

238

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 8th Avenue
New York, NY 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

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

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

THE SCO GROUP, INC.

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

DECLARATION OF K.Y. SRINIVASAN
ON BEHALF OF NOVELL, INC.

Civil No. 2-03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, K.Y. Srinivasan, declare as follows:

1. I am currently employed as a Distinguished Engineer at Novell, Inc. ("Novell").
2. I began employment at AT&T in 1988. At AT&T, I worked, among other things, as an architect of UNIX System V, Release 4. I moved to USL after AT&T formed the USL subsidiary. While at AT&T/USL, I was a Distinguished Engineer. I moved to Novell in 1993, when Novell purchased USL. Since 1993, I have been remained an employee of Novell, with the exception of a brief period in 2000-2002.
3. This declaration is submitted in connection with the lawsuit filed by the SCO Group, Inc. ("SCO"), against International Business Machines, Corporation ("IBM"), Caldera Systems, Inc. v. International Business Machines, Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003).
4. This declaration is based on Novell's knowledge and understanding of the matters described herein. I am authorized to submit this Declaration on behalf of Novell.
5. It is Novell's understanding that SCO has alleged that certain header files and certain Executable and Linking Format ("ELF") material in Linux infringe UNIX intellectual property that SCO purports to own.
6. By the mid-1990s, Novell participated (with IBM) in a standards-setting consortium known as the Tool Interface Standards (TIS) Committee. TIS has published standards relating to object file formats: The Portable Format Specification, version 1.1, and the Executable and Linking Format (ELF) Specification, version 1.2. Both standards cite USL as the "Industry Source" of the ELF format. (Exhibit 1 (TIS Committee, The Portable Formats Specification, version 1.1 (October 1993)), at i); Exhibit 2 (TIS Committee, the Executable and Linking Format (ELF) Specification, version 1.2 (May 1995)), at ii.) Any code that implements the ELF format of the TIS Specification to be TIS-compliant (including Linux ELF code) is governed by these standards.

7. More than a decade ago, Novell granted IBM and others a worldwide license to use the information disclosed in the TIS Specification to make its software TIS-compliant. Novell was a member of the TIS Committee by May 1995, when the committee released version 1.2 of the ELF Specification and stated, in the first sentence following the cover page: "The TIS Committee grants you a non-exclusive, worldwide, royalty-free license to use the information disclosed in this Specification to make your software TIS-compliant; no other license, express or implied, is granted or intended hereby." It was Novell's understanding and intent at the time this license was granted that it would make the ELF format freely available to everyone, regardless of their possession of a UNIX license.

8. In the 1990s, Novell participated in an industry consortium with other UNIX vendors, including IBM, to draft a single unified specification of the UNIX Systems Services. This effort led to a draft specification known as "SPEC 1170."

9. In the 1990s, Novell granted IBM and others a right to use the files specified in SPEC 1170, including the Single Unix Specification (SUS).

10. In March 1994, the participants in the SPEC 1170 project and X/Open signed an agreement that recognized that each participant owned intellectual property in SPEC 1170. (Exhibit 3 (Letter Agreement concerning the X/Open Fast Track Process for the Common APIs for UNIX-based Operating Systems ("SPEC 1170")).) When this agreement was executed, Novell owned copyrights to materials in SPEC 1170. This agreement was executed prior to Novell's Asset Purchase Agreement with The Santa Cruz Operation ("Santa Cruz"), wherein Novell sold certain UNIX assets to Santa Cruz.

11. Each party then "grant[ed] to X/Open a non-exclusive perpetual, world-wide, royalty-free, paid-up, irrevocable license [sic] to prepare derivative works and to use, execute, reproduce, display and perform the [SPEC 1170] Specification." (Exhibit 3 at 1.) X/Open, in turn, granted participants in X/Open (including IBM) "a non-exclusive, perpetual, world-wide,

royalty-free, paid-up, irrevocable license to prepare derivative works and to use, execute, reproduce, display and perform X/Open Specifications and such derivative works.” (Exhibit 3 at 1-2.) Novell granted IBM a license to any standard UNIX header files as specified in the SPEC 1170 Specification.

12. Novell further understands that in 1994 USL/Novell and others entered into a Cross-License Agreement concerning common API specifications with respect to SPEC 1170, wherein USL/Novell granted IBM (among others) a license to the API specification as set forth in SPEC 1170.

13. In participating in UNIX standards projects like SPEC 1170, and the Single Unix Specification, Novell understood that it was ceding control to the elements specified by the standards. Novell believed that the unnecessary variability of UNIX systems hindered the growth of UNIX usage, and that efforts to standardize Unix across platforms—whether derived from AT&T UNIX code or not—would ultimately be in Novell’s best interests.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed on this 22 day of September, 2006 in Princeton Junction, New Jersey.

A handwritten signature in black ink, appearing to read "K.Y. Srinivasan", is written over a horizontal line.

K.Y. Srinivasan