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IN THE UNITED STATES DISTRICT COURT
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

December 7, 2011

Jury Trial

A P P E A R A N C E S

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I N D E X

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1 December 7, 2011

8:00 a.m.

2 P R O C E E D I N G S

3
4 THE COURT: Good morning, everybody.

5 One quick thing before the jury comes in. My
6 computer is not working so I couldn't type this out, but for
7 those of you who are thinking about such things, I thought
8 of one more thing for the instructions, and I thought maybe
9 the easiest way to do it is to tell you first thing in the
10 morning.

11 Again, it is tentative, and I certainly don't
12 think Microsoft will like this, but I still think deception
13 is part of the case, not the tort of deception, and I
14 propose adding at page 3 of the draft that I gave you
15 yesterday, in the third paragraph down, which basically
16 talks about the duty to cooperate, the following phrase:
17 What I now say is such as when a monopolist has entered
18 voluntarily and, thus, presumably a proper course of
19 dealing, or when a monopolist has engaged in deceptive
20 conduct that has a purpose and effect of preventing a
21 competitor from developing a product that would enhance
22 competition by threatening a monopolist's monopoly power.

23 I don't know whether you'll have this transcript
24 in time for this afternoon, but it is consistent with the
25 prior opinion that I wrote and really what I think. I still

1 think I need something about deception. I know that Novell
2 sort of backed away from it, but as far as I'm concerned
3 factually Microsoft may very well not have destroyed a
4 preexisting profitable relationship, but may have engaged in
5 deceptive conduct, arguably, that prevented a competitive
6 product from being developed that threatened the monopoly.
7 That is the concept. We don't have to discuss it now. I'm
8 just mentioning it, because I couldn't give it to you in
9 writing.

10 Let's get the jury.

11 (WHEREUPON, the jury enters the proceedings.)

12 THE COURT: Good morning, everybody. I hope you
13 all had a pleasant afternoon and evening, and we'll continue
14 with the cross-examine of Professor Hubbard.

15 MR. TASKIER: Thank you, Your Honor.

16 CROSS-EXAMINATION (Cont.)

17 BY MR. TASKIER

18 Q. Good morning, Dr. Hubbard.

19 A. Good morning.

20 Q. Lets look at PX-153.

21 MR. TASKIER: Mr. Goldberg.

22 BY MR. TASKIER

23 Q. These are minutes from a Novell board of director
24 meeting on March 20th, 1994. Let's turn to page 3 in the
25 middle of the page where it says Lotus Development

1 Corporation was continuing to up its proposed purchase price
2 for WordPerfect over and above what Novell was willing to
3 pay. As a result, any delay in the WordPerfect definitive
4 agreement could force Novell to pay a substantially higher
5 price in order to acquire WordPerfect Corporation.

6 Now, Dr. Hubbard, isn't this evidence, additional
7 evidence that Lotus and Novell were making competing offers
8 to WordPerfect?

9 A. That is not how I see it. There may be discussions
10 with Lotus but, as I said yesterday, it is not terribly
11 germane to this proceeding. We don't know an amount. We
12 know it is the value in Lotus's hands, and it may be subject
13 to the same overpayment. So I guess I'm not sure what the
14 relevance is. But, yes, I can read the lines on the page.

15 Q. And it is evidence that there were competing offers in
16 place?

17 A. It is certainly evidence that there was a discussion,
18 yes.

19 Q. Let's talk about Dr. Warren-Boulton.

20 MR. TASKIER: We can take that down, Mr. Goldberg.

21 BY MR. TASKIER

22 Q. Dr. Warren-Boulton's October 6, 1995 damages figure.
23 This damage figure is another way that he uses to look at
24 damages by seeing how much Novell's market capitalization
25 fell on that date beyond the portion that he attributed to

1 the \$41 million in missed earnings, correct?

2 A. That is certainly the way he describes it, yes.

3 Q. Now, let's look at Dr. Warren-Boulton's chart for the
4 jury.

5 MR. TASKIER: It is slide 554, Mr. Goldberg.

6 BY MR. TASKIER

7 Q. And that shows in his demonstrative the drop on October
8 6th, and in the box he segregates out the drop that he
9 attributes to the earnings shortfall, leaving \$1.177 billion
10 as a loss of market value and damages of \$1.136 billion,
11 because that in his view was the market's reaction to the
12 first notice that Novell would not have had a Windows 95
13 product ready until early 1996; is that right?

14 A. That is not at all how I would characterize either the
15 press release or the economic content of what he has done.
16 I can reprise the testimony I gave yesterday.

17 Q. Let's pull up your chart, your slide 237. There we go.

18 It says Novell believes the anticipated fourth quarter
19 weakness in its applications business is primarily due to a
20 continued fall off in the Windows 3.1 application market
21 following the introduction of Microsoft's new Windows 95
22 operating system in August. Novell applications designed
23 specifically for this new operating system are not available
24 today, but are expected to ship in early 1996.

25 Correct?

1 A. That is what it says, yes.

2 Q. So he testified that the October 6 drop was
3 significant, he being Dr. Warren-Boulton, because if the
4 market value of WordPerfect and QuattroPro at \$207 million
5 as you claim in March of 1994, then the market couldn't drop
6 another billion plus again when it learned this bad news
7 about the applications market, whether the news was about 16
8 bit sales or 32 bit sales, it is all about the same
9 products, correct?

10 A. Well, that, of course, is one that is a matter of both
11 arithmetic and economics. The economics would be that if
12 you felt that the losses were going to be even worse than
13 you thought, and it could be certainly greater than 200, and
14 as a matter of arithmetic attributing all of this to the
15 earnings miss is certainly incorrect.

16 Q. He didn't attribute all of it to earnings miss, right?
17 He attributed it to the fact that they were not going to
18 ship early.

19 A. Yes. I'm sorry. That is what I mean. That would be
20 incorrect, for the logic I gave yesterday, which I am happy
21 to give again.

22 Q. You, however, are claiming that the drop was \$1.177
23 million drop as a result of the continued fall off in the 16
24 bit product, correct?

25 A. What I'm claiming is that Novell had a history of

1 earnings misses that led to large drops. I showed the jury
2 a table yesterday that did that, and you cannot count this
3 as an event for Dr. Warren-Boulton's purposes, unless you
4 can show that it is directly attributable to the delay. The
5 press release says in plain English the word primarily
6 before something else. So it is disqualified as an event
7 and the economic analysis was done incorrectly. Both of
8 those are true.

9 Q. You and he obviously disagree on the economic analysis,
10 correct?

11 A. That is certainly the case, yes.

12 Q. Now let's turn to the differences you -- thank you --
13 the differences between you and Dr. Warren-Boulton in
14 implementing what Dr. Warren-Boulton called his forecast of
15 revenues and profits.

16 Could we have your demonstrative 246.1.

17 Now, this chart you used in illustrating your criticism
18 of Dr. Warren-Boulton's projections, correct?

19 A. Yes.

20 Q. And you claim that he made a significant mistake by
21 excluding the third quarter of 1995 in calculating his
22 baseline market share going forward for projected profits,
23 correct?

24 A. I believe what I said was two mistakes, one of
25 misconstruing what the market is and, second, the third

1 quarter, yes.

2 Q. And you claim that the mistake by excluding the 3.8
3 percent quarter systematically inflates his but-for market
4 shares and the damages?

5 A. That is true as a matter of arithmetic, yes.

6 Q. Now, let's look at what was happening in the
7 applications market at that time.

8 In the first and second quarters of 1995, both Novell
9 and Microsoft had a 16 bit suite product in the market for
10 Windows 3, Perfect Office 3.0, released in December of 1994,
11 and Microsoft Office, 4.2C, right?

12 A. That is my understanding, yes.

13 Q. They were competing against one another in 1995 first
14 quarter and in 1995 second quarter?

15 A. That is certainly my understanding.

16 Q. And in the third quarter -- and in the Novell share
17 when they were head to head, was in the first quarter 13.1
18 percent of suite sales, and 10.2 percent of suite sales in
19 the second quarter?

20 A. You're mischaracterizing the chart, Mr. Taskier. He
21 didn't do it correctly, i.e., looking at suites and other
22 things. He had this mooshed together market called
23 productivity applications.

24 Q. I stand corrected. That is another point we'll get to.
25 Sorry.

1 So he took 13.1 percent of combined productivity
2 application revenue, and ten percent, and he projected them
3 forward using combined 11.7 percent into the future as a
4 baseline market share, correct?

5 A. Yes, sir, that is what he did.

6 Q. Because he is using these historic first quarter, the
7 most recent historic data for the head to head competition,
8 correct?

9 A. He is not using all the most recent historic data.

10 That is the difference we're talking about now.

11 Q. Right. Now, the reason that he didn't use the 3.8
12 percent, which is a dramatic drop, and didn't average that
13 in is because by that quarter the Microsoft Office for
14 Windows 95 suite was in the marketplace and there was no
15 WordPerfect Perfect Office for Windows 95 in the
16 marketplace, such that in the suite market in that quarter
17 Microsoft had 100 percent of the 32 bit suite product, and
18 Novell had zero percent, such that that quarter is skewed
19 because in the future in a but-for world there would be two
20 products going head to head and in this one there is only
21 one, right?

22 A. No. Unfortunately, you don't get to redefine the
23 but-for world. The quarter belongs in the but-for world.
24 Again, you keep mischaracterizing these as being about
25 suites. They are not. These data, as he constructed them,

1 improperly in my view, are about productivity applications.

2 Q. And they include the suites, right?

3 A. They certainly includes the suites.

4 Q. That is right. That is part of your dispute that we'll
5 get to in a moment.

6 So if his number excludes the quarter that is skewed
7 downward, because there is no competing WordPerfect suite in
8 the mix, then that is a fairer and more accurate view of
9 what goes forward, and rather than the number which you
10 have, which is 8.7 percent, it is really 11.7 percent going
11 forward?

12 I know you disagree.

13 A. May I say why I disagree?

14 Q. Please. Absolutely.

15 A. It is neither fair nor more representative for the
16 reasons I said yesterday it should be in the but-for world,
17 but to remind the jury what I said yesterday, either one of
18 these mistakes, both of which are severe, are sufficient to
19 get rid of all of his damages.

20 Q. Except that where you say that he systematically
21 inflates what you did by including that one quarter where
22 there was no competition in 32 bit, because you
23 systematically deflated his damages, didn't you?

24 A. No, sir. I included what I thought was the but-for
25 world, the way I testified yesterday.

1 Q. So now let's turn to suites and standalones.

2 You criticized Dr. Warren-Boulton for using a combined
3 productivity application share, combining suites and
4 standalones rather than using shares in product categories.

5 Do you recall that?

6 A. Yes, sir.

7 Q. And do you agree that there may be differences in
8 consumer preferences in the word processing business? That
9 is, some consumers may want Word and some may want
10 WordPerfect?

