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U.S. DISTRICT COURT  
DISTRICT OF UTAH

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**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.

**DEFENDANT/COUNTERCLAIM  
PLAINTIFF IBM'S EX PARTE MOTION  
FOR LEAVE TO FILE OVERLENGTH  
REPLY MEMORANDUM**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

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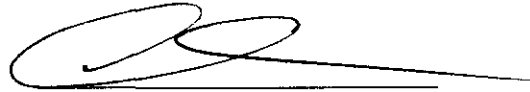
Pursuant to DUCivR 7-1(e), Defendant/Counterclaim-Plaintiff International Business Machines Corporation (“IBM”) respectfully submits this Ex Parte Motion for Leave to File Overlength Reply Memorandum in further support of its cross-motion for partial summary judgment on its claim for declaratory judgment of non-infringement, consisting of approximately 39 pages of argument, exclusive of face sheet, preliminary statement, statement of facts, declarations and exhibits.

In opposition to IBM’s Cross-Motion for Partial Summary Judgment on its Claim for Declaratory Judgment of Non-Infringement, SCO submitted a 90-page brief, three lengthy witness declarations, and thousands of pages of exhibits. Despite this, and as demonstrated in IBM’s Reply Memorandum in Further Support of its Cross-Motion for Partial Summary Judgment on its Claim for Declaratory Judgment of Non-Infringement (“Reply Memorandum”), SCO failed to adduce evidence sufficient to allow a jury to find that IBM’s Linux activities infringe SCO’s alleged copyrights, and IBM is entitled to summary judgment on its Tenth Counterclaim. Even succinctly addressing each of the points raised in SCO’s 90-page brief, however, resulted in the need for approximately 39 pages of legal argument, exclusive of face sheet, preliminary statement, statement of facts, declarations and exhibits, 29 additional pages of argument beyond the ten pages allotted by DUCivR 7-1(3).

For the foregoing reasons, IBM respectfully requests that it be granted leave to file its Reply Memorandum, consisting of approximately 39 pages of argument.

DATED this 23<sup>rd</sup> day of August, 2004.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of August, 2004, a true and correct copy of the foregoing was hand delivered to the following:

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