

Addendum A
IBM's Undisputed Facts: SCO's Breach of Contract Claim

THE PROPERTY OF THE PROPERTY O		Undisputed.	Undisputed.	Decreed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
1-SCD-TREsponse	Undisputed.	Undisputed.	Undisputed.	Disputed to the extent the statement suggests that AT&T had waived any copyright or other legal rights in UNIX by distributing any version of UNIX during that time. (¶ 79.) "The mere fact of publishing a copyrighted work does not give others the right to use, copy, modify, or distribute that work." (IBM Statement of Undisputed Facts in Support of IBM's Motion for Summary Judgment on its Claim for Copyright Infringement (IBM's Eighth Counterclaim) ¶ 8.)
	in me 1900s, MIT, AT&T's Bell Labs, and General Electric collaborated on a project, known as Multics, to create a computer operating system that would allow for the simultaneous access by multiple users to a single computer. (Ex. 487 at 26-27; Ex. 384; Ex. 230 ¶ 5.)	Multics resulted in an operating system that could accommodate simultaneous users, but the operating system could not support many multiple users and was expensive to operate, and Bell Labs withdrew from the project. (Ex. 384; Ex. 385; Ex. 386; Ex. 230 ¶ 6.)	After Bell Labs withdrew from Multics, one of its developers, Ken Thompson, undertook to design an alternative operating system, drawing on the work done in Multics. (Ex. 386.) With others at Bell Labs, including Dennis Ritchie, Mr. Thompson developed an operating system they called Unics. (Ex. 487 at 9, Ex. 387.) At the suggestion of another Bell Labs developer, Brian Kernighan, the name of the operating system was eventually changed to "UNIX". (Ex. 388.)	In the years that followed, AT&T developed numerous versions of UNIX and made it widely available to universifies and businesses, as well as to the United States government. (Ex. 389.) AT&T permitted licensees, including the University of California at Berkeley ("UC Berkeley"), to develop and add their own features to UNIX and to distribute those features. (Ex. 488 at *1-2, 18; Ex. 275 ¶ 13; Ex. 230 ¶ 8; Ex. 389.)
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Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. The facts stated in IBM's referenced paragraph are fully supported by the cited material.	SCO's response does not create a genuine issue of fact in that the facts in the referenced paragraph are background and no point purportedly controverted is material to IBM's motion
Disputed to the extent the statement suggests that AT&T had waived any copyright or other legal rights in UNIX by virtue of any such courses or projects. (¶ 79.)	Disputed to the extent the statement suggests that any such manual, article, paper or commentary constituted any waiver by AT&T of any copyright or other legal rights in UNIX. (Ex. 288 at 49-50; Ex. 139 ¶ 23-26.) "The mere fact of publishing a copyrighted work does not give others the right to use, copy, modify, or distribute that work." (IBM Statement of Undisputed Facts in Support of IBM's Motion for Summary Judgment on Its Claim for Copyright Infingement (IBM's Eighth Counter-lists) ¶ 8.)	at the statement draws a spated in that the cited operly support the statement.	,
# - F	Numerous manuals, articles and papers were written about UNIX, including no less than seven editions of the "UNIX PROGRAMMER'S MANUAL", which was distributed by Bell Labs with its UNIX operating systems, and the Lions' Commentary on UNIX 6th Edition, written by John Lions. (Ex. 487 at 43, 130; Ex. 385; Ex. 491; Ex. 230 § 11.)	In 1982, AT&T entered into a consent decree with the U.S. Federal Trade Commission, which provided for the spin-off of the regional Bell operating companies and freed AT&T to enter the computer industry, from which it had previously been barred. (Ex. 487 at 190; Ex. 230 ¶ 19.)	
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e statement suggests nd sold a commercial as a result of the 1982 properly support. SCO's response does not create a genuine issue of fact in that the facts in the referenced paragraph are background and no point purportedly controverted is material to IBM's motion.	Decemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. SCO's response does not create a genuine issue of fact in that the facts in the referenced paragraph are background and no point purportedly controverted is material to IBM's motion.	Undisputed.
Disputed to the extent the statement suggests that AT&T developed and sold a commercial version of UNIX solety as a result of the 1982 consent decree, which statement the lnadmissible clted material does not properly support.	Disputed to the extent the statement suggests that AT&T developed UNIX System V, Retease I solely "in an attempt to end confusion concerning the differing versions of the UNIX operating system," which statement the linadmissible cited material does not proporty support.	Undisputed.
	In an attempt to end confusion concerning the differing versions of the UNIX operating system, AT&T in 1983 combined various versions of UNIX developed at universities and other companies into UNIX System V, Release 1. (Ex. 391.) Later, AT&T released other versions, including System V Release 2.0, System V Release 3.0, and System V Release 4.0. (See Ex. 297 at 32:2-13.)	Over the years, through various business units and subsidiaries, including AT&T Technologies, Inc. and UNIX System Laboratories, Inc. ("USL"), AT&T licensed various versions of its UNIX operating system, both in source code and object code form. (See Ex. 3 ¶ 23-24; Ex. 5 ¶ 9; Ex. 64 ¶ 2.)
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	system pursuant becaused its UNIX operating system pursuant to standard form agreements. A software agreement granted the licensee the right to use and modify the source code of the operating system. A sublicensing agreement granted the licensee the right to flurnish sublicensed products based on UNIX System V to customers in object code format. And, a substitution agreement provided that the software agreement replaced earlier agreements relating to UNIX System V software LEX. 282 ¶ 6.)	Undisputed.	Undisputed.
<u></u>	The head of the AT&T division responsible for licensing AT&T UNIX software during this time was Otis Wilson. Mr. Wilson fed the UNIX licensing negotiations for AT&T and either personally signed, or authorized the signing of almost all, if not all, of AT&T's UNIX licensing agreements. (See Ex. 281 ¶ 5; Ex. 282 ¶ 3; Ex. 301 at 41:4-14, 42:7-43:6.)	Depending on the meaning of the terms "responsible for licensing" and "this time," disputed in that Mr. Wilson reported to William Guffey, who was then the head of AT&T's Software Services Division responsible for the UNIX software, through 1985. (Ex. 138¶3.) Disputed to the extent the statement suggests that Mr. Wilson had the authority to modify or negotiate away the terms of AT&T's standard license agreements. (¶90.)	Docaned admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
13.	Mr. Wilson reported to Michael DeFazio, who was then the head of the overall AT&T organization responsible for the UNIX software, including procket management, marketing and licensing. (See Bx. 182 ¶ 1.) As head of the organization, Mr. DeFazio had ultimate responsibility for the terms and conditions of AT&T's UNIX licensing agreements. (See id. ¶ 6-7.)	Disputed in that as of 1985, Mr. Wilson reported to William Guffey, who was then the head of AT&T's Software Services Division responsible for the UNIX software, through 1985. (¶ 105.) Disputed in that Mr. DeFazio did not have the auxhority to modify or negotiate away the terms of AT&T's standard form UNIX license agreements, and was only one of several individual responsible for interpreting and enforcing the agreements. (¶ 90.)	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.

	(See Ex. 190 %) Ex. 302 at 8:1-22.) Mr. Prasure participated in negotiating many of AT&T's UNIX System V licenses, and on occasion signed the agreements on Mr. Wilson's behalf. (See Ex. 302 at 8:13-9:6.)		
7.	Under the direction of Messrs. Defazio, Wilson and Frasure, AT&T and its subsidiaries licensed UNIX source code, including UNIX System V source code, to hundreds of licensees. AT&T also licensed many companies to distribute their own UNIX operating systems, such as Hewlett-Packard Co.'s "HP-UX" operating system. (See Ex. 3 ¶ 24-27; Ex. 64 ¶ 3.)	Disputed to the extent the statement suggests that Messrs. DeFazio, Wilson and Frasure had the authority to modify the terms of AT&T's standard UNIX license agreements, to the extent the statement suggests that Messrs. DeFazio, Wilson and Frasure were the only individuals under whose direction AT&T licensed its UNIX source code, and to the extent the statement suggests that AT&T licensed any company to distribute their own UNIX operating system in source code format. (MT 6-6).	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
.9	The standard software agreements that AT&T used to license UNIX System V source code and related materials set forth the various rights given to licensees and the restrictions imposed on the licensees with respect to such materials. (Ex. 282 § 6.)	Disputed to the extent the statement suggests that AT&T did not license the UNIX System V methods and concepts pursuant to the standard license agreements. (¶80.)	Decemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
17.	Among the provisions in AT&T's early software agreement (including in the IBM Software Agreement and the Sequent Software Agreement) were the following: • Section 2.01: "A T&T grants to LICENSEE a personal, nontransferable and nonexclusive right to use in the United States each SOFTWARE PRODUCT identified in the one or more Deemed admitted:Supplements hereto, solely for LICENSEE's own internal business purposes." • Section 2.05: "No right is granted by this Agreement for the use of SOFTWARE	Depending on the meaning of the term "early," (disputed to the extent the statement suggests that A T&T or its successors—in—interest ever abandoned the foregoing protections in the standard UNIX license agreements. (¶ 76-96.)	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.

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	PRODUCTS directly for others, or for		
	any use of SOPTWARE PRODUCTS by		
	others."		-
	Section 4.01: "LICENSEE agrees that it		
	will not, without the prior written consent		
	of A l'&1, export, directly or indirectly,		
···.	SUF I WAKE PRODUCTS covered by		
	uns Agreement to any country outside of the United States "		
	Section 7 OK/ob #1 ICHNICEE agrees that		
	it shall hold all nade of the SOPTWA DR		
••••	PRODUCTS subject to this Agreement in		
	confidence for AT&T."		
	Section 7.10: "Except as provided in		
	Section 7.06(b), nothing in this		
	Agreement grants to LICENSEE the right		
	to sell, lease or otherwise transfer or		
	dispose of a SOPTWARE PRODUCT in		
	whole or in part,"		
	(Ex. 282 ¶ 12; Ex. 119; Ex. 492.)		
<u>8</u>	These provisions concern the UNIX System V	Disputed to the extent the statement supposets	Deemed admitted Nothing in CO's etsternent
	source code and related materials — the	that AT&T did not license the UNIX System	specifically contrasents IRM's facts with
•	"SOFTWARE PRODUCT" or "SOPTWARE	methods and concepts pursuant to the standard	admissible evidence menting the requirements of
	PRODUCTS" — that AT&T provided to its	software agreements, and, depending on the	Rule 56. Further the material referred to by
	licensees. The Agreements define	meaning of the term "their own original works."	SCO does not support SCO's statement.
	"SOFTWARE PRODUCT" as "materials such	to the extent that the statement suggests that the	
	as COMPUTER PROGRAMS, information used	terms of AT&T's standard UNIX license	
	or interpreted by COMPUTER PROGRAMS	agreement do not place restrictions on what	
	and documentation relating to the use of	licensees can do with their own original works.	
	COMPUTER PROGRAMS"; "COMPUTER	(113-21.)	
	PROGRAM" is defined as "any instruction or		
	instructions, in source-code or object-code		
	format, for controlling the operation of a CPU".		
	(Ex. 119; Ex. 492.) The provisions do not, by		
	their terms, place restrictions on what licensees		
	can do with their own original works. (Ex. 282 4		
	12; Ex. 119; Ex. 492.)		

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19.	As Messrs. Wilson, DeFazio, and France	Dismissal in that an instance of the same	のの他に対する。
	independent of discussions of the	Deemed at the material referred to by	Deemed admitted: The material referred to by
	united strong and discussed the provincing with	easity permits the inference) that Messrs.	SCO does not support SCO's statement.
	licensees, they do not, and were not intended to,	Wilson, DePazio, and Frasure had no such	
	restrict a licensee's right to use, export, disclose	understanding or discussions. (99 63-163.)	
	or transfer its own products and source code, so	Depending on the meaning of the phrases "their	
	long the licensee did not use, export, disclose or	own original works" and "its own products and	
	transfer AT&T's UNIX System V source code	source code," disputed in that AT&T's software	
	along with it. AT&T's software agreements	agreements were intended to place restrictions	
	were not intended to place any restrictions on	on the licensee's modifications and derivative	
	licensees' use of their own original work. (Ex.	works based on the licensed UNIX software	
	282 ¶ 12; Ex. 182 ¶ 17; Ex. 189 ¶ 14-16.)	product (94 82-86)	
5 0.	AT&T's standard software agreements granted	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	licensees the right to modify UNIX System V	that the term "SOFTWARE PRODUCT" in the	specifically controverts IBM's facts with
	source code and to prepare derivative works	standard UNIX license agreement excludes the	admissible evidence meeting the requirements of
	based upon the code. Section 2.01 of AT&T's	methods and concepts embodied therein. (¶ 80.)	Rule 56. Further the material referred to be
	early software agreement included the following		SCO does not support SCO's statement
	language:		
	Such right to use includes the right to		
	modify such SOPTWARE 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.		
	(Ex. 281 § 13; Ex. 182 § 16; Ex. 189 § 15; Ex.		
	190 € 14.)		

