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

NOVELL, INC.,)	
)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2:04-CV-1045 JFM
)	
MICROSOFT CORPORATION,)	
)	
)	
Defendant.)	
)	

BEFORE THE HONORABLE J. FREDERICK MOTZ

DATE: DECEMBER 6, 2011

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

VOLUME XXVI

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1 was inquiring, back here in January of 1995, about
2 documentation for the NameSpace extensions, correct?

3 A. I think that Mr. Schulman was actually inquiring in
4 early 1994, but, yes, I think it's the same person that I was
5 talking about.

6 Q. Okay. It's early 1995, isn't it, sir? You said '94.

7 A. I'm looking at the mail thread here and the place where
8 George Moore says that Schulman has asked him. He sent that
9 mail in December '94.

10 Q. Oh, I see. I see. You're absolutely right. So late
11 1994. So, it's also pretty clear, based upon your
12 communications with him in March of 1996, that Mr. Schulman
13 was not provided any documentation on the NameSpace
14 extensions between December of 1994 and March of 1996, right?

15 A. I don't know whether he was or not. That's a
16 conclusion you might draw.

17 Q. Well, if you take a look at Defendant's Exhibit 131-A,
18 which I think you also have with you?

19 A. Yes.

20 MR. JOHNSON: If you could bring that up,
21 Mr. Goldberg.

22 Q. BY MR. JOHNSON: And drawing your attention to
23 Mr. Schulman's email to you, on the third page.

24 If we could bring that up, Mr. Goldberg.

25 A. Yes. I see that.

1 Q. He's writing to you and saying that Mr. Silverberg
2 apparently gave out your name and number or email address to
3 see if he could find some documentation on how to create
4 NameSpace extensions, and he says, "Brad insisted to me that
5 these had been documented, but I and others haven't been able
6 to find any docs."

7 Right?

8 A. Yes. I see that.

9 Q. So, again, we can tell from Mr. Schulman's email that,
10 between the period of December, 1994, all the way up to
11 March, 1996, he had not received any documentation on the
12 NameSpace extensions, right?

13 A. Yes. It says here he hadn't been able to find a doc.

14 Q. Okay.

15 If we could return briefly to Plaintiff's Exhibit
16 259, Mr. Goldberg.

17 And I'd like to draw your attention to Mr. Struss'
18 email down there where he's trying to figure out how to
19 respond to Mr. Schulman. And if we could just highlight.
20 Just the paragraph that starts out my initial response is.

21 If you could bring that up.

22 So, Mr. Struss is proposing this response to
23 Mr. Schulman, and he says, "Sorry, Andrew, you can't easily,
24 since it's something supported only for a few system level
25 components, fonts, printers, control panel, it would be a

1 neat general feature to expose at some point, but the way
2 that it works is not something that we can support moving
3 forward beyond the initial release of Windows 95 or to
4 Windows NT, so we didn't want developers to create apps that
5 would inevitable --" I assume he means inevitably -- "break
6 in follow on releases."

7 Do you see that, sir?

8 A. Yes.

9 Q. Now, of course, this is really not the truth to
10 Mr. Schulman, is it, this proposed response?

11 A. This is the truth.

12 Q. Because you had already decided that these API's were
13 in fact staying in Windows 95, and had already been ported to
14 Windows NT. Isn't that a fact, sir?

15 A. No. Well, I don't think that's true. I think that
16 the -- I think what Mr. Struss is saying is the truth,
17 certainly what he believed at that time. And the distinction
18 is that he's saying -- he's saying you can't his easily do
19 this because it is something supported only for a few system
20 level components, fonts, printers control panel. And I think
21 what he's referring there to is the use of NameSpace
22 extensions in a way where they are integrated into tree, as
23 supposed to be being run rooted, which we talked about
24 earlier.

25 I believe when we shipped Windows 95, the Marvel --

1 the Marvel experience used the NameSpace extension in a way
2 that ran rooted, and we made -- we made that available on the
3 B-list because we had a method for solving the reliability
4 problem. When it ran rooted, it was in a separate window and
5 thus encapsulated in a separate process, so it couldn't bring
6 down the shell. I believe at the time Mr. Struss sent this,
7 he drew the analogy between this particular scenario, the
8 fonts, printers and control panel, where they are integrated
9 into tree.

10 We did not have, and to my knowledge I think we
11 still don't have -- although I could be wrong about that -- a
12 way to run tree-integrated sub-hierarchies in a separate
13 process so that they wouldn't create compatibility or
14 reliability issues. So I think what he's saying is
15 absolutely true.

16 Q. Mr. Belfiore, you will agree with me, and I think we
17 established this yesterday, that, in fact, the decision had
18 been made to import -- to port the entire Chicago shell code
19 base to Windows NT back in September, 1994, correct?

20 A. I think we -- I think so. Yes.

21 Q. Okay. Let's go back to Plaintiff's -- I guess this was
22 actually -- I'm sorry -- Defendant's Exhibit 131-A. This
23 response you made to Mr. Schulman was actually something you
24 cut and pasted from a -- from another letter, correct?

25 A. I -- that's a reasonable assumption to make, although I

1 don't remember doing that.

2 Q. Let me show you what has been marked Plaintiff's
3 Exhibit 603. This is Plaintiff's Exhibit 603.

4 And, Your Honor, I understand there is no objection
5 to this exhibit --

6 THE COURT: Okay.

7 MR. JOHNSON: That I am showing to the witness.

8 THE COURT: Thank you.

9 MR. HOLLEY: Your Honor, the only point I would make
10 is that there is a hyperlink in this document to a word file
11 called Extending the Shell's NameSpace which is not part of
12 this exhibit, but as to the letter itself, I have no
13 objection.

14 THE COURT: Thank you.

15 Q. BY MR. JOHNSON: Mr. Belfiore, you would agree, sir,
16 that this is the letter that you cut and pasted into your
17 response to Mr. Schulman, right?

18 A. Without reading it entirely, I wouldn't disagree. It
19 certainly does look like it.

20 Q. Now, the documentation that you referred to, to
21 Mr. Schulman, that was coming --

22 A. Actually, sorry, there is one difference in the text,
23 so what I included in my email is not exactly the same. So,
24 they are substantially similar, but it's clearly not just a
25 cut and paste.

1 Q. Okay. Thank you. The documentation that you referred
2 to in your response to Mr. Schulman and that's indicated in
3 this letter to ISV's was not actually ready in March of 1996,
4 correct?

5 A. Well, I referred to a preliminary doc that we had been
6 giving to people, so that was ready. I'm not sure what you
7 mean by the documentation that you referred to.

8 Q. Well, I'm referring specifically to the hyperlink that
9 Mr. Holley just referred to at the top of the page. It says
10 Download Extending the Shell's NameSpace.

11 A. I see that.

12 Q. That was not ready in March of 1996, correct?

13 A. In March of 1996, I referred in my email to a document
14 that we had been giving out to ISV's who had been asking for
15 it. I don't know whether the document I referred to is the
16 same document as that or not, but what I referred to is a
17 document that would enable ISV's to begin work on creating a
18 NameSpace extension. So, documentation was ready. You're
19 saying "the documentation." I don't know what "the
20 documentation" means.

21 Q. Let me show you, sir. This is Plaintiff's Exhibit 604,
22 and which is the -- which is the link to extending the
23 shell's NameSpace document. I'd like you to turn first to
24 the last page in this document under the heading Built-in
25 Document Properties. Second to the last page. I'm sorry,

1 Mr. Belfiore.

2 A. Okay. Yeah.

3 Q. And do you see that the author of this document is a
4 Michael Schram?

5 A. I see that, yes.

6 Q. And do you know who Mr. Schram is?

7 A. No.

8 Q. And under the heading Document Statistics, do you see
9 that the creation date is April 23, 1996?

10 A. Yes.

11 Q. Okay. so the full documentation with respect to the
12 NameSpace extensions was not available prior to April of
13 1996. You would agree with that, wouldn't you?

14 A. Well, you changed your question. This document, as
15 you're saying, handing to me, says it doesn't have a creation
16 date until April of 1996, but clearly there was a document
17 that had been available before that which I referred to in my
18 mail. I don't know -- I don't know which document was which.
19 I don't know the circumstances under which this particular
20 Word document was created, but documentation had been created
21 and was available before that date.

22 Q. Yeah. And that slim doc that you were talking about,
23 do you know what that is? Is that just a header file?

24 A. I doubt that's true, no. I think -- I don't know what
25 it is, but it was documentation that was sufficient for

1 people to begin doing work creating NameSpace extensions,
2 although, as I described earlier, it hadn't yet contained the
3 full amount of work that would include examples and complete
4 API documentation.

5 Q. Okay. Turning back to the second page in Plaintiff's
6 Exhibit 603 -- I'm sorry. 604. Excuse me -- under the
7 heading Non-rooted and Rooted Explorer. Do you see that,
8 sir?

9 A. Yes.

10 Q. And it starts off and states, "Your NameSpace extension
11 can be implemented in either of two ways and there is no set
12 criteria for determining which to use; rather, it depends
13 only on your valuation of which is more logical and better
14 suited to your particular application."

15 And you would agree with that, right, sir? ISV's
16 were allowed to do either rooted or non-rooted explorers with
17 the NameSpace extensions, correct?

18 A. Actually, I would not agree with that. You -- you --
19 you are drawing a conclusion that's different than what I
20 would draw from this. I would personally, as I have said
21 earlier, and as I wrote in the email, I think -- I think
22 there is a good criteria for determining which to use, which
23 we have talked about a lot here already.

