

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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THE SCO GROUP, INC.,                    )  
  ) Case No. 2:04CV-00139  
    Plaintiff/                            )  
    Counterclaim Defendant,            ) Videotaped Deposition of:  
NOVELL, INC.,                            ) ROBERT J. FRANKENBERG  
  )  
  )  
    Defendant/                            )  
    Counterclaim Plaintiff.            )

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February 10, 2007  
10:00 a.m.

Fillmore & Spencer  
3301 N. University avenue  
Provo, UT 84604

Sharon Morgan, CSR, RPR, CRR  
Notary Public in and for the State of Utah  
Job: 191635

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1 object. Hopefully less frequently than more, but, in  
2 any event, if you understand a question, you should  
3 still seek to answer it. The objections are for the  
4 record and before a judge, if necessary, to rule upon  
5 at some future time.

6 A. Uh-huh (affirmative).

7 Q. Are you represented by counsel here in  
8 connection with this deposition?

9 A. I am, yes. Bill Fillmore is my attorney.

10 Q. I would like to begin by asking you to  
11 briefly summarize your educational background.

12 A. I have a bachelor's degree in computer  
13 engineering from San Jose State University, and I'm an  
14 SEP graduate of the Stanford Graduate School of  
15 Business.

16 Q. Can you briefly summarize your employment  
17 background prior to coming to Novell?

18 A. I was in the U.S. Air Force from 1965 to  
19 1969, joined Hewlett-Packard out of the Air Force as a  
20 manufacturing technician, and stayed there nearly 25  
21 years, just a few months short of 25 years. And when  
22 I left, I was the vice president responsible for  
23 Hewlett-Packard's networking in personal computer  
24 businesses.

25 Q. When did you leave Hewlett-Packard?

1 A. In April of 1994.

2 Q. Where did you go?

3 A. To Novell.

4 Q. And what position did you assume at Novell?

5 A. I became the CEO and president of Novell and  
6 shortly thereafter also became chairman.

7 Q. What was the date, Mr. Frankenberg, that you  
8 assumed the office of chief executive officer of  
9 Novell?

10 A. It would have been in late March of 1994, or  
11 early April. I can't remember. It was right at the  
12 boundary.

13 Q. Could you briefly describe the different  
14 lines, major lines, of Novell's business at that  
15 point?

16 A. Novell's largest single business was NetWare.  
17 The second largest business was training people in the  
18 use, installation and application of NetWare. After  
19 that we had a number of smaller businesses including  
20 UNIX, UnixWare, DR-DOS, and a range of much smaller  
21 businesses having to do with document management and  
22 so forth.

23 Q. Can you briefly describe what the NetWare  
24 business was?

25 A. The NetWare business, as I said, was the

1 largest single business. It provided the ability to  
2 connect personal computers to shared resources such as  
3 disks and printers and also, through those shared  
4 resources, to connect to other networks.

5 Q. Did there come a --

6 A. It also provided the capability to write  
7 applications on that shared resource and make further  
8 use of it.

9 Q. Did there come a time when you decided, as  
10 CEO of the board, to explore divesting certain of the  
11 business lines of the company?

12 A. Excuse me, I misspoke. At about the same --  
13 at about the same time that I joined, Novell had just  
14 purchased WordPerfect and the associated products  
15 there. So at the moment I was there it hadn't been  
16 completed, but shortly thereafter those were added. I  
17 don't know whether that was the intent of your  
18 question or not.

