

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MARYLAND

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5
6 IN RE MICROSOFT CORP.
7 ANTITRUST LITIGATION
8 This Document Relates to:
9 Novell, Inc. v. Microsoft Corporation

10
11 Civil Action
12 No. JFM-05-1087

13
14 DEPOSITION OF:
15 WILLIAM HENRY GATES, III
16 VOLUME II

17
18 May 19, 2009

19
20 9:49 a.m.

21
22
23 VIDEOTAPED DEPOSITION BEFORE ZOYA O.
24 SPENCER, at K & L GATES, 925 Fourth Avenue, Suite
25 2900, Seattle, Washington, on May 19, 2009,
26 commencing at 9:49 in the morning, pursuant to
27 notice.

28
29 JOSEPH ALBANESE & ASSOCIATES
30 Certified Shorthand Reporters
31 250 Washington Street
32 Toms River, New Jersey 08753
33 -
34 Telephone (732) 244-6100
35 Fax (732) 286-6316
36
37

1 you know, and I'm not the one who decided
2 which APIs would be published in which
3 way.

4 This is about a reorganization and
5 what people are going to be missioned to
6 do. And there were several more
7 reorganizations that came after this
8 before Chicago finally got done, and as
9 Cairo changed and as Office changed in the
10 next couple of years.

11 MR. JOHNSON: What's our time left
12 on this tape?

13 THE VIDEOGRAPHER: Right now we
14 have 13 minutes.

15 MR. JOHNSON: Okay.

16 BY MR. JOHNSON:

17 Q Mr. Gates, let me show you what has
18 been marked -- it hasn't been marked.

19 MS. WILCOX: 14 from the last
20 deposition.

21 MR. JOHNSON: Oh, I'm sorry. One
22 moment, I got the wrong one.

23 (Exhibit No. 24 was marked.)

24 BY MR. JOHNSON:

25 Q Mr. Gates, let me show you what has

1 been marked Gates Exhibit No. 24. This is an
2 e-mail from you to a large number of people
3 within Microsoft, Subject matter: Shell plans -
4 iShellBrowser, dated Monday, October 3rd, 1994.

5 Do you recall this e-mail, sir?

6 A Not in particular, but, you know, I
7 look at it, it's an e-mail that I sent around
8 this time frame.

9 Q One of the recipients is Brian
10 MacDonald. Was he working on REN at the time?

11 A Likely.

12 Q I would like to refer your
13 attention to the first two paragraphs of this
14 e-mail which state, "It's time for a decision on
15 iShellBrowser. This is a tough decision. The
16 Chicago team has done some great work in
17 developing a graphical user interface that will
18 be a big step forward for millions of people.
19 The explorer is an important part of this because
20 it provides a neat paradigm for finding
21 interesting information. The shell group did a
22 good job defining extensibility interfaces. It
23 is also very late in the day to making changes to
24 Chicago and Capone," close quote.

25 When you say that the shell group

1 did a good job defining extensibility interfaces,
2 are you referring to the Chicago shell group
3 here, sir?

4 A It's not clear. Could be the Cairo group
5 but --

6 Q Well, aren't you talking about the
7 Chicago team in this paragraph, sir?

8 A Right, but they didn't do what I had
9 wanted.

10 Q I've heard that, sir, quite a few
11 times. Now I'm just asking you whether, when
12 you're referring to the shell group here, you're
13 talking about the Chicago shell group and the
14 extensibility interfaces that they had developed.

15 A So what's the question?

16 Q The question is: In the second
17 paragraph of this e-mail from you to all these
18 people within Microsoft, when you state, "That
19 the shell group did a good job defining
20 extensibility interfaces," are you referring to
21 the Chicago shell group?

22 A I'm not sure if that's the Cairo or
23 Chicago group.

24 Q You state, quote, "It is also very
25 late in the day to making changes to Chicago and

1 Capone," close quote.

2 Why was it very late in the day to
3 make these changes, sir?

4 A As you get closer to your ship date, you
5 want to make less changes.

6 Q In your next paragraph you state,
7 quote, "it is hard to know how much actual market
8 benefit iShellBrowser integration would bring."

