

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,	:	Case No. 2:04CV00139
	:	
Plaintiff,	:	Videotaped Deposition of:
	:	
vs.	:	R. DUFF THOMPSON
	:	
NOVELL, INC.,	:	
	:	
Defendant.	:	
	:	

February 13, 2007 - 9:13 a.m.

Location: HATCH, JAMES & DODGE
10 West Broadway, Suite 400
Salt Lake City, UT 84101

Reporter: Teri Hansen Cronenwett
Certified Realtime Reporter, Registered Merit Reporter
Notary Public in and for the State of Utah

1 recused yourself?

2 A. I did, and my recollection is that the -- while I
3 was aware that this amendment was in the works, that I was
4 not given any information by either party, by either side as
5 to how it was being negotiated and who was signing it and all
6 those sorts of things.

7 Q. So you anticipated my next question, but just to be
8 clear, did you provide any input to the Novell side about
9 Amendment No. 2 as it related to ownership of the Unix
10 copyrights?

11 A. I don't remember any instance in which I was either
12 asked to give input or that I did give input. Is it
13 possible? You have to understand that all of the legal staff
14 or many members of the legal staff at Novell were employees
15 of mine who I had hired and brought into the company, and so
16 I had not -- I hadn't brought them into Novell. I had
17 brought them into a previous company which merged with
18 Novell. And so I had interaction with these attorneys on a
19 fairly regular basis, socially and just in the community.

20 And so is it possible I had discussions? Yes. I
21 saw Bob Frankenberg on a social basis. Is it possible I had
22 discussions? Yes. But I have no recollection that there was
23 any specific input that I was asked to give nor that I
24 actually gave that resulted in the creation of Amendment 2.

25 Q. So just to prod your memory a little bit, you don't

1 A. Not at all. My understanding of the deal starting
2 in May and June of 1995 was exactly this, and the document,
3 the APA, that I -- that we signed in September of '95 to my
4 understanding said this. And to the extent it didn't say
5 this, the -- or at least it didn't say it clearly, the
6 Amendment No. 2 was a clarification of the ambiguous
7 language.

8 But you have to read that whole paragraph 8
9 together to kind of understand part of the rationale there,
10 because not only did we sign the APA, but we signed the
11 technology license agreement in December of 1995. And it
12 certainly wouldn't have made any sense to me to sign the
13 technology licensing agreement in December from SCO to Novell
14 if Novell had retained all of that intellectual property.

15 That was kind of -- I mean, I didn't -- maybe a way
16 to answer your question is, the Amendment 2 was not the
17 instructive document on where the copyrights were for me.
18 The instructions I received from Bob Frankenberg were the
19 instructive charge. What I said to Alok Mohan when I was
20 negotiating this transaction were consistent with Bob's
21 directions, and the APA -- we intended in the APA to make
22 that clear. So I didn't need Amendment 2 to help me
23 understand what we had conveyed and what we hadn't conveyed.
24 I just make that distinction.

25 Q. So just to press that point a bit, do you recall

1 recall something along the lines of, Duff, there is a
2 provision in the asset purchase agreement that gives Novell
3 ownership of the Unix copyrights. SCO is claiming that needs
4 to be clarified. Do you recall why that provision is the way
5 it is in the asset purchase agreement?

6 A. I don't recall having that discussion with anyone.

7 Q. When you prepared this declaration that's in front
8 of us dated November 9th, 2006, did you have in mind the fact
9 that Amendment No. 2 had a provision relating to ownership of
10 the Unix copyrights?

11 A. In the general sense.

12 Q. So if you take a look at paragraph 8, for example.

13 MR. SINGER: Paragraph 8?

14 A. Did you say eight?

15 Q. (By Mr. Jacobs) Yes. You say there in the first
16 sentence: Likewise, it was my understanding and intent, as
17 the Novell executive responsible for the negotiation of the
18 transaction, that the Unix copyrights were transferred to
19 Santa Cruz as part of the transaction that was closed in
20 December 1995. You see that?

21 A. Yes.

22 Q. Now, the Amendment No. 2 was executed in October
23 1996. Does Amendment No. 2 and the fact that it has, as you
24 said, a clarifying provision relating to Unix copyrights,
25 bear on your testimony in that first sentence?

1 specific discussions leading up to the execution of the APA
2 in September 1995 about copyright -- and I emphasize
3 copyright -- ownership?

4 A. I don't recall any specific discussion about
5 copyright.

6 Q. Do you recall any specific discussions about
7 copyright ownership leading up to the execution in December
8 1995 of Amendment No. 1?

9 A. I mean, the answer is, I -- not only is this now 11
10 and a half years in the past, so trying to remember a
11 specific discussion about copyright is difficult, but what
12 I -- I guess what I can recall is the actual negotiations and
13 the tenor of those negotiations and what was said, what we
14 said and what they said. And so if you are asking me --
15 well, what are you asking me?

16 Q. I am asking you -- I think you're answering about
17 tenor or overall deal structure, and I am asking you
18 specifically about the legal question of copyright ownership.

