

70. SCO's false and misleading statements have also damaged the reputation and prospects of the entire open-source community. SCO's misconduct undermines the substantial public interest in the provision of software that is reliable, inexpensive, and accessible by the general public.

O. SCO's Copyright Infringement

71. As stated, IBM has made contributions of source code to Linux under the GPL, some of which are identified below. IBM owns valid copyrights in these contributions, as illustrated below, and has identified them with appropriate copyright notices.

72. Notwithstanding SCO's allegations that IBM and others have breached SCO's intellectual property rights, SCO has infringed and is infringing IBM's copyrights in its Linux contributions.

73. IBM granted SCO and others a non-exclusive license to these copyrighted contributions on the terms set out in the GPL and only on the terms set out in the GPL. SCO breached its obligations under the GPL, however, and therefore its rights under the GPL terminated.

74. SCO has infringed and is infringing IBM's copyrights by copying, modifying, sublicensing and/or distributing Linux products after its rights under the GPL terminated. SCO has taken copyrighted source code made available by IBM under the GPL, included that code in SCO's Linux products, and copied, modified, sublicensed and/or distributed those products other than as permitted under the GPL.

P. SCO's Patent Infringement

75. In addition to infringing IBM's copyrights, SCO is engaged in pervasive acts of infringement of no fewer than four of IBM's patents, by making, using, selling and/or offering to sell a variety of products, including but not limited to: "UnixWare", a Unix operating system for Intel and AMD processor-based computer systems; "Open Server", an operating system platform; "SCO Manager", a web-based remote systems management solution for management of Linux and SCO Unix systems; and "Reliant HA", "clustering" software that permits interconnection of multiple servers to achieve redundancy.

Q. Effects of SCO's Misconduct and Its State of Mind

76. As a result of the misconduct described above, SCO has not only artificially inflated its stock price and been unjustly enriched, but also it has injured IBM and, more broadly, the open-source movement. SCO's misconduct has resulted in damage to IBM's business, including its reputation and goodwill, has interfered with its prospective economic relations and has required it unduly to divert resources to respond to SCO's baseless allegations. SCO has injured the open-source movement, of which it was once a part, by fostering fear, uncertainty and doubt about its and others' rights to use Unix, AIX, Dynix and Linux.

77. SCO's misconduct is especially egregious because SCO has implemented its scheme with actual knowledge or in reckless disregard of the fact that it does not have the rights that it seeks to assert (e.g., the right to terminate IBM's irrevocable and perpetual Unix rights). Moreover, SCO committed not to assert certain proprietary rights over or to restrict further distribution of any program distributed by SCO under the terms of the GPL.

FIRST COUNTERCLAIM

Breach of Contract

78. IBM repeats and realleges the averments in paragraphs 1 through 77, with the same force and effect as though they were set forth fully herein.

79. SCO is licensor and IBM licensee of the right to use and sublicense Unix software, as specified in the AT&T Agreements, Amendment X and other similar agreements, all of which are valid contracts.

80. IBM has performed all its duties and obligations under the AT&T Agreements, Amendment X and other similar agreements.

81. SCO has breached its express duties and obligations under the AT&T Agreements, Amendment X and other similar agreements by, among other things, purporting to terminate IBM's irrevocable and perpetual Unix rights and/or refusing to provide IBM adequate notice and opportunity to cure its alleged misconduct.

82. SCO has also breached the implied covenant of good faith and fair dealing under the AT&T Agreements, Amendment X and other similar agreements by affirmatively seeking to deprive IBM of the benefits to which it is entitled under those contracts through numerous acts of bad faith, including, among other things, making false and misleading statements to the public about SCO's and IBM's rights under the same.

83. IBM has suffered damages from SCO's breaches of contract in an amount to be determined at trial.

SECOND COUNTERCLAIM

Lanham Act Violation

84. IBM repeats and realleges the averments in paragraphs 1 through 83, with the same force and effect as though they were set forth fully herein.

