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は、「なっぱいないのでは、これのでは、これは、これには、これには、これには、これには、これには、これには、これには	LINK S KEPIVO SE PRESENTATION SERVICES	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 down and	Support SCO's statement		Firstfier the cited modernial falls, and	the since the since the same of the support Sibilis	Sub-Olivelli.																							
A STOCK BESTONSE	Disputed to the section of	that IRM and Comment at a suitement suggests	with the and sequent and 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	30ftware product. (11 13-29, 82-86.) Disputed to	the extent that the statement suggests that, upon	cutoring into their written agreement, the parties	did not intend to exclude any previous and	Subsequent onal discussion from the saresment	the parties had reached. (m 18, 91-92) "The	1BM 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 "hased	on" UNIX System V." (IBM Statement of	Undisputed Facts § 50.) Disputed to the extent	that the cited material does not support the	essertion that IBM or Sequent relied on	"AT&T's failure to take any action to preclude	licensees from doing as they wished with their	original works" in deciding to continue to	develop their AIX and Dynix derivative works.	(IBM Statement of Undisputed Facts § 50.)	Depending on the meaning of the term "original	works," disputed to the extent that IBM and	Sequent had compelling reasons to continue to	invest in AIX and Dynix as they did under the	terms of their UNIX System V license	agreements. (¶ 30-62.) 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-
THE PARTY OF THE P	Based on their understanding of the Agreements.	the representations of AT&T representatives and	AT&T's failure to take any action to preclude	licensees from doing as they unished units 4-12	Original under IBM and Comment (18)	licenseses) continued to describe officer	The result of the second of th	56:11 57:5 52:20 52:17 1:00 12 29:8-31:5,	130.1.																										
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SECTION REDACTED During this time Sequent likewise invested heavily in the development and marketing of Dynix and wrote millions of lines of original source code. (Ex. 257 ¶ 10; Ex. 252 at 67:21-68:11; 97:25-98:20, 140:12-21; Ex. 181, Ex. G; Ex. 596 ¶ 3-4.) Neither IBM nor Sequent would have invested in AIX and Dynix as they did if they had believed that AT&T or its successors, instead of IBM and Sequent, owned and had the right to control IBM's or Sequent's original works, whether or not they were part of a modification or derivative work of UNIX System V. (Ex. 257 ¶ 6; Ex. 295 at 27:2-25.

		A PART OF THE PROPERTY OF THE	「このですが、ことに、こので、このでははない。これはは100年後の最初の表現である。
¥.	Over the years, AT&T made the source code to	Disputed to the extent the statement suggests	Deemed admitted: The material referred to two
·	its UNIX operating systems available to many	that by making its source code available to	SCO does not support SCO's statement.
	unusunds of persons and entities, without	persons and entities, AT&T waived or intended	•
	confidential ATAT's view and that a least	to waive any of its copyrights or other legal	The facts stated in IBM's referenced paragraph
	number of I MIX from beforehis not mare	rights in UNIX. "The mere fact of publishing a	are fully supported by the cited material.
	Would help foster the adoption of I NITY Content	copyrighted work does not give others the right	
	V as an industry standard within the information	W use, copy, modify, or distribute that work." (IBM Systemant of Indianatal Earth in Systemant	Nothing in SCO's statement specifically
	technology marketplace. (Ex. 182 § 37; Ex. 281	of IBM's Motion for Summary Indement on Its	controverts them's facts with admissible
	☆ 33-37.)	Claim for Copyright Infringement (IBM's	cymerce meeting the requirements of Kure 56.
		Eighth Counterclaim) [8.) Disputed in that the	
		cited material does not properly support the	
		assertion that AT&T did not "necessarily"	
		require its UNIX source code to be kept	
		confidential. Disputed to the extent the	
		statement suggests that AT&T intentionally	
		decided not to keep its UNIX System V source	
3		code confidential.	
.,,	because A L&I and USL intended to distribute	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	The Civil's system v source code and related	that by making its source code available to	specifically controverts IBM's facts with
	muormanon Widely, they understood that it	persons and entities, AT&T waived or intended	admissible evidence meeting the requirements of
	would be difficult to require that the code and	to waive any of its copyrights or other legal	Rule 56.
	reduced infolloation of Kept confidential. (Ex.	rights in UNIX. "The mere fact of publishing a	
	162 J 50; EX. 189 7 55-56; EX. 279 9; Ex. 281	copyrighted work does not give others the right	The material referred to by SCO does not
	123.)	to use, copy, modify, or distribute that work."	support SCO's statement.
		(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.) 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,	
		modifications, or derivative works. (# 78-79.)	

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.	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.
NIX source code to Depending on the meaning of the phrase "very avorable forms," disputed to the extent the states and students to promote the widespread erating systems by ensuring systems by ensuring code available to persons and entities, AT&T ating systems by ensuring code available to persons and entities, AT&T ating systems by ensuring each or intended to waive any of its concepts, knowmer 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 Counterclaim) § 8.) Disputed in that there was nothing inherent in AT&T's or USL's UNIX illicansing program that would result in the disclosure of any confidential UNIX material,	Disputed to the extent the statement suggests that by making its source code available to persons and entities, AT&T waived or intended to waive any of its copyrights or other legal rights in UNIX. "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 Counterclaim) ¶ 8.) Disputed in that there was nothing inherent in AT&T's or USL's UNIXI licensing program that would result in the disclosure of any confidential UNIX material, modifications or derivative marker.
AT&T licensed is Ul universities worldwid to encourage use by palike. AT&T sought adoption of UNIX ophinal UNIX System V how, methods, and tecknown and understood (Ex. 182 ¶ 36-37; Ex.	AT&T knew that some universities made the source code available to individual students who were not bound by confidentiality obligations. AT&T also knew that such students often took copies of the source code with them when they graduated. AT&T's practice was not to take action regarding such breaches of the license agreements unless the students sought to commertialize the software, in which case it would require the students to enter into license agreements and pay royalties. (Ex. 281 § 34.)
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Regests Deemed admitted: Nothing in SCO's statement set to specifically controverts IBM's facts with atmissible evidence meeting the requirements of Rule 56. Iishing a dmissible evidence meeting the requirements of Rule 56. Iishing a the right The material referred to by SCO does not support SCO's statement. The material referred to by SCO does not support SCO's statement. 1 that attain the attain the attain the statement.	Decaned 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 that by making its source code available to persons and entities, AT&T waived or intended to waive any of its copyrights or other legal rights In UNIX. "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 Pacts in Support of IBM's Motion for Summary Judgment on Its Claim for Copyright Infingement (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, modifications, or derivative works. (¶ 78-79.)	Disputed in that substantial evidence shows (and easily permits the inference) that AT&T did not infend and it was not its policy to hold all licensees to the same basic standard, without regard to 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 Facts ¶ 50.) Disputed in that AT&T did not grant IBM "the right to disclose UNIX System V." (¶ 88-89.) Disputed in that neither AT&T or nor its successor—in-inserest ever "abandoned" any intent to protect the methods and concepts of its UNIX operatine systems. (₱ 6.46.)
AT&T's Commercial licensing practices also resulted in the wide availability of UNIX source code. AT&T licensed the source code to hundreds of licensees, who in turn (with AT&T's permission) made it available to tens of thousands of individuals, such as professional software developers that AT&T knew would become knowledgeable about its source code. (Ex. 281 ¶ 33.)	At & 1 expressly granted IBM the right to disclose UNIX System V ideas, concepts, knowhow, methods, and techniques embodied in UNIX System V (Ex. 122 § 9) and then afforded the same right to its licensees, which AT&T endeavored to hold to the same standard (Ex. 281 ¾ 13-17). At approximately the same time, AT&T "abandoned" (to use Mr. Wilson's term) an early interest in protecting the methods and concepts of its UNIX operating systems. (Ex. 346 at 62:23-25, 84:8-13, 86:4-18, 264:8-265:8.)
100.	

102. 102. 103. A B B B B B B B B B B B B B B B B B B	In an effort to make UNIX an "open" operating system, meaning that customers would not be locked in with a particular hardware vendor or a particular operating system vendor, AT&T itself published information concerning the interface of the operating system. For example, AT&T published information concerning the interface of the operating system. For example, AT&T published a System V Interface Definition ("SVID"), which provided a complete interface specification that could even be used by AT&T's competitors to develop independently their own UNIX-like operating systems. (Ex. 281 ¶ 36; Ex. 182 ¶ 37.) AT&T and its successors authorized, or at least did not prevent, the publication of hundreds, if not thousands, of books, articles, internet websites and other materials regarding UNIX, many of which provide detailed information regarding the design and implementation of the UNIX operating system. (Ex. 181 ¶ 38-59 & Ex. E; Ex. 281 ¶ 37-38; 182 ¶ 37-38.)	日 學	Deemed admitted: The material referred to by SCO does not support SCO's statement. Nothing in SCO's statement specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56. The declaration referred to constitutes a supplemental expert report and was not timely disclosed. Deemed admitted: The material referred to by SCO does not support SCO's statement. Nothing in SCO's statement specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56. The declaration referred to constitutes a supplemental expert report and was not timely disclosed.	
		Claim for Copyright Infringement (IBM's Eighth Counterclaim) ¶ 8.) Depending on the meaning of the phrase "design and implementation," disputed to the extent the statement suggests that such publications disclosed the internal materials and concepts in UNIX, which statement the cited material does not support, and which is not correct. (Ex. 139 ₱ 9.27.)		

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<u>8</u>	Between 1985 and 1996, AT&T Canital	104. Between 1985 and 1996. A T&T Caniful Discussion of the Control of the Contro	では、 一般のないでは、 一般のないでは、 一般のないできない。
	Cornoration then a embeddiam of A Train	Disputed in that the cited material does not	Docmed admitted: The material referred to by
	thousand of med a substituty of A 1601, 5010	property support the assertions. Disputed to the	SCO does not support SCO's statement
	unusations of used of discontinued AT&!	extent the statement suggests that by making its	
	computer systems, hundreds of them from Bell	source code available to persons and entities.	Nothing in SCO's statement energingally
	Labs, without imposing any confidentiality	AT&T waived or intended to waive any of its	controverte IRM's facts with admissible
	restrictions on the purchasers. Some of the	copyrights or other legal rights in I MIX "The	And denote marking the secondary of D. I
	computers included UNIX System V, Rolease 3,	mere fact of publishing a convrighted work does	Arrestee the tequilitation of Aule 56,
	and Release 4 source code. (Ex. 174 110-16;	not give others the right to use conv. modify or	
	Ex. 223 7 4-10; Ex. 253 7 3-5; Ex. 281 4 39;	distribute that work." (IBM Statement of	
	Ex. 189 32.)	Undisputed Facts in Support of IBM's Motion	
		for Summary Judgment on Its Claim for	
		Copyright Infringement (IBM's Eighth	
		Counterclaim # 2)	
105.	AT&T recognized that its goal of promoting the	Disputed to the extent the statement snowests	Dermad odmitted: Mothing is 8000's and
	Widespread adoption of UNIX System V was	that by making its source code available to	execution and accompanies of the forest the
	inconsistent with its general desire to preserve	Dersons and entities AT&T waited or intended	approximately connected that I states With
	the confidentiality of the source code. However	לי יייי שייי מיייני אין איני איני איני איני איני איני	admissible evidence meeting the requirements of
	ATAT use more consumed with the state of	to waive any of its copyrights or other legal	Rule 56.
	wideoned of the Craws of the Co.	rights in UNIX. The more fact of publishing a	
	wince problem of UNIX System V, and	copyrighted work does not give others the right	The material referred to by SCO does not
	consound the associated royalties, than it was	to use, copy, modify, or distribute that work."	support SCO's statement
	with protecting the confidentiality of its source	(IBM Statement of Undisputed Facts in Support	
	code. (Ex. 281 35; Ex. 190 25.)	of IBM's Motion for Summary Judgment on its	
		Claim for Copyright Infringement (IBM's	
		Bighth 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,	
		modifications, or derivative works. (111 78-79.)	

	に対する。 は、対するとは、対するとは、対するとなった。 は、対するとは、は、は、は、は、は、は、は、は、は、は、は、は、は、は、は、は、は、は、	を表現している。 は他なども、またのである。 では、これには、これでは、これでは、これでは、これでは、これでは、これでは、これでは、これで	- 1
96	The code, methods, and concepts of UNIX	District to the extent the effection of the extension	The state of the s
	System V are available without restriction to the	that hy making its course code eveilable to	Consideration of the statement of the st
	general public within the meaning of 7 06(a) as	Descent and entities A Tart and the second	specialistic controverts 18141's 1803 with
	the provision was intended by A T.B.T. Gr. 191	persons and chillies, A loca walved of intended	admissible evidence meeting the requirements of
·····	44 58.50 to Do D: 52 173 414 to 105 6 2	w waive any of its copyrights or other legal	Rule 56. The declaration referred to constitutes
	٠ -	rights in UNIX. 'The mere fact of publishing a	a supplemental expert report and was not timely
	40/ 11 11-15; EX. 281 11 35-39; EX. 219.)	copyrighted work does not give others the right	disclosed.
		to use, copy, modify, or distribute that work."	
		(IBM Statement of Undisputed Facts in Support	The material referred to by SCO does not
		of IBM's Motion for Summary Judgment on Its	support SCO's statement
		Clalm 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.	
		modifications, or derivative works. (17 78-79.)	
		Disputed to the extent the statement draws a	
		legal conclusion Disputed in that the code	
		to a market out, Disputed in that the code,	
		methods, and concepts of UNIX System V are	
		not available without restriction to the general	
]		public. (Ex. 139 11 23-26.)	
107.	In 1991, an undergraduate student at the	Disputed. SCO disputes IBM's assertion that	Deemed admitted: Nothing In SCO's statement
	University of Heisinki, named Linux Torvalds,	Linux Torvalds set out to create a "new"	specifically controverts IBM's facts with
	set out to create a new, free operating system,	operating system. Rather, Mr. Torvalds based	admissible evidence meeting the remirements of
	which later became known as "Linux". (Ex. 272	Linux on the Minix operating system, which he	Rule 56.
	1 3; EX. 398 at 1-5.)	describes as a "Unix variant," Linux Torvalds &	
		David Diamond, Just for Fun: The Story of an	SCO's response does not create a genuine issue
		Accidental Revolutionary 61 (2001) (Ex. 169 at	of fact in that the facts in the referenced
		61.). Mr. Torvalds then used the manuals for the	paragraph are background and no point
		Sun Microsystems version of Unix for his early	purportedly controverted is material to IBM's
		development of the operating system: "That's	motion.
		how early development was done. I was reading	
		the standards from either the Sun OS [Operating	
		System] manual or various books, just picking	
		off system calls one by one and trying to make	
		something that worked." (Id. at 82.)	

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108.	Torvalds began developing the core of the	Disputed SCO disputes that Mr. Towards.	LBM S Keply Transfer and Transf
	operating system, known as the "kernel", and	"developed" much of the Linux material	Decined admitted: Nothing in SCO's statement
	some months later posted news of his project to	because such "development" consists of	specifically controvers IBM's facts with
	Inferred newsgroups, inviting volunteers to assist	appropriating material from Minix and other	buile of
•	him in his efforts. (Ex. 398 at 1.5; Ex. 272 ¶ 4.)	UNIX-like operating systems, at least as to the	Nuis 35,
		material in dispute in this case and as described	SCO's response does not craste a genuine ions
		In SCO's expert Dr. Thomas A Carglll's expert	of fact in that the facts in the referenced
		reports. See Disputed Facts #1, 283-85; (Cargill	paragraph are background and no point
		1 Ex. 274; Cargill 11 Ex. 275; Cargill III Ex. 276.1	purportedly controverted is material to IBM's
<u>8</u>	With the Internet providing for a distributed	Disputed SCO disputes that Mr. Torvalds and/or	Deemed admitted. The material referred to her
	collaboration, other programmers joined to	other Linux contributors "created" much of the	SCO does not support SCO's statement
	Grade code making up the kernel. (Ex. 398 at 1-	material in Linux, as opposed to copying such	
	collaboration to a version 10 returns a fetter	material from pre-existing sources, to the extent	SCO's response does not create a genuine issue
	Limits formel in 1004 and has constant at	Linux versions contain the material in dispute in	of fact in that the facts in the referenced
_	maintain the formal development since one one	this case as described in SCO's expert Dr.	paragraph are background and no point
	at 1.5: Ev. 272 e.c.)	Thomas A. Cargill's expert reports. (See	purportedly controverted is material to IBM's
	m 1-3, EA: 414 3.)	Disputed Facts Nos. 1-2, 283-85 to SCO's	motion.
		Memorandum in Opposition to IBM's Motion	
		for Summary Judgment on Its Tenth	
9	1 1	Counterclaim (Nov. 11, 2006).)	
.10	the years that followed, thousands of	Disputed in part and undisputed in part. It is	Deemed admitted: Nothling in SCO's statement
	developers, including developers at SCO,	undisputed that developers at SCO have	specifically controverts IBM's facts with
	contributed to the further development of Linux.	contributed to the development of Linux-	admissible evidence meeting the manifestance of
	(See Ex. 5 45; Ex. 364 (identifying SCO	related products. However, neither Santa Cruz.	Rule 56. Further the material referred to but
	contributions to Linux); Ex. 105 at 15, 22, 26;	Caldera International, nor SCO have	SCO does not support SCO's statement
	EX. 194 5.)	contributed or Intended to contribute any of the	coc cos not appoin oco a superiori.
		material at issue in this litigation to Linux, (Ex.	SCO's response does not create a genuine issue
		269 1 9-14; Ex. 233 1 4, 6, 13; Ex. 11 1 17;	of fact in that the facts in the referenced
		Ex. 6 111.) IBM's sources do not support the	paragraph are background and no point
		assertion that SCO, or any other entity that	purportedly controverted is material to IBM's
_		hold copyrights to UNIX, contributed to Linux.	motion.
		Neither Caldera, Inc. nor Caldera Systems, Inc.	
-		("Caldera Systems") held any copyrights to	The facts stated in IBM's referenced paragraph
		UNIX prior to the 2001 merger that created	are fully supported by the cited material.
	-	Caldera International. (Ex. 269 ¶ 9; Disputed	
		Facts Nos. 9, 34-37, 104 to SCO's	
		Memorandum in Opposition to IBM's Motion	
		for Summary Judgment on its Tenth	

	, 2006).).	IBM Ex. 5 (SCO's Answer to IBM's Second	Amended Counterclaims) ¶ 45: The cited	source does not support the assertion that SCO	"contributed to the further development of	Linux." Rather, the cited source supports the	assection that IBM contributed source code to	Linux, and devies all other allegations, including	allegations that SCO distributed IBM's	contributions under the GNU General Public	License ("GPL").	IBM Ex. 105 (Caldera Systems, Inc.'s	October 2000 Form 10-K/A) at 15, 22, 26: The	cited source refers to Caldera Systems, Inc.	("Caldera Systems"), which did not own any	copyrights in UNIX. (Disputed Facts Nos. 9, 34-	37, 104 to SCO's Memorandum in Opposition to	IBM's Motion for Summary Judgment on Its	Tenth Counterclaim (Nov. 11, 2006).) The cited	source shows that Caldera Systems sought to	deliver Linnx-related products (p. 15), would be	forced to contribute to the development of Limux	if independent third-parties ceased such	development (p. 22), and competed with Linux	providers (p. 26). The source does not mention	SCO and does not support the assertion that	either SCO or Caldera Systems contributed	source code to the Linux kernel or any non-	proprietary, Linux-related software. Rather, the	source stresses that "most of the components of	[Cathora Systems'] software offerings are	developed by independent parties" (p. 26).	IBM Ex. 364 (SCO website): The cited source	shows only vague support for limited	contribution by SCO to elements of Linux that	do not constitute part of the infringing Linux	material. The cited source does not specify a	time frame for the accepted actions
Sales LINKE					·····															•			-							-		-			•			

Linux is an "open source" program, which makes a source and undiqued in part and undiqued in part SOC disputed in part and undiqued in part SOC disputed in part and undiqued in part SOC disputed in part and undiqued in part and oben and so ober things, that is source cook is publicly available, rogaly-free, and users have because it contains material that has not been the freedom to run, copy, distribute, study, adapt, properly licensed by the owner(s) of the sound in prove the software. [Ex. 572 f Copyright in such material. In particular, neither SOC mor any other UNIX copyright holder properly released the copyright holder properly released the copyright holder (PMX material at issue in this case under the GPL. Neither ATST, Unix Systems Laboratories ("USL"), Novell, Inc. ("Novell"), Santa Cruz, Caldera luterational, or SOC bare placed a notice on or in any products indicating that they grant the rights "fro run, copy, distribute, study, adapt and improve" the Infinity ingred with material in Linux without royaldics, under the terms of the GPL or any other "open source" license, nor did they even intend to grant study approducts indicating that they grant the rights "to run, copy, distribute, study, adapt and improve" the Infinity ingred UNIX ropyright holder copyright holder when the terms of the GPL or any other "open source" license, nor did they even intend to grant study approducts any forth no evidence that any UNIX copyright holder contributed the infinity full material they contributed the infinity full material to Linux on the broke and in the PMX material is a precquisite to Linux on the broke and material in full whether SOC or any other UNIX copyright holder what whether SOC or any other UNIX copyright holder what whether SOC or any other UNIX copyright in the material they contributed the infinity full what such an evidence what whether SOC or any other UNIX copyright is not the property of the unified for the material in state in the what whether SOC or any other UNIX copyright places.	はは、これでは、これでは、これでは、これでは、これでは、これでは、これでは、これ			admissible evidence meeting the requirements of				SOO's response does not greate a gamille is man	of fact in that the facts in the additional	nemotions are herboroused and as a seing	presented are configurated in motorial to 100 to			The facts stated in IRM's referenced narrows	are fully supported by the cited material	'mi carro and Carro alle Carro																							
Linux is an "open source" program, which means, among other things; that its source code is publicly available, royalty-free, and users have the freedom to run, copy, distribute, study, adapt, and improve the software. (Ex. 5 ¶ 22; Ex. 272 ¶ 6; Ex. 22 i ¶ 7; Ex. 64 ¶ 8.)		disputes that I have in the	because it milita is an open source program	weeter it contains material that has not been	properly licensed by the owner(s) of the	copyright in such material. In particular, neithe	SCO nor any other UNIX copyright holder	properly released the copyrighted, disputed	UNIX material at issue in this case under the	GPL. Neither AT&T. Unix Systems	Laboratories ("USL"), Novell, Inc. ("Novell")	Santa Cruz, Caldera International, or SCO have	placed a notice on or in any products indicating	that they grant the rights "to run, copy,	distribute, study, adapt and improve" the	Infringing UNIX material in Linux without	royalties, under the terms of the GPL or any	other "open source" license, nor did they ever	intend to grant such rights. (Ex. 11; Ex. 233 974	6, 13; Ex. 269 119-14; Ex. 6 1111, 14.	Placement of such a notice by the copyright	holder in the UNIX material is a prerequisite to	granting such rights in the UNIX material under	the GPL. (IBM Ex. 128 § 0.) IBM has put forth	no evidence that any UNIX copyright holder	contributed the inflinging Linux material to	Linux or placed an appropriate GPL notice on	Linux, or that other Linux contributors actually	owned the copyright in the material they	contributed. For instance, Mr. Torvalds admits	to having incorporated system calls taken from a	Unix licensee - Sun Microsystems. (Disputed	Fact No. 2 to Yet, IBM has put forth no evidence	showing that Sun granted rights to use such	material in Linux. Furthermore, whether SCO or	any other UNIX copyright holder has granted	such rights, to whom such rights were granted,	what conditions were imposed on such rights,	and whether use of the infringing Linux material
The state of the s	Linux is an "open source" program, which	means, among other things, that its source code	is publicly available, royalty-free, and users have	the freedom to my court distribute and a de-	and improve the cofficer / 75 6 # 50 m out a	6: 22, 22, 62, 73, 6: 20, 1 22, 5x, 272 q	0, EX. 2217 /; EX. 64 8.)																																