24 If you have a significant document management or
25 email kind of thing and there is a lot of code and there is a

1 risk that you're worried about that you might crash and bring
2 down other shell extensions, or if you are concerned about
3 other shell extensions bringing you down, then I would
4 recommend not running as part of the tree or implement your
5 own being application. So, I --

6 Q. Now -- I'm sorry. Go ahead.

7 A. So I don't agree with this paragraph.

8 Q. All right. But this paragraph was the full
9 documentation of the NameSpace extensions being provided by
10 Microsoft, correct?

11 A. It's in this document, yes.

12 Q. So this is Microsoft's advice to ISV's concerning the
13 use of NameSpace extensions, right?

14 A. I'm sure there are many documents that Microsoft gave
15 to ISV's which probably included conflicting advice. We saw
16 a document which was a PowerPoint def that I presented that
17 gave different advice. We saw an email that I sent that gave
18 different advice. Here is a document that was written by a
19 document author, and it says something different. You asked
20 me if I agreed, and I said I don't.

21 Q. Mr. Belfiore, you agree, don't you, that Microsoft was
22 telling ISV's that your NameSpace extension can be
23 implemented in either of two ways and that there is no set
24 criteria for determining which to use. Correct?

25 A. The document does say that.

1 Q. And you would agree that, when Microsoft published the
2 NameSpace -- NameSpace extensions API's, it allowed ISV's to
3 implement their extensions both rooted and non-rooted,
4 correct?

5 A. I believe that's true. Yes.

6 Q. And if you'll turn to the page 3 of Exhibit 604,
7 please, going along in the same section on non-rooted and
8 rooted explorers --

9 Can we bring up the last paragraph in that section.

10 "As noted earlier, whether you choose to implement
11 your extensions as rooted or non-rooted is largely
12 situational. There is no hard and fast rule."

13 So, again, Mr. Belfiore, Microsoft is telling ISV's
14 there is no hard and fast rule, it is perfectly permissible
15 to engage in either a rooted or non-rooted extension using
16 the NameSpace extensions, right?

17 THE COURT: There is no objection, but please watch
18 out. Don't argue with the witness by your tone of voice.
19 Elicit testimony.

20 THE WITNESS: I think you're greatly exaggerating
21 the actual situation. I think, when Microsoft communicates
22 with ISV's, there are many, many, many forms of
23 communication. I don't know the actual source of this
24 document. I don't know what date it was created. I don't
25 know who saw it. It is true that you found a document which

1 says this. I think this author was a little bit lazy. I
2 told you my opinion.

3 I showed you a PowerPoint def that I presented. I
4 showed you an email that I sent. I think there's a lot of
5 documentation that shows that there are other factors, and
6 this author who wrote there is no hard and fast rule, that's
7 technically accurate, but there is an important consideration
8 that we talked about at length here already.

9 Q. Okay. But I just want to make it clear that this
10 is the official -- what we are looking at here, this document
11 is the official documentation from Microsoft with respect to
12 extending the shell's NameSpace, correct?

13 A. I don't know. This document has no header. I don't
14 know if it's part of a book. I don't know what date it was
15 created. It certainly -- it certainly looks like an official
16 document, but without knowing the source or the date or the
17 timing, I don't know.

18 Q. I'm sorry, Mr. Belfiore. I thought we had already
19 established that this document was created in April of 1996.
20 Do you remember the next to the last page?

21 A. We established that the Word doc, the computer file
22 that got printed out was created in April, 1996.

23 Q. Okay. Thank you, sir. And, again, this was the
24 download from the letter to ISV's that you were referencing
25 to Mr. Schulman, right?

1 A. I don't know.

2 Q. Now, I think we already established this, but if you
3 did a non-rooted extension, it would run in the explorer's
4 process, correct?

5 A. Yes.

6 Q. Now I'd like to turn back to that Plaintiff's Exhibit
7 603, please, which is the letter to ISV's. And looking down
8 in the paragraph that is headed in the first page, Solution
9 To The Current Limitations. And it speaks about, in the
10 first two sentences there, a current plan to separate the
11 desktop/taskbar process from the rest of the explorer
12 extensions. Do you see that, sir?

13 A. Yes.

14 Q. I take it, at this point, that hadn't been implemented
15 yet, then?

16 A. That's probably true, although I don't know what the
17 timeline -- I don't know what date is the source of the
18 version you have.

19 Q. So, do you know whether or not that -- that tweak, when
20 it was actually implemented?

21 A. I don't know when it was implemented, although I'm
22 fairly certain -- I'm not sure. I have a strong belief that
23 it happened after the Win 95 release and in a later service
24 release, but I'm not certain of that fact.

25 Q. And, in looking at the first sentence there, it talks

1 about this -- this little -- this change to being a
2 rearchitecture of the processes slightly. Do you see that
3 sir?

4 A. Yes.

5 Q. So, you would agree this was a slight rearchitecting of
6 the processes, correct?

7 A. I would agree the change in processing ended up not
8 being that different, but that doesn't imply that it wasn't a
9 lot of work.

10 Q. Well, the ability to do that was simply made possible
11 because you had more memory on machines right now, right?

12 A. I would say that's a factor, but you had to do a bunch
13 of work, and you'd have to test it.

14 Q. Sure. Of course. But I think you testified that the
15 reason they weren't in separate processes before was because,
16 in Windows 95, you were shooting for this 4 megabyte memory
17 target, right?

18 A. The way I characterized it is that, when we designed
19 the shell and did our first work on Windows 95, we had a
20 very, very important goal to run really well on a 4 megabyte
21 machine. And as time went by, you know, getting closer to
22 the date Windows 95 shipped and then to the dates that we did
23 service packs, the capabilities of PC's in general improved
24 so that, that very strong focus on 4 megabytes declined, so,
25 yes, generally.

1 Q. Right. It gave you the ability to do this without
2 having a problem with memory limitations, right?

3 A. Yes.

4 Q. But this slight change referenced in this letter to
5 ISV's didn't involve any rearchitecting of the NameSpace
6 extensions, correct?

7 A. I don't know.

8 Q. Well, again, you would agree that Mr. Nakajima would
9 know?

10 A. Mr. Nakajima would know, yes.

11 Q. And, just looking at this Exhibit 604 -- and I know
12 this is much too long for you to read today -- but are you
13 aware of whether that slight change was even referenced in
14 the documentation of extending the shell's NameSpace?

15 A. I don't know.

16 Q. Let me show you what's been marked Plaintiff's Exhibit
17 355. This is the --

18 Can we bring that up, 355?

19 MR. GOLDBERG: 355?

20 MR. JOHNSON: Yes. I believe so. Yes, 355.

21 Q. BY MR. JOHNSON: This is the Microsoft System Journal
22 article on extending the Windows Explorer with NameSpace
23 extensions in July 1996. Are you familiar with this
24 publication of documentation related to the NameSpace
25 extensions?

1 A. Yes.

2 Q. And, again, are you aware whether or not this slight
3 change in processes is even mentioned in this entire article
4 on extending the Windows Explorer with NameSpace extensions?

5 A. I haven't read this article, so I don't know whether
6 it's mentioned or not.

7 Q. I'd like to return just for a few moments to the B-list
8 question again.

9 MR. JOHNSON: Your Honor, I would like to read to
10 the jury an interrogatory and interrogatory response from
11 Microsoft.

12 THE COURT: Sure.

13 And what that is, is -- obviously depositions -- but there
14 is, in a civil case, as you -- excuse me -- in a civil case,
15 as you learned, there are all kind of pretrial procedures
16 known as discovery. Depositions are obviously one. Another
17 kind of question is a written question given by one side to
18 the other that's called an interrogatory. And the answer to
19 the interrogatory is certainly usually admissible into
20 evidence, so of course you can read it.

21 MR. HOLLEY: Your Honor, to the extent that Novell
22 is asking the jury to draw some inference about whether
23 something was kept during the ten-year period Microsoft had
24 no obligation to maintain documents, I object to this.

25 THE COURT: And I suspect we will hear a lot of

1 argument about missing documents. But go ahead, let me hear
2 the question.

3 MR. JOHNSON: Sure, Your Honor. And, Your Honor, I
4 might add that you ordered this answer on a motion to compel,
5 so...

6 THE COURT: Well --

7 Q. This is Interrogatory Number 2, and I'm just going read
8 it -- 22, I'm sorry, Interrogatory Number 22 propounded to
9 Microsoft in this case.

10 "Please set forth the factual basis for and identify
11 all documents concerning each and every instance, from
12 October, 1994, to July, 1996 in which Microsoft provided to
13 any ISV documentation for B-list NameSpace API's, the dates
14 you distributed such documentation, the documentation that
15 you provided, your reasons on an ISV-by-ISV basis for
16 providing B-list NameSpace API's, the identity of ISV's to
17 which you provided the documentation for the B-list NameSpace
18 API's and the dates on which you provided such documentation
19 on an ISV-by-ISV basis."

20 "In your answer, please identify the Bates numbers,
21 if any, of the documents responsive to this interrogatory."

22 And just so you know, that Bates number references
23 those little numbers we keep referring to that get stamped on
24 the documents when parties produce them.

25 And Microsoft's response is: "Microsoft

1 incorporates the objections to this interrogatory contained
2 in Microsoft's responses and objections to Novell's second
3 set of interrogatories. Microsoft has not located any
4 documents in response to this interrogatory other than those
5 of which Novell is already aware, all of which have been used
6 as Deposition Exhibits in this action or have been identified
7 in court filings or other papers exchanged between the
8 parties."

9 Now, Mr. Belfiore, in your preparation to testify in
10 this case, have you seen a single document that would
11 identify a single ISV who allegedly received any B-list
12 documentation for any of the NameSpace extension API's prior
13 to March of 1996?

14 A. I don't remember the time frame, but I have seen
15 documents that refer to ISV's that were building NameSpace
16 extensions.

