

1 (10:19 a.m.)

2 THE COURT: Let's get the jury. Good to hear from
3 you, Mr. Wheeler. I have been looking forward to it.

4 MR. WHEELER: Well, I was promoted from a potted
5 plant.

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

7 THE COURT: Mr. Wheeler?

8 MR. WHEELER: Thank you, Your Honor. I guess after
9 this you may not hear from me again. I don't know.

10 THE COURT: I hope we do. It is just a pleasure to
11 hear from you and Mr. Jardine coming out here. It is no
12 reflection upon the other members of either party.

13 Q. (By Mr. Wheeler) Mr. Larsen, where were we?

14 A. I was hoping you would remember.

15 THE COURT: And you are the one who asked for the
16 break.

17 Q. (By Mr. Wheeler) You were asked on direct
18 examination several questions with the conclusion that
19 Windows -- that WordPerfect was late to Windows, I think was
20 the phrase, correct?

21 A. That is right.

22 Q. And we were talking, I believe at that time,
23 talking about the time period from the late 80s to into the
24 early 90s; is that true?

25 A. Yes.

1 Q. Okay. And this was during the time that you were
2 having some difficulty with Mr. Peterson and his points of
3 view that differed with yours?

4 A. That is right.

5 Q. And Mr. Peterson actually left WordPerfect in
6 late '93, did he not?

7 A. I don't recall the exact timeframe, but that
8 sounds familiar.

9 Q. I am just told by they who know it all that it
10 was late '92, I'm sorry.

11 A. Okay.

12 Q. Does that make sense?

13 A. Yeah.

14 Q. Does that comport with your recollection?

15 A. Yes.

16 Q. Ultimately, however, WordPerfect did come out
17 with a Windows product, correct?

18 A. Yes, they did.

19 Q. And that was in -- it shipped in '94; is that
20 right?

21 A. As far as I can remember, yes.

22 Q. And was that the one that was bundled with the
23 Borland product?

24 A. The initial version of WordPerfect for Windows.

25 Q. Yes.

1 A. I don't recall.

2 Q. Are you -- do you remember that Borland and
3 WordPerfect collaborated together on a product?

4 A. Yes.

5 Q. You don't have any recollection as to what that
6 was?

7 A. I remember the product. I just don't remember
8 specifically which versions of the products. I mean we
9 released major versions and minor versions, had numbering
10 sequences, and I don't remember which versions went with
11 which in the packages.

12 Q. Is that because you were not assigned to the
13 Windows projects?

14 A. I think partly that and partly just it has been
15 17 years.

16 Q. That is a long time ago. But the way WordPerfect
17 was divided up with its various groups, one group didn't
18 necessarily know everything that another group was doing, is
19 that a fair statement?

20 A. That is fair.

21 Q. And so when you were limited in your assignments,
22 you would not necessarily know everything that was going on
23 in other groups?

24 A. That is correct.

25 Q. And what you have testified about with respect to

1 what was going on in WordPerfect doesn't necessarily come
2 from your personal knowledge of that but what you heard
3 around the office or what people were talking about, is that
4 a fair statement?

5 A. I think it is a mixture. I did attend some
6 higher level meetings and so forth where there were reports
7 given and so forth but then I also had friends that worked
8 with other groups. There were some migration of personnel
9 from one group to another. Gary Gibb, for example,
10 originated in the MacIntosh group. I originally hired him
11 at WordPerfect. So I knew him on a personal basis.

12 Q. Okay. Let's go back to the WordPerfect Windows
13 products. The PerfectOffice product came out in '94; is
14 that right?

15 A. Yes.

16 Q. Do you recall that that product received very
17 good reviews?

18 A. Which version are you talking about?
19 PerfectOffice --

20 Q. 3.0?

21 A. 3.0, yes.

22 Q. And this was one of the products that you would
23 have said would be late for Windows; is that right?

24 A. Yes.

25 Q. Okay. And so the late for Windows products

1 ultimately came out in '94 with a very successful office
2 suite; correct?

3 A. Very successful is kind of a vague term. I
4 mean --

5 Q. Yeah, it is. It is. But let me -- let me
6 rephrase that. It came out with a product that was very
7 well received by those that review products at that time?

8 A. Yes, it was received favorably, yes.

9 Q. Let's put up a few of those reviews that talk
10 about PerfectOffice 3.0. This is in evidence already.

11 MR. TULCHIN: Your Honor, again assuming we're making
12 this very fine distinction.

13 THE COURT: Absolutely. The people who wrote the
14 articles aren't here to be cross-examined so it is not
15 coming in for the truth of what is said in there.

16 MR. WHEELER: Thank you, Your Honor.

17 Q. (By Mr. Wheeler) Could you put that on the
18 screen, please. You don't know which one it is, do you?
19 Well, I don't either. It is 253.

20 Do you recognize this as one of the publications
21 that rates computer products?

22 A. Yes, this appears to be from PC World.

23 Q. And is PC World one of the more respected
24 publications that evaluate computer products?

25 A. Yes. We certainly paid attention to it.

1 Q. And in your experience, did the market pay
2 attention to these articles that came out in these
3 publications?

4 A. Yes.

5 Q. If you would blow up the first paragraph. It
6 says, "when Novell bought WordPerfect Corporation and
7 Borland's Quattro Pro spreadsheet last summer," does that
8 refresh your recollection as to the Borland --

9 A. Yes.

10 Q. -- product? "It signaled a major realignment of
11 the PC industry. And now with Novell's release of
12 PerfectOffice 3.0, we're finally getting to test the
13 company's vehicle for changing how PCs and people work
14 together. The packages innovative design presents a clear
15 challenge to Microsoft Office which holds the pole position
16 in the business suite race."

17 Do you recall hearing those kinds of reviews?

18 A. Yes.

19 Q. Do you recall seeing this particular one?

20 A. I don't specifically recall this one, no.

21 Q. And there were others as well that came out
22 praising PerfectOffice 3.0, correct?

23 A. Yes.

24 Q. So notwithstanding the fact that they may have
25 been, as you call it late, they were able to put together a

1 good product, would you agree?

2 A. Yeah.

3 Q. Mr. Larsen, are you familiar with the term
4 critical path?

5 A. Yes, I am.

6 Q. Can you define for the jury what you think that
7 means?

8 A. Well to me the critical path is the components
9 that need to fit together in a specific timeframe in order
10 to meet the deadline.

11 Q. Okay. Would it be fair to say that critical path
12 means the part of the project that is going to be critical
13 in both in terms of substance and time to make a product
14 work and to ship?

15 A. Typically I would think of it as being the one
16 that is most at risk of being ready, being complete at the
17 time the product ships.

18 Q. Okay. And there is only one critical path in a
19 particular product, right?

20 A. Yes, I would say that is true. It is hard to
21 characterize. Different people may have a different opinion
22 of which one is the critical path but --

23 Q. And with respect to the Windows 95 suite project,
24 would you agree that Mr. Gibb would be probably the best
25 person to determine what critical path was for that project.

1 A. I would.

2 Q. Do you recall Mr. Gibb's position at the time in
3 WordPerfect?

4 A. Like I say, he went through various positions. I
5 know he managed the shared code, he was also manager over
6 the suite.

7 Q. Could we put --

8 A. But I don't recall specifically what his title
9 was.

10 Q. Let's put the organizational chart up and see if
11 that refreshes your recollection. Do you want a copy of
12 this? We're killing a lot of trees.

13 Do you recognize this as an organizational chart?

14 A. Yes.

15 Q. For the Novell Business Applications Division?

16 A. Yes.

17 Q. Let's go to Bates stamp 438. And you see the --
18 from the top you have got a capital letter A, and then you
19 go down to subparagraph three and you see Gary Gibb there,
20 correct?

21 A. Yes.

22 Q. Does that refresh your recollection as to his
23 position?

24 A. Yes.

25 Q. And what was that position?

1 A. Director of PerfectOffice for Windows 95.

2 Q. And you agree that he would know better than you
3 what critical path was under Windows 95?

4 MR. TULCHIN: Asked and answered, Your Honor.

5 THE COURT: Sustained.

6 Q. (By Mr. Wheeler) Are you aware that Mr. Gibb has
7 testified in this court that the shared code was critical
8 path for the Windows 95 suite?

9 A. I know that he has testified, but I don't know
10 the content of what he testified to.

11 Q. Are you in a position to dispute him in that
12 statement?

13 A. In which statement?

14 Q. That shared code was the critical path for the
15 Windows WordPerfect suite?

16 A. No, I'm not in a position to dispute that.

17 Q. You did not mean to imply, I assume, in your
18 testimony about Quattro Pro, that Quattro Pro was critical
19 path for the WordPerfect suite?

