

**In The Matter Of:**

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

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*ERIK W. HUGHES*

*May 11, 2004*

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1 its behalf on a particular subject matter pursuant to  
 2 what I'll refer to, or what we'll refer to, as Federal  
 3 Rule of Civil Procedure 30(b)(6)?  
 4 A. Yes, I do.  
 5 Q. Okay. Could I show you what's been marked  
 6 as Deposition Exhibit 1.  
 7 THE WITNESS: Thanks.  
 8 Q. BY MR. GREENWALD: And I'd like to ask you  
 9 to please turn to Pages 6 and 7. For the record I'll  
 10 note that Deposition Exhibit 1 is  
 11 Defendant/Counterclaim-Plaintiff IBM's Amended Notice  
 12 of 30(b)(6) Deposition dated March 19th, 2004.  
 13 Directing your attention again to Pages 6  
 14 and 7, you understand that the topics about which you  
 15 have been designated to testify are Topics Number 5,  
 16 as to Linux products only, 13, 14(a), 14(b), and 18?  
 17 A. Yes.  
 18 Q. All right.  
 19 Now, Mr. Hughes, in preparation for your  
 20 deposition today, I take it you met with SCO's  
 21 lawyers?  
 22 A. Yes, I did.  
 23 Q. And I take it you also, in the course of  
 24 your preparation, reviewed certain documents with  
 25 them?

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1 A. That's right.  
 2 Q. Did those documents help you to refresh  
 3 your recollection as to certain of the topics that the  
 4 lawyers covered with you?  
 5 A. I, being in the position that I've been in  
 6 for five years, as well as having my own files that I  
 7 studied, as well as meeting with my attorneys, helped  
 8 refresh my memory, yes.  
 9 Q. And is it your position that none of the  
 10 documents you reviewed helped you refresh your  
 11 recollection?  
 12 A. Pardon me?  
 13 Q. Is it your position that none of the  
 14 documents that you reviewed with them helped you  
 15 refresh your recollection?  
 16 A. Yes, they did help me with --  
 17 Q. They did help you.  
 18 A. Yes.  
 19 Q. Okay.  
 20 Were all the documents that you reviewed  
 21 with your attorneys documents that had been produced  
 22 to IBM in this litigation, in this case? And if you  
 23 can't answer that, perhaps your counsel can, but I'll  
 24 first ask you.  
 25 A. I'm trying to think through. I believe

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1 all of the documents that we reviewed were court  
 2 documents.  
 3 Q. What do you mean by court documents?  
 4 A. Documents like this (indicating).  
 5 Q. Pleadings, documents filed in court?  
 6 A. Yes.  
 7 Q. So it's your testimony that none of the  
 8 documents you reviewed were documents that had been  
 9 produced in this litigation, though not filed in  
 10 court?  
 11 A. The documents were documents like this, as  
 12 well as our own internal documents.  
 13 Q. Okay. With respect to your internal  
 14 documents, were all those documents documents that had  
 15 been produced to IBM in this litigation; and again,  
 16 you may or may not -- not -- you may or may not know.  
 17 Answer only if you know.  
 18 A. I don't know.  
 19 Q. All right. I'll direct the question,  
 20 then, to your counsel.  
 21 MR. HEISE: The documents -- any documents  
 22 that were reviewed with the witness were -- have been  
 23 produced in this litigation.  
 24 MR. GREENWALD: Including all internal  
 25 documents?

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1 MR. HEISE: The only documents that were  
 2 not produced in this litigation were documents that  
 3 were created by the witness to assist in answering his  
 4 questions for you here today to expedite this process.  
 5 For example, spreadsheets that were created.  
 6 MR. GREENWALD: And they have not been  
 7 produced to us?  
 8 MR. HEISE: No.  
 9 MR. GREENWALD: All right. I'd ask that  
 10 you just retain those for the moment. We may be  
 11 sending you follow-up correspondence concerning them.  
 12 MR. HEISE: Sure. If the questions come  
 13 up today, they --  
 14 MR. GREENWALD: Sure.  
 15 MR. HEISE: -- they -- be relevant.  
 16 MR. GREENWALD: Okay.  
 17 All right. I'd like to -- you can put  
 18 that exhibit aside.  
 19 Q. I'd like to now hand you what's been  
 20 marked as Deposition Exhibit 2. And I'd like you to  
 21 turn to Pages 15 and 16.  
 22 Now, to speed things along, I'm going to  
 23 represent to you that what appears at Pages 15 and 16  
 24 is SCO's answer to IBM's Interrogatory Number 11, and  
 25 to further speed things along I'm going to represent

1 to you that that interrogatory, as you can see on  
2 Page 14, sought the identification of all products  
3 ever marketed, sold, or distributed by SCO. With that  
4 in mind, please review the list appearing on Pages 15  
5 and 16.

6 All right. I'd like to ask you to tell me  
7 which of the products listed on Pages 15 and 16 are  
8 products that either included the Linux kernel or were  
9 intended for use with computers running the Linux  
10 operating system. And by Linux operating system I'm  
11 referring to the GNU/Linux operating system.

12 MR. HEISE: Objection to form.

13 You may answer.

14 A. Those --

15 MR. GREENWALD: Hold on. I -- I take the  
16 objection. Let me rephrase that.

17 Q. Could you first tell me which of the  
18 products listed there are products that include --  
19 that included the Linux kernel.

20 A. SCO Linux Server 4. OpenLinux 3.1.1  
21 Server, Workstation, the entire OpenLinux product line  
22 included. Do you want me to read each one of them?

23 Q. Please do, for the record. In fact,  
24 please read each -- each name, and each product as it  
25 appears exactly on the list.

1 A. From this top --

2 Q. From the -- from --

3 A. Okay. Top.

4 Q. Yeah.

5 A. SCO UnixWare 7 --

6 Q. No, no, no. I mean -- I mean starting  
7 with SCO Linux Server 4.0.

8 A. Okay.

9 "SCO Linux Server 4.0, OpenLinux

10 3.1.1 Server, OpenLinux 3.1.1

11 Workstation, OpenLinux 3.1 64 bit,

12 OpenLinux 3.1 Server, OpenLinux 3.1

13 Workstation, OpenLinux eServer 2.3.1,

14 Linux Technology Preview,

15 eDesktop 2.4, eServer 2.3,

16 OpenLinux 2.3, OpenLinux 2.2,

17 OpenLinux 1.3, OpenLinux Base 1.2,

18 OpenLinux Standard 1.2, OpenLinux

19 1.1, OpenLinux 1.0, Caldera Network

20 Desktop."

21 Q. Let's focus on those for one moment.

22 Could you tell me for each of those  
23 products which version of the Linux kernel those  
24 incorporated?

25 A. I believe that's already been provided to

1 you in -- in the software products themselves. I  
2 don't -- if you have the products, I'd be happy to  
3 look at them. I don't know which version of the  
4 kernel each of those include.

5 Q. So your answer is you don't know?

6 A. Yes.

7 Q. Can you tell me for each of those products  
8 what was the approximate -- or for that matter if you  
9 know the exact date of release of each of those  
10 products.

11 A. I joined the company in May of '99 and  
12 OpenLinux 2.2 had been released just prior to my  
13 joining the company.

14 OpenLinux 2.3 was released sometime later  
15 in 1999, and -- yeah, I -- I don't recall the exact  
16 dates of some of the rest of these.

17 OpenLinux Server or SCO Linux Server 4.0  
18 was released in November of 2002.

19 Q. Do you know the months and/or years of  
20 release of any of the other -- of the products you've  
21 just testified about?

22 A. Let's see. eDesktop and eServer were  
23 released probably in 2000.

24 Q. So that would be eServer 2.3.1,  
25 eDesktop 2.4, and eServer 2.3?

1 A. The eDesktop 2.4 and eDesktop 2.3.

2 Q. Would be -- eServer 2.3 you mean?

3 A. Yes.

4 Q. Would be in 2000?

5 A. Yes. The Linux technology preview was  
6 released right when -- right after the Linux 2.4  
7 kernel was released --

8 Q. Which was when?

9 A. -- and I can't recall the date --

10 Q. Do you recall the year?

11 A. -- when that came out.

12 Q. Did it incorporate the 2.4 kernel Linux --

13 A. Yes, it did.

14 Q. -- technology preview?

15 A. And then the rest of these OpenLinux 3  
16 series products were all released between then and  
17 November of 2002 when SCO Linux 4 was released.

