

1 THE COURT: Let's get the jury.

2 (Jury present)

3 THE COURT: Mr. Tulchin.

4 MR. TULCHIN: Yes, sir.

5 For its next witness, Microsoft calls David
6 LeFevre.

7 DAVID AUSTIN LEFEVRE,

8 Having been duly sworn, was examined

9 and testified as follows:

10 THE CLERK: Please state your full name and spell
11 it for the record.

12 THE WITNESS: David Austin LeFevre. David,
13 D-a-v-i-d, Austin, A-u-s-t-i-n, LeFevre, L-e-capital F-
14 e-v-r-e.

15 DIRECT EXAMINATION

16 Q Mr. LeFevre, good morning.

17 A Good morning.

18 Q Could you please tell the jury when and where you were
19 born?

20 A I was born in Salt Lake City on XXXXXX XXX, XXXX.

21 Q Sir, did you graduate from any college?

22 A Yes. I graduated from Brigham Young University in
23 1984.

24 Q What was your degree in?

25 A In history.

1 Q Are you married, Mr. LeFevre?

2 A Yes, I am.

3 Q How many children do you have?

4 A I have seven children.

5 Q Now I think you said you were born in 1958 and
6 graduated from college in 1984, did I get that right?

7 A Yes.

8 Q You were a little bit older than maybe some other
9 college students. What, if anything, did you do in the
10 interim there that explains that?

11 A After I graduated from high school, I served a mission
12 for the LDS Church. That took two years. I took a year off
13 after my mission to earn some money for college. After
14 that, I was married and I took a year off because my wife
15 was pregnant and we needed insurance to have a baby, so I
16 took a job. So there were four years off in between that.

17 Q After your graduation from Brigham Young in 1984, what
18 was your first full-time job?

19 A The first job I had was with a company in Orem, Utah
20 called MSC Computers. And I was working as a programmer on
21 a library management software package.

22 Q How long were you at that company, MSC?

23 A MSC was about two years.

24 Q What did you do after that?

25 A After that, I moved to Montana. My parents owned a

1 chain of restaurants up in Montana and Idaho, and I went to
2 work for them for a couple of years.

3 Q What did you do after working for your parents
4 restaurant business?

5 A Then I returned to Utah in 1987, went to work for
6 Intermountain Healthcare, also in their IT department. 1987
7 was an important time for -- personal computers were
8 starting to become very popular in corporations, and so my
9 job was to maintain all the personal computers within 12
10 hospital and clinics for Intermountain Healthcare in the
11 State of Utah.

12 Q That was for Intermountain Healthcare?

13 A Yes, sir.

14 Q How long were you in that position, sir?

15 A About three years.

16 Q What was next?

17 A Then I went to work for WordPerfect on January 2nd,
18 1990.

19 Q How long did you stay at WordPerfect?

20 A Just over six years.

21 Q So you went until around 1996, that was after Novell
22 acquired the company, correct?

23 A That's correct. My last day was March 8th, 1996.

24 Q You have a good memory for days.

25 A Some of them.

1 Q All right. March 8th, 1996, what did you do after
2 that?

3 A After WordPerfect?

4 Q Yes.

5 A I went to work for Microsoft. That was April 8th,
6 1996.

7 Q Where do you work today?

8 A I work at Microsoft today still.

9 Q Have you been at Microsoft continuously from 1996 until
10 now?

11 A Except for a six-month period where I took some time
12 off, yes.

13 Q What is your current position at Microsoft?

14 A Currently I work in the customer service division, and
15 I'm responsible for all the training programs for customer
16 service agents around the world. These are the people that
17 answer the phones when you have a problem with your computer
18 and make sure you have the answers that you need.

19 Q Mr. LeFevre, I want to direct your attention to the six
20 years that you were at WordPerfect/Novell, that's 1990 to
21 1996. Can you tell the jury what positions you had with the
22 company during those years?

23 A Yes. When I was first hired, I started as a tester in
24 the DOS department, so I was testing WordPerfect for DOS
25 5.1. That's the product that had just shipped in 1989. I

1 did that for about six months.

2 Then I was promoted to be a test lead in what we called
3 our shared code department where we test things like
4 printers, drivers, and common things that are shared across
5 multiple applications. I led that team for about six
6 months.

7 Then I was promoted to be the test director for the
8 entire DOS testing department with about 55 people reporting
9 to me. So we were responsible for testing basically all of
10 WordPerfect's DOS products.

11 Q What are we up to now, what time period?

12 A It was about two years after I was hired.

13 Q What was your next position?

14 A Then I shifted gears and went into the marketing
15 department. I was offered a position as a technical
16 marketing manager with WordPerfect for Windows. And that
17 position allowed me to work with both marketing and
18 development as a liaison between the two, to try to take the
19 marketing needs and interests the customer desires for the
20 product and help integrate that into the development
21 process.

