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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, Plaintiff/Counterclaim-Defendant, -against- INTERNATIONAL BUSINESS MACHINES CORPORATION, Defendant/Counterclaim-Plaintiff.	**IBM'S RESPONSES & OBJECTIONS TO SCO'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS AND FIRST SET OF INTERROGATORIES** Civil No. 2:03cv0294 Honorable Dale A. Kimball

Defendant International Business Machines Corporation ("IBM"), by its undersigned attorneys, hereby responds and objects to Plaintiff's First Request for the Production of Documents (the "Requests") and First Set of Interrogatories (the "Interrogatories"), as follows:

GENERAL OBJECTIONS

1.   IBM objects to the Requests and the Interrogatories to the extent that they purport to impose obligations and require procedures beyond those set forth in the Federal Rules of Civil Procedure and the local rules or orders of this Court.

2.   IBM objects to the Requests and the Interrogatories to the extent that the documents and information sought are unreasonably cumulative or duplicative or obtainable from other sources that are more convenient, less burdensome, or less expensive, as provided by the Federal Rules of Civil Procedure.

3.   IBM objects to the Requests and the Interrogatories to the extent that they are vague, ambiguous, overly broad, unduly burdensome, seek irrelevant information or are not reasonably calculated to lead to the discovery of admissible evidence.

4.   IBM objects to the Requests and the Interrogatories as overly broad and unduly burdensome to the extent that, as amended by plaintiff, they seek documents and information relating to the period from January 1, 1985 to June 24, 2003. IBM will undertake a reasonable search for responsive documents, which, depending on the specific Request or Interrogatory, may or may not concern documents and information dating back to 1985.

5. IBM objects to the Requests and the Interrogatories to the extent that they purport to require the production of documents or information protected by the attorney-client privilege, the work-product doctrine or any other applicable privilege, statute, law, or rule. IBM hereby claims such privileges and protections to the extent implicated by the Requests and the Interrogatories and excludes privileged information from its responses. Any disclosure of such protected or privileged information is inadvertent and not intended to waive those privileges or protections. Inadvertent disclosure or production of any privileged or protected documents or information shall not constitute waiver of any privilege, work-product protection, or immunity, or any other ground for objecting to discovery of the document or information. Pursuant to an agreement between the parties, IBM reserves the right to demand and obtain the return of any privileged documents it may produce and all copies thereof. If the production of any document or information is deemed to be a waiver of any right or privilege, the waiver shall be a limited waiver pertaining to that document or information only.

6. IBM objects to the Requests and the Interrogatories on the grounds that they seek improperly to require extensive discovery of IBM before plaintiff has disclosed information sufficient to permit IBM to understand the nature of plaintiff's claims. See Automed Tech., Inc. v. Eller, 160 F. Supp. 2d 915, 926 (N.D. Ill. 2001); Xerox Corp. v. Int'l Bus. Mach. Corp., 64 F.R.D. 367, 371-72 (S.D.N.Y. 1974). The Requests and Interrogatories do not reasonably limit the scope of the search to be conducted by IBM.

7.   IBM objects to the Requests and the Interrogatories to the extent that they purport to require the disclosure of information or documents not presently within the possession, custody, or control of IBM.

8.   IBM objects to the Requests and the Interrogatories insofar as they seek documents or information equally accessible to plaintiff and/or in plaintiff's exclusive possession, custody, or control.

9.   IBM objects to the Requests and the Interrogatories insofar as they seek documents or information subject to a confidentiality obligation owed to a non-party to this case. IBM will attempt to obtain permission of such non-party to provide the requested information. For any non-party that does not provide permission to provide such information, IBM will provide to plaintiff the identity of such non-party and a sufficient description of the information in IBM's custody, control, or possession to allow plaintiff to request the information directly from such non-party. IBM will withhold production of all non-party confidential documents and information until and unless permission has been granted by the non-party to produce such documents and information.

10.   IBM objects to the Requests and the Interrogatories insofar as they seek "all" documents, where a subset of all documents would be sufficient, and insofar as they do not reasonably limit the scope of the search to be conducted by IBM. IBM will produce responsive, non-privileged documents identified after a search of reasonable scope.

11.   IBM objects to the Requests and the Interrogatories insofar as they do not identify with reasonable particularity the documents and information plaintiff seeks.

