

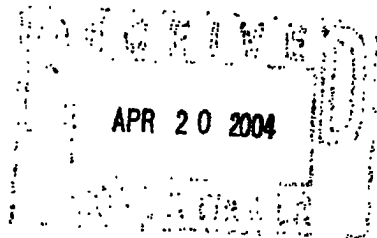
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April 19, 2004

Todd Shaughnessy, Esq.
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Re: SCO v. IBM

Dear Todd:

Accompanying this letter is the Declaration of Chris Sontag evincing SCO's compliance with the Order of Magistrate Judge Wells entered on March 3, 2004 ("Order"). We have also provided IBM under separate cover with numerous CD's and other materials relevant to its discovery requests. Also enclosed at Exhibits A through G are the additional information specified under items 2 through 5 of the Order.

1. SCO has fully complied with the Court's order of December 12, 2003 as clarified and extended by the Court's order of March 3, 2004. In particular, SCO has produced all non-privileged documents IBM has requested in its First and Second Requests for Production that SCO had difficulty in obtaining prior to the January 12, 2004, deadline, including but not limited to those items further requested in IBM's letter dated January 30, 2004.¹ A source log identifying the supplemental production is attached hereto as Exhibit A.
2. SCO, based on the information currently available, has identified all specific lines of code that it can currently identify that IBM contributed to Linux from AIX and Dynix/ptx. In addition to the information previously provided in SCO's supplemental answers to interrogatories, SCO has identified additional lines of code in Exhibits B and C. In compliance with the Court's order, these lists are lines or files of code that SCO can identify at this time. These new files represent over 21,000 lines of code. However, based upon the fact that IBM produced the source code in a different format than requested (indeed, a different format than either side had previously produced source code), SCO was able to begin its review of the limited source code provided only recently and therefore is continuing to identify specific lines and expects to find additional files and lines of code, as contemplated by the Court's Order. Moreover, because the source code selected by IBM for production was random snapshots of such code and did not come with programmers' notes, design documents and change logs, SCO will be filing a memorandum detailing the need to obtain a complete production from IBM to further

¹ The review of privileged documents continues and, to the extent portions of those documents are subsequently determined not to be privileged and otherwise responsive, they will be produced.

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respond to this item, as suggested by the Court's Order. Upon receipt of all necessary materials, SCO expects it will be adding further examples to this list.

In addition, although in Table A of SCO's 70-page January response SCO noted that entire files were copied almost verbatim from Dynix/ptx into Linux, which made the identification of specific lines redundant and unnecessary, SCO nonetheless has specifically identified for IBM those lines of code contributed by IBM from Dynix/ptx in Exhibit D.

3. SCO, based on the information currently available, has attempted to identify the specific lines of code from UNIX System V from which IBM's contributions from AIX and Dynix/ptx were derived. SCO's ability to respond to this item, however, has been and continues to be severely impaired. First, in the absence of having every version of the AIX and Dynix/ptx code it is difficult, if not impossible, to answer this question in full detail. IBM, however, refuses to provide all versions of the AIX and Dynix/ptx code. Second, IBM first provided AIX in a usable format only on March 25, 2004, so there has been limited time to undertake such code comparisons. Third, this is an extremely time consuming process and three weeks is an insufficient amount of time to provide more detailed information.

Notwithstanding the foregoing, as an initial matter, this Item 3 can be responded to by noting that each version of AIX and each version of Dynix/ptx are modifications or derivative works based on UNIX System V. The AIX work as a whole and the Dynix/ptx work as a whole are modifications of, or are derived from System V, including, but not limited to, the parts that have been identified previously as having been improperly contributed to Linux.

The AIX operating system, in its entirety, was either a derivative work based on or a modification of UNIX System V Release 3.2, which includes the following: kernel, interfaces, system calls, libraries, commands and architectural structure and sequence as licensed to IBM. As such, no feature of the AIX operating system will operate or retain necessary functionality in AIX independent from UNIX System V base-level functionality required by that feature. Therefore, as noted above, the entire AIX operating system is either based on, or is a modification of, UNIX system V Release 3.2, and IBM's contributions from the AIX operating system to Linux are in their entirety derivative works based on, or modifications of UNIX System V.

Similarly, the Dynix/ptx operating system, in its entirety, was either a derivative work based on or a modification of UNIX System V Release 4.2 ES/MP, which includes the following: kernel, interfaces, system calls, libraries, commands and architectural structure and sequence as licensed to Sequent. As such, no feature of the Dynix/ptx operating system will operate or retain necessary functionality in Dynix/ptx independent from UNIX System V base-level functionality required by that feature, particularly as it relates to multi-processor functions such as RCU and NUMA. Therefore, as noted above, the entire Dynix/ptx operating system is either based on, or is a modification of, UNIX System V Release 4.2ES/MP, and IBM's contributions from the Dynix/ptx operating system to Linux are in their entirety derivative works based on, or modifications of UNIX System V.

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Based on the forgoing, the entirety of UNIX System V licensed to IBM and Sequent are the lines from which IBM's contributions of AIX and Dynix/ptx are derived.

In addition to identifying the entirety of UNIX System V as the specific lines of code from which IBM's contributions from AIX or Dynix/ptx are derived, SCO has undertaken the task of identifying the specific lines of UNIX System V found in the selected versions of AIX and Dynix/ptx provided by IBM. By doing so, however, SCO does not in any way admit the relevancy of such information. In fact, SCO steadfastly maintains that this item is not relevant to this litigation nor is it likely to lead to the discovery of admissible evidence. The main issue in this case is whether IBM has breached its contract with SCO because it contributed or otherwise disposed of a part of AIX or Dynix/ptx to others in contravention of the terms of the license agreement. Subject to these forgoing limitations, SCO has identified the lines of UNIX System V from which AIX and Dynix/ptx are derived in Exhibits E and F.

4. SCO, based on the information currently available, has identified all lines of code in Linux in which it claims rights. In addition to the information previously provided in SCO's supplemental answers to interrogatories, SCO has identified additional lines or files of code in which SCO claims rights in Exhibit G. These files comprise an additional approximately 240,000 lines of code.
5. SCO has identified the lines of code that SCO distributed to third parties. In addition to the information previously provided in SCO's supplemental answers to interrogatories, which is incorporated herein, SCO has identified to whom this additional code was released, the date and under what circumstances such code was released. This information is contained in Exhibit G and the spreadsheets found at Bates Numbers 1508045 to 1512471, which identify specifically to whom the code was released, the date and under what circumstances such code was released.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Brent O. Hatch", written over a horizontal line.

Brent O. Hatch

Encls.

EXHIBITS REDACTED