1   (WHEREUPON, the jury enters the proceedings.)

2   THE COURT: We're sorry about the paint smell. We

3 don't know where it is coming from. If it bothers you all,

4 we'll have to work through it. If any of you want to, and I

5 don't know when the next break is going to be, but ideally

6 we will try to go for a couple of hours, and if you all want

7 a break sometime before that just let me know. We'll

8 probably go for two hours. If we need to change court

9 reporters we will do that. It may depend on where we are

10 with a witness so we'll just role with the punches.

11   CROSS-EXAMINATION

12 BY MS. NELLES

13 Q.   Good morning, Mr. Gibb.

14 A.   Good morning.

15 Q.   My name is Sharon Nelles. I am one of the attorneys

16 for Microsoft. We have not met before. I would like to go

17 back to the beginning of your testimony this morning and

18 talk a little bit about the time that you joined WordPerfect

19 Corporation.

20 A.   Uh-huh.

21 Q.   When you joined WordPerfect Corporation, and I think

22 you said in 1986, the company's focus was on the WordPerfect

23 word processor application, right?

24 A.   Yes.

25 Q.   And it was absolutely the goal of WordPerfect

1   Corporation to make WordPerfect a word processor, the best

2   word processor on the market, right?

3   A.   Sure.

4   Q.   And you wanted to be the leading word processor, right?

5   A.   Uh-huh.

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

7   THE WITNESS: Sorry. Yes.

8   BY MS. NELLES

9   Q.   And WordPerfect Corporation achieved some real success

10   in that endeavor, didn't they?

11   A.   Yes. We were the leaders, yes.

12   Q.   You were the number one word processor for the MS

13   MOS platform --

14   THE COURT: If you all want to come in. They are

15   doing work on the vents.

16   MS. NELLES: Is that better?

17   THE WITNESS: I can hear you.

18   MS. NELLES: I think the court reporter was having

19   some problems.

20   BY MS. NELLES

21   Q.   WordPerfect was the number one word processor for the

22   MS DOS platform; isn't that right?

23   A.   Yes.

24   Q.   But would you agree with me that as the 1980s were

25   turning into the early 1990s there were some seismic shifts

1   in the world, at least in the world of personal computing?

2   A.   Sure.   There were changes, yes.

3   Q.   One of those shifts was a consumer movement away from

4   character based operating systems to graphical operating

5   system like the Macintosh and Microsoft Windows; isn't that

6   right?

7   A.   Yes.

8   Q.   And another shirt was a consumer movement away from

9   standalone applications like Microsoft Word to suites of

10   business productivity applications like Microsoft Office,

11   right?

12   A.   Yes.   There was movement that way, yes.

13   MS. NELLES: Can we put up slide 13-A from the

14   opening.

15   BY MS. NELLES

16   Q.   Can you see that all right?

17   A.   Yes, I can.

18   Q.   I have a hard copy if you need one.   Would you agree

19   with me that WordPerfect was behind Microsoft with respect

20   to the graphical user interface shift?

21   A.   No.   I mean, I don't know.   That is an interesting

22   question.   We had -- do you mean as far as market share or

23   as far as technology?

24   Q.   I mean, Microsoft had a bit of a head start on

25   WordPerfect in terms of -- you can see from the product

1   releases; isn't that right?

2   A.   Yes. I mean, I guess -- sure.

3   Q.   Okay.

4   MS. NELLES: Let's look at slide 27 also from the

5   opening.

6   BY MS. NELLES

7   Q.   Would you also agree with me that WordPerfect was a

8   little bit behind Microsoft in the shift to suites?

9   A.   Well, Microsoft started the shift to suites by

10   packaging them together. It was not really a suite, it was

11   packaging it together. Initially they were the first ones

12   to do that.

13   Q.   Let's just stay with suites for a bit more.

14   As you said, Microsoft created the concept of the suite

15   and released the first version of Microsoft Office in 1990;

16   isn't that right?

17   A.   Yes.

18   Q.   I will give you a hard copy.

19   MS. NELLES: Can we put up DX-200?

20   BY MS. NELLES

21   Q.   Do you recognize this document, sir?

22   A.   Yes.

23   Q.   This is, again, a early positioning concept for Eliot?

24   A.   Yes.

25   Q.   And Eliot was the code name for what?

```
 1    A.    The WP WIN 6.1.

 2            MS. NELLES:  Can we go to appendix A to this

 3    document, please.  If we could bring up that first section

 4    in paragraph B.

 5            THE COURT:  I'm sure you all remember, but I

 6    forgot, this is the Wordperfect application for Windows 95;

 7    is that right?

 8            MS. NELLES:  No.  No, Your Honor.

 9            THE COURT:  Well, that is right.  What is it?

10            MR. SCHMIDTLEIN:  It is code name.

11            MS. NELLES:  Yes.  Eliot -- sir, do you want to --

12    Eliot is the code name for Windows 6.1.

13            THE COURT:  6.1

14            THE WITNESS:  It was on the Windows 3.1 release.

15            MS. NELLES:  It was a 16 bit product.

16            THE WITNESS:  That is right.

17            THE COURT:  You clarified it for myself.

18    BY MS. NELLES

19    Q.    As we look at this statement, and this appendix A, it

20    says Microsoft created the Windows suite category in 1990

21    and clearly owns it approximately 75 percent of the market

22    share.  That comports with your recollection, does it not,

23    sir?

24    A.    Yes.

25    Q.    The next sentence says Lotus entered the category in
```

1   1992 and has a 15 percent share.

2   A.   Yes.

3   Q.   That is your recollection, right?

4   A.   Right.

5   Q.   Borland and WordPerfect Corp effectively entered the

6   market with B.O.W. 2.0 -- that is the Borland option?

7   A.   Yes.

8   Q.   In January of 1993?

9   A.   Yes.

10   Q.   And had about eight percent of the share?

11   A.   Right.

12   Q.   Right. So Microsoft created the category in 1990, and

13   Lotus launched its suite product called SmartSuite in 1992,

14   right?

15   A.   Well, you know, when you read this -- I mean, the

16   reason we talked about this was initially it was just a

17   bundle, right, so when you put two things together in the

18   same package they called it a suite, but it was really just

19   putting two independent packages together. And, you know,

20   people at that time commonly would buy WordPerfect and then

21   like Lotus One Two Three. Those two would be the common

22   things that would be bought separately. You are just buying

23   them together initially, until we get better about suites

24   and about integrating them.

25   Q.   Okay. And, in fact, that is exactly what Borland

1 Office was, correct?

2 A.   Yes.

3 Q.   The third entrant?

4 A.   Correct.

5 Q.   It was a partnering with Borland International?

6 A.   Yes. Just packing it together.

7 Q.   And just packaged together?

8 A.   Yep.

9 Q.   Borland was a less famous brand name than WordPerfect,

10 wasn't it?

11 A.   Yes.

12 Q.   In fact, you have referred to Borland Office as a

13 stopgap product, correct?

14 A.   Well, like I said, the vision of suites is that you

15 actually made them easier to work together inside

16 applications so you are familiar with it, but initially,

17 like I said, most people would buy it because it was a

18 package deal.

19 Q.   Sir, you have given testimony in this case before,

20 haven't you?

21 A.   Yes.

22 Q.   You sat for a deposition?

23 A.   Oh, yes.

24 Q.   Do you recall at that deposition testifying that

25 Borland Office was a stopgap product?

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 1    A.    I don't remember, but I am sure -- that sounds

 2    familiar.

 3    Q.    Does that sound right to you?

 4    A.    Yes.

 5    Q.    I am going to give you a copy of your deposition so

 6    that you will have that.

 7    A.    Okay.

 8    Q.    And by stopgap, as you use the phrase, it means it is a

 9    placeholder product, correct?

10    A.    Yes.  It was just a packaged thing where we eventually

11    wanted to integrate them so that they more easily worked

12    together.

13    Q.    And because it was a stopgap product Borland Office was

14    never a big focus of WordPerfect Corporation, right?

15    A.    Do you mean selling that product or --

16    Q.    The product itself, it was not a big focus of the

17    company and it was not in your words a big deal, was it?

18    A.    Well, it was a stopgap towards the goal of building

19    suites, right.  We wanted to build suites.

20          MR. SCHMIDTLEIN:  Is there a time period you're

21    referring to?

22          MS. NELLES:  I am sorry.  It would be about the

23    time period when PerfectOffice was coming out.  This is

24    WordPerfect Corporation.

25    BY MS. NELLES
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1   Q.   All right. I would like to show you what has been

2   marked as Defendant's Exhibit 267.

3   Is this a document that you are familiar with, sir?

4   A.   A little bit, I think.

5   Q.   This is a Novell WordPerfect document?

6   A.   It looks like that. It looks like it is a marketing

7   document that they put together.

8   Q.   And on the first page it says here 1994 business plan,

9   suite marketing team?

10   A.   Yes.

11   Q.   I would like to go to page 2.

12   MS. NELLES: Pull up the first bullet.

13   BY MS. NELLES

14   Q.   Do you see this?

15   A.   Yes.

16   Q.   WordPerfect Corp market position. We really don't have

17   an established position in the market suite.

18   Let's go to the bottom. It shows the date of August

19   17, 1993?

20   A.   Yeah. I'm sorry.

21   Q.   We really don't have an established position in the

22   suite market. That is correct, isn't it, sir, in 1993 that

23   you didn't have an established position in the suite market?

24   A.   Yeah. We were a small player because we just had the

25   Borland Office. Yeah.

1   Q.   The next bullet. Okay. Our only established position

2   is what we have done by partnering with Borland through the

3   Borland Office. This has not been received very well.

4   You agree with that, right?

5   A.   Yeah. People were concerned about the two companies

6   coming together. Sure.

7   Q.   Let's just look at that fourth bullet point. As an

8   incomplete suite the Borland Office has not been met with

9   great enthusiasm. It has been labeled by some as the,

10   quote, sort of suite, quote, because it did not take into

11   account some of the factors which persuaded people to buy

12   suites, integration and consistency.

13   A.   Yes.

14   Q.   That is correct, right?

15   A.   Yes.

16   Q.   And because WordPerfect Corporation did not offer

17   suites earlier than in the 1990s, one of the challenges

18   Novell had to overcome in 1994 was the perception that

19   WordPerfect couldn't play in the suite market; isn't that

20   correct?

21   A.   Sure.

22   Q.   Sir, in June of 1994 when Novell acquired WordPerfect,

23   Novell also purchased Quattro Pro, which was the spreadsheet

24   it got from Borland International, right?

25   A.   Yes.

1   Q.   And still now in 1994 Microsoft Excel was the most

2   successful spreadsheet application on the market, right?

3   A.   Yeah. I think it was number one.

4   Q.   And Lotus One Two Three was the number two spreadsheet

5   application?

6   A.   I think it was that, yes.

7   Q.   And Quattro Pro was number three or maybe number three?

8   A.   It was number three. I think there was only three

9   reviewed in all of the --

10 Q.   Okay.

11 A.   There were three big players.

12 Q.   Prior to the acquisition by Novell, WordPerfect had at

13 least ideas, didn't it, of combining WordPerfect, the word

14 processor, with the Lotus One Two Three spreadsheet, right?

15 A.   Yes.

16 Q.   If you could have chosen a spreadsheet partner for the

17 WordPerfect word processor, your first choice would have

18 been Lotus One Two Three, right?

