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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 24, 2011

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

VOLUME V

Reporter: REBECCA JANKE, CSR, RPR
LAURA ROBINSON, CSR, RPR
PATTI WALKER, CSR, RPR

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I N D E X

ADAM HARRAL Cross by Mr. Tulchin 375

1 OCTOBER 18, 2011

SALT LAKE CITY, UTAH

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

3 * * *

4 THE COURT: Good morning, everybody. The jury
5 is here. Terrific. Let's get started.

6 MR. JOHNSON: May I bring Mr. Harral up, Your
7 Honor?

8

9 MR. JOHNSON: Thank you.

10 THE COURT: Good morning, Mr. Harral.

11 THE WITNESS: Good morning.

12 (Jury brought into the courtroom.)

13 THE COURT: Good morning, everybody. You all
14 are terrific. I wish everybody involved would be --

15 Mr. Johnson.

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

17 DIRECT EXAMINATION

18 BY MR. JOHNSON:

19 Q. Good morning, Mr. Harral.

20 A. Good morning.

21 Q. On Thursday last, you testified that you became
22 aware that Microsoft had de-documented the NameSpace
23 extension functionality in the October time frame, and
24 you further testified that, faced with this Microsoft
25 decision, you had three options for continuing to develop

1 your products for the Windows 95 operating system. We've
2 made a slide --

3 Mr. Goldberg.

4 -- containing, directly from your testimony,
5 the three options you mentioned. Could you just review
6 those for yourself and tell us whether that accurately
7 reflects the three options that you had.

8 MR. TULCHIN: Your Honor, sorry to interrupt.
9 I wonder if I could get a copy of that.

10 THE COURT: You've got it right now.

11 MR. TULCHIN: Thank you.

12 THE WITNESS: Yes. These are the options that
13 I outlined.

14 Q. Now, you further testified that the third
15 option was Novell's least favorite choice, and you told
16 the jury that you started the effort -- that third option
17 in January. Can you please explain to the jury what
18 Novell did, if anything, between October of 1994, when
19 you found out that Microsoft had decided to de-document
20 the NameSpace extension functionality, and January of
21 1995, when Novell turned to option 3?

22 A. Okay. When we found out about the option or
23 the de-documentation, the first thing that we tried
24 was -- by de-documenting the API's, there are
25 different -- there are different things that can happen.

1 Certainly what -- what we felt Microsoft was saying is,
2 you can't count on these things that we are, of course,
3 saying that that can't be used.

4 That didn't mean that they ceased to exist. It
5 just meant that, in one regard, we would be at risk,
6 which would be the least of the three. We would be at
7 risk if we used them because if they decided that they
8 needed to change them in the future, they could, and we
9 would have more work to do in order to be able to later
10 on, when those changes were made public. That could go
11 all the way to the point of, we really don't want you to
12 use these, and there would be no support whatsoever.

13 So, we had -- in the past, when I had dealt
14 with Microsoft on -- because I worked on, many years, the
15 presentation of the commands in the application in the
16 past, and there were things that were not documented,
17 but, working with Microsoft, we would find ways that we
18 could get information that would help us to finish what
19 we were doing.

20 So in -- so the first option we took, which is
21 the first option in this list, was continuing to work
22 with Microsoft's premier support and making queries as
23 to -- as to what we would be able to do or what would
24 be -- what they would help us with. And we -- we spent
25 those three months basically trying to do that, but, over

1 those three months, it became apparent that there
2 would -- there was not a -- that this wasn't about that
3 things were busy, there was just no -- for every query
4 that we made, there was just information not forthcoming.

5 And so -- from the support. And so, this was a
6 different kind of of handling of the relationship, from
7 the premier support perspective, than we had had in the
8 past. We were -- basically we were on our own is how we
9 interpreted their -- their response to our queries. And
10 then that, basically -- because we would -- we would ask
11 questions, try to probe, okay, we're looking at this
12 recycle bin, you know. How is it supposed to behave.

13 How do we -- you know, I'm trying to open the
14 file, and it's -- you know, somebody else is doing work
15 there, or I've got a briefcase here, and I want to open
16 the file, but it's synchronizing at the same time so I
17 can't open it. How do I figure it out that it's doing
18 that so that I don't tell the user, you know, yeah, open
19 the file and then it comes on and says, no, I can't do
20 this. It's not letting you open it. Those are -- can be
21 very disconcerting to the customer of the product.

22 But we just were not getting any of the help
23 that we needed to be able to -- to overcome this problem.

24 Q. Did Novell ever consider the second option on
25 the list some?

1 A. Yes. As I stated before, we did many times.
2 Every time that we went -- we had to -- every time we had
3 to consider an option, this is the option that came back
4 on the table because it would have been an easier option
5 than the third, and it would -- it would -- it would be
6 more supportable going forward. It would be less risky
7 for us. It would be less work for us to take it, and
8 what we hoped -- it was not an option until October. We
9 revisited it in January because, as we had tried to work
10 out on the one side, we were also looking for, you know,
11 the documentation or other information.

12 It's not just that Microsoft documents
13 information, but there are also -- there were other
14 sources of Windows information, what other companies
15 might learn or be told about them, so we would look for
16 that information to see if we could piece together a
17 picture that would give us a path to be able do it.

18 But, even in January, we could see that there
19 really was no more information about taking option two
20 and making it viable. So, yes, every time that we
21 considered an option, we would look back at number 2
22 because we had hoped that there would be some opportunity
23 there, but there wasn't in January.

24 Q. So, now, moving to option 3, you had testified
25 that Novell had decided, in January of 1995, to take the

1 option 3 and that it took Novell almost a year to
2 recreate the functionality offered by the NameSpace
3 extensions. Can you explain to the jury, generally, why
4 recreating this functionality, option 3, took so long?

5 A. We were -- we were basically trying to recreate
6 the underpinnings of the Microsoft Windows 95 shell. In
7 trying to -- when faced with the problem of trying to
8 recreate something that looks like somebody else's work,
9 there's -- there are different levels of doing that. One
10 is, you can say, I can do the same thing that you -- that
11 somebody else does. Two different cars operate more or
12 less the same way, but if one of them is for racing and
13 one of them is for four-wheel fun, there are still some
14 fundamental differences. You can see that they are
15 similar, but they are not really for the same purpose.

16 We are, in this -- we had to have a higher
17 level of reproduction. We were trying to -- actually
18 it's like trying to reproduce a vintage car in its exact
19 state. But the difficulty of this task is kind of hard.
20 It's kind of -- we had to have, we had to know how the
21 file system is going to work underneath. We had to know
22 what were the new areas that the shell was going to
23 present and if there were ways that we could access that.
24 The -- and we had to do that in a way that, when we
25 taught our applications, since we were the shared code

1 team, we are telegraphing the stems that Microsoft has to
2 the applications that are built on top of us.

3 And we wanted to telegraph those relation --
4 those features in their purest form because we wanted to
5 eventually get out of the way and let them talk more
6 directly to the shell. For us to set up our own way to
7 talk would have meant that we would have been in the way
8 more for the life cycle of the application. And we felt
9 that Microsoft had a very good architectural foundation
10 for what they had decided to do and so when we had had
11 the Microsoft representatives earlier on there, we had
12 told them we were really buying into what they were doing
13 for the shell. And so we were intent on undoing that
14 because it would -- in the long run, it would give our
15 application better access to new things that they had,
16 and it would reduce the work that we had to do, which
17 would make the product more stable.

18 But, in trying to reproduce it, it's kind of
19 like -- I was thinking about this. It's kind of like a
20 Sudoku puzzle. If you -- if you are the maker of a
21 puzzle, you know, you look in the newspaper and you have
22 a key there. You can reproduce the key very easily if
23 you know the answer at the end, but if you're somebody
24 who has to come along and solve it, a very hard Sudoku
25 puzzle, you have to get one number before you can get the

1 next, before you can get the next, before you can get the
2 next. And it takes a lot of time. You may go down a
3 path and you may figure out that you've taken the wrong
4 path, and you have to undo it and go back at it again.

5 And that's what trying to reproduce the shell
6 was like. If we had had documentation, if we had had
7 even the premier support information trying to help us to
8 reproduce it so that we could solve -- they could help us
9 solve our problem, it would have gone faster. But,
10 because there really was no information forthcoming that
11 would help us with our fundamental problem, it really was
12 just trying to piece through it day-after-day,
13 month-after-month for that time.

14 And, at the same time, we also had the
15 applications that were trying to expose their
16 functionality, and we are supposed to help them as well.
17 So we are doing it internally, and we are trying to help
18 the rest of the company do it as well. And we would make
19 mistakes, and we would learn that something that we had
20 done inside or an assumption that we had made was
21 incorrect as we found evidence that stated otherwise and
22 we would have to go back and rework it.

23 And that's painful for the applications because
24 they are setting schedules and then we are telling them,
25 oh, you need another month here because there's this

1 whole new area that we were not aware of before, and
2 you've go to go in and change how it's written, and that
3 became very frustrating for the applications as time went
4 on.

5 Q. Based on your personal experience, did
6 Microsoft's attitude change at all towards WordPerfect
7 after it merged with Novell?

8 A. The relationship was cooler.

9 Q. And why do you say that?

10 A. About the time of that -- of the Acquisition of
11 WordPerfect Corporation by Novell, there was a change in
12 the premier support that we had. We used to have a
13 person that was assigned specifically to WordPerfect that
14 we would deal with. Every time we called we got that
15 person. They knew the problems that we had, the issues
16 that we were facing, and there were many times where, at
17 WordPerfect, we would end up talking with technical
18 people at Microsoft, even the developers of Windows
19 itself, who had worked on specific features that we had
20 concerns about.

21 And it was a very, very effective relationship
22 from WordPerfect's perspective. It was very helpful in
23 us meeting our deadlines and promoting Windows as the --
24 as the operating system that we would have going forward.
25 After the -- after the acquisition, our premier support

1 was changed, and we were -- then, every time that we
2 would call, we would end up at a, like, a customer
3 service group, wherever person that we got was different
4 every time. And so they would -- they would have to keep
5 track of the things that we were doing like they did
6 before, but each person would have to come up to speed on
7 what we were asking for.

8 And so it seemed like we just didn't have
9 access to the same level of support. There wasn't the
10 technical resources brought on board on our conversations
11 as often as they were before, so, it just kind of cooled
12 down.

13 Q. On Thursday, you talked about the fact take
14 WordPerfect historically had been written for multiple
15 operating systems. Did Novell plan to continue to make
16 PerfectOffice for Windows' 95 cross platform?

17 A. Yes, it did. We were concentrating on Windows
18 because that was in front of us, but WordPerfect had had
19 a history of working on multiple platforms, and we had --
20 when you -- when you do new revisions of your product,
21 you're not just doing changes for that operating system,
22 you're also looking at the industry of, how are people
23 working now? And what are the problems they are facing?
24 So, there's also an evolution of the product and its
25 features.

