personal 24 knowledge as to what Unix System V code is contained in 25 Dynix?</p>	<p>1 performance. So an augmentation that exists in Dynix is 2 so-called processor affinity. It's the ability of a 3 program to say: I would like to continue running on the 4 processor that I was running on before so that I can 5 preserve those dynamic memory contents and, as a result, 6 operate at a higher speed. 7 So an augmentation that exists in Dynix is 8 processor affinity. It's a system call that doesn't 9 exist in another version of Unix, that specifically 10 allows for a program to get higher execution speed. 11 Q. And is an augmentation implemented through new 12 source code? 13 A. It's completely new source code. 14 Q. Now, you also mentioned, in your understanding 15 of the word "modification," that it could include 16 changes. 17 A. That's right. 18 Q. Can you explain to me what you mean by that? 19 A. Certainly. For example, the compilers that 20 were used to build the Dynix operating system are the 21 Berkeley-derived compilers, and there are subtle 22 differences in the way symbols are treated. And so it 23 might be necessary, if you wanted to compile, without 24 adding an additional function, a System V source module to 25 make a modification that was really cosmetic or had no</p>
Page 30	Page 32

8 (Pages 29 to 32)

DAVID P. RODGERS

Page 33

1 meaning other than to make it compatible with the form  
 2 of the compiler. So you might change a symbol from  
 3 having a dollar sign in it to not having a dollar sign  
 4 in it to make it compatible.  
 5 Q. Have you ever heard of something, Mr. Rodgers,  
 6 called Dynix/ptx?  
 7 A. Yes. That was a later version of the Dynix  
 8 operating system that was prepared that had a higher  
 9 degree of compatibility with the System V operating  
 10 environment.  
 11 Q. Do you know when Dynix/ptx was created?  
 12 A. I don't have a precise date recollection. It  
 13 was certainly during my tenure at Sequent, but I don't  
 14 have an exact recollection. And it was certainly --  
 15 certainly after 1985, 1986.  
 16 Q. Did -- earlier you talked about the Dynix  
 17 operating system. Did the Dynix operating system  
 18 continue to exist after Dynix/ptx was created, or was it  
 19 replaced by Dynix/ptx?  
 20 A. They coexisted. Gradually -- AT&T ultimately  
 21 was successful in their campaign to proselytize the  
 22 System V operating environment, and so more and more  
 23 application software was created for the System V  
 24 operating environment. And although there were new  
 25 applications created for the BSD family of Unixes, they

Page 34

1 were mostly aimed at technical and university-oriented  
 2 markets.  
 3 *Sequent continued to sell both Dynix and*  
 4 *Dynix/ptx, but as its business became more and more*  
 5 *commercially oriented, aimed at high-end business*  
 6 *systems and commercial applications based on databases,*  
 7 *I would say the proportion of Dynix/ptx to Dynix sales*  
 8 *changed in favor of Dynix/ptx.*  
 9 Q. In paragraph 9, then, of your declaration, are  
 10 you referring to Dynix or Dynix/ptx?  
 11 A. Actually, both of the products, Dynix and  
 12 Dynix/ptx, started from the same source base. In this  
 13 paragraph, I'm actually referring to the Dynix, the  
 14 predecessor operating environment, but the paragraph  
 15 applies to both versions of the product. The core of  
 16 the Dynix/ptx operating system is also Berkeley derived.  
 17 Q. I'll ask you to review now paragraph 10 of  
 18 your declaration for yourself. There's no need to read  
 19 that into the record.  
 20 A. Yes.  
 21 Q. Is that a true and accurate statement?  
 22 A. It is.  
 23 Q. And I'll ask you also to review paragraph 11  
 24 of your declaration to yourself.  
 25 A. Okay.

Page 35

1 Q. Is that an accurate statement?  
 2 A. It is.  
 3 Q. And in paragraph 11, you note that  
 4 Section 7.06(a) of the software agreement includes  
 5 language concerning confidentiality; is that right?  
 6 A. Yes, I do.  
 7 Q. Can you turn with me to the software agreement  
 8 that's attached behind Tab 1 of your declaration. And  
 9 there, if you can turn to Section 7.06(a).  
 10 A. Okay.  
 11 Q. My only question is whether this  
 12 Section 7.06(a) that appears in the software agreement  
 13 is the same section that you discuss in your  
 14 declaration.  
 15 A. Yes, it is.  
 16 Q. Now, turning back to your declaration, to  
 17 paragraph 12, can you read paragraph 12 into the record  
 18 for me?  
 19 A. Okay.  
 20 "It was my understanding that the purpose of  
 21 this confidentiality provision from the  
 22 perspective of AT&T Technologies was to  
 23 protect the Unix System V source code that it  
 24 was licensing. Although there is reference  
 25 in Section 7.06(a) to 'methods or

Page 36

1 concepts" -- in quotes -- "I had no  
 2 understanding at the time that AT&T  
 3 Technologies was interested in protecting  
 4 anything other than the Unix source code."  
 5 Q. Is that true and accurate?  
 6 A. It is.  
 7 MR. HEISE: Excuse me.  
 8 MR. KAO: Q. Can you -- well, first, can you  
 9 explain to me where you get your understanding of the  
 10 purpose of Section 7.06(a) of the software agreement?  
 11 A. From the reading of the document and from the  
 12 conversations with AT&T Technologies folks.  
 13 Q. And what is it in particular that you base  
 14 your understanding that AT&T Technologies was not  
 15 interested in protecting methods or concepts?  
 16 A. Actually, there are several things that lead  
 17 to that understanding.  
 18 The first is that contemporaneous with this  
 19 document and with Sequent's work, AT&T employees and  
 20 others were publishing books and generally exposing the  
 21 structure of the Unix operating system. Universities,  
 22 by this time, had switched to training young engineers  
 23 in software methods using the Unix operating system. So  
 24 the notion of protecting the methods or concepts of Unix  
 25 actually was turned on its head. Instead of protecting,

DAVID P. RODGERS

<p style="text-align: right;">Page 37</p> <p>1 they were actually exposing and proselytizing methods or 2 concepts because they were trying to build a broad base 3 of technical workers who were competent in the 4 technologies. 5 So as a consequence, it was very clear from 6 the paragraph and from the conversations that what they 7 were mostly interested in was just keeping the source 8 code under control. 9 Q. Did you ever ask anybody from AT&amp;T to delete 10 that language from the software agreement? 11 A. I did not because we had an understanding what 12 it referred to. 13 Q. Do you know if anybody from your staff ever 14 asked anyone from AT&amp;T to delete the language? 15 A. Not to my knowledge. 16 Q. Did anybody, in your discussions with AT&amp;T, 17 ever attempt to define for you what the term "methods or 18 concepts" means? 19 A. It's a pretty vague term, but I would say an 20 example of a method is how to produce digits for 21 printing from a binary number. 22 And the technique, of course, is well known. 23 You divide by the base. The remainder is the digit to 24 which you add the base of the character. In ASCII, it's 25 60 octal. You take, then, the quotient and divide it</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Were you involved in negotiating that 2 agreement? 3 A. I don't recall direct involvement. I think it 4 was probably Michael Simon who did that one. 5 Q. And who is Michael Simon? 6 A. He was the V.P. of marketing at the time. 7 Q. Do you know what time period that agreement 8 was entered into? 9 A. I have no precise recollection. 10 Q. And can you describe for me generally what 11 that agreement entailed? 12 A. It was basically a consulting services 13 agreement where Sequent technical resources would be 14 applied to development on behalf of AT&amp;T. 15 Q. Do you know if any work was ever performed 16 pursuant to that agreement? 17 A. I believe so, but I don't have direct 18 knowledge. 19 Q. Was that agreement entered into while you were 20 vice president of engineering? 21 A. Actually, I think it was after I had moved on 22 to be CIO or even later. 23 Q. What did it -- sorry. 24 Was it executed during a time that you were 25 overseas, or were you still in Portland?</p>
<p style="text-align: right;">Page 38</p> <p>1 again by the base, producing the next digit, and so on. 2 So that's an example of a method where 3 repeated division by the base, using the remainder to 4 produce a character and using the quotient to do the 5 next digit until it becomes zero. 6 Q. Is the method that you described something 7 that's a method from Unix System V, or were you just 8 giving an example? 9 A. That's certainly used in Unix System V, but 10 it's an example of a method that probably goes back to 11 the origin of numbers. Probably the Greeks did it. 12 Q. With respect to this Section 7.06(a), did you 13 understand AT&amp;T to be asserting any right to control 14 methods or concepts contained in the Dynix software? 15 MR. HEISE: Objection to form. 16 You may answer. Excuse me. 17 THE WITNESS: Certainly not. In fact, the 18 later agreement that we had with AT&amp;T suggested that 19 they didn't have such concepts and that they needed 20 Sequent to help them develop them. 21 MR. KAO: Q. Can you tell me what later 22 agreement you're referring to? 23 A. We did a consulting agreement with AT&amp;T later 24 on, where we added some multiprocessor enhancements for 25 System V.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. I don't have a precise recollection. 2 Q. Do you have any recollection of specifically 3 what technology was involved in that agreement? 4 A. Only generally, that it related to 5 multiprocessing. 6 Q. Turning back to your declaration, 7 paragraph 13, can you read paragraph 13 for the record, 8 please? 9 A. Yes. 10 "As I understood the agreement regarding 11 confidentiality, Sequent had no obligation to 12 keep confidential any information embodied in 13 any of the software products provided to 14 Sequent, provided that Sequent did not 15 disclose source code (except as otherwise 16 permitted by the license agreements). In 17 addition, as I discuss above, Sequent had no 18 obligation to keep confidential any 19 modification or derivative work developed by 20 Sequent that did not include . . . System V" 21 -- "Unix System V source code. Sequent was 22 free to use, copy, distribute or disclose 23 such modifications and derivative works, 24 provided that it did not copy, distribute or 25 disclose any portions of the licensed Unix</p>

