

1 THE COURT: Why don't we plan to take a break
2 around quarter of 11:00. Does that make sense to everybody?
3 If you need time before then, let me know.

4 THE WITNESS: Thank you very much.

5 THE COURT: Does that work for you? Does that work
6 for the court reporters?

7 THE COURT REPORTER: Yes.

8 (Whereupon, the jury returned to the
9 court proceedings.)

10 THE COURT: Mr. Holley?

11 MR. HOLLEY: Thank you, Your Honor.

12 Q. BY MR. HOLLEY: Mr. Alepin, in addition to
13 maintaining source code for product in source code control
14 systems, in your experience sophisticated developers also
15 maintain written specifications for their products which are
16 the roadmap for developing them; is that right?

17 A. Yes. That is typically the case that there are
18 what we call artifacts, development artifacts, that are --
19 that include specifications, functional requirements, detail
20 design documents, tests documents, those kinds of things that
21 are used to memorialize, communicate and share the
22 development, the development project among the development
23 team as well as with -- to communicate with other groups
24 outside the development team.

25 Q. You have never seen, sir, any such development

1 artifacts for a PerfectFit file open dialog written between
2 June of 1994 and October of 1994 that call the NameSpace
3 extension APIs and the M6 beta of Windows 95, have you, sir?

4 A. There's a lot of stuff in there. There are
5 development artifacts which reference the NameSpace APIs. I
6 think, however, your question goes beyond that. So can you
7 give me a little more information?

8 Q. Sure. I read you Mr. Richardson's testimony about
9 the PerfectFit file open dialog that he said Mr. Giles created
10 between June of 1994 and October of 1994. And my question to
11 you, sir, is whether you've ever seen any written
12 specifications, detailed design documents or any other
13 artifacts as you refer to them relating to that piece of
14 software code?

15 A. Excuse me. I have seen development documents which
16 track the correspondence between the home window of
17 WordPerfect and the WordPerfect file open dialog for
18 Windows 95. One of those documents which I can recall listed
19 all of the things you could do with the file open dialog,
20 essentially the home page in the earlier version of
21 WordPerfect, delete, copy, all those kinds of functions, and
22 whether -- and how they would be implemented in the
23 WordPerfect file open dialog for the Windows 95 version of the
24 software. So I've seen that correspondence.

25 Q. That document is dated March 31, 1995; correct,

1 sir?

2 A. I would take your statement that that's the date of
3 that version of it. I don't know whether there's an earlier
4 version or not. It's hard sitting here today to remember the
5 precise dates of all of those documents.

6 THE COURT: By the way, probably the way to ask
7 that question is during a break pull it out and say, is that
8 the document that you're referring to?

9 MR. HOLLEY: Fair enough, Your Honor. I know
10 exactly what he's talking about.

11 THE WITNESS: That's one of them.

12 Q. BY MR. HOLLEY: Okay. That's one of them. But can
13 you answer the question that I asked, sir, which is, do you
14 recall seeing any specifications or detailed design documents
15 about a PerfectFit file open browser that was written between
16 June of '94 and October of '94?

17 A. Well, these documents go through multiple
18 iterations. So a document that -- I don't know that this is
19 the case with this particular document, but the one you say
20 was written in March, it may have been originally written
21 in -- and during the time period and then revised one, two,
22 three, four times during the development process. Typically
23 these development artifacts are in categories like the
24 detailed conceptual specifications, the detailed design
25 specifications, and then they are Version 1 and then

1 Version 1.1. So the same document is updated with
2 additional -- I don't know if that's the case here. I can't
3 think of a document that I saw that had a date of -- between
4 that period. I can't say that I was looking specifically
5 during that period. But....

6 Q. All right.

7 A. That's what I can recall.

8 Q. Fair enough. And we may look at that document at a
9 later time this morning.

10 Am I correct that what the NameSpace extension APIs
11 allowed third-party software developers to do was add custom
12 containers or folders to the treeview of the Windows Explorer
13 which would then also appear in the Windows common file open
14 dialog?

15 A. At least, yes.

16 Q. Okay. Now, I'd like to show you demonstrative
17 Exhibit 47A.

18 MR. SCHMIDTLEIN: Your Honor, can I be heard about
19 this?

20 THE COURT: Sure.

21 (Whereupon, the following proceedings were held
22 at the bench:)

23 MR. SCHMIDTLEIN: I think we're about to launch
24 into another cross-examination subject which is beyond the
25 scope of his direct testimony. He talked about technical

1 justifications. He didn't talk about how Novell or
2 WordPerfect were incorporating these, how they are going to
3 launch these. He's doing a recross of Mr. Richardson who did
4 provide the explanation for Mr. Harral. He's just doing
5 another version of the same cross-examination of the Novell
6 fact witnesses. This gentleman has not provided direct
7 testimony about this subject. He is only dealing with, you
8 know, essentially the technical justifications in the
9 (inaudible).

10 MR. HOLLEY: Your Honor, the whole -- now that we
11 don't talk about printing or logo licensing anymore, this
12 entire case has come down to whether these NameSpace extension
13 APIs were or were not important to Novell. He testified to
14 the jury that there was no plausible justification for
15 removing them. I think I'm entitled to explore whether there
16 was any need for them because that's sort of implicit in his
17 testimony. He is telling the jury that it was a big problem
18 for Novell that support for these APIs was withdrawn. My
19 point is they didn't need them to begin with.

20 MR. SCHMIDTLEIN: He hasn't offered any opinions
21 one way or another.

22 THE COURT: I know. I think you were right before.
23 I think Mr. Holley is right this time. So the objection is
24 overruled. I think this is within the scope for the reasons
25 Mr. Holley said.

1 MR. HOLLEY: Thank you, Your Honor.

2 (Whereupon, the following proceedings were
3 held in open court:)

4 MR. HOLLEY: The fuzz buster is off.

5 Q. BY MR. HOLLEY: Mr. Alepin, it's correct, is it
6 not, sir, and I ask you this with reference to demonstrative
7 Exhibit 47A, that Novell did not need the NameSpace extension
8 APIs to put icons for WordPerfect and Quattro Pro and the
9 presentation graphics software product called Corel
10 Presentations on the Windows desktop so that when users
11 clicked on those icons the applications would launch?

12 A. They did not need the NameSpace extensions to place
13 those icons on the desktop in Windows 95 or Windows 3.1 for
14 that matter.

15 Q. Okay. I'd like you to look at demonstrative
16 Exhibit 47.

17 A. Thank you.

18 Q. And it's also true, is it not, sir, that Novell did
19 not need the NameSpace extension APIs to include WordPerfect,
20 Quattro Pro and the presentation graphics software product in
21 the start menu of Windows 95 so that if a user pressed start
22 and then went to programs, they would see those programs,
23 could select them from the menu and the applications would
24 launch?

25 A. That is correct. They could as part of the

1 installation process or programatically add elements to the
2 start folder.

3 Q. I'd like to show you what's demonstrative
4 Exhibit 93.

5 A. Thank you.

6 Q. I'll represent to you, sir, that this is the
7 PerfectFit file open dialog in the product that was ultimately
8 released by Corel in the spring of 1996. And my question to
9 you, sir, is, Novell did not need the NameSpace extension APIs
10 in Windows 95 in order to add a folder to the file system
11 called MyFiles that was problematically selected as the
12 default location for storing documents created using Novell
13 applications; correct?

14 A. That is also correct.

15 Q. And I'd like to show you demonstrative Exhibit 94.

16 A. Thank you.

17 Q. Now, looking at this screen shot of Windows 95, the
18 desktop user interface of Windows 95 --

19 A. Yes.

20 Q. -- you'll see a document icon called test1 with the
21 WordPerfect associated icon and a Quattro Pro spreadsheet file
22 with the Quattro Pro icon associated with it called test2. Do
23 you see those, sir?

24 A. I do.

25 Q. And it was possible for Novell without using the

1 NameSpace extension APIs to associate WordPerfect and
2 Quattro Pro with file types such that if a user put one of
3 those files anywhere on the Windows desktop and clicked on it,
4 the associated application would launch and the document would
5 open; correct?

6 A. That's correct. The file association to program
7 was something that was available to independent software
8 vendors for Windows 95.

9 Q. And it didn't use the NameSpace extension APIs;
10 correct, sir?

11 A. That is true.

12 Q. Now, there was a file open dialog called
13 PerfectFit 2.3 that was created by Novell for use in
14 PerfectOffice 3.0 for Windows 3.1; correct?

15 A. I think so. There was a lot of 3.0, 2.3 things
16 there. I think that's correct.

17 Q. And it would have been easy for Novell to take that
18 file open dialog that it had already written for a product
19 that was released in December of 1994 and put it in the
20 version of PerfectOffice for Windows 95, just as a technical
21 matter.

22 A. I want to make sure I understand your question.
23 Was it -- you're asking if it was technically possible to take
24 the --

25 THE COURT: I think he said technically easy. I

1 don't -- did you say easy or possible?

2 MR. HOLLEY: I'm happy to accept the amendment,
3 Your Honor.

4 Q. BY MR. HOLLEY: Was it technically possible for
5 Novell to take the PerfectFit file open dialog that it had
6 written for PerfectOffice 3.0 and move that into the
7 Windows 95 version of PerfectOffice?

8 A. It's -- it's difficult to say.

9 THE COURT: Excuse me. Do you mean, again, without
10 the NameSpace extension being used?

11 MR. HOLLEY: Yes, Your Honor. Because --

12 THE COURT: Fine. Fine. Fine. Fine.

13 MR. HOLLEY: Yes.

14 THE WITNESS: I think it's difficult to say. The
15 programmers who developed for Windows 3.1 may have made use of
16 functionality that was not available or did not work correctly
17 in Windows 95 in order to achieve the functionality that they
18 provided to users in their file open dialog. Without looking
19 at it, I can say it's a small matter of programming. But
20 it's -- I don't know whether the conversion would have been
21 effortless or whether it would have been complicated or
22 whether functions would have been lost between the two.

