

1 (Jury present)

2 THE COURT: Mr. Johnson.

3 MR. JOHNSON: Thank you, Your Honor.

4 BY MR. JOHNSON:

5 Q Mr. Frankenberg, I would now like to turn to  
6 Plaintiff's Exhibit 225. Mr. Tulchin showed you this e-mail  
7 and he quoted something that came from Brad Struss. I'm  
8 sure I'm mispronouncing that. On the first page he says,  
9 quote, so far Stac, Lotus, WP -- meaning WordPerfect --  
10 Oracle appear to be okay with this, close quote, in  
11 reference to independent software vendors' reaction to the  
12 decision of Mr. Gates.

13 Now Mr. Tulchin wasn't able to identify where  
14 Mr. Struss allegedly got this information.

15 THE COURT: I think it's Struss.

16 MR. TULCHIN: Yes, sir.

17 MR. JOHNSON: Struss. Thank you, Your Honor.

18 BY MR. JOHNSON:

19 Q It's fair to say, Mr. Frankenberg, that such  
20 information didn't come from you, correct?

21 A Correct.

22 Q Mr. Frankenberg, were you okay with the decision Bill  
23 Gates had made to withdraw support for the namespace  
24 extensions?

25 A No.

1 MR. TULCHIN: Leading.

2 THE COURT: He answered, but overruled.

3 THE WITNESS: It was definitely not okay with the  
4 decision. It was reprehensible. They had recruited us,  
5 evangelized us to use these extensions, then took them away.  
6 In Mr. Gates' memo it says that they took them away in order  
7 to allow their developers time to catch up. I don't think  
8 that's reasonable nor fair.

9 BY MR. JOHNSON:

10 Q At the back of this e-mail chain, in Plaintiff's  
11 Exhibit 225, there is a question and answer document.

12 MR. JOHNSON: If we could turn to that page. Yes,  
13 you are there. Thank you, Mr. Goldberg.

14 BY MR. JOHNSON:

15 Q Which appears to be a set of talking points that were  
16 given to people working within the Microsoft developer  
17 relations group.

18 Looking down at the bottom of the first page of the  
19 question and answer, there is a question which states, will  
20 Info Center, Marvel and MS APPs still continue to use these  
21 interfaces? Seems like this would be an unfair advantage.  
22 The answer provided by Microsoft to ISVs was, Info Center,  
23 Marvel and MS APPs will no longer use these interfaces. Do  
24 not mention Marvel unless asked directly.

25 Mr. Frankenberg, do you have personal knowledge whether

1 info center, Marvel or Microsoft APPs, in fact, no longer  
2 used these interfaces?

3 A I do not have personal knowledge of that, no.

4 Q Do you have any idea why Microsoft would be instructing  
5 its employees not to mention Marvel to ISVs?

6 MR. TULCHIN: Calls for speculation.

7 THE COURT: Sustained.

8 BY MR. JOHNSON:

9 Q Let's turn to the last page of this question and  
10 answer. There is a question -- I guess it's the next to the  
11 last question and answer. Quote, what if I decide to use  
12 some of the undocumented APIs, i.e., I am a developer that  
13 received some of the preliminary documents on the topic.  
14 What will the penalty be? Will you change the interfaces  
15 that had been defined?

16 The suggested answer for the developer relations group  
17 is as follows, quote, we will not arbitrarily change these  
18 interfaces, but because of how tightly these interfaces are  
19 tied to internals of the shell, we cannot guarantee ISVs  
20 that try to call into them will work in future releases of  
21 Windows 95, or even between interim beta builds. There will  
22 be no support for ISVs who use this. It will be completely  
23 at their own risk.

24 Mr. Frankenberg, would you ever recommend to your  
25 development teams that they use APIs which may be changed or

1 taken out between interim beta builds of the operating  
2 system product?

3 A I definitely would not recommend that.

4 Q Were you aware, Mr. Frankenberg, that Windows 95 had  
5 two more interim beta builds after the date of this e-mail?

6 A I don't think I was aware of that, although it wouldn't  
7 surprise me.

8 Q Would you have authorized Novell developers to use  
9 namespace extensions which may not work in the next interim  
10 beta builds?

11 A No, I would not.

12 MR. TULCHIN: Your Honor, he testified he didn't  
13 have anything to do with the decision.

14 THE COURT: I'll overrule the objection. The  
15 question was already answered.

16 BY MR. JOHNSON:

17 Q Let's go back to the first page. Going down to the  
18 next -- on the first page of this e-mail, going down to the  
19 next to the last paragraph, it states, quote, as we covered  
20 in our last -- at our meeting last Friday, we were faced  
21 with the challenge of going to our ISVs and telling them  
22 about Bill G's recent decision to return the namespace  
23 extension APIs to their original system level status.  
24 Notice the wording. Let's try not to use the word  
25 undocumented or private APIs. That has a negative

1 connotation to most ISVs.

2           Apparently, Mr. Frankenberg, these Microsoft employees  
3 were told not to the use the word undocumented. But isn't  
4 it a fact, Mr. Frankenberg, that that's how you understood  
5 the decision should be characterized as undocumented APIs?

6 A     Yes.

7 Q     And that is precisely what you complained about  
8 repeatedly to Mr. Gates?

9 A     Yes, it is.

10 Q     Let's turn now to Defendant's Exhibit 230.

11           Mr. Tulchin asked you some questions about the Quattro  
12 Pro and whether Quattro Pro was a problem with getting out  
13 the PerfectOffice suite. And you responded to almost every  
14 one of these questions that you didn't really know how far  
15 along they were at this point, or whether Quattro Pro was a  
16 problem at all.

17           I would like to show you now what Mr. Gibb testified  
18 about that issue.

19                   MR. JOHNSON: Can you bring up Mr. Gibb's  
20 testimony on this issue?

21 BY MR. JOHNSON:

22 Q     In response to the question, do you recall Quattro  
23 Pro -- the development of Quattro Pro causing a delay in the  
24 shipment of PerfectOffice 95 suite? Answer: No. I mean  
25 early on, like I said, when we were first spec'ing out

1 storm, we thought Quattro Pro might be critical path. So  
2 early on before we had project plans and before we tracked  
3 the progress, we were nervous about Quattro Pro because they  
4 had a lot of things to do. We were nervous that they might  
5 have a hard time getting the schedule. But they were very  
6 conservative in their estimates and kind of overdelivered.  
7 So it turned out to be a pleasant surprise.

8 Mr. Frankenberg, Mr. Gibb was in charge of the  
9 PerfectOffice suite; is that right?

10 A Yes.

11 Q Would he be in the best position to know whether  
12 Quattro Pro had anything to do with the delay in producing a  
13 PerfectOffice suite for Windows 95?

14 A He would be in the very best position to know.

15 MR. JOHNSON: Mr. Goldberg, could we put up  
16 Plaintiff's Exhibit 1 again, please.

17 BY MR. JOHNSON:

18 Q During cross-examination, Mr. Frankenberg, you said  
19 yesterday that Microsoft may have been making some efforts  
20 to help WordPerfect create a suite. I would like to show  
21 you PX-1 again.

22 Does this e-mail from Mr. Gates indicate that Microsoft  
23 was trying to help Novell/WordPerfect create a suite for  
24 Windows 95?

25 A No, it does not.

1 Q Doesn't this e-mail indicate just the opposite?

2 A Yes, it does.

3 In fact, it shows they were purposely delaying us in  
4 order to give their team -- their office team --

5 MR. TULCHIN: Move to strike about Microsoft's  
6 intent, which this witness cannot possibly testify to.

7 THE COURT: This witness clearly doesn't like the  
8 decision, he so testified. Move on to something else.

9 BY MR. JOHNSON:

10 Q Now despite the fact that you had no reason at the time  
11 to know that Mr. Gates had personally ordered that the  
12 namespace extensions not be published, did you, nonetheless,  
13 repeatedly complain to Mr. Gates about undocumented calls  
14 and interfaces?

15 A Yes, I do.

16 Q When you complained to Mr. Gates about undocumented  
17 calls and interfaces, did that include the undocumented  
18 interfaces that you had learned about in early 1995 that  
19 were holding up the PerfectOffice product for Windows 95?

20 A Yes, it did, amongst many others.

21 Q I would like to take a look now at DX-271. Mr. Tulchin  
22 used this document to discuss with you a number of  
23 weaknesses that the Novell business applications group  
24 talked about -- or identified in this April 1995 business  
25 plan. You indicated, I think, that these business plans and

1 reviews were part of the things -- one of the things that  
2 you instituted when you came to Novell; is that right?

