

**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.

ORDER

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

On February 24, 2005, Plaintiff/Counterclaim Defendant The SCO Group, Inc.'s ("SCO") Motion for Leave to Take Certain Prospective Depositions (Docket No. 607) and Motion to Compel (Docket No. 592) came on for hearing before this Court. Brent Hatch and Mark James appeared for SCO. Todd Shaughnessy and Curtis Drake appeared for Defendant/Counterclaim-Plaintiff International Business Machines Corporation ("IBM"). Based upon the memoranda, exhibits, and the arguments of counsel, and good cause appearing, the Court hereby orders as follows:

A. SCO's Motion for Leave to Take Certain Prospective Depositions (Docket No. 607):

With regard to SCO's Motion for Leave to Take Certain Prospective Depositions, the Court finds as follows:

1. The subpoenas that SCO served on Intel, Oracle, and The Open Group on or about January 12, 2006, were defective both in substance and service and even if not technically defective would have also likely provided inadequate notice in time to prepare for those depositions;

2. SCO failed to comply with the meet-and-confer requirement of the local rules of the Federal District Court for the Northern District of California, the court from which two of the subpoenas were issued;

3. The requirements of the Court's October 12, 2005, Order were clear and not subject to unilateral decisions to violate;

4. SCO should have noticed these depositions earlier and, at a minimum, overseen the preparation of those subpoenas such that the argument would be they were effective on January 12, 2006, which they were not.

Accordingly, it is HEREBY ORDERED that SCO's motion is DENIED.

B. SCO's Motion to Compel (Docket No. 592):

With regard to SCO's Motion Compel, Docket No. 592, it is HEREBY ORDERED that SCO's motion is DENIED, WITHOUT PREJUDICE. SCO is granted leave to file a new motion to compel no later than March 26, 2006. Any such motion shall:

1. Be filed only after meeting and conferring with IBM in good faith;
2. Be limited to (a) deficiencies in the documents produced by IBM during the latter half of January 2006, which SCO contends it had not had an adequate opportunity to review, and (b) those items identified in the Motion to Compel (Docket No. 592) which SCO determines remain outstanding after review of IBM's January production; and

3. Provide a much more detailed and concise statement of what SCO seeks to compel from IBM.

DATED this 26th day of April, 2006.

BY THE COURT

A handwritten signature in black ink that reads "Brooke C. Wells". The signature is written in a cursive style with a large initial 'B'.

Brooke C. Wells
U.S. Magistrate Judge

APPROVED AS TO FORM:

HATCH, JAMES & DODGE, P.C.
Brent O. Hatch
Mark F. James

By /s/ Mark F. James
Counsel for Plaintiff/Counterclaim-Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of April, 2006, 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
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101

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

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

/s/ Todd M. Shaughnessy