

1 (Recess)

2 MR. TULCHIN: I didn't mean to interrupt. There
3 were a couple of hands that looked like they were really --

4 THE COURT: I understand.

5 (WHEREUPON, the jury enters the proceedings.)

6 THE COURT: I am sorry that I made you all raise
7 your hands. I am glad somebody picked it up. I was trying
8 to go an extra ten minutes. There were some people that
9 walked into the courtroom, and I wanted them to hear the
10 testimony. That was our schedule and let's get back on it.

11 Mr. Johnson.

12 MR. JOHNSON: Thank you, Your Honor.

13 BY MR. JOHNSON

14 Q. Mr. Gates, prior to the break you were handed
15 Plaintiff's Exhibit 55. This is two days after Mr. Abner
16 shared his notes from the Hood Canal retreat, and Mr. Tom
17 Evslin also forwarded his notes from that retreat.

18 Now, in 1993 Mr. Evslin was the manager of the
19 WorkGroup division, correct?

20 A. It was some WorkGroup thing somewhere in Maples'
21 organization that he was in charge of. I don't know the
22 name of it.

23 Q. Well, he was certainly the guy, Mr. Evslin, working on
24 mail related things, right?

25 A. No. I don't think REN worked for him.

1 Q. Mr. Evslin would have been working on Capone, right?

2 A. That sounds right.

3 Q. He was the guy that worked in Microsoft on mail related
4 things, right?

5 A. Yes. He was not the only guy working on mail related
6 things. There were mail related things that did not work
7 for him.

8 Q. Mr. Evslin states at the top of his e-mail there, and
9 if we could bring up the first paragraph, please don't
10 forward. A few things came up of importance with regard to
11 WGD. Again, the WorkGroup division. A very interesting
12 plan was developed and tentatively adopted to bundle the
13 extensibility of the Chicago shell and some of the shell
14 sizzle in Office rather than release with Chicago itself.

15 Now, Mr. Gates, this document from Mr. Evslin indicates
16 that Microsoft in June of 1993, in fact, had tentatively
17 adopted a plan to bundle the extensibility of the operating
18 system in Office rather than in Chicago, correct?

19 A. No. It says that Evslin thought so but, in fact, we
20 never put shell functionality in Office. I was never
21 thinking that that plan made sense, and so he thought there
22 was something tentatively adopted but, in fact, that was
23 wrong.

24 Q. It goes on to say this makes these features a
25 compelling reason to buy Office rather than the icing on the

1 cake of an operating system we can't make as much profit on.

2 The implication is that the mail client in Chicago
3 might not want to be as full featured as the mail client in
4 Office or mail itself. Perhaps this is even the 16 bit
5 client that Explorer is not extensible in Chicago itself.

6 So Mr. Evslin was reflecting that if the shell in
7 Chicago was not extensible, that he might have to par back
8 on his plan for Capone, correct?

9 A. I don't know what he means by the 16 bit client. He
10 clearly thinks there is a difference between the 16 bit
11 client and the 32 bit client, and that is interesting
12 because we actually didn't do a 16 bit client. I don't know
13 what he means in that sentence about the 16 bit client.

14 Q. So you don't think this has anything to do with Capone,
15 what Mr. Evslin was working on at the time?

16 A. Well, I don't know what he means by the 16 bit client.

17 Q. I show you now what has been marked as Plaintiff's
18 Exhibit 61.

19 This document was written about three weeks after Mr.
20 Evslin's e-mail. This Office shell, ideas and issues, was
21 written by Chris Graham, correct, sir?

22 A. Well, I have never seen the document except in the
23 deposition.

24 Q. Well, you would agree with me that the header file up
25 above indicating where this document can be found is with

1 Chris Graham. That is Chris GR, right?

2 A. That is right. It appears to be written by Chris
3 Graham.

4 Q. And Mr. Graham was one of the Microsoft executives that
5 was a member of the group one team that proposed the radical
6 extreme plan, correct?

7 A. Yeah, I think he was a member. He seems to be pushing
8 a plan.

9 Q. Yes, sir.

10 In the summary, if we could go to the summary, please,
11 it states this paper investigates a proposal that the next
12 major version of Office after Chicago should consist of a
13 Windows shell and applications optimized to work together.
14 The proposal originated at a senior technical retreat at
15 Hood Canal in June of 1993.

16 Does that refresh your recollection, sir, that the plan
17 to ship an Office shell and to deny the extensibility of
18 Chicago to ISVs was developed in Hood Canal in June of 1993?

19 A. Well, it uses the word proposal not plan, and
20 apparently Chris Graham both in the retreat and in this
21 document is suggesting that we do something that, in fact,
22 we chose not to do.

23 Q. Well, has your recollection been refreshed at all that
24 the plan --

25 A. It says to make --

1 Q. -- to make Chicago with limited or less extensibility
2 originated at the Hood Canal retreat in June of 1993?

3 A. No. That proposal, which was not adopted, was about
4 eliminating extensibility from the Chicago shell, and
5 neither that plan or the taking out of all of the
6 extensibility, none of that happened.

7 Q. Now, you see below the summary that Mr. Graham
8 recommends that Microsoft should follow the aggressive
9 version of the Office shell plan, correct?

10 A. Yes, he apparently thought so.

11 Q. And, in fact, rather than saying the Chicago would ship
12 with no extensibility, Mr. Graham states that Chicago would
13 ship with limited extensibility, correct?

14 A. Do you want me to read the document?

15 Q. No. We can point it out to you.

16 MR. JOHNSON: If we can go down and highlight
17 schedule, quarter two, 1994. If we could highlight that
18 right there.

19 THE WITNESS: Yeah. It is very funny. I mean,
20 Q-2, 1994, Chicago didn't ship anything like that, so
21 clearly this document in reality diverged in a very dramatic
22 way.

23 BY MR. JOHNSON

24 Q. Mr. Gates, my simple question was the aggressive plan
25 advanced by Mr. Graham would involve shipping Chicago with

1 limited extensibility, correct?

2 A. It says Q-2 '94 Chicago shipped shell has limited
3 extensibility. That is what the document says, yes. That
4 did not happen.

5 Q. And according to Mr. Graham, if we could turn to the
6 third page of this memorandum, with a Bates stamp ending
7 7123, according to Mr. Graham one of the advantages of the
8 aggressive plan would be that it would give Microsoft a
9 significant lead over Microsoft's competitors and make
10 Microsoft's competitors' products look old, correct?

11 A. That is what the document says, yes.

12 Q. Does this document refresh in any way your recollection
13 of the plan you approved at Hood Canal in June of 1993, was
14 to ship an extensible shell in Office?

15 THE COURT: Please rephrase the question.

16 BY MR. JOHNSON

17 Q. Mr. Gates, does this document refresh your recollection
18 at all of whether or not you approved at Hood Canal in June
19 of 1993 a plan to ship the extensible shell in Office?

20 A. No. We did not adopt a plan to ship an extensible
21 shell in Office, nor did we ship an extensible shell in
22 Office.

23 THE COURT: I wish you would have shipped in
24 February of '94 and none of us would be here.

25 THE WITNESS: Software is hard.

1 BY MR. JOHNSON

2 Q. So in 1993, Capone, which you indicated was Microsoft's
3 e-mail application, was to be integrated into Chicago,
4 right?

5 A. No. Capone was a separate -- actually I'm not sure
6 what the ship plan was for Capone. It was an e-mail client,
7 but I think -- yeah, I think it was separate. It was just
8 like an application. I would have to check on that.

9 Q. Mr. Gates, you don't recall that Capone was to be
10 integrated in Chicago on your order, sir?

11 A. Well, every application in a sense was integrated into
12 Windows. The question I was opining about was whether it
13 was the plan to ship it with it. You can call anything that
14 runs on top of Windows integrated with Windows. The
15 question is how do they ship?

16 Q. Well, let's try it this way.

17 You agreed with me a few moments ago that in 1993
18 Capone was using the namespace extension APIs to integrate
19 into Chicago, correct?

20 A. No. When you use the namespace extension APIs you get
21 exactly what is involved there. When somebody is in the
22 Explorer, and if they click on a name there is a new level
23 of names there, so that is the accurate description of what
24 that did.

25 Capone was a project, and at this time in that project

1 they were planning on using those APIs.

2 Q. And isn't it a fact, sir, that the only reason Capone
3 was in Chicago was to help Microsoft achieve dominance in
4 the market for e-mail applications, correct?

5 A. Well, all the work we were doing on e-mail
6 applications, whether it is Capone or REN or everything, is
7 to increase or market share in e-mail applications. Whether
8 or not the marketplace loved our product so much that we
9 would get a dominant share, that was completely up to the
10 market.

