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

_____)	
NOVELL, INC.,)	
)	
)	
Plaintiff,)	
)	
vs.)	Case 2:04-CV-1045 JFM
)	
MICROSOFT CORPORATION,)	
)	
Defendant.)	
_____)	

BEFORE THE HONORABLE J. FREDERICK MOTZ

DATE: OCTOBER 25, 2011

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL
VOLUME VI

Reported by: KELLY BROWN HICKEN, CSR, RPR, RMR
BECKY JANKE, CSR, RPR
PATTI WALKER, CSR, RPR

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I N D E X

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SALT LAKE CITY, UTAH, TUESDAY, OCTOBER 25, 2011

* * * * *

THE COURT: Okay. I think I need to hear a dispute between you -- I think I'd had -- we're here to discuss the production by Novell to Microsoft certain things, and I decided to wait to hear it this morning when I heard from Mr. Johnson just had a long history. Let me hear the history and --

MR. JOHNSON: Thank you, Your Honor. You know, prior to the openings, as is my practice, anyway, is to exchange those opening slides which are summary exhibits and the like, which both sides used in their openings so that you could verify that they were accurate summaries and based upon appropriate data. I asked for those three times, and I got no response to any of those requests. So I did not take time after openings Mr. Tulchin requesting all of my slides. And, moreover, Your Honor, the reason for requesting summary slides is to make sure that it was being presented as an accurate portrayal. The openings themselves, of course, are not evidence.

And, frankly, Your Honor, given what happened in Microsoft's opening in this case, I'm a bit concerned about what use may be made of my opening slides. They certainly have the transcript of everything I said in opening, and I think that's sufficient since the slides themselves are not

1 evidence and are not given to the jury.

2 THE COURT: Mister -- I don't know who's going.

3 MR. PARIS: Discussion with Mister -- Good morning.

4 Frankly, Mr. Johnson has misrepresented what
5 actually happened. We had about a week and a half of
6 discussions back and forth, trying to get to an agreement on a
7 stipulation that concerned exchange first of underlying -- a
8 stipulation that dealt with the admissibility of underlying
9 expert data. We went on and on about this for about a week
10 and a half. I have copies of correspondence that went back
11 and forth between the parties. I thought at one point Sunday
12 before trial started that we had an agreement. I spoke with
13 Mr. Johnson Sunday afternoon and Ms. Vishio about that. We
14 sent over an agreement, what I thought was an agreement Sunday
15 evening.

16 Monday morning after voir dire, we were told that
17 it wasn't acceptable. We tried to get to an understanding.
18 That only concerned the exchange of summary exhibits. What I
19 then asked them for at the conclusion of opening statements on
20 Tuesday, so Tuesday evening, was that we simply exchange the
21 demonstratives that each side had showed to the jury. That
22 seems like an obvious thing to me since that is the normal
23 practice that if something is shown to the jury, it goes to
24 the other side.

25 We were willing to give them ours. I have one with

1 me today. I've had them with me every day that we've been in
2 here. So frankly, what Mr. Johnson had to say about the
3 expert data stipulation, that we weren't able to come to an
4 agreement on is sort of, it sort of misses the point, you
5 know. We engaged in those 10 days of discussions. I think
6 they were good faith discussions. We just had a different
7 view as to the extent as to which we would preview each
8 other's summary exhibits. But that really has nothing to do
9 whatsoever with the exchange of slides that have now been
10 shown to the jury and on behalf of Microsoft.

11 I think I can speak for Mr. Tulchin. We take issue
12 with his characterization of Mr. Tulchin's opening statement.
13 There was nothing inappropriate about it at all. If they
14 think there is, they think there is. But that doesn't have --
15 that's it, has no bearing on whether we exchange exhibits to
16 each other -- I'm sorry -- exchange slides that were shown to
17 the jury.

18 THE COURT: Mr. Johnson?

19 MR. JOHNSON: The data stipulation which we tried
20 to reach is wholly apart from the question of exchanging the
21 summary demonstrative. We asked three times for those data
22 exchange. In fact, in the last e-mail which Ms. Vishio sent
23 to Adam, we said, we are prepared to exchange those slides
24 now. And again, no response.

25 So once again, I feel like there hasn't been that

1 kind of exchange in the past. And now to ask for my complete
2 set of slides, which again is not evidence, I just think is
3 unnecessary and inappropriate, Your Honor. Thank you.

4 THE COURT: This is by far the most frivolous
5 dispute that I have ever heard in a case involving good
6 counsel in 26 years on the bench. I feel like a croupier here
7 in Salt Lake City presiding over what seems to be a crap
8 shoot, and I don't know who's at fault. But I'm not happy
9 about it, as you well know because the reasons I've expressed
10 before.

11 I also right now feel like a parent, probably a
12 mother rather than a father presiding over one of the -- I
13 know you boys don't like each other, but grow up. Something
14 shown to the jury, give it to each other. This is crazy. You
15 ought to be ashamed of yourselves, and I'm ashamed for you. I
16 will --

17 Anything else we have to take up this morning?

18 MR. PARIS: No, Your Honor.

19 MR. JOHNSON: No, Your Honor.

20 THE COURT: Let me try -- we've got a couple
21 minutes, I tried to write it out, and I sort of wish I brought
22 it down. There's going to be a recurring issue in the case.
23 First, I need to know from Novell now, and you don't need to
24 give it to me now, maybe back in the briefing on the
25 instructions I'll understand it better, but I don't quite know

1 why I hadn't picked this up before. But until I heard the
2 opening statements, I really thought that WordPerfect --
3 Microsoft had made Windows 95 incompatible with WordPerfect as
4 an application system. I don't know why I thought that, and I
5 probably missed it in the papers. I now understand that is
6 not the case. That as a word processing application
7 WordPerfect could be used by Windows 95, and an icon could
8 have been installed and it could have been used. And to the
9 extent I just missed this, I apologize, but frankly that's
10 where I was.

11 Now that I understand the issue better, and I
12 understand Novell's position that providing documentation for
13 the NameSpace extension APIs increase functionality and that
14 the third way is different than simply sitting on top of
15 the -- having the application sitting on top of the operating
16 system. I understand that.

17 But it does add a new dimension, which is to what
18 extent a monopolist has to cooperate with a competitor by
19 providing to the competitor product enhancement that the
20 monopolist has made to his own product through its own
21 investment and research and development. And to that, I don't
22 know if there's -- no case that I thought of comes to mind
23 that does that. There may be cases out there. I just need to
24 know at some point, now that I focused upon that issue I need
25 to know, need to know from Novell what authority there is.

1 It's almost like I was trying to think of an
2 analogy since I couldn't stand watching the Raiders. It was
3 almost like asking somehow the owner of the -- a monopolist
4 somehow built a railroad around and made three, I think three,
5 it's three mountains fronting one another, and that the
6 fourth, the plaintiff sort of required that you extend that
7 railroad to us, too, so that we can engage in the enhancement
8 which you made for yourself.

9 Now, I don't -- I'm sure there is a case, and I
10 need to -- and I don't need an answer now. But that is -- I'm
11 just trying to tell you what's been on my mind.

12 Also, what I went off on yesterday, and it is a
13 terribly, terribly difficult conceptual issue, and that is it
14 seems to me there's inconsistency. I understand Novell's
15 theory. The theory is that Microsoft, as I understand it,
16 withdrew the documentation through the NameSpace extension
17 APIs to target Novell because it saw Novell as a potential
18 middleware threat and because it saw that WordPerfect became
19 so popular that it would supercede Word and that, therefore,
20 people would buy WordPerfect and whatever operating system it
21 was working on and not Windows 95.

22 This case is not about and cannot be about and,
23 frankly, it seems to me it was what Mr. Harral was concerned
24 about is absolutely right. It may be that Microsoft was using
25 its knowledge of Windows 95 and restricting what it was giving

1 to competitors, application competitors so that it could make
2 Word and Office more dominate respectively in the word
3 processing and the Office suite market. I understand that.

4 But that is not the claim here. The claim here is
5 different. It has to work to the operating system. And for
6 the life of me it seems to me there is an inconsistency
7 between Novell's theory and the facts, because at least, maybe
8 not all of the facts, but the facts I've heard from Mr. Harral
9 and others that testified that clearly he could not have been
10 clearer that through 1996 at least and for the foreseeable
11 future thereafter what was going to make WordPerfect
12 attractive both as a middleware and as a word processor
13 application was the fact that it was married to Windows 95.

14 So whatever bad intent Mr. Gates may have had,
15 maybe he did perceive in the long term, I understand
16 Mr. Johnson pointed out it's classic hallmark of any
17 anticompetitive behavior to take a short-term loss in order to
18 gain a long-term profit. Maybe that was Mr. Gates' intent.
19 Assuming it was is not the facts, at least the facts that I've
20 heard so far, which is that WordPerfect wasn't going anywhere
21 through 1996, which is the relevant time period unless it was
22 married to Windows 95 which is the operating system.

23 There is just -- I've struggled with this. I'm
24 sorry I lost my temper yesterday because it is so hard that
25 time trying to understand it. And like I say, I woke up in

1 the middle of the night and drew up some notes, and I tried to
2 type them out to make my thoughts more clear. But I mentioned
3 this now only because this is hard. It's going to be hard for
4 the jury. It's hard for you all. It's going to be hard for
5 me on a motion for judgment as a matter of law, which I'm
6 going to undertake seriously.

7 And I'm just alerting you now to now what my
8 mindset is so you know what's happening. I don't need a
9 response, Mr. Johnson, and I don't mean to argue with you.
10 I'm just telling you where -- why I'm having the problems that
11 I'm having.

12 So just bear that in mind, and we'll get through
13 this.

14 MR. JOHNSON: Your Honor, if I could since we do
15 have five minutes, and we will address in a fuller fashion to
16 Your Honor.

17 But two short points. First with your -- with
18 respect to your first comment about duty of a monopolist to
19 help a competitor, and you asked if there was a case. And
20 there is a case. It's called Novell vs. Microsoft. And you
21 addressed this point in summary judgment. In fact --

22 THE COURT: I was under -- whatever I did, I'll
23 reread it. I was under -- frankly, and I'm embarrassed I was
24 under a misapprehension. I thought that WordPerfect would not
25 run on Windows 95.

1 MR. JOHNSON: Your Honor, what is important and I
2 do urge you to reread your opinion --

3 THE COURT: I will.

4 MR. JOHNSON: -- because what you said was that
5 this is not just the normal case of a monopolist withholding
6 some functionality that it had a right to do so. This was a
7 case that involved an element of deception.

8 THE COURT: Well, you tell me also in the evidence
9 where there is any evidence that when Microsoft first
10 published the APIs and NameSpace extensions API it knew at
11 that time that it was going to withdraw them. That would be a
12 deception claim. What you're dealing with is something, which
13 frankly what I've heard is Microsoft's own e-mails that you
14 rely upon is an open question until the very end when
15 Mr. Gates makes his decision to withdraw. Now, that may have
16 been wrong. It may very well have been wrong in that it was
17 favoring Word or WordPerfect, but that's not the claim.

18 I don't see where there's any evidence that at the
19 time that in the alpha and beta releases it intended at that
20 time to withdraw.

21 MR. JOHNSON: Your Honor, you may recall the
22 evidence that came in through Mr. Gates at the Hood Canal
23 Retreat. There was the discussion of the Radical Extreme
24 which was a plan, a plan, Your Honor, to deny the extensible
25 shell of Chicago to ISVs.

