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COPY

Brent O. Hatch (5715)
HATCH, JAMES & DODGE, PC
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

Stephen N. Zack (admitted pro hac vice)
Mark J. Heise (admitted pro hac vice)
David K. Markarian (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
Bank of America Tower – Suite 2800
100 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

Robert Silver (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

Frederick S. Frei (admitted pro hac vice)
Aldo Noto (admitted pro hac vice)
John K. Harrop (admitted pro hac vice)
ANDREWS KURTH LLP
1701 Pennsylvania Avenue, Ste. 300
Washington, DC 20006
Telephone: (202) 662-2700
Facsimile: (202) 662-2739

*Attorneys for Plaintiff/Counterclaim- Defendant
The SCO Group, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim- Defendant,

vs.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim- Plaintiff.

**PLAINTIFF/COUNTERCLAIM
DEFENDANT SCO'S RESPONSE TO
DEFENDANT/COUNTERCLAIM
PLAINTIFF IBM'S FIFTH REQUEST
FOR PRODUCTION OF DOCUMENTS**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke Wells

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, and to the Local Rules for the United States District Court for the District of Utah, Plaintiff/Counterclaim Defendant, The SCO Group, Inc, ("SCO"), hereby responds and objects to Defendant/Counterclaim Plaintiff,

International Business Machine Corporation ("IBM")'s Fifth Request for the Production of Documents, as follows:

GENERAL OBJECTIONS

SCO hereby incorporates by reference all of the General Objections set forth in SCO's Response to IBM's First Set of Interrogatories and First Request for the Production of Documents (the "General Objections"). Each of the General Objections is incorporated by reference into each of the responses set forth below, which responses SCO makes without waiver of the General Objections. SCO also objects to the supplemental instruction in IBM's Fifth Request for Production of Documents which seeks to define a relevant time period as "from six years prior to the March 6, 2003, date that SCO initiated the instant action." Unless otherwise dictated by the context of the document request, the proper time period as to IBM's counterclaims is six years prior to the date on which IBM raised the patent issues by filing its counterclaims in the instant action. SCO also objects to each document request to the extent it seeks information beyond the disclosure of the claims and specification of each of the patents in issue.

SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION

REQUEST NO. 78:

Documents sufficient to identify each and every SCO Product (by name, version and release) that provides for high availability in a clustered arrangement of computers having

at least one distributed program running within the cluster through the use of configurable monitors.

RESPONSE TO REQUEST NO. 78:

In addition to the General Objections, including that this Request is vague and ambiguous as to the term "high availability," overbroad and unduly burdensome, SCO objects to this Request because, as written, it is not limited to any specific patent in suit. Therefore, the Request does not seek information reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '785 patent claims and specification, including the '785 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 79:

Documents sufficient to identify the dates of first offering (and, where applicable, last availability) of each and every SCO Product (by name, version and release) that provides for high availability in a clustered arrangement of computers having at least one distributed program running within the cluster through the use of configurable monitors or supports or allows a user to specify an automated procedure for recovery from a failure in a clustered arrangement of computers.

RESPONSE TO REQUEST NO. 79:

In addition to the General Objections, including that this Request is vague and ambiguous as to the terms "high availability" and "automated procedure for recovery," overbroad and unduly burdensome, SCO objects to this Request because, as written, it is not limited to any specific patent in suit. Therefore, the Request does not seek information reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '785 patent claims and specification, including the '785 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 80:

Documents sufficient to identify each and every SCO Product (by name, version and release) providing a program, process, procedure, module, tool, feature or function for automated recovery from a failure of a program running within a clustered arrangement of computers involving one or more configurable monitors.

RESPONSE TO REQUEST NO. 80:

In addition to the General Objections, including that this Request is vague and ambiguous as to the term "automated recovery from failure," overbroad, and unduly burdensome, SCO objects to this Request because, as written, it is not limited to any specific patent in suit. Therefore, the Request does not seek information reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of

reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '785 patent claims and specification, including the '785 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 81:

Documents sufficient to identify each and every SCO Product (by name, version and release) that supports or allows a user to specify an automated procedure for recovery from a failure in a clustered arrangement of computers.

RESPONSE TO REQUEST NO. 81:

In addition to the General Objections, including that this Request is vague and ambiguous with respect to the phrase "an automated procedure for recovery from a failure," SCO objects to this Request because, as written, it is not limited to any specific patent in suit. Therefore, the Request does not seek information reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '785 patent claims and specification, including the '785 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 82:

Documents sufficient to identify each and every SCO Product (by name, version and release) that supports or provides automated user-defined detection and/or recovery from failure events occurring on one or more computers in a computer network.