17 Q. I'd like to get an answer to my question.

18 A. I can't --

19 Q. Have you seen a single document that would identify a
20 single ISV who allegedly received any B-list documentation
21 for any of the NameSpace extension API's prior to March of
22 1996?

23 A. I don't know. I don't know what dates they received
24 the documents or what dates the -- I don't know.

25 Q. And, sir, isn't it a fact that you cannot give me one

1 real world example of Microsoft making this documentation
2 available to an ISV prior to March of 1996, correct?

3 A. I know that other companies were creating NameSpace
4 extensions. I believe it was prior to March of 1996. I
5 don't -- I don't recall the dates. It's a very long time
6 ago, and I don't have any paperwork in front of me to be very
7 precise about the days. I know other companies were doing
8 this.

9 Q. I'd like to refer you to your deposition in this case
10 on page 178, lines 8 through 10. Do you recall having the
11 following question, and your answer:

12 "Question: Okay. And what were the real world
13 examples that you're thinking of.

14 Answer: I don't remember."

15 And did you give that answer to that question at
16 your deposition, sir?

17 A. I probably did, yes.

18 Q. So, isn't it a fact, sir, that you cannot give me one
19 real world example of Microsoft making this documentation
20 available to any ISV prior to March of 1996?

21 A. As I said, and I'll say it again, I know there were
22 companies that were creating these kinds of things. I don't
23 know what dates they were doing it, but today -- at the time,
24 I couldn't think of examples. Today I can think of examples.
25 Semantic was a company that was doing it, for example. Stac

1 was a company that was doing it, for example.

2 Q. But, again, you can't tell us or show us any document
3 of any documentation provided to any of those ISV's you just
4 mentioned prior to March of 1996, correct?

5 A. Not. No. I'm sitting here. No, I can't do that right
6 now, no.

7 Q. And you haven't seen any documentation of that type in
8 preparation for this case, right?

9 THE COURT: He doesn't know, Mr. Johnson. He
10 doesn't know the date.

11 Q. BY MR. JOHNSON: And in fact, sir, you were not
12 responsible at all in gathering any alleged requests from any
13 ISV's for this documentation, correct?

14 A. My typical job responsibilities weren't sort of front
15 line support for ISV's. I wasn't the guy who went out on the
16 road and met with people except in relatively exceptional
17 cases when we had -- when we were going to go give the first
18 pitch to ISV's about the new user interface, my primary job
19 focus was internal, working with engineers and getting it all
20 designed, so I did interact with them, but it wasn't my job
21 to go out and to get people documentation and to support them
22 in their development work.

23 Q. So the answer to my question was yes?

24 A. Can you ask your question again?

25 Q. Sure. And, in fact, you were not responsible at all in

1 gathering any alleged requests from any ISV's for
2 documentation on the NameSpace extensions, correct?

3 A. I was not responsible for that.

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

5 THE COURT: Mr. Holley.

6 MR. HOLLEY: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. HOLLEY:

9 Q. Mr. Belfiore, Mr. Johnson represented to you that
10 PX-604, the document entitled Extending the Shell's
11 NameSpace, was the document that was hyperlinked to the
12 letter to ISV's. Assuming that that is correct, did the
13 letter that enclosed the document say anything about the
14 robustness issues that you described in your testimony?

15 A. I'm sorry. Could you piece that question -- I was
16 trying to parse what you were asking, which documents and
17 which letter.

18 Q. Sure. So Mr. Johnson represented to you, and I have no
19 reason to doubt that what he's saying is true, that PX-604 is
20 the Word document that one would download if you clicked the
21 hyperlink in PX-603.

22 A. Okay.

23 Q. And if that is true, does the letter that enclosed that
24 documentation say anything about robustness issues presented
25 by the NameSpace extension API's?

1 A. Yes.

2 Q. What does it say?

3 A. Well, I'd have to read it to find all -- any or all of
4 those, but just briefly the one I can see right off the top
5 of my head is a -- in the number 3, Run As Part Of The
6 NameSpace. "If your application absolutely cannot run
7 rooted, you are willing to risk being taken down at any time
8 by another application, and you are willing to be extra
9 careful in testing your application to make sure you are not
10 going to take anyone else down, then go ahead and run as part
11 of the NameSpace."

12 Q. And directing your attention to the first page of the
13 letter that enclosed the documentation and the first
14 paragraph under the heading Limitations With The Current
15 Implementation, what, if anything, does that say about
16 robustness issues with the NameSpace extension API's?

17 A. The first paragraph describes the current
18 implementation of the Windows 95 shell, where all of the
19 applications of the shell run in the same process. And it
20 goes onto explain this, that is the desktop, which includes
21 the taskbar, my computer, network neighborhood, my briefcase,
22 the recycle bin, and any other instances of the explorer that
23 are launched are run in a single process.

24 What this means is that if any of the above
25 applications fail, they will bring down the entire shell,

1 including all of the shell extensions and the desktop.

2 Q. Now, Mr. Belfiore, directing your attention to the last
3 two pages of Plaintiff's Exhibit 604, the documentation,
4 under Document Statistics, under Total Edit Time, it says
5 that this 55-page document was edited for two minutes. What,
6 if any, implication do you draw from that?

7 A. That the Word --

8 THE COURT: I think you draw inferences, don't you?

9 MR. HOLLEY: That's a fair point, Your Honor.

10 Q. What inference do you draw from that?

11 A. That the -- now reading this, this was a document
12 called Name Doc.Doc. And it is a Word document. There is no
13 way someone wrote this documentation in two minutes. It's
14 50-plus pages and technical. That must mean that there
15 was -- the content was created elsewhere and it was pasted
16 into a Word document and saved, or the Word document was
17 generated in an automated way from a document management
18 system.

19 Q. Now, Mr. Belfiore, do you still have up in front of you
20 Plaintiff's Exhibit 105 that Mr. Johnson showed you on cross
21 examination? It's an email from David Cole to Brad
22 Silverberg, Brad Struss, yourself and George Moore. Now,
23 Mr. -- do you recall that Mr. Johnson --

24 A. Hang on. Hang on. Let me --

25 Q. Sure. Sure. Sorry.

1 A. Sorry. I know you want to go quickly.

2 THE COURT: It's probably up on the screen.

3 THE WITNESS: Okay. Here it is. All right.

4 Q. BY MR. JOHNSON: Now, Mr. Johnson directed your
5 attention to the paragraph that said, "They were very happy
6 about us deciding to document the shell extensions." And
7 then he showed you the sentence, "since they just acquired a
8 document management system -- I forget from who -- I assume
9 they will want to plug that in, plus WPMail."

10 Now, what, if any, comparison can you make between a
11 document management system and an email client on the one
12 hand, and a word processor and a spreadsheet on the other
13 hand in terms of their use of the NameSpace extension API's?

14 A. I would say, as I already explained, and as I discussed
15 explicitly in the PowerPoint presentation I made, it might
16 make sense -- in fact, it could make sense really for a
17 word -- for a document management system because it is a
18 container of icons, just like a hard drive is, or for an
19 email client, because it's a tree of folders. They are all
20 containers. They contain email messages. Those make sense
21 to be considered to be done as as NameSpace extension.

22 A word processor is not one of those things, and as
23 I talked about earlier, I don't think it makes sense, and I
24 think it would be a bad idea to try to put a word processor
25 in a system for navigating folders.

1 Q. Now, Mr. Johnson -- let's look at PX-113, which is the
2 slide presentation that you gave at the professional
3 developers conference that Mr. Johnson showed you on cross.
4 And, in particular, I'd like you to look at the second to the
5 last page.

6 Mr. Goldberg, can you put that up. It's PX-113,
7 please. It's the second to the last page. And it's entitled
8 Ten Keys For Making a Great Windows Chicago Application UI.

9 And Mr. Johnson asked you to look at number 4, which
10 says, "Use the common dialog, or comdlg file open or recreate
11 its NameSpace accurately, including network browsing and
12 links."

13 Was it necessary to use the NameSpace extension
14 API's for an ISV to recreate the Windows NameSpace
15 accurately, including network browsing and links?

16 A. No.

17 Q. How could they do that without the NameSpace extension
18 API's?

19 A. Well, the -- there's a -- there's a minor subtlety
20 here. They -- the easiest way to do that would have been to
21 use our tree control and then call our IShellFolder API to
22 ask it the question, "Hey, Shell, what icon and text should I
23 put first in the tree?" And Shell will answer, "Desktop."
24 And then, when the user clicks -- as the user clicks their
25 way through -- let's say the user clicks on network

1 neighborhood, your application would ask the shell, by asking
2 IShellFolder, "Hey, IShellFolder what are the computers
3 inside network neighborhood?" The Shell will say, you know,
4 "Harry's desktop PC and Susan's desktop PC." To get an
5 answer to the question you can fill the list.

6 The subtlety is that when, that IShellFolder
7 interface appears as part of the NameSpace extensions, but
8 only for the purpose of someone to answer the question, not
9 for the purpose of someone being able to ask it. So, when
10 you phrased the question, is this part of the NameSpace
11 extension? If you found a document, that document had the
12 NameSpace extension, you would see IShellFolder appear in
13 that document. But that's a very different usage of it than
14 in the scenario where an application is trying to do what I'm
15 describing in number 4, which is to recreate the shell
16 NameSpace.

17 And, again, the distinction is, it was always
18 available and easy to use as a means of asking the shell,
19 "What should I display next?" And then the debate was about
20 whether it should be available for an application to give
21 answers to the shell.

22 Q. I just want to be clear about this. Post October 3,
23 1994, when Mr. Gates decided to withdraw support for the
24 NameSpace extension API's, could ISV's still use IShellFolder
25 to ask the questions about what was in the shell NameSpace?