11 A. That is the way competitive markets work, yes.

12 Q. And that is why some customers bought WordPerfect and
13 some bought Word, correct?

14 A. I would assume if you buy something you place value on
15 it relative to alternatives, yes.

16 Q. Now, yesterday we saw an IDC report that said in 1994
17 WordPerfect had an install base of approximately 7 million
18 users of WordPerfect for DOS.

19 Do you remember that?

20 A. I remember that document, yes.

21 Q. And it is fair to assume that if they were on
22 WordPerfect for DOS, many of these users had not presumably
23 upgraded to Windows yet?

24 A. I think that is a fair assumption.

25 Q. And, indeed, we saw an IDC survey that Mr. Frankenberg

1 referenced in his testimony, which said that, indeed, 74
2 percent of users had not yet chosen suites for their use at
3 that point in time, correct?

4 A. I think your question mischaracterizes what you showed
5 me. You showed me a reference to a single marketing study
6 by another firm contained in an IDC document but, yes, it
7 did offer that opinion.

8 Q. And Mr. Frankenberg relied on that in his testimony as
9 saying that was part of his plan to capture that 74 percent
10 for future suite purchases for WordPerfect, correct?

11 A. I believe that is what he said, yes.

12 Q. So let's assume that the people who own Windows for DOS
13 were late adopters. They have not moved to Windows and they
14 have not moved to suites. They are waiting for Windows or
15 some other advance in the marketplace, right?

16 A. That would be one hypothesis, yes.

17 Q. For example, as you said, they are driving their
18 buggies, but maybe they are just waiting for the buggy to
19 fall apart or the horse to die before they move onto a car?

20 A. Possibly.

21 Q. So early adopters, by contrast, are the people who
22 jumped in and bought Windows early on and then bought suites
23 early on and primarily bought Microsoft Office suites,
24 correct?

25 A. Both of those statements are true, sure.

1 Q. So let's talk about the choice that a late adopter of
2 Windows and suites might make. Let's assume they were using
3 Windows for DOS and not a suite. If they were loyal to
4 WordPerfect, and WordPerfect had a suite product for Windows
5 95 --

6 THE COURT: When you say Windows, do you mean
7 Office? You said Windows for DOS.

8 MR. TASKIER: I am sorry. If I misspoke --

9 THE COURT: I know exactly what you are talking
10 about.

11 Just rephrase.

12 MR. TASKIER: I will rephrase.

13 BY MR. TASKIER

14 Q. If they were loyal to WordPerfect and WordPerfect had a
15 suite product for Windows 95 and all their files, of course,
16 were already on WordPerfect for DOS, and they knew how to
17 use WordPerfect and all its commands, isn't it likely that
18 they would choose Perfect Office for Windows 95 when they
19 upgraded to Windows 95?

20 A. I don't think so. I can offer a practical and economic
21 observation. The practical observation is if you look at
22 the Storm documents that I believe have been in this
23 proceeding, Novell is commenting that the conversion rate
24 from DOS was only about 30 percent rather than the 80 that
25 they expected.

1 The economic observation is that these are separate and
2 distinct for the reasons that I said yesterday, and
3 aggregating them is just simply a way to inflate shares for
4 all the reasons I said yesterday.

5 Q. So the Storm documents, that was before there was even
6 a Perfect Office for Windows 95, so that is historical data
7 based on Perfect Office for early adopters. That is not
8 what we're asking about. I am asking about late adopters.
9 Once there is a Perfect Office for Windows 95 in the
10 marketplace, wouldn't they move to that product?

11 A. I don't see why they would. The question, by the way,
12 before had been about loyalty, which is the question that I
13 answered, but I don't see any reason one way or another. I
14 am not a marketing expert.

15 Q. Isn't it well understood in terms of network effects
16 that there is a barrier such that when someone already has
17 invested money and effort and has files in a particular word
18 processing software, there is a barrier they have to
19 surmount to go and move to another one?

20 A. There is a barrier, but what network economics would
21 say is when the gain to move is sufficiently large you jump
22 over that barrier, which is, of course, what we saw from the
23 testimony yesterday.

24 Q. And the gains have to be perceived to be sufficiently
25 large, correct?

1 A. That is true by definition, yes.

2 Q. Right. And a loyal WordPerfect user on DOS who was
3 waiting for a WordPerfect suite on Windows, might very well
4 not see that there are gains to be gained by moving to
5 Microsoft Office, fair?

6 A. There could be an individual with that view. I
7 certainly can't dispute that. It has nothing to do with the
8 question about whether this is one market or four.

9 Q. Let's talk about that. You separate the analysis of
10 standalone and suite categories, because you're assuming
11 that the late adopters coming into the suites make the same
12 choices that the early adopters did, that they are buying
13 Microsoft Office in the same share, the same percentage
14 share, very high, as the early adopters.

15 That is the assumption that you built into your
16 forecast, isn't it?

17 A. The assumption I am making is simply that these are
18 distinct for the reasons that I said yesterday. That is the
19 only assumption. And putting them together would lead to
20 the nonsensical result of gaining shares in a market when
21 you were losing on the principal forward moving product.

22 Q. Right, because standalone sales were dropping as suites
23 were taking off in popularity, right?

24 A. Correct.

25 Q. And so you were baking in WordPerfect's 50 percent

1 share of standalone products in the ever decreasing market?

2 You don't assume that there is going to be a switch into
3 suites when those people buy their next product, correct?

4 A. If I'm understanding your question, no. All I am
5 assuming is that we're starting out with the four markets,
6 and I calculated the market shares as I did yesterday.

7 Q. Right. But you in your standalone are saying that
8 forever WordPerfect will have that 50 percent share, but the
9 50 percent share of this much is a good amount. 50 percent
10 share of this much is a very small amount. And as time goes
11 forward it goes from a large market for standalone to small,
12 so you are biasing in standalone sales WordPerfect's future
13 market share?

14 A. I don't think so. I'm using actual data on what the
15 size of these markets are and the market share. What Dr.
16 Warren-Boulton is doing is biasing everything up by
17 essentially lumping winners and losers together.

18 Q. You're baking in the prior historical share when they
19 were standalones, and you're not accounting for the fact
20 that there will be a shift to suites, and in your model by
21 keeping the suite share separate you have baked in a 4
22 percent share of suites for WordPerfect forever, even though
23 it may have a Perfect Office for Windows 95 that is
24 extremely popular. You discount that possibility.

25 Isn't that true, sir?

1 A. Well, there are possibilities of everything in life.
2 What I'm doing is forecasting based on the data that are
3 actually there in the market and on what typically happens
4 to non-leading firms. I'm not discounting anything, nor am
5 I ignoring the growth in the market because I'm using actual
6 market data for each of those years about the size of my
7 market.

8 Q. Right. But while you're using the actual market data
9 you have pre-selected what kind of share in that market
10 WordPerfect would have, and you have biased it by putting it
11 on the historical share of suites, which is a very low
12 number because Perfect Office for Windows 95 had not come
13 out.

14 Isn't that right?

15 A. That is not what I'm doing. Let me try to explain it
16 one more time. I'm starting out with the market shares that
17 we can calculate. You and I may disagree about the third
18 quarter, but we are calculating those, and then going
19 forward what would I think in the but-for world. I have
20 simply used non-leading software categories. Dr.
21 Warren-Boulton has a related approach. We are not that
22 different in that regard.

23 Q. Right. And you have projected from your baseline
24 market share a share of suite income that is baked in at
25 about 4 percent as opposed to what could have happened had

1 the late adopters moved from DOS to a Windows 95 suite made
2 by WordPerfect?

3 A. As an economist I can't be in the world of would of,
4 could of and should of. What I have to do is do the best I
5 can with a but-for world, with a starting off jumping point
6 and a forecast. If your point is anything in life may
7 happen, I'm sure that is true, but that is not a forecast.

8 Q. Okay. I thought we were in a could of, would of and
9 should of.

10 Let's look at a chart by Professor Noll on another
11 point related to this.

12 MR. TASKIER: Can you bring up Dr. Noll's chart
13 for conduct reduced distribution of competing suites.

14 BY MR. TASKIER

15 Q. Now, this is something that Dr. Noll showed the jury
16 during his testimony. He says this shows in the third
17 quarter of 95, when Windows 95 was released, a huge spike in
18 the sales of Microsoft office to people who were taking up a
19 competitive upgrade. In other words, they are switching
20 from a competing office productivity suite or application,
21 so that these are sales to people who have already installed
22 on their computers a product that competes with Office, but
23 at this time it shows that there is an enormous spike in the
24 third quarter which demonstrates the conversion of those
25 people to Microsoft Office.

1 Is that correct? Do you see that?

2 A. This is the first time I have seen this chart. It
3 looks like in July there is a spike. Is that your question?
4 I'm not sure.

5 Yes, there is a spike, if that is what you're asking.

6 Q. Your lost profits approach looks back at the third
7 quarter you're talking about, and you treat it as normal
8 sales, but for Microsoft Office -- in other words, remember
9 we dropped it 3.8 percent for Novell and Microsoft Office as
10 we see here had a pretty significant jump. You carry that
11 one quarter's jump high forward as normal sales as part of
12 your baseline share; isn't that right?

13 A. I think there is no principal reason to exclude it from
14 the but-for world. I would note that Professor Noll's
15 graph, and this is the first time I have seen it, is just
16 averaging and does not look like it is that exceptional. In
17 any event, if you believe what you said you should also
18 maybe go back and take a prior quarter as well, which would
19 be a low number. It would change nothing.

20 Q. This shows that there were pretty significant -- pretty
21 steady sales at around the \$30 million mark, and then it
22 jumps up to like \$95 million right after Windows 95 comes,
23 and then it drops down again and stays back in the mid
24 twenties.

25 So for you to take that \$95 million and that market

1 share and bake that into your going forward analysis skews
2 it in favor of Microsoft, doesn't it?

3 A. I don't think so, no.

4 Q. Okay. So let's see if we can determine where we agree
5 and where we disagree without calling names.

6 We agree that both you and Dr. Warren-Boulton assumed
7 liability and sought to calculate damages?

8 A. Yes, we had the same assignment.

9 Q. And can we agree that both you and Dr. Warren-Boulton
10 used a purchase versus sales damages calculation?

11 A. We both use those words, yes.

12 Q. And can we agree that both of you used a \$1.555 billion
13 purchase price and a \$146 million sales price?

14 A. Yes.

15 Q. If we agree that you found a \$1.1348 billion
16 overpayment by Novell for WordPerfect and QuattroPro, and
17 Dr. Warren-Boulton found a \$431 million overpayment?

