1   (Recess)

2   THE COURT: What Gibbs testified to shouldn't have

3   been told. So that people don't have heartache about this,

4   it is not the end of the world. People make mistakes, but

5   just make sure in the future testimony is not told to the

6   witnesses.

7   Let's get the jury.

8   I say that generally for the case and also for

9   anybody who --

10   (WHEREUPON, the jury enters the proceedings.)

11   THE COURT: I meant to ask you all before you took

12   the break, and I was thinking about something else, ideally

13   I would like to get us a day or two breathing space, so if

14   you all would talk among yourselves, and if we could sit an

15   extra hour or two, what I would like to do is get us five to

16   ten hours by next Friday. We're setting this Friday but not

17   the following Friday. We have nine days. If we picked up

18   ten hours, that would be the equivalent of about two trial

19   days. If we picked up five hours, it would be the

20   equivalent of -- talk to one another, and this is all about,

21   frankly, at your convenience, that's the most important

22   thing, but if we could get a couple day's of breathing space

23   between now and the week beginning December 12 that would be

24   great.

25   If you all could stay an extra hour or two, just

1   talk and find out if that is possible, and if you would like

2   to do that and, if so, what days you would like to do that.

3   The week of the 12th, which I think it is a fair

4   assumption that we can get the case finished by the 16th,

5   and that week may require a lot more flexibility in terms of

6   your schedule because of closing argument of counsel, and

7   we'll try to get those in, and the most important is when

8   you begin your deliberations we would like to have you stay

9   longer.

10   If you have to stop at 1:30 on those days, fine,

11   but it might extend the trial. If you all could talk to one

12   another and find out in the next nine days if you all could

13   stay an hour or two longer we could pick up -- I just think

14   that will make us more comfortable with a couple days

15   leeway. The week of the 12th it seems to me probably more

16   flexibility is required, if you all can give it, so just let

17   Teresa know.

18   Excuse me, Mr. Schmidtlein.

19   MR. SCHMIDTLEIN: Thank you, Your Honor.

20   BY MR. SCHMIDTLEIN

21   Q.   Mr. Bushman, I just want to go back and ask one

22   question about some of the layoffs that you testified about

23   earlier, and you testified about some of the sales layoffs.

24   Do you know whether the total headcount in the business

25   applications division, in other words, the division that was

1   actually doing the development, do you know whether the

2   headcount in that group actually increased after the merger?

3   A.   I don't know specifically.

4   Q.   I believe you gave some testimony to Mr. Jardine about

5   Borland Office 1.0.

6   Do you recall that?

7   A.   Yes.

8   Q.   You were asked some questions about Borland Office?

9   A.   Yes.

10 Q.   Borland Office was the suite product that WordPerfect,

11 Quattro Pro put out prior to the Novell merger with

12 WordPerfect and the Quattro Pro acquisition from Borland,

13 correct?

14 A.   Correct.

15 Q.   Indeed, one of the reasons for the acquisition was to

16 try to bring these products together so that they could be

17 integrated more effectively, correct?

18 A.   Correct.

19 Q.   I believe you testified that sort of the initial

20 product reviews of sort of the pre-merger product that was

21 not as tightly integrated weren't so good; is that right?

22 A.   That is my recollection.

23 Q.   Now, do you recall the product reviews that occurred

24 for the products after the Novell, WordPerfect, QuatroPro

25 acquisitions were complete?

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1   A.   Yes.   Some were favorable and some were not favorable.

2   Q.   You recall that the first Perfect Office product that

3   was put out after the merger was Perfect Office 3.0; is that

4   right?

5   A.   I believe that is correct.

6   Q.   And that product was released, I believe, in December

7   of 1994; is that right?

8   A.   I don't recall specifically.

9   Q.   It was released obviously before the product that was

10   eventually developed for Windows 95?

11   A.   Correct.

12   Q.   Perfect Office 3.0 was --

13   THE COURT: I think you're right and the evidence

14   shows that Mr. Frankenberg testified it was Christmas of

15   '94.

16   MR. SCHMIDTLEIN: Right.

17   BY MR. SCHMIDTLEIN

18   Q.   And you recall that the reviews for Perfect Office 3.0

19   were fairly favorable, weren't they?

20   A.   I don't recall specifically.   I think they were getting

21   better all the time.

22   Q.   Let me show you what we have marked as PX-297.

23   Now, PX-297, this is a product review for Perfect

24   Office 3.0, right?

25   A.   Yes.   It looks like that.

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 1    Q.    And this product review I believe was from April 24,

 2    1995; is that right?

 3    A.    Yes.

 4    Q.    If you look in the upper right-hand corner that is the

 5    date?

 6    A.    Correct.

 7    Q.    And this is from a company called InfoWorld; is that

 8    right?

 9    A.    Yes.

10    Q.    And the jury heard, I believe, that InfoWorld was a

11    very prominent computer publication, wasn't it?

12    A.    Yes.  It was one of a number of key influential

13    magazines.

14    Q.    I think the jury heard Mr. Gates refer to this last

15    week as the key product review for business applications

16    suites like this.

17          Do you agree with that?

18    A.    We liked InfoWorld and PC Magazine primarily.

19    Q.    And you would agree with me that in April of '95, that

20    InfoWorld gave Perfect Office 3.0 a very, very positive

21    review?

22    A.    Well, I have not read this and I don't recall, but the

23    title certainly looks good.

24    Q.    And, in fact, if you will turn to the third page of

25    this, and you have seen the format of these types of reviews
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 1  before, haven't you?

 2  A.    Yes.

 3  Q.    And if you look at the report card for the office suite

 4  down there --

 5  A.    Yes.

 6  Q.    -- and it sort of gives various scores for Perfect

 7  Office 3.0, Microsoft Office and Lotus Smart Suite, right?

 8  A.    Correct.

 9  Q.    And the very last line there is the final score they

10  gave, right?

11  A.    Correct.

12  Q.    And Perfect Office 3.0 got the highest score, right?

13  A.    Correct.

14        MR. JARDINE:  Your Honor, I just want to remind

15  the Court of our objection, that this comes in not for the

16  truth, but --

17        THE COURT:  Absolutely.  This is not coming in for

18  the truth.  It is really for its affect on the market.

19  Bringing it up here blurs the distinction perhaps beyond

20  recognition, but it is not in for the truth.

21  BY MR. SCHMIDTLEIN

22  Q.    And you said the other one that you all really were

23  focused on was PC World; is that right?

24  A.    PC Magazine.

25  Q.    PC Magazine.  Are you familiar with PC World?
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1   A.   Yes.

2   Q.   And you recall PC World also very favorably reviewed

3   Perfect Office 3.0?

4   A.   I don't recall, but if you have an article I would

5   believe you.

6   Q.   Well, I am not asking you to believe me until I show

7   you the article.

8   A.   Great.

9   THE COURT: So that you all understanding it, the

10   problem is that the people who wrote the article are not

11   here for cross-examination, so you can't really take it for

12   the truth that these are good products, but obviously the

13   publications had an affect on the market.

14   BY MR. SCHMIDTLEIN

15   Q.   Do you have PX-253 in front of you?

16   A.   Yes.

17   Q.   And looking at this now, do you recognize that this was

18   a product review from PC World in January of 1995 for

19   Perfect Office 3.0?

20   A.   Let's see. Yep. January 1995.

21   Q.   And you would agree with me that, again, this is a very

22   positive product review for Perfect Office 3.0?

23   A.   Well, again, based on the headline it looks good.

24   Q.   I don't want to, and I don't think Judge Motz wants me

25   to go through this in any excruciating detail --

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 1              THE COURT:  You have got that right,

 2   Mr. Schmidtlein.

 3   BY MR. SCHMIDTLEIN

 4   Q.   Just to be clear, the Perfect Office 3.0 product was

 5   the product that was actually assembled and put together and

 6   integrated after the merger, correct?

 7   A.    I believe it was under process, but it was finished

 8   under Novell's acquisition, yes.

 9   Q.   Do you recall that folks worked very hard to get that

10   product out in December of 1994?

11   A.   Yes.

12   Q.   Now, Mr. Jardine asked you some questions about whether

13   the namespace extensions were discussed, in particular, a

14   product Storm meeting.

15        Do you recall that?

16   A.   Yes.

17   Q.   Did you attend all product Storm meetings?

18   A.   The biweekly meetings I was there except for when I

19   traveled internationally, but I always received the notes

20   that were sent out by the secretary afterwards.

21   Q.   Was Mr. Gibb the leader or those meetings or one of the

22   leaders of those meetings?

23   A.   Not for the correlation meeting.  The correlation

24   meetings were generally run by the product manager.  He was

25   a participant in those meetings.
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3216

1 Q.   Do you understand what critical path means in software

2 development?

3 A.   Certainly.

4 Q.   Were you ever told or did you ever learn that the

5 shared code development effort was critical path for Perfect

6 Office 95?

7 A.   Shared code was important as part of the integration of

8 all of the products, yes.

9 Q.   But specifically isn't it true that during these

10 meetings, and particularly in 1995, that the shared code

11 development work was critical path to getting Perfect Office

12 95 out to market?

13 A.   In each of these meetings each team lead would give an

14 update on what the critical path elements were that were

15 inhibiting its release schedule. So anything that was

16 critical path was brought up in those meetings, yes.

17 Q.   Again, Mr. Gibb would be somebody who would be very

18 knowledgable about which elements were critical path for

19 Perfect Office 95, right?

20 A.   For that section of the suite, yes.

21 Q.   Now, I think you had some testimony about that there

22 had been damage done to the WordPerfect product even prior

23 to the merger; is that right?

24 A.   Correct.

25 Q.   And whatever damage that you thought was done, you

1 didn't believe that WordPerfect or Novell couldn't come back

2 and compete effectively against Microsoft, right?