12.   In making these objections, IBM does not in any way waive or intend to waive, but rather preserves and intends to preserve:

a.   all rights to object on any ground to the competency, relevancy, materiality, and admissibility of any information or document that may be provided in response to the Requests or the Interrogatories or the subject matter thereof;

b.   all rights to object on any ground to the use of any information or document that may be provided in response to the Requests or the Interrogatories or the subject matter thereof, in any subsequent proceeding, including the trial of this or any other action; and

c.   all rights to object on any ground to any request for further responses to these or any other discovery requests.

13.   IBM reserves the right to make any use of, or to introduce at any hearing and at trial, documents or information responsive to the Requests and the Interrogatories but discovered subsequent to the date of IBM's responses and initial production, including, but not limited to, any documents obtained during discovery.

14.   IBM's discovery and investigation of the facts relevant to this case are ongoing and IBM's responses to the Requests and the Interrogatories are made to the best of its present knowledge, information, and belief. IBM reserves the right to amend

and/or supplement its responses, which are subject to such additional or different information as discovery or further investigation may disclose.

15.   As used herein, any statement that IBM "will produce non-privileged, responsive documents", or the substantive equivalent, means that IBM will conduct a reasonable search of documents within its possession, custody, or control and, at a mutually agreeable time, produce responsive documents not subject to the attorney-client privilege or the work-product immunity or otherwise immune from discovery, subject to the objections stated herein.

16.   In agreeing to produce documents or information in response to a particular Request or Interrogatory, IBM does not represent that such documents or information exist. IBM also does not represent that its initial production of documents or information pursuant to the Requests and the Interrogatories will consist of every responsive, non-privileged document or piece of information that is in IBM's possession, custody, or control.

17.   IBM objects to the Requests and the Interrogatories on the grounds and to the extent that they purport to require the disclosure of confidential information (including, but not limited to, confidential business information, trade secrets, or information subject to any confidentiality agreement, order, and/or obligation) without entry by the Court of an appropriate protective order. IBM will not produce any IBM confidential information until such a protective order is agreed to by the parties and entered by the Court.

18.   IBM objects to the Requests and the Interrogatories insofar as they relate to activities and seek documents or information from outside the United States.

IBM will produce non-privileged, responsive documents or information relating to activities concerning, and located in, the United States.

19.   IBM objects to plaintiff's definitions of the terms "AIX" and "Dynix". Insofar as plaintiff defines these terms to include all prior versions, releases, maintenance modifications, derivative works, methods, and modifications, they are overbroad, unduly burdensome, and seek information that is irrelevant and not reasonably calculated to lead to admissible evidence.

20.   IBM objects to plaintiff's definition of the terms "IBM", "Defendant", "you", "your", and "any synonym thereof" on the grounds that they are overbroad, unduly burdensome, and seek information that is irrelevant and not reasonably calculated to lead to admissible evidence.

21.   IBM objects to plaintiff's use of the term "UNIX" as vague and ambiguous to the extent plaintiff does not define the term. IBM also objects to the term "UNIX" insofar as it renders the Requests and Interrogatories overbroad.

22.   IBM objects to plaintiff's use of the terms "modifications", "methods", and "derivative works" as vague, ambiguous, and unintelligible.

23.   All of the General Objections set forth herein are incorporated into each of the individual responses set forth below and have the same force and effect as if fully set forth therein.

DOCUMENTS REQUESTED

Request No. 1

All documents concerning or relating to any agreements entered into with AT&T relating to UNIX, including but not limited to the agreements attached to the First Amended Complaint.

<u>Response to Request No. 1</u>

Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 2

All versions or iterations of AIX source code, modifications, methods and/or derivative works from May 1999 to the present, including but not limited to version 4.3 and above.

<u>Response to Request No. 2</u>

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad and unduly burdensome. IBM also objects to this Request on the grounds that it is vague, ambiguous, and unintelligible with respect to the phrase "modification, methods, and/or derivative works". Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM will produce a copy of the source code for AIX Version 4.3.3 and AIX Version 5.2.

Request No. 3

All versions or iterations of Sequent Dynix source code, derivative works, modifications and/or methods from January 1, 1999 to the present.

