

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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**DOCKETING STATEMENT**

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Case Name: The SCO Group, Inc. v. Novell, Inc.

Appeal No. (if available) : 10-4122

Court/Agency Appeal From: United States District Court for the District of Utah

Court/Agency Docket No.: 2:2004-cv-00139 District Judge: Hon. Ted Stewart

Party or Parties filing Notice of Appeal/Petition: The SCO Group, Inc.

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**I. TIMELINESS OF APPEAL OR PETITION FOR REVIEW**

**A. APPEAL FROM DISTRICT COURT**

1. Date notice of appeal filed: July 7, 2010

a. Was a motion filed for an extension of time to file the notice of appeal? If so, give the filing date of the motion, the date of any order disposing of the motion, and the deadline for filing notice of appeal: No.

b. Is the United States or an officer or an agency of the United States a party to this appeal? No.

2. Authority fixing time limit for filing notice of appeal:

Fed. R. App. 4 (a)(1)(A) <u>X</u>	Fed. R. App. 4(a)(6) _____
Fed. R. App. 4 (a)(1)(B) _____	Fed. R. App. 4(b)(1) _____
Fed. R. App. 4 (a)(2) _____	Fed. R. App. 4(b)(3) _____
Fed. R. App. 4 (a)(3) _____	Fed. R. App. 4(b)(4) _____
Fed. R. App. 4 (a)(4) _____	Fed. R. App. 4(c) _____
Fed. R. App. 4 (a)(5) _____	

Other: \_\_\_\_\_

3. Date final judgment or order to be reviewed was filed and **entered** on the district court docket: June 10, 2010

4. Does the judgment or order to be reviewed dispose of **all** claims by and against **all** parties? *See* Fed. R. Civ. P. 54(b).  
Yes.

**(If the order being appealed is not final, please answer the following questions in this section.)**

- a. If not, did district court direct entry of judgment in accordance with Fed. R. Civ. P. 54(b)? When was this done?  
\_\_\_\_\_
- b. If the judgment or order is not a final disposition, is it appealable under 28 U.S.C. § 1292(a)? \_\_\_\_\_
- c. If none of the above applies, what is the **specific** statutory basis for determining that the judgment or order is appealable? \_\_\_\_\_
5. Tolling Motions. *See* Fed. R. App. P. 4(a)(4)(A); 4(b)(3)(A).
- a. Give the filing date of any motion under Fed. R. Civ. P. 50(b), 52(b), 59, 60, including any motion for reconsideration, and in a criminal appeal any motion for judgment of acquittal, for arrest of judgment or for new trial, filed in the district court:  
\_\_\_\_\_
- b. Has an order been entered by the district court disposing of that motion, and, if so, when? \_\_\_\_\_  
\_\_\_\_\_
6. Bankruptcy Appeals. (To be completed only in appeals from a judgment, order or decree of a district court in a bankruptcy case or from an order of the Bankruptcy Appellate Panel.)

Are there assets of the debtor subject to administration by a district or bankruptcy court? \_\_\_\_\_

Please state the approximate amount of such assets, if known.

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**B. REVIEW OF AGENCY ORDER** (To be completed only in connection with petitions for review or applications for enforcement filed directly with the Court of Appeals.)

1. Date petition for review was filed: \_\_\_\_\_
2. Date of the order to be reviewed: \_\_\_\_\_
3. Specify the statute or other authority granting the court of appeals jurisdiction to review the order: \_\_\_\_\_  
\_\_\_\_\_
4. Specify the time limit for filing the petition (cite specific statutory section or other authority): \_\_\_\_\_  
\_\_\_\_\_

**C. APPEAL OF TAX COURT DECISION**

1. Date notice of appeal was filed: \_\_\_\_\_  
(If notice was filed by mail, attach proof of postmark.)
2. Time limit for filing notice of appeal: \_\_\_\_\_
3. Date of entry of decision appealed: \_\_\_\_\_
4. Was a timely motion to vacate or revise a decision made under the Tax Court's Rules of Practice, and if so, when? *See* Fed. R. App. P. 13(a) \_\_\_\_\_

**II. LIST ALL RELATED OR PRIOR RELATED APPEALS IN THIS COURT WITH APPROPRIATE CITATION(S).**

SCO Group v. Novell, Inc., 08-4154 Notice of Appeal filed August 1, 2008 by Movant-Appellant Jonathan Lee Riches. Appeal dismissed on October 6, 2008 pursuant to Tenth Cir. R. 42.1 for failure to prosecute.

SCO Group v. Novell, Inc., 08-4217 Notice of Appeal filed November 25, 2008 by Appellant The SCO Group, Inc. Opinion issued August 24, 2009.

**III. GIVE A BRIEF DESCRIPTION OF NATURE OF ACTION AND RESULT BELOW.**

Plaintiff, The SCO Group, Inc. (“SCO”), brought suit against the Defendant, Novell, Inc. (“Novell”), principally to redress (i) Novell’s public claims that it owns the copyrights to the source code to the UNIX computer operating system, which copyrights SCO contends were transferred to SCO’s predecessor-in-interest in 1995 and thereafter to SCO; (ii) Novell’s claimed right to waive SCO’s rights under any contracts it owns concerning any legacy UNIX System V (or “SVRX”) computer operating system; and (iii) Novell’s decision to waive SCO’s rights under the Software and Sublicensing Agreements to which International Business Machines, Inc. (“IBM”) is party, and which SCO is seeking to enforce against IBM in parallel litigation in the District Court. Novell brought counterclaims principally claiming ownership of 95% of the money that SCO has received under several agreements that SCO has executed since 2003, including agreements with Microsoft, Inc. and Sun Microsystems, Inc., and requesting a declaratory judgment that SCO lacked the authority to enter into those agreements.

In an Order dated August 10, 2007, and Findings of Fact and Conclusions of Law dated July 16, 2008, following a four-day non-jury trial, both embodied in its Final Judgment dated November 20, 2008, the District Court (i) ruled, as a matter of law, that copyrights to the source code in the UNIX operating system were not transferred to SCO’s predecessor-in-interest in 1995; (ii) ruled, as a matter of law, that Novell has the right to waive SCO’s rights under any contracts it owns concerning SVRX; (iii) ruled, as a matter of law, that Novell has the right to waive SCO’s claims to enforce the IBM Software and Sublicensing Agreements; (iv) found that Novell is not entitled to any of the money that SCO has received under the foregoing agreements executed since 2003, except for a portion of the money received under the Sun Agreement; and (v) found that SCO had the authority to execute the SCOsource Agreements and Microsoft Agreement, but was not authorized to enter into the Sun Agreement based on the amendment of provisions concerning confidentiality requirements in a prior agreement with Sun.

Upon SCO’s appeal of rulings embodied in the Final Judgment of November 20,

2008, the Tenth Circuit ruled that the district court erred in concluding as a matter of law that (i) the copyrights in the UNIX operating system were not transferred to SCO's predecessor-in-interest in 1995; (ii) if the copyrights were not transferred in 1995, then SCO is not entitled specific performance, requiring transfer of the copyrights now; (iii) Novell has the right to waive SCO's rights under any contracts it owns concerning SVRX; and (iv) Novell did not have to comply with the covenant of good faith and fair dealing in exercising whatever rights it retained in 1995 with respect to those contracts. The Tenth Circuit accordingly reversed those rulings and remanded those issues for trial. Upon remand, the issue of copyright transfer was tried to a jury, and by stipulation of the parties, the remaining issues were concurrently tried to the district court.

On March 30, 2010, the jury returned a verdict for Novell, finding that the copyrights to the UNIX operating system did not transfer from Novell to SCO. Prior to the close of trial, SCO filed a Motion for Judgment as a Matter of Law, but the district court denied the Motion, erroneously concluding that the Motion was mooted by the court's judgment as a matter of law dismissing one of Novell's counterclaims for failure to prove damages. On April 27, 2010, SCO filed a Renewed Motion for Judgment as a Matter of Law, or in the Alternative, for a New Trial. On June 10, 2010, the district court (i) denied that Motion, (ii) issued Findings of Fact and Conclusions of Law in favor of Novell on the issues tried to the court, concluding that SCO is not entitled to specific performance requiring the transfer of the copyrights and that Novell properly waived SCO's rights under contracts concerning SVRX, and (iii) issued a Final Judgment embodying the jury verdict and the court's findings of facts and conclusions of law.

#### **IV. ISSUES RAISED ON APPEAL.**

- (1) Did the district court err in denying SCO's motion and renewed motion for judgment as a matter of law on the question whether the copyrights to the UNIX operating system were transferred to SCO's predecessor-in-interest in 1995?
- (2) Did the district court err in denying SCO's alternative motion for a new trial on the question whether the copyrights to the UNIX operating system were transferred to SCO's predecessor-in-interest in 1995?
- (3) Did the district court err in concluding that SCO was not entitled to specific performance, requiring transfer of those copyrights now, if they were not transferred to SCO's predecessor-in-interest in 1995?
- (4) Did the district court err in concluding that Novell is entitled to waive SCO's rights under contracts concerning SVRX?

(5) Did the district court err in concluding that Novell properly waived SCO's rights under contracts concerning SVRX?

**V. ADDITIONAL INFORMATION IN CRIMINAL APPEALS.**

- A. Does this appeal involve review under 18. U.S.C. § 3742(a) or (b) of the sentence imposed? \_\_\_\_\_
- B. If the answer to question in A is yes, does the defendant also challenge the judgment of conviction? \_\_\_\_\_
- C. Describe the sentence imposed. \_\_\_\_\_  
\_\_\_\_\_
- D. Was the sentence imposed after a plea of guilty? \_\_\_\_\_
- E. If the answer to question D is yes, did the plea agreement include a waiver of appeal and/or collateral challenges? \_\_\_\_\_
- F. Is defendant on probation or at liberty pending appeal? \_\_\_\_\_
- G. If the defendant is incarcerated, what is the anticipated release date if the judgment of conviction is fully executed? \_\_\_\_\_

**NOTE:** In the event expedited review is requested, the defendant shall consider whether a transcript of any portion of the trial court proceedings is necessary for the appeal. Necessary transcripts must be ordered at the time of appeal by completing and delivering the transcript order form to the clerk of the district court when a notice of appeal is filed. Defendant/appellant must refrain from ordering any unnecessary transcript as this will delay the appeal. If the court orders this appeal expedited, it will set a schedule for preparation of necessary transcripts, for designation and preparation of the record on appeal, and for filing briefs. If issues other than sentencing are raised by this appeal, the court will decide whether bifurcation is desirable.

**VI. INDICATE WHETHER ORAL ARGUMENT IS DESIRED IN THIS APPEAL.**

Yes. The factual background of the claims in this litigation is lengthy and complex and the appeal presents several legal issues that turn on detailed analysis of the applicable precedent. SCO seeks oral argument (i) to summarize and highlight for the Panel the particular facts and authority on which SCO would ask the Panel to focus; and (ii) to answer any questions from the Panel at that time, which SCO reasonably expects the Panel will have and pursue.

**VII. ATTORNEY FILING DOCKETING STATEMENT:**

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**PLEASE IDENTIFY ON WHOSE BEHALF THE DOCKETING STATEMENT IS FILED:**

A.  Appellant

Petitioner

Cross-Appellant

**B. PLEASE IDENTIFY WHETHER THE FILING COUNSEL IS**

Retained Attorney

Court-Appointed

Employed by a government entity  
(please specify \_\_\_\_\_)



Employed by the Office of the Federal Public Defender.

s/ Edward Normand  
Signature  
X Attorney at Law

July 21, 2010  
Date

**NOTE:** A copy of the court or agency docket sheet, the final judgment or order appealed from, any pertinent findings and conclusions, opinions, or orders, any motion filed under Fed. R. Civ. P. 50(b), 52(b), 59, or 60, including any motion for reconsideration, for judgment of acquittal, for arrest of judgment, or for new trial, and the dispositive order(s), any motion for extension of time to file notice of appeal and the dispositive order, and the notice of appeal or petition for review **must be submitted with the Docketing Statement**, except as otherwise provided in Section I of the instructions.

The Docketing Statement must be filed with the Clerk via the court's Electronic Case Filing System (ECF). Instructions and information regarding ECF may be found on the court's website, [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

This Docketing Statement must be accompanied by proof of service.

The following Certificate of Service may be used.

**CERTIFICATE OF SERVICE**

I, Edward Normand, hereby certify that on this 21st day of July, 2010, a true and correct copy of the foregoing **DOCKETING STATEMENT** was filed with the Court and served via electronic mail to the following recipients:

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**CERTIFICATE OF DIGITAL SUBMISSION**

The undersigned certifies with respect to this filing that no privacy redactions were necessary. This **DOCKETING STATEMENT** submitted in digital form is an exact copy of the written document filed with the Clerk. The digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program (using Symantec Antivirus which is updated weekly) and, according to the program, is free of viruses.

Dated: July 21, 2010

/s/ Edward Normand  
Edward Normand, Esq.

# **EXHIBIT 1**

APPEAL, **CLOSED**, COPYRIGHT, SUP\_CT

**Electronic Case Filing System**  
**District of Utah (Central)**  
**CIVIL DOCKET FOR CASE #: 2:04-cv-00139-TS**

SCO Grp v. Novell Inc  
Assigned to: Judge Ted Stewart  
Demand: \$0  
Case in other court: Tenth, 08-04154  
Supreme Court, 09-01061  
Tenth, 10-04122  
Third Dist, SL Cnty, 040900936  
Cause: 28:1441 Notice of Removal

Date Filed: 02/06/2004  
Date Terminated: 06/10/2010  
Jury Demand: None  
Nature of Suit: 820 Copyright  
Jurisdiction: Federal Question

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**Movant**

**Jonathan Lee Riches**  
*TERMINATED: 07/15/2008*

**Counter Claimant**

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**John J. Brogan**

(See above for address)

*TERMINATED: 12/11/2009**ATTORNEY TO BE NOTICED***Kevin P. McBride**

(See above for address)

*ATTORNEY TO BE NOTICED***Mark J. Heise**

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*ATTORNEY TO BE NOTICED***Sashi Bach Boruchow**

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*ATTORNEY TO BE NOTICED***Scott E. Gant**

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*ATTORNEY TO BE NOTICED***Sean Eskovitz**

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**Stephen Neal Zack**

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*ATTORNEY TO BE NOTICED***Stuart H. Singer**

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*ATTORNEY TO BE NOTICED***William T. Dzurilla**

(See above for address)

*ATTORNEY TO BE NOTICED*

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
02/06/2004	<a href="#">1</a>	Notice of Removal assigned to Judge Kimball Receipt no.: 136232 (Entered: 02/09/2004)
02/09/2004		Clerk's mailing of certificate of acknowledgment of alternative dispute resolution option. Mailed, faxed or emailed to plaintiff SCO Grp, defendant Novell Inc (Entered: 02/09/2004)
02/09/2004		Notification of Filing mailed to Register of Copyrights. (Entered: 02/09/2004)

02/09/2004	<a href="#">2</a>	Motion by Novell Inc to dismiss (blk) (Entered: 02/10/2004)
02/09/2004	<a href="#">3</a>	Memorandum by Novell Inc in support of [2-1] motion to dismiss (blk) (Entered: 02/10/2004)
02/09/2004	4	Notice of filing Original Affidavit of Ryan L. Richards Re: Memo in Support of Novell's Motion for Change of Venue. (motion and memo filed in State Court and not on this case docket yet) (blk) (Entered: 02/10/2004)
02/10/2004	<a href="#">5</a>	Certificate of election filed by plaintiff SCO Grp Refer to: Litigation (blk) (Entered: 02/11/2004)
02/10/2004	<a href="#">6</a>	Motion and Order signed by Judge Dale A. Kimball , 2/10/04 Granting motion/PHV for Attorney Goldstein Paul on behalf of defendant Novell Inc cc:attys (blk) (Entered: 02/12/2004)
02/10/2004	<a href="#">7</a>	Motion and Order signed by Judge Dale A. Kimball , 2/10/04 Granting motion/PHV for Attorney Michael A. Jacobs on behalf of defendant Novell Inc cc:attys (blk) (Entered: 02/12/2004)
02/10/2004	<a href="#">8</a>	Motion and Order signed by Judge Dale A. Kimball , 2/10/04 Granting motion/PHV for Attorney Matthew I. Kreeger on behalf of defendant Novell Inc cc:attys (blk) (Entered: 02/12/2004)
02/27/2004	<a href="#">9</a>	Stipulation by SCO Grp, Novell Inc stipulated to extend time for SCO to file a memo in opposition to Novell's motion to dismiss up to and including 3/5/04. SCO will not file any further pleadings in the matter until it files its opposition memo. (blk) (Entered: 03/01/2004)
03/01/2004	<a href="#">10</a>	Order granting [9-1] stipulation motion stipulated to extend time for SCO to file a memo in opposition to Novell's motion to dismiss up to and including 3/5/04. SCO will not file any further pleadings in the matter until it files its opposition memo signed by Judge Dale A. Kimball , 3/1/04 cc:atty (blk) (Entered: 03/02/2004)
03/05/2004	<a href="#">11</a>	Motion by SCO Grp to remand (blk) (Entered: 03/08/2004)
03/05/2004	<a href="#">12</a>	Memorandum by Novell Inc in support of [11-1] motion to remand (blk) (Entered: 03/08/2004)
03/05/2004	<a href="#">13</a>	Memorandum by SCO Grp in opposition to [2-1] motion to dismiss (blk) (Entered: 03/08/2004)
03/16/2004	<a href="#">14</a>	Stipulation by Novell Inc, SCO Grp to extend time for Novell to file reply memo in support of its motion to dismiss up to and including 3/19/04 (blk) (Entered: 03/17/2004)
03/17/2004	<a href="#">15</a>	Order granting [14-1] stipulation motion to extend time for Novell to file reply memo in support of its motion to dismiss up to and including 3/19/04 signed by Judge Dale A. Kimball , 3/17/04 cc:atty (blk) (Entered: 03/17/2004)
03/18/2004	<a href="#">16</a>	Stipulation by SCO Grp, Novell Inc to extend time for Novell to file opposition memo re: remand motion up to and including 3/26/04 (blk) (Entered: 03/18/2004)

03/19/2004	<a href="#">17</a>	Order granting [16-1] stipulation motion to extend time for Novell to file opposition memo re: remand motion up to and including 3/26/04 signed by Judge Dale A. Kimball , 3/19/04 cc:atty (blk) (Entered: 03/22/2004)
03/19/2004	<a href="#">18</a>	Reply by Novell Inc to response to [2-1] motion to dismiss (blk) (Entered: 03/23/2004)
03/23/2004	<a href="#">19</a>	Reply by Novell Inc to response to [2-1] motion to dismiss (blk) (Entered: 03/24/2004)
03/26/2004	<a href="#">20</a>	Memorandum by Novell Inc in opposition to [11-1] motion to remand (alt) (Entered: 03/29/2004)
04/07/2004	<a href="#">21</a>	Reply by SCO Grp to response to [11-1] motion to remand (blk) (Entered: 04/08/2004)
04/07/2004	22	Exhibit No. 1 filed by plaintiff SCO Grp RE: [11-1] motion to remand (blk) (Entered: 04/09/2004)
04/09/2004	<a href="#">23</a>	Notice of Hearing filed : Motion hearing set for 3:00 p.m. on 5/11/04 for [11-1] motion to remand To be held before Judge Dale A. Kimball cc:atty ( Ntc generated by: DAK, KJ.) (jmr) (Entered: 04/09/2004)
04/12/2004	<a href="#">24</a>	Amended Notice of Hearing filed : Motion hearing set for 3:00 5/11/04 for [11-1] motion to remand, set for 3:00 5/11/04 for [2-1] motion to dismiss To be held before Judge Kimball cc:atty ( Ntc generated by: clerk) (blk) (Entered: 04/12/2004)
05/04/2004	<a href="#">25</a>	Motion and Order signed by Judge Dale A. Kimball , 4/30/04 Granting motion/PHV for Attorney Scott E. Gant on behalf of plaintiff SCO Grp cc:attys (blk) (Entered: 05/05/2004)
05/11/2004	<a href="#">26</a>	Minute entry: Motion hearing held for [11-1] motion to remand, held for [2-1] motion to dismiss [11-1] motion to remand taken under advisement, [2-1] motion to dismiss taken under advisement ; Judge: DAK Court Reporter: Kelly Hicken Court Deputy: Kim Jones (kj) (Entered: 05/12/2004)
06/09/2004	<a href="#">27</a>	Motion and Order signed by Judge Dale A. Kimball , 6/9/04 Granting motion/PHV for Attorney Johnathan E. Mansfield on behalf of defendant Novell Inc cc:attys (blk) (Entered: 06/09/2004)
06/09/2004	<a href="#">28</a>	Motion and Order signed by Judge Dale A. Kimball , 6/9/04 Granting motion/PHV for Attorney Maame A.F. Ewusi-Mensah on behalf of defendant Novell Inc cc:attys (blk) (Entered: 06/09/2004)
06/09/2004	<a href="#">29</a>	Memorandum Decision denying [11-1] motion to remand, granting in part, denying in part [2-1] motion to dismiss: Dft's Motion to Dismiss is denied as to pla's pleading of falsity and granted as to pla's pleading of special damages. Pla is granted 30 days from the date of this order to amend its Complaint to more specifically plead special damages signed by Dale A. Kimball cc:atty (blk) (Entered: 06/10/2004)
07/07/2004	<a href="#">30</a>	Motion and Order signed by Judge Dale A. Kimball , 7/7/04 Granting motion/PHV for Attorney Robert Silver on behalf of plaintiff SCO Grp



		cc:attys (blk) (Entered: 07/08/2004)
07/09/2004	<a href="#">31</a>	SECOND Amended complaint by SCO Grp Amends [31-1] amended complaint; jury demand (kvs) (Entered: 07/12/2004)
07/22/2004	<a href="#">32</a>	Stipulation by SCO Grp, Novell Inc Stip to extend time upto 8/6/04 for Novell to answer or otherwise respond to pla's amended complaint (jmr) (Entered: 07/26/2004)
07/26/2004	<a href="#">33</a>	Order granting [32-1] stipulation motion to extend time upto 8/6/04 for Novell to answer or otherwise respond to pla's amended complaint signed by Judge Dale A. Kimball , 7/26/04 cc:atty. (jmr) (Entered: 07/26/2004)
07/29/2004	<a href="#">34</a>	Motion and Order signed by Judge Dale A. Kimball , 7/29/04 Granting motion/PHV for Attorney David E. Melaugh on behalf of defendant Novell Inc cc:attys (blk) (Entered: 07/30/2004)
08/06/2004	<a href="#">35</a>	Motion by Novell Inc to dismiss the Amended Complaint (blk) (Entered: 08/09/2004)
08/06/2004	<a href="#">36</a>	Ex parte motion by Novell Inc for leave to file overlength memorandum in support of motion to dismiss [35-1] (blk) (Entered: 08/09/2004)
08/06/2004	37	Declaration of Bruce Lowry Re: [35-1] motion to dismiss the Amended Complaint (blk) (Entered: 08/09/2004)
08/06/2004	38	Declaration of David E. Melaugh Re: [35-1] motion to dismiss the Amended Complaint (blk) (Entered: 08/09/2004)
08/09/2004	<a href="#">39</a>	Order granting [36-1] ex parte motion for leave to file overlength memorandum in support of motion to dismiss [35-1] signed by Judge Dale A. Kimball , 8/9/04 cc:atty (blk) (Entered: 08/10/2004)
08/09/2004	<a href="#">40</a>	Memorandum by Novell Inc in support of [35-1] motion to dismiss the Amended Complaint (blk) (Entered: 08/10/2004)
08/11/2004	<a href="#">41</a>	Notice of filing original declarations by Novell Inc (blk) (Entered: 08/11/2004)
08/23/2004	<a href="#">42</a>	Stipulation by SCO Grp, Novell Inc to extend time for SCO to file memo in opposition to Moiton to Dismiss by 9/7/04 (blk) (Entered: 08/24/2004)
08/24/2004	<a href="#">43</a>	Order granting [42-1] stipulation motion to extend time for SCO to file memo in opposition to Moiton to Dismiss by 9/7/04 signed by Judge Dale A. Kimball , 8/24/04 cc:atty (blk) (Entered: 08/25/2004)
08/30/2004	<a href="#">44</a>	Notice of Hearing filed : Motion hearing set for 2:00 9/15/04 for [35-1] motion to dismiss the Amended Complaint and motion for summary jgm To be held before Judge Kimball cc:atty ( Ntc generated by: KJ) (blk) (Entered: 08/30/2004)
09/01/2004	<a href="#">45</a>	Notice of VACATED Hearing filed : Hearing set for 9/15/04 at 2:00 p.m. set in error therefore is VACATED cc:atty ( Ntc generated by: BK) (blk) (Entered: 09/01/2004)

09/07/2004	<a href="#">46</a>	Stipulation by SCO Grp to extend time for SCO to file a memorandum in opposition to Novell's Motion to Dismiss up to and including 9/24/04 (blk) (Entered: 09/09/2004)
09/09/2004	<a href="#">47</a>	Order granting [46-1] stipulation motion to extend time for SCO to file a memorandum in opposition to Novell's Motion to Dismiss up to and including 9/24/04 signed by Judge Dale A. Kimball , 9/8/04 cc:atty (blk) (Entered: 09/10/2004)
09/24/2004	<a href="#">48</a>	Stipulation by SCO Grp, Novell Inc to extend time to 10/1/04 for SCO to resp to 2nd mot/dism (alt) (Entered: 09/24/2004)
09/24/2004	<a href="#">49</a>	Order granting [48-1] stipulation motion to extend time to 10/1/04 for SCO to resp to 2nd mot/dism signed by Judge Dale A. Kimball , 9/24/04 cc:atty (blk) (Entered: 09/27/2004)
10/01/2004	<a href="#">50</a>	Ex parte motion by SCO Grp for leave to file overlength opposition memo (blk) (Entered: 10/05/2004)
10/01/2004		Proposed document from SCO Grp entitled: Memo in opposition to Novell's motion to dismiss amended complaint (blk) (Entered: 10/05/2004)
10/04/2004	<a href="#">51</a>	Order granting [50-1] ex parte motion for leave to file overlength opposition memo signed by Judge Dale A. Kimball , 10/4/04 cc:atty (blk) (Entered: 10/05/2004)
10/04/2004	<a href="#">52</a>	Memorandum by SCO Grp in opposition to [35-1] motion to dismiss the Amended Complaint (blk) (Entered: 10/06/2004)
10/06/2004	<a href="#">53</a>	Stipulation by Novell Inc to extend time for Novell to file reply memorandum in support of second motion to dismiss up to and including 11/8/04 (blk) (Entered: 10/07/2004)
10/07/2004	<a href="#">54</a>	Order granting [53-1] stipulation motion to extend time for Novell to file reply memorandum in support of second motion to dismiss up to and including 11/8/04 signed by Judge Dale A. Kimball , 10/7/04 cc:atty (blk) (Entered: 10/07/2004)
11/08/2004	<a href="#">55</a>	Ex parte motion by Novell Inc for leave to file overlength memorandum (blk) (Entered: 11/09/2004)
11/08/2004	<a href="#">56</a>	Reply by Novell Inc to response to [35-1] motion to dismiss the Amended Complaint (blk) (Entered: 11/09/2004)
11/08/2004	<a href="#">57</a>	Declaration of Kellie Carlton Re: [35-1] motion to dismiss the Amended Complaint (blk) (Entered: 11/09/2004)
11/09/2004	<a href="#">58</a>	Order granting [55-1] ex parte motion for leave to file overlength memorandum signed by Judge Dale A. Kimball , 11/9/04 cc:atty (blk) (Entered: 11/10/2004)
11/10/2004	<a href="#">59</a>	Notice of filing by Novell Inc re: Original Declaration of Kellie Carlton in Support of Dft Novell's Motion to Dismiss, which contained a faxed signature page. (tsh) (Entered: 11/12/2004)

11/16/2004	<a href="#">60</a>	Notice of Hearing filed : Motion hearing set for 3:00 1/20/05 for [35-1] motion to dismiss the Amended Complaint To be held before Judge Kimball cc:atty ( Ntc generated by: KJ) (blk) (Entered: 11/16/2004)
12/28/2004	<a href="#">61</a>	Notice of Hearing filed : Motion hearing reset for 3:00 2/1/05 for [35-1] motion to dismiss the Amended Complaint To be held before Judge Kimball cc:atty ( Ntc generated by: KJ) (blk) (Entered: 12/28/2004)
01/25/2005	<a href="#">62</a>	Amended Notice of Hearing filed by plaintiff SCO Grp : Motion hearing reset for 3:00 3/8/05 for [35-1] motion to dismiss the Amended Complaint To be held before Judge Kimball cc:atty ( Ntc generated by: counsel for Pla) (blk) (Entered: 01/26/2005)
02/28/2005	<a href="#">63</a>	Motion by Novell Inc to continue hearing on motion to dismiss set for 3/8/05 (blk) (Entered: 02/28/2005)
02/28/2005	<a href="#">64</a>	Declaration of Heather M. Sneddon Re: [63-1] motion to continue hearing on motion to dismiss set for 3/8/05 (blk) (Entered: 02/28/2005)
02/28/2005	<a href="#">65</a>	Declaration of Michael A. Jacobs Re: [63-1] motion to continue hearing on motion to dismiss set for 3/8/05 (blk) (Entered: 02/28/2005)
03/01/2005	<a href="#">66</a>	Stipulation by Novell Inc, SCO Grp to continue hearing re: Motion to Dismiss Amended Complaint (blk) Modified on 03/02/2005 (Entered: 03/02/2005)
03/03/2005	<a href="#">67</a>	Order granting [66-1] stipulation motion to continue hearing re: Motion to Dismiss Amended Complaint, granting [63-1] motion to continue hearing on motion to dismiss set for 3/8/05, Motion hearing set for 3:00 5/25/05 for [35-1] motion to dismiss the Amended Complaint signed by Judge Dale A. Kimball , 3/2/05 cc:atty (blk) (Entered: 03/04/2005)
03/04/2005	<a href="#">68</a>	Original Declaration of Michael A. Jacobs Re: [66-1] stipulation motion to continue hearing re: Motion to Dismiss Amended Complaint (blk) (Entered: 03/04/2005)
03/04/2005	69	Notice of filing original declaration by Novell Inc (blk) (Entered: 03/04/2005)
05/23/2005	<a href="#">70</a>	MOTION/ORDER granting motion for Admission Pro Hac Vice for of Edward Normand for SCO Group. <i>Attorneys admitted pro hac vice may download a copy of the District of Utah's local rules from court's web site at <a href="http://www.utd.uscourts.gov">http://www.utd.uscourts.gov</a>.</i> Signed by Judge Dale A. Kimball on 5/23/05. (blk, ) (Entered: 05/23/2005)
05/24/2005	<a href="#">71</a>	MOTION/ORDER granting motion for Admission Pro Hac Vice for of Sean Eskovitz for SCO Group. <i>Attorneys admitted pro hac vice may download a copy of the District of Utah's local rules from court's web site at <a href="http://www.utd.uscourts.gov">http://www.utd.uscourts.gov</a>.</i> Signed by Judge Dale A. Kimball on 5/24/05. (blk, ) (Entered: 05/25/2005)
05/25/2005	72	Minute Entry for proceedings held before Judge Dale A. Kimball : Motion Hearing held on 5/25/2005 re <a href="#">35</a> Motion to Dismiss filed by Novell, Inc., motion taken under advisement. Attorney for Plaintiff: Edward Normand, Sean Eskovitz, Brent Hatch; Attorney for Defendant: Michael Jacobs,

		Thomas Karrenberg, John Mullen.(Court Reporter Becky Janke.) (kmj, ) (Entered: 05/25/2005)
06/07/2005	<a href="#">73</a>	MOTION/ORDER granting motion for Admission Pro Hac Vice for of Kenneth W. Brakebill for Novell, Inc.. <i>Attorneys admitted pro hac vice may download a copy of the District of Utah's local rules from court's web site at <a href="http://www.utd.uscourts.gov">http://www.utd.uscourts.gov</a>.</i> Signed by Judge Dale A. Kimball on 6/7/05. (blk, ) (Entered: 06/08/2005)
06/07/2005	<a href="#">74</a>	CERTIFICATE OF SERVICE of motion/application for admission pro hac vice by Novell, Inc. (blk, ) (Entered: 06/09/2005)
06/27/2005	<a href="#">75</a>	ORDER denying <a href="#">35</a> Motion to Dismiss . Signed by Judge Dale A. Kimball on 6/27/05. (sih, ) (Entered: 06/27/2005)
07/12/2005	<a href="#">76</a>	STIPULATION for extension of time to file Answer and Counterclaims in response to SCO's Amended Complaint by 7/29/05 by Novell, Inc. (blk, ) (Entered: 07/15/2005)
07/13/2005	<a href="#">77</a>	ORDER approving <a href="#">76</a> Stipulation for extension of time for Novell to answer Amended Complaint/file counterclaims by 7/29/05 . Signed by Judge Dale A. Kimball on 7/13/05. (blk, ) (Entered: 07/15/2005)
07/29/2005	<a href="#">78</a>	ANSWER to Amended Complaint with Jury Demand, COUNTERCLAIM against SCO Group filed by Novell, Inc.(ce, ) (Entered: 08/03/2005)
08/17/2005	<a href="#">79</a>	STIPULATION/MOTION for Extension of Time to File Answer re <a href="#">78</a> Answer to Amended Complaint, Counterclaim by 9/12/05 filed by Counter Defendant SCO Group. (blk, ) (Entered: 08/18/2005)
08/18/2005	<a href="#">80</a>	ORDER granting <a href="#">79</a> Motion for Extension of Time to Answer Answer deadline updated for SCO Group answer due 9/12/2005. . Signed by Judge Dale A. Kimball on 8/18/05. (blk, ) (Entered: 08/22/2005)
09/12/2005	<a href="#">81</a>	ANSWER to Counterclaim filed by SCO Group.(blk, ) (Entered: 09/14/2005)
11/10/2005	82	<b>NOTICE OF INITIAL PRETRIAL CONFERENCE:</b> (Notice generated by clerk)***The Attorneys Planning Meeting Report and Proposed Scheduling Order forms, available on the court web site at <a href="http://www.utd.uscourts.gov/documents/formpage.html">http://www.utd.uscourts.gov/documents/formpage.html</a> , should be prepared 30 days before the Initial Pretrial Conference hearing date. The Court may enter a scheduling order and vacate the hearing if counsel (a) file a stipulated Attorneys Planning Meeting Report and (b) e-mail a Proposed Scheduling Order to <a href="mailto:ipt@utd.uscourts.gov">ipt@utd.uscourts.gov</a> 30 days before the scheduled hearing.*** <b>Initial Pretrial Conference set for 12/20/2005 01:30 PM in Room 477 before Magistrate Judge David Nuffer.</b> (blk, ) (Entered: 11/10/2005)
11/29/2005	83	NOTICE REMINDER of Attorneys' Planning Meeting Report due five days from receipt of this notice re 82 <b>NOTICE OF INITIAL PRETRIAL CONFERENCE:</b> (Notice generated by clerk)***The Attorneys Planning Meeting Report and Proposed Scheduling Order forms, available on the court web site at <a href="http://www.utd.uscourts.gov/documents/formpage.html">http://www.utd.uscourts.gov/documents/formpage.html</a> , should be prepared 30 days before the Initial Pretrial Conference hearing date. The Court may enter a scheduling order and vacate the hearing if counsel (a) file a

		stipulated Attorneys Planning Meeting Report and (b) e-mail a Proposed Scheduling Order to ipt@utd.uscourts.gov 30 days before the scheduled hearing. *** <b>Initial Pretrial Conference set for 12/20/2005 01:30 PM in Room 477 before Magistrate Judge David Nuffer.</b> (blk, ) (tsh, ) (Entered: 11/29/2005)
12/01/2005	<a href="#">84</a>	REPORT OF ATTORNEY PLANNING MEETING. (blk, ) (Entered: 12/02/2005)
12/06/2005	<a href="#">85</a>	SCHEDULING ORDER: Initial Pretrial Conference vacated. Amended Pleadings due by 3/7/2006. Joinder of Parties due by 3/7/2006. Discovery due by 11/1/06, 1/12/2007. Motions due by 1/26/2007. Final Pretrial Conference set for 6/6/2007 02:30 PM in Room 220 before Judge Dale A. Kimball. 21 day Jury Trial set for 6/25/2007 08:30 AM in Room 220 before Judge Dale A. Kimball.. Signed by Judge David Nuffer on 12/6/05. (blk, ) (Entered: 12/06/2005)
12/06/2005	<a href="#">86</a>	CERTIFICATE OF SERVICE re: Discovery by Novell, Inc. (blk, ) (Entered: 12/07/2005)
12/14/2005	<a href="#">87</a>	CERTIFICATE OF SERVICE re: discovery by Novell, Inc. (kla, ) (Entered: 12/19/2005)
12/19/2005	88	<b>NOTICE OF HEARING:</b> (Notice generated by Kim Jones) Telephone Conference set for 1/25/2006 02:30 PM in Room 220 before Judge Dale A. Kimball. (kmj, ) (Entered: 12/19/2005)
12/30/2005	<a href="#">89</a>	MOTION to Amend/Correct, File Second Amended Complaint filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> exhibits)(blk, ) (Entered: 01/03/2006)
12/30/2005	<a href="#">90</a>	CERTIFICATE OF SERVICE of First Set of Interrogatories to SCO Grp by Novell, Inc. (blk, ) (Entered: 01/04/2006)
01/11/2006	<a href="#">91</a>	CERTIFICATE OF SERVICE re: First Request for Production of Documents and First Set of Interrogatories by SCO Group (blk, ) (Entered: 01/12/2006)
01/18/2006		Deadlines/Hearings terminated: telephone conference re: scheduling trial date is stricken by stipulation of counsel. (kmj, ) (Entered: 01/18/2006)
01/26/2006	<a href="#">92</a>	STIPULATION re: <a href="#">89</a> MOTION to Amend Amended Complaint by SCO Group, Novell, Inc (alt) (Entered: 01/31/2006)
01/31/2006	<a href="#">93</a>	ORDER granting <a href="#">89</a> Motion to Amend Amended Complaint. Signed by Judge Dale A. Kimball on 1/26/06 (alt) (Entered: 01/31/2006)
01/31/2006	<a href="#">94</a>	CERTIFICATE OF SERVICE re: Subpoena by Novell, Inc. (kla, ) (Entered: 02/03/2006)
02/02/2006	<a href="#">95</a>	CERTIFICATE OF SERVICE re: subpoena by Novell, Inc. (kla, ) (Entered: 02/03/2006)
02/03/2006	<a href="#">96</a>	SECOND AMENDED COMPLAINT against Novell with Jury Demand, filed by SCO Group.(blk, ) (Entered: 02/06/2006)
02/10/2006	<a href="#">97</a>	CERTIFICATE OF SERVICE re: discovery by Novell, Inc. (kla, ) (Entered: 02/10/2006)

		02/13/2006)
02/17/2006	<a href="#">98</a>	CERTIFICATE OF SERVICE re: discovery by Novell, Inc. (blk, ) (Entered: 02/21/2006)
03/01/2006	<a href="#">99</a>	CERTIFICATE OF SERVICE re: Rule 26 Initial Disclosure by Novell, Inc. (blk, ) (Entered: 03/03/2006)
03/17/2006	<a href="#">100</a>	STIPULATION/MOTION for Extension of Time to File Answer re <a href="#">96</a> 2d Amended Complaint filed by Defendant Novell, Inc.. (blk, ) Modified on 3/20/2006 by adding text - stipulation (blk, ). (Entered: 03/20/2006)
03/21/2006	<a href="#">101</a>	CERTIFICATE OF SERVICE re: Initial Disclosures by SCO Group (blk, ) (Entered: 03/22/2006)
04/10/2006	<a href="#">102</a>	ORDER that Novell may file, under seal, confidential exhibits to its Motion to Stay. Signed by Judge Dale A. Kimball on 4/10/06. (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">103</a>	STIPULATION to file confidential exhibits under seal re: Motion to Stay by Novell, Inc.. (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">104</a>	MOTION to Stay Claims Raising Issues Subject to Arbitration filed by Defendant Novell, Inc.. (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">105</a>	<b>**SEALED DOCUMENT**</b> Memo in Support re <a href="#">104</a> MOTION to Stay filed by Defendant Novell, Inc.. (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">106</a>	REDACTION to <a href="#">105</a> Sealed Document Memo in Support of Motion to Stay by Defendant Novell, Inc.. (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">107</a>	<b>**SEALED DOCUMENT**</b> Declaration of Michael A. Jacobs re <a href="#">104</a> MOTION to Stay filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit # <a href="#">2</a> Exhibit)(blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">108</a>	REDACTION to <a href="#">107</a> Sealed Document: Declaration of Michael A. Jacobs in Support of Motion to Stay by Defendant Novell, Inc.. (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">109</a>	MOTION for More Definite Statement of SCOs Unfair Competition Cause of Action filed by Defendant Novell, Inc.. (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">110</a>	MEMORANDUM in Support re <a href="#">109</a> MOTION for More Definite Statement filed by Defendant Novell, Inc.. (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">111</a>	DECLARATION of Kenneth W. Brakebill re <a href="#">109</a> MOTION for More Definite Statement filed by Novell, Inc.. (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">112</a>	CERTIFICATE OF SERVICE by Novell, Inc. re <a href="#">103</a> Stipulation (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">113</a>	CERTIFICATE OF SERVICE by Novell, Inc. re <a href="#">105</a> Sealed Document Memo in Support of Motion to Stay (blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">114</a>	CERTIFICATE OF SERVICE by Novell, Inc. re <a href="#">107</a> Sealed Document: Declaration of Machael A. Jacobs re: Motion to Stay (blk, ) (Entered: 04/11/2006)

		04/11/2006)
04/10/2006	<a href="#">115</a>	ANSWER to SCO's Second Amended Complaint, and Counterclaims filed by Novell, Inc..(blk, ) (Entered: 04/11/2006)
04/10/2006	<a href="#">120</a>	COUNTERCLAIM against SCO Group, filed by Novell, Inc..(blk, ) (Entered: 05/04/2006)
04/17/2006	<a href="#">116</a>	NOTICE of Third-Party Subpoena by Novell, Inc. (Brakebill, Kenneth) (Entered: 04/17/2006)
04/25/2006	<a href="#">117</a>	CERTIFICATE OF SERVICE re: Subpoena in a Civil Case (Recall) and Declaration of Service by Novell, Inc., Novell, Inc. (kla, ) (Entered: 04/27/2006)
04/28/2006	<a href="#">118</a>	STIPULATION by SCO Group, Novell, Inc.. (blk, ) (Entered: 05/01/2006)
05/01/2006	<a href="#">121</a>	ANSWER to Counterclaim filed by SCO Group.(blk, ) (Entered: 05/04/2006)
05/02/2006	<a href="#">119</a>	ORDER for SCO to file response to Motion to Stay and Motion for More Definite Statement on or before 5/19/06 - re <a href="#">118</a> Stipulation filed by Novell, Inc., SCO Group, . Signed by Judge Dale A. Kimball on 5/1/06. (blk, ) (Entered: 05/02/2006)
05/26/2006	<a href="#">122</a>	MEMORANDUM in Opposition re <a href="#">104</a> MOTION to Stay <i>Claims Raising Issues Subject to Arbitration</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2# <a href="#">3</a> Exhibit 3# <a href="#">4</a> Exhibit 4# <a href="#">5</a> Exhibit 5# <a href="#">6</a> Exhibit 6# <a href="#">7</a> Exhibit 7# <a href="#">8</a> Exhibit 8# <a href="#">9</a> Exhibit A# <a href="#">10</a> Exhibit B# <a href="#">11</a> Exhibit C# <a href="#">12</a> Exhibit D# <a href="#">13</a> Exhibit E)(Hatch, Brent) (Entered: 05/26/2006)
05/26/2006	<a href="#">123</a>	Ex Parte (Not Sealed) MOTION for Leave to File Excess Pages <i>Memorandum in Opposition to Novell's Motion to Stay Claims Relating to Issues Subject to Arbitration</i> filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 05/26/2006)
05/26/2006	<a href="#">124</a>	MEMORANDUM in Opposition re <a href="#">109</a> MOTION for More Definite Statement filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B)(Hatch, Brent) (Entered: 05/26/2006)
05/31/2006	<a href="#">125</a>	ORDER granting <a href="#">123</a> Motion for Leave to File Excess Pages . Signed by Judge Dale A. Kimball on 2:04cv139. (sih) (Entered: 05/31/2006)
06/09/2006	<a href="#">126</a>	MOTION to Withdraw as Attorney filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Hatch, Brent) (Entered: 06/09/2006)
06/12/2006	<a href="#">127</a>	Stipulated MOTION for Extension of Time to File Response/Reply <i>Memoranda in Support of Novell, Inc.'s Motions to Stay and For More Definite Statement</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Sneddon, Heather) (Entered: 06/12/2006)
06/13/2006	128	DOCKET TEXT ORDER granting <a href="#">126</a> Motion to Withdraw as Attorney. Attorney Mark R. Clements withdrawn from case for The SCO Group. Signed by Judge Dale A. Kimball on 6/12/06. (kmj, ) (Entered: 06/13/2006)

06/13/2006	<a href="#">129</a>	ORDER granting <a href="#">127</a> Motion for Extension of Time to File Response/Reply re <a href="#">109</a> MOTION for More Definite Statement Replies due by 6/19/2006.. Signed by Judge Dale A. Kimball on 6/13/06. (blk, ) (Entered: 06/14/2006)
06/19/2006	<a href="#">130</a>	Ex Parte (Not Sealed) MOTION for Leave to File Excess Pages <i>in Reply in Support of Novell, Inc.'s Motion to Stay Claims Raising Issues Subject to Arbitration</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Sneddon, Heather) (Entered: 06/19/2006)
06/19/2006	<a href="#">131</a>	REPLY to Response to Motion re <a href="#">104</a> MOTION to Stay <i>Claims Raising Issues Subject to Arbitration</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Thies v. Lifeminders, Inc.# <a href="#">2</a> Exhibit B - IBA Rules)(Sneddon, Heather) (Entered: 06/19/2006)
06/19/2006	<a href="#">132</a>	DECLARATION of David E. Melaugh re <a href="#">131</a> Reply Memorandum/Reply to Response to Motion <i>to Stay</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 - SCO Source Log in SCO v. Novell# <a href="#">2</a> Exhibit 2 - SCO Source Log in SCO v. IBM# <a href="#">3</a> Exhibit 3 - SCO's First Requests for Production and Interrogatories# <a href="#">4</a> Exhibit 4 - Attorneys' Planning Meeting Report)(Sneddon, Heather) (Entered: 06/19/2006)
06/19/2006	<a href="#">133</a>	REPLY to Response to Motion re <a href="#">109</a> MOTION for More Definite Statement of <i>SCO's Unfair Competition Cause of Action</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Coexist, LLP v. Cafepress.com, et al.) (Sneddon, Heather) (Entered: 06/19/2006)
06/20/2006	<a href="#">134</a>	ORDER granting <a href="#">130</a> Motion for Leave to File Excess Pages . Signed by Judge Dale A. Kimball on 6/20/06. (kmj, ) (Entered: 06/20/2006)
06/20/2006	135	<b>NOTICE OF HEARING ON MOTION</b> re: <a href="#">109</a> MOTION for More Definite Statement, <a href="#">104</a> MOTION to Stay: Motion Hearing set for 7/17/2006 10:00 AM in Room 220 before Judge Dale A. Kimball. (kmj, ) (Entered: 06/20/2006)
07/17/2006	136	Minute Entry for proceedings held before Judge Dale A. Kimball : Motion Hearing held on 7/17/2006 re <a href="#">104</a> MOTION to Stay filed by Novell, Inc., and <a href="#">109</a> MOTION for More Definite Statement filed by Novell, Inc.. Mr. Jacobs advised Court that <a href="#">109</a> Motion for More Definite Statement is moot as pla will be amending complaint, and that arbitration will begin shortly as arbitrators are being chosen at this time. The Court heard the arguments of counsel as to the Motion to Stay and took the motion under advisement.Written Order to follow oral order: no.Attorney for Plaintiff: Stuart Singer, William Dzurilla and Brent Hatch, Attorney for Defendant: Michael Jacobs and Thomas Karrenburg.(Court Reporter: Becky Janke.) (kmj, ) (Entered: 07/17/2006)
07/31/2006	<a href="#">137</a>	Stipulated MOTION for Protective Order filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Sneddon, Heather) (Entered: 07/31/2006)
08/02/2006	<a href="#">138</a>	STIPULATED PROTECTIVE ORDER granting <a href="#">137</a> Motion for Protective Order . Signed by Judge Dale A. Kimball on 8/1/06. (Attachments: # <a href="#">1</a> Exhibit a)(blk, ) (Entered: 08/02/2006)



08/21/2006	<a href="#">139</a>	ORDER granting in part and denying in part <a href="#">104</a> Motion to Stay . Signed by Judge Dale A. Kimball on 8-21-06.(sih) (Entered: 08/21/2006)
09/21/2006	<a href="#">140</a>	Stipulated MOTION for Leave to File Novell, Inc.'s Amended Counterclaims filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Novell, Inc.'s Amended Counterclaims# <a href="#">2</a> Text of Proposed Order)(Sneddon, Heather) (Entered: 09/21/2006)
09/22/2006	<a href="#">141</a>	ORDER granting <a href="#">140</a> Motion for Leave to File Amended Counterclaims. Signed by Judge Dale A. Kimball on 9/22/06.(blk, ) (Entered: 09/25/2006)
09/25/2006	<a href="#">142</a>	AMENDED COUNTERCLAIM against SCO Group, filed by Novell, Inc.. (blk, ) (Entered: 09/25/2006)
09/27/2006	<a href="#">143</a>	CERTIFICATE OF SERVICE by Novell, Inc. ( <i>Novell, Inc.'s Second Set of Interrogatories and Third Set of Requests for Production to The SCO Group, Inc.</i> ) (Sneddon, Heather) (Entered: 09/27/2006)
09/29/2006	<a href="#">144</a>	CERTIFICATE OF SERVICE by Novell, Inc. ( <i>Novell, Inc.'s First Set of Requests for Admission to The SCO Group, Inc.</i> ) (Sneddon, Heather) (Entered: 09/29/2006)
09/29/2006	<a href="#">145</a>	CERTIFICATE OF SERVICE by Novell, Inc. ( <i>Novell, Inc.'s Third Set of Interrogatories to The SCO Group, Inc.</i> ) (Sneddon, Heather) (Entered: 09/29/2006)
09/29/2006	<a href="#">146</a>	CERTIFICATE OF SERVICE by Novell, Inc. ( <i>Novell, Inc.'s Fourth Set of Requests for Production to The SCO Group, Inc.</i> ) (Sneddon, Heather) (Entered: 09/29/2006)
09/29/2006	<a href="#">147</a>	MOTION for Partial Summary Judgment <i>or Preliminary Injunction</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 09/29/2006)
09/29/2006	<a href="#">148</a>	MEMORANDUM in Support re <a href="#">147</a> MOTION for Partial Summary Judgment <i>or Preliminary Injunction</i> [ <i>REDACTED pursuant to the August 2, 2006 Stipulated Protective Order</i> ] filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 09/29/2006)
09/29/2006	<a href="#">149</a>	DECLARATION of Joseph A. LaSala, Jr. re <a href="#">148</a> Memorandum in Support of Motion, <a href="#">147</a> MOTION for Partial Summary Judgment <i>or Preliminary Injunction</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 - July 11, 2003 Novell Letter# <a href="#">2</a> Exhibit 2 - July 17, 2003 SCO Letter)(Sneddon, Heather) (Entered: 09/29/2006)
10/02/2006	150	<b>**SEALED DOCUMENT**</b> DECLARATION of Michael A. Jacobs re <a href="#">147</a> MOTION for Partial Summary Judgment <i>or Preliminary Injunction</i> filed by Defendant Novell, Inc.. NOTE: Document Oversized - Not Scanned/Attached. Retained in Clerks Office Sealed Room. (blk, ) (Entered: 10/02/2006)
10/02/2006	<a href="#">151</a>	REDACTION to 150 Sealed Declaration of Michael A. Jacobs in support of <a href="#">147</a> MOTION for Partial Summary Judgment <i>or Preliminary Injunction</i> by Defendant Novell, Inc.. NOTE: Oversized - Partially Scanned/Attached. Retained in Clerks Office for Viewing. (blk, ) (Entered: 10/02/2006)

10/02/2006	<a href="#">152</a>	CERTIFICATE OF SERVICE by Novell, Inc. re 150 Sealed Document, ( <i>Declaration of Michael A. Jacobs in Support of Novell, Inc.'s Motion for Partial Summary Judgment or Preliminary Injunction</i> ) (Sneddon, Heather) (Entered: 10/02/2006)
10/02/2006	<a href="#">153</a>	NOTICE OF CONVENTIONAL FILING of Declaration of Michael A. Jacobs in Support of Novell, Inc.'s Motion for Partial Summary Judgment or Preliminary Injunction [REDACTED pursuant to the August 2, 2006 Stipulated Protective Order] filed by Defendant Novell, Inc. re <a href="#">151</a> Redacted Document, (Sneddon, Heather) (Entered: 10/02/2006)
10/02/2006	<a href="#">154</a>	CERTIFICATE OF SERVICE by Novell, Inc. ( <i>Memorandum in Support of Novell, Inc.'s Motion for Partial Summary Judgment or Preliminary Injunction [Filed UNDER SEAL pursuant to the August 2, 2006 Stipulated Protective Order]</i> ) (Sneddon, Heather) (Entered: 10/02/2006)
10/02/2006	<a href="#">155</a>	<b>**SEALED DOCUMENT**</b> Memorandum in Support re <a href="#">147</a> MOTION for Partial Summary Judgment or Preliminary Injunction filed by Defendant Novell, Inc.. (blk, ) (Entered: 10/03/2006)
10/04/2006	<a href="#">156</a>	Plaintiff's MOTION to Stay or Continue Novell's Motion for Partial Summary Judgment -EXPEDITED TREATMENT SOUGHT filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Hatch, Brent) (Entered: 10/04/2006)
10/08/2006	<a href="#">157</a>	ERRATA to <a href="#">148</a> Memorandum in Support of Motion, <a href="#">155</a> Sealed Document filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 10/08/2006)
10/16/2006	<a href="#">158</a>	ANSWER to Counterclaim docket # 142 filed by SCO Group, SCO Group. (Hatch, Brent) (Entered: 10/16/2006)
10/18/2006	<a href="#">159</a>	MEMORANDUM in Opposition re <a href="#">156</a> Plaintiff's MOTION to Stay or Continue Novell's Motion for Partial Summary Judgment -EXPEDITED TREATMENT SOUGHT filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2# <a href="#">3</a> Exhibit 3# <a href="#">4</a> Exhibit 4# <a href="#">5</a> Exhibit 5)(Sneddon, Heather) (Entered: 10/18/2006)
10/23/2006	<a href="#">160</a>	MOTION for Admission Pro Hac Vice of Stuart H. Singer Registration fee \$ 15, receipt number 407276. filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B# <a href="#">3</a> Text of Proposed Order)(Hatch, Brent) (Entered: 10/23/2006)
10/23/2006	<a href="#">161</a>	MOTION for Admission Pro Hac Vice of William Dzurilla Registration fee \$ 15, receipt number 407281. filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B# <a href="#">3</a> Text of Proposed Order)(Hatch, Brent) (Entered: 10/23/2006)
10/24/2006	<a href="#">162</a>	ORDER granting in part, denying in part <a href="#">156</a> Plaintiff's MOTION to Stay or Continue Novell's Motion for Partial Summary Judgment. Existing deadlines and trial date vacated. Motions now due by 3/14/2007. Jury Trial reset for 9/17/2007 08:30 AM before Judge Dale A. Kimball. Signed by Judge Dale A. Kimball on 10/24/06 (alt) (Entered: 10/24/2006)
10/25/2006	<a href="#">163</a>	ORDER granting <a href="#">160</a> Motion for Admission Pro Hac Vice of Stuart H. Singer for SCO Group, granting <a href="#">161</a> Motion for Admission Pro Hac Vice of

		William Dzurilla for SCO Group. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at http://www.utd.uscourts.gov.</i> Signed by Judge Dale A. Kimball on 10/24/06.(kla) (Entered: 10/26/2006)
11/06/2006	<a href="#">164</a>	CERTIFICATE OF SERVICE by Novell, Inc. (Sneddon, Heather) (Entered: 11/06/2006)
11/07/2006	<a href="#">165</a>	MOTION to Compel Production of Deposition Transcripts and Exhibits from SCO v. IBM filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 11/07/2006)
11/07/2006	<a href="#">166</a>	MEMORANDUM in Support re <a href="#">165</a> MOTION to Compel Production of Deposition Transcripts and Exhibits from SCO v. IBM filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2)(Sneddon, Heather) (Entered: 11/07/2006)
11/07/2006	<a href="#">167</a>	DECLARATION of Kenneth W. Brakebill re <a href="#">165</a> MOTION to Compel Production of Deposition Transcripts and Exhibits from SCO v. IBM filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B# <a href="#">3</a> Exhibit C# <a href="#">4</a> Exhibit D# <a href="#">5</a> Exhibit E# <a href="#">6</a> Exhibit F# <a href="#">7</a> Exhibit G# <a href="#">8</a> Exhibit H)(Sneddon, Heather) (Entered: 11/07/2006)
11/09/2006	168	ORDER REFERRING CASE to Magistrate Judge Brooke C. Wells under 28:636 (b)(1)(A), Magistrate to hear and determine all nondispositive pretrial matters.. Signed by Judge Dale A. Kimball on 11/09/06. (abr, ) (Entered: 11/09/2006)
11/14/2006	<a href="#">169</a>	NOTICE OF FILING filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit)(Sneddon, Heather) (Entered: 11/14/2006)
11/27/2006	<a href="#">170</a>	MEMORANDUM in Opposition re <a href="#">165</a> MOTION to Compel Production of Deposition Transcripts and Exhibits from SCO v. IBM filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1-7)(Hatch, Brent) (Entered: 11/27/2006)
12/01/2006	<a href="#">171</a>	MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 12/01/2006)
12/01/2006	<a href="#">172</a>	MEMORANDUM in Support re <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief [REDACTED pursuant to the August 2, 2006 Stipulated Protective Order]</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 12/01/2006)
12/01/2006	<a href="#">173</a>	DECLARATION of Kenneth W. Brakebill re <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief [REDACTED pursuant to the August 2, 2006 Stipulated Protective Order]</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 - Part 1 (pp. 1-48)# <a href="#">2</a> Exhibit 1 - Part 2 (pp. 49-97)# <a href="#">3</a> Exhibit 2-3# <a href="#">4</a> Exhibit 4-8# <a href="#">5</a> Exhibit 12-15, 17# <a href="#">6</a> Exhibit 23# <a href="#">7</a> Exhibit 24-27# <a href="#">8</a> Exhibit 28-41# <a href="#">9</a> Exhibit 42 - Part 1# <a href="#">10</a> Exhibit 42 - Part 2# <a href="#">11</a> Exhibit 43, 45)(Sneddon, Heather) (Entered: 12/01/2006)
12/01/2006	<a href="#">174</a>	NOTICE OF CONVENTIONAL FILING of Memorandum and Declaration of Kenneth W. Brakebill in Support of Novell's Motion for Partial Summary Judgment on Its Fourth Claim for Relief [FILED UNDER SEAL pursuant to

		the August 2, 2006 Stipulated Protective Order] filed by Defendant Novell, Inc. re <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> (Sneddon, Heather) (Entered: 12/01/2006)
12/01/2006	<a href="#">175</a>	<b>**SEALED DOCUMENT**</b> MEMORANDUM IN SUPPORT re <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Defendant Novell, Inc.. (blk, ) (Entered: 12/04/2006)
12/01/2006	<a href="#">176</a>	<b>**SEALED DOCUMENT**</b> DECLARATION OF KENNETH W. BRAKEBILL re <a href="#">175</a> Sealed MEMORANDUM IN SUPPORT re <a href="#">171</a> MOTION for Partial Summary Judgment on Novell's Fourth Claim for Relief filed by Defendant Novell, Inc.. (blk, ) (Entered: 12/04/2006)
12/11/2006	<a href="#">177</a>	REPLY to Response to Motion re <a href="#">165</a> MOTION to Compel Production of Deposition Transcripts and Exhibits from SCO v. IBM filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 12/11/2006)
12/12/2006	<a href="#">178</a>	NOTICE OF CONVENTIONAL FILING of SCO'S MEMORANDUM IN OPPOSITION TO NOVELL'S MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION AND IN SUPPORT OF SCO'S CROSS MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT filed by Plaintiff SCO Group (Hatch, Brent) (Entered: 12/12/2006)
12/12/2006	<a href="#">179</a>	NOTICE OF CONVENTIONAL FILING of Declaration of Brent O. Hatch filed by Plaintiff SCO Group (Hatch, Brent) (Entered: 12/12/2006)
12/12/2006	<a href="#">180</a>	Cross MOTION for Summary Judgment <i>OR PARTIAL SUMMARY JUDGMENT ON NOVELL'S THIRD, SIXTH, SEVENTH, EIGHTH AND NINTH COUNTERCLAIMS</i> filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 12/12/2006)
12/12/2006	<a href="#">181</a>	STIPULATION <i>AND MOTION FOR LEAVE TO FILE MEMORANDUM IN OPPOSITION</i> by SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) (Hatch, Brent) Modified on 1/10/2007 by changing this to a motion(blk). (Entered: 12/12/2006)
12/12/2006	<a href="#">182</a>	Ex Parte (Not Sealed) MOTION for Leave to File OVERLENGTH MEMORANDUM IN OPPOSITION TO NOVELL'S MOTION FOR PARTIAL SUMMARY JUDGMENT OR PRELIMINARY INJUNCTION AND IN SUPPORT OF SCO'S CROSS MOTION FOR SUMMARY JUDGMENT OR PARTIAL SUMMARY JUDGMENT filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Hatch, Brent) (Entered: 12/12/2006)
12/12/2006	<a href="#">183</a>	<b>**SEALED DOCUMENT**</b> MEMORANDUM IN OPPOSITION re <a href="#">147</a> MOTION for Partial Summary Judgment <i>or Preliminary Injunction</i> filed by Plaintiff SCO Group.Note: Exhibits are oversized and not attached in the pdf image. The Complete document is retained in the sealed room for access by authorized persons only.(blk, ) (Entered: 12/13/2006)
12/12/2006	<a href="#">184</a>	<b>**SEALED DOCUMENT**</b> DECLARATION OF BRENT O. HATCH filed by Plaintiff SCO Group. (blk, ) (Entered: 12/13/2006)

12/12/2006	185	<b>**SEALED DOCUMENT**</b> EXHIBITS 1-20 re <a href="#">184</a> Sealed Declaration of Brent O. Hatch filed by Plaintiff SCO Group. (blk, ) NOTE: No image attached - document is oversized. Document retained in the sealed room for access by authorized persons only. (Entered: 12/13/2006)
12/12/2006	186	<b>**SEALED DOCUMENT**</b> EXHIBITS 21-27 re <a href="#">184</a> Sealed Declaration of Brent O. Hatch filed by Plaintiff SCO Group. NOTE: No image attached - document oversized. Document is retained in the sealed room for access by authorized persons only. (blk, ) (Entered: 12/13/2006)
12/12/2006	187	<b>**SEALED DOCUMENT**</b> EXHIBIT 28 re <a href="#">184</a> Sealed Declaration of Brent O. Hatch filed by Plaintiff SCO Group. NOTE: No image attached - document oversized. Document retained in the sealed room for access by authorized persons only. (blk, ) (Entered: 12/13/2006)
12/12/2006	188	<b>**SEALED DOCUMENT**</b> EXHIBITS 20-32 re <a href="#">184</a> Sealed Declaration of Brent O. Hatch filed by Plaintiff SCO Group. NOTE: No image attached - document oversized. Document retained in the sealed room for access by authorized persons only. (blk, ) (Entered: 12/13/2006)
12/12/2006	189	<b>**SEALED DOCUMENT**</b> EXHIBITS 33-46 re <a href="#">184</a> Sealed Declaration of Brent O. Hatch filed by Plaintiff SCO Group. NOTE: No image attached - document oversized. Document retained in the sealed room for access by authorized persons only. (blk, ) (Entered: 12/13/2006)
12/13/2006	<a href="#">190</a>	<b>**SEALED DOCUMENT**</b> ELECTRONIC EXHIBIT 26 (cd) re <a href="#">184</a> Sealed Declaration of Brent O. Hatch filed by Plaintiff SCO Group. (blk, ) (Entered: 12/14/2006)
12/18/2006	<a href="#">191</a>	Stipulated MOTION for Extension of Time to File Response/Reply as to <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order [Proposed] Order to Enlarge Deadlines) (Normand, Edward) (Entered: 12/18/2006)
12/19/2006	<a href="#">192</a>	ORDER granting <a href="#">191</a> Motion for Extension of Time to File Response/Reply re <a href="#">171</a> MOTION for Partial Summary Judgment on <i>Novell's Fourth Claim for Relief</i> . Signed by Judge Dale A. Kimball on 12-19-06.(sih) (Entered: 12/19/2006)
01/03/2007	193	<b><u>NOTICE OF HEARING ON MOTION</u></b> re: <a href="#">165</a> MOTION to Compel Production of Deposition Transcripts and Exhibits from SCO v. IBM : Motion Hearing set for 1/11/2007 10:30 AM in Room 436 before Magistrate Judge Brooke C. Wells. (jwd) (Entered: 01/03/2007)
01/04/2007	<a href="#">194</a>	MOTION for Admission Pro Hac Vice of Devan Padmanabhan, Registration fee \$ 15, receipt number 4681015433, filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Application for Admission# <a href="#">2</a> e-filing Registration Form# <a href="#">3</a> Text of Proposed Order)(James, Mark) (Entered: 01/04/2007)
01/04/2007	<a href="#">195</a>	MOTION for Admission Pro Hac Vice of John J. Brogan, Registration fee \$ 15, receipt number 4681015434, filed by Counter Defendant SCO Group,

		Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Application for Admission# <a href="#">2</a> e-filing Registration Form# <a href="#">3</a> Text of Proposed Order)(James, Mark) (Entered: 01/04/2007)
01/08/2007	<a href="#">196</a>	MOTION for Extension of Time to File Response/Reply as to <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 01/08/2007)
01/08/2007	<a href="#">197</a>	Ex Parte (Not Sealed) MOTION for Leave to File Excess Pages ( <i>Overlength Reply to SCO's Opposition to Novell's Motion for Partial Summary Judgment or Preliminary Injunction</i> ) filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 01/08/2007)
01/08/2007	<a href="#">198</a>	REDACTION ( <i>Reply to SCO's Opposition to Novell's Motion for Partial Summary Judgment or Preliminary Injunction</i> ) by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Sneddon, Heather) (Entered: 01/08/2007)
01/08/2007	<a href="#">199</a>	DECLARATION of Heather M. Sneddon re <a href="#">198</a> Redacted Document ( <i>Reply to SCO's Opposition to Novell's Motion for Partial Summary Judgment or Preliminary Injunction</i> ) filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, Pt. 1# <a href="#">2</a> Exhibit 1, Pt. 2# <a href="#">3</a> Exhibit 1, Pt. 3# <a href="#">4</a> Exhibit 2, Pt. 1# <a href="#">5</a> Exhibit 2, Pt. 2) (Sneddon, Heather) (Entered: 01/08/2007)
01/08/2007	<a href="#">203</a>	ORDER granting <a href="#">195</a> Motion for Admission Pro Hac Vice of John J. Brogan for SCO Group. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at http://www.utd.uscourts.gov . Signed by Judge Dale A. Kimball on 1/5/07. (blk)</i> (Entered: 01/09/2007)
01/08/2007	<a href="#">204</a>	ORDER granting <a href="#">194</a> Motion for Admission Pro Hac Vice of Devan V. Padmanabhan for SCO Group. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at http://www.utd.uscourts.gov . Signed by Judge Dale A. Kimball on 1/5/07. (blk)</i> (Entered: 01/09/2007)
01/09/2007	<a href="#">200</a>	MEMORANDUM in Opposition re <a href="#">196</a> MOTION for Extension of Time to File Response/Reply as to <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> MOTION for Extension of Time to File Response/Reply as to <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 01/09/2007)
01/09/2007	<a href="#">201</a>	NOTICE OF CONVENTIONAL FILING of Novell's Reply to SCO's Opposition to Novell's Motion for Partial Summary Judgment or Preliminary Injunction [Filed Under Seal] filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 01/09/2007)
01/09/2007	<a href="#">202</a>	REPLY to Response to Motion re <a href="#">196</a> MOTION for Extension of Time to File Response/Reply as to <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> MOTION for Extension of Time to File