85. IBM sells and distributes AIX and Linux-related products and services in interstate commerce, and IBM sold and distributed Dynix in interstate commerce.

86. SCO has made material false representations regarding AIX, Dynix and IBM's Linux-related products and services, which affect a customer's decision whether to purchase these products and services. Specifically, SCO has publicly misrepresented the legitimacy of these products and services by falsely representing that IBM no longer has the right, authority and license to use, produce and distribute these products and by misrepresenting SCO's own rights in and to Unix, AIX, Dynix and Linux.

87. SCO has published its false statements in a series of widely-distributed press releases, press interviews and other streams of commerce, as part of its bad faith campaign to discredit IBM's products and services in the marketplace, to increase the perceived value of SCO's limited rights to Unix and to promote SCO's own Unix operating systems, UnixWare and Open Server.

88. These statements are likely to cause confusion and mistake and have in fact caused confusion and mistake as to the characteristics of IBM's goods, products and/or services.

89. As a direct result of SCO's false representations, all of which are in violation of 15 U.S.C. § 1125, IBM has suffered damages in an amount to be determined at trial. IBM is also entitled to damages and attorneys' fees pursuant to 15 U.S.C. § 1117(a).

THIRD COUNTERCLAIM

Unfair Competition

90. IBM repeats and realleges the averments in paragraphs 1 through 89, with the same force and effect as though they were set forth fully herein.

91. IBM has invested over two decades and hundreds of millions of dollars in the creation and development of AIX. Through IBM's efforts, innovation and hard work, AIX has become one of the leading Unix operating systems, and IBM's products and services are sold and used throughout the United States. Similarly, IBM expended substantial resources to acquire Dynix and has invested substantial time and effort in developing its Linux-related products and services.

92. SCO has intentionally, knowingly, wrongfully and in bad faith engaged in a public pattern of conduct aimed at depriving IBM of the value of its AIX, Dynix and Linux-related products and services and misappropriating the same for the benefit of SCO's Unix licensing business as well as SCO's competing Unix operating systems. SCO's misconduct is likely to result in confusion in the marketplace and has in fact resulted in confusion concerning AIX, Dynix and Linux.

93. SCO has engaged in unfair competition by falsely claiming ownership of IBM's intellectual property as well as the intellectual property created by the open-source community; publishing false and disparaging statements about AIX and Dynix; making bad faith

misrepresentations concerning IBM's rights to Unix, AIX and Dynix; misusing and misrepresenting SCO's limited rights in Unix to injure IBM; and falsely accusing IBM of theft of SCO's intellectual property.

94. As a direct result of SCO's unfair competition, IBM has and will continue to suffer damage to its reputation, goodwill, and business in an amount to be determined at trial. Because SCO's acts of unfair competition were and are willful and malicious, IBM is also entitled to punitive damages.

FOURTH COUNTERCLAIM

Intentional Interference with Prospective Economic Relations

95. IBM repeats and realleges the averments in paragraphs 1 through 94, with the same force and effect as though they were set forth fully herein.

96. IBM is actively engaged in the development, manufacture and sale of AIX and products and services relating to Linux, and IBM has sold and distributed Dynix. IBM has prospective business relationships with numerous companies and individuals to whom IBM has sold and/or licensed these products and services and/or to whom IBM seeks to sell and/or license these products and services. IBM also has prospective business relationships with business and individual members of the Linux and open-source software development, distribution, service and computing communities with whom IBM seeks to do business in various capacities, including through research and development efforts.

97. SCO is fully aware of these prospective business relationships and the importance of the relationships to IBM's continued commercial success.

98. SCO has intentionally interfered with these relationships through improper means, including by making false and misleading statements to IBM's prospective customers that IBM no longer has the right, authority and license to use, produce and distribute AIX, Dynix and Linux-related products. SCO has also misrepresented its own rights relating to these operating systems. The purpose of SCO's unlawful conduct is to injure IBM by driving prospective customers of AIX, Dynix and IBM's Linux-related products and services away from purchasing and licensing the same from IBM.

