

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,                   : Case No. 2:04CV00139  
  :                                 :  
Plaintiff,                               : Videotaped Deposition of:  
  :                                 :  
vs.                                        : TY MATTINGLY  
  :                                 :  
NOVELL, INC.,                           :                                 :  
  :                                 :  
Defendant.                              :                                 :  
  :                                 :

January 19, 2007 - 9:23 a.m.

Location: SCO Group  
          355 South 520 West  
          Lindon, Utah 84042

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

Esquire Deposition Services  
1-800-944-9454

1 Q. Uh-huh. I think you said you joined as senior  
2 product manager. When did your title change? What did it  
3 change to?  
4 A. I think the first change in it was probably a year  
5 later when Ray Noorda basically hired me to work directly for  
6 him, and Ray Noorda was the then chairman and CEO and founder  
7 of Novell.  
8 Q. In what capacity did he hire you to work for him?  
9 A. Title was executive director, office of the  
10 chairman.  
11 Q. What were your responsibilities?  
12 A. To be his right-hand man and gopher and body guard  
13 and --  
14 Q. Okay. How long did you hold that title?  
15 A. I probably worked for Ray for about two years.  
16 Q. Okay. And what was your next title at Novell?  
17 A. Basically kept the same title, and then when Ray  
18 retired, I worked in that same capacity for Bob Frankenberg.  
19 Q. Uh-huh.  
20 A. Who was his successor.  
21 Q. And until what time did you do that?  
22 A. I probably worked for Bob for maybe 18 months.  
23 Yeah, probably about 18 months.  
24 Q. So it started at some point in 1995, your  
25 responsibilities for Mr. Frankenberg?

1 A. It sounds about right.  
2 Q. Let me ask it a different way. Can you recall with  
3 any specificity either when you began working --  
4 A. Exactly.  
5 Q. -- in that capacity or when you stopped working?  
6 A. The day he was hired --  
7 Q. Oh, okay.  
8 A. -- is when I started work working for Bob  
9 Frankenberg, so I don't know exactly what day that was. So I  
10 remained in that transition through the transition of the new  
11 CEO and remained in that position until I left about a year  
12 and a half later and started working for Duff Thompson.  
13 Q. Uh-huh.  
14 A. And in that position and title I was vice president  
15 of corporate development and strategic relationships.  
16 Q. And when did your responsibilities in connection  
17 with Mr. Thompson begin?  
18 A. Well, probably about '96 time frame. Roughly, I  
19 think it was about a year and a half with Bob Frankenberg.  
20 Q. And the responsibilities you had in connection with  
21 your work with Mr. Frankenberg were similar to the work you  
22 had done with Mr. Noorda?  
23 A. Correct.  
24 Q. And when did you leave Novell?  
25 A. Well, I actually left Novell probably in '97, but

1 that was to go to a joint venture that Novell created with  
2 Netscape called Novonyx, N-O-V-O-N-Y-X.  
3 Q. How long did you work at Novonyx?  
4 A. About a year.  
5 Q. And then what?  
6 A. Novell basically acquired all of the equity in  
7 Novonyx, pulled that back into Novell, and that's when I had  
8 my severance agreement and left Novonyx.  
9 Q. Okay. What did you do at Novonyx?  
10 A. Sales and marketing.  
11 Q. And if you could take a minute to summarize the  
12 kind of work you have done since you left Novonyx.  
13 A. We started a consulting company. I knew that I did  
14 not like hardware from my IBM days and did not like software  
15 from my Novell days, and so thought I would get into the  
16 consulting where we just talked about both of those things.  
17 And we started a Internet consulting firm right when the  
18 Internet was all of the rage in about '98. And basically  
19 myself and a couple of others founded that company, and we  
20 built it and sold it in 2004.  
21 Q. What was the name of that company?  
22 A. It was SBI Razorfish, R-A-Z-O-R-F-I-S-H.  
23 Q. And what were your responsibilities with SBI  
24 Razorfish?  
25 A. Corporate development.

