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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

NOVELL, INC.,)	
)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:04-CV-1045 JFM
)	
MICROSOFT CORPORATION,)	
)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE J. FREDERICK MOTZ

DATE: OCTOBER 18, 2011

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

VOLUME II

Reporter: REBECCA JANKE, CSR, RMR

KELLY BROWN HICKEN, CSR, RMR

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1 OCTOBER 18, 2011

SALT LAKE CITY, UTAH

2 P R O C E E D I N G S

3 * * *

4 THE COURT: Okay. The jurors are here. We are all
5 set to go. The first thing that I would do is to read the
6 instructions that from yesterday.

7 MR. TULCHIN: Thank you, Your Honor.

8 THE COURT: Yes, sir

9 MR. JOHNSON: Your Honor, just to give you an idea
10 of how I think we see things going today, obviously we are
11 going to do the openings. I don't know if Your Honor has a
12 preference of giving them -- given the length of the opening,
13 giving them a short break.

14 THE COURT: I'm glad you asked that, because I think
15 there is a schedule which the Court wants to follow of taking
16 a short break around 10:00 o'clock, and then I think they are
17 actually going to have a light lunch, so we will break around
18 12, so we will see how it goes. Whichever. And I also told
19 Theresa if the jurors feel uncomfortable, if they want a
20 bathroom break before 10:00 o'clock, to raise their hands.

21 MR. JOHNSON: Okay. And I think given the
22 advertised sort of lengths, that actually might work out
23 well, where we're going to be done to probably somewhere
24 around ten.

25 THE COURT: Actually, it sounds about right.

1 MR. JOHNSON: After that, I think the only thing we
2 anticipate doing, after, given the length of the day, is we
3 are going to have the collateral estoppel findings, we're
4 going to read those in.

5 THE COURT: Okay.

6 MR. JOHNSON: And I have -- if I can approach, we
7 have agreed upon -- we talked yesterday about the sentence
8 you're going to read about it and, as you may remember, there
9 was an issue on timing, given there's references to timing in
10 those facts currently, and so we have added in, "in 1999 to,"
11 I think it will solve that.

12 THE COURT: You all are making it too easy for me.
13 Although, I suspect that from now on --

14 MR. JOHNSON: The only other last housekeeping
15 thing, Your Honor, is I did confer that you can get the same
16 streaming transcript over the internet back in Baltimore, and
17 what we will do is we will e-mail to the clerk --

18 THE COURT: That's all right.

19 MR. JOHNSON: -- that information, and the parties
20 have agreed that -- you will still have to, you know, set up
21 a user name and a log in, but the cost of that comes to us,
22 and the parties are going to split that cost.

23 THE COURT: Well, if it's expensive, let me know,
24 and I will --

25 MR. JOHNSON: It's \$75 a day or something like that,

1 so we will split that. So, they don't have to log in every
2 day, but any day they want to log in, we will handle it.

3 THE COURT: Okay. And then, Theresa, actually, I'll
4 come down and start and get this --

5 THE CLERK: Or Larry it is here.

6 THE COURT: Oh, there you are. We might as well do
7 it now and bring in the jury.

8 Are you still about two hours?

9 MR. JOHNSON: I think so, Your Honor. I'm going to
10 try to --

11 (Phone rings.)

12 SECRETARY: Judge Moffat's chambers.

13 THE COURT: Here we are, and we will have the
14 opening statements soon.

15 SECRETARY: Thank you, Judge. I'll hold on.

16 THE COURT: If she knew she was speaking to the
17 entire courtroom -- actually, she does know. I called her up
18 before and said, "Did you know you're speaking to the entire
19 courtroom?" And she was mortified.

20 (Jury brought into the courtroom.)

21 THE COURT: Good morning everybody. Please be
22 seated. Thank you all for being so prompt. We very much
23 appreciate it. I'm sure Theresa has told you -- (loud noise)
24 -- are being serviced. I apologize for that.

25 I'm sure Theresa has told you what the basic

1 schedule will be. We'll take a break around 10:00 o'clock.
2 Mr. Johnson is going to give an opening statement, and at the
3 end of his opening statement, we will have some food and a
4 bread and then Mr. Tulchin is going to give an opening
5 statement, and we'll take another short break, and then we
6 will have the trial go on. If, at any time, any of you feel
7 uncomfortable and you need a break before 10:00 o'clock, just
8 raise your hand. Don't be embarrassed. It happens
9 sometimes. It's much more important that you are comfortable
10 and listen to what's going on, so don't be embarrassed if you
11 want a short break.

12 One thing I forgot to tell you yesterday in my
13 preliminary instructions was that -- and I'll just read this
14 to you. In the process of producing documents in this case
15 during discovery, which I described yesterday, the lawyers
16 from Novell and Microsoft may have placed stamps or other
17 indications on documents for identification purposes. For
18 example, you may see the word, quote, confidential, unquote,
19 or the words, quote, highly confidential, unquote, on certain
20 documents. Those stamps may not have been made on the
21 documents when -- they may not have been made -- been on the
22 documents when they were originally created by Novell or
23 Microsoft but were added later by the lawyers when they
24 exchanged documents during discovery.

25 You may also see documents containing markings with

1 one or more letters followed by a series of numbers, often
2 near the bottom right corner of each page. For example, some
3 documents contain the marking, quote, MS, unquote, followed
4 by a number. Others contain, quote N-O-V, end quote,
5 followed by a number. These markings were also not on the
6 documents when they were created. Finally, some of the
7 Novell documents contain some dates in 2008. These dates are
8 incorrect and do not reflect when the documents were actually
9 created or edited but are on those documents because of the
10 way they were kept by the company. That happens once in a
11 while.

12 And I might add, I suspect you may hear the number
13 Bates number or something of that nature. Bates is simply a
14 way of numbering documents. So if they say Bates stamp or
15 Bates number during deposition testimony, they are just
16 referring to the number on the bottom right-hand of the page.

17 Mr. Johnson.

18 MR. JOHNSON: Thank you very much, Your Honor.

19 Ladies and gentlemen of the jury, good morning. My
20 name is Jeff Johnson. I am an attorney for Novell. Under
21 the rules of the Court, I get to talk to you about the
22 evidence you will hear and see in this case.

23 During the course of this trial, I will be assisted
24 by other attorneys from Novell. Let me first introduce
25 Mr. Max Wheeler, with the firm of Snow, Christensen &

1 Martineau here in Salt Lake City. John Schmidline from the
2 firm of Williams & Connolly in Washington, D.C., and my
3 colleague, Paul Taskier and Marian Vishio, of the firm of
4 Dickstein Shapiro. I would also like to introduce to you
5 Mr. Jim Lundberg. Jim. Jim works for Novell here in Provo,
6 Utah, and he was also employed by WordPerfect for many years
7 prior to coming to Novell. He will try to be with us
8 throughout the trial, although he may be called away, from
9 time to time, on other business.

10 As you know, this is an antitrust case. Judge Motz
11 gave you some preliminary instructions about the case
12 yesterday. Before we get into all the evidence, I tried to
13 think of a way to simply summarize what this case is all
14 about. And the best way to do that is to tell you that this
15 is a case about fair play. This is not a case where Novell
16 is wanting some special treatment from Microsoft.

17 Novell wanted nothing more than to compete on the
18 merits of its products. Microsoft, however, had other plans.
19 Microsoft, as you were told yesterday, has a monopoly in
20 operating systems. The evidence will show that Microsoft was
21 threatened by Novell's applications and middleware products
22 and took anticompetitive actions against those products in
23 order to protect its operating systems monopoly.

24 Instead of competing with Novell on the merits,
25 Microsoft engaged in deception, a classic bait and switch,

1 where Microsoft offered Novell and other application
2 developers some very exciting and important technology and
3 then pulled the rug out from under them. Microsoft did this
4 in order to tilt from the playing field in Microsoft's
5 direction.

6 Now, you may ask, how could Novell, who owned the
7 popular word processing application, WordPerfect, and the
8 spreadsheet, Quattro Pro, threaten Microsoft's monopoly in
9 operating systems? Here's the answer. In the mid-1990's
10 word processing applications and spreadsheets were the
11 primary reason people would go by computer software. People
12 don't go out looking to by an operating system. You go
13 shopping for the applications that will do something for you.
14 You simply need the operating system to run the applications.

15 WordPerfect was historically one of the most popular
16 word processing applications available. It worked on a
17 number of different operating systems. The fact that an
18 application as popular as WordPerfect worked on a number of
19 different operating systems was a threat to Microsoft's
20 operating systems monopoly. The evidence will show that
21 Microsoft took anticompetitive actions against Novell so that
22 Microsoft could control these key franchise applications and
23 ensure that Microsoft Windows remained the dominant operating
24 system.

25 Microsoft's monopoly was further threatened because

1 Novell -- threatened by Novell because WordPerfect was a form
2 of middleware. Later today I will explain in detail to you
3 what middleware is, but, generally, it's technology that
4 allows application developers to write their applications to
5 the middleware instead of to the operating system. This has
6 the effect of making the operating system a lot less
7 important. Moreover, if the middleware works on multiple
8 operating systems, like WordPerfect did, then the application
9 developers really don't care what operating system is
10 underneath.

11 From the consumer perspective, your perspective,
12 this would mean that your favorite applications would work
13 with any operating system, whether it was Microsoft's or a
14 competitors. To combat the threat that Novell's applications
15 and middleware products posed to Microsoft's operating system
16 monopoly, the evidence will show that Microsoft engaged in a
17 number of anticompetitive acts that injured Novell.

18 Today I'm going to primarily focus on the most
19 important anticompetitive act, the bait and switch I have
20 alluded to earlier, but you will hear about other
21 anticompetitive acts throughout the course of this trial.

22 As you will see today, most of the evidence of
23 Microsoft's conduct comes out of the mouths of Microsoft's
24 own executives, including Mr. Bill Gates, as recorded in
25 their e-mails and other documents at the time of the events

1 in question. One of the things that you're going to have to
2 do in this case is to look at what the Microsoft executives
3 said at the time and compare that with what some of them will
4 tell you today. As Judge Motz told you, you are the sole
5 judge of the facts.

6 Today, I'm going to share with you pertinent parts
7 of some of those contemporaneous documents. And don't worry
8 that I'm only showing you parts of those documents today. At
9 the end of the case, you will get complete copies of all the
10 documents I am going to show you. Let's get started.

11 WordPerfect Corporation and Novell are both Utah
12 companies. Many of you have probably heard of them. Back in
13 the 1980's and early 1990's WordPerfect was the leading word
14 processing application in the world. The original
15 application was written by the leader of the marching band at
16 B.Y.U. Novell was also a leading software company back then,
17 best known for its server operating system called Netware.
18 Novell continues to exist today and is headquartered in
19 Provo, Utah.

20 In June of 1994, Novell acquired WordPerfect, the
21 maker of the WordPerfect word processing application. It
22 also acquired a spreadsheet application called Quattro Pro.
23 As you will learn, Novell was not the only bidder for
24 WordPerfect. Another applications developer called Lotus
25 also wanted to buy WordPerfect. I mention Lotus not only for

1 their interest in WordPerfect, but also because you will see
2 Lotus' name come up quite a bit in the documents.

3 Lotus was also an applications company. Their suite
4 of office productivity applications was called Lotus Smart
5 Suite. And they also sold a document and e-mail
6 collaboration application called Lotus Notes. Some of you
7 may have heard of those applications. As the evidence will
8 show, Microsoft executives often spoke of Novell WordPerfect
9 and Lotus together.

10 You will learn why as we go along. Novell's vision
11 was to combine WordPerfect and Quattro Pro with other Novell
12 applications and technology to produce a suite of
13 network-aware applications called PerfectOffice, shown on the
14 screen on the right.

15 Bob Frankenberg, the former CEO of Novell, will be a
16 witness in this case, and he will talk to you about Novell's
17 vision of network-aware applications. Now, everyone across
18 the country and across the world knows Microsoft. Some of
19 you may remember the Microsoft operating systems, Windows
20 3.1, Windows 95 and Windows 98. We will be talking primarily
21 about Windows 95 in this case. During this time period,
22 Microsoft also produced a server operating system called
23 Windows NT. It competed with Novell's Netware operating
24 system.

25 During this mid-'90's period, Windows NT had a very

1 small market share. It wasn't very popular, but I mention it
2 because we will hear about Windows NT again this case. Now,
3 Microsoft also produces a suite of office productivity
4 applications calls Microsoft Office, which contains the word
5 processor Word and the spreadsheet Excell. So that's three
6 suites of office productivity applications that you will hear
7 about in this case, Novell's PerfectOffice, Microsoft's
8 Office, and Lotus' SmartSuite.

9 It's hard to avoid Microsoft products today. Most
10 people use Microsoft's operating system Windows and its
11 application products that run on top of it, including
12 Microsoft Office. The evidence will show Microsoft
13 understood early on that, in order to strengthen its position
14 in operating systems, it was important to control the office
15 productivity applications that ran on top of the operating
16 system Windows.

17 Here we see an internal Microsoft e-mail. It is
18 from Bill Gates to other Microsoft executives. The subject
19 is Microsoft's operating system strategy. Here, going all
20 the way back to 1989, Mr. Gates recognized that a strong
21 applications business would be extremely helpful to
22 Microsoft's system strength and operating systems, and the
23 applications discussed in this e-mail by Mr. Gates include
24 the word processing and spreadsheet applications that are
25 contained in the office productivity application suites that

1 we will be talking about.

2 So, why is a strong applications business extremely
3 helpful to Microsoft's strength in operating systems? That
4 question is answered by Jeff Raikes. Mr. Raikes was a top
5 Microsoft executive in the 1990's. Mr. Raikes is sending an
6 e-mail to Warren Buffett here, one of the richest men in the
7 world. Mr. Raikes is trying to get Mr. Buffett to understand
8 Microsoft's business and why it was a good investment.

9 Mr. Raikes states: "If we own the key franchises
10 built on top of the operating system we dramatically widen
11 the moat that protects the operating system business."

12 Now, you will get to see portions of Mr. Raikes'
13 deposition where he explains that the key franchises he is
14 talking about here are the office productivity applications
15 that run on top of Windows. So, if Microsoft owns all these
16 key franchises, it dramatically widens the moat protecting
17 Microsoft's operating systems monopoly. It is Novell's
18 contention in this case that Microsoft took anticompetitive
19 actions against Novell WordPerfect in order to advantage
20 Microsoft's Office, its key franchise suite of office
21 productivity applications and that it took those actions
22 for the reasons stated here by Mr. Raikes, to widen the moat
23 protecting Microsoft's operating systems monopoly.

24 Now, in the software industry, which we are going to
25 be talking about throughout this case, it is absolutely

1 critical that your new applications be on the shelf and
2 available to consumers at or near the time of a new operating
3 system release. Here we see a Microsoft document talking
4 about the importance of time to market and their desire to
5 exploit system releases to advantage their own office
6 productivity applications.

7 Microsoft wants to time its applications releases
8 with its operating systems releases.

9 Time to market is so important that here we see
10 Steve Ballmer -- he's Microsoft's current CEO, indicating
11 that he was prepared to delay the release of Windows 95 if
12 Office 95 was not available in quantity in the stores
13 at that time. He says: "Let me be clear, though. If we can
14 not get office in the stores, we will need to move the
15 Windows 95 street date. I will not want to move forward with
16 Windows street if we can not have office in quantity in
17 stores. That is an absolute requirement for me."