3 A Yes, I did. That was a very good way, a very good  
4 discipline for the teams to evaluate their business, their  
5 opportunities and issues.

6 Q And did you encourage all these groups within the  
7 Novell to be self-critical in doing those evaluations?

8 A Very much so. In fact, I chided a number of them for  
9 not being sufficiently critical or not looking objectively  
10 at their weaknesses.

11 Q Did you also tell them that they should point out the  
12 strengths and opportunities presented within the group as  
13 well as the weaknesses?

14 A Yes.

15 Q Now Mr. Tulchin did not share with the jury any of the  
16 strengths and opportunities presented in this document. If  
17 you could turn to page 8, the Bates stamp ending 356, with  
18 respect to the company's strengths that assist business  
19 applications, let's look at some of those.

20 Looking at the top of the A section there, one of those  
21 company strengths indicated to be word processing strength  
22 and WordPerfect install base.

23 Now Mr. Tulchin represented to you that WordPerfect had  
24 an 80-percent share of the install base of word processors  
25 on the DOS platform.



1 MR. TULCHIN: I did not say that, Your Honor. It  
2 wasn't install base.

3 THE COURT: Rephrase the question.

4 BY MR. JOHNSON:

5 Q Well, whatever Mr. Tulchin said, he said you had an  
6 80-percent share, and I don't recall the exact words he  
7 used, whether it was install base, but it certainly sounded  
8 close to the D word, which we won't mention here today.

9 THE COURT: It's been mentioned, just not in terms  
10 of Novell.

11 BY MR. JOHNSON:

12 Q Do you think this DOS install base provided an  
13 opportunity for Novell as DOS users eventually shifted to  
14 Windows?

15 A Yes, it did, a significant opportunity, because  
16 ultimately they would all shift from DOS to Windows, and  
17 hopefully they really enjoyed working with WordPerfect and  
18 we'd move with WordPerfect into PerfectOffice.

19 Q Let's look at the some of the division group strengths  
20 under 3-B, if we could. And one of those bullet points  
21 provides -- the top one actually, strong expertise in word  
22 processing, spreadsheets, presentation graphics and  
23 electronic publishing tools.

24 Did you believe that that too was a strength of the  
25 applications group competing with Microsoft?

1 A It definitely was a strength and I think they showed  
2 their prowess in that by getting that first suite out  
3 between June and December of 1994. Major accomplishment.

4 Q There is a reference here in a few bullet points down  
5 to PerfectFit technology. Ideal platform for suites. Way  
6 ahead of the competition here.

7 Mr. Frankenberg, did you believe that WordPerfect and  
8 Novell was way ahead of the competition with respect to  
9 PerfectFit technology?

10 A Yes, we were. We were significantly ahead and provided  
11 the capability, as we talked about, to easily move across  
12 platforms, and also provided that capability to our other  
13 application developers. A great strength, of course.

14 Q The next bullet point says, support of open  
15 architectures. Can you tell us what that means,  
16 Mr. Frankenberg?

17 A Open architectures are those that have open interfaces  
18 and open definitions that anyone can develop to with  
19 confidence, and the result that is compatible with all the  
20 other applications that make use of such an architecture.

21 Q Down under opportunities, which is the next section  
22 down, and particularly Section 3-C --

23 MR. JOHNSON: Yeah, that's it. Thank you,  
24 Mr. Goldberg.

25 //

1 BY MR. JOHNSON:

2 Q -- states in the second bullet point, getting  
3 PerfectOffice to be the suite of choice for all NetWare  
4 users is a large opportunity.

5 Mr. Frankenberg, why was that such a large opportunity?

6 A At that time we had approximately 40 million users of  
7 NetWare. So becoming the suite of choice to 40 million  
8 users was a huge opportunity.

9 Q The fourth bullet point here states, leveraging  
10 WordPerfect to sell Quattro Pro.

11 Mr. Frankenberg, why did the business applications  
12 group think that they could leverage WordPerfect to sell  
13 Quattro Pro?

14 A Because WordPerfect was such a strong word processor  
15 that had such a strong following. And I think, as was  
16 mentioned yesterday, the word processing part of the suite  
17 was the one that most people made their decision based on  
18 because that's what they used the most. Having a strong  
19 word processor meant that we would be able to sell the suite  
20 and Quattro Pro as part of that.

21 Q Finally the last bullet point reads, quote, many OEM  
22 opportunities for PerfectOffice and stand-alone  
23 applications.

24 Was that a part of your plan that you testified to  
25 yesterday, to sell PerfectOffice and the stand-alone

1 applications to OEMs during this time period?

2 A Yes, it was.

3 Q Let's turn back briefly to the beginning of the SWOT  
4 analysis on the page Bates stamp ending in 2354, and turning  
5 to something Mr. Tulchin talked to you about, the top bullet  
6 point. It states here that Office holds 86 percent of the  
7 suite market share at this time. Apparently had revenues of  
8 \$1.4 billion in 1994.

9 Now is it true, Mr. Frankenberg, that your suite had  
10 been on the market for about three months at this point in  
11 time?

12 A Three or four months, yes.

13 Q We saw from other documents in your direct examination  
14 that 74 percent of users had not yet made the decision with  
15 respect to which suite to purchase. So regardless of  
16 whether Microsoft held 86 percent of the suite market share  
17 at this time, was there still lots of opportunity for Novell  
18 in the suite market?

19 A There was substantial opportunity. 74 percent of the  
20 market hadn't made a decision yet. We had a huge install  
21 base of WordPerfect and we had a huge install base of  
22 NetWare, and all those were ways for us to reach customers  
23 with a suite product.

24 Q Do you remember, Mr. Frankenberg, how many hundreds of  
25 millions of dollars in revenue Novell made from WordPerfect

1 both in its stand alone and its suite product sales in 1995?

2 A I do not recall that number. At one point I would have  
3 known it off the top of my head, but that point is in the  
4 past.

5 Q Let me show you a slide I used in opening.

6 MR. JOHNSON: If we could turn to that,  
7 Mr. Goldberg. Thank you.

8 BY MR. JOHNSON:

9 Q This is a slide of revenue based on IDC data. Do you  
10 know what IDC data is?

11 A Yes.

12 Q What is that?

13 A IDC is a publishing firm that tracks the relative  
14 market shares, amongst other things, in the computer and  
15 software business. They also do analysis.

16 MR. TULCHIN: Your Honor, sorry to interrupt.  
17 This seems to be way outside the scope of cross. It also --  
18 I mean all these questions have been grossly leading.

19 THE COURT: Try not to lead. I'm not going to try  
20 to fathom right now. If it becomes a problem later, let me  
21 know.

22 MR. JOHNSON: Thank you, Your Honor.

23 BY MR. JOHNSON:

24 Q We had some testimony and there were some questions  
25 from Mr. Tulchin about the fact that, you know, sales had

1 dropped off in 1995 because everybody was waiting for  
2 Windows 95. I think you agreed with Mr. Tulchin that there  
3 would have been some drop off in sales?

4 A Yes, I do.

5 Q And does this figure seven, this chart indicate that  
6 despite that drop off in 1995, WordPerfect revenues exceeded  
7 \$250 million?

8 A Yes, it does.

9 Q And in 1994, can you give us a guesstimate of how many  
10 hundreds of millions of dollars WordPerfect word processor  
11 revenues were?

12 MR. TULCHIN: Your Honor, this is just counsel  
13 testifying. This chart wasn't --

14 MR. JOHNSON: Your Honor, he's speaking  
15 objections. If he wants to approach the bench.

16 THE COURT: He's speaking objections and you're  
17 testifying. So let's move on to something else.

18 BY MR. JOHNSON:

19 Q In your view, Mr. Frankenberg, was there plenty of room  
20 in the suite market in 1995 for a number two suite or even a  
21 number three suite to be very successful from a monetary  
22 perspective in this market?

23 A There was definitely plenty of room with 74 percent of  
24 the people not having made a decision. That's a very huge  
25 opportunity.

1 Q Is it fair to say, Mr. Frankenberg, that in order to be  
2 successful in the suite market, you had to have a suite to  
3 sell?

4 A I think so, yes.

5 Q In 1995, when Windows 95 came out in August, Novell  
6 didn't have a suite that was built to run on Windows 95,  
7 right?