1 And those -- the features that were inside of
2 PerfectOffice were some of the foremost in the company,
3 and they were looking at moving those features, some of
4 them, back into DOS, over to Os2, into the Macintosh.
5 They were looking at -- at Unix and Linux. All of those
6 were plans that they had after the -- the Windows 95
7 release.

8 Q. Mr. Harral, had Microsoft not pulled these
9 extensions, what was WordPerfect's plan with respect to
10 these NameSpace extensions?

11 A. So, I can -- as the architect, actually, I had
12 quite a big view in what were our plans technologically.
13 WordPerfect had tried, in the past, to be what our
14 business customers needed in an application, and when
15 they were printing documents. We have lots of different
16 applications in the industry today. We have things that
17 present graphics. We have things -- you know, we write
18 letters. We -- we manage financial information.

19 Back at this time, when we're talking about
20 '94, '95, the -- those applications were less pervasive.
21 And then, back to when WordPerfect was written
22 originally, they were almost nonexistent. WordPerfect
23 saw the demise of the -- the loss of the typewriter pool
24 in a company, where you were allowing, now, people to use
25 the computer themselves and use their own skills to do it

1 instead of having to delegate it to somebody else.

2 So, WordPerfect had grown up from a history of
3 trying to provide people all the tools that they needed
4 so that they were comfortable doing their work. Windows
5 95 was bringing a lot of thinking in the industry
6 together in, how do people want to see their computer?
7 How do they want to see their information? How do they
8 want to act with it? Dragging and dropping, we talked
9 about how that was very common for lots of PC users,
10 personal computer users.

11 So, then the question was, what were we going
12 to put into that environment? What were we going to
13 add to it so that we could once again create this
14 environment and make our customers comfortable? So we
15 knew that we weren't the only application anymore out
16 there. There were applications that were better at doing
17 financials than we were. And so now the question is, can
18 we take things that we have -- we had a stand-alone spell
19 checker we had a stand-alone thesaurus.

20 So, you know, we would be looking at tasks
21 like, could you be helping people spell check things
22 while they were inside of their financial application,
23 doing notes, or in their e-mail, in their presentations?
24 Those are things that we were looking at. Could we put
25 their graphics in a place, their pictures, that they use

1 for building their business documents? Could we put them
2 somewhere where every one of their business applications
3 could use? Could we help manage not only WordPerfect
4 documents but all of the documents so that they could
5 find them easily, so that they could get to the changes
6 that had happened inside of them and get their work done,
7 and not just WordPerfect products, but any product on
8 that platform.

9 That's traditionally what WordPerfect had done,
10 and that's what it intended to do here. So, basically,
11 we were -- we were thinking that WordPerfect could make
12 Windows the best version of Windows that it could be.

13 Q. Mr. Harral, you've told the jury that you have
14 not worked for Novell for a number of years. Why are you
15 here testifying today?

16 A. Well, the first answer is, is that I -- I
17 believe in the court system because I don't -- I don't
18 want anybody to think I take it for granted. I like that
19 we can work out things in our country. And I can't like
20 that and not be willing to participate with that,
21 although my participation would be much smaller than the
22 people who are doing so here. At the same time, this was
23 a very hard time for the company, and there were a lot of
24 good people who worked in an extraordinary manner on
25 these technologies. They had -- this was a privately

1 held company, WordPerfect was at that time, when they
2 started doing these things, before the acquisition of
3 Novell.

4 And these people stayed with the company
5 because they believed in what they were doing. They were
6 very proud of the things that they were able to help
7 people solve. And this was a very difficult time for a
8 lot of these good people and lot of these families. And
9 I -- I think that it's nice that finally this subject can
10 be -- can be addressed and it can be looked at because I
11 would -- it would be nice to know what happened, because
12 it was very hard. It was very hard for a lot of people.
13 It was very hard for a lot of our customers, too. And
14 that was really our intention.

15 MR. JOHNSON: Thank you, Mr. Harral.

16 Pass the witness.

17 CROSS EXAMINATION

18 BY MR. TULCHIN

19 Q. Mr. Harral, good morning.

20 A. Good morning.

21 Q. My name is David Tulchin, and as, of course,
22 you know, I represent Microsoft. Mr. Harral, just some
23 introductory questions, if I could, about your position
24 at Novell during the period in question, let's say 1994
25 and 1995. You certainly weren't trying last Thursday or

1 this morning to give the jury or the Court the impression
2 that you were in charge of making strategic decisions
3 for the company, for Novell. Correct?

4 A. No. I was the -- I was somebody that those
5 people, who would make those decisions, would come to
6 often to ask about -- counsel about direction before they
7 would make it.

8 Q. Well let me just see if we can get, you know, a
9 straight answer, if I could. You weren't in charge of--

10 MR. JOHNSON: Objection, Your Honor.

11 Q. -- strategy.

12 MR. JOHNSON: There is no reason for him to say
13 he didn't get a straight answer.

14 THE COURT: The objection is overruled. Just
15 don't argue with the witness. Unless you have to --

16 MR. TULCHIN: Thank you, Your Honor.

17 Q. BY MR. TULCHIN: You weren't in charge of
18 strategy for the company, correct?

19 A. No. I was not in charge of strategy for the
20 company.

21 Q. Okay. And you weren't in charge of any of the
22 business units that the company had?

23 A. That is correct. I was not.

24 Q. You also weren't the chief architect, software
25 architect, for any of the Novell products, correct?

1 A. That's correct.

2 Q. And I looked at the transcript of last
3 Thursday, and I think when you were asked questions about
4 Novell, or you you were asked questions about your own
5 thoughts or reactions or what happened, you said several
6 hundred times -- you used the word "we" in your answer?

7 A. Uh-huh.

8 Q. Does that seem right to you?

9 A. Talking about Novell and WordPerfect, yes. I
10 recall that.

11 Q. Right. You weren't trying to imply to the jury
12 or to the Court in this case that you were speaking for
13 Novell, correct? You were speaking for yourself?

14 A. I was speaking for the division for which I was
15 the architect.

16 Q. Okay. Let's come to that in a moment. It's
17 true, is it not, Mr. Harral, that you were not making
18 product decisions for the company; is that right?

19 A. Architecture makes product decisions for the
20 company.

21 Q. Well, what I mean by product decisions is, you
22 weren't the person deciding on the strategy of when
23 products would be released or exactly what functionality
24 the overall product would have, correct?

25 A. I would make decisions about what the overall

1 product would have. Novell relied heavily upon its
2 architects to make that decision. I would not decide on
3 the timing. That is true. But I would help them decide
4 what would be the features that were viable and what we
5 would be giving our users. I had direct access to the
6 usability information of the company, and the architects
7 would talk amongst each other, and we would be the ones
8 that the business people would rely upon about what was
9 possible and feasible for the next versions. We would
10 help chart the road map for the company for our
11 division.

12 Q. I see in your last answer, just this moment,
13 that you used the word "architects," plural, correct?

14 A. Yes.

15 Q. And last Thursday you used the word
16 "architect," singular; is that right?

17 A. I may have, at times, used both. Yes.

18 Q. Okay. Am I right, Mr. Harral, that -- and I
19 think you testified to this last Thursday -- that, during
20 this period of 1994, all the way until 1996, your
21 position at the company never changed?

22 A. That is correct.

23 Q. And your title didn't change?

24 A. My manager let me have whatever title I wanted,
25 and he told me that a number of times, so -- he -- I

1 guess that makes it non sequitur in that regard because I
2 could have had whatever title I wanted. That's what he
3 told me.

4 Q. Well, let me be clear about something,
5 Mr. Harral. Regardless of what he told you, your title
6 didn't change, correct?

7 A. Between -- in our division, my title, my
8 responsibility did not change.

9 Q. Okay. Fair enough.

10 A. Okay.

11 Q. And I think you also said that, after you went
12 to work for Corel in 1996, your position didn't change
13 then either, correct?

14 A. That's correct.

15 Q. And would it be fair to say, Mr. Harral, that
16 throughout this whole period, the same two-year period,
17 you never worked in marketing?

18 A. No. I never did.

19 Q. And you never worked in sales?

20 A. Nope. I never did.

21 Q. And you you were never in charge of any of the
22 business units of Novell?

23 A. Nope. Never was.

24 Q. You were a software engineer?

25 A. Nope, I wasn't just a software engineer.

1 Q. Well, let me see if I can try that. You were a
2 software engineer. That's what you were?

3 A. Yes, I was, I was a software engineer. That
4 was one of my responsibilities.

5 Q. Okay. Fair enough. And is it also fair to
6 say, Mr. Harral, that throughout this period, you did not
7 rub shoulders with upper management?

8 A. No. That is not true.

9 Q. Well, you do remember giving a deposition in
10 this -- sorry, it wasn't in this case. It was in another
11 case. Do you remember that?

12 A. I do.

13 Q. You had no deposition in this case, correct?

14 A. That's correct.

15 Q. Okay. So, this is the deposition -- may I
16 approach the witness, Your Honor?

17 THE COURT: Yes.

18 Q. BY MR. TULCHIN: Let me hand you a transcript.
19 This is a deposition taken of you on December 12, 2001.
20 Do you need a copy, Mr. Johnson?

21 MR. JOHNSON: No, I have one, if you'll just
22 give me your page references.

23 MR. TULCHIN: I certainly will.

24 Q. BY MR. TULCHIN: And if I could ask you, sir,
25 to turn to page 177. Sorry. It's the -- I have to give

1 you the second day. My apologies. This was the next
2 day, Mr. Harral, December 13.

3 A. I didn't even remember there being two days.

4 Q. Well, I obviously didn't either because I gave
5 you the wrong day.

6 A. Okay.

7 Q. So now we have the second day. It's page 177.

8 A. Okay.

9 Q. Just let me know when you've found the right
10 page.

11 A. Let me see here. I'm on the page. Go ahead
12 and ask the question. I'll follow along as best I can.

13 Q. Are you with me?

14 A. I think so.

15 Q. Okay. And the question was -- and I'm going to
16 ask you whether you recall this question and your answer.
17 "Did you gain any understanding, while you worked at
18 WordPerfect, during 1989, first part of '90, about
19 whether the company felt that a character based was
20 better."

21 And you answered: "I didn't have -- when you
22 say 'the company,' I would assume you mean the upper
23 management in WordPerfect that would make the decisions,
24 and I did not rub shoulders with upper management in the
25 company, so I couldn't say what -- what they felt was

1 the -- I only knew the product that I was working on and
2 asked to work on."

3 A. In 1989 and -- okay. Go ahead. I'm sorry.

4 Q. Okay. Yes. Just give me a chance to ask the
5 question.

6 A. Yeah. Sorry.

7 Q. Do you recall being asked that question and
8 then giving that answer?

9 A. I do vaguely recall that question, yes.

10 Q. Okay. And that was true when you spoke it?

11 A. Uh-huh.

12 Q. Okay. Now I wonder if you could look at
13 exhibit 372. I'll be happy to give you a copy, if we
14 can -- Plaintiff's Exhibit 372 -- Mr. Johnson?

