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SNELL & WILMER LLP  
Alan L. Sullivan (3152)  
Todd M. Shaughnessy (6651)  
15 West South Temple  
Gateway Tower West  
Salt Lake City, Utah 84101-1004  
Telephone: (801) 257-1900  
Facsimile: (801) 257-1800

CRAVATH, SWAINE & MOORE LLP  
Evan R. Chesler (admitted pro hac vice)  
David R. Marriott (7572)  
Worldwide Plaza  
825 Eighth Avenue  
New York, New York 10019  
Telephone: (212) 474-1000  
Facsimile: (212) 474-3700

*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.

**DEFENDANT/COUNTERCLAIM-  
PLAINTIFF IBM'S  
FIFTH SET OF  
INTERROGATORIES**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure,  
defendant/counterclaim-plaintiff International Business Machines Corporation ("IBM")  
submits this Fifth Set of Interrogatories to plaintiff The SCO Group, Inc. ("plaintiff").

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Plaintiff is directed to give answers to the written interrogatories separately, fully, in writing, under oath, and in accordance with the following definitions and instructions. Plaintiff is requested to produce the documents and things in its possession, custody or control pursuant to the document requests.

Answers to the interrogatories must be served on the undersigned attorneys for IBM at the offices of Cravath, Swaine & Moore LLP, 825 Eighth Avenue, New York, NY 10019 within 30 days of service of these interrogatories.

**Interrogatories**

**INTERROGATORY NO. 17:**

Identify, with specificity, each file, routine or module (by name) within each and every SCO Product that includes, embodies or implements at least one of the following:

- (a) a compression technique referred to as "modified Lempel-Ziv", "adaptive Lempel-Ziv", "Lempel-Ziv-Welch" or "LZW" coding;
- (b) a capability to either compress or decompress a file using a technique referred to as "modified Lempel-Ziv", "adaptive Lempel-Ziv", "Lempel-Ziv-Welch" or "LZW" coding, or to support or convert a graphic to or from, a file format commonly referred to within the computer industry as "Graphics Interchange Format" or "GIF" format or a file format commonly referred to within the computer industry as "compressed Tagged Image File Format" or "compressed TIFF", or to process any of the UNIX commands or utilities entitled "compress", "uncompress", "decompress", "gzip" or "gifclip";

(c) one or more files compressed by, or that must be decompressed using, a technique referred to as "modified Lempel-Ziv", "adaptive Lempel-Ziv", "Lempel-Ziv-Welch" or "LZW" coding; or

(d) one or more compressed files bearing a ".Z" or ".lzw" file extension;

and, for each, the specific SCO Product(s) (by name, version or release, and date(s) of availability) containing such file, routine or module, the person at SCO most knowledgeable about the history of SCO's inclusion therein, and the two persons at SCO most knowledgeable about how each such embodiment or implementation of the subject matter of (a), (b) and/or (c) in each SCO product operates to achieve (a), (b) and/or (c) and the particular command or program code used to compress each such file in the SCO Products bearing the ".z" or ".gz" extension identified in response to (d).

**INTERROGATORY NO. 18:**

Identify, with specificity, each and every SCO Product (including name, version, release and dates(s) of availability thereof) having any tool, feature or function that, as part of the installation process requires either (a) acknowledgment of receipt of the SCO Product, or (b) consent to terms authorizing use of the SCO Product before either changing such SCO Product from a non-executable form to an executable form or installing such SCO Product in a run-able form on the host computer, the specific files, utilities or modules (by name) implementing such tool, feature or function, the history of SCO's incorporation of each such tool, feature or function into each identified SCO

Product, and the person at SCO most knowledgeable about about the function and operation of each such tool, feature or function.

**INTERROGATORY NO. 19:**

Identify with specificity each and every SCO Product (by name, version, release and file, routine or module name, and dates(s) of availability thereof) that, in whole or part, provides the functionality set forth in any of (a) through (d) herein and the person at SCO most knowledgeable about such functionality:

(a) provides for high availability in a clustered arrangement of computers having at least one distributed program running within the cluster through the use of configurable monitors;

(b) provides a program, process, procedure, module, tool, feature or function for automated recovery from a failure of a program running within a clustered arrangement of computers involving one or more configurable monitors;

(c) supports or allows a user to specify an automated procedure for recovery from a failure in a clustered arrangement of computers; or

(d) provides or supports user-defined automated detection and/or recovery from failure events occurring on one or more computers in a computer network.

**INTERROGATORY NO. 20:**

Identify whether SCO intends to rely upon any opinion of counsel as a defense to an IBM charge of willful infringement of United States Patent Nos. 4,814,746, 4,953,209 or 5,805,785 (individually and collectively "the Patents-in-Suit") and, if so,

identify each opinion, whether formal, informal or drafts thereof (an "Opinion"), prepared by, for, or on behalf of SCO or a predecessor in interest thereto, concerning, relating or referring to any Patent-in-Suit, particularly including identification of:

- (a) the date each such Opinion was first requested;
- (b) the name, title and employer (at the time of request) of each such person who requested each such Opinion;
- (c) the name, title, and employer of each such person who substantively contributed to any portion of each such Opinion;
- (d) the name, title and employer of each such person to whom, in whole or part, the substance of each such Opinion has been rendered since the date identified in response to (a);
- (e) the date and form (i.e. written or oral) in which each such Opinion was rendered to each person identified in response to (d); and
- (f) all Patents-in-Suit to which each such Opinion pertains.