8 A We did not, that's true.

9 We had one that was built to run on Windows 3.1 that  
10 ran on Windows 95, but did not take advantage of any of its  
11 capabilities.

12 THE COURT: The answer is yes, not no?

13 THE WITNESS: You are right, Your Honor. Yes, we  
14 did have one, but it didn't -- but it was an earlier version  
15 and gave the user no additional functionality.

16 THE COURT: I understand.

17 THE WITNESS: Thank you.

18 BY MR. JOHNSON:

19 Q Mr. Frankenberg, Mr. Tulchin had a great deal of  
20 questions for you about WordPerfect 6.0, which was a product  
21 that was actually put out by WordPerfect prior to the merger  
22 with Novell, and the fact that it did have some issues and  
23 you said it had some functionality issues, and Mr. Tulchin  
24 repeatedly referred to an internal evaluation that  
25 characterized it as slow and buggy.

1 Mr. Gibb testified that the product was only slow if  
2 you had a machine or a computer that didn't have a lot of  
3 memory, such as machines with only four megabytes of memory  
4 or less. Were you aware that WordPerfect 6.0 was only slow  
5 on low memory machines?

6 A I was not aware of that, no.

7 Q At the risk of overkill, let me show you what's been  
8 marked as Plaintiff's Exhibit 110. This is a PC Computing  
9 Magazine's award for the best products of the year for  
10 December 1993, and WordPerfect 6.0 for Windows won the MVP  
11 award for 1993. And if you conclude -- go to the end of  
12 this article, the last paragraph on the next page.

13 MR. JOHNSON: I want the end of the article,  
14 Mr. Goldberg. You may have been there. I can't see.

15 MR. TULCHIN: Your Honor, this is subject to the  
16 objections that we have discussed.

17 THE COURT: Absolutely. Absolutely. If you like  
18 that, it says Windows does it all.

19 MR. TULCHIN: It's still hearsay, Your Honor.

20 MR. JOHNSON: Could you bring up the last  
21 paragraph of this? Not that one, the paragraph of the text.  
22 Not the pricing.

23 THE WITNESS: Just in case you're interested.

24 BY MR. JOHNSON:

25 Q And PC Computing Magazine concludes, is there any



1 reason not to get WordPerfect now? No way. Version 6.0  
2 strikes a perfect balance between Windows interface  
3 standards and WordPerfect functionality. Are there serious  
4 reasons to buy it? Only if you want a word processor that  
5 takes the brakes off of what you can do with a document --  
6 from word processing to spreadsheet computations to  
7 drawing -- and makes the process so easy that it's more fun  
8 than work, close quote.

9 Does this refresh your recollection, Mr. Frankenberg,  
10 that not everyone thought WordPerfect 6.0 was slow --

11 THE COURT: I'm going to strike the question and  
12 strike the whole thing under 403. Whatever purpose there is  
13 for getting these in is so outweighed by your testifying  
14 about it, I'll strike the whole thing.

15 Please understand I'm letting all these  
16 evaluations in for limited purpose. The person is not here  
17 to be cross-examined, and that was inappropriate.

18 Move on.

19 MR. TULCHIN: Your Honor, I wonder if we could  
20 take it down, please?

21 MR. JOHNSON: Take it down, please.

22 Your Honor, I was only offering it for the same --

23 THE COURT: Whatever you offered it for, you know  
24 darn well what you were doing. It was inappropriate. Move  
25 on.

1           The person that wrote that is not here to be  
2 cross-examined.

3           MR. JOHNSON: Well, then, Your Honor, I would like  
4 to turn to Plaintiff's Exhibit 378, which is what Microsoft  
5 said about WordPerfect 6.0 for Windows.

6 BY MR. JOHNSON:

7 Q     Mr. Frankenberg, this is an internal Microsoft document  
8 written by Microsoft. Turning to the first page of this  
9 competitive product analysis with respect to WordPerfect  
10 6.0, it states, quote, the industry generally lauded  
11 WordPerfect's robust and feature-filled Windows word  
12 processor, as it seemed like WordPerfect finally created an  
13 application that has excellent high-end DTP features, 98  
14 spreadsheet functions, and its trademark text editing and  
15 proofing tools. This product is positioned to be a one-stop  
16 solution for every level word processing user.

17           Mr. Frankenberg, does that conform to your recollection  
18 that WordPerfect 6.0 was generally lauded in the industry?

19 A     Yes. That is a very good summary.

20 Q     In the next paragraph, Microsoft goes on to say,  
21 WordPerfect word processing sales still rival those of Word.  
22 In the past year, WordPerfect for Windows unit shipments  
23 increased by 60 percent while Word's increased only by six  
24 percent. It goes on to say that the point is, WordPerfect's  
25 success up to now shows it is making inroads in the Windows

1 market and not just by converting their DOS installed base.

2 Mr. Frankenberg, do you agree, is it your recollection  
3 that you were winning market share not simply by converting  
4 the DOS installed base?

5 A Yes.

6 MR. TULCHIN: He's leading again, Your Honor.

7 THE COURT: It is leading. It's overruled. This  
8 is a Microsoft document. A whole different set. Please  
9 don't just lead the whole time.

10 Just go on. I've overruled the objection.

11 MR. JOHNSON: Can we bring up the last paragraph,  
12 Mr. Goldberg?

13 BY MR. JOHNSON:

14 Q I won't read that. I will let you read it for  
15 yourself, Mr. Frankenberg. Starting with the bottom line  
16 there, could you read that to yourself.

17 A Yes.

18 Q Mr. Frankenberg, did WordPerfect continue to make  
19 improvements to WordPerfect with additional releases?

20 A Yes, we did.

21 Q Do you recall that there was a WordPerfect 6.0A  
22 release?

23 A Yes, that happened shortly after the announcement.

24 Q And do you recall how that was received in the  
25 marketplace?

1 A That was received positively.

2 Q Let me show you what has been marked as Plaintiff's  
3 Exhibit 162-A.

4 MR. JOHNSON: Mr. Goldberg, don't put this up yet,  
5 please.

6 MR. TULCHIN: Your Honor, could I just have a  
7 moment? I don't know what was removed here.

8 THE COURT: Of course.

9 MR. JOHNSON: Your Honor, we would just remove the  
10 article about the product.

11 MR. TULCHIN: No objection.

12 THE COURT: That's fine. Go ahead.

13 BY MR. JOHNSON:

14 Q So this exhibit, Plaintiff's Exhibit 162-A, shows Mr.  
15 Bill Gates' reaction to WordPerfect's 6.0A. Mr. Gates  
16 states, quote, I'm amazed at their responsiveness. This is  
17 very scary and somewhat depressing. This is as much as we  
18 plan to do for 1995. A lot of work in this release.

19 Mr. Frankenberg, do you recall that WordPerfect 6.0A  
20 was again named by PC Computing Magazine as the MVP award  
21 winner for 1994?

22 MR. TULCHIN: Same objection, Your Honor.

23 THE COURT: Overruled.

24 Go ahead.

25 THE WITNESS: Yes, it was. We were very proud of

1 that.

2 BY MR. JOHNSON:

3 Q Were you also aware it was chosen over Microsoft Word  
4 for Windows as the best word processor for 1994?

5 A Yes, I was.

6 Q Then again, Mr. Frankenberg, Novell, after it had  
7 purchased WordPerfect, issued another release of WordPerfect  
8 called WordPerfect 6.1.

9 A We did release 6.1, yes, with further improvements.

10 Q Do you recall that was also well received by the  
11 industry?

12 A It was very well received by the industry.

13 Q Do you recall that WordPerfect for Windows 6.1 received  
14 the Editor's Choice Award for PC Magazine in November of  
15 1995?

16 A Yes, I was, and very happy to see it.

17 Q Mr. Frankenberg, Mr. Tulchin asked you a series of  
18 questions about your level of involvement regarding the  
19 course the company took after Microsoft took away the  
20 namespace extensions. Would such decisions ordinarily be  
21 made by the people in charge of the business unit?

22 A Yes, they would.

23 Q And I believe you testified --

24 A Unless they encountered difficulties that they needed  
25 to raise to my attention.

1 Q And I think you testified that certain people were  
2 identified, including Mr. Rietveld and Mr. Calkins; is that  
3 correct?

4 A Yes.

5 Q Were these people highly placed executives that you  
6 trusted their judgment?

7 A Mr. Rietveld was a former president of WordPerfect  
8 Corporation. He was a vice president of Novell. He had run  
9 a very substantial business and knew a lot more about word  
10 processing and the office products than most other people in  
11 the industry. I trusted him fully.