15 MR. JOHNSON: Thanks.

16 MR. TULCHIN: There's a copy for you.

17 Your Honor, would you like a copy?

18 THE COURT: No. I'm fine.

19 Q. BY MR. TULCHIN: Mr. Harral, if you need paper
20 copy, hard copy, let me know. I'd be happy to give it to
21 you. Is it on the screen in front of you, sir?

22 A. I can almost read it on the screen.

23 MR. TULCHIN: If I may, Your Honor --

24 THE COURT: That's better. That's fine.

25 A. That would be great. Thank you.

1 Q. BY MR. TULCHIN: You're very welcome. This is
2 one of Novell's exhibits in the case. And it's an
3 organization chart, correct?

4 A. Yes. It appears to be.

5 Q. All right. And on the first page, you'll see
6 in the upper right, just under the Exhibit Number, the
7 date February 16, 1995. You have that sir?

8 A. I do.

9 Q. So, this is an organization chart for the
10 business applications development organization?

11 A. Uh-huh.

12 Q. As of February of '95, correct?

13 A. That's correct.

14 Q. And, as far as your position was concerned, it
15 would have been the same in '94 or '95. I thought you
16 just said that, correct?

17 A. I do not know what my upper management was
18 representing me as being. I knew, like I said, my
19 responsibilities had not changed. I do not know what
20 they presented at any time as what my position was to the
21 other people.

22 Q. Well, do you remember seeing organization
23 charts, such as this one, during the period we're talking
24 about, 1994 to '6?

25 A. Actually, I saw one when we first were acquired

1 by Novell, and they would come out infrequently, every
2 three months or four months.

3 Q. Okay. And just so that we're clear here, the
4 gentleman who was the vice-president of the business
5 applications business unit was Bruce Brereton. Do you
6 see that, sir?

7 A. Okay. I do see that.

8 Q. And do you recall, going back to '94 or '95,
9 who Mr. Brereton reported to, who was directly above him?

10 A. I do not.

11 Q. And does the name David Moon?

12 A. I do know --

13 Q. Is that a familiar name?

14 A. I do know Dave Moon.

15 Q. Do you recall that Mr. Brereton reported to
16 David Moon?

17 A. I do not recall that, but I believe you.

18 Q. Okay. Do you recall that Mr. Moon was a senior
19 vice-president?

20 A. I do recall that.

21 Q. All right. And do you remember who Mr. Moon
22 reported to?

23 A. No, I do not.

24 Q. Let's say in '94?

25 A. I do not recall. I'm sorry. I was kind of

1 focused on what I was doing at the time, I guess.

2 Q. All right. And Mr. Moon actually reported to
3 someone named Ad Rietveld in 1994.

4 A. Okay.

5 Q. It's R-i-e-t-v-e-l-d?

6 A. Okay.

7 Q. Do you remember Mr. Rietveld?

8 A. I don't.

9 Q. And then Mr. Rietveld reported to
10 Mr. Frankenberg, right, the --

11 THE COURT: He doesn't recall Mr. Rietveld, so
12 he can't --

13 MR. TULCHIN: All right. Thank you.

14 Q. BY MR. TULCHIN: Mr. Frankenberg was the boss.
15 He was the chief executive officer.

16 A. Okay.

17 Q. Correct?

18 A. Yes. I do recall that.

19 Q. All right. And do you recall that, in 1994 and
20 1995, Novell had somewhere between 7,000 and 8,000
21 employees?

22 A. I didn't know that. So...

23 Q. Does that sound about right to you?

24 A. It sounds about like where the company was,
25 yeah.

1 Q. And this unit, the one that Mr. Brereton was in
2 charge of, the business applications business unit --

3 A. Uh-huh.

4 Q. -- at least on Exhibit 372, it seems to show
5 that there are 364 people?

6 A. Uh-huh.

7 Q. Is that right?

8 THE COURT: He doesn't know that. If you
9 represent that, that's fine.

10 Q. BY MR. TULCHIN: I do.

11 A. I see that.

12 Q. Okay.

13 A. I see that.

14 Q. Okay. And, Mr. Harral, how many software
15 engineers were there among the 364, if you know, roughly
16 speaking?

17 A. I don't know.

18 Q. Okay.

19 A. I think there was maybe, oh, at this time -- I
20 don't know. I recall at some time there being
21 approximately 120 software engineers.

22 Q. And I think you said last week that, at least
23 at one time, there was something like 12 hundred, do I
24 remember that right, software engineers at the company?

25 A. No. There were 12 hundred employees at the

1 company. In fact there were over -- almost 2,000
2 at one time in the company.

3 Q. I'm sorry. 2,000 software engineers?

4 A. No, employees.

5 Q. Well, I thought we just agreed that there were
6 between 7,000 and 8,000 altogether?

7 A. I said at one time. That was before the
8 acquisition of Novell.

9 Q. I see. Okay. Fair enough. And then going
10 down, looking again at Exhibit 372, there are ten people,
11 according to the chart, who report directly to
12 Mr. Brereton. Mr. Brereton, again, was the
13 vice-president. You see number 1 is Ed Moss. Then right
14 below him there's Dave Payne, and we won't go through all
15 of them, but, on the next page, the second page, number 9
16 of the ten is Toom Creighton. Do you see that, sir?

17 A. I do.

18 Q. And Mr. Creighton was one of ten who reported
19 to Mr. Brereton, the vice-president of this unit,
20 right?

21 A. Uh-huh. Yes.

22 Q. And working for Mr. Creighton, reporting
23 directly to Mr. Creighton, were actually two people. One
24 was Jim Johnson?

25 A. Uh-huh.

1 Q. Manager of PF Core Services, and PF stands for
2 Perfectfit, right?

3 A. Uh-huh, it does.

4 Q. If you go down the page a little further you'll
5 see the other person reporting is Chuck Middleton?

6 A. Uh-huh.

7 Q. I'm sorry.

8 Could we take that whole chunk? There we go.

9 So, reporting to Mr. Creighton is Jim Johnson
10 and Chuck Middleton. And then there were five people
11 reporting to Mr. Johnson. Do you see that, sir?

12 A. Yes, I do.

13 Q. And you were one of them. You were one of the
14 five?

15 A. That is correct.

16 Q. The other four, who were at the same level you
17 were, Whitney, Cannon -- I hope I pronounce this right --
18 Mashayekhi and Spencer, those other four?

19 A. Uh-huh.

20 Q. Were on the same general level as you were?

21 A. In the organizational hierarchy of the company,
22 that's true.

23 Q. Right. And your title at the time, according
24 to this org chart, was Lead Developer Of Core Services?

25 A. That's correct.

1 Q. Do we have that right?

2 A. Uh-huh.

3 Q. And you had a total of three people who
4 reported to you?

5 A. Uh-huh.

6 Q. Is that right, sir?

7 A. Yeah.

8 Q. Okay. Just need a verbal answer.

9 A. Yes. Sorry.

10 Q. The uh-huh is hard for the court reporter to
11 get.

12 A. Sorry.

13 Q. Thank you, Mr. Harral. And that was true, that
14 there were three people reporting to you, throughout this
15 whole period that we've been talking about, 1994 to '96?

16 A. Okay.

17 Q. Is that right?

18 A. Those are my direct reports, yes.

19 Q. Okay. So, you didn't mean to give the
20 impression to the jury on Thursday or earlier this
21 morning that, when you said you were the architect, that
22 you were somehow the lead architect for the whole
23 company?

24 A. No. I was the lead architect for shared
25 code.

1 Q. Okay. Shared code?

2 A. All of Tom Creighton's division.

3 Q. Tom Creighton, who is the director of
4 Perfectfit technology, correct?

5 A. That's correct.

6 Q. And, as we've said, he had 45 people in his
7 unit. Do you see that?

8 A. That's correct.

9 Q. One plus 44?

10 A. Uh-huh.

11 Q. There were two people who reported to him,
12 Johnson and Middleton?

13 A. Yeah.

14 Q. And you were one of five who reported to
15 Johnson?

16 A. That's correct.

17 Q. Now, am I right in thinking, Mr. Harral, that,
18 in your testimony last Thursday, you indicated that,
19 during this same period, 1994 to 1996, you didn't work
20 directly -- you weren't directly involved in the
21 WordPerfect product?

22 A. No. I was not involved in the WordPerfect
23 product.

24 Q. And you weren't directly involved with the
25 PerfectOffice product?

1 A. Shared code code was a part of PerfectOffice,
2 so, yes, we were directly involved in PerfectOffice.

3 Q. Well, let's go back to Exhibit 372. If you
4 look on the first page again, you'll see that reporting
5 to Mr. Brereton are a number of people who were
6 working -- their titles, at least, are Director of POWin
7 number -- sorry, POWin 95. That would be PerfectOffice
8 for Win 95, correct?

9 A. Thank you for that.

10 Q. Am I right about that?

11 A. Your person on the screen is helping me find it
12 faster than I can find it. So, yes, Gary Gibb was in
13 charge of PerfectOffice Win 95.

14 Q. And below him there is Eric Meyers?

15 A. Uh-huh.

16 Q. Who is the Director of PerfectOffice Win 94.
17 Do you see that?

18 A. I do.

19 Q. And then, below him, these are, again, people
20 reporting to Mr. Brereton?

21 A. They are.

22 Q. Who was Mr. Creighton's boss, right?

23 A. Uh-huh.

24 Q. And Johnson reported to Creighton, and you
25 reported to Johnson, right?

1 A. Uh-huh.

2 Q. Okay. And below that there is Steve Weitzel,
3 who was the Director of WordPerfect for Windows?

4 A. Yes.

5 Q. Correct?

6 A. Uh-huh.

7 Q. So, again, you didn't directly work on those
8 products, correct, shared code?

9 A. On PerfectOffice?

10 Q. Well, let me back up for a second and see if I
11 can finish my question?

12 A. Okay.

13 Q. Sorry if it was confusing.

14 A. I was confused.

15 Q. I apologize. The WordPerfect product for
16 Windows 95 was a product that you weren't directly
17 involved in?

18 A. WordPerfect, the word processor for Windows 95,
19 I was not directly involved.

20 Q. Right. And would the same be true for Quattro
21 Pro, the spreadsheet?

22 A. I did not work as a developer on the Quattro
23 Pro team.

24 Q. Okay. And throughout the same two-year period,
25 you had no direct involvement in any of the strategic

1 decisions about those two products, correct?

2 A. That would not be true. Let me explain my
3 answer. Even though we have an org chart here, now,
4 I know for a fact that -- because I spoke with people at
5 Microsoft -- that their architects would have direct
6 access to managers that they did not report to, and, in
7 fact, that Bill Gates would sometimes meet with certain
8 people that were technologic, and they would bypass the
9 lines of command inside of the organization. We had a
10 similar setup at Novell, where you have the chain of
11 command that assimilates the customer needs and the
12 business requirements that come down, but there was also
13 an ancillary access point that the architects had where
14 they could bypass all of the hierarchy here.