1 THE COURT: When was that?

2 MR. JOHNSON: That was in 1993. Mr. Gates endorsed
3 that plan. The actions ultimately taken in this case mirrored
4 that plan.

5 THE COURT: That's helpful.

6 MR. JOHNSON: That was deception. That was
7 anticompetitive. That was -- and had they, had they, Your
8 Honor, simply denied the extensible shell to all ISVs, that
9 would have been wrong according to Microsoft's own executives
10 with respect to this point, but it might have fallen within
11 what you said, the lack of duty of a monopolist.

12 THE COURT: That's helpful.

13 MR. JOHNSON: Which that's not the case that
14 occurred here --

15 THE COURT: I don't want to cut you off. It's
16 8 o'clock. The jury is probably here. Thank you.

17 MR. PARIS: Your Honor, I know we need to bring the
18 jury in, but I very much disagree with what Mr. Johnson said.

19 THE COURT: I don't want to hear from you all. The
20 purpose was not to engender argument. It was to tell people
21 what was on my mind.

22 MR. PARIS: Thank you, Your Honor.

23 MR. JOHNSON: Thank you, Your Honor.

24 (Whereupon, the jury returned to the court
25 proceedings.)

1 THE COURT: Good morning, again, everybody. I
2 think we're ready for another witness.

3 MS. VISHIO: Good morning. My name is
4 Mariam Vishio on behalf of Novell.

5 Novell calls Gregory Richardson.

6 THE COURT: Mr. Richardson, please come forward.

7 THE CLERK: Please raise your right hand.

8 GREGORY LEE RICHARDSON,
9 called as a witness at the request of Plaintiff,
10 having been first duly sworn, was examined
11 and testified as follows:

12 THE WITNESS: Yes.

13 THE CLERK: Please be seated.

14 Please state your full name and spell it for the
15 record.

16 THE WITNESS: Gregory Lee Richardson.

17 G-R-E-G-O-R-Y, L-E-E, R-I-C-H-A-R-D-S-O-N.

18 DIRECT EXAMINATION

19 BY MS. VISHIO:

20 Q. Good morning, Mr. Richardson. Mr. Richardson,
21 where do you live?

22 A. I live in Pleasant Grove, Utah.

23 Q. How long have you lived in Utah?

24 A. I've lived in Utah for over 20 years.

25 Q. Where are you currently employed?

1 A. I work for the Church of Jesus Christ of Latter-Day
2 Saints.

3 Q. And what do you do there?

4 A. I'm a software development engineer. I work in the
5 genealogy program for the church.

6 Q. How long have you been employed by the Church of
7 Jesus Christ of Latter-Day Saints?

8 A. It will be four years in December.

9 Q. How long have you been a software engineer?

10 A. For over 20 years.

11 Q. Before I get into your work as a software engineer,
12 would you, please, tell the jury where you went to college.

13 A. I went to college at Brigham Young University.

14 Q. And when did you graduate?

15 A. I graduated in 1988.

16 Q. What is your degree in?

17 A. I have a double major in computer science and
18 Portuguese.

19 Q. What did you do after you attended Brigham Young
20 University?

21 A. My first job was at Microsoft.

22 Q. And how long have you been employed by Microsoft?

23 A. For a little less than two years.

24 Q. And what was your position there?

25 A. I was a software tech engineer.

1 Q. And what were your job responsibilities as a
2 software tech engineer?

3 A. My position was to validate that the software that
4 was being produced worked as it was supposed to, find any
5 problems and make sure that they were fixed appropriately.

6 Q. What products did you support?

7 A. Well, I worked on a variety of products while I was
8 at Microsoft. Initially I worked on their internal compiler
9 debugger interpreter, which was a product that they used to
10 produce their own products. It was used to produce Word and
11 Excel. Later I worked on a product that provided help in
12 Windows, WinHelp. I worked on a variety of smaller products.
13 I worked in a group that provided shared support for all the
14 applications. And so there was a small product dialog
15 management. There was a bug tracking system, a variety of
16 small pieces used by all the applications.

17 Q. And what operating systems do you support?

18 A. In my group we supported Windows, we supported DOS,
19 we supported the MacIntosh, and we supported OS2.

20 Q. Do you recall when you left Microsoft?

21 A. I left Microsoft in spring of 1990.

22 Q. And what did you do after you left Microsoft?

23 A. I went to work for WordPerfect Corporation.

24 Q. What was your position then?

25 A. I was a software development engineer.

1 Q. And as a software development engineer what were
2 your job responsibilities?

3 A. I developed software specially initially
4 WordPerfect for Windows 5.1. So I was a software developer
5 that help create the first word processor that WordPerfect did
6 for Windows.

7 Q. And what did you do after that?

8 A. After the initial version of WordPerfect for
9 Windows, WordPerfect for Windows 5.1 shipped, we took a
10 portion of the code that we had written for WordPerfect for
11 Windows and made it into a shared code that could be shared by
12 other applications for Windows that WordPerfect was creating.
13 We also took functionality from other WordPerfect products
14 such as the mail program and used those in that same base so
15 that everybody could share that functionality.

16 Q. And how long were you on the shared code team?

17 A. I worked in shared code from the end of the 5.1
18 product until -- I was -- several years later after Novell had
19 purchased WordPerfect and Corel had purchased WordPerfect. So
20 probably eight or nine years I worked in shared code.

21 Q. Do you know Mr. Adam Harral?

22 A. I do.

23 Q. Was he a member in the shared code team?

24 A. He was.

25 Q. Do you recall approximately when WordPerfect was

1 acquired by Novell?

2 A. Novell purchased WordPerfect in 1994.

3 Q. Did the merger affect your day-to-day job
4 responsibilities as a software developer?

5 A. No. I continued to work on the same products. I
6 continued to work in the same office. There wasn't really a
7 direct impact on me and my duties.

8 Q. You had mentioned that after Novell that Corel had
9 acquired WordPerfect, the application, as well. What did you
10 do at Corel?

11 A. I continued to work on WordPerfect in the shared
12 code group for about a year. And then I was transferred to
13 another product called Remagen, R-E-M-A-G-E-N, that is a
14 client server. Remagen was a Citrix-like product. It allowed
15 you to run an application on the server and have a
16 representation of that product on a client's machine in an
17 attempt to make it easier to manage the software, that the
18 server would have the software installed in a controlled
19 environment, and then clients could log into that server and
20 access the server.

21 Q. How long were you employed by Corel?

22 A. I worked at Corel for just less than two years.

23 Q. And what did you do after you left Corel?

24 A. I returned to Novell.

25 Q. And what was your position there when you returned?

1 A. Once again, I was a software development engineer.
2 And I worked in the advanced development group. The product
3 that I worked on initially was a product that accelerates
4 access to the Internet. So that when your browser attaches to
5 a web server like CNN and Google, that happens more quickly.

6 Q. How long were you employed by Novell the second
7 time around?

8 A. I was employed by Novell the second time around
9 about nine years. So I went there in 1988 and left in 2007.

10 Q. Why did you leave?

11 A. I was laid off.

12 Q. And what did you do after you left Novell?

13 A. After I left Novell I came to work for the Church
14 of Jesus Christ of Latter-Day Saints.

15 Q. Let me return to your employment at WordPerfect.
16 Did Microsoft have a practice of promoting its operating
17 systems to WordPerfect?

18 A. That was common. Every time there was a new
19 release of Windows we would get advanced information about it.
20 And we talked with Microsoft personnel at their conferences to
21 learn about the conference and learn about the new features
22 and what were the advantages of this operating system.

23 Q. Before I get into your experience with those
24 conferences, are you familiar with Microsoft's logo
25 certification program for Windows 95?

1 A. I am.

2 Q. And can you explain to the jury what you know
3 generally about that program?

4 A. The logo program was a seal of approval that
5 Microsoft gave to applications indicating that they had looked
6 at them and they worked well on Windows 95. So it was a logo
7 that you could put on your software that indicated that
8 Microsoft approved of it.

9 Q. How would a software developer obtain the logo?

10 A. There were a variety of requirements. The
11 requirements that I specifically dealt with were related to
12 compatibility of the application that we were running on
13 Windows 95 and Windows NT. The requirement was that the
14 various executables, the same version of the code had to run
15 both Windows 95 and Windows NT. So my responsibility was to
16 take the shared code and make it work in both places.

17 Q. Were you successful?

18 A. I was not.

19 Q. Why not?

20 A. As I attempted to take that functionality, import
21 it to Windows 95 and Windows NT, I encountered a variety of
22 circumstances where the functionality was either incompatible,
23 it being done so differently I couldn't make it work both
24 places, or functionality was entirely missing in Windows NT.
25 The requirements were that the software would degrade

1 gracefully where there wasn't compatible functionality, but I
2 ran into the obstacles that were so large that I couldn't make
3 enough work to make it worth while to move the software into
4 Windows NT.

5 Q. How long did you try to make the code compatible
6 between Windows 95 and Windows NT?

7 A. I spent two months doing that.

8 Q. What happened next? Did Novell obtain a logo?

9 A. My understanding is Novell did not obtain the logo.

10 Q. Let me get back to your earlier testimony about the
11 conferences that you mentioned previously. You testified
12 earlier that Microsoft held conferences to promote the
13 operating systems to WordPerfect. Did you ever attend any
14 such conferences where Microsoft promoted Windows 95 prior to
15 its release?

16 A. I attended two conferences. The first conference
17 was early in 1993. It was a very early preview of what was
18 planned for Windows 95. They didn't have any code actually
19 ready to show to us to show something working, but they wanted
20 to present this new model, which was a pretty dramatic
21 departure from the way things had been done previously where
22 access to information on Windows became document centric and
23 object oriented. It was a really new concept, and they wanted
24 to kind of sell that to us, that concept really early in the
25 process and get by on that concept.

1 Q. And what is the object-oriented concept that you're
2 referring to?

3 A. So that's a little bit difficult to understand.
4 Object orientation moves from having just a list of APIs that
5 you called access functionality in the operating system to
6 dealing with objects that then have functionality associated
7 with them. And so it's a stronger model. It was a good move.
8 It was a good change, and we were able to see the advantages.
9 And we were very excited about that and wanted to move forward
10 with that technology. We thought it was a great idea.

11 Q. Do you remember any specific functionalities that
12 Microsoft was promoting for Windows 95?

13 A. What I recall is a variety of places where they
14 kind of turned this view perspective around to making it
15 object oriented. They included the ability to drag and drop
16 things from various places and pick up an icon and move it
17 someplace and have it be received wherever you dropped it.
18 They had a new way of looking at the way you would interact
19 with clipboard. So you would copy something and then paste it
20 someplace else, how it all works.

21 And then, of course, the file system which changed
22 to be more object oriented where you would take a document and
23 look at the document to see what you could do with it rather
24 than go to the operating system to see what files you could
25 operate on.

1 Q. Are you familiar with the term NameSpace extension?

2 A. I am.

3 Q. What are those?

4 A. NameSpace extensions were the way that this new
5 object-oriented file system allowed you to present a
6 collection of items to the operating system. So when you have
7 a folder and it has a variety of items in it, a NameSpace
8 would be provided to that folder and would enumerate the items
9 within that. The NameSpace extension allowed you to provide
10 different kinds of collections rather than just files on a
11 hard drive.

