

1 MR. TULCHIN: Could I quickly mention two
2 scheduling things before the jury comes in? It will just
3 take a minute.

4 The first is I think we're really quite on track
5 to be finished by the 12th, Monday the 12th with our
6 witnesses, and that's even including taking into account
7 that you won't be here on the 9th. So if we finish a little
8 early today, with the Court's permission, we would like to
9 start with our next witness tomorrow morning. We have two
10 live witnesses tomorrow. If we finish early, I don't think
11 it will be much early, but that's number one.

12 Number two, we have a deposition of a fellow named
13 Middleton where Novell has six or seven objections to
14 passages that we've been unable to work out with them. At
15 the Court's convenience, perhaps we could have a little
16 discussion about these. Ms. Gao, who's appeared before you
17 earlier, Your Honor, will be prepared to do this whenever
18 it's convenient for you. We have a copy of the transcript
19 if you want to see these passages in advance.

20 THE COURT: If you want to give that to me in
21 advance. You don't have to give them to me now. I figure
22 we'll go until 2:00. I've got to take a -- there's a
23 dispute in one of my regular cases. I've got a conference
24 call at 2:10. I thought that could be -- so we'll see what
25 time we finish today. But I think today we ought to go

1 over -- begin the process of maybe going through those
2 exhibits. And then we'll take up the other issue after
3 Novell's had that letter from yesterday. When you all have
4 a chance, we'll take that up. And that takes care of it.

5 I thought we would stop -- because I know you all
6 have witnesses to prepare, I thought we would try to stop
7 around four o'clock or something today. Does that give you
8 time to prepare for your witnesses tomorrow? I thought we
9 would talk about as many exhibits as we can. Then we'll
10 stop.

11 MR. TULCHIN: I don't think it will take us nearly
12 that long, at least that's my impression.

13 THE COURT: I hope not.

14 (Jury present)

15 THE COURT: We're very much on track. If we
16 finish a little early today, we're going to stop today. I
17 hope it will be -- still will be by two o'clock. If it's
18 before two o'clock, we're going to break. But we're very
19 much on schedule.

20 BY MR. JARDINE:

21 Q Mr. Ford, in your testimony this morning you talked
22 about issues relating to the common file open dialog and
23 issues related to the file open dialog. I would like to
24 show you an exhibit, DX114. This is a document dated July
25 11, 1995, but the label at the top is PerfectFit 95, open

1 file dialog -- functions and issues.

2 Looking at this, do you recall if you ever saw this
3 document at the time?

4 A Yeah -- yes, it looks familiar.

5 Q The first paragraph reads, the main purpose of this
6 document is to provide a functional description of the open
7 dialog for Storm. It lists functions and behavior, and most
8 important, a consensus of open dialog functionality. This
9 document was necessary to alleviate differences of opinion
10 of how this dialog would be implemented.

11 Do you recall what the differences of opinion were
12 about how the dialog was to be implemented?

13 A I don't. I don't remember being in any of those
14 meetings where those differences were expressed or decided.

15 Q The next line reads, coding will occur from the
16 information provided by this document, this document
17 supersedes the user requirements section of the design
18 document.

19 Do you recall that in July of 1995 there were still
20 decisions being made about what coding would be done for the
21 file open dialog? And this is probably shared code, but --

22 A Yeah, this would be the shared code dialog. So I
23 remember in the summer, summer time frame -- spring, summer
24 time frame we had meetings discussing the open dialog, where
25 they were at on their schedule, whether they should use it,

1 if they should use the common open dialog that Microsoft
2 provided in their APIs for Windows 95. And so I remember a
3 couple of those meetings in building E.

4 Q Were you a part of those meetings?

5 A I was.

6 Q Do you recall specifics about what the debate or what
7 the discussion was with respect to using the customized file
8 open dialog or using the Windows 95 common file open dialog?