DAVID P. RODGERS

Page 41

1 source code (except as otherwise permitted by  
 2 the license agreements)."  
 3 Q. Are the statements that you make in  
 4 paragraph 13 of your declaration --  
 5 A. They are.  
 6 Q. -- true and accurate?  
 7 And again, I'll ask you what you base your  
 8 understanding of the software agreement on.  
 9 A. Again, it's based on a reading of the  
 10 agreement and conversations with AT&T personnel at the  
 11 time.  
 12 Q. At several places in your declaration,  
 13 including in this paragraph, you say that "except as  
 14 otherwise permitted by the license agreements."  
 15 Do you see that?  
 16 A. Yes, I do.  
 17 Q. What do you mean by that?  
 18 A. There are certain elements that are in the  
 19 source code that actually have to be reproduced.  
 20 I think a trivial example is the copyright  
 21 notice which is in the source code but we're required to  
 22 reproduce it in viewable form, so . . .  
 23 Header files are another example of things  
 24 that have to be exposed in order to make the operating  
 25 environment usable.

Page 42

1 Q. What's a header file?  
 2 A. It's a source module that contains symbol  
 3 definitions.  
 4 Q. And what do you mean by they had to be  
 5 exposed?  
 6 A. In order to make a program that effectively  
 7 uses the System V calls, you have to have those symbols  
 8 defined for the program.  
 9 Q. And was it your understanding that AT&T  
 10 permitted those header files to be disclosed without any  
 11 restriction?  
 12 A. Yes. They have to be.  
 13 Q. Did somebody from AT&T ever tell you that?  
 14 A. No. It's how it works.  
 15 Q. Let me ask you to turn to the last page of  
 16 your declaration, and I'll ask you to read paragraph 14  
 17 into the record.  
 18 A. "The confidentiality provision of the  
 19 Software Agreement provided that Sequent was  
 20 not required to keep a software product  
 21 confidential if it became 'available without  
 22 restriction to the general public.' As" --  
 23 quoted -- "I understood the agreement,  
 24 Sequent would be free to disclose, without  
 25 any restriction whatsoever, information that

Page 43

1 became available without restriction to the  
 2 general public by acts not attributable to  
 3 Sequent or its employees."  
 4 Q. Are those statements true and accurate --  
 5 A. They are.  
 6 Q. -- Mr. Rodgers?  
 7 Now, the language that you referred to in  
 8 paragraph 14, is that language contained in  
 9 Section 7.06(a) of the software agreement that's  
 10 attached behind Tab 1 to your declaration?  
 11 A. Yes, it is.  
 12 Q. And can you tell me what your understanding of  
 13 that language is based on?  
 14 A. Yes. The -- in fact, generally, in  
 15 confidentiality agreements, there are some basic  
 16 provisions that if the owner of the restricted  
 17 information makes it public, say through a public  
 18 disclosure, or that someone else lawfully in possession  
 19 of that information makes it public or it's  
 20 independently discovered or it's subject to a court  
 21 order, that that information then becomes free for  
 22 disclosure. That was my understanding -- even though  
 23 that language here is vague, that was my understanding  
 24 as to what it meant to be otherwise accessible.  
 25 Q. Did you have any discussions with anyone at

Page 44

1 AT&T specifically about that language?  
 2 A. I don't recall those discussions.  
 3 Q. If you could look now at paragraph 15 of your  
 4 declaration.  
 5 A. Yes.  
 6 Q. I'll ask you to read that into the record.  
 7 And again, take your time for the court reporter.  
 8 A. Mm-hmm.  
 9 "Although I do not recall any particular  
 10 definition being given to the term 'available  
 11 without restriction to the general public,'  
 12 at the time the Software Agreement was  
 13 executed, I believe a number of circumstances  
 14 would meet the definition. For example, a  
 15 software product or any part of a software  
 16 product would be considered 'available  
 17 without restriction to the general public' if  
 18 it was lawfully published by someone outside  
 19 of Sequent. I believe that any number of  
 20 books and other materials have been published  
 21 regarding the Unix software, and that the  
 22 information contained in those materials at  
 23 least would not be subject to the  
 24 confidentiality restrictions in the Software  
 25 Agreement."

DAVID P. RODGERS

Page 45

1 Q. Are the statements that you make in  
2 paragraph 15 of your declaration true and accurate?  
3 A. They are.  
4 Q. Can you explain for me the circumstances that  
5 you believe would be considered -- well, strike that.  
6 Can you just explain to me the circumstances  
7 that you discuss in your declaration and how that would  
8 make something available without restriction to the  
9 general public?  
10 A. Yes. As I've said previously, AT&T was on a  
11 marketing campaign, and they were encouraging or perhaps  
12 allowing a number of their employees to publish books,  
13 documenting the inner workings of Unix System V. They  
14 were encouraging professors at universities to teach  
15 their students on how to develop and enhance the Unix  
16 operating environment.  
17 So in particular, I was in possession of a  
18 book at the time that talked a lot about how Unix worked  
19 internally. There were lots of books published then and  
20 since on how Unix works internally. And at least if you  
21 read the preface, many of those were actually encouraged,  
22 by AT&T Technologies.  
23 Q. Do you remember the names of any of the books  
24 that you had regarding Unix?  
25 A. There are zillions. The one I remember

Page 46

1 personally is Unix System Primer, but -- and I won't be  
2 able to give you a precise title, but there was another  
3 book I remember that was the Design of the Unix  
4 Operating System. That's an approximate title.  
5 Q. Was the author of that a guy by the name of  
6 Maurice Bach or Bach, by any chance?  
7 MR. HEISE: Objection to form.  
8 THE WITNESS: Yeah, Maury Bach certainly would  
9 have been one of the authors.  
10 MR. KAO: Q. And those are -- strike that.  
11 Do you have those books pursuant to any  
12 license from AT&T?  
13 A. No. Those were freely available. You go to  
14 the bookstore.  
15 Q. Did those books, to the extent you remember,  
16 contain any source code from Unix System V?  
17 A. There were source code fragments in many of  
18 the books.  
19 Q. Are there any other circumstances that you  
20 believe would meet the definition of "available without  
21 restriction to the general public," sitting here today?  
22 A. Certainly a public announcement would qualify  
23 as available to the general public.  
24 Q. Now, after -- after leaving Sequent, did you  
25 have the occasion to ever review these agreements that

Page 47

1 we've been talking about here today?  
2 A. Until our first contact, I did not.  
3 Q. I'd like you now just to turn to the software  
4 agreement itself, which is the document behind Tab 1 of  
5 your declaration.  
6 A. Yes.  
7 Q. And in particular, at Section 2.01.  
8 A. Okay.  
9 Q. And my question to you is whether, in your  
10 understanding of Section 2.01, AT&T placed any  
11 restrictions on the use of Sequent's Dynix source code  
12 that it wrote on its own?  
13 MR. HEISE: Objection to form.  
14 You may answer.  
15 THE WITNESS: None that I understood from my  
16 reading or my conversations. My reading of this  
17 paragraph and my understanding of this paragraph is that  
18 it relied -- or it referred only to the Unix System V  
19 source code that was contributed by AT&T.  
20 MR. KAO: Q. I'll ask you to look at  
21 Section 2.05 of this agreement. And my question for you  
22 is whether you understood Section 2.05 of this agreement  
23 to place any restrictions on Sequent's use of the Dynix  
24 source code that Sequent wrote on its own?  
25 A. No, I did not understand this to --

Page 48

1 MR. HEISE: Let me --  
2 THE WITNESS: -- apply.  
3 MR. HEISE: -- object to form as well, but --  
4 THE WITNESS: Sorry.  
5 MR. HEISE: -- I was a little bit slow on the  
6 draw. That was my fault.  
7 MR. KAO: Q. I'll ask you to look at  
8 Section 4.01 of the agreement.  
9 A. Yes.  
10 Q. And my question is whether you understood  
11 Section 4.01 to place any restrictions on Sequent's  
12 export of any Dynix source code that Sequent wrote on  
13 its own.  
14 MR. HEISE: The same objection.  
15 You may answer.  
16 THE WITNESS: No, I did not understand this to  
17 apply to Sequent's own source code.  
18 MR. KAO: Q. Let me ask you to turn to  
19 Section 7.06(a) of the agreement. And can you review  
20 that for yourself.  
21 A. Yes.  
22 Okay.  
23 Q. And my question is whether you understood  
24 Section 7.06(a) to place any restrictions on Sequent's  
25 ability to disclose Dynix source code that Sequent wrote

DAVID P. RODGERS

Page 49

1 on its own.  
 2 MR. HEISE: Objection; form.  
 3 You may answer.  
 4 THE WITNESS: Again, no, I did not understand  
 5 this to apply to the Sequent source code.  
 6 MR. KAO: Q. And finally, I'll have you look  
 7 at Section 7.10 to the software agreement.  
 8 A. Okay.  
 9 Q. And my question is whether you understood  
 10 Section 7.10 to restrict Sequent's ability to sell,  
 11 lease, or otherwise transfer or dispose of any Dynix  
 12 source code that Sequent wrote on its own.  
 13 MR. HEISE: Same objection.  
 14 You may answer.  
 15 THE WITNESS: No. This, in particular, would  
 16 have been crazy if I had interpreted it as applying to  
 17 the Sequent source code, because that was the -- one of  
 18 the key assets of the company. To bind a key asset  
 19 would have required a board decision.  
 20 MR. KAO: Can we go off the record?  
 21 THE VIDEOGRAPHER: Going off the record. The  
 22 time is 9:08.  
 23 (Recess taken.)  
 24 THE VIDEOGRAPHER: We are back on the record.  
 25 The time is 9:31.