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THEM'S KOTH FOR THE SAME TO SEE	Deemed admitted: Nothing in SCO's statement	specifically confroverts IBM's facts with	Batmissible evidence meeting the requirements of	Kule 50. Further, the material referred to by	अट्ट करड तथ अमुख्या अट्ट 5 अवस्थापतार				, 										Deemed admitted: Nothing in SCO's statement	specifically controverts IBM's facts with	admissible evidence meeting the requirements of	Rule 56. Further, the material referred to by	SCO does not support SCO's statement.								
or have the second of the seco	Disputed in that substantial evidence shows (and	cashy permits the inference) that Messrs.	with the allo, frashe and other A 1 401	representatives that to such interesting all to represent in the most of the communications ()	163.) Disputed in that AT&T's license	agreements were intended to require licensees to	hold in confidence all parts of their	modifications and derivative works based on the	licensed UNIX System V software product. (Pr	82-86.)									Disputed in that AT&T and USL intended to	require their UNIX System V licensees to hold	in confidence all parts of the modifications and	derivative works they developed based on the	licensed UNIX System V software product, even	those parts of such modifications and derivative	works as to which AT&T and USL claimed no	ownership. (99 82-86.)					
	A.B.M. representatives communicated to	AT&T's licensees this remission was only	intended to ensure that if a licensee were to	create a modification or derivative work based	on UNIX System V, any material portion of the	original UNIX System V source code provided	by AT&T or USL that was included in the	modification or derivative work would remain	subject to the confidentiality and other	restrictions of the software agreement. Any	source code developed by or for a licensee and	included in a modification or a derivative work	would not constitute "resulting materials" to be	treated as part of the original software product,	except for any material proprietary UNIX	System V source code provided by AT&T or	USL and included therein. (Ex. 282 § 14; Ex.	182¶16; Ex. 190¶14.)	AT&T and USL did not intend to assert	ownership or control over modifications and	derivative works prepared by licensees, except to	the extent of the original UNIX System V source	code included in such modifications and	derivative works. Aithough the UNIX System V	source code contained in a modification or	derivative work continued to be owned by	AT&T or USL, the code developed by or for the	Hornsec remained the property of the licensee,	and could therefore be used, exported, disclosed	or transferred freely by the licensee. (Ex. 282]	15; Ex. 182 17; Ex. 190 16.)
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Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, the material referred to by SCO does not support SCO's statement.	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, the material referred to by SCO does not support SCO's statement.
Deemed admitted in that substantial evidence shows (and easily permits the inference) that Messrs. Wilson, DeFazio, Frasure and other AT&T admissible evid representatives held no such belief or understanding. (¶ 63-163.) SCO does not s	Disputed in that substantial evidence shows (and easily permits the inference) that Messrs. Wilson, DeFazio, Frasure and other AT&T representatives held no such understanding and made no such statements. (¶ 63-163.) Disputed in that no side letter permitted any AT&T or USL UNIX System V licensee to distribute any part of its modifications or derivative works based on the licensed UNIX System V software product. (¶ 82-88.) Disputed to the extent that the statement suggests that, upon catering into their written agreement, the parties did not intend to exclude any previous oral discussion from the agreement the parties had reached. (¶ 18, 91-92.) "The IBM Agreements and the Sequent Agreements (collectively "the Agreements") set forth the terms under which UNIX System V could be used and disclosed by them and under which they could distribute software programs "based on" UNIX System V." (IBM Statement of Undisputed Pacts ¶ 50.) Disputed to the extent the statement suggests that any writing referred to the licensee's "control," which statement the cited material does not support.
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25.	25. It was Mr. Wilson's view at the time that AT&T Disputed in that substantial evidence show	(8) X	1.0
	could not claim any rights to non-UNIX System	easily permits the inference) that Mr. Wilson	specifically controverts IRM's facts with
-	V code source (as SCO does here) without	held no such view and made no such	admissible evidence meeting the requirements of
	raising serious antitrust issues. In light of the	representations. (49 63-163.) Disputed to the	Rule 56. The material referred to by SCO does
	divestitute of AT&T in the early 1980s, AT&T	extent that the statement suggests that, upon	not support SCO's statement.
	as a company was concerned with the potential	entering into their written agreement, the parties	•
	anticompetitive effects of its actions. As a	did not intend to exclude any previous oral	
	result, one of the reasons Mr. Wilson made clear	discussion from the agreement the parties had	
	to A T&T's licensees that its UNIX System V	reached. (TI 18, 91-92.) "The IBM Agreements	
	software agreements did not impose any	and the Sequent Agreements (collectively "the	
	restrictions on the use or disclosure of their own	Agreements") set forth the terms under which	
	original code, except insofar as It included UNIX	UNIX System V could be used and disclosed by	
	System V code, was to avoid any appearance of	them and under which they could distribute	
	any impropriety. (Ex. 282 ¶ 18.)	software programs "based on" UNIX System	
		V." (IBM Statement of Undisputed Facts (50.)	•
×	Because AT&T and USL intended to distribute	Disputed in that there was nothing inherent in	Deemed admitted: Nothing in SCO's statement
	the UNIX System V source code and related	AT&T's or USL's UNIX Ikensing program that	specifically controverts IBM's facts with
	information widely, AT&T understood that it	would result in the disclosure of any confidential	admissible evidence meeting the remirements of
	would be difficult to require that the code and	UNIX material, modifications, or derivative	Rule 56.
	related information be kept confidential. Since	works. (1178-79.)	
	AT&T believed that its licensees held the same		
	view, its standard UNIX software agreements		
	provided that a licensee would not be required to		
	keep a software product confidential if it became		
	available without restriction to the general		
	public. (Ex. 282 29.)		

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27.	The exception is set forth in Section 7.06(a) of	Districted to the extent the grotement currents	Desired at the Notice of Control of the Control of
_	the standard software agreement:	that Section 7.06(s) of the standard software	consideration to control and the fact with
	If information relating to a SOFTWARE	agreement embodies the exception on and for the	appearately controvers a total a tacts with
	PRODUCT subject to this Agreement at any	resons described in Denomin 20	Built 64
	time becomes available without restriction	The state of the s	Aute Jo.
	to the general public by acts not attributable		
	to LICENSEE or its employees,		
	LICENSEE'S obligations under this section		
	shall not apply to such information after		
	(Ex. 119 § 7.06(a).) The licensee was free to		
	disclose, without any restriction whatsoever, any		
	information that became available without		
	restriction to the general public by acts not		
	attributable to that particular licensee. (Ex. 281		
	[130.)		
8	This exception was intended to ensure that the	Disputed, AT&T intended to require its licensees	Deemed admitted: Nothing in SCO's statement
	confidentiality restriction applied only to	to hold in confidence all parts of their	specifically controverts IBM's facts with
	information that needed to be protected	modifications and derivative works based on the	admissible evidence meeting the requirements of
	specifically, any trade secrets embodied in	licensed UNIX software product, (¶ 82-86.)	Rule 56. Further, the material referred to by
	UNIX System V source code provided by AT&T	AT&T sought to obtain more protection under	SCO does not support SCO's statement.
	or USL. If part or all of the source code were	the standard license agreement than AT&T	
	not entitled to be protected as a trade secret, then	might have under the existing intellectual	
	such software product (or portion of a software	property law. (¶81.) Disputed to the extent the	
	product) would be "available without restriction	statement suggests that Section 7.06(a) of the	
	to the general public" within the meaning of the	standard software agreement embodies the	
	agreements, and no longer protected by any	exception as and for the reasons described in	
	confidentiality restriction. AT&T did not intend	Paragraph 26.	
	to impose a confidentiality obligation beyond	•	
	what it could enforce under trade secret law.		
	(Ex. 281 ¶ 31.)		

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THE MAKEN THE STATE OF THE STAT	Deemed admitted: Nothing in SCO's statement	specifically controverts IBM's facts with admissible evidence meeting the requirements of	Rule 56. Further, the material referred to by	SCO does not support SCO's statement.	· · · · ·															Deemed admitted: Nothing in SCO's statement	specifically controverts IBM's facts with	admissible evidence meeting the requirements of	Rule 56. Further, the material referred to by	SCO does not support SCO's statement,						
	Disputed to the extent the statement suggests	or concepts embodied therein, accompanied by a	copyright notice, would constitute making such	rechnology "available without restriction to the general public," "The mere fact of publishing a	copyrighted work does not give others the right	to use, copy, modify, or distribute that work." (IBM Statement of Undisound Facts in Suproce	of IBM's Motion for Summary Judgment on Its	Claim for Copyright Infringement (IBM's Eighth Counterclaim) § 8.) Disputed in that	there was nothing inherent in AT&T's or USL's	UNIX licensing program that would result in the	disclosure of any confidential UNIX material,	Disputed to the extent the statement connects.	that the OPL existed when the standard UNIX	license agreement was created, which statement	the cited material does not support.	:	•			Disputed in that substantial evidence shows (and	easily permits the inference) that AT&T did not	intend to hold all licensees to the same basic	standard Without regard to the provisions of any	Stoc letters with its licensees. († 89.) "The IBM Appropriate and the Content Americants	(collectively "the Agreements") set forth the	terms under which UNIX System V could be	used and disclosed by them and under which	they could distribute software programs "based	on" UNIX System V." (IBM Statement of	CHALISPIERCA 1 GAVE 1 JULY
	A 1 & 1 was in A 1 & 1 ways in which source code could become "available	without restriction to the general public" within	the meaning of the software and related	agreements. But A 1 & 1, including Mr. Wilson and other representatives, believed that the	UNIX System V source code (or any part	the general public if, for example, it were (1)	published by a party other than the licensee in	question, (2) accessione outside the limits of a confidentiality agreement, such as for download	from the internet; (3) available because its owner	latted, even if by inadvertence or simple	engine that it would remain confidential: (4)	distributed so widely that contractual	confidentiality restrictions would be insufficient	to maintain confidentiality; (5) made available to	a third party who had the right to disclose the	software product (or any part thereof); or	(6) distributed under an open-source license like	the GNU General Public License (the "GPL").	(EX. 281 7 32.)	Some notabled requested not letters clarifying	or americang A Local 's standard terms or	A T.B.T. served to focus side Laters in a contract of the cont	circum agrees as an accommodation to the	licensee, but it nevertheless intended to hold all	licensees to the same basic standard. (Ex. 28)	TI 22-26, 43.)				
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31.	Atthough not all of AT&T's licensees had a side	Disputed in that substantial evidence shows (and	Deemed admitted: Nothing in SCO's statement
	letter or most-favored customer provision,	easily permits the inference) that AT&T did not	specifically controverts IBM's facts with
	AT&T interpreted its license agreements in light	Intend and it was not its policy to hold all	admissible evidence meeting the requirements of
	of the collective body of UNIX license	licensees to the same basic standard regardless	Rule 56. Further, the material referred to by
	agreements. For example, the UNIX licensing	of the provisions of any side letters with its	SCO does not support SCO's statement.
	group used the churc body of side letters to movide its quidance to A T&T's UNIX licenses	Incrisces, (¶ 89.) "The IBM Agreements and the	٠
	AT&T's policy was to deal with a licensee that	Agreements") set forth the terms under which	
	did not have a most-favored customer provision	UNIX System V could be used and disclosed by	
	in a side letter (like Sequent) in the same manner	them and under which they could distribute	
	as a licensee that had a side letter with such a	software programs "based on" UNIX System	
	provision (like IBM). (Ex. 281 ¶ 43.)	V." (IBM Statement of Undisputed Facts ¶ 50.)	
32,	IBM and Sequent (like many other companies)	Undisputed,	Undkputed.
	entered into negotiations with AT&T in the mid-		•
	1980s, to replace their existing UNIX licenses		
	with new ones for UNIX System V. Those		
	negotiations led ultimately to execution of the		
	Agreements, which SCO now contends IBM has		
	Ex. 217 ¶ 4; Ex. 228 ¶ 4-9; Ex. 233 ¶ 4; Ex. 252		
	12; Ex. 266 13; Ex. 275 7-8; Ex. 282 7-8		
33.	While Messrs. Wilson, DeFazio, and Frasure had	Disputed to the extent the statement suggests	Deemed admitted: Nothing In SCO's statement
	primary responsibility for the negotiation and	that the standard UNIX license agreement at that	specifically controverts IBM's facts with
	execution of the new IBM and Sequent UNIX	time had not been previously drafted by AT&T.	admissible evidence meeting the requirements of
	licensing agreements, Mr. Steve Vuksanovich	(# 106-18.)	Rule 56.
	and Mr. Ira Kistenberg also participated in the		
	negotiations. (See Ex. 275 ¶ 7; Ex. 217 ¶ 4.)		
	Mr. Vuksanovich was the AT&T account		
	representative assigned to the IBM account.		
	(See Ex. 275 ¶ 8.) Mr. Kirtenberg was the		
	AT&T account representative specifically		
	assigned to the Sequent account. (See Ex. 217		
	13-5.)		

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が見る対象を構成的はなができません。 「で、これに対象を表現を表現している。」で、これに対象を表現を表現している。 では、これに対象を表現している。		Undisputed.	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, the material referred to by SCO does not support SCO's statement.
	· ·	Undisputed.	Disputed in that substantial evidence shows (and easily permits the inference) that AT&T did not intend and it was not its policy to hold all licensees to the same basic standard regardless of the provisions of any side letters with its licensees. (¶ 89.) "The IBM Agreements and the Sequent Agreements (collectively "the Agreements") set forth the terms under which UNIX System V could be used and disclosed by them and under which they could distribute software programs "based on" UNIX System V." (IBM Statement of Undisputed Pacts ¶ 50.)
	IBM was represented in the negotiation of its UNIX licensing agreements by, among others, Messrs. Richard McDonough, Thomas Cronan, and Jeffiey Mobley. Mr. McDonough was the Division Counsel for IBM's System Products Division. (Ex. 228 ¶ 4.) Mr. Cronan was an attorney in IBM's System Products Division. (See Ex. 178 ¶ 4-5.) Mr. Mobley was a member of IBM's corporate Commercial & Industry Relations staff. (See Ex. 233 ¶ 1, 3-4.)	Sequent was represented in the negotiation of its UNIX licensing agreements by, among others, Messrs. David Rodgers and Roger Swanson. Mr. Rodgers was Sequent's Vice President of Engineering. (See Ex. 252 1 2.) Mr. Swanson was Sequent's Director of Software Engineering.	The AT&T representatives insisted on licensing its UMIX System V software and related materials pursuant to a standard set of license agreements. They stated that AT&T intended to license and distribute UMIX System V software and related materials broadly and, for the sake of efficiency and ease of administration, wanted to avoid having to draft different agreements with each of its licensees. In addition, they made clear that AT&T wished to license UMIX System V software and related materials evenhandedly; they said they expected to treat all of their licensees the same. (Ex. 178¶ 7; Ex. 228 ¶ 5-6; Ex. 252¶ 6; Ex. 266 ¶ 6; Ex. 226 ¶ 6; Ex. 266
T. C.	34.	ė,	36.

Statements of the understanding and his statements. (Fig. 1787) They stated that the proposed allow AT&T to control led what licensees to transfer of the licensees use, export, disclosure, or transfer of the licensees that did not allow AT&T to control licensees that did not allow AT&T to control licensees that did not allow AT&T to control licensees use, export, disclosure, or transfer of the licensees modifications and derivative works that did not allow AT&T to control licensees use, export, disclosure, or transfer of the licensees modifications and derivative works that did not allow AT&T to control licensees use, export, disclosure, or transfer of the licensees modifications and derivative works and the safe on the licensees that did not allow AT&T representatives held no sality permits the inference that the statement suggests that, upon entering into their written agreement, the parties did not into their written agreement the parties had reached. (The statements of licensees are statements and the sequence of the licensees what the statement is upported to the extent of the transfer of license and the statement and the sequence of the licensees what the statement is upported to the extent of the licensees what the statement is upported to the extent of the licensees what the statement is upported to the extent of the licensees what the statement is uppervious oral discussion from the agreement the parties had reached. (The licensees with a support statement and the sequence of the licensees what the statement is uppervious oral discussion from the sequence of the licensees what the statement is collectively "the licensees with a support statement and the sequence of the licensees with a support statement is oblectively "the licensees with a support statement is oblectively "the licensees with a support statement is uppervious oral discussion licensees with a support statement is oblectively "the licensees with a support statement in the statement is uppervious and discussion licensees with a support st	
Disputed to the extent the statement suggests that Mr. Wilson and his staff held the view and told IBM or Sequent that the proposed agreements did not allow AT&T to control licensees' use, export, disclosure, or transfer of the licensees modifications and derivative works based on the licensed System V software product, in that substantial evidence shows (and easily pormits the inference) that Messrs. Wilson and his staff other AT&T representatives held no such widerstanding and made no such statements. (¶ 63-163.) Disputed to the extent that the statement suggests that, upon entering into their written agreement, the parties did not lintend to exclude any previous oral discussion from the agreement the parties had reached. (¶ 91-92.) "The IBM Agreements and the Sequent Agreements (collectively "the	Agreements") set forth the terms under which UNIX System V could be used and disclosed by them and under which they could distribute software programs "based on" UNIX System V." (IBM Statement of Undisputed Facts ¶ 50.)
Mr. Wilson and his staff explained that the proposed agreements controlled what licensees could and could not do with the UNIX System V software products. They stated that the proposed agreements did not allow AT&T to control licensees' use, export, disclosure, or transfer of any software products or source code that licensees developed themselves that did not contain any UNIX System V code. (Ex. 178 ¶ 9, Ex. 228 ¶ 12; Ex. 233 ¶ 8-9; Ex. 252 ¶ 7; Ex. 266 ¶ 10.)	