	The state of the s	The Contraction of the Contracti	
\$	-	legal conclusions, are all disputed legal conclusions, not "Disputed Facts." IBM Ex. 5 (SCO's Auswer to IBM's Second Amended Counterclaims) ¶ 22: The cited source does not support the assertion that such rights have been granted in all of Linux, and does not specify any particular portion of Linux in which such rights have been granted. IBM Ex. 272 (Declaration of Linux Torvalds) ¶ 6: Ex. 221 (Declaration of Ransom Lave) ¶ 7: The cited sources constitute legal conclusions asserted without any summorthing factuals beside.	
	Linux not only adheres to open standards, but also is built and maintained by a worldwide group of engineers who share the common goal of making open systems and open source ubiquitous. (Ex. 106 at 3; Ex. 272 ¶ 7; Ex. 221 ¶ 8.) Anyone can freely download Linux and many Linux applications and modify and re-	Disputed in that the cited material is inadmissible to support the assertion that a worldwide group of engineers who build and maintain Linux share the common goal of making open systems and open source ubkquitous.	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
	distribute them with few restrictions. (Ex. 107 at 5; Ex. 272 § 8; Ex. 221 § 9.)		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
<u></u>	The Linux kernel is distributed under the GNU General Public License ("GPL"). The GPL provides that a person receiving code under the GPL "may copy and distribute verbatim coples of the Program's source code" and "modify [their] copy or coples of the Program or any portion of it". (Ex. 272 ¶ 9; Ex. 128 §§ 1, 2; Ex. 107 at 24; Ex. 221 ¶ 10.) The GPL also movides	Disputed to the extent the statement suggests that the foregoing provisions of Linux are the only ones relevant to the terms under which the Linux kernel is distributed.	motion. Deemed admitted: Nothing in SCO's statement specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56.
	that a person receiving code under the GPL receives "a license from the original licensor to copy, distribute or modify the Program". (Ex. 128 § 6.)		

whose behalf he is authorized to speak regarding referenced paragraph are fully supported by the evidence meeting the requirements of Rule 56. Deemed admitted: The facts stated in IBM's knowledge of Novell, Inc., a legal person, on cited material. Mr. LaSala's declaration is proper since it is based upon the personal Nothing in SCO's statement specifically controverts IBM's facts with admissible the matters in the declaration. any matter contained in the declaration. To the constray, he asserts that the declaration is "based on Novell's knowledge and understanding of the matters described herein," and that he is authorized to submit the declaration "on behalf of Novell's (BMB 240°¶4.) Federal Rule of Civil Procedure 56(e) states that affixivity in support of summary judgment motions are required to "be made on personal knowledge." Only in paragraphs 30-36 of the declaration does Mr. Lagar make subments that are besed on his personal knowledge. Where the deficiencies in an afficient make it impossible for LaSala identifies himself as "Sentor Vice President and General Counsel as Novell, Inc." Although not mentioned m the declaration, Mr. LaSala was hired by Novell in 2001. See http://brww.novell.com/company/bios/liteala.html. Mr. LaSala makes no assertion that he has personal knowledge of the Court to determine "which facts it can accept as based on personal knowledge and which must be rejected as being conjecture or belief," the Court should disregard the entire affidawit. Malek v. Martin Matietta Coins. 859 F. Supp. 458, 460-61 (D. Kan. 1994), Those statements regarding Disputed in the IBM Exhibit 240 constitues, in relevant part, readmissible evidence. The declarant is Joseph A. LaSala, Jr. "on behalf of Novell, Inc." (IBM Bx. 240.) Mr. speculation, that are admissible at trial and the proper subject Foderal Rules of Civil Procedure do not permit Mr. LaSala to of any afficient,"), accord Richa v. Xerox Corp., 577 F. Supp. 1465, 1470 n.1 (D. Kan. 1995). Specifically, paragraphs 7, 11-25, and 40-43 of the declaration convey on their first Novell's "understanding" of the significance of events and are therefore inappropriate evidence in support of were clearly not made upon personal knowledge, constitute inadmissible bearray, and should be disregarded by the Additionally, to the extent the entire declaration purports to question occurred prior to affiner's liming, parts of affidavit a runnmary judgment motion, in addition to the fact that the occurrences prior to Mr. LaSala's joining Novell in 2001 Court. See Perez v. Volvo Car Corp., 247 F. 3d 303, 316 concoming those events "cannol property be considered") Malch, 859 P. Supp. at 460 ("It is the plaintiff's personal (1st Cir. 2001) (where record made clear that events in relay Novell's "understanding" of mattern, it should be disregarded as not in accordance with Rule 54(c). See knowledge and not his beliefs, opinions, rumors or Including AT&T's UNIX licensing agreements At approximately the same time Mr. Torvalds and copyrights. (Bx. 5 § 10; Ex. 182 § 8.) In acquired (in 1991) an interest in USL, which 1993, Novell acquired all of the UNIX assets held all of AT&T's UNIX-related assets, began the development of Linux, Novell National Party of the second s held by USL. (Ex. 240 99.) 114

doclare anything "on behalf of" Novell

	· 1000 1000 1000 1000 1000 1000 1000 10		
115.	LINIX access May all	3	
	assumed AT&T's rights and obligations under	Disputed in that IBM Exhibit 240 constitutes, in relevant part instruction	밀
	Its UNIX licenses, including AT&T's UNIX licensing agreements with TDM	(See response to IBM Paragraph 114.)	referenced paragraph are fully supported by the cited material. Mr. LaSala's declaration is
	Like AT&T and USL before it, Novell managed		proper since it is based upon the personal
	UNIX licensing agreements by, among other		knowledge of Novell, Inc., a legal person, on
	things, interpreting, explaining, and enforcing		Whose behalf he is authorized to speak regarding the matters in the declaration
<u>.</u>	den denis. (EX. 240 ¶ 10.)		
··			Nothing in SCO's statement specifically
			controverts IBM's facts with admissible
- 16.	In acquiring AT&T's rights to the Agreements,	Disputed in that there is substantial evidence	Permed of the St. 4. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1. 1.
	the extrictions them to place restrictions on	demonstrating (and easily permitting the	specifically contravers (BAA's facts with
	I MIX System V. Marrill 13.1 Econoces could use	inference) that the members of Novell's UNIX	admissible evidence meeting the reminements of
	[NIX licenses to confer on A T and	Exercing group understood the UNIX licenses to	Rule 56. Further, the material referred to by
	AT&T's successor) any rights to the code	require the licensees to keep confidential all	SCO does not support SCO's statement.
	methods or concepts of AT&T's and Novell's	parts of their modifications and derivative works	
	licensees — whether or not the licensees' code,	product (% 63.96) Diemsted in the 100.	The facts stated in IBM's referenced paragraph
	methods or concepts were or had been part of a	Exhibit 240 constitutes in relevant north	are fully supported by the cited material. Mr.
	modification or derivative work of AT&T's	inadmissible evidence (See remones to 101)	Labata S declaration is proper since it is based
	UNIX software product. (Ex. 240 🍴 11-23.)	Paragraph 114.)	upon the personal knowledge of Novell, Inc., a
			legal person, on whose behalf he is authorized to
	Novell understood that UNIX licensees could do	Disputed in that there is substantial evidence	Speak regarding the matters in the declaration.
	as usey wished with any non-UNIX portions of	demonstrating (and easily permitting the	specifically continverte IRM's facts with
	[NIX coffware product The int	inference) that AT&T and Novell understood the	admissible evidence meeting the remirements of
	understood its own [NIX]; consequent ATAT	UNIX licenses to require the licensees to keep	Rule 56. Further, the material referred to by
	AT&T made It clear to Novell, and Novell to	connocities and parts of their modifications and derivative and the second derivative and the second	SCO does not support SCO's statement.
	AT&T, that Novell, as an AT&T licensee, could	System V software product, and that neither	The firsts stated in TD Att.
	do as it wished with its own code, methods, and	AT&T nor Novell suggested otherwise to each	are fully supported by the cited motorial. Me
	to Novell material area of included in	other. (¶ 63-96.) Disputed in that IBM Exhibit	LaSala's declaration is proper since it is based
		240 constitutes, in relevant part, inadmissible	upon the personal knowledge of Novell, Inc., a
	software. (Ex. 240 pp 11-23.)	Commence (2002) (Capture to Langraph 114.)	legal person, on whose behalf he is authorized to
			sycan regarding the matters in the declaration.

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		specifically controvers [BA 6] facts with	admissible evidence meeting the requirements of	Rule 56. Further, the material referred to hy	SCO does not support SCO's statement.		The facts stated in IBM's referenced paragraph	are fully supported by the cited material. Mr.	LaSala's declaration is proper since it is based	upon the personal knowledge of Novell, Inc., a	legal person, on whose behalf he is authorized to	speak regarding the matters in the declaration.																						
	Discussed in that there is substantial evidence	demonstrating (and easily nermitting the	inference) that AT&T and Novell understood the	UNIX licenses to require the licensees to keep	confidential all parts of their modifications and	derivative works based on the licensed UNIX	System V software product, and that neither	AT&T nor Novell suggested otherwise to each	other. (¶ 63-96.) Disputed in that like the	AT&T licenses, Novell's own UNIX System V	license agreements state expressly that Novell	and its licensees intended to exclude any	previous or subsequent discussions from the	agreement the parties had reached. (¶ 18, 91-	92.) Disputed to the extent the statement	suggests that licensees did not enter into	agreements 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	licensees 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.)Disputed in that IBM	Exhibit 240 constitutes, in relevant part,	inadmissible evidence. (See response to IBM
	Noveil shared its view of its licenses with its	new (and AT&T's former) licensees, with whom	Novell (like AT&T) had frequent dealings. Like	AT&T, Novell intended for its licensees to rely	on its statements and assurances about what	incensees could do and not do with their original	WOTKS. (EX. 183 1) 5-6; Ex. 240 11 11-23.)	•																										
	118																																	

例という。日本音学、 こうこう 金藤の食はのないになられ	72	specifically controlled IDAC's statement specifically controlled IDAC's facts with	admissible evidence meeting the reminements of	Rule 56. Further the material referred to bu	SCO does not support SCO's statement		The facts stated in IBM's referenced narsoraph		LaSala's declaration is proper since it is based	upon the personal knowledge of Novell Inc. s	legal person, on whose behalf he is authorized to	speak regarding the matters in the declaration																						
		casily permits the inference) that Noveli held no	such understanding of the licenses and had no	such communications with licensees regarding	rights of disclosure. (¶ 63-96.) Disputed to the	extent the statement suggests that Novell	represented that UNIX System V licensees could	do as they wished with "the licensees" code,	methods and concepts" without regard to	whether such material was included in the	licensees' modifications or derivative works	based on the licensed UNIX System V software	product. (77 63-96.) Disputed to the extent the	statement suggests that licensees did not enter	into agreements 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 licensees 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	UNLY 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 call for a	legal conclusion. Disputed in that IBM Exhibit	240 constitutes, in relevant part, inadmissible	evidence. (See response to IBM Paragraph 114.)
	119. Novell representatives made clear to Novell's	licensees, including IBM and Sequent, that	Noveli asserted no rights to the licensees' code,	memods and concepts and that they could do	with them as they wished, whether or not they	were included in modifications or derivative	Works of UNIX software products. To the extent	Novell ever had any right to its heensees' code,	methods, and concepts, Novell relinquished it.	(Ex. 240 TI 11-23.)																								

120	120. Just as they had before Novell acquired USI	Novell acounted USI See Proceedings of the Control	IBM(s Religional property)
	IBM, Sequent and other UNIX licensees exercised ownership and control over their original works, despite the fact that those works were (or had been) part of a modification and derivative work of UNIX System V or were (or had been) associated in some respect with UNIX System V, such as by publicly disclosing them. (Ex. 561; Ex. 562; Ex. 563; Ex. 567; Ex. 568;	ARE Response to LBM Statement of Fact No. 90.	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. The declaration referred to constitutes a supplemental expert report and was not timely disclosed. Further, the material referred to by SCO does not support SCO's statement.
121	Put differently, Novell's UNIX licensees publicly disclosed code, methods, and concepts from their flavors of UNIX after Novell acquired AT&T's UNIX assets. (Ex. 561; Ex. 562; Ex. 563; Ex. 567; Ex. 568; Ex. 569; Ex. 571.)	See Response to IBM Statement of Fact No. 90.	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. The declaration referred to constitutes a supplemental expert report and was not timely disclosed. Further, the material referred to by
<u> </u>	For example, IBM published The Advanced Regrammer's Guide to AIX 3.x., which contained source code, methods and concepts from AIX (Ex. 493), and disclosed AIX methods and concepts in patent applications and issued patents including Patent No. 5,202,971 (Ex. 567), Patent No. 5,102,822 (Ex. 495), Patent No. 5,428,771 (Ex. 497). Likewise, Sequent disclosed methods and concepts in patent applications and issued patents including Patent No. 5,428,778 (Ex. 498), and Patent No. 5,428,778 (Ex. 498), and Patent No. 5,42758 (Ex. 498), and Patent No. 5,428,758 (Ex. 498).	See Response to IBM Statement of Fact No. 90. Disputed to the extent that the statement suggests that AT&T or USL knew or should have known about the substance of IBM's patent applications. (See Argument, Part IV.)	SCU does not support SCO's statement. Deemed admitted: Nothing in SCO's statement specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56. The declaration referred to constitutes a supplemental expert report and was not timely disclosed. Further, the material referred to by SCO does not support SCO's statement.
123.	IBM and Sequent were not alone in disclosing the code, methods, and concepts of their flavors of UNIX. For example, Sun Microsystems, Inc. ("Sun") disclosed source code from Solaris, its UNIX flavor, in Solaris Porting Chick (1995) (Ex. 561 at 228), and Solaris Multithreaded Programming Chick (Ex. 562).	See Response to IBM Statement of Fact No. 90.	Deemed admitted: Nothing in SCO's statement specifically controverts IBMs facts with admissible evidence meeting the requirements of Rule 56. The declaration referred to constitutes a supplemental expert report and was not timely disclosed. Further, the material referred to by SCO does not sumbort SCO's statement.

Like A f&T and USL before it, Novell was aware and undershood that its licensees were exercising their full rights of ownership and disclosing the code, methods and concepts of their shorts of UNIX. (B.x. 183 ¶ 6-7; Ex. 270 ¶ 6-7; Ex. 271 ¶ 5-6; Ex. 250 ¶ 6-7; Ex. 270 ¶ 6-7;	F	T	
24. Like A T&T and USL before it, Novell was aware and understood that its licensees were exercising their full rights of ownership and disclosing the code, methods and concepts of their flavors of UNIX. (Bx. 183 ¶ 6-7; Ex. 250 ¶ 6-7; Ex. 251 ¶ 5-6; Ex. 251 ¶ 5-6; Ex. 251 ¶ 6-7; Ex. 251 ¶ 6	J. Britis Reply 11 To The Wall of Section 1	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. The declaration referred to constitutes a supplemental expert report and was not timely disclosed. Further, the material referred to by SCO does not support SCO's statement.	
24. Like A T&T and USL before it, Novell was aware and understood that its licensees were exercising their full rights of ownership and disclosing the code, methods and concepts of their flavors of UNIX. (Bx. 183 ¶ 6-7; Ex. 250 ¶ 6-7; Ex. 251 ¶ 5-6; Ex. 250 ¶ 6-7; Ex. 251 ¶ 5-6; Ex. 250 ¶ 6-7; Ex. 251 ¶ 6-7; Ex. 250 ¶ 6-7; Ex. 251 ¶ 6		where shows (and Novell now about such further erence) that de under aterial breaches	
24. Like A T&T and USL before it, Novell was aware and understood that its licensees were exercising their full rights of ownership and disclosing the code, methods and concepts of their lawors of UNIX. (Bx. 183 ¶ 6-7; Ex. 250 ¶ 6-7; Ex. 250 ¶ 6-7; Yet, Novell fook no steps to stop its licensees from doing as they wished with their original works. (Bx. 183 ¶ 6-7; Ex. 250 ¶ 6-7; Ex. 251 ¶ 5-6; Ex. 250 ¶ 6-7; Ex. 251 ¶ 5-6;	(A)	ubstantial evide inference) that d not actually k .) The evidence permits the inf including as ma on, were not ru.	
24. Like A T&T and USL before it, Novell was aware and understood that its licensees were exercising their full rights of ownership and disclosing the code, methods and concepts of their flavors of UNIX. (Ex. 183 ¶ 6-7; Ex. 250 si ¶ 6-7; Ex. 271 ¶ 5-6; Ex. 276 ¶ 6-7.) Yet, Novell fook no steps to stop its licensees from doing as they wished with their original works. (Ex. 183 ¶ 6-7; Ex. 250 ¶ 6-7; Ex. 270 ¶ 6-7.	2000	Visputed in that stailly permits the spresentatives disclosures. (¶ 96, hows (and easily Lich disclosures, lappyright protectif the agreements.	
Like A T&T and USL before it, Nove aware and understood that its licensee exercising their full rights of ownersh disclosing the code, methods and contheir flavors of UNIX. (Bx. 183 ¶ 6- ¶ 6-7; Ex. 271 ¶ 5-6; Ex. 276 ¶ 6-7; Novell took no steps to stop its license doing as they wished with their origin (Ex. 183 ¶ 6-7; Ex. 250 ¶ 6-7;		li was ss were gs were gepts of Gepts of 7; Ex. 250 si 7; Yet, ss al works, of	(O-C F
24. Like A T&T and USL aware and understood exercising their full riddle followers of UNIX. 116-7; Ex. 271 ff 5-6 Novell fook no steps the doing as they wished to the few. 183 ff 6-7; Ex. 276 ff 6-7.)	before it Moure	that its licensee that its licensee that its licensee ghts of ownersh eethods and connections at \$76. 18 \text{K} 18 \text{K} \text{K} 18 \text{K} \te	7. XZ */-0 # 0c
24. Like, aware aware exercicle disclosure of their forms of their	A TAPE and FIST	sing their full rising their full rising the code, in lawors of UNIX; Ex. 271 [¶ 5-6] [fook no steps the steps with the code of the code o	76 11 6-7.)
	24. Like	aware exercition disclosing their formal for	Ex. 27

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	TO PARTY OF THE PA	Deemed admitted: Nothing in SCO's statement	specifically controverts IBM's facts with	admissible evidence meeting the roonirements of	Rule 56. Further, the material referred to hy	SCO does not support SCO's statement		The facts stated in IBM's referenced narround	are fully supported by the cited material																									
	Disputed to the second of the	the internal or are extent the statement suggests	use 15M 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. (71 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	1BM 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	that the cited material does not support the	assection that IBM or Sequent relied on	"Novell's failure to take any action to preclude	licensees from doing as they wished with their	original works" in deciding to continue to	develop their AIX and Dynix derivative works.	Disputed to the extent the statement suggests	that, absent an "indication of a different	interpretation of the Agreements," IBM and	Sequent would not have continued to develop	AIX and Sequent as they did. (¶ 30-62.)	Disputed to the extent the statement suggests	that IBM knew the terms and conditions of any	other UNIX licensee's license arrangement. (Ex.	333 ¶ 23: Ex. 355 ¶ 23)
	Based on its understanding of the Agreements	the statements of Novell representatives and	Novell's failure to take any option to preschild.	licenses from the care and action to preclude	necessers from doing as they wished with their	original works, IBM continued to develop its	Havor of UNIX. Similarly, Sequent, having	received no indication of a different	interpretation of the Agreements from Novell.	continued to develop its own Dynix operating	system. (Ex. 257 11 3-5; Ex. 252 at 67:21-	68:11; 97:25-98:20, 140:12-21; Ex., 596 9 2-4.)																						
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126.		Description on the management of the contraction of	
	SECTION REDACTED	source code," disputed to the extent the cited	Decined admitted: Nothing in SCO's statement specifically controverts IBM's facts with
	Segment likewise imported tank of millions of	material does not identify what lines of code in	admissible evidence meeting the requirements of
	dollars in the development and marketing of	ALA of Sequent were written by developers	Rule 56.
	Dynix and wrote millions of lines of original	on such reference or access, or experience based	
	source code. (Ex. 257 ¶ 10; Ex. 252 at 67:21-	UNIX System V software product	
	68:11; 97:25-98:20, 140:12-21; Ex. 181; Ex. G; Ex. 596 #f 3-4)		
127.	Neither IBM nor Sequent would have continued	Disputed to the extent the statement comments	P
	to invest in AIX and Dynix as they did if they	that IBM and Sequent did not enter into a written	specifically contropers IDLP formed.
	had believed that Novell (instead of IBM and	agreement requiring them to hold in confidence	admissible evidence meeting the manifester of
	Sequent) owned and had the right to control their	all parts of their modifications and derivative	Rule 56. Further the material referred to be
	onginal works, whether or not they were	works based on the Ilcensed UNIX System V	SCO does not support SCO's statement
	included in a modification or derivative work of	software product. (19 13-29, 82-86.) Disputed to	White the state of
	UNIX System V. (Ex. 257 %6; Ex. 295 at 27:2-	the extent that the statement suggests that, upon	
	(*(c7	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. (71 18, 91-92.) "The	
-		IBM Agreements and the Soquent Agreements	
		(collectively "the Agreements") set forth the	
		terms under which UNIX System V could be	***
ż		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 or any of its	
		successors-in-interest claimed to own IBM's or	
		sequent's "original works." (¶ 76-96.)	
		Disputed In that IBM and Sequent had	
		compelling reasons to continue to invest in AIX	
		and Dynix as they did under the terms of their	
		UNIX System V license sorreements (98 30-62)	

Deemed admitted: Northing 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. SCO's response does not create a genuine issue of fact in that the facts in the referenced paragraph are background and no point purportedty controverted is material to IBM's	motion. 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. 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 in part and undisputed in part. Caldera, Disputed in part and undisputed in part. Caldera, Deemed admitted Inc. is not a "predecessor" of SCO to the extent that term could be construed as making the past actions of Caldera, Inc. attributable to SCO or indicating that Caldera, Inc. could grant others rights to use the infringed SVr4 material. (See Disputed Fact No. 4 to IBM's Motion for Summary Indgment on Its Tenth Counterclaim.) paragraph are baci	Disputed in part and undisputed in part, SCO disputes IBM's implication that the actions of Caldera, Inc. or Caldera Systems prior to May 2001 are attributable to SCO, or that Caldera, Inc. or Caldera Systems had the power to grant or release rights in the infringed SVr4 material. The actions of Caldera, Inc. and Caldera Systems prior to May 2001 are not attributable to SCO and could not grant IBM any rights to use the infringed SVr4 material, because neither Caldera, Inc. nor Caldera Systems owned copyrights in any UNIX material. (See Disputed Pacis Nos. 4, 22 to IBM's Memorandam in Support of Its Motion for Summary Judgment on Its Tenth Counterdam (Nov. 1, 2006).
128. After Novell amounced the termination of a project related to Linux, members of Project Corsair (as it was known) left Novell to form Caldera, Inc. ("Caldera), a predecessor of SCO, in 1994. (Ex. 107; Ex. 440; Ex. 193 ¶ 6; Ex. 221 ¶ 16.)	Caldera was formed to develop and market software based on the Linux operating system and to provide related services enabling the development, deployment, and management of Linux-specialized servers. (Ex. 221 ¶ 17; Ex. 107 at 6, 31; Ex. 193 ¶ 7; 242 ¶ 6.) In fact, Caldera was the first company to invest heavily in the establishment of Linux as an acceptable business solution. (Ex. 221 ¶ 18; Ex. 441.)
128.	89