1 A. Yes. There was never any debate or doubt or lack of
2 ability for ISV's to call IShellFolder to ask the question
3 and build the NameSpace -- build the tree.

4 Q. Now, do you have up in front of you, Mr. Belfiore,
5 Plaintiff's Exhibit 136? This is an email that you sent on
6 February 2, 1994, to Mr. Silverberg, Mr. Cole and Mr. Ludwig.

7 A. Hang on. Hang on. Do you have that in front of you
8 sir.

9 A. I do now, yes.

10 Q. Now, Mr. Johnson showed you this document on cross
11 examination, and I -- I would like to direct your attention
12 to the heading entitled Remaining Concerns in which you refer
13 to something called DNA API. And you say, in the second
14 paragraph under that. "DNA really had better be a subset, at
15 least functionally, and I have alerted Darrel and BobMu of
16 this." Now who are those two people?

17 A. That would be Darrel Ruben and Bob Muglia.

18 Q. "But remain skeptical that will it will really happen.
19 I'm afraid someone will start screaming that we can't publish
20 IShellFolder because DNA is on the way..."

21 What does that mean?

22 A. Until I saw this yesterday, I had completely forgotten
23 about this DNA initiative that had happened at Microsoft. As
24 I recall, DNA was an attempt to create a database like API,
25 where Microsoft would implement an API that a software

1 developer could use to call and ask questions about what's
2 inside things. It was -- it was a fancy. It was -- the
3 vision was very fancy and far-reaching, and I think I was --
4 as I said, I was skeptical that it would really happen. In
5 fact, it didn't happen. It was a rocket sciencey project.
6 It was too hard.

7 And it had a similar characteristic in that -- to
8 IShellFolder, where an application would say, "Hey, I want
9 to -- I want to build a tree of containment. So, what's at
10 the root?"

11 "Oh, desktop."

12 "What's inside the desktop?"

13 "These things."

14 What I'm saying here is that if there's a group at
15 Microsoft that expects to define an API and wants to tell
16 software developers that it's the main API, then if it's very
17 different than our IShellFolder API, then we will get in a
18 big debate about whether we can publish ours or not because
19 if we have one that's coming in the future that we think is
20 more important but is different, then some people at
21 Microsoft will say, "Well, don't publish yours because in the
22 future I'll have to make mine compatible."

23 And so, what I was saying here is, if they are
24 making one, and if it's really going to ship, and if it's not
25 compatible, I can anticipate that someone will say to us,

1 "Don't publish yours." And it was important that ours got
2 published because that's how you build the tree.

3 Q. Did the debate that you anticipated actually happen?

4 A. I don't remember that it did, actually.

5 Q. Now, Mr. Johnson showed you, on cross examination, a
6 document you wrote called How To Be A Great App In The
7 Chicago Shell. That's Plaintiff's Exhibit 529. And tell me
8 when you have found that in your stack of things up there.

9 A. Got it.

10 Q. So, Mr. Johnson directed you to two parts of this, and
11 I would like to talk about both of them. First he showed you
12 paragraph number 5, where you say. "Use the common
13 dialogues, especially file open/save as." And can you tell
14 us why it was that you were strongly recommending in all
15 capital letters that, in particular, ISV's use the file, the
16 common file open dialogue provided by Windows 95?

17 A. Well, there are a number of reasons. One, taking and
18 end-user point of view, as I said earlier, I really wanted
19 the users of Windows PC's to have a very friendly and
20 consistent experience from application-to-application. And
21 in the picture I showed the common file open dialogue
22 performs a lot of software work to give people a
23 full-featured and easy to use experience and makes you not
24 have do that map network drive thing so you can find files on
25 the network. It shows you -- let's you make copies of files,

1 so a common scenario when creating Word documents is, you
2 have a version you have already started, you want to open a
3 new one. You can make a copy of it right there and then open
4 your new one.

5 It does a lot of things. And we had already done
6 the work in a single Package that was very easy for ISV's to
7 use. And for most ISV's, that amount of work would be too
8 much. You consider, you know, there are large companies that
9 write applications, and there are small companies and even
10 individuals. For an individual, that would be way too much
11 work. It's much more prudent for them to use the work that
12 we already had. And so, I felt that was an important point
13 of consistency and in giving users a good experience. It's a
14 characteristic of what made Windows 95 easy to use, so it was
15 really important that people do that well.

16 Q. Now --

17 A. People being ISV's, sorry.

18 Q. Sorry. I didn't mean to interrupt. Now, you go on to
19 say, "If you cannot use the common dialogue open file, open
20 save as dialogue, be sure your open save as dialogue supports
21 the following features for consistency with the shell and
22 apps/applets."

23 And I'd like to focus particularly on the first
24 bullet which is your advice that if you can't use the Windows
25 95 common file open dialogue, you should have a NameSpace

1 heirarchy that's the same as the shell. Desktop is the root
2 followed by everything on the desktop, my computer, my
3 network, etc.

4 Mr. Belfiore, did ISV's need the NameSpace extension
5 API's, understanding your comment about IShellFolder, but did
6 they need if the NameSpace extension API's to do what you
7 were recommending here in the first bullet point?

8 A. No.

9 Q. And not to belabor the point, but what would they do
10 instead, instead of using the NameSpace extension API's?

11 A. They would take our tree control and easily put it into
12 a dialog box and then populate the tree control by calling
13 IShellFolder and asking the question, "What's the first
14 item?"

15 The shell will say, "Desktop."

16 "What's the second item?"

17 The shell will give an answer. It's very
18 straightforward.

19 Q. Now, Mr. Johnson also showed you point number 12, which
20 starts on -- well, they are not numbered internally, but it
21 starts on the page beginning 7130 and carries on to the next
22 page. And I'm interested, in particular, in the statements
23 on the top of the last page of the document which says, "If
24 you have a hierarchical containment NameSpace that contains
25 specific non-ordered objects, think about integrating into

1 the explorer as a, quote, special folder, close quote."

2 Were word processing applications, spreadsheet
3 applications and presentation graphics applications ones that
4 had a hierarchical containment NameSpace that contained
5 specific non-ordered objects?

6 A. No.

7 Q. Now, Mr. Johnson asked you various questions about
8 Mr. Gates' email announcing his decision to withdraw support
9 for the NameSpace extensions and the reasons for that
10 decision. And I'd like to direct your attention, as
11 Mr. Johnson did, to Defendant's Exhibit 90, which is the
12 email that you sent the day after that Mr. Gates' email. And
13 what reason did you provide in your email to your team for
14 why Mr. Gates had made the decision?

15 A. As I wrote in the mail, that it would create additional
16 work for what was then -- had then become the Ren team. The
17 people from the Cairo shell team had merged into the Ren
18 team, and they had set out, at that time, with a goal to
19 create a different explorer. And their assumption was that
20 they would need to compatibly support what we had already
21 done. They wanted to ensure that it had really high
22 reliability because they would put email and calendar and you
23 know, task, a whole bunch of things in this explorer, and
24 they wanted to simultaneously make it reliable and support
25 our NameSpace extensions, and that would be a significant

1 amount of work. And I explained that in the mail.

2 Q. Did you ever hear Mr. Gates or anyone else say that the
3 decision to withdraw support for the NameSpace extensions was
4 motivated by a desire to advantage Microsoft Office in
5 relation to Lotus and WordPerfect?

6 MR. JOHNSON: Objection.

7 THE COURT: Overruled. Obviously, somebody else
8 could have heard it, but the question is whether he ever
9 heard it.

10 A. I did not hear that.

11 Q. Now, you were asked on cross examination about what you
12 were just talking about, the Ren team's goal of shipping a
13 replacement for the Windows Explorer and Windows 95 that
14 would be a superset of that explorer. Did that ever
15 happen?

16 A. No, It didn't.

17 Q. And, directing your attention to Plaintiff's Exhibit
18 379, which I think you still have up there somewhere in that
19 pile. It's entitled --

20 A. Yep. I've got it.

21 Q. Okay. So Mr. Johnson showed you this document on cross
22 examination. Had you ever seen it before?

23 A. No.

24 Q. And in the first paragraph it says -- on the front
25 cover under Summary, it says, "Office Explorer will superset

1 and replace the Chicago Explorer to become the single place
2 where users can find and manipulate all their information
3 irrespective of its type, including all documents and files,
4 in addition to personal information such as appointments,
5 task lists and mail."

6 Now, to your understanding, did the Microsoft Office
7 team ever create a replacement for Windows Explorer in
8 Windows, any version of Windows?

9 A. No.

10 Q. Mr. Belfiore, you were shown on cross examination
11 Defendant's Exhibit 84. Do you have that up in front of you?
12 It was an email from Mr. Struss to Mr. Gates.

13 A. Yes.

14 Q. Dated November 12, 1994. And directing your attention
15 to the second page, which Mr. Johnson showed you under the
16 heading Q and A -- excuse me. It says, Issues To Be Prepared
17 To Address. And it says, under number 1, "The NameSpace
18 extensions were initially pulled from Windows 95, and ISV's
19 were informed of this change. In general, they have been
20 okay with this."

21 Mr. Belfiore, did any information ever come to your
22 attention that was inconsistent with this statement by
23 Mr. Struss; namely, that, in general, ISV's were okay with
24 the withdrawal of support for the NameSpace extension API's?

25 A. I never was involved in a conversation or felt, myself,

1 anything different than that.

2 Q. Now, Mr. Johnson also showed you Plaintiff's Exhibit
3 225 on cross examination, which is another email from
4 Mr. Struss, this time to Mr. Chase, Mr. Freedman and others.
5 Do you have that in front of you, sir?