19 A.   It would have been, yes.

20 Q.   Because you really never want to have a third place

21 product, right?

22 A.   Well, Lotus was very, very popular like WordPerfect was

23 very popular. I mean, it is better to be number two than

24 number three. Sure.

25 Q.   In fact, you never want to have a third place product,

1   right?

2   A.   If you can pick number two, it is better.

3   Q.   Okay. In fact, you testified in your deposition that

4   you never wanted to have a third place product, right?

5   A.   We wanted to have only first place products.

6   Q.   And to succeed in the market you need to have products

7   that are popular with consumers?

8   A.   Sure.

9   Q.   In fact, Lotus One Two Three, like WordPerfect at the

10   time, had a big loyal base of customers?

11   A.   Yes.

12   Q.   Particularly on the DOS system, right?

13   A.   Yes.

14   Q.   And Quattro Pro did not have that, right?

15   A.   It did not have that big of a market share.

16   MS. NELLES: Lets see DX-326.

17   I am trying to resolve things without you, Your

18   Honor.

19   THE COURT: That is always good.

20   BY MS. NELLES

21   Q.   What I would like to do is direct your attention to --

22   this is a hard one because it is not really labeled. It is

23   NOV-256615. Before we even go there, do you recognize this

24   document, sir?

25   A.   I have seen it before. I didn't write this. This was

 1 submitted by Mark Calkins, Bruce Brereton and Glen Mella.

 2 Q.   Who is Mark Calkins, Bruce Brereton and Glen Mella?

 3 A.   I reported to Bruce Brereton. He was over all

 4 development. Glen Mella was over marketing. Mark Calkins

 5 was the general manager of the business unit for Novell.

 6 Q.   I apologize. Did you say that you had seen this

 7 document?

 8 A.   Yes, I think I have seen this.

 9 Q.   I would like to take you to the last four numbers,

10 Bates numbers 6615.

11 A.   I am assuming they are in order. I have 6598 followed

12 by 6660.

13   THE COURT: I don't know if it is an abridged

14 document. Did you take out some stuff?

15   MS. NELLES: It is a large document, Your Honor.

16 It does not have --

17   THE COURT: Well, that would make sense. What you

18 have are the relevant parts?

19   MS. NELLES: That is right.

20   THE COURT: When it was reduced there was a lot of

21 numbers in between --

22   MS. NELLES: That is right. It is just the Bates

23 number, Your Honor.

24   THE COURT: That is fine. I was explaining to the

25 witness why there was a gap.

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 1              THE WITNESS:  I was just trying to find it.

 2    Sorry.

 3              MS. NELLES:  I apologize.  I had a --

 4    BY MS. NELLES

 5    Q.   Let's do this on the screen and we'll find the page for

 6    you.

 7    A.   I am there now.

 8    Q.   That was a lot to do for this point.

 9         Do you see where it says market position?

10    A.   Yes.

11    Q.   It says here Quattro Pro will not lead the spreadsheet

12    market in either unit share or revenue share in the

13    foreseeable future, right?

14    A.   That is what it says.

15    Q.   Okay.  This is on July 19, 1994?

16    A.   Okay.

17    Q.   That is what it said on the first page?

18    A.   Right.

19              THE COURT:  It indeed did.

20              MS. NELLES:  Okay.

21    BY MS. NELLES

22    Q.   And it says it will not lead the spreadsheet market in

23    the foreseeable future, right?

24    A.   That is what it says.

25    Q.   It would take a massive paradigm shift in the software
```

1   marketplace if it is to happen long term, correct?

2   A.   That is what it says.

3   Q.   Do you agree with this assessment, sir, as of July of

4   19, 1994? This document was distributed by Mr. Calkin, Mr.

5   Frereton and and Mr. Mella.

6   A.   I would agree that Quattro Pro alone -- I don't know if

7   it could have moved from third place on its own.

8   Q.   It says today, and this is in August of 1994, there is

9   no room for a third place player; isn't that right?

10   A.   I think, again, it is talking about standing alone, I

11   think, right?

12   Q.   Right. That you are confident that we can successfully

13   grow from a nearly second unit share position in a secure

14   second place within the next fiscal year with similar

15   footing for revenue share by the close of Novell's fiscal

16   year '96, right?

17   A.   That is what they said, yes.

18   Q.   And then to do that you would need to beat Microsoft

19   Corporation, correct?

20   A.   To become second?

21   Q.   It says who do we need to beat?

22   A.   Right.

23   Q.   Microsoft Corporation.

24   A.   Yeah. That is one of the options, or Lotus, right.

25   Q.   Right.

1   A.   I think that -- if I remember right I think that the

2   strategy was to say that we can move from three to number

3   two, and I think to attack Lotus was the strategy.

4   Q.   Let's go to the next page. It says Lotus Development

5   Corporation?

6   A.   Right.

7   Q.   So the goal was to beat Lotus Development Corporation

8   and to move into the number two position, correct?

9   A.   Well, from the business standpoint it was to move to

10   that. Our goal from development was to be number one. I

11   mean, we were not shooting for number two.

12   Q.   No. Is that not what this said?

13   A.   Business-wise they were shooting for number two market

14   share, but certainly in development we were shooting to be

15   the best.

16   Q.   Okay. You were shooting for number two in the

17   marketplace?

18   A.   The marketing group --

19   THE COURT: Everybody always shoots for number

20   one.

21   MS. NELLES: Your Honor, as somebody who

22   represents defendants, I'm aware.

23   BY MS. NELLES

24   Q.   Did you ever achieve that?

25   A.   You know, I am not a market expert guy. I don't think

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 1   it -- I don't know.  I don't think so.  I don't know.

 2   Q.   I would like to show you what has been marked and

 3   introduced as Defendant's Exhibit 259.

 4           MS. NELLES:  Can you bring that up?

 5   BY MS. NELLES

 6   Q.   Do you recognize this document, sir?

 7   A.   Yes.

 8   Q.   It is headed WordPerfect for Windows, code name Eliot,

 9   and it is a marketing requirements document?

10   A.   Yes.

11   Q.   It is dated December 21, 1993?

12   A.   Yes.

13   Q.   If we could go to the first page, page 1.

14        There is a sign off review sheet.

15   A.   Yes.

16   Q.   Does the sign off review sheet mean that the people

17   listed here reviewed and approved this document, some of it

18   or all of it?

19   A.   Yes.

20   Q.   And at the top, at the very top we have corporate?

21   A.   Yes.

22   Q.   And it is the president and C.E.O.?

23   A.   Yes.

24   Q.   Ad Rietveld?

25   A.   Yes.
```

1   Q.   Who was Ad Rietveld, president and C.E.O. of

2   WordPerfect Corporation?

3   A.   Yes.

4   Q.   And also Dave Moon?

5   A.   He was our C.T.O.

6   Q.   He was the C.T.O.

7   Then there was a group of marketing, and you see Mark

8   Calkins who we just saw a document from?

9   A.   Yes.

10 Q.   And then next we have development?

11 A.   Yes.

12 Q.   And vice president for word processing, Bruce Brereton.

13 That is who you reported to, correct?

14 A.   That is right.

15 Q.   And then down a few steps we see director engine

16 development, Gary Gibb. That is you, right?

17 A.   Yes.

18 Q.   And right below you, shared code, is Tom Creighton?

19 A.   Yes.

20 Q.   Were you at Tom Creighton's at horizontal levels?

21 A.   We were. We both reported to Bruce.

22 Q.   At this point you were the director of engine

23 development?

24 A.   Yes. This is a cross platform part that we talked

25 about. That is what this engine was.

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1   Q.   All those different operating systems?

2   A.   Yes.

3   Q.   And the shared code, Mr. Creighton was in charge of the

4   shared code team, not you?

5   A.   Correct.

6   Q.   Do you remember seeing this document at the time? Do

7   you remember participating in the preparation of this

8   document?

9   A.   I mean, yeah, kind of. Vividly no, but, yes I

10   remember.

11   Q.   Go to page 4 of the document. There is a section

12   industry trends and observations. Do you see that?

13   A.   Yes.

14   Q.   It says Windows 3.1 has been immensely successful

15   selling over 40 million copies. That is correct, right,

16   that Windows 3.1 was immensely successful?

17   A.   Yes.

18   Q.   That was the first GUI -- not the first GUI, but it was

19   a shift to the GUI platform?

20   A.   Well, it was the shift to GUI from DOS really.

21   Q.   From DOS, right.

22   A.   I mean, from Mac to --

23   Q.   And then it says the next version of Windows, code name

24   Chicago, and likely to be called Windows 4.0 is due to ship

25   in the third quarter of 1994, and will combine the functions

639

1   of DOS, Windows and Windows for Workgroups, making Chicago a

2   true operating system.

3   In December of 1993 WordPerfect knew that Chicago was

4   in the works, right?

5   A.   Yes.

6   Q.   And then looking at the next sentence, it is

7   anticipated that this upgrade will be extremely popular,

8   adding 32 bit processing, a new file system, built in

9   networking, e-mail, scheduling and a new interface built on

10   OLE 2.0.

11   A.   Yes.

12   Q.   By December of 1993 WordPerfect Corporation fully

13   anticipated that Chicago, which became Windows 95, would be

14   tremendously popular, correct?

15   A.   Yes. We thought it would be popular. Sure.

16   Q.   Let's look at the last sentence. It is critical that

17   WordPerfect Corp have the version of WordPerfect, WP WIN,

18   and that is WordPerfect for Windows; is that right?

19   A.   Uh-huh.

20   Q.   That is coded for the 32 bit Chicago release within no

21   more than a few weeks of Chicago's ship date. In December

22   of 1993 WordPerfect understood that it was critical to have

23   a product ready to release within no more than a few weeks

24   of Chicago's ship date because of the anticipated popularity

25   of the operating system, right?

1   A.   Yes.   We certainly wanted to be there all along.

2   Q.   In fact, you thought Chicago would be huge, didn't you?

3   A.   Well, it was a big step up.   Windows 3.1 was not very

4   strong, and from a technology standpoint we thought it was

5   going to be significant, sure.

6   Q.   And you thought as a product it was going to be huge?

7   A.   Yeah.   I mean, we thought it was going to be big.

8   Sure.

9   Q.   Let me direct your attention to your deposition.   Do

10   you have that in front of you?

11   A.   Yes.

12   Q.   Okay.   Page 42, line 1.   If you go to the last question

13   and answer on page 41, carrying over to 42 --

14   A.   Right.

15   Q.   Do you recall the question -- do you recall that as of

16   this time, this document you are looking at was written,

17   which is December of 1993, WordPerfect anticipated the

18   popularity of the Chicago product?

19   A.   Yes.

20   Q.   And --

21   A.   I said I thought it would be huge.

22   Q.   You thought it would be huge?

23   A.   Right.

24   Q.   And by August of 1994, which was after the acquisition

25   by Novell, you understood that Chicago just might take over

1   the world, right, and that WordPerfect, the product, needed

2   to be there, meaning you needed to release along with

3   Windows 95, right?

4   A.   Yes. We wanted to, certainly.

5   Q.   You understood that in '93 and you understood that in

6   '94?

7   A.   Yes.

8   Q.   You would agree with me, wouldn't you, that Chicago did

9   in fact take over the world at least in terms of operating

10 system software?

