include/linux/jfs/jfs_lock.h (Tab 105)	32-34, 44-73, 198-336
fs/jfs/jfs_dmap.c (Tab 106)	39-52, 130-172, 323-4494
fs/jfs/jfs_dtree.c (Tab 107)	111-124, 177-219, 240-311, 559-2566, 3586-3659, 3764-4589
fs/jfs/jfs_imap.c (Tab 108)	60-76, 78-123, 129-150, 202-216, 273-282, 293-323, 596-607, 631-739, 765-2550, 2593-2983
fs/jfs/jfs_mount.c (Tab 109)	70-78, 80-86, 124-143, 168-200, 208-212, 215-280, 306-360, 371-437, 467-484, 496-498, 503-513, 515-520, 527-550, 552-566, 724-732, 808-839
fs/jfs/jfs_umount.c (Tab 110)	42-55, 79-86, 91-148, 155-157, 162-236, 243-272
fs/jfs/jfs_xtree.c (Tab 111)	33-41, 125-167, 980-4110

As identified in Table J, commentary in Linux JFS files that refer to AIX are found in Linux at lines 31-36, 291-329, 158-165 (Tab 104); lines 32-34, 44-73, 198-336 (Tab 105); lines 39-52, 130-172, 323-4494 (Tab 106); lines 111-124, 177-219, 240-311, 559-2566, 3586-3659, 3764-4589 (Tab 107); lines 60-76, 78-123, 129-150, 202-216, 273-282, 293-323, 596-607, 631-739, 765-2550, 2593-2983 (Tab 108); lines 70-78, 80-86, 124-143, 168-200, 208-212, 215-280, 306-360, 371-437, 467-484, 496-498, 503-513, 515-520, 527-550, 552-566, 724-732, 808-839 (Tab 109); lines 42-55, 79-86, 91-148, 155-157, 162-236, 243-272 (Tab 110); lines 33-41, 125-167, and 980-4110 (Tab 111). The significance of this information is that it shows how information first improperly "dropped" into Linux by IBM in non-functional form has been used by Linux developers to implement AIX/JFS in Linux. But for IBM's transfer of AIX technology to Linux, Linux developers would have had to learn from the beginning, through trial and error, how to create an advanced filing system for enterprise application. With IBM's improper transfer of Protected Materials, it became far easier for the open source development community to help create a functional file system for enterprise use.

IBM has also improperly transferred a UNIX/AIX-based enterprise volume management system ("AIX/EVMS") to Linux, which also constitutes Protected Materials. Again, this was done by IBM to transfer enterprise-class capabilities from AIX to Linux, and was a violation of IBM's Related Agreements and promise not to adapt AIX as a general operating system for a non-IBM company. The purpose of AIX/EVMS is to allow the management of disk storage in terms of logical 'volumes' in a large enterprise environment. Tools with this level of sophistication and performance were entirely unavailable and unknown to the open source development community prior to IBM's improper transfer to Linux. The actual transfer "patch" by IBM can be found at http://www.sourceforge.net/project/showfiles.php?group_id=25076&package_id=17436. The first code drop of AIX/EVMS by IBM was v0.0.1, which occurred on 03/21/2001. The first major release of AIX/EVMS by Linux was v1.0.0, in Linux 2.4, which occurred on 03/27/2003. The latest Linux release version of AIX/EVMS is v2.2.1, which occurred on 12/20/2003. The following table, Table K, identifies the AIX/EVMS "patches" of source code improperly transferred by IBM to the Linux 2.4 version.

TABLE K

EVMS 1.0.0 patches to Linux 2.4.x	**Line #s**	**AIX MERCED/9922A_43NIA**	**Line #s**
include/linux/evms/evms_aix.h (Tab 112)	157-263	kernel/sys/IA64/bootrecord.h (Tab 113)	64-170
include/linux/evms/evms_aix.h (Tab 112)	311-327	usr/include/liblvm.h (Tab 114)	234-250
include/linux/evms/evms_aix.h (Tab 112)	329-349	usr/include/liblvm.h (Tab 114)	252-272, 289-307
include/linux/evms/evms_aix.h (Tab 112)	352-400	usr/include/liblvm.h (Tab 114)	316-363
include/linux/evms/evms_aix.h (Tab 112)	266-294	usr/include/lvmrec.h (Tab 115)	24-92

include/linux/evms/evms_aix.h (Tab 112)	6-11	usr/include/lvm.h (Tab 116)	26-35
include/linux/evms/evms_aix.h (Tab 112)	26	kernel/sys/hd_psn.h (Tab 117)	32
include/linux/evms/evms_aix.h (Tab 112)	13, 300-309	kernel/sys/vgsa.h (Tab 118)	37, 56-73

