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April 4, 2005

BY ELECTRONIC FILING

The Honorable Sue L. Robinson, Chief Judge
United States District Court
District of Delaware
844 North King Street
Wilmington, Delaware 19801

Re: *Red Hat, Inc. v. The SCO Group, Inc.*, C.A. No. 03-772-SLR

Dear Chief Judge Robinson:

Pursuant to this Court's April 6, 2004 Order, SCO respectfully submits this 90-day status report to apprise the Court of events that have transpired since our last update (on January 3, 2005) in SCO v. IBM, Case No. 2:03CV0294 (DAK), which is currently pending before the Honorable Dale A. Kimball in the United States District Court for the District of Utah.

The Parties' Dispositive Motions

On February 8, 2005, Judge Kimball decided various dispositive motions, relating to certain claims and counterclaims, as follows:

1. The Court denied IBM's Motion for Partial Summary Judgment on SCO's Breach of Contract Claims, IBM's Motion for Partial Summary Judgment on Its Claim of Copyright Infringement (Eighth Counterclaim), and IBM's Motion for Partial Summary Judgment on Its Claim for Declaratory Judgment of Non-Infringement (Tenth Counterclaim), all without prejudice to IBM's re-filing those motions at the close of discovery.

2. The Court vacated its Order of September 30, 2004, to the extent that it had granted the parties permission to file dispositive motions before the close of discovery, directing the parties not to file any further dispositive motions until the close of discovery unless both parties stipulate that an issue may be so resolved before that time.
3. The Court denied SCO's Motion to Dismiss or Stay Count Ten of IBM's Second Amended Counterclaims (Tenth Counterclaim).

SCO's Motion to Amend Its Complaint

As last reported to the Court, SCO filed a motion on October 14, 2004, for leave to amend its complaint in order to add a copyright-infringement claim based on newly discovered evidence of IBM's unauthorized use of SCO code in AIX. The parties have now fully briefed this motion, and the Court has scheduled oral argument for April 21, 2005.

In its motion papers, SCO argued that IBM would not be prejudiced by the proposed amendment because, among other things, SCO's new claim pertained to issues already covered by IBM's own Ninth Counterclaim, which seeks a broad declaratory judgment of non-infringement relating to AIX. On February 18, 2005, IBM filed a Motion for Entry of Order Limiting the Scope of Its Ninth Counterclaim. That motion has also been briefed, but no argument date has been set.

SCO's Renewed Motion to Compel Discovery

On January 18, 2005, United States Magistrate Judge Brooke Wells entered an Order granting in part SCO's Renewed Motion to Compel Discovery. Judge Wells ordered IBM to produce programming-history information including:

1. source code for all versions and changes to the AIX and Dynix operating systems, including an additional "approximately 'two billion lines of code' as represented by IBM" and all other code contained in IBM's revision-control databases relating to AIX and Dynix;
2. all programming-history information contained in IBM's CMVC and RCS revision control databases, including all changes made to those operating systems and the identity of the persons who made such changes;

3. programmer's notes, design documents, white papers, and comments and notes for the 3,000 persons who made the greatest contributions and changes to the development of the AIX, Dynix, and Linux operating systems; and
4. the names and contact information for those 3,000 programmers, and the specific changes each made to the operating systems at issue.¹

Judge Wells ordered IBM to complete its production of all of the above discovery by no later than March 18, 2005.

Recognizing that this discovery order "necessitates some modification to the scheduling order," Judge Wells struck the Amended Scheduling Order, including the fact-discovery deadline of February 11, 2005. She also ordered the parties to meet and confer regarding a new schedule and to submit a new proposed scheduling order by March 25, 2005. The parties submitted separate proposed orders on that date.

On February 11, 2005, IBM filed a Motion for Reconsideration of the portion of the Court's January 18 Order that required IBM to produce programmer-contribution information for 3,000 people. In its motion papers, IBM seeks to relitigate that part of the January 18 Order, to advance an interpretation of the Order that limited the scope of IBM's obligations to produce much of the discovery that the Court had specified therein. The parties have fully briefed this motion, but no date has been set for oral argument.

On March 9, 2005, IBM filed a Motion for a 45-day Extension of Time to Comply with the Court's January 18 Order as it applies to materials that are not the subject of IBM's above-referenced Motion for Reconsideration. On March 16, 2005, the Court granted the extension and entered an order requiring IBM to produce those materials by May 3, 2005. With respect to the materials that are the subject of IBM's Motion for Reconsideration, the Court granted IBM's request to stay its discovery obligations until the Court rules on that motion.

SCO's Additional Motions to Compel Discovery

On January 12, 2005, SCO filed its Motion to Compel IBM to Produce Samuel J. Palmisano for Deposition. Mr. Palmisano is IBM's Chief Executive Officer, the Chairman of its Board of Directors, and the IBM executive who, according to IBM's own public statements,

¹ In its Motion for Reconsideration of the Court's January 18, 2005 Order (2/11/05), IBM also seeks to limit the Order's scope, arguing that IBM is not required to provide information concerning its Linux contributions. In its Opposition to IBM's Motion for Reconsideration (2/28/05), SCO identifies IBM's renewed attempt to avoid producing this outstanding discovery and asks the Court to reject IBM's interpretation of the Court's discovery order.

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spearheaded IBM's strategic shift to Linux. The parties have fully briefed this motion, and the Court has scheduled oral argument for April 21, 2005.

The parties have also now fully briefed SCO's December 23, 2004 Renewed Motion to Compel Discovery, which seeks to compel IBM's compliance with prior Court orders relating to IBM's obligation to produce (1) all documents pertaining to Linux from the files of Mr. Palmisano, IBM "Linux czar" Irving Wladawsky-Berger, and IBM's Board of Directors; and (2) to compel IBM to produce witnesses to testify on several topics in two Rule 30(b)(6) notices of deposition that SCO has served. The Court has not set a hearing date for this motion.

Additional Developments

G2 Computer Intelligence, Inc.'s November 30, 2004 Motion to Intervene and Motion to Unseal Court's File has been fully briefed and is scheduled for argument for April 26, 2005.

Pursuant to Judge Wells's February 11, 2005 Order, the parties filed and served their respective privilege logs and have until April 9, 2005, to file their respective objections.

The parties also took eleven additional depositions during the period covered by this report.

SCO will submit its next 90-day update to the Court by July 5, 2005.

Respectfully,

/s/ Leslie A. Polizoti

cc: Peter T. Dalleo, Clerk (By Hand)
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