19 Q. Well, it helps to add that to the picture.  
20 WordPerfect, as a lot of people will be familiar with,  
21 had a word processing program --

22 A. Correct.

23 Q. -- of the same name?

24 A. Uh-huh (affirmative).

25 Q. And did there come a time after you became

1 CEO when you decided it would be in the best interest  
2 of Novell to sell one or more of these businesses?

3 A. Yes.

4 Q. Approximately when did you come to that view?

5 A. That would have been late in '94 to early in  
6 '95.

7 Q. Can you recall your thinking as to why that  
8 would be advantageous?

9 A. Well, there were several reasons. One, after  
10 a very thorough study, we looked at the range of  
11 businesses that we were trying to advance and came to  
12 the conclusion that we weren't able to fund  
13 appropriately all of those businesses. And as such,  
14 it made sense to get out of some of them or sell them  
15 and concentrate our efforts on the ones that we  
16 thought would be the most successful or the ones that  
17 we thought we could have the greatest success with,  
18 having moved the responsibility for some of the others  
19 elsewhere.

20 Q. Were there particular businesses that fell in  
21 the category of those that you wanted to sell?

22\* A. Yes.

23 Q. Which were those?

24 A. The WordPerfect word processing software, and  
25 the associated office product that we called Perfect

1 Office is one of those that we decided to sell. We  
 2 decided to sell UNIX and Unixware, which was a  
 3 combined implementation of UNIX and NetWare Services.  
 4 We decided to sell Tuxedo, which was a transaction  
 5 processing capability. And then we decided to close  
 6 down several of the smaller businesses that were  
 7 referred to earlier because we didn't see that we  
 8 would be able to succeed with them as well as we might  
 9 if we concentrated our efforts on others.

10 Q. Did you have a time frame in which you hoped  
 11 to accomplish these sales?

12 A. I had hoped that we would be able to get out  
 13 of those as expeditiously as possible. Once you  
 14 decide that you're going to make a change like that,  
 15 it's best to do well but with dispatch and hoped that  
 16 we would be able to be out of them by the end of '95.

17 Q. Was it your interest to sell these businesses  
 18 in their entirety?

19 MR. JACOBS: Objection, vague.

20 Q. (By Mr. Fillmore) Let me be more specific.  
 21 With respect to the UNIX and UnixWare business, was it  
 22 your intent to sell that business in its entirety?

23 A. Yes.

24 Q. Did there come a time when you directed  
 25 certain of the people who worked at Novell to take

1 steps to have that sale occur?

2 A. Yes.

3 Q. Is there a gentleman who you know and who is  
 4 here at the deposition by the name of Duff Thompson  
 5 who worked at Novell?

6 A. Yes.

7 Q. What position did Mr. Thompson have in 1995?

8 A. He was the senior vice president of business  
 9 development.

10 Q. Did you ask Mr. Thompson to take any steps to  
 11 effectuate the sale of the UNIX and UnixWare business?

12 A. Yes, I did.

13 Q. What do you recall to be the directions that  
 14 you gave Mr. Thompson in that regard?

15 A. Together with several other people, I gave  
 16 Mr. Thompson the charge to find a company to sell UNIX  
 17 to that, together with other efforts that we had under  
 18 way, would result in a unified UNIX on Intel -- on the  
 19 Intel processor, excuse me.

20 Q. Was there a gentleman by the name of Ed  
 21 Chatlos who also worked at Novell at that time?

22 A. Yes.

23 Q. Did Mr. Chatlos also become involved in the  
 24 process of selling the UNIX business?

25 A. He did, yes.

1 Q. Would it be fair to say that he was the --  
 2 became the lead negotiator on the transaction  
 3 reporting to Mr. Thompson?

4 A. According to Mr. Thompson?

5 Q. Reporting.

6 A. Reporting. I thought you said according.

7 Q. Reporting.

8 A. Reporting, yes.

9 Q. Do you recall who became the buyer of the  
 10 UNIX system?

11 A. Yes, the Santa Cruz operation.

12 Q. Were you familiar with the Santa Cruz  
 13 operation at the time when you were making these  
 14 decisions regarding UNIX?

15 MR. JACOBS: Objection.

16 A. Yes.

17 Q. (By Mr. Singer) Do you recall how contact  
 18 was made with Santa Cruz regarding potential sale of  
 19 the business?