9 A The thing that I remember was dates and schedule and
10 when they could deliver it, and when they could deliver what
11 piece of functionality versus -- what is the functionality
12 for the new dialog versus let's just use the common open
13 dialog right now and use the new one in the next release.
14 So those were some of the discussions that I remembered.

15 They could have discussed specific functionality or
16 features, but I don't remember that. Nothing sticks out on
17 a particular feature.

18 Q Were you ever asked your opinion about whether you
19 could write WordPerfect 7.0 and/or PerfectOffice for
20 Windows 95 on the Windows 95 common file open dialog?

21 A So I was asked my opinion on whether we should use the
22 common open dialog or whether we should wait and -- not
23 wait, but keep trying to implement the new shared code file
24 open dialog, and what my opinion was. And I stated to Gary
25 Gibb and Steve Weitzel that if they were concerned about

1 schedule and they wanted to schedule, then the common open
2 dialog would be the safest route for that because we were
3 still trying to implement the shared code and there were no
4 guarantees of when that would be completed and if it would
5 be completed on time.

6 Q Did there ever a come a time when PerfectOffice for
7 Windows 95 was, in fact, implemented on the Windows 95
8 common file open dialog?

9 A I believe there was. So when Corel completed the
10 acquisition, we moved down to building G. And Paul Skillen
11 was vice president from Corel, he had moved down from
12 Ottawa, and he had instructed Jim Johnson, who was the VP of
13 the shared code at that time, to have the common dialog up
14 and running and have it working before we continued to try
15 to implement the new shared code dialog. And he -- that
16 didn't happen to Paul Skillen's satisfaction, so Paul
17 Skillen fired Jim, and somebody else was brought in as the
18 director of shared code.

19 And so for a time we got the common dialog up and
20 running. And then Steve and Adam went -- continued to try
21 to get the new shared code file open dialog up and running
22 and I continued to implement it into WordPerfect, and we
23 were successful, and the new shared code open file dialog
24 shipped with WordPerfect for Windows 7.0 in May.

25 Q Let me just make sure I understand your testimony. As

1 I understand it, after the acquisition by Corel, there came
2 a point in time when the PerfectOffice product was
3 implemented, the Windows common file open dialog was up and
4 running?

5 A Yes.

6 Q And --

7 A We never shipped with it, but it was up and running on
8 my machine and in our engineering environment.

9 Q And as I understand your testimony, that the shared
10 code developers kept working on the customized file open
11 dialog and ultimately that's what was shipped?

12 A Yes.

13 MR. JARDINE: I have no further questions, Your
14 Honor.

15 CROSS-EXAMINATION

16 BY MS. VISHIO:

17 Q Good afternoon, Mr. Ford. My name is Mariam Vishio.
18 We just meant briefly here today. It was a pleasure to meet
19 you.

20 If I understand your testimony from earlier today, your
21 responsibility with the dialogs was only to make the -- was
22 only to make calls to the file open and save as dialog
23 through the shared code; is that correct?

24 A That's correct.

25 Q And I think you might have mentioned this before, but

1 it's fair to state, isn't it, that to the extent there were
2 issues with the development of the file open dialog or the
3 save as dialog, then Mr. Harral or Mr. Richardson would be
4 more knowledgeable than you with respect to those issues; is
5 that correct?

6 A That's correct. Mr. Giles as well.

7 Q After Novell acquired WordPerfect, you still had the
8 same director, the same manager, and the same vice president
9 that you were reporting to; is that correct?

10 A That's correct.

11 Q And during this transition in new management, you were
12 working with your team plugging away with the same work that
13 you were doing before the merger; is that correct?

14 A Yes.

15 Q Your efforts to fix bugs in WordPerfect 6.0 led to the
16 release of WordPerfect 6.0A and WordPerfect 6.1; is that
17 correct?

18 A So my effort to fix bugs first was with WordPerfect
19 6.0, and then we fixed bugs for 6.0A as well, and I fixed
20 bugs for 6.1 and worked on new features for 6.1 as well.