11 Q. Let me show you what has been marked as Plaintiff's
12 Exhibit 39.

13 This is an e-mail from John Ludwig at the top.
14 Mr. Ludwig was the group manager for networking for Chicago,
15 correct?

16 A. I think so, yes.

17 Q. And WGA means WorkGroup applications, correct?

18 A. Where?

19 Q. Do you need a where to answer that question, Mr. Gates?

20 A. Yeah. Three letter acronyms, depending on the context,
21 the same three letter acronym could mean many different
22 this. Windows graphics accelerator is called WGA.

23 Q. Okay. Let's look down at the first bullet point and
24 the first sentence thereof. It says, quote, the only reason
25 mail is in Chicago is to help WGA achieve dominance in the

1 mail market. Bill's words, not mine.

2 Would you agree with me, sir, that WGA means WorkGroup
3 applications?

4 A. Yes. In that sentence, absolutely.

5 Q. And Capone was being developed by WorkGroup
6 applications, correct?

7 A. I think that is right, yes.

8 Q. And Capone was an e-mail application, correct?

9 A. An e-mail client, yes.

10 Q. Mr. Ludwig is reporting that you told him that the only
11 reason mail is in Chicago is to help WGA achieve dominance
12 in the mail market. Bill's words, not mine.

13 Correct?

14 A. I am not copied on this e-mail, but apparently he felt
15 that that is what I was saying in a Chicago review.

16 Q. Do you deny saying that, sir?

17 A. No. As I said, the idea of our e-mail work was to gain
18 market share, and if the market liked our product we would
19 get a high enough share to be called dominant.

20 Q. And your view was, sir, at the time was that because
21 Capone was to be part of Chicago, there was no need to
22 document the APIs Capone was using to integrate into the
23 Chicago shell, correct?

24 A. Well, actually we end up documenting all the APIs that
25 Capone used. So I can't go back and recall what I was

1 thinking about particular APIs in the application, but
2 Capone used published APIs.

3 THE COURT: Don't answer this if it is
4 complicated. I am just curious. I keep hearing about
5 e-mail clients and applications.

6 Is there a difference between a client and an
7 application?

8 THE WITNESS: No. The word application is just
9 such a broad term, client -- the end user sits in front of
10 the e-mail client and sees their set of mail messages and
11 the server manages those things. So the term application is
12 so broad it could refer to the server piece as well, but I
13 just keep clarifying this is the end user piece not the
14 exchange piece which is up on the server.

15 BY MR. JOHNSON

16 Q. I'm handing you now Plaintiff's Exhibit 483, Mr. Gates.

17 This is an e-mail chain, and the first e-mail, which is
18 actually at the end of the document as e-mails want to do
19 from the bottom up, is from Mr. Evslin who, again, we
20 identified as the manager of the WorkGroup division, right?

21 A. Yes.

22 Q. And as we have established he would have been working
23 on Capone, right?

24 A. Yes.

25 Q. And Mr. Evslin wanted to know if there was anything

1 being done in integrating Capone into Chicago that a third
2 party, Lotus, for example, won't be able to do.

3 Do you see that, sir?

4 A. Yes.

5 Q. And then there is some back and forth about that issue
6 going up this e-mail string. I would like you to focus,
7 please, on Mr. Joe Belfiore's e-mail on the first page to
8 Tom Evslin dated September 22nd, 1993 at 7:39 p.m.

9 Are you with me, sir?

10 A. Yes, sir.

11 Q. He states it is unclear whether we'll publish them or
12 not for our release. Bill is very, with asterisks around
13 it, aware of this as an issue, so you can bring it up with
14 him. He may be instrumental in deciding whether or not it
15 is important for us to do the work to make them palatable.

16 Do you see that, sir?

17 A. These palatable, yes.

18 Q. Yes. So you were very well aware of the issue of
19 whether or not to publish the APIs that Capone was using at
20 that time to integrate into Chicago, correct?

21 A. Yeah. The issue of the namespace APIs causing
22 significant problems for the Windows NT and Cairo group had
23 been -- people were aware of that issue by this time.

24 Q. If we go up to the top e-mail we see that Mr. Evslin
25 apparently talked to you about this issue in some detail and

1 your answer was, no, Microsoft is not going to publish these
2 extensions because Capone is part of Chicago, correct?

3 A. Right. We had a general policy that for things that
4 ship separately from the operating system we would publish
5 the APIs. There was no absolute requirement to do that, but
6 we had that as a general policy. There was some ambiguity
7 about things that actually shipped with the operating
8 system, that ran in kind of an application like way, whether
9 we would publish those APIs or not.

10 People like Silverberg took the position that we
11 should. I had taken the position that our policy did not
12 extend to that.

13 Q. Now, it is fair to say that there were a lot of
14 Microsoft executives who disagreed with your view, correct?

15 A. There were people that agreed and disagreed, but that
16 is -- so you have two separate issues. One is when you have
17 an application like thing that ships only with the operating
18 system and it is calling APIs, do you need to publish those
19 APIs? There were people who had different views on that.

20 In terms of applications that ship separately, although
21 there was no requirement or anything, we did have a policy
22 that we generally publish the APIs of things that ship
23 separately. Now, all of that is separate from the question
24 of which APIs we would support across our Windows operating
25 systems.

1 Q. And Jon Lazarus, he was the vice president for system
2 strategy, he disagreed with your view, right?

3 A. Yes. He and Silverberg thought that even though
4 something shipped in the Windows box, if it was application
5 like their view is that they wanted us to publish the APIs
6 that those products used.

7 Q. In fact, Mr. Lazarus chimes in after Mr. Belfiore's
8 e-mail.

9 MR. JOHNSON: If we could bring that up, it is the
10 second one from the top, please.

11 BY MR. JOHNSON

12 Q. Mr. Lazarus states if we use them, we have to publish
13 them. Right, sir?

14 A. Yeah. His view is that that was a good idea. He
15 agreed with Brad Silverberg and I differed on that.

16 Q. Do you recall, sir, that in your deposition that you
17 told me that your guess was that Mr. Lazarus was probably
18 confused here?

19 A. Actually I don't recall that.

20 MR. JOHNSON: Could we bring up Mr. Gates'
21 deposition, please, of 3-4, 2009, at page 74, lines 3
22 through 9.

23 BY MR. JOHNSON

24 Q. Do you recall me asking you the following question --

25 A. Can you show me what came before? I have no idea what

1 this is. It is out of context.

2 Q. You can read the whole page if you would like.

3 A. Is it possible to actually ask you to go even further
4 and see the page that explains what is going on?

5 Q. Why don't we just get the question answered first, and
6 then you can read --

7 THE COURT: No, I think he is entitled to see what
8 is being talked about in that question.

9 MR. JOHNSON: We can give him a copy. I think he
10 has a copy of his deposition up there. You can look as much
11 as you like.

12 THE WITNESS: I don't think I do, sir.

13 MR. JOHNSON: Okay.

14 THE COURT: Maybe I missed it -- my guess is that
15 what is being talked about is exactly what you say is being
16 talked about, I just don't remember.

17 THE WITNESS: Neither do I.

18 BY MR. JOHNSON

19 Q. You'll see, sir, and I can probably move this along a
20 little bit, on page 73 we're talking about the exact same
21 e-mail and the exact same quote, which is if we use them we
22 have to publish them. I asked you if you agreed with Mr.
23 Lazarus and you gave a long answer, and then I asked you the
24 question --

25 MR. JOHNSON: Can we highlight this?

1 BY MR. JOHNSON

2 Q. Question, do you think Mr. Lazarus is confused here?
3 Your answer was from time to time Mr. Lazarus was confused.
4 It is not impossible that he was confused here. Reading
5 what I wrote, I -- my guess is that he is confused right at
6 that moment when he wrote that.

7 Did I ask that question and did you give that answer at
8 your deposition in this case?

9 A. Yes. Whether it relates to the other stuff we're
10 talking about or not, I'll look into it if you want me to.

11 Q. No, sir. That is fine.

12 A. Okay.

13 Q. Let's take a look at PX-85.

14 This is an e-mail, very short, from Mr. Lazarus to Mr.
15 Silverberg, and then an e-mail from Mr. Silverberg to Mr.
16 Cole and others. Mr. Silverberg states we clearly have to
17 publish whatever APIs Capone uses. Mr. Lazarus responds,
18 thanks, sanity is refreshing.

