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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH  
CENTRAL DIVISION

NOVELL, INC., )  
Plaintiff, )  
vs. ) CASE NO. 2:04-CV-1045 JFM  
MICROSOFT CORPORATION, )  
Defendant. )  
\_\_\_\_\_)

BEFORE THE HONORABLE J. FREDERICK MOTZ  
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December 2, 2011

Jury Trial

A P P E A R A N C E S

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1 December 2, 2011

8:00 a.m.

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

3  
4 THE COURT: Good morning everybody.

5 Let's get the jury.

6 Mr. Acheson is here?

7 MS. NELLES: He is.

8 Your Honor, before the jury comes in, I thought  
9 the Court and opposing counsel would want to know that today  
10 is Mr. Tulchin's birthday.

11 I am going to be in big trouble.

12 THE COURT: Somehow I don't think that is going to  
13 bring sweetness and light.

14 Happy birthday, Mr. Tulchin.

15 (WHEREUPON, the jury enters the proceedings.)

16 THE COURT: Good morning.

17 Good morning. You are all terrific as usual.

18 We are in session.

19 DIRECT EXAMINATION (Cont.)

20 BY MS. NELLES

21 Q. Good morning, Mr. Acheson.

22 A. Good morning.

23 Q. When we ended for the day yesterday we were discussing  
24 Borland Office.

25 Do you recall that?

1 A. Yes, I do.

2 Q. And you stated that your customers did not react well  
3 to Borland Office?

4 A. Correct.

5 Q. That they felt it was separate applications put  
6 together in a cardboard box?

7 A. That is correct. That is what I said.

8 Q. Did there come a time when WordPerfect Novell released  
9 a better integrated suite?

10 A. Yes, and that was several months later.

11 Q. Actually, do you recall when that was?

12 A. More than a year.

13 Q. Do you recall how that better integrated suite sold to  
14 large account customers?

15 A. It didn't sell well because we had missed the window of  
16 opportunity that we had. People had already purchased the  
17 Microsoft Office suite and, therefore, there was no need for  
18 them to purchase ours. They already had a word processor, a  
19 spread sheet, an entire office suite.

20 Q. And is the product that you are referring to, and I  
21 know it has been a lot of years, but is it Perfect Office?  
22 Does that refresh your recollection?

23 A. Yes, Perfect Office 3.0, perhaps.

24 Q. Did Perfect Office 3.0 enable you to compete  
25 effectively with Microsoft for customers?

1 A. No.

2 Q. I would like to show you what has been marked as  
3 Defendant's Exhibit 372.

4 MS. NELLES: Your Honor, Mr. Johnson is taking a  
5 moment to look at the document.

6 MR. JOHNSON: No objection.

7 MS. NELLES: Okay.

8 THE COURT: Thank you.

9 BY MS. NELLES

10 Q. Mr. Acheson, can you identify this document?

11 A. Yes. It is a letter that was sent by one of the  
12 systems integrators that worked in the information  
13 technology field. Specifically they would help law firms  
14 implement technology solutions.

15 Q. Who is this document addressed to?

16 A. It is addressed to Dave Moon. He was our chief  
17 technology officer.

18 Q. Can we just turn briefly to the second page.

19 This letter is from Leo Spiegel. Who is Leo Spiegel?

20 A. Leo Spiegel was, as it says, the executive vice  
21 president and chief technology officer for this company  
22 LANSystems, which had offices in San Diego and also in New  
23 York City.

24 Q. This letter is copied to Mr. Rietveld and Mr. Lewis and  
25 Mr. Thompson who you identified yesterday as senior

1 management of the company?

2 A. Yes, the three of them being the office of the  
3 president.

4 Q. And to yourself as well?

5 A. Yes. And my name is there too, yes.

6 Q. Do you recall receiving this document?

7 A. Yes, I do.

8 Q. If I can direct your attention to the first paragraph  
9 of the document, in the first sentence it says right here  
10 the intent of this letter is to escalate a critical  
11 situation with a mutual client.

12 Do you see that?

13 A. I do.

14 Q. And skipping to the second paragraph, the letter  
15 continues --

16 THE COURT: I take it you avoided the second  
17 sentence of the first paragraph?

18 MS. NELLES: I saw --

19 THE COURT: I'm only joking. I assume they are  
20 competitors.

21 MS. NELLES: Now I to have to, Your Honor.

22 BY MS. NELLES

23 Q. Can we go back up?

24 A. Yes, I'm up there.

25 Q. Okay. And it says the client is Shearman & Sterling, a

1 large influential New York based international law firm.

2 Do you see that?

3 A. I do. And, indeed, they were and are.

4 Q. Okay. Let's just stay in that paragraph.

5 MS. NELLES: Can we stay in there?

6 Mornings.

7 BY MS. NELLES

8 Q. It says they are using the entire suite of WordPerfect  
9 products, including WordPerfect for Windows 5.2, Office 4.0,  
10 and Informs and SoftSolutions on a Novell network.

11 Do you see that?

12 A. Yes, I do. I did a great job selling to them. They  
13 used all WordPerfect stuff.

14 Q. If we can move to the next paragraph.

15 Enclosed you will find various documents that describe  
16 the problems that lead up to this final appeal. Frankly,  
17 the situation is getting out of hand. The firm is seriously  
18 considering switching to Microsoft Word and I fear will look  
19 at other products as well.

20 Was it concerning to you to receive a letter like this?

21 A. Yes, very concerning because, as I had mentioned, they  
22 were using WordPerfect Solutions and here one of my flagship  
23 firms for the flagship industry for our flagship product was  
24 threatening to abandon us and that was bad, and especially  
25 because law firms talk to each other. It is a tightknit



1 community. It is a competitive community, but they talk to  
2 each other. And especially at the chief technology, chief  
3 information officer level they get together in meetings and  
4 in their consortiums and there is nothing but chatter about  
5 what is working and what is not working.

6 MR. JOHNSON: Your Honor, that is just masses of  
7 hearsay. I mean, move to strike.

8 THE COURT: I will strike that.

9 If you want to ask a question --

10 MS. NELLES: Sure.

11 BY MS. NELLES

12 Q. Staying in the same paragraph do you see it says I am  
13 concerned that if not corrected these discussions will have  
14 a serious impact on the market share you have developed in  
15 the legal marketplace and will reflect negatively on  
16 WordPerfect.

17 Do you see that?

18 A. Yes.

19 Q. Was that concerning to you?

20 A. Yes, it was concerning to me.

21 Q. Did you have concerns about the market share you had  
22 developed in the legal marketplace at this time?

23 A. I did, great concerns, and I wanted to sort of share  
24 that with everybody that I could at WordPerfect.

25 Q. Moving to the next paragraph, do you see it says here

1 as a strategic partner I need your help to rectify this  
2 situation?

3 A. Yes.

4 Q. First, please provide a written response with regard to  
5 documented bugs in 5.2 and delineate which if any bugs you  
6 plan on fixing. Secondly, if you do not plan to correct the  
7 problem with 5.2, then please document what alternatives are  
8 available to the firm. Based on your response the firm will  
9 decide on the appropriate course of action.

10 Do you see that?

11 A. I do.

12 Q. 5.2 is a reference to WordPerfect's 5.2 for Windows,  
13 right?

14 A. Correct.

15 Q. Was the sentiment being expressed here unique in your  
16 experience that issues with bugs were causing customers to  
17 consider switching to Word?

18 A. No, this was not unique and this is what my  
19 customers -- from my experience this is what my customers  
20 were going to do.

21 MS. NELLES: If we could just go to the next  
22 paragraph.

23 BY MS. NELLES

24 Q. The letter continues. As a founder of LANSystems I am  
25 finding it more and more difficult to motivate our sales and

1 technical staff to recommend and support your products.

2 Were strategic partners of yours backing away from  
3 recommending and supporting WordPerfect products in the  
4 early months of 1994?

5 A. Yes, and my experience was that with all of these  
6 integrators such as LANSystems, that their feet on the  
7 street, their salespeople were beginning to plant seeds of  
8 doubt about WordPerfect products.

9 Q. Just so there is no confusion in the courtroom this  
10 morning, you know that my law firm is Sullivan & Cromwell  
11 and not Shearman & Sterling; is that right?