11 A.   It became the biggest pretty quickly.

12 Q.   After Windows 95 shipped, at that point it was crystal

13 clear that Windows 95 was the future, correct?

14 A.   I'm sorry?

15 Q.   Was the future, that people were going to Windows 95?

16 A.   I mean, I don't know at what point it became clear that

17 that was the future. It certainly was very popular.

18 Q.   Let's bring up your deposition. Look at page 132. It

19 is really the question and answer that begins at line 15 and

20 continues through line 25.

21 A.   Okay.

22 Q.   And what you said in 2009, in March of 2009, is that

23 you thought everybody believed that Chicago WIN 95 was the

24 future, right?

25 A.   Sorry. Are you reading the answer? You know, probably

1 a year before. No.

2   Where are you seeing that? Line 15?

3 Q.   Line 21 --

4 A.   Line 21.

5 Q.   -- through line 22.

6 A.   The part that says I would have so little experience

7 with that, I mean, I think everybody believed that Chicago

8 WIN 95 was the future.

9 Q.   Right. That is what you testified to in 2009, right?

10 A.   That everybody believed that, yeah.

11 Q.   And that was because, going on with your answer, it was

12 faster?

13 A.   Yeah.

14 Q.   It was a better operating system, right?

15 A.   It was better than Windows 3.1, yes.

16 Q.   So you thought at the time that everybody believed that

17 the shift was on to Windows 95, right?

18 A.   Yes.

19 Q.   Okay. I hate to bounce around the time line, but I am

20 going to go back to 1993 for a little bit.

21   In or about October of 1993 WordPerfect Corporation

22 released WordPerfect version 6.0 for Windows, right?

23 A.   Yes.

24 Q.   That is the Windows 3.0 and 3.1 series?

25 A.   Right.

1   Q.   And WordPerfect 6.0 was designed for Windows 3.1,

2   right?

3   A.   Yes.

4   Q.   Specifically on that program?

5   A.   Yes.

6   Q.   You would agree, and you have already seen the

7   document, that Windows 3.1 was immensely successful by

8   December of 1993?

9   A.   Yeah, it was successful.

10   Q.   But when WordPerfect 6.0 shipped it had a lot of bugs

11   in it, didn't it?

12   A.   It had some bugs, sure. It was actually fairly simple

13   that a point zero release had bugs. Ours, Microsoft, point

14   zero had bugs. We had bugs, yeah.

15   Q.   Lots of bugs, right?

16   A.   I would say it was fairly in line with point zero

17   releases but, yeah, it had bugs.

18   Q.   More than you would have liked, correct?

19   A.   I don't want any bugs so, yes.

20   Q.   When an application like WordPerfect has lots of bugs,

21   consumers are often unhappy with the product; isn't that

22   right?

23   A.   If the bug interferes with your work it bothers you,

24   sure.

25   Q.   Because a bug in an application like WordPerfect can

1   make it unstable; isn't that right?

2   A.   Yes. If it crashes or something it would bother you

3   but, you know, when we say there were a lot of bugs, a lot

4   of bugs is relative, right. I mean, there are strange

5   circumstances. I mean, I read through thousands of bugs,

6   right, so you have different levels on these bugs. When

7   this said if you do this weird table of authorities and you

8   have a graphic in there and it does something weird, you

9   know, it would be a very, very minor case, and that is

10   considered -- all of those things considered, if a bug is

11   core and interferes with what you want do do, then it is a

12   problem.

13   Q.   WordPerfect 6.0 was slow compared to competitors, isn't

14   that right, like Microsoft Word?

15   A.   It was slow in low memory situations as it swapped out.

16   Q.   Let's go back to Defendant's Exhibit 259 that we looked

17   that at a few minutes ago. Let's go to page 2.

18   This is the executive summary, the first bullet. Pull

19   that up.

20   Improved speed and reliability. Would you agree with

21   the statement, sir, that WordPerfect WIN 6.0 is universally

22   praised as having great functionality, quote, but was

23   considered by the press and many users in its initial

24   release as too slow for their current hardware as compared

25   to the competition and contained too many bugs to be

 1   considered sufficiently stable?

 2   A.   Yes. I mean, like I said, that is what I was referring

 3   to, low memory situations, for example, and with the current

 4   hardware. Right. On four megabyte machines --

 5   Q.   The second bullet here under modularity, that is what

 6   you are also referring to, correct, WordPerfect 6.0 cannot

 7   be run by many users because it requires --

 8   A.   Right. There were limitations on four megabyte

 9   machines because Windows took up a big chunk and then --

10   Q.   We can agree, can't we, that customers don't like slow,

11   unstable products? We can agree that consumers and

12   customers don't like slow and unstable products?

13   A.   I think that is true.

14   Q.   So you understood that you needed to make the product

15   faster and leaner and meaner and cooler, right?

16   A.   Yeah. That was why we were working on 6.08.

17   Q.   And that meant that the practical consequence was that

18   in 1994 WordPerfect had to work really hard and work really

19   long hours to get out another version of WordPerfect for

20   Windows 3.1 that ran faster and with fewer bugs; isn't that

21   right?

22   A.   Yes. Yeah.

23   Q.   And as a result in August of 1994 Novell had very few

24   resources working on WordPerfect for Windows 95; isn't that

25   correct?

1   A.   Well, remember we talked about the team and there were

2   a lot of teams, and the WordPerfect for windows group was

3   focused on that release. There were some people that were

4   focussed on researching new things in the operating system

5   and things like that, while we were focused on making

6   WordPerfect faster and run leaner on small machines.

7   Q.   Okay. Let's look at Defendant's Exhibit 4, please.

8   This is an interoffice memorandum, correct?

9   A.   Yes.

10   Q.   And it says attached is the integration plan submitted

11   by Ad. Do you see that?

12   A.   Ad.

13   Q.   Ad, sorry. That is Ad Rietveld?

14   A.   Uh-huh.

15   Q.   If we can go to page 5 of this document.

16   Do you see the section business applications?

17   A.   Yes.

18   Q.   Do you see the second bullet says Chicago? There are

19   very few resources on Chicago at this time. Do you see

20   that?

21   A.   Yes. That was the same thing I was referring to. Like

22   I said, the shared code group would be investigating that

23   while WordPerfect and the other apps were focused on, you

24   know, getting the release for 6.08.

25   Q.   You talked a little bit this morning and we heard a lot

1   in this case about file open dialogue.

2   A.   Yes.

3   MS. NELLES: Can we bring back up Plaintiff's

4   Exhibit 322?

5   BY MS. NELLES

6   Q.   Do you have that still in front of you, sir, the panic

7   mode modification?

8   A.   Yes.

9   Q.   If we could go back to page 4 of the document and the

10 proposal that Mr. Schmidtlein showed you?

11 A.   Yes.

12 Q.   And that says deliver N.S.B. component implemented with

13 a common open dialogue by required code complete date.

14   Do you see that?

15 A.   Yes.

16 Q.   This just means use the Windows 95 common file open

17 dialogue?

18 A.   Yes.   That was the placeholder we were all developing.

19 Q.   That was the proposal, correct, that is put forward

20 here?

21 A.   In other words, all through the documents while we were

22 waiting on the new open dialogue we actually used the common

23 open dialogue to open a file.   You couldn't test the other

24 things, but you could test open.

25 Q.   Novell's developers could have had the applications in

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 1   PerfectOffice for the Windows 95 common file open dialogue,

 2   right?

 3   A.   It would have been painful, but we could have done

 4   that, yes.

 5   Q.   Actually it would have been quite easy physically?

 6   A.   It is easy to call.  We thought it would be a huge step

 7   backwards for our customers.

 8   Q.   All right.  But you understood that it could be done

 9   and, in fact, it was quite easy to do?

10   A.   Right.  You can call --

11   Q.   You could have called into them, right?

12   A.   You could call them.

13   Q.   But rather than use the Windows 95 common file open

14   dialogue that Microsoft provided for free to developers in

15   the Windows 95 operating system, the shared code team and

16   Novell decided that they wanted to spend a lot of time to

17   write their own custom file open dialogue, right?

18   A.   Yes.  We wanted to write -- we thought we wanted to

19   exceed what was the default stuff.

20   Q.   Right.  Novell decided that it was important to write

21   its own custom file open dialogue --

22   A.   Yes.

23   Q.   -- for Windows 95 rather than relying on the Windows 95

24   common file open dialogue, because Novell thought it could

25   do something cooler, correct?
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1   A.   Yes.

2   Q.   And Novell also thought that writing its own custom

3   file open dialogue would provide a competitive

4   differentiation --

5   A.   Yes.

6   Q.   -- to the application?

7   A.   Yes. It was historically that way. From the beginning

8   we thought that and we continued to think that way.

9   Q.   Now, you did just tell me, sir, right, that you were

10   not the market expert, correct?

11   A.   No.

12   Q.   So you were not the person to know whether it would be

13   important to users that PerfectOffice and PerfectFit had a

14   custom file open dialogue?

15   A.   Well, market fit with the customers -- I was an expert

16   in -- I went to use-ability labs, I talked to customers, and

17   we gathered requests from those and aggregated those, so I

18   did consider myself an expert on what customers wanted. I

19   was not a marketing guy.

20   Q.   You would be a marketing expert for that, right?

21   A.   To pick out the market and the position -- I was

22   certainly there to represent the customer and how to deliver

23   the best value to the customer, yes.

24   Q.   You said that Paul Skillen was the vice president of

25   product development at Corel?

1   A.   Yes.

2   Q.   And Jim Johnson was in charge of the shared code team

3   at Corel; isn't that correct?

4   A.   Yes.

5   Q.   As he had been at Novell, correct?

6   A.   Yes. Well, Tom Creighton was over it at Novell and Jim

7   worked for him and then Jim took that over.

8   Q.   And Mr. Skillen told Mr. Johnson to use the Windows 95

9   common file open dialogue, didn't he?

10 A.   You know, I have heard that and I believe that is true.

11 Q.   Have you heard that Mr. Johnson was let go for not

12 doing that?

13 A.   Only through the rumor mill because that wasn't

14 announced, but I don't know. I don't really know, but --

15 could be. Jim was a strong willed guy.

16   THE COURT: I hope he is still with us. I assume

17 he is.

18   THE WITNESS: He is. He is a great guy. He is a

19 tall guy, skinny, beard, and a wonderful guy, but he

20 certainly believed that we should do --

21   THE COURT: Strong willed would fit him --

22 BY MS. NELLES

23 Q.   I think you and I could agree, couldn't we, sir, that

24 there was at least a debate about this issue and the

25 importance of it, right?

 1   A.   There were always debates. We debated everything.

 2   Q.   Some Quattro Pro developers did leave when Novell

 3   acquired Quattro Pro in June of 1994, correct? We talked

 4   about the later period earlier in your direct testimony, but

 5   some Quattro Pro developers left; isn't that right?

 6   A.   You know, I don't know the details of that, but I

 7   suspect -- I don't know. Maybe. There is probably evidence

 8   some place that shows if some left.

 9   Q.   I can point you to your deposition testimony, if you

10   would like, but do you recall some Quattro Pro developers

11   left when Novell acquired --

12   A.   I don't. But, I mean, certainly -- I mean, certainly

13   the bulk of the team was there. There might have been some

14   that left.

15   Q.   After Novell purchased Quattro Pro in June of 1994, the

16   Quattro Pro developers who stayed at Novell worked in their

17   own little group in California, right?