Page 50

1 MR. KAO: Q. I just have a few remaining  
 2 questions for you, Mr. Rodgers. And you might as well  
 3 pretend like I'm sitting over there --  
 4 A. Okay.  
 5 Q. -- so the video will look all right.  
 6 A. All right.  
 7 Q. First question for you is, you referred to  
 8 Dynix/ptx in your testimony earlier. And I was curious  
 9 to know what it is that "ptx" stands for.  
 10 A. Ptx is kind of a tweak on POSIX. The  
 11 government was promulgating some standards for Unix at  
 12 the time under the rubric of POSIX, which I think was  
 13 also known as P1109, or something like that, at the  
 14 time. In any case, "psx," which was a more obvious  
 15 reference to POSIX, wasn't available; so we settled on  
 16 "ptx" as the reference to POSIX compliance. And that  
 17 was to give us some more credibility in government  
 18 sales.  
 19 Q. What is POSIX?  
 20 A. POSIX is a government standard for Unix  
 21 application programming interfaces. It's -- there are,  
 22 as you probably know, a lot of government standards  
 23 designed to improve the portability and the  
 24 cost-effectiveness of government procurements, and POSIX  
 25 is one of those standards relating to Unix.

Page 51

1 Q. Do you know which agency within the government  
 2 issued POSIX standards?  
 3 A. I don't, at this moment in time, remember who  
 4 was doing it. It was probably Commerce, but I don't  
 5 know.  
 6 Q. Was there an independent -- was it actually a  
 7 government agency, or was it some sort of joint, you  
 8 know, independent -- joint government and commercial  
 9 body? Do you know?  
 10 A. Like a lot of these standards activities,  
 11 there are contributors and hangers-on and authorizers  
 12 and sponsors. And so it was government-sponsored,  
 13 contributed-to-by-private-sector activity.  
 14 Q. And I think you mentioned POSIX compliance  
 15 before. What does it mean to be compliant with POSIX?  
 16 A. To comply with the POSIX standard, you have to  
 17 implement the system program interface, the application  
 18 programming interface, and the system calls in a  
 19 specific way so that the applications run the way  
 20 they're expected to run and that there are no unexpected  
 21 side effects of the way it's implemented.  
 22 Q. While you were employed at Sequent, did  
 23 Sequent ever, to your knowledge, disclose any Unix  
 24 System V source code without permission?  
 25 A. Not to my knowledge.

Page 52

1 Q. Did Sequent ever export any Unix System V  
 2 source code without permission?  
 3 A. Not to my knowledge.  
 4 Q. Did Sequent ever transfer -- well, let me ask  
 5 it this way: Did Sequent ever sell, lease, or otherwise  
 6 transfer or dispose of any Unix System V source code  
 7 without permission?  
 8 A. Not to my knowledge.  
 9 Q. Did Sequent ever allow any other entities to  
 10 use Unix System V source code without permission?  
 11 A. Not to my knowledge.  
 12 Q. Did Sequent ever use Unix System V source code  
 13 in any way that was not permitted by its license with  
 14 AT&T?  
 15 A. Not to --  
 16 MR. HEISE: Objection to form.  
 17 You may answer.  
 18 THE WITNESS: Not to my knowledge.  
 19 MR. KAO: That's all I have.  
 20 EXAMINATION BY MR. HEISE  
 21 MR. HEISE: Q. Good morning, Mr. Rodgers.  
 22 A. Good morning.  
 23 Q. As I mentioned earlier, I'm Mark Heise,  
 24 representing The SCO Group in this case. And as Mr. Kao  
 25 mentioned, to the extent I ask you a question that is



DAVID P. RODGERS

Page 53

1 unclear to you or I mumble or do something to prevent  
 2 you from answering, just please let me know. I'll be  
 3 glad to rephrase it or try and accommodate your  
 4 concerns.  
 5 You and I have never met before; is that  
 6 correct?  
 7 A. That's correct."  
 8 Q. And I want to essentially follow the same  
 9 format that you did with the lawyer for IBM. I'm going  
 10 to go through some of your personal history and then go  
 11 through some of the statements that you made in the  
 12 affidavit.  
 13 The address that you gave us earlier in  
 14 Saratoga, is that your home or office address?  
 15 A. That's my home.  
 16 Q. What is your office address?  
 17 A. It's 475 Sycamore, S-y-c-a-m-o-r-e, Drive in  
 18 Milpitas, California.  
 19 Q. And that's for IP Unity?  
 20 A. That's IP Unity.  
 21 Q. Do you currently own any stock in IBM?  
 22 A. I may. My personal investment advisers invest  
 23 in mutual funds, and so from time to time I may.  
 24 Q. Other than a possible investment in a mutual  
 25 fund, you don't own individual shares of IBM?

Page 54

1 A. Correct.  
 2 Q. With respect to some of your personal history,  
 3 you know, I have to ask these questions. Have you ever  
 4 been arrested?  
 5 A. No.  
 6 Q. Have you ever been convicted of any crime?  
 7 A. No.  
 8 Q. You mentioned that you were in an automobile  
 9 accident in 2001.  
 10 A. Yes.  
 11 Q. Were you the plaintiff in that case or the  
 12 defendant in that case?  
 13 A. I was the defendant.  
 14 Q. And you said it ultimately --  
 15 A. Settled.  
 16 Q. -- settled.  
 17 What was the name of the plaintiff in that  
 18 case?  
 19 A. His last name is Kitikoon. I don't recall his  
 20 first name.  
 21 Q. Do you have a copy of the deposition that you  
 22 gave in that case?  
 23 A. I do not.  
 24 Q. Who was your lawyer in that case?  
 25 A. It was the insurance company lawyer, and his

Page 55

1 name was, I think, Mike McDonald, but that's not -- I  
 2 don't recall his name.  
 3 Q. Is he here in San Jose or Saratoga?  
 4 A. Yes, he's in San Jose.  
 5 Q. In terms of your professional background after  
 6 you graduated from college, you indicated that you began  
 7 at Digital Equipment Corporation in approximately 1973.  
 8 A. That's right.  
 9 Q. From the time that you graduated in 1968 up  
 10 until 1973, how were you employed?  
 11 A. I was employed by Carnegie-Mellon University,  
 12 in the computer science.  
 13 Q. That's right. You mentioned that.  
 14 A. Right.  
 15 Q. I forgot.  
 16 As your employment at Carnegie-Mellon, did you  
 17 have any involvement whatsoever with licensing of any  
 18 type at Carnegie-Mellon?  
 19 A. I don't recall doing any.  
 20 Q. How about with Digital Equipment Corporation?  
 21 What was your position there?  
 22 A. My position was as a development engineer and  
 23 later as a development manager, and it was a series of  
 24 engineering jobs.  
 25 Q. So in those engineering jobs, did your

Page 56

1 position require you to review or execute licenses on  
 2 behalf of Digital?  
 3 A. No.  
 4 Q. When you went to Sequent in approximately  
 5 1983, I think you indicated for us that you were there  
 6 as the vice president of engineering from approximately  
 7 1983 to 1991. Is that correct?  
 8 A. I wasn't V.P. of engineering that whole time,  
 9 but I was V.P. of engineering initially and then in a  
 10 variety of other roles until I left the company.  
 11 Q. Okay. Then I misunderstood, then.  
 12 If we could, if you could just track for us  
 13 your roles, because what I -- this is what I understood,  
 14 and maybe it's high level enough to be accurate.  
 15 Vice president of engineering from 1983 to  
 16 1991, chief information officer in Europe from '91 to  
 17 '93, and then head of professional services from  
 18 approximately 1993 to 1996.  
 19 A. The misunderstanding is that from about '88 to  
 20 '91, I was CIO; '91 to '93, I was in Europe as the --  
 21 Q. Okay.  
 22 A. -- European engineering manager.  
 23 Q. Thank you for correcting that.  
 24 In your role as vice president of engineering  
 25 from '83 to approximately '88, did you execute any

