

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

In re:)	
)	
NOVELL,)	
)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	2:04-CV-01045JFM
MICROSOFT,)	
)	
Defendant.)	
)	
_____)	

BEFORE THE HONORABLE J. FREDERICK MOTZ

November 28, 2011

Daily Transcript of Jury Trial

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3131

I N D E X

Examinations	Page
CRAIG BUSHMAN	3133
DIRECT EXAMINATION BY MR. JARDINE	3134
CROSS-EXAMINATION BY MR. SCHMIDTLEIN	3194

1 Salt Lake City, Utah, November 28, 2011

2 * * * * *

3 THE COURT: Good morning everybody.

4 MR. JARDINE: Good morning.

5 MR. JOHNSON: Good morning.

6 THE COURT: I hope you had as pleasant a Thanksgiving
7 as possible. Mr. Tulchin, we don't need to know right away,
8 but in any event pretty soon about what the last pending
9 question was when we -- how long, recognizing it is just
10 going to be an estimate, how long do you think it is going
11 to take to try the case?

12 MR. TULCHIN: Your Honor, we have thought about this a
13 little bit and our best estimate and, of course, some of
14 this is outside our control as the court knows because it is
15 hard to predict the length of any cross-examination, but our
16 best estimate is that our case can be finished in 11 or 12
17 trial days. And I am ordinarily optimistic about most
18 things, and I guess I am here, too, I'm sort of thinking,
19 Your Honor, that we can do it in 11. And that gives me some
20 optimism in thinking that the whole thing might be concluded
21 by the 16th.

22 THE COURT: Okay. I guess probably a good idea, I'll
23 ask the jury at some point, but we may go, given the choice
24 between going past the 16th and maybe staying an hour or so
25 later, they may opt, you know, some days they may opt for

1 the latter.

2 (Whereupon, the jury returned to the courtroom.)

3 THE COURT: Good morning everybody. I hope you all
4 had a great Thanksgiving. It is great that you certainly
5 enjoyed it. Next time I walk in, tell the lawyers let's go.

6 We have talked a little bit about scheduling. I'll
7 talk to you a bit in the next minute, I'll let you know
8 where we stand. It looks like the best estimate is we are
9 going to be finished by the 16th. But we may have to ask
10 you to stay late. We may ask you to stay an hour or two
11 later during a given day because we're sort of assuming that
12 you would rather be finished by the 16th and stay an hour or
13 two later. So when I know a little bit more, I'll let you
14 know. Next witness?

15 MR. JARDINE: Your Honor, Microsoft would like to call
16 Craig Bushman.

17 THE COURT: Mr. Bushman.

18 CRAIG BUSHMAN,
19 called as a witness at the request of the Defendant,
20 having been first duly sworn, was examined
21 and testified as follows:

22 THE WITNESS: Yes.

23 THE CLERK: Please be seated. Please state your full
24 name and spell it for the record.

25 THE WITNESS: Craig John Bushman, C-R-A-I-G J-O-H-N

1 B-U-S-H-M-A-N.

2 DIRECT EXAMINATION

3 BY MR. JARDINE:

4 Q. Good morning, Mr. Bushman.

5 A. Good morning.

6 Q. Would you tell the jury where you live?

7 A. I live in Cedar Hills, Utah.

8 Q. And where are you currently employed?

9 A. It is a company called Certiport.

10 Q. And where are its headquarters?

11 A. American Fork, Utah.

12 Q. What is your position with Certiport?

13 A. I'm the vice-president of marketing.

14 Q. Would you describe your educational background?

15 A. I went through a traditional K through 12

16 education here in Utah. I attended Brigham Young

17 University. Graduated with a bachelors of art in broadcast

18 management and communications.

19 Q. What was your employment history following your
20 graduation from BYU?

21 A. I started working for KSL in Salt Lake City.

22 After that I jumped into the technology field because that

23 is where the money was and then began working for

24 WordPerfect Corporation in February of 1988. At that time I

25 was hired as a customer support representative. That is the

1 fastest way to get to know a product very quickly is to
2 learn it and help support the customers. I then
3 transitioned to a trained coordinator where I was
4 responsible for going out and training corporations on the
5 use of the product, as well as training internal customer
6 support personnel on escalated support issues. So that
7 enabled me to work closely with our development team to
8 determine how best to resolve the problems. I then --

9 Q. Let me stop you there so we can get some time
10 frames. As I understand it, you started with WordPerfect in
11 1988?

12 A. Correct.

13 Q. And your -- how long were you a customer support
14 representative?

15 A. Seven months.

16 Q. And your next position then was global training
17 education department?

18 A. Correct.

19 Q. And how long were you in that position?

20 A. I believe it was -- I think it may have been a
21 year and a half or so, maybe two years.

22 Q. And what sorts of things would you do in that
23 position?

24 A. Well, primarily my responsibility was first
25 because I came from the support department and when

1 WordPerfect was well-known for its free customer support, we
2 had over 500 customer support reps, and when issues would
3 get escalated to the customer support rep, they would track
4 which were the issues that were most pertinent and taking
5 most of the time.

6 My job was to identify those issues and then work with
7 the development team to find work-arounds and that would
8 help the customer support personnel to resolve the problem
9 faster and get off the phone faster.

10 Q. Is work-around a technical term?

11 A. Yes.

12 Q. What does it mean to --

13 A. It means that if there is not a clear solution to
14 the problem, we would find different ways to get a problem
15 resolved faster.

16 Q. After your work in the global training education
17 department, which you said was about two years, what was
18 your next position?

19 A. I began working in the international division. I
20 was responsible for the global training and certification
21 programs outside of the United States. And then I also
22 handled escalated support issues from Latin America because
23 of my Spanish language experience.

24 Q. How long were you in the international division?

25 A. I believe it was about three years. And at that

1 time, they decided to diversify the international division
2 so that it wasn't such a separate entity. It almost ran as
3 a separate company within WordPerfect. Bruce Bastian, the
4 chairman of the board and cofounder, he ran the
5 international division. And the rest of the company was
6 managed by Alan Ashton and Pete Peterson. So they decided
7 to have all of the marketing teams and there was a marketing
8 team for WordPerfect, presentations, data perfect, office,
9 and so each of those needed to have an international person
10 to handle the marketing. So I was offered a job by several
11 departments and chose to go into the presentations marketing
12 department.

13 Q. What was WordPerfect's presentation product at
14 the time?

15 A. It would be the equivalent of today's Microsoft
16 PowerPoint.

17 Q. And what was your next position after that?

18 A. So that position was called the international
19 product marketing manager. And I was then offered a
20 position on the flagship product which was WordPerfect and I
21 became an international product marketing manager for
22 WordPerfect.

23 Q. Do you recall about what year that was?

24 A. That was probably in around 1991 or -- about
25 1993, actually.

1 Q. Was that before the acquisition of WordPerfect by
2 Novell?

3 A. Yes.

4 Q. And I'm going to ask you some more detailed
5 questions about your responsibility in that position. But
6 after the acquisition by Novell of WordPerfect, did your
7 position stay the same?

8 A. Not completely. For some time I remained in
9 international product marketing manager and then I was moved
10 to international product manager over the WordPerfect
11 PerfectOffice Suite.

12 Q. Do you recall about when that was?

13 A. Not specifically the exact time.

14 Q. Sometime after the acquisition?

15 A. Yes.

16 Q. And eventually, in early 1996, Novell sold the
17 WordPerfect assets to Corel. Did you stay with your
18 responsibility in going to Corel? What was your employment
19 upon that transaction?

20 A. I continued as the international product manager
21 over the suite and then after about, oh, probably six
22 months, I was offered the position of international -- it
23 was the vice-president of international sales marketing.

24 Q. For Corel?

25 A. Correct.

1 Q. And did you supervise employees in that
2 responsibility?

3 A. Yes, I had about 122 employees.

4 Q. When did your employment with Corel terminate?

5 A. It was about a month before they packed up and
6 left Utah and I don't remember exactly the year even. It
7 was probably about 1997, sometime in that timeframe.

8 Q. And from that time until your current employment
9 with Certiport, have you been employed in the high-tech
10 business area?

11 A. Yes.

12 Q. And what has been the general nature of your work
13 in that area?

14 A. Marketing.

15 Q. We'll get into this, but what is the difference
16 between marketing and sales?

17 A. Well, marketing traditionally drives the
18 development of the product so we determine what the features
19 and benefits of a product should be based on customer
20 feedback and industry research. We also then determine the
21 strategy which is called a go to market plan. So we help
22 develop the strategy of messaging, communication, and the
23 marketing vehicles that would be used to help sell the
24 product. Our role with sales is to primarily help enable
25 them. In other words, give them the tools necessary to

1 articulate our message clearly to the customer.

2 Q. Now, I would like to focus on your roles and
3 responsibilities as an international product marketing
4 manager, a position I think you said you were given with
5 WordPerfect in 1993?

6 A. Correct.

7 Q. Would you describe in that role both with
8 WordPerfect and Novell what your general responsibilities
9 were as an international product marketing manager?

10 A. Sure. Primarily, we were an advocate for the
11 international affiliate offices around the world. Our job
12 was to work closely with them to identify local customer
13 needs. We would identify, for example, if it was Germany
14 what were the local needs of customers in Germany that had
15 to be representative in the product so that they would -- so
16 it would sell well. We would then help package up the
17 campaigns and marketing materials that were developed at
18 corporate headquarters, provide those to the local offices
19 so they could effectively market the product.

20 Q. Did you have any role or responsibility in
21 providing input to the development teams for product
22 development?

23 A. Yes.

24 Q. Would you describe how that worked?

25 A. Development is usually comprised of producing a

1 list of customer requirements. So our job was to track
2 several different databases. One was what were the
3 customers requirements. So we had global customers all over
4 the world that would tell us things that they needed to have
5 in the product, so that we would keep a list of what those
6 -- a prioritized list of what those features and
7 capabilities should be. We also had a list internally that
8 was developed jointly between the development team as well
9 as the marketing team of just ideas that we came up with on
10 our own of how we should improve the product. And then we
11 also had a list of things that were developed based upon
12 industry research. Secondary and primary research that was
13 conducted.

