

1 THE COURT: Okay. Let's get the jury.

2 (Jury brought into the courtroom.)

3 THE COURT: Mr. Johnson.

4 MR. JOHNSON: Thank you, Your Honor.

5 Q. BY MR. JOHNSON: Mr. Muglia, during the break, one of
6 my colleagues informed me that you may have misspoken about
7 your deposition. You said something about 1999. If you look
8 at that --

9 A. 2009. I'm sorry.

10 Q. It was the 2009. Correct?

11 A. Yes.

12 Q. So it was a couple years ago, right?

13 A. Yeah. Just a couple years ago for this case, right.

14 Q. Thank you. Let's talk about Cairo a little bit.

15 You've already testified, of course, that the Cairo?

16 shell never shipped, right?

17 A. Yes. That's correct.

18 Q. In fact, the Cairo-based shell technology for Windows

19 NT was canceled in the fall of 1994, correct?

20 A. Yes. I mean, the team -- some of the folks in the team

21 wanted to move over to the Office group, but, yes, it was

22 canceled.

23 Q. And, in fact, at that time, in the fall of 1994, it was

24 decided that the Chicago shell would be used on Windows NT,

25 correct?

1 A. That's correct. I don't recall the exact dates, but it
2 was the fall of '94.

3 Q. Let me show you what has been marked as PX --
4 Plaintiff's Exhibit 216. Now, this is an email from
5 Mr. Alepin to the Windows NT group. And my first question to
6 you is, would you have been part of the Windows NT group?

7 A. Yes, I would have.

8 Q. So, you've seen this email before, right?

9 A. Yeah. I don't recall reviewing it in preparation for
10 this testimony, so -- I certainly would have received it in
11 1994.

12 Q. Now let's turn to the second page, second full
13 paragraph. Mr. Alepin states here that Bill Gates recently
14 made the decision to move the Cairo shell effort to Office
15 because Mr. Gates wanted Office to take on Lotus Notes and to
16 take advantage of any new shell features first. Right, sir?

17 A. That's what it says.

18 Q. You don't have any reason to disagree with that, do
19 you, sir?

20 A. Nope.

21 Q. And Office -- he goes on to say, Office was now
22 explicitly planning on building shell features such as their
23 own explorer in their '96 product, correct, sir?

24 A. That's what Jim said, although they never -- they never
25 did their own explorer. They did their own -- their own file

1 open dialogue, but they never did the explorer.

2 Q. And at least as of September 27 of 1994, Mr. Alepin
3 states that Mr. Gates' plan was to pull some of those
4 features and code back from the Office team into post-1996
5 versions of NT and Chicago, correct?

6 A. That's what Jim said in the mail. Like I say, I don't
7 recall anything that ever was pulled back, but, yes, that's
8 what Jim said.

9 Q. That was certainly the plan at the time, correct, sir?

10 A. You know, the plan at the time was to -- was basically
11 that Cairo was not successful, and the team moved over to
12 Office, and there certainly was some hope on some executive's
13 part, Jim, perhaps, and Bill, that wanted to see the Cairo
14 vision move forward of having Office bring these things to
15 more fruition. Like I say, it never really happened, but
16 that was what I think Jim and Bill wanted to happen.

17 Q. Well, you certainly agree that, among executives,
18 Mr. Alepin and Mr. Gates would be pretty high up in the
19 pecking order, right?

20 A. Yes. But just because they wanted something doesn't
21 mean it happened.

22 Q. Yes, sir, but that was their plan at the time, correct?

23 A. Yes. They wanted that to happen, but they didn't --
24 clearly, they didn't -- they didn't really do the steps that
25 were necessary in order to make that plan a real reality.

1 It's not like there was a team that was actively driving this
2 forward and all of these features were being built, etc. It
3 just sort of fizzled away and died.

4 Q. And do I understand correctly that the Cairo team was
5 moving over to the Office team led by Mr. Chris Peters?

6 A. The shell team. The shell team was supposed to move
7 over. Not all of the Cairo teams. There were people working
8 on other things besides the Cairo shell. The shell team was
9 moved over. I don't recall how many people actually did
10 move. I know everybody didn't move, but certainly some of
11 them almost certainly did.

12 Q. And if we could go down to the next paragraph please.

13 "Given Mr. Gates' decision, the Windows NT group has
14 decided to use the Chicago shell code base on Windows NT."

15 Right?

16 A. For NT Work Station, yes.

17 Q. And you recall this decision was made to use the
18 Chicago shell code base on NT, right?

19 A. Well, yeah. Now, there is -- there is some open
20 question as to how we would work it. You see the following
21 sentence. From those efforts, his team will decide whether
22 to fork the code; in other words, create their own code base
23 from Chicago or work in a single tree. I'm pretty sure that
24 they ultimately forked the code.

25 Q. This is really good, right? This gives ISV's one set

1 of API's to target, right?

2 A. It did provide -- yes, it did provide a consistent way
3 for ISV's to target -- I mean, it was really good. I didn't
4 think it was great at the time because I had been working on
5 Cairo, and Cairo had obviously not been successful, but, yes,
6 for ISV's it was good news.

7 Q. And, in fact, your group was responsible for building
8 the Windows 32 SDK, which was common between Chicago and
9 Windows NT, correct?

10 A. That's correct.

11 Q. And the Chicago shell code base, of course, included
12 the shell extensions, correct?

13 A. It included -- let's sort of be clear. The Chicago
14 code base included the shell extensions. I don't believe, at
15 the time the SDK was initially published, that it included
16 the NameSpace extensions, but it did include a broader set of
17 shell extensions.

18 Q. Well, whether it was in the SDK or not, sir, the fact
19 of the matter is, the NameSpace extension API's were part of
20 the Chicago shell code base, correct?

21 A. That's a -- that's a complicated question to answer.
22 It was -- it is true that the -- that the implementation of
23 the -- of the Chicago shell had those extensions, the
24 NameSpace extensions in it, but we did not publish the header
25 files for a period of time that -- that that's how ISV's used

1 it. That's my current understanding, yes.

2 Q. Yes. And I understood that distinction, sir. In other
3 words, they weren't documented?

4 A. Right.

5 Q. But they were still there, right?

6 A. That's correct.

7 Q. And so those NameSpace extension API's were being
8 ported from Chicago to Windows NT, right?

9 A. Ported is a funny word, but they were -- they were
10 moved -- they were moved -- made to run under Windows NT.
11 And, again, that was the different implementation. That was
12 now running out of process and thus had less robustness
13 issues.

14 Q. Now, less than a month after Mr. Gates decided to
15 cancel Cairo and to move the Chicago code base into Windows
16 NT, he decided to withdraw support for the NameSpace
17 extension API's; isn't that correct, sir?

18 A. I don't remember the dates. They are not in front of
19 me. This was September 27, but I think it was shortly
20 thereafter, yes.

21 Q. This is Plaintiff's Exhibit 1. I'm sure you've seen
22 that one?

23 A. Yes, I have.

24 Q. Now, Mr. Gates' decision resulted in making the
25 NameSpace extensions undocumented API's, correct?

1 A. That's correct.

2 Q. And, as I believe you testified earlier, IShellBrowser
3 refers to the NameSpace extension API's?

4 A. The explorer NameSpace extensions, yes.

5 Q. And there are more than one of them, right?

6 A. Yeah. I think there are a couple of interfaces. I
7 don't know the specifics, but, yes, you could say the
8 NameSpace extensions in IShellBrowser are roughly meaning --
9 they are meant to mean the same thing.

10 Q. And what this decision meant was that Microsoft would
11 no longer support these API's, and they might be broken or
12 changed at any point in time, correct?

13 A. That is correct. This was recognized. This was almost
14 a year before Windows 95 shipped, and, you know, as I said,
15 in the process of developing the product, we finally
16 ultimately came to the decision not to publish these
17 extensions.

18 Q. Actually, it was ten months before Windows 95 shipped;
19 isn't that correct, sir?

20 A. That would be -- that would be roughly correct, yes.

21 Q. And, in fact, the ship date for Chicago during this
22 period of time, the planned ship date was much earlier,
23 correct?

24 A. In general, Chicago shipped out, so I'm sure that's
25 true.

1 Q. So, in fact, Mr. Gates' decision, according to the
2 planned ship time, was within a matter of months of the
3 planned shipment date for Chicago. Isn't that correct,
4 sir?

5 A. I believe so, yes.

6 Q. Now, I'm sure that you've read this email in detail.
7 Mr. Gates states in this email there was nothing wrong with
8 the extensions and that they were a fine piece of work.
9 Correct, sir?

10 A. That's what his words say, yes. I would obviously
11 disagree with that, but that's what Bill said.

12 Q. Well, the fact of the matter is, sir, you would agree
13 that, at the time of Mr. Gates' decision, the NameSpace
14 extension API's were functioning fine. Isn't that a fact,
15 sir?

16 A. No. It's not a fact. At this time, they were still in
17 process. They still had major robustness issues, and I
18 thought they would have been a disaster to ship, and I was
19 arguing vociferously to make sure they weren't shipped
20 because I was worried about robustness on Windows NT.

21 Q. Let's turn to your deposition, page 220, lines 1
22 through 7.

23 Could you bring that up, Mr. Goldberg.

24 So, Mr. Muglia, we're here discussing in your
25 deposition -- I wasn't there, actually. Somebody else was

1 asking the questions -- but discussing Mr. Gates' email in
2 which he made the decision to de-document the NameSpace
3 extensions. And the question is asked:

4 "You don't see Mr. Gates in this email discussing
5 any such problems, do you?

