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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP,
 	
      Plaintiff /Counterclaim-Defendant,
 	
vs.
 	
INTERNATIONAL BUSINESS
MACHINES CORPORATION,
 	
      Defendant/Counterclaim-Plaintiff.
	ADDENDUM TO DEFENDANT/COUNTERCLAIM PLAINTIFF INTERNATIONAL BUSINESS MACHINES CORPORATION'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY
	
	(ORAL ARGUMENT REQUESTED)
	
	Civil No. 2:03cv0294
	
	Honorable Dale A. Kimball
	
	Magistrate Judge Brooke Wells

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of November, 2003, a true and correct copy of the

foregoing **ADDENDUM TO DEFENDANT/COUNTERCLAIM PLAINTIFF**

INTERNATIONAL BUSINESS MACHINES CORPORATION'S REPLY

MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY was sent by
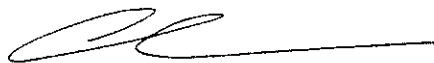
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Addendum

Summary of Deficiencies in SCO's Supplemental Responses

No.	Information Requested by IBM	SCO's Supplemental Response	Deficiencies in SCO's Supplemental Response
1	Interrogatory No. 1 seeks specific identification of all alleged trade secrets and confidential or proprietary information that SCO alleges IBM misappropriated or misused. This information is requested by product, file and line of code.	SCO reiterates its references to "UNIX software design methods" and "technical UNIX categories". (Exh. A at 3.) SCO lists 591 files, by source file heading, contained in unidentified releases of the Linux 2.4 and/or Linux 2.5 kernels. It states merely that they include or may include "information (including methods) that IBM was required to maintain as confidential or proprietary pursuant to contract with SCO and/or which constitute trade secrets misused by IBM". (Id. at 3-6, 7-19.)	SCO fails to identify a single Unix file or line of code. SCO's references to "design methods" and "technical Unix categories" are so vague as to be essentially meaningless. In fact, SCO does not identify any of the methods it purports to own; it merely describes the categories in which they supposedly fall. SCO's list of files is neither responsive nor identified with meaningful particularity, as SCO fails to identify the precise releases of the Linux kernel in which these files are found or the precise lines of code at which the alleged methods are found and SCO acknowledges that it has rights to only some of the code in these files.
2	For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No. 1, Interrogatory No. 2 seeks further identification of: (a) all persons who have or had rights to the same; (b) the nature and sources of SCO's rights in the same; and (c) efforts to maintain secrecy or confidentiality of the same.	SCO states that IBM and Sequent and their respective employees, contractors, agents and some customers had rights to the information contained in the files SCO identifies. SCO further states that IBM and Sequent were required to maintain that information in confidence pursuant to various agreements. (See Exh. A at 20.)	With respect to subpart (a), SCO specifically identifies only IBM and Sequent. It fails specifically to mention any others, including licensees of Unix System V software, persons to whom SCO gave rights by distributing the identified files as part of one of its Linux products, or persons to whom SCO has disclosed the files in connection with this litigation. With respect to subpart (b), SCO makes no real attempt to identify the nature and sources of its rights. It fails to disclose whether, for example, SCO's rights derive from contract, common law or statute (e.g., copyright) and how SCO acquired such rights (e.g., as an author or by acquisition).