18 Now, time to market is equally important for
19 independent software vendors. That's one of those terms
20 that's going to be an acronym throughout this case.
21 Independent software vendors are called ISV's in the
22 industry. Novell, WordPerfect and Lotus are all ISV's. The
23 evidence will show that one of Novell's primary objectives
24 was to have PerfectOffice for Windows 95 on the store shelves
25 within 30 to 60 days of the release of Windows 95. The

1 evidence will show that Novell's office productivity
2 applications did not meet this goal because of the
3 anticompetitive conduct of Microsoft.

4 Now, Judge Motz told you, in his preliminary
5 instructions yesterday, that during the time period relevant
6 to this case, Microsoft had a monopoly in the market for PC
7 operating systems. Microsoft can not dispute that fact in
8 this case. That's important because that's one of Novell's
9 burdens in this case, to show that Microsoft had a monopoly.
10 That burden is satisfied.

11 The conclusion that Microsoft had a monopoly in PC
12 operating systems was the result of a case against Microsoft
13 in Washington, D.C. that was filed in 1998. This case
14 against Microsoft also resulted in a large number of
15 additional factual findings that Microsoft cannot dispute in
16 this case.

17 At the conclusion of Microsoft's opening statement
18 later today, Mr. Taskier, who I have introduced to you
19 earlier, will read to you some of those undisputed facts.
20 And I apologize right now for their length and their
21 complexity, but they are important for you to hear. We will
22 talk about some of those undisputed facts this morning. You
23 should also keep in mind that those undisputed facts were
24 written in 1999. So, when you hear a finding that says
25 currently or talks about today, it is talking about the world

1 in 1999.

2 Now, as Judge Motz also told you, a monopoly, in and
3 of itself, is not illegal. But the law imposes an obligation
4 on a monopolist not to engage in anticompetitive or predatory
5 conduct in order to maintain that monopoly because the law
6 favors competition. Competition is good for consumers like
7 you and me. It leads to more choices. It leads to lower
8 prices. In this case, the evidence will show that
9 Microsoft's conduct was predatory. It did not encourage
10 competition. It stifled it.

11 One of the facts found in the case against Microsoft
12 was that its Windows monopoly in operating systems was
13 protected by what is called the applications barrier to
14 entry, shown on your screen. Some of the findings which we
15 will read to you later talk about this applications barrier
16 to entry that protects Microsoft's operating systems
17 monopoly. This barrier exists because of two characteristics
18 of the software market.

19 Number 1. Most consumers prefer operating systems for which
20 a large number of applications have already been written.
21 That sounds complex, but it really isn't. As I mentioned at
22 the beginning. People don't generally go shopping for
23 operating systems. They shop for applications to do
24 something, to create a document, to play a game, to run a
25 spread sheet. So consumers naturally favor an operating

1 system that has many applications available.

2 Number 2. Most developers prefer to write for
3 operating systems that already have a substantial consumer
4 base. That one is pretty obvious. If I'm an applications
5 software developer, the larger the consumer base, the more
6 money I can make there.

7 This application barrier to entry makes it very
8 difficult for another operating system vendor to have any
9 success against Microsoft. Now, as found in the case against
10 Microsoft in Washington, D.C., two of the products that
11 Microsoft targeted were Netscape's Navigator internet browser
12 and Sun Microsystems' Java computer languages. Now neither
13 Navigator nor Java are operating systems, so why did the
14 Court, in a case against Microsoft in Washington, D.C.
15 conclude that Microsoft targeted these companies?

16 That brings us to middleware, a subject I mentioned
17 at the start of my remarks. To understand middleware
18 requires a bit of knowledge about computer software,
19 knowledge that some of you may already have. For those that
20 don't, I will explain. The structure of a computer is like a
21 layer cake. At the bottom is the microprocessor, the
22 computer chip made by Intel.

23 Next up is the operating system. The applications
24 are on top. These application programming interfaces --
25 here's another acronym for you if you're taking notes, API's.

1 That's what they are called in the industry, application
2 programming interfaces, API's.

3 The operating system provides API's to application
4 developers for certain functions and routines. Let's take a
5 simple one. Say, for an example, an application developer
6 wants to print a document. Well, rather than write all the
7 thousands of lines of code to print a document, the
8 application merely calls on the printer API in the operating
9 system to print a document. An operating system has
10 thousands of such API's.

11 Now we're going put a new layer between the
12 operating system and the applications. This layer is called
13 middleware. Middleware also provides API's for applications
14 to use. With middleware, applications may start to become
15 less reliant on the API's in the operating system. They can,
16 instead, use the API's being offered by the middleware.

17 If enough API's are provided by the middleware and
18 the middleware will run on many different operating systems,
19 the application developers no longer care which operating
20 system is at the bottom of the layer cake.

21 This is one of those long findings which Microsoft
22 cannot dispute in this case. I'm going to see if I can break
23 this down for you a little bit. I apologize again for its
24 length. Let's take the top part. Middleware technologies
25 have the potential to weaken the applications barrier to

1 entry. Microsoft was apprehensive that the API's exposed by
2 middleware technologies would attract so much developer
3 interest and would become so numerous and varied that there
4 would arise a substantial, growing number of full-featured
5 applications that relied largely or even wholly on middleware
6 API's.

7 So, what have we established here? Middleware has
8 the potential to weaken the applications barrier to entry.
9 Microsoft was apprehensive that middleware would attract a
10 lot of developer interest.

11 Next part. The applications relying largely on
12 middleware API's would potentially be relatively easy to port
13 from one operating system to another. The applications
14 relying exclusively on middleware API's would run as written
15 on any operating system hosting the requisite middleware, so
16 the more popular middleware became and the more API's it
17 exposed, the more the positive feedback loop that sustains
18 the applications barrier to entry would dissipate.

19 So, what have we established here? Applications
20 relying on middleware could potentially be used on many
21 systems, and the more middleware became popular, the weaker
22 the applications barrier to entry protecting Microsoft's
23 operating systems monopoly becomes. The last part.
24 Microsoft was concerned with middleware as a category of
25 software. Each type of middleware contributed to the threat

1 posed by the entire category. At the same time, Microsoft
2 focused its antipathy on two incarnations of middleware that,
3 working together, had the potential to weaken the
4 applications barrier severely, without have the assistance of
5 any other middleware. These were Netscape's web browser and
6 Sun's implementation of the Java technologies.

7 So, what is the takeaway here? Microsoft was
8 concerned by the threat to their operating system monopoly
9 posed by middleware. Each type of middleware contributed to
10 the threat posed by the entire category. These are
11 undisputed facts in this case. Both Netscape Navigator and
12 Sun's Java computer languages were forms of middleware. They
13 both exposed API's that application developers could use in
14 their products.

15 The evidence will show that WordPerfect and other
16 technologies owned by Novell also contained API's that
17 application developers could use in their products. The
18 evidence will show that WordPerfect contained middleware
19 called PerfectFit that was shared by all the applications
20 within PerfectOffice. PerfectFit, within WordPerfect,
21 provided tool bars, menus, dialogs, spell checkers and many
22 other functionalities. These functionalities could be used
23 by other application developers to build new applications.

24 Thus, the PerfectFit technology within WordPerfect
25 served as a middleware platform to third-party developers by

1 exposing its API's and allowing these third-party developers
2 to use over 2,000 WordPerfect controls. PerfectOffice also
3 contained AppWare. AppWare was a Novell technology. AppWare
4 also served as a middleware platform to third-party
5 developers by providing easy to use API's to create
6 applications that were completely independent of the
7 underlying operating system.

8 This allowed third-party developers to create
9 applications on top of the PerfectOffice suite. Thus the
10 combination of WordPerfect and AppWare constituted another
11 category of middleware which posed a threat to Microsoft's
12 operating systems monopoly and, as we just discussed, it is
13 established in this case that each type of middleware
14 contributed to the threat posed by the entire category.

15 Using the language of Microsoft's Mr. Raikes,
16 WordPerfect and AppWare could help bridge the moat protecting
17 Microsoft's operating systems monopoly.

18 Now, even before Novell purchased WordPerfect,
19 internal communications between top Microsoft executives
20 revealed their fear of the middleware threat presented by
21 Novell. Here Jim Allchin, the vice-president of Advanced
22 Windows Systems Group writes to Bill Gates and others, quote,
23 they, meaning Novell, want to control the API's, middleware,
24 and as many desktops as they can in addition to the server
25 market they already own. We need to start thinking about

1 Novell as the competitor to fight against.

2 This is Mr. Paul Maritz, during the relevant time
3 period. He was the man in charge of the development of
4 Microsoft's server operating systems, like Windows NT.
5 Mr. Maritz was deposed in 1994, in connection with that case
6 against Microsoft in Washington, D.C. What's really
7 important about this is he was deposed at the time of the
8 relevant events in this case. And he was asked about
9 Microsoft's views on Novell's AppWare:

10 "Question: Could you tell us what AppWare is.

11 Answer: Yes. That's an explicit attempt by Novell
12 to develop a layer that will provide all of the services
13 required by applications.

14 Question: Do you regard AppWare as a competitive
15 threat?

16 Answer. Very much so. Probably one of our, in the
17 long-term point of view, most serious competitors."

18 You will get to see this part of Mr. Maritz's
19 deposition in this case. I will show it to you on video
20 later. Here's another Microsoft executive, John Ludwig,
21 describing the threat of Novell Lotus middleware as
22 Microsoft's worst nightmare. I mentioned before we would see
23 Lotus in the documents.

24 Microsoft was also fearful of the middleware threat
25 presented by Lotus, particularly the Lotus Notes product,

1 which was a form of middleware. These e-mails we are looking
2 at, of course, are all internal to Microsoft. We got them in
3 discovery in this case.

4 The public face that Microsoft presented to the
5 independent software vendors, the ISV's, like WordPerfect and
6 Lotus was quite different. Interaction with ISV's wanting to
7 build software products to run a Microsoft's operating system
8 was handled by the Microsoft's developer relations group.
9 Here's another acronym for you, the DRG, Microsoft's
10 development relations group.

11 The developer relations group's mission was to drive
12 the success of Microsoft's operating systems by encouraging
13 ISV's to write products for that system. Microsoft wants to
14 attract a large number of applications to its new operating
15 system, and ISV's want their products to run on the new
16 operating system. This has the effect, of course, of making
17 the applications barrier to entry even stronger.

18 Now, I have to tell you that Microsoft uses the word
19 evangelism to describe the mission of the DRG. We usually
20 think of that word as something more than pushing an
21 operating system, but I bring it to your attention because
22 you will hear that word used to describe the activities of
23 the DRG.

24 Microsoft had various ways of encouraging ISV's to
25 write software for the new operating systems. They held

1 these gigantic developer conferences where WordPerfect and
2 hundreds of other ISV's were invited to learn of the new
3 features and benefits of the upcoming operating system.

4 There were Alpha and Beta releases of the operating
5 system's software before the final release. These were given
6 to the ISV's so that they could create applications for the
7 new operating system in advance of its public release. There
8 were software developer kits, another acronym, SDK's as they
9 are called in the industry. They came with the Alpha and
10 Beta releases which provided the documentation of the API's
11 that the software developers were being urged to support.

12 There were first wave agreements with top ISV's,
13 providing extra levels of support for those targeted on
14 getting their applications to market within that critical
15 time in the market window of 30 to 90 days of the new system
16 release.

17 There were online developer forms. I don't know if
18 any of you remember Compuserve -- that goes back a ways --
19 where ISV's could pose questions over the internet to
20 Microsoft developers about the new operating system. There
21 was the premier support line. This one cost a little money,
22 but here you could actually call Microsoft and get to speak
23 with Microsoft developers about the new API's in the planned
24 operating system. The evidence will show that WordPerfect
25 was a first wave participant and had access to the premier

1 support line.

2 Now, the development of Windows 95 went back to
3 1993. Wasn't called Windows 95 then. Its code name was
4 Chicago. Chicago was designed to be a huge advance in
5 the (loud noise). Excuse me.

6 I might get rid of this, my voice is loud enough
7 without it. That's annoying.

8 Chicago was designed to be a huge advance in the
9 user interface or shell of the operating system.

10 THE COURT: Is that on?

11 MR. JOHNSON: As I was saying, Chicago was designed
12 to be a huge advance in the user interface or shell. That's
13 what you see when you turn on the computer. The old user
14 interface of Windows 3.1, the predecessor to Windows 95, was
15 a series of manager screens like the one shown here. This
16 one was the program manager. It was pretty simplistic. The
17 planned user interface for Windows 95 was much more
18 sophisticated. It's shown here on the right. Some of this
19 will appear familiar to us today.

20 At the heart of the new user interface was the
21 Chicago explorer shown here on the screen. The explorer is
22 fairly familiar to us now, but it was a big deal back then.
23 As described by Microsoft, it was the eyes of Chicago,
24 enabling a user to view all of the computer's resources,
25 whether local or remote, in one place, from 10 thousand feet

1 down to ten inches. Now, the explorer, as you can see has
2 two panes, one on the left and one on the right.

3 The left pane is often called the tree view because
4 you start with the trunk, which, in this case, is my
5 computer, and work downward with the limbs and branches of my
6 computer. You will also see this left pane referred to as
7 hierarchical view or the scope pane. The right-hand pane is
8 a little easier to understand. It is usually called the
9 contents pane. It displays the contents of what you have
10 clicked on from the tree view. Each of the items within the
11 tree view of the Chicago explorer are called name spaces.

12 Three name spaces, which were new to Windows 95, are
13 shown here, network neighborhood, recycle bin and my
14 briefcase. Network neighborhood brought the resources of all
15 the documents and information sitting on remote servers
16 directly to your desktop. That was a big deal. Back in the
17 old days, you had to map to a server and it was a very
18 complicated procedure to get to the network. What enabled
19 Microsoft to extend the explorer to include these additional
20 stores of information were some very special API's called
21 name space extensions.

22 In the documents we see today, you will sometimes
23 see these name space extension API's called shell extensions.

24 Now we are in June of 1993 in the documents, about
25 the same time period as those e-mails we looked at earlier

1 about the middleware threat presented by Novell and Lotus.
2 Microsoft held an executive retreat at Hood Canal. And
3 that's the name of Mr. Gates' personal residence compound.
4 This was attended by Microsoft operating systems executives
5 and executives that built applications for Microsoft to
6 address the crucial issue of leveraging system and
7 applications from a functionality and features point of view.
8 By the way, when you see Bill G in these e-mails, like you do
9 in the first highlighted line there in discussing this with
10 Bill G, it says, that's Bill Gates. And you'll see that
11 acronym used for him -- or alias used for him in a lot of the
12 documents that you will be looking at.

13 At the Hood Canal Retreat, the group 1 team,
14 composed of executives within systems and applications,
15 devised a strategy to gain access to the operating system
16 API's in order to shut out competing applications, entitled
17 the radical extreme. The group proposed the creation of an
18 Office shell containing extensibility features that would be
19 for the sole benefit of Microsoft Office, it's application of
20 office productivity applications cutting out WordPerfect and
21 other competing ISV's.

22 As we had earlier discussed, Office was the suite
23 that Microsoft had of office productivity applications. The
24 extensibility features being discussed include the name space
25 extensions. The basic approach proposed was to hold the

1 extensible shell for Office, to make the Chicago shell --
2 that's Windows 95 -- non-extensible and to provide, as an
3 excuse for this action, quote, we couldn't get it done in
4 time. Dot. Dot. Dot.

