

TTAB

ER 806612952 US

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

X/OPEN COMPANY LIMITED,

Opposer,

Opposition No.: 122,524

vs.

Application Serial No.: 75/680,034

WAYNE R. GRAY,

Applicant.



05-13-2004

U.S. Patent & TMOft/TM Mail Rcpt Dt. #22

**NOTICE OF DEPOSITION**

TO: Finnegan, Henderson, Farabow, Garrett, & Dunner, L.L.P.  
Evan A. Raynes, Esquire  
1300 I Street, N.W., Washington, D.C. 20005

NOTICE IS HEREBY GIVEN that Applicant Wayne R. Gray in the above-styled cause will take the deposition(s) by oral examination, at the following location:

Novell, Inc., 1800 S Novell Place, Provo, UT 84606-6194

of the person or persons identified below on May 25, 2004 at the time(s) indicated:

Name and Address

Time

Novell, Inc., 1800 S Novell Place, Provo, UT 84606-6194, 9:00 a.m.

Attachment A hereto designates the materials which the deponent is to produce at said deposition for inspection, inquiry and copying by the examining attorney.

Attachment B hereto designates the general matters which will be the subject(s) of the examination of a designated representative of the deponent.

Said deposition is being taken for the purpose of discovery, for use at trial, or for such other purposes as are permitted under the Federal Rules of Civil Procedure and TBMP.

**CERTIFICATE OF EXPRESS MAILING**

"Express Mail" mailing label number: ER 806612952 US

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513 on May 13, 2004.  
Date

  
David L. Partlow

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been furnished by U.S. Mail & FAX to Evan A. Raynes, Esquire, at Finnegan, Henderson, Farabow, Garrett, & Dunner, L.L.P., 1300 I Street, N.W., Washington, D.C. 20005, this 13<sup>th</sup> day of May, 2004.

  
David L. Partlow

ATTACHMENT A

DESIGNATION OF MATERIALS TO BE PRODUCED BY DEPONENT

With respect to the Notice of Deposition dated May 12, 2004 for the deposition on May 25, 2004 of Novell, Inc., the following materials shall be produced by the deponent for inspection and possible copying by the examining attorney:

1. Provide copies of all documents and all communications of any kind concerning all communications, meetings, and all agreements or understandings (written or oral) with AT&T (defined hereinafter) concerning the Unix marks, Unix business, Unix goodwill and/or Unix intellectual property (defined hereinafter).

2. Provide copies of all documents and all communications of any kind concerning all communications, meetings, and all agreements or understandings (written or oral) with USL (defined hereinafter) concerning the Unix marks, Unix business, Unix goodwill and/or Unix intellectual property (defined hereinafter).

3. Provide copies of all documents and all communications of any kind concerning all communications, meetings, and all agreements or understandings (written or oral) with SCO (defined hereinafter) concerning the Unix marks, Unix business, Unix goodwill and/or Unix intellectual property (defined hereinafter).

4. Provide copies of all documents and all communications of any kind concerning all communications, meetings, and all agreements or understandings (written or oral) with The X/Open Company (defined hereinafter) concerning the Unix marks, Unix business, Unix goodwill and/or Unix intellectual property (defined hereinafter).

5. Provide copies of all documents and all communications concerning any contracts relating to the Unix marks, including but not limited to licenses, licensing agreements, software agreements and sublicensing agreements.

6. Provide copies of all documents and all communications concerning Novell's acquisition of Unix System Laboratories, Inc. ("USL").

7. Provide copies of all documents and all communications of any kind concerning AT&T's development of and ownership of any version and/or edition of the following products or items:

- a. "System V Interface Definition", also known as SVID;
- b. "System V Verification Suite", also known as SVVS; and
- c. "Single UNIX Specification" and/or any alleged predecessor including but not limited to any version or edition of "Spec 1170" and/or any version or edition of the "X/Open Portability Guide" also identified as "XPG".

titled "Asset Purchase Agreement by and between Santa Cruz Operation, Inc. and Novell, Inc." dated on or about September 19, 1995 and all amendments.