20 A. I don't recall the specific details, but I do  
 21 recall having conversations with Doug Michael, who was  
 22 one of the principals there, and several other people.  
 23 If I remember correctly, it was at one of the industry  
 24 conferences that I attended regularly concerning the  
 25 possibility of creating a unified UNIX on Intel and

1 the Santa Cruz operation being the team to do that.

2 Q. Why did you believe Santa Cruz was the team  
 3 to do that?

4 A. Well, number one, it -- the Santa Cruz  
 5 operation had a good reputation in UNIX. It had  
 6 opened several products that had been out in the  
 7 market and had been quite successful. It was also  
 8 independent of the warring factions in the industry at  
 9 the time and could effectively work with both sides,  
 10 which frankly was one of our challenges.

11 And they were well acquainted with UNIX, had  
 12 had successful -- as I said, successful products  
 13 there, but had a deep knowledge of it, as well as good  
 14 distribution to third parties who wrote applications  
 15 and provided installation services and other kinds of  
 16 service.

17 Q. Mr. Frankenberg, you made a reference to the  
 18 warring factions in the industry. Can you identify  
 19 those factions and what they were about?

20 A. The two major factions in the industry at the  
 21 time in this arena were Novell and Microsoft.  
 22 Microsoft had disagreements with other people in the  
 23 industry as well, but in this particular arena it was  
 24 ourselves, Novell and Microsoft.

25 Q. And was that disagreement centered on your

1 Is that, Mr. Frankenberg, an accurate  
2 statement in your understanding of the intent of the  
3 deal?

4 A. Yes.

5 Q. If we turn now -- now turn to Schedule  
6 1.1(a), which appears after page 49, I would like to  
7 direct your attention to the very first Roman numeral  
8 item on this list of the assets, which you'll recall  
9 as the assets being sold. It states that "All rights  
10 and ownership of UNIX and UnixWare, including but not  
11 limited to all versions of UNIX and UnixWare and all  
12 copies of UNIX and UnixWare (including revisions and  
13 updates in process), and all technical, design,  
14 development, installation, operation and maintenance  
15 information concerning UNIX and UnixWare, including  
16 source codes, source documentation, source listings  
17 and annotations, appropriate engineering notebooks,  
18 test data and test results, as well as all reference  
19 manuals and support materials normally distributed by  
20 seller to end users and potential end users in  
21 connection with the distribution of UNIX and UnixWare,  
22 such assets to include without limitation the  
23 following," and it lists a variety of different  
24 technologies. Is that statement consistent with your  
25 understanding of the intent of this transaction?

1 Q. Did you ever hear from anyone at Novell that  
2 copyrights were not being sold?

3 A. I have some memory of there being a  
4 discussion of whether copyrights would be sold or not.

5 Q. And as we've covered it, it was your intent  
6 under this transaction that those copyrights would be  
7 sold?

8 A. Yes.

9 Q. Now, I would like to briefly look at the  
10 other assets which were being sold on Schedule 1.1(a).  
11 If you look at III, is it your understanding that all  
12 of the seller's rights pertaining to UNIX and UnixWare  
13 under any software development contracts, licenses and  
14 other contracts to which seller is a party or by which  
15 it is bound and which pertain to the business (to the  
16 extent that such contracts are assignable), was being  
17 sold, including those listed without limitation in the  
18 various subparts below that?

19 A. Yes.

20 Q. Is it your understanding that to the extent  
21 there were contracts involving source code that had  
22 been entered into by AT&T and IBM that pertain to UNIX  
23 technology, that that was part of all of the seller's  
24 rights which were being sold to Santa Cruz in this  
25 transaction?

1 A. Yes.

2 Q. Is it your understanding that that sale of  
3 all rights and ownership of UNIX and UnixWare would  
4 include copyrights associated with UNIX and UnixWare?

