

1 THE COURT: Let's get the jury.

2 MR. JARDINE: Your Honor, were you able to watch the
3 Baltimore Ravens last night?

4 THE COURT: No. I saw the highlights after. I was
5 a happy person, unlike last Tuesday a week ago.

6 (Jury brought into the courtroom.)

7 THE COURT: Mr. Tulchin, cross?

8 CROSS EXAMINATION

9 BY MR. TULCHIN:

10 Q. Mr. Frankenberg, good morning.

11 A. Good morning.

12 Q. Good to see you again.

13 A. Good to see you.

14 THE COURT: You're under oath, Mr. Frankenberg.

15 THE WITNESS: Thank you, Your Honor.

16 MR. TULCHIN: We had a very nice time at his
17 deposition, Your Honor, a couple years ago.

18 Q. Mr. Frankenberg, you still have that notebook in front
19 of you, sir?

20 A. Yes, I do, sir.

21 Q. These were the documents that your lawyer showed you on
22 direct. The second document is Plaintiff's Exhibit 153. And
23 that's the minutes of the meeting of the board of directors
24 of Novell, March 20, 1994. Do you have that, sir?

25 A. Yes, I do.

1 Q. You weren't intending, on direct, to tell the jury
2 about what happened at that meeting, were you, sir?

3 A. No, I was not.

4 Q. You were not present at the meeting?

5 A. I was not present at the meeting.

6 Q. This was before you even agreed to join Novell?

7 A. That's correct.

8 Q. So that's March 20. And, in fact, the announcement of
9 the deal to buy WordPerfect Corporation and Quattro Pro from
10 Borland came the next day, March 21, correct?

11 A. That may be right. Yes, sir.

12 Q. Okay. And you testified on direct that Mr. Gates never
13 told you that, in October, 1994, he had decided to withdraw
14 support for the name space extension API's. Do you recall
15 that testimony?

16 A. Yes, I do.

17 Q. Now, you're certainly not implying, are you,
18 Mr. Frankenberg, that other employees of Microsoft told other
19 employees of Novell about that decision?

20 A. I'm sure they did, sir.

21 Q. And, in fact, Novell was told by Microsoft of
22 Mr. Gates' decision very promptly after the decision was
23 made, right?

24 A. That may be the case. I don't know that for sure.

25 Q. I think you said on direct that you don't recall

1 hearing about that decision until sometime in 1995, correct?

2 A. Correct.

3 Q. But you're aware now, are you not, that in October,
4 within a week or ten days or so of the decision, Novell was
5 told about it?

6 A. That may well be the case. I don't know that
7 personally.

8 Q. Okay. It's just that that information didn't get up to
9 you until sometime months and months later, fair?

10 A. I think that's fair, yes.

11 Q. And also, with respect to the documents in front of
12 you, there were some questions about Plaintiff's Exhibit 268.
13 That's the license agreement between Novell and Netscape. Do
14 you recall those questions?

15 A. I do, yes.

16 Q. Now, I don't think you ever said, on direct
17 examination, when it was that this agreement was entered
18 into, did you, sir?

19 A. No, I did not.

20 Q. Could you -- maybe we could bring up page 11 of
21 Plaintiff's Exhibit 268. There, on page 11, is the signature
22 of Steve Markman of Novell, correct?

23 A. Correct.

24 Q. And he was executive vice-president at the time?

25 A. Yes, he was.

1 Q. And that contract with Netscape was signed in February
2 of 1995, correct?

3 A. That's correct.

4 Q. Okay. So, just to be clear on this, you weren't
5 implying during your direct examination, were you,
6 Mr. Frankenberg, that you had this deal with Netscape before
7 PerfectOffice 3.0 was released, which you said was December
8 23, 1994?

9 A. I was not implying, that, no.

10 Q. In fact, the deal took place a couple months later?

11 A. Yes.

12 Q. All right. And when you said on direct that you
13 bundled Navigator, Netscape's browser called Navigator, with
14 PerfectOffice; in fact, that didn't happen with PerfectOffice
15 3.0, did it?

16 A. It was available with PerfectOffice 3.0, yes.

17 Q. I'm asking whether it was bundled with PerfectOffice
18 3.0, which was the word that you used on direct.

19 A. If I said that, I may have been in error, yes.

20 Q. Thank you, sir. I wonder if you could just go back,
21 and if I could direct your attention to the last three years
22 or so, when you worked at Hewlitt Packard, and I think you
23 said, sir, that from January, 1991, until around March
24 of '94, you were running Hewlitt Packard's PC business,
25 correct?

1 A. That's correct.

2 Q. And that was the business of making personal computers,
3 right?

4 A. Yes.

5 Q. Just prior to the time that you started running that
6 business, Hewlett Packard had been using Microsoft as a
7 supplier of operating systems, correct?

8 A. That's correct.

9 Q. And, in the '80's, Hewlett Packard licensed Microsoft's
10 MS DOS operating system on HP's PC's?

11 A. Also correct.

12 Q. Right. And when you started running that business in
13 January of 1991, it was your view, right at the outset, that
14 the future of the PC business lay in graphical user
15 interfaces, correct?

16 A. Correct.

17 Q. It was your view, right at the outset, that the future
18 of HP's business, the PC business that you were running,
19 depended on acquiring a graphical user interface to put on
20 the PC's; isn't that right?

21 A. That's right.

22 Q. And, in fact, it was your view that it was vital for
23 Hewlett Packard to offer Windows on all its PC's?

24 A. That's correct.

25 Q. And, during the time that you ran the PC business for

1 Hewlitt Packard, the company went from being the 24th or 25th
2 largest PC maker to being something like number 7, right?

3 A. That's also correct, yes.

4 Q. And you said in the past that that success, in the PC
5 business, was something that you got some credit for?

6 A. I did, as well as the team that I worked with, yes.

7 Q. Right. And your success in selling PC's for Hewlitt
8 Packard, at least in part, led you to get the offer from
9 Novell to become the president and then CEO?

10 MR. JOHNSON: Objection as to why they offered him
11 the job. How would he know?

12 THE COURT: What's sauce for the goose is sauce for
13 the gander. Sustained.

14 MR. TULCHIN: I knew we would come across that rule
15 sooner or later.

16 Q. BY MR. TULCHIN: Mr. Frankenberg, can we agree, sir,
17 that Hewlitt Packard's success in moving from 24th or 25th,
18 to 7th in the PC business was attributable in part to the
19 fact that Hewlitt Packard installed Windows on all its
20 PC's?

21 A. That's true.

22 Q. And you said that you couldn't have done it if you
23 hadn't used Windows?

24 A. That's true.

25 Q. And you also said that you recognized, in this same

1 period, from January, '91, until March, '94, when you left
2 Hewlett Packard, that users across the United States and
3 elsewhere were clamoring for Windows?

4 A. That's true.

5 Q. That was something that lots of people in the PC
6 business recognized in that same period, correct?

7 MR. JOHNSON: Objection.

8 THE COURT: Yeah. I'm going to overrule that. I
9 think, in terms of the industry, what the industry knew, if
10 you knew from what the industry knew. I mean, obviously, you
11 can't say what other people thought, but you can say what you
12 knew of the industry. You can say that.

13 THE WITNESS: So, yes, it was generally known in the
14 in the industry that Windows was required for success in the
15 business.

16 Q. BY MR. TULCHIN: Mr. Frankenberg, the fact that
17 people -- that you recognized in the early '90's that
18 customers were clamoring for Windows, that was, in large
19 measure, a result of Windows 3.0, which Microsoft had
20 released in May of 1990, correct?