18 Q. So is it fair to conclude that SCO Linux  
19 Server 4.0, OpenLinux 3.1.1 Server, OpenLinux 3.1.1  
20 Workstation, OpenLinux 3.1 64 bit, OpenLinux 3.1

21 Server, and OpenLinux 3.1 Workstation all encompassed  
22 or included the Linux kernel version 2.4 or higher?

23 A. Yes.

24 MR. HEISE: Objection to the form.

25 You may answer. Sorry for the delay on

1 that.

2 MR. GREENWALD: That's okay.

3 Q. To your knowledge, do any of the other

4 products -- or do any of the products listed on

5 Page 16, in addition to Linux Technology Preview,

6 include the 2.4 kernel?

7 A. There was a release of SCO LinuxWare

8 release 7.1.2 that included the Linux kernel

9 personality and SCO Linux release 7.1.3 included the

10 Linux kernel personality. At first when it first

11 shipped it did include the Linux kernel packages which

12 were subsequently removed.

13 Q. Which kernel packages did they include?

14 A. The Linux kernel packages. I-- I don't

15 know which specific ones.

16 Q. Would it have been a Version 2.4 or

17 higher?

18 A. Yes.

19 MR. HEISE: Object to the form and the

20 whole line of questions is exceeding particular scope

21 of this witness's designation.

22 Q. Now, you said that as originally produced

23 the UnixWare releases included the Linux kernel

24 personality, and that at first the Linux kernel

25 personality had the Linux kernel in them; is that

1 correct?

2 MR. HEISE: Same objection.

3 MR. GREENWALD: Is that -- you have to

4 answer audibly.

5 A. Yes.

6 Q. BY MR. GREENWALD: During what period of

7 time did those products -- that is, the Linux kernel

8 personality -- include the Linux kernel?

9 MR. HEISE: Same objection.

10 MR. GREENWALD: You may answer.

11 THE WITNESS: Is this -- is this my area?

12 MR. HEISE: No, but he's allowed --

13 MR. GREENWALD: You may answer.

14 MR. HEISE: He's allowed to ask the

15 questions even though these are not the areas upon

16 which you've been designated so they don't bind the

17 company, but you're free to provide him with

18 whatever --

19 MR. GREENWALD: For the record, I disagree

20 with that characterization, but you may proceed.

21 A. UnixWare 7 Release 7.1.2 shipped somewhere

22 after the consummation of the transaction between

23 Caldera and acquiring the assets from SCO, so the date

24 is late 2001 or early 2002.

25 Q. Okay. And what about 7.1.3?

1 MR. HEISE: Same objection.

2 You may answer.

3 MR. GREENWALD: You can have a standing

4 objection to this line of questions.

5 MR. HEISE: Okay.

6 A. Yes. It -- 7.1.3 included the Linux

7 operating system, including the Linux kernel packages,

8 until SCO suspended Linux and removed those packages

9 from the media kit.

10 Q. Which was when?

11 A. Which was May of last year.

12 Q. So until May of last year, Unix -- those

13 two UnixWare 7 releases included the Linux kernel?

14 A. That's correct.

15 MR. HEISE: Objection. Form.

16 Q. BY MR. GREENWALD: And it was a version of

17 the kernel that was either 2.4 or higher?

18 A. That's correct.

19 MR. HEISE: Objection to form.

20 Q. BY MR. GREENWALD: Now, are there any

21 other products listed on Page 15 or 16, other than

22 those you've just tested -- testified about, that,

23 though not including the Linux kernel, were

24 nonetheless intended for use with computers running

25 the Linux operating system?

1 MR. HEISE: Objection. Exceeds the

2 scope --

3 (There was a discussion held off the record.)

4 MR. HEISE: Exceeds the scope of the

5 designation.

6 MR. GREENWALD: You may answer.

7 Do you understand the question?

8 THE WITNESS: Yes, I do.

9 MR. GREENWALD: Good.

10 A. And the answer is no.

11 Q. BY MR. GREENWALD: Focusing on SCO Linux

12 Server 4.0, could you tell me what was its intended

13 function.

14 A. SCO Linux Server 4.0?

15 Q. Yes.

16 A. It's intended function was --

17 MR. HEISE: Objection. I'm sorry,

18 objection.

19 You may answer.

20 MR. GREENWALD: What's the basis for the

21 objection?

22 MR. HEISE: Again, exceeding the scope of

23 what this witness has been designated to testify

24 pursuant to the items in your notice as well as our

25 objections to that notice.

Page 21

1 MR. GREENWALD: You may answer.  
 2 A. The function of that product is to run a  
 3 personal computer.  
 4 Q. BY MR. GREENWALD: Using the Linux  
 5 operating system?  
 6 A. That's right.  
 7 Q. What about the function of OpenLinux 3.1.1  
 8 Server?  
 9 A. Same function.  
 10 Q. What about OpenLinux 3.1.1 Workstation?  
 11 MR. HEISE: You know, David, let me just  
 12 interrupt, because as you said before, you'd rather I  
 13 just put a standing objection. If we can mark as  
 14 Deposition Exhibit 3 our objections, so that those are  
 15 part of the record, and --  
 16 MR. GREENWALD: Let's mark it as a  
 17 different number, if it's all right.  
 18 MR. HEISE: I think the agreement  
 19 previously was that all deposition exhibits are just  
 20 marked numerically, not by plaintiff or defendant.  
 21 MR. GREENWALD: Right.  
 22 MR. KAO: That's how we're going to do it.  
 23 MR. GREENWALD: The problem is we -- can  
 24 we go off the --  
 25 MR. HEISE: You've premarked.

Page 22

1 MR. GREENWALD: We've premarked, so --  
 2 MR. HEISE: Do you want to call it 2(a)?  
 3 MR. GREENWALD: If you want to call it  
 4 2(a) that's fine.  
 5 MR. HEISE: That's fine.  
 6 MR. GREENWALD: That's fine. Let's call  
 7 it 2(a).  
 8 MR. HEISE: We can just mark it during a  
 9 break and I'll just --  
 10 MR. GREENWALD: Okay.  
 11 MR. HEISE: -- designate on it so she  
 12 doesn't have to stop.  
 13 Q. BY MR. GREENWALD: Where were we?  
 14 3.1.1 Workstation, what does -- what was  
 15 its function?  
 16 A. Same function.  
 17 Q. What's the function of OpenLinux 3.1 64  
 18 bit?  
 19 A. Same function.  
 20 Q. What about the function of OpenLinux 3.1  
 21 Server?  
 22 A. Same function.  
 23 Q. What was the function of OpenLinux  
 24 Workstation?  
 25 A. Same function.

Page 23

1 Q. How, if at all, did any of these products  
 2 differ in their function; and when I say these  
 3 products, I mean the products that you've just been  
 4 testifying about.  
 5 A. OpenLinux Server 3.1.1 was geared towards  
 6 being optimized on server hardware.  
 7 Workstation was optimized for workstation  
 8 hardware and also providing that type of a solution  
 9 for a server or a workstation.  
 10 Same with 64 bit, was for -- optimized for  
 11 64 bit hardware.  
 12 Q. What is the difference between a server  
 13 and a workstation?  
 14 MR. HEISE: Just continuing my objection.  
 15 A. A server is something that generally runs  
 16 in the -- in the back office. A work station is  
 17 something that someone uses as a client.  
 18 Q. All right. So now let's turn to the  
 19 products on Page 16, and I'll ask you for each one of  
 20 those, what their intended function was.  
 21 MR. HEISE: I'll just have a standing  
 22 objection to this whole line.  
 23 MR. GREENWALD: Well, you've already --  
 24 MR. HEISE: I don't know when you're  
 25 switching, so I just don't want --

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1 MR. GREENWALD: That's fine.  
 2 MR. HEISE: -- the record to be unclear.  
 3 MR. GREENWALD: That's fine.  
 4 Okay. Continue.  
 5 A. eServer is a server function. Linux  
 6 Technology Preview was neither geared towards a server  
 7 or a workstation or a -- a preview of the Linux 2.4  
 8 technology.  
 9 Desktop is a workstation function.  
 10 eServer 2.3 is a server function. OpenLinux 2.3 is  
 11 just a generic PC operating system solution as well as  
 12 2.2, 1.3. OpenLinux Base 1.2, Standard 1.2, OpenLinux  
 13 1.1 --  
 14 Q. You're going too fast I think both for the  
 15 record and for comprehension.  
 16 OpenLinux 2.3, what was its intended  
 17 function?  
 18 A. As a general operating system solution.  
 19 Q. What does that mean, a general operating  
 20 system solution?  
 21 A. We generally included -- to provide a  
 22 solution we -- we integrated our own technology and  
 23 third-party technologies and open-source technologies  
 24 to create something more than just a technology CD.  
 25 Q. Is it fair to say that it had comparable

1 that none of the other Linux distributions had.  
 2 Q. Do you think there were any other reasons  
 3 or factors that accounted for the success of OpenLinux  
 4 2.2?

