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SALT LAKE CITY, UTAH

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

THE SCO GROUP,

Plaintiff/Counterclaim-Defendant,

vs.

INTERNATIONAL BUSINESS
MACHINES CORPORATION,

Defendant/Counterclaim-Plaintiff.

**ADDENDUM TO
DEFENDANT/COUNTERCLAIM
PLAINTIFF INTERNATIONAL BUSINESS
MACHINES
CORPORATION'S MEMORANDUM IN
SUPPORT OF MOTION TO
COMPEL DISCOVERY**

(ORAL ARGUMENT REQUESTED)

Civil No. 2:03cv0294

Honorable Dale A. Kimball

Magistrate Judge Brooke Wells

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2003, a true and correct copy of the foregoing **ADDENDUM TO DEFENDANT/COUNTERCLAIM-PLAINTIFF INTERNATIONAL BUSINESS MACHINES CORPORATION'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DISCOVERY** was hand delivered to the following:

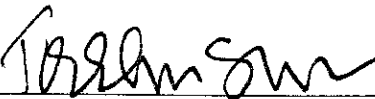
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SCO v. IBM; IBM v. SCO

Summary of Deficiencies in SCO's Interrogatory Responses

NO.	Interrogatory	Response	Deficiencies And Cure
1.	<p>Please identify, with specificity (by product, file and line of code, where appropriate) all of the alleged trade secrets and any confidential or proprietary information that plaintiff alleges or contends IBM misappropriated or misused, including but not limited to as alleged in ¶ 105 of the Complaint.</p>	<p>SCO's Response and Objections: "In addition to the foregoing General Objections, SCO notes that discovery has just begun and it has not yet received responsive discovery from IBM that would allow it to fully answer this question because part of this information is peculiarly within the knowledge of IBM. Subject to and without waiving these objections, pursuant to Fed.R.Civ.P. 33(d), SCO will make available for copying or inspection at a mutually convenient date and time the responsive documents upon the entry of an appropriate confidentiality agreement and order. The trade secrets include without limitation UNIX software design methods for creation and modification of software based on UNIX System V. These UNIX methods include ways to modify IBM's version of UNIX known as AIX and Sequent's version of UNIX known as Dynix/ptx. The UNIX methods include those inherent in and learned through access to the System V source code licensed to IBM and/or Sequent and those developed by IBM and/or Sequent in creating derivative works and modification based on UNIX System V pursuant to licensing agreement with SCO's predecessors and SCO and those that IBM and/or Sequent agreed to maintain in confidence for SCO's predecessors and SCO. Without limitation, the methods include technical UNIX categories, such as multi-processor locking and unlocking methods, methods for avoiding locking requirements, methods for implementing filing systems, debugging methods, methods for implementing and improving processor scalability, methods for implementing and improving processor reliability, methods for implementing and improving scheduling systems, methods for implementing and improving memory management, methods for implementing and improving threading and multi-threading, and methods for implementing and improving general system functionality based on UNIX technology."</p>	<p>SCO has agreed not to withhold responsive information based upon its objections, but nevertheless declines to provide that information. SCO misplaces reliance on Rule 33(d), and its general, narrative response is essentially meaningless.</p> <p>SCO's reliance on Rule 33(d) is improper because (1) the alleged trade secrets and any confidential or proprietary information that SCO alleges or contends IBM misappropriated or misused cannot be derived or ascertained (by product, file and line of code) from the documents SCO has produced; (2) the burden of deriving or ascertaining the answer to this interrogatory from the documents SCO has produced is not substantially the same for IBM as for SCO; and (3) SCO has not provided a specification in sufficient detail to permit IBM to locate and identify, as readily as SCO, the records from which the answer may be ascertained.</p> <p>SCO's narrative response is essentially meaningless because (1) it is expressly non-exclusive; (2) it omits any reference to most of the very kinds of alleged trade secrets and confidential or proprietary information that SCO has publicly identified (albeit in vague and general terms) as having been misappropriated</p>