3 A.   Well, we hoped. When we were seeing 90 percent of the

4 suite sales especially in Europe going to Microsoft, that is

5 almost unsurmountable. First to market is the first rule of

6 marketing.

7 Q.   If you don't have a product to get to market, you can't

8 get to market, right?

9 A.   Correct.

10 Q.   You can be the best marketer and salesperson in the

11 world, but if you don't have a product you can't sell,

12 right?

13 A.   That is correct.

14 Q.   I mean, after the Novell merger happened, were you

15 sending your resume out looking to leave the company?

16 A.   Yes. I actually was starting to look as well.

17 Q.   But you didn't leave the company, did you?

18 A.   No.

19 Q.   In fact, the whole purpose of the Novell merger, the

20 combination of WordPerfect, Novell, Quattro Pro, one of the

21 real purposes of that was to try to get an integrated

22 product that could in fact compete more effectively in the

23 suites market, correct?

24 A.   That was the plan.

25 Q.   Now, I think you talked a little bit with Mr. Jardine

1 about some of the localization issues that some of the

2 products faced; is that right?

3 A.   Correct.

4 Q.   All those localization issues, those were for the

5 international products, right?

6 A.   That is correct.

7 Q.   When you talked about localization, that does not refer

8 to sort of the flagship English version that was being sold

9 in the United States, right?

10 A.   That is correct. It does have an impact, because we

11 can slow down the release of an English product if we

12 determine that the combination of a multi-language release

13 is essential for the market.

14 Q.   Did Microsoft historically simultaneously release its

15 foreign language and its -- I think we looked at some

16 documents, Microsoft staggered its foreign release of its

17 Microsoft Office products, right?

18 A.   Yes, similar to us. We staggered based on the

19 importance of the market.

20 Q.   So it was always, it historically had been and was

21 always during the Novell merger period, it was always the

22 plan to release international version on a staggered

23 schedule after the U.S. release, correct?

24 A.   Some. But, as I mentioned in my testimony, the FIG

25 languages, French, Italian, German, Spanish and Dutch were

2219

1   considered simultaneous release languages.

2   Q.   I thought the documents we looked at showed that those

3   were going to ship 90 or 120 days after the --

4   A.   I don't recall that those languages were post release,

5   but the plan was always, especially for multi-national

6   companies, and those were the countries where those

7   multi-national companies resided, that that was essential

8   for us in maintaining our market share with some of those

9   companies.

10   Q.   You gave some testimony, I think, about hard coding; is

11   that right?

12   A.   Yes.

13   Q.   And your recollection was that the Quattro Pro product

14   was hard coded in a way that made it difficult to deal with

15   some of the localization issues; is that right?

16   A.   Yes. QuatroPro had significant issues with that.

17   Q.   Who was in charge of dealing with the hard coding,

18   dealing with the hard coding issue for the Quattro Pro

19   product?

20   A.   Dorothy Wise was her name.

21   Q.   Do you recall specifically when Ms. Wise and her group

22   completed dealing with the hard coding issue?

23   A.   I don't recall specifically when it was completed or if

24   it was completed.

25   Q.   I show you what we are going to mark as DX-217.

1   This is a Novell incorporated employee self-review form

2   from Ms. Wise. It says date submitted to the manager at the

3   top March 10, 1995, right?

4   A.   Yes.

5   Q.   You're familiar with these employee self-review forms?

6   A.   Yes.

7   Q.   If you go down under products on the first page --

8   A.   Yes.

9   Q.   -- under number five, do you see that?

10 A.   Yes.

11 Q.   It says made a difficult decision in 2-94 to start a

12 parallel effort to fix all of the problems with the

13 international enablement of Q.P., a move which had been

14 decided against for 1.0, 5.0 and 6.0. This effort lost its

15 two key engineers during the acquisition transition leaving

16 with only one remaining resource for the duration of the 6.0

17 release until 9-94, at which time two new resources were

18 added. Finally, after the 6.0 releases were completed in

19 12-94 -- that would have been for the Perfect Office suite

20 3.0?

21 A.   Yes.

22 Q.   -- the whole team was reassigned to finish up the work.

23 The core effort was completed on 2-28, '95.

24   Do you see that?

25 A.   Yes.

1   Q.   Isn't that the hard coding issue that you had been

2   testifying to previously?

3   A.   It does not say that. You could extrapolate that, but

4   I can't tell. There were a lot of core issues. Most of

5   them dealt with Perfect Script as well.

6   Q.   Look at the next sentence. The core effort was

7   completed on 2-20 of '95. This has been probably the most

8   difficult release to complete as it was a re-architecting of

9   the product and, as such, was very difficult to schedule and

10   get people motivated to work on it. I feel this will

11   position us very well for future releases and am proud to

12   have taken the hit and pain to accomplish this task.

13   Doesn't that refer to the hard coding issue you were

14   talking about?

15   MR. JARDINE: Your Honor, I object on the ground

16   that he is asking him to interpret somebody else's employee

17   review. He can certainly ask if it refreshes his

18   recollection.

19   THE COURT: Well, I think we know this is his own

20   view of it.

21   Go ahead, if you know.

22   THE WITNESS: Yeah. There were a lot of issues as

23   I mentioned before with Quattro Pro, localization being one

24   of the significant issues. The interface and the

25   architecture being others. Whether this relates

1   specifically to the hard cording I couldn't tell you.

2   BY MR. SCHMIDTLEIN

3   Q.   You don't know what she is referring to here?

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

5   BY MR. SCHMIDTLEIN

6   Q.   Again, all of these issues that we're talking about,

7   these all relate to the international product, correct?

8   A.   What I'm testifying about, yes.

9   Q.   Now, the localization effort and the people who did the

10   localization work were different from the people who would

11   have been dealing with the hard coding issues, correct?

12   A.   Yes. Well, the developers have to package it up to

13   hand it over to the localization developers.

14   Q.   Right. But, I mean, the localization developers were a

15   separate group who dealt with the translation issues,

16   correct?

17   A.   To some degree. There is localization that happens on

18   the product itself, the software, and then there is

19   localization that happens on the documentation, the

20   packaging, et cetera. So there was a localization team that

21   was separate that was under Mary Burnside's organization.

22   They did packaging and that sort of thing. The localization

23   of the product itself still resided in the development

24   group.

25   Q.   Now, you talked a little bit about your employment

 1 history this morning with Mr. Jardine and you testified that

 2 you left Corel. I guess you went through the first merger

 3 and then you went through the Corel acquisition, and you

 4 left Corel you thought sometime around '97. You were not

 5 sure.

 6 A.   I would have to look at my resume.

 7 Q.   Where did you go to work after Corel?

 8 A.   Power Quest.

 9 Q.   And what was Power Quest?

10 A.   Power Quest was a systems management software company,

11 actually right across the street and still resided on the

12 same WordPerfect Novell campus.

13 Q.   How long did work at Power Quest?

14 A.   I believe it was about three and a half years.

15 Q.   And after you went to work at Power Quest, where did

16 you go to work?

17 A.   Caldera International.

18 Q.   How long did you work at Caldera?

19 A.   Caldera was a Linux software company, and I was there

20 until it merged with Santa Cruz Operation. That total

21 employment period was about seven years.

22 Q.   And the company that you eventually worked for after

23 that acquisition became known as the SCO Group, right?

24 A.   Correct.

25 Q.   That is capitals S-C-O, right?

1   A.   Yes.

2   Q.   If I just refer to that as SCO, you'll know what I'm

3   talking about?

4   A.   Right.

5   Q.   That is what people often referred to them as, right?

6   A.   Yes.

7   Q.   Am I correct that you worked for this entity, either

8   the pre-merger entity or the SCO entity from roughly 2001

9   until November of 2007; is that right?

10   A.   That is correct.

11   Q.   And you said SCO was a software company?

12   A.   Yes. Caldera was an international Linux software

13   company.

14   Q.   The jury has heard about the Linux operating system

15   during the course of this trial. The Linux operating system

16   was an open source operating system; is that right?

17   A.   Correct.

18   Q.   And that means that it was sort of available to what

19   they call the open source community for people to make

20   improvements and changes to it and then try to market it,

21   correct?

22   A.   Well, they didn't market it. The open source community

23   helps develop it, and then it is marketed by companies like

24   Novell, Caldera, Red Hat and those types of companies.

25   Q.   And Linux was a competitor to Microsoft, correct?

1   A.   Yes.

2   Q.   The Linux operating system competed with Windows,

3   correct?

4   A.   That is correct.

5   Q.   Now, in 2003 while you were working at SCO, SCO began

6   making claims that people who were using the Linux operating

7   system to compete against Microsoft, people like IBM and

8   Novell, were violating copyrights that SCO claimed it had in

9   technology that was included in Linux; is that right?

10   A.   Correct.

11   Q.   And before SCO began making these claims, do you recall

12   what SCO's stock was trading at?

13   A.   Well, let's see. It was probably in the two dollar

14   time frame.

15   Q.   Sorry?

16   A.   The two dollar price range.

17   Q.   And SCO eventually sued Novell and IBM and others,

18   correct?

19   A.   That is correct.

20   Q.   And they sued them over alleged infringements in these

21   copyrights that SCO claimed it had to technology in the

22   Linux operating system, correct?

23   A.   That is correct.

24   Q.   SCO sought billions of dollars in damages in that

25   litigation against IBM and Novell, correct?

1   A.   Yes.

2   Q.   And after these lawsuits were filed, what happened to

3   SCO's stock price?

4   A.   After it was filed? There was some speculation and it

5   rose and fell with the market.

6   Q.   It rose a lot, didn't it?

7   A.   It rose -- I think the peak was around $21 a share.

8   Q.   And the reason the stock rose was because of

9   litigation, right?

10   A.   I don't know if it was specifically about litigation,

11   but there was speculation that SCO had a strong case.