These AIX/EVMS files are header files originating in UNIX/AIX. The AIX/EVMS Protected Materials found in Linux 2.4 kernel at lines 157-263 (Tab 112) is traced directly back to, and is a copy of, AIX 9922A_43NIA version at lines 64-170 (Tab 113). Lines 311-327 (Tab 112) from Linux are copies of AIX at lines 234-250 (Tab 114). Lines 329-349 (Tab 112) from Linux are copies of AIX lines 252-272, 289-307 (Tab 114). Lines 352-400 (Tab 112) from Linux are copies of AIX lines 316-363 (Tab 114). Lines 266-294 (Tab 112) from Linux are copies of lines 24-92 from AIX (Tab 117). Lines 6-11 (Tab 112) from Linux are copies of lines 26-35 of AIX (Tab 116). Line 26 (Tab 112) of Linux is a copy of line 32 of AIX (Tab 117). Lines 13, 300-309 (Tab 112) of Linux are copies of lines 37, 56-73 of AIX (Tab 118). As with the violations above, these transfers of Protected Materials by IBM constitute improper use of AIX for and by others, improper transfers of AIX to others, and improper adaptation of AIX as a general operating system for a non-IBM company under the restrictions of the Related Agreements. In disregard of the Related Agreements, IBM has transferred this key enterprise technology from UNIX/AIX to Linux.

SCO also has reasonable cause to believe that IBM is, and has since about 2001, continuously used UNIX Technology, including Protected Materials embodied in AIX and Dynix/ptx, in ways that are not directly traceable to specific transfer of source code to Linux, but nevertheless deploy methods, sequences and structures from UNIX-based Protected Materials. IBM has made numerous statements about the many ways in which it is improving the performance of Linux—far too many

public statements to categorize them usefully in the answers to these interrogatories. However, one particular performance study published by IBM in January 2003 (the "IBM Linux Enhancement Study") is illustrative of the large category of such public statements made by IBM. This performance study is attached as Tab 119, and is otherwise found at http://www-106.ibm.com/developerworks/linux/library/l-kperf/. The IBM Linux Enhancement Study contains the following statement by IBM:

> In order for Linux to be enterprise-ready and commercially viable in the SMP market, its SMP scalability, disk and network I/O performance, scheduler, and virtual memory manager must be improved relative to commercial UNIX systems.
>
> The Linux Scalability Effort (LSE) (see Resources for a link) is an open source project that addresses these Linux kernel issues for enterprise class machines, with 8-way scalability and beyond.
>
> ***The IBM Linux Technology Center's (LTC) Linux Performance Team (see Resources for a link) actively participates in the LSE effort. In addition, their objective is to make Linux better by improving Linux kernel performance with special emphasis on SMP scalability.*** (Emphasis added).

As specified in this quotation, IBM is placing "special emphasis" on SMP (i.e., Symmetrical Multi-Processing) scalability. The IBM Linux Enhancement Study continues by identifying a table that identifies the areas in which IBM is dedicating resources and funds to improve Linux performance and functionality in enterprise applications. The IBM Table is set out below as Table L.

