

September 22, 2003

Via E-Mail and U.S. Mail

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RE: SCO v. IBM

Gentlemen:

We covered so much in the many hours of discussion last week with respect to production that we thought it prudent to clarify and summarize the larger open issues. Since you asked that we address SCO's concerns with IBM's responses first, we were able to get through all of those issues. We still await your call to schedule time to finish addressing any concerns you may have with SCO's answers to IBM's requests for production and interrogatories. We do believe we will be able to resolve most, if not all, of your concerns.

To facilitate this summary, we will track Todd's correspondence of September 15, 2003.

I. General Objections

General Objection Nos. 1-3, 5, 7, 10. IBM has objected and stated it will conduct a reasonable search for responsive documents by determining the likely sources of the information sought and, with respect to individuals, searching their computer, office and home files. As we discussed, while this initial step is appropriate for both sides, both sides are not just obligated to perform a reasonable search, but also to act in good faith to produce all responsive documents. In any event, you have confirmed that you are not withholding responsive, non-privileged documents.

Along these lines, we had discussed preparing a source log to accompany the CDs. We agreed that this is a good idea and will be providing one later this week for the 46 previously provided CDs. For future logs, the necessary information should be an identification of the source (i.e. general file, source code, individual). If it is an individual, we should identify the person and their position in the company so we know whether they were involved in particular issues, e.g. Linux, AIX, licensing, etc.

General Objection No. 4. We have agreed that both SCO and IBM will use January 1, 1985 as the start date for documents, however, should responsive non-

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privileged documents of an earlier date be discovered, they will be produced. Additionally, you were going to determine whether you believed there were any particular requests for which IBM required documents which predated 1985. Please advise.

General Objection No. 6. We directed you to the allegations in SCO's Amended Complaint, including, without limitation, as related to NUMA, RCU and SMP technology. Todd advised that in light of his technical disadvantage, he would discuss this issue with others and get back to us to ensure that IBM will produce responsive non-privileged documents, even in light of this objection.

General Objection No. 8. You have confirmed that you will provide responsive, non-privileged documents in IBM's possession even if they are also publicly available.

General Objection No. 10. You have confirmed that you are not withholding documents on this basis.

General Objection No. 11. You have confirmed that you will produce responsive, non-privileged documents and that the limitation you placed with respect to IBM's attempts "in most instances to discern the information sought" meant only that IBM had not "attempted...to discern" information with respect to Intel processors. We clarified that SCO only seeks information regarding Intel processors with UNIX, AIX or Linux platforms. You will confirm that you will provide responsive, non-privileged documents with this limitation.

General Objection No. 15. Please see our previous corresponding comments.

General Objection No. 17. We both agreed to this but the Court order has now been entered.

General Objection No. 18. Nothing is being withheld.

General Objection No. 19. This remains as our big issue, i.e., our position that IBM is obligated to produce "derivative works, modifications and methods" vs. IBM's position that it cannot determine what those terms mean, despite their specific use in the agreements between the parties. Nevertheless, Peter confirmed that he is not aware that IBM is withholding anything based upon it being a derivative rather than AIX itself and that IBM is producing any AIX, UNIX, and Dynix documents even if they are, arguably, related to a derivative work, modification or method. To assist in locating responsive documents for the methods of the various operating systems, we need all programming

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notes, comments, and experiments, including interim and final versions of UNIX, AIX and Linux programming. This includes but is not limited to technical UNIX categories, such as multi-processor locking and unlocking methods, methods for avoiding locking requirements, methods of implementing filing systems, de-bugging methods, methods for implementing and improving processor scalability, methods for implementing and improving processor reliability, methods for implementing processor accessibility, methods for implementing and improving scheduling systems, methods for implementing and improving memory management, methods for implementing and improving threading and multi-threading, and methods for implementing and improving general system functionality based on UNIX technology.

We reiterate the necessity for all versions, not just the final versions. These are essential to determine the full scope of IBM's violations.

General Objection No. 20. You have agreed that the definition of IBM shall include its officers and that you have not found any directors who are not also officers, but shall advise us in the event that is the case. In addition, "IBM" includes Sequent materials in IBM's custody, control or possession.

General Objection No. 21. See our comments in General Objection No. 19, above.

General Objection No. 22. See our comments in General Objection No. 6, above.

II. Document Responses

Response to Request No. 1. You have confirmed that responsive, non-privileged documents are being produced.

Response to Request Nos. 2 and 3. See our comments to General Objection No. 19, above. We need confirmation as to whether we are getting all versions of the requested items, not simply the final version. Also, you need to let us know when we can get these documents in light of your statement that there are third party notifications that must be issued. Because it is being produced pursuant to litigation and under a confidentiality notice, I don't understand the need for such notifications. Nonetheless, please tell me the date upon which we will get the documents.

