

EXHIBIT 32

3/25/2009 Frankenberg, Novell v Microsoft, USDC Maryland

UNITED STATES DISTRICT COURT

DISTRICT OF MARYLAND

IN RE MICROSOFT CORP.)
ANTITRUST LITIGATION)
) MDL Docket No. 1332
)
Novell, Inc. v. Microsoft)
Corporation,) Hon. J. Frederick Motz
)
Civil Action No.)
JFM-05-1087)

VIDEOTAPED DEPOSITION OF ROBERT FRANKENBERG

March 25, 2009 - 8:01 a.m.

Location: Ray, Quinney & Nebeker
86 North University Avenue, Suite 430
Provo, Utah

Reporter: Vicky McDaniel, CSR, RPR, RMR

Notary Public in and for the State of Utah

Videographer: Ryan Reverman, CLVS

A P P E A R A N C E S

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VIDEOGRAPHER: Ryan Reverman

1 antitrust claim that Mr. Bradford thought Novell had
2 against Microsoft. Is that fair?

3 MR. LEVERIDGE: You're referring to the
4 claim that he discussed in the 1994 document that we
5 looked at before?

6 MR. TULCHIN: No, I want to -- my question
7 was my question.

8 MR. LEVERIDGE: Then I'm going to object
9 to the form of the question as vague and subject to
10 lots of different interpretations. So I'll object to
11 the form of that question.

12 Q. (BY MR. TULCHIN) Can you answer it the
13 way it was?

14 A. Can you tell me what it was? Sorry.

15 Q. Sure. In the same transaction when Novell
16 sold DR DOS to Caldera, Novell also sold to Caldera
17 an antitrust claim of action against Microsoft. Is
18 that right?

19 A. For acts having to do with DR DOS, yes.

20 Q. Would you say they were for acts having to
21 do with DR DOS and the operating system market?

22 MR. LEVERIDGE: I'm going to object to the
23 question, asked and answered.

24 THE WITNESS: Do I answer or not?

25 MR. LEVERIDGE: Well, I've had a

1 continuing objection to the use of the operating
2 system market without clarifying it, whether it's
3 dealing with DR DOS or broader than that. So I'll
4 continue to object.

5 THE WITNESS: We sold with it the right to
6 pursue antitrust litigation having to do with acts
7 that occurred in selling against DR DOS.

8 Q. (BY MR. TULCHIN) Well, let me go back,
9 Mr. Frankenberg. I can show you some documents on
10 this. I probably will.

11 A. Okay.

12 Q. But the transaction with Caldera I think
13 you agree with me took place in 1996. Is that right?

14 A. I believe that's right, yeah.

15 Q. And from the time you arrived at Novell --
16 we saw Mr. Bradford's welcome memo earlier -- from
17 the time you arrived in 1994, there was discussion
18 about possibly bringing a lawsuit against Microsoft.

19 A. Yes.

20 Q. True?

21 A. True.

22 Q. Exhibit 10, third paragraph says the
23 following. "Novell has placed no restrictions on
24 Caldera as far as its ability to promulgate a lawsuit
25 against Microsoft as a result of Caldera's ownership

1 of DOS based on previous antitrust violations of
2 Microsoft. Caldera is free to do whatever they wish
3 with this asset."

4 I just read that whole paragraph. Is that
5 all correct, as far as you remember it?

6 A. It should have -- it would have been
7 clearer had it said DR DOS. It used DOS as a
8 substitute for that. So if it had said DR DOS, it
9 would have been more accurate.

10 Q. Well, with that amendment, which I
11 understand your testimony, you're saying that DOS in
12 that paragraph would be better written as DR DOS?

13 A. Yes. Because that's what was actually
14 sold.

15 Q. All right. Now, with that amendment, if
16 we change the word "DOS" to "DR DOS," as far as
17 you're concerned, is everything that's stated in that
18 paragraph correct?

19 A. I guess it would be clearer if it said on
20 previous antitrust violations of Microsoft having to
21 do with DR DOS, but...

22 Q. Do you agree that Novell placed no
23 restrictions on Caldera as far as its ability to
24 promulgate a lawsuit?

25 A. Alleging violations of antitrust having to

1 do with DR DOS?

2 Q. Right.

3 A. I agree with that as I amended it, yes.

4 Q. Okay. So your testimony, Mr. Frankenberg,
5 is that with respect to any Microsoft antitrust
6 violations having to do with DR DOS, Novell placed no
7 restrictions on Caldera as far as bringing and
8 prosecuting that claim. Agreed?

9 A. Could you say that again, please?

10 MR. TULCHIN: Would you read that, Vicky?

11 (The pending question was read.)

12 THE WITNESS: Yes.

13 Q. (BY MR. TULCHIN) Now, how much cash, if
14 you remember, did Caldera pay Novell in the
15 transaction in '96?

16 A. I don't recall exactly. I think it was
17 around a million dollars.

18 Q. Does \$400,000 sound right?

19 A. Could be. I know it was a relatively
20 small amount.

21 Q. Novell retained an interest in any
22 proceeds of the case, right?

23 A. Retained an interest in proceeds of any
24 revenue or any results of a suit, yes.

25 Q. So the way the deal was structured, if