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*Attorneys for Defendant/Counterclaim-Plaintiff  
International Business Machines Corporation*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

-against-

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

EXHIBIT

100

## DECLARATION OF DAVID P. RODGERS

I, David P. Rodgers, declare as follows:

1. From July 1983 until December 1996, I held various positions at Sequent Computer Systems, Inc. ("Sequent"), including Vice President of Engineering from 1983 through 1988. Since October 2001, I have been employed as Senior Vice President of Engineering at IP Unity Corp.

2. During the time I served as Vice President of Engineering at Sequent, I executed several agreements with AT&T Technologies, Inc. ("AT&T Technologies") for the licensing of certain Unix software and related materials. In particular, I executed the following agreements between Sequent and AT&T Technologies:

- the Software Agreement (Agreement Number SOFT-00321) dated April 18, 1985 (the "Software Agreement")
- the Sublicensing Agreement (Agreement Number SUB-00321A) dated January 28, 1996 (the "Sublicensing Agreement"),
- the Substitution Agreement (Agreement Number XFER-000321B) dated January 28, 1986 (the "Substitution Agreement").

True and correct copies of these agreements, referred to herein as the "Sequent Agreements", are attached as Exhibits 1, 2 and 3 to this Declaration.

3. This declaration is submitted in connection with the lawsuit entitled The SCO Group, Inc. v. International Business Machines Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003). Except as stated otherwise, this declaration is based upon personal knowledge.

4. Section I of this declaration sets out my understanding of the grant of rights under the license agreements pursuant to which Unix software and related

materials were licensed to Sequent by AT&T Technologies. Section II sets out my understanding of the confidentiality provisions of the license agreements. Section III sets out my understanding of certain exceptions to the confidentiality provisions.

**I. Basic Grant of Rights to Unix System V.**

5. Although I did not personally negotiate the Sequent Agreements with representatives of AT&T Technologies, I carefully reviewed the agreements myself and with other Sequent employees before executing them and have personal knowledge of the parties' understanding of, and intent behind, the terms and conditions of the agreements.

6. It was my understanding that the licensing agreements that I executed were standard form agreements used by AT&T Technologies to license Unix software products to its users. The Software Agreement granted Sequent the right to use Unix software products, including source code, for its internal business purposes. The agreement further granted Sequent the right to modify Unix software products and to prepare derivative works based upon such products.

7. Section 2.01 of the Software Agreement states that Sequent's "right to use includes the right to modify such SOFTWARE PRODUCT and to prepare derivative works based on such SOFTWARE PRODUCT, provided that the resulting materials are treated hereunder as part of the original SOFTWARE PRODUCT". I did not understand this language to give AT&T Technologies the right to assert ownership or control over modifications or derivative works prepared by Sequent, except to the extent that the licensed Unix software product was included in such modifications or derivative works. I would never have signed an agreement that would grant ownership or control to

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AT&T Technologies over modifications or derivative works prepared by Sequent to the extent those modifications or derivative works contained no part of the Unix software product licensed from AT&T Technologies.

8. As I understood the Software Agreement between Sequent and AT&T Technologies, Sequent was free to use, copy, distribute or disclose any modifications or derivative works developed by Sequent, provided that it did not copy, distribute or disclose any portion of the licensed Unix software product source code (except as otherwise permitted by the licensing agreements).

9. It is my understanding that Sequent's Dynix products might include some small parts of the licensed Unix System V source code, although I do not personally know whether it does or not. I also do not know whether Dynix is so similar to Unix System V that it may properly be viewed as a "derivative work" based on Unix System V, particularly in light of the fact that Dynix was originally created using Berkeley Software Design ("BSD") Unix as a base and not AT&T Technologies' Unix System V. In any event, as I understood the Sequent Agreements, Sequent was free to use, copy, distribute, or disclose Dynix (including source code), provided that it did not copy, distribute or disclose any Unix System V source code that might be contained therein (except as otherwise permitted by the licensing agreements).

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## II. Confidentiality Restrictions in the License Agreements.

10. The standard form licensing agreements proposed by AT&T Technologies imposed certain confidentiality restrictions on Sequent.

11. Section 7.06(a) of the Software Agreement included the following language concerning confidentiality:

LICENSEE agrees that it shall hold all parts of the SOFTWARE PRODUCTS subject to this Agreement in confidence for AT&T. LICENSEE further agrees that it shall not make any disclosure of any or all of such SOFTWARE PRODUCTS (including methods or concepts utilized therein) to anyone, except to employees of LICENSEE to whom such disclosure is necessary to the use for which rights are granted hereunder.

As discussed below in Section III, Sequent's confidentiality obligation was subject to important exceptions.

12. It was my understanding that the purpose of this confidentiality provision from the perspective of AT&T Technologies was to protect the Unix System V source code that it was licensing. Although there is reference in Section 7.06(a) to "methods or concepts", I had no understanding at the time that AT&T Technologies was interested in protecting anything other than the Unix source code.

13. As I understood the agreement regarding confidentiality, Sequent had no obligation to keep confidential any information embodied in any of the software products provided to Sequent, provided that Sequent did not disclose source code (except as otherwise permitted by the license agreements). In addition, as I discuss above, Sequent had no obligation to keep confidential any modification or derivative work developed by Sequent that did not include Unix System V source code. Sequent was free to use, copy, distribute or disclose such modifications and derivative works, provided that it did not copy, distribute or disclose any portions of the licensed Unix source code (except as otherwise permitted by the license agreements).

III. Relief from Confidentiality Restrictions.

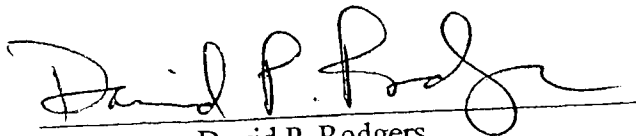
14. The confidentiality provision of the Software Agreement provided that Sequent was not required to keep a software product confidential if it became "available without restriction to the general public". As I understood the agreement, Sequent would be free to disclose, without any restriction whatsoever, information that became available without restriction to the general public by acts not attributable to Sequent or its employees.

15. Although I do not recall any particular definition being given to the term "available without restriction to the general public" at the time the Software Agreement was executed, I believe a number of circumstances would meet the definition. For example, a software product or any part of a software product would be considered "available without restriction to the general public" if it was lawfully published by someone outside of Sequent. I believe that any number of books and other materials have been published regarding the Unix software, and that the information contained in those materials at least would not be subject to the confidentiality restrictions in the Software Agreement.

16. I declare under penalty of perjury that the foregoing is true and correct.

Executed: November 5, 2003.

Saratoga, California

  
David P. Rodgers