12   Q.   You owned stock in SCO, didn't you?

13   A.   At the time, yes, I was an employee.

14   Q.   And you had stock options as well?

15   A.   Correct.

16   Q.   At the time SCO filed this litigation against Novell

17   and others, SCO was in pretty bad financial shape, right?

18   A.   At the time it was in declining revenues, yes.

19   Q.   It was even unclear at the time whether SCO could

20   afford to litigate the case, right?

21   A.   I don't know specifically.

22   Q.   Do you recall at the time of the litigation that SCO

23   licensed some of this copyrighted technology that it claimed

24   it had to Microsoft?

25   A.   I don't know specifically.

1   Q.   You never heard that Microsoft paid SCO roughly $16

2   million for a license to its technology at the time?

3   A.   What time frame was this?

4   Q.   2003, during the time frame of the litigation.

5   A.   I don't recall that we had a specific license with

6   Microsoft, but I was not in the licensing division.

7   Q.   Do you recall that there was public speculation at the

8   time that the reason that Microsoft invested, took this

9   license and paid money was to finance SCO's litigation

10   against Novell and IBM and others?

11   A.   Actually most of the conversation that we had

12   internally was that we still had a somewhat acrimonious

13   relationship with Microsoft.

14   Q.   You don't remember people speculating that Microsoft

15   all of a sudden decided to end this acrimonious relationship

16   and began investing money in SCO to help SCO litigate to

17   harm Linux?

18   A.   I don't recall that, no.

19   MR. SCHMIDTLEIN: I am going to mark this for

20   identification. Don't put this up on the big screen.

21   BY MR. SCHMIDTLEIN

22   Q.   I show you what we have marked for identification as

23   PX-591.

24   This is a newspaper article from the Seattle Post

25   Intelligence Reporter dated May 19, 2003. I would like you

1   to read -- the title of the article is Microsoft SCO Reach

2   Deal on Unix. Just take a moment to review that to

3   yourself, if you would.

4   A.   Okay.

5   Q.   Okay. Does this refresh your recollection that in 2003

6   at around the time that SCO had sued IBM and Novell, that

7   Microsoft entered into a licensing deal with SCO?

8   A.   Yes. We had licensing arrangements with a number of

9   different companies.

10   Q.   This was the largest licensing deal SCO had, correct?

11   A.   I have no idea.

12   Q.   Does this also refresh your recollection that there was

13   a great deal of public speculation that the reason Microsoft

14   did this deal with SCO was to invest money to help SCO fight

15   litigation that would harm Linux?

16   MR. JARDINE: Your Honor, I object. That --

17   THE COURT: Sustained.

18   BY MR. SCHMIDTLEIN

19   Q.   You never heard that?

20   MR. JARDINE: Same objection.

21   THE COURT: Sustained.

22   One thing this case is not about is public

23   speculation.

24   BY MR. SCHMIDTLEIN

25   Q.   You were the director of marketing at the time, right,

2229

1   or you were involved in marketing at SCO at the time?

2   A.   Yes. Correct.

3   Q.   I take it that you familiarized yourself with the

4   allegations in the lawsuit, because the allegations in the

5   lawsuit would have a substantial impact on your ability to

6   market products for SCO, correct?

7   A.   My primary responsibility was to ensure that the

8   products that we had were marketed effectively to our

9   current customers.

10 Q.   SCO's legal claims against IBM and Novell threatened to

11 significantly hinder the growth and the distribution of the

12 Linux operating system, correct?

13 A.   I think that was speculation in the industry.

14 Q.   Prior to the time that Microsoft invested and took this

15 license in SCO, Microsoft didn't have any business dealings

16 with SCO, correct?

17   MR. JARDINE: Your Honor --

18   THE COURT: Sustained.

19   MR. JARDINE: -- this is --

20   THE COURT: Sustained.

21 BY MR. SCHMIDTLEIN

22 Q.   Now, in August of 2007 you were still working at SCO?

23 A.   Let's see.

24 Q.   I believe you testified that you left there in November

25 of 2007.

2230

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 1    A.    I think I actually left September 7th of 2007 to work

 2    for Symantic Corporation.

 3    Q.    And do you remember what happened in August of 2007 to

 4    the SCO lawsuit?

 5    A.    Let's see.  I know there was a significant ruling that

 6    impacted it, but I don't recall specifically.

 7    Q.    In August of 2007 a federal judge from this very

 8    courthouse, Judge Dale Kimball, granted summary judgment for

 9    Novell against SCO, correct?

10    A.    I believe that is correct, yes.

11    Q.    And Novell had actually asserted counterclaims and was

12    seeking damages on those counterclaims from SCO, correct?

13              MR. JARDINE:  Your Honor, I am going to object.

14              THE COURT:  Sustained.  Sustained.

15              MR. SCHMIDTLEIN:  Your Honor, can I be heard?

16              THE COURT:  Yes.

17              (WHEREUPON, a bench conference was begun.)

18              MR. SCHMIDTLEIN:  This company declared bankruptcy

19    and he lost his job and his stock and everything, and it was

20    all because they lost a lawsuit against Novell.

21              MR. JARDINE:  I have no objection to --

22              THE COURT:  If you want to ask that, but that is

23    not where we are --

24              MR. JARDINE:  I have no objection to that

25    question.
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 1              THE COURT:  If you want to ask that, fine.

 2              (WHEREUPON, the bench conference was concluded.)

 3      BY MR. SCHMIDTLEIN

 4      Q.   After the summary judgment ruling in August of 2007,

 5      what happened to SCO's stock price?

 6      A.   I think it went down.

 7      Q.   It went down to less than a dollar, didn't it?

 8      A.   I don't recall specifically.

 9      Q.   And as a result of that ruling in August of 2007, SCO

10      filed for bankruptcy, right?

11      A.   That is correct.

12      Q.   It filed for bankruptcy in September of 2007, correct?

13      A.   Correct.

14      Q.   And you left SCO in September of 2007, correct?

15      A.   Yes.

16      Q.   And you became a creditor in SCO's bankruptcy, didn't

17      you?

18      A.   Well, I believe I still held some employee stock

19      options -- stock purchases, not options.  I still had

20      employee stock purchases.  I actually became a creditor.

21      Q.   Have you received any distribution out of the

22      bankruptcy?

23      A.   No.  I wrote that off long ago and moved on.

24      Q.   And you said that you currently work at CertiPort; is

25      that right?
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1    A.    That is correct.

2    Q.    What is CertiPort?

3    A.    CertiPort is a global certification company.

4    Q.    What does a global certification company do?

5    A.    So individuals who would like to be certified on

6    technologies can take examines through our technology and

7    our partners throughout the world.

8    Q.    Does CertiPort also sell practice tests?

9    A.    That is correct.

10   Q.    And they sell practice tests for the certification

11   exams they administer?

12   A.    Yes.

13   Q.    You give exams to people who want to become specialists

14   in certain types of software; is that right?

15   A.    Anybody who wants to demonstrate proficiency in a

16   technology that we offer an examine for, they will take

17   those exams.

18   Q.    If you are somebody in the IT field and you wanted to

19   put on your resume you are a specialist in a certain type of

20   software, you might want to take an exam and get certified

21   by CertiPort?

22   A.    Actually our primary target market is individuals in K

23   through 12 in education, so students.

24   Q.    Are the two largest selling and most popular exams that

25   CertiPort administers for Microsoft products?
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1   A.   Microsoft is definitely one of those exams as well as

2   Adobe and HP and IntuIt, QuickBooks, oDesk, and a number of

3   them, yes.

4   Q.   Microsoft -- strike that.

5   CertiPort does certification exams for Microsoft Office

6   Specialist, right?

7   A.   That is correct.

8   Q.   Is that the number one selling certification exam that

9   CertiPort offers?

10   A.   I am not allowed to say. It is a private company.

11   They don't publish their numbers.

12   THE COURT: Can you rephrase the question to avoid

13   the problem?

14   BY MR. SCHMIDTLEIN

15   Q.   Isn't it fair to say that Microsoft Office Specialist

16   is certainly one of the leading products, exam products that

17   you offer?

18   A.   It is one of the products that we offer.

19   Q.   It is one of the leading products that you offer?

20   A.   As a private entity I'm not sure that I can disclose

21   the financials.

22   Q.   Let me show you. It is the exclusive exam

23   administrator for that product, Microsoft Office Specialist?

24   A.   Actually we are specifically instructed that we can't

25   use the word exclusive for Microsoft.

1   Q.   You're listed on the Microsoft web site, aren't you?

2   A.   We are one of the gold partners.

3   Q.   Let me show you what we have marked as PX-587.

4   Do you recognize this document?

5   A.   Yes.

6   Q.   This is a --

7   A.   This is actually a printout from a Web site it looks

8   like.

9   Q.   This is a printout from Microsoft's web site, right?

10   A.   Yes.

11   Q.   And this is part of Microsoft's Web site that deals

12   with certification exams, right?

13   A.   Yes.

14   MR. SCHMIDTLEIN: Your Honor, at this time I would

15   move for the admission of PX-587.

16   MR. JARDINE: No objection, Your Honor.

17   THE COURT: It is admitted.

18   (Plaintiff's Exhibit PX-587

19   was received into evidence.)

20   BY MR. SCHMIDTLEIN

21   Q.   And if we can go down to the bottom of that page, the

22   first page there. Okay. Yeah.

23   This Microsoft Office Specialist and Microsoft

24   Technology Associate certifications, those are two of the

25   certification exams that CertiPort offers, right?

2235

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 1   A.    That is correct.

 2   Q.    It talks about and describes what those exams are and

 3   what the certifications are, and then at the Microsoft Web

 4   site it directs people to register at CertiPort to take

 5   those exams, right?

 6   A.    That is correct.

 7   Q.    And if you click on that register at CertiPort, that

 8   button I guess there, that takes you to the CertiPort Web

 9   site, right?