5 MR. HEISE: Objection to form. Exceeds  
 6 the scope.

7 You may answer.

8 A. It included other technologies such as a  
 9 Netware client so it could work with Netware servers.

10 Q. BY MR. GREENWALD: Anything else?

11 A. No.

12 Q. Did Caldera ever make a profit from the  
 13 sale of Linux products?

14 MR. HEISE: Objection to form.

15 You may answer.

16 A. I believe at the time we were shipping  
 17 OpenLinux 2.2, there was a period of profitability,  
 18 but the company was in a hiring mode and that didn't  
 19 last for very long.

20 MR. GREENWALD: Let me ask the question  
 21 again.

22 Q. Did Caldera ever make a profit from the  
 23 sale of Linux products?

24 MR. HEISE: Objection to form.

25 THE WITNESS: Profit as in overall company

1 profitability, profit on cost of goods, or --

2 MR. GREENWALD: Profit in terms of overall  
 3 profitability of the Linux division.

4 MR. HEISE: Objection to form.

5 You may answer.

6 MR. GREENWALD: If there was such a  
 7 division.

8 A. There was -- Caldera in its -- the years  
 9 that I joined the company, was a development company,  
 10 and they were -- the objective of the company was not  
 11 profitability.

12 Q. BY MR. GREENWALD: Well, is it not the  
 13 case that between 1994 and 2001, the -- Caldera sold  
 14 Linux products exclusively?

15 MR. HEISE: Objection to form.

16 THE WITNESS: What do you mean by "Linux  
 17 products"?

18 MR. GREENWALD: Products that either  
 19 included the Linux kernel or intended for use with  
 20 computers running the Linux operating system.

21 MR. HEISE: Same objection.

22 You may answer.

23 A. I wouldn't characterize it as Linux  
 24 products. We were trying to sell some kind of a  
 25 solution. They did include Linux.

1 Q. BY MR. GREENWALD: But the solutions were  
 2 Linux solutions?

3 A. They were computing solutions that  
 4 included Linux.

5 MR. GREENWALD: Okay.

6 Q. During those years 1994 to 2001, did  
 7 Caldera ever make a profit?

8 MR. HEISE: Objection to form.

9 THE WITNESS: '94 to when?

10 MR. GREENWALD: 2001.

11 A. No.

12 MR. GREENWALD: All right. I'd like to  
 13 hand you what has been marked as Deposition Exhibit 3.  
 14 (There was a discussion held off the record.)

15 Q. BY MR. GREENWALD: Do you recognize this  
 16 document?

17 A. Yes, I do.

18 Q. What is it?

19 A. It's a product announcement.

20 Q. For what product?

21 A. For the SCO Linux Server 4.0 product.

22 Q. And what is the date of the product  
 23 announcement?

24 A. 14th of April 2003.

25 Q. What was Linux Server 4.0?

1 A. It was an operating system solution  
 2 product.

3 Q. Linux operating solution?

4 A. Yes.

5 Q. System solution?

6 A. It was an operating system solution  
 7 product, yes.

8 Q. All right. I'd like to direct your  
 9 attention to the second page of this document, the  
 10 fourth paragraph headed Linux 2.4.19 kernel, where it  
 11 says, quote,

12 "The core of SCO Linux Server 4.0 is  
 13 the 2.4.19 Linux kernel." Close  
 14 quote.

15 What does that mean?

16 A. It means the version of the Linux kernel  
 17 that was included within this product.

18 Q. Did SCO Linux Server 4 contain the  
 19 entirety of that -- the 2.4.19 kernel?

20 MR. HEISE: And I'll just have a  
 21 continuing objection to this line because this -- it  
 22 likewise exceeds the scope of what he's been  
 23 designated on.

24 You may answer the question.

25 MR. GREENWALD: Well, one moment.

1 As -- I'm looking at Topic 5 upon which  
2 Mr. Hughes has been designated and it includes the  
3 dates on which SCO has marked it as -- those products.

4 I see. Your position is SCO Linux  
5 Server 4.0 is not listed in response to --

6 MR. HEISE: No, that's not my position. I  
7 think your question is exceeding the scope of the --

8 MR. GREENWALD: Well, I don't see that  
9 because SCO Linux Server 4.0 is clearly included in  
10 response to Interrogatory Number 11, and I'm asking --

11 MR. HEISE: I'm not contesting that.

12 MR. GREENWALD: My question is: When did  
13 SCO start selling Linux Server 4.

14 MR. HEISE: Then I misunderstood your  
15 question. If that's your question, I apologize.

16 MR. GREENWALD: I believe that was my  
17 question. If I'm -- if I'm misrecalling it, I  
18 apologize, but could you answer that.

19 A. Certainly. On the -- just right after the  
20 14th of April 2003 it started selling this product.

21 Q. BY MR. GREENWALD: Did there come a time  
22 that it stopped -- SCO stopped selling Linux Server  
23 4.0?

24 A. Yes.

25 Q. When?

1 objection to this whole line.

2 A. I'm familiar with the reasons, and that  
3 was there was concern about our intellectual property  
4 making its way into Linux, and that the company had  
5 to -- until these issues were resolved, had to suspend  
6 the sales and marketing of its Linux products.

7 Q. BY MR. GREENWALD: Now, during the period  
8 that SCO was selling Linux Server 4, how many sales  
9 did it make in terms of units?

10 A. I -- I don't know the exact number. Very  
11 few. It was only a month.

12 Q. How many sales did it make in terms of  
13 revenues?

14 A. Probably next to nothing.

15 Q. Well, when you say "next to nothing" was  
16 it more than \$100,000?

17 A. No.

18 Q. Was it more than \$50,000?

19 A. I would need to go back and look, but I  
20 don't believe it was more than \$100,000.

21 Q. Where would you need to go back and look  
22 in order to determine that?

23 A. In the -- we have a product sales report,  
24 and I'd need to look down particularly and find the  
25 SKU and then find the total revenue for the -- the

1 A. May of 2003.

2 Q. And why did it stop?

3 A. I believe that's --

4 MR. HEISE: Let me also interpose an  
5 objection on that. That's a topic with another  
6 witness designated, so it exceeds the scope of the  
7 designation.

8 MR. GREENWALD: You may answer.

9 MR. HEISE: You may answer.

10 THE WITNESS: The question was when?

11 Q. BY MR. GREENWALD: Why. What accounted  
12 for it stopping?

13 A. The company made a strategic decision to  
14 suspend its Linux business.

15 Q. When you say "strategic decision" what do  
16 you mean by that?

17 A. It was made in in the executive group.  
18 (There was a discussion held off the record.)

19 A. The executive group.

20 Q. BY MR. GREENWALD: Are you familiar -- are  
21 you a part of the executive group?

22 A. No, I am not.

23 Q. Are you familiar with the reasons that the  
24 executive group had for reaching its decision?

25 MR. HEISE: I'll just have a standing

1 SKU.

2 Q. Do you know what the SKU number was?

3 A. There are a few SKU numbers located on  
4 Page 5 -- this isn't numbered -- under Number 5, New  
5 Model Numbers and Pricing.

6 Q. Page 5?

7 A. Under Section 5.

8 Q. Section 5. I see.

9 So you'd need to go to your product sales  
10 report and look at each of the model numbers listed in  
11 the third column of that table on Page SCO1269795?

12 A. I'm sorry, where did you see that?

13 MR. HEISE: He's reading off the bottom  
14 corner there.

15 THE WITNESS: Oh, yes.

16 Q. BY MR. GREENWALD: Do you know what -- the  
17 identities of any customers to whom sales were made?

18 A. I do not. We have thousands of these  
19 SKUs, and so I would need to go in -- if you want  
20 information on a particular product and what the  
21 revenue or who they are sold, I would need to go in  
22 and look at that.

23 Q. Is that an inquiry that you could make  
24 during a break during questioning this morning and  
25 come back and give an answer?

1 Q. BY MR. GREENWALD: Would -- did those  
2 discussions take place -- well, first I'll ask with  
3 whom of the members of the -- of that group did you  
4 have those discussions?