<u>Response to Request No. 3</u>

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad and unduly burdensome. IBM also objects to this Request on the grounds that it is vague, ambiguous, and unintelligible with respect to the phrase "modification, methods, and/or derivative works". Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM will

produce a copy of the source code for the base operating system component of Dynix

Version 4.4.10, Dynix Version 4.5.3, and Dynix Version 4.6.1.

Request No. 4

All documents concerning IBM's efforts, if any, to maintain the confidentiality of UNIX source code, derivative works, modifications, and/or methods.

Response to Request No. 4

In addition to the foregoing general objections, IBM objects specifically to

this Request as duplicative (of Request No. 7). IBM also objects to this Request on the

grounds that the phrase "derivative works, modifications, and/or methods", as used in this

Request, is vague, ambiguous, and unintelligible. Subject to, as limited by, and without

waiving the foregoing general and specific objections, IBM, after a search of reasonable

scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 5

All documents concerning IBM's efforts, if any, to maintain the confidentiality of AIX source code, derivative works, modifications, and/or methods.

Response to Request No. 5

In addition to the foregoing general objections, IBM objects specifically to

this Request as duplicative (of Request No. 8). IBM also objects to this Request on the

grounds that the phrase "derivative works, modifications, and/or methods", as used in this

Request, is vague, ambiguous, and unintelligible. Subject to, as limited by, and without

waiving the foregoing general and specific objections, IBM, after a search of reasonable

scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 6

All documents concerning IBM's efforts, if any, to maintain the confidentiality of Sequent Dynix source code, derivative works, modifications, and/or methods.

Response to Request No. 6

In addition to the foregoing general objections, IBM objects specifically to this Request as duplicative (of Request No. 9). IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Request, is vague, ambiguous, and unintelligible. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 7

All documents concerning IBM's efforts, if any, to restrict distribution of UNIX source code, derivative works, modifications, and/or methods.

Response to Request No. 7

In addition to the foregoing general objections, IBM objects specifically to this Request as duplicative (of Request No. 4). IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Request, is vague, ambiguous, and unintelligible. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 8

All documents concerning IBM's efforts, if any, to restrict distribution of AIX source code, derivative works, modifications, and/or methods.

Response to Request No. 8

In addition to the foregoing general objections, IBM objects specifically to this Request as duplicative (of Request No. 5). IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Request, is vague, ambiguous, and unintelligible. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 9

All documents concerning IBM's efforts, if any, to restrict distribution of Sequent Dynix source code, derivative works, modifications, and/or methods.

Response to Request No. 9

In addition to the foregoing general objections, IBM objects specifically to this Request as duplicative (of Request No. 6). IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Request, is vague, ambiguous, and unintelligible. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 10

All documents concerning Prerequisite Source Licenses, including but not limited to all instances in which IBM required persons or entities to obtain a Prerequisite Source License under paragraph 2.2(a) of its contract with its customers.

Response to Request No. 10

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is vague and ambiguous insofar as the term

"Prerequisite Source Licenses" is undefined. In responding to this Request, IBM will define "Prerequisite Source Licenses" as referring to licenses to UNIX System V code that IBM and/or Sequent required a third-party to have or obtain as a precondition to IBM's disclosure of AIX or Dynix source code to that third-party. IBM also objects to this Request on the grounds that it is overbroad and unduly burdensome insofar as it seeks documents concerning prerequisite source licenses relating to source code other than UNIX System V. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 11

All contributions made without confidentiality restrictions by IBM or anyone under its control including, but not limited to, source code, binary code, derivative works, methods, and modifications to Open Source Development Lab, Linus Torvalds, Red Hat or any other entity.

Response to Request No. 11

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. The Request seeks "contributions" unrelated to UNIX System V source code. IBM also objects to this Request on the grounds that it is vague and ambiguous in its use of the phrase "any other entity", and it is vague, ambiguous, and unintelligible in its use of the terms "derivative works, methods, and modifications". IBM further objects to this Request on the grounds and to the extent that open-source contributions made by IBM are publicly available and as accessible to plaintiff as to IBM. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of

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reasonable scope, will produce non-privileged documents, if any, responsive to this Request relating to UNIX System V source code.

Request No. 12

All documents that identify any person or entity to whom IBM has provided UNIX source code, derivative works, modifications and/or methods.