5 As we will see, this proposed excuse is pure spin.
6 Microsoft was already using the name space extensions in
7 Chicago in June of 1993. Notes from that retreat reflect
8 Bill Gates' personal adoption of the radical extreme plan.
9 As Mr. Adler states here: "Shift extensible shell in Office.
10 Bill G says do it."

11 Now, other Microsoft executives offered support
12 for the idea of denying ISV's the extensible shell within
13 Chicago. Here we see an e-mail from Bob Muglia. He was the
14 director of program management for Windows NT. Remember what
15 I said earlier, we would be hearing about Windows NT again.
16 He believes allowing ISV's the extensibility afforded by
17 Chicago is a bad option no matter how you view it, he says.
18 Mr. Muglia writes that providing the extensibility to ISV's
19 would mean that, quote, Word and Excel are forced to battle
20 against their competitors on even turf --

21 What a horrible thought, battling against your
22 competitors on even turf.

23 -- given that Lotus and WordPerfect have largely
24 caught up, they, meaning Microsoft Word and Excel, almost
25 certainly lose ground if not market share and margins.

1 The evidence will show that's all Novell wanted to
2 do, to battle against Microsoft on even turf. The evidence
3 will also show that Microsoft was not willing to allow
4 competition on even turf. Note here, too, a top Microsoft
5 executive is reflecting that, by July of 1993, WordPerfect
6 and Lotus had largely caught up. You will see other
7 statements from Microsoft executives like this, that
8 WordPerfect and Lotus both had good products on Windows that
9 had caught up with Microsoft's applications by 1993 and 1994.

10 You should compare those statements made at the time
11 with what Microsoft will tell you today, that WordPerfect was
12 late to Windows and was doomed to failure. You will have to
13 decide what is more credible, what Microsoft's executives
14 said at the time of the events in question or what they say
15 now in defending this lawsuit.

16 Now, not everybody within Microsoft was happy about
17 Mr. Gates' plan, particularly those responsible for Chicago.
18 Here, Tandy Trower, the executive responsible for
19 architecting the user interface in Chicago, told Mr. Gates
20 directly that the proposal to withhold the functionality from
21 the ISV's was a bad idea. Mr. Trower goes on. Quote: This
22 stinks of proprietaryness, something that we have been
23 critical of others for embracing. In the 12 years I have
24 been here, I have always taken pride in the fact that we
25 excelled by doing things better than our competition, not by

1 withholding some functionality that we might uniquely
2 leverage."

3 As you will see later that is exactly what Bill
4 Gates did. He withheld functionality from the ISV's so that
5 Microsoft could uniquely leverage it.

6 Let's return now to the public face of Microsoft as
7 presented to ISV's like WordPerfect. As a part of
8 Microsoft's evangelization of Chicago, this Novell trip
9 report memorializes a Chicago user interface design for
10 preview held in early July of 1993. Brad Silverberg,
11 Microsoft's head of the Chicago development, attended part of
12 this session. Mr. Silverberg reports the results of that
13 session to Jim Allchin.

14 They, meaning the ISV's, quote, really want
15 extensibility. They continue to press for that in every way.
16 What's more, they were afraid and angry that Microsoft would
17 use the hooks for its own purposes, apps, meaning
18 applications, mail, etc., but not provide the hooks to ISV's.
19 This was a very hot button.

20 As Mr. Silverberg acknowledged in his deposition,
21 the hooks he's talking about here are the API's used for
22 extensibility. The ISV's had good reason to be angry.
23 Microsoft was already planning on using the name space
24 extensions to help Microsoft's e-mail application achieve
25 dominance over other e-mail applications in Chicago.

1 Capone is the code name, another code name for an
2 e-mail application created by Microsoft. Someone from
3 Microsoft was obviously from Chicago. Gates planned to
4 bundle the Capone application within Windows 95 in order to
5 dominate the e-mail applications market. That's not my
6 allegation, it comes right out of the mouth of Microsoft.

7 As shown in this April 22, 1993 e-mail from
8 Microsoft executive John Ludwig, quote: The only reason mail
9 is in Chicago is to help WGA -- that's Microsoft's work group
10 applications, achieve dominance in the mail market. Bill's
11 words, not mine.

12 The evidence will show that Capone, Microsoft's
13 e-mail application, was using the name space extensions
14 provided by Chicago to integrate directly into the Chicago
15 shell. Now that raised a flag for some at Microsoft. Here
16 we see Tom Evslin. He was in charge of Microsoft's work
17 group applications division, asked if there was anything
18 being done in integrating Capone with Chicago that a third
19 party, Lotus, for example, won't be able to do. Joe
20 Belfiore, Microsoft's program manager for Chicago, responded
21 that it was unclear whether these API's would be published
22 ISV's, like Lotus, but that Bill, meaning Bill Gates, was
23 very aware of this issue.

24 As you will see during the course of this case,
25 there were executives in Microsoft that wanted to be fair to

1 the ISV's. Here John Lazarus, the vice-president of systems
2 strategy in Microsoft, expressed his view that if Microsoft
3 used the extensions they had to be published. This concept
4 of publishing is important for you to understand.

5 Application developers are totally dependent on Microsoft to
6 provide the technical details needed to use the API's in the
7 operating system.

8 When Microsoft publishes an API, it is providing the
9 documentation needed by the ISV's to actually code their
10 applications to those API's. Such documentation usually
11 comes in those software developer kits that we talked about
12 earlier.

13 Here Doug Henrich, the head of Microsoft's DRG,
14 developer relations group, felt that withholding the name
15 space extensions being used by Capone was problematic from a
16 PR and an ISV perspective. As he states, "This will play
17 out as an unfair advantage issue with the press."

18 Mr. Lazarus was more want.

19 Again, WordPerfect and the other ISV's knew nothing
20 about this internal debate going on within Microsoft, but
21 what is important to remember from this series of e-mails is
22 that Bill Gates is very aware of this issue. The evidence
23 reflects that, by -- that in mid-September of 1993, agreement
24 was reached within Microsoft to publish the name space
25 extension API's.

1 This e-mail summarizes a meeting between Brad
2 Silverberg, David Cole, Bob Muglia and Jim Allchin. This
3 lineup is important. Mr. Silverberg was the head of Chicago
4 development. David Cole was the program manager for Chicago.
5 Jim Allchin was the head of Microsoft's NT development, which
6 included Cairo, the planned future Windows NT, and Bob Muglia
7 was the program manager for NT in Cairo.

8 So, what we have here is the top executives within
9 Microsoft responsible for all operating systems development
10 within Microsoft. According to this e-mail these four top
11 Microsoft executives have agreed to document the name space
12 extension API's being used by Capone within Chicago. As
13 spelled out by this e-mail, those API's would be on the
14 A-list, documented and published to the ISV's.

15 About a month later -- we're now in November of
16 1993 -- WordPerfect got the good news about the name space
17 extension API's from Microsoft's DRG. This occurred in a
18 meeting between WordPerfect developers and some top Microsoft
19 executives who had come to WordPerfect to talk to them about
20 producing a good Chicago application.

21 Here David Cole, the group manager of Chicago, the
22 same David Cole who decided to document the name space
23 extensions, reported on their visit to WordPerfect, stating
24 these guys at WordPerfect, quote, will bet on Chicago. They
25 never had any doubts about that.

1 At the bottom, Mr. Cole notes how enthusiastic
2 WordPerfect was about Chicago, much in contrast to the ho-hum
3 attitude of Microsoft's own applications group. We are going
4 to meet and hear from Adam Harral, one of the WordPerfect
5 developers who attended this meeting on November 15, 1993.
6 We will come back to Mr. Harral in just a little bit.

7 This is another e-mail to remember. Microsoft is
8 going to present evidence to you, from years earlier, back to
9 the early days of Windows. That evidence will show that
10 WordPerfect was slow to develop for Windows in the late
11 1980's and early 1990's. Microsoft will point to that
12 ancient history as a cause of WordPerfect's downfall. Now
13 there is evidence that deception from Microsoft was part of
14 the reason that WordPerfect didn't initially develop for
15 Windows, which we may have to get into in this case, but the
16 point to remember here is, by 1993, WordPerfect was totally
17 sold on Windows, and Microsoft knew it, as Mr. Gates --
18 Mr. Cole states, these guys will bet on Chicago. They have
19 never had any doubts about that.

20 The e-mail from Mr. Cole goes on: "They," meaning
21 WordPerfect, "were very happy about us deciding to document
22 the shell extensions. I explained conceptually how the
23 extensibility would work and what controls they would have.
24 Since they just acquired a document management system, I
25 forgot from whom, I assume they will want to plug that in,

1 plus WP mail," which is WordPerfect mail, "and the other
2 parts of WordPerfect Office." That's WP Office is WordPerfect
3 Office.

4 In other words, Mr. Harral and the other WordPerfect
5 developers at this meeting were told that they were getting
6 the API's that would enable WordPerfect to integrate their
7 own mail application into the Windows shell, just like
8 Microsoft was doing with Capone.

9 We took the depositions of Mr. Cole and
10 Mr. Silverberg in this case. We asked them about this
11 e-mail. David Cole wrote the e-mail. It was first addressed
12 to Mr. Silverberg. Neither of them admit or acknowledge
13 remembering anything about the decision to tell WordPerfect
14 and other ISV's that Microsoft had decided to document the
15 shell extensions.

16 In his deposition, Mr. Gates even claimed that such
17 a decision had never been made. As you can see from the last
18 two e-mails, the decision to document and A-list these
19 extensions was plainly made at the highest levels within
20 Microsoft.

21 One month after Microsoft's visit with WordPerfect,
22 in December of 1993 -- we're moving month-by-month --
23 Microsoft held a professional developers conference where
24 Mr. Joe Belfiore gave this presentation to WordPerfect and
25 hundreds of other ISV's. Greg Richardson is another one of

1 the Novell developers that you will hear from in this case,
2 attended this professional developers conference.

3 As the slide states, Mr. Belfiore was the program
4 manager for the Chicago shell/UI. UI means user interface.
5 Microsoft told WordPerfect and the other ISV's about the new
6 controls that they not only can use but that they should use,
7 as stated in the third bullet point here.

8 The controls included the ability for the ISV's to
9 extend the shell. That capability includes the name space
10 extension API's that we have been talking about here. As
11 Mr. Belfiore went on to explain at the conference, Microsoft
12 was giving the ISV's the ability to create custom container
13 implementations within the left-hand pane of the explorer.
14 Here shown on the left, which we previously discussed, is
15 called the tree view within the explorer.

16 The shell extensibility being evangelized to the
17 ISV's included the ability to integrate directly into the
18 Windows Explorer. As stated here in the last bullet point.
19 If you have an application that displays a collection of
20 file-like objects, you can create your own custom container
21 displayed in the folder explorer hierarchy.

22 Here we see the complete explorer -- this was also
23 Mr. Belfiore's presentation -- containing a hypothetical your
24 custom folder, which is highlighted in blue right there on
25 the tree view. That would be created by a third-party ISV

1 which has been integrated directly into the tree view of the
2 explorer.

3 Note that this says at the top, not for most
4 applications and that it, quote, only should be used if your
5 application displays a pseudo folder, electronic mail,
6 document management, etc.

7 Electronic mail and document management were exactly
8 the type of features that office productivity applications
9 needed. In fact, let's go back a couple of slides. Mr. Cole
10 had previously stated that WordPerfect would use the
11 extensions for WordPerfect mail and a document management
12 system that it had recently acquired, exactly as being
13 evangelized by Mr. Belfiore.

14 Let's go back now to Mr. Belfiore's presentation to
15 WordPerfect and the other ISV's. As I have mentioned, we are
16 going to play for you certain videos of depositions of
17 Microsoft executives. Just parts of them. I don't want to
18 bore you to death.

19 One of those will be a portion of the deposition of
20 Bill Gates taken in 2009. Mr. Gates is going to say in that
21 deposition that the technology that allowed applications to
22 do what Mr. Belfiore is talking about here was trivial and
23 unimportant. He repeats, several times in his deposition
24 that it was trivial.

25 The evidence will show that that is not what Bill

1 Gates said back in 1994. Here we see an e-mail from
2 Mr. Gates to Brad Silverberg and other top Microsoft
3 executives. Mr. Gates states that in many meetings he has
4 said that the hierarchical view, also called the tree view,
5 is critical. The ability to see the real name space of the
6 system, where we are putting everything, only exists there.

7 What are these real name spaces he's talking about?
8 Let's go back a slide. The real name spaces are those
9 folders shown on the tree view on the left-hand side of the
10 explorer. Mr. Gates goes on to say: The tree view is
11 central to our whole strategy. E-mail, document library,
12 applications, file system. E-mail, document library. That
13 should be familiar to you by now. That was exactly the items
14 that Microsoft assumed WordPerfect would use the name space
15 extension API's for. E-mail and a document management
16 system.

17 So what Mr. Gates said in many meetings, many
18 meetings, was critical and central to Microsoft's full
19 strategy becomes trivial and unimportant in this case.

20 WordPerfect documents written after the Belfiore
21 presentation showed that WordPerfect understood the
22 importance of Chicago representing both a challenge and an
23 opportunity for WordPerfect to demonstrate its leadership in
24 the Windows arena. WordPerfect understood the importance of
25 integrating into the Chicago shell and the need to extend

1 Microsoft's common dialogs to provide the added functionality
2 historically present in WordPerfect or to use the name space
3 extension API's to extend WordPerfect's own dialogs.

4 Let me break that down for you a little bit. As the
5 WordPerfect developers that you will hear from in this case
6 will explain, WordPerfect had traditionally had a very
7 powerful file open dialogue containing features and
8 functionality well beyond that offered by Microsoft's Word.
9 Within this new operating system, Windows 95, application
10 developers had a choice to make. They could rely on the
11 common open file dialogs provided within Windows 95, or they
12 could create their own more powerful file open dialogue.

13 In either case, whichever choice they made, the name
14 space extension API's in Windows would allow application
15 developers to add real name spaces to whichever file open
16 dialog was chosen.

17 Let's look at that in a little more detail. This is
18 the Windows 95 common file open dialogue shown on the screen.
19 It was pretty basic compared to what WordPerfect had done in
20 the past. You couldn't search across different drives or
21 folders. You could only search within a given location.
22 WordPerfect developers had identified a long list of
23 deficiencies with Microsoft's common file open dialogue.
24 Here's a prototype of WordPerfect's file open dialogue.
25 Unlike Microsoft's file open, here you could search across

1 all the folders and drives shown on the left-hand pane or
2 tree view. This capability was provided by WordPerfect's
3 quick finder technology, which was light years ahead of
4 anything in Microsoft's Word

5 You could search by file name. You could search by
6 content. You could search by the attributes of the document.
7 Here we see the tree view as displayed by WordPerfect's file
8 open dialogue. As Mr. Harral and the other Novell developers
9 will explain to you, with the name space extensions being
10 evangelized by Microsoft, Novell would have been able to add
11 its own name space objects, including its own applications,
12 network drives or internet browsers into the hierarchy.

13 WordPerfect's advanced searching technology would
14 have provided easy access to all this information by text,
15 file name or the attributes of the document. For example,
16 information located in WordPerfect's document management
17 system SoftSolutions, it's Netware file systems, it's mail
18 servers and other work spaces where people could exchange
19 information.