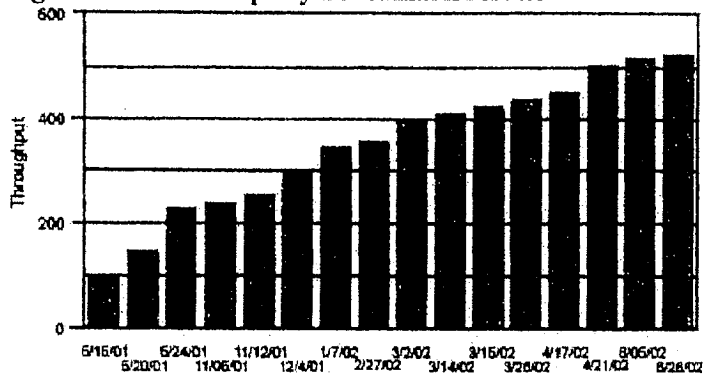
TABLE L

Linux kernel performance benchmarks

Linux kernel component	Database query	VolanoMark	SPECweb99 Apache2	NetBench	Netperf	LMBench	TioBench IOZone
Scheduler		X	X	X			
Disk I/O	X						X
Block I/O	X						
Raw, Direct & Async I/O	X						
Filesystem (ext2 & journaling)			X	X		X	X
TCP/IP		X	X	X	X	X	
Ethernet driver		X	X	X	X		
Signals		X				X	
Pipes						X	
Sendfile			X	X			
pThreads		X	X		X		
Virtual memory			X	X		X	
SMP scalability	X	X	X	X	X		X

Again, Table L identifies specifically that IBM has achieved SMP scalability in every single area identified in the performance benchmark testing. The IBM Linux Enhancement Study continues by charting performance improvements IBM has made to Linux performance, thus far, specified as follows:

Figure 1. Database query benchmark results



Netfinity 8500R, 8-Way 700 Mhz Pentium III with 2MB L2 Cache, 8 GB Ram, IBM ServeRAID
Red Hat 7.1, Linux Kernel 2.4.6 / 2.4.16 / 2.4.17, DB2 7.1 EEE

This chart states that IBM has achieved on Linux a 5x improvement in throughput on an 8-way 700 MhZ Pentium III Intel Processor with 2MB L2 Cache, 8 GB Ram, running on an IBM SerRAID on RedHat 7.1 Linux Kernel 2.4.6/2.4.16/2.4.17. IBM concludes the IBM Linux Enhancement Study with the following summary statement:

> Linux has enjoyed great popularity, specifically with low-end and midrange systems. In fact, Linux is well regarded as a stable, highly-reliable operating system to use for Web servers for these machines. However, high-end, enterprise level systems have access to gigabytes, petabytes, and exabytes of data. These systems require a different set of applications and solutions with high memory and bandwidth requirements, in addition to larger numbers of processors (see Resources for the *developerWorks* article, "Open source in the biosciences", which discusses this type of application).
>
> This type of system application introduces a unique set of issues that may be orders of magnitude more complex than those present in smaller installations. ***In order for Linux to be competitive for the enterprise market, its performance and scalability must improve.***
>
> ***Our experience thus far indicates that the performance of the Linux kernel can be improved significantly. We are proud to contribute to this goal by working within the open source community to quantify***

> ***Linux kernel performance, and to develop patches to address degradation issues to make Linux better, and to make it enterprise ready.*** (Emphasis added).

As admitted by IBM, it is actively working with the open source community to improve Linux performance in large-systems for enterprise use, particularly through advanced use of SMP sequences and structures. In addition to the numerous improper contributions detailed above, based on information and belief, IBM is improperly using methods, sequences and structures from UNIX that are included in the Protected Materials in order to make such improvements. However, performance improvements such as SMP are not readily visible from evaluation of the Linux code base alone. Plaintiff needs complete discovery from IBM to fully identify all of the ways in which IBM is contributing methods, sequences, structures and code to Linux SMP and other performance enhancements, and to fully identify the degree to which IBM is improperly using Protected Materials in making such enhancements.

Upon receipt of complete discovery from IBM, particularly all versions of AIX and Dynix/ptx, SCO will be able to further identify with greater particularity the specific ways in which the referenced files and others were created by IBM and its agents, contractors and partners, the methods used in creating such files, and their improper contribution to Linux. SCO therefore may provide additional supplements to this interrogatory answer as discovery progresses.

INTERROGATORY NO. 2:

For each alleged trade secret of any confidential or proprietary information identified in response to interrogatory No. 1, please identify: (a) all persons who have or have had rights to the alleged trade secret or confidential or proprietary information; (b) the nature and source of the rights; and (c) all efforts by any person to maintain the secrecy or confidentiality of the alleged trade secrets and any confidential or proprietary information.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 2:

Subject to and without waiving its objections, Plaintiff supplements its response to this Interrogatory No.2 and states that persons who have or have had rights to the information that IBM was required to maintain as confidential or proprietary and/or constitutes trade secrets, as contained in the files and lines of code identified in response to Interrogatory 1 above, include IBM and Sequent and their respective employees, contractors and agents and some customers. In addition, SCO, and its predecessors in interest including The Santa Cruz Operation, Novell, UNIX Systems Laboratories and AT&T, required that such information be maintained in confidence pursuant to the Software Agreements and Sublicensing Agreements with IBM and Sequent attached to the Amended Complaint, together with Related Agreements. For many years, IBM (and Sequent) complied with the terms and conditions of the foregoing agreements, such as maintaining the confidentiality of UNIX System V and the derivative works and modifications thereto. In fact, besides having their own license agreements with their customers, which required confidentiality of the code identified above and otherwise restricted use of such code, Sequent and IBM also would require customers who

wanted to view source code of AIX or Dynix/ptx, which included the files and lines of code identified above, to obtain a source code viewing license from AT&T and its successors, including SCO. SCO has not granted access to any person with respect to the Protected Materials identified above in response to Interrogatory No. 1.

The latest efforts by any person to maintain the secrecy or confidentiality of the information identified above occurred when SCO learned that IBM was breaching the terms of its above referenced agreements by giving its modifications and derivatives of System V to Linux. Specifically, SCO first attempted to negotiate with IBM to prevent IBM's improper disclosure of the Protected Materials. Thereafter, SCO filed suit against IBM and then terminated IBM's (and Sequent's) licenses and sublicenses.

INTERROGATORY NO. 3:

For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No. 1, please identify all persons to whom the alleged trade secret or confidential or proprietary information is known or has been disclosed and describe, in detail, the circumstances under which it became known or was disclosed, including but not limited to: (a) the date on which the alleged trade secret or confidential or proprietary information was disclosed or became known to such persons; (b) the specific terms on which the information was disclosed or became known, such as pursuant to a confidentiality agreement; (c) all documents or agreements relating to the disclosure; and (d) all places or locations where the alleged trade secret or confidential or proprietary information may be found or accessed.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiving its objections, Plaintiff supplements its response to this Interrogatory No. 3 and states that because IBM posted the Protected Materials publicly, including in the Linux 2.4 kernel and above, it is impossible to identify all persons to whom the Protected Materials have been disclosed.

Despite IBM's failure to provide the necessary discovery, SCO is currently aware of the following persons at IBM in which part of the confidential or proprietary and/or trade secret information was known or had been disclosed:

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The following persons likely have knowledge, although their names do not appear in the Linux code base. Upon receipt of discovery from IBM, SCO will be better able to definitively state whether these individuals have the requisite knowledge:

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As further response to subpart (a), where available, the information in response to Interrogatory 1, particularly the tabbed exhibits, identify the dates when such information was publicly disclosed. As to subparts (b) and (c), IBM may have entered into agreements with others to make such contributions. SCO, however, does not have the agreements, if any, IBM entered into to disclose such materials to Linux. As to subpart (d), the Tables and tabbed exhibits in response to Interrogatory No. 1 identify where such information may be accessed or located.

INTERROGATORY NO. 4:

For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No.1, please describe, in detail, each instance in which plaintiff alleges or contends that IBM misappropriated or misused the alleged trade secret or confidential or proprietary information, including but not limited to: (a) the date of the alleged misuse or misappropriation; (b) all persons involved in any way in the alleged misuse or misappropriation; (c) the specific manner in which IBM is alleged to have engaged in misuse or misappropriation; and (d) with respect to any code or method plaintiff alleges or contends that IBM misappropriated or misused, the location of each

portion of such code or method in any product, such as AIX, in Linux, in open source, or in the public domain.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 4

Subject to and without waiving its objections, Plaintiff supplements its response to this Interrogatory No. 4 and states that IBM misappropriated and misused the trade secrets and/or confidential and proprietary information of Plaintiff each time it made contributions to Linux, including contributions to Linus Torvalds and/or the Open Source Development Laboratory ("OSDL"), including the Protected Materials identified in response to Interrogatory No. 1, in violation of the Software and Sublicensing Agreements attached to the Amended Complaint. As to subpart (a), the dates of contributions, if known, are identified in the Tables and tabbed exhibits in Interrogatory No. 1. As to subpart (b), to the extent the identity of persons involved in the misuse or misappropriation is publicly known, those individuals are identified in the tabbed exhibits in response to Interrogatory No. 1. Others at IBM who may have been involved in the public dissemination of the Protected Materials identified in response to Interrogatory No. 1 are also identified in response to Interrogatory No. 3 above. Until IBM identifies these individuals in discovery, SCO is unable to identify further individuals involved in the public dissemination of the material identified in Interrogatory No. 1