15 And, for example, you mentioned Eric Meyers. I
16 would talk with Eric Meyers often, even though I was
17 not -- I did not report to him, and the only place in
18 which we commonly reported was way up the chain. But we
19 would talk often about what was possible because most of
20 the -- most of the direction of where the platform was
21 potentially going to go was embodied in the shared code,
22 and so the shared code team was an ancillary point that
23 the business managers would come to, and they would ask,
24 where should the products be going?

25 And the -- the point is, is that there are

1 not -- if you were to go through here, I think you could
2 notice that there are almost no architects specified in
3 this organization. The architects sit independent of
4 this organization and have access to outside of it, even
5 though they are not inside, so they are not bound by this
6 organization as to who they talk to or what they have
7 influence over. And the architects were consulted. One
8 of them is Glen Monson, and I don't know where he sits
9 down inside of the chart, but he was one of the main
10 architects as well outside of shared code.

11 So that's why it might be confusing about my
12 answer about, do I have influence over these people?
13 Yes, they were talking to us, and they were using our
14 input as to what -- it's not what the business decisions
15 they can make, but it's about the feasibility of those
16 decisions and so we were helping them decide what
17 features would go into the products just from an
18 architectural perspective.

19 So, yes, I could see how that could be
20 confusing because this chart does not represent the
21 architects in the process of doing that.

22 Q. Mr. Harral, there were a lot of documents
23 produced in this case by both sides, but I don't recall
24 ever seeing a document that was produced by Novell that
25 shows an org chart of architects.

1 A. That's right.

2 Q. Do you recall any such document?

3 A. I don't think one was ever made.

4 Q. Okay. And in an answer you gave just a moment
5 ago, again, you said something like, we were helping them
6 decide what features would go into particular products.
7 Did I get that about right?

8 A. The architects were helping the product
9 managers decide.

10 Q. Well, that's what I was going to ask you next.

11 A. Okay.

12 Q. "Them," there, refers to the product
13 managers?

14 A. That's correct.

15 Q. Okay. And the individual product managers,
16 some of the names were on that org chart that we just
17 looked at, Exhibit 372, they reported to more senior
18 business people?

19 A. They did.

20 Q. Like vice-president Bruce Brereton?

21 A. Yes.

22 Q. Right? Am I right that the ultimate decision
23 about strategic options for the company was a decision
24 that would be made by upper management?

25 A. Uh-huh.

1 Q. Is that a "yes," sir?

2 A. It's a yes.

3 Q. Okay. Sorry to bother you. Just to be
4 clear --

5 A. No. I'm not using -- I'm sorry.

6 Q. The "uh-huh" is hard for the court reporter to
7 take down.

8 A. I understand.

9 Q. Thank you, sir. And when you spoke about the
10 three options -- and I think we'll come back to them
11 later -- but last Thursday you spoke about the three
12 options, and Mr. Johnson put a demonstrative exhibit on
13 the screen this morning?

14 A. Yes.

15 Q. With the three options. Those were strategic
16 options for senior business people to consider and
17 decide, correct?

18 A. In the end, yes.

19 Q. Now, Mr. Harral, you've testified that it
20 was -- I think I have your words, in around the October
21 time frame?

22 A. Okay.

23 Q. That you heard from premier support, someone at
24 Microsoft working at premier support, that Microsoft
25 would be withdrawing support for the NameSpace extension

1 API's, correct?

2 A. What I said was that they would not talk about
3 the question that I had because they were not allowed to
4 talk about it. That they were withdrawing it was not
5 said.

6 Q. Mr. Harral, you say they were not allowed to
7 talk about it?

8 A. That's what they said.

9 Q. Who is the "they"?

10 A. That the premier support people that I was
11 talking to were not allowed to talk about these API's
12 that I was asking them about.

13 Q. But my question was, who is the "they"?

14 A. Microsoft premier support.

15 Q. I know. Maybe I should be more specific. I'm
16 trying to find out a name or some names of people.

17 A. It was different every time I called. That's
18 the way Microsoft set it up.

19 Q. But didn't you say, Mr. Harral, last
20 Thursday -- and we'll get the testimony later. I don't
21 have it at my fingertips -- but that you recalled three
22 telephone calls, after October, to premier support?

23 A. Uh-huh.

24 Q. Is that right?

25 A. I have recollection of at least three telephone

1 calls that we made.

2 Q. Now you are saying at least. I think last week
3 you said --

4 A. Because I was --

5 Q. -- three?

6 A. Okay. If -- what do you want from that, I
7 guess is the question because, yes, there were three, and
8 I can give -- I was asked to give examples and I gave
9 examples. If I had a question or not, or if I sat in
10 with some other architect because they had a question,
11 the number of calls that we might have or that I might
12 have sat on in, I would need more time than just sitting
13 down for an hour or five hours, and probably with other
14 people, to be able to reconstruct those events. So I
15 gave some useful information. It was there. Whether it
16 was complete or not, I'm sure somebody else could remind
17 me. I know that premier support --

18 Q. Sorry?

19 A. -- kept track of that information, so they --
20 that would probably be the best record is that Microsoft
21 could produce the premier support records and tell me how
22 many calls I have.

23 Q. Mr. Harral, I'm now trying to get your
24 recollection.

25 A. I can recall -- I can recall three discussions

1 that we had.

2 Q. Okay. And if I could just ask this question?

3 A. Okay.

4 Q. This is where I was trying to go.

5 A. Okay.

6 Q. You've testified that you can recall three
7 discussions.

8 A. Uh-huh.

9 Q. Can you give us the name or names of any of the
10 people at premier support with whom you had those
11 discussions?

12 A. During that time, no. They did not offer
13 them.

14 Q. Well, in an answer a moment ago, you said
15 something about records. And I want to ask you about
16 Novell's records.

17 A. Okay.

18 Q. During the period that you were having these
19 discussions with premier support, let's say in late 1994,
20 or even into 1995 --

21 A. Uh-huh.

22 Q. -- did you make any written record of what
23 transpired during those discussions?

24 A. The only records that I know of would be the
25 e-mails that would go back and forth between the

1 developers and the management about the result of those
2 conversations.

3 Q. Now, in this case, Novell has produced no such
4 e-mails that you wrote --

5 A. Okay.

6 Q. -- to management or your boss or Mr. Creighton
7 or Mr. Brereton.

8 A. Okay.

9 Q. Is it your testimony that you did write those
10 e-mails?

11 A. We used e-mails to communicate those things
12 both with Microsoft and within the management, yes.

13 Q. Well, in your answer, Mr. Harral, again you
14 used the word "we." It was the first word. I asked you,
15 did you write such e-mails?

16 A. I wrote e-mails to people about these events.

17 Q. Did you write e-mails to people about these
18 phone calls with premier support?

19 A. Yes.

20 Q. And we have no such e-mails.

21 A. I don't know. I don't have access to
22 Novell's -- Novell's e-mails servers. I couldn't do
23 that.

24 Q. I wasn't asking if you did, sir.

25 A. Okay.

1 Q. I was just representing to you that, as far as
2 I know, we have no e-mails that you ever wrote to anyone
3 at Novell about any conversations you ever had with
4 anyone from premier support, and I'm just asking, in
5 light of that --

6 A. Uh-huh.

7 Q. -- are you sure that you wrote such e-mails?

8 A. Yes.

9 Q. And I think you said, in an answer about five
10 or so minutes ago, that the ultimate decision about what
11 strategic path to take, such as the decision about the
12 three options that you spoke about this morning and also
13 last Thursday, those type of decisions would be for
14 senior management, correct?

15 A. That responsibility would fall to them.

16 Q. Somebody at the level of Mr. Frankenberg, who
17 was the CEO or maybe just below him, correct?

18 A. Mr. Moon or somebody like that.

19 Q. And they may have had input from you about that
20 decision?

21 A. That's correct.

22 Q. Now, did you provide any input to those people
23 at any time in some writing, an e-mail, a memorandum,
24 something in writing?

25 A. That kind of information would have been

1 provided through Tom Creighton, up to the management,
2 because it was not my responsibility to formulate my
3 opinion, but it was the architects' responsibility to
4 formulate a concerted response, and that would have gone
5 up through Mr. Creighton.

6 Q. So, if I understand you correctly, Mr. Harral,
7 you would have given information to Mr. Creighton,
8 correct, and he would have communicated directly to
9 senior management?

10 A. That's what we understood as architects.

11 Q. And with respect to the three options you
12 talked about, the demonstrative that was on the screen
13 this morning, do you have a specific memory of providing
14 your input to Mr. Creighton about which of those three
15 options to take or what the consequences would be of
16 taking option 1 or 2 or 3?

17 A. We had -- we had long discussions about those
18 options.

19 Q. Did you provide anything in writing to
20 Mr. Creighton about the options?

21 A. No. I don't recall that I did. We would get
22 together, and I do not know who he had tasked as
23 recording that information.

24 Q. And then, it would be your understanding that,
25 at the time, let's say in 1994 or '5, when you're

1 choosing among the options, it would be your
2 understanding that Mr. Creighton would then be tasked
3 with the job of talking to people senior to him?

4 A. Yes.

5 Q. Do you ever recall seeing anything in writing,
6 a memorandum, an e-mail, anything at all, from
7 Mr. Creighton to any of these more senior people?

8 A. We did see -- he -- quote, carbon copy. He
9 would forward to us some of the e-mails that he would
10 send up. I don't know where it would go from there. So
11 we did see such e-mails, but I don't know who they went
12 to.

13 THE COURT: I assume you don't mean carbon
14 copies?

15 THE WITNESS: When I say carbon -- it's a term
16 in -- sorry. Yeah. That's a term in e-mails about
17 sending out a copy of something to somebody else that's
18 not intended for you. I apologize.

19 THE COURT: No, I just wanted to make sure.

20 MR. TULCHIN: That goes back a long way, the
21 actual carbon copies.

22 THE COURT: Not that long.

23 MR. TULCHIN: Sorry, Your Honor.

24 THE COURT: Not that long.

25 MR. TULCHIN: It depends on our perspective,

1 Your Honor.

2 THE COURT: Absolutely.

3 MR. TULCHIN: It seems like a long time ago to
4 me.

5 THE COURT: Papyrus was a very good thing.

6 Q. BY MR. TULCHIN: Mr. Harral, again, we don't
7 have anything in writing from Mr. Creighton to any of the
8 senior business people --

9 A. I wouldn't know.

10 Q. -- about any these three options.

11 A. Uh-huh. Okay.

12 Q. Do you remember seeing any such document,
13 e-mail or memo or anything else?

14 A. There were -- okay. So the ones that he
15 forwarded to, that he gave us, we would see what would
16 have been the culmination of those discussions, but who
17 they went to, I do not know, but, yes, we did see them.

18 Q. All right. And when you were telling the jury
19 on Thursday, and also early this morning, I think before
20 8:30, about the decision about which option to take,
21 those decisions were actually made by people way senior
22 to you in upper management?