12 Q. Did Microsoft promote this NameSpace extension
13 functionality to WordPerfect?

14 A. My recollection is that they were very excited
15 about this, and we became very excited about this as we
16 understood the technology.

17 Q. Mr. Richardson, if you would, please turn to
18 Plaintiff's Exhibit 113 in your binder. It's also on the
19 screen in front of you and behind you.

20 Have you seen this document before?

21 A. Yes. I believe I have.

22 Q. What is this document?

23 A. This is a presentation describing functionality
24 that was being provided in Windows 95 to promote those
25 features.

1 Q. On the bottom right-hand corner of the page in
2 front of you, you'll see an NOV number with the number 71 at
3 the end. Do you see that?

4 A. Yes, I see that.

5 Q. If you can turn to Page 90, I'd like to direct your
6 attention to the slide entitled, "Explorer Integration
7 Details."

8 A. Okay.

9 Q. First of all, Mr. Richardson, what is the Explorer?

10 A. The Explorer is one of the places you can go to go
11 explore the names. So if you want to look for files or other
12 things that are presented by NameSpaces, this is the place you
13 go. It's kind of the replacement for what had been the
14 Windows file manager in Windows 3.1. You would start up the
15 file manager, and you could browse through your drives and
16 your different files, and then you would find a file and could
17 launch an application from there.

18 So this Explorer is kind of the same kind of
19 functionality, but it did go by going through NameSpace
20 extensions rather than just by going and looking through the
21 drives.

22 Q. And what is your understanding of what Explorer
23 integration is as shown in this slide?

24 A. So as we see right over here, this area right here
25 is a tree that represents the things that are available, the

1 places that are available for me to go. So we have the
2 drives, A drive, floppy drive, C drive. My Computer is one of
3 those NameSpaces. It's the place where you start. You go to
4 that NameSpace, and it has a collection of things within it.
5 In this case, we have the A drive and the C drive. But the
6 C drive then is expanded to contain a variety of folders
7 within it.

8 At this point right here, it looks like it's
9 presenting a custom NameSpace. So this is a place where
10 someone can come in and say, I want to present a new
11 collection of items. And this is a custom NameSpace here with
12 the items enumerated by that NameSpace, which are not
13 necessarily files on the file system.

14 Q. Did WordPerfect want to integrate into the
15 Explorer?

16 A. We saw pretty quickly that there's some really
17 powerful things that we could do with this. This was a very
18 powerful new paradigm. And there was a lot of advantages.
19 There was a variety of things that we could do that could
20 present very useful functionality to our users to making their
21 experience of using our product better.

22 Q. And how would you achieve creating these custom
23 folders?

24 A. So there were a series of new functionalities
25 available in Windows 95. The shell extensions that allowed us

1 to create our own extensions register those with Windows, and
2 then they would show up within the browsers of those
3 NameSpaces. There's two dominate browsers; the Explorer
4 itself, and then the file open dialogs that were presented
5 inside applications. So if you're in an application and you
6 want to go find something, you would go to either the file
7 open dialog or the Explorer, and you could navigate to
8 whatever item you're looking for.

9 Q. Mr. Richardson, I'd like to direct your attention
10 to the first couple of bullets there. The first bullet point
11 says:

12 Not for most applications, and states that Explorer
13 integration, quote, only should be used if your application
14 displays a pseudo-folder, electronic mail, document
15 management, et cetera, end quote.

16 Did WordPerfect plan to display pseudo-folders for
17 electronic mail?

18 A. They did.

19 Q. And did WordPerfect plan to display pseudo-folders
20 for its document management system?

21 A. They did.

22 Q. What other custom folders, if any, did Novell plan
23 to integrate into the Explorer?

24 A. There were a number of other custom NameSpaces that
25 we intended to provide. One of them was a collection of bit

1 maps with our presentations program, like to create slides.
2 So we navigated to the bit map depository. Even though it was
3 just a big compressed file with a lot of bit maps in it, it
4 would appear with a series of folders with files in them, so
5 you could find a bit map to put into your document.

6 We also created or intended to create NameSpaces
7 that allowed us to access things on the Internet. So we
8 created an FTP NameSpace an HTP NameSpace that allowed you to
9 browse the Internet. We also integrated our QuickFinder
10 technology so that the results of a search would show up in a
11 NameSpace.

12 So, for example, if you're in the file open dialog
13 and you're working on a document but you can't remember where
14 you saved it but you could remember something what it had in
15 it, you might be able to look for Mr. John Smith, and the
16 search technology would then search all of your drives for all
17 files that had Mr. John Smith in them and present those files
18 that had that name in it as members of a folder in the
19 NameSpace extension.

20 Q. Are you familiar with a browser from Netscape
21 called Navigator?

22 A. I am.

23 Q. And what is Netscape Navigator?

24 A. Netscape Navigator is a Web browser or an Internet
25 browser just like Internet Explorer. And it was one of the

1 very first browsers that could talk to a web server and
2 present the content to you on your local machine.

3 Q. Did Novell have any relationship with Netscape?

4 A. They did.

5 Q. And what was that relationship?

6 A. Well, my relationship -- or my involvement with
7 that relationship was that Novell got rights to the Netscape
8 Navigator source code. So I took the Netscape Navigator
9 source code and constructed a NameSpace for the Internet, so
10 that in this location right here rather than seeing a list of
11 files, you would see a web page. So if I were to go to Google
12 or CNN, that content would show up right here. You could then
13 follow those links, browse them to some location, and this was
14 available in our file open dialog so you could hit the open
15 binder and it would bring that content into the application
16 we're using. So you could insert a graphic off of the
17 Internet, or you could take a web page that had other content
18 in it and open it directly into the word processor.

19 Q. Mr. Richardson, if you would, please turn to
20 Plaintiff's Exhibit 344 in your binder. Again, this will be
21 on the screen in front of you and also behind you. This is a
22 Microsoft document entitled Web-Like Shell, Architecture, and
23 the subheading, "Internet Explorer integration, in place
24 navigation and page view" followed by the date November 8th,
25 1995. Do you see that?

1 A. Yes.

2 Q. When you were working at Novell, had you ever seen
3 this document before?

4 A. No, I had not.

5 Q. I'd like to direct your attention to the second
6 page of this document, specifically the second full paragraph
7 that bears the heading, Windows 95 Shell NameSpace Extension.
8 Do you see that?

9 A. I do.

10 Q. This paragraphs states, quote:

11 Although we haven't clearly defined how we
12 present documents on WWW to the end user on the
13 Explorer left pane, i.e., the hierarchy, we know
14 that they don't belong to any of existing folders,
15 shell's NameSpace. It is quite natural to use the
16 NameSpace extension mechanism, see picture below,
17 to plug the URL NameSpace into the Explorer's
18 NameSpace, end quote.

19 Mr. Richardson, is this what you were describing
20 earlier with Novell's plans for integrating Netscape Navigator
21 into the Explorer?

22 A. Yes. It sounds very similar.

23 Q. And why would Novell want to integrate Netscape
24 Navigator into the Explorer?

25 A. Well, the significance of the Internet was becoming

1 very important. There were lots of contents on the Internet.
2 There was a lot of graphics, bit maps, clip art that was
3 available. Plus there was a desire for WordPerfect to be a
4 place where you could edit your web content. So you could go
5 out to a web page, load that document into WordPerfect, edit
6 it and then save it back out to the Internet after having
7 edited in WordPerfect.

8 Q. In addition to the Explorer were users able to
9 access Novell's custom folders anywhere else on the desktop?

10 A. Yes, they could.

11 Q. And where was that?

12 A. So NameSpace, once it's registered, would appear in
13 the Explorer. And they'd also appear in any file open dialog
14 or any application that was unable to make use of NameSpaces.
15 So once you extended a NameSpace in the system, it was
16 available to everybody.

17 Q. Are you familiar with the term common file open
18 dialog?

19 A. I am.

20 Q. And what is that?

21 A. The common file open dialog is a file dialog that
22 allows you to open file, attain a file or to select a
23 directory. It's used by every application. If you're going
24 to want to access any of your data, you have to be able to
25 load it and you have to be able to save it.

1 So the common dialog was a simple dialog that
2 happen to traverse these NameSpaces.

3 Q. Would Novell's custom folders have appeared in the
4 common file open dialog?

5 A. Well, we initially thought they would, but when we
6 tried to, our NameSpaces didn't show up in the common file
7 open dialog.

8 Q. Did WordPerfect plan to use Microsoft common file
9 open dialog as its file open dialog for WordPerfect?

10 A. Well, once again, we evaluated that when it first
11 became available, when we first got the first copy of Win95
12 functionality. And we evaluated and we considered making use
13 of it, but we determined there was two problems for us that we
14 couldn't overcome with the file open dialog. The first was
15 that part of the history of WordPerfect was extremely strong
16 in file management support. So in WordPerfect for DOS it was
17 common for people to open up WordPerfect and just stay in
18 WordPerfect for doing all of their file management because the
19 file management was so strong in WordPerfect for DOS.

20 Moving into Windows 3.1, 3.0 and 3.1, we had
21 extended that capability that we had with our DOS product into
22 the Windows' arena. And so we had functionality available to
23 us that hadn't been available through the standard operating
24 system. For example, the ability to do file operations like
25 copy and delete from within the file open dialog hadn't been

1 available in DOS and hadn't been available in 3.1. We also
2 had -- in the DOS product, we had extended the ability of the
3 user trying to interact with their document over what was
4 available in DOS. Some of you who may remember DOS remember
5 that your files had 8.3 names. They had eight characters and
6 a dot and three characters, and that was all you could use to
7 describe a document.

8 Well, WordPerfect had extended that to allow you to
9 have a long file name, and we restored that name with the top
10 of the document before the rest of the data of the document.
11 In our file management system when you look at a list of
12 files, you could see that long name, that descriptive name.
13 That was functionality that wasn't available prior to that in
14 Windows or in DOS. We wanted to have that same information
15 available to us. That information that had been in the
16 WordPerfect documents has to move into Windows 5.1. As we
17 looked into expanding the common dialog of customizing it, we
18 couldn't get enough customization into it in order to support
19 the level of functionality we had in previous versions of
20 WordPerfect Windows and in DOS product.

21 The second problem we had related to these
22 NameSpaces, our custom NameSpace, and, in fact, not even all
23 of the Microsoft NameSpaces showed up when we first evaluated
24 the Win95 product. It seemed to a certain subset of those
25 NameSpaces that were available, and so our extensions didn't

1 show up. So we determined that we wouldn't be able to make
2 use of the common file open dialog.

3 Q. Mr. Richardson, please take a look at the image
4 marked for identification as demonstrative Number 10 on the
5 screen in front of you. What is this image?

6 A. This is a picture of the file open dialog that we
7 created for Windows 95 in WordPerfect.

8 Q. And you testified that Novell wanted to add
9 additional NameSpaces or custom folders. Can you explain to
10 the jury where Novell's custom NameSpaces or custom folders
11 would have been able to appear on this screen?

12 A. So the NameSpaces would appear in a variety of
13 places. This area right here we mentioned before is the tree,
14 and we see My Computer up there, which is the desktop. We see
15 some of the items that contained there are drives, the floppy
16 and C drive. So they would appear in this area right here.
17 This window is a special window being used for QuickFinder
18 technology which was search-and-indexing technology.

