

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 RICHARD HUME

March 24, 2009 - 8:04 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

1 A. January of '90, I believe.

2 Q. How did you come to WordPerfect?

3 A. So, a gentleman I worked with, Dennis
4 Foster at NCR, he got fed up sooner than I did in the
5 way things were going there, and he started putting
6 out resumes and he got a job at WordPerfect. And I
7 met him and Tom Creighton at Comdex in November '89,
8 I guess it would have been, and then I went and came
9 down for an interview, like, in December.

10 Q. You met Foster and Creighton at Comdex
11 while they were employed at WordPerfect?

12 A. At WordPerfect, yeah.

13 Q. Is Comdex the same time every year?

14 A. I don't even know if they're doing it
15 anymore. It was, I believe. As far as I recall, it
16 was.

17 Q. And did you say it was in October?

18 A. I thought it was November, but I don't
19 know. That was a long time ago. But I do remember
20 it was quite a short period of time that I actually
21 came up for an interview and then accepted the job,
22 yeah.

23 Q. What position did you accept at
24 WordPerfect?

25 A. So, everybody at WordPerfect -- well, not

1 everybody. Everybody that I dealt with at
2 WordPerfect was working on Presentation Manager.
3 They all felt OS/2 was going to be the next thing,
4 but they decided they needed to do something with
5 Windows. And that's really why Dennis got hired.

6 And so I was the first person working on
7 Windows in the office. I didn't actually work on
8 WordPerfect, the word processor. I worked on their
9 electronic e-mail. It had various names. At the
10 time I joined I believe we called it Office, but then
11 that soon changed because Microsoft had Office.

12 Yeah, so I was the first Windows developer
13 in that division, if you will. I'm not sure
14 "division" is the right word.

15 Q. When you say "division," you're referring
16 to the group that worked on --

17 A. What ended up being GroupWise, yes.
18 GroupWare Division is how I would refer to it,
19 although I don't believe that's the name we had at
20 the time. It was probably the Office group or
21 something like that. I don't know.

22 Q. Did you ever work on WordPerfect while you
23 were at WordPerfect?

24 A. Never, but I did work on code that was
25 used by WordPerfect. We called it the shared code,

1 from Ryan Richards?

2 A. I believe that's true.

3 Q. And it discusses this -- what is that
4 paragraph there discussing?

5 A. Apparently Ryan Richards wanted to speak
6 with people from the GroupWare division, or whatever
7 we would have called them, about a DOJ inquiry.

8 Q. And in the second paragraph down there it
9 says, "I suggest those who will participate get
10 together tomorrow, if possible, and determine what we
11 have to offer," and that's from Ryan. Do you recall
12 meeting ever with Ryan Richards?

13 A. No, I don't recall it.

14 Q. Do you recall generally -- strike that.
15 Do you recall any meetings that you had related to
16 the DOJ group?

17 A. Yeah. I believe I stated before, I do
18 remember it happening. I don't remember meeting with
19 any lawyers. Certainly nothing -- not even like I
20 met a year ago. But it seems that there was an
21 internal meeting. I don't even remember what it was
22 about.

23 (Exhibit 14 marked.)

24 MR. ENGELHARDT: Let me just explain
25 something briefly on the record. What we've marked

1 as Exhibit 14 I have just learned in the last day or
2 two in preparing for this deposition is the work
3 product of a Novell attorney, and I'm therefore going
4 to have to invoke the clawback provision of the
5 agreement between the parties.

6 MR. EHRENBERG: Is this identified on a
7 privilege log anywhere?

8 MR. ENGELHARDT: No, not yet. Because I
9 literally just learned of the authorship of this
10 document in my preparations for today's deposition.

11 MR. EHRENBERG: Who is the attorney?

12 MR. ENGELHARDT: Ryan Richards, I think.
13 It would appear to be his notes of some interviews he
14 conducted.

15 MR. EHRENBERG: All right. Put that aside
16 for now.

17 MR. ENGELHARDT: Let me state on the
18 record that we'll make a note here to get this on a
19 privilege log.

20 (Exhibit 15 marked.)

21 MR. EHRENBERG: Showing you Exhibit 15.

22 Just to be clear: it's your position that
23 information gathered by a Novell attorney for the
24 express purpose of turning it over to the Department
25 of Justice in hope of instigating or facilitating an

1 investigation of a competitor is attorney-client
2 privileged? Is that right?