99. Furthermore, SCO has intentionally interfered with IBM's valuable economic relationships with business and individual members of the Linux and open-source software communities by falsely and publicly accusing IBM of inserting "truckloads" of SCO's intellectual property into the Linux kernel and related software. Again, the purpose of SCO's unlawful conduct is to injure IBM by driving away these businesses and individuals from future open-source collaborations with IBM.

100. IBM has suffered damages from SCO's tortious interference with its economic relations in an amount to be determined at trial. Because SCO's tortious interference with IBM's prospective economic relations was and is willful and malicious, IBM is entitled to punitive damages.

FIFTH COUNTERCLAIM

Unfair and Deceptive Trade Practices

101. IBM repeats and realleges the averments in paragraphs 1 through 100, with the same force and effect as though they were set forth fully herein.

102. SCO has engaged in unfair and deceptive trade practices by, among other things, falsely representing that IBM no longer has the right, authority and/or license to use, produce and/or distribute AIX, Dynix and Linux-related products; misrepresenting SCO's and IBM's rights relating to these operating systems; and publishing false and disparaging statements about AIX, Dynix and Linux.

103. SCO's false statements and misrepresentations were made in connection with SCO's solicitation of business, and in order to induce IBM and others to purchase products and licenses from SCO. SCO's statements and misrepresentations are likely to cause confusion and misunderstanding as to the qualities, benefits and characteristics of AIX, Dynix and Linux. SCO has misrepresented the qualities, benefits and/or characteristics of these products.

104. SCO's misconduct was undertaken for the purpose of deceiving the marketplace and defaming IBM and has deceived and misled the public and IBM's customers; disparaged the goods, services, and business of IBM; and otherwise injured IBM's business in violation of N.Y. Gen. Bus. Law § 349 and the laws of other states.

105. IBM has provided SCO with notice of its false and misleading statements, and has given SCO an opportunity to correct those statements. SCO has refused and has instead opted to make more false and misleading statements.

106. As a direct result of SCO's unfair and deceptive trade practices, the public at large, including AIX, Dynix and Linux users, has been harmed by SCO's campaign to foster fear, uncertainty and doubt about AIX, Dynix and Linux. Moreover, IBM has suffered damages in an amount to be determined at trial. Because SCO's acts of unfair and deceptive trade

practices were and are willful, knowing and malicious, IBM is also entitled to treble damages and/or fees pursuant to N.Y. Gen. Bus. Law § 349(h).

SIXTH COUNTERCLAIM

Breach of the GNU General Public License

107. IBM repeats and realleges the averments in paragraphs 1 through 106, with the same force and effect as though they were set forth fully herein.

108. IBM has made contributions of source code to Linux under the GPL on the condition that users and distributors of such code, including SCO, abide by the terms of the GPL in modifying and distributing Linux products, including, for example, the requirement that they distribute all versions of software licensed under the GPL (original or derivative) under the GPL and only the GPL.

109. SCO has taken source code made available by IBM under the GPL, included that code in SCO's Linux products, and distributed significant portions of those products under the GPL. By so doing, SCO accepted the terms of the GPL (pursuant to GPL § 5), both with respect to source code made available by IBM under the GPL and with respect to SCO's own Linux distributions.

110. SCO has breached the GPL by, among other things, copying, modifying, sublicensing or distributing programs licensed under the GPL, including IBM contributions, on terms inconsistent with those set out in the GPL; and seeking to impose additional restrictions on the recipients of programs licensed under the GPL, including IBM contributions, distributed by SCO.

111. Based upon its breaches of the GPL and the misconduct described herein, SCO's rights under the GPL, including but not limited to the right to distribute the copyrighted works of others included in Linux under the GPL, terminated (pursuant to § 4 of the GPL). The GPL prohibits SCO from, among other things, asserting certain proprietary rights over, or attempting to restrict further distribution of any program distributed by SCO under the terms of the GPL, except as permitted by the GPL.

