EXHIBIT 389

## Deposition of LAWRENCE BOUFFARD

Date: February 16, 2007

Volume: 1

Case: SCO v. NOVELL

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- 1 BY MR. JACOBS:
- Q. Let's break it down a little bit.
- Do you see that, first of all, Exhibit 61 is
- 4 a declaration that you executed on November 10th,
- 5 2003?
- 6 A. I do.
- 7 Q. And you see that you'd executed it under
- 8 penalty of perjury?
- 9 A. I do.
- 10 Q. And you understood what "penalty of perjury"
- 11 meant when you executed it?
- 12 A. I did.
- 13 Q. You understood this was a serious --
- 14 executing this was a serious matter?
- 15 MR. NORMAND: Objection to form.
- 16 THE WITNESS: I did.
- 17 BY MR. JACOBS:
- 18 Q. And at the time you executed it, you studied
- 19 it, and, to the best of your knowledge and belief at
- 20 the time, it represented your understanding?
- MR. NORMAND: Objection to form.
- 22 THE WITNESS: It was not written by me. You
- 23 know how these things go. It was provided to me, and
- 24 I was asked, "Is this an accurate representation of
- 25 what you said when you met with us?"

- 1 The first go-round, there were several
- 2 sections that were completely objectionable and
- 3 wrong. Actually, they didn't reflect what I said,
- 4 and it was clear that it was trying to get me to say
- 5 something that they wanted to hear.
- 6 So I didn't sign it the first go-round, I
- 7 sent it back to them. And they said, "Well, which
- 8 paragraphs do you have a problem with?" And I told
- 9 them.
- I got another draft, and it still was not
- 11 what I had said. So I asked them to strike some
- 12 things, I believe they did, and then we went back and
- 13 forth a few times.
- By the last time reading it over, I read it
- 15 over at that point a little weary of it from the
- 16 standpoint of, "well, I guess you could interpret
- 17 what I said that way." Because that's what I was
- 18 being asked to do: Did we interpret you that way.
- 19 It's not really a statement of my words.
- 20 And I understand they never really are -- well, not
- 21 never. It's only a couple times I've done this. But
- 22 this was particularly difficult working with them,
- 23 trying to get it to be how I would characterize
- 24 things. It became a negotiation of my words rather
- 25 than a document of my own words.

- 1 BY MR. JACOBS:
- Q. Why did you sign it?
- 3 A. I signed it -- I said, "Well, I guess you
- 4 could interpret what I said that way. There are some
- 5 things that I would have said differently." But at
- 6 that point, I just got kind of tired of the process,
- 7 and I said that's, you know, close enough.
- 8 Q. Close enough that you were comfortable
- 9 signing it under penalty of perjury that it was true
- 10 and correct?
- 11 MR. NORMAND: Objection to form.
- 12 THE WITNESS: Correct.
- 13 BY MR. JACOBS:
- 14 Q. If you skip ahead in the document -- it
- 15 looks like it's about a third of the way through --
- 16 you'll come to the Asset Purchase Agreement. It's
- 17 after the last of the UNIX licensing documents that
- 18 are attached to the agreement.
- The next document. Let me give you a clip
- 20 to make it easier.
- 21 So this is, in fact, what you understood to
- 22 be the Asset Purchase Agreement when you executed the
- 23 declaration?
- 24 A. Yes.
- Q. And what you understood to be an Asset

- 1 time is 1:56.
- 2 EXAMINATION
- 3 BY MR. NORMAND:
- Q. Good afternoon, Mr. Bouffard.
- 5 A. Good afternoon.
- 6 Q. Towards the end of his questions, Mr. Jacobs
- 7 referred to a second declaration that you executed.
- 8 Do you recall that?
- 9 A. Yes, I do.
- 10 MR. NORMAND: I want to mark that declaration
- 11 as an exhibit. And it's been marked as Exhibit 1060.
- 12 (Plaintiff/Counterclaim-Defendant's Exhibit
- 13 No. 1060 was marked for identification.)
- 14 BY MR. NORMAND:
- 15 Q. The signature line of the declaration is
- 16 dated November 8th, 2006, with your signature.
- Did you execute this document on that date?
- 18 A. Yes, I did.
- 19 Q. And this was the declaration you executed
- 20 after the process that you described to Mr. Jacobs
- 21 earlier; is that right?
- 22 A. That's correct.
- Q. How did that process compare to the process
- 24 by which you executed your IBM declaration?
- 25 A. This process was much more friendly, less

- 1 adversarial, and did not seem to have an overt agenda
- 2 to establish certain points.
- 3 Q. Have you had occasion to read Exhibit 1060
- 4 in the recent past?
- 5 A. Yes, I have.
- 6 Q. Is there any language in the exhibit that
- 7 does not reflect your -- doesn't accurately reflect
- 8 your views of the issues that are addressed therein?
- 9 A. I don't believe so.
- 10 Q. I wanted to direct your attention,
- 11 Mr. Bouffard, to paragraph 29.
- 12 A. Okay.
- 13 Q. You see in the first paragraph, "Although I
- 14 did not negotiate the 1995 Asset Purchase Agreement
- 15 APA for Novell, I had an understanding of the
- 16 transaction given my job responsibilities at the
- 17 time, which involved selling UNIX products. My
- 18 understanding was that Novell sold its UNIX business
- 19 to Santa Cruz lock, stock and barrel, and Novell only
- 20 retained the right to continue receiving binary
- 21 royalties paid by then-existing UNIX licensees for
- 22 their distribution of binary products based on their
- 23 UNIX flavor pursuant to their UNIX sublicensing
- 24 agreements (the binary royalty stream)." End quote.
- Do you see that paragraph?