

FILED
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10 JUN 04 PM 4:15

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

BY: _____
DEPUTY CLERK

THE SCO GROUP, INC.,

**Plaintiff/Counterclaim-
Defendant,**

vs.

**INTERNATIONAL BUSINESS
MACHINES CORPORATION,**

**Defendant/Counterclaim-
Plaintiff.**

ORDER

Case No. 2:03CV294 DAK

This matter is before the court on Plaintiff/Counterclaim-Defendant The SCO Group, Inc.'s ("SCO") Motion for Separate Trials and Motion to Amend Scheduling Order. A hearing on the motions was held on June 8, 2004. At the hearing, SCO was represented by Brent O. Hatch, Frederick S. Frei, and Robert Silver. Defendant/Counterclaim-Plaintiff International Business Machines Corporation ("IBM") was represented by David R. Marriott and Todd M. Shaughnessy. Before the hearing, the court considered carefully the memoranda and other materials submitted by the parties. Since taking the matter under advisement, the court has further considered the law and facts relating to the motions. The court has also considered David R. Marriott's letter to the court dated June 9, 2004 and Brent O. Hatch's response to that letter, dated June 10, 2004. Now being fully advised, the court renders the following Order.

I. MOTION TO BIFURCATE

SCO seeks bifurcation of three patent counterclaims asserted by IBM. SCO essentially claims that the patent counterclaims are unrelated to the primary claims and counterclaims asserted in this case and that litigating the patent counterclaims together with the primary claims would cause prejudice to SCO, would virtually double the amount of discovery to be completed, and would render the current deadlines impossible to meet.

IBM contends that there is no reason to decide the issue at the present time. IBM argues that only after the completion of discovery and the filing of motions will the court be in a position to meaningfully determine whether to bifurcate the patent counterclaims. Additionally, IBM asserts that there is no reason that the parties cannot complete the patent discovery under the current Scheduling Order.

The court declines to bifurcate the patent counterclaims at this time. As discussed below, the court will amend the Scheduling Order to provide additional time to conduct discovery related to all the claims and counterclaims in this action.

II. MOTION TO AMEND SCHEDULING ORDER

SCO has requested that the court amend the Scheduling Order because IBM asserted 14 counterclaims after the Scheduling Order was entered. Thus, the deadlines set forth in the Scheduling Order did not contemplate litigating additional claims. Furthermore, SCO claims that IBM has caused delays in discovery thus far, and, consequently, the parties cannot complete the significant amount of remaining discovery by the current deadline of August 4, 2004.

IBM, on the other hand, argues that the delays in discovery are of SCO's own making

and that, in light of the resources available to the parties, the remaining discovery can be completed by the August 4, 2004 deadline. IBM also contends that SCO seeks to delay resolution of this litigation to serve SCO's "improper goal of maintaining fear, uncertainty, and doubt in the marketplace concerning Linux and IBM's (and many others') products."

Because IBM's counterclaims were added after the entry of the current Scheduling Order and because the court has declined to bifurcate IBM's patent counterclaims from the remainder of the claims and counterclaims, the court will modify the Scheduling Order. However, the court will not modify the Scheduling Order again, absent extremely compelling circumstances.¹ The dates set forth in the previous Scheduling Order are stricken, and the following dates now apply:

EVENT	DEADLINE
Fact Discovery	February 11, 2005
Expert Discovery	April 22, 2005
Initial Report	February 25, 2005
Opposing Experts' Reports	March 11, 2005
Counter-reports	March 25, 2005
Dispositive Motions	May 20, 2005
Rule 26(a)(3) Disclosures	September 30, 2005
Special Attorney Conference and Settlement Conference	October 3, 2005
Final Pretrial Conference	October 10, 2005 at 2:30 p.m.

¹ When necessary to accommodate the court's schedule, the court may alter dates that involve the court.

Exchange of proposed jury instructions ²	September 30, 2005
Filing of proposed jury instructions	October 10, 2005
5-week jury trial	November 1, 2005

Accordingly, IT IS HEREBY ORDERED that (1) SCO's Motion to Bifurcate is DENIED without prejudice to renew after all dispositive motions have been decided; and (2) SCO's Motion to Amend Scheduling Order is GRANTED in part and DENIED in part. As set forth above, the court has amended the Scheduling Order, although not to the extent requested by SCO. The dates set forth in the previous Scheduling Order are hereby STRICKEN.

DATED this 10th day of June, 2004.

BY THE COURT:


DALE A. KIMBALL
United States District Judge

² Approximately six weeks prior to trial, the court will send to the parties a Trial Order that sets forth deadlines regarding the exchange of jury instructions between the parties, filing of stipulated instructions and proposed instructions to which the parties could not agree, objections to proposed instructions, and responses to the objections. In the Trial Order, the court will also provide deadlines for proposed voir dire, proposed special verdict forms, and motions in limine.

United States District Court
for the
District of Utah
June 10, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:03-cv-00294

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