14 Q. In your view, was it important to provide input
15 on the needs and perspectives of international customers to
16 the development team?

17 A. Absolutely.

18 Q. Why?

19 A. Well, at the time, if I recall correctly, about
20 60 percent of our revenue came from international. And more
21 importantly we dealt with many multi-national corporations.
22 Whether it's Bank of America or Bristol-Myers Squibb, these
23 were companies that had offices all over the world. And so
24 when we produced a product for them, it was important for it
25 to come out in multilanguage versions because a

1 multinational company doesn't use the same language version
2 in all of its offices around the world.

3 Siemens, for example, based out of Germany, they would
4 purchase the German localized version for Germany, but buy
5 the English version for the United States and the Chinese
6 version for Beijing. So that -- that was the primary role
7 was to ensure that those international customers were
8 represented and so that our marketing staff in those
9 companies were also able to be effective.

10 Q. If I heard your testimony correctly, I think that
11 you said that initially when you were made an international
12 product marketing manager you were assigned to the
13 WordPerfect product; is that correct?

14 A. Actually, when I first became an international
15 product marketing manager it was in the WordPerfect
16 presentations group. And after about a year and a half in
17 that, I was offered a job on the flagship product which was
18 the WordPerfect word processing. And then that transitioned
19 into the PerfectOffice Suite after that.

20 Q. Especially in the period that Novell owned it,
21 would you participate in meetings with others involved in
22 product development?

23 A. There were a number of different types of
24 meetings. I was involved in core team meetings which
25 discussed what the features would be. So we would sit in

1 with the development team and give them a list of
2 prioritized features that should be included in the product.
3 Oftentimes development liked to build their own list and
4 which is not uncommon in the software industry that
5 developers identify what their favorite features are. But
6 we were the balance to ensure that the features that were
7 presented were what the customer needed and what the market
8 demanded.

9 So we produced in marketing two types of documents.
10 One is called the product requirements document and this is
11 what development used as their -- essentially the architect
12 of the product. And for marketing, we developed what was
13 called a market requirements document. And this was a
14 little bit more of the messaging and strategy behind the
15 approach to market product.

16 Q. During the time that you were on the -- working
17 on the flagship product, PerfectOffice product, how often
18 would you have meetings, this core team meetings?

19 A. When it became close -- well, probably before
20 within six to eight months of it launching, we would have
21 biweekly coordination meetings. Those coordination meetings
22 brought together different groups from all over the company
23 that had their finger in the release of the product. This
24 could be development, different groups within marketing,
25 operations, sales, channel marketing, localization,

1 publications, public relations. So anybody who had their
2 finger in the release of the product would be in these
3 meetings to ensure that their voice was represented and that
4 they were clear on when the release schedule was going to
5 take place.

6 Q. Where physically would those meetings take place?

7 A. Well, these were actually taking place on the
8 Orem campus of the old WordPerfect Office, Building D, first
9 floor conference room. I remember them well.

10 Q. Was that -- was your personal office located in
11 Orem?

12 A. Yes.

13 Q. After the Novell acquisition, what was your chain
14 of command? Who did you report to?

15 A. After the acquisition?

16 Q. Yes.

17 A. When I was on the PerfectOffice team I reported
18 to Dave LeFevre who was the director of product management.
19 There actually are five or six different product managers.
20 I was over the international suite along with another
21 colleague, we split responsibilities. He was responsible
22 for Cyrillic languages and 2-byte enabled Asian languages.
23 I handled the rest of the non-U.S. parts of the world. And
24 then we had other product managers who were specific to
25 technologies or components of the suite.

1 Q. Cyrillic is not a word I use every day. Can you
2 explain to the court and jury what the Cyrillic language is?

3 A. Cyrillic languages are Russian, Czech, I think
4 even Finnish. It was those types of language. Little more
5 difficult to develop.

6 Q. And then you referred to 2-bit Asian languages.
7 Can you explain what that means?

8 A. So 2-byte in enabled language is like Japanese or
9 Chinese and because their characters are different than the
10 alphabet we use, it requires more space when you create
11 that. So it requires specific coding and unique development
12 capabilities.

13 THE COURT: Probably not the right time to use 2-byte
14 instead of 2-bit.

15 MR. JARDINE: I was hoping that would go unnoticed,
16 Your Honor.

17 Q. (By Mr. Jardine) Now while you were at Novell,
18 were you ever nominated for any employee recognitions?

19 A. I think in 1995 my supervisor nominated me as
20 employee of the year.

21 Q. Was that Mr. LeFevre?

22 A. Yes.

23 Q. Let me have -- Dave, if you would put up
24 Exhibit 297. I'm sorry, I got the wrong one. 632. I
25 apologize.

1 THE COURT: Thank you.

2 Q. (By Mr. Jardine) Mr. Bushman, would you explain
3 what Exhibit DX-632 is?

4 A. This is my supervisor's nomination form.

5 Q. And did he give you a copy?

6 A. Yes.

7 Q. I would like to just ask you about a couple of
8 points that he puts in there as reasons he is nominating you
9 and have you explain it.

10 The very first bullet point says, "product manage all
11 Novell Windows Bizapps in 21 languages." What does that
12 mean?

13 A. So we produced our product, our business
14 applications was the old WordPerfect division. And so the
15 business applications, Bizapps was a shortened term for
16 that. So I helped ensure that the features and benefits of
17 each of the products within the suite were represented
18 internationally in 21 languages.

19 Q. And some of this may be duplicative, let me just
20 have Dave highlight the sixth bullet point which reads,
21 "worked with development defining market and product
22 requirements for international versions of Novell Windows
23 applications, as well as making sure international
24 functionality is properly supported in domestic products."
25 Would you describe what is involved in that work that you

1 did?

2 A. Yes. So we would work with the international
3 offices. They often would have their own marketing people,
4 their own product marketing managers. So we would gather
5 requirements from the local international representatives to
6 ensure that their features were represented in the product.
7 For example, we wanted to release both an English version of
8 the PerfectOffice Suite as well as an English international
9 version. The difference being English international was
10 sold in other English speaking markets, but they used a
11 different paper size format, it called A-4 which is a little
12 bit longer than our standard format. Instead of defaulting
13 to our format of eight and a half by 11, it would default to
14 the specific requirements of international versions.

15 Q. So the next bullet point reads, "works with
16 development on the design of specific international
17 features." Is that referring to anything more than what you
18 just described?

19 A. Well, again, it was meaning specifically - I
20 developed a close relationship with a number of specific
21 development leads. I worked most specifically with Gary
22 Gibb, Steve Weitzel and Bruce Brereton, who is senior
23 development leads on those teams to ensure that what we
24 needed internationally was represented on the priority list.

25 Q. And the next bullet point says "member of five

1 core teams." Is that referring to the kind of core team
2 work that you testified about earlier?

3 A. Yes.

4 Q. If you look at the next bullet point it says, it
5 reads, "set product localization priorities." Can you
6 describe what the word localization means?

7 A. So again, this is taking the English version of
8 the product and translating it, as another word to use
9 instead of localization, into a local language whether it is
10 German, French, Italian, Spanish and then changing the
11 features sometimes like the A-4 versus eight and a half by
12 11 paper size, or the English pound symbol as being the
13 default in Quattro Pro instead of the dollar sign.

14 Q. Thank you. If you look at -- I think the next
15 bullet point says, "responsible for prioritizing the work
16 that international development and localization do." Why
17 would you be involved in prioritizing the localization
18 group?

19 A. Well, some markets are larger than others so we
20 call it the FIGS language. So French, Italian, German,
21 Spanish were our highest priority languages. And because
22 the revenue opportunity was greater in those markets, we
23 would prioritize languages over others so that they would be
24 released first to market. And that also played an important
25 part in multinational companies. So, for example, a

1 Siemens, they would hold off buying the product until all of
2 those versions were available so they could roll it out at
3 the same time across the world in the organization.

4 Q. Just one more bullet point. The next one reads,
5 "were instrumental in transfer of international development
6 resources to 32-bit before domestic had even made the shift
7 completely. For example, we stopped development of
8 PerfectOffice for the 2-byte languages in November moving
9 those resources to 32-bit. This initiated the three to four
10 month battle with sales but now they all agree it was the
11 right decision." Can you describe what was involved in that
12 point?

13 A. If I remember correctly this -- our marketshare
14 in Asia was not as large as Microsoft's. And so while we --
15 the 32-bit was the next step. It provided for faster
16 processing time in computers and we knew that was the
17 direction that the market was headed. And so rather than we
18 had such slim resources on international development, we
19 decided to just jump over the 16-bit for some time and go
20 straight to 32-bit because we thought we had a better market
21 opportunity with that.

22 Q. And to remind the jury, 16-bit would have been
23 WordPerfect Novell's PerfectOffice 6.1 -- excuse me,
24 WordPerfect 6.1 and PerfectOffice 3.0?

25 A. I believe so. That is correct, yes.

1 Q. And 32-bit would have been product development
2 for the products for Windows 95?

3 A. Correct.

4 Q. By the way, where did this document come from?

5 A. Actually I was going through some papers in my
6 office a month or two ago. I had a new employee that I had
7 actually hired and I was giving him templates of different
8 business cases that I had used in the past for him to look
9 at and see how to develop a market requirements document.
10 And I came across this in my files at that time.

11 Q. When the WordPerfect assets were purchased by
12 Corel, did anyone at Novell ask you to preserve any
13 documents relating to the WordPerfect business or to
14 dealings with Microsoft?

15 A. No.

16 Q. Were you asked to make any copies of any
17 documents you had in your possession relating to those
18 topics?

19 A. No. When the acquisition took place, I stayed in
20 the same office. The name on the outside of the building
21 changed.

22 Q. When you met with me for the first time, did you
23 provide some additional documents that you found?

24 A. Yes. As I was subpoenaed to be here and asked to
25 provide background, I went through and found these prior to

1 meeting with you. And then I think I also found some for
2 Mr. Hassid prior to meeting with him that I gave him as
3 well.