		Response/Reply as to <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Plaintiff SCO Group. (Normand, Edward) (Entered: 01/09/2007)
01/09/2007	<a href="#">205</a>	<b>**SEALED DOCUMENT**</b> Novell's Reply to SCO's Opposition re <a href="#">147</a> MOTION for Partial Summary Judgment <i>or Preliminary Injunction</i> filed by Defendant Novell, Inc. (kla) (Entered: 01/10/2007)
01/10/2007	<a href="#">206</a>	ORDER granting <a href="#">197</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 1-10-07. (sih) (Entered: 01/10/2007)
01/10/2007	<a href="#">207</a>	ORDER granting <a href="#">196</a> Motion for Extension of Time to File Response/Reply re <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> Replies due by 1/17/2007.. Signed by Judge Dale A. Kimball on 1/9/07. (blk) (Entered: 01/10/2007)
01/11/2007		Parties notified court they have resolved Novell's motion/compel. Hearing stricken for 1/11/07. Parties will file stipulation. (mlp) (Entered: 01/11/2007)
01/12/2007	<a href="#">208</a>	ORDER granting <a href="#">181</a> Motion for Leave to File. Signed by Judge Dale A. Kimball on 1-12-07. (sih) (Entered: 01/12/2007)
01/12/2007	<a href="#">209</a>	REDACTION to <a href="#">183</a> Sealed Document, <i>SCO's Memorandum in Opposition to Novell's Motion for Partial Summary Judgment or Preliminary Injunction and In Support of SCO's Cross Motion for Summary Judgment or Partial Summary Judgment</i> by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Part 2# <a href="#">2</a> Appendix A)(Normand, Edward) (Entered: 01/12/2007)
01/16/2007	<a href="#">221</a>	<b>**SEALED DOCUMENT**</b> OPPOSITION to <a href="#">180</a> Cross MOTION for Summary Judgment <i>OR PARTIAL SUMMARY JUDGMENT ON NOVELL'S THIRD, SIXTH, SEVENTH, EIGHTH AND NINTH COUNTERCLAIMS</i> filed by Defendant Novell, Inc.. (blk) (Entered: 01/18/2007)
01/16/2007	222	<b>**SEALED DOCUMENT**</b> DECLARATION of Heather M. Sneddon re <a href="#">221</a> Sealed Opposition to Cross-Motion filed by Defendant Novell, Inc.. Part 1 of 2. (Oversized - No attachment.) (blk) (Entered: 01/18/2007)
01/16/2007	223	<b>**SEALED DOCUMENT**</b> DECLARATION of Heather M. Sneddon re <a href="#">221</a> Sealed Opposition to Cross-Motion filed by Defendant Novell, Inc.. Part 2 of 2. (Oversized - no attachment.) (blk) (Entered: 01/18/2007)
01/17/2007	<a href="#">210</a>	NOTICE OF CONVENTIONAL FILING of Novell's Opposition to SCO's Cross-Motion for Summary Judgment (Filed Under Seal), Declaration of Heather M. Sneddon (Filed Under Seal), and Novell's Response to SCO's Statement of Facts (Filed Under Seal) filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 01/17/2007)
01/17/2007	<a href="#">211</a>	NOTICE OF CONVENTIONAL FILING of (1)SCO's Memorandum in Opposition to Novell's Motion for Partial Summary on its Fourth Counterclaim for Relief, and in Support of SCO's Motion for Summary Judgment (2) Declaration of Brent O. Hatch filed by Counter Defendant SCO Group, Plaintiff SCO Group (Hatch, Brent) (Entered: 01/17/2007)

01/17/2007	<a href="#">212</a>	MOTION for Leave to File Over Length Memorandum in Opposition to Novell's Motion for Partial Summary Judgment on its Fourth Counterclaim for Relief, and for SCO's Cross Motion for Summary Judgment filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Hatch, Brent) (Entered: 01/17/2007)
01/17/2007	213	<b>**SEALED DOCUMENT**</b> MEMORANDUM IN OPPOSITION to <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Plaintiff SCO Group. (Oversized - no document attached.) (blk) (Entered: 01/18/2007)
01/17/2007	214	<b>**SEALED DOCUMENT**</b> Memorandum in Support re <a href="#">180</a> Cross MOTION for Summary Judgment <i>OR PARTIAL SUMMARY JUDGMENT ON NOVELL'S THIRD, SIXTH, SEVENTH, EIGHTH AND NINTH COUNTERCLAIMS</i> filed by Plaintiff SCO Group. (Oversized - No document attached.) (blk) (Entered: 01/18/2007)
01/17/2007	215	<b>**SEALED DOCUMENT**</b> DECLARATION of Brent O. Hatch filed by Plaintiff SCO Group. (blk) (Oversized - no attachment.) (Entered: 01/18/2007)
01/17/2007	216	<b>**SEALED DOCUMENT**</b> EXHIBITS 10-43 re 215 Sealed Declaration of Brent Hatch filed by Plaintiff SCO Group. (Oversized - no attachment.) (blk) (Entered: 01/18/2007)
01/17/2007	217	<b>**SEALED DOCUMENT**</b> EXHIBIT 35 re 215 Sealed Declaration of Brent Hatch filed by Plaintiff SCO Group. (Oversized - no attachment.) (blk) (Entered: 01/18/2007)
01/17/2007	218	<b>**SEALED DOCUMENT**</b> EXHIBITS 44-56 re 215 Sealed Declaration of Brent Hatch filed by Plaintiff SCO Group. (Oversized - no attachment.) (blk) (Entered: 01/18/2007)
01/17/2007	219	<b>**SEALED DOCUMENT**</b> EXHIBITS 57-63 re 215 Sealed Declaration of Brent Hatch filed by Plaintiff SCO Group. (Oversized - no attachment.) (blk) (Entered: 01/18/2007)
01/17/2007	<a href="#">220</a>	<b>**SEALED DOCUMENT**</b> RESPONSE to Statement of Facts in <a href="#">180</a> Cross MOTION for Summary Judgment <i>OR PARTIAL SUMMARY JUDGMENT ON NOVELL'S THIRD, SIXTH, SEVENTH, EIGHTH AND NINTH COUNTERCLAIMS</i> filed by Defendant Novell, Inc.. (blk) (Entered: 01/18/2007)
01/18/2007	<a href="#">224</a>	Cross MOTION for Partial Summary Judgment <i>on Novell's Fourth Counterclaim</i> filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Normand, Edward) (Entered: 01/18/2007)
01/19/2007	225	DOCKET TEXT ORDER granting <a href="#">182</a> Motion for Leave to File; granting <a href="#">212</a> Motion for Leave to File. Signed by Judge Dale A. Kimball on 1-19-07.No attached document. (sih) (Entered: 01/19/2007)
01/23/2007	<a href="#">226</a>	MOTION for Admission Pro Hac Vice of Sashi Bach Boruchow, Registration fee \$ 15, receipt number 4681015764, filed by Counter Defendant SCO



		Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Application for Admission# <a href="#">2</a> Text of Proposed Order # <a href="#">3</a> E-Filing Registration Form)(Hatch, Brent) (Entered: 01/23/2007)
01/23/2007	<a href="#">227</a>	Minute Entry for proceedings held before Judge Dale A. Kimball : Motion Hearing held on 1/23/2007 re <a href="#">147</a> MOTION for Partial Summary Judgment <i>or Preliminary Injunction</i> filed by Novell, Inc., <a href="#">180</a> Cross MOTION for Summary Judgment <i>OR PARTIAL SUMMARY JUDGMENT ON NOVELL'S THIRD, SIXTH, SEVENTH, EIGHTH AND NINTH COUNTERCLAIMS</i> filed by SCO Group, <a href="#">224</a> Cross MOTION for Partial Summary Judgment <i>on Novell's Fourth Counterclaim</i> filed by SCO Group, <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Novell, Inc. After hearing argument from counsel, the court takes this matter under advisement. Attorney for Plaintiff: Brent Hatch, Stuart Singer, Edward Normad, Esq., Attorney for Defendant Thomas Karranberg, Michael Jacobs, Heather Sneddon, Esq.. Court Reporter: Becky Janke. (tab) (Entered: 01/24/2007)
01/25/2007	<a href="#">228</a>	ORDER granting <a href="#">226</a> Motion for Admission Pro Hac Vice of Sashi Bach Boruchow for SCO Group. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at <a href="http://www.utd.uscourts.gov">http://www.utd.uscourts.gov</a> . Signed by Judge Dale A. Kimball on 1/24/07. (blk) (Entered: 01/25/2007)</i>
01/25/2007	<a href="#">229</a>	Minute Entry for proceedings held before Judge Dale A. Kimball : Telephone Conference held on 1/25/2007. After hearing from counsel, the court will allow each side to designate 3 or 4 additional depositions by 1/29, to be taken by 3/2/07. Each side will also be allowed to designate one more deposition by 2/9/07 to be taken by 3/2/07. Attorney for Plaintiff: Mark James, Edward Normand, Esq. Attorney for Defendant Ken Brakebill, Esq. Court Reporter: Kelly Hicken. (tab) (Entered: 01/26/2007)
01/30/2007	<a href="#">230</a>	Stipulated MOTION for Extension of Time to File Response/Reply filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 01/30/2007)
01/31/2007	<a href="#">231</a>	NOTICE OF CONVENTIONAL FILING of SCO's Reply Memorandum in Support of Its Cross Motion for Summary Judgment or Partial Summary Judgment on Novells Third, Sixth, Seventh, Eighth and Ninth Counterclaims filed by Counter Defendant SCO Group, Plaintiff SCO Group re <a href="#">180</a> Cross MOTION for Summary Judgment <i>OR PARTIAL SUMMARY JUDGMENT ON NOVELL'S THIRD, SIXTH, SEVENTH, EIGHTH AND NINTH COUNTERCLAIMS</i> (Hatch, Brent) (Entered: 01/31/2007)
01/31/2007	<a href="#">233</a>	<b>**SEALED DOCUMENT**</b> REPLY MEMORANDUM IN SUPPORT re <a href="#">180</a> Cross MOTION for Summary Judgment <i>OR PARTIAL SUMMARY JUDGMENT ON NOVELL'S THIRD, SIXTH, SEVENTH, EIGHTH AND NINTH COUNTERCLAIMS</i> filed by Plaintiff SCO Group. (Oversized - exhibits not attached as an image.) (blk) (Entered: 02/02/2007)
02/01/2007	<a href="#">232</a>	ORDER granting <a href="#">230</a> Motion for Extension of Time to File Response/Reply re <a href="#">180</a> Cross MOTION for Summary Judgment <i>OR PARTIAL SUMMARY</i>

		<i>JUDGMENT ON NOVELL'S THIRD, SIXTH, SEVENTH, EIGHTH AND NINTH COUNTERCLAIMS</i> Replies due by 1/31/2007.. Signed by Judge Dale A. Kimball on 2-1-07. (sih) (Entered: 02/01/2007)
02/09/2007	<a href="#">234</a>	MOTION for Admission Pro Hac Vice of Grant L. Kim, Registration fee \$ 15, receipt number 4681016160, filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A -- Application# <a href="#">2</a> Exhibit B -- Text of Proposed Order)(Sneddon, Heather) (Entered: 02/09/2007)
02/12/2007	<a href="#">235</a>	Ex Parte (Not Sealed) MOTION for Leave to File Excess Pages ( <i>Novell's Reply to SCO's Opposition to Novell's Motion for Partial Summary Judgment on its Fourth Claim for Relief</i> ) filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 02/12/2007)
02/12/2007	<a href="#">236</a>	NOTICE OF CONVENTIONAL FILING of Novell's Reply to SCO's Opposition to Novell's Motion for Partial Summary Judgment on its Fourth Claim for Relief [Filed Under Seal] filed by Defendant Novell, Inc. re <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> (Sneddon, Heather) (Entered: 02/12/2007)
02/12/2007	<a href="#">237</a>	<b>**SEALED DOCUMENT**</b> REPLY TO RESPONSE regarding <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Defendant Novell, Inc.. (blk) (Entered: 02/13/2007)
02/13/2007	<a href="#">238</a>	ORDER granting <a href="#">234</a> Motion for Admission Pro Hac Vice of Grant L. Kim for Novell, Inc.. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at http://www.utd.uscourts.gov</i> . Signed by Judge Dale A. Kimball on 2/13/07. (blk) (Entered: 02/13/2007)
02/20/2007	<a href="#">240</a>	<b>**SEALED DOCUMENT**</b> Opposition to Cross Motion re <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Defendant Novell, Inc.. (blk) (Entered: 02/22/2007)
02/20/2007	<a href="#">241</a>	<b>**SEALED DOCUMENT**</b> DECLARATION of Heather Sneddon re <a href="#">240</a> Sealed Opposition to Cross-Motion filed by Defendant Novell, Inc.. (blk) (Entered: 02/22/2007)
02/21/2007	<a href="#">239</a>	NOTICE OF CONVENTIONAL FILING of Novell's Opposition to SCO's Cross-Motion for Summary Judgment on Novell's Fourth Claim for Relief; Declaration of Heather M. Sneddon in Support; Novell's Response to SCO's Statement of Facts filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 02/21/2007)
02/21/2007	<a href="#">242</a>	<b>**SEALED DOCUMENT**</b> REPSONSE to SCOs Statement of Facts in Support of its Cross-Motion for Summary Jgm on Novells Fourth Claim for Relief filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> 2nd half of document)(blk) (Entered: 02/22/2007)
03/02/2007	<a href="#">243</a>	Stipulated MOTION for Extension of Time to Complete Discovery filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 03/02/2007)

03/05/2007	<a href="#">244</a>	ORDER RE SCHEDULING granting <a href="#">243</a> Motion for Extension of Time to Complete Discovery. Signed by Judge Dale A. Kimball on 3/5/07. (blk) (Entered: 03/05/2007)
03/05/2007		<b>Set/Reset Deadlines:</b> Motions due by 4/13/2007. (blk) (Entered: 03/05/2007)
03/09/2007	<a href="#">245</a>	MOTION for Extension of Time to File Response/Reply to <i>Novell's Opposition to SCO's Cross Motion for Partial Summary Judgment on Novell's Fourth Claim for Relief</i> filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 03/09/2007)
03/12/2007	<a href="#">246</a>	ORDER granting <a href="#">245</a> Motion for Extension of Time to File Response/Reply re <a href="#">224</a> Cross MOTION for Partial Summary Judgment on <i>Novell's Fourth Counterclaim</i> . Replies due by 3/16/2007. Signed by Judge Dale A. Kimball on 3/12/07. (blk) (Entered: 03/12/2007)
03/16/2007	<a href="#">247</a>	NOTICE OF CONVENTIONAL FILING of Reply Memorandum in Support of its Cross Motion for Partial Summary Judgment on Novells Fourth Counterclaim and Exhibits Attached Thereto; Declaration of Mark F. James filed by Counter Defendant SCO Group, Plaintiff SCO Group (James, Mark) (Entered: 03/16/2007)
03/16/2007	<a href="#">248</a>	MOTION for Leave to File Excess Pages filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(James, Mark) (Entered: 03/16/2007)
03/16/2007	<a href="#">251</a>	<b>**SEALED DOCUMENT**</b> REPLY MEMORANDUM IN SUPPORT re <a href="#">224</a> Cross MOTION for Partial Summary Judgment on <i>Novell's Fourth Counterclaim</i> filed by Counter Defendant SCO Group. (blk) (Entered: 03/21/2007)
03/19/2007	<a href="#">249</a>	ORDER granting <a href="#">248</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 3/19/07. (blk) (Entered: 03/19/2007)
03/20/2007	<a href="#">250</a>	Stipulated MOTION to Amend/Correct <i>SCO's Fifth Claim for Relief</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 03/20/2007)
03/22/2007	<a href="#">252</a>	ORDER on <a href="#">250</a> Motion to Amend/Correct Second Amended Complaint. It is hereby ordered that Plaintiff and Counterclaim-Defendant SCO's Second Amended Complaint is deemed amended to reflect that SCO's Fifth Claim for Relief arises out of Utah statutory and/or common law and Defendant and Counterclaim-Plaintiff Novell's Motion for a More Definite Statement of SCO's Unfair Competition Cause of Action is mooted. Signed by Judge Dale A. Kimball on 3/21/07. (blk) (Entered: 03/22/2007)
03/23/2007	253	<b><i>NOTICE FROM THE CLERK'S OFFICE: From this day forward, sealed submission in this case will not be scanned for internal court use but will be maintained in the court's sealed room not to be accessed except by court personnel.</i></b> (ce) (Entered: 03/23/2007)
03/26/2007	<a href="#">254</a>	Stipulated MOTION for Protective Order ( <i>Entry of Stipulated Addendum</i> ) filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)

		Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 03/26/2007)
03/28/2007	<a href="#">255</a>	STIPULATED ADDENDUM to PROTECTIVE ORDER. Signed by Judge Dale A. Kimball on 3/27/07. (blk) (Entered: 03/28/2007)
03/30/2007	<a href="#">256</a>	Stipulated MOTION for Extension of Time to Complete Outstanding Fact Discovery filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 03/30/2007)
04/03/2007	<a href="#">257</a>	ORDER granting <a href="#">256</a> Motion for Extension of Time to complete all outstanding fact discovery. The parties' 9/17/07 trial date will not change. Signed by Judge Dale A. Kimball on 4/3/07. (blk) (Entered: 04/03/2007)
04/09/2007	<a href="#">258</a>	MOTION for Summary Judgment ( <i>Partial</i> ) on <i>SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim</i> filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Normand, Edward) (Entered: 04/09/2007)
04/09/2007	<a href="#">259</a>	MEMORANDUM in Support re <a href="#">258</a> MOTION for Summary Judgment ( <i>Partial</i> ) on <i>SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim</i> MOTION for Summary Judgment ( <i>Partial</i> ) on <i>SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim</i> filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A-D: Unpublished Cases)(Normand, Edward) (Entered: 04/09/2007)
04/09/2007	<a href="#">260</a>	DECLARATION of Edward Normand re <a href="#">259</a> Memorandum in Support of Motion, filed by SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1 Part 1# <a href="#">2</a> Exhibit 1 Part 2# <a href="#">3</a> Exhibit 1 Part 3# <a href="#">4</a> Exhibit 1 Part 4# <a href="#">5</a> Exhibit 2-9# <a href="#">6</a> Exhibit 10-20# <a href="#">7</a> Exhibit 21-27# <a href="#">8</a> Exhibit 28-31# <a href="#">9</a> Exhibit 32-34# <a href="#">10</a> Exhibit 35 Part 1# <a href="#">11</a> Exhibit 35 Part 2# <a href="#">12</a> Exhibit 36-41)(Normand, Edward) (Entered: 04/09/2007)
04/09/2007	<a href="#">261</a>	Stipulated MOTION for Extension of Time to File Dispositive Motions filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 04/09/2007)
04/10/2007	<a href="#">262</a>	MOTION for Admission Pro Hac Vice of David Boies, Registration fee \$ 15, receipt number 490587, filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A: Application for Admission# <a href="#">2</a> Exhibit B: ECF Registration# <a href="#">3</a> Text of Proposed Order)(James, Mark) (Entered: 04/10/2007)
04/10/2007	<a href="#">263</a>	ORDER granting <a href="#">261</a> Motion for Extension of Time to Extend Dispositive Motion Deadline to April 20, 2007. Signed by Judge Dale A. Kimball on 4-10-07. (sih) (Entered: 04/10/2007)
04/11/2007	<a href="#">264</a>	ORDER granting <a href="#">262</a> Motion for Admission Pro Hac Vice of David Boies for SCO Group. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of</i>

		<i>Utahs local rules from the courts web site at <a href="http://www.utd.uscourts.gov">http://www.utd.uscourts.gov</a></i> Signed by Judge Dale A. Kimball on 4/11/07. (blk) (Entered: 04/11/2007)
04/16/2007	<a href="#">265</a>	REDACTION to 213 Sealed Document <i>SCO's Memorandum in Opposition to Novell's Motion for Partial Summary Judgment on its Fourth Counterclaim for Relief, and In Support of SCO's Cross Motion for Partial Summary Judgment</i> by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Part 2# <a href="#">2</a> Part 3# <a href="#">3</a> Appendix A)(Normand, Edward) (Entered: 04/16/2007)
04/16/2007	<a href="#">266</a>	REDACTION to <a href="#">251</a> Sealed Document <i>SCO's Reply Memorandum In Support of its Cross Motion for Partial Summary Judgment on Novell's Fourth Counterclaim</i> by Plaintiff SCO Group. (Normand, Edward) (Entered: 04/16/2007)
04/19/2007	<a href="#">267</a>	Stipulated MOTION for Extension of Time to Complete All Expert Discovery filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 04/19/2007)
04/19/2007	<a href="#">268</a>	Stipulated MOTION for Protective Order ( <i>Entry of Second Stipulated Addendum</i> ) filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 04/19/2007)
04/20/2007	<a href="#">269</a>	ORDER granting <a href="#">267</a> Motion for Extension of Time of deadlines for expert discovery. <i>See order for deadlines set.</i> Signed by Judge Dale A. Kimball on 4/17/07. (blk) (Entered: 04/20/2007)
04/20/2007	<a href="#">270</a>	ORDER granting <a href="#">268</a> Motion for Protective Order - SECOND STIPULATED ADDENDUM TO PROTECTIVE ORDER. Signed by Judge Dale A. Kimball on 4/20/07. (blk) (Entered: 04/20/2007)
04/20/2007	<a href="#">271</a>	MOTION for Partial Summary Judgment <i>on the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">272</a>	MEMORANDUM in Support re <a href="#">271</a> MOTION for Partial Summary Judgment <i>on the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">273</a>	MOTION for Partial Summary Judgment <i>on SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">274</a>	MEMORANDUM in Support re <a href="#">273</a> MOTION for Partial Summary Judgment <i>on SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 - Evolution v. Prime Rate)(Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">275</a>	MOTION for Summary Judgment <i>on SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> filed by Defendant Novell, Inc..

		(Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">276</a>	MEMORANDUM in Support re <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance [REDACTED]</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">277</a>	MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">278</a>	DECLARATION of Allison Amadia re <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2)(Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">279</a>	DECLARATION of David Bradford re <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2# <a href="#">3</a> Exhibit 3)(Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">280</a>	DECLARATION of James R. Tolonen re <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> filed by Novell, Inc.. (Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">281</a>	DECLARATION of Tor Braham re <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2 - Pt. A# <a href="#">3</a> Exhibit 2 - Pt. B# <a href="#">4</a> Exhibit 2 - Pt. C# <a href="#">5</a> Exhibit 3# <a href="#">6</a> Exhibit 4# <a href="#">7</a> Exhibit 5 - Pt. A# <a href="#">8</a> Exhibit 5 - Pt. B# <a href="#">9</a> Exhibit 6 - Pt. A# <a href="#">10</a> Exhibit 6 - Pt. B# <a href="#">11</a> Exhibit 7-8# <a href="#">12</a> Exhibit 9# <a href="#">13</a> Exhibit 10# <a href="#">14</a> Exhibit 11)(Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">282</a>	NOTICE of Corrected Filing by Novell, Inc. re <a href="#">273</a> MOTION for Partial Summary Judgment on <i>SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> (Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	<a href="#">283</a>	NOTICE OF CONVENTIONAL FILING of (Memoranda and Declarations) filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 04/20/2007)
04/20/2007	284	<b>**SEALED DOCUMENT**</b> DECLARATION of Kenneth W. Brakebill filed by Defendant Novell, Inc.. (blk) (Entered: 04/23/2007)
04/20/2007	286	<b>**SEALED DOCUMENT**</b> MEMORANDUM IN SUPPORT re <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> filed by Defendant Novell, Inc.. (blk) (Entered: 04/23/2007)
04/20/2007	287	<b>**SEALED DOCUMENT**</b> MEMORANDUM IN SUPPORT re <a href="#">273</a> MOTION for Partial Summary Judgment on <i>SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> filed by Defendant Novell, Inc.. (blk) (Entered: 04/23/2007)

04/20/2007	288	<b>**SEALED DOCUMENT**</b> MEMORANDUM IN SUPPORT re <a href="#">277</a> MOTION for Summary Judgment <i>on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> filed by Defendant Novell, Inc.. (blk) (Entered: 04/23/2007)
04/23/2007	<a href="#">285</a>	REDACTION to 284 Sealed Document DECLARATION OF KENNETH W. BRAKEBILL by Defendant Novell, Inc.. (blk) Modified on 4/23/2007 - Exhibits not scanned because they are oversize. They will be retained in the clerk's office for viewing (blk). (Entered: 04/23/2007)
04/24/2007	<a href="#">289</a>	MOTION for Admission Pro Hac Vice of Marc J. Pernick, Registration fee \$ 15, receipt number 4681017374, filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Application# <a href="#">2</a> Exhibit B - Electronic Case Filing Registration Form# <a href="#">3</a> Exhibit C - Proposed Order)(Sneddon, Heather) (Entered: 04/24/2007)
04/25/2007	<a href="#">290</a>	ORDER granting <a href="#">289</a> Motion for Admission Pro Hac Vice of Marc J. Pernick for Novell, Inc.. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at http://www.utd.uscourts.gov</i> . Signed by Judge Dale A. Kimball on 4/25/07. (blk) (Entered: 04/25/2007)
04/25/2007	<a href="#">291</a>	REDACTION to 288 Sealed Document [ <i>Memorandum in Support of Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> ] by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 - The SCO Group v. Novell# <a href="#">2</a> Exhibit 2 - Geer v. Cox# <a href="#">3</a> Exhibit 3 - Zapata v. IBP# <a href="#">4</a> Exhibit 4 - Marseilles Hydro Power v. Marseilles Land & Water# <a href="#">5</a> Exhibit 5 - Computerized Thermal Imaging v. Bloomberg# <a href="#">6</a> Exhibit 6 - Professional Asset Mgmt. v. Penn Square Bank) (Sneddon, Heather) (Entered: 04/25/2007)
05/14/2007	<a href="#">292</a>	Defendant's MEMORANDUM in Opposition re <a href="#">258</a> MOTION for Summary Judgment ( <i>Partial</i> ) on <i>SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim</i> MOTION for Summary Judgment ( <i>Partial</i> ) on <i>SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim</i> [ <i>REDACTED</i> ] filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-Response to SCO's Statement of Facts# <a href="#">2</a> Exhibit B# <a href="#">3</a> Exhibit C)(Sneddon, Heather) (Entered: 05/14/2007)
05/14/2007	<a href="#">293</a>	DECLARATION of James McKenna re <a href="#">292</a> Memorandum in Opposition to Motion,, filed by Novell, Inc.. (Sneddon, Heather) (Entered: 05/14/2007)
05/14/2007	<a href="#">294</a>	NOTICE OF CONVENTIONAL FILING of (Sealed Memorandum in Opposition & Sealed/Redacted Supplemental Declaration) filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 05/14/2007)
05/14/2007	295	<b>**SEALED DOCUMENT**</b> MEMORANDUM IN SUPPORT re <a href="#">292</a> Memorandum in Opposition to Motion for Partial Summary Judgment on SCO's First, Second, and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim (Copyright Ownership) filed by Defendant Novell, Inc.. (No document attached.) (blk) (Entered: 05/15/2007)

05/14/2007	296	<b>**SEALED DOCUMENT**</b> SUPPLEMENTAL DECLARATION of Kenneth W. Brakebill in Opposition to SCO's Motion for Summary Judgment filed by Defendant Novell, Inc.. (No document attached.) (blk) (Entered: 05/15/2007)
05/14/2007	<a href="#">297</a>	REDACTION to 296 Sealed Supplemental Declaration of Kenneth W. Brakebill by Defendant Novell, Inc.. (Exhibits not attached in this image due to overlength size.) (blk) (Entered: 05/15/2007)
05/15/2007	<a href="#">298</a>	OBJECTIONS to 213 Sealed Document, <a href="#">258</a> MOTION for Summary Judgment ( <i>Partial</i> ) on SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim MOTION for Summary Judgment ( <i>Partial</i> ) on SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim, <a href="#">224</a> Cross MOTION for Partial Summary Judgment on Novell's Fourth Counterclaim, <a href="#">259</a> Memorandum in Support of Motion, [ <i>Evidentiary Objections to SCO's Summary Judgment Exhibits</i> ] filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B)(Sneddon, Heather) (Entered: 05/15/2007)
05/18/2007	<a href="#">299</a>	Plaintiff's MEMORANDUM in Opposition re <a href="#">271</a> MOTION for Partial Summary Judgment on the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Normand, Edward) (Entered: 05/18/2007)
05/18/2007	<a href="#">300</a>	Plaintiff's MOTION for Leave to File Excess Pages filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order Order Granting Ex Parte Motion for Leave to File Excess Pages) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 05/18/2007)
05/18/2007	<a href="#">301</a>	Plaintiff's MEMORANDUM in Opposition re <a href="#">273</a> MOTION for Partial Summary Judgment on SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit Unpublished Cases)(Normand, Edward) (Entered: 05/18/2007)
05/18/2007	<a href="#">302</a>	NOTICE OF CONVENTIONAL FILING of SCO's Memorandum in Opposition to Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance, SCO's Response in Opposition to Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages, Declaration of Mark F. James filed by Plaintiff SCO Group (Normand, Edward) (Entered: 05/18/2007)
05/18/2007	<a href="#">303</a>	EXHIBITS filed by SCO Group. (Normand, Edward) (Entered: 05/18/2007)
05/18/2007	306	<b>**SEALED DOCUMENT**</b> SEALED MEMORANDUM IN OPPOSITION re: <a href="#">275</a> MOTION for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance, filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)



05/18/2007	307	<b>**SEALED DOCUMENT**</b> SEALED RESPONSE IN OPPOSITION re: <a href="#">277</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> , filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	308	<b>**SEALED DOCUMENT**</b> SEALED DECLARATION OF MARK F. JAMES filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	309	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 9-14 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	310	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 15-20 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	311	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 21-34 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	312	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 35-40 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	313	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 41-50 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	314	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 51-59 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	315	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 60-63 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	316	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 64-70 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	317	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 71-75 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	318	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 76-86 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/18/2007	319	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 87-104 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)

05/18/2007	320	<b>**SEALED DOCUMENT**</b> SEALED EXHIBITS 105-120 re: 308 Sealed Document filed by Plaintiff SCO Group (oversized document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/21/2007)
05/19/2007	<a href="#">304</a>	Plaintiff's MOTION for Leave to File Excess Pages <i>re SCO's Response in Opposition to Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 05/19/2007)
05/19/2007	<a href="#">305</a>	Plaintiff's MOTION for Leave to File Excess Pages <i>re SCO's Memorandum in Opposition to Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 05/19/2007)
05/21/2007	<a href="#">321</a>	ORDER granting <a href="#">304</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 5/21/07 (alt) (Entered: 05/21/2007)
05/21/2007	<a href="#">322</a>	ORDER granting <a href="#">305</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 5/21/07 (alt) (Entered: 05/21/2007)
05/21/2007	<a href="#">323</a>	ORDER granting <a href="#">300</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 5/21/07 (alt) (Entered: 05/21/2007)
05/21/2007	<a href="#">324</a>	DECLARATION of G. Gervaise Davis III re 306 Sealed Document, <i>SCO'S MEMORANDUM IN OPPOSITION re: <a href="#">275</a> MOTION for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> , filed by SCO Group. (Attachments: # <a href="#">1</a> Exhibit A-B)(Normand, Edward) (Entered: 05/21/2007)
05/24/2007	<a href="#">325</a>	REDACTION to 306 Sealed Document, <i>SCO's Memorandum in Opposition to Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Part 2# <a href="#">2</a> Appendix A)(Normand, Edward) (Entered: 05/24/2007)
05/24/2007	326	<b>NOTICE OF HEARING ON MOTION</b> re: <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> , <a href="#">277</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> , <a href="#">273</a> MOTION for Partial Summary Judgment on <i>SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> , <a href="#">180</a> Cross MOTION for Summary Judgment <i>OR PARTIAL SUMMARY JUDGMENT ON NOVELL'S THIRD, SIXTH, SEVENTH, EIGHTH AND NINTH COUNTERCLAIMS</i> , <a href="#">258</a> MOTION for Summary Judgment (Partial) on <i>SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim</i> MOTION for Summary Judgment (Partial) on <i>SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim</i> , <a href="#">271</a> MOTION for Partial Summary Judgment on <i>the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> , <a href="#">224</a> Cross MOTION for Partial Summary Judgment on

		<i>Novell's Fourth Counterclaim</i> , <a href="#">147</a> MOTION for Partial Summary Judgment or Preliminary Injunction, <a href="#">171</a> MOTION for Partial Summary Judgment on <i>Novell's Fourth Claim for Relief</i> : Motion Hearing set for 5/31/2007 09:00 AM in Room 220 before Judge Dale A. Kimball. (kmj) (Entered: 05/24/2007)
05/24/2007	<a href="#">327</a>	EXHIBIT 113 filed by SCO Group re 308 Sealed Declaration of Mark F. James. (Normand, Edward) Modified on 5/25/2007 by adding descriptive text (blk). (Entered: 05/24/2007)
05/24/2007	<a href="#">328</a>	EXHIBIT 114 filed by SCO Group re 308 Sealed Declaration of Mark F. James. (Normand, Edward) Modified on 5/25/2007 by adding descriptive text (blk). (Entered: 05/24/2007)
05/24/2007	<a href="#">329</a>	REDACTION to Exhibit 89 re 308 Sealed Declaration <i>Exhibit 89 to the Declaration of Mark F. James</i> by Plaintiff SCO Group. (Normand, Edward) Modified on 5/25/2007 by adding descriptive text (blk). (Entered: 05/24/2007)
05/25/2007	<a href="#">330</a>	EXHIBITS filed by SCO Group re 308 Sealed Document. (Normand, Edward) (Entered: 05/25/2007)
05/25/2007	<a href="#">331</a>	Ex Parte (Not Sealed) MOTION for Leave to File Excess Pages ( <i>Overlength Reply Memoranda</i> ) filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 05/25/2007)
05/25/2007	<a href="#">332</a>	REPLY to Response to Motion re <a href="#">271</a> MOTION for Partial Summary Judgment on the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Klein-Becker v. Home Shopping Network# <a href="#">2</a> Exhibit B - Bloom v. Goodyear Tire)(Sneddon, Heather) (Entered: 05/25/2007)
05/25/2007	<a href="#">333</a>	REPLY to Response to Motion re <a href="#">273</a> MOTION for Partial Summary Judgment on SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit Addendum: Response to SCO's Statement of Facts# <a href="#">2</a> Exhibit A-D: Unpublished Decisions# <a href="#">3</a> Exhibit E-G: Unpublished Decisions# <a href="#">4</a> Exhibit H: Unpublished Decision)(Sneddon, Heather) (Entered: 05/25/2007)
05/25/2007	<a href="#">334</a>	DECLARATION of James McKenna re <a href="#">275</a> MOTION for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance filed by Novell, Inc.. (Sneddon, Heather) (Entered: 05/25/2007)
05/25/2007	<a href="#">335</a>	DECLARATION of Kenneth W. Brakebill re <a href="#">275</a> MOTION for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance, <a href="#">271</a> MOTION for Partial Summary Judgment on the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition, <a href="#">277</a> MOTION for Summary Judgment on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages, <a href="#">273</a> MOTION for Partial Summary

		Judgment on <i>SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2# <a href="#">3</a> Exhibit 3# <a href="#">4</a> Exhibit 4# <a href="#">5</a> Exhibit 5# <a href="#">6</a> Exhibit 6# <a href="#">7</a> Exhibit 7# <a href="#">8</a> Exhibit 8# <a href="#">9</a> Exhibit 9# <a href="#">10</a> Exhibit 10# <a href="#">11</a> Exhibit 11# <a href="#">12</a> Exhibit 13# <a href="#">13</a> Exhibit 14# <a href="#">14</a> Exhibit 15)(Sneddon, Heather) (Entered: 05/25/2007)
05/25/2007	<a href="#">336</a>	NOTICE OF CONVENTIONAL FILING of Reply Memoranda and Declaration filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 05/25/2007)
05/25/2007	<a href="#">337</a>	REPLY to Response to Motion re <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance [REDACTED]</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Response to SCO's Statement of Facts# <a href="#">2</a> Exhibit B - Relational Design v. Brock# <a href="#">3</a> Exhibit C - Dick Corp. v. SNC-Lavalin# <a href="#">4</a> Exhibit D - Bank of the West v. Resolution Trust# <a href="#">5</a> Exhibit E - Wester Online Dictionary Entry for "Require")(Sneddon, Heather) (Entered: 05/25/2007)
05/25/2007	338	<b>**SEALED DOCUMENT**</b> SEALED REPLY IN SUPPORT OF <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> filed by Defendant Novell, Inc (document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/29/2007)
05/25/2007	339	<b>**SEALED DOCUMENT**</b> SEALED REPLY IN SUPPORT OF <a href="#">277</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> filed by Defendant Novell, Inc (document is not scanned - will be kept in permanent storage) (alt) (Entered: 05/29/2007)
05/25/2007	340	<b>**SEALED DOCUMENT**</b> SEALED 2ND SUPPLEMENTAL DECALRATION OF KENNETH W. BRAKEBILL re: <a href="#">147</a> MOTION for Partial Summary Judgment or <i>Preliminary Injunction</i> , <a href="#">171</a> MOTION for Partial Summary Judgment on <i>Novell's Fourth Claim for Relief</i> , <a href="#">271</a> MOTION for Partial Summary Judgment on <i>the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> , <a href="#">273</a> MOTION for Partial Summary Judgment on <i>SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> , <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> , <a href="#">277</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> filed by Defendant Novell, Inc (alt) (document is not scanned - will be kept in permanent storage) Modified on 5/29/2007: added text re: permanent storage (alt) (Entered: 05/29/2007)
05/29/2007	341	<b>AMENDED NOTICE OF HEARING ON MOTION</b> re: <a href="#">275</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> , <a href="#">277</a> MOTION for Summary Judgment on <i>SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> , <a href="#">273</a> MOTION for Partial Summary Judgment on <i>SCO's Non-</i>

		<i>Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> : (Notice generated by Kim Jones) Motion Hearing reset for 5/31/2007 02:00 PM in Room 220 before Judge Dale A. Kimball. (kmj) (Entered: 05/29/2007)
05/29/2007	342	<b>SECOND AMENDED NOTICE OF HEARING ON MOTION</b> re: <a href="#">258</a> MOTION for Summary Judgment ( <i>Partial</i> ) on SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim MOTION for Summary Judgment ( <i>Partial</i> ) on SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim, <a href="#">271</a> MOTION for Partial Summary Judgment on the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition, <a href="#">224</a> Cross MOTION for Partial Summary Judgment on Novell's Fourth Counterclaim, <a href="#">171</a> MOTION for Partial Summary Judgment on Novell's Fourth Claim for Relief : (Notice generated by Kim Jones) Motion Hearing reset for 6/4/2007 09:00 AM in Room 220 before Judge Dale A. Kimball. (kmj) (Entered: 05/29/2007)
05/29/2007	<a href="#">343</a>	ORDER granting <a href="#">331</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 5/29/07 (alt) (Entered: 05/29/2007)
05/29/2007	344	<b>CORRECTED NOTICE OF HEARING ON MOTION</b> re: <a href="#">277</a> MOTION for Summary Judgment on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages, <a href="#">273</a> MOTION for Partial Summary Judgment on SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition, <a href="#">271</a> MOTION for Partial Summary Judgment on the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition : (Notice generated by Kim Jones) Motion Hearing set for 5/31/2007 02:00 PM in Room 220 before Judge Dale A. Kimball. (kmj) (Entered: 05/29/2007)
05/29/2007	345	<b>SECOND CORRECTED NOTICE OF HEARING ON MOTION</b> re: <a href="#">275</a> MOTION for Summary Judgment on SCO's First Claim for Slander of Title and Third Claim for Specific Performance, <a href="#">258</a> MOTION for Summary Judgment ( <i>Partial</i> ) on SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim MOTION for Summary Judgment ( <i>Partial</i> ) on SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim, <a href="#">224</a> Cross MOTION for Partial Summary Judgment on Novell's Fourth Counterclaim, <a href="#">171</a> MOTION for Partial Summary Judgment on Novell's Fourth Claim for Relief : (Notice generated by Kim Jones) Motion Hearing set for 6/4/2007 09:00 AM in Room 220 before Judge Dale A. Kimball. (kmj) (Entered: 05/29/2007)
05/29/2007	<a href="#">346</a>	REPLY to Response to Motion re <a href="#">258</a> MOTION for Summary Judgment ( <i>Partial</i> ) on SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim MOTION for Summary Judgment ( <i>Partial</i> ) on SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim filed by Plaintiff SCO Group. (Normand, Edward) (Entered: 05/29/2007)
05/29/2007	<a href="#">347</a>	DECLARATION of Edward Normand re <a href="#">346</a> Reply Memorandum/Reply to

		Response to Motion, filed by SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1-2# <a href="#">2</a> Exhibit 3# <a href="#">3</a> Exhibit 4-12# <a href="#">4</a> Exhibit 13-14# <a href="#">5</a> Exhibit 15 Part 1# <a href="#">6</a> Exhibit 15 Part 2# <a href="#">7</a> Exhibit 15 Part 3# <a href="#">8</a> Exhibit 15 Part 4# <a href="#">9</a> Exhibit 15 Part 5# <a href="#">10</a> Exhibit 16-19# <a href="#">11</a> Exhibit 20-26# <a href="#">12</a> Exhibit 27-34)(Normand, Edward) (Entered: 05/29/2007)
05/29/2007	<a href="#">348</a>	MOTION for Leave to File Excess Pages <i>re Docket Entry 346</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 05/30/2007)
05/29/2007	350	<b>**SEALED DOCUMENT**</b> Novell's Evidentiary Objections to SCO's Exhibits Submitted in Support of its Summary Judgment Oppositions filed 5/18/07 re 317 Sealed Document, 314 Sealed Document, 315 Sealed Document, 319 Sealed Document, 316 Sealed Document, 312 Sealed Document, 311 Sealed Document, 309 Sealed Document, 310 Sealed Document, 313 Sealed Document, 318 Sealed Document, 320 Sealed Document filed by Defendant Novell, Inc.(This document is not scanned and is located in the sealed area.) (kla) (Entered: 05/30/2007)
05/30/2007	<a href="#">349</a>	ORDER granting <a href="#">348</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 5/30/07 (alt) (Entered: 05/30/2007)
05/30/2007	<a href="#">351</a>	NOTICE OF CONVENTIONAL FILING of Supplemental Declaration of Mark F. James filed by Counter Defendant SCO Group, Plaintiff SCO Group re 308 Sealed Document (James, Mark) (Entered: 05/30/2007)
05/30/2007	<a href="#">352</a>	MOTION to Strike <i>Supplemental Declaration of Mark F. James Attaching Expert Reports and Declarations</i> filed by Defendant Novell, Inc.. Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 05/30/2007)
05/30/2007	<a href="#">353</a>	MEMORANDUM in Support re <a href="#">352</a> MOTION to Strike <i>Supplemental Declaration of Mark F. James Attaching Expert Reports and Declarations</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Leviton v. Nicor)(Sneddon, Heather) (Entered: 05/30/2007)
05/30/2007	354	<b>**SEALED DOCUMENT**</b> Supplemental Declaration of Mark F. James filed by Counter Defendant SCO Group, Plaintiff SCO Group. (This document is not scanned and is located in the sealed area.) (kla) (Entered: 05/31/2007)
05/31/2007		Motions No Longer Referred: <a href="#">352</a> MOTION to Strike <i>Supplemental Declaration of Mark F. James Attaching Expert Reports and Declarations</i> because this relates to the summary judgment motions. (mjw) (Entered: 05/31/2007)
05/31/2007	355	Minute Entry for proceedings held before Judge Dale A. Kimball : Motion Hearing held on 5/31/2007 re <a href="#">271</a> MOTION for Partial Summary Judgment <i>on the Copyright Ownership Portions of SCO's Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> filed by Novell, Inc., <a href="#">273</a> MOTION for Partial Summary Judgment <i>on SCO's Non-Compete Claim in its Second Claim for Breach of Contract and Fifth Claim for Unfair Competition</i> filed by Novell, Inc., <a href="#">277</a> MOTION for Summary Judgment <i>on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i>

		filed by Novell, Inc. After hearing the arguments of counsel, the Court took the motions under advisement. Attorneys for Plaintiff: Brent Hatch, Edward Normand, Sashi Boruchow; Attorneys for Defendant: Michael Jacobs, Thomas Karrenberg, Grant Kim, Kenneth Brakebill. Court Reporter: Kelly Hicken. (kmj) (Entered: 06/01/2007)
06/04/2007	356	Minute Entry for proceedings held before Judge Dale A. Kimball : Motion Hearing held on 6/4/2007 re <a href="#">275</a> MOTION for Summary Judgment <i>on SCO's First Claim for Slander of Title and Third Claim for Specific Performance</i> filed by Novell, Inc., <a href="#">258</a> MOTION for Summary Judgment ( <i>Partial</i> ) <i>on SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim</i> MOTION for Summary Judgment ( <i>Partial</i> ) <i>on SCO's First, Second and Fifth Causes of Action and for Summary Judgment on Novell's First Counterclaim</i> filed by SCO Group, <a href="#">224</a> Cross MOTION for Partial Summary Judgment <i>on Novell's Fourth Counterclaim</i> filed by SCO Group, <a href="#">171</a> MOTION for Partial Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Novell, Inc. After hearing the arguments of counsel, the Court took the motions under advisement. Attorneys for Plaintiff: Stuart Singer, Edward Normand, Mark Jacobs; Attorneys for Defendants: Michael Jacobs, Kenneth Brakebill, Thomas Karrenberg. Court Reporter: Becky Janke. (kmj) (Entered: 06/04/2007)
06/07/2007	<a href="#">357</a>	CERTIFICATE OF SERVICE by SCO Group <i>Regarding SCO's Expert Reports</i> (Normand, Edward) (Entered: 06/07/2007)
06/07/2007	<a href="#">358</a>	REDACTION to 339 Sealed Document, <i>Reply Memorandum in Support of Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B# <a href="#">3</a> Exhibit C# <a href="#">4</a> Exhibit D) (Sneddon, Heather) (Entered: 06/07/2007)
06/07/2007	<a href="#">359</a>	REDACTION to 350 Sealed Document,, <i>Novell's Evidentiary Objections to SCO's Exhibits Submitted in Support of Its Summary Judgment Oppositions Filed May 18, 2007</i> by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Part 1# <a href="#">2</a> Exhibit A - Part 2# <a href="#">3</a> Exhibit A - Part 3# <a href="#">4</a> Exhibit A - Part 4# <a href="#">5</a> Exhibit B)(Sneddon, Heather) (Entered: 06/07/2007)
06/11/2007	<a href="#">360</a>	REDACTION to 307 Sealed Document, <i>SCO's Response in Opposition to Novell's Motion for Summary Judgment on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages</i> by Plaintiff SCO Group. (Boruchow, Sashi) (Entered: 06/11/2007)
06/18/2007	<a href="#">361</a>	NOTICE OF CONVENTIONAL FILING of SCO's Memorandum in Opposition to Novell's Evidentiary Objections to SCO's Exhibits Submitted in Support of Its Summary Judgment Oppositions Filed May 18, 2007, Incorporating by Reference Novell's Evidentiary Objections to SCO's Summary Judgment Exhibits (Filed Under Seal) filed by Plaintiff SCO Group re 350 Sealed Document,, (James, Mark) (Entered: 06/18/2007)
06/18/2007	362	<b>**SEALED DOCUMENT**</b> MEMORANDUM IN OPPOSITION to Novell's Evidentiary Objections to SCO's Exhibits Submitted in Support of its Summary Judgment Oppositions Filed May 18, 2007, Incorporating by

		Reference Novell's Evidentiary Objections to SCO's Summary Judgment Exhibits, re 350 Sealed Objections, filed by Plaintiff SCO Group. <i>No attachment - document retained in sealed room.</i> (blk) (Entered: 06/19/2007)
06/18/2007	<a href="#">363</a>	<b>**SEALED DOCUMENT**</b> EXHIBITS to SCO's Memorandum in Opposition to Novell's Evidentiary Objections to SCO's Exhibits Submitted in Support of its Summary Judgment Oppositions Filed May 18, 2007 Incorporating by Reference Novell's Evidentiary Objections to SCO's Summary Judgment Exhibits filed by Plaintiff SCO Group re 362 Sealed Document filed by Plaintiff SCO Group. <i>No attachment - document retained in the sealed room.</i> (blk) (Entered: 06/19/2007)
06/20/2007	<a href="#">364</a>	Plaintiff's MOTION for Leave to File Excess Pages <i>re SCO's Memorandum in Opposition to Novell's Evidentiary Objections to SCO's Exhibits Submitted in Support of Its Summary Judgment Oppositions Filed May 18, 2007, incorporating by reference Novell's Evidentiary Objections to SCO's Summary Judgment Exhibits</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 06/20/2007)
06/20/2007	<a href="#">365</a>	ORDER granting <a href="#">364</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 6/20/07. (kla) (Entered: 06/20/2007)
07/03/2007	<a href="#">366</a>	RESPONSE re 362 Sealed Document,, ( <i>SCO's Opposition to Novell's Evidentiary Objections to SCO's Exhibits Submitted in Connection with Summary Judgment Motions</i> ) filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Appendix A# <a href="#">2</a> Appendix B)(Sneddon, Heather) (Entered: 07/03/2007)
07/10/2007	<a href="#">367</a>	Stipulated MOTION for Scheduling Order ( <i>Pretrial Schedule</i> ) filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 07/10/2007)
07/11/2007	<a href="#">368</a>	PRETRIAL ORDER Setting dates/deadlines. Final Pretrial Conference set for 9/11/07. Jury Trial set for 9/17/2007 08:30 AM in Room 220 before Judge Dale A. Kimball. <i>See order for all dates/deadlines set.</i> Signed by Judge Dale A. Kimball on 7/11/07. (blk) (Entered: 07/11/2007)
08/02/2007	<a href="#">369</a>	Proposed Witness List <i>and Exhibit List (Rule 26 Pretrial Disclosures)</i> by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-1, A-2, B and C)(Sneddon, Heather) (Entered: 08/02/2007)
08/02/2007	<a href="#">370</a>	Proposed Exhibit List <i>and Witness List (Rule 26 Pretrial Disclosures)</i> by Plaintiff SCO Group.. (Normand, Edward) (Entered: 08/02/2007)
08/03/2007	<a href="#">371</a>	MOTION for Admission Pro Hac Vice of Eric M. Acker, Registration fee \$ 15, receipt number 548982, filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B# <a href="#">3</a> Exhibit C - Text of Proposed Order)(Sneddon, Heather) (Entered: 08/03/2007)
08/06/2007	<a href="#">372</a>	Proposed Exhibit List <i>and Witness List (Rule 26 Pretrial Disclosures)</i> AMENDED by Plaintiff SCO Group.. (Normand, Edward) (Entered: 08/06/2007)
08/06/2007	<a href="#">373</a>	ORDER granting <a href="#">371</a> Motion for Admission Pro Hac Vice of Eric M. Acker



		for Novell, Inc.. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at http://www.utd.uscourts.gov</i> . Signed by Judge Dale A. Kimball on 8/6/07. (blk) (Entered: 08/07/2007)
08/08/2007	<a href="#">374</a>	Stipulated MOTION for Extension of Time Re Objections to Pre-Trial Rule 26(a)(3) Disclosures filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 08/08/2007)
08/09/2007	<a href="#">375</a>	Stipulated MOTION for Extension of Time for Submission of Pre-Trial Order filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 08/09/2007)
08/09/2007	<a href="#">376</a>	ORDER granting <a href="#">374</a> Motion for Extension of Time to file objections to the Pre-Trial Rule 26(a)(3) Disclosures until 8/31/07. Signed by Judge Dale A. Kimball on 8/9/07. (kla) (Entered: 08/09/2007)
08/10/2007	<a href="#">377</a>	MEMORANDUM DECISION AND ORDER granting in part and denying in part <a href="#">147</a> Motion for Partial Summary Judgment; granting <a href="#">171</a> Motion for Partial Summary Judgment; granting in part and denying in part <a href="#">180</a> Motion for Summary Judgment ; denying <a href="#">224</a> Motion for Partial Summary Judgment; denying <a href="#">258</a> Motion for Summary Judgment ; granting <a href="#">271</a> Motion for Partial Summary Judgment; granting in part and denying in part <a href="#">273</a> Motion for Partial Summary Judgment; granting <a href="#">275</a> Motion for Summary Judgment ; finding as moot <a href="#">277</a> Motion for Summary Judgment. Signed by Judge Dale A. Kimball on 8-10-07. (sih) (Entered: 08/10/2007)
08/10/2007	<a href="#">378</a>	TRIAL ORDER. Signed by Judge Dale A. Kimball on 8-10-07. (sih) (Entered: 08/10/2007)
08/17/2007	<a href="#">379</a>	STATUS REPORT ( <i>Joint Statement in Response to the Court's August 10, 2007 Memorandum Decision and Order</i> ) by Novell, Inc.. (Sneddon, Heather) (Entered: 08/17/2007)
08/22/2007	<a href="#">380</a>	Proposed Witness List and Exhibit List ( <i>Novell's First Amended Rule 26 Pretrial Disclosures</i> ) by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-1, A-2, B and C)(Sneddon, Heather) (Entered: 08/22/2007)
08/22/2007	<a href="#">381</a>	Proposed Exhibit List and Witness List ( <i>Rule 26 Pretrial Disclosures</i> ) <i>SECOND AMENDED</i> by Plaintiff SCO Group.. (Normand, Edward) (Entered: 08/22/2007)
08/23/2007	<a href="#">382</a>	Proposed Witness List and Exhibit List ( <i>Novell's Second Amended Rule 26 Pretrial Disclosures</i> ) by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-C) (Sneddon, Heather) (Entered: 08/23/2007)
08/24/2007	<a href="#">383</a>	STATUS REPORT ( <i>Supplemental Joint Statement re: the Parties' August 17, 2007 Joint Statement</i> ) by Novell, Inc.. (Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">384</a>	NOTICE OF CONVENTIONAL FILING filed by Plaintiff SCO Group <i>Re: SCO's Motion to Exclude Testimony of Terry L. Musika and SCO's Motion in</i>

		<i>Limine Regarding Apportionment of 2003 Microsoft and Sun Agreements</i> (Normand, Edward) (Entered: 08/24/2007)
08/24/2007	<a href="#">385</a>	MOTION to Strike <i>SCO's Jury Demand</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">386</a>	MEMORANDUM in Support re <a href="#">385</a> MOTION to Strike <i>SCO's Jury Demand</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">387</a>	MOTION to Dismiss <i>Voluntarily Its Third Claim for Relief</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">388</a>	MEMORANDUM in Support re <a href="#">387</a> MOTION to Dismiss <i>Voluntarily Its Third Claim for Relief</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">389</a>	Plaintiff's MOTION in <i>Limine to Exclude All Evidence Related to Other Litigation and Commentary Thereon</i> filed by Plaintiff SCO Group. (Normand, Edward) (Entered: 08/24/2007)
08/24/2007	<a href="#">390</a>	Plaintiff's MOTION to Strike <i>Exhibits on Novell's Revised Exhibit List Not Previously Disclosed</i> filed by Plaintiff SCO Group. Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 08/24/2007)
08/24/2007	<a href="#">391</a>	MOTION in <i>Limine No. 1 to Preclude SCO from Challenging Questions Already Decided as a Matter of Law</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">392</a>	MEMORANDUM in Support re <a href="#">391</a> MOTION in <i>Limine No. 1 to Preclude SCO from Challenging Questions Already Decided as a Matter of Law</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">393</a>	MOTION in <i>Limine No. 2 to Preclude SCO from Contesting Licenses Conveying SVRX Rights are "SVRX Licenses"</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">394</a>	MEMORANDUM in Support re <a href="#">393</a> MOTION in <i>Limine No. 2 to Preclude SCO from Contesting Licenses Conveying SVRX Rights are "SVRX Licenses"</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">395</a>	MOTION in <i>Limine No. 3 to Preclude SCO from Introducing New Evidence or Argument of SCOSource Revenue</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">396</a>	MEMORANDUM in Support re <a href="#">395</a> MOTION in <i>Limine No. 3 to Preclude SCO from Introducing New Evidence or Argument of SCOSource Revenue [REDACTED]</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) Modified on 8/27/2007 by sealing document image. The image attached was not redacted and was mistakenly attached as the redacted version. Please see

		image # <a href="#">397</a> for the redacted image (blk). (Entered: 08/24/2007)
08/24/2007	<a href="#">397</a>	NOTICE of Corrected Filing of MEMORANDUM IN SUPPORT by Novell, Inc. re <a href="#">396</a> Memorandum in Support of Motion <i>in Limine No. 3 to Preclude SCO from Introducing New Evidence or Argument Regarding Apportionment of SCOSource Revenue</i> (Sneddon, Heather) Modified on 8/27/2007 by linking to # <a href="#">395</a> Motion (blk). (Entered: 08/24/2007)
08/24/2007	<a href="#">398</a>	DECLARATION of David E. Melaugh re <a href="#">395</a> MOTION in <i>Limine No. 3 to Preclude SCO from Introducing New Evidence or Argument of SCOSource Revenue</i> , <a href="#">391</a> MOTION in <i>Limine No. 1 to Preclude SCO from Challenging Questions Already Decided as a Matter of Law</i> , <a href="#">393</a> MOTION in <i>Limine No. 2 to Preclude SCO from Contesting Licenses Conveying SVRX Rights are "SVRX Licenses" [REDACTED]</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1 & 2# <a href="#">2</a> Exhibit 3 Pt. 1# <a href="#">3</a> Exhibit 3 Pt. 2# <a href="#">4</a> Exhibit 4-6# <a href="#">5</a> Exhibit Ex. 8-15)(Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	<a href="#">399</a>	NOTICE OF CONVENTIONAL FILING of Declaration of David E. Melaugh in Support of Novell's Motions in <i>Limine Nos. 1-3</i> (Filed Under Seal), Opening Brief in Support of Novell's Motion in <i>Limine No. 3 to Preclude SCO from Introducing New Evidence or Argument Regarding Apportionment of SCOSource Revenue</i> (Filed Under Seal) filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 08/24/2007)
08/24/2007	404	<b>**SEALED DOCUMENT**</b> OPENING BRIEF/Memorandum in Support re <a href="#">395</a> MOTION in <i>Limine No. 3 to Preclude SCO from Introducing New Evidence or Argument of SCOSource Revenue</i> filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (blk) (Entered: 08/27/2007)
08/24/2007	405	<b>**SEALED DOCUMENT**</b> SEALED MOTION to Exclude Testimony of Terry L. Musika filed by Plaintiff SCO Group. Motions referred to Brooke C. Wells.(blk) (Entered: 08/27/2007)
08/24/2007	406	<b>**SEALED DOCUMENT**</b> SEALED MOTION in <i>Limine Regarding Apportionment of 2003 Microsoft and Sun Agreements</i> filed by Plaintiff SCO Group. Motions referred to Brooke C. Wells.(blk) (Entered: 08/27/2007)
08/24/2007	407	<b>**SEALED DOCUMENT**</b> DECLARATION of David E. Melaugh in Support of Novell's Motions in <i>Limine Nos. 1-3</i> , re <a href="#">395</a> MOTION in <i>Limine No. 3 to Preclude SCO from Introducing New Evidence or Argument of SCOSource Revenue</i> , <a href="#">391</a> MOTION in <i>Limine No. 1 to Preclude SCO from Challenging Questions Already Decided as a Matter of Law</i> , <a href="#">393</a> MOTION in <i>Limine No. 2 to Preclude SCO from Contesting Licenses Conveying SVRX Rights are "SVRX Licenses"</i> filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (blk) (Entered: 08/27/2007)
08/27/2007	400	<b>NOTICE OF HEARING ON MOTION</b> re: <a href="#">389</a> Plaintiff's MOTION in <i>Limine to Exclude All Evidence Related to Other Litigation and Commentary Thereon</i> , <a href="#">393</a> MOTION in <i>Limine No. 2 to Preclude SCO from Contesting Licenses Conveying SVRX Rights are "SVRX Licenses"</i> , <a href="#">390</a> Plaintiff's MOTION to Strike Exhibits on Novell's Revised Exhibit List Not Previously Disclosed, <a href="#">395</a> MOTION in <i>Limine No. 3 to Preclude SCO from Introducing New Evidence or Argument of SCOSource Revenue</i> , <a href="#">391</a> MOTION in <i>Limine</i>

		<i>No. 1 to Preclude SCO from Challenging Questions Already Decided as a Matter of Law</i> : (Notice generated by Kim Jones) Motion Hearing set for 9/13/2007 10:00 AM in Room 220 before Judge Dale A. Kimball. (kmj) (Entered: 08/27/2007)
08/27/2007	<a href="#">401</a>	NOTICE OF CONVENTIONAL FILING of SCOS AMENDED MOTION IN LIMINE REGARDING APPORTIONMENT OF 2003 MICROSOFT AND SUN AGREEMENTS filed by Plaintiff SCO Group ( <i>Amending Exhibit 2: Plaintiff inadvertently filed with the Court the incorrect version</i> ) (Normand, Edward) (Entered: 08/27/2007)
08/27/2007	<a href="#">402</a>	REDACTION to <a href="#">384</a> Notice of Conventional Filing <i>SCO's Motion to Exclude Testimony of Terry L. Musika</i> by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1: Filed Under Seal# <a href="#">2</a> Exhibit 2: Filed Under Seal)(Normand, Edward) (Entered: 08/27/2007)
08/27/2007	<a href="#">403</a>	REDACTION to <a href="#">384</a> Notice of Conventional Filing <i>SCO's Motion in Limine Regarding Apportionment of 2003 Microsoft and Sun Agreements</i> by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1: Filed Under Seal# <a href="#">2</a> Exhibit 2: Filed Under Seal)(Normand, Edward) (Entered: 08/27/2007)
08/27/2007	408	<b>**SEALED DOCUMENT**</b> SEALED AMENDED MOTION in Limine Regarding Apportionment of 2003 Microsoft and Sun Agreements filed by Plaintiff SCO Group. Amends Motion # 406 . Motions referred to Brooke C. Wells.(blk) (Entered: 08/27/2007)
08/29/2007	409	<b>AMENDED NOTICE OF HEARING ON MOTION</b> (Notice generated by Kim Jones) Motion Hearing re: all motions in limine reset for 9/11/2007 10:00 AM in Room 220 before Judge Dale A. Kimball at the request of Heather Snedden, Esq. (kmj) (Entered: 08/29/2007)
08/29/2007	<a href="#">410</a>	Plaintiff's MOTION for Entry of Judgment <i>PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 54(b)</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Normand, Edward) (Entered: 08/29/2007)
08/29/2007	<a href="#">411</a>	Plaintiff's MEMORANDUM in Support re <a href="#">410</a> Plaintiff's MOTION for Entry of Judgment <i>PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 54 (b)</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A-C: Unpublished Cases)(Normand, Edward) (Entered: 08/29/2007)
08/29/2007	<a href="#">412</a>	STATUS REPORT ( <i>Joint Statement Regarding Trial Length</i> ) by Novell, Inc.. (Sneddon, Heather) (Entered: 08/29/2007)
08/29/2007	<a href="#">413</a>	MOTION to Withdraw <i>Matthew I. Kreeger, Johnathan Mansfield and Maame A.F. Ewusi-Mensah as Counsel for Novell, Inc.</i> filed by Defendant Novell, Inc.. Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 08/29/2007)
08/29/2007	<a href="#">414</a>	MEMORANDUM in Support re <a href="#">413</a> MOTION to Withdraw <i>Matthew I. Kreeger, Johnathan Mansfield and Maame A.F. Ewusi-Mensah as Counsel for Novell, Inc.</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Sneddon, Heather) (Entered: 08/29/2007)
08/29/2007	<a href="#">415</a>	Proposed Jury Instructions by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, 2)

		(Sneddon, Heather) (Entered: 08/29/2007)
08/31/2007	<a href="#">416</a>	ORDER granting <a href="#">413</a> Motion to Withdraw as Counsel as to Matthew Kreeger, Johnathan Mansfield and Maame A.F. Ewusi-Mensah for Novell. Signed by Judge Dale A. Kimball on 8/30/07. (blk) (Entered: 08/31/2007)
08/31/2007	<a href="#">417</a>	Plaintiff's MEMORANDUM in Opposition re <a href="#">387</a> MOTION to Dismiss <i>Voluntarily Its Third Claim for Relief</i> filed by Plaintiff SCO Group. (Normand, Edward) (Entered: 08/31/2007)
08/31/2007	<a href="#">418</a>	Plaintiff's MEMORANDUM in Opposition re <a href="#">391</a> MOTION in Limine <i>No. 1 to Preclude SCO from Challenging Questions Already Decided as a Matter of Law</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A-B: Unpublished Cases)(Normand, Edward) (Entered: 08/31/2007)
08/31/2007	<a href="#">419</a>	Plaintiff's MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURTS AUGUST 10, 2007 ORDER re <a href="#">377</a> Order on Motion for Partial Summary Judgment,, Order on Motion for Summary Judgment,,,,,,,,,,,,,,,,,,,,, filed by Plaintiff SCO Group. Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 08/31/2007)
08/31/2007	<a href="#">420</a>	Plaintiff's MEMORANDUM in Support re <a href="#">419</a> Plaintiff's MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURTS AUGUST 10, 2007 ORDER re <a href="#">377</a> Order on Motion for Partial Summary Judgment,, Order on Motion for Summary Judgment,,,,,,,,,,,,,,,,,,,,,Plaintiff's MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURTS AUGUST 10, 2007 ORDER re <a href="#">377</a> Order on Motion for Partial Summary Judgment,, Order on Motion for Summary Judgment,,,,,,,,,,,,,,,,,,,,, filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A-B: Unpublished Cases) (Normand, Edward) (Entered: 08/31/2007)
08/31/2007	<a href="#">421</a>	Plaintiff's MEMORANDUM in Opposition re <a href="#">393</a> MOTION in Limine <i>No. 2 to Preclude SCO from Contesting Licenses Conveying SVRX Rights are "SVRX Licenses"</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A: Unpublished Case)(Normand, Edward) (Entered: 08/31/2007)
08/31/2007	<a href="#">422</a>	MEMORANDUM in Opposition re <a href="#">389</a> Plaintiff's MOTION in Limine <i>to Exclude All Evidence Related to Other Litigation and Commentary Thereon</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 08/31/2007)
08/31/2007	<a href="#">423</a>	MEMORANDUM in Opposition re <a href="#">390</a> Plaintiff's MOTION to Strike <i>Exhibits on Novell's Revised Exhibit List Not Previously Disclosed</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit (Attachment A))(Sneddon, Heather) (Entered: 08/31/2007)
08/31/2007	<a href="#">424</a>	Plaintiff's MEMORANDUM in Opposition re <a href="#">395</a> MOTION in Limine <i>No. 3 to Preclude SCO from Introducing New Evidence or Argument of SCOsource Revenue</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit A: Unpublished Case)(Normand, Edward) (Entered: 08/31/2007)
08/31/2007	<a href="#">425</a>	MEMORANDUM in Opposition to <i>SCO's Motion In Limine to Exclude Testimony of Terry L. Musika [REDACTED]</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A - Valentino v. Proviso Township# <a href="#">2</a> Exhibit B -

		Wrench v. Taco Bell)(Sneddon, Heather) (Entered: 08/31/2007)
08/31/2007	<a href="#">426</a>	MEMORANDUM in Opposition to <i>SCO's Motion in Limine Regarding Apportionment of Microsoft and Sun SCOSource Licenses [REDACTED]</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 08/31/2007)
08/31/2007	<a href="#">427</a>	DECLARATION of David E. Melaugh re <a href="#">426</a> Memorandum in Opposition to Motion, <a href="#">425</a> Memorandum in Opposition to Motion, <a href="#">423</a> Memorandum in Opposition to Motion, <a href="#">422</a> Memorandum in Opposition to Motion filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 5# <a href="#">2</a> Exhibit 6)(Sneddon, Heather) (Entered: 08/31/2007)
08/31/2007	<a href="#">428</a>	NOTICE OF CONVENTIONAL FILING of Novell's Oppositions to SCO's Motions in Limine Regarding Terry L. Musika and the Apportionment of Microsoft and Sun SCOSource Licenses, and the Declaration of David E. Melaugh filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 08/31/2007)
08/31/2007	<a href="#">429</a>	OBJECTIONS to <a href="#">381</a> Exhibit List(Proposed) ( <i>SCO's Second Amended Rule 26 Disclosure</i> ) filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A) (Sneddon, Heather) (Entered: 08/31/2007)
08/31/2007	<a href="#">430</a>	Plaintiff's MEMORANDUM in Opposition re <a href="#">385</a> MOTION to Strike <i>SCO's Jury Demand</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A-B: Unpublished Cases)(Normand, Edward) (Entered: 08/31/2007)
08/31/2007	<a href="#">431</a>	Proposed Jury Instructions by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, 2) (Sneddon, Heather) (Entered: 08/31/2007)
08/31/2007	432	<b>**SEALED DOCUMENT**</b> filed by Defendant Novell, Inc. - Opposition to SCO's 405 Motion in Limine to Exclude Testimony of Terry L. Musika (note: there is no image attached to this entry). (ce) (Entered: 09/04/2007)
08/31/2007	433	<b>**SEALED DOCUMENT**</b> filed by Defendant Novell, Inc. in Opposition to SCO's 406 and 408 Motions in Limine Regarding Apportionment of Microsoft and Sun SCOSOURCE Licenses (note: no image attached to this entry). (ce) (Entered: 09/04/2007)
08/31/2007	434	<b>**SEALED DOCUMENT**</b> filed by Defendant Novell, Inc. - Declaration of David E. MeLaugh in Support of Novell's Opposition (entry 433) to SCO's Motions in Limine entry numbers 406 and 408 (note: there is no image of this document). (ce) (Entered: 09/04/2007)
09/04/2007	<a href="#">435</a>	REPLY to Response to Motion re <a href="#">395</a> MOTION in Limine <i>No. 3 to Preclude SCO from Introducing New Evidence or Argument of SCOSource Revenue</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 09/04/2007)
09/04/2007	<a href="#">436</a>	REPLY to Response to Motion re <a href="#">391</a> MOTION in Limine <i>No. 1 to Preclude SCO from Challenging Questions Already Decided as a Matter of Law</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2# <a href="#">3</a> Exhibit 3)(Sneddon, Heather) (Entered: 09/04/2007)
09/04/2007	<a href="#">437</a>	REPLY to Response to Motion re <a href="#">393</a> MOTION in Limine <i>No. 2 to Preclude SCO from Contesting Licenses Conveying SVRX Rights are "SVRX Licenses"</i>

		filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2) (Sneddon, Heather) (Entered: 09/04/2007)
09/04/2007	<a href="#">438</a>	REPLY to Response to Motion re <a href="#">385</a> MOTION to Strike <i>SCO's Jury Demand</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2)(Sneddon, Heather) (Entered: 09/04/2007)
09/04/2007	<a href="#">439</a>	REPLY to Response to Motion re <a href="#">387</a> MOTION to Dismiss <i>Voluntarily Its Third Claim for Relief</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 09/04/2007)
09/04/2007	<a href="#">440</a>	SEE CORRECTED ENTRY FOR THIS DOCUMENT DATED 9/4/07, ENTRY <a href="#">441</a> . REPLY to Response to Motion re <a href="#">390</a> Plaintiff's MOTION to Strike <i>Exhibits on Novell's Revised Exhibit List Not Previously Disclosed</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A-B (Unpublished Cases))(Normand, Edward) Modified on 9/13/2007 by removing link to Motion <a href="#">390</a> . This Reply relates to the Sealed Motion re: Musika, document 405 dated 8/24/07. See counsel's corrective entry re: this reply, entry 441 dated 9/4/07 (ce). (Entered: 09/04/2007)
09/04/2007	<a href="#">441</a>	NOTICE of CORRECTED FILING by SCO Group re <a href="#">440</a> Reply Memorandum/Reply to Response to Motion (Normand, Edward) (Entered: 09/04/2007)
09/04/2007	<a href="#">442</a>	REPLY to Response to Motion <i>Re: SCO's Motion to Exclude Testimony of Terry L. Musika</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A-B (Unpublished Cases))(Normand, Edward) (Entered: 09/04/2007)
09/04/2007	<a href="#">443</a>	NOTICE OF CONVENTIONAL FILING of SCO's Reply Memorandum In Further Support of SCO's Motion In Limine Regarding Apportionment of 2003 Microsoft and Sun Agreements filed by Plaintiff SCO Group (Normand, Edward) (Entered: 09/04/2007)
09/04/2007	<a href="#">444</a>	Plaintiff's MOTION for Leave to File Excess Pages <i>re: SCO's Reply Memorandum In Further Support of SCO's Motion in Limine Regarding Apportionment of 2003 Microsoft and Sun Agreements</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 09/04/2007)
09/04/2007	<a href="#">445</a>	REPLY to Response to Motion re <a href="#">389</a> Plaintiff's MOTION in Limine <i>to Exclude All Evidence Related to Other Litigation and Commentary Thereon</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A (Unpublished Case))(Normand, Edward) (Entered: 09/04/2007)
09/04/2007	<a href="#">446</a>	REPLY to Response to Motion re <a href="#">390</a> Plaintiff's MOTION to Strike <i>Exhibits on Novell's Revised Exhibit List Not Previously Disclosed</i> filed by Plaintiff SCO Group. (Normand, Edward) (Entered: 09/04/2007)
09/04/2007	449	<b>**SEALED DOCUMENT**</b> REPLY MEMORANDUM in Further Support of 406 SCO's Sealed Motion in Limine Regarding Apportionment of 2003 Microsoft and Sun Agreements filed by Plaintiff SCO Group. (blk) (Entered: 09/05/2007)
09/05/2007	<a href="#">447</a>	ORDER granting <a href="#">444</a> Motion for Leave to File Excess Pages. Signed by