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		<p>Supplemental Response: In response to IBM's demand for more information, SCO stated, in a letter dated August 8, 2003, that "the documents responsive to [Interrogatory Nos. 1-8 and 10-11] are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel".</p>	<p>or misused by IBM (e.g., "literal copying", "derivative works", "obfuscation", and "non-literal transfers" of "structures" and "sequence"); (3) the "methods" to which SCO refers are described in terms that are so vague as to be essentially meaningless (e.g., SCO fails entirely to identify the files and lines of code that correspond to the "methods" to which SCO refers); and (4) SCO's reference to terms such as "RCU", "NUMA" and "SMP" are no more meaningful than SCO's list of "technical UNIX categories", as SCO fails to identify a single file or line of code and cannot in good faith claim all RCU, NUMA and SMP code.</p> <p>SCO should be required immediately to identify -- by product, file and line of code -- all of the alleged trade secrets and any confidential or proprietary information that SCO alleges or contends IBM misappropriated or misused. There is no reason it cannot, and should not be required to, do this.</p>

NO	Interrogatory	Response	Deficiencies And Cure
2.	<p>For each alleged trade secret of any confidential or proprietary information identified in response to Interrogatory No. 1, please identify: (a) all persons who have or have had rights to the alleged trade secret or confidential or proprietary information; (b) the nature and source of the rights; and (c) all efforts by any person to maintain the secrecy or confidentiality of the alleged trade secrets and any confidential or proprietary information.</p>	<p>SCO's Response and Objections: "In addition to the foregoing General Objections, SCO notes that discovery has just begun and it has not yet received responsive discovery from IBM that would allow it to fully answer this question because part of this information is peculiarly within the knowledge of IBM. In addition, SCO objects to this question as overly broad in that once SCO or its predecessors licensed the Protected Material to companies, the identity of persons within those companies who were bound by the confidentiality provisions is not known to SCO nor are the individual efforts of each of those companies and its personnel to maintain the secrecy and confidentiality of the Protected Material as they were obligated to do. Subject to and without waiving these objections, pursuant to Fed.R.Civ.P. 33(d), SCO will make available for copying or inspection at a mutually convenient date and time the responsive documents upon the entry of an appropriate confidentiality agreement and order, including but not limited to the license agreements between SCO (and its predecessors) and third parties concerning the Protected Material."</p> <p>Supplemental Response: In response to IBM's demand for more information, SCO stated, in a letter dated August 8, 2003, that "the documents responsive to [Interrogatory Nos. 1-8 and 10-11] are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel".</p>	<p>SCO has agreed not to withhold responsive information based upon its objections, but nevertheless declines to provide that information. SCO misplaces reliance on Rule 33(d) and does not even undertake a narrative response.</p> <p>SCO's reliance on Rule 33(d) is improper because (1) the identity of all persons who have or have had rights to, the nature and source of, and all efforts by any person to maintain the secrecy or confidentiality of each line of code identified in response to Interrogatory No. 1 cannot be derived or ascertained from the documents SCO has produced; (2) the burden of deriving or ascertaining the answer to this interrogatory from the documents SCO has produced is not substantially the same for IBM as for SCO; and (3) SCO has not provided a specification in sufficient detail to permit IBM to locate and identify, as readily as SCO, the records from which the answer may be ascertained.</p>

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			<p>For each line of code identified in response to Interrogatory No. 1, SCO should be required immediately to identify: (a) all persons who have or have had rights to the code, including in particular all officers and employees of SCO and its predecessors in interest; (b) the nature and source of SCO's rights in the code, such as whether they are contractual, common law or statutory (e.g., trade secret) and how SCO acquired such rights; and (c) all efforts by any person to maintain the secrecy or confidentiality of the code (such as by bringing suit to protect the confidentiality of the code).</p>