DAVID P. RODGERS

Page 57

1 software license agreements other than the ones that  
 2 we've talked about this morning?  
 3 A. Yes. I'm sure we licensed a variety of tools  
 4 and other technology for engineering.  
 5 Q. What companies would you have executed license  
 6 agreements on behalf of Sequent during that time frame?  
 7 A. I don't recall specific names at this point in  
 8 time, but we would have had license agreements with -- I  
 9 can't think of the name of the company -- with a  
 10 compiler company that I think was called Green River  
 11 Software or something like that. In any case, it was a  
 12 Bay Area company that had compiler technology that we  
 13 used. We had some license agreements for some test  
 14 tools. We had some license agreements with Mentor  
 15 Graphics for the computer-aided design workstations. We  
 16 had -- I'm trying to think what else.  
 17 In any case, the bulk of the license  
 18 agreements were for engineering tools, and then there  
 19 were a couple of license agreements that were for  
 20 software that was passed through to the customer, a  
 21 Fortran compiler, a C compiler, and so on.  
 22 Q. Could you tell us or give us an approximation  
 23 of the number of licenses? Are we talking about four or  
 24 five? Are we talking about 40 or 50? Just --  
 25 A. Oh, it's not in the tens. It's going to be

Page 58

1 countable on the fingers of two hands.  
 2 Q. Okay. Were you the person that was assigned  
 3 to execute all of these licenses, or was there somebody  
 4 else in the company that was also involved at the  
 5 execution level?  
 6 A. It was certainly a matter of convenience,  
 7 whoever -- whatever executive was around at the time  
 8 that the license agreement needed to be signed. I saw a  
 9 lot of them, but certainly not every one of them.  
 10 Q. Was there a person at Sequent that was  
 11 designated to negotiate the licenses on behalf of  
 12 Sequent, whether it be with AT&T or Mentor Graphics or  
 13 any of these test tool companies?  
 14 A. Again, it would depend a little on what the  
 15 nature of it was. So, for instance, Roger Swanson, who  
 16 was the director of software engineering, did a lot of  
 17 the software licenses, specifically the compilers and  
 18 the source code licenses. Walt Mayberry would have done  
 19 the hardware licenses and -- the hardware design tool  
 20 licenses. But again, it was a small company, so it was  
 21 whoever was in town at the time.  
 22 Q. Is that how it ended up that you signed on  
 23 behalf of Sequent? You happened to be in town as  
 24 opposed to some of the other engineers that had the  
 25 authority to sign?

Page 59

1 MR. KAO: Objection to form.  
 2 MR. HEISE: Q. You may answer.  
 3 MR. KAO: You can answer.  
 4 THE WITNESS: Okay. Sorry.  
 5 In the case of that license agreement, I had  
 6 more involvement perhaps because it was a major piece of  
 7 function, but it certainly wasn't necessary that I be  
 8 the person executing.  
 9 MR. HEISE: Q. And the reason I'm asking is,  
 10 you indicated earlier that you did not personally  
 11 negotiate any of the terms.  
 12 A. Right.  
 13 Q. And so I was wondering why the person who did  
 14 negotiate the terms was not that. And it seems to be  
 15 that you're telling us that it just happened that you  
 16 were the person that would have been in town that day to  
 17 sign the agreement.  
 18 A. It was probably --  
 19 MR. KAO: Objection to form.  
 20 Give me a chance to object, but you can answer  
 21 the question.  
 22 THE WITNESS: Okay. It was probably a little  
 23 more than that, because it was a technical issue. But  
 24 yeah, it would have been one of the executives who was  
 25 executing on the recommendation of the director of

Page 60

1 software engineering.  
 2 MR. HEISE: Q. And the director of software  
 3 engineering, I've already forgotten his name and you've  
 4 said it three times.  
 5 A. Roger Swanson.  
 6 Q. Okay. What was the process that Sequent would  
 7 follow when it would license? And just to give you an  
 8 idea of what I'm talking about, would it be done by  
 9 committee headed by Roger Swanson? He would meet with  
 10 all of you? Would it go to the legal department? Just,  
 11 if you could, walk us through the steps of Sequent wants  
 12 to license X product. How does Sequent go about doing  
 13 that during the time that you were there?  
 14 A. Okay. First, there's a difference between  
 15 licensing a product for internal use and licensing a  
 16 product for incorporation in resale.  
 17 And so for internal use, they were largely  
 18 standard form licenses: negotiate the best price you  
 19 can for as few seats as you can buy and get on with it.  
 20 So there wasn't a lot of negotiating.  
 21 In the case of a product for resale, as it  
 22 would have been for the compilers or operating system  
 23 components, again there would be a cost consideration.  
 24 Is there an appropriate royalty that's not unsustainable  
 25 from a commercial perspective? Are the licensing terms

DAVID P. RODGERS

Page 61

Page 63

1 fair, meaning there's no undue restriction on the  
 2 ability to distribute, for example?  
 3 And then whoever happened to be the subject  
 4 matter expert -- in the case of most of the software, it  
 5 was Roger -- would proceed to engage with whoever was  
 6 the source of the technology and come to a draft  
 7 agreement. We'd read it over, have a discussion with --  
 8 to see if we could move them around a little bit, if  
 9 that was necessary, and then executed the document.  
 10 Q. So in the case --  
 11 A. There wasn't a corporate counsel to respond to  
 12 the question.  
 13 Q. Okay. So in the case of an agreement for  
 14 internal use -- which you understood the Unix System V  
 15 agreement to be for internal purposes only; right?  
 16 A. It varied at different moments in time. The  
 17 initial agreement was for internal use. It was to get  
 18 access to the source code --  
 19 Q. Correct.  
 20 A. -- so that we could put a System V face on the  
 21 Dynix operating system.  
 22 At the point in time when there was a  
 23 derivative work prepared and it was ready for sale, then  
 24 we executed the next agreement, which was to give us  
 25 distribution rights for that.

1 language --  
 2 Q. Right.  
 3 A. -- that humans can interpret that gives them  
 4 control over what algorithm is being executed.  
 5 The source code form often will be larger than  
 6 the binary code form. The source code form almost  
 7 always will have a layer of abstraction like a library  
 8 between it and the binary code form.  
 9 Q. And so if we were to look at the binary form,  
 10 it would just appear as a series of 1s and 0s?  
 11 A. That's correct.  
 12 Q. After your tenure as the vice president of  
 13 engineering at Sequent, during which time you executed  
 14 these agreements, for the remainder of your time at  
 15 Sequent, either as the chief information officer or head  
 16 of professional services, did you have any involvement  
 17 in executing any other licenses on behalf of Sequent?  
 18 A. Certainly as the CIO, I executed license  
 19 agreements for software for internal use. We used  
 20 Oracle extensively. There were a number of accounting  
 21 programs and other programs that we used.  
 22 As professional services head, I don't recall  
 23 executing any license agreements. I might have done one  
 24 with respect to -- with Lotus Corporation with respect  
 25 to Notes, but I don't have a specific recollection of

Page 62

Page 64

1 Q. Just so that we're clear on the record, what  
 2 you're referring to is initially what was executed for  
 3 internal business purposes only was Exhibit 1 to  
 4 Exhibit 100, the software agreement?  
 5 A. That's correct.  
 6 Q. And then, when you were ready to distribute  
 7 the derivative work, it was based upon entering into  
 8 Exhibit 2 to Exhibit 100; is that correct?  
 9 A. That's correct.  
 10 Q. Okay. When you entered into Exhibit 2, the  
 11 sublicensing agreement to Exhibit 100, that was to allow  
 12 Sequent to distribute in binary form only; is that  
 13 correct?  
 14 A. That's correct.  
 15 Q. And so that we all understand, binary form is  
 16 different than source form; is that correct?  
 17 A. That's correct.  
 18 Q. Could you tell us the difference between  
 19 source code versus binary or object code?  
 20 A. Right. At the highest level, source code is  
 21 human readable and binary code is machine readable or  
 22 computer executable. Specifically, the binary form will  
 23 be a highly encoded representation of the detailed  
 24 instructions for whatever the program is, and the source  
 25 code will be a representation in something close to a

1 that.  
 2 Q. Again, in terms of these other licenses,  
 3 Oracle or Lotus that were for internal business  
 4 purposes, can we count those on a hand or two or are  
 5 those in the dozens?  
 6 A. Still small numbers.  
 7 Q. Okay.  
 8 A. Yes.  
 9 Q. After you left Sequent in approximately 1996,  
 10 you said you went to Compaq Corporation?  
 11 A. That's right.  
 12 Q. As the vice president of business  
 13 applications, did you have any responsibility for  
 14 executing licenses on behalf of Compaq?  
 15 A. No.  
 16 Q. How about during your tenure at Brightlink?  
 17 Did you have any responsibility for negotiating or  
 18 executing license agreements on behalf of Brightlink?  
 19 A. Yes. Again, it would have been engineering  
 20 tools.  
 21 Q. So not for internal business purposes? The  
 22 other type of --  
 23 A. Correct.  
 24 Q. -- contracts?  
 25 And how about at IP Unity? Do you have any