6 Answer: I don't see him discussing that here.

7 And, in fact, to your knowledge, those IShell
8 browsers were functioning fine. Isn't that right.

9 Answer: I believe they were, yes."

10 Mr. Muglia, did you give those answers to those
11 questions at your deposition in 2009?

12 A. Yes, I did. And, as I said -- as I testified earlier
13 today, my -- my recollection of the specific details of when
14 something happened was not clear to me when I was deposed in
15 2009 because the focus wasn't as much on these browser
16 extensions. And what I was confused about during my
17 deposition was at what point these interfaces were changed so
18 that they ran out of process; in other words, that they --
19 the robustness was improved. You know, I now understand the
20 sequence of timing to be such that those changes were not
21 made until -- made until after this time.

22 So, as I've learned more and recalled on the
23 specifics of timing -- you know, remember, I was deposed in
24 2009, and we were talking about 1994, so roughly 15 years
25 earlier. Okay? And the first time I had really been talking

1 about these browser extensions in many, many years was in
2 this deposition, so I was not as clear on the sequence of
3 details as I am right now.

4 Q. Mr. Muglia, you understand that when you take a
5 deposition -- and you have taken many, have you not, sir?

6 A. Yes, I have.

7 Q. -- that you are sworn to tell the truth, the whole
8 truth and nothing but the truth. Correct, sir?

9 A. To the best of my knowledge, yes.

10 Q. And, in fact, sir, that's what you did here, correct
11 sir?

12 A. Yes, I did. Yes, I did. And, as I said, it was 15 --
13 you know, we're talking about a relatively obscure -- no --
14 extremely obscure set of interfaces that, honestly, I hadn't
15 paid any attention to in, you know, almost 15 years, and so,
16 yes, I did not remember all of the details of timing. In
17 preparation for this testimony, I now have a better
18 understanding of what happened when, and I am testifying to
19 the best of my knowledge right now.

20 Q. Well, Mr. Muglia, do you recall being asked about
21 Mr. Gates' email in your deposition taken in the class action
22 case against Microsoft in California in 2001?

23 A. As I sit here now, no. I mean, I certainly may have,
24 but as I sit here now, I don't recall something ten years
25 ago.

1 Q. Do you recall, sir, that you testified in that case
2 that almost immediately after Mr. Gates sent his email
3 deciding that these extensions should not be published, that
4 they were in fact published?

5 A. If I did testify to that, I was incorrect. And that
6 would be consistent with my testimony in 2009, but, as we
7 know from what we have seen in this trial, that they were not
8 published for a number of months, and I don't believe they
9 were published until 19 -- until 1996, if I understand
10 correctly, in the Windows Systems Journal magazine.

11 Q. Let's turn to that 2001 deposition.

12 THE COURT: Turn to it if it's different. Don't
13 turn to it if it's the same as his testimony here. If it's
14 inconsistent, turn to it. If it's not inconsistent, don't
15 turn to it.

16 MR. JOHNSON: I understand.

17 Q. BY MR. JOHNSON: Mr. Muglia, a couple preliminary
18 questions. You were represented by Microsoft's counsel in
19 the 2001 deposition that is in front of you now, right?

20 A. Yes, I was.

21 Q. And you took time to prepare for that deposition as
22 well, didn't you, sir?

23 A. Yes, I did.

24 Q. And, once again, you understood that you were sworn to
25 tell the truth in that deposition as well?

1 A. Yes, I did.

2 Q. Now, you testified in 2001 -- and this would have been
3 nine years closer to the events in question, right?

4 A. Seven years after they happened, but yes.

5 Q. You testified that Mr. Gates made his decision based on
6 conversations that you had had with others regarding the
7 difficulty of transitioning into the more sophisticated Cairo
8 shell if the NameSpace extension API's were published,
9 correct?

10 A. I have no idea because I don't know what you're
11 referring to in the deposition. I haven't seen this document
12 since -- in over ten years, and I did not review it in
13 preparation for today's testimony. So, if you want to refer
14 to my deposition specifically, I'm glad to look at that.

15 Q. Sure.

16 Let's bring up page 165. And first let's go to
17 lines 2 through 9.

18 And, again, in this portion of the deposition,
19 Mr. Muglia, you were discussing Mr. Gates' decision in the
20 email that we've all been talking about, just to put this in
21 context. And you see here, on the screen in front of you,
22 that you stated that very shortly after Bill sent the mail
23 saying they shouldn't be published, they were in fact
24 published almost immediately.

25 THE COURT: And that's just what he said before.

1 It's absolutely consistent.

2 MR. JOHNSON: Yes. And I'm going to bring it back.

3 THE COURT: Keep going.

4 MR. JOHNSON: Yes.

5 THE WITNESS: Yeah. I mean, I will point out that
6 if you go earlier in this deposition, it was actually
7 referring to a different email and then there was an oblique
8 reference to it, so it was not -- it was not -- it was an
9 email that had something to do with Tom Evslin, and so I
10 don't know -- I have to go back and look at all the things
11 that I said leading up to that paragraph, but I do -- you
12 know, obviously that is consistent with the testimony that I
13 gave in 2009.

14 Q. Well, actually, Mr. Muglia, the Evslin email was a
15 response to Mr. Gates' email de-documenting the NameSpace
16 extensions. Do you recall that, sir?

17 A. No, I don't. I don't have that document in front of
18 me. It could be. I just don't know.

19 Q. And the same email included Mr. Gates' email. Do you
20 recall that, sir?

21 A. No, but I'll take your word for it.

22 Q. Thank you. Now, the question I posed, which you
23 said you had difficulty answering without seeing, if we could
24 turn down to page 165, lines 12, to 166, lines 24. And
25 you'll see that this is right after the little bit of

1 testimony we just looked at. And the plaintiff's lawyer,
2 Mr. Bishop, asked you:

3 "I'm wondering why they would go against Bill
4 Gates's instructions?"

5 And you go on, "It wouldn't be the first time."

6 If you would just read that paragraph and the next
7 paragraph to yourself, I think you will be in a position to
8 answer the question I pose.

9 A. Okay.

10 Q. So, my question was -- and I attempted to summarize
11 your longer answer -- that you testified that Mr. Gates made
12 his decision based on conversations that he had had with you
13 and others regarding the difficulty of transitioning the more
14 sophisticated Cairo shell if the NameSpace extension API's
15 were published, right?

16 A. Yes. That's right. That's what this says.

17 Q. You went on to testify, however, that two things
18 happened in parallel with Mr. Gates' decision that made it
19 clear that Microsoft had no reason not to publish the API's,
20 correct?

21 A. No, not in those two paragraphs that you asked me to
22 read.

23 Q. If you keep reading your answer in the next paragraph,
24 Mr. Muglia, I think it will clear it up for you.

25 A. I finished that second paragraph up to line 10, and I

1 don't see anything that would be -- that would be consistent
2 with what you just said.

3 Q. Okay. Keep going down in your answer.

4 A. Okay.

5 Q. And move past line 24.

6 A. Okay. I'm going to have to go further. Okay. Great.
7 I'll keep reading. Yeah. I've now gone through line 24, and
8 I still don't think I see anything that would be
9 inconsistent.

10 Q. I'm sorry, Mr. Muglia. Line 25 it starts, "In fact,
11 shortly after this thread of mail we went through, basically
12 two things happened in parallel."

13 Do you see that paragraph, sir?

14 A. I do now.

15 Q. Okay. Just read that to yourself.

16 A. Okay. I've read it.

17 Q. All right. So, now that you have refreshed yourself
18 with your testimony, you testified in that case that two
19 things happened in parallel with Mr. Gates' decision that
20 made it clear that Microsoft had no reason not to publish
21 these API's, correct?

22 A. That's what I said.

23 Q. First, you testified that the developer relations group
24 was talking to ISV's, and it became clear that third parties
25 wanted to take advantage of these sorts of capabilities.

1 Correct?

2 A. That's what I said.

3 Q. In fact, you testified that ISV's started calling you,
4 interfaces actually started getting used by third parties
5 because people explained how to use it, and it got out, and
6 third parties started building applications that took
7 advantage of it, correct?

8 A. That's what I said in 1991 -- in 2001.

9 Q. And, in fact, the second thing that happened was that
10 the decision that was made not to move to the Cairo-based
11 shell technology -- and that's what we just talked about,
12 right, Bill's decision to move the Chicago code base into
13 Windows NT, correct?

14 A. Right. But we now know that my timing was confused
15 when I testified in 2001, that the decision to cancel Cairo
16 happened before Bill sent the email, and -- and, in fact, the
17 interfaces weren't published for a period of time, and
18 they -- although I testified to the opposite in the previous
19 paragraph -- and -- and -- and ultimately they were published
20 a year or so later in 1996.

21 So, look, I -- you know, when I did this deposition,
22 again, seven years after all of this happened, I had not
23 reviewed the specific details of what happened when in this
24 highly obscure set of API's that ultimately was used by
25 almost nobody and has not amounted to anything significant

1 commercially in the industry.

2 Q. Mr. Muglia, I don't think you got it wrong at all, sir.
3 Let's go up to the first paragraph. One of the things that
4 happened is, you testified that the developer relations group
5 was talking to ISV's. That was clearly happening, wasn't it,
6 sir?

7 A. That was happening.

8 Q. That was happening in this time frame, in 19 -- late
9 1993, well into 1994, right? The DRG was out there
10 evangelizing these extensions, correct?

11 A. No, that's not -- you have to be careful here. The
12 developer relations group was talking to ISV's.
13 That's correct. When the decision was made to not publish
14 those extensions, in whatever it was, October of 1994, when
15 the Bill G decision -- the Bill Gates' decision got made and
16 he sent his email, the developer relations group would have
17 stopped evangelizing. However we had still published the
18 darn things previously. The header files still existed in
19 previous versions and, you know, perhaps other ISV's were --
20 were calling it, but they were not documented at that time.

21 Q. In fact, it became clear that third parties wanted to
22 take advantage of these sorts of capabilities like you saw
23 with WordPerfect, who was very happy about Microsoft's
24 decision to document the shell extensions, correct, sir?

25 THE COURT: Do you want to establish a time frame

1 for that? I think that was 1993.

