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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 MEMORANDUM IN  
OPPOSITION TO SCO'S MOTION FOR  
LEAVE TO FILE DECLARATION OF  
MARC ROCHKIND**

Civil No.: 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Argument

IBM respectfully submits this memorandum in opposition to SCO's motion for leave to file the Declaration of Marc Rochkind in connection with IBM's motion to limit the scope of SCO's claims.

SCO seeks to file a sur-reply declaration in opposition to IBM's preclusion motion purportedly on the grounds that it did not know IBM would submit a declaration from Professor Davis with IBM's reply papers. However, the only reason IBM submitted a declaration from Professor Davis was to rebut SCO's assertions (in its opposition papers) that SCO provided the specificity required by the Court. If SCO had wanted to substantiate its assertions of compliance, the time for doing so was when it submitted its opposition brief. There is absolutely no reason it could not have submitted a declaration then. Indeed, it should have known IBM would submit a declaration to rebut any false assertions of compliance.

SCO's attempt to file a declaration just days before the scheduled hearing is not only belated and unjustified, but it is also plainly just an effort to make additional legal arguments. If SCO believes Professor Davis erred in his analysis, it can point the Court to the information which IBM contends is missing at the hearing. After all, the primary purpose of Professor Davis' declaration was simply to confirm that SCO did not provide the specific information it was required to provide. Moreover, SCO provided the Court with a copy of its Final Disclosures. It does not need a declaration to show the Court what they say. It can show them to the Court at Friday's hearing. SCO should not be allowed to use an untimely declaration to seek to justify its non-compliance with the Court's orders.

Allowing SCO to submit a belated, sur-reply declaration likely would necessitate further delay, which would itself be unjustified. Neither the Court nor IBM should be required to evaluate an expert submission in less than 48 hours. Although SCO claims to have served IBM

with its motion on Monday, as of this filing IBM has received nothing from SCO on this score. SCO's filing came to IBM's attention for the first time today when its counsel received a notice from the Court. Moreover, if a SCO declaration were allowed (and, respectfully, it should not be), IBM and Professor Davis would need a fair opportunity to respond. That would obviously require more than a few days, assuming Professor Davis is even available.

For these reasons, we respectfully submit that SCO's motion to file a sur-reply declaration be denied.

DATED this 12th day of April, 2006.

Snell & Wilmer L.L.P.

/s/Amy F. Sorenson

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of April, 2006, a true and correct copy of the foregoing was sent to the following by U.S. Mail:

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