21 MR. JOHNSON: Objection. Now we've got people
22 clamoring rather than the industry clamoring.

23 THE COURT: Overruled. I think people know what's
24 going on. Go ahead.

25 THE WITNESS: Mr. Tulchin, could you please repeat

1 the question. Sorry.

2 Q. BY MR. TULCHIN: Yes. Let me try it again. When you
3 were running the PC business at Hewlett Packard, was it your
4 view that the popularity of Windows and the reason that you
5 wanted Windows on all your PC's was, to a great extent, a
6 result of Windows 3.0, which had come out in 1990?

7 A. Yes, and the subsequent minor releases, yes.

8 Q. Including Windows 3.1, which came out in '91. Is that
9 fair?

10 A. Yes, sir.

11 Q. And was it also the case, Mr. Frankenberg, that, in the
12 early 1990's, not just when you were at Hewlett Packard, but
13 into the time that you were CEO of Novell, that the computer
14 business and the software business, both, were very
15 competitive businesses?

16 A. Yes, they were.

17 Q. And the software business, in particular, was, I think
18 we might say, a dynamic industry, correct?

19 A. Yes, it was.

20 Q. Things were changing all the time?

21 A. Yes.

22 Q. And sometimes things changed very fast, wouldn't you
23 say?

24 A. Yes, they did.

25 Q. And if a company wasn't nimble enough to see the

1 changes coming, that company could be left behind. Is that a
2 fair statement?

3 A. Yes, it is.

4 Q. And you recognized, when you joined Novell, that if
5 Novell wasn't able successfully to adapt to the rapid change
6 which took place in the industry, the profitability, the
7 revenues, the future of Novell might be adversely affected?

8 A. Yes.

9 Q. Could you tell the jury, Mr. Frankenberg, what a form
10 10-K is?

11 A. A form 10-K is the annual report of your financial
12 results filed with the SEC, the Securities & Exchange
13 Commission.

14 Q. Right. And this is filed with the Securities and
15 Exchange Commission in Washington, D.C., correct?

16 A. Yes.

17 Q. And this is an official statement by the company which
18 is filed publicly so that the company's stockholders can get
19 information about the company and prospective stockholders,
20 people who might want to buy the stock, can also get
21 information; is that right?

22 A. Yes, it's correct, as well as others. It's a public
23 document.

24 Q. And during the years that you were CEO, Novell was a
25 public company?

1 A. Yes, we were.

2 Q. Mr. Frankenberg, let me hand you what's been marked as
3 Defendant's Exhibit 380. And I wonder if you want to just
4 tell the jury what that is.

5 A. This is a copy of the form 10-K for Novell Corporation
6 for the fiscal year that ended October 29, 1994.

7 Q. And Novell had a fiscal year that didn't match the
8 calendar year, correct?

9 A. That's correct.

10 Q. It ended, I guess, the last Friday of October every
11 year, at the time?

12 A. That's correct.

13 Q. And this form 10-K was filed with the SEC early in
14 1995, correct?

15 A. That's correct.

16 Q. And if we can go to page 19, I think we'll see that you
17 are listed as the first signator of this form?

18 A. Yes, I am.

19 Q. This shows that you signed the 10-K on January 23,
20 1995, as chairman of the board, president, chief executive
21 officer and director. And then, in parentheses, it says
22 principal executive officer. Do you see that, sir?

23 A. Yes, I do.

24 Q. So this is an official statement, filed with the SEC,
25 meant to provide information to stockholders and other

1 members of the public, correct?

2 A. Correct.

3 Q. And it's obviously very important that you get
4 everything in it accurate. Is that fair?

5 A. Yes.

6 Q. I wonder if we could look at pages 6 to 7, right at the
7 bottom. You'll see, sir, that, at the bottom of page 6 and
8 on to page 7, there's a section entitled Product Development.
9 And I want to just direct your attention to that first
10 sentence under product development. It says:

11 "Due to the rapid pace of technological change in
12 its industry, the company believes that its future success
13 will depend, in part, on its ability to enhance and develop
14 its network and application software products to meet dynamic
15 market needs."

16 Do you see that, sir?

17 A. Yes, I do.

18 Q. And that's what we were talking about a moment ago,
19 that market needs were dynamic in this industry, correct?

20 A. Yes.

21 Q. And they could change and sometimes change quickly?

22 THE COURT: He has already said that.

23 Q. BY MR. TULCHIN: Right.

24 A. Yes.

25 Q. And there was a risk to the company that, if products

1 weren't developed in a satisfactory way, that the company's
2 future success could be in jeopardy. Isn't that right?

3 MR. JOHNSON: Also asked and answered. Objection,
4 Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: That's correct.

7 Q. BY MR. TULCHIN: Okay. And then, could we look at page
8 8 of this form 10-K. This is Defendant's Exhibit 380. There
9 is a section on page 8 entitled Competition, and I want to
10 just look at the first paragraph under that. You'll see that
11 the statement, which you signed, says:

12 "Novell competes in the highly competitive market
13 for computer software, including, in particular, network and
14 general purpose operating systems, network services, desktop
15 operating systems and application software. Novell believes
16 that the principal competitive factors are technical
17 innovation to meet dynamic market needs."

18 And I just want to stop there. The sentence goes
19 on, and you're welcome to read as much as you want,
20 Mr. Frankenberg. But you were telling the SEC there and the
21 public that what Novell believed was that the principal
22 competitive factors include, and this is the first one
23 mentioned, technical innovation to meet dynamic market needs.
24 Isn't that right?

25 A. That's correct.

1 Q. And is it fair to say, Mr. Frankenberg, that you
2 understood, when you took over at Novell, that there was no
3 guarantee at all that Novell would be able to keep up in
4 the -- these very competitive markets?

5 A. There was no guarantee, but Novell had a track record
6 of successful competing, yes.

7 Q. Well, let me talk a little bit about the track record
8 of WordPerfect if I could because, as you've testified, you
9 started in late March or early April; is that right?

10 A. That's correct.

11 Q. Could we say around April 1?

12 A. Close to that, yes.

13 Q. '94. And the deal to acquire WordPerfect closed in
14 June?

15 A. Correct.

16 Q. You said late June?

17 A. Yes.

18 Q. Okay. When you had been running the PC business at
19 Hewlett Packard, you had had meetings, I think you said
20 quarterly, with Mr. Noorda of Novell?

21 A. That's correct.

22 Q. Right?

23 A. Yes, I did.

24 Q. And you were familiar with Novell's business when it
25 came to Netware?

1 A. Correct. And some of the other associated products as
2 well.

3 Q. Right. Novell, during those years when you were at HP,
4 didn't own the WordPerfect word processing application,
5 correct?

6 A. No, they did not.

7 Q. And, is it fair to say that, when you joined Novell,
8 you weren't as familiar with WordPerfect's business as you
9 had been with Novell's?

10 A. That's fair to say, yes.

11 Q. Netware, by the way, was the dominant product in its
12 market at the time; is that right?

13 A. It had the largest market share.

14 Q. It had about 70 --

15 A. I have been taught never to use the word "dominant."

16 Q. I'm sorry sir?

17 A. I've been taught never to use the word "dominant" in a
18 court of law.

19 THE COURT: When talking about Novell.

20 Q. BY MR. TULCHIN: Okay. Just going back one step. In
21 '94, when you took over at Novell, Netware had about 70
22 percent of the market for network operating systems; is that
23 right?

24 A. That's approximately correct, yes.

25 Q. And you don't want to use the word "dominant," but

1 let's just say 70 percent is a very high share, is that fair,
2 of that market?