INTERROGATORY NO. 5:

For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No.1, please identify: (a) all agreements relating to the alleged trade secret or confidential or proprietary information including but not limited to the parties to and the terms of the agreements; and (b) all copyrights and patents relating to the alleged trade secret or confidential or

proprietary information including but not limited to the owners, licensors, licensees, assignors or assignees of those copyrights or patents.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 5

Subject to and without waiving its objections, Plaintiff supplements its response to subpart (a) by referencing all of the agreements with IBM and Sequent attached to the Amended Complaint and Related Agreements. The numerous Related Agreements between SCO (or its predecessors) and IBM and Sequent are found at the following Bates numbers: 9085045, 0986966, 0988096-0988097, 0990372-0990373, 0996962, 0997870, 1000091-1000092, 1000191, 1000197-1000201, 1000202-1000203, 1000204-1000214, 1000222-1000223, 1003707, 1006113-1006120, 1014916-1015030, 1017409, 1017421, 1017436-1017437, 1017444-1017526, 1017548-1017558, 1017559-1017562, 1017563, 1017573-1017576, 1017581-1017585, 1017586-1017588, 1017600-1017607, 1017608-1017610, 1017611-1017612, 10227495, 1022500, 1022506-1022507, 1026515, 1026516-1026517, 1112278, 1127016-1127021, 1021961-1021966, 1009625-1009633, 1153282-1153286, 1153287-1153288, 1003293-1003299, 1122744-1122745, 0981279, 1014788, 0976801-0976802, 0976880-0976881, 0977352-0977353, 0977524-0977526, 0977836, 0977948-0977949, 0978147, 0978202-0978206, 0978258-0978292, 0978348, 0978350, 1288870-1288875, 1169925-1169928, 1174979-1174981, 1169925-1169928, 1174966-1174978, 1174979-1174981, 1289249-1289251, 1174983-1174986, 1174989-1174990, 1175000-1175001, 11754002, 1175007-1175011, 1175017-1175021, 1175022-1175024, 1175025-1175030, 1175031-1175034, 1175040-1175051, 1175052-1175071, 1289255, 1175072-1175084, 1175136-1175141, 1175142-1175146, 1175147-1175152, 1175153-1175155, 1175212-1175243, 1175244-1175251, 1175252-1175254, 1289294-1289300, 1175255-1175258, 1175280-1175283, 1175287-1175309, 1175310, 1289313-1289342, 1175349-1175378,

1176110-1176111, 1177823-1177825, 1178164-1178197, 1178198-1178221, 1180107-1180108, 1180969-1180991, 1180994-1180999, 1184087-1184092, 1184093-1184105, 1184174-1184230, 1290038-1290040, 1184245-1184247, 1184287-1184296, 1187297-1187318, 1184319-1184345, 1184369-1184388, 1184389-1184395, 1184401-1184434, 1184515-1184525, 1184548-1184551, 1290047-1290049, 1184557-1184636, 1184637, 1184645, 1184648-1184653, 1290060-1290063, 1228015-1228048, 1228222-1228230, 1228250-1228256, 1228269-1228275, 1228322-1228374, 1228636, 1232498-1232521, 1232540-1232546, 1233450-1233455, 1233772-1233776, 1233779-1233789, 1233790-1233800, 1233804-1233823, 1233824-1233859, 1233860-1233872, 1233873-1233923, 1233928-1233946, 1234034-1234036, 1234037-1234038, 1234059-1234060, 1234062-1234063, 1234070, 1234077-1234078, 1234102-1234106, 1234117-1234120, 1234121-1234127, 1234260-1234264, 1234274-1234280, 1234804-1234826, 1234827-1234830, 1290677-1290681, 1235154-1235156, 1235160-1235161, 1235162-1235164, 1290709-1230749, 1238361-1238434, 1238456-1238492, 1238486-1238492, 1241409-1241411, 1241431-1241437, 1241438-1241443, 1241448-1241452, 1290778-1290804, 1290815-1290821, 1290822-1290829, 1290844-1290846, 1290861-1290878, 1290921-1290922, 1290923-1290924, 1290959-1290968, 1290983-1290985, 1290986-1290998, 1291025-1291039, 1291052-1291054, 1291056-1291060, 1291084-1291095, 1291096-1291102, 1291103-1291105, 1291106-1291109, 1291114-1291117, 1291118-1291119, 1291123, 1291124, 1291132-1291134, 1291157-1291158, 1276975-1277027, 1288112-1288150, 1233947-1233955, 1036311-1036320, 0978343-0978346, 0992712, 0992791-0992792, 0992824-0992827, 0995517-0995519, 0995600-0995605, 0983624-0983625, 0983644, 0983671-0983672, 0984244-0984272, 0985007-0985016, 0999577-0999586, 0985070-0985072, 1019097, 1019111, 1001269-1001272, 0986906, 0986930-0986932, 0985595, 0990276, 0990390-0990391, 1000706-

