

1 BY MR. TULCHIN:

2 Q Mr. Harral, when Novell sold WordPerfect and Quattro
3 Pro to Corel, you went along to Corel, correct?

4 A I did.

5 Q So did Jim Johnson, who would be your boss at Novell?

6 A Yes, he did.

7 Q And at Corel in 1996, Jim Johnson reported to a man
8 named Paul Skillen, S-k-i-l-l-e-n; is that right?

9 A I think so.

10 Q Mr. Skillen was the vice president of engineering, I
11 think, for Corel?

12 A Yes. I recall that's the case.

13 Q He hadn't come over from Novell, he was a Corel person,
14 correct?

15 A Yes, he came from I think Canada.

16 Q Right. Now do you recall that in 1996 Mr. Skillen told
17 Mr. Johnson, Jim Johnson, this is while you were at Corel,
18 that your group, the shared code group, should use the
19 standard file open dialog in Windows 95 so as to get the
20 WordPerfect and Quattro Pro products out on to the market?

21 A I don't know if he told Mr. Johnson that. If they had
22 decided that, they would have told us and we would have done
23 that. But I don't know if he told them that or not.

24 Q Do you remember that Mr. Skillen actually fired Jim
25 Johnson in 1996?

1 A I do remember that Jim Johnson was fired in 1996.

2 Q Do you recall that he was fired because he did not
3 comply with Mr. Skillen's directive to use the Windows
4 common file open dialog in order to get the products out?

5 A They did not divulge to me the reason for him leaving
6 the company.

7 Q Okay. I want to go back to 1994, just briefly. I
8 think you said earlier today that between June 10th and
9 October you wrote a version of the file open dialog that
10 called the namespace extension APIs?

11 A Yes.

12 Q Now what happened to the code that you wrote?

13 A That you being the shared code group?

14 Q Yes, sir, because we don't have it. It's not --

15 MR. JOHNSON: Objection, Your Honor. There was no
16 source code --

17 THE COURT: The question was who was you.

18 MR. JOHNSON: There was no source code produced in
19 this case. Both sides objected to it.

20 THE COURT: Let me hear the question. As far as
21 I'm concerned, the only exchange was who was you are -- who
22 was you.

23 BY MR. TULCHIN:

24 Q You wrote code that called on the namespace extension
25 APIs; is that right?

1 A The shared code group wrote code that called upon the
2 namespace extension APIs.

3 Q Was that code that was written preserved in some
4 fashion?

5 A That code was the same code that was used by
6 WordPerfect in their development later on. So it was in
7 use -- I know it was in use after December still because
8 WordPerfect would not have -- would have been running on it
9 to do their development, but we wouldn't have done our APIs
10 at that point. So I don't know whether it ever saw the
11 light of day in the actual shipped product. That I wouldn't
12 know.

13 Q Whether it saw the light of day in a shipped product,
14 was it preserved somehow at Novell electronically, let's say
15 placed in a particular file or on a server?

16 A Well, I don't know -- I don't know if they archived it.
17 Any of the releases of WordPerfect that they were working on
18 and testing would have had that code inside of it.

19 Q Was there ever a written specification describing the
20 work that was done to write code to the namespace extension
21 APIs?

22 A I don't know if the person who wrote that code did such
23 a thing.

24 Q Well, you didn't write the code?

25 A I did not write the code.

1 Q Was it one of the people who worked for you who wrote
2 it?

3 A It was one of the people who worked for Tom Creighton
4 that wrote it.

5 Q You don't know if there was ever a specification,
6 prepared something in writing describing what was done?

7 A I am unaware of a specification for it.

8 Q Now was it the case, Mr. Harral, that during 1995, one
9 of the difficulties that the shared code team was having in
10 creating Perfectfit that could be used with PerfectOffice
11 stemmed from, let's say, disagreements that shared code
12 people were having with some of the other Novell people like
13 the Netware people?

14 A I don't know -- I don't know to what you are referring.

15 Q Was it true that people in the shared code group, in
16 the group that Mr. Creighton was running, and people
17 elsewhere at Novell were at each other's throats during this
18 period?

19 A I'm not aware of that. In fact, later on Mr. Creighton
20 was taken off by Novell and wasn't even in charge of the
21 shared group. I'm not aware of any problems that he might
22 have been having or if there were any problems whatsoever.

23 Q If I could just show you Defendant's Exhibit 347. This
24 is an e-mail written it says in 1995, August 27th. So it's
25 just about a month or month and a half after that other

1 document we looked at, Exhibit 118. And this is an e-mail
2 written by Mr. Creighton, correct?

3 A It says that it is.

4 Q And Mr. Creighton is writing to someone named Dave
5 Miller. Do you see that?

6 A Right underneath Mr. Creighton's name I see that.

7 Q Do you recall who Dave Miller was at Novell back in
8 let's say August of 1995?

9 A I don't.

10 Q And in the first sentence of the e-mail Mr. Creighton
11 says, in principle I have no argument with the proposition.
12 It is strategic for the company to have all groups work
13 together to form a synergy resulting in greater revenue than
14 we could do alone. Do you see that?

15 A I do.

16 Q Do you recall a debate in 1995 at the company about the
17 extent to which different groups should work together?

18 A I don't. I don't recall.

19 Q Do you recall Mr. Creighton thinking that one of the
20 problems in producing software was that various groups at
21 Novell were at each other's throats?

22 A I don't know about that.

23 Q Would it be fair to say again that was sort of at a
24 different level above you if that was going on?

25 MR. JOHNSON: Objection.

1 THE COURT: Is this somewhere or I'm just missing
2 this -- at each other's throats?

3 MR. TULCHIN: I'm about to show that, Your Honor.

4 BY MR. TULCHIN:

5 Q If we look at the first page --

6 A Well, you asked me a question first.

7 Q Go ahead and answer.

8 A So as I said before, the WordPerfect -- at least from
9 the developers' perspective, there was limited interchange
10 between us and Novell so that we could get our product out.
11 So there was -- if there were requests that were going on
12 between Novell and our division with applications, they were
13 probably keeping that to a minimum so we could get the
14 product out.

15 Q One of the things that was going on around this time is
16 that the Netware people at Novell were pressing people in
17 the applications group to include some Netware technology in
18 the applications that were being written, correct?

19 A Like I said, I don't know.

20 Q You don't know.

21 If you look at Mr. Creighton's e-mail, it's just about
22 halfway down, there is a big thick paragraph that starts I'm
23 quite aware of some strong feelings. Do you see that?

24 A I do.

25 Q Does this refresh your recollection at all that there

1 was some strong feelings in the system group at Novell that
2 there's a lack of commitment on the part of applications
3 people to support Netware fully?