20 A. I think that -- I mean that, again, this is kind
21 of where the critical path distinction comes into play.
22 There is a critical path within WordPerfect, the product,
23 and then there is a critical path within PerfectOffice. Our
24 focus, when I say our I think as a company, we tended to
25 think of ourselves as WordPerfect still as the product. And

1 so talking about the critical path for WordPerfect, and I
2 believe in shared code that is what Gary would be referring
3 to is within the WordPerfect piece of the PerfectOffice of
4 the suite of applications. So I am not sure if he was
5 referring to shared code, but it really would not have an
6 impact on Quattro Pro because they didn't share that same
7 code.

8 Q. Well, but Mr. Gibb was in charge of the suite was
9 he not?

10 A. That is right.

11 Q. He was not in charge of just WordPerfect the
12 processor, he was in charge of the entire suite?

13 A. Yes.

14 Q. And so when he testifies that the suite critical
15 path for the suite was shared code, he would be in a better
16 position than you to make that determination, correct?

17 MR. TULCHIN: Same objection.

18 THE COURT: I let you ask a couple of questions twice
19 so go ahead.

20 THE WITNESS: Yes, I believe he would.

21 MR. WHEELER: Thank you.

22 Q. (By Mr. Wheeler) Can you describe for the jury
23 what shared code means?

24 A. Shared code is meant to be a way to re-use code
25 or development efforts in different products. So it is a

1 way to -- it has several benefits to the company, several
2 benefits to the user. By sharing code it can reduce the
3 overall cost, it can expedite the delivery of products
4 because you're using pieces that are already tried and
5 tested, it has benefits to the user because it can enhance
6 consistency between the products because they're actually
7 running the same code underneath.

8 Q. Okay. And you stated that during the several
9 meetings that you attended toward the -- at the beginning of
10 1996 that there were shared code people present?

11 A. That is right.

12 Q. And you don't recall the details of those
13 meetings; is that fair?

14 A. That is fair.

15 Q. And again, 17 years ago your memory is foggy on
16 that I assume?

17 A. Yes.

18 Q. In terms of times and what was actually said?

19 A. Times, specific people even who were there. I
20 mean some people stand out in my memory, but to say one
21 individual was there during a particular discussion would be
22 very difficult.

23 Q. So the fact that you don't remember something
24 being said doesn't mean that it wasn't said?

25 A. That is fair.

1 Q. Is that fair? It just means you don't remember?

2 A. That is right.

3 Q. Now, you were talking about on direct examination
4 Quattro Pro. And in your opinion it was no where close to
5 being ready to ship?

6 A. Yes.

7 Q. If I am paraphrasing your testimony correctly.
8 Now let me represent to you that Mr. Gibb testified that had
9 the shared code group been able to meet its commitments, its
10 time demands, that Quattro Pro would not have delayed the
11 shipment of the WordPerfect office suite. Is Mr. Gibb in a
12 better position than you to make that statement?

13 A. He had a more direct responsibility for that so
14 yes, I would say so.

15 Q. And would it be fair to say that Mr. Gibb had a
16 more expansive view of what was going on in the office suite
17 development than you did?

18 A. I think he probably had a broader view. I had a
19 more specific view of what was happening within Quattro
20 itself.

21 Q. You were focused on Quattro Pro, he was looking
22 at everything including Quattro Pro?

23 A. That is right.

24 Q. Is that right?

25 A. Yes.

1 Q. Would his testimony indicate to you that maybe he
2 had some information that you didn't know about with respect
3 to Quattro Pro?

4 A. It is hard to know what kind of information
5 you're talking about. From a development standpoint of
6 actually getting the product building and ready to go, I
7 would probably have a better picture of what was happening
8 on the ground than he did. From a strategic standpoint of,
9 you know, what was happening in discussions at a higher
10 level, he would certainly have a better window into that.

11 Q. And you stated that you couldn't find certain
12 codes for Quattro Pro, maybe he knew where they were?

13 A. He would not have known where they were.

14 Q. Okay. But he at least had a view that was more
15 expansive than yours in terms of knowing what was needed to
16 ship the suite product?

17 A. I think so, yes.

18 Q. Now you talked about beta versions of software?

19 A. That is right.

20 Q. Do you remember that testimony? And as I
21 understand your testimony, your only experience directly
22 with beta versions comes from your work on the MacIntosh
23 system, is that fair to say?

24 A. No. I mean I have had experience even in my
25 current position where we deal with beta software. So it is

1 an ongoing --

2 Q. You mean at Ancestry.com?

3 A. That is correct.

4 Q. So your first experience with beta systems came
5 with MacIntosh; is that right?

6 A. That is correct.

7 Q. And then you continued to have experiences
8 thereafter?

9 A. That is right.

10 Q. Is it fair to say that when a software vendor
11 provides and evangelizes a product, let's say an operating
12 system vendor evangelizes a product to an ISV, that there is
13 a certain expected trust that develops between the two
14 parties?

15 A. It is an interesting relationship that forms. I
16 mean it is -- I think it was Ray Noorda who talked about
17 coopetition, you need to cooperate but in some ways you're
18 competing. For example on MacIntosh, we were relying on
19 Apple to provide the operating system but they also had
20 competing products that we were competing with. So there is
21 a level of trust but there is also a level of mistrust.

22 Q. Well, and the way you deal with the mistrust
23 portion of that is that you just withhold information that
24 you don't want the other side to know about, correct?

25 A. That is one way to deal with it, yes.

1 Q. But with respect to those things that are
2 evangelized to an ISV, there is a system of trust that tells
3 the ISV that the provider of the operating system is not
4 going to act in bad faith with respect to what they're
5 telling you they're going to do or willing to do; is that
6 fair?

7 A. I think there is always a healthy dose of
8 skepticism because they tend to inflate the expectations of
9 -- I mean they're trying to entice you to develop for this
10 new piece of software. They need you to -- if you don't
11 develop on top of it, then they're not as successful. So
12 they need you, you need them, but it is kind of a cat and
13 mouse game.

14 Q. But there is a symbiotic relationship between an
15 ISV and the operating system vendor, would you agree with
16 that?

17 A. That is right. They both have to be able to
18 succeed.

19 Q. You have a common interest in successfully
20 writing for whatever operating system is being promoted?

21 A. That is right.

22 Q. And so when Microsoft comes to an ISV and
23 promotes a certain operating system with certain features,
24 the ISV forms a relationship of, to some degree, of trust
25 that Microsoft is not going to do something in bad faith

1 with respect to that product; isn't that right?

2 A. I think that there is some expectation but my
3 experience has been that -- that that doesn't always bear
4 out. For example, when I left WordPerfect and went to a
5 small startup company, we were building a product for the
6 Apple computer based on Opendoc technology. And we -- our
7 whole company was based on that technology. And we
8 subsequently sold it to Apple, but then within a short time
9 after they sold it to us they discontinued support for the
10 Opendoc technology and effectively eliminated our market for
11 the product that we had developed. So there -- I have had
12 experiences where you get burned if you trust them too
13 implicitly.

14 Q. But in that case I gather that what you did is
15 you had written programs for that particular API and then
16 they some years later they withdrew it?

17 A. It was -- I mean the period of time is hard to
18 characterize. I'm not sure it can be characterized as some
19 years. But there was a specific point in time and some of
20 that had to do with Steve Jobs returning to Apple and a lot
21 of other factors. But they did make a decision to
22 withhold -- withdraw support for the product that we were
23 developing for them.

24 Q. And was there a reason given to you for that
25 withdrawal?

1 A. No.

2 Q. Would you agree that within the industry that it
3 would be bad faith for a seller of an operating system to
4 pull an API after evangelizing them for a non technical
5 reason?

6 A. It is hard to generalize that. It would really
7 depend on the specifics of what the API did, how critical it
8 was to the core functionality of the overall product. It is
9 really not terribly uncommon to have APIs what we call
10 deprecate where they mark them as being slated for
11 obsolescence and then subsequently support being withdrawn
12 from. That is a fairly common occurrence.

13 Q. I'm not talking about deprecation, we'll go to
14 that in a minute. Deprecation occurs after the product has
15 been used for a while, right?

16 A. That is right.

17 Q. And then it becomes obsolete or something and so
18 they deprecate it and it is replaced by something else,
19 right?

20 A. That is correct.

21 Q. I'm not talking about that. I'm talking about
22 the vendor of an operating system coming to an ISV,
23 evangelizing their operating system and then after work is
24 done by the ISV writing to that particular set of APIs on
25 that operating system, make a decision before any shipments

1 take place, before the operating system is shipped, and say
2 we're going to withdraw that for a nontechnical reason.
3 Wouldn't you believe that that would be an act of bad faith
4 on behalf of the operating system?