2 MR. JOHNSON: It was, sir.

3 THE COURT: And this is 1994?

4 MR. JOHNSON: Correct, sir.

5 THE COURT: Okay. Clarify your question.

6 MR. JOHNSON: Yes.

7 Q. BY MR. JOHNSON: Mr. Muglia, do you recall seeing the
8 email in November of 1993, Microsoft came to WordPerfect, and
9 WordPerfect was very happy about them deciding to document
10 the shell extensions?

11 A. All of the shell extensions, yes.

12 Q. And, in fact, in June of 1994, the shell extensions
13 were, in fact, partially documented, right?

14 A. I think they were -- in June of 1994, I think they were
15 fully documented.

16 Q. Well, I won't argue with you about that, but I think
17 you're wrong, Mr. Muglia --

18 A. I don't -- Again --

19 Q. -- but let's move on.

20 A. -- the specific dates get confusing, but my
21 understanding was in M6 we fully documented all the shell
22 extensions, and then in the latter part of that year, in
23 October, November, we dedocumented the NameSpace extensions.
24 That's my understanding.

25 Q. And after documenting -- and let's leave aside the

1 question of whether it was a partial documentation or full
2 documentation. There has been a lot of testimony on that.

3 A. Okay.

4 Q. After the documentation in June of 1994, it became
5 clear that third parties wanted to take advantage of these
6 sorts of capabilities, correct?

7 THE COURT: Now wait a second. But I thought the
8 context of this question was October of '94. Maybe I'm
9 wrong. I thought this was parallel with Bill Gates'
10 decision. Maybe I -- maybe I misread your question. But
11 I -- you're now -- you're saying that in June -- okay, well,
12 go ahead. But that's not this question, I don't think, but
13 go ahead. I could -- maybe I --

14 Q. BY MR. JOHNSON: All I'm asking, Mr. Muglia, is, isn't
15 it a fact that, during this late 1994 period, up through the
16 point of Mr. Gates' decision, that ISV's wanted to take
17 advantage of these sorts of capabilities? Correct, sir?

18 A. There were a lot of capabilities in the Chicago
19 product. ISV's were just trying to decide -- remember, this
20 was all ten months or so before Chicago shipped. ISV's were
21 trying to decide what would be important. We were trying to
22 decide what would be important, and these interfaces were, as
23 I pointed out all morning, highly contentious. We published
24 these interfaces with a broad set of shell extensions in June
25 of 1994. In October, November, we de-published them. And

1 then a number of months, I believe in '96, they were
2 republished. That's what happened, to my knowledge.

3 And ISV's were calling thousands and thousands of
4 Chicago API's, building products that mattered in the
5 marketplace, and nobody -- and the simple fact of the matter
6 is, nobody has -- has ever -- no product has been successful
7 or not successful in the history of time because of these
8 silly NameSpace interfaces.

9 Q. Mr. Muglia, the second thing that happened -- and
10 actually this happened prior to Mr. Gates' decision. Prior
11 to Mr. Gates' decision on the IShellBrowser, Mr. Gates had
12 already decided that the Cairo-based shell technology would
13 no longer be used and that the Chicago shell code base
14 would be moved to Windows NT, right?

15 A. That's consistent with the sequence of emails that I
16 just reviewed. It looked like Jim's email to the Windows NT
17 team was several days prior to -- that was dated September
18 27, where the Bill Gates' email was Monday, October 3. So,
19 that's correct, actually, although it's different than what I
20 said in this testimony in 2001, but that is what appears to
21 have happened based on the sequence of emails.

22 Q. And you stated that, under the circumstances as you
23 described them in your sworn testimony in 2001, the idea of
24 not publishing these interfaces made no sense, correct, sir?

25 A. In 2001, I did not recall the specific sequence of

1 events. It had not gone through the minute details of what
2 happened day-per-day seven years earlier, and I was confused
3 in 2001, just like I was confused in 2009. I thought the
4 interfaces had been published the entire time. In fact, I
5 was wrong. I didn't understand that simple detail.

6 And, remember, there were hundreds of thousands of
7 Windows interfaces, tens of thousands of people at Microsoft
8 writing code. The specific details of what happened seven
9 years earlier, I didn't remember everything.

10 MR. JOHNSON: A moment's indulgence, Your Honor.

11 THE COURT: Sure.

12 Q. Mr. Muglia, you would agree with me that, once the
13 Cairo shell was canceled in September of 1994, there was no
14 remaining concern over the compatibility of the NameSpace
15 extensions with Windows NT?

16 A. There was no remaining concern about compatibility.
17 There remained active concerns about the robustness, which
18 was a problem.

19 Q. Thank you, sir. In fact, the Chicago team had always
20 kept Windows NT in mind when designing the Chicago shell,
21 which is why the Chicago shell ported so easily to Windows
22 NT; isn't that correct, sir?

23 A. Absolutely, not. Satoshi didn't give it a thought from
24 what I can tell. Had he actually taken into account Windows
25 NT, he would never have built the interfaces the way he did,

1 in processes that were so fundamentally unrobust.

2 Q. Let me show you what has been marked PX-324.

3 Well, take that down.

4 I'm sorry. I apologize, Your Honor.

5 THE COURT: No problem. I don't know how you all
6 handle the documents as well as you do.

7 MR. JOHNSON: Thank you, Your Honor. Believe me,
8 without people like Ms. Burns here, I would be totally
9 lost.

10 Q. BY MR. JOHNSON: Turning your attention to 324,
11 Plaintiff's Exhibit 324, this is an August 11, 1995 email
12 from Brad Silverberg to Brad Struss and Paul Maritz, Cameron
13 Myhrvold and Doug Henrich. Subject. Shell Extensibility and
14 ISV's. Now, have you seen -- did you review this email in
15 preparation for your testimony?

16 A. No. I don't believe that I was ever copied on this
17 email, it doesn't appear, and I don't remember reviewing it
18 at all. I certainly didn't review it over the last couple of
19 days.

20 Q. Okay. Drawing your attention to the third paragraph of
21 Mr. Silverberg's email there, he states.

22 "The Win 95 team did make darn sure NT is kept in
23 mind from the beginning of the shell, which is why it ported
24 so easily. We have the X platform responsibility, and we
25 deliver on it. We have one shell team, the PSD shell team,

1 which dropped off the code to BSD to do the NT adaptation.
2 They are not to be enhancing it, just a straight adaptation.
3 Unicode tweaks supportability, etc. Their changes will be
4 merged back into the code base."

5 I have a couple questions about what Mr. Silverberg
6 said here, just so we can get some technical points straight.
7 The shell team, the PSD, that would have been the Chicago
8 shell team, right?

9 A. That's correct.

10 Q. Personal Systems Division?

11 A. Yep.

12 Q. And the BSD would be the Business Systems Division, and
13 that's what you were in, right?

14 A. That's correct. That was windows NT.

15 Q. And what Mr. Silverberg is saying here is that, when
16 you -- when the decision was made to port the Chicago shell
17 code base into Windows NT, it ported quite easily. Isn't
18 that correct, sir?

19 A. That's what Brad said, but, boy, with all due respect
20 to Brad, I very strongly disagree with what this sentence
21 says. Of course, I have never seen this email before just
22 this moment, but I would not agree with what Brad said
23 here.

24 Q. Mr. Muglia, you're not a coder, are you?

25 A. I do write code, although I was not employed writing

1 code at that time, and I am not now. Okay?

2 Q. So you weren't involved, actually physically involved
3 in the people that were doing the porting, right?

4 A. No, but there's -- no. And there -- I did not do the
5 porting myself, but that's very different, also, than saying
6 NT was kept in mind. As I said, the design of the Chicago
7 shell explicitly, certainly from my perspective, did not keep
8 NT in mind. It violated the basic principles of NT,
9 particularly the robustness principle.

10 Q. Yes. You've brought up robustness a number of times.
11 Now, Mr. Gates did not cite any robustness concerns in his
12 October 3, 1994 email as a reason for his decision not to
13 publish the NameSpace extension API's, correct?

14 A. He did not, but I did in my response to that.

15 Q. In fact, when Mr. Gates was here, he agreed with me
16 that, nowhere in his October 3, 1994 email, are robustness
17 concerns mentioned. You have no reason to disagree with that
18 testimony of Mr. Gates, do you, sir?

19 A. I don't know what Bill did or didn't say, as I didn't
20 review his testimony in preparation for mine.

21 Q. Well, in fact, you do know that what Mr. Gates actually
22 said was that there was not anything wrong with the
23 extensions; on the contrary, they are a very nice piece of
24 work. Correct?

25 A. What I -- again, I don't know what Bill said during his

1 testimony, but I will tell you that the teams were fighting.
2 Bill was basically telling the Chicago team that they were
3 not going to move forward with these extensions, which they
4 wanted to do, and he was letting them down gracefully. That
5 was the way I interpreted it at the time. I very
6 specifically did talk about robustness as a problem in my
7 response that I sent subsequent to Bill's mail back in
8 1994.

9 Q. Mr. Muglia, I actually had shifted, and I'm sorry if
10 you didn't understand that. I wasn't talking now about what
11 Mr. Gates testified to in this case, I was talking about what
12 he actually said in October of 1994 in his email. So we will
13 put that back up there for you, so you can see what Mr. Gates
14 actually said.

15 "This is not to say that there was anything wrong
16 with the extensions. On the contrary, they are a very nice
17 piece of work."

18 So, you wouldn't have any reason to disagree with
19 Mr. Gates with respect to the quality of these extensions,
20 correct, sir?

21 A. Oh, yes, I would, and I did -- and I was very clear
22 that these things were problematic in a lot of ways. And
23 Bill said that -- I think he was being nice to the Chicago
24 team in trying to let them down gracefully, but I would not
25 agree with the words that Bill wrote back in 1994, that there

1 was nothing wrong with it, that this is not to say there is
2 anything wrong with these extensions. I thought there was
3 plenty wrong.