No.	Information Requested by IBM	SCO's Supplemental Response	Deficiencies in SCO's Supplemental Response
3	For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No. 1, Interrogatory No. 3 seeks the identity of all persons to whom the same was disclosed and the details of such disclosure. In particular, this interrogatory seeks: (a) the date of disclosure; (b) the terms of disclosure; (c) the documents relating to disclosure; (d) all places where the trade secret and/or confidential or proprietary information may be found or accessed.	SCO states that it is impossible to identify all persons to whom the trade secrets and confidential or proprietary information were disclosed. (See Exh. A at 21.) SCO references its supplemental response to Interrogatory No. 2 and states that employees of SCO and its predecessors have had access to the trade secrets and confidential or proprietary information, as have employees of IBM involved in Project Monterey. (See id. at 21-22.) SCO alleges over 140 persons affiliated with IBM "in which part of the confidential or proprietary and/or trade secrets was known or had been disclosed". [sic] (Id. at 22-26.)	SCO declines specifically to identify anyone other than employees of IBM and Sequent. It makes general reference to employees of SCO and its predecessors and refers to its supplemental responses to Interrogatory No. 10, but it fails to specify responsive persons. SCO has failed to identify, for example: (1) all licensees of disclosed information; (2) the persons to whom it distributed its Linux products; and (3) the third parties to whom SCO has disclosed its supposed evidence in connection with this lawsuit. SCO makes no real attempt to provide the information requested in the subparts to this interrogatory, including in particular the dates for any disclosure, the terms of disclosure, and documents relating to the disclosure. With respect to the places where the requested information may be found, SCO lists hundreds of Linux files in response to Interrogatory No. 1, but fails to identify precise releases of Linux or lines of code in the files identified. It makes no mention of Unix software licensees, web postings or publications in response to this interrogatory.
4	For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No. 1, Interrogatory No. 4 seeks information regarding each instance in which plaintiff alleges that IBM misappropriated or misused the same. In particular, this interrogatory seeks (a) the date of the alleged misuse or misappropriation; (b) the persons involved;	SCO states that IBM "misappropriated and misused the trade secrets and/or confidential and proprietary information of Plaintiff each time it made contributions to Linux of source code or methods based on, derived from or developed in UNIX System V, AIX and/or Dynix". (See Exh. A at 27.) SCO states that IBM "misappropriated and misused the trade secrets and/or confidential and proprietary information of Plaintiff through Project Monterey". (Id.)	SCO does little more than reiterate the allegations in its Amended Complaint, without disclosing the specific factual basis of its allegations (assuming there is one). SCO has not meaningfully provided any of the information requested in the subparts of this interrogatory, especially subparts (c) and (d). Subpart (c) seeks identification of the manner in which IBM allegedly misused or misappropriated SCO's intellectual property. While SCO admits in its opposition brief that not all of the instances described in its presentation at the SCO Forum pertain to IBM, it refuses to disclose which ones, if any, do in response to this interrogatory. Subpart (d) seeks identification of the places where the allegedly misappropriated/misused material can be found.

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No.	Information Requested by IBM	SCO's Supplemental Response	Deficiencies in SCO's Supplemental Response
	(c) the manner of misuse or misappropriation; and (d) the location of any method or code in any IBM product, Linux, open source or the public domain.		As previously stated, SCO offers only an imprecise and incomplete response to this subpart in its answer to Interrogatory No. 1.
5	For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No. 1, Interrogatory No. 5 seeks identification of (a) all agreements relating thereto, and (b) all copyrights and patents relating thereto, including but not limited to the owners, licensors, licensees, assignors or assignees thereof.	SCO incorporates its supplemental responses to Interrogatory Nos. 2 and 3. (See Exh. A. at 28.) With respect to agreements, SCO refers to all agreements between IBM and Sequent and SCO or its predecessors. (See id.) With respect to copyrights, SCO states that those relating to UNIX System V and UnixWare will be produced in the ordinary course of a rolling production. SCO refers to copyrights held by IBM and/or Sequent in AIX, Dynix and other software products. (See id.)	With respect to subpart (a), SCO identifies only (in the vaguest of terms) agreements between IBM/Sequent and itself. IBM is entitled to identification of every other agreement relating to the trade secrets and propriety or confidential information at issue. With respect to subpart (b), SCO fails specifically to identify whether there are copyrights or patents relating to each item of information (disclosed in response to Interrogatory No. 1) and declines to provide the specific information requested as to any such copyright or patent. SCO's reliance on its intent to offer a rolling production of unspecified documents is improper.
6	For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No. 1, Interrogatory No. 6 seeks (a) the origin of the code or method, including where, when and by whom created; (b) all products in which the code or method is included or upon which it is based (in whole or in part).	SCO states that "the origin of the code and/or method identified in response to Interrogatory No. 1 above is one of UNIX System V, UnixWare, AIX, Dynix or related code or code developed therein or modifications thereof". (Exh. A at 29.)	With respect to subpart (a), SCO's reference to "Unix System V, UnixWare, AIX, Dynix or related code or code developed therein or modifications thereof" is inadequate. The Amended Complaint gives this much detail. SCO fails to identify, for each line of code or method at issue when, where and by whom the code or method was created. With respect to subpart (b), SCO has provided no supplemental response. Again, SCO should be required to identify by product name, version and release number, all Unix or Linux products in which any line of code to which it asserts rights is included or upon which it is based (in whole or in part) and identify the file name and specific line(s) of code that allegedly comprise the code or method.