4 A I don't remember any conversations like that.

5 Q And Netware was Novell's main product, correct?

6 A Yes, the Netware operating system was their main
7 product.

8 Q The Netware operating system accounted for, would you
9 say like half of all of Novell's revenues or maybe more?

10 A I couldn't say. I don't have any numbers.

11 Q Then going down to the next paragraph which starts with
12 remember, the first sentence says -- this is Mr. Creighton
13 writing to Mr. Miller -- remember also that it's not easy to
14 make dramatic changes to existing code.

15 Now was that a reference to the fact that in 1995 there
16 were some people at Novell asking the shared code group to
17 make dramatic changes to the code in order to incorporate
18 some of the Netware technology into the applications?

19 A There was a polling of -- as I said, there were a
20 limited number of interchanges because of our schedule. At
21 the beginning, with the acquisition of WordPerfect, there
22 was an initial polling about what kind of synergy there
23 could be between the groups. And we had milestone charts
24 that said, you know, here's what we plan in the year, here's
25 what we plan in two years, three years, four years, five

1 years.

2 So we then had discussions with people and I -- at the
3 time, it was my understanding they would take that
4 information and they would work that into the plan. Where
5 those ended up, I do not know. If there was trouble with
6 that, I do not know. We were of the habit of taking that
7 input and integrating it.

8 They could have been upset that we weren't doing it.
9 They could have been upset that we weren't doing it soon
10 enough. I don't know what that would be. I have no
11 knowledge of the interchanges here beyond the query of can
12 we do something and we said yes, but just not now.

13 Q Is it the case, Mr. Harral, that part of the reason for
14 the delay in getting the Perfectfit product, the shared code
15 product out, that the delay you talked about was trying to
16 make these sorts of dramatic changes to the existing code,
17 the source code?

18 A No. We never did the integration that Novell wanted,
19 that they talked about at this time.

20 Q And if we look at the very next paragraph down the
21 page, it says, we cannot make this happen if we are at each
22 other's throats or if we snipe at each other.

23 Do you recall that part of the reason for the delay was
24 that people at Novell were sniping at one another?

25 A I guess Mr. Creighton did a very good job of keeping

1 all those things from us so we could do our work.

2 Q We talked about Mr. Miller a moment ago, and I want to
3 hand you a document that we've marked at Exhibit 6. This is
4 a one-page document and it's dated October 16th, 1995.

5 THE COURT: Again, this is just the same thing.
6 When you say an exhibit, the record will reflect that it's a
7 defense exhibit unless you otherwise indicate.

8 MR. TULCHIN: Yes, I'm sorry.

9 THE COURT: No, no, no.

10 MR. JOHNSON: We have an objection to this
11 exhibit.

12 THE COURT: Come up and tell me what the objection
13 is.

14 (Side-bar conference held)

15 MR. JOHNSON: Your Honor, this is about Netware.

16 THE COURT: Is Netware DOS and DOS technology?

17 MR. JOHNSON: No. Netware is a server.

18 THE COURT: It's a server. Nothing to do with
19 PCs.

20 MR. JOHNSON: This is all Netware related stuff.
21 That has nothing to do with what we're talking about here.
22 These bugs being talked about have to do with bugs in
23 Windows 95 that were causing problems with existing
24 products, not the product that was being planned for,
25 Windows 95, backwards compatibility required. In other

1 words, Windows 95, you had to be able to run your old
2 products on Windows 95. So what they are talking about is
3 bugs that had to do with running existing products like
4 Netware. Nothing to do with this case. We're only
5 confusing the jury as to the significance of this completely
6 irrelevant document.

7 MR. TULCHIN: Your Honor, I don't know that that
8 is the case. It strikes me that this is a business record.
9 And Mr. Richards says this, worked in the legal department
10 at Novell, submitted an affidavit to the Court in connection
11 with the motion to compel saying that he wrote this, if I
12 remember correctly, or maybe a different document. I hope I
13 have got the right one, but this is a business record of
14 Novell. It reflects something other than the ability to get
15 these products out in 1995. I guess the witness can say so.
16 I hear what Mr. Johnson is saying.

17 MR. JOHNSON: Here's another problem. He's going
18 to show that the problem that we had, we had with
19 development.

20 THE COURT: A lot of things that he says, there is
21 a difference in interpretation in what the documents mean.
22 Certainly some you have introduced. I have confidence in
23 the jury. It's got nothing to do with this and, again, you
24 can bring it on later.

25 (Side-bar conference concluded.)

1 THE COURT: Ladies and gentlemen, this document
2 may look very dramatic. It's going to be for you to
3 determine the significance. There's going to be subsequent
4 questioning in the case that maybe has nothing to do with
5 PCs or with Netware, which is a server product.

6 MR. TULCHIN: Let's not quite show it yet.

7 BY MR. TULCHIN:

8 Q Mr. Harral, before we publish the document to the jury,
9 this is Defendant's Exhibit 6, let me ask you, sir, are you
10 familiar with this document? Do you recall having seen it
11 before?

12 A I do not recall having seen this document before.

13 Q Can you tell from the second paragraph which begins,
14 the important matter in Dave's mind whether this has
15 anything to do with the Netscape -- sorry, namespace
16 extension APIs?

17 A I don't know.

18 Q When there's reference here to the beta release, can
19 you tell whether this is a beta release of Windows 95, such
20 as the first release that you got in 1994?

21 A I don't know.

22 THE COURT: I think -- this witness knows nothing
23 about the document. It's just for identification right now.

24 MR. TULCHIN: Under the circumstances, Your Honor,
25 I think I will not use it.

1 THE COURT: Thank you, Mr. Tulchin.

2 MR. TULCHIN: I am about to finish my questions
3 with Mr. Harral.

4 BY MR. TULCHIN:

5 Q Mr. Harral, I think this the last question.

6 When you showed these three choices, the three options
7 that you referred to, one was to continue to use the
8 namespace extension APIs. That was one number one, correct?

9 A Yes.

10 Q Number two was not to the use them -- not to use the
11 APIs, but to try to proceed without that extra
12 functionality, correct?

13 A No. Let me back up here. I need to make sure what you
14 are saying is that we had three options. One was to use the
15 APIs. The second one was to use the common dialog and
16 enhance it such that we could leverage those functionalities
17 within the framework of the common dialog. The third was,
18 as we were told, reproduce exactly what was -- what was
19 there.

20 Now you rightly state that the bad side of the common
21 dialog is that if we couldn't leverage what we were doing,
22 we would end up with just the common dialog, which is not
23 the option we were looking for. That's why if we could get
24 beyond just the common dialog, we could then use that
25 option. If we couldn't get beyond just the common dialog,

1 we wouldn't be able to -- and, in fact, didn't use that
2 option many times.

3 MR. TULCHIN: Your Honor, if this isn't too much
4 of an imposition, could I ask the plaintiff's team to put
5 this demonstrative on the screen? It's demonstrative 15
6 that they showed this morning.

