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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

THE SCO GROUP, INC., a)	
Delaware corporation,)	
)	
Plaintiff,)	
)	
vs.)	Civil No. 2:03-CV-294DAK
)	
INTERNATIONAL BUSINESS)	
MACHINES CORPORATION, a)	
New York corporation,)	
)	
Defendant.)	

Status Conference

BEFORE THE HONORABLE BROOKE C. WELLS

November 21, 2003

Transcript of Magnetically Recorded Hearing

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112103GJ

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1 Appearances of Counsel:

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6 For the Defendant: SNELL & WILMER
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9 CRAVATH, SWAINE & MOORE
10 BY: DAVID R. MARRIOTT
11 Attorney at Law
12 Worldwide Plaza
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13 Also Present:

Mr. McBride

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1 Salt Lake City, Utah, November 21, 2003

2 P R O C E E D I N G S

3 THE COURT: Calling the SCO Group Inc.,
4 plaintiff, versus International Business Machines
5 Corporation, defendant. The record should indicate that
6 in this matter, the plaintiffs are represented by Mr.
7 Todd Shaughnessy and Mr. David Marriott. Is that
8 correct, sir?

9 MR. SHAUGHNESSY: We represent IBM.

10 THE COURT: I'm sorry. I screwed that up,
11 didn't I?

12 MR. SHAUGHNESSY: No -- well, they grabbed
13 the wrong seat.

14 THE COURT: Well, that may be. I'm easily
15 confused. Mr. McBride, welcome --

16 MR. MCBRIDE: Good morning, Your Honor.

17 THE COURT: -- and Mr. Hatch.

18 MR. HATCH: Yes.

19 THE COURT: Counsel, the purpose for this
20 hearing, as I understood it, and for which I reviewed
21 the docket entry which then indicated that this was
22 merely a status hearing to determine whether or not we
23 were going to need to hold a more extensive hearing as
24 to the discovery issues that appear to remain. Is that
25 your understanding as well?

1 MR. HATCH: That's correct, Your Honor. To
2 bring you up to date on what's happened since our last
3 hearing, as well -- as far as filings.

4 THE COURT: I have received some of them, as
5 well as a filing yesterday. I haven't had an
6 opportunity to review those in depth. If you want to
7 briefly tell me, I would be happy to do that.

8 MR. HATCH: I think the only thing that is
9 probably relevant, since this is just a status
10 conference, is that -- since we met last -- of course we
11 filed a -- they filed a response to what -- we filed a
12 motion to compel, which we told the Court we would do.
13 They have just received it yesterday (inaudible).

14 IBM has also filed a second motion to
15 compel, and based on what I see -- and I don't know if I
16 did the dates wrong -- right or wrong, but I'm sure Mr.
17 Shaughnessy will correct me -- is I believe our
18 opposition to that is due I think the 25th, sometime
19 next week, and I tried to calculate the dates based on
20 that, and it seems like their reply would be due
21 December 9th. And so when we had our last hearing
22 before Your Honor, I was hoping that we were going
23 to -- in my opinion -- to try to do all the motions to
24 compel in one hearing. So this other motion to compel
25 was not anticipated, at least not talked about at the

1 last hearing.

2 THE COURT: Although I have no reason to
3 believe we couldn't just incorporate it.

4 MR. HATCH: I agree. I guess what
5 I -- since they're -- I don't know if they intend to
6 (inaudible) coordinate after the hearing date, and then
7 I also wanted to raise with Your Honor as well, based on
8 the pleadings that have happened since the last hearing,
9 it probably would be important, although not -- we can
10 do without it, but we prefer to have one of the counsel
11 from the (inaudible) firm who has been most (inaudible)
12 involved with the discovery to be in attendance. I
13 think I told you at the last hearing that it did not
14 look like he could on the dates we picked.