5 MR. JACOBS: Objection, calls for a legal  
6 conclusion.

7 A. I guess I have to answer the question?

8 Q. (By Mr. Singer) Yes, you should if you  
9 understand the question.

10 A. Okay. I understand. Yes.

11 Q. Now, did you ever give any directions to the  
12 team that was negotiating the deal, including  
13 Mr. Thompson, Mr. Chatlos, that they should transfer  
14 all right and title and interest to UNIX and UnixWare  
15 but retain copyrights for UNIX and UnixWare from being  
16 sold?

17 A. No.

18 Q. Did you ever tell anyone at Santa Cruz  
19 Operation that copyrights for UNIX and UnixWare were  
20 not part of the technology being sold?

21 A. No.

22 Q. Did you ever authorize anyone at Novell to  
23 tell anyone at Santa Cruz that copyrights were not  
24 being sold as part of the transaction?

25 A. No.

1 A. Yes.

2 Q. There is a separate schedule that  
3 subsequently was amended by an amendment to the  
4 transaction that we will look at in a few moments --  
5 two amendments to the transaction, one in particular  
6 amended the schedule. That's Schedule 1.1(b) of  
7 Excluded Assets.

8 Now, as we begin at the top of that page, you  
9 see the NetWare operating system that any asset not  
10 listed on Schedule 1.1(a), including the assets  
11 pertaining to NetWare and the NetWare operating system  
12 and services.

13 Is it fair to say that you wanted to be clear  
14 that NetWare was not being transferred as part of the  
15 transaction?

16 A. Yes. It was very important that we be clear  
17 that it was not part of the transaction.

18 Q. If you now look at V under Intellectual  
19 Properties where it says, as part of the assets not  
20 being transferred, "All copyrights and trademarks,  
21 except for the trademarks UNIX and UnixWare," would  
22 you understand that to be a reference to Novell not  
23 transferring its own copyrights and trademarks with  
24 respect to NetWare products?

25 MR. JACOBS: Objection. The document speaks

1 the mixed structure we've described, was that  
2 retaining the UNIX copyrights would facilitate  
3 Novell's exercise of rights with respect to  
4 capitalizing the SVRX revenue stream?")

5 A. Well, I recall discussing that, and I have a  
6 vague recollection of that, but I don't -- I can't say  
7 that I charged the team with doing that.

8 Q. (By Mr. Jacobs) But if the team had done  
9 that, in fact, that would have -- and believing that  
10 that was a way to facilitate and protect Novell's  
11 interests, that would not have been inconsistent with  
12 your understanding of the structure of the  
13 transaction?

14 MR. SINGER: Object to the form of the  
15 question, leading, misstates the witness's prior  
16 testimony.

17 A. Let's see. I think it would have been  
18 inconsistent with selling UNIX to SCO. They wouldn't  
19 hold the copyrights, and so that wouldn't be  
20 consistent. And, furthermore, there wouldn't be a  
21 necessity for a license back of the technology because  
22 we would have owned it.

23 Q. (By Mr. Jacobs) So when you met with  
24 Mr. Brakebill and Mr. Lundberg, did you explain to  
25 them that you thought Novell wanted to retain, among

1 other things, the UNIX copyrights in order to  
2 facilitate negotiation of SVRX License buyouts?

3 MR. SINGER: Before you answer that, let me  
4 ask Mr. Jacobs, are you waiving any assertion of  
5 privilege with respect to such a meeting?

6 MR. JACOBS: No.

7 MR. SINGER: Then I object to your taking a  
8 position asking the witness to testify about a meeting  
9 that at the same time you're going to be asserting  
10 privilege to. So which way do you want it?