1 Q. And those ended in 2004?  
2 A. Yes.  
3 Q. How about since 2004?  
4 A. I have just been doing a consulting, personal  
5 consulting gigs and personal investing.  
6 Q. Okay. Were you involved with Novell's acquisition  
7 of the Unix business?  
8 A. I was not involved in the acquisition, but when  
9 Novell bought Unix Systems Labs from AT&T, that was one of  
10 the key reasons why I decided to join Novell because of the  
11 application environment and the business applications that  
12 ran on Unix that I believed would now be merged into NetWare.  
13 Q. Do you know why Novell acquired USL?  
14 A. I believe it was for the same reason. Ray Noorda  
15 had a vision of getting an application development  
16 environment inside of NetWare that he knew we needed to have  
17 in order to be competitive with Microsoft.  
18 Q. Did there come a time during your tenure at Novell  
19 when you learned that Novell was interested in selling some  
20 or all of its Unix business?  
21 A. Yes.  
22 Q. And when was that time?  
23 A. Well, let me think about that. It was probably a  
24 few months before we actually completed the divestiture to  
25 SCO, so I think that would have been about the '95 time

1 A. You know, there were -- there were a number of  
 2 other people, but really I think -- I think we had a lot of  
 3 engineers. We brought in a lot of Unix marketing and  
 4 salespeople at various times, but most of my interaction in  
 5 the entire deal process was really with Ed Chatlos through  
 6 the negotiations and with the SCO team that they had  
 7 involved, as well as the executives inside of Novell.  
 8 Q. When the notion of selling the assets first arose,  
 9 were there more than one company discussed as potential  
 10 purchaser?  
 11 A. Yes. There were more than one company discussions.  
 12 I think that the high level strategy was to try and find a  
 13 home that could take Unix on X-86 architecture, Intel's PC  
 14 architecture, and unify all of the different OEMs around a  
 15 common Unix on a common platform. Once again, if you  
 16 remember, the reason I joined Novell was business  
 17 applications running on Unix solving business problems.  
 18 Q. Uh-huh.  
 19 A. So the opportunity and the reason why SCO was an  
 20 ideal candidate that we focused in on was because they were  
 21 the leader in Unix on the X-86 platform. So we wanted to  
 22 take Unix, UnixWare, et al., and push that to SCO so that  
 23 those guys could try and rally all of the other hardware OEMs  
 24 around a common Unix.  
 25 Q. Uh-huh.

1 A. And not have all the fragmentation that existed in  
 2 the minicomputer RISC architecture world, R-I-S-C.  
 3 Q. Were there other, I guess, so-called Unix companies  
 4 that were considered apart from SCO or --  
 5 A. Yeah. We -- we talked about all of the candidates,  
 6 HP, Sun, Oracle.  
 7 Q. Were there any serious discussions with any of  
 8 those three companies that you just mentioned?  
 9 A. Well, HP was part of our process on the  
 10 divestiture.  
 11 Q. Yeah.  
 12 A. So we really polled them as an OEM to see how they  
 13 would view and support and basically kind of sustain SCO as  
 14 this unifier of Unix.  
 15 Q. Uh-huh.  
 16 A. And the industry. So we wanted to have a potential  
 17 OEM that had a really impressive next generation architecture  
 18 coming out that was also an Intel partner so that we could  
 19 actually say, Hey, help us model this properly so that if you  
 20 will license it, then IBM will, then Sun will, etc., etc.  
 21 Q. When did Novell's initial interest in selling its  
 22 Unix business rise to the next level, so to speak? If you  
 23 can recall the chronology of events, what was the next step  
 24 after these initial discussions about whether we should sell  
 25 it and after having identified potential purchasers?