**INTERROGATORY NO. 21:**

Separately identify, on an element by element basis, each asserted claim of each Patent-in-Suit that SCO contends is not infringed, is invalid and/or provides any basis for holding a Patent-in-Suit unenforceable and provide, for each such claim a claim chart setting forth SCO's construction of all elements of each such claim and, to the extent SCO contends that:

- (a) any element of an asserted claim is to be construed pursuant to 35 U.S.C. § 112 ¶6, identify every basis in the patent and prosecution history for each such

contention along with SCO's contention as to the alleged corresponding structure for such element;

(b) any claim is not infringed, further identify each and every specific claim element SCO contends is not satisfied by the accused SCO Product literally and under the doctrine of equivalents and every basis for such contention, including, if SCO contends the SCO Product is structurally or operationally different from that of a claim element, the specific differences in structure or operation between the SCO Product and the claim element and the specific program code component (by module or file name), responsible for implementing each such difference;

(c) it is immune from suit on any asserted claim based upon license to SCO, identify each such license, each specific SCO Product, Patent-in-Suit and claim therein to which the license purportedly applies, whether such license is, in whole or part, asserted to be express or implied along with all specific Agreements or other evidence establishing that such license applies to SCO from IBM;

(d) any claim is invalid, the specific grounds and basis for each invalidity allegation including all known facts and documents SCO relies upon to support those grounds including,

i) if a claim is alleged to be invalid for a failure to comply with any provision of 35 U.S.C. § 112, the specific provision allegedly not complied with,

ii) if a claim is alleged to be invalid as anticipated or obvious in view of prior art, all prior art references that SCO contends anticipates or renders that

claim obvious and a claim chart correlating, on an element by element basis, each passage in each such prior art reference where such element is allegedly found,

iii) if SCO contends any claim is specifically invalid for obviousness, all passages in each such prior art reference SCO relies upon as providing a motivation to modify or combine such prior art references in a manner that would achieve the claimed invention, and

iv) if SCO contends any claim is invalid based upon offer, sale, derivation, or public knowledge or use, describe in detail all facts and circumstances upon which SCO relies and all documents SCO relies upon as corroboration thereof;

e) a Patent-in-Suit is unenforceable based upon alleged inequitable conduct, if such allegation is based upon an alleged failure to disclose a prior art reference, separately identify:

i) each specific piece of evidence SCO relies upon to demonstrate knowledge of such prior art reference by a person substantively involved with the preparation or prosecution of an application for the Patent-in-Suit prior to issuance of the Patent-in-Suit to which the allegation pertains,

ii) each passage of each such prior art reference that SCO contends is more material than what was considered by the Patent Office in allowing that Patent-in-Suit,

iii) the factual basis for SCO's contention that each such passage is more material than what was considered by the Patent Office during prosecution of the pertinent patent-in-suit, and



iv) how each such prior art reference alone or in combination with some other prior art reference establishes a *prima facie* case of unpatentability of the asserted claim of the Patent-in-Suit to which the allegation pertains by way of a claim chart correlating the pertinent passage(s) of each such reference to each such claim; and

f) IBM is not the owner of one or more of the Patents-in-Suit, identify each Patent-in-Suit to which the contention pertains, each entity whom SCO contends is the owner of such Patent-in-Suit, the specific legal basis for each such contention (in terms of specific statute, case, or otherwise), and all facts and documentary evidence upon which SCO relies in support of its contention of non-ownership.

**INTERROGATORY NO. 22:**

For each of the Webface, UnixWare, OpenServer, and ReliantHA SCO Products and each further SCO Product identified in response to any of Interrogatories 17 through 21, individually quantify on a yearly, quarterly or monthly basis, the distribution and financial figures in terms of:

- (a) number of units created or distributed;
- (b) highest and lowest per unit selling price, license or fee received;
- (c) average per-unit selling price, license or fee;
- (d) total revenues received;
- (e) gross profit; and
- (f) incremental, marginal and net pretax or operating profit;

and, presuming infringement by each such SCO product, identify what SCO would contend to be the applicable reasonable royalty rate and royalty base for each instance of infringement and all known documents supporting each such contention.

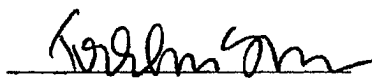
**Instructions and Definitions**

Defendant/counterclaim-plaintiff IBM hereby incorporates by reference all instructions, definitions and rules contained in Rule 33 and Rule 34 of the Federal Rules of Civil Procedure and the local rules or individual practices of this Court and supplements them with the definitions and instructions set out in Defendant IBM's First Set of Interrogatories and First Request for the Production of Documents, which are incorporated herein by reference. IBM additionally supplements the definitions as follows:

As used herein, the terms "SCO Product" or "SCO Products" include any and all products that are or were created by, for, or on behalf of SCO, or licensed, distributed (in any fashion), sold or offered by or on behalf of SCO or any predecessor in interest thereof in any form (whether or not for a fee), from six years prior to the March 6, 2003 date that SCO initiated the instant action against IBM through to the present date.

DATED this 30<sup>th</sup> day of July, 2004.

SNELL & WILMER LLP



Alan L. Sullivan  
Todd M. Shaughnessy

CRAVATH, SWAINE & MOORE LLP

Evan R. Chesler  
David R. Marriott

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

Of counsel:

MORGAN & FINNEGAN LLP

Christopher A. Hughes  
Richard Straussman  
345 Park Avenue  
New York, New York 10154  
(212) 758-4800

INTERNATIONAL BUSINESS MACHINES CORPORATION

Donald J. Rosenberg  
Alec S. Berman  
1133 Westchester Avenue  
White Plains, New York 10604  
(914) 642-3000

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