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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 DION L. JOHNSON II

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, Dion L. Johnson II, declare as follows:

1. I am retired. As a part-time activity, I serve as a Director of Wireless Cables Inc. in Santa Cruz, California, but this "job" is without pay or any financial interest in WCI. Wireless Cables Inc. designs, manufactures, and sells Bluetooth-based wireless cable-replacement products, or "Wireless Cables", under the brand name AIRcable.

2. 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.

3. From 1987 through 2001, I was employed by the Santa Cruz Operation, Inc. ("Santa Cruz") in various positions. I began my career at Santa Cruz in the Training Department, then went on to become Manager of a developer program that encouraged third party developers to write software for Santa Cruz's products. In 1993, I joined the Product Management Group as Product Manager for development systems. I later transferred to the Engineering Department as an Engineering Manager, and then subsequently returned to my role as a Product Manager, ultimately concentrating my efforts on Santa Cruz's UNIX-based operating systems.

4. In May 2001, Caldera International, Inc. ("Caldera") purchased the Server and Professional Services Divisions of Santa Cruz. Included in this acquisition was Santa Cruz's UNIX business, with which I was then employed. I began working for Caldera after the acquisition as an Engineering Manager. I left the company in April 2002.

Access to UNIX Source Code

5. Throughout the course of my employment with Santa Cruz, I could have access to UNIX System V source code ("System V code") because it was maintained on and available through the company's servers.

6. Through its Engineering Services department, Santa Cruz frequently made arrangements for customers or other software development companies to have access to and review System V code. If one of Santa Cruz's original equipment manufacturers ("OEMs"), other partners, software development program participants, or even one of its individual customers requested source code access, Santa Cruz typically would provide access to the source code.

7. Santa Cruz also licensed UNIX and other Santa Cruz-produced source code to OEMs, academic institutions, and other customers; some of these licenses would authorize the licensees to modify the source code and to develop derivative works.

Santa Cruz's Ownership of UNIX Assets

8. In December 1995, Santa Cruz acquired certain UNIX assets, including the UnixWare product line, from Novell for approximately $53,000,000.

9. I was not personally involved in the transaction between Santa Cruz and Novell.

10. While I was not personally involved in the transaction between Santa Cruz and Novell, through my work as a product manager for Santa Cruz's UNIX products, I gained some understanding of what Santa Cruz had acquired with respect to rights to the System V code. I understood and believed that Santa Cruz had obtained rights to control (through licenses) the disclosure of the System V code. I did not understand or believe that Santa Cruz had obtained

the right to control the entirety of UNIX or System V methods and concepts or that it had the right to control code, modifications or derivative works which were developed by other System V licensees.

11. While I was employed at Santa Cruz, I cannot recall any discussion of an attempt by Santa Cruz to control the methods and concepts which are contained in UNIX. In fact, any such discussion would have been pointless because the methods and concepts of UNIX had been publicly revealed and were familiar to many students, programmers, and others for decades before Santa Cruz acquired the UNIX assets. Furthermore, it was to Santa Cruz's advantage that the methods and concepts related to UNIX should be propagated to other software because this enhanced the standing and power of the UNIX (and Linux) environment.

12. Evidence of the fact that UNIX methods and concepts had been widely known for years prior to 1995 can be found in Lions' Commentary on UNIX 6th Edition, with Source Code, written by John Lions in 1976. The book contains the complete source code of the 6th edition UNIX kernel and commentary which explains the UNIX methods and concepts. Investigation of software development literature going back as far as the 1960s will show that many of the "UNIX methods and concepts" were simply common knowledge among operating system software developers (or that they would be obvious solutions to OS needs). UNIX was one of many operating systems that incorporated, aggregated, and utilized well known software techniques that had been known for years.

13. Further evidence of the widely-known nature of UNIX methods and concepts is found in the 1978 Bell Labs publication, The Bell System Technical Journal. An article titled, "The UNIX Time Sharing System", written by Ken Thompson and Dennis Ritchie, appears in

the Bell Labs book. Mr. Thompson and Mr. Ritchie were the pioneers of UNIX development. In the article Mr. Thompson and Mr. Ritchie describe UNIX methods and concepts in great detail.

14. While Santa Cruz owned certain rights to the UNIX System V source code, I never believed that the methods and concepts associated with UNIX were or could be controlled by Santa Cruz.

Santa Cruz's Involvement in Standardization

15. Santa Cruz supported and promoted the development of UNIX standards. It did so in large part because it did a significant amount of business with the United States government, and the government demanded common UNIX standards from its vendors. This support and promotion began in 1983 when Santa Cruz first began working on the XENIX operating system for and with Microsoft Corporation. Note that UNIX standards are also incorporated in the POSIX standards (promulgated by the IEEE).

16. In August 1997, I met with a group of active players in the Intel-compatible Unix and Linux market at Santa Cruz's headquarters in August 1997 to form a group which was later called "86Open".

17. The goal of 86Open was to create a common programming and binary interface for the various Unix and Linux flavors running on Intel hardware.

18. Leading members of 86Open included then-Caldera CEO Bryan Sparks and Linux founder Linus Torvalds.

19. As part of the initial 86Open standardization effort, various participants proposed creating a new application binary interface (ABI) specification ("Spec 150") that would enable a

commercial software application, in binary form, to run on a variety of operating systems that supported this ABI. This means that a single packaged product could be used on and with a variety of commercial operating systems.

20. One of the aspects of software standardization in general involves the packaging of executable (compiled) programs. In the later (SVR4) Unix world, the ELF binary format was widely used, and Santa Cruz supported the idea that this (ELF) binary package format should be a widely used, universal, and and freely useable standard.