22 Q All right. So, Mr. LeFevre, I think you said somewhere
23 in early 1992 you became the technical product manager?

24 A Yes.

25 Q That's for WordPerfect for Windows; is that right?

1 A That's correct.

2 Q Was that the last position you had at the company or
3 was there a subsequent position?

4 A Subsequently, about two years later, I was promoted to
5 be the director of marketing. We had several directors. My
6 specific responsibility was over product planning, so
7 customer research, market analysis, competitive analysis,
8 those kinds of things. Again, more of a liaison position
9 between marketing and the development teams. So I worked
10 closely with the developers for WordPerfect for Windows and
11 our suite product, Borland Office, and subsequently
12 PerfectOffice.

13 Q So you were a director of marketing; is that right?

14 A That is correct.

15 Q Is that beginning in when, 1993 --

16 A 1994.

17 Q '94?

18 And as of the time you left in March '96, what position
19 did you have?

20 A I had that position until I left.

21 Q So approximately the last two years that you were at
22 WordPerfect/Novell, you were director of marketing?

23 A That's correct.

24 Q There were other directors of marketing as well, but
25 you were one of them; is that right?

1 A That's right.

2 Q Mr. LeFevre, do you recall the time when Novell
3 acquired WordPerfect Corporation?

4 A Yes. The acquisition was announced earlier in 1994.
5 It was finalized in June of 1994.

6 Q When you first heard about the acquisition, what was
7 your reaction to this proposed transaction?

8 A I first heard about it when I was traveling. I was on
9 the road. We got a phone call letting us know about it. I
10 was with two other people from WordPerfect. As we discussed
11 it, we initially were surprised about the acquisition
12 because we weren't sure, you know, what's the affinity
13 between NetWare, a network company, and an applications
14 company like WordPerfect. But as we discussed it, we began
15 to see a lot of affinities. Over the next few weeks, as the
16 acquisition was being finalized and approved, we thought
17 there are some opportunities here that we could perhaps work
18 together with the NetWare team and have some correlations
19 and some unique capabilities. So we saw a potential
20 opportunity for that.

21 Q Now once the deal actually closed in June and the
22 acquisition had taken place, and I want to direct your
23 attention just to that period in the middle of 1994 first,
24 what actually happened, as far as you could tell, with
25 Novell's acquisition of WordPerfect Corporation?

1 A Well, the acquisition changed tones, as it were.
2 During the process initiated by Ray Noorda, when I first
3 started, there was a little different concept. By the time
4 it was finalized in that summer, in June, Novell had
5 different management under Bob Frankenberg. And Bob
6 Frankenberg and the other senior management team at Novell
7 had a little less interest in WordPerfect. They were much
8 more interested in a product called GroupWise. It was an
9 e-mail package that we had that they thought had a better
10 affinity with NetWare. This became sort of obvious in early
11 meetings that we had with them, that they had less interest
12 and less understanding of the applications business, the
13 side of the business that I was on, than they did on the
14 GroupWise product.

15 Q As this acquisition took place in the early days, did
16 you observe some negatives from the acquisition?

17 A Yes.

18 Q What were they?

19 A One of the first things I remember is that we had a
20 meeting -- kind of introductory meeting with Novell senior
21 management there at the WordPerfect campus in Orem. They
22 came to introduce themselves and kind of talk about, you
23 know, what was going to happen with the acquisition. And
24 one of the presenters was Mary Burnside, who was a senior
25 executive from Novell, and as she went to present her

1 slides, she was using Microsoft PowerPoint. And we went,
2 well, we have a product that does that.

3 So after the meeting, Glen Mella and Chris Grazio and
4 myself from the marketing department went to Mary and said,
5 we would love to help you install our products on your
6 computer. It would be really good if you were talking to
7 customers and you used our products instead of the
8 competition's. Mary's reaction was, thank you very much, I
9 like the ones that I'm using.

10 I thought that's an odd kind of opposition from a
11 senior manager. They should be using our products. But
12 that was very indicative of kind of the attitudes that we
13 had for many things at Novell.

14 Novell also came in with lay-offs subsequent to the
15 acquisition and cut budgets, did a number of things that
16 were quite painful and, frankly, damaged the morale of the
17 WordPerfect employees.

18 Q Mr. LeFevre, this meeting that you have described where
19 Ms. Burnside was making a presentation, to the best of your
20 recollection, how much -- how much longer after the
21 acquisition did this take place?

22 A A few weeks at most. I don't remember the exact date,
23 but it was that summer of 1994.

24 Q Was this the first time that you had been in a meeting,
25 participated in a meeting attended by the senior executives

1 of Novell?

