

195

RECEIVED CLERK

2005 SEP 26 P 9:10

U.S. DIST. CT. COURT  
DISTRICT OF UTAH

SNELL & WILMER LLP  
Alan L. Sullivan (3152)  
Todd M. Shaughnessy (6651)  
Amy F. Sorenson (8947)  
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.

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

## DECLARATION OF DANIEL FRYE

I, Daniel Frye, declare as follows:

1. I am the co-founder and Vice President responsible for managing the Linux Technology Center ("LTC") at International Business Machines Corporation ("IBM").
2. This declaration is submitted in connection with the lawsuit brought by SCO against IBM, entitled 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.
3. I have read SCO's memorandum in support of its renewed motion to compel and am familiar with the scope of the additional discovery that SCO seeks from IBM relating to the development history for all of IBM's Linux contributions. As I illustrate herein, the effort required to collect all of the materials sought by SCO would be immense, and would impose an enormous burden on IBM.
4. The LTC is a center of competency and development for IBM in the area of Linux and open source. Currently there are approximately 600 IBM employees who are assigned directly or indirectly to the LTC, of which more than 300 are developers who have made contributions to Linux. These include programmers in approximately ten countries throughout the world.
5. As Vice President, LTC, I am responsible for overseeing IBM's Linux technical strategy and participation in the Linux development community. Based upon my duties and responsibilities at IBM, I have personal knowledge of IBM's Linux activities, including the Linux development process.

6. The development of the Linux operating system, unlike proprietary operating systems such as AIX and Dynix, does not occur confidentially within any individual company, but rather is accomplished through a community effort in the public view. When IBM employees make contributions to Linux, they do so in a public way. That is, they post onto publicly accessible mailing lists and code repositories such as the Linux Kernel Mailing List (LKML) or SourceForge ([www.SourceForge.net](http://www.SourceForge.net)). Once posted to one of these public venues, the Linux development community is given the opportunity to comment on the contribution prior to a decision being made as to whether the contribution should be accepted into Linux. This commentary, along with interim versions and code patches of the programming source code, is generally maintained and publicly accessible in these venues and at archiving sites.

7. Because Linux is developed publicly, through a community effort, IBM's Linux development efforts are not centralized. IBM developers working on Linux contributions are spread throughout IBM, working in numerous different areas of technology development, in many different geographical locations across the globe.

8. Similarly, neither the LTC, nor IBM generally, has any policy or formal process for centrally maintaining internal development material (e.g., programming notes, design documents, and internal code drafts) of individual IBM programmers who participate in the Linux community and contribute to Linux. Programmers who contribute to Linux are generally at their discretion, subject to IBM's general corporate guidelines, as to whether they create any such material at all, and there is no uniformity in what materials are created.

9. In order to collect all of the development history documentation sought by SCO, it would be necessary to search the individual offices and workstations of each of the more

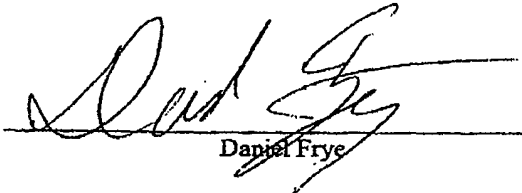
than 300 IBM developers throughout the world who have made Linux contributions. It would also be necessary to interview individual managers, team leads, support staff and all programmers for each of the more than 100 Linux projects that IBM has established since it initiated its Linux development efforts in 1999 to determine whether that specific project utilized any shared server space that might contain development documentation related to that project.

10. The identification and collection of all of this documentation would require extraordinary effort, significantly burdening IBM. I estimate that the materials requested amount to hundreds of thousands of documents, comprising a million pages or more of paper. The production of these documents would require a concerted effort spanning many months and result in significant expenses of time, energy and money.

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

Executed: September 26, 2005

Beaverton, Oregon

  
Daniel Frye

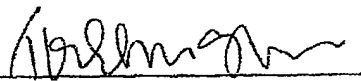
CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of September, 2005, a true and correct copy of the foregoing was sent by U.S. Mail, postage prepaid, to the following:

Brent O. Hatch  
Mark F. James  
HATCH, JAMES & DODGE, P.C.  
10 West Broadway, Suite 400  
Salt Lake City, Utah 84101

Stephen N. Zack  
Mark J. Heise  
BOIES, SCHILLER & FLEXNER LLP  
100 Southeast Second Street, Suite 2800  
Miami, Florida 33131

Robert Silver  
Edward Normand  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, NY 10504

  
\_\_\_\_\_  
Todd Shaughnessy