Deemed admitted: Nothing in SCO's statement	specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, the material referred to by	SCO does not support SCO's statement.																
made clear during their Disputed in that AT&T's license agreements Deemed admitted: Nothing in SCO.	where interioral to require interiors so noted in confidence all parts of their modifications and derivative works based on the licensed UNIX	System V software product, AT&T would not have entered into a license agreement with any	licensee who had stated a contrary view as a condition of entering into the contract, and the	piain language of AT&T's standard UNIX System V license agreement made clear that	AT&T had entered into no such understanding.	(T13-163.) Disputed in that the evidence shows	(who easily permits the inference) that member IBM nor Sequent would have imposed any such	conditions on their willingness to enter into their	agreements. (¶ 13-21.) Disputed to the extent	that the statement suggests that, upon entering	into their written agreement, the parties did not	from the agreement the parties had reached. (The	18, 91-92.) "The IBM Agreements and the	Sequent Agreements (collectively "the	Agreements") set forth the terms under which INTX System V could be used and disclosed to	them and under which they could distribute	software programs "based on" UNIX System	V." (IBM Statement of Undisputed Facts ¶ 50.)
Both IBM and Sequent made clear during their respective negotiations that they could not not	would not enter into any agreement that did not give them ownership and control of their own	original works. The IBM and Sequent negotiators insisted that they had to own and	control their own original works, even if they were included in a modifications and derivative	work of UNIX System V. (Ex. 178 ff 13-14; Ex. 228 f 13; Ex. 233 ff 6, 8; Ex. 252 f 7; Ex.	266 71 10-11.)													

Aboth Disputed in that substantial evidence shows (and easily permits the inference) that the AT&T and of easily permits the inference) that the AT&T and of easily permits the inference) that the AT&T and of easily permits the inference) that the AT&T and of easily permits the inference) that the AT&T and advice or assurances, and the because they held no such understanding. (¶ 65- Further, the material referred to by SCO statement of Scould do because they held no such understanding. (¶ 65- Further, the material referred to by SCO does not support SCO's statement. SCO does not support SCO's statement. Suggests that the standard derms of AT&T regotiators had the support SCO's statement. The Bond of AT&T and the catent that the statement suggests that, upon entering into their written agreement, the parties did not into their written agreement and under which they could distribute software programs "based on" UNIX System V., (IBM Statement of Undisputed Facts ¶ 50.)
Disputed in that substantial evidence shows (and easily permits the inference) that the AT&T negotiators gave no such advice or assurances, because they held no such understanding. (¶ 63-10 Disputed to the extent that the statement suggests that the AT&T negotiators had the authority to modify or amend the standard terms of AT&T's standard System V license agreement. (¶ 90-91.) Disputed to the extent that the statement suggests that, upon entering into their written agreement, the parties did not intend to exclude any previous oral discussion from the agreements (Ollectively "the Agreements") set forth the terms under which UNIX System V could be used and disclosed by them and under which they could distribute software programs "based on" UNIX System V." (IBM Statement of Undisputed Facts § 150.)
The AT&T negotiators separately advised both the IBM and Sequent negotiators that AT&T did not seek to preclude ownership and control of their original or homegrown works. In fact, the AT&T negotiators assured IBM and Sequent that the purpose of the restrictions imposed by the AT&T Agreements was to protect AT&T's original code and that IBM and Sequent could do whatever they wanted with their own code so long as they did not use, export, disclose, or transfer AT&T's original code (unless otherwise permitted by the AT&T Agreements). (Ex. 178 § 19; Ex. 228 § 15; Ex. 233 § 16; Ex. 252 § 8;
39.

	The Fill In Y 18 State Hall In the Control of the C		
6.	The IBM negotiating team would never have		Deemed admitted Nothing in SCO's etstement
	agreed to give AT&T the right to own or control	original works" and "control," disputed to the	specifically controverts IBM's facts with
	IBM's original works. To do so would have	extent the statement suggests that the IBM	admissible evidence meeting the requirements of
	represented a dramatic departure from IBM's	negotlating team did not enter into a written	Rule 56. Further, the material referred to by
	practices regarding the ticensing of third-party	agreement requiring IBM to hold in confidence	SCO does not support SCO's statement,
		all parts of its modifications and derivative	
	the way it developed products to ensure that it	works based on the licensed UNIX System V	
	not allow any IBM or third-party code to be	software product. (7 13-29, 82-86.) Disputed to	
	Infroduced into the source code base containing	the extent that the statement suggests that, upon	
	me UNIX System V code (however briefly)	entering into their written agreement, the parties	
	unless IBM was prepared forever to yield control	did not intend to exclude any previous oral	
	of that code to AT&T. (Ex. 178 ¶ 9; Ex. 228 ¶	discussion from the agreement the parties had	
	18; Ex. 233 ¶ 17.)	reached. (¶ 18, 91-92.) "The IBM Agreements	
		and the Sequent Agreements (collectively "the	
		Agreements") set forth the terms under which	
		UNIX System V could be used and disclosed by	
		then and under which they could distribute	
		coffigure recommend thereof on Third Contain	
		Society of the control of the contro	
		V. (1BM Statement of Undisputed Facts § 50.)	
		Disputed to the extent the statement suggests	
		that IBM had compelling business reasons to	
_		insist on the "control" as described by iBM	
		herein. (¶ 30-62.)	
4	So that there would be no confusion, the IBM	Disputed in that substantial evidence shows (and	Deemed admitted: Nothing in SCO's statement
	negotiators told the AT&T representatives with	casily permits the inference) that the IBM	specifically controvers iBM's facts with
	whom they negotiated that IBM intended to	negotiators made no such statements and asked	admissible evidence meeting the requirements of
	include portions of AT&T's UNIX System V	for no such assurances. (¶ 63-163.) Disputed to	Rule 56. Further, the material referred to by
	code in products with IBM code and to make	the extent that the statement suggests that, upon	SCO does not support SCO's statement.
	changes to the AT&T code (such as by adding to	entering into their written agreement, the parties	-
	it) and thus IBM had to ensure that the parties	did not intend to exclude any previous oral	
	agreed that IBM had the right to do so, without	discussion from the agreement the parties had	
	forfeiting any rights (including the right to	reached, (#118, 91-92.) "The IBM Agreements	
	control) to such IBM products and code. (Ex.	and the Sequent Agreements (collectively 'the	
	178 ¶ 19.)	Agreements") set forth the terms under which	
		UNIX System V could be used and disclosed by	
		them and under which they could distribute	
		software programs "based on" UNIX System	
		V." (IBM Statement of Undisputed Facts § 50.)	

7	THE STATE OF THE S	SCO STREET ONS CONTRACT OF THE PARTY OF THE	のの大きないのでは、一般の大きないのでは、一般の大きないのでは、一般の大きないのでは、一般の大きないのでは、一般の大きないできない。
걾	Similarly, the Sequent negotiators would never	Depending on the meaning of the phrase "IBM's	Deemed admitted: Nothing in SCO's statement
	have agreed to give AT&T the right to own or	original works" and "control," disputed to the	specifically controverts IBM's facts with
	control their original works. (Ex. 252 § 7; Ex.	extent the statement suggests that the Sequent	admissible evidence meeting the requirements of
	266 T 10-11.) As a small company at the time,	negotiating team did not enter into a written	Rule 56. Further, the material referred to by
	it would not have made any sense for Sequent to		SCO does not support SCO's statement.
	have entered into an agreement that gave AT&T	confidence all parts of its modifications and	•
	control over the source code that Sequent	derivative works based on the licensed UNIX	
	developed for its own software products. (Ex.	System V software product. (Tf 13-21, 82-86.)	
	266 [11.) Sequent's original or homegrown	Disputed to the extent that the statement	
	source code was one of the key assets of the		
	company, and to compromise Sequent's	agreement, the parties did not Intend to exclude	
	ownership of or control over the code would	any previous oral discussion from the agreement	
	have required the approval of Sequent's board of	the parties had reached. (¶ 18, 91-92.) "The	
	directors. (Ex. 295 at 47:9-49:19.)	IBM Agreements and the Sequent Agreements	
		terms under which UNIX System V could be	
		used and disclosed by them and under which	
		they could distribute software programs "based	
		on" UNIX System V." (IBM Statement of	
		Undisputed Facts ¶ 50.) Disputed to the extent	
		the statement suggests that Sequent had	
		compelling business reasons to Insist on the	
		"control" as described by IBM herein. (¶ 30-	
		(62.)	

			一方 このこの一方の子を表現のである。 このはないは大変をはる
43.	Messrs. Wilson, Frasure and DeFazio	Disputed in that substantial evidence shows (and	Demod admitted. Nothing in COOs anteness
	understood that neither IBM nor Sequent would		enecifically controvery IDAP face with
	have entered into the proposed UNIX licensing	Wilson, DeFazio, Frasure and other AT&T	admissible evidence meeting the requirements of
	agreements if AT&T had sought and insisted on	representatives held no such understanding and	Rule 56.
	the right to control any product or code that	made no such statements. (¶ 63-163.)	
	might in the tuture be associated with UNIX	Depending on the meaning of the phrase "IBM	The material referred to by SCO does not
	System V code, except insofar as it might	or Sequent original code," disputed to the extent	support SCO's statement. The testimony of
	molude UNIX System V code. (Ex. 182 ¶ 17;	the statement suggests that the Sequent	individuals who did not negotiate or execute the
	Ex. 190 29; Ex. 282 16.) No one involved in	negotizating team did not enter into a written	Agreements is irrelevant.
	the negotiation of the Agreements ever	agreement requiring IBM and Sequent to hold in	<u> </u>
	suggested that they would give AT&T (or	confidence all parts of its modifications and	
	anyone else other than IBM or Sequent) the right	derivative works based on the licensed UNIX	
	to control IBM or Sequent original code. (Ex.	System V software product. (#113-29, 82-86.)	
	178 ¶ 11-12; Ex. 228 ¶ 19; Ex. 233 ¶ 9; Ex. 252	Disputed to the extent that the statement	
	17; Ex. 266 ¶ 10.)	suggests that, upon entering into their written	
		agreement, the parties did not intend to exclude	
		any previous oral discussion from the agreement	
		the parties had reached. (T 18, 91-92.) "The	
		IBM Agreements and the Sequent Agreements	
		(collectively "the Agreements") set forth the	
		terms under which UNIX System V could be	
		used and disclosed by them and under which	
		they could distribute software programs "based	
		on" UNIX System V." (IBM Statement of	
		Undisputed Facts ¶ 50.) Disputed to the extent	
		the statement suggests that IBM or Sequent had	
	-	compelling business reasons to insist on the	
		"control" as described by IBM herein. (11 30-	

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ľ	THE REPORT OF THE PARTY OF THE		specifically controverts IBM's facts with	admissible evidence meeting the requirements of		_	The material referred to by SCO does not	support SCO's statement. The testimony of	individuals who did not negotiate or execute the	Agreements is irrelevant				·													
CONTRACTOR OF THE SECOND RESIDENCE OF THE SECOND SE	Disputed in the contraction of the contraction	conference at the substitute evidence site ws (after	casily permits the interence) that Messrs.	Wilson, DeFazio, Frasure and other AT&T	representatives gave no such assurances. (79 63-	163.) Disputed to the extent the statement	suggests that IBM and Sequent did not enter into	agreements requiring IBM and Sequent to hold	In confidence all parts of its modifications and	derivative works based on the licensed UNIX	System V software product. (¶¶ 13-29, 82-86.)	Disputed to the extent that the statement	suggests that, upon entering into their written	agreement, the parties did not intend to exclude	arry previous oral discussion from the agreement	the parties had reached. (11 18, 91-92.) "The	IBM Agreements and the Seguent Agreements	(collectively "the Agreements") set forth the	terms under which UNIX System V could be	used and disclosed by them and under which	they could distribute software programs "based	on" UNIX System V." (IBM Statement of	Undisputed Facts § 50.) Disputed to the extent	the statement suggests that IBM or Sequent had	compelling business reasons to insist on the	"control" as described by IBM herein. (99 30-	(25)
		IBM and Semient made the decision to account	ייייי בייי ביייי ביייי מיייי	Hoensing agreements that A local represented to	reflect its standard terms. Sequent agreed to sign	the agreements as is, whereas IBM agreed to	sign them subject to clarifications and	amendments set out in a contemporaneous side	letter. IBM wanted to make sure there would be	no question that, among other things, AT&T's	licensees, not AT&T, would own and control the	source code that was developed by the licensee	or developed for the licensee by a third party.	(Ex. 178 ¶ 13-17; Ex. 228 ¶ 13-14, 18; Ex. 233	11 10-13; Ex. 252 ¶ 7; Ex. 266 ¶ 12.)												
15	4.																										