Response to Request No. 12

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to this Request on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Request, is vague, ambiguous, and unintelligible. Defendant further objects to this Request as overbroad to the extent it seeks "all" documents that identify "any person or entity" to whom IBM has provided UNIX source code. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents sufficient to identify the persons, if any, to whom IBM has provided UNIX System V source code.

Request No. 13

All documents that identify any person or entity to whom IBM has provided AIX source code, derivative works, modifications and/or methods.

Response to Request No. 13

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to this Request on the grounds that the

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phrase "derivative works, modifications, and/or methods", as used in this Request, is vague, ambiguous, and unintelligible. Defendant further objects to this Request as overbroad to the extent it seeks "all" documents that identify "any person or entity" to whom IBM has provided AIX source code. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents sufficient to identify the persons, if any, to whom IBM has provided the subject source code.

Request No. 14

All documents that identify any person or entity to whom IBM has provided Sequent Dynix source code, derivative works, modifications and/or methods.

Response to Request No. 14

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Defendant also objects to this Request on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Request, is vague, ambiguous, and unintelligible. Defendant further objects to this Request as overbroad to the extent it seeks "all" documents that identify "any person or entity" to whom IBM has provided Dynix source code. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents sufficient to identify the persons, if any, to whom IBM has provided the subject source code.

Request No. 15

All documents that identify any person at IBM and Sequent who had access to UNIX source code, derivative works, modifications and/or methods.

Response to Request No. 15

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is duplicative (of Request No. 12), overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Request, is vague and ambiguous. IBM further objects to this Request as overbroad to the extent it seeks "all" documents that identify "any person at IBM and Sequent who had access to" UNIX source code. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a reasonable search, will produce documents sufficient to show persons at IBM and Sequent, if any, who had access to UNIX System V source code.

Request No. 16

All documents that identify any person at IBM and Sequent who had access to AIX source code, derivative works, modifications and/or methods.

Response to Request No. 16

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is duplicative (of Request No. 13), overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Request, is vague and ambiguous. IBM further objects to this Request as overbroad to

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the extent it seeks "all" documents that identify "any person at IBM and Sequent who had access to" AIX source code. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a reasonable search, will produce documents sufficient to show persons at IBM and Sequent, if any, who had access to the subject source code.

Request No. 17

All documents that identify any person at IBM and Sequent who had access to Sequent Dynix source code, derivative works, modifications and/or methods.

Response to Request No. 17

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is duplicative (of Request No. 14), overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Request, is vague and ambiguous. IBM further objects to this Request as overbroad to the extent it seeks "all" documents that identify "any person at IBM and Sequent who had access to" Dynix source code. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a reasonable search, will produce documents sufficient to show persons at IBM and Sequent, if any, who had access to the subject source code.

Request No. 18

All documents, agreements and correspondence between IBM or any person or entity under IBM's control and Linus Torvalds including, but not limited to, those with or copied to Sam Palmisano.

<u>Response to Request No. 18</u>

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. IBM also objects to this Request on the grounds that it is vague and ambiguous. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 19

All documents, agreements and correspondence with Open Source Development Lab.

<u>Response to Request No. 19</u>

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. IBM also objects to this Request as vague and ambiguous because the statement "[a]ll documents . . . with Open Source Development Lab" is nonsensical. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 20

All documents, agreements and correspondence with Red Hat.

Response to Request No. 20

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. IBM also objects to this Request as vague and ambiguous because the statement "[a]ll documents . . . with Red Hat" is nonsensical. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 21

All documents, agreements and correspondence with SuSe.

Response to Request No. 21

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. IBM also objects to this Request as vague and ambiguous because the statement "[a]ll documents . . . with SuSe" is nonsensical. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 22

All documents, agreements and correspondence between IBM and Novell regarding UNIX, including but not limited to all correspondence with Jack Messman, Chris Stone and/or Novell's counsel.

Response to Request No. 22

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. IBM also objects to this Request as vague and ambiguous because the statement "[a]ll documents . . . between IBM and Novell" is nonsensical. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 23

All documents, agreements and correspondence between IBM and Santa Cruz Operation regarding UNIX.

Response to Request No. 23

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this Request as vague and ambiguous because the statement "[a]ll documents . . . between IBM and Santa Cruz Operation" is nonsensical. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 24

All documents, agreements and correspondence between IBM and Caldera.