RESPONSE TO REQUEST NO. 82:

In addition to the General Objections, including that this Request is vague and ambiguous with respect to the phrase "automated user-defined . . . recovery from failure events," SCO objects to this Request to the extent that the Request, as written, is not limited to any specific patent in suit. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '785 patent claims and specification, including the '785 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 83:

Summary documents individually quantifying, on a yearly, quarterly or monthly basis, the distribution and financial figures in terms of:

- (i) number of units created or distributed,**
- (ii) highest and lowest per unit selling price, license or fee received,**
- (iii) average per-unit selling price, license or fee,**
- (iv) total revenues received,**
- (v) gross profit, and**

(vi) incremental, marginal and net pretax or operating profit for the SCO Products called "ReliantHA" and every other SCO Product that supports or provides automated user-defined detection and/or recovery from failure events occurring on one or more computers in a computer network.

RESPONSE TO REQUEST NO. 83:

In addition to the General Objections, including that this Request is ambiguous, SCO objects to this Request to the extent it seeks documents quantifying the same distribution and financial information on a yearly, quarterly and monthly basis rather than quantifying such information on one of those three bases. Providing the same information based on more than one time increment is unnecessary for IBM and unduly burdensome for SCO. SCO objects to subpart (vi) of this Request because information responsive to subpart (vi) is not relevant to any appropriate measure of IBM's damages. Therefore, subpart (vi) is not reasonably calculated to lead to the discovery of admissible evidence. SCO also objects to this Request to the extent it seeks information about SCO Products that only support or provide "automated user-defined recovery from failure events" because such products would not provide a service claimed by the '785 patent. SCO objects to this Request to the extent it requires or requests SCO to create documents that do not presently exist. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '785 patent claims and specification, including the '785 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 84:

All documents identifying or referring to all sources and developers of the ReliantHA SCO Product.

RESPONSE TO REQUEST NO. 84:

SCO objects to this Request because it is duplicative of part of what is requested by Request No. 87. SCO incorporates herein its responses and objections to Request No. 87 in their entirety.

REQUEST NO. 85:

Documents sufficient to identify all authorized resellers or redistributors of the ReliantHA SCO Product.

RESPONSE TO REQUEST NO. 85:

Without waiving the General Objections, SCO, after a search of reasonable scope, will produce at a mutually convenient time and place non-privileged documents, if any, responsive to this Request.

REQUEST NO. 86:

All documents describing the function and operation of the ReliantHA SCO Product including, without limitation, specifications, manuals, tutorials, marketing materials, training materials, and developer assistance materials.

RESPONSE TO REQUEST NO. 86:

In addition to the General Objections, including that this Request is vague, ambiguous, and overbroad, SCO objects to this Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, after a search of reasonable scope, will produce at a mutually convenient time and place non-privileged documents, if any, responsive to the non-objectionable aspects of this Request.

REQUEST NO. 87:

Documents sufficient to identify the origins of the ReliantHA SCO Product including, without limitation, all persons involved in the development of such SCO Product and, if it was acquired from a third party, the entity from whom it was obtained, the means by which it was obtained, and the financial terms relating to such acquisition.

RESPONSE TO REQUEST NO. 87:

Without waiving the General Objections, SCO, after a search of reasonable scope, will produce at a mutually convenient time and place non-privileged documents, if any, responsive to this Request.

REQUEST NO. 88:

All documents relating, in whole or part, to the facts and circumstances surrounding the need for, or inability of, if any, SCO to itself develop a program that supports or provides automated user-defined detection and/or recovery from failure events occurring on one or more computers in a computer network.

RESPONSE TO REQUEST NO. 88:

In addition to the General Objections, including that this Request is vague, ambiguous, overbroad, and unduly burdensome, SCO objects to this Request because it potentially encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. SCO objects to this request to the extent it seeks information about SCO efforts to develop a program that only supports or provides "automated user-defined ... recovery from failure events" because such a program would not provide a service claimed by the '785 patent. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '785 patent claims and specification, including the '785 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 89:

Documents sufficient to identify each and every SCO Product (by name, version and release) that incorporates, implements or uses what is commonly referred to as "modified Lempel-Ziv", "adaptive Lempel-Ziv", "Lempel-Ziv-Welch" or "LZW" coding.

RESPONSE TO REQUEST NO. 89:

In addition to the General Objections, SCO objects to this Request as overbroad and unduly burdensome to the extent the Request, as written, includes documents not limited to any specific patent in suit. For example, SCO objects to this Request to the extent it seeks information about "modified Lempel-Ziv" coding or "adaptive Lempel-Ziv" because such

information is not limited to any specific patent in suit. Therefore, these aspects of the Request do not seek information reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '746 patent claims and specification, including the '746 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 90:

Documents sufficient to identify each and every SCO Product (by name, version and release) that implements any of the UNIX-family commands or utilities – “compress”, “uncompress”, “decompress”, “gifclip” or gzip”.

