IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91122524
Party	Defendant Wayne R. Gray
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Submission	Motion to Reopen
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Signature	/David L. Partlow/
Date	04/08/2011
Attachments	MOT TO RESUME Exhibit No. 13.pdf (7 pages)(258170 bytes) MOT TO RESUME Exhibit No. 14.pdf (7 pages)(185950 bytes) MOT TO RESUME Exhibit No. 15.pdf (13 pages)(60784 bytes) MOT TO RESUME Exhibit No. 17.pdf (2 pages)(27705 bytes)

EXHIBIT No. 13

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Attorneys for Defendant Counterclaim-Plaintiff Novell, Inc.

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP, INC., a Delaware corporation,
 	
    Plaintiff,
 	
vs.
 	
NOVELL, INC., a Delaware corporation,
 	
    Defendant.
	DECLARATION OF DAVID BRADFORD
	
	Case No. 2:04CV00139
	
	Judge Dale A. Kimball

I, David Bradford, declare as follows:

1.   The statements made in this Declaration are based on my personal knowledge. In connection with this Declaration, I have also reviewed documents I authored or received contemporaneous to the transaction discussed herein. I have attached several of these documents as Exhibits to this Declaration.

2.   I am an attorney duly licensed to practice law in the state of California. I have an undergraduate degree and JD degree from Brigham Young University. I also have an MBA from Pepperdine University.

3.   I was employed by Novell, Inc. from 1985 to 2000 in various legal and business capacities. From 1987 to 2000, I was Senior Vice-President, General Counsel and Corporate Secretary. My responsibilities included overseeing legal, security, government relations and, from time to time, corporate development functions at Novell. During this period of time, I also was part of a group of executives that comprised the Executive Staff, which advised Novell's President and Chief Executive Officer regarding business decisions for the company. In addition, I was a Secretary to the Novell Board of Directors. I participated in strategic management decisions. I led Novell through a number of complex transactions, including acquisitions, asset sales and public offerings.

4.   In 1995, Novell decided to sell certain UNIX-related assets that it had acquired in 1993 from AT&T's UNIX System Laboratories subsidiary. A company called Santa Cruz Operation, Inc. ("Santa Cruz") surfaced as a prospective buyer. After a series of executive-level discussions during the summer of 1995, I was tasked, in my role as Senior Vice-President and General Counsel, with overseeing the negotiation and drafting of a contract between Novell and Santa Cruz that would protect Novell's interests.

5.   I retained the law firm of Wilson, Sonsini, Goodrich & Rosati, then Novell's regular outside counsel, to negotiate and draft the agreement between Novell and Santa Cruz. The Wilson team was led by Tor Braham, an experienced partner in that firm who was already

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familiar with Novell's business. In fact, Tor had negotiated Novell's purchase of UNIX assets from USL in 1993.

6. I charged Tor Braham with the responsibility of putting together the necessary agreements to protect Novell's interests. He was the principal drafter of what became the Asset Purchase Agreement executed on September 19, 1995. Tor Braham communicated directly with me during the drafting and negotiation process, including sending me drafts of the Asset Purchase Agreement.

7. The Novell-Santa Cruz transaction took on a more complex form due to various concerns that arose during the course of the negotiations. For example, at the outset, Novell had been hopeful that the transaction would be a cash deal. It became apparent, however, that Santa Cruz would not be able to come up with the requisite cash to buy all of the UNIX assets that Novell had purchased from USL in 1993, as well as Novell's UnixWare business. Among other things, this resulted in an agency relationship, under which Santa Cruz would collect and pass through a revenue stream for SVRX contracts and Novell would retain control over the SVRX licensing arrangements.

8. There also arose serious concerns about Santa Cruz's viability as a company. Santa Cruz was not the most financially stable company. We thus became focused on building in protections for Novell in the event that Santa Cruz went bankrupt.

9. Because of these concerns, during the negotiations I discussed with Tor Braham the need to increase Novell's protections in the transaction, including but not limited to the need to retain Novell's intellectual property rights in UNIX and UnixWare. This retention of intellectual property rights was implemented with an eye to protecting Novell's interest in the significant revenue stream that Novell would be retaining from SVRX source code. Novell's copyright ownership would permit Novell to continue to have rights to this revenue, should Santa Cruz go bankrupt.

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