

Brent O. Hatch (5715)
Mark F. James (5295)
HATCH, JAMES & DODGE, PC
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

Robert Silver, Esq. (admitted pro hac vice)
Edward Norman (admitted pro hac vice)
Sean Eskovitz (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

Stephen N. Zack (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
Bank of America Tower – Suite 2800
100 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

Attorneys for Plaintiff The SCO Group, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-
Defendant,

vs.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-
Plaintiff.

RECEIVED CLERK

2004 NOV 31 A 12: 03

U.S. DISTRICT COURT
DISTRICT OF UTAH
FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

NOV 30 2004

MARKUS B. ZIMMER, CLERK
BY _____
DEPUTY CLERK

WA

**THE SCO GROUP'S RULE 56(f)
MOTION IN FURTHER
OPPOSITION TO IBM'S MOTION
FOR SUMMARY JUDGMENT ON
SCO'S CONTRACT CLAIMS**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke Wells

343

Plaintiff/Counterclaim-Defendant The SCO Group, Inc. ("SCO") hereby moves the Court for an Order denying or continuing consideration of Defendant/Counterclaim-Plaintiff International Business Machines Corporation's ("IBM") Motion for Summary Judgment on SCO's Contract Claims pursuant to Federal Rule of Civil Procedure 56(f). SCO's Motion is based on the following grounds:

As set forth in detail in SCO's Opposition Memorandum and accompanying declarations, there remains significant, relevant discovery in this case that bears directly on the issues raised in IBM's Motion. This discovery includes, among other things, depositions of several witnesses whose declarations IBM has submitted with its Motion; depositions of participants in the negotiations of the 1995 Asset Purchase Agreement between Novell and SCO and of the October 1996 Amendment No. 2 thereto; depositions of IBM employees responsible for accessing SCO's password-protected website; and a review a documents only recently made available to SCO. Although the law and record evidence developed to date are sufficient to require the denial of IBM's Motion, the Motion should further be denied because SCO has not had an opportunity to make full discovery.

This Motion is supported by the declarations of Edward Normand and Michael Davidson and SCO's Memorandum in Opposition to IBM's Motion for Summary Judgment on SCO's Contract Claims.

DATED this 30th day of November, 2004.

A handwritten signature in cursive script that reads "Mark F. James". The signature is written in black ink and is positioned above a horizontal line.

HATCH, JAMES & DODGE, P.C.

Brent O. Hatch

Mark F. James

BOIES, SCHILLER & FLEXNER LLP

Robert Silver, Esq. (admitted pro hac vice)

Stephen N. Zack (admitted pro hac vice)

Edward Normand (admitted pro hac vice)

Sean Eskovitz (admitted pro hac vice)

CERTIFICATE OF SERVICE

Plaintiff, The SCO Group, hereby certifies that a true and correct copy of **THE SCO GROUP'S RULE 56(f) MOTION IN FURTHER OPPOSITION TO IBM'S MOTION FOR SUMMARY JUDGMENT ON SCO'S CONTRACT CLAIMS** was served on Defendant International Business Machines Corporation by first class mail on the 30th day of November, 2004, as follows:

Alan L. Sullivan, Esq.
Todd M. Shaughnessy, Esq.
Snell & Wilmer L.L.P.
15 West South Temple, Ste. 1200
Salt Lake City, Utah 84101-1004

Evan R. Chesler, Esq.
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019

Donald J. Rosenberg, Esq.
1133 Westchester Avenue
White Plains, New York 10604