23 Q. BY MR. HOLLEY: Okay. If I represent to you, and
24 I'm happy to show you the transcript if needed to see it, if I
25 represent to you that Mr. Frankenberg, who was the CEO of

1 Novell at the time, testified in this courtroom a couple days
2 ago that PerfectOffice 3.0, all of it, was made to run on
3 Windows 95, would that help you answer the question I asked
4 you?

5 A. Well, I understood that the question was whether I
6 would recompile the program. Windows 95 was made to run
7 Windows 3.1 programs. But I understood your question to be,
8 could the programmers who were developing, who had developed
9 Windows 3.1 version of PerfectFit 2.3, could they have taken
10 the code and rewritten it to run on Windows 95? And would
11 that project have been one that would have been easy or not or
12 I just -- I don't know. I know that they -- the program
13 PerfectOffice 3.0 ran on Windows 95 like other Windows 3.1
14 programs ran on Windows 95.

15 Q. And the PerfectFit file open dialog was part of
16 PerfectOffice 3.0 that ran on Windows 95; correct, sir?

17 A. Indeed, yes.

18 Q. Now, have you had occasion to look at the version
19 of PerfectOffice that was released by Corel in the spring of
20 1996 to see whether it adds any custom containers to the
21 treeview of Windows Explorer?

22 A. I recall having done that, but I can't remember now
23 what the results were.

24 Q. You're not in a position to disagree with me, sir,
25 are you, that the version of PerfectOffice that Corel released

1 in the spring of 1996 does not add any custom containers to
2 the treeview of Windows Explorer or to the Windows common file
3 open dialog; isn't that right?

4 A. I believe that there -- I saw correspondence to
5 that effect, but I was not sure whether that was implemented.
6 Sitting here I know I explored it some number of years ago,
7 but...

8 Q. Well, let's look at the demonstrative Exhibit 93
9 again. Do you still have that in front of you, sir?

10 A. 93?

11 Q. Yeah.

12 A. Yes.

13 Q. Which is the PerfectFit file open dialog for the
14 product that Corel released. And you don't see in the
15 treeview of this file open dialog any custom containers, do
16 you, sir?

17 A. No. No, I don't.

18 Q. Now, it's also true, is it not, sir, that Lotus
19 SmartSuite, the IBM suite of productivity for applications of
20 Windows 95, did not add any custom containers to the treeview
21 of Windows Explorer?

22 A. You're referring to the SmartSuite, the version
23 that was released in 1996?

24 Q. Yes. The version -- the version that IBM released
25 for Windows 95.

1 A. Which was released, I believe, in early '96. Well,
2 one of the programs in the suite was -- and that changed from
3 the version that ran on Windows 3.1. And then the other two
4 of the other -- well, two of the other main ones had been
5 updated to use Windows 95 controls. But I don't know, I don't
6 recall whether they added any custom containers to the file
7 open dialog. Certainly one of them because it was a 3.1
8 version would not have mattered to anything.

9 Q. It couldn't have because there were no NameSpace
10 extension APIs in Windows 3.1; correct?

11 A. That's correct. And, of course, the SmartSuite
12 developers did not have access to the APIs for NameSpace
13 during the time in the 1995, early '96 time frame.

14 Q. Well, I won't go back and brawl with you about
15 that, but we can agree to disagree.

16 Let's look at the demonstrative Exhibit H06. I'll
17 represent to you that this is the file open dialog that Novell
18 wrote for PerfectOffice 3.0, which was released in December of
19 1994 for Windows 3.1. And are you familiar with this, sir,
20 this file open dialog for PerfectOffice for Windows 3.1?

21 A. I am familiar with it, although I'm not --
22 Microsoft --

23 Q. I'll thank you for that.

24 Now, on the right-hand side of this file open
25 dialog, there are various buttons. Do you see those?

1 A. Yes, I see them.

2 Q. And one of them is called QuickFinder; right?

3 A. I do see it, yes.

4 Q. And what that did if you clicked it was it launched
5 the search engine that Novell had called QuickFinder that
6 allowed you to go searching through documents to find
7 particular words; is that right?

8 A. That's correct. It was part of their indexing and
9 retrievable system, yes.

10 Q. And there's also a button called Quicklist. Do you
11 see that?

12 A. Yes.

13 Q. And what happened when you clicked that button is
14 that the user saw, and we can see it in the center pane, the
15 user saw a list of frequently used directories in the file
16 system.

17 A. Like favorites, yes.

18 Q. Like favorites, correct. And there's also a button
19 called view. And what happened when you clicked that button
20 is that without launching the application, you could see a
21 picture of the first page of the document; is that right?

22 A. That's correct. You had -- some of the properties
23 of the document in WordPerfect system would be -- well,
24 included a view of the initial page so the user could identify
25 the document to determine whether it was what he wanted to

1 work on.

2 Q. Okay. And you had less overhead because you didn't
3 have to actually launch the application to see it?

4 A. That was the whole idea of this was to accelerate
5 that process.

6 Q. And none of this used the NameSpace extension APIs
7 because they didn't exist in Windows 3.1; is that correct?

8 A. That is correct.

9 Q. Okay. I'd like to show you demonstrative
10 Exhibit 95.

11 A. Thank you.

12 Q. Now, what I've done here, Mr. Alepin, is to put the
13 two things that we just looked at separately together on the
14 same slide so that it will be easier for us to compare them.

15 The Windows 3.1 version of the file open dialog has
16 QuickFinder on a button on the right, and then the PerfectFit
17 file open dialog for Windows 95 has QuickFinder where, sir?

18 A. In a tab at the top underneath the bars right
19 there.

20 Q. Right. So both file open dialogs have QuickFinder
21 in them; correct?

22 A. Both -- they have access to the functionality of
23 QuickFinder. You mean, do they both have the word on it?

24 Q. No. Actually your answer is a better one, if I
25 answer my own question.

1 A. I do my best.

2 Q. Both file open dialogs gave users access to
3 QuickFinder technology; right?

4 A. That's correct.

5 Q. Now, on the left there is a Quicklist button which
6 we talked about a little earlier. And where is that same
7 functionality of seeing recently used information sources on
8 the PC on the right-hand side? Is it under the tab called
9 "view" up at the top?

10 A. I believe -- I'm not sure whether that's it or
11 whether it's the button on -- I think it's the button on
12 the -- third button from the right, I think is the view
13 button.

14 Q. Okay.

15 A. Do you see what I'm talking about?

16 Q. So there's buttons across the top, and the third
17 one from the right, which is a picture of a document, if I
18 clicked that I would get a view of the document without
19 opening the document just as if I had clicked the view button
20 on the dialog on the left; is that right, sir?

21 A. I believe that's -- you would get what we talked
22 about, a preview.

23 Q. A preview of the document.

24 A. You would view a preview, you're right.

25 Q. Okay. So in terms of the ability to view previews,

1 the ability to see a list of recently accessed information and
2 the ability to use the QuickFinder search technology, although
3 what you press is different, the functionality between these
4 two dialogs is the same, is it not, sir?

5 A. Umm, the top of functionality is the same. I
6 believe that there were improvements that were made to the
7 underlying technology, the implementations of the view and
8 finder were improved between the two versions of the software.
9 But the top level functionality are equivalent. So find
10 preview is the -- is there, and find or QuickFind is there.

11 Q. And Quicklist or favorites --

12 A. Favorites, yes.

13 Q. -- are, too. Thank you, sir.

14 Now --

15 A. I'm sorry. I don't think we talked about favorites
16 in the --

17 Q. You're right. I'm sorry. So the Quicklist which
18 shows you things that you used recently you said was like
19 favorites, and I guess I leapt forward in my own head. There
20 is a tab on the right dialog called favorites; correct?

21 A. Above there. Yeah; because it's also -- other
22 operating systems versions, it's above, as well. But, yes,
23 there are favorites there.

24 Q. And if I clicked that tab called favorites, I would
25 get a similar list of recently used or commonly used

1 information sources; isn't that right, sir?

2 A. I believe that's the implementation.

3 Q. Now --

4 A. I believe --

5 Q. I'm sorry, sir?

6 A. I believe there's a conflict or confusion between
7 the favorites that are introduced in Windows and the favorites
8 from the Quicklist. But that was the idea on this one.

9 Q. The concept was the same in both instances; is that
10 right, sir?

11 A. Yes. Yes.

12 Q. Now, I'd like to turn to a different topic, which
13 was item 2 or opinion 2 that Mr. Schmedtlein discussed with
14 you yesterday. I believe it was your opinion that Microsoft
15 had no value -- excuse me -- no valid technical justification
16 for its decision to withdraw support for the NameSpace
17 extension APIs in October of 1994. Is that your opinion, sir?

18 A. I'm not sure we -- I'm not sure of the exact
19 phrasing of it. That's the essence of it. But --

20 Q. Well, did you write the slides that were up on the
21 screen yesterday during your direct testimony yesterday, or
22 did some lawyer write them?

23 A. No, I wrote them. Excuse me. It's -- I'm not sure
24 that you're repeating them verbatim, so...

25 THE COURT: Just an opinion. Let's not get into

1 who. If you wrote them that's great. But anything prepared
2 in a courtroom I assume has some lawyer involved.