4 Q. And Mr. Gates also noted in the October, 1994 email
5 that the shell group did a good job of defining extensibility
6 interfaces, correct, sir?

7 A. I don't know what you're referring to explicitly. I'd
8 have to go back and look at the email. Where does it say
9 that?

10 Q. There we go. First paragraph.

11 A. Yep. I see what he wrote.

12 Q. And you wouldn't have any reason to disagree with
13 Mr. Gates with respect to that, would you, sir?

14 A. Yes, I would. I argued, you know, vociferously for
15 months, as I've testified all morning, that I did not think
16 that they were building the right extensibility interfaces.

17 Q. Well then, you would have to agree with me that
18 Mr. Gates didn't buy your argument. Correct, sir?

19 A. Not necessarily. Bill made the decision that I wanted
20 him to make, which was to not publish the interfaces. Like I
21 said, what you've got, what you've talked about all morning,
22 is you've got two teams that were warring for a long time,
23 many months, over a year.

24 Bill made a decision. He made one decision that
25 ultimately caused the Cairo shell to -- to cancel the Cairo

1 shell. He subsequently made another decision, four or five
2 days later, to not publish the set of interfaces that the
3 Chicago team wanted to publish. So he was simply letting the
4 Chicago team -- it appears to me, my understanding of the
5 email when I received it is that he was letting the Chicago
6 team down gracefully when he sent this email.

7 Q. Well, let's turn to your email that I think you were
8 just talking about, this -- before we get to that. I think
9 you testified that Mr. Gates really liked the explorer and
10 the heirarchy, right?

11 A. He loved hierarchy.

12 Q. In fact, that was a big thing with him, right?

13 A. Yes, it was.

14 Q. And so he was really enamored with the Windows Explorer
15 and its ability to browse information from any source, no
16 matter where it was, correct?

17 A. Yes.

18 Q. And that was something he had been pushing for a long
19 time. That goes back to Information At Your Fingertips from
20 his 1990 speech, correct?

21 A. Absolutely.

22 Q. I show you now Defendant's Exhibit 21, which you were
23 shown on direct.

24 If we could bring up that first paragraph.

25 We already looked at it this morning, but just to

1 remind everybody of where we are.

2 Bring up the next paragraph down, too, as well,
3 please.

4 And so this was -- this was good news for BSD,
5 right?

6 A. Yep.

7 Q. Mr. Gates' decision. And you didn't have to spend any
8 time dealing with them, right?

9 A. That's right.

10 Q. But, in fact, sir, isn't it true that the only change
11 that was made for Windows NT was to have the NameSpace
12 extensions run in a separate window, correct?

13 A. No. I mean -- No. What -- at the time, the decision
14 was made -- this is -- again, this is October 4, 1994. At
15 the time Bill decided to not publish the interfaces, he --
16 the interfaces, to the best of my knowledge, were moved from
17 the header file and made internal, so they were not
18 documented. Satoshi, at some point, made a change, and I
19 don't know when, to change the implementation of these to
20 something that was more robust. I don't recall the specifics
21 of when that change was made. But the decision, and as I
22 understood it when I wrote this email, was that they would be
23 undocumented, and we would not need to support them.

24 Q. Do you know who Mr. Belfiore is?

25 A. Oh, yes.

1 Q. Who is he?

2 A. Joe Belfiore is -- he is currently the vice-president
3 that works on Windows Phone. I actually hired Joe many years
4 ago to the company, into the Windows NT and Cairo group, and
5 then he ultimately became the person who designed the Windows
6 95 shell. Joe has actually done tremendous UI work for
7 Microsoft over the years. He did the Windows 95 shell. He
8 did XP. He did work on -- on Zoom and some other products,
9 and he's now working with the Windows Phone.

10 Q. So, as the designer of the Windows 95 shell, he would
11 certainly be in a position to know whether the shell
12 extensions would run just fine on Windows NT, right?

13 A. No, not necessarily. Joe was a UI guy, and he -- and
14 his focus was on the user experience, not on the internal
15 technical implementation details

16 Q. I'm handing you now what has been parked as Plaintiff's
17 Exhibit 279. So, at this time period, Mr. Belfiore would
18 have been the program manager for the Chicago shell, right?

19 A. For the user interface design of the Chicago shell,
20 yes. Not the interfaces. I'll point out, not the
21 interfaces. He was really focused much more on the UI. He
22 may have been involved with the interfaces, but, again, Joe
23 is the guy that understands how users think and lays things
24 out, and he does graphical design, and he is much more of a
25 user interfaces person.

1 Q. And this email which is -- the one on the bottom there,
2 which is to Mr. Maritz, who, again, as we stated earlier,
3 would have been your boss' boss, right?

4 A. That's right.

5 Q. He reflects on the notes from the meeting today. And
6 you see the first full paragraph there?

7 A. Right. I see it. I'll also just point out, this is an
8 email I don't believe I ever received and I didn't review in
9 preparation for today. So I think this is the first time I
10 have seen it.

11 Q. Okay. Well, you see where Mr. Belfiore writes:

12 "There shouldn't be any issues with shell extensions
13 being run robustly on NT. The big ones, the NameSpace
14 extensions, end up in a separate process, and the little
15 ones, icon handler, prop sheet handler, etc., are okay in the
16 shell's process."

17 So we can agree that, at least some time prior to
18 March 6, 1995, the NameSpace extensions were running robustly
19 on NT. Isn't that a fact, sir?

20 A. No. I mean, Joe said he felt these were okay. I still
21 think they are not okay. I mean, after all these years,
22 these interfaces are problematic. They cause failures on
23 Windows -- on Windows 7 today. They are not -- they were not
24 designed originally with the robustness ideas in mind. The
25 implementation was a design which did not result in the

1 robustness characteristics that users want in systems. So,
2 Joe, who loves his work and the Chicago team -- that was his
3 baby -- was saying, Hey, everything is fine here." I don't
4 agree with Joe. I don't agree with him in '95, and I don't
5 agree with him in -- sitting here in 2011.

6 It's not with this line, the little ones are okay in
7 the shell's process. It's just wrong. That is the wrong
8 design way, the wrong design way to do things. Unfortunately
9 it is the way it works because we had to be compatible with
10 that work Satoshi did way back when in 1993.

11 Q. I'm sorry, Mr. Muglia, I thought you just told the jury
12 that the way you solved the robustness problem was to put it
13 in a separate process, just like Mr. Belfiore is saying,
14 right?

15 A. The putting it in a separate process helps robustness
16 significantly, but you still wind up with writing code, small
17 amounts of code in the shells process, and you can't solve
18 that. You can mitigate it. You can make it less likely to
19 be a problem, which we did all sorts of things in Windows NT
20 to try and make it better, but I don't believe that it's -- I
21 don't agree that it is robust. It is not a robust design.

22 Q. Well, it certainly was sufficient enough for Microsoft
23 to leave the NameSpace extension API's in every version of
24 Windows from then until today, correct, sir?

25 A. That's right, because they were mitigated to the point,

1 after that change was made, of running in a separate process,
2 as it says in this email. They were no worse than anything
3 else. Before that change was made, they were significantly
4 worse, but, at this point, they were, like the rest of them,
5 not great, but, you know, okay.

6 Q. All right. But then we can agree that, at some time
7 prior to March 6, 1995, the change had been made which, to
8 this day, is the change which solved whatever robustness
9 issues the people at Microsoft thought there were, correct?

10 A. No. No. What I -- to be clear, sometime between
11 October of '94 and March of '96, the design of the NameSpace
12 extension API's were changed to put it in a separate process.
13 That mitigated the robustness issues. It did not solve them.
14 It made them much less problematic, and we decided in the --
15 you know, in the goodness of trying to be consistent, to live
16 with it.

17 Q. Isn't it a fact, sir, that this fix of running in a
18 separate process in fact occurred much earlier?

19 A. I don't know. I really don't know when it happened.

20 Q. Indeed, sir, wasn't it within a month of Mr. Gates'
21 decision to de-document the NameSpace extensions that this
22 fix was put in place?

23 THE COURT: You're too good a lawyer not to listen
24 to the answer. He said he didn't know.

25 Q. BY MR. JOHNSON: Let's take a look at Defendant's

1 Exhibit 84. Mr. Muglia, this is an email from Mr. Struss to
2 Bill Gates dated Saturday, November 12, 1994, and concerns a
3 certain CEO dinner talking points. Do you see that sir?

4 A. I do. This is an email I don't believe I ever received
5 and I certainly did not review in preparation for this
6 case.

7 Q. And if you'll turn to the second page, Mr. Struss
8 provides a section of question and answers that Mr. Gates
9 needs to be prepared to address at this dinner that he's
10 apparently going to. Do you see that, sir?

11 A. Yes, I do.

12 Q. And with respect to the issues to be prepared to
13 address, one of those is the NameSpace extensions, right?

14 A. Yes. I see that.

15 Q. And if you look down in the bottom portion of that
16 paragraph, Mr. Struss states:

17 "The semantics of these API's has also changed
18 slightly. Apps that use these will come up in a new explorer
19 window, and the left-hand pane will only represent the
20 heirarchy that the applications presents. Previous semantics
21 allowed apps to show their heirarchy along with the file
22 system and run in the same window."

23 Do you see that, sir?

24 A. I do.

25 Q. So, you will agree with me that the change to run in a

1 separate window was, in fact, accomplished within about a
2 month of Mr. Gates' decision to de-document the NameSpace
3 extensions, correct, sir?

4 A. Yeah. It appears that it happened between October --
5 the beginning of October and November 12. I mean, it's a
6 fascinating -- again, I never saw this, and to me it's just
7 facinating sitting her looking at it after all of this.
8 First of all, it says -- I'll note in that same paragraph it
9 says, you know, the NameSpace extensions were initially
10 pulled from Windows 95, and ISV's were informed of this
11 change. In general, they have been okay with this.