19 Mr. Gates, do you still think Mr. Lazarus was confused
20 in his view on this issue?

21 A. Wait a minute. If you want me to talk about confusion,
22 I'm going to have to go back and read the deposition and see
23 what series of questions were going on there. This mail,
24 although I am not copied on it, and this is the first time I
25 have ever seen it, is 100 percent consistent with what I

1 told you, which is that there were people, including Brad
2 Silverberg and Jon Lazarus, who thought that when an
3 application shipped with Windows, they thought it should be
4 our policy to publish those APIs. So the fact that these
5 two thought that, there is nothing -- this e-mail is just
6 exactly what I told you.

7 Q. Mr. Silverberg, he was the vice president of the
8 personal systems group, and he was the man in charge of
9 Chicago, right?

10 A. He worked for Paul Maritz who worked for me, yes.

11 Q. Was that a yes to the question of he was the man in
12 charge of Chicago?

13 A. It was an answer that he did not have unilateral
14 decision making, but he was the direct manager of the
15 Windows 95 group. He did not have unilateral authority.

16 Q. And you would agree, sir, that it was his view that
17 Microsoft clearly had to publish whatever APIs Capone was
18 using?

19 A. Well, he thought it would be a good idea. It is simply
20 a matter of Microsoft policy. We can publish, not publish,
21 that's completely up to us. He thought it would be a good
22 idea for this class of application, even the ones that
23 shipped with Windows, to also publish for those like we did
24 for applications that shipped separately.

25 Q. And Mr. Doug Henrich, he was the head of the developer

1 relations group in 1993, correct?

2 A. He was in DRG. I don't know if he was in charge.

3 Q. He also disagreed with your view as well, correct?

4 A. Yeah. There were people who disagreed with that view.

5 I don't know -- actually I don't know Doug's opinion. I
6 know that he forwarded an e-mail, by just looking at this
7 thing for the first time, I know that Doug appears to have
8 forwarded on Sunday, September 26th, an e-mail from Brad,
9 forwarded it to Jon.

10 In this blank area where he could have typed I agree, I
11 disagree, he just types nothing and he just forwards it.

12 Maybe there are other documents that say what Doug thought.

13 Q. I might have one here for you, Mr. Gates.

14 This is Plaintiff's Exhibit 84.

15 You'll see there is an e-mail at the top from Mr.
16 Henrich, Brad Silverberg and others. You were not copied on
17 this e-mail --

18 A. Anywhere in the chain?

19 Q. -- concerning Capone and Chicago. Do you see that,
20 sir?

21 A. You are saying I am not copied anywhere in the chain?

22 Oh, this is just a continuation of that one we just
23 looked at.

24 Q. Yes, sir.

25 A. Okay.

1 Q. Mr. Henrich states, quote, I am not sure what you're
2 thinking is about publishing the interface APIs that Capone
3 uses, but I know Lotus will take a big deal of this. Manzi
4 has already mentioned it to Bill G, and I am afraid that the
5 press will have another field day with this.

6 You would agree with me, sir, that Mr. Henrich, the
7 head of the developer relations group, also disagreed with
8 your view?

9 A. I wouldn't say it that strongly. He clearly had some
10 concerns about it.

11 Q. Mr. Gates, I would like to show you a slide that we
12 made last night of some of your testimony yesterday. This
13 comes from page 2,781, lines 15 through 21, and 2,794 at
14 lines 14 through 21.

15 The question was asked what impact, if any, did the
16 namespace extension APIs in Windows 95 have on the
17 reliability or the robustness as you have used that term?
18 Answer, the Windows NT people when they looked at this work,
19 that they had not been aware of when it was being done, and
20 then later they saw it, they came with some very serious
21 concerns.

22 Then going down to the second part there, question,
23 now, going back to Plaintiff's Exhibit 1, sir, and in the
24 second paragraph you say this is a tough decision. Why did
25 you say that, sir? Answer, well, I knew whichever way I

1 decided it there would be somebody who would be
2 disappointed. If I decided that, hey, this stuff that, you
3 know, they didn't talk to you about in advance, that they
4 just did, they didn't think about your needs. The answer
5 goes on.

6 You're not suggesting, are you, Mr. Gates, to this jury
7 that the NT and Cairo people were not fully aware that the
8 Windows 95 team was working on the namespace extension APIs
9 and, in fact, had decided to publish them?

10 A. I know that when they became aware of it they had
11 significant concerns about that work, and they felt that if
12 they had been consulted before the work had been done, then
13 a different approach would have been taken.

14 Q. Mr. Gates, I just want to make clear that you're not
15 trying to suggest to this jury that the NT and Cairo people
16 were not fully aware that the Windows 95 team was working on
17 these namespace extension APIs and, in fact, had decided to
18 publish them. Can I get a yes or no to that, sir?

19 A. Well, it was not up to the Windows 95 team whether or
20 not they published them. That was a decision to be made by
21 the company and that got escalated to me. In fact, those
22 people had not been involved in the original design, and
23 they were raising some serious questions about whether we
24 should make a commitment that the Windows NT and Cairo based
25 shell should support those capabilities.

1 Q. Isn't it a fact, Mr. Gates, that the top executives in
2 charge of Chicago, Cairo and Windows NT decided in September
3 of 1993 to publish the extensions that Capone was using to
4 integrate into the Chicago shell?

5 A. Well, given the disagreement, that decision eventually
6 came to me.

7 Q. Could you answer my question, Mr. Gates?

8 A. I believe I just answered that the decision was
9 escalated to me to make that decision.

10 Q. Let me show you Plaintiff's Exhibit 473. This is
11 Plaintiff's Exhibit 473, Mr. Gates. It is from Brad
12 Silverberg.

13 MR. JOHNSON: I'm looking at the bottom, if we
14 could bring that up.

15 BY MR. JOHNSON

16 Q. Now, he was in charge of Chicago, correct?

17 A. Brad Silverberg, yes.

18 Q. It is to Dennis Adler. He was the group program
19 manager for Chicago, correct?

20 A. I don't know his title, but that sounds right.

21 Q. With a CC to David Cole. He was the group manager of
22 Chicago, correct?

23 A. Right. These are three Chicago people.

24 Q. Absolutely. And the e-mail states that David and I met
25 with Bob U and Jim Al. Now, Bob U is Bob Muglia, right?

1 A. That is correct.

2 Q. And he was in charge of Windows NT, right?

3 A. Yeah, the Windows NT people worked for him.

4 Q. And Jim Al, that would have been Jim Allchin?

5 A. That is correct.

6 Q. And at this time he would have been in charge of Cairo,
7 correct?

8 A. Cairo and a bunch of NT stuff.

9 Q. And Mr. Silverberg is reporting --

10 A. Actually -- Cairo -- I don't know when Cairo got
11 transferred away from him, but I think he still had it here.

12 Q. And Mr. Silverberg is reporting that the decision has
13 been made to document the shell extensibility after we have
14 finalized on the APIs.

15 Do you see that, sir?

16 A. I do see that.

17 Q. And Mr. Silverberg states that we decided it is A list.

18 Do you see that, sir?

19 A. I do.

20 Q. And A list means fully documented and fully supported.
21 Correct, Mr. Gates?

22 A. No. I don't know what A list means. How do you know
23 what it means?

24 Q. So, finally, Mr. Gates, when you suggested to this jury
25 that the Windows NT and Cairo people didn't know about the

1 publishing of the namespace extensions you were incorrect,
2 right?

3 A. No. You're mischaracterizing this e-mail. Brad
4 Silverberg is trying to say that he thinks he got clearance
5 to do this. In fact, that is not right. It was a
6 controversial issue and there were serious concerns by those
7 teams. Those were escalated to me.

8 So the notion that Jim Allchin agreed that these things
9 should be published, that is just not true. It was
10 escalated to me and I had a tough decision to make, which
11 was made subsequent to this e-mail.

12 Q. Excuse me, Mr. Gates. Your decision was made sometime
13 in October of 1994. Are you suggesting to me that those
14 executives who had this big disagreement didn't speak to you
15 about this matter for over a year?

16 A. There were a lot of changes in these APIs, and a lot of
17 things that went on, and what the Chicago team did raised a
18 lot of concerns particularly -- this thing here, who knows
19 what they are referring to here. There is no reference here
20 at all to namespace APIs. This is a much more general thing
21 that is taking place way before the specific knowledge of
22 those APIs became available.

23 So by '94 people had looked at what had been done, they
24 became aware of it, and they felt they had not been
25 consulted and they escalated that issue to me.

