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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

THE SCO GROUP, INC., a Delaware corporation, Plaintiff, vs. INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation, Defendant.	**PLAINTIFF SCO'S RESPONSE TO IBM'S THIRD SET OF INTERROGATORIES** Case No. 2:03-CV-0294 DAK Hon. Dale A. Kimball Magistrate Judge Brooke C. Wells

Pursuant to Federal Rules of Civil Procedure 26 and 33(b), Plaintiff The SCO Group, Inc.

("SCO") hereby submits its objections and responses to Defendant International Business

Machines Corporation's ("IBM") Third Set of Interrogatories (the "Interrogatory"), dated October

29, 2003. The objections to interrogatories set forth herein are made by and through the

undersigned attorneys. SCO reserves the right to supplement these responses and objections because, among many reasons, contention interrogatories at this early stage of the litigation are clearly premature--before even a single deposition of either party has been conducted and before critical discovery has been provided by IBM.

GENERAL OBJECTIONS TO INTERROGATORY 14

1.   SCO objects to the Interrogatory on the ground that it is premature and should not be answered until the close of discovery. SCO's objections and responses are based on information now known to SCO. Discovery is in the initial stages in this case, especially for IBM's newly asserted counterclaims. For many of IBM's counterclaims, such as those asserting patent infringement, IBM has relied on notice pleading and has provided no identification of the claims which are allegedly infringed, an open-ended identification of allegedly infringing products, and no claim charts to show infringement. The few allegedly infringing products which IBM has identified to date are complex, software products. As discovery progresses in this proceeding, SCO will obtain a greater understanding of IBM's causes of action. It is expected that additional information underlying SCO's defenses will be obtained in the discovery process. Accordingly, for these reasons and others, SCO reserves the right to supplement this interrogatory answer at the appropriate time.

The premature nature of the Interrogatory is further highlighted by the fact that IBM has filed a Second Amended Counterclaim since the filing of the Interrogatory, which SCO is not yet required to answer. As a result, there are no longer any affirmative defenses pending as a technical matter. SCO nonetheless has answered below based on the previously filed affirmative defenses it expects it will file again. To the extent SCO files any different or additional

affirmative defenses in response to the Second Amended Counterclaim, SCO reserves the right to amend, modify or supplement its objections and responses.

2. SCO objects to the Interrogatory on the ground that it seeks "all facts concerning each affirmative defense asserted" and is therefore overly broad and unduly burdensome.

3. SCO objects to the Interrogatory insofar as the information requested is already provided in SCO's Second Amended Complaint and SCO's Reply to IBM's Amended Counterclaims, the allegations of which are incorporated by reference herein.

4. SCO objects to the Interrogatory insofar as it imposes obligations on SCO beyond those contemplated in the Federal Rules of Civil Procedure and/or the Local Rules of the District of Utah.

5. SCO objects to the Interrogatory to the extent that it purports to seek information protected by the attorney-client privilege or any other applicable privilege or immunity from discovery.

6. SCO objects to the Interrogatory to the extent that it seeks production of work product, mental impressions, conclusions, opinions, or legal theories of SCO's counsel, experts, and/or consultants developed in connection with or in anticipation of this or other litigation or other business transactions not related to this litigation.

7. To the extent the answer to this interrogatory is not contained in the text of this answer, it is contained in the documents referred to herein. The burden of deriving or ascertaining the answer from these documents is substantially the same for SCO as it is for IBM. For the most part, the documents are publicly available, have already been produced or the documents originated with IBM. Nevertheless, SCO will provide IBM with a reasonable opportunity to inspect and make copies of such documents.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORY 14

Interrogatory No. 14

Please describe, with specificity and in detail, all facts concerning each affirmative defense asserted in SCO's Answer to IBM's Amended Counterclaims.

Response to Interrogatory No. 14

SCO's responses regarding the affirmative defenses are as follows:

1.   IBM fails to state a claim upon which relief may be granted.

Without waiving the foregoing objections, SCO objects to providing "all facts" concerning this affirmative defense because this Affirmative Defense involves pure questions of law. Accordingly, the interrogatory is improper and beyond the scope of permissible discovery pursuant to Fed. R. Civ. P. 33 inasmuch as it is directed at this defense. To the extent a response is required, SCO incorporates by reference its answer to each of its other affirmative defenses set forth below.