18   A.   Yes.

19   Q.   That was separate from the rest of WordPerfect and the

20   Novell employees in Utah, right?

21   A.   Yes, geographically separate.

22   Q.   It would have been easier to integrate Quattro Pro into

23   the PerfectOffice suite for Windows 95 if all of the

24   developers had been in the same place; isn't that right?

25   A.   I think there are certainly synergies and, yeah, there

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1   are advantages of being local. Obviously people do it all

2   the time, have remote teams, but, yes, I think it is easier

3   if you are next to them.

4   Q.   Quattro Pro 6.0 was the version of Quattro Pro that had

5   been developed for Windows 3.1; is that right?

6   A.   I think that is right.

7   Q.   And Quattro Pro 7.0 was the version for Windows 95?

8   Does that sound right?

9   A.   That sounds right.

10   Q.   That sounds right to me too.

11   Let's use Defendant's 219. This document is called

12   notes from Storm coordination meeting?

13   A.   Yes.

14   Q.   It is dated February 2, 1995?

15   A.   Yes.

16   Q.   This is a Novell document, right?

17   A.   Yes, notes from my meeting. The Storm coordination

18   meeting is what I did.

19   Q.   This is your meeting?

20   A.   Yes.

21   Q.   Let's go to page 2. These are your product notes, sir?

22   A.   I mean, I don't think I made the notes. I think

23   somebody took notes and typed these up afterwards.

24   Q.   These are notes from your meeting?

25   A.   Yeah. They are notes from my meeting, yes.

 1   Q.   Let's call up the seventh point of the product notes.

 2   It says the Quattro Pro folks are still working on

 3   international versions of Q.P. and that is Quattro Pro,

 4   right?

 5   A.   Yes.

 6   Q.   6.0?

 7   A.   Yes.

 8   Q.   That is the WIN 3.1 version, right?

 9   A.   Right.

10   Q.   End of March, and then we'll begin our next version of

11   Quattro Pro?

12   A.   Yes.

13   Q.   And is it true that as of February of 1995, which is

14   six months before the release of Windows 95, that the

15   Quattro Pro team was still working on international versions

16   of 6.0?

17   A.   Well, internalization of the product was something that

18   applied to the new release as well as the old release,

19   because we tried to release international shortly after the

20   U.S. domestic, and so we thought it applied to both. The

21   bulk of the team was working on the internalization of the

22   product in preparation for that.

23   Q.   And this does say Quattro Pro 6.0, correct?

24   A.   Correct.

25   Q.   And the reason this is important is because Novell had

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 1    customers in countries all over the world, right?

 2    A.    Yes.

 3    Q.    And it wasn't enough just to have a version of Quattro

 4    Pro in English for users in the United States or other

 5    English speaking countries?

 6    A.    Like I said, we thought the international work would

 7    apply to he 16 bit sales as well as the 32 bit sales.  We

 8    thought it was important to do that.

 9    Q.    It was important that Quattro Pro be localized?  Is

10    that the right word?

11    A.    Yes.

12    Q.    That means turned into languages other than English?

13    A.    Yes.

14    Q.    And some language are more challenging than others;

15    isn't that right?

16    A.    Yes.

17    Q.    The Asian languages like Japanese and Korean are more

18    difficult than German and French?

19    A.    Sure.

20    Q.    But Novell believed in 1994 and in 1995 that it was

21    imperative to make the components of the PerfectOffice

22    suite, including Quattro Pro, available in all major

23    languages, right?

24    A.    Yes.

25    Q.    And the Quattro Pro team faced challenges creating
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 1   localized versions of the 6.0 version of their product for

 2   Windows 3.1; isn't that correct?

 3   A.   I mean, I don't know the details of that, but I'm

 4   sure -- I mean, it was something that took time, sure.

 5   MS. NELLES: Let's put up Defendant's Exhibit 272.

 6   BY MS. NELLES

 7   Q.   This time, sir, I have got gotten help and I have

 8   marked the page for you.

 9   A.   Thank you.

10   Q.   Do you recognize this document, sir?

11   MS. NELLES: Hold on one moment, please.

12   Sorry about that.

13   THE COURT: Is everything okay?

14   MR. SCHMIDTLEIN: Yes. Sorry, Your Honor.

15   THE COURT: No problem.

16   BY MS. NELLES

17   Q.   Do you recognize this document?

18   A.   I mean, I recognize all the names on it. I don't

19   remember actually seeing it, but --

20   Q.   Do you recall a quarterly international conference for

21   Novell's business applications?

22   A.   I think they had that fairly regular. I was not

23   invited to that.

24   Q.   This one is on June 13 through 16, 1995?

25   A.   Yes.

1   Q.   You don't recall attending that?

2   A.   I don't recall that.

3   Q.   Okay. Can I direct you to page 15 of the document.

4   A.   That is where the blue tab is. I am there.

5   Q.   Right. You see it says Thursday, June 15, 1995, and

6   then if you go to the very next page, product development

7   Storm was --

8   A.   Yes.

9   Q.   Does this help you recall whether you attended this

10 meeting?

11   THE COURT: I think the answer is no, but he

12 probably did. It must have been scintillating conversation.

13   THE WITNESS: I am sure this was a great meeting.

14 I wrote it in my diary later.

15 BY MS. NELLES

16 Q.   The answer is no?

17 A.   I don't remember. Sorry.

18 Q.   I am going to nonetheless make you turn the page to

19 page 8. It appears, does it not, and you agree, that you

20 and Mr. Brereton did present the product development on

21 Storm on that day, correct?

22   THE COURT: According to the document that is what

23 it appears.

24   THE WITNESS: Sure.

25 BY MS. NELLES

1   Q.   I am going to go ahead and ask the question anyway. If

2   we go to page 18, now, again, this is June 15 at the June 13

3   through 16 conference of 1995?

4   A.   Uh-huh.

5   Q.   Do you see the localization and international --

6   A.   Sure.

7   Q.   Do you know who those people are?

8   A.   Yes.

9   Q.   Who were they?

10   A.   They were over international, great guys, and did our

11   international sales.

12   Q.   Do you recall a Mr. Buschmann and Mr. Christensen

13   presenting on localization issues in June of 1995?

14   A.   I don't specifically remember, no.

15   Q.   Okay. Let's go back to DX-219.

16   A.   I have a big stack now.

17   Q.   I know. Me too. We are having the same struggle.

18   THE COURT: It may save time to just look at the

19   monitor.

20   THE WITNESS: I am happy to use the monitor.

21   THE COURT: He is happy to use the monitor if you

22   are.

23   MS. NELLES: I am, but, Your Honor, in my quest to

24   find my document I turned my page. Give me one second.

25   THE COURT: It is a lot easier to sit here than it

1 is to stand there.

2   MS. NELLES: Especially in heels.

3   THE WITNESS: I found it. It is two pages. It is

4 skinny.

5 BY MS. NELLES

6 Q. Okay. Let's go to page 2.

7 A. Okay.

8 Q. I will go back to that same sentence we looked at

9 before. Quattro Pro was not even going to begin on a

10 version for Windows 95 until the end of March of 1995 at the

11 earliest; isn't that correct?

12 A. I think there were a couple people working on the

13 Windows 95 integration, but the bulk of the team was still

14 internationalizing, right.

15 Q. Okay. There is nothing in this document, sir, and

16 please feel free to take your time to look at it, but there

17 is nothing in this document anywhere that indicates that

18 there was any delay anticipated because of any issues with

19 shared code or PerfectFit; isn't that right?

20 A. This document?

21 Q. Right.

22 A. February '95. I think -- I mean, I would have to read

23 it all again, if you want me to, but I suspect in this --

24 February 2nd, early February -- I mean we certainly listed

25 shared code as a risk because, again, an operating system

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1   release, so an operating system release, and PerfectFit was

2   one that dealt with the operating system so we certainly

3   recoginzed that as a risk, but it was not a critical path

4   when we first started out. We hoped it wouldn't be a

5   critical path.

6   Q.   I'm sorry. Did you say you saw something in here that

7   relates --

8   A.   No. No. I said I could look.

9   Q.   Let's turn to the first page of the document. If we

10 could go down to the code names of the persons in charge.

11   MS. NELLES: I am glad I have a reason to pull

12 this up so I can show Your Honor that there is a lightening

13 code name.

14   THE WITNESS: Code names are critical.

15 BY MS. NELLES

16 Q.   Wind is the code name for PerfectFit; is that right?

17 A.   Yes.

18 Q.   And Tom Creighton was at this meeting, correct?

19 A.   Yes. Sure. He would always be there.

20 Q.   Let's go to DX-270.

21   MS. NELLES: Don't put that up yet.

22   THE WITNESS: Is this a new one or --

23 BY MS. NELLES

24 Q.   I will bring it up to you. I have to negotiate with

25 counsel.

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 1              THE COURT:  I think you all understand that unless

 2    something has been agreed to come into evidence we prefer

 3    not to put it up for you all to see it.  That is the reason.

 4    Sometimes they are, and sometimes they are not.

 5              MS. NELLES:  We'll go ahead and put up DX-270.

 6              THE COURT:  Good.

 7    BY MS. NELLES

 8    Q.   Do you recognize this document, sir?

 9    A.   Yes.

10    Q.   This is one of your documents?

11    A.   Todd and I built it, yes.

12    Q.   I'm sorry?

13    A.   Todd Titensor and I built this document, yes.

14    Q.   And there is a date on here of December 9, 2008.  You

15    can ignore that.  That date is not a correct date.  That is

16    the way it was produced, but --

17    A.   The second page shows the date.

18    Q.   That is right.  If we go to the second page it says

19    revision history.

20    A.   Yes.

21    Q.   And it says February 6, 1995?

22    A.   Second revision, first revison, and we just kept track

23    of these right in the document.  December 15th initially and

24    some relation is made to February 6th.

25    Q.   Does this mean that the document was created on
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1   February 6, 1995?

2   A.   No, it means it was finally reviewed --

3   Q.   Updated on --

4   A.   Yeah, it was updated on February 6th and first reviewed

5   on December 15th. Written sometime before that.

6   Is that what you're asking?

7   Q.   Yes. I'm trying to understand what the document --

8   A.   When we would have the meeting to review it, that is

9   when we would put the date. So December 15 would be -- it

10   says initial documents were reviewed by most of the Storm

11   team. That is when you review it the document -- however

12   long it took to build it before that.

13   Q.   It says that the revision, which was modified to

14   reflect changes in time schedules, and this was needed due

15   to delays in the Quattro Pro development effort, correct?

16   A.   Yes.

17   Q.   Can we go to, and it is not marked, but the fourth page

18   in and it has the number, the identification number on the

19   bottom and ends with 28, four pages in the chart.

20   A.   I think I am there.

21   Q.   All right. Do you see it says major risks in project?

22   A.   Yes.

23   Q.   And that is identified as a way to identify the risks

24   and one is the highest; is that right?

25   A.   Yes. We just had, you know, on every project we did we

 1   identified the risks in critical path and things like that,

 2   and you wanted to identify your risk so that you could

 3   mitigate the risk. Sure.

 4   Q.   And number three meant a low risk, correct?

 5   A.   Had a low risk? What do you mean? No. I mean one is

 6   higher followed by two and three. Which one are you talking

 7   about?