12 Because of this one internal app, Marvel, which was
13 MSN, couldn't stop using them or chose not to stop using them
14 for whatever reason, they have been made into some bizarre
15 semi-zombie state where we are going to document them but
16 tell people that it's going to change in the future. It's
17 just an odd -- very odd answer to the question. It just
18 shows that, even after we decided to de-document it, there
19 was still discussion internally about whether to document
20 them or not.

21 It was an ongoing debate, having to do with more --
22 having to do with whether or not, you know, other Microsoft
23 products, particularly a -- a -- an online service called
24 Marvel, or actually MSN, were going to use it.

25 Q. Mr. Muglia, my question was a more limited point. I

1 just want to make sure that we're on the same page. And that
2 is, within a month, a couple days of Mr. Gates' decision, he
3 had already figured out the fix that would make this robust
4 enough to use the NameSpace extension API's on this version
5 of Windows and every version subsequent thereto. Correct,
6 sir?

7 A. Yes. I will point out that the semantics are
8 different. It's very important to note that it also says
9 clearly that, by doing this fix, the API's didn't do what
10 they were previously going to do. I mean, in fact, this idea
11 that you could be browsing in the explorer and using it as
12 your way of opening emails and having them open in the pane
13 of the explorer, that was no longer functional given this
14 change. So, that whole thing Bill Gates was in love with,
15 since -- since the COMDEX speech in 1990, this change that
16 was made changed the semantics, which really made it no
17 longer really usable the way Bill had envisioned it.

18 Q. Well, Mr. Muglia, you would have to agree with me that
19 the NameSpace extension API's did not change between 1994 and
20 1996, when they were republished, correct, sir?

21 A. No. I would not agree. An API has to be -- there's
22 two things about an API. There is the syntax in the
23 definition of the API, and there is the semantics of what
24 they do. The API syntax stayed the same when Satoshi made
25 this change, but the semantics were changed considerably. In

1 fact, the functionality of the API was changed so
2 significantly that -- that most of its intended purpose that
3 was debated and hotly -- hotly argued about for months and
4 months just went away when Satoshi made this semantic change.

5 So the API's -- the syntax may have been the same,
6 but the API's were very, very different in terms of the
7 behavior of what they did.

8 Q. Mr. Muglia, you certainly wouldn't be in a position to
9 disagree with Mr. Nakajima if he said there had been no
10 change to the API's between 1994 and 1998?

11 A. Well, I don't know what you're referring to. Satoshi
12 may have answered the question precisely. The syntax did not
13 change. The semantics changed significantly.

14 Q. Let me show you what Mr. Nakajima said.

15 Can we turn to page 92 of Mr. Nakajima's testimony.
16 Page 92, lines 21, through 93, line 10.

17 A. Can I see a hard copy of this, since I've obviously
18 never seen it?

19 Q. We'll bring it up for you so you can see it.

20 A. I don't know the context.

21 Q. Okay. I'll get you that, if you'd like. Here's the
22 full transcript of Mr. Nakajima's deposition, taken on
23 February 24, 2009.

24 A. And what page is this on, please?

25 Q. Just a moment and I'll get it for you. Page 92, line

1 21, to 93, line 10. And you'll see that what Mr. Nakajima
2 was talking about, he was actually talking about using the
3 NameSpace extensions to integrate Internet Explorer into
4 Windows 98. So the question was asked:

5 "Question: And this was for Internet Explorer 3.0?

6 Answer: No. The 3.0 was simply using the dock
7 objects. The NameSpace extension integration came in
8 Internet Explorer 4 and Windows 98."

9 And you would agree with that, wouldn't you, sir,
10 that the explorer used the NameSpace extensions to integrate
11 into Windows 98. Correct, sir?

12 A. It would appear so. It's a very obscure use of it,
13 but, yes, I believe that's correct. I don't know
14 specifically.

15 Q. Okay. And then the following question occurred:

16 "Now, the NameSpace extensions that you used, are
17 those the same extensions that we have been talking about --

18 Answer: Yes.

19 Question: -- here?

20 Answer: Yes.

21 Question: Were those changed in any significant way
22 between what they were in, say, June of 1994, and when you
23 were using them?

24 Answer: No. No change."

25 Now, Mr. Muglia, you certainly don't have any basis

1 to disagree with the inventor of the NameSpace extension
2 API's, that there was no change in those API's between 1994
3 and 1998?

4 A. I absolutely do have reason to disagree, and we have
5 gone through this. The API's are the same. The semantics
6 are different. It's very clear, and we all agree the
7 semantics have changed after Bill wrote his mail in October,
8 and it was emphasized specifically in the Brad Struss mail,
9 that email that he sent that you put in front of me ten
10 minutes ago, where he very clearly says, in reference to the
11 NameSpace extensions, the semantics of these API's has also
12 changed slightly. So Brad is referring to this change. They
13 changed.

14 How -- what Satoshi was answering specifically, I
15 can't speak to. You'd have to ask him. But clearly they did
16 change, not in the API, but in the semantics.

17 MR. JOHNSON: A moment's indulgence.

18 THE COURT: Sure.

19 MR. JOHNSON: Pass the witness, Your Honor.

20 THE COURT: Thank you very much, Mr. Johnson.

21 Mr. Holley.

22 REDIRECT EXAMINATION

23 BY MR. HOLLEY:

24 Q. Mr. Muglia, do you still have Plaintiff's Exhibit 61 up
25 there that Mr. Johnson asked you about on cross examination?

1 It's entitled Office Shell Ideas and Issues.

2 A. This is the one that was sent -- Chris Graham -- that
3 Chris Graham sent?

4 Q. Yes.

5 A. I'm sure I have it. I'm sure I could get to it
6 eventually.

7 Q. If I had another one handy, I'd bring it to you.

8 THE COURT: You can turn around and look at it on
9 the board.

10 THE WITNESS: I can see it up here. If you want to
11 show me something, I can look at it on the screen.

12 Q. BY MR. HOLLEY: Sure. I'm interested in looking under
13 the section of the document --

14 THE COURT: Actually, Mr. Holley, you have one.

15 MR. HOLLEY: Thank you.

16 Q. BY MR. HOLLEY: Here you go.

17 A. Thanks.

18 Q. Okay. Now, looking down under the heading Schedule, it
19 says Q-294. Chicago ships. Shell has limited extensibility.

20 Is that an accurate statement of what happened?

21 A. No, not in any way. First of all, Chicago didn't ship
22 until the summer of '95. And, as we've discussed, it had
23 boatloads of extensibility when it shipped.

24 Q. Now, you were asked a series of questions by
25 Mr. Johnson on cross examination about the shell

1 extensibility mechanisms in Windows 95 being OLE compatible.
2 Did the fact that the Windows 95 shell extensibility
3 Mechanisms became, at some point, OLE compatible mean that
4 those interfaces were compatible with the shell extensibility
5 mechanisms in Cairo?

6 A. No. As I said, the fact that they used OLE, OLE was a
7 mechanism, but the specific signatures of the API's, the
8 specific API calling sequence that Chicago was using was
9 completely different from what we were building in Cairo --
10 in the Cairo shell.

11 Q. And how, if at all, did that affect your attitude
12 toward the Chicago shell extensibility mechanisms?

13 A. I was still equally troubled by them. I did think that
14 the work that Satoshi did to make the shell interfaces OLE
15 compatible was a clever piece of work, and I liked that work,
16 but I -- I -- the fact that they were different than Cairo, I
17 was still troubled by, and, of course, they were not robust
18 in their implementation.

19 Q. Now, you were asked a question by Mr. Johnson on cross
20 examination about Mr. Gates' interest in the hierarchical
21 view presented by Windows Explorer. Is that the same thing
22 as saying that Mr. Gates thought that the NameSpace extension
23 API mechanism was important?

24 A. He did think that having a mechanism that would do that
25 was important, yes, which was why -- one of reasons why this

1 was debated so endlessly.

2 Q. And did it turn out to be, based on your experience
3 working with different versions of Windows, that the
4 hierarchical view provided by Windows Explorer was the
5 principal means that users use to find information and launch
6 applications?

7 A. No. In general, people go to the start menu to launch
8 applications. You know, if you find that there is a document
9 in your documents folder, you might double click on that
10 document and then Word will come up, so people do use the
11 explorer to find documents, and they use it to open, but, you
12 know, again, these NameSpace extensions weren't designed for
13 word processors or spreadsheets. They had nothing to do with
14 those. They had to do with programs that -- that -- which
15 didn't have files in the file system, like emails, email
16 packages. And, you know, nobody wants to go to the Windows
17 Explorer to look at their email, and nobody does.

18 Q. Mr. Muglia, I'd just like to pursue that -- that point
19 a little further. Wasn't it necessary for ISV's like Lotus
20 and WordPerfect to use the NameSpace extensions to add
21 folders to the file system where they could store their
22 spreadsheets and word processing documents?

23 A. No. The NameSpace extensions aren't used for that
24 purpose. There are other API's that are used to create
25 folders and to create documents, and those were never in

1 contention.

2 Q. Now, I'd like you to take a look again, if you would,
3 sir, at Defendant's Exhibit 21, which is your email of
4 October 4, 1994. Do you have that with you there, sir?

5 A. I have it up on the screen, and I'm familiar with
6 that.

7 Q. Now, when you wrote this email, the day after you got
8 Mr. Gates' email back in October of 1994, were you genuinely
9 concerned about robustness issues presented by the NameSpace
10 extension API's?

11 A. Well, I was very concerned until Bill made the
12 decision. Once Bill made the decision that they wouldn't be
13 published, my concern, you know, lessened considerably.

14 Q. Why was that?

15 A. Because if -- by not -- the concern was that ISV's
16 would take advantage of this -- of these extensions and do
17 things that, by definition, were not robust. Once we decided
18 that we weren't publishing it, then ISV's weren't supposed to
19 take advantage of it at that point.