		Judge Dale A. Kimball on 9/5/07. (kla) (Entered: 09/05/2007)
09/05/2007	<a href="#">448</a>	MEMORANDUM in Opposition re <a href="#">410</a> Plaintiff's MOTION for Entry of Judgment <i>PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 54(b)</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2# <a href="#">3</a> Exhibit 3)(Sneddon, Heather) (Entered: 09/05/2007)
09/05/2007	<a href="#">450</a>	OBJECTIONS to <i>SCO's Supplemental Jury Instructions</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 09/05/2007)
09/05/2007	<a href="#">451</a>	OBJECTIONS to <i>Novell's Proposed Supplemental Jury Instructions</i> filed by Plaintiff SCO Group. (Normand, Edward) (Entered: 09/05/2007)
09/05/2007	<a href="#">452</a>	OBJECTIONS to <a href="#">382</a> Witness List(Proposed) ( <i>Novell's Second Amended Rule 26 Pretrial Disclosures</i> ) filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A)(Normand, Edward) (Entered: 09/05/2007)
09/07/2007	<a href="#">453</a>	ORDER granting <a href="#">385</a> Motion to Strike ; granting <a href="#">387</a> Motion to Dismiss ; finding as moot <a href="#">389</a> Motion in Limine; granting <a href="#">391</a> Motion in Limine; granting <a href="#">393</a> Motion in Limine; denying <a href="#">395</a> Motion in Limine; finding as moot in part and denying in part 406 & 408 Sealed Amended Motion in Limine; denying <a href="#">410</a> Motion for Entry of Judgment. Signed by Judge Dale A. Kimball on 9-7-07. (sih) (Entered: 09/07/2007)
09/10/2007		Deadlines/Hearings terminated : Motion hearing set for 9/11/2007 is vacated. (kmj) (Entered: 09/10/2007)
09/10/2007	<a href="#">454</a>	MEMORANDUM in Opposition re <a href="#">419</a> Plaintiff's MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURTS AUGUST 10, 2007 ORDER re <a href="#">377</a> Order on Motion for Partial Summary Judgment, Order on Motion for Summary Judgment [ <i>REDACTED</i> ] filed by Defendant Novell, Inc. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2)(Sneddon, Heather) Modified on 9/13/2007 by removing duplicative text created when this entry was made (ce). (Entered: 09/10/2007)
09/10/2007	<a href="#">455</a>	DECLARATION of David E. Melaugh re <a href="#">454</a> Memorandum in Opposition to Motion,, [ <i>REDACTED</i> ] filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 5) (Sneddon, Heather) (Entered: 09/10/2007)
09/10/2007	<a href="#">456</a>	NOTICE OF CONVENTIONAL FILING of Novell's Opposition to SCO's Motion for Reconsideration and David Melaugh's Declaration filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 09/10/2007)
09/10/2007	458	<b>**SEALED DOCUMENT**</b> MEMORANDUM IN OPPOSITION re <a href="#">419</a> Plaintiff's MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURTS AUGUST 10, 2007 ORDER re <a href="#">377</a> Order on Motion for Partial Summary Judgment,, Order on Motion for Summary Judgment, filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (blk) Modified on 9/11/2007 by correcting filed date to 9/10/07(blk). (Entered: 09/11/2007)
09/10/2007	459	<b>**SEALED DOCUMENT**</b> DECLARATION OF DAVID E MELAUGH re 458 Sealed Memorandum in Opposition, filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (blk) (Entered: 09/11/2007)



09/11/2007	<a href="#">457</a>	ORDER denying <a href="#">390</a> Motion to Strike Exhibits; denying 405 Motion to Exclude Testimony. Signed by Judge Dale A. Kimball on 9-11-07. (sih) (Entered: 09/11/2007)
09/12/2007	<a href="#">460</a>	NOTICE of Courtroom Change for Trial by Novell, Inc. (Sneddon, Heather) (Entered: 09/12/2007)
09/12/2007	<a href="#">461</a>	NOTICE OF CONVENTIONAL FILING of SCOS REPLY MEMORANDUM IN FURTHER SUPPORT OF ITS MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURTS AUGUST 10, 2007 ORDER filed by Plaintiff SCO Group re 458 Sealed Document, (Normand, Edward) (Entered: 09/12/2007)
09/12/2007	<a href="#">462</a>	Plaintiff's MOTION for Leave to File Excess Pages <i>re SCOS REPLY MEMORANDUM IN FURTHER SUPPORT OF ITS MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURTS AUGUST 10, 2007 ORDER</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Normand, Edward) (Entered: 09/12/2007)
09/12/2007	<a href="#">463</a>	REDACTION to <a href="#">461</a> Notice of Conventional Filing <i>re SCOS REPLY MEMORANDUM IN FURTHER SUPPORT OF ITS MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURTS AUGUST 10, 2007 ORDER</i> by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2: Filed Under Seal# <a href="#">3</a> Exhibit 3# <a href="#">4</a> Exhibit 4)(Normand, Edward) (Entered: 09/12/2007)
09/13/2007	<a href="#">464</a>	ORDER granting <a href="#">462</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 9/13/07. (blk) (Entered: 09/13/2007)
09/13/2007	465	<b>**SEALED DOCUMENT**</b> REPLY MEMORANDUM IN FURTHER SUPPORT re <a href="#">419</a> Plaintiff's MOTION FOR RECONSIDERATION OR CLARIFICATION OF THE COURTS AUGUST 10, 2007 ORDER re <a href="#">377</a> Order on Motion for Partial Summary Judgment,, Order on Motion for Summary Judgment filed by Plaintiff SCO Group. (blk) (Entered: 09/13/2007)
09/13/2007	466	Modification of Docket: re <a href="#">440</a> Reply Memorandum/Reply to Response to Motion re <a href="#">390</a> Plaintiff's MOTION to Strike Exhibits on Novell's Revised Exhibit List Not Previously Disclosed filed by Plaintiff SCO Group. (Attachments: # 1 Exhibit A-B (Unpublished Cases). <i>CORRECTION: SEE COUNSEL'S CORRECTED ENTRY FOR THIS DOCUMENT DATED 9/4/07, ENTRY <a href="#">441</a> and <a href="#">442</a></i> . Entry 440 was modified on 9/13/2007 by removing link to Motion <a href="#">390</a> as this Reply relates to the Sealed Motion re: Musika, document 405 dated 8/24/07. (ce) (Entered: 09/13/2007)
09/14/2007	<a href="#">467</a>	TRIAL BRIEF [REDACTED] by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1# <a href="#">2</a> Exhibit 2)(Sneddon, Heather) (Entered: 09/14/2007)
09/14/2007	<a href="#">468</a>	NOTICE OF CONVENTIONAL FILING of Novell's Trial Brief [Filed Under Seal] filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 09/14/2007)

09/14/2007	<a href="#">469</a>	ORDER denying <a href="#">419</a> Motion for Reconsideration or Clarification. Signed by Judge Dale A. Kimball on 9-14-07. (sih) (Entered: 09/14/2007)
09/14/2007	470	<b>**SEALED DOCUMENT**</b> Novell's Trial Brief filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (blk) (Entered: 09/14/2007)
09/14/2007	<a href="#">471</a>	NOTICE of Filing for Bankruptcy by SCO Group (Attachments: # <a href="#">1</a> Exhibit Exhibit A to Notice of Filing For Bankruptcy)(James, Mark) (Entered: 09/14/2007)
09/14/2007		Deadlines/Hearings terminated: Bench trial set for 9/17/2007 is vacated due to the notice of bankruptcy filing. (kmj) (Entered: 09/14/2007)
11/27/2007	<a href="#">472</a>	NOTICE of Delaware Bankruptcy Court's Memorandum Opinion and Order Granting Novell's Motion for Relief from the Automatic Stay to Proceed with the Lawsuit by Novell, Inc. (Attachments: # <a href="#">1</a> Exhibit A# <a href="#">2</a> Exhibit B) (Sneddon, Heather) (Entered: 11/27/2007)
12/06/2007	<a href="#">473</a>	ORDER requesting joint statement by parties by December 13, 2007. Signed by Judge Dale A. Kimball on 12-06-07. (sih) (Entered: 12/06/2007)
12/11/2007	<a href="#">474</a>	MOTION to Withdraw as Attorney filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Mullen, John) (Entered: 12/11/2007)
12/11/2007	<a href="#">475</a>	MEMORANDUM in Support re <a href="#">474</a> MOTION to Withdraw as Attorney filed by Defendant Novell, Inc.. (Mullen, John) (Entered: 12/11/2007)
12/12/2007	<a href="#">476</a>	ORDER granting <a href="#">474</a> Motion to Withdraw as Attorney. Attorney John P. Mullen withdrawn from case for Novell, Inc.. Signed by Judge Dale A. Kimball on 12/12/07. (jwt) (Entered: 12/12/2007)
12/13/2007	<a href="#">477</a>	Joint RESPONSE re <a href="#">473</a> Order, filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 12/13/2007)
12/21/2007	<a href="#">478</a>	MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 12/21/2007)
12/21/2007	<a href="#">479</a>	MEMORANDUM in Support re <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief [REDACTED]</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1)(Sneddon, Heather) (Entered: 12/21/2007)
12/21/2007	<a href="#">480</a>	DECLARATION of David E. Melaugh re <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief [REDACTED]</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 2# <a href="#">2</a> Exhibit 5# <a href="#">3</a> Exhibit 6# <a href="#">4</a> Exhibit 7# <a href="#">5</a> Exhibit 8# <a href="#">6</a> Exhibit 9, Pt. 1# <a href="#">7</a> Exhibit 9, Pt. 2# <a href="#">8</a> Exhibit 9, Pt. 3# <a href="#">9</a> Exhibit 10# <a href="#">10</a> Exhibit 12)(Sneddon, Heather) (Entered: 12/21/2007)
12/21/2007	<a href="#">481</a>	NOTICE OF CONVENTIONAL FILING of Memorandum in Support of Novell's Motion for Summary Judgment on its Fourth Claim for Relief, and Declaration of David E. Melaugh filed by Defendant Novell, Inc. [ <i>FILED UNDER SEAL</i> ] (Sneddon, Heather) (Entered: 12/21/2007)
12/21/2007	482	<b>**SEALED DOCUMENT**</b> Memorandum in Support of Novell's <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed

		by Counter Claimant Novell, Inc., Defendant Novell, Inc. (original not scanned). (jwt) (Entered: 12/26/2007)
12/21/2007	483	<b>**SEALED DOCUMENT**</b> Declaration of David E. Melaugh in Support of <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Counter Claimant Novell, Inc., Defendant Novell, Inc. (original not scanned). (jwt) (Entered: 12/26/2007)
01/11/2008	484	<b>NOTICE OF HEARING:</b> (Notice generated by Kim Jones)4-day Bench Trial set for 4/29/2008 08:30 AM in Room 220 before Judge Dale A. Kimball. Any motions for summary judgment filed will be heard at the time of trial.(kmj) (Entered: 01/11/2008)
01/15/2008	<a href="#">485</a>	ORDER regarding bench trial and hearing on motion for summary judgment. Signed by Judge Dale A. Kimball on 1-15-08. (sih) (Entered: 01/15/2008)
01/25/2008	<a href="#">486</a>	NOTICE OF CONVENTIONAL FILING of MEMORANDUM IN OPPOSITION TO NOVELLS MOTION FOR SUMMARY JUDGMENT ON ITS FOURTH CLAIM FOR RELIEF and EXHIBITS THERETO filed by Counter Defendant SCO Group, Plaintiff SCO Group (Hatch, Brent) (Entered: 01/25/2008)
01/25/2008	<a href="#">487</a>	DECLARATION of Brent O. Hatch re <a href="#">486</a> Notice of Conventional Filing <i>OF SCO'S MEMORANDUM IN OPPOSITION TO NOVELLS MOTION FOR SUMMARY JUDGMENT ON ITS FOURTH CLAIM FOR RELIEF AND EXHIBITS THERETO</i> filed by SCO Group. (Hatch, Brent) (Entered: 01/25/2008)
01/25/2008	<a href="#">488</a>	MOTION for Leave to File Excess Pages filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Hatch, Brent) (Entered: 01/25/2008)
01/25/2008	<a href="#">489</a>	Proposed Exhibit List <i>and Witness List (Rule 26(a)(3) Pretrial Disclosures) SUPPLEMENTAL</i> by Plaintiff SCO Group.. (Normand, Edward) (Entered: 01/25/2008)
01/25/2008	490	SEALED DOCUMENT - Memorandum in Opposition to <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Counter Defendant SCO Group, Plaintiff SCO Group. (This memorandum and 7 envelopes of exhibits have not been scanned but will be placed in sealed storage in the clerk's office.) (jwt) Modified on 2/4/2008: removed sealed designation (alt) Modified on 2/4/2008 correcting title of entry to Sealed Document instead of Sealed Entry(jwt). (Entered: 01/28/2008)
01/28/2008	<a href="#">491</a>	ORDER granting <a href="#">488</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 1/28/08. (jwt) (Entered: 01/28/2008)
02/07/2008	<a href="#">492</a>	Stipulated MOTION for Extension of Time to File Response/Reply as to <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 02/07/2008)
02/08/2008	<a href="#">493</a>	ORDER granting <a href="#">492</a> Motion for Extension of Time to File Response/Reply

		re <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief</i> . Replies due by 2/19/2008. Signed by Judge Dale A. Kimball on 2/08/08. (jwt) (Entered: 02/11/2008)
02/19/2008	<a href="#">494</a>	Ex Parte (Not Sealed) MOTION for Leave to File Excess Pages ( <i>Overlength Reply Memorandum in Support of Novell's Motion for Summary Judgment on its Fourth Claim for Relief</i> ) filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 02/19/2008)
02/19/2008	<a href="#">495</a>	REPLY to Response to Motion re <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief [REDACTED]</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 02/19/2008)
02/19/2008	<a href="#">496</a>	DECLARATION of David E. Melaugh re <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 3, # <a href="#">2</a> Exhibit 4, # <a href="#">3</a> Exhibit 5, # <a href="#">4</a> Exhibit 6, # <a href="#">5</a> Exhibit 7, # <a href="#">6</a> Exhibit 8, # <a href="#">7</a> Exhibit 9, # <a href="#">8</a> Exhibit 10, # <a href="#">9</a> Exhibit 11, # <a href="#">10</a> Exhibit 12)(Sneddon, Heather) (Entered: 02/19/2008)
02/19/2008	<a href="#">497</a>	NOTICE OF CONVENTIONAL FILING of Reply Memorandum in Support of Novell's Motion for Summary Judgment on its Fourth Claim for Relief and Reply Declaration of David E. Melaugh [FILED UNDER SEAL] filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 02/19/2008)
02/19/2008	500	<b>**SEALED DOCUMENT**</b> Reply Declaration in Support of <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (jwt) (Entered: 02/20/2008)
02/20/2008	<a href="#">498</a>	ORDER granting <a href="#">494</a> Motion for Leave to File Excess Pages. Signed by Judge Dale A. Kimball on 2/20/08. (jwt) (Entered: 02/20/2008)
02/20/2008	<a href="#">501</a>	REDACTION to 490 Sealed Entry, <i>SCO's Memorandum in Opposition to Novell's Motion for Summary Judgment on its Fourth Claim for Relief</i> by Plaintiff SCO Group. (Normand, Edward) (Entered: 02/20/2008)
03/07/2008	<a href="#">502</a>	NOTICE OF CONVENTIONAL FILING of MOTION FOR JUDGMENT ON THE PLEADINGS ON NOVELLS CLAIMS FOR MONEY OR CLAIM FOR DECLARATORY RELIEF; OR FOR AMENDMENT OF THE SCOPE OF THE TRIAL filed by Counter Defendant SCO Group, Plaintiff SCO Group (Hatch, Brent) (Entered: 03/07/2008)
03/07/2008	<a href="#">503</a>	NOTICE OF CONVENTIONAL FILING of MEMORANDUM IN SUPPORT OF SCOS MOTION FOR JUDGMENT ON THE PLEADINGS ON NOVELLS CLAIMS FOR MONEY OR CLAIM FOR DECLARATORY RELIEF; OR FOR AMENDMENT OF THE SCOPE OF THE TRIAL filed by Counter Defendant SCO Group, Plaintiff SCO Group (Hatch, Brent) (Entered: 03/07/2008)
03/07/2008	<a href="#">504</a>	NOTICE OF CONVENTIONAL FILING of SCO's Motion for Judgment on the Pleadings on Novell's Claims for Money or Claim for Declaratory Relief, and Memorandum in Support Thereof filed by Counter Defendant SCO Group, Plaintiff SCO Group ( <i>Corrected Filing</i> ) (Hatch, Brent) (Entered: 03/07/2008)

		03/07/2008)
03/07/2008	505	<b>**SEALED DOCUMENT**</b> SEALED MOTION for Judgment on the Pleadings on Novell's Claims for Money or Claim for Declaratory Relief filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Document has not been scanned but will be retained in the sealed room of the clerk's office.) (jwt) Modified on 3/7/2008 (jwt). Modified on 3/14/2008 motion referral to Judge Wells removed(jwt). (Entered: 03/07/2008)
03/07/2008	506	<b>**SEALED DOCUMENT**</b> Memorandum in Support of 505 SEALED MOTION for Judgment on the Pleadings on Novell's Claims for Money or Claim for Declaratory Relief filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Document has not been scanned but will be retained in the sealed room of the clerk's office.) (jwt) (Entered: 03/07/2008)
03/12/2008	<a href="#">507</a>	REDACTION to 506 Sealed Document, <i>SCO's Memorandum in Support of its Motion for Judgment on the Pleadings on Novell's Claims for Money or Claim for Declaratory Relief</i> by Counter Defendant SCO Group. (Normand, Edward) (Entered: 03/12/2008)
03/14/2008		Motions No Longer Referred: 505 Sealed Motion is before Judge Kimball (jwt) (Entered: 03/14/2008)
03/31/2008	<a href="#">508</a>	Proposed Witness List <i>and Exhibit List (Supplemental)</i> by SCO Group. (Normand, Edward) (Entered: 03/31/2008)
04/07/2008	<a href="#">509</a>	MEMORANDUM in Opposition to <i>SCO's Motion for Judgment on the Pleadings on Novell's Claims for Money or Claim for Declaratory Relief</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B) (Sneddon, Heather) (Entered: 04/07/2008)
04/07/2008	<a href="#">510</a>	DECLARATION of David E. Melaugh re <a href="#">509</a> Memorandum in Opposition to <i>Motion for Judgment on the Pleadings on Novell's Claims for Money or Claim for Declaratory Relief</i> filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3)(Sneddon, Heather) (Entered: 04/07/2008)
04/08/2008	511	<b>NOTICE OF HEARING ON MOTION</b> (Notice generated by blk) The Motion for Judgment on the Pleadings will also be heard with the Motion for Summary Judgment in the Motion Hearing set for 4/30/2008 03:00 PM in Room 220 before Judge Dale A. Kimball. (blk) (Entered: 04/08/2008)
04/08/2008	<a href="#">512</a>	MOTION for Admission Pro Hac Vice of Mauricio A. Gonzalez, Registration fee \$ 15, receipt number 4681023661, filed by Counter Defendant SCO Group, Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Text of Proposed Order)(Hatch, Brent) (Entered: 04/08/2008)
04/09/2008	<a href="#">513</a>	ORDER granting <a href="#">512</a> Motion for Admission Pro Hac Vice of Mauricio A. Gonzalez for SCO Group. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at http://www.utd.uscourts.gov.</i> Signed by Judge Dale A. Kimball on 4/09/08. (jwt) (Entered: 04/09/2008)
04/15/2008	<a href="#">514</a>	MOTION for Admission Pro Hac Vice of Jason C. Cyrulnik, Registration fee \$ 15, receipt number 4681023769, filed by Counter Defendant SCO Group,

		Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Text of Proposed Order)(Hatch, Brent) (Entered: 04/15/2008)
04/15/2008	<a href="#">515</a>	Proposed Exhibit List ( <i>Novell's Third Amended Rule 26 Pretrial Disclosures</i> ) by Defendant Novell, Inc... (Attachments: # <a href="#">1</a> Exhibit C (Supplemental)) (Sneddon, Heather) (Entered: 04/15/2008)
04/16/2008	<a href="#">516</a>	Proposed Exhibit List ( <i>Supplemental</i> ) by Counter Defendant SCO Group.. (Normand, Edward) (Entered: 04/16/2008)
04/17/2008	<a href="#">517</a>	ORDER granting <a href="#">514</a> Motion for Admission Pro Hac Vice of Jason C. Cyrulnik for SCO Group. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at http://www.utd.uscourts.gov.</i> Signed by Judge Dale A. Kimball on 4/16/08. (jwt) (Entered: 04/17/2008)
04/22/2008	<a href="#">518</a>	Proposed Exhibit List ( <i>Novell's Fourth Amended Rule 26 Pretrial Disclosures</i> ) by Defendant Novell, Inc... (Attachments: # <a href="#">1</a> Exhibit C (Supplemental))(Sneddon, Heather) (Entered: 04/22/2008)
04/23/2008	519	<b>**SEALED DOCUMENT**</b> Novell's Amended Trial Brief filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (jwt) (Entered: 04/23/2008)
04/23/2008	520	<b>**SEALED DOCUMENT**</b> Trial Brief on Behalf of the SCO Group, Inc. filed by Counter Defendant SCO Group, Plaintiff SCO Group. (jwt) (Entered: 04/23/2008)
04/23/2008	<a href="#">521</a>	NOTICE OF CONVENTIONAL FILING of TRIAL BRIEF ON BEHALF OF THE SCO GROUP, INC. filed by Counter Defendant SCO Group (Normand, Edward) (Entered: 04/23/2008)
04/23/2008	<a href="#">522</a>	REDACTION to 519 Sealed Document <i>Novell's Amended Trial Brief</i> by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Sneddon, Heather) (Entered: 04/23/2008)
04/23/2008	<a href="#">523</a>	NOTICE OF CONVENTIONAL FILING of Novell's Amended Trial Brief filed by Defendant Novell, Inc. (Sneddon, Heather) (Entered: 04/23/2008)
04/24/2008	<a href="#">524</a>	REDACTION to 520 Sealed Document <i>Trial Brief on Behalf of the SCO Group, Inc.</i> by Counter Defendant SCO Group. (Normand, Edward) (Entered: 04/24/2008)
04/24/2008	<a href="#">525</a>	REPLY to Response to Motion <i>for Judgment on The Pleadings On Novells Claims For Money Or Claim For Declaratory Relief</i> filed by Counter Defendant SCO Group. (Attachments: # <a href="#">1</a> Exhibit A-H: Unpublished Cases) (Normand, Edward) (Entered: 04/24/2008)
04/28/2008	<a href="#">526</a>	STIPULATION ( <i>Pretrial</i> ) by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A) (Sneddon, Heather) (Entered: 04/28/2008)
04/28/2008	<a href="#">527</a>	STIPULATION ( <i>First Amended Joint Pretrial Stipulation</i> ) by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Sneddon, Heather) (Entered: 04/28/2008)
04/29/2008	<a href="#">528</a>	Proposed Findings of Fact by Novell, Inc.. (Sneddon, Heather) (Entered: 04/29/2008)

04/29/2008	<a href="#">529</a>	Proposed Findings of Fact by SCO Group. (Attachments: # <a href="#">1</a> Exhibit A-C (Unpublished Cases))(Normand, Edward) (Entered: 04/29/2008)
04/29/2008	530	Minute Entry for proceedings held before Judge Dale A. Kimball: Bench Trial held on 4/29/2008. Trial opened at 8:30 AM with all parties present. Both parties invoked the witness exclusion rule. Opening statements were made by Mr. Jacobs and Mr. Singer. Testimony of witnesses was heard and evidence rec'd. Depositions of Joseph LaSala and Christopher Sontag were published. Court recessed at 2:08 PM. Attorneys for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Jason Cyrulnik; Attorneys for Defendant: Michael Jacobs, Eric Acker, David Melaugh. Court Reporter: Becky Janke/Kelly Hicken. (kmj) (Entered: 04/29/2008)
04/30/2008	531	Minute Entry for proceedings held before Judge Dale A. Kimball: Bench Trial held on 4/30/2008. Court opened at 8:28 AM with all parties present. Testimony of witnesses was heard and evidence rec'd. Deposition of Greg Jones was published. Novell rested its case. Mr. Singer moved for involuntary dismissal; the Court took the motion under advisement without hearing argument at this time. SCO began presenting its case. Court recessed at 2:08 PM. Attorney for Plaintiff: Stuart Singer, Edward Normand, Jason Cyrulnik; Attorney for Defendant: Michael Jacobs, Eric Acker, David Melaugh. Court Reporter: Kelly Hicken/Becky Janke. (kmj) (Entered: 04/30/2008)
04/30/2008	532	Minute Entry for proceedings held before Judge Dale A. Kimball: Motion Hearing held on 4/30/2008 re <a href="#">478</a> MOTION for Summary Judgment <i>on Novell's Fourth Claim for Relief</i> filed by Novell, Inc. and SCO's Motion for Judgment on the Pleadings. After hearing the arguments of counsel, the Court took the motions under advisement. Attorney for Plaintiff: Stuart Singer, Edward Normand, Mauricio Gonzalez; Attorney for Defendant: Michael Jacobs, Eric Acker, David Melaugh. Court Reporter: Laura Robinson. (kmj) (Entered: 05/01/2008)
05/01/2008	533	Minute Entry for proceedings held before Judge Dale A. Kimball: Bench Trial held on 5/1/2008. Court opened at 8:32 AM with all parties present. Testimony of witnesses was heard and evidence rec'd. Depositions of John Hunsaker and Jay Petersen published. Trial will continue at 9:00 AM 5j/2/08. Court recessed at 2:03 PM. Attorney for Plaintiff: Stuart Singer, Edward Normand, Mauricio Gonzalez, Jason Cyrulnik; Attorney for Defendant: Michael Jacobs, Eric Acker, David Melaugh. Court Reporter: Becky Janke/Kelly Hicken. (kmj) (Entered: 05/01/2008)
05/02/2008	534	Minute Entry for proceedings held before Judge Dale A. Kimball: Bench Trial completed on 5/2/2008. Court opened at 9:05 AM with all parties present. Testimony of one witness heard and evidence was rec'd. Deposition of Andrew Nagle was published. SCO rested its case. Closing arguments were presented by Mr. Acker and Mr. Singer. The Court took the matter under advisement. All exhibits were reviewed and approved by counsel. Court adjourned at 12:00 PM. Attorney for Plaintiff: Stuart Singer, Edward Normand, Mauricio Gonzalez, Jason Cyrulnik, Brent Hatch; Attorney for Defendant: Michael Jacobs, Eric Acker, David Melaugh. Court Reporter: Becky Janke. (kmj) (Entered: 05/02/2008)

05/02/2008	<a href="#">535</a>	Trial Witness List. (kmj) (Entered: 05/08/2008)
05/02/2008	<a href="#">536</a>	Trial Exhibit List of Novell exhibits. (kmj) (Entered: 05/08/2008)
05/02/2008	<a href="#">537</a>	Trial Exhibit List of SCO exhibits. (kmj) (Entered: 05/08/2008)
05/14/2008	<a href="#">538</a>	<p>TRANSCRIPT of Proceedings held on April 30, 2008-Motion for Summary Judgment before Judge Dale A. Kimball. Court Reporter/Transcriber Laura W. Robinson, CSR, RPR, CP, Telephone number 801-328-4800.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/4/2008. Redacted Transcript Deadline set for 6/16/2008. Release of Transcript Restriction set for 8/12/2008. (jmr) Modified on 9/9/2008 removed restricted text(rak). (Entered: 05/14/2008)</p>
07/10/2008	<a href="#">540</a>	MOTION to Intervene filed by Jonathan Lee Riches. Motions referred to Brooke C. Wells.(kpf) (Entered: 07/14/2008)
07/15/2008	<a href="#">541</a>	ORDER denying <a href="#">540</a> Motion to Intervene and Reconsideration or Clarification. Signed by Judge Dale A. Kimball on 7/15/08. (jwt) (Entered: 07/16/2008)
07/16/2008	<a href="#">542</a>	FINDINGS OF FACT AND CONCLUSIONS OF LAW and Order. Signed by Judge Dale A. Kimball on 7/16/08. (jwt) (Entered: 07/16/2008)
07/30/2008	<a href="#">543</a>	Joint MOTION for Extension of Time Regarding Deadlines for Proposed Final Judgment and Pre-Judgment Interest Submission filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 07/30/2008)
08/01/2008	<a href="#">544</a>	ORDER granting <a href="#">543</a> Motion for Extension of Time for Proposed Final Judgment and Pre-Judgment Interest Submission. Signed by Judge Dale A. Kimball on 7/31/08. (jwt) (Entered: 08/01/2008)
08/01/2008	<a href="#">545</a>	NOTICE OF APPEAL as to <a href="#">541</a> Order on Motion for Miscellaneous Relief filed by Jonathan Lee Riches. Appeals to the USCA for the Tenth Circuit. Fee Status: Not Paid. (jmr) (Entered: 08/04/2008)
08/04/2008	<a href="#">546</a>	Transmission of Preliminary Record to USCA re <a href="#">545</a> Notice of Appeal; packet to appellant. (Attachments: # <a href="#">1</a> Notice of Appeal, # <a href="#">2</a> Order, # <a href="#">3</a> Docket)(jmr) (Entered: 08/04/2008)
08/06/2008	<a href="#">547</a>	USCA Case Number Case Appealed to Tenth Case Number 08-4154 for <a href="#">545</a>



		Notice of Appeal filed by Jonathan Lee Riches. (jmr) (Entered: 08/06/2008)
08/22/2008	<a href="#">548</a>	Joint MOTION for Extension of Time Regarding Deadlines for Proposed Final Judgment and Pre-Judgment Interest Submission filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) Motions referred to Brooke C. Wells.(Sneddon, Heather) (Entered: 08/22/2008)
08/25/2008	<a href="#">549</a>	ORDER granting <a href="#">548</a> Motion for Extension of Time Regarding Deadlines for Proposed Final Judgment and Pre-Judgment Interest Submission. Signed by Judge Dale A. Kimball on 8/25/08. (jwt) (Entered: 08/25/2008)
08/29/2008	<a href="#">550</a>	RESPONSE re <a href="#">542</a> Findings of Fact & Conclusions of Law, ( <i>Novell's Unopposed Submission Regarding Prejudgment Interest</i> ) filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 08/29/2008)
08/29/2008	<a href="#">551</a>	RESPONSE re <a href="#">542</a> Findings of Fact & Conclusions of Law, ( <i>Novell's Submission Regarding Entry of Final Judgment</i> ) filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 08/29/2008)
09/15/2008	<a href="#">552</a>	NOTICE of Voluntary Dismissal of Stayed Claims filed by Plaintiff SCO Group (Attachments: # <a href="#">1</a> Text of Proposed Order)(Normand, Edward) Modified on 9/16/2008 changing event to Motion to Dismiss(jwt). (Entered: 09/15/2008)
09/15/2008	<a href="#">553</a>	MOTION for Judgment under Rule 54(b) filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Normand, Edward) (Entered: 09/15/2008)
09/15/2008	<a href="#">554</a>	MOTION for Entry of Judgment filed by Plaintiff SCO Group. (Normand, Edward) (Entered: 09/15/2008)
09/15/2008	<a href="#">555</a>	MEMORANDUM in Support re <a href="#">553</a> MOTION for Judgment under Rule 54 (b), <a href="#">554</a> MOTION for Entry of Judgment and <a href="#">552</a> NOTICE of Voluntary Dismissal of Stayed Claims filed by Plaintiff SCO Group. (Normand, Edward) (Entered: 09/15/2008)
09/15/2008	<a href="#">556</a>	EXHIBITS filed by SCO Group re <a href="#">555</a> Memorandum in Support of Motion. (Normand, Edward) (Entered: 09/15/2008)
10/03/2008	<a href="#">557</a>	MEMORANDUM in Opposition re <a href="#">553</a> MOTION for Judgment under Rule 54(b), <a href="#">554</a> MOTION for Entry of Judgment, <a href="#">552</a> MOTION to Dismiss <i>Stayed Claims</i> filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 10/03/2008)
10/03/2008	<a href="#">558</a>	DECLARATION of David E. Melaugh re <a href="#">557</a> Memorandum in Opposition to Motion ( <i>SCO's Motions for Voluntary Dismissal of Stayed Claims, Entry of Final Judgment, and Certification and Entry of Partial Final Judgment</i> ) filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1)(Sneddon, Heather) Modified on 10/6/2008 linking document to <a href="#">552</a> Motion to Dismiss, <a href="#">553</a> Motion for Judgment, <a href="#">554</a> Motion for Entry of Judgment (jwt). (Entered: 10/03/2008)
10/06/2008	<a href="#">559</a>	MANDATE of USCA as to <a href="#">545</a> Notice of Appeal(08-4154) filed by Jonathan Lee Riches. According to the USCA the Appeal of the USDC for the Dist of UT is Dismissed pursuant to Tenth Cir. 42.1 for failure to prosecute.

		(Attachments: # <a href="#">1</a> Mandate Cover Letter)(jmr) (Entered: 10/06/2008)
10/09/2008	<a href="#">560</a>	<p>TRANSCRIPT of Proceedings held on January 25, 2007-Motion Hearing (Held telephonically) before Judge Dale A. Kimball. Court Reporter/Transcriber Kelly Brown, Hicken CSR, RPR, RMR, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/30/2008. Redacted Transcript Deadline set for 11/10/2008. Release of Transcript Restriction set for 1/7/2009. (jmr) Modified on 1/22/2009 - removed restricted text (rak). (Entered: 10/09/2008)</p>
10/20/2008	<a href="#">561</a>	NOTICE of Voluntary Dismissal of Its Unresolved Stayed Claims With Prejudice filed by Counter Defendant SCO Group (Attachments: # <a href="#">1</a> Text of Proposed Order) (Normand, Edward) (Entered: 10/20/2008)
10/20/2008	<a href="#">562</a>	REPLY to Response to Motion re <a href="#">554</a> MOTION for Entry of Judgment <i>and in support of</i> <a href="#">561</a> NOTICE of Voluntary Dismissal of Its Unresolved Stayed Claims With Prejudice filed by Counter Defendant SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order Proposed Final Judgment) (Normand, Edward) (Entered: 10/20/2008)
10/31/2008	<a href="#">563</a>	RESPONSE re <a href="#">561</a> Notice of Voluntary Dismissal, filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order Novell Proposed Final Judgment, # <a href="#">2</a> Exhibit Judgment Redline)(Sneddon, Heather) (Entered: 10/31/2008)
11/06/2008	<a href="#">564</a>	REPLY to Response to Motion re <a href="#">554</a> MOTION for Entry of Judgment <i>and Re</i> <a href="#">561</a> SCO's Motion to Voluntarily Dismiss Its Unresolved Stayed Claims With Prejudice filed by Counter Defendant SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Text of Proposed Order [Proposed] Final Judgment)(Normand, Edward) (Entered: 11/06/2008)
11/20/2008	<a href="#">565</a>	FINAL JUDGMENT in favor of Novell, Inc., SCO Group and also against Novell, Inc., SCO Group. Case Closed. Magistrate Judge Brooke C. Wells no longer assigned to case. See Judgment for details. Signed by Judge Dale A. Kimball on 11/20/08. (ce) (Entered: 11/20/2008)
11/20/2008	<a href="#">566</a>	Report on the Final Decision of an action mailed to the Register of Copyrights Office. (Attachments: # <a href="#">1</a> Final Judgment) (ce) (Entered: 11/20/2008)

11/25/2008	<a href="#">567</a>	NOTICE OF APPEAL as to <a href="#">377</a> Order on Motion for Partial Summary Judgment,, Order on Motion for Summary Judgment, <a href="#">565</a> Judgment filed by SCO Group. Appeals to the USCA for the 10th Circuit. Filing fee \$ 455, receipt number 10880000000000796676. (Hatch, Brent) Modified on 11/26/2008 to fix typo(jmr). (Entered: 11/25/2008)
11/26/2008	<a href="#">568</a>	Transmission of Preliminary Record to USCA re <a href="#">567</a> Notice of Appeal. (Attachments: # <a href="#">1</a> Memorandum Decision and Order, # <a href="#">2</a> Final Judgment, # <a href="#">3</a> Notice of Appeal, # <a href="#">4</a> Docket)(jmr) (Entered: 11/26/2008)
12/01/2008	<a href="#">569</a>	USCA Case Number Case Appealed to Tenth Circuit Case Number 08-4217 for <a href="#">567</a> Notice of Appeal, filed by SCO Group. (jmr) (Entered: 12/02/2008)
12/10/2008	<a href="#">570</a>	TRANSCRIPT REQUEST by SCO Group for proceedings held on 05/11/2004; 01/25/2007; 05/31/2007; 04/29/2008; 04/30/2008; 05/01/2008. before Judge Hon. Dale A. Kimball, re <a href="#">567</a> Notice of Appeal, (Normand, Edward) (Entered: 12/10/2008)
12/10/2008	<a href="#">571</a>	TRANSCRIPT REQUEST by SCO Group for proceedings held on 05/25/2005; 07/17/2006; 01/23/2007; 06/04/2007; 04/29/2008; 05/01/2008; 05/02/2008 before Judge Hon. Dale A. Kimball, re <a href="#">567</a> Notice of Appeal, (Normand, Edward) (Entered: 12/10/2008)
12/10/2008	<a href="#">572</a>	TRANSCRIPT REQUEST by SCO Group for proceedings held on 04/30/2008 before Judge Hon. Dale A. Kimball, re <a href="#">567</a> Notice of Appeal, (Normand, Edward) (Entered: 12/10/2008)
12/10/2008	<a href="#">573</a>	BILL OF COSTS filed by Novell, Inc.. (Sneddon, Heather) (Entered: 12/10/2008)
12/10/2008	<a href="#">574</a>	DECLARATION of David E. Melaugh re <a href="#">573</a> Bill of Costs filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3)(Sneddon, Heather) (Entered: 12/10/2008)
12/24/2008	<a href="#">575</a>	MOTION to Stay <i>Taxation of Costs</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A)(Normand, Edward) (Entered: 12/24/2008)
12/31/2008	<a href="#">576</a>	MEMORANDUM in Opposition re <a href="#">575</a> MOTION to Stay <i>Taxation of Costs</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F)(Sneddon, Heather) (Entered: 12/31/2008)
01/08/2009	<a href="#">577</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of January 23, 2007-Motion Hearing before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Rebecca Janke, CSR, RMR, Telephone number 801-521-7238.  <b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within</b>

		<p><b>the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/29/2009. Redacted Transcript Deadline set for 2/9/2009. Release of Transcript Restriction set for 4/8/2009. (jmr) Modified on 4/8/2009 - removed restricted text(rak). (Entered: 01/09/2009)</p>
01/08/2009	<a href="#">578</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of June 4, 2007-Motion Hearing Volume II before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Rebecca Janke, CSR, RMR, Telephone number 801-532-3441.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/29/2009. Redacted Transcript Deadline set for 2/9/2009. Release of Transcript Restriction set for 4/8/2009. (jmr) Modified on 4/8/2009 - removed restricted text(rak). (Entered: 01/09/2009)</p>
01/08/2009	<a href="#">579</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of July 17, 2006-Motion Hearing before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Rebecca Janke, CSR, RMR, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/29/2009. Redacted Transcript Deadline set for 2/9/2009. Release of Transcript Restriction set for 4/8/2009. (jmr) Modified on 4/8/2009 - removed restricted text(rak). (Entered: 01/09/2009)</p>

01/27/2009	<a href="#">580</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 4/30/08 - Trial Volume II before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Rebecca Janke/Kelly Hicken, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/17/2009. Redacted Transcript Deadline set for 2/27/2009. Release of Transcript Restriction set for 4/27/2009. (jwt) Modified on 4/27/2009 - removed restricted text (rak). (Entered: 01/27/2009)</p>
01/27/2009	<a href="#">581</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 5/1/08 Trial Volume III before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Rebecca Janke, Kelly Hicken, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/17/2009. Redacted Transcript Deadline set for 2/27/2009. Release of Transcript Restriction set for 4/27/2009. (jwt) Modified on 4/27/2009 - removed restricted text (rak). (Entered: 01/27/2009)</p>
01/27/2009	<a href="#">582</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 5/2/08 Trial Volume IV before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Rebecca Janke, CSR RMR, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and</b></p>

		<p><b>forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/17/2009. Redacted Transcript Deadline set for 2/27/2009. Release of Transcript Restriction set for 4/27/2009. (jwt) Modified on 4/27/2009 - removed restricted text (rak). (Entered: 01/27/2009)</p>
01/27/2009	<a href="#">583</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 5/25/05 - argument on Motion before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Rebecca Janke, CSR, RMR, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/17/2009. Redacted Transcript Deadline set for 2/27/2009. Release of Transcript Restriction set for 4/27/2009. (jwt) Modified on 4/27/2009 - removed restricted text(rak). (Entered: 01/27/2009)</p>
01/28/2009	<a href="#">584</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 5/11/04 - Motion Hearing before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Kelly Brown Hicken, CSR, RPR, RMR, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/18/2009. Redacted Transcript Deadline set for 3/2/2009.</p>

		Release of Transcript Restriction set for 4/28/2009. (jwt) Modified on 4/28/2009 - removed restricted text (rak). (Entered: 01/28/2009)
01/28/2009	<a href="#">585</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 5/31/07 - Motion Hearing Volume I before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Kelly Brown Hicken, RPR, CSR, RMR, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/18/2009. Redacted Transcript Deadline set for 3/2/2009. Release of Transcript Restriction set for 4/28/2009. (jwt) Modified on 4/28/2009 - removed restricted text (rak). (Entered: 01/28/2009)</p>
02/03/2009	<a href="#">586</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 7/17/06 - Motion Hearing before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Rebecca Janke, CSR, RMR, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/24/2009. Redacted Transcript Deadline set for 3/6/2009. Release of Transcript Restriction set for 5/4/2009. (jwt) Modified on 5/4/2009 - removed restricted text (rak). (Entered: 02/03/2009)</p>
02/03/2009	<a href="#">587</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 1/23/07 - Motion Hearing before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Rebecca Janke, CSR, RMR, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar</b></p>

		<p><b>days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/24/2009. Redacted Transcript Deadline set for 3/6/2009. Release of Transcript Restriction set for 5/4/2009. (jwt) Modified on 5/4/2009 - removed restricted text (rak). (Entered: 02/03/2009)</p>
02/03/2009	<a href="#">588</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 6/4/07 - Motion Hearing Volume II before Judge Dale A. Kimball, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Rebecca Janke, CSR, RMR, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/24/2009. Redacted Transcript Deadline set for 3/6/2009. Release of Transcript Restriction set for 5/4/2009. (jwt) Modified on 5/4/2009 - removed restricted text (rak). (Entered: 02/03/2009)</p>
02/03/2009	<a href="#">589</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of 4/29/08 - Trial before Judge Dale A, Kimball, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Rebecca Janke, CSR, RMR/Kelly Brown Hicken, CSR, RMR, Telephone number 801-521-7238.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 calendar days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through</p>



		the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/24/2009. Redacted Transcript Deadline set for 3/6/2009. Release of Transcript Restriction set for 5/4/2009. (jwt) Modified on 5/4/2009 - removed restricted text (rak). (Entered: 02/03/2009)
02/03/2009	<a href="#">590</a>	Please be advised the Record is complete for purposes of appeal for USCA case number 08-4217 re <a href="#">567</a> Notice of Appeal.(jwt) (Entered: 02/03/2009)
03/13/2009	<a href="#">591</a>	ORDER denying <a href="#">575</a> Motion to Stay Taxation of Costs. Signed by Judge Dale A. Kimball on 3/13/09. (jwt) (Entered: 03/13/2009)
03/27/2009	<a href="#">592</a>	Mail Returned as Undeliverable. Mail sent to Jonathan Lee Riches, unable to forward. (djs) (Entered: 03/27/2009)
03/27/2009	<a href="#">593</a>	OBJECTIONS to <a href="#">573</a> Bill of Costs filed by Counter Defendant SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1-6, # <a href="#">2</a> Exhibit A-D (Unpublished Opinions)) (Normand, Edward) (Entered: 03/27/2009)
04/03/2009	<a href="#">594</a>	RESPONSE re <a href="#">593</a> Objections, to <i>Novell's Bill of Costs</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3) (Sneddon, Heather) (Entered: 04/03/2009)
04/22/2009	<a href="#">595</a>	Costs Taxed in amount of \$ 99,639.09 for Defendant against Plaintiff signed by Louise York, Chief Deputy Clerk 4/22/09 (jwt) (Entered: 04/23/2009)
08/24/2009	<a href="#">596</a>	ORDER OF RECUSAL Judge Dale A. Kimball recused. Case reassigned to Judge Ted Stewart for all further proceedings. Signed by Judge Dale A. Kimball on 8/24/09. (jwt) (Entered: 08/24/2009)
10/29/2009	<a href="#">597</a>	MANDATE of USCA as to <a href="#">567</a> Notice of Appeal(08-4217), filed by SCO Group According to the USCA the judgment of the USDC for the Dist of UT is AFFIRMED IN PART AND REVERSED IN PART. Judgment included with mandate: Yes. Case Reopened. Case is REMANDED for trial. (Attachments: # <a href="#">1</a> Judgment, # <a href="#">2</a> Mandate Cover Letter)(jmr) (Entered: 11/02/2009)
11/02/2009	598	<b>NOTICE OF HEARING:</b> (Notice generated by Chambers/slm) Status Conference set for 11/23/2009 10:00 AM in Room 142 before Judge Ted Stewart. (slm) (Entered: 11/02/2009)
11/03/2009	599	<b>AMENDED NOTICE OF HEARING:</b> (Notice generated by Chambers/slm) Status Conference RESET for 12/1/2009 01:30 PM in Room 142 before Judge Ted Stewart. (slm) (Entered: 11/03/2009)
11/10/2009	<a href="#">600</a>	NOTICE of Related Proceeding by Novell, Inc. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C) (Sneddon, Heather) (Entered: 11/10/2009)
11/17/2009	<a href="#">601</a>	Mail Returned as Undeliverable. Mail sent to Jonathan Lee Riches, inmate no longer at facility, unable to forward. Document #597 attached but not scanned here - already on docket. (djs) (Entered: 11/17/2009)
11/24/2009	<a href="#">602</a>	RESPONSE re <a href="#">600</a> Notice (Other), filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 11/24/2009)

11/24/2009	<a href="#">603</a>	AFFIDAVIT of Brent O. Hatch in Support re <a href="#">602</a> Response (NOT to motion) filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G)(Hatch, Brent) (Entered: 11/24/2009)
11/30/2009	<a href="#">604</a>	RESPONSE re <a href="#">600</a> Notice (Other), filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 11/30/2009)
12/01/2009	605	Minute Entry for proceedings held before Judge Ted Stewart: Scheduling Conference held on 12/1/2009. The Court sets a Final Pretrial Conference for 2/25/2010 02:00 PM and a 3-week Jury Trial for 3/8/2010 08:30 AM in Room 142 before Judge Ted Stewart. Counsel will meet to determine other dates and deadlines, and Mr. Hatch will submit an order for the Court's signature reflecting those dates. Attorney for Plaintiff: Brent Hatch, Edward Normand, Mauricio Gonzalez, Attorney for Defendant Michael Jacobs, Thomas Karrenberg. Appearing by phone: Judge Edward Cahn, Trusee; and Bonnie Fatelle Court Reporter: Kerry Sorensen. (slm) (Entered: 12/01/2009)
12/10/2009	<a href="#">606</a>	Ex Parte (Not Sealed) MOTION to Withdraw as Attorney filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Hatch, Brent) (Entered: 12/10/2009)
12/11/2009	<a href="#">607</a>	ORDER granting <a href="#">606</a> Motion to Withdraw as Attorney. Attorney John J. Brogan withdrawn from case for Plaintiff. Signed by Judge Ted Stewart on 12/10/09 (alt) (Entered: 12/11/2009)
12/22/2009	<a href="#">608</a>	MOTION to Set Aside Judgment filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 12/22/2009)
12/22/2009	<a href="#">609</a>	MEMORANDUM in Support re <a href="#">608</a> MOTION to Set Aside Judgment filed by Defendant Novell, Inc.. (Sneddon, Heather) (Entered: 12/22/2009)
12/22/2009	<a href="#">610</a>	DECLARATION of Grant L. Kim re <a href="#">608</a> MOTION to Set Aside Judgment filed by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4)(Sneddon, Heather) (Entered: 12/22/2009)
01/04/2010	611	<b>NOTICE OF HEARING ON MOTION</b> re: <a href="#">277</a> MOTION for Summary Judgment on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages and <a href="#">608</a> MOTION to Set Aside Judgment: (Notice generated by Chambers) Motion Hearing set for 2/4/2010 03:00 PM in Room 142 before Judge Ted Stewart. By 1/7/2010 at 5:00 p.m., the parties shall submit to chambers (Room 148) a courtesy copy of all filings related to <a href="#">277</a> Motion for Summary Judgment on SCO's First Claim for Slander of Title Based on Failure to Establish Special Damages. (tco) (Entered: 01/04/2010)
01/05/2010	<a href="#">612</a>	MEMORANDUM in Opposition re <a href="#">608</a> MOTION to Set Aside Judgment filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Appendix of Unpublished Cases)(Normand, Edward) (Entered: 01/05/2010)
01/06/2010	<a href="#">613</a>	AMENDED SCHEDULING ORDER: Final Pretrial Conference set for 2/25/2010 02:00 PM in Room 142 before Judge Ted Stewart. 15 day Jury Trial set for 3/8/2010 08:30 AM in Room 142 before Judge Ted Stewart. Signed by Judge Ted Stewart on 01/06/2010. (asp) (Entered: 01/06/2010)

01/06/2010	<a href="#">614</a>	NOTICE of Appearance by David R. Wright on behalf of Novell, Inc. (Wright, David) (Entered: 01/06/2010)
01/06/2010	<a href="#">615</a>	NOTICE of Appearance by Sterling Arthur Brennan on behalf of Novell, Inc. (Brennan, Sterling) (Entered: 01/06/2010)
01/06/2010	<a href="#">616</a>	NOTICE of Appearance by Kirk R. Harris on behalf of Novell, Inc. (Harris, Kirk) (Entered: 01/06/2010)
01/06/2010	<a href="#">617</a>	NOTICE of Appearance by Cara J. Baldwin on behalf of Novell, Inc. (Baldwin, Cara) (Entered: 01/06/2010)
01/15/2010	<a href="#">618</a>	NOTICE OF WITHDRAWAL OF COUNSEL of David E. Melaugh on behalf of Novell, Inc. (Melaugh, David) (Entered: 01/15/2010)
01/22/2010	<a href="#">619</a>	REPLY to Response to Motion re <a href="#">608</a> MOTION to Set Aside Judgment filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 01/22/2010)
01/28/2010	<a href="#">620</a>	MEMORANDUM DECISION denying <a href="#">608</a> Motion to Set Aside Judgment. Signed by Judge Ted Stewart on 01/28/2010. (asp) (Entered: 01/28/2010)
01/28/2010	<a href="#">621</a>	MEMORANDUM DECISION granting in part and denying in part <a href="#">277</a> Motion for Summary Judgment ; The hearing set for February 4, 2010, is STRICKEN. Signed by Judge Ted Stewart on 01/28/2010. (asp) (Entered: 01/28/2010)
02/01/2010	<a href="#">622</a>	Proposed Exhibit List <i>and Witness List (Rule 26(a)(3) Disclosures)</i> by Defendant Novell, Inc... (Attachments: # <a href="#">1</a> Exhibit A-1, # <a href="#">2</a> Exhibit A-2, # <a href="#">3</a> Exhibit B, # <a href="#">4</a> Exhibit C-1, # <a href="#">5</a> Exhibit C-2)(Brennan, Sterling) (Entered: 02/01/2010)
02/01/2010	<a href="#">623</a>	Proposed Exhibit List <i>and Witness List (Supplemental Rule 26(a)(3) Disclosures)</i> by Plaintiff SCO Group.. (Normand, Edward) (Entered: 02/01/2010)
02/02/2010	<a href="#">624</a>	Proposed Exhibit List <i>and Witness List (Amended Supplemental Rule 26(a)(3) Disclosures)</i> by Plaintiff SCO Group.. (Normand, Edward) (Entered: 02/02/2010)
02/03/2010	<a href="#">625</a>	Proposed Exhibit List <i>and Witness List (Second Amended Supplemental Rule 26(a)(3) Disclosures)</i> by Plaintiff SCO Group.. (Normand, Edward) (Entered: 02/03/2010)
02/04/2010	<a href="#">626</a>	TRIAL ORDER with instructions to counsel: 15 day Jury Trial set for 3/8/2010 08:30 AM in Room 142 before Judge Ted Stewart. Final Pretrial Conference set for 2/25/2010 02:00 PM in Room 142 before Judge Ted Stewart. Signed by Judge Ted Stewart on 02/04/2010. (asp) (Entered: 02/04/2010)
02/06/2010	<a href="#">627</a>	MOTION in Limine <i>No. 1 to Exclude Evidence and Argument Concerning Claims Not Included in SCO's Appeal or the Tenth Circuit's Limited Mandate</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1-Final Judgment, # <a href="#">2</a> Exhibit 2-Tenth Circuit Opinion, # <a href="#">3</a> Exhibit 3-SCO Appeal Brief, # <a href="#">4</a> Exhibit 4-SCO Reply Brief, # <a href="#">5</a> Exhibit 5-Ruling, # <a href="#">6</a> Exhibit 6-Order)

		(Brennan, Sterling) (Entered: 02/06/2010)
02/08/2010	628	DOCKET TEXT ORDER Plaintiff is directed to respond to <a href="#">627</a> MOTION in <i>Limine No. 1 to Exclude Evidence and Argument Concerning Claims Not Included in SCO's Appeal or the Tenth Circuit's Limited Mandate</i> filed by Novell, Inc., by February 12, 2010 at 5:00 p.m. No attached document. Signed by Judge Ted Stewart on 2/8/2010. (tco) (Entered: 02/08/2010)
02/08/2010	<a href="#">629</a>	MOTION in <i>Limine No. 2 to Determine that First Amendment Defenses Apply to Slander of Title</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 2A, # <a href="#">2</a> Exhibit 2B, # <a href="#">3</a> Exhibit 2C)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">630</a>	MOTION in <i>Limine No. 3 to Determine that SCO is a Limited Purpose Public Figure</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 3A, # <a href="#">2</a> Exhibit 3B, # <a href="#">3</a> Exhibit 3C, # <a href="#">4</a> Exhibit 3D, # <a href="#">5</a> Exhibit 3E, # <a href="#">6</a> Exhibit 3F-Under Seal, # <a href="#">7</a> Exhibit 3G, # <a href="#">8</a> Exhibit 3H, # <a href="#">9</a> Exhibit 3I, # <a href="#">10</a> Exhibit 3J, # <a href="#">11</a> Exhibit 3K, # <a href="#">12</a> Exhibit 3L, # <a href="#">13</a> Exhibit 3M, # <a href="#">14</a> Exhibit 3N, # <a href="#">15</a> Exhibit 3O, # <a href="#">16</a> Exhibit 3P-Under Seal, # <a href="#">17</a> Exhibit 3Q, # <a href="#">18</a> Exhibit 3R, # <a href="#">19</a> Exhibit 3S)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">631</a>	MOTION in <i>Limine No. 4 to Preclude SCO from Contesting that Novell had an Objectively Reasonable, Good Faith Basis for its Statements Regarding Copyright Ownership</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 4A)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">632</a>	MOTION in <i>Limine No. 5 to Preclude SCO from Relying on Novell's June and August 2003 Statements as Factual Assertions of Copyright Ownership</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 5A, # <a href="#">2</a> Exhibit 5B, # <a href="#">3</a> Exhibit 5C, # <a href="#">4</a> Exhibit 5D)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">633</a>	MOTION in <i>Limine No. 7 to Determine that Common Law Privileges Apply to Allegedly Defamatory Publications</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 7A, # <a href="#">2</a> Exhibit 7B, # <a href="#">3</a> Exhibit 7C, # <a href="#">4</a> Exhibit 7D, # <a href="#">5</a> Exhibit 7E, # <a href="#">6</a> Exhibit 7F)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">634</a>	MOTION in <i>Limine No. 8 to Preclude SCO from Relying on Novell's Applications for Copyright Registration</i> filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">635</a>	MOTION in <i>Limine No. 10 to Preclude SCO from Presenting Argument Relating to Issues Stayed Pending Arbitration</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 10A, # <a href="#">2</a> Exhibit 10B)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">636</a>	MOTION in <i>Limine No. 11 to Exclude Evidence of Substantial Performance</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 11A)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">637</a>	MOTION in <i>Limine No. 12 to Exclude Certain Testimony from William Broderick for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 12A) (Brennan, Sterling) (Entered: 02/08/2010)

02/08/2010	<a href="#">638</a>	MOTION in Limine <i>No. 13 to Exclude Certain Testimony From Lawrence Bouffard for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 13A-Under Seal)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">639</a>	MOTION in Limine <i>No.14 to Exclude Certain Testimony from Jean Acheson for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 14A)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">640</a>	MOTION in Limine <i>No. 15 to Exclude Certain Testimony from Robert Frankenberg for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 15A)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">641</a>	MOTION in Limine <i>No. 16 to Exclude Certain Testimony from R. Duff Thompson for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 16A, # <a href="#">2</a> Exhibit 16B, # <a href="#">3</a> Exhibit 16C)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">642</a>	MOTION in Limine <i>No. 17 to Exclude Certain Testimony from Ty Mattingly for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 17A)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">643</a>	MOTION in Limine <i>No. 1 TO PRECLUDE MISLEADING STATEMENTS OR EVIDENCE CONCERNING LANGUAGE IN THE APA REMOVED BY AMENDMENT NO. 2</i> filed by Plaintiff SCO Group. (Normand, Edward) Modified docket text on 2/10/2010 (asp). (Entered: 02/08/2010)
02/08/2010	<a href="#">644</a>	MOTION in Limine <i>No. 18 to Exclude Certain Testimony from Douglas Michels for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 18A) (Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">645</a>	MOTION in Limine <i>No. 2 TO PRECLUDE REFERENCES AND EVIDENCE CONCERNING REVERSED RULINGS</i> filed by Plaintiff SCO Group. (Normand, Edward) Modified docket text on 2/10/2010 (asp). (Entered: 02/08/2010)
02/08/2010	<a href="#">646</a>	MOTION in Limine <i>No. 3 TO EXCLUDE REFERENCE TO NOVELLS MONETARY JUDGMENT AGAINST SCO</i> filed by Plaintiff SCO Group. (Normand, Edward) Modified docket text on 2/10/2010 (asp). (Entered: 02/08/2010)
02/08/2010	<a href="#">647</a>	MOTION in Limine <i>No. 4 TO EXCLUDE REFERENCE TO LITIGATION COMMENTARY</i> filed by Plaintiff SCO Group. (Normand, Edward) Modified docket text on 2/10/2010 (asp). (Entered: 02/08/2010)
02/08/2010	<a href="#">648</a>	MOTION in Limine <i>No.19 to Exclude Certain Testimony from Edward Chatlos, Burt Levine, and Kim Madsen for Lack of Personal Knowledge</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 19A-Under Seal, # <a href="#">2</a> Exhibit 19B-Under Seal, # <a href="#">3</a> Exhibit 19C, # <a href="#">4</a> Exhibit 19D)(Brennan,

		Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">649</a>	MOTION in Limine <i>No. 5</i> TO EXCLUDE STATEMENTS MADE BY MICHAEL ANDERER AS AN INDEPENDENT CONTRACTOR FOR SCO filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4)(Normand, Edward) Modified docket text on 2/10/2010 (asp). (Entered: 02/08/2010)
02/08/2010	<a href="#">650</a>	MOTION in Limine <i>No. 9</i> to Preclude SCO from Contesting that Agreements that Post-Date the APA May Constitute SVRX Licenses filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">651</a>	MOTION in Limine <i>No. 6</i> to Preclude Reliance on Statements in December 2003 and March 2004 that do not Constitute Factual Assertions of Copyright Ownership filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 6A, # <a href="#">2</a> Exhibit 6B, # <a href="#">3</a> Exhibit 6C)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">652</a>	NOTICE OF CONVENTIONAL FILING of Exhibits 3F, 3P, 3R, and 3S to filed by Defendant Novell, Inc. re <a href="#">630</a> MOTION in Limine <i>No. 3</i> to Determine that SCO is a Limited Purpose Public Figure (Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">653</a>	NOTICE OF CONVENTIONAL FILING of Exhibit 13A filed by Defendant Novell, Inc. re <a href="#">638</a> MOTION in Limine <i>No. 13</i> to Exclude Certain Testimony From Lawrence Bouffard for Lack of Personal Knowledge and Violation of Parol Evidence Rule (Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">654</a>	NOTICE OF CONVENTIONAL FILING of Exhibits 19A and 19B filed by Defendant Novell, Inc. re <a href="#">648</a> MOTION in Limine <i>No.19</i> to Exclude Certain Testimony from Edward Chatlos, Burt Levine, and Kim Madsen for Lack of Personal Knowledge (Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">655</a>	MOTION for Daubert Hearing to Disqualify Dr. Christine A. Botosan filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order) (Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">656</a>	MEMORANDUM in Support re <a href="#">655</a> MOTION for Daubert Hearing to Disqualify Dr. Christine A. Botosan filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C-Part1, # <a href="#">4</a> Exhibit C-Part 2, # <a href="#">5</a> Exhibit D, # <a href="#">6</a> Exhibit E, # <a href="#">7</a> Exhibit F, # <a href="#">8</a> Exhibit G, # <a href="#">9</a> Exhibit H, # <a href="#">10</a> Exhibit I)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">657</a>	MOTION for Daubert Hearing to Disqualify Dr. Gary Pisano filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">658</a>	MEMORANDUM in Support re <a href="#">657</a> MOTION for Daubert Hearing to Disqualify Dr. Gary Pisano filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">659</a>	MOTION for Daubert Hearing to Disqualify G. Gervaise Davis III filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Brennan, Sterling) (Entered: 02/08/2010)

02/08/2010	<a href="#">660</a>	MEMORANDUM in Support re <a href="#">659</a> MOTION for Daubert Hearing to <i>Disqualify G. Gervaise Davis III</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">661</a>	OBJECTIONS to <a href="#">625</a> Exhibit List(Proposed) <i>Second Amended Supplemental Rule 26(a)(3) Pretrial Disclosures</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Brennan, Sterling) (Entered: 02/08/2010)
02/08/2010	<a href="#">662</a>	<b>**SEALED DOCUMENT**</b> Exhibits 19A and 19B re <a href="#">648</a> MOTION in <i>Limine No.19 to Exclude Certain Testimony from Edward Chatlos, Burt Levine, and Kim Madsen for Lack of Personal Knowledge</i> filed by Defendant Novell, Inc.. (asp) (Entered: 02/09/2010)
02/08/2010	<a href="#">663</a>	<b>**SEALED DOCUMENT**</b> Exhibit 13A re <a href="#">638</a> MOTION in <i>Limine No. 13 to Exclude Certain Testimony From Lawrence Bouffard for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> filed by Defendant Novell, Inc.. (asp) (Entered: 02/09/2010)
02/08/2010	<a href="#">664</a>	<b>**SEALED DOCUMENT**</b> Exhibits 3F, 3P, 3R and 3S re <a href="#">630</a> MOTION in <i>Limine No. 3 to Determine that SCO is a Limited Purpose Public Figure</i> filed by Defendant Novell, Inc.. (asp) (Entered: 02/09/2010)
02/09/2010	665	<b>NOTICE OF HEARING ON MOTION</b> re: <a href="#">634</a> MOTION in <i>Limine No. 8 to Preclude SCO from Relying on Novell's Applications for Copyright Registration</i> , <a href="#">629</a> MOTION in <i>Limine No. 2 to Determine that First Amendment Defenses Apply to Slander of Title</i> , <a href="#">659</a> MOTION for Daubert Hearing to <i>Disqualify G. Gervaise Davis III</i> , <a href="#">649</a> MOTION in <i>Limine No. 5</i> , <a href="#">644</a> MOTION in <i>Limine No. 18 to Exclude Certain Testimony from Douglas Michels for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> , <a href="#">636</a> MOTION in <i>Limine No. 11 to Exclude Evidence of Substantial Performance</i> , <a href="#">635</a> MOTION in <i>Limine No. 10 to Preclude SCO from Presenting Argument Relating to Issues Stayed Pending Arbitration</i> , <a href="#">650</a> MOTION in <i>Limine No. 9 to Preclude SCO from Contesting that Agreements that Post-Date the APA May Constitute SVRX Licenses</i> , <a href="#">637</a> MOTION in <i>Limine No. 12 to Exclude Certain Testimony from William Broderick for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> , <a href="#">655</a> MOTION for Daubert Hearing to <i>Disqualify Dr. Christine A. Botosan</i> , <a href="#">642</a> MOTION in <i>Limine No. 17 to Exclude Certain Testimony from Ty Mattingly for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> , <a href="#">657</a> MOTION for Daubert Hearing to <i>Disqualify Dr. Gary Pisano</i> , <a href="#">630</a> MOTION in <i>Limine No. 3 to Determine that SCO is a Limited Purpose Public Figure</i> , <a href="#">631</a> MOTION in <i>Limine No. 4 to Preclude SCO from Contesting that Novell had an Objectively Reasonable, Good Faith Basis for its Statements Regarding Copyright Ownership</i> , <a href="#">646</a> MOTION in <i>Limine No. 3</i> , <a href="#">627</a> MOTION in <i>Limine No. 1 to Exclude Evidence and Argument Concerning Claims Not Included in SCO's Appeal or the Tenth Circuit's Limited Mandate</i> , <a href="#">641</a> MOTION in <i>Limine No. 16 to Exclude Certain Testimony from R. Duff Thompson for Lack of Personal Knowledge and Violation of Parol Evidence Rule</i> , <a href="#">651</a> MOTION in <i>Limine No. 6 to Preclude Reliance on Statements in December 2003 and March 2004 that do not Constitute Factual Assertions of Copyright Ownership</i> , <a href="#">645</a> MOTION in <i>Limine No. 2</i> , <a href="#">647</a> MOTION in <i>Limine No. 4</i> , <a href="#">633</a> MOTION in <i>Limine No. 7 to Determine that Common Law</i>

