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September 15, 2003

VIA FACSIMILE AND U.S. MAIL

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Re: SCO v. IBM

Dear Brent and Mark:

We have reviewed Mark's letter of September 8, 2003 (the "Objection Letter"), setting forth The SCO Group's ("SCO's") "concerns" with respect to IBM's Responses and Objections to SCO's First Request for the Production of Documents and First Set of Interrogatories ("IBM's Responses"). This letter responds thereto.

First, please be assured that we share the goal stated in second paragraph of the Objection Letter, to provide appropriately requested documents and let the facts come out in Court. We note, however, that while certain of IBM's objections may be similar in form to those lodged by SCO in its Response to IBM's First Set of Interrogatories and First Request for Production of Documents ("SCO's Responses"), IBM's Responses were made in the context of a wholly different set of discovery demands and must be evaluated independently. We address SCO's concerns in turn:

I. General Objections

General Objection Nos. 1-3, 5, 7, 10. IBM is not affirmatively withholding responsive, non-privileged documents based on these general objections. However, it should be noted that IBM has sought to collect potentially responsive documents from individuals whom we have determined to be the most likely sources of information requested by SCO, in addition to certain centralized business files. We believe this

Brent O. Hatch
Mark J. Heise
September 15, 2003
Page 2

constitutes a reasonable search for responsive documents given IBM's size and SCO's failure to particularize the factual basis of its causes of action. IBM is not presently seeking to collect, review or produce any documents that are not kept in the ordinary course of business by these individuals.

General Objection No. 4. IBM has attempted to collect, where appropriate, documents dating as far back as January 1, 1985¹ that have been retained in the ordinary course of business by the individuals identified as likely sources of responsive documents. We intend to produce any responsive, non-privileged information identified in their files.

General Objection No. 6. As you are well aware, the Amended Complaint fails to particularize, among other things, the code which SCO alleges IBM has wrongfully contributed to Linux. Despite IBM's repeated requests for this information -- which is clearly within SCO's possession given its willingness to provide the same to analysts, customers and members of the press -- SCO has refused to provide any further clarification for IBM. We believe that discovery in this case is properly limited to information concerning such alleged disclosures, and, without identification thereof by SCO, we are left to interpret in a vacuum a series of overbroad requests. We reiterate our request to you to define the scope of the alleged wrongdoing in this case so that discovery can be appropriately tailored.

General Objection No. 8. IBM has not, as a general matter, attempted to collect responsive documents that are generally available to the public, including SCO. To the extent such documents are otherwise included in the files that we have otherwise collected, however, IBM is not affirmatively withholding them on the basis of this objection.

General Objection No. 10. Please see our preceding response re: General Objections 1-3, 5, 7 and 10.

General Objection No. 11. In several instances, IBM has already provided further clarification of this objection throughout the Specific Objections. See, e.g., IBM's Response to Request No. 39. Despite SCO's lack of specificity, IBM has attempted in

¹ Per your e-mail to David Marriott of July 9, 2003, we understand that the date range specified in Instruction No. 1 was a typo, and should have stated "January 1, 1985 to present".

Brent O. Hatch
Mark J. Heise
September 15, 2003
Page 3

most instances to discern the information being sought and will produce responsive, non-privileged documents despite this General Objection and the Specific Objections.

General Objection No. 15. Please see our preceding response re: General Objections 1-3, 5, 7 and 10 for clarification of the reasonable search that is being conducted by IBM. IBM's Responses already specify each request in response to which a reasonable search for documents is being performed.

General Objection No. 17. We expect to commence a rolling production of documents this week. Please confirm that, until the stipulated protective order is entered by the court, SCO will treat all information produced by IBM on an attorneys-eyes-only basis. (We will, of course, do the same for SCO.) We will send the first installment of discs to Mark's attention upon receipt of that confirmation.

General Objection No. 18. IBM is not withholding non-privileged, responsive documents on the basis of this objection.

General Objection No. 19. IBM is not withholding non-privileged, responsive documents on the basis of our objections to these definitions insofar as they relate to prior versions, releases and updates of AIX or Dynix. Please see the upcoming response re: General Objection No. 22 for our continued concerns relating to your definitions' use of the terms "derivatives works", "modifications" or "methods".