2000 1000 1000 1000 1000 1000 1000 1000		1000年	of the Sections of the Control of th		BM's Reply with the second sec	
45.	The AT&T negotiators agreed to prov	ide IBM	45. The AT&T negotiators agreed to provide IBM Depending on the meaning of the term "mxst- Demed admitted. Nothing in SCO's east		Deemed admitted. Nothing in SCO's statement	1
	with a side letter, including, among other things,	her things,	favored nation customer provision," disputed in	.5	specifically controverts IBM's facts with	
	a most-favored customer provision, but stated	# stated	that the term concerns terms other than pricing		admissible evidence meeting the conjicements of	
	that a side letter was not necessary because,	ause,	(Ex 333 ¶ 27.) Disputed in that substantial		Rule 56.	
	among other reasons, AT&T did not wish to	rish to	evidence shows (and easily permits the			
	assert ownership or control over any		inference) that Messrs, Wilson, DePazio, Frasure The material referred to by SCO does not	Sure	The material referred to by SCO does not	
	modifications and derivative works prepared by	spared by	and other AT&T representatives possessed no	_	support SCO's statement. The testimony of	
	or for IBM, or by any other of AT&T's Ilcensees	Si Si	such wishes. (#9 63-163.)		individuals who did not negotiate or execute the	
	for that matter, except to the extent that those				Agreements is irrelevant	
	portions of the modifications or derivative works	tive works				
	contained licensed UNIX System V source code.	urce code,		•		
	(Ex. 178 ¶ 16; Ex. 228 ¶ 13-14; Ex. 233 ¶ 12-	33 112-				
	13; Ex. 182 1 18, 20; Ex. 189 1 14-16; Ex. 281	6; Ex. 281				
	· 1	_		_		_

46. AT&T made dot better or not — AT&T intended to treat all of its liteneses the same basis. AT&T intended to treat all of its liteneses the same basis. AT&T intended to treat all of its liteneses the same basis. AT&T intended to treat all of its liteneses the same basis. AT&T intended to treat all of its liteneses the same basis. ATAT TST ashed policy was to treat all of its liteneses to the same basis standard. ATAT TST stated policy was to treat all of its liteneses to the same basis standard. ATAT TST stated policy was to treat all of its liteneses to the same basis standard. ATAT TST stated policy was to treat all of its liteneses to the same basis standard. ATAT TST stated policy was to treat all of its liteneses to the same basis standard. ATAT TST stated policy was to treat the tot of plant increases seemilably the same. (Bet. 18.7 FIg. 18.2.) ATAT TST stated policy was to treat the tot of plant increases seemilably the same (Bet. 18.7 FIg. 18.2.) ATAT TST STATE TST STA			The state of the s	の一般には大変なのでは、
ATÆT intended to treat all of its licensees the same. Mesers. Wilson, Del'Resure, Kistenberg, and Vuksanovich intended to hold same basic standard. ATÆT intended to treat all of its intended to hold same basic standard. ATÆT intended to the growth intended to hold same basic standard. ATÆT is stated point was to treat all of its intended to the provisions of any side letters with its licensees to the same basic standard. ATÆT intenders and vuksanovich intended to hold same basic standard. ATÆT stated point was to treat all of its intended to the provisions of any side letters with its licensees essentially the same. (Bx 182 ¶ 18, Ex 217 ¶ 212; Ex 217 ¶ 12; Ex 217 ¶ 12; Ex 217 ¶ 12; Ex 215 ¶ 29; Ex 282 ¶ 28; Ex 282 ¶ 28	 -	AT&T made clear that side letter or not	Disputed in that substantial evidence shows (and	1 Decimed admitted. Nothing in SC(3)'s statement
Same. Mesrs. Wilson, Defeato Frastre, Statebeg, and Vulsamovich intended to hold all licensees to the same basic standard. AT&T's stated policy was to treat all of its licensees sessually the same. (Ex. 187 F18, 21-22; Ex. 277 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 275 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 287 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 287 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 287 T\$2-27; Ex. 287 T1-16; Ex. 217 T7 21-22; Ex. 217 T1-16; Ex. 217 T7 21-22; Ex. 217 T1-16; Ex. 217 T7 21-22; Ex. 217 T1-16; Ex. 2		AT&T intended to treat all of its licensees the	easily permits the inference) that AT&T did not	specifically controverts IBM's facts with
Kistenberg, and Vuksanovich intended to hold standard without regard to the provisions of any all licensees essentially use same. (Ex. 182 ¶ 18, 18. 27) for Ex. 18 ¶ 14-16; Ex. 217 ¶ 12-12; Ex. 27 § 19; Ex. 190 ¶ 26; Ex. 27 § 19; Ex. 190 ¶ 26; Ex. 27 § 19; Ex. 27 § 19; Ex. 27 § 29; Ex. 282 ¶ 28.) Software. (See Ex. 182 ¶ 18; Ex. 190 ¶ 26; Ex. 27 § 19; Ex. 27 § 29; Ex. 282 ¶ 28.) Extend the statement suggests that IBM and sequent of the phrase vortex, so long as they protected AT&T's UNIX Sequent did not enter into a worter and echnism of the phrase vortex, so long as they protected AT&T's UNIX Sequent did not enter into a written agreement erquiring BM and Sequent completed negotiations relating to their UNIX System V licensing agreements beginning in early 186. (Ex. 119; Ex. 122; Ex. 492.) Ex. 120; Ex. 122; Ex. 492.)		same. Messrs. Wilson, DeFazio Frasure,	intend to hold all licensees to the same basic	admissible evidence meeting the requirements of
all licensees to the same basis standard. 20, Ex. 189 T 14-16, Ex. 217 T 21-22, Ex. 275 T 26-25. Ex. 281 T 17.) All were free to do as 17 T 26-25. Ex. 281 T 26-27. Ex. 281 T 27-25. Ex. 281 T 2		Kistenberg, and Vuksanovich intended to hold	standard without regard to the provisions of any	Rule 56. Further, the material referred to by
ACT 12 Stated policy was to treat all of its permit the inference; that Messis. Wilson, 20; Ex. 189 ¶ 14-16; Ex. 217 ¶ 12-22; Ex. 277 ¶ 14-16; Ex. 217 ¶ 12-22; Ex. 277 ¶ 14-16; Ex. 219 ¶ 26; Ex. 219 ¶ 26; Ex. 219 ¶ 26; Ex. 220 ¶ 28.) To a software. (See Ex. 189 ¶ 14:16; Ex. 219 ¶ 26; Ex. 220 ¶ 28.) To a software. (See Ex. 189 ¶ 26; Ex. 220 ¶ 28.) To a software product (₱ 13-21; \$2-36.) Disputed to the extent that the statement suggests that upon entering into their written agreement the parties had reached. (₱ 11-21; \$2-36.) Disputed to the extent that the statement suggests that upon entering into their UNIX System V software programs "based on" UNIX System V including its stell elefen negotiations agreements beginning in early 1985. (Ex. 119; Ex. 120; Ex. 492.) Ex. 120; Ex. 122; Ex. 492.) Undisputed. We be a stand or the all of the terms under which which written and under which they could distribute software programs "based on" UNIX System V includisputed. Undisputed. We be a stand or programs "based on" UNIX System V includisputed. Undisputed. We be a stand or second by Mr. Frasure on behalf of Mr. Wilson for AT&T and by Mr. McDonough for IBM. (Ex. 122; Ex. 122; Ex. 222; E		all licensees to the same basic standard.	side letters with its licensees. (§ 89.) Disputed in	SCO does not support SCO's statement.
Dicensees essentially the same. (Bx. 187 ft 18, permits the inference) that Messrs. Wilson, 20; Ex. 198 ft 14-16; Ex. 217 ft 12-22; Ex. 217 ft 12-22; Ex. 217 ft 12-23; Ex. 218 ft 17. All tweer free to do as they wished with their original or homegrown works, so long as they protected AT&T's UNIX software. (See Ex. 182 ft 18; Ex. 190 ft 26; Ex. 201 ft 12; Ex. 275 ft 29; Ex. 282 ft 28. (See Ex. 182 ft 18; Ex. 190 ft 26; Ex. 201 ft 12; Ex. 275 ft 29; Ex. 282 ft 28. (See Ex. 182 ft 18; Ex. 190 ft 26; Ex. 201 ft 12; Ex. 275 ft 29; Ex. 282 ft 28. (See Ex. 182 ft 18; Ex. 190 ft 26; Ex. 201 ft 18; Ex. 190 ft 26; Ex. 201 ft 18; Ex. 201 ft 18; Ex. 201 ft 29; Ex. 282 ft 28. (See Ex. 182 ft 18; Ex. 190 ft 26; Ex. 201 ft 18; Ex. 201 ft 18; Ex. 201 ft 29; Ex.		AT&T's stated policy was to treat all of its	that substantial evidence shows (and easily	:
Ex. 189 7 1-16, Ex. 217 7 21-22, Ex. 235 71-22, Ex.		licensees essentially the same. (Ex. 182 pt 18,	permits the inference) that Messrs. Wilson,	
How wished with their original or homegrown sortis, EX. 281 § 17.) All were free to do as they wished with their original or homegrown works, disputed to the software. (See Ex. 182 § 18; Ex. 190 § 26; Ex. 282 § 28.) 217 § 12; Ex. 275 § 29; Ex. 282 § 28.) 218 A 12; Ex. 275 § 29; Ex. 282 § 28.) 219 § 12; Ex. 275 § 29; Ex. 282 § 28.) 210 § 12; Ex. 275 § 29; Ex. 282 § 28.) 210 § 12; Ex. 275 § 29; Ex. 282 § 28.) 210 § 12; Ex. 275 § 29; Ex. 282 § 28.) 211 § 12; Ex. 275 § 29; Ex. 282 § 28.) 212 § Ex. 275 § 29; Ex. 282 § 28.) 213 § Ex. 275 § 29; Ex. 282 § 28.) 214 § 12; Ex. 275 § 29; Ex. 282 § 28.) 215 § Ex. 275 § 29; Ex. 282 § 28.) 216 § Ex. 275 § 29; Ex. 282 § 28.) 217 § Ex. 275 § 29; Ex. 282 § 28.) 218 Mand Sequent completed negotiations redefined to exclude any pervious oral discussion from the agreement the parties had reached that the statement suggests that, upon entering into their withen any exceuted its agreements with A T&T. 217 § Ex. 275 § 29; Ex. 282 § 28.) 227 § Ex. 275 § 29; Ex. 282 § 28.) 228 § Ex. 182 § 18; Ex. 190 § 26; Ex. 282 § 28.) 239 § Ex. 275 § 29; Ex. 282 § 28.) 240 § Ex. 120; Ex. 122; Ex. 422.) 250 § Ex. 120; Ex. 122; Ex. 422.) 260 § Ex. 120; Ex. 122; Ex. 422.) 270 § Ex. 120; Ex. 122; Ex. 422.) 271 § Ex. 120; Ex. 122; Ex. 422.) 271 § Ex. 120; Ex. 122; Ex. 422.) 272 § Ex. 422.) 273 § Ex. 422.) 274 § Ex. 275 § 29; Ex. 282 § 28.) 274 § Ex. 120; Ex. 122; Ex. 422.) 275 § Ex. 120; Ex. 122; Ex. 422.) 276 § Ex. 120; Ex. 122; Ex. 422.) 277 § Ex. 120; Ex. 122; Ex. 422.) 278 § Ex. 120; Ex. 122; Ex. 422.) 279 § Ex. 120; Ex. 122; Ex. 422.) 270 § Ex. 120; Ex. 122; Ex. 422.) 270 § Ex. 120; Ex. 122; Ex. 422.) 270 § Ex. 120; Ex. 122; Ex. 422.) 271 § Ex. 422.) 271 § Ex. 422.) 272 § Ex. 422.) 273 § Ex. 422.) 274 § Ex. 120; Ex. 122; Ex. 422.) 275 § Ex. 122; Ex. 422.) 276 § Ex. 120; Ex. 122; Ex. 422.) 277 § Ex. 122; Ex. 422.) 277 § Ex. 122; Ex. 422.) 278 § Ex. 120; Ex. 122; Ex. 122; Ex. 122; Ex. 122; Ex. 492.)		20; Ex. 189 11 14-16; Ex. 217 11 21-22; Ex. 275	DeFazio, Frasure and other AT&T	
ucy wasted with their original or homegrown works, so long as they protected AT&T's UNIX software. (See Ex. 182 ¶ 18; Ex. 190 ¶ 26; Ex. 21 ¶ 29; Ex. 282 ¶ 28.) 217 ¶ 12; Ex. 275 ¶ 29; Ex. 282 ¶ 28.) 217 ¶ 12; Ex. 275 ¶ 29; Ex. 282 ¶ 28.) 217 ¶ 12; Ex. 275 ¶ 29; Ex. 282 ¶ 28.) 217 ¶ 12; Ex. 275 ¶ 29; Ex. 282 ¶ 28.) 218 Sequent did not enter into a written agreement cequiring BM and Sequent to hold in confidence all parts of its modifications and derivative works based on the licensed UNIX System V software product. (¶ 13-21, 82-86.) Disputed to the extent that the statement suggests that, upon entering into their withen agreement, the parties did not infend to exclude any previous oral discussion from the agreement the parties and the Sequent completed negotiations relating to their UNIX System V because the suggests that the statement suggests that upon entering into their withen agreements to collectively, the 'TBM Agreements with AT&T. Including its side letter, on February 1, 1985 (collectively, the "TBM Agreements"). The IBM Agreements with AT&T. Including its side letter, on February 1, 1985 (collectively, the "TBM Agreements"). The IBM Agreements with AT&T. Including its side letter, on February 1, 1985 (collectively, the "TBM. Agreements"). The IBM Agreements with AT&T. Including the side letter, on February 1, 1985 (collectively, the "TBM. Agreements"). The IBM Agreements with AT&T and by Mr. Molbonough for IBM. (Ex. 120; Ex. 122; Ex. 492.)		11 20-2/; Ex. 281 11.) All were tree to do as	representatives gave no such assurances. (9) 63-	
works, so long as they protected AT&T's UNIX software. (See Ex. 182 ¶ 18; Ex. 190 ¶ 26; Ex. 217 ¶ 12; Ex. 275 ¶ 29; Ex. 282 ¶ 28.) Sequent did not enter into a written agreement requiring BM and Sequent to hold in confidence all parts of its modifications and derivative works based on the licensed UNIX System V software product. (M 13-21, 82-86.) Disputed to the extent that the statement suggests that, upon entering into their written agreement, the parties did not intend to exclude any previous oral discussion from the agreement the parties had reading to their UNIX System V found be used and disclosed by them and moder which they could distribute software programs "beginning in early 1985. (Ex. 119; Ex. 120; Ex. 492.) BM and Sequent completed negotiations relating to their UNIX System V found be used and disclosed by them and moder which they could distribute software programs "begon on" UNIX System V could be used and disclosed by them and worked the state, on February 1, 1985 (collectively, the "IBM Agreements"). The IBM Agreements were exceuted by Mr. Fraute on behalf of Mr. Wilson for AT&T and by Mr. McDonough for IBM. (Ex. 120; Ex. 122; Ex. 122; Ex. 492.)		mey wished with their original or homegrown	163.) Depending on the definition of the phrase	
Sortware. (255 Ex. 187 18; Ex. 190 26; Ex. 201 18; Ex. 190 26; Ex. 201 28.) Sequent did not enter into a written agreement requiring IBM and Sequent to hold in confidence all parts of its modifications and derivative works based on the licensed UNIX System V software product. (¶ 13-21, 82-86.) Disputed to the extent that the statement suggests that, upon entering into their written agreement, the parties did not infend to exclude any previous oral discussion from the agreement, the parties and the Sequent completed negotiations relating to their UNIX System V sould be used and disclosed by them and under which they could distribute software programs "based on" UNIX System V licensing agreements beginning in early 1985. (Ex. 119; Ex. 120;		works, so long as they protected AT&T's UNIX	"original or homegrown works," disputed to the	
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EX. 120; EX. 122; EX. 492.) IBM executed its agreements with AT&T, including its side letter, on February 1, 1985 (collectively, the "IBM Agreements"). The IBM Agreements were executed by Mr. Frasure on behalf of Mr. Wilson for AT&T and by Mr. McDonough for IBM. (Ex. 120; Ex. 122; Ex. 492.)		agreements beganing in early 1985. (Ex. 119;		
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(collectively, the "TBM Agreements"). The IBM Agreements were executed by Mr. Frasure on behalf of Mr. Wilson for AT&T and by Mr. McDonough for IBM. (Ex. 120; Ex. 122; Ex.	÷	LBM executed its agreements with AT&T,	. Undisputed.	Undkputed.
Agreements were executed by Mr. Frasure on behalf of Mr. Wilson for 120; Ex. 122; Ex. 492.)		declinating its side felicity of receding 1, 1965		
Agreements were executed by All. I rasure on behalf of Mr. Wilson for 120; Ex. 122; Ex. 492.)		American, the Library Agranicals J. History		
McDonough for IBM. (Ex. 120; Ex. 122; Ex. 492.)		behalf of Mr. Wilson for AT&T and by Mr.		
492.)		McDonough for IBM. (Ex. 120; Ex. 122; Ex.		
		492.)		

