

(44)

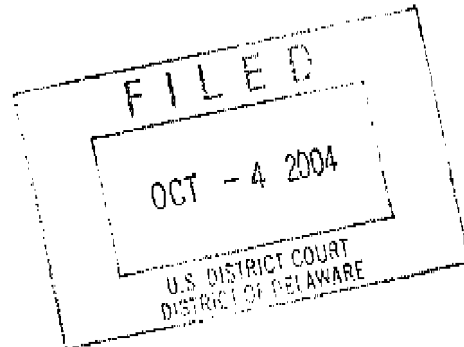
MORRIS, NICHOLS, ARSHT & TUNNELL

1201 NORTH MARKET STREET
P.O. Box 1347
WILMINGTON, DELAWARE 19899-1347

302 658 9200
302 658 3989 FAX

October 4, 2004

LESLIE A. POLIZOTTI
302 575 7415
302 425 3084 FAX
lpolizotti@mna.com



The Honorable Sue L. Robinson
United States District Court
844 North King Street
Wilmington, Delaware 19801

Re: Red Hat, Inc. v. The SCO Group, Inc., C.A. No. 03-772 (SLR)

Dear Chief Judge Robinson:

Pursuant to this Court's April 6, 2004 Order (D.I. 34), SCO respectfully submits this second summary of the status of the *SCO v. IBM* case pending before The Honorable Dale A. Kimball in the United States District Court for the District of Utah (the "Utah Case"). This summary updates the status of the Utah Case since July 6, 2004 (*see* D.I. 42).

Two motions that were originally scheduled for August 4, 2004 were heard before Judge Kimball on September 15, 2004:

1. Defendant/Counter-Plaintiff IBM's Motion for Partial Summary Judgment on Its Counterclaim for a Declaratory Judgment of Non-Infringement [Counterclaim Ten]; and
2. SCO's Motion to Dismiss or to Stay Count Ten of IBM's Second Amended Counterclaims.

Both parties made substantial submissions to the Court on these motions. Judge Kimball also heard on September 15, 2004, SCO's Rule 56(f) motion and IBM's Motion to Strike material submitted by SCO in opposition to IBM's above-referenced summary judgment motion. All of these motions are before Judge Kimball and are awaiting his decision.

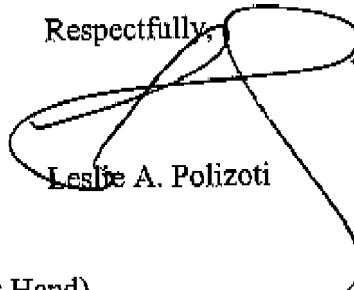
In addition to the above-referenced summary judgment motion, within the past two months, IBM has also filed two additional motions, seeking summary judgment on SCO's contract claims as well as IBM's Eight Counterclaim for copyright infringement relating to Linux. In response to those motions, on September 8, SCO filed a Motion to Enforce the Scheduling Order, which asked the Court to defer consideration of IBM's dispositive motions until after the close of fact discovery. Judge Kimball denied SCO's motion on October 1, 2004,

The Honorable Sue L. Robinson
October 4, 2004
Page 2

but the Court has provided SCO with additional time to respond to IBM's pending motions. SCO is preparing its responses to IBM's summary judgment motions on SCO's contract claims and IBM's Eight Counterclaim.

Finally, a number of discovery issues remain pending before the Magistrate Court. SCO has filed two applications seeking to compel the production of core, predicate discovery that IBM has now withheld for over a year. (Indeed, one of SCO's pending motions seeks to enforce the Magistrate Judge's March 3 Order, with which IBM still has not complied.) Magistrate Judge Wells has scheduled a hearing on all of the pending discovery issues for October 19, 2004.

Respectfully,

A handwritten signature in black ink, appearing to read "Leslie A. Polizoti". The signature is written in a cursive style with a large loop at the end.

Leslie A. Polizoti

cc: Peter T. Dalleo, Clerk (By Hand)
Josy Ingersoll (By Hand)
William F. Lee (By Fax)
Mark J. Heise (By Fax)

430513