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3.	<p>For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No. 1, please identify all persons to whom the alleged trade secret or confidential or proprietary information is known or has been disclosed and describe, in detail, the circumstances under which it became known or was disclosed, including but not limited to:</p> <p>(a) the date on which the alleged trade secret or confidential or proprietary information was disclosed or became known to such persons; (b) the specific terms on which the information was disclosed or became known, such as pursuant to a confidentiality agreement; (c) all documents or agreements relating to the disclosure; and (d) all places or locations where the alleged trade secret or confidential or proprietary information may be found or accessed.</p>	<p>SCO's Response and Objections: "For questions 3(a)-(c) in addition to the foregoing general objections, SCO notes that discovery has just begun and it has not yet received responsive discovery from IBM that would allow it to fully answer this question because part of this information is peculiarly within the knowledge of IBM. In addition, SCO objects to this question as overly broad in that once SCO or its predecessors licensed the Protected Material to companies, the identity of persons within those companies who were bound by the confidentiality provisions is not known to SCO nor are the individual efforts of each of those companies and its personnel to maintain the secrecy and confidentiality of the Protected Material as they were obligated to do. Subject to and without waiving these objections, pursuant to Fed.R.Civ.P. 33(d), SCO will make available for copying or inspection at a mutually convenient date and time the responsive documents upon the entry of an appropriate confidentiality agreement and order, including but not limited to the license agreements between SCO (and its predecessors) and third parties concerning the Protected Material. For interrogatory 3(d), SCO's investigation is continuing but, at this time, SCO's Protected Material has been found in Linux Kernel 2.4.x and 2.5.x., as well as on various licensees' flavors of UNIX."</p> <p>Supplemental Response: In response to IBM's demand for more information, SCO stated, in a letter dated August 8, 2003, that "the documents responsive to [Interrogatory Nos. 1-8 and 10-11] are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel".</p>	<p>SCO has agreed not to withhold responsive information based upon its objections, but nevertheless declines to provide that information. SCO misplaces reliance on Rule 33(d) and does not even undertake a narrative response.</p> <p>SCO's reliance on Rule 33(d) is improper because (1) all persons to whom the code identified in response to Interrogatory No. 1 is known or has been disclosed and a detailed description of the circumstances under which it became known or was disclosed cannot be derived or ascertained from the documents SCO has produced; (2) the burden of deriving or ascertaining the answer to this interrogatory from the documents SCO has produced is not substantially the same for IBM as for SCO; and (3) SCO has not provided a specification in sufficient detail to permit IBM to locate and identify, as readily as SCO, the records from which the answer may be ascertained.</p> <p>SCO should be required immediately to identify all persons to whom the code identified in response to Interrogatory No. 1 is known or has been disclosed and describe, in detail, the circumstances under which it became known or was disclosed, including but not limited to:</p> <p>(a) the date on which it was disclosed or became known; (b) the specific terms on which it was disclosed or became known, such as pursuant to a confidentiality agreement or under the GPL or another license; (c) all documents or agreements</p>

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			<p>relating to the disclosure such as e-mails or internal memoranda discussing a disclosure; and (d) all places or locations where the alleged trade secret or confidential or proprietary information may be found or accessed such as a website or a file and line of code in Linux.</p>