1 Q. Really, Mr. Gates?

2 A. Absolutely.

3 Q. Are you telling this jury that this didn't involve the
4 namespace extensions?

5 A. I know that the NT group when they saw the namespace
6 extensions they were surprised at the design and they
7 objected to those being part of the official API set.

8 Q. Do you see the re line, sir, Capone and Chicago?

9 A. Yes.

10 Q. Do you notice that all the prior e-mails we looked at
11 had the same re line, Capone and Chicago, and they were
12 talking about whether or not to publish these namespace
13 extension APIs?

14 A. No. The term namespace -- there were design changes
15 made between 1993 and 1994, and when people saw what was
16 being done they developed substantial concerns, and those
17 were serious concerns that were quite legitimate, and that
18 is why I had a tough decision to make.

19 Q. In fact, sir, if we look above in Plaintiff's Exhibit
20 473, to Mr. Dennis Adler's s-mail, he states --

21 MR. JOHNSON: Could we bring up his e-mail there,
22 please.

23 BY MR. JOHNSON

24 Q. Last line of his e-mail, the APIs I think this covers
25 are those for hooking into the right left pane of the

1 Explorer.

2 That would be the namespace extensions, correct,
3 Mr. Gates?

4 A. Yes. Those APIs when the NT group became aware of
5 them, they were very negative on them being published.

6 Q. Simple question, Mr. Gates. We're talking about the
7 namespace extension APIs, right?

8 A. No, there are quite a few APIs this could be referring
9 to. It talks about property sheet pages. It is well before
10 the namespace controversy came to fruition.

11 Q. Mr. Gates, you knew at the time that the top executives
12 in charge of Chicago and Cairo and Windows NT decided to
13 publish the namespace extensions in 1993, that applications
14 using those APIs would work fine on later generations of
15 Microsoft's operating system, correct?

16 A. No.

17 Q. Let's turn to Plaintiff's Exhibit 94.

18 This is about two weeks after the decision e-mail we
19 just looked at, Mr. Gates. Mr. Maritz is sending an e-mail
20 to you, right?

21 A. Yes.

22 Q. I would like to focus on paragraph number one,
23 recognizing that Chicago is the next ISV target.

24 Do you see where we are, sir?

25 A. Yep.

1 Q. Mr. Maritz states in his e-mail to you, ensure that the
2 APIs exposed by Chicago are as close as we can make to the
3 OLE direction we want to go. Mainly, can we get shell
4 extension APIs to be OLE? Answer, yes, we can by using
5 lighter weight OLE implementation for just those scenarios
6 that shell uses, i.e., not for general in place editing, et
7 cetera.

8 This will mean that any Chicago UI exploitative apps
9 would work decently on Cairo, i.e., no need for ISVs to do
10 different work to run on Cairo.

11 Do you see that, sir?

12 A. Yes, I do.

13 Q. And this e-mail indicates, does it not, sir, that as of
14 October of 1993 that Mr. Maritz has told you that Chicago
15 exploitative applications using the shell extension APIs
16 would work decently on Cairo?

17 A. No. He is saying that we're going to work to try to
18 ensure that.

19 Q. In fact, sir, a light weight OLE implementation of
20 these APIs was in fact developed.

21 Isn't that a fact, sir?

22 A. Yeah, that also had technical problems that it created,
23 but that is unrelated to namespace extension APIs.

24 Q. Now, about a month after the decision was made to
25 document the shell extensibility used by Capone to integrate

1 into the Explorer, i.e., the namespace extensions, Microsoft
2 informed WordPerfect of that decision.

3 Is that right, Mr. Gates?

4 A. I don't know what you mean -- I am not sure what you
5 are referring to, which time frame and what decision? We
6 eventually decided not to add the namespace extensions to
7 the official API set because of the concerns from the NT and
8 Cairo team.

9 Q. I'm talking about the decision made in Plaintiff's
10 Exhibit 473 to A list these extensions and document the
11 shell extensibility. That is the decision I'm talking
12 about, Mr. Gates.

13 A. No. There was a very bad relationship between Brad
14 Silverberg and Jim Allchin, and Brad certainly was pushing
15 for certain things to be done and Jim was resisting those
16 things.

17 Eventually, when we looked at what we were trying to
18 ensure in terms of upwards compatibility, and we were always
19 trying to ensure it, we ended up with a problem, a real
20 problem, because the way they had gone off and done it
21 without consulting with the other people meant that NT and
22 Cairo were very concerned about it.

23 So eventually the decision had to be made whether to
24 publish the things are not. Over the period of years Brad
25 is pushing for it and trying to get it to be done, and Jim,

1 as he gets a chance to look at what specifically happened,
2 he is raising objections, and we had lots of tension between
3 those two.

4 Q. Mr. Gates, I can show you this e-mail if you would
5 like, but perhaps I can just represent to you that on
6 November 18, 1993, David Cole and other Microsoft people
7 came to WordPerfect and told them of the decision to
8 document the shell extensions, the namespace extensions.

9 Will you accept that representation or do you need to
10 look at the exhibit?

11 MR. HOLLEY: Your Honor, I do not accept that
12 representation.

13 MR. JOHNSON: Then we'll use the exhibit.

14 MR. HOLLEY: It is false.

15 BY MR. JOHNSON

16 Q. Mr. Gates, let me show you what has been marked PX-105.

17 This e-mail, Mr. Gates, memorializes a trip to
18 WordPerfect by David Cole, Brad Struss and Jeff Field in
19 November of 1993.

20 Do you see that, sir?

21 A. Yes. Is it copied to me?

22 Q. No, sir.

23 Now, David Cole was the group manager for Chicago,
24 correct?

25 A. A group manager, yes.

1 Q. And that was the same David Cole that was involved in
2 the decision to document the shell extensibility that Capone
3 was using to integrate into Chicago, right?

4 A. No. David Cole was not the final authority on what
5 APIs we publish. You know, that is a decision that you make
6 when you finalize the product.

7 Q. And do you see down in the fourth paragraph there, if
8 you could go down to the fourth paragraph.

9 MR. JOHNSON: Highlight that, please.

10 Thank you.

11 BY MR. JOHNSON

12 Q. Do you see where it says that they, meaning
13 WordPerfect, were very happy about us deciding to document
14 the shell extensions.

15 Do you see that, sir?

16 A. Yes.

17 Q. Now, other ISVs other than WordPerfect were also
18 informed that Microsoft had decided to publish the shell
19 extensions, correct?

20 A. No. What they were informed is that we were working on
21 Windows 95, doing our best to get it done, and they were
22 informed that some aspects of it would change over time, but
23 we were helping them to write applications and we wanted
24 them to write applications for Windows 95. But we were
25 clear that things could change like they did in many

1 software releases.

2 Q. Let me show you what has been marked as Plaintiff's
3 Exhibit 139.

4 I would like to direct your attention to David Cole's
5 e-mail in the middle of the page where he is responding to
6 certain questions that are being posed by Mr. Maritz.

7 Do you see that, sir?

8 A. Yeah. I see Mr. Maritz. This is in 1994. This is
9 after 1993, and he is saying please help unconfuse me again.
10 In M6 we plan to ship a new set of OLE like APIS for doing
11 right pane shell extensibility? He is trying to figure what
12 the heck is going on.

13 Q. Yes, sir. And Mr. Cole responds, correct, these are
14 essentially done today, and we plan to start talking about
15 them with specific people who ask like Symantic. They are
16 here on the 16th.

17 Do you see that, sir?

18 A. Yes, sir.

19 Q. And Mr. Maritz asks what shell APIs for Capone are used
20 for doing its right pane work? Answer, same APIs as above.
21 Everything internally will -- has been mostly converted over
22 to use the new stuff, even control panels and printers.

23 A. Yes. That suggests the amount of change there was,
24 that things kept changing and we had to change things over.
25 But there is no doubt that at one time Capone intended to

1 use some of these shell APIs.

2 Q. And here Mr. Cole was informing Mr. Maritz that these
3 APIs are essentially done today, and we're going to be
4 talking to specific people about them, right?

5 A. I think his words speak for themselves. That is not a
6 good summary.

7 Q. The reference in Mr. Maritz's question, question number
8 one, he says in M6 -- M6, you will agree with me, refers to
9 the M6 beta for Chicago, right?

10 A. Right, which was not done at this time, but they were
11 working on the milestone six release that eventually was
12 done.

13 Q. Now, Chicago uses the namespace extensions internally
14 to display namespaces like Network Neighborhood, Recycle Bin
15 and My Briefcase, correct?