21 Q Do you recall that WordPerfect 6.0A was favorably
22 reviewed in the market; is that correct?

23 A I don't remember -- I don't remember if it was
24 favorably reviewed or not.

25 Q Mr. Ford, I'm going to hand you what has been marked as

1 PX233 for identification purposes only.

2 MS. VISHIO: Mr. Goldberg, please don't put this
3 up on the screen yet.

4 BY MS. VISHIO:

5 Q PX233 is from the Business Services Industry Business
6 Wire and it's entitled WordPerfect 6.0A for Windows named
7 best word processor for second year in a row; WordPerfect
8 for Windows chosen over Microsoft Word for Windows as best
9 word processor for 1994, and is dated November 14th, 1994.

10 If you could just take a moment to review this document
11 to see if it refreshes your recollection about the reviews
12 that WordPerfect 6.0A received.

13 Have you reviewed the document?

14 A I have.

15 Q Does that refresh your recollection that WordPerfect
16 6.0 received favorable reviews in the marketplace?

17 A You know, I don't remember. We thought we had the best
18 word processor. We had a lot of pride with the product, and
19 so we always believed it was the best. I mean even until
20 today, I'll tell you it was the best. But I could have read
21 this before. I probably have read articles like this
22 because we would have watched the industry publications and
23 stuff. But I don't remember specifically if I've read this
24 or not.

25 Q You testified on direct about a speech that

1 Ms. Burnside had given. Do you recall that testimony?

2 A I do. It was a question and answer session.

3 Q In that question and answer session, she had made a
4 comment about the version of WordPerfect that was running on
5 her computer; is that right?

6 A That's correct.

7 Q And it could be that Ms. Burnside simply misspoke; is
8 that right?

9 A It could be, sure.

10 Q She could have just been mistaken about the version of
11 WordPerfect she had on her computer; is that correct?

12 A That's correct. You could ask her and she could tell
13 you what version she had.

14 Q Now you weren't a member of the Quattro Pro team, were
15 you?

16 A No.

17 Q You weren't a developer for Quattro Pro; is that right?

18 A No.

19 Q And isn't it fair to say that if there were issues with
20 Quattro Pro or how that affected the development of the
21 PerfectOffice Suite, that Gary Gibb would be more
22 knowledgeable than you as to whatever those issues might be;
23 is that correct?

24 A Yes. Yes, he would be.

25 Q You also testified on direct that you and your team had

1 spent -- I think it was a majority of your time working on
2 the 16-bit version of WordPerfect before turning to your
3 development efforts for the 32-bit product. Do you recall
4 giving that testimony?

5 A I do.

6 Q It's true, though, isn't it, that there were other
7 teams at Novell that were working on the 32-bit product, the
8 WordPerfect product for Windows 95 before you had focused
9 your attention on the 32-bit product; is that right?

10 A Yes, I believe there was.

11 Q On direct you also asked about Jim Johnson's departure
12 from Corel. Do you recall that testimony?

13 A I do.

14 Q And you had said that Mr. Skillen of Corel had
15 instructed Mr. Johnson to use the common file open dialog
16 and the save as dialogs, and when Mr. Johnson did not follow
17 those orders, he was fired; is that correct?

18 A That's correct.

19 Q So he lost his job protecting the custom file open
20 dialog; is that correct?

21 A I believe he did.

22 Q This was around the time that Corel acquired
23 WordPerfect from Novell?

24 A I believe it was February, March time frame of 1996.

25 Q And sometime after Mr. Johnson was fired, WordPerfect

1 continued to implement the custom dialog and dialogs and it
2 actually included them in the product that they shipped for
3 Windows 95; is that correct?

4 A Yes.

5 Q Among the things that the shared code group developed,
6 as I believe you've testified before, was actually
7 implementing the file open and save as dialogs for
8 WordPerfect for Windows 95; is that correct?