130	. Caldera continued the work done by Novell on	5	(1) (1) (1) (1) (1) (1) (1) (1) (1) (1)
	Project Corsair to develop a Linux desktop	disputes IBM's implication that the actions of	Deemed admitted: Nothing in SCO's statement
	operating system and eventually delivered a	Caldera Inc. or Caldera Systems prior to Man.	specifically condovers IBM's facts with
· · · · · ·	product called "Caldera Network Desktop" in	2001 are attributable to COO or that Coldania	admissible evidence meeting the requirements of
	1995. (Ex. 221 ¶ 19; Ex. 440; Ex. 107 at 8; Ev.	for or Colden Control of the Caloria	Kule 56. Further, the material referred to by
	283 at 33; Ex. 193 ¶ 8; Ex. 242 ¶ 7.)	are of Calucia by stems had the power to grant	SCO does not support SCO's statement.
		of recesse rights in the intringed SVr4 material.	
		Inc actions of Caldera, Inc. and Caldera	SCO's response does not create a genuine issue
		Systems prior to May 2001 are not attributable to	of fact in that the facts in the referenced
		SCO and could not grant IBM any rights to use	paragraph are background and no noint
		the infringed SVr4 material, because neither	purportedly controverted is material to IRM's
		Caldera, Inc. nor Caldera Systems owned	motion.
		copyrights in any UNIX material (See Disputed	
		Facts Nos. 4, 22 to IBM's Motion for Summary	
		Judgment on Its Tenth Counterclaim.)	
		IBM's cited sources do not indicate that the	
		Linux products created by Caldera, Inc. were	
		created through any affiliation with Novell or	
		that Novell transferred any rights or convergent	
		to Caldera, Inc. (See Disnuted Facts Nos 4 22	
		to IBM's Motion for Summers, Indomest on Its	
		Therefore Commenced in Statement Statement on its	
٥	Coldery also made and	(cum Counterclaim.)	
:	Caucata also made code contributions to Limix	Disputed in part and undisputed in part, SCO	Deemed admitted: Nothing in SCO's statement
	And respect and encouraged independent	disputes IBM's implication that the actions of	specifically controverts IRM's facts with
	souware vendors and manufacturers to port their	Caldera, Inc. or Caldera Systems prior to May	admissible evidence meeting the reminements of
	programs to its Linux products in an attempt to	2001 are attributable to SCO, or that Caldera,	Rule 56. Further the material referred to by
	provide the types of software that had been	Inc. or Caldera Systems had the power to grant	SCO does not support SCO's statement
	unavadable for Linux to that time. (Ex. 440;	or release rights in the infringed SVr4 material.	
	EX. 444, EX. 441 \$ 31.)	The actions of Caldera, Inc. and Caldera	SCO's response does not create a genuine issue
		Systems prior to May 2001 are not attributable to	of fact in that the facts in the referenced
		SCO and could not grant IBM any rights to use	paragraph are background and no point
		the infringed SVr4 material, because neither	purportedly controverted is material to IRM's
		Caldera, Inc. nor Caldera Systems owned	motion.
		copyrights in any UNIX material. (See Disputed	
		Facts Nos. 4, 22 to IBM's Motion for Summery	
		Judgment on Its Tenth Counterclaim.)	

es.			
132.	To facilitate the porting of Linux to the evicting	Die state of the s	September 19 Septe
	applications in the market that were written	Lispation III part and undisputed in part, SCO	Deemed admitted: Nothing In SCO's statement
	Drimarily for TMIV-based and the	disputes LEM's implication that the actions of	specifically controverts IBM's facts with
	Calders worked on making and a significant of the control of the c	Calders, Inc. or Caldera Systems prior to May	admissible evidence meeting the requirements of
	Some forth our making its Linux products	2001 are attributable to SCO, or that Caldera.	Rule 56 Further the motorial action of the L.
	compliant with various UNIX standards,	Inc. or Caldera Systems had the power to grant	SOO does not empore SCO's statement
	the poery	or release rights in the infringed SVr4 material.	oce ace not support oce a statement.
	Ex. 221 § 32;	The actions of Caldera, Inc. and Caklera	SCO's response does not meate a manning force
····	CA. 442.)	Systems prior to May 2001 are not attributable to	of fact in that the facts in the referenced
		SCO and could not grant IBM any rights to use	Daracraph are background and no point
		the infringed SVr4 material, because acither	Duroofedly confroverted is material to IDAC.
		Caldera, Inc. nor Caldera Systems owned	motion
		copyrights in any UNIX material. (See Disputed	
		Facts Nos. 4, 22 to IBM's Motion for Simmary	
3		Judgment on Its Tenth Counterclaim	
133.	10 achieve compliance with UNIX standards	Disputed in part and undisputed in part SCO	Desmand admitted Working : Office
	with its Linux products, Caiders hired software	disputes IBM's implication that the actions of	checkfoolty confronter IDA C. C. c
	developers that had both UNIX and Linux	Caldera, Inc. or Caldera Systems prior to May	administration and a second se
	experience to work on making Linux compliant	2001 are attributable to SCO or that Caldan	aumission evidence meeting the requirements of
	with UNIX standards. (Ex. 221 § 35; Ex. 442.)	Inc or Colders Contents to 4 4.	Kule 56. Further, the material referred to by
		time of Caluca Systems had the power to grant	SCO does not support SCO's statement.
		or release rights in the infringed SVr4 material.	· ·
		The actions of Caldera, Inc. and Caldera	SCO's response does not create a genuine leave
		Systems prior to May 2001 are not attributable to	Of fact in that the facts in the referenced
		SCO and could not grant IBM any rights to use	Darsonh are backeround and an exclusion
		the infringed SVr4 material, because neither	Diffrontedly continuented is meterial to TDL 0.
		Caldera, Inc. nor Caldera Systems owned	motion.
		copyrights In any UNIX material, (See Disputed	
		Facts Nos. 4, 22 to IBM's Motion for Summary	
76	1, 100, 1	Judgment on Its Tenth Counterclaim.)	
1.	In 1995, as Cardera was beginning its Linux	Depending on the meaning of the term "certain	Deemed admitted: Nothing in SCO's statement
	Contr. Cont.	Novell assets," disputed in that the parties	specifically controverts IRM's facts with
	Continue Cluz Operation, Inc. ("Santa Cruz")	negotiated the sale of Novell's UNIX business	admissible evidence meating the manipulation
	release the Sare of Certain Novell assets	assets, and intellectual property, with few limited	Rule 56.
		exceptions. (¶ 169-82.)	
	Provided: (EC. 209 4; EX. 123.)		

Undisputed.	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.	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.	Undisputed.	Depending on the meaning of the term "a variety of assets," disputed in that the parties negotiated the sale of Novell's UNIX business assets, and intellectual property, with limited exceptions. (¶ 169-82.) Disputed to the extent the statement suggests that Santa Cruz did not obtain the UNIX copyrights. (¶ 169-82.)	Disputed to the extent the statement suggests that the rights retained by Novell under the APA extend beyond the right to continue to receive and protect royalties paid by then-existing SVRX licensees for their ongoing distribution of SVRX binary products pursuant to UNIX sublicensing agreements. (¶ 279-93.)
135. On September 19, 1995, Novell and Sarta Cruz executed an Asset Purchase Agreement ("APA"). (Ex. 239 § 5.) The parties entered into two Amendments to the APA: Amendment No. 1 on December 6, 1995, and Amendment No. 2 on October 16, 1996. (Ex. 239 § 6; Ex. 502; Ex. 444; Ex. 123.)	Santa Cruz did not have the financial capacity to pay the purchase price contemplated by Novell for its UNIX assets. (Ex. 182 § 43; Ex. 254 § 10; Ex. 239 § 8.) To bridge the price gap and consummate the transaction, Novell and Santa Cruz agreed that Novell would receive Santa Cruz stock and retain certain UNIX rights. (Ex. 123; Ex. 239 § 8.)	Under the APA and its Amendments, Santa Cruz obtained a variety of assets, including hundreds of contracts and licenses, various trademarks, source code and binaries to UnixWare products, and physical assets such as furniture and personal computers. (Ex. 123; Ex. 444; Ex. 502; Ex. 239 ¶ 7.)	payments under System V Release X ("SVRX") licenses, prior approval rights relating to new SVRX licenses, and amended SVRX licenses, the right to direct Santa Cruz to take certain actions relating to SVRX licenses and the right to conduct andits of the SVRX license programs. (Ex. 123 § 4.16; Ex. 239 ¶ 8.)
135.	<u>%</u>	137.	

1			
139.	5	- 1	Demod edmitted: Nothing is CCO3.
	administering the collection of royalty payments	"royakles" in the first three sentences refers to	specifically controverts IBM's facts with
	Santa Cruz would collect and ness through to	anything other than the royalties paid by then-	admissible evidence meeting the requirements of
	Novell 106% of the SVRX royalties. In return	distribution of CVDV kines — 1 - 1	Rule 56. Further, the material referred to by
	Novell agreed to pay Santa Cruz an	to UNIX subfloonsing sercements and dismused	SCU does not support SCO's statement.
	administrative fee of 5% of those royalty	to extent the word 'toyalties" in the last sentence	
	amounts. Santa Cruz also agreed to pay	suggests that Novell retained any rights to the	
		"other products" other than the right to receive	
	(Ex. 123 g 4.10(a); Ex. 239 ¶ 9.)	certain contingent payments for the projected	
		(but ultimately unrealized) sales of the "other	
1 4 6	As specified by Section V.A of Schedule 1.1(b)	Disnuted The narries intended to have the UNITY	Parameter of the Act of the State of Control
	of the APA, it excluded from the transfer and	copyrights transferred from Novell to	specifically controvers DAY's facts with
	Novell retained "[a]ll copyrights and trademarks,	Santa Cruz in the APA, and Amendment No. 2	admissible evidence meeting the requirements of
	except for the trademarks UNIX and	clarified that the parties had so intended. (T	Rule 56. Further, the material referred to hy
	Unix Ware". Amendment No. 2 to the APA	169-82.)	SCO does not sumort SCO's statement
	addressed copyrights but did not effect the		Tiping and a condition of the condition
	transfer of any copyrights to Santa Cruz.		
	(Ex. 123 § 1.1(b); Ex. 444; Ex. 239 ¶ 10.)		
<u>14</u>].	Novell also retained rights to supervise Santa	Depending on the meaning of the phrase	Doemed admitted: Nothing in CO's statement
	Cruz's administration of SVRX licenses.	"supervise Santa Cruz's administration of	specifically controverts IBM's facts with
•	(Ex. 239 ¶ 11.) Section 4.16(b) of the APA	SVRX licenses" and the term "SVRX licenses,"	admissible evidence meeting the remirements of
	provides that:	disputed in that the parties did not intend to	Rule 56. Further the material referred to by
	Buyer shall not, and shall not have the	permit Novell to interfere with Santa Cruz's	SCO does not support SCO's elatement
	suthority to, amend, modify or waive any	exercise of its rights with respect to SVRX	on the second of
	right under or assign any SVRX License	source code in accordance with the transfer of	
_	without the prior written consent of Seller.	assets under the APA. (¶¶ 279-93.)	
	In addition, at Seller's sole discretion and		
	direction, Buyer shall amend, supplement,		
	modify or waive any rights under, or shall		
	essign any rights to, any SVRX License to		
	the extent so directed in any manner or		
	respect by Seller. In the event that Buyer	***************************************	
	shall fail to take any such action concerning		•
	the SVRX Licenses as required herein,		
	Seller shall be authorized, and hereby is		
	granted, the rights to take any action on		
	Buyer's own behalf. (Ex. 123 § 4.16(b).)		

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	A Koply	Deemed admitted: Nothing in SCO's statement	specifically controverts IBM's facts with	admissible evidence meeting the remirements of	Rille S6 Further the meterial referred to by	CO does not manage and address of the	occurrent authority occurrent.		-								
		Lispaica to the extent the statement suggests	mar me rights retained by Novell under the	APA extend beyond the right to continue to	receive and protect royalties paid by then.	existing SVRX licensees for their opposing	distribution of SVRX hinger products mission	to UNIX sublicensing agreements (40	that the parties did not intend to seem it has a	interfere with Sente Const. assessing a fire at the	With respect to CVP V course and in account	With the transfer of second under the AbA	(W169.82)	:/22 (211)			
	142. Novell, therefore retained the "sole discretion" Prince P	to direct Sents Crist to smend simulants	modify we're or engine and state.	the Carbo Linners of assign any rights under of 10	use a vich librarises; if Naries Cruz fails to take	any such action, the APA specifically granted	Novell the right to take these actions on behalf	of Santa Cruz. (Ex. 123 § 4.16(b); Ex. 239 ¶ 8)	Santa Cruz recognized this right in Amendment	X to IBM's Software and Sublicensing	Agreements, to which Novell was a party, and	which noted that "Novell retained certain	rights with respect to" the agreements IBM	entered into with AT&T, including "Software	Agreement SOFT-00015 as amended" and	"Sublicensing Agreement SUB-00015A as	Company of the contract of the
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		Deemed admitted: Nothing in SCO's statement	specifically controverts IBM's facts with	admissible evidence meeting the regularments of	Rule 56. Further the material referred to by	SCO does not support SCO's statement																													
では、「大阪」 からでは、他のでは、このでは、このでは、このでは、このでは、このでは、このでは、「ない」では、「ない、「ない」では、「ない、「ない」では、「ない、「ない」では、「ない」では、「ない」では、「ない、「ない」では、「ない」では、「ない、「ない」では、「ない、「ない」では、「ない」では、「ない」では、「ない」では、「ない」では、「ない、「ない、「ない、「ない、「ない、「ない、「ない、「ない、「ない、「ない		Disputed to the extent the statement suggests	that Novell had any ownership rights in Santa	Cruz's UNIX licenses or copyrights. (1) 169-	82.) Disputed in that substantial evidence shows	(and easily permits the inference) that Novell	and Santa Cruz held no such understanding of	the licenses and had no such communications	with licensees regarding rights of disclosure. (95	63-163.) Disouted to the extent the statement	suggests that Novell or Santa Cruz represented	that UNIX System V licensees could "do as they	wished with their own code, modifications and	derivative works" without regard to whether	such material was included in the licensees'	modifications or derivative works based on the	licensed UNIX System V software product. (17)	63-163.) Disputed to the extent the statement	suggests that licensees did not enter into	agreements 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	licensees 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.)
と 100mm 10	While Novell and Center Control of the	of AT&T'e I INITY and	representative of Nevel and Sector Committee	CVDV Ileasons that the control of th	SANCA mediated unit mey could do as they			With their own code, modifications and	defivative works, so long as the code,	modifications, and derivative works did not	Contain System V code. (Ex. 227 7 8-11; Ex.	700 1 0-13.)								-															
4	143																																		

Harden Continued to use the non-SVRX licensees See Response to IBM Statement of Pact No. 90. Deemed admitted: The material referred to by SCO does not support SCO's statement.	177						.,					
144. IBM, Sequent and other SVRX licensees continued to use the non-SVRX portions of their flavors of UNIX as they wished. (Ex. 564; Ex. 565.) 145. For example, IBM publicly disolosed AIX methods and concepts behind the fournaled File System (Ex. 503 at 55-65), and Hewlett-Packand disclosed the methods and concepts behind the fournaled File System in its version of UNIX called HP-UX. Tuning and Performance (2000) (Ex. 563).		8	SCO does not support 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	Deemed admitted: The material referred to by	SCO does not support SCO's statement	SCO's statement fails to identify material facts	Of record meeting the requirements of Rule 56. The declaration referred to constitute:	supplemental expert report and was not timely	disclosed.
144. IBM, Sequent and other SVRX licensess continued to use the non-SVRX portions of their flavors of UNIX as they wished. (Ex. 564; Ex. 565.) 145. For example, IBM publicly disclosed AIX methods and concepts in AIX/6000; Internals and Architecture (1996), which included an entire chapter on the Journaled File System (Ex. 503 at 55-65), and Hewlett-Packard disclosed the methods and concepts behind the Journaled File System in its version of UNIX called HP-UX in a book titled HP-UX: Tuning and Performance (2000) (Ex. 565).	THE PROPERTY OF THE PARTY OF TH	See Response to IBM Statement of Fact No. 90.					See Response to IBM Statement of Foat No. 90.					
145.		IBM, Sequent and other SVRX licensees	flavors of UNIX as they wished. (Ex. 564; Ex.	303.)				and Architecture (1996), which included an	entire chapter on the Journaled File System (Ex. 503 at 55-65), and Hewlett-Packard	disclosed the methods and concepts behind the	solled HP. IX in a book titled up 1 for min	and Performance (2000) (Ex. 565).
		4		-			145.					

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2000年度的新班金属的基础的企业,A1993年度上的	Doomed 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.																	
一位,这个条项企业的设计,从1000年,1000年,1000年,1000年,1000年,1000年,1000年,1000年,1000年,1000年,1000年,1000年,1000年,1000年,1000年,1000年,	Disputed to the extent the statement suggests	una Novell had any ownership rights in Santa Cruz's UNIX licenses or converients (##	169-82.) Disputed to the extent the statement	suggests that the cited declarants had the authority to modify the terms of the UNIX	license agreements, or had the authority to waive	why or same cruz's rights under the UNIX System license agreements. (\$4.90.) Disputed in	that substantial evidence shows (and easily	permits the inference) that Santa Cruz had no	such awareness or understanding. (¶ 63-163.)	Depending on the meaning of the term "original	works," disputed to the extent the statement	suggests that licensees did not enter into	agreements requiring them to hold in confidence	ail parts of their modifications and derivative	works based on the licensed UNIX System V	software product. (Tf 13-29, 82-86.) The	evidence further shows (and easily permits the	inference) that such disclosures, including as	made under copyright protection, were not	material breaches of the agreements. (Ex. 139	7 2-22.)
	Representatives of Novell and Santa Cruz were aware and understood that he licenses uses	exercising their full rights of ownership and	disclosing the code, methods and concepts of	any steps to preclude them from doing as they	Wished With their original works. (Ex. 183 ¶¶ 6- 7; Ex. 250 ¶¶ 6-7; Ex. 271 ¶¶ 5-4; Ev. 274 ¶¶ 6-	7; Ex. 227 (8-11.)															
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	The second secon	fement suggests fement suggests fement suggests fement suggests fement suggests fement suggests beared admitted: Nothing in SCO's statement flicenses, or had the of the UNIX flicenses, or had the of the term of the the term of the the term of the the term of the t	Statement of
The Statement in the Court of State Cruz's Server flower Division, told System V licensees that y were free to do as they wished with their m code, modifications and derivative works, long as the code, modifications, and rivative works did not contain System V code. In Cruz representatives, including Mr. Crabb, bold licensees that It Interpreted the ense agreements in this manner. (Br. 227 ¶	The second secon	Disputed to the extent the statement suggests that Mr. McCrabb had the actual or apparent authority to speak for Santa Cruz regarding the scope of Santa Cruz's UNIX licenses, or had the authority to wolify the terms of the UNIX license agreements, or had the authority to waive any of Santa Cruz's rights under the UNIX System license agreements, (¶ 76-96.) Disputed in that substantial evidence shows (and easily permits the Inference) that Mr. McCrabb and his colleagues at Santa Cruz had no such understanding and made no such statements. (¶ 63-163.) Depending on the meaning of the term "their own code, modifications and derivative works," disputed to the extent the statement suggests that licensees did not enter into agreements 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 agreements, the parties did not intend to exclude any previous or subsequent oral discussions from the agreement the parties had reached. (¶ 18, 91-92.) The IBM Agreenents and the Sequent Agreements (collectively "the Agreements") set forth the terms under which UNIX System V could be used and dischosed by them and under which they could distribute software programs "based	on" UNIX System V." (IBM Statement of
8	The second secon	Santa Cruz representatives, including David McCrabb, the President of Santa Cruz's Server Software Division, told System V licensees that they were free to do as they wished with their own code, modifications and derivative works, so long as the code, modifications, and derivative works did not contain System V code. Santa Cruz representatives, including Mr. McCrabb, told licensees that it interpreted the license agreements in this manner. (Bx. 227 ¶ 8.)	

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Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with		The facts stated in IBM's referenced paragraph are fully supported by the cited material.				·	Deemed admitted: Nothing in SCO's statement	specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56.	
SOOR Response to the Agreements, Disputed to the extent the statement suggests Deemed admitted: Noth that IBM and Sequent did not enter into a written specifically controverts I shall be seen to take any or ta	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	ure parties had reached. (¶ 18, 91-92.) "The IBM Agreements and the Sequent Agreements (collectively "the Agreements") set forth the forms 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.) Disouted to the extent	that the cited material does not support the assertion that IBM or Sequent relied on "Novell's failure to take any action to preclude licensess from doing as they wished with this	original works" in deciding to continue to develop their AIX and Dynix derivative works. Disputed to the extent the statement suggests that, absent an "indication of a different interpretation of the Agreements," IBM and	Sequent would not have continued to develop AIX and Sequent as they did. (¶ 30-62.) Depending on the meaning of the term "original	source code," disputed to the extent the cited material does not identify what lines of code in AIX or Sequent were written by developers without reference or access, or experience based	on such reference or access, to the licensed UNIX System V software product.
148. Based on its understanding of the Agreements, the representations of Novell and Santa Cruz representatives and Novell's failure to take any	action to preclude licenses from doing as they wished with their original works, IBM continued to develop its flavor of UNIX. Similarly, Sequent having received no indication of	different interpretation of the Agreements from Sama Cruz, continued to develop its own Dynix operating system. (Ex. 257 m 3-5; Ex. 252 at 67.21-68: 11: 97-35, 08-30	2-5.)				SECTION DEDACTED		us weverquiran and marketing of Lynix and wrote millions of lines of original source code. (Ex. 257 ¶ 10; Ex. 596 ¶ 2-4.)
148							149.		

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150	Neither IBM nor Sequent would have continued	District to the second of	
	to invest in A IV and Dimin as the 11.1 16.4.	Capatra to the cated the statement suggests	Deemed admitted: Nothing in SCO's statement
····	bod halfarrad de transmit de tres did if they	that IBM and Sequent did not enter into a written	specifically controverts IBM's facts with
		agreement requiring them to hold in confidence	admissible evidence meeting the requirements of
		all parts of their modifications and derivative	Rule 56. Further, the material referred to by
	control their original works, whether or not they	works based on the licensed UNIX System V	SCO does not support SCO's statement
		software product. (¶ 13-29, 82-86.) Disputed to	
	of UNIX System V. (Ex. 257 (6; Ex. 596) 3-	the extent that the statement suggests that, npon	
	4.)	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 "hased	
		on" UNIX System V." (IBM Statement of	
		I'mdigranted Bacts # 50 \ Discreted to the actual	
		the state of the care of the c	
		the statement suggests that A 1 & 1 or any of its	
		successors-in-interest claimed to own IBM's or	
		sequent's "original works," (11 76-96.) 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. (¶ 30-62.)	
151.	While Novell and Santa Cruz shared an interest	Disputed to the extent the statement suggests	Deemed admitted: Undisputed that Caldera
	in UNIX System V software and related assets,	that Novell had any ownership rights in Santa	continued to develop and promote Linux.
	Caldera continued to develop and promote	Cruz's UNIX licenses or copyrights. (1169-	
	Limix. (Ex. 106 at 2-5.)	82.)	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.