 8   Q.   I am looking at the identified risks and it says one

 9   equals --

10   A.   I'm sorry. Right. One is high. Three is low.

11   Q.   Okay. And what is the number one risk identified as

12   the major risk identified in the project?

13   A.   Quattro Pro delivering late.

14   Q.   And if you go down to number five it says PerfectFit

15   delivers late?

16   A.   Yes, but if you look at them they are all an overall

17   risk of one. This is not sorted order, this is sorted by

18   overall risk, meaning all of these were considered the

19   riskiest parts that we needed to focus on.

20   Q.   And Perfectfit delivering late is given a risk factor

21   of two, neither high nor low?

22   A.   Right.

23   Q.   Right. It is true, isn't it, sir, that as of February

24   6, 1995, that you believed that the risk that PerfectOffice

25   would be adversely affected by a competitive product such as

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1   Microsoft Office and Lotus Smart Suite was higher than the

2   risk that the product of the shared code team would be late;

3   isn't that right?

4   A.   You're extrapolating that from here someplace?

5   Q.   I am.

6   A.   Where are you reading that from? Because later -- I'm

7   sorry. Should I look up here?

8   Q.   Is this accurate?

9   A.   PerfectFit is number five and Quattro Pro -- I mean,

10 those are both number one risk priorities.

11 Q.   Right.

12 A.   And you're saying -- but you were extrapolating as

13 compared to competitive --

14 Q.   Right. Number four, competition raises the bar.

15 A.   I guess those were all considered number one risks

16 overall, right?

17 Q.   Right.

18 A.   They were all -- it was considered part of the risk,

19 yes. A high risk, yes.

20 Q.   A high risk. And GroupWise delivers late, that was

21 also a high risk?

22 A.   Well, that would be considered high. GroupWise was

23 number two, right? So that was a lower risk than -- the far

24 right column is the one that I would focus on.

25 Q.   Okay.

1   A.   So the overall risk is kind of a big category, this is

2   what we care about most, and so GroupWise delivering late

3   was number two, so lower.

4   Q.   WordPerfect delivers late, that is a number one risk?

5   A.   Oh, yeah. Yes.

6   Q.   Let's go to DX-226.

7   Do you recognize this document, sir?

8   A.   My name is on the front of it. Yeah, I think it is my

9   document.

10   Q.   This is another project development plan?

11   A.   Yes, for Storm back in -- I don't know the date here.

12   Started December of '94 it looks like. Yeah, reviewed

13   anyway.

14   Q.   And Storm is PerfectOffice --

15   A.   Yes.

16   Q.   -- for Windows 95?

17   A.   Yes.

18   Q.   Let's turn to the next page.

19   A.   Revision history.

20   Q.   Revision history. May 26, 1995. So you would agree

21   with me, wouldn't you, that this document was created May

22   26, 1995 or later?

23   A.   It was what again? Sorry.

24   Q.   This document was updated --

25   A.   It was updated in May. We had a review on May 26th of

1   the upgrades or changes, yes.

2   Q.   Let's go in three pages. Same chart. Do you see that?

3   A.   Yes.

4   Q.   So by the end of May of 1995 Quattro Pro delivering

5   late is still the very first identified risk, correct?

6   A.   Well, I suspect that those are all the same. Really

7   when we said revision history we would go back and add --

8   like I see U.S.C. support and online help, the key elements,

9   those were things added, and we didn't always go back and

10   update original functions. We didn't change original

11   functions. I don't think you could read into it that that

12   was still a top priority. I think it was really added to

13   this document that we kept, that we were going to do U.S.C.

14   support and we were going to do online help. We didn't

15   necessarily go back and update the initial projections.

16   Q.   It was still a high risk, correct?

17   THE COURT: I think he has answered the question.

18   MR. SCHMIDTLEIN: Objection, Your Honor.

19   BY MS. NELLES

20   Q.   It wasn't changed. Is that --

21   THE COURT: It obviously wasn't changed.

22   THE WITNESS: Right. But we didn't necessarily

23   update those kinds of things.

24   BY MS. NELLES

25   Q.   But you would agree with my, wouldn't you, sir, that

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 1   PerfectOffice for Windows 95 could not ship without Quattro

 2   Pro?

 3   A.   Actually we had a contingency plan to coupon Quattro

 4   Pro, but we didn't want to.

 5           THE COURT:  A sort of sort of --

 6           THE WITNESS:  A what?

 7           THE COURT:  A sort of sort of suite?

 8           THE WITNESS:  Yeah.  We didn't want to do that,

 9   sir.

10   BY MS. NELLES

11   Q.   You referred to that as a contingency plan?

12   A.   Yeah.  I was being a little facetious.  I probably

13   shouldn't.  It was if all else fails --

14           THE COURT:  You're fine.

15   BY MS. NELLES

16   Q.   I asked because it made me think of a particular

17   document which is Defendant's Exhibit 211.

18   A.   Do I have that one?

19   Q.   I have not given that to you.

20   A.   Okay.  Sir, before December of 1994 Novell was already

21   aware that it could not ship a version of PerfectOffice

22   contemporaneously with the release of Windows 95 in August

23   of 95; isn't that right?

24           THE COURT:  Well,  in fairness it didn't know when

25   Windows 95 was going to deliver.
```

 1   THE WITNESS: Nobody knew --

 2   THE COURT: Nobody knew the date. He didn't know,

 3   I don't think.

 4   THE WITNESS: The world didn't know. Windows 95

 5   slipped by three years.

 6   THE COURT: Just rephrase the question. That's

 7   all.

 8   BY MS. NELLES

 9   Q.   Well, let's pull up Defendant's Exhibit 211.

10   Sir, are you familiar with this document?

11   A.   Yes.

12   Q.   And it is a project proposal for Storm?

13   A.   Yes.

14   Q.   Storm is PerfectOffice?

15   A.   Yes.

16   Q.   I'm going to ask you to turn to what is I believe page

17   5. It is appendix A. I am going to ask you if you can help

18   me identify the date of this document. If you look under

19   the introduction the first sentence says Storm is the code

20   name for our PerfectOffice release to follow the

21   PerfectOffice 3.0 product that is shipping in December of

22   1994.

23   A.   Yes.

24   Q.   Would you agree that this document was created before

25   December of 1994?

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 1    A.    I am sure it started before then and probably close to

 2    that time.

 3    Q.    Because it says prior --

 4    A.    Because it had not shipped yet and PerfectOffice 3.0 I

 5    think shipped in December of '94, so before that

 6    certainly -- yeah.

 7    Q.    Let's go back to the first page of this document.

 8          It says here that time frames is the critical decision

 9    to be made for finalizing the Storm strategy.

10          You agree with that, right?

11    A.    Yes.  This was a proposal that we put out there as an

12    option to consider.

13    Q.    And there is a table here and it outlines three such

14    proposals; isn't that right?

15    A.    Yes.

16    Q.    Are these proposals what you would refer to or were

17    referring to as the contingencies?

18    A.    Well, no.  That was a little different.  We had

19    contingency plans on every element and everything that was

20    considered a risk, and that is where we had the contingency

21    plans.  This was an option to say we are always making trade

22    offs between, you know, the functions and features that we

23    were putting in for customers and timing of operating

24    systems releases.  This is a trade off to say here are the

25    things we would be trading off.
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1   Q.   And these proposals, were you involved in preparing

2   these proposals?

3   A.   Yes. I actually think Bruce put this one out, but I

4   was certainly involved. Sure.

5   Q.   Who did this go to?

6   A.   I am sure it went to Mark Calkins. I suspect he shared

7   it with others, but I don't know.

8   Q.   Did this go to senior management?

9   A.   You know, I never went to senior management. Mark

10   is -- the extent of my visibility was Mark Calkins.

11   Q.   And you suspect it went to --

12   A.   I suspect it went to him.

13   Q.   All right. And proposal one is primarily a WIN 95

14   stragety for a September 30, 1995 release?

15   A.   Yes.

16   Q.   And under advantages, the advantages section it says

17   this is about four months after MS Office is scheduled to

18   ship and five months after WIN 95 is scheduled to ship.

19   Do you see that?

20   A.   Yes.

21   Q.   So there was an anticipated ship date for both MS

22   Office and WIN 95 at this time, right?

23   A.   Yeah. We thought that it was going to be the first

24   half for WIN 95 and Office was supposed to ship about then

25   too.

```
 1    Q.    And then the last sentence in that box says this is

 2    aggressive yet possible with great effort, and we would not

 3    risk being perceived as, quote, late to a key platform

 4    again?

 5    A.    Yes.

 6    Q.    Do you see that?

 7    A.    Yes.

 8    Q.    Was that important?

 9    A.    Yes.

10    Q.    Okay.  And then if you go over to the left-hand column,

11    do you see that there is a list of problems with this

12    proposed solution?

13    A.    Yes.

14    Q.    And if you go down to number two on the page --

15    A.    Yes.

16    Q.    Quattro Pro believes this is barely acheivable with all

17    their resources and with no additional functionality.

18          Do you see that?

19    A.    Yes.

20    Q.    Do you recall this being the case?

21    A.    Yes.  They wanted to do more functionality than just

22    make it 32 bit and add the shared code stuff.