RESPONSE TO REQUEST NO. 90:

In addition to the General Objections, SCO objects to this Request as overbroad and unduly burdensome to the extent that it seeks documents about SCO Products which implement commands or utilities not referenced, referred to, disclosed, or recited in any specific patent in suit. For example, SCO objects to this Request to the extent it seeks information about commands or utilities of “gifclip” or “gzip” because such information is not limited to any specific patent in suit. Therefore, these aspects of the Request do not seek information reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '746 patent claims and specification, including the

'746 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 91:

All documents describing the function and operation of any program, process, procedure, module, tool, feature or function in a SCO Product that:

(vii) implements or uses what is commonly referred to as "modified Lempel-Ziv", "adaptive Lempel-Ziv", "Lempel-Ziv-Welch" or "LZW" coding;

(viii) implements or uses any of the UNIX-family commands or utilities – "compress", "uncompress", "decompress", "gifclip" or "gzip"; or

(ix) supports, opens, saves or converts the file format for computer images that is commonly referred to within the computer industry as "Graphics Interchange Format" or "GIF" format or a file format commonly referred to within the computer industry as "compressed Tagged Image File Format" or "compressed TIFF" or including any computer files bearing a ".gif", ".tif" or ".tiff" file extension.

RESPONSE TO REQUEST NO. 91:

In addition to the General Objections, including that this Request is vague, ambiguous, overbroad and unduly burdensome, SCO objects to this Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. SCO objects to this Request as overbroad and unduly burdensome to the extent it seeks information about "modified Lempel-Ziv" coding or "adaptive Lempel-Ziv" coding or about commands or utilities of "gifclip" or "gzip" because such information is not

limited to any specific patent in suit. Therefore, these aspects of the Request do not seek information reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '746 patent claims and specification, including the '746 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 92:

All documents identifying or referring to all sources and developers of any program, process, procedure, module, tool, feature or function used in a SCO Product to:

(i) implement or use what is commonly referred to as "modified Lempel-Ziv", "adaptive Lempel-Ziv", "Lempel-Ziv-Welch" or "LZW" coding;

(ii) implement or use any of the UNIX-family commands or utilities -- "compress", "uncompress", "decompress", "gifclip" or "gzip"; or

(iii) support, open, save or convert the file format for computer images that is commonly referred to within the computer industry as "Graphics Interchange Format" or "GIF" format or a file format commonly referred to within the computer industry as "compressed Tagged Image File Format" or "compressed TIFF" or including any computer files bearing a ".gif", ".tif" or ".tiff" file extension.

RESPONSE TO REQUEST NO. 92:

In addition to the General Objections, including that this Request is vague, ambiguous, overbroad and unduly burdensome, SCO objects to this Request because it encompasses a

substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. SCO objects to this Request to the extent it seeks information about "modified Lempel-Ziv" coding or "adaptive Lempel-Ziv" coding or about commands or utilities of "gifclip" or "gzip" because such information is not limited to any specific patent in suit. Therefore, these aspects of the Request do not seek information reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '746 patent claims and specification, including the '746 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 93:

Documents sufficient to identify each and every SCO Product (by name, version and release) that is, or has been, distributed in a compressed format by or on behalf of SCO, the specific compression technique used to compress each such SCO Product, and the specific compression technique used to uncompress or decompress each such SCO Product.

RESPONSE TO REQUEST NO. 93:

SCO objects to this Request to the extent it seeks information about products distributed in a "compressed format" because such information is not limited to any specific patent in suit. . Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '746 patent claims and specification, including the '746 file history, and will produce at a mutually convenient time and

place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this request.

REQUEST NO. 94:

Documents sufficient to identify the dates of first offering (and, where applicable, last availability) of each and every SCO Product (by name, version and release):

i) supporting the file format for computer images that is commonly referred to within the computer industry as "Graphics Interchange Format" or "GIF" format or a file format commonly referred to within the computer industry as "compressed Tagged Image File Format" or "compressed TIFF";

ii) including any computer files bearing a ".gif", ".tif" or ".tiff" file extension;

iii) that incorporates, implements or uses what is commonly referred to as "modified Lempel-Ziv", "adaptive Lempel-Ziv", "Lempel-Ziv-Welch" or "LZW" coding;

iv) that implements any of the UNIX-family commands or utilities — "compress", "uncompress", "decompress", "gifclp" or "gzip"; or

v) that is, or has been, distributed in a compressed form by or on behalf of SCO.