23 A. I hope so.

24 Q. All right. And, Mr. Harral, something else
25 last Thursday. I'm changing subjects now, just to let

1 you know.

2 A. Okay.

3 Q. You spoke a number of times about things that
4 customers wanted. You remember that?

5 A. Yes.

6 Q. And you testified last week that customers may
7 have wanted certain features or may have anticipated
8 certain features in products, correct?

9 A. Yes.

10 Q. And I think you also testified that there were
11 customers of the shared code team; is that right?

12 A. Yes.

13 Q. The shared code team was licensing particular
14 products to customers during this period, right?

15 A. There were Perfectfit licensed -- being
16 marketed to people, and it was essentially the shared
17 code being marketed to people outside of the company.

18 Q. Okay, so when I said shared code in my
19 question, is that the same thing for this purpose as
20 Perfectfit?

21 A. Yes. Shared code is Perfectfit branded for
22 people to use.

23 Q. Right. And in your testimony last Thursday,
24 when you were talking about things that customers wanted
25 or anticipated, you were referring to customers of

1 Perfectfit; is that fair?

2 A. For -- I'm sorry. Say that again. I was
3 trying get around this. I'm sorry.

4 Q. Sure. Sorry. I know there's a screen between
5 the two of us. If I can move to make a more direct view,
6 let me know.

7 A. Thank you.

8 THE COURT: Actually, let's take a short break.
9 I've got to make one call.

10 MR. TULCHIN: Certainly, Your Honor.

11 THE COURT: I'll be back in about five minutes.

12 (Short break.)

13 THE COURT: Sorry. Let's get started. I've
14 just got to keep things going back home.

15 (Jury brought into the courtroom.)

16 THE COURT: Sorry for the delay. I'm trying to
17 juggle two schedules.

18 Mr. Tulchin.

19 MR. TULCHIN: Shall I proceed, Your Honor?

20 THE COURT: Yes, sir.

21 Q. BY MR. TULCHIN: Mr. Harral, just trying to
22 pickup where we last were. The customers of the shared
23 code teams -- the shared code team, sorry -- were
24 customers who were licensing Perfectfit; is that right?

25 A. The customers of the shared code team were all

1 of the applications in the company and those who licensed
2 Perfectfit.

3 Q. Okay. Now, when you spoke last Thursday about
4 customers, you actually weren't speaking directly to
5 customers for WordPerfect, were you?

6 A. Well, yes, because WordPerfect was a platform
7 in which people were solving their business problems on.
8 And these companies had IT departments. They deployed
9 solutions inside of their companies to solve problems
10 that may even be unrelated to or likely were unrelated to
11 WordPerfect, but WordPerfect Corporation and Novell had a
12 technology where they could leverage more than
13 WordPerfect, the word processor, they could -- because
14 once people had used WordPerfect, they had a look and a
15 feel or a way in which the product acted. There were
16 behaviors and features that they had there.

17 If they could leverage those features into
18 products that they were writing for their own consumption
19 or for their own sale to other place, that would be to
20 their advantage, so that their users would not have to be
21 retrained in that, and so they would have the opportunity
22 to write applications internally that would be congruent
23 with the way WordPerfect was using its interface. So,
24 yes, these were customers of WordPerfect. They weren't
25 constrained to that, but they definitely were that as

1 well.

2 Q. Well, my question, Mr. Harral, was this. In
3 this period of late 1994, after you say you found out
4 that Microsoft was going to withdraw support for the
5 fourth NameSpace extension API's and into 1995, do you
6 remember speaking to any particular specific customers?

7 A. Those requests came through the support
8 organization to us, so that we would be able to finish
9 our work. Just like we had premier support at Microsoft,
10 WordPerfect had support that they would field those
11 questions with, and then, as those escalated, if they
12 needed to talk to us, then they would come to us as
13 well.

14 Q. Right, but the customers would be talking to
15 other people, ordinarily, within Novell. They would be
16 talking to the support group at Novell?

17 A. Yes.

18 Q. Correct?

19 A. Unless they needed to talk to somebody on our
20 team.

21 Q. And my question was, do you recall any
22 conversations with a specific customer, from the period
23 October, '94 and into 1995, about what customers wanted
24 or anticipated from WordPerfect or PerfectOffice or
25 Quattro Pro?

1 A. I was not part of the conversations for those
2 customers.

3 Q. All right. So, when you testified last
4 Thursday that you had some understanding about what the
5 customers wanted --

6 A. Uh-huh.

7 Q. -- that understanding was gained as a result of
8 discussions you had with other people at Novell?

9 A. Yeah, the developers on my team who had talked
10 to those people, yes.

11 Q. Right. You, yourself did not talk to them?

12 A. Nope.

13 Q. All right. I just wanted to be clear about
14 that. Now, I also just wanted to ask about meetings,
15 face-to-face meetings which you had with people from
16 Microsoft.

17 A. Okay.

18 Q. On Thursday -- Thursday you testified about one
19 meeting in 1993. Do you remember your testimony?

20 A. Uh-huh.

21 Q. Is that a "yes," sir?

22 A. Which is -- okay there was a meeting in 1993
23 that we had with Microsoft at the WordPerfect campus.

24 Q. I'll show you the document --

25 A. Thank you.

1 Q. -- in just a moment.

2 A. Okay. Thank you.

3 Q. Sure. Sure. It was Plaintiff's Exhibit 105.

4 But I wasn't entirely clear. I thought you said last
5 week that you remembered no other face-to-face meetings
6 that you, personally, ever had with anyone from Microsoft
7 Corporation. Am I right?

8 A. No. I think I said that I don't remember a
9 face-to-face meeting discussing the API's.

10 Q. All right.

11 A. Because I did have a meeting -- for example, we
12 were licensing the True Type technology, and I did have a
13 meeting with Microsoft about that. So, there were
14 meetings with Microsoft, but not about those API's after
15 they were not available.

16 Q. Okay. Let me see if I get this one right. I'm
17 going to try. In the period from, let's say, June 9 or
18 10 of 1994, which is when I think you said you received
19 the documentation for the NameSpace extension API's in
20 the first Beta, remember that? So, from June of 1994,
21 until the time you went to Corel, in 1996, am I correct
22 that you don't remember any face-to-face meetings with
23 Microsoft about Windows 95 or the API's in Windows 95?

24 A. I did not have a face-to-face meeting. That's
25 the reason I don't remember. I did not have a

1 face-to-face meeting with them about these API's.

2 Q. I'm sorry. I may not have heard that
3 correctly?

4 A. I did not have a face-to-face meeting with them
5 about these API's after we learned about that in
6 October.

7 Q. Okay. There were no meetings?

8 A. None that --

9 Q. Am I right? No meetings that you participated
10 in?

11 A. There were none that I participated in.

12 Q. Okay. Just wanted to be clear about that. And
13 let's go back and look just briefly, if we can, at
14 Plaintiff's Exhibit 105. This was the document that you
15 were shown in your direct examination last Thursday
16 morning. Do you remember this, Mr. Harral?

17 A. Uh-huh.

18 Q. Is that a "yes," sir? Again --

19 A. I'm sorry. Yes, I do.

20 Q. And I'm sorry to pester you. I just wanted the
21 record to be clear.

22 A. No. That's fine.

23 Q. Okay. Now, this is an e-mail written by
24 someone at Microsoft in November, 1993, correct?

25 A. Yes.

1 Q. And it reports on a meeting -- well, sorry.
2 Let me back up for a second. The e-mail that I'm
3 referring to is from David C-O-L, and then on the two
4 line, there are five or six e-mail aliases. Do you see
5 that, sir?

6 A. Yes.

7 Q. Okay. And, right at the beginning it says,
8 Jeff T, Brad S-T-R and I went to WordPerfect last
9 Thursday?

10 A. Okay.

11 Q. Do you see that, sir?

12 A. Uh-huh. Yes.

13 THE COURT: Yes?

14 A. I'm sorry. Yes, I do. Sorry.

15 Q. I'll try --

16 A. You'll teach me eventually.

17 THE COURT: As far as I'm concerned "uh-huh"
18 was okay. I just didn't want Mr. Tulchin to --

19 THE WITNESS: Okay.

20 MR. TULCHIN: I was trying to help the court
21 reporter, Your Honor.

22 THE COURT: I know. I appreciate that.

23 Q. BY MR. TULCHIN: Mr. Harral, my question to you
24 is, do you remember this meeting specifically?

25 A. I do remember this meeting.

1 Q. Above and beyond the notes in the e-mail?

2 A. Yes.

3 Q. And did you speak to anyone named Brad Struss
4 from Microsoft during that meeting?

5 A. I did.

6 MR. WHEELER: Your Honor --

7 JUROR: We can't hear.

8 THE WITNESS: Hello. Okay.

9 THE COURT: Thank you.

10 THE WITNESS: I do not remember the names of
11 the people that were in this meeting.

12 Q. BY MR. TULCHIN: All right. Subsequent to
13 November, 1993, to the best of your memory, did you ever
14 have any conversations about any topic whatsoever with
15 Brad Struss, S-t-r-u-s-s, of Microsoft?

16 A. The answer is I don't -- I don't know if I ever
17 talked to him again.

18 Q. You have no recollection of doing so?

19 A. No. I don't -- that doesn't mean that I had
20 the names of the people that I talked to at Microsoft. I
21 do not know if any of the people that I talked to was
22 this person.

23 Q. All right. Were you aware, in the period of
24 1994 to 1996, as best as you can remember, were you aware
25 what Mr. Struss' job was or what his responsibilities

1 were?

2 A. No.

3 Q. And how about David Cole? Do you remember what
4 he did at Microsoft?

5 A. I don't. I don't know.

6 Q. Do you remember ever talking to Mr. Cole about
7 the NameSpace extension API's or anything else subsequent
8 to November of 1993?

9 A. I don't know if any of the people that I talked
10 to was a Mr. Cole.

11 Q. All right. And to be clear, again, the only
12 people you talked to from Microsoft were people from
13 premier support who answered your calls, correct?

14 A. Except for when we would attend, like, the
15 developer conference at Microsoft, yes. Any of the other
16 interactions we had were with premier support or people
17 that they would bring to the calls that we would be on.

18 Q. Right. And in these calls with premier support
19 about the development of Windows 95 and the API and the
20 name space extension API's, you don't remember the names
21 of any of the people at Microsoft with whom you spoke?

22 A. No.

23 Q. Okay. Now, I want to look briefly, if we can,
24 as well, at Plaintiff's Exhibit 113, which you were also
25 shown last week. This is the first page.

1 A. All right.

2 Q. Do you remember this, sir?

3 A. I remember seeing this -- these pages.

4 Q. Last Thursday?

5 A. Yes.

6 Q. Okay. If you need a hard copy, just let me
7 know, and I'll bring it to you.

8 A. It will be okay.

9 Q. And I think you testified that you were aware,
10 at the time, that there had been such a meeting?

11 A. Yes.

12 Q. Correct?

13 A. That is correct.

14 Q. But you said you didn't attend the meeting?

15 A. I did not attend the meeting.

16 Q. Is it correct, Mr. Harral, that you weren't
17 invited to attend that meeting?

18 A. That is not correct.

19 Q. I see.

20 A. I had -- I had responsibilities at that time
21 for a product that was shipping out and so I was unable
22 to attend.