5 A. Pretty much all of them.

6 MR. HEISE: Do you want me to make a  
7 running objection or do you want me to --

8 MR. GREENWALD: It's a standing objection.

9 MR. HEISE: All right.

10 MR. GREENWALD: I've heard it.

11 MR. HEISE: I don't want to keep  
12 interrupting on the same line.

13 MR. GREENWALD: Yeah, you've got it.

14 A. The entire executive group.

15 MR. GREENWALD: Okay.

16 Q. Focusing on your discussions with -- who  
17 did you say, Jeff Hunsaker, H-u-n-s-a-k-e-r?

18 A. Hunsaker, yes.

19 Q. Hunsaker. Did those discussions take  
20 place before or after the suspension announcement?

21 A. Before the suspension announcement.

22 Q. And what was the nature of those  
23 discussions?

24 A. The nature of those discussions were  
25 that -- that the company needed to suspend the sales

1 A. The determination was that it was  
2 disingenuous of the company to continue to market and  
3 distribute Linux with our unauthorized intellectual  
4 property showing up in Linux.

5 Q. BY MR. GREENWALD: Did you agree with that  
6 decision?

7 A. Yes, I did.

8 Q. Why did you agree with it?

9 A. Because the company had spent countless  
10 number of years and hundreds of millions of dollars  
11 developing the intellectual property, then Caldera  
12 became the rightful owner and heir of the contract and  
13 rights to that intellectual property.

14 Q. Which company had spent hundreds of  
15 millions of dollars?

16 A. All the companies that had ownership of  
17 the intellectual property had added to it.

18 Q. Which companies specifically are you  
19 referring to?

20 A. AT&T, USL, Novell, the original SCO, and  
21 then subsequently Caldera and SCO.

22 Q. So when you say original SCO, I take it  
23 you're referring to the Santa Cruz Operation?

24 A. That's correct.

25 Q. Did you have discussions with Reg

1 and marketing of Linux products, and operationally we  
2 had discussions on what that would entail and what --  
3 you know, what was covered, what needed to be done.

4 Q. Did he explain to you the reason why that  
5 was a necessary decision?

6 A. Yes.

7 Q. What did he say to you?

8 A. The explanation to me was that upon  
9 discovering evidence of our intellectual property  
10 being misappropriated into the Linux kernel, that --  
11 that we needed to -- until the issue was resolved, we  
12 needed to suspend the sales and marketing of Linux.

13 Q. Did he indicate to you when that discovery  
14 had been made?

15 A. No.

16 Q. Do you know independently when that  
17 discovery had been made?

18 A. No, I do not.

19 Q. Why -- what is the relation or why was it  
20 necessary to suspend distribution of Linux products  
21 solely because of the -- solely because SCO discovered  
22 that there was SCO intellectual property encompassed  
23 within those products?

24 MR. HEISE: Objection to form.

25 You may answer.

1 Broughton --

2 A. Yes, I did.

3 Q. -- about the decision to suspend?

4 A. Yes.

5 Q. What -- when did those discussions take  
6 place?

7 A. All at the same time.

8 Q. What did -- what was the nature of your  
9 discussion with Mr. Broughton?

10 A. His responsibility being over  
11 international, it was what do we do about pipelines  
12 that had been built, existing customer discussions  
13 that were under way, what do we say to customers,  
14 and -- and operationally what -- when does this take  
15 effect, and what do we do with customers that have  
16 existing contracts.

17 Q. Did he agree or disagree with the  
18 decision?

19 A. He agreed with the decision.

20 Q. And what was the -- what if anything was  
21 the determination with respect to existing SCO Linux  
22 customers?

23 A. With existing SCO customers we wanted to  
24 fulfill our contractual obligations. We've always  
25 been a company that wanted to uphold our contracts,



1 A. That we had just shipped the SCO Linux 4  
 2 product the prior November, and here it was only six  
 3 months later with a new -- new product, and it -- you  
 4 know, from just a product point of view -- purely  
 5 product point of view, that that's not a lot of time  
 6 to -- to see a product mature in the market.  
 7 Q. Just so I'm clear, again, SCO Linux 4  
 8 shipped in November 2003 -- is it November 2002 or --  
 9 A. That's correct.  
 10 Q. -- or March 2003?  
 11 A. November of 2002.  
 12 Q. 2002. Okay.  
 13 Did Mr. Sontag -- how powerful did he or  
 14 you find that argument?  
 15 MR. HEISE: Objection to form.  
 16 Q. BY MR. GREENWALD: How powerful did he --  
 17 how powerful did he find that argument?  
 18 MR. HEISE: Objection to form.  
 19 You may answer.  
 20 A. It was a tough decision internally. You  
 21 have customers that you've just sold the product to.  
 22 It was not an easy decision.  
 23 The company had always supported its  
 24 customers, had been known for working with customers  
 25 for 20-plus years, and had some customers for as long

1 as 10 and 15 years, so we had great relationship with  
 2 our customers.  
 3 We didn't take lightly just --  
 4 discontinuing a line of business.  
 5 Q. BY MR. GREENWALD: Well, you said the  
 6 company had customers for 10 or 20 years?  
 7 A. Sure.  
 8 Q. When was Caldera founded?  
 9 MR. HEISE: Objection. Exceeds the scope.  
 10 You may answer.  
 11 A. The original Caldera was founded before I  
 12 joined the company. I believe it was 1994.  
 13 Q. BY MR. GREENWALD: So who were the  
 14 customers who had been with the company for 20 years?  
 15 A. So when you acquire the company, you  
 16 acquire the customers as well, and so customers had  
 17 been running our platform for those periods of time.  
 18 Q. My understanding, though, is that the  
 19 assets you -- you acquired were the Unix assets, not  
 20 Linux assets?  
 21 A. That's correct.  
 22 MR. HEISE: Again, objection. All this is  
 23 exceeding the scope of this witness's designation.  
 24 This is Topic Number 1 for which this witness is not  
 25 designated --

1 (There was a discussion held off the record.)  
 2 MR. HEISE: -- of this witness's  
 3 designation. This is all Topic Number 1 for which  
 4 this witness is not designated.  
 5 MR. GREENWALD: Well, let's stick with  
 6 your conversation with Mr. Sontag.  
 7 Q. What ultimately persuaded -- well, did --  
 8 let me ask you this: Was Mr. Sontag ultimately  
 9 persuaded that it was -- the right decision was to  
 10 suspend Linux from distribution?  
 11 MR. HEISE: Same objection.  
 12 You may answer.  
 13 THE WITNESS: Your question is what  
 14 persuaded Mr. Sontag?  
 15 Q. BY MR. GREENWALD: Was he -- was he  
 16 ultimately persuaded that that was the right decision?  
 17 A. Certainly.  
 18 Q. Are you aware -- well, I'll withdraw that  
 19 question.  
 20 Did you receive complaints from purchasers  
 21 of SCO Linux 4.0 about the suspension of Linux  
 22 distributions?  
 23 MR. HEISE: Same objection.  
 24 You may answer.  
 25 A. I don't have any personal knowledge of any

1 complaints that came in.  
 2 Q. BY MR. GREENWALD: Do you have any  
 3 knowledge through other persons?  
 4 A. I don't.  
 5 Q. Now let's focus on your conversations or  
 6 discussions with Darl McBride about the suspension of  
 7 Linux products.  
 8 Did you have such discussions?  
 9 A. Yes, I did.  
 10 Q. When did those discussions take place?  
 11 A. May of 2003.  
 12 Q. May of 2003?  
 13 A. Uh-huh.  
 14 Q. Before or after the suspension  
 15 announcement?  
 16 A. Before the suspension announcement.  
 17 Q. What was the nature of your discussions  
 18 with Mr. McBride?  
 19 A. The same as the others. It was -- it is  
 20 disingenuous for the company to continue to distribute  
 21 and sale and market Linux with -- with the company's  
 22 intellectual property in -- in that product, and so we  
 23 needed to suspend sales and marketing of the product,  
 24 and how best to -- to get that done.  
 25 Q. Did Mr. McBride perceive any impediments