9 A I -- yeah, keep going.

10 Q And you go on to say -- and you
11 talk about Chicago being successful either way,
12 et cetera.

13 A No, I didn't --

14 Q I can read it in but that's just a
15 waste of time, you can read it to yourself. In
16 the last sentence you state, quote, "This is not
17 to say that there was anything wrong with the
18 extensions - on the contrary they a very nice
19 piece of work."

20 What was a very nice piece of work,
21 sir, the iShellBrowser extensions?

22 A No, this is about iShellBrowser. What
23 I'm -- it appears that I've gotten to the point
24 that I'm cancelling the idea, and I say -- I say
25 here, "I have decided that we should not publish

1 the extensions. We should wait until we have a
2 way to do a high level of integration which would
3 be harder for likes of Notes, WordPerfect to
4 achieve and which will give Office a real
5 advantage."

6 So the level of integration where
7 you can't invoke the application is just not
8 interesting enough to us or anyone else. And at
9 the time I'm saying to these people, hey, Capone
10 is not going to use this, you know, I'm being
11 nice to them and saying, hey, you're nice people
12 but, you know, we're going to change this, we're
13 just not -- not going to use it in Capone, we're
14 just not going to move forward. Because the
15 whole idea of that right pane integration, you
16 know, what they had done is so trivial, it -- it
17 didn't make a dig difference. And so I say, "I
18 don't think the integration will have a marked
19 effect in terms Capone competing with cc:Mail."
20 I believe Chicago will be successful either way,
21 and so I'm pointing out the relative unimportance
22 of this whole topic.

23 Q I'm sure these were nice people,
24 sir, I don't have any doubt about that. But what
25 you actually state, that there was nothing wrong

1 with these extensions; correct , sir?

2 A I'm saying that I'm cancelling them and I
3 give the reason that I'm cancelling them. Not
4 that the code was terrible code or they're
5 terrible people, but what was done was so trivial
6 that I don't -- I didn't think it was worth the
7 trouble and I didn't think it would affect
8 Chicago and I didn't think it would affect
9 Capone. And I'm very, very explicit: I believe
10 Chicago will be successful either way; I don't
11 think the integration will have a marked effect
12 in terms of Capone.

13 So what I'm saying is, hey, I'm
14 being nice to you guys, I'm saying nice things,
15 I'm not saying your code was bad, but the work
16 you did doesn't matter a whit, and before we try
17 and do anything like this again, let's do it in a
18 way that would allow some real integration.

19 Q Isn't it a fact, sir, that you had
20 recently made the decision to port the entire
21 Chicago API set to Windows NT?

22 A I don't know the chronology relative to
23 this memo, but yes, the Cairo shell effort got
24 moved into Office. And then to make the actual
25 shipment date for NT, we went ahead and we took

1 the Chicago shell code base and we decided -- we
2 had essentially the two shell groups with a lot
3 of tension because one was still evolving and the
4 other one had to be a superset of the others.
5 You even showed me some e-mail where there was
6 tension about one group saying, hey, they're
7 trying to make our thing too fat and slow and
8 they're trying to make us compatibility; the
9 other group was saying they're trying to make us
10 have compatibility with this weird non-OLE thing.
11 So there had been a lot of tension there. That
12 was resolved because the Cairo shell thing didn't
13 make good progress and so we decided to use the
14 code base that had been on 9X and use that for NT
15 as well.

16 Q Let's not let the chronology pass
17 us by. Let me show you what has been previously
18 marked as Bates Exhibit 14, which is an e-mail
19 from Mr. Allchin. And if you turn to the second
20 page of that e-mail which is dated September
21 27th, 1994, referring you to the page Bates stamp
22 ending 119, third full paragraph, "Bill recently
23 made a decision to move the Cairo shell effort to
24 Office," et cetera, et cetera.