2.   IBM's claims are barred by the doctrines of waiver, estoppel, acquiescence, and/or laches.

Without waiving the foregoing objections, Plaintiff refers to its answer below regarding Item 3. In addition, IBM became a licensee of Unix System V, on which UnixWare (alleged to infringe U.S. Patent No. 4,814,746 ("the '746 patent") and U.S. Patent No. 4,953,209 ("the '209 patent")) and OpenServer (alleged to infringe the '746 patent) are based, in the 1980's. In addition, IBM has known of UnixWare and OpenServer for more than six years. Since at least 1991, Unix System V has incorporated LZ-type data compression methods. Unix System V is a "core" operating system, of which UnixWare and OpenServer are specific modifications and/or derivative works. These modifications typically enable Unix System V to operate on a particular machine type. SCO (or its predecessor) has entered into service support agreements with IBM to

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provide support for SCO's products, including UnixWare and OpenServer. Further, IBM has resold UnixWare and OpenServer.

SCO entered into a joint development agreement with IBM on October 23, 1998 to develop Project Monterey (the "Project Monterey agreement"). Project Monterey established a high-volume, enterprise-class UNIX product line that ran across Intel IA-32 and IA-64 processors and IBM's Power processors in systems that range from departmental to large data center servers. Project Monterey aggregated IBM's AIX, SCO's UnixWare and Monterey for IA-64 (code name Monterey/64) into a single product line. As part of the Project Monterey initiative, a UNIX operating system was developed for Intel's IA-64 architecture using IBM's AIX operating system's enterprise capabilities complemented with technology from SCO's UnixWare operating system and Sequent's enterprise technologies. In addition, IBM licensed AIX technology to SCO for inclusion in UnixWare and to promote this offering to the IA-32 market. Based on the cooperative nature of Project Monterey, IBM knew that UnixWare incorporated LZ-type data compression methods since at least 1998.

Reliant HA was developed by Pyramid Technology Corporation in the early 1990s. SCO acquired a non-exclusive license to sell this product to its customers in 1996. Other companies have similar licenses, of which IBM is aware. To the extent that additional facts are uncovered during the course of discovery, SCO reserves the right to supplement this response when fact and expert discovery have been completed.

3. IBM's contractual right to license, distribute or use AIX or Dynix/ptx has been properly and validly terminated, and any claim based thereon is barred.

Without waiving the foregoing objections, Plaintiff offers the following facts concerning this Affirmative Defense: As fully set forth in SCO's Second Amended Complaint, SCO is the

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successor to AT&T under the Software Agreement originally executed by and between AT&T and

IBM on February 1, 1985, and designated a Software Agreement Number Soft-0015 ("AT&T /

IBM Software Agreement"). The AT&T / IBM Software Agreement specifies the terms and

conditions for use of UNIX System V source code, documentation and methods related thereto,

together with modifications and derivative works created by IBM based on UNIX System V

(collectively, the "Software Products"). With respect to the rights granted for use of the Software

Products under Section 2.01 of the Software Agreement, IBM received the following:

> [A] personal, *nontransferable* and nonexclusive right to *use* in the
> United States each Software Product identified in the one or more
> Supplements hereto, *solely for Licensee's own internal business
> purposes* and solely on or in conjunction with Designated CPUs for
> such Software Product and to *prepare derivative works based on*
> such Software Product, provided the resulting materials are *treated
> hereunder as part of the original Software Product.* [Emphasis
> added.]

IBM violated § 2.01 of the AT&T / IBM Software Agreement by, *inter alia*, using, and

assisting others to use, the Software Products and IBM's modifications and derivative works based

on the Software Product (i.e., the "resulting materials") for external purposes different from, and

broader than, IBM's own internal business purposes. By publicly transferring IBM's

modifications and derivative works based on the Software Products (i.e. AIX) to Linux, IBM has

failed to treat these resulting materials as part of the original Software Product. These

contributions include, but are not limited to, those items previously identified in SCO's

supplemental answer to Interrogatory 1 served on January 12, 2004.

Further, IBM agreed in § 2.05 of the AT&T / IBM Software Agreement to the following

additional restrictions on the use of the Software Products:

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> No right is granted by this Agreement for the use of Software
> Products directly *for others, or for any use of Software Products by
> others*. [Emphasis added].