11 MR. JACOBS: I would like the witness to  
12 answer the question.

13 MR. SINGER: We view that as a waiver of  
14 privilege if you ask the witness the question.

15 MR. JACOBS: We reserve all rights.

16 MR. SINGER: It's his privilege.

17 THE WITNESS: You're having fun, but I don't  
18 understand what I --

19 MR. SINGER: It's Novell's privilege. I  
20 understand that --

21 MR. JACOBS: Our record is clear with respect  
22 to each other. You and I did that very economically.  
23 Now let's turn to the witness, and would you read back  
24 the question, please.

25 "QUESTION: So when you met with

1 Mr. Brakebill and Mr. Lundberg, did you explain to  
2 them that you thought Novell wanted to retain, among  
3 other things, the UNIX copyrights in order to  
4 facilitate negotiation of SVRX License buyouts?")

5 A. I said that I had a memory, and I think I  
6 called it a vestigial memory, of that topic and I  
7 thought that might be an explanation of why I was  
8 remembering that.

9 Q. (By Mr. Jacobs) As Mr. Singer elicited from  
10 you, you signed the Asset Purchase Agreement, correct?

11 A. Yes.

12 Q. At the time you signed it, were you signing  
13 it essentially on the basis of the recommendation from  
14 your team that you execute the agreement as opposed to  
15 going through it on a detailed basis yourself?

16 A. On the basis of the recommendation of the  
17 team. I did not review every item in it.

18 Q. At the time you signed it, you understood  
19 that it reflected Novell's intentions with respect to  
20 its subject matter?

21 A. That's what the team told me, yes.

22 Q. And you've done a lot of transactions in the  
23 course of your career as an executive with computer  
24 companies?

25 A. At least hundreds, if not more, yes.

1 Q. And in those transactions, you tend to rely,  
2 especially as you've moved into senior positions,  
3 you've relied on negotiating teams to effectuate the  
4 parties' intent, correct?

5 A. Negotiating teams and the lawyers  
6 representing us, yes.

7 Q. Actually, just to be clear, when I say  
8 negotiating teams, I include the lawyers.

9 MR. SINGER: Are you waiving the  
10 attorney/client privilege between Novell and its  
11 counsel with respect to this transaction?

12 Q. (By Mr. Jacobs) Mr. Frankenberg, did you  
13 have confidence in your negotiating team that  
14 represented you with respect to --

15 Mr. Singer, I'm not going to answer that  
16 question. I'm asking Mr. Frankenberg --

17 MR. SINGER: Well, the fact that you're not  
18 answering the question I can't deal with, but I just  
19 want the record to be clear that we view, to the  
20 extent you asked Mr. Frankenberg about communications  
21 with lawyers on the negotiating team, directly or  
22 indirectly, that that constitutes a waiver of the  
23 attorney/client privilege and we have every right,  
24 then, to depose those lawyers on that same subject.

25 Q. (By Mr. Jacobs) Mr. Frankenberg, did you

1 A. Correct.  
 2 Q. Now, let's turn to 1.6 of the Asset Purchase  
 3 Agreement. Mr. Singer asked you about this. You've  
 4 testified that you think the structure of the  
 5 Technology License Agreement is inconsistent with the  
 6 idea that Novell was retaining the copyrights. Do you  
 7 recall that?  
 8 A. I do.  
 9 Q. My question to you, in 1.6 in the first  
 10 sentence, do you see that 1.6 contemplates SCO  
 11 granting to Novell a royalty-free, perpetual,  
 12 worldwide license to all of the technology included in  
 13 the assets. Do you see that?  
 14 A. I do.  
 15 Q. You see in the board minutes, I focused you  
 16 on this earlier, in Exhibit 2 in the paragraph under  
 17 the first Resolved.  
 18 A. Okay.  
 19 Q. It refers to technology assets.  
 20 A. Yes.  
 21 Q. And then as we've discussed, in the box below  
 22 that, it talks about, among other things, copyrights.  
 23 Do you recall that discussion back and forth?  
 24 A. I do, yes.  
 25 Q. So in 1.6 now it's referring -- in the