1 MR. BRAKEBILL: Objection, vague and ambiguous.  
 2 A. Well --  
 3 Q. (By Mr. Normand) I mean, I could ask a more  
 4 specific foundational question is, if you recall when the  
 5 initial discussions happened.  
 6 A. You know, while I view myself as the high level  
 7 strategy guy --  
 8 Q. Yeah.  
 9 A. -- there is a higher level strategy, you know,  
 10 inside of Novell that kind of feeds down to my level.  
 11 Q. Uh-huh.  
 12 A. And so you know, those types of discussions likely  
 13 happened with Bob Frankenberg and Alok Mohan earlier on. So  
 14 I don't know when that would have started, but you know, when  
 15 it surfaced and fed down to us, then that's when the team was  
 16 put together, and that's when we engaged there.  
 17 Q. Did you have occasion to attend meetings with  
 18 representatives of Santa Cruz or SCO?  
 19 A. Yes.  
 20 Q. And to the best of your recollection, when did  
 21 those meetings begin?  
 22 A. Well, they began not too long after the high level  
 23 strategy was made to divest of that asset, so myself and Ed  
 24 Chatlos and various other people as we needed them --  
 25 Q. Yeah.

1 A. -- met with the SCO team out in Los Gatos for, you  
 2 know, one to two months.  
 3 Q. If I said the summer of '95, does that sound right?  
 4 A. Uh-huh. It was warm. It was nice time of the  
 5 year.  
 6 Q. How many meetings can you recall attending in Los  
 7 Gatos with representatives of Santa Cruz?  
 8 A. You know, we lived there in Los Gatos on and off  
 9 for probably a month and a half to two months, so between Los  
 10 Gatos and Palo Alto and San Jose.  
 11 Q. Who were the principal representatives of Santa  
 12 Cruz that you met with, if you can recall?  
 13 A. The principal people that were working the deal  
 14 structure were Jeff Seabrook and Jim Wilt, W-I-L-T.  
 15 Q. You mentioned deal structure. Were there other  
 16 sort of categories of involvement that you would describe  
 17 Santa Cruz as having been involved in?  
 18 A. Yeah. There was the negotiation of us divesting of  
 19 an asset and them buying it and how much you pay for that,  
 20 etc.  
 21 Q. Yeah.  
 22 A. And then once we do that, you know, how will you  
 23 sell it? How will you market it? How will you do all those  
 24 other things? So at various times we would pull in different  
 25 people and put together little ad hoc tiger teams to talk

1 about those different aspects.  
 2 Q. And were you part of any of those teams?  
 3 A. You know, I may have sat in on the sales and  
 4 marketing team, but I think it's really important to  
 5 understand, you know, my involvement in all of this was high  
 6 level. How do we implement this strategy that came down from  
 7 a higher level and try and put a deal together that works for  
 8 them and works for us.  
 9 Q. And who were you that were out in Los Gatos, Palo  
 10 Alto, San Jose working on the deal structure for Novell?  
 11 A. Who what?  
 12 Q. Who were you? What was the group?  
 13 MR. BRAKEBILL: Objection, vague and ambiguous.  
 14 A. Yeah. I mean, the Novell deal team, so some of  
 15 those people that I referenced --  
 16 Q. (By Mr. Normand) I guess I took --  
 17 A. -- would meet with some of the SCO deal team at  
 18 those hotels, at different hotels.  
 19 Q. I guess I meant to ask, when you said that you had  
 20 moved out there.  
 21 A. Oh, sorry.  
 22 Q. Was there a sort of core group of you who had moved  
 23 out there?  
 24 A. Yeah. We didn't really move out there. I mean,  
 25 it's just that we were traveling out there and staying in

1 hotels every week and doing all of the different various  
 2 meetings, and the meetings happened, you know, between Palo  
 3 Alto, as well as Los Gatos.  
 4 Q. The members of that core group included yourself  
 5 and Ed Chatlos?  
 6 A. Correct.  
 7 Q. Who else was part of that group?  
 8 A. You know, there were a number of other people that  
 9 were very important in that.  
 10 Q. Uh-huh.  
 11 A. But more on the technology side, and I am  
 12 embarrassed to say I don't remember all of their names.  
 13 Q. When you say the technology side, what do you mean?  
 14 A. There were actually people there that were, you  
 15 know, hard-core Unix programmers and architects and people  
 16 that had worked on the entire SuperNOS type of a strategy, as  
 17 well as were career AT&T people. People in the Unix business  
 18 tend to be real enthusiasts, and so those folks had stayed  
 19 there through USL, through Novell, and I believe a lot of  
 20 them stayed even through the SCO transition.  
 21 Q. How would you describe your role during the course  
 22 of the summer of 1995 as part of these negotiations?  
 23 A. Well, I was very heavily involved at the kind of  
 24 senior executive level, so interfacing between Bob  
 25 Frankenberg and the SCO team and participating in the