10   A.    Yes.

11   Q.    And Microsoft has partnered with CertiPort on offering

12   exams going back to 1999, I believe; is that right?

13   A.    '97 actually.

14   Q.    1997.  Thank you.

15         And Microsoft is certainly one of the premiere partners

16   that CertiPort has; isn't that right?

17   A.    It is hard to work in the technology field without

18   having some interaction with Microsoft.

19             MR. SCHMIDTLEIN:  We'll mark this PX-585.

20   BY MR. SCHMIDTLEIN

21   Q.    Do you recognize PX-585?

22   A.    Yes.

23   Q.    This is the web page for CertiPort, correct?

24   A.    Our home page, yes.

25             MR. SCHMIDTLEIN:  At this time, Your Honor, we
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1   would move into evidence PX-585.

2   MR. JARDINE: No objection, Your Honor.

3   THE COURT: It is admitted.

4   (Plaintiff's Exhibit PX-585

5   was received into evidence.)

6   Q.   I believe you testified that this is the CertiPort home

7   page; is that right?

8   A.   Yes.

9   Q.   And down at the bottom there are a number of the

10   products or the partners that CertiPort has?

11   A.   That is correct.

12   Q.   And the first two listed on the left there are Office

13   Specialist and Microsoft Technology Associate; is that

14   right?

15   A.   That is correct.

16   Q.   Am I correct that in light of the fact that -- you say

17   that CertiPort is a privately held company?

18   A.   Yes.

19   Q.   Do you own stock in that company?

20   A.   No.

21   Q.   Am I correct that you're going to take the position

22   that you won't answer specific questions about those

23   products and the revenues of those products generated for

24   CertiPort because you're a private company?

25   A.   Well, I am under specific instructions that we don't

1   distribute our financials outside of the boardrooms.

2   MR. SCHMIDTLEIN: No further questions then, Your

3   Honor.

4   REDIRECT EXAMINATION

5   BY MR. JARDINE

6   Q.   Mr. Bushman, just so the jury is clear, are you

7   appearing here by virtue of having received a subpoena?

8   A.   Yes.

9   Q.   And that means you're compelled to come and give

10 testimony?

11 A.   That is correct.

12 Q.   You have not come here voluntarily?

13 A.   No.

14 Q.   A series of questions were asked to you about your

15 association with SCO and your current employment at

16 CertiPort.   Has the testimony that you have given in this

17 courtroom today been truthful to the fullest extent of your

18 knowledge?

19 A.   Absolutely.

20 Q.   Have any of the things which Mr. Schmidtlein identified

21 influenced in any way the truthfulness of your testimony?

22 A.   No.   In fact, my deposition was given while I worked at

23 Symantic Corporation which had no vested interest in it as

24 well.

25 Q.   If we could just turn to Exhibit 217.   Do you have

1   that?   That is the Dorothy Wise employee self-review.

2   Can you find that?

3   A.   Yes.

4   Q.   Can you read it on the screen if we blow it up?

5   A.   Sure.

6   Q.   I just want to ask you one other question, and maybe

7   you can read it off the monitor in front of you.

8   Have you got it?

9   A.   I have got that.

10   Q.   Great. Turn to page 3. Again, I know this is not your

11   document. In the very last paragraph, if we could highlight

12   that, Mr. Wise writes, I underestimated the time it would

13   take to complete international 6.0 causing -- would that be

14   WordPerfect 6.0?

15   A.   That would be -- well, all the products were called 6.0

16   in preparation for the release of -- so it would be Quattro

17   Pro 6.0.

18   Q.   -- causing larger expenditures on localization than we

19   should have had. Even though the goal is to minimize this

20   by the changes we are making, the poor scheduling has

21   resulted in cost overruns and late shipment of both QP and

22   Perfect Office. This also caused a later start on the

23   Windows 95 project, potentially impacting our ability to

24   ship Typhoon/Storm in Q4, fiscal year '95.

25   Does that comfort with your memory of the things that

1   Quattro Pro was dealing with?

2   A.   That was the majority of the issue.

3   Q.   Now, Mr. Schmidtlein asked you some questions about

4   critical path and shared code being critical path.

5   Do you remember that?

6   A.   Yes.

7   Q.   Would the development of Quattro Pro so that it was

8   ready to be released with Perfect Office also be critical

9   path as you understand that term?

10   A.   Absolutely.

11   Q.   And so we are clear, I asked you about December of

12   1995. To your knowledge from having visited the Quattro Pro

13   campus, was Quattro Pro ready in December of 1995 to be

14   included in Novell's Perfect Office product for Windows 95?

15   A.   Not to my recollection.

16   Q.   It obviously was ready by May of 1996 when it shipped

17   with Corel. Do you recall when after December and May of

18   1996 it was ready?

19   A.   I don't remember the specific month, no.

20   Q.   Was it closer to May than December, if you recall?

21   MR. SCHMIDTLEIN: Objection, Your Honor. He just

22   said that he couldn't remember the specific month.

23   THE COURT: If you know, you know. If you don't,

24   you don't.

25   THE WITNESS: I just recall it was still the

2240

1   primary issue holding up the release.

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

3   Honor.

4   THE COURT: Thank you.

5   Could you excuse us just two minutes. I have one

6   question I have to ask for legal purposes. It will take

7   less than two minutes.

8   MR. SCHMIDTLEIN: Your Honor --

9   THE COURT: Excuse me. Do you have something

10   else?

11   MR. SCHMIDTLEIN: I have one question.

12   THE COURT: Go ahead.

13   Excuse me.

14   RECROSS-EXAMINATION

15   BY MR. SCHMIDTLEIN

16   Q.   Just one question here.

17   217 that Mr. Jardine just showed you, Plaintiff's 217,

18   can you put that back up? Go to the third page.

19   That last paragraph there that Mr. Jardine asked you

20   about, and there is a reference there in the last sentence

21   to Q4 FY '95, right?

22   A.   Yes.

23   Q.   That is quarter four, fiscal year 1995, right?

24   A.   Is that '95 or -- I can't see. There is something on

25   my screen.

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 1               THE COURT:  It does, yes.

 2               THE WITNESS:  '95, yes.  Correct.

 3    BY MR. SCHMIDTLEIN

 4    Q.   And the Q4 FY '95 relates to Novell's fiscal year,

 5    correct?

 6    A.   I believe so.

 7    Q.   The fourth quarter for 1995 in the way Novell kept its

 8    fiscal year referred to October, September and October of

 9    1995, correct?

10    A.   That would be correct.

11               THE COURT:  Thank you.  If you all could excuse

12    me.  It will probably take about a minute.

13               (WHEREUPON, the jury leaves the proceedings.)

14               THE COURT:  I have what I think are two questions,

15    but being a lawyer it could probably be more.

16               Did I hear you correctly that there were biweekly

17    meetings held concerning what I will call the development of

18    Perfect Office for Windows 95?  How would you describe it?

19               THE WITNESS:  There were biweekly meetings that

20    were held that involved all departments that had an impact

21    on the release of the product.

22               THE COURT:  And did I hear you say that there were

23    notes of those meetings that you received copies of?

24               THE WITNESS:  Yes.

25               THE COURT:  That's all.
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1   Thank you very much.

2   Get the jury.

3   MR. SCHMIDTLEIN: My team is telling me that I

4   misspoke on the last question and I said October, September,

5   October of 1995 instead of August, September, October.

6   THE COURT: Whatever the fiscal year fiscal is --

7   THE WITNESS: It would be August, September,

8   October.

9   THE COURT: I will tell the jury that.

10   MR. SCHMIDTLEIN: Thank you.

11   MR. JARDINE: Can we take a minute and reshuffle

12 the desk? Someone else is going to do the next examination.

13   THE COURT: We'll take a short break.

14   MR. TULCHIN: Thank you, Your Honor. We just need

15 to find our witness. He is right outside.

16   THE COURT: Tell the jury we are going to be five

17 minutes.

18   (Recess)

19   THE COURT: The jury can stay until 2:00 every

20 day. Is that okay with everybody today?

21   Welcome back. I'm sorry that you have been

22 absent.

23   THE CLERK: Thursday Marjorie has something that

24 she has rescheduled --

25   THE COURT: Thursday may be an exception, but

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 1   certainly today and tomorrow and Wednesday.  Friday they can

 2   stay until close of business.

 3              THE CLERK:  I think we can stay later on Friday.

 4              THE COURT:  As Mr. Tulchin, I would like to have

 5   some breathing space and then there might be some rebuttal.

 6   We really have to get it done by the 16th because juror

 7   number six has recital problems.

 8              THE CLERK:  Juror number six is a guitar teacher

 9   and she has major recitals the week of the 19th.

10              THE COURT:  And my secretary will kill me.

11              MR. JARDINE:  We wouldn't that to happen.

12              THE COURT:  Some of you might and some of you

13   might not.

14              (WHEREUPON, the jury enters the proceedings.)

15              THE COURT:  Thank you all very much for the

16   feedback and we had some shuffling of papers, and we'll stay

17   until 2:00 today and tomorrow and Wednesday, and probably

18   not on Thursday, and stay as long as we can on Friday, but

19   we'll see.  That is adjustable too.

20              Our next witness.

21              MS. NELLES:  Thank you, Your Honor.

22              Microsoft calls Brad Struss.

23              THE COURT:  I was informed Ms. Nelles was

24   preparing a witness and not enjoying Thanksgiving.

25              MS. NELLES:  Both.
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1   BRADFORD JON STRUSS

2   Having been duly sworn, was examined

3   and testified as follows:

4   THE WITNESS: Bradford Jon Struss,

5   B-r-a-d-f-o-r-d, J-o-n, S-t-r-u-s-s.

6   THE COURT: I can't believe you have such a long

7   name. We know you only from your e-mail abbreviation.