General Objection No. 20. IBM stands by this objection. For purposes of responding to SCO's requests, we have interpreted IBM to mean the International Business Machines Corporation, its subsidiaries, divisions and employees.

General Objection No. 21. IBM accepts the definition of UNIX set forth at page 21 of its own First Set of Interrogatories and First Request for Production of Documents.

General Objection No. 22. Until SCO specifies the code which it alleges IBM has wrongfully contributed to Linux, we cannot make any meaningful interpretation of these terms in order to properly define the scope of documents for production. We reiterate our request that you provide this information forthwith. Please see our preceding response re: General Objection No. 6.

Brent O. Hatch
Mark J. Heise
September 15, 2003
Page 4

II. Document Responses

Response to Request No. 1. As stated in our preceding response re: General Objections 1-3, 5, 7 and 10, we have undertaken to search for responsive documents in the files of individuals most likely to possess the same.

Response to Request Nos. 2 and 3. Please see our preceding response re: General Objection No. 22. In addition, IBM stands by its objection that these requests are both overbroad and unduly burdensome. Two versions of AIX were shipped from May 1999 to the present: versions 4 and 5. We have already agreed to provide the final releases of those versions: 4.3.3 and 5.2. In addition, we will produce AIX version 5.1 for Itanium-based systems. These will include the fixes and updates to these releases. From January 1, 1999 to the present, one version of Dynix was shipped: version 4. We have already agreed to produce three releases of that version (4.4.10, 4.5.3, and 4.6.1) and will produce three other releases as well (4.2.4 and 4.3.1). Again, these will include the fixes and updates to these releases. Please the note that foregoing will require a substantial number of third-party notifications prior to production.

Response to Requests Nos. 4-6. Please see our preceding response re: General Objection No. 22. We are not withholding non-privileged, responsive documents based on our objections that certain requests are duplicative. While we are unaware of any requirement under the Federal Rules to articulate whether documents produced in response to different requests are identical, we expect that many of the documents produced in response to these requests (for example, confidentiality agreements) are also responsive to Requests 7, 8 and 9, respectively.

Response to Request Nos. 7-9. Please see our preceding response re: Response to Requests Nos. 4-6.

Response to Request No. 10. You have adopted the definition and limitation previously articulated by IBM in its response to this request. Subject thereto, and as previously stated, IBM will conduct a reasonable search for and produce non-privileged documents responsive to this request.

Response to Request No. 11. IBM stands by its objections in response to Request No. 11. As drafted and clarified in your Objection Letter, this request calls for all documents relating to any open-source contributions of any kind by IBM -- and as such is highly objectionable for the reasons stated in IBM's Responses. Contrary to the suggestion in your objection letter, IBM does not keep a centralized listing of "its contributions" to open-source. With respect to IBM's contributions to Linux, however,

Brent O. Hatch
Mark J. Heise
September 15, 2003
Page 5

summary information identifying IBM contributions is readily available to SCO and members of the public on a variety of Linux websites -- including kernel.org and sourceforge.net. We note, however, that various divisions of IBM prepare patches contributed to open-source without confidentiality restrictions that are completely unrelated to this litigation. The only open-source contributions pertinent to this case are those which SCO alleges were made by IBM in violation of confidentiality provisions in the agreements inherited by SCO -- which, as noted above, SCO has time and again refused to specify.

Absent the necessary clarification from SCO and despite these well-founded objections to Request No. 11, IBM has undertaken to collect documents from various members of the Linux Technology Center (the "LTC") who are responsible for work relating to open-source contributions to Linux. In addition, we are collecting materials from the Open Source Steering Committee (the "OSSC"), the group within IBM responsible for reviewing and approving open-source projects. We intend to produce non-privileged documents identified in these files that relate to IBM open-source contributions to Linux.

Response to Request Nos. 12-14. Please clarify your "concerns" with respect to our responses to these requests. Those set forth on Page 8 of your Objection Letter, while referencing these requests, appear to be directed at Request No. 11.