IBM breached § 2.05 of the AT&T / IBM Software Agreement by, *inter alia*, publicly transferring IBM's modifications and derivative works based on the Software Products (i.e. AIX) to Linux. The contribution of these modifications or derivative works based on the Software Products has made them available for use for others and by others. By way of example and not limitation, IBM has made available for use for others and by others those items previously identified in SCO's supplemental answer to Interrogatory 1 served on January 12, 2004.

Further, IBM agreed in § 7.10 of the AT&T / IBM Software Agreement to the following restrictions on transfer of the Software Product, including AIX, the modification or derivative work based on UNIX System V:

> [N]othing in this Agreement grants to Licensee the right to sell,
> lease or otherwise transfer or dispose of a Software Product *in
> whole or in part*. [Emphasis added].

IBM breached § 7.10 of the AT&T / IBM Software Agreement by, *inter alia*, transferring portions of the Software Products or modifications or derivative works based thereon (i.e., AIX), including but not limited to the AIX Journaling File System and all other UNIX-based source code publicly announced by IBM, to Linus Torvalds for open distribution to the general public under a software license that destroys the proprietary and confidential nature of the Software Products. Other contributions made "in whole or in part" in violation of this paragraph include, but are not limited to, those items previously identified in SCO's supplemental answer to Interrogatory 1 served on January 12, 2004. IBM has further stated its intention to transfer the entirety of AIX into open source in anticipatory violation of its obligations under § 7.10 of the AT&T / IBM Software Agreement.

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Further, IBM agreed in Side Letter ¶ 9, a substitute provision to § 7.06(a) of the AT&T /

IBM Software Agreement, to the following restrictions on confidentiality of the Software Product,

including AIX as a modification or derivative work based on UNIX System V:

> Licensee agrees that it shall hold Software Products subject to this
> Agreement *in confidence for AT&T*. Licensee further agrees that it
> *shall not make any disclosure* of such Software Products to anyone,
> except to employees of Licensee to whom such disclosure is
> necessary to the use for which rights are granted hereunder.
> Licensee shall appropriately notify each employee to whom any
> such disclosure is made that such disclosure is made in confidence
> and shall be kept in confidence by such employee. [Emphasis added].

In recognition of SCO's right of confidentiality of the Software Products and the

modifications and derivative works based thereon (i.e., AIX) IBM directs all customers who need

to view AIX source code to first obtain a source code license from SCO as a condition to viewing

any part of AIX. For example, SCO received a letter on or about March 4, 2003 from Lockheed

Martin Corporation requesting verification of the existence of a Software Agreement by and

between Lockheed and SCO as a condition to Lockheed obtaining access to view AIX source code.

The letter stated, in part, as follows:

> LMATM is in the process of licensing [AIX] from IBM to be used
> for integration purposes only. Per the attached supplement to the
> subject to document, contained within the AIX source code is third
> party IP which must be licensed from the owner prior to IBM
> providing the AIX source code to any licensee (see Prerequisite
> Source License, Para. 2.2).
>
>   * * *
>
> 2.2 Prerequisite Source License. *IBM cannot disclose* (includes
> viewing) certain Third-Party Source Code *to any party who does
> not have a license that permits access to the Code*. Prior to
> receiving or accessing the Source Code described above in this
> Supplement, LMATM must obtain the following Source Code
> Licenses:
>
> a) *AT&T Technologies, Inc. AT&T Information Systems, Inc., or
> UNIX™ Systems Laboratory Software Agreement* No. SOFT-

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-- and AT&T Information Systems, Inc. Software Agreement Supplement for Software Product AT&T UNIX System V. Release 4.0, or AT&T Information Systems, Inc. Schedule for Upgrades (from UNIX Systems V. Release 3.1 to UNIX System V. Release 3.2 or from UNIX System V. Release 3.1 International Edition to UNIX System V. Release 3.2 International Edition) to *equivalent SCO Group License.* [Emphasis added].

Despite being well aware of the need to preserve the confidentiality of the Software product and the modifications and derivative works based thereon (i.e., AIX) IBM breached its obligation of confidentiality, and has failed to otherwise hold the Software Products in confidence for SCO by contributing portions of the Software Product to open source development of Linux , including, but not limited to, those items previously identified in SCO's supplemental answer to Interrogatory 1 served on January 12, 2004.