		<i>Privileges Apply to Allegedly Defamatory Publications</i> , <a href="#">638</a> MOTION in Limine No. 13 to Exclude Certain Testimony From Lawrence Bouffard for Lack of Personal Knowledge and Violation of Parol Evidence Rule, <a href="#">632</a> MOTION in Limine No. 5 to Preclude SCO from Relying on Novell's June and August 2003 Statements as Factual Assertions of Copyright Ownership, <a href="#">640</a> MOTION in Limine No. 15 to Exclude Certain Testimony from Robert Frankenberg for Lack of Personal Knowledge and Violation of Parol Evidence Rule, <a href="#">639</a> MOTION in Limine No.14 to Exclude Certain Testimony from Jean Acheson for Lack of Personal Knowledge and Violation of Parol Evidence Rule, <a href="#">648</a> MOTION in Limine No.19 to Exclude Certain Testimony from Edward Chatlos, Burt Levine, and Kim Madsen for Lack of Personal Knowledge, <a href="#">643</a> MOTION in Limine No. 1 : (Notice generated by Chambers/slm) Motion Hearing set for 2/25/2010 beginning 09:00 AM in Room 142 before Judge Ted Stewart. PLEASE NOTE THAT THE FINAL PRETRIAL CONFERENCE FOR THIS CASE IS ALSO SET THIS DAY AT 2:00 P.M. (slm) (Entered: 02/09/2010)
02/11/2010	<a href="#">666</a>	ERRATA to <a href="#">648</a> MOTION in Limine No.19 to Exclude Certain Testimony from Edward Chatlos, Burt Levine, and Kim Madsen for Lack of Personal Knowledge filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 19C) (Brennan, Sterling) (Entered: 02/11/2010)
02/11/2010	<a href="#">667</a>	MOTION for Admission Pro Hac Vice of Daniel P. Muino, Registration fee \$ 15, receipt number 10880000000001053899, filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Application for Admission, # <a href="#">2</a> ECF Registration, # <a href="#">3</a> Text of Proposed Order)(Brennan, Sterling) (Entered: 02/11/2010)
02/12/2010	<a href="#">668</a>	ORDER granting <a href="#">667</a> Motion for Admission Pro Hac Vice of Daniel P. Muino for Novell, Inc.. <i>Attorneys admitted Pro Hac Vice may download a copy of the District of Utahs local rules from the courts web site at <a href="http://www.utd.uscourts.gov">http://www.utd.uscourts.gov</a> . Signed by Judge Ted Stewart on 02/11/2010. (asp) (Entered: 02/12/2010)</i>
02/12/2010	<a href="#">669</a>	MEMORANDUM in Opposition re <a href="#">627</a> MOTION in Limine No. 1 to Exclude Evidence and Argument Concerning Claims Not Included in SCO's Appeal or the Tenth Circuit's Limited Mandate filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G)(Hatch, Brent) (Entered: 02/12/2010)
02/15/2010	<a href="#">670</a>	MOTION for Leave to File Reply to SCO's Opposition to Novell's Motion in Limine No. 1 filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-Reply, # <a href="#">2</a> Text of Proposed Order)(Brennan, Sterling) (Entered: 02/15/2010)
02/16/2010	<a href="#">671</a>	MEMORANDUM in Opposition re <a href="#">670</a> MOTION for Leave to File Reply to SCO's Opposition to Novell's Motion in Limine No. 1 filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A)(Hatch, Brent) (Entered: 02/16/2010)
02/16/2010	<a href="#">672</a>	Amended MEMORANDUM in Opposition re <a href="#">670</a> MOTION for Leave to File Reply to SCO's Opposition to Novell's Motion in Limine No. 1 filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A)(Hatch, Brent) (Entered: 02/16/2010)
02/16/2010	673	DOCKET TEXT ORDER denying <a href="#">670</a> Motion for Leave to File. Signed by



		Judge Ted Stewart on 2/16/2010. No attached document. (tco) (Entered: 02/16/2010)
02/18/2010	<a href="#">674</a>	MEMORANDUM DECISION denying <a href="#">627</a> Motion in Limine. Signed by Judge Ted Stewart on 02/18/2010. (asp) (Entered: 02/18/2010)
02/19/2010	<a href="#">675</a>	MEMORANDUM in Opposition re <a href="#">643</a> MOTION in Limine <i>No. 1 to Preclude Misleading Statements or Evidence Concerning Language in APA Removed by Amendment No. 2</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1A, # <a href="#">2</a> Exhibit 1B, # <a href="#">3</a> Exhibit 1C)(Brennan, Sterling) (Entered: 02/19/2010)
02/19/2010	<a href="#">676</a>	MEMORANDUM in Opposition re <a href="#">645</a> MOTION in Limine <i>No. 2 re Reversed Rulings</i> filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 02/19/2010)
02/19/2010	<a href="#">677</a>	MEMORANDUM in Opposition re <a href="#">646</a> MOTION in Limine <i>No. 3 re Novell's Monetary Judgment Against SCO</i> filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 02/19/2010)
02/19/2010	<a href="#">678</a>	MEMORANDUM in Opposition re <a href="#">647</a> MOTION in Limine <i>No. 4 to Exclude Reference to Litigation Commentary</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 4A-Filed Under Seal, # <a href="#">2</a> Exhibit 4B, # <a href="#">3</a> Exhibit 4C-Filed Under Seal, # <a href="#">4</a> Exhibit 4D-Filed Under Seal)(Brennan, Sterling) (Entered: 02/19/2010)
02/19/2010	<a href="#">679</a>	MEMORANDUM in Opposition re <a href="#">649</a> MOTION in Limine <i>No. 5 to Exclude Statements Made by Michael Anderer as an Independent Contractor for SCO</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 5A-Filed Under Seal, # <a href="#">2</a> Exhibit 5B-Filed Under Seal, # <a href="#">3</a> Exhibit 5C-Filed Under Seal)(Brennan, Sterling) (Entered: 02/19/2010)
02/19/2010	<a href="#">680</a>	NOTICE OF CONVENTIONAL FILING of Exhibits 4A, 4C, and 4D to filed by Defendant Novell, Inc. re <a href="#">678</a> Memorandum in Opposition to Motion, <i>in Limine No. 4</i> (Brennan, Sterling) (Entered: 02/19/2010)
02/19/2010	<a href="#">681</a>	NOTICE OF CONVENTIONAL FILING of Exhibits 5A, 5B, and 5C filed by Defendant Novell, Inc. re <a href="#">679</a> Memorandum in Opposition to Motion, <i>in Limine No. 5</i> (Brennan, Sterling) (Entered: 02/19/2010)
02/19/2010	<a href="#">682</a>	MEMORANDUM in Opposition re <a href="#">629</a> MOTION in Limine <i>No. 2 to Determine that First Amendment Defenses Apply to Slander of Title</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Appendix of Unpublished Cases)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">683</a>	MEMORANDUM in Opposition re <a href="#">630</a> MOTION in Limine <i>No. 3 to Determine that SCO is a Limited Purpose Public Figure</i> filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">684</a>	MEMORANDUM in Opposition re <a href="#">631</a> MOTION in Limine <i>No. 4 to Preclude SCO from Contesting that Novell had an Objectively Reasonable, Good Faith Basis for its Statements Regarding Copyright Ownership</i> filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 02/19/2010)

02/19/2010	<a href="#">685</a>	MEMORANDUM in Opposition re <a href="#">632</a> MOTION in Limine No. 5 to Preclude SCO from Relying on Novell's June and August 2003 Statements as Factual Assertions of Copyright Ownership filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Appendix of Unpublished Cases)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">686</a>	MEMORANDUM in Opposition re <a href="#">651</a> MOTION in Limine No. 6 to Preclude Reliance on Statements in December 2003 and March 2004 that do not Constitute Factual Assertions of Copyright Ownership filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Appendix of Unpublished Cases)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">687</a>	MEMORANDUM in Opposition re <a href="#">633</a> MOTION in Limine No. 7 to Determine that Common Law Privileges Apply to Allegedly Defamatory Publications filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">688</a>	MEMORANDUM in Opposition re <a href="#">634</a> MOTION in Limine No. 8 to Preclude SCO from Relying on Novell's Applications for Copyright Registration filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">689</a>	MEMORANDUM in Opposition re <a href="#">650</a> MOTION in Limine No. 9 to Preclude SCO from Contesting that Agreements that Post-Date the APA May Constitute SVRX Licenses filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">690</a>	MEMORANDUM in Opposition re <a href="#">635</a> MOTION in Limine No. 10 to Preclude SCO from Presenting Argument Relating to Issues Stayed Pending Arbitration filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">691</a>	MEMORANDUM in Opposition re <a href="#">636</a> MOTION in Limine No. 11 to Exclude Evidence of Substantial Performance filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Appendix of Unpublished Cases)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">692</a>	MEMORANDUM in Opposition re <a href="#">637</a> MOTION in Limine No. 12 to Exclude Certain Testimony from William Broderick for Lack of Personal Knowledge and Violation of Parol Evidence Rule filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">693</a>	MEMORANDUM in Opposition re <a href="#">638</a> MOTION in Limine No. 13 to Exclude Certain Testimony From Lawrence Bouffard for Lack of Personal Knowledge and Violation of Parol Evidence Rule filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1 - FILED UNDER SEAL)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">694</a>	MEMORANDUM in Opposition re <a href="#">639</a> MOTION in Limine No.14 to Exclude Certain Testimony from Jean Acheson for Lack of Personal Knowledge and Violation of Parol Evidence Rule filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1)(Hatch, Brent) (Entered: 02/19/2010)

02/19/2010	<a href="#">695</a>	MEMORANDUM in Opposition re <a href="#">640</a> MOTION in Limine No. 15 to Exclude Certain Testimony from Robert Frankenberg for Lack of Personal Knowledge and Violation of Parol Evidence Rule filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">696</a>	MEMORANDUM in Opposition re <a href="#">641</a> MOTION in Limine No. 16 to Exclude Certain Testimony from R. Duff Thompson for Lack of Personal Knowledge and Violation of Parol Evidence Rule filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">697</a>	MEMORANDUM in Opposition re <a href="#">642</a> MOTION in Limine No. 17 to Exclude Certain Testimony from Ty Mattingly for Lack of Personal Knowledge and Violation of Parol Evidence Rule filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">698</a>	MEMORANDUM in Opposition re <a href="#">644</a> MOTION in Limine No. 18 to Exclude Certain Testimony from Douglas Michels for Lack of Personal Knowledge and Violation of Parol Evidence Rule filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">699</a>	MEMORANDUM in Opposition re <a href="#">648</a> MOTION in Limine No.19 to Exclude Certain Testimony from Edward Chatlos, Burt Levine, and Kim Madsen for Lack of Personal Knowledge filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">700</a>	MEMORANDUM in Opposition re <a href="#">659</a> MOTION for Daubert Hearing to Disqualify G. Gervaise Davis III filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Appendix of Unpublished Cases)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">701</a>	MEMORANDUM in Opposition re <a href="#">655</a> MOTION for Daubert Hearing to Disqualify Dr. Christine A. Botosan filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Expert Report of Christine Botosan - FILED UNDER SEAL, # <a href="#">2</a> Rebuttal Report of Christine Botosan - FILED UNDER SEAL, # <a href="#">3</a> Declaration of Christine Botosan - FILED UNDER SEAL, # <a href="#">4</a> Appendix of Unpublished Cases)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">702</a>	MEMORANDUM in Opposition re <a href="#">657</a> MOTION for Daubert Hearing to Disqualify Dr. Gary Pisano filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Expert Report of Dr. Gary Pisano - FILED UNDER SEAL, # <a href="#">2</a> Rebuttal Report of Dr. Gary Pisano - FILED UNDER SEAL, # <a href="#">3</a> Appendix of Unpublished Cases)(Hatch, Brent) (Entered: 02/19/2010)
02/19/2010	<a href="#">714</a>	<b>**SEALED DOCUMENT**</b> Exhibits A-C re <a href="#">679</a> Memorandum in Opposition to Motion, filed by Defendant Novell, Inc.. (asp) (Entered: 02/22/2010)
02/19/2010	<a href="#">715</a>	<b>**SEALED DOCUMENT**</b> Exhibits A, C, D re <a href="#">678</a> Memorandum in Opposition to Motion, filed by Defendant Novell, Inc.. (asp) (Entered: 02/22/2010)

02/22/2010	<a href="#">703</a>	NOTICE OF CONVENTIONAL FILING of Exhibit 1 filed by Plaintiff SCO Group re <a href="#">693</a> Memorandum in Opposition to Motion, (Hatch, Brent) (Entered: 02/22/2010)
02/22/2010	<a href="#">704</a>	MEMORANDUM DECISION denying <a href="#">633</a> Motion in Limine. Signed by Judge Ted Stewart on 02/22/2010. (asp) (Entered: 02/22/2010)
02/22/2010	<a href="#">705</a>	NOTICE OF CONVENTIONAL FILING of Exhibit 2 filed by Plaintiff SCO Group re <a href="#">699</a> Memorandum in Opposition to Motion, (Hatch, Brent) (Entered: 02/22/2010)
02/22/2010	<a href="#">706</a>	NOTICE OF CONVENTIONAL FILING of Expert Report, Rebuttal Report and Declaration of Dr. Christine Botosan, filed by Plaintiff SCO Group re <a href="#">701</a> Memorandum in Opposition to Motion, (Hatch, Brent) (Entered: 02/22/2010)
02/22/2010	<a href="#">707</a>	NOTICE OF CONVENTIONAL FILING of Expert Report and Rebuttal Report of Dr. Gary Pisano filed by Plaintiff SCO Group re <a href="#">702</a> Memorandum in Opposition to Motion, (Hatch, Brent) (Entered: 02/22/2010)
02/22/2010	<a href="#">708</a>	MEMORANDUM DECISION denying <a href="#">643</a> Motion in Limine. Signed by Judge Ted Stewart on 02/22/2010. (asp) (Entered: 02/22/2010)
02/22/2010	<a href="#">709</a>	MEMORANDUM DECISION granting <a href="#">645</a> Motion in Limine. Signed by Judge Ted Stewart on 02/22/2010. (asp) (Entered: 02/22/2010)
02/22/2010	<a href="#">710</a>	MEMORANDUM DECISION denying <a href="#">632</a> Motion in Limine; denying <a href="#">651</a> Motion in Limine. Signed by Judge Ted Stewart on 02/22/2010. (asp) (Entered: 02/22/2010)
02/22/2010	<a href="#">711</a>	MEMORANDUM DECISION granting <a href="#">650</a> Motion in Limine. Signed by Judge Ted Stewart on 02/22/2010. (asp) (Entered: 02/22/2010)
02/22/2010	<a href="#">712</a>	MEMORANDUM DECISION granting in part and denying in part <a href="#">649</a> Motion in Limine. Signed by Judge Ted Stewart on 02/22/2010. (asp) (Entered: 02/22/2010)
02/22/2010	<a href="#">713</a>	MEMORANDUM DECISION taking under advisement <a href="#">647</a> Motion in Limine. Signed by Judge Ted Stewart on 02/22/2010. (asp) (Entered: 02/22/2010)
02/22/2010	<a href="#">716</a>	MEMORANDUM DECISION granting <a href="#">635</a> Motion in Limine. Signed by Judge Ted Stewart on 02/22/2010. (asp) (Entered: 02/22/2010)
02/22/2010	<a href="#">717</a>	MEMORANDUM DECISION granting in part and denying in part <a href="#">637</a> Motion in Limine; granting in part and denying in part <a href="#">638</a> Motion in Limine; granting in part and denying in part <a href="#">639</a> Motion in Limine; granting in part and denying in part <a href="#">640</a> Motion in Limine; granting in part and denying in part <a href="#">641</a> Motion in Limine; granting in part and denying in part <a href="#">642</a> Motion in Limine; granting in part and denying in part <a href="#">644</a> Motion in Limine; granting in part and denying in part <a href="#">648</a> Motion in Limine. Signed by Judge Ted Stewart on 02/22/2010. (asp) (Entered: 02/22/2010)
02/23/2010	<a href="#">718</a>	<b>**SEALED DOCUMENT**</b> Exhibit 1 re <a href="#">693</a> Memorandum in Opposition to Motion, filed by Plaintiff SCO Group. (asp) (Entered: 02/23/2010)

02/23/2010	<a href="#">719</a>	<b>**SEALED DOCUMENT**</b> Exhibit 2 re <a href="#">699</a> Memorandum in Opposition to Motion, filed by Plaintiff SCO Group. (asp) (Entered: 02/23/2010)
02/23/2010	<a href="#">720</a>	<b>**SEALED DOCUMENT**</b> Exhibit 3 re <a href="#">701</a> Memorandum in Opposition to Motion, filed by Plaintiff SCO Group. (asp) (Entered: 02/23/2010)
02/23/2010	<a href="#">721</a>	<b>**SEALED DOCUMENT**</b> Exhibit 4 re <a href="#">701</a> Memorandum in Opposition to Motion, filed by Plaintiff SCO Group. (asp) (Entered: 02/23/2010)
02/23/2010	<a href="#">722</a>	<b>**SEALED DOCUMENT**</b> Exhibit 3 re <a href="#">702</a> Memorandum in Opposition to Motion, filed by Plaintiff SCO Group. (asp) (Entered: 02/23/2010)
02/23/2010	<a href="#">723</a>	<b>**SEALED DOCUMENT**</b> Exhibit 2 re <a href="#">702</a> Memorandum in Opposition to Motion, filed by Plaintiff SCO Group. (asp) (Entered: 02/23/2010)
02/23/2010	<a href="#">724</a>	MEMORANDUM DECISION granting <a href="#">631</a> Motion in Limine. Signed by Judge Ted Stewart on 02/23/2010. (asp) (Entered: 02/23/2010)
02/23/2010	<a href="#">725</a>	MEMORANDUM DECISION denying <a href="#">634</a> Motion in Limine. Signed by Judge Ted Stewart on 02/23/2010. (asp) (Entered: 02/23/2010)
02/23/2010	<a href="#">726</a>	Proposed Voir Dire by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 02/23/2010)
02/23/2010	<a href="#">727</a>	Proposed Voir Dire by Plaintiff SCO Group. (Hatch, Brent) (Entered: 02/23/2010)
02/24/2010	<a href="#">728</a>	MEMORANDUM DECISION denying <a href="#">636</a> Motion in Limine; granting <a href="#">646</a> Motion in Limine. Signed by Judge Ted Stewart on 02/23/2010. (asp) (Entered: 02/24/2010)
02/24/2010	<a href="#">729</a>	REQUEST for Judicial Notice of Prior Factual Findings filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 02/24/2010)
02/25/2010	<a href="#">730</a>	ORDER denying <a href="#">629</a> Motion in Limine; denying <a href="#">630</a> Motion in Limine. Signed by Judge Ted Stewart on 02/25/2010. (asp) (Entered: 02/25/2010)
02/25/2010	<a href="#">731</a>	PRETRIAL ORDER: 3 Week Jury Trial set for 3/8/2010 08:30 AM in Room 142 before Judge Ted Stewart. Signed by Judge Ted Stewart on 02/25/2010. (asp) (Entered: 02/25/2010)
02/25/2010	732	Minute Entry for proceedings held before Judge Ted Stewart: Motion Hearing held on 2/25/2010 re <a href="#">657</a> MOTION for Daubert Hearing <i>to Disqualify Dr. Gary Pisano</i> filed by Novell, Inc., <a href="#">655</a> MOTION for Daubert Hearing <i>to Disqualify Dr. Christine A. Botosan</i> filed by Novell, Inc., <a href="#">659</a> MOTION for Daubert Hearing <i>to Disqualify G. Gervaise Davis III</i> filed by Novell, Inc.. The Court hears argument on the 3 daubert motions filed by defendant, and takes the motions under advisement. Attorney for Plaintiff: Brent Hatch, Stuart Singer, Edward Normand, Jason Cyrulnik, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: Patti Walker. (slm) (Entered: 02/25/2010)
02/25/2010	733	Minute Entry for proceedings held before Judge Ted Stewart: Final Pretrial Conference held on 2/25/2010. Defendant asks for judicial notice regarding Judge Kimball's and the 10th Circuit's prior findings on this case. The Court

		asks counsel to avoid reference to these findings without prior notice to the Court. The parties report that they do not agree on specifically what should be decided by the Court, and what should go to the jury. The Court asks counsel to submit their understanding of the issues referred to in the pretrial order by Tuesday, March 2; with responses due by Thursday, March 4. The Court outlines its preferred trial procedures and deadlines. Counsel are asked to review the section of "Courtroom Conduct" in the Court's trial order. Counsel raise 1st amendment issues, and they are instructed to submit any motions regarding this issue by Tuesday, March 2, with responses due Thursday, March 4. Attorney for Plaintiff: Brent Hatch, Stuart Singer, Edward Normand, Jason Cyrulnik, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: Patti Walker. (slm) (Entered: 02/25/2010)
02/25/2010	<a href="#">735</a>	ORDER Setting Briefing Schedule: Novell may file a brief in support of the Request by 5:00 p.m. on Tuesday, March 2, 2010 and Plaintiff and counterclaim defendant The SCO Group may file a brief in response to Novell's brief by 5:00 p.m. on Thursday, March 4, 2010. Signed by Judge Ted Stewart on 02/25/2010. (asp) (Entered: 02/26/2010)
02/26/2010	<a href="#">734</a>	DOCUMENTS LODGED consisting of Letter from Sterling A. Brennan. (asp) (Entered: 02/26/2010)
03/01/2010	<a href="#">736</a>	OBJECTIONS to <a href="#">625</a> Exhibit List(Proposed) <i>Second Amended Supplemental Rule 26(a)(3) Disclosures</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Brennan, Sterling) (Entered: 03/01/2010)
03/01/2010	<a href="#">737</a>	Proposed Jury Verdict by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/01/2010)
03/01/2010	<a href="#">738</a>	TRIAL BRIEF by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/01/2010)
03/01/2010	<a href="#">739</a>	Proposed Jury Instructions by SCO Group, Novell, Inc.. (Brennan, Sterling) (Entered: 03/01/2010)
03/01/2010	<a href="#">740</a>	Proposed Jury Instructions by Novell, Inc.. (Brennan, Sterling) (Entered: 03/01/2010)
03/01/2010	<a href="#">741</a>	Proposed Jury Verdict by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/01/2010)
03/01/2010	<a href="#">742</a>	TRIAL BRIEF by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Appendix A, # <a href="#">2</a> Appendix of Unpublished Cases)(Hatch, Brent) (Entered: 03/01/2010)
03/01/2010	<a href="#">743</a>	Proposed Jury Instructions by SCO Group. (Hatch, Brent) (Entered: 03/01/2010)
03/02/2010	<a href="#">744</a>	OBJECTIONS to <i>Novell's Rule 26(a)(3) Disclosures</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A)(Hatch, Brent) (Entered: 03/02/2010)
03/02/2010	<a href="#">745</a>	MEMORANDUM DECISION denying <a href="#">659</a> Motion for Daubert Hearing. Signed by Judge Ted Stewart on 03/02/2010. (asp) (Entered: 03/02/2010)

03/02/2010	<a href="#">746</a>	MEMORANDUM DECISION denying <a href="#">655</a> Motion for Daubert Hearing. Signed by Judge Ted Stewart on 03/02/2010. (asp) (Entered: 03/02/2010)
03/02/2010	<a href="#">747</a>	MEMORANDUM DECISION denying <a href="#">657</a> Motion for Daubert Hearing. Signed by Judge Ted Stewart on 03/02/2010. (asp) (Entered: 03/02/2010)
03/02/2010	<a href="#">748</a>	MOTION to Determine that First Amendment Defenses Apply to Slander of Title and Require Proof of Constitutional Malice filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Errata 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3)(Brennan, Sterling) (Entered: 03/02/2010)
03/02/2010	<a href="#">749</a>	BRIEF in Support re <a href="#">729</a> Request for Judicial Notice of Prior Factual Findings filed by Defendant Novell, Inc.. (Brennan, Sterling) Modified on 3/3/2010 added in Support to docket text (asp). (Entered: 03/02/2010)
03/02/2010	<a href="#">750</a>	Submission Addressing Allocation of Issues for Bench and Jury Trial BRIEF re 733 Pretrial Conference - Final filed by Plaintiff SCO Group, Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/02/2010)
03/02/2010	<a href="#">751</a>	BRIEF REGARDING ISSUES TO BE TRIED IN EQUITY BY THE COURT filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/02/2010)
03/02/2010	<a href="#">752</a>	DOCUMENTS LODGED consisting of Letter from Sterling A. Brennan. (asp) (Entered: 03/03/2010)
03/03/2010	<a href="#">753</a>	Proposed Voir Dire by Plaintiff SCO Group, Defendant Novell, Inc.. (Hatch, Brent) (Entered: 03/03/2010)
03/03/2010	<a href="#">754</a>	Proposed Exhibit List ( <i>Second Amended Supplemental Rule 26(a)(3) Pretrial Disclosures</i> ) by Plaintiff SCO Group.. (Hatch, Brent) (Entered: 03/03/2010)
03/03/2010	<a href="#">755</a>	Proposed Witness List <i>Amended Supplemental Rule 26(a)(3) Pretrial Disclosures</i> by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-1, # <a href="#">2</a> Exhibit A-2, # <a href="#">3</a> Exhibit B)(Brennan, Sterling) (Entered: 03/03/2010)
03/04/2010	<a href="#">756</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Proceedings held on February 25, 2010-Motion Hearing before Judge Ted Stewart. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number 801-364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/25/2010. Redacted Transcript Deadline set for 4/5/2010.</p>

		Release of Transcript Restriction set for 6/2/2010. (jmr) Modified by removing restricted text on 6/2/2010 (rks). (Entered: 03/04/2010)
03/04/2010	<a href="#">758</a>	RESPONSE re <a href="#">729</a> Request, <a href="#">749</a> Brief, to <i>Novell's Request for Judicial Notice</i> filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/04/2010)
03/04/2010	<a href="#">759</a>	MEMORANDUM in Opposition re <a href="#">748</a> MOTION to Determine that First Amendment Defenses Apply to Slander of Title and Require Proof of Constitutional Malice filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Appendix of Unpublished Cases)(Hatch, Brent) (Entered: 03/04/2010)
03/05/2010	<a href="#">760</a>	Memorandum Addressing <i>Novell's Request for Advisory Verdict</i> filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/05/2010)
03/05/2010	<a href="#">761</a>	MEMORANDUM DECISION and ORDER on Allocation of Issues for Bench and Jury Trial. Signed by Judge Ted Stewart on 3/5/2010. (ce) (Entered: 03/05/2010)
03/05/2010	<a href="#">762</a>	MEMORANDUM DECISION granting <a href="#">748</a> Motion to Determine that First Amendment Defenses Apply to Slander of Title and Require Proof of Constitutional Malice. Defendant's Motions in Limine No. 2 to Determine that First Amendment Defenses Apply to Slander of Title filed by Defendant Novell, Inc. and Motion in Limine No. 3 to Determine that SCO is a Limited Purpose Public Figure filed by Defendant Novell, Inc. are granted. Signed by Judge Ted Stewart on 3/5/2010. (ce) (Entered: 03/05/2010)
03/05/2010	<a href="#">763</a>	MEMORANDUM DECISION Denying Defendant's <a href="#">729</a> Request for Judicial Notice of Prior Factual Findings. Signed by Judge Ted Stewart on 3/5/2010. (ce) (Entered: 03/05/2010)
03/05/2010	<a href="#">764</a>	DOCUMENTS LODGED consisting of Letter from Brent O. Hatch to Judge Stewart re: videos and other demonstrative evidence to be used in opening statement. (ce) (Entered: 03/05/2010)
03/05/2010	<a href="#">765</a>	DOCUMENTS LODGED consisting of Letter from Brent O. Hatch re: trial matters. (ce) (Entered: 03/05/2010)
03/05/2010	<a href="#">766</a>	MEMORANDUM DECISION and ORDER Limiting Use of Deposition Testimony During Opening Statements. Signed by Judge Ted Stewart on 3/5/2010. (ce) (Entered: 03/05/2010)
03/05/2010	<a href="#">767</a>	TRIAL BRIEF ( <i>Amended</i> ) by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/05/2010)
03/05/2010	<a href="#">768</a>	Proposed Exhibit List by Defendant Novell, Inc... (Brennan, Sterling) (Entered: 03/05/2010)
03/05/2010	<a href="#">769</a>	Proposed Witness List ( <i>Will Call</i> ) by Novell, Inc.. (Brennan, Sterling) (Entered: 03/05/2010)
03/05/2010	<a href="#">770</a>	Proposed Witness List ( <i>May Call</i> ) by Novell, Inc.. (Brennan, Sterling) (Entered: 03/05/2010)
03/05/2010	<a href="#">771</a>	Proposed Witness List ( <i>Depositions</i> ) by Novell, Inc.. (Brennan, Sterling) (Entered: 03/05/2010)



03/05/2010	<a href="#">772</a>	OBJECTIONS to <i>Novell's Proposed Jury Instructions and Verdict Form</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Appendix of Unpublished Cases) (Hatch, Brent) (Entered: 03/05/2010)
03/06/2010	<a href="#">773</a>	OBJECTIONS to <a href="#">741</a> Proposed Jury Verdict filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/06/2010)
03/06/2010	<a href="#">774</a>	OBJECTIONS to <a href="#">739</a> Proposed Jury Instructions filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2)(Brennan, Sterling) (Entered: 03/06/2010)
03/07/2010	<a href="#">775</a>	Fourth MOTION in <i>Limine Novell's Motion for Further Ruling on Motion in Limine No. 4 to Preclude SCO From Contesting that Novell Had An Objectively Reasonable, Good Faith Basis for Its Statements Regarding Copyright Ownership</i> filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/07/2010)
03/07/2010	<a href="#">776</a>	Memorandum <i>Memorandum of Authorities Regarding Excusing Potential Jurors Having Knowledge Pertaining to This Dispute</i> filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/07/2010)
03/08/2010	<a href="#">777</a>	Proposed Exhibit List by Plaintiff SCO Group.. (Hatch, Brent) (Entered: 03/08/2010)
03/08/2010	<a href="#">778</a>	Proposed Witness List ( <i>Will Call</i> ) by SCO Group. (Hatch, Brent) (Entered: 03/08/2010)
03/08/2010	<a href="#">779</a>	Proposed Witness List ( <i>May Call</i> ) by SCO Group. (Hatch, Brent) (Entered: 03/08/2010)
03/08/2010	<a href="#">780</a>	Proposed Witness List ( <i>Depositions</i> ) by SCO Group. (Hatch, Brent) (Entered: 03/08/2010)
03/08/2010	<a href="#">781</a>	MEMORANDUM DECISION denying <a href="#">775</a> Motion in Limine. Signed by Judge Ted Stewart on 03/08/2010. (asp) (Entered: 03/08/2010)
03/08/2010	<a href="#">782</a>	DOCUMENTS LODGED consisting of Letter from Sterling A. Brennan. (asp) (Entered: 03/08/2010)
03/08/2010	<a href="#">783</a>	Memorandum of <i>Point and Authorities Responding to SCO's Objection to Board Meeting Minutes</i> filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/08/2010)
03/08/2010	<a href="#">784</a>	REPLY BRIEF <i>in Support of SCO's Objections to Novell's Proposed Jury Instructions</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Hatch, Brent) (Entered: 03/08/2010)
03/08/2010	<a href="#">785</a>	REPLY BRIEF <i>in Support of SCO's Objections to Novell's Proposed Verdict Form</i> filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/08/2010)
03/08/2010	<a href="#">786</a>	REPLY BRIEF re <a href="#">772</a> <i>Objections to Novell's Proposed Jury Instructions</i> filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E)(Brennan, Sterling) (Entered: 03/09/2010)

03/08/2010	793	Minute Entry for proceedings held before Judge Ted Stewart: Voir Dire held on 3/8/2010. 52 jurors are sworn and questioned. 13 jurors (one alternate) are sworn and seated. The jurors are released for the day, and trial will begin tomorrow morning at 8:30 a.m. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterlilng Brennan, Eric Acker, Michael Jacobs. Court Reporter: Patti Walker. (slm) (Entered: 03/12/2010)
03/08/2010	<a href="#">807</a>	<b>**SEALED DOCUMENT**</b> Jury Panel Record. (slm) (Entered: 03/17/2010)
03/08/2010	<a href="#">849</a>	<b>**SEALED DOCUMENT**</b> Jury Seating Arrangement. (slm) (Entered: 03/30/2010)
03/09/2010	<a href="#">787</a>	Proposed Jury Instructions by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D)(Brennan, Sterling) (Entered: 03/09/2010)
03/09/2010	794	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/9/2010. Counsel deliver opening statements, and the trial begins. Testimony heard, exhibits admitted. The jury is instructed on appropriate behavior and released for the day. Trial will continue tomorrow morning at 8;30 a.m. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: Patti Walker, Ed Young, Kelly Hicken. (slm) (Entered: 03/12/2010)
03/10/2010	<a href="#">788</a>	DOCUMENTS LODGED consisting of Letter from Brent Hatch. (asp) (Entered: 03/10/2010)
03/10/2010	795	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/10/2010. Trial continues. Testimony heard, exhibits admitted. Trial will continue tomorrow morning. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: Patti Walker, Ray Fenlon, Ed Young. (slm) (Entered: 03/12/2010)
03/11/2010	<a href="#">789</a>	Letter from US Supreme Court re: Notice of Petition for Writ of Certiorari re <a href="#">567</a> Notice of Appeal. Supreme Court Case Number 09-1061. (jmr) (Entered: 03/11/2010)
03/11/2010	<a href="#">790</a>	MOTION to Allow Evidence Responding to SCO's Allegation that Novell's Slander Continues "To This Very Day" filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A-Trial Testimony, # <a href="#">2</a> Exhibit B-Order)(Brennan, Sterling) (Entered: 03/11/2010)
03/11/2010	796	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/11/2010. Trial continues. Testimony heard, exhibits admitted. The jury is released for the evening. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: Patti Walker, Ray Fenlon, Laura Robinson. (slm) (Entered: 03/12/2010)

03/12/2010	<a href="#">791</a>	DOCUMENTS LODGED consisting of Letter from Brent O. Hatch. (asp) (Entered: 03/12/2010)
03/12/2010	<a href="#">792</a>	DOCUMENTS LODGED consisting of Letter from Sterling A. Brennan. (asp) (Entered: 03/12/2010)
03/12/2010	797	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/12/2010. Trial continues. Testimony heard, exhibits admitted. The Court reminds jurors that only a portion of the evidence is in and they are not to be making up their minds, nor discussing the case with anyone. Jurors released until Monday morning at 8:30 a.m. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: Patti Walker, Ray Fenlon, Laura Robinson. (slm) (Entered: 03/12/2010)
03/15/2010	<a href="#">798</a>	MEMORANDUM in Opposition re <a href="#">790</a> MOTION to Allow Evidence Responding to SCO's Allegation that Novell's Slander Continues "To This Very Day" filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Hatch, Brent) (Entered: 03/15/2010)
03/15/2010	<a href="#">799</a>	ORDER DENYING DEFENDANTS ORAL MOTION FOR MISTRIAL. Signed by Judge Ted Stewart on 03/15/2010. (asp) (Entered: 03/15/2010)
03/15/2010	800	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/15/2010. Out of the haring of the jury, defendants move for a mistrial. The Court takes the matter under advisement. Trial continues. Testimony heard, exhibits admitted. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: Patti Walker, Kelly Hicken, Laura Robinson. (slm) Modified on 3/17/2010 (slm). (Entered: 03/15/2010)
03/15/2010	<a href="#">801</a>	NOTICE OF FILING of Offer of Proof Regarding Prior Inconsistent Declaration of Steven Sabbath filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Attachment-Novell Trial Ex. Y23)(Brennan, Sterling) (Entered: 03/15/2010)
03/16/2010	<a href="#">802</a>	NOTICE OF FILING of Opposition to SCO's Letter to the Court of March 15, 2010, Regarding Admission of Deposition Testimony from the IBM Case filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/16/2010)
03/16/2010	<a href="#">803</a>	Memorandum of Points and Authorities in Support of Likely Objections to Dr. Gary A. Pisano Testimony filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Brennan, Sterling) (Entered: 03/16/2010)
03/16/2010	<a href="#">804</a>	Memorandum of Points and Authorities in Support of Likely Objections to Dr. Christine A. Botosan Testimony filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C)(Brennan, Sterling) (Entered: 03/16/2010)
03/16/2010	808	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/16/2010. Out of the presence of the jury the Court deals with pending requests/motions. Testimony heard, exhibits admitted. Trial to continue tomorrow morning at 8:30 a.m. Attorney for Plaintiff: Stuart Singer, Edward

		Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: various. (slm) (Entered: 03/17/2010)
03/17/2010	<a href="#">805</a>	Motion to Allow Testimony Pursuant to Federal Rule of Evidence 803(3) filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Appendix of Unpublished Cases)(Hatch, Brent) Modified on 3/17/2010 changed docket text from Notice of Filing to Motion (asp). (Entered: 03/17/2010)
03/17/2010	<a href="#">806</a>	DOCUMENTS LODGED consisting of Letter from Brent Hatch. (asp) (Entered: 03/17/2010)
03/17/2010	809	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/17/2010. Again, the Court addresses pending motions/requests of counsel. The jury is brought in and trial continues. Testimony heard, exhibits admitted. Trial will resume at 8:30 tomorrow morning. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: various. (slm) (Entered: 03/17/2010)
03/17/2010	<a href="#">810</a>	MOTION Renewed Motion Regarding Prior District Court Rulings filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/17/2010)
03/18/2010	<a href="#">811</a>	Proposed Jury Verdict by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/18/2010)
03/18/2010	<a href="#">812</a>	Proposed Jury Instructions by SCO Group, Novell, Inc.. (Hatch, Brent) (Entered: 03/18/2010)
03/18/2010	813	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/18/2010. Trial continues. Testimony heard, exhibits admitted. Trial will continue tomorrow morning at 8:30 a.m. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: E. Young, L. Robinson, Patti Walker. (slm) (Entered: 03/18/2010)
03/19/2010	814	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/19/2010. Out of the hearing of the jury, trial issues are discussed and resolved. Testimony heard, exhibits admitted. The jury is again instructed on proper behavior and released for the weekend. Trial will continue Monday morning, 3/22/10, at 8:30 a.m. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: L. Robinson, Becky Janke, Patti Walker. (slm) (Entered: 03/19/2010)
03/21/2010	<a href="#">815</a>	MOTION <i>for Leave to Examine Its First Witness on Prior Rulings</i> filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/21/2010)
03/21/2010	<a href="#">816</a>	OBJECTIONS to <i>Novell's Designation of Testimony of Michael Defazio</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit A)(Hatch, Brent) (Entered: 03/21/2010)
03/21/2010	<a href="#">817</a>	MEMORANDUM in Opposition re <a href="#">815</a> MOTION <i>for Leave to Examine Its First Witness on Prior Rulings</i> filed by Plaintiff SCO Group. (Attachments: #

		<a href="#">1</a> Appendix of Unpublished Cases)(Hatch, Brent) (Entered: 03/21/2010)
03/21/2010	<a href="#">818</a>	MOTION TO PRECLUDE SCO FROM CALLING TROY KELLER AS A WITNESS filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/21/2010)
03/21/2010	<a href="#">819</a>	Memorandum of Points and Authorities on the Limitations on Novell's Trial Testimony Imposed by Novell's Own Privilege Objections filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2, # <a href="#">3</a> Exhibit 3, # <a href="#">4</a> Exhibit 4, # <a href="#">5</a> Exhibit 5, # <a href="#">6</a> Exhibit 6, # <a href="#">7</a> Exhibit 7, # <a href="#">8</a> Exhibit 8)(Hatch, Brent) (Entered: 03/21/2010)
03/22/2010	<a href="#">820</a>	REPLY BRIEF Novell's Response to SCO's Objection to Novell's Designation of Testimony of Michael DeFazio filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A)(Brennan, Sterling) (Entered: 03/22/2010)
03/22/2010	<a href="#">821</a>	APPENDIX to <a href="#">819</a> Memorandum (NOT to motion), Memorandum (NOT to motion) filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/22/2010)
03/22/2010	822	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/22/2010. Week three of trial begins. Testimony heard, exhibits admitted. Trial will continue tomorrow morning at 8:30 a.m. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: P. Walker, E. Young, B. Janke. (slm) (Entered: 03/22/2010)
03/23/2010	<a href="#">823</a>	MOTION to Strike TESTIMONY OF DAMAGES AFTER JUNE 9, 2004 filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/23/2010)
03/23/2010	837	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/23/2010. Out of the jury's hearing, trial issues are resolved. Trial continues. Testimony heard, exhibits admdditted. Attorney for Plaintiff: Stuart Singer, Ed Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Erick Acker, Michael Jacobs. Court Reporter: various. (slm) (Entered: 03/26/2010)
03/24/2010	<a href="#">824</a>	REPLY BRIEF NOVELL'S RESPONSE TO SCO'S OBJECTION TO CERTAIN TESTIMONY OF TOR BRAHAM filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Brennan, Sterling) (Entered: 03/24/2010)
03/24/2010	<a href="#">825</a>	MEMORANDUM in Opposition re <a href="#">823</a> MOTION to Strike TESTIMONY OF DAMAGES AFTER JUNE 9, 2004 filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/24/2010)
03/24/2010	<a href="#">826</a>	Proposed Jury Instructions by Novell, Inc.. (Brennan, Sterling) (Entered: 03/24/2010)
03/24/2010	<a href="#">827</a>	RESPONSE to Jury Instructions filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/24/2010)
03/24/2010	<a href="#">828</a>	MOTION to Strike Testimony That is Inconsistent with Unambiguous

		<i>Contract Language</i> filed by Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/24/2010)
03/24/2010	840	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/24/2010. Trial continues. Testimony heard, exhibits admitted. Jury released until tomorrow morning at 8:30 a.m. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: various. (slm) (Entered: 03/30/2010)
03/25/2010	<a href="#">829</a>	MOTION for Judgment as a Matter of Law <i>NOVELL'S RULE 50(A) MOTION AT THE CLOSE OF PLAINTIFF'S CASE</i> filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/25/2010)
03/25/2010	<a href="#">830</a>	MEMORANDUM DECISION denying <a href="#">829</a> Motion for Judgment as a Matter of Law. Signed by Judge Ted Stewart on 03/25/2010. (asp) (Entered: 03/25/2010)
03/25/2010	<a href="#">831</a>	MEMORANDUM DECISION denying <a href="#">828</a> Motion to Strike. Signed by Judge Ted Stewart on 03/25/2010. (asp) (Entered: 03/25/2010)
03/25/2010	<a href="#">832</a>	Memorandum of Points and Authorities Concerning the Proper Scope of Closing Arguments filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/25/2010)
03/25/2010	841	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/25/2010. Outstanding issues are resolved out of the presence of the jury. Testimony heard, rebuttal witnesses called, and exhibits admitted. Both sides. The jury is released until tomorrow morning. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: various. (slm) (Entered: 03/30/2010)
03/26/2010	<a href="#">833</a>	MOTION for Judgment as a Matter of Law <i>NOVELL, INC.'S RULE 50(a) MOTION AT THE CLOSE OF ALL EVIDENCE</i> filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/26/2010)
03/26/2010	<a href="#">834</a>	MEMORANDUM in Support re <a href="#">833</a> MOTION for Judgment as a Matter of Law <i>NOVELL, INC.'S RULE 50(a) MOTION AT THE CLOSE OF ALL EVIDENCE</i> filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Brennan, Sterling) (Entered: 03/26/2010)
03/26/2010	<a href="#">835</a>	MOTION for Judgment as a Matter of Law <i>SCO'S RULE 50(a) MOTION AT THE CLOSE OF ALL EVIDENCE</i> filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/26/2010)
03/26/2010	<a href="#">836</a>	MEMORANDUM in Support re <a href="#">835</a> MOTION for Judgment as a Matter of Law <i>SCO'S RULE 50(a) MOTION AT THE CLOSE OF ALL EVIDENCE</i> filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 03/26/2010)
03/26/2010	<a href="#">838</a>	MEMORANDUM DECISION denying <a href="#">833</a> Motion for Judgment as a Matter of Law. Signed by Judge Ted Stewart on 03/26/2010. (asp) (Entered: 03/26/2010)

		03/26/2010)
03/26/2010	<a href="#">839</a>	MEMORANDUM DECISION granting Plaintiff's oral Motion for Judgment as a Matter of Law ; finding as moot <a href="#">835</a> Motion for Judgment as a Matter of Law. Signed by Judge Ted Stewart on 03/26/2010. (asp) (Entered: 03/26/2010)
03/26/2010	842	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial held on 3/26/2010. The Court instructs the jury, and closing statements are delivered. The jury is released to begin deliberations. At 5:30 p.m., the jury breaks for the week, and will return at 8:30 a.m. on Tuesday morning to continue deliberations. The Court gives cautionary instructions on proper behavior for jurors during deliberations. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: various. (slm) (Entered: 03/30/2010)
03/29/2010	<a href="#">843</a>	ORDER for Supplemental Jury Fees. Signed by Judge Ted Stewart on 03/29/2010. (asp) (Entered: 03/30/2010)
03/30/2010	844	Minute Entry for proceedings held before Judge Ted Stewart: Jury Trial completed on 3/30/2010. Jury returns a verdict for Defendant Novell, Inc. Attorney for Plaintiff: Stuart Singer, Edward Normand, Brent Hatch, Attorney for Defendant Sterling Brennan, Eric Acker, Michael Jacobs. Court Reporter: Karen Murakami. (slm) (Entered: 03/30/2010)
03/30/2010	<a href="#">845</a>	Witness and Exhibit List, filed by Plaintiff SCO Group, Defendant Novell, Inc.. (slm) (Entered: 03/30/2010)
03/30/2010	<a href="#">846</a>	JURY VERDICT for Defendant Novell. (slm) (Entered: 03/30/2010)
03/30/2010	<a href="#">847</a>	Jury Instructions. (slm) (Entered: 03/30/2010)
03/30/2010	848	<b>**SEALED DOCUMENT**</b> Jury Notes. (slm) Modified on 3/30/2010: corrected to read "Jury Notes" (alt) (Entered: 03/30/2010)
04/15/2010	<a href="#">850</a>	MOTION for Extension of Time for filing Proposed Findings of Fact and Conclusions of Law filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 04/15/2010)
04/16/2010	851	DOCKET TEXT ORDER granting <a href="#">850</a> Motion for Extension of Time. Signed by Judge Ted Stewart on 4/16/2010. No attached document. (srs) (Entered: 04/16/2010)
04/19/2010	<a href="#">852</a>	Proposed Findings of Fact by Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit 1, # <a href="#">2</a> Exhibit 2)(Brennan, Sterling) (Entered: 04/19/2010)
04/19/2010	<a href="#">853</a>	Proposed Findings of Fact by SCO Group. (Hatch, Brent) (Entered: 04/19/2010)
04/19/2010	<a href="#">854</a>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 8, 2010-Jury Trial-Jury Selection before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number (801)364-5440.

		<p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (jmr) (Additional attachment(s) added on 4/30/2010: # <a href="#">1</a> Corrected Transcript) (jmr). Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
<p>04/19/2010</p>	<p><a href="#">855</a></p>	<p><b>**RESTRICTED DOCUMENT**</b>Original transcript will not be released. Corrected transcript is NOT restricted.                  NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 9, 2010-Jury Trial(Part One) before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number (801)364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (jmr) Modified on 4/20/2010 to make transcript Part One (jmr). (Additional attachment(s) added on 4/29/2010: # <a href="#">1</a> Corrected Transcript) (jmr). Modified by releasing corrected transcript only and adding informative text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
<p>04/19/2010</p>	<p><a href="#">856</a></p>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 9, 2010-Jury Trial(Parts Two and Three) before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, Telephone number (801)364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers</b></p>



		<p><b>from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Three)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">857</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 10, 2010-Jury Trial-Volume II before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Ed Young, Ray Fenlon, Patti Walker, Telephone number (801) 328-3202.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part 3)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">858</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 11, 2010-Jury Trial before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number (801) 364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through</p>

		<p>the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part Three)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">859</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 12, 2010-Jury Trial before Judge Ted Stewart re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number (801) 364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part Three)(jmr) Modified on 4/20/2010-added text (jmr). Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">860</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 15, 2010-Jury Trial before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number (801) 364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part Three)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>

04/19/2010	<a href="#">861</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 16, 2010-Jury Trial-Volume VII before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Ed Young, Becky Janke, Patti Walker, Telephone number (801) 328-3202.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part Three)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">862</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 17, 2010-Jury Trial before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Laura W. Robinson Rebecca Janke Patti Walker, Telephone number (801)364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part Three)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">863</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT re March 18, 2010-Jury Trial-Volume IX before Judge Stewart re: <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Ed Young, Laura Robinson, Patti Walker, Telephone number (801) 328-3202.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of</b></p>

		<p><b>Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part Three)(jmr) Modified on 4/20/2010 (jmr). Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">864</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 19, 2010-Jury Trial before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number 801-364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Three, # <a href="#">2</a> Part Three)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">865</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 22, 2010-Jury Trial before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number (801) 364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p>

		<p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part Three)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">866</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 23, 2010-Jury Trial before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number (801) 364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part Three)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">867</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 24, 2010-Jury Trial before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number (801) 364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part Three)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>

04/19/2010	<a href="#">868</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 25, 2010-Jury Trial before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number (801) 364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two, # <a href="#">2</a> Part Three)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/19/2010	<a href="#">869</a>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 26, 2010-Jury Trial before Judge Ted Stewart, re <a href="#">567</a> Notice of Appeal. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number 801-364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 5/10/2010. Redacted Transcript Deadline set for 5/20/2010. Release of Transcript Restriction set for 7/19/2010. (Attachments: # <a href="#">1</a> Part Two)(jmr) Modified by removing restricted text on 7/19/2010 (rks). (Entered: 04/20/2010)</p>
04/27/2010	<a href="#">871</a>	<p>MOTION for Judgment as a Matter of Law filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 04/27/2010)</p>
04/27/2010	<a href="#">872</a>	<p>MEMORANDUM in Support re <a href="#">871</a> MOTION for Judgment as a Matter of Law filed by Plaintiff SCO Group. (Hatch, Brent) (Entered: 04/27/2010)</p>
04/27/2010	874	<p>MOTION for New Trial filed by Plaintiff SCO Group. See document <a href="#">871</a> for</p>

		image. (asp) (Entered: 05/12/2010)
05/11/2010	<a href="#">873</a>	MEMORANDUM in Opposition re <a href="#">871</a> MOTION for Judgment as a Matter of Law <i>OR A NEW TRIAL</i> , re 874 MOTION for New Trial filed by Counter Claimant Novell, Inc., Defendant Novell, Inc.. (Brennan, Sterling) Modified on 5/12/2010 ; added docket relationship to 874 (asp). (Entered: 05/11/2010)
05/28/2010	<a href="#">875</a>	REPLY to Response to Motion re 874 MOTION for New Trial and <a href="#">871</a> Motion for Judgment filed by Plaintiff SCO Group. (Hatch, Brent) Modified on 6/3/2010 added link to Motion <a href="#">871</a> (las). (Entered: 05/28/2010)
06/10/2010	<a href="#">876</a>	FINDINGS OF FACT AND CONCLUSIONS OF LAW that Novells claim for declaratory judgment is GRANTED ; that SCOs claims for specific performance and breach of the implied covenant of good faith and fair dealing are DENIED. Signed by Judge Ted Stewart on 06/10/2010. (asp) (Entered: 06/10/2010)
06/10/2010	<a href="#">877</a>	MEMORANDUM DECISION denying <a href="#">871</a> Motion for Judgment as a Matter of Law ; denying 874 Motion for New Trial. Signed by Judge Ted Stewart on 06/10/2010. (asp) (Entered: 06/10/2010)
06/10/2010	<a href="#">878</a>	JUDGMENT in favor of Novell, Inc. against SCO Group. Case Closed. Signed by Judge Ted Stewart on 06/10/2010. (asp) (Entered: 06/10/2010)
06/24/2010	<a href="#">879</a>	BILL OF COSTS filed by Novell, Inc.. (Brennan, Sterling) (Entered: 06/24/2010)
06/24/2010	<a href="#">880</a>	RESPONSE re <a href="#">879</a> Bill of Costs,, Memorandum filed by Defendant Novell, Inc.. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F)(Brennan, Sterling) (Entered: 06/24/2010)
07/07/2010	<a href="#">881</a>	NOTICE OF APPEAL as to <a href="#">876</a> Findings of Fact & Conclusions of Law, <a href="#">878</a> Judgment, <a href="#">877</a> Order on Motion for Judgment as a Matter of Law, Order on Motion for New Trial, Memorandum Decision filed by SCO Group. Appeals to the USCA for the 10th Circuit. Filing fee \$ 455, receipt number 1088-1150192. (Hatch, Brent) (Entered: 07/07/2010)
07/08/2010	<a href="#">882</a>	Transmission of Preliminary Record to USCA re <a href="#">881</a> Notice of Appeal with partial docket attached. (jmr) (Entered: 07/08/2010)
07/08/2010	<a href="#">883</a>	MOTION to Stay <i>Taxation of Costs</i> filed by Plaintiff SCO Group. (Attachments: # <a href="#">1</a> Appendix Unpublished Cases)(Hatch, Brent) (Entered: 07/08/2010)
07/09/2010	<a href="#">884</a>	USCA Case Number Case Appealed to Tenth Case Number 10-4122 for <a href="#">881</a> Notice of Appeal, filed by SCO Group. (jmr) (Entered: 07/09/2010)
07/15/2010	<a href="#">885</a>	<b>**RESTRICTED DOCUMENT**</b> NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of February 25, 2010-Motion Hearing before Judge Ted Stewart, re <a href="#">881</a> Notice of Appeal. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number 801-364-5440.  <b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of</b>

		<p><b>Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/5/2010. Redacted Transcript Deadline set for 8/16/2010. Release of Transcript Restriction set for 10/13/2010. (jmr) (Entered: 07/15/2010)</p>
<p>07/15/2010</p>	<p><a href="#">886</a></p>	<p><b>**RESTRICTED DOCUMENT**</b> NOTICE OF FILING OF OFFICIAL TRANSCRIPT for dates of March 25, 2010-Jury Instruction Conference before Judge Ted Stewart, re <a href="#">881</a> Notice of Appeal,. Court Reporter/Transcriber Patti Walker, CSR, RPR, CP, Telephone number 801-364-5440.</p> <p><b>NOTICE RE REDACTION OF TRANSCRIPTS: Within 7 business days of this filing, each party shall inform the Court, by filing a Notice of Intent to Redact, of the parties intent to redact personal data identifiers from the electronic transcript of the court proceeding. The policy and forms are located on the court's website at <a href="http://www.utd.uscourts.gov">www.utd.uscourts.gov</a>. Please read this policy carefully. If no Notice of Intent to Redact is filed within the allotted time, this transcript will be made electronically available on the date set forth below.</b></p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/5/2010. Redacted Transcript Deadline set for 8/16/2010. Release of Transcript Restriction set for 10/13/2010. (jmr) (Entered: 07/15/2010)</p>
<p>07/20/2010</p>		<p>Deadlines terminated. Transcript deadlines terminated for docket entry 855. Original transcript will remain restricted. A corrected version was added and has been released. (rks) (Entered: 07/20/2010)</p>

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
07/20/2010 12:02:46			
<b>PACER Login:</b>	bs0285	<b>Client Code:</b>	96010003
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	2:04-cv-00139-TS
<b>Billable Pages:</b>	30	<b>Cost:</b>	2.40



# **EXHIBIT 2**

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

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff/Counterclaim Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation, Defendant/Counterclaim Plaintiff.</p>	<p>FINAL JUDGMENT</p> <p>Case No. 2:04-CV-139 TS</p>
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This matter came before the Court for trial on March 8, 2010, through March 26, 2010. Based on the Jury Verdict and the Court's Findings of Fact and Conclusions of Law, Final Judgment is entered as follows:

1. Judgment is entered in favor of Novell and against SCO on SCO's claim for slander of title pursuant to the Jury Verdict.
2. Judgment is entered in favor of Novell and against SCO on SCO's claim for specific performance pursuant to the Court's Findings of Fact and Conclusions of Law.
3. Judgment is entered in favor of Novell and against SCO on Novell's claim for declaratory relief pursuant to the Court's Findings of Fact and Conclusions of Law. Specifically, the Court declares:


- a. Under § 4.16(b) of the APA, Novell is entitled, at its sole discretion, to direct SCO to waive its purported claims against IBM, Sequent and other SVRX licensees;
  - b. Under § 4.16(b) of the APA, Novell is entitled to waive on SCO's behalf SCO's purported claims against IBM, Sequent and other SVRX licensees, when SCO refuses to act as directed by Novell; and
  - c. SCO is obligated to recognize Novell's waiver of SCO's purported claims against IBM and Sequent.
4. Judgment is entered in favor of Novell and against SCO on SCO's claim for breach of the implied covenant of good faith and fair dealing pursuant to the Court's Findings of Fact and Conclusions of Law.

The Clerk of the Court is directed to close this case forthwith.

SO ORDERED.

DATED June 10, 2010.

BY THE COURT:



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TED STEWART  
United States District Judge

# **EXHIBIT 3**

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

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THE SCO GROUP, Inc., a Delaware  
corporation,  
  
Plaintiff/Counterclaim Defendant,

MEMORANDUM DECISION AND  
ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF’S MOTION  
IN LIMINE NO. 1 TO PRECLUDE  
MISLEADING STATEMENTS OR  
EVIDENCE CONCERNING  
LANGUAGE IN THE APA  
REMOVED BY AMENDMENT NO.  
2

vs.

NOVELL, INC., a Delaware corporation,  
  
Defendant/Counterclaim Plaintiff.

Case No. 2:04-CV-139 TS

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This matter is before the Court on Plaintiff’s Motion in Limine No. 1. In that Motion, Plaintiff seeks to preclude misleading statements concerning language in the Asset Purchase Agreement (“APA”) that was changed by Amendment No. 2. For the reasons discussed below, the Court will deny Plaintiff’s Motion without prejudice.

The Asset Purchase Agreement (“APA”) provides that all copyrights and trademarks, except for the trademarks UNIX and UnixWare, were excluded from the deal between Novell

and SCO.<sup>1</sup> Less than a year later, the parties entered into Amendment No. 2, which amended the excluded assets portion of the APA. Amendment No. 2 excluded all copyrights and trademarks, except for the copyrights and trademarks owned by Novell as of the date of the APA required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies.<sup>2</sup>

The Tenth Circuit held that “Amendment No. 2 must be considered together with the APA as a unified document.”<sup>3</sup> The court noted that “California law . . . dictates that we construe them together, following Amendment No. 2 wherever the language contradicts the APA.”<sup>4</sup>

Plaintiff argues that Defendant should be precluded from making an argument to the jury concerning the excluded asset portion of the APA because that provision was replaced by Amendment No. 2. While Plaintiff recognizes that it may be necessary to refer to the language of the APA that existed before Amendment No. 2 was adopted, Plaintiff argues that the parties should be clear that this is not the state of the contractual language that is to be considered by the jury.

It will be necessary for the parties to refer to both the APA and Amendment No. 2 to put this dispute into context for the jury. As Defendant correctly states “[t]his story cannot be told without reference to the language of the APA itself—this includes both the original language of the APA and Amendment No. 2.”<sup>5</sup> Further, Defendant states that it and its witnesses will

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<sup>1</sup>*The SCO Group, Inc. v. Novell, Inc.*, 578 F.3d 1201, 1205 (10th Cir. 2009).

<sup>2</sup>*Id.*

<sup>3</sup>*Id.* at 1211.

<sup>4</sup>*Id.*

<sup>5</sup>Docket No. 675 at 2.

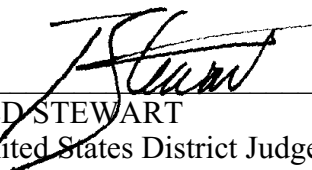
acknowledge at trial that the APA has been amended. Based on these consideration, the Court must deny Plaintiff's blanket request as set forth in its Motion. However, Plaintiff is free, during trial, to make any objections it deems necessary on this issue.

It is therefore

ORDERED that Plaintiff's Motion in Limine No. 1 (Docket No. 643) is DENIED WITHOUT PREJUDICE.

DATED February 22, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

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

THE SCO GROUP, INC., a Delaware corporation,  
Plaintiff/Counterclaim Defendant,

vs.

NOVELL, INC., a Delaware corporation,  
Defendant/Counterclaim Plaintiff.

MEMORANDUM DECISION AND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF’S MOTION IN LIMINE NO. 5 TO EXCLUDE STATEMENTS MADE BY MICHAEL ANDERER AS AN INDEPENDENT CONTRACTOR FOR SCO

Case No. 2:04-CV-139 TS

This matter is before the Court on Plaintiff’s Motion in Limine No. 5. In that Motion, Plaintiff seeks an order to exclude statements from Michael Anderer. Plaintiff argues that Mr. Anderer worked as an independent contractor, not an agent, therefore his statements are not admissible under Fed.R.Evid. 801(d)(2)(D).<sup>1</sup> Defendant counters that it will not be offering Mr. Anderer’s statements to prove the truth of the matter asserted and are, therefore, not hearsay.

<sup>1</sup>Fed.R.Evid. 801(d)(2)(D) provides that a statement is not hearsay if it is offered against a party and is “a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship.”



Defendant argues that Mr. Anderer's statements will be offered to show Darl McBride's state of mind when he contacted Defendant to request transfer of the UNIX copyrights. Defendant does not argue that Mr. Anderer was Plaintiff's agent. For the reasons discussed below, the Court will grant Plaintiff's motion in part and deny it in part.

## I. DISCUSSION

In 2003, Plaintiff engaged Mr. Anderer as an outside consultant under an Independent Contractor Agreement with his firm S2 Strategic Consulting, LLC. His services were largely limited to acting as a liaison between Plaintiff and Microsoft concerning an SCOsource agreement.

At some point during this time, Mr. Anderer read the APA. Mr. Anderer emailed Darl McBride stating that the agreement "indicates Novell transferred substantially less than what was transferred to USL in the previous agreement."<sup>2</sup> Mr. Anderer noted that the APA excluded "all patents, copyrights and just about everything else."<sup>3</sup> Mr. Anderer stated to Mr. McBride: "We really need to be clear on what we can license. It may be a lot less than we think."<sup>4</sup> Mr. Anderer acknowledged that his position was based on his own reading of the APA and that he did not have access to Amendment No. 2.<sup>5</sup>

Subsequent to Mr. Anderer's email to Mr. McBride, Mr. McBride contacted Defendant seeking to amend the APA to give Plaintiff the copyrights to UNIX.

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<sup>2</sup>Docket No. 679, Ex. A.

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>Docket No. 649, Ex. 3 at 86-87, 91-92.

Plaintiff argues that Mr. Anderer was not an agent and, therefore, his statements are not admissible under Fed.R.Evid. 801(d)(2)(D). Defendant does not dispute this argument and the Court considers it waived. Therefore, to the extent that Defendant seeks to admit Mr. Anderer's statements as non-hearsay under Fed.R.Evid. 801(d)(2)(D), it will be precluded from doing so.

Defendant argues that the statements are not hearsay as they will not be offered for the truth of the matter asserted. The Court is unable to rule on this argument outside of trial. The Court notes that before any such statements can be admitted Defendant will have to show their relevance. The Court finds that Mr. Anderer's statements concerning his reading and interpretation of the APA, as someone who was not involved in the negotiations or drafting of that document, are of little, if any, relevance as they will not help the trier of fact. With this framework in mind, the Court will determine the admissibility of any such statements at trial.

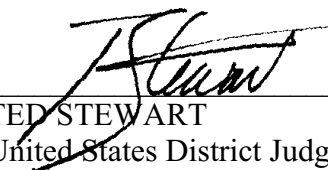
## II. CONCLUSION

It is therefore

ORDERED that Plaintiff's Motion in Limine No. 5 to Exclude Statements Made by Michael Anderer as an Independent Contractor for SCO (Docket No. 649) is GRANTED IN PART AND DENIED IN PART as set forth above.

DATED February 22, 2010.

BY THE COURT:

  
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TED STEWART  
United States District Judge

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

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation, Defendant.</p>	<p>MEMORANDUM DECISION AND ORDER TAKING UNDER ADVISEMENT PLAINTIFF’S MOTION IN LIMINE NO. 4 TO EXCLUDE REFERENCE TO LITIGATION COMMENTARY</p> <p>Case No. 2:04-CV-139 TS</p>
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This matter is before the Court on Plaintiff’s Motion in Limine No. 4. In that Motion, Plaintiff seeks to exclude reference to various sources which have been providing publicly available commentary on this and other related litigation. Plaintiff argues that such evidence is irrelevant and unduly prejudicial. Defendant argues that this evidence is relevant to the issue of damages and that any potential prejudice can be prevented by instructing the jury not to investigate any external sources during trial.

Federal Rule of Evidence 402 provides that only relevant evidence is admissible. “Relevant evidence’ means evidence having any tendency to make the existence of any fact that

is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”<sup>1</sup> Of course, “[t]he standard is not stringent; it is aimed at each ‘brick’ of evidence potentially making a wall and not every witness ‘mak[ing] a home run.’”<sup>2</sup> Rule 403 excludes otherwise relevant evidence

if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

The Court agrees with Plaintiff’s general premise that sources of commentary on this and related SCO litigation has little, if any, relevance to this case. However, there may be some relevance as it relates to Defendant’s argument that Plaintiff’s SCOsource initiative failed for reasons other than Defendant’s statements concerning copyright ownership. As to Plaintiff’s concern regarding any prejudice from possible jury investigation, the Court will instruct the jury that it is not to do any investigation whatsoever on anything that could relate to this trial. Because of these considerations, the Court is unable to grant Plaintiff’s broad request for exclusion. Rather, the Court will rule on Plaintiff’s objections to specific exhibits as they arise during trial.

It is therefore

ORDERED that Plaintiff’s Motion in Limine No. 4 (Docket No. 647) is TAKEN UNDER ADVISEMENT.

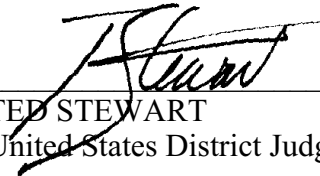
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<sup>1</sup>Fed.R.Evid. 401.

<sup>2</sup>*United States v. Yazzie*, 188 F.3d 1178, 1189 (10th Cir. 1999) (quoting Fed.R.Evid. 401 advisory committee’s note).

DATED February 22, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

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

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff/Counterclaim Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation, Defendant/Counterclaim Plaintiff.</p>	<p>MEMORANDUM DECISION AND ORDER ON DEFENDANT’S MOTIONS IN LIMINE 12 TO 19</p> <p>Case No. 2:04-CV-139 TS</p>
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This matter is before the Court on Defendant’s Motions in Limine 12 to 19. The Court will discuss each Motion below.

I. BACKGROUND

In its Motions in Limine 12 to 19, Defendant seeks to exclude a number of witness from testifying on the copyright ownership provisions of the APA and Amendment No. 2 because they lack personal knowledge. In particular, Defendant argues that these particular witnesses were not involved in the drafting or negotiating of these documents and, therefore, lack personal knowledge to testify on them. Defendant also argues that testimony interpreting and contradicting the specific unambiguous terms of the APA should be excluded as improper parol evidence.

## II. DISCUSSION

To properly consider this issue, the Court must examine the Tenth Circuit’s ruling as it relates to extrinsic evidence on these contracts. As an initial matter, the Tenth Circuit had to determine whether to consider the APA and Amendment 2 separately or together. After considering the relevant evidence and argument, the court held that “Amendment No. 2 must be considered together with the APA as a unified document.”<sup>1</sup> The court further stated that “to the extent that it is proper for us to read Amendment No. 2 as clarifying the APA, SCO’s extrinsic evidence of the business negotiators’ intent concerning the transaction ought to be admissible.”<sup>2</sup> The court found that “extrinsic evidence regarding the parties’ intent [was] relevant to [its] interpretation of the combined instrument.”<sup>3</sup>

Turning to the question of whether summary judgment should have been granted on the ownership issue, Novell had argued “that many of [SCO’s] witnesses were involved in the business negotiations, as opposed to the actual drafting of the contract.”<sup>4</sup> The court noted, however, that “because we cannot exclude the possibility that Amendment No. 2 was designed to restore the language of the transaction to the parties’ actual intent during the business negotiations over the deal, such testimony is not irrelevant.”<sup>5</sup> The court further noted that “SCO’s extrinsic evidence extends not only to the business negotiations proceeding the contract,

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<sup>1</sup>*The SCO Group, Inc. v. Novell, Inc.*, 578 F.3d 1201, 1211 (10th Cir. 2009).

<sup>2</sup>*Id.* at 1210-11.

<sup>3</sup>*Id.* at 1211.

<sup>4</sup>*Id.* at 1217.

<sup>5</sup>*Id.*

but also to the parties' understanding of the contract language itself."<sup>6</sup> The Tenth Circuit further held that course of performance "evidence may be used to interpret an ambiguous contractual provision."<sup>7</sup>

Under the Tenth Circuit's ruling, a number of types of testimony are relevant to a determination of the ownership issue, including: (1) testimony from those involved with the actual drafting of the APA and Amendment No. 2; (2) testimony from those involved with the business negotiations preceding the contract; (3) testimony concerning the parties' understanding of the contractual language; and (4) testimony concerning the parties course of performance.

As indicated, Defendant seeks to exclude these witnesses based on a lack of personal knowledge. Fed.R.Evid. 602 provides, in pertinent part:

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.

Further, Fed.R.Evid. 701 states that "[i]f the witness is not testifying as an expert, the witness' testimony in the form of opinions . . . is limited to those opinions or inferences which are . . . helpful to . . . the determination of a fact in issue . . . ." Lay testimony offering a legal conclusion is inadmissible because it is not helpful to the trier of fact.<sup>8</sup> Similarly, "evidence that merely tells the jury what result to reach is not sufficiently helpful to the trier of fact to be admissible."<sup>9</sup> With this background in mind, the Court turns to Defendant's Motions.

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<sup>6</sup>*Id.*

<sup>7</sup>*Id.*

<sup>8</sup>*See, e.g., United States v. Noel*, 581 F.3d 490, 496 (7th Cir. 2009) ("We have held repeatedly that lay testimony offering a legal conclusion is inadmissible because it is not helpful to the jury, as required by Rule 701(b).").