20 In addition, the name space extension API's would
21 have allowed WordPerfect to add Microsoft's real name space
22 objects, like recycle bin, shown at the bottom, and network
23 neighborhood to its file open. This ability to add your own
24 name spaces and the ability to include Microsoft's new name
25 spaces in your application was absolutely critical to

1 WordPerfect. Anything less would have been a step backward
2 from what WordPerfect had historically offered to the
3 consumer.

4 A search across the unified shell view could result
5 in a broad array of information from websites stored locally
6 or on a network. In 1994, this was a potential huge advance
7 in personal computing. In June of 1994, Microsoft issued
8 Chicago Beta 1 to approximately 20 thousand sites worldwide,
9 including to Novell WordPerfect, so by that time, they had
10 joined forces. Novell had bought WordPerfect.

11 The reference here to M6 means milestone 6 in the
12 development of Chicago. There were 8 such milestones in the
13 Chicago development process.

14 There had been a number of earlier milestone
15 releases of Chicago to many ISV's, but none of them contained
16 information on the name space extensions. Now, the issuance
17 of a Beta release is a significant event in the development
18 process. A Beta provides ISV's with a nearly complete
19 pre-release version of the operating system, which allows
20 ISV's to start developing compatible products for the
21 forthcoming new operating system.

22 The M6 Beta included partial documentation for the
23 name space extensions in an SDK, software development kit.
24 We talked about it. This is just a list of the API's. The
25 actual exhibit is a much bigger document written in language

1 that only a software developer could love or understand.

2 This documentation gave the ISV's like Novell the
3 details of the name space extension API's that Microsoft had
4 been encouraging the ISV's to use to become a great Chicago
5 application. As I mentioned earlier to you, documentation is
6 very important for ISV's work and has great significance in
7 the software industry. Here we have Mr. Raikes, again. You
8 remember the Microsoft executive who admitted that Microsoft
9 widens the moat protecting its operating systems monopoly if
10 Microsoft owns the key franchises running atop Windows.

11 Here Mr. Raikes is testifying about the significance
12 of documenting an API in the computer software industry.

13 "Question: You testified at your prior deposition
14 that, quote, the purpose of documenting an API is, in effect,
15 to put a stake in the ground and say this is something that
16 you, as an applications developer, can count on being
17 available to you as an operating systems service today and in
18 the future in order to ensure compatibility, close quote.

19 And the quote goes on, but I'll stop there and ask
20 you, do you recall giving that testimony?

21 Answer: I don't recall the specific testimony.

22 Question: You have continued to agree with that
23 statement?

24 Answer: I would say, from what I recall from what
25 you just read, I would say yes and that, you know, when

1 you're an application developer, again, back to principles
2 about how the industry worked, you encourage application
3 developers to bet on your operating system if they know
4 clearly which application programming interface you have and
5 what you're intending to support now and in the future."

6 You will get to see portions of Mr. Raikes'
7 deposition testimony in this case, including this exchange
8 about the purpose of documenting an API, that purpose being
9 to put a stake in the ground.

10 This is Greg Richardson on the left, Adam Harral on
11 the right. Both Mr. Harral and Mr. Richardson are software
12 developers. They write the code that makes the software
13 function. There are literally millions of lines of code
14 in an office productivity application like WordPerfect.
15 Mr. Richardson actually worked for Microsoft before coming to
16 WordPerfect and later to Novell. Mr. Harral was also a
17 WordPerfect developer before coming to Novell.

18 Mr. Harral and Mr. Richardson are part of the shared
19 code team at Novell. That fact is important. The shared
20 code team was responsible for many things, but, most
21 importantly, it was responsible for the file open dialogue
22 for all the constitute parts of the PerfectOffice suite.
23 What do I mean when I say that? This is the box that
24 contained the PerfectOffice suite for Windows 3.1. That was
25 the predecessor operating system to Windows 95.

1 Each of these applications, WordPerfect, Quattro
2 Pro, Presentation, Info Central, Envoy, Groupwise, each of
3 these applications has to have a file open dialogue. You
4 have to be able to open the files within the application.
5 Pretty basic.

6 The shared code team is responsible for creating a
7 commonly shared file open dialogue for each of these
8 applications, or, to put it another way, each of these
9 applications depends on the shared code team to produce the
10 file open dialogue. Mr. Harral and Mr. Richardson will
11 explain that process to you in detail.

12 As you may recall, the developers at WordPerfect,
13 later Novell, back in November of 1993, were very happy about
14 Microsoft's decision to document the name space extensions.
15 They liked the technology, and they determined to use it
16 for the file open dialogs for all the parts of the
17 PerfectOffice suite. The shared code team immediately
18 started coding, with the expectation of receiving those
19 extensions, and later they were coding directly to the name
20 space extensions, as documented in the M6 Beta for Windows 95
21 in June of 1994.

22 By October of 1994, they were 80 percent complete
23 with that process. That's important. I'm going to repeat
24 it. By October of 1994, Novell was 80 percent complete with
25 that process.

1 Mr. Richardson and Mr. Harral will testify that
2 Microsoft was well aware that Novell was using these
3 extensions in the development process. As you will see in
4 this case, Microsoft's documents are mixed on the issue of
5 whether Novell was using these extensions. Fortunately, you
6 won't have to rely on conflicting second and third-hand
7 reports from Microsoft. You will get to hear from the Novell
8 developers actually involved in the process.

9 The evidence will also show that many other
10 substantial and important ISV's were also using these
11 extensions. These extensions were not just important to
12 Novell.

13 On September 20, 1994, Mr. Gates attended an annual
14 event where top software executives display their latest
15 technologies. It is called the Agenda Conference. This
16 e-mail contains Mr. Gates' later report to other top
17 Microsoft executives on Novell's demonstration at that
18 conference. Mr. Gates saw Bob Frankenberg, the CEO of
19 Novell, demonstrating Novell's new technology.

20 He saw Mr. Frankenberg demonstrate Corsair, which
21 was WordPerfect's new shell, which was cross platform
22 middleware that integrated with WordPerfect to provide
23 unified views and simplified access across networks.
24 Mr. Gates saw how WordPerfect had created a direct hyperlink
25 to the internet through their new web browser Ferret.

1 This was a big deal in 1994. I don't recall seeing
2 another document in this case where Bill Gates used three
3 exclamation points at the end of a sentence.

4 THE COURT: Mr. Johnson, I'm sorry to interrupt you,
5 but I have to take a break. And I don't think we'll finish
6 up with you're statement, and I have to take a break.

7 MR. JOHNSON: Thank you, Your Honor.

8 (Short break.)

9 I'm sorry for the interruption, Mr. Johnson, but I
10 suspect I was doing you a favor, which I think has been
11 confirmed by what occurred as I saw a bunch of you running
12 for the door.

13 MR. JOHNSON: Your Honor, there is no doubt you were
14 doing us a favor. Thank you.

15 THE COURT: Thanks. Let's get the jury.

16 MR. JOHNSON: In fact, your timing was impeccable,
17 as you will soon see.

18 (Jury brought into the courtroom.)

19 THE COURT: Mr. Johnson.

20 MR. JOHNSON: Thank you, Your Honor, very much.
21 Welcome back. I needed this break, too.

22 Picking up the story where we left off, September
23 20, 1994, Mr. Gates attended this demonstration of Novell's
24 new technology as presented by Mr. Frankenberg, the CEO of
25 Novell. Mr. Gates not only is extremely impressed, he

1 states: "This emphasizes the importance of our shell
2 integration. Novell is a lot more aware of how the world is
3 changing than I thought they were."

4 Now let's move just two weeks after that September
5 20 Agenda Conference. On October 3, 1994, in an e-mail
6 widely distributed to Microsoft's top executives, Bill Gates
7 addressed the name space extension API's. What he refers
8 to here is IShellBrowser, which happens to be one of the
9 names for one of the name space extension API's. At the
10 start it is interesting to observe that Mr. Gates says,
11 quote: "It's time for a decision on IShellBrowser," as
12 though that decision had not already been made over a year
13 ago, in September of 1993, by Microsoft's top systems
14 executives. Mr. Gates decided that Microsoft should not
15 publish these extensions, even though his top executives had
16 decided to publish these extensions over a year before and
17 even though the extensions had already been published to the
18 ISV's in the M6 Beta five months earlier.

19 Instead, Mr. Gates states that Microsoft should wait
20 until they had a way to do a high level of integration that
21 will be harder for the likes of Notes, WordPerfect to achieve
22 and which would give Office a real advantage.

23 Now, Mr. Gates' reference to Notes is to the
24 middleware product built by Lotus, called Lotus Notes.
25 Mr. Gates wants to wait, in order to allow Office,

1 Microsoft's suite of office productivity applications, to
2 gain a real advantage over Lotus Notes and WordPerfect. It
3 is Novell's contention in this case that Mr. Gates' decision
4 is purely predatory, without a hint of pro-competitive
5 justification.

6 Continuing in the same e-mail. Mr. Gates notes that
7 it was already very late in the day to be making these
8 changes to Chicago and Capone. At this point, we're less
9 than a year away from the launch of Windows 95. It is also
10 important to note that his decision not to publish the name
11 space extensions had nothing to do with the quality of the
12 extensions themselves.

13 To the contrary, Mr. Gates states, in the same
14 e-mail, that the shell group did a good job of defining the
15 extensibility interfaces and that they were a very nice piece
16 of work.

17 Indeed, the evidence will show that these extensions
18 continued to be used in Windows 95 and in various versions of
19 Windows since that time. So, when you hear the later excuses
20 proffered by Microsoft for Mr. Gates' decision to not publish
21 the name space extensions, I want you to return to this
22 Plaintiff's Exhibit 1 to see for yourself if Mr. Gates gave
23 that excuse for making that decision. Remember that the
24 reason given by Mr. Gates was to advantage Office over Lotus
25 Notes and WordPerfect.

1 The e-mail goes on. By not publishing the name
2 space extensions Mr. Gates was trying to ensure that only
3 Microsoft would benefit. Here he states again, in the same
4 e-mail, that Microsoft can't compete with Lotus and
5 WordPerfect Novell without this. The goal was to have Office
6 96 take advantage of the new shell integration work and to
7 delay introduction of that technology to Windows until 1997,
8 thus advantaging Microsoft's applications at the expense of
9 competitors' applications.

10 So, when Microsoft tells you, as they will in this
11 case, that Office 95 didn't use the name space extensions,
12 turn again to PX-1, where Mr. Gates states that the goal is
13 to have Office 96 sell better because of the shell
14 integration work. By disadvantaging WordPerfect, Novell and
15 Lotus, the key competitors to Microsoft's office productivity
16 application, Mr. Gates was seeking to widen the moat
17 protecting the operating systems monopoly.

18 Later in this case, you will be hearing from
19 Professor Roger Noll of Stanford University. Dr. Noll is a
20 well-known authority in antitrust economics. He has served
21 as the senior economist at the United States President's
22 Council of Economic Advisors as a consultant for Congress and
23 federal agencies such as the Federal Trade Commission and the
24 Department of Justice.

25 Dr. Noll will discuss with you in detail how

1 Microsoft's conduct, both against Novell and against other
2 software companies, led to harm the competition in the
3 operating systems market and resulted in a further widening
4 of the moat protecting Microsoft's Windows operating systems
5 monopoly.

6 Let's get back to the facts. Mr. Gates' decision to
7 not publish the name space extensions was immediately carried
8 into effect. Satoshi Nakajima, the principal inventor of the
9 name space extension API's, spoke of hiding one of the shell
10 extension mechanisms. What he was doing, of course, was
11 undocumenting the extensions from the SDK that had gone out
12 with the M6 Beta. Microsoft was next faced with the problem
13 of explaining Mr. Gates' decision to the ISV's that were
14 using the extensions in their planned Windows 95
15 applications. Note the instructions at the end of the
16 highlighted portion, not to use the words undocumented or
17 private API's, which is exactly the status that Mr. Gates'
18 decision created for the name space extensions.

19 Microsoft's internal instructions acknowledged that
20 the name space extensions were being used by Microsoft's info
21 center and Marvel. Persons charged with contacting the ISV's
22 were repeatedly cautioned not to mention Marvel in any of
23 their conversations. Why? Because the evidence will show
24 that Marvel, now known as Microsoft network, or MSN, was and
25 continued to use the name space extensions.

1 The Microsoft employees that were charged with
2 contacting the ISV's were given a script to follow. ISV's
3 were told to stop using these API's. If ISV's asked why this
4 is being done, the Microsoft employees were told to say,
5 because the API's were very difficult to support long-term.
6 We don't want to send ISV's down a dead-end path.

7 The evidence will show that this reason was pure
8 spin, just wasn't true. Mr. Gates had said nothing about
9 these API's being difficult to support long-term. To the
10 contrary, he had said that they were a very nice piece of
11 work. The document went on with a question and answer,
12 sample question and answer for the DRG folks to respond to
13 the a ISV's. The number 1 reason underlined in the original,
14 as you see it here on the screen, was compatibility.

15 Quote: "We have determined that it will be very
16 difficult to support these API's for applications as we move
17 forward with our operating systems. We did not want to
18 encourage ISV's to support interfaces that would go away in
19 the future."

20 These API's never went away. In fact, the evidence
21 shows that the extensions were not only used in Windows 95,
22 they were also added to Windows NT, Microsoft's advanced
23 server operating system, even before Mr. Gates made his
24 decision not to publish them. A week prior to Mr. Gates'
25 decision to not publish the name space extensions, Microsoft

1 had already decided that the entire Chicago shell code base,
2 including these name space API extensions, would be used on
3 Windows NT. Note the date here on this e-mail, September 27,
4 1994, a week prior to Mr. Gates' decision to deny ISV's the
5 name space extensions.

6 Mr. Allchin, he's the head of the Windows NT in
7 Cairo development, reports that the decision had been made to
8 use the Chicago shell code base for the NT work station.
9 Notice Mr. Allchin talking about the positive benefit from
10 this decision. The shell in NT will now be the same as
11 Chicago, and this will give ISV's one set of API's to target.

12 Other Microsoft executives noted specifically that
13 the shell extensions would run fine on Windows NT. This
14 e-mail is from Brad Silverberg, the head of Chicago
15 development. He states that the Windows 955 shell will be on
16 Windows NT and that the shell extensions will run fine there.
17 There is no issue about supporting on NT. So, the alleged
18 lack of future compatibility with future operating systems
19 was just pure spin.

20 Now, Microsoft will advance other excuses for
21 Mr. Gates' decision. They will say that the API's lacked
22 robustness, that a badly written extension could bring down
23 the shell. We will rebut all those additional excuses but,
24 again, look back at PX-1. Does Mr. Gates say anything about
25 a lack of robustness? Does he say anything about a badly

1 written extension could bring down the shell? You won't find
2 that in Mr. Gates' e-mail. To the contrary, Mr. Gates says
3 they were a very fine piece of work and there was nothing
4 wrong with the extensions.

5 The Microsoft employees charged with contacting the
6 ISV's were told to inform the ISV's that Microsoft's own
7 applications had been required to stop using these
8 interfaces. This also was not true. Marvel was the code
9 name for the Microsoft application I referred to earlier
10 called MSN or Microsoft Network. It planned to ship with
11 Chicago. The Marvel team called Gates' decision a bombshell
12 and poignantly noted a redesign of their shell was not a
13 realistic solution given the time constraints.