1 Linux code?  
 2 A. Linux as in Linux operating system --  
 3 Q. Yeah.  
 4 A. -- or Linux kernel?  
 5 Q. Well, let's start with Linux kernel.  
 6 A. I don't know.  
 7 Q. Do you know whether it contained Linux  
 8 operating system code?  
 9 A. Likely, because it was in the  
 10 OpenLinux 3.1.1 directory.  
 11 Q. All right. What's the difference between  
 12 Linux operating system code and Linux kernel code?  
 13 A. There's a common misperception in the  
 14 industry that Linux is -- is an entire operating  
 15 system, but really, most of what Linux operating  
 16 system consists of is Unix-compatible software, just  
 17 compiled for a Linux kernel.  
 18 Q. Now, you'll agree that the Linux kernel is  
 19 distributed pursuant to the GPL, correct?  
 20 MR. HEISE: Again, object to the exceeding  
 21 the scope of the designation.  
 22 You may answer.  
 23 A. That's right.  
 24 Q. BY MR. GREENWALD: And you'll also agree  
 25 that the Linux operating system is distributed

1 pursuant to the GPL?  
 2 A. The Linux operating system?  
 3 Q. Yes.  
 4 A. No.  
 5 Q. Are -- did SCO, when it distributed --  
 6 when Caldera or SCO distributed the Linux operating  
 7 system, did it distribute it pursuant to the GPL?  
 8 A. Caldera distributed its solutions pursuant  
 9 to the terms of its end-user license agreement.  
 10 Q. But that -- that software, did it not,  
 11 included a code that was subject and hence distributed  
 12 pursuant to the GPL, correct?  
 13 A. That's correct.  
 14 Q. And I take it that -- is it not correct  
 15 that OpenLinux 3.1.1 was distributed pursuant to the  
 16 GPL?  
 17 A. OpenLinux 3.1.1 I believe was distributed  
 18 pursuant to the EULA.  
 19 Q. To the EULA?  
 20 A. Yes.  
 21 Q. What is the EULA?  
 22 A. End user license agreement.  
 23 Q. So that's E-U-L-A?  
 24 A. That's correct.  
 25 Q. Is it your testimony, then, that 3.1.1 was

1 not distributed pursuant to the GPL?  
 2 A. There were parts of it. My testimony is  
 3 that parts of it were distributed by the GPL, and the  
 4 EULA had no force or effect over the components that  
 5 were GPL. But the product or the solution was  
 6 distributed according to the EULA.  
 7 Q. Well, with respect to the file -- the SRNP  
 8 file that Mr. Spraul is referring to, do you agree  
 9 that that file was available for download from SCO's  
 10 FTP server on the date of this email; that is,  
 11 June 15th, 2003?  
 12 A. It appears that the person that wrote the  
 13 email thought that the file was available when he sent  
 14 the email.  
 15 Q. Yes. But what is your independent  
 16 knowledge of that? Do you have independent knowledge  
 17 of that?  
 18 A. I -- I don't.  
 19 Q. Well, wasn't it part of your  
 20 responsibilities, as the person in charge of  
 21 distribution of Linux, to be aware of what code was or  
 22 was not available for distribution on SCO's FTP  
 23 servers?  
 24 A. We respected all of the license agreements  
 25 that we had, whether they were third party, whether

1 they were open source. The fulfillment of all of  
 2 those obligations required many people in the company.  
 3 Engineering or someone associated with a technical  
 4 group would be the ones that actually posted code to  
 5 an FTP site.  
 6 MR. GREENWALD: Well, could -- could I  
 7 have the question again that I just asked.  
 8 (The pending question was read back.)  
 9 MR. GREENWALD: Could you answer that  
 10 question again. I don't believe your last answer  
 11 responded to it.  
 12 A. I believe that --  
 13 MR. HEISE: Objection to form.  
 14 You may answer.  
 15 A. When you asked me what my responsibilities  
 16 were earlier in the day, I testified that they were  
 17 business related, and so it was --  
 18 My responsibilities were to bring together  
 19 all of the -- the groups inside the company that  
 20 needed to run a product; and each of the details  
 21 associated with running a product, such as posting  
 22 some code to an FTP site, was not something I did  
 23 personally.  
 24 Q. BY MR. GREENWALD: But it was within the  
 25 scope of your overall responsibilities to be aware of

1 what codes are on the FTP sites, correct?  
 2 A. No.  
 3 Q. Whose job was it?  
 4 A. I believe that responsibility is in  
 5 engineering.  
 6 Q. Who in engineering?  
 7 A. Development manager over -- over each  
 8 individual product would be responsible for their --  
 9 Q. Who is the development manager for 3.1.1?  
 10 A. I believe at that time the gentleman's  
 11 name was Ed Orcutt.  
 12 MR GREENWALD: I'd like to hand you  
 13 Deposition Exhibit 7.  
 14 Q. Do you recognize this document?  
 15 A. No.  
 16 Q. All right. You'll agree with me, though,  
 17 that it appears to be an email from a man named  
 18 Jonathan Corbet to Blake Stowell, dated August 5th,  
 19 2003?  
 20 A. That's right.  
 21 Q. And you'll agree with me that the subject  
 22 of the email appears to be SCO and the GPL?  
 23 A. Yes.  
 24 Q. Do you know a Jonathan Corbet?  
 25 A. No, I do not. It appears from his email

1 alias that he works for Linux Weekly News or something  
 2 like that.  
 3 Q. What is Linux Weekly News?  
 4 A. It's a publication.  
 5 Q. Is it a publication that you subscribe to?  
 6 A. No.  
 7 Q. Is it a publication that you've read?  
 8 A. I may have read it.  
 9 Q. What would you -- how would you describe  
 10 its standing within the Linux community, that  
 11 publication?  
 12 MR. HEISE: Objection to form.  
 13 MR. GREENWALD: Let me withdraw.  
 14 Q. How would you with describe that  
 15 publication's reputation within the Linux community.  
 16 MR. HEISE: Objection to the form.  
 17 You may answer.  
 18 A. I have no basis on determining what its  
 19 standing is in the Linux community.  
 20 Q. BY MR. GREENWALD: Directing your  
 21 attention to the sentence in which Mr. Corbet states,  
 22 quote,  
 23 "I verify this morning that it is  
 24 still possible to download source for  
 25 a 2.4 kernel from ftp.sco.com," close

1 quote.  
 2 Is that true; that is, that as of  
 3 August 5th, 2003 it was possible to download source  
 4 for -- from the 2.4 kernel from SCO's FTP servers?  
 5 MR. HEISE: Objection to form and exceeds  
 6 the scope of this witness's designation.  
 7 You may answer.  
 8 A. It appears that the author thinks that  
 9 he -- that he can download the 2.4 kernel from  
 10 ftp.sco.com.  
 11 Q. BY MR. GREENWALD: Well, my question is:  
 12 Are you aware that that was true on August 5th, 2003?  
 13 MR. HEISE: Same objections.  
 14 You may answer.  
 15 A. I didn't ever go up there and look.  
 16 Q. BY MR. GREENWALD: Do you have any basis  
 17 for knowing one way or the other?  
 18 MR. HEISE: Same objections.  
 19 A. I assume that -- that for customers that  
 20 needed to get some of these things, they were still  
 21 there.  
 22 Q. BY MR. GREENWALD: Why would a customer  
 23 have needed to get some of these things, as you put  
 24 it?  
 25 A. Well, our FTP site -- well, let me

1 rephrase that.  
 2 Our FTP site remained active for customers  
 3 that need what we generally put up there.  
 4 Q. And that included the Linux 2.4 kernel?  
 5 A. I don't know.  
 6 Q. If it did -- if it included the 2.4  
 7 kernel, would that have been consistent or  
 8 inconsistent with the May 14th, 2003 suspension of  
 9 Linux distributions?  
 10 MR. HEISE: Objection to form.  
 11 You may answer.  
 12 Exceeds the scope as well.  
 13 THE WITNESS: I'm sorry, what was your  
 14 question again?  
 15 Q. BY MR. GREENWALD: If the server -- if the  
 16 FTP site included the Linux 2.4 kernel, would that  
 17 have been consistent or inconsistent with the  
 18 company's May 14th suspension of Linux distributions?  
 19 MR. HEISE: Same objections.  
 20 A. I don't know whether it would be  
 21 consistent or not with our suspension of sales and  
 22 marketing of Linux, but we were providing the -- to  
 23 customers that were under contract, we were continuing  
 24 to provide what they needed to run their business.  
 25 Q. BY MR. GREENWALD: Well, are there any

1 circumstances -- why do you say you don't know?  
 2 A. I don't know if it's --  
 3 MR. HEISE: Same objections.  
 4 A. -- with the decision to suspend the Linux.  
 5 Q. BY MR. GREENWALD: Well, it would seem to  
 6 me that it is, isn't it, because distribution of Linux  
 7 encompasses distribution of the Linux 2.4 kernel,  
 8 correct?  
 9 MR. HEISE: Same objections.  
 10 A. I believe that I have stated that we  
 11 suspended the sales and marketing of Linux but we  
 12 continued to honor the contractual obligations we had  
 13 with existing customers, and providing them support  
 14 and maintenance.  
 15 Q. BY MR. GREENWALD: But under what  
 16 circumstances would a preexisting Linux customer need  
 17 a whole new version of the kernel?  
 18 MR. HEISE: Same objections.  
 19 You may answer.  
 20 A. I don't know.  
 21 Q. BY MR. GREENWALD: Can you think of any  
 22 circumstances?  
 23 A. They lost their media kit.  
 24 Q. They lost their media kit?  
 25 A. Yeah, maybe they lost their media kit.

