

FILED
CLERK, U.S. DISTRICT COURT

13 AUG 04 PM 4:29

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

SNELL & WILMER L.L.P.
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Amy F. Sorenson (8947)
15 West South Temple, Suite 1200
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP
Evan R. Chesler (admitted pro hac vice)
David R. Marriott (7572)
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*Attorneys for Defendant/Counterclaim-Plaintiff
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,
Plaintiff/Counterclaim-Defendant,
v.
INTERNATIONAL BUSINESS MACHINES
CORPORATION,
Defendant/Counterclaim-Plaintiff.

**DECLARATION OF TODD M.
SHAUGHNESSY IN SUPPORT OF IBM'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON BREACH OF
CONTRACT CLAIMS**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

277

I, Todd M. Shaughnessy, declare as follows:

1. I represent IBM in the lawsuit brought by SCO against IBM, entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). This declaration is submitted in support of Defendant/Counterclaim-Plaintiff IBM's Motion for Partial Summary Judgment on Breach of Contract Claims.

2. Enclosed herewith are true and correct copies of the following documents:

(a) Exhibit 1 is SCO's Second Amended Complaint, dated February 27, 2004.
(b) Exhibit 2 is SCO's Answer to IBM's Second Amended Counterclaims, dated April 23, 2004.

(c) Exhibit 3 is IBM's Second Amended Counterclaims, dated March 29, 2004.

(d) Exhibit 4 is SCO's Memorandum in Opposition to IBM's Motion for Summary Judgment on its Tenth Counterclaim for Declaratory Judgment of Non-Infringement, dated July 8, 2004.

(e) Exhibit 5 is excerpts from the Rule 30(b)(6) deposition of William M. Broderick, dated May 11, 2004.

(f) Exhibit 6 is a letter from Brent O. Hatch to Todd M. Shaughnessy, dated April 19, 2004.

(g) Exhibit 7 is a document titled "SCO Linux Introduction, Version 1.2", bates numbered SCO1355589-SCO1355653.

(h) Exhibit 8 is material printed from SCO's website, available at <http://www.thescogroup.com/developers/community/contrib/> and

<http://www.thescogroup.com/developers/community/contrib/linux.html>, identifying various SCO contributions to Linux.

(i) Exhibit 9 is the Form 10-K/A, without exhibits, filed by Caldera Systems, Inc. for the fiscal year ending October 31, 2000.

(j) Exhibit 10 is the Software Agreement (Number SOFT-00015) between AT&T Technologies, Inc. and International Business Machines Corporation (“IBM”), dated February 1, 1985.

(k) Exhibit 11 is the Software Agreement (Number SOFT-000321) between AT&T Technologies and Sequent Computer Systems, Inc. (“Sequent”), dated April 18, 1985.

(l) Exhibit 12 is the Sublicensing Agreement (Number SUB-00015A) between AT&T Technologies and IBM, dated February 1, 1985.

(m) Exhibit 13 is the Sublicensing Agreement (Number SUB-000321A) between AT&T Technologies and Sequent, dated January 28, 1986.

(n) Exhibit 14 is the letter agreement between AT&T Technologies and IBM, dated February 1, 1985.

(o) Exhibit 15 is the Asset Purchase Agreement between Novell, Inc. (“Novell”) and The Santa Cruz Operation, Inc. (“Santa Cruz”), dated September 19, 1995.

(p) Exhibit 16 is Amendment No. X, entered into by IBM, Novell and Santa Cruz, dated October 17, 1996.

(q) Exhibit 17 is a SCO press release titled “Caldera Systems to Acquire SCO Server Software and Professional Services Divisions, Providing World’s Largest Linux/UNIX Channel”, dated August 2, 2000.

- (r) Exhibit 18 is SCO's original Complaint, dated March 6, 2003.
- (s) Exhibit 19 is IBM's First Set of Interrogatories and First Request for the Production of Documents, dated June 13, 2003.
- (t) Exhibit 20 is SCO's Amended Complaint, dated July 22, 2003.
- (u) Exhibit 21 is SCO's Responses to IBM's First Set of Interrogatories and First Request for the Production of Documents, dated August 4, 2003.
- (v) Exhibit 22 is IBM's Second Set of Interrogatories and Second Request for the Production of Documents, dated September 16, 2003.
- (w) Exhibit 23 is IBM's Memorandum in Support of its First Motion to Compel Discovery, dated October 1, 2003.
- (x) Exhibit 24 is IBM's Memorandum in Support of its Second Motion to Compel Discovery, dated November 6, 2003.
- (y) Exhibit 25 is the transcript of the December 5, 2003 hearing before Magistrate Judge Wells.
- (z) Exhibit 26 is the Order Granting IBM's Motions to Compel Discovery and Requests for Production of Documents, dated December 12, 2003.
- (aa) Exhibit 27 is SCO's Revised Supplemental Response to IBM's First and Second Set of Interrogatories, dated January 15, 2004.
- (bb) Exhibit 28 is a letter from Todd M. Shaughnessy to Brent O. Hatch, dated January 30, 2004.
- (cc) Exhibit 29 is a letter from Mark J. Heise to David R. Marriott, dated February 4, 2004.

