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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,

-against-

INTERNATIONAL BUSINESS MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

DECLARATION OF OTIS L. WILSON

I, Otis L. Wilson, declare as follows:

1. I was responsible for licensing operating systems under the UNIX brand from 1980 until 1991, first with American Telephone and Telegraph Company ("AT&T") and then with its subsidiary, UNIX System Laboratories, Inc. ("USL"). Initially, I was on the staff responsible for negotiating license agreements with our customers. From 1983 until I retired in 1991, I was the head of the group responsible for licensing the UNIX System V operating system worldwide.

2. This declaration is submitted in connection with the lawsuit entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003). Except as stated otherwise, this declaration is based upon personal knowledge and review of the documents referenced herein.

3. In Section I of this declaration, I describe my roles and responsibilities regarding Unix operating systems. In Section II, I describe my understanding of the confidentiality provisions of these license agreements. In Section III, I describe my understanding of the modifications and derivative works provisions of the license agreements. In Section IV, I describe my understanding of the exception to the confidentiality provisions for information that becomes available without restriction to the general public. In Section V, I describe my understanding of the most-favored customer provisions in certain of the license agreements. Finally, in Section VI, I discuss plaintiff's allegations that source code, derivative works and methods were transferred in violation of the license agreements.

I. Roles and Responsibilities Regarding Unix

4. I joined AT&T in 1963. In 1980, after completing a company-sponsored management training program, I left the Princeton office of AT&T to join the Patent and Licensing Group in Greensboro, North Carolina. I was responsible for licensing operating systems under the UNIX brand beginning in 1980. Initially, I was on the staff responsible for negotiating license agreements with our customers. Beginning in 1983 until I retired in 1991, I was the head of the group responsible for licensing the UNIX System V operating system worldwide. During that time, I reported to Michael J. DeFazio.

5. In 1989, AT&T separated the organizations responsible for UNIX System V, and associated system software products and services, into a business unit called UNIX Software Operation. In 1991, rights to Unix operating systems and related products, technology and intellectual property were transferred to USL. I was head of the licensing group throughout this period, until I retired in 1991. During the period from 1980 to 1991, AT&T and USL licensed UNIX System V source code to hundreds of licensees. Nearly every Unix license agreement executed by AT&T during this period was signed by me or on my behalf by people that reported to me.

6. The UNIX System V source code license agreements generally included a number of "standard" form agreements with each licensee. The standard software agreement granted the licensee the right to use and modify the source code for its own internal business purposes. In addition, many licensees were parties to sublicensing agreements, which granted the licensee the right to furnish sublicensed products based on UNIX System V to customers in object code format. A substitution

agreement provided that the software agreement and, if applicable, the sublicensing agreement, replaced earlier agreements relating to UNIX System V software.

7. I am familiar with the following license agreements between International Business Machines Corporation ("IBM") and AT&T Technologies, Inc. ("AT&T Technologies"), which were negotiated under my supervision while I was head of the licensing group:

- the Software Agreement (Agreement Number SOFT-00015) dated February 1, 1985 (the "IBM Software Agreement");
- the Sublicensing Agreement (Agreement Number SUB-00015A) dated February 1, 1985 (the "IBM Sublicensing Agreement");
- the Substitution Agreement (Agreement Number XFER-00015B) dated February 1, 1985 (the "IBM Substitution Agreement"); and
- the letter agreement dated February 1, 1985 (the "IBM Side Letter").

David W. Frasure, who reported to me, signed these agreements for me on behalf of AT&T Technologies. True and correct copies of these agreements are attached hereto as Exhibits 1 through 4. I refer to these agreements as the "IBM Related Agreements."

8. I am also familiar with the following agreements between Sequent Computer Systems, Inc. ("Sequent") and AT&T Technologies, Inc., which were also negotiated under my supervision:

- the Software Agreement (Agreement Number SOFT-000321) dated April 18, 1985 (the "Sequent Software Agreement");
- the Sublicensing Agreement (Agreement Number SUB-000321A) dated January 28, 1986 (the "Sequent Sublicensing Agreement"); and
- the Substitution Agreement (Agreement Number XFER-000321B) dated January 28, 1986 (the "Sequent Substitution Agreement").

I signed these agreements on behalf of AT&T Technologies, Inc. True and correct copies of these agreements are attached hereto as Exhibits 5 through 7. I refer to these

agreements as the "Sequent Related Agreements." I understand that Sequent has been acquired by, and merged into, IBM.