1 That's --  
 2 Q. So --  
 3 A. That's one instance where I could think  
 4 they may need a new kernel.  
 5 Q. And it was SCO's policy that if a customer  
 6 lost a product, to replace that product free of  
 7 charge?  
 8 A. No.  
 9 Q. Now, in the same email Mr. Corbet asked  
 10 the question, quote,  
 11 "What is SCO's position regarding the  
 12 licensing of the code found in the  
 13 2.4 kernel it is distributing?"  
 14 close quote.  
 15 What -- had you been posed that question  
 16 on August -- well, let me not ask it that way.  
 17 What is your answer to that question?  
 18 MR. HEISE: Objection. Exceeds the scope  
 19 of the witness's designation.  
 20 You may answer.  
 21 MR. GREENWALD: Well, let me ask that  
 22 again.  
 23 Q. Directing your attention to the question  
 24 in the second paragraph, quote,  
 25 "What is SCO's position regarding the

1 licensing of the code found in the  
 2 2.4 kernel it is distributing?"  
 3 close quote.  
 4 What is the answer to that question?  
 5 MR. HEISE: Objection as stated earlier.  
 6 A. From -- I'm going to answer this question  
 7 from a product point of view and not a company point  
 8 of view.  
 9 From a product point of view, when we  
 10 distributed Linux, our position was that the licensing  
 11 of the code in the 2.4 kernel was under the terms of  
 12 the GPL.  
 13 MR. GREENWALD: Could you read back the  
 14 question for me -- the answer for me.  
 15 (The previous answer was read back.)  
 16 Q. BY MR. GREENWALD: Would distribution of  
 17 the Linux kernel 2.4 on August 5th, 2003 have been  
 18 under the terms of the GPL?  
 19 MR. HEISE: Same objections.  
 20 A. If it was a product-related delivery, yes.  
 21 Q. BY MR. GREENWALD: And if on August 5th,  
 22 2003, SCO was in breach of the GPL, would that  
 23 distribution have been pursuant to the GPL?  
 24 MR. HEISE: Same objections, including  
 25 objections to form.

1 You may answer.  
 2 A. I'm not familiar enough with the terms of  
 3 the GPL to know whether it was or was not in violation  
 4 of the GPL.  
 5 Q. BY MR. GREENWALD: I'd like now to focus  
 6 on the second question in Mr. Corbet's email. Quote,  
 7 "Does SCO feel entitled to infringe  
 8 upon the copyrights of contributors  
 9 to the Linux kernel?" close quote.  
 10 What is the answer to that question?  
 11 MR. HEISE: Objection to form. Also  
 12 exceeds the scope of this witness's designation.  
 13 A. From a product point of view, the company  
 14 has always honored licenses of third-party commercial  
 15 software packages that we distribute a lot of, as well  
 16 as our own intellectual property, as well as  
 17 open-source packages.  
 18 MR. GREENWALD: I'd like to hand you  
 19 what's been marked as Deposition Exhibit 8.  
 20 THE WITNESS: Thanks.  
 21 (There was a discussion held off the record.)  
 22 Q. BY MR. GREENWALD: Do you recognize  
 23 Deposition Exhibit 8?  
 24 A. No, I do not.  
 25 Q. Do you know who Kieran O'Shaughnessy is?

1 A. Yes, I do.  
 2 Q. Is it a man or a woman?  
 3 A. It's a man.  
 4 Q. Who is Mr. O'Shaughnessy?  
 5 A. He is a country manager for Australia.  
 6 Q. And who is Porter Olsen?  
 7 A. Porter Olsen is a product manager.  
 8 Q. Directing your attention to the first line  
 9 of email, quote -- in which Mr. O'Shaughnessy writes,  
 10 quote,  
 11 "I have just had enquiring email from  
 12 an Open Source guy that among other  
 13 things, asserts that we are still  
 14 making a version of our Linux based  
 15 on the 2.4 kernel" -- sorry --  
 16 "available on our ftp site, under the  
 17 GPL."  
 18 What was the answer to Mr. O'Shaughnessy's  
 19 question as of July 23rd, 2003?  
 20 MR. HEISE: Same objections.  
 21 You may answer.  
 22 A. When a question like this comes in, we're  
 23 not the legal department, and so we would just bring  
 24 this attention -- to the attention of -- of our legal  
 25 department.

1 Q. BY MR. GREENWALD: Do you know as -- on  
 2 July 23rd, 2003, would you have known the answer to  
 3 that question?  
 4 MR. HEISE: Same objection to form.  
 5 You may answer.  
 6 Q. BY MR. GREENWALD: Did you know the answer  
 7 to that question on July 23rd?  
 8 MR. HEISE: Objection to form.  
 9 You may answer.  
 10 A. Our FTP site was still active, and -- at  
 11 that time in August, July.  
 12 Q. BY MR. GREENWALD: So the answer is yes?  
 13 A. Yes.  
 14 MR. HEISE: Objection.  
 15 Q. BY MR. GREENWALD: Did there come a time  
 16 that the 2.4 kernel has ceased to be available on the  
 17 FTP site?  
 18 MR. HEISE: Objection. Same objections.  
 19 A. I think I've stated I don't know if it's  
 20 up there. I haven't been up there to look at it. We  
 21 haven't shut down our FTP server.  
 22 MR. GREENWALD: I'd like you now to turn  
 23 to what's been marked as Deposition Exhibit 9.  
 24 Q. Do you recognize Deposition Exhibit 9?  
 25 A. No, I do not.

1 Q. Who is John Boland?  
 2 A. John Boland is one of our support  
 3 personnel in Europe.  
 4 Q. And who is Rhonda P?  
 5 A. Rhonda -- her last name is not coming  
 6 right now. She's an employee.  
 7 Q. Here in Utah?  
 8 A. In Santa Cruz.  
 9 Q. In Santa Cruz?  
 10 A. Uh-huh.  
 11 Q. Direct -- directing your attention to the  
 12 bottom of the page where John Boland is quoted as  
 13 saying, quote,  
 14 "Can I request that the SCO Linux 4.0  
 15 for Itanium Processor link be removed  
 16 from  
 17 www.sco.com/support/download.html as  
 18 we never officially shipped this  
 19 product."  
 20 And my question to you is whether --  
 21 whether you recognize a distinction between official  
 22 and unofficial shipments of a SCO product?  
 23 MR. HEISE: Objection to form.  
 24 You may answer.  
 25 A. Yeah. The product announcement went out a

1 month before the Linux suspension --  
 2 MR. GREENWALD: Yes.  
 3 A. -- and so I -- I would need to go back and  
 4 check and see if we actually ever did ever ship a  
 5 version, if a customer had ever ordered it, or we  
 6 fulfilled it or not.  
 7 I don't -- I don't recall whether we  
 8 officially shipped the product or not.  
 9 Q. BY MR. GREENWALD: Well, if I'm not  
 10 mistaken we looked earlier at a set of invoices that  
 11 showed clearly shipments of Linux Server 4.0; isn't  
 12 that correct?  
 13 A. That's for --  
 14 MR. HEISE: Objection to form.  
 15 A. -- Linux Server 4.0. This is for Itanium,  
 16 which is a high-end 64-bit processor.  
 17 MR. GREENWALD: Oh, I see.  
 18 Q. Was the Linux Server 4.0 product you --  
 19 that was -- whose -- whose shipments were reflected in  
 20 the invoices we looked at earlier, what version of the  
 21 kernel did that product contain?  
 22 MR. HEISE: Objection to form.  
 23 You may answer.  
 24 A. The 2.4 series kernel.  
 25 Q. BY MR. GREENWALD: Okay. And when was

1 that -- when was that product's introduction -- when  
 2 was that product's introduction announced?  
 3 A. You're -- you're referring to SCO --  
 4 Q. SCO Linux 4.0, not 4.0 for the Itanium  
 5 processor.  
 6 A. We tried to -- it doesn't always work out.  
 7 We try to send our product out -- announcements out  
 8 four to six weeks before the product ships, so since  
 9 the product shipped in November we probably tried to  
 10 send out the product announcement in October of 2002.  
 11 Q. So if I understand your testimony, Linux  
 12 Server 4.0 shipped in November 2002, and it contained  
 13 the 2.4 kernel?  
 14 A. That's correct.  
 15 Q. And if I also understand your testimony,  
 16 Linux Server 4.0 for the Itanium processor was  
 17 announced in --  
 18 A. -- April.  
 19 Q. -- April 2003?  
 20 A. That's correct.  
 21 Q. Did that product ever ship?  
 22 A. I don't know.  
 23 Q. Were there any -- ever any sales of the  
 24 latter product?  
 25 A. I -- we can look and see but I don't know.