3 THE WITNESS: I have it here now. Thank you.

4 Q. BY MR. HOLLEY: Okay. So slide Number 8 reads,
5 Microsoft had no legitimate technical justification for
6 de-documenting and withdrawing support for the NameSpace
7 extension APIs; correct?

8 A. That's correct, yes.

9 Q. Okay. I'd like to talk about that a little bit.

10 A. Okay.

11 Q. Now, you do not disagree that as a technical matter
12 as of October 1994 applications that called the NameSpace
13 extension APIs -- okay, we're going to get there -- ran in the
14 same process, the same computing process as the rest of the
15 Windows 95 shell?

16 A. I do not disagree with that.

17 Q. And you don't disagree that if one of those
18 applications running in the same computing process as the rest
19 of the Windows 95 shell went into an infinite loop or
20 otherwise misbehaved, it would bring the Windows 95 shell
21 down; correct?

22 A. It had the potential to make the system
23 unresponsive like any caller of those APIs.

24 Q. Well, what you mean when you say make the system
25 unresponsive, that would mean that if you were working on a

1 document or you were typing an e-mail, you'd have to reboot,
2 restart the computer and you might lose your work?

3 A. That's --

4 THE COURT: And you may say a few bad words.

5 MR. HOLLEY: I have, Your Honor, in the past.

6 THE WITNESS: Yes. The modes failure were perhaps
7 many up to and including having to restart your system, yes.
8 I agree with that.

9 Q. BY MR. HOLLEY: Okay. Now, Microsoft unlike game
10 vendors, like Nintendo and Sony, don't impose any requirements
11 on the people who call the APIs exposed by Windows; right?
12 Anybody can write to Windows APIs?

13 A. Well, Microsoft is a game vendor like Nintendo or
14 Sony, as well. You weren't trying to separate Microsoft out
15 as a different kind of game vendor, are you?

16 Q. No. I'm happy to include the Xbox if you want.
17 Nobody -- people are not allowed to willy-nilly write games
18 for the Xbox or the Nintendo or the Sony PlayStation; isn't
19 that right? They have to be approved by the game vendor.

20 A. And some financial consideration has to change
21 hands, yes.

22 Q. Correct. But Windows is very different; right?
23 Anybody can write, you and I can write a Windows application,
24 and nobody in Redman, Washington, tells us that we can't.

25 A. I wouldn't disagree that you could write it by now.

1 So --

2 Q. I think I'll take that as a complement.

3 A. Yes. The ability to develop software for the
4 Windows platform is one that now can be done without any cost.
5 In the late '80s and early '90s, developers had to pay money
6 for the software development kit, which gave them access to
7 the API definitions and other functionality so that they could
8 write programs. But that's not -- no longer, I think, the
9 case.

10 Q. And the price for being an MSDN member is quite
11 modest; right?

12 A. Well, it's still \$2,000. But --

13 Q. Okay.

14 A. It cost me \$2,000. That's because I get it in all
15 languages. But in the -- to get the SDK in the old days was I
16 think 350 or \$400. So unless it's MSDNs, it's the Windows
17 SDK, the SKU, that stopped keeping it.

18 Q. So if you're Novell and you're hoping to make
19 hundreds of millions of dollars developing applications that
20 run on Windows, the price of buying an SDK is around there or
21 less?

22 A. That's correct. Although you do step up for
23 Premier Support because developers don't want to wait for
24 answers.

25 Q. And you might also call your representative in the

1 developer relations group, as well; right?

2 A. You would enlist them, as well, to assist you and
3 the development team in getting your project going and for
4 moving any roadblocks, such as, I don't understand how this
5 works, and, when are we going to receive this, and whatever.

6 Q. So especially if the Premier Support people weren't
7 able to answer your question, your next step would be to talk
8 to your contact person in the developer relations group.

9 A. My guess is you would go --

10 THE COURT: Why don't you -- there's been -- you
11 know what you want to argue on that at the appropriate time.

12 MR. HOLLEY: Yes, Your Honor.

13 Q. BY MR. HOLLEY: Now, there was no predetermined
14 limit on the size of a third-party application that could call
15 the NameSpace extension APIs; isn't that right? Microsoft
16 didn't impose any limit on the size?

17 A. On the size? You mean memory, the memory
18 footprint?

19 Q. No. I'm talking about the size and complexity of
20 the application calling the NameSpace extension API that was
21 running in the same process as the rest of the shell.
22 Microsoft did not impose any limits on the size or complexity
23 of those applications, did it?

24 A. Well, there are a host of limitations on the size
25 and -- at least size of the application memory footprint.

1 There's a constraint on certain types of -- the consumption of
2 certain types of memory. There's -- I guess I'm not -- I'm
3 not doing your question -- I don't understand where you want
4 to go with your question so I'm answering it inartfully.

5 Q. Okay. I'll ask you a better question.

6 The APIs themselves, the NameSpace extension APIs
7 didn't have any parameter that limited the size of a software
8 product that called them; isn't that right?

9 A. That's correct. There was no check by the
10 NameSpace APIs implementation to say how big you are or
11 whether you are inverting the square root of the universe or
12 something like that. They weren't interested in that.

13 Q. Okay. And Microsoft had no ability to impose
14 quality control standards on third-party software developers
15 who wrote applications to pull the NameSpace extension APIs;
16 isn't that right? There was no Good Housekeeping seal of
17 approval for people writing applications that called those
18 NameSpace extension APIs?

19 A. Well, I mean there's a bigger organization than
20 Good Housekeeping that polices that. People who write buggy
21 software or unsatisfactory software are subject to some
22 Darwinian exercise there. If you write bad software, they
23 don't buy it.

24 Q. Right. But my question is a little different. I
25 wasn't talking about the invisible hand of the market. What I

1 was asking you is whether Microsoft had an ability to impose
2 quality control standards on third-party software developers
3 who call the -- whose products called the NameSpace extension
4 APIs?

5 A. Nor could it for any. The NameSpace extensions
6 APIs were in no way different from any APIs that Microsoft
7 made available. If you were good or bad, whatever those
8 things meant, big or small, you could use those APIs. Come
9 one, come all.

10 Q. Now, I think you used the term yesterday
11 robustness, or maybe we just saw it in some videotape
12 recently, and that's what I'm thinking of.

13 THE COURT: You used robustness.

14 THE WITNESS: I'm a big robustness fan.

15 Q. BY MR. HOLLEY: Right. In the context of software
16 development, can you tell the jury what you mean when you talk
17 about system robustness?

18 A. So system robustness is --

19 THE COURT: A system that had a bad shoulder.

20 THE WITNESS: At least; and a younger system, too.

21 MR. HOLLEY: He's still pretty robust, Your Honor.

22 THE WITNESS: I want a younger one of those.

23 So robustness is an attribute. So it's -- of a
24 piece of -- we use it in terms of a piece of software or of a
25 system generally, use of the combination of hardware and

1 software. And robustness is the ability of the system to
2 function and to continue to function in the presence of
3 adversity. So some systems can function. If you take out a
4 disk drive while the computer is running, what happens? And
5 so some systems are robust enough to continue to operate
6 because they have a redundant disk. Some systems stop talking
7 to you. And so we look at robustness as an attribute of the
8 system, how well it responds to adverse conditions.

9 Q. BY MR. HOLLEY: Now, yesterday I believe you
10 testified that you're aware that Mr. Gates, then CEO of
11 Microsoft and now the chairman, made a decision on
12 October 4th -- October 3rd, excuse me, of 1994, to withdraw
13 support for the NameSpace extension APIs; is that right?

14 A. I'm aware of that, yes.

15 Q. Okay.

16 A. And I believe it's October 3rd of 1994.

17 Q. I think you and I are in a heated agreement on
18 that. October 3rd.

19 And you're also aware, are you not, sir, from your
20 review of the record that within 10 days of that decision the
21 developer relations group at Microsoft went out to tell
22 software developers about that decision; correct?

23 A. I believe that that --

24 THE COURT: I mean, in fairness to him, you have to
25 say if he's seen documents which so reflect. He doesn't know.

1 MR. HOLLEY: Well, Your Honor, I apologize if I
2 wasn't clear. He testified yesterday about reviewing the
3 record of the case. And my question was, from his review --

4 THE COURT: And I thought you objected yesterday.

5 MR. HOLLEY: Well, it happened. So I'd have to go
6 back and deal with it.

7 THE COURT: Just rephrase the question in fairness.

8 MR. HOLLEY: Fair enough, Your Honor.

9 Q. BY MR. HOLLEY: Have you seen documents produced in
10 discovery in this case which reflect the fact that within
11 10 days of Mr. Gates's decision the developer relations group
12 at Microsoft was out telling software developers about
13 Mr. Gates's decision?

14 A. I have seen documents that reflect the fact that
15 there was some contact by the DRG with the independent
16 software vendors within a short period after the decision to
17 remove the APIs, but I don't know whether 10 days is the time
18 frame or not. A short period of time afterwards is the best I
19 could do here without a document.

20 Q. Thank you. And just so it's clear to the jury, I
21 think they know this, but when you say DRG, that's a shorthand
22 for the developer relations group at Microsoft; correct?

23 A. Yes. I thought we'd already cleared that hurdle.

24 Q. Okay. There's so many acronyms in this case that I
25 think it's important to keep remembering what they mean.

1 I'd like to show you a document in evidence. It's
2 Defendant's Exhibit 3.

3 THE COURT: Again, just for the jurors, was that
4 Mr. Henrich's group at the time?

5 MR. HOLLEY: Mr. Doug Henrich at the time, yes,
6 Your Honor.

7 THE COURT: Heinrich.

8 Q. BY MR. HOLLEY: Is this document Exhibit 3 one that
9 you reviewed in the course of forming the opinions that you've
10 expressed in this case?