112. As a result of SCO's breaches of the GPL, countless developers and users of Linux, including IBM, have suffered and will continue to suffer damages and other irreparable injury. IBM is entitled to a declaration that SCO's rights under the GPL terminated, an injunction prohibiting SCO from its continuing and threatened breaches of the GPL and an award of damages in an amount to be determined at trial.

SEVENTH COUNTERCLAIM

Promissory Estoppel

113. IBM repeats and realleges the averments in paragraphs 1 through 112, with the same force and effect as though they were set forth fully herein.

114. SCO made a clear and unambiguous promise to IBM and others that SCO would copy, modify or distribute programs distributed by IBM and others under the GPL only on the terms set out in the GPL; and would not assert rights to programs distributed by SCO under the GPL except on the terms set out in the GPL.

115. IBM and others reasonably, prudently and foreseeably relied upon these promises, such as by making contributions under the GPL and committing resources to open-source projects.

116. SCO knew or should have known that IBM and others would rely and in fact relied upon SCO's promises and knew or should have known that those promises would induce and in fact induced action or forbearance on the part of IBM and others.

117. SCO was and is aware of all material facts relating to IBM's reliance on SCO's promises including but not limited to IBM's contributions under the GPL, SCO's distributions under the GPL and the intent, meaning and import of the GPL.

118. As a result of its reliance upon SCO's promises, IBM has sustained injuries and is entitled to an award of damages in an amount to be determined at trial. In addition to an award of damages, IBM is entitled to declaratory and injunctive relief, including but not limited to a declaration that SCO is not entitled to assert proprietary rights with respect to products distributed by SCO under the GPL except upon the terms set out in the GPL.

EIGHTH COUNTERCLAIM

Copyright Infringement

119. IBM repeats and realleges the averments in paragraphs 1 through 118, with the same force and effect as though they were set forth fully herein.

120. As stated, IBM has made contributions of source code to Linux under the GPL. IBM is, and at all relevant times has been, the owner of valid copyrights in these contributions, as well as of all the rights, title and interest in those copyrights.

121. IBM holds the following certificates of copyright from the United States Copyright Office (copies of which are attached hereto as Exhibits O - U), among others:

Registration No.	Date of Registration	Title of Work
TX 5-757-696	August 15, 2003	IBM Enterprise Volume Management System
TX 5-757-697	August 15, 2003	IBM Enterprise Class Event Logging
TX 5-757-698	August 15, 2003	IBM Dynamic Probes
TX 5-757-699	August 15, 2003	IBM Linux Support Power PC64
TX 5-757-700	August 15, 2003	IBM Omni Print Driver
TX 5-757-701	August 15, 2003	IBM Journaled File System
TX 5-757-702	August 15, 2003	IBM Next Generation Posix Threading

122. IBM has placed or caused to be placed a copyright notice on these contributions of source code to Linux under the GPL and has otherwise complied with the copyright laws of the United States in this respect. IBM does not permit the unauthorized copying of its Linux contributions.

123. IBM granted SCO and others a non-exclusive license to the above-listed copyrighted contributions to Linux on the terms set out in the GPL and only on the terms set out in the GPL. IBM made these contributions on the condition that users and distributors of its copyrighted code, including SCO, abide by the terms of the GPL in copying, modifying and distributing Linux products.

124. SCO has infringed and is infringing IBM's copyrights by copying, modifying, sublicensing and/or distributing Linux products except as expressly provided under the GPL. SCO has taken copyrighted source code made available by IBM under the GPL, included that code in SCO's Linux products, and copied, modified, sublicensed and/or distributed those products other than as permitted under the GPL. SCO has no right -- and has

never had any right -- to copy, modify, sublicense and/or distribute the IBM copyrighted code except pursuant to the GPL.