3 A. That's a fair statement, yes.

4 Q. And Netware was Novell's most important product in
5 1994?

6 A. Yes, sir.

7 Q. Correct?

8 A. Yes, it was.

9 Q. Okay. And it remained the most important in '95 and
10 thereafter?

11 A. During at least through the time that I was there, yes.

12 Q. Yes. And is it fair to say, Mr. Frankenberg, that your
13 focus -- during the two years and several months that you
14 were CEO of Novell, your focus was principally on Netware; is
15 that right?

16 A. No. That's not right.

17 Q. Well, Netware was the most important product for the
18 company, correct?

19 A. Correct.

20 Q. It accounted for more than half of the revenues of the
21 company; is that about right?

22 A. Significantly more than half, yes.

23 Q. And it accounted for more than half of the profits of
24 the company as well, correct?

25 A. Correct.

1 Q. Would you say that, during the time that you were CEO
2 of Novell, it was important to you to make sure that Netware
3 retain its very strong market share in the network operating
4 system market?

5 A. Yes. That was very important.

6 Q. That was Novell's core business, right?

7 A. That was our largest business.

8 Q. Would you say it was your core business, c-o-r-e?

9 A. I would say that it was our largest business.

10 Q. So, you don't want to say core for some reason.

11 A. We were in the process of changing what we were doing
12 to pursue our basic **computer business, so Netware was a
13 very important part of what we were doing. The core was
14 becoming something different than Netware.

15 Q. Mr. Frankenberg, just because Netware had 70 percent of
16 the market in network operating systems did not mean that you
17 wanted to sort of lift your foot off the accelerator a little
18 bit and allow others to get a higher market share, right?

19 A. Correct.

20 Q. Even at 70 percent, your job was to get as much of the
21 business as you could?

22 A. As much as we could, yes.

23 Q. And if you have 70 percent, any business wants to get
24 71. Is that fair?

25 A. That's the job the shareholders expect you to pursue,

1 yes.

2 Q. And after 71, you're going to try for something above
3 that, correct?

4 A. Yes.

5 Q. Okay. When you took over at Novell, I think you said
6 before that you found that -- actually, let me strike that.
7 At the time that the WordPerfect deal closed in late June of
8 '94, I think you said that you found that WordPerfect people
9 were not in the habit of putting in writing business plans,
10 formal business plans; is that right?

11 A. That's correct. That was also true of a number of
12 other Novell businesses.

13 Q. And it was your decision, when you became CEO, that
14 every business, every group within the company, should create
15 business plans; is that right?

16 A. That's true.

17 Q. Was it also your view, Mr. Frankenberg, when you took
18 over in 1994, that when a company, a big public company like
19 Novell makes important strategic or tactical decisions, it's
20 usually a good idea for someone to put in writing the issues
21 and questions that should be considered by those who are
22 making those decisions?

23 A. That's generally a very good practice, yes.

24 Q. And Novell, at the time, was in the top of Fortune
25 1,000, one of the largest public companies in the country,

1 correct?

2 A. I think it was closer to the border of the Fortune
3 1,000. I don't remember the exact position, so I don't want
4 to be inaccurate.

5 Q. But you certainly said that it had revenues about \$2
6 billion?

7 A. Slightly less than 2 billion a year, yes.

8 Q. And thousands of employees?

9 A. Correct.

10 Q. Okay. So, for a company of that size, it was your view
11 that if there's an important decision to be made, if I could
12 put it this way, a fork in the road, we have an option, two
13 options or three options, which choice should we make; that,
14 ordinarily, business people would create some sort of
15 document, a memorandum or something setting forth the options
16 and the considerations and issues that decision-makers should
17 be thinking about; is that right?

18 A. Yes.

19 Q. And that was something you tried to enforce, tried to
20 get people to do that?

21 A. Yes, I did.

22 Q. Sorry about the delay, Your Honor.

23 THE COURT: No problem.

24 Q. BY MR. TULCHIN: Mr. Frankenberg, I'm handing you what
25 we've marked as Defendant's Exhibit 312. This was a document

1 written to you by David Bradford in April of 1994, correct?

2 A. Correct.

3 Q. And would you tell the jury who Mr. Bradford was at the
4 time?

5 A. David Bradford was our general counsel.

6 Q. Your chief lawyer?

7 A. Yes.

8 Q. He was an important part of the team, your team, when
9 you were at Novell, correct?

10 A. Correct.

11 Q. And this is just after you started at your job,
12 correct?

13 A. It was within a few days, yes.

14 Q. Within a few days. Novell has announced that it's
15 going to buy WordPerfect Corporation, but the deal hasn't
16 closed yet, right?

17 A. Right.

18 Q. And Mr. Bradford is sort of writing a welcome
19 memorandum to you. Is that a fair way to put it?

20 A. I would say that's a good description, yes.

21 Q. Could I ask you to turn to page 3. I'm sorry. I said
22 page 3, and I meant the second page, page 2. It has the
23 production number 3199 at the bottom. Do you see that, sir?

24 A. Yes.

25 Q. Right at the top, Mr. Bradford is discussing business

1 development. Do you see that paragraph?

2 A. Yes, I do.

3 Q. And he says: "Novell speaks a great deal about
4 partnerships, and we like to think of ourselves as the
5 partnership company. However, in my view, we have done a
6 poor job at properly developing new business opportunities."

7 This was one of the first things you were told by
8 Mr. Bradford, your top lawyer, when you took the job, right?

9 A. Correct.

10 Q. And, in fact, as you looked into things, you agreed
11 with him. In some cases, Novell had done a poor job in
12 developing new business opportunities?

13 A. In some cases that was true, yes.

14 Q. And then, in the third paragraph on on that same page,
15 Mr. Bradford says, again in April of '94: "In some respects,
16 even worse has been our job at integrating new businesses
17 within the Novell corporate structure once the acquisition
18 has been made."

19 And, when you looked into that, you found that that
20 was true as well, correct?

21 A. In a number of of cases that was true as well, yes.

22 Q. And, of course, when one company buys another, there
23 may be a number of very difficult issues about how to
24 integrate the two organizations and make them one, correct?

25 A. Yes.

1 Q. A business organization isn't going to function well
2 unless you integrate two organizations well, correct?

3 A. Correct.

4 Q. And that could be a difficult job?

5 A. It can be, yes.

6 Q. Sometimes the two organizations have different
7 corporate cultures; is that right?

8 A. That's right.

9 Q. Sometimes the two organizations may be located in
10 geographically disparate places. One might be in Utah, one
11 in Scotts Valley, California. Correct?

12 A. Correct.

13 Q. And sometimes personalities may not get along. There's
14 a whole new structure, and somebody at, let's say,
15 WordPerfect, a company that's being acquired, may get a new
16 boss, correct?

17 A. Correct.

18 Q. And, unless the integration goes well, sometimes the
19 combined company can fall flat on its face. True?

20 A. That's true.

21 Q. And if I could ask you, Mr. Frankenberg, to look at the
22 very next page. Now we're on page 3. Mr. Bradford has a
23 Roman Numeral 4, which says Microsoft. And he says:

24 "There are so many levels to deal with when speaking
25 of Microsoft, it is difficult to know where to begin. The

1 first should be a given. We need a single point of contact
2 to coordinate our relationship with Microsoft."

3 Now, let me just stop there. When you took over
4 this job at Novell, you found out that, in fact, there had
5 been no single point of contact at Novell to deal with
6 Microsoft, correct?

7 A. That's what this memo says, yes.

8 Q. Right. On the other hand, Microsoft had a
9 well-organized team whose sole responsibility was to work
10 with Novell, a team that was headed by Bob Kruger, right?