18 A. I don't remember that his was 431, but, yes, they were
19 in that range. Yes.

20 Q. And can we agree that that is the biggest dollar
21 disagreement between you and his method?

22 A. No. I think all of his methods that led to a billion
23 and I got to zero, so I would say we had lost of
24 disagreements.

25 Q. In this method --

1 A. In this method, I apologize, yes, that would be the
2 biggest.

3 Q. Can we agree that in calculating the overpayment by
4 looking at the stock market's reaction to events, that your
5 different treatment of the events of October 27 and the days
6 in January of 1996 when there was the sale announcement to
7 Corel, are the treatments that produced the largest
8 individual dollar differences, \$400 million for October 27
9 and about \$250 million for the January 1996 dates?

10 A. I think that is right. His incorrect inclusion of
11 those I think would lead to the largest difference between
12 our numbers.

13 Q. You disagree on that, you and he?

14 A. At the level of econ 101 and statistics 101.

15 Q. No name calling. You disagree, right?

16 A. Economics 101 is not -- I view that as a favorable term
17 of art.

18 Q. You're saying that you can't get to it with economics
19 101, so that is a little name-calling.

20 We can agree that other technical details like what
21 stock market index to use and whether the measure of the
22 changes in stock price in dollars or percentage terms, those
23 are technical decisions about which and Dr. Warren-Boulton
24 also disagree, correct?

25 A. Yes, but I want to be sure when you say technical

1 you're not implying that they are tiny differences.

2 Q. I am not implying --

3 A. They are technical because they are economics.

4 Q. They are different economic choices?

5 A. Yes.

6 Q. We can agree to disagree on whether the Lotus bid is a
7 valid independent way to value WordPerfect. You say it
8 isn't and Dr. Warren-Boulton says it is, right?

9 A. It is certainly true that I say it isn't and he says it
10 is, yes.

11 Q. And we can agree to disagree on whether the October 6th
12 announcement in the drop in market value of Novell by \$1.17
13 billion is irrelevant, as you say, or another way to look at
14 damages as Dr. Warren-Boulton says?

15 A. You're asking me do we disagree on that?

16 Q. Yes.

17 A. Of course we do, yes.

18 Q. We can agree to disagree that those are two different
19 approaches?

20 A. Agree to disagree makes it sound like there is some
21 reasonable argument here. To me as an economist it is
22 completely unreasonable.

23 Q. Okay. You have said that before, along with a few
24 other things.

25 THE COURT: I will strike that.

1 BY MR. TASKIER

2 Q. We can agree that forecasting WordPerfect's but-for
3 revenue is appropriate, correct?

4 A. In the lost profits model, is that your question?

5 Q. Yes.

6 A. Yes, sir.

7 Q. And we can agree to disagree on whether it makes sense
8 or not to use the third quarter of 1995 in calculating
9 baseline market shares for that forecast, right?

10 A. It is certainly true that we did it differently and we
11 made different assumptions, yes.

12 Q. And we can agree to disagree on whether it makes sense
13 or not to analyze the product categories of standalone and
14 suites separately or combining them as Dr. Warren-Boulton
15 did, right?

16 A. Again, I'm having trouble with agree to disagree. If
17 you are asking me factually did we do two different things,
18 yes.

19 Q. And, finally, I guess the overall thing is that you
20 have your positions and testimony and Dr. Warren-Boulton has
21 his on pretty much the same things, right?

22 A. We both looked at the same event and came to different
23 conclusions, yes.

24 MR. TASKIER: I have no further questions.

25 THE COURT: Mr. Jardine.

REDIRECT EXAMINATION

BY MR. JARDINE

Q. Good morning, Dr. Hubbard.

A. Good morning.

Q. I would like to go back and talk about some of the questions first that you were asked this morning by Mr. Taskier, and then we'll address some of the things yesterday.

A. Okay.

Q. Toward the end of the examination this morning you and Mr. Taskier had a discussion about the criticisms, the differences between the way that you and Dr. Warren-Boulton approached the lost profits method of estimating damages. And one of the things that you discussed, and I just would like to make sure that your views on this are clear, is the issue of whether you had separate categories for each of the product categories or you combined them or, to use your technical term, mooshed them together.

A. Yes. I apologize for the informal use of moosh.

Q. No. It is a very clear term.

MR. JARDINE: Anyway, could we put up slide 245?

BY MR. JARDINE

Q. I just want to make sure. I think you used this in explaining why you chose to do that. Would you remind again the jury why you think that was an important approach to use

1 and how this slide supports it?

2 A. Sure. When you're talking about looking forward,
3 whether it is valuation or lost profits, you want to know
4 what is going to happen in this marketplace. As you can
5 see, all of the movement in productivity applications is
6 toward suites. I used a numerical example with you
7 yesterday, and I won't bore you with it again, but it simply
8 illustrates the point that if you are sitting in 1993, and
9 tried to imagine what the world would look the same going
10 forward, that would be significantly mistaken, and it would
11 be known to be mistaken even at that early date.

12 Q. Thank you.

13 Now, in asking you about your decision to create
14 projected market shares for each of these categories,
15 suites, word processor, spreadsheets and presentations
16 software, separate categories, Mr. Taskier asked you a
17 series of questions about the install base of WordPerfect on
18 both DOS and I suppose Windows and whether that would
19 transfer.

20 I wanted to ask you a question or two about that. Are
21 you aware of any market, independent marketing study that
22 provides you any information about whether, and if so at
23 what level, that transition from an install base to the
24 WordPerfect Perfect Office suite for Windows 95 might have
25 occurred?

1 A. I'm not aware of any in this proceeding. The only
2 thing I did see germane to that is actually the Novell Storm
3 document which came to the opposite conclusion.

4 MR. JARDINE: Why don't we show Defendant's
5 Exhibit 223 if we could, Dave.

6 THE COURT: Remind me what is Storm on --

7 MR. JARDINE: This is a Novell document, and I
8 believe --

9 THE COURT: No, but --

10 MR. JARDINE: Storm is the code name for Perfect
11 Office for Windows 95.

12 THE COURT: Windows 95.

13 THE WITNESS: The new suite. I believe that is
14 correct.

15 BY MR. JARDINE

16 Q. I think this was a document that you were shown
17 yesterday in your examination, and Mr. Taskier had you read
18 some excerpts from it. It is market requirements document,
19 a Novell document and it is marked Novell confidential.

20 I would like you to turn, if you would, to page 20.

21 A. 20?

22 Q. Yes.

23 A. Okay.

24 Q. If you will look in the first paragraph, the first two
25 sentences, and let me read those and see if this is what you

1 had reference to. It reads WordPerfect for DOS possesses
2 the single largest user install base in the word processing
3 market. WordPerfect currently claims that 10 million users
4 or 30 percent of the total word processor market are
5 WordPerfect users. I guess it is three sentences.

6 Currently, only 30 percent of this WordPerfect for DOS
7 install base is remaining with WordPerfect as they
8 transition to a Windows word processor.

9 Is that the reference in a Novell document that you
10 recall?

11 A. Yes, sir. I am sorry, I forgot the specific document.

12 Q. And just because you use the number, let me read the
13 last sentence. One of Novell's main goals is to compel at
14 least 80 percent of WordPerfect for DOS customers to upgrade
15 to WordPerfect for Windows as they make the transition to
16 Windows word processing.

17 Is that where you remember the 80 percent number?

18 A. Yes, sir.

19 Q. And as you read that internal Novell document, does
20 that support in your view the opinion that you have rendered
21 regarding the way you have structured your projected market
22 shares?

23 A. It certainly supports it. I didn't need it but, yes,
24 it would be corroborative.

25 Q. Let me turn to one other issue that you and Mr. Taskier

1 discussed with respect to the lost profits method, and that
2 was the discussion of whether or not to include the third
3 quarter.

4 MR. JARDINE: If we should show 236.1.

5 BY MR. JARDINE

6 Q. Do you recall the questions Mr. Taskier asked you about
7 that?

8 A. Yes, sir.

9 Q. Let me just see if I can ask a couple of questions just
10 to make sure that the explanation of this is full and
11 complete.

12 Mr. Taskier asked you about Q-3 and noted that there
13 were no Novell WordPerfect suites in the market in that
14 quarter specifically for Windows 95.

15 Do you recall that question?

16 A. Yes, he asked me that.

17 Q. Are you aware if there were other WordPerfect Novell
18 suites such as Perfect Office 3.0 in the of market competing
19 with Microsoft's Office in that quarter?

20 A. Yes. That is true. I spoke of that yesterday.

21 Q. And to your knowledge was Perfect Office 3.0 compatible
22 with Windows 95?

23 A. That is my understanding, yes.

24 Q. In fact, it would have been competing in that quarter?

25 A. It certainly would have been available, yes.

1 Q. Now, I think Mr. Taskier showed you some reviews that
2 were favorable to Perfect Office 3.0?

3 A. He did yesterday, yes.

4 Q. Now, could an argument be made that the first quarter
5 on that chart, Q-1, 1995, is abnormal if you look at the
6 success of Perfect Office 3.0 in that quarter?

7 A. I'm not following your question.

8 Q. Do you know when Perfect Office 3.0 was released?

9 A. I don't recall, no.

10 Q. If I told you that it was released in December of 1994
11 and, therefore, it was essentially available to the public
12 for the first time in Q-1 of 1995, would that present to you
13 a potential argument that there was penned up demand for
14 pre-sales reflected in that quarter?

15 MR. TASKIER: That is a little leading, Your
16 Honor. I'm sorry.

17 THE COURT: It is a little leading.

18 Overruled. You need to set the context. That is
19 fair. I don't know how to do it otherwise.

20 Go ahead.

21 THE WITNESS: Should I answer?

22 THE COURT: Yes, you can answer.

23 THE WITNESS: It certainly could be representative
24 of penned up demand. What I said to Mr. Taskier in his
25 question is if that is your view, then you also want to look

1 back more quarters and you would still be back to lower
2 numbers, so you can't pick and choose.

3 BY MR. JARDINE

4 Q. Right. Now, let me turn to a different subject that
5 you talked about today. Mr. Taskier asked you a series of
6 questions about the method Dr. Warren-Boulton used to
7 provide a damages estimate by looking at the market's
8 reaction to the October 6, 1995 press release.

9 Do you remember those questions?

10 A. Yes.

11 Q. Let's just put that slide we looked at briefly up,
12 slide 238. I'm sorry. I mean the press release. I
13 probably gave you the wrong number.

14 I think it is probably 237.

15 MR. TASKIER: 237?

16 MR. JARDINE: 237.

17 BY MR. JARDINE

18 Q. I just want to make sure that the jury is clear about
19 this. I know that you criticized Dr. Warren-Boulton's
20 utilization of this damages estimate method, correct?