7 MR. JOHNSON: Not a problem, Your Honor.

8 BY MR. TULCHIN:

9 Q I'm sorry, Mr. Harral. I didn't mean to spend as much
10 as time on this. But the first option was to continue to
11 use the namespace extension APIs, correct?

12 A And see if we somehow fit it, yes.

13 Q Those APIs never went away, they remained there?

14 A What we're referring to there is icomdlg browser.

15 Q Mr. Harral, you testified earlier those APIs were never
16 removed, they remained there in the product?

17 A They were re-documented. That one was re-documented.

18 Q The APIs were not removed, they actually remained in
19 the beta and were in the final version for Windows 95,
20 correct?

21 A That is correct.

22 Q Here was my question. On the second option, you said
23 last Thursday, and this slide reflects what you said, page
24 342, the second option would be to see if we could somehow
25 fit within the framework that they had given us and reduce

1 functionality.

2 A Uh-huh.

3 Q My question to you is this: What you are referring to
4 there in the second option is using the Windows common file
5 open dialog, correct?

6 A Using -- do you mean using it wholly --

7 Q Yes.

8 A -- or using it and then working with it?

9 Q No, using it as the file open dialog --

10 A No, that's not what we were intending. Because it says
11 work within that framework. Okay. There's still work to
12 do. Okay. We're not just putting up the dialog and that's
13 what we're going to have. What we're saying is could we
14 work with Microsoft and find a way that we could still
15 expand what real estate we had access to. Could we get the
16 viewer on there even if we couldn't maybe get the namespaces
17 up. This is a wide vista of possibilities.

18 The question is as we work with Microsoft, do we get
19 enough help that we think it's adequate, or are we going to
20 be so reduced, i.e., by just the common dialog that it's not
21 an option. It always came back to we could never get enough
22 help so that we could work with it. So that option always
23 came on and we always looked at it and we said, but it
24 doesn't look like it yet, but we still have enough
25 information to do that, and it always went off.

1 Q Did we not look earlier at Exhibit 118, Defendant's
2 118, from July -- I will get you another copy if you want?

3 A I hope I still have it. I'm running out of space on my
4 desk.

5 THE COURT: When Mr. Tulchin said that was going
6 to be his last question before, you didn't believe it, did
7 you?

8 MR. TULCHIN: Last subject matter I hope I said.

9 THE WITNESS: That's okay. Maybe I can remember.
10 Tell me about it.

11 BY MR. TULCHIN:

12 Q The document written in July, which talks being Mr.
13 Creighton's directive in June, remember that, about which
14 alternatives, and he didn't --

15 MR. JOHNSON: Your Honor, I would like him to have
16 the document, please.

17 MR. TULCHIN: Well, if I may proceed, Your Honor?
18 If I may proceed?

19 THE COURT: Go ahead.

20 MR. TULCHIN: But let me do this and we'll try to
21 move along. It's the wrong document, 118, and my memory was
22 wrong about what document.

23 MR. JOHNSON: That's exactly why I wanted him to
24 have it, Your Honor.

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

1 THE COURT: Just proceed.

2 BY MR. TULCHIN:

3 Q Am I right in thinking that we looked at a document
4 earlier today where Novell recognized that it was possible
5 to use the Windows file open dialog, the file open dialog
6 provided by Microsoft, and still get out the product?

7 MR. JOHNSON: Your Honor, asked and answered
8 innumerable times.

9 THE COURT: Overruled. This is a predicate for
10 the next series, the subject matter in which we have now
11 resolved.

12 Go ahead.

13 THE WITNESS: So, okay. I think this is the
14 document.

15 THE COURT: Did you hear what I said? The subject
16 matter in which we now reside. Didn't make any sense.

17 THE WITNESS: So if you are referring to when we
18 were talking about the document where Tom Creighton said we
19 were no longer going to consider the alternative, then that
20 was a discussion -- in my view, that was a discussion of a
21 representative above Tom Creighton wanting to know why
22 things are going the way they are. And that is why Tom
23 Creighton said, we're not going to do anything with the
24 alternative. I think the representative who asked that
25 question was given information and Tom was allowed to make

1 that decision. And so I think at that point everything went
2 the same way, the representative didn't tell Tom to do
3 differently, and that's where it stood.

4 BY MR. TULCHIN:

5 Q But certainly you told me earlier this morning that if
6 you decided to use the Windows file open dialog, you could
7 have gotten the product out in 1995?

8 A If that was an acceptable solution, it would have been
9 easier to get it out.

10 MR. TULCHIN: Nothing else, Your Honor. Thank
11 you.

12 THE COURT: Mr. Johnson.

13 MR. JOHNSON: Thank you, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. JOHNSON:

16 Q Why was it not an acceptable solution?

17 A Because we had customers who had been on WordPerfect
18 for a decade and we had -- WordPerfect Corporation had a --
19 knew that its customers had made a great investment in their
20 product. If we were to -- there were many, many, many
21 discussions as we moved into Windows, because Windows had a
22 huge amount of standards that it taught people. And we knew
23 that as people moved on to Windows, they were adopting those
24 standards.

25 As the people that we had that were already using DOS,

1 they already had entrenched standards. How they had -- the
2 people who ran their day around trying to work with the
3 documents they had created with WordPerfect. And only when
4 they chose to move would they be saying they were going to
5 adopt these different standards. We weren't trying to force
6 them to move in any direction. We wanted to provide
7 functionality wherever they were at.

8 If we brought out a version of WordPerfect -- and there
9 was a discussion about this. When we tried to move forward,
10 I talked about how you would record things that you did so
11 you could play them back later so you didn't have to do the
12 work yourself over and over again. There were huge
13 discussions in WordPerfect about how do you bring forward
14 this way that they've done it on DOS into Windows when
15 Windows had totally different ways to do it. We could
16 invalidate all the work that they've invested in our product
17 as they moved to Windows. So we had lots and lots of
18 meetings and discussions with the DOS group to make sure
19 that we didn't only do what Windows wanted but we were able
20 to bring forward these people so that their work was not
21 invalidated.

22 At the same time, we knew that their way of living in
23 the product was what we were talking about as well with the
24 file open dialog. If we wanted them to live in the product
25 and feel like -- we wanted them to feel like, oh, here's

1 where it's at now. We didn't want them to feel like, oh,
2 can I even do this anymore. That wasn't the option we
3 didn't have. Because if you disenfranchise your customer,
4 usually what my experience has been is they will -- if they
5 have to go look at something else, they will look at all the
6 options and you're at the bottom of the list because you
7 just hurt them. We did not want to be in that position.

8 Just like we wanted to make sure their work of
9 capturing work they had done was brought forward, we wanted
10 the place that they lived in to be brought forward. We knew
11 that new people would live in the Windows 95 shell. But we
12 had to make sure that the people who were going to be coming
13 forward, they felt comfortable as well. The people in the
14 Window 95 shell, we thought there were features they would
15 like. So we wanted to make sure that people using
16 WordPerfect on Window 95 and all the other products that
17 leverage that, that they were going to have the same -- they
18 felt -- nobody felt like a second class citizen, whether
19 they were in Windows or whether they were inside of our
20 products. That was the goal that we had.