5 A. It would be irritating, but I would not
6 characterize it necessarily as bad faith. Again, they don't
7 necessarily have to specify what their -- why they're
8 withholding that. You would hope that they would, they
9 would discuss it with you. But often times there are
10 instances where one man's bug is another man's feature. And
11 so you may be using parts of the operating system in ways
12 that they were not originally intended to be used, or you
13 may be trying to -- we would try to find ways to exploit
14 anomalies in the operating system to our advantage and
15 somebody else may have reported that as a bug, and so the
16 vendor would go in and they would fix the bug. But by
17 fixing that bug, it may eliminate the functionality that you
18 were dependent on. So the nature of the -- until the API
19 has been released and frozen and has been made stamped as
20 official that -- I think that they would not do that without
21 some consideration. You would hope not. But it would
22 certainly impact your relationship going forward. You would
23 be less likely to trust them going forward. But I -- I
24 wouldn't necessarily have been shocked for that to occur.

25 Q. Did that ever happen to you?

1 A. That APIs --

2 Q. My --

3 A. -- were taken away.

4 Q. My hypothetical? Did that ever happen to you
5 where a vendor came in and evangelized something and then
6 without explanation after you had done a lot of work on it
7 simply withdrew it without giving you a reason?

8 A. Yes.

9 Q. And who did that to you?

10 A. I can remember some examples where Apple with the
11 operating system did that to us.

12 Q. Did they offer an explanation as to why they were
13 doing it?

14 A. No.

15 Q. Did you find out that there was some bug or other
16 issue with it?

17 A. No.

18 Q. If you found out that the withdrawal by Apple was
19 cause to delay work that you had done so that they could
20 compete better with you, would you view that as an act of
21 bad faith?

22 A. I'm not sure. Maybe you can define bad faith for
23 me. I'm not sure I understand exactly what the --

24 Q. Let's use breach of trust?

25 A. I would say no.

1 Q. What about if they withdrew the API for the
2 purpose of gaining some advantage over you after having done
3 all of the work on that API?

4 MR. TULCHIN: Objection, Your Honor. So far we have
5 had a lot of hypotheticals. This gentleman isn't an expert.
6 I am happy to have this go on but this, of course, is
7 contrary to the facts that have been established in the
8 trial so far.

9 MR. WHEELER: We object to speeches from counsel, Your
10 Honor.

11 THE COURT: I'll let one more question but it seems to
12 me you have gone far afield --

13 MR. WHEELER: I will go onto another point.

14 Q. (By Mr. Wheeler) You talked about deprecating
15 APIs. Tell us what that means?

16 A. Deprecation is a process whereby it is an orderly
17 evolution to a new way of doing things. So you have to be
18 able to identify what is going to go away and what you might
19 do differently to accomplish the same or similar work, and
20 then you encourage the ISVs, other people who are writing to
21 your APIs, to write to the new API. And then once they have
22 had time to adjust their code to work with a new API, then
23 you remove that piece of code from the -- from the base or
24 whatever it is that you're working on.

25 Q. With the goal of substituting some new API for

1 the old one that is being deprecated?

2 A. Generally that is the case. Although there are
3 times when the API is just abandoned.

4 Q. But in those cases the provider of the software
5 makes an attempt at least to transition the user of the API
6 to something else, is that fair to say?

7 A. Yes, there is -- generally there is an
8 alternative offered or there is continued support for the
9 existing API which such time has been gone through the
10 deprecation process.

11 Q. And have you seen APIs deprecated in that
12 fashion?

13 A. Yes, I have.

14 Q. Would you say that that is the common and the
15 most accepted way to get rid of an API is through the
16 deprecation process?

17 A. I think that it is today. It certainly is a
18 process that has matured over the years. Back when I was
19 writing on the MacIntosh, we were writing our code in
20 assembly language which meant we could -- we could really go
21 in and do whatever we wanted on any part of the machine at
22 any time. And so we could -- we could actually subvert what
23 the operating system was doing and we did so on a regular
24 basis. As time has gone on, that is not a very profitable
25 way of doing software development because it leads to a lot

1 of incompatibilities with the operating system with other
2 products that are trying to run in the same space. And so
3 over time, I think APIs and the processes behind developing
4 APIs have matured. Now we talk about things like service
5 level agreements where we version APIs and have a migration
6 path that is in place to make it a little bit less of the
7 wild wild west and more of a planned and orderly transition
8 from one to the next.

9 Q. You stated that one way to do it was to continue
10 to write to the API that was being deprecated, correct?

11 A. That is correct.

12 Q. And you stated that that could -- that it was not
13 a good way to do it because it led to possibly bugs or
14 incompatibilities, is that what you said?

15 A. Right. You knew you were kind of on your own at
16 that point.

17 Q. And it also would create delays, would it not?

18 A. Yes.

19 Q. And so the provider of a software that was going
20 to take away an API, could delay a vendor by withdrawing
21 those APIs, correct?

22 A. Yes, they could.

23 Q. And that is something that they in all
24 probability would not have happen as a result of the
25 withdrawal; is that correct?

1 A. Generally I would say yes.

2 Q. You talked about localization on direct
3 examination which is -- would you define that term for us,
4 please?

5 A. Localization, to my understanding, specifically
6 deals with string translation or taking text that appears in
7 the interface and converting it into another language. It
8 can also deal with cultural elements. So even in some
9 cultures, colors may be considered offensive or have certain
10 meanings that you don't want to convey. So you're trying to
11 take a product and make it so it looks like someone who is
12 native to that culture, native to that language, was the one
13 who authored the code.

14 Q. Have you ever been assigned to do those
15 localizations on any of the products at WordPerfect?

16 A. Yes.

17 Q. And what was your role in that position?

18 A. Any piece of software that is meant to be
19 localized first has to be internationalized which is what I
20 said, as I talked about earlier. And the whole process of
21 internationalization really is just -- that is inherent in
22 the design from the ground up. You need to take into
23 account fundamental things about how much space are you
24 going to allocate for each character that appears on the
25 screen. And if you choose to use one byte of information,

1 then you may be precluding yourself from supporting
2 languages such as Japanese and Chinese where they have kanji
3 characters that range into the tens of thousands of
4 different characters and they need more than one byte of
5 information to represent those characters. So from a very
6 fundamental level of when you design the products you have
7 to take localization and internationalization into account.

8 Q. Would it be fair to say that localization
9 frequently occurs after shipment of the English product?

10 A. The localization typically does. The
11 internationalization takes place simultaneously to the --
12 the internationalization typically takes place when the
13 product is being developed.

14 Q. But translating it into individual languages and
15 such could follow the shipment date?

16 A. It can and often does although the timeframe is
17 critical. You want to try to capitalize on the buzz that
18 surrounds your release worldwide. And, in fact, today we
19 typically try to have those things take place
20 simultaneously.

21 Q. But back at the time we are talking about, that
22 is -- it was not uncommon to ship nationally after the
23 English version shipped?

24 A. That is right.

25 MR. WHEELER: May I have a moment, Your Honor?

1 THE COURT: Sure.

2 MR. WHEELER: That is all I have, Your Honor.

3 THE COURT: Mr. Tulchin, anything further?

4 MR. TULCHIN: Very quick, Your Honor.

5 THE COURT: Thank you.

6 REDIRECT EXAMINATION

7 BY MR. TULCHIN:

8 Q. Mr. Larsen, on cross Mr. Wheeler asked you some
9 questions about Mr. Gibb and critical path. Do you remember
10 that?

11 A. Yes, I do.

12 Q. Just a couple of questions. You saw Exhibit 230
13 which was that e-mail just before Christmas of 1995,
14 correct?

15 A. From Bruce Brereton.

16 Q. Yes, from Bruce Brereton. It was right after
17 that in January that you went out to Scotts Valley?

18 A. That is correct.

19 Q. Now, do you know from your own firsthand
20 experience, as a result of being in Scotts Valley at the
21 Quattro Pro Offices there, that the Quattro Pro product was
22 not ready to ship in January of 1996?

23 A. Yes, that is correct.

24 Q. Was Mr. Gibb with you on that trip to Scotts
25 Valley?

1 A. No, he was not.

2 Q. And how about in February. Do you know of your
3 own firsthand knowledge that Quattro Pro, including the
4 Quattro Pro component of PerfectOffice, was not ready to
5 ship?

6 A. That is right.

7 MR. TULCHIN: Nothing else, Your Honor.

8 THE COURT: Mr. Larsen, thank you very much.

9 Next witness?

10 MR. TULCHIN: We will just need one minute, Your
11 Honor.

12 THE COURT: One minute is fine. Two minutes is
13 problematic.

14 MR. JARDINE: Your Honor, we're going call Karl Ford.
15 They need a little reshuffling time themselves.

16 THE COURT: Actually two minutes is fine.

17 THE CLERK: Raise your right hand, please.

18 KARL EARL FORD,
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: I do.

23 THE CLERK: Please be seated.

24 MR. JARDINE: Right over there.

25 THE CLERK: Please state your full name and spell it

1 for the record.