21 A. I think that is putting it mildly. Yes.

22 Q. Did you attempt to correct his approach and provide a
23 corrected number?

24 A. No. The approach was illegitimate.

25 Q. Why in your view was it not possible to do that? I

1 think it is clear, but I just want to make sure it is clear
2 to the jury why you thought it was not possible to get to a
3 legitimate or valid estimate using that approach.

4 A. Well, I think the plain English of the press release,
5 which Mr. Taskier read well this morning, tells you why
6 because it says it is primarily due to a continued fall off
7 in the Windows 3.1 application market.

8 In any event, you cannot do this separation of earnings
9 miss, the actual 41 million and the market reaction.
10 Neither one of those is appropriate, one for English and one
11 for economics.

12 Q. Now, let's turn back to some questions Mr. Taskier
13 asked you yesterday. I think there was a point in his
14 examination where Mr. Taskier pointed you to some language
15 in your expert report relating to your view about whether
16 WordPerfect was successful.

17 Do you recall that line of questioning?

18 A. I do.

19 Q. I would like to return to the actual testimony that you
20 gave in court yesterday.

21 MR. JARDINE: I'll call up graphic 225, if we
22 could.

23 BY MR. JARDINE

24 Q. Do you recall that this was the slide that summarized
25 kind of your background to your analysis of what had

1 happened to WordPerfect up to sort of the point right before
2 the acquisition by Novell?

3 A. Right. This is the summary I was offering to the jury
4 as just the story of the industry and the firm, yes.

5 Q. And the term you used to describe WordPerfect's
6 condition I find in the fourth line down, WordPerfect was in
7 decline.

8 A. Yes.

9 Q. Can you again repeat in a very summary fashion why you
10 concluded that WordPerfect was in decline as of the first
11 part of 1994?

12 A. Well, its operating income was in decline. We know
13 that from the data. We know also that there had been a
14 forecast of a decline. We know that from the board minutes
15 that are in evidence.

16 Q. You mentioned a decline in their operating income. I
17 would just like to clear up one or two things about that
18 slide.

19 MR. JARDINE: Could we turn to slide 219?

20 BY MR. JARDINE

21 Q. Do you recall looking at this slide with Mr. Taskier
22 yesterday?

23 A. Yes.

24 Q. He asked you a question about fiscal year 1994, and how
25 that estimate of a year's worth of operating income was

1 arrived at when the acquisition occurred halfway through the
2 year.

3 Do you recall those questions?

4 A. Yes.

5 Q. And he pointed you to the Novell S-4 that contained
6 information, and I think we saw that there was six month's
7 worth of operating income for Novell.

8 THE COURT: Because of the fiscal year.

9 MR. JARDINE: I thought --

10 THE COURT: Let's agree it was less than 12
11 months. It was less then 12 months and you can explore it.
12 whatever it is, is whatever it is.

13 MR. TASKIER: Right.

14 MR. JARDINE: I think we both agree, frankly, Your
15 Honor, that it was through April.

16 THE COURT: It was through April.

17 BY MR. JARDINE

18 Q. In any event, can you explain to the jury how you
19 predicted or projected a full year's worth of revenue for
20 the FY-94?

21 A. My recollection is I annualized.

22 Q. Right. In your view is that a far and reasonable thing
23 to do?

24 A. It is actually extremely conservative. If you have a
25 downward trend, by annualizing a number I am giving you the

1 benefit of the doubt. Yes, factually that is what I did.

2 Q. Now, in looking at this slide also, Mr. Taskier called
3 your attention to some information in that S-4 that showed
4 in fiscal year 1993 a significant increase in WordPerfect
5 sales and marketing expenses.

6 Do you recall that question?

7 A. I recall that he showed me that, yes.

8 Q. Right. And the suggestion by Mr. Taskier was that you
9 should have taken that expense number that was actually in
10 their operating income statement, and added it back in to
11 show profits I think because the projection was that somehow
12 Novell would have reduced those costs.

13 Do you recall that question?

14 A. I do recall that question, yes.

15 Q. Would that in your view have been a proper thing to do
16 to accurately reflect WordPerfect's operating income?

17 A. No. I think yesterday I referred to it as silly talk.
18 I mean, there would be no way to do that. Frankly, as a
19 matter of fact, Novell's own marketing costs were rising.
20 The notion that it was someone who could reduce costs would
21 be fanciful. The method wouldn't have worked.

22 Q. Did you prepare some graphics to show that?

23 A. I did.

24 MR. JARDINE: Can we have 262?

25 MR. TASKIER: Are these new?

1 MR. JARDINE: These are new.

2 MR. TASKIER: Your Honor, can we have a brief
3 conference on this?

4 MR. JARDINE: Let me just explain. These were
5 prepared several weeks ago based on the argument that was
6 made by Dr. Warren-Boulton. They were not prepared last
7 night.

8 THE COURT: I think that probably solves it.

9 MR. TASKIER: That was certainly the impression I
10 just got.

11 THE COURT: Thank you. We all had the same
12 question and you provided the answer.

13 MR. TASKIER: Thank you, sir. That is fine.

14 MR. JARDINE: May we put 262 on the board?

15 BY MR. JARDINE

16 Q. Can you explain what this is, Professor Hubbard?

17 A. These are sales and marketing costs for WordPerfect
18 measured in dollars.

19 Q. And, in fact, they show an increase, a significant
20 increase between 1992 and 1993 as Mr. Taskier pointed out?

21 A. Yes. That is correct.

22 Q. Let me show you what has been marked as Demonstrative
23 263.

24 Can you explain what that chart shows, Professor
25 Hubbard?

1 A. To address this argument about Novell's ability on
2 sales and marketing costs I went to Novell's 10-K, its
3 annual data that it put out as a company, and got a similar
4 measure of sales and marketing costs. They are rising
5 consistently throughout this period. By the way, it is not
6 unusual in the competitive marketplace, but they are rising,
7 not falling.

8 Q. What conclusions do you draw about whether or not there
9 would have been a significant reduction in the WordPerfect
10 assets, sales and marketing costs, after the acquisition by
11 Novell?

12 A. Well, one would certainly have to work a bit harder to
13 say that Novell's sales and marketing costs would have been
14 an advantage in this given that they were rising sharply.

15 Q. One other question. Yesterday Mr. Taskier pointed you
16 in this whole discussion to some favorable reviews of
17 WordPerfect products. In reaching your opinion that as of
18 early 1994 WordPerfect was in decline, did you rely more
19 heavily on market data such as market share and operating
20 income trends or on product reviews?

21 A. I certainly relied principally on data, on economic
22 analysis. I would note that the reviews I looked at were
23 consistent with that, but I'm here as an economist to look
24 at the data.

25 Q. Right. Yesterday Mr. Taskier, turning to a different

1 subject, but relating still to the market approach or the
2 sale versus purchase approach, Mr. Taskier asked you some
3 questions about the inclusion or exclusion of Friday,
4 October 27, 1995 in the window portion of the events study
5 analysis.

6 Do you remember that set of questions?

7 A. Yes, sir, I do.

8 Q. And would you briefly describe again for the jury why
9 in your view that day should have been excluded, October
10 27th?

11 A. Well, the question is, you know, under what principle
12 would it have been included? There was no evidence of any
13 leakage. There were other events on the same day. If you
14 look at volume data you saw not only nothing prominent,
15 indeed, relatively low volume.

16 Q. I think we prepared another slide, 255.

17 THE COURT: Again, I assume this wasn't prepared
18 for --

19 MR. JARDINE: This was prepared several weeks ago
20 in anticipation from Dr. Warren-Boulton's examination.

21 THE COURT: That is fine.

22 BY MR. JARDINE

23 Q. Can you describe what this shows, Professor Hubbard?

24 A. Let me just take a look here. In red is the stock
25 price, and then the dotted line is telling you the median

1 trading volume in this period. I think I showed you
2 something similar. So what you can see is very high volume
3 on the event date, the 10-30 day, but not on 10-27. Indeed,
4 if you were to look at the within day volume it would be
5 very small.

6 Q. Does that support the reason that you gave that the
7 volume information would tell you that that is not a reason
8 to include this date?

9 A. Yes. Events studies that talk about event windows
10 often point to volume as something to look at if one wants
11 to make a leakage argument, but that would be difficult to
12 do here.

13 Q. All right. One of the other points of difference
14 between you and Dr. Warren-Boulton on this purchase versus
15 sale method was his inclusion of the January 31, 1996 date
16 when Corel was identified as the purchaser.

17 Do you recall that series of questions?

18 A. Yes, sir.

19 Q. My memory of your testimony is that you gave several
20 reasons why you wouldn't include that day, and one of them
21 was that it was not statistically significant.

22 That, as I understand it, a statistical term used by
23 economists?

24 A. Well, that is not why I wouldn't include it, but had I
25 included it I would have reported it as a zero.

1 Q. Just so we are clear, could you explain to the jury
2 what the term statistically significant means?

3 A. When you're estimating something you are testing
4 essentially a hypothesis of what number you had estimated is
5 effectively zero or close to that number. When an economist
6 says not statistically significant, it means as a matter of
7 statistics you can't reject a hypothesis that it is in fact
8 zero. It is common practice in events studies to use the
9 statistical significance as a threshold. Dr. Warren-Boulton
10 just chose not to do so.

11 Q. Lastly, at the end of his examination today Mr. Taskier
12 went through a series of differences between you and Dr.
13 Warren-Boulton, and characterized them as technical
14 differences, at least part of them. I don't know that he
15 did every one.

16 Do you regard, and this is a general point, but I want
17 to give you the opportunity to make it, do you regard in
18 general the places that you differed with Dr. Warren-Boulton
19 as matters of technical difference or matters of principle?

20 A. Well, as an economist I will bring both of them
21 together. I mean, I think they are all technical in the
22 sense that they are about economics, but some are about
23 levels of principle or a sheer freshman level method of
24 understanding economics. I would call that more than just a
25 simple technical thing.