9. As a result of my role as head of the group responsible for negotiating the IBM Related Agreements and the Sequent Related Agreements, and hundreds of other UNIX System V license agreements, I have a thorough understanding of these agreements and what the parties intended them to accomplish.

II. Confidentiality Restrictions in the License Agreements

10. The standard software agreement used for licensing the UNIX System V operating system while I headed the licensing group imposed confidentiality restrictions on the licensee. Specifically, Section 7.06(a) of the standard software agreement included the following language prohibiting the licensee from disclosing the UNIX System V source code obtained from AT&T:

> LICENSEE agrees that it shall hold all parts of the SOFTWARE PRODUCTS subject to this Agreement in confidence for AT&T. LICENSEE further agrees that it shall not make any disclosure of any or all of such SOFTWARE PRODUCTS (including methods or concepts utilized therein) to anyone, except to employees of LICENSEE to whom such disclosure is necessary to the use for which rights are granted hereunder.

This prohibition is subject to a number of important exceptions. For example, the confidentiality obligations do not apply to any information relating to a software product that "becomes available without restriction to the general public by acts not attributable to LICENSEE or its employees," as is discussed in Section IV below.

11. The purpose of Section 7.06(a) was to require licensees to keep the UNIX System V source code confidential. However, we recognized that we might not be able to protect effectively the confidentiality of our software because we distributed the source code and related information so broadly. In particular, the more time that passed

after the release of a particular version of the software, the less likely it was that the version would contain any information that remained confidential.

12. Some licensees sought to clarify the confidentiality restrictions of Section 7.06(a). For example, Paragraph A.9 of the IBM Side Letter clarified the confidentiality provision of the IBM Software Agreement in a number of important respects.

13. First, Paragraph A.9 of the Side Letter deleted the phrase "all parts of" from the first sentence. This deletion clarified that IBM would not be held in breach of the confidentiality provision for immaterial disclosures.

14. Second, Paragraph A.9 of the IBM Side Letter deleted the parenthetical "(including methods or concepts utilized therein)" from the second sentence. In fact, we were not aware of any particular "methods or concepts" that needed to be protected. We made up this phrase as sort of a general catch-all. We were willing to delete the reference to methods and concepts in the IBM agreement because we were not aware of any UNIX System V methods or concepts that required protection. The fact was that we had distributed the UNIX System V source code so broadly that the internal structure of the UNIX System V operating system was well known in the academic community and by computer programmers generally. This is because AT&T had deliberately distributed the UNIX System V source code widely, and under terms favorable to AT&T's customers (especially universities), in order to promote UNIX System V as a standard operating system.

15. Finally, Paragraph A.9 of the IBM Side Letter included a provision expressly stating that:

> Nothing in this agreement shall prevent LICENSEE from developing or marketing products or services employing ideas, concepts, know-how or techniques relating to data processing embodied in SOFTWARE PRODUCTS subject to this Agreement, provided that LICENSEE shall not copy any code from such SOFTWARE PRODUCTS into any such product or in connection with any such service and employees of LICENSEE shall not refer to the physical documents and materials comprising SOFTWARE PRODUCTS subject to this Agreement when they are developing any such product or service or providing any such service.

This language clarified that IBM was not subject to any confidentiality obligations with respect to UNIX System V ideas, concepts, know-how, methods and techniques.

16. As clarified by its side letter, IBM had no confidentiality obligation with respect to any UNIX System V information, other than to refrain from disclosing the actual UNIX System V source code provided by AT&T or USL, and to refrain from referring to that source code while developing or providing products or services. IBM was free to use and disclose any of the ideas, concepts, know-how, methods or techniques embodied in the software products.

17. I did not view these changes as substantive--they were all clarifications. Even though we may have entered into side letters or other agreements with a number of licensees that clarified the confidentiality restrictions and other provisions in the standard software agreement, my intent was always to treat all licensees the same. In fact, clarifications provided to particular licensees in side letters were generally shared with other licensees through informal interpretive guidance that was provided either orally or in writing. In any event, our intent was always to treat all licensees equally, so that relief from the confidentiality restrictions provided to one licensee in a side letter benefited all licensees. All licensees, including Sequent, which

did not have a side letter like IBM, were treated the same and would have the benefit of the same clarifications.