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4.	<p>For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No. 1, please describe, in detail, each instance in which plaintiff alleges or contends that IBM misappropriated or misused the alleged trade secret or confidential or proprietary information, including but not limited to: (a) the date of the alleged misuse or misappropriation; (b) all persons involved in any way in the alleged misuse or misappropriation; (c) the specific manner in which IBM is alleged to have engaged in misuse or misappropriation; and (d) with respect to any code or method plaintiff alleges or contends that IBM misappropriated or misused, the location of each portion of such code or method in any product, such as AIX, in Linux, in open source, or in the public domain.</p>	<p>SCO's Response and Objections: "In addition to the foregoing General Objections, SCO notes that discovery has just begun and it has not yet received responsive discovery from IBM that would allow it to fully answer this question because part of this information is peculiarly within the knowledge of IBM and/or Linus Torvalds and/or the Open Source Development Laboratory ("OSDL"). Subject to and without waiving these objections, pursuant to Fed.R.Civ.P. 33(d), SCO will make available for copying or inspection at a mutually convenient date and time the responsive documents upon the entry of an appropriate confidentiality agreement and order. In addition, and subject to and without waiving any objections, IBM has misappropriated, misused, transferred and otherwise directly and indirectly communicated the trade secrets identified in Interrogatory No. 1 above to Linus Torvalds, the OSDL, other Linux and open source developers, Linux distributors and Linux end users."</p> <p>Supplemental Response: In response to IBM's demand for more information, SCO stated, in a letter dated August 8, 2003, that "the documents responsive to [Interrogatory Nos. 1-8 and 10-11] are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel".</p>	<p>SCO has agreed not to withhold responsive information based upon its objections, but nevertheless declines to provide that information. SCO misplaces reliance on Rule 33(d), and its general, narrative response is essentially meaningless.</p> <p>SCO's reliance on Rule 33(d) is improper because (1) IBM cannot derive or ascertain from the documents SCO has produced (a) each instance in which SCO alleges or contends that IBM misappropriated or misused the code identified in response to Interrogatory No. 1; (b) the date of the alleged misuse or misappropriation; (c) all persons involved in any way in the alleged misuse or misappropriation; (d) the specific manner in which IBM is alleged to have engaged in misuse or misappropriation; or (e) the location of each portion of such code or method in any product, in Linux, in open source, or in the public domain; (2) the burden of deriving or ascertaining the answer to this interrogatory from the documents SCO has produced is not substantially the same for IBM as for SCO; and (3) SCO has not provided a specification in sufficient detail to permit IBM to locate and identify, as readily as SCO, the records from which the answer may be ascertained.</p> <p>SCO's narrative response is essentially meaningless because it includes no more particularity than the vague allegations of the complaint.</p>

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			<p>SCO should be required immediately to describe, in detail, each instance in which plaintiff alleges or contends that IBM misappropriated or misused the code identified in response to Interrogatory No. 1, including but not limited to: (a) the date of the alleged misuse or misappropriation; (b) all persons involved in any way in the alleged misuse or misappropriation, including in particular all officers and employees of SCO and its predecessors in interest; (c) the specific manner in which IBM is alleged to have engaged in misuse or misappropriation, such as by (i) line-for-line copying of code from System V to Linux kernels 2.4+, (ii) copying, posting, removing legal notices or reorganizing the order of programming structures; (iii) contributing modifications of System V to Linux kernels 2.4+ in violation of contracts; and (iv) making non-literal transfers of methods, structures and sequences from System V to Linux kernels 2.4+; and (d) the location of each portion of the identified code in any product, in Linux, in open source, or in the public domain -- identified by file and line of code.</p>