- (dd) Exhibit 30 is the transcript of the February 6, 2004 hearing before Magistrate Judge Wells.
- (ee) Exhibit 31 is the Order Regarding SCO's Motion to Compel Discovery and IBM's Motion to Compel Discovery, dated March 4, 2004.
- (ff) Exhibit 32 is Supplement No. 1 to the Software Agreement between AT&T Technologies and IBM.
- (gg) Exhibit 33 is Supplement No. 2 to the Software Agreement between AT&T Technologies and Sequent.
- (hh) Exhibit 34 is excerpts from the Deposition of Otis L. Wilson, dated June 10, 2004.
- (ii) Exhibit 35 is excerpts from the Deposition of David Frasure, dated June 8, 2004.
- (jj) Exhibit 36 is excerpts from the Deposition of David P. Rodgers, dated June 10, 1984.
- (kk) Exhibit 37 is the April 1985 edition of AT&T's *\$ echo* newsletter.
- (ll) Exhibit 38 is the August 1985 edition of AT&T's *\$ echo* newsletter.
- (mm) Exhibit 39 is the Software Agreement (Number SOFT-000302) between AT&T Information Systems, Inc. and Santa Cruz, dated May 6, 1987.
- (nn) Exhibit 40 is a document entitled "Caldera Intellectual Property Title and Ownership", bates numbered SCO1178124.
- (oo) Exhibit 41 is a letter from Joseph A. LaSala Jr. (Novell's General Counsel) to Ryan Tibbitts (SCO's General Counsel), dated October 7, 2003.

(pp) Exhibit 42 is a letter from Joseph A. LaSala to Ryan Tibbitts and Ronald A. Lauderdale (IBM's Assistant General Counsel), dated October 10, 2003.

(qq) Exhibit 43 is a letter Joseph A. LaSala to Ryan Tibbitts, dated February 6, 2004.

(rr) Exhibit 44 is a letter from Joseph A. LaSala to Ryan Tibbitts and Ronald A. Lauderdale, dated February 11, 2004.

(ss) Exhibit 45 is a letter from Jack L. Messman (Novell's Chairman and CEO) to Darl McBride (SCO's President and CEO), dated June 9, 2003.

(tt) Exhibit 46 is a letter from Jack L. Messman to Darl McBride and Ronald A. Lauderdale, dated June 12, 2003.

(uu) Exhibit 47 is a SCO press release titled "Caldera, Conectiva, SuSE, Turbolinux Partner to Create UnitedLinux, and Produce a Uniform Version of Linux for Business", dated May 30, 2002.

(vv) Exhibit 48 is a UnitedLinux press release titled "UnitedLinux Releases Version 1.0", dated November 19, 2002.

(ww) Exhibit 49 is a SCO press release titled "SCO Unveils SCO Linux 4.0, Powered by UnitedLinux", dated November 19, 2002.

(xx) Exhibit 50 is a UnitedLinux press release titled "UnitedLinux Signs IBM and AMD as First Technology Partners", dated January 14, 2003.

(yy) Exhibit 51 is a SCO product announcement for OpenLinux Server Release 3.1.1., dated January 24, 2002, bates numbered SCO1324397-SCO1324404.

(xx) Exhibit 52 is a SCO product announcement for OpenLinux Workstation Release 3.1.1., dated January 24, 2002, bates numbered SCO1324405-SCO1324412.

(aaa) Exhibit 53 is excerpts from the Rule 30(b)(6) deposition of Erik W. Hughes, dated May 11, 2004.

(bbb) Exhibit 54 is a SCO product announcement for SCO Linux Server 4.0, Powered by UnitedLinux, dated November 19, 2002, bates numbered SCO1270429-SCO1270436.

(ccc) Exhibit 55 is a document titled "Technical Overview of SCO Linux 4.0 Powered by United Linux", bates numbered SCO1307695-SCO1307714.

(ddd) Exhibit 56 is a SCO product announcement for SCO Linux Server 4.0 for the Itanium Processor Family, dated April 14, 2003, bates numbered SCO1269792-SCO1269797.

(eee) Exhibit 57 is invoices attached as Tab 121 to SCO's Revised Supplemental Responses to IBM's First and Second Set of Interrogatories, dated January 15, 2004.

(fff) Exhibit 58 is a selection of invoices produced by SCO for Linux products sold after March 7, 2003.

(ggg) Exhibit 59 is excerpts from Exhibit 3(a) to the Rule 30(b)(6) deposition of Erik W. Hughes.

(hhh) Exhibit 60 is the General Public License.

3. Volume I contains Exhibits 1-10, Volume II contains Exhibits 11-24, and Volume III contains Exhibits 25-60. True and correct copies of Exhibits 5, 7, 40, 53, 57, 58, and 59, however, are filed separately under seal pursuant to the protective order in this case.

4. I declare under penalty of perjury that the foregoing is true and correct.

Executed: August 13th, 2004.

Salt Lake City, Utah



Todd M. Shaughnessy

CERTIFICATE OF SERVICE


I hereby certify that on the 13th day of August, 2004, a true and correct copy of the foregoing was hand delivered to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

and was sent by U.S. Mail, postage prepaid, to the following:

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
100 Southeast Second Street, Suite 2800
Miami, Florida 33131

Robert Silver
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504


Amy F. Sorenson