1000712, 0988180, 1031451-1031461, 1027607-1027610, 1027617-1027618, 1013237-1013245, 1024465, 1110924-1110934, 1110935-1111000, 1029445-1029456, 1030444-1030453, 1022138-1022142, 1127697-1127708, 1112467-1112477, 1122936-1122942, 1175259-1175265, 1175266-1175272, 1175278-1175279, 1175413-1175417, 1132248-1132257, 1142031-1142034, 1168854-1168855, 1168877-1168916, 1168918-1168957, 1168958-1168979, 1168985-1168989, 1168990-1168995, 1168837-1168853, 1168856-1168859, 1168861-1168869, 1168870-1168876, 1127709-1127711, 1161166-1161172, 1162391-1162399, 1233547-1233548, 1233568-1233577, 1234336-1234342, 1234345-1234360, 1234381-1234382, 1234390-1234397, 1296254-1296257, 1290769-1290772, 1289351-1289355, 1289301-1289309. As to subpart (b), there are two types of copyrights relating to the trade secret or confidential or proprietary information. The first group of copyrights relating to this information are SCO's copyrights, which are found at Bates numbers SCO 1292920 through SCO 1292941. The second group of copyrights relating to this information would be the copyrights, if any, of IBM (and Sequent). To the extent any such copyrights exist, SCO does not have possession of any such documents and cannot further respond to this question.

INTERROGATORY NO. 6:

For each line of source or object code and each method identified in response to Interrogatory No. 1, please identify: (a) the origin of the code or method, including when, where and by whom the code or method was created; and (b) all products in which, in whole or in part, the code or method is included or on which, in whole or in part, the code or method is based.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 6 :

Subject to and without waiving its objections, Plaintiff supplements its response to this Interrogatory No. 6 and states that the origin of the code and/or method identified in response to Interrogatory No. 1 above is at two levels. At the original level, the origin of the code or method, or that on which it is based, is UNIX System V code licensed by IBM and Sequent, i.e., System V Release 3.2 and System V Release 4.0, as AIX and Dynix/ptx are modifications or derivatives of UNIX System V. At the modification or derivative level, the origin of this code is from AIX or Dynix/ptx as set forth in the Tables and tabbed exhibits in response to Interrogatory No. 1. Because that work was done by IBM and Sequent and because SCO has not received complete discovery from IBM on the creation of this code, SCO cannot provide any further detail as to who at IBM or Sequent created the code or method or precisely when they did so. To the extent the contributions by IBM identified in response to Interrogatory No. 1 publicly identify who at IBM made the contribution to Linux, it appears in the tabbed exhibits in response to Interrogatory No. 1. The code or method identified in response to Interrogatory No. 1 is included in any product that contains the Linux kernel 2.4 and above, which is sold or distributed by hundreds of entities around the world thereby making it impossible to identify all products in which this code is included. As to SCO, the products that it discontinued distributing that include the information identified in response to Interrogatory No. 1 likewise are those that contain the Linux kernel 2.4 and above. These products are as follows:

SCO Linux Server 4.0, Powered by UnitedLinux IPF (64bit Itanium)

SCO Linux Server 4.0, Powered by UnitedLinux

INTERROGATORY NO. 7:

Please describe, in detail, each instance in which plaintiff alleges that IBM engaged in unfair competition, including but not limited to: (a) the dates on which IBM allegedly engaged in any unfair competition; (b) all persons involved in the alleged unfair competition; and (c) the specific manner in which IBM is alleged to have engaged in unfair competition including but not limited to as alleged in ¶ 118 of the Complaint.

SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 7:

See answer to interrogatory 8 below. In addition, IBM's unfair competition arose from the relationship it established with SCO as a result of the joint effort between SCO and IBM known as "Project Monterey." Part of the focus of Project Monterey was to jointly develop an operating system based on SCO's UnixWare for 64-bit Intel processors. Beyond the scope of the formal contract to create the new operating system for 64-bit Intel processors, IBM made numerous representations to SCO. These representations by IBM executives to SCO executives, made during or about Q4 of 1998 that IBM would do the following as part of a broad partnership relationship with SCO:

(a) Port its family of enterprise applications to SCO's existing 32-bit version of UnixWare, including Lotus/Domino, Tivoli, WebSphere and DB2;

(b) Publish its own price list for SCO's existing 32-bit version of UnixWare, and market 32-bit UnixWare within its own customer base;

(c) Market SCO's existing 32-bit version of UnixWare within IBM's ISV channels, encourage IBM's ISV partners to port their applications to UnixWare, and invite

SCO marketing representatives on joint marketing calls to IBM's ISV partners for these purposes;

(d) Expand IBM's family of products so that SCO's existing 32-bit version of UnixWare and AIX would jointly operate in a combined environment for RISC and Intel processors.

In return, IBM asked SCO for access to SCO's OEM channels and ISV partner relationships so that IBM could start promoting the joint IBM/SCO products through SCO's OEM channels. At this point in time, IBM had had little or no UNIX-based independent experience with the companies that were SCO's OEMs. SCO, on the other hand, had had years of successful experience, and deep UNIX-based business relationships with its 15,000 OEM channel partners.

A Project Monterey Fact Sheet designed jointly by SCO and IBM in October 1998 spoke of the new enhanced relationship, as represented by IBM and relied on by SCO, in part, as follows:

> *On October 26th, 1998 SCO announced that it has reached a strategic, long-term business agreement with IBM Corporation. SCO and IBM, in collaboration with Intel and other key partners, will aggressively accelerate worldwide growth of Intel processor-based UNIX servers for the enterprise, and will deliver a seamless family of UNIX products for today's IA-32 systems and future IA-64 systems.*
>
> *Under the new agreement, IBM is applying substantial resources to promote and sell SCO's UnixWare operating system word wide, and feed the demand for 32-bit systems in the enterprise. IBM has committed to make UnixWare 7 its strategic 32-bit UNIX operating system for the high volume enterprise market, and will offer it as a member of its new UNIX product family.* (Emphasis added.)

A working draft of the Project Monterey Fact Sheet is attached as Exhibit 120. The detailed plan discussed between SCO and IBM for porting IBM's enterprise applications identified above to UnixWare in a document entitled "Solution Stacks for Project Monterey" attached as Exhibit 103.

SCO reasonably relied on IBM's representations identified above, based on the circumstances. As a result of the formal agreement between SCO and IBM and the numerous representations made by IBM that were calculated to be relied on by SCO, IBM had a fiduciary obligation to SCO that required IBM to be forthright and truthful in all affairs related to the partnership relationship.

Based on the agreed strategic relationship to promote 32-bit UnixWare and to develop new products as a family of products with IBM and AIX, SCO ceased its own independent efforts to aggressively market UnixWare for broad enterprise applications, even though the demand for UnixWare product (UNIX on Intel) was substantial at the time. The general time frame for the above representations was Q4, 1998.

Following the events specified above, SCO worked aggressively to make the joint relationship actually come about. SCO diverted resources for independent development and marketing of UnixWare 7 in order to create the new IBM and SCO relationship. SCO also introduced IBM products to its entire ISV network, and encouraged its ISV network to develop stronger relationships with IBM in UNIX-on-Intel environment. SCO also encouraged its largest OEM partners, including those identified above, to begin a working relationship with IBM for development of UnixWare on Intel. Prior to that time, SCO's OEM partners had been largely competitors of IBM in UNIX. Therefore, SCO's encouragement of OEM partners to work with IBM was a significant benefit to IBM. SCO continued in this vein, attempting to advance the joint goals of IBM and SCO as represented by IBM and as set forth above, from Q4 1998 through and including most of the entire year of 1999. IBM, on the other hand, unfairly took advantage of its partnership relationship with