Response to Request No. 24

In addition to the foregoing general objections, IBM objects to this Request as vague and ambiguous because the statement "[a]ll documents . . . between IBM and Caldera" is nonsensical. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 25

All documents, agreements and correspondence between IBM and The SCO Group.

Response to Request No. 25

In addition to the foregoing general objections, IBM objects to this Request as vague and ambiguous because the statement "[a]ll documents . . . between IBM and The SCO Group" is nonsensical. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 26

All documents identifying any IBM personnel who are or were employed or working at the Linux Technology Center.

Response to Request No. 26

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad and unduly burdensome. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce documents, if any, sufficient to identify current and former employees of the Linux Technology Center.

Request No. 27

All documents identifying any IBM personnel who are or were employed or working at the Linux Center of Competency.

Response to Request No. 27

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad and unduly burdensome. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce documents, if any, sufficient to identify current and former employees of the Linux Center of Competency.

Request No. 28

All documents concerning Project Monterey.

Response to Request No. 28

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 29

All documents concerning any UNIX source code, derivative works, modifications or methods disclosed by IBM to any third party or to the public.

Response to Request No. 29

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible

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evidence. IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, or methods", as used in this Request, is vague, ambiguous, and unintelligible. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, sufficient to identify UNIX System V source code disclosed by IBM to a third party or to the public.

Request No. 30

All documents concerning any AIX source code, derivative works, modifications or methods disclosed by IBM to any third party or to the public.

Response to Request No. 30

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, or methods", as used in this Request, is vague, ambiguous, and unintelligible. IBM further objects to this Request as overbroad to the extent it seeks documents relating to the disclosure of AIX source code to which SCO does not have rights. Only a small percentage of AIX source code is UNIX System V code. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, sufficient to identify AIX source code disclosed by IBM to a third party or to the public.

Request No. 31

All documents concerning any Sequent Dynix source code, derivative works, modifications or methods disclosed by IBM to any third party or to the public.

<u>Response to Request No. 31</u>

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, or methods", as used in this Request, is vague, ambiguous, and unintelligible. IBM further objects to this Request as overbroad to the extent it seeks documents relating to the disclosure of Dynix source code to which SCO does not have rights. Only a small percentage of Dynix source code is UNIX System V code. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents sufficient to identify Dynix source code, if any, disclosed by IBM to any third party or to the public.

Request No. 32

All documents concerning any UNIX source code, derivative works, modifications or methods found in Linux, open source, or the public domain.

<u>Response to Request No. 32</u>

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, or methods", as used in this Request, is vague, ambiguous, and unintelligible. Defendant further objects to this Request on the grounds the requested information is as accessible to SCO as to IBM. Finally, IBM objects to this Request on

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the grounds that it fails to identify with reasonable particularity the documents that plaintiff seeks. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, sufficient to identify UNIX System V source code contributed by IBM to Linux, the open-source community, or the public domain.

Request No. 33

All documents concerning any AIX source code, derivative works, modifications or methods found in Linux, open source, or the public domain.

Response to Request No. 33

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, or methods", as used in this Request, is vague, ambiguous, and unintelligible. Defendant further objects to this Request on the grounds that the requested information is as accessible to SCO as to IBM. Finally, IBM objects to this Request on the grounds that it fails to identify with reasonable particularity the documents that plaintiff seeks. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, sufficient to identify AIX source code contributed by IBM to Linux, the open-source community, or the public domain.

Request No. 34

All documents concerning any Sequent Dynix source code, derivative works, modifications or methods found in Linux, open source, or the public domain.

Response to Request No. 34

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, or methods", as used in this Request, is vague, ambiguous, and unintelligible. Defendant further objects to this Request on the grounds that the requested information is as accessible to SCO as to IBM. Finally, IBM objects to this Request on the grounds that it fails to identify with reasonable particularity the documents that plaintiff seeks. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, sufficient to identify Dynix source code contributed by IBM to Linux, the open-source community, or the public domain.

Request No. 35

All documents concerning any contributions to Linux or to open source made by IBM and/or Sequent.

Response to Request No. 35

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this Request on the grounds that the phrase "derivative works, modifications, or methods", as used in this Request, is vague, ambiguous, and unintelligible. Defendant further objects to this Request on the grounds that the requested information is as accessible to SCO as to IBM. Finally, IBM objects to this Request on

the grounds that it fails to identify with reasonable particularity the documents that plaintiff seeks. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, sufficient to identify UNIX System V, AIX, or Dynix source code contributed by IBM to Linux, the open-source community, or the public domain.