152. 153.	and enhant pure the property of the property o	Ce its Linux business, Disputed to the extent the statement suggests that Caldera, luc made the acquisition, or made divisions of Santa Cruz assets on May 7, 2001. UNIX assets of Santa and open-sourcing the mprove Linux. (Bx. 221 ¶ 85; the UNIX assets were lue and because the market lue and because the statement suggests which statement suggests that IBM's contributions to Linux in material breach of its UNIX System V license agreements were not a substantial factor in the downtum of Santa Cruz's UNIX business by the time of Caldera's acquisition of the business, (¶ 192-97.) Disputed to the extent the statement suggests that IBM's contributions to Linux in material breach of its UNIX System V license agreements were not a substantial factor in the downtum of Santa Cruz's UNIX business by the time of Caldera's acquisition of the business. (¶ 192-97.) Disputed to the extent the statement suggests that IBM's contributions to Linux in material breach of its UNIX System V license agreements were not a substantial factor in the downtum of Santa Cruz's UNIX business by the time of Caldera's acquisition of the downtum of santa Cruz's UNIX business by the time of a substantial factor in the downtum of its UNIX System V license agreements were not a substantial factor in the extent the statement suggests	Deemed admitted: The facts stated in IBM's referenced paragraph are fully supported by the cited material. Nothing in SCO's statement specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56. Deemed admitted: Nothing in SCO's statement specifically controvers 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 controvers IBM's facts with admissible evidence meeting the requirements of Rule 56.	
	15; Ex. 472.)	Caldera International's acquisition of the	The material referred to by SCO closs not	

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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.			
aquired Santa Cruz's UNIX Disputed to the extent the statement suggests not believe it was selling, authority to speak for Santa Cruz's UNIX licenses, or had the actual or apparent authority to modify the terms of the UNIX license agreements, or had the authority to waive any of Santa Cruz's rights under the UNIX	System license agreements. (¶ 90.) Depending on the meaning of the term "their original works," disputed in that substantial evidence shows (and easily permits the inference) that Mr. McCrabb and his colleagues at Sarta Cruz had no such understanding. (¶ 63-163.) Depending on the meaning of the term "44-in principle.	works, "disputed to the extent the statement suggests that illeansees did not enter into agreements requiring them to hold in confidence all parts of their modifications and derivative works based on the licensed UNIX System V software product. (74 13-29, 82-86.) Denending	on the meaning of the term "their original works," disputed to the extent the statement suggests that Mr. Love specifically considered at the time of acquisition the issue of the extent of Caldera International control over the modifications and derivative works the licensees had developed based on the licensed UNIX
At the time Caldera acquired Santa Cruz's UNIX assets, Santa Cruz did not believe it was selling, and Caldera did not believe it was buying the right to control what all UNIX System V licensees could do with their original works. (Ex. 227 ¶ 37-38; Ex. 221 ¶ 107-09.)			
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	3.5	NEW INSTRUMENT OF THE STATE OF	1970年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本の
o D	ode and A improp A improp I at 43; E3 FS (Item Ve know ! The remain	Undisputed.	Undisputed.
25	In its Revised Response to IBM's interrogratories, SCO stated that the allegedly misused material "is included in any product that contains the Linux kernei 2.4 and above, which is sold or distributed by hundreds of entities around the world", including by SCO. (Ex. 33 ¶ 43.) In particular, SCO conceded that its "SCO Linux Server 4.0" products contain such code. (Id.)	Undisputed.	Undisputed.
	Although not identified by SCO in its interrogatory responses, SCO's earlier Linux distributions also contain code SCO claims IBM improperty contributed to Linux. (See Ex. 350; Ex. 351.) Among other products, SCO's "OpenLinux Server 3.1.1" and "OpenLinux Workstation 3.1.1" products, which were released in January 2002, both include the Linux 2.4 kernel. (See Ex. 350 at 2; Ex. 351 at 2; Ex. 296 at 16:18-23.)	Disputed in part and undisputed in part. SCO disputes that IBM's cited sources support the assertion that Caldera International or SCO distributed the OpenLinux Server 3.1.1 or OpenLinux Workstation 3.1.1 at any time after January of 2002.	Deemed admitted: The facts stated in IBM's referenced paragraph are fully supported by the cited material. Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
161.	In fact, SCO specifically advertised to its customers that its distributions of Linux included some of the very technology it now complains IBM should not have contributed to Linux. (See Ex. 350; Ex. 351; Ex. 352; Ex. 356; Ex. 353.)	Depending on the meaning of the clause "some of the very technology it now complains IBM should not have contributed to Linux," disputed to the extent that the statement does not specify the "very technology" at issue.	Documed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.

		の方式では、10mmでは、1	では、
162.	For example, in its product appointments for	The state of the s	The property of the property o
	Open Jinny Server 3 1 and Open Jimm	Disputed to the extent that the statement	Deemed admitted: The facts stated in IBM's
	Workstation 3 1 CO concilionity of tradition	suggests that SCO specifically advertised that	referenced paragraph are fully supported by the
	that the product included a conference of	me products included the Journaling File System	cited material.
	when the products included from realities stich as	(or "JFS") taken from AIX, which statement the	-
	For 241 at 2)	cited material does not support.	Nothing in SCO's statement specifically
···	th: 001 dt 2.)		controverts IBM's facts with admissible
2	Cimilado in in in acce		evidence meeting the requirements of Rule 56.
}	subolingement for 1900 I imm	Disputed to the extent that the statement	Deemed admitted: The facts stated in IBM's
	which was based on Linia I have Very	suggests that SCO specifically advertised that	referenced paragraph are fully supported by the
	SCO noted that "fills core of SCO 1 into Correct	the products included the Journaling File System	cited material.
	4.0 is the 24.19 Linux kernel. New features	the start meeting and ALX, which statement	
	include broadened USB support Logical	ure cited ittaterial does not support.	Nothing in SCO's statement specifically
	Volume Manager, improved journaling file		controverts IBM's facts with admissible
	system support". (Ex. 352 (emphasis added))		evidence meeting the requirements of Rule 56.
164	Likewise, SOO's Technical Overview of SCO	Indicontect	# - # # F
	Linux 4.0 emphasized that its product included		Undisputed.
	"IFS Cloumaling File System Developed by		
	IBM". (Ex. 396 (emphasis added).)		
165.	Although SCO claims to have "discontinued"	Disputed to the extent the statement supposts	Deemed admitted. Mathing in CCO's officers and
	distributing any products containing the source	that SCO did not timely discontinue Its	specifically controverse IDMs foots with
	code it claims IBM should not have disclosed, it	intentional distribution of its I inux products (95	operationally conflicted about 1 page 1900 of
	continued to do so after it filed this lawsuit. (See	220-33.) Disputed to the extent the statement	Rule 56
	Ex. 44; Ex. 45; Ex. 296 at 92:1-22; 353; 33 at	Suggests that as a legal conclusion SCD was not	
	Tub 121; Ex. 505; Ex. 486.)	entitled reasonably to wind-down its Linux	
		business in support of its existing customers	
.99	For example, SCO released its "SCO Linux	Undernited	1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 - 1 -
	Server 4.0 for the Itanium Processor Family"		Ondispured.
	distribution on April 14, 2003, after SCO filed	-	
	its original Complaint. (See Ex. 353; Ex. 1.) In		
	the product amouncament, SCO touted the new		
	reatures of this release, including "improved		
	Journal and System Support". (Ex. 353 at SCO1269793.)		

200		言語が	1、1、1、1、1、1、1、1、1、1、1、1、1、1、1、1、1、1、1、
167.	SCO has also produced involves and other	東京は10年の10年の10年の10年の10年の10年の10年の10年の10年の10年の	では、大学のでは、10mmでは、マードのでは、10mmで
	documentation reflecting SCO's continued	Oranspured:	Undisputed.
	distribution of its OpenLinux 3.1.1 and Linux		
	Server 4.0 products until at least January 2004.	<u> </u>	
····	(See Ex. 33 at Tab 121; Ex. 505; Ex. 296; Ex. 486)		
89	Moreover, SCO made available to the public as	Indistruted	
·····	recently as the end of 2004 the Linux 2,4 kernel		Onaspaca.
	for download from its website. (See Ex. 45 at 3;		
	Ex. 167 [11.) The version of Linux available		
•	from SCO's website includes code SCO claims		
	IBM disclosed in violation of its contracts. (Sec		
	Ex. 44; Ex. 45; Ex. 33 at 43; Ex. 167 (11.)		
	In addition, SCO has admitted that it made	Undisonted	The Alice and Alice
	available to the public for download material		Ollula pared.
	that SCO claims IBM improperly contributed to		
	Linux. (See Ex. 44 at 3-22.) This material		
	includes JFS (Item 1), RCU (Item 2) and certain		
····	"negative know how" (Items 23 and 90). (See		
	id.) For the remaining items of allegedly		
	misused material, SCO indicates that It has "not		
	presently determined" whether it made the		
	material available to the public for download.		
	('B)		
170.	SCO distributed source code for the Linux 2.4	Disputed to the extent the enternent costs to	Deemed admitted: Mathian in COO!
	kernel, which is contained in SCO's OpenLinux	summarize the terms of the GPI, and to the	considerable confined to the first of the control o
	Server 3.1.1, OpenLinux Workstation, and Linux	extent the statement draws a legal conclusion	specifically controvers forms lacis with
	Server 4.0 products, under the terms of the GPI.	The same was a same control of the same contro	The second contacting the requirements of
	(Ex. 128; Ex. 296 at 75:9-12.) The terms of the		Kule 30.
	GPL permit licensees freely to use, copy,		
	distribute and modify whatever code is provided		
	thereunder. (Ex. 128.)		

		A CHOCK AND CONTROL OF THE PROPERTY OF THE PARTY OF THE P	1000 March
į	Foliowing its acquisition of Santa Cruz's UNIX	Disputed in that the cited material does not	Degree of the fact of the fact of the state
	assets, Cattera was unable to make a profit, switched management, changed its name to		referenced paragraph are fully supported by the
	SCO, and adopted a new business model focused		cited material.
	Ex. 423; Ex. 427.)		SCO's response does not create a genuine issue
			or tact in that the facts in the referenced paragraph are background and no point
			purportedly controverted is material to IBM's
			monon.
			Nothing in SCO's statement specifically
			controverts IBM's facts with admissible
12.	SCO filed its original Complaint, which featured	Depending on the meaning of the term	Deemed admitted: Nothing in CO's determined
	a claim for the misappropriation of trade secrets,	"featured," disputed in that the cited material	specifically controverts IBM's facts with
	SCO among of the distance of the state of th	does not support the assertion that SCO treated	admissible evidence meeting the remirements of
	breached its INIX System V license by	its claim for the misappropriation of trade secrets	Rule 56.
	"subject[ing] SCO's UNIX trade secrets to	with any nigher priority that the other claims brought in the original Complete.	
	narestricted disclosure, unauthorized transfer	Section of the complaint.	
	and disposition, unauthorized use, and has		
	otherwise excouraged others in the Linux		7.77
	development community to do the same". (Id. 9 135.)		
173.	In the Complaint, SCO did not identify with any	Depending on the meaning of the above the	
	specificity what "UNIX trade secrets" it claimed	any specificity, and "greeific I MIX	exercises admirated. Noming in SCO's statement
	were at issue. (See Ex. 1.) SCO instead	code," disputed to the extent the statement	admissible enidence meeting the
	described its trade secrets only as "unique know	suggests that SCO did not detail the nature of its	Rule 56
	now, concepts, ideas, methodologies, standards,	claims based on what SCO knew at the time.	
	Software Code object code architecture	(Ex. 165 ¶ 37.)	
	and schematics that allow UNIX to operate with		
	unmatched extensibility, scalability, reliability		
	and security". (Id. ¶ 105.) SCO did not identify		
	any specific UNIX code upon which it based its		
	Manual: (252 19)		

17.4 SOO filed at Amended Compilant to a lay 5.7. Soo filed at Amended Compilant of a lay 5.6. Security in any greater chall be trade secrets only as "unique know how, concepts, idea," and secrets only as "unique know how, concepts, idea," and secrets only as "unique know how, concepts, idea," and "or controlled secrets only as "unique know how, concepts, idea," and "or controlled secrets only as "unique know how, concepts, idea," and "or controlled secrets only as "unique know how, concepts, idea," and "or controlled its challed secrets only as "unique know how, concepts, idea," and "or controlled its challed secrets only as "or controlled secrets on the unique to the control of controlled secrets of the UNIX system V Cost on the unique of controlled secrets of the UNIX system V Cost on the unique of controlled secrets of the UNIX system V Cost on the unique of controlled secrets of the UNIX system V Cost on the unique of controlled secrets of the UNIX system V Cost on the unique of controlled secrets of the UNIX system V Cost on the unique of controlled secrets of the UNIX system V Cost on the unique of controlled secrets of the UNIX system V Cost on the Unique of Co	1435.44	500年的光度的主要的自己的光神经济的1000000000000000000000000000000000000	Land of the Contract of the Co	
2003. (Ex. 2) The Amended Complaint did not idealing on the meaning of the phrase—"in any ideatify in any greater detail the rade secrets only as allegedly musappropriated by IBM. (See id.) Again, SO described its trade secrets only as "unkitue know how, concepts; ideas, methodologies, standards, specifications, programming, techniques, UNIX Software Code, object code, architecture, design and schematics that allow UNIX to operate with unmatched extractellity, scalability, reliability and second Amended Complaint, (Br. 3) in its Second Amended Complaint, (Br. 3) in its Second Amended Complaint, (Br. 3) in its Second Amended on the accentes altogether. (See id.) SCO thereafte sough, and was granted, complaint, (Br. 3) in its Second Amended Complaint, (Br. 3) in its Second Amended on Secreta in UNIX system V. Course in first no trade secrets altogether. (See id.) There is no the record. No problem with that. (Br. 4) at 46.2-3.3 In its Second Amended Complaint, SOO asserts to the UNIX System V. Soor share to contract that IBM and Sequent Software Agreements by contributing such code to Linux. (Br. 3) 110-72.) SOO's First and Third Causes of Action allege that there are in fact to the decidence of the second amended complaint, Storal and Man Sequent Software Agreements by contributing and Complaints. (Br. 3) 110-72.) SOO's First and Third Causes of Action allege that BM and Sequent Software Agreements by contributing such code to Linux. (Br. 3) 110-72.) SOO's First and Third Causes of Action allege and Sequent therethed Sections 201, 2.05, 4.01, 6.03, 7.06(a) and 7.10 of the Software Agreements by contributing and Sequents by Comparate the character of contract that IBM issued secret so the Unix. (Br. 3) 112-25.)		THE STATE OF THE PERSON OF THE	THE REPORTS OF THE PARTY OF THE	公田 10 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
identify in any greater detail the trade secrets allegedly missppropriated by IBM. (See id.) Again, SCO described its trade secrets only as "unique know how, concepts, ideas," unique know how, concepts, ideas," methodologies, standards, specifications, programming, techniques, UNIX Software Code, object code, architecture, design and schematics that allow UNIX to operate with unmatched extensibility, scalability, reliability and extensibility, reliability and extensibility, reliability and extensibility, reliability and complaint. (Br. 3.) In its Second Amended Complaint (Br. 3.) In its Second Amended Complaint (Br. 3.) In its Second Amended Complaint (Br. 4.1) and second reliability and complaint (Br. 4.1) and second and seco	.	SCU filed an Amended Complaint on July 22,	Depending on the meaning of the phrase "in any	Deemed admitted Nothing in SCO's statement
allegedly misappropriated to laid to trade secrets and secrets only as "unique know how, concepts, ideas, methodologies, standarded it trade secrets only as "unique know how, concepts, ideas, methodologies, standarded its relations, programming, techniques, UNIX Software Code, object code, architecture, design and schematics programming, techniques, UNIX Software Code, object code, architecture, design and schematics that allow UNIX to operate with unmatched extensibility, reliability and security." [44 161.) SCO thereafter sought, and was granted, permission to file a Second Amended Complaint, filed on February 27, 2004, SCO abandoned its claim for misappropriation of the secure in UNIX System V. Counsel for SCO abandoned its claim for misappropriation of the secure in UNIX System V. Counsel for SCO abandoned its claim for misappropriation of secures in UNIX System V. Counsel for SCO abandoned its claim for misappropriation of that." [Ex. 414 at 46.2-3.) In its Second Amended Complaint, SCO asserts to the UNIX System V. Software Agreements by confribinging such code to Linux. (Ex. 3 #110-72.) SCO's First and Third Causes of Action allege that IBM and Sequent Software Agreements by confribinging such code to Linux. (Ex. 3 #110-72.) Software product. (Ex. 3 #110-72.) Agreements. (Ex. 14 at 46.2-3.) In its Second Amended Complaint, SCO alleges that IBM and Sequent Software Agreements by confribinging such code to Linux. (Ex. 3 #110-72.) Software product. (Ex. 3 #110-72.) Agreements. (Ex. 14 at 46.2-3.) Agreements of the UNIX System V. System V		1 2003. (Ex. 2.) The Amended Complaint did not	greater detail," disputed to the extent the	specifically controvers IDMS face wise
allegedly misappropriated by IBM. (See [d]) Again, SCO described its trade secrets only as "unique know kow, concepts, ideared by IBM. Software Code, object code, architecture, design and schematics that allow UNIX so operate with unmatched extractionity, scalability, reliability and security." (Id. 1 [a]) SCO inperator sought, and was granted, permission to file a Second Amended Complaint, (Ex. 3) in its Second Amended Complaint, (Ex. 3) in its Second Amended Complaint, (S. 3) in fis Second Amended Complaint, (S. 3) in fact at a security." (Id. 4 [a] and the secret in UNIX system (Second Amended Complaint, SCO asserts in UNIX system (Y). That is on the record No problem with that." (Ex. 414 at 6.2.3.) In its Second Amended Complaint, SCO asserts (Didisputed that licenses for the Unix System V software Agreements by concepts and forced cases of Action allege that IBM and Sequent Software Agreements by concepts and know-how subject to the IBM and Sequent Software Agreements by concepts and know-how subject to the IBM and Sequent breached Sections 2.0. 2.0. 4.0.). Soft 14-66.) Specification, 20. 4.0. 1.		locately in any greater detail the trade secrets	statement suggests that SCO did not detail the	administration of the second o
Again, SCO described its trade secrets only as methodologies, standards, specifications, programming, techniques, UNIX Software Code, object code, architecture, design and schematics programming, techniques, UNIX Software Code, object code, architecture, design and schematics programming, techniques, UNIX Software Code, object code, architecture, design and schematics of the actual standard schematics of the actual standard and actual security. (Id. 161) SCO thereafter sought, and was granted, complaint, filed on February 27, 2004, SCO complaint, filed on February 27, 2004, SCO schowledged that there are in fact no trade secures in UNIX system V. Counsel for SCO standard. "There is no trade socret in UNIX system V. Counsel for SCO standard. "There is no trade socret in UNIX system V. Counsel for SCO standard. "There is no trade socret in UNIX system V. Counsel for SCO standard." (Ex. 414 at 46.2-3.) SCO's First and Third Causes of Action allege that IBM misused source code subject to the IBM and Sequent Software Agreements by software product. (Ex. 3 ¶ 110-72.) SCO's First and Third Causes of Action allege that IBM misused source code subject to the IBM and Sequent Software Agreements by such that IBM misused source code subject to the IBM and Sequent Software Agreements by such that IBM misused source code subject to the Software Agreements by such that IBM misused source code subject to the Software Agreements by source code subject to the Software Agreements by such and 7.10 of the Software		allegedly misappropriated by IBM. (See id.)	nature of its claims haved on what SCO knows of	participation evidence incering the requirements of
"unique know how, concepts, ideas, multiplosdogies, standards, specifications, programming, cebruleus, unit Social and schematics that allow UNIX to operate with unmatched exercisibility, scalability, reliability and scourity". (Id. 161.) SOO thereafter sought, and was granted, permission to file a Second Amended Complaint. (Ex. 3.) In its Second Amended Complain		Again, SCO described its trade secrets only as	the time. (Ex. 165 # 37.)	Cuite 30.
methodologies, standards, specifications, object code, architecture, design and schematics that allow UNIX be operate with unanched security". (14, 161.) SCO thereafter sought, and was granted, permission to file a Second Amended Complaint, filed on February 27, 2004, SCO abandoned its claim for misappropriation of trade secures aftogether. (Ex. 3.) In its Second Amended Complaint, filed on February 27, 2004, SCO abandoned its claim for misappropriation of trade secures aftogether. (Ex. 2003, SCO abandoned its claim for misappropriation of trade secures in the factor of morbiant, SCO asserts in UNIX System V. Coursel for SCO stated: "There is no trade secure in fact no trade secure in lower secures and the record. No problem with that: "(Ex. 414 at 46.2-3.) In its Second Amended Complaint, SCO asserts of the UNIX System V software breach of contract claims, all of which rest on the underlying allogation that IBM misused source code subject to the IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ¶ 110-72.) SCO's First and Third Causes of Action alloge that IBM misused methods, contributing such code to Linux. (Ex. 3 ¶ 110-22.) SCO's First and 7.10 of the Software Agreements. (Ex. 3 ¶ 112-25.)		"unique know how, concepts, ideas,	(::::::::::::::::::::::::::::::::::::::	
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SCO thereafter sought, and was granted, Complaint, (Ex. 3.) In its Second Amended Complaint, (Ex. 41 at 46:2-3.) In its Second Amended Complaint, (Ex. 41 at 46:2-3.) In its Second Amended Complaint, SCO asserts four separate breach of contract claims, all of which rest on the underlying allegation that IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ff 110-72.) Software product. (Ex. 3 ff 110-72.) Software for our code to Linux. (Ex. 3 ff 110-72.) Software for our code to Linux. (Ex. 3 ff 110-72.) Software for our code to Linux. (Ex. 3 ff 110-72.) Software for our code to Linux. (Ex. 3 ff 110-72.) Software for our code to Linux. (Ex. 3 ff 110-72.) Software for our code to Linux. (Ex. 3 ff 110-72.) Software for our for our code to Linux. (Ex. 3 ff 110-72.) Software for our code to Linux. (Ex. 3 ff 110-72.) Software for our for our code to Linux. (Ex. 3 ff 110-72.) Software for our for our code to Linux. (Ex. 3 ff 110-72.) Software for our for for the Software Agreements by contributing and for for the Software Agreements by contributing the formal for formal		extensibility, scalability, reliability and		
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abandoned its claim for misappropriation of trade secrets altogether. (See id.) In fact, at a hearing on December 5, 2003, SCO acknowledged that there are in fact no trade secret in UNIX system V. Counsel for SCO stated: "There is no trade secret in UNIX system V. Counsel for SCO stated: "There is no trade secret in UNIX system V. There is on the record. No problem with that: "(Ex. 414 at 46:2-3.) In its Second Amended Complaint, SCO asserts four separate breach of contract claims, all of which rest on the underlying allegation that IBM breached its licenses for the UNIX system V software product. (Ex. 3 ff 110-72.) SCO's First and Third Causes of Action allege that IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ff 110-72.) SCO's First and Third Causes of Action allege that IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ff 110-72.) SCO's First and Third Causes of Action allege that IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ff 110-72.) SCO's First and Third Causes of Action allege that IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ff 110-72.) SCO's First and Third Causes of Action allege that IBM and Sequent breached Socifically, SCO alleges that IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ff 112-25.) SCO'S First and Third Causes of Action allege that IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ff 112-25.) SCO'S First and Third Causes of Action allege that IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ff 112-25.)		Complaint, filed on February 27, 2004, SCO		admissible evidence meeting the requirements of
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In its Second Amended Complaint, SCO asserts four separate breach of contract claims, all of which rest on the underlying allegation that IBM breached its licenses for the UNIX System V software product. (Ex. 3 ¶ 110-72.) SCO's First and Third Causes of Action allege that IBM misused source code subject to the IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ¶ 110- source code subject to the IBM and Sequent breached Sections 2.01, 2.05, 4.01, such technology to Linux. (IBM Ex. 3.) Agreements. (Ex. 3 ¶ 112-25.)		that," (Ex. 414 at 46:2-3.)		
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which rest on the underlying allegation that IBM breached its licenses for the UNIX System V software product. (Ex. 3 ¶ 110-72.) SCO's First and Third Causes of Action allege that IBM misused source code subject to the IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ¶ 110-80.) Agreements. (Ex. 3 ¶ 112-25.)		four separate breach of contract claims, all of		Olldisputed.
breached its licenses for the UNIX System V software product. (Ex. 3 ff 110-72.) SCO's First and Third Causes of Action allege that IBM misused source code subject to the IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ff 110-51), and Sequent breached Sections 2.01, 2.05, 4.01, such technology to Linux. (IBM Ex. 3.) Agreements. (Ex. 3 ff 112-25.)		which rest on the underlying allegation that IBM		
SCO's First and Third Causes of Action allege that IBM misused source code subject to the IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ¶ 110-36, 136, 143-66.) Specifically, SCO alleges that IBM sud Sequent breached Sections 2.01, 2.05, 4.01, 6.03, 7.06(a) and 7.10 of the Software Agreements. (Ex. 3 ¶ 112-25.)		breached its licenses for the UNIX System V		
SCO's First and Third Causes of Action allege that IBM misused source code subject to the IBM and Sequent Software Agreements by contributing such code to Linux. (Ex. 3 ¶ 110-600.3, 7.06(s) and 7.10 of the Software Agreements by concepts and rechnology to Linux. (IBM Ex. 3.)		software product. (Ex. 3 99 110-72.)		
that SCO does not allege as part of its claim for breach of contract that IBM misused methods, concepts and know-how subject to the IBM and Sequent Software Agreements by contributing such technology to Linux. (IBM Ex. 3.)	17.	SCO's First and Third Causes of Action allege	Disputed to the extent the statement suggests	Demost of [4, 4, 11, 4]
breach of contract that IBM misused methods, concepts and know-how subject to the IBM and Sequent Software Agreements by contributing such technology to Linux. (IBM Ex. 3.)		that IBM misused source code subject to the	that SCO does not allege as part of its claim for	continuation maintain noming in SCO's statement specifically controlled TDMs, facts with
concepts and know-how subject to the IBM and Sequent Software Agreements by contributing such technology to Linux. (IBM Ex. 3.)		IBM and Sequent Software Agreements by	breach of contract that IBM misused methods	admissible evidence meeting the manifest of
Sequent Software Agreements by contributing such technology to Linux. (IBM Ex. 3.)		contributing such code to Linux. (Ex. 3 1110.	concepts and know-how subject to the IRM and	Pula 56
		36, 143-66.) Specifically, SCO alleges that IBM	Sequent Software Agreements by contributing	100
		and Sequent breached Sections 2.01, 2.05, 4.01,	such technology to Linux. (IBM Ex. 3.)	
		6.03, 7.00(a) and 7.10 of the Software Agreements (Px. 2 m 112.25)		