1 license back it's referring to all of the technology  
 2 included in the assets. Do you see that?  
 3 A. Yes.  
 4 Q. My question to you is do you have an  
 5 understanding of whether the technology referred to in  
 6 Section 1.6 is the same as, less than or more than the  
 7 copyrights that reside in UNIX?  
 8 MR. FILLMORE: If you're not clear about the  
 9 question --  
 10 THE WITNESS: I'm not clear. The technology  
 11 certainly exceeds the copyrights.  
 12 Q. (By Mr. Jacobs) It could exceed the  
 13 copyrights, right?  
 14 A. Sure.  
 15 Q. And so --  
 16 MR. SINGER: I don't know the witness is  
 17 finished. You were saying?  
 18 A. But I don't know if that's what you were  
 19 asking me.  
 20 Q. (By Mr. Jacobs) That was my -- that's sort  
 21 of my predicate question is that technology is more  
 22 than copyrights, right?  
 23 A. Yes.  
 24 Q. And so under 1.6 when it provides that SCO  
 25 would grant Novell a license to technology, it's

1 granting rights that are different than had the  
 2 language said SCO grants to Novell a royalty for  
 3 perpetual, worldwide license to all the copyrights  
 4 included in UNIX?  
 5 MR. SINGER: Object to the form.  
 6 A. Yes. It could be more, yes, if that's what  
 7 your question was.  
 8 Q. (By Mr. Jacobs) So if Novell was retaining  
 9 the copyrights, the grant of the license to technology  
 10 could be a grant of different rights that were not  
 11 included in Novell's retaining copyright rights?  
 12 MR. SINGER: Objection, assumes facts  
 13 contrary to those in evidence.  
 14 A. I guess what you're asking is since  
 15 technology is broader than copyrights, could it be  
 16 more than just the copyrights, or are you saying  
 17 because technology is broader than copyrights, would  
 18 it exclude the copyrights? I'm confused as to which  
 19 of those --  
 20 Q. (By Mr. Jacobs) Would it make sense to  
 21 you -- because technology is more than copyrights,  
 22 would it not make sense to you to have a license back  
 23 of technology even if Novell was retaining the  
 24 copyrights?  
 25 MR. SINGER: Object to the form, assumes

1 facts contrary to those in evidence.  
 2 A. You're asking me to speculate, so I guess it  
 3 could.  
 4 Q. (By Mr. Jacobs) Well, were you doing  
 5 anything more than speculation when you explained that  
 6 you thought it didn't make sense to have the TLA if  
 7 Novell retained the copyrights?  
 8 MR. FILLMORE: Are you asking him to  
 9 interpret the contract or express his intent on the  
 10 deal?  
 11 Q. (By Mr. Jacobs) When you were -- let me  
 12 strike that question to start over. When you were  
 13 explaining your view about the relationship between  
 14 the question whether Novell retained the copyrights  
 15 and the fact that there is a Technology License  
 16 Agreement --  
 17 A. Right.  
 18 Q. -- were you sitting here trying to make your  
 19 best sense of these various documents as opposed to  
 20 having a clear recollection in 1995 of what was going  
 21 on?  
 22 A. That's a very different question than the  
 23 earlier one. As I recall, what I said was it didn't  
 24 make sense to me that if Novell had retained the  
 25 copyrights, that it would need a license back.

1 Q. And is that not making sense -- reminds me of  
2 a talking headstone. Is that not making sense  
3 something that you basically came up with as you were  
4 thinking about this in 2006, 2007?

5 A. Yes.

6 Q. As opposed to -- this was really your  
7 lawyer's question -- as opposed to having a  
8 recollection as you sit here today of specific  
9 thoughts you had in 1995?

10 A. Well, if I go back to my intent, the intent  
11 was to sell the whole business, including the  
12 technology and the copyrights.