125. As a result of SCO's infringement, IBM has been damaged and is entitled to an award of actual and/or statutory damages pursuant to 17 U.S.C. § 504 in an amount to be proven at trial. Because SCO's infringement has been willful, deliberate and in utter disregard and derogation of IBM's rights, IBM is entitled to enhanced statutory damages pursuant to 17 U.S.C. § 504. IBM is entitled to costs and attorney's fees pursuant to 17 U.S.C. § 505.

126. In addition, IBM is entitled to injunctive relief pursuant to 17 U.S.C. § 502, as SCO will continue to infringe IBM's copyrights in violation of the copyright laws of the United States unless restrained by this Court. IBM is also entitled to an appropriate order pursuant to 17 U.S.C. § 503.

NINTH COUNTERCLAIM

Patent Infringement

127. IBM repeats and realleges the averments in paragraphs 1 through 126, with the same force and effect as though they were set forth fully herein.

128. IBM is the lawful owner, by assignment, of the entire right, title and interest in United States Patent No. 4,814,746 ("the '746 Patent"), duly and legally issued on March 21, 1989 to Miller et al., entitled "Data Compression Method". A copy of the '746 Patent is attached hereto as Exhibit V.

129. Upon information and belief, SCO has been and is infringing the '746 Patent within this judicial district and elsewhere by making, using, selling and/or offering to sell products, including UnixWare and Open Server, that practice one or more claims of the '746

Patent and therefore infringe that patent to the extent such infringing acts have occurred or occur during the effective period of that patent.

130. Upon information and belief, SCO will continue to infringe the '746 Patent unless enjoined by this Court.

131. IBM has been damaged by SCO's infringement of the '746 Patent, has been irreparably harmed by that infringement, and will suffer additional damages and irrevocable harm unless this Court enjoins SCO from further infringement.

132. Continued manufacture, use, sale or offer for sale of the infringing products, including UnixWare and Open Server, or evidence that SCO was aware of the '746 Patent, shall render SCO liable for willful infringement, as well as active inducement of infringement of the '746 Patent, making this an exceptional case and justifying the assessment of treble damages pursuant to 35 U.S.C. § 284, and the award of attorneys' fees pursuant to 35 U.S.C. § 285.

TENTH COUNTERCLAIM

Patent Infringement

133. IBM repeats and realleges the averments in paragraphs 1 through 132, with the same force and effect as though they were set forth fully herein.

134. IBM is the lawful owner, by assignment, of the entire right, title and interest in United States Patent No. 4,821,211 ("the '211 Patent"), duly and legally issued on April 11, 1989 to Torres, entitled "Method of Navigating Among Program Menus Using a Graphical Menu Tree". A copy of the '211 Patent is attached hereto as Exhibit W.

135. Upon information and belief, SCO has been and is infringing the '211 Patent within this judicial district and elsewhere by making, using, selling, and/or offering to sell products, including SCO Manager, that practice one or more claims of the '211 Patent and therefore infringe that patent to the extent such infringing acts have occurred or occur during the effective period of that patent.

136. Upon information and belief, SCO will continue to infringe the '211 Patent unless enjoined by this Court.

137. IBM has been damaged by SCO's infringement of the '211 Patent, has been irreparably harmed by that infringement, and will suffer additional damages and irrevocable harm unless this Court enjoins SCO from further infringement.

138. Continued manufacture, use, sale, or offer for sale of the infringing products, including SCO Manager, or evidence that SCO was aware of the '211 Patent, shall render SCO liable for willful infringement, as well as active inducement of infringement of the '211 Patent, making this an exceptional case and justifying the assessment of treble damages pursuant to 35 U.S.C. § 284, and the award of attorneys' fees pursuant to 35 U.S.C. § 285.

ELEVENTH COUNTERCLAIM

Patent Infringement

139. IBM repeats and realleges the averments in paragraphs 1 through 138, with the same force and effect as though they were set forth fully herein.