14 Now, keep in mind that Marvel is a Microsoft
15 application. They had direct access to the source code
16 implementing these name space extensions. They could talk
17 directly to the inventor of the name space extensions,
18 Mr. Nakajima, and all the other Microsoft developers of
19 Windows 95. Yet, here, Marvel is acknowledging that a
20 redesign of the Marvel shell was not a realistic solution,
21 given the time constraints. It was even less of a realistic
22 solution for Novell WordPerfect who has no access to the
23 source code, no access to Mr. Nakajima, and no access to the
24 Microsoft developers of this technology.

25 The bottom line for Marvel, was that there was only

1 one solution that didn't cause a huge risk to the project,
2 using the de-documented extensions. Any other option meant
3 that Marvel would not make Chicago. Note here on this e-mail
4 that Bill G. -- that's Bill Gates -- is being advised
5 directly, two days after his decision, that there is only one
6 solution that doesn't cause huge risk to Marvel, using the
7 name space extension API's.

8 Microsoft, in general, and Bill Gates, in
9 particular, knew that WordPerfect was using these extensions.
10 Here, Brad Silverberg, the head of Chicago development, urges
11 Bill Gates and other Microsoft executives to make the
12 extensions public. He states that other ISV's using the
13 extensions are WordPerfect, Lotus, Semantic, Oracle.
14 Mr. Silverberg points out that the action may lead to calls
15 for the Department of Justice to investigate. The evidence
16 will show that Mr. Silverberg's pleas fell on deaf ears.

17 The API's remained undocumented at the direction of
18 Mr. Gates, and the reason for de-documented the name space
19 extensions remained the same, to advantage Office at the
20 expense of WordPerfect and Lotus.

21 Even after the decision had been made, Novell
22 developers continued to try and get more information about
23 the use of the name space extensions from Microsoft. Here,
24 Kelly Sonderigger writes -- Kelly Sonderigger of Novell,
25 writes to Brad Struss at Microsoft requesting an article on

1 the name space extension API's. Mr. Struss finally responds
2 to him that, quote: "This functionality, as described, is no
3 longer available."

4 Now, as Novell's developers and our technical expert
5 Mr. Alepin, whom you will be hearing from, will explain to
6 you, no ISV can use API's which the operating systems'
7 vendors says it will not support, which may be removed in the
8 future, and having been told here that the functionality is
9 no longer available. Novell and many other ISV's had no
10 choice than but to find another way. Microsoft had laid down
11 a road for the ISV's to use, and Novell had gone a long way
12 down that road. You remember me telling you, 80 percent down
13 that road.

14 And then, suddenly, Microsoft blocked the road.
15 Microsoft, in essence, forced them to build their own road
16 from scratch. And it wasn't just the withdrawal of the name
17 space extensions. The evidence will show that, after Mr.
18 Gates' decision, Microsoft developers refused to provide any
19 help to Novell about the operation of the entire Windows 95
20 shell. That information window that Microsoft had provided
21 to WordPerfect and to the other ISV's was suddenly slammed
22 closed.

23 Mr. Harral and Mr. Richardson will describe in
24 detail to you the struggle of the shared code team to build a
25 new road after Microsoft undocumented the name space

1 extension API's. This was functionality Novell had to have
2 in order to create a competitive suite of office productivity
3 applications in a timely manner. The evidence will show that
4 Novell had seven full-time developers working on the file
5 management system night and day for over a year and nine
6 other developers from the various dependent applications in
7 the suite spending half their time on this as well.

8 Microsoft's decision severely crippled Novell's
9 ability to produce a competitive product in a timely fashion.
10 You will also get the opportunity to hear from Gary Gibb.
11 Mr. Gibb was the director of the PerfectOffice suite for
12 Windows 95. He was in charge of the entire suite
13 development. It was his responsibility to bring all the
14 pieces together to create the finished product.

15 We will learn about the concept of critical path.
16 That concept looks at the development process of all the
17 pieces that need to come together to finish the suite and
18 tells you -- excuse me -- and tells you which piece is
19 critical path; in other words, which piece is taking the
20 longest to get done in driving the issue of time to
21 completion. Mr. Gibb will explain that the file open
22 dialogue was critical path throughout this project. The
23 evidence will show that Mr. Gates' decision resulted in a
24 delay in Novell's efforts to produce a timely suite for
25 Windows 95.

1 By late July, 1995, in a document entitled Panic
2 Mode Modification Recommendations, Novell knew that there was
3 no conceivable way to have the name space browser code
4 complete by August 22, which was close to the scheduled
5 release date for Windows 95. At the same time, eliminating
6 the feature altogether was not a reasonable option. The
7 evidence will show that, as a result of Microsoft's gaming
8 the interfaces, PerfectOffice did not release until May of
9 1996, long after the release of Windows 95, and Office 95, in
10 August of 1995.

11 Now, Microsoft's use of the name space extensions
12 within Chicago continued unabated. Athena was another code
13 name, this time for a personal information manager, sometimes
14 called a PIM in the industry. The evidence related to Athena
15 will demonstrate for you the hypocrisy of Microsoft's claimed
16 excuses for denying ISV's the name space extensions and the
17 concern within Microsoft itself for the impact on ISV's like
18 Novell and WordPerfect.

19 Here we have Scott Henson. He was the head of the
20 developer relations group at Microsoft, the public face of
21 Microsoft. He writes, in August of 1995, about his strong
22 concern for the ISV's. As you can see, the subject of this
23 e-mail is shell extensibility and ISV's. Mr. Henson has just
24 installed Athena, this MS PIM application on his computer and
25 found, to his dismay, that not only was it using the name

1 space extensions but that it was also displayed in both the
2 left and right-hand panes of the Windows Explorer. As
3 Mr. Henson states, this is the exact thing we told ISV's they
4 could and should not do.

5 Here's what Mr. Henson saw. This is a screen shot
6 of Athena being used to display internet mail and news which
7 we highlighted with those red boxes at the bottom, fully
8 integrated into the shell and showing its contents in the
9 right-hand pane. When we click on internet news, the program
10 runs in the right-hand pane. This is the exact functionality
11 that Mr. Gates stated over and over again, in his deposition,
12 never happened. It is also the functionality that he
13 claimed, at his deposition, was trivial and unimportant.

14 As Mr. Henson further explains, Microsoft had a
15 product that was to be sold in the very near future
16 implementing interfaces that Microsoft told ISV's they should
17 not use because they would not be able to support them moving
18 forward. That was the excuse, you remember, given to the
19 ISV's. That was the excuse advanced in October of 1994.
20 Mr. Henson can't even express how bad this is. We lose
21 everything when we do this, credibility, trust, leverage, the
22 works. Mr. Henson also found it strange that Athena worked
23 just as well on windows NT, because he had been telling the
24 ISV's all a long that incompatibility with Windows NT was the
25 reason why the extensions had been de-documented.

1 We know differently from the e-mails we saw this
2 morning. Microsoft had made the decision to use the Chicago
3 shell API's in Windows NT ten months earlier, in September of
4 1994, just before Mr. Gates' decision to de-document the name
5 space extensions. There was no compatibility issue with
6 Windows NT. It was all a facade. Mr. Henson went on to note
7 that Athena was just the tip of the iceberg. There was
8 internal development within Microsoft where various groups
9 were implementing these interfaces.

10 Let's look at a little of that work going on at
11 Microsoft. This document is an Office 96 specification. You
12 may remember that Mr. Gates said that the reason to
13 de-document the name space extensions was to advantage
14 Microsoft Office. You will also remember that the target was
15 not Office 95, but, rather, Office 96. The plan was to use
16 the technology in Office 96, the version of Office to come
17 out a year after Windows 95. Here the Microsoft developer
18 writing the specification for Office 96 states that the
19 Office Explorer implementation strategy is to, quote,
20 leverage the Chicago shell's teamwork as much as possible and
21 that Chicago provided some of the crucial interfaces that
22 would simplify their work, including IShell Folder and IShell
23 View, IShell folder and IShell view are two of the name space
24 extension API's.

25 The evidence will also show that Microsoft used the

1 name space extension API's to integrate Microsoft's Internet
2 Explorer directly into the Windows 95 Explorer. This
3 article, written by the inventor of the name space extension,
4 Mr. Nakajima, shows exactly how it was to be done. Windows
5 95 shell name space extension, he writes, although we haven't
6 clearly defined how we present documents on WWW -- that's the
7 worldwide web, for those that remember -- to the end user on
8 the Explorer left pane, i.e., the hierarchy, we know that
9 they don't belong to any of the existing folders, shells,
10 name space. It is quite natural to use the name space
11 extension mechanism -- see picture below -- to plug the URL
12 name space into the Explorer's name space.

13 Now, as Mr. Richardson of Novell will explain to
14 you, this is precisely what Novell wanted to do in
15 WordPerfect for Windows 1995. They wanted to add the
16 internet browser right into the file open dialogue in
17 WordPerfect, using the name space extensions.

18 Let's return now to Mr. Henson's e-mail over Athena.
19 He recommended that Microsoft document the API's quick. Our
20 ISV's are already months behind. Novell couldn't have said
21 it better. Novell and other ISV's were already months
22 behind. Of course we are now in August of 1995. It's too
23 late. Windows 95 is coming out that month. On August 24,
24 1995, Windows 95 was launched to great fanfare. Office 95
25 was launched at the same time. People lined up in the stores

1 hours before opening to buy the new products. Jay Leno was
2 the MC for the launch ceremony at Microsoft's headquarters.

3 Microsoft reportedly paid the Rolling Stones
4 millions of dollars to use the song Start Me Up in their
5 launch campaign. The Empire State Building was lit up in
6 Microsoft's orange, yellow and green logo colors. No other
7 office productivity application suite built for Windows 95
8 was available at the launch. Neither Lotus' Smart Suite nor
9 Novell's PerfectOffice. The PerfectOffice Suite was finally
10 released by Corel, it's new owner, and I mentioned this
11 before, in May of 1996. In other words, Microsoft's suite of
12 office productivity applications was the only choice if an
13 individual or business wanted office productivity
14 applications built for Windows 95.

15 Microsoft was left as the virtual undisputed owner
16 of the key franchises sitting atop the operating system, just
17 as Mr. Raikes had told Mr. Warren Buffet. Microsoft had
18 succeeded in widening the moat protecting Microsoft's
19 operating systems monopoly.

20 By the way, you are going to hear a lot of evidence
21 from Microsoft that, after the merger of Novell and
22 WordPerfect, that Novell let go a lot of the WordPerfect
23 salespeople and that Novell allegedly decimated the sales
24 force. This is another effort by Microsoft at misdirection.
25 When you hear this evidence, I ask you to reflect on this.

1 Even if it was true that Novell had decimated the sales
2 force -- and I think we will show you that that's not true --
3 but let's assume it is true. What difference would that have
4 made? Because of Microsoft's conduct, Novell didn't have a
5 product to sell. You can have the greatest sales force in
6 the world, and it wouldn't have mattered, if you have nothing
7 to sell.

8 As I mentioned earlier, Microsoft is also going to
9 try and tell you that WordPerfect was doomed, that the die
10 was cast by decisions made years before by WordPerfect, and
11 later by the alleged mismanagement of Novell. The evidence,
12 however, will suggest otherwise. Here's a chart of
13 WordPerfect revenues from 1989 to 1998. The yellow shown on
14 the chart is revenue from the DOS operating system, the
15 predecessor of Windows, which was on its way out. The
16 important color for you to look at here is blue, WordPerfect
17 revenues on Windows operating systems.

18 Once WordPerfect started writing for Windows, in
19 1991, their Windows revenues grew and grew, through 1994,
20 when WordPerfect revenues exceeded \$300 million. Even in
21 1995, with most of the world waiting for the release of
22 Windows 95 in August of that year, WordPerfect's Windows
23 based revenue exceeded \$250 million. When Microsoft
24 destroyed Novell's chance to have a timely suite for Windows
25 95, WordPerfect revenues plummeted (as spoken).

1 Microsoft is also going to pull out a lot of old
2 product reviews to try and suggest to you that consumers were
3 choosing not to buy WordPerfect because of these poor
4 reviews. As this graph shows, WordPerfect was doing quite
5 well on Windows in 1992, 1993 and 1994. And if product
6 reviews drive sales, as Microsoft will argue, let me share
7 with you a few of the reviews of PerfectOffice 3.0, which
8 came out in 1994.

9 I show these product reviews excerpts not for the
10 truth of the statements made, but rather to show you that if
11 the reviews drive sales, as Microsoft will argue, then
12 WordPerfect was doing quite well, thank you very much.

13 PerfectOffice has leapfrogged Microsoft Office
14 Professional and Lotus Smart Suite to become the mostly
15 highly integrated office suite on the market. PerfectOffice
16 does a better job of sharing information across applications
17 for a work group and has a more consistent user interface.
18 PerfectOffice 3.0 runs nose to nose with Microsoft Office,
19 but the cross application integration is better. Overall,
20 PerfectOffice is a stunner. No other suite can match the
21 consistency of PerfectOffice applications. The opportunities
22 for integration, including extensive Olay 2.0 implementation
23 and the QuickCast micros, the end user hand-holder link and
24 the work group support, for now this is the best all
25 around. PerfectOffice sales have finally taken a bite out

1 of Microsoft Office. The latest figures show Novell has 25
2 percent of the office suite market, up from next to nothing.
3 Lotus is still in the toilet with 5 percent market share,
4 while Microsoft has all the rest.

5 So we ask you to draw your own conclusions when
6 Microsoft says that WordPerfect failed in the marketplace
7 because of poor product reviews.

8 I skipped one, didn't I? I won't even read this
9 one. Here's another one in the same document, Plaintiff's
10 Exhibit 390.

11 Damages. It would be great if we could turn back
12 the hands of time and give Novell WordPerfect a more level
13 playing field in creating a world class suite of office
14 productivity applications for Windows 95. We can't. All the
15 law can do now is to compensate Novell with money for
16 Microsoft's anticompetitive actions. You will hear from
17 Dr. Frederick Warren-Boulton, who is the damages expert for
18 Novell. Dr. Warren-Boulton has an extensive background in
19 economics. He served for six years as the chief economist
20 for the antitrust division for the United States Department
21 of Justice. I'm not going to get into the issue of damages
22 here in any detail. I'm going to leave that to the experts.

23 What I will say, however, is that the evidence will
24 show that, by late 1995, after Windows 95 and Office 95 had
25 been launched to great fanfare, Novell had come to understand

1 that Microsoft would not allow fair competition in the office
2 productivity applications market and made the decision to
3 sell these applications to the highest bidder. That bidder
4 was Corel, who purchased the applications in March of 1996,
5 for \$146 million. In a period of 22 months, Novell lost more
6 than a billion dollars.

7 A couple of items as I finish up here. As I
8 mentioned at the beginning, name space extensions API's is
9 not the only issue we have with Microsoft in this litigation,
10 although it's plainly the most important. You will hear
11 about other acts taken by Microsoft against Novell that were
12 also anticompetitive, but none of those had the impact of
13 these name space extensions. You will also hear in this case
14 about other anticompetitive conduct engaged in by Microsoft
15 that didn't impact Novell directly. Now Novell, obviously,
16 is not claiming damages for conduct that hurt others, like
17 Lotus or Netscape or Sun Microsystems.