RESPONSE TO REQUEST NO. 94:

In addition to the General Objections, including that this Request is vague and ambiguous with respect to the phrase "compressed form," SCO objects to this Request as overbroad and

unduly burdensome to the extent it seeks information about "modified Lempel-Ziv" coding or "adaptive Lempel-Ziv" coding, about commands or utilities of "gifclip" or "gzip," or about products in "compressed format" because such information is not limited to any specific patent in suit and therefore not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '746 patent claims and specification, including the '746 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 95:

Documents sufficient to identify the method used to distribute each and every SCO Product (by name, version and release) that is, or has been, distributed in a compressed form by or on behalf of SCO.

RESPONSE TO REQUEST NO. 95:

In addition to the General Objections, including that this Request is ambiguous and unduly burdensome, SCO objects to this Request because it is not reasonably calculated to lead to the discovery of admissible evidence. Seeking documents concerning the method of distribution of "each and every SCO Product" in any "compressed form" is not limited to any specific patent in issue and is too broad. It is also not relevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to

the disclosure of the '746 patent claims and specification, including the '746 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectable aspects of this Request.

REQUEST NO. 96:

For each and every SCO Product (by name, version and release) that is, or has been, distributed in a compressed form by or on behalf of SCO, all documents or things that identify, discuss, refer to, relate to or describe what is to be done to compress, uncompress or decompress each such SCO Product.

RESPONSE TO REQUEST NO. 96:

Without waiving the General Objections, including that this Request is vague, ambiguous, overbroad and unduly burdensome, SCO notes that SCO's responses to Request Nos. 93 - 95 comprise a response to this Request, and SCO incorporates herein its responses and objections to those requests in their entirety.

REQUEST NO. 97:

Documents sufficient to identify each and every SCO Product (by name, version and release) that, as distributed by or on behalf of SCO, includes or has included one or more compressed files or compressed images, and all specific compression techniques used to compress and/or uncompress or decompress such file(s) or image(s).

RESPONSE TO REQUEST NO. 97:

Without waiving the General Objections, including that this Request is vague, ambiguous, overbroad and unduly burdensome, SCO notes that SCO's responses to Request Nos. 93 - 96 comprise a response to this Request, and SCO incorporates herein its responses and objections to those requests in their entirety.

REQUEST NO. 98:

Documents sufficient to identify each and every SCO Product (by name, version and release) supporting the file format for computer images that is commonly referred to within the computer industry as "Graphics Interchange Format" or "GIF" format or a file format commonly referred to within the computer industry as "compressed Tagged Image File Format" or "compressed TIFF" or including any computer files bearing a "gif", ".tif" or ".tiff" file extension.

RESPONSE TO REQUEST NO. 98:

Without waiving the General Objections, including that this Request is vague, ambiguous, overbroad and unduly burdensome, SCO notes that SCO's responses to Request Nos. 93 -97 comprise a response to this Request, and SCO incorporates herein its responses and objections to Request Nos. 93 - 97 in their entirety.

REQUEST NO. 99:

Documents sufficient to identify each and every SCO Product (by name, version and release) capable of:

- i) opening and displaying a graphic in,

ii) converting a graphic to, or

iii) converting a graphic from,

either a file format commonly referred to within the computer industry as "Graphics Interchange Format" or "GIF" format or a file format commonly referred to within the computer industry as "compressed Tagged Image File Format" or "compressed TIFF" or including any computer files bearing a ".gif", ".tif" or ".tiff" file extension.

RESPONSE TO REQUEST NO. 99:

Without waiving the General Objections, including that this Request is vague, ambiguous, overbroad and unduly burdensome, SCO notes that SCO's responses to Request Nos. 93 -98 comprise a response to this Request, and SCO incorporates herein its responses and objections to Request Nos. 93 - 98 in their entirety.

REQUEST NO. 100:

Summary documents quantifying (by name, version and release and on a per product yearly, quarterly or monthly basis) distribution and financial figures in terms of:

- i) number of units created or distributed,
- ii) highest and lowest per unit selling price, license rate or fee received,
- iii) average per-unit selling price, license or fee,
- iv) total revenues received,
- v) gross profit, and
- vi) incremental, marginal and net pretax or operating profit for the SCO

Products called "Unixware and "OpenServer" and each and every other SCO Product that

implements, incorporates or uses what is commonly referred to as "modified Lempel-Ziv", "adaptive Lempel-Ziv", "Lempel-Ziv-Welch" or "LZW" coding, or implements or executes any of the UNIX-family commands or utilities "compress", "uncompress", "decompress", "gzip" or "gifclip".

