

claim that Novell's distribution of the SUSE Linux product infringed SCO's alleged copyrights in the UNIX operating system.

7. Attached as Exhibit B hereto is a complete and accurate copy of the Memorandum In Support of Novell's Motion to Stay Claims Raising Issues Subject to Arbitration (Novell's Motion to Stay), which Novell filed in the Utah Litigation on April 10, 2006. The version of Exhibit B included with the publicly filed version of this Declaration is the redacted version that was publicly filed with the District Court, which removes certain material that is protected by the confidentiality clause in the UnitedLinux contracts. Novell is submitting an unredacted version of Exhibit B to the Court under seal for its review and is serving the unredacted version on SCO, which already has the unredacted pleading.

8. Attached as Exhibit C hereto is a complete and accurate copy of the Request for Arbitration (excluding exhibits), which SUSE submitted on April 10, 2006 to the International Court of Arbitration of the International Chamber of Commerce ("ICC"), to initiate the Arbitration. The version of Exhibit C included with the publicly filed version of this Declaration is the redacted version that was publicly filed with the District Court in support of Novell's Motion to Stay, which removes certain material that is protected by the confidentiality clause in the UnitedLinux contracts. Novell is submitting an unredacted version of Exhibit C to the Court under seal for its review and is serving the unredacted version on SCO, which already has the unredacted pleading.

9. Attached as Exhibit D hereto is a complete and accurate copy of the District Court's Order of August 21, 2006, which granted Novell's motion to stay the Utah Litigation with respect to SCO's claim that Novell's distribution of SUSE Linux infringed SCO's rights.

10. The Arbitration has been suspended for over two years, following this Court's ruling in November 2007 that the automatic stay arising from this bankruptcy proceeding applied to the Arbitration. At the time of this Court's ruling, the Arbitration had already been pending for 19 months, and was on the verge of a hearing on key liability issues that had been scheduled

to take place in Zurich, Switzerland on December 3 to 14, 2007. Key preceding events in the Arbitration included the following.

11. In June 2006, SCO submitted a reply to SUSE's Request for Arbitration that asserted various defenses, including an argument that SUSE's claims were not arbitrable. Also in June 2006, the ICC confirmed the appointment of two arbitrators nominated by SCO and SUSE, respectively: Mr. Yves Derains, the former Secretary-General of the ICC, based in Paris; and Mr. Roberto Dallafior, a Swiss arbitration lawyer based in Zurich. In August 2006, the ICC confirmed the appointment of Mr. Toby Landau, a British barrister based in London, as Chairman of the Arbitral Tribunal.

12. In October 2006, SCO belatedly submitted a Counterclaim in the Arbitration. Also in October 2006, the Arbitral Tribunal finalized the "Terms of Reference," which is a document required by the ICC Rules that sets forth basic information about the case, including a summary of the parties' claims and defenses. The Tribunal also issued a Procedural Order that set forth the schedule for further proceedings as well as basic rules that governed the procedures.

13. In January 2007, the Arbitral Tribunal conducted a full-day hearing in Zurich to address SCO's argument that the Tribunal lacked jurisdiction to address SUSE's claims. This hearing followed extensive written briefing on this subject. In July 2007, the Tribunal issued a lengthy, 96-page ruling that rejected SCO's jurisdictional arguments and concluded that it had jurisdiction to resolve SUSE's claims.

14. In accordance with the procedural schedule adopted by the Tribunal, both SUSE and SCO submitted numerous witness statements, extensive documentary evidence, lengthy argumentative briefs, and multiple legal authorities in anticipation of a hearing on liability issues that was scheduled to be held in Zurich from December 3 to 14, 2007. SUSE made three large submissions of evidence, argument, and legal authorities on SUSE's claims and SCO's counterclaims, including SUSE's opening submission on its claims (June 2007); SUSE's opposition to SCO's counterclaims (September 2007); and SUSE's rejoinder in support of SUSE's claims (October 2007). Similarly, SCO made two large submissions of evidence,

argument, and legal authorities, including SCO's opening submission on its counterclaims (July 2007); and SCO's opposition to SUSE's claims (August 2007).

15. The only pre-hearing submission that has not been made was SCO's rejoinder in support of its counterclaims. SCO was originally scheduled to submit its rejoinder in October 2007, but did not make this submission because it filed its bankruptcy petition in September 2007.

16. Upon learning of this bankruptcy proceeding, the Arbitral Tribunal initially rescheduled the December 2007 merits hearing for April 16 to 25, 2008, with a request that the parties advise on the status of the bankruptcy. When the parties advised that the automatic stay of the Arbitration remained in effect, the Tribunal cancelled the hearing and requested the parties to provide periodic status reports.

17. Pursuant to the Arbitral Tribunal's request, the parties have provided multiple updates to the Tribunal about the bankruptcy proceeding and the related Utah Litigation, including in January, March, and September 2008, as well as in February and August 2009. The parties have advised the Tribunal that the automatic stay of the Arbitration remains in effect. Accordingly, the Tribunal has continued the suspension of the Arbitration and has not conducted any substantive proceedings.

18. The Parties have also advised the Arbitral Tribunal about significant developments in the bankruptcy and in the Utah Litigation. For example, on October 1, 2008, SCO informed the Arbitral Tribunal that it intended to appeal the District Court's summary judgment ruling that SCO had not acquired ownership of the UNIX Copyrights. SCO stated that it "strongly disputes this finding, but, if it is affirmed, SUSE's claim in this case that SCO 'divested itself' of this property will be largely, if not entirely, moot." A complete and accurate copy of SCO's letter is attached hereto as Exhibit E.

19. SCO made a similar comment in its letter to the Arbitral Tribunal of February 27, 2009, stating that if the Tenth Circuit affirmed the summary judgment ruling, it would render

SUSE's claims in the Arbitration "largely, if not entirely, moot." A complete and accurate copy of SCO's letter is attached hereto as Exhibit F.

20. The most recent communication from the Arbitral Tribunal is a letter dated October 5, 2009, a complete and accurate copy of which is attached hereto as Exhibit G. This letter stated:

Following each party's update of 4 August 2009, a further two months have now elapsed, and as far as the Arbitral Tribunal is aware, there is still no indication as to whether this arbitration might be permitted to proceed.

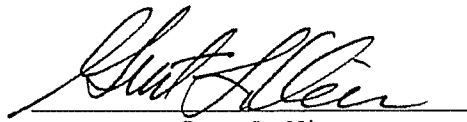
As the parties will appreciate, if this situation is to continue indefinitely, it will begin to cause difficulties for the members of the Arbitral Tribunal.

To this end, I attach herewith **Procedural Order No 10**, which sets a further reporting date of 4 December 2009, by which time the arbitration will have been in abeyance for approximately two years. If there have been no developments by that date, the members of the Arbitral Tribunal may then need to consider their position, as well as the future conduct of these proceedings.

21. As noted above, the parties have made all scheduled pre-hearing submissions with the exception of SCO's Rejoinder in support of its counterclaim. If the stay of the Arbitration is lifted, SUSE expects that it should be possible to schedule the hearing on liability (which was originally scheduled for December 2007) to take place within about three to six months thereafter.

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

Executed this 10th day of November 2009 at San Francisco, California.



Grant L. Kim