<sup>9</sup>*Kostelecky v. NL Acme Tool*, 837 F.2d 828, 829 (8th Cir. 1988).



A. WILLIAM BRODERICK

Defendant's Motion in Limine No. 12 seeks to exclude certain testimony from William Broderick. At the time the APA was negotiated, Mr. Broderick worked for Novell as a contracts manager and has continued in that capacity with SCO. Mr. Broderick was not involved with the negotiation or drafting of either the APA or Amendment No. 2. Mr. Broderick is of the opinion that the APA transferred the copyrights at issue in this case to Plaintiff's predecessor and that Amendment No. 2 reinforces this understanding. Mr. Broderick's deposition makes clear that his opinion is based on two things: (1) statements made by Novell during company-wide meetings; and (2) his own understanding of those agreements based on his reading of them.

The first basis for his opinion—statements made by Novell during company-wide meetings—are clearly relevant as to the parties' understanding of the contract language. As set out by the Tenth Circuit, this is relevant evidence concerning the issue of copyright ownership. Mr. Broderick was a participant in those company-wide meetings and, thus, has personal knowledge of what was discussed there. Therefore, Mr. Broderick can testify as to those statements, provided they are otherwise admissible. Mr. Broderick can also provide testimony as to the parties' course of performance.

Mr. Broderick's second basis for his opinion—his own opinion of the agreements based on his reading of them—is an issue for the jury to decide. The jury can determine itself how to read the APA and Amendment No. 2 and how those agreements should be reconciled. Mr. Broderick's statements concerning his own understanding, as someone who was not involved with the drafting or the negotiation of either document, is not helpful to the trier of fact as it merely tells the jury the conclusion it should reach and is essentially a legal conclusion. For these reasons, this testimony will be excluded.

Defendant also seeks to exclude parol evidence on the unambiguous terms of the APA. As indicated, the meaning of the APA and the amendments thereto, as they relate to copyright ownership, is in dispute and the Tenth Circuit has held that extrinsic evidence is relevant to the determination of the ownership issue. Therefore, some parol evidence will be relevant and admissible on these issues. That being said, the Court cannot rule on this issue in the abstract and must deny Defendant's blanket request.

**B. LAWRENCE BOUFFARD**

Defendant's Motion in Limine No. 13 seeks to exclude certain testimony from Lawrence Bouffard. At the time the APA was negotiated, Mr. Bouffard worked in sales for Novell. Mr. Bouffard was not involved with the negotiation or drafting of the APA, however he was involved with the transition team.

It is the opinion of Mr. Bouffard that Santa Cruz, SCO's predecessor, had purchased Novell's UNIX business "lock, stock and barrel." Mr. Bouffard is of the opinion that it would not make sense for Novell to have sold Santa Cruz the UNIX business, but not the UNIX copyrights. Mr. Bouffard does not clearly state the basis for his opinions, but his opinions seem to be based on his own reading of the APA and his years of experience. To the extent that his opinions are based merely on his own reading of the APA and Amendment No. 2, that evidence will be excluded. Plaintiff has stated that it will not present any testimony from Mr. Bouffard in which he presently reads or interprets the language of the APA or Amendment No. 2. To the extent that Mr. Bouffard has testimony concerning one of the relevant types of evidence set forth above, he will not be excluded.

Defendant also seeks to exclude parol evidence on the unambiguous terms of the APA. For the same reasons discussed above, the Court must deny Defendant's blanket request.

C. JEAN ACHESON

Defendant's Motion in Limine No. 14 seeks to exclude certain testimony from Jean Acheson. Around the time of the APA, Ms. Acheson was the revenue manager for Novell. Ms. Acheson was not involved in the negotiations or drafting of the APA or Amendment No. 2, but was involved in the transition team and attended transition meetings. Based on these meetings and discussions with others, it was Ms. Acheson's understanding that Novell had sold its UNIX business, including the intellectual property, to SCO, only retaining the right to certain royalties.

Ms. Acheson's understanding of the APA is based on statements made by Novell employees concerning that agreement. This is clearly relevant to the parties' understanding of the contract language. Ms. Acheson attended those meetings where the understanding of the APA was discussed and, thus, has personal knowledge. Therefore, she can testify as to those statements, provided they are otherwise admissible. Ms. Acheson may also testify as to the parties' course of performance. Ms. Acheson, however, does not appear to have any personal knowledge concerning Amendment No. 2 and cannot testify as to that issue.

Defendant also seeks to exclude parol evidence on the unambiguous terms of the APA. For the same reasons discussed above, the Court must deny Defendant's blanket request.

D. ROBERT FRANKENBERG

Defendant's Motion in Limine No. 15 seeks to exclude certain testimony from Robert Frankenberg. Around the time of the APA, Mr. Frankenberg was the President and CEO of Novell. Mr. Frankenberg's deposition reveals that he has a personal knowledge of the parties' intent and understanding of the APA. Specifically, Mr. Frankenberg testified that the intent of the APA was to sell the whole UNIX business, including the copyrights. As Mr. Frankenberg has personal knowledge of the parties' intent and understanding, his testimony on that issue will

not be excluded on that ground. Further, Mr. Frankenberg may testify as to the parties' course of performance. However, Mr. Frankenberg has no such personal knowledge as it relates to Amendment No. 2. Rather, his testimony on Amendment No. 2 is based on his own reading of that agreement. That testimony is irrelevant, not based on personal knowledge, and will not help the trier of fact. Therefore, that testimony will be excluded.

Defendant also seeks to exclude parol evidence on the unambiguous terms of the APA. For the same reasons discussed above, the Court must deny Defendant's blanket request.

E. R. DUFF THOMPSON

Defendant's Motion in Limine No. 16 seeks to exclude certain testimony from R. Duff Thompson. At the time the APA was drafted, Mr. Thompson was Senior Vice President of Business Development and Strategic Relations for Novell. Mr. Thompson was the Novell executive responsible for the sale of the UNIX business. Mr. Thompson's deposition reveals that he has a personal knowledge of the intent and understanding of the parties concerning the APA. Specifically, he testified that it was Novell's intent to sell the UNIX business, including the copyrights. This testimony is consistent with his Declaration. Therefore, the Court finds that he has personal knowledge and his testimony on that issue will not be excluded on that ground. However, Mr. Thompson has no such personal knowledge as it relates to Amendment No. 2. His testimony on Amendment No. 2 is irrelevant, not based on personal knowledge, and will not help the trier of fact. Therefore, that testimony must be excluded.

Defendant also seeks to exclude parol evidence on the unambiguous terms of the APA. For the same reasons discussed above, the Court must deny Defendant's blanket request.

F. TY MATTINGLY

Defendant's Motion in Limine No. 17 seeks to exclude certain testimony from Ty Mattingly. At the time of the APA, Mr. Mattingly was working for R. Duff Thompson and was part of the "deal team." Mr. Mattingly was not involved in the crafting of the APA, but was involved in negotiations of the APA at a "high level." It is Mr. Mattingly's understanding that all of the UNIX business, including the copyrights, were sold to Santa Cruz. This understanding is based on his involvement in the negotiations of the APA at a "high level." Mr. Mattingly's testimony shows personal knowledge of the intent and understanding of the parties concerning the APA. Therefore, his testimony on that issue will not be excluded on that ground. Mr. Mattingly has no personal knowledge, however, concerning Amendment No. 2. Therefore, his testimony on Amendment No. 2 will be excluded.

Defendant also seeks to exclude parol evidence on the unambiguous terms of the APA. For the same reasons discussed above, the Court must deny Defendant's blanket request.

G. DOUGLAS MICHELS

Defendant's Motion in Limine No. 18 seeks to exclude certain testimony from Douglas Michels. At the time of the APA, Mr. Michels worked for Santa Cruz as its Chief Technology Officer. Mr. Michels was not involved in the drafting of the APA, but was "very involved" with the initiation of the APA, "very involved" in the strategy behind it, "very involved" in the high level structure of the agreement, and involved in supervising those people that were negotiating the details of the agreement.<sup>10</sup> Mr. Michels' understanding of the transaction was that Santa Cruz was buying the UNIX business from Novell. Mr. Michels testified that it was the intent of the

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<sup>10</sup>Docket No. 644, Ex. A at 9:11-16.

parties for Novell to sell the entire UNIX business and for Santa Cruz to buy it. In his Declaration, Mr. Michels states the entire UNIX business, including copyrights, was transferred to Santa Cruz. The Court finds that Mr. Michels' understanding of the APA is based on his personal knowledge and is relevant to the issue of the parties' intent and understanding of the APA. Therefore, it will not be excluded. However, Mr. Michels testified that he had no knowledge of Amendment No. 2. Therefore, testimony on Amendment No. 2 must be excluded because of a lack of personal knowledge.

Defendant also seeks to exclude parol evidence on the unambiguous terms of the APA. For the same reasons discussed above, the Court must deny Defendant's blanket request.

#### H. EDWARD CHATLOS, BURT LEVINE, AND KIM MADSEN

Defendant's Motion in Limine No. 19 seeks to exclude certain testimony from Edward Chatlos, Burt Levine, and Kim Madsen. Each of these individuals will be discussed below.

##### 1. *Edward Chatlos*

Defendant seeks to preclude testimony from Mr. Chatlos concerning Amendment No. 2. Mr. Chatlos was not involved in the drafting Amendment No. 2 and had left Novell by that time. Mr. Chatlos speculates that Amendment No. 2 addresses the intent of the parties to transfer the copyrights. However, this speculation is not based on personal knowledge and would not help the trier of fact. Therefore, it will be excluded. This ruling does not preclude Mr. Chatlos from testifying concerning the APA.

##### 2. *Burt Levine*

Defendant seeks to preclude testimony from Mr. Levine concerning Amendment No. 2. Mr. Levine was not involved in the negotiations or drafting of Amendment No. 2. However, Mr. Levine testified that Amendment No. 2 confirmed his understanding that the copyrights were

transferred to Santa Cruz. It is unclear what Mr. Levine bases this understanding on, though it appears that it is just upon his reading of Amendment No. 2. If this is the case, the Court finds that such testimony would not be helpful to the trier of fact and must be excluded. This ruling does not preclude Mr. Levine from testifying concerning the APA.

3. *Kim Madsen*

Defendant seeks to preclude testimony from Ms. Madsen concerning Amendment No. 2. During her deposition, Ms. Madsen could not recall any specific conversations concerning Amendment No. 2. However, in her Declaration, she stated that her understanding, from negotiations and discussions, was that Amendment No. 2 was intended to confirm the parties' intent and agreement that Santa Cruz obtained ownership of the UNIX copyrights. Such testimony is admissible.

### III. CONCLUSION

It is therefore

ORDERED that Defendant's Motion in Limine No. 12 to Exclude Certain Testimony from William Broderick for Lack of Personal Knowledge and Violation of Parol Evidence Rule (Docket No. 637) is GRANTED IN PART AND DENIED IN PART. It is further

ORDERED that Defendant's Motion in Limine No. 13 to Exclude Certain Testimony From Lawrence Bouffard for Lack of Personal Knowledge and Violation of Parol Evidence Rule (Docket No. 638) is GRANTED IN PART AND DENIED IN PART. It is further

ORDERED that Defendant's Defendant's Motion in Limine No. 14 to Exclude Certain Testimony from Jean Acheson for Lack of Personal Knowledge and Violation of Parol Evidence Rule (Docket No. 639) is GRANTED IN PART AND DENIED IN PART. It is further

ORDERED that Defendant's Motion in Limine No. 15 to Exclude Certain Testimony from Robert Frankenberg for Lack of Personal Knowledge and Violation of Parol Evidence Rule (Docket No. 640) is GRANTED IN PART AND DENIED IN PART. It is further

ORDERED that Defendant's Motion in Limine No. 16 to Exclude Certain Testimony from R. Duff Thompson for Lack of Personal Knowledge and Violation of Parol Evidence Rule (Docket No. 641) is GRANTED IN PART AND DENIED IN PART. It is further

ORDERED that Defendant's Motion in Limine No. 17 to Exclude Certain Testimony from Ty Mattingly for Lack of Personal Knowledge and Violation of Parol Evidence Rule (Docket No. 642) is GRANTED IN PART AND DENIED IN PART. It is further

ORDERED that Defendant's Motion in Limine No. 18 to Exclude Certain Testimony from Douglas Michels for Lack of Personal Knowledge and Violation of Parol Evidence Rule (Docket No. 644) is GRANTED IN PART AND DENIED IN PART. It is further

ORDERED that Defendant's Motion in Limine No. 19 to Exclude Certain Testimony from Edward Chatlos, Burt Levine, and Kim Madsen for Lack of Personal Knowledge (Docket No. 648) is GRANTED IN PART AND DENIED IN PART.

DATED February 22, 2010.

BY THE COURT:

  
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TED STEWART  
United States District Judge



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

THE SCO GROUP, INC., a Delaware corporation,  
Plaintiff/Counterclaim Defendant,

vs.

NOVELL, INC., a Delaware corporation,  
Defendant/Counterclaim Plaintiff.

MEMORANDUM DECISION AND ORDER GRANTING NOVELL'S MOTION IN LIMINE NO. 4 TO PRECLUDE SCO FROM CONTESTING THAT NOVELL HAD AN OBJECTIVELY REASONABLE, GOOD FAITH BASIS FOR ITS STATEMENTS REGARDING COPYRIGHT OWNERSHIP

Case No. 2:04-CV-139 TS

This matter is before the Court on Defendant's Motion in Limine No. 4. In that Motion, Defendant essentially argues that the law of the case and the mandate rule precludes litigation of the copyright ownership portions of Plaintiff's claims for unfair competition and for breach of the implied duty of good faith and fair dealing. Plaintiff states that it will not pursue its claim for unfair competition as it relates to assertions of copyright ownership because there were independent grounds for dismissal of that claim that were not appealed. Plaintiff argues, however, that the Court's summary judgment ruling on the claim for breach of the implied

covenant was predicated on now-reversed rulings and should proceed to trial. Because Plaintiff has conceded the copyright ownership portion of its unfair competition claims, this Order is limited to the copyright ownership portion of its implied covenant of good faith and fair dealing claim.

## I. BACKGROUND

As set forth more fully in the Court's Memorandum Decision and Order Denying Defendant's Motion in Limine No. 1,<sup>1</sup> the Court's prior summary judgment ruling on a number of issues was predicated on its finding that Defendant was the owner of the copyrights at issue. That determination has now been reversed.

The Court, however, made other rulings concerning the copyright ownership portions of Plaintiff's implied covenant of good faith and fair dealing claim. The Court stated:

Even if the court had found that SCO owned the copyrights, Novell would still be entitled to summary judgment on the copyright ownership portions of SCO's claims of unfair competition and breach of the implied covenant of good faith and fair dealing. Novell's assertions that SCO does not own the UNIX and UnixWare copyrights do not state a claim for unfair competition under Utah common law or statutory law, and do not state a claim for breach of the implied covenant of good faith under California law.

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SCO's breach of contract claim alleges that Novell breached the covenant of good faith and fair dealing under the APA and TLA by numerous acts of bad faith, including making false and misleading statements denying SCO's ownership of the copyrights in UNIX and UnixWare. SCO has cited to no California case holding that the implied duty of good faith and fair dealing prohibits a party to a contract from making statements related to its understanding of the rights that are conferred or not conferred by the contract.

A breach of the implied covenant requires objectively unreasonable conduct, regardless of the actor's motive. A comment to Section 205 of the Restatement Second of Contracts states that the implied covenants are violated by dishonest conduct such as conjuring up a pretended dispute, asserting an interpretation contrary to one's own understanding, or falsification of facts.

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<sup>1</sup>Docket No. 674.

Even if this court had ruled in SCO's favor on the copyright ownership issue, there is no evidence to demonstrate that Novell's position was contrary to its own understanding of the contractual language or objectively unreasonable given the history of the dispute between the parties.<sup>2</sup>

Plaintiff did not appeal this alternative ruling, either directly or indirectly, and it was mentioned only in passing by the Tenth Circuit.<sup>3</sup>

## II. DISCUSSION

The mandate rule is an "important corollary" to the law of the case doctrine.<sup>4</sup> "The mandate rule is a 'discretion-guiding rule' that 'generally requires trial court conformity with the articulated appellate remand,' subject to certain recognized exceptions."<sup>5</sup> The mandate rule "provides that a district court must comply strictly with the mandate rendered by the reviewing court."<sup>6</sup> While "a district court is bound to follow the mandate, and the mandate 'controls all matters within its scope, . . . a district court on remand is free to pass upon any issue which was not expressly or impliedly disposed of on appeal.'"<sup>7</sup> Further, the Court may decide issues that

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<sup>2</sup>Docket No. 377 at 64-65 (quotation marks and citations omitted).

<sup>3</sup>*The SCO Group, Inc. v. Novell, Inc.*, 578 F.3d 1201, 1207 (10th Cir. 2009).

<sup>4</sup>*Huffman v. Saul Holdings Ltd. P'ship*, 262 F.3d 1128, 1132 (10th Cir. 2001).

<sup>5</sup>*United States v. Hicks*, 146 F.3d 1198, 1200 (10th Cir. 1998) (quoting *United States v. Moore*, 83 F.3d 1231, 1234 (10th Cir. 1996)).

<sup>6</sup>*Huffman*, 262 F.3d at 1132 (quotation marks and citation omitted).

<sup>7</sup>*Procter & Gamble Co. v. Haugen*, 317 F.3d 1121, 1126 (10th Cir. 2003) (quoting *Newball v. Offshore Logistics Int'l*, 803 F.2d 821, 826 (5th Cir. 1986)).

were necessarily implied by the mandate.<sup>8</sup> However, the mandate rule prevents a court from considering an argument that could have been, but was not, made on appeal.<sup>9</sup>

Plaintiff argues that the Court's alternative ruling was premised on the Court's other rulings—that (1) the APA can and should be read independent of Amendment No. 2; (2) extrinsic evidence cannot be considered; and (3) the APA merely gives SCO an implied license—which have now been reversed. Therefore, the Court may revisit them because they are necessarily implied by the mandate. The Court disagrees.

The Court's alternative rulings were not predicated on those now-reversed rulings. Unlike the Court's decision concerning Plaintiff's slander of title claim, which was solely based on the Court's finding that Defendant owned the copyrights, there were alternative, independent bases for the Court's ruling on the copyright ownership portion of Plaintiff's implied covenant of good faith and fair dealing claim. As those alternative rulings were not appealed and, thus, not reversed, the Court is without authority to revisit them on remand. Therefore, the Court will preclude litigation of the copyright ownership portions of Plaintiff's claim for breach of the implied duty of good faith and fair dealing.

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<sup>8</sup>*Id.* at 1132.

<sup>9</sup>*See, e.g., United States v. Webb*, 98 F.3d 585, 589 (10th Cir. 1996) (noting that because an issue was not appealed the district court's ruling became final and court did not err in declining to address it on remand).

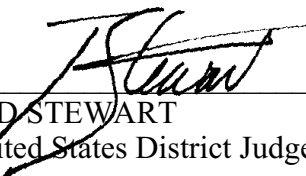
III. CONCLUSION

It is therefore

ORDERED that Defendant's Motion in Limine No. 4 to Preclude SCO from Contesting that Novell had an Objectively Reasonable, Good Faith Basis for its Statements Regarding Copyright Ownership (Docket No. 631) is GRANTED.

DATED February 23, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

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

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff/Counterclaim Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation, Defendant/Counterclaim Plaintiff.</p>	<p>MEMORANDUM DECISION AND ORDER ON ALLOCATION OF ISSUES FOR BENCH AND JURY TRIAL</p> <p>Case No. 2:04-CV-139 TS</p>
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This matter is before the Court for a determination of which issues are to be decided by the Court and which are to be decided by the jury. In the Pretrial Order, the parties agreed that Plaintiff's claim for specific performance should be resolved by the Court and that the parties' claims for slander of title should be tried to the jury, but disagreed as to whether Plaintiff's remaining claim for breach of the implied covenant of good faith and fair dealing and Defendant's claim for declaratory judgment should be tried to the Court or the jury.

The parties now agree that:

1. Plaintiff's slander of title claim against Defendant should be tried to the jury;
2. Defendant's slander of title claim against Plaintiff should be tried to the jury;

3. Plaintiff's remaining claim that Defendant breached the implied covenant of good faith and fair dealing should be tried to the Court;
4. The Court should declare Defendant's rights under § 4.16 of the APA;
5. Plaintiff's claim for specific performance should be tried to the Court; and
6. If Defendant's unclean hands defense is tried, it should be tried to the Court.<sup>1</sup>

In addition to the above, Defendant requests an advisory verdict from the jury on the following issues:

1. Whether the APA requires Defendant to transfer the UNIX copyrights to Plaintiff; and
2. Defendant's unclean hands defense.

Plaintiff opposes Defendant's request for an advisory verdict.

Fed.R.Civ.P. 39(c)(1) provides: "In an action not triable of right by a jury, the court, on motion or on its own . . . may try any issue with an advisory jury." The decision to use an advisory jury is within the Court's discretion.<sup>2</sup>

Exercising this discretion, the Court will deny Defendant's request for an advisory jury. As articulated by Plaintiff, this trial is already sufficiently complex. It would only become more complex if the jury was asked to decide a number of issues which the parties now agree are for the Court to resolve. The Court declines to place such a burden on the jury. Further, the jury's findings would be merely advisory and the Court would be required to make its own findings of

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<sup>1</sup>Plaintiff argues that Defendant's affirmative defense of unclean hands should not be tried at all.

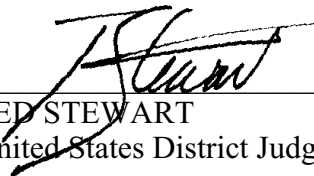
<sup>2</sup>See *Wright v. United States*, 80 F.R.D. 478, 479 (D. Mont. 1978).

fact and conclusions of law.<sup>3</sup> The Court finds that the use of an advisory jury in this circumstance would be an inefficient use of both the jury's and the Court's resources. Therefore, the Court will deny Defendant's request for an advisory jury. The Court will decide the issues concerning Defendant's affirmative defense of unclean hands in connection with the jury instructions.

SO ORDERED.

DATED March 5, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

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<sup>3</sup>See *OCI Wyoming, L.P. v. PacifiCorp*, 479 F.3d 1199, 1206 (10th Cir. 2007).



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

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff/Counterclaim Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation, Defendant/Counterclaim Plaintiff.</p>	<p>MEMORANDUM DECISION AND ORDER GRANTING DEFENDANT’S MOTION TO DETERMINE THAT FIRST AMENDMENT DEFENSES APPLY TO SLANDER OF TITLE AND REQUIRE PROOF OF CONSTITUTIONAL MALICE</p> <p>Case No. 2:04-CV-139 TS</p>
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This matter is before the Court on Defendant’s Motion to Determine that First Amendment Defenses Apply to Slander of Title and Require Proof of Constitutional Malice. In that Motion, as well as two previous motions in limine, Defendant seeks a ruling that the First Amendment applies to slander of title claims. Defendant also seeks a ruling that Plaintiff is a limited-purpose public figure for purposes of the First Amendment. If Defendant were to prevail in both instances, Plaintiff would be required to prove, by clear and convincing evidence, that Defendant acted with actual malice. Plaintiff argues that First Amendment standards should not apply to its slander of title claim. Plaintiff also suggests that the Court could propound a

question to the jury to ask whether Defendant acted with actual malice. Plaintiff does not argue that it is not a limited-purpose public figure.

## I. DISCUSSION

### A. SLANDER OF TITLE

As both parties recognize, the impact of the First Amendment and the Supreme Court's decision of *New York Times Co. v. Sullivan*,<sup>1</sup> on slander of title actions is unclear. The Supreme Court has not explored the issue.<sup>2</sup> As stated in Comment C to the Restatement (Second) of Torts § 623A:

In the absence of any indications from the Supreme Court on the extent, if any, to which the elements of the tort of injurious falsehood will be affected by the free-speech and free-press provisions of the First Amendment, it is not presently feasible to make predictions with assurance.<sup>3</sup>

In *New York Times Co. v. Sullivan*, the Supreme Court held that the First Amendment requires a public official to prove that a defamatory falsehood relating to his official conduct was made with “actual malice,” that is, with “knowledge that it was false or with reckless disregard of whether it was false or not.”<sup>4</sup> The Court has extended this rule to include claims by private individuals who are “limited-purpose public figures.”<sup>5</sup> The Supreme Court has also extended the

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<sup>1</sup>376 U.S. 254 (1964).

<sup>2</sup>Robert D. Sack, *Sack on Defamation*, § 13.1.8 (Practicing Law Institute 2008).

<sup>3</sup>Restatement (Second) of Torts § 623A, cmt. c (1977).

<sup>4</sup>*Sullivan*, 376 U.S. at 279-80.

<sup>5</sup>*Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974) (defining limited purpose public figure as “an individual [who] voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues”).

rule to claims for invasion of privacy and intentional infliction of emotional distress.<sup>6</sup> The Court has held that “such a standard is necessary to give adequate ‘breathing space’ to the freedoms protected by the First Amendment.”<sup>7</sup>

Federal courts have relied on this principle in extending the First Amendment to other claims directed against an allegedly wrongful statement. In *Jefferson County School District No. R-1 v. Moody’s Investor’s Services, Inc.*,<sup>8</sup> the Tenth Circuit applied the First Amendment’s protection of statements of opinion to claims for publication of an injurious falsehood.<sup>9</sup> The Tenth Circuit also rejected claims for intentional interference with contract and for intentional interference with prospective business relations on First Amendment grounds, noting that lower courts had rejected “a variety of tort claims based on speech protected by the First Amendment.”<sup>10</sup> The court specifically cited to *Unleko Corp. v. Rooney*.<sup>11</sup> In that case, the Ninth Circuit stated that claims for product disparagement and tortious interference were “subject to the same first amendment requirements that govern actions for defamation.”<sup>12</sup>

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<sup>6</sup>*See Time, Inc. v. Hill*, 385 U.S. 374, 390-91 (1967); *Hustler Magazine v. Falwell*, 485 U.S. 46, 56 (1988).

<sup>7</sup>*Hustler Magazine*, 485 U.S. at 56.

<sup>8</sup>175 F.3d 848 (10th Cir. 1999).

<sup>9</sup>*Id.* at 856. The Court recognizes, as Plaintiff argues, that *Jefferson* addressed First Amendment protection of opinions. Despite this difference in the case before the Court, the Court finds it significant that *Jefferson* extended First Amendment protections to a claim for an injurious falsehood.

<sup>10</sup>*Id.* at 857.

<sup>11</sup>912 F.2d 1049, 1057 (9th Cir. 1990).

<sup>12</sup>*Id.* at 1058.

In *Bose Corp. v. Consumers Union of United States, Inc.*,<sup>13</sup> the district court addressed a product disparagement case, a tort closely related to slander of title.<sup>14</sup> The court provided the following thoughtful analysis:

An analysis of the Supreme Court's reasoning in *New York Times* also leads to the conclusion that the actual malice standard should not be limited to personal defamation actions. In the *New York Times* line of cases the Supreme Court has attempted to strike a balance between the need for a vigorous and uninhibited press and the legitimate state interest in compensating individuals for wrongful injury to reputation.

The nature of the balancing process changes significantly in product disparagement cases because different interests are being weighed. In a personal defamation action one of the competing interests being balanced is an individual's interest in the protection of his reputation, which, according to Mr. Justice Stewart reflects no more than our basic concept of the essential dignity and worth of every human being a concept at the root of any decent system of ordered liberty. On the other hand, in this product disparagement action we are concerned with a manufacturer's interest in the reputation of its product, an interest not nearly as significant as an individual's interest in his personal reputation and hardly at the root of any decent system of ordered liberty. Damage to a product's reputation, unlike damage to the reputation of an individual, can always be measured in terms of monetary loss. Moreover, a manufacturer almost always has access to the channels of communication that can be used to refute disparaging comments about its product.

On the other side of the scale in this balancing process is the consumer's interest in obtaining information about the quality and characteristics of consumer products. The public's interest in obtaining information of this type is perhaps even greater than the corresponding interest in personal defamation actions, the interest in obtaining information about other people. Information obtained from product commentators often relates to health or safety problems in consumer products. It would be unfortunate indeed if the threat of product disparagement actions stifled the free flow of such information.

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<sup>13</sup>*Bose Corp. v. Consumers Union of United States, Inc.*, 508 F.Supp. 1249, *rev'd on other grounds*, 692 F.2d 189 (1st Cir. 1982), *aff'd*, 466 U.S. 485 (1984).

<sup>14</sup>*See* Robert D. Sack, *Sack on Defamation*, § 13.1.1 (Practicing Law Institute 2007) (explaining that injurious falsehood describes two common law torts: slander of title and disparagement of quality); *Jack B. Parson Co. v. Nield*, 751 P.2d 1131, 1134 (Utah 1988) (stating that slander of title is also known as injurious falsehood).

On balance, the Court concludes that the factors underlying the *New York Times* privilege militate perhaps even more strongly in favor of the application of the actual malice standard in product disparagement cases than they do in personal defamation actions. Accordingly, the Court rules that the *New York Times* actual malice standard is applicable in this product disparagement case, provided, of course, that the plaintiff is a public figure for First Amendment purposes.<sup>15</sup>

This case was later appealed to the Supreme Court, but the applicability of the malice standard in a product disparagement case was not before the Court and, therefore, not addressed.<sup>16</sup>

The California Supreme Court has held that First Amendment defenses apply to “all claims whose gravamen is the alleged injurious falsehood of a statement” because “constitutional protection does not depend on the label given the stated cause of action.”<sup>17</sup> The Utah Supreme Court has held that actual malice is required in a product disparagement action against a media defendant.<sup>18</sup> The Colorado Court of Appeals has stated that “[t]he constitutional protections afforded a defendant in a defamation action are applicable to a defendant in a product disparagement action.”<sup>19</sup>

Plaintiff asserts that federal courts have never applied First Amendment defenses to a slander of title action. In support, Plaintiff cites to *Mueller v. Abdnor*.<sup>20</sup> One of the issues on

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<sup>15</sup>*Bose Corp.*, 508 F.Supp. at 1270-71 (internal quotation marks and citations omitted).

<sup>16</sup>*Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 513 (1984).

<sup>17</sup>*Blatty v. New York Times, Co.*, 728 P.2d 1177, 1182 (Cal. 1987).

<sup>18</sup>*Direct Import Buyer's Ass'n v. K.S.L., Inc.*, 572 P.2d 692, 696 (Utah 1977) (stating that “this case involves, not defamation of character, but defamation of a product of a business and the correct standard to be applied is that of actual malice.”).

<sup>19</sup>*Teilhaber Mfg. Co. v. Unarco Materials Storage*, 791 P.2d 1164, 1167 (Colo. Ct. App. 1989).

<sup>20</sup>972 F.2d 931 (8th Cir. 1992).

appeal in that case is whether the trial court was correct in using a preponderance standard, rather than the higher clear and convincing standard.<sup>21</sup> The court noted that “[t]he higher standard . . . does not apply in the ordinary defamation case, but in an action brought by an individual, specifically a public official or a public figure.”<sup>22</sup> The court further noted that, under Missouri law, the “clear and convincing standard applies only in cases involving a public figure or public official.”<sup>23</sup> While acknowledging that the defendant in that case, the Small Business Administration, may be a public figure, because the case involved defamation to land, not defamation to an individual’s reputation, the court found that the trial court applied the appropriate standard.<sup>24</sup> The Court finds *Mueller* unhelpful because it does not involve a matter of public interest. Further, the *Mueller* court seemed to recognize that the clear and convincing standard could be applicable in some circumstances not present in that case.

Plaintiff also relies on *Zacchani v. Scripps-Howard Broadcasting Co.*<sup>25</sup> In that case, the Supreme Court declined to apply a First Amendment defense to a claim for misappropriation of property. Importantly, that case did not involve an allegedly wrongful statement. Further, the Court emphasized the distinction between the tort of misappropriation of property and the other

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<sup>21</sup>*Id.* at 936.

<sup>22</sup>*Id.*

<sup>23</sup>*Id.*

<sup>24</sup>*Id.* at 937.

<sup>25</sup>433 U.S. 562 (1977).

torts to which First Amendment protections had been extended.<sup>26</sup> Based on these considerations, the Court finds *Zacchani* to be inapplicable here.

Having reviewed the relevant authority, the Court finds that slander of title claims are subject to the First Amendment. As one commentator aptly stated:

There is no reason to accord lessened protection because the plaintiff's claim is denominated "disparagement," "trade libel," or "injurious falsehood" rather than "libel" or "slander" or because the injury is to economic interests rather than to personal reputation. Since only economic injury and not injury to reputation and psyche is at issue, perhaps the balance should tip even further to the side of free expression.<sup>27</sup>

#### B. COMMERCIAL SPEECH

Plaintiff further argues that Defendant's statements are entitled to lesser protection because they constitute commercial speech. Plaintiff, however, does not argue that all of Defendant's statements can be considered commercial speech. Plaintiff only points to two statements that it contends are commercial speech: press releases from May 28, 2003 and June 6, 2003.<sup>28</sup>

"The Supreme Court has not held whether the actual malice standard applies to commercial speech . . . ."<sup>29</sup> Various courts, however, have held that the actual malice standard

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<sup>26</sup>*Id.* at 573-75.

<sup>27</sup>Robert D. Sack, *Sack on Defamation*, § 13.1.8.

<sup>28</sup>Plaintiff has previously stated that it does not assert that the June 6, 2003 press release constitutes slander of title. See Docket No. 682 at 2-3.

<sup>29</sup>*Dial One of the Mid-South, Inc. v. BellSouth Telecomms., Inc.*, 269 F.3d 523, 526-27 (5th Cir. 2001).

does not apply to commercial speech.<sup>30</sup> The Court need not reach this issue because it finds that Defendant's May 28, 2003 and June 6, 2003 press releases do not constitute commercial speech.

The Supreme Court defines commercial speech as "expression related solely to the economic interests of the speaker and its audience."<sup>31</sup> The Court has stated that the "core notion of commercial speech" is "speech which does no more than propose a commercial transaction."<sup>32</sup> "According to the Court, speech may properly be characterized as commercial speech where, among other things, (1) it is concededly an advertisement, (2) it refers to a specific product, or (3) it is motivated by an economic interest in selling the product."<sup>33</sup> If all three factors are present, there is strong support for the conclusion that the speech is commercial.<sup>34</sup>

With these principles in mind, the Court considers the two press releases which Plaintiff argues are commercial speech. Defendant's May 28, 2003 press release states:

Defending its interests in developing services to operate on the Linux platform, Novell today issued a dual challenge to The SCO Group over its recent statements regarding its UNIX ownership and potential intellectual property rights claims over Linux.

First, Novell challenged SCO's assertion that it owns the copyrights and patents to UNIX System V, pointing out that the asset purchase agreement entered

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<sup>30</sup>See *Procter & Gamble Co. v. Amway Corp.*, 242 P.3d 539, 556 (5th Cir. 2001) ("Supreme Court precedent prevents us from importing the actual-malice standard into cases involving false commercial speech."); *U.S. Healthcare, Inc. v. Blue Cross of Greater Philadelphia*, 898 F.2d 914, 937 (3d Cir. 1990) (concluding that commercial speech "does not warrant heightened constitutional protection").

<sup>31</sup>*Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n*, 447 U.S. 557, 561 (1980).

<sup>32</sup>*Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 66 (1983) (quotation marks and citations omitted).

<sup>33</sup>*United States v. Wenger*, 427 F.3d 840, 847 (10th Cir. 2005) (citing *Bolger*, 463 U.S. at 66-67).

<sup>34</sup>*Bolger*, 463 U.S. at 67.



into between Novell and SCO in 1995 did not transfer these rights to SCO. Second, Novell sought from SCO facts to back up its assertion that certain UNIX System V code has been copied into Linux. Novell communicated these concerns to SCO via a letter (text below) from Novell® Chairman and CEO Jack Messman in response to SCO making these claims.

“To Novell's knowledge, the 1995 agreement governing SCO’s purchase of UNIX from Novell does not convey to SCO the associated copyrights,” Messman said in the letter. “We believe it unlikely that SCO can demonstrate that it has any ownership interest whatsoever in those copyrights. Apparently you share this view, since over the last few months you have repeatedly asked Novell to transfer the copyrights to SCO, requests that Novell has rejected.”

“SCO claims it has specific evidence supporting its allegations against the Linux community,” Messman added. “It is time to substantiate that claim, or recant the sweeping and unsupported allegation made in your letter. Absent such action, it will be apparent to all that SCO’s true intent is to sow fear, uncertainty, and doubt about Linux in order to extort payments from Linux distributors and users.”

“Novell has answered the call of the open source community,” said Bruce Perens, a leading proponent of open source. “We admire what they are doing. Based on recent announcements to support Linux with NetWare services and now this revelation . . . Novell has just won the hearts and minds of developers and corporations alike.”<sup>35</sup>

The text of the letter from Mr. Messman to SCO President and CEO Darl McBride is reprinted in the press release.<sup>36</sup> The press release then provides a short statement about Novell, stating that it is “a leading provider of information solutions.”<sup>37</sup> The letter identifies certain Novell products and provides contact information.<sup>38</sup>

Defendant’s June 6, 2003 press release states:

In a May 28th letter to SCO, Novell challenged SCO’s claims to UNIX patent and copyright ownership and demanded that SCO substantiate its allegations that Linux infringes SCO’s intellectual property rights. Amendment

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<sup>35</sup>Docket No. 748, Ex. 2.

<sup>36</sup>*Id.*

<sup>37</sup>*Id.*

<sup>38</sup>*Id.*

#2 to the 1995 SCO-Novell Asset Purchase Agreement was sent to Novell last night by SCO. To Novell's knowledge, this amendment is not present in Novell's files. The amendment appears to support SCO's claim that ownership of certain copyrights for UNIX did transfer to SCO in 1996. The amendment does not address ownership of patents, however, which clearly remain with Novell.

Novell reiterates its request to SCO to address the fundamental issue Novell raised in its May 28 letter: SCO's still unsubstantiated claims against the Linux community.<sup>39</sup>

That press similarly provides a brief statement about Defendant.<sup>40</sup>

The Court finds that these press releases do not constitute commercial speech as they do not propose a commercial transaction. Turning to the first factor set out in *Bolger*, the Court agrees with Plaintiff that, in some circumstances, a press release may constitute an advertisement. This is not such a circumstance. While, as discussed below, the press releases do mention certain of Defendant's products, they do not attempt to market those products in anyway. Rather, these press releases merely challenge Plaintiff's claims of ownership to the UNIX and UnixWare copyrights and their claims of infringement of such copyrights by Linux. Second, the press releases do mention some of Defendant's specific products. However, the mention of specific products is only in passing and in connection with boilerplate language describing Defendant. Third, there is at least some evidence to suggest that Defendant made these statements because they were motivated by an economic interest. By challenging Plaintiff on its claims of ownership and infringement Defendant could be seen as appealing to the Linux community, which may have been out of an economic interest. However, considering each of the *Bolger* factors and these press releases as a whole, the Court finds that Defendant's possible economic interest in making these statements alone does not convert these press releases into

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<sup>39</sup>*Id.*, Ex. 3.

<sup>40</sup>*Id.*

commercial speech. Therefore, they are not entitled to lesser protection under the First Amendment as argued by Plaintiff.

### C. LIMITED-PURPOSE PUBLIC FIGURE

Defendant next argues that, if the First Amendment applies to claims for slander of title, Plaintiff is a limited-purpose public figure. Plaintiff does not argue that it is not a limited-purpose public figure. Rather, Plaintiff argues that if the First Amendment does apply to a slander of title claim and Defendant's statements qualify for heightened protection, the appropriate course would be to provide a special question on the verdict form.<sup>41</sup> As a result of Plaintiff's failure to respond to Defendant's argument, the Court finds that Plaintiff is a limited-purpose public figure. Even without Plaintiff's apparent concession of this point, the Court would find Plaintiff to be a limited-purpose public figure.

"[A] limited-purpose public figure is only a public figure with respect to a specific issue."<sup>42</sup> The Supreme Court has defined a limited-purpose public figure as one who "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues."<sup>43</sup>

Utah employs a two-part test to determine whether the plaintiff is a limited-purpose public figure. First, the court must isolate the specific public controversy related to the defamatory remarks. Next, the court should examine the type and extent of the plaintiff's participation in that public controversy to

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<sup>41</sup>Docket No. 683 at 2.

<sup>42</sup>*World Wide Ass'n of Specialty Programs v. Pure, Inc.*, 450 F.3d 1132, 1136 (10th Cir. 2006).

<sup>43</sup>*Gertz*, 418 U.S. at 351.

determine whether, under *Gertz*, he has “thrust [himself] to the forefront of [the] controvers[y] in order to influence the resolution of the issues involved.”<sup>44</sup>

First, the Court finds that there is a public controversy concerning the ownership of the UNIX and UnixWare copyrights and Plaintiff’s contention that Linux users infringed those copyrights. In support of its Motion in Limine No. 3, Defendant has submitted a number of news accounts of this controversy.<sup>45</sup> Further, thousands of companies and individuals have a direct interest in the controversy because of the impact it may have on them. Second, the Court finds that Plaintiff thrust itself to the forefront of the controversy in order to influence the resolution of those issues. Specifically, Plaintiff made a number of public statements, through press releases and other means, and actively sought media coverage to air its position on these issues. Therefore, the Court finds that Plaintiff is a limited-purpose public figure concerning its alleged UNIX rights.

## II. CONCLUSION

Based on the above, the Court finds that the First Amendment applies to slander of title claims, that Defendant’s press releases are not commercial speech, and that Plaintiff is a limited-purpose public figure. As a result, Plaintiff must prove, by clear and convincing evidence, that Defendant acted with actual malice. The above reasoning is equally applicable to Defendant’s slander of title claim.

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<sup>44</sup>*World Wide Ass’n of Specialty Programs*, 450 F.3d at 1136-37 (quoting *Wayment v. Clear Channel Broad., Inc.*, 116 P.3d 271, 283 (Utah 2005)).

<sup>45</sup>*See* Docket No. 630.

It is therefore


ORDERED that Defendant's Motion to Determine that First Amendment Defenses Apply to Slander of Title and Require Proof of Constitutional Malice (Docket No. 748) is GRANTED.

It is further

ORDERED that Defendant's Motions in Limine No. 2 and 3 (Docket Nos. 629 and 630) are GRANTED.

DATED March 5, 2010.

BY THE COURT:



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TED STEWART  
United States District Judge

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

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation, Defendant.</p>	<p>MEMORANDUM DECISION AND ORDER LIMITING USE OF DEPOSITION TESTIMONY DURING OPENING STATEMENTS</p> <p>Case No. 2:04-CV-139 TS</p>
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This matter is before the Court on a letter sent to the Court by counsel for Plaintiff. In that letter, Plaintiff’s counsel indicates that he intends to use videos and other demonstrative evidence in his opening statement. Plaintiff’s counsel further indicates that Defendant has objected to the use of deposition testimony (either by video or otherwise) in opening statements. Plaintiff’s counsel requests the Court’s guidance on this issue prior to trial.

The Court will not permit either party to use portions of video depositions during opening statements. The Court believes that using video depositions during opening statements is akin to permitting a witness to testify during opening statements. The Court will not allow either practice.

The Court finds the reasoning in *Hynix Semiconductor Inc. v. Rambus Inc.*,<sup>1</sup> particularly instructive. That court addressed the same issue before this Court. The court noted that, “if unrestricted, a video deposition can be shown once in opening, again during trial (at least once), and in closing in the exact same form.”<sup>2</sup> In rejecting the use of video depositions during opening statements, the *Hynix* court held that “[r]epeatedly showing the same few deposition segments seeks to exalt the relevance of those videotaped shreds of evidence over live testimony.”<sup>3</sup> The Court agrees with this statement. Accordingly, neither party will be allowed to use video deposition testimony during opening statements.

Reading deposition testimony, however, does not raise the same concerns.<sup>4</sup> Therefore, the parties will be allowed to read portions of deposition testimony during openings.

As the parties have not sought the Court’s guidance on the use of other types of demonstrative evidence during opening statements, the Court makes no ruling on them. The Court expects counsel to communicate with each other the demonstrative evidence they intend to use in their opening statements and either party may make appropriate objection to the same prior to opening statements being delivered to the jury.

SO ORDERED.

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<sup>1</sup>2008 WL 190990 (N.D. Cal. Jan 21, 2008).

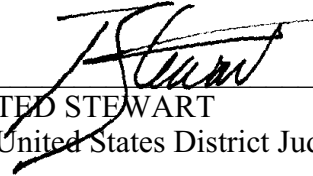
<sup>2</sup>*Id.* at \*1.

<sup>3</sup>*Id.*

<sup>4</sup>*See id.*

DATED March 5, 2010.

BY THE COURT:



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TED STEWART  
United States District Judge



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

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation, Defendant.</p>	<p>SPECIAL VERDICT FORM</p> <p>Case No. 2:04-CV-139 TS</p>
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We, the jury, unanimously find as follows:

1. Did the amended Asset Purchase Agreement transfer the UNIX and UnixWare copyrights from Novell to SCO?

Yes \_\_\_\_\_ No

If you answer "Yes," go on to Question 2. If you answer "No," have the foreperson sign and date the Special Verdict Form and notify the Court Security Officer that you have reached a verdict.

2. Did Novell slander SCO's title to the UNIX and UnixWare copyrights?

Yes \_\_\_\_\_ No \_\_\_\_\_

If you answer "Yes," go on to Question 3. If you answer "No," have the foreperson sign and date the Special Verdict Form and notify the Court Security Officer that you have reached a verdict.

3. What is the amount of special damages, if any, that you award SCO as a result of Novell's slander of SCO's title to the UNIX and UnixWare copyrights?

\$ \_\_\_\_\_

Go on to Question 4.

4. What is the amount of punitive damages, if any, that you award SCO as a result of Novell's slander of SCO's title to the UNIX and UnixWare copyrights?

\$ \_\_\_\_\_

DATED this 30 day of March, 2010.

  
\_\_\_\_\_  
Foreperson

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

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff/Counterclaim Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation, Defendant/Counterclaim Plaintiff.</p>	<p>FINDINGS OF FACT AND CONCLUSIONS OF LAW</p> <p>Case No. 2:04-CV-139 TS</p>
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This matter came before the Court for trial from March 8, 2010, through March 26, 2010. Having heard the evidence presented at trial, reviewed the materials submitted by the parties, and being otherwise fully informed, the Court makes the following findings of fact and conclusions of law.

**I. INTRODUCTION**

“This case primarily involves a dispute between SCO and Novell regarding the scope of intellectual property in certain UNIX and UnixWare technology and other rights retained by Novell following the sale of part of its UNIX business to Santa Cruz, a predecessor corporate

entity to SCO, in the mid-1990s.”<sup>1</sup> Following competing motions for summary judgment, this Court issued an opinion granting summary judgment to Novell on many of the key issues.<sup>2</sup> SCO appealed the Court’s decision to the Tenth Circuit Court of Appeals which affirmed in part, reversed in part, and remanded for trial on the remaining issues. Specifically, the Tenth Circuit reversed the Court’s “entry of summary judgment on (1) the ownership of the UNIX and UnixWare copyrights; (2) SCO’s claim seeking specific performance; (3) the scope of Novell’s rights under Section 4.16 of the APA; [and] (4) the application of the covenant of good faith and fair dealing to Novell’s rights under Section 4.16 of the APA.”<sup>3</sup> The Tenth Circuit remanded these issues for trial.<sup>4</sup>

Pursuant to the Tenth Circuit’s remand, a trial was held in this matter beginning March 8, 2010, through March 26, 2010. Prior to trial, the parties agreed that certain issues were to be decided by the jury and certain issues were to be decided by the Court.<sup>5</sup> Specifically, SCO’s claim for slander of title and Novell’s counterclaim for slander of title were to be decided by the jury.<sup>6</sup> At the close of Novell’s evidence, the Court granted SCO’s Motion for Judgment as a

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<sup>1</sup>*The SCO Group, Inc. v. Novell, Inc.*, 578 F.3d 1201, 1204 (10th Cir. 2009).

<sup>2</sup>*See* Docket No. 377.

<sup>3</sup>*The SCO Group, Inc.*, 578 F.3d at 1227.

<sup>4</sup>*Id.*

<sup>5</sup>Docket No. 750.

<sup>6</sup>*Id.* at 1.

Matter of Law Pursuant to Fed.R.Civ.P. 50 on Novell's counterclaim for slander of title.<sup>7</sup> After its deliberations, the jury found that the amended Asset Purchase Agreement ("APA") did not transfer the UNIX and UnixWare copyrights from Novell to SCO.<sup>8</sup> Because it found that SCO was not the owner of the UNIX and UnixWare copyrights, there was no need for the jury to reach SCO's slander of title claim.

The issues the Court must now decide include: (1) SCO's claim for specific performance, seeking an order directing Novell to transfer the UNIX and UnixWare copyrights; (2) Novell's counterclaim for declaratory judgment of its rights under Section 4.16 of the APA; and (3) SCO's claim that Novell breached the implied covenant of good faith and fair dealing in exercising its rights under Section 4.16 of the APA.<sup>9</sup> Additionally, the parties agreed that Novell's affirmative defense of unclean hands, if any, should be tried to the Court.<sup>10</sup> Novell did not include any discussion of its affirmative defense of unclean hands in its Proposed Findings of Fact and Conclusions of Law.<sup>11</sup> The Court finds that this constitutes a waiver of that defense and

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<sup>7</sup>Docket No. 839.

<sup>8</sup>Docket No. 846.

<sup>9</sup>Docket No. 750, at 1.

<sup>10</sup>*Id.*

<sup>11</sup>Docket No. 852.

it will not be addressed by the Court.<sup>12</sup> Therefore, only those three issues set forth above remain for the Court's determination.

## II. FINDINGS OF FACT

### A. THE PARTIES

1. Plaintiff, The SCO Group, Inc. ("SCO"), is a Delaware corporation with its principal place of business in Lindon, Utah.<sup>13</sup> SCO is in the business of developing and selling software products.<sup>14</sup>
2. Defendant, Novell, Inc. ("Novell"), is a Delaware corporation with its executive offices in Waltham, Massachusetts, and its principal product development facility in Provo, Utah.<sup>15</sup> Novell is also involved in the development and sale of software products.<sup>16</sup>

### B. UNIX AND UNIXWARE

3. UNIX is the name of a computer operating system originally developed in the late 1960s by engineers at AT&T's Bell Laboratories.<sup>17</sup>

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<sup>12</sup>Because of the Court's determination of the issues, discussion of Novell's defense of unclean hands is unnecessary in any event. In addition, the Court need not rule on Novell's defense of substantial performance.

<sup>13</sup>Docket No. 731, at 3.

<sup>14</sup>*Id.*

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup>*Id.*

4. “By the 1980s, AT&T had developed UNIX System V (“SVRX”); it built a substantial business by licensing UNIX source code to a number of major computer manufacturers, including IBM, Sun, and Hewlett-Packard. These manufacturers, in turn, would use the SVRX source code to develop their own individualized UNIX-derived “flavors” for use on their computer systems. Licensees could modify the source code and create derivative products mostly for internal use, but agreed to keep the UNIX source code confidential.”<sup>18</sup>
5. “In 1993, Novell paid over \$300 million to purchase UNIX System Laboratories, the AT&T spin-off that owned the UNIX copyrights and licenses.”<sup>19</sup>
6. “UnixWare is the brand name for the more recent releases of the UNIX System V, Release 4 operating system developed and licensed in the early 1990s by Novell and its predecessors to the technology. The product was called UnixWare because it was to be a combination of the latest release of System V source code and some components of Novell’s NetWare source code. The first releases of UnixWare contain all or virtually all of the technology included in the immediately prior System V releases, SVR4.2 and SVR4.2MP.”<sup>20</sup>

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<sup>18</sup>*The SCO Group, Inc.*, 578 F.3d at 1204-05.

<sup>19</sup>*Id.* at 1205.

<sup>20</sup>Docket No. 542 at 7. Both parties agree that the Court’s prior factual findings, to the extent not reversed, are applicable here. *See* Docket No. 852, at 21 & n.7; Docket No. 853, at 8 n.3; Trial Tr. 1917:8-1918:3.

7. As will be discussed in more detail below, Novell sold the UnixWare business to Santa Cruz in 1995 under the APA.<sup>21</sup> “The core members of Novell’s UNIX licensing group became employees of Santa Cruz. After the APA, Santa Cruz and then SCO developed and licensed SCO UnixWare.”<sup>22</sup>
  8. “SCO released several subsequent releases of UnixWare, including multiple versions of each UnixWare 2 and UnixWare 7, which are the latest implementation of System V and the latest generation of UNIX SVR 4.2 with SVR 4.2 MP. All of the releases of UnixWare subsequent to Novell’s transfer of the business are releases of System V. Witnesses testified that the commercially valuable technology from the prior versions is included in UnixWare, and UnixWare would not operate without its System V components. The current version of UnixWare supports the newest industry-standard hardware.”<sup>23</sup>
  9. “Novell acknowledges that it is not entitled to royalties from any UnixWare licenses.”<sup>24</sup>
- C. THE SALE TO SANTA CRUZ**
10. In 1995, Robert Frankenberg, then-CEO of Novell, made the determination that it would be in the best interest of Novell to sell the UNIX business.<sup>25</sup> Mr. Frankenberg appointed

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<sup>21</sup>Docket No. 542, at 7.

<sup>22</sup>*Id.*

<sup>23</sup>*Id.* at 7-8.

<sup>24</sup>*Id.* at 9.

<sup>25</sup>Trial Tr. at 88:9-89:13.



Novell Senior Vice President Duff Thompson as the individual responsible for accomplishing the sale of the UNIX business.<sup>26</sup> Mr. Thompson and others from Novell had discussions with various individuals from Santa Cruz, which was ultimately chosen as the buyer.<sup>27</sup>

11. It was the initial intent of Novell to sell the entire UNIX business.<sup>28</sup> However, during the negotiations, the parties realized that Santa Cruz could not afford to pay cash or stock for the entire purchase price sought by Novell.<sup>29</sup> Therefore, the deal was structured so that Novell only sold certain of the assets that it had acquired when it purchased the UNIX business from AT&T.<sup>30</sup> In particular, Novell sold Santa Cruz the UnixWare business, that is the right to exploit and develop UnixWare.<sup>31</sup> As will be discussed below, Novell retained substantial rights in the UNIX business,<sup>32</sup> that is the UNIX System V source licensing business where source code was provided to customers to create a binary product.<sup>33</sup> Specifically, Novell retained the UNIX and UnixWare copyrights and the right

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<sup>26</sup>*Id.* at 90:13-25; *id.* at 223:4-11.

<sup>27</sup>*Id.* at 223:12-228:6; *id.* at 92:14-93:19.

<sup>28</sup>*Id.* at 90:2-12; *id.* at 221:24-222:2.

<sup>29</sup>*Id.* at 234:19-25; *id.* at 353:3-10; *id.* at 459:14-22; *id.* at 2344:1-19.

<sup>30</sup>*Id.* at 2346:23-2347:1.

<sup>31</sup>*Id.* at 2305:5-2308:10; *id.* at 2347:2-5.

<sup>32</sup>*Id.* at 2346:17-2348:3.

<sup>33</sup>*Id.* at 2305:11-16.

to receive SVRX royalties. For its part, SCO was to act as Novell's agent in the collection of those royalties and SCO acquired certain UNIX-related assets, such as contracts and employees, to aid in this role.<sup>34</sup>

12. In exchange for selling these assets, Novell received the following: approximately 16% to 19% of Santa Cruz Stock; a royalty arrangement if Santa Cruz hit certain benchmarks on certain products; and the royalties from SVRX licenses.<sup>35</sup>

**D. THE ASSET PURCHASE AGREEMENT**

13. In September 1995, Novell and Santa Cruz entered into the APA memorializing the terms of the sale.<sup>36</sup> The APA was signed on September 19, 1995, and was amended in December 1995 and again in October 1996.<sup>37</sup> SCO is a successor-in-interest to all of the assets that Santa Cruz acquired under the amended APA with Novell.<sup>38</sup>

14. Recitals A and B of the APA state:

- A. Seller is engaged in the business of developing a line of software products currently known as Unix and UnixWare, the sale of binary and source code licenses to various versions of Unix and UnixWare, the support of such products and the sale of other products which are directly related to Unix and UnixWare (collectively, the "Business").

- B. The Board of Directors of each of Seller and Buyer believe it is in the best interests of each company and their respective stockholders that Buyer

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<sup>34</sup>*Id.* at 2347:6-2348:3.

<sup>35</sup>*Id.* at 235:4-236:15; *id.* at 353:3-10; *id.* at 2344:20-2347:5; *see also* Trial Ex. 1, § 1.2(a)-(b).

<sup>36</sup>Docket No. 731 at 3; *see also* Trial Ex. 1.

<sup>37</sup>Docket No. 731 at 3; *see also* Trial Ex. 1.

<sup>38</sup>Docket No. 731 at 3.

acquire certain assets of, and assume certain liabilities of Seller compromising the Business (the “Acquisition”).<sup>39</sup>

15. The “Acquisition” and those “certain assets” which Santa Cruz acquired are set forth in more detail in Section 1.1(a) of the APA. That section provides:

On the terms and subject to the conditions set forth in this Agreement, Seller will sell, convey, transfer, assign and deliver to Buyer and Buyer will purchase and acquire from Seller on the Closing Date . . . all of Seller’s right, title and interest in and to the assets and properties of Seller relating to the Business (collectively the “Assets”) identified on Schedule 1.1(a) hereto. Notwithstanding the foregoing, the Assets to be so purchased shall not include those assets (the “Excluded Assets”) set forth on Schedule 1.1(b).<sup>40</sup>

16. Schedule 1.1(a) identifies those assets that were transferred under the APA. Section I of Schedule 1.1(a) states:

All rights and ownership of UNIX and UnixWare, including but not limited to all versions of UNIX and UnixWare and all copies of UNIX and UnixWare (including revisions and updates in process), and all technical, design, development, installation, operation and maintenance information concerning UNIX and UnixWare, including source code, source documentation, source listings and annotations, appropriate engineering notebooks, test data and test results, as well as all reference manuals and support materials normally distributed by Seller to end-users and potential end-users in connection with the distribution of UNIX and UnixWare . . . .<sup>41</sup>

That provision goes on to list a number of UNIX source code products, binary product releases, products under development, and other technology.<sup>42</sup>

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<sup>39</sup>Trial Ex. 1, Recitals A-B.

<sup>40</sup>*Id.* § 1.1(a).

<sup>41</sup>*Id.* Schedule 1.1(a), § I.

<sup>42</sup>*Id.*

17. Section II of Schedule 1.1(a) transferred “[a]ll of Seller’s claims arising after the Closing Date against any parties relating to any right, property or asset included in the Business.”<sup>43</sup>
18. Section III.L of Schedule 1.1(a) transferred to Santa Cruz “[a]ll of Seller’s rights pertaining to UNIX and UnixWare under any software development contracts [or] licenses . . . and which pertain to the Business, . . . including without limitation: Software and Sublicensing Agreements . . . .”<sup>44</sup>
19. Section IV of Schedule 1.1(a) transfers “[a]ll copies of UNIX and UnixWare, wherever located, owned by Seller.”<sup>45</sup>
20. Section V of Schedule 1.1(a), the “Intellectual Property” portion of the included asset schedule, transfers: “Trademarks UNIX and UnixWare as and to the extent held by the seller . . . .”<sup>46</sup>
21. Section V of Schedule 1.1(b), the “Intellectual Property” portion of the excluded asset schedule, states:
  - “A. All copyrights and trademarks, except for the trademarks UNIX and UnixWare.
  - B. All Patents”<sup>47</sup>

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<sup>43</sup>*Id.* Schedule 1.1(a), § II.

<sup>44</sup>*Id.* Schedule 1.1(a), § III.L.

<sup>45</sup>*Id.* Schedule 1.1(a), § IV.

<sup>46</sup>*Id.* Schedule 1.1(a), § V.

<sup>47</sup>*Id.* Schedule 1.1(b), § V.

22. Section VIII of Schedule 1.1(b) excludes “[a]ll right, title and interest to the SVRx Royalties, less the 5% fee for administering the collection thereof pursuant to Section 4.16 hereof.”<sup>48</sup>
23. Under the plain language of the original APA, all copyrights, including the UNIX and UnixWare copyrights, were clearly excluded from the transaction between Novell and Santa Cruz.<sup>49</sup>
24. Another significant aspect of the APA is the treatment of SVRX royalties. Under the payment provisions of the APA, Novell retained “all rights to the SVRX Royalties notwithstanding the transfer of the SVRX Licenses to [Santa Cruz].”<sup>50</sup> Santa Cruz agreed to collect and pass through 100% of the SVRX royalties, as defined in Section 4.16, and Novell agreed to pay Santa Cruz a 5% administrative fee.<sup>51</sup> Santa Cruz obtained only “legal title and not an equitable interest in such royalties within the meaning of Section 541(d) of the Bankruptcy Code.”<sup>52</sup>
25. Section 4.16(a) of the APA, as amended by Amendment No. 1, provides:
- Following the Closing, Buyer shall administer the collection of all royalties, fees and other amounts due under all SVRX Licenses (as listed in detail under item VI

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<sup>48</sup>*Id.* Schedule 1.1(b), § VIII.

<sup>49</sup>*See The SCO Group, Inc.*, 578 F.3d at 1210 (“If we were to interpret the contract based initially only on the APA itself—without regard to Amendment No. 2—we agree that its language unambiguously excludes the transfer of copyrights.”)

<sup>50</sup>Trial Ex. 1, § 1.2(b).

<sup>51</sup>*Id.*

<sup>52</sup>*Id.*

of Schedule 1.1(a) hereof and referred to herein as “SVRX Royalties”). Within one (1) calendar month following each calendar month in which SVRX royalties (and royalties from Royalty-Bearing Products) are received by Buyer [except for those SVRX Royalties to be retained in their entirety by Buyer pursuant to paragraph (e) of Section 1.2 hereof] Buyer shall remit 100% of all such royalties to Seller or Seller’s assignee. Buyer shall also provide to Seller, within six (6) days following the calendar month in which such royalties are received, and estimate the total amount of such royalties. . . . In consideration of such activities described in the preceding sentence, Seller shall pay to Buyer within 5 days of receipt of SVRX Royalties from Buyer as set forth in the preceding sentence, an administrative fee equal to 5% of such SVRX Royalties . . . .<sup>53</sup>

26. Item VI of Schedule 1.1(a) states that among the assets to be transferred to SCO are “[a]ll contracts relating to the SVRX Licenses listed below.”<sup>54</sup> Item VI of Schedule 1.1(a) goes on to provide a list of SVRX software releases, up to and including UNIX System V 4.2 MP.<sup>55</sup> UNIX System V 4.2 MP was the last version of UNIX before UnixWare.<sup>56</sup>
27. Under Section 1.2(e), which was added by Amendment No. 1, Santa Cruz had the right to retain 100% of the following categories of SVRX Royalties: (1) fees attributable to stand-alone contracts for maintenance and support of SVRX products listed under Item VI of Schedule 1.1(a); (2) source code right to use fees under existing SVRX Licenses from the licensing of additional CPU’s and from the distribution by Santa Cruz of additional source code copies; (3) source code right to use fees attributable to new SVRX licenses approved by Novell pursuant to Section 4.16(b); and (4) royalties attributable to the

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<sup>53</sup>Trial Ex. 1, § 4.16(a) and Amendment No. 1.

<sup>54</sup>*Id.*, Schedule 1.1(a), § VI.

<sup>55</sup>*Id.*

<sup>56</sup>Trial Tr. 1731:24-1732:5.

distribution by Santa Cruz and its distributors of binary copies of SVRX products, to the extent such copies are made by or for Santa Cruz pursuant to Santa Cruz's own licenses from Novell acquired before the Closing Date.<sup>57</sup>

28. Section 4.16(b), as amended by Amendment No. 1, states:

Buyer shall not, and shall not have the authority to, amend, modify or waive any right under any SVRX License without the prior written consent of Seller. In addition, at Seller's sole discretion and direction, Buyer shall amend, supplement, modify or waive any rights under, or shall assign any rights to, any SVRX License to the extent so directed in any manner or respect by Seller. In the event that Buyer shall fail to take any such action concerning the SVRX Licenses as required herein, Seller shall be authorized, and hereby is granted, the rights to take any action on Buyer's own behalf. Notwithstanding the foregoing, Buyer shall have the right to enter into amendments of the SVRX Licenses (i) as may be incidentally involved through its rights to sell and license UnixWare software or the Merged Product . . . or future versions of the Merged Product, or (ii) to allow a licensee under a particular SVRX License to use the source code of the relevant SVRX product(s) on additional CPU's or to receive an additional distribution, from Buyer, of such source code. In addition, Buyer shall not, and shall have no right to, enter into new SVRX Licenses except in the situation specified in (i) of the preceding sentence or as otherwise approved in writing in advance by Seller on a case by case basis.<sup>58</sup>

29. Another aspect of the APA is the License Back of Assets found in Section 1.6. That section states that Santa Cruz must execute a license agreement giving Novell "a royalty-free, perpetual, worldwide license to (i) all of the technology included in the Assets and (ii) all derivatives of the technology included in the Assets."<sup>59</sup>

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<sup>57</sup>Trial Ex. 1, § 1.2(e) and Amendment No. 1.

<sup>58</sup>*Id.* § 4.16(b) and Amendment No. 1.

<sup>59</sup>*Id.* § 1.6.

30. The parties did enter into a Technology Licensing Agreement (“TLA”) in connection with the APA’s closing.<sup>60</sup> The TLA states that Novell retains a “non-exclusive, non-terminable, worldwide, fee-free licence to” use “Licensed Technology” under certain conditions.<sup>61</sup> The TLA provides that the term “Licensed Technology” has the same meaning attributed to it in the APA. The APA, in turn, defines “Licensed Technology” as “all of the technology included in the Assets and . . . all derivatives of the technology included in the Assets.”<sup>62</sup>
31. Novell’s Board of Directors approved the APA on September 18, 1995.<sup>63</sup> As part of that approval, the Board of Directors resolved that “Novell will retain all of its patents, copyrights and trademarks (except for the trademarks UNIX and UnixWare) . . . .”<sup>64</sup>

**E. THE CLOSING AND AMENDMENT NO. 1**

32. The transaction between Novell and Santa Cruz closed on December 6, 1995. At the same time, the parties entered into a Bill of Sale<sup>65</sup> and Amendment No. 1.<sup>66</sup>

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<sup>60</sup>Trial Ex. 162.

<sup>61</sup>*Id.*

<sup>62</sup>Trial Ex. 1, § 1.6.

<sup>63</sup>Trial Ex. Z3.

<sup>64</sup>*Id.* at 2.

<sup>65</sup>Trial Ex. 90.

<sup>66</sup>Trial Ex. 1, Amendment No. 1; Trial Ex. T5.



33. As set forth above, Amendment No. 1 made various changes to the APA, including changes to Section 4.16. Amendment No. 1, however, did not amend the intellectual property portion of either the included or excluded asset schedules found in Schedule 1.1(a) and Schedule 1.1(b).<sup>67</sup>

**F. AMENDMENT NO. 2**

34. The parties entered into Amendment No. 2 on October 16, 1996.<sup>68</sup> Amendment No. 2 amended the intellectual property provision of the excluded asset schedule, Schedule 1.1(b), as follows:

All copyrights and trademarks, except for the copyrights and trademarks owned by Novell as of the date of the Agreement required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies. However, in no event shall Novell be liable to SCO for any claim brought by any third party pertaining to said copyrights and trademarks.<sup>69</sup>

35. Amendment No. 2 also set out provisions for how the parties were to approach future buy-outs of SVRX licenses.<sup>70</sup> Section B.5 of Amendment No. 2 states:

This Amendment does not give Novell the right to increase any SVRX licensee's rights to SVRX source code, nor does it give Novell the right to grant new SVRX source code licenses. In addition, Novell may not prevent SCO from exercising its rights with respect to SVRX source code in accordance with the Agreement.<sup>71</sup>

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<sup>67</sup>Trial Ex. 1, Amendment No. 1; Trial Ex. T5.

<sup>68</sup>Trial Ex. 1, Amendment No. 2; Trial Ex. N8.

<sup>69</sup>Trial Ex. 1, Amendment No. 2; Trial Ex. N8.

<sup>70</sup>Trial Ex. 1, Amendment No. 2; Trial Ex. N8.

<sup>71</sup>Trial Ex. 1, Amendment No. 2; Trial Ex. N8.

**G. TESTIMONY ON SCO'S CLAIM FOR SPECIFIC PERFORMANCE**

36. The bulk of the evidence presented during the March 2010 trial focused on the intent of the parties concerning the APA and what copyrights were “required” for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies. The Court will discuss that evidence below.

*1. The Intent of the Parties*

*a. SCO's Witnesses*

37. SCO presented a number of witnesses who testified that it was the intent of the parties to transfer ownership of the copyrights.

38. Robert Frankenberg, the CEO of Novell at the time of the APA, testified that it was his intent to sell the UNIX business in its entirety, including the UNIX copyrights.<sup>72</sup>

However, Mr. Frankenberg's testimony revealed that he was only involved in the high-level negotiations, that he did not read the entire APA before he signed it, and that he relied on the advice of the attorneys and others in accepting the APA.<sup>73</sup>

39. Duff Thompson, the Senior Vice President of Corporate Development for Novell at the time of the APA, testified that he was instructed to sell the UNIX business in its entirety.<sup>74</sup> As part of that sale, Mr. Thompson testified that he “assumed” that the

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<sup>72</sup>Trial Tr. 90:2-9.

<sup>73</sup>*Id.* at 148:13-24.