12 Q You also mentioned the possibility that Mr. Glen Mella  
13 may have been involved. Now Mr. Mella was a marketing guy,  
14 right?

15 A Mr. Mella was a vice president of marketing for the  
16 applications business group.

17 Q So he was not a technical person, right?

18 A No, he was not.

19 Q He was not a developer in any sense of the word?

20 A No, he wasn't.

21 It was a good thing he didn't write any code too.

22 Q Do you have any personal knowledge whether Mr. Mella  
23 was actually involved in any decision with respect to how to  
24 develop the product for Windows 95 after Microsoft took away  
25 the namespace extensions?

1 A I'm sure he was involved, but I can't pin down exactly  
2 what meetings or whatever he was involved in.

3 Q What I'm asking you, do you actually have personal  
4 knowledge that he was, in fact, involved?

5 A Yes, he was, in fact, involved.

6 Q And what do you recall about that? I thought you said  
7 you didn't recall who made that decision?

8 A I'm sorry. You lost me.

9 THE COURT: You lost me too.

10 BY MR. JOHNSON:

11 Q I'm just trying to figure out, Mr. Frankenberg -- I  
12 know you thought Mr. Mella may have been involved.

13 THE COURT: That's not what he said. He said he  
14 had personal knowledge he was involved.

15 MR. JOHNSON: Yes, and I'm asking him what is that  
16 personal knowledge.

17 THE WITNESS: Mr. Mella was the vice president of  
18 marketing responsible for the business applications. He  
19 would have been involved in all decisions that were made  
20 regarding the marketability, delivery schedule, promotions,  
21 et cetera, of the PerfectOffice suite.

22 BY MR. JOHNSON:

23 Q Mr. Frankenberg, let's take a look at Defendant's  
24 Exhibit 621. This is Novell's 10-K filing with the  
25 Securities and Exchange Commission for the period ending

1 10-28, 1995. I believe Mr. Tulchin drew your attention to  
2 page 8 of this exhibit. And Mr. Tulchin went on at some  
3 length about the fact that 10-Ks are filed with the SEC,  
4 that you personally signed these statements, and he tried to  
5 get you to agree that the only reason Novell sold the  
6 WordPerfect office productivity applications was because  
7 they did not contribute to Novell's network focus and core  
8 business.

9 As an initial matter, this document was filed on  
10 January 26th, 1996. So this filing would have been made  
11 some couple months after you made the decision to sell the  
12 business applications; is that correct?

13 A That's correct.

14 Q At that point Novell was refocusing its business on the  
15 NetWare product?

16 A Yes, and other associated networking products.

17 Q Would it be correct to say that these statements in  
18 this 10-K are forward looking with respect to Novell's plans  
19 for the future, not the past?

20 MR. TULCHIN: Again, leading, Your Honor.

21 THE COURT: Sustained. Don't lead.

22 BY MR. JOHNSON:

23 Q Mr. Frankenberg, were the statements made in this 10-K  
24 forward looking?

25 MR. TULCHIN: Same objection.



1 THE COURT: Or not.

2 Go ahead.

3 BY MR. JOHNSON:

4 Q Go ahead, Mr. Frankenberg.

5 A Yes, they were forward looking savings in this 10-K.

6 Q Now you told Mr. Tulchin more than once that the reason  
7 Novell sold WordPerfect was that it had become very clear  
8 that Novell could not compete in that market and that it was  
9 a tilted playing field, and that no matter what Novell did,  
10 it would not be able to succeed because the playing field  
11 was unfairly spewed, and I'm quoting from your testimony.

12 Mr. Tulchin persisted with you with respect to the  
13 statements made in this Novell 10-K, and Mr. Tulchin further  
14 stated to you, and I'm quoting again from the transcript at  
15 page 1107, lines 16 and 18, of the official transcript we  
16 received last night, quote, feel free to look elsewhere or  
17 anywhere you want, anywhere you think you might find it,  
18 referring to your claim that you sold the business  
19 application because of Microsoft's unfair treatment.

20 Did Novell also file a statement with the Federal Trade  
21 Commission in Washington, D.C. detailing the reasons why  
22 Novell had announced plans to sell the applications group?

23 A Yes, we did.

24 MR. TULCHIN: Objection, Your Honor. I think this  
25 is off limits.

1 THE COURT: Overruled.

2 BY MR. JOHNSON:

3 Q Let me show you what has been marked Plaintiff's  
4 Exhibit 346.

5 MR. JOHNSON: For identification only,  
6 Mr. Goldberg.

7 THE COURT: I gather if it's for identification  
8 only, you shouldn't put it up yet.

9 MR. JOHNSON: I hope he understood it.

10 THE COURT: That's fine. It's my fault.

11 BY MR. JOHNSON:

12 Q Was this the statement that Novell, Inc. presented to  
13 the Federal Trade Commission in Washington, D.C. on December  
14 1st, 1995?

15 A Yes, it is.

16 Q Turning your attention to page 8 of this statement,  
17 please read to yourself the second full paragraph.

18 THE COURT: It shouldn't be up.

19 MR. JOHNSON: It's not up, Your Honor. The screen  
20 is blank. You get to see it, but the jury does not.

21 THE COURT: I'm sorry.

22 MR. TULCHIN: Your Honor, we discussed this in  
23 Baltimore and the Court ruled it was inadmissible.

24 THE COURT: Yeah, but I haven't heard the  
25 cross-examination.

1           Go ahead.

2           MR. JOHNSON: Thank you, Your Honor.

3           THE WITNESS: Yes, sir.

4 BY MR. JOHNSON:

5 Q       Does this paragraph detail those reasons for its  
6 decision to divest its applications group, the publisher of  
7 WordPerfect, Quattro Pro, and other PerfectOffice  
8 productivity applications?

9 A       It's a very good summary of the reasons why we decided  
10 to do that.

11 Q       Is this statement consistent with your testimony that  
12 the reason you decided to sell is that it had become very  
13 clear that Novell could not compete in the applications  
14 market, that it was a tilted playing field, and that no  
15 matter what Novell did, it would not be able to succeed on  
16 such a playing field?

17           MR. TULCHIN: Same objection.

18           THE COURT: Overruled.

19           THE WITNESS: Yes, it clearly states that.

20           MR. JOHNSON: Your Honor, I move for the admission  
21 of Plaintiff's Exhibit 346.

22           THE COURT: No.

23           MR. JOHNSON: With the Court's indulgence, Your  
24 Honor.

25           THE COURT: It goes on.

1 BY MR. JOHNSON:

2 Q Let me show you, Mr. Frankenberg, Plaintiff's Exhibit  
3 467.

4 Mr. Frankenberg, do you recognize this document?

5 A Yes, I do.

6 Q Mr. Tulchin got into the issue of bugs?

7 MR. TULCHIN: We do have an objection to this  
8 document, Your Honor.

9 MR. JOHNSON: I'm sorry. Take it down, please. I  
10 wasn't aware he had an objection.

11 THE COURT: I am going to sustain the objection to  
12 the document.

13 MR. JOHNSON: Can we be heard on that, Your Honor?

14 THE COURT: Sure, but why don't you just ask a  
15 question and then I'll hear it.

16 MR. JOHNSON: Thank you, Your Honor.

17 BY MR. JOHNSON:

18 Q Mr. Frankenberg, can you describe the situation  
19 involving Plaintiff's Exhibit 467?

20 A The situation that occurred was that shortly before the  
21 shipment of Windows 95, Microsoft published a list of 200  
22 purported bugs with our current PerfectOffice suite. In  
23 other words, the one that was written for the earlier  
24 version of Windows. And it was important that it -- as  
25 we've talked about before, it was important that it run on

1 Windows 95. So they published a list of 200 purported bugs  
2 with our current suite running on Windows 95. Almost all of  
3 those had been fixed. And it had a significant detrimental  
4 effect on our introduction of that product in conjunction  
5 with Windows 95.

6 Q Did you complain to Microsoft about their publishing  
7 these 200 bugs that allegedly were impacting PerfectOffice  
8 3.0?

9 A Novell complained aggressively about that.

10 Q This statement you said came out right before the  
11 release of Windows 95?

12 A Shortly before. I don't remember, but very close to  
13 the release, yes.

14 Q Thank you, Mr. Frankenberg.

15 Today Mr. Tulchin asked you a series of questions about  
16 PerfectOffice and whether PerfectOffice, during your tenure  
17 with Novell, had come out in a cross-platform version. I  
18 think you previously testified that WordPerfect historically  
19 had been cross-platform, and that during your tenure  
20 WordPerfect continued to be brought out under multiple  
21 platforms; is that right?