6 A. I do.

7 Q. And in the first sentence of Mr. Struss' email, he
8 says, "Per PaulMa --" and that's Mr. Maritz's email address,
9 correct?

10 A. Yes.

11 Q. "-- we are now in the process of proactively notifying
12 ISV's about the NameSpace API changes (will not document
13 them, and they will go away/change). So far Stac, Lotus,
14 WP --" meaning WordPerfect -- "Oracle, SCC appear to be okay
15 with this."

16 Mr. Belfiore, did any information ever come to your
17 attention that was inconsistent with the statement that
18 Mr. Struss is making in this document?

19 A. No.

20 Q. Now, finally, Mr. Belfiore, do you have Defendant's
21 Exhibit 131-A in front of you? Mr. Johnson showed it to
22 you --

23 A. Yeah.

24 Q. -- so it should be there. I have another copy.

25 A. I recognize that. Okay. I just have to find it.

1 Q. Just to speed things along?

2 A. Okay.

3 Q. Let me give you another one.

4 A. Sorry.

5 Q. Now, in your email to Mr. Schulman, you say, in the
6 second paragraph, "We have a preliminary doc that we've been
7 giving to people who ask for it."

8 Do you have any doubt, Mr. Belfiore, that the
9 statement that you made to Mr. Schulman in March of 1996, was
10 accurate; namely, that there was a preliminary document and
11 that Microsoft had been providing it to people who asked for
12 it?

13 A. I'm sure that's true.

14 MR. HOLLEY: Your Honor, I have no further
15 questions.

16 THE COURT: Any questions, Mr. Johnson?

17 MR. JOHNSON: I do have a couple, Your Honor.

18 RECROSS EXAMINATION

19 BY MR. JOHNSON:

20 Q. If we could put up Plaintiff's Exhibit 105 again,
21 briefly.

22 And bring up that paragraph.

23 A. Could you tell me which one 105 is?

24 Q. Sure. It's the visit to WordPerfect by Microsoft that
25 you were copied on.

1 A. Okay. Got it.

2 Q. Do you have it, sir?

3 A. I do.

4 MR. JOHNSON: And if we could bring up the same
5 paragraph that Mr. Holley referred to, "they were very
6 happy." Bring that up.

7 Q. BY MR. JOHNSON: Now, Mr. Belfiore, WordPerfect is not
8 suggesting here at all that they would use the NameSpace
9 extensions to plug in their word processor, were they?

10 A. I don't know what they were suggesting.

11 Q. Well, you just read that email. Is there anything in
12 that email that suggests that WordPerfect was thinking about
13 using the NameSpace extensions to plug in their word
14 processor?

15 A. No, There's not.

16 Q. And, in fact, what it actually says is they were going
17 to use the NameSpace extensions to plug until their document
18 management system, plug in WordPerfect mail and other parts
19 of WordPerfect Office, too, correct?

20 A. Yes.

21 Q. And those were all things that you had evangelized to
22 ISV's that was an appropriate use of the NameSpace
23 extensions, correct?

24 A. Yes. As I have said many times, I think that email
25 client and document management systems make sense to plug in

1 as part of the NameSpace.

2 Q. If you could return to Plaintiff's Exhibit 355.

3 MR. HOLLEY: Your Honor, I don't care, but this is
4 outside the scope of the redirect. I didn't ask Mr. Belfiore
5 about this.

6 THE COURT: Well, if you don't care, it makes it
7 easy for me. Thank you.

8 Mr. Belfiore.

9 THE WITNESS: Hang on: Okay.

10 Q. BY MR. JOHNSON: So, this is documentation provided to
11 ISV's and the public at large with respect to extending the
12 Windows Explorer with NameSpace extensions, right?

13 A. Yes. It's an article about that.

14 Q. And if you look at the second page under the figure 3,
15 look at the paragraph right under figure 3, this first one
16 there.

17 If you would bring that up.

18 And it says, "The implementation of the NameSpace
19 extension is basically the same for both kinds."

20 And you understand that to mean both rooted or
21 non-rooted, correct?

22 A. Just -- that's a reasonable interpretation, although I
23 need to look at it to see if that's actually what it says.

24 Yes. That's what he's referring to.

25 Q. And, again, here's Microsoft, in an official

1 publication to ISV's, saying, "Which method you use depends
2 on your extension and is a matter of style and common sense
3 as much as anything else."

4 Right, sir?

5 A. It does say that.

6 Q. Okay. So, again, in this official publication in the
7 Microsoft Systems Journal, there is no mention in this
8 article about any robustness concerns about using non-rooted
9 extensions. Isn't that correct, sir?

10 A. There's a mention of common sense. And common sense
11 implies things like performance and reliability. So, as you
12 pointed out, no, there are literally no words, but it does
13 say common sense, and developers think about whether their
14 applications are going to crash or not.

15 Q. Well, certainly you would agree with me there's no
16 specific mention of robustness concerns at all --

17 A. In the two lines --

18 Q. -- using non-rooted extensions?

19 A. Should I read the whole document now?

20 THE COURT: No. You have already testified that it
21 doesn't, so you don't need to.

22 THE WITNESS: Okay.

23 Q. BY MR. JOHNSON: Now I'd like to return briefly to
24 Plaintiff's Exhibit 604. And drawing your attention to page
25 30 of Plaintiff's Exhibit 604, you've talked a lot about

1 IShellFolder and what you could do with it, right, sir?

2 A. Yes.

3 Q. And, in fact, IShellFolder was the API that allowed
4 ISV's to use NameSpace extensions to create a custom
5 container. Correct?

6 A. No. Not as you say.

7 Q. Looking down in the first paragraph there, it states,
8 "As you install a new NameSpace directly within the heirarchy
9 of the system NameSpace, anything that exists in your
10 NameSpace is known only to you, so you are responsible for
11 implementing everything you expect to see in it."

12 Do you see that, sir?

13 A. I see it.

14 Q. So, IShellFolder was one of the API's that -- that
15 ISV's needed to implement the NameSpace extensions?

16 A. They needed to implement a form of IShellFolder as a
17 means of answering the question that the shell might ask or
18 that another third-party ISV might ask in order to answer
19 what goes in the NameSpace, yes.

20 Q. In fact, when Mr. Nakajima hid the NameSpace extension
21 API's in response to Mr. Gates' decision, he made
22 IShellFolder read only, so there could be no custom
23 implementations, correct, sir?

24 A. I don't know how, technically, Satoshi responded to
25 Bill's request, but I do know that IShellFolder was available

1 for ISV's to use to create the tree and replicate what we did
2 in our file open dialog. So I'm not sure what you're asking
3 me.

4 Q. I'm should go asking you, sir, isn't it a fact that,
5 based on Mr. Gates' decision, ISV's were no longer able to
6 create custom folders, custom implementations of
7 IShellFolder?

8 A. I can't say that I agree with you. You're asking me to
9 conclude that Satoshi did something technical that made that
10 impossible. I don't know whether he did or not. In fact, I
11 think he didn't, because ISV's in fact still were writing
12 software that plugged into the explorer, and we had that on
13 the B-list, so I actually think what you are saying is
14 incorrect. To my knowledge, it was not disabled. It was not
15 made impossible, and it was certainly still used by many
16 ISV's who duplicated what we did in the common file open
17 dialog.

18 Q. All right. Let's try it this way. You would agree
19 that Mr. Nakajima would know more about this subject than
20 you?

21 A. It depends on what you mean by "subject." Mr. Nakajima
22 would know specifically, in the software code, how this was
23 implemented and whether he changed any code, but what I know
24 is that IShellFolder was available for ISV's. They used it
25 frequently. They recreated our NameSpace in their own

1 versions of file open dialogue, and it's my belief that they
2 continued to use it to extend the NameSpace, and it wasn't
3 explicitly disabled.

4 Q. Okay. Let me show you what has been marked Plaintiff's
5 Exhibit 224. Drawing your attention to the first paragraph
6 there, this is an email from Mr. Nakajima dated October 10,
7 1994. He states, "Based on the recent decision, we are
8 hiding one of the shell extension mechanisms."

9 And you would agree with me, sir, that this would
10 have been Mr. Nakajima's response to Mr. Gates' decision?

11 A. Yes.

12 Q. And if we look down at his summary of what he was
13 doing, you can see, can you not, sir, that IShellFolder and
14 IEnumerate, IDlist, became read-only interfaces. And read
15 only means no customized implementation, correct, sir?

16 A. What I take this to mean, looking at what Mr. Nakajima
17 wrote, is that he marked some of these internal, so, as it
18 says literally above, so we don't put them in the SDK header
19 files. The SDK is the broad software development tool kit
20 that goes out to ISV's and indicates our commitment to future
21 support for API's. That is the A-List.

22 He has marked these so they won't appear in that
23 evangelized software development kit. They will still be
24 available as B-list. They will still continue to work if
25 they are called by software code, and what the bottom yellow

1 highlight says, "read only means no customized
2 implementation," that is, IShellFolder remains in the public
3 evangelized SDK for software developers to use to create
4 their own versions of the file open dialog and recreate our
5 NameSpace, but that it is not evangelized in the public SDK
6 as a mechanism for answering the question, "What goes in the
7 tree next?"

8 Q. So, when Mr. Nakajima says read only means no
9 customized implementation, you think the IShellFolder still
10 permitted customized implementation?

11 MR. HOLLEY: Your Honor, asked and answered.

12 Mr. Johnson is arguing with the witness.

13 THE COURT: That's true, but we will let him answer
14 one more time. I think we know what the answer is going to
15 be.

16 THE WITNESS: I think what Mr. Nakajima did here was
17 make it not appear in the public SDK evangelized software
18 development kit. He did not disable it from working. It
19 continued to work, and if a software developer knew how to do
20 it, they could have used it, and they did.