23    Q.    And if you go to the last sentence in that box --

24    A.    Yes.

25    Q.    They, meaning Quattro Pro, feel that an additional
```

 1   three months would help them compete effectively?

 2   A.   Yes. I think the crux of this document was actually

 3   because of Quattro Pro's request.

 4   Q.   The crux of this document was because of the Quattro

 5   Pro request?

 6   A.   Yes. We would love to have more time to add features.

 7   Q.   They also believe a four month beta is needed for a

 8   significant release such as a WIN 95 product?

 9   A.   Yes.

10   Q.   Okay. Can we go further down on the problem box to

11   number three. It says P.R. presentation?

12   A.   That is the presentation in Quattro Pro.

13   Q.   And shared does is in a very similar situation to

14   Quattro Pro from a development standpoint. Do you see that?

15   A.   Yes.

16   Q.   They are nervous about that date and --

17   A.   Yes.

18   Q.   -- would have to make significant corner cutting moves

19   to make that date?

20   A.   Yes. They always like -- everybody wanted to make

21   great products, and so -- there is fixed overhead in making

22   a release. Fixed overhead was something that you wanted to

23   spend as much time as you could adding new capabilities and

24   features for people. So, yeah, they all wanted to do that.

25   Q.   The date that we're talking about here is the September

1   30, 1995 date?

2   A.   Yes.

3   Q.   And if we go down to number four in the box under the

4   problems column, WordPerfect is only on target for this date

5   if the other pieces they rely on are there on time. The

6   WordPerfect team, such as shared code -- the WordPerfect

7   team is best prepared because of advanced work and

8   significant resources, but they still feel the schedule is

9   aggressive but achievable?

10   A.   Yes.

11   Q.   So for a September 30, 1995 release Quattro Pro

12   believed it was barely achievable?

13   A.   Yes.

14   Q.   This is in 1994?

15   A.   Yes.

16   Q.   And the P.R. shared code was in a similar situation?

17   A.   They are nervous about it but, like I said, most

18   developers would be nervous about almost any date. Yeah.

19   Q.   WordPerfect was in the best place at that time?

20   A.   WordPerfect was in the -- they felt most confident

21   because they started developing features. They were still

22   nervous about shared code, but they felt most confident with

23   the features that they had added.

24   Q.   Turning to the next page, number 6 under the problems

25   column, Office will be cometing with the significant

1   upgrades to MS Office and Lotus Smart Suite?

2   A.   Yes.

3   Q.   Both of these products have had 15 months or greater

4   development cycles as opposed to our proposed nine month

5   cycle --

6   A.   Yes.

7   Q.   -- because they already had a suite on the market.

8   A.   It was just really time frame, right, so whenever you

9   release it was just time frames. Because they released

10   before PerfectOffice they had additional time on that.

11   Q.   Microsoft and Lotus were starting ahead because they

12   had a previous product and they already had a suite on the

13   market?

14   A.   We had -- this is for Storm. We already had

15   PerfectOffice also at this time.

16   Q.   But proposal two --

17   A.   Yes.

18   Q.   -- is a solution driven strategy for January 1996?

19   A.   Yes.

20   Q.   Does this mean that you were considering a proposal in

21   1994 for a release date in January of 1996?

22   A.   Yes.

23   Q.   And under advantages, number one, this is for a later

24   release date?

25   A.   Yes.

1   Q.   And a more significant development time frame before

2   the release overhead is incurred?

3   A.   Exactly. That is what I was trying to explain before,

4   is that there is a fixed amount of overhead on all of these,

5   and so one idea was to spend more time adding new features

6   as opposed to just making WIN 95 with less features.

7   Q.   Right. But by January of 1996, if we can go to

8   problems, you were aware, weren't you, that this was about

9   seven months after MS Office is scheduled to ship and eight

10   months after WIN 95 is scheduled to ship?

11   A.   Yes.

12   Q.   By that time --

13   A.   Of course, again, it was an unknown, but we thought

14   maybe they were going to ship then, you know, in the

15   April-May time frame.

16   Q.   And it was in fact in the summertime, right?

17   A.   Yes. They didn't hit those dates, but we were not sure

18   so we were nervous.

19   Q.   You understood that if you had a seven month or eight

20   month lag that perhaps you would have missed the market,

21   correct?

22   A.   An eight month lag would have been a huge problem,

23   yeah.

24   Q.   And the party is over at that point, correct?

25   A.   I mean, a little tongue in cheak, but, yeah.

1   Q.   And then actually there was a third proposal, right?

2   A.   Yes.

3   Q.   That is on the next page. Proposal three is WP WIN,

4   WordPerfect for Windows in September of 1995 and then the

5   rest later in 1996?

6   A.   Yes. It was just like I said -- one of the options was

7   to ship and then add the rest a little later. It was

8   certainly an option to consider.

9   Q.   Okay. Among the options available to you, turning to

10   the next page, the recommendation --

11   A.   Yes.

12   Q.   -- that was made in 1994?

13   A.   Yes.

14   Q.   That is option two and that is the January 1996 release

15   is the best option?

16   A.   Yeah. We were promoting that as the best option under

17   the three because there were so many unknowns. We could

18   have more functionality in the product and so maybe we

19   should do that. It was, yeah, we said here are three

20   options and we suggest number two.

21   Q.   Right. You thought this was the best way to be

22   competitive, correct?

23   A.   It was -- you know, there are a lot of things that

24   weigh into that. One of the things that weigh into that is

25   the unknown about when the operating system would release.

1   So if the operating system release was much, much later and

2   you did a very short time frame, then it is kind of like you

3   spent all of that overhead and the operating system didn't

4   come out. So it was hard to balance. It was a balancing

5   act. It was a balancing act at best to try figure out when

6   the operating system is going to go out and how much you

7   should spend in the development cycle so you are still

8   within that window of opportunity. We wanted to ship very

9   close to the operating system.

10   Q.   And one of the reasons that you thought option two was

11   the best option, and the reason you needed this longer time

12   frame option was because, and I am looking down to the third

13   sentence, Lotus and Microsoft opted to create 32 bit

14   solutions early this year at the expense of having

15   additional 16 bit releases. They are allocating significant

16   development time between releases to allow significant

17   advances. To compete with these forces we must at least

18   allocate similar time frames, right?

19   A.   Right.

20   Q.   In 1994, and we talked about this a little bit earlier,

21   WordPerfect, Novell WordPerfect was devoting significant

22   resources to upgrading the WordPerfect 6.0 product to

23   WordPerfect 6.1, correct?

24   A.   Yeah.

25   Q.   And that shipped in December of 1994, correct?

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1   A.   Right.

2   Q.   Right.

3   A.   I mean, this is like the age old trade off between

4   timing around an unknown operating system release and new

5   functionality that you could add and say -- it is a tough

6   trade off to make and to try to guess.

7   Q.   If we could just turn back to proposal three for one

8   quick second. This is the ship WordPerfect for Windows in

9   September of 1995 and then the rest later. One of the

10   advantages for doing it this way was it would buy additional

11   time for Quattro Pro and GroupWise, correct?

12   A.   Yes.

13   THE COURT: I think, and I may be wrong, GroupWise

14   was an e-mail product; is that right?

15   THE WITNESS: Yes. It was e-mail. This is

16   referring to additional time for Quattro to add

17   functionality and to add features as opposed to

18   distinguishing WIN 95 and integrate new shared code stuff.

19   BY MS. NELLES

20   Q.   Releasing PerfectOffice was a big undertaking, wasn't

21   it?

22   A.   Yes.

23   Q.   You had overall management responsibility for about 300

24   developers working on that project?

25   A.   Yes.

 1   Q.   As the director of PerfectOffice you were responsible

 2   for keeping WordPerfect and Quattro Pro and these other

 3   products, several other products together into a suite,

 4   right?

 5   A.   Yes.

 6   Q.   And you were responsible for delivering PerfectOffice

 7   on time, right?

 8   A.   Yes.

 9   Q.   And in order to release PerfectOffice on time you kept

10   schedules for completing development of all the parts of the

11   PerfectOffice suite, right?

12   A.   Why.

13   Q.   You testified a little bit about that earlier?

14   A.   Yes. Every week we met on it and we kept track of it

15   all the time.

16   Q.   And at these weekly meetings you had these huge gant

17   charts; is that right?

18   A.   Yes.

19   Q.   And to assess where people were headed and what was the

20   critical path?

21   A.   Yes.

22   Q.   Where were those charts kept?

23   A.   There was a package -- I think it was called

24   timeline -- that we just kept updating it. It was not

25   completely automated. People would send e-mails in of their

1   status and then Marcus Lund was the guy that was in charge

2   of it, so he would enter them or do whatever it took to get

3   the gant chart up to date.

4   Q.   Did you have access to those charts?

5   A.   Did I have access to the charts? I met with Marcus,

6   you know, probably a couple times a week to talk about the

7   progress and where we were at.

8   Q.   Did you have your own copy of the chart, sir?

9   A.   No.

10 Q.   Was the progress of the shared code team in creating

11 the PerfectFit file open dialogue for Windows 95 reflected

12 in the chart?

13 A.   Yes.

14 Q.   It was?

15 A.   Yes.

16 Q.   When was the last time you have seen one of those

17 charts?

18 A.   Back in '95.

19 Q.   You have not seen one in preparation for your

20 testimony?

21 A.   I have not.

22 Q.   You remember, and we discussed it a little bit earlier,

23 you remember being deposed in this case in March of 2009,

24 right?

25 A.   Yes.

1   Q.   At that deposition, just like today, you were asked a

2   lot of questions, right?

3   A.   Yes.

4   Q.   One of the questions that you were asked was do you

5   have any recollection as to the reasons for the delay in

6   shipping the WordPerfect product for Windows platform? Do

7   you recall that?

8   A.   Yes.

9   Q.   I'm going to point you to your deposition, and do you

10   have that, the transcript?

11   A.   I have that.

12   Q.   Go to page 89 and start at line 10. Let's take a look

13   at that.

14   A.   Okay.

15   Q.   You were asked if you recalled the reasons for the

16   delay in shipping the WordPerfect product for Windows

17   platform and you said there were a lot of reasons, didn't

18   you?

19   A.   Yes.

20   Q.   And, in fact, you even had nightmares about the delays,

21   right?

22   A.   That is what I am smiling about, yeah.

23   Q.   And you were asked to recall what those reasons were.

24   A.   Yes.

25   Q.   And you noted integration across different groups,

581

1   right?

2   A.   Yes.

3   Q.   That was one of the reason for the delay in shipping

4   PerfectOffice for Windows 95, right?

5   A.   Yes. PerfectFit, shared code stuff.

6   Q.   And that there were about 300 people involved?

7   A.   Yes.

8   Q.   And another reason was that you had the job of going to

9   a new operating system, right?

10   A.   I am sorry. Where are you reading?

11   Q.   At lines 20 to 22.

12   A.   Sorry. Yes.

13   Q.   And you had the job of coordinating the next features

14   that were being incorporated in each one of the products,

15   right?

16   A.   Right.

17   Q.   Plus adding integration steps?

18   A.   Yes.

19   Q.   So that there was going to be a similar look and feel

20   between the applications?

21   A.   Yes.

22   Q.   And pulling it all together, right?

23   A.   Yes.

24   Q.   And there were many groups and many teams and many

25   responsibilities, right?

1   A.   Yes.

2   Q.   And that was a challenge, wasn't it?

3   A.   Yes.

4   Q.   It was one of the most challenging things that you have

5   ever had to do, right, to pull all of that together and get

6   the product shipped?

7   A.   Sure. It was one of the most challenging --

8   Q.   That is what you testified to in 2009 when you were

9   asked what your recollection was concerning the delay in

10 shipping WordPerfect?

11 A.   Yes.

12 Q.   The WordPerfect product for the Windows 95 platform,

13 right?

14 A.   Yes.

15 Q.   PerfectOffice?

16 A.   Yes.

17 Q.   Sir, do you recognize this document?

18 A.   Yes.

19 Q.   It is Exhibit 635. What is this document?

20 A.   It looks like it is an e-mail from me to Bruce and

21 Steve, and I can't see the rest, talking about linguistics