1 Q. All right. If you could also, in the  
 2 break, determine that as well. I'd like to ask that  
 3 question.  
 4 I'd like --  
 5 MR. HEISE: I don't mean to interrupt,  
 6 just make sure that -- because I -- I'm trying to make  
 7 accurate notes, what you want to know is the dollar  
 8 amounts --  
 9 MR. GREENWALD: Dollar amounts.  
 10 MR. HEISE: -- of SCO Linux 4.0, and SCO  
 11 Linux 4.0 for Itanium processor?  
 12 MR. GREENWALD: Correct.  
 13 MR. HEISE: And -- sorry.  
 14 MR. GREENWALD: And also dates of -- last  
 15 date of the shipment of each.  
 16 MR. HEISE: And just as housekeeping  
 17 matter, because we've got witnesses --  
 18 MR. GREENWALD: Yep.  
 19 MR. HEISE: -- kind of lined up, any  
 20 idea -- and I'm not trying to rush you -- whatever is  
 21 appropriate --  
 22 MR. GREENWALD: I think I can finish with  
 23 him in the next -- and I hope -- my game plan is to  
 24 finish with him in the next 20 minutes.  
 25 MR. HEISE: Okay. And then maybe what

1 we'll do is take a break, then he can make some phone  
 2 calls if he can find out the answers, and then, I  
 3 don't know, if you want to pop him back in -- or maybe  
 4 he can do it during the break and we can just, you  
 5 know, excuse him for the day.  
 6 MR. GREENWALD: Sure.  
 7 MR. HEISE: Okay?  
 8 MR. GREENWALD: Sure.  
 9 Okay. I'd like to hand you now what's  
 10 been marked as Deposition Exhibit 10.  
 11 Q. Do you recognize 10?  
 12 A. No, I do not.  
 13 Q. I believe you've testified earlier who  
 14 Jeff Hunsaker is. Who is Larry Gasparro?  
 15 A. Larry Gasparro is on the sales team.  
 16 Q. Is he still on the sales team?  
 17 A. Yes, he is.  
 18 Q. Who is Dean Zimmerman?  
 19 A. Dean Zimmerman is in marketing.  
 20 Q. I'd like to direct your attention to the  
 21 bottom email. Quote,  
 22 "Reading some of the comments on the  
 23 internet, the long hair smelly's  
 24 (sic) are indicating that we have not  
 25 turned off our Linux downloads?"

1 Close quote.  
 2 Who are the long hair smellies?  
 3 A. That's a common stereotypical name of  
 4 computer geeks.  
 5 Q. And do you know what comments of theirs  
 6 were being referred to?  
 7 MR. HEISE: Objection to form.  
 8 You may answer.  
 9 Q. BY MR. GREENWALD: Or do you know what  
 10 comments were being referred to in this email?  
 11 A. I do not.  
 12 Q. Was it correct that as of July 31st, 2003,  
 13 Linux code was -- was available for download from  
 14 SCO's website?  
 15 A. As I mentioned before, the FTP server was  
 16 still running. I am not personally aware of what's  
 17 been running on the FTP site.  
 18 MR. GREENWALD: I'd like to hand you  
 19 what's been marked as Deposition Exhibit 11.  
 20 Q. Do you recognize it?  
 21 A. I do not.  
 22 Q. Who is Steven Shankland?  
 23 A. Steven Shankland is a writer, computer  
 24 technology writer.  
 25 Q. Is he employed by SCO or no?

1 A. No.  
 2 Q. And who is Blake Stowell?  
 3 A. Blake Stowell is someone that works in  
 4 marketing.  
 5 Q. Directing your attention to the last line,  
 6 what are the Linux RPMs?  
 7 A. That's the common packaging mechanism for  
 8 Linux packages, is to package them as an RPM.  
 9 Q. Do you know what that's an acronym for?  
 10 A. Stand for RPM package manager.  
 11 Q. Okay. Now, do those Linux RPMs include  
 12 Linux code?  
 13 A. Yes, they do.  
 14 Q. Do they include kernel code?  
 15 A. Some can, yes, if they are kernel  
 16 packages.  
 17 Q. Do you know whether, as of July 31st,  
 18 kernel packages were available?  
 19 A. I do not.  
 20 MR. HEISE: Object to the form.  
 21 You may answer.  
 22 Q. BY MR. GREENWALD: Are Linux RPMs still  
 23 available for download?  
 24 A. We have a mirror site where we pass  
 25 through updates from UnitedLinux that our customers

1 can access, by password.  
 2 Q. I'd like to hand you what's been marked as  
 3 Deposition Exhibit 12.  
 4 Do you recognize this document?  
 5 A. I do not.  
 6 Q. Do you know who Jay Petersen is?  
 7 A. Yes, I do.  
 8 Q. Who is he?  
 9 A. Jay Petersen is a part of the New Jersey  
 10 engineering group.  
 11 Q. Who is Lesley M?  
 12 A. Lesley Mazerwitz, if I pronounced her name  
 13 correctly, is on a team that runs online services in  
 14 Santa Cruz.  
 15 Q. Do you know how to spell her last name?  
 16 A. I don't.  
 17 Q. How about Karen AD?  
 18 A. Karen Adams.  
 19 Q. Karen Adams, who is she?  
 20 A. Same group in Santa Cruz.  
 21 Q. Now, I'd like you to look it over, the  
 22 email.  
 23 A. Okay.  
 24 Q. Okay. Are you familiar with the general  
 25 subject of this email?

1 A. Yeah, it's what we've been talking about  
 2 for the last little bit.  
 3 Q. All right. What was this email, I guess,  
 4 from -- initially now from Rhonda -- seeking to  
 5 accomplish, from Rhonda to Jay Petersen?  
 6 MR. HEISE: Objection to form.  
 7 You may answer.  
 8 A. It looks like she is changing the FTP site  
 9 a little bit and putting a notice for visitors to that  
 10 FTP site.  
 11 Q. BY MR. GREENWALD: Why is she putting --  
 12 what does the notice say, first of all?  
 13 A. The notice is as it says is on Page 2.  
 14 Q. All right. What was -- why did she want  
 15 to put the notice there?  
 16 MR. HEISE: Objection to form.  
 17 You may -- excuse me -- you may answer.  
 18 Q. BY MR. GREENWALD: From what you can tell  
 19 from the email.  
 20 A. From what I can tell from the email, she  
 21 put the notice there to answer the questions that were  
 22 coming up from some of the long-haired Smellies on --  
 23 on why there was some of these products up on the FTP  
 24 site.  
 25 Q. And I take it that that answer was, if you

1 will, embedded in the second sentence of the notice;  
 2 that is, quote,  
 3 "SCO will, however, continue to  
 4 support existing SCO Linux and  
 5 Caldera OpenLinux customers  
 6 consistent with existing contractual  
 7 obligations," close quote.  
 8 A. I think the notice speaks for itself.  
 9 Q. Now, is it fair to conclude that as of  
 10 this email, Rhonda Petersen had determined that SCO's  
 11 website contained Linux code available for download?  
 12 A. Rhonda Powers?  
 13 Q. Excuse me. Excuse me. Rhonda Powers,  
 14 that's right. Rhonda Powers had determined that SCO's  
 15 website obtained Linux code available for download?  
 16 MR. HEISE: Objection to form.  
 17 You may answer.  
 18 A. That appears so.  
 19 Q. BY MR. GREENWALD: Now, directing your  
 20 attention to Jay Petersen's response where he says,  
 21 quote,  
 22 "This looks good except that I don't  
 23 want to have this notice come up with  
 24 Volution," V-o-l-u-t-i-o-n, "SCO  
 25 Office or sco/pub/opensource. This

1 should really just apply to our Linux  
2 OS products, not Open Source  
3 applications," close quote.  
4 Why -- do you understand why Mr. Petersen  
5 held that view?  
6 MR. HEISE: Objection to form.  
7 You may answer.  
8 A. Volution and SCO Office were application  
9 products. Volution was a systems management product,  
10 SCO Office was a collaboration product, and in his  
11 opinion looks -- it appears he didn't think they  
12 applied to what she was doing.  
13 Q. BY MR. GREENWALD: I'm not sure I  
14 understand why.  
15 Why wouldn't they apply? Why would it  
16 follow, from what you just said, that the notice  
17 wouldn't apply to those?  
18 A. From this email I really -- I don't see --  
19 I can't speculate why Jay Petersen felt they didn't  
20 apply, other than that they were -- they were  
21 products, they were not operating systems.  
22 Q. Do you feel that distinction -- I'm just  
23 trying to understand the basis of the distinction.  
24 Can you articulate the basis for it?  
25 MR. HEISE: Objection to the form.