21 Q Thank you.

22 Going back early on to the cross-examination by Mr.
23 Tulchin, he asked a large number of questions and almost all
24 of them were framed during the period of 1994 to 1996, and
25 he kept referring to that period in time. Then he asked the

1 question, quote, is it also fair to say, Mr. Harral, that
2 throughout this period you did not rub shoulders with upper
3 management. And you said that you didn't rub shoulders with
4 upper management during that time period. Then he showed
5 you a portion of your deposition. And do you still have
6 that up there with you?

7 A I do have it.

8 MR. JOHNSON: Can we get that deposition up? We
9 don't have that one. Can we put this on the Elmo?

10 BY MR. JOHNSON:

11 Q Mr. Tulchin referred you to this testimony that you had
12 given in this deposition -- not in this case --

13 A Which page was this again?

14 Q But in some other case.

15 177.

16 A Thank you.

17 Q And I just wanted to be clear here that the question
18 about --

19 A Rubbing shoulders.

20 Q -- rubbing shoulders had to do with a much earlier
21 period in time back when you were with WordPerfect in 1989
22 and 1990?

23 A I was -- one of the things that I noted here is that
24 the context of the comment, in 1989 and 1990, when I was
25 first hired, I was hired in 1989 at WordPerfect. And in to

1 1990 when I'm still working in the printing group at
2 WordPerfect, the only interaction I had with the upper
3 management really was that the head of the company
4 interviewed me to get hired. After that, I never talked to
5 them. So in that time frame, that wasn't something that I
6 really had the opportunity to do.

7 Q But if we turn to the time period that Mr. Tulchin kept
8 talking about, which is the time period between 1994 all the
9 way through 1996, it would be fair to say that you did rub
10 shoulders with upper management at Novell?

11 A Yes.

12 Q Thank you, Mr. Harral.

13 MR. JOHNSON: Can we put up Defendant's Exhibit
14 172, please?

15 BY MR. JOHNSON:

16 Q Do you have that document before you, Mr. Harral?

17 A I'm searching through the dead trees that I have here
18 right now.

19 THE COURT: It's on the screen.

20 BY MR. JOHNSON:

21 Q Can you read it on the screen there?

22 A Yes, I actually think I can.

23 Q There's a simple question I have about this. I know
24 you didn't even know who Scott Nelson was. Down at the
25 bottom it says he was apparently some product marketing

1 director, NBA. Do you know what that means, NBA?

2 A No.

3 Q This document is about compatibility of PerfectOffice
4 3.0. On the new operating system, Windows 95, that hadn't
5 even shipped yet; is that right?

6 A That's what it says here. Because PerfectOffice, we
7 would have concern in shipping a Windows product and
8 operating system that had not been yet been released.

9 Q PerfectOffice 3.0, which had already been released, I
10 think you testified, in December of 1994, it was important
11 that that product be at least able to work on Windows 95; is
12 that right?

13 A Yes, that would be a big concern. Because when you
14 release a new operating system like the -- one of the
15 companies that I came from, as I dealt with the IT
16 department and my frustration they had not upgraded Windows
17 in a while, I would talk to them and they told me it would
18 take them a year to deploy an operating system. So it takes
19 a while for a new operating system to end up in businesses
20 where they are using it day to day. So we could have this
21 older product in place for a long time after afterwards and
22 some people could use Windows 95 and some may not. So even
23 though we wouldn't have everybody over, if somebody was
24 trying it on Windows 95, that could determine whether they
25 wanted to use our product or not from just those small

1 tests. We wanted to make sure -- we were concerned that
2 they would have a good experience of this older product for
3 the new operating system.

4 Q Thank you.

5 MR. JOHNSON: I think we can turn that one off.

6 BY MR. JOHNSON:

7 Q There were quite a number of questions from Mr. Tulchin
8 with respect to e-mails and memos and things, and a
9 discussion of your discussions with Premier Support. At one
10 point you said that Premier Support kept records of the
11 phone conversations that you would have had with them. How
12 do you know that?

13 A Well, because when I called Premier Support and I
14 wanted to follow up on an issue that I had submitted with
15 Premier Support, there is no way that the person I just
16 happened to get on the phone could know, one, what my issue
17 was and, two, what the status was unless there was a
18 recording system that they would maintain those incidents
19 from call to call.

20 Q So based upon your knowledge of how this worked,
21 Microsoft should have a record of all those phone calls you
22 made to Premier Support?

23 A Yes.

24 Q I have looked through all of Microsoft's document in
25 this case and I haven't seen those records. Have you seen

1 any of those records in this case, Mr. Harral?

2 A I have not, and I don't get the chance to look through
3 all the documents that you do.

4 Q Let's turn to Defendant's Exhibit 259. If you would
5 turn to the second page. Mr. Tulchin referred you to one
6 bullet point, I believe it was the first bullet point, and
7 talked about the slow and too many bugs part of this
8 particular bullet point. Do you recall that?

9 A I do recall this page.

10 Q Let's go up to the top of the page, executive summary,
11 first paragraph. It states, WordPerfect 6.0 for Windows has
12 done many things to help establish WordPerfect Corporation
13 as a leader in Windows word processing. The product has
14 been correctly positioned, advertised and reviewed as the
15 most comprehensive word processing program in the market.

16 Is that consistent with your recollection of the
17 reviews with respect to WordPerfect 6.0 for Windows?

18 A It was.

19 Q Let's not leave this to doubt, Mr. Harral.

20 MR. JOHNSON: Could we put up Plaintiff's Exhibit
21 110, please? And turning to the second page. This is a
22 December --

23 MR. TULCHIN: I would object to the let's not
24 leave this to doubt comment on direct -- or redirect.

25 THE COURT: Sustained.

1 BY MR. JOHNSON:

2 Q Mr. Harral, I'm drawing your attention to Plaintiff's
3 Exhibit 110 and looking at this computer magazine from
4 December of 1993, and turning to the first page there,
5 WordPerfect 6.0, at the top it says, looking for the
6 ultimate Windows processor, and it talks about WordPerfect
7 6.0.

8 Do you recall that this was the type of reviews that
9 WordPerfect 6.0 was receiving?

10 A I do. I didn't see this review, but I do recall that
11 is the sentiment we had about the product.

12 Q Reading from the top of the review, it states,
13 WordPerfect 6.0 for Windows isn't just another software
14 program. It is a computer user's garden of unearthly
15 delights, an MVP award winner. The latest version of
16 WordPerfect makes major gains in the word processing
17 features war adding functions available in its chief rival,
18 Microsoft Word for Windows, and then some.

