

Brent O. Hatch (5715)
Mark F. James (5295)
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666

Stephen N. Zack
Mark J. Heise
David K. Markarian
BOIES, SCHILLER & FLEXNER L.L.P.
100 Southeast Second Street
Suite 2800
Miami, Florida 33131
Telephone: (305) 539-8400
Facsimile: (305) 539-1307

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

FEB - 4 2004

MARKUS B. ZIMMER, CLERK
BY _____
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Attorneys for Plaintiff The SCO Group, Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

THE SCO GROUP, INC.,
a Delaware corporation,

Plaintiff,

vs.

INTERNATIONAL BUSINESS MACHINES
CORPORATION, a New York corporation,

Defendant.

**PLAINTIFF'S MOTION FOR
LEAVE TO FILE AMENDED
PLEADINGS**

Case No. 03-CV-0294

Hon: Dale A. Kimball
Magistrate Judge Brooke Wells

Plaintiff/Counterclaim Defendant, The SCO Group, Inc. ("SCO"), through its
undersigned counsel, pursuant to Rules 15(a) of the Federal Rules of Civil Procedure and

applicable Local Rules, files this motion for leave to file its Second Amended Complaint and Amended Affirmative Defenses to IBM's Counterclaim, and in support states:

1. SCO's proposed Second Amended Complaint is attached hereto as Exhibit "A". This proposed amended complaint serves to streamline the pleadings and adds claims that have arisen since the filing of the case.

2. SCO's proposed Amended and Additional Affirmative Defenses to IBM's Counterclaim are attached hereto as Exhibit "B". These proposed amendments reflect the continuing investigation into the allegations and issues raised by IBM in its eleven count counterclaim, including four separate claims of patent infringement, and serve to better frame the issues for this Court's determination. Moreover, the revisions address the concerns raised in IBM's Motion to Strike portions of SCO's Affirmative Defenses, thereby rendering moot IBM's Motion to Strike.

3. No prejudice will result to IBM by the granting of this Motion. The current discovery cut off date is not until August 4, 2004 for fact discovery and October 22, 2004 for expert discovery. Moreover, the Court set February 4, 2004 as the deadline for amending pleadings.

4. In addition, great prejudice will be suffered by SCO if it precluded from amending its pleadings and affirmative defenses. Moreover, the recent stay of IBM's discovery obligations have limited SCO's ability to assess the case and fashion and plead defenses to IBM's Counterclaim. It is anticipated that IBM may reveal through discovery additional evidence relevant to the issues raised by its Counterclaim and that SCO may in fact request a

future opportunity to further align its claims once IBM's resumes the process of complying with its discovery obligations.

SCO has filed concurrently herewith this Memorandum of Law In Support of its Motion for Leave to File its Second Amended Complaint and Amended Affirmative Defenses to IBM's Amended Counterclaim.

DATED THIS 4th day of February, 2004

Respectfully submitted,

HATCH, JAMES & DODGE, P.C.
Brent O. Hatch
Mark F. James

BOIES, SCHILLER & FLEXNER, L.L.P.
Stephen N. Zack
Mark J. Heise
David K. Markarian

By 
Counsel for Plaintiff/Counterclaim defendant

CERTIFICATE OF SERVICE

Plaintiff/Counterclaim Defendant, The SCO Group, hereby certifies that a true and correct copy of the foregoing was served by mail on Defendant International Business Machines Corporation on the 4th day of February 2004, by U.S. Mail to:

David Marriott, Esq.
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

Donald J. Rosenberg, Esq.
1133 Westchester Avenue
White Plains, New York 10604

and HAND-DELIVERED to:

Todd Shaughnessy, Esq.
Snell & Wilmer L.L.P.
15 West South Temple, Ste. 1200
Gateway Tower West
Salt Lake City, Utah 84101-1004

A handwritten signature in black ink, appearing to read "D. Rosenberg", with a large, stylized initial "D" and "R".

Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.