

EXHIBIT 1

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

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

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

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

Attorneys for The SCO Group, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF
R. DUFF THOMPSON**

Case No. 2:03CV-0294DAK
Honorable Dale A. Kimball
Magistrate Judge Brooke C. Wells

I, R. Duff Thompson, declare as follows:

1. I submit this declaration in connection with The SCO Group, Inc. v. International Business Machines Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003), and The SCO Group v. Novell, Inc., Civil Action No. 2:04CV00139 DAK (D. Utah 2004). I make this declaration based upon personal knowledge.

2. I began my professional legal career as a practicing attorney in 1981 in Salt Lake City, Utah. I began working in the software industry in 1986 when I joined **WordPerfect Corporation** as vice president and general counsel. At the time of the **WordPerfect/Novell** merger in 1994 I accepted a position with Novell as Senior Vice President of Business Development and Strategic Relations. I held that position until early 1996 and then I stayed on in a part time and consulting role to assist Robert Frankenberg with selected issues until 1997.

3. I joined the Caldera International Board of Directors in May of 2001 after Caldera International acquired the two UNIX divisions of Santa Cruz Operations. Caldera International is now known as The SCO Group and I continue to server on the Board of Directors.

Novell's Sale of Its UNIX Business to Santa Cruz

4. In early 1995, Novell Chairman and CEO Robert Frankenberg directed me to sell the complete UNIX business and related assets so the company could focus on its flagship product **NetWare**, cut the related UNIX costs and thereby increase shareholder values for the company. I understood my directive was to sell all of the UNIX business and related assets and that is how I approached the assignment.

5. After receiving this directive from Mr. Frankenberg, we engaged in a selection process, the end result of which was the determination that Santa Cruz Operations was a good candidate to purchase Novell's UNIX business and assets. Thereafter, I formed a transaction

team including myself, Ed Chatlos and other Novell executives and staff, including Ty Mattingly, and we entered into negotiations with Santa Cruz for a potential sale. Lawyers from Wilson, Sonsini, Goodrich & Rosati represented Novell in the transaction and lawyers from Brobeck, Phleger & Harrison represented Santa Cruz Operation. During the negotiations in the summer of 1995, I had the responsibility to report back to Mr. Frankenberg regularly on the status of the transaction, which I did. Mr. Chatlos conducted the day to day negotiations with the Santa Cruz team throughout the summer of 1995. I also participated in several of the negotiation sessions meeting with the Santa Cruz CEO and President, Alok Mohan and its general counsel, Steve Sabbath and others, including Jim Wilt, Geoff Seabrook, and Kim Madsen.

6. Early in the process I informed Mr. Mohan that we were selling the entire UNIX business and all related assets. I wanted that to be very clear to him as we were asking for a substantial sum for the sale. We continued to inform Santa Cruz that it was buying the entire UNIX business and assets, except as explained below.

7. During the course of the negotiations, it became clear that Santa Cruz could not afford to pay the purchase price we were requesting, so various ways were explored to make it possible for Santa Cruz to make the purchase. The solution was that Novell would retain an interest in the binary royalty stream from the existing SVRX sub-licenses. It was never suggested or agreed in the negotiation in which I participated that Novell would retain the right to receive additional royalties or fees from licensing of source code or from new sales of SVRX products. Novell did, however, retain certain limited rights to protect that existing SVRX binary royalty stream. The responsibility for the collection of those royalties was placed upon Santa Cruz because after the closing of the sale, they were to own the customer relationships as they

had purchased the entire business and associated assets. Since Novell could report this ongoing binary royalty stream as profit(keeping in mind that this revenue source was simply a mechanism to reduce the upfront purchase price for Santa Cruz) it made the sale more attractive and more easily justified to the Novell shareholders. To the extent Novell claims it retained rights to waive claims that Santa Cruz or its successors might have regarding breaches of the System V source code agreements, this does not comport with the instructions I received from Robert Frankenberg nor with my recollection of the negotiations or the agreements; and, is certainly contrary to discussions I had with representatives of Santa Cruz regarding what Santa Cruz was buying and what Novell was retaining. As the Novell executive charged with the sale of the UNIX business and assets, it was never my intent or understanding that Novell was retaining rights to waive breaches of the UNIX System V source code agreements that may have occurred years after Novell sold those UNIX source assets to Santa Cruz.

8. Likewise, it was my understanding and intent, as the Novell executive responsible for the negotiation of the transaction, that the UNIX copyrights were transferred to Santa Cruz as part of the transaction that was closed in December 1995. To that end, I signed on behalf of Novell the Technology License Agreement ("TLA") with Santa Cruz Operations in December 1995 which, among other things, granted Novell the right, with certain limitations set forth therein, to use the technology that we had just sold to Santa Cruz. If Novell had retained the UNIX copyrights as it now claims, there would have been no need for the TLA; indeed, Novell would have needed to grant Santa Cruz a license to the technology.