11 A. Yes.

12 Q. Now, if you turn to the second -- just to get us
13 oriented here, this is an e-mail stream so that the message
14 that's at the top is the last one incoming; correct? It's the
15 one that -- they go in sort of reverse chronological order; is
16 that right?

17 A. That's the e-mail segments that appear in reverse
18 chronological order, although the paragraphs within the e-mail
19 go in the correct order.

20 Q. That's fair. Now, the e-mail I'd like to direct
21 your attention to is the third in the series. It's from a man
22 named Scott Henson to the various people in the developer's
23 relation group, I'll represent that to you, including a
24 Mr. Doug Henrich that Judge Motz just referred to. Do you see
25 that?

1 A. I do.

2 Q. Now, on the second page of this e-mail there's a
3 heading that's called "The Conversation" in sort of arrows.
4 Do you see that midway down through the page?

5 A. I do.

6 Q. Okay. And as you understand it, this was basically
7 a script for a conversation that Microsoft DRG personnel were
8 to have with software developers?

9 A. Yes. I'm not sure whether software developers
10 directly or whether it was development managers or something.
11 But it was with outside folks, people outside of Microsoft who
12 were using the Microsoft software to develop software.
13 Programmers I'm not sure is the correct term exactly for the
14 audience.

15 Q. Well, actually I guess that was my mistake. What I
16 meant to say was software developers in the sense of Novell
17 Lotus, Adobe. Independent software vendors maybe would be a
18 better term.

19 A. That's what I understand this to be. A script
20 prepared for conversations that DRG would have with the ISVs
21 to use. More of those TLAs. TLAs, three letter acronym,
22 which is also a TLA.

23 Q. Too much inside baseball going on here.

24 A. That's all right.

25 Q. Now, directing your attention to the paragraph

1 which begins, there is a set of APIs which allows you to
2 extend.

3 This says, that APIs allow you to extend the
4 explorer visually in a manner that makes an application look
5 as though it were a system level hierarchical component, i.e.,
6 like the control panel, fonts folder, printer folder, et
7 cetera.

8 That's just a way of describing the NameSpace
9 extension APIs, is it not?

10 A. That's correct. I'm reading it to make sure it's
11 not talking about the larger included thing, which is the
12 shell extension APIs, which the NameSpace APIs are a part.
13 But it looks like it's just referring to the NameSpace APIs
14 here.

15 Q. Okay.

16 A. That's correct.

17 Q. And I appreciate that clarification, because as you
18 see it, there's a big distinction to be drawn between the
19 NameSpace extension APIs, of which there were four or five,
20 and all of the shell extensibility APIs, of which there were
21 hundreds; correct?

22 A. There's a distinction. One is a subset of the
23 other.

24 Q. Yes. Thank you.

25 A. The NameSpace is a subset of the shell

1 extensibility API.

2 Q. Actually quite a small subset; isn't that right?

3 THE COURT: I think --

4 THE WITNESS: There's a smaller number --

5 THE COURT: Is that what you're talking about?

6 (Multiple persons talking at one time.)

7 Q. BY MR. HOLLEY: I think the Court is telling us to
8 move on, so we will.

9 So it goes on to say, we have taken a hard look at
10 these APIs, and because it makes it very difficult for us to
11 support our long-term objectives with the Windows shell, we
12 have decided to return these interfaces back to their
13 system-only status.

14 Now, you have no reason to believe that this
15 message was not delivered to Novell approximately the date of
16 this document, which is October 12th of 1994; correct?

17 A. I guess I'd have no difficulty accepting that the
18 message was communicated shortly after it was written, whether
19 it was a week. But shortly after it was prepared, yes.

20 Q. Okay. Now, I'd like to direct your attention to
21 Page 3 of this document, which is entitled -- actually I'm
22 sorry. Page 4 is entitled, Q&A. Do you see that?

23 A. Yes, I do.

24 Q. Okay. And there's a question. It's the second
25 question in this Q&A. It says: Why has Microsoft decided

1 not to publish the NameSpace extension interfaces?

2 And the second bullet there says, systems
3 robustness. NameSpace extensions were design --
4 I think it probably means designed -- to be part
5 of the system as such they run in the explorer's
6 process space.

7 So you testified earlier that that's correct,
8 right, that applications that call the NameSpace extensions
9 were running in the same process space as Windows Explorer?

10 A. I testified that that was correct, yes.

11 Q. And badly written NameSpace extensions could
12 cause the reliability of Windows 95 to be less
13 than what it should be.

14 And that's sort of a euphemistically nice way of
15 saying that a badly written NameSpace extension could cause
16 Windows 95 to crash; isn't that right?

17 A. I guess that's euphemism for that, perhaps, yes.

18 Q. And then it says, in the sub bullet, ship
19 schedule. We have determined the amount of
20 development and testing time it would take to
21 support these APIs through the entire development
22 cycle adds a tremendous amount of overhead to
23 our very rigid, it says, legalines. Somebody's
24 a bad typist, probably means deadlines.

25 Now, based on your earlier testimony that Microsoft

1 had no ability to impose quality control standards on software
2 developers who were using the NameSpace extension APIs, you
3 agree, do you not, sir, that it would be very important to
4 test those third-party products to make sure that they didn't
5 result in crashing of the system?

6 A. If you're saying that it would be important that
7 the developers tested their software to ensure that they
8 didn't crash the system, that's -- that is true no matter what
9 you're doing. It makes no difference. All software
10 developers -- all good software developers test their
11 software, and it's important to test their software.

12 Q. Well, and Microsoft spends tens of millions of
13 dollars in developing a new operating system testing as many
14 third-party applications as it can get its hands on to make
15 sure that those third-party applications don't crash Windows.
16 You're aware of that, aren't you?

17 A. I'm aware of Microsoft's efforts to test its
18 software, as I'm aware of other parties' efforts to test their
19 software, as well. So, yes.

20 Q. Now, it goes on to say, equivalent visual
21 functionality. We will provide common controls.

22 And let's just pause there. Can you explain to the
23 jury what it means to say that there's a control in Windows
24 that an ISV can use?

25 A. Well, in a graphical user interface environment,

1 you define certain types of things like an icon. And an icon
2 is a control, or a button is a control. A radio button, when
3 you select something, you click on it, it puts a black dot. A
4 check box, that's a control. And what the platform vendor
5 does or the software developer provides for other software
6 developers is basically a toolkit where instead of having to
7 figure out how to develop the software that draws the box,
8 puts the text on the box and senses when the box is clicked
9 that they provide a library of software that I can include in
10 my program which I can call to say, draw box, and tell me when
11 the user clicks the box.

12 And because there are a number of them over time
13 that we've come to understand are useful in usability in
14 having users use and interact with these graphical user
15 interfaces, they've come to mean and are called the common
16 controls. They're common to many applications and many
17 different environments. So a user understands what a radio
18 button is, and a user understands what a drop down menu is.
19 Those are called common controls.

20 Q. Thank you, Mr. Alepin.

21 And this document goes on to say, we will
22 provide common controls, listview, treeview, column
23 heading, et cetera, that will allow ISVs to create
24 their own views in the same plan that the Explorer
25 does. This allows ISVs to write applications with

1 the same look and feel of the Windows 95 Explorer
2 that run on Windows NT 3.5 and Windows 3.11.

3 And you're aware that Microsoft did that; correct,
4 sir? Microsoft provided common controls that ISVs could use
5 to create treeviews inside their own applications that looked
6 like the treeview in Windows Explorer?

7 A. I am aware of -- Microsoft provided those controls,
8 yes.

9 Q. Okay. And let's look at demonstrative Exhibit 93,
10 which is the PerfectFit file open dialog. And I'll give you
11 one more if it's easier.

12 A. No. I think I have it here. I got lucky here.

13 Q. I know I'm drowning you in paper up there.

14 So using common controls that were exposed by
15 Windows 95, it was possible for software developers to add to
16 their own treeviews not only folders that were in the file
17 system like Corel in this list or program files or Windows,
18 but they could also borrow folders from the system NameSpace
19 like My Computer or Network Neighborhood or Briefcase, and
20 they could put those in their treeview inside their
21 application; correct?

22 A. It was possible to make a -- to make use of these
23 common controls to use them for many different application
24 purposes, one of which could be to pretend to be like the
25 Windows Explorer.

1 Q. Now, I'm done with that one for a moment, sir.

2 Now, you're aware that in October of 1994, there
3 were three different groups at Microsoft working on three
4 different operating systems.

5 A. I'm sorry, when?

6 Q. In October of 1994, there were people working on
7 Windows 95, a new version of Windows NT and a very advanced
8 operating system called Cairo; correct?

9 THE COURT: You're going to a new area. And for
10 the witness and everyone else, why don't we take a very short
11 break and pick up -- again, I'm ready when anybody else is.
12 But if we come back at quarter to 11:00 and we will go for
13 about an hour.

14 MR. HOLLEY: Thank you, Your Honor.

15 (Whereupon, the jury left the court proceedings.)

16 (Whereupon, the jury returned to the court
17 proceedings.)

18 THE COURT: Mr. Holley?

19 MR. HOLLEY: Thank you, Your Honor.

20 Q. BY MR. HOLLEY: Before the break, Mr. Alepin, we
21 were talking about the multiple operating systems developments
22 under way at Microsoft in 1994.

23 A. Yes.

24 Q. And you agree with me that there were three; right?
25 The Chicago team, the Windows NT team and the Cairo team?

1 A. Well, I think you asked me as of October. And I
2 would have said as of September I agreed with you. But as of
3 October, I think I would maybe have a different assessment of
4 that.