23 Q. All right. Do you recall seeing any e-mails or
24 memos or other documents written by any of the Novell
25 people -- I'm sorry -- I should say WordPerfect people.

1 A. Uh-huh.

2 Q. This was before --

3 A. It was.

4 Q. -- Novell acquired WordPerfect. Let me back up
5 and do it again.

6 A. That's fine.

7 Q. My error.

8 A. Okay.

9 Q. Do you remember any e-mails or memos or other
10 documents written by anyone at WordPerfect, who actually
11 attended this meeting, reporting on anything that
12 Mr. Belfiore of Microsoft had said?

13 A. Glen Monson did. He was the main person who
14 wrote the summaries for people to consume afterwards, and
15 so he was the one that I recall wrote the summary about
16 this, which sparked the discussions that I had with other
17 people about these topics.

18 Q. Do you know what happened to that report that
19 he wrote?

20 A. As I said, I do not have access to the e-mal
21 system for the corporation, so, no, I don't know what
22 happened to it.

23 Q. And, again, at least as far as I'm aware, we
24 have never received any such report of that meeting. Do
25 you know what might have become of it?

1 A. It's probably in the place where the lost socks
2 go.

3 Q. Somehow in the dryer?

4 A. Uh-huh.

5 Q. Maybe the memos are there. Okay. And just to
6 be clear about premier support for a minute, premier
7 support was a hotline that Microsoft set up for
8 developers, correct?

9 A. Yes.

10 Q. Outside developers, what we sometimes call
11 ISV's?

12 A. That was my understanding.

13 Q. And an ISV had to pay some fee, an annual fee
14 to get access to this hotline?

15 A. Yes, it did.

16 Q. And the people at Microsoft who answered the
17 hot hotline were software engineers, correct?

18 A. That was my understanding.

19 Q. All right.

20 THE COURT: To remind the jury, I'm sure they
21 remember what an ISV was, what, an independent software
22 vendor?

23 MR. TULCHIN: Yes, sir. Thank you, Your Honor.
24 Appreciate that. There are a lot of acronyms.

25 Q. BY MR. TULCHIN: And, Mr. Harral, there was

1 also something called the systems group at Microsoft,
2 correct?

3 A. I don't recall that. Do you have more about
4 what you're talking about?

5 Q. All right. Well, regardless of what it was
6 called, there was an entire group of Microsoft employees
7 whose job it was to develop operating systems for the
8 company, operating systems like Windows 3.1?

9 A. Uh-huh.

10 Q. And Windows 95, correct?

11 A. Yes.

12 Q. And my question to you, sir, is, I gather, from
13 your testimony, that you never spoke to any of the people
14 in the systems group, the people who were actually
15 designing and developing new versions of Windows?

16 A. No. I actually had opportunity on two
17 occasions to speak to people in the systems group.

18 Q. My question maybe should have been clearer.
19 You never spoke to people in the systems group about the
20 NameSpace extension API's?

21 A. That is correct.

22 Q. Okay. My fault.

23 A. No.

24 Q. It was a tail end to the question which I just
25 forgot.

1 A. Okay.

2 Q. And is it your understanding, Mr. Harral, that
3 there were people at Novell, again in the period, '94 to
4 '96 --

5 A. Did you say "were" or "weren't"? I'm sorry.

6 Q. There were.

7 A. Okay.

8 Q. There were. There actually were people at
9 Novell, during this same period, two-year period, '94 to
10 '96, who, from-time-to-time, had occasion to talk to the
11 systems group at Microsoft?

12 A. I don't know.

13 Q. And were you aware, sir, that during that same
14 two-year period, Mr. Frankenberg, the CEO of Novell,
15 from-time-to-time communicated with Bill Gates, who was
16 then the CEO of Microsoft?

17 A. I do not know that.

18 Q. That was certainly sort of way above your pay
19 grade? Is that the way to say it?

20 A. Mr. Creighton may have been aware of that, but
21 I was not.

22 Q. Okay. Fair enough.

23 May I approach the witness, Your Honor?

24 THE COURT: Yes. You all can always approach
25 witnesses without having -- without asking my approval.

1 If I think you are harassing a witness, I will be the
2 first to tell you.

3 MR. TULCHIN: Thank you, Your Honor.

4 Q. BY MR. TULCHIN: Mr. Harral, I've handed you a
5 copy of what's been marked as Defendant's Exhibit 172.
6 Do you see this, sir?

7 A. I do.

8 Q. And this is an e-mail from someone named Scott
9 Nelson. Do you remember Mr. Nelson?

10 A. I do not.

11 Q. Mr. Nelson worked at Novell in 1995, am I
12 right?

13 A. I as I said, I don't know Mr. Nelson.

14 Q. Do you know whether Mr. Nelson was a software
15 engineer at Novell?

16 THE COURT: He doesn't know Mr. Nelson.

17 THE WITNESS: I don't.

18 Q. BY MR. TULCHIN: Okay. Fair enough. So, it
19 would be fair to say, as well, that you don't know about
20 the contacts that Mr. Nelson was having with people at
21 the systems group in Microsoft?

22 A. That's correct.

23 Q. Okay. Well, let me just ask you to look at
24 Exhibit 172, in the third paragraph. And first, just to
25 point out, this is an e-mail from April 7, 1995.

1 A. Uh-huh.

2 Q. And among the people copied there are Glen
3 Mella, Glen M at Novell. Do you see that?

4 A. Yes, I do.

5 Q. Do you remember Mr. Mella?

6 A. I know of him.

7 Q. All right. And then there was Todd -- was that
8 Todd Titensor of Novell?

9 A. I don't know.

10 Q. All right. In any event, if you look the third
11 paragraph. Mr. Nelson writes this e-mail in April, 1995,
12 and he says, "Second, we are now at a point where Win 95
13 development is our highest priority."

14 Do you see that, sir?

15 A. I do see that paragraph.

16 Q. And, Mr. Harral, does that refresh your memory
17 that it wasn't until about April of 1995 that Novell made
18 development for the Windows 1995 platform a high
19 priority?

20 MR. JOHNSON: Your Honor, objection. He
21 doesn't even -- hasn't even established that he knows
22 anything about this e-mail.

23 THE COURT: I know that, but he's just using
24 the document as -- if it refreshes his recollection, it
25 does. If it doesn't, it doesn't. By whatever source.

1 THE WITNESS: Okay. Please restate the
2 question.

3 Q. BY MR. TULCHIN: Sorry. Mr. Harral, does this
4 refresh your recollection that it wasn't until about
5 April of 1995, that Novell made Win 95 development its
6 highest priority?

7 A. That's not true. It does say here that, at
8 this point, it is our highest priority, but it doesn't
9 say that it begins to be our highest priority. In the
10 shared code group, we -- as I said before, we would be
11 six months to a year in advance of the applications. The
12 Novell had visibility into what -- what shared code did
13 through the applications. The applications were the
14 things that drove what was being marketed outside for the
15 business.

16 Now -- and so, many times, the communication to
17 upper management about what was happening in shared code
18 would come through the lens of the applications. Down
19 inside of -- as I said before, shared code had to be
20 there long before the other applications could move onto
21 the platform. So, for us -- I do note that Tom Creighton
22 his raised the issue with -- and that information did
23 make its way to Microsoft, that I think the quote that he
24 had is there would be hell to pay if these application
25 API's were removed.

1 And he did show me that, his survey, when he
2 forwarded that because we knew, at that time, that that
3 was going to be a big deal, and our management knew that
4 that was a big deal. So, within shared code -- I can't
5 speak for the other applications, but within shared code,
6 this was an issue of the highest priority back in
7 October. And it -- as the critical path raised to
8 surface that it would impact the applications, it would
9 become more and more prominent with them as well.

10 So it is true here that he says that it is at
11 this time our highest priority, but it doesn't say that
12 it begins to be our highest priority on this date.

13 Q. Okay. And, Mr. Harral, I want to just point
14 out the next couple of sentences, just skipping one
15 sentence. You're free to read it, of course.

16 A. Uh-huh.

17 Q. But Mr. Nelson goes on to say, "We have
18 discovered many problems. Many of them are system
19 problems. The good news is that the cooperation between
20 Microsoft and Novell has been very good."

21 A. Okay.

22 Q. Do you see that, sir?

23 A. I do.

24 Q. And my question here is, just so that we're
25 clear about something --

1 A. Uh-huh.

2 Q. -- there may have been other people at Novell,
3 people other than yourself --

4 A. Uh-huh.

5 Q. -- who were dealing with Microsoft, maybe
6 dealing with the systems group at Microsoft?

7 A. Uh-huh.

8 Q. And getting very good cooperation from
9 Microsoft, correct?

10 A. Yeah. If they weren't asking about the shell
11 API's, I'm sure they were.

12 Q. All right. And if they were getting good
13 cooperation, that's something you're not aware of?

14 A. That's right.

15 Q. And you didn't talk to the systems group people
16 at Microsoft?

17 A. Nope, was never given an opportunity to do so
18 by the premier support people, unlike in the past.

19 Q. Well, Mr. Harral, there's always a telephone
20 number to call, for instance, Mr. Struss who visited you
21 in 1993?

22 A. I do not know his name.

23 Q. Well, you were at the meeting when he
24 was there?

25 A. I said, I knew that I was in a meeting with

1 people, and we had a discussion.

2 Q. And Mr. Cole was there?

3 A. Uh-huh.

4 Q. And you could certainly have reached out and
5 made a telephone call to either one of them at any time
6 during this two-year period?

7 MR. JOHNSON: Objection, Your Honor.
8 Argumentative.

9 THE WITNESS: No, I could not.

10 THE COURT: Sustained.

11 Q. BY MR. TULCHIN: Okay. Mr. Harral, am I right
12 that, on the occasions where there were business issues
13 between Novell and Microsoft, that, very often, senior
14 people of the two companies would meet or talk or
15 correspond to try to work out those issues?

16 A. I heard people speak of such things. I'm not
17 aware of them actually happening.

18 Q. Okay. And let's look at Exhibit 105 a minute.
19 I just want to -- you said a moment ago that, at
20 a certain period, you were busy. This was the at the
21 Belfiore meeting. You were busy trying to get out some
22 product?

23 A. Uh-huh.

24 Q. And just to try to set the time -- I'm sorry --
25 just to set the time period again, the meeting that you

1 did attend was in November of 1993?

2 A. That's correct.

3 Q. And when was that meeting that Mr. Belfiore
4 had, where that material was presented, the meeting that
5 you did not attend?