1 MR. JARDINE: I have no other questions, Your
2 Honor.

3 MR. TASKIER: I have no questions, Your Honor.

4 THE COURT: Thank you, Professor.

5 Are we all set for the next witness, Mr. Tulchin?

6 MR. TULCHIN: Yes, sir. I think he is just
7 outside.

8 For its next witness Microsoft calls Willard E.
9 Peterson, sometimes known as Pete.

10 Your Honor, with the Court's permission, Mr. Paris
11 will conduct the examination.

12 MR. JARDINE: Your Honor, may I be excused just
13 temporarily?

14 THE COURT: Of course.

15 MR. TULCHIN: It will just be a minute, I believe,
16 Your Honor. Here they come.

17 Thank you, Your Honor.

18 THE COURT: Come forward, Mr. Peterson.

19 WILLARD EUGENE PETERSON

20 Having been duly sworn, was examined
21 and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. PARIS

24 Q. Good morning, Mr. Peterson.

25 A. Good morning.

1 Q. Could you introduce yourself to the jury?

2 A. My real name is Willard Eugene Peterson. Everyone
3 calls me Pete. Most everyone.

4 Q. Okay. And where do you live?

5 A. I live in Orem, Utah.

6 Q. What do you do?

7 A. I am retired.

8 Q. Was there a time you worked for WordPerfect
9 Corporation?

10 A. Yes, from October of 1980 until March of 1992.

11 Q. At the time that you joined WordPerfect, what was it
12 called?

13 A. Satellite Software International.

14 Q. It changed its name at some point later to WordPerfect?

15 A. Yeah. I think in 1984 it became WordPerfect
16 Corporation.

17 Q. And you left WordPerfect Corporation when?

18 A. In March of 1992.

19 Q. And up until that time you were employed full time for
20 WordPerfect?

21 A. Yes, from October of 1980 until March of 1992.

22 Q. And at the time you left in March of 1992, did you have
23 any further agreements with WordPerfect?

24 A. I had a non-compete agreement after I left that said I
25 wouldn't go to work for a competitor of WordPerfect, and I

1 had a consulting agreement.

2 Q. Did WordPerfect ever ask you to do any consulting
3 pursuant to that agreement?

4 A. No. They gave me money, but they didn't ask me to do
5 anything.

6 Q. So backing up to 1980 when you started with what was
7 then Satellite Software, what was your position?

8 A. I was hired to be of a part-time office manager for \$5
9 an hour. In my initial training they told me that they
10 didn't pay taxes and that I would pay those on my own and so
11 I quit. They asked me why did I quit and I said because I
12 am not a subcontractor. I am an employee. I had worked in
13 the drapery business, and we had a workroom and we had
14 people that worked for us that were employees and that were
15 subcontractors and I knew the difference.

16 So then they asked me a couple of questions like do you
17 know what a 941 is? Do you know what a W-4 is? I said yes.
18 So they immediately offered me a job as their financial
19 manager for \$2,000 a month, and that was my first official
20 title, and they paid the taxes.

21 Q. After that did your title or position with the company
22 further change?

23 A. Over time I became director of marketing, and then vice
24 president and then executive vice present.

25 Q. When did you become executive vice president?

1 A. I would think it would be about 1982.

2 Q. What were your job duties as executive vice president?

3 A. Alan Ashton -- there were two people who owned the
4 company primarily, Alan Ashton and Bruce Bastian. Alan
5 handled development, everything to do with programming and
6 the products we produced, and Bruce handled everything
7 outside of North America, the marketing, the business, the
8 branch offices. So I handled pretty much the business end
9 of the company, everything in North America, the marketing,
10 the finance, the operations, you name it.

11 Q. And was this true from 1982 until the time that you
12 left full-time in 1992?

13 A. Yes.

14 Q. Also, did you have a position on the board of directors
15 of WordPerfect?

16 A. I think it was 1991, but for sure '92 -- excuse me.
17 For sure by 1982 I was on the board.

18 Q. And who else was on the board?

19 A. Bruce and Alan, Bruce Bastian and Alan Ashton were the
20 other members.

21 Q. So it was a three member board, Bruce Bastian, Alan
22 Ashton and yourself?

23 A. Right. And the three of us were on the board until I
24 left.

25 Q. And just so the jury is clear, Bruce and Alan were the

1 two founders of WordPerfect?

2 A. Bruce and Alan were the two founders.

3 Q. During your time with WordPerfect was there a C.E.O. of
4 the company?

5 A. Alan was the chairman of the board, Bruce was the
6 president and I was the executive vice president. I was
7 probably the one most likely you would call the C.E.O., but
8 I never had that title.

9 Q. You never had a formal title of C.E.O., correct?

10 A. That is right.

11 Q. But who of the three of you performed the duties that
12 most people would commonly understand were performed by a
13 C.E.O.?

14 A. I would have.

15 Q. Now, from the time that you became executive vice
16 president in '81 until the time you left, you were aware of
17 WordPerfect Corporation's corporate strategies generally?

18 A. Yes.

19 Q. And you were aware of its general competitive
20 strategies in the marketplace as well?

21 A. Yes.

22 Q. After you left WordPerfect in March of 1992 full-time,
23 did you write a book?

24 A. I did.

25 Q. What is it called?

1 A. Almost Perfect.

2 Q. And when was that published?

3 A. It took me 18 months to write it, and I left in March,
4 so it would have been sometime in '94.

5 MR. PARIS: Can we put up DX-369?

6 MR. JOHNSON: Your Honor, this is not in evidence,
7 and I don't think it should be shown on the screen.

8 THE COURT: All right.

9 MR. PARIS: That is fine.

10 BY MR. PARIS

11 Q. I'm going to hand you a copy of your book, Mr.
12 Peterson.

13 A. Okay.

14 Q. I am going to ask you some questions from it as we
15 proceed this morning.

16 What is the subtitle of your book, sir?

17 A. How a bunch of regular guys built WordPerfect
18 Corporation.

19 Q. Were you one of the regular guys who built WordPerfect
20 Corporation?

21 A. I was one of the regular guys, yes.

22 Q. Why did you write this book?

23 A. I didn't leave WordPerfect entirely of my own freewill
24 and choice. It was hard, and so kind of writing the book
25 was my therapy.

1 Q. Is everything that you wrote in that book true to the
2 best of your recollection?

3 A. Yes. There are a couple of errors in the book having
4 to do with names and some of the technical stuff about
5 graphics. But, yes, when I wrote it I thought it was true
6 and I still think it is true.

7 Q. And you did your best to get it right, right?

8 A. I did.

9 Q. Why are you here today?

10 A. I guess because I wrote the book.

11 Q. That might be one of the reasons, but what was the but
12 for reason you're here today?

13 A. I received a subpoena that commanded me to appear and a
14 check for about \$85.

15 Q. The check for \$85, that is the statutory amount of
16 money that you are paid pursuant to subpoena?

17 A. Yes.

18 Q. And you're here today in response to that subpoena,
19 sir?

20 A. Yes.

21 Q. You're not here because you have any allegiance to
22 Microsoft; is that right?

23 A. No.

24 Q. In fact, I think you write on page 4 of your book that
25 during your time with WordPerfect Corporation you were,

1 quote, in a battle to the death with Bill Gates and
2 Microsoft, spending almost every waking moment figuring out
3 exactly how to beat them.

4 That is a fair statement?

5 A. It is.

6 Q. And so the jury knows, your have spoken in advance of
7 your testimony today, you have spoken with both counsel for
8 Microsoft and counsel for Novell, right?

9 A. Yes.

10 Q. How many employees did Satellite Software have when you
11 joined in October of 1980?

12 A. I was the sixth person hired.

13 Q. Did that change over time?

14 A. Yes. When I left we actually had two companies
15 WordPerfect Corporation and Soft Copy, the company that
16 produced the documentation and the disks. Between the two
17 we had 3,500 employees.

18 Q. How did WordPerfect's sales change from the time that
19 you joined in 1980 until the time you finished your
20 full-time work in 1992?

21 A. They were about 20,000 a month when I first started,
22 and went up to 600 million the last full year I was there in
23 1991.

24 Q. So from 20,000 a month your first year, so how much was
25 that --

1 A. A half a million the next year and then close to a
2 million, and then it kept doubling and then went up by 75
3 million until we --

4 Q. And you said it was almost 600 million by the time you
5 left; is that right?

6 A. My recollection is that the last year I was there we
7 did 600 million in gross sales.

8 Q. How would you characterize that growth?

9 A. It was remarkable and wonderful.

10 Q. Was there any one product that WordPerfect Corporation
11 developed during the time that you were there that was
12 principally responsible for that increase in sales?

13 A. WordPerfect for DOS accounted for 80 to 90 percent of
14 our business.

15 Q. So it would be fair to say that WordPerfect for DOS
16 during the time you were with WordPerfect was your flagship
17 product?

18 A. Yes.

19 Q. Is it also true that WordPerfect for DOS accounted for
20 most of WordPerfect's market share during that period in the
21 word processing software business?

22 A. Yes, in word processing.

23 Q. By the late 1980s what in your view was the dominant
24 word processing software in North America?

25 A. Well, in North America and the world WordPerfect was

1 dominant. We had, by my estimate, we had about 75 percent
2 of the market.

3 Q. And when you say WordPerfect, to which WordPerfect
4 product are you --

5 A. WordPerfect for DOS.

6 Q. And to which product was the company's most able and
7 experienced programmers and managers assigned to work on?

8 A. Generally the best and the brightest were working for
9 WordPerfect for DOS.

10 Q. Did that change at any point in time before, say, the
11 end of 1990?

12 A. No.

13 Q. And the jurors have heard this already, I'm sure, but
14 let's remind them. WordPerfect for DOS was written to run
15 on which operating system?

16 A. It was written to run on PC DOS and MS DOS.

17 Q. What is MS DOS?

18 A. MS DOS was Microsoft's version of DOS. PC DOS was
19 IBM's version of DOS.

20 Q. What about other WordPerfect -- strike that.

21 What about WordPerfect versions for other platforms?

22 Let's say in the late 1980s, did WordPerfect write word
23 processing software for any other platforms?

24 A. We wrote for just about every platform. We had one
25 that would run on IBM mainframes, Data General machines,

1 Digital machines and all sorts of DOS machines and on the
2 Mac.

3 Q. How did WordPerfect sales of its word processing
4 software for those other platforms compare to its sales of
5 WordPerfect for DOS?

6 A. In many of the environments we had the biggest part,
7 but the DOS -- the PC market was the biggest, and the PC
8 product, WordPerfect for DOS, accounted for 80 to 90 percent
9 of our business over time.

10 Q. So would it be a fair characterization to say that your
11 sales of WordPerfect for DOS dwarfed your sales of
12 WordPerfect for other platforms? Is that fair in terms of
13 dollar revenue?

14 A. In terms of dollar revenue -- I mean, on the MacIntosh
15 we did maybe a half a million a year at its best, and we
16 were doing hundreds of millions of the DOS product. I guess
17 that is dwarfed.

18 Q. And during this period of time WordPerfect for DOS was
19 more popular in terms of sales than Microsoft's Word for the
20 DOS platform?

21 A. Yes, very much so.

22 Q. You would agree that WordPerfect at the time was the
23 king of the hill on the DOS platform, right?

24 A. From about 1984 until I left.

25 Q. And was there any point in time in the late 1980s where

1 WordPerfect didn't have a larger market share on the DOS
2 platform than Microsoft's Word?

3 A. No.

4 Q. And this was the case even though, of course, Microsoft
5 had written the MS DOS platform on which Microsoft Word was
6 running, right?