8   DIRECT EXAMINATION

9   BY MR. JARDINE

10   Q.   Good morning, Mr. Struss.

11   A.   Good morning.

12   Q.   Did you travel to be with us here today?

13   A.   Yes, I did.

14   Q.   Where did you come from?

15   A.   I came from Seattle, Washington.

16   Q.   Do you live in Seattle?

17   A.   I do live in Seattle.

18   Q.   Do you work for Microsoft?

19   A.   I do not work for Microsoft.

20   Q.   Where do you work?

21   A.   I work for Empower Northwest. Empower is a nonprofit.

22   We work with other nonprofits in the community to help them

23   use technology to better serve their communities. I am kind

24   of a geek at heart, so it is a great way to use my

25   technology skills to work in the community.

2245

1   Q.   Did you at some point work for Microsoft?

2   A.   Yes, I did.

3   Q.   When did you work for Microsoft?

4   A.   I worked for Microsoft from 1991 until 1999.

5   Q.   Did you join Microsoft right after graduating from

6   college?

7   A.   I did. It was my first job out of college.

8   Q.   What did you study in college?

9   A.   I studied computer science and math.

10   Q.   Where was that?

11   A.   At the University of Puget Sound in Tacoma.

12   Q.   Was your job with Microsoft your first technically

13   oriented job?

14   A.   It was not. I had several jobs in college working as a

15   warehouser and software developer, developing a game for

16   children's diabetes and doing an internship at Microsoft.

17   Q.   Did you work for a particular group or division of

18   Microsoft when you joined in 1991?

19   A.   When I joined I started working for the developer

20   relations group at Microsoft.

21   Q.   Is that sometimes referred to as the DRG?

22   A.   Yes, it is.

23   Q.   Can you describe to the jury the role of the developer

24   relations group at Microsoft?

25   A.   Yes. The role of the developers relations group was to

1   work with third party software developers early on in our

2   product release group before we were releasing a version of

3   the operating system, and really get them on board and get

4   them involved early so that they could ship applications

5   that supported our operating system.

6   Q.   When you started in the developer relations group did

7   you hold a particular position?

8   A.   When I started I was a technical evangelist.

9   Q.   Briefly what is a technical evangelist?

10   A.   A technical evangelist is a term used at a lot of

11   technology companies for somebody who is speaking about a

12   company's technology and explaining that to other technical

13   people or other organizations to get them excited about that

14   company's technology. It is a fairly common title among

15   technology companies.

16   Q.   Did your role in DRG change after 1991 at any point?

17   A.   Yes. Throughout the five years I was in developer

18   relations I took on additional management responsibilities.

19   I first become a manager in developer relations and then

20   became a group manager in developer relations.

21   Q.   What groups did you manage?

22   A.   I started off managing the Windows 95 evangelism group,

23   and then by the time I left I was also managing teams that

24   were related to multimedia evangelism and Internet

25   evangelism.

2347

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1    Q.    If I refer to you or your time then as the manager of

2    Windows 95, will you and I understand each other?

3    A.    Yes, we will.

4    Q.    Okay.  Hopefully the jury will too.

5          Do you recall when you became the manager of the

6    Windows 95 group?

7    A.    I believe it was sometime in late 1992 or the first

8    half of 1993.

9    Q.    For how long did you hold that position?

10   A.    I held it through the release of Windows 95.

11   Q.    Did you change positions after the release of Windows

12   95?

13   A.    After the release of Windows 95 I gained additional

14   responsibility and additional people on my team focused on

15   other areas, but I still was focused on working with that

16   same set of ISVs.

17   Q.    Did you stay in DRG the entirety of your time at

18   Microsoft?

19   A.    I did not.  I left developer relations in 1995.

20         Sorry, 1996.

21   Q.    What did you do after that?

22   A.    I went to a group called Sidewalk dot com.  It was an

23   online arts and entertainment Web site that we did in

24   different cities across the country.

25   Q.    When did you again leave Microsoft?
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 1    A.    I left Microsoft in 1999.

 2    Q.    What did you do when you left Microsoft?

 3    A.    I did several different things.  I went back -- I

 4    always wanted to get my master's degree in computer science.

 5    I went back and got my master's degree in computer science

 6    at the University of Washington.  I worked for several

 7    different start-ups, and then I found my way to Empower

 8    Northwest.

 9    Q.    This morning what I want to do is focus primarily on

10    your time as the manager of developer relations for the

11    Windows 95 team.

12          Can you describe for the jury briefly what your job

13    responsibilities were in that position?

14    A.    As managing the Windows 95 developer relations team, my

15    job was to get as many software developers -- major software

16    developers on board with Windows 95 and shipping shortly

17    after Windows 95 as possible.

18              THE COURT:  Excuse me.

19              I just remembered, I promised -- this is

20    absolutely apropos of nothing, but in the last series of

21    questions Mr. Schmidtlein had said --

22              MR. SCHMIDTLEIN:  Fiscal year 95.

23              THE COURT:  I think that the last quarter of the

24    year of Novell is August, September and October, and I think

25    he said September, October and November.  Whatever he said,
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 1   it is August, September and October.

 2              Mr. Struss, I apologize.

 3              THE WITNESS:  That is okay.

 4              THE COURT:  I looked down and saw Mr. Schmidtlein

 5   and I realized I forgot to tell you.

 6   BY MS. NELLES

 7   Q.   When you and I talk about years this morning, are we

 8   talking about calendar years?

 9   A.   We're talking about calendar years, yes.

10   Q.   If we slip into fiscal years for any reason, will you

11   alert me?

12   A.   Yes, I will.

13   Q.   Okay.

14   A.   I don't think I --

15   Q.   Me neither.

16        How big was your team, the developer relations group

17   for Windows 95?

18   A.   The Windows 95 developer relations team was about seven

19   people.  I would say six to eight, and it probably varied

20   during the time I managed that team.