19 Is that consistent with what you recall at the time
20 about the reviews of WordPerfect 6.0?

21 A Yes, it is.

22 Q Turning now to Plaintiff's Exhibit 126. This is much
23 like Plaintiff's Exhibit 390 that we looked at in your
24 direct examination where WordPerfect had excerpted some of
25 the reviews with respect to PerfectOffice 3.0. This is the

1 same thing for WordPerfect 6.0. And by looking through
2 these blurbs, can you tell us, are these also consistent
3 with your memory that WordPerfect 6.0 for Windows received
4 high praise?

5 MR. TULCHIN: Objection, Your Honor, both because
6 apparently it's being offered for the truth and because this
7 witness has already said he wasn't familiar with the
8 marketing or advertising.

9 MR. JOHNSON: Your Honor, we've already instructed
10 the jury that these are offered to show its impact on the
11 consumers and not for the truth of the statements made.

12 THE COURT: I think under the circumstances, I
13 think Mr. Tulchin opened the door a little bit, but I think
14 you've gone through it. Sustained.

15 MR. JOHNSON: Your Honor, may I show a couple
16 reviews for the other WordPerfect version that he talked
17 about, which was not 6.0 but 6.0A?

18 THE COURT: Yes. I don't remember him being
19 asked, but that's fine. Go ahead.

20 BY MR. JOHNSON:

21 Q Turning now your attention to WordPerfect 6.0, Mr.
22 Harral, was that a subsequent version of WordPerfect?

23 A Yes, by the number it would be. It is.

24 Q And drawing your attention to Plaintiff's Exhibit 233,
25 in this business services industry article with respect to

1 WordPerfect 6.0A says, WordPerfect 6.0A for Windows named
2 best word processor for second year in a row. WordPerfect
3 for Windows chosen over Microsoft Word for Windows as the
4 best word processor of 1994.

5 MR. TULCHIN: Object.

6 THE COURT: I'm going to tell you all later this
7 case is not about monopolizing or attempt to monopolize in
8 the application market. It's important for you all to
9 understand this. This is not a case about whether -- I'll
10 not get into this war, but I might as well say it now. It's
11 time it's stated clearly by me, this is not a case against
12 Microsoft for attempting to leverage any monopoly it has in
13 the operating systems market into the applications market.
14 That is not what the case is all about except to the extent
15 that somehow it's a basis for destroying -- to the extent
16 that it affects the operating system. It's a very hard
17 concept to understand, but you will have to -- putting all
18 these things up, this is not a case about somehow Microsoft
19 monopolizing or attempting to monopolize the word processing
20 application market. It's very important for you to
21 understand that.

22 BY MR. JOHNSON:

23 Q Mr. Harral, now turning your attention --

24 MR. JOHNSON: This will be the last one of these,
25 Your Honor. This is actually Mr. Gates speaking.

1 BY MR. JOHNSON:

2 Q -- to Plaintiff's Exhibit 162. And drawing your
3 attention to the top of this e-mail, e-mail from Mr. Gates
4 to Mr. Pete Higgins and Mr. Mike Maples dated Wednesday
5 March 30th, 1994. The subject is with WordPerfect 6.0A.
6 Mr. Gates states, I'm amazed at their responsiveness. This
7 is very scary and somewhat depressing. This is as much as
8 we plan to do for 1995. A lot of work in this release.

9 Do you recall, Mr. Harral, that the press was saying
10 that you had done a lot of work for this release, this 6.0A
11 release of WordPerfect?

12 MR. TULCHIN: Objection, Your Honor. This
13 document --

14 THE COURT: Sustained.

15 MR. TULCHIN: Can they take it off the screen,
16 Your Honor?

17 THE COURT: It's off.

18 BY MR. JOHNSON:

19 Q Mr. Harral, there were a number of questions asked by
20 Mr. Tulchin with respect to whether or not there were
21 reports that came out after Microsoft's developer
22 conferences that you would have seen at the time. I just
23 want to show a couple of these. Plaintiff's Exhibit 63.

24 If you can take a look at that, would that be an
25 internal document within WordPerfect where somebody had gone

1 to the conference, details for everybody else what occurred
2 and what was presented at the conference?

3 A Yes, it is.

4 Q And, similarly, if we take a look at PX-78. Is that
5 another one of these types of internal things at WordPerfect
6 where people that had been at the conference are telling
7 everybody else what happened there and all the features and
8 things that were being discussed?

9 A Yes, it is.

10 Q Mr. Tulchin also asked you a number of questions
11 relating to whether or not there had been any work done
12 prior to receipt of the beta in June of 1994 with respect to
13 WordPerfect for Windows 95. I would like to show you what
14 has been marked --

15 MR. JOHNSON: Before you put that up, I think you
16 have an objection to this one. So it's PX-172. If you
17 don't, I will put it up. If you do --

18 MR. TULCHIN: I don't know what the document is,
19 Your Honor.

20 We do, Your Honor.

21 THE COURT: Approach the bench.

22 THE COURT: Has the witness ever seen it before?
23 Has the witness ever seen this document?

24 MR. JOHNSON: The witness has seen this document.

25 (Side-bar conference held at bench.)

1 MR. JOHNSON: Your Honor, this document, the
2 articles of the development efforts for 132 Windows 95 was
3 the first 32 bit operating system for Microsoft. This goes
4 in detail through the chronology of work that had been done
5 with respect to getting ready for Windows 95, the 132
6 development process.

7 MR. TULCHIN: None of this is work that he did or
8 is familiar with, at least that was his testimony today. It
9 also, Your Honor, has nothing to do with what work they did
10 in reliance on the statements at the meeting in November of
11 1993. There is no question whether they had done any work.
12 It's whether they had done any work based on anything they
13 were told at the conference, at least as I remember we just
14 went through.

15 THE COURT: What is the testimony going to be?

16 MR. JOHNSON: Your Honor, in opening he said over
17 and over again we're late, we're late, we're late. We were
18 always late. This document shows we were not late. We were
19 on top of our development efforts for Windows. That's when
20 we begin Windows 95. Windows 95 was the first 32 bit
21 operating system.

22 THE COURT: I am going to allow the testimony.
23 It's only marked for identification right now, but you can
24 put it on the screen.

25 (Side-bar conference concluded.)

1 BY MR. JOHNSON:

2 Q Mr. Harral, drawing your attention to Plaintiff's
3 Exhibit 172.

4 THE COURT: This document is not in evidence, but
5 will let Mr. Harral testify about it and you all can look at
6 it as he testifies. Maybe it comes in later. I just
7 haven't made up my mind.

8 BY MR. JOHNSON:

9 Q Does this document summarize the development efforts
10 begun at WordPerfect going all the way back to 1992 in
11 preparation for the first 32 bit operating system from
12 Microsoft, which would have been Windows 95?

13 A Okay. I was -- sorry. I was confused about the first
14 part because it's talking about the win NT.

15 These would have been efforts for Windows 32 bit
16 development that would have led up to the Windows 95
17 release.

18 Q So even as far back as November of 1992, WordPerfect at
19 least was engaged in development efforts looking forward to
20 the first Windows 32 bit product?