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 Ruie 56. The facts stated in iBM's referenced parameter	are fully supported by the cited material.
Disputed to the extent the statement suggests that SCO did not terminate the agreements for IBM's material breach. (See SCO's Memorandum in Opposition to iBM's "Motion for Summary Judgment on SCO's Copyright Claim (Fifth Cause of Action).")	Disputed to the extent the statement draws a legal conclusion.	Disputed to the extent the statement suggests that SCO's public statements pertained solely to the ciaims brought in this lawsuit, in that the cited material does not support such a statement.	
181. These two causes of action ultimately depend on SCO's altegation that IBM "fail[ed] to fuiffil one of its obligations under the Software Agreements, SCO and not terminate the agreements or more of its obligations under the Software Agreements, SCO will ministerally to terminate the IBM and Sequent Subliconsing Agreements, SCO had the right unliaterally to terminate the IBM and Sequent Subliconsing Agreements, SCO had the right unliaterally to terminate the IBM and Sequent Subliconsing Agreements, and therefore, there is no breach of the Subliconsing Agreements.	and Sequent Software Agreements and the IBM and Sequent Software Agreements and the IBM and Sequent Sublicensing Agreements are governed by New York law. (See Ex. 492 § 7.13; Ex. 19 § 7.13; Ex. 120 § 6.05; Ex. 121 § 6.05.)	From the beginning of this litigation, SCO has touted its claims and the strength of its alieged evidence. (See e.g., Ex. 367; Ex. 368; Ex. 369.)	
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	は、一般の大学を表現の対象を表現して、人口の人のである。これでは、人名の人の人の人の人の人の人の人の人の人の人の人の人の人の人の人の人の人の人の	Deemed admitted: Nothing in SCO's statement	Specifically controverte [RM*, facts with	admissible endeane martin at	Date &	TOTAL TOTAL	The facts stated in IBM's referenced parameter	are fully supported by the cited material																				
1	- 1	Disputed to the extent the statement suggests	that the quotes pertained solely to the claims	brought in this lawsuit, in that the cited material	does not support such a statement, and to the	extent the statement ignores the following	confext; In (a), Mr. McBride was referring to the	protection of intellectual property rights,	particularly in software, their significance to this	case, and the importance of the protection of	intellectual property rights to the global	economy. In (b), Mr. McBride was referring	more broadly to the question of whether Linux	could be distributed freely and without greater	methods for protection of intellectual property.	IBM's use of Linux to commoditize the	operating system, among other impacts, did have	and is still having major impacts of the con-	indiging on the farth is the	memory, as see total in the expert reports of Drs.	Usay Fisher and Jeffrey Leitzinger. (Exs. 281,	282, 283, 284, 285, 286.) Furthermore, at the	time of these articles, this case was receiving a	high level of national and international media	affention, consistent with it being considered a	case of national or even global importance, and	consistent with its potential to have great	consequence in the software industry.
	According to SCO the jeenes present a territory	the most important focus 600-1 L. the	Allow and the same state of the south the sout	moverny in ten years and the future of the	industry — indeed, the future of the global	conomy - hangs in the balance:	a. In an article for Salon.com, Sam	Methode se series in section 1	Case: "There really in relating to this	graind The fairm of the winter	Aconomy haron in the Lateral W. Co. T.	320)	h In an article from VCI	Constant at their from NoL.com, Jed Boar	quotes michigan as saying, in reference to	this case: "If has become the biggest	issue in the computer industry in	decadesThe stakes are extremely high.	The balance of the software industry is	hanging on this " (See Py 271)	(11)							
	<u>%</u>																									-		

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Q +	SCO's public statements concerning its alieged	ant sugges	Deemed admitted Nothing in SOO's statement
ĕ'	ce are no less gr	that SCO's public statements pertained solely to	specifically controvers (BM's facts with
4	A unit 2003 McBride civing the con-	the claims brought in this tawsuit, in that the	admissible evidence meeting the requirements of
	had found a "mountain of code"	Disputed to the extent the estement imposes the	Rule 56.
	improperly contributed to Linux. (See	following context: This and other statements	The facts stated in IBM's referenced nersonsh
-4	Ex. 367.)	about the volume of code that had been	are fully supported by the cited material.
C)	. In a reference with analysts and reporters on May 30, 2003, McB-14.	improperly contributed to Linux are truthfui.	
	stated: "Everybody's been clamoring for	of lines of code from derivative mode (much	
	the code - show us two lines of code.	AIX and Dynix) that were identified by SCO	
	We're not going to show two lines of	consultants. For instance, SCO identified	
	code, we're going to show hundreds of	approximately 160,000 lines of code contributed	
	lines of code. And that's just the tip of	by IBM from its Journaline File System that one	
	the iceberg of what's in this." (See	derived from System V code and improperty	
		contributed to Linux. (Ex. 144 at Item No. 1.)	
ژب		SCO also identified 1.200.000 lines of code in	
	McBride claimed that a "truckload of	the form of test suites that IBM contributed	
	code." was improperly contributed to	improperty to the Linux development (Pv 144	
	Linux. (See Ex. 372.)	at Item Nos. 18, 113,42)	
Ą.		·/m:	
	Business Week, McBride stated that the		
	amount of LINUX code infringing on		
	SCO's intellectual property rights is		
	"gargantuan". (Ex. 480.)		
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	Les Vegns, SCO, through its Senior Vice		
	President Chris Sonting, stated that it had		
	uncovered more than a million lines of		
	improperly copied UNIX code in Linux.		
			-

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186.	186. At the same time, SOO refused to disclose the	Disouting to the second	
	particulars of its claims and alleged evidence	And soon and the extent the statement suggests	Decreed admitted: Nothing in SCO's statement
	(See Ex. 32; Ex. 33; Fy. 137; Hy 34) 40,000	use account not proceed in discovery in good	specifically controverts IBM's facts with
	Permecandative others is the state of the st	Islum (T1 234-93), to the extent the statement	admissible evidence meeting the requirements of
	stratement to obtained, it was une company's	suggests that SCO chose not to disclose Its	Rule 56,
	De 274. D. 226.	evidence for any reason other than to protect	
	LAC 3/4, EA. 3/3.)	what SCO regarded as confidential material (Ex.	The facts stated in IBM's referenced reports
		165 ¶ 38), and to the extent the statement	are fully supported by the cited material
		suggests that SCO's public statements pertained	
		solely to the claims brought in this lawsuit, in	
		that the cited material does not support such a	
187	For exemple SOO's come indicated in	statement.	
	interview with Manner Commercial and	Depending on the meaning of the term	Deemed admitted: The facts stated in IBM's
	In March 2002 at 44	"Indicated," disputed in that counsel for SCO	referenced paragraph are fully supported by the
	on which the are defining of the case, that	made no such statement, (Ex. 251 11 3-8.)	cited material
	GOOD WANTED TO KNOW WHAT THEY	Disputed in that the cited material does not	
	[SCO s substantive claims] are", (Ex. 374.)	support the proposition that counsel for SCO	SCO's response does not create a genuine issue
		made the quoted statement. Disputed to the	of fact in that the facts in the referenced
		extent the statement suggests that SCO did not	paragraph are background and no point
		proceed in discovery in good faith (11 234-93)	purportedly controverted is material to IRM's
		and to the extent the statement suggests that	motion.
		SCO chose not to disclose its evidence for any	
		reason other than to protect what SCO regarded	Nothing in SCO's statement specifically
		as confidential material (Ex. 165 § 38).	controverts IBM's facts with admissible
		Disputed in that the fact that SCO would not	evidence meeting the requirements of Rule %
		discuss the substance of SCO's claims with a	
		reporter no more evinces a design to obfuscate	
		than does IBM's spokesperson's refusal "to spell	
		out what steps it was taking to monitor the	
		technology it contributes to open-source projects	
		like Linux and to ensure that its Linux	-
		development does not violate the intellectual	
		property rights or licenses of others," even	
		though in the article "I.B.M. contends that these	
		matters will be evidence if the SCO suit goes to	
		trial." (Ex. 170.)	

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TIBM'S Rolly Constitution of the second	Deemed admitted: The facts stated in IBM's	referenced paragraph are fully supported by the	cited material.		occupations and common state of 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.		Nothing in SCO's statement specifically	controverts IBM's facts with admissible	evidence meeting the requirements of Dule 66	the second are requirement of the second																			
President Gresory Bland Discussion of Act 4	constitute at the life statement misquotes the	ground an induced to Mr. Bidge, Which is choted as follower "There was don't and	everything on the table at the start has tracked	you bring out arguments and evidence niece by	piece." Disputed to the extent the statement	Suppress that Mr. Plans did not make his	Statement in the context of containing 4.	securion in the context of explaining the	procedures that govern "legal actions in the	United States" and the role of confidentiality	("non-disclosure") agreements in preventing	certain information from being released publicly.	Disputed to the extent the statement suggests	that SCO did not proceed in discovery in good	faith. (¶ 234-93.) Disputed in that the fact that	SCO would not discuss the substance of SCO's	claims with a reporter no more evinces a design	to obfuscate than does IBM's spokesperson's	reflusal "to spell out what steps it was taking to	monitor the technology it contributes to open-	source projects like Linux and to ensure that its	Linux development does not violate the	intellectual property rights or licenses of others,"	even though in the article "I.B.M. contends that	these matters will be evidence if the SCO suit	goes to trial," (Ex. 170.) Disputed in that, if said	at, Mr. Blepp's statement is not consistent with	anything he was instructed by anyone at SCO to	say and does not reflect SCO's position or	strategy; and in that Mr. Blopp is from Munich,	and was a SCO sales person in Germany, and	was not familiar with the American legal system.	(Ex 94 12.16)
Further, SCO Vice President Gregory Blens	stated in a published interview in Anril 2004 that	"you don't put everything on the table at the	start, but instead you bring out arguments and	evidence piece by piece". (Ex. 375.)																													
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œ 6	After SCO filed suit, Novell sent a series of letters to SCO that explicitly waived the purported breaches of contract SCO has asserted IBM committed. (See Ex. 135; Ex. 136; Ex. 137; Ex. 138; Ex. 240 ¶ 29.)	Disputed to the extent the statement draws a legal conclusion and, disputed in that Novell does not have the right or authority to "waive purported breaches of contract SCO has asserted IBM committed." (¶ 279-93.)	Doemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
6.	On October 7, 2003, in a letter from Joseph A. LaSala, Jr. to Ryan Tibbitts, Novell directed SCO to waive any purported right to assert a breach of the IBM Software Agreement based on IBM's use or disclosure of code that does not contain any UNIX System V source code. (Ex. 135; Ex. 240 ¶ 30.) The letter states: [Pjursuant to Section 4.16(b) of the Asset Purchase Agreement, Novell hereby directs SCO to waive any purported right SCO may claim to roquire IBM to treat IBM Code itself as subject to the confidentiality obligations or use restrictions of the Agreements. Novell directs SCO to take this action by noon, MST, on October 10, 2003, and to notify Novell that it has done so by that time.	Disputed to the extent the statement draws a legal conclusion and, disputed in that Novell does not have the right or authority to "direct SCO to waive any purported right to assert a breach of the IBM Software Agreement." (¶¶ 279-93.)	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. The material referred to by SCO does not support SCO's statement.
	In the letter, Novell informed SCO that its position that IBM's own homegrown code "must be maintained as confidential and subject to use restrictions is contrary to the agreements between AT&T and IBM, including Amendment X, to which Novell is a party". (Ex. 135; Ex. 240 ¶ 33.)	Disputed to the extent the statement purports to describe the scope of the agreements between AT&T and IBM or Amendment No. X. (¶ 63-163.)	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
1			simport SCO's statement to by SCO does not

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	allocation of rights": (1) AT&T retained ownership of its code from the Software Products (AT&T Code.)	describe the scope of the agreements between AT&T and IBM or Amendment No. X. (\$\mathbb{M}\$ 63-163.)	Decined admitted: Nothing In SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
	code, i, and use Agreements' restrictions on confidentiality and use apply to the AT&T Code, whether in its original form or as incorporated in a modification or derivative.		The material referred to by SCO does not support SCO's statement.
	work, but (2) IBM retained ownership of its own code, and the Agreements' restrictions on confidentiality and use do not apply to that code so long.		
	AT&T Code. (Ex. 135; Ex. 240 ¶ 33.) Novell concluded that any other interpretation "would defy logic as		
	well as the intent of the parties". (Ex. 135; Ex. 240 ¶ 31.)		
	on October 10, 2003, Novell expressly waived any purported right of SCO's to assert a breach of the IBM Software Agreement based on IBM's	Disputed to the extent the statement draws a legal conclusion. Disputed in that Novell does not have the right or authority to "expressly waive any numerical dispute the conclusion."	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of
	use or disclosure of code that does not contain any UNIX System V source code. (Ex. 136; Ex. 240 § 34.) Novell erises in its Land	breach of the IBM Software Agreement." (99) 279-93.) Disputed to the extent the statement	Rule 56. The material referred to by SCO door and
	Accordingly, pursuant to Section 4.16(b) of the Asset Purchase Agreement, Novell, on behalf of The SCO Group, hereby waives	purports to describe the scope of the agreements between AT&T and IBM or Amendment No. X. (¶ 63-163.)	Support SCO's statement.
	any purported right SCO may claim to require IBM to treat IBM Code, that is code developed by IBM. Or licensed in the	-	
	from a third party, which IBM incorporated in AIX but which itself does not confain providenty IMX code constitution.		
	under the license agreements between AT&T and IBM, itself as subject to the		
	confidentiality obligations or use restrictions of the Agreements. (Ex. 136; Ex. 240 ¶ 34.)		

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.	Deemed admitted: Nothing in SCO's statement specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56. The material referred to by SCO does not support SCO's statement.
Disputed to the extent the statement draws a legal conclusion. Disputed in that Novell does not have the right or authority to "waive any purported right to assert a breach of the Sequent Software Agreement." (¶ 279-93.) Disputed to the extent the statement purports to describe the scope of the agreements between AT&T and Sequent. (¶ 63-163.)	Disputed to the extent the statement purports to describe the scope of the agreements between AT&T and Sequent (\$\mathbb{H}\$63-163.)
194. Additionally, on February 16, 2004, in a letter from Mr. Lassa to Mr. Tibblits, Novell that it as done so by that the control of the catent the statement and several sort of the sequent Software Agreement and the sequent Software Agreement space of Ex. 137; Ex. 240 f 35.) The letter states: Plurtuant to Section 4.16(b) of the Asset Plurtuant to Section 4.16(b) of the sextent that sex sex servicions of Sequent Code as subject to the confidentiality obligations or use restrictions of Sequent Code as subject to the confidentiality obligations or use the confidentiality of the confidentiality	ain <i>l</i> y S
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にある。	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.										Deemed admitted: Nothing in SCO's statement	specifically controverts IBM's facts with	admissible evidence meeting the requirements of	Rule 56.	
		legal conclusion. Disputed in that Novell	does not have the right or authority to "expressly	waive any purported right of SCO to assert a	breach of the Sequent Software Agreement," (¶	279-93.) Disputed to the extent the statement	purports to describe the scope of the agreements	between AT&T and Sequent, (99 63-163.)		-							Disputed to the extent the statement draws a	legal conclusion. Disputed in that Novell	does not have the right or authority to "waive	any purported right of SCO to terminate the IBM	Sublicensing Agreement." (¶ 279-93.)
	196. After SCO stailed to sollow Novell's instruction, Disputed to the extent the statement drain	on rebruary 11, 2004, Novell expressly waived	any purported right of SCO to assert a breach of	the Sequent Software Agreement based on	1BM's use of disclosure of code that does not	contain any UNLX System V source code.	(Ex. 138; Ex. 240 ¶ 36.) Novell states in its	letter to SCO:	Accordingly, pursuant to Section 4.16(b) of	the Asset Purchase Agreement, Novell, on	behalf of The SCO Group, hereby waives	any purported right SCO may claim to	require Sequent (or IBM as its successor) to	treat Sequent Code as subject to the	confidentiality obligations or use restrictions	of Sequent's SVRX license.	 Novell also waived as	to terminate the IBM Sublicensing Agreement.	(Seg Ex. 139; Ex. 140; Ex. 240 ¶ 37-39.)		
新造安	<u>8</u>																197.				

	大学 はない	またしました。 一日の一日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本	
ő	Ц		
; `	3 7	Disputed to the extent the statement draws a	Deemed admitted: Nothing in SCO's statement
	SOO that was a second informed	legal conclusion. Disputed to the extent the	specifically controverts IBM's facts with
	SCO did under the terms of Amendment No. X,	statement purports to describe the scope of	admissible evidence meeting the reminements of
	account not have the right to terminate any of	Amendment No. X. (See SCO's Memorandum	Rule 56.
	IBM's rights under the Sublicensing Agreement	in Opposition to IBM's "Motion for Summary	
	to distribute its AIX software program, (Ex.	Judgment on SCO's Coovright Claim (F18h	The moterial referend to have O.O. done
	139; Ex. 240 § 37.) The letter states:	Cause of Action)	succession referred to by SCO does not
	Pursuant to Amendment No. X, however,		support occ sometiment
	Novell and SCO granted IBM the		
	"irrevocable, fully paid-up, perpetual right"		
	to exercise all of the rights under the IBM		
	SVRX Licenses that IBM then held, IBM		
	paid \$10,125,000 for the rights under		
	Amendment No. X. Novell believes.		
	therefore, that SCO has no right to terminate		
	IBM's SVRX Linenses and that It is		
	Inappropriate at hear for SCO to be		
	threatening to do so		
	(Ev 130, Ev 340, e. 240, e. 24		
2	(EA. 139, EX. 240 § 37.)		
<u>.</u>		Disputed to the extent the statement draws a	Deemed admitted. Nothing In SCO's embanes
	purported right under its SVRX Licenses with	legal conclusion. Disputed in that Novell	essectionally continued 1DM. Continued 1DM.
	IBM to terminate IBM's right to distribute AIX	does not have the right or authority to "direct	admissible wildens medically likes Will
	under the IBM Sublicensing Agreement:	SCO to waive any numorited right and at the	admissione evidence meeting the requirements of
	[P]ursuant to Section 4.16(b) of the Asset	SVRX Licenses with IBM to terminate IDM?	Kule 30.
-	Purchase Agreement, Novell hereby directs	right to distribute AIX under the IRM	The material as formed to the COO decided
	SCO to waive any purported right SCO may	Sublicensing Agreement " (WE 779-03.)	the managed referred to by SCO does not
	claim to terminate IBM's SVRX Licenses		support seed a statement.
	enumerated in Amendment X or to revoke		
	any rights thereunder, including any		
	purported rights to terminate asserted in		
	SCO's letter of March 6, 2003 to IBM.		
	Novell directs SCO to take this action by		
	noon, MDT, June 12, 2003, and to notify		
	Novell that it has done so by that time.		
	(Ex. 139; Ex. 240 ¶ 38.)		

200	1 2	- 4	ができる。 では、 では、 では、 では、 では、 では、 では、 では、
	on June 12, 2003. Novell expressly unived any	Leaduce to the extent the statement draws a	Deemed admitted: Nothing in SCO's statement
	Districted right of SCO to terminate 101.42	legal conclusion. Disputed in that Novell	specifically controverts IBM's facts with
	rights under the IRM Sublicensing American	does not have the right or authority to "expressly	admissible evidence meeting the requirements of
	(Ex. 140; Ex. 240 ¶ 39.) Novell states in its	wave any purported right of SCO to terminate IBM's rights under the IBM Subjection	Rule 56.
	letter to SCO:	Agreement." (99 279-93.)	The material referred to by SCO does not
	Accordingly, pursuant to Section 4.16(b) of		support SCO's statement.
	Lie Asset Furchase Agreement, Novell, on		
	source of the SCO Group, neredy warves		
	terminate IBM's SVRX 1 icenses		
	enumerated in Amendment X or to smoke		
	any rights thereunder, including any		
	Damorted rights to terminate secented in		
	SCO's letter of March 6, 2002 to 1814		
	(Ex. 140: Ex. 240 4 39)		
201	Pollowing SCO's refusal to disclose the material	Discourse	
	of its claims or its alleged evidence, IBM served	that SCO did not preced in Alectronic in any	Deemed admitted: Nothing in SCO's statement
	interrogatories on SCO asking It to describe in	faith or could have provided the reminded	specifically controverts IBM's facts with
	detail its allegations and alleged evidence of	information with our	admissione evidence meeting the requirements of
	misconduct hy IRM (Ry 11)	automination without precedent production of	Rule 56.
	machine of this. (EA. 11.)	material by IBM (77 234-69), and to the extent	
		the statement suggests that IBM was unable to	7
		identify those Instances in which its employees	
		contributed technology to Linux from the AIX or	
		Dynix/pix operating systems (IBM Statement of	
38	Got decount of 1DM 6 l. J COCK	Fact No. 238 and material cited thereIn.)	
•	i or example, 15M asked SCU to: "Ipjlease	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	Menuly, Will specificity (by product, file and	that SCO did not proceed in discovery in good	specifically controverts IBM's facts with
	une of code, where appropriate) any	faith or could have provided the requested	admissible evidence meeting the requirements of
	confidential or proprietary information that	information without precedent production of	Rule 56.
	premiting alleges or contends IBM	material by IBM (¶ 234-69), and to the extent	
	misappropriated or misused". (Ex. 11 at	the statement suggests that IBM was unable to	
	Interrogatory No. 1.)	identify those instances in which its employees	
-		contributed technology to Linux from the AIX or	
		Dynix/ptx operating systems (IBM Statement of	
		Fact No. 238 and material cited thereIn.)	

203.	IBM asked SCO: "For any confidential or	on an confidential or Discontinuous and a second se	
	Drobnetary information identified in secure	Lispuica to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	intermentary No. 1 fto July 14 and 14	that SCO did not proceed in discovery in good	specifically controverts IBM's facts with
	the notice and course of COOST (1)	faith or could have provided the requested	admissible evidence meeting the requirements of
	Ry 11 of Information 11 at Inf	Information without procedent production of	Rule 56.
	LA. 11 41 INICATOR MOTO NO. 2.)	material by IBM (¶ 234-69), and to the extent	
		the statement suggests that IBM was unable to	
	-	identify those instances in which its employees	
		contributed technology to Limix from the AIX or	
		Dynix/ptx operating systems (IBM Statement of	
200	A 4 4.	Fact No. 238 and material cited therein.)	
ţ	the same time, 15M also asked SCO to	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	Reduity now 1BM is alleged to have violated	that SCO did not proceed in discovery in	specifically controverts IBM's facts with
	SCU Stignis, 15M asked SCU; "For., any	good faith or could have provided the requested	admissible evidence meeting the requirements of
	confidential or proprietary information identified	information without precedent production of	Rule 56
		material by IBM (19 234-69), and to the extent	
	describe, in detail (a) the date of the alleged	the statement suggests that IBM was unable to	
	misuse or misappropriation; (b) all persons	identify those instances in which its employees	
	Involved in any way in the alleged misuse or	contributed technology to I into from the A IV or	
	misappropriation; (c) the specific manner in	Dyntx/ofx operating systems (IRM Systement of	
	which IBM is alleged to have engaged in misuse	Fact No. 238 and material cited therein	
	or misappropriation; and (d) with respect to any		
	code or method the location of each portion		
	of such code or method in any product, such as		
	AlX, in Linux, in open source, or in the public		
	domain." (Ex. 11 at Interrogatory No. 4.)		
205.	Moreover, IBM asked SCO to: "(1) identify	Disputed to the extent the statement suggests	Desmed admitted: Nothing in 2000;
	with specificity all the material in Linux to	that SCO did not proceed in discovery in each	considerate conference (DAM) Control of the Control of the Conference (DAM) Control of the Contr
	which it claims rights; (2) detail the nature of its	faith or could have provided the requested	Specifically collaborate ideas with
	alleged rights, such as whether and how the	information without precedent production of	substitute evidence meeting the requirements of
	material in which SCO claims rights derives	insterial by IBM (W 734-60) and to the entert	TABLE DO:
	from UNIX; and (3) state whether IBM has	the statement encorate that IRM was unable to	
	infringed SCO's rights and, If so, detail how	Identify those instances in reliable in	
	IBM infringes SCO's alleged rights. (See Ex. 12	contributed technology to I inny from the ATV or	-
	at Interrogatory No. 12.)	Dynix/ofx orderating systems (IRM Systement of	
		Pact No. 238 and material cited therein.)	

