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IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

THE SCO GROUP,

Plaintiff,

v.

INTERNATIONAL BUSINESS
 MACHINES CORPORATION,

Defendant.

Case No. 2:03CV0294DAK

Hon. Dale A. Kimball
 Magistrate Judge Brooke C. Wells

DECLARATION OF
 BURTON LEVINE

I, Burton I. Levine, declare as follows:

1. I submit this Declaration in connection with *The SCO Group v. International Business Machines Corporation*, No. 2:03CV0294DAK (D. Utah 2003).
2. I received a bachelor's degree from New York University in 1962 and an L.L.M. degree from New York University in 1963. I was admitted to practice law in New York in 1962. I am registered to practice before the United States Patent and Trademark Office, and I have spent 39 years practicing and specializing in intellectual property and antitrust law. I was involved in patent prosecution and licensing for Western Electric (1963-1974); in private practice handling patent and trademark prosecution (1974-1977); and, after returning to the Bell System, was part of Bell Laboratories' antitrust law group (1977-1984).
3. From 1984 through 2000, I was responsible for providing legal advice to various business organizations that licensed the UNIX operating system to licensees. Those organizations included AT&T (1984-1991); UNIX System Laboratories ("USL") (1991-1993); Novell, Inc. (1993-1996); and The Santa Cruz Operation, Inc. (1996-2000).

4. During my tenure at AT&T, I assisted Marty Pfeffer in the legal department overseeing the licensing of AT&T's UNIX product. We reviewed proposed changes to the terms of the standard license agreements; we counseled AT&T account executives regarding the protections of the licensee agreements (in order to, among other things, assist them in explaining the terms to prospective licensees); and we occasionally participated in discussions with licensees concerning the terms and obligations set forth in the license agreements.

5. As a result of my legal activities for AT&T, outlined above, I am familiar with the intent and meaning of the license agreements that AT&T used to license the UNIX software product to its licensees. All of the UNIX license agreements contained the same core intellectual property protections. It was always AT&T's intent to prevent through its UNIX license agreements, and the license agreements expressly restricted, the unauthorized use, export, and disclosure of all the intellectual property contained within the UNIX software, including, but certainly not limited to, the UNIX source code itself.

6. For example, Section 2.01 of AT&T's standard license agreement provided that:

"AT&T grants to LICENSEE a personal, nontransferable and nonexclusive right to use in the United States each SOFTWARE PRODUCT identified in the one or more Supplements hereto, solely for LICENSEE'S own internal business

purposes and solely on or in conjunction with DESIGNATED CPUs for such SOFTWARE PRODUCT. Such right to use includes the right to modify such SOFTWARE PRODUCT and to prepare derivative works based on such SOFTWARE PRODUCT, provided the resulting materials are treated hereunder as part of the original SOFTWARE PRODUCT.”

Based on my personal knowledge and professional experience, I know that this language protected the full content of all of the “resulting materials” created over time from the licensees’ exercise of their contractual “right to modify” and “to prepare derivative works” based on the original licensed material, including the UNIX source code and all of the proprietary information reflected or embodied therein. The license agreements safeguarded AT&T’s valuable UNIX asset by protecting the entire chain of development that resulted from the special access and development rights AT&T afforded its licensees under those agreements. Section 2.01 certainly did not require that modifications or derivatives of the UNIX product contain any literal copying of UNIX source code in order to be protected. Indeed, there would have been no need for the last clause of Section 2.01 if it were so limited; the literal UNIX source code was already protected by virtue of its inclusion in the term “SOFTWARE PRODUCT.”

7. I am also familiar with the specific UNIX licensing agreements that AT&T entered into with International Business Machines Corporation ("IBM") in 1985, including the following:

- (1) Software Agreement Number SOFT-00015 dated February 1, 1985

(the "IBM Software Agreement") and
- (2) the letter agreement dated February 1, 1985 (the "IBM Side Letter").

I recall that I was present during negotiations between AT&T's UNIX software licensing manager, Otis Wilson, and IBM representatives relating to the IBM Side Letter.

8. Nothing in the IBM Software Agreement or in the IBM Side Letter was intended to reduce, or reduced, AT&T's protections for its UNIX software (including, among other things, its use, disclosure, and export restrictions) to just the literal source code. Such a significant and material change would have been entirely inconsistent with the goals of the license agreements as we drafted them, with the policies consistently espoused by the AT&T Sales and Licensing Group, and with the position that AT&T took in dealing with licensees throughout the years that

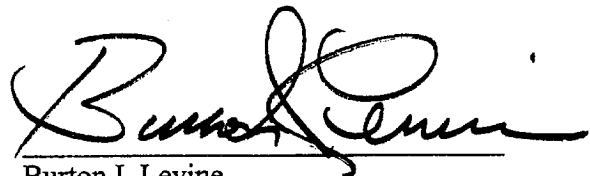
I served as its legal counsel. I never approved such a change to AT&T's standard license

agreement, and I do not recall anyone ever proposing, approving, or making any such change.

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

Executed: November 23, 2004

Monroe Twp., New Jersey


Burton I. Levine