22 A That's correct.

23 Q Now in order to run cross-platform, would it be  
24 necessary for the shared code running underneath WordPerfect  
25 to be able to run on those different operating systems?

1 A Yes, it would be essential for that to happen.

2 Q Once WordPerfect's word processor had the shared code  
3 to operate on all those differing operating systems, what  
4 issue, if any, would exist with making PerfectOffice suite  
5 cross-platform?

6 A The issues that would be involved would be largely --  
7 well, it would depend a bit on the platform. There may be  
8 some platform unique things that would need to be taken care  
9 of within the applications. And beyond that there would be,  
10 of course, a significant amount of testing to make sure that  
11 it ran properly.

12 Q But the shared code, once it had been ported to another  
13 operating system, could run under any of the applications  
14 within the PerfectOffice suite?

15 A That's correct. It was one of our strengths.

16 Q There were a number of questions directed to you with  
17 respect to Novell's NetWare and with respect to beta  
18 versions of Novell's NetWare. During your tenure with  
19 Novell, did you ever recall a time when Novell withdrew  
20 significant functionality, withdrew APIs that had previously  
21 been published?

22 A No, I don't recall us ever doing that.

23 Q In fact, do you ever recall that, period, in your  
24 history in the industry by any company other than Microsoft?

25 A I don't recall that, no. Not that it might not have

1 happened, but I don't recall.

2 MR. JOHNSON: Nothing further, Your Honor.

3 THE COURT: Thank you, Mr. Johnson.

4 Anything further, Mr. Tulchin?

5 MR. TULCHIN: I will try to be quick, Your Honor.

6 Do the best I can.

7 RE-CROSS-EXAMINATION

8 BY MR. TULCHIN:

9 Q Mr. Frankenberg, hello again.

10 A Hello.

11 Q You were shown Exhibit 467, and I think you testified  
12 something about Microsoft -- you don't need the document,  
13 sir, but if you want to look at it, that's fine. It was not  
14 shown to the jury.

15 A Could you remind me of what that document is?

16 Q Yes, I'm going to.

17 A I don't remember by numbers.

18 Q Of course. Of course.

19 I should have started this way. You gave some  
20 testimony that just before Windows 95 came out, Microsoft  
21 published a list of bugs. Do you remember that --

22 A Yes.

23 Q -- a few minutes ago?

24 I think you said that these were bugs that pertained to  
25 the old version of PerfectOffice, PerfectOffice 3.0,

1 correct?

2 A Correct.

3 Q We looked at Exhibit 6 this morning. That was the one  
4 that said Dave Miller, remember that, in October of '95?

5 A I do remember that, yes.

6 Q And Exhibit 6 -- if we can put that back up. Exhibit 6  
7 is about the same subject, according to your testimony, it's  
8 about bugs in Windows 95 that affected PerfectOffice 3.0,  
9 correct?

10 A Correct.

11 Q And here in this memo we hear it reported that Dave  
12 thinks it's mostly our fault. Isn't that right?

13 A That's what it says, yes.

14 Q Thank you, sir.

15 Now you also said that with respect to these bugs --

16 A May I expand on that a moment?

17 Q Well, let me ask my question, Mr. Frankenberg, if I  
18 may.

19 MR. JOHNSON: Your Honor, he wanted to expand on  
20 his prior answer.

21 THE COURT: I think he expanded before in a way  
22 which was inappropriate, so no.

23 BY MR. TULCHIN:

24 Q Mr. Frankenberg, you said that around August of '95  
25 when this issue of the bugs came up, you complained



1 aggressively to Microsoft.

2 A I said that Novell complained aggressively to  
3 Microsoft.

4 Q Yes, that's what I should have said, Novell.

5 Now, in contrast, in October 1994, when Mr. Gates made  
6 the decision about the namespace extension APIs, as far as  
7 you know, there was no complaint in writing ever made by  
8 Novell to Microsoft, correct?

9 A As far as -- I have not seen any documents, that's  
10 correct.

11 Q Nothing in November of '94, true?

12 A No documents, yes.

13 Q No documents in December of '94?

14 A No documents that I know of in December of '94.

15 Q And your complaints aggressively in August of 1995 were  
16 about the bugs, and those were put in writing, correct?

17 A Yes.

18 Q But there was no writing from Novell to Microsoft, as  
19 far as you know, in January of '95, true?

20 MR. JOHNSON: Your Honor, he stated that there  
21 were no writings.

22 THE WITNESS: Yes.

23 THE COURT: If there are no writings at all, there  
24 are no writings in the years. There's no writings.

25 MR. TULCHIN: Thank you, Your Honor.

1 BY MR. TULCHIN:

2 Q Now --

3 A To my knowledge.

4 Q Yes, and I think that's what you said, Mr. Frankenberg.  
5 But you don't remember any writing and in preparing for your  
6 testimony you didn't see any writing, true?

7 A Correct.

8 Q Could we look at Exhibit 225, which Mr. Johnson showed  
9 you on redirect a little while ago. This is -- the first  
10 page is an e-mail from Brad Struss to Doug Henrich,  
11 October 12th, '94. And below that there was an e-mail from  
12 Scott Henson -- this is an internal Microsoft e-mail  
13 chain -- also of October 12, '94. On the second page of  
14 Exhibit 225, towards the bottom, there is a paragraph which  
15 says, this decision not only affects people outside of  
16 Microsoft, but inside the company as well. All applications  
17 within Microsoft which were originally implementing these  
18 interfaces have been required to stop.

19 Now, Mr. Frankenberg, you looked at this earlier, this  
20 same document, and I think you offered your views about what  
21 pieces of Exhibit 225 mean. Do you remember that?

22 A Yes.

23 Q And this was, of course, a Microsoft document that you  
24 hadn't seen in 1994 or '95, true?

25 A Correct.

1 Q Do you have any reason whatsoever to doubt that all  
2 applications within Microsoft which had been implementing  
3 the namespace extension APIs were required to stop as of  
4 October '94?

5 A Do I have any -- please repeat the question.

6 Q Do you have any information to the contrary of what is  
7 stated here, that Microsoft applications were not permitted  
8 to use the namespace extension APIs?

9 A That's not exactly what it says. It says that they had  
10 to stop development. It doesn't mean they couldn't continue  
11 to use what they had already done.

12 Q It doesn't say stop development.

13 A It says stop.

14 Q Stop. So I understand your interpretation, but let me  
15 ask my question.

16 A Okay.

17 Q Do you have any reason, sitting here today, to doubt  
18 that as of October 1994, Microsoft's applications were  
19 required to stop using the namespace extension APIs?

20 THE COURT: I think it's implementing. Doesn't it  
21 say implementing?

22 MR. TULCHIN: It just says stop, Your Honor.

23 THE COURT: Go ahead.

24 THE WITNESS: Could you repeat your question?

25 Sorry to ask you again.

1 BY MR. TULCHIN:

2 Q I think you said on cross-examination earlier that you  
3 don't know whether or not Word or Excel or Office actually  
4 as released used the namespace extension APIs?

5 A I do not know that, that's true.

6 Q Do you have any reason to doubt that as of October, all  
7 the Microsoft applications were required to stop using those  
8 APIs?

9 A This says stop development. It doesn't say stop using.

10 Q The word development is not there, Mr. Frankenberg. I  
11 don't want to argue with you.

12 A It says stop.

13 Q Stop. I just want you to answer my question. Do you  
14 have any reason to doubt that they stopped?

15 A I do not have any reason to believe that they didn't  
16 stop development with those APIs.

17 Q Could you look at Exhibit 215? Mr. Johnson showed you  
18 this on redirect. And on the first page at the top --

19 A I'm sorry. Which one? This doesn't have labels on all  
20 of them.

21 Q I'm sorry. It's Plaintiff's Exhibit 215. It's on the  
22 screen in front of you, but if you want me to help you find  
23 the hard copy, I will.

24 A I'll find it.

25 Yeah, here it is.

1 Q Thank you, sir.

2 You will see that at the top there is an e-mail from  
3 Brad Struss, September 22, '94. And that e-mail is more  
4 recent in time than the e-mail from Mr. Henson that  
5 Mr. Johnson showed you in this document. Would you agree  
6 with that?