Decmed 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.
Disputed to the extent the statement suggests that SCO did not proceed in discovery in good faith or could have provided the requested information without precedent production of material by IBM (¶ 234-69), and to the extent the statement suggests that IBM was unable to identify those instances in which its employees contributed technology to Linux from the AIX or Dynix/pix operating systems (IBM Statement of	Fact No. 238 and material cited therein.) Disputed to the extent the statement suggests that SCO did not proceed in discovery in good faith or could have provided the requested information without precedent production of material by IBM (†† 234-69), and to the extent the statement suggests that IBM was unable to identify those instances in which its empkoyees contributed technology to Linux from the AfX or Dynix/ptx operating systems (IBM Statement of Fact No. 238 and material cited therein.)
Earther, IBM asked SCO: "For each line of code and other material identified in response to linerrogatory No. 12, [to] please state whether (a) IBM has infringed plaintiff's rights, and for material by IBM (ff. 234-69), and to the extent describe in detail how IBM is alleged to have infringed plaintiff's rights." (Ex. 12 at infringed plaintiff's rights) by infringed plaintiff's rights, and for material by IBM (ff. 234-69), and to the extent describe in detail how IBM is alleged to have infringed plaintiff's rights. (Ex. 12 at infringed plaintiff's rights) by interrogatory No. 13.) Fights (Fights Reights (Fights) (Fi	SCO did not provide IBM with all of the Information it requested, and IBM twice moved to compel meaningful responses on October I, 2003 and November 6, 2003. (Ex. 62; Ex. 63.)
206.	207.

suggests Deemed admitted: Nothing in SCO's statement y in specifically controverts IBM's facts with admissible evidence meeting the requirements of citien of Rule 56. The extent unable to range of the AIX or ratement of in.)	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
Disputed to the extent the statement suggests that SCO did not proceed in discovery in good faith or could have provided the requested information without precedent production of material by IBM (¶¶ 234-69), and to the extent the statement suggests that IBM was unable to identify those instances in which its employees contributed technology to Linux from the AIX or Dynix/ptx operating systems (IBM Statement of Fact No. 238 and material cited therein.)	Disputed to the extent the statement suggests that the Court found that SCO had not proceeded in discovery in good faith, to the extent the statement suggests that the Court had concluded that IBM was unable to identify those instances in which its employees contributed technology to Linux from the AIX or Dynix/px operating systems, and to the extent the statement suggests that the Court's Order adopted the requests for relief set forth in IBM's underlying motion. (% 23-42.)
Specifically, BM asked the Court to require SCO to specify (1) all the material in Linux to which SCO claims rights (i.g., by kernel version X, file Y, and lines 1-2-3); (2) the nature of SCO's alleged rights, including whether and, if so, how the material derives from the UNIX software (i.g., if SCO asserts contract, copyright or some other right to the identified code, and how the Linux code identified derives from UNIX version A, file B, times 4-5-6); and (3) whether IBM has infittinged material to which SCO claims rights, and if so, the details of the alleged infitingement (i.g., by copying Linux kernel version X, file F, lines 1-2-3, which are copied or derived from UNIX version A, file B, lines 1-2-3, the structure and sequence of which was copied from UNIX version A, file B, lines 1-2-3, which are copied or derived from UNIX version X, file F, lines 1-2-3, which are copied or derived from UNIX version A, file B, lines 4-5-6.	, 2003, the Court ordered SCO formation on or before January x. 55.) The Court ordered SCO tate with specificity the source is claiming from the basis of st IBM". (Ex. 55.)
208.	209.

1		·									Ţ								-	
	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with											Deemed admitted: Nothing in SCO's statement	specifically connevers forms facts with admissible evidence meeting the requirements of	Rule 56.						
	Disputed to the extent the statement suggests that the Court found that SCO had not proceeded	in discovery in good faith, to the extent the statement suggests that the Court had concluded that IBM was unable to identify those instances	in which its employees contributed technology to Linux from the AIX or Dynix/ptx operating	systems, and to the extent the statement suggests that the Court's Order adopted the requests for	relief set forth in IBM's underlying motion. (¶ 243-51.)						D	that SOO did not proceed in discovery in sood	faith (17 234-93), to the extent the statement	suggests that the Court had concluded that IBM	was unable to identify those instances in which	its employees contributed technology to Linux	from the AIX or Dyniz/ptx operating systems	data to the extent the statement suggests that the Court's Order adouted the requests for reliaf set	forth in iBM's underlying motion (#1239-51).	
210 In an order dated Masch 2, 2004, 4, C	reiterated its December 2003 order, compelling	SCU again to provide meaningful responses to IBM's interrogatories, this time on or before April 19, 2004. (See Ex. 56.) Specifically, the	Court required SCO to "fully comply within 45 days of the entry of this order with the Court's	previous order dated December 12, 2003". (Ex. 56.) Thus the Court required SCO to	Tespond fully and in detail to interrogatory Nos. 12 and 13 as stated in IBM's Second Set of	Interrogatories [which require SCO to specify (1) the material in Linux to which SCO claims	rights; (2) the nature of SCO's alleged rights	including whether and, it so, how the material derives from UNIX: and (3) whether IRM has		nd, if so, the details of the alleged	intringement[." (Ex. 55.) Desnite the Court's orders SCO again 41d again	produce the Information requested by IBM. (See	Ex. 132.) While SCO identified more materials	Linux to which it claimed rights (albeit	without the particularity ordered by the Court	nd without an adequate explanation as to why it	to the Court's first order) SOO still did not	detail the nature of its alleged rights or describe	in detail how IBM was alleged to have inflinged	SCO's rights. (See Ex. 132.)
74_	2 2	<u>ን ⊞ ∢</u>	O 4	<u> </u>		<u> </u>		= 0	.=	æ .			ш.	.=	*	ਗ਼ਾ ਹ	5 £	÷	.≘	Ω.

Despite	Despite the Court's order, SCO did not identify a		Deemed admitted: Nothing in SCO's statement
methods, or concepts SCO did not identify line of ATY or Denty	single Version, file, or line of System V code, methods, or concepts allegedly misused by IBM. SCO did not identify a single version, file, or line of APV or Parity could.	that SCO did not proceed in discovery in good faith or could have provided the requested information without precedent production of	specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
allegedly misused by link a single line of al	allegedly misused by IBM. And, SCO did not link a single line of allegedly misused Linux	material by IBM (¶ 234-69), to the extent the statement suggests that IBM was unable to identify those instances in which its employees	
code to any version, file, or line o or System V code. (<u>See</u> Ex. 132.)	code to any version, file, or line of ADC, Dynix or System V code. (<u>See</u> Ex. 132.)	contributed technology to Linux from the AIX or Dynix/ptx operating systems (IBM Statement of Fact No. 738 and material cited theories).	
		extent the statement suggests that the Court had concluded that IBM was unable to identify those	
		Instances in which its employees contributed technology to Linux from the AIX or Dynix/ptx	
		operating systems and to the extent the statement suggests that the Court's Order advanced the	
		requests for relief set forth in IBM's underlying	
Based on SCO's conti	tinued failure to comply,	Disputed to the extent the statement suggests	Desmed admitted: Nothing in COO.
ISM moved on May 1		that SCO did not proceed in discovery in good	specifically controverts IBM's facts with
summingly judgment.	(EX. 65 at 27.)	faith or could have provided the requested	admissible evidence meeting the requirements of
		information without precedent production of	Rule 56.
		the statement suggests that IBM was unable to	
		identify those instances in which its employees	
		contributed technology to Linux from the AIX or	
		Statement suggests that the Court had concluded	
		that IBM was unable to Identify those instances	
		in which its employees contributed technology to	
		Linux from the AIX or Dynix/ptx operating	
		material cited therein) and to the extent the	
		statement suggests that the Court's Order	
		adopted the requests for relief set forth in IBM's	
		underlying motion (¶ 239-51).	

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214.	On February 8, 2005, the Court avantage		では、100mmので
:	actionishment at COD's failure of the colline	Depending on the meaning of the term "failure	Deemed admitted: Nothing in SCO's statement
	Assessment at the statement of proof, but	of proof," disputed to the extent the	specifically controverts IBM's facts with
	unique a decision on the ments of IBM's	statement suggests that the Court concluded that	admissible evidence meeting the requirements of
	summary judgment motion until after the close	SCO had failed to or would be unable upon full	Rule 56.
	of discovery. (Ex. 57 at 10.)	discovery to adduce proof to support its claims.	
		which statement the cited material does not	
310	F	support.	
	The Court set October 28, 2005 as the "Interim	Undisputed,	Undisputed
	Deadline for Parties to Disclose with Specificity		
	22, 2005 as the "Final Deadline for Parties to		
	Identify with Specificity All Allegedly Misused		
	Material", (Ex. 58 at 4) The Court required		
	SCO "to Indate Internostory Desposes		
	Accordingly" (Fx 58 at 4: Fy 418 at 56)		
216	On October 29 2005 2222224 44 C		
	Turk 1 2005 sekededing 0 de Court's	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	factoring Districtions and Colors, SCO Served IIS	that the Court had ordered, clearly or	specifically controverts IBM's facts with
		otherwise, SCO 'to describe all of the allegedly	admissible evidence meeting the requirements of
	responses concerning the allegedly misused	misused materials by version, file, and line of	Rule 56.
	materials, SCO failed to describe all of the	code." (Docket No. 643.)	
	allegedly misused materials by version, file, and		
	line of code. (Ex. 53.)		
217.	Upon review of SCO's Interim Disclosures, IBM	Depending on the meaning of the wood	Denned admitted. Matting in 9000.
	inunediately notified SCO that it failed "to	"Immediately " dismitted to the extent the	presidently controvers IDM's feet with
	identify the allegedly misused material by	statement apposets that IBM movided mak	specimently controvers is incis with
	version, file and line of code", "to identify and	notice as soon as it had reached in conclusions	aministore evidence meeting me requirements of
	match up the allegedly infringing and allegedly	and which statement the citad metaric does not	KMC 20,
	infringed material by version, file and line of	support disputed to the extent the statement	
	code", "to identify the material alleged to have	Suggests that the Court had ordered clearly or	
	been contributed improperty by version, file and	otherwise. SCO "to describe all of the allegedly	
	line of code", and to identify, "to the extent the	misused materials by version file and line of	
	allegedly contributed material is not UNIX	oode." (Docket No. 643.)	
	System V code, but is in any sense alleged to		
	have been based on or resulted from UNIX		
	System V code, the version, file and line of		
	UNIX System V code from which the allegedly		
	result." (Ex. 151 at 1.)		
			_

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218.	IBM notified SCO that unless SCO compiled	Disputed to the extent the statement suggests	SCO's ctaf
	with the specificity required by the Court's many	that the Court had ordered, clearly or	specifically controverts IBM's facts with
	orders, "1BM Intends to ask the Court to	otherwise, SCO "to describe all of the allegedly	admissible evidence meeting the requirements of
	Previous SCO from pursuing any claims Tregarding allegedly missised material not	misused materials by version, file, and line of	Rule 56.
	properly disclosed on or before December 22, 2005". (Ex. 151 at 2.)	Court (Locket 100, 043.)	
219.	Thereafter SCO expressly stipulated and agreed	Disputed to the extent the statement numbers to	Deemed admitted: Nothing in SCO's appearant
	with IBM that its claims would not exceed the	summarize the terms of the parties' stipulation.	specifically controverts IBM's facts with
	Final Disclosures. In a Stipulation Re	(Ex. 481.)	admissible evidence meeting the requirements of
	December 7 2005 the most section of		Rule 56.
	agreed as follows:		
	1. Both parties are required to identify with		
	specificity any and all material that each		
	party contends the other has misused no		
	later than December 22, 2005;		
	(c) Neither party shall be permitted to use		
	[the period for discovery relating to the		
	Final Disclosures] for the purpose of		
	identifying additional misused material		
	not disclosed by the December 22, 2005,		
	(Ex. 481.)		
220.	On December 22, 2005, SCO served its Final	Disputed to the extent the statement as	
	Disclosures, again largely failing to describe all	that the Court had ordered clearly or otherwise	specifically contravers IRM's facts with
	of the allegedly misused materials by version,	SCO "to describe all of the allegedly misused	admissible evidence meeting the requirements of
	file, and line of code and to update its	materials by version, file, and line of code."	Rule 56.
	interrogatory responses. (Ex. 54.)	(Docket No. 643.) Disputed to the extent the	
		statement purports to characterize the final	
221	Based on COO's failure to follow the county.	disclosures. (Ex. 144.)	
	orders requiring It to identify all of the allegedly	Disputed to the extent the statement suggests that the Court had ordered clearly or otherwise	Deemed admitted: Nothing in SCO's statement
	misused materials by version, file, and line of	SCO 'to describe all of the allegedly misused	admissible evidence menting the requirements of
	code, IBM moved on Pebruary 13, 2006 to	materials by version, file, and line of code."	Rule 56.
	preclude certain of SCO's claims. (Ex. 66.)	(Docket No. 643.) Disputed to the extent the	
		Statement purports to characterize the final	
		discionation (Ed. 144.)	

発する			では、10mm
222.	Pending the disposition of IBM's motion, SCO	Disputed to the extent the statement enoughts	Demad admitted. Nothing in COO.
	served several expert reports seeking to	that the content of the referenced expert	surcifically controverts IRM's facts with
	challenge additional allegedly misused materials	reports included material that the Court had	admissible evidence meeting the requirements of
	that were not identified in its Final Disclosures.	ordered SCO to produce by its Final Disclosures	Rule 56
	IBM then made another motion (which has been	but that SCO had not included in its Final	
	fully briefed but not yet argued) to confine and	Disclosures, Chocket No. 707	
	limit the scope of SCO's claims to those		
	materials identified in its Final Disclosures.		
1	(EX 0/.)		
	In an order dated June 28, 2006, the Court	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	granted, in part, IBM's February 13, 2006	that the District Court granted IBM's motion, to	specifically controverts IBM's facts with
	motion to preclude certain of SCO's claims -	the extent the statement suggests that the order at	admissible evidence meeting the requirements of
	striking from the case SCO's Final Disclosure	Issue was one "striking from the case" the	Rule 56.
	Item Nos.: 3-22, 24-42, 44-89, 91-93, 95-112,	material cited in the referenced Item Nos., and to	
	143-49, 165-82, 193, 232-71, 279-93. (Ex. 59 at	the extent the statement suggests that the District	
	36-38.)	Court has passed judgment on the content of the	
		order, which statements the cited material does	
		not support,	
224	In greating IBM's motion in part, the Court held	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	version and file information for substance claims	that the District Court granted IBM's motion, to	specifically controverts IBM's facts with
	form the basis of CONs ages amines Int. In	the extern the statement suggests that the	admissible evidence meeting the requirements of
	(Px <0 at 29.)	Magistrate Court tound that SCO had acted in	Rule 56.
	(tax. 2) at 40.)	bad faith in discovery, to the extent the statement	
		suggests that SCO had acted in bad faith in	
		discovery, and to the extent the statement	
		suggests that the District Court has passed	
		judgment on the content of the order, which	
255		statements the cited material does not support.	
	I he Court held further that "SOO has had ample	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	opportunity to articulate, identify and	that the District Court granted IBM's	specifically controverts IBM's facts with
		motion, to the extent the statement suggests that	admissible evidence meeting the requirements of
	tallure was intentional and therefore willful	the Magistrate Court found that SCO had acted	Rule 56.
	based on SCO's disregard of the court's orders	in bad faith in discovery, and to the extent the	
	and ratifice to seek clarification. In the view of	statement suggests that the District Court has	
	the court it is almost like SCO sought to hide its	passed judgment on the content of the order,	
	case until the ninth inhing in hopes of gaming an	which statements the cited material does not	
	mind anythinge despite being repeatedly told to	support.	
	put an evaluance on use table. (Ex. 39 at		

226.	226. Finally the Court hald that SCO's and at	LOOP REPRODUCED AND CONTRACT TO THE PRODUCE OF THE	Butheren
	Coode r of given nore 35.)	Disputed to the extent the statement suggests that the District Court granted IBM's motion, to the extent the statement suggests that the Magistrate Court found that SCO had acted in bad faith in discovery, and to the extent the statement suggests that the District Court has passed judgment on the content of the order, which statements the cited material does not	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
227.	Following the Court's order the following "Items" relating to SCO's allegations of IBM's breach of contract relating to the AIX and Dynix operating systems remain in the case: Items 1, 2, 23, 43, 90, 94 113-42, and 186-92.	Disputed to the extent the statement suggests that the District Court granted IBM's motion, to the extent the statement suggests that the order at issue was one "striking from the case" the material cited in the previously referenced item Nos., and to the extent the statement suggests that the District Court has passed judgment on the content of the order, which statements the	Deemed admitted: Nothing In SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
228.	Despite three orders of the Court, SCO has not additioned any evidence that IBM breached the Agreements. (See Ex. 54.)	Disputed to the extent the statement draws a legal conclusion, and in that the cited material does not support the statement.	Deemed admitted: IBM's statement is fully supported by the cited material, SCO's Final Disclosures, which contains all of SCO's purported evidence that IBM breached the Agreements. Nothing in SCO's statement specifically controverts IBM's facts with admissible
229.	SCO's Final Disclosures identify 294 Items of allegedly misused material. However, only a subset of these Items concerns SCO's claims of breach of contract. (Ex. 54.)	Undisputed.	evidence meeting the requirements of Rule 56. Undisputed.

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230.	As a result of the Court's order of June 28, 2006, only 43 of the Items relating to SCO's contract claims remain in the case. (Items 1, 2, 23, 43, 90, 94, 113-42 and 186-92.) These Items concern allegations of misuse relating to AIX and Dynix. (See Ex. 54; Ex. 59.)	ests tion, to order at of Item gests nt on	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, the District Court has "passed judgment on the content of the order". (See Ex. 630 at 4.)
231.	Only one of the remaining 43 Items, Item 1, concerns allegations of misuse relating to AIX. Item I concerns IBM's Journaled File System (JFS). (Ex. 54; Ex. 291 ¶ 6.)	Disputed to the extent the statement suggests that the order at issue was one "striking from the case" the material cited in the previously referenced Item Nos, which statements the cited material does not support.	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
3	misuse relating to Dynix. Item 2 concerns Read- Copy Update (RCU); Items 113-42 concern testing technologies; and Items 23, 43, 90, 94 and 186-92 concern "negative know-how" or "exposure" to Dynix. (Ex. 54, Ex. 291 ¶ 7.)	Disputed to the extent the statement suggests that the order at issue was one "striking from the case" the material cited in the previously referenced Item Nos., which statement the cited material does not support.	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
233.	Unly one of the transining 43 Items (Item 1) identifies any UNIX System V source code. That Item identifies 17 lines of code from one version of a UNIX System V sie. (See Ex. 54 Item 1, Tab 425; Ex. 291 ¶ 8). SCO's experts do not address this file in their expert reports. (See generally Ex. 285; Ex. 286 ¶ 84-112.) SCO does not alloge that IBM publicly disclosed this file to Linux or otherwise. (See Ex. 54)	Disputed to the extent the statement suggests that JFS is not derived from UNIX System V. (Ex. 277 ¶ 95-114 & Exs. C.H.)	Deemed admitted: Nothing In SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, the only evidence SCO cites for its purported dispute is the portions of the expert report of its proposed expert, Dr. Ivie, that were expressly the subject of IBM's motion to strike (IBM Ex. 67 at 9), which Magistrate Judge Wells granted. (IBM Ex. 621.) Accordingly
			OCO CARROLLED ON DIS EVIDENCE.

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234.	12	-	SERM's Reply of the second of
	2) identify any AIX or Dynix source code.	the Dynix operating system. (Fx. 164 at 252.	Deemed admitted: Nothing In SCO's statement
	Thirty of the remaining 43 Items (Items 113-42)		accurrently convoyers IBM staces with actually convoyers of
	well as onde from the I fame 7 at Barrier as		Rule 56.
	Ex. 54.) None of that testing ends is next of		
	either the Dynix or Linux operating systems		The material referred to by SCO does not
	(Ex. 287 ¶ 41; Ex. 288 ¶ 25, 29; Fx. 291 ¶ 9)		support SCO's statement. Mr. Rochkind stated
			that he did not "have a definition of [the]
			Dynix/ptx operating system." (SOO Ex. 164 at
	- \-		256.) Further, SCO's other proposed expert
			agrees that "test suites should not be part of the
235.	While the remaining 43 Items do identify Linux	Disputed to the extent the statement suggests	Deemed admitted: Nothing in SCO's statement
	Glass 11 of the residence of Linux Test Project	that SCO was obligated to provide "versions,	specifically controverts IBM's facts with
	186.00) do not identify.	files or lines of source code" with respect to all	admissible evidence meeting the requirements of
	code in the 1 inner terms any versions or lines of	of IBM's allegedly misused material. (Docket	Rule 56. Further, SCO's contention that it was
	lines of source and from Thirty Comments of	No. 643.)	not obligated to provide "versions, files or lines
	or Duniv SCO simply lists a month of the		of source code" has been rejected by the Court.
	remel files (without remise or line in femore)		(Ex. 630 at 4.)
	for each of these literated date and the		
	endence ferner or offerning to		
	contain and code and wise unit these files		
	Tours and code meanods of concepts from		
	UNIA System V, AIX, or Dynix. (See Ex. 54; Ex. 291 ¶ 10.)		
236.	SOO has not specifically identified, in the Final	Dismited to the extent the statement suggester	
	Disclosures or elsewhere, a single line of UNIX	that SCO has not shown that I jour wereing 3.4	Decined admitted: Nothing in SCO's statement
	System V material that IBM is alleged to have	and 2.6 are derivative works of INIX System V	specifically controvers IBM's facts with
	misused in violation of its contractual	release 4 under the convrient law (Fv 274)	Puis & COS and inexture in requirements of
	obligations. Nor has it specifically identified	Disputed to the extent the statement snosests	ATV while manifold have a feature to Linux and
	any evidence that IBM misused any UNIX	that SCO has not shown that ATX is a derivative	whether it agest dentified and positing on
	System V code. (Ex. 54; Ex. 291 ¶ 5.) When	work of UNIX System V. release 4 under the	microscal to ever identified any contente that 1500
	IBM raised with SCO its failure to disclose	copyright law. (See SCO's Memorandum in	insused any civily dystall 4 code.
	UNIX System V material, SCO stated that "IBM	Opposition to IBM's 'Motion for Summary	
	keeps insisting on something that is not part of	Judgment on SCO's Copyright Claim (Fifth	
	SCO's claims, so it should come as no surprise	cause of Action).")	
	that files or lines of code in System V have not		
	been identified". (Ex. 134 at 2.)		