Response to Request Nos. 15-17. We withdraw our objection regarding the duplicative nature of these requests: given your clarification, we understand that Requests 12-14 call for identification of third parties (if any) to whom Unix, AIX or Dynix source code was provided and that Requests 15-17 call for identification of internal IBM/Sequent personnel who had access to the same. We disagree, however, that SCO is entitled to "all documents" that identify those IBM/Sequent personnel. Read literally, this request (as drafted) would require us to search for and produce all documents concerning any IBM employee with access to AIX code -- including ID badges, personnel files, payment records, benefits statements, etc. These are classic examples of requests for which documents sufficient to show the pertinent information sought (i.e., the identity of persons with access to code) will suffice -- we intend to produce a list of the same in response to your interrogatories. What else do you want?

Response to Request No. 18. IBM stands by its objections in response to this request. Despite these objections, however, we can confirm that we have included in our search Sam Palmisano and other individuals who were determined to be likely to possess correspondence or agreements (if any) with Linus Torvalds. We intend to

Brent O. Hatch
Mark J. Heise
September 15, 2003
Page 6

produce from those files any correspondence or agreements with Mr. Torvalds, as well as any non-privileged documents relating thereto.

Response to Request Nos. 19-25. IBM stands by its objections in response to these requests. You state that you "do not know what IBM finds non-sensical about these requests)": as explained in IBM's Responses, the phrase "documents ... with" these different enumerated entities simply does not make sense. Given your refusal to clarify, we have interpreted this language to mean documents relating to the correspondence or agreements otherwise sought in these requests, and will undertake to produce such non-privileged documents (if any) identified in the files searched.

Response to Request Nos. 26-27. IBM stands by its objections in response to these requests. As drafted, these requests would literally call for a broad range of documents completely unrelated to the issues in the litigation -- for example, personnel files, payment records, benefits statements, etc. These are additional examples of requests for which documents sufficient to show the information sought (i.e., the identity of persons employed in the LTC or Linux Center of Competency) will suffice -- we intend to produce a list of same in response to your interrogatories. What else do you want?

Response to Request No. 28. IBM stands by its objections in response to this request. Project Monterey was a broad-reaching initiative spanning several years and involving work by hundreds of different IBM employees. The request as drafted would call for the collection of every document concerning (as that term is broadly defined) Project Monterey from every such individual at the company. Such an endeavor would be highly burdensome on IBM and is not justified by a likelihood that admissible evidence would be uncovered through such efforts. Nevertheless, we have attempted to gather documents responsive to this request by searching for documents from IBM employees with significant involvement in technical, business development, and contractual aspects of Project Monterey. We intend to produce non-privileged documents (if any) concerning Project Monterey identified in the files of these individuals.

Response to Request Nos. 29-31. Please see our preceding responses re: General Objection No. 22. Nevertheless, we will produce non-privileged documents identified through a reasonable search sufficient to identify Unix, AIX or Dynix source code disclosed by IBM to a third party or the public.

Response to Request Nos. 32-34. IBM stands by its objection with respect to use of the terms "derivative works, modifications, or methods", as stated in the preceding response re: General Objection No. 22. However, we appreciate your clarification

Brent O. Hatch
Mark J. Heise
September 15, 2003
Page 7

regarding the scope of documents sought in these requests. We will produce any non-privileged memoranda discussing the subject matter of these requests or other companies' contributions to Linux, in addition to any other non-privileged, responsive documents identified.

Response to Request No. 35.² For the reasons stated in the preceding response re: Request No. 11, Request No. 35 as drafted calls for production of a broad scope of documents that are entirely unrelated to the subject matter of this litigation. Nevertheless, we are undertaking to produce from the files of LTC and OSSC personnel non-privileged documents that relate to IBM's open-source contributions to Linux. We believe this is a reasonable compromise at this stage of discovery.