15. Provide copies of all documents and all communications of any kind concerning the Unix mark Deed of Assignment between Novell as Assignor and X/Open as Assignee dated on or about November 13, 1998 and recorded at the USPTO on June 22, 1999 and all amendments.

16. Provide copies of all documents and all communications of any kind concerning the Unix marks, including written or electronic correspondence, memoranda, search reports and all contracts or other written documents that establish Novell's right to ownership of the Unix marks as Assignor in the Deed of Assignment between Novell and X/Open dated on or about November 13, 1998 and recorded at the USPTO on June 22, 1999, including but not limited to chain of title pursuant to 37 C.F.R. §3.73(b).

17. Provide copies of all documents and all communications of any kind concerning the Unix mark acknowledgement statement "UNIX is a registered trademark in the United States and other countries, licensed exclusively through X/Open Company Limited", including but not limited to the use, definition, development, first date of use, last date of use, and all dates of use.

18. Provide copies of all other documents and all communications of any kind concerning any Unix mark ownership acknowledgement that implies and/or states in any manner, form or format that Unix is a registered trademark of, or is licensed exclusively through, SCO, Novell, or X/Open.

19. Provide copies of all documents and all communications of any kind concerning all pleadings in all State or Federal courts, and the United States Patent & Trademark Office (USPTO) including the Trademark Trial & Appeals Board (TTAB), concerning all Unix marks, Unix business, Unix goodwill and/or Unix intellectual property and concerning all pleadings in which AT&T, Berkley Software Design (BSD), University of California, Apple Computer, Inc., Novell, X/Open, SCO and/or USL are or were a party, including but not limited to the action titled Unix Systems Laboratories, Inc. v. Berkeley Software Design, Inc., No. 92-1667 (D.N.J.).

20. Provide copies of all documents and all communications of any kind with respect to third parties, excluding actual filings, concerning the action titled X/Open Company Limited v Wayne R. Gray, USPTO TTAB Opposition Proceeding No. 122,524.

21. Provide copies of all documents and all communications of any kind not produced above, concerning the Unix marks, Unix business, Unix goodwill and/or Unix intellectual property, including but not limited to all issues of AT&T's publication "\$ Echo."

#### Instructions and Definitions

The instructions, definitions, and rules contained in the Federal Rules of Civil Procedure, including in particular Rule 45, are incorporated herein by reference and supplemented with the following definitions and instructions:

### Instructions

1. Each paragraph should herein be construed independently and, unless otherwise directed, without reference to any other paragraph for the purpose of limitation.
2. Each requested document shall be produced in its entirety for possible copying by the deposing party. If a document responsive to any request cannot be produced in full, it shall be produced to the extent possible.
3. All documents produced in response to this subpoena shall be produced in the same order as they are kept or maintained in the ordinary course of business and, where attached, shall not be separated or disassembled.
4. In responding to these requests, you are required to furnish all responsive documents that are in your possession, custody or control, including documents in the possession, custody or control of your officers, directors or employees and anyone else acting on your behalf or otherwise subject to your control, regardless of whether those documents are in personal files or company files or the files of a predecessor or the files of a licensee or the files of a third party and regardless of the original source of the documents.
5. If any objection is made to any part of a request, that document and part shall be identified with specificity, and the objection shall be made specifically and individually in each such case.