21 Q. Well, once again, Mr. Nakajima would know better than
22 you, correct?

23 THE COURT: That's a different question.

24 MR. JOHNSON: It is.

25 THE COURT: He knows what he knows. This is his

1 answer. Move on.

2 THE WITNESS: Do you want me to answer?

3 THE COURT:

4 THE WITNESS: Okay.

5 MR. JOHNSON: Nothing further, Your Honor.

6 THE COURT: Thank you very much, Mr. Belfiore.

7 Can we get the next witness and just continue
8 without taking a break, or should we take a break?

9 MR. HOLLEY: Your Honor, Dean Hubbard is here, and
10 he's happy to get up on the witness stand.

11 THE COURT: Is everybody else set to go? Let's keep
12 going. That way we won't lose ten minutes.

13 ROBERT HUBBARD,
14 the witness hereinbefore named, being first duly cautioned
15 and sworn or affirmed to tell the truth, the whole truth, and
16 nothing but the truth, was examined and testified as follows:

17 THE CLERK: Please be seated.

18 THE COURT: Mr. Jardine, as you know, there's a
19 pending -- oh, no. No. That's a different person.

20 MR. JARDINE: I think he's clear, Your Honor.

21 THE COURT: He's clear. Thank you.

22 MR. JARDINE: I would like to just hand to
23 Mr. Taskier and the witness a set of the slides we are going
24 to use.

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

1 for the record.

2 THE WITNESS: Sure. It's Robert, R-o-b-e-r-t.
3 Glenn, G-l-e-n-n. Hubbard, H-u-b-b-a-r-d.

4 MR. JARDINE: And we have a set for the Court.

5 THE COURT: Thank you.

6 DIRECT EXAMINATION

7 BY MR. JARDINE:

8 Q. Good morning, Professor Hubbard.

9 A. Good morning.

10 Q. Could you tell the jury where you reside?

11 A. Yes. I live in New York, in Manhattan.

12 Q. Would you describe your educational background.

13 A. Sure. I went to college at the University of Central
14 Florida in Orlando, where I got a BA and BS degree and then
15 went to graduate school at Harvard University in Cambridge,
16 Mass to study economics, where I got a master's degree in
17 Ph.D. Economics.

18 Q. And have you been involved in teaching?

19 A. Yes. At the beginning of my career, I started teaching
20 at Northwestern University in Evanston. Since 1988, except
21 for some time in government, I have been in Columbia
22 University in New York. I have held visiting professorships
23 at the University of Chicago and Harvard as well during that
24 time.

25 Q. Have you prepared a slide that would summarize your

1 work experience for the jury?

2 A. Yes, I have.

3 MR. JARDINE: If we could have slide 210, please.

4 Q. BY MR. JARDINE: Is this a slide you prepared,
5 Professor Hubbard?

6 A. Yes.

7 Q. And would you just identify or highlight the things on
8 that slide that reflect the summaries of your work
9 experience.

10 A. Sure. Just to highlight, at present I'm a professor of
11 economics and finance at Columbia Business School. I'm also
12 the Dean of the school. I'm a professor of economics at the
13 Faculty of Arts and Sciences at the university as well. I
14 have also, while I have been teaching at Colombia, been
15 active as a scholar. I have written widely in a range of
16 subjects, in industrial organization, corporate finance, tax
17 policy, in macroeconomics and in monetary policy, and to
18 facilitate my own teaching and because I actually think
19 economics is fun, I printed three popular text books. One is
20 freshman, Principles of Economics; one in money banking, How
21 The Financial System Works, and one in teaching students how
22 the macroeconomy works.

23 Q. And have you also been involved in government service?

24 A. I have on two occasions. In the early '90's, from '91
25 to '93, I ran the Office of tax policy inside the Treasury

1 Department when President George H. W. Bush was in office.
2 From 2001 to 2003, I was the chairman of the Council of
3 Economic Advisors in the Whitehouse when George W. Bush was
4 president.

5 As part of that job, I also chaired the Economic
6 Policy Committee for the OECD, which is the group of large
7 industrial companies.

8 Q. In case the jury is not familiar, what is the -- what
9 were your roles and responsibilities as the Chairman of the
10 President's Council of Economic Advisors under the second
11 President Bush?

12 A. Well, the Council of Economic Advisors is wonderful
13 institution. It's like a small consulting firm. You have
14 one client, the President, that does what the President
15 wanted. As the President's chief economic advisor, my
16 assignments were principally about tax and budget, which were
17 of great concern to President Bush; Asian economic
18 situations; a variety of international finance issues. You
19 remember, we had the 9/11 tragedy during that time, so
20 managing federal aid in New York City as well. General
21 economic topics were -- were my purview.

22 Q. I think you told the jury you're currently the Dean of
23 the Columbia Graduate School of Business. Are you
24 currently -- are you still doing economic policy in addition
25 to your teaching and academic responsibilities?

1 A. Yes. In a couple of ways. I really enjoy writing
2 about economic policy, so I have columns periodically in
3 places like the Wall Street Journal, The New York Times and
4 Washington Post, and I have a regular radio and television
5 commentary to talk about economics. And I am currently the
6 chief economic advisor to Governor Romney in his campaign for
7 the presidency.

8 Q. In addition to the things you have described here, do
9 you also, from time to time, testify as an expert witness on
10 economic matters?

11 A. I do.

12 Q. And is your -- just so I understand -- there's a lot of
13 things. What would be your primary professional focus?
14 Would it be the academic responsibilities you just described
15 or your work as an expert witness?

16 A. Certainly in my academic responsibilities, I am very
17 active as a teacher and a scholar, and as the Dean of
18 Columbia Business School, it's a very large institution, with
19 2,000 students and 600 staff all over the world. It's very
20 much a full-time job.

21 Q. Have you been retained by Microsoft Corporation in this
22 case to provide expert testimony?

23 A. Yes, I have.

24 Q. And what hourly rate are you charging in this case?

25 A. \$1200 an hour.

1 Q. What were you asked to do by Microsoft in -- as part of
2 your retention in this case as an expert witness?

3 A. Well, really two things, and I prepared a slide on this
4 if it's helpful.

5 Q. Right.

6 MR. JARDINE: If we could have slide 211, please.

7 THE WITNESS: The court reporter is advising me to
8 slow down.

9 Q. BY MR. JARDINE: I'll try to help.

10 A. Okay. So, really two things --

11 THE COURT: And it's in your economic interest to do
12 it.

13 THE WITNESS: Exactly, Your Honor. Very well put.
14 Very well put.

15 Q. BY MR. JARDINE: Judge Motz will get an A in your
16 class.

17 A. He definitely will. Really just two things in the
18 assignment. Lots of details, but two big things. One is to
19 assess whether the plaintiff, whether Novell actually
20 suffered damages. And in my case, as an economist, that's
21 going to be in terms of the lost value of the productivity
22 applications that it bought in this case -- that's
23 WordPerfect and Quattro Pro -- or whether there were lost
24 profits in that acquisition as a result of the alleged
25 anticompetitive conduct by Microsoft. So that is my, if you

1 will, affirmative task.

2 I was also asked by Microsoft to review the damages
3 analyses that were put forward by Dr. Warren-Boulton, whom I
4 understand you have heard already, to opine on their accuracy
5 and reliability from an economist's perspective. So those
6 were the two tasks.

7 Q. And I'm not sure this was clear but, in performing this
8 responsibility, did you assume liability; that is, did you
9 assume the allegation that Microsoft acted in an
10 anticompetitive way?

11 A. I did. I am here as a damages witness. So it's not
12 really for me to discuss liability. I take liability as
13 given and really ask the question: If the jury were to find
14 there's liability here, would there have been damages, and to
15 what extent would those damages be to the plaintiff? That's
16 really my task.

17 Q. And is that -- by assuming that, does that mean that
18 you agree one way or the other with the proposition of
19 liability?

20 A. It does not. That's merely the task I have as this
21 sort of witness, to take that as given and then opine on the
22 damages.

23 Q. Have you formed opinions with respect to the issues
24 you've identified as part of your assignment?

25 A. Yes, I have.

1 Q. And have you prepared a slide that summarizes those?

2 A. Yes.

3 MR. JARDINE: If we could put up slide 212.

4 Q. BY MR. JARDINE: Using that slide, Professor Hubbard,
5 would you describe generally the opinions you have reached in
6 this case?

7 A. Yeah. Following the words of the slide, it's actually
8 a pretty simple notion. Bottom line, there is no damage to
9 Novell. Why is this? And it would be a story we talk about
10 this morning. But why is this? There are really other
11 market forces at play, other shifts in consumer preferences
12 that explain the decline in valuation, so the way to think
13 about that in terms of a damages analysis is that, even in
14 the but-for world, so, even absent whatever anticompetitive
15 behavior was alleged for Microsoft, the value of these
16 assets -- "these assets" meaning WordPerfect and Quattro Pro
17 assets -- in 1996 would have been essentially the same as
18 what you observed when they were actually sold to Corel.

19 That is what it means to say no damages. And that's
20 what I will try to demonstrate to you this morning.

21 As a second piece of that, I would note that, if the
22 Windows 95 products from Novell wouldn't have been released
23 until after October 95 in the but-for world, the opinions on
24 damages that you heard from Dr. Warren-Boulton would be
25 unrelated to that subject because he has no opinion in that

1 case.

2 Q. We will get into these in more detail but, in this
3 case, and in general, economists like the phrase "in a
4 but-for world," and I would just like to make sure that's as
5 clear as we can make it to the jury. Would you explain,
6 again, what we mean by in a but-for world in this case and in
7 the testimony.