15 THE COURT: And my recollection is that that
16 date was set primarily as the soonest date because of
17 counsel's request for an expedited hearing. Is that
18 right --

19 UNIDENTIFIED SPEAKER: That's correct.

20 THE COURT: -- initially, and so, you know,
21 I suppose the question then is posed to you about
22 whether or not -- because you haven't had time to
23 respond to this latest filing, whether you want to
24 attempt to respond so that we could continue to keep the
25 December 5th hearing date or whether we want to move it.

1 MR. SHAUGHNESSY: Thank you, Your Honor.

2 MR. HATCH: Well, I think that I'm only
3 talking about really a matter of weeks, and so I don't
4 think that that's going to (inaudible).

5 MR. SHAUGHNESSY: As I understand it, Your
6 Honor, the plaintiff's response to IBM's second motion
7 to compel, which I believe was raised as a possibility
8 at the last hearing, is actually due to ~~my~~. It is not
9 due in a week. And we served that document by hand on
10 Mr. Hatch on the 6th day of November. I believe that
11 amounts to today as the date that (inaudible).

12 If we could respond, Your Honor. I have
13 seen the paper, obviously, Your Honor. But we could
14 respond to that as promptly as possible. (Inaudible.)

15
16 December 5th (inaudible). As you know, we are
17 interested in having a hearing date (inaudible) are of
18 great importance and would not wish to see (inaudible).

19 THE COURT: Mr. Hatch, based upon counsel's
20 representations that they either have sufficiently
21 replied or responded or can't within the appropriate
22 time, I don't know -- I don't see any compelling reason
23 to continue the December 5th hearing date.

24 MR. HATCH: Ye ~~Um~~ I can quibble with the
25 service of last May, but I don't think that's a

1 relevant issue. The only reason I'm asking for that
2 extra week is based on the filings that have happen ~~me~~
3 since the last hearing. It would be very useful for us
4 to be able to have the representative from (inaudible),
5 because most of discovery has gone directly to
6 (inaudible) because there are volumes of it. If we have
7 to, we will do without him, we will do whatever Your
8 Honor wants. I prefer if he can be here -- and so I'm
9 not asking for some -- you know, I'm not for
10 months and months delay. I'm only asking for a week.

11 THE COURT: Mr. Hatch, I think that under
12 these particular circumstances where this issue was
13 raised before, that we'll maintain the December 5th
14 hearing date, all right?

15 MR. HATCH: That will be fine, Your Honor.

16 THE COURT: I did receive a copy, just for
17 information's sake, of an order gr ~~h~~ ~~am~~ ~~ing~~ pro hac vice
18 status on behalf of a Mr. Mark James in this matter.

19 MR. HATCH: Actually, I think Mark James is
20 the one who filed. He's a member of the firm.

21 THE COURT: He filed it? All right. Oh,
22 then -- he is associate local counsel. I'm still
23 learning, counsel. And I realize what my confusion may
24 be, Mr. atch. It seems like earlier this week you were
25 on that side for -- as defense, and so forgive my memory

1 loss.

2 Is there anything else that we need to
3 address this morning?

4 MR. HATCH: I think that was the issue, Your
5 Honor.

6 THE COURT: All right. Thank you for
7 accommodating the change in schedule this morning. We
8 found it necessary to double schedule this morning and I
9 thought it would be easier to move this matter.

10 MR. HATCH: It just gave us one less hour to
11 agonize over the hearing.

12 THE COURT: That's right, one less hour to
13 ago ~~in the~~ and I'm sure that this constituted agony for
14 both sides.

15 MR. HATCH: Thank you, Your Honor.

16 THE COURT: Anyway, we'll be in recess.
17 Thank you.

18 (Whereupon, this matter was concluded.)
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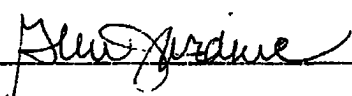
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STATE OF UTAH)
) ss.
COUNTY OF UTAH)

I, Geri Jardine, do hereby certify that the foregoing transcript was taken down by me stenographically from electronically recorded tapes and thereafter transcribed under my direction.

That the foregoing pages contain a true and accurate transcript of the electronically recorded proceedings and was transcribed by me to the best of my ability from the tapes furnished to me.


Geri Jardine