18 You will learn about the anticompetitive conduct
19 engaged in by Microsoft against Netscape and Sun Microsystems
20 from the findings which will be read to you at the beginning
21 of the case, and we address what Microsoft did to these other
22 companies in this case because it's relevant to your
23 understanding of Microsoft's intent with what they did to us.
24 And some of it will also be relevant to the issue of harm to
25 competition in the operating system market.

1 As I mentioned earlier Dr. Noll will be addressing
2 the question of harm to competition in the operating systems
3 market with you in great detail later in the case.

4 Now, one thing I want to do before I sit down is to
5 thank you for acting as jurors in this case. It's an
6 imposition. We know that, and we thank you for your service.
7 And we will do everything in our power to get the evidence to
8 you as quickly and directly as possible. That's the least we
9 can do. So that's it for now. I won't have the opportunity
10 to talk with you like this until the very end of the case. I
11 look forward to that day.

12 Your Honor, that concludes Novell's opening
13 statement.

14 THE COURT: Thank you very much, Mr. Johnson.

15 We've gone a little longer than we expected, so
16 Mr. Tulchin, you can start, but we may have to have you
17 finish up after the lunch break.

18 MR. TULCHIN: Thank you, Your Honor. Appreciate it.

19 Opposing counsel, Judge Motz, and, of course, ladies
20 and gentlemen of the jury, my name is David Tulchin. I'm
21 from the law firm of Sullivan and Cromwell. I'm very pleased
22 to be here today on behalf of Microsoft Corporation, and
23 before I begin, I wonder if I can introduce my colleagues who
24 will be trying the case here. Steve Holley, who is with
25 Sullivan and Cromwell, my firm; Jim Jardine, from Ray,

1 Quinney & Nebeker; Steve Aeschbacher, who is from Microsoft
2 Corporation in the state of Washington; and Sharon Nelles,
3 also from my firm, Sullivan and Cromwell.

4 It is indeed a privilege to be here to represent
5 Microsoft and to address all of you. It's also a pleasure to
6 be in this beautiful old courthouse, which I'm told was built
7 in the 1930's, and I mention that because I remarked on that
8 earlier, and one of my colleagues asked if I had seen it
9 being constructed. Not quite. But it really is a great old
10 courthouse.

11 THE COURT: Give me a break, Mr. Tulchin.

12 MR. TULCHIN: Almost, Your Honor.

13 I have a favor to ask of you at the beginning. As
14 you know, the case will go on for some period of time, and I
15 ask that you be patient, and as the Court said yesterday,
16 wait for the evidence to come in before making any decisions
17 about anything. Novell gets to go first. They put their
18 witnesses and evidence on first. We have to wait until they
19 are finished before we call our witnesses, so I ask you to
20 withhold judgment about the important issues in this case
21 until you've had the chance to hear all the evidence.

22 A couple of opening remarks, if I may. Novell's
23 lawyer pretty much said -- and I think this is the burden of
24 what he said to you -- that, during the short period of time
25 that Novell owned WordPerfect, the word processing, Novell

1 failed. The product was unsuccessful. That period, of
2 course, was from June of 1994 to March 1, 1996, and in my
3 opening statement to you today, I'm going to try to put some
4 of these pieces together chronologically because I don't want
5 there to be confusion about when things occurred.

6 It's very important in this story. In 2011, here
7 today, Novell's lawyer stood up and blamed Microsoft for the
8 failure of WordPerfect when it was in Novell's hands. He
9 even said that there was deception -- he used that word
10 several times -- hypocrisy, that it was spin, Microsoft's
11 reasons for taking certain things were spin. He said that it
12 was all a facade.

13 The truth is that the evidence will show that the
14 blame cannot be placed at Microsoft's feet for what happened
15 to WordPerfect and also to another product that Novell bought
16 also in '94 called Quattro Pro, a spreadsheet. The blame
17 really lies at Novell's feet and at the feet of WordPerfect
18 Corporation, the company that Novell acquired in '94. And if
19 Novell's products failed because of bad choices by Novell and
20 WordPerfect, as they did, it was also a function of the great
21 products that Microsoft made.

22 You remember, just a few minutes ago, Novell's
23 lawyer telling you about the huge success of Windows 95. He
24 showed you a picture of the launch date, August 24, 1995, and
25 I think he said that millions of people around this country

1 and around the world waited on line to get Windows 95. And
2 we'll come to that this morning. Microsoft made great
3 products that people wanted to use. And that helps explain
4 what happened to WordPerfect as well. It's easy to make
5 allegations about spin and hypocrisy. It's easy to say there
6 was deception. Again, we ask that you wait to hear the
7 evidence of whether there was any deception at all. I'll
8 come to just a little bit of this evidence as we talk this
9 morning.

10 Novell's lawyer did not tell you that these events
11 about the name space extension API's -- and that's the only
12 thing that he says Microsoft did wrong -- something to do
13 with the name space extension API's. And he points to a
14 decision on October 3, '94, by Mr. Gates, to withdraw support
15 for the name space extension API's. I'm going to get into
16 this in more detail, but it's important to say right at the
17 very beginning. At that time, October, '94, Windows 95 was
18 not a released product on the market. We're talking about a
19 Beta version of the product, a pre-released version. So,
20 when Novell's lawyer talks about a road that had been built,
21 the road had not been built.

22 Microsoft was working on Windows 95. This is a
23 pre-release version that it had provided to Novell, under a
24 contract, and you'll see some of this later, and, of course,
25 in the development of a very complicated operating system

1 like Windows 95, things change. The product is not final.
2 That's the very nature of a Beta. And that's what the
3 evidence will show. The beta is a pre-release version sent
4 out to ISV's like Novell to be tested, and as Microsoft gets
5 feedback about -- from ISV's about this pre-release version,
6 there are many, many decisions for Mr. Gates and others at
7 the company to make about exactly what the final product will
8 look like.

9 That's the decision in October '94. There was
10 nothing provided to Novell, that was Novell's property, that
11 was suddenly seized away. Indeed, Novell's lawyer, I noted,
12 said three times that Mr. Nakajima, who was a Microsoft
13 engineer -- he worked for Microsoft. He was paid by
14 Microsoft -- and the lawyer said that Mr. Nakajima was the
15 inventor of the name space extension API's. Yes, he was.
16 That invention belonged to Microsoft.

17 No one promised Novell that it could use that
18 invention as it chose, if Microsoft decided that Windows 95
19 would be a better product without it. And I'll come to that
20 in just a little while. And, interestingly, well, today you
21 hear that Novell is asking for -- I think the only number put
22 up on the screen was a billion dollars in damages. And the
23 lawyer said, well, you will hear from experts about that.

24 At the time, Novell never complained about
25 Mr. Gates' decision to withdraw the name space extension

1 API's. That's October of 1994. Novell didn't even file this
2 lawsuit until November of 2004, more than ten years later.
3 So, when you hear there was deception and hypocrisy and spin,
4 when the lawyer says it was all a facade, this conduct that
5 allegedly is so bad -- and it's easy to toss around those
6 words. That's what the courtroom is for, for the evidence.
7 This conduct that was supposedly so bad, Novell said nothing
8 about at the time and waited more than ten years before it
9 even brought this case, filed the lawsuit.

10 The evidence will show that Novell, itself, made
11 misjudgments and bad choices, and the demise of WordPerfect,
12 the decline of the product, was a function of that and a few
13 other things that we will come to. And, of course, one other
14 preliminary thing. It's easy to say deception and to use the
15 word, and it's easy to show little snippets of e-mails on the
16 screen, just a little word or two or a fragment of a
17 sentence, and to construct an argument about what that
18 sentence means or what you should think it means.

19 Again, I ask you to wait for the evidence.
20 Mr. Gates will be here in this courtroom. He will come in
21 and tell you about the decision to withdraw support for the
22 name space extension API's. That will be the evidence, not
23 what a lawyer tells you you should think, but how you
24 evaluate the testimony and the evidence in front of you.

25 I also noted, and I hope I got this right -- I think

1 I did -- that through this opening statement that you just
2 heard from the Novell side, I don't think you were shown a
3 single Novell document about what really happened. I'll show
4 you some of those as we go through this this morning. You
5 were also told several times about findings of fact in
6 another case. And you were told that one of the lawyers for
7 Novell will read you those findings of fact.

8 I ask just this. I ask you, when you listen to
9 them, to try to figure out if there's any mention, in any of
10 those findings in this other case in Washington, in 1999, any
11 mention of Novell or WordPerfect or any Novell products, any
12 of them. I think you'll find that there is none.

13 So, we're very happy to have you listen to the
14 findings that will be read to you. They have to do with a
15 case that was filed in 1998, as Novell's lawyer said, and the
16 findings were made in '99.

17 One other preliminary thing, if I may. I don't
18 think you were ever told what the name space extensions
19 really are, what they were, and I will show you if I can.
20 It's technological and a little complicated. There will be
21 witnesses here who will explain it much better than I can.
22 But there is an implication that, when you see something
23 about extending the shell or shell extensibility, that that's
24 a reference to the name space extension API's. And that's
25 not right. The name space extensions were just a very small

1 piece of the shell and the Microsoft technology to extend of
2 the shell, just a tiny piece of them. The name space
3 extension API's were not the reason that WordPerfect failed
4 in the marketplace.

5 Let's start, if we can have the first slide, just
6 with some basics here. And, as I think you know by now,
7 there are three sorts of products that are principally
8 involved in the case, PC operating systems, which we often
9 just call operating systems. Included are DOS and the
10 Microsoft version of DOS called MS DOS, and then Windows;
11 word processing software. Microsoft had something called
12 Word. Novell had WordPerfect; and then spreadsheet software,
13 Microsoft Excel, and Novell had a product called Quattro Pro
14 during that short period of the time, from June of '94 to
15 March 1 of '96.

16 It's also worth noting, and I think we should do it
17 right here, that, as the Judge instructed you yesterday, it
18 is not unlawful, in and of itself, to have monopoly. Judge
19 Motz said these words to you yesterday as part of his
20 preliminary instructions to you. Mere possession of monopoly
21 power, if lawfully acquired, does not, itself, violate the
22 antitrust laws. And, yes, Microsoft, during the relevant
23 period, had a monopoly in operating systems thanks to the
24 popularity of MS DOS and Windows.

25 Novell's lawyer mentioned an expert that they will

1 call, that Novell has hired, named Roger Noll, who will
2 testify in this case. Dr. Noll, who is a professor, has
3 testified previously that Microsoft's monopoly was lawfully
4 acquired. Nothing illegally done by Microsoft to obtain that
5 monopoly.

6 And the Court will give you full instructions at the
7 end of the case about what constitutes anticompetitive
8 conduct. I think Judge Motz said yesterday that you'd hear
9 that in his final instructions. A harsh sounding e-mail, in
10 and of itself, is not anticompetitive conduct. And you will
11 hear the final instructions. Whatever they say, they will
12 say, but that's certainly my prediction you will hear that.
13 And I think you will also hear --

14 2C

15 -- that conduct is not anticompetitive if it was
16 undertaken for a legitimate business purpose.

17 Novell's lawyer said something similar to that in
18 his opening statement, and we will come to the name space
19 API's and the reasons, plural, reasons, that Microsoft
20 decided, during the period it was working on Windows 95,
21 developing the product, to make that small change.

22 Now, let me tell you a little bit about Microsoft.
23 Many of you know a piece of the story. Bill Gates was 19 and
24 at Harvard College in Massachusetts in 1974, I believe, when
25 he became very interested in actually a -- what was then

1 called a mini computer that he saw in a magazine, dropped out
2 of college, and with his boyhood friend, Paul Allen, went to
3 work in writing a computer programming language called Basic.
4 Some of you may even have heard of Basic. A few years later,
5 Bill Gates and Paul Allen, who had started Microsoft, bought
6 a software program from a company in Seattle, modified it,
7 and developed what was called Microsoft DOS or MS DOS.

8 Of all things, IBM, which was then the 300 pound
9 gorilla in the world of technology and computing literally
10 knocked on Mr. Gates' door, in the suburbs of Seattle,
11 inquiring about whether Microsoft could write or provide an
12 operating system for the first IBM PC, which came out on the
13 market in 1981.

14 And, Judge Motz, that one I do remember.

15 And Mr. Gates made a deal with IBM and, pretty soon,
16 MS DOS was on the majority of all PC's that were being sold
17 anywhere around the world.

18 Now, that, of course, was in the 1980's. Bill Gates
19 could have stopped right there. Microsoft was very
20 successful selling MS DOS to IBM and all these other
21 companies that were making what were then called IBM clone
22 PC's. But Mr. Gates saw the future of computing as something
23 a little different.

24 And let me just show you what MS DOS looked like.
25 It was a character based system. Some of you may have seen

1 it. In a character based system, this is what the screen
2 would look like when you get your computer booted up.

3 And let's look at the next one.

4 In order to get to anything useful in your computer,
5 you had to type in a command, and if you typed in the command
6 correctly, the computer would respond by displaying the
7 contents of the file that you were interested in. If you
8 didn't type the command in exactly right, the computer, of
9 course, would give you nothing.

10 And let's look in a minute at what are called
11 graphical user interface operating systems. And I know there
12 are a lot of are acronyms in this case. It's going to be
13 hard to keep them all straight. This one I think you will
14 hear from time to time. GUI, G-U-I, which stands for
15 graphical user interface. And what you're looking at now, is
16 a screen shot of a GUI operating system. This one is
17 Windows. The picture depicts the Windows 95 desktop, and, as
18 I think all of you probably know, the user can interact
19 with a GUI operating system by just clicking on icons and
20 buttons on the screen.

21 Now, in the 1980's, this was something very new.
22 Mr. Gates, early in the '80's, made a commitment to the GUI
23 platform, graphical user interface platform. He saw it as
24 the future of computing. He saw it as the way that, as he
25 had predicted in the 1970's -- something that seemed

1 implausible then -- there would be a computer in every home
2 and in every office. And, in effect, Mr. Gates bet the
3 company, bet Microsoft's future on the GUI platform.

4 Apple -- and you've all recently read about the
5 unfortunate death of Mr. Jobs, one of the co-founders. But
6 Apple came out with the Macintosh in 1984. It was a GUI
7 platform. Bill Gates recognized the potential of GUI's right
8 then, in 1984. It was a whole different, much easier way for
9 most people to get the benefits of using a computer. And,
10 right away, Microsoft went to work on making operating
11 systems that were graphical and applications, like word
12 processors and spreadsheets, that would run on a GUI
13 platform.

14 In 1985, Microsoft came out with the first version
15 of Windows. That's -- it's not on this chart, but that's
16 1985, Windows 1.0. Windows 2.0 came out in 1987, at the end,
17 and what we show you on this graph is all the work that
18 Microsoft did writing applications for GUI platforms, for
19 these graphical user interface operating systems, Word and
20 Excel for the Macintosh. That's 1985. 1987. And you see
21 the progression here of Microsoft applications for the GUI
22 platform. This is an important point because of the contrast
23 with what WordPerfect, itself, did.

24 Now, you see Windows 3.0. That was released in May
25 of 1990. The evidence at the trial will show you that

1 Windows 3.0 was a game changer. And we'll come to that in
2 just a minute. The first two versions of Windows were not
3 hugely popular. They were not huge sellers. The world
4 continued using mostly DOS operating systems, and
5 particularly Microsoft DOS.