20 I actually thought the API's -- when I wrote this
21 email, I thought the API's would go away. They never
22 actually went away, in retrospect, but I thought they would
23 go away, that the whole problem would go away. Apparently
24 not.

25 Q. Now, at the time that you wrote this email, did you

1 believe that the fact that these interfaces were going away
2 would harm Novell WordPerfect or Lotus?

3 A. No. I -- I would have had no reason to think that they
4 cared at all about it, and they certainly never said anything
5 to me when I met with them that they cared about it. And, as
6 I said, all of the reasons why we were discussing whether
7 they should be there or not was all about -- the internal of
8 whether it was Cairo or Chicago or robust or whatever, had
9 nothing to do with harming any other company.

10 MR. HOLLEY: Your Honor, I have no further
11 questions.

12 MR. JOHNSON: Nothing Your Honor.

13 THE COURT: Thank you, Mr. Muglia.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Do we have time for another witness, to
16 begin another witness? We have time. The question is -- we
17 have a half an hour.

18 MR. TULCHIN: Your Honor, we have some video
19 depositions.

20 THE COURT: That's terrific.

21 MR. TULCHIN: We have one that takes 34 minutes.

22 THE COURT: Is that okay, everybody?

23 MR. TULCHIN: Which will take us to five after two.

24 THE COURT: Five after two.

25 MR. TULCHIN: And this is the deposition of Cameron

1 Myhrvold, taken on February 12, 2009. It runs 34 minutes and
2 17 seconds, or at least that's what I've been told.

3 MR. HOLLEY: Your Honor, may I be excused for a
4 moment?

5 THE COURT: Of course you may.

6 MR. HOLLEY: Thank you.

7 THE COURT: My guess is it will be 2:07.

8 MR. JOHNSON: And, Your Honor, may I excuse
9 Ms. Burns? She has some other things to do.

10 THE COURT: Of course. Of course.

11 MR. JOHNSON: Thank you very much.

12 THE COURT: Anybody can be excused, except these 12.

13 MR. TULCHIN: Shall we proceed, Your Honor?

14 THE COURT: Of course.

15 MR. TULCHIN: This is Cameron Myhrvold. Thank
16 you.

17

18 DESIGNATED PORTIONS OF THE DEPOSITION OF CAMERON MYHRVOLD

19 PLAYED AS FOLLOWS:

20 Q. Am I correct that in the spring of 1988, you joined
21 what was called the developer relations group at Microsoft?

22 A. The spring of '88. So, I joined Microsoft first in
23 1986. Microsoft bought a startup company that my brother and
24 I had started. Then I left Microsoft, went back to Cal and
25 finished my degree and rejoined -- I would have rejoined in

1 the fall of '87. In the spring of '88 took over the
2 developer relations group, yes. That's right.

3 Q. Okay. I may sometimes use DRG to refer to the
4 developer relations group today.

5 A. That's what I did, too, so that's fine.

6 Q. I understand you had two different affiliations over
7 time with that group, and we'll talk about each.

8 A. Okay.

9 Q. Was -- at that time, was WordPerfect one of the top
10 independent software vendors?

11 A. Yes. Absolutely.

12 Q. Were they one of the most important independent
13 software vendors on Microsoft platforms.

14 MS. WHEELER: In October of '88?

15 Q. In spring of '88, when you took on responsibilities at
16 the DRG?

17 A. They were a very important, you know, potential
18 customer for us, yes. They had, of course, the world's
19 leading word processor on MS DOS. We didn't really -- you
20 know, that was not our responsibility, to go and help
21 companies on MS DOS. It was to get them to try and write
22 Windows. So, from a potential ISV perspective, absolutely,
23 they were one of the top ISV's we spent time with.

24 Q. You referred to them as a potential customer. Why did
25 you refer to them that way?

1 A. Well, I would -- in my role in DRG, which was to go out
2 and support third-party software vendors to help their
3 efforts in writing products for Microsoft platforms,
4 specifically Windows and then later NT, and then later a few
5 other things -- I would think of them as my customers. There
6 was no money that necessarily changed hands. I'm sure they
7 bought some development tools from Microsoft, but my -- my
8 role was not a sales role. It was a technical support role
9 primarily.

10 Q. And it was part of Microsoft's normal business to
11 provide that technical support?

12 A. Yes, which you could do -- which you could purchase if
13 you were, you know, anybody, or on occasion was given away
14 in -- in hopes of encouraging companies to -- to develop
15 products on top of Microsoft platforms. WordPerfect
16 certainly would have been the one that got -- would have been
17 one that got access to free support from time to time. I'm
18 sure there's probably times when they paid for it as well and
19 had access to the development team at Microsoft, which you
20 can't do -- you can't purchase.

21 Q. Why were you encouraging WordPerfect to develop a
22 product for the Windows platform?

23 A. Because that's the way you sell operating systems. If
24 you want a popular operating system, it is pretty much wholly
25 dependent on what applications run for it and how compelling

1 those applications are.

2 Q. Did you have personal interaction with WordPerfect
3 employees during this period?

4 A. Absolutely.

5 Q. Do you recall the names?

6 A. Well, see I would arrange meetings with their senior
7 management, so Alan Ashton, Pete Peterson. On a day-to-day
8 basis, I would work with some of their development managers.
9 There's a couple guys in particular. I can only remember one
10 name, and that's Eric Meyers, but, yeah, I had a lot of
11 contact with -- with WordPerfect. I would visit them, you
12 know, probably two, three times a year. They would come out
13 to Redmond, you know. Alan would see Bill Gates probably
14 every 18 months or so, and -- and then their technical folk
15 were on site, you know, at least a half a dozen times a
16 year.

17 Q. And that was all part of the effort to encourage
18 WordPerfect to write products for the Windows platform?

19 A. Correct. Well, you know, to be -- to be strictly
20 accurate, it was Windows, OS/2, and Windows NT.

21 Q. You were encouraging them to write for all three
22 platforms?

23 A. It depends upon the period of time. In 1988, our real
24 focus was OS/2. I know, you know, '89 and the early '90's,
25 it was definitely on Windows. In the mid-'90's, it was more

1 Windows NT.

2 Q. Now, during the period when you were focused on OS/2,
3 did you interact with WordPerfect in the way you just
4 described?

5 A. Yes. Absolutely.

6 Q. You were encouraging them to write product for the OS/2
7 platform?

8 A. Along with IBM.

9 Q. IBM was also encouraging them to write for OS/2?

10 A. They had their only ISV group that called on -- called
11 on ISV's.

12 Q. Did your ISV group, your DRG group coordinate with
13 IBM's group?

14 A. Loosely, from time to time. We didn't go and call on
15 customers directly. Once a year we'd have joint meetings at
16 COMDEX with major ISV's in conjunction with IBM.

17 Q. Who, if anyone, for Microsoft was encouraging
18 WordPerfect to develop programs for the Windows platform at
19 this time?

20 MS. WHEELER: At this time is when?

21 Q. What he's defined as the period of time when
22 Mr. Myhrvold was -- was evangelizing OS/2, spring '80 through
23 sometime in 1989.

24 A. Well, in '88 we would have been talking to them both
25 for sure. So, in spring of 1988, I ran the -- sort of a

1 joint DRG group. In '89 I focused exclusively on OS/2, and
2 there was another lady who focused on -- on Windows working
3 directly out of the Windows group. In 1990, we merged them
4 both back together.

5 Q. Do you recall there being a question of priority as
6 between the two platforms, Windows and OS/2, even as You were
7 encouraging ISV's to write for both?

8 A. Well, okay, so -- so, it's kind of open-ended. I would
9 say certainly software vendors wrestled with that all the
10 time because IBM was telling them to write for OS/2. We were
11 telling them to write for OS/2 and also telling them write
12 for Windows. So, I think they had decisions and questions in
13 their mind as to what platform to support. Does that answer
14 your question?

15 Q. Yes.

16 A. Okay.

17 Q. Did you, yourself, advise ISV's as to which of the two
18 platforms to prioritize?

19 A. Well, certainly in the period of 1989, my job was OS/2.
20 My job was not Windows. So, when I went out to talk to them,
21 I talked to them about OS/2. That said, I was always very
22 clear about what Microsoft's own applications group was doing
23 because that was always a question that would come up with
24 ISV's, and I would explain that they were on a Windows
25 strategy first and then supporting OS/2, which is what they

1 did.

2 Q. Do you recall discussing that with anyone from
3 WordPerfect?

4 A. I'm sure that came up. Specific conversations, no, but
5 I'm sure that would have come up with Alan Ashton and Pete
6 Peterson, and certainly with Eric Meyers, and I'm sure other
7 folks whose names I can't recall.

8 Q. When did you first become aware that Windows 3.0 was
9 becoming a commercial success?

10 A. Well, I guess it would have been in -- you know, a
11 month after it shipped. I believe it shipped in May, so I
12 think it was pretty evident that, you know -- that, you
13 know -- it would have been pretty evident by the end of June
14 for sure that this thing was taking off really well. I think
15 probably there would have been OEM commitments that were
16 announced, you know, before -- before the OS shipped. So I
17 think in early 1990, certainly second quarter of 1990, you
18 know, it would have been evident that this thing was going to
19 be a force to reckon with.

20 Q. This increase in popularity of Windows, did you
21 understand that that hurt certain ISV's who had previously
22 been writing for OS/2 instead of Windows?

23 A. Well, for people who wrote for OS/2 and didn't write
24 for Windows, they were -- they would have been -- they would
25 not have been able to sell into the Windows base, so they

1 would have had to, you know, change and write for Windows.
2 So I think there probably are some ISV's that made the OS/2
3 bet and, in retrospect, may have felt they were -- they were
4 penalized by that.