11 A. That's what it says, yes.

12 Q. Now, in the two years or so that you were the CEO of
13 Novell, did you ever follow Mr. Bradford's recommendation to
14 appoint a single person as the point of contact to deal with
15 Microsoft?

16 A. No, I did not.

17 Q. And, if you look down at the next paragraph, just that
18 one sentence, My Recommendation. Bradford says it very
19 explicitly there, quote: "My recommendation is that one
20 individual within the company be assigned full-time
21 responsibility to coordinate our efforts with Microsoft."

22 And, despite that, no one person ever was appointed,
23 correct?

24 A. Correct.

25 Q. You testified on direct you had some conversations from

1 time to time with Mr. Gates, but, in fact, there were others
2 at Novell, such as Mr. Creighton. Do you remember
3 Mr. Creighton?

4 A. I do remember Tom Creighton, yes.

5 Q. Did you know, at the time, that he was talking to
6 various people at Microsoft?

7 A. I probably did know that.

8 Q. And did you know that Dave Moon and Ad Rietveld were
9 also talking to people at Microsoft?

10 A. They should have been doing that, yes.

11 Q. Mr. Rietveld was -- had formerly been the president of
12 WordPerfect; is that right?

13 A. That's right.

14 Q. And after the merger, he came to Novell, and I think
15 his title was Executive Vice-president at Novell; is that
16 correct?

17 A. That's correct.

18 Q. And he was the guy running the applications business
19 for you, right?

20 A. That's correct, yes.

21 Q. Okay. Now, to go back to something we talked about a
22 little bit earlier, I think on direct examination you
23 answered one of Mr. Johnson's questions by saying that
24 WordPerfect had a history of being successful with the word
25 processing application called WordPerfect, right?

1 A. Yes, I did, and they were.

2 Q. They were very successful on the DOS platform; isn't
3 that right?

4 A. Yes, they were. I wouldn't use the word dominant, but
5 they were successful

6 Q. Well, I think that -- I'm going to try to stay away
7 from that word right now as well.

8 A. Okay.

9 Q. On the DOS platform, WordPerfect, in the early '90's,
10 had 70, 80 percent of the whole market, correct?

11 A. I don't know that personally, but that would not
12 surprise me. Yes.

13 Q. At the time of the acquisition, it wouldn't surprise
14 you that WordPerfect had more than 80 percent of the market
15 on the DOS platform, correct?

16 A. That wouldn't surprise me either, although I don't
17 recall that specific number.

18 Q. And, during the time you were running Novell, do you
19 recall hearing about something called the first-mover
20 advantage, or sometimes referred to as the first-in
21 advantage?

22 A. I heard about it long before I was at Novell, yes.

23 Q. Okay. But you certainly heard about it at Novell, too?

24 A. I did, yes.

25 Q. And, generally, the principle there is that, in a

1 technology field, in a high-tech industry, the first company
2 to come out with a product usually winds up doing very well,
3 correct?

4 A. I would say that's a shortened version of what it
5 really means. The first one that comes out with a product
6 that really addresses the users' requirements and is able to
7 market it as well. Just having it isn't enough, and just
8 being the first one there without it being adequate to the
9 task isn't enough either.

10 Q. Right. And I accept your amendment. That's a good
11 clarification. So, the first-mover advantage or first-in
12 advantage means that if you have a good product and you have
13 to do well marketing it, it has to be something that
14 consumers want, you're going to have a big advantage over
15 companies that come into that same market later?

16 A. Correct.

17 Q. Correct?

18 A. Yes.

19 Q. Maybe a good example, later in time, would be the Apple
20 iPod, which came out in 2001, right?

21 A. That would be a good example, yes.

22 Q. It was a device for -- a portable device for playing
23 music, and it turned out to be very popular, correct?

24 A. Correct.

25 Q. Had a big share of the market?

1 A. Correct.

2 Q. And a number of companies developed and then
3 commercialized and marketed competing devices later on,
4 right?

5 A. Yes.

6 Q. Nobody else has ever been able to crack that
7 first-mover advantage. Apple is still number 1 by far in
8 that market. Fair?

9 A. Fair.

10 Q. And the same thing has happened in various software
11 businesses; isn't that right?

12 A. Yes.

13 Q. In fact, WordPerfect was very late coming out with a
14 word processor for the Windows platform; isn't that right?

15 A. I don't know exactly how late they were. That was
16 before I was there.

17 Q. Well, it was, but when you took over Novell, and when
18 the acquisition of WordPerfect closed in June of '94, part of
19 your job was to learn a little bit about the history of the
20 company, right?

21 A. Yes.

22 Q. It was very important for you to understand the
23 businesses that WordPerfect was in and how they had done in
24 the past?

25 A. Yes.

1 Q. You knew that Windows 3.0 had come out in May, 1990.
2 You knew that because you were at Hewlett Packard at the time
3 and you've told us already that users were clamoring for
4 Windows, right?

5 A. Right.

6 Q. Did you come to learn, as CEO of Novell, that
7 WordPerfect didn't come out with its first word processor
8 for the Windows platform until November, 1991, a year and a
9 half after Windows 3.0 came out?

10 A. I probably did learn that at the time, but we're
11 talking 17 years ago. I don't remember everything that I
12 learned in the first few months I was there. Sorry.

13 Q. I understand that, sir. We were younger then.

14 A. If we were back then, we were a little closer in time,
15 I probably would be able to answer your question.

16 Q. Okay. But, can you and I agree that, in a dynamic
17 industry -- and the word "dynamic" comes from Exhibit 380,
18 your 10-K that we looked at earlier -- in a dynamic industry,
19 being 18 months late to get into the market can itself be a
20 big disadvantage?

21 A. It can be, yes.

22 Q. And, if you're the second player in or the third or
23 fourth, very often, to get market share, you have to come out
24 with something not just as good as the first company that
25 came to that market, but something considerably better; is

1 that right?

2 A. Correct.

3 Q. And when you -- when the deal with WordPerfect closed
4 in June of 1994, you also learned something about where
5 WordPerfect had been in the market for suites; is that right?

6 A. Yes.

7 Q. And, again, WordPerfect was very late to come to that
8 market; is that correct?

9 A. When I joined Novell, they were not in the market
10 yet.

11 Q. Microsoft had come out with Microsoft Office, which was
12 a suite that included Word and Excel in 1990; is that right?

13 A. That may be correct. I don't know the exact date of
14 Microsoft's introduction.

15 Q. And it's your testimony, Mr. Frankenberg, that, even as
16 of June of '94, WordPerfect wasn't in that market at all?

17 A. Correct.

18 Q. So, when it comes to suites, Microsoft had a huge head
19 start; isn't that right?

20 A. That's correct.

21 Q. And that head start, itself, is a big advantage in the
22 market, just as we talked about earlier the Apple iPod. The
23 first guy in has a big advantage?

24 A. Yes.

25 Q. That was true with suites as well, wasn't it?

1 A. Yes.

2 Q. And it wasn't surprising to you, sir, was it, that the
3 market share of Borland Office, which was before the
4 acquisition that Novell made of WordPerfect and the Quattro
5 Pro Office, Borland Office was a combination of WordPerfect
6 and Quattro Pro. Do you remember that?

7 A. I do not remember that, no.

8 Q. All right. All right. Fair enough. If you don't
9 remember it, let me go on. In, let's say, '93 and '94, just
10 before, and about the time that Novell was buying the
11 WordPerfect Corporation, was it your understanding that
12 WordPerfect's share of word processors written to Windows was
13 much, much, much lower than WordPerfect's share on the DOS
14 market?