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Response to Request Nos. 4-6. You have agreed that you will not withhold responsive, non-privileged documents except with respect to General Objection No. 22. Please see our comments in General Objection No. 6, above.

Response to Request Nos. 7-9. See our comments to Request Nos. 4-6, above.

Response to Request No. 10. You have confirmed that responsive, non-privileged documents will be produced.

Response to Request No. 11. We have agreed that the only documents we seek with respect to open-source contributions are those related to UNIX, AIX, Dynix and Linux. With that limitation, you have agreed to produce responsive, non-privileged documents which shall include e-mails. You have also confirmed that even though you stated a limitation of collecting documents from members of LTC and OSSC, you have also collected responsive, non-privileged documents from others who may have had involvement and have responsive, non-privileged documents. Along these lines, we need written confirmation of the additional sources of documents, which may include the AIX Development Lab in Austin, Texas and the AIX work done in Germany, any UNIX, AIX, Dynix or Linux work done in Beaverton, Oregon and, if applicable to any of our requests, The Thomas Watson Research Centers. In short, we need assurances that the discovery responses from IBM include searches wherever AIX, Dynix and Linux were being performed.

Response to Request Nos. 12-14. You have confirmed that you will stand on your objection to these requests, but will look into the issue. In the meantime, you will provide the source code as stated in your responses. Again, we need to know the date of such production.

Response to Request Nos. 15-17. We talked about exchanging lists of such witnesses on a given date. What date would you propose?

Response to Request No. 18. You have confirmed that you will produce responsive, non-privileged documents.

Response to Request Nos. 19-25. You have confirmed that you will provide the relevant documents and that the phraseology of the objection was not an attempt to play semantic games. Again, when can we expect such documents?

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Response to Request Nos. 26-27. You have confirmed that you will provide either documents or a list reflecting the names of the individuals, the dates of employment, the nature of their work and the relevant projects they worked on. Please also include the most recent contact information IBM maintains. As noted earlier, you will address the amount of time IBM needs to produce this information and we will agree to exchange said information at that time.

Response to Request No. 28. You have confirmed that you will provide responsive, non-privileged documents and that the statement that you will be "searching for documents from IBM employees with significant involvement in technical, business development and contractual aspects of Project Monterey" will not limit you from collecting documents from other employees who may have relevant responsive documents.

Response to Request Nos. 29-31. See our response to General Objection No. 19, above.

Response to Request Nos. 32-34. You have confirmed that the use of the term "memoranda" was illustrative and not limiting of the kinds of documents you will search for and produce.

Response to Request No. 35. You have confirmed that you will produce responsive, non-privileged documents relative to UNIX, AIX, Dynix, or Linux from the files of LTC, OSSC, and other personnel who may have particular relevant information.

Response to Request No. 36. We have agreed that IBM will produce responsive, non-privileged documents for units involved in AIX, Dynix, Linux and Project Monterey. If you have such information for Project Gemini, we would appreciate receiving that also.

Response to Request No. 37. We accept your position consistent with our previous comments, and do not require additional information.

Response to Request Nos. 38 and 39. We clarified, with respect to Request No. 38, that we are seeking, for instance, the course guidelines, handouts, presentations and the like. Peter confirmed that what we seek is consistent with what IBM sought and you will produce all such responsive, non-privileged documents. With respect to Request No. 39, you have confirmed that you will produce responsive, non-privileged documents that would include files, contracts, e-mails, drafts and memoranda on the subject.

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Response to Request Nos. 40-41. We have agreed to accept a limitation on this request so that it relates only to the use of UNIX, AIX, Dynix or Linux on Intel processors. You advised that you will check on this and get back to us.

Response to Request Nos. 42. See our comments to Response to Request No. 11.

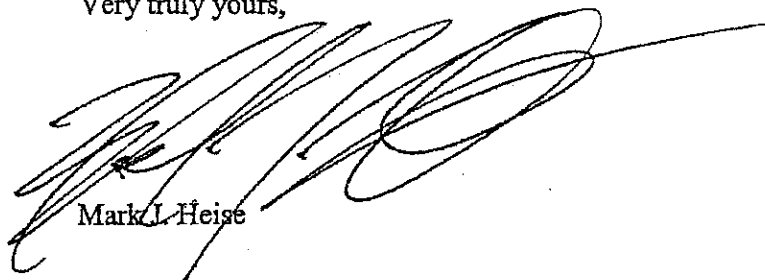
Response to Request Nos. 43-52. You have confirmed that you will produce all responsive, non-privileged documents.

III. Interrogatory Responses

Interrogatory No. 2. You will provide the names, addresses and subject matter about which each of the officers and directors have knowledge. You will get back to us with a date upon which we may exchange this information.

Interrogatory Nos. 4 and 5. See our comment to Interrogatory 2 above.

Very truly yours,



Mark L. Heise

DWG/mm

cc: Brent Hatch