25 Does that refresh your recollection

1 that in about the same time that you pulled the
2 iShellBrowser from Chicago you made the decision
3 to move the entire Chicago API set to Windows NT?

4 MR. HOLLEY: Objection to the form
5 of the question. I think we need to
6 change the tape.

7 BY MR. JOHNSON:

8 Q You may respond, Mr. Gates.

9 MR. HOLLEY: Well, if you're going
10 to persist in asking him the question.
11 You're talking about two different things
12 and I don't think you want the record to
13 agree. There's a big difference between
14 Windows 95 shell and the Win32 API set.

15 But with that objection, if you
16 understand the question you can answer it.

17 THE WITNESS: Yes, in terms of
18 chronology, it looks like before September
19 27th, 1994, although I don't know when,
20 that the fact that the Cairo shell thing
21 wasn't going well, that we had announced
22 that to people and moved those -- those
23 people over to Office. Later when they
24 went to Office their work came to no end
25 as well. But the first decision was to

1 move them to Office and it was later that
2 we decided, hey, that work has no -- we're
3 not going to use that work.

4 BY MR. JOHNSON:

5 Q Mr. Gates, prior to your decision
6 to pull the namespace extensions, hadn't you
7 decided to move the Chicago shell code base into
8 the NT workstation?

9 MR. HOLLEY: Object to the form of
10 the question.

11 THE WITNESS: We didn't move. We
12 decided that the shell code base would be
13 the same for the two groups.

14 MR. JOHNSON: Why don't we go off
15 the record now.

16 THE VIDEOGRAPHER: This marks the
17 end of tape No. 2, Volume II of the
18 deposition of William Henry Gates, III.
19 The time is 11:54 a.m. We are off the
20 record.

21 (A brief recess was taken.)

22 THE VIDEOGRAPHER: This is the
23 beginning of tape No. 3, Volume II of the
24 deposition of William Henry Gates, III.
25 The time is 12:01 p.m. We are on the

1 record.

2 BY MR. JOHNSON:

3 Q Mr. Gates, referring you back again
4 to Exhibit 24, in the third paragraph you talk
5 about the struggle versus Notes and the
6 Office/REN team and you go on at some length
7 about them and then you state, "The Ren team has
8 a lot of challenges and compatibility would be an
9 extra effort for" -- "for them of at least 5 man
10 years.

11 When you say, "compatibility would
12 be an extra effort for the Ren team," what do you
13 mean?

14 A I'm not sure.

15 Q Wouldn't it be fair to say that REN
16 had failed to take advantage of the extensibility
17 offered by the namespace extensions?

18 A No. As this memo says, what ended up
19 being done was trivial and unimportant and I said
20 that we should wait until we have a higher level
21 of integration which would include the right pane
22 type capability. Sitting here 16 years later, we
23 never did that higher level of integration, and
24 so that never became a basis of competition in
25 any way, shape or form for any of these

1 applications. So the dream of that right pane
2 thing I wanted to try out never happened in this
3 time frame, never happened in any later time
4 frame.

5 Q That's about the second or third
6 time that you said that this was trivial and
7 unimportant. Do you get always involved and
8 trivial and unimportant decisions?

9 A Well, I -- no. I wrote this e-mail, and
10 in it I say I believe Chicago will be successful
11 either way and I say it won't have a marked
12 effect on Capone. And so I'm pointing out that
13 the decision to take this thing which didn't have
14 the part that I had shown an interest in, that
15 that never gotten done, the decision to say no,
16 let's not use this thing in applications, that
17 decision was not a big deal, because the success
18 of Chicago, success of Capone, would be just fine
19 without using these extensions in any of our
20 applications.

21 Q Isn't that what you had complained
22 about six months ago that REN needed to be
23 integrated into the Chicago shell like Capone had
24 done?

25 A Capone did not -- when Windows 95 finally

1 shipped, Capone did not get integrated into the
2 shell in any meaningful way, nor did any future
3 version of REN have that happen.