21   Q.   And, again, with respect to your particular

22   responsibility, did your job responsibilities change from

23   the time that you became the manager of the Windows 95 team

24   until the time that Windows 95 was actually released in

25   August of 1995?
```

1   A.   No. It was always focused on getting leading

2   developers shipping on Windows 95.

3   Q.   Did DRG have a goal with respect to software vendors or

4   ISVs -- do you know the term ISVs?

5   A.   Yes, I do.

6   Q.   -- with respect to ISVs during Microsoft's development

7   of Windows 95?

8   A.   Yes. Our goal was to get leading software developers

9   shipping great Windows 95 applications shortly after Windows

10   95 shipped.

11   Q.   What, if anything, did DRG do to encourage key ISVs to

12   write great applications for Windows 95?

13   A.   We provided a whole set of technical and marketing

14   incentives through a program we developed called the First

15   Wave Program.

16   Q.   Can you describe the First Wave Program a little for

17   the jury?

18   A.   Yes. So the First Wave Program was designed to

19   give developers with leading software companies a focus, so

20   we basically compiled a set of technical benefits for

21   developers, as well as a set of marketing incentives to

22   really get them on board with building Windows 95

23   applications and shipping it within 90 days of the Windows

24   95 ship date.

25   Q.   We will come back to some of those technical and

1   marketing incentives.

2   But, first, when was the First Wave Program put in

3   place, do you recall?

4   A.   We started in early '94, the first half of 1994.

5   Q.   What was the purpose of the First Wave Program as

6   opposed to DRG generally?

7   A.   I mean, the purpose of the First Wave Program, as I

8   mentioned, was to really give a focus to the effort. We

9   always worked with software developers early in getting

10 their support for the operating system, but in the Windows

11 95 case it was such a critical release for Microsoft that

12 for its future importance -- we knew we wanted to have the

13 leading software developers there, so we really devised a

14 program to really work with them in a very structured way to

15 get them to release applications for Windows 95.

16 Q.   You mentioned a few minutes ago that one of the goals

17 was to get applications to ship within a short period after

18 the release of Windows 95.

19 A.   Yes.

20 Q.   Why was that?

21 A.   Microsoft knew that while they could produce a great

22 operating system, if users didn't have the applications that

23 they wanted and needed they would be less likely to upgrade

24 or move to that version of the operating system. We just

25 knew that we had to have some of those key third party

2252

1   software products out there so that we could be successful

2   with the operating system.

3   Q.   Separate from the benefits that Microsoft received,

4   were there any benefits to the ISVs themselves from

5   membership in the First Wave Program?

6   A.   Yes. I had mentioned that he put together a package of

7   technical incentives and marketing incentives. So on the

8   technical side it was early access to software development

9   kits, it was small conferences and seminars at Microsoft's

10 campus. We had a porting lab on our campus, basically a

11 private off network area where people would come in and work

12 with software developers in the developer relations group to

13 help them move their applications of Windows 95 and get

14 questions answered quickly.

15   Then there was a whole set of marketing incentives that

16 we worked with the marketing team on for getting the Windows

17 95 logo and participation in trade shows, and a variety of

18 other marketing incentives.

19 Q.   Did First Wave ISVs have a finite point of contact at

20 DRG?

21 A.   Yes. Each First Wave ISV had a primary point of

22 contact.

23 Q.   Was WordPerfect part of the First Wave Program for

24 Windows 95?

25 A.   Yes, they were.

1   Q.   Did WordPerfect have a primary or dedicated point of

2   contact in DRG?

3   A.   Yes.   I was their primarily point of contact.

4   Q.   Were you the main point of contact for any other ISV?

5   A.   For a period of time I was also the main point of

6   contact for Lotus, but most of the other ISVs were supported

7   by my team.

8   Q.   Did you have a counterpart, a designated or primary

9   contact person at WordPerfect Corporation?

10   A.   Yes, I did.

11   Q.   Who was that?

12   A.   That was Tom Creighton.

13   Q.   What was Mr. Creighton's role at WordPerfect?

14   A.   Creighton led the shared code group at WordPerfect.

15   Q.   Did you have contact with anyone at WordPerfect other

16   than Mr. Creighton?

17   A.   At various times I did.   I spoke to Dave Moon who was

18   their vice president of product development, I believe, and

19   then various other engineers and senior managers within

20   their organization.

21   Q.   Why did DRG invite WordPerfect to be part of the First

22   Wave Program?

23   A.   WordPerfect was a major software application, that we

24   felt it was critical to have their support for Windows 95

25   and for Windows 95 to be successful.

1   Q.   This was true even though WordPerfect had office

2   productivity applications that competed with Microsoft's

3   office productivity applications?

4   A.   It was. I mean, within the developer relations group,

5   the fact that they might have applications that competed

6   with our application division didn't matter to us. In fact,

7   we worked extra hard with those developers that competed

8   with us in other areas to help them and make sure that they

9   knew that we were there to work with them. It was very

10 important to us.

11 Q.   After Novell purchased WordPerfect Corporation in June

12 of 1994, did WordPerfect continue to be part of the First

13 Wave Program?

14 A.   Yes, they did.

15 Q.   Did your primary contact change after Novell purchased

16 WordPerfect?

17 A.   No, it did not.

18 Q.   If you will indulge me, and if the jury will indulge

19 me, I would like to step back and just take a little bit

20 more time talking about the benefits of the First Wave

21 Program.

22   At what point in time in the development process for

23 Windows 95 did DRG provide information about Windows 95 to

24 First Wave ISVs?

25 A.   We worked hard to provide that information as early as

1 possible to them.

2 Q.   You mentioned SDKs. What is an SDK?

3 A.   Yes. Software development kits are the necessary tools

4 for developers to build products for an operating system, so

5 we would provide early versions of the software development

6 kits to members of the First Wave Program. Whenever there

7 was a stable new release or build, we would provide a

8 version of that to the members of the First Wave Program.

9 Q.   When you are referring to build, are you referring to

10 what we sometimes have called in this room beta?

11 A.   Yes. A build or beta release would be the same thing,

12 yes.

13 Q.   Beta release.

14   When in the development process for Windows 95 was a

15 beta release made available to First Wave ISVs?

16 A.   I believe the first release was in 1994, which would

17 have been around the first time there was a solid, stable

18 version of that.

19 Q.   Was there any point in time in the development of the

20 beta that the beta was provided to First Wave ISVs?

21 A.   Could you repeat the question?

22 Q.   I am going to try.

23   Was there a point in time at which the beta was

24 considered ready to be given to a First Wave ISV?

25 A.   Yes. The windows product, the Windows 95 product team

 1   had a series of what they called milestone releases, which

 2   meant there was a certain amount of functionality and it was

 3   stable and they had what is called a milestone release, and

 4   at each of those milestone releases is when we provided

 5   access to the First Wave ISVs. The DRG would get access to

 6   those First Wave ISVs.

 7   Q.   Why did DRG provide ISVs with prerelease or beta

 8   versions of Windows 95?

 9   A.   A prerelease version of our operating system is

10   required for them to be able to build products on top of

11   Windows 95, to be able to test those products and understand

12   fully the functionality that is there.

13   Q.   What, if anything, did an ISV in the First Wave program

14   have to do to get a prerelease beta version of Windows 95?

15   A.   They needed to be a member of the First Wave Program,

16   and they also needed to sign a nondisclosure agreement with

17   Microsoft.

18   Q.   How physically did a First Wave ISV receive the beta?

19   A.   Yeah. Early on the developer relations group actually

20   had a CD burner down the hall, that when there was a new

21   release we had people on staff that actually burn the CD and

22   mail them out to the First Wave Program participants.

23   Q.   And so the DRG, the group itself provided the physical

24   beta release; is that right?

25   A.   Yes, during the really phases of the Windows 95 beta.

2257

1   Q.   For First Wave ISVs?

2   A.   For First Wave ISVs, yes.

3   Q.   What, if anything, did DRG tell ISVs about whether

4   features in a beta version of Windows 95 would be available

5   in the final release product?

6   A.   We never made promises about what would be in a version

7   of the operating system. For those people who have been in

8   the technology industry, there is a good solid understanding

9   that a beta release of a product may or may not be

10   everything that is in that final release. It is really

11   trying to meet the quality standards and the ship dates

12   desired, impacts what is in a final release versus what is

13   in a beta release.

14   Q.   During this 1994 to 1995 development period, other than

15   the betas and the SDKs, did DRG provide other sorts of

16   technical information to First Wave ISVs about Windows 95?

17   A.   We did. We did a series of small conferences or

18   seminars on Microsoft's campus to educate developers about

19   the technical features of Windows 95. We would have phone

20   calls or e-mails and meetings with developers in the Windows

21   95 First Wave Program to educate them about changes in ship

22   dates, functionality, as well as just to check in with them

23   to make sure that things were going well with their

24   development, and if there were any roadblocks we could help

25   them with those.

2258

1   Q.   During this 1994 to 1995 development period, when in

2   the development process were these developer conferences

3   held?

4   A.   I believe the first conference would have been in the

5   second half of 1993, and then there was a series of

6   conferences growing larger up through the shipment of

7   Windows 95.

8   Q.   They continued through the ship of Windows 95?

9   A.   They did.

10   Q.   Were developers of WordPerfect invited to those

11   conferences?

12   A.   Yes, they were.

13   Q.   Do you recall if they ever attended?

14   A.   They did attend.

15   Q.   Do you know who?

16   A.   I know Tom Creighton was a frequent attendee at events.

17   I know Dave Moon attended would we call the system design

18   review.

19   Q.   Again, during this 1994 through 1995 development period

20   for First Wave ISVs, was any one-on-one help available to

21   First Wave ISVs with technical questions about the product?

22   A.   Yes, there was. So we were part of the systems

23   division, so the same group that the Windows 95 team was

24   part of, so we had direct communications with the Windows 95

25   team, and if developers had issues or questions we could

```
 1    help get those resolved.

 2         We also had software engineers within developer

 3    relations who would help resolve issues.  We also had the

 4    porting lab, which I mentioned before.

 5    Q.    Are you familiar with a service that was provided by

 6    Microsoft called Premiere Support?

 7    A.    Yes, I am.

 8    Q.    What was Premiere Support during this time period?

 9    A.    Premiere Support is a paid product support option that

10    corporations, ISVs and even individuals could use to get

11    support, technical support on Microsoft's products.

12    Q.    Can you describe the difference between DRG and

13    Premiere Support?

14    A.    I can.  So DRG was really focused on providing early

15    strategic technical direction to software developers to help

16    inform them early about where we were going with our

17    operating system product.  And also to be an advocate for

18    them within the company, so we would frequently work with a

19    set of developers in an area and come back to the product

20    teams with feedback based upon working with those

21    developers.  The product teams would listen to us about that

22    feedback.

23         Premiere Support generally didn't start to get engaged

24    until closer to a product being released.  They were more if

25    you had a specific question about -- if you were trying to
```

1   get a dialogue box to work a certain way, and couldn't get

2   it to work correctly, they would help resolve those specific

3   technical issues, so for more strategic issues developer

4   relations was the channel to go through.

5   Q.   Did WordPerfect Novell have to rely exclusively on

6   Premiere Support for technical support when developing its

7   applications for Windows 95?

8   A.   No, they did not.

9   Q.   Between Premiere Support and DRG, was one group better

10   equipped to assist WordPerfect Novell if it found itself

11   running into critical difficulties in developing its

12   applications for Windows 95?

13   A.   I mean, developer relations was there to be the group

14   to help these software vendors get onto Windows 95, and both

15   help them with technical benefits, marketing incentives, but

16   also to help remove any roadblocks. We were there as a

17   partner with them and, as I mentioned before, our goal and

18   mission was to get the developer to ship and to remove any

19   potential roadblocks.

20   Q.   This was true throughout 1995?

21   A.   Yes, it was.

22   Q.   Was it also true throughout 1994?

23   A.   Yes, it was.

24   Q.   I want to focus now on specific interaction between

25   Microsoft and WordPerfect. I am going to hand you a

1   document.

2   A.   Okay.

3   Q.   I am going to hand you a whole set of documents. It

4   will save some walking.

5   Mr. Struss, let me have you look at Defendant's Exhibit

6   161.

7   Are you able to identify this document?

8   A.   Yes, I am.

9   Q.   What is this document?

10 A.   It is an e-mail from David Cole, who was a senior

11 manager in the Windows 95 team, summarizing a meeting that

12 he, Jeff Thiel and I had at WordPerfect in November of 1993.

13 Q.   Do you recall this meeting?

14 A.   Yes, I do.

15 Q.   Do you recall who was at this meeting from WordPerfect?

16 A.   I know Dave Moon was in attendance as well as Tom

17 Creighton. I don't recall other specific individuals.

18 Q.   You mentioned David Cole and also Jeff Thiel.

19   Who is Jeff Thiel?

20 A.   Jeff Thiel is a marketing manager, the marketing

21 manager for the Windows 95 team.

22 Q.   What was the purpose of this meeting?

23 A.   The goal of this meeting was actually initiated by

24 David Cole. David wanted to ensure that key software

25 developers were onboard early for Windows 95, so for a

```
 1    handful of software developers the practically said -- he

 2    would like to go out and visit and meet with them to make

 3    sure they were onboard with Windows 95.  And WordPerfect was

 4    one of the small handful of software developers that he

 5    chose to go visit.

 6    Q.    Was this meeting part of the First Wave Program?

 7    A.    This meeting was before the First Wave Program.

 8    Q.    What did you discuss at the meeting?

 9    A.    We talked in general about the features and benefits of

10    Windows 95, and had a discussion with WordPerfect about that

11    functionality.

12    Q.    I would like to direct your attention to the fourth

13    paragraph of this document.