140. IBM is the lawful owner, by assignment, of the entire right, title and interest in United States Patent No. 4,953,209 ("the '209 Patent"), duly and legally issued on August 28, 1990 to Ryder et al., entitled "Self-Verifying Receipt and Acceptance System for

Electronically Delivered Data Objects". A copy of the '209 Patent is attached hereto as Exhibit X.

141. Upon information and belief, SCO has been and is infringing the '209 Patent within this judicial district and elsewhere by making, using, selling and/or offering to sell products, including UnixWare, that practice one or more claims of the '209 Patent and therefore infringe that patent to the extent such infringing acts have occurred or occur during the effective period of that patent.

142. Upon information and belief, SCO will continue to infringe the '209 Patent unless enjoined by this Court.

143. IBM has been damaged by SCO's infringement of the '209 Patent, has been irreparably harmed by that infringement, and will suffer additional damages and irrevocable harm unless this Court enjoins SCO from further infringement.

144. Continued manufacture, use, sale or offer for sale of the infringing products, including UnixWare, or evidence that SCO was aware of the '209 Patent, shall render SCO liable for willful infringement, as well as active inducement of infringement of the '209 Patent, making this an exceptional case and justifying the assessment of treble damages pursuant to 35 U.S.C. § 284, and the award of attorneys' fees pursuant to 35 U.S.C. § 285.

TWELFTH COUNTERCLAIM

Patent Infringement

145. IBM repeats and realleges the averments in paragraphs 1 through 144, with the same force and effect as though they were set forth fully herein.

146. IBM is the lawful owner, by assignment, of the entire right, title and interest in United States Patent No. 5,805,785 (“the ‘785 Patent”), duly and legally issued on September 8, 1998 to Dias et al., entitled “Method for Monitoring and Recovery of Subsystems in a Distributed/Clustered System”. A copy of the ‘785 Patent is attached hereto as Exhibit Y.

147. Upon information and belief, SCO has been and is infringing the ‘785 Patent within this judicial district and elsewhere by making, using, selling and/or offering to sell products, including Reliant HA, that practice one or more claims of the ‘785 Patent and therefore infringe that patent to the extent such infringing acts have occurred or occur during the effective period of that patent.

148. Upon information and belief, SCO will continue to infringe the ‘785 Patent unless enjoined by this Court.

149. IBM has been damaged by SCO’s infringement of the ‘785 Patent, has been irreparably harmed by that infringement, and will suffer additional damages and irrevocable harm unless this Court enjoins SCO from further infringement.

150. Continued manufacture, use, sale or offer for sale of the infringing products, including Reliant HA, or evidence that SCO was aware of the ‘785 Patent, shall render SCO liable for willful infringement, as well as active inducement of infringement of the ‘785 Patent, making this an exceptional case and justifying the assessment of treble damages pursuant to 35 U.S.C. § 284, and the award of attorneys’ fees pursuant to 35 U.S.C. § 285.

THIRTEENTH COUNTERCLAIM

Declaratory Judgment

151. IBM repeats and realleges the averments in paragraphs 1 through 150, with the same force and effect as though they were set forth fully herein.

152. SCO has breached its contractual obligations to IBM, violated the Lanham Act, engaged in unfair competition, interfered with IBM's prospective economic relations, engaged in unfair and deceptive trade practices, breached the GPL, infringed IBM copyrights and infringed IBM patents, as stated above.

153. Pursuant to 28 U.S.C. § 2201, IBM is entitled to declaratory relief with respect to SCO's and IBM's rights, including among other things a declaration that SCO has violated IBM's rights as outlined above by breaching its contractual obligations to IBM, violating the Lanham Act, engaging in unfair competition, interfering with IBM's prospective economic relations, engaging in unfair and deceptive trade practices, breaching the GPL, infringing IBM copyrights and infringing IBM patents, and is estopped as outlined above.