RESPONSE TO REQUEST NO. 100:

In addition to the General Objections, including that this Request is vague and ambiguous, overbroad and unduly burdensome, SCO objects to this Request to the extent it seeks documents quantifying the same distribution and financial information on a yearly, quarterly, and monthly basis rather than quantifying such information on one of those three bases. Providing the same information based on more than one time increment is unnecessary for IBM and unduly burdensome for SCO. SCO objects to subpart (vi) of this Request because information responsive to subpart (vi) is not relevant to any appropriate measure of IBM's damages. Therefore, subpart (vi) is not reasonably calculated to lead to the discovery of admissible evidence. SCO objects to this Request to the extent it seeks information about SCO Products with "modified Lempel-Ziv" coding or "adaptive Lempel-Ziv" coding, or with commands or utilities of "gifclip" or "gzip", because such coding or commands/utilities are not limited to any specific patent in suit. SCO objects to this Request to the extent it requests information about Unixware that is duplicative of information sought by Request No. 107. SCO objects to this Request to the extent it requires or requests SCO to create documents that do not presently exist. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '746 patent claims and specification, including the '746 file history, and will produce at a mutually convenient time and

place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 101:

Summary documents quantifying (by name, version and release on a per product yearly, quarterly or monthly basis) distribution and financial figures in terms of:

- i) number of units created or distributed,
- ii) highest and lowest per unit selling price, license or fee received,
- iii) average per-unit selling price, license or fee,
- iv) total revenues received,
- v) gross profit, and
- vi) incremental, marginal and net pretax or operating profit for each and

every SCO Product created, imported or distributed by or on behalf of SCO either in a compressed format or including one or more compressed files or compressed images of a file of a format commonly referred to within the computer industry as "Graphics Interchange Format" or "GIF" format or commonly referred to within the computer industry as "compressed Tagged Image File Format" or "compressed TIFF" or including any computer files bearing a ".gif", ".tif" or "tiff" file extension.

RESPONSE TO REQUEST NO. 101:

In addition to the General Objections, including that this Request is vague and ambiguous, overbroad and unduly burdensome, SCO objects to this Request to the extent it seeks documents quantifying the same distribution and financial information on a yearly, quarterly, and

monthly basis rather than quantifying such information on one of those three bases. Providing the same information based on more than one time increment is unnecessary for IBM and unduly burdensome for SCO. SCO objects to subpart (vi) of this Request because information responsive to subpart (vi) is not relevant to any appropriate measure of IBM's damages. Therefore, subpart (vi) is not reasonably calculated to lead to the discovery of admissible evidence. SCO also objects to this Request to the extent it seeks information about compression files, format and techniques that are not limited to the '746 patent. SCO objects to this Request to the extent it requires or requests SCO to create documents that do not presently exist. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '746 patent claims and specification, including the '746 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 102:

Documents sufficient to identify each and every SCO Product (by name, version and release) that is distributed in a non-executable form and that also includes a program, process, procedure, module, tool, feature or function that requires a user to, as part of the installation process, either acknowledge receipt of the software or consent to terms authorizing use of the software, before it will change that SCO Product from the non-executable form to an executable form.

RESPONSE TO REQUEST NO. 102:

In addition to the General Objections, including that this Request is vague, ambiguous, overbroad and unduly burdensome, SCO objects to this Request because of the ambiguous nature of the phrases "non-executable form" and "executable form." Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '209 patent claims and specification, including the '209 file history and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 103:

Documents sufficient to identify (by name, version and release) each and every program, process, procedure, module, tool, feature or function that is part of or used with any SCO Product that will change software from a non-executable form to an executable form only after, as part of the installation process, a user either acknowledges receipt of the software or consents to terms authorizing use of the software.

RESPONSE TO REQUEST NO. 103:

SCO incorporates herein its responses and objections to Request No. 102 in their entirety.

REQUEST NO. 104:

Documents sufficient to identify each and every SCO Product (by name, version and release) that requires a receiver of the SCO Product, as part of the process of installing the SCO Product, to either acknowledge receipt of the SCO Product or consent to terms authorizing use of the SCO Product in order for the SCO Product to run.

RESPONSE TO REQUEST NO. 104:

In addition to the General Objections, including that this Request is vague and ambiguous, and overbroad and unduly burdensome, SCO objects to this Request because the phrase "in order for the SCO Products to run" is not specific enough to allow SCO to conduct a reasonable search for responsive documents. SCO also objects because the phrase "in order for the SCO Products to run" is not specific enough to relate to any specific patent in suit. Therefore, this Request seeks information which is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '209 patent claims and specification, including the '209 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 105:

All documents that refer to, relate to, or describe the development, function and/or operation of every installation program, process, procedure, module, tool, feature or function used in, or in connection with, any SCO Product that requires either acknowledgment of receipt of the SCO Product or consent to terms authorizing the use of the SCO Product, as part of the process of installing the SCO Product for use.