6 Now, while Microsoft was working on these graphical
7 user applications, Word and Excel, WordPerfect Corporation --
8 this is long before it was bought by Novell -- was much, much
9 slower at recognizing the future, where computing might go in
10 the next several years. WordPerfect first came out with a
11 word processor for the Apple Mackintosh system in the middle
12 of 1988, and, in fact, came out with nothing for Windows, no
13 word processor for Windows, until the end of 1991. And we're
14 going to come back to that in just a minute.

15 The evidence will show that the reason Novell was
16 having so much trouble getting its applications out in a
17 timely way in 1995 is because WordPerfect was always late.
18 We'll see this as we go along. At that time -- and I want to
19 stop here and talk a little bit about Novell, which did not
20 own WordPerfect then. At that time, Novell --

21 I'm sorry. Would you turn that off. My apologies.

22 Novell, in the early '90's, was principally a
23 company whose product was called Netware. And I think you
24 remember Novell's lawyers saying Novell's business was
25 network operating systems. The evidence will show that

1 Novell, in the early '90's was very successful in network
2 operating systems. They had something like 65 or 70 percent
3 of that market. These are operating systems for servers.

4 And Novell and Microsoft competed at that point.
5 Microsoft had Windows NT, and Novell had Netware. Many of
6 the e-mails that Novell's lawyer showed you from 1992 and
7 1993, written in Microsoft, are clearly about competition
8 between Windows NT and Netware, Novell's Netware. They have
9 nothing to do with WordPerfect or Quattro Pro. They have
10 nothing to do with the issues in this case. Those e-mails
11 from '93 were before Novell ever bought WordPerfect. Those
12 e-mails are about this competition in this other area where
13 Novell was then dominant, network operating systems, and
14 Microsoft was sort of the new boy on the block.

15 The idea of diversifying for Novell, to diversify
16 into word processing and spreadsheets, was an idea that Ray
17 Noorda had. Mr. Noorda was the founder of Novell. He ran
18 Novell up until the spring of 1994. Just about the time that
19 he left Novell is when Novell announced that it was buying
20 WordPerfect and Quattro Pro. Quattro Pro, at the time, was
21 owned by company called Borland in California, Scotts Valley,
22 California.

23 And, as I've noted, the current lawsuit is Novell's
24 effort to blame Microsoft for what happened to those
25 products. In order to understand what happened to them, we

1 really need to understand where they were, where those
2 products were in the marketplace at the time Novell bought
3 them. And let's go through just some of that.

4 Slide 15.

5 First, it is quite correct that, on DOS, WordPerfect
6 was king. It was true in the '80's. And here we show you
7 the period in the early '90's. The WordPerfect word
8 processing product, owned by WordPerfect Corporation, was
9 very successful on the DOS platform.

10 The evidence will show you that, if you have a piece
11 of software like WordPerfect that's running on one platform,
12 like DOS, you cannot usually automatically make it available
13 on a different platform, like Windows or Mackintosh, some GUI
14 platform. That's a big job. You have to rewrite your code
15 so that it fits with the other operating system. WordPerfect
16 had done a great job on DOS. Their market share was very
17 high. Microsoft Word's market share -- this was the
18 Microsoft product Word, on the DOS platform, was much lower.

19 And you can see it here. Even when Microsoft Word
20 was written to run on the Microsoft operating system, MS DOS,
21 WordPerfect was far more successful. Microsoft, meanwhile,
22 was hugely successful on the Mackintosh, on the GUI operating
23 system from Apple. And Microsoft was getting all these years
24 of experience working on a GUI system. Microsoft was also
25 way, way ahead of WordPerfect in writing Word for Windows.

1 Again, you have to rewrite your software to make it work on a
2 different platform.

3 Let's look at 18, please.

4 I showed you on one of the charts, and just
5 mentioned it briefly that, in May of 1990, Microsoft released
6 Windows 3.0. And I mentioned to you that the evidence will
7 show that Windows 1 and Windows 2, released years earlier,
8 had not been huge hits in the market, but Windows 3.0 was.
9 Even Novell's expert in this case, Roger Noll, has said
10 Windows 3.0 was a revolutionary technological leap. It was a
11 huge event for Microsoft.

12 And Charles Middleton, who will come testify, who
13 was a Novell employee, has said something very similar, that
14 Windows 3.0 was a big leap forward from the previous versions
15 of Windows. When that product came out in May of 1990 -- and
16 this will be the evidence at trial -- droves of consumers
17 moved from the DOS platform, that character-based system
18 where you had to type in commands, to Windows 3.0.

19 The evidence will show that WordPerfect Corporation
20 was nowhere at that time. They weren't ready for this
21 change, this shift in the marketplace.

22 Let's look at slide 19.

23 Again, I know this is a lot of information. We're
24 just getting started at the trial. You will hear this over
25 weeks and weeks. We don't expect you to memorize all these

1 dates and things and for people who are new to all this, it
2 may sound a little intimidating. But what we show here on
3 this slide is that when Windows 3.0 came out in May of '90,
4 this operating system that Microsoft created, that was a
5 revolutionary technological leap, Microsoft had Word out to
6 run on Windows; one version in 1989, a second one later.

7 WordPerfect had nothing, and you will hear at this
8 trial, from a man named Willard Peterson -- he goes by Pete,
9 as you might think -- Pete Peterson who, at the time, worked
10 for WordPerfect. He left WordPerfect in 1992. Mr. Peterson
11 basically ran the business. His title, I believe, was
12 executive vice-president. But he was running the WordPerfect
13 business. And he will testify right hear from the witness
14 chair, I believe, that WordPerfect Corporation was late to
15 come out with a product that ran on Windows because it was
16 late to see this huge shift that was taking place in the
17 market, or maybe because it deliberately decided to stick
18 with DOS, where it was very successful and making lots of
19 profit. He'll explain to you these reasons.

20 So, first, WordPerfect is a year and a half behind
21 in coming out with a product that will run on Windows. The
22 first one it comes out with is November, '91. I don't think
23 you will hear any evidence at trial that Microsoft did
24 anything about name space extension API's or anything like
25 that that caused WordPerfect to be late. Mr. Peterson will

1 tell you why.

2 And, not surprisingly, what happens in a high tech
3 field when you're late? Let's say you're the second or third
4 company to get to the market? In a fast changing
5 technological field, very often the first product turns out
6 to be the big winner. There are many examples of this. You
7 can think of an iPod to play music. Apple came out with that
8 in 2001. There were other competitors, including Microsoft
9 that came out with something called the Zune a few years
10 later. If you're first, very often, you win.

11 And the first product that WordPerfect ever had for
12 any Windows platform was late. November, '91. It took a
13 bump up in market share because, the evidence will show,
14 consumers were waiting for WordPerfect. It had a great
15 reputation on the other platform, DOS. And people were
16 excited to see if WordPerfect would do well on Windows. The
17 evidence will show it did not. It was not a good product.

18 And you can see where the market share lines go for
19 WordPerfect on the Windows platform thereafter. And just so
20 that we can keep this in mind, this is the date on which
21 Novell bought WordPerfect. You can see where that line is
22 going. And making a misjudgment about the value of a
23 business you buy, that can happen. We don't blame anyone or
24 say it's anyone's fault. But making a misjudgment about a
25 business that you buy and then, ten years later, blaming

1 someone else for your mistake, that, with all respect, I
2 think is wrong

3 Now, let's look at 25, please, David.

4 I told you that the WordPerfect products that were
5 written for Windows weren't that good, that the evidence will
6 show that they weren't of high quality, and I just want to
7 look at a couple of documents with you. This is Defendant's
8 Exhibit 259, second page. And I want you to note that this
9 is a document that was a Novell document. It was written at
10 WordPerfect in 1993, and Novell later produced it to
11 Microsoft in discovery. That's why it has those funny little
12 numbers in the lower right-hand column, N-O-V, dash, and then
13 a number.

14 This was a document prepared by WordPerfect, and
15 even in Oct -- sorry. Even in December, 1993, you'll see
16 that WordPerfect, itself, evaluates its own product.
17 WordPerfect (Win) 6.0, which came out in October, 1993, very
18 late, is too slow, as compared to the competition, and
19 containing too many bugs to be considered sufficiently
20 stable.

21 Now, the evidence will show that those two things
22 will make it difficult for you to sell your software. If
23 it's too slow for the hardware, and if it's not stable
24 because it's crashing, you have a problem with quality.

25 And let's look at 25-A.

1 Even in 1995, this is in the middle of the period
2 when Novell owns WordPerfect. Even in 1995, Novell, itself,
3 is saying, still recovering from that slow and buggy product,
4 WordPerfect 6.0 for Windows. This was eight months after
5 Mr. Gates made the decision not to support the name space
6 extension API's. June of 1995. And Novell, in its business
7 plan, Exhibit 341, is noting they are still recovering from a
8 product that is not high quality. So the question of who to
9 blame for the lack of success is one we'll come back to.

10 Let's look at Exhibit 26.

11 In contrast to some of the problems that WordPerfect
12 and Novell were having with its own products, again, they did
13 great on the DOS platform, but the products written for
14 Windows? Another Novell document. This is DX 7, Defendant's
15 Exhibit 7. It was written in 1994. This is just a month,
16 less than a month after Novell purchased WordPerfect. So,
17 Novell was brand new. They now owned this WordPerfect
18 business. And what do they do? They recognize that
19 Microsoft's suite, Microsoft's suite is called Office, as you
20 may know, is the industry leading suite, that it's 1, 2 punch
21 Word and Excel, is the strongest combination in the industry.

22 There will be lots of evidence at the trial. But,
23 as you can see -- and I'm coming to some more as we go
24 through this -- even Novell recognized quality, of course, is
25 hugely important. If you have a product and its quality is

1 not high, and the competition has the best 1, 2 punch, well,
2 you don't have to speculate about why a product fails.

3 And let's look at slide 29.

4 Again, this is after Novell purchased WordPerfect.
5 I'm going to get a little bit of this in my opening, but
6 because of constraints of time, it may be less than I'd like.
7 WordPerfect had no suite. WordPerfect had the word
8 processing program called WordPerfect. Quattro Pro was being
9 made by Borland in California. So, when WordPerfect and
10 later Novell got into the suite business, they partnered with
11 Borland. First WordPerfect Corporation did that, and they
12 came out with a suite called Borland Office. And here in
13 1994 what do they say? This has not been received very well.
14 Nothing about the name space extensions in this document.

15 In fact, what they say -- and this was the reality
16 in the marketplace. The evidence will show you this at
17 trial. As an incomplete suite, the Borland Office has not
18 been met with great enthusiasm. It has been labeled by some
19 as a sort of suite because it didn't take into account some
20 of the factors which persuade people to buy suites,
21 integration and consistency. Now, if you're selling a
22 product that doesn't take into account the factors that
23 convince people to buy that product, well, we all know what
24 happens.

25 So, let's look at slide 30.

1 We talked earlier, briefly, about the shift that
2 went on from the DOS platform to the GUI platforms. There
3 was also a shift that took place a little bit later, in the
4 early '90's and into the mid-'90's from stand-alone products,
5 like a word processor by itself, either WordPerfect or Word
6 or some competing product, to buying office suites. And
7 Microsoft Office contained everything that you could get in
8 word and Excel and also several other products.

9 And you can see what was happening in the
10 marketplace during this period. 1993. You can see it in
11 green. That shows you the quantity of spreadsheets being
12 purchased. The purple or blue color is word processors, and
13 it looks like they are about double the number of suites
14 being sold in terms of dollar amount of the revenue. In 1994
15 suites are in first place. They have made up that whole
16 deficit by a fair amount. By 1995, you can see that revenues
17 for suites are triple those for word processors and
18 spreadsheets alone. And then you see what happens in 1996.

19 Again, the period that Novell owned WordPerfect and
20 Quattro Pro was this period, June of '94, from the middle of
21 '94, to March 1, '96. So the evidence at trial will show you
22 that, at the time Novell purchased these products --

23 Sorry, David. My fault. We want slide 34.

24 -- there had been two major changes in the market.
25 WordPerfect Corporation was slow getting to the Windows

1 platform. It was not only slow when it came out with
2 products, those products were not of high quality. And it
3 was very slow coming out with products that could compete in
4 the suite market. Those two major changes in the market, in
5 effect, meant that Novell was buying products that were
6 already in decline.

7 When Novell purchased WordPerfect and Quattro Pro in
8 June of '94, those products were on that sharp line downward.
9 Instead of blaming Microsoft, the evidence will show that
10 Novell, and the companies before it, had not adapted to
11 technology, to changes in technology.

12 And now let's do 31.

13 I use this just as an example. The Eastman Kodak
14 company was once dominant when it came to film for cameras.
15 And here's a picture on the left. Some of the younger people
16 here may not even remember the old-fashioned film that was
17 used in cameras. Many of you will. And now look what you
18 get in the memory card. You can actually store 5 thousand
19 photographs in one tiny little card instead of a clumsy piece
20 of film that you have to feed properly into your
21 old-fashioned camera.

22 Changes in technology can happen fast, and companies
23 that don't recognize them, of course, go by the wayside. It
24 may sound harsh. It's the nature of competition,
25 particularly when it comes to high tech.

1 Okay. Let's look at exactly what happened when
2 Novell announced that it was going to buy WordPerfect and
3 Quattro Pro because the marketplace itself recognized the
4 shifts that were going on that I've described to you, the
5 shift to the GUI platform, to Windows, where WordPerfect was
6 weak, the shift to suites, where WordPerfect, if anything,
7 was even weaker. And this is March 21. This is the reaction
8 in the stock market, shareholders of Novell, to the
9 announcement that Novell is going to purchase WordPerfect and
10 Quattro Pro for roughly \$1.5 billion.

11 The announcement was made on March 21, after trading
12 had closed. I should say Novell's stock -- Novell was a
13 public company. Its stock was traded on the NASDAQ stock
14 exchange, and these prices are the closing prices on the days
15 in question, on NASDAQ. Novell's stock is going along
16 nicely. It closes at 23.75. The announcement is made at the
17 close of trading that day. The next day the price drops to
18 \$20, and the day after that, the 23rd, to 19. That drop,
19 from 23.75 to 19, is a fall in the stock price of Novell of
20 20 percent. 20 percent.

21 Unless you think that the stock market is crashing
22 on the days in question and that's what explains this drop,
23 no, the NASDAQ was just about flat. It was up a teeny amount
24 in the two days in question. The New York Stock Exchange,
25 the S&P 500 were also flat. Novell's stock took a huge hit

1 downward.

2 And Glenn Hubbard, who's the Dean of the Colombia
3 Business School, will come testify in this case as an expert
4 for Microsoft and will tell you why, in his opinion, the
5 stock price dropped by 20 percent on the days in question.
6 He will tell you that the stock market, the shareholders of
7 Novell, recognized the very things that I've been describing,
8 that I think the evidence in this case will show. The stock
9 market recognized that Novell was buying products that were
10 in decline, that Novell made a misjudgment about the future
11 of those products.

12 And the map is more complicated than we may want to
13 deal with here. Dean Hubbard from Colombia will give it to
14 you in detail. But if you take the number of shares of
15 Novell that were outstanding then -- it was about 309
16 million -- and you multiply by the drop in the stock price,
17 the loss in the value of the company, what is called the
18 market capitalization, in those two days alone was almost
19 \$1 1/2 billion, about the same -- not quite exactly the same
20 but about the same as what Novell was paying to buy the two
21 companies. In other words, the stock market saw that these
22 two products were not worth what Novell was prepared to pay.