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5.	<p>For each alleged trade secret and any confidential or proprietary information identified in response to Interrogatory No. 1, please identify: (a) all agreements relating to the alleged trade secret or confidential or proprietary information including but not limited to the parties to and the terms of the agreements, and (b) all copyrights and patents relating to the alleged trade secret or confidential or proprietary information including but not limited to the owners, licensors, licensees, assignors or assignees of those copyrights or patents.</p>	<p>SCO's Response and Objections: "Subject to and without waiving the General Objections, pursuant to Fed.R.Civ.P. 33(d), SCO will make available for copying or inspection at a mutually convenient date and time the responsive documents upon the entry of an appropriate confidentiality agreement and order."</p> <p>Supplemental Response: In response to IBM's demand for more information, SCO stated, in a letter dated August 8, 2003, that "the documents responsive to [Interrogatory Nos. 1-8 and 10-11] are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel".</p>	<p>SCO has agreed not to withhold responsive information based upon its objections, but nevertheless declines to provide that information. SCO relies too heavily on Rule 33(d) and does not even undertake a narrative response.</p> <p>SCO may rely, in part, on Rule 33(d) to satisfy its obligation to respond to this interrogatory. But SCO goes too far, as (1) the mere production of documents does not allow IBM to link the lines of code identified in response to Interrogatory No. 1 to the agreements, copyrights and patents requested by this interrogatory; (2) the burden of deriving or ascertaining the full answer to this interrogatory from the documents SCO has produced is not substantially the same for IBM as for SCO; (3) SCO has not provided a specification in sufficient detail to permit IBM to locate and identify, as readily as SCO, the records from which the full answer may be ascertained.</p> <p>SCO should be required immediately to identify, by file and line of code, all agreements, copyrights and patents relating to each file and line of code identified in response to Interrogatory No. 1.</p>

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6.	<p>For each line of source or object code and each method identified in response to Interrogatory No. 1, please identify: (a) the origin of the code or method, including when, where and by whom the code or method was created; and (b) all products in which, in whole or in part, the code or method is included or on which, in whole or in part, the code or method is based.</p>	<p>SCO's Response and Objections: "In addition to the foregoing General Objections, SCO notes that discovery has just begun and it has not yet received responsive discovery from IBM that would allow it to fully answer this question because part of this information is peculiarly within the knowledge of IBM, such as the modifications and derivative works created by IBM that were to be treated as the original Software Product as that term is defined in the Software Agreement or Sublicensing Agreement. Subject to and without waiving these objections, pursuant to Fed.R.Civ.P. 33(d), SCO will make available for copying or inspection at a mutually convenient date and time the responsive documents upon the entry of an appropriate confidentiality agreement and order."</p> <p>Supplemental Response: In response to IBM's demand for more information, SCO stated, in a letter dated August 8, 2003, that "the documents responsive to [Interrogatory Nos. 1-8 and 10-11] are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel".</p>	<p>SCO has agreed not to withhold responsive information based upon its objections, but nevertheless declines to provide that information. SCO misplaces reliance on Rule 33(d) and does not even undertake a narrative response.</p> <p>SCO's reliance on Rule 33(d) is improper because (1) IBM cannot derive or ascertain from the documents SCO has produced (a) the origin of the code identified in response to Interrogatory No. 1; and (b) all products in which the code is included or on which it is based; (2) the burden of deriving or ascertaining the answer to this interrogatory from the documents SCO has produced is not substantially the same for IBM as for SCO; and (3) SCO has not provided a specification in sufficient detail to permit IBM to locate and identify, as readily as SCO, the records from which the answer may be ascertained.</p> <p>SCO should be required immediately to disclose, for each line of code identified in response to Interrogatory No. 1, (a) the origin of the code or method (such as when, where and by whom the code or method was created); and (b) all products in which it is included or on which it is based (such as files and lines of code in Linux).</p>