7 MR. JOHNSON: Your Honor, I have been pretty lax,
8 but these are almost all leading.

9 THE COURT: Okay. That is a fair point. You can
10 ask that, but don't lead anymore.

11 MR. PARIS: Okay.

12 BY MR. PARIS

13 Q. That is true, that WordPerfect was leading Microsoft's
14 Word on the DOS platform written by Microsoft, correct?

15 A. Yes. We continually outsold Microsoft Word.

16 Q. And why in your view was WordPerfect for DOS so
17 popular?

18 A. It was a better product than Microsoft Word for DOS.

19 Q. Why?

20 A. It was faster, it had more features, had fewer bugs.

21 Q. Any other reasons you can think of?

22 A. I like to think it was because we were great marketeers
23 with a sense of humor, charming and nice.

24 Q. I certainly will not take issue with that.

25 In the late 1980s did you personally observe the shift

1 in operating systems from character based platforms like MS
2 DOS to a different platform?

3 A. We could see a GUI, the so-called GUI, graphical user
4 interface environment was at some point in the future going
5 to become the dominant platform.

6 Q. And just staying in the period of the late 1980s right
7 now, what do you recall being the GUI operating systems that
8 were in the market at the time, which ones?

9 A. Apple came out with Eliza first, so we all got a look
10 at what it was going to look like, and followed that with
11 MacIntosh. Microsoft came out with something called Tiles,
12 which was a pretty bad version of a GUI product. There were
13 probably others that made GUI operating systems that hoped
14 to do it, but those are the ones I remember.

15 Q. And just so the jury knows, Microsoft Tiles, that was
16 the predecessor system to what later became Windows, right?

17 A. Yes. I think that was the 1.0 Windows.

18 Q. And in your view was there a clear winner as to which
19 of these GUI platforms would emerge at this period of time,
20 the mid to late 1980s?

21 A. IBM was developing OS/2, so it looked like it was
22 shaking up that the battle for GUI on the PC would be
23 between OS/2 and Windows.

24 Q. But you didn't know which one would ultimately come out
25 on top, correct?

1 A. No, we did not know.

2 Q. How did this shift in platforms, if at all, how did it
3 effect your business at WordPerfect Corporation?

4 A. At that time in 1989, 1990 it didn't effect it at all.
5 Our sales just kept on going up.

6 Q. Were you worried about the future?

7 A. At some point -- Word for Windows I think came out in
8 maybe in 1989, 1990, and we felt like we had dodged a
9 bullet. The product didn't sell very well at all.

10 Q. But in terms of where you thought the market may be
11 heading, were you at all concerned?

12 A. Yeah, longer term -- yeah, I mean, the writing was on
13 the wall, so to speak. We knew what was going to happen.

14 Q. Did you personally, and I'm just asking about you and
15 not about WordPerfect Corporation necessarily, but did you
16 personally want to see Microsoft's Windows emerge as the GUI
17 winner, if you will?

18 A. I did not want Microsoft Windows to emerge as the GUI
19 winner.

20 Q. And why not?

21 A. The company who owns the operating system and who
22 writes the operating system is at an advantage. They can
23 put things in the operating system to make their products
24 better, to run faster, and so we would rather have someone
25 else besides Microsoft, our main competitor, own the

1 operating system.

2 Q. If you could flip to this, although I will read it for
3 you, sir, on page 125 of your book, do you remember in 1987
4 that you write on Labor Day we all put our hands together,
5 much like a basketball team at the start of a big game, and
6 made a formal declaration of war against Microsoft.

7 Do you recall that?

8 A. It seems like it was Labor Day and it wasn't a work day
9 but we met at Marie Callenders, and Microsoft had put out
10 some ads that were rather derogatory, and so it was kind of,
11 yeah, we're going to go to war. I mean, not with bullets,
12 of course.

13 Q. Of course. Figuratively not literally?

14 A. Figuratively. Yeah.

15 Q. Do you recall -- strike that.

16 Do you believe that WordPerfect, you know, as a company
17 or a software product had the ability to influence or effect
18 the success or failure of Windows at that time?

19 A. I am not sure what I believed. I mean, I had hoped
20 OS/2 would win out, and I wouldn't have thought that our not
21 writing for Windows would have been the deciding factor.
22 Our customers would have decided what they wanted to use,
23 and we would have had to run on whatever they wanted.

24 Q. Okay. So your customers would decide and then you
25 would follow your customers? Is that what you're saying?

1 A. Uh-hum.

2 THE COURT: You have to say yes or no.

3 THE WITNESS: Yes. Sorry.

4 BY MR. PARIS

5 Q. You are doing great. You have been doing far better
6 than I.

7 Jumping ahead a bit, in January of 1990 now, and we
8 talked some about the emergency GUIs, in January of 1990 do
9 you remember Microsoft offering WordPerfect Corporation a
10 prerelease beta version of what eventually became Windows
11 3.0?

12 A. Yes. It seems like I saw Bill Gate at a conference in
13 October or November and he encouraged us to write for
14 Windows and told me that he could help us get some beta
15 software.

16 Q. And that, in fact, happened a few months afterwards?

17 A. I think in January of 1990.

18 Q. In your book at page 174 you write Microsoft offered to
19 make us a beta --

20 MR. TASKIER: Your Honor, may we approach?

21 THE COURT: Sure.

22 (WHEREUPON, a bench conference was begun.)

23 MR. TASKIER: I honestly don't mind him asking
24 questions with respect to the period that he was working
25 there, but now we're reading hearsay from a book after he

1 left, and I just don't think it is appropriate.

2 THE COURT: No. What is this particular question?

3 MR. PARIS: This particular question is just about
4 when they got the beta and what they did with it.

5 THE COURT: Was he still there?

6 MR. PARIS: Yes. This is 1990. He was in the
7 company until the middle of 1992.

8 THE COURT: This is hearsay. Phrase it --

9 MR. JOHNSON: I mean, he should ask non-leading
10 questions, and he shouldn't be referring to a hearsay book
11 that was written after he left in order to elicit testimony.

12 MR. PARIS: He is here and the book is designed
13 purely to refresh his recollection.

14 THE COURT: Just rephrase the question. What is
15 in the book is technically hearsay.

16 MR. JOHNSON: Thank you. He shouldn't be reading
17 from a book.

18 Thank you.

19 (WHEREUPON, the bench conference was concluded.)

20 THE COURT: Just so you understand, technically
21 what is in the book is hearsay. To the extent the book has
22 been referred to before, Mr. Peterson has adopted what is in
23 the book, so it is not hearsay.

24 If you can rephrase the question, that would be
25 good.

1 MR. PARIS: Thank you, Your Honor.

2 BY MR. PARIS

3 Q. You got the beta in January of 1990, correct?

4 A. Correct.

5 Q. Did WordPerfect's developers start working on a version
6 of WordPerfect's word processor for Windows when you got the
7 beta in January of 1990?

8 A. We were led to believe that if we developed for OS/2
9 that it would be the same as if we were developing for
10 Windows. I think our developers wanted to believe that, and
11 so while they looked at the beta they didn't immediately
12 start to write WordPerfect for Windows. They were already
13 underway writing for WordPerfect for OS/2.

14 Q. Do you recall when, if at all, your developers moved
15 over and started to write for Windows 3.0?

16 A. I think by May of 1990 we made the switch. We
17 abandoned OS/2 and went right to Windows.

18 Q. So to be clear then, they started writing in May of
19 1990. Did WordPerfect have a word processing product ready
20 to ship for Windows in May of 1990?

21 A. No. It would be November of 1991 before our product
22 would be ready.

23 Q. Do you recall what product that was that was released
24 in November of 1990?

25 A. WordPerfect 5.1 for Windows. It might have been

1 WordPerfect for Windows 5.1.

2 Q. In your view, Mr. Peterson, was Windows 3.0 a
3 commercial success?

4 A. I didn't want to like it, but our customers were
5 starting to use it, and so it was imperative that we develop
6 for Windows 3.0.

7 Q. That was your view at the time, correct?

8 A. Yes.

9 Q. Did you think as the executive vice president of
10 WordPerfect that one of the things WordPerfect needed to do
11 to be successful going forward was to have a good word
12 processor for Windows?

13 A. Yes.

14 Q. Now, by the time that you released WordPerfect 5.1 for
15 Windows, or WordPerfect for Windows 5.1 in November of 1991,
16 that was about 18 months after Microsoft had released
17 Windows 3.0, correct?

18 A. Yes.

19 Q. Can you tell the jury what your understanding of what a
20 market leader is in the software industry?

21 A. A market leader in any industry or in any product
22 grouping is the one that sells the most, the one that has
23 the highest sales.

24 Q. Would you characterize WordPerfect as a market leader
25 in the word processing software market in North America at

1 this time?

2 A. In the DOS word processing market we were definitely
3 the market leader.

4 Q. How had you become the market leader on the DOS
5 platform?

6 A. It was just -- I mean, it is a process over the years.
7 Governments would look at our product and evaluate it, and
8 we generally would be seen as the best product. We had
9 reviews in magazines and we were generally seen as the best
10 product. People would use it and people liked it and people
11 liked us, and over time we captured more and more of the
12 market.

13 Q. And based upon your experience from working in software
14 all those years, does the market leader tend to stay on top
15 once it is there?

16 A. Yeah. If we're talking about toothpaste or cars or
17 whatever, once you get into that position where you have 65
18 percent of the market, let's say, it is hard to move
19 somebody out of there.

20 Q. And at this time, just to remind the jury, on the DOS
21 platform WordPerfect had approximately 75 to 80 percent of
22 the market?

23 A. Yeah. I would guess it was 75.

24 Q. How can that change or how does that change?

25 A. Well, I mean, in this case Windows became -- over time

1 became the dominant platform, so being the market leader on
2 DOS didn't necessarily make us the market leader on Windows.

3 Q. So one of the things that could make it change is a
4 shift to a new platform; is that fair?

5 A. That is right.

6 Q. Now, who was the market leader on word processing
7 software for the Windows platform at the time that you left
8 WordPerfect in 1992?

9 A. At the time I left in 1992 I would estimate that our
10 market share of the Windows market was about 40 percent, and
11 that Microsoft had at least 50 percent of the market.

12 Q. So in your view Microsoft would have been the market
13 leader?

14 A. Yes.

15 Q. And at that time was WordPerfect's 5.1 product for
16 Windows -- how was that received in the marketplace?

17 A. The reviews were lukewarm. We had some bugs in the
18 product. I think some people liked it but it wasn't -- I
19 mean, obviously, if we were only selling 40 percent, if
20 we're only tapping 40 percent of the market it is not as
21 well received as we had hoped. We had hoped to have the
22 same market share in the Windows market and we didn't.

23 Q. Were you concerned that you didn't?

24 A. Concerned? Wow. I was frustrated, upset, discouraged,
25 concerned, sure.

1 Q. And in your view was WordPerfect at this point -- did
2 if have to play catch up to catch Microsoft on the word
3 processing software for the Windows platform?