2 THE WITNESS: Karl, K-A-R-L, Earl, E-A-R-L, Ford,
3 F-O-R-D.

4 DIRECT EXAMINATION

5 BY MR. JARDINE:

6 Q. Good morning, Mr. Ford.

7 A. Good morning.

8 Q. Would you tell the jury where you reside?

9 A. Pleasant Grove, Utah.

10 Q. And are you here appearing pursuant to a subpoena
11 you received?

12 A. Yes, I am.

13 Q. Is this your first time being a witness in a
14 trial?

15 A. It is.

16 Q. As a person under oath, would you prefer to be
17 somewhere else?

18 A. Yeah, I would prefer to be shipping my product
19 which is due to ship today actually. So I'm not too
20 excited.

21 Q. We'll try to make this as painful and efficient
22 as possible.

23 THE COURT: Painless.

24 MR. JARDINE: Painless.

25 THE COURT: Until that very moment I thought you were

1 a nice fella.

2 MR. JARDINE: Your Honor, that probably will live with
3 me a long time.

4 MR. TULCHIN: A secret sadist, Your Honor.

5 Q. (By Mr. Jardine) Mr. Ford, what is your current
6 employment?

7 A. I am a director of engineering for Blue Coat
8 Systems.

9 Q. And would you tell the jury what is the business
10 of Blue Coat Systems?

11 A. We have a secure web gateway product. We help
12 enterprise customers block viruses, malware and we speed up
13 their network traffic and services like that.

14 Q. And where are the offices of Blue Coat Systems
15 located?

16 A. I work out of the Draper, Utah office. The
17 headquarters are in Sunnyvale, California.

18 Q. And what does your position entail as director?

19 A. I manage a team of software engineers that work
20 on features on the product. And then I'm also the --
21 currently the project manager for our latest project that
22 we're shipping.

23 Q. These --

24 A. Our latest version of our product.

25 Q. So these ladies are trying to take down what we

1 say so I'll --

2 A. I'll slow down. I'm sorry.

3 Q. I know you are probably a little nervous. What
4 is your educational background starting after high school?

5 A. So I attended what is now called UVU, Utah Valley
6 University, and also Brigham Young University studying
7 computer science.

8 Q. And what was your first employment after your
9 education?

10 A. So during my education, I was a brick mason. And
11 then I started working for Satellite Software International
12 which later changed their name to WordPerfect Corporation.

13 Q. And how long were you with WordPerfect
14 Corporation?

15 A. So I started with WordPerfect December 17th,
16 1984, and then Novell bought us in '94, I think it was in
17 June of '94.

18 Q. Then did you continue your employment with
19 Novell?

20 A. I did. I continued my employment with Novell
21 until they sold the WordPerfect product to Corel Corporation
22 in January of '96.

23 Q. And did you continue employment with Corel?

24 A. I did. I continued work on the WordPerfect
25 product for Corel Corporation.

1 Q. When did your employment with Corel terminate?

2 A. I believe it was July of 1998 Corel shut down
3 their Utah operations and moved the WordPerfect product up
4 to Ottawa, Canada, which is where their headquarters were
5 at, and the rest the folks in Utah were told we had a couple
6 of months to find employment somewhere else, another job.

7 Q. After your employment concluded with Corel, what
8 was your next employment?

9 A. My next employer was actually Novell. So I
10 interviewed around and took a job offer at Novell.

11 Q. When did you leave Novell?

12 A. I left Novell February 4th, 2008.

13 Q. What employment did you then undertake?

14 A. I have been at Blue Coat Systems ever since.

15 Q. When you began with WordPerfect back in I think
16 you said 1984?

17 A. '84, uh-huh.

18 Q. What was your first area of responsibility or
19 position?

20 A. I helped to back their -- back then manufacture
21 floppy disks, floppy disks, and then wrote printer drivers
22 and helped with supporting WordPerfect on the data general
23 operating system or platform.

24 Q. And what was the Data General operating system?

25 A. Data General is a mini mainframe operating

1 system, mini mainframe computer. It is similar to Unix
2 today.

3 Q. Did it have a graphical user interface?

4 A. WordPerfect version did not.

5 Q. And did you work on -- did WordPerfect have a
6 product for that operating system?

7 A. Yeah. So the first product that WordPerfect
8 wrote was actually on the Data General for Orem City and
9 yeah, we had a product for the Data General.

10 Q. In the period of the late 1980s, did WordPerfect
11 Corporation release versions of WordPerfect for any other
12 operating systems that you recall?

13 A. Yeah. So there was the VAX, VAX, or VMS was from
14 digital corporation at the time. IBM 370, Apple, DOS, Unix,
15 I believe Amiga. Those are the ones that are off the top of
16 my head.

17 Q. Other than Apple, did any of those other
18 operating systems have a graphical user interface?

19 A. There was also one called NeXT. Steve Jobs had a
20 NeXT platform that he went to after he left Apple. And I'm
21 not sure if that one had a graphical user interface for a
22 GUI or not.

23 Q. Thank you. Do you have an understanding at the
24 time as to why WordPerfect Corporation developed for all
25 these different platforms, these different operating

1 systems?

2 A. What I remember is that we wanted to let folks
3 run WordPerfect on whatever operating system, whatever
4 platform, they choose to. So whatever computer environment
5 they had they could choose WordPerfect to run on that
6 platform.

7 Q. Over time did the number of operating systems for
8 which WordPerfect Corporation developed word processing
9 products decrease?

10 A. Yes. So I was working on the Data General
11 operating system and we stopped development on that
12 operating system on that computer platform and I transferred
13 to the WordPerfect for Windows group. So as those -- as the
14 marketshare for those different platforms shrunk for VAX,
15 for Data General, Amiga, they would discontinue working on
16 new development and shipping new products on the platforms.

17 Q. I think you testified you transferred to be on
18 the WordPerfect for Windows team. Do you recall about when
19 that was?

20 A. That was in 1993.

21 Q. What were your -- do you recall which WordPerfect
22 products you were working on when you transferred to that
23 team?

24 A. 6.0.

25 Q. And when you -- just so we have a timeframe, when

1 WordPerfect was acquired by Novell, did you continue to work
2 on the WordPerfect for Windows team?

3 A. Yes, I did.

4 Q. Did that continue through your -- all the way
5 through the period when Novell owned the WordPerfect product
6 and assets?

7 A. Yes.

8 Q. And when Corel acquired the WordPerfect assets,
9 were you also -- did you continue on the WordPerfect for
10 Windows team?

11 A. Yes, I did.

12 Q. And during that period, let's focus on '95, when
13 Novell acquired in the year 1995, do you recall which of the
14 WordPerfect products you were working -- for Windows you
15 were working on?

16 A. So Novell acquired us in '94.

17 Q. Yes.

18 A. So in 1995, I would have been working on
19 WordPerfect 7 which was for Windows 95.

20 Q. Is that a product that you continued to work on
21 after Corel acquired it?

22 A. Yes. So I worked on the same features when I was
23 -- when I went to work for Corel, and continued to work on
24 WordPerfect for Windows.

25 Q. We'll come back to this, but as I understand it,

1 correct me if I'm wrong, you were a team leader on the
2 WordPerfect for Windows team assigned to the user interface?

3 A. At that time I was, yes.

4 Q. Okay. During the period that you and your team
5 were working on the WordPerfect for Windows 95 product, were
6 you and your team working on developing that product for any
7 other platforms or operating systems?

8 A. So we just finished shipping 6.1 for Windows 3.1,
9 which is a 16-bit product. I was working on Windows 95, and
10 I know NT was out at the same time. But as I remember, my
11 focus was on Windows 95.

12 Q. Was that true when you went to Corel and
13 continued developing that product?

14 A. Yes.

15 Q. Now, I would like to go back to the point in time
16 when you first began working on the WordPerfect for Windows
17 team on, as I understood it, the WordPerfect 6.0 product?

18 A. Uh-huh (affirmative). Yes.

19 Q. And I think you -- do you recall if that was for
20 the Windows 3.0 or 3.1 platforms?

21 A. I believe it was 3.1.

22 Q. All right. And when you first started working on
23 that team, what were your responsibilities?

24 A. So I was new to the Windows environment and new
25 to the team. So I was assigned to fix bugs or problems in

1 the code that our testers had found, and then I was also
2 assigned to work on a feature called Coaches. That feature
3 called Coaches.

4 Q. And what was -- what did the Coaches feature do?

5 A. Coaches is similar to the little paperclip icon
6 for Microsoft Word where you can ask a question and it can
7 show you how to do something.