RESPONSE TO REQUEST NO. 105:

In addition to the General Objections, including that this Request is vague, ambiguous, overbroad and unduly burdensome, SCO objects to this Request because it encompasses a

substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. SCO objects to this Request because the phrase "as part of the process of installing the SCO Project for use" is not specific enough to allow SCO to conduct a reasonable search for responsive documents. SCO also objects because the phrase "as part of the process of installing the SCO Project for use" is not specific enough to relate to any specific patent in suit. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '209 patent claims and specification, including the '209 File history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 106:

Documents sufficient to identify each and every SCO Product (by name, version and release) that can only be installed on a computer in a run-able form after, as part of the installation process, an installer either acknowledges receipt of the software or consents to terms authorizing use of the software.

RESPONSE TO REQUEST NO. 106:

In addition to the General Objections, including that this Request is vague and ambiguous, and overbroad and unduly burdensome, SCO objects to this Request because the phrase "in a run-able form" is not specific enough to allow SCO to conduct a reasonable search for responsive documents. SCO also objects because the phrase "in a run-able form" is not specific enough to relate to any specific patent in suit. Therefore, this Request seeks information

which is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '209 patent claims and specification, including the '209 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 107:

Summary documents individually quantifying (by name, version and release on a per product yearly, quarterly or monthly basis) the distribution and financial figures in terms of:

- i) number of units created or distributed,
- ii) highest and lowest per unit selling price, license or fee received,
- iii) average per-unit selling price, license or fee,
- iv) total revenues received,
- v) gross profit, and
- vi) incremental, marginal and net pretax or operating profit for the SCO

Products called "Webface" and "Unixware" and every other SCO Product that incorporates or uses an installation program that requires either acknowledgment of receipt of the SCO Product, or consent to terms authorizing the use of the SCO Product, as part of the installation process.

RESPONSE TO REQUEST NO. 107:

In addition to the General Objections, including that this Request is ambiguous, SCO objects to this Request to the extent it seeks documents quantifying the same distribution and financial information on a yearly, quarterly, and monthly basis rather than quantifying such information on one of those three bases. Providing the same distribution and financial information based on more than one time increment is unnecessary for IBM and unduly burdensome for SCO. SCO objects to subpart (vi) of this Request because information responsive to subpart (vi) is not relevant to any appropriate measure of IBM's damages. Therefore, subpart (vi) is not reasonably calculated to lead to discovery of admissible evidence. SCO also objects to this Request to the extent it seeks information about products other than Webface and Unixware because the Request is not limited to any patent in suit and is therefore not relevant or reasonably calculated to lead to the discovery of admissible evidence. SCO objects to this Request to the extent it requires or requests SCO to create documents that do not presently exist. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '209 patent claims and specification, including the '209 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 108:

Documents sufficient to identify each and every SCO Product (by name, version and release), other than Webface and Unixware, that uses the same installation program,

process, procedure, module, tool, feature or function as provided by SCO for the installation of the Webface or Unixware SCO Products.

RESPONSE TO REQUEST NO. 108:

SCO objects to this Request to the extent it seeks information about products other than Webface and Unixware because the Request is not limited to any patent in suit and is therefore not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '209 patent claims and specification, including the '209 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 109:

All documents implementing, describing, referring or relating to the installation program for the SCO Products called "Webface" and "Unixware."

RESPONSE TO REQUEST NO. 109:

In addition to the General Objections, including that this Request is vague and ambiguous, SCO objects to this Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, after a search of reasonable scope, will produce at a mutually convenient time and place non-privileged documents, if any, responsive to the non-objectionable aspects of this Request.

REQUEST NO. 110:

All documents identifying or referring to all sources and developers of the program provided by SCO for the installation of the Webface and Unixware SCO Products.

RESPONSE TO REQUEST NO. 110:

SCO objects to this Request because it is duplicative of part of what is requested by Request No. 109. SCO incorporates herein its responses and objections to Request No. 109 in their entirety.

REQUEST NO. 111:

Source code for each of:

- i) the specific program, process, procedure, module, tool, feature or function provided by SCO for installation of the Webface and Unixware SCO Products on a user's computer; and
- ii) every installation program incorporated into or for use in installing any SCO Products other than Webface and Unixware that, as part of the installation process, requires either a) acknowledgement of receipt of the SCO Product, or b) consent to terms authorizing use of the SCO Product.