7 A What was the date of Mr. Henson's --

8 Q It actually doesn't say, Mr. Frankenberg, but an e-mail  
9 chain normally has the most recent one on top followed by  
10 the less recent, true?

11 A That's true. They could have been pretty close to each  
12 other. There's no way of telling from this.

13 Q Well, let me suggest there is a way of telling. If you  
14 look at the first three paragraphs of Mr. Struss's e-mail,  
15 he says, below is a summary, Scott HE -- that's Scott  
16 Henson -- pulled together from a couple of weeks ago of what  
17 ISVs current thoughts are. And Mr. Johnson showed you  
18 Scott's summary of a couple weeks earlier.

19 I want to show you what Mr. Struss said about  
20 WordPerfect as of September 22nd. Just go down one  
21 paragraph. It says WordPerfect. They have not begun any  
22 work on IShellFolder, IShellView, et cetera. I know that on  
23 cross you told me that you didn't know what the namespace  
24 extensions were, but let me just represent to you that  
25 IShellFolder and IShellView are two of them. Okay?

1 A Okay.

2 Q Right?

3 A How many others were there?

4 Q Two.

5 A Okay.

6 Q Some would say three, but we won't debate that now.

7 A All right.

8 Q What Mr. Struss's e-mail says of September 22nd, 1994,  
9 is that WordPerfect hasn't begun any work on these APIs. Do  
10 you see that, sir?

11 A On those two, that's what it says.

12 Q Correct, et cetera.

13 Now do you doubt that Mr. Creighton of Novell told  
14 Mr. Struss around September 22nd of 1994 that Novell had  
15 not -- Novell/WordPerfect had not begun any work yet on  
16 these APIs?

17 A I have no way of answering your question, sir.

18 Q Well, you answered Mr. Johnson's question about the  
19 same document and Mr. Henson's e-mail later on which  
20 reported on what he understood WordPerfect was doing. You  
21 didn't have any problem answering those. So I just would  
22 ask you again, do you have any reason to doubt that  
23 Mr. Creighton told Mr. Struss, around September 22nd, that  
24 WordPerfect hadn't begun any work yet on the namespace  
25 extension APIs?

1 A Sir, I have no way of knowing.

2 MR. JOHNSON: Objection, asked and answered.

3 THE COURT: Overruled.

4 THE WITNESS: What Mr. Creighton said to  
5 Mr. Struss or whether Mr. Struss got this information from  
6 Mr. Creighton, I have no way of knowing.

7 BY MR. TULCHIN:

8 Q Mr. Frankenberg, early on in the redirect I think you  
9 said that Novell didn't want to give information to  
10 Microsoft, and we were looking at this document later in  
11 where Mr. Henson says it's going to be hard to get  
12 information from WordPerfect. Do you remember that?

13 A Yes.

14 THE COURT: You mean later in or earlier?

15 MR. TULCHIN: I'm sorry, Your Honor?

16 THE COURT: Later in or earlier?

17 MR. TULCHIN: Later in.

18 THE WITNESS: That's a good point, Your Honor.

19 Earlier in time, later in --

20 BY MR. TULCHIN:

21 Q I think what you said then is that Novell/WordPerfect  
22 didn't want to give information to Microsoft because  
23 Microsoft was a competitor, correct?

24 A There was -- we were circumspect about that, yes.

25 Q Is it your view that Microsoft was required to give

1 information to Novell, its competitor, to help Novell build  
2 a better product to compete against Microsoft?

3 MR. JOHNSON: Objection.

4 THE COURT: Sustained.

5 MR. JOHNSON: Thank you, Your Honor.

6 THE COURT: You don't have to thank me. That's my  
7 job.

8 BY MR. TULCHIN:

9 Q Now you were shown some reviews -- product reviews in  
10 magazines, correct?

11 A Yes.

12 Q Am I right that in 1994 and '05, and throughout that  
13 time period, there were many, many magazines that covered  
14 the PC industry?

15 A Yes, there were.

16 Q Would you say there were dozens of magazines that  
17 reviewed software like word processing and spreadsheet  
18 software?

19 A Could easily have been that many. I don't know the  
20 exact number. There were a handful that were significant  
21 and followed closely.

22 Q There were many, many of these magazines that did  
23 reviews on a frequent basis?

24 A Yes, there were.

25 Q Right?



1 A Yes.

2 Q Sometimes a WordPerfect product might come out ahead in  
3 one review and sometimes a Microsoft product would come out  
4 in another -- come out ahead in another, true?

5 A I'm sure that's possible, yes.

6 Q Isn't it true, Mr. Frankenberg, that over the period of  
7 around '93, '04, '05, Microsoft products won more of these  
8 product reviews in magazines and other trade press  
9 publications than Novell's did?

10 MR. JOHNSON: Objection, Your Honor. How is this  
11 witness to answer that question?

12 THE COURT: He's going to say he doesn't know.

13 THE WITNESS: I'm going to say I have no way of  
14 knowing.

15 MR. TULCHIN: Thank you.

16 I have nothing else, Your Honor.

17 MR. JOHNSON: Your Honor, I have one question.

18 THE COURT: Yes, and I think I know what it is.  
19 Go ahead.

20 MR. JOHNSON: I hate to be so predictable.

21 THE COURT: I could be wrong.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. JOHNSON:

24 Q Mr. Frankenberg, Mr. Tulchin went into a great bit  
25 about going month by month and there being no writings. I

1 just want to make sure we have your testimony from before  
2 that, in fact, you wrote to Mr. Gates about the problem of  
3 undocumented calls and interfaces in 1995, and those letters  
4 were in writing?

5 A Yes, they were.

6 MR. JOHNSON: Thank you.

7 THE COURT: Next witness.

8 Thank you, Mr. Frankenberg.

9 THE WITNESS: Thank you.

10 MR. JOHNSON: Your Honor, we're going to show some  
11 videotaped transcript. Maybe a five-minute -- a short  
12 break?

13 THE COURT: Do you want five minutes just to  
14 stretch your legs and set up the equipment. I'm ready any  
15 time.

16 (In chambers conference)

17 MR. SCHMIDTLEIN: There was an issue that just got  
18 brought to us this morning. The reason why we're in here,  
19 we think the reporters are out there. There may be -- this  
20 is today's Deseret News. I'm told is a very --

21 THE COURT: Deseret, that's how it's pronounced?

22 MR. JARDINE: Deseret News.

23 MR. SCHMIDTLEIN: We understand is a very widely  
24 read newspaper, and one that a good deal of the jury --  
25 frankly, the front page of it, the front page of the paper

1 does have an article about yesterdays' proceedings, and  
2 included is some reporting and characterizations of comments  
3 you made yesterday. And I am not going to go into whether  
4 the reporters got it right or wrong, the fact of the matter  
5 is they are there, and as we get to sort of some of the more  
6 high profile witnesses, Mr. Frankenberg, we just wanted to  
7 sort --

8 THE COURT: Ask the jury, or just tell them I  
9 think probably.

10 MR. SCHMIDTLEIN: I don't think -- I'm not asking  
11 that we poll the jury right now as to whether anybody read  
12 it. I think it's probably -- and, you know, we do  
13 appreciate --

14 THE COURT: It's a good caution. I appreciate  
15 that.

16 MR. SCHMIDTLEIN: We find it useful to get your  
17 views.

18 THE COURT: I appreciate that. I appreciate that.  
19 I still was flabbergasted.

20 MR. JOHNSON: Your Honor, if you could hold your  
21 comments and perhaps bring us into chambers if you feel you  
22 need to talk to us.

23 THE COURT: That's fair.

24 MR. JOHNSON: This is very damaging if a juror,  
25 you know, reads this and finds out that the judge in the

1 case thinks one of --

2 THE COURT: It's a fair comment.

3 MR. JOHNSON: -- our top witnesses -- you are  
4 flabbergasted what he has to say, that's incredibly  
5 prejudicial.

6 THE COURT: It's a fair comment. I will --

7 MR. TULCHIN: They were instructed not to read --

8 THE COURT: I understand. If you want me to  
9 ask -- I won't ask.

10 MR. JOHNSON: We would only ask -- we understand  
11 Your Honor likes to comment to us and let us know what you  
12 think, we appreciate that, but --

13 THE COURT: I appreciate that, but I'm trying to  
14 be fair to you, and there are two big problems in your case  
15 and they are going to come to the floor next week.