8 Q. And just to remind the jury, was WordPerfect 6.0
9 a 16-bit product?

10 A. It was.

11 Q. Thank you. Do you recall who you reported to?

12 A. Dave Hallmeyer was the manager of the WordPerfect
13 folks. I don't remember if I had a team lead in between
14 Dave Hallmeyer and myself. And then Steve Weitzel was the
15 director of the Windows for PerfectWindows group.

16 Q. In general, we're going back in time, do you know
17 that many of the WordPerfect engineers, software developers,
18 had been working in the DOS environment and you're now
19 working in the Windows environment. What sort of challenges
20 were faced by developers moving from the DOS environment to
21 the Windows environment?

22 A. Um, so it is a different architecture. A lot of
23 the DOS code is written in assembly language, it is
24 character based. Windows is -- the language is called C or
25 C-plus-plus, and it is a message system based. And so it is

1 a little different paradigm. Working on DOS, you weren't
2 used to working on a graphical interface as much so there is
3 a learning curve there if you hadn't worked on Windows
4 before. There were some engineers that had had Windows
5 experience at previous companies.

6 Q. And so did, in that period of time, did
7 WordPerfect hire some people with graphical user interface
8 or Windows experience to be added to the team to help?

9 A. So when I got to the team, I think those folks
10 were already hired. I can't remember if anybody was brought
11 in after I transferred, but I know that there were a few
12 folks that were, I believe, brought to work on WordPerfect
13 for Windows because they had Windows experience at a prior
14 company.

15 Q. What was the status of the Windows WordPerfect
16 6.0 product when you arrived on the team? Where was it in
17 its development stages?

18 A. I believe it was near feature complete. I think
19 there were a lot of features complete, but we were in what
20 is called bug fix mode, trying to clean up any issues that
21 were -- that were severe enough that we thought it would
22 affect customers. So I believe it was close to feature
23 complete, but not all the way because I know I worked
24 Coaches and there were still some other features coming in.

25 Q. In that process, how would bugs be identified?

1 Would you go identify bugs or how would they be brought to
2 your attention?

3 A. When you're testing your code or fixing other
4 problems, you can -- a developer can find a bug. And we had
5 a bug tracking system, I forget what it was, it was
6 homegrown or what kind of database, and then we had testers
7 or quality assurance engineers that their job was to find
8 bugs in a particular feature. They would have a number of
9 features assigned to them that they were responsible for,
10 and so they would -- they would test those features and try
11 out different scenarios. And if they found something that
12 wasn't functioning properly or would crash, then they would
13 log a bug and there were -- there were two what we call
14 verifiers that would take every bug and they would try to
15 reproduce it themselves. And if they could reproduce it,
16 then they would mark the bug verified. And that would tell
17 you that that is one that you could at least reproduce and
18 it would be easier to fix because if you can reproduce it
19 you can debug through it and understand it and fix it a
20 little easier.

21 Q. Was there in place at WordPerfect a process for
22 prioritizing bugs?

23 A. Yeah, there is a severity. If a bug crashes, the
24 system crashes the application, that is obviously a higher
25 severity than if there is a misspelling in a menu. And so

1 there was certain criteria on what the severity would be.

2 Q. Was there pressure on the WordPerfect team to
3 develop this product and get it out quickly in the time that
4 you were there that you could observe?

5 A. There was an urgency, we knew that. There were
6 dinners being brought in to stay late, to encourage us to
7 stay late and work late so that we could eat and keep
8 working. There was an incentive bonus that if we ship the
9 product by, I am remembering September, September I think it
10 was September of '93 or somewhere in that timeframe, that if
11 we shipped a product by a certain date, then the developers
12 would get an incentive bonus for working hard and staying
13 late and shipping the product.

14 Q. Do you recall why there was this particular sense
15 of urgency with respect to this product at this date in this
16 time period?

17 A. It was a race with Microsoft to ship the latest
18 and greatest word processor and keep up with the competition
19 or better Microsoft Word.

20 Q. Do you recall whether there was any urgency or
21 motivation that related to the market's perception of the
22 prior WordPerfect products, WordPerfect 5.1 and 5.2?

23 A. I remember that the comments and the publications
24 were that it had a little bit of DOS feel to it. It wasn't
25 quite like a true Windows application. And then Microsoft

1 had come out with some features that we didn't have and so
2 we needed to put those features in and add additional
3 features so our product was better, more feature rich. And
4 so there was that pressure to try to better the competition
5 and keep our marketshare.

6 Q. When the -- I think you said that the WordPerfect
7 6.0 product shipped in September, I think that the date may
8 be October, right in that period of '93, what kind of shape
9 was it in with respect to bugs when this shipped as you
10 recall?

11 A. So I wouldn't have visibility over the whole
12 product. I know my area. If we had a bug that was deemed
13 that needed to be fixed, we called that a ship stopper and
14 you would fix it as fast as you can. I don't remember
15 having any ship stoppers on my team or in my area within the
16 last couple of weeks of the product shipping, but I don't
17 have the visibility over the entire product. That would be,
18 you know, Steve or Steve Weitzel or Gary Gibb would have
19 that knowledge.

20 Q. Let me show you what has been marked as
21 Defendant's Exhibit 259. I think this is in evidence. This
22 document is labeled WordPerfect for Windows quote "Eliot"
23 Marketing Requirements Document. Do you recall what the
24 code name Eliot stood for?

25 A. I don't remember that, but looking at the date

1 December 21st, '93, I would think that that would be talking
2 about 6.1. But I don't remember the code name Eliot.

3 Q. That is my understanding. If I could have you
4 turn three pages back. If you look at the bottom with the
5 marking number 6499 at the bottom, do you see that?

6 A. Yes.

7 Q. This is an executive summary about the Eliot
8 products. And it is talking, if you look at the first line
9 under executive summary, it says -- do you see that?

10 A. I do.

11 Q. "WordPerfect 6.0 for Windows has done many things
12 to help establish WPCorp as a leader in Windows word
13 processing." And then if you go to the next paragraph it
14 says, "to continue," do you see that?

15 A. I do.

16 Q. "To continue this leadership trend and to answer
17 key efforts being made by the competition, the next version
18 of the program, code named Eliot, needs to focus on eight
19 key objectives." And then it lists eight. And I would like
20 to focus on the first one that says, "improves speed and
21 reliability." Do you see that?

22 A. I do.

23 Q. It reads, "WP Win 6.0 is universally praised as
24 having great functionality, but was considered by the press
25 and many users in its initial release as too slow for their

1 current hardware and as compared to the competition and
2 containing too many bugs to be considered sufficiently
3 stable." Do you recall hearing that from Novell executives
4 at the time shortly after the release of Windows WordPerfect
5 6.0?

6 A. I don't -- I didn't hear it from Novell because
7 Novell hadn't purchased us yet so --

8 Q. Thank you. Let me rephrase the question.

9 THE COURT: Just answer as to WordPerfect.

10 THE WITNESS: For WordPerfect?

11 Q. (By Mr. Jardine) Yes.

12 A. So what sticks out in my mind is that after we
13 shipped, it was determined we needed to put out a patch. We
14 had a meeting outside Building E with all of our engineering
15 folks and we had kind of a pep talk saying that we needed to
16 address the bugs and, you know, clean it up. And I believe
17 this was after 6.0. And I remember Steve Weitzel was our
18 director and he was emotional that day and he broke down
19 into tears basically. And Donald LaVange was our QA
20 director and Don had stated that, you know, we need to get
21 this right. That this is basically our last chance to get
22 this thing right.

23 Q. How many people were in the parking lot roughly,
24 do you recall?

25 A. Estimation between 30 and 50.

1 Q. The development team?

2 A. The development team.

3 Q. And there --

4 A. And it might have been more than that. So it was
5 most of Building E.

6 Q. And Mr. Steve Weitzel was --

7 A. Was the director.

8 Q. He was director over the whole team?

9 A. He was director over the WordPerfect for Windows
10 product.

11 Q. What was your reaction to seeing Mr. Weitzel get
12 emotional about this?

13 A. I was shocked a little bit. We knew that he felt
14 it and just shocked that he would breakdown in front of us.
15 And yeah, we realized that we needed to clean it up, if that
16 is what, you know, they were saying, and that was the
17 information that he communicated to us.

18 Q. And I think you said Mr. LaVange said that he
19 thought this was WordPerfect's last chance to get it right?

20 A. Right.

21 Q. What did you understand, you personally
22 understand, he meant by that?

23 A. I didn't know if he was exaggerating a little bit
24 or just trying to emphasize his point that we needed to make
25 sure that the quality was better, that we needed to be

1 stable so that we didn't lose our customer base and their
2 belief in us to deliver quality products.

3 Q. From your association with other developers, did
4 you -- was it your sense they understood Mr. LaVange in the
5 same way?