Further, IBM agreed in §4.01 of the AT&T / IBM Software Agreement to restrictions on export of the Software Product, as follows:

Licensee agrees that it will not, without the prior written consent of AT&T, export, *directly or indirectly,* Software Products covered by this Agreement to any country outside of the United States. [Emphasis added].

This provision was later modified to allow export rights to several countries outside the United States. However, SCO or its predecessors have not given IBM permission to allow it to indirectly make available all or portions of the Software Product or IBM's modifications or derivative works to any other countries outside the United States including India and particularly those that are subject to strict technology export control by the United States government: *viz.,* Cuba, Iran, Syria, North Korea and Libya. By exporting the Software Product or modifications or derivative works based on the Software Products (i.e. AIX) to India, IBM has breached this term of the agreement. Moreover, by contributing IBM's modifications and derivative works based on

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the Software Products to Linux, including but not limited to those items previously identified in SCO's supplemental answer to Interrogatory 1 served on January 12, 2004, IBM breached §4.01 of the AT&T / IBM Software Agreement. By such contribution of the Software Products and modifications or derivative works based thereon (i.e., AIX) to Linux, IBM has directly or indirectly exported such resulting materials to anyone in the world with a computer.

IBM is aware of the importance of these restrictions and the need to protect the confidentiality of UNIX System V, including modifications and derivatives such as AIX and Dynix/ptx. Indeed, years after signing the original license agreements, IBM executed Amendment X. Paragraph 3.7 of Amendment X provides examples under which IBM is entitled to disclose UNIX and AIX source code to its development partners – and examples under which IBM is not entitled to make such disclosures. Paragraph 3.7 of Amendment X provides as follows:

> The following illustrations are intended to clarify and illustrate the relief provided in Subsection 2.1 of this Agreement [relating to disclosure of source code to contractors].
>
> Company A, sublicensee of the Sublicensed Product [AIX] is a general computing system manufacturing firm. IBM may distribute Source Copies to Company A for Authorized Purposes.
>
> *However, IBM may not distribute Source Copies to Company A for purposes of making modifications to adapt the Sublicensed Products [AIX] as a general operating system for Company A's general computer hardware system.* [Emphasis added].

Paragraph 3.7 of Amendment X states that IBM may not use any Sublicensed Product from SCO, including AIX, for the purposes of making modifications to adapt AIX as a competing general operating system. IBM nonetheless has chosen to adapt UNIX and AIX for use in a competing operating system (i.e. Linux) in violation of its obligations to SCO.

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IBM collaborated with third parties in releasing source code to the general public, including but not limited to those items previously identified in SCO's supplemental answer to Interrogatory 1 served on January 12, 2004. Such actions have resulted in IBM thereby breaching its contracts. Contractors who worked on the Open Source Development Laboratory assisted IBM employees in transferring information technology to Linux. Examples of such transfer of information include emails written to and from IBM employees, including Kevin Corry, Mike Spreitzer, A. Prasad, Ian Romanick, Ben Rafanello, Niels Christiansen, and Juan Gomez, which imparted AIX information technology during at least the period from September 2000 through November 2002.

Based on the forgoing breaches of the license agreement, SCO had the self-executing contractual right to terminate IBM's right to use and distribute the Software Product, including modifications and derivative works based thereon. This authority is contractually granted under the following provisions:

> If Licensee fails to fulfill one or more of its obligations under this Agreement, AT&T may, upon its election and in addition to any other remedies that it may have, at any time terminate all the rights granted by it hereunder by not less than two (2) months' written notice to Licensee specifying any such breach, unless within the period of such notice all breaches specified therein shall have been remedied; upon such termination Licensee shall immediately discontinue use of and return or destroy all copies of Software Products subject to this Agreement. [AT&T / IBM Software Agreement, §6.03]

> Regarding Section 6.03 of the Software Agreement and Sections 2.07 and 3.03 of the Sublicensing Agreement, we will not terminate your rights for breach, nor will we give notice of termination under such Sections, for breaches we consider to be immaterial. We agree to lengthen the notice period referenced in such Sections from two (2) months to one hundred (100) days. If a breach occurs that causes us to give notice of termination, you may remedy the breach to avoid termination if you are willing and able to do so. In the

event that a notice of termination is given to you under either of such Sections and you are making reasonable efforts to remedy the breach but you are unable to complete the remedy in the specified notice period, we will not unreasonably withhold our approval of a request by you for reasonable extension of such period. We will also consider a reasonable extension under Section 2.07 of the Sublicensing Agreement in the case of a Distributor who is making reasonable efforts to remedy a breach.