4 A. When you're behind you have to play catch up.

5 Q. But the time you left in March of 1992, had WordPerfect
6 caught up to Microsoft?

7 A. Well, no. The product came out in November, and really
8 February and March were the first time we knew what our
9 numbers were and so, I mean, yeah, we had not caught up when
10 I left.

11 Q. Can you explain to the jury how you found out what your
12 numbers were in February or March?

13 A. We subscribed to different organizations that would
14 collect the numbers, and then you see the numbers also
15 published in trade magazines. You pay a fee and somebody
16 will collect the data.

17 Q. So WordPerfect 5.1 comes out in November of 1991?

18 A. For Windows.

19 Q. For Windows. And you have about a 40 percent market
20 share.

21 What happened after that?

22 A. Well, I was no longer with the company.

23 MR. JOHNSON: Your Honor, objection. This is
24 exactly what we talked about.

25 THE COURT: I have not heard the answer yet. The

1 question is not objectionable. The answer may be subject to
2 being struck. I understand your point.

3 MR. PARIS: I will rephrase.

4 BY MR. PARIS

5 Q. Do you know what happened to WordPerfect's market share
6 after this initial period in early 1992 on the Windows
7 platform?

8 A. My understanding is that WordPerfect never regained the
9 top spot in the Windows marketplace. Never gained the top
10 stop, excuse me, in the marketplace.

11 Q. Now, I'm going to take you back for just a minute, Mr.
12 Peterson. Do you recall in 1990 when Microsoft was
13 releasing its products for the Windows platform, that one of
14 the products it released was a spreadsheet?

15 A. Yes, they released Excel.

16 Q. What was your reaction to Excel?

17 A. It came out first on the Mac, and we were really
18 surprised because Microsoft was not known for writing good
19 software and Excel looked like a really nice product. It
20 was discouraging.

21 Q. Why was it discouraging?

22 A. At the time people bought a word processor and a
23 spreadsheet. They bought their word processor from
24 WordPerfect and they bought their spreadsheet from Lotus.
25 Lotus One Two Three was the dominant product. We were

1 worried that if Microsoft could actually write a good
2 spreadsheet that they might actually write a good word
3 processor, and having both products come from the same
4 company would be tough competition.

5 Q. What was your view of Excel as a product, a software
6 product?

7 A. It looked really nice.

8 Q. I think at one point in time do you recall calling it a
9 great piece of software?

10 A. Yes, sadly.

11 Q. Why was it sadly?

12 A. Well, I mean --

13 THE COURT: I think he has already explained. He
14 saw it as a potential competitor.

15 MR. PARIS: Fair enough, Your Honor.

16 BY MR. PARIS

17 Q. Did you view -- explain to the jury why you thought
18 Excel, which was a spreadsheet, if it did, why would it pose
19 a problem for WordPerfect?

20 MR. JOHNSON: Asked and answered, Your Honor.

21 THE COURT: I think so, but if you have anything
22 to add, add it. If not, just move on.

23 It is because the two products were sold together.

24 THE WITNESS: Because the two products would be
25 sold together.

1 BY MR. PARIS

2 Q. So your concern was that Microsoft was bundling them
3 together, Excel and --

4 A. And we were also concerned that they might actually
5 have some talent in writing their software. I mean, we beat
6 their pants off for ten years and we enjoyed winning.

7 Q. So your were beating Microsoft like crazy for years,
8 and suddenly they have good software products.

9 A. They have one good software product. It took us by
10 surprise.

11 Q. And they are putting it together with Word; is that
12 right?

13 A. Well, the potential was there.

14 Q. And did that, in fact, start to happen?

15 THE COURT: While he is there?

16 MR. JOHNSON: Time period, Your Honor.

17 BY MR. PARIS

18 Q. While you were at WordPerfect did Microsoft --

19 A. Before I left WordPerfect Microsoft came out with Excel
20 for Windows and they had Word for Windows, and even though
21 we felt Word for Windows was not the best product, putting
22 it together with Excel was a threat.

23 Q. Okay. And it was a threat to WordPerfect's dominance
24 in the word processing --

25 A. To our knowledge. We did not have a competing

1 spreadsheet at the time.

2 Q. What did you do in reaction to that? What did
3 WordPerfect do in reaction to that?

4 MR. JOHNSON: Time period, Your Honor.

5 THE COURT: Were you still there when they did
6 whatever they did? Did WordPerfect --

7 THE WITNESS: Before I left we really hadn't
8 reacted to that.

9 BY MR. PARIS

10 Q. Were there plans to react?

11 A. Well, I knew what I wanted to do, but I don't know what
12 Bruce and Alan --

13 Q. What did you want to do?

14 A. I wanted us to produce in-house a spreadsheet that
15 would be better than Excel.

16 Q. Did that happen?

17 A. No, not while I was will and not after. I say not
18 after, but, I mean, they did sell a spreadsheet. I don't
19 know how much of that was developed in-house and how much
20 was Borland.

21 Q. Do you recall which one that was?

22 A. QuattroPro.

23 Q. How did that compare to Excel?

24 THE COURT: Sustained.

25 MR. JOHNSON: Objection.

1 THE COURT: Mr. Johnson.

2 That obviously happened after.

3 MR. PARIS: Fair enough.

4 BY MR. PARIS

5 Q. As of the time that you left the company in about the
6 middle of 1992, did WordPerfect have a suite product which
7 contained a word processing application and a spreadsheet
8 application?

9 MR. JOHNSON: Your Honor, I would just note that
10 we have established it was March of 1992, not the middle of
11 1992.

12 MR. PARIS: That is fine.

13 BY MR. PARIS

14 Q. So amended.

15 A. We did not have a Windows spreadsheet to go with our
16 Windows word processor.

17 Q. Do you know sitting here today what WordPerfect
18 Corporation's first word processing and spreadsheet bundle
19 was?

20 MR. JOHNSON: Again --

21 THE COURT: I think we know, don't we? I think we
22 know. It was Borland 1 at some point.

23 MR. SCHMIDTLEIN: Correct, Your Honor.

24 THE COURT: I frankly don't remember --

25 MR. SCHMIDTLEIN: It was after March.

1 THE COURT: After March.

2 MR. PARIS: May I be heard very briefly, Your
3 Honor?

4 THE COURT: If you really want to.

5 MR. PARIS: I will move on.

6 THE COURT: Borland 1 came out whenever Borland 1
7 came out.

8 BY MR. PARIS

9 Q. Just shifting gears a bit, Mr. Peterson, during your
10 time as executive vice president as we discussed, you were
11 involved in WordPerfect's strategic decision making, right,
12 and you kept appraised of the competitive trends in the
13 software industry during your tenure; is that right?

14 A. Yes.

15 Q. What was your view about the state of WordPerfect's
16 business when you left in March of 1992?

17 A. I felt that we needed to conserve our cash, write a
18 better product, fix the bugs in the word processing, write a
19 good Windows spreadsheet. Mine was sort of, you know, we
20 needed to live to fight another day. So in the meantime we
21 needed to conserve our cash and develop better products.

22 Q. When you say develop better products, are you referring
23 to any specific platform for those products?

24 A. Better products for Windows.

25 Q. At the time you left in 1992, March of 1992, did you

1 have a view as to the future of the WordPerfect for DOS
2 product?

3 A. I felt like I could estimate that the sales were going
4 to decline and how much over time -- I felt like short-term
5 our sales would decline, but we still would have four of 500
6 million to work with. It wasn't like we were poverty
7 stricken. I wanted to save our extra cash and live to fight
8 another day.

9 Q. So in the short term you thought DOS would continue on
10 for a period of time, but long term what was going to happen
11 to it?

12 A. I mean, long term it would decline more and more until
13 it was just almost nothing.

14 Q. Have you ever used an analogy to represent what you
15 thought the state of WordPerfect's business was by the time
16 you left in March of 1992?

17 A. Well, the one that comes to mind, and I am sure I have
18 used a bunch of them, but I felt like we had been bloodied
19 in the battle, and the image in my mind was that we were
20 laying in the road bleeding out, and so I wanted to kind of
21 patch up the body real quick so we didn't die, and then get
22 our strength back and get ready to fight, like I say,
23 another day.

24 Q. Have you also at times called the state of business at
25 that time a sinking ship?

1 MR. JOHNSON: Objection, Your Honor. That is
2 ridiculously leading.

3 MR. PARIS: No.

4 THE COURT: What if any analogies he is drawing to
5 drawing anything that is on the --

6 BY MR. PARIS

7 Q. Do you recall that, sir?

8 A. I probably called it a crashing airplane and a sinking
9 ship and a bunch of things. It was 20 years since that
10 happened.

11 Q. Let me show you a --

12 MR. JOHNSON: Your Honor, we are going to need to
13 approach on this one.

14 THE COURT: Okay.

15 (WHEREUPON, a bench conference was begun.)

16 MR. PARIS: It was used in opening and I just want
17 to ask him about it. This is where you were, and is this
18 consistent with what -- is what happened consistent with
19 what --

20 MR. JOHNSON: But this chart starts when he left.

21 MR. PARIS: That is the point of the question.

22 MR. JOHNSON: What could he offer?

23 THE COURT: He can say what he anticipated at the
24 time he left.

25 MR. PARIS: That is exactly right.

1 THE COURT: It is in evidence already.

2 MR. JOHNSON: It is not in evidence.

3 MR. PARIS: It was a demonstrative --

4 THE COURT: You can show him and ask him is this
5 consistent with what he anticipated was going to happen?

6 MR. JOHNSON: Your Honor, and not show it to the
7 jury? It is not in evidence.

8 MR. PARIS: It has been shown to the jury.

9 THE COURT: He can't talk about after --

10 MR. JOHNSON: Thank you.

11 (WHEREUPON, the bench conference was concluded.)

12 THE COURT: I am going to let you all see this
13 exhibit, but obviously after 1992 we know from the
14 testimony, March, Mr. Peterson is not with the company and I
15 will allow one question. You all can see this. This is not
16 an exhibit, it is a demonstrative.

17 BY MR. PARIS

18 Q. The jury will remember, and, Mr. Peterson, so you know,
19 this is a demonstrative that Microsoft prepared based upon
20 information produced in litigation in this case. It was
21 shown to the jury during opening statements in this case.

22 My only question for you, Mr. Peterson, is you left the
23 company -- you were with the company during the period we
24 were just talking about, March of 1992, correct?

25 A. Right.

1 Q. Is this consistent with what you expected to happen
2 after you left, WordPerfect's market share on Windows and
3 the DOS platform combined?

4 A. When I left?

5 Q. Right. Is this what you were worried about?

6 A. I knew that the DOS market would shrink so our numbers
7 would go down. I felt the DOS market would shrink. I had
8 hoped we could maintain our 40 percent share of the Windows
9 market and then grow from there, but that is about all I
10 knew.

