

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

Stuart Singer (admitted pro hac vice)
ssinger@bsfllp.com
Sashi Bach Boruchow (admitted pro hac vice)
sboruchow@bsfllp.com
BOIES SCHILLER & FLEXNER LLP
401 East Las Olas Blvd.
Suite 1200
Fort Lauderdale, Florida 33301
Telephone: (954) 356-0011
Facsimile: (954) 356-0022

David Boies (admitted pro hac vice)
dboies@bsfllp.com
Robert Silver (admitted pro hac vice)
rsilver@bsfllp.com
Edward Normand (admitted pro hac vice)
enormand@bsfllp.com
BOIES SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

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 style="text-align: center;">Plaintiff/Counterclaim-Defendant,</p> <p>vs.</p> <p>NOVELL, INC., a Delaware corporation,</p> <p style="text-align: center;">Defendant/Counterclaim-Plaintiff.</p>	<p>SCO'S OPPOSITION TO NOVELL'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</p> <p>Civil No. 2:04 CV-00139</p> <p>Judge Ted Stewart</p>
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Novell seeks to preclude SCO from offering certain testimony of R. Duff Thompson on the grounds that Mr. Thompson did not participate in negotiating the APA or Amendment No. 2. Novell adopts an unduly restrictive interpretation of the law and of the nature of Mr. Thompson's experience and testimony.¹

Under the direction of Novell CEO Robert Frankenberg, Mr. Thompson was the Novell executive responsible for the sale of the UNIX and UnixWare business. (Ex. 1 ¶ 4.) After the transaction closed, Novell appointed Mr. Thompson to serve as its representative on the Santa Cruz Board of Directors. (Id. ¶ 6.) Novell's instructions to Mr. Thompson were clear: "sell everything, from Bob Frankenberg to me, and sell UnixWare. So sell UNIX, sell UnixWare." (Ex. 2 at 24-25.) He formed the Novell deal team and was personally involved in face-to-face negotiations with Santa Cruz officials Alok Mohan, Steve Sabbath, Jim Wilt, Geoff Seabrook, and Kim Madsen. (Ex. 1 ¶ 5.) Mr. Thompson testified to his understanding and belief at the time of the transaction in 1995 that the assets transferred "included the bundle of the copyrights." (Ex. 2 at 132-33.)

Such testimony is admissible. Mr. Thompson has personal knowledge of the business negotiators' intent concerning the transaction, because he participated in the negotiations. His testimony constitutes relevant extrinsic evidence of the circumstances in which the APA was drafted; of the negotiations that occurred leading up to the execution of the APA; of the object, nature, and subject matter of the APA; and of circumstances helping to explain the execution and meaning of Amendment No. 2. SCO Group, Inc. v. Novell, Inc., 578 F.3d 1201, 1211, 1217 (10th Cir. 2009). His testimony is integral to helping the factfinder place itself in the same

¹ This is the fifth of Novell's eight similar motions (Motions in Limine Nos. 12-19) regarding witness testimony. SCO sets forth the controlling law governing the admissibility of such testimony in its Memorandum in Opposition to Novell's Motion in Limine No. 12, and hereby incorporates that discussion.

situation in which the parties found themselves in negotiating and executing the APA. Consistent with well-established California law, the Tenth Circuit has necessarily rejected the argument that only the testimony of the individuals who negotiated the language of the APA or Amendment No. 2 is relevant. Novell's arguments go to the weight of Mr. Thompson's testimony, not its relevance.

CONCLUSION

SCO respectfully submits, for the reasons set forth above, that the Court should deny Novell's Motion in Limine No. 16.

DATED this 19th day of February, 2010.

By: /s/ Brent O. Hatch
HATCH, JAMES & DODGE, P.C.
Brent O. Hatch
Mark F. James

BOIES, SCHILLER & FLEXNER LLP
David Boies
Robert Silver
Stuart H. Singer
Edward Normand
Sashi Bach Boruchow

Counsel for The SCO Group, Inc.

CERTIFICATE OF SERVICE

I, Brent O. Hatch, hereby certify that on this 19th day of February, 2010, a true and correct copy of the foregoing **SCO'S OPPOSITION TO NOVELL'S MOTION IN LIMINE NO. 16** was filed with the court and served via electronic mail to the following recipients:

Sterling A. Brennan
David R. Wright
Kirk R. Harris
Cara J. Baldwin
WORKMAN | NYDEGGER
1000 Eagle Gate Tower
60 East South Temple
Salt Lake City, UT 84111

Thomas R. Karrenberg
Heather M. Sneddon
ANDERSON & KARRENBERG
700 Bank One Tower
50 West Broadway
Salt Lake City, UT 84101

Michael A. Jacobs
Eric M. Aker
Grant L. Kim
MORRISON & FOERSTER
425 Market Street
San Francisco, CA 94105-2482

Counsel for Defendant and Counterclaim-Plaintiff Novell, Inc.

By: /s/ Brent O. Hatch
Brent O. Hatch
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666