DAVID P. RODGERS

Page 65	Page 67
<p>1 involvement in the execution or negotiation of license 2 agreements?</p> <p>3 A. Yes.</p> <p>4 Q. And are those for internal use only license 5 agreements or for the tools and the like?</p> <p>6 A. Both types.</p> <p>7 Q. Of the companies other than Sequent, which 8 we're obviously discussing this morning, have you 9 executed or been involved in the negotiation of any 10 license agreements with AT&amp;T or any of its successors 11 for Unix System V code?</p> <p>12 A. Not to my recollection.</p> <p>13 Q. You had indicated earlier that you met with 14 Mr. Kao, the lawyer for IBM, sometime in 2003. Is that 15 correct?</p> <p>16 A. I don't recall the exact date, but I've met 17 with Mr. Kao two times before today.</p> <p>18 Q. Okay. Let's -- if you could, sir, tell us the 19 first time that you met with Mr. Kao.</p> <p>20 MR. KAO: Again, I'd caution the witness not 21 to reveal any attorney-client communications, but you 22 are able to answer Mr. Heise's question here.</p> <p>23 THE WITNESS: Okay. After the preparation of 24 my document here, I had the occasion to meet with 25 Mr. Kao here in San Jose; and basically, we just</p>	<p>1 processing.</p> <p>2 At some point in time, it became necessary to 3 expand the base of application software that was 4 available for the platform in order to expand sales, and 5 this was a time when the applications were being written 6 for a number of variants of Unix, but the most prominent 7 ones were the Berkeley variant and the System V variant. 8 And so we sought to license System V technology from 9 AT&amp;T in order to add that second flavor, that second 10 body of application code.</p> <p>11 So we -- Roger engaged with someone at AT&amp;T. 12 I don't actually recall how we got to find out who would 13 do the licensing. And we executed the source agreement, 14 which is this Exhibit 1; started working on it; 15 developed a first version of the Dynix operating system 16 that had a so-called System V personality. And 17 internally, we referred to it as "the oil slick" because 18 that was about how much difference there was. And we 19 went to market with that, and that was adequate to 20 secure some additional applications.</p> <p>21 Over time, as POSIX and AT&amp;T's marketing 22 program were successful, there were more applications 23 available for the System V API variant, and so we needed 24 to make a more faithful expression of the System V 25 system calls, and so that was the -- when we started</p>
<p>Page 66</p> <p>1 reviewed the content of the document and confirmed that 2 it was an accurate statement of my recollection.</p> <p>3 MR. HEISE: Q. Okay. I may have used a word 4 that unnecessarily confined your answer, so let me just 5 take one step back. When is the first time you had any 6 contact with anybody on behalf of IBM?</p> <p>7 A. Okay. That would have been in 2003. It was a 8 phone call. Again, I don't recall whether it was 9 Mr. Kao or someone else from his office who made the 10 initial contact, but it was a phone call asking me if I 11 was the guy who signed the document.</p> <p>12 Q. Was anything else discussed in that first 13 phone call?</p> <p>14 A. Again, I don't have a precise recollection; 15 but I probably, in the first phone call, recounted the 16 general sequence of events.</p> <p>17 Q. Okay. And in that first phone call, could you 18 recount for us the general sequence of events that took 19 place at that point?</p> <p>20 A. Yes. The history of Sequent is that it 21 started off building a multimicroprocessor hardware 22 platform running the Unix operating system, and it chose 23 the Unix Berkeley Standard Distribution as the source 24 basis for that operating system. Its innovations were 25 in the area of symmetric multiprocessing and parallel</p>	<p>Page 68</p> <p>1 building and marketing the Dynix/ptx variant. Continued 2 to market both versions of the software.</p> <p>3 Eventually -- there were several platform 4 changes during this time, first going from a National 5 Semiconductor 32-bit -- 16-bit micro to a 32-bit micro 6 to an Intel 386-based product to an Intel 486-based 7 product; and ultimately, very close to the end of my 8 employment at Sequent, we started working on distributed 9 coherent cache architecture that was an opportunity to 10 scale up the number of processors that could be put in a 11 shared memory architecture.</p> <p>12 MR. KAO: Could we go off the record for one 13 second?</p> <p>14 THE VIDEOGRAPHER: Going off the record. The 15 time is 9:56.</p> <p>16 (Discussion off the record.)</p> <p>17 THE VIDEOGRAPHER: We're back on the record.</p> <p>18 This marks the end of Tape No. 1 in the 19 deposition of David Rodgers. We're going off the 20 record. The time is 9:57.</p> <p>21 (Recess taken.)</p> <p>22 THE VIDEOGRAPHER: We're back on the record.</p> <p>23 This marks the beginning of Tape No. 2 in the 24 deposition of David Rodgers. The time is 10 o'clock.</p> <p>25 MR. KAO: For the record, Mr. Rodgers just</p>

17 (Pages 65 to 68)

DAVID P. RODGERS

Page 69

1 testified as to communications he had with either myself  
 2 or somebody at my law firm before we agreed to represent  
 3 Mr. Rodgers.  
 4 Mr. Rodgers informed me at break that he  
 5 wasn't sure if he actually had those discussions with me  
 6 or with somebody else before or after. So I don't  
 7 intend his testimony to be a waiver -- to constitute a  
 8 waiver of the attorney-client privilege to the extent  
 9 that those discussions happened after we agreed to  
 10 represent him.  
 11 MR. HEISE: Q. When I was asking you the  
 12 question, this was all what I understood was in the  
 13 first phone conversation. So that's where I'm limiting  
 14 my questions to right now.  
 15 A. Okay. So I've misled you. Describing things  
 16 that happened in a series of conversations and the first  
 17 meeting.  
 18 Q. Okay. Then let me make sure that we're all  
 19 perfectly clear on the record.  
 20 You indicated you got a phone call from  
 21 somebody at IBM's counsel's office, asking if you are  
 22 the David Rodgers that signed the agreement.  
 23 A. Yes.  
 24 Q. You indicated that in that conversation, other  
 25 matters were discussed. And so I thought you had

Page 70

1 indicated you talked about the history of Sequent in  
 2 that initial conversation and that's what you just  
 3 provided to us. Is that correct?  
 4 A. Yes.  
 5 Q. What else was discussed in that first  
 6 conversation when you were contacted by IBM's attorneys?  
 7 A. I don't have a precise recollection, but  
 8 probably I was asked would I be willing to document my  
 9 recollection.  
 10 Q. Was anything else discussed during that first  
 11 conversation?  
 12 A. No.  
 13 Q. Did you take any notes from that first  
 14 conversation?  
 15 A. I did not.  
 16 Q. Did you prepare any -- any documentation as a  
 17 result of that first conversation, specifically in  
 18 response to the request of would you document what took  
 19 place?  
 20 A. I did not.  
 21 Q. When was the next time you had any contact  
 22 with anybody from IBM's attorneys' offices?  
 23 A. I met with Mr. Kao here in San Jose, and that  
 24 was my opportunity to see the -- these exhibits.  
 25 Q. Were there any other discussions, phone calls,

Page 71

1 correspondence from the time of that initial phone call  
 2 and the time that IBM's attorneys came and met you here  
 3 in San Jose, California?  
 4 A. None that I recall. I mean, possibly one to  
 5 organize the meeting, but . . .  
 6 Q. At that second meeting, who was in attendance?  
 7 A. Myself and Mr. Kao.  
 8 Q. Nobody else?  
 9 A. Right.  
 10 Q. Was that at your home or your office?  
 11 A. Actually, it was here in San Jose, but I don't  
 12 recall where it was.  
 13 Q. Besides the three exhibits that were attached  
 14 to Exhibit 100, were you shown anything else at that  
 15 second meeting?  
 16 MR. KAO: And here, at that meeting, we agreed  
 17 to represent Mr. Rodgers. So I'm going to instruct the  
 18 witness not to answer that. And I --  
 19 MR. HEISE: Well, let me --  
 20 MR. KAO: The fact that the exhibits were  
 21 disclosed, I also would not -- you know, I would like to  
 22 state that's not intended to waive the privilege.  
 23 MR. HEISE: Well, then let me just explore  
 24 this for just one moment.  
 25 Q. During your first meeting with IBM's attorneys

Page 72

1 here in San Jose, California, did a point in time -- at  
 2 what point in time during that meeting was there a  
 3 discussion about IBM's attorneys representing you?  
 4 A. Sometime during the meeting. I don't recall  
 5 whether it came up at the beginning or, you know, after  
 6 the pleasantries, but sometime during that meeting.  
 7 Q. Was there ever a point in time in which you  
 8 have signed or -- scratch that.  
 9 Was there ever a point in time when you had a  
 10 written agreement that IBM's attorneys were going to  
 11 represent you?  
 12 A. No.  
 13 Q. Have you had discussions about them  
 14 representing you? Let me --  
 15 A. Unclear.  
 16 Q. Let me put that back into English.  
 17 You do not have a written agreement with  
 18 anybody representing IBM in this case --  
 19 A. That's correct.  
 20 Q. -- to be your attorney?  
 21 A. That's correct.  
 22 Q. Would it be fair, then, to say that the  
 23 agreement that IBM's attorneys represent you is only  
 24 oral?  
 25 A. That's correct.