4 So whatever I meant, you know, that
5 idea of some relationship with the shell, which I
6 referred to as a, you know, higher level of
7 integration in this e-mail, it -- it never got
8 done. We worked on other features instead.

9 Q It was a pretty simple question,
10 Mr. Gates. In Exhibit 13 didn't you state that
11 REN had to be integrated into the shell like
12 Capone?

13 A And that -- Capone was never integrated
14 into the shell. We know that when windows 95
15 ships, there's no meaningful integration between
16 Capone and the shell. And we know that REN which
17 later ships as Outlook has no meaningful
18 integration into the shell.

19 So my dreams in Exhibit 17 or even
20 what I thought was going on with Capone, that
21 didn't happen. Capone was not integrated into
22 the shell in some deep way when it finally ships.

23 Q What do you mean when you say
24 compatibility would be an extra effort for the
25 REN team?

1 MR. HOLLEY: Objection, asked and
2 answered.

3 THE WITNESS: Are we back on
4 Exhibit 24?

5 BY MR. JOHNSON:

6 Q Yes.

7 A So you're repeating yourself?

8 Q I want to know what you meant by
9 this extra effort. It apparently is going to
10 take five man years --

11 A I said --

12 Q -- to achieve compatibility?

13 A -- I don't know what that sentence
14 referred to. But compatibility with what?

15 Q That's what I'm asking.

16 A I don't -- I don't know what I was
17 referring to there. Basically I'm --

18 Q What is a man year?

19 A Depends on your vacation policy. It's a
20 period of work that a man gets done in a year.

21 Q Okay. So five developers working
22 for a year to achieve compatibility, that's what
23 you're saying here?

24 A But with what?

25 Q Well, I don't know, sir. It's your

1 e-mail, so if you don't -- if you can't tell me,
2 then I'm certainly not going to guess.

3 What I'm trying to determine now
4 here is, when you say it would take five man
5 years for REN to achieve compatibility, that
6 would be the equivalent of five developers
7 working for a year to achieve compatibility,
8 correct?

9 A Yeah, but with what?

10 Q The REN team, they would have the
11 source code available to them from Chicago,
12 right?

13 A They wouldn't use that in any of their
14 work.

15 Q That wasn't the question. The
16 question was simply: Would the REN team have
17 available to them the source code from Chicago?

18 A I don't know how -- what was done in terms
19 of blocking access to Windows source code or not
20 between various groups at Microsoft. You
21 wouldn't want to look at that because you always
22 want to know what are the parts that are going to
23 be maintained version to version, and so you can
24 look explicitly and see, okay, those are the
25 app -- app APIs that get called. And those are

1 the things that you've got the commitment to
2 maintain.

3 Q Turning again to Exhibit 24 and
4 continuing with the fifth paragraph there.
5 Quote, "I have decided that we should not publish
6 these extensions. We should wait until we have a
7 way to do a high level of integration that will
8 be harder for the likes of Notes, WordPerfect to
9 achieve, and which will give Office a real
10 advantage."

11 Did Mr. Silverberg agree with your
12 decision?

13 A I don't know what you mean, did he agree
14 with the decision.

15 Q Your decision not to publish these
16 extensions --

17 A I'm not --

18 Q -- as I just read. Did he agree
19 with that decision?

20 A I'm not sure.

21 Q And the higher level of integration
22 to which you refer was going to take place in
23 Office96 --

24 A It nev- --

25 Q -- isn't that right, Mr. Gates?

1 A No, it never happened. It wasn't in
2 Office96. There wasn't a line of code done for
3 it in Office96.

4 Q And this higher level of
5 integration was intended to give your Office
6 product a real advantage over Notes and
7 WordPerfect, correct?