5 Q. Well, in terms of operating system development
6 overall, there was a team led by Brad Silverberg that was
7 developing Windows 95; do you agree with that?

8 A. I agree with the personal system division, yes.

9 Q. And then there was a team working for Mr. Allchin
10 headed by Bob Muglia that was working on a new version
11 Windows NT?

12 A. That's correct. I agree with that.

13 Q. And then there were pieces of the grand dream of
14 Cairo which had been moved to different parts of the company
15 in the hope of resuscitating those efforts; is that right?

16 A. They'd been moved into the Office organization, I
17 understand. In late September a decision had been taken, as I
18 understand it, to take the Cairo team and to fold them into --
19 fold some portions of them, as you say, into, for example, the
20 Office team.

21 Q. The Cairo and in particular in this case, it was
22 the Cairo shell team that got moved to the Microsoft Office
23 team.

24 A. In particular, you're correct, as far as I
25 understand, yes.

1 Q. And I believe you testified yesterday, sir, that
2 before October of 1995, a decision had been made to stop
3 developing a special shell for Windows NT and to use the
4 Windows 95 shell on top of Windows NT as well as Windows 95;
5 correct?

6 A. That's --

7 THE COURT: I'm sorry. Are we jumping in here? I
8 just want to make sure.

9 MR. SCHMIDTLEIN: I think he said October '95.

10 THE COURT: You said '94 before.

11 MR. HOLLEY: That's my mistake. '94. Thank you
12 for the correction.

13 THE COURT: Thank you, Mr. Schmedtlein.

14 Q. BY MR. HOLLEY: So let me ask a sensible question.
15 So you testified yesterday that in October of 1994 the
16 decision had been made to move the Windows 95 shell to
17 Windows NT rather than having a separate shell product for
18 Windows NT; correct?

19 A. That's my understanding, yes.

20 Q. Now, Windows NT was an operating system targeted at
21 that time principally toward high end work stations and
22 servers as opposed to PCs that normal people would buy; is
23 that right?

24 A. Normal people. There's still normal people who use
25 work stations. But --

1 Q. It depends on your definition of normal.

2 A. Yes. But there was a different target audience for
3 the Windows NT product from the Windows 95 product.

4 Q. And the Windows NT target audience was more
5 concerned about system robustness than your average PC user
6 because they -- the average Windows NT user was using
7 Windows NT in more mission critical situations; correct?

8 A. I think that was aspirational because the numbers
9 of Windows NT customers was relatively small, so I would say
10 it was the goal to have Windows NT be more reliable than
11 Windows 95.

12 Q. And you're aware, sir, are you not, that one day
13 after Mr. Gates made his decision to withdraw support for the
14 NameSpace extension APIs Mr. Muglia who ran the Windows NT
15 team was applauding that decision?

16 A. I have seen that e-mail, yes.

17 Q. And let's look at that, if we could, please. It's
18 Defendant's Exhibit 21.

19 Now, I presume you have seen this document in
20 connection with your work on this case; is that right, sir?

21 A. That is right.

22 Q. Now, below Mr. Muglia's e-mail is an e-mail from
23 Mr. Gates to various executives of Microsoft dated October 3,
24 1994, entitled, shell plans iShellBrowser, which I think the
25 jury has seen under a difference guise, it's called PX1 in

1 this case. Are you aware that this PX1, sir, the e-mail that
2 is the second or third in the chain here?

3 A. Yes. This is the one that you referred me to or we
4 spoke about earlier, the decision e-mail.

5 Q. Okay. And Mr. Muglia is writing to an alias
6 called, Windows NT program management. And I'll represent to
7 you if you don't know that that was an e-mail alias that
8 collected together all of the people of responsibility within
9 the Windows NT development group. And what Mr. Muglia says in
10 the second -- in the first paragraph is:

11 I am sending this out broadly because of the
12 general interest in this group with regard to --

13 That WRT is another one of those acronyms; right?

14 A. TLA.

15 Q. -- with regard to this decision.

16 Now in forming your opinions that you expressed
17 yesterday, did you take into account the fact that this e-mail
18 written the day after Mr. Gates's decision says that the
19 NameSpace extension APIs are a matter of general interest to
20 the Windows NT team?

21 A. Yes.

22 Q. Okay. And in the next paragraph, Mr. Muglia
23 writes, this is very good news for BSD.

24 Here we go again. So BSD is business systems
25 division; correct?

1 A. Yes. That's the group that besides Mr. Silverberg,
2 you referred to Mr. Allchin's group.

3 Q. Okay. And I know this is hard to keep this in
4 mind. But there was a PSD, a personal systems division,
5 headed by Mr. Silverberg developing Windows NT; and then there
6 was a B, as in boy, SD, business systems division, headed by
7 Mr. Allchin developing Windows NT.

8 THE COURT: I think you meant Chicago in the first
9 part of that.

10 MR. HOLLEY: Okay. I'm trying to be precise, and
11 here I messed up.

12 THE COURT: We're all in agreement that
13 Brad Silverberg had Chicago.

14 Q. BY MR. HOLLEY: Brad Silverberg had Chicago
15 Windows 95 in the PSD, or personal systems division; and
16 Mr. Allchin had Windows NT and Cairo in the business systems
17 division; correct?

18 A. Yes.

19 Q. Now, what Mr. Mulgia says here is:

20 Mr. Gates's decision to withdraw support for
21 the NameSpace APIs is very good news for BSD, the
22 Windows NT team, since Bill has decided these interfaces
23 won't be published, NT development does not have to
24 expend precious energy on implementing these for NT.

25 So what Mr. Muglia is saying is that Windows NT

1 team is happy that Mr. Gates has withdrawn support for these
2 NameSpace extension APIs because that means the Windows NT
3 team doesn't have to worry about implementing them on its
4 system.

5 A. I see that, yes.

6 Q. Okay. And then he goes on to say:

7 More importantly, as these interfaces include --
8 excuse me -- as these interfaces introduce
9 significant robustness issues, we won't have to
10 spend time on building a robust implementation of
11 iShellBrowser.

12 And what he means by that is because of this
13 potential crashing problem that you and I have been talking
14 about this morning, the Windows NT team won't have to worry
15 about building a version of the NameSpace extension mechanism
16 that is not prone to crashing.

17 A. I see that.

18 Q. Now, Mr. Muglia gave a deposition in this case,
19 which I presumed you've reviewed; is that right, sir?

20 A. I did.

21 Q. Okay. And I'd like to read you a question and the
22 answer and ask you whether you took this into consideration in
23 forming your opinions. The question was asked by Novell's
24 lawyer, Mr. Muglia about --

25 A. Could you just refresh my recollection of when the

1 deposition was taken? There were several depositions.

2 Q. Sure. I'd be happy to do that.

3 A. I believe.

4 THE COURT: And if they have -- if you want to a
5 copy of them, I'm sure --

6 MR. HOLLEY: Absolutely, Your Honor. I'm happy to.

7 THE WITNESS: I just needed to --

8 THE COURT: No. No. No.

9 Q. BY MR. HOLLEY: So the deposition was taken on
10 February 6th of 2009. And I'm happy -- I'm cognizant of not
11 filing more papers in front of you.

12 A. If it's a long passage, maybe. But if you're --

13 Q. Well, it actually isn't a very long passage, but
14 I'm happy to give that to Mr. Schmedtlein.

15 THE COURT: Give Mr. Schmedtlein page and lines.

16 MR. HOLLEY: Yes, Your Honor. I'm looking at
17 Page 226 starting on Line 7 and going to Line 23.

18 Q. BY MR. HOLLEY: And you were asked a question
19 about -- excuse me -- Mr. Muglia was asked a question about
20 what technical issues there were with the NameSpace extension
21 APIs. So the question was asked:

22 What technical issues did you believe there
23 were with it?

24 Answer. When you actually called these
25 interfaces, the breadth of the shell interfaces, a

1 third party was actually writing code that sat in
2 the shell, and if the third party did something
3 wrong, the shell could crash, which I think we've
4 maybe all seen on Windows where sometimes the
5 shell, if something happens to the shell, it goes
6 away and then comes back. And typically that's
7 caused because one of these applications has done
8 something wrong and the shell needs to determine
9 it.

10 Now, when you testified yesterday that there was no
11 plausible justification, no plausible technical justification
12 for Mr. Gates's decision to withdraw support for the NameSpace
13 extension APIs, you didn't give any weight to what Mr. Muglia,
14 the person running the Windows NT team, said; isn't that
15 right?

16 A. Well, I don't mean to make -- I think I said
17 legitimate, not plausible. But notwithstanding that, I took
18 what Mr. Muglia was talking about, and I factored that into my
19 assessment of whether there was -- there was a legitimate
20 technical consideration.

21 Q. Well, when I asked you the question I just asked
22 you in your deposition in this case, you told me that you
23 didn't attribute any significance to Mr. Muglia's e-mail dated
24 October 4th or his deposition testimony because you didn't
25 find it either persuasive or compelling; isn't that what you

1 told me, sir?

2 A. In the deposition back in 2008, I believe, or was
3 it 2008 or 2009? That's what I -- that's the answer that I
4 gave you. And I did not find that in light of the other facts
5 Mr. Muglia's reply there was a valid or a legitimate technical
6 justification.

7 Q. So your testimony to the jury is that you know
8 better than the man who was responsible for developing
9 Windows NT in 1994 about whether there was a technical problem
10 with the NameSpace extension APIs that the Windows NT team
11 both worried about.

