

No. 10-4122

**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

THE SCO GROUP, INC.,

Plaintiff-Appellant,

v.

NOVELL, INC.,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Utah
Hon. Ted Stewart, Presiding
No. 2:04-CV-00139-TS

**APPELLANT'S UNOPPOSED MOTION
TO EXPEDITE APPEAL**

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Plaintiff-Appellant, The SCO Group, Inc. (“SCO”), respectfully moves the Court to hear oral argument in this case at the earliest practicable opportunity, and thereafter to expedite its resolution of this appeal.

In support of this Motion, SCO states:

1. At issue in this case are the rights of the parties concerning UNIX, one of the most popular computer operating systems in the world.

2. In addition to the instant litigation against Defendant-Appellee, Novell, Inc. (“Novell”), SCO is involved in two other cases concerning its intellectual property and contract rights in UNIX.

3. SCO filed for Chapter 11 bankruptcy protection in September 2007, following the district court’s summary judgment rulings that this Court largely reversed. SCO has thus been in bankruptcy for over three years.

3. In March 2003, SCO brought an action in the United States District Court for the District of Utah against International Business Machines Corporation (“IBM”), to enforce its intellectual property and contract rights in UNIX. In August 2003, Red Hat, Inc. (“Red Hat”) brought suit against SCO in the United States District Court for the District of Delaware. In both cases, the UNIX copyrights at issue in the instant action are also at issue in most or all of claims and

counterclaims. Accordingly, until this Court resolves the issue of the ownership of those copyrights, the IBM and Red Hat litigations cannot be fully resolved.

4. Indeed, soon after SCO filed for bankruptcy protection, the district court below stayed the IBM litigation pending resolution of the instant case. In addition, on September 10, 2010, the district court denied SCO's motion to proceed with SCO claims that are independent of the resolution of this action. The district court ruled that "proceeding in the IBM litigation in the piecemeal manner suggested by the SCO Group" would be "inefficient" because "the claims in the Novell litigation are inextricably intertwined with the claims in the IBM litigation." The court further noted that, "when the Tenth Circuit Court of Appeals has issued its decision in the Novell litigation (No. 10-4122), either party may move the court to re-open the case."

5. The district court in the Red Hat case has also stayed the action pending resolution of matters in SCO's lawsuits against Novell and IBM.

6. In September 2007, SCO filed for bankruptcy protection under Chapter 11 in the United States Bankruptcy Court for the District of Delaware. SCO's pending actions against Novell and IBM have been identified as among SCO's principal assets. The Bankruptcy Court has observed, and SCO and its creditors agree, that the resolution of the actions against Novell and IBM bears directly on SCO's business and its ability to exit bankruptcy.

8. In sum, the resolution of several federal court actions and the disposition of issues in the bankruptcy cases all turn on the resolution of the instant appeal.

9. SCO therefore respectfully requests that oral argument be held at the earliest practicable opportunity, and that the Court thereafter expedite its resolution of this appeal.

10. Novell does not oppose this Motion but takes the position that this appeal can be resolved without oral argument.

DATED this 4th day of November, 2010.

By: /s/ Edward Normand
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CERTIFICATE OF SERVICE

I, Edward Normand, hereby certify that on this 4th day of November, 2010,
a true and correct copy of the foregoing **APPELLANT'S UNOPPOSED
MOTION TO EXPEDITE APPEAL** was filed with the court and served via ECF
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