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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 PAUL MCKENNEY**

**Civil No. 2:03CV-0294 DAK**

**Honorable Dale A. Kimball**

**Magistrate Judge Brooke C. Wells**

I, Paul McKenney, declare as follows:

1. I am currently employed by International Business Machines Corporation (“IBM”) as a Distinguished Engineer in IBM’s Linux Technology Center (“LTC”). I have worked for IBM since 1999.
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. I understand that SCO has alleged in Item 2 of its Final Disclosures that I disclosed DYNIX/ptx RCU (Read-Copy Update) to Linux.
4. Before it was acquired by IBM, I worked for Sequent Computer Systems, Inc. (“Sequent”). At Sequent, John D. Slingwine and I invented a technique called Read-Copy Update (“RCU”). RCU is an operating system synchronization mechanism that allows concurrent reading and updating data while maintaining data coherency.
5. Sequent filed a patent application for RCU on July 19, 1993, and the patent was granted on August 15, 1995. (See Exhibit 1 (U.S. Patent # 5,442,758 (describing the parallel RCU infrastructure)).) In subsequent years, further patents were granted based on the same patent application. (See Exhibit 2 (U.S. Patent # 5,608,893 (describing the use of RCU to synchronize data between a pair of SMP/NUMA computer systems)); Exhibit 3 (U.S. Patent # 5,727,209 (describing doing an atomic update by copying the data item, updating the copy,

and then substituting the updated copy into the data structure)); Exhibit 4 (U.S. Patent # 6,219,690 (describing the “change in mode” aspect of RCU)).)

6. I have published a number of papers on RCU. One of these papers was “Read-Copy Update: Using Execution History to Solve Concurrency Problems” (with John D. Slingwine), which describes and analyzes the RCU mechanism in DYNIX/ptx, describes application to linked list update and log-buffer flushing, defines ‘quiescent state’, and includes both measured and analytic evaluation. (See Exhibit 5).

7. In developing RCU, I did not review or use any code, methods or concepts from the Unix System V operating system. I developed RCU using publicly described operating system primitives including locking, memory allocation, and scheduling-clock interrupts, for example, as provided by DYNIX (a Berkeley Software Design-based) operating system. In fact, to the best of my knowledge, System V does not contain code, methods or concepts relating to RCU.

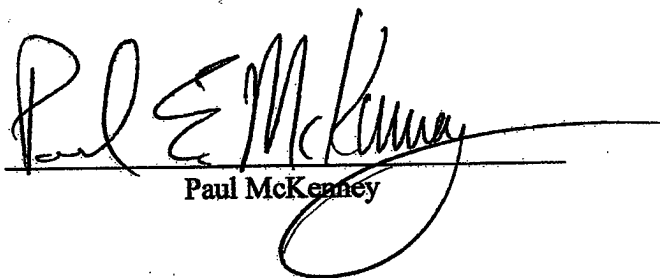
8. The RCU material that IBM has contributed to Linux was original IBM or Sequent work; it did not include Unix System V material; it was not a modification or derivative work of Unix System V; and it was not made with reference to Unix System V.

9. I am familiar with the Linux implementation of RCU. As I previously testified in my deposition in this case, the Linux implementation of RCU is an implementation of concepts published in the RCU patent issued in 1995. (See Deposition of Paul McKenney at 117-121.)

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

Executed: September 11, 2006.

Beaverton, Oregon

  
Paul McKenney