III. Modifications and Derivative Works

18. In early versions of the standard software agreement, including the IBM Software Agreement and the Sequent Software Agreement, Section 2.01 included the following language regarding modifications and derivative works:

> Such right to use includes the right to modify such SOFTWARE PRODUCT and to prepare derivative works based on such SOFTWARE PRODUCT, provided the resulting materials are treated hereunder as part of the original SOFTWARE PRODUCT.

19. This provision was intended to ensure that if a licensee were to create a modification or derivative work based on UNIX System V, any material portion of the original UNIX System V source code provided by AT&T or USL that is included in the modification or derivative work would remain subject to the confidentiality restrictions of the software agreement. Any source code developed by or for a licensee and included in a modification or a derivative work would not constitute "resulting materials" to be treated as part of the original software product, except for any material proprietary UNIX System V source code provided by AT&T or USL and included therein.

20. AT&T and USL did not intend to assert ownership or control over modifications and derivative works prepared by licensees, except to the extent of the original UNIX System V source code included in such modifications and derivative works. While the UNIX System V source code provided by AT&T or USL contained in a modification or derivative work continued to be owned by AT&T or USL, the code developed by or for the licensee remained the property of the licensee.

21. I do not believe that our licensees would have been willing to enter into the software agreement if they understood Section 2.01 to grant AT&T or USL (or their successors or assigns) the right to own or control source code developed by the licensee or provided to the licensee by a third party. I understood that many of our licensees invested substantial amounts of time, effort and creativity in developing products based on UNIX System V. The derivative works provision of the software agreement was not meant to appropriate for AT&T or USL the technology developed by our licensees.

22. In fact, some licensees sought to clarify that, under the agreements, the licensee, not AT&T or USL (or their successors or assigns), would own and control modifications and derivative works prepared by or for the licensee (except for any original UNIX System V source code provided by AT&T or USL and included therein). We provided such clarification, when asked, because that is what we understood the language in the standard software agreement to mean in any event. As discussed above, in some cases we provided this clarification orally and in some cases we provided it in writing.

23. We provided IBM with such a clarification in Paragraph A.2 of the IBM Side Letter:

> Regarding Section 2.01, we agree that modifications and derivative works prepared by or for [IBM] are owned by [IBM]. However, ownership of any portion or portions of SOFTWARE PRODUCTS included in any such modification or derivative work remains with [AT&T].

I understood this language to mean that IBM, not AT&T, would have the right to control modifications and derivative works prepared by or for IBM. IBM (like all licensees under the agreements) fully owns any modifications of and derivative works based on

UNIX System V prepared by or for IBM, and can freely use, copy, distribute or disclose such modifications and derivative works, provided that IBM does not copy, distribute or disclose any material portions of the original UNIX System V source code provided by AT&T or USL (except as permitted by the IBM Related Agreements).

24. Clarifications of the kind reflected in Paragraph A.2 of the IBM Side Letter did not represent a substantive change to the standard software agreement, since AT&T and USL never intended to assert ownership or control over modifications and derivative works prepared by licensees, except to the extent of any material portions of the original UNIX System V source code provided by AT&T or USL and included in such modifications and derivative works.

25. Eventually, we revised the standard software agreement to clarify the derivative works issue. For example, Section 2.01 of a software agreement between AT&T Information Systems Inc. and The Santa Cruz Operation, Inc. entered into in May 1987, a true and correct copy of which is attached hereto as Exhibit 8, included the following language:

> Such right to use includes the right to modify such SOFTWARE PRODUCT and to prepare derivative works based on such SOFTWARE PRODUCT, provided that any such modification or derivative work *that contains any part of a SOFTWARE PRODUCT subject to this Agreement* is treated hereunder the same as such SOFTWARE PRODUCT. *AT&T-IS claims no ownership interest in any portion of such a modification or derivative work that is not part of a SOFTWARE PRODUCT.* (emphasis added)

26. Whether or not we entered into a side letter to clarify the treatment of modifications and derivative works, or altered the language of Section 2.01, AT&T's and USL's intent was always the same. We never intended to assert ownership or control over any portion of a modification or derivative work that was not part of the original UNIX System V source code provided by AT&T or USL. The licensee was free to use,

copy, distribute or disclose such modifications and derivative works, provided that it did not copy, distribute or disclose any portions of the original UNIX System V source code provided by AT&T or USL (except as permitted by the license agreements).