1 You may answer.  
2 A. As I said, it appears Jay sees our  
3 application products, Volution and SCO Office, as not  
4 having to fall under the same notice as operating  
5 system products.  
6 Q. BY MR. GREENWALD: Do-- do those -- do  
7 Volution and SCO office, for example, contain Linux  
8 operating system code?  
9 A. They do not include Linux kernel code, no.  
10 Q. Okay. But do they include operating  
11 system code?  
12 A. What do you mean by operating system code?  
13 Q. Well, you just said it, so -- do they  
14 include code that is part of the operating system, the  
15 GNU/Linux operating system?  
16 MR. HEISE: Objection to form.  
17 You may answer.  
18 A. They include some code that is open source  
19 software, but they may or may not -- we didn't  
20 consider them part of the operating system. We  
21 included them as part of these applications.  
22 Q. BY MR. GREENWALD: All right. Are you  
23 familiar with the term "SCO Education" as it was used  
24 within SCO?  
25 A. Yes, I am.

1 Q. What did that term refer to?  
2 A. SCO Education referred to an education  
3 initiative that we had which was chartered as a profit  
4 center, profit loss.  
5 We had courses that were instructor-led  
6 courses that we sold. We had online courses that we  
7 sold, and certification, where it's pretty much  
8 standard in the industry to provide some kind of --  
9 some level of certification that -- that could have  
10 some value in the industry. And that -- that's what  
11 SCO Education was about.  
12 MR. HEISE: I don't mean to interrupt, but  
13 you sound like you just switched gears.  
14 MR. GREENWALD: Yes, I did.  
15 MR. HEISE: When we come back, if we could  
16 just take a short break, and I can try and get the  
17 answers to your questions and also take care of some  
18 other business real quickly.  
19 MR. GREENWALD: Let's go off the record  
20 for a moment.  
21 VIDEOGRAHER: Off the record 11:28.  
22 (There was a discussion held off the record.)  
23 (There was a break taken.)  
24 VIDEOGRAHER: We're on the record at  
25 11:49. Counsel may proceed.

1 Q. BY MR. GREENWALD: Could you tell me the  
2 volume of sales of Linux Server 4.0.  
3 A. Sure. For SCO Linux 4, 32 bit, there were  
4 several different SKUs. The first one was the OEM  
5 SKU, there were zero sales. For the NFR, not for  
6 resale, there were \$4,688.75 -- actually I know it was  
7 a return -- how about I just give you the total?  
8 Would you like the total?  
9 Q. How many SKUs are there in total?  
10 A. There are five. Three of those have a  
11 return that happened in recent quarters that I haven't  
12 subtracted out.  
13 Q. Let's just take the total.  
14 A. Okay. The total is 175,861.  
15 Q. 175,861?  
16 A. That's right.  
17 Q. That represents the total dollar revenues  
18 derivable from sales of SCO Linux 4.0?  
19 A. That's correct.  
20 Q. And what was the last date on which a  
21 version of that product was shipped?  
22 A. The 31st of December, 2003.  
23 Q. Let's -- all right. Now let's turn to SCO  
24 Linux 4.0 for the Itanium processor. What was the  
25 dollar revenues associated with that product?



1 A. Zero.  
 2 Q. I suppose it may follow -- well, how many  
 3 units of that product shipped?  
 4 A. Zero.  
 5 Q. All right.  
 6 MR. HEISE: If you're switching back, let  
 7 me just put on the record, you know, we've provided  
 8 these materials that are through the first quarter of  
 9 2004 from which he derived this information; and in  
 10 preparing for this deposition, the Interrogatory 11  
 11 did not include some of the products that are now  
 12 incorporated in all of the items incorporated in  
 13 Item 3 are both Unix and Linux products, so now that  
 14 encompasses every single product, including the few  
 15 that were missing from Interrogatory 11, in  
 16 preparation for this deposition.  
 17 MR. GREENWALD: And when you say "these  
 18 documents" you're pointing to what?  
 19 MR. HEISE: Exhibit 3(a).  
 20 MR. GREENWALD: What's been marked as  
 21 Exhibit 3(a)?  
 22 MR. HEISE: Correct.  
 23 MR. GREENWALD: Do those documents have  
 24 Bates numbers on them?  
 25 MR. HEISE: No, they're just -- they're

1 divided by year, and they -- I believe chronologically  
 2 they're --  
 3 MR. GREENWALD: Okay. Why don't I then  
 4 take a look at -- are they all in the same format?  
 5 MR. HEISE: Yes.  
 6 MR. GREENWALD: All right. Maybe then if  
 7 I could just go through one so we can understand what  
 8 each column is and how to read them.  
 9 THE WITNESS: Sure.  
 10 Q. BY MR. GREENWALD: What I'm looking at is  
 11 a seven-column spreadsheet. Are all the documents in  
 12 that format, they're seven-column spreadsheets?  
 13 A. Yes, they are.  
 14 Q. All right. Now, could you tell me what  
 15 the first column represents. In -- in my -- well,  
 16 actually it's more complicated than that.  
 17 I have on the heading a -- well, the  
 18 heading -- the heading page I have says product  
 19 revenue for the period of fiscal year 2004 to one FQ  
 20 04 November 2003 to January 2004. I think that's  
 21 self-explanatory, but --  
 22 MR. HEISE: Obviously we're not working  
 23 off the same one. Ours says --  
 24 MR. GREENWALD: Yeah.  
 25 MR. HEISE: -- you know, fiscal year 2003

1 November 2002 to October 2003.  
 2 Q. BY MR. GREENWALD: How do you define  
 3 product --  
 4 (There was a discussion held off the record.)  
 5 Q. BY MR. GREENWALD: Not to be too picky  
 6 here, but is there an agreed-upon definition of  
 7 product revenue here that I should be aware of?  
 8 A. This is all product revenue.  
 9 Q. I see a row entitled sum of total EXT NET.  
 10 What does that mean?  
 11 A. That's -- this printout is from a finance  
 12 application --  
 13 Q. Right.  
 14 A. -- and that -- I don't know what that  
 15 specific abbreviation means.  
 16 Q. Underneath I see headings for seven  
 17 columns. One is entitled Grouping. What does  
 18 Grouping refer to?  
 19 A. Grouping means the -- the product family.  
 20 Q. What are -- how many product families does  
 21 SCO have?  
 22 A. There are Unix products, Linux products,  
 23 layered products, I believe are -- are all the main  
 24 product families. OpenServer, UnixWare are separate  
 25 product families.

1 Q. What does "layered" mean?  
 2 A. Layered on top of the operating system.  
 3 Q. I see.  
 4 I see another column entitled Product Line  
 5 Description: What does that refer to?  
 6 A. A description of the -- the product line.  
 7 Let me find an example. So a product  
 8 family of Linux, a product line description is SCO  
 9 Linux 4.  
 10 Q. What about the column entitled Item?  
 11 A. Item Number is our product number, part  
 12 number.  
 13 Q. Does that correspond to a SKU number?  
 14 A. Yes, it does.  
 15 Q. The next column is entitled Item --  
 16 D-E-S-C-P one. I guess Item Description One?  
 17 A. That's right.  
 18 Q. What does that mean?  
 19 A. That's describing each of the different  
 20 SKUs and what they are.  
 21 Q. Next column says Sold to Name. What does  
 22 that refer to?  
 23 A. That's the name of the customer.  
 24 Q. The next column says Invoice Date. What  
 25 does that refer to?