21 A Yes.

22 Q Thank you, Mr. Harral.

23 MR. JOHNSON: Can I have this entered into
24 evidence, Your Honor?

25 THE COURT: Not right now. I will decide it

1 later.

2 MR. JOHNSON: Thank you.

3 THE COURT: It may very well be admitted. This
4 witness didn't author it.

5 BY MR. JOHNSON:

6 Q Mr. Harral, there were some questions to you by Mr.
7 Tulchin concerning concept design specifications, and this
8 was Defendant's Exhibit 98.

9 MR. JOHNSON: Can we get Defendant's Exhibit 98 up
10 there?

11 BY MR. JOHNSON:

12 Q And this was with respect to thunder, which you weren't
13 really certain exactly what that was. But there was a
14 suggestion by Mr. Tulchin in his questions that they weren't
15 able to find any of these concept design specifications for
16 Perfectfit and the file open.

17 So I would like to draw your attention to PX-91,
18 please.

19 MR. JOHNSON: And if we could put -- maybe we
20 could put those kind of side by side. Is that possible? If
21 we could do that.

22 BY MR. JOHNSON:

23 Q So turning your attention to this PX-291, would this be
24 the concept design specification as of March 31, 1995 for
25 Perfectfit 95 with respect to the file system and the file

1 open?

2 A Yes. That's what it says.

3 Q Turning to --

4 MR. JOHNSON: I'm going to require a little help
5 on this, Your Honor. Just a moment.

6 BY MR. JOHNSON:

7 Q Turning to the page Bates stamped 186, which is page 15
8 of the document, and it has a glossary of new terms. The
9 very first one is namespace. So this would have been a
10 glossary of new terms in connection with the file open
11 dialog for Perfectfit. And the namespace being referred to
12 here, Mr. Harral, does that relate to the namespace
13 extension APIs that we've been talking about in this case?

14 A Yes.

15 Q Thank you, Mr. Harral.

16 There was a series of questions by Mr. Tulchin with
17 regard to Quattro Pro and whether or not they were somehow
18 the reason for the delay. I recognize that you said
19 appropriately that that wasn't what you were doing, the
20 product Quattro Pro was not your thing. But let me ask you
21 this. Would Gary Gibb be a person that would know if
22 Quattro Pro was the problem?

23 A Yes.

24 Q Why?

25 A Because he was at the level of management to look over

1 the various products. All I would be able to report to Gary
2 through Tom was what our reasons were and convey those. I
3 would be unaware of that. Gary would be the person that
4 would be able to talk more about that.

5 Q Drawing your attention now to another exhibit used by
6 Mr. Tulchin. It was actually marked as Exhibit 559-A
7 because it was a portion of that big book in front of you
8 that was apparently a 1995 -- mid 1995 publication of some
9 type.

10 MR. JOHNSON: Can we bring that up? You don't
11 have that?

12 We don't have it, Your Honor, because we didn't --

13 THE COURT: No, it's not yours. In fact, you
14 objected to it, as I recall.

15 BY MR. JOHNSON:

16 Q Drawing your attention to this 559-A exhibit, which is
17 a portion of this book, and all I want to ask you, in this
18 list of shell extensions that Microsoft apparently published
19 some information about sometime in 1995, is there anything
20 here in this list of shell extensions about namespace
21 extensions?

22 A On this first page I don't see anything about namespace
23 extensions.

24 Q I'm sure if there's a reference to namespace extensions
25 in there, Mr. Tulchin will bring it to your attention.

1 MR. TULCHIN: Objection, Your Honor.

2 THE COURT: Sustained.

3 BY MR. JOHNSON:

4 Q Now could we turn to Defendant's Exhibit 347.

5 Mr. Harral, you were referred to this exhibit during
6 the cross-examination. And Mr. Tulchin highlighted the
7 first sentence in the fifth paragraph there. If we could
8 just draw out that you whole paragraph.

9 Mr. Creighton was apparently reporting that there were
10 some strong feelings in the systems group that there was
11 some sort of lack of commitment by the applications people
12 to support the network fully. So mr. Creighton goes on,
13 does he not, to say that is not the case?

14 A Yes, it says it's simply not the case.

15 Q And doesn't he go on in this paragraph to say that
16 what's really important here is we've got to be make very
17 sure that whatever we do doesn't cause our products undue
18 delay in release? Doesn't he say that, sir?

19 A It does later on there, yes.

20 Q That, in fact, he actually suggests that -- and he
21 says, there is also a fairly strong desire to maintain our
22 jobs.

23 Can you tell us why Mr. Creighton would be concerned
24 about his job in case of a late release of this product?

25 A A late release, there are two things that would happen.

1 When developing software, you have got to deliver -- you've
2 got to be able to deliver what you said you would and you
3 have to be to able to deliver it in a timely fashion. So
4 you always weigh that -- the Windows team in WordPerfect
5 Corporation had a good history of delivering what they said
6 they would and when they said they would. And you don't get
7 the chance to keep doing it if you consistently show that
8 you can't do it, that you can't release the product on time
9 and release the product that you said you would.

10 So Tom is pointing out rightly so here that we
11 understand the risk here. We are not -- we are not taking
12 this for granted. We are trying to weigh very difficult
13 decisions with things that are potentially, depending upon
14 how things fall out, very much out of our control, and
15 trying to chart the best course that we can to release this
16 product, and Tom understood that fully.

17 Q Thank you, Mr. Harral.

18 MR. JOHNSON: I think the last thing I wanted to
19 do was -- and I think I owe an apology for this. Figure 11,
20 which was the common file open -- I think it was 11. No, it
21 wasn't 11. What was it?

22 MR. TULCHIN: I believe, Your Honor, it was nine.

23 MR. JOHNSON: There it is.

24 I blamed myself for this. As Mr. Tulchin said
25 this is the file open dialog for Windows 2000. I'm sure he

1 didn't get that wrong. Could we put up one now that came
2 from one of the exhibits in the case that is the file open
3 dialog for Windows 95? And if we could enlarge that.

4 BY MR. JOHNSON:

5 Q Is that substantially different, Mr. Harral, from the
6 file open dialog in Windows 2000?

7 A It's not significantly different, which is why you
8 would want to take some time to discern which operating
9 system it came from. Functionally they are not
10 significantly different.

11 Q Thank you.

12 MR. JOHNSON: I apologize for that, Your Honor.

13 Thank you, Mr. Harral. No further questions.

14 MR. TULCHIN: Very few, Your Honor.

15 RE-CROSS-EXAMINATION

16 BY MR. TULCHIN:

17 Q Mr. Harral, you were shown on redirect two memos, one
18 is Exhibit 63 and the other is Exhibit 78, written by people
19 at WordPerfect in 1993 about meetings or conferences with
20 Microsoft, right?