14          You'll see here a reference to WordPerfect being very

15    happy about MS deciding to document the shell extensions.

16          Do you see that?

17    A.    I do see that.

18    Q.    Do you recall that?

19    A.    I don't recall that specifically.  I recall that they

20    were excited about Windows 95, but not about the specific

21    features they were excited about.

22    Q.    Was this meeting the first time that you met Tom

23    Creighton?

24    A.    No, it was not.

25    Q.    When did you first meet Tom Creighton?
```

 1   A.   It would have been sometime before this, because I know

 2   we had an established relationship with Tom and he was the

 3   person that I went through to work with to make this meeting

 4   happen.

 5   Q.   Following this meeting, this November 19th meeting, did

 6   you and Mr. Creighton continue to have conversations about

 7   Windows 95?

 8   A.   Yes, we did.

 9   Q.   What was the nature of that contact?

10   A.   We would talk about -- when the First Wave program came

11   out we talked about the First Wave Program. We talked about

12   technical changes, technical features for Windows 95, and

13   really working with him to make sure that he knew that we

14   were there to help them and support them with their Windows

15   95 software development in any way that we could.

16   Q.   Did the nature of that contact change after Novell

17   purchased WordPerfect Corporation in June of 1994?

18   A.   No, it did not.

19   Q.   Can you describe your relationship with Tom Creighton

20   during this period of time?

21   A.   I think Tom and I had a good working relationship based

22   on mutual trust. Both he and I had technical backgrounds so

23   we had a good working relationship.

24   Q.   Did that ever change?

25   A.   It did not.

```
 1    Q.    All right.  I am going to move to Defendant's Exhibit

 2    17.

 3          Can you find that one in the pile?

 4    A.    Yes.

 5    Q.    Have you got that?

 6    A.    I have got it.

 7    Q.    Do you know what, before we go there let me ask you one

 8    more question about the November 1993 meeting.

 9          Do you recall discussions at this meeting about

10    specific APIs that were being included in Windows 95?

11    A.    I don't recall discussing that.  The meeting was

12    designed to be kind of a high level, get them onboard, talk

13    about the main functionality of Windows 95.  There were

14    seminars and conferences later on that went into low level

15    details.

16    Q.    During the period between the November 1993 meeting

17    and, let's say, the beginning of September of 1994, do you

18    recall having any conversations with Tom Creighton or

19    anybody at WordPerfect regarding specific APIs that were

20    going to be included in Windows 95?

21    A.    Yes.  There was an internal discussion going on during

22    that time period about a set of APIs between the Windows 95

23    team and the Windows NT team, so we did reach out and talk

24    specifically about APIs to WordPerfect and other developers.

25    Q.    Any time before that?
```

1   A.   Not that I can recall, no.

2   Q.   Let's look at Defendant's Exhibit 17.

3   A.   Okay.

4   Q.   Do you recall a set of APIs being developed for Windows

5   95 that were referred to as the namespace extension APIs?

6   A.   Yes, I do.

7   Q.   I think you have already answered my question, but what

8   is it that you recall about the namespace extension APIs?

9   A.   The namespace extension APIs were part of a broader set

10   of functionality called shell extensibility.

11   Q.   Okay.

12   A.   And there was discussion -- there is a great deal --

13   the Windows 95 team and the Windows NT team had a fair

14   amount of conflict over different areas, and this is one of

15   the areas that they had conflict.

16   Q.   May I refer to that -- well, what was your role, if

17   any, with respect to that conflict?

18   A.   Developer relations was asked to do -- as the decision

19   was being figured out, developer relations was asked to poll

20   software developers to find out what parts of shell

21   extensibility were being used or being planned to be used by

22   software developers.

23   Q.   Let me have you look at Defendant's Exhibit 17.

24   Do you recognize this document?

25   A.   Yes, I do.

1   Q.   What is this document?

2   A.   This document is a summary of a survey that Scott

3   Henson led -- Scott Henson was a member of my team in

4   developer relations -- that he led working with software

5   developers in the First Wave Program to understand what

6   areas of shell extensibility they were going to use. It is

7   a summary from me to senior executives at the company about

8   what we found.

9   Q.   When did you prepare this summary?

10   A.   I prepared it on September 22nd, 1994.

11   Q.   And who received this summary?

12   A.   It was sent to Paul Maritz, who ran all of the

13   division, which included Windows 95 and Windows NT, and it

14   included Steve Madigan, who was a senior executive in the

15   Windows NT group, and it included Joe Belfiore, who was a

16   senior executive in the Windows 95 group, and two other

17   engineers.

18   Q.   If you look at the first sentence of your mail to Mr.

19   Maritz and Mr. Madigan and others, you write here that your

20   e-mail incorporates or attaches an earlier summary pulled

21   together by Mr. Henson.

22   What was Mr. Henson doing?

23   A.   Mr. Henson -- so we had been asked -- developer

24   relations had been asked to survey developers on what it was

25   being used for, shell extensibility, or planned to be using

 1   for shell extensibility in Windows 95, and so he was

 2   summarizing the results of that to help inform the decision

 3   about what support for shell extensibility would look like

 4   moving forward.

 5   Q.   Did DRG ask WordPerfect about its plans as part of this

 6   survey?

 7   A.   Yes, we did.

 8   Q.   If we can look starting with Mr. Henson's summary, and

 9   I am going to direct you to page 48 carrying over to 49.

10   A.   Okay.

11   Q.   Do you see on the second page there is something

12   referred to as a plan for implementation?

13   A.   I do.

14   Q.   At the time when Mr. Henson compiled this information

15   about shell extensibility in September of 1994, or a few

16   weeks before you wrote the mail, did Microsoft know whether

17   WordPerfect intended to use any shell extension technology

18   in the applications it was developing for Windows 95?

19   A.   From reading this e-mail it is, you know, it is likely

20   based on speculation was our point of view at that moment in

21   time.

22   Q.   Now, if we could go back to your mail, which is

23   specifically the second paragraph on the first page, it says

24   here is a summary of more specific feedback we have gotten

25   from Lotus and WordPerfect. It says Scott compiled this

1   data.

2   Did someone in DRG speak with WordPerfect sometime

3   after Mr. Henson put together the summary that we just

4   looked at?

5   A.   Yes. We did the initial overall survey of shell

6   extensibility overall, which included the namespace

7   extensions, and we knew that it -- it was known that the

8   decision around shell extensibility was really going to

9   focus on that namespace extension API, so for both Lotus and

10 WordPerfect we reached out to them specifically to talk to

11 them about those APIs to understand what they were using and

12 what the implications of changing those may be.

13 Q.   So am I correct that there was a second contact to

14 WordPerfect Novell?

15 A.   Yes, that is correct.

16 Q.   What did WordPerfect Novell tell you?

17 A.   WordPerfect, as we are reading from this e-mail, said

18 that they had not begun any work on iShellFolder,

19 iShellView, et cetera.

20 Q.   You wrote in the second sentence of the fourth

21 paragraph of DX-17, if Capone integrates into the Explorer

22 then they will also, quote, figure it out if it is not

23 documented.

24   What did you mean by this sentence?

25 A.   Well, I believe I was quoting what Tom Creighton had

1   told either myself of Scott Henson in those following

2   conversations, that he was saying that if Capone, which is

3   the Microsoft e-mail client, uses it, then they would use it

4   also whether or not it is documented and they would, quote,

5   figure it out.

6   Q.   In the next sentence you wrote for common dialogues the

7   current plan is to use the MS dialogue, but I don't believe

8   they have investigated this enough to know for sure.

9   What are you referring to here?

10   A.   I am referring here to Windows 95 -- we had been

11   hearing from users that different applications had different

12   ways when you deal with the file open dialogue box or the

13   file save as, and they would look different, so what we did

14   in Windows 95 -- what Microsoft did in Windows 95 was to

15   provide a standard set of dialogues or boxes for providing

16   functionality, and to provide a consistent interface to the

17   users. And so I asked them about what their plans were for

18   using those dialogue boxes.

19   Q.   When you wrote this e-mail on September 22, 1994, did

20   you have any reason to believe that WordPerfect Novell had

21   begun work on a product that relied on the namespace

22   extension APIs?

23   A.   None. I would have reported that if there was.

24   Q.   From September 22, 1994 when you wrote this e-mail

25   until the beginning of October of 1994, do you believe that

1 anything changed to make you believe that WordPerfect Novell

2 planned to use the namespace extension APIs?

3 A.   No, I did not.

4 Q.   What did you tell others at Microsoft about whether or

5 not Novell WordPerfect planned to use the namespace

6 extension APIs?

7 A.   I told them what I knew to be true or what had been

8 communicated to me from WordPerfect, which is that they were

9 not using it and they were not dependent upon it.

10 Q.   If I could have you look now at Defendant's Exhibit 3.

11   Tell me when you have that.

12 A.   I have that.

13 Q.   Are you aware of what decision Microsoft made in

14 October of 1994 concerning this conflict that you referred

15 to before regarding the namespace extension APIs in Windows

16 95?

17 A.   Yes, I am.

18 Q.   What decision was made?

19 A.   Microsoft -- Bill Gates specifically decided not to

20 support those interfaces moving forward within the Windows

21 95 software development.

22 Q.   Did that decision have any practical consequences for

23 DRG?

24 A.   Yes, it did.

25 Q.   What were they?

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 1   A.    We proactively -- DRG proactively notified the software

 2   developers that we were working with about this change to

 3   communicate that so that they would not depend upon -- so

 4   that they would know not to depend upon these interfaces

 5   moving forward.

 6   Q.    Who did that proactive outreach?

 7   A.    My entire team did that proactive outreach.

 8   Q.    When did you notify ISVs about this decision?

 9   A.    I mean, on or about October 12th.

10   Q.    Your looking at --

11   A.    Yes.  Sorry.

12   Q.    Let's go right there.

13         Do you recognize Defendant's Exhibit 3?

14   A.    Yes, I do.

15   Q.    What is it?

16   A.    It is a summary and a plan for practically notifying

17   all of the First Wave software developers about the change

18   with the namespace extensions.

19   Q.    In the first sentence you wrote per Paulma we are now

20   in the process of proactively notifying ISVs about the

21   namespace API changed.  Paulma is Paul Maritz?

22   A.    That is correct.

23   Q.    In the first paragraph it says so far Stac, Lotus, WP,

24   Oracle, SCC appear to be okay with this.

25         What is WP a reference to?
```

1   A.   WordPerfect.

2   Q.   Why did you write this?

3   A.   At that point in time -- any time Microsoft made a

4   change in anything there was always lots of excitement in

5   the press about it, and so we wanted to be really clear and

6   communicate this change to software developers. I also

7   wanted to make sure that if there was going to be any issue

8   or concern, I wanted to make sure to communicate it to the

9   senior executives what that concern may or may not be.