DAVID P. RODGERS

Page 73

1 Q. And you don't recall what was said in this  
 2 meeting with Mr. Kao before you came to this oral  
 3 understanding of the fact that IBM's attorneys were  
 4 going to also represent you in this case?  
 5 A. No. As I said, we might have exchanged  
 6 pleasantries or something.  
 7 Q. How long was the meeting?  
 8 A. Maybe an hour.  
 9 Q. After that meeting, when was the next contact  
 10 you had by anyone who was also representing IBM in this  
 11 case?  
 12 A. There was a later phone call. I don't have a  
 13 precise recollection as to time.  
 14 Q. With whom?  
 15 A. I think it was with Mr. Kao. And my  
 16 recollection is it was just "Are you available to give a  
 17 deposition?"  
 18 Q. Approximately when would that phone call have  
 19 been?  
 20 A. Actually, let me correct myself. The next  
 21 contact would have been to discuss the review of a draft  
 22 declaration and then, after that, it would have been to  
 23 discuss my willingness to give a deposition.  
 24 Q. Okay. In looking at your Exhibit 100, this  
 25 declaration that you signed, it indicates that it was

Page 74

1 signed on November 5th, 2003.  
 2 A. Yes.  
 3 Q. Is that when, in fact, it was signed?  
 4 A. Yes.  
 5 Q. So using November 5th, 2003 as a date of which  
 6 we are certain, how far before that was your first  
 7 contact by phone with Mr. Kao and then your meeting with  
 8 Mr. Kao? Can you tell us that?  
 9 A. I have no recollection.  
 10 Q. Was it within days? Weeks? Months?  
 11 A. I would guess that it's more a span of weeks.  
 12 Q. From the time that you said -- excuse me --  
 13 Mr. Kao and you met and the declaration was prepared,  
 14 did you prepare the declaration during that time frame?  
 15 A. No. I gave the fact statements, and then the  
 16 declaration was prepared by someone in Mr. Kao's office  
 17 and delivered to me -- I think it was delivered  
 18 electronically -- for review. I marked it up.  
 19 Q. When you say "electronically," you mean as an  
 20 attachment to an e-mail?  
 21 A. Yes.  
 22 Q. Do you maintain your sent or deleted e-mails?  
 23 A. For a period of time.  
 24 Q. Do they become automatically deleted, or do  
 25 you have to manually permanently delete them?

Page 75

1 A. I purge them every two or three months.  
 2 Q. Do you know whether you've purged the e-mails  
 3 going back and forth between you and the lawyers for  
 4 IBM?  
 5 A. Not definitively.  
 6 Q. Can you agree not to purge any of the e-mails  
 7 that go between you and IBM's attorneys until this case  
 8 has been resolved?  
 9 A. Well, depends on when that is.  
 10 Q. Certainly for the next 12 months, so that in  
 11 the event we need to see them, they won't be made more  
 12 difficult to retrieve by going to archives and all that?  
 13 A. I can't agree to keep them on-line. That's  
 14 what I have to do to maintain the integrity of my  
 15 e-mail. What I can do is agree to preserve them in some  
 16 machine-readable form.  
 17 Q. That would be fine.  
 18 When you got the first draft of this  
 19 declaration prepared by IBM's attorneys, you indicated  
 20 you had made some changes to it and sent those back.  
 21 A. Yes.  
 22 Q. What changes were made to it?  
 23 A. Don't have a precise recollection. I think  
 24 there were a number of incorrect references to Dynix and  
 25 Unix System V. I think there was one statement that

Page 76

1 just seemed awkwardly put. It was substantively  
 2 accurate, but it wasn't technically accurate.  
 3 Q. Was there anything from your first phone call  
 4 that was not included in the declaration that was  
 5 ultimately prepared by IBM's attorneys?  
 6 A. Not to my recall, but . . .  
 7 Q. How many times was there a back-and-forth of  
 8 changing this declaration before you signed it on  
 9 November 5th, 2003?  
 10 A. I recall only one update, one edit.  
 11 Q. After November 5th, 2003, when you signed the  
 12 declaration prepared by IBM's attorneys, did you have  
 13 any further contact with anybody representing IBM in  
 14 this case?  
 15 MR. KAO: Again, I'll caution the witness to  
 16 limit the answer to whether you had contact and not what  
 17 the substance of the communications were.  
 18 THE WITNESS: And your question is between  
 19 November 5th and now?  
 20 MR. HEISE: Q. As we sit here today, correct.  
 21 A. Yes.  
 22 Q. Okay. When was the next contact after you  
 23 executed this declaration, November 5th, 2003, that you  
 24 had contact with the lawyers for IBM?  
 25 A. Sometime earlier this year I was contacted,

DAVID P. RODGERS

Page 77

1 asking if I was available.  
 2 MR. KAO: I mean, again, I don't intend that  
 3 to be a waiver of the attorney-client privilege. I  
 4 think Mr. Heise was just asking -- you are allowed to  
 5 tell Mr. Heise the occasions on which you were  
 6 contacted --  
 7 THE WITNESS: I see.  
 8 MR. KAO: -- and how often and the dates, to  
 9 the extent you can remember them, but I instruct you not  
 10 to disclose the content of any communications between  
 11 you and myself.  
 12 MR. HEISE: Q. So sometime in 2004 you were  
 13 contacted again by --  
 14 A. Yes.  
 15 Q. -- IBM's attorneys?  
 16 And was that telephone or in person?  
 17 A. Telephone.  
 18 Q. How long was that conversation, approximately?  
 19 A. Would have been a short conversation.  
 20 Q. After that short telephone conversation, did  
 21 you have any further contact with IBM's attorneys?  
 22 A. Yes.  
 23 Q. When was that?  
 24 A. Relatively recently. It would have been in  
 25 the last month.

Page 78

1 Q. Was that in person or by telephone?  
 2 A. By telephone.  
 3 Q. Okay. Was that also a short telephone  
 4 conversation, or was that a --  
 5 A. Basically a short call.  
 6 Q. After that phone conversation, did you have  
 7 any other contact with anybody representing IBM?  
 8 A. Yes.  
 9 Q. When was that?  
 10 A. Yesterday.  
 11 Q. Was that in person or by phone?  
 12 A. It was in person with Mr. Kao.  
 13 Q. How long was your meeting -- how long was your  
 14 meeting with Mr. Kao yesterday?  
 15 A. Not including lunch, about an hour.  
 16 Q. Did you meet today before your deposition?  
 17 A. Briefly.  
 18 Q. You indicated that Roger Swanson was the  
 19 director of software at Sequent.  
 20 A. That's correct.  
 21 Q. Do you know where he is currently?  
 22 A. I believe that he resides in either Portland  
 23 or Beaverton, Oregon.  
 24 Q. Do you know where he's employed?  
 25 A. I don't know.

Page 79

1 Q. When's the last time that you had contact with  
 2 Mr. Swanson?  
 3 A. It's been years.  
 4 Q. In preparation to give your deposition today,  
 5 have you taken any steps?  
 6 MR. KAO: Again, I would --  
 7 THE WITNESS: I don't understand the question.  
 8 MR. HEISE: Q. Have you done anything to  
 9 prepare yourself for today's deposition?  
 10 MR. KAO: And again, I would instruct the  
 11 witness, to the extent it discloses any attorney-client  
 12 communications, that you not answer the question.  
 13 THE WITNESS: I read the document.  
 14 MR. HEISE: Q. Have you reviewed anything  
 15 other than the Exhibit 100 with its attachments?  
 16 MR. KAO: I'm going to instruct the witness  
 17 not to answer the question.  
 18 MR. HEISE: On what basis?  
 19 MR. KAO: On the basis of attorney-client  
 20 privilege.  
 21 MR. HEISE: Q. Have you had conversations  
 22 with anyone other than your attorney --  
 23 MR. KAO: The same position you guys took.  
 24 MR. HEISE: Q. -- about your deposition  
 25 today?

Page 80

1 A. I told my father I was going to do it.  
 2 Q. Have you talked with anybody who is a witness  
 3 in this case or a potential witness in this case?  
 4 A. I don't think so. I suppose that's possible.  
 5 Q. For example, you didn't talk to Mr. Swanson?  
 6 A. I have not.  
 7 Q. You just said you hadn't talked to him in  
 8 years. So that's what I'm trying to get at, is whether  
 9 you've talked to anybody, if you've talked to  
 10 Mr. Wilson, who you said --  
 11 A. No.  
 12 Q. -- signed this agreement and that sort of  
 13 thing. Okay.  
 14 During the time that you were at Sequent, who  
 15 else besides Mr. Swanson was involved in the  
 16 negotiations, discussions, or execution of the license  
 17 for the Unix System V software that's attached to your  
 18 declaration?  
 19 A. I don't have a precise recollection. It's  
 20 possible that any number of people were. And it's  
 21 certainly likely that we would have discussed the  
 22 agreement at the executive staff meetings, but as to  
 23 negotiations, I think it was probably only Roger and a  
 24 couple of the other staff members who I've mentioned  
 25 before.