22 and technologies.

23 Q.   Who is it directed to?

24 A.   Steve Michael was the director of WordPerfect for

25 Windows and Bruce Brereton, my boss, he was the vice

1 president of business applications.

2 Q.   The subject is you can lead a horse to water but it can

3 only drink so much?

4 A.   That was creative.

5 Q.   And there were a lot of perspectives about how to put

6 together the PerfectOffice product, right?

7 A.   Yes.

8 Q.   And you were responding in this e-mail to someone's

9 perspective?

10 A.   Yes.

11 Q.   If you go down into the third paragraph, third full

12 paragraph --

13 A.   Alan Hansen was over linguistics, yes.

14 Q.   You respond, if you believe my priorities are messed

15 up, please let me know. Here are my current unresolved

16 issues for Storm. This is in March of '95, right?

17 A.   Yes.

18 Q.   Can you tell the jury in March of 1995 what you believe

19 the priorities were, the unresolved issue for Storm?

20 A.   GroupWise deliverables, the network integration, third

21 party integration, U.I. consistency, the shared code kind of

22 stuff, desktop strategy, oh, tapestry stuff, sure, info

23 central strategy to work on, the new help system, Quattro

24 Pro, use-ability findings, and last linguistic features in

25 Storm.

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1   Q.   Let's go back to number four. U.I. consistency

2   progress. This is what you said was the shared code?

3   A.   Yes.

4   Q.   It says additional pushes are needed in a few areas but

5   good progress is being made, right?

6   A.   Yes.

7   THE COURT: Again, I just want to make sure that I

8   am not confused. U.I. stands for user interface?

9   THE WITNESS: Yes, user interface, and it is just

10   saying that they there were and --

11   THE COURT: No. That is fine.

12   BY MS. NELLES

13   Q.   Mr. Gibb, you were not one of the developers who wrote

14   code for any part of PerfectOffice, right?

15   A.   During this release cycle I was not. I wrote the

16   border stuff before for 6.0.

17   Q.   But not for this product?

18   A.   Not for this release, right.

19   Q.   The file open dialogue feature that was being, and we

20   have talked about this, that was being developed by the

21   shared code team, right?

22   A.   Yes.

23   Q.   And that was Tom Creighton, who was one of the --

24   A.   Yes.

25   Q.   And Mr. Corral and Mr. Richardson were among the

885

1   members of the shared code team responsible for completing

2   the file of the dialogue feature, right?

3   A.   Yes.

4   Q.   You don't know the details of what was causing the

5   shared code team to be late in completing?

6   A.   I don't know with a lot of depth, I don't.

7   Q.   Your intrest was in getting the shared code team to

8   finish their work on PerfectFit and the files and dialogue

9   so that Novell could get PerfectOffice for Windows 95 out

10   the door; isn't that right?

11   A.   Yes.   That was my whole drive.

12   Q.   And the shared code team had a lot of reasons about why

13   PerfectFit open dialogue was late; isn't that right?

14   A.   Like I said, the specifics of that, you know, I didn't

15   get involved in any great detail. I went to review meetings

16   where they talked about it and that is where I was exposed

17   to the ideas like name space files and things like that, but

18   certainly the details I don't know in depth.

19   Q.   Right. In 2009 at least when you testified in your

20   deposition you noted that the shared code team had more than

21   one grievance?

22   A.   I think they had -- sure, they had a lot of things to

23   address, especially early on to build it because it was a

24   new operating system. It was a new operating system and

25   they were the layer at the top of the operating system, so

1 they had a lot to do.

2 Q.   And you never communicated directly with anybody at

3 Microsoft technical specifications for Windows 95?

4 A.   I did not. That was the expertise within the shared

5 code group and that is who talked to them.

6 Q.   Other than what members of the shared code team may

7 have told you, you have no personal knowledge of what

8 Microsoft did or did not do in 1993 or 1994 or 1995 to

9 provide documentation or support for the name basic

10 extension APIs or for any other feature of --

11 A.   Yeah, I was not at that level.

12 Q.   Sir, you testified earlier today that WordPerfect was

13 middleware. Do you recall that?

14 A.   Yes.

15 Q.   That was not your testimony in 2009, was it?

16 A.   I thought I did. Maybe not.

17 Q.   Let's take a look at your testimony on page 105 of your

18 deposition.

19 A.   Okay.

20 Q.   It is going to start -- the question starts at line 20

21 and then carries over to the next page. The question you

22 were asked was do you recall any discussions during your

23 time either at WordPerfect or Novell about Novell --

24 about -- strike that -- about WordPerfect evolving from a

25 standalone word processor into a middleware layer that could

1   provide services to other applications?

2   What was your answer, sir?

3   A.   Do you want me to read it? We talked about that. I

4   mean, you know, did it ever happen? In a lot of ways, you

5   know, 6.0 and 6.1 were almost middleware. I mean, it had --

6   you could drop in a spreadsheet or an OLE application,

7   tables included calculation capabilities. There was a mini

8   graphics package in there. It was the discussion why do we

9   need a suite when WordPerfect is everything? Certainly that

10 was discussed as one of the, you know -- it was discussed,

11 yeah. I hate it when they put in the you knows. Yeah.

12 Q.   But not much beyond discussing and you say, no, it

13 wasn't. I guess there were a lot --

14 A.   No. The question was would it evolve. Wasn't that the

15 question?

16 Q.   You were asked --

17 A.   Do you recall any discussion during your time at

18 WordPerfect or Novell -- strike that -- WordPerfect evolving

19 from a standalone word processer into a middleware layer.

20 It already had support for perfect scripting so that you

21 could drive it, and a lot of applications did, and we had

22 partners, like over 1,000 partners that did it all the time.

23 It always did. I guess maybe I didn't understand, but as

24 far as evolving into something different it wasn't, but it

25 was certainly used by partners.

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 1  Q.    Sir, what general purpose applications ran on

 2  WordPerfect without calling the underlying APIs imposed by

 3  Windows?

 4  A.    You know, I was exposed to those when they had

 5  problems, so I was most aware of when --

 6            THE COURT:  When you say partners, are they your

 7  customers?

 8            THE WITNESS:  No.  These were like somebody who

 9  would build a specialized document management package, they

10  would build, you know -- they would do their own spexizliaed

11  thing on top of WordPerfect.

12            THE COURT:  I see.

13            THE WITNESS:  Like I said, when I say over 1,000,

14  these are companies that would partner with us and build

15  stuff.

16            THE COURT:  What I am not clear on, is are these

17  ISCs or are they companies who were using WordPerfect as a

18  world to live in?

19            THE WITNESS:  That is a good question.  I don't

20  know the break up of it, because it was really -- I was

21  involved with the technology to build it, so it was a big

22  deal to put the perfect scripting in there and to tie it on

23  an individual basis, so that our partners could build their

24  cutsom things on top of it.  Like I said, I was not involved

25  with the sale to the different companies.
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 1              THE COURT:  Please don't draw any inference,

 2     ladies and gentlemen, from that fact that I ask questions.

 3     I have to decide things as we go along, and these are things

 4     that I have to understand that --

 5     BY MS. NELLES

 6     Q.   I am sure you gave an answer to the question I asked

 7     but I am not sure I got it.  I am sure you said it.  I am

 8     just not sure I heard it.

 9          What general purpose application ran on WordPerfect

10     without calling the underlying APIs exposed by Windows?  Can

11     you think of any?

12     A.   The applications that called it?

13     Q.   General purpose applications.  What general purpose

14     applications ran on WordPerfect without calling the

15     underlying APIs exposed by Windows?

16     A.   I'm sorry.  Without calling the underlying stuff?

17     Q.   Correct.

18     A.   I don't know for sure.  The document management package

19     was my only call for an example.  It was like an add-on that

20     they ran on top -- is that what you're asking?

21     Q.   I am asking if you can identify any general purpose

22     applications that ran on top of WordPerfect without calling

23     the underlying APIs that were exposed by Windows?

24     A.   I don't know the details of any of those applications.

25     I just know there were thousands of partners that did
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1   thousands of things.

2   Q.   Did any third party ever write a spreadsheet

3   application that ran on top of WordPerfect?

4   A.   I don't know of any. Certainly table had some

5   capabilities in there and we actually did some formula

6   calculations in a limited form, but I would be surprised if

7   they did a spreadsheet.

8   Q.   Did any third party ever write a word processing

9   application that ran on top of WordPerfect?

10   A.   I think they did a lot of pieces where they would use a

11   piece of WordPerfect to handle little chunks of word

12   processing inside of something or, inversely, feed it from a

13   database into a document, but I don't -- I think they would

14   do some of that.

15   Q.   Isn't it true, sir, that the only product that ran on

16   top of WordPerfect were products that either amended the

17   functionality of WordPerfect or automated the functionality

18   of WordPerfect?

19   A.   I don't know. There were thousands of applications. I

20   don't know. I don't know.

21   Q.   You're not testifying today, are you, that WordPerfect

22   could have replaced the Windows operating system, are you?

23   A.   No, it was not meant to replace it, but I'm saying some

24   people lived in it, so to them it was the world. That's

25   all.

1   MS. NELLES: Just one moment.

2   THE COURT: Sure.

3   BY MS. NELLES

4   Q.   I am almost done here, sir. Could we go back to DX-272

5   for just one moment. This is the quarterly international

6   conference meeting. Do you remember this document?

7   A.   Yes.

8   Q.   Let's go to page 19.

9   A.   Okay.

10   Q.   The fourth bullet from the top -- I'm sorry. I am

11   coming from the bottom. My mistake. The fourth bullet up

12   from the bottom.

13   A.   Okay.

14   Q.   It says development is now starting to work overtime on

15   Storm, PerfectOffice. We're doing all possible to avoid any

16   delays in delivery of product in the December-January time

17   frame.

18   Do you see that?

19   A.   Yes.

20   Q.   In June of 1995 what Novell is saying here, right, is

21   that you were starting to work overtime and cannot deliver

22   until December '95 or January '96, and that is four to five

23   months after Windows 95 is released?

24   A.   Yes.

25   Q.   Okay. Mr. Gibb, what you said before our break was

1   that you and Novell were faced with the age old trade off.

2   You could get out a product more quickly and sacrifice

3   features, or you could delay until 1996 and try to build a

4   cooler product?

5   A.   Yes.

6   Q.   Such us a custom file open dialogue?

7   A.   Yes.

8   Q.   What Novell chose, when faced with that choice, was to

9   wait until 1996 to try to make the cooler product; isn't

10   that right?

11   A.   No.   They actually chose -- of the three options I gave

12   them, they chose number one.

13   Q.   Ultimately, sir, isn't it true that the choice was made

14   to wait until 1996 to make the cooler product?

15   A.   No.   It was not a choice made to do that.   It was not

16   so that we could add features.   What happened is we were on

17   a critical path and things didn't get done in time to make

18   that earlier date.   We wanted to make the earlier date.

19   That was the choice that was mandated back to us.

20   Q.   Okay.

21   MS. NELLES: That is all that I have for now.

22   THE COURT: Any questions, Mr. Schmidtlein?

23   MR. SCHMIDTLEIN: Yes.

24   THE COURT: I think if it is okay with everybody,

25   we will try to go until about 20 of or a quarter of.

1   Is that okay with the court reporter?

2   COURT REPORTER: That is fine, Judge.

3   THE COURT: Another 15, 20 minutes.

4   Okay with you? Okay with you all?

5   MS. NELLES: Absolutely, Your Honor.

6   REDIRECT EXAMINATION

7   BY MR. SCHMIDTLEIN

8   Q.   Mr. Gibb, you were just asked a question about whether

9   what you were trying to do when you decided to hold off and

10   ship the product in 1996 was a decision to try to make a

11   cooler product.

12   A.   More features kind of a thing, yeah.

13   Q.   Was the functionality that you were trying to add, the

14   file open dialogue, was or was not that functionality that

