166

SNELL & WILMER L.L.P.
Alan L. Sullivan (3152)
Todd M. Shaughnessy (6651)
Amy F. Sorenson (8947)
15 West South Temple, Suite 1200
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,

v.

INTERNATIONAL BUSINESS MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

DECLARATION OF DOUGLAS B. BEATTIE

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, Douglas B. Beattie, declare as follows:

1. I am currently employed as a Senior Software Engineering Manager for Novell, Inc. ("Novell") in Provo, Utah.

2. I was employed at Caldera, Inc. ("Caldera") from 1996 to 1998. I served as Director of Integration and Testing.

3. I was employed by the Santa Cruz Operation, Inc. ("Santa Cruz") as a Testing Engineer, Reliability Engineer from 1998 until May 2001, when Caldera purchased the Server Software and Professional Services Divisions of Santa Cruz.

4. From May 2001 through February 2002, I was employed by Caldera as a Test Architect.

5. This declaration is submitted in connection with the lawsuit brought by The SCO Group, Inc. ("SCO") against IBM, titled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). I make this declaration based upon personal knowledge.

UNIX Work Prior to Caldera Employment

6. I had my first experience with UNIX source code in 1980 with Version 7. I obtained the source code from a publicly available document purchased at the University of California, Berkeley bookstore.

7. In 1983-84, I did a port of UNIX System 3 to a new hardware platform for Sperry Corporation (now Unisys Corporation). I had access to UNIX System 3 source code during that project.

8. As a contractor for Uhisys, I also did ports of parts of Unix System V Release 3 ("SVR3") and UNIX System V Release 4 ("SVR4"). I had source code access to SVR3 and SVR4 while doing this work.

9. Before I began my employment with Caldera in 1996, I had nearly a decade of experience working with UNIX System V source code.

Caldera's Linux Business

10. Caldera was founded as a Linux company in 1994.

11. Caldera distributed a variety of Linux products, including Caldera Network Desktop and Caldera OpenLinux.

12. Caldera made various contributions to Linux and to the open source community generally, including being an early sponsor and architect of the Redhat Package Manager (RPM), contributing equipment and funding for the Linux SMP project, making early contributions to the development of various kernel drivers (including Ethernet and Frame Relay), developing Novell's Netware Client for Linux, and providing manpower and funding to vendor-neutral initiatives such as Linux Standard Base and the Linux Professional Institute.

13. I was personally involved with several Linux projects while at Caldera, including testing of WABI and WINE.

Caldera's Involvement in Linux Standardization

14. Caldera participated in the Linux Standard Base (LSB).

15. The purpose of LSB was to form a consensus on the common core of components that can be expected to be found in any "Linux" or other operating system wishing to comply with the LSB standard.

16. Compliance with the LSB requires that the Linux distribution contain all of the ABI-level material explicitly specified by the LSB, as well as material required by other UNIX standards to which the LSB refers.

17. I understand that SCO claims that certain materials in Linux infringe SCO's alleged intellectual property, including: header files required by the Open Group's Single Unix Specification (SUS), and files and specifications relating to the Executable and Linking Format (ELF).

18. This material has been in Linux for a very long time: some of the header files required by the SUS have been in Linux since its creation in 1991—all have been in Linux for at least six years; and ELF has been in Linux since ELF became publicly available, which was before I started working for Caldera in 1996.

19. Whether explicitly or by reference to the requirements of Unix standards, the LSB mandates inclusion of the SUS header files claimed by SCO. The LSB also includes numerous requirements that mandate an ELF implementation such as that claimed by SCO.

20. I know that this material was in Linux because Caldera included general Linux kernel sources into its Linux products since Caldera Network Desktop 1.0.

21. Caldera distributed its Linux products under the GNU General Public License (GPL). Caldera made available all source information, with GPL notices, to all persons purchasing or downloading its general Linux kernel products and associated header files.

22. Caldera promoted the LSB, which required inclusion of the header files in the Single Unix Specification, as well as the ELF format. After it was renamed "SCO", Caldera claimed to ship a Linux distribution certified as compliant with the LSB. Caldera was eager,

even to the point of jumping the gun, to be the first to announce that it had an LSB-compliant Linux distribution.

UNIX and Linux Experience at Santa Cruz

23. While employed at Santa Cruz from 1998 to 2001, I assisted engineers in identifying code that needed fixing and hardening in the company's UnixWare product.

24. While employed at Santa Cruz, I had access to UNIX System V source code. In fact, most, if not all, engineers inside the company at Santa Cruz had access to the source code.

25. I was working with others at Santa Cruz in an attempt to improve reliability for UNIX, but Santa Cruz management was concerned that UNIX had no future and felt they needed to get into Linux. To that end there was internal discussion of getting a Santa Cruz distribution of Linux, and a team was formed to put together a Linux distribution. To my knowledge, there was no effort made to cut off UNIX source code access to the developers working on Santa Cruz's Linux distribution. Development work on such a distribution was ongoing when Caldera acquired the Server Software and Professional Services Divisions of Santa Cruz in May 2001.

26. While employed at Santa Cruz, I worked on the Trillian Project. Trillian was a project to port Linux to the Intel IA-64 architecture and involved Santa Cruz, Hewlett-Packard, Intel, IBM, and others. Santa Cruz provided several UNIX testing programs to aid with the development of Itanium Linux. The company hoped that, through participation in the project, it could assist Linux in achieving technological equality with UNIX as quickly as possible.

Post-Purchase Employment at Caldera

27. In May 2001, Caldera purchased the Server Software and Professional Services Divisions of Santa Cruz. Included in these Divisions was Santa Cruz's UNIX-related business.

28. The CEO of Caldera at that time was Ransom Love. Mr. Love stated that Caldera would pursue the merging of UNIX technology and Linux. I recall being present in company meetings where Mr. Love discussed his plan to use the value of the UNIX-related business that Caldera purchased from Santa Cruz in order to improve Linux by making it more reliable, powerful and "enterprise hardened".

29. I worked on UNIX following Caldera's acquisition and continued to have access to UNIX System V source code.

30. While employed at Caldera and Santa Cruz, I never received training in intellectual property, including what steps should be taken to protect any rights of Caldera and Santa Cruz and to avoid infringing intellectual property rights of third parties.

31. Caldera was the main driver of the formation of the UnitedLinux project. In May 2002, Caldera and other Linux vendors including Connectiva, SuSe and TurboLinux announced the organization of UnitedLinux to streamline Linux development and certification around a global, uniform distribution of Linux for business. UnitedLinux released its first Linux distribution, UnitedLinux Version 1.0, in November 2002.

32. UnitedLinux Version 1.0 contained the SUS header files, ELF/SVID interface specifications, and SMP capabilities like those in SVR4, and system calls, file system, and other structures like those in SVR4. I know this because I had CDs that contained those header files and I am familiar with the SVID and with SVR4 source code. All of these capabilities were ultimately included in Caldera's UnitedLinux distribution.

33. Caldera knew exactly what was in the UnitedLinux code. Some of the company's engineers, including myself, were very familiar with what was in Linux and knew what code and technologies were included.

34. Caldera wanted UnitedLinux to have most all of the capabilities of UNIX and worked to make Linux more like UNIX in that regard.

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

Executed: September 20, 2006.

Provo, Utah

Douglas B. Beattie

Douglas B. Beattie