Request No. 36

All documents sufficient to show IBM's organizational and personnel structure, including but not limited to organizational charts, flow charts and personnel directories.

Response to Request No. 36

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is to the extent it seeks documents relating to the structure or personnel of IBM but having nothing to do with the subjects of this lawsuit. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM will produce non-privileged documents, if any, relating to AIX, Dynix, and Linux.

Request No. 37

All documents concerning any statement, affidavit, declaration, or opinion in IBM's possession relating to contributions by IBM to open source, including but not limited to those statements identified in the Complaint made by Messrs. Mills, LeBlanc and Strassmeyer.

Response to Request No. 37

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this Request on the grounds and to the extent that the

documents requested are as accessible to SCO as to IBM. IBM further objects to this

Request on the grounds that it seeks documents and information protected from

disclosure by the attorney-client privilege, the work-product immunity, or any other

applicable privilege, law, or immunity. Subject to, as limited by, and without waiving the

foregoing general and specific objections, IBM, after a search of reasonable scope, will

produce non-privileged documents, if any, responsive to this Request.

Request No. 38

All documents concerning the Open Source Developer's Class, including any guidelines relating thereto.

Response to Request No. 38

In addition to the foregoing general objections, IBM objects specifically to

this Request on the grounds that it is overbroad and unduly burdensome. IBM also

objects to this Request on the grounds that it seeks documents and information protected

from disclosure by the attorney-client privilege, the work-product immunity, or any other

applicable privilege, law, or immunity. Subject to, as limited by, and without waiving the

foregoing general and specific objections, IBM, after a search of reasonable scope, will

produce non-privileged documents, if any, responsive, if any, to this Request.

Request No. 39

All documents concerning export controls for any UNIX source code, derivative works, modifications or methods contributed to open source, including all portions of AIX, and Dynix and their derivative works, modifications, or methods.

Response to Request No. 39

In addition to the foregoing general objections, IBM objects specifically to

this Request on the grounds that it is overbroad, unduly burdensome, and seeks

information that is irrelevant and not reasonably calculated to lead to admissible

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evidence. IBM also objects to this Request on the grounds that the term "export controls" is undefined, vague, and ambiguous, and the phrase "derivative works, modifications, or methods", as used in this Request, is vague, ambiguous, and unintelligible. IBM further objects to this Request on the grounds that it does not identify with reasonable · particularity the documents plaintiff seeks. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 40

All documents concerning IBM's use of Intel processors prior to January 1, 1998.

Response to Request No. 40

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. IBM also objects to this Request on the grounds that it does not identify with reasonable particularity the documents plaintiff seeks.

Request No. 41

All documents concerning IBM's use of Intel processors after January 1, 1998.

Response to Request No. 41

In addition to the foregoing general objections, IBM objects specifically to this Request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. IBM also objects to this Request on the grounds that it does not identify with reasonable particularity the documents plaintiff seeks.

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Request No. 42

All documents concerning IBM's contributions to development of the 2.4 and 2.5 Linux Kernel.

Response to Request No. 42

In addition to the foregoing general objections, IBM objects specifically to this Request as duplicative (of Request No. 35), vague, overbroad, and unduly burdensome. IBM also objects to this Request on the grounds and to the extent that contributions made by IBM are publicly available and as accessible to SCO as to IBM. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, sufficient to identify its contributions to the 2.4 and 2.5 Linux Kernel.

Request No. 43

All documents concerning IBM's First Affirmative Defense that the Complaint fails to state a claim upon which relief can be granted.

Response to Request No. 43

In addition to the foregoing general objections, IBM objects to this Request on the grounds that it does not identify with reasonable particularity the documents that plaintiff seeks. IBM also objects to this Request on the grounds that the documents it seeks are as accessible to plaintiff as to IBM. Subject to, as limited by, and without waiving the foregoing general objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 44

All documents concerning IBM's Second Defense that Plaintiff's claims are barred because IBM has not engaged in any unlawful or unfair business practices, and IBM's conduct was privileged, performing the exercise of an absolute right, proper and/or justified.

