

# **EXHIBIT 1**

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

Robert Silver (admitted pro hac vice)  
Edward Normand (admitted pro hac vice)  
BOIES, SCHILLER & FLEXNER LLP  
333 Main Street  
Armonk, New York 10504  
Telephone: (914) 749-8200  
Facsimile: (914) 749-8300

Stuart H. Singer (admitted pro hac vice)  
BOIES, SCHILLER & FLEXNER LLP  
401 East Las Olas Boulevard – Suite 1200  
Ft. Lauderdale, Florida 33301  
Telephone: (954) 356-0011  
Facsimile: (954) 356-0022

Stephen N. Zack (admitted pro hac vice)  
BOIES, SCHILLER & FLEXNER LLP  
Bank of America Tower – Suite 2800  
100 Southeast Second Street  
Miami, Florida 33131  
Telephone: (305) 539-8400  
Facsimile: (305) 539-1307

*Attorneys for The SCO Group, Inc.*

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

**THE SCO GROUP, INC.**

Plaintiff/Counterclaim-Defendant,

v.

**INTERNATIONAL BUSINESS  
MACHINES CORPORATION,**

Defendant/Counterclaim-Plaintiff.

**DECLARATION OF  
DOUG MICHELS**

Case No. 2:03CV-0294DAK  
Honorable Dale A. Kimball  
Magistrate Judge Brooke C. Wells



I, Doug Michels, declare as follows:

1. I submit this declaration in connection with The SCO Group, Inc. v. International Business Machines Corporation, Civil Action No. 2:03CV-0294 DAK (D. Utah 2003), and The SCO Group v. Novell, Inc., Civil Action No. 2:04CV00139 DAK (D. Utah 2004). I make this declaration based upon personal knowledge.

**Career at Santa Cruz**

2. I co-founded The Santa Cruz Operation, Inc. ("Santa Cruz") with my father in 1978, and was then employed with the company in various executive management positions.
3. I was the President and Chief Executive Officer of Santa Cruz from April 1998 until May 2001, when Caldera International, Inc. ("Caldera") acquired certain divisions of Santa Cruz. Santa Cruz then changed its name to Tarantella, Inc., where I stayed on as President and Chief Executive Officer until 2003.
4. As the President and CEO of Santa Cruz, I became familiar with Santa Cruz's UNIX System V license agreements after we acquired the UNIX business and assets, including the UNIX copyrights, from Novell in 1995.
5. I have reviewed the declarations of former Santa Cruz employees Jim Wilt and Kim Madsen and agree with their explanation of the transaction with Novell and other issues.

**Santa Cruz's Rights Under the System V License Agreement**

6. Santa Cruz was itself a UNIX System V licensee prior to its acquisition of the UNIX business and copyrights from Novell. As a UNIX System V licensee, Santa Cruz understood it was obligated to keep confidential all parts of System V software, including modifications and derivative works, and including the methods and concepts therein.



After Santa Cruz obtained the UNIX business and assets from Novell, Santa Cruz viewed the agreements the same way and informed our customers of those confidentiality obligations.

7. I understand that others, including David McCrabb, may have offered less restrictive interpretations of the UNIX System V licenses than I have set forth above. To the extent those interpretations are at odds with the explanation given above, they are at odds with company practice and policy. I have reviewed the Declaration of Kim Madsen, who was Santa Cruz's Manager of Law and Corporate affairs, on this point and I agree with her explanation of the UNIX System V licenses. It was our policy and practice that the sales organization defer to the legal department on issues such as this.
8. The employees at Santa Cruz who had the most experience in interpreting and enforcing the UNIX System V license agreements were the members of the UNIX licensing group that had been part of UNIX Systems Labs ("USL") and Novell. The management of Santa Cruz relied to a great extent on the experience and views of such individuals which was consistent with the description set forth above.
9. In connection with the 1995 purchase from Novell, the parties agreed that (as is accurately explained by both Mr. Wilt and Ms. Madsen) Novell could retain the existing binary royalty stream even though the entire UNIX business, source code and related assets, including copyrights, were transferred to Santa Cruz. There was no intent to grant Novell any right to waive or to direct or require SCO to waive, any of its intellectual property rights or protections contained in the UNIX licenses.



10. After 1995, Santa Cruz's business with respect to the UNIX System V source code license agreements consisted primarily in collecting binary royalties attributable to sublicensed object code product. At the same time, the UNIX System V software included substantial intellectual property that Santa Cruz was using in later versions of its UNIX and UnixWare products. Accordingly, Santa Cruz had a strong continuing interest in protecting that property under the existing UNIX System V license agreements.