9. During the course of the negotiations, and in my meetings with representatives of Santa Cruz, I never represented that Novell was retaining the copyrights. I did, however, inform

the Santa Cruz team, including Mr. Mohan, that they were getting all of the assets except for (i) the payment back to Novell of the binary royalty stream as mentioned above, (ii) any patents, (iii) accounts receivable relating to the binary royalty stream and (iv) some Master License Agreements. Because Santa Cruz was buying the entire UNIX business, including the source code, it was clear that they were getting the copyrights to that source code. We specifically and repeatedly confirmed with Santa Cruz that they were not purchasing any patents, but no such representations were made about the UNIX copyrights because it followed that with the sale of the underlying UNIX source code, they were getting those associated copyrights. To the extent the Excluded Asset Schedule is unclear on the copyright transfer issue, it should be read to conform to the intent and understanding as stated above, i.e., Novell sold the copyrights to Santa Cruz. If that schedule were construed to exclude the UNIX copyrights from the transaction, it would not reflect the intent and understanding of the transaction as agreed to between representatives of Santa Cruz, including Mr. Mohan, and myself, nor does it comport with the instructions I received from Bob Frankenberg upon commencing the negotiations. I have read paragraph 11 of Mr. Chatlos's declaration of October 1, 2004 and I agree with his conclusion there regarding the Excluded Asset schedule. I also agree that Mr. Chatlos's declaration accurately reflects the negotiation and agreements of the parties in the sale of the UNIX business and associated assets to Santa Cruz Operations.

10. I have reviewed paragraphs 41 through 48 of Michael DeFazio's October 3, 2003 declaration and to the extent he states that Novell retained the UNIX copyrights, or that Novell retained the right to receive source code fees or waive, on behalf of Santa Cruz or its successors, breaches of the UNIX System V source code agreements, he is mistaken. Mr. DeFazio may have

been involved somewhat in the sale of the UNIX assets in some fashion, but he was not on the lead negotiation team and was not in a position to dictate the intent or understanding of the transaction. Certainly, if Mr. DeFazio really held those views at the time, he never expressed them to me or anyone else of whom I am aware on the Novell transaction team.

11. It is my understanding that in 1996 the parties executed Amendment No. 2 to, among other things, clarify any confusion on the copyright transfer issue, as I have explained above.

12. As noted above, I joined the Caldera International Board of Directors in May of 2001 after Caldera International acquired the two UNIX divisions of Santa Cruz Operations. Caldera International is now known as The SCO Group and I continue to serve on the Board of Directors. During the time that Ransom Love was the CEO of Caldera International and after I joined its Board, there was never any occasion when I heard or was informed that the company had reviewed its UNIX System V source agreements in relation to IBM's initiatives to support and enhance Linux, and that Caldera International had concluded that IBM was not breaching those source agreements or if there was a breach, the company did not care... In my view, as a director of Caldera International (later renamed SCO Group) there was never a decision, let alone a conscious decision, to allow IBM or any other party to freely and without restriction license technology protected under the UNIX source code agreements, for the purpose of making contributions to Linux, or for any other purpose.

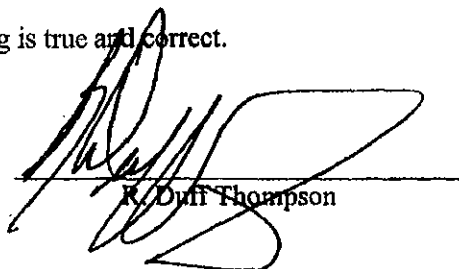
13. I have been made aware of a declaration entered in this matter by Greg Jones, who, at the time of the Novell-Santa Cruz Operations transaction was a staff attorney in the Novell legal department. Although it is possible that someone in the Novell legal department

gave Greg Jones assignments relative to the documentation of the Novell- Santa Cruz transaction, I do not recall him being involved with the APA and related closing documents. .

Greg Jones was not part of the core Novell negotiating team, nor, to the best of my knowledge was he involved in the negotiations with Santa Cruz business negotiators. The firm of Wilson Sonsini Goodrich & Rosati represented Novell in the transaction with Santa Cruz and worked with the Novell legal department in drafting the agreements. The lawyers' direction and assignment was to memorialize the intent and agreement of the parties as directed by Bob Frankenberg and as carried out by by me, Ed Chatlos and our **team**. The inside and outside lawyers for Novell working on the transaction did not have the authority or directive to change material terms of the transaction as intended and agreed by the respective negotiating teams. If any of those lawyers, including Mr. Jones, claim that the APA and related documents mean something other than what is stated in my declaration and the declaration of Ed Chatlos they are wrong. It appears to me that Mr. Jones may be offering his current view or interpretation of the agreements rather than offering any factual testimony from personal involvement in the transaction.

I declare under penalty of perjury that the foregoing is true and correct.

November 4, 2006



R. Duff Thompson