5 Q. Would one of the -- you used the term "penalized," so
6 I'll use the term "penalties." Would one of the penalties of
7 having bet on OS/2 for these ISV's have been getting to
8 market late on the new Windows 3 platform?

9 A. Depending upon their development strategy, yes. Some
10 people supported both and had products in market relatively
11 quickly. Some people, I think, were developing for OS/2 in
12 1989 and made, you know, quick about-faces and developed for
13 Windows. Companies like Lotus Development went out and
14 bought at least two ISV's that had Windows products so they
15 could have Windows products in market when Windows --
16 Windows' 3.0 launched. So there's a number of responses to
17 that. I'm sure some people were late because they focused on
18 OS/2.

19 Q. Staying with this period of time when you were
20 evangelizing OS/2, was it difficult to write programs for
21 both platforms simultaneously?

22 A. Um, it -- was it difficult? It certainly wasn't easy.
23 Some companies did do it, but there were some things that
24 were just almost arbitrarily different between OS/2 and --
25 and Windows. So, I would not call it easy, no.

1 Q. Can you recall any of those differences?

2 A. Sure. The graphics engines were entirely different.
3 And, if I recall correctly, where you had the origin point on
4 Windows was directly opposite what it was on OS/2, so just
5 doing coordinates for vectors and things was completely
6 opposite, just, you know, maddeningly different.

7 I'm sure there were other issues, too. Those are
8 the -- that's -- that was the one that -- well, the graphics
9 systems were -- were different, too. One was vector
10 graphics, and one was raster. So, yeah, they were pretty
11 different. Certainly the graphics subsystem would have been
12 an area where they were quite different.

13 Q. Let's mark this, please, as Exhibit 54. Do you
14 recognize this document?

15 A. No -- I mean, I recognize the people on it.

16 Q. Can you tell, from your review, that it's a piece of an
17 email string, including email from yourself to others at
18 Microsoft?

19 A. Yeah.

20 Q. Do you believe that you wrote and you have sent the
21 email that appears about the middle of the page from yourself
22 to -- looks like Brian Y, Doug E and a string of others?

23 A. Brian V.

24 Q. Brian v.

25 A. Brian Valentine. Yeah. It looks that way.

1 Q. Do you see here that you're discussing the revelation
2 of some API's that were at least allegedly previously unknown
3 to the developing public? Does that reviewing the document
4 refresh your recollection at all of what's being discussed
5 here?

6 A. It does. I don't understand what the other mail is
7 down below here from -- looks like that there was mail from
8 Rick and Jerry P. I don't remember who Jerry P is, but Rick
9 Segal worked for me, so there must have been some issue they
10 were addressing about -- about mail API's, I guess.

11 Q. Does the concern seem to be that certain Microsoft
12 applications are using some API's that were not published?

13 A. Well, I clearly bring that up in my reference to
14 Schulman. Schulman wrote a book called the -- well, he and
15 four other guys wrote a book called The Undocumented Windows,
16 I think it was called. So, yeah, that's what I seem to be
17 referring to, but I don't -- I don't completely understand
18 the issue from this.

19 Q. You respond to the issue under the statement.

20 "Now, this may sound horrible, but 1, you say we
21 will docu -- we'll document but we will not encourage and, in
22 fact, we'll aggressively discourage any use of these
23 interfaces by ISV's and won't be talking about them."

24 What did you mean by that?

25 A. So, this is a period of time in which, you know, the

1 press picked up this Undocumented Windows, and I was in
2 cons -- I was in a lot of PR meetings where people thought
3 that the applications group was -- you know, had some unfair
4 evangelizing because they could take advantage of
5 undocumented API's. That wasn't true, but I was very
6 sensitive at this period of time to the -- to the insinuation
7 and to having ISV's believe that we weren't being, you know,
8 open and forthcoming with them, so I'm sure that's what
9 motivated this piece of email.

10 Q. Well, do you recall why you wrote that you would
11 document these API's but would discourage use of them?

12 A. So, in an operating system, you know, you document the
13 API's that you essentially are committing to support over
14 time. The compatibility issue becomes a huge issue over time
15 and, you know, that's why, for later operating systems, you
16 know, you would have 18-month Beta programs primarily to try
17 and get compatibility right.

18 So, limiting the number of API's where you have that
19 technical liability is just a smart thing to do if you want
20 to produce quality operating systems and a good user
21 experience down the road. So, because of that, you don't
22 document stuff you don't have to document. And here I'm
23 clearly making an argument that we should document this
24 stuff, and I am trying to, in an email, minimize whether
25 people will take advantage of them.

1 Q. Do you believe, at this time, it would have been better
2 for ISV's not to use these API's that were being discussed
3 here?

4 A. I -- okay. The problem is, I don't really know what
5 they're talking about here. They're talking about 500 to 800
6 API's. But, in general, you know, I would never want an ISV
7 to take advantage of an API that I knew was going to break
8 because that's just -- that's causing them problems, and
9 that's causing, you know, the next operating system problems,
10 so I -- I wouldn't want to do that.

11 Q. What do you mean by "break," as you just used the term?

12 A. Well, that's the issue of compatibility that I talked
13 about. Ideally, what will happen is you'll write your
14 application for a platform and there can be successive
15 versions of that platform. That application continues to run
16 completely unmodified, right? That -- that gives you that
17 compatibility. If that application relies on an API, the API
18 changes in a future OS, your application breaks. Now, it may
19 do so in a minor way. It may do so in an insignificant way,
20 or it could in a catastrophic way.

21 Q. And Microsoft was trying to avoid ISV's suffering
22 injury through such a breaking by relying on these API's; is
23 that correct?

24 A. Well, it's not just the ISV, you know, it's also the
25 operating system. I mean, if you force ISV's to rewrite

1 their application every time you produce an operating system,
2 well, that's just going to limit the number of applications
3 that are available, and you're not going to do as well, and
4 customers aren't going to be happy.

5 Q. Down near the bottom of your email, you write about how
6 these API's should be published, and you conclude with a
7 sentence that uses the term "air cover." Could you review
8 that language, and I'll ask you a question -- some questions
9 about the term "air cover."

10 A. Sure.

11 Q. What did -- how were you using the term "air cover"
12 there?

13 A. Okay. Well, as I explained in my earlier answer, there
14 was a period of time when we're taking a lot of heat in the
15 press over these undocumented API's. I am trying to avoid
16 that situation here for Windows For Work Groups evidently,
17 and so I'm trying to get the development group to actually
18 document this stuff. I don't think I understood the scale of
19 it, because it doesn't really make sense to document 500 to
20 800 API's that you're not going to support in the future.
21 That's a disaster waiting to happen.

22 Q. Why is it you believe that Microsoft would not be
23 supporting these 500 to 800 API's in the future?

24 A. Well, generally, you know, because they're -- because
25 they are not documented. I mean, you document what you're

1 making a commitment to support in the future, and the stuff
2 that you don't document is stuff that, by definition, is
3 subject to change.

4 Q. What more issues in the press are you looking to avoid
5 here?

6 A. Articles saying that -- that -- that, you know, we
7 don't document some API's and that our applications group
8 takes advantage of those API's and has an unfair advantage.
9 That was the tenor of the articles that came out after the
10 Undocumented Windows book was published.

11 Q. Mr. Myhrvold, I want to go back to Exhibit 54 for just
12 a moment. In point 2 of the email that you wrote, which is
13 in the middle of the page, you wrote, "Remember. We are not
14 going to stick this doc into a book or even an SDK box."

15 And you go on to explain how it will be documented.
16 Why were you going document these API's that way?

17 A. So, as I think I've explained a couple times, I appear
18 to be responding solely to the threat of bad PR, and so I'm
19 suggesting that we document the API's so we can tell people
20 of the world that we documented them, yet -- yet bury the
21 API's in the middle of a CD ROM so that they may not be taken
22 advantage of.

23 Reading it now, I think it's a fairly fallacious
24 argument, but that's what I'm saying.

25 Q. Why do you think it's a fallacious argument?

1 A. Because you shouldn't document API's you don't want
2 people to take advantage of, period.

3 Q. Not even in this --

4 A. Correct.

5 Q. -- way you're describing here?

6 A. Correct.

7 Q. Was it easier for Microsoft to keep its own applications
8 focused primarily on the Windows platform, as compared to
9 keeping ISV's focused on the Windows platform?

10 A. Well, sure, because, you know, you've got a common
11 management chain there, and Bill could tell them this is what
12 I want you to do. You know, I'm not trying to characterize
13 that that's what happened. I don't know that this was a Bill
14 Gates'-driven thing, but sure, it was of tremendous advantage
15 to have, you know, hundreds of developers in the applications
16 group beating their brains out trying to develop the best
17 Windows application. That's a huge advantage, just as, you
18 know, Apple benefitted greatly from Claris and having their
19 own captive application development.

20 IBM, I think, failed largely with OS/2 because they
21 canceled a bunch of their early application efforts to
22 support -- to support OS/2 with their own applications.

23 Q. We'll move on. Let's mark this, please, as 106. What
24 was Tammy Steele's role at this time, if you recall?

25 A. Tammy Steele worked in DRG.

1 Q. Under Executive Summary and the subheading Windows 95
2 Evangelism Goals, she wrote: "Obtain a critical mass of
3 market-leading designed-for-Windows applications" -- "Windows
4 95 applications within 90 days of Windows 95 shipping
5 covering all the key application categories."

6 And do you have any understanding of the importance
7 of the 90-day period that's referenced there?

8 A. Well, like I said, you know, it -- people aren't going
9 to use an operating system for which there's no applications,
10 so the sooner you get the applications -- and the higher
11 quality, popularity of the application all helps. So, this
12 is clearly designed to get a first wave of -- of Windows
13 application support for Windows 95.

14 Q. Did you understand that it was important for ISV's to
15 deliver their product to market relatively close in time to
16 the delivery of a new operating system such as Windows 95?