12 A. Well, I think Mr. Muglia indicates that he's
13 concerned that there will be a lot of time spent, and that is
14 incorrect. It did not take a lot of time. That
15 Mr. Silverberg in other correspondence among IBM -- not IBM --
16 among Microsoft executives reflects that the porting of the
17 shell to the Chicago shell to Windows NT was -- I'm not sure
18 what the adjective was, but it was easily accomplished, and
19 that the people who had designed the NameSpace extensions had
20 done so with a view to moving the shell to NT.

21 The second part of that was that a solution to the
22 problem of robustness on Windows NT was readily available and
23 required only -- it would have required modest, if modest at
24 all, programming efforts on the part of Microsoft.

25 The third element of this was that the Microsoft

1 software including application software was continuing to use
2 the NameSpace extensions and exposing the system to the same
3 kinds of crashes that third-party software would expose
4 Windows NT system to.

5 I think the fourth part of that would be why
6 Mr. Muglia's testimony there was not technically compelling to
7 me was that when the software was released the applications
8 that used the -- I'm sorry -- when the NameSpace extensions
9 were re-documented, the NameSpace extensions continued to be
10 accessible in the same process space as the shell.

11 Q. Well, what work -- well, we'll deal with all of the
12 points you just made. But what work have you done to look at
13 the source code for either Windows NT or Windows 95 to
14 determine that post 1996 the NameSpace extensions are running
15 in the same process as the rest of the Windows 95 shell?

16 MR. SCHMIDTLEIN: Your Honor, objection. Obviously
17 the jury's been told this before, but there's been an
18 objection. They didn't produce the source code.

19 MR. HOLLEY: It wasn't requested, Your Honor. My
20 question could be answered either he did or he didn't.

21 THE COURT: Overruled.

22 THE WITNESS: I did not have the source code and
23 accordingly could not examine it.

24 Q. BY MR. HOLLEY: Now, you don't have any doubt, do
25 you, sir, because you've never met Mr. Muglia, you've never

1 talked to him about this, that he believed on October 4th of
2 1994 that it was a good thing for the Windows NT team that it
3 wouldn't have to devote precious energy on implementing the
4 NameSpace extension APIs on Windows NT?

5 THE COURT: I'm going to object to that and sustain
6 my objection, again, close to asking him to interpret what was
7 in Mr. Muglia's mind. You can argue what you want. It's a
8 contemporaneous memo, but...

9 Q. BY MR. HOLLEY: But what you're effectively saying,
10 Mr. Alepin, to the jury is that you decided not to believe
11 Mr. Muglia in forming your opinions.

12 A. I don't -- I looked at the considerations that were
13 being -- that were involved and found that they, the elements
14 that he had identified as potential issues were, in fact, not
15 present.

16 Q. Can you answer the question I asked you, which is,
17 in forming your opinion that there was no, I guess your word
18 is, no legitimate technical justification for withdrawing
19 support for the NameSpace extensions, you decided not to
20 believe the statements that are made in an e-mail written on
21 October 4, 1994?

22 THE COURT: Sustained. Mr. Schmedtlein is standing
23 up. I think that question was answered.

24 MR. SCHMIDTLEIN: Thank you.

25 MR. HOLLEY: Well, all right, Your Honor.

1 Q. BY MR. HOLLEY: Now, are you aware that deposition
2 testimony from Mr. Allchin, the vice-president in charge of
3 Windows NT, was played to the jury two days ago or perhaps
4 three?

5 A. No, I don't think I was aware of that testimony
6 being played to the jury.

7 Q. All right. But I presume that you have reviewed
8 the testimony, the deposition testimony that Mr. Allchin gave
9 in this matter relating to the NameSpace extension APIs;
10 correct?

11 A. I reviewed Mr. Allchin's testimony relevant to the
12 NameSpace APIs and to other subjects.

13 Q. And you're familiar with the view that Mr. Allchin
14 expressed that the NameSpace extension APIs, the entire
15 concept of the NameSpace extension APIs was bad in a bunch of
16 computer science ways. You know that, right, sir, that he
17 said that?

18 A. I think he and a couple of -- I think Sinofsky,
19 Steve Sinofsky also had a view -- I think I may be conflating
20 this or thinking of another moment here. But there were --
21 there was a difference of opinion about the concept of the
22 view on information that was being made available through the
23 NameSpace extension. Is that what you were referring to?

24 Q. Well, there was also a dispute going on within
25 Microsoft. I agree with you about that.

1 A. Right.

2 Q. But there was also a school of thought at Microsoft
3 being championed by Mr. Allchin, Mr. Muglia, people like
4 Tandy Trower, who was in charge of the Cairo user interface,
5 that the entire concept of allowing applications to extend the
6 Windows NameSpace was a really bad idea.

7 THE COURT: I'm not sure of the question.

8 Q. BY MR. HOLLEY: Correct?

9 MR. SCHMIDTLEIN: I'm not sure any of that is in
10 evidence.

11 THE COURT: You might want to turn it into one.
12 Isn't that so? Or something.

13 MR. HOLLEY: All right. I'll accept the Court's
14 amendment.

15 Q. BY MR. HOLLEY: Isn't that so, sir?

16 A. I believe that there were differences of opinion
17 about that which are ultimately -- I don't know ultimately,
18 shortly were not -- were dismissed.

19 Q. Well, you don't have any doubt, do you, sir, that
20 in advance of October 3, 1994, Mr. Gates was being lobbied by
21 Mr. Allchin and others that the NameSpace extension APIs were
22 a terrible design and that Microsoft never should have
23 supported them?

24 MR. SCHMIDTLEIN: Objection; there's no foundation
25 for any of that.

1 MR. HOLLEY: I'm about to go there, Your Honor.

2 THE COURT: If there's an objection, why don't you
3 go there.

4 MR. HOLLEY: Okay.

5 Q. BY MR. HOLLEY: So are you familiar with
6 Mr. Allchin's testimony that was played to the jury the other
7 day that if an application had an error in it, it could take
8 down or corrupt the user experience overall? In other words,
9 the application could impact more than just it, so that's bad.
10 You want -- you want this nice little boundary around the
11 operating system that applications can't penetrate. That was
12 a view expressed by senior executives at Microsoft, which was
13 that it was a bad idea to let applications penetrate the
14 boundary around the operating system; correct?

15 A. That's a --

16 THE COURT: Wait a minute. I'm just confused.
17 There's a difference whether that was expressed
18 contemporaneous and whether it was expressed by Mr. Allchin in
19 his deposition. I think in fairness you've got to make a
20 distinction between the two. Lobbying implies that this
21 witness would know he was being told that at the time. I just
22 don't understand the record. But just make the distinction.

23 MR. HOLLEY: Well, I guess, Your Honor, my question
24 is whether this witness has any reason based on his review of
25 the record to know one way or the other whether people like

1 Mr. Allchin were advocating to Mr. Gates that the entire
2 design --

3 THE COURT: That's a fair question.

4 Q. BY MR. HOLLEY: -- of the NameSpace extension
5 mechanism was a bad one.

6 A. Well, I think that I have to take it in a couple of
7 steps. The first is that the -- all of the shell extensions
8 including the several hundred that you talked about before and
9 the NameSpace extensions used this mechanism which Mr. Allchin
10 decried in his deposition and violated this boundary. And the
11 shell extension interfaces were not withdrawn.

12 The second element of that was that as I mentioned
13 in my testimony yesterday, there were many, many areas in the
14 Windows Chicago operating system that were broad enough to
15 drive a truck through and violate this circle of security and
16 protection.

17 It is true, of course, that as a general principle,
18 operating systems designers wish to create barriers around the
19 information that is vital to continue to keep the operating
20 system and the computer system operating. In fact, the best
21 computing system is one in which there were no applications
22 running. That's the most secure. But all of these things
23 require tradeoffs. You have to, in the situation where --
24 which Windows 95 was the case, you went from the DOS
25 Windows 3.1 Wild West Show where people were doing anything

1 they wanted to any part of the operating system to one in
2 which there were increasingly more moles and barriers that
3 were being built around the part of the operating system to
4 contain and mitigate -- or minimize the harm or damage that
5 misbehaving applications could create.

6 Q. You are not aware of any evidence, are you, sir,
7 that Mr. Allchin and Mr. Muglia did not believe in October of
8 1994 that the NameSpace extension was materially more
9 dangerous than these other situations that you have just
10 described for the jury where someone could crash Windows 95?

11 A. Oh, I think that the -- Mr. Allchin must have
12 known -- now I'm speculating. But Mr. Allchin must have known
13 that they were, having worked on the design on the Windows NT
14 system, he must have been intimately familiar with the
15 exposures in the Windows 95 system, which he had to design
16 differently in Windows NT in order to provide the robustness
17 that he desired. So every time there was a difference between
18 Windows NT and Windows 95, there was a good chance that they
19 did that for robustness concerns. They might have done it for
20 capacity concerns. They might have done it for other
21 concerns. But robustness was a good reason. The device
22 driver model is one example where knowing what happens with
23 device drivers in Windows 95 you know you need to build a
24 wall.

25 Q. Now, Mr. Alepin, I appreciate your view about

1 whether Mr. Allchin must or must not have known, and I guess
2 we'll find out. But I asked you a different question, which
3 is, are you aware of any evidence in the record based on your
4 review that you did in reaching the opinions that you
5 expressed, any evidence which suggests that Mr. Allchin and
6 Mr. Muglia did not believe in October of 1994, rightly or
7 wrongly in your view, that the NameSpace extension mechanism
8 was more dangerous than other ways in which some ill-behaved
9 application might crash Windows 95?

10 A. I believe there may have been some -- I'm now
11 thinking back to, there may have been some consideration or
12 some mention somewhere in the record of a potential difference
13 between the NameSpace and the shell extensions, but I'm not --
14 but not between the NameSpace and other exposures to
15 Windows 95. Generally not.