In any event our respective representatives will exert their mutual good faith best efforts to resolve any alleged breach short of termination. [Side Letter, ¶5]

In light of IBM's unlawful actions, and consistent with its rights under the Software Agreement, SCO delivered a notice of termination to Sam Palmisano, Chief Executive Officer of IBM (the "AIX Termination Notice") for IBM's breaches of the Software (and Sublicensing) Agreement by IBM. Following delivery of the AIX Termination Notice, SCO took every reasonable step to meet and confer with IBM regarding IBM's breach of the AT&T / IBM Software Agreement and Related Agreements. For instance, on June 2, 2003 SCO met with IBM representatives, including Bob Anderegg, Don Rosenberg, Ron Lauderdale, Alfred Spector, and Alec Berman, at IBM's headquarters and identified various breaches of the license agreement by IBM. Neither at that meeting nor thereafter in meetings with senior IBM executives did IBM indicate it would make any effort to correct its past breaches or state that it would discontinue breaching the agreement.

IBM disregarded SCO's rights under the IBM Related Agreements by failing to undertake any efforts to cure its numerous and flagrant violations thereunder. As a result, effective June 13, 2003, SCO properly terminated the IBM Related Agreements and, accordingly, IBM has no further rights thereunder. Despite SCO's valid termination, IBM nonetheless continues to operate under the IBM Related Agreements, and use the Software Products and Source Code thereunder as

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though its rights under the Agreement have not been terminated. IBM no longer has any right to use the UNIX Software Code or make modifications or derivative works thereunder. In fact, IBM is contractually obligated to "immediately discontinue use of and return or destroy all copies of Software Products subject to this Agreement." As a result, IBM's contractual right to license, distribute or use AIX has been properly and validly terminated, and any claim based thereon is barred.

Additionally, SCO is the successor to AT&T under that certain Sublicensing Agreement originally executed by and between AT&T and IBM designated as SUB-00015A (the "AT&T / IBM Sublicensing Agreement"). The AT&T / IBM Sublicensing Agreement grants the right to distribute object-based code of UNIX System V and modifications thereto and derivative works based thereon. SCO terminated IBM's right to use and distribute the Software Product, including derivative works and methods based thereon as of the AIX Termination Date, i.e., June 13, 2003. From and after the AIX Termination Date, any and all distributions of AIX by IBM are in violation of the AT&T / IBM Sublicensing Agreement.

As also fully set forth in SCO's Second Amended Complaint, SCO is the successor to AT&T under that certain Software Agreement originally executed by and between AT&T and Sequent designated as Software Agreement Number SOFT-000321 ("AT&T / Sequent Software Agreement"). The AT&T / Sequent Software Agreement specifies the terms and conditions for use of UNIX System V source code, documentation and methods relating thereto, together with modifications and derivative works created by IBM/Sequent based on UNIX System V (collectively, the "Software Products"). With respect to the rights granted for use of the System V source code under Section 2.01 of the AT&T / Sequent Software Agreement, Sequent received the following:

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[A] personal, *nontransferable* and nonexclusive right to *use* in the United States each Software Product identified in the one or more Supplements hereto, *solely for Licensee's own internal business purposes* and solely on or in conjunction with Designated CPU's for such Software Product. Such right to use includes the right to *modify* such Software Product and to *prepare derivative works based on* such Software product, provided the resulting materials are *treated hereunder as part of the original Software Product.* [Emphasis added.]

IBM violated §2.01 of the AT&T / Sequent Software Agreement by, *inter alia*, using, and assisting others to use the Software Products and IBM's modifications and derivative works based thereon (i.e., the "resulting materials") for external business purposes different from , and broader than, IBM's own internal business purpose. By publicly transferring IBM's modifications and derivative works based on the Software Products (i.e., Dynix/ptx) to Linux, IBM has failed to treat these resulting materials as part of the original Software Product as limited by other provisions in the agreement detailed below. These contributions include, but are not limited to, those items previously identified in SCO's supplemental answer to Interrogatory 1 served on January 12, 2004.