27. My understanding is that IBM's AIX and Sequent's Dynix/PTX operating system products include some UNIX System V source code. I do not know whether AIX and Dynix/PTX are sufficiently similar to UNIX System V that they would constitute modifications of, or derivative works based on, UNIX System V. However, even if AIX or Dynix/PTX were modifications of, or derivative works based on, UNIX System V, IBM and Sequent are free to use, copy, distribute, or disclose AIX and Dynix/PTX source code, provided that they do not copy, distribute or disclose any portions of the original UNIX System V source code provided by AT&T or USL (except as permitted by the IBM Related Agreements or the Sequent Related Agreements). Therefore, IBM and Sequent are free, under the IBM Related Agreements and the Sequent Related Agreements, to open source all of AIX and Dynix/PTX other than those portions of the original UNIX System V source code provided by AT&T or USL and included therein. Even portions of the original UNIX System V source code included in AIX and Dynix/PTX may be open sourced to the extent permitted by the IBM Related Agreements or the Sequent Related Agreements.

28. I understand that plaintiff claims that IBM and Sequent have breached the IBM Related Agreements and the Sequent Related Agreements by using and disclosing Unix methods, derivative works and modifications in violation of the confidentiality and other restrictions contained in those agreements, irrespective of whether IBM or Sequent have disclosed any specific protected source code copied from

the UNIX System V source code provided by AT&T or USL. In my view, these claims are inconsistent with the provisions of the IBM Related Agreements and the Sequent Related Agreements. I do not believe that anyone at AT&T or USL intended these agreements to be construed in this way. In all cases, modifications and derivative works are not subject to the confidentiality and other restrictions contained in the license agreements (except for any protected UNIX System V source code provided by AT&T or USL actually included therein) because they are owned by the licensees.

IV. Available without Restriction to the General Public

29. As discussed above, because AT&T and USL intended to widely distribute the UNIX System V source code and related information, we understood that it would be difficult to require that the code and related information be kept confidential. Since we believed that our licensees held the same view, the standard software agreements provided that a licensee would not be required to keep a software product confidential if it became available without restriction to the general public.

30. The exception is set forth in Section 7.06(a) of the standard software agreement:

> If information relating to a SOFTWARE PRODUCT subject to this Agreement at any time becomes available without restriction to the general public by acts not attributable to LICENSEE or its employees, LICENSEE'S obligations under this section shall not apply to such information after such time.

I understood this provision to mean that the licensee was free to disclose, without any restriction whatsoever, any information that became available without restriction to the general public by acts not attributable to that particular licensee.

31. This exception was intended to ensure that the confidentiality restriction applied only to information that needed to be protected--specifically, any trade

secrets embodied in UNIX System V source code provided by AT&T or USL. If part or all of the source code were not entitled to be protected as a trade secret, then such software product (or portion of a software product) would be "available without restriction to the general public" within the meaning of the agreements, and no longer protected by any confidentiality restriction. We did not intend to impose a confidentiality obligation beyond what we could enforce under trade secret law.

32. We never attempted to list all the ways in which source code could become "available without restriction to the general public" within the meaning of the software and related agreements. However, I believe that the UNIX System V source code (or any part thereof) would be available without restriction to the general public if, for example, it were (1) published by a party other than the licensee in question; (2) accessible outside the limits of a confidentiality agreement, such as for download from the internet; (3) available because its owner (whether AT&T, USL or their successors) failed, even if by inadvertence or simple negligence, to take sufficient precautions to ensure that it would remain confidential; (4) distributed so widely that contractual confidentiality restrictions would be insufficient to maintain confidentiality; (5) made available to a third party who had the right to disclose the software product (or any part thereof); or (6) distributed under an open-source license like the GNU General Public License (the "GPL"), a true and correct copy of which is attached hereto as Exhibit 9.

33. Although we sought to protect the confidentiality of the source code by distributing it only under legally binding license agreements that included confidentiality provisions, the UNIX System V source code was distributed to hundreds

of such licensees, and was made available by those licensees to tens of thousands of individuals, including professional software developers, university faculty members and students. Based solely on the breadth of its distribution, I believe it is unlikely that there are many, if any, parts of the UNIX System V source code that could be said still to be confidential.