1 meetings that we would have at times with Alok Mohan and Doug  
 2 Michaels.  
 3 Q. Uh-huh. I am going to ask you a series of more  
 4 specific questions about the negotiations, but let me ask you  
 5 up front if there's anything in particular that you can  
 6 recall focussing on in that summer of '95, meaning you  
 7 personally.  
 8 A. Of what I focused on?  
 9 Q. Yeah.  
 10 A. Yeah. You know, maybe I can help speed this up a  
 11 little bit by just giving you a little bit of dialogue versus  
 12 all of the questioning. But I think, I think it's important  
 13 to recognize from the high level what we were doing was  
 14 divesting of the Unix business at all, and we were going to  
 15 focus on NetWare and GroupWise and the other applications  
 16 that we were keeping inside of Novell.  
 17 So my job and responsibility in this negotiation  
 18 was to be a part of that team and make sure that as we  
 19 divested of the Unix business to SCO that all of our other  
 20 parties would be okay and would understand what we were doing  
 21 and why we were doing that, etc.  
 22 Q. When you say parties, you mean existing Novell  
 23 customers or contractual counterparties?  
 24 A. Yeah, all of the different OEM potential players, I  
 25 mean, IBM and Sun, etc.

1 Q. So in that role, I take it you had discussions with  
 2 representatives of those companies in the summer of '95  
 3 explaining what the negotiations were about?  
 4 A. You know, a lot with HP and with some of the  
 5 others. I did have a series of calls with different heads  
 6 from those various companies when the deal was complete and  
 7 we were updating our partners about the deal before we  
 8 announced it. So you know, I probably called out and had a  
 9 number of meetings with -- telephonic meetings with a number  
 10 of the executives from the different companies maybe the day  
 11 before we announced what was taking place.  
 12 Q. Uh-huh. Can you recall -- now I'm testing your  
 13 recollection here. Can you recall with whom you spoke from  
 14 those companies at that time?  
 15 A. I can't recall all of them. The one I can recall  
 16 is an IBM guy because it was -- it was -- oh, what was the  
 17 name? Thompson, who is now the CEO of Symantec. So because  
 18 he had, you know, risen to such prominence post that era, I  
 19 thought, wow, that's pretty interesting to see what has  
 20 happened in his career.  
 21 Q. And he was one of the individuals you spoke with  
 22 after the deal was executed, I think you said?  
 23 A. Yeah. I believe it was him, John Thompson from  
 24 IBM.  
 25 Q. And what did you tell him?

1 A. I just told him about the deal, that we were  
2 divesting of the Unix business to SCO and gave him specifics  
3 as to why.

4 Q. And do you recall what he said or how he reacted?

5 A. I don't. It was a very cordial call, and he's a  
6 very nice guy, and that's basically it. That's the only one  
7 I can really remember, but I'm sure we had calls with all of  
8 the other people because there were about, I think, 13  
9 partners that we really tried to work with.

10 Q. Okay. I take it that the negotiations we have been  
11 discussing resulted in an asset purchase agreement?

12 A. That's correct.

13 Q. I'm going to mark this as an exhibit just to get it  
14 in.

15 (Deposition Exhibit No. 1 was marked.)

16 Q. (By Mr. Normand) I am handing you, Mr. Mattingly,  
17 the -- a document titled asset purchase agreement by and  
18 between the Santa Cruz Operation Inc. and Novell Inc.

19 A. Uh-huh.

20 Q. Dated as of September 19th, 1995. I take it you  
21 have seen this document before?

22 A. Many moons ago.

23 Q. Okay. When was the last time you saw this  
24 document?

25 A. Probably -- this was dated on the 19th. It

1 probably would have been maybe a few days prior to the  
2 signature.

