

January 28, 2009

UNITED STATES COURT OF APPEALS Elisabeth A. Shumaker  
Clerk of Court

FOR THE TENTH CIRCUIT

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SCO GROUP, a Delaware corporation,

Plaintiff - Appellant,

v.

No. 08-4217

NOVELL, INC., a Delaware corporation,

Defendant - Appellee.

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**ORDER**

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Before **KELLY** and **McCONNELL**, Circuit Judges.

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Pending before the court is “Appellant’s Unopposed Motion to Expedite Appeal” and the “Defendant-Appellee Novell, Inc.’s Response to Appellant’s Motion to Expedite Appeal.” The motion is granted in part.

Appellant appeals a decision of the district court related to UNIX operating system copyrights. Appellant asserts that the progress of other pending litigation is dependent on the resolution of this appeal and therefore asks that the appeal be expedited. The appellant asks to be ordered to file its opening brief by March 6, 2009, for the appellee to be ordered to file its response brief by April 6, 2009, and to be ordered to file a reply brief

by April 20, 2009. The appellee does not strongly object to the appeal being expedited, but does object to the briefing schedule, asking for a 30-day extension to file its response brief beyond that proposed by the appellant.

The speed at which the opening brief is filed is almost completely within the control of the appellant who now seeks expedited briefing. The appellant can file its opening brief and appendix at any time those documents are ready, thus triggering a due date for the filing of a response brief. Appellant can also file its reply brief the next day after the response brief is filed, should appellant so elect. Therefore, there is no need to set an expedited schedule for the filing of the opening brief and reply.

The court does direct, however, that once the time for the filing of the appellee's response brief is set based on the service date of the opening brief and appendix (see Fed. R. App. P. 31(a)(1)), the appellee is discouraged from filing any motion for extension of time within which to file its response brief. Further, if appellee does seek an extension of time, the appellee is limited to a single extension of time of no more than 15 days.

The court infers from the motion to expedite that once the appeal is briefed, the appellant would like the panel of judges assigned to the case to give this appeal expedited consideration over other cases. However, in this circuit, the appeal will not be assigned to a panel until after it is fully briefed. After the briefing is completed, the appellant may, if it so elects, file a motion asking that the case be given expedited consideration on the

merits by the panel ultimately assigned to hear this appeal.

Entered for the Court  
ELISABETH A. SHUMAKER  
Clerk of Court

A handwritten signature in black ink, appearing to read "Douglas E. Cressler", written over a faint rectangular stamp.

by:  
Douglas E. Cressler  
Chief Deputy Clerk