10MS-REDIV	Undisputed.	Undisputed.	Und isputed.
SCO's Response	Undisputed.	Undisputed.	Undisputed.
A STONE STON	April 18, 1985 and January 28, 1986 (collectively the "Sequent Agreements"). The Sequent Agreements were executed by Mr. Wilson for AT&T and Mr. Rodgers for Sequent. (Ex. 119; Ex. 121.)	The IBM Agreements and the Sequent Agreements (collectively "the Agreements") set forth the terms under which UNIX System V could be used and disclosed by them and under which they could distribute software programs "based on" UNIX System V. (Ex. 119; Ex. 492; Ex. 282 ¶ 6; Ex. 182 ¶ 15.)	The Agreements included the following provisions from AT&T's standard Software Agreements, each of which SCO acouses IBM of breaching: Section 1.01: AT&T grants to LICENSEE a personal, northansferable 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. Such right to use includes the right to modify such SOFTWARE PRODUCT and to prepare derivative works based on such SOFTWARE PRODUCT. Such right is use includes the right to prepare derivative works based on such SOFTWARE PRODUCT. Section 1.00 Section 1.00 Section 2.00 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. Section 4.01
\$	2	50.	<u>v</u>

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LICENSEE's obligations under this section shall not apply to such information after such time.	time becomes available without restriction to the general public by acts not attributable to LICENSEE or its employees.	PRODUCT subject to this Agreement at any time becomes swellakle without sessionic	use for which rights are granted hereunder If information relating to a SOFTWARE	to whom such disclosure is necessary to the	anyone, except to employees of LICENSEE	methods or concepts utilized therein) to	SOFTWARE PRODUCTS (including	make any disclosure of any or all of such	LICENSEE further agrees that it shall not	this Agreement in confidence for AT.&T	of the SOFTWARE PRODUCTS subject to	Section 7.06(a)	to this Agreement.	copies of SOFTWARE PRODUCTS subject	termination LICENSEE shall Immediately	shall have been remedled; upon such		such breach, unless within the period of	hereunder by not less than two (2) months?	terminate all the rights granted by it	may, upon its election and in addition to any other remedies that it may have at one time	its obligations under this Agreement, AT&T	If LICENSEE fails to fulfill one or more of	Section 6.03	PRODUCTS covered by this Agreement to	directly or indirectly, SOFTWARE	the prior written consent of AT&T, export,	LICENSEE agrees that it will not without	では、1000年度の1000
	time becomes available without restrict to the general public by acts not attribut to LICENSER or its employees	PRODUCT subject to this Agreement at time becomes swellable without secretaria	use for which rights are granted hereunc	to whom such disclosure is necessary to	anyone, except to employees of LICEN!	methods or concepts utilized therein) to	SOFTWARE PRODUCTS (including	make any disciosure of any or all of suc	LICENSEE further agrees that it shall in	this Agreement in confidence for AT&T	of the SOPTWARE PRODUCTS subject	Section 7.06(a)	to this Agreement.	copies of SOFTWARE PRODUCTS su	termination LICENSEE shall Immediate	shall have been remedled; upon such	such notice all breaches specified there.	without to the control of such breach, unless within the period of	hereunder by not less than two (2) mon	terminate all the rights granted by it	other remodies that it may have at one.	its obligations under this Agreement, A		Section 6.03	PRODUCTS covered by this Agreemen	directly or indirectly, SOFTWARE	the prior written consent of AT&T, exp	LICENSEE agrees that it will not with	

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	Section 7,10		
	Except as provided in Section 7.06(b),		····
	nothing in this Agreement grants to		
	LICENSEE the right to sell, lease or		
	otherwise transfer or dispose of a		
	SOFTWARE PRODUCT in whole or in		
	pert,		
	(Ex. 492; Ex. 119.)		
52.	On their face, the allegedly breached provisions	Disputed to the extent the externent suggests	Desmed admitted: Netter in Control
	(Sections 2.01, 2.05, 4.01, 6.03, 7.06(a) and	that the foregoing provisions relate only to the	Declied Administral, 140ming in SCO'S Spiement
	7.10) pertain to AT&T's "SOFTWARE	"software product" in that on their face	administration and account of the state will
	PRODUCT", which is defined by the	Sections 2.01 7 (b(a) and 7.10 of the	Posts of SCO1.
	Agreements as:	Appropriate also pertain to any modifications	Nume Job. SCO S statement does not refer to any
	Materials such as COMPUTER	and derivative works that IDs 6 - 1 C.	portion of the record on which SCO refles.
	PROGRAMS, information used or	develop based on the licensed TMIN Section 17	
	interpreted by COMPUTER PROGRAMS	Software moduct	
	and documentation relating to the use of		
	COMPUTER PROGRAMS. Materials		
	available from AT&T for a specific		
	SOFTWARE PRODUCT are listed in the		
	Sile		
	PRODUCT.		
	(Ex. 492 § 1.04; Ex. 119 § 1.04.)		
53.	The various schedules attached to the IBM and	Disputed to the extent the statement suggestive	Deamed admitted. Mathing In SCO: 144
	Sequent Software Agreements identify the	that the agreements do not refer to energia-	consideration and interest to the constitution of the constitution
	specific "SOFTWARE PRODUCT" or	Versions of IMIX System V which statement	specifically collected above 8 1808 With
	"SOFTWARE PRODUCTS", and related	the cited material does not support	manuscript evidence meeting the requirements of
	materials, that AT&T provided under the terms	niodan con con-	name ov. ov. o standardill those not refer to any
	of the agreements. (Id.) The particular		portuon of the resort of witten occurates.
			The facts stated in 10th the and
	NIX System V".		are fully encoured by the city of presenting
	126).)		at charty supported by the cited material.

TO MAN THE PROPERTY OF THE PARTY OF THE PART	Deemed admitted: Nothing in SCO's statement	specifically controverte IRM's facts with	admissible evidence meeting the requirements of	Rule 56. The material referred to by SCO does	not support SCO's statement.												
(ACO NICS Bons Branch Company Compan	Depending on the meaning of the word	"controlled" and the phrase "original or	homegrown works," disputed in that the	language in Paragraph 2 of the IBM Side Letter	dld not clerify that IBM (or any other AT&T	UNIX System V licensee) was free to publicly	disclose even those portions of a modification or	derivative work that IBM (or AT&T's other	UNIX System V licensees) owned (97 87-89)								
THE RESERVE THE PROPERTY OF TH	The IBM Side Letter clarified Section 2.01 as	follows:	Regarding Section 2.01, we agree that that	modifications and derivative works prepared	by or for [IBM] are owned by [IBM].	However, ownership of any portion or	portions of SOFTWARE PRODUCTS	Included in any such modification or	derivative work remains with [AT&T]	(Ex. 122 at 2; Ex. 282 11 19-20; Ex. 189 114;	Ex. 182 ¶ 18; Ex. 275 ¶ 15-16; Ex. 228 ¶ 13-	14; Ex. 178 11 13-16; Ex. 233 11 10-13.) This	language clarified that IBM (like all AT&T	licensees) owned and controlled its original or	homegrown works. (Ex. 282 91 19-20; Ex. 189	¶ 14; Ex. 182 ¶ 18; Ex. 275 ¶¶ 15-16; Ex. 228	113-14; Ex. 178 113-16; Ex. 233 110-13.)
李	54.																

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55.	In addition, the Side Letter, as well as	egoing statement omits	Deemed admitted: Nothing in SCO's statement
	subsequent Amendment No. X, amended Section	the third sentence of Paragraph A.9 of the IBM	specifically controverts IBM's facts with
	7.06(a) of the IBM Software Agreement to	Side Letter: "LICENSEE shall appropriately	admissible evidence meeting the requirements of
	provide as follows:	notify each employee to whom any such	Rule 56.
	LICENSEE agrees that it shall hold	disclosure is made that such disclosure is made	
	SOFTWARE PRODUCTS subject to this	in confidence and shall be kept in confidence by	
	Agreement In confidence for AT&T.	such employee."	
	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 Nothing in		
	this Agreement shall prevent LICENSEE		
	from developing or marketing products or		
	services employing ideas, concepts, know-		
	how or techniques relating to data		
	processing embodied in SOFTWARE		
	PRODUCTS subject to this Agreement,		
	provided that LICENSEE shall not copy any		
	code from such SOPTWARE PRODUCTS		
	into any such product or in connection with		
	to a SOFTWARE PRODUCT subject to this		
	without restriction to the general public by		
	acts not attributable to LICENSEE or its		
	employees, LICENSEE's obligations under		
	this section shall not apply to such		
	information after such time.		
	(Ex. 122 ¶ A.9; Ex. 124 ¶ 6.) This language		
	clarified, among other things, that IBM (like all		
	AT&T licensees) had no obligation of		
	confidentiality regarding UNIX software that		
	becomes available without restriction to the		
	general public by acts not attributable to IBM.		

		SCO WEST CONTROL OF THE PROPERTY OF THE PROPER	いたがある。
56.	56. Consistent with AT&T's policy to treat all Disputed to the extent the statement suggests	Disputed to the extent the statement suggests	Deemed admitted: The material referred to by
	licensees the same, Paragraph A.12 of the IBM	that paragraph A.12 concerned any term other	SCO does not support SCO's statement
	Side Letter provides:	than pricing. (Ex. 333 § 27.) Disputed to the	•
	We agree that all SOFTWARE	extent that IBM ever licensed any subsequent	Nothing in SCO's statement specifically
	PRODUCTS, including enhancements to or	version of UNIX System V other than the	controverts IBM's facts with admissible
	new versions of existing SOFTWARE	version licensed under its 1985 Agreement and	evidence meeting the requirements of Rule 56,
	PRODUCTS, generally available under the	Side Letter. (Ex. 333 ¶ 27.)	
	Software Agreement will be made available	•	
	to you at the fees and under terms,		
	warranties and benefits equivalent to those		
	offered to other licensees.		
_	(Ex. 122 § A.12.) This language meant that if		
	any other licensee was offered or obtained terms		
	more favorable to the licensee than those		
	contained in the IBM Agreements, then IBM		
	would have the advantage of such more		
	favorable terms as if they had been set forth in		
	the IBM Agreements. (Ex. 281 § 43.)		

admissible evidence meeting the requirements of individuals who did not negotiate or execute the Deemed admitted: Nothing in SCO's statement support SCO's statement. The testimony of The material referred to by SCO does not BM's Roby and a second specifically controverts IBM's facts with Agreements is irrefevant. Rule 56. were the only Individuals under whose direction suggests that IBM and Sequent did not enter into 96.) Disputed in that substantial evidence shows that the "Involved Persons" had the authority to "Involved Persons" did not share any such view modifications and derivative works based on the 92.) "The IBM Agreements and the Sequent Agreements (collectively "the Agreements") set a written agreement requiring IBM and Sequent licensed UNIX System V software product. (¶ statement suggests that, upon entering into their statement suggests that the "Involved Persons" AT&T licensed its UNIX source code. (717 76written agreement, the parties did not intend to could be used and disclosed by them and under "based on" UNIX System V." (IBM Statement agreement the parties had reached. (11 18, 91which they could distribute software programs exclude any previous oral discussion from the Disputed to the extent the statement suggests Sequent," disputed to the extent the statement 13-29, 82-86.) Disputed to the extent that the modify the terms of AT&T's standard UNIX forth the terms under which UNIX System V during their tenure at AT&T. (¶¶ 63-163.) "original code written by, or for, IBM and (and easily permits the Inference) that the Depending on the definition of the phrase license agreements and to the extent the to hold in confidence all parts of its disclosure of any original code written by, or for, IBM and Sequent. (See Bx. 178¶ 18; Bx. 1827 17 17 17 17 18; Bx. 189¶ 13-16, 24-29; Bx. 217¶ 9; Bx. 228¶ 11-19; Bx. 233¶ 9; Bx. 252¶ 7-9; Bx. 266¶ 8; Bx. 275¶ 12; Bx. 282¶ 14-15; 27-30.) agree that the Agreements were not intended to, DeFazio, who had ultimate responsibility for and do not, restrict in any manner the use or them (collectively, the "involved Persons"), negotiated the Agreements, as well as Mr. All of the individuals who executed and

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of Undisputed Facts ¶ 50.)

admissible evidence meeting the requirements of Deemed admitted. Nothing in SCO's statement individuals who did not negotiate or execute the support SCO's statement, and the testimony of The material referred to by SCO does not specifically controverts IBM's facts with Agreements is irrelevant. HNSKE Rule 56. AT&T licensed its UNIX source code. (¶ 76-96.) Disputed in that substantial evidence shows suggests that IBM and Sequent did not enter into were the only individuals under whose direction that the "Involved Persons" had the authority to "Involved Persons" did not share any such view modifications and derivative works based on the a written agreement requiring IBM and Sequent Agreements (collectively "the Agreements") set licensed UNIX System V software product. (🍴 statement suggests that, upon entering into their statement suggests that the "Involved Persons" written agreement, the parties did not intend to agreement the parties had reached. (\$\forall 18, 91could be used and disclosed by them and under "based on" UNIX System V." (IBM Statement Disputed to the extent the statement suggests Sequent," disputed to the extent the statement 13-29, 82-86.) Disputed to the extent that the exclude any previous oral discussion from the which they could distribute software programs modify the terms of AT&T's standard UNIX forth the terms under which UNIX System V 92.) "The IBM Agreements and the Sequent during their tenure at AT&T. (¶ 63-163.) "original code written by, or for, IBM and (and easily permits the inference) that the Depending on the definition of the phrase license agreements and to the extent the to hold in confidence all parts of its SCOUNT REMOVE of Undisputed Pacts § 50.) derivative works that they created (or that others modifications or derivative works. (See Ex. 178 § 17; Ex. 182 § 20; Ex. 190 ¶ 14-15; Ex. 217 ¶ derivative works based on UNIX System V. To Agreements to give AT&T or its successors the right to assert ownership or control over all of None of the Involved Persons understood the created for them) based on UNIX System V material that might be contained within their 10-11; Bx. 228 ¶ 13, 15; Bx. 233 ¶ 8-9; Ex. 252 ¶ 7; Ex. 266 ¶ 10-12; Ex. 275 ¶ 13; the contrary, they understood that IBM and however they wanted, any modifications or Sequent owned, and were permitted to use software, except for the UNIX System V the source code of any modifications or