12 A. That is correct, yes.

13 Q. Did you sell WordPerfect to Sullivan & Cromwell?

14 A. I sold WordPerfect to Sullivan & Cromwell and I was  
15 there when you bailed on me and went to Microsoft.

16 Q. Did you happen to sell WordPerfect to the law firm of  
17 Dickstein Shapiro?

18 A. Yes, I did.

19 Q. How about Williams & Connolly?

20 A. Yes, I did. Name a law firm, I sold WordPerfect to  
21 them.

22 Q. In early 1994 just before WordPerfect was purchased by  
23 Novell, from your observation what was morale like at  
24 WordPerfect Corporation?

25 A. Morale was very low.

1 Q. How was your morale?

2 A. My morale was very low.

3 Q. From your vantage what was causing morale to be poor at  
4 this time?

5 A. First, that the products were not solid and, second,  
6 that sales were low. Sales were going down.

7 Q. Do you recall whether there were any changes in  
8 personnel prior to the acquisition by Novell?

9 A. Yes. There was a large layoff. We had never had a  
10 layoff before, and then there was a layoff of I think over  
11 1,000 people.

12 Q. How did you first come to learn about the possibility  
13 that WordPerfect Corporation was going to be sold?

14 A. There was office chatter about PricewaterhouseCoopers  
15 coming in and doing an analysis, and then the fact that as  
16 they left that we were not in good shape, and that we needed  
17 to be acquired or we needed some kind of an exit strategy in  
18 a way.

19 Q. How did you learn that the company was going to be sold  
20 to Novell?

21 A. We had a company meeting and everybody was invited and  
22 they announced it.

23 Q. How did you personally react to the news of Novell's  
24 acquisition of WordPerfect?

25 A. I was sceptical and hopeful.

1 Q. Did you have discussions with your peers, other  
2 enterprise account directors regarding the news of Novell's  
3 acquisition of WordPerfect?

4 A. Yes. We again met informally several times a day and  
5 formally on at least a weekly basis if not twice a week, and  
6 I led discussions about what was going to be going on with  
7 the new Novell.

8 Q. What was the sales forces reaction to WordPerfect being  
9 acquired by Novell?

10 MR. JOHNSON: Objection, Your Honor.

11 THE COURT: Rephrase the question.

12 BY MS. NELLES

13 Q. Based on your discussions that you had with people in  
14 the sales force, did you observe how others reacted to the  
15 news of Novell's acquisition of WordPerfect?

16 A. Yes. Based on the discussions that I actually led and  
17 spoke at, there was agreement amongst all of the sales force  
18 that there would be -- that we were skeptical and also  
19 hopeful.

20 MR. JOHNSON: Objection, move to strike.

21 THE COURT: Overruled.

22 BY MS. NELLES

23 Q. What reasons for the acquisition did WordPerfect  
24 management give the employees?

25 A. The reasons given were that it was going to be a great

1 synergy. It was taking the back Office, the back office  
2 being NetWare and the ability for servers to work and  
3 connect computers, so take the back Office and marry it with  
4 the front Office. The front Office being the business  
5 applications, where secretaries and end users are using word  
6 processing and spread sheets. So it was going to be this  
7 great marriage that would trump Microsoft's strategy.

8 Q. Did you see those synergies take place?

9 A. No.

10 Q. Were you able to sell your customers on the idea of  
11 synergies and compatibility between Novell's products and  
12 WordPerfect's applications?

13 A. No, not at all.

14 Q. Did you try?

15 A. Yes.

16 Q. You mentioned that you came in hopeful. Did you  
17 ultimately come to a view about the wisdom of the  
18 acquisition?

19 A. Yes. Within a matter of days my opinion was that the  
20 acquisition was not going to work.

21 Q. What caused you to form that view?

22 A. My direct experience with reading the materials that  
23 were given to us and in talking to my customers.

24 Q. From your observation how well did -- well, let me ask  
25 you this. Was the corporate culture of Novell similar to

1 the corporate culture of WordPerfect from your point of  
2 view?

3 A. No. The culture was very different.

4 Q. Can you describe the differences in culture from your  
5 point of view?

6 A. Yeah. From my point of view Microsoft -- I'm sorry,  
7 not Microsoft -- WordPerfect had more of a family feeling,  
8 there was more comradery, and Novell had very much a  
9 hardline business perspective. It was manifested in lots of  
10 management by yelling is what we would call it.

11 Q. As you observed it how well did the corporate cultures  
12 of WordPerfect and Novell integrate after Novell's  
13 acquisition?

14 A. They never integrated, ever.

15 Q. How would you characterize morale among employees,  
16 former WordPerfect -- Legacy WordPerfect employees after  
17 Novell acquired WordPerfect?

18 MR. JOHNSON: Objection, Your Honor. He can speak  
19 for himself. He cannot speak for all employees.

20 THE COURT: He can't speak for all employees. He  
21 can speak to employees and his views and what he observed.

22 BY MS. NELLES

23 Q. From your observation --

24 A. My observation -- actually, can you repeat the  
25 question?

1 Q. How did you observe morale among Legacy WordPerfect  
2 employees after Novell acquired WordPerfect?

3 A. My observation was that across the board we were all  
4 discouraged and felt that the Novell acquisition had been a  
5 mistake.

6 MR. JOHNSON: Objection, again, Your Honor.

7 THE COURT: Overruled.

8 BY MS. NELLES

9 Q. Sir, I would like to show you what has been marked as  
10 Defendant's Exhibit 16.

11 Mr. Acheson, do you recall participating in an employee  
12 survey while at Novell?

13 A. Yes.

14 Q. What do you recall about the survey?

15 A. I recall that I was anticipating, greatly anticipating  
16 the opportunity to share my feelings with the Novell  
17 management about how the acquisition was going.

18 Q. Do you see you have in front of you a Novell employee  
19 survey executive overview?

20 A. Yes.

21 Q. Do you see that?

22 A. Yes.

23 Q. And it is dated May 3rd, 1995; is that right?

24 A. Yes.

25 Q. Is it your recollection that you took your survey



1       sometime before May 3rd, 1995? Is this in the right time  
2       area?

3       A.     That is correct.

4                 MS. NELLES: Can we go to page 3 of this?

5       BY MS. NELLES

6       Q.     Are you able to identify your group here?

7       A.     Yes. We are the fifth group down, the Novell  
8       applications group.

9       Q.     What is your group's participation rate in this survey?

10      A.     The data there shows it was 92 percent, which to my  
11      mind that shows just how anxious all of us at WordPerfect or  
12      Legacy WordPerfect employees were to share our feelings with  
13      management.

14      Q.     I am not going to spend too much time on this document,  
15      but I do want to look at a few of these survey results.

16                 If we could turn to page 34.

17                 Tell me when yo get there.

18      A.     I'm there.

19      Q.     Do you see the heading on this chart of survey results,  
20      the employees were dissatisfied with organizational  
21      structure issues, including resourcing and relations between  
22      division functions and technology?

23                 Is this statement consistent with your personal views  
24      at the time?

25      A.     Yes. I'm scanning through trying to see which answers

1 were pertinent.

2 Yes, this is consistent with my feelings at the time  
3 and obviously with many others.

4 Q. Why were you dissatisfied with Novell's organizational  
5 structure?

6 A. I was dissatisfied because I was not getting the  
7 resources that I needed to do my job. My job when I had  
8 been at WordPerfect as the enterprise account director was  
9 to meet face-to-face with my law firms and they demanded  
10 that. So I had the resources that I needed at WordPerfect  
11 to fly out to New York or Chicago or the west coast and meet  
12 with law firms as often as needed.

13 Once I started at Novell, or once we were acquired by  
14 Novell all of those resources were cut off and I was  
15 expected to do my business by telephone, which did not work  
16 for my customers.

17 Q. Under written comments on this page there is a  
18 notation, eliminate competitiveness inside of the company  
19 and focus on our real competitors.

20 Did you observe competitiveness within the company?

21 A. Yes. My experience was that there was great  
22 competitiveness within the company. There was competition  
23 for attention from management, there was competition for  
24 resources, and my observation was that the Novell --  
25 traditional Novell NetWare salespeople got the resources

1 that they needed, and the WordPerfect Legacy employees that  
2 did the business applications for WordPerfect sales, we  
3 didn't get the resources that we needed at all.