9 A Yes.

10 Q And WordPerfect chose to write its own custom file open
11 dialog as opposed to using the common file open dialog; is
12 that right?

13 A The shared code group chose to write that, right, and
14 we chose to use that.

15 Q And shared code is part of WordPerfect; is it not?

16 A In the product. I guess I'm separating it from teams.
17 We were in different buildings and different teams had
18 different managers and directors and reporting structures,
19 but as the product, yes, shared code is part of the
20 WordPerfect for Windows product.

21 Q Right. And there are just different teams that work on
22 the WordPerfect product and shared code happened to be one
23 of those teams?

24 A And shared code delivers into other products, such as
25 GroupWise and Quattro Pro, and other products consumed their

1 code as well.

2 Q In fact, in your view, you had thought of the common
3 file open dialog as very basic; is that right?

4 A It had more features than Windows 3.1's s common
5 dialog, so Microsoft had enhanced it. It didn't have as
6 many features as the new shared code file open dialog. So
7 it was more basic than the new one.

8 Q In fact, I believe that the functionality that shared
9 code incorporated into its dialogs, in your view, added
10 value for consumers because they had more features and
11 capabilities; is that right?

12 A Yes.

13 Q Mr. Ford, I'm handing you what has been marked as
14 Defendant's Exhibit 99. It's a requirements document and
15 for file system dated February 26th -- excuse me,
16 February 22nd, 1995.

17 Mr. Ford, do you want to take a moment to review the
18 document? You have seen this document before, correct?

19 A I believe I have, but just let me look through it
20 really quick.

21 Q I believe it was one of your deposition exhibits, if
22 that helps.

23 A Yes, I've seen this.

24 Q Do you recall whether you saw this at the time that you
25 were working at WordPerfect/Novell?

1 A I believe I did.

2 Q Now if you turn to what is labeled page 1, and the page
3 numbers are on the bottom right-hand corner of the document,
4 it has a stamp of NOV-B00435948, if that helps. I would
5 like to turn your attention to the introduction, the first
6 sentence there that says, the open, save as, and select
7 directory dialogs in PerfectFit 2.3, parentheses, used by
8 WPWind6.1, PRWin 3.0, and QPW 6.0, end paren, have given
9 WordPerfect, the Novell applications group good reviews in
10 industry publications file management capabilities.

11 That statement accords with your recollection that
12 WordPerfect's file open dialog was well reviewed by industry
13 publications; is that right?

14 A Yes.

15 Q Now on the bottom of that page under general
16 description, there is a sentence that says -- just the first
17 sentence there, the user interface changes in Windows 95,
18 and the greater functionality in the common dialogs,
19 requires us to change our dialogs to fit the Windows 95
20 style guides and still provide the functionality our users
21 have come to expect.

22 The functionality that the shared code team was trying
23 to implement is the same kind of functionality that
24 WordPerfect users had historically come to expect, is that
25 your understanding?

1 A Yeah, that's my understanding. I don't have an exact
2 recollection of one for one mapping from what they had in
3 6.1 versus what's not there in Windows 95, but I remember it
4 had additional functionality and our customers liked it.

5 Q I would like to move to the next page, page 2, under
6 section three, functional requirements. The first sentence
7 says, items 1.1 through 1.13 are the, quote, must do, end
8 quote, items. The rest are would be nice items, and would
9 be nice is in quotes.

10 Do you see that, where I'm referring?

11 A I do.

12 Q 1.1 through 1.13, then, these first 13 items were
13 considered necessities for the file system for Novell's
14 PerfectOffice 95 Suite; is that correct?

15 A That's correct.

16 Q Now if you could turn to page 4 and look at section
17 five, which is called Windows 95 common dialog problems --
18 excuse me, Windows 95 common dialog problems and needs.
19 This section is identifying the problems and needs for the
20 Windows 95 common dialog; is that correct?