Z Z Z Z Z Z Z Z Z Z Z Z Z Z Z Z Z Z Z	As the Involved Persons understood the Agreements, they impose no restrictions on IBM's or Sequent's use, export, disclosure or transfer of those portions of any modifications on IBM's or Sequent's use, export, disclosure or transfer of those portions of any modifications on IBM's or Sequent's use, export, disclosure or transfer of those portions of any modifications on modify the terms of AT&T's standard UNIX transfer of those portions of any modifications on modify the terms of AT&T's standard UNIX transfer of those portions of any modifications on modify the terms of AT&T's standard UNIX transfer of those portions of any modifications on modify the terms of AT&T's standard UNIX transfer of those portions of any modifications on modify the terms of AT&T (II) and do Sequent to the ortical throughout the AT&T (II) and the Agreements, IBM and Sequent and free to use however they want any AIX or Dynix free to use however they want any AIX or Dynix provided by AT&T (II) and may be contained by the AT&T Agreements). (See Ex. 178 19; Ex. 228 11; Ex. 226 11; Ex. 2	Disputed to the extent the statement suggests that the "Involved Persons" had the authority to modify the terms of AT&T's standard UNIX license agreements and to the extent the statement suggests that the "Involved Persons" were the only individuals under whose direction AT&T licensed its UNIX source code. (#776-96.) Disputed in that substantial evidence shows (and easily permits the inference) that the "Involved Persons" did not share any such view during their tenure at AT&T. (#763-163.) Disputed to the extent the statement suggests that IBM and Sequent did not enter into a written agreement requiring IBM and Sequent to hold in confidence all parts of its modifications and derivative works based on the iscensed UNIX System V software product. (#713-29, 82-86.) Disputed to the extent that the statement agreement the parties did not intend to exclude any previous oral discussion from the agreement the parties and needed. (#718, 91-92.) "The IBM Agreements and the Sequent Agreements (collectively "the Agreements") set forth the terms under which UNIX System V could be used and disclosed by them and under which they could distribute software programs "based	Deemed admitted. Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. The material referred to by SCO does not support SCO's statement. The testimony of individuals who did not negotiate or execute the Agreements is irrelevant.
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admissible evidence meeting the requirements of Deemed admitted: Nothing In SCO's statement individuals who did not negotiate or execute the support SCO's statement. The testimony of specifically controverts IBM's facts with The material referred to by SCO does not Agreements is irrelevant. The Action of the Action of the Restry Rule 56, that the "Involved Persons" had the authority to were the only individuals under whose direction 96.) Disputed in that substantial evidence shows (and easily permits the inference) that the statement suggests that IBM and Sequent did not methods, or concepts," disputed to the extent the and Sequent to hold in confidence all parts of its "Involved Persons" did not share any such view modifications and derivative works based on the licensed UNIX System V software product. (T Agreements (collectively "the Agreements") set statement suggests that the "Involved Persons" AT&T licensed its UNIX source code. (77 76statement suggests that, upon entering into their "freedom of action" and "orlginal source code, written agreement, the parties did not intend to agreement the parties had reached. (¶¶ 18, 91-92.) "The IBM Agreements and the Soquent could be used and disclosed by them and under "based on" UNIX System V." (IBM Statement Disputed to the extent the statement suggests which they could distribute software programs modify the terms of AT&T's standard UNIX 13-29, 82-86.) Disputed to the extent that the exclude any previous oral discussion from the enter into a written agreement requiring IBM forth the terms under which UNIX System V Depending on the definition of the phrases during their tenure at AT&T. (¶ 63-163.) license agreements and to the extent the of Undisputed Pacts ¶ 50.) disclosing or transferring AIX and Dynix source parties' intentions. (See Ex. 178 ¶ 21; Ex. 182 ¶ 31; Ex. 190 ¶ 27; Ex. 217 ¶ 24; Ex. 228 ¶ 17; Ex. intended to limit IBM's or Sequent's freedom of theory of the case — that IBM has breached the 233 ¶ 16; Ex. 275 ¶ 30; Ex. 282 ¶ 29; Ex. 310 at action with respect to their original source code, methods, or concepts and were intended merely 233 ¶ 17; Ex. 276 ¶ 3; Ex. 282 ¶ 12; Ex. 310 at System V source material. (See Ex. 178 § 22; Agreements by improperty using, exporting, Ex. 182 ¶ 22; Ex. 190 ¶ 12; Ex. 228 ¶ 18; Ex. to protect AT&T's interest in its own UNIX According to the Involved Persons, SCO's provisions of the Agreements and with the transferred any protected UNIX System V 116:18-118:4.) The Agreements were not improperly used, exported, disclosed or source code - is inconsistent with the code, irrespective or whether IBM has 80:15-19, 117:14-118:4; 124:12-21.)

admissible evidence meeting the requirements of Deemed admitted: Nothing in SCO's statement individuals who did not negotiate or execute the support SCO's statement. The testimony of The material referred to by SCO does not specifically controverts IBM's facts with Agreements is irrelevant. Rule 56. that IBM and Sequent did not enter into a written were the only individuals under whose direction 96.) Disputed in that substantial evidence shows agreement requiring IBM and Sequent to hold in confidence all parts of its modifications and that the "Involved Persons" had the authority to "Involved Persons" did not share any such view any previous oral discussion from the agreement statement suggests that the "involved Persons" agreement, the parties did not Intend to exclude AT&T licensed its UNIX source code. (¶ 76-System V software product. (11 13-29, 82-86.) they could distribute software programs "based IBM Agreements and the Sequent Agreements Disputed to the extent the statement suggests suggests that, upon entering into their written Disputed to the extent the statement suggests derivative works based on the licensed UNIX the parties had reached. (¶ 18, 91-92.) "The modify the terms of AT&T's standard UNIX terms under which UNIX System V could be used and disclosed by them and under which (collectively "the Agreements") set forth the during their tenure at AT&T. (¶ 63-163.) on" UNIX System V." (IBM Statement of (and easily permits the inference) that the license agreements and to the extent the Disputed to the extent that the statement developed by or for a licensee and included in a any material proprietary UNIX System V source on UNIX System V, any material portion of the restrictions of the software agreement. (See Ex. 178 ¶ 11; Ex. 182 ¶ 16; Ex. 190 ¶ 14; Ex. 228 ¶ 12; Ex. 233 ¶ 8; Ex. 282 ¶ 14; Ex. 584 at 176:2-18; Ex. 310 at 30:17-31:5.) Any source code original UNIX System V source code provided part of the original software product, except for constitute "resulting materials" to be treated as create a modification or derivative work based modification or derivative work would remain understood by the Involved Persons, was only code provided by AT&T or USL and included Ex. 190 ¶ 14; Ex. 217 ¶ 11; Ex. 228 ¶ 12; Ex. 233 ¶ 8; Ex. 252 ¶ 7; Ex. 282 ¶ 14; Ex. 584 at Section 2.01 of the Software Agreements, as modification or a derivative work would not intended to ensure that if a licensee were to by AT&T or USL that was included in the therein. (See Ex. 178 ¶ 11; Ex. 182 ¶ 16; subject to the confidentiality and other 173:3-174:8.) 5

Undisputed Facts ¶ 50.)

0 5 % > 85 #	大学的 1000 1000 1000 1000 1000 1000 1000 10	Deemed of introduction in SOC:	For include in SCO's statement	admissible evidence meeting the requirements of	or series and all control of the con		The material referred to by SCO does not	Support SCO's statement. The testimony of	individuals who did not negotiate or evenue the	Televant																		
None of the Involved Persons intended the Agreement to permit AT&T and USL to assert owners the port of the involved Persons intended the Agreement to permit AT&T and USL to assert owners and to the extent to permit AT&T and USL to assert owners and use extent to permit AT&T and USL to assert owners and use the nitrolived Persons, had the authority modify the terms of AT&T's standard UNIX licenses, except to the critaria to the original UNIX System V source code furcillode in such modifications and derivative works. (See Ex. 128 T Ex. 228 T I; Ex. 238 T I; E	- [-	1		 }								-			. <u>.</u>							Ħ						
Agreement to permit AT&T and USL to assert ownership or control over modifications and derivative works prepared by licenses, except to license agreements at the extent of the original UNIX System V source code included in such modifications and derivative works. (See Ex. 187 § 15; Ex. 182 § 20; Ex. 190 § 14-15; Ex. 223 § 8; Ex. 222 § 7; Ex. 226 § 10; Ex. 233 § 8; Ex. 222 § 7; Ex. 266 § 10; Ex. 233 § 8; Ex. 225 § 15.) They Intended that the code developed by or for the licensee, would remain the property of the licensee, would remain the property of the licensee, and could therefore be used, exported, disclosed or transferred freely by the licensee, (See Ex. 178 § 14.15; Ex. 223 § 16; Ex. 223 § 16; Ex. 223 § 17; Ex. 222 § 17.) System V software pictures and parties and previous oral distributes.		nt the statement supposts	ersons" had the suthority	AT&T's standard UNIX	and to the extent the	hat the "Involved Persons	tuals under whose directi	NIX source code. (1) 76	substantial evidence sho	he Inference) that the	tid not share any such vie	: AT&T. (91 63-163.)	it the statement suggests	it did not enter into a writ	18M and Sequent to hold	of its modifications and	ed on the licensed UNIX	roduct. (¶ 13-29, 82-86,	it that the statement	ntering into their written	s did not intend to exclud	cussion from the agreeme	3d. (¶ 18, 91-92.) "The	I the Sequent Agreements	reements") set forth the	NIX System V could be	them and under which	software programs "base
None of the Involved Persons intended the Agreement to permit AT&T and USL to assert ownership or control over modifications and derivative works prepared by licensees, except to the extent of the original UNIX System V source code included in such modifications and derivative works. (See Ex. 178 ¶ 15; Ex. 182 ¶ 20; Ex. 190 ¶ 14-15; Ex. 217 ¶ 22; Ex. 228 ¶ 13; Ex. 233 ¶ 8; Ex. 252 ¶ 7; Ex. 266 ¶ 10; Ex. 275 ¶ 27; Ex. 282 ¶ 15; Dr. 266 ¶ 10; Ex. 275 ¶ 27; Ex. 182 ¶ 20; Ex. 190 ¶ 14-15; Ex. 217 ¶ 22; Ex. 217 ¶ 22; Ex. 284 ¶ 15; Ex. 237 ¶ 9; Ex. 252 ¶ 8-9; Ex. 266 ¶ 10, 12; Ex. 235 ¶ 9; Ex. 252 ¶ 8-9; Ex. 266 ¶ 10, 12; Ex. 275 ¶ 27; Ex. 282 ¶ 15.)	EART I'V RAGIO TERM	Disputed to the extern	that the "Involved Pe				were the only Individ	AT&T licensed its U	96.) Disputed in that	(and easily permits th	"Involved Persons" d	during their tenure at	Disputed to the exten	that IBM and Sequen	agreement requiring 1	confidence all parts o	derivative works base	System V software pr	Disputed to the extent	suggests that, upon en	agreement, the parties	any previous oral disc	the parties had reache	IBM Agreements and	(collectively "the Agr	terms under which U	used and disclosed by	they could distribute a
None of the Involved P. Agreement to permit A ownership or control ov derivative works prepar the extent of the origina code included in such m derivative works. (Sec. 20; Ex. 190 ff 14-15; E. [13; Ex. 233 ff; Ex. 2275 f 27; Ex. 282 f 15; oode developed by or formain the property of the therefore be used, export the used to the used therefore be used, export the used to the use		ersons intended the	F&T and USL to assert	er modifications and	ed by licensees, except to	I UNIX System V source	redifications and	Ex. 178 ¶ 15; Ex. 182 ¶	x. 217 ¶ 22; Ex. 228	52¶ 7; Ex. 266¶ 10; Ex.	They intended that the	r the licensee would	he licensee, and could	ted, disclosed or	licensee. (See Ex. 178 4	0 앱 14-15; Ex. 217 ¶	3¶9; Ex. 252 👣 8-9;	75 ¶ 27; Ex. 282 ¶ 15.)										
	The second second	None of the Involved Po	Agreement to permit A'	ownership or control ov	derivative works prepar	the extent of the original	code included in such m	derivative works. (See	20; Ex. 190 11 14-15; E	113; Ex. 233 18; Ex. 2.	2/5 1 2/; Ex. 282 115.)	code developed by or fo	remain the property of ti	therefore be used, expor	transferred freely by the	18; Ex. 182 ¶ 20; Ex. 19	23; Ex. 228 ¶ 15; Ex. 23	Ex. 266 11 10, 12; Ex. 2										

	· 一种,	N .		specifically controvers into a more with	admissible evidence meeting the requirements of	Rule 56. Further, the material referred to by			-		•																								
	が 100mm 10	Disputed in that substantial evidence shows (and	easily nemrits the inference) that ATAT did not	interest to be 11 of the country of	illieuld 10 fiolid iul licensees 10 the same basic	standard without regard to the provisions of any	side letters with its licensees. (¶ 89.) Disputed to	the extent the statement suggests that the	"Involved Persons" had the authority to modify	the terms of AT&T's standard UNIX license	agreements and to the extent the statement	suggests that the "Involved Persons" were the	only individuals under whose direction AT&T	licensed its UNIX source code. (1776-96.)	Disputed in that substantial evidence shows (and	easily permits the inference) that the "Involved	Persons" did not share any such view during	their tenure at AT&T. (#163-163.) Disputed to	the extent the statement suggests that IBM and	Sequent did not enter into a written agreement	requiring IBM and Sequent to hold in confidence	all parts of its modifications and derivative	works based on the licensed UNIX System V	software product. (TI 13-29, 82-86.) Disputed to	the extent that the statement suggests that, upon	entering into their written agreement, the parties	did not intend to exclude any previous oral	discussion from the agreement the parties had	reached. (TI 18-9 (92.) "The IBM Agreements	and the Sequent Agreements (collectively "the	Agreements") set forth the terms under which	UNIX System V could be used and disclosed by	them and under which they could distribute	software programs "based on" UNIX System	 (LDM Statement of Undisputed Facts 1 SU.)
日日の大学の11 10年 1177 、 1187 日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日		Whether or not AT&T entered into a side letter		the treatment of modifications and derivative	Works or altered the longings of Continuo of	A TRANS JEIGHT 1.	A 100 1's and USL's intent was always the same.	It never intended to assert ownership or control	over any portion of a modification or derivative	work that was not part of the original UNIX	System V source code provided by AT&T or	USL. The licensee was free to use, copy,	distribute or disclose its modifications and	derivative works, provided that it did not use,	copy, distribute or disclose any portions of the	original UNIX System V source code provided	by AT&T or USL except as permitted by the	lloense agreements. (See Ex. 182 § 20; Ex. 190	\$24; Ex. 217 \$22; Ex. 275 \$ 27; Ex. 282 \$ 27.)																
	7.	63.																																	