4 Q. Has anyone ever given you any suggestions about
5 whether or not to look for additional documents?

6 A. No, there was -- I was not encouraged to look for
7 documents.

8 Q. Was that by me?

9 A. No. When I found these, I have had conversations
10 both with you and with the Novell team and they always asked
11 me what did the other one say? And when I disclosed what --
12 that I had found documents, I was told that I didn't need to
13 go find any more.

14 Q. Let me turn for a minute, if I could, to your
15 work at WordPerfect and then Novell. And I gather that you
16 focus on the international market as you have testified.

17 When you first joined WordPerfect, what was the
18 primary product releases, what operating systems did the
19 WordPerfect product principally work on?

20 A. When I joined in 1988, it was on the DOS
21 operating system. There were others obviously, UNIX, fax,
22 others, but DOS was the primary seller.

23 Q. We have heard testimony earlier in the trial
24 about the movement or trend to graphical user interface in
25 the early 1990s. From your perspective was that trend --

1 did that trend or movement also occur in the international
2 market?

3 A. Yes, it did, if not faster.

4 Q. All right. And in your view, how responsive was
5 WordPerfect in moving towards products with the graphical
6 user interface market?

7 A. Well as I recall, there was the consortium of a
8 number of industry leaders such as IBM, Microsoft,
9 WordPerfect, Apple, Intel that formed a group to develop
10 OS/2, which I think was the first big foray into the
11 graphical user interface market. And so all these groups
12 got together and worked towards an OS/2 GUI interface,
13 graphical user interface.

14 Q. And ultimately do you recall when WordPerfect
15 first released a product for the Windows graphical user
16 interface operating system?

17 A. I don't recall the exact month.

18 Q. Was it, in your view, timely or late in response
19 to what Microsoft was doing as a competitor to WordPerfect?

20 A. Well, I think that we were pretty surprised.
21 Because as we were going down that path of graphical user
22 interface on OS/2, we were not aware that at the same time
23 Microsoft was developing what they later called Windows.
24 And I think we were struck with significant surprise when
25 they went the windows route and we were all stuck on the

1 OS/2 route, and we had shifted all of our resources on
2 graphical user interface to OS/2 at the time. So Microsoft
3 went to the left, we went to the right.

4 Q. Did you have any sense from the management of
5 WordPerfect about whether there was a reason why they were
6 writing for the OS/2 system rather than windows?

7 A. Well, there was -- obviously there was a
8 commitment to that direction by our senior management team.
9 Our chief operating officer at the time, Pete Peterson, also
10 very, very much disliked Bill Gates. And it was well-known
11 that he was not going to put any effort into producing a
12 product that would put another penny in Bill Gates' pocket.

13 Q. There was -- also we have heard testimony in the
14 court about, in this trial, about the shift to suites. Do
15 you recall when you first learned that Microsoft was going
16 to offer a suite product?

17 A. Yeah, it was a stunning development. From a
18 marketers prospective I thought it was a brilliant move
19 because at the time it was just a word processor sold for
20 \$495. A suite version dropped the prices and combined
21 products together which had interoperability, they had a
22 similar look and feel. We thought it was a brilliant move
23 and it put us in a very difficult position.

24 Q. How did customers in the international market
25 receive the concept of suites?

1 A. They loved it. It was cheaper, it was more
2 effective, they embraced it.

3 Q. What was WordPerfect's response to that
4 competitive challenge?

5 A. Well, they scrambled. I remember we even
6 developed a DOS version of a suite. We had obviously a
7 marketshare, a significant marketshare in the word processor
8 market not as much in the spreadsheet market. I think at
9 the time actually Lotus was the leader in the spreadsheet
10 market. We had a database product and we had a
11 presentations product. So we cobbled those together in a
12 DOS suite and then in a Windows or -- yeah it was a Windows
13 suite later. I think that the first version was not a very
14 good attempt. We actually just did a bundle with Borland on
15 the Quattro Pro spreadsheet, Ashton Tate and ourselves. So
16 we were trying to respond to a very slick strategy from
17 Microsoft with some cobbled products together at the time.

18 Q. What was the reception of that product that you
19 described which I think was Borland 1.0 that you said you
20 cobbled together. What was the reception for that in the
21 international market?

22 A. If I recall, it did not sell very well. It was
23 not very well received.

24 Q. I think you said that and I would like to turn
25 now and that was sort of the state of things up to the point

1 in early 1994 when Novell acquired WordPerfect?

2 A. Correct.

3 Q. I would like to talk for a few minutes about the
4 acquisition process and what you experienced. At the time
5 that Novell acquired WordPerfect, what did you see as the
6 challenges to the WordPerfect product?

7 A. We had a lot of challenges. Microsoft had gained
8 significant marketshare against us. They seemed like an
9 unstoppable machine in their marketing, their communication.
10 I think WordPerfect had lived for so long with a dominant
11 marketshare in word processing that they weren't quite sure
12 how to respond. So there was a lot of damage done prior to
13 the acquisition.

14 Q. When the acquisition was announced, were you
15 hopeful about it?

16 A. I was. There was a great concept of networked
17 applications and we knew that Novell owned the network
18 market with NetWare. So, you know, we had just gone through
19 a number of layoffs, things were not as rosy at the company
20 prior to the acquisition. There were key personnel that
21 were leaving the company and so we needed to do something.
22 And I think that was -- there was a perception that is one
23 of the reasons why Alan Bruce sold the company because its
24 heyday was done and they were going to sell it as fast as
25 they could so they could make the money while they could.

1 Q. From your perspective what did Novell need to do
2 to give the WordPerfect products the best chance for future
3 success?

4 A. I think come out with a very clear strategy to
5 customers to retain them, as well as ensure that this
6 network concept could really be followed through with. Most
7 importantly we needed investment into the development of the
8 product line as well as the marketing of the product.

9 Q. Now, I am going to talk about the integration of
10 the companies, but I'm going to refer to the WordPerfect
11 employees who went and stayed with Novell as legacy
12 WordPerfect employees. Is that a term you know?

13 A. Perfect employees?

14 Q. Legacy WordPerfect employees?

15 A. Legacy, yes. We weren't that perfect.

16 Q. From your perspective how effective was Novell's
17 management in communicating to the WordPerfect legacy
18 employees its plans and enthusiasm for the WordPerfect
19 business?

20 A. Will, there certainly wasn't enthusiasm. I think
21 one of the challenges was Ray Noorda had this vision of
22 bringing the companies together to combat Microsoft. He
23 hated Bill Gates with a passion.

24 MR. SCHMIDTLEIN: Objection. Objection, Your Honor.

25 THE COURT: Sustained.

1 THE WITNESS: Um --

2 Q. (By Mr. Jardine) Just describe what was
3 communicated to you about the integration?

4 A. It was -- there were newsletters that went out
5 that talked about how we would work together as a company
6 but it certainly didn't filter down to the average employee.

7 Q. What was the first communication you had from
8 anyone in Novell's senior management?

9 A. From senior management, I got a call from the
10 vice president of sales operations out of San Jose,
11 California.

12 Q. Let me just stop there. Were there Novell
13 management in San Jose?

14 A. Yes. That was where most of the management of
15 Novell was at the time.

16 Q. Okay. Keep going?

17 A. So after that acquisition, Frankenberg who was
18 the CEO, was based I think mostly down in San Jose, most of
19 the executive staff had their offices, the sales operations
20 vice-president called me and was very upset about the number
21 of products SKUs that we had, a number of different
22 versions.

23 MR. SCHMIDTLEIN: Objection, I think this is also
24 hearsay, Your Honor.

25 THE COURT: Overruled.

1 THE WITNESS: So he told me to start cutting them, get
2 rid of a number of products.

3 Q. (By Mr. Jardine) Let me just stop you there.
4 You said SKUs. Can you explain to the jury what a SKU is?

5 A. A SKU is just a product line on a -- on a price
6 list. The number of products that we have.

7 Q. And so he, as I understand, he told you to get
8 rid of a number of them?

9 A. He said we had too many and we needed to
10 immediately start eliminating them because there were too
11 many to fit into the system.

12 Q. What was your response?

13 A. I remember it well because I was -- I told him
14 this would have a direct impact on revenue. These were
15 products that were selling.

16 Q. Can you explain why internationally it would have
17 an impact on the revenue if you were to eliminate SKUs?

18 A. Well, not only do we have localized versions of a
19 product, we also had what were called language modules. So
20 if a person used an English version of WordPerfect, they
21 could attach on to it a Spanish or French or German spell
22 checker or grammar checker. And so that created many, many
23 SKUs, I guess you could say, that could attach on to many
24 different types of products.

25 Q. Did you have -- were there any particular

1 customers in the -- in Europe that would have demands in
2 bidding, for instance, about having multiple SKUs?

3 A. Well, the biggest was the European union. We
4 were required by law in order to even bid on their projects
5 to have native versions of the products available for their
6 European union customers.

7 Q. And did your response to the person who called
8 you have any effect on his directions?

9 A. I don't recall specifically. I think we had a
10 number of conversations about it. I ended up in Mary
11 Burnside's office, she was chief operating officer of
12 Novell, on my next visit to Novell to argue about the need
13 to have localized versions of the product.

14 Q. Did that meeting take place in San Jose?

15 A. Yes.

16 Q. And again, just to be clear, Mary Burnside was
17 the chief operating officer of Novell?

18 A. Yes.

19 Q. And would you describe that meeting?

20 MR. SCHMIDTLEIN: Objection, Your Honor, hearsay.

21 THE COURT: Overruled.

22 THE WITNESS: She had a monthly meeting that included
23 all of her staff to discuss the release schedules of
24 products and strategy. We would fly down monthly to be
25 participants in that meeting. After the meeting I requested

1 a private meeting with her to discuss what was, in my terms,
2 an important strategy shift if we were not to release these
3 localized versions in time. So we had a discussion in her
4 office. I got on the phone Thor Christiansen, who is my
5 counterpart, to discuss some of the language priorities. It
6 was a lively debate.

7 Q. (By Mr. Jardine) And at some point did
8 Ms. Burnside invite anyone else into the meeting?

9 A. She called Joe Marengi who is the -- I think he
10 is the executive vice-president of worldwide sales whose
11 office was next door. She called him into his office --
12 into her office.