#### **IBM's System V License Buyout**

11. In early 1996, Novell, and IBM attempted to negotiate an agreement whereby Novell would be paid a buy-out settlement from IBM's obligation of paying binary royalties pursuant to its UNIX licenses. Novell even signed the agreement "on behalf of" Santa Cruz without authority to do so. Santa Cruz believed this unilateral action by Novell was contrary to SCO's rights under the APA. We notified Novell of our belief that their actions had breached our agreement with them and that we intended to aggressively pursue all available remedies under the agreement. After protracted discussion, correspondence and negotiation a settlement agreement was reached between Santa Cruz and Novell and Santa Cruz, Novell and IBM agreed to a modified Amendment No. X additionally, it was agreed Santa Cruz would receive a payment for this buy-out. It was my understanding that all parties clearly understood that the Amendment did not negatively impact our rights under the APA, and the related UNIX licenses, including our core source code rights.

12. No one ever expressed the view to me that Amendment No. X precluded Santa Cruz from terminating IBM's UNIX source code or sublicensing agreements in the event of a



breach. I would not have agreed to the terms of Amendment X if it had been explained to me that way. I also agree with Ms. Madsen's statements on this point.

**Project Monterey**

13. I supported and helped to negotiate Santa Cruz's work with IBM in Project Monterey in 1998, and I oversaw the progress of the work during my tenure at Santa Cruz. I thought that Project Monterey represented a valuable opportunity for both companies.
14. One of the principal components of Project Monterey was that Santa Cruz and IBM would work together as partners in the joint development and general commercial release of a product designed for use on a prospective Intel 64-bit chip.
15. In conjunction with the foregoing principal component of the Project, IBM would have the right to use Santa Cruz's UnixWare/SVR4 code in IBM's AIX for Power product, but the propriety of IBM's use of that code was inextricably linked to the release of a commercially viable joint product for use on the Intel 64-bit chip.
16. I am told that as early as October 2000, IBM had released a version of AIX for Power with hundreds of thousands of lines of UnixWare/SVR4 source code which I did not know at the time. At the same time, Santa Cruz was focused on moving the project forward and was looking forward to the release of the joint products as contemplated by the agreement between the IBM and Santa Cruz and we believed IBM was pursuing the same goal at that time.
17. Santa Cruz believed during the course of Project Monterey that IBM was serious about the joint development of a general commercial release of the joint product for use on the Intel 64-bit chip, and relied on IBM's repeated representations of its commitment to the

Project. I specifically recall a meeting with IBM executives, including Ron Lauderdale, in the summer of 2000 in which I asked IBM to confirm that it was not focusing on Linux at the expense of Project Monterey, and in which IBM assured me that they were pursuing Project Monterey vigorously. During the course of Project Monterey, IBM consistently maintained this position.

18. IBM also strenuously maintained that its support of Linux through the project known as Trillian (to port Linux to IA-64) in no way impacted their support of Project Monterey and that the free operating systems needed to support some IBM database products would not be a significant factor in the enterprise or high-end server markets where we were well positioned. We accepted IBM's assertions on this point.

PM

### **Santa Cruz's View of Linux**

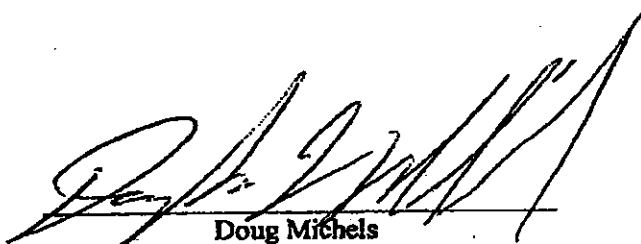
19. In mid to late 1999, because the Linux system was beginning to encroach into some small business uses and major players in the computer industry, including IBM, had announced support for Linux, Santa Cruz considered and preliminarily investigated the possibility that UNIX System V source code had been incorporated into Linux without authorization. Although this preliminary investigation indicated that there were some potential and suspicious problems with Linux, we concluded that it was not then in Santa Cruz's interests to undertake an exhaustive and expensive investigation of the issue. Santa Cruz did not undertake to analyze, for example, whether any version of Linux constituted a derivative work of any version of UNIX System V within the meaning of the copyright laws.
20. One of the key premises of Project Monterey, as representatives of IBM repeatedly confirmed to me, was that the parties were to create a family of UNIX-based products that would provide revenues to benefit both parties in the market for UNIX on the Intel architecture chips, including the 64-bit chip.
21. The intent of the Joint Development Agreement, as confirmed by IBM's representations, was that (among other things) the parties would jointly develop an IA-64 product and each receive royalties from the sales of that product; that the commercial release of the IA-64 product would permit IBM to use SCO's UnixWare source code for use in IBM's existing AIX operating system; and that IBM would permit SCO to use AIX source code to develop SCO's UnixWare product.
- gjm

22. When I and others at Santa Cruz informed IBM that Santa Cruz was concerned about IBM's announced support for Linux and how that might impact Project Monterey, IBM's response was to emphasize that Linux was not being supported by IBM as a commercially hardened operating system and would not substantially encroach on Santa Cruz's core markets or the markets targeted by Project Monterey, and that we need not worry about it.

23. By 1999, systems based on Intel processors and designed for corporate server environments had become more competitive with proprietary RISC based systems. With both Project Monterey products and Santa Cruz's other offerings, Santa Cruz was well positioned to obtain greater penetration into this market.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

November 9, 2006



Doug Michels