10 Q.   Can we go to page 3 of this document.

11   You'll see there is First Wave ISVs, there is a list

12 there?

13 A.   I see that.

14 Q.   What is that list?

15 A.   It is a list of the First Wave ISVs along with their

16 primary point of contact in developer relations and the

17 person who was to contact about this.

18 Q.   And you see at the bottom it says WordPerfect?

19 A.   I do.

20 Q.   And is that your e-mail address there?

21 A.   Yes, that is my e-mail address.

22 Q.   What does that indicate?

23 A.   That indicates that I would be the person to contact

24 them about this.

25 Q.   What did you say to ISVs about the decision not to

1   support the namespace extension APIs?

2   A.   DRG told ISVs that because of the way those namespace

3   APIs were built or designed that we couldn't commit to

4   supporting those on future versions of Windows 95 or Windows

5   NT, so we were going to withdraw official support for them

6   so that they wouldn't go down a path of developing for

7   something that may change or break in the future.

8   Q.   Is that what you said to WordPerfect?

9   A.   Yes, I did.

10   Q.   Do you know who at WordPerfect you said that to?

11   A.   Tom Creighton was the person that I would give any

12   critical information to.

13   Q.   Did Mr. Creighton or anyone else from WordPerfect

14   Novell complain to you about the decision not to support the

15   namespace extension APIs?

16   A.   No.

17   Q.   In this e-mail did you report the ISV's reaction

18   accurately?

19   A.   Yes, I did.

20   Q.   Is there a reason you know that?

21   A.   I am always truthful in my communications, and even

22   more so to senior executives at Microsoft, and just in

23   general. But I would be extra careful with senior

24   executives to make sure I was stating the information

25   accurately.

 1   Q.   Why don't we take a look at Defendant's Exhibit 86.

 2   THE COURT: Let's go a little bit longer today,

 3   just because we're going to stay until 2:00.

 4   MS. NELLES: Okay. Whatever the Court wants.

 5   THE COURT: Does anybody have a hot lunch? That

 6   is the only thing that concerns me. Do you have a hot

 7   lunch? We can go over then.

 8   BY MS. NELLES

 9   Q.   Do you have DX-86?

10   A.   Yes, I have DX-86.

11   Q.   Can you identify this document?

12   A.   This document is an e-mail from Kelly Sonderegger at

13   Novell to me about Explorer extensions and asking technical

14   questions about it.

15   Q.   Who is Kelly Sonderegger?

16   A.   All I know is that he was a developer at WordPerfect.

17   Q.   On page 2 Mr. Sonderegger asks for a follow-up article

18   to an earlier article that would describe extending the

19   Explorer with a hierarchical structure of objects.

20   Do you see that?

21   A.   I do.

22   Q.   Did you respond to this request?

23   A.   I did. I explained how the namespace extensions had

24   been changed or their status had changed and pointed him to

25   relevant information to help him.

2275

1   Q.   Is your e-mail response above the response that you

2   sent to Mr. Sonderegger?

3   A.   I can only assume that it is.

4   Q.   Do you recall any other conversations with Mr.

5   Sonderegger other than this e-mail on this topic?

6   A.   No, I do not.

7   Q.   Okay. In the last paragraph of your mail you make

8   reference to a sample application CHICOAPP.

9   What is CHICOAPP?

10 A.   CHICOAPP was a sample that was part of the Microsoft

11 developer network, which was a program that educated

12 developers about software functionality that Microsoft had,

13 and CHICOAPP was an application that we talked about that

14 specifically took advantage of the features in Windows 95

15 and was a great example for people to see how they could

16 implement functionality in Windows 95.

17 Q.   Did Mr. Sonderegger tell you that Novell WordPerfect

18 was experiencing any difficulties as a result of the

19 decision not to support the namespace extension APIs?

20 A.   No, he did not.

21 Q.   This mail is written on November 23 of 1994?

22 A.   That is correct.

23 Q.   Did you have any communications with anybody from

24 WordPerfect Novell between your call to Mr. Creighton that

25 we just saw and discussed, and this mail regarding whether

 1   or not WordPerfect Novell was experiencing any difficulties

 2   as a result of this decision not to support the namespace

 3   extension APIs?

 4   A.   I did not.

 5   Q.   After Bill Gates made the decision to withdraw support

 6   for the namespace extension APIs, did DRG continue to talk

 7   to and survey ISVs about their development efforts for

 8   Windows 95?

 9   A.   Yes. We were very focused on getting those

10   applications to ship shortly after Windows 95, so we were

11   in, you know, continuing and regular contact with First Wave

12   ISVs about their status toward shipping on Windows 95.

13   Q.   Did you continue to act as the primary contact for

14   WordPerfect Novell?

15   A.   Yes, I did.

16   Q.   Let me show you Defendant's Exhibit 2.

17   A.   Okay.

18   Q.   Can you identify this document?

19   A.   Yes. This is a summary e-mail that I wrote about the

20   status of developers that were part of our First Wave

21   Program.

22   Q.   When did you write this?

23   A.   I wrote it on October 21st, 1994.

24   Q.   What did DRG's survey at WordPerfect Novell find in

25   October of 1994?

1   Let me direct you to the second page, page 659. You'll

2   see that there is a paragraph that begins WordPerfect --

3   A.   What I reported was that due to the focus on 16 bit

4   product revisions this fall there are limited resources

5   working on next year's 32 bit release. Given this, and the

6   fact that they would rather deliver a great product later

7   than a mediocre one sooner, they currently expect to ship

8   September '95 or around 125 days after the Windows 95 ship.

9   Working with their senior management to see about getting

10   more focused on the 32 bit release.

11   Q.   Is this an accurate report?

12   A.   Yes. I mean, as before, there would be no reason I

13   would say anything other than what is accurate.

14   Q.   Was DRG working with senior management at WordPerfect

15   Novell about getting more focused on their 32 bit release?

16   A.   Yes. Every time that I -- frequently when I spoke to

17   Tom Creighton I would ask him how we could we help them? If

18   they are having issues what can we do to help move them

19   forward? Going back to that first David Cole -- that David

20   Cole visit, our commitment to them was significant to get

21   them to ship.

22   Q.   If Novell and WordPerfect had complained about the

23   withdrawal of the support of the namespace extension APIs,

24   would you have included that information in your First Wave

25   Program status report?

1   A.   Absolutely.

2   Q.   Let me have you look at Defendant's Exhibit 92.

3   A.   Okay.

4   Q.   Can you identify this document?

5   A.   This document is another First Wave status report that

6   I wrote on December 15th, 1994.

7   Q.   And this provides status on the First Wave ISVs as of

8   December 15, 1994?

9   A.   Yes, it does.

10   Q.   If you go to the second page you'll see there is a

11   section WordPerfect. Is there any reference in this section

12   that refers to Microsoft's decision on the namespace

13   extension APIs?

14   A.   There is not.

15   Q.   If Novell and WordPerfect had complained about the

16   withdrawal of support for the namespace extension APIs,

17   would you have included that information in this First Wave

18   Program status report?

19   A.   Yes, absolutely.

20   Q.   From October 1993 -- excuse me.

21   From October 3, 1994 when Mr. Gates decided not to

22   support the namespace extension APIs, to August 24, 1995

23   when Windows 95 shipped, did Mr. Creighton or anyone else at

24   WordPerfect or Novell every complain about the namespace

25   extension APIs to Microsoft?

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 1              MR. SCHMIDTLEIN:  Your Honor, can I be heard?  I

 2    have an objection to that question.

 3              I think this gets --

 4              THE COURT:  Sure.  Let's break for lunch.

 5              See you all at about ten after 12:00.

 6              (WHEREUPON, the jury leaves the proceedings.)

 7              MR. SCHMIDTLEIN:  The way the last question was

 8    phrased, and I know we have been around the block on

 9    questions about -- due to other evidentiary issues and

10    documents and the rulings Your Honor has made about

11    complaints and were complaints made and --

12              THE COURT:  Rephrase.

13              MS. NELLES:  I will rephrase the question.

14              THE COURT:  Rephrase --

15              MS. NELLES:  Not a problem at all, Your Honor.

16    Absolutely.  I will rephrase.

17              THE COURT:  Absolutely fair.  See you guys at ten

18    after.

19              MR. SCHMIDTLEIN:  Thank you.

20              THE COURT:  In terms of planning, I think I will

21    tell the jury, if they can sit on Friday, maybe sit until

22    around 4:00 on Friday.  Is that too late?

23              MR. TULCHIN:  I am sorry, Your Honor?

24              THE COURT:  4:00 on Friday?

25              MR. TULCHIN:  It will require some adjustments in
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1   our witnesses, but we'll do the very best we can.

2   THE COURT: I will tell them about that

3   possibility.

4   MR. JARDINE: Thank you.

5   (Recess)