23 Now, let's talk now about the name space extension
24 API's and the decision to de-document them. Chicago, as
25 Novell's lawyer told you, was the code name used by Microsoft

1 for the project it was working on that ultimately became
2 Windows 95.

3 There's nothing strange about these code names.
4 Every software company does that when they are developing a
5 product. And Chicago, Novell's lawyers said it, was a big
6 advance in the planned user interface. The name space
7 extension API's were just a very small piece of what was
8 called the shell. And you'll see that from the witnesses who
9 testify, including Mr. Nakajima, who wrote the name space
10 extension API's and from several other Microsoft witnesses.

11 Thank you.

12 One thing that maybe got a little bit lost in the
13 shuffle earlier this morning, an API is the connection that
14 Microsoft writes in the operating system that an application
15 can use to call on the great things the operating system can
16 provide and the underlying hardware. As Novell's lawyers
17 say, API is an acronym. It stands for application
18 programming interface. And Microsoft, in working on Chicago,
19 what became Windows 95, worked very hard, lots and lots of
20 Microsoft engineers, to write many API's so that all sorts of
21 software -- not just word processing -- thousands
22 of different kinds of software products, would work well with
23 Windows.

24 There were four API's that are referred to as the
25 name space extension API's, just four. They are four of

1 several thousand.

2 Our slide says approximately 2,500. I think John
3 Bennett, who will come here from the University of Colorado,
4 and is a true expert on operating systems and software
5 engineering, will testify that the number of API's was
6 something like 2,800. But the exact number isn't important.

7 What's important here is to keep the name space
8 extension API's in context. Just a very small piece of what
9 the operating system was being written to provide to
10 companies like Novell.

11 Now let's look at slide 41.

12 And bear with me for just a minute. I've tried not
13 to be too technical, but here it's going to be just a little
14 bit technical. Bill Gates will be here and talk to you about
15 why he decided to do what he did. And I want to show you the
16 e-mail that Novell's counsel so heavily relied on, but there
17 are three reasons Mr. Gates decided, during the development
18 of Chicago, to withdraw support for these four API's, three
19 reasons. The first is that a program written to use those
20 API's could potentially crash the whole shell, the Windows
21 shell.

22 These four API's -- sorry to be technical -- allowed
23 an ISV', like Novell or WordPerfect, to write a program that
24 integrated directly into the shell of Windows 95. So, that
25 meant that any ISV', any application developers, could use

1 the name space extensions in a way that their programs
2 would be written in the same what's called process space as
3 the whole shell, and if one of those programs malfunctioned,
4 a program not written by Microsoft, by any one of thousands
5 of other companies that makes applications, it could crash
6 the entire shell.

7 Now there aren't that many things more important to
8 someone building an operating system than to avoid the
9 possibility that a user, who's using his or her computer,
10 would find that the whole thing crashes.

11 Secondly. The name space extension API's were not
12 compatible with future versions of Windows that were then
13 being developed. There were, at the time, in 1993 and 4,
14 actually three different teams at Microsoft all working on
15 different operating systems. One was Chicago, which became
16 Windows 95. One was something called Cairo, which was
17 working on an operating system that Microsoft never brought
18 to market. It never got released. And the third was Windows
19 NT, this version that was competing with Netware, an
20 operating system for work stations and servers.

21 The Windows NT team was headed by a man named Bob
22 Muglia. Mr. Muglia will be here and testify from the witness
23 stand during the trial. The NT team, because they were
24 writing an operating system for work stations and servers,
25 needed to make sure that stability and reliability could not

1 be adversely impacted by third-party programs. Mr. Muglia
2 and the people who worked for him were very, very opposed to
3 leaving the name space extension API's in the system and
4 available for all ISV's to use because of their fear of what
5 it would do to Windows NT. And they lobbied Mr. Gates hard
6 to withdraw support for the name space extension API's.

7 Thirdly. Mr. Gates, it is true, had originally
8 contemplated that the name space extension API's would be
9 more significant than what Mr. Nakajima was able to create or
10 invent. Mr. Gates wanted and dreamed of API's that would
11 allow applications to be launched from the scope pane and to
12 run in the view pane, the right-hand pane of the Explorer.
13 When Mr. Nakajima got done writing these API's, they could
14 not accomplish all that. All they did was to allow an
15 application to add a custom folder to the scope pane of the
16 Explorer that would display a list of files or other objects
17 in the view pane. In other words, they did not achieve the
18 functionality that Mr. Gates sometime earlier had hoped.

19 They turned out to be far less important or, to use
20 the word that Novell's lawyer used, more trivial than what
21 Mr. Gates had been hoping for when he was thinking, a year
22 earlier, about what Windows 95 might become. Again. A
23 complicated operating system, as Novell's lawyer said, I
24 believe, with millions of lines of source code. There were
25 many decisions to be made about what would go in the final

1 product.

2 In effect, what Novell is arguing, is that it was
3 Microsoft's job to make those decisions in a way that was
4 best for Novell instead of a way that was best for Microsoft,
5 for Microsoft to make the Windows 95 that would actually
6 become that product that Mr. Johnson referred to, the product
7 where people lined up for blocks and blocks to get it, a
8 product that all of us -- many of us, I'm sure, wound up
9 using.

10 And let me try to show you, just briefly, what the
11 name space extensions are all about. Microsoft designed
12 Windows 95 during this time period in a way so that ISV's,
13 like Novell, could display their applications in a way that
14 would make it very easy for users to launch those
15 applications.

16 Let's look at 47.

17 This is the Windows 95 desktop. Windows 95 was the
18 first Windows operating system that had a start button. By
19 now, I think we're all familiar with start buttons. This was
20 new in Windows 95. It allowed an ISV, like Novell or anyone
21 else, to put a shortcut to their application, to their
22 software products, by clicking on the start button. And what
23 we show you here in this slide, clicking on the start button,
24 you can get right to Corel Office 7, the product Corel
25 launched in 1996.

1 There was a second way that Windows came out with
2 something that people like Novell, companies like Novell
3 could use to make it very easy for all of us to get to
4 WordPerfect or PerfectOffice. And that was by clicking an
5 icon on the desktop.

6 We are all familiar with this now, but Windows 95
7 was the first operating system that allowed a developer like
8 Novell to put this shortcut right on the desktop. All you'd
9 have to do to use Quattro Pro or WordPerfect is to click on
10 one of those icons. Now, those two means of launching
11 WordPerfect were in Windows 95. There's no complaint about
12 those. Microsoft invented that technology in a way that
13 assisted all ISV's so that any user could get to WordPerfect
14 very easily.

15 What Novell says it wanted, what Novell says it was
16 entitled to through the name space extensions, was a third
17 way, a way that would allow users to get to WordPerfect and
18 Quattro Pro from the Windows Explorer. Now, Windows Explorer
19 is different than Internet Explorer, as you probably know,
20 but here's a picture of the Explorer. The left-hand pane is
21 called the tree view. Novell's lawyer pointed out to you it
22 sort of looks like it has branches on the left here. That's
23 the tree view. And what we've shown you on this slide is
24 functionality that was never implemented in Windows 95.

25 Here there's an icon for a prototype of an e-mail

1 client called Infocenter. That appears way on the left. And
2 then in the tree view, you can see Infocenter right there.
3 In this picture, a user could access his e-mail, in box, from
4 the Windows Explorer, as opposed to, for example, clicking on
5 Microsoft Outlet -- Outlook, excuse me, which is the way most
6 people would do it.

7 And let's look at the next slide.

8 Windows 95 provided this functionality to Novell.
9 It allowed Novell and any other ISV to add whatever folders
10 they wanted to, to the left-hand pane of the Explorers. They
11 didn't need the name space extension API's. And you could
12 add, on the right side, folders labeled WordPerfect and
13 Quattro Pro.

14 So the whole thing about the name space
15 extensions --

16 And let's go back one slide.

17 -- has to do with this one way, of three or four, of
18 getting access to WordPerfect or Quattro Pro. This was the
19 functionality that Microsoft did not include in Windows 95.
20 Microsoft withdrew support for them. And you will hear what
21 that means. It's technical.

22 The API's actually stayed in Windows 95. They were
23 never taken out. And if Novell needed them so desperately to
24 get to market in a timely way, Novell could have used them.
25 They stayed right there. Microsoft withdrew support, which

1 just means that it warned ISV's that, in future versions of
2 Windows, those four API's might not remain there, so it would
3 be risky to rely on them because, in some future version,
4 let's say Windows 98, they might be taken out then.

5 That's what Microsoft did, withdraw support. And
6 the only thing that it would have given Novell is what's
7 depicted on our slide 48, the addition of custom folders to
8 the Explorer, as opposed to the way people wound up using
9 their software, going to the start button and finding
10 WordPerfect or going to the icon on the Desktop itself.

11 Now, thank you for your patience. I know it's been
12 a long morning, and we've given you lots of information. I
13 do have a few other things that I need to go through with
14 you. Let's look quickly at PX-1. And I won't take you
15 through it all. This is the e-mail that Novell's lawyer says
16 Mr. Gates wrote. And they say this is the proof.

17 It's 44-C, I think.

18 This was the paragraph. There are seven or eight
19 paragraphs in this e-mail, and I'm sure, before any of you
20 come to any judgment about what Mr. Gates was thinking and
21 what he meant and what his reasons are or were in 1994,
22 you'll listen to Mr. Gates and read the e-mail.

23 But this is what Novell's lawyer says was the proof
24 that Microsoft was trying to do something deceptive, was
25 trying to get some unfair advantage over Novell. And the

1 sentence that he directed you to is the second sentence of
2 the two that I've highlighted. It says: "We can't compete
3 with Lotus, WordPerfect and Novell without this."

4 Novell's lawyer then argued to you that, what that
5 means is that we can't compete with WordPerfect unless we
6 take the name space extensions out.

7 It's clearly not what this e-mail says. When it
8 says "without this," in the second highlighted sentence, it's
9 plainly referring to the prior sentence. Having the office
10 team really think through the information-intensive scenarios
11 and be a demanding client of systems is absolutely critical
12 to our future success. Those two sentences say nothing about
13 the name space extension API's. Those two sentences are
14 about the office team thinking hard about the functionality
15 that would be provided in Office.

16 Of course Microsoft, Mr. Gates, is thinking, what do
17 we do to make Microsoft Office as good as it can be, as easy
18 to use as Windows 95, as something critical to our future
19 success. And the idea that we can't compete with WordPerfect
20 is not about the name space extension API's. The prior
21 sentence makes it clear. It's about continued work by the
22 Office developers to make its product as good as it can be.

23 It will be several weeks now, I believe, before
24 Mr. Gates can come and testify. Novell, of course, gets to
25 go first. But Joe Belfiore will also testify. He's from

1 Microsoft as well. He will tell you about alternative ways
2 that Novell could have gotten the same functionality that the
3 name space extension API's would have given them.

4 If those four little API's were so critical to
5 Novell, there were ways for Novell to write their own
6 software instead of using Microsoft's inventions to get to
7 the desired objective. And, of course, they could have used
8 those same API's themselves if they were so important.

9 Bob Muglia, whom I mentioned earlier, who I said was
10 lobbying Mr. Gates to de-document the API's, he will testify.
11 So will Mr. Nakajima, and Brad Struss will as well. And we
12 will come to him in a minute.

13 But first if we can look at slide 50.

14 When I started a little while ago with my opening
15 statement, I said to you that one of the things that I
16 thought you probably hadn't appreciated in listening to
17 Novell's opening statement, is that the decision in October,
18 1994, about the name space extension API's, was made when the
19 product was still under development. Microsoft wasn't
20 finished with it. They are still working on it, developing
21 it. Of course it can change.

22 And here's the contract between Microsoft and
23 WordPerfect which, of course, May 24, '94, just before Novell
24 bought it -- so it's the contract binding on Novell as well.
25 And the idea that Novell advocates in this case, I think, is

1 that somehow, because Microsoft in a very early version of
2 the Beta, included the name space API's, they could never
3 take them out. That was the deception. They've told us that
4 these API's, these four, out of thousands, might be in the
5 product, and then later you withdrew support for them.

6 Well, Novell and WordPerfect understood full well
7 what a Beta version is. The contract under which Microsoft
8 agreed to pretrial Novell with the Beta says this.

9 It's a pre-release version, so of course it says
10 this. "The product may not operate correctly and may be
11 substantially modified prior to first commercial shipment."
12 So these accusations about deception, that somehow Microsoft
13 deceived Novell. Novell could not have been deceived that a
14 Beta version of Windows 95 was subject to change. It may be
15 substantially modified before the final product is shipped.

16 Now, Novell's lawyer implied, if he didn't say it,
17 that -- he says now, I guess, that the reason Novell's
18 products were late, that they came to the market later than
19 the release date of Windows 95, that August 24, '95 date, was
20 because these developers were working so hard to build their
21 own root, that road, they didn't have the name space
22 extensions, they actually had to do the work themselves
23 instead of relying on Microsoft's engineers, and that's what
24 held them up.

25 That's what made the products late, and because they

1 were late, I think the theory is, because they were late,
2 that's why Novell was able to sell those products for a much,
3 much smaller amount than they had paid for them.

4 I think you may remember Novell's lawyer said that
5 Novell was able to sell the products for \$140 million, when
6 they had paid about 1.5 billion, ten times as much. Of
7 course, as we saw earlier, the stock market thought the
8 products were worth about 140 million, apparently, when the
9 announcement was made.

10 But the idea that Microsoft is to blame because
11 Novell was late getting WordPerfect out, that idea is just
12 not supported by the evidence. And I'll try to go through
13 this. There will be lots of evidence at trial about this. I
14 will give you some of it now.

15 THE COURT: Do you know if the lunch is here?

16 THE CLERK: It should have been here at 11:45.

17 THE COURT: According to your estimate, you have
18 about 20 minutes to a half an hour to go?

19 MR. TULCHIN: Yes, sir. Half an hour would do.

20 THE COURT: I think we had told everybody that the
21 lunch would be here. This seems like a natural stopping
22 spot, so why don't we stop for a light lunch for 20 minutes
23 and then resume.

24 MR. SCHMIDTLEIN: Your Honor.

25 THE COURT: Yeah.

1 MR. SCHMIDTLEIN: Can we be heard once the jury has
2 been --

3 THE COURT: Sure. Okay. I'll stay here if you
4 want. If the lunch isn't there, let me know, Theresa, and
5 we'll continue.

6 (Jury leaves the courtroom.)

7 MR. SCHMIDTLEIN: Your Honor, during one of the
8 motion in limine rulings, I think Novell filed a motion in
9 limine on the beta release, and I think you denied the
10 motion. But you stated, at the time -- and we can get the
11 transcript -- you stated at the time that a limiting
12 instruction would be given.

13 Mr. Tulchin has just told the jury that, in light of
14 that beta release language, that warranty language, there can
15 be no deception in this case.

16 I think we are entitled to an instruction at either
17 the close of this or some appropriate time very soon after,
18 that explains to the jury -- and I believe you said it at the
19 time, that you will give an instruction that that language is
20 not immunity or does not otherwise, as a defense to the
21 antitrust claims in this case.

22 MR. TULCHIN: Your Honor, if I may --

23 THE COURT: No. I understand the point. As far as
24 I'm concerned you all are here, and you shouldn't be here
25 now, but you are here now, and just wait it out, and I will

1 give a limiting instruction when I give it, and I'm not going
2 to give a limiting instruction at the end of what you are
3 saying.

4 (Short break.)

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