13 Q. That was your original intent, correct?

14 A. Right.

15 MR. SINGER: Object to the form of the  
16 question.

17 Q. (By Mr. Jacobs) And then the intent changed?

18 MR. SINGER: Object to the form of the  
19 question.

20 A. The intent changed because the buyer couldn't  
21 afford to pay for the whole thing in cash, yes.

22 Q. (By Mr. Jacobs) And one of the things that  
23 that meant was that now instead of you getting the  
24 capitalized revenue stream from the SVRX licenses all  
25 up front in a single buyout transaction, sort of a

1 Q. And all that's included there are the  
2 trademarks UNIX and UnixWare as and to the extent held  
3 by seller within the exclusionary parenthetical. Do  
4 you see that?

5 A. I do, yes.

6 Q. So -- and it doesn't say -- in particular in  
7 this Section V, it doesn't say the copyrights in UNIX?

8 A. It does not say that, no.

9 Q. And then if you look at the excluded assets,  
10 there's sort of a matching provision at V called  
11 Intellectual Property?

12 MR. SINGER: Object to the form of the  
13 question.

14 Q. (By Mr. Jacobs) Do you see that?

15 MR. SINGER: Object to the form of the  
16 question. Misstates the document.

17 A. I do, yes.

18 Q. (By Mr. Jacobs) And, actually, having  
19 focused you on V for a minute, you'll see on item II  
20 of the excluded assets that it excludes NetWare, as  
21 Mr. Singer pointed out to you. Do you see that?

22 A. Yes.

23 Q. So there is an exclusion for NetWare in the  
24 excluded assets at II, correct?

25 A. Correct.

1 grand buyout transaction by buyer, you had to  
2 anticipate a bunch of little buyout transactions going  
3 forward?

4 MR. SINGER: Object to the form of the  
5 question.

6 A. Correct. In other words, we agreed to retain  
7 the royalty stream and look at that as partial payment  
8 or part of the payment for the deal, yes.

9 Q. (By Mr. Jacobs) And you anticipated trying  
10 to achieve the capitalized value of that royalty  
11 stream on a go-forward basis with the rights that you  
12 retained under the Asset Purchase Agreement?

13 A. Correct.

14 Q. If you turn to Schedule 1.1(a), and you look  
15 at item V, Intellectual Property --

16 A. Yes.

17 Q. -- so just to -- having taken a look at that  
18 provision, I want to refresh your recollection that  
19 Mr. Singer asked you about Section 1, "All rights" --  
20 which starts out with this broad language, "All rights  
21 and ownership of UNIX and UnixWare." Do you see that?

22 A. Yes, I do.

23 Q. Now we have a specific provision governing  
24 intellectual property? Do you see that?

25 A. Yes.

1 Q. And then there's this intellectual property  
2 provision, and it says "All copyrights and trademarks  
3 except for the trademarks in UNIX and UnixWare. Do  
4 you see that?"

5 MR. SINGER: Same objection. Misstates the  
6 document as amended.

7 A. Yes, I do.

8 Q. (By Mr. Jacobs) So that -- except for the  
9 trademark UNIX and UnixWare, the trademark UNIX and  
10 UnixWare were obtained by Novell as part of the  
11 acquisition of USL, correct?

12 A. Correct.

13 Q. They weren't sort of preexisting trademarks  
14 in Novell, preexisting before the acquisition from  
15 USL?

16 A. Excuse me, UNIX was acquired with the  
17 acquisition of USL. UnixWare was invented by Novell  
18 to describe a subsequent product.

19 Q. Thank you. Fair correction. So --

20 A. So UNIX obtained that one, yes.

21 Q. And so a reviewer of the Asset Purchase  
22 Agreement in 1995 would have seen in Section V of  
23 Schedule 1.1(a) that only specified trademarks, UNIX  
24 and UnixWare, are included, correct? I just referred  
25 you to (a).

1 competitor to Microsoft. I remember that being part  
2 of the charge and I remember reminding Mr. Thompson  
3 about that. And we wanted to make sure Intel was  
4 supportive of what we came up with.