<sup>74</sup>*Id.* at 221:24-222:2.

copyrights were being sold as well.<sup>75</sup> Despite this assumption, Mr. Thompson offered no testimony on any actual discussions concerning the copyrights. Mr. Thompson also testified that around the time of the APA he had already decided to leave Novell.<sup>76</sup> Mr. Thompson subsequently became a board member of Santa Cruz and ultimately of SCO.<sup>77</sup> Mr. Thompson was part of the SCO board when SCO made the decision to sue Novell and voted in favor of that decision.<sup>78</sup> Mr. Thompson also has a financial interest in SCO and stands to gain financially if SCO is successful in this lawsuit.<sup>79</sup>

40. Edward Chatlos, the Senior Director of Strategic Relationships at Novell at the time of the APA, was a primary negotiator of the deal between Novell and Santa Cruz.<sup>80</sup> Mr. Chatlos testified that the general nature of the transaction was to sell “the entire business,” including the copyrights.<sup>81</sup> Mr. Chatlos admitted that his wife works for SCO and that she had stock options that could become more valuable if SCO succeeded in this lawsuit.<sup>82</sup>

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<sup>75</sup>*Id.* at 230:24-231:4; *id.* at 304:2-10.

<sup>76</sup>*Id.* at 278:1-279:11.

<sup>77</sup>*Id.* at 279:12-280:8.

<sup>78</sup>*Id.* at 280:9-24.

<sup>79</sup>*Id.* at 281:13-282:13.

<sup>80</sup>*Id.* at 349:13-16.

<sup>81</sup>*Id.* at 351:8-11; *id.* at 351:20-22; *id.* at 352:5-8.

<sup>82</sup>*Id.* at 374:8-375:11.

41. Jim Wilt, Santa Cruz's Vice President of Development at the time of the APA, testified that the intent of SCO was to acquire the entire UNIX and UnixWare business, including the copyrights.<sup>83</sup> However, Mr. Wilt also testified that he became less active toward the end of the negotiations and that he could not recall any specific conversations concerning the transfer of copyrights.<sup>84</sup>
42. Alok Mohan, the CEO of Santa Cruz at the time of the APA, testified that Santa Cruz bought the business from Novell.<sup>85</sup> However, Mr. Mohan acknowledged that he was only involved in the negotiations at a high level.<sup>86</sup> He also testified that he was not involved in writing the APA, which was drafted by others.<sup>87</sup>
43. Doug Michels, the Executive Vice President of Santa Cruz at the time of the APA, testified that the intent of Santa Cruz was to buy the UNIX business from Novell.<sup>88</sup> Mr. Michels testified that Santa Cruz bought the business "[a]nd as a result of buying the business, we owned all the intellectual property."<sup>89</sup> Mr. Michels stated that there was "no

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<sup>83</sup>*Id.* at 445:12-446:5.

<sup>84</sup>*Id.* at 442:11-444:8.

<sup>85</sup>*Id.* at 458:14-19.

<sup>86</sup>*Id.* at 455:20-456:9.

<sup>87</sup>*Id.* at 456:10-457:6.

<sup>88</sup>*Id.* at 491:15-21.

<sup>89</sup>*Id.* at 501:3-4.

way that [the] deal could have happened without getting the copyrights.”<sup>90</sup> However, Mr. Michels could not recall specific conversations concerning the copyrights.<sup>91</sup> Mr. Michels further stated that he did not draft or review the APA,<sup>92</sup> did not have specific recollections of being involved in Amendment No. 1,<sup>93</sup> and did not know what Amendment No. 2 was.<sup>94</sup>

44. Burt Levine, an attorney working with Novell at the time of the APA who later transferred to Santa Cruz, testified that the intent was to transfer ownership rights, including the copyrights.<sup>95</sup> Mr. Levine testified that he disagreed with the language concerning intellectual property in the excluded asset schedule of the APA and would have stricken this language or reformed it in some way.<sup>96</sup> However, Mr. Levine did review this portion of the APA when it was being drafted and did not alter the copyright exclusion.<sup>97</sup>

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<sup>90</sup>*Id.* at 504:7-8.

<sup>91</sup>*Id.* at 504:9-505:7.

<sup>92</sup>*Id.* at 510:11-24; *id.* 512:13-15.

<sup>93</sup>*Id.* at 511:5-11.

<sup>94</sup>*Id.* at 511:11-15.

<sup>95</sup>*Id.* at 518:5-14.

<sup>96</sup>*Id.* at 530:13-531:17.

<sup>97</sup>*Id.* at 531:18-537:23; *see also* Trial Ex. X3.

45. Ty Mattingly, Novell’s Vice President of Corporate Development Strategic Relationships at the time of the APA, was also involved in the sale of the UNIX business to Santa Cruz.<sup>98</sup> Mr. Mattingly testified that Novell “sold the business” to Santa Cruz and that Novell only retained 95% of the SVRX royalties.<sup>99</sup> Mr. Mattingly, however, stated that he was not focused on the details of the transaction and was more of a “high level strategy guy.”<sup>100</sup> While he was involved in the memorandum of understanding phase, he was not involved in the actual drafting of the APA.<sup>101</sup> Further, Mr. Mattingly testified that he owns over 9,000 shares of SCO stock.<sup>102</sup>
46. Kimberlee Madsen worked as the Manager of Law and Corporate Affairs for Santa Cruz at the time of the APA.<sup>103</sup> Ms. Madsen was involved in the transaction between Novell and Santa Cruz as support for Santa Cruz’s general counsel Steve Sabbath and was involved in the negotiations as well.<sup>104</sup> Ms. Madsen testified that the intent was for Santa Cruz to purchase all of the UNIX and UnixWare assets, including the copyrights.<sup>105</sup>

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<sup>98</sup>Trial Tr. at 674:23-675:6.

<sup>99</sup>*Id.* at 676:12-677:4.

<sup>100</sup>*Id.* at 711:2-4.

<sup>101</sup>*Id.* at 711:5-715:10.

<sup>102</sup>*Id.* at 701:12-23.

<sup>103</sup>*Id.* at 780:22-24.

<sup>104</sup>*Id.* at 781:9-17.

<sup>105</sup>*Id.* at 783:2-9.

However, Ms. Madsen conceded that the transaction was more complicated than simply buying the whole business.<sup>106</sup>

47. Steve Sabbath, Santa Cruz’s general counsel at the time of the APA, testified that Santa Cruz was buying the entire business, including the intellectual property.<sup>107</sup> However, Mr. Sabbath previously executed a declaration where he made a number of contradictory statements, including that, under the APA, Novell would retain significant UNIX-related assets including much of the UNIX System V intellectual property.<sup>108</sup>

*b. Novell’s Witnesses*

48. Tor Braham, outside counsel for Novell and lead drafter of the APA, testified that Novell was selling to Santa Cruz the UnixWare business while Novell “retained all of the economics and relationships arising out of the UNIX business.”<sup>109</sup> Mr. Braham testified that the exclusion of the copyrights was agreed upon by the parties.<sup>110</sup> He also stated that the purpose for excluding the copyrights was to protect Novell’s interest in the UNIX business that it had retained.<sup>111</sup> Mr. Braham further testified that Santa Cruz could use the assets that it received “to then build a new version of UnixWare, and it would own the

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<sup>106</sup>*Id.* at 820:1-3.

<sup>107</sup>*Id.* at 899:12-16.

<sup>108</sup>*Id.* at 926:9-927:10.

<sup>109</sup>*Id.* at 2346:17-2347:5.

<sup>110</sup>*Id.* at 2363:19-23.

<sup>111</sup>*Id.* at 2364:3-11.

copyrights in what it built on top of the base UNIX and UnixWare software that it had a copy of.”<sup>112</sup> Santa Cruz could then license that product to third parties.<sup>113</sup>

49. David Bradford worked as Novell’s general counsel from 1985 to 2000. Mr. Bradford testified that it was “very clear” that Novell retained the copyrights.<sup>114</sup> Mr. Bradford further testified that the Novell board of directors agreed that under the APA Novell would retain all of its copyrights.<sup>115</sup>
50. James Tolonen, Novell’s Chief Financial Officer at the time of the APA, testified that the copyrights were purposefully excluded from the assets to be transferred to Santa Cruz.<sup>116</sup> Mr. Tolonen explained that retaining the copyrights was done: (1) as “part of [Novell’s] strategy and [was] really necessary under the nature of the transaction”; (2) because Santa Cruz was relatively small and could not afford the entire value; (3) to avoid ownership issues with other products; and (4) because of concerns with the long-term viability of Santa Cruz.<sup>117</sup> As will be discussed in more detail below, Mr. Tolonen also testified that Amendment No. 2 was meant to address use rights, not ownership of the copyrights.<sup>118</sup>

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<sup>112</sup>*Id.* at 2365:2-9.

<sup>113</sup>*Id.* at 2365:10-13.

<sup>114</sup>*Id.* at 2438:14-16.

<sup>115</sup>*Id.* at 2442:13-19.

<sup>116</sup>*Id.* at 2021:24-2022:3.

<sup>117</sup>*Id.* at 2022:7-2023:18.

<sup>118</sup>*Id.* at 2036:5-22.



51. Michael Defazio, an Executive Vice President at Novell at the time of the APA, testified that the intent of the APA was not to transfer the copyrights and that the copyrights were retained as a way to “bulletproof” Novell’s financial asset stream.<sup>119</sup>
52. Jack Messman was a member of Novell’s Board of Directors at the time of the APA<sup>120</sup> and would later become CEO. Mr. Messman was present for a telephonic meeting where the APA was discussed.<sup>121</sup> Mr. Messman testified that, based upon that meeting, he understood that the copyrights were not sold as part of the transaction between Novell and Santa Cruz and that there was a specific discussion on that issue.<sup>122</sup> Mr. Messman stated Novell retained the copyrights because SCO was a “fledgling company” and because Novell was worried about the SVRX revenue stream.<sup>123</sup> Mr. Messman testified that retention of the copyrights “was the key part of the deal that convinced the board to do that deal.”<sup>124</sup> Mr. Messman further testified that the copyrights were not required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies as the plan was for SCO to develop new code.<sup>125</sup>

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<sup>119</sup>*Id.* at 2311:7-17.

<sup>120</sup>*Id.* at 2284:2-3

<sup>121</sup>*Id.* at 2284:9-10.

<sup>122</sup>*Id.* at 426:9-13-428:5.

<sup>123</sup>*Id.* at 2284:17-2285:1.

<sup>124</sup>*Id.* at 2285:5-6.

<sup>125</sup>*Id.* at 429:2-10; *id.* at 437:5-439:24.

*c. Conclusions from the Testimony*

53. The Court finds the witnesses presented by SCO on the parties' intent to be less credible than Novell's witnesses for a number of reasons. First, many of SCO's witnesses were involved only in the "high level" negotiations and did not participate in the actual drafting of the APA where the details of the deal were agreed to. Thus, while these individuals may have provided relevant testimony as to what the parties were intending or hoping to do at the outset, their testimony has less relevance as to what actually happened as the negotiations unfolded and the APA was actually drafted. This fact is critical here because the transaction could not be completed as it had been initially envisioned, specifically it had to be structured to account for the fact that Santa Cruz did not have the financial resources necessary to purchase the entire business and there was uncertainty about its long-term viability. Second, many of these witnesses seemed to take for granted that the copyrights would transfer, but there was surprisingly little evidence of any actual discussions concerning the copyrights. Finally, a number of SCO's witnesses, though not all, have a direct financial interest in this litigation.<sup>126</sup>

*d. Course of Performance*

54. SCO also points to the parties' course of performance to support its argument that it was the intent of the parties to transfer ownership of the copyrights.

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<sup>126</sup>*Id.* at 281:13:282:13; *id.* at 445:12-446:5; *id.* at 701:12-23.

55. SCO points to a “joint” press release issued after the transaction. That press release announced an “agreement for SCO to purchase the UNIX business from Novell.”<sup>127</sup> The press release goes on to state that “SCO will acquire Novell’s UnixWare business and UNIX intellectual property.”<sup>128</sup> While SCO described this as a “joint” press release, there is no indication that it was joined in by Novell and appears to be issued solely by SCO. Further, the press release supports Novell’s argument that SCO only acquired the UnixWare business, as opposed to the UNIX business. Finally, though the press release mentions “UNIX intellectual property,” it does not specifically mention copyrights and could just as logically refer to other UNIX-related assets which did transfer under the APA.
56. SCO also points to its 1996 Form 10-K in which it stated that it “acquired certain assets related to the UNIX business including the core intellectual property from Novell.”<sup>129</sup> Again, there is no mention of copyrights and no description of what “core intellectual property” was acquired.
57. SCO also relies on the fact that SCO copyright notices were placed on existing versions of UnixWare, but as SCO’s own witness admitted, this does not answer the question of ownership.<sup>130</sup> SCO also points to the physical possession of copyright registration

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<sup>127</sup>Trial Ex. 526.

<sup>128</sup>*Id.*

<sup>129</sup>Trial Ex. 521.

<sup>130</sup>Trial Tr. at 1779:2-20.

certificates. However, SCO's witnesses testified that, when the APA was finalized, SCO staff and property simply remained in the same physical location as before.<sup>131</sup>

58. SCO also argues that letters sent from Novell to its customers support the conclusion that the copyrights were transferred. These letters state that Novell transferred to SCO Novell's "existing ownership interest in UNIX System-based offerings and related products."<sup>132</sup> However, SCO's witnesses acknowledged that the letters were not meant to give the customers all of the details of the transaction, but merely to inform the customers that they were going to deal with SCO in the future.<sup>133</sup>
59. SCO also points to the TLA as further evidence of the parties intent to transfer copyright ownership. However, testimony concerning the TLA affirmed that one of the purposes of that agreement was to allow Novell the right to use post-APA SCO-developed code.<sup>134</sup>
60. The Court finds that SCO's course of performance evidence, either separately or in combination, does not support its position that it was the intent of the parties to transfer copyright ownership.

*e. Conclusion on the Intent of the Parties*

61. Based on the evidence presented at trial, the Court finds that it was not the intent of the parties to transfer ownership of the UNIX and UnixWare copyrights. Rather, the Court

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<sup>131</sup>*Id.* at 641:19-642:3.

<sup>132</sup>Trial Ex. 580.

<sup>133</sup>Trial Tr. at 1705:22-1707:25.

<sup>134</sup>*Id.* at 1964:8-22; *id.* at 1984:6-1985:21.

finds that Novell intentionally retained the UNIX and UnixWare copyrights. The Court finds that the copyrights were retained by Novell for the following reasons: (1) to protect the SVRX royalty stream; (2) because Santa Cruz could not afford to purchase the entire UNIX business; and (3) because of concerns with Santa Cruz’s future financial viability.

2. *Whether the Copyrights are “Required”*

62. SCO argues that the copyrights are, nonetheless, “required” under Amendment No. 2.

63. As set forth above, Amendment No. 2 amended the excluded asset schedule (Schedule 1.1(b)) of the APA to state: “All copyrights and trademarks, except for the copyrights and trademarks owned by Novell as of the date of the Agreement required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies.”<sup>135</sup> The parties presented differing evidence on the intent and purpose of Amendment No. 2, as well as which copyrights were “required.”

a. *SCO’s Witnesses*

64. SCO presented little evidence as to the intent of Amendment No. 2. Steve Sabbath, general counsel for Santa Cruz at the time of the APA, testified that Amendment No. 2 was meant to confirm that Santa Cruz acquired all copyrights pertaining to the UNIX business.<sup>136</sup> Mr. Sabbath stated that the copyrights were needed to protect the technology.<sup>137</sup> As discussed above, however, Mr. Sabbath executed a contradictory

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<sup>135</sup>Trial Ex. 1, Amendment No. 2.

<sup>136</sup>Trial Tr. at 911:8-10.

<sup>137</sup>*Id.* at 913:12-15.

declaration and, as will be discussed below, Mr. Sabbath's testimony is refuted by Novell witnesses.

65. Kimberlee Madsen testified that the copyrights were essential for SCO to protect its intellectual property rights.<sup>138</sup> However, when asked what copyrights were required for Santa Cruz to operate its UNIX and UnixWare business, she responded that Santa Cruz "would have acquired all the copyrights."<sup>139</sup> Ms. Madsen also testified that she did not draft the language of Amendment No. 2 and had no specific recollection of any discussions with Mr. Sabbath about that Amendment.<sup>140</sup>
66. A number of SCO witnesses testified that the UNIX and UnixWare copyrights were "required" for SCO to operate its business. For instance, William Broderick, a former Novell and current SCO UNIX Contract manager, testified that the way "you show your ownership and protect your software is by copyright."<sup>141</sup> But Mr. Broderick was not involved in the negotiation of the APA and had no involvement in either Amendment.<sup>142</sup>
67. Darl McBride, the former CEO of SCO, testified that ownership of the copyrights was required for SCO's business.<sup>143</sup> Mr. McBride testified that there were a number of

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<sup>138</sup>*Id.* at 875:7-14.

<sup>139</sup>*Id.* at 802:23-803:1.

<sup>140</sup>*Id.* at 802:17-22.

<sup>141</sup>*Id.* at 667:20-21.

<sup>142</sup>*Id.* at 621:16-25.

<sup>143</sup>*Id.* at 997:3-14.

reasons for this, stating that copyrights were required in order to make copies, do deals, and enforce your rights against others.<sup>144</sup> Mr. McBride was also not involved with negotiation or drafting of either the APA or Amendment No. 2.<sup>145</sup>

68. John Maciaszek, a former Novell and current SCO UNIX Product Manager, testified that copyrights are required for SCO to operate its business.<sup>146</sup> There is no evidence that Mr. Maciaszek was involved in negotiating or drafting the APA or its Amendments.
69. Ryan Tibbitts, general counsel for SCO, testified that the copyrights were “critical” for SCO to run the business purchased from Novell.<sup>147</sup> Mr. Tibbitts stated: “Because we own the core UNIX intellectual property and a very critical component of that at this point in time is to protect that IP, and we have got to have that IP to keep other people from encroaching into our marketplace.”<sup>148</sup> Mr. Tibbitts was similarly not involved with the APA or its Amendments.<sup>149</sup>
70. Most of these witnesses testified that the copyrights were “required” for SCO to run its SCOsource licensing program.<sup>150</sup> However, as will be discussed below, this program was

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<sup>144</sup>*Id.* at 997:14-23.

<sup>145</sup>*Id.* at 1054:5-12.

<sup>146</sup>*Id.* at 1687:22-24.

<sup>147</sup>*Id.* at 1844:25-1846:1.

<sup>148</sup>*Id.* at 1845:15-18.

<sup>149</sup>*Id.* at 1847:16-24.

<sup>150</sup>*Id.* at 1225:18-1226:10.

not something that SCO acquired from Novell. SCO only acquired the UnixWare business from Novell, while Novell retained significant rights in the UNIX business. Amendment No. 2 applies only to those copyrights “required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies.”

71. SCO witnesses acknowledged that SCO could operate its UnixWare business without the copyrights. Mr. McBride admitted that SCO could run its UnixWare business without the copyrights.<sup>151</sup> Mr. Tibbitts similarly stated that SCO could run its UNIX product business without the UNIX and UnixWare copyrights.<sup>152</sup> Indeed, SCO had offered to sell its business without the copyrights.<sup>153</sup>
72. Moreover, it was undisputed that SCO would own any newly developed code and could obtain copyrights to protect that code.<sup>154</sup>

*b. Novell’s Witnesses*

73. Novell presented a different view of the intent and meaning of Amendment No. 2.
74. Allison Amadia worked as in-house counsel for Novell at the time of Amendment No. 2 and was the lead negotiator and drafter of that document for Novell.<sup>155</sup> Ms. Amadia was contacted by Steve Sabbath, general counsel for SCO, who requested an amendment to

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<sup>151</sup>*Id.*

<sup>152</sup>*Id.* at 1850:11-1851:18.

<sup>153</sup>*Id.*

<sup>154</sup>*Id.* at 933:2-7; *id.* at 939:3-18; *id.* at 816:19-817:14; *id.* at 2365:2-9.

<sup>155</sup>*Id.* at 2105:18-25.



the APA.<sup>156</sup> Mr. Sabbath stated that because of a “clerical error” the APA did not transfer copyright ownership.<sup>157</sup>

75. Mr. Sabbath sent Ms. Amadia a proposed amendment which would have amended Section V of Schedule 1.1(b) of the APA (the intellectual property portion of the excluded assets schedule) to state: “All copyrights and trademarks, except for the copyrights and trademarks owned by Novell as of the date of this Amendment No. 2, which pertain to the UNIX and UnixWare technologies and which SCO has acquired hereunder. . . .”<sup>158</sup>
76. After review of the APA and discussions with Tor Braham and James Tolonen, Novell, through Ms. Amadia, made the decision not to alter the APA with regard to copyright ownership as requested by Mr. Sabbath.<sup>159</sup> Rather than alter the APA to transfer copyrights, Ms. Amadia modified the amendment proposed by Mr. Sabbath to affirm that SCO had the rights to use the technology.<sup>160</sup> Ms. Amadia testified that Amendment No. 2 was meant to affirm that SCO had the right to use, manufacture, and make modifications to the UNIX technology.<sup>161</sup>

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<sup>156</sup>*Id.* at 2107:2-12.

<sup>157</sup>*Id.*

<sup>158</sup>Trial Ex. T34.

<sup>159</sup>Trial Tr. at 2119:25-2120:6.

<sup>160</sup>*Id.* at 2120:17-25.

<sup>161</sup>*Id.* at 2128:1-19.

77. James Tolonen, Novell's Chief Financial Officer at the time of the APA and Amendment No. 2, similarly testified that Amendment No. 2 was meant to address use rights, not ownership.<sup>162</sup> Mr. Tolonen stated that the easiest way to show a transfer of the copyrights would be to include them on the schedule of included assets, which did not happen.<sup>163</sup>
78. Mr. Sabbath signed Amendment No. 2, as modified by Ms. Amadia, on behalf of Santa Cruz with no apparent further protest.<sup>164</sup>

*c. Conclusions from the Testimony*

79. The Court finds that Amendment No. 2 was not intended to confirm that the UNIX and UnixWare copyrights were transferred to SCO under the APA, as argued by SCO. Rather, the Court finds that Novell made a conscious decision to retain the copyrights in the APA and that intent was reflected throughout the negotiating and drafting of Amendment No. 2. The Court finds that Amendment No. 2 was only meant to confirm that SCO had the right to use the UNIX technology. The Court finds the testimony of Novell's witnesses, especially Ms. Amadia and Mr. Tolonen, to be credible. The Court finds SCO's witnesses to be less credible for a number of reasons, including the fact that many were not directly involved in the negotiation and drafting of Amendment No. 2. Additionally, as previously stated, many have a financial interest in this litigation.

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<sup>162</sup>*Id.* at 2036:5-22.

<sup>163</sup>*Id.* at 2037:18-25.

<sup>164</sup>Trial Ex. 1, Amendment No. 2; *see also* Trial Tr. 2124:21-2127:18.

80. Based on all of the above, the Court finds that it was not the parties intent to transfer ownership of the UNIX and UnixWare copyrights to SCO. Rather, Novell purposefully retained those copyrights. The purpose for doing so was to protect its significant interest in the SVRX royalty stream, to alleviate concerns of SCO's future financial viability, and because of the fact that SCO could not afford to purchase the entire UNIX business. The Court further finds that the copyrights are not required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies. SCO did not acquire the entire UNIX business from Novell, but only acquired the UnixWare business while Novell retained substantial rights in the UNIX business. The undisputed evidence is that SCO did not need the UNIX and UnixWare copyrights in order to operate its UnixWare product business. Further, ownership of the copyrights is not required for SCO to protect its own code. SCO did present evidence that the copyrights were required for SCO to operate its SCOSource licensing program. However, this was a business strategy designed by SCO after the APA and its Amendments, not something that it acquired from Novell.

**H. NOVELL’S WAIVER RIGHTS UNDER SECTION 4.16**

81. As stated above, Novell retained significant assets under the APA. One of those assets were royalties from SVRX licenses.<sup>165</sup> Novell recognized that this future royalty stream would be very significant.<sup>166</sup>
82. Under the APA, SCO was to act as Novell’s agent in the collection of these royalties.<sup>167</sup> In connection with that role, SCO acquired certain assets, including certain agreements and certain employees of Novell.<sup>168</sup>
83. Section 4.16 of the APA was “the key provision that embodied the deal that the UNIX business, as compared to the UnixWare business, . . . would remain with Novell, but be administered by SCO.”<sup>169</sup> The intent of Section 4.16 was to “bulletproof” Novell’s ongoing financial interest.<sup>170</sup> A number of SCO witnesses similarly recognized the purpose of Section 4.16 as a way of protecting and managing Novell’s ongoing financial

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<sup>165</sup>See Trial Ex. 1, § 1.2(b); *see also* Trial Tr. at 236:6-15; *id.* at 353:3-10; *id.* at 2344:20-2347:5.

<sup>166</sup>*Id.* at 2310:14-15.

<sup>167</sup>*Id.* at 2347:6-2348:3; *see* Trial Ex. 1, § 4.16(a); *see also* Trial Ex. 163 (stating that SCO “will manage the licensing business for UNIX prior to UnixWare 1.0 (SVRx)”).

<sup>168</sup>Trial Tr. at 2347:6-2348:3.

<sup>169</sup>*Id.* at 2350:2-9.

<sup>170</sup>*Id.* at 2310:15-2311:6.

interests, though those witnesses disagreed on the scope of Novell's rights under that section.<sup>171</sup>

84. Tor Braham testified that Section 4.16 was added to make very clear that SCO did not have the right to modify, change, or waive SVRX licenses without Novell's written consent and that if SCO did not act properly Novell "could step in and do it ourselves."<sup>172</sup> Mr. Braham testified that Section 4.16 was drafted to avoid any doubt that Novell had complete rights to control what happened with the UNIX business.<sup>173</sup> Mr. Braham further stated that, under Section 4.16, "[i]f SCO didn't do what it was supposed to do as [Novell's] agent, we could step in . . . and do it ourselves."<sup>174</sup>
85. Section 4.16(a) states: "Following the Closing, Buyer shall administer the collection of all royalties, fees and other amounts due under all SVRX Licenses (as listed in detail under item VI of Schedule 1.1(a) hereof and referred to herein as 'SVRX Royalties'). . . ." Item VI of Schedule 1.1(a) states that among the assets to be transferred to SCO are "[a]ll contracts relating to the SVRX Licenses listed below." However, the list provided in Item VI of Schedule 1.1(a) provides a list of SVRX software releases, not a list of license agreements.

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<sup>171</sup>*Id.* at 247:23-248:19; *id.* at 447:3-19; *id.* at 829:12-16.

<sup>172</sup>*Id.* at 2350:10-19.

<sup>173</sup>*Id.* at 2354:6-8.

<sup>174</sup>*Id.* at 2355:6-13.

86. Section 4.16(b) preserved to Novell certain waiver rights with regard to SVRX licenses.

It states, in pertinent part:

Buyer shall not, and shall not have the authority to, amend, modify or waive any right under any SVRX License without the prior written consent of Seller. In addition, at Seller's sole discretion and direction, Buyer shall amend, supplement, modify or waive any rights under, or shall assign any rights to, any SVRX License to the extent so directed in any manner or respect by Seller. In the event that Buyer shall fail to take any such action concerning the SVRX Licenses as required herein, Seller shall be authorized, and hereby is granted, the rights to take any action on Buyer's own behalf.<sup>175</sup>

87. The question here is what constitutes an “SVRX License.” SCO contends that the term SVRX License applies only to product supplement agreements, while Novell contends that the term is not so limited and applies to software agreements and sublicensing agreements as well.

88. William Broderick, the Director of Software Licensing for SCO, described the various types of agreements. The first type of agreement is called the software agreement or umbrella agreement.<sup>176</sup> The software agreement provided the general terms and conditions that a company would agree to when licensing source code.<sup>177</sup> The second type of agreement is a product supplement agreement or product schedule license. This type of license actually licenses a software product.<sup>178</sup> The third type of agreement is a sublicensing agreement. The sublicensing agreement grants the rights to distribute a

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<sup>175</sup>Trial Ex. 1, § 4.16(b).

<sup>176</sup>Trial Tr. at 555:15-20.

<sup>177</sup>*Id.* at 555:21-556:9.

<sup>178</sup>*Id.* at 578:13-18.

binary product.<sup>179</sup> These agreements work together. The software and product license allow companies to create a UNIX flavor and the sublicensing agreement allows that company to distribute its UNIX flavor. A company could not take a product license if it did not have an umbrella software agreement.<sup>180</sup>

89. SCO's witnesses asserted that Novell's waiver rights extend only to product schedule licenses. For instance, Mr. Broderick testified that Novell used the term SVRX Licenses to refer to product schedule licenses that licensed SVRX products.<sup>181</sup> However, Mr. Broderick had no involvement in the drafting, negotiation, or approval of the APA or its amendments.<sup>182</sup> Mr. Broderick also conceded that there was nothing in the APA so limiting Section 4.16.<sup>183</sup> Other SCO witnesses testified that this provision was only meant to give Novell control over binary royalties,<sup>184</sup> but this testimony suffers from the same flaws set forth above in relation to the intent of the parties. Further, many of these witnesses acknowledged that the language of Section 4.16 of the APA was not limited to product supplement agreements.<sup>185</sup>

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<sup>179</sup>*Id.* at 581:1-12.

<sup>180</sup>*Id.* at 627:9-19.

<sup>181</sup>*Id.* at 658:23-659:16.

<sup>182</sup>*Id.* at 621:16-25.

<sup>183</sup>*Id.* at 654:24-655:7

<sup>184</sup>*Id.* at 110:2-21; *id.* at 247:23-248:19; *id.* at 367:22-369:10; *id.* at 447:3-19; *id.* at 494:23-494:18; *id.* at 852:1-10; *id.* at 906:7-23.

<sup>185</sup>*Id.* at 379:12-381:5; *id.* at 519:17-520:14; *id.* at 654:24-655:7.

90. SCO also points to the parties' course of performance in arguing that Novell's waiver rights extend only to product schedule licenses. Specifically, SCO points to a dispute between Novell, Santa Cruz, and IBM in 1996 where Novell attempted to grant IBM a buyout of its contractual royalty obligations.<sup>186</sup> SCO objected and began to initiate a lawsuit against Novell.<sup>187</sup> The dispute was ultimately settled by: (1) cancelling the buyout that Novell had executed with IBM and replacing it with Amendment No. X, a three-party agreement between IBM, Novell, and SCO; (2) a payment to SCO; and (3) clarifying how to approach future buyouts through Amendment No. 2.<sup>188</sup> During that dispute, Novell did not invoke Section 4.16(b) to the extent it now has.<sup>189</sup> However, the fact that Novell decided to settle this dispute in this way provides little support for SCO's ultimate argument. As recognized by the Tenth Circuit, "[p]arties may choose to settle claims for a variety of reasons unrelated to their merits, not the least to avoid expensive litigation or to maintain civility in an important commercial relationship."<sup>190</sup>
91. The Court finds that Novell's waiver rights extend to all three types of agreements and are not limited to product supplement agreements. The Court bases this finding on a number of things. First, a number of witnesses, including SCO witnesses, recognized the

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<sup>186</sup>*Id.* at 1689:5-21.

<sup>187</sup>*Id.* at 1689:22-1695:20.

<sup>188</sup>*Id.* at 1696:16-1697:24.

<sup>189</sup>*Id.* at 1695:21-1696:9.

<sup>190</sup>*The SCO Group, Inc.*, 578 F.3d at 1223.



importance of the royalty stream that Novell was retaining and viewed Section 4.16 as the mechanism that Novell put in place to protect that royalty stream. While Novell did transfer certain assets to SCO, it did not transfer the SVRX royalty stream. In order to protect and maintain control over that royalty stream, Novell retained significant rights, as set out in Section 4.16. It only makes sense for Novell to retain control over all components of the SVRX licensing agreements in order to protect this significant asset. The reasoning behind this is the somewhat hierarchical nature of the agreements. Each company was required to sign a software agreement and termination of the software agreement would terminate the other agreements. If Novell did not retain control over the software agreement, SCO could terminate that agreement, thereby terminating the other agreements, and deprive Novell of revenue to which Novell would be entitled. Thus, in order for Novell to protect its SVRX revenue stream, it needed to retain rights with respect to all components of the SVRX licensing agreements.

92. Second, the plain language of the APA states that Novell's waiver rights apply to "any SVRX License." The language of the APA is not limited to product supplement agreements. Several SCO witnesses conceded that the language of the APA was not limited to product supplement agreements.
93. Third, Section 1.2(e) provides support for this finding. By identifying "source code right to use fees under existing SVRX Licenses" as a type of SVRX Royalty, this provision supports the conclusion that "SVRX License" includes software agreements covering source code rights.

94. Fourth, 4.16(a) refers to Item VI of Schedule 1.1(a). That provision states that “[a]ll contracts relating to the SVRX Licenses listed below” will be transferred to SCO. While Item VI does not go on to list licenses, it does go on to list releases of UNIX. Thus, under this provision, SVRX licenses include all contracts relating to UNIX System V releases, up to and including UNIX System V 4.2 MP, the latest version of UNIX prior to UnixWare.
95. Finally, the Court finds SCO’s evidence on this to be less credible for many of the same reasons stated above in relation to SCO’s claim for specific performance. Further, many witnesses acknowledged that the language of Section 4.16 of the APA was not limited to product supplement agreements.
96. Based on the above, the Court finds that Novell’s waiver rights apply to all three types of agreements and are not limited to product supplement agreements. With this in mind, the Court turns to the actions taken by Novell under Section 4.16.

**I. LINUX, SCOSOURCE, AND NOVELL’S ACTIONS UNDER SECTION 4.16**

97. “In 2002 and 2003, tensions increased between Novell and SCO. SCO asserted that users of Linux, an alternative to UNIX might be infringing on SCO’s UNIX-related intellectual property rights.”<sup>191</sup>
98. “In late 2002, SCO formally created a new division known as SCOSource. In approximately January 2003, SCO launched its SCOSource program. . . . As a general matter, the SCOSource program was an effort to obtain license fees from Linux users

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<sup>191</sup>*Id.* at 1206.

based on SCO's claims to UNIX intellectual property allegedly contained in Linux."<sup>192</sup>

Under its SCOSource program, SCO "purported to offer Linux users the opportunity to purchase an intellectual property license in order to continue using Linux without infringing any of SCO's copyrights."<sup>193</sup>

99. In January 2003, Joseph LaSala, Novell's then-General Counsel, learned of SCO's SCOSource program.<sup>194</sup> Mr. LaSala viewed this as a "campaign against Linux end users" and became concerned about SCO's program because of Novell's own involvement in the Linux business.<sup>195</sup> By that point, Novell had "announced its intention to get involved in the Linux business."<sup>196</sup> In connection with Novell's Linux business, IBM purchased \$50 million worth of Novell stock.<sup>197</sup>
100. SCO filed a lawsuit against IBM in 2003 alleging that IBM had distributed UNIX source code and other confidential information to Linux.<sup>198</sup> As part of that litigation, SCO threatened to terminate IBM's SVRX license.

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<sup>192</sup>Docket No. 542, at 13.

<sup>193</sup>*The SCO Group, Inc.*, 578 F.3d at 1206-07.

<sup>194</sup>Trial Tr. at 1882:7-15.

<sup>195</sup>*Id.* at 1882:16-1883:19.

<sup>196</sup>*Id.* at 1883:3-10.

<sup>197</sup>*Id.* at 2289:6-2290:13.

<sup>198</sup>*The SCO Group, Inc. v. Int'l Bus. Machs. Corp.*, 2:03-CV-294 TC (D. Utah).

101. After the initiation of that lawsuit, Mr. LaSala received a call from IBM's outside counsel.<sup>199</sup> IBM's outside counsel informed Mr. LaSala that Novell had certain rights under the APA<sup>200</sup>
102. At some later point, Mr. LaSala participated in a call between himself, the general counsel of IBM, IBM's outside counsel, and Novell's outside counsel.<sup>201</sup> During that call, IBM's outside counsel requested that Novell waive all claims that SCO had made or might make against IBM with respect to IBM's SVRX license.<sup>202</sup> Novell, through its outside counsel, responded that they were looking at the issue, that they would evaluate each on a case by case basis, and that Novell would take action accordingly.<sup>203</sup> Novell undertook that analysis, which resulted in letter written on June 9, 2003.<sup>204</sup>
103. On June 9, 2003, then-CEO of Novell Jack Messman wrote a letter to SCO CEO Darl McBride.<sup>205</sup> In that letter, Novell stated that SCO was advancing unsubstantiated charges and threatening action that could potentially injure Novell, Novell's customers, and the

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<sup>199</sup>Trial Tr. at 1886:19-1887:1.

<sup>200</sup>*Id.* at 1887:2-12.

<sup>201</sup>*Id.* 1908:18-1909:12.

<sup>202</sup>*Id.* at 1909:13-18.

<sup>203</sup>*Id.* at 1909:19-1910:4.

<sup>204</sup>*Id.* at 1910:5-8.

<sup>205</sup>Trial Ex. F16.

industry in general.<sup>206</sup> Mr. Messman explained that Novell and SCO had granted IBM an irrevocable, fully paid-up, perpetual right to exercise all of the rights under the IBM SVRX Licenses that IBM then held and that IBM had paid over \$10 million for this right.<sup>207</sup> Novell then quoted directly from Section 4.16(b) of the APA, stating that Novell had the sole discretion to waive any rights under any SVRX License.<sup>208</sup> Novell concluded, acting pursuant to Section 4.16(b), by directing “SCO to waive any purported right SCO may claim to terminate IBM’s SVRX Licenses enumerated in Amendment X or to revoke any rights thereunder.”<sup>209</sup> When SCO failed to take the action directed by Novell, Novell wrote a second letter on June 12, 2003.<sup>210</sup> In that letter, Novell, acting pursuant to Section 4.16(b) and on behalf of SCO, waived “any purported right SCO may claim to terminate IBM’s SVRX Licenses enumerated in Amendment X or to revoke any rights thereunder.”<sup>211</sup>

104. Novell wrote another letter to SCO on October 7, 2003, responding to SCO’s “position that code developed by IBM, or licensed by IBM from a third party, which IBM incorporated in AIX but which itself does not contain proprietary UNIX code supplied by

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<sup>206</sup>*Id.*

<sup>207</sup>*Id.*

<sup>208</sup>*Id.*

<sup>209</sup>*Id.*

<sup>210</sup>Trial Ex. 675.

<sup>211</sup>*Id.*

AT&T under the license agreements between AT&T and IBM ('IBM Code'), must nevertheless be maintained as confidential and may not be contributed to Linux."<sup>212</sup> In that letter, Novell disputed SCO's position, citing to various agreements.<sup>213</sup> Novell again cited to Section 4.16(b) of the APA and directed "SCO to waive any purported right SCO may claim to require IBM to treat IBM Code itself as subject to the confidentiality obligations or use restrictions of the Agreements."<sup>214</sup> When SCO failed to take the action directed by Novell, Novell, acting pursuant to Section 4.16(b), waived "any purported right SCO may claim to require IBM to treat IBM Code . . . which IBM incorporated in AIX but which itself does not contain proprietary UNIX code supplied by AT&T under the license agreements between AT&T and IBM, itself as subject to the confidentiality obligations or use restrictions of the Agreements."<sup>215</sup>

105. A similar interaction took place in relation to another company, Silicon Graphics, Inc. ("SGI"). On October 7, 2003, Novell wrote a letter to SCO disputing SCO's "position that code developed by SGI, or licensed by SGI from a third party, which SGI incorporated in its UNIX variant but which itself does not contain proprietary UNIX code supplied by AT&T under the license agreement between AT&T and SGI ("SGI Code"),

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<sup>212</sup>Trial Ex. F21.

<sup>213</sup>*Id.*

<sup>214</sup>*Id.*

<sup>215</sup>Trial Ex. 691.

must nevertheless be maintained as confidential and may not be contributed to Linux.”<sup>216</sup>

Novell stated that SCO’s position was “not supportable” and detailed the reasons why.<sup>217</sup>

Citing to Section 4.16(b) of the APA, Novell directed SCO “to waive any purported right SCO may claim to terminate SGI’s SVRX license or to revoke any rights thereunder.”<sup>218</sup>

Novell further directed SCO “to waive any purported right SCO may claim to require SGI to treat SGI code itself as subject to the confidentiality obligations or use restrictions of SGI’s SVRX license.”<sup>219</sup> Novell made clear that it was not “directing SCO to take any action (other than to waive termination) with respect to claims that SGI incorporated in Linux certain proprietary UNIX code supplied by AT&T under the SGI license agreement.”<sup>220</sup>

106. SCO also took this position with a third company, Sequent Computer Systems. Novell responded in similar fashion. On February 6, 2004, Novell wrote a letter to SCO directing SCO, under Section 4.16(b) of the APA, “to waive any purported right SCO may claim to require Sequent (or IBM as its successor) to treat Sequent Code as subject to the confidentiality obligations or use restrictions of Sequent’s SVRX license.”<sup>221</sup> When

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<sup>216</sup>Trial Ex. G21.

<sup>217</sup>*Id.*

<sup>218</sup>*Id.*

<sup>219</sup>*Id.*

<sup>220</sup>*Id.*

<sup>221</sup>Trial Ex. 108.

SCO failed to take the action directed by Novell, Novell, acting pursuant to Section 4.16(b), waived “any purported right SCO may claim to require Sequent (or IBM as its successor) to treat Sequent Code as subject to the confidentiality obligations or use restrictions of Sequent’s SVRX license.”<sup>222</sup>

107. Chris Stone, Senior Vice President of Novell from 1997 to 1999 and Vice Chairman of Novell from 2002 to 2004, testified that when Novell took these actions with respect to IBM, it was concerned about Novell, Linux, and the open source movement, and that SCO’s actions were damaging to that process.<sup>223</sup> Mr. Stone further testified that Novell’s actions were not motivated by something said or done by IBM and were not motivated by IBM’s purchase of \$50 million of Novell stock.<sup>224</sup> Jack Messman, Novell’s former CEO, similarly testified that Novell’s action to waive SCO’s claims against IBM was unrelated to IBM’s investment in Novell.<sup>225</sup>
108. As will be discussed below, the Court finds that Novell had the right, under Section 4.16 of the APA, to take these actions.

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<sup>222</sup>Trial Ex. 500.

<sup>223</sup>Trial Tr. at 1613:22-1614:3.

<sup>224</sup>*Id.* at 1638:3-11.

<sup>225</sup>*Id.* at 2298:24-2299:23.



### III. CONCLUSIONS OF LAW

#### A. SPECIFIC PERFORMANCE

109. SCO requests, as an alternative to its other claims for relief, an order directing Novell to transfer the UNIX and UnixWare copyrights. SCO's request for specific performance must be rejected for three reasons. First, the jury verdict has determined that the amended APA did not transfer the copyrights from Novell to SCO. Second, it was not the intent of the parties to transfer ownership of the copyrights. Finally, the copyrights are not required for SCO to exercise its right with respect to the acquisition of UNIX and UnixWare technologies. Each of these conclusions will be discussed in detail below.

##### *1. The Jury Verdict*

110. As set forth above, this matter came before the jury on the parties' competing claims for slander of title. While Novell's slander of title claim was dismissed on a Rule 50 motion, SCO's claim proceeded to the jury. The jury determined that the amended APA did not transfer the UNIX and UnixWare copyrights from Novell to SCO. Because the jury determined that SCO was not the owner of the copyrights, there was no need for the jury to determine SCO's claim for slander of title.

111. "[T]he Seventh Amendment prevents district courts from applying equitable doctrines on the basis of factual predicates rejected, explicitly or implicitly, by a jury verdict."<sup>226</sup> If

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<sup>226</sup>*Haynes Trane Serv. Agency, Inc. v. Am. Standard, Inc.*, 573 F.3d 947, 959 (10th Cir. 2009).

“the jury verdict by necessary implication reflects the resolution of a common factual issue . . . the district court may not ignore that determination.”<sup>227</sup>

112. SCO argues that the jury verdict does not resolve its claim for specific performance. SCO argues that its claim rests on findings not precluded by the jury verdict. In support of this argument, SCO posits a number of rather tenuous grounds on which the jury could have determined the question presented to it. The Court must respectfully disagree with SCO’s assessment.
113. As stated previously, the bulk of the evidence at trial concerned two issues: (1) whether the parties intended to transfer ownership of the copyrights; and (2) whether the copyrights were “required” for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies. Both parties presented substantial evidence and argument on these two issues.
114. The jury verdict in this case shows that the jury considered SCO’s evidence on these points and rejected that evidence in favor of the evidence presented by Novell. The jury verdict necessarily means that the jury found that it was not the intent of the parties to transfer ownership of the copyrights from Novell to SCO and that the copyrights were not required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies. As discussed in the Court’s Memorandum Decision and Order Denying SCO’s Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial, the jury’s verdict is well supported by the evidence.

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<sup>227</sup>*Ag Servs. of Am., Inc. v. Nielsen*, 231 F.3d 726, 732 (10th Cir. 2000).

115. SCO's claim for specific performance rests upon factual predicates rejected by the jury verdict. SCO's request for specific performance essentially asks the Court to ignore or overrule the jury verdict. Such relief is prohibited under the Seventh Amendment. For this reason, SCO's claim for specific performance must fail. Even if the jury verdict did not preclude SCO's claim for specific performance, it would be rejected for the reasons discussed below.

2. *The Intent of the Parties*

116. Much of the evidence at trial focused on the intent of the parties in drafting the APA. While Plaintiff presented a number of witnesses from both Novell and Santa Cruz who testified that it was the intent of the parties to transfer the copyrights, the Court, as evidently did the jury, finds the evidence presented by Novell on this issue to be more persuasive. The Court finds particularly persuasive the testimony of Novell's outside counsel Tor Braham, who was the lead drafter of the APA.

117. As set forth above, Mr. Braham's testimony showed that Novell purposefully retained ownership of the copyrights. Novell did so in order to protect its substantial retained interest in the UNIX business. Mr. Braham's testimony is supported by the testimony of James Tolonen who explained that retaining the copyrights was necessary: (1) because of the nature of the transaction; (2) because Santa Cruz could not afford the entire value; (3) to avoid ownership issues with other products; and (4) because of concerns with the long-term viability of Santa Cruz. Mr. Braham's testimony is further supported by Michael Defazio, an Executive Vice President at Novell, who testified that the copyrights were

retained as a way to “bulletproof” Novell’s financial asset stream. SCO’s witnesses on this issue are less credible for the reasons set forth above.

118. The parties’ dealings concerning Amendment No. 2 further support the conclusion that it was not the intent of the parties to transfer copyright ownership. As set forth above, Steve Sabbath, Santa Cruz general counsel, contacted Allison Amadia, in-house counsel for Novell, to discuss a “clerical error” resulting in the copyrights not being transferred. Santa Cruz sought an amendment which would have amended Schedule 1.1(b) to exclude all copyrights and trademarks, except for the copyrights and trademarks owned by Novell which pertain to the UNIX and UnixWare technologies. Upon further research, Ms. Amadia concluded that no clerical error had occurred and Novell specifically rejected the proposed amendment. Thus, Amendment No. 2 was written to state that all copyrights and trademarks were excluded, except for the copyrights and trademarks required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies. As testified to by both Ms. Amadia and Mr. Tolonen, this amendment addressed use, not ownership. This interaction shows Novell’s continued intent to retain the copyrights.

119. SCO argues that the forthright negotiator rule is applicable to Amendment No. 2. The Tenth Circuit has stated:

Where the parties assign different meanings to a term, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made  
(a) that party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party; or

(b) that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party.<sup>228</sup>

Here, there is no evidence to support the argument that Ms. Amadia had reason to know that SCO attached a different meaning to Amendment No. 2. Indeed, Ms. Amadia specifically testified that she informed Mr. Sabbath that Novell would not transfer the copyrights.<sup>229</sup>

120. SCO also argues that other provisions of the APA are consistent with it acquiring ownership of the copyrights. Specifically, SCO cites to the license back provision of the APA, Section 1.6. However, that provision only applies to the assets listed in the included asset schedule, which does not include the UNIX copyrights. Further, testimony concerning the TLA affirmed that one of the purposes of that agreement was to allow Novell the right to use post-APA SCO-developed code.<sup>230</sup> SCO also points to Section II of Schedule 1.1(a), which transferred “[a]ll of [Novell’s] claims arising after the Closing Date against any parties relating to any right, property or asset included in the Business.”<sup>231</sup> However, SCO provided no evidence of any such claims that it was entitled to pursue.

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<sup>228</sup>*Flying J Inc. v. Comdata Network, Inc.*, 405 F.3d 821, 837 (10th Cir. 2005) (citing Restatement (Second) of Contracts § 201(2)).

<sup>229</sup>Trial Tr. at 2120:15-2121:2.

<sup>230</sup>*Id.* at 1964:8-22; *id.* at 1984:6-1985:21.

<sup>231</sup>Trial. Ex. 1, Schedule 1.1(a), § II.

121. While it may have initially been the wish of individuals in both entities for Novell to sell and Santa Cruz to buy the entire UNIX business, that is not what happened. Rather, because Santa Cruz could not purchase the entire business, the deal had to be structured in a way different than had been originally envisioned. As all witnesses seemed to recognize, a primary component of the transaction was Novell's retention of a significant royalty stream. One of the ways that Novell chose to protect that royalty stream was to retain ownership of the copyrights. Based on all of the above, the Court finds that the intent of the parties did not entail transfer of ownership of the copyrights.

3. *Copyrights are not "Required"*

122. SCO further argues that transfer of ownership is appropriate because the copyrights are "required" under Amendment No. 2. SCO makes two arguments as to why ownership of the copyrights is required. First, it argues that ownership of the copyrights are required in order for it to protect its intellectual property. Second, SCO argues that ownership of the copyrights are necessary for its SCOsource licensing program. The Court rejects both arguments.

123. In order to fully understand both of these issues, the exact nature of the transaction between the parties must be understood. As set forth above, Novell initially envisioned selling the entire UNIX business that it had purchased from AT&T to Santa Cruz. However, because Santa Cruz could not afford the entire business, the transaction had to be restructured. The business was essentially divided into two components: the UNIX business and the UnixWare business. The UNIX business was the UNIX System V

source licensing business. Novell retained the royalties from the licenses and SCO acted as Novell's agent in their collection. Novell retained significant rights in order to protect its royalty stream. Additionally, Novell retained the copyrights as a way to "bulletproof" those royalties. The UnixWare business, on the other hand, was the business whereby SCO had the ability to go forward and create a new product. SCO would, of course, own the copyrights for whatever new code it created. With this understanding, the Court turns to SCO's arguments.

124. SCO argues that the copyrights are required to protect its intellectual property. The Court agrees with this general proposition. However, SCO was not the owner of the copyrights and, thus, had no right to enforce them. Further, the parties agree that SCO would own the copyrights to any newly developed code and could use those copyrights to protect against infringement. Thus, SCO has not shown that ownership of the UNIX copyrights is required to protect its own intellectual property.
125. SCO also argues that ownership of the copyrights is necessary to run its SCOSource licensing program. However, the language of Amendment No. 2 applies to copyrights required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies. The SCOSource program is not something SCO ever acquired from Novell. It appears that SCOSource was not something that was envisioned by either party at the time of the APA and its amendments. Further, both Mr. Tibbitts and Mr. McBride acknowledged that SCO could run its UnixWare business, which is something SCO did acquire from Novell, without the copyrights. Therefore, the Court finds that the

copyrights are not required for SCO to operate the business that it had acquired from Novell.

126. Based on the above, the Court finds that it was not the intent of the parties to transfer the copyrights and that the copyrights are not required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies. Further, the jury verdict precludes the Court from entering judgment in favor of SCO on its claim for specific performance. For all of the reasons stated, SCO's claim for specific performance must fail.

**B. DECLARATORY JUDGMENT**

127. Novell seeks declaratory relief that: (a) under Section 4.16(b) of the APA, Novell is entitled to direct SCO to waive claims against IBM, Sequent and other SVRX licensees; (b) Novell is entitled to waive such claims on SCO's behalf; and (c) SCO is obligated to recognize such a waiver.<sup>232</sup>

128. Section 4.16(b) of the APA states, in pertinent part:

Buyer shall not, and shall not have the authority to, amend, modify or waive any right under any SVRX License without the prior written consent of Seller. In addition, at Seller's sole discretion and direction, Buyer shall amend, supplement, modify or waive any rights under, or shall assign any rights to, any SVRX License to the extent so directed in any manner or respect by Seller. In the event that Buyer shall fail to take any such action concerning the SVRX Licenses as required herein, Seller shall be authorized, and hereby is granted, the rights to take any action on Buyer's own behalf.<sup>233</sup>

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<sup>232</sup>Docket No. 142, at 26.

<sup>233</sup>Trial Ex. 1, § 4.16(b).



129. “The scope of Novell’s waiver rights turns on the meaning of the term ‘SVRX License.’”<sup>234</sup> In order to understand the meaning of Section 4.16(b) and the term SVRX License, it is again necessary to understand the nature of the transaction between the parties.
130. As stated previously, Novell sold Santa Cruz the UnixWare business, while retaining substantial rights in the UNIX business. While Novell retained the financial portion of the UNIX business (the royalties from SVRX licenses), SCO acted as Novell’s agent in the collection of those royalties.<sup>235</sup>
131. Witnesses from both SCO and Novell recognized Novell’s ongoing financial interests and the importance of that interest. Section 4.16(b) was the key provision of the APA designed to protect Novell’s financial interest. As Mr. Braham testified, Section 4.16 was drafted to avoid any doubt that Novell had the right to control what happened with the UNIX business and that if SCO did not do what it was supposed to as Novell’s agent, Novell could step in and take what action it deemed necessary.<sup>236</sup>
132. The Court concludes that Novell’s waiver rights are not limited to product supplement agreements, as argued by SCO. The Court reaches this conclusion based on a number of things. First, the financial interest Novell had in the SVRX royalty stream necessitates such a finding. As stated above, Novell retained a significant financial interest and Mr.

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<sup>234</sup>*The SCO Group, Inc.*, 578 F.3d at 1219.

<sup>235</sup>Trial Ex. 1, § 4.16(a).

<sup>236</sup>Trial Tr. at 2354:6-2355:13.

Braham, as well as others, testified that Section 4.16 of the APA was designed to protect that interest. The somewhat hierarchical structure of the three types of agreements leads to the conclusion that Novell must retain rights over the software and sublicensing agreements as well. As was explained by Mr. Broderick, each company was required to obtain a software agreement. If Novell did not have the authority over the software agreements, SCO could easily cancel that agreement, necessarily cancelling both the sublicensing and product supplement agreements, and thereby deprive Novell of revenue.

133. Another consideration in support of the Court's conclusion is the contract language itself. The contract is not limited to product supplement agreements. The contract language refers to "SVRX Licenses" and does not differentiate between the three types of agreements. Further, other language in the APA, specifically Section 1.2(e) and Item VI of Schedule 1.1(a), support a broad reading of the language.
134. Finally, the Court considers SCO's evidence on this point to be less credible than that of Novell. For all of these reasons, the Court finds that Novell's waiver rights extend to software agreements, sublicensing agreements, and product supplement agreements.
135. With this conclusion in mind, the Court turns to Novell's actions with regard to its waiver rights. On June 9, 2003, Novell directed SCO to waive any right SCO may claim to terminate IBM's SVRX Licenses or to revoke any rights thereunder. When SCO failed to act, Novell waived those rights on SCO's behalf. On October 7, 2003, Novell directed SCO to waive any right SCO may claim to require IBM to treat IBM code as subject to the confidentiality obligations or use restrictions of IBM's SVRX Licenses. When SCO

failed to act, Novell waived that right on SCO's behalf. Novell took similar actions in relation to SGI and Sequent.

136. The Court finds that Novell had the authority under Section 4.16(b) of the APA to direct SCO to waive its claims against these SVRX licensees, that Novell had the authority to waive such claims on SCO's behalf, and that SCO was obligated to recognize such waivers.

### **C. IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

137. SCO argues that Novell's actions in directing SCO to waive certain claims against IBM, SGI, and Sequent breached the implied covenant of good faith and fair dealing.

138. The APA is governed by California law.<sup>237</sup> Under California law, "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement."<sup>238</sup> "The covenant of good faith finds particular application in situations where one party is invested with a discretionary power affecting the rights of another. Such power must be exercised in good faith."<sup>239</sup> That said, "[i]t is universally recognized the scope of conduct prohibited by the covenant of good faith is circumscribed by the purposes and express terms of the contract."<sup>240</sup> The Court is "aware of no reported case in which a court has held the covenant of good faith may be read to prohibit a party from

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<sup>237</sup>Trial Ex. 1, § 9.8.

<sup>238</sup>*Carma Developers (Cal.), Inc. v. Marathon Dev. Cal., Inc.*, 826 P.2d 710, 726 (Cal. 1992) (quotation marks and citation omitted).

<sup>239</sup>*Id.*

<sup>240</sup>*Id.* at 727.

doing that which is expressly permitted by an agreement. On the contrary, as a general matter, implied terms should never be read to vary express terms.”<sup>241</sup>

139. In this matter, the Tenth Circuit has cautioned “that it is not always the case that an express grant of contractual authority is not constrained by the operation of the covenant of good faith.”<sup>242</sup> “California recognizes at least two exceptional situations where the covenant of good faith may inform the interpretation of even an express grant of contractual authority. First, where the express discretion makes the contract, viewed as a whole, ‘contradictory and ambiguous,’ the implied covenant may be applied to aid in construction.”<sup>243</sup> “Second, the covenant may aid in the interpretation of a contract seemingly expressly granting unbridled discretion ‘in those relatively rare instances when reading the provision literally would, contrary to the parties’ clear intention, result in an unenforceable, illusory agreement.’”<sup>244</sup>
140. Considering Novell’s actions, the implied covenant of good faith and fair dealing, and the exceptional situations discussed by the Tenth Circuit, the Court finds that SCO’s breach of the implied covenant of good faith and fair dealing claim must fail.

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<sup>241</sup>*Id.* at 728.

<sup>242</sup>*The SCO Group, Inc.*, 578 F.3d at 1225.

<sup>243</sup>*Id.* (citing *April Enters., Inc. v. KTTV*, 147 Cal. App. 3d 805, 816 (Cal. Ct. App. 1983)).

<sup>244</sup>*Id.* (quoting *Third Story Music, Inc. v. Waits*, 41 Cal. App. 4th 798, 808 (Cal. Ct. App. 1995)).

141. The Court finds, as an initial matter, that the actions Novell took with respect to IBM, SGI, and Sequent were pursuant to an express contractual provision granting it the authority to do so for the reasons discussed above. Thus, generally speaking, Novell's conduct would not be a breach of the implied covenant.
142. Considering the exceptional circumstances discussed by the Tenth Circuit on appeal, the Court finds that neither are present here.
143. The first exceptional circumstance applies where the express discretion makes the contract, viewed as a whole, "contradictory and ambiguous," the implied covenant may be applied to aid in construction.<sup>245</sup> Under the contract at issue in *April Enterprises*, one party had the right to syndicate episodes of a television show, while the other had the right to erase episodes of the show. Both parties shared revenues from compensation. Although the contract expressly granted one party the right to erase episodes, the court applied the covenant of good faith, holding that the contract was contradictory and ambiguous as to whether tapes could be erased while the other party was negotiating for syndication.
144. SCO argues that Novell's interpretation of Section 4.16(b) creates the same contradiction and ambiguity because, if Novell could change any part of the contracts that embody the UNIX-based business that Novell transferred, it could destroy that business. This argument, however, hinges on a faulty premise: that Novell transferred the UNIX business to SCO. As set forth above, Novell transferred the UnixWare business to SCO,

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<sup>245</sup>*April Enters., Inc.*, 147 Cal. App. 3d at 816.

while retaining substantial rights in the UNIX business. SCO's involvement with the UNIX business was as Novell's agent and those portions of the UNIX business that did transfer to SCO were transferred to aid SCO in this role. Because Novell did not transfer the entire UNIX business, it could take the above actions in relation to that business and the contractual provision allowing for such action cannot be viewed as contradictory or ambiguous.

145. The second exceptional circumstance, as stated in *Third Story Music, Inc. v. Waits*, provides that “courts are not at liberty to imply a covenant directly at odds with a contract’s express grant of discretionary power except in those relatively rare instances when reading the provision literally would, contrary to the parties’ clear intention, result in an unenforceable, illusory agreement.”<sup>246</sup> As set forth throughout this Order, this is not such a “rare instance.”
146. Further, the Court finds that SCO’s claim for breach of the implied covenant of good faith and fair dealing fails because Novell acted in good faith according to a reasonable interpretation of the contract language. A breach of the implied covenant requires “objectively unreasonable conduct, regardless of the actor’s motive.”<sup>247</sup> Here, the Court finds that Novell’s conduct was objectively reasonable, considering its actions and the language of the APA. The Court finds that Novell’s actions were motivated to protect its

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<sup>246</sup>*Third Story Music, Inc.*, 41 Cal. App. 4th at 808.

<sup>247</sup>*Carma Developers*, 826 P.2d at 727.

own interests and those of the open source community and were not taken because of influence by IBM or any ill-will toward SCO.

#### IV. CONCLUSION


Based on the foregoing, it is hereby

ORDERED that Novell's claim for declaratory judgment is GRANTED. It is further

ORDERED that SCO's claims for specific performance and breach of the implied covenant of good faith and fair dealing are DENIED.

DATED June 10, 2010.

BY THE COURT:



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TED STEWART  
United States District Judge

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

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THE SCO GROUP, INC., a Delaware  
corporation,

Plaintiff/Counterclaim Defendant,

vs.

NOVELL, INC., a Delaware corporation,

Defendant/Counterclaim Plaintiff.

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MEMORANDUM DECISION AND  
ORDER DENYING SCO'S  
RENEWED MOTION FOR  
JUDGMENT AS A MATTER OF  
LAW OR, IN THE ALTERNATIVE,  
FOR A NEW TRIAL

Case No. 2:04-CV-139 TS

This matter comes before the Court on SCO's Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial. For the reasons discussed below, the Court will deny the Motion.



## I. BACKGROUND

This matter came before the Court for trial from March 8, 2010, through March 26, 2010. The sole issue before the jury was SCO's claim for slander of title.<sup>1</sup> After its deliberations, the jury found that the amended Asset Purchase Agreement ("APA") did not transfer the UNIX and UnixWare copyrights from Novell to SCO.<sup>2</sup> Because it found that SCO was not the owner of the UNIX and UnixWare copyrights, there was no need for the jury to reach SCO's slander of title claim.

In the instant Motion, SCO argues that the "jury simply got it wrong."<sup>3</sup> As a result, SCO argues that it is entitled to judgment as a matter of law or, in the alternative, a new trial. Novell opposes the Motion.

## II. DISCUSSION

### A. JUDGMENT AS A MATTER OF LAW

Under Fed.R.Civ.P. 50, a court should render judgment as a matter of law when "a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue."<sup>4</sup> A party which has made a motion for

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<sup>1</sup>Novell's counterclaim for slander of title was disposed of on a Rule 50 Motion and the parties remaining claims were tried to the Court and are addressed in the Court's Findings of Fact and Conclusions of law issued contemporaneously herewith.

<sup>2</sup>Docket No. 846.

<sup>3</sup>Docket No. 872 at 1.

<sup>4</sup>Fed. R. Civ. P. 50(a)(1).

judgment as a matter of law under Rule 50(a) prior to a jury verdict may renew that motion under Rule 50(b) after judgment is rendered.

“In [entertaining a motion for judgment as a matter of law], the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence.”<sup>5</sup> “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.”<sup>6</sup>

The Tenth Circuit has made it clear that judgment as a matter of law is to be “cautiously and sparingly granted,”<sup>7</sup> and is only appropriate when there is no way to legally justify a jury verdict. Judgment as a matter of law is appropriate only “[i]f there is no legally sufficient evidentiary basis . . . with respect to a claim or defense . . . under the controlling law,”<sup>8</sup> or if “the evidence points but one way and is susceptible to no reasonable inferences which may support the opposing party’s position.”<sup>9</sup> “Judgment as a matter of law is improper unless the evidence so overwhelmingly favors the moving party as to permit no other rational conclusion.”<sup>10</sup>

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<sup>5</sup>*Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554-555 (1990).

<sup>6</sup>*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

<sup>7</sup>*Weese v. Schukman*, 98 F.3d 542, 547 (10th Cir. 1996).

<sup>8</sup>*Baty v. Willamette Indus., Inc.*, 172 F.3d 1232, 1241 (10th Cir. 1999) (quoting Fed. R. Civ. P. 50).

<sup>9</sup>*Finley v. United States*, 82 F.3d 966, 968 (10th Cir. 1996).

<sup>10</sup>*Shaw v. AAA Eng’g & Drafting*, 213 F.3d 519, 529 (10th Cir. 2000).

SCO argues that it is entitled to judgment as a matter of law “because the verdict cannot be squared with the overwhelming evidence and the law.”<sup>11</sup> The Court respectfully disagrees. The jury was presented with two versions of the deal between Novell and Santa Cruz, SCO’s predecessor in interest. On the one hand, SCO argued that the deal was essentially an acquisition of the UNIX and UnixWare business, wherein Santa Cruz acquired all of the business, including the copyrights. Novell, on the other hand, argued that the deal was more complex and that Santa Cruz only acquired the UnixWare business and that Novell retained significant rights in the UNIX business, such as the copyrights and the right to receive SVRX royalties. Evidently, the jury found Novell’s version of facts to be more persuasive. This conclusion is well supported by the evidence.

There was substantial evidence that Novell made an intentional decision to retain ownership of the copyrights. For instance, Tor Braham, outside counsel for Novell and lead drafter of the APA, testified that Novell was selling to Santa Cruz the UnixWare business and retaining the UNIX business.<sup>12</sup> Mr. Braham testified that the exclusion of the copyrights was agreed upon by the parties.<sup>13</sup> Mr. Braham stated that the purpose for excluding the copyrights was to protect Novell’s interest in the UNIX business that it had retained.<sup>14</sup>

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<sup>11</sup>Docket No. 872 at 4.

<sup>12</sup>Trial Tr. at 2347:2-5.

<sup>13</sup>*Id.* at 2363:19-23.

<sup>14</sup>*Id.* at 2364:3-11.

Mr. Braham’s testimony is supported by James Tolonen, Novell’s Chief Financial Officer at the time of the APA and Amendment No. 2, who testified that the copyrights were purposefully excluded from the assets to be transferred to Santa Cruz.<sup>15</sup> Mr. Tolonen explained that retaining the copyrights was: (1) “part of [Novell’s] strategy and really necessary under the nature of the transaction”; (2) necessary because Santa Cruz was relatively small and could not afford the entire value; (3) necessary to avoid ownership issues with other products; and (4) necessary because of concerns with the long-term viability of Santa Cruz.<sup>16</sup>

That testimony is further supported by Michael Defazio, an executive vice president at Novell at the time of the APA, who testified that the intent of the APA was not to transfer the copyrights and that the copyrights were retained as a way to “bulletproof” Novell’s financial asset stream.<sup>17</sup>

All such testimony is further supported by the minutes of Novell’s Board of Directors, which resolved that “Novell will retain all of its patents, copyrights and trademarks (except for the trademarks UNIX and UnixWare).”<sup>18</sup>

It is true that SCO presented more witnesses who testified that it was the intent of the parties to transfer the copyrights as part of the deal but, as the jury was instructed, the number of

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<sup>15</sup>*Id.* at 2021:24-2022:3.

<sup>16</sup>*Id.* at 2022:7-2023:18.

<sup>17</sup>*Id.* at 2311:7-17.

<sup>18</sup>Trial Ex. Z3.

witnesses is not determinative.<sup>19</sup> Thus, there was more than sufficient evidence on which the jury could determine that it was not the parties intent to transfer the copyrights.

SCO nonetheless argues that the copyrights were required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies under Amendment No. 2. Again, there was testimony presented that it was not the intent of Novell, in executing Amendment No. 2, to transfer ownership of the copyrights. Allison Amadia, who worked as in-house counsel for Novell at the time of Amendment No. 2 and was the lead negotiator and drafter of that document, testified that after reviewing the APA and consulting with Tor Braham and James Tolonen, the decision was made not to alter the APA with regard to copyright ownership.<sup>20</sup> In fact, Novell rejected a draft amendment from SCO which would have transferred ownership of the copyrights “which pertain to the UNIX and UnixWare technologies and which SCO has acquired hereunder. . . .”<sup>21</sup> Ms. Amadia further testified that Amendment No. 2 was meant to affirm that SCO had the right to use, manufacture, and make modifications to the UNIX technology. James Tolonen similarly testified that Amendment No. 2 was meant to address use rights, not ownership.<sup>22</sup>

Further, SCO witnesses acknowledged that SCO could operate its UnixWare business without the copyrights. Mr. McBride, SCO’s former CEO, admitted that SCO could run its

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<sup>19</sup>Jury Instruction No. 12.

<sup>20</sup>Trial Tr. at 2119:25-2120:6.

<sup>21</sup>Trial Ex. T34.

<sup>22</sup>*Id.* at 2036:5-22.

UnixWare business without the copyrights.<sup>23</sup> Mr. Tibbitts, SCO's general counsel, similarly stated that SCO could run its UNIX product business without the UNIX and UnixWare copyrights.<sup>24</sup> Indeed, SCO had offered to sell its business without the copyrights.<sup>25</sup> Moreover, it was undisputed that SCO would own any newly developed code and could obtain copyrights to protect that code.<sup>26</sup> Finally, while SCO's witnesses testified that the copyrights were "required" for SCO to run its SCOSource licensing program, this was not something that SCO ever acquired from Novell.

SCO relies on Recital A in arguing that SCO acquired the "Business," which is defined as "the business of developing a line of software products currently known as Unix and UnixWare, the sale of binary and source code licenses to various versions of Unix and UnixWare, the support of such products and the sale of other products which are directly related to Unix and UnixWare."<sup>27</sup> SCO, however, ignores Recital B which states that Santa Cruz would only acquire "certain assets."<sup>28</sup> Those "certain assets" are set forth in more detail in Schedule 1.1(a) and do

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<sup>23</sup>*Id.* at 1225:18-1226:10.

<sup>24</sup>*Id.* at 1850:11-1851:18.