15   had been part of prior releases of WordPerfect?

16   A.   Yeah. It was not considered extra. It was considered

17   core.

18   Q.   Did you think that you had any choice but to delay the

19   release to add functionality, core functionality that had

20   been part of prior releases?

21   A.   We didn't see an option really. I mean, obviously

22   there is an option, but it would be hugely painful.

23   Q.   In some ways your life would have been easier if you

24   had just cut out all of this --

25   THE COURT: And he would have been without a job.

1   THE WITNESS: Yes, it would have been easier.

2   BY MR. SCHMIDTLEIN

3   Q.   DX-272, which I think you were just shown, and page 19,

4   and I think you were just shown by counsel for Microsoft the

5   fourth bullet point from the bottom.

6   A.   Okay.

7   Q.   The one that says development is now starting to work

8   overtime on Storm. We're doing all possible to avoid any

9   delays for delivery of product in the December-January

10 timeframe.

11   Now, the date on this document or the date of this

12 meeting is June 13 to June 16, 1995; is that right?

13 A.   Yes.

14 Q.   I think we looked at earlier today the panic mode memo

15 that you were part of authoring; is that correct?

16 A.   Yes. That was in July.

17 Q.   That was in July of 1995?

18 A.   Right.

19 Q.   As of June of 1995 was it apparent to you that the

20 shipment date had already slipped, right?

21 A.   Yes.

22   THE COURT: The shipment date of WordPerfect?

23 BY MR. SCHMIDTLEIN

24 Q.   I am sorry. The shipment date for PerfectOffice 95.

25 A.   Well, certainly -- yeah. We had changed and it looked

1   like we were not going to make it, yes.

2   Q.   And this document reflects that you knew that in June

3   of 1995, right?

4   A.   Yes.

5   Q.   Can we go back to Defendant's Exhibit 259?

6   This is the WordPerfect for Windows Eliot marketing

7   requirement document, right?

8   A.   Yes.

9   Q.   And just to sort of get everybody back on the same

10 page, this was a version of WordPerfect that was going to

11 run on the version of Windows that came out prior to Windows

12 95?

13 A.   Right.

14 Q.   And the product that WordPerfect was developing at that

15 time was Windows 6.1 or 6.0?

16 A.   This would be 6.0.

17 Q.   This document didn't have to do with PerfectOffice 95?

18 A.   No. This was a 16 bit product.

19 Q.   I think you were asked some questions about whether

20 these prior versions had been slow in bugging.

21   Do you recall that?

22 A.   Yes.

23 Q.   Was WordPerfect 6.0 very well reviewed?

24 A.   No. I mean, well it was on features and functionality,

25 but to your point it was reviewed as having some bugs and

1   slow.

2   Q.   Were those bugs corrected in subsequent releases?

3   A.   Yes.   6.0-A was much better.   It was improved, the

4   speed on the low memory machines and also fixed some of the

5   core things that customers had found.

6   Q.   Was bugginess or slowness in running an issue when you

7   released the PerfectOffice 3.0 product?

8   A.   It was not pointed out anywhere as being -- I don't

9   think we ever said we were faster than others, but it was

10   not pointed out as slower either.   It is sort of a no op.

11   COURT REPORTER: A what?

12   THE WITNESS: No op, meaning not a plus or a

13   minus.

14   BY MR. SCHMIDTLEIN

15   Q.   Now, I think at the very beginning of the examination

16   you were shown a couple of slides that were used by

17   Microsoft's counsel during opening argument.

18   MR. SCHMIDTLEIN: Do you have those?

19   THE COURT: Do you want to put them up?

20   MS. NELLES: 13-A.

21   MR. SCHMIDTLEIN: 13-A.

22   BY MR. SCHMIDTLEIN

23   Q.   I believe you were asked some questions about whether

24   WordPerfect was somehow late getting to the Windows

25   platform.

1   Do you recall those questions?

2   A.   Yes.

3   Q.   Now, this chart cuts off in 1991, right?

4   A.   Right.

5   Q.   The events that we're talknig about in this case and

6   release of PerfectOffice 95, when did those events take

7   place?

8   A.   Well, the ones we're talking about are in '94 and '95

9   and '96.

10   Q.   Out here, right?

11   A.   Right.

12   MR. SCHMIDTLEIN: Can you put up number 27,

13   please.

14   Thank you very much.

15   BY MR. SCHMIDTLEIN

16   Q.   This relates to the release scheduled for suites. Do

17   you recall being asked by Microsoft's counsel about that?

18   A.   Yes.

19   Q.   I believe you were asked some questions about whether

20   WordPerfect or Novell was late in getting the suites.

21   Do you remember that?

22   A.   Yes.

23   Q.   Again, you see the period focused on the '90, '91, '92,

24   '93 and '94, correct?

25   A.   Yes.

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1   Q.   When did Novell release PerfectOffice 3.0?

2   A.   Right there. I think it was '94, yes.

3   Q.   December of 1994?

4   A.   Right.

5   Q.   So by the time of 1995, the period leading up to the

6   Windows 95 release, Novell had released a complete suite

7   product, correct?

8   A.   Yes.

9   Q.   In fact, one of the reasons for the merger, the

10   acquisition of Quattro Pro, was that to assist you in better

11   putting together and marketing a suite product?

12   A.   Absolutely. I mean, it would make it consistent and

13   make it great and user friendly.

14   MR. SCHMIDTLEIN: Can we see Defendant's Exhibit

15   267?

16   BY MR. SCHMIDTLEIN

17   Q.   I believe you were asked some questions about this

18   document and in particular page 2. At the very top, the

19   first line, I think you were asked questions about we don't

20   have an established position in the suite market.

21   A.   Right.

22   Q.   Do you see that?

23   A.   Yes.

24   Q.   And if you go down to the very bottom right-hand corner

25   of that page, what is the date there?

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 1   A.    1993.

 2   Q.    And, it is true, that in 1993 this was prior to the

 3   merger that acquired Quattro Pro, correct?

 4   A.    Yes.

 5   Q.    I think as we just looked at, in December 1994 you had

 6   released a version of PerfectOffice, correct?

 7   A.    Yes.

 8   Q.    Of the suite of products that you have talked about,

 9   there was word processing, there were spreadsheets, there

10   were presentations, which was sort of a powerpoint type of

11   product; is that right?

12   A.    Yes.

13   Q.    Do you know which of those products was sort of the one

14   that drove the purchase more than others?

15   A.    Well, the information that we had was the word

16   processing was number one, the spreadsheet was number two,

17   and then every thing else was a distant third and fourth

18   kind of stuff.  But certainly it was the word processing and

19   spreadsheet, and we believed the word processing was the

20   most important.

21   Q.    If you will go to page 5 of this document, under

22   product description it says the WordPerfect suite comprises

23   the best in Windows applications.  It redefines traditional

24   suites by incorporating personal time management, group

25   calendaring and scheduling, and the WordPerfect suite is
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1 anchored by the world's most powerful and customizable word

2 processor.

3 A.   Yes.

4 Q.   Is that accurate? Is that how you felt about the

5 product?

6 A.   Absolutely. WordPerfect was the anchor. No question.

7 Q.   Look at Defendant's Exhibit 4.

8   I believe you were asked some questions on this

9 document. You were asked questions in this document about

10 the amount of resources that were being devoted to Chicago

11 or the PerfectOffice 95 product.

12   Do you remember that?

13 A.   Yes.

14 Q.   Turn to the first page. Just to refresh everybody,

15 this is October of 1994, right?

16 A.   Yes.

17 Q.   I think you can barely see that down in the left-hand

18 corner.

19 A.   Yes. August.

20 Q.   Yes. If you go to the top of this first -- I'm sorry.

21 It is the first page and there are some key points. We are

22 making new investments in the Chicago development.

23   Was that true in August of 1994?

24   THE COURT: I think we are going to stop around a

25 quarter of.

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1   Did the new reporter just come in? That is good.

2   THE WITNESS: Yes.

3   BY MR. SCHMIDTLEIN

4   Q.   Okay. If you go to the second page under business

5   applications, the very first bullet there says eliminate

6   resources on WordPerfect for V.M.S.

7   What does that mean?

8   A.   That was one of the cross platform, you know, versions

9   that we were releasing was V.M.S. So I think they were

10   removing them and moving them to PerfectOffice for Chicago.

11   Q.   Down under consumer products, and the second bullet

12   point there, it says share at least 80 percent of the work

13   code in platform and OSs. Platform team with responsibility

14   to deliver the Mac and Windows teams code that is developed

15   to run on either Mac or Windows 16 of 32 bit.

16   What does that refer to?

17   A.   I am not positive. I think what that means is that the

18   code between the platforms was a shared code, so the shared

19   code group would develop, you know, all of the things that

20   interfaced with the operating system, and between platforms

21   is the engine, the team that I was over for a time, where

22   you would write the core word processing that would then be

23   shared across all the different operating systems.

24   Q.   When you were beginning to move additional resources

25   over to the Chicago or the Windows 95 projects, were you

902

1   starting from scratch to develop the PerfectOffice suite 95?

2   A.   No.   I mean, like I said, the engine was developed for

3   all those other operating systems that were already 32 bit,

4   so all of those opearting systems were already there.   So

5   when we developed -- you know, we worked on Windows 16 bit,

6   but we always worked on 32 bit also.   Every other operating

7   system was actually 32 bit that we used.   We developed --

8   most of the code was 32 bit.

9   Q.   You were shown some documents I think from sort of the

10   late '94 early '95 period that talked about various shipment

11   dates.   Was there uncertainty certainly in 1994 as to when

12   Windows 95 was going to ship from your perspective?

13   A.   Sure.   It was a huge risk and unknown.   Like I said, I

14   think initially it was targeted in '92 or '93.   I mean, they

15   were years off, right.   It was very hard to predict.

16   Q.   At some point did you all believe that in fact Windows

17   was going to ship later than August of 1995?

18   A.   We did.   We had some expectation that it might ship

19   closer to Comdex 95.

20   Q.   That would have been in the fall of --

21   A.   In the November time frame.

22   Q.   During this whole time period was developing a product

23   for Windows 95 the number one priority within the business

24   applications division?

25   A.   Absolutely.

1   Q.   Now, you have spent some time first talking with me and

2   then talking with counsel for Microsoft about Quattro Pro

3   and various issues with Quattro Pro, or estimates about when

4   the Quattro Pro product was going to be delivered.

5   Can you explain whether or not there was any

6   significant new added functionality that you thought was

7   necessary to be added to Quattro Pro for the PerfectOffice

8   suite 95 version?

9   A.   No. I mean, the thing that was critical for Quattro

10   Pro and for all of these, it was windows 95 first, and then

11   for the suite to enable it consistent, so the features -- we

12   would have feature wars for the previous ten years where

13   they would implement something and then we would implement

14   something, and then they would copy what we did, and we

15   would use the version of what they did, and so it was very

16   much about use and integration and being there on the

17   platform and it was a much higher priority than a feature

18   war. Yeah. We done feature wars for a long, long time.

19   That was not the priority.

20   Q.   We looked at some documents where -- do you remember

21   the documents we looked at that had sort of the one, two and

22   three rankings about, you know, which things were risks?

23   A.   Yes.

24   Q.   And I believe in some of those documents Quattro Pro

25   was listed as the number one risk for being late?

904

1   A.   Yes.

2   Q.   Sitting here today, those documents were done during

3   the development phase, right?

4   A.   Yes.   The early planning stages, yes.

5   Q.   Did Quattro Pro end up being a critical path on the

6   PerfectOffice suite 95 development?

7   A.   No.   I mean, absolutely not.   It was shocking actually,

8   and they had a lot of challenges to do, but every week, week

9   after week it was shared code.   Shared code.   It was not

10   Quattro Pro.

11   Q.   If we can take a look --

12   THE COURT: How much longer are you going to be?

13   A while?

14   MR. SCHMIDTLEIN: I am going to try to be --

15   THE COURT: We can stop here and come back.   There

16   will also be recross.

17   MR. SCHMIDTLEIN: Why don't we take a break now.

18   THE COURT: We'll take a short break and come back

19   a little after 12:00.

20   (Recess)

21

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