21 A Yes.

22 Q And just so that I'm sure about this, you have never
23 seen any memos about the November 1993 meeting that you
24 testified about, correct?

25 A Never seen any memos about --

1 Q Sorry. Let me ask a better question.

2 Exhibit 63 is about 15 pages long, and it's all about a
3 design preview in July of 1993, right?

4 A Okay.

5 Q Exhibit 78 is about a workshop in September '93 and
6 it's about 12 or 13 pages, right?

7 A Okay.

8 Q And I think what I asked you on cross -- and I'm just
9 going to make sure that I've got this -- is that there are
10 no memos of which you are aware about this 19 --
11 November 1993 meeting when Mr. Struss and Mr. Cole talked
12 about what might be in the beta versions of Windows 95?

13 THE COURT: I think we've been through that. You
14 better say people at Microsoft.

15 BY MR. TULCHIN:

16 Q People at Microsoft. There is no memo about that as
17 far as you know?

18 A As far as I know.

19 Q Lastly, you were shown Plaintiff's Exhibit 291, concept
20 design specification, March 31, 1995.

21 A Yes.

22 Q Do you recall any document with a similar title or same
23 title for Perfectfit that goes back to 1994?

24 A The reason there may not be is because -- so the answer
25 is I wouldn't recall any because it would be entirely

1 different because back in 1994, that was close to the
2 acquisition time and WordPerfect had a different way of
3 maintaining its information. This is a Novell document that
4 going forward they would do it in this form. So I don't
5 know what -- so would there be something similar to it?
6 There were documents that were produced that we worked from,
7 but I don't -- I haven't seen any of them yet.

8 Q Let me just see if I can get this straight. In the
9 last six months of 1994 when Novell owned WordPerfect, was
10 there any concept design specification for Perfectfit as far
11 as you can remember?

12 A I don't recall concept design specification.

13 MR. TULCHIN: Nothing else, Your Honor.

14 THE COURT: Thank you very much. I'm a little
15 worried we're running behind schedule, but still this is
16 just a natural time to break. I will stay here with counsel
17 and Mr. Harral for a second and see you all at eight o'clock
18 in the morning. Thank you all very much.

19 (Jury excused)

20 THE COURT: Sorry, Mr. Harral. I know you need to
21 get back on the road, but let me ask you a couple questions
22 which I'm not sure are different from the ones I asked you
23 last Thursday. Everybody else seems to understand all of
24 this better than I do. I don't have the transcript from
25 this morning, although I think it's been prepared.

1 But your testimony this morning and on Thursday
2 seems to me to be that you all -- when I say you all, I will
3 say you. I guess you and the members of your group, I don't
4 want to get hung up on that. You saw that Windows was a
5 technological breakthrough. It was adding things that other
6 operating systems had not in the past conceptually, correct?
7 Features, something?

8 THE WITNESS: No. I have not characterized that
9 well.

10 THE COURT: No, you probably did. I just didn't
11 understand.

12 THE WITNESS: So it was new for the PC. I could
13 look to the McIntosh and I could find some of the things --

14 THE COURT: Excuse me, for the PC. It was
15 something -- in the PC area it really was different?

16 THE WITNESS: Yes.

17 THE COURT: You wanted, and I think you said it
18 very well before, you wanted, and I wish I had it, you
19 wanted WordPerfect to be -- to make the best of the new
20 product, the best of Windows?

21 THE WITNESS: I wanted -- we wanted Windows to be
22 the best it could be because of that.

23 THE COURT: So as I understand it, at least from
24 your perspective, you wanted Windows to succeed, but you
25 just wanted WordPerfect to succeed along with it?

1 THE WITNESS: Yes.

2 THE COURT: And so you were expecting consumers
3 and end users to be buying Windows so it could be used with
4 this new wonderful application for WordPerfect as it
5 developed?

6 THE WITNESS: The way that -- we had people still
7 using DOS. And we felt that if we started producing very
8 compelling products in Windows 95, that those people -- we
9 would remove one more reason that people would hold off
10 going over to Windows and would move over to Windows.

11 THE COURT: So the consumer would buy -- it was a
12 better -- a new better product that Microsoft had produced
13 which you wanted to have consumers buy?

14 THE WITNESS: Yes.

15 THE COURT: That's what you wanted?

16 THE WITNESS: Yes.

17 THE COURT: What your concern was, and I don't
18 quite know how to put this, but essentially it's quite
19 frankly the case is not all about, you were worried about
20 Microsoft using its access to the operating system, Windows,
21 to leverage its knowledge there and make WordPerfect and
22 eventually win out over WordPerfect and eventually
23 Perfectfit because it was going to be able to tie into
24 the -- it sounds like I know what I'm talking about, but I
25 don't -- this rich expansive environment that Windows 95

1 provided, that it was going to be, respectively, a word
2 and --

3 THE WITNESS: And the operating system.

4 THE COURT: Together it was going to connect the
5 hooks. It wasn't going to allow you all to connect to the
6 hooks. So therefore it was going go to a better product?

7 THE WITNESS: That's right.

8 THE COURT: So your real concern really was that
9 Microsoft was trying to use its knowledge to monopolize or
10 attempt to monopolize the applications part of it?

11 THE WITNESS: That was one of the concerns we had.

12 THE COURT: What was the other concern, if any?

13 THE WITNESS: Even if you don't monopolize it --

14 THE COURT: Be dominant, without getting into
15 legal terms.

16 THE WITNESS: Yes, because --

17 THE COURT: To win out over WordPerfect?

18 THE WITNESS: Yes.

19 THE COURT: And that was a concern?

20 THE WITNESS: Yes.

21 THE COURT: Perfectly understood. But from your
22 perspective, that's what the concern was?

23 THE WITNESS: Yes.

24 THE COURT: In fact, no matter what happened, you
25 were trying to connect WordPerfect and whatever it exposed

1 in terms of its own APIs or everything else, it was going to
2 be operating on the Windows 95 operating system?

3 THE WITNESS: Yes.

4 THE COURT: No matter what happened. And if
5 somebody could use what it exposed in terms of APIs and use
6 them eventually as whatever, it was still going to be
7 operating on the basis of the Windows 95?

8 THE WITNESS: Yes.

9 THE COURT: Thank you. I understand and I
10 understand. Thank you. I will take a recess.

11 I'm getting impatient. I'm getting very, very
12 impatient.

13 Is there anything we need to discuss about
14 tomorrow, if there is a tomorrow?

15 MR. TULCHIN: Your Honor, we did deliver a letter,
16 we filed it this morning, asking -- I don't know if the
17 Court had a chance to see this. It was filed earlier this
18 morning before court. Mr. Johnson played a bunch of slides
19 during his opening and we asked in writing two or three
20 times for copies of them. He didn't respond until Saturday
21 when he told Mr. Holley that he wouldn't give us copies
22 unless he was ordered to do so. And we filed that letter
23 this morning with the Court. And my request now is that the
24 Court tell Novell to provide us with copies of what he
25 showed to the jury in his opening.