6 A. I don't --

7 MS. VISHIO: Objection, Your Honor, he can't speak to
8 that.

9 THE COURT: He doesn't know unless they told him.

10 THE WITNESS: I don't know what they were thinking and
11 I don't remember that.

12 Q. (By Mr. Jardine) What was your -- so I gather
13 from your testimony that under Mr. Weitzel's leadership that
14 people went to work on the next release. What do you recall
15 the next release was?

16 A. It was a patch or a bug fix patch 6.0A or 6.0
17 something. So we just fix bugs and tried to improve the
18 stability of the product.

19 Q. Do you recall when that patch was released?

20 A. I don't. I don't.

21 Q. Does the spring of 1994 sound about right?

22 A. Yeah, because I don't think it was too long
23 after. I think it was -- it was a few months.

24 Q. And was the -- after you worked on that patch,
25 what was your next assignment?

1 A. Then my next assignment was 6.1.

2 Q. And did you have a new position with respect to
3 6.1?

4 A. I did some -- I don't remember the timeframe, but
5 time during 6.1 I was made a team leader and that is when I
6 had the user interface team. And so I had additional
7 features that were assigned to me to work on and then to
8 give technical leadership to my team members.

9 Q. How many people were on your team during the
10 development period for WordPerfect 6.1?

11 A. For me I think I had four -- four different
12 engineers underneath me.

13 Q. And do you recall when WordPerfect 6.1 was
14 released?

15 A. Fall -- I would say October of '94, or something
16 like that.

17 Q. I think officially November, but right about the
18 right timeframe. So just so we have, the jury has the
19 timeframe, as I understand it, WordPerfect 6.0 was released
20 in September or October of '93, and WordPerfect 6.1 was
21 released in October/November of '94?

22 A. Right.

23 Q. Is that your testimony?

24 A. Yeah.

25 THE COURT: 6.0A was somewhere --

1 MR. JARDINE: In between.

2 THE WITNESS: Spring, springtime.

3 Q. (By Mr. Jardine) Was WordPerfect 6.1 a 16-bit or
4 32-bit operating system?

5 A. 16-bit.

6 Q. Okay. Do you know in this, as you and your team
7 were working on WordPerfect 6.1 through 1994, up until the
8 time you finished your work were you doing any work on a
9 32-bit system?

10 A. I might have started writing a design doc or a
11 requirements document. I don't remember coding for Windows
12 95. You fix bugs right up until you release. But if you
13 don't have any bugs, then you start working on the next
14 product. So I'm sure I had some time here and there to
15 start working on, you know, the design or the user
16 requirements for the next feature, for the next product.

17 Q. Would it be fair to say, and you correct me if
18 this is wrong, but up until the time that WordPerfect 6.1
19 released, the majority of your time and your team's time was
20 devoted to the 6.1 product, the 16-bit product?

21 A. For my team I would say yes.

22 Q. Okay. Now, this period of time we're talking
23 about, 1994, is the period of time in which the Novell
24 acquisition of WordPerfect took place?

25 A. Right.

1 Q. I think you testified earlier that it closed in
2 June of 1994?

3 A. '94.

4 Q. And do you recall that it was announced a few
5 months earlier?

6 A. Yeah, I don't remember the timeframe from when it
7 was announced to when it was closed, but it seems like it
8 was spring or early summer, yeah.

9 Q. And apparently sometime in 1994 with that
10 acquisition and the addition of Quattro Pro the development
11 teams of Novell began to also focus on a PerfectOffice
12 suite. Did you have any involvement in the development
13 process for the PerfectOffice suite, PerfectOffice 3.0, that
14 was released in December of 1994?

15 A. I don't remember any additional work that I did
16 for PerfectOffice. I wrote the features that were assigned
17 to me for WordPerfect which were then the WordPerfect
18 product was consumed by PerfectOffice. I don't remember
19 doing any additional work for the PerfectOffice product. I
20 may have, I just don't remember.

21 Q. Do you have any recollection today, looking back,
22 about whether the addition of the Quattro Pro product and
23 the PerfectOffice project in '94 slowed down or delayed in
24 any way getting the WordPerfect 6.1 product out or the
25 PerfectOffice 3.0 product out by virtue of this additional

1 work?

2 MS. VISHIO: Objection, foundation, Your Honor. He
3 just testified that he wasn't aware of additional work he
4 had done.

5 THE COURT: Go ahead and answer. I think -- I think
6 you were saying --

7 THE WITNESS: I don't have the perspective of -- there
8 were a lot of different groups. They had the engine group,
9 the shared code group. So I don't recall and I don't have
10 the knowledge of what those groups were doing and how much
11 they had to work on PerfectOffice.

12 Q. (By Mr. Jardine) Let me turn to a different
13 topic now which is the effect of the Novell acquisition. Do
14 you recall how you learned about Novell's acquisition of
15 WordPerfect?

16 A. I don't remember exactly how I learned. The
17 thing that stands out in my mind is that we had an e-mail
18 saying this was happening and go to the conference room and
19 we watched a video simulcast of the announcement with the
20 Novell and WordPerfect executives. I might have got an
21 e-mail an hour before that or a press release, you know,
22 saying this is happening go to the conference room. I don't
23 remember the exact timing of it.

24 Q. Do you recall what your personal reaction was
25 when you learned about the acquisition?

1 A. I was a little surprised. Yeah.

2 Q. Was there a change in the senior management of
3 the company after this acquisition occurred?

4 A. Yes. There had been change because before that
5 because Alan Ashton had stepped down and Ad Reitveld was
6 promoted to the president of WordPerfect. And we went
7 through layoffs and it was kind of a tumultuous time because
8 we had never experienced layoffs at WordPerfect. And then
9 Novell bought us and I think there was some additional
10 changing of executives when Novell bought us.

11 Q. What was your perception of the attitude of
12 Novell executives toward the WordPerfect product?

13 A. At the time it was fine when they bought us.

14 Q. Did your sense of that change over time?

15 A. It did near the end. And the thing that stands
16 out in my mind was I want to say Halloween of '95, we were
17 all called to go to Building J to the large auditorium, all
18 of the WordPerfect folks, and they didn't have any chairs
19 set up for us so we all had to sit on the floor. And they
20 made the announcement that they were going to sell
21 WordPerfect. And Mary Burnside was doing a question and
22 answer and somebody stood up and said you know we have heard
23 that you never liked us in the first place. And she said
24 that is not true. I use WordPerfect, you know, every day I
25 use WordPerfect. And the person said what version? And she

1 said on my Apple or whatever it was, I can't remember. And
2 the person said, we don't even ship that version of
3 WordPerfect on that computer.

4 MS. VISHIO: Objection, Your Honor, move to strike as
5 hearsay.

6 MR. JARDINE: Can I show the organizational chart?

7 THE COURT: No. No. We know who Ms. Burnside is. We
8 have heard that before. I know Ms. Burnside is COO, right?

9 MR. JARDINE: I have got a demonstrative it will take
10 just a minute.

11 THE COURT: Objection is overruled. But go ahead.

12 MR. JARDINE: Show KF-1.

13 Q. (By Mr. Jardine) This is an ORG chart as we
14 understand it of the senior Novell employees. Can you see
15 it?

16 A. I can.

17 Q. It shows Mr. Frankenberg as the chairman,
18 president and CEO?

19 A. Yes.

20 Q. Do you see that?

21 A. I see that.

22 Q. And then the next level is executive vice
23 president and do you see Ms. Mary Burnside to the left?

24 A. I do.

25 Q. And it says COO?

1 A. Uh-huh.

2 Q. Was that your understanding of her position?

3 A. Yes.

4 Q. And this shows, I think, seven senior
5 vice-presidents. We had testimony yesterday or Monday about
6 Joseph Marengi who is another one of the executive
7 vice-presidents of EBP of worldwide sales.

8 A. Yes.

9 Q. So that was your understanding of Mary Burnside's
10 position?

11 A. Yes.

12 THE COURT: In any event, it is still -- the objection
13 is overruled. It is not for the truth of it any way, it is
14 for the understanding of what he had about -- the enthusiasm
15 for WordPerfect.

16 Q. (By Mr. Jardine) What was your reaction,
17 personally, when -- to Ms. Burnside's comments?

18 A. I remember when the person -- I don't remember
19 the person that stood up who asked the question, when he
20 said WordPerfect is not even on that platform, that we all
21 kind of chuckled and she was taken aback a little bit. So
22 that was not -- that was not a good day. So we were all --
23 we were all a little bit, you know, emotional or stunned or
24 whatever. I remember talking about that trick or treating
25 with my kids that night with my neighbors that worked at

1 Novell.

2 Q. So it was a topic of conversation for a while?

3 A. Yeah. Uh-huh (affirmative).

4 Q. Do you recall at the time of the acquisition

5 Novell representatives saying or explaining that part of its

6 vision in the acquisition was to create networked

7 applications?

8 A. I do.

9 Q. From the perspective of the work that you and

10 your team did, did that ever happen?