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7.	<p>Please describe, in detail, each instance in which plaintiff alleges that IBM engaged in unfair competition, including but not limited to: (a) the dates on which IBM allegedly engaged in any unfair competition; (b) all persons involved in the alleged unfair competition; and (c) the specific manner in which IBM is alleged to have engaged in unfair competition including but not limited to as alleged in ¶ 118 of the Complaint.</p>	<p>SCO's Response and Objections: "In addition to the foregoing general objections, SCO notes that discovery has just begun and it has not yet received responsive discovery from IBM that would allow it to fully answer this question because part of this information is peculiarly with the knowledge of IBM. Subject to and without waiving these objections, pursuant to Fed.R.Civ.P. 33(d), SCO will make available for copying or inspection at a mutually convenient date and time the responsive documents upon the entry of an appropriate confidentiality agreement and order. These acts include improper use of the Software Products and modifications and derivative works of the Software Products in a manner exceeding the scope of the license. Such acts include, but are not limited to, contributions of the modifications and derivative works to Linus Torvalds and/or others in the open source community."</p> <p>Supplemental Response: In response to IBM's demand for more information, SCO stated, in a letter dated August 8, 2003, that "the documents responsive to [Interrogatory Nos. 1-8 and 10-11] are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel".</p>	<p>SCO has agreed not to withhold responsive information based upon its objections, but nevertheless declines to provide that information. SCO misplaces reliance on Rule 33(d), and its general, narrative response is essentially meaningless.</p> <p>SCO's reliance on Rule 33(d) is improper because (1) IBM cannot derive or ascertain from the documents SCO has produced the particulars of each instance in which SCO alleges that IBM engaged in unfair competition; (2) the burden of deriving or ascertaining the answer to this interrogatory from the documents SCO has produced is not substantially the same for IBM as for SCO; and (3) SCO has not provided a specification in sufficient detail to permit IBM to locate and identify, as readily as SCO, the records from which the answer may be ascertained.</p> <p>SCO's narrative response is essentially meaningless because it (1) is expressly non-exclusive; and (2) includes no more particularity than the vague allegations of the complaint.</p> <p>SCO should be required immediately to describe, in detail, each instance in which plaintiff alleges that IBM engaged in unfair competition, including but not limited to: (a) the dates on which IBM allegedly engaged in any unfair competition; (b) all persons involved in the alleged unfair competition; and (c) the</p>

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			<p>specific manner in which IBM is alleged to have engaged in unfair competition, such as by (i) line-for-line copying of code from System V to Linux kernels 2.4+, (ii) copying, posting, removing legal notices or reorganizing the order of programming structures; (iii) contributing modifications of System V to Linux kernels 2.4+ in violation of contracts; and (iv) making non-literal transfers of methods, structures and sequences from System V to Linux kernels 2.4+; and (d) the location of each portion of the identified code in any product, in Linux, in open source, or in the public domain -- identified by file and line of code.</p>

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8.	<p>Please identify all agreements with which plaintiff alleges IBM interfered and describe, in detail, each instance in which plaintiff alleges or contends that IBM interfered with those agreements, including but not limited to:</p> <p>(a) the date of alleged interference; (b) all persons involved in the alleged interference; (c) the specific manner in which IBM is alleged to have interfered with the agreement; (d) the specific actions, if any, that IBM induced or encouraged plaintiff's customers or licensees to take; (e) the specific action, if any, that plaintiff's customer or licensee took as a result of the actions allegedly induced or encouraged by IBM; and (f) the specific trade secret or confidential or proprietary information, if any, involved in the alleged interference.</p>	<p>SCO's Response and Objections: "In addition to the foregoing general objections, SCO notes that discovery has just begun and it has not yet received responsive discovery from IBM that would allow it to fully answer this question because part of this information is peculiarly within the knowledge of IBM. Subject to and without waiving these objections, pursuant to Fed.R.Civ.P. 33(d), SCO will make available for copying or inspection at a mutually convenient date and time the responsive documents upon the entry of an appropriate confidentiality agreement and order."</p> <p>Supplemental Response: In response to IBM's demand for more information, SCO stated, in a letter dated August 8, 2003, that "the documents responsive to [Interrogatory Nos. 1-8 and 10-11] are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel".</p>	<p>SCO has agreed not to withhold responsive information based upon its objections, but nevertheless declines to provide that information. SCO misplaces reliance on Rule 33(d) and does not even undertake a narrative response.</p> <p>SCO may rely, in part, on Rule 33(d) to satisfy its obligation to respond to this interrogatory. But SCO goes too far. The production of documents may be sufficient to identify all agreements with which SCO alleges IBM interfered, but it is plainly insufficient to describe, in detail, each instance in which SCO alleges or contends that IBM interfered with those agreements. With respect to that information, SCO's reliance on Rule 33(d) is improper because (1) IBM cannot derive or ascertain the information from the documents SCO has produced; (2) the burden of deriving or ascertaining this information from the documents SCO has produced is not substantially the same for IBM as for SCO; and (3) SCO has not provided a specification in sufficient detail to permit IBM to locate and identify, as readily as SCO, the records from which the answer may be ascertained.</p> <p>With respect to each agreement identified in response to this interrogatory, SCO should be required immediately to specify (a) the date of alleged interference; (b) all persons involved in the alleged interference; (c) the specific manner in which IBM is alleged to have interfered with</p>

