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2005 MAY -4 P 4: 58
DISTRICT OF UTAH
BY: _____
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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,

v.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**UNSEALED DECLARATION OF
ALEC S. BERMAN
[Docket 331]**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

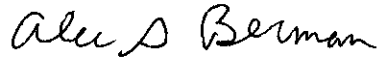
I, Alec S. Berman, declare as follows:

1. I am currently employed by International Business Machines Corporation (“IBM”) as Associate General Counsel—Corporate Litigation.
2. This declaration is submitted in connection with the lawsuit brought by The SCO Group, Inc. (“SCO”) against IBM, titled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). I make this declaration based upon personal knowledge.
3. On February 18, 2004, Peter Ligh, an attorney from Cravath, Swaine & Moore LLP (“Cravath”), and I visited the office of Samuel Palmisano in Armonk, New York. Mr. Ligh and I performed a thorough search of Mr. Palmisano’s files. We reviewed Mr. Palmisano’s documents (including his e-mails), and selected all documents that were potentially responsive to SCO’s document requests for copying and further review.
4. On February 19, 2004, I returned to Mr. Palmisano’s office to review files in two additional file drawers that had been inadvertently overlooked on our visit the day before. I again selected all documents that were potentially responsive for copying and further review.
5. After copies were made of Mr. Palmisano’s potentially responsive documents, attorneys from Cravath reviewed those documents for responsiveness and privilege. I understand that more than 1,000 pages of Mr. Palmisano’s documents were determined to be responsive and non-privileged and have been produced to SCO.

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

Executed: November 15, 2004.

White Plains, New York



Alec S. Berman

CERTIFICATE OF SERVICE

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2005 MAY -4 P 4
DISTRICT OF UTAH
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I hereby certify that on the 19th day of November, 2004, a true and correct copy of
the foregoing was hand delivered to the following:

Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

and was sent by U.S. Mail, postage prepaid, to the following:

Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP
100 Southeast Second Street, Suite 2800
Miami, Florida 33131

Robert Silver
Edward Normand
Sean Eskovitz
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504

T. J. [Signature]

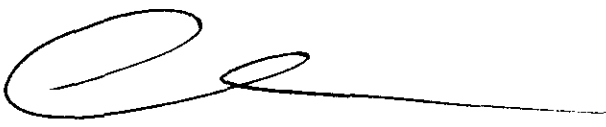
CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of May, 2005, a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

Brent O. Hatch
Mark F. James
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Armonk, New York 10504

A handwritten signature in black ink, consisting of a large, stylized initial 'R' followed by a long horizontal stroke extending to the right.