34. One purpose of distributing the source code to universities was to promote the widespread adoption of Unix operating systems by ensuring that UNIX System V ideas, concepts, know-how, methods and techniques would be widely known and understood by future programmers. AT&T's view was that a large number of Unix-knowledgeable programmers would help foster the adoption of UNIX System V as an industry standard within the information technology marketplace. However, our practice of offering favorable license terms to universities had the effect of making Unix source code available without restriction to the general public. For example, we knew that some universities made the source code available to individual students who were not themselves bound by confidentiality obligations. We also knew that such students often took copies of the source code with them when they graduated. Our practice was not to take action regarding such breaches of the license agreements unless the students sought to commercialize the software, in which case we would require the students to enter into license agreements and pay royalties.

35. We recognized that our goal of promoting the widespread adoption of UNIX System V was inconsistent with our desire to preserve the confidentiality of the source code. However, we were more concerned with promoting the widespread

adoption of UNIX System V, and collecting the associated royalties, than we were with protecting the confidentiality of our source code.

36. Furthermore, AT&T intended Unix to be an "open" operating system, meaning that customers would not be locked in with a particular hardware vendor or a particular operating system vendor. To that end, AT&T published a System V Interface Definition ("SVID"), which provided a complete interface specification that could even be used by AT&T's competitors to develop independently their own Unix-like operating systems. AT&T also created a System V Verification Suite ("SVVS"), which was made available to test the compliance of both sublicensed products based on UNIX System V and other Unix-like operating systems with SVID.

37. It is my understanding that hundreds, and perhaps thousands, of books, articles, internet web-sites and other materials have been published regarding Unix, many of which provide detailed information regarding the design and implementation of the Unix operating system. For example, *Lions' Commentary on UNIX 6th Edition with Source Code*, by John Lions, includes a complete source code listing of AT&T's UNIX Operating System Source Code Level 6. While I was head of the licensing group, we provided copies of the Lions book to our customers, subject to confidentiality restrictions. However, I understand that the Lions book has since been published, with the permission of Santa Cruz, and that it is now available to anyone, with no restriction whatsoever. I also understand that *UNIX Internals, A Practical Approach*, published in 1996 by Steve Pate, then a Senior Kernel Engineer at Santa Cruz, describes in detail the internals of SCO OpenServer Release 5, a Unix operating system that is a sublicensed product based on UNIX System V Release 3.2 ("SVR3.2"). The information

contained in books, articles, internet web-sites and other publications of this kind is "available without restriction to the general public" within the meaning of the software and related agreements and is therefore not subject to any confidentiality restrictions whatsoever.

38. I understand that plaintiff has made certain Unix source code available for download without charge on the internet, without ensuring that the people who download it have entered into legally binding confidentiality agreements (and could reasonably be expected to comply with those agreements). Based on my understanding of the confidentiality provisions, my view is that any such source code is "available without restriction to the general public" and therefore not subject to any confidentiality restrictions whatsoever, even if plaintiff purported to place limited restrictions on use of the downloaded source code (such as that it not be used for commercial purposes).

39. I am also told that, between 1985 and 1996, AT&T Capital Corporation, then a subsidiary of AT&T, sold thousands of used or discontinued AT&T computer systems, hundreds of them from Bell Laboratories, that some of the computers included UNIX System V, Release 3 and Release 4 source code, and that AT&T did not impose any confidentiality restrictions on the purchasers. If this is true, based on my understanding of the license agreements, any of the information on these computer systems would be considered "available without restriction to the general public". Thus, any source code on these machines would not be subject to the confidentiality restrictions in the software and related agreements of any licensee.

40. To the extent a third party acquires the right to disclose part of a software product, that part of the software product would be considered "available

without restriction to the general public" and would no longer be subject to the confidentiality provisions of the software and related agreements. So, for example, AT&T granted IBM the right to disclose UNIX System V ideas, concepts, know-how, methods and techniques embodied in SVR3.2, as discussed above. As a result, IBM may properly disclose any such UNIX System V ideas, concepts, know-how, methods and techniques to anyone, at any time, without restriction. They are, thus, "available without restriction to the general public".