11 A. My team didn't do that. I know there was another

12 team that was assigned to work on that and I didn't have any

13 visibility into what they did or how successful they were.

14 Q. Did any of the fruits of their work ever impact

15 or come to play in the work you were doing on the

16 WordPerfect product?

17 A. The only thing that I could think of would be

18 maybe a remote install or network based install or something

19 like that. But Gary Gibb or Steve Weitzel would have more

20 of a perspective on the whole product to be able to answer

21 that.

22 Q. But from your perspective is that the only

23 evidence?

24 A. That is the only thing that I can remember.

25 There may have been others, but I -- I wasn't -- I didn't

1 have the authority in that area or any visibility into that.

2 Q. Now, once the WordPerfect 6.1 product shipped,
3 what was your next responsibility?

4 A. So after 6.1 shipped, we started working on user
5 requirements and design documents for the features that we
6 were assigned for 7.0 or Windows, the Windows 95 platform.

7 Q. That was, I think so we're clear, and I think
8 everyone now knows, that was a 32-bit product?

9 A. Yes.

10 Q. And that was being designed for Windows 95?

11 A. Yes.

12 Q. As part of your responsibilities as a team leader
13 on the WordPerfect piece, did you attend any product or
14 development meetings relating to the development of
15 WordPerfect 7.0?

16 A. Yes.

17 Q. And were any of those regularly held meetings?

18 A. Yeah. You have normal staff meetings and then we
19 had some meetings with shared code, the shared code team. I
20 don't remember if it went on for a couple of months or how
21 many months, but we had some it seemed like regularly
22 scheduled meetings every week or so. Every week as I
23 remember.

24 Q. Would there be discussions in any of those
25 meetings with respect to projected or goal release dates for

1 the 7.0 product?

2 A. I am sure there was. I don't remember off the
3 top of my head, but I'm sure we discussed dates and risks
4 and features and stuff like that.

5 Q. Let me just show you some documents that may
6 refresh your recollection. I'm going to hand you
7 Defendant's Exhibit 211. We have looked at this document
8 before and there has been testimony in this case that it
9 doesn't bear a date, that it was released sometime -- or
10 that it was prepared sometime in the fall, perhaps late fall
11 of 1994. Do you recall --

12 THE COURT: Do you want to refresh our best
13 recollection as to what Storm is?

14 MR. JARDINE: I will do that.

15 Q. (By Mr. Jardine) Do you recall what the code
16 name Storm stood for?

17 A. I thought it was -- it is either the code name
18 for I thought it was PerfectOffice on Windows 95.

19 Q. I think that is what the testimony has been.
20 Thank you, Your Honor. And there is no names of people that
21 were copied on this. Do you have any recollection of having
22 seen this document or parts of it before?

23 A. I know I saw this in the deposition, in my
24 deposition. I don't remember if I saw this back when I
25 worked at WordPerfect and Novell.

1 Q. Let me just focus you very briefly on a couple of
2 aspects of this document. This document lays out three
3 different proposals for a Windows 95 strategy. Proposal one
4 is, as can you see on Page 1, if we can highlight that, is
5 primarily a Win 95 strategy for September 30, 1995 and then
6 it lists the problems and advantages.

7 And if you turn to the next page, there is a proposal
8 two that is described as a solution driven strategy for
9 January 1996. And I think that is to release PerfectOffice
10 in January of 1996.

11 And then there is a third page that says proposal
12 three, WP Win, would that be WordPerfect for Windows?

13 A. Yes.

14 Q. September '95. Then the rest later April 1996.

15 So my question to you is do you recall ever
16 hearing about the time, maybe slightly before WordPerfect
17 6.1 was released, a discussion of these three timing options
18 for WordPerfect 7.0 or the PerfectOffice for Windows 95
19 product?

20 A. You know, I don't remember. I may have. You
21 said before 6.1 shipped or about the same time?

22 Q. Yes.

23 A. You know, I -- I -- I don't remember at that time
24 if I was made aware of that.

25 Q. All right. If we can go back to Page 1 on the

1 problems side, the box labeled point two talks about
2 challenges for Quattro Pro making that proposal on schedule.
3 We won't take time to read it. And then the box with the
4 three on it says, "PR and shared code are in a very similar
5 situation to QP from a development standpoint."

6 Do you recall what PR stands for?

7 A. Presentations.

8 Q. All right. And then if we look at Box 4 it says,
9 "WP is only on target for this date if the other pieces they
10 rely are there on time such as Shared Code, Draw and Chart.
11 The WordPerfect team is the best prepared because of advance
12 work and significant resources but they still feel the
13 schedule is aggressive but achievable."

14 Do you recall that your team, the WordPerfect
15 team, was ahead of the Quattro Pro team and the shared code
16 team in being ready for the Windows 95 product at this point
17 in time?

18 A. Yeah. The only thing that sticks in my mind is I
19 know the Quattro Pro team had an issue with localization and
20 the way they handled resources. And then I understood they
21 had engineers that left the company.

22 Q. Let me follow that document.

23 A. That is what is in my mind. That is what I
24 remember.

25 Q. Great. Thank you. Let me show you what has been

1 marked as DX-221.

2 DX-221, Mr. Ford, appears to be an e-mail from Bruce
3 Brereton, and it is addressed to BU-staff, BU-managers. Can
4 you remind the jury who Mr. Brereton is?

5 A. He was our VP of engineering, I believe, for our
6 business unit, our -- yeah, you know, our business unit.

7 Q. Is he someone Steve Weitzel would have reported
8 to?

9 A. Yes.

10 Q. And Gary Gibb?

11 A. Yes.

12 Q. And BU, what would that stand for?

13 A. Business unit.

14 Q. And the date of this, as you can see, is March
15 the 1st, 1995. And if we can read, I would like to just
16 focus on the first three paragraphs. Let's start with the
17 first paragraph. "In an effort to make sure we are all
18 in-sync with our product dates, I'm sending this message out
19 to our group leaders. Please forward this with your teams."
20 Would that have included you?

21 A. I believe it would because I was a team lead and
22 it says it is addressed to staff and managers. So I would
23 assume that all of the managers were instructed to give it
24 to their team members.

25 Q. As you sit here today do you recall this

1 document?

2 A. You know, I don't remember it.

3 Q. Is that -- is it possible that you received it?

4 A. Oh, I'm sure I could have received it. It was
5 17 years ago, so I could have received it.

6 Q. We all understand that.

7 A. 16 years ago.

8 Q. The next part of the first paragraph reads, "as
9 you know, quote, "plan of record" is that we would ship our
10 Win 95 products as follows. WordPerfect: September 15th;
11 Storm: November 30th, paren the suite and the stand-alone
12 products."

13 Do you remember in this timeframe that there was
14 a quote "plan of record" to ship WordPerfect first aiming
15 for September 1995, and to ship Storm and the stand-alone
16 products two and a half months later?

17 A. I don't remember a particular instance. I do
18 remember there was a lot of scheduled discussions about when
19 to ship what and where our features were and where shared
20 code was. I don't remember this specific instance, but I
21 remember there was a lot of discussion on dates and timing.

22 Q. All right. Let's look at the next paragraph and
23 see if you recall this.

24 It reads, "after further discussion and an
25 analysis of several options, we feel it will be much better

1 to have WP, paren, which then implies PerfectFit, WPDraw and
2 many other components, close paren, on the same schedule as
3 Storm. Also, the QP team have examined their product
4 deliver timeframe and feel December 30th is a more realistic
5 date. Therefore, after reviewing this with Mark, Glen and
6 others, we have moved the Storm RTM date back by one month
7 to December 30th and have put WP on the same timeline as
8 Storm."

9 Who would Mark in that sentence refer --
10 paragraph refer to, if you know?

11 A. Who would Mark --

12 Q. Yeah, it says after reviewing this with Mark,
13 Glen and others?

14 A. That would be probably Mark Caulkins, I want to
15 say.

16 Q. All right. And do you recall his position?

17 A. Glen Mella. Mark Caulkins was, I think, the GM
18 of our business unit.

19 Q. All right. And Mr. Mella?

20 A. Glen Mella was our marketing vice-president, I
21 believe.

22 Q. Do you recall in about this timeframe learning
23 that a decision had been made by senior management to move
24 back, to make -- to have as a goal that all of the products
25 ship together and to reset the date for December 30th?

1 A. You know, I don't remember a specific instance.
2 I -- I just -- I get the recollection that the dates changed
3 a bit because we were trying to, you know, ship and get
4 everything together, piece it altogether so we could ship
5 the product at the same time. I just -- I don't remember
6 exact time and looking at this yeah, I remember a meeting I
7 was in or a certain document where I remember that it was
8 moved back to this date.