21 A Yes.

22 Q And the custom dialog being designed by the shared code
23 group was to include functionality that was not available
24 here in the common Windows 95 dialog; is that correct?

25 A That's correct.

1 Q And the functionality that shared code was hoping to
2 provide in its file open and save as dialogs included such
3 things as a find capability on a toolbar button or menu,
4 right?

5 A Yes.

6 Q It also providing quick list capability, correct?

7 A Correct.

8 Q And enabling the user to password protect a file; is
9 that right?

10 A That's right.

11 Q To select a default save format; is that correct?

12 A That's correct.

13 Q Also to e-mail a document from the open file and save
14 as dialogs, right?

15 A Right.

16 Q And the common dialogs did not have any of this
17 functionality; is that right?

18 A I don't remember specifically. I would have to take a
19 look. It's been too many years ago. I will take this
20 document's word that they have done the research. I assume
21 this is all factual. I have no reason to doubt it.

22 MS. VISHIO: No further questions, Your Honor.

23 THE COURT: Thanks, Ms. Visio.

24 Anything further, Mr. Jardine?

25 MR. JARDINE: Yes.

1 REDIRECT EXAMINATION

2 BY MR. JARDINE:

3 Q I just want -- if you will keep the document Ms. Vishio
4 was examining you about, I see the date on the first page is
5 February 22, 1995; is that correct?

6 A That's correct.

7 Q Does it comport with your memory that it was in late
8 February 1995 when requirements for the shared code were
9 being developed?

10 A I don't have a view into that group. I know that's
11 when I was doing my requirements and my team was doing our
12 requirements, but I can't say the shared -- when the shared
13 code group was -- had started or was continuing or, you
14 know, were doing their requirements documents.

15 Q Let me try to -- I guess what I'm asking this in a very
16 simple way. This appears to be something like architect
17 plans for the shared code file open dialog?

18 A This is a user feature list, what features are required
19 for this -- for this particular feature or function, what is
20 wanted by -- what we think is wanted by the customer to, you
21 know, make a difference in the marketplace.

22 Q Would this typically precede the development of the
23 code to fulfill those features?

24 A Yes.

25 Q So apparently at the end of February of 1995 those

1 features were being identified?

2 A From the document, they -- I don't know what -- it says
3 revision one, so I don't know if there's any other revisions
4 to other documents because this is the first one. Many
5 times there are multiple revisions, so there could be others
6 after. But generally the requirements are done first before
7 you start coding. You might do a prototype on paper or
8 something, but generally requirements are done first.

9 Q So we've got the date highlighted, if you go to the
10 line next which says revision 1.0, that would typically mean
11 this was the first version of this document?

12 A Correct.

13 Q Just one other question. If you will turn to the third
14 page back under the introduction heading. I'm sorry, it's
15 one forward. I would like you to just look at the sentences
16 after the sentence Ms. Vishio read to you. The second
17 sentence of the introduction reads, these dialogs -- and I
18 think they are referring to the dialogs for WordPerfect
19 6.1 -- these dialogs provided functionality that the
20 Windows 3.X common dialogs did not provide, added value, and
21 allowed users to perform file management and maintenance
22 functions without leaving the current application. However,
23 Windows 95 has new common dialogs that have been changed to
24 fit into the redesigned user interface, and provide much of
25 the same functionality that the PerfectFit dialogs provided

1 for applications in Windows 3.X.

2 Do you recall that being the case with the Windows 95
3 common file open dialog?

4 A Yeah, it had more capabilities. It had some file
5 management. Windows 95 had the Explorer concept. Obviously
6 it didn't have all the features that the shared code guys
7 wanted, but Windows 95 definitely had a lot of features that
8 the 3.1 common dialog didn't have.