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Response to Request No. 44

In addition to the foregoing general objections, IBM objects to this

Request on the grounds that it does not identify with reasonable particularity the

documents that plaintiff seeks. IBM also objects to this Request on the grounds that the

documents it seeks are as accessible to plaintiff as to IBM. Subject to, as limited by, and

without waiving the foregoing general objections, IBM, after a search of reasonable

scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 45

**All documents concerning IBM's Third Affirmative Defense that
Plaintiff lacks standing to pursue its claims against IBM.**

Response to Request No. 45

In addition to the foregoing general objections, IBM objects to this

Request on the grounds that the documents it seeks are as accessible to plaintiff as to

IBM. Subject to, as limited by, and without waiving the foregoing general objections,

IBM, after a search of reasonable scope, will produce non-privileged documents, if any,

responsive to this Request.

Request No. 46

**All documents concerning IBM's Fourth Affirmative Defense that
Plaintiff's claims are barred, in whole or in part, by the applicable statutes of
limitations.**

Response to Request No. 46

In addition to the foregoing general objections, IBM objects to this

Request on the grounds that the documents it seeks are as accessible to plaintiff as to

IBM. Subject to, as limited by, and without waiving the foregoing general objections,

IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 47

All documents concerning IBM's Fifth Affirmative Defense that Plaintiff's claims are barred, in whole or in part, by the economic loss doctrine or the independent duty doctrine.

Response to Request No. 47

In addition to the foregoing general objections, IBM objects to this Request on the grounds that it does not identify with reasonable particularity the documents that plaintiff seeks. IBM also objects to this Request on the grounds that the documents it seeks are as accessible to plaintiff as to IBM. Subject to, as limited by, and without waiving the foregoing general objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 48

All documents concerning IBM's Sixth Affirmative Defense that Plaintiff's claims are barred by the doctrines of laches and delay.

Response to Request No. 48

In addition to the foregoing general objections, IBM objects to this Request on the grounds that it does not identify with reasonable particularity the documents that plaintiff seeks. IBM also objects to this Request on the grounds that the documents it seeks are as accessible to plaintiff as to IBM. Subject to, as limited by, and without waiving the foregoing general objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 49

All documents concerning IBM's Seventh Affirmative Defense that Plaintiff's claims are barred by the doctrines of waiver, estoppel and unclean hands.

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<u>Response to Request No. 49</u>

In addition to the foregoing general objections, IBM objects to this Request on the grounds that it does not identify with reasonable particularity the documents that plaintiff seeks. IBM also objects to this Request on the grounds that the documents it seeks are as accessible to plaintiff as to IBM. Subject to, as limited by, and without waiving the foregoing general objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 50

All documents concerning IBM's Eighth Affirmative Defense that Plaintiff's claims are, in whole or in part, preempted by federal law.

<u>Response to Request No. 50</u>

In addition to the foregoing general objections, IBM objects to this Request on the grounds that the documents it seeks are as accessible to plaintiff as to IBM. Subject to, as limited by, and without waiving the foregoing general objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 51

All documents concerning IBM's Ninth Affirmative Defense that Plaintiff's claims are improperly venued in this district.

<u>Response to Request No. 51</u>

In addition to the foregoing general objections, IBM objects to this Request on the grounds that the documents it seeks are as accessible to plaintiff as to IBM. Subject to, as limited by, and without waiving the foregoing general objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

Request No. 52

      All documents used, referred to, identified, or relied upon in responding to Plaintiff's First Set of Interrogatories.

Response to Request No. 52

      In addition to the foregoing general objections, IBM objects to this Request on the grounds that the documents it seeks are as accessible to plaintiff as to IBM. Subject to, as limited by, and without waiving the foregoing general objections, IBM, after a search of reasonable scope, will produce non-privileged documents, if any, responsive to this Request.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

Interrogatory No. 1:

      Identify the name and address of the person(s) answering these interrogatories, and, if applicable, the persons' official position or relationship with Defendant?

Response to Interrogatory No. 1:

      In addition to the foregoing general objections, IBM objects specifically to this Interrogatory on the grounds that it is vague and ambiguous. IBM understands this Interrogatory to call for identification of the person verifying IBM's responses to these Interrogatories. Subject to, as limited by and without waiving the foregoing general objections, IBM identifies: Daniel Frye, Director of LTC, International Business Machines Corporation, 15300 S.W. Koll Parkway, Beaverton, OR 97006.