19 A. Yeah, and I guess I would answer that by saying, I
20 was instructed to sell the entire Unix business, everything,
21 everything. That was the initial instruction, sell
22 everything, from Bob Frankenberg to me, and sell UnixWare.
23 So sell Unix, sell UnixWare.

24 And having practiced law in this area previous to
25 joining Novell, so I was a general counsel for another

1 A. Yes.

2 Q. Does the fact that the board minutes record that
3 Novell will retain all the copyrights have any effect on your
4 recollections of the structure of the deal and what was
5 understood to be occurring with respect to the Unix
6 copyrights?

7 A. Yeah, well. What it says is, "Novell will retain
8 all of its patents, its copyrights and trademarks." Now, my
9 mindset would say, of course it is. It's keeping all of the
10 NetWare and NetWare-specific products. Otherwise, everything
11 that Bob told me to do and the instructions I received were a
12 fraud. So I kind of come at this from the standpoint that,
13 when it says Novell is keeping all of its trademarks and
14 copyrights and patents, I understand that to mean its, as in
15 Novell's, not those that it sold.

16 And as backup for that, in reading this boxed
17 language, it says, "Novell will retain all of its patents,
18 copyrights and trademarks and a royalty-free, perpetual
19 worldwide license back to Unix and UnixWare for internal use
20 and resale in bundled products." And I guess that seems
21 perfectly consistent to me because it says it needed to have
22 a license back to be able to use those products because it
23 had sold the underlying asset to SCO.

24 So it kind of -- even though it's the first time I
25 have seen this, as I read it, I think to myself, I'm not

1 sure -- I'm not sure that even today, if you were to ask the
2 members of the board who were there, if they understood that
3 to known Novell was retaining all the Unix copyrights because
4 it says in the next sentence, they're getting back a
5 royalty-free perpetual worldwide license back to Unix and
6 UnixWare for internal use.

7 So my own reading of this is that this is perfectly
8 consistent with what I understood we did and what we were
9 signing the next day in the September 19th APA.

10 Q. Now, it does say, except for the trademarks Unix
11 and UnixWare, doesn't it?

12 A. Right.

13 Q. So it does get pretty granular about something
14 associated with Unix when it talks about trademarks?

15 A. Trademarks, right.

16 Q. But it doesn't have similar degree of granularity
17 when it's discussing copyrights?

18 A. No. But the license back to Unix and UnixWare in
19 the next line, it seems to me, is relatively granular.

20 Q. So let's talk -- let's get granular about that,
21 then. The -- you understood that there were a bundle of
22 assets associated with Unix and UnixWare that were being
23 transferred to SCO?

24 A. That's right, that this was a business that
25 included a bundle of rights. That's right.

1 Q. And a bundle of rights you believed included --
2 looking back on it, you believed the structure of the deal
3 meant that the bundle of rights included the copyrights?

4 A. No. At the time I believe it included the bundle
5 of the copyrights, at the time.

6 Q. Well, I'm a little confused because I thought you
7 said this morning that you don't recall any specific
8 discussion about copyrights.

9 A. Yeah, but that doesn't mean that that's not what I
10 understood we were doing at the time.

11 Q. So you --

12 A. So the fact that I may not have had a specific
13 discussion that I can recall 11 and a half years later should
14 not be taken to mean I don't recall what our intention was in
15 selling the business. It is impossible for me to parse in my
16 mind the assignment that we received to sell the -- to sell
17 the entire business, all of Unix and UnixWare to SCO, and to
18 somehow also in that same breath say, except the copyrights.

19 I just -- I don't understand that kind of thinking,
20 and certainly I just have to tell you that that kind of trick
21 play was not something that Bob Frankenberg would have
22 directed, nor is it something he would have stood for. It's
23 not something I would have done.

24 If we had intended not to transfer the copyrights,
25 we would have been very careful to say, you don't get the

1 copyrights. And it wouldn't have been an oblique reference.
2 It would have been, you get all the business except the
3 copyrights. Not, you get all the business.

4 Q. You know there are a lot of arguments on both sides
5 of this issue, and I don't want to get into a debate with you
6 that you and I can't resolve. But if -- but does your
7 testimony on this point turn on your view that this is all a
8 trick if Novell in fact retained the copyrights? If it were
9 demonstrated to you that it was not a trick, for example,
10 would that change your view?

11 MR. SINGER: Object to the form of the question.

12 Q. (By Mr. Jacobs) I'm trying to --

13 A. I think --

14 Q. -- let me be a little clearer. What exactly -- as
15 you sit here today, what exactly are you calling upon in your
16 memory to testify that you understood it was Novell's intent
17 to transfer the copyrights?

18 A. My conversations with my staff, Ed Chatlos in
19 particular. Ty Mattingly was in some of those meetings. My
20 conversations with Alok Mohan, Jeffrey Seabrook, I think was
21 his name, Steve Sabbath, in which I said, "We are selling our
22 Unix business, lock, stock and barrel, all of it." That's
23 how it started.

24 Q. Exactly. That's how it started, isn't it?

25 A. Yes. We are selling everything.