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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.

**IBM'S MOTION FOR 45-DAY
EXTENSION OF TIME TO COMPLY
WITH 1/18/05 ORDER**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

414

Defendant/counterclaim-plaintiff International Business Machines Corporation (“IBM”) respectfully submits the following Motion for 45-Day Extension of Time to Comply with the Court’s Order dated January 18, 2005 (the “Order”). IBM has requested that SCO stipulate to an extension of this deadline, but SCO has refused to do so.

As the Court is aware, the Order requires, among other things, that IBM produce (1) CMVC and RCS data relating to IBM’s AIX and Dynix operating systems (Order at 10); and (2) information related to the “individuals who made the most contributions and changes to the development of AIX and Dynix”. (*Id.* at 16.) The Order gave IBM 60 days to do so, making IBM’s response due on March 18, 2005. (*Id.* at 17.)

Immediately upon receipt of the Order, IBM began the process of identifying, reviewing, and preparing for production the operating systems material in its CMVC and RCS databases relating to AIX and Dynix, including source code, the change history of that source code, and programmers’ notes and design documents. IBM also began identifying the individuals who made the most contributions and changes to the development of AIX and Dynix (the contributions and changes they made are contained within the material being produced from the CMVC and RCS databases) and compiling their contact information. In addition, IBM has undertaken to search for additional white papers, programmer notes, source code, and design documents not found in CMVC or RCS from the individual files of developers, as well as searching various repositories, which store documents from hundreds (if not thousands) of developers and other IBM employees. IBM has involved hundreds of employees in assisting with these tasks.

This production is one never before undertaken by IBM, and requires the identification and organization of massive amounts of data, including source code, countless programmers’ notes, and hundreds of thousands of pages of documents. IBM and its attorneys must, among

other things, review these materials to ensure they are responsive and not privileged, as well as ensure they do not implicate third-party confidentiality concerns, in order to prepare the material for production. Under the terms of the Order, IBM was given only 60 days within which to accomplish this task. As a result of the magnitude of this task, and despite the efforts of hundreds of people within IBM, IBM is simply unable to produce the materials identified above by March 18. As a result, IBM respectfully requests 45 additional days, or until May 3, 2005, to produce these materials.

Moreover, because IBM has moved for reconsideration of that portion of the Order which would obligate it to produce materials from the files of 3,000 individuals, and because this motion likely will not be ruled upon by March 18, IBM further respectfully requests that that obligation be stayed until such time as the Court rules on IBM's motion for reconsideration.¹ IBM submits herewith a proposed form of order reflecting these extensions.

¹ SCO's opposition to IBM's reconsideration motion makes clear the necessity of staying any further discovery obligations arising from the Order until after the Court has ruled. Contrary to the Order's provisions (and contrary to the March 3, 2004 Order which precedes it), SCO contends that the Order requires IBM (1) to produce not only "specific development and contribution information" for AIX and Dynix, but also for Linux; and (2) to produce not just AIX and Dynix operating systems materials, but also all materials in CMVC that are unrelated to AIX or its code, internal design, or methods, such as hardware system designs, firmware, manufacturing-related components, and middleware and other software designed to run on top of the AIX or Dynix operating systems, among other things. (2/28/05 Opp'n at 8, 9.) As set forth in IBM's motion, even if the Court required the production of these materials (which plainly it did not), it would be literally impossible for IBM to produce them without many months of additional work.

DATED this 9th day of March, 2005.

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of March, 2005, a true and correct copy of **IBM'S MOTION FOR 45-DAY EXTENSION OF TIME TO COMPLY WITH 1/18/05 ORDER** was served by hand delivery on the following:

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