3 Q. Were your responsibilities in the weeks leading up  
4 to the negotiation -- let me rephrase that. Were your  
5 responsibilities in the weeks leading up to the execution of  
6 this agreement --

7 A. Uh-huh.

8 Q. -- any different than your responsibilities had  
9 been in the summer of '95?

10 A. Well, they probably were just because I don't know  
11 that I was -- well, actually, I probably had been in that job  
12 for a while. But I think I transitioned from working for Bob  
13 Frankenberg to working for Duff Thompson probably in '95.

14 Q. Okay. Did you have -- if you can recall, did you  
15 have occasion to attend a meeting of the Novell board of  
16 directors in September '95 regarding the APA?

17 A. You know, I am sure that I attended all of the  
18 board of directors' meetings that would have dealt with the  
19 divestiture of Unix.

20 MR. NORMAND: Let's mark that.

21 MS. BORUCHOW: Can we just go off the record for a  
22 one second?

23 VIDEOGRAPHER: Going off the record. The time is  
24 9:59.

25 (Discussion off the record and recess.)

1 VIDEOGRAPHER: Going back on the record. The time  
2 is 10:07.

3 Q. (By Mr. Normand) Mr. Mattingly, do you recall  
4 considering during the APA negotiations the issue of the Unix  
5 copyrights?

6 MR. BRAKEBILL: Objection, vague and ambiguous.

7 THE WITNESS: So what does that mean?

8 MR. BRAKEBILL: Oh, we should probably say this.  
9 During the course of the deposition I will make objections as  
10 to the question just to preserve the record, but you can go  
11 ahead and answer the question.

12 THE WITNESS: Okay.

13 MR. BRAKEBILL: Unless it's a privilege issue that  
14 comes up due to your tenure at Novell.

15 THE WITNESS: Uh-huh.

16 MR. BRAKEBILL: We can consider it, and if  
17 necessary either answer or not answer.

18 A. Okay. You want to give me a little more  
19 specificity?

20 Q. (By Mr. Normand) Did you have an understanding  
21 during the course of the APA negotiations as to whether  
22 Novell owned copyrights in its Unix business?

23 A. Yeah. Clearly Novell owned copyrights. We bought  
24 Unix Systems Labs from AT&T for some 300 plus million  
25 dollars. So, yeah, we owned the Unix business, lock, stock

1 and barrel, and it was the Unix business that we divested to  
2 SCO.

3 Q. And can you recall considering specifically the  
4 issue of Unix copyrights during the course of the APA  
5 negotiations? When I say you, I mean you personally.

6 A. You know, I, personally do not recall sitting there  
7 saying, yes. The Unix copyrights are part of this  
8 lock-stock-and-barrel Unix business that we are selling. But  
9 once again, I think it's important to understand that at the  
10 high level, that's where I was involved.

11 The detail level would be more Ed Chatlos, but at  
12 the highest level, the intention was that we were exiting the  
13 Unix business and selling that business to SCO so that they  
14 could pick up, unify the industry around Unix on X-86.

15 Q. Do you know whether in this case Novell is  
16 asserting that the copyrights were not transferred?

17 A. Well, I mean, I have read enough about the case  
18 early on. I haven't stayed real current lately. But I mean,  
19 obviously we're here today because Novell is asserting that  
20 the copyrights were not sold with the Unix business to SCO,  
21 and obviously SCO would assert that they purchased the Unix  
22 business from us lock, stock and barrel.

23 Q. And do you have a view as to the merits of Novell's  
24 assertion, such as you understand it?

25 A. I do.

1 Q. And what is your view?

2 A. Well, my firm belief is that we sold the Unix  
3 business to SCO, and that is why SCO paid us roughly 125  
4 million dollars at that point because they bought the Unix  
5 business from us basically in its entirety.

6 The only things that did not go with that was a  
7 kind of an agent relationship whereby SCO was collecting the  
8 SVRX royalties from existing OEMs at the time we sold that  
9 business and then giving the bulk of those moneys back to  
10 Novell. So that piece of the business, if you will, Novell  
11 maintained the royalty stream base of that going forward, and  
12 SCO acted as Novell's agent there for a very good reason.