41. In addition, a software product (or any part of a software product) is "available without restriction to the general public" if released, distributed or made available pursuant to an open-source license, like the GPL, which permits the licensee to copy and distribute source code to others without confidentiality restrictions. I understand that plaintiff and its predecessors distributed Linux products pursuant to the GPL for a number of years, and that some of these distributions may have included UNIX System V source code. I do not recall having heard of the GPL while I was employed with AT&T or USL. However, our intent was that if source code were distributed without confidentiality restrictions, it would no longer be subject to any confidentiality restrictions. Whether plaintiff distributed the Unix System V source code pursuant to the GPL deliberately or inadvertantly, the result is the same--the source code is "available without restriction to the general public" and therefore no longer subject to any confidentiality restrictions.

42. I understand that plaintiff has alleged that IBM and Sequent have breached the confidentiality and other restrictions in the IBM Related Agreements and the Sequent Related Agreements. In light of the wide distribution of the UNIX System V

source code, and the enormous amounts of additional information that has become available to the general public regarding the design and implementation of the Unix operating system, I believe that it is unlikely that a significant amount of UNIX System V source code remains subject to confidentiality restrictions.

V. Most-Favored Customer Provision

43. As discussed above, when I headed the Unix licensing group at AT&T and USL, our stated policy was to treat all of our licensees essentially the same. Some of our licensees, including IBM, requested a "most-favored customer" provision to ensure that we would comply with this policy. Paragraph A.12 of the IBM Side Letter provides:

> We agree that all SOFTWARE PRODUCTS, including enhancements to or new versions of existing SOFTWARE PRODUCTS, generally available under the Software Agreement will be made available to you at the fees and under terms, warranties and benefits equivalent to those offered to other licensees.

This language meant that if any other licensee were offered or obtained terms more favorable to the licensee than those contained in the IBM Related Agreements, then IBM would have the advantage of such more favorable terms as if they had been set forth in the IBM Related Agreements. Although not all of our licensees had a side letter or most-favored customer provision, we interpreted our license agreements in light of the collective body of Unix license agreements. For example, the Unix licensing group used the entire body of side letters to provide interpretive guidance to our Unix licensees. Our policy was to deal with a licensee that did not have a most-favored customer provision in a side letter (like Sequent) in the same manner as a licensee (like IBM) that had a side letter with such a provision.

VI. Plaintiff's Allegations Under Section 7.10 of the Software Agreements

44. I understand that plaintiff has alleged that IBM and Sequent have breached Section 7.10 of the IBM Software Agreement and the Sequent Software Agreement by "transferring portions of the Software Product (including System V source code, derivative works and methods based thereon) . . . to Linus Torvalds for open distribution to the general public under a software license that destroys the proprietary nature of the Software Products." This allegation misunderstands the software agreements in two important respects.

45. First, under Section 1.04 of the software agreements, the term "Software Product" was defined to include "Computer Programs", which in turn was defined in Section 1.02 to include "instructions in source-code or object-code format". "Software Product" was not defined to include "derivative works or methods based thereon". As discussed above, only the original UNIX System V source code provided by AT&T or USL and included in a derivative work was to be treated as part of a "Software Product" under the software agreements, and, notwithstanding the fact that many of the standard agreements made reference to methods and concepts, we were not aware of any UNIX System V methods or concepts that required protection under the software agreements.

46. Second, Section 7.10 was not intended to impose a confidentiality restriction beyond that contained in Section 7.06(a). In fact, Section 7.10 is not about confidentiality at all. Section 7.10 provides as follows:

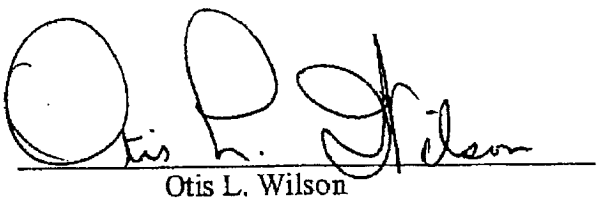
> Except as provided in Section 7.06(b), nothing in this Agreement grants to LICENSEE the right to sell, lease or otherwise transfer or dispose of a SOFTWARE PRODUCT in whole or in part.

Section 7.10 says that the software agreement does not grant the right to sell, lease or otherwise transfer or dispose of UNIX System V source code. However, Section 7.10 does not prohibit such sale, lease, transfer or disposal by the licensee. In fact, since Section 7.10 does not prohibit the licensee from doing anything, or require the licensee to do anything, I do not think it is possible for a licensee to breach Section 7.10.

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

Executed: December 11, 2003.

Greensboro, North Carolina



Otis L. Wilson