13 Q. Would you describe what occurred after
14 Mr. Marengi was invited into the meeting?

15 A. He -- I'd never met him before. I had heard a
16 lot about him. He came into the meeting.

17 THE COURT: Mr. Schmidtlein has a continuing objection
18 to this line of questions.

19 MR. SCHMIDTLEIN: Thank you.

20 THE COURT: But it is overruled.

21 THE WITNESS: He was asked about the importance of
22 these localized versions in the international marketplace.
23 We talked about the importance of it for international
24 revenue. He was very frustrated. In my opinion, he didn't
25 clearly understand the applications business. At that point

1 he said WordPerfect is a mistake and we should kill it.

2 Q. (By Mr. Jardine) What was your reaction when you
3 heard the executive vice-president of sales for Novell tell
4 you that WordPerfect was a mistake and we should kill it?

5 A. I was stunned. I told my supervisor as soon as I
6 got home.

7 Q. As things progressed, did you sense similar
8 attitudes on the part of other Novell management?

9 MR. SCHMIDTLEIN: Objection, Your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: I felt like there was a deliberate
12 antagonism against WordPerfect product lines and its
13 employees.

14 Q. (By Mr. Jardine) Were you the only one of the
15 legacy WordPerfect employees that felt that, to your
16 knowledge?

17 MR. SCHMIDTLEIN: Objection, Your Honor.

18 THE COURT: Rephrase that question.

19 MR. JARDINE: All right.

20 Q. (By Mr. Jardine) As you communicated with other
21 WordPerfect employees, did you have a sense of what the
22 morale in the company was?

23 A. Well we often discussed it, how we felt like the
24 red-headed stepchild that no one paid attention to and
25 listened to our needs. There was a significant lack of

1 morale on the WordPerfect legacy employee side.

2 THE COURT: Watch out and look at jury and I am a
3 red-headed grandson.

4 MR. JARDINE: I just want to note for the record --

5 THE COURT: And Andy Dalton wasn't red-headed --

6 MR. JARDINE: I want to note for the record that three
7 of my four children are red-headed. I'm going to forgive
8 Mr. Bushman for that comment.

9 Q. (By Mr. Jardine) Over the time periods that
10 Novell owned the WordPerfect product, well let me strike
11 that and go back. Did you sense the same attitude from
12 Mr. Frankenberg?

13 MR. SCHMIDTLEIN: Objection, Your Honor.

14 THE WITNESS: Not --

15 THE COURT: You better establish a basis for his
16 knowledge for that.

17 Q. (By Mr. Jardine) All right. Did you have
18 interactions with Mr. Frankenberg?

19 A. On several occasions I attended his executive
20 staff meetings.

21 Q. Did you sense the same attitude on the part of
22 Mr. Frankenberg that you felt for Mr. Marengi?

23 A. No.

24 Q. Can you describe what you sensed, what your
25 perception was of Mr. Frankenberg's attitude about the

1 WordPerfect business?

2 A. I think he generally wanted to see it succeed.
3 He was brought into a company that was bringing three
4 disparate pieces together and obviously felt pressure to
5 focus on the primary product line which was NetWare. We
6 rarely had interaction on the application side with him --
7 interaction on the application side with him.

8 Q. Over the time period that Novell owned the
9 WordPerfect assets, up until the time they were sold to
10 Corel, did you sense any change in the kinds of attitudes
11 you have described?

12 MR. SCHMIDTLEIN: Objection, Your Honor.

13 THE COURT: Overruled.

14 THE WITNESS: I have always felt like it was a perfect
15 business case of how to kill a product. Cut off its
16 marketing funds, let go of key development people, its
17 WordPerfect sales force, it was -- it was a perfect recipe
18 for disaster.

19 Q. (By Mr. Jardine) Let's talk a little bit about
20 personnel and layoff issues. Were there layoffs conducted
21 by Novell following the acquisition of WordPerfect?

22 A. Yes.

23 Q. And was any particular category of employee
24 focused on in those layoffs?

25 A. Sales.

1 Q. And do you have -- do you have any sense of
2 whether those that were laid off in sales were principally
3 Novell employees or legacy WordPerfect employees?

4 A. I have firsthand knowledge.

5 Q. All right.

6 A. That there was traditionally in the sales office
7 around the world, even in the United States and regions,
8 when the sales forces came together there was the legacy
9 WordPerfect people and then there was the Novell NetWare
10 people. Some of those offices integrated well and had all
11 of the sales people sell all products. Most of them did
12 not. They kept two separate groups because they were fairly
13 distinct businesses. When layoffs came, it was
14 overwhelmingly the WordPerfect sales people that were let
15 go.

16 Q. All right. Let me have you look at Exhibit
17 DX-15. Mr. Bushman, this is a memo dated August 19th, 1994
18 to Mr. Frankenberg and Tim Harris from Joe Marengi and Paul
19 Cook. I don't know that you would have seen this, but does
20 this suggest that on or about August 1994 there were 378
21 layoffs at Novell WordPerfect. Do you recall in that time
22 frame there being significant layoffs?

23 A. Yes.

24 Q. And I would like to have you turn to Page 2. Can
25 we put this up, Bob? And if you look, this list of columns

1 of I think there are -- there are, I don't know, 10 or 15
2 pages of employees that are being laid off and it shows in
3 the third column over whether they are WordPerfect or
4 Novell. Do see that?

5 A. Yes.

6 Q. Can you just turn through the pages, Bob -- or
7 Dave, I mean, if you will turn through those that would be
8 great. Okay. The next page. And the next page. And the
9 next page. And the next page. And the next page. And the
10 next page. And the next page. And the next page. And the
11 next page. And then the next page. Next page. I think
12 that is it. Does that comport with your memory that the
13 vast majority of layoffs were of WordPerfect personnel?

14 A. Yes.

15 Q. What was the impact on the morale of the legacy
16 WordPerfect employees as a result of these layoffs and the
17 fact that the vast majority were WordPerfect?

18 A. It was catastrophic.

19 Q. All right. And what was your, from your
20 perspective, what was the impact on the ability of the
21 WordPerfect product to be sold as a result of the layoffs of
22 the sales people with WordPerfect background?

23 A. Well, you could develop a perfect product but if
24 there is nobody there to sell it, or to know how to sell it,
25 it doesn't do any good.

1 Q. There was testimony earlier in the trial that
2 Novell understood there needed to be layoffs but thought
3 that it could sell the WordPerfect product equally through
4 its channel. From your perspective, was that a reasonable
5 strategy?

6 A. Well, I think we had hopes for that, but I never
7 saw it really come to fruition.

8 Q. And why did it not come to fruition in your view?

9 A. Well, there were very few people in the channel
10 sales organization that were legacy WordPerfect people that
11 were even incented to do it, let alone had the understanding
12 of how to do it.

13 Q. In the international meeting you mentioned
14 multinationals. Did that present a special challenge in
15 your view to the -- to this approach to sales?

16 A. In selling through a channel?

17 Q. The Novell channel?

18 A. I don't know that the Novell sales channel was as
19 strong internationally as it was in the United States. We
20 already had two-tiered distribution models internationally
21 where we would sell through distributors and then channel
22 partners to our customers. We often would sell a lot direct
23 to the largest companies.

24 Q. And if you were selling direct to the largest
25 companies, did the loss of these WordPerfect sales people

1 impact that?

2 A. Dramatically.

3 Q. Why was that?

4 A. Well, sales is all about building a relationship
5 of trust. And when these large corporations had worked for
6 years with a particular sales rep who understood their
7 business and what the product could do for them, and that
8 person was no longer available, they were calling corporate
9 headquarters asking who their sales rep was, who could come
10 and talk to them about issues.

11 Q. Now, we have talked mostly about these layoffs of
12 sales people. Did you observe either layoffs or attrition
13 among the legacy WordPerfect developers?

14 A. Yes.

15 Q. Would you describe what you observed.

16 A. Well, there were a number of key people that left
17 the company during the acquisition time. They -- some just
18 cashed out on stock options when they became vested with
19 Novell. My neighbor who was one of the original developers,
20 Tom Thurston was a critical loss, I felt, to the product
21 line. It seemed that during the acquisition there was not
22 an incentive program in place to keep key developers on
23 staff. The only incentives I saw was when you were being
24 acquired by Corel, myself and a number of others were
25 offered significant sums of money to stay on so that the

1 product could be viable by the time Corel got it.

2 Q. Was that in contrast to the way Novell managed
3 the transition?

4 A. Absolutely.

5 Q. Did others at WordPerfect, to your knowledge,
6 agree with your assessment of the effects of developers and
7 sales persons layoffs?

8 MR. SCHMIDTLEIN: Objection, Your Honor.

9 THE COURT: Yeah, rephrase that.

10 Q. (By Mr. Jardine) All right. Did you have
11 communications with any of the senior management that came
12 from WordPerfect to Novell about the problems that you saw?

13 A. Yes. I had a number of conversations about the
14 problem.

15 Q. Did you have any with Mr. Rietveld who was the --
16 who had been the CEO of WordPerfect?

17 A. Yes, I talked to him after a recent visit to
18 Europe. I had gone to Europe to talk with the Novell sales
19 teams and the general managers of local offices. I had
20 expressed frustration to him that after setting up meetings
21 with a number of the Novell general managers that they
22 refused to meet with me. In France, particularly, I
23 remember they came out and said we're not interested in
24 WordPerfect, we're not going to sell it, we have got it on
25 our machines, we're not planning to install WordPerfect,

1 you're wasting your time here. So I went to his office when
2 I got home and expressed frustration and told him not only
3 are we having a lack of support from the international
4 Novell offices, but we are having key developers leave the
5 company that are impacting our development schedule.

6 Q. Let me just go back because I want to be clear.
7 You talked about visiting the Novell office in Paris. Did
8 you make it a point to visit the Novell offices in foreign
9 countries as part of the integration of the two companies?

10 A. Yes. When -- about March of 1995, I took Gary
11 Gibb and Steve Weitzel with me to Europe to help them
12 understand what some of the problems were, some of our
13 customers needs and we also attended the CeBit tradeshow in
14 Hannover, Germany, which is the largest technology tradeshow
15 in the world.

