

# **EXHIBIT 31**

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FROM: Nate Wheatley

PHONE: 801-257-1930

RE: *SCO v. IBM*

MESSAGE:

ORIGINAL DOCUMENT: Will be sent NUMBER OF PAGES (Including Cover): 11

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December 16, 2005

**VIA FACSIMILE AND U.S. MAIL**

Edward Normand  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, NY 10504

**Re: SCO v. IBM; IBM v. SCO**

Dear Ted:

I write in response to the Amended Notice of 30(b)(6) Deposition served by SCO on November 11, 2005. This letter sets forth IBM's responses and objections to SCO's amended notice and incorporates by reference IBM's General Objections set forth in IBM's response to SCO's first set of interrogatories and document requests, including but not limited to the objections that the topics in SCO's amended notice are vague, ambiguous, overbroad, unduly burdensome and seek irrelevant information, are not reasonably calculated to lead to the discovery admissible evidence, and/or seek information protected by the attorney-client privilege or the work-product doctrine.

**Topic 1:**

**IBM's reasons for portraying or marketing AIX, including to prospective customers, as a UNIX System V-based operating system, rather than a BSD-based operating system.**

**Response to Topic 1:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this topic on the grounds that it does not describe with reasonable particularity the matters on which examination is requested. Subject to, as limited by and without waiving the foregoing objections, IBM states that it will produce a witness on this subject.

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**Topic 2:**

**Sequent's reasons for portraying or marketing Dynix/ptx, including to prospective customers, as a UNIX System V-based operating system, rather than a BSD-based operating system.**

**Response to Topic 2:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this topic on the grounds that it does not describe with reasonable particularity the matters on which examination is requested. Subject to, as limited by and without waiving the foregoing objections, IBM states that it will produce a witness on this subject.

**Topic 3**

**The significance to Linux of the contributions, direct or indirect, that IBM has made to Linux or Linux development that have improved and/or enhanced Linux.**

**Response to Topic 3:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this topic on the grounds that it does not describe with reasonable particularity the matters on which examination is requested. Subject to, as limited by, and without waiving its objections, IBM will produce a witness to testify as to the general significance to Linux of IBM's contributions to Linux.

**Topic 4**

**The means by which IBM confirmed the accuracy of or approved IBM's public statements that IBM has made improvements or enhancements to Linux, in documents such as (a) the Linux Technology Center document titled "The Linux Community and How IBM Contributes, Nordic Mainframe Linux Usergroup Meeting, Sweden, 16th June 2005," (b) the document titled "IBM Contributions to Open Source Community," Deposition Exh. No. 423, (c) the document titled "IBM Contributions to Linux Open Source Community", Deposition Exh. No. 424, (d) the document titled "Linux Technology Center, Status - September 2002", Deposition Exh. No. 519, and (e) the document titled "Linux Technical Roadmap (1HO2) v2.0", Deposition Exh. No. 520.**

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## Response to Topic 4:

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM further objects to this topic insofar as the specific documents identified by SCO above are confidential IBM documents and do not contain public statements. Subject to, as limited by, and without waiving its objections, IBM will produce a witness to testify as to any general procedures and processes that are involved in the creation of public documents at the Linux Technology Center that contain statements concerning IBM's contributions to Linux.

## Topic 5:

**The steps IBM has taken to test the performance and reliability of Linux, including IBM's reliance on technology for such testing.**

## Response to Topic 5:

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. Subject to, as limited by, and without waiving its objections, IBM will produce a witness to testify about IBM's testing of the performance and reliability of Linux.

## Topic 6:

**The bases on which IBM has, with current or prospective customers, vouched for the performance and reliability of Linux.**

## Response to Topic 6:

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. Subject to, as limited by, and without waiving its objections, IBM will produce a witness to testify about the bases for IBM's view as to the performance and reliability of Linux.

## Topic 7:

**IBM's view as to why current or prospective customers have or have not accepted IBM's representations regarding the performance and reliability of Linux.**

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### Response to Topic 7:

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence.

### Topic 8:

**The steps or measures IBM has taken to help IBM customers transition from using other operating systems to using Linux, including making available to customers technology on which IBM has relied in testing the performance and reliability of Linux.**

### Response to Topic 8:

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this topic on the grounds that it does not describe with reasonable particularity the matters on which examination is requested.

### Topic 9:

**The restrictions that IBM's AIX Licenses have imposed on the licensee's use or distribution of AIX source code, methods, or concepts, or of products that the licensee develops after entering into the AIX License.**

### Response to Topic 9:

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM has produced copies of AIX source code licenses, and SCO can see for itself the terms contained in those licenses.

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**Topic 10:**

**The restrictions that IBM's Dynix/ptx Licenses have imposed on the licensee's use or distribution of Dynix/ptx source code, methods, or concepts, or of products that the licensee develops after entering into the Dynix/ptx License.**

**Response to Topic 10:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM has produced copies of Dynix source code licenses, and SCO can see for itself the terms contained in those licenses.

**Topic 11:**

**IBM's use or distribution of AIX source code or binary products after SCO terminated IBM's UNIX System V license on June 13, 2003.**

**Response to Topic 11:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM further objects to this topic on the grounds that SCO's purported termination of the license is without basis under the contracts. Subject to, as limited by and without waiving the foregoing objections, IBM states that it will produce a witness on this subject.