### Definitions

As used here, the following terms have the following definitions:

1. The term "AT&T" means American Telephone and Telegraph Company, its predecessors in interest, related companies, licensees, directors, officers, employees, agents, and representatives.
2. The term "Novell" shall mean and include, collectively and/or individually, Novell, Inc. and all its directors, officers, authorized agents, employees, consultants, attorneys, representatives, direct and indirect contractors, and/or all other persons acting on behalf of Novell, Inc.
3. The term "X/Open" shall mean X/Open Company Limited, any wholly owned or partly owned subsidiaries, divisions, affiliated companies and/or predecessors in the business of X/Open; and any counsel, licensee, agent, representative, distributor or other Person (as defined below) who is acting or has acted on behalf of X/Open. The term " X/Open " encompasses the term "The Open Group," X/Open's trading name.
4. The term "SCO" means The SCO Group, its predecessors in interest (including but not limited to Caldera International, Inc., Tarantella, Inc. and Santa Cruz Operation, Inc.), related companies, licensees, directors, officers, employees, agents, and representatives.

5. The term "USL" means Unix Systems Laboratories, its predecessors in interest, related companies, licensees, directors, officers, employees, agents, and representatives.

6. The term "all" as used herein shall mean "any and all."

7. The terms "and" and "or" as used herein shall be construed conjunctively or disjunctively to bring within the scope of these documents any and all information which might otherwise be construed as outside their scope.

8. The term "communication" shall mean any transmittal of information, whether oral or written, including correspondence, electronic mail and other internet transmissions, web pages, Internet Relay Chat logs, instant messages, telexes, facsimile transmissions, telecopies, recordings in any medium of oral communication, telephone or message logs, or notes or memoranda concerning written or oral communications.

9. The term "concerning" shall mean relating to, referring to, reflecting, describing, evidencing, referencing, discussing or constituting.

10. The term "document" shall be synonymous in meaning and usage with the broadest scope of the term used in Rule 34(a) of the Federal Rules of Civil Procedure. The term "document" shall mean any papers and writing, including drafts, wherever located, whether an original or a copy, including agreements, financing statements, invoices, minutes, memoranda, notes, records, interoffice communications, tape or other recordings, microfilms, telegrams, letters, photographs, drawings, data, reports, printed matter, publications, press releases, offers, bids, proposals, statements, telexes, complaints, notices, claims, counterclaims, answers, oppositions and presentations to any governmental body. World Wide Web pages, electronic mailing lists or automated fax support systems. The term "document" specifically includes electronic mail, electronic correspondence, or electronic peer-to-peer messages ("e-mail") and any attachments and files created and maintained in electronic form in the normal course of business. Any copy containing or having attached any alternations, notes, comments or other material not included in the originals or copies referred to in the preceding sentence shall be deemed a separate document with the foregoing definition.


11. The term "person" includes, without limitation, individuals, a natural person, firms, partnerships, joint ventures, proprietorships, corporations, unions, associations, governmental bodies, or any other organization or entity.

12. The term "quality control" includes, without limitation, a system for ensuring the maintenance of proper standards in manufactured goods, especially by supervision of the product manufacturing process and/or periodic random inspection of the product.

13. The term "the Unix mark(s)" means those marks that are the subjects of U.S. Trademark Registration Nos. 1,390,593 and 1,392,203 for the mark UNIX.

Requesting Attorney:

  
David L. Partlow

  
Date

ATTACHMENT B

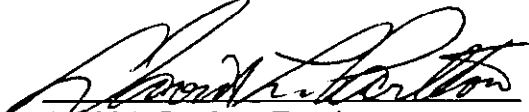
DESIGNATION OF MATTERS FOR EXAMINATION

With regard to the Notice of Deposition dated May 12, 2004 for the deposition on May 25, 2004 of Novell, Inc., an entity other than a natural person, examination of a designated representatives or representatives of the deponent will be conducted with respect to the following matter(s):

1. The documents specified in Attachment A hereto.
2. In general, ownership of the marks known as "Unix" and the business, goodwill, and intellectual property associated therewith.

Pursuant to the applicable rules of civil procedure, the deponent is to designate the person or persons to testify with respect to these matters.

Requesting Attorney:

  
David L. Partlow, Esquire

Date: May 13, 2004