Response to Request No. 36. IBM stands by its objections to this request. While we appreciate SCO's cooperation in producing documents in response to IBM's Request No. 52, it is irrelevant to IBM's position here. Unlike SCO, IBM has hundreds of operating divisions worldwide and over 300,000 employees.³ (By contrast, we understand that SCO has only two operating divisions and approximately 340 employees.) SCO's unlimited request for "all documents that show IBM's organizational and personnel structure" would thus be quite burdensome and is simply not justified by any likelihood that admissible evidence would be uncovered from these efforts. Nothing in your Objection Letter establishes the contrary. We expect to produce documents relating to the IBM units involved in AIX, Dynix and Linux development. If there are other specific areas of the company that you believe are pertinent to this case, please articulate them and we will consider additional production.

Response to Request No. 37. IBM stands by its objections in response to this request. For the reasons stated in the preceding responses re: Request Nos. 11 and 35, requests for statements regarding IBM's contributions to open-source, without further limitation, are plainly overbroad. Furthermore, as stated in the preceding response re: General Objection 8, IBM has not affirmatively sought to collect publicly available information that is equally accessible to SCO -- such as third-party, public articles reporting on IBM statements regarding its contributions to open source. Subject to these

² IBM withdraws the objection stated in the second sentence of its original Response to Request No. 35.

³ For an overview of the corporation, we suggest you consult IBM's most recent 10K filing.

Brent O. Hatch
Mark J. Heise
September 15, 2003
Page 8

objections, IBM has conducted a reasonable search for responsive documents from individuals likely to possess such information, including top company executives and their speechwriters, as well as from centralized repositories of company press releases. Privileged documents will, of course, be logged appropriately. What else do you want?

Response to Request Nos. 38 and 39. IBM stands by its objections in response to these Requests.

Request No. 38 is plainly overbroad and seeks to impose undue burdens on IBM. The Open Source Developer's Class is a broadly administered educational session that has been attended by hundreds of IBM employees worldwide. As drafted, Request 38 would literally call for IBM to interview each such employee who attended these sessions, as well as each employee who administered such session, to collect, for example, every note taken or handout obtained. Such efforts would not be justified by any likelihood that admissible evidence would be discovered through them. Nevertheless, we have undertaken to perform a reasonable search for documents relating to the Open Source Developer's Class and will produce non-privileged documents responsive to this request. Privileged documents will, of course, be logged appropriately.

Likewise, we have attempted to reasonably construe your Request No. 39. We have identified IBM personnel with primary responsibility for matters relating to export controls, and intend to produce non-privileged documents collected from their files sufficient to show IBM's policies pertaining to Unix, AIX or Dynix exports (if any).

Response to Request Nos. 40-41. IBM stands by its objections in response to these requests. IBM has used Intel processors in a broad range of its products and services before and after 1998: for example, most of the personal computers shipped since 1998. As drafted, these requests would literally call for production of a vast array of documents wholly irrelevant to this litigation -- ranging from contracts with Intel, to technical specifications and development documents relating to products that incorporate Intel processors, to marketing materials, sales and financial information relating to the same, to name only a few. Please clarify the types of documents you are interested in so that we can have a meaningful discussion about their relevance and the scope of production.

Request Nos. 42. Please see our preceding responses re: Request No. 11 for a description of the documents that we intend to produce with respect to IBM's contributions to Linux.

Brent O. Hatch
Mark J. Heise
September 15, 2003
Page 9

Request Nos. 43-52. We obviously disagree with you as to the merits of IBM's objections. Nevertheless, we intend to produce responsive, non-privileged documents.

III. Interrogatory Responses

Interrogatory No. 2. IBM stands by its objections in response to this interrogatory. Nevertheless, we have undertaken to identify IBM officers and employees believed to have knowledge about the issues in this lawsuit and expect to amend our answer to this interrogatory as soon as practicable. Once you have reviewed our response, we can discuss any additional information you think you need.

Interrogatory Nos. 4 and 5. IBM stands by its objections in response to these interrogatories. We are, however, in the process of collecting (to the extent practicable) documents showing IBM and Sequent employees who may have had access to AT&T Unix System V, AIX and/or Dynix source code, as well as those who may have worked on developing AIX, Dynix or Linux, and intend to amend our responses these interrogatories as soon as practicable. Once you have reviewed these documents, we can discuss any additional information you think you need.

Very truly yours,



Todd Shaughnessy

cc: David Marriott
Alan Sullivan