**Topic 12:**

**IBM's use or distribution of Dynix/ptx source code or binary products after SCO terminated Sequent's UNIX System V license on July 30, 2003.**

**Response to Topic 12:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM further objects to this topic on the grounds that SCO's purported termination of the license is without basis under the contracts. Subject to, as limited by and without waiving the foregoing objections, IBM states that it will produce a witness on this subject.

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**Topic 13:**

***IBM's use or distribution of any software product based on or containing UNIX System V source code after SCO terminated IBM and Sequent's UNIX System V Licenses, on June 13, 2003, and July 30, 2003, respectively.***

**Response to Topic 13:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM further objects to this topic on the grounds that SCO's purported termination of the license is without basis under the contracts. Subject to, as limited by and without waiving the foregoing objections, IBM states that it will produce a witness on this subject.

**Topic 14:**

***IBM's revenues from its use or distribution of AIX source code or binary products after June 13, 2003.***

**Response to Topic 14:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. Subject to, as limited by, and without waiving its objections, IBM will produce a witness to testify as to IBM's revenues from AIX after June 13, 2003.

**Topic 15:**

***IBM's revenues from its use or distribution of Dynix/ptx source code or binary products after July 30, 2003.***

**Response to Topic 15:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. Subject to, as limited by, and without waiving its objections, IBM will produce a witness to testify as to IBM's revenues from Dynix after July 30, 2003.



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### Topic 16:

**IBM's revenue from its use or distribution of any software product based on or containing UNIX System V source code after July 30, 2003.**

### Response to Topic 16:

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. Subject to, as limited by, and without waiving its objections, IBM will produce a witness to testify as to IBM's revenues from AIX after June 13, 2003, and will produce a witness to testify as to IBM's revenues from Dynix after July 30, 2003.

### Topic 17:

**The communications regarding SCO, Linux, AIX or Dynix among the "Chicago 7" (comprising Computer Associates International, Inc., Oracle Corporation, Dell Inc., Intel Corporation, Novell Inc., IBM, and Hewlett-Packard Company).**

### Response to Topic 17:

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM also objects to this topic on the grounds that it does not describe with reasonable particularity the matters on which examination is requested.

### Topic 18:

**The content of the document entitled "Server Strategy" and bates labeled 181520926.**

### Response to Topic 18

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM further objects on the grounds that the topic is not an appropriate one for a 30(b)(6) deposition. The document listed by SCO is an attachment to an email bates numbered 181520924-25, which contains the names of the authors of the document.

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**Topic 19:**

**The content of the document entitled "Unix OS Platform Strategy" and bates labeled 181459350.**

**Response to Topic 19:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM further objects on the grounds that the topic is not an appropriate one for a 30(b)(6) deposition. The document listed by SCO was produced from the files of Michael Day.

**Topic 20:**

**The technologies (if any) proposed for open sourcing that the Open Source Steering Committee rejected, and the reason(s) for the rejection.**

**Response to Topic 20:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM further objects insofar as this topic calls for information protected by the attorney-client privilege. IBM also objects to this topic on the grounds that it is not an appropriate one for a 30(b)(6) deposition.

**Topic 21:**

**The manner in which IBM tracked its return on investment in Linux, and the amount of such return from 2000 to date and projected for future periods.**

**Response to Topic 21:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. Subject to, as limited by, and without waiving its objections, IBM will produce a witness to testify as to this topic.

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**Topic 22:**

**The origins and development of the journaling file system (JFS) that IBM released in AIX version 3, the JFS that IBM released in OS/2, and the JFS that IBM offered for contribution to Linux.**

**Response to Topic 22:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. Subject to, as limited by, and without waiving its objections, IBM will produce a witness to testify in general terms as to the origins of the JFS that IBM released in AIX version 3, the JFS that IBM released in OS/2, and the JFS that IBM offered for contribution to Linux.

**Topic 23:**

**The origins and development of the read-copy update (RCU) that Sequent released in Dynix/ptx, and the RCU that IBM offered for contribution to Linux.**

**Response to Topic 23:**

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM further objects to this topic on the grounds that it is cumulative of discovery already taken in this case. Subject to these objections, we note that after this notice was served, SCO deposed Paul McKenney, Dipankar Sarma (and perhaps others) who I understand have testified about RCU and who presumably answered all of SCO's questions on this subject. If additional testimony on this subject is required, please describe with reasonable particularity what that testimony would be.

**Topic 24:**

**The extent to and manner in which IBM used or relied on UNIX Software Products in the creation, derivation, or modification of any source code that IBM contributed to Linux, including, but not limited to:**

- a. **IBM's and Sequent's use of structures, sequences, organization, ideas, methods or concepts contained within any UNIX Software Product in developing source code that IBM contributed to Linux; and**

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- b. **IBM's and Sequent's programmers' exposure to any UNIX Software Product prior to assisting or during their assisting in the development of any contribution of source code to Linux.**

Response to Topic 24:

IBM objects to this topic on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and seeks information that is irrelevant and not reasonably calculated to lead to admissible evidence. IBM refers SCO to IBM's responses to SCO's Interrogatory No. 23.

\* \* \*

We are inquiring into the schedules of the 30(b)(6) witnesses and will provide you with dates as soon as possible.

Please feel free to call me if you have any questions.

Sincerely,



Todd M. Shaughnessy

TMS:dw

cc: Brent Hatch  
David Marriott  
Peter Ligh  
Amy Sorenson