	A. L. W. W. W. States and M. C. Control of the Cont	Sec. 2008	日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日本の日
64.	At about the same time that IBM and Sequent	į	thing in
•	executed the Agreements, other licensees and	are cited for the truth of the proposition that	specifically controverts IBM's facts with
	prospective licensees sought clarification that	other licensees and prospective licensees sought	admissible evidence meeting the requirements of
	AT&T and USL did not intend to assert	such clarification, and disputed to the extent the	Rule 56. Further, the material referred to by
	ownership or control over modifications and	statement suggests that AT&T held the view that	SCO does not support SCO's statement.
	derivative works prepared by licensees, except to	the agreements did not preclude the licensees?	•
	the extent of any material portions of the original	use, export, disclosure, or transfer of the	
	UNIX System V source code provided by AT&T	licensees modifications and derivative works	
	or USL and included in such modifications and	based on the licensed System V software	
	derivative works. (See Ex. 217 13; Ex. 275	product, in that substantial evidence shows (and	
	[17.]	easily permits the inference) that AT&T held no	
		such view. (¶ 63-163.)	
. 65	Because of the numerous inquiries it received	Depending on the meaning of the word "apply,"	Deemed admitted: Nothing in SCO's statement
	from licensees, AT&T further clarified the	disputed to the extent the statement suggests that	specifically controverts IBM's facts with
	meaning of Section 2.01 of its software license	AT&T intended the \$ echo newsletter to have	admissible evidence meeting the requirements of
	agreements at seminars organized for licensees	any binding logal effect. (Ex. 5 at [00-01; Ex. 69	Rule 56.
	and in its "f echo" publication. f echo was a	at 120-21; Ex. 10 ¶ 8; Ex. 14 ¶ 4; see also IBM	
	newsletter that AT&T published for all UNIX	Ex. 301 at 68; 1BM Ex. 302 at 246-47.)	
	System V licensees to keep them informed of		
	AT&T's policies with respect to UNIX System		
	V. AT&T intended the guidance provided in the	-	
	newsletter to apply to all of its UNIX System V	-	
	licensees. (See Ex. 190 f 19; Ex. 217 ff 14-15;		
	Ex. 275 1 18-19; Ex. 282 (21.)		
\$	The April 1985 edition of \$ scho describes	Disputed to the extent that the statement	Deemed admitted: Nothing in SCO's statement
	presentations made by a member of Mr.	suggests that in April 1985 Mr. Wilson had the	specifically controverts IBM's facts with
	Wilson's licensing group, Mr. Frasure, outlining	lone or ultimate authority over AT&T's UNIX	admissible evidence meeting the requirements of
	changes that AT&T intended to make to the	software licensing, or that Mr. Wilson or Mr.	Rule 56.
	licensing and sublicensing agreements as a result	Prasure alone had the authority to make any	
	of discussions that Mr. Wilson and others in his	"changes" to the standard licensing and	
	group had with AT&T's licensees. (See Ex. 190	sublicensing agreements. (¶ 90.)	
	120; Ex. 217 116; Ex. 275 120; Ex. 282 122.)		

2.44		作品的是一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个一个	から、	6
67.	As discussed in the newsletter, among the	Depending on the meaning of the term "control"	State	.
	changes A L& L decided to implement, and	in previous statements, disputed to the extent the	specifically controverts IBM's facts with	
	which were announced at the seminars by Mr.	statement suggests that AT&T's statement	admissible evidence meeting the requirements of	
	currentin of modifications designs to clarify	regarding ownership was one relieving the	Rule 56. Further, the material referred to by	
	prepared by a licenses." (See Pe. 100 € 20. De.	licensees of their existing obligations to keep	SCO does not support SCO's statement.	
	217 17; Ex. 275 121; Ex. 282 123.) The	derivative works based on the licensed I NITY		
	August 1985 edition of \$ echo describes these	System software product or to remove that		
	changes in detail. With respect to Section 2.01,	obligation for future licensees (99 82-86)		_
	the newslotter states:			
	Section 2.01 - The last sentence was added			
	to assure licensees that AT&T will claim no			
	ownership in the software that they			
	developed — only the portion of the			_
	software developed by AT&T.			
	(See Ex. 190 (21; Ex. 217 (18; Ex. 275 (22;			
	Ex. 282 [24.)			
8 9	This change was not intended to alter the	Depending on the meaning of the term "any	Deemed admitted: Nothing in SCO's statement	
	meaning of the software agreements, but was	right," disputed to the extent the statement	specifically controverts IBM's facts with	
	meant only to clarify the original intent of	suggests that AT&T intended to relieve the	admissible evidence meeting the remirements of	
	Section 2.01. AT&T intended only to make	llcensees of their existing obligations to keep	Rule 56. Further, the material referred to by	
	clear to its licensees that AT&T, and later USL,	confidential all parts of their modifications and	SCO does not support SCO's statement.	
	did not claim any right to the licensees' original	derivative works based on the licensed UNIX		
	work contained in modifications or derivatives	System software product, or to remove that		
	of UNIX System V. (See Ex. 182 § 20; Ex. 190	obligation for future licensees. (77 82-86.)		
	[121; Ex. 217 18; Ex. 275 122; Ex. 282 124.)			

Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Purther, the material referred to by SCO does not support SCO's statement.	Deemed admitted: Nothing In SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Purther, the material referred to by SCO does not support SCO's statement.	Deemed admitted: Nothing In SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, the material referred to by SCO does not support SCO's statement.
reflected, for example, in that of the cacent the statement suggests the region of the cacent the statement suggests that are agreement between systems inc. and The Santa centered into in May 1987. Includes the following language: Includes the right to despect that any on or derivative works based on such topouct, provided that any on or derivative work that is not the cacent the statement and the cacent the statement and the cacent that any out	Disputed to the extent that the statement suggests that at the time Mr. Wilson had the lone or ultimate authority over AT&T's UNIX software licensing (¶ 90-105) and to the extent the statement suggests that AT&T intended to ellminate from their existing or prospective UNIX System V license agreements the obligation on the part of the licensees to keep confidential all parts of their modifications and derivative works based on the licensed UNIX System software product (¶ 82-87).	Disputed to the extent the statement suggests that AT&T intended to eliminate from their existing or prospective UNIX System V license agreements the obligation on the part of the licensees to keep confidential all parts of their modifications and derivative works based on the licenseed UNIX System software product. (¶ 82-87.)
The new language is reflected, for example, in Section 2.01 of a software agreement between AT&T Information Systems Inc. and The Santa Cruz Operation, Inc. entered into in May 1987. That agreement includes the following language: Such right to use Includes the right to modify such SOFTWARE PRODUCT and to prepare derivative works based on such SOFTWARE PRODUCT, provided that any such modification or derivative work that contains any part of a SOFTWARE PRODUCT. AT&T-IS claims treated hereunder the same as such SOFTWARE PRODUCT. AT&T-IS claims no ownership interest in any portion of such a modification or derivative work that is not part of a SOFTWARE PRODUCT. (Ex. 127 § 2.01 (emphasits added)).	As AT&T communicated at its seminars and in its newsletters to UNIX System V licensees, this new language was intended only to clarify the language in the original Section 2.01, not change its meaning. Mr. Wilson's licensing group inferpreted the language of the original Section 2.01 and thus revised Section 2.01 in exactly the same way. (See Ex. 190¶22; Ex. 217¶20; Ex. 275¶24; Ex. 282¶25.)	Although AT&T made "specimen copies" of the revised software agreement available to its licensees, it did not require that its licensees enter into new agreements. AT&T intended for all of AT&T's UNIX System V licensees to receive the benefit of the changes and clarifications it outlined at its seminars and in the newsletter. (See Ex. 190¶23; Ex. 217¶21; Ex. 275¶26; Ex. 282¶26.)
66	90.	71.

2.	72. Based in important part on the Agreements and Disputed to the other than the state of the st		A CONTRACTOR OF THE CONTRACTOR
	AT&T's repeated and consistent explanations of	that IBM and Sequent did not enter into a united	Deemed admitted: The material reterred to by
	them, IBM continued the development of and	Agreement requiring them to hold in confidence	SCU does not support SCU's statement.
	distributed a flavor of the UNIX operating	all parts of their modifications and derivative	Nothing in SCO's statement specifically
	system known as AIX (see Ex. 5 ¶ 13), and	works based on the licensed UNIX System V	controverts IBM's facts with admissible
	Sequent (which IBM acquired in 1999)	software product. (#82-87.) Disputed to the	evidence meeting the requirements of Rule 56.
	confined the development of and distributed a	extent that the statement suggests that, upon	
	tiavor of the UNIX operating system known as	entering into their written agreement, the parties	
_	Dynix (300 10 7 16).	did not intend to exclude any previous and	
		subsequent oral discussion from the agreement	
		the parties had reached. (¶ 82-87.) "The IBM	
		Agreements and the Sequent Agreements	
		(collectively "the Agreements") set forth the	
		terms under which UNIX System V could be	
		used and disclosed by them and under which	
		they could distribute software programs "based	
		on" UNIX System V." (IBM Statement of	
		Undisputed Facts § 50.) Depending on the	
		meaning of the terms "control" and "original	
		works" as used in previous statements, disputed	
		to the extent the statement suggests that AT&T	
		ever represented to IBM or Sequent that those	
		companies would have the right to "control"	
		their "original works" that were part of any	
		modification or derivative work they had	
		developed based on the licensed UNIX System	
		V software product. (71 63-163.) Depending on	
_		the meaning of the term "UNIX flavor," disputed	
		to the extent the statement suggests that AIX and	
		Dynix are not "derivative works" of the licensed	
		UNIX System V software product within the	
		meaning of their agreements, as well as the	
		copyright law. (§ 192.) Disputed to the extent	
		the statement suggests that IBM or Sequent had	
		compelling business reasons to insist on the	
		"control" as described by IBM herein. (¶ 30-	

3	ed to hv	```	!		·	Rule S6				_					•															_
	naterial refer	SCO does not support SCO's statement	}	Nothing to SCO's statement specifically	controverts IBM's facts with admissible	evidence meeting the requirements of Rule 56.						•																		
A COLOR	olffed The n	of support SC		CO's statem	BM's facts v	cting the rea	·																							
THE REPORT OF THE PROPERTY OF	Demed admitted. The material referred to by	SCO does no		Nothing In S	controverts 1	evidence me																								
	gests	o a written	unfidence	ivative	item V	isputed to	hat, upon	he parties	bus	recment	- 1	cements	th the	uld be	which	based s	# of	£	oever,"	gests that	uent that	•	are part of	bad k	System	ated to	3Mor	ns to	BM	_
	statement su	not enter int	to hold in co	ions and den	A UNIX Sys	29, 82-86.) D	nt suggests ti	agreement, t	iny previous	from the ag	W 18, 91-92.	Sequent Agn	ents") set for	System V co	n and under	are program	3M Statemen	epending on	nterest whats	fatement sug	BM or Seq	ve the right t	orks" that we	tive work the	ensed UNIX	3-163.) Disp	ggests that II	usiness reaso	escribed by I	
Onse	he extent the	Sequent did	quiring them	eir modificat	on the Ilcense	luct. (¶ 13-)	t the stateme	their written	to exclude a	al discussion	d reached. (*	ents and the	"the Agreeme	Fich UNIX	losed by then	stribute softw	stem V." (IE	acts ¶ 50.) D	e term "no ir	e extent the s	spresented to	ies would ha	r "original w	ion or deriva	ed on the lic	oduct. (¶ 6.	statement su	compelling by	control" as d	707
A 2000 TO 10	Disputed to the extent the statement suggests	that IBM and Sequent did not enter into a written	agreement requiring them to hold in confidence	all parts of their modifications and derivative	works based on the Ilcensed UNIX System V	software product. (17 13-29, 82-86.) Disputed to	the extent that the statement suggests that, upon	entering into their written agreement, the parties	did not intend to exclude any previous and	subsequent oral discussion from the agreement	the parties had reached. (91 18, 91-92.) "The	IBM Agreements and the Sequent Agreements	(collectively "the Agreements") set forth the	terms under which UNIX System V could be	used and disclosed by them and under which	they could distribute software programs "based	on"UNIX System V." (IBM Statement of	Undisputed Facts § 50.) Depending on the	meaning of the term "no interest whatsoever,"	disputed to the extent the statement suggests that	AT&T ever represented to IBM or Sequent that	those companies would have the right to	"control" their "original works" that were part of	any modification or derivative work they had	developed based on the licensed UNIX System	V software product. (¶ 63-163.) Disputed to	the extent the statement suggests that IBM or	Sequent had compelling business reasons to	insist on the "control" as described by IBM	herein (Mil 30,42)
					_							_	_				_	_	-		7		-					-	_	
1	ested in the	ynix based o	d by the repo	Sentatíves —	whatsoever	works, even if they might	ication or derivative work	:57 🎢 3-5; E	62:20-63:17, 119:16-																					
	Sequent inv	of AIX and D	- reinforce	AT&T repre	d no interest	original wor	a modificati	en V. (Ex. 2		-128:1.)																				
	Both IBM and Sequent invested in the	development of AIX and Dynix based on the	understanding reinforced by the repeated	assurances of AT&T representatives that	A1&1 claimed no interest whatsoever in IBM's	and Sequent's original	be included in a modifi	of UNIX System V. (Ex. 257 71 3-5; Ex. 310 at	29:8-31:5, 56:11-57:5,	20:2, 127:15																				
	73. I			w -													•												_	

7.35		
December admitted. Nothing In SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.	Undisputed.	Decemed admitted: Nothling in SCO's statement specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56.
Depending on the meaning of the term "original," disputed to the extent the cited material does not identify what lines of code in AIX or Sequent were written by developers without exposure, reference or access, or experience based on such exposure, reference on access, to the licensed UMIX System V software product.	Undisputed.	Depending on the meaning of the term "original," disputed to the extent the cited material does not identify what lines of code ln AIX or Sequent were written by developers without exposure, reference or access, or experience based on such exposure, reference or access, to the licensed UNIX System V software product.
Lie ESSS ac	ALX and Dynix are comprised of code from numerous sources, Including code written by IBM and Sequent software engineers (or outside contractors retained by IBM or Sequent) and also code written by third parties and licensed to IBM or Sequent for inclusion in AIX or Dynix.	ine overwitching importy of the code in AIX and Dynix is original IBM or Sequent work, written or created independent of UNIX System V. (Ex. 181, Ex. C, Ex. G.)
74.		ė

Ė.	For example, AIX 5.1.G for Power is comprised of 123,821 files and 160,198,865 lines of source code. (Ex. 181, Ex. G.) The Final Disclosures Identify lines of System V code in any version of AIX. (Ex. 54, Item 1, Tab 425.) SECTION REDACTED	77. For example, AIX 5.1.G for Power is comprised of 123,821 files and 160,198,865 lines of source code. (Ex. 181, Ex. G.) The Final Disclosures ldentify by an in any version of AIX. (Ex. 34, Item 1, Tab A25.) SECTION REDACTED For example, AIX 5.1.G for Power is comprised. Disputed to the extent the cited material does not beened admitted. The notation the cited material does not support SC odes not support SC odes not support SC odes not support SC odes not support SC statement fails to identify in any version of AIX. (Ex. 34, Item 1, Tab based on such exposure, reference or access, to the incensed UNIX System V software product. (aisclosed.	Deemed admitted: The material referred to by SCO does not support SCO's statement, SCO's statement, SCO's statement fails to identify material facts of record meeting the requirements of Rule 56. The declaration referred to constitutes a supplemental expert report and was not timely disclosed.
		SECTION REDACTED	
78	The base operating system of Dyntx/pix 4.6.1 alone is comprised of 36,096 files and 10,238,823 lines of source code. (Ex. 181, Ex. G.) Here again, the Final Disclosures identify lines of System V code in any version of Dynix. (Ex. 54, Item 204, Tab 220.)	Disputed to the extent the statement suggests that Dynix/ptx is not a derivative work based on UNIX System V. (¶ 192.) Disputed to the extent the cited material does not identify what lines of code in AIX or Sequent were written by developers without exposure, reference or	Decreed admitted: Nothlng in SCO's statement specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56.
	SECTION REDACTED	access, or experience based on such exposure, reference or access, to the licensed UNIX System V software product.	
ž	SECTION REDACTED	Depending on the meaning of the term "original," disputed to the extent the cited material does not identify what lines of code in AIX were written by developers without exposure, reference or access, or experience hased on such exposure, reference or access, to	Deemed admitted: Nothling In SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
		the licensed UNIX System V software product.	