16 A. No. I would have to look at the code to see how it
17 does that.

18 Q. You don't know that, sir?

19 A. No, because once you're inside -- that is it a level of
20 protection where calling back out to an app API is actually
21 very difficult because of the way the memory mapping works.
22 So I don't know if they did that -- called through those or
23 called another way.

24 I bet they called another way, but we would have to get
25 the source code to see.

1 Q. Well, just to be clear here, you can agree with me,
2 right, that Mr. Maritz was aware of the plan to ship the
3 namespace extension APIs with the M6 beta, correct?

4 A. I doubt that he focused specifically on that subset of
5 the APIs, but he knew there was shell extensibility and, you
6 know, then this issue arose of what did the other groups
7 that worked for him think about this, and discussions ensued
8 culminating in a decision about whether or not -- which
9 parts of that API we would publish or not.

10 Q. Mr. Gates, I don't want to be argumentative, but isn't
11 the subject matter of Mr. Maritz's e-mail Capone and shell
12 APIs?

13 A. That is the subject line, yes.

14 Q. And --

15 A. Capone used shell APIs other than the namespace
16 extensions, so you shouldn't just limit it to that.

17 Q. And Mr. Cole tells him it is the same shell APIs for
18 Capone that is being published to ISVs in the M6 beta,
19 right, sir?

20 A. He says we are going to start talking to them, with
21 specific people. Publication is something that you do at
22 the end when you decide what the final API set is. So when
23 people talk about publication with respect to beta, that is
24 different than publication with respect to the final
25 product.

1 Q. Well, Mr. Gates, surely you knew that the namespace
2 extensions were partially documented in the M6 beta,
3 correct?

4 A. I wouldn't have known about those specific APIs, but,
5 that is right, in these betas where we tell people that they
6 are subject to change, we document the things that are in
7 there including the things that are APIs.

8 Q. I want to make sure that you agree with me that the
9 shell extensions that Capone planned to use to integrate
10 into the Explorer at this time, in February of 1994, would
11 have been the namespace extension APIs, right?

12 A. No. No. It is not limited to that. Capone did plan
13 to use the namespace extension APIs. As we know
14 subsequently they changed and did not use the namespace
15 APIs, but, yes, they had a plan to do that. But you
16 shouldn't limit how they do shell extensibility to that.

17 In fact, there are icons, start menu, there are lots of
18 things that Capone did with the shell.

19 Q. Let me show you what has been marked Plaintiff's
20 Exhibit 142.

21 I would like to direct your attention to the second
22 e-mail on the page from John Kallen to a Mr. Taylor and to
23 Satoshi Nakajima on February 17, 1994.

24 Do you know Mr. Kallen?

25 A. No.

1 Q. Were you aware that he wrote the Capone shell?

2 A. One person did it all? Is that your testimony?

3 THE COURT: No testimony.

4 BY MR. JOHNSON

5 Q. Fortunately, Mr. Gates, I don't get to testify.

6 THE COURT: If that is testimony, I haven't been
7 doing my job.

8 THE WITNESS: I am not copied on this.

9 BY MR. JOHNSON

10 Q. You can't answer that question, Mr. Gates?

11 A. He may be one of the developers. The developer whose
12 name I remember is Satoshi Nakajima. You're saying that
13 Satoshi did not do any of the work?

14 Q. I'm talking about Capone, sir. I am not talking about
15 the namespace extensions right now. I'm talking about
16 Capone.

17 A. You're saying one person wrote Capone?

18 Q. He wrote the Capone shell according to this e-mail. If
19 you want to disagree with that, that is fine with me.

20 A. Am I copied?

21 Q. No, you are not, sir. I'm just asking if you know that
22 Mr. Kallen wrote the Capone shell?

23 I guess you don't know that. Is that fair to say?

24 A. No. It is hard when you don't know the person to know
25 what they did.

1 Q. Well, let's talk about somebody that you do know, Mr.
2 Nakajima. He was the inventor of the namespace extension
3 APIs, correct?

4 A. I have heard that.

5 Q. You have heard that? Mr. Gates, you copied to him on
6 your iShellBrowser decision --

7 A. That is right.

8 Q. -- memo, right?

9 A. He was very involved in the Chicago shell work.

10 Q. So you knew that he was the inventor of the namespace
11 extensions, right?

12 A. Actually I didn't know who specifically did the
13 invention, but I knew he was involved in that work.

14 Q. I will represent to you that your attorneys have
15 identified him as such. Okay?

16 A. Okay. Good.

17 Q. Mr. Kallen writes to Mr. Nakajima and Mr. Taylor
18 stating that he has spoken with a PM, which I assume refers
19 to project manager, about a solution where mail somehow
20 manages to browse a Lotus Notes database. He writes that
21 the PM wants to have someone write a viewer that would
22 browse the Lotus server natively and still appear inside the
23 Capone box.

24 And Mr. Kallen immediately thought, quote, they are
25 going to want to use the iShellView interface. Not only is

1 Chicago Explorer ready for this kind of action, but the
2 Capone Explorer shell that I have written expects iShellView
3 and presents a shell browser interface to those iShellViews.

4 Mr. Gates, you would agree with me, sir, that
5 iShellView and iShellBrowser are two of the namespace
6 extension APIs, correct?

7 A. I am not certain.

8 Q. Well, you can certainly agree --

9 A. IShellBrowser, I think not. IShell View, I think yes.

10 Q. Lotus Notes was Lotus's GroupWare product, correct?

11 A. That is correct, mail and GroupWare.

12 Q. And Microsoft also viewed Lotus Notes as a middleware
13 threat, correct?

14 A. Well, not in the sense that that term was used in legal
15 settings, no. In the general sense that it had APIs, yes.
16 In the sense that anybody would ever write a general
17 application to it, no.

18 Q. Now, Mr. Kallen goes on to say that a contracting
19 company would be the one to write this Notes viewer, and so
20 he asks, Mr. Nakajima, whether he can give the contractor
21 the header file, the shell object header file, appropriately
22 stripped of internal stiff, and whether there is a plan to
23 make these interfaces public either in M6 or when Chicago
24 ships.

25 Do you see that, sir?

1 A. Yeah. Yeah. He asked let me know what you think the
2 date of the shell extensibility is going to be.

3 Q. And, Mr. Gates, you would agree with me that the
4 reference to shell object header file, was the header file
5 for the namespace extension APIs, right?

6 A. No, that is a more general thing. That is the header
7 file. The header file gives you all the interfaces.

8 Q. Including all of the namespace extensions?

9 A. Any APIs that are there, that is what the header file
10 does.

11 Q. Would it include the namespace extensions?

12 A. Yeah, it would include all of the APIs. He is curious
13 about the fate of the shell extensibility.

14 Q. In fact, Mr. Nakajima replies to him, yes, to his
15 question about whether or not the APIs are to be published,
16 correct?

17 A. Yeah. He took the position, like most people in the
18 Windows 59 group, that they should be published.

19 Q. And at the end of his e-mail, if we can go to that, the
20 last sentence, he states these interfaces are nice, as they
21 are the result of many months of tuning. It would be good
22 to reuse them.

23 Mr. Gates, you would agree that the namespace
24 extensions were nice and the result of many months of
25 tuning, correct?

1 A. Well, I don't know about the months of tuning, but they
2 were a nice piece of work.

3 Q. And there was nothing wrong with these extensions as
4 you stated to all of your top executives in Plaintiff's
5 Exhibit 1, correct?

6 A. There was something wrong with them in the sense that
7 the NT and Cairo people pointed out that we would have
8 serious problems with robustness and compatibility if we
9 published those, and that is what led to my decision not to
10 publish them.

11 Q. Didn't you state in your decision e-mail, PX-1, that
12 there was nothing wrong with these extensions?

13 A. Obviously there was something wrong with them because I
14 had decided not to publish them. Just taking that one
15 sentence as a snippet, yes, that sentence is in there, but
16 anybody who looks at the document knows that I'm talking
17 about a severe problem, which is that Windows NT and Cairo
18 made serious objections. That is why they were not
19 published.

20 Q. And you would agree, sir, that Mr. Nakajima was right
21 that, in fact, the namespace extensions were partially
22 documented four months later in the M6 beta in June of 1994,
23 right?

24 A. The information about them was included in the beta
25 release. We decided not to publish them as official Windows

1 APIs later.

2 Q. Mr. Gates, let me show you what has been marked as
3 PX-134.

4 This is an e-mail from you. Looking at the bottom one,
5 and --

6 MR. JOHNSON: If you can draw out the second full
7 paragraph?

8 BY MR. JOHNSON

9 Q. Mr. Gates, is it true, is it not, that you acknowledge
10 here in this e-mail that in many meetings you have stated
11 that the hierarchal view scope pane is critical, correct?