16 We had scheduled time with each of the offices in the
17 Netherlands, France, Germany, the UK. Usually when a
18 corporate visitor comes to town, it is a pretty big deal and
19 we had always been treated very well in the past by
20 WordPerfect affiliate offices. And we were quite shocked at
21 the refusal to meet with us by the Novell offices.

22 Q And what was the purpose of those visits?

23 A. It was to understand what their sales marketing
24 efforts were, their markets as well as to give them a
25 preview of what our upcoming product schedule was looking

1 like.

2 Q. These were the historic Novell offices?

3 A. Yes.

4 Q. And do you remember, I think you said in Paris
5 where -- I just want to be clear, was it the head of the
6 office that refused to meet with you?

7 A. The general manager and his sales staff. There
8 were about 14 people scheduled for the meeting, only one
9 showed up. That one person was a legacy WordPerfect person.

10 Q. As I understand your testimony, that is what you
11 reported among other things to Mr. Rietveld?

12 A. Yes.

13 Q. To your knowledge did Mr. Rietveld communicate
14 your concerns to senior management of Novell?

15 A. He told me that he had tried to convey concern --

16 MR. SCHMIDTLEIN: Objection, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: He tried to convey concern multiple
19 times to Bob Frankenberg, Mary Burnside --

20 Q. (By Mr. Jardine) Start over, go a little bit
21 slower for the court reporter.

22 A. I -- Mr. Rietveld told me that he had tried
23 multiple times to convey these concerns to senior management
24 at Novell and he rarely got a response.

25 Q. Now, let me turn to a slightly different subject.

1 What kind of actions did Novell take with respect to the
2 marketing budget for the WordPerfect products?

3 A. They dramatically cut it.

4 Q. And what was the impact of their cutting the
5 budget on your ability to market effectively WordPerfect
6 products under the Novell ownership?

7 A. Well, they cut the localization so we weren't
8 able to produce the number of languages we felt which were
9 imperative, but it also inhibited our ability to go out and
10 effectively combat Microsoft's very well oiled machine that
11 was competing against us all around the world. This caused
12 a significant perception shift in customers.

13 MR. SCHMIDTLEIN: Objection, Your Honor.

14 THE COURT: Well, he perceived it caused a perception
15 shift.

16 THE WITNESS: I can tell you I have direct evidence of
17 that. That Bristol-Myers Squibb they said that --

18 MR. SCHMIDTLEIN: Objection, Your Honor. This is all
19 hearsay, what Bristol-Myers Squibb said.

20 THE COURT: I think that is right. You have gone as
21 far as you can go on this.

22 Q. (By Mr. Jardine) Okay. You mentioned a minute
23 ago that the CeBit -- that this major tradeshow, the CeBit
24 tradeshow, would you tell the jury what that is?

25 A. That is the largest technology tradeshow in the

1 world. It is held annually in Hannover, Germany. It
2 usually has about 700,000 people attend it annually. It is
3 a seven day show. I have attended it nine times. We --
4 WordPerfect for years had a key presence at that show in the
5 premier hall, hall number two, which is the entry hall for
6 the attendance. Our booth was right next to Microsoft's.

7 Q. After the acquisition in March of 1995, did the
8 combined Novell WordPerfect organization have a booth at the
9 tradeshow?

10 A. They actually had two. They had our traditional
11 spot with a very large footprint in hall two, and they also
12 had a spot in hall number nine which was the networking hall
13 which was Novell's primary booth.

14 Q. Let me show demonstrative -- have Dave put up
15 demonstrative 192. Is that a photo of the Novell booth at
16 this tradeshow?

17 MR. SCHMIDTLEIN: Excuse me, Your Honor. Your Honor,
18 may we be heard?

19 (Whereupon, a sidebar conference was held out of the
20 presence of the jury.)

21 MR. SCHMIDTLEIN: I have no idea where -- what this
22 is. He now tells me that this is a photograph that this
23 witness took that he gave to Mr. Jardine last week. I have
24 never seen this. I have no idea where this came from or
25 what this is, so I object to it.

1 MR. JARDINE: He gave this to us at the -- after trial
2 Tuesday, and we didn't provide a copy because we didn't
3 intend to make it an exhibit. We are just showing --

4 MR. SCHMIDTLEIN: Is it --

5 THE COURT: I can't -- I can't follow the distinction
6 between an exhibit and demonstrative. He can describe it.

7 MR. JARDINE: Okay.

8 (Whereupon, the bench conference concluded.)

9 Q. (By Mr. Jardine) Mr. Bushman, would you describe
10 the difference in the presentation of the WordPerfect
11 product at the March 1995 CeBit exhibit Tradeshow as
12 contrasted from earlier years when WordPerfect had it?

13 A. Traditionally when we had a booth it was very,
14 very busy. We had many theaters where we could have up to
15 100 people watching demonstrations of each individual
16 product, staffed by some 50 to 60 WordPerfect personnel.
17 When myself, Gary Gibb, Steve Weitzel went to the show, we
18 were dismayed that this space was consumed of a Novell booth
19 that just had pillars in it and no product was demonstrated
20 at all. The only thing inside of the booth were two clowns
21 on stilts that were walking around telling people
22 PerfectOffice for you and for you and for you. It was -- it
23 was laughable.

24 Q. Did Microsoft have a booth in that show?

25 A. Yes, right next door they had a booth that was

1 packed with hundreds of people. We had a customer e-mail me
2 after the show and told me --

3 MR. SCHMIDTLEIN: Objection, Your Honor, a customer
4 e-mail came after the show is hearsay.

5 THE COURT: Was this e-mailed to you at Novell?

6 THE WITNESS: Yes.

7 THE COURT: Overruled.

8 THE WITNESS: He told me if they had at least had a
9 french fry stand they would have at least walked away with
10 something from the booth. There was nothing, no literature,
11 no product demonstrations, nothing happening in the booth.

12 Q. (By Mr. Jardine) We have talked a little bit and
13 I asked you questions about the impact on morale of legacy
14 WordPerfect employees. I would like to show you DX-60.

15 MR. SCHMIDTLEIN: Your Honor, before he gets started,
16 can I be heard on this?

17 THE COURT: Sure.

18 (Whereupon, a sidebar conference was held out of the
19 presence of the jury.)

20 MR. SCHMIDTLEIN: This document is in evidence but at
21 his deposition he -- this is an employee survey, Novell
22 employee survey. And in his deposition, he said he had
23 never seen it and he had never -- he didn't recall
24 participating in it. So is --

25 THE COURT: My question --

1 MR. JARDINE: There is a finding that 48 percent of
2 the legacy WordPerfect employees were thinking of quitting.
3 I'm going to ask him if that is consistent with his
4 understanding of the morale at the time.

5 MR. SCHMIDTLEIN: He can ask him a question about
6 that. He has already testified about the employee morale at
7 the time.

8 THE COURT: It is an admitted document. You can ask
9 him about it, but don't dwell on it.

10 (Whereupon, the sidebar conference concluded.)

11 Q. (By Mr. Jardine) Mr. Bushman, I have handed you
12 what's been labeled as Novell Employee Survey May 3rd, 1995.
13 And I gather from your deposition testimony you have not --
14 you did not see this document at the time?

15 A. No, I didn't see this executive overview.

16 Q. All right. I would like you to turn to what is
17 marked Page 38 in the bottom right hand -- excuse me,
18 Page 40 in the bottom right hand corner. It says as of the
19 -- one of the summaries of this survey is 48 percent of
20 employees originally hired at WordPerfect are thinking about
21 quitting. Does that comport with your understanding of the
22 morale of the legacy WordPerfect employees at this time?

23 A. I said in my deposition I was surprised it was
24 that low.

25 Q. Thank you. Now, we were talking about

1 communications to senior management. Do you recall ever
2 writing yourself a memo to Novell senior management about
3 the things you saw, the things you have described to the
4 jury?

5 A. After multiple visits internationally, and having
6 experiences I had with the Novell management overseas and
7 the lack of support, I wrote a memo to Jeff Waxman who was
8 our general manager of the business applications group
9 expressing my frustrations and recommended solutions of what
10 we could do to turn some things around.

11 Q. Did you receive -- were the things that you had
12 described to Mr. Waxman the things that you enumerated for
13 the jury today?

14 A. Yes.

15 Q. What response did you receive from Mr. Waxman?

16 A. None.

17 Q. Since this lawsuit, have you seen a copy of that
18 memo?

19 A. I had it for years. It is not very often that I
20 would write a letter to somebody that senior so I kept it in
21 my files for a number of years. And I have must have
22 discarded it because when I was asked by both sides if I
23 could produce it I looked through as much stuff as I could
24 find and I never found it.

25 Q. And you haven't been shown a copy from Novell's

1 files?

2 A. No.

3 Q. Let me turn to another subject now. You have
4 testified earlier that as an international product marketing
5 manager you were involved in attending meetings for the
6 product development of PerfectOffice for Windows 95,
7 correct?

8 A. Actually, when I became international product
9 manager I attended more development meetings.

10 Q. Thank you. And can you give us roughly the time
11 period when that assignment was given to you?

12 A. I think it was early 1994.

13 Q. All right. And I think you said at least seven
14 or eight months out those meetings would occur biweekly?

15 A. Yes.

16 Q. And you told us where those meetings would occur.
17 Who would attend?

18 A. Um --

19 Q. Not by name but by position?

20 A. Development, sales, public relations, marketing,
21 operations. It was quite a few different people. Probably
22 30 to 35 people would be in those meetings.

23 Q. And what would -- what would be the kinds of
24 topics that would be discussed in those meetings?

25 A. As an international product manager -- well as

1 the product managers it was myself and somebody else would
2 generally run those meetings to get updates biweekly on
3 where we stood on our development timeline as well as our
4 marketing timeline and the preparation for the release of
5 the product.

6 Q. Were the timelines important to you in your
7 position?

8 A. Crucial interest.

9 Q. Why?

10 A. Not only were we incentive with bonuses on
11 meeting our timelines, but it was meeting the timelines that
12 we had indicated to the market that we would deliver our
13 product.