8 A If we had come up with a way of doing an
9 integration that was beneficial to users, it's
10 possible we could have done that better than
11 other people. It turns out we never did come up
12 with that way, even though I had dreamed about
13 using this right pane approach as a better way to
14 do integration. But we never came up with that
15 way. Now it's possible we would have come up
16 with that way and somebody would have used it
17 better than our apps group. It's all a question
18 of execution who takes best advantage of the
19 opportunity.

20 Q In 1994 at this time period you
21 believed that this higher level of integration
22 would give your Office product a real advantage
23 over Notes and WordPerfect, correct?

24 A I thought that there might exist a
25 non-trivial approach that would give us an

1 opportunity to innovate. Now I thought the
2 direction to that approach would be to let the
3 application run in the right pane. As we moved
4 forward, we never tried to do that higher level
5 of integration; we found other things to work on.
6 And so the opportunity we would have had to be
7 the best innovator in that space, or other people
8 would have, never came about. We never did the
9 higher level of integration that's referred to
10 here.

11 Q You knew at the time you made this
12 decision October of 1994 that Capone and Marvel
13 were using the namespace extensions; isn't that
14 correct, sir?

15 A I actually think Capone did not use them.
16 It looks like in the memo I thought it did, but I
17 actually think Capone did not.

18 Q I'm sorry, sir. So you stated one
19 thing in the memo but you now believe something
20 else?

21 A No , when I wrote the memo I say -- let's
22 see, where does it go? Looked like when I wrote
23 the memo I say that they can, but I actually --
24 my recollection is that Capone did not.

25 But now we're talking about

1 something that doesn't have an effect upon the
2 success of Capone because you're not actually
3 running the application, you're just clicking off
4 a top-level window.

5 Q You also knew, sir, that the
6 iShellBrowser APIs would continue to be used by
7 Windows 95 for Microsoft-provided views like the
8 control panel, correct?

9 A I'm stating that inside Windows itself we
10 call all sorts of interfaces that let Windows
11 itself come together. And so the question about
12 what to maintain between versions and commit to
13 have in future versions is different than what
14 the internal components call. So I say that
15 within Windows itself that they can still use
16 this call, but that's only within windows itself.
17 I'm distinguishing that from applications where
18 it's different.

19 Q And these Microsoft-provided views
20 that were using the iShellBrowser APIs included
21 briefcase and recycle bin, correct?

22 A I don't know if those used it. Those are
23 components of Windows that ship inside Windows
24 itself. But I don't -- I don't know that they
25 used it. They certainly could, because they were

1 not separate applications.

2 Q So you knew when you made this
3 decision that the namespace extensions would
4 remain in Windows 95 for these MS-provided views,
5 correct?

6 A The decision here is that what we've ended
7 up with is so trivial that it won't affect
8 Chicago, it won't affect Capone, it does not
9 provide a high level of integration. And so the
10 decision here is, hey, this thing basically has
11 become unimportant. You can use it from things
12 that are inside Windows itself, but that's it.

13 Q So the answer to the question is
14 yes.

15 A Now, I'm sorry, ask me the question again.

16 Q You knew when you made this
17 decision that the namespace extensions would
18 remain in Windows 95, correct?

19 A I was -- it's not -- the decision I was
20 making in this memo is about: Is this an
21 important thing. And I'm saying that it's not.

22 The question of whether they kept
23 it around for internal usage, that's up to them.
24 We always had a policy that the way Windows calls
25 itself internally, we didn't commit that all

1 those things would stay the same. And so there's
2 about a hundred times as many interfaces internal
3 to Windows as there are published where we say,
4 okay, we are committing for application
5 compatibility we'll keep this around. So
6 certainly they could keep using that as an
7 internal interface, but I don't know if they --
8 if they chose to.

9 Q Mr. Gates, isn't it a fact that the
10 decision you were making was not to publish these
11 extensions?

12 A That was one of the -- I decided that they
13 had done so little in terms of the integration
14 opportunity that it didn't matter for any of the
15 products, and therefore that the applications
16 that shipped separately from us and others should
17 not call those APIs. And so that decision is --
18 is what this e-mail is.