9 Q. One other point on this document. If you look
10 down to the next paragraph, "starts some additional
11 comments." The last four lines of that reads, "also, we are
12 committed to help out the QP team in any way we can, paren,
13 most likely PerfectFit and Win 95 kinds of things, close
14 paren, period. So please be aware that some of you will be
15 asked to travel to Scotts Valley for short trips and may
16 work on QP for some amount of time while here in Orem, paren
17 FWIW, which I think means for what it is worth, their
18 location is beautiful."

19 A. I do remember that. I do remember I wondered who
20 they would ask and how long it would go and I do remember
21 that request.

22 Q. Were you ever asked to go?

23 A. I was never asked to go.

24 Q. Thank you. We have had some questions about --
25 well, let me show you one other document and just see if you

1 recognize this document. DX-224

2 Do you recall seeing documents in this time
3 period that were labeled Market Requirements Documents?

4 A. I don't believe I would get these type of
5 documents. The documents I would have would be user
6 requirements documents or design documents. I have seen
7 these later in Novell and in some roles, but I don't believe
8 I received this, let me just look through it, when I was at
9 WordPerfect.

10 Q. Let me -- actually I'm just going to ask you
11 about one page to see if you have ever seen it or are
12 familiar with the analytical process.

13 Could you turn back to Page 44, it is near the
14 end. Do you see that? Are you to that page?

15 A. Okay.

16 Q. Do you recall ever seeing this document or a
17 document like it where management created a matrix and
18 ranked the risks to hitting the release dates on time?

19 A. I don't remember this document. I do remember
20 being asked about my feature and my team's feature and
21 assessing where we're at and our confidence level about
22 hitting dates. But I don't remember seeing this document.
23 I may have seen it, but I don't remember it.

24 Q. Do you recall in the meetings that you have
25 described attending in this 1995 period ever having

1 discussions about Quattro Pro being ranked as the highest
2 overall risk to hitting the release dates?

3 A. I had heard that they were having issues with
4 localization and resource issues and then where they wanted
5 developers to go help them out. So obviously we figured
6 that they were late and at risk with the schedule.

7 Q. Listed at number five is PerfectFit delivers
8 late. Was PerfectFit the same as shared code in your mind?

9 A. In my mind it is. I am sure there are other
10 components that are not shared code, but when I see
11 PerfectFit, I think of the shared code pieces.

12 Q. Were you aware that there were some issues or
13 identified risks with respect to shared code being timely
14 with respect to the proposed release dates?

15 A. Yeah, because I -- I worked on the open and save
16 dialogue, so I had to call in to shared code for those
17 dialogues to be displayed in WordPerfect. So I had to
18 integrate that piece of shared code into the WordPerfect for
19 Windows product. And I worked with the shared code
20 developers to do that integration and I had discussions with
21 Steve Weitzel and Gary Gibb on where we were at in the
22 cycle. There were discussions on whether they should go to
23 the common open dialogue that Microsoft provided or whether
24 they should keep going down the customized dialogue that the
25 shared code group was working on.

1 Q. Great. I would like to ask you some questions
2 about that.

3 Can you explain to the jury what the relationship
4 was between your team which dealt with the user interface in
5 the WordPerfect product for Windows 95 and the shared code
6 team?

7 A. So it was mainly me, so I had the features that
8 would allow you to open a file or insert a file or save a
9 file. And the shared code groups, specifically Steve Giles,
10 Adam Harral, Greg Richardson, were working on a new, what we
11 called, open save dialogue that would let you search by file
12 name or search by content and had some other features that
13 the Microsoft common dialogue did not have.

14 And so it was my job to call their APIs inside of
15 WordPerfect for Windows so I would link their shared code
16 library into WordPerfect for Windows, call their API
17 and have it display and, you know, use it so that you could
18 open files and save files and have the dialogue come up.

19 Q. Were other features of the user interface for
20 WordPerfect primarily under the responsibility of your team
21 or the shared code team?

22 A. There were other teams besides mine. So for
23 WordPerfect Windows you have a word processor, you have a
24 tool bar at the top where you can change it to bold, to
25 underline, to center. There are features to change the

1 font, the spacing, all kinds of different user interface
2 features. So I had some of the team, but there were other
3 engineers that worked on user interface features as well.
4 And I can't remember the team names, but it would be in an
5 ORG chart. Some of those folks probably interacted with
6 shared code functionality as well and I would have to go
7 down each feature and see a list and tell you who did what.

8 Q. We won't do that.

9 A. Okay. Thank you.

10 Q. Who made the final determination about what
11 features would be in WordPerfect 7.0 for Windows 95?

12 A. So that would be our marketing -- product
13 marketing manager. And then probably a discussion with him
14 and Steve Weitzel and Gary Gibb. Probably those three. And
15 if it escalated, then it would probably go up to Glen Mella
16 and Bruce Brereton. And if it was a shared code feature
17 that they wanted to have in the product, then I think Tom
18 Creighton is over the shared code group so he would be
19 involved as well and he would be a decision maker.

20 Q. And does making determination about what are the
21 features that would be included in the final product a trade
22 off sometimes between features you might like versus getting
23 the product out in time?

24 A. Yes.

25 Q. That is a -- is that, in your experience common?

1 A. I just did that for the past nine months with my
2 project at Blue Coat.

3 Q. You mentioned a little while ago the file open
4 dialogue. What was your role and responsibility as the team
5 leader for the user interface for the WordPerfect 7.0
6 product? What was your relationship with respect to the
7 file open dialogue for that product?

8 A. So I implemented it. So it was my feature
9 responsibility to make sure that it worked properly and it
10 ran and there were no bugs.

11 Q. And did I understand your testimony correctly
12 that that would be implementing what shared code gave you?

13 A. Right.

14 Q. And who did you deal with primarily among those
15 three developers that you identified?

16 A. Steve and Adam the most. I probably dealt with
17 Steve Giles the most. I did most debugging with Steve, but
18 I did some with Adam as well.

19 Q. All right. Now, I gather you know Mr. Harral?

20 A. I do, yes.

21 Q. Did he have a nickname given to him by other
22 software developers at WordPerfect?

23 A. Sometimes. Yeah.

24 Q. Do you recall what that nickname was?

25 A. I do. So Adam is a talented engineer, very

1 talented, great guy, I like to work with him. So he would
2 -- he would come in late because he would stay late until
3 1:00 or 2:00 in the morning. And when you check in code at
4 1:00 or 2:00 in the morning you are sleepy. So sometimes
5 you would break what we call break the build or break the
6 code. So one of the nicknames was Adam Bomb because he
7 would check in something that breaks the build and things
8 like so a bomb, so Adam Bomb. But Adam was a great
9 developer, very talented.

10 Q. Now, you said that you mostly did debugging with
11 Steve Giles?

12 A. When I had an issue with the file open dialogue
13 and I determined that it could be a shared code issue.

14 Q. So did there come a point in time when Mr. Giles,
15 for the shared code team delivered shared code code for you
16 to implement in the WordPerfect 7.0?

17 A. So that was ongoing. I want to say it started in
18 the spring/summer of '95 and I would take different builds
19 periodically until we shipped with Corel in May of '96. So
20 you get different -- different handoffs, different builds as
21 bugs are fixed and features are added.

22 Q. Were there issues with the code, that shared code
23 provided you to implement in WordPerfect 7.0 in the
24 spring/summer of 1995?

25 A. Well, yeah. I don't believe it was feature

1 complete at that time. So we were just trying to get the
2 framework up and running.

3 Q. Do you know a Leonard Shoell?

4 A. I do.

5 Q. What was his position at this time in
6 WordPerfect?

7 A. He was on -- he was on the first floor. He was
8 on the like the graphics team or something, the GUI team. I
9 think he was one of the engineers, maybe his team was one of
10 the teams that were looking at 32-bit while the rest of us
11 were working on 6.1. So he was doing some Windows 95 and
12 some NT graphics features.

13 Q. Did you have any information or knowledge about
14 his reaction to the shared code code that was delivered to
15 his part of the team in this time period?

16 A. So the only interaction --

17 MS. VISHIO: Objection, Your Honor, hearsay.

18 THE COURT: What is the basis of your knowledge, if
19 you have it?

20 THE WITNESS: Well, I had a personal conversation with
21 Leonard. He came up to my office and asked me how it was
22 going for me implementing the open save dialogue. And I
23 told him where I was at. And he told me that he was having
24 issues getting it to run, and that he had other things to do
25 and he wasn't going to mess with it any more until it was

1 more stable.

2 THE COURT: Overruled.

3 MR. JARDINE: Your Honor, I think this is a pretty
4 good time to break.

5 THE COURT: Yeah, I was hoping for Mr. Ford and his
6 product that we could let him go, but we're not going to
7 make it. So we'll take about a 20-minute break and then
8 pick it up.

9 (Whereupon, the jury left the courtroom.)

10 (Recess.)

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