6 A. I'm unaware of exactly when it was.

7 Q. Do you know if it was before or after this
8 meeting?

9 A. It would have been before this, I think. I'm
10 not certain of that, but I think it would have been
11 before.

12 Q. Now, around the end of 1993, WordPerfect, which
13 had not yet been acquired by Novell, was very busy
14 working on other products, correct?

15 A. Products other than what?

16 Q. Well, products other than the one that you were
17 planning to run on Windows 95?

18 A. Yes.

19 Q. And WordPerfect 6.0 for Windows had come out in
20 October, 1993; is that right?

21 A. I -- that sounds correct, about that time
22 frame.

23 Q. And that was a product that people at Novell
24 often recognized was not received well in the market,
25 correct?

1 A. I don't know what the Novell people felt about
2 it.

3 Q. Do you remember documents at Novell -- I'm
4 sorry. At WordPerfect. I made the same mistake --
5 saying that WordPerfect 6.0 for Windows was slow and
6 buggy?

7 A. I remember some people, some trade magazines
8 saying that they felt that way.

9 Q. And how about internal documents at
10 WordPerfect?

11 A. I don't recall there being any comments about
12 6.0 over, I guess, any other initial release that we
13 would do. But, yes, there were comments like that.
14 There were comments like that for, I think, each of the
15 releases that we did in working with customers going
16 through the release process

17 Q. All right. Let's look just very quickly, if we
18 could, at Defendant's Exhibit 259. This is a document
19 entitled WordPerfect For Windows Eliot. And it's just
20 after the meeting which was in November, 1993. It's
21 December, '93.

22 A. Okay.

23 Q. Do you remember this, Mr. Harral?

24 A. I don't. I didn't work -- I was in the shared
25 code team. I didn't work for the WordPerfect for Windows

1 product team.

2 Q. And looking at the third page of the document,
3 the page that says page 2 at the bottom. You'll see at
4 the top there is a bullet point that says improved speed
5 and reliability.

6 A. Okay.

7 Q. And if you need a hard copy, just let me know.

8 A. Okay.

9 Q. Do you see that?

10 A. I do see that.

11 Q. Does this refresh your recollection that people
12 at WordPerfect were recognizing, at the time, in late
13 1993, that WordPerfect 6.0 for Windows was considered by
14 the press and many users as too slow, as compared to the
15 competition, and containing too many bugs to be
16 considered sufficiently stable?

17 A. I don't -- like I said, I didn't work on the
18 WordPerfect team for the product, so I -- whoever wrote
19 this, I believe that they -- that that's true, that they
20 felt that way.

21 Q. All right. And do you recall that, in 1994,
22 Steve Weitzel -- Steve Weitzel was the guy working on
23 WordPerfect for Windows, correct?

24 A. He was the WordPerfect for Windows word
25 processor manager.

1 Q. Did you attend a meeting that was held outside
2 in early 1994, that Mr. Weitzel convened, to talk about
3 the problems of WordPerfect for Windows?

4 THE COURT: Wait a second.

5 MR. JOHNSON: I didn't get a copy of that
6 Exhibit.

7 MR. TULCHIN: That is an oversight, Your Honor.
8 I beg your pardon.

9 MR. JOHNSON: Sorry.

10 THE COURT: That's okay.

11 MR. TULCHIN: You are absolutely right. My
12 apologies.

13 MR. JOHNSON: Thank you.

14 Q. BY MR. TULCHIN: Mr. Harral, just to go back --

15 A. Yes.

16 Q. -- WordPerfect 6.0 for Windows had come out in
17 October, 1993, and we just looked at a document about the
18 product.

19 A. Okay.

20 Q. And my question now is, do you remember a
21 meeting that Mr. Weitzel held outside, maybe in the
22 parking lot, in early 1994, to talk with developers about
23 the problems in making a good word processor that would
24 run on Windows?

25 A. I don't recall that.

1 Q. All right. And do you recall that, in this
2 same period of late 1993, into early 1994, WordPerfect
3 was scrambling to try to fix these problems, the fact
4 that the product was considered slow and too buggy to be
5 sufficiently stable?

6 A. I wouldn't know that because that would be the
7 product team, and I wasn't a part of the product team.

8 Q. All right. Do you remember a product called
9 WordPerfect 6.0A?

10 A. Yes. I think there was a release of
11 WordPerfect called 6.0A.

12 Q. And that was around April of '94?

13 A. I wouldn't know.

14 Q. Okay. Do you recall that that was an effort to
15 sort of patch WordPerfect 6.0 to try to fix some of the
16 bugs?

17 A. I wouldn't know.

18 Q. Okay. Fair enough. Do you recall that, until
19 around May of 1993, WordPerfect had no suite that it had
20 marketed?

21 A. 1993. I don't know when they looked at that.

22 Q. All right. And do you recall that, when
23 WordPerfect first developed a suite, I think it was
24 called Borland Office 1.0. Do you remember that?

25 A. I do remember Borland Office.

1 Q. And do you recall that that was a suite that
2 was marketed in collaboration with Borland, the company
3 in California?

4 A. I do.

5 Q. And it was before Novell or WordPerfect had
6 acquired Quattro Pro?

7 A. Yes. I think it was.

8 Q. And do you recall, as well, that, in 1993, when
9 that first suite came out, Borland Office 1.0, people at
10 Novell recognized that that product wasn't --

11 THE COURT: Do you mean Novell?

12 MR. TULCHIN: Sorry. WordPerfect. Thank you,
13 Your Honor, I did it again.

14 Q. BY MR. TULCHIN: -- people at WordPerfect
15 recognized that that product was not well received
16 either?

17 A. I am unaware of that. I don't recall any
18 consternation about the Borland Suite while I was at
19 WordPerfect.

20 Q. You do recall, do you not, Mr. Harral, that,
21 last Thursday, Mr. Johnson showed you, at the back of
22 Exhibit 390, Plaintiff's Exhibit 390, some excerpts from
23 some reviews that were appended to that document. Do you
24 remember that?

25 A. I remember reviewing things for PerfectOffice

1 30. I don't remember any reviews about the Borland
2 Office.

3 Q. I'm just asking about Exhibit 390. You looked
4 at that last Thursday?

5 A. Can we -- which?

6 THE COURT: Show him again.

7 THE WITNESS: Can you show me again? I'm
8 sorry.

9 MR. TULCHIN: Can you just put the 390 on the
10 board?

11 Q. BY MR. TULCHIN: Do you remember this document?
12 It was PerfectOffice 3.0. And that product actually was
13 released to the market at the very end of 1994, correct,
14 December?

15 A. Yes. PerfectOffice was released then.

16 Q. Okay. Good. And am I right, Mr. Harral, that
17 throughout 1994, WordPerfect, and then Novell when it
18 took over in June of 1994, were working fast and furious
19 to try to get out on the market some products that would
20 live up to the WordPerfect standards to run on Windows
21 3.1, WordPerfect and PerfectOffice 3.0 and Quattro Pro?

22 A. I recall that the applications divisions were
23 working very hard to produce products for that platform.
24 That's about all that I understand about that. I wasn't
25 on those teams.

1 Q. All right. So, during the calendar year 1994,
2 while WordPerfect and then Novell were working on these
3 new products, and PerfectOffice 3.0 came out in December
4 of that year, you don't remember specifically what they
5 were doing, but you do remember that they were working
6 very hard to come out with new versions of this software
7 to run on Windows 3.1; is that right? They were working
8 very hard to produce versions of software for Windows.

9 Q. And, all through that year, that was the period
10 when the NameSpace extension API's were first documented
11 in June in the beta release, and then when, in October,
12 Microsoft said that it would withdraw support for them,
13 correct?

14 A. June of '93 versus?

15 Q. '4.

16 A. No. We had the information in June of '93,
17 because then they told us in June of '93 about -- that's
18 June of 93 to October of '94. That's the year, as I
19 recall.

20 Q. Well, actually, not, Mr. Harral. My question
21 was, the first documentation you received, in the first
22 Beta for Windows 95, came to Novell or WordPerfect --

23 A. Okay. That would -- okay. I thought you said
24 when we knew about --

25 Q. In June --

1 A. I'm sorry. I misunderstood. We knew about
2 when they came and visited us, and we had information at
3 that point, which is November.

4 Q. That was November?

5 A. of '93. Okay. They didn't withdraw until
6 October of '94. We've got almost a year there from that
7 time.

8 Q. Well, but, Mr. Harral, you didn't have any
9 documentation about these API's until June 9 or 10 --

10 A. That's correct.

11 Q. -- right, of '94?

12 A. But that does mean we weren't working on it.

13 Q. Well, you certainly couldn't be working to
14 write code to run on those API's when you didn't know
15 anything about the API's, correct?

16 A. That's not true. That's not true.

17 Q. That's your testimony?

18 A. Right. My testimony is -- my testimony is,
19 that I've talked before about how WordPerfect had a long
20 history of working on engines and code that would tie
21 into certain things. We still had already been working,
22 like for WordPerfect, they had been working on 32 bit
23 applications in Next, in Os2, and they had years of
24 experience already working in those areas. We had years
25 of experience already working on our -- on our image

1 browsing because we had already done that. We had
2 already done viewers. This was code that was an engine
3 that, in fact, you would show where Chuck Middleton was
4 the head of the -- all of the things that were exterior
5 for shared code, he was tasked with having all of these
6 things that were outside of shared code coming into it.
7 And these were things this had been worked on for a long
8 time.

9 The only part that we are talking about, then,
10 is, how do we tie this working system into these API's,
11 which should be a small amount of work. So, yes -- so,
12 to characterize the effort, if we are talking about, had
13 we worked on anything? Yes. These things were solid and
14 working in other platforms and were already running in
15 those platforms, and we were going to move them like we
16 had, for almost a decade before, about engine versus
17 libraries. And so we had a lot that was already working
18 and going to run.

19 Q. And I think you just said in your answers that,
20 until you got the first Beta in June of '94, and the
21 documentation, you couldn't do anything, write any code
22 to tie into --

23 A. To the libraries.

24 Q. -- those API's.

25 A. -- that is correct.

1 Q. Okay. Thank you, Mr. Harral. Maybe my
2 question hadn't been phrased properly. Thank you for
3 your answer. And am I also right, Mr. Harral, that, in
4 your prior answer, just a minute ago, you said that doing
5 that work, to tie into the NameSpace extension API's, was
6 something you could do very quickly?

7 A. From the representation that we had from the
8 Microsoft representatives, it should not take us a long
9 time to be able to move that code to tie into what they
10 had described would be available to us.

11 Q. Okay. So, actually writing code to tie into
12 these NameSpace extension API's was something you could
13 have done in, what, a day or two?

14 A. No, but I would anticipate that a developer,
15 given a month, should be able to work out the issues of
16 tying in their feature to leverage all of the code that
17 had already been written inside of the Windows 95
18 shell.

19 Q. And did that happen? Did Novell, in 1994,
20 write all the code necessary to leverage all the features
21 that Microsoft was providing in the Beta?