15 A. Yes.

16 Q. WordPerfect's share on Windows was down around 25 or 30
17 percent; is that right?

18 A. I don't recall the exact percentage, Mr. Tulchin.

19 Q. Well, it certainly wouldn't surprise you if it was in
20 that range, would it, sir?

21 A. It would not, no.

22 Q. And, at the same time, you had recognized, going back
23 to January, '91, when you were at Hewlett Packard, that the
24 future of this business was a future on Windows, correct?

25 A. Correct.

1 Q. That's why you made sure that Windows was on every PC
2 that Hewlitt Packard sold?

3 THE COURT: You've been there.

4 Q. BY MR. TULCHIN: That's why, isn't it?

5 THE COURT: You've been there, and we don't want to
6 stay here forever.

7 MR. TULCHIN: Okay. Thank you, Your Honor.

8 Q. BY MR. TULCHIN: Is it also true, Mr. Frankenberg,
9 that, when you took over as CEO of Novell, one of the things
10 that you came to understand is that, when WordPerfect first
11 began making word processing software to run on the Windows
12 platform, that software had been slow and buggy?

13 A. There were performance issues, yes.

14 Q. Well, you say there were performance issues. Let me be
15 specific and talk about WordPerfect 6.0. That was a product
16 that had come out in, I believe, December of 1993, and if it
17 wasn't December, it was very late in the year. Do you
18 remember WordPerfect 6.0?

19 A. I do, yes.

20 Q. And that product certainly had been viewed as slow and
21 buggy, correct?

22 A. There were performance issues and quality issues,
23 yes.

24 Q. Well, is it your recollection, Mr. Frankenberg, that
25 the market perceived WordPerfect 6.0 as being a slow and

1 buggy product?

2 A. I don't know how to answer you so that we can -- there
3 were performance issues, and there were reliability issues, I
4 agree, with 6.0.

5 Q. Let me show you a copy of the transcript of your
6 deposition, Mr. Frankenberg. This was taken on March 25,
7 2009.

8 A. Uh-huh.

9 MR. TULCHIN: Do you want a copy, Your Honor? No.

10 Q. BY MR. TULCHIN: And just so we're clear on this, could
11 I ask you to turn to page 123. And you'll see that there are
12 some questions at the bottom about WordPerfect 6.0.

13 A. Right.

14 Q. And then right at line 25, I asked you this question:

15 "Is it your recollection --" now we're going over to
16 126 -- "that the market perceived WordPerfect --" I'm sorry,
17 124. My error "-- that the market perceived WordPerfect 6.0
18 as being a slow and buggy product?"

19 And you answered that yes. Do you recall that?

20 A. Yes.

21 Q. And that was correct?

22 A. Yes.

23 Q. And it was also correct --

24 A. I think that's the same thing as having performance
25 issues and reliability issues. Okay?

1 Q. I wasn't sure. I wasn't sure if you meant the same
2 thing.

3 A. Didn't mean to be non-responsive. I just couldn't
4 understand what you were looking for.

5 Q. Okay. All right. My apologies. I didn't mean to
6 waste your time. But certainly, in the year 1994, when
7 Novell acquired WordPerfect Corporation, the fact that this
8 last major release of WordPerfect, WordPerfect 6.0, had been
9 perceived by the market as slow and buggy, that was something
10 that was hurting the reputation of WordPerfect; is that
11 right?

12 A. Yes, it did.

13 Q. And, of course, in a business like software,
14 particularly in the early to mid-'90's, a company's
15 reputation for making high quality products was extremely
16 important in terms of its having success?

17 A. And it still is, yes.

18 Q. Still is. Okay. Fair enough. Am I right,
19 Mr. Frankenberg, that, during the year 1994 -- again, it's
20 June. We've said this several times. You're the new CEO of
21 the company. WordPerfect is being acquired. And, for the
22 next six months, through the end of 1994, was it true that
23 the sales of WordPerfect were being hurt? They were falling
24 because of these problems with reputation?

25 A. The sales were falling, yes.

1 Q. Did you perceive, at the time, that one of the reasons
2 that WordPerfect's products were falling, that the sales were
3 diminishing, was because the prior products had had this sort
4 of bad reputation as being slow and buggy?

5 A. That would have been part of it, but the major reason
6 was we didn't have a suite to offer customers, and customers
7 were buying suites rather than individual products.

8 Q. So, that was right at the time, around 1994, when the
9 market was moving quickly from stand-alone products to
10 suites?

11 A. That's correct.

12 Q. And you didn't have one?

13 A. Not yet, no.

14 Q. Your objective, for the last six months of 1994, was to
15 have Novell, as the new owner of WordPerfect, devote its
16 resources to coming out with the best version of
17 PerfectOffice that it could make. Isn't that right?

18 A. Correct.

19 Q. And that's where the company put most of its efforts,
20 when it comes to the business applications unit?

21 A. There and on the next generation product for Windows
22 95.

23 Q. Well, let me come back to that in just a minute, but --

24 A. But most of the resources were on what became
25 WordPerfect Office 3.0.

1 Q. And on direct examination, Mr. Frankenberg, I think you
2 said that you were very proud of PerfectOffice 3.0?

3 A. I was. I think the team did a great job.

4 Q. Right. And it came out, you said, in December of '94?

5 A. Yes.

6 Q. And am I right, sir, that it was only after
7 PerfectOffice 3.0 was released that Novell decided to place a
8 great deal of its resources on developing a PerfectOffice
9 product for Windows 95?

10 A. No. That's not accurate.

11 Q. Well, you remember looking at Exhibit 4, Defendant's
12 Exhibit 4, under direct examination?

13 A. I remember looking at a lot of them. I don't remember
14 the name. Sorry.

15 THE COURT: It's in the book.

16 Q. BY MR. TULCHIN: It's in the book. It's the third
17 document that you were shown.

18 A. There it is. Yes, sir.

19 Q. Okay. And this was written in August, 1994, right?

20 A. Yes.

21 Q. And although it says on the first page from Maile -- I
22 hope I'm pronouncing it right -- M-a-i-l-e --

23 A. Her name is Maile.

24 Q. Maile -- thank you -- Patterson. If you go to the next
25 page, you'll see that this was submitted by Mr. Rietveld,

1 right?

2 A. That's correct.

3 Q. And he had been the president of WordPerfect, as we
4 talked about, correct?

5 A. Correct.

6 Q. And it was your decision to make him -- to put him in
7 charge of the WordPerfect business, going forward?

8 A. Yes, the business applications group.

9 Q. Now, would you look at page 5, sir. And under the
10 title Business Applications, there are 3 bullet points there.
11 The first says: "Getting company resources focused on
12 supporting Quattro Pro."

13 And let me just stop there for a moment. It was
14 true, was it not, Mr. Frankenberg, in 1994 and 1995, that the
15 company had not focused many resources on Quattro Pro?

16 A. Well, I guess it depends on your definition of many
17 resources. There were resources assigned to big improvements
18 to it and to make it part of the suite. There were the
19 people that came over from Borland with the acquisition who
20 were working on it. I'm sorry. I don't know quite how to
21 answer your question, Mr. Tulchin.

22 Q. Okay. Fair enough. Quattro Pro, the Quattro Pro
23 developers, the software developers, were all located in
24 Scotts Valley, California, correct?

25 A. Correct.

1 Q. And when Novell bought Quattro Pro from Borland, some
2 of those developers quit and got new jobs, correct?

3 A. That's correct.

4 Q. For whatever reason, they decided to leave?

5 A. Yes, sir.

6 Q. And the remainder of the development group remained in
7 California, right?

8 A. That's correct, although there were some people who
9 knew the product and began working on the product in Utah,
10 but the vast majority were in California.