14 Q. Okay. In early 1995, were there discussions
15 about potential delays in the PerfectOffice product for
16 Windows 95?

17 A. Yes.

18 Q. Can you describe generally what the discussions
19 were about, the prospective delays in that product?

20 A. The delays generally fell into three different
21 categories. One was the frustration with the development
22 team with the Quattro Pro product line. It was architected
23 differently. It created significant impact to the
24 integration into the suite, not only from a look and feel,
25 but if I recall, I think they were called PerfectScript,

1 these were macros that would go cross product, they were not
2 working very well. There were frustrations with the number
3 of developers that either didn't come over from Borland that
4 were key on the Quattro Pro line or who had left the
5 company.

6 The second one was localization issues. Novell had
7 gotten rid of all of the in-house translators which
8 significantly impaired our ability to release a product in a
9 timely manner with the international versions. They didn't
10 have the proper tools available to localize. These issues
11 were escalated to Mary Burnside who was over the
12 localization efforts.

13 And then the third was operations. Operations took
14 place both in Orem, Utah, production of the product, the
15 packages, as well as Ireland for the international versions.
16 And Novell ran those and there was a lot of problems with
17 the products getting released and produced in time.

18 Q. Was it important, I mean there has been some
19 testimony about this earlier in the trial, in your view was
20 it important to be able to release international versions,
21 language versions, simultaneous with the English versions?

22 A. Critical if we wanted to maintain our
23 multinational company accounts.

24 Q. In the meetings you attended in 1995, did you --
25 do you recall anyone ever mentioning that one of the

1 problems with meeting the original timelines related to the
2 withdrawal of something called NameSpace extension APIs?

3 A. No, I don't recall.

4 Q. Do you recall anyone ever mentioning that some of
5 the delays were due to actions Microsoft had taken with
6 respect to the Windows 95 beta?

7 A. In the meetings I attended that didn't come up.

8 Q. As part of your responsibility on the core team
9 and as an international product manager, did you ever visit
10 the Borland campus where the Quattro Pro developers were?

11 A. Almost monthly.

12 Q. And what was the purpose of your visits?

13 A. I worked closely with the product manager at --
14 on the Quattro Pro team to identify the issues that were
15 inhibiting our ability to bring the product into the
16 PerfectOffice suite and to market it. And so Borland
17 actually had a large campus of their own. A beautiful
18 \$100,000,000 campus. And our buildings were actually down
19 the hill in their old offices. So we had one single story
20 building that was the Quattro Pro building.

21 Q. And when you first visited the Borland offices
22 where the Quattro Pro developers were, what impression did
23 you have on the work that was going on there?

24 A. It looked like a ghost town.

25 Q. And I think you testified earlier that you were

1 concerned about the localization issues there with respect
2 to the Quattro Pro product?

3 A. Yes. The product was hard coded and so
4 localization -- hard coded means when you create a product
5 if you are going to sell it internationally you usually
6 create the strings or the words themselves in separate files
7 so you can pull them out easily and translate them and
8 localize them. With Borland's Quattro Pro they didn't do
9 that so it made it a significant development effort problem
10 to pull out all of the word strings to localize what is
11 called a hard coded environment.

12 Q. I want to ask you some more about that in a
13 minute, but let me have you look at Exhibit 221. This
14 Exhibit DX-221 is a memo from Bruce Brereton. The e-mail
15 address is BU staff and BU managers dated March 1st, 1995.
16 I don't know -- do you recall whether you received this
17 document?

18 A. I likely would have being part of the BU managers
19 alias.

20 Q. Would you remind the jury who Bruce Brereton is?

21 A. He was vice-president of development over the
22 PerfectOffice suite.

23 Q. If you look down at the second paragraph, begins
24 after further discussion, do you see that?

25 A. Yes.

1 Q. It says, "after further discussion, and an
2 analysis of several options, we feel it will be much better
3 to have WordPerfect, WP, which I assume is WordPerfect,
4 which then implies PerfectFit, WP draw and many other
5 components on the same schedule as Storm." What was Storm?

6 A. Storm was the code name for the PerfectOffice
7 suite.

8 Q. And then it goes on, "also, the QP team have
9 abandoned their product delivery timeframe and feel
10 December 30th is a more realistic date. Therefore, after
11 reviewing this with Mark, Glen and others, we have moved the
12 Storm RTM date back by one month to December 30th and have
13 put WP on the same timeline as Storm." Looking at the
14 sentence also the QP, would QP be Quattro Pro?

15 A. Yes.

16 Q. The QP team have examined their product delivery
17 timeframe and feel December 30th is a more realistic date.
18 Do you remember in about this timeframe learning that the
19 Quattro Pro development team thought that December 30 was a
20 more, 1995 was a more realistic timeframe for the release of
21 their product?

22 A. Yes. The problem -- Quattro Pro was always the
23 boat anchor on this suite because it was having so many
24 architectural problems. It was delaying everything.

25 Q. You mentioned earlier -- thank you. We're

1 finished with that. You mentioned earlier that part of your
2 responsibility was developing market requirements documents.
3 I would like to show you DX-224?

4 A. Yes.

5 Q. Is this the kind of document you were describing
6 earlier when you described the market requirements document?

7 A. Yes.

8 Q. This one is dated April 14th, 1995, and I would
9 like you to turn to Page 4.

10 A. Yes.

11 Q. That is a document revision history. And I see
12 four lines up from the bottom your name?

13 A. Yes.

14 Q. Would that indicate that on February 2nd, 1995,
15 you made edits to this document?

16 A. Correct.

17 Q. And under description it says, international
18 perspective and comments?

19 A. Yes.

20 Q. And that would have been your role?

21 A. Correct.

22 Q. Let me have you turn, if you will now to Page 19.
23 This document says in the last sentence on Page 19, "we have
24 fallen behind the competition in most of the important
25 international markets. Storm can be a tremendous

1 opportunity to change our position internationally." At
2 this point in time, was it your view that WordPerfect had
3 fallen behind the competition in most of the important
4 international markets?

5 A. Yes.

6 Q. And why was that?

7 A. Well, as I indicated earlier, Microsoft had a
8 very well-oiled marketing machine. They had dramatically
9 changed the landscape with suites. Our research showed that
10 at the time that 90 percent of sales at the time
11 internationally were going to suites, to Microsoft Office
12 Suites, so we had fallen behind significantly.

13 Q. All right. Will you turn to Page 36 now. If you
14 look at under the target the heading international
15 requirements in the second paragraph, the third sentence,
16 well let's go to the third sentence says, "in fact,
17 international operating systems sales are more than double
18 the U.S."?

19 A. Yes.

20 Q. Is that your recollection of how sales were going
21 internationally?

22 A. I think so, yes.

23 Q. The next line reads, "Microsoft is
24 well-established in all of the world's important and
25 emerging markets. They have published the following release

1 schedule for international versions of Windows 95 in 27
2 languages. Localized versions of Microsoft Office should
3 follow this schedule closely. A localized version of
4 Microsoft Office currently ships or has been announced in
5 the bolded languages and then it lists a number of
6 languages."

7 In your view in order to succeed internationally, did
8 WordPerfect Novell need to meet and match that localization
9 effort on the part of Microsoft?

10 A. Yes.

11 Q. If you will now turn to Page 37. Under the chart
12 on the second paragraph down, the major issue, do you see
13 that?

14 A. Yes.

15 Q. It reads, "a major issue continues to be the
16 inability to simultaneously release localized Quattro Pro
17 with a localized suite. This will hinder our ability to
18 quickly capture international market share and revenue."
19 Can you explain the inability to simultaneously release
20 localized Quattro Pro with a localized suite what you meant
21 by that?

22 A. Well obviously the suite was comprised of several
23 different products, and Quattro Pro was the one boat anchor
24 that was not meeting the schedules and dragging the whole
25 suite dates behind. And so there were proposals put forth

1 about possibly including a voucher in the package, shipping
2 the English Quattro Pro and international versions and
3 getting the localized version later. We indicated that this
4 just would not work. If our large corporations were going
5 to buy a suite, they wanted it to be equal to the Microsoft
6 Suite. If they had an option of one or the other, they're
7 going to choose one that is fully localized.

8 Q. Let me go back to something you just said. You
9 said you talked about putting a voucher --

10 A. Yes.

11 Q. -- in the product?

12 A. Yes.

13 Q. Explain what you meant? Would another word for
14 voucher be a coupon?

15 A. Yes.

16 Q. Would you explain what the proposal was?

17 A. It was if they wanted to leave Quattro Pro behind
18 and release it later in the international versions, the
19 proposal by operations and other people within Novell was to
20 just put a voucher in the product so that customers who
21 really wanted to use that part of the product in a localized
22 state could get that 30, 60, 90, 120 days after the original
23 release.

24 Q. That coupon would have been for language
25 versions?

1 A. Yes.

2 Q. And what was, again, can you tell the jury what
3 the reaction recommendation was of the international
4 marketing group to that proposal?

5 A. Well, they said it was simply not feasible. Not
6 only would it help us lose significant marketshare with the
7 large multinational companies, we would lose our ability to
8 put requests for proposals into the European union and it
9 was illegal in France.

10 Q. Now, one last thing in this document. If you
11 would turn to Page 44. Page 44 is labeled Appendix A, risks
12 - management matrix. And there is a -- it labels it major
13 risks in project. And it says table is ordered by overall
14 risk. The way you read that appendix, what is identified as
15 the number one risk by overall risk to the development of
16 this product on time?

17 A. The Quattro Pro product.

18 Q. And is that delivering late?

19 A. Yes.

20 Q. And does that comport with your memory of what
21 the problem was at the time?

22 A. Yes.

23 Q. Thank you. Let me have you put that down. And I
24 would like you to look at one other document, DX-272.

25 DX-272 is labeled Novell Business Applications

1 Quarterly International Conference Meeting Notes, June 13
2 through 16, 1995. Did you participate or hold quarterly
3 international conferences?