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7	Interrogatory No. 7 seeks a description of each instance in which IBM allegedly engaged in unfair competition, including but not limited to: (a) the dates of such conduct, (b) the persons involved, and (c) the specific manner of unfair competition.	SCO states that IBM engaged unfair competition by: (1) improperly competing with and influencing competition for UNIX software on Intel-based processors in connection with Project Monterey; (2) inducing or attempting to induce Hewlett-Packard and Intel from doing business with SCO; (3) using Software Products and modifications/derivatives thereof in a manner exceeding the scope of IBM's licenses with SCO; and (4) entering into a conspiracy and combination in restraint of trade with others in the Linux development business. (Exh. A at 30-31.)	SCO offers little more than vague generalizations about the acts of unfair competition it attributes to IBM, without the detail sought in the various subparts of the interrogatory. Few or none of those facts have been provided. With respect to Project Monterey, SCO provides only conclusory allegations about the nature of the alleged unfair competition and none of the requested specifics. With respect to the alleged improper use of software products in a manner exceeding the scope of licenses, SCO says nothing specific beyond its reference to unidentified "contributions of the modifications and derivative works to Linus Torvalds and/or others in the open source community". (Exh. A at 30.) SCO's description of an alleged conspiracy/combination is likewise deficient. With whom specifically did IBM conspire and combine? On what terms? What evidence does SCO have of this? How did the supposed conspiracy affect competition? How did it injure SCO?
8	Interrogatory No. 8 seeks the identification of all agreements with which IBM allegedly interfered, including but not limited to: (a) the date of interference, (b) the persons involved in the interference, (c) the manner of interference, (d) the actions (if any) IBM encouraged licensees to take, (e) the actions, if any, such licensees took as a result of IBM's inducement/	SCO alleges two types of interference by IBM: (1) inducing or attempting to induce breaches of agreements "by assisting and/or performing services in switch from UnixWare to Linux"; and (2) approaching certain of SCO's partners to induce them to stop doing business with SCO. (See Exh. A at 32.)	With respect to the first type of interference, SCO fails either to identify or to produce the agreements with which it alleges IBM interfered. Moreover, SCO provides little if any of the specific information sought in subparts (a) through (f). With respect to the second type of interference, SCO again fails either to specify or to produce the agreements IBM purportedly attempted to induce SCO's partners to breach. Likewise, much of the detail sought in subparts (a) through (f) is absent from SCO's supplemental response.

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	encouragement, (f) the trade secret or proprietary information (if any) involved in the alleged interference.		
9	Interrogatory No. 9 seeks identification of all agreements that IBM has allegedly breached, including but not limited to: (a) the date of breach, (b) the persons involved, and (c) the specific manner of breach.	SCO has not provided any supplemental response to this interrogatory.	For the reasons stated in IBM's opening papers, SCO's response to this request remains deficient. Simply put, it offers (1) no dates, (2) none of the persons involved, and (3) no specific facts relating to the alleged breaches. SCO does so despite the fact that it suggests that its breach of contract claims are the thrust of its case.