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			<p>the agreement (e.g., by "literal copying" or "non-literal transfers"); (d) the specific actions that IBM included or encouraged SCO's customers or licensees to take; (e) the specific action that SCO's customer or licensee took as a result of the actions allegedly induced or encouraged by IBM; and (f) the specific code (identified by file and line of code), if any, involved in the alleged interference.</p>

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9.	<p>Please identify all agreements that plaintiff alleges or contends that IBM has breached, including the specific provisions or portions of those agreements that plaintiff alleges or contends that IBM breached, and describe, in detail, each instance in which plaintiff alleges or contends that IBM breached those agreements, including but not limited to (a) the date of the alleged breach; (b) all persons involved in the alleged breach; and (c) the specific manner in which IBM is alleged to have breached the agreement.</p>	<p>SCO's Response and Objections: "In addition to the foregoing General Objections, SCO notes that discovery has just begun and it has not yet received responsive discovery from IBM that would allow it to fully answer this question because part of this information is peculiarly within the knowledge of IBM. Nonetheless, at this time, as detailed in the Amended Complaint, among the provisions the Software and Sublicensing Agreements that IBM breached are Sections 2.01, 2.05, 4.01, 6.03 and 7.06, of the Software Agreement. Section 2.01 was breached by IBM's failure to treat modifications and derivative works as part of the original Software Product by contributing such items to open source. Likewise, IBM breached Section 2.05 by allowing use for others and by others as a result of contributing the Protected Material to open course. Section 4.01 prohibits export of the Software Products, which IBM breached by contributing the Software Product, including methods, modifications and derivative works to open source. As a result, persons anywhere in the world with a computer can access this information, including in countries that the federal government prohibits dissemination of such information. IBM breached Section 6.03 by continuing to use the Software Products after the license was terminated on June 13, 2003, as well as failing to return or destroy all Software Products after that date. IBM also breached Section 7.06 by failing to maintain in confidence the Software Products, as that term is defined in the agreements. IBM also breached a subsequent agreement that IBM would not use System V or AIX in any open source operating system. IBM also breached §2.1 of Amendment X by using the Software Products for its contractors, including OSDL and other Linux development laboratories and Linux developers for other than Authorized Purposes. IBM also breached §6 of Amendment X by using the Software Product for an unauthorized use and distribution of Linux without paying the required additional royalty amounts."</p>	<p>SCO has agreed not to withhold responsive information based upon its objections, but nevertheless declines to provide that information. SCO misplaces reliance on Rule 33(d), and its general, narrative response is essentially meaningless.</p> <p>SCO may rely, in part, on Rule 33(d) to satisfy its obligation to respond to this interrogatory. But SCO goes too far. The production of documents may be sufficient to identify all agreements that SCO alleges or contends that IBM has breached, but it is plainly insufficient to describe, in detail, the specific provisions or portions of those agreements that SCO alleges or contends that IBM breached and each instance in which plaintiff alleges or contends that IBM breached them. SCO's reliance on Rule 33(d) is improper because (1) IBM cannot derive or ascertain this information from the documents SCO has produced; (2) the burden of deriving or ascertaining this information from the documents SCO has produced is not substantially the same for IBM as for SCO; and (3) SCO has not provided a specification in sufficient detail to permit IBM to locate and identify, as readily as SCO, the records from which this information may be ascertained.</p> <p>SCO's narrative response is essentially meaningless because it (1) is expressly non-exclusive; and (2) includes no more particularity than the vague allegations of the complaint.</p>