8 A. Sure. In the but-for world, you're putting aside the
9 considerations of alleged anticompetitive conduct here, what
10 would have happened in the normal course of events, so that
11 means we have to know what this industry was like, what
12 trends were happening, how do consumers make decisions? All
13 of that is in the but-for world. Then we compare that world,
14 which is a world we will have to construct, with the actual
15 world, the data that actually happened.

16 Q. And in a but-for world, do you assume, in this case,
17 that Novell would have had access in its development of the
18 Windows 95 products to the NameSpace extension API's?

19 A. That's correct. That would be my assignment, to design
20 a but-for world.

21 Q. I would like to look at your second bullet point for a
22 minute to make sure we're clear about that. Why did you make
23 an assumption about when Novell would have had its Windows 95
24 products available in the market but-for or even if it had
25 had access to the NameSpace extension API's?

1 A. Well, the question is, was there a sufficient period of
2 time after the release of Windows? So, like
3 Dr. Warren-Boulton, I looked at a specific period of time,
4 which gets me to October, 1995.

5 Q. And did that -- I know when you wrote your original
6 report, you had to rely on materials that were available
7 then. Have you considered Dr. Warren-Boulton's testimony in
8 this court?

9 A. Yes, I have.

10 Q. Okay.

11 Let me have slide 212.1 put up, please.

12 This is a quote taken from Dr. Warren-Boulton's
13 testimony on November 17, 2011 and I'll just read it and see
14 if this is what you have assumed.

15 He testified, "It depends on the assumption that
16 Novell would have had its product in the market within a
17 sufficiently short time period so that there would not have
18 been a significant effect on its sales. It is my
19 understanding, from the testimony, which I totally rely on
20 the programmers, that we are talking about something in the
21 order of the time frame August, September, October. It is my
22 understanding also from the testimony that the expectation
23 was -- that that was their goal, was to get it out within 30
24 or 60 days, and that is my but-for world. But, you know, on
25 this, you know, I would defer to the prior testimony that has

1 been heard."

2 So is that testimony, the 60 days, or October, what
3 you have assumed for your analysis?

4 A. Yes, sir, it is.

5 Q. And just to be clear on your last point, if the jury
6 were to determine that, even if Novell had had access to the
7 NameSpace extension API's, it would not have been able to
8 release its Windows 95 products by October of '95, for
9 whatever reasons; for instance, such as the Quattro Pro
10 element, what would be the effect of such a finding on the
11 opinions Dr. Warren-Boulton provided here, in your economic
12 opinion?

13 A. Speaking as an economist, those views just wouldn't be
14 relevant to the proceeding anymore because they are
15 predicated on this but-for world.

16 Q. Now I would like to turn, if we could, to the bases for
17 the opinions that you are going to offer here. And, as you
18 undertake to prepare these opinions, from an economic
19 perspective, what do you look at to get context for
20 understanding?

21 A. Well, broadly speaking, one would start with the
22 industry and the marketplace. What was going on here? What
23 are the paradigm shifts going on and the kinds of products
24 and platforms? Where did WordPerfect stand in that shift?
25 And then to look, as an economist, at how we would value

1 those productivity assets in the context of those shifts.

2 Q. And to give a focus of those shifts, have you prepared
3 a chart showing the key transactions in this case about which
4 you build a context?

5 A. Yes, I have.

6 MR. JARDINE: And if we could put up slide 213 next.

7 Q. BY MR. JARDINE: And would you explain to the jury what
8 this slide shows.

9 A. Well, I think it's important, since -- going through
10 some economic analysis to start out with some facts and
11 dates. So, what happened on March 24, 1994? We have the
12 announcement of an acquisition, so Novell wants to buy
13 WordPerfect and Quattro Pro. And, at that time, this deal,
14 if you will, is worth just shy of 1.6 billion, 1.55 billion
15 dollars. In June, the acquisition is completed, but because
16 this was a stock deal and the Novell stock had declined in
17 value, the deal is valued at that time, again, data at this
18 point. The deal is now valued at a billion dollars.

19 October 30 of that year, Novell announces that it
20 will sell the assets, WordPerfect and Quattro Pro, and then
21 finally, January 31, of the succeeding -- January 31, 1996,
22 Novell announces the sale of these assets to a specific
23 buyer, Corel, for about \$146 million. That's the sort of
24 timeline.

25 Q. And that generally describes the history of the period

1 in which Novell owned the WordPerfect/Quattro Pro assets?

2 A. That's correct.

3 Q. We've got a separate graphic. It's actually tilting a
4 little, but we have put up there a board that shows the
5 market's reaction to the announcement by Novell of the
6 acquisition of WordPerfect and Quattro Pro. Would you
7 describe for the jury the market's reaction.

8 A. Sure. The --

9 MR. TULCHIN: Your Honor, there is a handout among
10 the jurors.

11 THE COURT: Oh. Thank you very much. Thank you,
12 Mr. Tulchin.

13 THE WITNESS: It's also identical. So this is the
14 same thing.

15 THE COURT: This is the same thing?

16 THE WITNESS: It's the same thing.

17 THE COURT: Thank you very much.

18 MR. JARDINE: I maybe made it worse.

19 THE WITNESS: In any event, it's right there.

20 THE COURT: Just ignore the tilt.

21 Q. BY MR. JARDINE: Would you describe to the jury what
22 happened in the two days following the March announcement by
23 Novell that it was acquiring WordPerfect and Quattro Pro. I
24 think the date was March 21.

25 A. Sure. The announcement of an acquisition means that

1 when an acquirer is going after a target, Novell going after
2 these assets, the acquirer is stating what it thinks is the
3 value of those assets is, when it means to go buy something.
4 The market had a chance to opine on that, if you will, the
5 very next day by saying, "Okay. This is what the price is.
6 What do we think? Is it a good deal? Is it a bad deal?"

7 If you look at either the board or the chart here,
8 they're the same thing. You see a sharp drop in the stock
9 price immediately after the announcement. This is the first
10 time that market participants would have had time to pass
11 judgment on whether this was a good deal or a bad deal for
12 Novell. And, as you can tell -- we will talk about this more
13 formally, but you don't need the formalism to look at the
14 picture -- it's a very steep drop and a very significant
15 market criticism.

16 Q. Do you recall approximately how large the drop in
17 market capitalization was over those two days?

18 A. I believe when you filter out other events, it's
19 something on the order of 1.8 billion dollars.

20 Q. And, in your experience, was this a harsh reaction by
21 the market?

22 A. It is indeed a harsh reaction. It's useful to know
23 that there's a large body of research on management overpaid
24 for acquisitions, hardly the first time that has happened, but
25 this would be a quite significant reaction even in the

1 context of generally overpaying for acquired assets and
2 companies.

3 Q. From an economic perspective and based on your view of
4 the transaction and the context and history of these
5 companies, why did the market react so negatively?

6 A. Well, I think to understand that, the question is, why
7 might the market not be as optimistic about Novell's
8 ownership of these assets as Novell was?

9 That's really the question you're trying to get at.
10 And, from an economic perspective, I think it's about trends
11 that were going on. The WordPerfect had been late in a
12 couple of big changes in the marketplace, changes in moving
13 to the Windows platform and the other change of moving from
14 stand-alone products, like you would buy a word processor
15 separately or presentation software, to buying a suite of
16 office products. They were late to both of those, and, of
17 course, that was known to market participants.

18 Q. For purposes of your assignment and the opinions that
19 you're going to render today, do you think it's important to
20 understand the historical context that you've just
21 described?

22 A. Well, most definitely.

23 Q. You mentioned two shifts. Would you describe the first
24 of those shifts.

25 A. Sure. The shift -- and I have a slide on this if

1 that's helpful.

2 Q. Yeah.

3 Why don't we put up 215, Dave.

4 A. The two shifts that I mentioned that were going on were
5 a migration to the Windows platform from DOS and the
6 evolution of Windows; and then the second shift was the shift
7 from individual products, like a word processor or
8 presentation software, to suites. You can see this figure
9 tries to present a lot of information simply. On the left,
10 you're seeing the evolution of the Windows platform over
11 time, going from 1989 to 1994. And, in the blue, you can see
12 Microsoft product offerings starting in word processors, with
13 Word 1.0, on suites with Office 1.0. The green refers to the
14 WordPerfect offerings or, in the case of suites, the Borland
15 Office.

16 And you can see that there's a lateness in this
17 picture, substantially, in both of these shifts, both the
18 shift to Windows and the shift to suites. The two, what I
19 would describe as the sea changes, really, in the
20 marketplace.

21 Q. Let's just for a moment focus on word processors and
22 the shift to Windows. I notice that, on the Microsoft
23 column, Word 1.0 is its first word processor for a Windows
24 platform. Is that what this chart shows?

25 A. Yes. Yes.

1 Q. And you've identified that WordPerfect's -- if I read
2 it correctly, and let me know if I do -- that WordPerfect's
3 first word processing system for the Windows platform was
4 WordPerfect 5.1?

5 A. That's correct.

6 Q. And that's about two years after Microsoft's?

7 A. Yes. And we're basically -- in computer time, two
8 years isn't two years. You can think of this as missing a
9 whole generation. That's what that's saying. Yes, in
10 calendar time, it would be two years.

11 Q. And, after -- if you look at your chart, beginning with
12 WordPerfect 5.1, it appears that there's almost -- it looks
13 like roughly simultaneously releases. What comment do you
14 have about that and whether WordPerfect had, quote, caught
15 up?

16 A. Well, there is no real evidence here that WordPerfect
17 has, quote, caught up. It's just leapfrogging a generation
18 behind the Microsoft product.

19 Q. And let me put up slide 216 that talks about this shift
20 from Windows -- from DOS to Windows. Would you explain to
21 the jury what this chart shows.