11 Q. All right. And am I right that, of the people who quit
12 when Novell took over, many of those developers were not
13 replaced?

14 A. I don't know the answer to that question.

15 Q. Okay. Well, let's go on. We're still in Exhibit 4,
16 Defendants' 4. And then there's a bullet point that says
17 Chicago. There were very few resources on Chicago at this
18 time. That's what Mr. Rietveld said. Am I right?

19 A. That's correct.

20 Q. And that was correct?

21 A. Yes, but it's important to note that the initial
22 developments for Chicago were done by the shared code team,
23 and, as such, there would not have been a lot of people
24 initially on that development.

25 Q. In the year 1994, did you, as a general proposition,

1 speak to the developers in the shared code team?

2 A. No, I did not.

3 Q. Did you do so in 1995?

4 A. No, I did not.

5 Q. Did they rub shoulders with you or you with them?

6 A. No. I'm sure I met some of them, but I don't know
7 quite what you mean by rub shoulders, but, okay.

8 Q. Well, do you ever remember having a conversation with
9 Mr. Harral or Mr. Richardson --

10 A. I do not.

11 Q. -- about their work?

12 A. I do not remember that.

13 Q. Do you remember having a conversation ever with
14 Mr. Creighton, who was Mr. Harral's boss?

15 A. I know that I had conversations with Tom Creighton, but
16 I don't remember the conversations.

17 Q. Could I ask you to look at Exhibit 380 again. That was
18 the form 10-K that we looked at earlier.

19 A. Yes, sir.

20 Q. And I would point you, sir, to page 10. And you'll see
21 there's a paragraph that begins "As is common" towards the
22 bottom of the page?

23 A. I see that, yes.

24 Q. What Novell told the public and shareholders in this
25 form 10-K for Novell's 1994 fiscal year was that it was

1 common in the software industry for companies to experience
2 delays in developing software products; is that right?

3 A. I'm still reading the paragraph.

4 Q. Oh. Take your time. Sorry.

5 A. I just want to make sure that I can answer your
6 question properly. Okay.

7 Q. Well, let me ask you, without reference to the
8 document, just for a minute.

9 A. Okay.

10 Q. When you took over Novell -- and let's say in the first
11 year that you were chairman and CEO -- was it your view then
12 that it was common in the software industry for companies to
13 experience delays in developing new software products?

14 A. Yes. It was common.

15 Q. It was something that had happened to Novell in its own
16 business in the past, correct?

17 A. Correct.

18 Q. And that happened from time to time, whether or not
19 some operating system vendor withdrew support for certain
20 API's, right?

21 A. That could happen for a variety of reasons, to Novell
22 and virtually everyone else in the software business,
23 including Microsoft.

24 Q. Writing a complicated piece of software, that may have
25 many, many thousands of lines of code to it is a difficult

1 job, fair?

2 A. Yes, it is.

3 Q. It's complicated?

4 A. Very complicated.

5 Q. Mistakes can be made, correct?

6 A. Mistakes are made.

7 Q. And people can go off in the wrong direction and
8 choose, let's say, a path that's more difficult and
9 complicated than might have been necessary, just because
10 judgments that human beings make are not always perfect. Is
11 that fair?

12 A. Of course.

13 Q. And so, in the form 10-K, going back to that, Novell
14 was basically saying all that to the public?

15 A. Correct.

16 Q. Is that fair?

17 A. Uh-huh.

18 Q. And Novell was warning the public and Novell's
19 stockholders, again, in the first sentence, that -- sorry.
20 Now I'm on the second sentence: "Significant delays in
21 developing, completing or shipping new or enhanced products
22 would adversely affect the company."

23 And, in fact, a delay in getting PerfectOffice for
24 Windows 95, you say, did adversely affect Novell?

25 A. It did.

1 Q. Correct?

2 A. It did. Yes.

3 Q. Now, do you recall at your deposition being asked
4 whether you could assess the extent to which any delay was
5 attributable to something Microsoft had done?

6 A. I do not recall that. I may well have. We may well
7 have talked about it, but --

8 Q. Okay.

9 A. (Holding up deposition) It's a lot to recall.

10 Q. I understand. Let me just ask you directly,
11 Mr. Frankenberg, sitting here today, you cannot attribute to
12 Microsoft any particular length of delay, can you?

13 A. I believe that -- I cannot do it precisely, but I can
14 identify it.

15 THE COURT: I assume you mean in bringing the
16 WordPerfect product for Windows 95 to market?

17 Q. BY MR. TULCHIN: Yes. And PerfectOffice.

18 THE COURT: And PerfectOffice.

19 THE WITNESS: I assumed that's what you were talking
20 about.

21 Q. BY MR. TULCHIN: Yeah. You can't say, well, anything
22 Microsoft did caused us a week or a month or a year or some
23 other amount of time, right?

24 A. I can provide an approximation for that, knowing
25 that -- two dates that were involved.

1 Q. Well, didn't you say in your deposition that there were
2 others at the company who we should ask if we wanted to know
3 how much delay had been caused by Microsoft?

4 A. Yes.

5 Q. You didn't have any view in 2009 about that?

6 A. Correct.

7 Q. Okay. And I want to go back to PerfectOffice 3.0,
8 which came out at the end of 1994. As it turned out, having
9 a good office suite, what you say was a good office suite on
10 the market, beginning in December, 1994, turned out to be
11 less important than it might have been at other times
12 because, in fact, everyone knew that Windows 95 was coming
13 out in 1995?

14 A. I'm sorry. Could you ask your question again?

15 Q. Yes.

16 A. I'm a little confused by it.

17 Q. I hope it wasn't a bad question. Let me try again. I
18 think you said in direct examination --

19 THE COURT: Could you rephrase. Maybe I'm wrong,
20 but it seemed to me -- and I could be wrong, but it seemed to
21 me that Chicago would be coming to market soon. I'm not sure
22 anybody knew an exact date. If they did by '95, I just don't
23 remember. I know that, in the past, there was talk about
24 Windows 95 coming out in '94. You all know the evidence
25 better than I do.

1 Q. BY MR. TULCHIN: Mr. Frankenberg, sorry. Let me try it
2 again. It wasn't a good question. As of December, '94, you
3 knew that Chicago, what became Windows 95, would be released
4 in 1995; is that right?

5 A. That was the projection from Microsoft, yes, sir.

6 Q. And the market knew that, too. That had been publicly
7 announced?

8 A. Yes.

9 Q. And I think you said on direct examination that, when
10 the maker of an operating system publicly announces that a
11 new product is coming out to market, people in the market
12 generally stop buying, correct?

13 A. If they believe the announcement and the dates, yes,
14 they generally stop buying until they can discern what they
15 need to do for the new operating system.

16 Q. And that happened to PerfectOffice 3.0 to some extent,
17 didn't it, that sales were not all that strong because, as
18 you understood things at the time, users in the marketplace
19 were waiting for the new operating system before they started
20 buying new applications?

21 A. It put a chill on the market, but I think I also
22 testified that our market share on suites moved up into the
23 mid-20 percent range, and we thought that was a very good
24 performance.

25 Q. Well, that wasn't for a full year, was it,

1 Mr. Frankenberg? The 20 percent was just for a couple of
2 months or so?

3 A. The first part of the year, yes.

4 Q. Right. For the full year of 1995, PerfectOffice's
5 market share was around 3 percent, correct?

6 A. I don't know the exact number for the whole year, but
7 it was less than what was achieved at its peak, yes.

8 Q. Right. The peak was just the first few months of the
9 year, when people were still several months away from Windows
10 95, right?