19 So one of the things that we wanted to do to help
20 our users to be able to access their documents was as they
21 worked on documents, loaded them, they saved them, we would
22 automatically index them and put them in the special
23 NameSpaces. So we wanted these NameSpaces to be very easy for
24 them to find, very easy for them to access.

25 In addition, NameSpaces could be nested within

1 other NameSpaces so you could have a NameSpace that was
2 contained within another NameSpace. In that circumstance, it
3 would be possible to have NameSpaces show up in this window,
4 and it would just show up as another folder.

5 Q. Mr. Richardson, please take a look at the image
6 marked for identification as demonstrative Exhibit Number 16
7 now on the screen in front of you. Can you, please, tell the
8 jury what this screen represents?

9 A. So this red box right here represents the view that
10 you would see in that tree view which is now obscured behind
11 this area with this front graphic. This represents some of
12 the NameSpaces that we intended to make available within the
13 NameSpaces that we were providing. So you can see here once
14 again some of the Microsoft NameSpaces, network neighborhood,
15 recycle bin. This quick lists was tied into the QuickFinder
16 search and indexing technology went into the access of those
17 search results. My favorites would be the list of your files
18 that you have in your browser that you've saved in your
19 favorite list. And so if you were to click on one of those,
20 you would go to that view right here of that page, and then
21 you can follow that links wherever you want to.

22 So those are some of the -- that's a brief
23 representation, showing the NameSpaces that we had working
24 along with the Microsoft NameSpaces for the user in the file
25 open dialog.

1 Q. Is this an exhaustive list of the NameSpaces that
2 Novell intended to include?

3 A. No, it's not.

4 Q. Did there come a time when you became involved with
5 the NameSpace extensions?

6 A. There did.

7 Q. And what were the circumstances of you becoming
8 involved?

9 A. So I was working in the shared code group, which
10 was responsible for the file open dialog. I was not the
11 primary developer initially that worked on that. A co-worker
12 took that technology and wrote the initial version of the file
13 open dialog and reached the point where he was, he felt he was
14 mostly complete when he started encountering problems with the
15 performance of the NameSpaces. The time it took to take a
16 NameSpace and find all the entries that were contained within
17 that were so slow that it would take several minutes for the
18 dialog to populate a folder. It was just terribly, terribly
19 slow.

20 As that -- it appeared to us based on our
21 observation of those same NameSpaces within the Explorer that
22 there was some additional communication that was going on that
23 allowed them to speed up that process. As we worked with
24 Microsoft and tried to get the answer to that, it became
25 obvious that there was something there that was missing that

1 we didn't have that we needed to have. And then subsequently
2 the retraction of the documentation, our determination of what
3 we had to do to get around those problems led to the
4 additional resources to work on the file open dialog.

5 So I was kind of pulled into that effort, along
6 with a number of other people who were working on our team.
7 And eventually there were seven of us who all joined that
8 team.

9 Q. Can you tell us how Microsoft's decision to retract
10 the documentation for the NameSpace extensions affected
11 Novell's Windows 95 products?

12 A. Yes, I can. So when we reached this point where
13 the performance was unacceptable and we tried to work with
14 Microsoft to get a resolution and they didn't provide the
15 additional documentation, and they finally came back and said,
16 well, we're not even going to let you use what you've already
17 got, we're not going to continue this documentation, and we
18 may change them so they may break so don't count on these, at
19 that point we took a look at what our options were.

20 One option was to go back to what we had done with
21 Windows 3.1 and go back to the file open dialog that we had in
22 our application for the Windows 3.1. The problem with that
23 was just as Microsoft had left behind the Microsoft filing
24 manager to go to the Explorer there was a whole new set of
25 functionality that was unavailable to us in the old file open

1 dialog. We couldn't access the new Microsoft NameSpaces. We
2 couldn't get to network neighborhood. We couldn't get to My
3 Computer. So those locations that were crucial to being able
4 to access files in the Windows 95 environment weren't
5 available to us in what we already had, so we couldn't do
6 that.

7 We went back and looked at the common file dialog
8 again, and the problem still remained in that we couldn't
9 extend it to get the functionality that we already had in our
10 existing Windows product and in our Windows -- or DOS product,
11 and our NameSpaces weren't showing up. And so we couldn't
12 extend it with all this new functionality that we created. So
13 that didn't work out for us.

14 We also then looked at saying, well, how do we work
15 around the problem? How do we build up the part of the system
16 that Microsoft isn't letting us use so we can get the same
17 functionality and be able to move forward? If we didn't do
18 that, then I don't believe that we had a product that we could
19 ship on Windows 95. If you're a word processor and you can't
20 access your files or if you can't save your files, then you
21 don't really have a word processor. Yes, we could edit the
22 documents, but we didn't have a way to get access the place
23 where the documents were stored or any access enough of the
24 locations to give us a WordPerfect product. We had to meet at
25 least the level of where our last product had been and be able

1 to access all the areas that were important to access in the
2 new operating system.

3 So we had no choice but to move forward. The
4 options that we had were to either revert in functionality to
5 something that was unacceptable or to simply not be able to
6 access our files in Windows 95.

7 Q. And what did Novell decide to do?

8 A. We determined the only option we had was to move
9 forward and to replace the functionality or build up for
10 ourselves the functionality that Microsoft was not allowing us
11 to use.

12 Q. And how would you go about rebuilding that
13 functionality?

14 A. Well, there were several pieces to that. The first
15 was that we had to guess what that communication was between
16 the Explorer and the NameSpaces that was allowing them to have
17 the functionality perform so that it didn't take several
18 minutes to populate each folder. We had to replace, and I
19 realize some of these are technical terms, but the interfacing
20 that you would be using as support accessing the NameSpaces
21 would refer to things like iMoniker and iShellBrowser. We had
22 to do our own implementation of those interfaces. We had to
23 build that whole infrastructure that Microsoft had built up
24 through our file system and through the Explorer and replace
25 that ourselves trying to guess as best we could and model as

1 best we could off of what they did.

2 Then the last piece we had to do was go to each of
3 the NameSpaces that Microsoft had provided. Since we didn't
4 know how they were talking to themselves we had to put a wrap
5 around them that allowed us to talk to them and provided
6 adequate performance so that we could render their NameSpaces
7 as well as they did themselves.

8 Q. And how long did this process take?

9 A. Well, we didn't know how long it was going to take.
10 We had hoped it would be something that was fairly quickly.
11 We -- when we very first started looking at this it was kind
12 of an unknown. So we all started working on it. We pulled in
13 more and more people. We ended up pulling in seven people.
14 And with those seven people, it took us about a year.

15 That year, though, was an extraordinary amount of
16 work for those of us who worked on the product. All of us
17 worked between 90 and 100-plus hours a week for almost that
18 entire year. There were weeks where I remember going to work
19 on Monday morning. I'd worked all day Monday, stayed all
20 night. I worked all day Tuesday. I stayed all night. I
21 worked until about 10 o'clock on Wednesday. I went home for
22 six hours, came home and started working again. We often got
23 our 40 hours in by Tuesday. We worked every day of the week.
24 We worked Monday through Sunday. I'd take time off Sunday to
25 go to church, and then I went right back to work. I almost

1 didn't see my family for that entire year.

2 Q. In your view, would the time that it took to
3 rebuild the functionality had been impacted with the addition
4 of more developers to assist you?

5 A. No, I don't believe so. We reached a point where
6 adding more people would have just made a sillier, running
7 into each other more. We brought in everybody that we thought
8 was useful to help, you know, separate things out and do
9 things separately as we could. But extra people would have
10 probably just slowed us down.

11 Q. Now, Mr. Richardson, you haven't worked for Novell
12 for a number of years. Why are you here testifying today?

13 A. Well, I have a story to tell. This is what
14 happened to me, and so my intent is to just tell my story and
15 let it be heard.

16 Q. Thank you.

17 Pass the witness.

18 THE COURT: Mr. Holley?

19 MR. HOLLEY: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MR. HOLLEY:

22 Q. Good morning, Mr. Richardson. We haven't had the
23 pleasure of meeting. But my name is Steve Holley, and I
24 represent Microsoft.

25 Now, you were showed Plaintiff's Exhibit 113, and

1 I'd like to put that back up on the screen, if we could. I
2 didn't hear you say whether you were present at this
3 presentation where these slides were represented. Were you
4 there, sir?

5 A. I don't recall if I saw this presentation at a
6 conference or if it was distributed another way.

7 Q. But you saw this at the time back in 1993; is that
8 your testimony?

9 A. I recall seeing this presentation. I don't
10 remember the exact date that I saw it.

11 Q. Okay. Well, it's true, is it not, Mr. Richardson,
12 that Microsoft provided an entire series of new controls in
13 Windows 95 that benefitted software developers like Novell?

14 A. There were many features in Windows 95 that we were
15 very excited about.

16 Q. And you used them, didn't you?

17 A. We made an attempt to use the best of the operating
18 system.

19 Q. Well, and you did, didn't you? You used tool bars
20 and status bars and sliders and column headings. You used
21 lots of controls in the new operating system, didn't you?

22 A. There were a variety of functionalities in the
23 operating system that we made good use of.

24 Q. But I'm trying to establish, sir, that not only
25 were they there and not only were you excited by them, but you

1 used them?

2 A. We used many of them. Some of them were not
3 adequate to provide the functionality we needed, and we
4 replaced them. But there were many of them that we did make
5 use of, yes, sir.

6 Q. Now, if you had wanted to put a folder in the
7 Windows Explorer to store all the documents created by
8 WordPerfect from Quattro Pro, that was easy, wasn't it?

9 A. It was easy to create a folder in the file system,
10 that is correct.

11 Q. And you did that, didn't you?

12 A. Users did that.

13 Q. Well, you did it, didn't you?

14 A. I as a user making use of Windows 95, there were
15 times when I created folders in Windows 95, that is correct.

16 Q. Right. But problematically both WordPerfect and
17 Quattro Pro created a file called My Files that was the
18 storage location for all the documents; isn't that right?

19 A. I'm not familiar with the default settings for
20 those applications.

21 Q. Can we look at DR-2, please?

22 Now, you'll agree with me, won't you, sir, that
23 this is the file open dialog in Corel WordPerfect Office that
24 was released in March of 1996?

25 A. It looks like it is, yes.

1 Q. Okay.

2 And I'm sorry, Mrs. Vishio. I apologize. Here's
3 the whole stack.

4 MS. VISHIO: Thank you.

5 MR. HOLLEY: Sorry. That wasn't fair.

6 Q. BY MR. HOLLEY: So looking at this, this My Files
7 folder is where WordPerfect and Quattro Pro files went by
8 default; isn't that right?

9 A. I'm not familiar with what the preference settings
10 were for those two applications.

11 Q. So your testimony is that you don't know how
12 WordPerfect and Quattro Pro actually worked when they were
13 released?

14 A. What I meant to say was that I don't recall knowing
15 what the preferences were for where files were saved for
16 WordPerfect and Quattro Pro.

17 Q. But you do agree with me that it was possible and,
18 in fact, it did happen that Novell was able to add a My Files
19 folder to the file system that showed up both in the Windows
20 common file open dialog and in the Windows Explorer?

21 A. It's -- it's very possible for an application to
22 create a folder in a file system in Windows 95.

23 Q. Now, an e-mail client is a product that displays a
24 collection of e-mail messages as items; right?

25 A. I'm sorry. Would you repeat that?

1 Q. Sure. An e-mail client is a product that displays
2 a list of e-mails as items; right? Either in your sent box or
3 your in box?