4 A. Yes.

5 Q. And would these be the notes from one of them?

6 A. Yes.

7 Q. And there are various things, but I would like to
8 have you turn to Page 18. And this is localization, it is
9 labeled localization and international product management
10 Craig Bushman and Thor Christiansen?

11 A. Yes.

12 Q. I think you mentioned Mr. Christiansen earlier.
13 Can you tell the jury who he was?

14 A. He was my colleague. Again, we split the
15 responsibilities of international product management. I
16 handled all -- he handles Cyrillic languages and 2-byte
17 languages, Asian languages. I handled all of the other
18 languages. All other languages.

19 Q. And this appears to be notes taken of your
20 presentations?

21 A. Yes.

22 Q. Would that be correct?

23 A. Correct.

24 Q. Would you look at the second bullet under the
25 heading, "QP had hard-coded their language strings which

1 made it almost impossible to localize." Was that -- I think
2 you testified earlier about the implication of that?

3 A. Correct.

4 Q. And how did that impact the development of
5 Quattro Pro for release in the Windows 95 product?

6 A. Well, it was, again, it was -- it was a show
7 stopper. It required significant effort to pull these
8 strings out. I think it was one of those issues that nobody
9 had really known about when the acquisition occurred Quattro
10 Pro and it was just a development issue that had to be taken
11 care of over time.

12 Q. From your perspective did it have an impact in
13 delaying Quattro Pro being able to have its product for the
14 PerfectOffice for Windows 95 product ready on the original
15 timeframe?

16 A. Well, there were two issues with Quattro Pro.
17 One was the hard coding of the strings which delayed
18 international versions, and then there was the lack of just
19 general development support on the main English version
20 which was impacting its release.

21 Q. All right. If you will turn over to the next
22 page, Page 19, about halfway down it says, "international
23 Storm schedule," do you see that?

24 A. Yes.

25 Q. And it says under that, "U.S. first customer

1 ship, FCS, is December 30." At this point in time, was that
2 your understanding of what the goal was to ship?

3 A. Yes.

4 Q. And then if you will look down two more bullet
5 points it says, "our localization budget has been
6 drastically cut. Our budget for fiscal '95 has just come
7 back and it's \$500,000. That means that we can't start any
8 new localization until November when we have new budget
9 monies. Craig is working with Mark who is working with Jeff
10 on this explosive issue." Let me ask you some questions
11 about that.

12 When it says, "this means we can't start any new
13 localization until November," this is written June of '95,
14 would that be referring to November of '95?

15 A. Yes.

16 Q. And what would be the impact of not being able to
17 start any new localizations until November of 1995?

18 A. Well, it would -- it would delay the release of
19 the international versions. Novell's fiscal year starts
20 November 1st and so our new budget year wouldn't be
21 available, those monies, until the new budget year. So our
22 request for specific localization, which again would be to
23 compete head to head with Microsoft, would be delayed until
24 November.

25 Q. And the last part of that paragraph or the first

1 of this is an explosive issue. What did you mean by
2 describing it as an explosive issue?

3 A. As I mentioned many other times to our senior
4 management is that it was going to delay the release of
5 simultaneous versions which would impact our revenue with
6 large corporations who relied heavily on multilanguage
7 versions.

8 Q. Okay. Then the very next bullet point says,
9 "development is now starting to work overtime on Storm.
10 We're doing all possible to avoid any delays for delivery of
11 product in December/January timeframe." Does that
12 accurately reflect your understanding of the time of
13 increased development efforts to try to make the
14 December/January timeframe?

15 A. It was a very stressful holiday time.

16 Q. Now, let me have you look at one other document
17 and that is DX-230. DX-230 is a document that we have seen
18 in this case before. It is a memo from Mr. Brereton who you
19 have described as the vice-president for development over
20 PerfectOffice?

21 A. Correct.

22 Q. And he writes to others and we know that one of
23 them was Mr. Frankenberg, and it is dated December 23rd,
24 1995. Was that -- at that point in time, December of '95,
25 were you still traveling to the Quattro Pro campus once a

1 month?

2 A. Yes.

3 Q. And do you recall whether you received this
4 document?

5 A. Yes.

6 Q. You did?

7 A. Yes.

8 Q. And it reads, and essentially if you look at
9 Paragraph 1, number one, it reads, "on this past Thursday,
10 Friday about 15 additional people submitted their
11 resignations. All except one will be going to Oracle. From
12 a development standpoint, this leaves us with just two
13 people."

14 Do you recall, Mr. Bushman, that event happening at
15 Quattro Pro?

16 A. Yes, it was significant.

17 Q. What was -- what was the status of the
18 development of the Quattro Pro product in terms of it being
19 ready to ship in PerfectOffice for Windows 95 at the time of
20 these resignations?

21 A. Well, it was already the product and the risk for
22 the ship date happening and with this, it was a death blow.
23 It was -- just before Christmas, it was stunning.

24 Q. As of the time that these developers quit, do you
25 recall was the Quattro Pro product finished?

1 A. I don't believe so.

2 Q. Do you recall when, in fact, it was finished and
3 ready to be part of the -- of PerfectOffice Suite that was
4 ultimately released by Corel in May of 1996?

5 A. I don't recall the exact timeframe. I just
6 recall there was still ongoing issues throughout that spring
7 also.

8 Q. Thank you. In preparation for this trial, have
9 you met with attorneys for both sides?

10 A. Yes, I have.

11 Q. And have you met with lawyers from both sides
12 actually since the trial began?

13 A. Yes, I have.

14 Q. When you met with the Novell lawyers, would you
15 describe what was discussed?

16 A. As I mentioned before, they were mostly
17 interested in what kinds of questions you were asking me. I
18 gathered they were trying to identify strategy similar to
19 what you asked me. They described some of the testimony of
20 Mr. Gibb.

21 Q. You said Mr. Gibb was a friend of yours?

22 A. Yes.

23 Q. Did knowing what Mr. Gibb's testimony was affect
24 in any way the testimony that you have given today?

25 A. Well, I was -- I was surprised that he was

1 called. I hadn't heard that he was called as a witness.
2 But it didn't affect my testimony.

3 Q. Now, just one last series of questions. What was
4 your reaction when you heard that Novell had filed this
5 lawsuit?

6 A. I remember I was in the car. I heard it on the
7 radio and I laughed out loud. I couldn't believe it. I
8 always thought that if there was a lawsuit it would be by
9 Novell shareholders on how mismanaged the product line was.

10 MR. JARDINE: All right. No other questions, Your
11 Honor.

12 THE COURT: Mr. Schmidtlein, is it okay if we go to
13 around quarter of ten? Is that okay with everybody, 15 more
14 minutes? Is that okay with you Mr. Schmidtlein? This is a
15 natural spot, but it would be better to go a little longer.

16 MR. SCHMIDTLEIN: Sure.

17 CROSS-EXAMINATION

18 BY MR. SCHMIDTLEIN:

19 Q. Good morning, Mr. Bushman.

20 A. Good morning.

21 Q. We have never met before, have we?

22 A. No.

23 Q. You gave some testimony earlier in response to
24 some questions from Mr. Jardine about Mr. Peterson. Do you
25 recall that?

1 A. Yes.

2 Q. Mr. Peterson left WordPerfect in 1992; is that
3 right?

4 A. Yes.

5 Q. He left WordPerfect before the Novell merger;
6 correct?

7 A. Correct.

8 Q. He left WordPerfect before there was any
9 development work done for the PerfectOffice Suite; correct?

10 A. I don't recall specifically when the development
11 started.

12 Q. Let me just go back over. You graduated college
13 in 1987; is that correct?

14 A. Correct.

15 Q. Okay. And you got a BA, bachelor of arts, in
16 broadcast management and communication; is that right?

17 A. Correct.

18 Q. Okay. So am I correct that you didn't study
19 computer science, did you, in college?

20 A. Actually I started as a computer science major my
21 first year at BYU.

22 Q. But you didn't get the major, did you?

23 A. I decided I liked to work with people instead of
24 being tied behind the computer.

25 Q. You weren't an economics or a finance major, were

1 you?

2 A. No, I took those classes.

3 Q. You didn't get a degree in those?

4 A. Not a degree, no.

5 Q. Okay. And you don't have any graduate degrees;
6 is that right?

7 A. Correct.

8 Q. You don't have a masters of business
9 administration or an MBA?

10 A. No.

11 Q. And while you were working at WordPerfect and
12 Novell, you never wrote any software code while you were
13 employed there, right?

14 A. No, I did not.

15 Q. You never worked as a software engineer or a
16 software architect, right?

17 A. No.

18 Q. And you were never part of the groups at
19 WordPerfect or Novell like the share code group or the
20 engine group that actually did the software development;
21 right?

22 A. I was not a developer, no.

23 Q. And the entire time you were there you worked in
24 marketing; is that right?

25 A. Correct.

1 Q. And within marketing you worked almost
2 exclusively in international marketing, right?

3 A. Correct.

4 Q. You were never a customer account director in the
5 United States, were you?

6 A. In sales? No, I was not in sales.

7 Q. And you never held any executive level positions
8 at WordPerfect or Novell, correct?

9 A. That is correct.

10 Q. You never attended any WordPerfect or Novell
11 board meetings, correct?

12 A. Not board meetings.

13 Q. Okay. And I believe Mr. Jardine asked you a
14 question about their came a time where you had some people
15 who were reporting to you; is that right?

16 A. When I was at Corel Corporation.

17 Q. And during the time that you worked at
18 WordPerfect and then at Novell, you never held a position
19 where anybody actually reported to you, correct?

20 A. That is correct.

21 Q. Let me, if we could put up PX-336, I'll show this
22 to you. I think this has been admitted into evidence. Do
23 you recognize this document?

24 A. No, I probably didn't have it in my possession.

25 Q. Okay. Have you seen documents like this when you

1 were at Novell?

2 A. Yes.

3 Q. This is an ORG chart of sorts?

4 A. Yes.

5 Q. And the first couple of pages of this
6 organizational chart are the Novell Business Applications
7 Division; is that right?

8 A. Correct.

9 Q. And is that the group that you were in?

10 A. Yes.

11 Q. Okay. And if you go over to the one, two, three,
12 four, fifth page, can you turn to that one, it has NBA
13 Development Organization. What is NBA Development
14 Organization?