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	None of the material IBM is alleged to have misused is, or contains, UNIX System V code, methods or concepts, or is, or contains, a modification or derivative work of UNIX System V. (See Ex. 54; Ex. 291 ¶ 11; Ex. 181 ¶ 11-50.)	Disputed to the extent the statement suggests that SCO has not shown that Linux versions 2.4 and 2.6 are derivative works of UNIX System V, release 4 within the meaning of the copyright laws. (Ex. 274.) Disputed to the extent the statement suggests that SCO has not shown that AIX is a derivative work of UNIX System V, release 4 under the copyright law, or that SCO has not alleged that IBM's distribution of its AIX operating system post-termination of its AIX operating system post-termination of its UNIX System V licenses constitutes a violation of SCO's copyrights. (See SCO's Memorandum in Opposition to IBM's "Motion for Summary Judgment on SCO's Copyright Claim and Fifth Cause of Action)."	Deemed admitted: Nothing In SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. SCO's statements relating to Linux and AIX, while meritless, have no bearing on whether any of the material IBM is alleged to have misused is, or contains, UNIX System V code, methods or concepts, or is, or contains, a modification or derivative work of UNIX System V.
	All of the material IBM is alleged to have misused in the remaining Items (Items 1-2, 23, 43, 90, 94, 113-42, and 186-92) is original IBM work or the work of third parties other than SCO and independent of System V. (Ex. 162, ¶ 5; Ex. 24¶ ¶ 5; Ex. 218 ¶ 7-8; Ex. 293 ¶ 6; Ex. 258 ¶ 4-5; Ex. 231 ¶ 7-8; Ex. 292 ¶ 4; Ex. 168 ¶ 6; Ex. 257 at 40, 57, 199-200, 225-26, 228; Ex. 293 ¶ 4; Ex. 173 ¶ 4; Ex. 196 ¶ 5; Ex. 255 ¶ 5; Ex. 200 ¶ 4; Ex. 201 ¶ 6; Ex. 263 ¶ 5; Ex. 206 ¶ 4; Ex. 210 ¶ 6; Ex. 263 ¶ 5; Ex. 222 ¶ 5; Ex. 206 ¶ 4; Ex. 255 ¶ 5; Ex. 188 ¶ 5.)	SECTION REDACTED	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. SECTION REDACTED

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239. None of alleged to referenci referenci involved disclosure Kleikamp Sarma, Pr Wright, P George, F Keniston, Kashyap, Jagana, Jaga	None of the A IV	- ;	「一」として、一人は一句のないのではないのできない。これでは「日本の世界の時間の
	alleged to have misused was written by referencing UNIX System V. (Ex. 291 ¶ 11.)	ons set	forth in response to Deemed admitted. Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
			SCO's statement does not refer with particularity th those portions of the record on which SCO relies and SCO does not properly controvert
Wright, P George, F Keniston, Kashyap, Jagana, Ja	SCO has identified 25 persons as having been involved with the allegedly improper disclosures: Barry Arndt, Ben Rafanello, Dave Kleikamp, Mark Peloquin, Steve Best, Dipankar Sarma, Paul McKenney, Martin Bligh, Tlm	Disputed for the reasons set forth in response to IBM Paragraphs 243-276 below.	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
1	Wright, Pat Gaughen, Wayne Boyer, John George, Haren Babu Myneni, Hlen Nguyen, Jim Keniston, Larry Kessler, Hal Porter, Vivek Kashyap, Nivedita Singhvi, Shirley Ma, Venkata Jagana, Jay Vosburgh, Mike Anderson, Mike Mason, Ruth Forester. (Ex. 291 § 12.)		SCO's statement does not refer with particularity to those portions of the record on which SCO relies and SCO does not properly controvert IBM's statements in the paragraphs referenced.
241. None of the otherwise source cox challenged Ex. 162.	None of these individuals referred to or otherwise used non-public UNIX System V source code, methods, or concepts in making the challenged Linux contributions. (Ex. 291 § 13; Ex. 162. § 5; Ex. 248 ¶ 5; Ex. 218 ¶ 5; Ex. 243	Disputed for the reasons set forth in response to IBM Paragraphs 243-276 below. Disputed in that Exhibit 507 does not support the statement.	Deemed admitted: Nothing In SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.
\$5, Bx. 16 Bx. 292 \$\frac{1}{228}, Bx. 292 \$\frac{1}{228}, Bx. 235 \$\frac{1}{35}\$	\$\frac{4}{15}; \text{ Ex. 168 }\frac{4}{6}; \text{ Ex. 231 }\frac{4}{17}.4s; \text{ Ex. 231 }\frac{4}{17}.4s; \text{ Ex. 231 }\frac{4}{17}.4s; \text{ Ex. 257 }\text{ ex. 267 }\text{ at 40, 57, 199-200, 225-26, 228; \text{ Ex. 293 }\frac{4}{15}; \text{ Ex. 173 }\frac{4}{15}; \text{ Ex. 196 }\frac{4}{15}; \text{ Ex. 210 }\frac{4}{15}; \text{ Ex. 216 }\frac{4}{15}; \text{ Ex. 216 }\frac{4}{15}; \text{ Ex. 227 }\frac{4}{15}; \text{ Ex. 227 }\frac{4}{15}; \text{ Ex. 227 }\frac{4}{15}; \text{ Ex. 161 }\frac{4}{16}; \text{ Ex. 161 }\frac{4}{16}; \text{ Ex. 227 }\frac{4}{15}; \text{ Ex. 161 }\frac{4}{16}; \text{ Ex. 161 }\text{ Ex. 161 }\		SCO's statement does not refer with particularity to those portions of the record on which SCO relies and SCO does not properly controvert IBM's statements in the paragraphs referenced. Further, IBM Ex. 507 fully supports IBM's statement. For example, Mr. Wright testified that he did not "recall ever referencing or
			reviewing any System V source code while [he was] at IBM." (IBM Ex. 507 at 228.)

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242,	In making the challenged contributions, the alleged wrongdoers identified by SCO relied on their own creativity and general experience. (Ex. 291 ¶ 13; Ex. 162 ¶ 5; Ex. 248 ¶ 5; Ex. 218 ¶ 5; Ex. 243 ¶ 5; Ex. 168 ¶ 6; Ex. 258 ¶ 4-5; Ex. 231 ¶ 7; Ex. 292 ¶ 4; Ex. 507 at 109-10; Ex. 293 ¶ 4; Ex. 173 ¶ 6; Ex. 196 ¶ 5; Ex. 235 ¶ 5; Ex. 237 ¶ 5; Ex. 211 ¶ 5; Ex. 216 ¶ 5; Ex. 246 ¶ 4; Ex. 210 ¶ 6; Ex. 263 ¶ 5; Ex. 222 ¶ 5; Ex. 206 ¶ 5; Ex. 274 ¶ 4; Ex. 161 ¶ 5; Ex. 222 ¶ 5; Ex. 268 ¶ 5; E	in responding the statement of the state	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. SCO's statement does not refer with particularity to those portions of the record on which SCO relies and SCO does not properly controvert IBM's statements in the paragraphs referenced. Further, IBM Ex. 507 fully supports IBM's statement. For example, Mr. Wright testified that, with respect to the material he Is alleged to have contributed, If "has no relation to ptx." (IBM Ex. 507 at 199.)
243.	The remaining Items of allegedly misused material all concern original IBM works that can be described in four categories: (1) IBM's Journaled File System (JFS) contribution; (2) IBM's Read Copy-Update (RCU) contribution; (3) IBM's Linux Test Project (LTP) contributions; and (4) general operating system experience or "negative know how". (Ex. 291 ¶ 14.)	Depending on the meaning of the phrase "original IBM works," disputed in that the referenced Items include technology taken from and developed based on modifications and derivative works based on the licensed UNIX System V software product (¶ 192), and JFS is a derivative work of UNIX System V (Ex. 277 ¶ 95-114 & Exs. C-H.).	Deemed admitted: Nothlng in SCO's statement specifically controvers IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, the only evidence SCO cites for its purported dispute is the portions of the expert report of its proposed expert, Dr. Ivie, that were expressly the subject of IBM's motion to strike (IBM Ex. 67 at 9), which Magistrate Judge Wells granted. (IBM Ex. 621.) Accordingly SCO cannot rely on this evidence.
1	SECTION REDACTED	Undisputed.	Undisputed.

	ES	specifically controverts IBM's facts with	admissible evidence meeting the requirements of	Kule 56. Ex. 277 relies on material that was not	disclosed in SCO's Final Disclosures. (See	Docket # 40K
Service Control of the Control of th	Disputed. The misused JFS material is a	Surface of the particular of UNIX	System V. (EA. 2// 11 95-114 & EXS. CH.)			
45. The allegedy microsed TRC models 1	CONCETT OF INCIDED AND INITIALISM OF STATE	s, it is not a modification or	IX System V: and it was	not based on or created with reference to I NIX	System V. (Ex. 291 9 16.)	

	····	· · · · ·									 			
	A CONTRACTOR OF THE PROPERTY O	Deemed admitted: Nothing in SCO's statement specifically confrovers IRM's fare with	admissible evidence meeting the requirements of	Kule 26.	With respect to SCO's first sentence, the only evidence SCO after for its purported dispute Is	the portions of the expert report of its proposed expert, Dr. Ivie, that were expressly the subject	of IBM's motion to strike (IBM Ex. 67 at 9), which Magistrate Judge Wells granted. (IBM	Ex. 621.) Accordingly SCO cannot rely on this evidence.			SECTION REDACTED			
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		Disputed in that the misused JFS material is a modification or derivative works of UNIX	System V. (Ex. 277 1995-114 & Exs. C.H.) Disputed in that the cited motorical decaracter	support the statement.					SECTION REDACTED					
	246. SCO has not specifically 1dentified and 1 mm.	System V material (by version, file or line of	the allegedty misused JFS material. (Ex. 291	171; see also Ex. 54, item 1.)	24.5 24.5 24.5 24.5 24.5 24.5 24.5 24.5	SECTION REDACTED								
у. Э.	246									•			 	

では、これには、これに対するとは後期は大きななななない。 これが、他のはなどははないとなっては、100mmであっています。 これが、100mmでは、10	∤ ፮ -	UNIX System V source code was used in the specifically controverts IBM's facts with development of IPS (Px 277 et 94,114 & n 44	& Exs. C-H.)	1	report of its proposed expert, Dr. Ivie, that were expressly the subject of IRM's motion to artiful.			SCO cannot rely on this evidence. Further,	IBM Ex. 277 cites no evidence that "IBM has	itself admitted" that UNIX System V source	+		contributed to Linux came from AIX (and		114 & n.55 & Exs. C-H.) Disputed in that the	misused JFS material is a modification or purported dispute is the portions of the expert	derivative works of UNIX System V. (Ex. 277 report of its proposed expert, Dr. Ivie, that were	W 95-114 & Exs. C-H.) expressly the subject of IBM's motion to strike	(IBM Ex. 67 at 9), which Magistrate Judge	Wells granted, (IBM Ex. 621.) Accordingly	
· · · · · · · · · · · · · · · · · · ·	SECTION REDACTED		The allegedly misused JFS material	none of these individuals identified by SCO used	or referred to UNIX System V source code in	developing JFS. (Ex. 291 918; Ex. 168 96;	EX. 216 1 5; EX. 243 1 5; EX. 248 1 5; Ex. 162				The IDS and a tilbut	The area code und 15 M contributed to the Linux	or o was originally ported from IBM's OS/2	opening system, not ALA, or was written	Special carried and Limits JFS. (Ext. 291 19;	CV: 100 II +C:					
2	247.		·····	•					_		240	į į									

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OS/2 did not include any UNIX System V code, and was not based on UNIX System V. (Ex. 291 19; Ex. 168 ¶ 7.)	Disputed in that the cited material is neither admissible nor sufficient to support the proposition in the statement, and in that the JFS In OS2 is derived from and based on UNIX System V. (Ex. 277 \$9 95-114 & Exs. C-H.)	·
		With respect to the first clause of SCO's statement, the facts stated in IBM's referenced paragraph are fully supported by the cited material and SCO does not articulate the basis for its argument that the cited material is not admissible. Both Mr. Best, who led the project to "port JFS code from IBM's OS/2 operating system to Linux" (IBM Ex. 168 ¶ 7) and Mr. Clark, who "was involved in the design of IBM's UNIX systems from 1989 to 2002" (IBM Ex. 291 ¶ 1) both state that OS/2 did not include any UNIX System V code, and was not based on UNIX System V. (Ex. 291 ¶ 19; Ex. 168 ¶ 7.)
		With respect to the second clause of SCO's statement, the only evidence SCO cites for Its purported dispute is the portions of the expert report of its proposed expert, Dr. Ivie, that were expressly the subject of IBM's motion to strike (IBM Ex. 67 at 9), which Magistrate Judge Wells granted. (IBM Ex. 621.) Accordingly SCO example rely on this evidence.
Some OS/2 based JFS material was later shipped D In IBM's AIX product. For this reason, the JFS of material that IBM contributed to Linux is sometimes mistaken as having originated from TAIX. (Ex. 291 ¶ 20; Ex. 168 ¶ 5.)	Disputed in that the JFS code that IBM contributed to Linux came from AIX (and previously UNIX System V). (Ex. 277 ¶ 95-114 & n.55 & Exs. C-H.) Disputed in that the misused JFS material is a modification or derivative works of UNIX System V. (Ex. 277 ¶ 95-114 & Exs. C-H.)	Deemed admitted: Nothling in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. The only evidence SCO cites for its purported dispute is the portions of the expert report of its proposed expert, Dr. Ivie, that were expressly the subject of IBM's motion to strike (IBM Ex. 67 at 9), which Magistrate Judge Wells granted. (IBM Ex. 621.) Accordingly

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NEO IS REPORTED TO THE PARTY OF	•	SECTION REDACTED		
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		SECTION REDACTED	,
252.	SECTION REDACTED		

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IBM's Rewell States and The States	Deemed admitted: Nothing in SCO's statement	specifically controverts IBM's facts with admissible evidence meeting the requirements of	Rule 56.	With respect to SCO's first sentence, SCO's citation to its expert reports (and not to the Final	Disclosures) shows that these "179 files" were	to Magistrate Judge Well's November 30 order	SCO cannot rely on this material. (IBM Ex.	With respect to SCO's second sentence, The	cited exhibit, the November 10, 2006	Declaration of Marc Rochkind, is an untimely	disclosure of expert opinion, as it was not served	on IBM until months after the deadline for	expert reports. Given that the Court has ruled	that SCO may not rely on material not	specifically identified in its Final Disclosures in	Its expert reports, it is beyond dispute that SCO	may not rely on material not specifically	identified in either its Final Disclosures or its	expert reports. Moreover, the reliability of	origin codes was specifically discussed in one of	IBM's expert reports (IBM Ex. 181 § 61, n.12),	thus SCO should have submitted Mr. Rochkind's	opinion in Mr. Rochkind's Rebuttal Report. It	did not. Accordingly SCO cannot rely on this
AND THE CONTROL OF TH	Disputed in that SCO has identified 179 files in	System V. (Exs. 287 & 288.) Disputed in that	un evidence shows (and easily permits the inference) that origin codes are reliable	material and/or is based on or derived from such	material, (Ex. 139 19 34.)																			
HINTER STATE OF THE STATE OF TH	SCO has noemined thirty files in AIX that contain "origin codes" which SCO claims	indicate that the files were based on UNIX System V, Release 2 or earlier. (Ex. 54: Fx. 286	195; Ex. 291 (21.) For these files, the Final Disclosures do not identify a single line of	source code in AIX that is alleged to be identical to or substantially cimilar to any contract.	UNIX System V. (Ex. 291 [21.) In any event,	origin codes are not necessarily indicators of	291 ¶ 21; Ex. 181 ¶ 61, n.12.)														*			
	£33.		-																	, -				

46			SECTION REDACTED	
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254. The Final Disclosures draw no connection with Depending on the mea any lines of code in UNIX System V and the JFS (hat IBM contributed that IBM contrib	SECTION REDACTED		SECTION REDACTED	
254,		255.		

					
SECTION REDACTED	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible ovidence meeting the requirements of Ruke 56.	SECTION REDACTED			
SECTION REDACTED		SECTION REDACTED			
256. SECTION REDACTED	IBM's Linux RCU contributions, and the earlier Sequent implementation of RCU in Dynix, do not include any UNIX System V code; they are not modifications or derivative works of UNIX System V; and they were not based on or created	IBM's Linux RCU contributions, and the earlier Sequent implementation of RCU in Dynix, do not include any UNIX System V code; they are not modifications or derivative works of UNIX System V; and they were not based on or created with reference to UNIX System V. They are original IBM work created independent of UNIX System V. (Ex. 231 ¶ 8; Ex. 258 ¶ 5; Ex. 291 ¶ 24.)			
256.	257.				

Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.		SECTION REDACTED	Further, Paul McKenney, who invented RCU, states that System V does not contain any code, methods or concepts relating to RCU. (Ex. 231 ¶ 7.)
SCO's Response And The Life	SECTION REDACTED		
258. SCO has not specifically identified any UNIX System V material (by version, file, or line of code, or otherwise) that it alleges is contained in RCU. (See Ex. 54 Item 2.)	SECTION REDACTED		
258.			

		
W (Reply V)	SECTION REDACTED	SECTION REDACTED
RD SECTION REDACTED		SECTION REDACTED
SECTION REDACT		SECTION REDACTED
259.		260.

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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. SCO's statement does not refer to any portion of the record on which SCO relies.	Undisputed.
Disputed to the extent that the statement suggests that AT&T or USL knew or should have known about the substance of IBM's patent applications. (See Argument at)	Undisputed.
Sequent engineers Paul McKenney and John Slingwine filed a patent application for RCU on July 19, 1993, and the patent was granted on August 15, 1995. (Ex. 231 ¶ 5; see Bx. 498.) The implementation of RCU in Dynk and the challenged implementation of RCU in Linux are implementations of the same general concept that is embodied in U.S. Patent # 5,442,758. (Ex. 231 ¶ 4-5; Ex. 291 ¶ 27; Ex. 268 at 117-21.)	SECTION REDACTED
261.	262.

	SECTION REDACTED		
SECTION REDACTED			
The allegedly misused testing technology material does not include any UNIX System V code; it is not a modification or derivative work of UNIX System V; and it was not based on or created with reference to UNIX System V. It was original Sequent work created independent of UNIX System V. (Ex. 196 § 5; Ex. 173 § 4; Ex. 291 § 29.)			
263.	·	 	

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The Reply Line Control of the Contro		SECTION REDACTED	
	SECTION REDACTED		
264.	SECTION REDACTED		
26.			

Deemed admitted: Nothing In SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56.	SECTION REDACTED	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. With respect to SCO's first sentence, nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. Further, SCO's contention that it was not obligated to provide "versions, files or lines of source code" has been rejected by the Court (Ex. 630 at 4.) SECTION REDACTED
SECTION REDACTED Disputed in that the cited material does not support the second and third statements.		Disputed to the extent the statement suggests that SCO was obligated to provide "versions, files or lines of source code" with respect to all of IBM's allegedly misused material. (Docket No. 643.) Disputed in that the cited material does not support the statement. SECTION REDACTED
SCO fails to identify anyone at IBM or Sequent as involved in misconduct relating to the SPIE Test Suits. SECTION REDACTED		SCO identifies no UNIX System V code, methods, or concepts in connection with Items 113-142. (Ex. 291 ¶ 30.)
265.		. 566.

	THE COURSE OF TH		
. 07	Dynix/ptx operating systems. (Ex. 208 ¶ 102; Ry 288 ₱ 05 5 5 5 5 7 5 5 5	SECTION REDACTED	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with
	291¶30.)	Disputed in that the cited material does not support the statement.	admissible evidence meeting the requirements of Rufe 56.
			SECTION REDACTED
368.		Undisputed,	Undisputed
	, SECTION REDACTED		
269.			
	SECTION REDACTED	SECTION REDACTED	SECTION REDACTED
270.	SCO identifies no UNIX System V code, methods or concepts (by version, file or line of code or otherwise) in connection with these	Disputed to the extent the statement suggests that SCO was obligated to provide "versions, files or lines of source code" with respect to all	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of
	methods, or concepts (by version, file, or line of	of IBM's allegedly misused material. (Docket No. 643.)	Rule 56.
	Ex. 54; Ex. 291 ¶ 34.)		Further, SCO's contention that it was not obligated to provide "Versions, files or lines of
	1		source code" has been rejected by the Court. (Ex. 630 at 4.)

SCO lists Linux files in connection with these literactions or dientify which versions or which lines of code in these files contain the allegedy misused material. SCO also lists whole directories in Linux without providing any version, file, and line information. (See Ex. 54) SCO lists Linux files in connection with these literation with these literation with these literation in Linux without providing any version, file, and line information. (See Ex. 54) SCO lists Linux files in connection with these literation with these literation of that SCO was obligated to provide "versions, files or lines of source code" with respect to all admissible evidence meeting the requirements of source code" with respect to all admissible evidence meeting the requirements of source code" with respect to all admissible evidence meeting the requirements of source code" with respect to all admissible evidence meeting the requirements of source code" with respect to all admissible evidence meeting the requirements of source code" with respect to all admissible evidence meeting the requirements of source code" with respect to all so lists of lines of source code" with respect to all so lists of source code" with respect to all so lists of source code" with respect to all so lists of source code	Undisputed.	For all of these lterns, the programmers allegedly making the disclosure either (a) did not make any contributions to the files or directories listed any contributions to the files or directories listed any contributions to the files or directories listed any contributions to the files or directories or UNIX System V or (b) did not base their contributions to the listed files or directories on UNIX System V or (b) did not base their contributions to the listed files or directories on UNIX System V or (b) did not base their contributions to the files or directories or UNIX System V or (b) did not base their contributions to the files or directories or UNIX System V or (c) did not base their contributions to the files or directories and know-how gained from their exposure to UNIX System V or (b) did not base their contributions to the files or directories listed any contributions to the files or directories listed any contributions to the files or directories listed any contributions to the files or directories or UNIX System V or (b) did not base their contributions to the files or directories or UNIX System V or (c) did not base their contributions to the files or directories or UNIX System V or (c) did not base their contributions to the files or directories or UNIX System V or concepts, in that Dynix/pix is a derivative work based on UNIX System V and declarants and concepts in making any contributions to Linux. 13-5: Ex. 216 17-5: Ex. 220 17-46: Ex	In some cases (Items 186, 187, 190 and 191), the Undisputed. programmers allegedly making the disclosure did not have experience in Dynix in the particular technology area cited by SCO. (Ex. 291 ¶ 38; Ex. 237 ¶ 4; Ex. 211 ¶ 3; Ex. 225 ¶ 4.)
SCO lists Linux files in Items, but does not iden which lines of code in tallegedy misused mate whole directories in Lit version, file, and line in Ex. 291 § 35.)			274. In some cases (items 186, programmers allegedly mudid not have experience in particular technology area 291 ¶ 38; Ex. 235 ¶ 3; Ex. 274 ¶ 3; Ex. 188 ¶ 4; 1

Undisputed.	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.
87, 188) the cited Undisputed. Ex. 210 ¶ 7; Ex. 263 ¶ 6; 6.)	Undisputed.		Disputed to the extent the statement refers to all UNIX System V licensees, in that the cited material does not support such a statement. Depending on the meaning of the term "control," If disputed to the extent the statement suggests that IBM and Sequent to hold in confidence all parts of their modifications and derivative works based on the thensed UNIX System V software product (WT 13-29, 82-686), and to the extent the statement suggests that AIX and Dynix/ptx are not derivative works based on UNIX System V († 192). Disputed to the extent the statement suggests that AIX and Dynix/ptx are not derivative works based on UNIX System V († 192). Disputed to the extent the statement suggests that SCO challenges the employability of programmers as such, which SCO does not and which statement the cited material does not support. (See Argument at
275. In some cases (Items 187, 188) the cited technology did not even exist in Dynix. (Ex. 291 ¶ 38; Ex. 246 ¶ 6; Ex. 210 ¶ 7; Ex. 263 ¶ 6; Ex. 206 ¶ 6.)		SECTION REDACTED	In a nutshell, SCO claims the right to control the code, methods and concepts of any modification or derivative work of System V, even where the code, methods, or concepts do not include or reveal any System V material or were not written or created by SCO or any of its predecessors in interest. (Ex. 43 at 7-8.) SECTION REDACTED
275.	7/0.		