RESPONSE TO REQUEST NO. 111:

SCO objects to this Request to the extent it seeks information about products other than Webface and Unixware because the Request is not limited to any patent in suit and is therefore not relevant or reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this

Request by limiting the Request to the disclosure of the '209 patent claims and specification, including the '209 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 112:

Documents sufficient to identify the origins of the program provided by SCO for the installation of the Webface and Unixware SCO Products including, without limitation, all persons involved in the development of such program(s) and, if any such program was acquired, purchased or licensed from a third party, the entity from whom such installation program was obtained, the means by which such installation program was obtained, and the financial terms relating to such transaction.

RESPONSE TO REQUEST NO. 112:

Without waiving the General Objections, SCO will produce at a mutually convenient time and place non-privileged documents, if any, responsive to this Request.

REQUEST NO. 113:

All documents relating, in whole or part, to the facts and circumstances surrounding the need for, or inability, if any, of SCO to itself develop, an installation program, process or procedure such as provided by SCO for the installation of the Webface and Unixware SCO Products.

RESPONSE TO REQUEST NO. 113:

In addition to the General Objections, including that this Request is vague, ambiguous, overbroad and unduly burdensome, SCO objects to this Request to the extent it seeks documents relating to the inability of SCO to develop an installation program, process, or procedure which SCO in fact developed. SCO objects to this Request because it potentially encompasses a substantial body of information not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, by conducting a search of reasonable scope, will respond to this Request by limiting the Request to the disclosure of the '209 patent claims and specification, including the '209 file history, and will produce at a mutually convenient time and place non-privileged documents, if any, which are responsive to the non-objectionable aspects of this Request.

REQUEST NO. 114:

All documents that, in whole or part, factually relate to or form a basis for SCO's allegations or contentions that one or more of United States Patent Nos. 4,814,746, 4,953,209 and 5,805,785 are unenforceable.

RESPONSE TO REQUEST NO. 114:

In addition to the General Objections, including that this Request is vague, overbroad and unduly burdensome, SCO objects to this Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, after a search of reasonable scope, will produce at a

mutually convenient time and place non-privileged documents, if any, responsive to the non-objectionable aspects of this Request.

REQUEST NO. 115:

All documents relating to facts and circumstances that support or refute any SCO allegation or contention that any of United States Patent Nos. 4,814,746, 4,953,209 and 5,805,785 are unenforceable.

RESPONSE TO REQUEST NO. 115:

In addition to the General Objections, including that this Request is vague, overbroad and unduly burdensome, SCO objects to this Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, after a search of reasonable scope, will produce at a mutually convenient time and place non-privileged documents, if any, responsive to the non-objectionable aspects of this Request.

REQUEST NO. 116:

All documents that, in whole or part, relate to, form the basis of, tend to support or tend to refute SCO's allegations or contentions that one or more of United States Patent Nos. 4,814,746, 4,953,209 and 5,805,785 are not infringed or are invalid for failure to satisfy one or more sections of 35 U.S.C. §§ 112, 102 or 103.

RESPONSE TO REQUEST NO. 116:

In addition to the General Objections, including that this Request is vague, overbroad and unduly burdensome, SCO objects to this Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, after a search of reasonable scope, will produce at a mutually convenient time and place non-privileged documents, if any, responsive to the non-objectionable aspects of this Request.

REQUEST NO. 117:

All documents that, in whole or part, relate to, form the basis of, tend to support or tend to refute each and every defense asserted by SCO with respect to any of United States Patent Nos. 4,814,746, 4,953,209 and 5,805,785.

RESPONSE TO REQUEST NO. 117:

In addition to the General Objections, including that this Request is vague, overbroad and unduly burdensome, SCO objects to this Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, after a search of reasonable scope, will produce at a mutually convenient time and place non-privileged documents, if any, responsive to the non-objectionable aspects of this Request.

REQUEST NO. 118:

All documents relating to the existence of any opinion prepared by, for, or on behalf of SCO or a predecessor in interest thereto relating to any of United States Patent Nos. 4,814,746, 4,953,209 and 5,805,785.

RESPONSE TO REQUEST NO. 118:

In addition to the General Objections, including that this Request is vague, overbroad and unduly burdensome, SCO objects to this Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, after a search of reasonable scope, will produce at a mutually convenient time and place non-privileged documents, if any, responsive to the non-objectionable aspects of this Request.

REQUEST NO. 119:

All opinions prepared by, for, or on behalf of SCO or a predecessor in interest thereto referring or relating to any of United States Patent Nos. 4,814,746, 4,953,209 and 5,805,785.