5 Q. In connection with the Intel discussions that  
6 you had around the time of the Asset Purchase  
7 Agreement, do you remember any input Intel gave you  
8 about things that Intel thought would be important in  
9 the transaction that you were about to enter into with  
10 SCO?

11 A. Not specifically. I'm sure we talked about a  
12 number of things, but I can't cite you a very specific  
13 this is what Intel told me was important right now,  
14 but I'm sure we talked about that.

15 Q. Do you recall who your counterpart was at  
16 Intel on those discussions?

17 A. Yeah, Dave Howse.

18 Q. What was his position?

19 A. Dave was a senior vice president, if I  
20 remember right, at least a vice president if not a  
21 senior vice president, and deeply involved in  
22 marketing and selling of processors.

23 Q. Just give me a minute.

24 MR. JACOBS: No further questions, sir.  
25 Thank you very much.

1 Q. Would you have expected that if the lawyers  
2 or any other party to the negotiating team on behalf  
3 of Novell was going to seek to change a deal point  
4 like that, that they would have told you about it  
5 rather than just go off and do it?

6 A. Yes.

7 Q. And that never happened, did it?

8 A. Not that I recall.

9 Q. Now, there's been some questioning about the  
10 exact scope of the rights regarding Section 4.16 over  
11 which Novell had a continued interest. Do you recall  
12 those questions?

13 A. Yes.

14 Q. And do you recall testifying in questions I  
15 asked you on direct that what Novell was retaining  
16 when it's referring to SVRX licenses was a continuing  
17 right to retain a binary royalty stream that was in  
18 place at the time of the transaction. Do you recall  
19 that?

20 A. I do.

21 Q. Then there was some questions by Mr. Jacobs  
22 directed at whether or not in the course of a buyout  
23 there would be some need to deal with source code  
24 rights. Do you recall questions there?

25 A. I do, yes.

1 FURTHER EXAMINATION

2 BY MR. SINGER:

3 Q. Mr. Frankenberg, I do have some redirect.

4 Do you recall being asked in  
5 cross-examination some questions about the intent of  
6 the transaction?

7 A. Uh-huh (affirmative).

8 Q. And the initial intent of the transaction?

9 A. Yes.

10 Q. I just want to be clear on a few things. Was  
11 your initial intent in the transaction that Novell  
12 would transfer copyrights to UNIX and UnixWare  
13 technology to Santa Cruz?

14 A. Yes.

15 Q. Was that your intent at the time when the APA  
16 was signed?

17 A. Yes.

18 Q. Was it your intent when that transaction  
19 closed?

20 A. Yes.

21 Q. And did that remain your intent, as you view  
22 it, at all relevant times?

23 A. Yes.

24 Q. So that never changed?

25 A. No.

1 Q. Would you agree that Mr. Chatlos was one of  
2 the individuals specifically -- in fact, the  
3 individual specifically charged with negotiating the  
4 agreement from a business standpoint?

5 A. With SCO?

6 Q. Yes.

7 A. Yes.

8 Q. I would like to show you a declaration  
9 Mr. Chatlos has executed and which has previously been  
10 provided to counsel to Novell in this litigation,  
11 which we would like to mark as the next exhibit.

12 MR. GONZALEZ: This will be marked as Exhibit  
13 1045.

14 (Exhibit No. 1045 marked.)

15 Q. (By Mr. Singer) Could you take a moment to  
16 review Mr. Chatlos' declaration.

17 A. Okay.

18 Q. Have you had a chance to review Mr. Chatlos'  
19 declaration?

20 A. Yes.

21 Q. I would like to ask you about certain  
22 passages. If we turn to 4 of Mr. Chatlos'  
23 declaration, he states, "Novell's intent and agreement  
24 under the APA and Amendment No. 1 was to transfer the  
25 entire UNIX business, including the UNIX source code