DAVID P. RODGERS

Page 81

1 Q. Was there anybody that would be, in your mind,  
 2 the person who was the lead negotiator on behalf of  
 3 Sequent since, as you've indicated, you had no personal  
 4 contact with AT&T?  
 5 MR. KAO: Objection; mischaracterizes the  
 6 witness's testimony.  
 7 MR. HEISE: Q. Okay. You can answer the  
 8 question.  
 9 A. Roger is the lead negotiator, was the lead  
 10 negotiator. I was certainly on phone calls with AT&T  
 11 personnel at various points in time.  
 12 Q. Did you participate, or were you just  
 13 listening?  
 14 A. Be hard to imagine me not participating.  
 15 Q. Okay. Who at AT&T was on these phone calls?  
 16 A. That, I don't have a precise recollection of.  
 17 As I said, I don't think it was Mr. Wilson, and I don't  
 18 remember the name of the lead guy on the AT&T side.  
 19 Q. Was it just one person from AT&T?  
 20 A. There's certainly one person with whom we  
 21 worked most frequently, but I recall that there were  
 22 other people involved in the process.  
 23 Q. What do you mean by that, others involved in  
 24 the process?  
 25 A. Preparing the drafts and transmitting the

Page 82

1 documents, things like that.  
 2 Q. When you say "preparing the drafts," what  
 3 drafts are you referring to?  
 4 A. The drafts of this license agreement.  
 5 Q. Well, Sequent didn't prepare those drafts.  
 6 A. That's correct. They were prepared by AT&T.  
 7 Q. So I thought from your testimony before you  
 8 indicated that this was a -- you had been told this was  
 9 a standard form agreement --  
 10 A. Yes.  
 11 Q. -- and that you had to sign it?  
 12 A. Yeah.  
 13 Q. So what terms, if any, were negotiated  
 14 differently from the standard form agreement?  
 15 A. None that I'm aware of. I mean, you had to  
 16 put the names and addresses and parties into the  
 17 document.  
 18 Q. So would it be fair, then, to say that there  
 19 really was no negotiation other than price?  
 20 MR. KAO: Objection to form.  
 21 MR. HEISE: Q. You may answer.  
 22 A. Okay.  
 23 MR. KAO: Yeah, sorry.  
 24 MR. HEISE: You can tack that onto the end of  
 25 every time somebody says "objection" unless he says it's

Page 83

1 attorney-client privilege.  
 2 MR. KAO: Yeah. Unless I instruct you not to  
 3 answer, you can still answer the question.  
 4 THE WITNESS: It wasn't -- I would say except  
 5 for price, it wasn't about the language. It was -- and  
 6 all of the discussions about intent or meaning were  
 7 oral.  
 8 MR. HEISE: Q. Okay. And that's -- I'm just  
 9 trying to make sure we're very clear on this.  
 10 AT&T said, "Here's the agreement." No terms  
 11 are negotiated, changed in any way, other than  
 12 discussions of price?  
 13 MR. KAO: Objection to form.  
 14 THE WITNESS: I don't think it was that  
 15 heavy-handed. I mean, I think they said, "We want to  
 16 recruit you as a System V licensee. Is there anything  
 17 here that gives you particular heartburn?"  
 18 But it wasn't -- you know, it wasn't like,  
 19 "Let's start drafting from the first paragraph."  
 20 MR. HEISE: Q. Okay. And when you were asked  
 21 something along the lines of "Is there anything here  
 22 that gives you particular heartburn?" if there was  
 23 anything, none of those terms were changed from the  
 24 standard agreement?  
 25 A. Not that I recall. It was a pretty benign

Page 84

1 agreement.  
 2 Q. If you could, sir, just at a general level of  
 3 what you've described as a benign agreement, this  
 4 Exhibit 1, the software agreement, what is your  
 5 understanding as to what it provided to Sequent?  
 6 A. You're speaking just of the first agreement?  
 7 Q. Just to the first agreement.  
 8 A. The first agreement provides Sequent with  
 9 access to the AT&T System V source code for its internal  
 10 use, and that internal use was preparation of a  
 11 derivative work that incorporated System V APIs.  
 12 Q. Did it incorporate anything from System V  
 13 other than the application programming interfaces, the  
 14 APIs?  
 15 MR. KAO: Objection to form.  
 16 You can answer.  
 17 THE WITNESS: Not that I know of. As I've  
 18 said before, there were probably some things like  
 19 copyright notices and header files and things like that  
 20 that had to be, just as a matter of making it useful,  
 21 copied from the System V source.  
 22 MR. HEISE: Q. And do you recall whether  
 23 Sequent had licensed System V, Release 3, or System V,  
 24 Release 4, or any other particular release of System V?  
 25 A. To my recollection, only 5.2 was licensed.



DAVID P. RODGERS

Page 85

1 Q. And when you say "5.2," you're seeing  
 2 System V, Release 2?  
 3 A. Yes.  
 4 Q. Do you know whether any subsequent agreements  
 5 were ever entered into by Sequent for licensing of  
 6 System V code besides the three that are attached to  
 7 your declaration?  
 8 A. Not to my knowledge.  
 9 Q. Do you know whether Sequent ever license  
 10 System V, Release 4?  
 11 A. I don't know that.  
 12 Q. After you left Sequent in 1996, did Sequent  
 13 continue to use Unix, to your knowledge?  
 14 A. You mean continue to sell it as a product?  
 15 Q. Continue to use -- I may have misspoken.  
 16 After you left, do you know whether Sequent  
 17 continued to use Unix System V?  
 18 A. Internally -- I'll answer it: Internally,  
 19 Sequent used Dynix as its operating system for its own  
 20 commercial applications and, of course, others, Windows.  
 21 It continued to sell both Dynix and Dynix/ptx.  
 22 Q. Well, you understood that both Dynix and  
 23 Dynix/ptx contained Unix/System V code?  
 24 MR. KAO: Objection to form.  
 25 THE WITNESS: No.

Page 86

1 MR. HEISE: Q. You have no understanding of  
 2 that?  
 3 A. First, I don't know it. And Dynix itself  
 4 doesn't have, to the best of my knowledge, any System V  
 5 code in it.  
 6 Q. Do you know whether it contains anything from  
 7 System V, whether it be source code, methods and  
 8 concepts, structures, sequence and organization,  
 9 anything --  
 10 MR. KAO: Objection.  
 11 MR. HEISE: Q. -- whatsoever from Unix  
 12 System V?  
 13 MR. KAO: Objection to form.  
 14 THE WITNESS: I don't know that explicitly.  
 15 MR. HEISE: Q. Was there any reason, besides  
 16 having access to the Unix System V application  
 17 programming interfaces, that Sequent licensed Unix  
 18 System V?  
 19 A. I can't state what value I would put on it,  
 20 but there was certainly a marketing value to having --  
 21 to being an AT&T System V licensee.  
 22 Q. Why is that?  
 23 A. It's essentially attraction of customers and  
 24 third-party application developers.  
 25 Q. Was the marketing value of being an AT&T

Page 87

1 customer something that Sequent would allow its  
 2 customers to advertise?  
 3 MR. KAO: Objection to form.  
 4 THE WITNESS: I don't understand the question.  
 5 MR. HEISE: Sure. I'll be glad to --  
 6 Q. So, for example, the marketing value of being  
 7 an AT&T customer, would Sequent tell its customers that  
 8 it could tell the world that it's using Dynix which is  
 9 derived from AT&T?  
 10 A. No.  
 11 MR. KAO: Objection to form.  
 12 MR. HEISE: Q. Do you know whether Sequent  
 13 has stated, either publicly or internally, that Dynix is  
 14 derived from Unix System V?  
 15 A. I don't know that explicitly. I doubt that  
 16 that statement was made.  
 17 Q. At the time that you signed Exhibit 1 to  
 18 Exhibit 100, which you characterized as a benign  
 19 agreement, was there anything that you found unclear or  
 20 ambiguous in the document itself?  
 21 A. Yes.  
 22 Q. Okay. Tell us, at the time that you signed  
 23 it, what you thought was unclear or ambiguous.  
 24 A. Well, there are many terms, many things that  
 25 are imprecise. In this particular case, the definition

Page 88

1 of "software product" just says System V source code.  
 2 It's not a listing of all the modules. Methods and  
 3 procedures is not specific as to are these patented  
 4 methods, are these industry-standard procedures, covered  
 5 by a standards body. I mean, there's lots of  
 6 imprecision in this document.  
 7 Q. Well, that's what I'm trying to find out from  
 8 you is: What in this agreement you believe was unclear  
 9 or ambiguous at the time that you entered into it? So,  
 10 so far you've identified Section 1.04, the definition of  
 11 "software product"; and in Section 7.06, the methods and  
 12 concepts.  
 13 Is there anything else that you believed was  
 14 unclear or ambiguous at the time that you entered  
 15 into -- excuse me -- Exhibit 1 to Exhibit 100?  
 16 MR. KAO: Objection to form.  
 17 THE WITNESS: I don't have a specific  
 18 recollection of something that I thought was unclear at  
 19 the time. I remember only that we needed to ask them  
 20 some questions about what their intent was.  
 21 MR. HEISE: Q. In these conversations that  
 22 you've indicated you believe took place between Sequent  
 23 and AT&T, was it -- were they limited solely to  
 24 discussions of what the intent was or was there anything  
 25 else discussed during these conversations?