19 And I say it won't affect Chicago,
20 won't affect Capone; let's try and come up with
21 something really meaningful, which is a high
22 level of integration. I was hoping that that
23 would happen in the future. And so yes, these
24 APIs I say are not -- are not -- these aren't
25 going to be published APIs and so our

1 applications won't use them, third party
2 applications won't use them.

3 Q But in fact the namespace
4 extensions would remain in Windows 95 for these
5 MS provided views; is that correct, sir?

6 A I don't know if they did or not. There's
7 a lot of internal interfaces inside of Windows
8 that are not published as APIs, and that's
9 because we can go and change those things without
10 breaking compatibility. And so there's a myriad
11 of internal interfaces of various types, and
12 yeah, they -- Windows does call into itself, it
13 has to, every piece of software does, in ways
14 that are different than what it commits to
15 maintain indefinitely.

16 Q I would like to draw your attention
17 to the next paragraph of this e-mail from you,
18 October the 3rd, 1994, where you add a few words
19 about the recent shell reorganization.

20 Are you with me, sir?

21 A Yeah, it looks like we didn't need to go
22 to another memo to realize that the shell
23 reorganization predated this October 3rd.

24 Q Actually that question had to do
25 with moving the Chicago API set to Windows NT.

1 A No, no, no.

2 Q It was a different question.

3 A No, sir. You are confused.

4 Q Was the decision --

5 A That was about the shell integration.

6 There were no APIs moved.

7 Q You state here in this paragraph,
8 quote, "Having the Office team really think
9 through the information intensive scenarios, and"
10 being -- "be a demanding client of systems is
11 absolutely critical to our future success. We
12 can't compete with Lotus and WordPerfect/Novell
13 without this."

14 Why did you state that, sir?

15 A I'm sorry?

16 Q Why did you state that?

17 A I wanted Office to be a group that was
18 coming up with new ideas and, you know, asking us
19 to push the state of the art.

20 Q And why didn't you think MS Office
21 could compete with Novell and WordPerfect without
22 this?

23 A I -- without innovation, without the
24 Office group thinking ahead to new scenarios, I
25 didn't think that our software would end up being

1 the best. And so I liked the Office team
2 thinking through information intensive scenarios;
3 that's basically what Office does. They come in
4 and think, okay, I have this business decision to
5 make. This is an information intensive scenario,
6 I've got to think, okay, what am I to write in
7 way of applications.

8 And so saying that the Office team
9 should really think through the information --
10 information intensive scenarios, that's what the
11 Office group does, that's key to their
12 competition. They have to be the ones that are
13 anticipating the needs of information workers
14 better than anybody else.

15 Q Isn't it a fact, sir, that what you
16 wanted to do was have Office take advantage of
17 the new shell features first?

18 A No, they -- as you can see in this memo, I
19 say that we weren't -- what had become -- what
20 had been done was so trivial that it was not a
21 high level of integration, it didn't matter, our
22 applications did not use it, it did not come up
23 in any competitive sense. These were not called
24 by our applications.

25 Q Isn't it a fact, sir, that the

1 Office96 was planning to use the namespace
2 extensions developed for Chicago that you had
3 decided to pull?

4 MR. HOLLEY: Object to the form of
5 the question.

6 THE WITNESS: That Cairo had a type
7 of integration that was actually quite
8 different, and they were still playing
9 around with that. And if they had
10 succeeded, it might have become a high
11 level integration. But it was quite
12 different and actually quite a bit more
13 ambitious than anything being discussed
14 here. That's the work that -- that was
15 cancelled.

16 BY MR. JOHNSON:

17 Q I hand you now what has been marked
18 as Gates Exhibit 15. This is a document -- this
19 is actually the document that we were talking
20 about when the first session ended. This is a
21 document entitled Chicago Explorer Superset and
22 Replacement.

23 MR. HOLLEY: So this has already
24 been marked as 15?

25 MR. JOHNSON: Correct. Do you have