Further, Sequent agreed in §2.05 of the AT&T / Sequent Software Agreement to the following restrictions on the use of the Software Products:

No right is granted by this Agreement for the use of Software Products directly *for others, or for any use of Software Products by others.* [Emphasis added].

IBM breached Sequent's obligations under § 2.05 of the AT&T / Sequent Software Agreement by, *inter alia*, publicly transferring IBM's modifications and derivative works based on the Software Products (i.e. Dynix/ptx) to Linux. The contribution of these modifications or derivative works based on the Software Products has made them available for use for others and by others. These contributions include, but are not limited to, those items previously identified in SCO's supplemental answer to Interrogatory 1 served on January 12, 2004. IBM has even gone

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so far as to publish the Dynix/ptx copyright as part of the source code and documentation contribution of UNIX-derived RCU technology it has improperly made available to the open source community. The following copyright attribution is found in Linux kernel 2.4x:

> Copyright (c) International Business Machines Corp., 2001 This program is free software; you can redistribute it and/or modify it under the terms of the GNU General Public License as published by the Free Software Foundation; either version 2 of the License, or (at your option) any later version. This program is distributed in the hope that it is useful, but WITHOUT ANY WARRANTY; without even the implied warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE. See the GNU General Public License for more details. You should have received a copy of the GNU General Public License along with this program; if not, write to the Free Software Foundation, Inc., 59 Temple Place – Suite 330, Boston, MA 02111-1307, USA. Author: Dipankar Sarma *(Based on a Dynix/ptx implementation by Paul McKenney)*. [Emphasis added].

This publication of the RCU copyright is an example of IBM's blatant disregard of SCO's rights to control the use of the Software Product, including derivative works and modifications thereof, pursuant to § 2.05 of the AT&T / Sequent Software Agreement.

Further, Sequent agreed under § 7.06(a) of the AT&T / Sequent Software Agreement, to the following restrictions on confidentiality of the Software Product, including Dynix/ptx as a modification or derivative work based upon UNIX System V:

> Licensee agrees that it shall hold all parts of the Software Products subject to this Agreement *in confidence* for AT&T. Licensee further agrees that it *shall not make any disclosure* of any or all of such Software Products (including methods or concepts utilized therein) to anyone, except to employees of Licensee to whom such disclosure is necessary to the use for which rights are granted hereunder. Licensee shall appropriately notify each employee to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by such employee. [Emphasis added].

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IBM has breached Sequent's obligation of confidentiality by contributing portions of the Software Products and the modifications and derivative works based thereon (i.e., Dynix/ptx) to open source development of Linux, including but not limited to, those items previously identified in SCO's supplemental answer to Interrogatory 1 served on January 12, 2004.

Further, Sequent agreed in § 7.10 of the AT&T / Sequent Software Agreement to the following restrictions on *transfer* of the Software Product, including Dynix/ptx, the modification or derivative work based on UNIX System V:

> [N]othing in this Agreement grants to Licensee the right to sell, lease or otherwise transfer or dispose of a Software Product in whole or in part.

IBM breached Sequent's obligations under § 7.10 of the AT&T / Sequent Software Agreement by, *inter alia*, transferring portions of the Software Products or modifications or derivative works based thereon (i.e., Dynix/ptx), including Dynix/ptx source code, documentation and methods to the OSDL and/or Linus Torvalds for open distribution to the general public under a software license that destroys the proprietary and confidential nature of the Software Products. Other contributions made "in whole or in part" in violation of this paragraph include, but are not limited to, those items previously identified in SCO's supplemental answer to Interrogatory 1 served on January 12, 2004.

Further, export of UNIX technology is controlled by the United States government. Thus, SCO, Sequent, IBM and all other UNIX vendors are subject to strict export control regulations with respect to any UNIX-based customer distribution. To this end, Sequent agreed in § 4.01 of the AT&T / Sequent Software Agreement to restrictions on export of the Software Product, as follows:

> Licensee agrees that it will not, without the prior written consent of AT&T, export, *directly or indirectly*, Software Products covered by this Agreement to any country outside of the United States.