		1000年間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本の	ļ
278.	278 SCO's claim demotis on the contract of the	が記録がある。	
: :	SOO's allowed actions on the proposition that	Disputed to the extent the statement refers to all	1 5
	occurrence of the second of th	UNIX System V licensees, in that the	Specifically contrasted IDMO. Carte miss
	Inght to control modifications and derivatives of	cited material does not support each a chalement	of missiple and desperations of the state of
	System V pursuant to its System V licensing	Depending on the meaning of the term "control"	Dult 66 Early 44
	agreements. The argument appears to be that	and "associated with " dienited to the extens the	SOO door not make the material reletted to by
	SCO has the right to control not only System V,	statement suggests that IBM and Segment did not	aco does not support aco statement.
	but also the code, methods and concepts of other	enter into a written agreement requision 1000	
	flavors of UNIX, like AIX and Dynix. In fact,	and Sequent to hold in confidence all parts of its	
	SCO seems to claim that it has the right to	modifications and derivative works based on the	
	control any code, methods, and concepts ever	licensed UNIX System V software product (fet	
	associated with System V. (Ex. 181 4 52.)	13-29 82-86)	
279.	When informed of the interpretation of the IBM	Disputed to the extent the datement suggests	Decree 4 (4 - 14 4)
	and Sequent Software Agreements that SCO is	that the cited deciarants had the authority to	considerable controlled TOM: 6-22
	advancing in this case, the individuals from	modify the terms of AT&T's standard form	adminally and and and and and a takes Will
	AT&T who were involved in negotiating the	UNIX licence corrections to the contract to	partitioning available meeting the requirements of
	Apreements state unemicrosity that SCO is	of the control agreements, to the extent the	Rule 30. Further, the material referred to by
	wmma (Fr 2174124: Ex 100 of 37 20. D. 201	statement suggests that the cited declarants were	SCO does not support SCO's statement.
	#30. Ex. 103 # 31. Ex. 327 # 27. 25, EX. 281	the only individuals under whose direction	
	1 20; EX. 102 7 31; EX. 2/3 7 30.)	AT&T licensed its UNIX source code, and to the	SCO's statement does not refer with narricularity
		extent the statement suggests that the cited	to those portions of the record on which SCO
		declarants have not offered conflicting and	relies.
		contradictory sworn testimony and taken	
		conflicting and contradictory actions. (¶ 63-	
		163.) Disputed in that other substantial evidence	
		shows (and easily permits the inference) that the	
		cited declarants did not have such a view during	
		their tenure at AT&T (MI 61-163)	•

According to Mr. Wilson, any claim that the IBM Software Agreement and the Sequent Software Agreement prohibit the use, export, disclosure or transfer of any code other than UNIX System V code is clearly wrong. Not only did Mr. Wilson and others at AT&T not intend the agreements to be read that way, but they also went out of their way to assure AT&T's ilcensees that that is not what the agreements meant. (Ex. 282 ¶ 30.)

agreements or was the only individual under whose direction AT&T licensed its UNIX source suggests that IBM and Sequent did not enter into that Mr. Wilson had the authority to modify the modifications and derivative works based on the a written agreement requiring IBM and Sequent inference) that Mr. Wilson did not have such a that Mr. Wilson has not offered conflicting and statement suggests that, upon entering into their Agreements (collectively "the Agreements") set licensed UNIX System V software product. (17 written agreement, the parties did not intend to agreement the parties had reached. (¶ 18, 91could be used and disclosed by them and under Disputed to the extent the statement suggests view during his tenure at AT&T. (軒 163-63.) Disputed to the extent the statement suggests exclude any previous oral discussion from the which they could distribute software programs code. (1176-96.) Disputed in that substantial 13-29, 82-86.) Disputed to the extent that the conflicting and contradictory actions. (97 63forth the terms under which UNIX System V 92.) "The IBM Agreements and the Sequent terms of AT&T's standard UNIX license 163.) Disputed to the extent the statement contradictory sworn testimony and taken evidence shows (and easily permits the to hold in confidence all parts of its

the statement suggests

e authority to modify the securifically controverts IBM's facts with admissible evidence meeting the requirements of modify individual under licensed its UNIX source (ithe TNIX ilcense agreements or that he was the only individual under whose direction A T&T ilcensed its UNIX source code. Finally, IBM does not suggest any oral discussion modified the statement suggests

The material referred to by SCO does not support SCO's statement. SCO does not cite any evidence that suggests that Mr. Wilson held contrary views. Furthermore, the evidence SCO cites does not support its view that IBM and Sequent agreed to hold confidential all parts of its AIX and Dynix source code.

SCO's statement does not refer with particularity to those portions of the record on which SCO relies.

"based on" UNIX System V." (IBM Statement

of Undisputed Pacts § 50.)

Sudden and American

the Software Agreements to mean. Mr. Frasure wish, so long as they did not disclose any UNIX System V code. Moreover, Mr. Frasure did not (and, he believes, others at AT&T) understood impossible to reconcile with what Mr. Frasure they developed. In fact, some, including IBM, agreements that placed restrictions of the kind SCO seeks to impose on their use of code that large ones like IBM) would have entered into believe that AT&T's customers (particularly never suggested, nor would have thought to disclosing their own products as they might SCO's interpretation of the Agreements is Agreements precluded them from using or specifically said so. (Ex. 189 99 18-26.) suggest, to AT&T's customers that the

whose direction AT&T licensed its UNIX source that Mr. Frasure had the authority to modify the that IBM and Sequent did not enter into a written agreement requiring IBM and Sequent to hold in that Mr. Frasure has not offered conflicting and inference) that Mr. Frasure did not have such a System V software product, (¶¶ 13-29, 82-86.) Disputed to the extent the statement suggests view during his tenure at AT&T. (¶ 63-163.) agreements or was the only individual under code. (¶ 76-96.) Disputed In that substantial Disputed to the extent the statement suggests Disputed to the extent the statement suggests derivative works based on the licensed UNIX contradictory sworn testimony. (¶ 125-37.) confidence all parts of its modifications and terms of AT&T's standard UNIX license evidence shows (and easily permits the Disputed to the extent that the statement

admissible evidence meeting the requirements of Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with Rule 56.

support SCO's statement. SCO does not cite any evidence that suggests that Mr. Wilson held contrary views during his tenure at AT&T The material referred to by SCO does not

support its view that IBM and Sequent agreed to hold confidential all parts of its AIX and Dynix Furthermore, the evidence SCO cites does not source code. SCO's statement does not refer with particularity to those portions of the record on which SCO

any previous oral discussion from the agreement

IBM Agreements and the Sequent Agreements

the parties had reached. (TH 18, 91-92.) "The (collectively "the Agreements") set forth the terms under which UNIX System V could be they could distribute software programs "based

Indisputed Pacts ¶ 50.)

used and disclosed by them and under which on" UNIX System V." (IBM Statement of

agreement, the parties did not Intend to exclude

suggests that, upon entering into their written

be Deemed admitted: Nothing in SCO's statement by the 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. SCO does not cite any evidence that suggests that Mr. Wilson held contrary views during his tenure at AT&T. Furthermore, the evidence SCO cites does not support its view that IBM and Sequent agreed to hold confidential all parts of its AIX and Dynix source code.	SCO's statement does not refer with particularity to those portions of the record on which SCO relies.	
. lor.≔ 41 or	code. (¶76-96.) Disputed In that substantial evidence shows (and easily permits the inference) that Mr. DeFazio did not have such a view during his tenure at AT&T. (¶63-163.) 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. (¶ 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 onal discussion from the agreement the parties.	IBM Agreements and the Sequent Agreements (collectively "the Agreements") set forth the terms under which UNIX System V could be used and dischood by them and under which they could distribute software programs "based on" UNIX System V." (IBM Statement of
According to Mr. DeFazio, SCO's claims are inconsistent with the provisions of the Agreements. He does not believe that anyone at AT&T, USL, or Novell intended the Agreements of be consistued as SCO construes them. In all whose direction AT&T licensed Its UNIX.	and licensees' contributions to derivative works are not subject to the confidentiality and other restrictions contained in the license agreements (except for any protected UNIX System V source code actually included therein) because they are owned by the licensees. (Ex. 182 ¶ 31.)		
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admissible evidence meeting the requirements of Deemed admitted: Nothing in SCO's statement SCO's response does not create a genuine issue purportedly controverted is material to IBM's Rule 56. Further, the material referred to by specifically controverts IBM's facts with SCO does not support SCO's statement. of fact in that the facts in the referenced peragraph are background and no point Disputed to the extent the statement suggests that IBM and Deserved administer. Nothing in SC motion. 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 Statements of Undisputed Facts §50.) Deponding on the meaning of the phrate "far-eaching, negative unplications," disputed in that prior to deciding to license the UNIX source code, any company could have decided instead Sequent did not enter into a written agreement requiring IBM entaing into their written agreement, the parties did not intend to exclude any previous oral discussion from the agreement the parties had reached (M 18, 91-92.) "The IBM Agreements and the Sequent Agreements (collectively "the Disputed to the extent that the statement suggests that, upon 10 try to develop its own operating system, including its own UNIX-like operating system, and thereby be free of any control over their "homogrown" material reserved to the UNIX kernen. (742) AT&T's capacity to negotiate and Statement suggests that the IBM and Sequent Agreements see system from scrasch. (1932-47.) The subsequent prevalence of UNIX flavors in the inclusity – the fact that so many ĕ modifications and derivative works based on the licensed UNIX System V software product. (¶ 13-29, 8286.) function of the many years that AT&T and its predecessors had invested in developing UNIX, and that prospective companies decided instead to license the UNIX head-start - serves to reinforce the reasonableness of the terms of the obtain partial control over its licensees UNIX flavors was a policy. (See Argument at ___) Disputed to the extent the statement suggests that all or even a significant amount of the UNIX System V methods or concepts have been made forth unreasonable term or are void on grounds of public publicity evallable without restriction. (Ex. 139 # 23-26; licensees recognized they would have to spend if they whated to try to develop their own UNIX-like operating UNIX (icenses. (\$\frac{11}{132-47.}\$) Disputed to the extent the and Sequent to hold in confidence all parts of its Despite the fact that SCO's theory is contrary to intent of the individual who negotiated them, it would, if accepted, have far-reaching, negative the plain language of the Agreements and the implications. (Ex. 181 9 51.)

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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.	
t to control modifications It	
16 SCO had such a right to control modifications and derivative works of System V, then it would have extraordinary — indeed, seemingly limitless — control over the software industry. AT&T and its successors widely disseminated information about the code, methods, and concepts of System V. System V alone has been licensed for redistribution to thousands of entities worldwide. These licensees have combined the code, methods, and concepts of System V software with hundreds of millions of lines of original non-AT&T code and many thousands of original non-AT&T code and many thousands of original non-AT&T code and many thousands of original, non-AT&T methods and concepts. For example, certain versions of ALX include more than 100 million lines of non-AT&T code, methods and concepts. Thus, If SCO had the right to control modifications and derivative works of System V, then it works of System V, then it works and concepts.	control vist quantities of others' property. (Ex.
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		in SCO's sta	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. Ex.	139, the Rochkind declaration, is unimely in	deadline for expert reports	account to cylon televis.															
である。 の関係は の対象が ののである。 のことが ののである。 のことが ののである。 のことが	The second secon	Depending on the meaning of the term "viral	quality, disputed to the extent the	statement suggests that it is mappropriate for a	Discrete in that the very contract that	distributed under also controls the desired	Works of Linux (Fx 278 \ 84) and 10 M?	AIX source-code licenses require that AIX	licensees treat all parts of derivative works of	AIX as confidential (Ex. 278 ¶ 85; Exs. 348.	349, 350). The UNIX license agreements cannot	be interpreted to have a lesser scope simply	because AT&T and its successors were	successful in a licensing a product pursuant to	licenses whose terms the licensees evidently	found reasonable. (71 30-62.) Disputed to the	extent the statement suggests that the IBM and	Sequent Agreements set forth unreasonable	terms or are void on grounds of public policy.	(See Argument at 1.) Disputed to the extent the	statement suggests that all or even a significant	amount of the UNIX System V methods or	concepts have been made publicly available	without restriction. (Ex. 139 ¶ 23-26; Ex. 278 ¶
The state of the s	285. The viral anality of SCO's claim small at the second state of	control rights well beyond the life of the Surface	V nights that the "control rights" are mirrora-d	protect. The apparent purpose of the "control	rights" claimed by SCO seems to be to ensure	among other things, the confidentiality of AT&T	System V code, methods, and concepts, The	argument seems to be prophylactic in nature: by A	retaining control of its licensees' code, methods,	and control of any	System v code, methods, and concepts that	mathods and some street where the code,	locations, and concepts of System V are no	louges connecting, SCO would have the right to	court in original works of its licensees.	System V could become freely available and	See a nghi to control others' works would	(which is unous) persist. (Ex. 181 § 54.)						
, 1	285.																							

**************************************	From a practical standment if SCO had the	- 11.5	JBM's Reply Week to the second
186	to control the code, methods, and concepts of all flavors of UMIX, the owners of these products would be limited in their ability to support or even market them. To support and market an operating system, it is often necessary to reference and disclose the code, methods, and concepts of the operating system. If SCO, as opposed to IBM, had the right to control what IBM could say publicly about the non-System V code, methods and concepts of AIX, for example, then IBM could not provide installation and technical assistance without the cooperation of SCO (an IBM competitor). (Ex. 181¶ 55.)	UNIX System V licensees, in that the cited material does not support such a statement. Disputed in that the statement ignores the "material broach" component of the UNIX System V license agreements, and bear no comparison to the wholesate disclosures IBM undertook in the course of its Linux-development efforts (Ex. 139 fg 2-22.) Disputed to the extent the statement suggests that the IBM and Sequent Agreements set forth unreasonable terms or are void on grounds of public policy.	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. Ex. 139, the Rochkind declaration, Is untimely in that it seeks to render an expert view after the deadline for expert reports.
	rights" extend to experience and know-how (positive or negative), then it could control the employment of a significant sector of the computer industry. Many hundreds of thousands of people have been exposed to the code, methods, and concepts of System V and other flavors of UNIX. SCO and its predecessors have disseminated such information to many, many, thousands of persons and entities. Assuming the truth of SCO's claims about the scope of its control rights, it would appear to have the ability to control the employability of these persons. (Ex. 181 § 56.)	Disputed to the extent the statement refers to all UNIX System V licensees, in that the cited material does not support such a statement. Disputed to the extent the statement suggests that SCO interprets the Agreements to impose restrictions on employment or employability as such. SCO does not base any claim of breach on the mere fact that IBM employed former Sequent employees. Disputed to the extent the statement suggests that the IBM and Sequent Agreements set forth unreasonable terms or are vold on grounds of public policy. (See Argument at 1.) Disputed to the extent the statement suggests that all or even a significant amount of the UNIX System V methods or concepts have been made publicly available without restriction. (Ex. 139 ¶ 23-26.)	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. Ex. 139, the Rochkind declaration, is untimely in that it seeks to render an expert view after the deadline for expert reports.

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The state of the s	Deemed admitted: Northing in SCO's statement	HIME IN SECTIONS STREETINGS	tions states with	additional big evidence inecting the requirements of		•	See Statement does not refer to any portion of	O relies.							
ļ	Deemed admitted: No.	Specifically controverty IRM's facts with	admissible exidence		Aut 20.		acus statement ages i	are record on which SCO relies.							
高雅·阿尔克·阿尔克·阿尔克·阿尔克·阿尔克·阿尔克·阿尔克·阿尔克·阿尔克·阿尔克	ne statement suggests	Agreements to impose	restrictions on employment or employability as	such. SCO does not have any claim of heaveh on	employed former	courted to the extens the	the IRM and Secure	Test Loivi and Sequent	casoniante territo di gre	at 1.)					
L NGO 3. Response	Disputed to the extent the statement suggests	that SCO interprets the Agreements to impose	restrictions on employm	such. SCO does not has	the mere fact that IBM employed former	Scought employees Disputed to the extent the	statement engoyets that the IBMs and Comment	Appendents set forth unresconded to the	Void on anymade of sub-	at [.]					
THE PROPERTY OF THE PROPERTY O	At the same time, SCO would have little	information about the scope of its rights. It	could not, as a practical matter, know to what	nsees have associated their own	original code, methods, and concepts with	System V code, methods, and concepts. It could	know even less about the extent to which	software developers have relied upon public	information about the code, methods, and	concepts of System V. Thus, If SCO had the	right to control modifications and derivative	works, there would be widespread uncertainty	about the scope of SCO's rights, including the	identity of the persons whose employability it	claims to have controlled. (Ex. 181 ¶ 57.)
	200. At the same to	Information a	could not, as a	extent its licensees l	original code,	System V cod	know even les	software deve	information at	concepts of Sy	right to contro	works, there w	about the scop	identity of the	claims to have

Based in part on the assurances of AT&T and its successors about what UNIX licensees could do invested heavily in the development of AIX and 56:11-57:5, 62:20-63:17, 119:16-120:2, 127:15-128:1 (Bx. 257 ¶ 3-5, 10; Bx. 283 ¶ 87.) IBM Dynix. (Ex. 257 ¶ 3-5; Ex. 310 at 29:8-31:5, assigned thousands of people to AIX projects. with their original works, IBM and Sequent (Bx. 257 ¶ 3-5, 10; Ex. 283 ¶ 87.)

admissible evidence meeting the requirements of

Rule 56. The majority of the assertions in

Deemed admitted: Nothing in SCO's statement

specifically controverts IBM's facts with

SCO's response do not address IBM's statement, which pertains to IBM's and Sequent's business

decisions and practices relating to AIX and

Dynix development.

SECTION REDACTED

AIX and Dynix. (Ex. 257 177, 10; Ex. 283 187; companies invested at least tens of millions of Sequent devoted hundreds of person-years to dollars in developing their businesses around developing Dynix. (Ex. 596 § 4.) :Both Ex. 596 ¶ 3-4.)

Disputed in that substantial evidence shows (and statement suggests that IBM and Sequent did not aggreements, the parties did not intend to exclude any previous or subsequent oral discussions from enter into agreements requiring them to hold in confidence all parts of their modifications and 91-92.) "The IBM Agreements and the Sequent assurances were given (¶¶ 63-163), and in that they did (¶ 30-62.) Disputed to the extent the System V software product. (青 13-29, 82-86.) the agreement the parties had reached. (¶¶ 18, derivative works based on the licensed UNIX suggests that, upon entering Into their written reasons to agree to the terms of the contracts IBM and Sequent otherwise had compelling casily permits the inference) that no such Disputed to the extent that the statement SCOS 数据的编码。

SCO's statement does not refer with particularity to those portions of the record on which SCO

Agreements (collectively "the Agreements") set

forth the terms under which UNIX System V

of Undisputed Facts ¶ 50.) Disputed to the extent

the statement suggests that SCO interprets the

"based on" UNIX System V." (IBM Statement could be used and disclosed by them and under

which they could distribute software programs

employees. Disputed to the extert the statement

does not base any claim of breach on the mere

fact that IBM employed former Sequent

employment or employability as such. SCO

Agreements to impose restrictions on

suggests that the IBM and Sequent Agreements

grounds of public policy. (See Argument at set forth unreasonable terms or are void on

materials specifically controverts the undisputed Nothing in SCO's statement or its referenced

particular investments in the development of

ATX and Dynix.

facts that IBM and Sequent made these

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291. 291. 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	original code to the operating systems. To give an example, the original AT&T SVR2.0 source code totaled 896,204 lines of code. (Ex. 181 Ex. G.) The ATX Version 5.1.G for Power contains 160,198,865 lines of code. (Id.) SCO does not and could not allege that AIX or Dynix incorporate all of any version of System V. (See Ex. 285 at 22-25.) Since the initial introduction of the original versions of AIX in 1987, IBM has incorporated new technology and improvements, including Virtual Resource Manager, a Journaled File System, a Logical Volume Manager, an Object Data Manager, a System Manager, and others. (Ex. 257 § 8; Ex. 283 § 81-85.) Subsequent AIX versions integrated even more enhancements, including a Web-based System Manager, and many other developments. (Ex. 257 § 8; Ex. 283 § 81-85.) AIX workload Manager, and many other developments. (Ex. 257 § 8; Ex. 283 § 81-85.) AIX code has been employed in other IBM products, including servers, printers, and multiproducts, including servers, printers, and multiproducts including servers.	Figure quantities of Depending on the meaning of the term "original" Demend admitted: Nothing in SCC and "significant quantities," disputed to the extent the statement suggests that some specific code. (Ex. 18) EX. 20 source code. (Ex. 18) EX. 20 source codes. (Ex. 18) EX. 20 source codes. (Ex. 18) EX. 20 does not or exposure to the licensed UNIX System V. (See not support such an assertion. 4) SCO does not on, or exposure to the licensed UNIX System V. (See not support such an assertion. 5) The original Depending on the meaning of the term "new the decision of the statement, where the decision in IBM Exhibit 257 acknowledges that "Each of these developments are comprised primarily of non-UNIX source code," which in that means that they contain UNIX source code, "which in that means that they contain UNIX source code," which in that means that they contain UNIX source code, "which in that means that they contain UNIX source code," which in that means that they contain UNIX source code, "which in that means that they contain UNIX source code, "which in that means that they contain UNIX source code," which in that the cited material in IBM Exhibit 283 is inadmissible evidence based spream unders, and multi- exhibit 283 is inadmissible evidence based inters, and multi- exhibit 283 is inadmissible evidence based in the statement remains that they conclusion of the employee. The facts stated in IBM's referenced and interesting the cited material in IBM Exhibit 283 is inadmissible evidence based in the cited material in IBM Exhibit 283 is inadmissible evidence based are fully supported by the cited material in IBM's statement are fully supported by the cited material in IBM's statement are fully supported by the cited material in IBM's statement are fully supported by the cited material in IBM's statement are fully supported by the cited material in IBM's statement are fully supported by the cited material in IBM's statement are fully supported by the cited material in IBM's facts are fully supported by the cit	Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. SCO's statement does not refer to any portion of the record on which SCO relies. Deemed admitted: Nothing in SCO's statement specifically controverts IBM's facts with admissible evidence meeting the requirements of Rule 56. SCO's statement does not refer to any portion of the record on which SCO relies. SCO does not offer support for its conclusion that AIX developments are "modifications and derivative works of UNIX". 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.
_			Supported by the views of its expert, Mr. Willig, IBM's reliance upon the sworn declaration of

293. Each of these dev

Bach of these developments stands on its own right and is comprised of non-UNIX source code. Some of them can even be considered stand-alone products. If IBM had believed that these additions to UNIX would have subjected the code to the confidentiality provisions of the licensing agreements, it would not have packaged them with AIX. Similarly, AIX code has been employed in other IBM products, including servers, printers, and multi-protocol routers. If IBM ever believed that the IBM code included with AIX in these IBM products would be subject to the confidentiality provisions of the licensing agreements, AIX would not have been used in these products. (Ex. 257 ¶9.)

Disputed in that the cited material does not support the statement, where the declarant in IBM Exhibit 257 acknowledges that "Each of these developments ... are comprised primarity of non-UNIX source code," which means that they contain UNIX source code, which in turn means that they are modifications and derivative works of UNIX. Disputed to the extent the statement suggests that licensees did not enter into agreements requiring them to hold in confidence all parts of their modifications and derivative works based on the licensed UNIX System V software product. (IN 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

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. SCO's citations do not lead to the conclusion that IBM's AIX developments are "modifications" and derivative works of UNIX.

SCO's statement does not refer with particularly to those portions of the record on which SCO relies.

any previous or subsequent oral discussions from

the agreement the parties had reached. (¶ 18, 91-92.) "The IBM Agreements and the Sequent

Agreements (collectively "the Agreements") set

could be used and disclosed by them and under which they could distribute software programs "based on" UNIX System V." (IBM Statement

forth the terms under which UNIX System V

otherwise had compelling reasons for improving

ALX as it did. (11 30-62.)

of Undisputed Facts ¶ 50.) Disputed in that IBM

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	ln SCO's	specifically controverts IBM's facts with	admissible evidence meeting the requirements of	Rule 56.		The material referred to bu COO december	support SCO's statement		SCO's department of the second desired	to these statement does not refer with particularity	to those portions of the record on which SCO		The Conference of the Conferen	Tale and statement in SCO's response that	selection that IDIA and Comment 1.2 4	business reasons to lead to the second competing	AIX and Dunix code Houseston Control 113	statement does not refer with medical and	those portions of the record on which COO	relies. Purthermore the material as forced to Lo.	SCO does not support SCO's statement	Thomas of the day						
m, if AT&T or its successors had many	Uspured in that substantial evidence shows (and	cashly permits the interestics) that AT&T and its	Successors-un-interest ever stated, orally or in	writing, that its UNIX System V licensees were	not obligated 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 the statement suggests that licensees did	not enter into agreements requiring them to hald	in confidence all narts of their modifications and	derivative works based on the licensed I harv	System V software product. (199 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. (99 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." (TBM Statement	of Undisputed Facts ¶ 50.) Disputed to the extent	the statement suggests that IBM or Sequent had	compelling business reasons to ansist on the	"control" as described by IBM herein. (1930-
In sum, if AT&T or its successors had some	expressed the position SCO asserts in this	lawsuit, IBM and Sequent would have directed	the vast amount of financial and topics	TESTITUTE that court of ATV ATV	differentia of Series of Alfand Dynix quite	June Willy: (EX. 23 / 1/0, 9; EX. 396 1 3-4.)											•										-	
294.																												