16 Q. Okay. I do appreciate that clarification. So you
17 do recall that there is evidence in the record that people
18 believed in October of 1994 that the NameSpace extension
19 mechanism, that subset, was potentially more prone to causing
20 shell crashes than the other larger set of shell extensibility
21 mechanisms; correct?

22 A. I told you my memory is dim on that.

23 Q. Now, I think you told Mr. Schmidlein yesterday
24 that one of the reasons that you concluded that Microsoft had
25 no valid or legitimate technical justification for withdrawing

1 support for the NameSpace extension APIs is that this issue
2 should have been apparent early in the development process.

3 Did I understand you to say that?

4 A. I'm sorry. Could I hear the question again?

5 Q. Sure. I thought I heard you say yesterday that one
6 of the reasons you concluded that Microsoft did not have a
7 valid technical justification for withdrawing support for the
8 NameSpace extension APIs was because in your view, this is an
9 issue that should have been apparent to Microsoft early in the
10 development process.

11 A. That's correct.

12 Q. Now, what evidence do you have that it wasn't
13 apparent early in the development process?

14 A. Well, as I mentioned yesterday, I think, there was
15 a decision to document the NameSpace APIs, which was taken in
16 late 1993, and a decision to make the APIs available in June
17 of 1994, and we're almost at the -- we're six -- we're six or
18 seven months or whatever away from the estimated delivery date
19 for Windows 95. And I believe even Mr. Gates said that a year
20 before is pretty late in the game. And we're talking about a
21 decision to show them six months before their product is going
22 to be released. So if it was a concern, then they could have
23 been not documented at all, if it was a concern earlier on in
24 the development process. That's the -- that was the point
25 that I was trying to convey, and that's what I was relying on.

1 Q. Okay. Now, you just said something that I would
2 like to explore a little bit. You are not suggesting, are
3 you, sir, that just because somebody showed developers the
4 concept on a piece of paper of adding a NameSpace extension to
5 the Windows Explorer sometime in '93 that that constituted
6 documentation of the APIs; right?

7 A. I think I've been quite clear on it. The answer is
8 no.

9 Q. The first documentation of the APIs occurred in
10 June of 1994 when the M6 beta was released; right?

11 A. Well, I think in fairness, the -- there is a
12 reviewer's guide for Windows 95 that was produced in early
13 '94, I believe, that highlights the importance of the
14 NameSpace extensions, and it talks about the Windows model for
15 information, information model for Windows 95 that programmers
16 should be thinking about it. And that is followed by the
17 delivery of the beta M6 with the documentation for the APIs.

18 Q. Well, if you're referring to the Microsoft Windows
19 Chicago Reviewer's Guide, which is Plaintiff's Exhibit 388,
20 and I'm happy to show it to you, sir.

21 A. Okay.

22 Q. There's nothing in Plaintiff's Exhibit 388 that
23 goes beyond describing the NameSpace extension mechanism at a
24 conceptual level; isn't that right, sir? There's no
25 documentation of application programming interfaces --

1 THE COURT: Well, that's a pretty big document.
2 Why don't you just represent that that's so, and if someone
3 wants to challenge that later they can.

4 MR. HOLLEY: Fair enough, Your Honor.

5 Q. BY MR. HOLLEY: I'll represent to you, Mr. Alepin,
6 that the discussion of NameSpace extensions in the Windows
7 Chicago Reviewer's Guide Beta 1, which was released in the
8 spring of 1994, contains no details of any kind about the
9 NameSpace extension API. Do you have any reason to doubt
10 that, sir?

11 A. I don't think that's what my testimony was. I
12 indicated that there was a reviewer's guide document, a large
13 document that was given out to enable people to understand
14 many of the key elements beyond the points of light that were
15 going to be in Chicago. And part of that had to do with the
16 information model. And it's quite simple to understand the
17 role of the NameSpace extensions in realizing the Windows 95
18 information model.

19 Q. But you can't write code and call APIs until you
20 get documentation to tell you what those APIs are, what inputs
21 they expect; correct?

22 A. Absolutely not.

23 Q. Thank you, sir.

24 Now, in forming your opinions about the legitimacy
25 or the validity of Microsoft's technical justifications for

1 withdrawing support for the NameSpace extension APIs, I
2 presume that you paid close attention to the testimony of the
3 man who wrote them, Mr. Nakajima; is that right, sir?

4 A. I did.

5 Q. And Satoshi Nakajima was a developer at Microsoft
6 who wrote the NameSpace extension APIs, and I believe you
7 testified yesterday that he got a patent on the entire shell
8 extensibility mechanism in Windows 95; is that right, sir?

9 A. I don't recall whether he's the only assignee -- or
10 not assignee, but author, but he is at least an author on the
11 patent.

12 Q. All right. And you recall Mr. Nakajima's testimony
13 at his deposition in February of 2009 about a meeting where he
14 was called before the Windows NT and Cairo teams and
15 Mr. Gates and asked to defend the accusations that were being
16 made against his code by those other teams?

17 A. I remember that there was such a meeting and that
18 he testified to that. He was asked questions about it.

19 Q. Okay. I'd like you to take a look at
20 Mr. Nakajima's testimony. And feel free to look around. But
21 I'm going to try to give you the right page so you're not
22 fumbling through all these pages here.

23 A. Thank you. All right.

24 Q. Now, looking at Mr. Nakajima's February 24, 2009,
25 deposition, at Page 57, Line 15, he was asked the question by

1 Novell's lawyer:

2 Now, you said you needed to defend Chicago in
3 front of Bill Gates at this meeting?

4 Answer. Yes.

5 Question. Did you defend the NameSpace
6 extensions?

7 Answer. Actually I chose not to. So the
8 particle of discussion was, is Chicago the right
9 operating system for the future of Microsoft,
10 because the Chicago was almost ready to be
11 released. The Cairo team was still struggling --
12 all smart people that came up with a beautiful
13 architecture but years away from releasing the
14 product. And they thought that Chicago is such a
15 bad product. So producing that and especially
16 publishing the API would prevent Microsoft to do
17 the right thing in the future. So that was their
18 view.

19 So that was why they attacked some of our
20 architecture, especially in the NameSpace
21 extension, to say, quote, if you publish this
22 NameSpace extension, then we'll never be able to
23 move to a clean architecture, close quote.

24 So that was their attack. And I was
25 supposed to defend, but I decided not to defend

1 because, technically speaking, they were right.

2 The Chicago was really dirty patch. It was simply
3 fixing a leak --

4 A. I was.

5 THE COURT: It says, I was simply fixing a leak.

6 Q. BY MR. HOLLEY: I was simply fixing a leak.

7 If you go from the top, you see a different color of
8 shingles attached around, ugly. It doesn't -- it
9 stops the water, but it's ugly and it's not
10 futuristic. But my approach was -- to Bill,
11 is, hey, Bill, it's great to have a future view,
12 but we have to release the product, so let's
13 release the product. So that was my defense.
14 But I actually didn't defend it at all. I just
15 said, let's release the product.

16 Now, in forming your view that there was no
17 legitimate or valid technical justification for Microsoft's
18 decision not to -- or to withdraw support for the NameSpace
19 extension APIs, you effectively ignored the testimony of the
20 man who wrote the NameSpace extension APIs; isn't that right,
21 Mr. Alepin?

22 A. No. You know, I don't think so. I took it into
23 consideration.

24 Q. And you decided that he was wrong when he said that
25 the technical attacks on his code were right?

1 A. I think the more -- the fairer reconstruction here
2 of what was going on and what he was saying was Chicago was a
3 hack. Chicago is dirty and ugly, and my software is simply
4 fixes -- my software does something good. But let's not have
5 a discussion about the merits of these things. We've got to
6 ship a product, and let's put aside architectural differences.

7 These are types of conversations that occur
8 frequently in software development projects. It's the
9 practical and pragmatic against the utopian and elegant. You
10 say, well, it should be designed with this and that, and so
11 we'll have to go back and spend two more years doing it.

12 So on the other hand, we've got to eat. We've got
13 to have a product. It's got to work. It's got to do things
14 that are good for the customers. And that's the approach that
15 Mr. Nakajima I think was taking elsewhere. He was quite proud
16 of his accomplishments and was awarded patents. So I thought
17 that the appropriate way of interpreting and valuing
18 Mr. Nakajima's testimony here was in that context.

19 Q. But you have no evidence that you can point to in
20 the record to undermine the idea that at this meeting, the
21 Cairo team was attacking Mr. Nakajima's code and telling
22 Mr. Gates that it was terrible and that it would impair their
23 ability to move to a clean architecture in the future, do you,
24 sir?

25 A. Mr. Gates reached a conclusion that it was a fine

1 piece of work. I believe those are his words. So --

2 Q. Mr. Alepin, please, can you answer the question
3 that I asked you? Do you have any evidence that you can point
4 to in the record that undermines the notion that at this
5 meeting the Cairo team was telling Mr. Gates that
6 Mr. Nakajima's code was a hack and that if the NameSpace
7 extensions remained published, we'll never be able to move to
8 a clean architecture?

9 MR. SCHMIDTLEIN: I'm just going to say if you can
10 let him finish his answer, that would be helpful.

11 Q. BY MR. HOLLEY: Can you answer that question?

12 THE COURT: You may answer that question.

13 THE WITNESS: Oh, I have no, nothing -- I did not
14 see anything in the record that says that they -- that the
15 Cairo team was not attacking the design.