9 MR. JARDINE: I have no other questions, Your
10 Honor.

11 THE COURT: Anything further, Ms. Vishio?

12 MS. VISHIO: Nothing further, Your Honor.

13 THE COURT: Thank you very much. Mr. Ford, good
14 luck with your product.

15 THE WITNESS: I wish I had my phone.

16 MR. JARDINE: May I just go out with him?

17 THE COURT: Sure.

18 I gather that we're just going to stop early today
19 instead of stopping late. And tomorrow we're going to stop
20 at 1:30. Again, I'll let you know sometime tomorrow our
21 best estimate as to when we're going to stop on Friday so
22 you can make your plans. We're very much on schedule. We
23 thank you all very much. Have a nice afternoon. I'll stay
24 here with counsel.

25 (Jury excused)

1 THE COURT: I assume it makes more sense for me to
2 read this. You're not planning to use the videotape
3 tomorrow, correct?

4 MR. TULCHIN: We were planning to do it on Friday,
5 Your Honor.

6 THE COURT: So we have time if there are
7 unresolved issues tomorrow?

8 MR. JOHNSON: Your Honor, we knew this was coming
9 obviously because the parties haven't been able to agree on
10 certain things. We prepared just a little memo that rather
11 than you having to look at the whole transcript, this just
12 highlights --

13 THE COURT: Great.

14 MR. JOHNSON: -- both the areas where there are
15 disagreements and also puts in what Microsoft's written
16 response was to our objections, and then our response to
17 their objection, and give you a chance to look at it and
18 then I'm sure we could have some argument if we need to.

19 THE COURT: Thank you.

20 MR. TULCHIN: Do you want the transcript, Your
21 Honor, with tabs on it?

22 THE COURT: I'm sure that's fine.

23 MR. TULCHIN: Whatever you prefer.

24 THE COURT: I'm sure Mr. Johnson's is fine.

25 MR. TULCHIN: Do you want to hear this later today

1 or tomorrow?

2 THE COURT: Tomorrow.

3 MR. JOHNSON: That makes sense, Your Honor.

4 THE COURT: When would you all like -- in terms of
5 this new document issue, do you want me to just -- I don't
6 care, but do you want to address that today or tomorrow, and
7 spoliation.

8 MR. JOHNSON: The now document issue?

9 THE COURT: Yeah, the new document, the letter.

10 MR. JOHNSON: Yeah. We're going to get a response
11 in to you today on that, so we can talk about that tomorrow,
12 if that's all right.

13 THE COURT: That's fine.

14 MR. JOHNSON: And you had mentioned maybe getting
15 into exhibits. Actually some of those have actually come in
16 since then.

17 THE COURT: I wish they all had.

18 MR. JOHNSON: It might make sense for us to just
19 review where the bidding is on that rather than get into it.

20 THE COURT: That's fine with me. The last time we
21 discussed this, you all talked and talked and talked, and I
22 thought I had to make a ruling.

23 MR. JOHNSON: I think you do still, but I think we
24 might be doing some things we don't need to do.

25 THE COURT: That would be wonderful.

1 MR. JOHNSON: So I would suggest we go back and
2 take a look at those because I think some of them have
3 actually come in.

4 MR. PARIS: That's fine, Your Honor. That's true.
5 That's fine. We could do that.

6 THE COURT: The less I have to focus on.
7 Since we're here for a couple of minutes, let me
8 try to get this resolved now. I'll go read it.

9 MR. JOHNSON: Great. Thank you, Your Honor.

10 MR. TULCHIN: Thank you, Your Honor.

11 (Recess)

12 THE COURT: I don't want to make you all wait
13 around. These are the beginning of the discussion. I don't
14 expect people to agree with them, but they are my ideas of
15 what the verdict form and the instructions should be. So we
16 can discuss them later.

17 But why don't we take up that deposition tomorrow.

18 MR. TULCHIN: Thank you very much, Your Honor.

19 (Whereupon, the trial was continued to Thursday,
20 December 1, 2011 at 8:00 a.m.)

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