4 Q. I am going to move to page 35.

5 The topic and heading here is senior managers indicate  
6 poor relationships between locations.

7 Did you observe poor relationships between locations?

8 A. Absolutely. My observation was that there was a very  
9 poor relationship between California and Utah, California  
10 representing the traditional Novell and Utah representing  
11 the Legacy WordPerfect people.

12 Q. Was there more than one location in Utah?

13 A. Yes. There was a Provo location, which was where  
14 Novell's Utah headquarters was, and then there was the Orem  
15 location, which is the traditional WordPerfect employees and  
16 that was our headquarters.

17 Q. How were relationships between those two locations?

18 A. Very poor also.

19 Q. Let's move to page 38.

20 The heading here is there is fair amount of pessimism  
21 among the employees.

22 In May of 1995 were you pessimistic?

23 A. Yes, I was very pessimistic.

24 Q. And in the comment section here it says, the fourth  
25 comment down, the reduction in force is keeping the deadwood

1 and getting rid of the good workers.

2 Do you see that?

3 A. Yes.

4 Q. Do you recall that there were reductions in the  
5 workforce after the acquisition?

6 A. Yes. That was a Novell tradition.

7 Q. Do you recall which categories of employees were laid  
8 off?

9 A. The immediate layoff just after the acquisition, I  
10 remember seeing a list of people and the list was  
11 overwhelmingly WordPerfect Legacy employees.

12 Q. Okay.

13 A. It felt like a slap in the face.

14 Q. From your observations how did the layoffs effect the  
15 morale of the remaining WordPerfect employees?

16 MR. JOHNSON: Objection, again, Your Honor.

17 BY MS. NELLES

18 Q. Just from your view and from what you saw and heard.

19 A. Yes. From the meetings that I was present at and that  
20 I led and spoke at, absolutely there was total  
21 demoralization of the team.

22 THE COURT: I don't think I ruled.

23 Overruled. Excuse me.

24 MS. NELLES: Thank you, Your Honor.

25 BY MS. NELLES

1 Q. Going ahead to page 40 in this document, it says  
2 here -- the heading is 48 percent of employees originally  
3 hired at WordPerfect are thinking about quitting.

4 Do you recall how you answered this question?

5 A. Yes. I was one of those employees that was thinking  
6 about quitting. So much so that I was looking for a job.

7 MS. NELLES: I'm finished with that document.

8 BY MS. NELLES

9 Q. After the Novell acquisition, did your position change  
10 at the company?

11 A. Yes, it did. I had been an enterprise account director  
12 and then I became a sales manager. So I went from a  
13 director position to a manager position.

14 Q. Was that a demotion?

15 A. It was -- as I recall, I didn't get a decrease in  
16 salary, but my title changed, and the way that that effected  
17 me was that that indicated to my customers that I had been  
18 demoted.

19 Q. Did any other enterprise account director have a change  
20 in position?

21 A. Yes. The entire team was changed down to become sales  
22 managers.

23 Q. Were you told why your position was changed?

24 A. It was to fit into the Novell sales structure.

25 Q. How did your sales responsibilities change after Novell

1 acquired WordPerfect?

2 A. We were asked to take on the responsibility of selling  
3 NetWare, the back Office.

4 Q. What is NetWare?

5 A. NetWare is the network operating system that Novell had  
6 created, and that was really their cash cow that made them  
7 their millions and billions of dollars, which, again, took  
8 PCs and networked those PCs so that they could share files,  
9 and they could share a printer, for example.

10 Q. To your knowledge were other Legacy WordPerfect sales  
11 personnel also asked to sell NetWare?

12 A. Yes. We as an entire team were asked to sell NetWare.

13 Q. How did you take to selling NetWare?

14 A. I didn't take well to it, and from the meetings that I  
15 led none of the enterprise account directors took well to  
16 that.

17 MR. JOHNSON: Move to strike, Your Honor.

18 THE COURT: Overruled.

19 BY MS. NELLES

20 Q. What was the reason why you didn't take well to selling  
21 NetWare?

22 A. I will speak for myself. There were two reasons. One,  
23 I am not a great technologist. Number two was that I felt a  
24 loyalty and felt that there was value in selling  
25 WordPerfect. I felt there was value with the WordPerfect

1 product line, the word processor and the presentations  
2 product, the e-mail product GroupWise. So that made it  
3 difficult for me to try and make the transition to NetWare.

4 Q. What about selling WordPerfect applications, did the  
5 Legacy Novell sales staff undertake to sell WordPerfect  
6 applications?

7 A. No. They were dismissive of it.

8 MR. JOHNSON: Move to strike, Your Honor.

9 THE COURT: You have to establish the foundation.

10 MR. JOHNSON: I mean, really. This guy is a  
11 salesman. He is now speaking for everyone in the company,  
12 and --

13 MS. NELLES: I am not asking --

14 THE COURT: I just struck that and asked for  
15 another question.

16 MR. JOHNSON: Thank you, Your Honor.

17 THE COURT: If he observed and what was said to  
18 him --

19 Go ahead.

20 BY MS. NELLES

21 Q. Were you ever asked to educate Legacy Novell sales  
22 people on how to best sell WordPerfect applications?

23 A. Yes.

24 Q. Did you observe in those efforts that they were  
25 interested in learning to sell WordPerfect applications?

1 A. No. My observation was that they were dismissive, that  
2 they were not interested in selling the applications.

3 Q. So from your knowledge who was out there selling  
4 WordPerfect applications at this time?

5 A. Nobody was really out there selling WordPerfect  
6 applications. I -- the Legacy WordPerfect employees -- I  
7 was given that task, but I had the additional task of  
8 selling NetWare, and was instructed that that was more  
9 profitable and had greater margins and so nobody was selling  
10 WordPerfect.

11 Q. Do you recall how Novell's NetWare was sold to  
12 customers, the sales model?

13 A. Yes, through a channel model.

14 Q. After Novell's acquisition did the sales model for  
15 selling WordPerfect applications change?

16 A. It did. We were instructed to change from the large  
17 account sales or the direct sales model, and move that to a  
18 model whereby it went through this channel, which meant it  
19 went through distributors and resellers. So the customer  
20 face-to-face contact was reduced dramatically.

21 Q. From your experience did Novell's channel model help to  
22 sell WordPerfect applications?

23 A. No, not at all.

24 Q. After the Novell acquisition were you provided with a  
25 clear marketing plan or strategy to follow?



1 A. No, none at all.

2 Q. How did that impact your ability to sell WordPerfect,  
3 QuattroPro and Perfect Office, the WordPerfect applications?

4 A. It had a large negative impact on our ability to sell  
5 anything that was related to the WordPerfect acquisition.

6 Q. When did you leave Novell?

7 A. I left in the summer of 1995.

8 Q. Were you laid off?

9 A. No, I was not. I had two job offers, one from  
10 Microsoft and one from a small startup in Salt Lake, and I  
11 went to the one startup in Salt Lake.

12 Q. Why did you leave?

13 A. I left because from my perspective I wouldn't be able  
14 to sell the products that I was asked to sell, because my  
15 commissions were going down, and because I had been demoted,  
16 and because I didn't see a future for myself, because I  
17 didn't see a future for WordPerfect products within the new  
18 Novell model.

19 Q. You mentioned yesterday, Mr. Acheson, that you had  
20 opportunities to meet or speak with developers; is that  
21 right?

22 A. That is correct.

23 Q. What did you speak about?

24 A. I spoke directly with them about the flaws, the  
25 problems, the bugs in our WordPerfect application product.

1 Q. During the period from late 1994 until the time you  
2 left in 1995, did you ever learn from anybody, anyone at  
3 all, or hear from anybody at all at WordPerfect that  
4 Microsoft did anything in any way to impede the development  
5 of WordPerfect's products for Windows?

6 MR. JOHNSON: I think that is a touch leading,  
7 Your Honor.

8 THE COURT: Rephrase the question.

9 MS. NELLES: Okay.

10 Excuse me, Your Honor?

11 THE COURT: Never mind.

12 BY MS. NELLES

13 Q. Mr. Acheson, from late 1994 until the time that you  
14 left in 1995 what, if anything, did you ever learn from  
15 anyone regarding whether Microsoft did anything in any way  
16 to impede development of WordPerfect's products for Windows?

