

No. 08-4217

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

THE SCO GROUP, INC.,

Plaintiff-Appellant,

vs.

NOVELL, INC.,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Utah
Hon. Dale A. Kimball, Presiding
No. 2:04-CV-00139-DAK

APPELLANT'S UNOPPOSED MOTION TO EXPEDITE APPEAL

Plaintiff-Appellant, The SCO Group, Inc. ("SCO"), respectfully moves the Court to expedite the instant appeal. In support of its Motion, SCO states:

1. In addition to the instant action against Defendant-Appellee Novell, Inc. (“Novell”), SCO brought two other actions in federal court to enforce, among other rights, its intellectual property and contract rights concerning UNIX, one of the most popular computer operating systems in the world; and an action has been brought against SCO in federal court concerning similar issues.

2. In all of these actions, copyrights in the UNIX operating system are at issue in some or all of the claims and counterclaims. Until this Court addresses the issue of the ownership of these UNIX copyrights, all of these related cases can proceed only in piecemeal fashion, if at all.

3. In addition, SCO is currently involved in Chapter 11 bankruptcy proceedings in Delaware and recently filed a proposed reorganization plan. The Bankruptcy Court will address the plan during the next few months. A significant aspect of that plan is designed to protect SCO and keep it operating as a going concern until this appeal is resolved. Accordingly, the sooner this appeal is resolved, the sooner the four related cases can proceed in an orderly and expeditious manner and the sooner SCO will be able to execute its plan to successfully emerge from Chapter 11 proceedings.

4. In March 2003, SCO brought suit against International Business Machines Corp. (“IBM”) in the United States District Court for the District of

Utah. The district judge presiding over the action against IBM, the Honorable Dale A. Kimball, is also the district judge who presided over the instant action against Novell, which was filed in January 2004. In March 2004, SCO brought suit against AutoZone, Inc. (“AutoZone”), in the United States District Court for the District of Nevada, alleging copyright infringement of certain UNIX copyrights.

5. In the action against IBM, after the parties had fully briefed and argued some ten motions for summary judgment, comprising well over one thousand pages of briefing and fifty thousand pages of exhibits, the district court decided in 2007 to resolve certain summary judgment motions in the Novell case prior to resolving the pending matters in the IBM case. The summary judgment rulings in the instant case had the effect of disposing of some but not all of the claims and counterclaims in the pending IBM case.

6. In the action against AutoZone, in August 2004, the district court stayed the action pending resolution of the actions against IBM and Novell in Utah but recently decided to lift the stay effective December 31, 2008. Although SCO urged the district court in Nevada to continue the stay until after the resolution of this appeal, to avoid duplication of efforts and to promote judicial efficiency, the

court determined to lift the stay. The court recognized, however, that if there is a reversal in this appeal, “we’ll have to redo, no doubt about it.”

7. In August 2003, Red Hat, Inc. (“Red Hat”) brought suit against SCO in the United States District Court for the District of Delaware. The district court in that case has stayed the action pending resolution of matters in the actions against IBM and Novell.

8. In September 2007, SCO filed for bankruptcy under Chapter 11 in the United States Bankruptcy Court for the District of Delaware. SCO’s pending actions against Novell, IBM, and AutoZone 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 going forward. In opposing one of SCO’s requests for an extension of its exclusivity period in the bankruptcy cases, Novell’s counsel argued that the instant appeal could take “years” to resolve and that the Bankruptcy Court should simply let the “chips fall where they may” relative to SCO. The Bankruptcy Court expressly disagreed.

9. Expedited resolution of this appeal is critical to the ability of SCO to move all of these cases forward in an efficient manner and to more successfully execute on its business plans going forward. Although SCO has made significant

progress in resolving certain issues and claims in the Novell case and other claims against the company during the pendency of its bankruptcy proceedings, a prompt resolution of this appeal is in the best interest of all parties.

10. In sum, the resolution of several pending federal court actions, the scope and extent of SCO's future business, and the disposition of issues in the bankruptcy cases all turn on the resolution of the instant appeal. The expedited resolution of this appeal will facilitate a sensible and efficient resolution of the action against AutoZone, and will expedite the lifting of the stays in SCO's action against IBM and Red Hat's action against SCO and the resolution of the issues raised therein.

11. SCO therefore asks the Court to expedite this appeal. SCO proposes as an expedited schedule the following, with no extensions of time permitted:

March 6, 2009	SCO's opening brief
April 6, 2009	Novell's opposition brief
April 20, 2009	SCO's reply brief

SCO further and respectfully requests that the Court schedule oral argument on the earliest practicable date after briefing is complete on April 20, 2009.

12. Novell does not oppose SCO's request for an expedited appeal nor the schedule SCO has proposed. Novell does seek to reserve the right to seek an

extension of its time to file its opposition brief. Seeking expedition, however, SCO asks that the Court impose the foregoing schedule without any extensions of time.

Respectfully submitted on this 23rd day of January, 2009.

/s/ Edward Normand

David Boies
Robert Silver
Edward Normand
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504
Telephone: 914-749-8200
Facsimile: 914-749-8300
dboies@bsfllp.com
rsilver@bsfllp.com
enormand@bsfllp.com

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

Devan V. Padmanabhan
DORSEY & WHITNEY LLP
50 South Sixth Street, Suite 1500
Minneapolis, Minnesota 55402
Telephone: 612-340-2600
Facsimile: 612-340-2868
padmanabhan@bsfllp.com

Stuart Singer
BOIES, SCHILLER & FLEXNER LLP
401 East Las Olas Blvd., Suite 1200
Fort Lauderdale, Florida 33301
Telephone: 954-356-0011
Facsimile: 954-356-0022
ssinger@bsfllp.com

Attorneys for Plaintiff-Appellant, The SCO Group, Inc.

CERTIFICATE OF SERVICE

I, Edward Normand, hereby certify that on this 23rd day of January, 2009, a true and correct copy of the foregoing **APPELLANT'S UNOPPOSED MOTION TO EXPEDITE APPEAL** was electronically filed with the court and forwarded via electronic mail to the following recipients:

Thomas R. Karrenberg
Heather M. Sneddon
ANDERSON & KARRENBERG
700 Bank One Tower
50 West Broadway
Salt Lake City, UT 84101

Michael A. Jacobs
George C. Harris
David E. Melaugh
MORRISON & FOERSTER
425 Market Street
San Francisco, CA 94105-2482

Counsel for Defendant-Appellee Novell, Inc.

/s/ Edward Normand
Edward Normand
Boies, Schiller & Flexner LLP
333 Main Street
Armonk, NY 10504
Telephone: 914-749-8200
Facsimile: 914-749-8300
enormand@bsflp.com

CERTIFICATE OF DIGITAL SUBMISSION

The undersigned certifies with respect to this filing that no privacy redactions were necessary. This **APPELLANT'S UNOPPOSED MOTION TO EXPEDITE APPEAL** submitted in digital form is an exact copy of the written document filed with the Clerk. The digital submission has been scanned for viruses with the most recent version of a commercial virus scanning program (using Symantec Antivirus which is updated weekly) and, according to the program, is free of viruses.

Dated: January 23, 2009

/s/ Edward Normand
Edward Normand
Boies, Schiller & Flexner LLP
333 Main Street
Armonk, NY 10504
Telephone: 914-749-8200
Facsimile: 914-749-8300
enormand@bsflp.com