15 A. Novell Business Applications.

16 Q. And this actually shows the chart of all of the
17 people who were actually involved in the software
18 development, right?

19 A. It looks like it.

20 Q. But in the preceding pages, we'll go to the --
21 first go back to the first page, please. Okay, that is the
22 Novell Business Applications Division. That is the division
23 you were in?

24 A. Correct.

25 Q. Okay. And if you go to the third page, at the

1 top there, can you blow that up or we're all going to need a
2 magnifying glass here I'm afraid, I guess Mr. Mella was the
3 VP of marketing; is that right?

4 A. Yes.

5 Q. He is the head of the group that you were in?

6 A. Yes.

7 Q. Okay. And now let's see if I can help you here
8 because I'm trying to locate where you were on this
9 organizational chart. Can you scroll down Mr. Goldberg.
10 Scroll down.

11 A. Yes.

12 Q. Blow this part up here. Is that you in that part
13 of the organizational chart?

14 A. Yes.

15 Q. And is that -- that is where you fit into the
16 marketing organization as of October 1995?

17 A. Yes.

18 Q. Now, the person who was the director of the
19 PerfectOffice 95 development project was Gary Gibb, right?

20 A. I believe he was the director of the PerfectFit
21 technology at the time.

22 Q. Do you recall that during the development of
23 PerfectOffice 95 he was the director of that development --

24 A. I don't recall specifically if he was. I worked
25 more specifically with he and with Bruce Brereton and with

1 Steve Weitzel. Those are the three primary leads I worked
2 with.

3 Q. Okay. Put that last exhibit back up. If you go
4 to, again this is as of October '95, if you go to -- that
5 NBA Development Organization page that we just were looking
6 at a moment ago, and if you look at actually that view you
7 just had was pretty good. Okay, so Bruce Brereton was the
8 top of this organization, right?

9 A. Right.

10 Q. If you look at number three there, that is
11 Mr. Gibb?

12 A. Yes.

13 Q. Is that right?

14 A. Correct.

15 Q. And it says there director PerfectOffice, PO Win
16 95. What is PO Win 95?

17 A. PerfectOffice.

18 Q. Does that refresh your recollection that he was
19 the director?

20 A. Yes. He and Steve Weitzel probably carried the
21 most sway in the development efforts.

22 Q. Okay. And Mr. Gibb was responsible for
23 coordinating the development of the PerfectOffice 95 product
24 in bringing it to market, right?

25 A. Yes.

1 Q. And do you have the -- it has been a while, the
2 jury has been so patient with us as we have gone on for
3 weeks here, Mr. Gibbs testified in this case. Do you have
4 the picture just to remind people who Mr. Gibb was. That is
5 Mr. Gibb, right?

6 A. That is correct.

7 Q. And you never reported to Mr. Gibb, did you?

8 A. No.

9 Q. Okay. And, in fact, you never worked for any
10 group that reported to Mr. Gibb; is that right?

11 A. He only had developers reporting to him.

12 Q. Okay. But you knew Mr. Gibb while you were at
13 WordPerfect; right?

14 A. Yes.

15 Q. It is fair to say you thought Mr. Gibb was a
16 pretty sharp guy, didn't you?

17 A. Yeah, I liked Gary.

18 Q. You believe he was very good at his job, didn't
19 you?

20 A. Yes.

21 Q. And you thought highly of Mr. Gibb, didn't you,
22 personally?

23 A. Yes.

24 Q. And in terms of understanding all of the issues
25 that arose during the development of the PerfectOffice for

1 95 product, Mr. Gibb would have had access to much more
2 information and knowledge about the development of Perfect
3 90 -- PerfectOffice 95 than you did, correct?

4 A. Development issues, yes.

5 Q. Now, you testified about the reduction in the
6 sales force that occurred after the WordPerfect Novell
7 merger. Do you know whether the merger impacted the work of
8 the WordPerfect engine team?

9 A. The engine team?

10 Q. Do you know what the engine team was?

11 A. Well, yes, I mean there is a number of different
12 core groups as part of that, but I think that it -- things
13 continued on. There was some impact to all of the
14 development teams just in morale, but I don't recall
15 specifically what you may be referring to.

16 Q. Well have you reviewed Mr. Gibb's testimony on
17 the subject of whether Novell WordPerfect merger impacted
18 the WordPerfect engine team after the merger?

19 MR. JARDINE: Objection, Your Honor. He is precluded
20 by your order.

21 THE COURT: Yeah, approach the bench for a minute. I
22 was surprised by the answer before.

23 (Whereupon, a sidebar conference was held out of the
24 presence of the jury.)

25 THE COURT: I was surprised. I didn't think people

1 could get trial testimony.

2 MR. SCHMIDTLEIN: We were surprised, too. I thought
3 he made a reference to Mr. Gibbs and him being aware of
4 Mr. Gibb's testimony.

5 THE COURT: From you, from your team, which shocked
6 me.

7 MR. JARDINE: You don't know about this, but he met
8 with your people. One of your lawyers told him about Gibb's
9 testimony until somebody else cut him off.

10 THE COURT: If he -- if he listened to it, if he knows
11 what Gibb's testimony is, this is almost grounds for a
12 mistrial.

13 MR. JARDINE: We --

14 THE COURT: But I'm not going to grant it.

15 MR. JARDINE: I'm just saying he does not know it from
16 us.

17 THE COURT: It was from you. Well, we'll explore this
18 outside of the presence of the jury.

19 (Whereupon, the sidebar conference concluded.)

20 Q. (By Mr. Schmidtlein) Mr. Bushman, do you know
21 whether the Novell WordPerfect merger impacted the work of
22 the shared code team?

23 A. As I mentioned before, I think everyone felt some
24 impact to it. Not only from uncertainty of direction and
25 timeliness, but what impact it could have on reduction in

1 forces.

2 Q. Do you know Adam Harral?

3 A. I only know the name.

4 Q. Do you know that Mr. Harral was the lead
5 developer in the shared code team?

6 A. I didn't know, but I assume he was.

7 Q. You would agree with me that Mr. Harral would be
8 in a better position to know what impact, if any, the merger
9 had on the development efforts of the shared code team than
10 you would?

11 A. Correct.

12 Q. Now, you would agree that after a merger it is
13 not unusual for the merged company to lay people off? That
14 happens from time to time after a merger, doesn't it?

15 A. Certainly.

16 Q. And indeed, in some cases, sort of the
17 pro-competitive effect from the merger can be that there are
18 cost savings achieved as a result of unfortunately some
19 layoffs, right?

20 A. Correct.

21 Q. Okay. And sometimes you save costs by
22 streamlining your operations; right?

23 A. Correct.

24 Q. And it is not unusual that after a merger the
25 merged company decides it doesn't need sort of the two

1 separate sales forces; right?

2 A. Well, I would disagree because they had not yet
3 educated the entire sales force on how to sell all product
4 lines. My argument was that they disproportionately let go
5 of the WordPerfect people that impacted the revenue.

6 Q. You would agree that Novell was very well-known
7 for having highly capable sales force and NetWare -- a
8 network of software distributors, right?

9 A. Correct.

10 Q. And, in fact, Novell had one of the largest and
11 most effective software distributor dealer organizations in
12 the world, right?

13 A. Probably one of the best, yes.

14 Q. And yet at the time of the WordPerfect merger,
15 Novell had 20 to 25,000 dealers who sold products to end
16 customers of all sizes, correct?

17 A. Yes.

18 Q. And Novell -- Novell executives made a decision
19 to change the way in which WordPerfect was sold to take
20 advantage of that existing Novell network of dealers, right?

21 A. Yes. But not exclusively.

22 Q. Okay. But you understood soon after the merger
23 that Novell had made a strategic decision in that regard,
24 right?

25 A. I was not aware of the strategic division of it

1 going strictly to a channel, no.

2 Q. You were aware that there was going to be a
3 significant emphasis put on the channel, right?

4 A. We were hoping so, yes.

5 Q. And had you heard people either inside or outside
6 of WordPerfect Novell refer to the WordPerfect sales force
7 as bloated?

8 A. No, I don't recall that.

9 Q. Did you know that Microsoft executives had
10 referred to the WordPerfect sales force as bloated?

11 A. No.

12 MR. SCHMIDTLEIN: Now after -- I think you testified
13 earlier -- well actually, Your Honor, this wouldn't be a bad
14 place --

15 THE COURT: Let's take a short break, ten minutes or
16 so, and then I'm ready. I'll stay here with counsel for
17 just a moment. 10 minutes.

18 (Whereupon, the jury left the courtroom.)

19 THE COURT: Please be seated. I am going ask you a
20 couple of questions, I'm not suggesting that you have done
21 anything wrong by these questions, but did I understand you
22 to say that somebody from Novell's team told you what
23 Mr. Gibb's testimony was?

24 THE WITNESS: Well, a couple of weeks ago when they
25 asked if they would meet with me, we met at the Monaco

1 Hotel. There were four, I think about four Novell attorneys
2 and we had some small chit-chat. And then they started
3 talking about what kind of questions did the Microsoft
4 attorneys ask me. And then they started asking me what my
5 role was. And then they asked me if I knew Gary Gibb and
6 outlined -- started to outline what his testimony was.

7 THE COURT: And who was that and who was there?

8 THE WITNESS: I don't remember the exact name.

9 THE COURT: Are they here today?

10 THE WITNESS: The gentlemen in the back left.

11 THE COURT: Anybody else?

12 THE WITNESS: I'm sorry?

13 THE COURT: Just him?

14 THE WITNESS: Yes.

15 THE COURT: And your name is?

16 MR. HOLCOMB: Bruce Holcomb, Your Honor.

17 THE COURT: And did I also understand, maybe the
18 answer would have been no, have you actually seen
19 transcripts of Mr. Gibb's testimony.

20 THE WITNESS: No.

21 THE COURT: Thank you. I'll take a short recess. Let
22 there be no misunderstanding, the whole idea of the
23 sequestration rule is that people aren't supposed to be told
24 the testimony of other people.

25 (Recess.)