17 A. I had participated in the office chatter that Pete  
18 Peterson had made a decision to go with OS2 instead of  
19 Windows and, therefore, our office chatter was that it was  
20 WordPerfect's fault that we were late to market.

21 MR. JOHNSON: Your Honor, move to strike. Mr.  
22 Peterson had left the company a year before this man even  
23 arrived.

24 BY MS. NELLES

25 Q. Mr. Acheson, let me --

1 MR. JOHNSON: Move to strike please, Your Honor.

2 THE COURT: The motion is granted. It is actually  
3 not responsive to the question.

4 BY MS. NELLES

5 Q. Mr. Acheson, what I'm asking you to focus on is the  
6 period from late 1994, and this is after the acquisition by  
7 Novell, and until the time that you left in 1995.

8 Are you there?

9 A. I'm there. I'm with you.

10 Q. Did you ever learn from anyone whether Microsoft did  
11 anything in any way to impede the development of  
12 WordPerfect's products for Windows?

13 A. No.

14 MS. NELLES: I pass the witness, Your Honor.

15 THE COURT: Mr. Johnson.

16 MR. JOHNSON: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. JOHNSON

19 Q. Mr. Acheson, good morning.

20 A. Good morning.

21 Q. My name is Jeff Johnson. We have not met before,  
22 correct?

23 A. Correct.

24 Q. Mr. Acheson, you surprised me this morning with some  
25 testimony. You suggested that you sold WordPerfect to

1 Dickstein Shapiro, my law firm.

2 That is not true, is it, sir?

3 A. From my recollection it is true.

4 Q. Mr. Acheson, Dickstein Shapiro picked Ami Pro. Do you  
5 recall that, sir?

6 A. I don't.

7 Q. Who did you deal with at Dickstein Shapiro?

8 A. I can't recall.

9 Q. Do you think you might be mistaken about that, sir?

10 A. Mistaken about what?

11 Q. Selling WordPerfect to Dickstein Shapiro.

12 A. I'll put it this way. My responsibility was to go into  
13 all law firms, and I know that I was in Dickstein Shapiro,  
14 so I would consider that selling into Dickstein Shapiro.

15 Q. Okay. So you didn't mean to suggest to this jury that  
16 you actually sold WordPerfect to Dickstein Shapiro?

17 A. If you mean that Dickstein Shapiro purchased, you're  
18 correct.

19 Q. Mr. Acheson, as I understand it, you began to work at  
20 WordPerfect in March of 1993 or thereabouts, correct?

21 A. Yeah.

22 Q. How old were you in March of 1993?

23 A. I was born in '61. 32. I was an English major.

24 Q. So no technical background?

25 A. Correct.

1 Q. Certainly never did any development in your career?

2 A. Correct.

3 Q. Wouldn't hold yourself out as an expert in any way in  
4 the development of software products, correct?

5 A. Correct.

6 Q. So by the time that you got to WordPerfect, WordPerfect  
7 had already released two Windows word processors; is that  
8 correct?

9 A. I can't recall. I know that we were selling 5.2 for  
10 Windows. I thought that was the first one.

11 Q. You do recall there was a 5.1 for Windows, don't you,  
12 sir?

13 A. I don't recall that, but I will take your word for it.

14 Q. Now, I believe you testified that you sold almost  
15 exclusively to law firms, right?

16 A. Correct, law firms and accounting firms.

17 Q. But the vast majority of your work, as you testified,  
18 was law firms, right?

19 A. That is correct.

20 Q. And that would have been true for the entire period,  
21 from March of 1993 to June of 1995 when you left, right?

22 A. I'm trying to recall when -- after Novell acquired us  
23 what additional sales channels or sales vertical markets I  
24 was supposed to take on, and my vague recollection is that I  
25 was asked to take on further accounts or vertical markets,

1 but for the life of me I can't remember what they were.

2 Q. So certainly you kept your responsibilities in the  
3 vertical legal market, correct?

4 A. To a small degree. I was asked to move away from  
5 focusing on law firms.

6 Q. When did that happen, sir?

7 A. After the Novell acquisition.

8 Q. But you have no recollection to share with us today  
9 about what different markets you may have sold into?

10 A. I don't. That was, what, 17 years ago.

11 Q. So from a sales perspective your personal experience at  
12 WordPerfect and Novell was primarily limited to law firms,  
13 right?

14 A. Correct.

15 Q. And in 1993 those law firms all used WordPerfect for  
16 DOS, correct?

17 A. Everybody but Dickstein Shapiro, apparently.

18 Q. That was our bad.

19 A. I agree.

20 Q. And that is because, that these law firms all used  
21 WordPerfect the DOS, that is because the legal secretaries  
22 loved the reveal codes and the fact that they didn't have to  
23 remove their hands from the keyboard, correct?

24 A. Correct, among other reasons.

25 Q. Yes. I notice you didn't give any of the other

1 reasons. Apart from those reasons WordPerfect was also well  
2 known for its document management capabilities, correct?

3 A. It was well known for its ability to interact with  
4 document management software such as SoftSolutions.

5 Q. Yes. For example, WordPerfect was integrated with the  
6 document management systems built by SoftSolutions, correct?

7 A. Yes, at some point.

8 Q. And one of the great things about SoftSolutions for law  
9 firms, was that you could have long file names, which was  
10 very innovative at the time, correct?

11 A. It might have been. My recollection is that I didn't  
12 sell to that.

13 Q. Do you recall, sir, your deposition in this case?

14 A. Yes, I think the one from three or four years ago.

15 Q. Do you recall, sir, that you testified that  
16 SoftSolutions enabled you to have names for your documents  
17 that were longer than seven characters?

18 A. Okay.

19 Q. Do you agree with that, sir?

20 A. Yes.

21 Q. So, in fact, one of the great things about  
22 SoftSolutions for law firms was that you could have these  
23 long file names which was innovative at the time, correct?

24 A. Yes.

25 Q. And in many cases law firms did all of their document

1 management in WordPerfect, right?

2 A. Correct.

3 Q. And that is another reason why law firms chose  
4 WordPerfect over Word or Ami Pro because WordPerfect was  
5 better integrated with folks like SoftSolutions, right?

6 A. Correct.

7 Q. Did I understand correctly that your title was  
8 enterprise account director at WordPerfect?

9 A. That is correct.

10 Q. That is a pretty important sounding title. How many  
11 people did you have reporting to you?

12 A. An admin, and it was a dotted line responsibility, so I  
13 shared her services with the other enterprise account  
14 directors.

15 Q. I am sorry. You said admin?

16 A. Yes, an admin. An administrative assistant or a  
17 secretary.

18 Q. So that was one person that was reporting to you, and  
19 that person actually served other sales representatives?

20 A. That is correct.

21 Q. So if we were to take a look at your place in the  
22 organizational chart at WordPerfect, there would be no one  
23 reporting to you, correct?

24 A. That is correct.

25 Q. How many salespeople were there at WordPerfect?



1 A. If I were to give a number it would be a wild guess.

2 Q. Well, it would certainly be over 100, wouldn't it?

3 A. Yes. I would say 100 or less.

4 Q. Well, in addition to the enterprise account people like  
5 yourself, there were a large number of corporate inside  
6 sales representatives, correct?

7 A. Yes. Correct.

8 Q. And there were over 40 regional sales representatives?

9 A. If that is the number that you have got documented,  
10 then I would take that as a fact.

11 Q. Well, I don't want you to take my representation. I  
12 want you to give me your recollection.

13 A. Right. Then my recollection is I don't know.

14 Q. There were a lot of them, weren't there?

15 A. That is a great way to put it.

16 Q. And there were over 40 sales representatives handling  
17 government accounts as well?

18 A. Again, as to specific numbers I couldn't speak to that,  
19 but we like the word a lot, so there were a bunch.

20 Q. So you were one sales guy out of 100 or so sales guys,  
21 right?

22 A. Correct.

23 Q. There were also over 40 sales representatives selling  
24 to educational accounts, too, correct?

25 A. Again, I don't know about the numbers, but there were a

1 bunch.