			である。 では、 では、 では、 では、 では、 では、 では、 では、
ઝ	Among the original IBM works in AIX are	Depending on the meaning of the term "original	Permed admitted: Nothing in COOs attention
	Virtual Resource Manager, Logical Volume	works," disputed to the extent the cited material	specifically controverts IBM's facts with
	Manager, Object Data Manager, System	does not identify whether the works were written	admissible evidence meeting the requirements of
	Management Interface Tool, Network Install	by developers without exposure, reference or	Rule 56.
	Manager, Web-based System Manager, IBM	access, or experience based on such exposure,	
	Java Development Kit, AIX Workload Manager,	reference or access, to the licensed UNIX	
	Dynamic Logical Partitioning, Capacity On	System V software product.	
	Demand, Chister Systems Management, and		
	many other developments. (Ex. 257 ¶ 8; Ex. 283 ¶ 85.)		
8I.	Among the original Sequent works in Dynix are	Depending on the meaning of the term Conicinal	December 14-14 Mark 1-1- 6000
	Read-Copy Update, Symmetric Multiprocessing	Sequent works." disputed to the extent the olfed	president destructions of the facts with
	and Non-Uniform Memory Access capabilities,	material does not identify whether the works	admissible evidence meeting the requirements of
	and functionality for Transmission Control	were written by developers without exposure	Rule 56
	Protocol/Internet Protocol (TCP/IP) networking	reference or access, or experience based on such	
	protocols on parallel computers. (Ex. 283 § 86.)	exposure, reference or access, to the licensed	
		UNIX System V software product.	
82.	Following execution of the Agreements, AT&T	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	and USL communicated with licensees on a	that AT&T or USL held the view or told IBM or	specifically controverts IBM's facts with
	regular basis and frequently explained their	Sequent that the proposed agreements did not	admissible evidence meeting the requirements of
	Intent, View, and understanding as to their	require their licensees to hold in confidence all	Rule 56. Further, the material referred to by
	licensees' rights to their own original materials.	parts of their modifications and derivative works	SCO does not support SCO's statement.
	(Ex. 1911 11; Ex. 250 4; Ex. 271 1 3-4; Ex.	based on the licensed System V software	
	270 TI 4-5; EX. 280 TI 3-4.)	product. (¶ 63-163.) Disputed to the extent that	
		the statement suggests that, upon entering into	
		their written agreement, the parties did not	
_		intend to exclude any previous and subsequent	
		oral discussion from the agreement the parties	
		had reached. (¶ 18, 91-92.) "The IBM	
		Agreements and the Sequent Agreements	
		(collectively "the Agreements") set forth the	
		terms under which UNIX System V could be	
		used and disclosed by them and under which	
		they could distribute software programs "based	
		on" UNIX System V." (IBM Statement of	
		Undisputed Facts ¶ 50.)	

	The state of the s	はないというとしている。	にはいる意識の意思はある。
	7	Disputed in that substantial evidence shows (and	Nothing
	to licensees, including IBM and Sequent, that	easily permits the inference) that AT&T and	specifically controverte IBM's facts with
	and owned and could do as they wished with	USL held no such understanding and made no	admissible evidence meeting the requirements of
	their own original works, even if those works		Rule 56 Further the material referend to be:
	might be included in a modification or derivative		SCO does not emercat SCO's restaurant
	work of UNIX System V, so long as they		occurs introduction occurs statement.
	protected AT&T's UNIX System V source code.	the licensees did not enter into written	
	(Ex. 183 ¶ 5; Ex. 191 ¶ 4-6; Ex. 250 ¶ 3-4; Ex.	agreements requiring them to hold in confidence	
	271 11 3-4; Ex. 276 11 4-5; Ex. 280 11 3-5.)	all parts of their modifications and derivative	
		works based on the licensed I NIX System V	
		software product. (TI 13-29, 82-86.) Disputed to	
		the extent that the statement suggests that upon	
		entering into their written agreements, the parties	
		did not Intend to exclude any previous or	
		subsequent oral discussions from the agreement	
		the parties had reached. (49 18, 91-92.) "The	
		IBM Agreements and the Sequent Agreements	
		(collectively "the Agreements") set forth the	
		terms under which UNIX Sweten V could be	
		need and disclosed by them and the day	
*****		waste and discussed by them and under which	
		urey could distribute software programs "based	
		on" UNIX. System V." (IBM Statement of	
		Undisputed Facts ¶ 50.)	
Į.	Some licensees sought to clarify that, under the	Disputed to the extent the referenced materials	Deemed admitted: Nothing in SCO's statement
	egreements, they, not AT&T or USL, would own	are cited for the truth of the proposition	specifically controverts IBM's facts with
	and control modifications and derivative works	that other licensees sought such clarification and	admissible evidence meeting the requirements of
		disputed to the extent the statement suggests	Rule 56 Further the material referred to by
	original UNIX System V source code provided	that AT&T held the view that the agreements did	SCO does not support SCO's etalement
		not preclude the licensees' use, export	and the same of th
	182 ¶ 18; Ex. 189 ¶ 17; Ex. 275 ¶ 15-17; Ex.	disclosure, or transfer of the licensees	
		modifications and derivative works based on the	
		licensed System V software product, in that	
		substantial evidence shows (and easily permits	
		the inference) that AT&T had no such intent (M	
		63-163.)	
χ; Σ	Mr. Wilson and members of this staff stated,	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's efatement
	orally and in writing, that AT&T's licensees, not	that AT&T ever represented to IBM or Sequent	specifically controverty IBM's facts with
	AT&T or USL, would own and control	that those companies were not obligated to hold	admired his anidance meeting the manipulation
	modifications and derivative works presented by	in confidence of most of dean and discontinued in	bearings of the content of the requirements of the regiments of the regime
	6 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8 8	I I COMMAND AND THE OF LIFE HIS CHILD SHOULD AND	A SECTION OF PROPERTY OF THE PROPERTY OF THE PASSIVE OF THE PASSIV

or for the licensee (except for any original UNIX	derivative works based on the licensed UNIX	SCO does not support SCO's statement	
System V source code provided by AT&T or	System V software product. (97 63-163.)		
USL and included therein). (Ex. 182 1 18; Ex.	Disputed to the extent that the statement	The cited material fully supports IBM's	
189 11 17-22; Ex. 271 11 3-5; Ex. 275 1 25; Ex.	suggests that Mr. Wilson or the "members of this	statement that AT&T and USL represented to	
280 W 3-5; Ex. 282 ¶ 17.)	staff" had the lone or ultimate authority over	their licensees that those companies would have	
	AT&T's UNIX software licensing, or that Mr.	the right to control their original works.	
	Wilson or any "member of his staff" had the		
	authority to amend the licensing and		
	sublicensing agreements. (TI 76-96.) Disputed		
	to the extent the statement suggests that IBM and		
	Sequent did not enter into a written agreement		
	requiring them to hold in confidence all parts of		
	their modifications and derivative works based		
	on the licensed UNIX System V software		
	product. (¶ 13-29, 82-86.) Disputed to the		
	extent that the statement suggests that, upon		
	entering into their written agreement, the parties		
	did not intend to exclude any previous and		
	subsequent oral discussion from the agreement		
	the perties had reached. (¶ 18, 91-92.) "The		
	IBM Agreements and the Sequent Agreements		
	(collectively "the Agreements") set forth the		
	terms under which UNIX System V could be		
	used and disclosed by them and under which		
	they could distribute software programs "based		
	on" UNIX System V." (IBM Statement of	•	
	Undisputed Facts ¶ 50.) Disputed to the extent		
	the statement suggests that AT&T ever		
	represented to IBM or Sequent that those		
	companies would have the right to "control"		
	their "original works" that were part of any		
	modification or derivative work they had		
	developed based on the licensed UNIX System		
	V software product. (17 63-163.) Disputed to the		
	extent that the cited material does not support the		
	assertion that AT&T or USL ever represented in		
	writing that any licensee would "control" any		
	part of the modifications or derivative works It		
	developed based on the licensed UNIX System		

2. (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)	O's statement cts with requirements of ferred to by ement.	O's statement ts with equirements of wred to by ment.
AND THE MENTAL PROPERTY OF THE	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, the material referred to by SCO does not support SCO's statement. The facts stated in IBM's referenced paragraph are fully supported by the cited material.	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, the material referred to by SCO does not support SCO's statement.
	Deemed adm specifically of admissible er Rule 56. Fur SCO does no The facts stat are fully supp	Deemed admi specifically or admissible ev Rule 56. Furt SCO does not
V software product	Disputed in that substantial evidence shows (and easily permits the inference) that Mr. Frasure held no such understanding of the licenses and had no such communications with licensees regarding rights of disclosure. (¶ 63-163.) Disputed to the extent that the cited material does not support the assertion that Mr. Frasure had any such communications in writing.	Disputed to the extent the statement suggests that Mr. DeFazio had the authority to modify the terms of AT&T's standard UNIX license agreements or was the person under whose ultimate direction AT&T licensed its UNIX software product. (¶ 76-96.) Disputed in that substantial evidence shows (and easily permits the inference) that Mr. DeFazio held no such understanding of the licensees and had no such communications with licensees regarding rights of disclosure. (¶ 63-163.)
	For example, Mr. Frasure, who continued to work with and for Mr. Wilson until he retired, was in daily communication with UNIX licensees. He personally communicated with them both in writing and orally, and participated in conferences that clarified AT&T's position regarding ownership of code that licensees developed themselves. Mr. Frasure assured licensees that they owned any code they developed themselves, or that third parties developed on their behalf and that they could disclose their code to whomever they wanted, just as long as they kept UNIX System V source code confidential. (Ex. 191 ¶ 4-6.)	
	99 8	8.7.

上於東特性。1999年 - 1998年 -		specifically confession (BM), fact with	admiredible midence mession to continue	Rule 56		The material referred to by SCO does not	Support SCO's statement																											
SCOVE ENDANGEMENT CENTER	Disputed to the extent the statement apparate	that AT&T or USL stated in any sixch	communications that UNIX System V licensees	"could do as they wished with their own priging	material" without regard to whether such	material was included in the licensees'	modifications or derivative works based on the	licensed UNIX System V software product. (1	63-163.) Disputed to the extent the statement	suggests that IBM and Sequent did not enter into	a written agreement requiring them to hold in	confidence all parts of their modifications and	derivative works based on the licensed UNIX	System V software product. (11 13-29, 82-86.)	Disputed to the extent that the statement	suggests that, upon entering into their written	agreement, the parties did not intend to exclude	any previous and subsequent oral discussion	from the agreement the parties had reached. (99	18, 91-92.) "The IBM Agreements and the	Sequent Agreements (collectively "the	Agreements") set forth the terms under which	UNIX System V could be used and disclosed by	then and under which they could distribute	software programs "based on" UNIX System	V." (IBM Statement of Undisputed Facts ¶ 50.)	Depending on the meaning of the term "their	own original material," disputed to the extent the	statement suggests that AT&T ever represented	to its licensees that they would have the right to	"do as they wished" with their "original works"	that were part of any modification or derivative	work they had developed based on the licensed	UNIX System V software product. (¶ 63-163.)
	In addition to dealing with licensees on a daily	basis regarding the Agreements, AT&T and USL	communicated with their licensees at users	conferences, such as USENIX (an organization	that supports the development of UNIX	variants), and in other public presentations.	Representatives of AT&T and USL emphasized		ed with their own original	material. (Ex. 255 ¶ 6-7.)																			***		-			

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IBM ARID	Deemed admitted: Nothing in SCO's statement	specifically controverts IBM's facts with	admissible evidence meeting the requirements of	Rule 56.		The material referred to by SCO does not	support SCO's statement.																			
IBMSR THE SECOND CONTRACTOR OF THE SECOND SE	Depending on the meaning of the term "original	works," disputed to the extent the statement	suggests that AT&T ever represented to its	licensees that they would have the right to "do as	they wished" with their "original works" that	were part of any modification or derivative work	they had developed based on the licensed UNIX	System V software product. (7163-163.)	Disputed to the extent the statement suggests	that IBM and Sequent did not enter into a written	agreement requiring them to hold in confidence	all parts of their modifications and derivative	works based on the licensed UNIX System V	software product. (99 13-29, 82-86.) Disputed to	the extent that the statement suggests that, upon	entering into their written agreement, the parties	did not intend to exclude any previous and	subsequent oral discussion from the agreement	the parties had reached. (¶ 18, 91-92.) "The	IBM Agreements and the Sequent Agreements	(collectively "the Agreements") set forth the	terms under which UNIX System V could be	used and disclosed by them and under which	they could distribute software programs "based	on" UNIX System V." (IBM Statement of	Undisouted Pacts (50.)
ATAT THE RESERVE TO T	figuration to the oscillatives interpret their	uccusees to roly upon their statements and	assurances about what incensees could and could	not do With their original works. (Ex. 183 § 6;	Ex. 191 77; Ex. 250 77 4-5; Ex. 271 7 5; Ex. 276																					
2	5																									

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ક્રં	Taking Mr. Wilson and his colleagues at their	Disputed in that the referenced exhibits do not	d: The mater
	word, IBM, Sequent and other UNIX licensees	disclose internal operating system source code.	SCO does not support SCO's statement
	exercised ownership and control over their	methods or concepts at all, disclose operating	
	original works, despite the fact that those works	system source code, methods or concepts at only	SCO's statement fails to identify material facts
	had been part of a modification and derivative	a general and superficial level such that the	of record meeting the requirements of Rule 56.
	work of UNIX System V or had been associated	disclosure would be of no use to operating	The declaration referred to constitutes a
	in some respect with UNIX System V code, such	system developers or disclose material that is so	supplemental expert report and was not timely
	as by publicly disclosing them. (Ex. 508; Ex.	specific to a particular operating system that it	disclosed,
	509; Ex. 510; Ex. 511; Bx. 512; Bx. 559; Ex.	would not be applicable to another operating	
	560; Ex. 561; Ex. 562; Ex. 563; Ex. 564; Ex.	system, such as Linux; are confidential	
	565; Ex. 566; Ex. 567; Ex. 568; Ex. 569; Ex.	documents, patents whose purpose is to prevent	
	570; Ex. 571.)	the use of the disclosed invention, or materials	
		that are protected by clear copyright language;	
		and/or give no indication that they were	
		published or distributed, or that their existence	
		was ever known to individuals outside of IBM.	
		(Ex. 139 17 222.) Disputed to the extent the	
		statement suggests that IBM and Sequent did not	
		enter into a written agreement requiring them to	
		hold in confidence all parts of their	
		modifications and derivative works based on the	
		licensed UNIX System V software product. (T)	
		13-29, 82-86.) Disputed to the extent that the	
		statement suggests that, upon entering into their	
		written agreement, the parties did not intend to	,
		exclude any previous and subsequent oral	
		discussion from the agreement the parties had	
		reached. (¶ 18, 91-92.) "The IBM Agreements	
		and the Sequent Agreements (collectively "the	
		Agreements") set forth the terms under which	
		UNIX System V could be used and disclosed by	
		them and under which they could distribute	
		software programs "based on" UNIX System	
		V." (IBM Statement of Undisputed Facts ¶ 50.)	