4 A. An e-mail client can do that, yes.

5 Q. Okay. And a clip art gallery similarly displays a
6 collection of items, a bunch of pictures that you can stick in
7 presentations; right?

8 A. That is correct.

9 Q. Okay. Now, that's very different from what a word
10 processor or a spreadsheet does; right? Their principal role
11 is not displaying the list of files like objects.

12 A. Let me make sure I understand your question. Your
13 question is, is the purpose of a word processor to display a
14 list of items?

15 Q. Yes.

16 A. I would not characterize a word processor that way.

17 Q. Okay. And let's go back to Plaintiff's Exhibit 113
18 to that page that Ms. Vishio had you looking at earlier, which
19 is number 4390 on the end.

20 A. I'm sorry. What was that?

21 Q. I think it's the one that says Explorer Integration
22 Details, and it says 90.

23 A. All right.

24 Q. Novell has a much nicer color version than I have,
25 so we'll have to live with this grey one, which is harder to

1 read.

2 But the second line down there says, not for most
3 applications, exclamation mark; right?

4 A. Agreed.

5 Q. Okay. And what it says is, only should be used if
6 your application displays a pseudo-folder. And then it gives
7 two examples, electronic mail, document management, et cetera;
8 right?

9 A. (Witness indicates by nodding head up and down.)

10 Q. Do you agree with me that that's what it says,
11 Mr. Richardson?

12 A. It does say that, yes.

13 Q. Okay. And it also says that you shouldn't, it says
14 "not" all in capital letters, should not edit documents with
15 an Explorer extension.

16 A. (Witness indicates by nodding head up and down.)
17 Yes, it says that.

18 Q. Okay.

19 A. Agreed.

20 Q. Now I'd like to -- I'd like to put up ER-7.

21 And I'll show this again to you, Mr. Richardson, so
22 you're not turning around looking at the screen.

23 Now, Mr. Richardson, this is a chart that I made.

24 But I think it sort of follows much of what you said this

25 morning. I guess we'll need to add one more thing across the

1 bottom, which is your Internet NameSpace. But what you said
2 was that Novell wanted to add various products as NameSpaces;
3 is that right?

4 A. Well, I wouldn't quite state it that way. We
5 wanted to add functionality of various products as NameSpace.

6 Q. Okay. And those were all products that were
7 different from word processors and spreadsheets; right?

8 A. They were integrated with the word processor in
9 many of these cases. Specifically in the case of Soft
10 Solutions and QuickFinder, these were specifically integrated
11 into WordPerfect. So when you had a WordPerfect document you
12 restore it in your document management system and retrieve it
13 from your document management system. Very closely
14 integrated.

15 With QuickFinder technology, once again we wanted
16 to very tightly integrate this with the word processor so that
17 whenever you worked in a document it was automatically
18 indexed. And whenever you were trying to open a document and
19 retrieve it into WordPerfect, you could make use of a
20 QuickFinder technology to retrieve that. So they're a very
21 tight integration.

22 Q. So tight that if I look at the box for Corel
23 WordPerfect Office you won't find Soft Solutions in it, will
24 you?

25 A. I don't have information related to how that was

1 marketed on the box. I don't know that information.

2 Q. So you can't tell me one way or the other whether
3 if I install Corel WordPerfect Office I even get Soft
4 Solutions?

5 A. I can't tell you whether on the box that they
6 displayed the name of Soft Solutions.

7 Q. Okay. Now, as I understand your testimony, it
8 wasn't just that you wanted Soft Solutions, the clip art
9 library, the QuickFinder search engine and the WordPerfect
10 e-mail client to show up inside WordPerfect and Quattro Pro,
11 but you wanted them to display in the Windows user interface
12 even when WordPerfect and Quattro Pro were not running; is
13 that right?

14 A. That was the way the functionality worked as
15 Microsoft had designed it, so when you add a NameSpace
16 extension, it showed up everywhere. Now we saw that as a
17 benefit and were desirous of that. That was a functionality
18 that Microsoft provided.

19 Q. And you thought that would make Windows 95 a better
20 operating system, didn't you? You thought if you could add a
21 document management system, a search engine, a clip art
22 library, an e-mail client and an early web browser, you would
23 make Windows 95 a better operating system; isn't that right?

24 A. It was our intent to make the user's experience on
25 Windows better because they had WordPerfect installed.

1 Q. Well, when you say WordPerfect, you need to be more
2 precise. You mean WordPerfect technologies; right? Not
3 WordPerfect, the word processing software?

4 A. So when the WordPerfect suite was installed we
5 wanted their experience on Windows to become a better
6 experience.

7 Q. And you wanted that to be a better experience even
8 if it happened to be that the user wasn't using your word
9 processor or your spreadsheet at the time?

10 A. That's correct.

11 Q. Now, you testified, I believe, earlier that the
12 object-oriented design of Windows 95 was great, I think that
13 was your word?

14 A. We really liked some of the concepts, yes.

15 Q. Now, was the shared code group writing an
16 object-oriented program in languages?

17 A. I believe that we started using C++, which is an
18 object-oriented programming language, around the time that we
19 did the Windows 95 development, although I don't recall
20 precisely at what point we started using it.

21 Q. And there was a general lack of experience on the
22 shared code team using C++, wasn't there?

23 A. There was a general lack of experience in the
24 industry generally with using object-oriented languages
25 because they were brand-new.

1 Q. Who wrote C++?

2 A. That's a good question. I don't know that I have
3 complete knowledge of that. My understanding is that a
4 graduate student initially wrote C++ as a compilation of
5 post compile for C language programming. So you would write a
6 C program in C++, and you would run it through this C++
7 processor and it would convert it into C code.

8 In fact, I remember in the first conference I went
9 to with Microsoft where they presented Win95 the Microsoft
10 developers were struggling with using C++. And they tried to
11 present these new concepts to us, these logical minded
12 concepts in C and apologized it was so much complicated to do
13 it in C than it was in C++ because object-oriented programming
14 did make it a lot easier. But it was a transition they
15 explained they were going through even as we were starting to
16 go through that.

17 Q. Microsoft's Visual C++ which Microsoft wrote was
18 one of the leading conversions of C++ in the market in 1994,
19 wasn't it?

20 A. I don't remember market share. I remember
21 Microsoft was a little bit late to the market with C++. When
22 I first went to Microsoft I worked on their internal compiler
23 debugger interpreter, which at that time was called C#, and
24 they named it C# because it was supposed to be twice as good
25 as C++. At that time Microsoft was not pursuing C++

1 technology, and other compiler vendors were. So I think
2 Microsoft was probably a little bit late to the game on that,
3 although Microsoft certainly has excellent C++ compiler now
4 and developed very good technology for compilation.

5 Q. Would you agree with me if people were going to
6 classes to learn how to write C++ that it's very hard for them
7 to be developing high quality software in C++?

8 A. The concept of C++, an object-oriented in general
9 are a little bit complex. But most of the people that I
10 worked with were able to make that transition relatively
11 quickly. There's a variety of concepts that you have to
12 learn. Once you've learned those and start using it, it
13 becomes progressively easier to use that. And I would say
14 that most of the developers I worked with probably within a
15 month or two were fairly comfortable with C++.

16 Q. Okay. I'd like you to look at what's been marked
17 as Defendant's Exhibit 108.

18 Now, Mr. Richardson, you were part of the
19 PerfectFit group in May of 1995; is that right?

20 A. Yes, I believe that's correct.

21 Q. And I'd like to direct your attention to the, it is
22 the fourth page of this document, which has the number
23 NOVE 01904058, and tell me when you're there.

24 A. Sorry. Could you read that number again?

25 Q. I'm sorry. It is 4058.

1 A. Okay.

2 Q. Now under the heading, "What was accomplished this
3 month," and we're in May of 1995, it says:

4 We all attended an advanced C++ class to
5 better enable us to code this project.

6 Isn't it sort of akin to saying to someone, I'm
7 writing a novel in French, but I'm taking French classes at
8 the same time, this idea that in May of 1995 people in the
9 shared code group were taking classes to learn the language
10 that they were writing in?

11 A. So there was a desire of WordPerfect for people to
12 continue education throughout their career. And although I
13 don't recall this particular coursework, it wasn't uncommon
14 for people to go to conferences about Windows, conferences
15 about C++, conferences about other technologies to keep
16 ourselves -- to keep the saw sharpened, as it were.

17 Q. Well, let's look down under the heading, "Problems
18 encountered," which is just below this. And it says:

19 Our lack of experience in the area of OOAD --

20 And that stands for object-oriented application
21 development; correct?

22 A. I'm not sure what the acronym, the person who wrote
23 this is referring to. OO is object oriented. But I'm not
24 familiar necessarily with an OOAD.

25 Q. Okay. So but:

1 Our lack of experience in the area of OOAD
2 causes us to underestimate the complexity of the
3 architectural design.

4 That was something that was causing problems at
5 Novell in May of 1995, people in the shared code group were
6 underestimating the complexity of tasks because of their lack
7 of experience?

8 A. My experience was that that was not the case. We
9 had a very bright group of developers. Many there were newer
10 developers who had less experience. But as a rule, we had a
11 very good group of developers who had a lot of experience and
12 did a very good job designing.

13 It's not uncommon for tasks to take more time than
14 you expect them to. Windows 95 had that same issue. It took
15 considerably longer than it was originally projected to.

16 Q. In fact, that's routine in the software industry,
17 isn't it?

18 A. It's not uncommon for things to take longer than
19 you think they would.

20 Q. People are very optimistic about their deadlines.

21 A. (Witness indicates by nodding head up and down.)

22 Q. Okay. Now you yourself are a very experienced
23 Windows programmer; right?

24 A. I started programming with Windows 2.

25 Q. And that was back in the mid '80s?

1 A. In the late '80s.

2 Q. Okay. And you have experience in developing
3 applications to run on Windows operating systems?

4 A. I worked at developing Windows applications for
5 many years. The last time I developed for Windows was in
6 2007.

7 Q. And you understand how to read the documentation
8 for Windows operating systems; that's right, isn't it?

9 A. I've used Windows documentation for a lot of years.

10 Q. Okay. And you're familiar with something called
11 MSDN or Microsoft Developer Network; right?

12 A. I am.

13 Q. Can you tell the jury what that is?

14 A. So the Microsoft Developer Network is a resource
15 that provides information that helps develop Windows
16 applications.

17 Q. Mr. Richardson, I'm sorry. I'm afraid your
18 microphone is not on because I'm having a difficulty hearing
19 you.

20 THE COURT: Can you all hear?

21 THE WITNESS: I apologize. Do I need to repeat
22 that answer?

23 Q. BY MR. HOLLEY: Thank you, sir.

24 Now, you're also familiar with the series of books
25 published by the Microsoft Press about how Windows operating

1 systems function; correct?

2 A. I'm familiar that Microsoft Press does produce a
3 variety of resources about Windows development.

4 Q. And third-party publishers also wrote many, many
5 books about how to write for Windows; isn't that right?

6 A. That's correct.

7 Q. And that was true back in the mid 1990s, it's as
8 true as it is today; isn't that right?

9 A. So there's a certain amount of lag time that
10 follows introduction of technology and production of those
11 books. But, yes, generally speaking after the introduction of
12 the technology a variety of resources follow to help develop
13 which code to those environments.