12 A. Yeah. Scope pane is the term for the Cairo work.

13 Q. And the scope pane is the left hand pane or preview of
14 the Explorer, right?

15 A. Right. You don't call it a scope pane until you get
16 the rich generality that was coming in Cairo.

17 Q. Yes, sir. And the ability to see the real namespace of
18 the system, where we are putting everything only exists
19 there, correct?

20 A. That is what I say, yes.

21 Q. In fact, that is almost precisely how the Windows
22 Explorer for Windows 95 is described by Microsoft. Isn't
23 that a fact, sir?

24 A. I am not sure what you're referring to. Sorry.

25 Q. Let me show you what has been marked PX-388.

1 What is this document, Mr. Gates?

2 A. The front page is titled Microsoft Windows Chicago
3 Reviewer's Guide. Beta one.

4 Q. Mr. Gates, Microsoft refers to the Windows Explorer as
5 the eyes of Chicago, correct?

6 A. Not the nose or ears?

7 Q. No, the eyes.

8 A. Wow. These analogies are amazing. I don't see where
9 it does that, but I bet you're right.

10 Q. And that is because the Explorer presented a unified
11 view where users could browse all of Chicago's resources
12 including Microsoft's new namespaces, correct?

13 A. Well, you could browse the file related resources.
14 There are plenty of resources. The word resource has a very
15 specific meaning. You couldn't literally browse every
16 single resource.

17 Q. I would like you to turn to page 39 of Plaintiff's
18 Exhibit 134. I refer you specifically to the first bullet
19 point following the picture of the Chicago Explorer. It
20 states, single view of information. The Explorer is the
21 eyes of the Chicago PC. With it the user can view the whole
22 of Chicago's single unified namespace, all resources, local
23 or connected, from 10,000 feet or zoom down to ten inches.

24 My Computer and the Network Neighborhood can be browsed and
25 managed, and if the MAPI 1-0 subsystem and Chicago Mail are

1 installed, the info center can be browsed giving access to
2 mail, shared folders, Microsoft at work faxing, and any
3 installed MAPI service providers such as Compuserve e-mails.

4 Did I read that right, sir?

5 A. Yes, sir.

6 Q. And so isn't it a fact, sir, that your description of
7 the hierarchal view, the ability to see the real namespace
8 of the system, where we put everything only exists there, is
9 in fact you talking about the Windows Explorer?

10 A. What do you mean only exists there?

11 Q. Exactly what your document states, sir.

12 A. I am not sure the connection you're drawing between
13 this e-mail and the Chicago Reviewer's Guide.

14 Q. You don't see where you stated in your e-mail,
15 Plaintiff's Exhibit 134, and if we can go back to that,
16 please.

17 MR. JOHNSON: Highlight the second paragraph
18 again. Thank you.

19 BY MR. JOHNSON

20 Q. You state the ability to see the real namespace of the
21 system, where we are putting everything only exists there.

22 Isn't it a fact, sir, that you're talking about the
23 Windows Explorer?

24 A. Yes. This is an e-mail exchange with Brad where I'm
25 talking about a piece of the Explorer, the tree view, and I

1 am saying I think, hey, this is pretty important. And then
2 Brad is completely dismissing me and saying that only people
3 that like view hierarchy would ever use it. So it is a
4 discussion about whether the tree is important or not.

5 Q. In fact, you say the tree is critical, right?

6 A. I say the tree is important and Brad says it is not.

7 Q. You say the tree is critical, right?

8 A. I say it is central to our whole strategy. The tree
9 view is central to our whole strategy.

10 Q. Well, actually in the first sentence you also say it is
11 critical, don't you, sir?

12 A. I am sure I do. I can't find my way back to that.

13 Where is it?

14 Q. The first sentence in the second paragraph of your
15 e-mail, sir.

16 A. That is the hierarchal view, yes.

17 Q. So the tree view to you, the hierarchal view, same
18 thing, right?

19 A. Yes, that is piece of it.

20 Q. Was both central and critical to Microsoft's whole
21 strategy, correct?

22 A. Right. That was a strategy that was based on the Cairo
23 investments that we were mark making. And, unfortunately,
24 those things didn't get done. It is interesting how Brad
25 even at this time, even before Cairo was supposed to get

1 done, still didn't agree with me.

2 Q. Mr. Gates, Mr. Silverberg is not talking about Cairo
3 here. He is talking about Chicago. Isn't that correct,
4 sir?

5 Let's go up to Mr. Brad Silverberg's response.

6 In fact, he says at the bottom of his e-mail as to the
7 goal of making Chicago easier to use, yes, this is a key
8 goal for the product. We will get lots of great feedback
9 during M6. That is the Chicago M6 beta, correct, sir?

10 A. Right. So the discussion I'm having with Brad is what
11 is going on with the tree view, because I view the way we're
12 going to evolve that into Cairo as being central to our
13 strategy. He is saying that he thinks that people won't use
14 the tree view hardly at all, and so he does not know why I'm
15 bringing it up. He wasn't a big fan of the Cairo work. In
16 some ways he was vindicated, because that work never got
17 finished.

18 Q. Mr. Gates, I'm sorry, but let's go back to your e-mail.
19 You're talking about Chicago. You're not talking about
20 Cairo. Look at the next paragraph after the one we just
21 looked at.

22 A. Right. When I talk --

23 Q. Excuse me, sir. Let me finish my question.

24 You said this notion that Chicago may have decided to
25 deemphasize the scope view is off strategy.

1 A. Right.

2 Q. You're talking Chicago here, aren't you, Mr. Gates?

3 A. Right. The strategy that I'm talking about includes
4 enhancing this general view that you can see a lot of things
5 all at the same time with Cairo. That was the strategy.
6 That is what I'm referring to.

7 So the question I'm discussing with Brad is what do we
8 do with this tree view so that it is front and center enough
9 so that it is natural for people to be using that, and so
10 that you have this graceful evolution into where we were
11 trying to go.

12 Q. Mr. Gates, I have searched this e-mail very carefully.
13 Can you find any use of the word Cairo in this e-mail? I
14 see Chicago a lot.

15 A. Where do you think we were trying to turn the tree view
16 into a rich viewer? Only one place. That strategy was
17 based on what we were doing in Cairo.

18 Q. Can you answer my question? Does Cairo appear in this
19 e-mail, the word Cairo?

20 A. The actual term Cairo, no, but the whole point is about
21 the tree view and the discussion and that is what Cairo is
22 about.

23 Q. In fact, one of the options that you were looking at
24 with respect to REN, which was the future outlook, right?

25 THE COURT: I think his question is whether REN is

1 a future outlook.

2 THE WITNESS: Yes. This whole thing changed a
3 lot. Subsequently the idea of having that group do a
4 Windows shell went away, even when we transferred Cairo into
5 them. They looked at doing shell work for Windows. That
6 did not succeed. Eventually what it became was a fairly
7 straightforward e-mail client called Outlook, which has been
8 very successful.

9 But at this time REN was looking at a much more
10 general view of things. In fact, I transferred the Cairo
11 people over to REN, so that with the two groups working on
12 these general views we could try and get critical mass and
13 try to get it to succeed. In fact, it did not.

14 BY MR. JOHNSON

15 Q. In fact, Mr. Gates, as we can see from this e-mail, one
16 of the options being discussed in April of 1994 was to
17 integrate REN into the Chicago shell just like Capone was
18 doing it with the namespace extensions, correct, sir?

19 A. Well, integrated in the same way we were doing with
20 Capone. Whatever Capone did, REN was going to be a superset
21 of. The alternative was to ship the whole thing with
22 Windows as a new shell.

23 Q. Let's move ahead now to September of 1994, three months
24 after Microsoft had partially published the namespace
25 extensions in the M6 beta.

1 A. I don't know what you mean by partially published.
2 They didn't become part of the final APIs of Windows, but
3 they were documented in the M6 beta documentation.