RESPONSE TO REQUEST NO. 119:

In addition to the General Objections, including that this Request is vague, overbroad and unduly burdensome, SCO objects to this Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, after a search of reasonable scope, will produce at a

mutually convenient time and place non-privileged documents, if any, responsive to the non-objectionable aspects of this Request.

REQUEST NO. 120:

All documents relating to knowledge of each of United States Patent Nos. 4,814,746, 4,953,209 and 5,805,785 by SCO, or a predecessor in interest thereto, at any time prior to the March 6, 2003 date that SCO initiated the instant action against IBM.

RESPONSE TO REQUEST NO. 120:

In addition to the General Objections, including that this Request is vague, overbroad and unduly burdensome, SCO objects to this Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. Subject to the foregoing objections, SCO, after a search of reasonable scope, will produce at a mutually convenient time and place non-privileged documents, if any, responsive to the non-objectionable aspects of this Request.

REQUEST NO. 121:

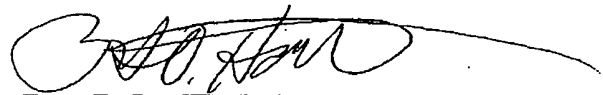
All documents referring or relating to SCO's first knowledge of United States Patent Nos. 4,814,746, 4,953,209 and 5,805,785 and all actions taken by SCO as a result of its knowledge that would tend to support or refute any allegation by SCO that it is not a willful infringer of each such patent.

RESPONSE TO REQUEST NO. 121:

In addition to the General Objections, including that this Request is vague, ambiguous, overbroad and unduly burdensome, SCO objects to the Request because it encompasses a substantial body of information that is not reasonably calculated to lead to the discovery of admissible evidence. SCO objects to the subpart of the Request which asks for "all documents ...that would tend to support ... any allegation by SCO that it is not a willful infringer" because logically this subpart seeks all documents which are not evidence of willful infringement, even if the documents do not refute willful infringement. Such documents are not needed by IBM, and production of all such documents would be unduly burdensome on SCO. Subject to the foregoing objections, SCO, after a search of reasonable scope, will produce at a mutually convenient time and place non-privileged documents, if any, responsive to the non-objectionable aspects of this Request.

DATED this 14th day of June, 2004.

By:



Brent O. Hatch
Mark F. James
HATCH, JAMES & DODGE

Robert Silver
Stephen N. Zack
Mark J. Heise
BOIES, SCHILLER & FLEXNER LLP

Frederick S. Frei
Aldo Noto
John K. Harrop
ANDREWS KURTH LLP

COPY

Brent O. Hatch (5715)
HATCH, JAMES & DODGE, PC
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

Stephen N. Zack (admitted pro hac vice)
Mark J. Heise (admitted pro hac vice)
David K. Markarian (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
Bank of America Tower – Suite 2800
100 Southeast Second Street
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

Robert Silver (admitted pro hac vice)
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, New York 10504
Telephone: (914) 749-8200
Facsimile: (914) 749-8300

Frederick S. Frei (admitted pro hac vice)
Aldo Noto (admitted pro hac vice)
John K. Harrop (admitted pro hac vice)
ANDREWS KURTH LLP
1701 Pennsylvania Avenue, Ste. 300
Washington, DC 20006
Telephone: (202) 662-2700
Facsimile: (202) 662-2739

*Attorneys for Plaintiff/Counterclaim- Defendant
The SCO Group, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP, INC.

Plaintiff/Counterclaim- Defendant,

vs.

**INTERNATIONAL BUSINESS
MACHINES CORPORATION,**

Defendant/Counterclaim- Plaintiff.

**CERTIFICATE OF SERVICE OF
PLAINTIFF/COUNTERCLAIM
DEFENDANT SCO'S RESPONSE TO
DEFENDANT/COUNTERCLAIM
PLAINTIFF IBM'S FIFTH REQUEST
FOR PRODUCTION OF DOCUMENTS**

Civil No. 2:03CV0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke Wells

I hereby certify that the foregoing PLAINTIFF/COUNTERCLAIM DEFENDANT SCO'S
RESPONSE TO DEFENDANT/COUNTERCLAIM PLAINTIFF IBM'S FIFTH REQUEST


FOR PRODUCTION OF DOCUMENTS was served by depositing a copy of same in the United States mail, first class, postage prepaid, this 14th day of June, 2004 to the following:

Todd M. Shaughnessy, Esq.
Snell & Wilmer L.L.P.
15 West South Temple, Ste. 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004

David Marriott, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

Donald J. Rosenberg, Esq.
1133 Westchester Avenue
White Plains, New York 10604

By:


Brent O. Hatch
HATCH, JAMES & DODGE