1 MR. JOHNSON: Your Honor, the letter that went to
2 you omitted some facts that I think are relevant here.
3 Prior to the openings, we had requested of Microsoft that
4 they provide us copies of all their summary charts and
5 exhibits that they expected to use in opening. I asked
6 three times and I got no response from them. Prior to --

7 THE COURT: I'm sorry. We'll it take this up at
8 8:45 tomorrow, if there is an issue.

9 Is there anything else for tomorrow that we have
10 to decide?

11 MR. TULCHIN: Not from us, Your Honor.

12 MR. JOHNSON: No, Your Honor.

13 THE COURT: I hope the reason for my impatience is
14 clear. This case is not about trying -- about the dominance
15 that Word might have obtained over WordPerfect. And it's
16 not. That claim is time barred and that ruling is subject
17 to appeal. And the Fourth Circuit has ruled on it. The
18 Tenth Circuit can do it. But the fact of the matter is to
19 the extent this is about acquiring or maintaining monopoly
20 in the operating systems market, and your own client just
21 testified and your own witness just testified that it was a
22 better product and WordPerfect was going to use it and it
23 was going to be -- it's clear as a bell to me. And I'll
24 take a recess.

25 MR. JOHNSON: Your Honor, may I respond to that

1 just very briefly?

2 THE COURT: You are going to have to sometime.

3 MR. JOHNSON: I think this is important that we
4 bring this back to what the Fourth Circuit said and why
5 we're here. Okay. Remember that what Mr. Raikes said was
6 that if we own these key franchises, and that may have to do
7 with monopolization of the applications market, that may yet
8 to do, but that's not what we're trying here. What
9 Mr. Raikes, if we own those key franchises, if we dominate
10 on top of Windows, we widen the moat protecting Windows
11 operating --

12 THE COURT: Your own client just testified that if
13 WordPerfect was the word processing application, it would be
14 using Windows 95 too. That is what he just testified to.
15 It doesn't matter. Whatever Mr. Raikes perceived, the fact
16 of the matter is the reality of the marketplace was that they
17 had a better product, it was somebody else's work, as the
18 witness already testified to. And the fact of the matter is
19 whether it was WordPerfect or whether it was Word or
20 whatever, it was going to use Windows 95, and this case is
21 about Windows 95, and it was a better product. And maybe
22 somebody wanted to back into the DOS system, but if they
23 wanted to back into the DOS system by reverse engineering,
24 then this claim is barred by the moat, the asset purchase
25 agreement.

1 MR. JOHNSON: Your Honor, this has nothing to do
2 with DOS, respectfully. And what the witness said was
3 actually they were looking to try to move those users over
4 to Windows 95.

5 But what Your Honor asked Mr. Harral last week was
6 very probative. You asked him, this is crazy, according to
7 your testimony, Microsoft was hurting it's own product.

8 THE COURT: Absolutely, and that's why I thought
9 more about it over the weekend. The fact of the matter is
10 it was still intending whatever -- I understand that. But
11 Microsoft, under your theory, was embarking upon a course of
12 conduct to maintain its monopoly frankly after 1996, which
13 itself is an issue. But I will give you the benefit of the
14 doubt on that. The fact of the matter is Novell and
15 eventually Corel wanted to use -- wanted these APIs and
16 namespace extensions so that it could take advantage of the
17 technological superiority of the new product that Microsoft
18 had produced.

19 MR. JOHNSON: That's right, Your Honor. Please,
20 because those questions you asked are very probative. You
21 said they were prepared to take a short term loss. You said
22 that. They were prepared to stop WordPerfect and take the
23 loss to make their product, Windows 95, less valuable, less
24 innovative in order to get rid of WordPerfect.

25 THE COURT: That's why I asked last --

1 MR. JOHNSON: That is a classic formulation of
2 anticompetitive conduct. You take a short term loss for a
3 long term gain.

4 THE COURT: That's why I asked last Thursday.
5 What I asked just now was WordPerfect, and your own client
6 testified to it, he wanted WordPerfect to be -- I forget
7 what it was -- to make Windows the best it could possibly
8 be. The fact of the matter is widening the moat is going to
9 be irrelevant vis-a-vis WordPerfect because WordPerfect was
10 going to be using Windows anyway, at least according to the
11 evidence so far.

12 MR. JOHNSON: But the point is, Your Honor --

13 THE COURT: That's the whole purpose. Of course,
14 you had a very honest witness. He was trying -- also it
15 seems to me you just wanted to turn Microsoft into an open
16 platform, which by the way -- which the government didn't
17 order, but the D.C. Circuit reversed.

18 MR. JOHNSON: Your Honor, the important part here
19 is that Microsoft was willing to -- in order to hurt
20 WordPerfect was willing to make it a less valuable piece of
21 property, which is --

22 THE COURT: Maybe that was its intent, but it had
23 nothing to do with the fact happening in the marketplace
24 because WordPerfect wanted to use Windows.

25 MR. JOHNSON: Of course, they did, Your Honor.

1 THE COURT: Because it was a better product.

2 MR. JOHNSON: But the effect of this conduct, Your
3 Honor, which is different obviously for Mr. Harral, the
4 impact is with respect to his product, the PerfectOffice
5 Suite. But the impact on the operating systems market,
6 that's not something Mr. Harral is interested in.

7 THE COURT: He's interested in this product which
8 you wanted to connect with Windows.

9 MR. JOHNSON: But the point of this case, which is
10 monopoly maintenance of --

11 THE COURT: You want to put some expert on the
12 stand who is going to ignore what was happening when they
13 were actually developing the product.

14 MR. JOHNSON: He's not going to ignore that at
15 all, Your Honor. He's going to speak to it and speak how
16 Microsoft's actions both with respect to WordPerfect, with
17 respect to Lotus, with respect to Netscape, and with respect
18 to these other products --

19 THE COURT: I will allow the case to continue and
20 hear it all, but what I've said before I continue to say,
21 and there are problems in your case having to do with the
22 facts. It's not just the theory. It's a wonderful theory.
23 I understand it. That's how you got this far. The fact of
24 the matter is I've now heard some of the evidence, and the
25 fact of the matter is your developer, your very good guy

1 here, who frankly got a lot of people at Microsoft to
2 believe that, look, the way to do this is to develop the
3 best operating system. We owe that. It ought to be
4 socialized. And people -- the competition ought to be in
5 the applications market. That is a way to approach it. But
6 the fact of the matter is I have heard testimony so far that
7 Windows 95 was a qualitative improvement, it was a superior
8 product that WordPerfect itself wanted to write to. That's
9 what I've heard.

10 Court is in recess.

11 (Whereupon, the trial was continued to Tuesday,
12 October 25, 2011 at 8:00 a.m.)

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