2 Q. So between March of 1993 and June of 1995 did you ever  
3 have any other salespeople reporting to you?

4 A. No.

5 Q. Did you manage any group of people during that entire  
6 time period?

7 A. Hardline, no; dotted line, yes. I had field sales reps  
8 that I used as my eyes and ears for legal sales worldwide,  
9 and so I worked with them to get my work done.

10 Q. Now, you had a pretty cushy job at WordPerfect, didn't  
11 you, sir?

12 A. Define cushy.

13 Q. Well, you were basically selling to just law firms,  
14 right?

15 THE COURT: That is cushy?

16 THE WITNESS: That is not fair, because you took  
17 my line. The hardest work I have ever done.

18 BY MR. JOHNSON

19 Q. Really?

20 A. Really. Yes.

21 Q. Wasn't that an easy job in 1993 because law firms, if  
22 they were using some kind of word processing technology,  
23 were using WordPerfect, right?

24 A. It was a fun and rewarding job, but as with most things  
25 in life, hard work combined with -- if you have fun and

1 reward that goes with that, that makes it great.

2 Q. Do you recall in your deposition testifying, sir,  
3 quote, I had an easy job because most law firms if they were  
4 using some kind of word processing technology were using  
5 WordPerfect?

6 A. Yes, I recall saying that.

7 Q. So it was you that said it was an easy job, right?

8 A. Yes, that is correct.

9 Q. And basically nobody ever told you no. Isn't that  
10 correct, sir?

11 A. With my -- as I look back at it with perspective over  
12 the past 17 or so years, I would say that that is a good  
13 answer.

14 Q. In fact, that is the answer that you gave at your  
15 deposition, is it not, sir?

16 A. That is correct. Life is always good and it always  
17 feels easy when you're being successful and working hard.

18 Q. I believe you testified that one of the things that you  
19 loved about WordPerfect was that you had free drinks and  
20 free ice cream, right?

21 A. Absolutely.

22 Q. The refrigerator was filled with snacks and stuff all  
23 the time?

24 A. Yes.

25 Q. And there were parties and get-togethers and gatherings

1 and you thought that was just great?

2 A. Yes.

3 Q. And you even had a large car allowance at WordPerfect,  
4 didn't you, sir?

5 A. Yes, I did. I don't know that it was large. I drove a  
6 Nissan Sentra.

7 Q. It was \$200 to \$400 a month, wasn't it, sir?

8 A. Yeah, it was somewhere in that range.

9 Q. And we're talking back in 1993, right, sir?

10 A. That is correct.

11 Q. So the merger of WordPerfect with Novell occurred in  
12 June of 1994, right?

13 A. Correct.

14 Q. So you were with Novell for only a year before you left  
15 the company?

16 A. Correct.

17 Q. As I understand your testimony, when the merger  
18 occurred you were no longer called an enterprise account  
19 director, but instead you became a sales manager?

20 A. Correct.

21 Q. And that is because that was the Novell system for  
22 salesmen within the organization, correct?

23 A. As I recall, yes.

24 Q. Now, in fact, you were actually paid better by Novell  
25 than you had been paid at WordPerfect.

1           Isn't that correct, sir?

2           A.    That is not my recollection.  I am not saying that I  
3           disagree with it, I just couldn't tell you what -- I  
4           couldn't tell you what I was making at that time, either  
5           with WordPerfect or with Novell.

6           Q.    You would certainly acknowledge that you didn't receive  
7           any less pay?

8           A.    Correct.

9           Q.    But this change in title you viewed as a demotion,  
10          correct, sir?

11          A.    Yes.

12          Q.    Because the title thing was really important for guys  
13          like you in your thirties, right?

14          A.    Yes, and guys like me in their fifties.

15          Q.    You testified at your deposition that it was real  
16          important for guys like you in your thirties, correct?

17          A.    Yes, that is correct.

18          Q.    And you were also unhappy because Novell tried to teach  
19          you how to sell differently, correct?

20          A.    Not sell differently, but to sell a different product  
21          and take the focus away from WordPerfect, which I was  
22          comfortable selling.

23                   MR. JOHNSON:  Bring up page 25 of Mr. Acheson's  
24          deposition.

25                   THE WITNESS:  By the way, my last name is

1 pronounced Acheson. There is no n in the middle.

2 MR. JOHNSON: Sorry. My apologies.

3 BY MR. JOHNSON

4 Q. Acheson.

5 A. You have got it. It is like you're sneezing.

6 MR. JOHNSON: If we could highlight lines 2  
7 through 8 there.

8 BY MR. JOHNSON

9 Q. Question, who asked you to? Answer, my management, so  
10 Brad Jackman, Ron Hines. Brad Jackman was the original  
11 WordPerfect guy. Ron Hines became Brad's boss after the  
12 Novell merger, and so Ron worked with Brad to have Brad get  
13 us as enterprise account directors to sell differently.

14 Do you see that, sir?

15 A. I do.

16 Q. Did you give that answer to that question at your  
17 deposition, sir?

18 A. Yes, I did.

19 Q. So you were asked to sell differently by Novell,  
20 correct?

21 A. Correct.

22 MS. NELLES: Mr. Johnson, what page are you on,  
23 please.

24 MR. JOHNSON: 25.

25 MS. NELLES: Thank you.

1 BY MR. JOHNSON

2 Q. And Novell actually expected you to sell NetWare as  
3 well as WordPerfect, correct?

4 A. Correct. The focus became on NetWare.

5 Q. And you didn't know anything about NetWare, right?

6 A. That is correct.

7 Q. It was too complicated, right?

8 A. Yes.

9 Q. It was too technical?

10 A. Yes.

11 Q. And you didn't feel technically qualified to sell  
12 NetWare, right?

13 A. Yes.

14 Q. And emotionally you had no tie to NetWare whatsoever.  
15 Isn't that correct, sir?

16 A. Yes, that is correct.

17 Q. And the other thing that you were unhappy about was  
18 that the NetWare people were making more money, because the  
19 NetWare sales were higher so there was more commission to  
20 earn, correct, sir?

21 A. That is correct.

22 Q. You left Novell for the first time in June of 1995; is  
23 that right?

24 A. Yes, that is right.

25 Q. And the fact of the matter is that you left after only

1 a year at Novell because you didn't see any future there for  
2 yourself, right?

3 A. Yes.

4 Q. You were not happy with the lack of career options,  
5 correct?

6 A. Correct.

7 Q. You didn't like the management?

8 A. Correct.

9 Q. You didn't like the way you were being managed?

10 A. Correct.

11 Q. And you thought there was not enough focus on  
12 applications, right?

13 A. Right.

14 Q. Let's go back a little bit to your time at WordPerfect  
15 in 1993.

16 I think we established that because you were selling to  
17 law firms that you were only selling WordPerfect's DOS  
18 products, correct?

19 A. Yes. I was selling DOS products and I was also  
20 responsible for selling WordPerfect for Windows.

21 Q. But the law firms used DOS. That was the big thing.  
22 All the legal secretaries liked DOS, right?

23 A. Correct, and law firms were switching to Windows also.

24 Q. But during the time period while you were at  
25 WordPerfect you were selling primarily WordPerfect for DOS



1 5.2?

2 A. No. If you look in that Leo Spiegel letter it says  
3 WordPerfect for Windows 5.2, so that was a big feather in my  
4 cap to sell WordPerfect for Windows 5.2 to Shearman &  
5 Sterling.

6 Q. I am just trying to establish, was the predominant  
7 sales that you were making while at WordPerfect in 1993 DOS  
8 based WordPerfect products to law firms?

9 A. The only reason I am hesitating is because law firms  
10 were already filled with 5.1 for DOS, and so new sales would  
11 come from new products and new releases. So WordPerfect for  
12 Windows 5.2, for example, would be something that I needed  
13 to sell to actually get revenue coming in.

14 Q. Because part of the problem was that WordPerfect 5.1  
15 for DOS was already out there and was just fine for law  
16 firms, right, so they had no reason to switch at that time?

17 A. Correct.

18 Q. Now, with respect to the Windows platform, you found  
19 that for the first time, in the shootouts that you described  
20 to the jury, that you were just breaking even or maybe even  
21 not performing quite as well, right?

22 A. Correct.

23 Q. But WordPerfect responded to this challenge with an  
24 increased emphasis on the development for WordPerfect for  
25 Windows.