22 A. I did not work on each of those. We had --
23 I know of problems with us not having -- okay. So, did
24 we tie into them? Yes. Then there's the question of
25 testing it through to see if everything works right, and

1 so, to my knowledge, they had been tied in, and they were
2 being used before October of '94.

3 Q. Okay.

4 Let's look, if we could, at Plaintiff's Exhibit
5 181.

6 This is a document that you were shown last
7 week. And I think you pointed out, Mr. Harral, that at
8 the very top, you'll see the numbers 06/09/94. Right?

9 A. Yes.

10 Q. And that's meant to stand for the date June 9,
11 1994, correct?

12 A. Yes. That's the release of this file, that
13 build.

14 Q. Am I right, Mr. Harral, that Plaintiff's
15 Exhibit 181 is a printout of what would have been given
16 to WordPerfect or Novell on a disk?

17 A. Yes. It's the computer description of trying
18 to tie into the API's, not the documentation for
19 people.

20 Q. Right. And the disk itself would have
21 contained the entire Beta, what's called the M6 Beta?

22 A. Yes.

23 Q. And the disk itself would have contained some
24 other information as well, like the reviewers' guide. Is
25 that right?

1 A. I'm not familiar if that, there was other
2 information on that disk as well. There were some
3 samples for different pieces, but the -- what we would
4 consider the API documentation was not there yet.

5 Q. Mr. Harral, we'll put the first page on the
6 screen, but --

7 A. Okay.

8 Q. I'm handing you Plaintiff's Exhibit 388. This
9 is a Novell exhibit in the case.

10 And, Mr. Johnson, here's one for you. Sorry I
11 forgot the last time.

12 And just take a minute to look at this. The
13 document itself is quite thick, but, just for the moment,
14 I want to focus on the very first page.

15 A. Okay.

16 Q. Plaintiffs Exhibit 388. Do you remember that
17 this came on the same disk that you were provided in June
18 of '94? By "you," I should say WordPerfect and Novell
19 was provided in '94, June of 1994?

20 A. I did not see this guide.

21 Q. All right. Do you know whether or not the
22 Windows Chicago reviewers' guide -- and then beneath that
23 it says Beta 1 --

24 A. Yes.

25 Q. -- came to Novell and WordPerfect along with

1 the disk that we talked about earlier, the same disk that
2 had Plaintiff's Exhibit 181 on it, that we -- that you
3 printed out?

4 A. As I said, I have not seen this guide before,
5 so I don't know. I don't know if it was there or not.

6 Q. Okay. And if I could draw your attention just
7 to the first page -- well, let me stop for a minute.
8 This is clearly something that Microsoft wrote. Do you
9 agree with that?

10 A. Yes. It says at the bottom -- okay. I see
11 Microsoft on it. Yes.

12 Q. And it was something given to ISV's,
13 independent software vendors?

14 A. Yes.

15 Q. With the Beta release, is that your
16 understanding?

17 A. From what you said, yeah, this looks like it
18 would be intended for them.

19 Q. I just want to direct your attention, if I
20 could, to the paragraph just under Beta-1.

21 A. Yes.

22 Q. And it says there, "The information discussed
23 in this guide is based on features and functionality
24 present either in the Beta-1 release of Chicago or
25 planned for a future release."

1 A. Yes.

2 Q. "The discussion of Chicago herein does not
3 represent a commitment on the part of Microsoft for
4 providing or shipping the features and functionality
5 discussed in the final retail product offerings of
6 Chicago." Do you see that?

7 A. I do see that paragraph.

8 Q. And was it not your understanding, in 1994,
9 that this was exactly the case, that the Beta was being
10 provided to ISV's under these terms, that there was no
11 commitment by Microsoft to provide any particular
12 features or functionality included in that Beta?

13 A. Okay. So, that is an interpretation that could
14 be given to this paragraph. The way that the software
15 industry works is that you get your partners on board,
16 and you help them build their products. If you're of the
17 habit, which Microsoft was not, of removing API's, then
18 you're not going to have a very successful launch of your
19 operating system if those partners are not able to be
20 there.

21 And so, my understanding here, with this
22 language, is that they are stating more along the line
23 of, if there's a behavior and it's a recycle bin that we
24 are going to do something else, you better be aware that
25 you may have to change.

1 We have never had an instance before, where a
2 feature was removed. It is more a language of, these
3 things may still change. And that's how we interpret
4 this kind of language, as developers.

5 Q. Well, when you say "we" in your answer, you
6 used the word "we" --

7 A. The shared code group.

8 Q. -- several times. You are referring to
9 yourself. You are not testifying --

10 A. And the shared code group.

11 Q. Mr. Harral, I mean, clearly, you're not here to
12 testify for other members of the shared code group,
13 right, you're testifying for yourself?

14 A. I am testifying as the architect of what we
15 acted upon in the shared code group, being the Architect
16 of the group.

17 Q. Well, let me go back to my question, then, if I
18 can. In your last answer, when you said "we" understood
19 certain things, are you speaking, then, for you and the
20 three people who worked for you, the three software
21 engineers who we saw in Exhibit 372?

22 A. I am speaking for the people that worked under
23 Tom Creighton, as the architect for that entire group.

24 Q. And it's your testimony here today, in 2011,
25 Mr. Harral, that you can speak for all those people and

1 what they thought and understood back in June of 1994?

2 A. My understanding of what we discussed is what I
3 have represented.

4 Q. And, Mr. Harral, in the answer you gave a
5 couple of moments ago, I think you said that, as far as
6 you knew, Microsoft had never removed a feature in an
7 operating system before?

8 A. To my knowledge.

9 Q. To your knowledge.

10 A. That's correct.

11 Q. But, didn't you tell us a few minutes ago that
12 you hadn't worked on the products that WordPerfect wrote
13 for Windows, including WordPerfect 6.0, which was
14 released in 1993?

15 A. Uh-huh.

16 Q. Right?

17 A. Yes.

18 Q. You didn't work on that?

19 A. I did not work on that.

20 Q. And you didn't work on Borland Office 1.0 that
21 came out in May of '93?

22 A. That's correct.

23 Q. And you didn't work on any of those products
24 that were written to run on Windows 3.0 or Windows 3.1?

25 A. I did not write any of the code for those

1 products. I was an architect for, and a consultant
2 because that was one of the roles I had, so -- and I said
3 that the shared code team did maintain most of the
4 linkages from the engines, which those are engines, into
5 the Windows platform. And so, if a Windows API had been
6 removed, I would probably know about it because we were
7 the ones that brokered those engines into the platform.

8 So, no, I did not write the code on those
9 products, but if something would have moved in the
10 operating system, I would have known about it.

11 Q. Well, I think you said "probably" in your
12 answer, and I just want to be very clear.

13 A. Okay. So, I said --

14 Q. Could I ask the question?

15 A. Sorry.

16 Q. Thank you. Sorry. Didn't mean to interrupt,
17 but just trying to go one at a time.

18 A. I understand.

19 Q. Sitting here today, you don't know whether or
20 not Microsoft may have made changes between Beta versions
21 of Windows 3.0 and the final product or Beta versions of
22 Windows 3.1 and the final product. Am I right? You
23 don't know?

24 A. I don't know if there were changes that were
25 made that they removed functionality. I never came

1 across an instance of that.

2 Q. So, it's certainly not your testimony that it
3 never happened, it's your testimony that you never came
4 across it?

5 A. It's my testimony that it never happened in the
6 shared code group.

7 Q. Well, again --

8 A. That I would have known. I would have known if
9 it was the shared code group.

10 Q. Yes, but you weren't working on the products
11 themselves that were written to those operating systems.

12 MR. JOHNSON: Objection, Your Honor.
13 Cumulative. Argumentative. We've been through this.

14 THE COURT: I think he's finished. Go on to
15 something else.

16 Q. Mr. Harral, last week you talked a little bit
17 about critical path, and you said that the work of the
18 shared code team, the work you were doing, you and
19 others, was a critical path, in order to get out products
20 for Windows 95, right?

21 A. Yes.

22 Q. Now, for PerfectOffice, the suite, it was also
23 critical path that Quattro Pro be ready; is that right?

24 A. No. I don't know if it was or not. I know
25 that it needed to be ready, but whether it was critical

1 path, I don't know that.

2 Q. Well, let me ask the question this way, then,
3 Mr. Harral. A suite, like PerfectOffice, always included
4 a spreadsheet, right?

5 A. I can't think of one than didn't.

6 Q. All right. That would -- that would include
7 Office always had Excel in it, right? And Borland Office
8 or PerfectOffice always had spreadsheet functionality
9 that was provided by Quattro Pro, true?

10 A. I think so. I'm not familiar with the history
11 of the evolution of what they had done with the suites,
12 but, yeah, let's say that there's always been a
13 spreadsheet there.

14 Q. All right.

15 A. All right.

16 Q. Do you know what the status of development
17 was -- well, let me back up for a minute. The Quattro
18 Pro product was purchased by Novell in June of 1994 from
19 Borland, right?

20 A. Right.

21 Q. And Borland was located in California?

22 A. Uh-huh.

23 Q. Somewhere in Silicon Valley, not too far from
24 Palo Alto or San Jose, right?

25 A. Yes.

1 Q. And when Novell purchased the Quattro Pro
2 product, the software engineers, who were working for
3 Quattro Pro, stayed there in California, right?

4 A. Yes. Novell had -- Novell had a campus there,
5 and they were comfortable having Quattro Pro people
6 remain in California.

7 Q. Right. As of late 1994, or 1995, did you have
8 any understanding of how the Quattro Pro people were
9 progressing in trying to write a version of Quattro Pro
10 for Windows 95?

11 A. I don't.

12 Q. Did you have any understanding of what problems
13 they were trying to confront?

14 A. No. The Novell wanted Quattro Pro -- just as
15 they wanted with WordPerfect when they acquired
16 WordPerfect, they wanted WordPerfect to not be interfered
17 with the process of trying to get the suite out and
18 integrating it, you know, with the company and with other
19 people. So, it was my understanding that we were kind of
20 a little bit removed so that we could concentrate on the
21 task at hand.

22 My understanding of Quattro Pro was that they
23 would have some autonomy that they could also concentrate
24 on getting their product out and not be interfered with
25 from outside influences for awhile from Novell. That was

1 my understanding.

2 Q. And, Mr. Harral, just so that I understand
3 this, and I hope this isn't repeating what you just said,
4 but in late 1994 and 1995, there was no way to get a
5 suite out onto the market, a suite for Windows 95, until
6 you had something ready to go from Quattro Pro?

7 A. I wouldn't think so. I don't make those
8 decisions, as you have pointed out, so I don't -- I would
9 assume that they needed to have a product ready. All of
10 us have to have a product ready.

11 Q. I wonder if I could show you Exhibit --

12 THE COURT: Okay. Go ahead. If the court
13 reporter needs a short break again, that's fine. Or
14 somebody. In any event, it doesn't matter. We'll take
15 a -- we'll take a short break. And I'm ready any time, I
16 can go.

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(Short break.)