## **ADDENDUM D**

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IN THE UNITED STATES DISTRICT COURT
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             FOR THE DISTRICT OF UTAH, CENTRAL DIVISION
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   SCO GROUP, INC.,
       Plaintiff/Counterclaim-Defendant,)
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                                              2:03-CV-294 DAK
   INTERNATIONAL BUSINESS MACHINES,
    CORPORATION,
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        Defendant/Counterclaim-Plaintiff.)
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              BEFORE THE HONORABLE BROOKE C. WELLS
15
                       DATE: APRIL 14, 2006
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               REPORTER'S TRANSCRIPT OF PROCEEDINGS
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                        ARGUMENT ON MOTION
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                           Reporter: REBECCA JANKE, CSR, RMR
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- they weren't provided to us, Your Honor, we are now -- we
- 2 are now not capable of doing the kind of work that we would
- provide -- that we would have done if the allegations had
- been provided to us. So, they are sitting on their
- allegations. 5
- That they have. That they are willfully doing. 6
- And they are completely free to say at summary judgment, 7
- when we say, "Gee, we didn't contribute that to Linux," 8
- they'll say, "Oh, yeah, it's over here. It's in that file 9
- there. We didn't point those lines out to you before, but 10
- it's right there." 11
- 12 We show a certain method is in the public domain.
- Oh, we're not talking about that part of the System V 13
- internals. We are not talking about that portion of NUMA. 14
- 15 We are talking about something else.
- They are the master of their allegations, Your 16
- Honor. We asked them for what their allegations were. 17
- They sat on the allegations because they contend the 18
- information is in Linux, but they won't tell us precisely 19
- where. They contend that it derives from System V, but 20
- they won't show us exactly where. They are effectively 21
- throwing back to IBM the burden to figure out what it is 22
- 23 exactly they contend.
- That, Your Honor, is improper. There is ample 24
- authority, again, for the Court to enter the order we have 25

- requested, to indicate that the Court's orders required the
- 2 disclosure of this information and that it hasn't been
- 3 provided. No hearing is required. It is undisputed that
- they haven't provided the information we say is required.
- 5 Thank you, Your Honor.
- THE COURT: Mr. Singer, let me just ask you --
- and then we are going to cut this off at 1:00 o'clock --
- but how do you address Mr. Marriott's argument that without
- 9 this information that you maintain custody of, the
- 10 allegation, that they are forced to figure it out, in
- 11 contravention of the Court's orders?
- 12 MR. SINGER: I strongly disagree with it, Your
- Honor. If we were to introduce a new technology not 13
- embraced by the 293, 198 they challenge, they object. It's 14
- out of the case. If we try do come up with specific source 15
- code that we should have produced now to buttress a 16
- connection that we didn't disclose that we should have, 17
- they could object to it at that time saying we should have 18
- 19 put it in the December submission. If there is something
- which is so general in the 293, and they say this one is 20
- too general, that we should get a summary judgment on it 21
- because it is so general, it really doesn't describe a 22
- method and concept, it isn't anything that isn't widely 23
- 24 known in the industry or that our people have communicated,
- 25 that's a summary judgment merits argument.

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