Interrogatory No. 2:

      List the names and addresses of all persons who are believed or known by you, your agents, or your attorneys to have any knowledge concerning

any of the issues of this lawsuit; and specify the subject matter about which the witness has knowledge.

Response to Interrogatory No. 2:

In addition to the foregoing general objections, IBM objects specifically to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and does not identify with reasonable particularity the "issues of this lawsuit". Based upon the general allegations of plaintiff's complaint, many thousands of current and former employees of plaintiff, IBM, AT&T, USL, Novell, and The Santa Cruz Operation could have knowledge about this lawsuit. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM will identify persons who are known by IBM to have discoverable information with respect to the particularized issues agreed upon by the parties after they have met and conferred concerning this Interrogatory.

Interrogatory No. 3:

If you intend to call any expert witness at the trial of this case, state, as to each such expert witness, the name and business address of the witness, the witness' qualifications as an expert, the subject matter upon which the witness is expected to testify, the substance of the facts and opinions to which the witness is expected to testify, and a summary of the grounds for each opinion.

Response to Interrogatory No. 3:

In addition to the foregoing general objections, IBM objects specifically to this Interrogatory as premature. The scheduling order entered in this case provides that IBM shall designate and submit the reports of its expert witnesses, if any, by September 24, 2004. IBM will provide the requested information on the schedule ordered by the Court.

Interrogatory No. 4:

Identify all persons who have or had access to UNIX source code, AIX source code and Dynix source code, including derivative works, modifications, and

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methods. For each such person, set forth precisely the materials to which he or she had access.

Response to Interrogatory No. 4:

In addition to the foregoing general objections, IBM objects specifically to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this Interrogatory on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Interrogatory, is vague, ambiguous, and unintelligible. IBM further objects to this Interrogatory as overbroad to the extent it seeks the identification of "all" persons who have had access to the subject source code and information. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a reasonable search, will produce documents pursuant to Rule 33(d) of the Federal Rules of Civil Procedure sufficient to identify persons at IBM and Sequent who have had access to UNIX System V, AIX, and Dynix source code.

Interrogatory No. 5:

Identify all IBM or Sequent personnel that work or worked on developing source code, derivative works, modifications or methods for AIX, Dynix and Linux, specifying for each person their precise contributions to each.

Response to Interrogatory No. 5:

In addition to the foregoing general objections, IBM objects specifically to this Interrogatory on the grounds that it is overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this Interrogatory on the grounds that the phrase "derivative works, modifications, and/or methods", as used in this Interrogatory, is vague,

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ambiguous, and unintelligible. IBM further objects to this Interrogatory as overbroad to the extent it seeks the identification of "all" persons who have worked on developing the subject source code and information. Subject to, as limited by, and without waiving the foregoing general and specific objections, IBM, after a reasonable search, will produce documents pursuant to Rule 33(d) of the Federal Rules of Civil Procedure sufficient to identify persons at IBM and Sequent who have worked on developing source code for AIX, Dynix, and Linux.

Dated: August 13, 2003

    As to Objections:

                SNELL & WILMER LLP

                Alan L. Sullivan
                Todd M. Shaughnessy

                CRAVATH, SWAINE & MOORE LLP
                Evan R. Chesler
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    As to Responses:

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*Attorneys for Defendant International Business
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP,
 	
        Plaintiff/Counterclaim-Defendant,
 	
-against-
 	
INTERNATIONAL BUSINESS
MACHINES CORPORATION,
 	
        Defendant/Counterclaim-Plaintiff.
	**CERTIFICATE OF SERVICE OF
	IBM'S RESPONSES & OBJECTIONS
	TO SCO'S FIRST REQUEST FOR
	THE PRODUCTION OF
	DOCUMENTS AND FIRST SET OF
	INTERROGATORIES**
	
	Civil No. 2:03cv0294
	
	Honorable Dale A. Kimball

I hereby certify that on the 13th day of August, 2003, a true and correct copy of **IBM'S**

RESPONSES & OBJECTIONS TO SCO'S FIRST REQUEST FOR THE PRODUCTION

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OF DOCUMENTS AND FIRST SET OF INTERROGATORIES was served on the

following by U.S. Mail, postage prepaid:

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