11 A. Right.

12 Q. And, as time went on, and if you look at the year as a
13 whole, PerfectOffice's share of the market was much, much
14 lower than 20 percent. Would you agree with me?

15 A. I would agree with that, yes.

16 Q. So, when you said the 20, you didn't mean to be
17 speaking about the full year, just a small segment of it?

18 A. Right. I tried to be careful to point out that it rose
19 to that and then decreased, yes.

20 Q. Could you look, sir -- I'm going to hand you Exhibit
21 271. And looking at the first page of this document,
22 Mr. Frankenberg, it says Novell Business Applications
23 Business Plan. Do you see that at the very top?

24 A. Yes, I do.

25 Q. And at the bottom, on the left corner, the date is

1 given as April 3, 1995. Do you have that?

2 A. Yes. Yes, I see that.

3 Q. And it says Business Plan For 1996 To '98, correct?

4 A. Correct.

5 Q. And this was one of the business plans that you
6 directed people to start preparing, correct?

7 A. Correct.

8 Q. We talked about this earlier. These business plans you
9 thought were useful in formulating strategy for the future?

10 A. Correct.

11 Q. All right. Do you remember seeing this business plan
12 in 1995?

13 A. I would have seen -- yes, I would have seen it and
14 reviewed it with the team. This says "draft" on the bottom
15 of it, so it may not have been this particular version of it.
16 It may have been a later version.

17 Q. Could I ask you, Mr. Frankenberg, to turn to page 6.
18 The production number in the bottom, what sometimes we call
19 the Bates number, is 2354.

20 A. Yes.

21 Q. And there's something called SWOT analysis, S-W-O-T.
22 That stands for strengths, weaknesses, opportunities and
23 threats. Correct?

24 A. Correct.

25 Q. And this was an analysis that you wanted people at your

1 company to do?

2 A. Correct.

3 Q. Number 1 is existing competitors. And first is
4 Microsoft. And it says that Microsoft Office holds 86
5 percent of the suite market. Do you see that, sir?

6 A. I do, yes.

7 Q. Would you agree with me that that was a function of the
8 fact that Microsoft had been first to that market, had really
9 created that category, and that Microsoft office had been
10 very popular with consumers?

11 A. Yes.

12 Q. Would you also agree that Word, Microsoft's word
13 processor, and Excel, were the strongest 1, 2 punch in the
14 industry?

15 A. They weren't the best word processor. They weren't the
16 best spreadsheet, but together they were a strong
17 combination, and I believe it was described as a 1, 2 punch,
18 yes.

19 Q. As far as word processors go, Word was strong. Excel
20 was a strong spreadsheet, and nobody else had two products as
21 strong as those two, two products to bundle together in a
22 suite. Fair enough?

23 A. Fair enough.

24 Q. A little bit further down the page, just more than
25 halfway, there's a bullet point that says: "Microsoft has a

1 very strong presence and is very aggressive in the
2 international markets. They have fully localized versions of
3 Office in many Asian countries. Windows '95 and Office '95
4 are likely being shipped in multiple languages
5 simultaneously."

6 Do you recall, as CEO of Novell, that one of the
7 problems in selling PerfectOffice was that that product was
8 not localized, written to as many languages as what Microsoft
9 had done?

10 A. That's true.

11 Q. And in many Asian countries, there were strong sales of
12 office suites, right?

13 A. Yes. It says that here.

14 Q. Novell WordPerfect was way behind Microsoft in
15 successfully writing its products for other languages,
16 languages other than English, fair?

17 A. Well, certainly Asian languages as it says here, yes.

18 Q. And the next bullet point says -- this is, again, under
19 Microsoft's Strong On Macintosh platform. Now, on direct you
20 said to Mr. Johnson that one of the things you liked, when
21 the deal was made to buy WordPerfect, was that WordPerfect
22 had written its word processor to the Macintosh, right?

23 A. Amongst other systems, yes.

24 Q. Yes. Microsoft had been the first company that wrote a
25 word processor to the Macintosh platform; is that right?

1 A. I don't know that.

2 Q. Am I right that what you learned at --

3 A. You may be right, but I don't know that to be true.

4 Q. All right. Fair enough.

5 THE COURT: Other than Apple, or you just don't know?

6 MR. TULCHIN: Including Apple.

7 THE COURT: Including Apple.

8 MR. TULCHIN: Or maybe I should say second to Apple,
9 Your Honor. I'm sorry.

10 Q. BY MR. TULCHIN: Mr. Frankenberg, when it came to the
11 Apple operating system, Microsoft had no advantages over
12 WordPerfect, true?

13 A. What do you mean "advantages," Mr. Tulchin? I'm
14 sorry.

15 Q. Here's what I mean. Sorry. Maybe that was a bad
16 question. Apple Computer Company developed the Macintosh and
17 used an operating system for it that Apple itself had
18 developed.

19 A. Correct.

20 Q. They didn't use a Microsoft operating system?

21 A. Correct.

22 Q. They had their own. And Microsoft didn't have that
23 operating system anymore than WordPerfect did?

24 A. Correct.

25 Q. It was proprietary to Apple?

1 A. Correct.

2 Q. So, Microsoft and WordPerfect were both ISV's when it
3 came to the Macintosh?

4 A. Correct.

5 Q. Neither had an advantage over the other in terms of
6 getting access to the operating system source code?

7 A. I don't know that for sure, but I would assume that's
8 the case.

9 Q. Do you know, sir, that Microsoft Word out sold
10 WordPerfect for the Macintosh -- I'm talking now for the
11 Macintosh platform -- by a factor of four or five to one or
12 more, year after year after year?

13 A. I do not know that.

14 Q. Well, does that accord with your general recollection
15 that Word for Microsoft had been far more successful on the
16 Macintosh platform than WordPerfect had been?

17 A. I think that's your assertion, sir, not mine.
18 I think -- could you ask me your question again.

19 THE COURT: No, no, no. You have answered. If he
20 wants to prove it, he's got to prove it. You don't have to.

21 Q. BY MR. TULCHIN: I'm just asking if you remember that.
22 If you don't, sir, that's -- you know, that's --

23 A. I don't remember it.

24 Q. Going back to Exhibit 271, I want to ask you, sir, to
25 turn to page 9 -- well, let's start at 8, just at the very

1 bottom. This was the SWOT analysis. There are strengths
2 listed for the company, and, at the bottom of the page, there
3 are weaknesses and threats. That's item 4. Do you see that,
4 sir?

5 A. Yes.

6 Q. And this is the business plan written in April, 1995.
7 Now, could you turn to page 9, the next page. At the very
8 top there's a heading that says Company Weaknesses That
9 Hinder Novell Business Applications. And there are something
10 like 10 bullet points that set forth company weaknesses.
11 That would be a reference to Novell?

12 A. Correct.

13 Q. Novell weaknesses?

14 A. Yes.

15 Q. True?

16 A. Yes.

17 Q. The fourth one, just to pick this one first, says:

18 "Weak vis-a-vis Microsoft in perception for
19 corporate strategy, vision and ability to develop software.
20 Recent user focus groups have indicated a perceived lack of
21 direction at Novell."

22 Now, you saw this in 1995, correct?

23 A. I would have seen this, yes.

24 Q. This was one of these business plans that you asked
25 people to create for you?

1 A. Yes.

2 Q. And one of the things that it says is that Novell is
3 weak, as compared to Microsoft, in its ability to develop
4 software. Do you see that?