16 MR. JOHNSON: I understand that. You made that  
17 clear. I just only ask --

18 THE COURT: No. I've told you as much as I'm  
19 going to tell you. My biggest concern is to let you know  
20 there are gaps, or if there's something I'm missing, let me  
21 know. That's a fair comment.

22 (In chambers conference concluded.)

23 (Jury present)

24 THE COURT: How long is the video?

25 MR. JOHNSON: I've got a selection of choices to

1 make. I am trying to find one that will be short.

2 THE COURT: When it's convenient for you, we'll  
3 break around quarter of.

4 MR. JOHNSON: That's going to be a 15 minuter.  
5 Could you do Steve Sinofsky now or not?

6 I originally planned to play a bit longer one,  
7 Your Honor.

8 THE COURT: How long?

9 MR. JOHNSON: The longer one is 36 minutes. The  
10 one I'm thinking of now is only 12, which would probably be  
11 perfect.

12 THE COURT: Play the 36-minute one and we'll  
13 break.

14 MR. JOHNSON: You want to do the 36-minute one?

15 THE COURT: And we'll break at some time. There  
16 is nothing magic. It seems to work. You come back at  
17 12:00, then we have an hour and a half.

18 MR. JOHNSON: So, Your Honor, we're now going to  
19 play the videotaped portions of the videotaped deposition of  
20 Microsoft executive James Allchin. This was taken  
21 January 8th of 2009. And, as I mentioned, it's about 36  
22 minutes long.

23 (Videotaped deposition of James Allchin was  
24 played.)

25 Q Good morning, Mr. Allchin. Thank you for your time

1 today.

2 Where are you currently employed?

3 A I'm not.

4 Q How long ago did you leave your employment with  
5 Microsoft?

6 A At the -- I don't remember the exact date. The  
7 beginning of 2007.

8 Q Okay. And did you take employment at that time --  
9 other employment outside of Microsoft?

10 A No.

11 Q Okay. Now from your prior testimony, I understand that  
12 you were hired in 1990 by Microsoft; is that correct?

13 A Yes.

14 Q Okay. And I believe you described in one of the  
15 depositions that you were hired to set Microsoft's  
16 networking strategy; is that correct?

17 A Yes.

18 Q In that context, what does networking mean?

19 A Having the ability, for multiple machines, to  
20 communicate with each other, and then the -- at a physical  
21 level -- and then the software above that to create a more  
22 unified homogenous view of the resources that are available  
23 of multiple PCs or multiple other machines. You want it to  
24 appear like all those resources are combined together at  
25 your disposal.

1 Q And those resources that you wish to appear to be  
2 combined together could be on different machines, different  
3 places, including the Internet or various disks on your home  
4 machine, if you will; is that correct?

5 A Right. Certainly in 1990, you know, the vision was a  
6 little bit different because some -- the Internet, although  
7 it was there, most of the world hadn't realized it yet. But  
8 the concept was something that I believed in from the  
9 beginning, along with some others.

10 Q Now when you say from the beginning --

11 A From the beginning of 1990.

12 Q Okay.

13 A But I actually believed that before with my work at  
14 Banyan Systems.

15 Q Okay. When did you first come to believe that? By  
16 that I mean the importance of the visual -- the  
17 visualization of various resources, as you've described it.

18 A Probably in the very early '80s before -- either while  
19 working on my master's or working on my Ph.D. In that time  
20 frame.

21 Q Where did you get your master's?

22 A At Stanford.

23 Q Your Ph.D.?

24 A George Institute of Technology.

25 Q Is that Georgia Tech?

1 A Yes.

2 Q Shortly after you began your employment at Microsoft,  
3 you began working on the NT code base; is that correct?

4 A Yes.

5 Q Can you describe for me what the NT code base was at  
6 that time? I'm talking now 1991, say.

7 A There were a number of limitations in the design of  
8 Windows 3.1, along with its predecessor of DOS, that were  
9 not modern operating systems. It wasn't designed as a  
10 modern operating system. It didn't have multitasking. It  
11 had no security to speak of. It didn't support  
12 multi-processors. Networking was quite limited, et cetera.

13 NT was a start over while still trying to maintain the  
14 user interface of Windows. So the idea was you replumb the  
15 bottom of the operating system and maintain the application  
16 interfaces so that the applications that have run before  
17 could still run, but get the access of more powerful  
18 multi-processing machines.

19 It was also a portable operating system, so it was a  
20 way to move it onto, at that time, what we thought were  
21 going to be alternatives to the Intel architecture, which  
22 included MIPS, Alpha from digital. I can't remember what  
23 else we moved it to, but it seemed like there were some  
24 others as well.

25 So it was -- hadn't shipped at that time. Dave Cutler



1 and a set of other people were working on it, and I would  
2 say that it was maybe being worked on a couple of years at  
3 that point.

4 Q Did you, in the mid 1990s, view Novell as a competitor  
5 to Windows NT?

6 A Yes.

7 Q And why was that?

8 A Because of NetWare.

9 Q As part of your vision of unifying the views of places  
10 and information, did you seek to have Microsoft's future  
11 developments bring together the local operating system and  
12 the network?

13 A Yes.

14 Q And would that include work for the benefit of  
15 independent software vendors applications?

16 A Yes.

17 Q The provision of APIs to independent software vendors?

18 A Yes.

19 Q What benefit did you intend to provide to independent  
20 software vendors by developing toward APIs that unified  
21 views across the local computer in the network?

22 A To make it easier for them.

23 Q To make it easier for the ISVs?

24 A Uh-huh. (Affirmative) Honestly, they could do it with  
25 or without the operating system, but to make it easier for

1 them.

2 Q Okay. In fact, I think you've testified somewhere that  
3 something like the best line of code is the line that isn't  
4 written. Do you recall that?

5 A No, but I think I've said it before.

6 Q Okay. And I believe you said in the context of Windows  
7 providing APIs such that the ISVs don't have to write the  
8 code themselves; is that correct?

9 A That's right.

10 Q What is the benefit of providing that API first to the  
11 ISV?

12 A First to the ISV? I'm sorry. I'm not following you  
13 here.

14 Q What benefits -- at the risk of asking the obvious,  
15 what benefits does providing that API -- and let's even stay  
16 on the model of an API that unifies views to an ISV as  
17 compared to having the ISV do it themselves?

18 A Less code for them.

19 Q Does it also lead to consistency in the look and feel  
20 of the various applications on the Windows platforms?

21 A It could. It could.

22 Q Would that be a benefit to Microsoft?

23 A Benefit to customers, yeah, and therefore Microsoft.

24 Q Okay. It was a benefit to customers to have that  
25 common look and feel among applications that are using a

1 common set of APIs; is that correct?

2 A Okay. The look and feel is different than the APIs.  
3 The APIs make it simpler. If the APIs have nothing to do  
4 with user interface, then it's up to the APPs to do  
5 something about it. If the APIs are common dialogs or  
6 things like that that actually embody the use of the  
7 transparency across the net into a user interface -- the  
8 applications used -- then that will get the consistency in  
9 terms of the interface. So some APIs have nothing to do  
10 with the user interface.

11 Q Okay. Fair enough. Were you recommending at this time  
12 that Microsoft begin to develop and provide APIs to unified  
13 views, as we've been discussing unified views?

14 A What time?

15 Q Let's start with the time of this document, 1990.

16 A Do you want me to read it, because I haven't a clue.  
17 18 years ago.

18 Q Whether -- I'm not trying --

19 A I don't know what I was recommending.

20 Q I'm not trying to trap you with regard to what that  
21 document says. I'm just --

22 A I've believed in unifying views for a very long time.  
23 That I said earlier. Unifying the view between what's local  
24 and what's remote or, if you can't, making it very clear  
25 what's local, what's remote.

1 I have said that. It's probably in my Ph.D. thesis. I  
2 don't know.

3 Q As part of that belief in unifying views, did you, in  
4 your work at Microsoft -- let's say throughout the early to  
5 mid 1990s -- seek to provide APIs that would allow ISVs to  
6 unify the views?

7 A When you say views, are you talking about user  
8 interface, or are you talking about technically so that, you  
9 know, a remote disk looks like a local disk?

10 Q Exactly that -- the remote looking like the local.

11 A I think that we have tried to do that.

12 Q Mr. Allchin, if you could turn to page 6 of Exhibit 1,  
13 I will have a couple of questions, and then we'll get off  
14 this document.

