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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.

IBM'S EX PARTE MOTION FOR LEAVE TO FILE A RESPONSE TO SCO'S SUPPLEMENTAL MEMORANDUM REGARDING DISCOVERY AND TO CONTINUE HEARING DATE

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

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International Business Machines Corporation ("IBM") respectfully moves the Court for an order allowing it to respond to the Supplemental Memorandum Regarding Discovery filed by The SCO Group, Inc. ("SCO"), and to SCO's Memorandum in Reply to IBM's Opposition to SCO's Ex Parte Motion for Leave to File a Supplemental Memorandum Regarding Discovery, both of which contain new arguments and new issues to which IBM has not been provided an opportunity to respond.

IBM learned this afternoon that the Court has granted SCO's Ex Parte Motion for Leave to File a Supplemental Memorandum Regarding Discovery.[1] That memorandum, together with SCO's reply memorandum received by counsel yesterday, raise a number of new arguments and issues to which IBM has not been permitted to respond. Most importantly, SCO's filings suggest that IBM must secure declarations to address the new issues raised in SCO's papers. IBM respectfully requests that it be granted leave to file a response, and that it be allowed ten days from the entry of the order within which to do so. Under the rules, IBM would be permitted fifteen days within which to oppose a motion. The ten days we seek is therefore less than the time IBM normally should be permitted under the rules, and reasonable given IBM's need to obtain declarations to address SCO's new arguments. IBM further requests that the hearing on these matters be re-set for a date as soon as the Court's calendar permits following the submission of these papers.

[1] Counsel for IBM learned this from the Court's law clerk. IBM has not yet received an order from the Court, nor does it appear on Pacer.

DATED this 8th day of September, 2004.

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of September, 2004, a true and correct copy of the foregoing was hand delivered to the following:

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