13 And that is that SCO wanted to create the  
14 relationships with those OEMs and move them from those  
15 existing licenses to their new UnixWare platform on X-86.  
16 That was basically the strategy that we wanted, and that was  
17 a rational approach for them to actually begin to create the  
18 relationships, associations, ties with those OEMs that they  
19 aspired to move. And we wanted them to move those OEM  
20 relationships over to UnixWare.

21 Q. Why did you want them to do that?

22 A. Well, remember the strategy. The strategy was  
23 about, how do we set up an alternative application platform  
24 out there in the industry that all of the -- what were  
25 existing minicomputer, microcomputer, mid-range computer RISC

1 architecture, that would move to this unified Unix that would  
2 run on the new Intel X-86 architecture.

3 So the idea is, if you can create a platform there  
4 so that now as an ISV -- so strategically, Microsoft's big  
5 strength in the industry is, they have this ISV control. And  
6 that means that these independent software vendors that write  
7 business applications that solve business problems run on NT.  
8 And they secured more of those people on their platform by, I  
9 don't know, a hundred X or more than what Novell did.

10 So the whole strategy here is, how do you take and  
11 create this alternative platform so that ISVs will say, gosh,  
12 if I write for UnixWare, now HP, Sun, IBM, et al., I'll be  
13 able to sell my applications into those environments, and it  
14 will run on every one of those vendors' platforms that run on  
15 Intel architecture.

16 So the strategy there, I think, is really important  
17 to understand because that's what drove all of our decisions.  
18 And quite honestly that was my value-add in this negotiation  
19 is, is everything we're doing consistent with that strategy.  
20 I am not the guy then or even today that is the detail guy  
21 that gets down into all of the nuts and bolts and looks at  
22 all of the fine language inside of this nice, thick document.

23 Q. Would it be fair to say that the transfer of the  
24 Unix copyrights to SCO was consistent with your view of this  
25 overall strategy?

1 MR. BRAKEBILL: Objection, mischaracterizes  
2 testimony.

3 A. So I can still answer? Yeah. I mean, absolutely.  
4 I believe that when they bought the business, when they paid  
5 us 125 million dollars, that the negotiations that we were  
6 involved with there was about selling them the entire  
7 business, the software, which would have included the  
8 copyrights.

9 Q. (By Mr. Normand) You mentioned in the course of  
10 one of your answers the royalty stream. Do you recall  
11 mentioning that?

12 A. Uh-huh, yes.

13 Q. Is that an issue that you can recall specifically  
14 discussing either within Novell or with representatives of  
15 SCO?

16 A. Yeah. I remember that, you know, at a fairly high  
17 level.

18 Q. Uh-huh.

19 A. With some clarity.

20 Q. Okay. And who do you recall discussing that with  
21 either within Novell or with representatives of SCO?

22 A. Well, I mean, we discussed that, you know, all the  
23 way up to the board level inside of Novell.

24 Q. Okay.

25 A. And then certainly we talked about that amongst our

1 deal team, the Novell deal team. We talked about it amongst  
2 the SCO deal team, and we talked about it with our outside  
3 advisors.

4 Q. You mentioned, I think in the course of an earlier  
5 answer, new UnixWare or new version of Unix. Do you recall  
6 sort of using that phrase?

7 A. Well, I don't know if I said new, but yeah,  
8 UnixWare. I mean, basically UnixWare was the word play. I  
9 mean, Novell had NetWare, UnixWare. We're calling everything  
10 Ware, AppWare, and so Novell's version of Unix that we sold  
11 there was basically, you know, the old AT&T Unix. We just  
12 branded it UnixWare.

13 Q. And do you recall the phrase merged product? Is  
14 that a phrase you recall being used in the course of these  
15 APA negotiations?

16 A. I do recall that.

17 Q. And what do you recall about what the merged  
18 product was?

19 A. Well, I think it's important to understand that  
20 SCO, when I say that they were the leading Unix on Intel  
21 provider, my memory might be a little off here, but the  
22 leader was only selling 200,000 servers a year, you know,  
23 every year, year -- every year in and year out.

24 You know, to contrast that, I mean Novell, we were  
25 probably in the, you know, 4 million plus servers out there.