<sup>25</sup>*Id.*

<sup>26</sup>*Id.* at 933:2-7; *id.* at 939:3-18; *id.* at 816:19-817:14.

<sup>27</sup>Trial Ex. 1, Recital A.

<sup>28</sup>*Id.*, Recital B.

not include the excluded assets set out in Schedule 1.1(b).<sup>29</sup> Under the plain language of the original APA, the copyrights were excluded from the transaction.<sup>30</sup>

SCO also points to Section II of Schedule 1.1(a), which transferred “[a]ll of [Novell’s] claim arising after the Closing Date against any parties relating to any right, property or asset included in the Business.”<sup>31</sup> However, SCO provided no evidence of any such claims that it was entitled to pursue.

Based on the above, the Court finds that SCO is not entitled to judgment as a matter of law on its claim for copyright ownership.

#### B. NEW TRIAL

SCO moves, in the alternative, for a new trial under Fed.R.Civ.P. 59. Rule 59(a) provides that a new trial may be granted “after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court.”<sup>32</sup> The Tenth Circuit has stated that “[a] motion for new trial on the grounds that the jury verdict is against the weight of the evidence . . . involve[s] the discretion of the trial court . . . . The inquiry focuses on whether the verdict is clearly, decidedly or overwhelmingly against the weight of the evidence.”<sup>33</sup>

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<sup>29</sup>*Id.*, § 1.1(a); *id.*, Schedule 1.1(a); *id.*, Schedule 1.1(b).

<sup>30</sup>*Id.*, Schedule 1.1(b), § V.

<sup>31</sup>Trial. Ex. 1, Schedule 1.1(a), § II.

<sup>32</sup>Fed. R. Civ. P. 59(a).

<sup>33</sup>*Black v. Heib’s Enterprises, Inc.*, 805 F.2d 360, 363 (10th Cir. 1986).

SCO argues that the “overwhelming weight of the evidence . . . [shows] that a transfer of copyrights was intended.”<sup>34</sup> It is certainly true that SCO presented more witnesses than Novell concerning the intent of the parties, however, the mere fact that SCO presented more witnesses does not show that the verdict is clearly, decidedly, or overwhelmingly against the weight of the evidence. The jury could have rejected the testimony of SCO’s witnesses for a number of reasons, including their lack of involvement in drafting the APA, the fact that there was little testimony on any actual discussions concerning the transfer of copyrights, or that many of the witnesses had a financial interest in the litigation.

SCO also relies on the “Forthright Negotiator Rule.” Under that rule,

Where the parties assign different meanings to a term,  
it is interpreted in accordance with the meaning attached by one of them if at the  
time the agreement was made

- (a) that party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party; or
- (b) that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party.<sup>35</sup>

Here, there is no evidence to support the argument that Ms. Amadia had reason to know that SCO attached a different meaning to Amendment No. 2. Indeed, Ms. Amadia specifically testified that she informed Mr. Sabbath that Novell would not transfer the copyrights.<sup>36</sup>

SCO also cites to the TLA as providing support for the transfer of copyrights. The testimony concerning the TLA, however, affirmed that one of the purposes of that agreement was

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<sup>34</sup>Docket No. 872 at 15.

<sup>35</sup>*Flying J Inc. v. Comdata Network, Inc.*, 405 F.3d 821, 837 (10th Cir. 2005) (citing Restatement (Second) of Contracts § 201(2)).

<sup>36</sup>Trial Tr. at 2120:15-2121:2.



to allow Novell the right to use post-APA SCO-developed code.<sup>37</sup> Further, the TLA licensed assets that were transferred under the APA, which did not include the copyrights.

SCO also points to various course of performance evidence in support of its argument. However, this evidence, either individually or in combination, does not support the notion that it was the intent of the parties to transfer copyright ownership.

Finally, SCO argues that the copyrights were required for it to exercise its rights with respect to the acquisition of the UNIX and UnixWare technologies. However, as set forth above, there was evidence that SCO did not need the copyrights to operate the UnixWare business, that it could obtain copyrights to protect any newly developed code, and that the SCOSource licensing program was not something that SCO acquired from Novell. Thus, this argument fails.

For each of these reasons, the Court finds that the verdict is not clearly, decidedly, or overwhelmingly against the weight of the evidence. Therefore, SCO is not entitled to a new trial.

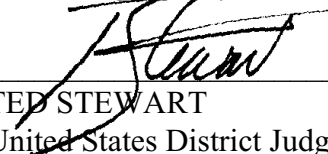
### III. CONCLUSION

It is therefore

ORDERED that SCO's Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial (Docket No. 871) is DENIED.

DATED June 10, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

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<sup>37</sup>*Id.* at 1964:8-22; *id.* at 1984:6-1985:21.

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

<p>THE SCO GROUP, INC., a Delaware corporation, Plaintiff/Counterclaim Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation, Defendant/Counterclaim Plaintiff.</p>	<p>FINAL JUDGMENT</p> <p>Case No. 2:04-CV-139 TS</p>
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This matter came before the Court for trial on March 8, 2010, through March 26, 2010. Based on the Jury Verdict and the Court's Findings of Fact and Conclusions of Law, Final Judgment is entered as follows:

1. Judgment is entered in favor of Novell and against SCO on SCO's claim for slander of title pursuant to the Jury Verdict.
2. Judgment is entered in favor of Novell and against SCO on SCO's claim for specific performance pursuant to the Court's Findings of Fact and Conclusions of Law.
3. Judgment is entered in favor of Novell and against SCO on Novell's claim for declaratory relief pursuant to the Court's Findings of Fact and Conclusions of Law. Specifically, the Court declares:

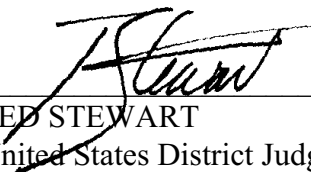
- a. Under § 4.16(b) of the APA, Novell is entitled, at its sole discretion, to direct SCO to waive its purported claims against IBM, Sequent and other SVRX licensees;
  - b. Under § 4.16(b) of the APA, Novell is entitled to waive on SCO's behalf SCO's purported claims against IBM, Sequent and other SVRX licensees, when SCO refuses to act as directed by Novell; and
  - c. SCO is obligated to recognize Novell's waiver of SCO's purported claims against IBM and Sequent.
4. Judgment is entered in favor of Novell and against SCO on SCO's claim for breach of the implied covenant of good faith and fair dealing pursuant to the Court's Findings of Fact and Conclusions of Law.

The Clerk of the Court is directed to close this case forthwith.

SO ORDERED.

DATED June 10, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

# **EXHIBIT 4**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

<p>THE SCO GROUP, INC., by and through the Chapter 11 Trustee in Bankruptcy, Edward N. Cahn,  Plaintiff/Counterclaim-Defendant,  vs.  NOVELL, INC., a Delaware corporation,  Defendant/Counterclaim-Plaintiff.</p>	<p><b>SCO'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, FOR A NEW TRIAL</b>  <b>(ORAL ARGUMENT REQUESTED)</b>  Civil No. 2:04 CV-00139  Judge Ted Stewart</p>
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Plaintiff, The SCO Group, Inc. (“SCO”), pursuant to Rule 50(b) of the Federal Rules of Civil Procedure, hereby respectfully moves the Court for judgment as a matter of law in favor of SCO for the reasons set forth in SCO’s Memorandum in Support of Its Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial, submitted herewith. In the alternative, SCO respectfully moves the Court to grant SCO a new trial pursuant to Rule 59 of the Federal Rules of Civil Procedure, for the reasons set forth in that same memorandum.

DATED this 27th day of April, 2010.

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**CERTIFICATE OF SERVICE**

I, Brent O. Hatch, hereby certify that on this 27th day of April, 2010, a true and correct copy of the foregoing **SCO'S RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, FOR A NEW TRIAL** was filed with the Court and served via electronic mail to the following recipients:

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

<p>THE SCO GROUP, INC., by and through the Chapter 11 Trustee in Bankruptcy, Edward N. Cahn,  Plaintiff/Counterclaim-Defendant,  vs.  NOVELL, INC., a Delaware corporation,  Defendant/Counterclaim-Plaintiff.</p>	<p><b>SCO'S MEMORANDUM IN SUPPORT OF ITS RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, FOR A NEW TRIAL</b></p> <p>Civil No. 2:04 CV-00139</p> <p>Judge Ted Stewart</p>
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Plaintiff/Counterclaim-Defendant, The SCO Group, Inc. (“SCO”), respectfully submits this Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial.<sup>1</sup>

### **PRELIMINARY STATEMENT**

The jury verdict in this case is the type for which Rule 50(b) and Rule 59 exist. The jury simply got it wrong: The verdict cannot be reconciled with the overwhelming evidence or the Court’s clear instructions regarding the controlling law. The jury answered “no” to the single question: “Did the amended Asset Purchase Agreement transfer the UNIX and UnixWare copyrights from Novell to SCO?” We do not know whether the verdict resulted from misapprehension of the jury instructions, confusion about the meaning of prior judicial decisions that Novell read into the record for the ostensible purpose of challenging SCO’s damages theory, Novell’s persistent efforts to focus the jury on the old language of the Asset Purchase Agreement (“APA”) which was replaced by a binding amendment, or other factors.

Whatever the explanation for the verdict, the evidence demonstrated that ownership of the UNIX and UnixWare copyrights is required for SCO to exercise the complete ownership rights in the UNIX and UnixWare technologies (including the source code) it acquired under the APA, and that the amended APA provides that such copyrights were transferred. That record compels judgment as a matter of law for SCO under Rule 50(b). At a minimum, the verdict is clearly against the substantial weight of the evidence, necessitating a new trial under Rule 59.

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<sup>1</sup> These motions and SCO’s Proposed Findings on its claim for specific performance all relate to the ownership of the UNIX and UnixWare copyrights. SCO believes the appropriate order of consideration is for the Court first to decide the Rule 50(b) motion which, if granted, would set aside the jury determination on ownership of the copyrights as a matter of law; if that were not granted, to consider SCO’s alternative motion for a new trial under Rule 59; and if neither of these post-trial motions were granted, to determine SCO’s claim for specific performance to receive transfer of the UNIX and UnixWare copyrights at this time.

Amendment No. 2, together with the APA, means that SCO acquired the copyrights “required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies.” The Tenth Circuit’s opinion supports that reading, and at trial the chief negotiator and sole drafter of the Amendment for Novell admitted it. There is no reasonable interpretation of Amendment No. 2 to the contrary. For a variety of reasons, it stretches reason beyond the breaking point to characterize the Amendment as merely “affirming” that SCO had received some sort of “license” under the APA. In the hundreds of pages of agreements, press releases, SEC filings, letters, and other contemporaneous documentation, there is not one word of a license from Novell to SCO for use of the UNIX and UnixWare copyrights.

The evidence further demonstrated beyond any reasonable dispute that the UNIX and UnixWare copyrights were required for SCO to exercise its full ownership rights with respect to the UNIX and UnixWare technologies. The evidence in SCO’s favor on this obvious point is overwhelming. The UNIX and early UnixWare technology lies at the heart of SCO’s subsequent versions of UnixWare, including the current version of UnixWare. Without copyright ownership SCO cannot assert rights or bring suit to protect that technology against misuse by third parties, and without the ability to protect the technology, SCO cannot maintain its UNIX business or exercise the full ownership rights to exploit, develop, and defend the core UNIX source code. While SCO could physically continue to sell its UnixWare and OpenServer products without copyright ownership, SCO could not fully maintain its UnixWare business without the ability to enforce the copyrights in the core UNIX technology.

In addition, SCO indisputably acquired “[a]ll of Seller’s claims arising after the Closing Date against any parties relating to any right, property or asset included in the Business.” (APA Schedule 1.1(a), Item II.) SCO thus acquired, among other claims, all of the claims, which

Novell otherwise would have, relating to the use or misuse of the UNIX and UnixWare source code – including all copyright claims concerning that source code. The law requires that SCO own the UNIX and UnixWare copyrights to prosecute such claims.

At a minimum, the verdict is clearly against the weight of the evidence. While there was some evidence by Novell witnesses to the contrary, the significantly more substantial and more persuasive evidence was that in the sale of a software business and source code, the parties did not agree that the seller could withhold the copyrights reflecting ownership of that source code. The business negotiators agreed that the parties intended for SCO to acquire the copyrights, and the course of performance after the APA was signed confirms that intent. An exclusion of the copyrights in the original APA nevertheless resulted, from either a mistake (negotiators who understood the exclusion to refer solely to Novell’s NetWare copyrights) or a last-minute, overzealous decision between Novell’s general counsel and its outside counsel (who admitted that they never asked the business negotiators whether any such exclusion was part of the deal). Regardless, Amendment No. 2 replaced the exclusion, and it did not merely preserve a status quo in which SCO had acquired some sort of “license.”

## **ARGUMENT**

### **I. SCO IS ENTITLED TO JUDGMENT AS A MATTER OF LAW**

Rule 50 requires that the verdict be set aside if there was not a “legally sufficient evidentiary basis” for a “reasonable jury” to have reached that verdict. Fed. R. Civ. P. 50(a)(1). Rule 50 is satisfied where the “evidence points but one way,” Wagner v. Live Nat’l Motor Sports, Inc., 586 F.3d 1237, 1244 (10th Cir. 2009), or “the evidence so overwhelmingly favors the moving party as to permit no other rational conclusion,” Shaw v. AAA Eng’g & Drafting, 213 F.3d 519, 529 (10th Cir. 2000); see, e.g., Vanmeveren v. Whirlpool Corp., 65 Fed. Appx. 698, 700-01 (10th Cir. 2003); J.I. Case Credit Corp. v. Crites, 851 F.2d 309, 311-16 (10th Cir.

1988). At the close of all the evidence, SCO moved for judgment on its claim to copyright ownership under Rule 50(a) on the grounds that ownership of the copyrights was required for SCO to exercise its rights in connection with its acquisition of the UNIX and UnixWare technologies, and now renews the motion under Rule 50(b) because the verdict cannot be squared with the overwhelming evidence and the law.<sup>2</sup>

**A. SCO Acquired the Copyrights Required to Exercise SCO's Ownership Rights in the UNIX and UnixWare Technologies It Acquired.**

The only reasonable interpretation of Amendment No. 2 – an interpretation that Novell's own negotiator of the Amendment adopted at trial – is that SCO acquired all copyrights “required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies.”

SCO acquired the “Business” of developing, licensing, and supporting UNIX and UnixWare software products, including the sale of both source and binary code licenses. (Ex. 1 (APA), Recital A.) The APA effectuated that asset transfer by specifying a schedule of transferred assets, Schedule 1.1(a) (the Assets Schedule), and a schedule of excluded assets, Schedule 1.1(b) (the Excluded Assets Schedule). (Id. § 1.1(a).)

The Assets Schedule covers copyrights by providing for the transfer of “All rights of ownership” in, among other things, the source code for all then-extant versions of UNIX and UnixWare. While the language of the Excluded Asset Schedule originally excluded all

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<sup>2</sup> On March 26, 2010, the day the jury received the case, the Court denied SCO's Rule 50(a) motion as “moot.” While that would have been true of a motion directed to Novell's slander of title claim, SCO's Rule 50(a) motion was directed to SCO's claim relating to copyright ownership (the sole question on which the jury returned a verdict). The motion may now be renewed under Rule 50(b). If granted, the motion would then require a new trial limited to whether slander of title occurred and whether (and to what extent) SCO suffered damages.

copyrights from the transferred assets, that language was replaced by Amendment No. 2. Item I of Schedule 1.1(a) identifies the full scope of the transferred assets as consisting of:

All rights and ownership of UNIX and UnixWare, including but not limited to all versions of UNIX and UnixWare and all copies of UNIX and UnixWare (including revisions and updates in process), and all technical, design, development, installation, operation and maintenance information concerning UNIX and UnixWare, including source code, source documentation, source listings and annotations, appropriate engineering notebooks, test data and test results, as well as all reference manuals and support materials normally distributed by Seller to end-users and potential end-users in connection with the distribution of UNIX and UnixWare, such assets to include without limitation the following:

Item I then proceeds to identify by name or reference all UNIX and UnixWare source code products and binary products.

As the Tenth Circuit recognized in its decision remanding the case for trial, the specific, catch-all phrase “All rights and ownership of UNIX and UnixWare” includes the copyrights of UNIX and UnixWare – the core intellectual property on which the UNIX and UnixWare licensing business depends. The SCO Group, Inc. v. Novell, Inc., 578 F.3d 1201, 1213-14 (10th Cir. 2009). A transfer of “all right, title and interest to computer programs and software can only mean the transfer of the copyrights as well as the actual computer program or disks.” Shugrue v. Cont’l Airlines, Inc., 977 F. Supp. 280, 286 (S.D.N.Y. 1997) (emphasis added); see also ITOFCA, Inc. v. Megatrans Logistics, Inc., 322 F.3d 928, 931 (7th Cir. 2003) (transfer of “all assets” to a business includes copyrights); Relational Design & Tech., Inc. v. Brock, No. 91-2452-EEO, 1993 WL 191323, at \*6 (D. Kan. May 25, 1993) (transfer of “all rights” in a program includes copyrights). In addition, the “without limitation” language makes clear that the list of Items that follow in the Assets Schedule is non-exhaustive. Where copyrights are one of the “rights and ownership” of UNIX and UnixWare covered by Item I of Schedule 1.1(a), such copyrights need not have been expressly included under the intellectual property subheading in



Item V of the Schedule. When Novell and SCO agreed to remove the language excluding copyrights from the APA by executing Amendment No. 2, the effect was that copyrights were included under “rights and ownership” in the Assets Schedule, as the Tenth Circuit indicated. SCO, 578 F.3d at 1213-14 (“[A]ny change to the set of Excluded Assets in Schedule 1.1(b) necessarily implicated those copyrights actually transferred under Schedule 1.1(a).”).

The inclusion of copyrights in the sale of the source code is logical. Indeed, it is difficult to comprehend that a party would or could transfer “all rights and ownership of” source code while retaining the copyrights. In a licensing arrangement, the licensor does not transfer all rights and ownership of the source code. Here, where Novell sold “all” ownership, it logically follows that the copyright ownership would be included in the sale. This common-sense proposition is reflected in the testimony of numerous witnesses, addressed below, who spoke to what they saw as the obvious inclusion of copyrights in the sale of the UNIX and UnixWare source code. Indeed, the only alternative interpretation that Novell offered at trial – that Amendment No. 2 “affirms” that SCO obtained a “license” to copyrighted material that SCO requires – finds no support in the plain language. As the Tenth Circuit observed: “Whatever the Amendment means, it refers to the ownership of copyrights, not to licenses.” SCO, 578 F.3d at 1216 (emphasis added).

With respect to the extrinsic evidence, moreover, Novell’s own chief witness for and negotiator of Amendment No. 2 ultimately acknowledged that copyrights that are required for SCO to exercise its rights in the UNIX and UnixWare technologies it had acquired were transferred, not licensed, to SCO. Alison Amadia confirmed on cross-examination that “if there are copyrights that are required for SCO to exercise its rights, like the UNIX and UnixWare

trademarks, they were transferred.” (2177:15-18 (emphasis added).)<sup>3</sup> Ms. Amadia’s testimony is consistent with Novell’s official position, as expressed in a press released dated June 6, 2003, that the ownership of required copyrights “did transfer” to SCO under the amended APA. (Ex. 97 (emphasis added).)<sup>4</sup>

Meanwhile, SCO’s negotiator and general counsel Steve Sabbath testified that “the intent was clearly to me that all the copyrights for the UNIX and UnixWare were to be transferred to Santa Cruz Operation” and that the Excluded Asset Schedule was intended to exclude the Netware copyrights. (900:23-901:9.) Mr. Sabbath further testified that SCO “bought the UNIX business from Novell, all copyrights pertaining to that business came with the product. Amendment Number 2 was meant to confirm that.” (911:6-14.) Even Ms. Amadia acknowledged that Mr. Sabbath told her that the copyrights had been excluded as a result of a “typographical error in the original APA” that required correction. (2184:25-2185:1.)<sup>5</sup>

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<sup>3</sup> Indeed, to give Amendment No. 2 a contrary interpretation the jury would had to have ignored the evidence – as to which there is no contrary evidence – that the Amendment confirmed the transfer of the UNIX and UnixWare trademarks by referring to them as ones “required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies.” (2176:5-24 (Amadia); 2177:25-218:18 (Amadia).) Where Amendment No. 2 changes the APA to make no distinction between trademarks and copyrights, and where Novell admitted that the trademarks referenced in Amendment No. 2 were not being licensed, but were in fact transferred, no reasonable juror could conclude that the same language used to describe the copyrights could mean something different.

<sup>4</sup> Novell subsequently tried to change its position and argued that Amendment No. 2 gave SCO the right to acquire copyrights if it could demonstrate that such copyrights were required. (Ex. 105.) That revised position is one basis for SCO’s alternative claim for specific performance.

<sup>5</sup> Ms. Amadia’s testimony about what Mr. Sabbath told her at the time is consistent with Mr. Sabbath’s deposition testimony as opposed to the IBM declaration that Mr. Sabbath stated did not accurately reflect his testimony. (927:14-25 (Sabbath); 928:19-929:2 (Sabbath)), and that is not affirmative evidence in any event.

The testimony of the only other Novell witness on Amendment No. 2, James Tolonen, cannot support a contrary result. Mr. Tolonen did not participate in the drafting or negotiation of the language, and while Mr. Tolonen expressed the view that he did not intend Amendment No. 2 to transfer copyrights, that absolutist view cannot be squared with the plain language of the Amendment. Nor can it be reconciled with what the Tenth Circuit stated:

Although Amendment No. 2 did not purport to amend Schedule 1.1(a), this does not mean that the balance of assets transferred to SCO remained unchanged. The transaction was structured such that SCO would acquire “all of Seller’s right, title and interest in and to the assets . . . identified on Schedule 1.1(a),” but that “the Assets to be so purchased not include those assets (the ‘Excluded Assets’) set forth on Schedule 1.1(b).” Schedule 1.1(a), in turn, provided that SCO would receive “[a]ll rights and ownership of UNIX and UnixWare . . . including all source code,” a broad set of assets limited only by Schedule 1.1(b). As a result, any change to the set of Excluded Assets in Schedule 1.1(b) necessarily implicated those copyrights actually transferred under Schedule 1.1(a).

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Whatever the Amendment means, it refers to the ownership of copyrights, not to licenses.

SCO, 578 F.3d at 1213-14, 1216 (emphasis added).

Novell further argued that Amendment No. 2 must not concern any transfer of copyrights because the Amendment is merely a “promise to sell,” because it did not have a separate Bill of Sale, or because the Amendment was “effective” as of the date of the APA. Those arguments could not reasonably or properly support the verdict. The Tenth Circuit’s opinion rejects these arguments, holding that the parties did not need to execute a separate bill of sale to satisfy Section 204(a) of the Copyright Act, SCO, 578 F.3d at 1213-14, and dismissing the idea that the date of Amendment No. 2 deprives it of its obvious role in modifying the assets being transferred through the APA. Id. By the end of trial Novell sought to refashion these contentions as

“contract” arguments, but they are no more tenable as such. There is no requirement in the law for a separate bill of sale to make effective an amendment to schedules of assets being transferred. See id.

Under Novell’s interpretation, in short, the relevant language of Amendment No. 2 serves no substantive purpose at all. It is unreasonable as a matter of law for the Court to permit the jury to interpret Amendment No. 2 in a way that gives it no meaning beyond the terms of the unamended APA.

**B. The Copyrights Are Required for SCO to Exercise Its Ownership Rights in The UNIX and UnixWare Technologies It Acquired.**

In remanding for trial, the Tenth Circuit pointed to the importance of copyright ownership for SCO to protect the value of the assets it had acquired under the APA:

SCO indisputably acquired certain assets under the APA. SCO’s claim, as we understand it, is that copyrights are necessary to protect the value of the assets themselves, and are therefore necessary to prosecute seller’s claims “relating to any . . . asset” included in the Business. Novell has not explained, for instance, what recourse SCO had under Novell’s theory of the transaction if a third party had copied and attempted to resell the core UNIX assets Santa Cruz received in the deal.

SCO, 578 F.3d at 1218 n.4. Now, after trial, there is still no cogent explanation from Novell as to how SCO could protect its property against third parties that “copied and attempted to resell the core UNIX assets Santa Cruz received in the deal.” Id. That failure renders the jury verdict on copyright ownership unsustainable.

If SCO does not own the copyrights, it cannot enforce them in court. Davis v. Blige, 505 F.3d 90, 98 (2d Cir. 2007) (owner of a copyright has the exclusive right to bring suit to enforce the copyrights); Silvers v. Sony Pictures Entmt., Inc., 402 F.3d 881, 885 (9th Cir. 2005) (copyright owner cannot transfer its accrued copyright infringement claims without also transferring the copyrights); 1 Copyright Throughout the World § 19:29 (2009); Copyrights and

Copywrongs: The Rise of Intellectual Property and How It Threatens Creativity, 3 J. High Tech. L. 1 (2003); 3 Patry on Copyright § 7:2 (2010) (explaining that “copyright is not just a bundle of rights; it is also the ability to enforce those rights”); accord Jury Instruction No. 34A.<sup>6</sup> More importantly, whatever the particular “license” theory Novell means to support, it offered no argument that it gives SCO the right to bring claims to enforce the copyrights, and there would be no support in the law for that argument.

In addition, the substantial, unrefuted testimony is that SCO required the ability to enforce the copyrights in order to exercise its ownership rights in the specific UNIX and UnixWare technologies listed in the Assets Schedule and acquired through the APA, the touchstone under Amendment No. 2. Given the technological reality of UnixWare’s development and ancestry, without copyright ownership, SCO does not have the right to enforce in court the copyrights at issue in the UNIX and UnixWare technology, and thus to protect the core technology in UnixWare. The evidence included the unequivocal testimony of witnesses who have been involved in the various aspects of the UNIX and UnixWare business, including former Novell and current SCO UNIX Contracts Manager William Broderick (666:9-21; 667:16-668:6); Santa Cruz General Counsel Steven Sabbath (913:1-15; 914:17-915:5); former SCO CEO Darl McBride (997:11-23); former Novell and current SCO UNIX Product Manager & OEM Relations Manager John Maciaszek (1686:25-1687:24); and former Santa Cruz Manager of Law and Corporate Affairs Kimberlee Madsen (780:23-24; 802:23-803:1; 865:16-21; 866:18-21; 875:7-14; 884:21-885:21). There is no support in the evidence that a software company that

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<sup>6</sup> Novell’s former General Counsel took the position that SCO acquired only an “implied license,” and Novell chose not to assert any contrary theory. (1975:14-22.) Ms. Amadia, for example, acknowledged that with an implied license, SCO cannot enforce the UNIX and UnixWare copyrights in court. (2157:8-12.)

owns and licenses source code need not protect that underlying source code and intellectual property as part of its business.<sup>7</sup>

As a technological matter, the evidence was undisputed that the UNIX and early UnixWare technology lies at the heart of SCO's current version of UnixWare. The source code of the versions of UnixWare that SCO acquired in 1995 (and built its business around licensing in the ensuing years) consists almost entirely of prior "UNIX" source code (1732:1-11 (Nagle), 1781:21-26 (Nagle)), and the current version of UnixWare that SCO sells still consists in significant part of that "UNIX" source code (1784:20-22 (Nagle)). UnixWare was a "version of UNIX is – [that] was essentially rebranded and some cosmetic and a few minor features added to it to create UnixWare 2.0. UnixWare 2.0 is almost entirely UNIX System V release 4.2." (1732:1-11 (Nagle).) Thus, "90, 95 percent" of UnixWare was older UNIX code that existed prior to the APA. (1782:6 (Nagle).) UnixWare is not simply a separate, stand-alone version or block of UNIX that can be detached from the UNIX code and run on its own; it is the latest release of UNIX. Neither the early version of UnixWare nor the latest version of UnixWare would work if the "UNIX" source code were removed. (1784:7-22 (Nagle).) All of this testimony went unrebutted.

In addition to requiring copyright ownership to protect the intellectual property contained within UNIX and UnixWare, SCO also requires the copyrights to facilitate certain types of source code licensing, which was an indisputable portion of the UNIX and UnixWare business

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<sup>7</sup> SCO's need to bring copyright enforcement actions does not turn on the existence of the SCOSource program whose demise Novell focused on at trial. Mr. Tibbitts explained that if SCO "could not protect" the "core intellectual property" in UnixWare, then "this venerable UNIX business that has been around for many years that many customers around the world are using would simply die off, and we have got to have that intellectual property to protect those crown jewels." (1845:21-1846:1.)

SCO acquired. Such source code licensing was historically part of the UNIX and UnixWare business; SCO's business included entering into new source code licenses, as contemplated by the APA; and the copyrights were needed for such licensing to occur, as there was nothing in the APA which granted a license for such activity. (2543:21-2544:3 (Frankenberg); 241:19-242:3 (Thompson); 666:9-21 (Broderick); 667:16-668:6 (Broderick); 503:9-11 (Michels); 504:6-7 (Michels); 442:15-443:6 (Wilt); 912:21-913:6 (Sabbath); 914:17-915:5 (Sabbath).)

The record contains many examples of the need for SCO's copyright ownership. After the parties executed Amendment No. 2, for example, SCO took the position in a formal petition against Microsoft Corporation in the European Union that SCO had acquired the UNIX copyrights and was the UNIX copyright holder. (Ex. 127 §§ 3.4, 4.9.) Copyright ownership was part and parcel of SCO's petition, and there can be no reasonable question that bringing the petition was part of SCO's pursuit and maintenance of its UNIX-based business.<sup>8</sup> The same is true for the settlement agreement that resolved the dispute. (Ex. 199, Recital B.)

Even if SCO could physically continue to sell certain of its UnixWare and OpenServer products without copyright ownership, as Mr. McBride suggested, Amendment No. 2 requires Novell to transfer the UNIX and UnixWare copyrights if they are required for SCO to exercise any of its ownership rights in connection with the UNIX and UnixWare business it acquired.<sup>9</sup>

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<sup>8</sup> While the petition against Microsoft is clear course of performance evidence that SCO had acquired the copyrights, the petition is also probative evidence that SCO required ownership of the copyrights to exercise its rights in connection with its UNIX and UnixWare business.

<sup>9</sup> Mr. Tibbitts testified about a proposed deal, in connection with SCO's Chapter 11 reorganization proceedings, where SCO would have sold certain aspects of the UNIX product business, but kept other aspects, including IP licensing rights and SCO's legal claims based on the unauthorized use of the UNIX and UnixWare technologies. (1850:20-1851:18.) Because the law requires ownership of the UNIX and UnixWare copyrights in order to pursue the claims SCO would have kept, the proposed deal contemplated that the copyrights would remain with SCO until it completed prosecuting those claims. That deal was thus consistent with the reading

Novell presented no evidence that SCO's acquisition of the UNIX and UnixWare business was limited to creating a merged product, or limited to the business of selling binary versions of UNIX, a business that Santa Cruz could already operate as a UNIX licensee prior to the APA. While it is true that Novell retained the right to receive certain royalties and reserved certain rights to protect that royalty stream, this does not transform the APA into a licensing arrangement whereby SCO could develop and market only UnixWare and serve as an agent to collect royalties. Even with respect to such royalties, moreover, the APA is clear that legal title to the royalties transferred to SCO. (Ex. 1 (APA) § 1.2(b).)

In addition, among the "rights and ownership" in UNIX and UnixWare that SCO acquired are all of Novell's claims relating to the UNIX and UnixWare source code. Item II of the Assets Schedule identifies "All of Seller's claims arising after the Closing Date against any parties relating to any right, property or asset included in the Business" as having transferred to SCO. SCO thus acquired all of the claims, which Novell otherwise would have, relating to the use or misuse of the UNIX and UnixWare source code. (See id. Schedule 1.1(a), Items I.A-D, II, IV.) Ownership of the copyrights is required to prosecute such claims.<sup>10</sup> A copyright owner cannot transfer its copyright claims without also transferring the copyrights. Silvers v. Sony Pictures Entmt., Inc., 402 F.3d 881, 885 (9th Cir. 2005).

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of Amendment No. 2 that SCO, as the party who indisputably acquired those claims under the APA, required ownership of the UNIX and UnixWare copyrights.

<sup>10</sup> Novell's suggestion in its Proposed Findings of Facts and Conclusions of Law (at 35) that there are no such "claims" is flatly wrong. The evidence at trial, for example, showed claims SCO pursued post-closing against Microsoft (807:3-811:20 (Madsen); Ex. 127 §§ 3.4, 4.9; Ex. 199 Recital B), expressly referring to ownership of copyrights. The copyright claims relating to alleged Linux infringement are another obvious example.



Novell presented no evidence at trial from which a reasonable jury could reach a contrary conclusion.<sup>11</sup> Novell presented no evidence at all that in order to bring copyright claims relating to the UNIX and UnixWare source code, SCO's ownership of the copyrights somehow was not "required."

## **II. IN THE ALTERNATIVE, SCO IS ENTITLED TO A NEW TRIAL**

A party's Rule 50(b) motion may include "an alternative or joint request for a new trial under Rule 59." Fed. R. Civ. P. 50(b). The decision whether to grant a new trial under the Rule lies within the broad discretion of the trial judge. Gasperini v. Ctr. for Humanities, Inc., 518 U.S. 415, 433 (1996) (the authority of trial judges to grant new trials "is large"). Indeed, as the Supreme Court has explained, the authority to grant new trials "is confided almost entirely to the exercise of discretion on the part of the trial court." Allied Chem. Corp. v. Daiflon, Inc., 449 U.S. 33, 35 (1980). Accordingly, decisions to grant a new trial have been deemed "virtually unassailable on appeal." Children's Broadcasting Corp. v. Walt Disney Co., 357 F.3d 860, 867 (8th Cir. 2004).

SCO moves, in the alternative, for a new trial on the lower, Rule 59 standard that the verdict was against the weight of the evidence presented at trial. A district court may grant a new trial "for any reason for which a new trial has theretofore been granted in an action at law in federal court," Fed. R. Civ. P. 59(a), including specifically "on the grounds that the jury verdict is against the weight of the evidence." Black v. Heib's Enters., Inc., 805 F.2d 360, 363 (10th Cir. 1986); Brown v. McGraw-Edison Co., 736 F.2d 609, 616 (10th Cir. 1984). "The inquiry

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<sup>11</sup> To the contrary, Novell's former General Counsel Mr. LaSala admitted both generally that "the agreements speak to what copyrights SCO requires in order to exercise its rights under the agreement" and specifically that "SCO has the rights to bring claims to protect its business." (1976:25-1977:7.)

focuses on whether the verdict is clearly, decidedly or overwhelmingly against the weight of the evidence.” Black, 804 F. 2d at 362.

A district court therefore may weigh evidence and consider the credibility of witnesses when exercising its broad discretion to determine whether a new trial is warranted. Tanberg v. Sholtis, 401 F.3d 1151, 1160 (10th Cir. 2005); see, e.g., Caruolo v. John Crane, Inc., 226 F.3d 46, 54 (2d Cir. 2000) (“Unlike a motion for judgment as a matter of law, a motion for a new trial may be granted even if there is substantial evidence to support the jury’s verdict.”); Giles v. Rhodes, 171 F. Supp. 2d 220, 229 at n.5 (S.D.N.Y. 2001) (trial judge may consider “credibility and the weight of the evidence”). In addition, after a long and complicated trial such as this, a trial judge should be especially vigilant in examining the verdict. See, e.g., Siemens Med. Solutions USA, Inc. v. Saint-Gobain Ceramics & Plastics, Inc., 615 F. Supp. 2d 884, 899 (N.D. Iowa 2009).

**A. SCO Acquired the UNIX and UnixWare Copyrights.**

SCO’s request for a new trial incorporates not only all of the points set forth in Section I above, but also the overwhelming weight of the evidence, summarized below, that a transfer of copyrights was intended.

**1. The Intent of the Negotiators and Principals Regarding the APA.**

A total of ten witnesses – including multiple witnesses from each of the SCO and Novell sides of the transaction – testified to their intent and understanding that Novell had sold and Santa Cruz had acquired the UNIX and UnixWare copyrights under the APA:

- Novell President and CEO Robert Frankenberg. Mr. Frankenberg testified that it was the intent at the beginning of the transaction, throughout the transaction, and when the transaction closed, to sell the copyrights in UNIX and UnixWare and to exclude the NetWare copyrights because Novell was retaining the Netware business. (176:9-177:3; 2558:17-2559:7.) He also testified that no other member of his board of directors had the authority to negotiate a deal apart from what the executives had

- negotiated across the table from SCO. (178:4-11.) And he testified that Messrs. Tolonen, Bradford, and Braham had no authority to decide whether copyrights would be part of the deal, as the deal had already been negotiated with SCO before those individuals even began their involvement in the process of documenting the deal. (2541:18-2542:4.)
- Novell Senior Vice President Duff Thompson. Mr. Thompson testified that Novell told SCO that it was selling all of the UNIX and UnixWare business “lock, stock and barrel, the whole thing” including the copyrights. (230:15-231:13.) He further testified that he never asked the attorneys documenting the deal from Novell’s end to change the deal so that the UNIX and UnixWare copyrights would be retained. (233:1-15.)
  - Novell Senior Director and Chief Negotiator Ed Chatlos. Mr. Chatlos testified that he participated in the face-to-face negotiations with SCO, including weekly travel from New Jersey to California for three months. (351:2-7.) He testified that “the deal with SCO was to include the copyrights” for UNIX and UnixWare and to exclude the copyrights for the Netware business that Novell was not selling, and that he understood Schedule 1.1(b)’s original exclusion of copyrights to be referring to the NetWare copyrights. (352:5-17; 359:20-362:3.) He further testified that holding back the UNIX and UnixWare copyrights would have been inconsistent with the directives he was given by Mr. Thompson and the directives and authority given to the lawyers documenting the deal. (354:16-355:5.) Mr. Chatlos also testified that the deal he negotiated included the UNIX and UnixWare copyrights and that changing the deal to exclude the copyrights “would have been unethical.” (354:16-355:5.)
  - Novell Vice President of Strategic Relations Ty Mattingly. Mr. Mattingly testified that during the months of negotiations that he attended, no one from Novell ever suggested that Novell was retaining the UNIX and UnixWare copyrights and that the copyrights the parties intended to withhold were the Netware copyrights for the Netware business that Novell was retaining. (677:5-13; 690:18-22.)
  - Novell In-House Counsel Burt Levine. Mr. Levine was involved in review of the very asset schedules that originally included language excluding copyrights. He testified that that language did not reflect Novell’s intent and that, under the APA, SCO “obtained a full right, title and interest in ownership” in UNIX and UnixWare that “would automatically convey the copyright along with the rest of the business assets.” (522:3-14.) Indeed, he characterized the idea that Novell would sell the business while withholding the copyrights as not being “ethical.” (521:17-522:2.)
  - Santa Cruz President and CEO Alok Mohan. Mr. Mohan testified that the deal “absolutely” included the UNIX copyrights as part of the business that SCO was acquiring. (461:19-462:9.) Like Novell’s own witnesses, he testified that SCO’s understanding was that it was acquiring the business “lock, stock, and barrel.” (464:4-19.) He testified that no one from Novell ever said to him prior to the execution of the APA that Novell intended to retain any UNIX or UnixWare copyrights. (467:24-468:6.)

- Santa Cruz Vice President of Business Development Jim Wilt. Mr. Wilt testified that it was his “intent on behalf of SCO to acquire, through the APA, Novell’s entire UNIX and UnixWare business, including the UNIX and UnixWare source code and all associated copyrights” and that he believed that Novell’s intent was to sell those assets and rights as well. (445:21-446:5.) He testified that if Novell had ever said that it was retaining the UNIX and UnixWare copyrights that would have been “extremely remarkable and probably would have ended the negotiations.” (443:7-19.)
- Santa Cruz Assistant Negotiator Kimberlee Madsen. Ms. Madsen testified that it was SCO’s intent to acquire the UNIX and UnixWare copyrights as part of the business and that it was her understanding and belief after the transaction was completed that SCO had acquired those copyrights. (783:3-784:4; 788:24-789:5; 814:24;815:3.) She also testified that Mr. Seabrook’s report to the SCO board of directors never suggested that Novell had retained any UNIX or UnixWare copyrights. (788:5-8;788:20-23.) She further testified that no one from Novell had ever said that Novell would retain any UNIX or UnixWare copyrights. (783:3-784:4.) She further testified that during the 1996 dispute with Novell concerning its conduct with respect to IBM, Novell never asserted that it had retained ownership of the UNIX and UnixWare copyrights. (802:3-7.)
- SCO General Counsel Steve Sabbath. Mr. Sabbath testified that “the intent was clearly to me that all the copyrights for UNIX and UnixWare were to be transferred to Santa Cruz Operation” and that the Excluded Assets Schedule was intended to exclude the Netware copyrights. (900:23-901:9.) He further testified that when SCO “bought the UNIX business from Novell, all copyrights pertaining to that business came with the product. Amendment Number 2 was meant to confirm that.” (911:6-14.)
- Santa Cruz Founder and Vice President Doug Michels. Mr. Michels testified that “of course” SCO bought the UNIX and UnixWare copyrights and that, had any of his executives suggested otherwise, he would have “laughed them out of [his] office.” (501:1-18.)

Novell continued to argue through trial that much of the foregoing testimony was irrelevant and inadmissible, but that is contrary to the Tenth Circuit’s decision, SCO, 578 F.3d at 1210-18, and this Court’s rulings on motions in limine. (Order on Defendant’s Motions in Limine 12 to 19, Docket No. 717.)

To be sure, Novell presented pieces of evidence at trial to support its version of events, but that evidence cannot overcome the overwhelming evidence in SCO’s favor.

The Existence of Amendment No. 2. Novell presented testimony regarding the intent of Tor Braham and highly equivocal testimony from David Bradford that the original exclusion of copyrights in the APA was intentional. The problem with that position – even putting aside the evidence that they lacked the authority to exclude the copyrights – is simply that the language of Amendment No. 2 indisputably replaced, as a matter of law, the old language in the Excluded Assets Schedule of the APA. SCO, 578 F.3d at 1210-11. The new language controls this Court’s interpretation of the deal. Id. If Braham and Bradford’s testimony had truly reflected the intent of the parties to the APA, Amendment No. 2 would not exist.

The Forthright Negotiator Rule. As noted above, Ms. Amadia conceded on cross-examination that Novell “transferred” to SCO – not licensed – “copyrights that are required for SCO to exercise its rights” in connection with its acquisition of the UNIX and UnixWare business. (2178:11-18; 2176:13-21; 2148:18-23; 2177:25-2178:3.)

Even if the Court were to focus solely on Ms. Amadia’s initial testimony that she intended that Amendment No. 2 would only affirm that there was some sort of license (testimony that she recanted at trial), that view must be rejected because of “the forthright negotiator rule” of contract interpretation, which the Tenth Circuit has explained:

Where the parties assign different meaning to a term, it is interpreted in accordance with the meaning attached by one of them if at the time the agreement was made . . . (a) that party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party; or (b) that party had no reason to know of any different meaning attached by the other, and the other had reason to know the meaning attached by the first party.

Flying J Inc. v. Comdata Network, Inc., 405 F.3d 821, 837 (10th Cir. 2005) (citing Restatement (Second) of Contracts § 201(2)). Under this rule, Amendment No. 2 must be interpreted in accordance with the meaning attached by SCO (Mr. Sabbath), since Ms. Amadia knew or at least

“had reason to know” that Mr. Sabbath intended the Amendment to confirm that the UNIX and UnixWare copyrights were transferred to SCO. Indeed, Ms. Amadia admitted that she understood that Mr. Sabbath’s understanding was that “the purpose of the Amendment was to clarify that the UNIX and UnixWare copyrights had transferred,.” (2169:17-2179:1.)<sup>12</sup> Rather than refuse to make any change to the language of the APA or propose language expressly affirming the grant of a license, Ms. Amadia drafted language that removed the copyright exclusion. She claimed to have done so in order to avoid a confrontation with Mr. Sabbath. But this is exactly what the “forthright negotiator” rule addresses, and Novell should therefore be bound to the interpretation that Mr. Sabbath held that Amendment No. 2 fixed the “clerical error” (2140:2-3; 2184:25-2185:1; 2140:20) that had existed in the APA, and confirmed the transfer of the copyrights.<sup>13</sup>

Meeting of the Novell Board of Directors. Notwithstanding Novell’s heavy focus on the Novell board of directors, their action did not constitute negotiations of the agreement between the parties. Of course, the language at issue in the board’s resolution excluding copyrights (taken directly from the old language in the APA) was replaced by Amendment No. 2. Moreover, the only term sheet provided to the directors did not even make the directors aware of the fact that copyrights were being retained – while identifying other assets (like patents) that

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<sup>12</sup> Ms. Amadia’s testimony is therefore consistent with Mr. Sabbath’s testimony that the parties understood that copyrights were to transfer and that a declaration provided to IBM’s counsel, to the extent it was inconsistent, did not accurately reflect his testimony. (927:14-25 (Sabbath); 928:19-929:2 (Sabbath).)

<sup>13</sup> There is no evidence that Mr. Sabbath believed the final language of Amendment No. 2 had a meaning different than the language he had initially proposed. Indeed, the Tenth Circuit specifically acknowledged, citing Mr. Sabbath’s testimony, that the SCO could have found “the final language equally sufficient for its purposes, given its insistence that all the UNIX copyrights were required for it to exercise its rights under the deal.” SCO, 578 F.3d at 1216.

were being retained. (Ex. 754; 678:3-681:18 (Mattingly); 2450:6-2451:1 (Bradford); 2470:10-2471:1 (Bradford).)<sup>14</sup> The minutes of the meeting of the Santa Cruz board did not reflect that there was any actual discussion of any retention of copyrights. (Ex. 29; 784:23-788:23 (Madsen).) Mr. Frankenberg further testified that if an exclusion of the UNIX copyrights had been discussed at the Novell meeting, he would have remembered that because the exclusion would be “ludicrous” and that was not the intent of the deal. (2543:12-2544:6.) There is no legal requirement that the Novell board subsequently approve the terms of Amendment No. 2, duly signed by a Novell officer, in order for that Amendment to be binding on the parties.

Novell’s Outside Counsel. Similarly, even taking the testimony in isolation from Amendment No. 2, the evidence that Tor Braham, David Bradford, or James Tolonen intended in the fall of 1995 to retain the copyrights for Novell is insufficient. Mr. Frankenberg testified not only that he never intended to retain the UNIX or UnixWare copyrights for Novell (2558:17-2559:2), but also that to the extent anyone below him had determined to retain the UNIX and UnixWare copyrights for Novell, however well intentioned that decision may or may not have been, no such person had the authority to do so. (2559:3-7.) The stated purpose for excluding the copyrights—protecting Novell’s royalty rights—makes no sense because Novell had already “bulletproofed” those rights in Section 1.2(b) of the APA, and there was no explanation that copyright ownership was needed to enhance that protection. (2404:17-2406:16 (Braham).) Moreover, it does not appear that Novell ever expressly drew SCO’s attention to the copyright exclusion language that had been added in the schedule of excluded assets, which would explain why there was no forcible “pushback” from SCO on the point. Mr. Braham testified that he

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<sup>14</sup> David Bradford’s testimony was completely equivocal. He did not recall the issue until reviewing documents and then reviewed only an incomplete set of documents, not containing Amendment No. 2. (2434:24-2435:15; 2438:5-16; 2441:7-10; 2444:12-21; 2446:22-2447:12; 2461:12-24.)

could recall a discussion about “the entire schedule of excluded assets,” but that he did not actually know that he and any Brobeck lawyer ever discussed that exclusion. (2403:6-25.)

While he “thought the other side was talking about the copyright exclusion,” he did not recall the Brobeck attorney “mentioning that specifically.” (2428:23-2429:4.)<sup>15</sup> The absence of any direct negotiations over the copyright exclusion language in the original APA, coupled with the subsequent replacement of that language a year later in Amendment No. 2 and the testimony of ten witnesses on both sides of the transaction, requires finding that the verdict was against the weight of the evidence.

**2. The TLA Reflects That Copyrights Transferred.**

Novell’s assertion (at 5 of its Proposed Findings of Fact and Conclusions of Law) that the Technology License Agreement (“TLA”) “did not grant Novell a license to any of the Excluded Assets because Novell retained them” begs the question. The TLA’s grant of a license back to the technology at the time of the APA would have been unnecessary had Novell retained the copyrights and simply granted SCO a license to use the technology.

The plain, undisputed terms of the TLA give Novell a license-back to use the “Licensed Technology,” and the “Licensed Technology” includes the then-existing and prior versions of UNIX and UnixWare source code. (Ex. 162 (TLA) § II.A; Ex. 1 (APA) § 1.6, Schedule 1.1(a) Item I.) The TLA thus gives Novell a license-back to use the UNIX and UnixWare source code

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<sup>15</sup> The evidence thus does not support Novell’s argument that SCO’s attorneys understood the copyrights to have been excluded from the deal. There is no evidence that the issue was ever discussed in the meeting of Santa Cruz’s board of directors, and there is no evidence that the outside attorneys for SCO ever discussed that particular exclusion with Novell’s outside attorneys. (2428:23-2429:4 (Braham).) One of Novell’s witnesses did take the position that SCO “had Brobeck, Phleger as their voice” in the negotiations of the APA (2358:13-21 (Braham)), and the evidence showed that the Brobeck law firm put its name to the SCO filing from early 1997 in which SCO expressly represented that it had acquired the UNIX copyrights and was the UNIX copyright owner. (Ex. 127 §§ 3.4, 4.9, signature block.)



in Novell's own products, subject to certain limitations. (Ex. 162 (TLA) § II.) If Novell had retained the UNIX and UnixWare copyrights, it would not have needed any license-back to use the UNIX and UnixWare source code in Novell's own products. (See 107:23-108:1 (Frankenberg); 847:4-7 (Madsen).) Indeed, the evidence showed that Novell itself thinks that it is reasonable to read the TLA as inconsistent with a reading of the APA under which the UNIX and UnixWare copyrights were retained. (1965:4-1966:4 (LaSala).) The TLA also identified SCO as the "owner" of the Licensed Technology. (Ex. 162 (TLA) § III.)

Novell has suggested that the license-back was necessary because it would permit Novell to use in its products the technology in the "Merged Product" that SCO was to develop after the execution of the APA. But the TLA gives Novell a license-back to much more than just the source code in the Merged Product; it gives Novell such a license for the existing UNIX and UnixWare source code itself. (Ex. 1 (APA) § 1.6, Schedule 1.1(a) Item I; Ex. 162 (TLA) § II.A.) Where the APA refers to the TLA and vice versa and the two agreements are obviously related agreements (Ex. 1 (APA) § 1.6; Ex. 162 (TLA) § I), it would be unreasonable to read the amended APA in a manner that renders it inconsistent with the unambiguous terms of the TLA.

### **3. The Parties' Course of Performance.**

In addition to the foregoing, a wealth of extrinsic evidence of the parties' course of performance prior to any litigation further demonstrated that SCO had acquired the UNIX and UnixWare copyrights. That course of performance is further compelling grounds for concluding that the parties intended for SCO to acquire the UNIX and UnixWare copyrights. The undisputed evidence at trial reflected the following facts of the parties' (and even third parties') "practical construction" of the amended APA:

- At Novell's direction, Novell's own engineers placed SCO copyright notices on source code for the existing versions of UnixWare – versions on which SCO had done

no work at all. (1727:19-25 (Nagle); 1733:9-25 (Nagle); Ex. 655; 1704:18-1705:7 (Maciaszek); 1723:14-20 (Maciaszek).) Novell also replaced the “Novell” copyright notice on the CD for the current version of the UnixWare product with a “Santa Cruz” copyright notice. (1725:1-1728:21 (Nagle); 1723:9-1736:17 (Nagle); Ex. 35.) Because SCO had done no additional work on UnixWare at the time Novell added the SCO copyright notices, these actions can only be understood as consistent with a change in ownership of the then-existing copyrights to UnixWare.

- The participants in the transition of the UNIX and UnixWare business from Novell to SCO – individuals who had not participated in the negotiations – understood SCO to have acquired the UNIX and UnixWare copyrights, including because no one ever suggested otherwise. (547:11-16 (Broderick); 1671:22-1672:18 (Maciaszek); 1676:17-20 (Maciaszek).) Novell presented no evidence that any such participants believed that Novell continued to own any such copyrights.<sup>16</sup>
- In sorting through the materials in its former offices to determine what to keep and what not to keep, moreover, Novell turned over to SCO the copyright registration certificates for UNIX and instructed its transition team to retain only materials pertaining to the businesses it was retaining, Netware and Tuxedo. (610:5-612:4 (Broderick).)
- In early 1996, Novell sent thousands of letters explaining that it had transferred to SCO Novell’s “existing ownership interest in UNIX System-based offerings and related products,” specifically identifying such products as including “All Releases of UNIX System V and prior Releases of the UNIX System” and “All UnixWare Releases up to and including UnixWare Release 2 (encompassing updates and upgrades to these releases as well.” (586:4-15 (Broderick); Ex. 580.) In one such letter, which was co-signed by Novell and SCO, Novell further explained that “Novell’s right as licensor under such agreements have been assigned to the Santa Cruz Operation” and that “the ownership of the UNIX operating system has been transferred from Novell, Inc. to the Santa Cruz Operation.” (Ex. 751; 1682:23-1684:10 (Maciaszek); 1684:24-1685:7 (Maciaszek).)<sup>17</sup>

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<sup>16</sup> In fact the only testimony regarding the transition meetings reflected that Novell representatives told SCO that Novell had sold UNIX and that the copyright notices had to be changed. (548:10-17 (Broderick); 1704:18-1705:7 (Maciaszek); 1723:14-1728:21 (Nagle); 1732:12-1737:13 (Nagle); 1775:15-1776:16 (Nagle).) There was no evidence that Novell ever told anyone in these meetings that Novell was retaining any UNIX or UnixWare copyrights.

<sup>17</sup> Novell argued at trial that these letters did not need to tell customers about Novell’s claimed copyright exclusion, but the evidence showed otherwise. In addition to the plain fact that Novell’s assertion of ownership transfer would have been inaccurate if Novell had retained the copyrights, such an exclusion would have been relevant to customers. Mr. Maciaszek testified, for example, that among the “things a customer does need to know” is “who can enforce the copyrights in the contracts” that SCO now owned. (1710:8-22.)

- In concert with these letters, Novell representatives visited OEM licensees, including in Europe, to reiterate the statements in those letters and personally inform the licensees that “SCO had acquired all ownership rights in the business,” without “any limitation ever.” (1678:4-16 (Maciaszek); 1680:22-1681:22 (Maciaszek); 1684:4-17 (Maciaszek).)
- Novell, SCO, and IBM engaged in a protracted dispute and negotiation throughout 1996 regarding the scope of Novell’s rights under the APA. SCO’s evidence showed that Novell never contended that it owned the copyrights during that dispute, and Novell presented no evidence to the contrary. (802:3-7 (Madsen).)
- During the dispute among the three corporations in 1996, even IBM took the position that SCO could protect itself through its ownership of the UNIX copyrights, asserting that “SCO is protected by copyright.” (Ex. 123.). SCO’s evidence showed that Novell never contended otherwise, and Novell presented no evidence to the contrary. (802:3-13 (Madsen).)
- Just months after Amendment No. 2 was signed, SCO, through the law firm that had represented SCO in connection with the Novell/SCO APA, took the position in formal litigation against Microsoft Corporation in the European Union that SCO had acquired the UNIX copyrights and was the UNIX copyright holder. (807:3-811:20 (Madsen); Ex. 127 §§ 3.4, 4.9.) Novell presented no evidence to call into question the nature of SCO’s assertions in that filing.
- In resolving the foregoing dispute, SCO entered into a settlement agreement with Microsoft in which SCO again stated that it had acquired the UNIX copyrights and was the UNIX copyright holder. (811:21-813:24 (Madsen).) The document states: “SCO has acquired AT&T’s ownership of the copyright in the UNIX System V Operating System Program.” (Ex. 199 Recital B.) Novell again presented no evidence to call into question the nature of SCO’s assertion in that settlement.

All of this evidence is particularly relevant here because the parties’ course of performance is the “best evidence” of the parties’ contractual intent. SCO, 578 F.3d at 1217.

**B. The Copyrights Are Required for SCO to Exercise Its Ownership Rights in the UNIX and UnixWare Technologies It Acquired.**

There was a surfeit of specific testimony, such as set forth above, concerning SCO’s need of the copyrights to run its UnixWare business. Mr. Frankenberg called it “ludicrous to think about selling software without selling the copyrights. If you don’t have the copyrights, you don’t have the ability to freely use what you bought.” (2543:21-2544:3.) Similarly, Mr. Thompson testified that “[i]t is hard for me to imagine any instance in which we are selling them the entire

business, to go forward with this business in the future, without giving them the underlying intellectual property rights that they needed to do so.” (241:19-242:3.) In a case where witnesses from both sides of the deal, with involvement in various aspects of the UNIX business, specifically testified that SCO required the UNIX and UnixWare copyrights to run its business and protect the intellectual property at the heart of that business, a jury verdict to the contrary simply cannot stand.<sup>18</sup>

### **CONCLUSION**

SCO respectfully submits, for the reasons stated above, that the Court should grant SCO’s motion for judgment as a matter of law or, in the alternative, grant SCO a new trial.

DATED this 27th day of April, 2010.

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<sup>18</sup> See, e.g., Broderick (666:9-21; 667:16-668:6) (SCO “would be out of business” if it couldn’t protect its software “through copyrights”); Michels (502:24-503:14) (copyrights “so essential” to a software business they are “like breathing oxygen”); Wilt (442:15-443:6) (copyrights “such a fundamental part of an asset purchase that if you didn’t have copyrights and such go along with it, there was no asset purchase”); Madsen (780:23-24; 802:23-803:1; 865:16-21; 866:18-21; 875:7-14; 884:21-885:21) (SCO “required all” the UNIX and UnixWare copyrights; copyrights “essential” to “protect and enforce [SCO’s] intellectual property rights” in UNIX); Sabbath (913:1-15; 914:17-915:5) (“you would need all the copyrights and binaries and source code”); McBride (997:11-23) (ownership of the UNIX copyrights “absolutely” “required for SCO’s business”); Maciaszek (1687:16-24) (“the copyrights are required to operate SCO’s business”); Tibbitts (1844:25-1845:18) (“copyrights are critical for us to run the business that was purchased from Novell in ‘95, both the SCOsource business and the right to protect that core UNIX intellectual property”).

**CERTIFICATE OF SERVICE**

I, Brent O. Hatch, hereby certify that on this 27th day of April, 2010, a true and correct copy of the foregoing **SCO'S MEMORANDUM IN SUPPORT OF ITS RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, FOR A NEW TRIAL** was filed with the court and served via electronic mail to the following recipients:

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

THE SCO GROUP, INC., a Delaware corporation,

Plaintiff,

v.

NOVELL, INC., a Delaware corporation,

Defendant.

Case No. 2:04CV00139

**NOVELL'S OPPOSITION TO SCO'S  
RENEWED MOTION FOR  
JUDGMENT AS A MATTER OF  
LAW OR A NEW TRIAL**

Judge Ted Stewart

AND RELATED COUNTERCLAIMS.

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## I. INTRODUCTION

With SCO's consent, even its insistence, the following primary question was put to the jury:<sup>1</sup>

“Did the amended Asset Purchase Agreement transfer the UNIX and UnixWare copyrights from Novell to SCO?” (Dkt. No 846.)

The jury's unanimous, unequivocal answer to that basic question was: “No.”

After having first lost on summary judgment, then contending in the Tenth Circuit that it should be given the chance to present its claims to a jury in order to obtain from the jury (rather than the Court) an answer to the foregoing question, and having had full opportunity to present its best case to the jury, SCO now asks the Court to reject and turn aside the jury's verdict because SCO does not like the answer. Judge Kimball found in favor of Novell on summary judgment, the Tenth Circuit reversed that ruling with respect to transfer of the UNIX and UnixWare copyrights, but acknowledged that Novell had “powerful arguments” on its side, and now a jury of twelve Utah citizens has found unanimously that the amended Asset Purchase Agreement did *not* transfer the copyrights from Novell to SCO. *See The SCO Group, Inc. v. Novell, Inc.*, 578 F.3d 1201, 1215 (10th Cir. 2009) (“We recognize that Novell has powerful arguments to support its version of the transaction, and that, as the district court suggested, there may be reasons to discount the credibility, relevance, or persuasiveness of the extrinsic evidence that SCO presents.”). In light of that history, SCO's assertion that the jury's verdict is unreasonable and overwhelmingly against the weight of the evidence is ludicrous.

Rule 50 of the Federal Rules of Civil Procedure allows a court to grant judgment as a matter of law only if the evidence is “so overwhelmingly preponderant in favor of the movant [in

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<sup>1</sup> *See* March 25, 2010 Jury Instruction Conference Tr. at 46:24-25 (SCO agreeing to the verdict form as is). Indeed, Novell objected that this approach would prevent the jury from addressing the other elements of the slander of title claim. (*Id.* at 47:1-48:4.) The Court stated that the jury would need to make the initial determination of copyright ownership in order to perform its responsibility. (*Id.* at 48:5-9.) *See also* March 2010 Trial Tr. at 2632:2-5 (SCO's counsel stating in closing argument: “The very first question will be did the amended Asset Purchase Agreement transfer [] UNIX and UnixWare copyrights from Novell to SCO. I would like to address that question at the outset.”).

this instance, SCO] as to permit no other rational conclusion.” *Snyder v. City of Moab*, 354 F.3d 1179, 1184 (10th Cir. 2003). Likewise, Rule 59 gives a court discretion to grant a new trial only if the jury verdict is “clearly, decidedly, or overwhelmingly” contrary to the evidence. *M.D. Mark, Inc. v. Kerr-McGee Corp.*, 565 F.3d 753, 762 (10th Cir. 2009). SCO has failed to demonstrate that the jury’s verdict was irrational or “clearly, decidedly, or overwhelmingly” contrary to the evidence. If anything, the evidence overwhelmingly supports the jury’s verdict.

SCO’s motion ignores testimony that contradicts its position, including former SCO CEO Darl McBride’s admission that copyrights were not required for SCO’s UNIX and UnixWare software businesses, and SCO General Counsel Ryan Tibbitts’s admission that SCO itself attempted to sell its software business while excluding the copyrights. SCO asks the Court to make credibility determinations that the jury has already made, weigh evidence that the jury has already considered and weighed, and draw all inferences in favor of SCO. As this Court has noted, however, it is inappropriate for a trial court to do so in considering a Rule 50 Motion. *See* Dkt. 838 at 3; *see also Guides, Ltd. v. Yarmouth Group Prop. Mgmt., Inc.*, 295 F.3d 1065, 1074 (10th Cir. 2002) (stating that for Rule 50(b) motion, courts construe all inferences in favor of nonmoving party and “refrain from making credibility determinations or weighing the evidence.”).

SCO also relies on a parade of witnesses with limited knowledge and memory, many of whom have an admitted financial bias towards SCO. By contrast, Novell relied at trial on the governing language of the Asset Purchase Agreement *and its amendments*, and the testimony of the individuals who actually negotiated and drafted that language (including Tor Braham, the primary drafter of the APA, and Allison Amadia, the primary drafter of Amendment No. 2). The jury plainly decided that the language of the amended Asset Purchase Agreement supported Novell’s position, Novell’s witnesses were more credible, and Novell’s other evidence was more probative. There is no basis whatsoever for second-guessing those determinations.

SCO’s disagreement with the jury’s verdict cannot justify judgment as a matter of law or a new trial. Instead, SCO must establish that the jury’s verdict was entirely contrary to the

evidence. Here, SCO was able to present the evidence that it wished at trial. The jury was able to carefully consider that evidence—as well as the evidence Novell was permitted to present—over two days of deliberations before rendering its verdict. Because SCO has not met its burdens under Rules 50 or 59, its motion should be denied.

## **II. SCO IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW**

### **A. Legal Standard.**

Judgment as a matter of law is warranted only if the evidence points but one way and is susceptible to “no reasonable inferences supporting the party opposing the motion,” such that the evidence is “so overwhelmingly preponderant in favor of the movant as to permit no other rational conclusion.” *Snyder v. City of Moab*, 354 F.3d 1179, 1184 (10th Cir. 2003); *Strickland Tower Maintenance, Inc. v. AT&T Communications, Inc.*, 128 F.3d 1422, 1426 (10th Cir. 1997). When ruling on a motion for judgment as a matter of law, the court does not weigh the evidence, pass on the credibility of the witnesses, or substitute its conclusions for that of the jury. *Minshall v. McGraw Hill Broad. Co., Inc.*, 323 F.3d 1273, 1279 (10th Cir. 2003) (quoting *Medlock v. Ortho Biotech, Inc.*, 164 F.3d 545, 549 (10th Cir. 1999)). In fact, the Supreme Court has held that “although [a] court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe.” *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 151 (2000).

### **B. The Jury’s Verdict That the Amended Asset Purchase Agreement Did Not Transfer Copyright Ownership Is Reasonable and Supported by the Evidence.**

The jury was presented at trial with two competing interpretations of the Novell—Santa Cruz transaction. SCO argued that the deal was essentially an acquisition of the entire UNIX and UnixWare business, transferring all relevant assets, including copyright ownership. Novell, on the other hand, presented evidence that the final deal was more limited, with Novell transferring the UnixWare business to Santa Cruz but retaining substantial rights in the UNIX licensing business, including continued ownership of the existing UNIX and UnixWare copyrights and the undisputed right to receive UNIX royalties. The jury was presented with

extensive documentary and testimonial evidence supporting Novell's interpretation of the Novell—Santa Cruz transaction, and it is flatly wrong for SCO to assert otherwise.<sup>2</sup>

**1. The Asset Purchase Agreement Established That Santa Cruz Was Novell's Agent.**

As Judge Kimball found, Section 4.16(b) of the Asset Purchase Agreement (“APA”) created an agency relationship whereby SCO (as Santa Cruz’s successor) was acting as Novell’s agent to collect SVRX royalties. (Order at 90, Dkt. No. 377 (“SCO does not dispute the agency relationship created by the APA.”).) Darl McBride, SCO’s former CEO, conceded this point at trial. (March 2010 Trial Tr. at 1075:16-1078:22.) The provisions of Section 4.16(b) were purposefully placed in the APA to avoid any doubt that Novell had “complete rights to control what happened with the UNIX business.” (*Id.* at 2353:21-2354:8.) If SCO did not act as SCO was supposed to as Novell’s agent, Novell could step in and take action itself. This agency relationship demonstrates that the deal was more complicated than a full acquisition of the UNIX business. If the deal had been a full acquisition, Santa Cruz would be simply a buyer, not an agent, and Novell would have no need to control what happened with the UNIX business.

Consistent with the foregoing, Alok Mohan, CEO of Santa Cruz in 1995 when the APA was executed, characterized the deal with Novell in an email to all Santa Cruz employees on September 19, 1995, explaining that Santa Cruz became “the owner of the UnixWare product line” but would merely “manage the licensing business for UNIX prior to UnixWare 1.0 (SVRx).” (Trial Ex. 163 at 1.) This is not the sort of language that describes an acquisition of

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<sup>2</sup> SCO argues that various APA provisions must be interpreted in accordance with statements plucked out of the text of the Tenth Circuit opinion. (*See, e.g.*, Motion at 6, 9, 10, 12, 13, 21, 19 n.13.) The purpose of a Rule 50(b) motion is to determine whether the jury verdict was supported by the evidence presented at trial. *See, e.g., Martin v. Howard Univ.*, 2006 U.S. Dist. LEXIS 72303, at \*17-18 (D.D.C. Oct. 4, 2006). The Tenth Circuit opinion is not evidence on factual questions of ownership, nor does it contain binding conclusions on copyright ownership issues. The Tenth Circuit was careful to state: “We take no position on which party ultimately owns the UNIX copyrights or which copyrights were ‘required’ for Santa Cruz to exercise its rights under the agreement. Such matters are for the finder of fact on remand.” *The SCO Group, Inc. v. Novell, Inc.*, 578 F.3d 1201, 1219 (10th Cir. 2009). If SCO believed the jury needed to interpret a particular provision in light of the Tenth Circuit opinion, the appropriate measure would have been to seek corresponding jury instructions.

the entire UNIX business. Mr. Mohan's email succinctly describes that there were two businesses—the forward-looking UnixWare product line and the existing UNIX business—and while Santa Cruz would own the forward-looking UnixWare product line after the APA, Santa Cruz would only manage the UNIX licensing business for Novell.

This agency relationship, along with other provisions in the APA such as the Excluded Assets Schedule, demonstrates why SCO's continued reliance on the broad definition of "Business" and the broad language "all rights and ownership" in the Asset Purchase Agreement is misplaced. (*See* Motion at 4-5.) It is undisputed, and was made abundantly clear through trial, that these broad introductory statements are explicitly limited in many ways. For example, in addition to copyrights, Novell retained all patents, certain royalties, and numerous other rights and assets as enumerated throughout the APA. The evidence on which the jury reasonably relied demonstrated that this transaction was not a full acquisition of a business and all related assets, but instead a carefully crafted purchase agreement that purposefully transferred only certain enumerated assets and rights.

## **2. The Retention of Copyrights Was Authorized by the Novell Board of Directors.**

Novell's Board of Directors approved the APA with specific reference to its exclusion of all copyrights. (Trial Ex. Z3 at 2.)<sup>3</sup> David Bradford, Secretary to the Board of Directors and General Counsel for Novell for nearly 15 years including at the time of the APA and Amendment No. 2, prepared the Board minutes. (March 2010 Trial Tr. at 2434:14-23.) He testified that Novell's Board of Directors approved the APA transaction with the proviso that Novell would retain all copyrights. (*Id.* at 2442:1-19.) If Amendment No. 2 had been intended to change this exclusion and to instead transfer copyright ownership, that would have been a

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<sup>3</sup> SCO attempts to minimize the import of the Novell Board meeting minutes by arguing that the Board's action "did not constitute negotiations of the agreement between the parties." (Motion at 19 (emphasis in original).) This argument is beside the point. SCO's entire case has rested on what the parties intended; in fact, this very argument in SCO's Motion falls under the heading "The Intent of the Negotiators and Principals Regarding the APA." The Board minutes reflect the intent of the actual party to the transaction—Novell—as opposed to the vague memories of select individuals within Novell reported 15 years later.

material change that would have required separate Board approval. Such approval was never sought or obtained. (*Id.* at 2037:11-25.) Thus, the Novell Board meeting minutes actually demonstrate that an Asset Purchase Agreement that purported to transfer copyrights to Santa Cruz would have been unauthorized.