22 A. Sure. What's being depicted here is total revenue for
23 sales of all of these products. So, this isn't for
24 individual firms. It's total revenues. So, where it says
25 millions there, 2.4, that's 2.4 billion dollars. The time is

1 going from 1989 to 1998. The yellow bars are the DOS
2 platform. The other bars relate to Windows. So the bluish
3 bars are the 3.X Windows platform and the red, Windows 98.

4 So, what you can see from this is, if you just look
5 at overall sales -- this is not individual firms. It's about
6 the industry -- there's a decline in the revenues for DOS and
7 a sharp acceleration in the revenues to Windows. That was
8 this first big change that I mentioned, away from DOS and
9 toward Windows.

10 Q. And have you prepared a chart also that shows
11 WordPerfect's market share on the DOS platform?

12 THE CLERK: Judge, Juror No. 7 has a problem.

13 THE COURT: Okay. Let's take a break. Let's take
14 a --

15 JUROR NUMBER 7: I can't see with the chart the
16 whole picture.

17 THE COURT: Oh. Just move that thing.

18 MR. JARDINE: I'm sorry. I did make it worse.

19 THE COURT: You can just take it down. Why don't
20 you just take it down? Nobody is looking at it.

21 MR. JARDINE: We actually put a lot of work into
22 that board.

23 THE COURT: It's a big investment.

24 Q. BY MR. JARDINE: They can look at the screen, and I can
25 look at the board, and we'll both feel good. To go back to

1 my question, have you prepared a chart showing WordPerfect's
2 market share on the DOS, Windows 3.X and Windows 95 platform?

3 A. Yes, I did.

4 MR. JARDINE: And, Dave, if we could put up 217.

5 THE WITNESS: Okay. So, remember before we were
6 talking about total revenue. That's DOS in the industry.
7 Now we're talking about market share. So here again the
8 yellow is DOS. The blue are the Windows 3.X and the red is
9 Windows 95. So what this shows you is that WordPerfect has a
10 very significant share along the left side percentages or
11 market shares. It's a very significant share of DOS, the
12 older platform, but a smaller share, and actually declining
13 share in the Windows 3.X and then subsequently Windows 95,
14 98.

15 Q. And you've described what each of these shows, and in a
16 summary sort of way, what does this slide tell you about the
17 trend you have been describing?

18 A. Well, the trend in the industry is clear -- that was
19 the other slide -- moving from DOS to Windows. So the
20 question is, going forward, who's doing well on those
21 platforms? And WordPerfect did well on the DOS platform. It
22 did not translate into similar market share success on the
23 Windows platform. So that was the first of those industry
24 shifts that I mentioned, DOS to Windows.

25 Q. Okay.

1 And if we could put slide 215 back up.

2 Would you now describe for the jury the second trend
3 as to chronology.

4 A. Sure. The second industry trend was, as I mentioned to
5 you earlier, was the shift from the stand-alone products to
6 suites. And, again, we can see from the timing that there's
7 a substantial lateness here vis-a-vis Microsoft's products,
8 but it's important to look, just as we just did with DOS
9 versus Windows, at what the consequence is in the overall
10 marketplace for missing the shift.

11 Q. And have you prepared a slide that reflects the
12 implications of that in the suite context?

13 A. Yes, I have.

14 MR. JARDINE: If we could put slide 218 up.

15 Q. BY MR. JARDINE: Would you describe for the jury what
16 you have tried to show in this slide?

17 A. Sure. There's a lot going on here, so it will be taken
18 in steps. On the left, you'll see revenue -- again, this
19 is -- again, this is back to dollars that we talked about,
20 with DOS and Windows. And here we're looking at stand-alone
21 products, like word processors, presentation software and so
22 on, versus suites. Red stand-alone, blue is suite.

23 So, first of all, for the industry as a whole, look
24 at the red bars and the blue bars. So what you see, as we go
25 over time, stand-alone products are declining because people

1 aren't buying these things individually anymore. The suite
2 products are rising. That was the second market event that I
3 mentioned. So the red and the blue bars are the market.

4 Now let's talk about these assets, the WordPerfect
5 assets, the Novell share. The red dash line is the
6 stand-alone share. The blue line, the light blue line, is
7 the Novell suites share. So, you see that there's a gradual
8 decline over this period in the stand-alone share that these
9 assets had and a very slight upward movement in the share of
10 the suites by these Novell offerings, but still at very low
11 levels.

12 To frame that, if you look at the right, where you
13 have Novell's share, those are market shares. The left is
14 dollars. So, if you look at that light blue line, you're
15 still coming in, eyeballing this, at no more than, say, 5
16 percent, so small -- small market share.

17 Q. So, just if I can understand this, if we -- the dotted
18 red line, if I understood your testimony correctly, is the --
19 shows Novell's market share in stand-alone products?

20 A. Yes.

21 Q. And you've described it as decreasing over the period
22 of this chart, 1993 to 1996?

23 A. That's correct.

24 Q. And the light blue line across the bottom is Novell's
25 market share in suites?

1 A. Suites, right.

2 Q. And these are calculated on an annual basis?

3 A. Correct.

4 Q. And you've put the source of the data down in the lower
5 left-hand corner?

6 A. Yes.

7 Q. And when you look at these two shifts and think about
8 early 1994, just prior to the announcement by Novell of its
9 acquisition of WordPerfect and Quattro Pro, what is your
10 conclusion about the condition of the WordPerfect
11 Corporation?

12 A. Well, it's important to step back again. When we are
13 going to be looking at the value of something, value is a
14 statement about, what do you expect the future to be? That's
15 what it means when you buy an asset. So it's really
16 important to know, where were we? Where were these assets in
17 riding those sea changes? And I've already explained that
18 the WordPerfect assets had, if you will, missed the boat on
19 the two platforms.

20 And so one could look at accounting data for
21 WordPerfect and see whether the accounting data for the
22 assets collectively mirrored that, and those data do. I
23 prepared a slide on it.

24 Q. If we could have --

25 THE COURT: Before I am -- I'm pretty sure now I do

1 understand it, but I was confused for a long time. Novell's
2 share percentage on the far right -- at the top it says
3 Novell's share and then the percentage. That relates to the
4 bottom line -- that does not relate to the blue line right
5 next to it. It's the light blue line on the bottom that it
6 relates to; is that right?

7 THE WITNESS: Both of those, Your Honor are -- the
8 dotted red line is the share in stand-alone. The light
9 blue -- since I'm from Colombia, I probably should call
10 it Columbia blue. That's our color -- is the share in
11 suites.

12 THE COURT: I want to be sure I understand. This
13 relates to that, not to that (Pointing to the chart)?

14 THE WITNESS: Yes, sir. Yes, sir. The big bars are
15 about the marketplace. The lines are about the firm.

16 Q. BY MR. JARDINE: And so the jury is clear on this,
17 because I probably wasn't clear, if you look at 1996, that
18 very tall blue bar reflects nearly 4 billion dollars of
19 revenue in the suite, total suite application market?

20 A. Correct. That's dollars, like we looked earlier at DOS
21 and Windows in dollars.

22 THE COURT: And that's industry-wide?

23 THE WITNESS: That's the whole industry. The firm
24 is the lines. The whole industry is the bars.

25 Q. BY MR. JARDINE: Thank you. If we -- I think that's

1 clear. If we can now move to -- you mentioned that you had
2 prepared a slide that would show WordPerfect's accounting
3 data, how these trends were affecting it.

4 If we could turn to slide 219. Thank you.

5 Would you describe for the jury -- the jury has
6 actually seen this graphical before in Dr. Warren-Boulton's
7 testimony. Would you describe again what this chart shows?

8 A. Well, we've been talking about missing boats, about
9 being late to platforms. So the question is -- we're going
10 to head toward valuations -- what did this have to do with
11 the actual performance of WordPerfect? What would it say
12 about that performance going forward? So these bars refer to
13 pre-tax operating income of WordPerfect in each of these
14 fiscal years. These data have no non-recurring charges.
15 They are purely operating income.

16 And you can see, the peak in these numbers was in
17 the 1991 fiscal year, and it continued erosion in operating
18 income of these assets going forward.

19 Q. And you mentioned that these bars did not contain any
20 non-recurring income. The jury may recall, we had a
21 discussion when Dr. Warren-Boulton was here. Does that
22 mean -- is that another way of talking about no one-time
23 expenses or no extraordinary items?

24 A. Yes. Those are other ways of saying the same thing.
25 These are normal, recurring operating top-line costs, getting

1 the operating income.

2 Q. And just to make sure we are clear about this, in your
3 opinion, why was WordPerfect experiencing this declining
4 operating income?

5 A. Well, going back to the economic story that it was
6 important to start with, again, WordPerfect had been
7 struggling with the two shifts that were going on in the
8 marketplace. In some sense, it wouldn't be surprising, given
9 what I told you about those two shifts, that that's being
10 mirrored in operating income performance as well.

11 Q. And these items, these shifts in this picture you have
12 described, how does that relate to your understanding of what
13 happened on March 22 and 23, 1994, when the market reacted to
14 the announcement by Novell of the acquisition?

15 A. Again, the market reaction was the first time the
16 financial market participants, buyers and sellers of stock,
17 are going to offer their opinion, a real dollars opinion.
18 They would have seen the industry trends that I have
19 mentioned, certainly seen the accounting data, so it really
20 was a verdict of -- by the marketplace essentially about over
21 optimism by the Novell management that these assets, the
22 WordPerfect and Quattro Pro assets, would pay off more
23 handsomely than the past had suggested that they would.

24 Q. Thank you. Your Honor, I think this would be an
25 appropriate time to break.

1 THE COURT: Okay. Let's take a break and pick up in
2 about 10, 15 minutes. I'm ready when you're ready.

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