14 Q. Okay. I'd like to ask you if you're familiar with
15 one book from the Microsoft Press, and I'll just bring it up
16 and show it to you so you don't have to stare across the room.
17 But have you seen this book before, The Programmers Guide For
18 Windows 95?

19 A. It does look familiar, but I don't recall having
20 used this book myself.

21 Q. Okay. And there's a chapter in this book entitled
22 Extending the Chicago Shell; right? And feel free to look at
23 the index if you'd like. But there's a chapter called
24 Extending the Chicago Shell. I think it's Chapter 12.

25 My question, Mr. Richardson, is have you seen the

1 material that appears in Chapter 12 of The Programmers Guide
2 for Windows 95 either in this form or in some other iteration?

3 A. I don't recall this docket or this book being
4 available at the point that we were writing our first shell
5 extensions. The information that was provided -- the
6 document, the documentation that was provided to us I believe
7 has already been introduced in this court. We had the shell,
8 object by H, the H file included these. I'm not sure we had a
9 lot more documentation on that.

10 Q. Let me ask you to look at what's Defendant's
11 Exhibit 72. Now, this is an article that appeared on the
12 Microsoft Developer Network by a guy name Kyle Marsh in May of
13 1994 entitled "Extending the Chicago Shell." Would you agree
14 with me that this is basically the same content that appears
15 in Article 12 of the book that was published a year later?

16 A. I would have to take the time to read them both and
17 compare them. I'm not familiar enough with the document to
18 say that.

19 Q. All right. Let's take a look at the second page of
20 what is Defendant's Exhibit 72. There's a section here
21 entitled, "Shell Extensions." And it says:

22 Shell extensions enhance the basic
23 functionality of the shell by providing additional
24 choices for manipulating file objects or
25 additional information. There are five shell

1 extensions.

2 And then it lists, context menu handlers. And if
3 you turn to Chapter 12, it says, context menu handlers, and it
4 says exactly the same words after.

5 And then we look at Defendant's Exhibit 72, it says
6 drag-drop handlers. If we look back at the book --

7 MS. VISHIO: Objection, Your Honor. Is there a
8 question pending?

9 MR. HOLLEY: I'm in the process of asking the
10 question.

11 THE COURT: So the answer is not yet.

12 MR. HOLLEY: She's rushing me, Your Honor.

13 Q. BY MR. HOLLEY: So, Mr. Richardson, my question is,
14 the five shell extensions that are described in Defendant's
15 Exhibit 72 are also described in Article 12 of Defendant's
16 Exhibit 559, the book; isn't that right?

17 A. I haven't reviewed the book. But --

18 THE COURT: If you want to represent that's so,
19 that's so.

20 MR. HOLLEY: Okay.

21 Q. BY MR. HOLLEY: Well, I'd just like to turn back to
22 Defendant's Exhibit 72 and point out to you the number that
23 appears on the bottom of the first page. It says NOV-B. And
24 that shows that this document was produced from Novell's
25 files. Have you seen this document before today?

1 A. Let me make sure I'm referring, I've got the right
2 document.

3 Q. Okay.

4 THE COURT: I think it's 72.

5 MR. HOLLEY: 72.

6 Q. BY MR. HOLLEY: 72, Mr. Richardson.

7 A. Okay. I'm lost.

8 Q. Sorry about that.

9 Okay. So the question I have for you is, this
10 document was produced from Novell's files, and we know that
11 because it has the Novell's production number down at the
12 bottom. And my question to you is whether you've seen it
13 before today?

14 A. I don't recall. Is this the document you're
15 referring to?

16 Q. Yeah. I'm blind without my -- yes. No. No. I'm
17 sorry. It's this one, Mr. Richardson.

18 A. This document?

19 Q. 72.

20 A. I don't recall specifically seeing this document.

21 Q. Do you recall seeing a documentation in the form of
22 MSDN articles in May or June of 1994 about how to extend the
23 Chicago shells?

24 A. I remember finding documentation, but I don't
25 recall this specific time frame or the specific documents.

1 Q. Now, in terms of the shell extensions that are
2 described here, context menu handlers which allow you to add a
3 context menu when you right check on a file, and things that
4 allow you to add items, specific icons, those things all
5 remained documented throughout the development of Windows 95;
6 correct? They were documented in the M6 beta, the M7 beta,
7 all the way through; correct?

8 A. I believe that's correct.

9 Q. And, in fact, Novell used those shell extension
10 mechanisms in developing WordPerfect for Windows 95 and
11 Quattro Pro for Windows 95; isn't that right?

12 A. That's correct.

13 Q. Now, I think this is clear from your testimony, but
14 I just want to be sure that we're all on the same page. When
15 you learned in October of 1994 that Microsoft was withdrawing
16 support for the NameSpace extension APIs, that didn't mean
17 that the code in the operating system that implemented those
18 APIs went away, did it?

19 A. My understanding is that the code remained. Just
20 the documentation was retracted.

21 Q. And you were allowed to keep the documentation that
22 you got in June of 1994 in the M6 beta; right? No one came
23 and took that back from you?

24 A. That's correct. However, we were warned that those
25 interfaces might change and might not continue to work. So it

1 might not be wise to depend upon them.

2 Q. Now, I'm trying to make sure I understand your
3 testimony. You said on direct examination that rather than
4 pull the APIs because you'd been told that Microsoft might not
5 support them in the future, you decided to clone them inside
6 the shared code; is that right?

7 A. That's not the way I would characterize that. We
8 decided that in order to achieve the functionality that had
9 never been documented, and to guarantee that we would continue
10 to operate that we would have to create our own infrastructure
11 that mirrored the infrastructure that Microsoft had created.

12 Q. Well, it was a clone, wasn't it?

13 A. Well, we didn't have visibility into how they did
14 adequately to say. I mean, a clone to me implies that it's
15 identical. So we did our best to imitate the functionality.
16 But not knowing how it worked I wouldn't call it a clone.

17 Q. Can we look at DR-35, please.

18 Okay. These are the 17 Comm interfaces that you
19 sought to implement in shared code; right?

20 A. That looks correct.

21 Q. Okay. And 16 of these are Windows APIs; right?

22 A. I'm not sure I understood the difference between
23 the 16 and the 17.

24 Q. Okay. Well, you made one up; right? You created
25 IPF Moniker. IPerfectFit Moniker.

1 A. I see where you're headed.

2 Q. Okay. But the other 16 are interfaces exposed by
3 Windows 95.

4 A. Those are interfaces that are defined by
5 Windows 95. And I don't recall if we had to create additional
6 interfaces besides the PF Moniker. My recollection is we did,
7 but I can't recall the specifics.

8 Q. Did you talk to a copyright lawyer before setting
9 up doing this?

10 A. I don't recall speaking with a copyright lawyer.

11 Q. Okay. And who's idea was it that Novell would
12 clone all of these interfaces in Windows 95?

13 MS. VISHIO: Objection, Your Honor.
14 Mischaracterizes his prior testimony.

15 THE COURT: Yeah. I think he said it's not a
16 clone. So it's sustained. Just rephrase the question.

17 MR. HOLLEY: Okay.

18 Q. BY MR. HOLLEY: Whose idea was it that Novell would
19 re-implement these 16 Windows interfaces in Novell's own
20 products?

21 A. So I guess there's a couple answers to that. First
22 of all, the infrastructure that we created was not merely the
23 interfaces that were provided, but the infrastructure that
24 recalled them. So an interface is a collection of calls that
25 you make. So if someone supports an interface, you know that

1 you can call a certain kind of functionality. You expect a
2 certain kind of functionality from them. So when you support
3 an interface, you merely say, you can call me and ask me these
4 questions, and I know how to answer them.

5 And so the work was not merely providing
6 implementations that supported these interfaces, but building
7 the infrastructure that knew how to tie them altogether, that
8 knew how to call them.

9 So the purpose of the interfaces was for people to
10 provide implementations that made use of them so in providing
11 these interfaces or implementations of these interfaces, all
12 we did was go to the registry like everybody else did like the
13 documentation told us to do, and we said, I support this
14 interface. And they could call us, and they could say, okay.
15 I can give you this kind of question because you know how to
16 answer that.

17 So we provided a substantiation of these
18 interfaces. The interfaces had been defined by Microsoft. We
19 continued to make use of those interface definitions as the
20 documentation had instructed us to, and then we provided the
21 infrastructure that knew how to call them.

22 Q. And that was hugely, hugely complex, wasn't it?

23 A. It cost us a lot to figure out how to do it and
24 then to actually implement it.

25 Q. Right. It was a big, big job to create your own

1 implementation of these 16 Windows APIs, wasn't it?

2 A. So once again, that was one portion of the task,
3 was to provide implementations for our objects that supported
4 each of these. And that wasn't the huge task. The bigger
5 task was creating that infrastructure behind that, you know,
6 how to make use of these that knew how to call them and knew
7 how to ask questions.

8 In addition to that, we had to go to each of the
9 Microsoft NameSpaces and provide a wrapper around them because
10 we didn't know how to ask the questions that were -- in order
11 to get the performance that we needed there was some kind of
12 connection there that we had never been given visibility to.
13 So we had to guess what that was, provide that and then
14 wrapper around their NameSpaces so that we could talk to them,
15 as well.

16 Q. Is it your testimony, Mr. Richardson, that it was
17 easier to do what you just said, which is write your own
18 implementation of the code that exposed these interfaces and
19 the code that called these interfaces, than it was to simply
20 keep calling the interfaces that Windows exposed that you had
21 been told about in the M6 beta?

22 A. So there were three options that we had that we
23 considered at the point where the documentation was retracted,
24 and I kind of went over those before. We looked at each of
25 those options very seriously. We didn't know which one was

1 going to be the right option, and we certainly weren't looking
2 for a big task. But as we looked at the options, we looked
3 back at the option only accessing the file system and not
4 having access to the other NameSpaces. If we couldn't access
5 the network neighborhood, then no one could get their
6 documents to or from network. Or if we couldn't go to
7 My Computer, that was the place that everybody went to start
8 in Win95.

9 The lack of those NameSpaces seemed to us to be an
10 insurmountable problem. We wouldn't have a Windows 95 product
11 if we didn't have access to those. It wouldn't be functional
12 enough to be considered a reasonable product in Windows 95.
13 So that one was off the table. We couldn't do that.

14 The next option was to -- sorry. I lost my place.
15 So one option was to go back to what we'd had previously. The
16 next option was to go with the common dialog. Now, the common
17 dialog had access to some of these NameSpaces. It had access
18 to My Computer. It had access to some of these Microsoft
19 NameSpaces. But we couldn't get all the Microsoft NameSpaces
20 to show up, and we couldn't get any of our NameSpaces to show
21 up.

22 So all this functionality that we'd invested in
23 that represented the work of dozens of developers for
24 QuickFinder, for Soft Solutions, for the e-mail client, all of
25 that work couldn't be used at all. We had to throw it all out

1 if we went with common dialog. In addition, the common dialog
2 wouldn't even give us the level of functionality we had in our
3 last release in Windows or that we had on our DOS card. It
4 was a huge step backwards for us. And we felt it simply
5 wasn't an option. If we were to go with that option we didn't
6 really have a product. So we were left with the third option.