4 Q. If you prefer the word documented we can use that.
5 Partially documented. Okay?

6 A. What do you mean partially?

7 THE COURT: I think it was partially that caused
8 concern, not that --

9 MR. JOHNSON: All right.

10 BY MR. JOHNSON

11 Q. There are other people who have testified to that. We
12 don't need to get into that.

13 Do you recall, sir, that you made the decision to move
14 the Cairo shell effort into Office?

15 A. Yes, to work in the Office organization together with
16 the REN team.

17 Q. Let me show you what has been marked as PX-216.

18 Mr. Gates, this is an e-mail from Jim Allchin to the
19 Windows NT group.

20 Do you see that, sir?

21 A. Yes. It does look like I'm copied.

22 Q. The Windows NT group would be all the employees that
23 were working on Windows NT?

24 A. I assume so, yes.

25 Q. You're familiar with this e-mail, right? It is dated

1 September 27, 1994.

2 A. No, I don't believe I have ever been shown this e-mail.

3 Q. Let's turn to the second page and bring up the second
4 full paragraph. It states Bill recently made a decision to
5 move the Cairo shell effort to Office. He made this
6 decision because he wanted the Office group chartered with
7 taking on Lotus Notes UI, user interface, and because he
8 thought it was very important that Office take advantage of
9 any new shell features first.

10 You agree with that, that Mr. Allchin correctly
11 characterizes your decision and the reasons therefore,
12 right?

13 A. Well, I like my own way of describing things better
14 than his, but it is not totally off base.

15 Q. Now, Office, according to this e-mail, was now
16 explicitly planning on building shell features such as their
17 own Explorer in their 96 product, correct?

18 A. We were going to build -- the goal, which didn't
19 happen, unfortunately, was that we would have the Cairo REN
20 team build a shell, and that would ship as an update to
21 Windows. So we were not planning to ship a shell in Office.
22 We were planning to have that team develop it, but the idea
23 was to build a Windows shell.

24 Now, in a sense this is all argument about nothing,
25 because what happened was that group didn't succeed. They

1 were not able to pull off that vision, and so what came out
2 of that group was an Outlook e-mail client.

3 Q. Do you see, sir, Mr. Allchin states in about the middle
4 of the paragraph, by transferring this technology to Office,
5 Office with a capital O, they can build the features
6 directly into their applications and thus support them on
7 both platforms.

8 So this technology was actually going to be placed into
9 Office not into Windows, sir, isn't that correct?

10 A. No. See what it says. It says over time Bill's plan
11 is to pull some of these features and code back from the
12 Office team into post 96 versions of NT and Chicago. So the
13 shell technology being developed there was going to go back
14 into Windows.

15 The mail related technology, absolutely, with the rich
16 viewing, that was an applications level feature which would
17 ship as part of Office. So now we had a combined team that
18 was going to do shell work that would go back and ship on a
19 Windows vehicle, exactly as he says here, and was going to
20 do Office applications work which would ship separately from
21 that.

22 That didn't happen. None of that code ever got done to
23 the point where it became any kind of shell in any product,
24 including the plan which would have been to take it back
25 into Windows.

1 Q. You're jumping ahead of me a little bit, Mr. Gates.
2 You're now talking about post 96 plans. I want to stick
3 with the 96 plans right now.

4 Mr. Allchin states, going on in this same e-mail,
5 Office is now explicitly planning on building shell features
6 such as their own Explorer, right? That was the plan for
7 Office to build its own Explorer, correct?

8 A. Yeah. You could call the e-mail client an Explorer,
9 but it was not a shell.

10 Q. In fact, that Explorer was going to go in the Office 96
11 product, right, sir?

12 A. We had no plan to ship a shell in Office and we did not
13 ship a shell in Office. The fact that you can in a mail
14 like this to a Windows group talk about Office plans, talk
15 about that as an Explorer, that is fine. Those are his
16 words, but the shell work was always shipped with Windows.

17 Q. Doesn't Mr. Allchin state, sir, that Office is now
18 explicitly planning on building shell features such as their
19 own Explorer in their 96 product?

20 A. The ability to navigate and look at rich objects was
21 part of REN. In fact, even when it shipped as Outlook, you
22 could say those are shell like features, but the only shell
23 we have for the operating system always shaped with Windows.
24 What was done with REN is not a shell.

25 Q. Was that a yes answer, Mr. Gates?

1 A. I think the way he is using the terminology may have
2 confused you.

3 Q. Well, I am not using the terminology, Mr. Allchin is,
4 so let me focus again on what Mr. Allchin said. Office is
5 now explicitly planning on building shell features such as
6 their own Explorer in their 96 product.

7 Was that the plan, sir?

8 A. No. If you want to know the plan for the Office group,
9 you should look at the thousands of documents that you have
10 of people in the Office group. Taking the sort of sloppy
11 characterization of the Office work by the Windows team is
12 not the best way to do that. We know perfectly well that no
13 shell work ever shipped in Office.

14 Q. Mr. Gates, Mr. Allchin goes on and he states over time
15 Bill's plan is to pull some of these features in code back
16 from the Office team into post 96 versions of NT and
17 Chicago.

18 Was that your plan, sir?

19 A. Yes. If the Cairo team -- exactly as I described, and
20 this is clear, exactly as I described -- if the Cairo team
21 successfully came up with shell like features, the idea was
22 that those would replace the existing Windows shell and that
23 would ship as part of Windows. There were no Windows
24 shipments in 1996, so what you call the post 96 plan is
25 synonymous with post 95.

1 That is, we shipped Windows 95 and then there was a
2 plan, okay, what came next after that? What should have
3 happened and what we were investigating happening was that
4 this Cairo work would build a shell that was very, very
5 powerful, and this general tree database type viewing would
6 be front and center to the user and that didn't happen.

7 Q. I'm just focusing now on what was the plan at this time
8 when you made this decision. Okay, Mr. Gates? If we could
9 just focus on that. I just want to make sure Mr. Allchin
10 has got it right.

11 Your plan was to pull some of these features and code
12 back from Office into post 96 versions of NT and Chicago,
13 right?

14 MR. HOLLEY: Your Honor, Mr. Gates is doing a good
15 job of fending for himself, but this is the third time that
16 Mr. Johnson has asked exactly the same question.

17 THE COURT: It seems so to me, but maybe I am
18 missing something.

19 You can ask one more time.

20 BY MR. JOHNSON

21 Q. Can you respond to that, Mr. Gates?

22 A. The plan was that the Cairo work, which is being
23 managed together with REN, that if that came up with shell
24 like features, that that would become a Windows shell and
25 ship in a subsequent version of Windows.

1 Q. Okay. So these new shell features would be solely for
2 the benefit of Office and Office 96?

3 A. Not --

4 Q. And the operating system wouldn't get those features
5 until some post date after 1996. Correct, Mr. Gates?

6 A. You're completely mischaracterizing what I said.

7 Q. It goes on to say that the Cairo team was moving to
8 Chris Peters' Office organization.

9 Chris Peters was in charge of Office, right?

10 A. No, he was a person in the Office group.

11 Q. Let's go to the next paragraph, if we could bring that
12 up.

13 As part of your decision, Windows NT was going to use
14 the Chicago shell code base, correct?

15 A. That was the plan, yes.

16 Q. And this is really good, isn't it, that Mr. Allchin
17 states here this gives ISVs one set of APIs to target for
18 both Windows 95 and Windows NT, right?

19 A. Yes. If we could align the APIs, that is a good thing.
20 The NT group wanted to do their own shell, and so saying to
21 them, hey, take a look at this 95 shell and figure out how
22 well it can work in the NT environment, that was something
23 they were being handed to do as part of that reorganization.

24 Q. You just didn't tell them to take a look at it, you
25 ordered that the Chicago shell code base would now be part

1 of Windows NT, right?

2 A. No. At no time did I say that the NT people would have
3 no ability to weigh in on what the common approach would
4 look like. What I said is that there would be a common
5 approach, and now I expected the NT people to look at that
6 code base, which was still subject to change, and look and
7 see what they liked and what they didn't like and what their
8 input was.

9 I said the starting point, the thing they should look
10 at and evaluate, the starting point was that Chicago code
11 base, because I wanted to get that benefit.

12 Now, subsequently some issues arose as they looked at
13 that code base.

14 Q. Well, let's look at this from the point of view of Mr.
15 Allchin. He is Windows NT, right?

16 A. Yes.

17 Q. And he states, given your decision we have decided to
18 use the Chicago shell code base for the NT work station,
19 right?

20 A. That was the starting point. As I said, that code base
21 was still in flux, so they had the opportunity to take a
22 look at it and decide what the problems were and say that
23 things should change, and, of course, that did happen.

24 Q. Yes. It did happen, right?

25 A. Yes.

1 Q. And a positive benefit from this is that -- he goes on
2 to say, a positive benefit from this is that the NT
3 workstation shell will be the same as Chicago, right?

4 A. Yes. The goal was to align those things. That is why
5 we got into controversies about things that the NT people
6 didn't like.