1           Isn't that correct, sir?

2           A.    Yes.

3           Q.    And in early October of 1993 WordPerfect 6.0 came out  
4           for the Windows platform, correct, sir?

5           A.    Yes.

6           Q.    And you considered WordPerfect 6.0 to be the best of  
7           breed word processing application at the time, correct, sir?

8           A.    That is correct.

9           Q.    In fact, WordPerfect 6.0 for Windows was better than  
10          any other word processor out there including Microsoft Word,  
11          correct?

12          A.    Correct.

13          Q.    Are you familiar with PC Computing Magazine?

14          A.    Yes.

15          Q.    Were you aware that PC Computing Magazine awarded  
16          WordPerfect 6.0 the MVP award for word processors in 1993?

17          A.    Yes, and I used that in my sales.

18          Q.    But you claimed at your deposition, sir, that you  
19          continued to see erosion in sales after the release of  
20          WordPerfect 6.0, right?

21          A.    Yes, because customers are not PC Magazine, so  
22          customers have the right and the opportunity to disagree  
23          with what experts might say.

24          Q.    Is it possible, sir, that your testimony here today is  
25          influenced by your dislike for Novell?

1 A. I think it would be disingenuous for me to say no, so I  
2 will say to a degree I am not happy with the way that I felt  
3 that I was treated by Novell, and that my precious products  
4 were treated also.

5 Q. Do you recall meeting with Mr. Max Wheeler and Mr.  
6 Lundberg sitting at the end of the table over there on  
7 November 17th?

8 A. Yes, when they took me to breakfast at Mimi's Cafe in  
9 Orem.

10 Q. Do you recall telling Mr. Lundberg and Mr. Wheeler that  
11 you really loved Microsoft and you really disliked Novell?

12 A. Yeah. Sure.

13 Q. Do you also recall telling Mr. Lundberg and Mr. Wheeler  
14 that your testimony may be a way for you to stick it to  
15 Novell?

16 A. I remember telling them that that was something that  
17 they might say, but it is not true. In other words, that  
18 they might suppose, but it is not true.

19 Q. The fact of the matter is, Mr. Acheson you have no idea  
20 what WordPerfect's sales were on Windows in 1993.

21 Isn't that correct, sir?

22 A. Yes, that is fair to say.

23 Q. You didn't review any overall sales figures for  
24 WordPerfect for Windows during the one year that you were at  
25 WordPerfect, correct?

1 A. Correct, because I was focused on my industry.

2 Q. You were a salesmen. You were not up in the executive  
3 offices reviewing sales data, correct?

4 A. Sales -- yeah, that is correct. Yeah.

5 Q. You were not privy to the overall sales figures for  
6 WordPerfect for Windows at any time in 1993.

7 Isn't that correct, sir?

8 A. I was privy to the sales in my industry.

9 Q. Were you aware, sir, that WordPerfect's word processor  
10 revenues in 1993 exceeded \$300 million?

11 A. Yes. I have seen documents to that effect.

12 Q. Were you aware, sir, that WordPerfect's word processor  
13 revenues on Windows increased every single year from 1991  
14 through 1994?

15 A. I was not.

16 Q. Mr. Acheson, are you familiar with IDC data, the  
17 International Data Corporation?

18 A. Yes, I am familiar with IDC.

19 Q. What does IDC do? What kind of data do they collect on  
20 software?

21 A. They collect sales figures, they do research with  
22 customers, with databases, and they mine information and  
23 then extrapolate from that.

24 Q. And one of the things that they track is the install  
25 base of word processors on a year-by-year basis, correct?

1 A. Yeah, I think they were doing that at the time.

2 MR. JOHNSON: Don't put this up yet, Mr. Goldberg.

3 For identification, Your Honor, Plaintiff's

4 Exhibit 599.

5 MS. NELLES: Your Honor, we have an objection.

6 THE COURT: Okay. It is not up yet.

7 Let me hear the question.

8 BY MR. JOHNSON

9 Q. I would like you to turn to table 13 on page 4,129, the  
10 Bates number.

11 A. Yes, I'm there.

12 Q. Can you see, sir, that in both 1991 and 1994  
13 WordPerfect's total installed base for IBM compatible word  
14 processors was higher than Word for Windows?

15 A. Yes.

16 Q. It is very important, isn't it, sir --

17 A. Actually, can we go back? Can you point to the  
18 specific lines? It is two and three, correct?

19 Q. One, two and three. You have got Microsoft, you have  
20 got Novell on Windows and Novell on DOS.

21 A. Yes. Okay. Yep.

22 Q. Your answer stands, right?

23 A. Could you ask it again? I believe it does, but if you  
24 could just ask it again.

25 Q. Sure. I would be happy to.

1           You concede, can you not, that in both 1993 and 1994  
2 WordPerfect's total install base for IBM compatible word  
3 processors was higher than Word for Windows?

4           A.    So are you saying combine two and three?

5           Q.    Yes, sir.

6           A.    Okay. Which gives us 12, right, the number of 12 plus?  
7 Right. So, yes. Correct, and my answer stands.

8           Q.    It is very important, isn't it, sir, for a software  
9 vendor to hold onto its install base, right?

10          A.    Yes.

11          Q.    Because you know that once you lose them it is very  
12 hard to get them back, right?

13          A.    Correct.

14          Q.    But in 1993 and 1994 WordPerfect had a tremendous  
15 opportunity, so long as it was able to hold onto its install  
16 base, correct?

17          A.    It is important to remember that these numbers were  
18 probably based on '91 and '92 survey information. There is  
19 a lag between when IDC prints, goes to press and the data  
20 that they use and the years that that data was collected.

21                THE COURT: Yes, but look at the heading and look  
22 at the bottom.

23                THE WITNESS: Yeah. Yes, I agree with your  
24 question.

25                BY MR. JOHNSON

1 Q. So you want to withdraw that testimony that this would  
2 have been based upon 1991 and 1992 data, sir?

3 A. No, because --

4 MS. NELLES: Your Honor, I object. He is not  
5 testifying to this document, Mr. Johnson is simply asking  
6 him to read the document.

7 MR. JOHNSON: He is trying to suggest, Your Honor,  
8 that the data is not current as of the year given.

9 MS. NELLES: He is not trying to suggest anything.

10 THE COURT: Hold it right now.

11 MS. NELLES: I'm sorry.

12 THE COURT: He said what he said and there is  
13 nothing to strike. The testimony stands for itself.

14 MS. NELLES: Thank you, Your Honor.

15 BY MR. JOHNSON

16 Q. Mr. Acheson, can you see that this particular IDC  
17 report, Plaintiff's Exhibit 599, was issued in September of  
18 1995? You will find that on the second page, sir.

19 A. I'll wait for that to come up.

20 Yes.

21 Q. Sir, do you have any personal knowledge that the data  
22 reflected in table 13 is not reflective of actual data from  
23 1993 and 1994?

24 A. No, nothing other than my layperson's opinion.

25 Q. Were you also aware, sir, in your position as a

1 salesman manager at Novell, that Novell understood that 74  
2 percent of the potential suite users had yet to choose a  
3 suite in 1994?

4 A. No. From my perspective I was not aware of that.

5 Q. Let me show you what has been marked as Plaintiff's  
6 Exhibit 412.

7 This is a WordPerfect strategy paper by the Novell  
8 applications group produced in the fall of 1994.

9 Did you ever receive a copy of this document?

10 A. I may have.

11 Q. In your position as a sales manager would you have even  
12 seen such strategy papers?

13 A. Yes.

14 Q. But you don't recall this one, sir?

15 A. No. I have seen documents over the past few years as I  
16 have done depositions, and so I have seen this and I  
17 couldn't tell you when was the first time I saw it.

18 Q. If you could turn to page 2 of the strategy paper, and  
19 look at the page Bates stamped at the end 8191.

20 A. I am there.

21 Q. If you can turn to the second paragraph there.

22 MR. JOHNSON: If we could bring that up, Mr.  
23 Goldberg.

24 BY MR. JOHNSON

25 Q. Do you see that it states the majority of customers



1 today have not chosen to adopt either one of today's leading  
2 suites. According to the January 1994 Computer World  
3 software suite study, 74 percent of users have not yet  
4 adopted a suite standard.

5 A. I see that.

6 Q. Can you see, sir, the tremendous opportunity that was  
7 presented to WordPerfect and Novell in the suite market,  
8 given that WordPerfect had the largest install user base in  
9 the industry at the time?