DAVID P. RODGERS

Page 89

1 A. The ones that I was party to, it was mostly  
 2 about what the intent was. I don't know what the other  
 3 ones were.  
 4 Q. Have you seen a single document from Sequent  
 5 or AT&T that memorialized these discussions that you've  
 6 described regarding the intent of the parties to this  
 7 written agreement?  
 8 A. I haven't seen --  
 9 MR. KAO: Objection to form.  
 10 THE WITNESS: I have not seen such a document.  
 11 MR. HEISE: Q. Is there anything else that  
 12 you can identify for us that you believe was clear --  
 13 excuse me -- unclear or ambiguous other than what we've  
 14 just discussed in Section 1.04 and Section 7.06, the  
 15 definition of "software product" and "methods and  
 16 concepts," respectively?  
 17 MR. KAO: Objection to form. Are you asking  
 18 for his recollection of what he remembers from the time  
 19 period or sitting here today?  
 20 MR. HEISE: I'm still back at the time of  
 21 entering into this agreement.  
 22 THE WITNESS: Not to my recollection.  
 23 MR. HEISE: Q. Having had the opportunity to  
 24 review the agreements again this morning, having had the  
 25 opportunity to review them apparently on several

Page 90

1 occasions with counsel for IBM, is there anything that  
 2 you view in this agreement that is unclear or ambiguous  
 3 today?  
 4 MR. KAO: Objection to form.  
 5 You can answer.  
 6 THE WITNESS: Look, today I would also  
 7 critique it on the parenthetical exceptions, "except as  
 8 otherwise may be permitted," since there's no reference  
 9 there.  
 10 MR. HEISE: Q. And what paragraph are you  
 11 referring to, sir?  
 12 A. The phrase "except as otherwise may be  
 13 authorized or permitted." I'll see if I can find you a  
 14 citation here. It's in the confidentiality paragraph.  
 15 Q. That would be Section 7.06.  
 16 A. That's not it.  
 17 Well, I'm not finding it right away. But  
 18 there's a parenthetical note in several occasions that  
 19 just says -- it provides an exception to the  
 20 confidentiality rule, but there's no citation. So it's  
 21 vague as to what those exceptions are and where they  
 22 might reside. This is not a monument to drafting.  
 23 MR. KAO: I was going to say, if it may speed  
 24 things up, I think he's talking about 7.06(a), but --  
 25 MR. HEISE: Well, that's what I thought he was

Page 91

1 looking at, so -- but I'm --  
 2 MR. KAO: But, yeah.  
 3 THE WITNESS: Yeah.  
 4 MR. KAO: Is that what you're --  
 5 THE WITNESS: But I couldn't find the --  
 6 MR. HEISE: Q. I want you to take whatever  
 7 time you need to --  
 8 MR. KAO: Yeah, look through the document and  
 9 see.  
 10 THE WITNESS: Let me look ahead at the next  
 11 one, see if I find it there.  
 12 MR. KAO: Did they get out of order?  
 13 Oh, it could be that -- looks like his copy  
 14 is --  
 15 THE WITNESS: I got them scrambled.  
 16 MR. KAO: -- gotten out of order. Yeah.  
 17 THE WITNESS: Okay.  
 18 I know it's not in there. I'll be careful  
 19 here.  
 20 I think it's my error. The parenthetical  
 21 notes are in my declaration, not in the document.  
 22 MR. HEISE: Q. So that portion of your  
 23 declaration is unclear?  
 24 A. I don't think it's unclear.  
 25 MR. KAO: Objection to form.

Page 92

1 MR. HEISE: Q. My question before was: When  
 2 you signed the agreement, what did you believe was  
 3 unclear and ambiguous? And you identified 1.04 --  
 4 A. Two items.  
 5 Q. -- software products, and methods and concepts  
 6 in 7.06.  
 7 A. Right.  
 8 Q. I then asked you: As you sit here today,  
 9 after having the opportunity to review with counsel for  
 10 IBM, go through all this stuff again, is there anything  
 11 further that you found to be unclear or ambiguous? And  
 12 you said, "The parenthetical "except as otherwise  
 13 permitted." And I asked you where that is in the  
 14 document, and it does not appear in the document.  
 15 A. That's correct.  
 16 Q. And the document I'm referring to is  
 17 Exhibit 1, the software agreement; right?  
 18 A. Yes.  
 19 Q. So that is not something that --  
 20 A. That is not something --  
 21 Q. -- is newly found to be --  
 22 A. That is correct.  
 23 Q. -- ambiguous or unclear?  
 24 A. That's correct.  
 25 Q. And in fact, where that appears is in your

DAVID P. RODGERS

Page 93

1 affidavit or declaration?  
 2 A. In my declaration, that's right.  
 3 Q. Is there anything else, sir, either at the  
 4 time or as you sit here today, that you can identify for  
 5 us in this software agreement that you believe is  
 6 unclear or ambiguous?  
 7 MR. KAO: Objection to form.  
 8 THE WITNESS: No. I think the initial  
 9 document is very clear. It's a grant of access to  
 10 source for internal use.  
 11 MR. HEISE: Q. Well, let's talk about that  
 12 grant of right to use for internal use.  
 13 You're referring to Section 2.01; is that  
 14 correct?  
 15 A. Yes.  
 16 Q. And actually, I'm going out of order. I'm  
 17 going to get back to that in one second.  
 18 The first item that you indicated was unclear  
 19 at the time that you signed it was Section 1.04, the  
 20 software product.  
 21 A. Yes.  
 22 Q. The agreement states that:  
 23 "SOFTWARE PRODUCT means materials such as  
 24 COMPUTER PROGRAMS, information used or  
 25 interpreted by COMPUTER PROGRAMS and

Page 94

1 documentation relating to the use of COMPUTER  
 2 PROGRAMS. Materials available from AT&T for  
 3 a specific SOFTWARE PRODUCT are listed in the  
 4 Schedule for such SOFTWARE PRODUCT."  
 5 Is that a correct statement of what the  
 6 agreement defines "software product" under Section 1.04?  
 7 A. That is.  
 8 Q. What is unclear about the definition of  
 9 "software product" as set forth in the agreement?  
 10 A. In this particular case, it's not an exact  
 11 list of what those programs are. The definition is  
 12 clear, so far as it goes, in that it's the programs. It  
 13 doesn't state that they're in source form. It's pretty  
 14 vague as to information used or interpreted by computer  
 15 programs, because that might come from human beings as  
 16 well as be part of the text files and documentation  
 17 files. So it's a pretty wide-open definition.  
 18 Q. Well, in fact, sir, computer programs is  
 19 defined both to include source code and object code.  
 20 A. Yes.  
 21 Q. So it is clear with respect to that, is it  
 22 not?  
 23 MR. KAO: Objection to form.  
 24 THE WITNESS: It's clear that it includes  
 25 source and object forms, and then it goes -- however, it

Page 95

1 goes on to talk about interpreted information. It's  
 2 pretty expansive.  
 3 MR. HEISE: Q. That's correct. It's much  
 4 more expansive than just source code, is it not?  
 5 MR. KAO: Objection to form.  
 6 THE WITNESS: Yes.  
 7 MR. HEISE: Q. Was there anything unclear  
 8 about the fact that 1.04 covered much more than simply  
 9 source code?  
 10 MR. KAO: Objection to form.  
 11 THE WITNESS: No, it's not unclear that it  
 12 covers much more. What it is unclear about is: What  
 13 are those items?  
 14 MR. HEISE: Q. Well, you would agree that it  
 15 defines "computer programs" to include source code in  
 16 object code format; right?  
 17 A. Yes.  
 18 Q. It also expands to include information used or  
 19 interpreted by computer programs and documentation  
 20 relating to the use of the computer programs.  
 21 So you understood that there were more than  
 22 just source code being covered by the term "software  
 23 product"?  
 24 A. Yes.  
 25 Q. With respect to 2.01, the one we were just

Page 96

1 getting ready to talk to before I interrupted myself, it  
 2 indicates that:  
 3 "AT&T grants to LICENSEE" -- in this case,  
 4 meaning Sequent -- "a personal,  
 5 nontransferable and nonexclusive right to use  
 6 in the United States each SOFTWARE PRODUCT  
 7 identified in the one or more Supplements  
 8 hereto, solely for LICENSEE'S own internal  
 9 business purposes and solely on or in  
 10 conjunction with DESIGNATED CPUs for such  
 11 SOFTWARE PRODUCT."  
 12 Is that a correct statement, sir?  
 13 A. Yes, that's a . . .  
 14 Q. And it's in here where it makes clear one of  
 15 the topics we were talking about earlier, that it's for  
 16 licensee's own internal business purposes, which is how  
 17 you had characterized this agreement before. Is this  
 18 where you're getting the language from --  
 19 A. Yes.  
 20 Q. -- that this was a document memorializing that  
 21 it was for Sequent's own internal business purposes?  
 22 A. Right.  
 23 MR. KAO: Objection to form.  
 24 MR. HEISE: Q. Would you agree, sir, that it  
 25 clearly limits the right of Sequent to use the product