7 Q. And this gives ISVs one set of APIs to target, right?

8 A. Whatever those are, yes.

9 Q. Now, the Chicago shell code base includes the namespace
10 extensions, right?

11 A. As of the M6 beta it did, and subsequently the NT
12 people raised the issue that they didn't see how to robustly
13 implement those features on the NT code base, and so we
14 decided not to have that capability in NT, and that was part
15 of the reason why we did not make them part of the official
16 Windows 95 API set.

17 Q. So as of this date, September 27, 1994, the namespace
18 extensions would be part of Chicago and part of NT, correct?

19 A. No. The controversy was already being discussed about
20 what features in that Chicago shell -- the NT people looked
21 at it and decided there were problems, and that was
22 escalated to me because they didn't just take the Chicago
23 code base. They looked at it to see what would work given
24 the requirements of their customers.

25 Q. So we know from Mr. Allchin's e-mail that the plan was

1 for Office 96 to have their own explorer, right?

2 A. No. What the Office team was doing was a mail client.
3 They were not doing a shell like thing, and so when he calls
4 that an Explorer I consider that misleading. We never
5 shipped any shell functionality in Office.

6 Q. And a big reason for that was taking on Lotus Notes,
7 because you wanted Office to take advantage of any new shell
8 features first, right?

9 A. Any features we put in -- any APIs that we put into the
10 shell that we used in our applications we published for
11 other people to use.

12 Q. Let me show you what has been marked as Plaintiff's
13 Exhibit 379.

14 If you look up in the upper left, Mr. Gates, you'll see
15 this is the Office 96 spec. That is what we have been
16 talking about, right, Office 96?

17 A. Well, we have not been talking about Office 96. We
18 never shipped a thing called Office 96.

19 Q. No. In the e-mails we have looked at Mr. Allchin
20 refers to Office 96, right?

21 A. That is right. We never shipped an Office 96.

22 Q. Now, as you'll see at the end of this document --
23 actually not the end, it is the Bates stamp ending 6804,
24 that Mr. Vinod -- did I pronounce that right?

25 A. I don't know.

1 Q. -- has made changes to this document both in November
2 and December of 1994, right?

3 A. Am I copied on this document?

4 Q. No, Mr. Gates.

5 Could you answer my question?

6 A. I have not gotten there. Just a second.

7 Yes, those look like something where it records when
8 changes were made.

9 Q. That is right.

10 So these changes were made to this document at a point
11 in time after your decision to de-document the namespace
12 extensions, right?

13 A. Well, yeah, that decision was made, what, like, October
14 3rd, 1994, that they are not going to be part of the
15 official APIs, which relieves both the NT people and the
16 Cairo people from dealing with those problems.

17 Q. Let's turn back to the front page.

18 Now, you told this jury just a moment ago that there
19 was no such thing as the Office Explorer. Isn't that what
20 this document is talking about, sir?

21 A. Yeah, it appears to be a document about an Office
22 Explorer. I know that we never did an Office Explorer, but,
23 absolutely, somebody here is proposing that we do an Office
24 Explorer, somebody named Vinod A.

25 Q. In fact, that is what Mr. Allchin said in his e-mail,

1 that Office was going to create its own Explorer, right?

2 A. Well, I know that Office did not create its own
3 Explorer, and I didn't have any plan for Office to do an
4 Explorer. Clearly this person here, whoever he worked with,
5 was exploring that possibility.

6 Q. If you look at the summary, and let's go to the second
7 sentence there, Office Explorer will superset and replace
8 the Chicago Explorer to become the single place where users
9 can find and manipulate all their information, irrespective
10 of its type, including all documents and files, and in
11 addition personal information such as appointments, task
12 lists and mail.

13 By allowing Office users to browse rich views on
14 documents without requiring them to be connected to a
15 GroupWare store, Office 96 undercuts Lotus Notes, giving
16 away a large part of the Notes functionality for free.

17 So this proposed Office Explorer was pretty powerful
18 stuff, Mr. Gates?

19 A. Yes. I have never seen this. It is talking about
20 replacing the Chicago Explorer, so I am not clear if he is
21 talking about shipping with Windows or what this proposal
22 is.

23 Q. In order to achieve the goal being set forth in this
24 document, Chicago was providing the crucial interfaces that
25 Office 96 was going to use, correct?

1 A. Well, this is all hypothetical because we didn't do it.

2 Is there some place in the document that I should look
3 at to see why you're saying that?

4 Q. Sure. Take a look at the third page with the Bates
5 stamp ending 6800 at the bottom.

6 Drawing your attention to the last full paragraph
7 there, and if you could highlight that, please, the Office
8 Explorer implementation strategy is to leverage the Chicago
9 shell team's work as much as possible. Chicago provides
10 some of the crucial interfaces that will simplify our work.

11 Do you see that, sir?

12 A. I do.

13 Q. So in order to achieve the goal of the Office Explorer,
14 Chicago provided the crucial interfaces that Office 96 was
15 going to use.

16 Right, sir?

17 A. Well, we never did an Office Explorer, so what you're
18 doing is you're showing me some things that somebody was
19 proposing we do that we ended up not doing. We did not do
20 an Office Explorer.

21 Q. And, sir, those crucial interfaces included the
22 namespace extensions. Isn't that a fact, sir?

23 A. I have no idea what he is referring to there.

24 Q. Well, sir, if we go down, iShellFolder, and on the next
25 page, iShellView, and those are namespace extension APIs,

1 are they not, sir?

2 A. Yes, at least one of them is.

3 Q. Thank you, sir.

4 THE COURT: If we're going on to another exhibit,
5 why don't we break for lunch.

6 MR. JOHNSON: Thank you.

7 THE COURT: I will stay here with counsel just to
8 talk about the schedule for a minute.

9 Have a nice lunch, and see you all at about five
10 after.

11 (WHEREUPON, the jury leaves the proceedings.)

12 THE COURT: You may or may not be able to provide
13 me with any guidance when the jury comes back, but I am a
14 little worried with facing short-term problems and maybe
15 long-term problems. At least I would like to be able to
16 tell the jury as much as possible. My guess is, and I have
17 been wrong twice in this case about this, that Mr. Gates may
18 have to come back another day.

19 MR. JOHNSON: I hope not, Your Honor. It is my
20 plan to get done in time for Mr. Holley to do a good chunk
21 of redirect. I mean, obviously Mr. Gates is --

22 THE COURT: That is fine.

23 MR. JOHNSON: Mr. Gates is not as easy a witness
24 as some, and --

25 THE COURT: No. No, that is fine.

1 MR. JOHNSON: We have had our own problems in that
2 regard, but --

3 THE COURT: Well, let me know what I should tell
4 the jury when they first come back, and Teresa can ask them
5 now, if they can stay a little longer than 1:30.

6 MR. HOLLEY: Your Honor, at the moment, based on
7 his testimony, I am not anticipating a lengthy redirect.
8 But if it --

9 THE COURT: You think you will be finished with
10 the cross relatively soon?

11 MR. JOHNSON: I mean, I think I have another hour,
12 but that would still allow Mr. Holley quite a bit of time to
13 do a redirect.

14 MR. HOLLEY: Your Honor, just because Mr. Gates's
15 schedule is virtually impossible to change, given all the
16 things that he has to do, if the jury would just give us,
17 all of us, just 15 minutes of cover --

18 THE COURT: Just ask the jury --

19 MR. HOLLEY: -- that would be great.

20 THE COURT: Also, if you all could let me know,
21 and thinking of the holidays, at some point I would like to
22 tell the jury what the schedule is going to be, particularly
23 since I think on the 16th I have to go back for a hearing.

24 I think I have already told you that. My guess is that what
25 we're looking for is closing arguments the following week,

1 which is before Christmas, unless you all have --

2 MR. TULCHIN: Your Honor, what I would like to do,
3 is to take you up on the invitation and let you know on
4 Monday.

5 THE COURT: Exactly. I don't expect you to tell
6 me now. My best estimate from what I have seen, but I could
7 be wrong, is that we may be coming back on the 19th for
8 closing argument. I would just like to --

9 MR. SCHMIDTLEIN: Judge, do we have a set schedule
10 as to which Fridays we will be --

11 THE COURT: I think I have got to go back, and I
12 will check with Mary Ellen, but I think I have got to go
13 back on the 9th, and I am full with proceedings, and the
14 16th, but I think I told you all --

15 MR. SCHMIDTLEIN: But not next week, the 2nd?

16 THE COURT: Not next week, the 2nd.

17 MR. JOHNSON: So we have five days next week.

18 Good.

19 MR. HOLLEY: Thank you, Your Honor.

20 THE COURT: Thank you.

21 (Recess)

22

23

24

25