NO	Interrogatory	Response	Deficiencies And Cure
			<p>With respect to each agreement SCO identifies in response to this interrogatory, SCO should be required immediately to identify the specific provisions or portions of those agreements that plaintiff alleges or contends that IBM breached and, with respect to each such provision or portion, describe, in detail, each instance in which plaintiff alleges or contends that IBM breached those agreements, including but not limited to (a) the date of the alleged breach; (b) all persons involved in the alleged breach; and (c) the specific manner in which IBM is alleged to have breached the agreement, such as by (i) line-for-line copying of code from System V to Linux kernels 2.4+, (ii) copying, posting, removing legal notices or reorganizing the order of programming structures; (iii) contributing modifications of System V to Linux kernels 2.4+ in violation of contracts; and (iv) making non-literal transfers of methods, structures and sequences from System V to Linux kernels 2.4+; and (d) the location of each portion of the identified code in any product, in Linux, in open source, or in the public domain -- identified by file and line of code..</p>

NO.	Interrogatory	Response	Deficiencies And Cure
10.	<p>Separately, for each of plaintiff's claims for relief, please identify all persons (including but not limited to present or former employees of plaintiff or plaintiff's predecessors in interest) with knowledge relating to plaintiff's claims and contentions and the general nature of, or the categories of, facts known by each person.</p>	<p>SCO's Response and Objections: "In addition to the General Objections, this question is overly broad and unduly burdensome in that it seeks information outside the custody or control of plaintiff by asking information known by plaintiff's predecessors. Subject to and without waiving the General Objections and foregoing objections, pursuant to Fed.R.Civ.P. 33(d), SCO will make available for copying or inspection at a mutually convenient date and time the responsive documents upon the entry of an appropriate confidentiality agreement and order."</p> <p>Supplemental Response: In response to IBM's demand for more information, SCO stated, in a letter dated August 8, 2003, that "the documents responsive to [Interrogatory Nos. 1-8 and 10-11] are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel".</p>	<p>IBM is not at this time moving to compel a response to this interrogatory.</p>

NO.	Interrogatory	Response	Deficiencies And Cure
11.	<p>Please identify all products ever marketed, sold or distributed by plaintiff or plaintiff's predecessors in interest, including but not limited to the terms on which each was marketed, sold or distributed.</p>	<p>SCO's Response and Objections: "In addition to the General Objections, this question is overly broad and unduly burdensome and seeks irrelevant information by requesting all products ever marketed, sold or distributed by plaintiff's predecessors in interest, including but not limited to the terms on which each was marketed, sold or distributed. Plaintiff's predecessors in interest include, for example, AT&T. A list of all products ever marketed, sold or distributed by AT&T would be filled with information wholly irrelevant to any issue in this action and, moreover, is not information known to plaintiff. Even limiting the request to items marketed, sold or distributed by plaintiff, the request remains overly broad because it seeks the terms of each sale or distribution. Such a request would require production of every invoice and such information is irrelevant and unduly burdensome to obtain. Subject to and without waiving these objections, pursuant to Fed.R.Civ.P. 33(d), SCO will make available for copying or inspection at a mutually convenient date and time sufficient documents identifying all products sold by SCO and the general terms on which they were marketed, sold or distributed upon the entry of an appropriate confidentiality agreement and order. The products sold include the following: [list of products]"</p> <p>Supplemental Response: In response to IBM's demand for more information, SCO stated, in a letter dated August 8, 2003, that "the documents responsive to [Interrogatory Nos. 1-8 and 10-11] are the System V source code, the license agreements with all licensees, and the Linux 2.4 kernel".</p>	<p>IBM is not at this time moving to compel a response to this interrogatory.</p>