7 Now, when we started, when we made that choice, we
8 didn't know how big it was going to be. We estimated based on
9 what we knew that there was a big unknown there, but we hoped
10 that we would be able to complete that in a relatively quick
11 period of time. We didn't start immediately with seven
12 developers knowing it was going to take us a full year. We
13 decided that was the only option we had left. The others
14 simply wouldn't work. We were in a rock and a hard place. We
15 couldn't go forward. We couldn't go back. Our only choice
16 was to try to replicate this functionality so that we could
17 have a product that was reasonable under the Win95.

18 Q. Now, when you said that you couldn't get access to
19 the Windows NameSpaces, you were aware, were you not, that it
20 was very simple using a Windows APIs called iShellFolder to
21 bind to the system NameSpace; right? You knew that?

22 A. So what I said was that we couldn't get the common
23 dialog to bind to all the Microsoft NameSpaces or to bind to
24 any of our NameSpaces. So the Microsoft functionality
25 provided the common dialog was the one that didn't do this,

1 not us.

2 Q. Okay. Fine. So you couldn't change Windows 95's
3 common file open dialog, the one that Microsoft wrote --

4 A. Correct.

5 Q. -- to do what you wanted it to do. But inside your
6 own file open dialog it was simple to display the entire
7 system NameSpace; correct?

8 A. So the binding of two NameSpaces was not a
9 difficult part of the problem in creating our own file open
10 dialog. Okay. That was not the difficult part of the
11 process. That was not the costly part of the solution we had
12 to compete with.

13 Q. So Novell could have made a choice to write a file,
14 open file for WordPerfect and Quattro Pro that displayed the
15 entire Windows 95 NameSpace including the briefcase, My
16 Computer, my network neighborhood, all that stuff would have
17 shown up in your file open dialog; right?

18 A. Yes, that's correct. The problem we encountered
19 was not difficulty in binding them, the problem was in
20 dissolving the list of items contained within each folder.
21 Using the APIs that were exposed, the performance was so slow
22 that it would take up to three or four minutes to render the
23 content of a full -- of a large folder. So we discovered that
24 when we used the interfaces which had been published with the
25 Microsoft NameSpaces it was very slow. When we put our

1 NameSpaces in the Explorer and it rendered the content of our
2 folders, they were very slow. But when we put the Microsoft
3 NameSpaces in the Microsoft Explorer, they were very fast.
4 There was some communications happening there. There was some
5 interaction that we didn't have access to that hadn't been
6 published, we couldn't get to. The performance was so bad
7 that it was unusable. You can't wait two or three or four
8 minutes every time you try to open a file. It was something
9 unacceptable.

10 Q. I'd like to have you look at something that
11 Mr. Harral was shown during his direct examination. It was
12 H-06, and I think we can put it up on the board. And I'll
13 give you this copy so you can see it, Mr. Richardson. It's
14 probably easier not to turn over your shoulder like that.

15 Now, Mr. Harral testified that this was the file
16 open dialog for PerfectFit 2.3 that showed up in applications
17 for Windows 3.1; and that's right, isn't it?

18 A. That looks correct.

19 Q. Okay. And so I'm looking here, and I see that
20 there is something called Quicklist, and that is presenting
21 some of the spaces in the file system that you thought users
22 would want to have easy access to; correct?

23 A. I don't recall this functionality. But that looks
24 like a reasonable interpretation.

25 Q. Okay. And it also allowed users to view files

1 without opening the application. That's what the view button
2 is; right?

3 A. I'm sorry -- yes, that's correct.

4 Q. Okay. And you could also use the QuickFinder
5 technology that you talked about earlier?

6 A. There's a QuickFinder button there.

7 Q. Right. And all of this once done -- I'm sorry.
8 One more. You could access the network; right? You could
9 press the network button, and it would take you out to network
10 drives or Windows NT server drives; right?

11 A. (Witness indicates by nodding head up and down.)

12 Q. I'm sorry. I didn't hear your answer, sir.

13 A. I'm sorry. What was the question?

14 Q. The question was you could press the network
15 button, and you could have access to various network drives.

16 A. Yes, that's correct.

17 Q. And all of this was done without NameSpace
18 extension APIs because they didn't exist yet; right?

19 A. That's correct.

20 Q. That's correct. Okay. Now, let's look at DR-3.

21 Now, this is the Windows 95 common file open
22 dialog. This was a service that Microsoft had wrote, put in
23 the operating system and told every application developer in
24 the world including Novell, you can use this for free; right?

25 A. That's correct.

1 Q. Okay. And what this did was give any application
2 developer access to all of the Windows system NameSpaces
3 including My Computer, the desktop, the network neighborhood
4 and my briefcase; is that right?

5 A. It provided access to a number of the Microsoft
6 NameSpaces. My recollection is that it did not provide access
7 to all of the Microsoft NameSpaces.

8 Q. But if Novell had chosen to use the Windows 95
9 common file open dialog, it would have been getting exactly
10 the same services from the operating system that all of the
11 thousands of other applications that called this common file
12 open dialog done; is that right?

13 A. That's correct. The issue is that this dialog was
14 not comparable to the functionality that we had to the dialog
15 you just showed us. It didn't provide as much information
16 that we had in Windows 3.1 or as we were able to provide in
17 our DOS product. It also didn't allow us to add our
18 NameSpaces into this.

19 Q. Okay. Let's look at DR-6, please.

20 All right. I made this up having listened to
21 Mr. Harral, but I think it's consistent with what you said
22 this morning. Novell had four objectives, and let me -- and
23 I'm going to give you this so you're not looking over your
24 shoulder at the screen. Thanks.

25 So I think you've said that one of the things you

1 wanted to do was to display the Windows 95 system NameSpace in
2 the file open dialog. That was one of your goals; right?

3 A. Display the system NameSpace in a file open dialog.
4 I'm not sure what you're referring to with system NameSpace.

5 Q. You know what the Windows 95 system NameSpace
6 looked like; right? It was the --

7 A. There were a number of NameSpaces provided by
8 Windows. I don't recall one specifically being named the
9 system NameSpace.

10 Q. Okay. Let's talk about displaying the tree view
11 for Windows 95 in your file open dialog. You know what I'm
12 talking about with that; right?

13 A. So the tree view doesn't tie directly to a
14 NameSpace but provides access to a variety of NameSpaces. I'm
15 just trying to make sure I understand what you're asking me.

16 Q. Well, there's a desktop NameSpace; right? You're
17 familiar with that concept, aren't you?

18 A. Correct. Correct.

19 Q. And the desktop NameSpace includes all of the
20 sub-NameSpaces starting with my desktop?

21 A. So that's what you're calling the system NameSpace.

22 Q. Yes. That's what I'm calling the system NameSpace.

23 A. Okay.

24 Q. So if we can agree that the desktop NameSpace and
25 the system NameSpace are the same thing, one of Novell's

1 objectives was to display the system NameSpace or the desktop
2 NameSpace in its file open dialog; right?

3 A. I believe that was one of our objectives, yes.

4 Q. Okay. And then the second objective was the one
5 you've been talking about, which was to display both the
6 system NameSpace plus Novell's extra technologies like
7 QuickFinder and the clip art library in the file open dialog.

8 A. That was a desire, as well.

9 Q. Okay. And then you had two other objectives which
10 didn't really have to do with your file open dialog but had to
11 do with Windows, as such. One of those was display those
12 Novell technologies like QuickFinder in the Windows Explorer
13 even when I'm not running WordPerfect or Quattro Pro; right?

14 A. That's correct.

15 Q. Okay. And your fourth objective was to add
16 Novell's technologies to the Windows common file open dialog,
17 the one that shows up in everybody else's applications, and
18 you wanted to add Novell technologies to that, didn't you?

19 A. That kind of was a freebie that came along with
20 having the -- any NameSpace. So when it showed up in our
21 dialog by adding some functionality to our dialog, it also
22 became available, at least, and became available in common
23 file open dialog.

24 Q. So if I installed PerfectOffice on top of my
25 Windows 95 machine in the old world, I would have seen

1 Novell's QuickFinder, its clip art library, its e-mail client,
2 its document management system, its web browser when I opened
3 into its Quicken; right?

4 A. You would have seen all of our NameSpaces available
5 in anybody's file open dialog that had access to the
6 NameSpaces.

7 Q. What did that have to do with WordPerfect or
8 Quattro Pro?

9 A. Well, the same thing that if I added a printer
10 driver, that that printer driver now became available for
11 every allocation it desired to print. It was a Microsoft
12 technology that when you added it it showed up everywhere. We
13 took advantage of that.

14 Q. I'm sorry, sir. I didn't mean to cut you off.

15 A. We wanted to take advantage of that. But I don't
16 know that -- I'm not sure that it was our desire to interject
17 ourselves potentially to other applications more than it was
18 to take advantage of the functionality Microsoft was providing
19 to the user.

20 Q. But you would have in your world interjected
21 yourselves as you said into everybody else's application that
22 chose to use the Windows common file open dialog; isn't that
23 right?

24 A. Yes. In the same way that we would interject our
25 printer driver for every other application that wanted to

1 print when we copied our printer driver to the system.

2 Q. And when you copied your printer driver to the
3 system, you were making Windows 95 a better operating system
4 because you were adding support for more printers; isn't that
5 right?

6 A. That's correct.

7 Q. That's correct. And if you were augmenting
8 Windows 95 by adding your document management system, your
9 e-mail client, your clip art library to all of these Windows
10 system components like the file open dialog, you were making
11 Windows 95 a better operating system, weren't you, sir?

12 A. That was our belief.

13 Q. Now, the people developing WordPerfect, the word
14 processing application, really didn't care what the shared
15 code team was doing with NameSpace extensions; isn't that
16 right?

17 A. I'm sorry. Could you repeat that?

18 Q. Sure. The people who were working on WordPerfect,
19 the word processing application, they really didn't care what
20 you were doing in the shared code team with your effort to
21 re-implement these 16 Windows APIs. That didn't matter to
22 them one wit, did it?

23 A. I would not characterize it that way. That was not
24 my experience interacting with the WordPerfect theme that they
25 didn't care.

1 Q. Did you have occasion to read Mr. Harral's
2 testimony last Thursday before you took the witness stand,
3 sir?

4 A. I have not read it.

5 Q. You have not read it? Did anyone tell you what he
6 said about this topic?

7 A. I have not discussed that.

8 Q. Okay. So I want to show you --

9 THE COURT: I thought we'd go about another
10 10 minutes. Is that okay with everyone?

11 MR. HOLLEY: We're going to go another 10 minutes,
12 Your Honor?

13 THE COURT: Yeah. We'll go another 10 minutes.

14 MR. HOLLEY: Okay. Sorry. I thought you said
15 we're going to take 10 minutes. Okay.

16 THE COURT: I just want to make sure that was okay
17 with everybody.

18 MR. HOLLEY: Thank you, Your Honor.

19 Q. BY MR. HOLLEY: I'm just trying to make sure I have
20 the right page. But I think if you look at Page 287 of the
21 trial transcript. Let me confirm that before we put it up.

22 Just bear with me one moment, Your Honor.

23 270, please. Page 270.

24 This is kind of backward, but I'm going to let you
25 read from this.

1 Now, here Mr. Harral's testifying, and he says:

2 The question isn't about WordPerfect's product
3 at that point. It's about what the users want to
4 do and can we give them the tools to provide that.