11 Q. I will put it a slightly different way, Mr. Peterson.
12 This is the decline that you were worried about when
13 you left in March of 1992?

14 MR. JOHNSON: Your Honor, asked and answered.

15 THE COURT: I think he answered. It is what it
16 is.

17 MR. PARIS: I will move on.

18 BY MR. PARIS

19 Q. Do you remember at the time or about the time that you
20 left the company, Mr. Peterson, as a full-time employee in
21 February of 1992, writing an e-mail to Mr. Bastian about the
22 state of play at WordPerfect at the time?

23 A. I remember a lot of e-mails. I mean, word for word I
24 couldn't tell you what I wrote, but we e-mailed each other
25 all the time.

1 Q. I will refresh you.

2 MR. JOHNSON: Your Honor, we would object.

3 If he wants to try to use this to refresh his
4 recollection, he can certainly do it for that purpose, but
5 this is not an admitted exhibit in this proceeding.

6 MR. PARIS: I will lay the foundation right now,
7 Your Honor.

8 THE COURT: Okay.

9 BY MR. PARIS

10 Q. Mr. Peterson, do you recognize this document?

11 A. I do.

12 Q. Who wrote it?

13 A. I did.

14 Q. Do you recall writing it?

15 A. Yes.

16 Q. Can you tell the jury what this is?

17 A. Bruce had written me an e-mail kind of saying what
18 should we do next and this was my response.

19 MR. PARIS: Your Honor, we would move to have this
20 admitted.

21 THE COURT: Were you with WordPerfect at the time?

22 THE WITNESS: Yes, this is February 3rd, 1992.

23 THE COURT: It is admitted.

24 MR. PARIS: Thank you, Your Honor.

25 If you could put it up, please.

1 (WHEREUPON, Defendant's Exhibit
2 was received into evidence.)

3 BY MR. PARIS

4 Q. So at the top the e-mail is from you to big capitals
5 Bruce, and you testified that is Mr. Bastian?

6 A. Yes.

7 Q. And it was written at 2:00 in the morning on February
8 3rd, 1992?

9 A. Yeah. Probably, yes.

10 Q. You work late?

11 A. I don't remember exactly, but it wasn't uncommon that I
12 would be up that late.

13 Q. Now, in the first paragraph, Mr. Peterson, you ask the
14 question who is going to save us if we don't? Do you think
15 there is anyone out there who could come in and make us
16 successful? I doubt it.

17 What were you talking about here?

18 A. I thought we knew what we were doing. I thought I was
19 a pretty good leader and manager, and I think Bruce was --
20 he was beginning to believe that we needed somebody else to
21 run the company, or at least not me.

22 Q. Focusing your attention on the fourth paragraph
23 beginning it would be wonderful to think, you wrote it would
24 be wonderful to think that better reps and more advertising
25 would save our bacon. However, I don't for a second believe

1 it.

2 Can you tell the jury what you were referring to when
3 you wrote that sentence, what you were talking about?

4 A. The amount of money we spent on marketing was much,
5 much, much less than Microsoft. I had grown to believe that
6 advertising had its limits, that it was a really quick way
7 to flush money away and so, yeah, I believed in better
8 products. If you build a better mousetrap they will beat a
9 path to your door. I believed that.

10 Q. Did everyone agree with you?

11 A. A lot of people didn't agree with me, but we had been
12 successful for so long that they had trouble disagreeing
13 with me. I mean, when you increase sales quarter after
14 quarter after quarter it is hard to believe that you're
15 doing a lot wrong.

16 Q. And you continue to write in this paragraph, whether
17 you want to believe it or not our products determine our
18 success.

19 You very much believed that?

20 A. I believed that.

21 Q. You said here Office has not lived up to its promises
22 and the delays have cost us a lot.

23 What do you mean by that?

24 A. We had a product called Office, and it had taken a lot
25 of time and it had been late and it was difficult. I mean,

1 it says what it is, I think.

2 Q. You continue to talk about PlanPerfect. Do you see
3 that sentence? PlanPerfect has never been the future --
4 competitive, and we have never given the produce the
5 resources of other companies. Where it has been competitive
6 because of localization we have sold well.

7 Just remind the jury what PlanPerfect was.

8 A. PlanPerfect was our spreadsheet for DOS.

9 Q. Looking at the second page of this document --

10 A. Okay.

11 Q. Page 2, starting with the paragraph I truly believe --
12 you wrote, I truly believe it is our destiny to create
13 wonderful software products for the world and jobs for our
14 community. This is our calling, our stewardship, and our
15 contribution to the world. We can avoid our destiny by
16 giving our responsibilities to someone else, but I seriously
17 doubt that they will do a better job or even come close to
18 the job that we can do.

19 You believed that, didn't you, Mr. Peterson?

20 A. I wasn't very humble, was I? Yeah, I did believe it.

21 Q. This was your view at the time, right?

22 A. Yes.

23 Q. In the ultimate paragraph you write, please don't get
24 too discouraged. This company will go on a diet and emerge
25 with much better products and much stronger people.

1 What did you mean by that?

2 A. Well, it was just my view, the one that eventually got
3 me fired, was that if we put our money into better products
4 that eventually we would succeed, but it would be a long
5 term battle. I didn't think a short-term marketing spending
6 spree could actually get our market share back.

7 Q. And you write where would we be right now without the
8 competition? We would never have to correct our mistakes or
9 write truly wonderful software. Opposition is good. Hard
10 times can be good.

11 Do you see that?

12 A. Yes.

13 Q. Your view was that being in tough competition with your
14 competitors would make you better, right? That was your
15 view?

16 A. Yes. I am something of an idealist.

17 Q. Was your proposed strategy for the company to go on a
18 diet and make better software, right? Was that carried out?

19 MR. JOHNSON: Your Honor, only if he --

20 MR. PARIS: If you know.

21 MR. JOHNSON: This is after the time he left,
22 obviously.

23 BY MR. JARDINE

24 Q. If you have a basis to know.

25 A. From what I observed after I left -- I know for one

1 thing that they went from 3,500 employees to 5,500
2 employees. They spent a lot of money. They certainly
3 didn't go on a diet.

4 Q. Now, shifting gears a bit, Mr. Peterson, during your
5 tenure with WordPerfect Corporation did Novell -- was there
6 ever a period where Novell considered merging with or
7 acquiring WordPerfect?

8 A. If there was, I didn't know about those talks.

9 Q. And just to remind the jury again, you left in March of
10 1992, but you had a consultancy agreement with WordPerfect
11 until when? Do you remember?

12 A. I don't remember. It seemed like it was for a few
13 months, but they never asked me to do any work or make any
14 comments.

15 Q. Would it refresh your recollection if I showed you your
16 consultancy agreement?

17 A. I am sure it would.

18 THE COURT: If it is there, why don't you just
19 represent what --

20 BY MR. PARIS

21 Q. I will represent that the consultancy went through the
22 end of 1994.

23 Does that refresh your recollection as to the period of
24 it?

25 A. Through the end of 1994? I guess.

1 Q. That was also the period of your non-compete with
2 WordPerfect?

3 A. I am not sure -- I mean, the agreement was until 1994?
4 Is that what you have got? I don't think they kept cutting
5 me checks that long. I think I probably did something
6 stupid and said don't send him any more money if you're not
7 going to ask me to do anything.

8 Q. They never asked you to do anything during the period
9 of the consultancy?

10 A. No. A couple of times I attempted to give them my
11 advice, and they didn't want to listen.

12 Q. During the period while you were writing your book, did
13 you try to stay informed of what was happening at
14 WordPerfect?

15 A. Well, I was still -- it seems like until Christmas of
16 '92 I was still a shareholder, and so I would still get
17 reports on the sales and things like that. I was still
18 reading the magazines and trade publications, and I still
19 thought that, you know, they would come back begging me to
20 come back and help them get out of the trouble and it never
21 happened. And so, yeah, I mean I was -- I would be like an
22 industry observer, I guess.

23 Q. An industry observer who just happened to be the
24 ex-senior level executive, right?

25 A. Yes.

1 Q. Did anyone at WordPerfect -- foundation.

2 Do you remember that at some point in 1994 Novell
3 acquired WordPerfect?

4 A. Yes.

5 MR. JOHNSON: Your Honor, again --

6 THE COURT: That is not a problem. That is fine.
7 They did. Okay.

8 I understand your objection.

9 BY MR. PARIS

10 Q. Do you recall that?

11 A. Yes.

12 Q. Did anyone at either WordPerfect or Novell at the time
13 of that acquisition contact you to solicit your views?

14 A. No.

15 Q. If anyone had asked you, what would you have said?

16 MR. JOHNSON: Your Honor --

17 THE COURT: Sustained.

18 BY MR. PARIS

19 Q. Do you recall how much Novell paid for WordPerfect?

20 A. It seems like they paid with stock, and originally it
21 was about 1.7 billion, and by the time the merger actually
22 took place it was more like 1.3 billion.

23 Q. What, if anything, did you think of that price?

24 MR. JOHNSON: Your Honor, objection.

25 THE COURT: Sustained.

1 MR. JOHNSON: Objection.

2 BY MR. PARIS

3 Q. I will put it a different way.

4 Did you think this was a good deal or a bad deal for
5 WordPerfect Corporation?

6 MR. JOHNSON: Objection.

7 THE COURT: Sustained.

8 BY MR. PARIS

9 Q. During your -- Mr. Peterson, do you have any
10 knowledge -- strike that.

11 You were never a software developer for WordPerfect
12 Corporation during your tenure, right?

13 A. No.

14 Q. Do you have any knowledge about Novell or Novell
15 WordPerfect's development of software products to run on the
16 Windows 95 platform?

17 A. Not really. I mean, a little here and there. I think
18 they might have sent me a copy of the software when it first
19 came out. But, no, I was not involved in that process.

20 Q. You were not involved in that process, correct?

21 A. That is correct.

22 Q. No one ever asked you for your reviews during the
23 development process?

24 A. No one asked me.

25 Q. Did you have any knowledge at all of Microsoft's

1 decision in October of 1994 not to support certain things
2 called namespace extension APIs in a beta version of Windows
3 95?

4 THE COURT: He was not there.

5 THE WITNESS: No.

6 MR. PARIS: I wanted the record to be clear.

7 THE WITNESS: The judge is correct.

8 MR. PARIS: The judge is correct. Good.

9 BY MR. PARIS

10 Q. You don't have any knowledge whatsoever --

11 THE COURT: We'll just assume that he has no
12 personal knowledge after he leaves in March of 1992 and
13 you're protected on that.

14 MR. PARIS: Thank you, Your Honor.

15 I will pass the witness.

16 THE COURT: We'll take a short recess and begin
17 with Mr. Johnson's cross.

18 (Recess)

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