3 MR. ENGELHARDT: It's work product. I
4 disagree with your characterization, or at least I
5 don't -- I'm not willing to expressly agree with your
6 characterization. Putting that aside for a moment,
7 it's our position that it's attorney work product. I
8 don't believe it was turned over to the Justice
9 Department in that form. They did indeed turn over
10 lots of things to the Justice Department. But just
11 as you and I turn things over to each other, we also
12 along the way create memos to our file that we don't
13 turn over to each other and that we keep within the
14 cloak of the privilege due to the fact that it's our
15 work product. And that's I think what's going on
16 here in Exhibit 14.

17 MR. EHRENBERG: And is it your position
18 that the facts that are recorded in here were
19 conveyed or not conveyed to the Department of
20 Justice?

21 MR. ENGELHARDT: I don't have any position
22 on that, sitting here right now.

23 MR. EHRENBERG: But you can't tell me they
24 weren't conveyed?

25 MR. ENGELHARDT: Well, first of all, I'm

1 not here to answer your questions.

2 MR. EHRENBERG: I know, but you've raised
3 an objection that prevents me from examining this
4 witness on a document that is highly probative, in
5 our view.

6 MR. ENGELHARDT: Fair enough; but it's not
7 an objection, it's an invocation of an ironclad
8 clawback agreement that was negotiated and executed
9 between the parties. And upon invoking the clawback,
10 you've got to give it up. That's the written
11 agreement between the parties. You might someday be
12 proven right in some of the assertions you're now
13 making, but that's for another day. On this day all
14 there is is the assertion of the applicability of the
15 clawback agreement, and on that basis alone you're in
16 fact supposed to give the document back to me.

17 MR. EHRENBERG: Well, we may not have
18 another opportunity to depose Mr. Hume on this
19 document. So I would propose that we examine him on
20 it, and you can make your argument about whether or
21 not it's privileged at a later date. And if the
22 testimony is excluded, then it can be excluded.

23 MR. ENGELHARDT: I'm afraid we can't
24 proceed that way.

25 MR. EHRENBERG: You're not willing to

1 agree to let me examine him on the basis that it
2 could later be agreed that it was in fact privileged
3 and not use that testimony?

4 MR. ENGELHARDT: I'm not willing to
5 proceed on that basis. I am willing to agree to hold
6 the deposition open at the end of the day pending a
7 chance to revisit that document should its status
8 change. But its status today is that it has been
9 made the subject of a request for a clawback, and by
10 operation of the agreement between us, the clawback
11 is in fact effective upon the request.

12 Q. (BY MR. EHRENBERG) Mr. Hume, have you had
13 an opportunity to review Exhibit 15?

14 A. Yes.

15 Q. Do you see that this is an e-mail from
16 Bruce Tietjen, T-i-e-t-j-e-n?

17 A. Yes, I see it.

18 Q. Who is Bruce Tietjen?

19 A. My recollection is that he was, like, a
20 product manager, maybe. I'm not positive about that,
21 though.

22 Q. Do you recall any discussions with
23 Mr. Tietjen about the DOJ inquiry?

24 A. No.

25 Q. In the first sentence there it says, It

1 objection.

2 MR. EHRENBERG: Vague as to "evangelize."
3 Foundation.

4 Q. (BY MR. ENGELHARDT) Do you have an
5 understanding of the term "evangelize"?

6 A. I would interpret it to mean they promoted
7 it in a public way.

8 Q. Did Microsoft promote MAPI as being an
9 open standard?

10 MR. EHRENBERG: Object to form.

11 THE WITNESS: My understanding is yes.

12 MR. ENGELHARDT: Okay. Please explain
13 your objection.

14 MR. EHRENBERG: Vague as to "open," vague
15 as to time frame, foundation.

16 Q. (BY MR. ENGELHARDT) Did that
17 evangelization of MAPI as an open standard factor
18 into your recommendation that Novell adopt the MAPI
19 standard?

20 A. I would say yes.

21 Q. Let's have you turn briefly to Exhibit 6.
22 Exhibit 6, Mr. Hume, is a news article that we looked
23 at earlier. Third paragraph under the headline
24 "Lotus, Novell say Microsoft is hiding MAPI
25 extensions," the third paragraph states, "MAPI is