5 A. Yes.

6 Q. You didn't disagree with that at the time, did you?

7 A. I don't know whether I disagreed with it at the time or
8 not.

9 Q. Well, do you recall at your deposition saying that you
10 had no reason to disagree?

11 A. I still have no reason to disagree, but I don't recall
12 that I agreed with it.

13 Q. Fair enough. Fair enough. It was a different question
14 Thank you.

15 A. Uh-huh.

16 Q. And the same bullet point says that Novell is weak
17 vis-a-vis Microsoft in perception for corporation strategy
18 and vision. Do you see that?

19 A. Yes.

20 Q. And I think you'll agree with me that in 1994 and '95,
21 when Mr. Gates was CEO of Microsoft, the perception out in
22 the market was that Microsoft had a very strong strategy and
23 vision, true?

24 A. True.

25 Q. Now, if you go down a couple of bullet points, about

1 four more, under Company Weaknesses, this document,
2 Defendant's Exhibit 271, says: "Over 50 percent of sales
3 force does not understand applications. Changing, but slow.
4 Over '95 percent of sales force does not understand Quattro
5 Pro or electronic publishing tools."

6 Now on direct you said to Mr. Johnson that, when the
7 deal was done in June of '94, you decided to change the way
8 that the WordPerfect product had been sold in the past.
9 Remember that?

10 A. Yes.

11 Q. In the past, you said WordPerfect, I think you said,
12 had a very strong group of salespeople who went out there and
13 met face-to-face with corporate customers; is that right?

14 A. Well, not only corporate customers, but small
15 businesses and individuals and people on street corners. I'm
16 sorry. The last one was in jest.

17 Q. Fair enough. Fair enough. But certainly, sir, that
18 was known as one of WordPerfect's strengths at the time of
19 the acquisition was the great sales force that met
20 face-to-face with people and did a great job selling the
21 product?

22 A. It was one of their historical strengths, yes.

23 Q. And you changed that?

24 A. And it had become a very expensive -- as I testified
25 earlier, it had become a very expensive way to sell

1 individual pieces of software.

2 Q. As a result of the fact that it was expensive, you
3 decided to change it, true?

4 A. Yes.

5 Q. And so, here we are in April of '95, and in this
6 business plan, it's stated that over 50 percent of sales
7 force does not understand applications. Now, certainly you
8 weren't hoping for that result, were you?

9 A. Actually, that's a pretty good result.

10 Q. More than half doesn't understand the product they are
11 trying to sell?

12 A. Actually, most of the sales force were managers of the
13 relationship between Mike and Novell and the dealers. The
14 people who are really needed to understand the applications
15 were the experts in the product areas, and those were people
16 who went out and taught folks at dealers and distributors
17 about the product. So, it's a very different model than what
18 Ad Rietveld and his team were accustomed to.

19 So, having 50 percent of the sales force or perhaps
20 slightly less than 50 percent of the sales force understand
21 the application products was quite a good result.

22 Q. Well, Mr. Rietveld, in fact, was very unhappy about
23 this change in the way the product was being sold, correct?

24 A. Yes, he was, but to compete with Microsoft in the
25 market, we needed to be far more efficient in our selling

1 process than the old model. And sometimes it's hard to give
2 up the old model.

3 Q. And then, just below, it says: "Over '95 percent does
4 not understand Quattro Pro."

5 Now, PerfectOffice, of course, included the Quattro
6 Pro spreadsheet, right?

7 A. Correct.

8 Q. And wouldn't you expect that a salesperson trying to
9 sell PerfectOffice should understand one of the two major
10 products that's in it?

11 A. That's a shortcoming. I agree.

12 Q. It's sort of like you talked about having car dealers,
13 a network of dealers for an automobile company, but if you
14 went to a Chevy dealer, and 95 percent of the salespeople in
15 the dealership didn't understand the Malibu, so if I had
16 questions about it -- I happen to own a Malibu. That's why I
17 asked you.

18 A. I'm sorry.

19 Q. If I had questions -- it's a great car. It's a great
20 car. I love it.

21 A. Okay. Sorry.

22 Q. I love my Malibu. I didn't mean to get off in that
23 direction. I won't ask you what car you have. That's okay.

24 A. Toyota pickup.

25 Q. But, wouldn't it be a little bit of a problem if you

1 went to a salesman and he didn't understand the product that
2 you were interested in buying?

3 A. Yes. And let me take your example and tell you how it
4 worked. Your example, the salesperson at the dealer
5 absolutely had to know a lot about your Malibu in order to
6 sell it to you. And that person learned it from somebody at
7 General Motors. And the salesperson at the dealer, not the
8 salesperson selling to the dealer, was the one who had to
9 know that. And they were taught that by people at General
10 Motors.

11 The same thing was true with our software. The
12 person at the dealer, who was there talking with customers,
13 had to understand WordPerfect and Quattro Pro in detail and
14 be able to sell it and sell it well. And that was done very
15 well by people who understood it and went out and trained
16 people who, in turn, trained people at the dealers. But the
17 sales rep who sold your dealer his -- that Chevy Malibu
18 probably didn't know it in as much depth as the guy in the
19 lobby, and that's the difference.

20 Q. Am I right --

21 A. The guy in the lobby.

22 Q. I'm sorry to interrupt. Am I right, Mr. Frankenberg,
23 that Mr. Rietveld didn't agree with that? He thought that
24 the sales force should know your products, the applications
25 products?

1 A. That's correct. And a number of people at WordPerfect
2 didn't agree with that. They liked the old model, and it's
3 always hard, when you make a change, to have everybody agree.
4 That's okay. Everybody didn't have to agree. But if you
5 have to make a change, you have to make a change.

6 Q. Well, let's look down again on page 9 of Exhibit 271.

7 A. Okay.

8 Q. There's then a title which says Division, parentheses,
9 Group, closed parentheses, Weaknesses.

10 A. Yes.

11 Q. And the division refers to the business applications
12 division, right?

13 A. I believe that this would encompass both divisions,
14 which would have been any of the three business units, as
15 well as the group overall. So, yes, with that minor
16 enhancement.

17 Q. And there were a number of bullet points, also roughly
18 ten. It goes on to the next page, under the heading of
19 Division Weaknesses. Do you see that, sir?

20 A. Yes.

21 Q. The first one says: "Third to suite market. Microsoft
22 has enormous momentum."

23 This was true even in 1995, that Microsoft had that
24 momentum. Correct?

25 A. Correct.

1 Q. And not only had Microsoft Office been first to the
2 market, but Lotus SmartSuite had been second, right?

3 A. Yes.

4 Q. And Microsoft Office was number 1 in sales in market
5 share, and Lotus was number 2 at this time in '95, right?

6 A. That could well be, yes. I don't recall the exact
7 market shares month by month, but it could we will be.

8 Q. And then the next bullet point says: "Still recovering
9 from WordPerfect 6.0."

10 That was the product that had come out at the very
11 end of '93. Do you remember that?

12 A. Yes.

13 Q. That was before Novell took over?

14 A. Yes.

15 Q. But here in '95, the author of this business plan says
16 that you're still recovering from that, a product which was
17 perceived as slow and buggy. Do you see that?

18 A. Yes.

19 Q. And that's because, as we talked about earlier, once
20 you get a reputation as making slow and buggy software, that
21 reputation can stick around for a long time. True?

22 A. True.

23 Q. In fact, it had stuck around, and Novell was still
24 doing its best to try to overcome that. Is that fair?

25 A. That's fair. That's what this says.

1 Q. Thank you, sir. If can we go back to Exhibit 308 for
2 just a moment.

3 THE COURT: How about if we break for lunch? We
4 will see everybody at five after 12.

5 MR. TULCHIN: Thank you, Your Honor.

6 (Lunch recess.)

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