10 A. From a rubber meets the road sales perspective talking  
11 to my customers, no, I would disagree with that statement.

12 Q. And your customers were primarily law firms, correct?

13 A. That is correct, yes.

14 Q. While you were at WordPerfect, WordPerfect 6.0A for  
15 Windows came out, correct?

16 A. That is correct.

17 Q. And WordPerfect 6.0A was also received very favorably  
18 in the trade press, correct?

19 A. Correct.

20 Q. Do you recall that WordPerfect 6.0A received the MVP  
21 award from PC Magazine for word processing in 1994?

22 A. Yes.

23 Q. And that, in fact, was the second year in a row that  
24 WordPerfect's Windows word processor had received the MVP  
25 award, correct?

1 A. Yes.

2 Q. During the single year that you were at Novell, Novell  
3 also introduced WordPerfect 6.1 for Windows, correct?

4 A. Yes.

5 Q. And that was released in November of 1994, right?

6 A. Yes.

7 Q. Do you recall that WordPerfect 6.1 for Windows was also  
8 well received?

9 A. It was not well received by my customers, so my answer  
10 would be no, from my experience.

11 Q. Would you agree with me that WordPerfect 6.1 was well  
12 received in the trade publications?

13 A. Sure.

14 Q. No question about that, is there, sir?

15 A. No. Experts, gotta love em.

16 Q. In fact, these publications that we have been seeing in  
17 this case, those drive industry professionals, correct?

18 A. I disagree.

19 Q. Let me show you what has been marked as Plaintiff's  
20 Exhibit 274.

21 MS. NELLES: Your Honor, I think we need the  
22 instruction on this document before we show this to the  
23 jury.

24 THE COURT: I can't see any possible reason,  
25 consistent with the reason I have admitted it for, for it to

1 be shown to this witness. I will hear the question and it  
2 is admitted, so you can put it on the screen, but let me  
3 hear a question.

4 MS. NELLES: Thank you, Your Honor.

5 THE COURT: I think it has been introduced for a  
6 very limited purpose, and I will wait to hear the question.

7 BY MR. JOHNSON

8 Q. Mr. Acheson, are you familiar with the Windows  
9 laboratory comparisons made in Windows Magazine in March of  
10 1995 --

11 A. Yes.

12 Q. -- with respect to WordPerfect 6.1?

13 A. Yes.

14 MS. NELLES: Object, Your Honor. I don't think  
15 this is supposed to be on the screen.

16 MR. JOHNSON: Your Honor, all of these have been  
17 shown --

18 THE COURT: If it has already been admitted I  
19 have no problem with it being on the screen. I will still  
20 wait for the question.

21 BY MR. JOHNSON

22 Q. Turn to the report card on page 271.

23 THE COURT: This is obviously being admitted for  
24 the truth of the evaluation. If this witness disagrees with  
25 these publications and if there is evidence to the contrary

1 you can argue that, but there is no reason to just use him  
2 as a medium to reinforce what is already in.

3 MS. NELLES: Yes, Your Honor.

4 THE COURT: Just move on.

5 BY MR. JOHNSON

6 Q. Well, Mr. Acheson, Windows Magazine was a respected  
7 publication?

8 MS. NELLES: Objection, Your Honor.

9 THE COURT: Correct, sir?

10 MS. NELLES: Objection, Your Honor.

11 THE COURT: Put it down and he can answer the  
12 question, but he has already told you that he does not think  
13 that that is what drives customers. There is evidence to  
14 the contrary, but that is for the jury to determine.

15 If you have a question -- put this down.

16 BY MR. JOHNSON

17 Q. Mr. Acheson, can you respond, please.

18 A. Yes, if you would repeat the question.

19 Q. Sure. Windows Magazine is a respected publication in  
20 the industry?

21 A. All of this stuff is like a marketing piece for a Ford  
22 car. It looks great but it does not help you buy the car.  
23 You have to test drive it and there are other factors. So,  
24 sure, yes, experts said it was great. It was. It was  
25 great. It worked well.

1 Q. Well, let's talk about another publication that you're  
2 familiar with, InfoWorld. Is that of the same type?

3 A. Yes.

4 Q. And InfoWorld was a respected publication as well,  
5 right?

6 A. Yes, and they loved it.

7 Q. It was widely read and it was turned to and relied upon  
8 by industry professionals, correct?

9 A. No, I disagree.

10 Q. Let's turn to your deposition. If we could turn to  
11 page 120.

12 MR. JOHNSON: 121. I'm sorry, Your Honor.

13 BY MR. JOHNSON

14 Q. Actually let's start with page 120, lines 22 through  
15 page 121, line 8.

16 MR. JOHNSON: Can we bring that up, Mr. Goldberg?

17 BY MR. JOHNSON

18 Q. Mr. Acheson, did you give the following answer to the  
19 following question at your deposition? Question, was this  
20 publication -- talking about InfoWorld -- widely known  
21 throughout the -- strike that. Would reviews such as this  
22 have been relied upon by persons with responsibility for  
23 purchasing software for corporations? Answer, yes.

24 InfoWorld was a respected publication. It was widely read  
25 and it was turned to and relied on by industry

1 professionals, by my customers, chief technology officers,  
2 and information officers in making decisions about  
3 purchasing products.

4 Did you give that answer, sir, to that question in your  
5 deposition in this case?

6 A. Yes, I did.

7 Q. And are you retreating from that answer in any manner  
8 whatsoever, sir?

9 A. I'm saying that in total these things can all weigh in,  
10 but the bottom line is what are the other factors that come  
11 into play in making final purchasing decisions.

12 MR. JOHNSON: Your Honor, I would like to now turn  
13 back to Plaintiff's Exhibit 274.

14 THE COURT: No. You are just using him as a  
15 medium to get in favorable reviews which are already in for  
16 a limited purpose.

17 BY MR. JOHNSON

18 Q. Now, Novell also released Perfect Office 3.0 for  
19 Windows in December of 1994, correct?

20 A. Correct.

21 Q. And you would agree, sir, that the integration in  
22 Perfect Office 3.0 was a pretty good job, right?

23 A. More than pretty good, excellent.

24 Q. And you recall, sir, that InfoWorld, the publication we  
25 just discussed from your deposition, found Perfect Office

1 3.0 to be the best of the high end suites in April of 1995?

2 MS. NELLES: Objection, Your Honor.

3 THE COURT: Sustained.

4 BY MR. JOHNSON

5 Q. If I could return your attention --

6 MR. JOHNSON: Again, don't put this up, Mr.

7 Goldberg.

8 BY MR. JOHNSON

9 Q. -- to the IDC data report, Plaintiff's Exhibit 599.

10 If you would turn to page 22 of this report, sir. The  
11 Bates stamp at the end is 4125.

12 A. Yes. I am going to wait for that to come up here on  
13 the screen.

14 Q. Looking at the paragraph entitled WordPerfect for  
15 Windows market statistics there in the middle, sir?

16 A. Yeah. I see that.

17 Q. I would like to draw you attention to the second  
18 paragraph in that section.

19 A. It starts the 1995 outlook?

20 Q. Yes.

21 A. Yes, I'm there.

22 Q. Do you recall, sir, that during the last two weeks of  
23 December WordPerfect took orders for 150,000 Perfect Office  
24 3.0 suites?

25 MS. NELLES: Objection, Your Honor.

1 Can we approach for a moment?

2 THE COURT: Sure.

3 (WHEREUPON, a bench conference was begun.)

4 MS. NELLES: Your Honor, this data has been the  
5 subject of a lot of back and forth. I think we are to a  
6 place where we never got to an actual stipulation, where we  
7 agreed that experts could use the actual data points. This  
8 is full of hearsay, underlined commentary, and he is just  
9 reading it to a gentleman that said he has never seen this  
10 report. He established that he has not the one to talk  
11 about this. He is just a sales guy, he has established it  
12 on cross again, and he is just reading IDC data to him. It  
13 is inappropriate. I keep jumping up and objecting, but we  
14 should just stop this.