154. Moreover, IBM is entitled to a declaration that (1) SCO has no right to assert, and is estopped from asserting, proprietary rights over programs that SCO distributed under the GPL except as permitted by the GPL; (2) SCO is not entitled to impose restrictions on the copying, modifying or distributing of programs distributed by it under the GPL except as set out in the GPL; and (3) any product into which SCO has incorporated code licensed pursuant to the GPL is subject to the GPL and SCO may not assert rights with respect to that code except as provided by the GPL.

155. There is a justiciable controversy between IBM and SCO with respect to all of the issues described above.

156. Absent declaratory relief, SCO's misconduct will continue to cause injury to IBM, the open-source community and the public at large.

PRAYER FOR RELIEF

WHEREFORE, counterclaim-plaintiff IBM prays that this Court enter judgment on the counterclaims in favor of IBM and against SCO:

- (a) awarding IBM compensatory damages;
- (b) awarding damages pursuant to 15 U.S.C. § 1117(a) and 17 U.S.C. § 504;
- (c) awarding IBM punitive damages;
- (d) granting IBM treble damages pursuant to 35 U.S.C. § 284;
- (e) granting IBM declaratory relief, including a declaration that (i) SCO has violated IBM's rights as outlined above by breaching its contractual obligations to IBM, violating the Lanham Act, engaging in unfair competition, interfering with IBM's prospective economic relations, engaging in unfair and deceptive trade practices, breaching the GPL, infringing IBM copyrights and infringing IBM patents; (ii) SCO has no right to assert, and is estopped from asserting, proprietary rights over programs that SCO distributed under the GPL except as permitted by the GPL; and is not entitled to impose restrictions on the copying, modifying or distributing of programs distributed by it under the GPL except as set out in the GPL; and (iii) any product into which SCO has incorporated code licensed pursuant to the GPL is subject to the GPL and SCO may not assert rights with respect to that code except as provided by the GPL.

(f) granting IBM injunctive relief, enjoining and restraining SCO and its affiliates, subsidiaries, officers, agents, servants, employees, attorneys, successors and assigns and all others persons acting in concert with them, from further violating IBM's rights as described above, including in particular from (i) misrepresenting SCO's rights and IBM's rights to Unix technology, such as that SCO can, will or has in fact revoked IBM's right to use Unix, (ii) misrepresenting that IBM no longer has the right, authority and license to use, produce and distribute AIX, Dynix and IBM's Linux-related products; (iii) publishing false and disparaging statements about AIX, Dynix and IBM's Linux-related products; (iv) engaging in further acts of unfair competition; (v) claiming certain ownership rights over programs made available under the GPL; (vi) engaging in unfair and deceptive trade practices; (vii) further infringement of IBM's copyrights; and (viii) further infringement or inducement of infringement of the '746, '211, '209 and '785 Patents;

(g) awarding IBM costs, expenses and reasonable attorneys' fees pursuant to 35 U.S.C. § 285, 15 U.S.C. § 1117(a), Utah Code Ann. § 13-24-5, N.Y. Gen. Bus. Law § 349(h), and 17 U.S.C. § 505;

(h) awarding IBM pre- and post-judgment interest on the damages caused to IBM as a result of all wrongful acts alleged herein; and

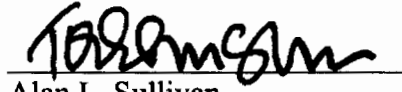
(i) granting IBM such other and further relief as this Court deems just and proper, including costs, disbursements and reasonable attorneys' fees.

JURY DEMAND

IBM demands a trial by jury on all issues so triable.

DATED this 25th day of September, 2003

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CERTIFICATE OF SERVICE

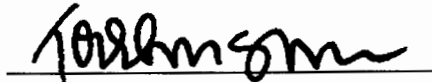
I hereby certify that on the 25th day of September, 2003, a true and correct copy of the foregoing **COUNTERCLAIM-PLAINTIFF IBM'S AMENDED COUNTERCLAIMS AGAINST SCO** was delivered to the following by U.S. Mail, postage prepaid:

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