17 A. Was it important? It was important to me. Whether it
18 was important to them, I -- I don't know. I mean, obviously
19 if the operating system is successful, I assume it's good for
20 them. If the operating system is a flop, I guess it's bad
21 for them. They wasted a bunch of time.

22 Q. During your tenure in the DRG or your time running the
23 DRG or having it report to you, I should say, do you recall
24 Microsoft ever increasing its level of support to ISV's in
25 order to move them along and get --

1 A. Sure. Sure. I -- I mentioned that earlier. That was
2 certainly one of the things that we did. WordPerfect, I
3 think, is actually a great example of that. I sent somebody
4 from my group, a guy named Kraig Brockschmidt who wrote --
5 literally wrote the book on OLE, and he spent two weeks
6 onsite with WordPerfect.

7 Q. When was that?

8 A. Uh --

9 Q. And if you can't give me a date, if you could give me
10 maybe a platform reference?

11 A. Well, when did we introduce OLE? We introduced OLE in
12 '91, '92, '93 -- I'm guessing '91 or '92. I don't remember
13 when he wrote the book. I'm guessing '92 or '93; is that
14 right? I don't remember, but that -- that's -- that's my
15 guess.

16 Q. Under the heading Benefits of Participation, the
17 subheading Technical Assistance, the second bullet says:
18 "Worked with developer support, PSD program
19 management/development and DRG SDE's to host porting labs
20 covering OLE2, Windows 95, UI/Shell support, preparation for
21 launch and preparation for shipment."

22 It's really just the shell support I want to ask you
23 a couple questions about. And my first question is, do you
24 recall what, if anything, about the Windows 95 user
25 interface/shell Microsoft was evangelizing at this time?

1 A. I'm sorry, I don't.

2 Q. Do you recall whether there were to be new unique
3 features to the shell in Windows 95?

4 A. Yeah. I think there were, and clearly it's one of
5 the -- you know, there's only three things they're talking
6 about, porting labs for OLE, Windows 95. So, I mean -- so it
7 must have been a big deal, whatever it was. It's one of two
8 things called out.

9 Q. Okay. That's all we'll have on that document. Let's
10 mark this as 108.

11 The first line says Recruiting Developers for
12 Office.

13 A. Yep.

14 Q. Do you know what it means to recruit developers for
15 Office?

16 A. Sure. Office -- components of Office, Excel, Word, had
17 had a macro language in them since very early versions that
18 would allow people to essentially program the applications
19 and write add-ins or programs or specific -- specific
20 functions into the applications.

21 Q. Did you evangelize Office as a technology that allowed
22 that?

23 A. So, through my work in the developer division managing
24 marketing for Visual Basic, I believe that was one of the
25 messages -- yes, I'm sure that was one of the messages we

1 used for Visual Basic as a development tool was the ability
2 to use Visual Basic to drive some of the applications.

3 Q. We earlier talked about basically recruiting developers
4 to the Windows platform and the many advantages of it that
5 you described. Why would you recruit developers to Office?

6 A. For the same reason essentially. Applications for an
7 operating system help sell the operating system.
8 Applications written on top of an application might help sell
9 more copies of that application.

10 Q. And just so we get a clear sense of the term, what do
11 you -- what, to your understanding, is middleware?

12 A. It is infrastructure software that an application
13 developer leverages to, you know, write their application to
14 get specific functionality.

15 Q. At this time, was Microsoft considering developing
16 Office into middleware?

17 A. I don't think anybody at -- I certainly don't ever
18 recall anybody talking about Office as middleware. As I
19 previously testified, there certainly were macro languages in
20 Excel and Word. There was -- obviously programability was
21 one of the early things that helped with Lotus 123 on DOS.
22 So, there was some rudimentary programability in the -- in
23 Office. I think, from-time-to-time, the Office group did get
24 excited about going after developers. I don't think they
25 ever did a very good job of it.

1 Q. You note at the bottom of the second slide here in
2 Exhibit 108 that our application competitors are striving for
3 this same potential. What did you mean by that?

4 A. Well, I'm not sure. Obviously I believe -- now, Lotus
5 did have real developer work going on, mainly with a product
6 called Lotus Notes, and they certainly did go after
7 developers, whether they were internal corporate developers
8 or kind of ours, to build solutions on top of notes, and they
9 were reasonably successful with it. Novell and WordPerfect,
10 I don't recall what those guys were doing. I mention
11 something later in the presentation about something called
12 PerfectFit, but I don't remember what that was.

13 Does that answer your question?

14 Q. Yes, but it also suggests a couple follow ups,
15 unfortunately. But, do you recall whether Novell WordPerfect
16 was exposing API's in this time period?

17 A. I don't recall that. I mean, I must have a reason for
18 having that bullet, and let me take a minute, and I'll find
19 where it is.

20 Q. Actually, page 10, slide 19 might be what you are
21 thinking of.

22 A. Yeah. There you go. PerfectFit technology and
23 WordPerfect SDK's -- SDK's is in quotes -- Windows open API.
24 I don't know what those things are, but that must be what I'm
25 referring to.

1 Q. Are you familiar with a technology known as OpenDoc?

2 A. Yes, I am.

3 Q. And what was OpenDoc?

4 A. OpenDoc was a competitor to object linking and
5 embedding, to OLE I believe. It was championed by Lotus
6 Development. I remember that. And Apple -- it was
7 Apple-derived technology, I believe. And I don't know who
8 else supported it. I would guess -- well, the typical sub --
9 suspects in that would be Borland and -- Borland and
10 WordPerfect. That's my recollection.

11 Q. Was OpenDoc middleware?

12 A. Yeah. I'd say OpenDoc was middleware.

13 Q. Why do you believe OpenDoc was middleware?

14 A. I believe it was something that you wrote for with an
15 app -- from your application to perform certain functions,
16 and I believe that it was pitched -- well, it was developed
17 by, you know, a platform company, Apple, and it was promoted
18 by some of the leading applications developers.

19 Q. Do you recall whether OpenDoc was cross-platform?

20 A. Well, coming from Apple, I've got to believe it was. I
21 don't remember. It must have been.

22 Q. Again, just so we have a common understanding on the
23 record, could you just give me a lay person's definition of
24 cross-platform?

25 A. Well, it's an API technology that is supported across

1 more than one operating system. So, in this case, it would
2 have supported the Macintosh and -- and Windows and perhaps
3 more than that.

4 Q. Was OLE cross-platform?

5 A. No.

6 Q. It was available only on Windows platforms?

7 A. Correct.

8 Q. Do you know why that was the case?

9 A. Well, sure. It was a Microsoft technology developed to
10 extend the functionality of Microsoft platforms. Why would
11 it support anybody else?

12 Q. It gave an advantage, in that sense, to the Windows
13 platforms?

14 A. To the degree that it was successful, yes. Obviously
15 if, you know, you produce an API and nobody writes for it, it
16 doesn't do you any good.

17 Q. If you produce an API and make it available to multiple
18 operating systems, then it doesn't uniquely advantage any one
19 operating system; is that right?

20 A. Not necessarily. I think that depends upon the market
21 environment. You know, in things like networking, well, you
22 got to have networks that support multiple platforms or
23 they're fundamentally not very useful because you're not
24 connecting a diverse enough audience, so I think that
25 depends. Take a look at ODBC, open database conductivity. I

1 think it was very important to Microsoft to get other
2 database vendors, other than Microsoft, to support that, or
3 it wouldn't be very useful to a software vendor.

4 Q. Mr. Myhrvold, did you ever view WordPerfect as a
5 competitor to the Windows operating systems?

6 A. No.

7 (Whereupon the playing of the deposition was concluded.)

8 THE COURT: Thank you. See you all at 8:00 o'clock
9 tomorrow, and you will go until 2:00 o'clock again tomorrow.
10 And I will stay here with counsel for just a second and go
11 over a list of loose ends, to find out when we can take them
12 up. I think Judge Benson wants to use the courtroom.

13 (Jury leaves the courtroom.)

14 THE COURT: Okay, a couple quick things. I just got
15 the letter from Microsoft about the documents received
16 from -- particularly one document from Mr. Bush. I assume
17 that Novell wants time to respond, so we won't address that
18 now.

19 MR. JOHNSON: Thank you, Your Honor.

20 THE COURT: Mr. Tulchin, just let me know as soon as
21 you can about the witness on Friday. I understand if you
22 can't adjust, you can't adjust.

23 MR. TULCHIN: We do have a witness for Friday, Your
24 Honor, but the question was whether we could fill all the
25 time.

1 THE COURT: Right.

2 MR. TULCHIN: And we're doing our best.

3 THE COURT: Fine. Fine.

4 MR. TULCHIN: I don't know if you really want to go
5 to four. If so, I think we may fill some of that time with
6 more videotape, although we don't have nearly as many
7 videotapes as Novell did.

8 THE COURT: Well, we'll see. I mean, I can -- I've
9 got a 5:15 flight, and I figure this is on the way to the
10 airport, so what I'll do is get a cab down here, but we can
11 see. The things we have -- we do have to talk about at some
12 time are the outstanding exhibits, and have I have been
13 inundated by paper, so if it's there, I apologize. Is there
14 a Microsoft written response? I'm not saying there should
15 be. I'm just -- is there on the exhibits that Novell wants
16 to introduce? I'm not saying there should be. I'm just
17 worried that I've lost it if there is one.

18 MR. TULCHIN: I don't think there is, Your Honor.

19 THE COURT: That's good.

20 MR. TULCHIN: I think we would like to be heard --

21 the COURT: That's fine.

22 MR. TULCHIN: -- orally on that whenever it's
23 convenient.

24 THE COURT: And, as I said, maybe -- I think I
25 better quit because I think Judge Benson wants the courtroom.

1 Thank you.

2 MR. TULCHIN: Thank you, Your Honor. See you
3 tomorrow.

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