The Novell Board meeting minutes also demonstrate why SCO's argument that the copyright exclusion was "a mistake . . . or a last-minute, overzealous decision between Novell's general counsel and its outside counsel" is untenable. (Motion at 7.) SCO's witness Robert Frankenberg confirmed and verified the accuracy of the minutes for the September 18, 1995 Board meeting at which the APA was approved with explicit reference to the exclusion of UNIX and UnixWare copyrights, and acknowledged that he reviewed the APA's Excluded Assets schedule in connection with the transaction. (March 2010 Trial Tr. at 102:16-18, 147:10-25.) SCO's witness Ty Mattingly agreed that, before they executed the APA, the lawyers and businesspeople at Santa Cruz had the opportunity to read the Included Assets and Excluded Assets schedules. (*Id.* at 344:20-24.) SCO's witness Burt Levine even made comments on the draft schedules and crossed out an item immediately above the copyright exclusion in Schedule 1.1(b), all while leaving that exclusion intact. (*Id.* at 531:22-537:23; Trial Ex. X3.)

Amendment No. 1 provides additional evidence supporting the jury's determination that the retention of copyright ownership was both intended and authorized by Novell. Three months after the initial signing, after careful review by both sides, the parties executed a lengthy clean-up amendment, titled Amendment No. 1. (Trial Ex. T5.) Amendment No. 1 did not add copyrights to the Included Assets that would be transferred, nor did it remove copyrights from the Excluded Assets that would not be transferred. (*Id.*) SCO's witness Mr. Frankenberg agreed that "even after the Board meeting that was held at which the Asset Purchase Agreement was approved, after [he] and other members of the Board had a chance to thoroughly review the [APA], and even after Mr. Sonsini [senior partner of the Wilson Sonsini law firm and member of Novell's Board] and Mr. Bradford, the legal advisors, apprised the Board about what was contained in the agreement and even after a nearly three-month period to review it, neither



Novell nor Santa Cruz Operation chose to include UNIX copyrights in the [APA] when Amendment No. 1 was executed.” (March 2010 Trial Tr. 153:12-154:23.)

**3. Novell Intentionally Retained Copyright Ownership to Address Significant Business Concerns.**

Tor Braham, the Wilson Sonsini attorney who was the primary draftsman of the APA, testified unequivocally that the copyright exclusion was negotiated and agreed upon at the direction of Novell. (*Id.* at 2363:19-23.)<sup>4</sup> Mr. Braham and Mike DeFazio, former head of the UNIX and UnixWare business at Novell, agreed that the copyright exclusion was designed to protect Novell’s interests. Mr. Braham testified that Novell’s concerns included its important interest in retaining the UNIX business, possible SCO bankruptcy, and a strategic concern that Microsoft was monopolizing the area. (*Id.* at 2364:3-15, 2425:16-2426:15.) Mr. DeFazio added that the retention of copyrights was crafted to “bulletproof” Novell’s financial asset stream. (*Id.* at 2311:7-17.)

Similarly, Novell’s witness James Tolonen, Novell’s CFO during the relevant time, testified that copyrights were purposefully excluded (1) as part of an overall strategy to retain ownership of the original software, (2) because Santa Cruz was relatively small and could not afford to pay Novell the entire value for all UNIX and UnixWare-related rights and assets, and (3) because Novell was concerned about the long-term viability of Santa Cruz and wanted to ensure Novell’s rights would not be brought into question if Santa Cruz was acquired by a competitor. (*Id.* at 2021:24-2023:18.) Mr. Tolonen made several presentations to the Novell Board describing the APA process, and SCO’s witness Mr. Frankenberg confirmed that he relied on Mr. Tolonen’s recommendations and advice. (*Id.* at 124:15-125:2, 2025:7-2026:10.)

SCO’s argument that the inclusion of copyrights in the sale was “logical” is irrelevant. (*See* Motion at 6.) The inclusion of patents may also have been logical, but they were expressly

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<sup>4</sup> Mr. Braham was praised by SCO’s own witnesses. Ty Mattingly testified that Mr. Braham was “the main guy,” “entrusted,” and would better know what was actually written in the final version of the agreement. (March 2010 Trial Tr. at 716:10-14, 755:10-15.) Duff Thompson stated that he had confidence in Novell’s outside counsel, which included Tor Braham. (*Id.* at 290:8-9.)

excluded from the sale, as were copyrights. Regardless of whether a particular course of action would have been “logical” in a simpler deal or full-out acquisition, there were a multitude of reasons for Novell to retain copyrights in this complicated transaction that ultimately led Novell to do so.

**4. Copyright Ownership Was Not Required for Santa Cruz to Exercise Its Rights with Respect to the Acquisition of UNIX and UnixWare Technologies.**

With respect to Amendment No. 2, it is a simple matter to “disregard all evidence favorable to [SCO] that the jury is not required to believe” as required by the Supreme Court, because SCO presented no evidence on the interpretation of Amendment No. 2. *See Reeves*, 530 U.S. at 151. SCO presented no testimony to show that its current interpretation of Amendment No. 2 was intended at the time of the Amendment’s execution; no testimony to rebut the sworn testimony of Novell’s witnesses who negotiated, drafted, and signed Amendment No. 2; and no evidence that at the time Amendment No. 2 was signed SCO required ownership of any specific copyrights to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies under the APA. With this dearth of evidence, SCO cannot meet the Rule 50 standard that requires showing that the evidence is “so overwhelmingly preponderant in favor of [SCO] as to permit no other rational conclusion” because, if anything, the evidence on the meaning and effect of Amendment No. 2 is overwhelmingly preponderant in favor of *Novell*.

**a. Novell’s Witnesses Confirmed That Amendment No. 2 Did Not Transfer Copyright Ownership.**

Novell’s witnesses testified that the “required for” language of Amendment No. 2 was not intended to transfer copyright ownership in view of the underlying purposes and structure of the APA. Jim Tolonen (again, Novell’s CFO at the time of both the APA and Amendment No. 2 and signer of Amendment No. 2) and Allison Amadia, the former in-house attorney who represented Novell in the negotiation and drafting of Amendment No. 2, both testified that the “required for” language in Amendment No. 2 was not intended to transfer the UNIX copyrights. (March 2010 Trial Tr. at 2036:15-22; 2038:1-3; 2119:21-2120:6; 2123:2-13.)

The purpose of Amendment No. 2 was to affirm that SCO had the right to use the UNIX and UnixWare technologies to manufacture UnixWare and to make modifications to it. (*Id.* at 2128:9-12.) Ms. Amadia confirmed that, under the APA, SCO would own the copyrights in any derivative works it created based on the UNIX technology, and could enforce those rights. (*Id.* at 2157:21-22.) SCO did not, however, acquire the rights from Novell to license the underlying UNIX code or to enforce copyrights in that code. (*Id.* at 2158:1-14.)

In fact, Ms. Amadia initially received a draft of Amendment No. 2 from Mr. Sabbath that would have revised Schedule 1.1(b), but Novell rejected the proposed language because Novell did not want to alter the APA to transfer the UNIX copyrights to SCO. (*Id.* at 2120:3-14.) Mr. Sabbath's proposed revision of Schedule 1.1(b), had it been accepted, would have excluded "[a]ll copyrights and trademarks, except for the copyrights and trademarks owned by Novell as of the date of this Amendment No. 2, which pertain to the UNIX and UnixWare technologies and which SCO has acquired hereunder." (Trial Ex. T34 at 1.) But Ms. Amadia told Mr. Sabbath that Novell would not alter the original APA to transfer copyright ownership, and she further said that she could only modify the language to "affirm the rights that [Santa Cruz] acquired in terms of license grants and rights to use the technology." (March 2010 Trial Tr. at 2120:23-2121:4.) Ms. Amadia prepared such a revision, and her revised language became the final language of Amendment No. 2. (*Id.* at 2121:3-2123:5.)

Ms. Amadia also testified that, if she were drafting an amendment to the APA under which the copyrights transferred, she "would have definitely amended Schedule 1.1(a), which listed the Included Assets," but she did not do that. (*Id.* at 2160:21-24.) Likewise, Mr. Tolonen agreed that the way to transfer the copyrights would have been to include them on the schedule of Included Assets. (*Id.* at 2037:18-25.) This did not occur.

SCO takes quotes from Novell's witness Allison Amadia out of context to argue that her testimony is consistent with its position that copyright ownership transferred. But Ms. Amadia was clear in her testimony that she was not discussing the transfer of copyright ownership, but

instead the transfer of certain copyright rights.<sup>5</sup> (*See, e.g., id.* at 2160:3-7 [“whatever *copyright rights* Santa Cruz needed in order to exercise the rights it was given . . . they would have *those rights.*”] [emphasis added], 2122:3-7 [“Q: Did anyone at Novell ever suggest to you that in connection with amendment number two that Novell ought to transfer *ownership* of UNIX copyrights to Santa Cruz Operation? A: No, no one did.”] [emphasis added].) SCO’s attempt to use the testimony of Steve Sabbath, former General Counsel at Santa Cruz, to contradict Ms. Amadia’s testimony is belied by the fact that, as discussed in more detail below, Mr. Sabbath (1) earlier executed a declaration under penalty of perjury conflicting with his later testimony, (2) testified that he had no memory of the negotiation of the relevant portion of Amendment No. 2, and (3) admitted that he would not be able to contradict Ms. Amadia regarding whether he stated the copyrights were specifically excluded from the APA. (*Id.* at 924:17-925:5, 933:13-21.)

**b. SCO’s Own Witnesses Testified That the Copyrights Were Not Required.**

SCO and its witnesses presented vague rhetoric at trial to argue that copyright ownership is always required for a software business, with SCO claiming in closing argument that a software business without the copyrights is “a car without an engine” or “a house without a roof.” (*Id.* at 2636:10-17.) But this hyperbole was defeated by the admissions of SCO’s own witnesses.

**(i) SCO CEO Darl McBride.**

Darl McBride, CEO of SCO from 2002 to 2009 and the architect of the SCOsource licensing program, admitted that SCO could in fact run its software business without owning the UNIX copyrights. (*Id.* at 1225:2-1226:10.) Indeed, Mr. McBride even issued a statement to the SEC and the investing public stating as much. (Tr. Ex. R45 at 6.) He also confirmed at trial that the UNIX copyrights were not required for SCO to run its UnixWare and OpenServer software business, because SCO could “run [its] business . . . without the copyrights, just like HP, IBM,

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<sup>5</sup> SCO’s argument that Amendment No. 2 must not have excluded *copyright* ownership because it included the *trademarks* UNIX and UnixWare is similarly misguided. The trademarks UNIX and UnixWare were explicitly listed as Included Assets even in the original APA.

all of the other licensees of UNIX can run their businesses as well.” (March 2010 Trial Tr. at 1225:24-1226:1.)<sup>6</sup> Mr. McBride characterized UnixWare and OpenServer as “branches off this tree,” and agreed that prior to the APA, Santa Cruz had sold OpenServer without owning the UNIX copyrights. (*Id.* at 1057:15-20, 1058:3-10.) He further admitted that SCO could develop and sell its UnixWare products without ownership of the UNIX copyrights. (*Id.* at 1231:11-19.)

Mr. McBride testified only that SCO was only unable to “run [its] business for the licensing side” without the copyrights. (*Id.* at 1226:2-3.) He asserted that the copyrights were needed for SCO’s new business of licensing—and, if necessary, suing—Linux users. (*Id.* at 1226:1-10.) But SCO presented no evidence that suing Linux users was part of the “rights” transferred under the APA. Rather, even SCO’s witnesses testified that the APA was intended to enable Santa Cruz to develop a new version of UnixWare that could compete with Microsoft Windows. (*Id.* at 91:7-13; 92:20-93:1 (Robert Frankenberg); 224:23-225:25 (Duff Thompson); *see also* 429:2-10 (Jack Messman).)

**(ii) SCO General Counsel Ryan Tibbitts.**

Ryan Tibbitts, SCO’s in-house corporate counsel from 2003 to the present, acknowledged at trial that SCO was recently involved in a proposed transaction whereby SCO would sell its UNIX-related business to a third party, yet still retain all of its copyrights. (*Id.* at 1850:20-1851:18.) Mr. Tibbitts testified that someone could buy and operate SCO’s product business and not receive the UNIX copyrights. (*Id.*) Under the proposed deal, SCO would have retained only its intellectual property business, which Mr. Tibbitts acknowledged was a new business. (*Id.* at 1859:8-20 [SCOsource was launched as a new “licensing line” in 2003].)<sup>7</sup> Moreover, neither Mr. Tibbitts nor anyone else for SCO testified as to precisely which

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<sup>6</sup> As SCO’s witness William Broderick explained, licensees executed licensing agreements and software agreements, which allowed a licensee to create a flavor of UNIX, and sublicensing agreements that allowed a licensee to market the flavored UNIX product. (*Id.* at 583:4-17).

<sup>7</sup> Dr. Christine Botosan, one of SCO’s damages experts, also testified that the SCOsource licensing program was a new “product” for SCO for which there was no “previous history” to look at. (*Id.* at 1447:5-8; 1448:3-5; 1449:8-11; 1453:20-24.)

copyrights SCO purportedly required. SCO provides some further background on this deal in a footnote in the present motion, but cannot hide from the fact that in a complicated transaction, SCO considered selling aspects of a software product business while retaining the related copyrights, just as Novell did in the transaction with Santa Cruz in 1995. (*See* Motion at 12 n.9.)

**c. SCO Did Not Require Ownership of the UNIX Copyrights to Protect Its Own Intellectual Property.**

SCO also argues, as it did throughout the trial, that it needs ownership of UNIX copyrights in order to protect its own intellectual property rights. This is simply not true. Both SCO's witness Mr. Sabbath and Novell's witness Ms. Amadia testified that Santa Cruz (and thus subsequently SCO) would own the copyrights to the new code it created and could use those copyrights to protect that code against infringement. (March 2010 Trial Tr. at 933:2-7; 2157:21-22.) Mr. Sabbath also acknowledged that Santa Cruz (and subsequently SCO) would not need anything more than a license to create derivative works based on the UNIX source code. (*Id.* at 939:3-18.) As the owner of the copyrights in its own software, SCO was able to protect itself against infringement of that code, and did not require ownership of the UNIX copyrights to do so.<sup>8</sup>

Consistent with Mr. McBride's testimony discussed above, SCO's witness Kim Madsen testified that for 12 years prior to the APA, Santa Cruz successfully distributed the OpenServer flavor of UNIX and developed a substantial business around that flavor without owning the copyrights in the underlying UNIX code. (*Id.* at 816:19-817:1, 817:7-14, 869:10-14.)

Ms. Madsen agreed that through the APA, Santa Cruz acquired another flavor of UNIX:

UnixWare. (*Id.* at 869:15-19.) This testimony supports Novell's position on the APA, with

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<sup>8</sup> SCO's argument that the majority of UnixWare is older UNIX code is both misleading and irrelevant. SCO's witness Andrew Nagle acknowledged that he had no estimate of the amount of code Santa Cruz and SCO contributed to the UnixWare product, and would not be surprised if Santa Cruz and SCO had added seven million lines of code on top of the seven million lines of code that existed in 1995. (*Id.* at 1773:10-21.) Regardless, whether the portion of code created by SCO makes up 10% or 50% of the product, it is undisputed that SCO owns the copyrights in the code *it creates* and can protect those rights without owning the UNIX copyrights.

which the jury agreed: the APA gave Santa Cruz the rights to develop UnixWare, another flavor of UNIX, along with the right to manage Novell's UNIX licensing business, a 5% administrative fee, and certain other enumerated rights and physical assets, none of which required ownership of the existing UNIX and UnixWare copyrights, as Santa Cruz would naturally own the copyrights in what it created going forward.

**d. SCO Presented No Credible Witnesses Regarding Amendment No. 2.**

The only two witnesses presented by SCO who had any involvement in Amendment No. 2—Kim Madsen and Steve Sabbath—had nothing to say with respect to the negotiation and interpretation of Amendment No. 2. Mr. Sabbath did not recall the relevant paragraph in Amendment No. 2, did not recall negotiating it, did not know who would have negotiated it, and could not recall focusing on that provision prior to signing Amendment No. 2. (*Id.* at 924:17-925:5.) Despite this lack of memory, he executed a declaration in 2004 stating his belief that Amendment No. 2 was intended to confirm that SCO would obtain ownership of the UNIX copyrights under the APA (*Id.* at 910:16-24), but also admitted executing an earlier declaration that conflicted with much of his later testimony, including statements acknowledging that Novell retained UNIX System V intellectual property and that SCO's claims were incorrect. (*Id.* at 927:4-928:18.)

Ms. Madsen testified that she had only a general memory of the execution of Amendment No. 2, and did not have any specific recollection of discussions with Mr. Sabbath. (*Id.* at 802:14-22.) She “reviewed and commented” on the language of Amendment No. 2, and in response to a question asking whether she had a view in 1996 about what copyrights were “required” for Santa Cruz to operate its UNIX and UnixWare business, responded only: “We would have acquired all the copyrights.” (*Id.* at 802:17-803:1.)

**e. SCO's Argument Regarding “All of Seller's Claims” Fails.**

SCO claims that it needs the copyrights because the APA transferred to SCO “all of [Novell's] claims arising after the Closing Date against any parties relating to any right, property or asset included in the Business.” (Trial. Ex. A1, Schedule 1.1(a).) Amendment No. 2 refers to

copyrights “*required for* SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies [emphasis added],” but SCO made no showing that such “rights” include Novell’s “legal claims.”

Furthermore, SCO cannot prevail on such a theory suggested after the trial because it presented no evidence at trial that Novell has any “claims” that SCO is entitled to pursue. The only evidence SCO presented on this point at trial was testimony that the enumerated assets Novell actually sold to Santa Cruz included “legal claims that it would have against parties that were connected with the business.” (March 2010 Trial Tr. at 248:20-249:23 (Duff Thompson).) However, SCO did not carry its burden of establishing that there were any such Novell “legal claims.”<sup>9</sup>

### **III. SCO IS NOT ENTITLED TO A NEW TRIAL**

#### **A. Legal Standard.**

As this Court has held, motions for a new trial under Rule 59(a) are “generally not regarded with favor and granted only with great caution. The party seeking to set aside a jury verdict must show either trial error which constitutes prejudicial error or that the verdict was not based on substantial evidence.” *P&G v. Haugen*, 627 F. Supp. 2d 1287, 1296 (D. Ut. 2008) (Stewart, J.) (denying motions for judgment as matter of law and new trial) (quoting *Smith v. Cochran*, 182 Fed. Appx. 854, 864 (10th Cir. 2006)). Put another way, new trial motions are granted to avoid “miscarriage of justice.” *Ruffin v. Fuller*, 2000 U.S. Dist. LEXIS 14619, at \*2 (S.D.N.Y. Oct. 5, 2000) (citing *United States v. Landau*, 155 F.3d 93, 104 (2d Cir. 1998)). Where a new trial motion asserts that the jury verdict is not supported by the evidence, the verdict must stand unless it is clearly, decidedly, or overwhelmingly against the weight of the

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<sup>9</sup> SCO’s references to claims that it pursued post-closing against Microsoft and its allegations of copyright infringement against Linux users are not pertinent. (Motion at 13 n.10.) These are claims created by SCO, not Novell, and thus are not “Seller’s claims.” They are self-serving positions taken by SCO (in the Microsoft example, litigation-drawn hearsay) and only “expressly refer[] to ownership of copyrights” because SCO claimed to own the copyrights. Neither has any bearing on the negotiated terms of the APA.



evidence. *M.D. Mark, Inc. v. Kerr-McGee Corp.*, 565 F.3d 753, 762 (10th Cir. 2009) (internal citation omitted).<sup>10</sup>

**B. The Jury’s Verdict Is Not “Clearly, Decidedly, or Overwhelmingly” Against the Weight of the Evidence.**

SCO does not assert that there were any prejudicial errors on the part of the Court. Instead, SCO stands solely on the argument that the jury verdict is not supported by the evidence. SCO argues that the “overwhelming weight of the evidence” is that the UNIX copyrights were intended to be transferred. This is false, as demonstrated by the same evidence set out above with respect to SCO’s Rule 50 Motion. Novell presented key witnesses with knowledge of the APA and involvement in the final negotiation and drafting of its terms, and put forth the only witnesses who testified credibly as to the interpretation of Amendment No. 2. SCO did not point to any financial stake of those witnesses in the outcome of the trial.

In addition, the jury was reasonable in its determination that Novell’s witnesses and evidence were more credible than SCO’s witnesses and evidence. SCO’s evidence included its “total of ten witnesses” who testified as supposed support for SCO’s position. (Motion at 19.) SCO mistakes quantity of testimony with quality of testimony, a distinction that was not lost on the jury. Indeed, the jury was instructed—without objection by SCO—that numerosity of witnesses is not determinative. (*See* Jury Instruction No. 12 [“To prove by a preponderance of the evidence means to prove something is more likely so than not so. It does not mean the greater number of witnesses or exhibits.”]) SCO presented witness after witness with little or no

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<sup>10</sup> SCO suggests that new trial grants are “virtually unassailable” on appeal (Motion at 14). In fact, the Tenth Circuit has cautioned that, while the standard of review if a new trial motion is *denied* is narrow, “a more searching inquiry is required” if a trial court *grants* a motion for a new trial “because of the concern that a judge’s nullification of the jury’s verdict may encroach on the jury’s important fact-finding function,” particularly where, as here, the motion is on the ground that the verdict is against the weight of the evidence. *Evans v. Fogarty*, 241 Fed. Appx. 542, 550 (10th Cir. 2007) (reversing district court’s grant of new trial because there was sufficient evidence to support jury verdict) (quoting *Hutchinson v. Stuckey*, 952 F.2d 1418, 1421 (D.C. Cir. 1992)); accord *Holmes v. City of Massilon*, 78 F.3d 1041, 1047 (6th Cir. 1996). SCO ignores this distinction in the cases it cites. Indeed, nine of the ten cases it cites for its argument as to the deference granted a district court under Rule 59 involve denials, rather than grants, of motions for a new trial. (Motion at 14-15.)

knowledge of the negotiation and drafting of the specific language of the amended APA. SCO put forth absolutely no competent witness to explain the language of Amendment No. 2. Moreover, at least three out of the five SCO witnesses who testified live at trial had a direct financial stake in SCO prevailing.

**1. SCO’s Witnesses Were Not Competent to Testify Regarding the Final Terms of the APA or Amendment No. 2.**

SCO’s “ten witnesses” were Robert Frankenberg, Duff Thompson, Ed Chatlos, Ty Mattingly, Burt Levine, Alok Mohan, Jim Wilt, Kim Madsen, Steve Sabbath, and Doug Michels. Despite SCO’s insistence that “Amendment No. 2 . . . is the key to answering [the question of whether the amended asset purchase agreement transferred the copyrights from Novell to SCO]” (March 2010 Trial Tr. at 2632:6-7), none of these ten witnesses offered reliable testimony as to the intent, negotiation, or drafting of the relevant portion of Amendment No. 2.

Even with respect to the only subject on which all ten of the witnesses were able to testify—the original APA—their knowledge and credibility were suspect.

- Robert Frankenberg admitted that his belief that copyrights were not meant to be retained by Novell was “something in [his] mind” that was different than the words in the APA and that he “should have read more carefully or clearly or we might not have been here.” (*Id.* at 2551:18-2552:2, 178:2-3.)
- Duff Thompson was not on the Novell Board of Directors, nor was he present at the Novell Board meeting where the APA was approved; he had decided to leave Novell before beginning work on this transaction; he was a member of the SCO Board that made the decision to file this lawsuit; and he admitted that he has a financial interest in this case. (*Id.* at 279:1-11, 280:5-11, 282:4-13, 285:14-22, 302:12-303:9.)
- Ed Chatlos was not at the Novell Board meeting in September 1995 when the APA was approved including the exclusion of copyrights, and does not know what was discussed; and his wife is an employee of SCO who could make money if SCO prevails in this lawsuit. (*Id.* at 374:8-375:11, 383:23-384:22.)

- Ty Mattingly acknowledged that he did not “write or craft” any provisions of the APA, did not participate in any “wordsmithing,” “did not make any contribution whatsoever to the terms or conditions” of the APA, that his “high-level strategy involvement” took place at least two to three weeks before the agreement was signed, and he did not remember who was present or what was said at the Board meeting at which the APA was approved. (*Id.* at 714:14-25, 715:1-5, 737:9-740:8.) Mr. Mattingly is also a SCO stockholder who owns over 9,000 SCO shares. (*Id.* at 701:12-20.)
- Burt Levine claimed that he would not have left intact the copyright exclusion in Schedule 1.1(b) of the APA, but then admitted when faced with his own handwriting that he had reviewed and commented extensively on drafts of Schedules 1.1(a) and 1.1(b), even crossing out the item directly above the copyright exclusion language, and did not add copyrights to the Included Assets or remove copyrights from the Excluded Assets. (*Id.* 531:22-537:23; Trial Ex. X3.)
- Alok Mohan’s involvement was “only at a high level”; he was not involved in the drafting of the APA or the “detail level of negotiations”; he did not participate in the meetings occurring between the respective parties drafting the document; and he agreed that when contract disputes arise, the contract is the best evidence of the parties’ rights and obligations under the deal. (March 2010 Trial Tr. 456:7-17, 473:2-13, 474:18-475:19.)
- Jim Wilt became less active as the negotiations progressed and had no recollection of anyone saying whether the copyrights would be included or excluded from the transaction. (*Id.* at 442:11-444:8.)
- Kim Madsen had no involvement in the drafting of the APA or Amendment No. 2, no specific memory of the intent or negotiation of Amendment No. 2, and

no specific recollections of discussions with Steve Sabbath about Amendment No. 2. (*Id.* at 802:17-22.)

- Steve Sabbath admitted executing a declaration that conflicted with much of his later testimony, including statements such as “Schedule 1.1(b) of the APA provided that much of the UNIX System V intellectual property would not be transferred to Santa Cruz” and that SCO’s claims were “incorrect . . . Novell retained certain rights under the UNIX System V licensing agreements as well as certain UNIX System V intellectual property.” (*Id.* at 927:4-928:18.) His explanations were, “I don’t have any skin in the game. I wasn’t that interested. Okay? I was being lazy,” and that the earlier declaration was “close enough for government work.” (*Id.* at 926:17-927:3, 928:19-929:2.)
- Doug Michels repeatedly emphasized his lack of knowledge about the APA and Amendment No. 2, stating “I have no memory specific to any specific agreement,” “I don’t even know what Amendment No. 2 is,” and “I didn’t read [the APA] then, and I haven’t read it recently. I’ve never read it through. I’m not a lawyer, and I have no comment about the Asset Purchase Agreement.” (*Id.* at 494:14, 511:15, 512:13-15.)

## **2. SCO’s Reliance on the “Forthright Negotiator Rule” Is Misplaced.**

SCO’s reference to the “forthright negotiator rule” is a red herring. This doctrine resolves questions of contract interpretation against a party (“Party 1”) if, at the time the agreement was made, (a) Party 1 knows that Party 2 attaches a different meaning to the term, and Party 2 does not know of any different meaning attached by Party 1, or (b) Party 1 has reason to know the meaning attached by Party 2, and Party 2 has no reason to know of any different meaning attached by Party 1. *Flying J Inc. v. Comdata Network, Inc.*, 405 F.3d 821, 837 (10th Cir. 2005). The rule has no applicability here, as SCO has presented no evidence that Santa Cruz

attached a different meaning to the relevant portion of Amendment No. 2 at the time the agreement was made.<sup>11</sup>

Even assuming the applicability of the “forthright negotiator rule,” Ms. Amadia’s testimony demonstrates that the elements of the doctrine fail with respect to both parties. At the time of the agreement, Novell (Party 1) had no reason to know that Santa Cruz (Party 2) believed that there was a disagreement as to the meaning of the term; Ms. Amadia believed that Mr. Sabbath was satisfied the amendment gave the assurance that Santa Cruz had the rights it needed to go forward. Conversely, Santa Cruz (Party 2) was made aware immediately by Novell (Party 1) that Novell would not execute an amendment that transferred copyright ownership, and Ms. Amadia explicitly rejected a draft amendment sent by Mr. Sabbath that seemed to be suggesting such a transfer. (Trial Ex. T34 at 1.)

SCO’s claim that Ms. Amadia knew Mr. Sabbath had a different view of the meaning of Amendment No. 2, and was thus allegedly not being a “forthright negotiator,” is a gross mischaracterization of her testimony. SCO accurately cites Ms. Amadia as agreeing that Mr. Sabbath expressed that “the purpose of the Amendment was to clarify that the UNIX and UnixWare copyrights had transferred,” but SCO inexplicably removes in its Motion the first part of this question, stating that this view was only “initially in the beginning of the discussions.” (Motion at 19, March 2010 Trial Tr. at 2169:20-2170:1.) Indeed, Ms. Amadia testified that “after he executed Amendment Number 2,” Mr. Sabbath “thought he got what he needed, which would clear license rights to go forward, to use the code, to develop it to, you know, own modifications to it, to do all of the things they intended to do to acquire the assets.” (March 2010 Trial Tr. at 2169:6-13.) Ms. Amadia further testified that Mr. Sabbath proposed a draft, and she subsequently had conversations with him about it, stating: “[W]e were not going to alter the

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<sup>11</sup> In any event, the parties expressly agreed in the APA that they “waive[d] the application of any law, regulation, holding, or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.” (Trial Ex. A1 at 47-48 (Section 9.9).) Ambiguities thus cannot be construed against Novell on account of Ms. Amadia’s role as drafter of the final language of Amendment No. 2.

original A.P.A. in terms of the transfer of copyrights . . . That is when I said, well, we can modify this language to affirm the rights that you have acquired in terms of license grants and rights to use the technology.” (*Id.* at 2120:12-2121:4.) SCO’s attempt to misconstrue Ms. Amadia’s testimony speaks volumes about the merits of its arguments.

**3. The Technology License Agreement Does Not Change the Intent of the APA or Amendment No. 2.**

SCO’s reference to the TLA is another diversion that rightfully did not distract the jury. Mr. Sabbath testified that the TLA would grant Novell the right to license post-APA SCO-developed code in which SCO owned copyrights. (*Id.* at 933:3-12.) Joe LaSala, General Counsel of Novell from 2001 to 2008, similarly testified that the TLA gave Novell a license-back to all assets *conveyed* to SCO, as well as additional code to be developed by SCO. (*Id.* at 1964:8-22; 1984:6-1985:21.) In short, all that was licensed back to Novell under the TLA were the assets transferred under the APA. And because intellectual property other than copyrights and patents was transferred, and Novell had an interest in a license to post-APA SCO-developed code, the license-back provision and the TLA are not inconsistent with Novell’s retention of the UNIX copyrights.

**4. SCO’s “Course of Performance” Evidence Does Not Trump the Terms of the Amended APA.**

It was also reasonable for the jury to give lessened weight to SCO’s so-called “course of performance” testimony. SCO presented course of conduct evidence such as letters sent to customers after the APA, changes in copyright notices, and physical possession of the copyright registrations, but testimony from SCO’s own witnesses revealed that (1) the letters at issue were not meant to give customers all details, but merely convey that customers needed to deal with Santa Cruz going forward, (2) neither copyright notices nor copyright registrations demonstrate who owns the copyrights if they conflict with the underlying agreements, and (3) when the APA was finalized, UNIX staff and property simply remained in the same physical location in New Jersey. (*Id.* at 1706:14-19, 1778:21-1779:20, 641:19-642:3.)

Moreover, copyright notices were changed only on the then-current releases of UnixWare that Santa Cruz was taking over, and not older UNIX or UnixWare releases, the copyrights to which SCO claims transferred under the APA. Andrew Nagle, SCO's Senior Director of Product Development, confirmed that copyright notices were changed only on the current software version that Santa Cruz was going to release after the APA, and SCO did not go back to change copyright notices on older UnixWare or System V Release 4.2MP because it was SCO's understanding that ownership of copyrights in older code was established by the legal agreements, not the notices. (*Id.* at 1775:15-1776:16.)

**5. SCO Presented No Evidence Regarding Which, If Any, Copyrights Were Required for It to Exercise Its Rights.**

Finally, as set out in greater detail above, SCO presented no testimony as to what copyrights were allegedly required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies, or why such copyrights would be required. It presented a series of witnesses to make broad allegations that all copyrights would be required to run a software business. However, its own witnesses undercut that generalization—Mr. McBride admitted that copyright ownership was not required for SCO to run its software business and Mr. Tibbitts admitted that SCO contemplated selling its software business without the related copyrights—and the undisputed testimony on Amendment No. 2 was that Amendment No. 2 was not intended to transfer copyright ownership.

**IV. CONCLUSION**

After fighting for years to have its case heard by a jury, SCO now asks this Court to disregard the jury's verdict because SCO does not agree with the verdict. SCO has not shown that the evidence points but one way and is susceptible to no reasonable inferences supporting Novell. Nor has SCO shown that the jury's verdict is clearly, decidedly, or overwhelmingly against the weight of the evidence, a miscarriage of justice, or not based on substantial evidence. *See M.D. Mark, Inc.*, 565 F.3d at 762; *Snyder*, 354 F.3d at 1184; *P&G*, 627 F. Supp. 2d at 1296; *Ruffin*, 2000 U.S. Dist. LEXIS 14619, at \*2. SCO's disagreement with the jury does not justify nullifying its verdict. Indeed, the weight of the evidence overwhelmingly supports the jury's





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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

<p>THE SCO GROUP, INC., by and through the Chapter 11 Trustee in Bankruptcy, Edward N. Cahn,  Plaintiff/Counterclaim-Defendant,  vs.  NOVELL, INC., a Delaware corporation,  Defendant/Counterclaim-Plaintiff.</p>	<p><b>SCO'S REPLY MEMORANDUM IN SUPPORT OF ITS RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, FOR A NEW TRIAL</b></p> <p>Civil No. 2:04 CV-00139</p> <p>Judge Ted Stewart</p>
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## INTRODUCTION

SCO's Rule 50 motion is predicated on the plain language of the APA, as amended by Amendment No. 2, and as interpreted by the Tenth Circuit. The plain language of the APA, after Amendment No. 2, as well as the Court of Appeals's analysis of that language, makes clear that all copyrights that are required for SCO to exercise any of its purchased rights in the UNIX and UnixWare technologies acquired under the APA were transferred, and Ms. Amadia, Novell's drafter of the provision, after she admitted that she was assuming no copyrights were required, conceded as much on cross-examination. Because ownership of the UNIX and UnixWare copyrights is required, at least, for SCO to enforce its rights against third-party infringers and to pursue enforcement of claims transferred to it under the APA, the jury's verdict cannot stand.

Novell's defense of the verdict rests on a series of suppositions and non-issues. First, Novell contends that what SCO received in the APA was just a license to develop a new modified UnixWare product. This position cannot be squared with the facts that the APA is an asset purchase agreement, not a licensing agreement; the APA transfers "all rights and ownership" in the UNIX and UnixWare source code, which no license would do; and Novell offered UnixWare source code licenses to develop new modified UnixWare products for \$375,000 – not the tens of millions of dollars Santa Cruz at minimum paid. (605:23-606:8 (Broderick); 598:4-8 (Broderick); 2018:6-8 (Tolonen); Ex. 133.) Second, Novell's position requires that SCO would have received a license to use UNIX and UnixWare copyrights, but there is no such license in the APA. Finally, Novell argues that it is sufficient that SCO could copyright its own modifications to the UNIX and UnixWare source code, ignoring that this would leave the underlying UNIX technology, on which such modifications are constructed, entirely unprotected. Because the amended APA transfers all copyrights that are required, and the UNIX and UnixWare copyrights are required, Rule 50 requires that judgment on copyright ownership be entered for SCO.

SCO's alternative motion for new trial under Rule 59 appropriately requires this Court to consider the jury's verdict against the extraordinary evidence that transfer of the UNIX and UnixWare copyrights was intended. This evidence includes testimony from Novell's own top executives and negotiators, not to mention indisputable evidence of how Novell remarked and relabeled UnixWare with SCO's copyright notice, informed customers that SCO now owned the technology, intentionally left its UNIX copyright registrations for SCO to keep, and never objected as SCO publicly claimed copyright ownership in subsequent press releases and other filings. Novell would have this Court believe that ten witnesses, five from Novell's side, most with no financial interest in the matter, have concocted the story that it was the intent of the transaction, as expressed in negotiations, that ownership of the whole UNIX and UnixWare business (excepting the existing royalty stream) be sold, and that this naturally included the UNIX and UnixWare copyrights.

It is true, as Novell says, that SCO fought for a jury trial. But doing so does not surrender the protections provided by law for a case where the jury is confused or misled into an untenable decision. We respectfully submit this is such a case.

## **ARGUMENT**

### **I. SCO IS ENTITLED TO JUDGMENT AS A MATTER OF LAW**

SCO's Rule 50 motion is appropriately granted under the standard of Reeves v. Sanderson Plumbing Prods, Inc., where the Supreme Court stated that courts "should give credence to the evidence favoring the nonmovant as well as that evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses." 530 U.S. 133, 150-51 (2000). The Court, of course, is also entitled – indeed required – to give controlling weight to the views of the Tenth Circuit expressed in the course of interpreting this very contract.

**A. The Amended APA Transferred “Required” Copyrights to SCO.**

The amended APA plainly provides for transfer of copyrights required for SCO to exercise its rights with respect to the UNIX and UnixWare technologies it acquired through the APA. The transfer of “all rights and ownership” in the UNIX and UnixWare source code – if there is no exclusion of copyrights – is plainly sufficient to transfer the copyrights under settled case law. (See SCO Opening Br. at 5.) As the Tenth Circuit observed, “when a party acquires ‘all rights and ownership’ in a set of items, as was the case here, courts have generally found such language sufficient to satisfy Section 204(a) in the absence of language excepting copyrights or other special circumstances.” SCO Group, Inc. v. Novell, Inc., 578 F.3d 1201, 1213 (10th Cir. 2008). Thus, “any change to the set of Excluded Assets in Schedule 1.1(b) necessarily implicated those copyrights actually transferred under Schedule 1.1(a).” Id. This clear statement, as well as others the Tenth Circuit made, resolves the issue here. Id. at 1213-16. Novell’s competing interpretation is that Amendment No. 2 simply affirmed in SCO a right to use the UNIX and UnixWare technology, i.e., a “license,” without using the word. But this is precisely the interpretation of which the Court of Appeals said it was “skeptical” because “[w]hatever the Amendment means, it refers to ownership of copyrights not to licenses.” Id. at 1216. The language of Amendment No. 2, the Tenth Circuit’s analysis, and the testimony of Novell’s own chief witness on the point are all contrary to Novell’s position.<sup>1</sup>

While the Tenth Circuit, as Novell argues, took “no position on which party ultimately owns the UNIX copyrights or which copyrights were required for Santa Cruz to exercise its rights under the agreement,” that does not mean the Tenth Circuit’s views of the proper interpretation of the contract are to be disregarded. They are law of the case. (See Novell Mot. in Limine No. 9

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<sup>1</sup> Ms. Amadia makes it clear that her view of Amendment No. 2 is based on her erroneous reading that the APA was a mere grant of rights for SCO to do certain things (2152:10-17; 2153:5-13; 2156:6-9), rather than the outright ownership transfer of the UNIX and UnixWare businesses that it indisputably is.

(Docket No. 650) at 2.) Now that this Court has heard the evidence, the Court should consider the evidence in light of the Tenth Circuit's opinion and the views expressed therein.

Novell cites provisions that SCO would manage and remit to Novell older UNIX royalties, points to evidence that “the retention of copyrights was approved by the Novell Board,”<sup>2</sup> and argues that Amendment No. 2 could not have been intended to transfer copyright ownership because “that would have been a material change that would have required separate Board approval.” But none of these arguments creates a plausible alternative reading of the amended APA. Moreover, there is no question that Amendment No. 2 is a binding contract to which Novell is legally bound, irrespective of the views of certain Novell witnesses regarding the need for further approval.<sup>3</sup> “Contract formation is governed by objective manifestations, not the subjective intent of any individual,” and “subjective, undisclosed intent” is “immaterial to interpretation of contract.” Coremetrics, Inc. v. Atomic Park.com, LLC, No. C-04-0222 EMC, 2005 WL 33100093, at \*5 (N.D. Cal. Dec. 7, 2005); accord Navair, Inc. v. IFR Americas, Inc., 519 F.3d 1131, 1138 (10th Cir. 2008) (contracts formed “by what the parties communicate”); Williston on Contracts § 4:1 (2007) (“mutual assent is to be judged only by overt acts and words”).

Novell also argues (at 9-10) that SCO “takes out of context” Ms. Amadia’s concession that the amended APA transferred ownership of any required copyrights. A review of Ms. Amadia’s testimony, however, shows that she clearly conceded the point under cross-examination that, if

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<sup>2</sup> Novell suggests (at 6) that Mr. Frankenberg “confirmed and verified the accuracy” of the Novell Board minutes at the time of the Board meeting. But Mr. Frankenberg merely authenticated the Board minutes. (147:10-17.) In addition, he made clear that he “misread” the exclusion of copyrights reflected in the Board minutes as an exclusion of Netware copyrights, and thus the mistake was not “caught at the time in 1995 when the transaction was being signed.” (102:19-103:6.)

<sup>3</sup> Not only was Amendment No. 2 binding, as it was signed by a Novell officer, but the APA and related agreements were amended in material ways affecting Novell’s rights, without evidence of Board approval, through Amendment No. 1 and the three-way amendment among Novell, SCO, and IBM known as Amendment X. (Ex. 1, Amendment No. 1; Ex. 165, Recitals.) Like those amendments, Amendment No. 2 was executed and became binding on Novell even without such Board approval.

copyrights were “required” by SCO contrary to what she was assuming in her direct testimony, the copyrights were transferred. First, she admitted that “whatever copyright rights Santa Cruz needed in order to exercise the rights it was given under the asset purchase agreement . . . they would have those rights.” (2160:5-8). Then, in the context of testifying that both trademarks and copyrights<sup>4</sup> were transferred under the same language of Amendment No 2, Ms. Amadia testified:

Q. So if there are copyrights that are required for SCO to exercise its rights, like the UNIX and UnixWare trademarks, they were transferred; correct?

A. Yeah.

(2177:25-2178:18) There is simply no contextual confusion – which is the only possible response Novell has to this clear, dispositive admission from its chief witness on the issue.

**B. SCO Required UNIX and UnixWare Copyrights.**

SCO showed that it plainly requires the copyrights to enforce its rights against third-party infringers and to pursue enforcement of claims transferred to it under the APA.

Novell does not and cannot dispute that SCO cannot enforce copyrights against infringers of the UNIX source code and related information, which Novell concedes SCO owns, without owning the copyrights (or holding an express exclusive license, a position even Novell does not espouse). SCO’s ability to copyright subsequent modifications and enhancements does not provide a means to protect the underlying UNIX source code – code that Andrew Nagle (a long-time USL, Novell, and Santa Cruz employee) testified to, without contradiction, “is still there” in UnixWare today.<sup>5</sup> (1784:1-22; see SCO Opening Br. at 11). Indeed, with no copyrights, SCO

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<sup>4</sup> While trademarks are expressly listed in Schedule 1.1(a), they are excluded by the excluded asset language unless that language – which applies equally to copyrights – allows for conveyance of ownership.

<sup>5</sup> Mr. Nagle’s testimony alone answers Novell’s assertion that SCO presented no testimony as to what copyrights were required. UNIX and UnixWare are a continuous development process building new code on top of the original UNIX code. (1722:5-11; 1729:11-1730:1.) “The engine to UNIX is the kernel, it is the core of the operating system . . . . All of that technology, the basis for that technology, reaches back

would not even be able to protect the UnixWare product it received and commenced selling at the time of the closing. (1784:1-22.)

With respect to the transfer of legal claims – which would include copyright claims – in the APA, Novell protests (at 13-14) that SCO “made no showing” that “legal claims” were among the rights SCO acquired under the APA. But Item II of Schedule 1.1(a) clearly transfers “All of Seller’s claims arising after the closing date against any parties relating to any right, property or asset included in the business.” (Emphasis added.) Without contradiction, Mr. Thompson testified “that the enumerated assets Novell actually sold to Santa Cruz included legal claims that it would have against parties that were connected to the business.” Under the case law, a copyright owner cannot transfer its copyright claims without also transferring the copyrights. Silvers v Sony Pictures Entm’t., Inc., 402 F.3d 881, 885 (9th Cir. 2005).

Novell next argues (at 8-9) that Ms. Amadia and Mr. Tolonen “testified that the ‘required for’ language in Amendment No. 2 was not intended to transfer the UNIX copyrights.” But even if (contrary to fact) that testimony could be squared with the plain language of the amended APA, Mr. Tolonen and Ms. Amadia were not testifying regarding the relevant question – whether the copyrights at issue are required – but rather declaring categorically that Amendment No. 2 accomplished nothing – even though Ms. Amadia admitted that the reason Amendment No. 2 was drafted in the first place was to, in Mr. Sabbath’s words, “correct” a “clerical error” “regarding the ownership of the copyrights under the asset purchase agreement.” (2107:2-18.)

Novell next argues (at 10-11) that Mr. McBride’s statement that the copyrights were not required to run the UnixWare business proves that the copyrights are not required for SCO to exercise the rights it acquired under the APA. But Mr. McBride was clearly referring to only one part of SCO’s business – its ability to sell UnixWare binary products directly to customers – as is

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to the development of 4.2 MP that was done at UNIX System Laboratories. It was brought forward into UnixWare 2, it was brought forward into UnixWare 2.1, and it is still there.” (1784:12-19.)

evident from (1) his comparison of UnixWare to OpenServer and the products of “HP, IBM and all other UNIX licensees,” and (2) the distinction he draws between the UnixWare business and “the licensing side” of SCO’s overall business. That SCO, like UNIX licensees, could continue to sell its UnixWare binary products without the copyrights does not mean that the copyrights were not required to exercise critical rights “on the licensing side” that SCO also acquired under the APA. Indeed, even selling binary products would be more tenuous if infringers could copy protected UNIX and UnixWare code with impunity.<sup>6</sup>

Mr. Tibbitts squarely testified that without the UNIX and UnixWare copyrights SCO “could not protect” its business and that “this venerable UNIX business that has been around for many years that many customers around the world are using would simply die off.” (1844:25-1846:1; 1850:11-14.) SCO’s consideration of selling the UnixWare binary business while retaining the copyrights to pursue its intellectual property business is consistent with the legal and practical reality that copyrights are required to license and enforce the intellectual property. Moreover, Mr. Tibbitts testified that “the copyrights were potentially going to go with that business [through the proposed sale] when the [litigation] issues get cleared up.” (1850:15-19.)

## **II. IN THE ALTERNATIVE, SCO IS ENTITLED TO A NEW TRIAL**

Alternatively, the verdict was clearly, decidedly, and overwhelmingly against the weight of the evidence that the parties intended for SCO to receive the copyrights, as part of the “all rights and ownership” to the software business it acquired in the APA. Novell suggests (at 15, n.10) that Evans v. Fogarty, 241 Fed. Appx. 542, 550 (10th Cir. 2007), modifies the “abuse of discretion” standard of review where a district court grants, as opposed to denies, a motion for a new trial. But the Tenth Circuit makes no such distinction. Henning v. Union Pacific, 530 F.3d 1206, 1217 (10th Cir. 2008) (“Like a district court’s decision to deny a motion for a new trial, we review the

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<sup>6</sup> A party suffering infringement may sue to enjoin the infringing user, license the infringing use as SCO attempted with certain users through SCOSource licensing, or a combination of both.



district court's decision to grant a new trial for an abuse of discretion.") Fogarty thus speaks to the thoroughness of a panel's review of the record, not to any distinct, less-deferential standard.

**A. SCO Acquired the UNIX and UnixWare Copyrights.**

**1. The Intent of the Negotiators and Principals Regarding the APA.**

Novell first argues (at 15-17) that "SCO mistakes quantity of testimony with quality of testimony." SCO respectfully suggests that when a litigant is able to present favorable testimony from an array of its adversary's most senior executives, including its then-CEO, and the lead business negotiators, it has provided both "quality" and "quantity" of proof. But in any event the following facts about SCO's ten key witnesses are derived from the record:

- At the time of the APA, five worked for Novell and five for Santa Cruz.
- There was no evidence that seven – Mr. Frankenberg, Mr. Levine, Mr. Mohan,<sup>7</sup> Mr. Wilt, Mr. Michels, Ms. Madsen, and Mr. Sabbath – ever had any affiliation or interest in SCO. All seven offered testimony that was consistent within the entire group and also with the witnesses Novell challenged as having some potential interest in SCO.
- Mr. Levine, who Novell notes marked up Schedule 1.1(b), testified that it was intended that copyrights transfer and suggested it would have been unethical for Novell to sell the business and yet withhold the copyrights in that manner. (521:7-522:14.)

Novell argues (at 16) that "none of these ten witnesses offered reliable testimony as to the intent, negotiation, or drafting of the relevant portion of Amendment No. 2," ignoring that Ms. Madsen and Mr. Sabbath both offered fully competent testimony concerning the intent of Amendment No.

2. (802:14-803:1 (Madsen); 865:3-866:1 (Madsen); 900:23-901:9 (Sabbath)). Novell next

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<sup>7</sup> Novell cites a memo from Mr. Mohan to argue that there were two businesses – the existing UNIX business and the UnixWare business – and that SCO acquired only the forward-looking UnixWare business. The APA, however, transferred all existing technology and versions of both UNIX and UnixWare without distinction, and Mr. Mohan drew no such distinction in his memo. (Ex. 1, Schedule 1.1(a), Item I; Ex. 163 at 1.) In fact, the memo states that SCO bought "the UNIX business from Novell" and attaches the Novell-SCO joint press release announcing that SCO was acquiring the "UNIX intellectual property." (110:22-112:13 (Frankenberg); Ex. 526; Ex. 163 at 1, 4.) Also, Mr. Mohan testified that when SCO bought the UNIX business from Novell, SCO got "the whole thing," including the copyrights. (459:2-6; 461:22-25; 462:1-9.)

selectively quotes (at 16-18) from the testimony of these ten witnesses purportedly to show that “their knowledge and credibility were suspect.” But Novell is unable to explain, and so does not try, how ten disparate witnesses, each allegedly suffering from distinct failures of knowledge or credibility, collectively offered identical testimony of their shared intent.<sup>8</sup>

The Technology Licensing Agreement (“TLA”) simply cannot be squared with Novell’s position. No one disputes that the TLA licensed to Novell post-APA UNIX derivatives. In another effort to focus the analysis on a non-issue, Novell claims that this is all the TLA does. But the TLA also licensed back to Novell the pre-APA UNIX technologies that Novell sold to SCO in the same transaction. Those are technologies for which Novell would not have needed a license, much less accepted a restricted license as stated in the TLA, had it owned the copyrights at issue. Novell incongruously emphasizes (at 20) that its General Counsel testified that “the TLA gave a license-back to Novell to all assets *conveyed* to SCO.” Yes, by definition, those assets were the existing pre-APA technologies, including all UNIX source code, not the derivatives of those technologies that SCO would subsequently develop.

**B. The Course of Performance Confirmed that Copyrights Were Transferred.**

Knowing that the Tenth Circuit deemed such evidence “the best evidence” of the parties’ contractual intent, SCO, 578 F.3d at 1217, Novell strains to downplay the probative value of the overwhelming, one-sided “course of performance” evidence SCO presented at trial.

Novell argues (at 21) that “copyright notices were changed only on the then-current release of UnixWare that Santa Cruz was taking over, and not older UNIX and UnixWare releases.” But

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<sup>8</sup> The forthright negotiator rule also requires interpreting Amendment No. 2 in SCO’s favor. According to Novell, the rule does not apply because “SCO has presented no evidence that Santa Cruz attached a different meaning to the relevant portion of Amendment No. 2 at the time the agreement was made.” But Mr. Sabbath believed that Amendment No. 2 fixed “a clerical error” and confirmed the transfer of the copyrights. (2107:2-18 (Amadia); 911:6-14 (Sabbath).) Knowing that that was his understanding from the start of the negotiations, Ms. Amadia drafted the final language to avoid “what his reaction was going to be to a whole modification of his proposed language” (2174: 6-24), which is the less-than-forthright negotiating approach that the law disfavors.

the fact that Novell changed the copyright notices on the “then-current release of UnixWare” is precisely the point. That release had been developed and was owned by Novell and was being transferred to SCO under the APA. (Ex. 1, Schedule 1.1(a), Item I (transferring UnixWare 2.1); 1722:19-1723-2 (Nagle).) No new code written by Santa Cruz was part of that product at that point. (1726:14-18 (Nagle); 1781:10-13 (Nagle).) Thus, it only made sense for Novell to change copyright notices on that release, which contained only Novell-developed code, if the pre-APA copyrights were also being transferred to SCO – which, of course, was the only testimony presented regarding the transition process.

Novell suggests (at 20) that it took no affirmative steps to turn its UNIX copyright registrations over to SCO but just left them behind in “the same physical location.” That lack of effort to keep possession is instructive. Moreover, Mr. Broderick testified without rebuttal that Novell management affirmatively sorted its files to identify and turn over to SCO all the materials being transferred to SCO under the APA, while keeping materials that should not be transferred to SCO, which were related to Netware and other Novell technologies. (610:5-611:25.)

Novell claims (at 20) that the letters it sent to hundreds of UNIX licensees and partners “were not meant to give customers all details, but merely convey that customers needed to deal with Santa Cruz going forward.” That may be true in part, but that does not detract from Novell’s precise statements that it had transferred “its existing ownership interest in UNIX” and “the ownership of the UNIX operating system,” including all existing and prior releases of UNIX and UnixWare. (Ex. 22; Ex. 751.) Not giving details is one thing; erroneously describing the transaction to partners is another. The letters speak for themselves about the intent of the APA.

**CONCLUSION**

SCO respectfully submits, for the reasons stated above, that the Court should grant SCO's motion for judgment as a matter of law or, in the alternative, grant SCO a new trial.

DATED this 28th day of May, 2010.

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**CERTIFICATE OF SERVICE**

I, Brent O. Hatch, hereby certify that on this 28th day of May, 2010, a true and correct copy of the foregoing **SCO'S REPLY MEMORANDUM IN SUPPORT OF ITS RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW OR, IN THE ALTERNATIVE, FOR A NEW TRIAL** was filed with the court and served via electronic mail to the following recipients:

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

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THE SCO GROUP, INC., a Delaware corporation,

Plaintiff/Counterclaim Defendant,

vs.

NOVELL, INC., a Delaware corporation,

Defendant/Counterclaim Plaintiff.

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MEMORANDUM DECISION AND  
ORDER DENYING SCO'S  
RENEWED MOTION FOR  
JUDGMENT AS A MATTER OF  
LAW OR, IN THE ALTERNATIVE,  
FOR A NEW TRIAL

Case No. 2:04-CV-139 TS

This matter comes before the Court on SCO's Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial. For the reasons discussed below, the Court will deny the Motion.

## I. BACKGROUND

This matter came before the Court for trial from March 8, 2010, through March 26, 2010. The sole issue before the jury was SCO's claim for slander of title.<sup>1</sup> After its deliberations, the jury found that the amended Asset Purchase Agreement ("APA") did not transfer the UNIX and UnixWare copyrights from Novell to SCO.<sup>2</sup> Because it found that SCO was not the owner of the UNIX and UnixWare copyrights, there was no need for the jury to reach SCO's slander of title claim.

In the instant Motion, SCO argues that the "jury simply got it wrong."<sup>3</sup> As a result, SCO argues that it is entitled to judgment as a matter of law or, in the alternative, a new trial. Novell opposes the Motion.

## II. DISCUSSION

### A. JUDGMENT AS A MATTER OF LAW

Under Fed.R.Civ.P. 50, a court should render judgment as a matter of law when "a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue."<sup>4</sup> A party which has made a motion for

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<sup>1</sup>Novell's counterclaim for slander of title was disposed of on a Rule 50 Motion and the parties remaining claims were tried to the Court and are addressed in the Court's Findings of Fact and Conclusions of law issued contemporaneously herewith.

<sup>2</sup>Docket No. 846.

<sup>3</sup>Docket No. 872 at 1.

<sup>4</sup>Fed. R. Civ. P. 50(a)(1).

judgment as a matter of law under Rule 50(a) prior to a jury verdict may renew that motion under Rule 50(b) after judgment is rendered.

“In [entertaining a motion for judgment as a matter of law], the court must draw all reasonable inferences in favor of the nonmoving party, and it may not make credibility determinations or weigh the evidence.”<sup>5</sup> “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.”<sup>6</sup>

The Tenth Circuit has made it clear that judgment as a matter of law is to be “cautiously and sparingly granted,”<sup>7</sup> and is only appropriate when there is no way to legally justify a jury verdict. Judgment as a matter of law is appropriate only “[i]f there is no legally sufficient evidentiary basis . . . with respect to a claim or defense . . . under the controlling law,”<sup>8</sup> or if “the evidence points but one way and is susceptible to no reasonable inferences which may support the opposing party’s position.”<sup>9</sup> “Judgment as a matter of law is improper unless the evidence so overwhelmingly favors the moving party as to permit no other rational conclusion.”<sup>10</sup>

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<sup>5</sup>*Lytle v. Household Mfg., Inc.*, 494 U.S. 545, 554-555 (1990).

<sup>6</sup>*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

<sup>7</sup>*Weese v. Schukman*, 98 F.3d 542, 547 (10th Cir. 1996).

<sup>8</sup>*Baty v. Willamette Indus., Inc.*, 172 F.3d 1232, 1241 (10th Cir. 1999) (quoting Fed. R. Civ. P. 50).

<sup>9</sup>*Finley v. United States*, 82 F.3d 966, 968 (10th Cir. 1996).

<sup>10</sup>*Shaw v. AAA Eng’g & Drafting*, 213 F.3d 519, 529 (10th Cir. 2000).



SCO argues that it is entitled to judgment as a matter of law “because the verdict cannot be squared with the overwhelming evidence and the law.”<sup>11</sup> The Court respectfully disagrees. The jury was presented with two versions of the deal between Novell and Santa Cruz, SCO’s predecessor in interest. On the one hand, SCO argued that the deal was essentially an acquisition of the UNIX and UnixWare business, wherein Santa Cruz acquired all of the business, including the copyrights. Novell, on the other hand, argued that the deal was more complex and that Santa Cruz only acquired the UnixWare business and that Novell retained significant rights in the UNIX business, such as the copyrights and the right to receive SVRX royalties. Evidently, the jury found Novell’s version of facts to be more persuasive. This conclusion is well supported by the evidence.

There was substantial evidence that Novell made an intentional decision to retain ownership of the copyrights. For instance, Tor Braham, outside counsel for Novell and lead drafter of the APA, testified that Novell was selling to Santa Cruz the UnixWare business and retaining the UNIX business.<sup>12</sup> Mr. Braham testified that the exclusion of the copyrights was agreed upon by the parties.<sup>13</sup> Mr. Braham stated that the purpose for excluding the copyrights was to protect Novell’s interest in the UNIX business that it had retained.<sup>14</sup>

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<sup>11</sup>Docket No. 872 at 4.

<sup>12</sup>Trial Tr. at 2347:2-5.

<sup>13</sup>*Id.* at 2363:19-23.

<sup>14</sup>*Id.* at 2364:3-11.

Mr. Braham’s testimony is supported by James Tolonen, Novell’s Chief Financial Officer at the time of the APA and Amendment No. 2, who testified that the copyrights were purposefully excluded from the assets to be transferred to Santa Cruz.<sup>15</sup> Mr. Tolonen explained that retaining the copyrights was: (1) “part of [Novell’s] strategy and really necessary under the nature of the transaction”; (2) necessary because Santa Cruz was relatively small and could not afford the entire value; (3) necessary to avoid ownership issues with other products; and (4) necessary because of concerns with the long-term viability of Santa Cruz.<sup>16</sup>

That testimony is further supported by Michael Defazio, an executive vice president at Novell at the time of the APA, who testified that the intent of the APA was not to transfer the copyrights and that the copyrights were retained as a way to “bulletproof” Novell’s financial asset stream.<sup>17</sup>

All such testimony is further supported by the minutes of Novell’s Board of Directors, which resolved that “Novell will retain all of its patents, copyrights and trademarks (except for the trademarks UNIX and UnixWare).”<sup>18</sup>

It is true that SCO presented more witnesses who testified that it was the intent of the parties to transfer the copyrights as part of the deal but, as the jury was instructed, the number of

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<sup>15</sup>*Id.* at 2021:24-2022:3.

<sup>16</sup>*Id.* at 2022:7-2023:18.

<sup>17</sup>*Id.* at 2311:7-17.

<sup>18</sup>Trial Ex. Z3.

witnesses is not determinative.<sup>19</sup> Thus, there was more than sufficient evidence on which the jury could determine that it was not the parties intent to transfer the copyrights.

SCO nonetheless argues that the copyrights were required for SCO to exercise its rights with respect to the acquisition of UNIX and UnixWare technologies under Amendment No. 2. Again, there was testimony presented that it was not the intent of Novell, in executing Amendment No. 2, to transfer ownership of the copyrights. Allison Amadia, who worked as in-house counsel for Novell at the time of Amendment No. 2 and was the lead negotiator and drafter of that document, testified that after reviewing the APA and consulting with Tor Braham and James Tolonen, the decision was made not to alter the APA with regard to copyright ownership.<sup>20</sup> In fact, Novell rejected a draft amendment from SCO which would have transferred ownership of the copyrights “which pertain to the UNIX and UnixWare technologies and which SCO has acquired hereunder. . . .”<sup>21</sup> Ms. Amadia further testified that Amendment No. 2 was meant to affirm that SCO had the right to use, manufacture, and make modifications to the UNIX technology. James Tolonen similarly testified that Amendment No. 2 was meant to address use rights, not ownership.<sup>22</sup>

Further, SCO witnesses acknowledged that SCO could operate its UnixWare business without the copyrights. Mr. McBride, SCO’s former CEO, admitted that SCO could run its

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<sup>19</sup>Jury Instruction No. 12.

<sup>20</sup>Trial Tr. at 2119:25-2120:6.

<sup>21</sup>Trial Ex. T34.

<sup>22</sup>*Id.* at 2036:5-22.

UnixWare business without the copyrights.<sup>23</sup> Mr. Tibbitts, SCO's general counsel, similarly stated that SCO could run its UNIX product business without the UNIX and UnixWare copyrights.<sup>24</sup> Indeed, SCO had offered to sell its business without the copyrights.<sup>25</sup> Moreover, it was undisputed that SCO would own any newly developed code and could obtain copyrights to protect that code.<sup>26</sup> Finally, while SCO's witnesses testified that the copyrights were "required" for SCO to run its SCOSource licensing program, this was not something that SCO ever acquired from Novell.

SCO relies on Recital A in arguing that SCO acquired the "Business," which is defined as "the business of developing a line of software products currently known as Unix and UnixWare, the sale of binary and source code licenses to various versions of Unix and UnixWare, the support of such products and the sale of other products which are directly related to Unix and UnixWare."<sup>27</sup> SCO, however, ignores Recital B which states that Santa Cruz would only acquire "certain assets."<sup>28</sup> Those "certain assets" are set forth in more detail in Schedule 1.1(a) and do

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<sup>23</sup>*Id.* at 1225:18-1226:10.

<sup>24</sup>*Id.* at 1850:11-1851:18.

<sup>25</sup>*Id.*

<sup>26</sup>*Id.* at 933:2-7; *id.* at 939:3-18; *id.* at 816:19-817:14.

<sup>27</sup>Trial Ex. 1, Recital A.

<sup>28</sup>*Id.*, Recital B.

not include the excluded assets set out in Schedule 1.1(b).<sup>29</sup> Under the plain language of the original APA, the copyrights were excluded from the transaction.<sup>30</sup>

SCO also points to Section II of Schedule 1.1(a), which transferred “[a]ll of [Novell’s] claim arising after the Closing Date against any parties relating to any right, property or asset included in the Business.”<sup>31</sup> However, SCO provided no evidence of any such claims that it was entitled to pursue.

Based on the above, the Court finds that SCO is not entitled to judgment as a matter of law on its claim for copyright ownership.

#### B. NEW TRIAL

SCO moves, in the alternative, for a new trial under Fed.R.Civ.P. 59. Rule 59(a) provides that a new trial may be granted “after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court.”<sup>32</sup> The Tenth Circuit has stated that “[a] motion for new trial on the grounds that the jury verdict is against the weight of the evidence . . . involve[s] the discretion of the trial court . . . . The inquiry focuses on whether the verdict is clearly, decidedly or overwhelmingly against the weight of the evidence.”<sup>33</sup>

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<sup>29</sup>*Id.*, § 1.1(a); *id.*, Schedule 1.1(a); *id.*, Schedule 1.1(b).

<sup>30</sup>*Id.*, Schedule 1.1(b), § V.

<sup>31</sup>Trial. Ex. 1, Schedule 1.1(a), § II.

<sup>32</sup>Fed. R. Civ. P. 59(a).

<sup>33</sup>*Black v. Heib’s Enterprises, Inc.*, 805 F.2d 360, 363 (10th Cir. 1986).

SCO argues that the “overwhelming weight of the evidence . . . [shows] that a transfer of copyrights was intended.”<sup>34</sup> It is certainly true that SCO presented more witnesses than Novell concerning the intent of the parties, however, the mere fact that SCO presented more witnesses does not show that the verdict is clearly, decidedly, or overwhelmingly against the weight of the evidence. The jury could have rejected the testimony of SCO’s witnesses for a number of reasons, including their lack of involvement in drafting the APA, the fact that there was little testimony on any actual discussions concerning the transfer of copyrights, or that many of the witnesses had a financial interest in the litigation.

SCO also relies on the “Forthright Negotiator Rule.” Under that rule,

Where the parties assign different meanings to a term,  
it is interpreted in accordance with the meaning attached by one of them if at the  
time the agreement was made  
(a) that party did not know of any different meaning attached by the other, and the  
other knew the meaning attached by the first party; or  
(b) that party had no reason to know of any different meaning attached by the  
other, and the other had reason to know the meaning attached by the first party.<sup>35</sup>

Here, there is no evidence to support the argument that Ms. Amadia had reason to know that SCO attached a different meaning to Amendment No. 2. Indeed, Ms. Amadia specifically testified that she informed Mr. Sabbath that Novell would not transfer the copyrights.<sup>36</sup>

SCO also cites to the TLA as providing support for the transfer of copyrights. The testimony concerning the TLA, however, affirmed that one of the purposes of that agreement was

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<sup>34</sup>Docket No. 872 at 15.

<sup>35</sup>*Flying J Inc. v. Comdata Network, Inc.*, 405 F.3d 821, 837 (10th Cir. 2005) (citing Restatement (Second) of Contracts § 201(2)).

<sup>36</sup>Trial Tr. at 2120:15-2121:2.

to allow Novell the right to use post-APA SCO-developed code.<sup>37</sup> Further, the TLA licensed assets that were transferred under the APA, which did not include the copyrights.

SCO also points to various course of performance evidence in support of its argument. However, this evidence, either individually or in combination, does not support the notion that it was the intent of the parties to transfer copyright ownership.

Finally, SCO argues that the copyrights were required for it to exercise its rights with respect to the acquisition of the UNIX and UnixWare technologies. However, as set forth above, there was evidence that SCO did not need the copyrights to operate the UnixWare business, that it could obtain copyrights to protect any newly developed code, and that the SCOSource licensing program was not something that SCO acquired from Novell. Thus, this argument fails.

For each of these reasons, the Court finds that the verdict is not clearly, decidedly, or overwhelmingly against the weight of the evidence. Therefore, SCO is not entitled to a new trial.

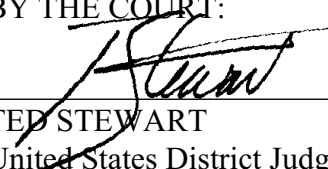
### III. CONCLUSION

It is therefore

ORDERED that SCO's Renewed Motion for Judgment as a Matter of Law or, in the Alternative, for a New Trial (Docket No. 871) is DENIED.

DATED June 10, 2010.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge

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<sup>37</sup>*Id.* at 1964:8-22; *id.* at 1984:6-1985:21.

# **EXHIBIT 5**



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*Attorneys for Plaintiff, The SCO Group, Inc.*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

<p>THE SCO GROUP, INC., by and through the Chapter 11 Trustee in Bankruptcy, Edward N. Cahn,</p> <p>Plaintiff/Counterclaim-Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation,</p> <p>Defendant/Counterclaim-Plaintiff.</p>	<p><b>NOTICE OF APPEAL</b></p> <p>Civil No. 2:04 CV-00139</p> <p>Judge Ted Stewart</p>
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Plaintiff, The SCO Group, Inc., hereby appeals to the United States Court of Appeals for the Tenth Circuit from the Jury Verdict entered in this action on March 30, 2010, the district court's evidentiary rulings at trial, Findings of Fact and Conclusions of Law dated June 10, 2010, Memorandum Decision and Order Denying SCO's Renewed Motion for Judgment as a Matter of Law or, in the alternative, for a New Trial dated June 10, 2010, and the Final Judgment entered on June 10, 2010.

DATED this 7th day of July, 2010.

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**CERTIFICATE OF SERVICE**

I, Brent O. Hatch, hereby certify that on this 7th day of July, 2010, a true and correct copy of the foregoing **NOTICE OF APPEAL** was filed with the court and served via electronic mail to the following recipients:

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