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

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

THE SCO GROUP, INC.,

Plaintiff/Counterclaim-Defendant,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF
PAUL MCKENNEY**

Civil No. 2:03CV-0294 DAK

Honorable Dale A. Kimball

Magistrate Judge Brooke C. Wells

I, Paul McKenney, declare as follows:

1. This declaration is submitted in connection with the lawsuit brought by The SCO Group, Inc. ("SCO") against IBM, titled The SCO Group, Inc. v. International Business Machines Corporation, Civil No. 2:03CV-0294 DAK (D. Utah 2003). I make this declaration based upon personal knowledge. I previously provided testimony in this case, which I incorporate herein.

2. I am currently employed by International Business Machines ("IBM"). Prior to joining IBM, I worked for Sequent Computer Systems, Inc. ("Sequent"). I understand that SCO claims IBM has breached the UNIX licensing agreements between AT&T and Sequent (the "Agreements") by using, exporting, disclosing or transferring DYNIX/ptx source code, regardless of whether IBM has used, exported, disclosed or transferred any protected UNIX System V source code. That theory is inconsistent with both how I understand the AT&T Agreements and how, by their own account, AT&T's representatives explained them.

3. Subsequent to the execution of the Agreements, Sequent invested in the development of its own operating system for multiprocessors, DYNIX/ptx. It did so based on the understanding that AT&T claimed no interest in Sequent's original works, even if such a work might be included in a modification or derivative work of UNIX System V.

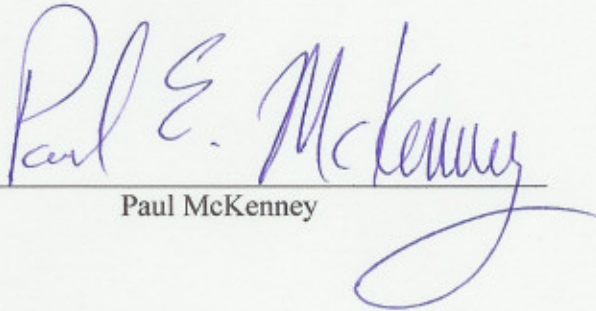
4. Sequent invested tens of millions of dollars in and devoted hundreds of person-years to developing DYNIX/ptx, including writing substantial amounts of original source code. Had Sequent understood AT&T to have control over not only the UNIX System V code in DYNIX/ptx, but over all material that Sequent developed itself, Sequent would not have made such investments of money and manpower.

5. In addition, Sequent also applied for numerous patents for technologies related to DYNIX/ptx. Because Sequent understood that the Software Agreements did not require Sequent to hold DYNIX/ptx methods in confidence for AT&T, it was free to apply for patents related to DYNIX/ptx methods and thus disclose such methods to the public.

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

Executed: September 21, 2006.

Location: Beaverton, OR.


Paul McKenney