15 MR. JOHNSON: Your Honor, this witness went on at  
16 great length about how the sales were disastrous, that he  
17 couldn't sell this stuff, it went into the toilet, et  
18 cetera, et cetera, et cetera. Now, the fact of the matter  
19 is this guy was a salesperson in a very limited niche  
20 market, and --

21 THE COURT: Wait a second. I am going to tell you  
22 something right now. It offends my most fundamental values  
23 to attack somebody because of their status. What you did  
24 early on in the examination, that he is just a salesmen,  
25 just offended me at my core. It also offended me when



1 somebody has self-righteously produced two software  
2 developers as speaking for Novell. You cut it out. I don't  
3 like it. It offends me at every place of my Quaker core.  
4 So cut it out.

5 Secondly, the question is does he recall, and I  
6 will allow it.

7 MS. NELLES: Thank you.

8 (WHEREUPON, the bench conference was concluded.)

9 BY MR. JOHNSON

10 Q. Mr. Acheson, the question is do you recall that in  
11 December of 1994 Perfect Office 3.0 had sales of 150,000  
12 units? '95, excuse me.

13 A. I am sure that I heard that at the time. I don't  
14 recall that right now, but I don't disagree with that.

15 Q. I would like to refer you back to DX-16, if you have  
16 that employee survey.

17 Can you see, sir, that that's dated May 3rd, 1995?

18 A. Correct.

19 Q. So the answers given by employees, including yourself,  
20 would have taken place at sometime prior to May 3rd of 1995.

21 Is that fair to say?

22 A. That is fair.

23 Q. Do you recall how much earlier it was that that data  
24 was collected?

25 A. I don't.

1 Q. As I understand your testimony, sir, you responded to  
2 the question about whether you were thinking about quitting  
3 with a yes?

4 A. That is correct.

5 Q. And you in fact quit in June of 1995, correct?

6 A. That is correct.

7 Q. So, in fact, sometime prior to May of 1995 you were  
8 already basically heading out the door?

9 A. I wouldn't characterize it in that way, but I was  
10 looking for a job.

11 Q. And you wouldn't have had any involvement in the  
12 development of Perfect Office for Windows 95, correct?

13 A. No.

14 Q. Now, you came back to Novell in June of 1996, right?

15 A. That is correct.

16 Q. So this company that you disliked so much took you back  
17 in, correct?

18 A. It is not fair to say that I disliked it so much.

19 Q. I'm sorry. Didn't you testify earlier that you  
20 disliked Novell?

21 A. My testimony is that I was frustrated, and that as with  
22 any situation in which there has been change that has been  
23 dramatic, that I was looking to change things up.

24 Q. And by the time that you came back Novell had sold  
25 WordPerfect and several other business applications to

1 Corel, correct?

2 A. Yeah, that is correct.

3 Q. So when you returned you were not working in any way  
4 with the business applications, right?

5 A. That is correct.

6 Q. And you don't have any personal knowledge with respect  
7 to events that occurred after you left in June of 1995 and  
8 before you returned in June of 1996, right?

9 A. What is the subject of that sentence? I don't recall  
10 what?

11 Q. Let me repeat it for you.

12 A. Okay.

13 Q. The question was you don't have any personal knowledge  
14 of events that occurred at Novell after you left in June of  
15 1995 and before you returned in June of 1996?

16 A. That is correct.

17 Q. You talked a little bit, Mr. Acheson, about the  
18 distributor channel that was used by Novell in the sales,  
19 correct?

20 A. Yes.

21 Q. And it is true, is it not, that Novell had a very  
22 sizable distributor channel to sell into?

23 A. Yes.

24 Q. Isn't it correct, sir, that Novell had somewhere  
25 between 20,000 to 25,000 channel partners at the time?

1 A. I would have to just say if you say so, because I  
2 didn't have direct knowledge of that.

3 Q. Isn't it true that Novell's distributor channel was one  
4 of the most effective and respected in the industry?

5 A. Absolutely.

6 MR. JOHNSON: I pass the witness, Your Honor.

7 THE COURT: Anything further?

8 MS. NELLES: Just a few, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. NELLES

11 Q. Mr. Acheson, do you still have the document that Mr.  
12 Johnson showed you that is marked as PX-599?

13 A. Just a second. Say that again.

14 Q. PX-599.

15 A. Yes, the IDC word processing software marketing review?

16 Q. Correct.

17 A. Yeah. I have it right here.

18 Q. I am trying to find my way back to that table 13.

19 Do you have that?

20 A. Is it the one -- let's see. Yes. Is it on page 12?  
21 The document is page 12.

22 Q. I think it is on page 26, it looks like.

23 Have you got that?

24 A. Yes, I have it there, table 13.

25 Q. Okay. Under ranked number one, what company has the

1 largest install base on the Windows platform?

2 A. Microsoft.

3 Q. What share does it have at this time?

4 A. 33.4 percent.

5 Q. And what was Novell's install base on the Windows  
6 platform?

7 A. On Windows, 17 percent.

8 Q. Could you turn in this document back to page 22.

9 Do you remember Mr. Johnson showed you page 22?

10 A. Hang on just a second.

11 At the very top it says these portions and deliver a  
12 concise message? Is that the page at the very top?

13 Q. Correct.

14 A. Yes. I am there.

15 Q. Do you see there is a header WordPerfect for DOS market  
16 statistics?

17 A. Yes, I see that.

18 Q. And it says WordPerfect for DOS is certainly a  
19 vanishing breed.

20 Do you see that?

21 A. I do.

22 Q. Do you recall at this time that WordPerfect for DOS was  
23 certainly a vanishing breed?

24 A. Yes.

25 Q. Do you see further down in the same paragraph on the

1 page that Mr. Johnson was showing you it says its days are  
2 certainly numbered? Do you recall that WordPerfect for  
3 DOS's days were certainly numbered at this time?

4 A. Yes, I do.

5 Q. Going to the section of the same page that Mr. Johnson  
6 showed you, WordPerfect for Windows market statistics.

7 Do you see that?

8 A. Yes.

9 Q. And Mr. Johnson directed your attention to the second  
10 paragraph of that.

11 A. Yes, the 1995 outlook.

12 Q. Right. I would like you to look at the first  
13 paragraph.

14 Do you see that?

15 A. WordPerfect for Windows maintained --

16 Q. Yes. It says WordPerfect for Windows maintained its  
17 second place position behind Microsoft Word with a 22.5  
18 percent shipment share and a 23.9 percent revenue share.  
19 WordPerfect for Windows shipment performance suffered  
20 greatly because of the uncertainty over Borland Office.  
21 This performance was down from the 30.1 percent shipment  
22 share that WordPerfect earned in 1993.

23 Do you recall in this time that performance was down  
24 from the shipment share that WordPerfect earned in 1993?

25 A. Yes, I do, and that was reflected in what was happening

1 in my market.

2 Q. You testified I think both on direct and cross that  
3 WordPerfect's Windows products, that you were proud of them?

4 A. Yes.

5 Q. You thought as they developed were good products?

6 A. Yes.

7 Q. Were you ever able to sell them to your customers after  
8 the shift was made to the Windows platform?

9 A. No.

10 MS. NELLES: That's all that I have, Your Honor.

11 THE COURT: Mr. Johnson.

12 RE-CROSS-EXAMINATION

13 MR. JOHNSON: Just very briefly, Your Honor.

14 BY MR. JOHNSON

15 Q. Mr. Acheson, that DOS market, those were the people  
16 that WordPerfect -- that was the install base, right?

17 A. That is correct, part of the install base.

18 Q. And that is the people that you really needed to hold  
19 onto, right?

20 A. I didn't need to hold onto DOS, I needed to hold onto  
21 them --

22 Q. I meant the customers.

23 A. Yes, I needed to keep those customers and to keep them  
24 WordPerfect customers.

25 Q. Because the moment that they switched and made all the

1 investments in another word processing application, and  
2 trained all their people in another word processing  
3 application, it would be too late, right?

4 A. Yes, and that is what proved out is that they switched  
5 to Word.

6 Q. And you would never get those customers back, right?

7 A. Correct.

8 Q. So it would be very, very important to have your  
9 product up and running and for sale at the time they were  
10 making that decision, right?

11 A. Yes.

12 MR. JOHNSON: Nothing further, Your Honor.

13 THE COURT: Thank you.

14 Thank you very much and let's take a short recess  
15 while you get your next witness.

16 (Recess)

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