5 You agree with that; right? That the question in
6 terms of the shared code word wasn't about WordPerfect, per
7 se, but instead about giving users in Windows tools like a
8 document management system and an e-mail plan?

9 A. So I'm not sure of the context here. Can I take a
10 minute to --

11 Q. Sure. By all means. It's not -- if you need to
12 read around and get yourself familiar with what he was saying,
13 that's perfectly fine.

14 (Time lapse.)

15 THE WITNESS: Okay. I think I understand the
16 context of what he's saying now.

17 Q. BY MR. HOLLEY: Okay. And you agree with what he's
18 saying there, that the question isn't about WordPerfect
19 product, namely, Quattro Pro and WordPerfect; it's about what
20 users want to do, and can we give them the tools to provide
21 that. That's what these new NameSpaces were all about, isn't
22 it?

23 A. I think I would have phrased it slightly different.
24 I think I would have said it's not only about WordPerfect
25 product at that point, it's about the user's data. It's about

1 the user being able to access their data and be able to do the
2 things they want to and extending the user's ability to use
3 their data to achieve their intentions.

4 Q. Extend the user's ability to use their data whether
5 or not they happen to be at that particular moment using
6 WordPerfect or Quattro Pro; right?

7 A. Whether or not they're using WordPerfect. So if
8 they're within WordPerfect and the last time they entered the
9 document it was in Word Starter they should still be able to
10 find it.

11 Q. Right. So QuickFinder would not only look in the
12 store for WordPerfect and Quattro Pro documents, but once it
13 had been installed and enhanced Windows 95, it would allow me
14 to look for documents basically created in any program; isn't
15 that right?

16 A. That's correct.

17 Q. Okay. Let's go back to DR-6, the objectives again.
18 Can I see the next screen?

19 Now, I think we've talked about all of these
20 things. But let's see how Novell could have achieved its
21 objectives.

22 Objective number one is displaying the desktop
23 NameSpace or system NameSpace in a file open dialog.

24 And if that's all you wanted to do, you could have
25 used the Windows common file open dialog, that's one option;

1 right? We're limiting ourselves to just displaying the system
2 NameSpace in a file open dialog. You could use the one in
3 Windows; right?

4 A. So some clarifying questions I would make. These
5 are four objectives, and I agree that Novell had these
6 objectives, although I don't necessarily believe this is an
7 exhaustive list of those objectives. And I think we've
8 already talked about the question of what the Windows 95
9 common file open dialog offered us and the drawbacks that it
10 had for us. We were unable to achieve the desired results we
11 had for two major reasons with the common file open dialog; it
12 would not meet our needs because we couldn't provide the same
13 level of functionality that we had in 3.1, and we could not
14 provide the same functionality we had in DOS, and we could not
15 have our NameSpaces appear in the common file open dialog.
16 This is not an option for us. It didn't work for us.

17 Q. Okay. All software development is about a series
18 of tradeoffs; isn't that right? You look at the benefits of a
19 choice and down side of that choice, and you have to decide
20 what to do; right?

21 A. And the consequences of producing an inferior
22 product to our previous release or to provide a product that's
23 guaranteed to be inferior to every other product in Win95 was
24 not an option for us.

25 Q. Well, I heard you say that, sir. And I'd like, if

1 you would, just bear with me and answer my questions as we go
2 through this, and you'll have an opportunity to say what you
3 would like to say.

4 But focusing on the first objective, which is to
5 display the system or desktop NameSpace in a file open dialog,
6 you could have, you could have made the choice to use the
7 Windows common file open dialog just like thousands of other
8 people did; is that right?

9 MS. VISHIO: Objection, Your Honor. Asked and
10 answered.

11 THE COURT: I don't think so. We'll see. We'll
12 see what we have.

13 THE WITNESS: So I believe I have answered this
14 question more than once. The file open dialog does display
15 the system NameSpace. It does not display all of the
16 Microsoft NameSpaces, and it does not display additional
17 NameSpaces. So the statement that it does display the system
18 or the desktop NameSpace is correct.

19 Q. BY MR. HOLLEY: That same is correct, okay. And I
20 think we also agreed earlier that by calling iShellFolder and
21 binding to the desktop NameSpace, you could have inside the
22 PerfectOffice file open dialog also shown the desktop
23 NameSpace; right?

24 A. So I believe I've already addressed this, as well.
25 The binding to the NameSpaces was not the problem. The

1 problem was the performance that arose from doing that. We
2 couldn't enumerate the items within the NameSpace sufficiently
3 fast to make it usable. So this wasn't an option for us.

4 Q. Did it occur to you that that was just the way the
5 system worked, that it was slow when anybody other than
6 another component of the operating system sought to enumerate
7 one of the system NameSpaces?

8 A. So we certainly considered that possibility. So
9 Explorer didn't have that problem. The common file open
10 dialog didn't have that problem. And as we reviewed the Word
11 beta, it did not have that problem. So it appeared that those
12 who had access to evidently some information that we didn't or
13 access that we didn't have were able to do this more quickly.

14 Q. You're quite aware, are you not, sir, that no
15 version of Microsoft Word ever extended the system NameSpace,
16 are you not?

17 A. I'm not testifying to what they did. I'm
18 testifying to the experience that we saw as we made use of it.

19 Q. Okay. Now, let's look at option -- or objective,
20 excuse me, number 2, which is you keep telling me you wanted
21 to do two things; you wanted to both display the desktop
22 NameSpace and add some Novell spaces. And you could have done
23 that; right? You could have had one window of your file open
24 dialog that showed the system NameSpace, and then could you
25 have had the window right next to do just like you did in the

1 Windows 3.1 PerfectOffice 2.3 file open dialog, display places
2 you thought users might want to go or things you thought users
3 might want to do like use QuickFinder; that's right, isn't it?

4 A. I would not characterize it that way, either. We
5 really didn't take time to discuss the differences between the
6 access to the technology in the 3.1 file open dialog. For
7 example, the QuickFinder, the level of integration there was
8 that you could launch the QuickFinder. That's it. The level
9 of integration provided by NameSpace is that I could
10 automatically index and have them show up right there in the
11 dialog. I could right click on an item, and one of the
12 options would be to find with QuickFinder.

13 So the level of integration making the experience
14 easier and more effective for the user is a completely
15 different thought. I wouldn't say it is equivalent, no.

16 Q. Okay. Not necessarily exactly the same, but you
17 certainly could have made QuickFinder technology available to
18 the users in the file open dialog had you chosen to do so even
19 if you were exposing the system NameSpace in a window right
20 next door.

21 A. I don't believe we could have provided an adequate
22 experience for the user without the technology the way we did
23 it.

24 Q. That's your opinion, sir, about what would be
25 adequate for users; right?

1 A. It's my opinion that a product that didn't have
2 that level of integration would not be able to be competitive
3 in the Win95 environment.

4 Q. And you decided it was worth one year of time, one
5 year to provide that marginal improvement in what you thought
6 would be a better user experience; is that your testimony?

7 A. We were between -- in my opinion we were between a
8 rock and a hard place. We couldn't move forward; we couldn't
9 move back. The options we had in front of us of making use of
10 the common file open dialog or reverting back to our
11 Windows 3.1 functionality were unacceptable in the Win95
12 environment, that our only option was to move forward.

13 Q. You're aware, are you not, sir, that Mr. Skillen of
14 Corel ordered the shared code team to use the Windows common
15 file open dialog after Corel completed the acquisition of
16 WordPerfect. You're aware of that, aren't you?

17 A. I don't recall that happening.

18 MS. VISHIO: Objection; foundation.

19 THE COURT: Overruled. The question is does he
20 know.

21 I'm sorry. Did you know? I didn't hear your
22 answer.

23 THE WITNESS: I cannot recall that happening.

24 Q. BY MR. HOLLEY: You were never part of any
25 discussion where Mr. Harral or anyone else told you that

1 senior management had directed the shared code team to stop
2 this exercise of re-implementing 16 Windows APIs and instead
3 to use the common file open dialog that was available in the
4 operating system for free?

5 A. So I think I heard more than one question in there.
6 The implementation of each of these APIs would have been done
7 regardless of whether we're using the file open dialog or not.
8 The implementation of NameSpaces was done to extend our
9 functionality wherever NameSpaces were used. So I think
10 that's a separate question in whether or not we did an open
11 file dialog.

12 Q. Okay.

13 A. So we were going to implement those interfaces
14 regardless of whether we used a common file open dialog or
15 not.

16 Q. Okay. That's an interesting clarification. So you
17 intended to re-implement these 16 Comm interfaces so that you
18 could create your own pluggable architecture so that
19 GroupWise, for example, another Novell product, could plug
20 itself into your own NameSpace extension mechanism that you
21 were writing; is that correct?

22 A. So I think once again there's a mischaracterization
23 of what the interfaces are. When you provide a NameSpace, you
24 support these interfaces. So you provide a piece of code that
25 can be called into to ask these set of questions. So

1 providing those was an ability to extend the system. We were
2 going to provide those functionalities whether we get our own
3 common dialog or whether we used the Microsoft common dialog.
4 So that the suggestion that providing those was only because
5 we were providing our own dialog and was somehow extra work
6 because of that decision I would say is probably not an
7 accurate characterization of what we did. The NameSpaces that
8 we provided were provided because that's the way you did
9 functionality in Win95 regardless of whether we provided our
10 own NameSpace or not. The decision to do our own NameSpace
11 was based on the problems that we encountered with making the
12 user experience acceptable for our user base. We had to have
13 acceptable performance, and we had to provide at least the
14 same level of functionality that we had in our previous
15 release. That was our motivation.

16 Q. Sorry, Mr. Richardson. Mr. Richardson, can you
17 tell the jury, give the jury one example, one, of any product
18 from any company that in the period 1994 to 1996 added
19 NameSpaces to the Windows Explorer of the Windows common file
20 open dialog? One.

21 A. So I was not the person in the team who dealt with
22 other corporations. There was a -- I believe it was a
23 CompuServe forum that was used for people who were working on
24 NameSpaces. My understanding from talking with my co-workers
25 who were involved with that was that it was a very active

1 group. But I did not work with them directly. I don't have
2 any direct knowledge of which other companies provided
3 NameSpaces.

4 Q. Well, the answer to my question is that you cannot
5 tell the jury the name of one product in the period between
6 1994 and 1996 that did what you said was imperative for Novell
7 to do, which is to add NameSpaces to the Windows common file
8 open dialog and to the Windows Explorer. You can't tell us
9 one, can you, sir?

10 A. I'm not familiar with any company specifically that
11 provided NameSpace.

12 THE COURT: Okay. Let's take a short recess. I'm
13 ready whenever anybody else is.

14 (Recess.)

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1 STATE OF UTAH)

2) ss.

3 COUNTY OF SALT LAKE)

4 I, KELLY BROWN HICKEN, do hereby certify that I am
5 a certified court reporter for the State of Utah;

6 That as such reporter, I attended the hearing of
7 the foregoing matter on October 25, 2011, and thereat reported
8 in Stenotype all of the testimony and proceedings had, and
9 caused said notes to be transcribed into typewriting; and the
10 foregoing pages number from 567 through 649 constitute a full,
11 true and correct report of the same.

12 That I am not of kin to any of the parties and have
13 no interest in the outcome of the matter;

14 And hereby set my hand and seal, this ____ day of
15 _____ 2007.

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KELLY BROWN HICKEN, CSR, RPR, RMR

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