16 Q. BY MR. HOLLEY: Now, I believe you testified
17 yesterday and you just testified a few minutes ago that it was
18 easy to change the way that the NameSpace extension APIs
19 operated so that they were tolerable and robust on Windows NT.
20 Did I understand that correctly, sir?

21 A. I think that's the correct -- the change required
22 to make the NameSpace extensions operated in a separate
23 process was a simple one.

24 Q. And you base that on what, sir?

25 A. On two elements; the first of which was the MOS

1 solution that was approved by the Windows NT team, whereby MOS
2 would continue online services, another acronym, that the
3 Microsoft online services, online people who were delivering
4 MSN would be permitted to use NameSpace extensions on
5 Windows NT were using a model where they ran in a separate
6 process. And the fact that Windows NT introduced the desktop
7 process like I believe in the registry which indicates that
8 the NameSpace extension users, applications used NameSpace
9 extensions are to be run in on separate process. And that the
10 default setting for that was off, so that by default NameSpace
11 extension applications would run in the same process.

12 Q. Well, let's explore that a little bit. I'd like
13 you to look at demonstrative Exhibit 102. Now, just because I
14 think it's not intuitively obvious, which would be a big
15 understatement, I want to talk to you a little bit more about
16 what happened in Windows NT. So the shell process was split
17 into two; is that correct?

18 A. The shell process was split into two? Are you
19 talking about 4.71 of the shell, or are you talking about the
20 4.0 version of the shell?

21 Q. I'm talking about the NT 4.0 shell where there was
22 a desktop process that was created which was everything but
23 the treeview with the NameSpaces. And then there was a
24 separate process that ran in conjunction with the desktop
25 process that had the NameSpace extensions.

1 A. That was -- I think that happened when the desktop
2 update -- you're referring to the desktop update?

3 Q. Well, you can tell me when you think it happened.
4 When do you think that happened, sir?

5 A. I believe the desktop update, which is shell
6 version 4.71, was introduced in late '96 or early '97, is my
7 recollection. I think that's correct. 4.71 and 4.72, one of
8 which is the NT version and the other --

9 Q. Okay. So it wasn't until late '96 or early '97
10 that this change was made to try to contain the problem of an
11 ill-behaved shell extension by creating two processes, one
12 which would be, you know, all of the desktop and task bars and
13 things but the NameSpace extension mechanism, and process
14 number 2 had the NameSpace extension.

15 A. The Explorer process would run in a separate
16 process, and that was the desktop process. It was brought in
17 with the -- with the desktop update that also introduced
18 active desktop.

19 Q. One of the great disasters of all times.

20 A. For very much the same reasons that we're talking
21 about here today.

22 Q. Right. Because it was terribly unreliable, and it
23 crashed all the time, didn't it?

24 A. I think that was the, would be -- but it was for
25 very much the same reasons. So the answer I think I've given

1 now is 4.71 and 4.72 versions of the shell distributed by
2 Microsoft in 1996 or 1997 coincident with the desktop update
3 to Windows 95. It was an optional update.

4 Q. Now, in the context of your work on this matter and
5 in forming the opinions that you have given, you looked at an
6 e-mail interchange that Mr. Shulman, the man who wrote an
7 unauthorized --

8 THE COURT: We know. One of the big books. It's
9 unauthorized something or other.

10 Q. BY MR. HOLLEY: You reviewed an e-mail exchange
11 that Mr. Shulman had with a man at Microsoft named Joe
12 Belfiore; is that not right?

13 A. I reviewed that correspondence. There's e-mails as
14 well as BBS exchanges.

15 Q. Okay. And just more insight baseball. BBS stands
16 for --

17 A. Bulletin board services.

18 Q. Okay.

19 A. It's the antique forums or chat groups or things
20 like that. It's the old place where we used to go to chat to
21 each other.

22 Q. Okay. And I'm going to show you a very large
23 document, but luckily I'm only going to show you two pages of
24 it.

25 A. Luckily.

1 Q. But I'm going to give you the whole thing.

2 A. Thank you.

3 (Time lapse.)

4 MR. HOLLEY: Your Honor, we've had a discussion,
5 and I'm not going to move at this time for the admission of
6 this document into evidence, but there's a pending objection.
7 But Mr. Schmidlein agrees that I can show it to this witness.

8 THE COURT: Fine. Thank you.

9 Q. BY MR. HOLLEY: Now, you've seen this document
10 before, have you not, sir? This -- and I'm going to -- I'm
11 not interested in this whole long back and forth from other
12 people. I'm interested in the e-mail from Joe Belfiore or JB
13 at Microsoft.com dated March 21, 1996, to Andrew Shulman
14 entitled, creating NameSpaces. And turning through to the
15 page numbered 95 of 98, you've seen this back and forth, have
16 you not, sir?

17 A. I have, yes.

18 Q. Now, Mr. Belfiore writes on the first page:

19 We want to reduce the possibility of shell
20 extensions getting written that run in process and
21 take down the shell and other shell extensions.

22 THE COURT: It may be not relevant, but it may help
23 us. Is there a time on the e-mail? Is there a time or date
24 or time?

25 MR. HOLLEY: Well, yes, Your Honor. The e-mail is

1 dated Thursday, March 21, 1996, at 10:54 a.m.

2 THE COURT: I don't care about the time. But March
3 of '96.

4 MR. HOLLEY: Yes, March of '96. Thank you.

5 Q. BY MR. HOLLEY: Mr. Belfiore writes:

6 We want to reduce the possibility of shell
7 extensions getting written that run in process and take down
8 the shell and other shell extensions.

9 And this is the same issue that we've been talking
10 about up until now, which is that given the design that
11 Mr. Nakajima created, if you ran a shell extension you were in
12 the same process as both the shell itself and other shell
13 extensions, circa 1994, and 1995.

14 A. I understand the problem. Yes.

15 Q. Okay.

16 A. It's the issue that we've been talking about, yes.

17 Q. Okay. And then on the second page of this e-mail
18 it says:

19 Due to some architectural limitations of the
20 current design --

21 MR. SCHMIDTLEIN: Excuse me. I'm sorry. Which
22 page are you on?

23 MR. HOLLEY: I'm sorry. 94.

24 MR. SCHMIDTLEIN: 94.

25 THE WITNESS: Top, upper.

1 MR. SCHMIDTLEIN: Yeah. I've got a different
2 version of it.

3 THE WITNESS: We're on the second page, are you?

4 Q. BY MR. HOLLEY: I'm up at the top. The first full
5 sentence on that page says:

6 Due to --

7 A. I see it, yes.

8 Q. Are you with me?

9 A. Yes.

10 Q. Due to some architectural limitations of
11 the current design, Microsoft originally chose not
12 to publish these mechanisms until the design could
13 be changed to work robustly on both Windows NT --
14 excuse me -- Windows 95 and Windows NT. With the
15 upcoming beta release of Windows 95, these limitations
16 have been addressed, and the extension mechanisms
17 will be published. The following document discusses
18 the limitations and the solutions available to
19 ISVs both today and with the upcoming release of
20 Windows NT.

21 Now, you understand this to mean, do you not, sir,
22 that as of March of 1996 Microsoft was still in the process of
23 putting the finishing touches on the changes to the NameSpace
24 mechanism in order to solve the robustness problems that were
25 identified in 1994?

1 A. As I understand this, the Microsoft had -- was
2 intending to make a modification to the software, a modest
3 modification, to allow a user to specify whether or not they
4 wanted the extensions, the NameSpace extensions to run in a
5 separate process or not, but that the systems would be shipped
6 with the default of no run them in the same process. That's
7 what I believe he's referring to. And the time frame here
8 that we're talking about here is coincident with my -- the
9 date that I gave you for the actual release. I think he's
10 talking about beta here. But the actual product would have
11 been released in late '96 or early '97.

12 Q. Okay. Thank you.

13 THE COURT: Why don't we break for lunch. It's
14 about 10 of -- unless it's a bad time. Do you want to go a
15 couple minutes?

16 MR. HOLLEY: No, Your Honor. It's as good a time
17 as any. I'm sort of right in the middle of this document,
18 but --

19 THE COURT: That's what I thought.

20 Any of you can tell me no without prejudice, any
21 one of you. I'm a little worried we're running a little
22 behind time. And I'm just wondering if by making a phone call
23 during the break it would be okay if we went until around 2:00
24 or 2:15 today. You've all been wonderful. And you can tell
25 me. You don't have to raise your hand. You can tell Theresa.

1 If any one of you says no, that's fine. But if we could go a
2 little longer today, I think it might be helpful. I'm a
3 little worried we're running behind time, and I just want to
4 pick up a half hour or so.

5 But I really mean it. You have all been absolutely
6 wonderful. The deal was we break at 1:30. You have jobs to
7 go to, and I absolutely would understand that. But if by
8 making a phone call during the break or something, you can buy
9 a half an hour, that would be great. But I'm not putting any
10 pressure upon you. I'm just asking you a question. We'll
11 take a break.

12 (Whereupon, the jury left the court proceedings.)
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1 STATE OF UTAH)

2) ss.

3 COUNTY OF SALT LAKE)

4 I, KELLY BROWN HICKEN, do hereby certify that I am
5 a certified court reporter for the State of Utah;

6 That as such reporter, I attended the hearing of
7 the foregoing matter on November 10, 2011, and thereat
8 reported in Stenotype all of the testimony and proceedings
9 had, and caused said notes to be transcribed into typewriting;
10 and the foregoing pages number from 1572 through 1638
11 constitute a full, true and correct report of the same.

12 That I am not of kin to any of the parties and have
13 no interest in the outcome of the matter;

14 And hereby set my hand and seal, this ____ day of
15 _____ 2011.

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KELLY BROWN HICKEN, CSR, RPR, RMR