15 Under heading 2.4, in the second sentence you write,  
16 applications drive the world. Do you see that?

17 A Yes.

18 Q Do you believe that to have been a true statement when  
19 you wrote it?

20 A I assume so. I wrote it.

21 Q Do you still believe it to be a true statement?

22 A Yeah.

23 Q Was there any time at which you can think when it was  
24 not a true statement?

25 A Well, the word applications has changed over time.

1 Solving people's problems drive the world, not technology.  
2 And if you put that in place of applications, I believe it  
3 will -- it has been true and will always be true.

4 Q Okay. What did the word applications mean to you at  
5 this time, 1991?

6 A I assume solving people's problems, you know, whether  
7 it be writing a piece of e-mail or writing a document for a  
8 legal brief, or whatever.

9 Q Word processors and spreadsheets would be products that  
10 solve people's problem in the sense that you use the term?

11 A They are tools, yes.

12 Q They would be applications, as you used the term here?

13 A Yes.

14 Q That would have been the case throughout the 1990s  
15 certainly?

16 A Yes.

17 Q Okay. Now when you say drive the world -- and take a  
18 moment to look at the rest of that paragraph or anything  
19 else in the document that you wish -- are you referring to  
20 the world of the operating system business?

21 A I'm sure.

22 Q Are you essentially arguing here that an operating  
23 system's success or platform success, if you will, depends  
24 upon the quality and availability of applications that run  
25 on it?

1 A That's always been true.

2 Q Was it, therefore, important for Microsoft itself to  
3 develop and sell good applications to run on its platforms?

4 A If we're going to develop applications, they should be  
5 good, and they should run on our platform, yes. They also  
6 help drive what the platform needs.

7 Q Was Windows subject to competition at the time you  
8 wrote this memo?

9 A Oh, yes.

10 Q Okay. From what other platforms?

11 A I think there were probably many at the time, but  
12 certainly OS/2 would have been viewed as a competitor.  
13 There would have been products from Sun. There would have  
14 been historic products from Microsoft and others like DOS.  
15 Name your Unix variety. There were -- there were a lot of  
16 different systems. What was the -- I think there was a  
17 layer that Lotus created at the time. I can't remember what  
18 that was. There were many.

19 Q Okay. Did these other competing platforms need the  
20 availability of applications that ran on those platforms to  
21 compete with Windows?

22 A Yes. Maybe not the same applications, but people  
23 wanted to write documents, people wanted to write  
24 spreadsheets, so they probably wanted those type of  
25 applications.

1           There were some operating systems competing with  
2 Windows -- and I'm talking about Windows in the most generic  
3 sense -- including NT and what was being envisioned, where  
4 those companies probably didn't even see Windows as  
5 competitive with them, but if you -- but it was longer term.

6 Q     Do you recall having any view as to whether WordPerfect  
7 was a good asset for Novell?

8 A     Nope.

9 Q     Do you have any view of that now?

10 A    Looking back in hindsight?

11 Q    Yes.

12 A    Well, it looks like they really messed it up, you know.  
13 I really don't know what I thought at the time, but, you  
14 know, its value isn't as much as it was.

15 Q    Do you recall giving any thought at the time -- I'm  
16 talking about the time of Novell's ownership of  
17 WordPerfect -- as to whether they could pose a competitive  
18 threat to any of Microsoft's platforms by making WordPerfect  
19 a network application?

20 A    I don't.

21 Q    Mr. Allchin, Exhibit 3 is what appears to be a  
22 memorandum authored by yourself, dated July 22, 1993; is  
23 that correct?

24 A    Yes.

25 Q    Do you recall writing this document?

1 A No.

2 Q Any reason to doubt that you did?

3 A No.

4 Q Okay. You have is a heading here at number two, what  
5 is a paradigm shift. Do you recall giving thought to the  
6 question of paradigm shifts at this point in your career at  
7 Microsoft?

8 A No.

9 Q Can you tell me what a paradigm shift is?

10 A Just conceptually?

11 Q Yes.

12 A A rapid change to a new model that, in many cases,  
13 could obsolete the way people are doing something or  
14 thinking about something today.

15 Q That would include the way people -- strike that.  
16 There are paradigm shifts in the computer industry, correct?

17 A Yes. My comments were related to that.

18 Q Now does a paradigm shift lead to new competitive  
19 opportunities for market entrance? I'm talking about  
20 applications.

21 A Yes.

22 Q As the paradigm shifts, is there an opportunity for a  
23 new word processing product to upset the former market  
24 leader?

25 A Yes.



1 Q Say same with respect to spreadsheets?

2 A Yes.

3 Q Let's just jump ahead a couple years in time. Do you  
4 consider Windows 95 to have been a paradigm shift?

5 A No.

6 Q And why is that?

7 A Tremendous success in the marketplace doesn't  
8 necessarily mean a paradigm shift to me.

9 Q Okay. What --

10 A And people had already seen the graphical user  
11 interface. This sort of just made it work.

12 Q Okay. Now what did you mean by tremendous success in  
13 the marketplace with respect to Windows 95?

14 A I think we all know Windows 95 was quite a success in  
15 the marketplace, so there isn't much more to say.

16 Q Irrespective of whether Windows 95 was a paradigm  
17 shift, did you perceive that it presented new competitive  
18 opportunities for applications developers?

19 A Yes.

20 Q New opportunities for a second or third position  
21 company to rise to the top and win a new market?

22 A Is it an opportunity? Yeah.

23 Q I'm talking specifically about competition in the  
24 business applications markets, word processing and  
25 spreadsheets.

1 A In order to rise, a lot of things have to be done just  
2 right. But, yes, all change is an opportunity. Change  
3 represents opportunity.

4 Every new operating system with a new set of APIs, the  
5 more change, the more opportunity if the APPs change with it  
6 if the operating system is successful.

7 Q And Windows 95, as you said, was successful?

8 A Yes, it was.

9 Q And Windows 95 did represent a change over Windows 3;  
10 is that correct?

11 A Yes.

12 Q In conjunction with the release of Windows 95, there  
13 was an opportunity in the markets for word processing and  
14 spreadsheets; is that correct?

15 A There were opportunities, yes.

16 Q Specifically, I mean, there were opportunities to  
17 improve market share; is that correct?

18 A Yes.

19 Q There was also -- the flip side of opportunity, I  
20 imagine, is peril for whoever's formerly number one; is that  
21 correct?

22 A Yes.

23 Q In either case, whether you're formerly number one or  
24 formerly number five, you're going to rise or fall in the  
25 new operating system according to how well you take

1 advantage of the new APIs in that system; is that correct?

2 A That's one aspect -- certainly just one aspect. The  
3 question is are you providing the functions that customers  
4 want, how easy to use, et cetera, et cetera.

5 Q Is it a necessary aspect to take advantage of those new  
6 APIs in a new platform such as Win95?

7 A Not necessarily.

8 Q What else could you do without taking advantage of the  
9 new APIs?

10 A You could decide not to take advantage of it and say I  
11 don't -- I don't need those, I don't want those, and still  
12 make a very nice application. You could -- for example, you  
13 could still use object linking and embedding and still not  
14 use any common dialogs with inside Microsoft. In fact, I  
15 think Microsoft did that. I don't think, until recently,  
16 they ever used the file open dialog. I could be wrong about  
17 that, but I don't think they used it until just recently.

18 Q What about -- the fourth bullet point you use the term  
19 shell extensibility. Can you tell me, what is that?

20 A For right or wrong, the basic layer of the operating  
21 system is referred to as a shell, and the APPs were allowed  
22 to make additions to that user interface to be able to add  
23 items to the context menus or to be able to add hooks  
24 through the system. It made Windows very popular. It was  
25 bad in a bunch of computer science ways, but it made it very

1 popular.

2 Q Okay. You said that shell extensibility was bad in  
3 computer science ways.

4 A The way it was implemented here because in the early  
5 days -- unfortunately even recently -- if an application had  
6 an error in it, it could take down or corrupt the user  
7 experience overall. In other words, the application could  
8 impact more than just it. So that's bad. You want -- you  
9 want this nice little boundary around the operating system  
10 that applications can't penetrate. So you write a bad  
11 application, then you wipe out a little part of the system.  
12 That's not good.

13 Q That would be a lack of security, as you defined  
14 security for us earlier?

15 A Or resiliency, yeah.

16 THE COURT: Stop. Okay. We'll take a short break  
17 and be back in 20 minutes.

18 (Recess)

19

20

21

22

23

24

25