21. The effort to create a standard ABI that would run on both UNIX and Linux platforms ultimately proved unnecessary because certain Santa Cruz engineers (and maybe others) created and produced an application called "lxrun". Lxrun was a kernel modification to UNIX which made it possible to run Linux applications on Santa Cruz's UNIX-based systems and, later, on Sun's UNIX-based systems as well.

Santa Cruz's Linux Strategy

22. In the early 1990s, Santa Cruz became aware of the development of Linux as a UNIX-like operating system and knew that there were many technical similaries between Linux and UNIX.

23. Santa Cruz (and Caldera) eventually determined that Linux presented promising opportunities and decided to develop technologies to provide interoperability between Linux and its UnixWare and OpenServer operating systems.

24. During the period from approximately 1997 to 2001, Santa Cruz had a policy of allowing employees who worked on UNIX product development to work on and make contributions to Linux (and other "open source" software) at the same time. I was aware that

some engineers would work on UNIX product development at Santa Cruz during the day and who would then go home at night to work on and make contributions to Linux. Santa Cruz knew that certain employees were acting in this manner, and the company did nothing to discourage or stop the practice. In fact, we encouraged it as we believed that the Linux and Unix technical heritages were complementary and should, increasingly, be merged. I saw nothing wrong with this practice or with the company's decision to allow its employees to work in this manner

Caldera's Purchase of the UNIX Assets From Santa Cruz

25. Santa Cruz had a good year in 1999 due to the Y2K phenomenon. In 2000, however, businesses dramatically reduced their technology spending, resulting in shrinking revenues for Santa Cruz. In addition to the dramatic downturn in revenues after the Y2K hysteria died down, Santa Cruz experienced declining sales of it long-time Unix-based product, SCO OpenServer. These factors and presumably others caused Santa Cruz to decide to sell its UNIX assets. During this period, the process of Caldera acquiring Santa Cruz's UNIX business began.

26. In May 2001, Caldera purchased the Server Software and Professional Services Divisions of Santa Cruz. Included in this acquisition were Santa Cruz's UNIX assets, as well as various other software assets that were developed by Santa Cruz

27. The CEO of Caldera at that time was Ransom Love. Mr. Love stated that Caldera would pursue the creation of a new product that would combine Unix and Linux. I recall being present in company meetings where Mr. Love discussed his plan to unite the two operating systems, including using code from UNIX to improve Linux by making it more reliable, powerful and "enterprise hardened".

Open-Sourcing of the "Ancient UNIX"

28. I and many of my co-workers at Santa Cruz and then at Caldera were advocates of the open source concept. We encouraged the company's management to make the source code from the "Ancient UNIX" releases (Versions 1 through 7 and UNIX/32V) available to enthusiasts and fans of UNIX, including many technical experts in the open source community. Santa Cruz management, including CEO Doug Michels, approved the proposal to make the "Ancient UNIX" releases available to these communities, and this program was later continued and expanded by Caldera and its CEO, Ransom Love.

29. In January 2002, Caldera made available Versions 1 through 7 of UNIX, as well as UNIX/32V, to the public under a "BSD-style" license. I was one of the Caldera employees who notified the UNIX and Linux enthusiasts of the contribution.

Caldera's Participation In Linux Standardization

30. Caldera participated in the Linux Standard Base (LSB). The purpose of LSB was to define the common core of components, as well as interfaces, file and data formats, and program behavior that can be expected to be found in any version of Linux. Caldera believed that the LSB would reduce the fragmentation and inconsistency among the versions of Linux that had then been developed by companies such as Red Hat and others. Increased standardization and common features would lead to increased ease of use by the consumer and to increased revenues for the companies. This support of open standards was a continuation of technical and business policies that had been practiced by Santa Cruz since its beginning.

31. Compliance with the LSB requires that a Linux distribution contain material explicitly specified by the LSB and perform according to certain Linux- and UNIX-based standards to which the LSB refers.

32. I understand that SCO claims that certain materials in Linux infringe SCO's alleged copyrights, specifically: (a) header files required by the Open Group's Single Unix Specification (SUS), (b) header files relating to the Streams technology, and (c) files and specifications relating to the Executable and Linking Format (ELF).

33. With respect to ELF, it is important to note that ELF is not executable code and it is not a program, as such. ELF is a format or a data packaging schema and related protocols, comparable to HTML. Any systems programmer is familiar with ELF. Some part of the ELF specification is expressed in source code, as header files, and these files must be accessible and useable by the programs so packaged.

34. Whether explicitly or by reference to the requirements of UNIX standards, the LSB requires that a Linux distribution contain all of the SUS header files which, I understand, SCO claims were misused by IBM. The LSB also requires that a Linux product contain the same ELF code that SCO claims was misused by IBM.

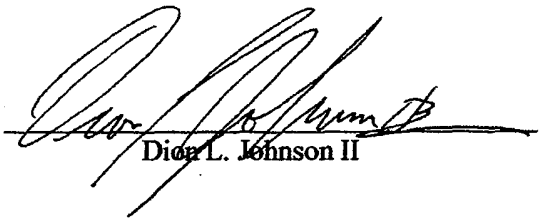
35. I believe that the SUS header files and ELF code were in Linux, and that the Streams header files were available for use with Linux, while I was employed at Santa Cruz and later at Caldera. Anyone with kernel or software development experience with Linux is aware of these files. Some of the material is in Linux because of the efforts of Santa Cruz and Caldera to standardize Linux, and Caldera incorporated the material into its own Linux products. Some of this material is in Linux because SCO and other UNIX licensees promoted the use of UNIX

source code in universities in support of teaching computer science and systems design, over many years.

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

Executed: September 15, 2006.

Scotts Valley, California



Dion L. Johnson II