2 A I believe it was. The first one I remember.

3 Q Were other senior executives of Novell present, as best
4 you remember it?

5 A Yeah. I remember Bob Frankenberg was there and Joe
6 Farengi was there.

7 Q What was that last name, sir?

8 A Farengi, I believe.

9 Q Could you spell that, perhaps, for the court reporter?

10 A I'll try. F-e-r-e-n -- is that how you spell it --
11 F-e-r-e-n-g-i.

12 THE COURT: We'll let the court reporter spell it.

13 THE WITNESS: I don't remember for sure. He was
14 the head of sales for Novell.

15 BY MR. TULCHIN:

16 Q All right. Mr. LeFevre, again directing your attention
17 to, let's say, the last half of 1994, as director of
18 marketing, what impact, if any, did you perceive from the
19 lay-offs that you were describing?

20 A The lay-offs -- well, let me answer your question by
21 saying we had had some lay-offs just prior to the Novell
22 acquisition, cost cutting measures. Those were in 1933.
23 Those didn't feel particularly painful at the time because
24 we had hired a lot of people, we had ramped up the company
25 quite nicely. So that didn't -- you know, it was always

1 painful to lose some people. But the lay-offs in 1994 that
2 Novell implemented were particularly painful because they
3 cut deeply into our development teams, into our testing
4 team, and probably most significantly into our sales
5 organization.

6 WordPerfect had a fairly large sales organization that
7 worked with our accounts all across the world, and our
8 customers mostly purchased our products through these sales
9 relationships. And when they cut the sales organization,
10 that was a very painful thing for us.

11 Q You haven't been here, Mr. LeFevre, but I think the
12 jury has heard testimony that at the time Novell had its own
13 channels for distributing its own products. Were you
14 familiar with that once the acquisition took place?

15 A Yes.

16 Q So why, if at all, was there a need to continue to
17 employ all these WordPerfect salespeople if Novell had its
18 own distribution system?

19 A Novell's sales model was to work with VARs, what we
20 call value added resellers.

21 Q Let me just stop you there for a minute. What was the
22 term you used, VARs?

23 A VARs.

24 Q That stands for what?

25 A Value added resellers.

1 Q Please proceed, if you would.

2 A Thank you. So a value added reseller would take
3 NetWare, for example, from Novell and then they would
4 customize it and package it up for a customer's needs. So
5 they would meet with the customer, determine what they
6 wanted the product to do and be and how it would work best
7 for their organization. A VAR makes money by doing those
8 kind of customizations. When they -- it's their time, in
9 other words, that's valuable to them, and that's how they
10 are making their income. It's not through the sale of the
11 software.

12 Our applications with WordPerfect and such didn't
13 require that kind of customization. So a VAR had not only
14 very little incentive to sell them because they didn't make
15 any money off of the deal, but they had no understanding of
16 how applications worked. It was a different audience of the
17 company. They were working with, you know, networking folks
18 at the company, not the ones that are making application
19 decisions. So Novell's sales model was a very challenging
20 thing for us because it was difficult for us to get in there
21 and for those VARs to have any reason to push our product to
22 the customers.

23 Our own salesforce, by contrast, had very good customer
24 relationships with these large accounts, they understood
25 their needs. Those relationships were critical to the sales

1 ultimately. We lost that when we lost the salesforce.

2 Q Mr. LeFevre, the VARs, these value added resellers, are
3 they employees of Novell? What are they?

4 A No, they are not employees of Novell. They are
5 independent companies and people who then, like I say, take
6 NetWare and then customize it for customers. They are a
7 middleman between Novell and the customer, and they make
8 their money by being that middleman and adding value to the
9 sale, hence the name value added reseller.

10 Q Prior to the acquisition, to your knowledge as a
11 director of marketing, had these VARs, that were the
12 distribution network for Novell, had any experience selling
13 WordPerfect or other software from the WordPerfect
14 Corporation?

15 A No, that would typically be outside of their experience
16 and interest.

17 Q Mr. LeFevre, how, if at all, from your perspective and
18 in your observation, did this change from a model where you
19 had salesmen working for WordPerfect to a model where the
20 sales channel was in large part the VARs, how did that
21 affect sales?

22 A It had a dramatic impact on our sales because we were
23 not able to get the product out to those customers. As we
24 lost those relationships with our accounts, which generated
25 the bulk of our revenue, 85 percent of our revenue, as I

1 recall, went through our salesforce, we lost the ability,
2 then, to make those sales. The VARs were simply not the
3 vehicle to continue that. So our sales decreased
4 dramatically after those lay-offs in 1994.

5 Q Mr. LeFevre, after the acquisition, what, if anything,
6 happened to the marketing budget for the WordPerfect
7 products?

8 A Our market budgets -- marketing budgets were slashed
9 quite dramatically by Novell. I don't recall the figures at
10 this time, but it was a dramatic decrease to the point where
11 we were cutting entire ad campaigns because we could no
12 longer afford them. We had to focus just on print
13 campaigns. For example, we couldn't do radio spots or any
14 of those. We simply couldn't afford that anymore.

15 Q Mr. LeFevre, again, how, if at all, from your point of
16 view, did that impact the company's ability to sell the
17 WordPerfect product?

18 A When you are selling an application like WordPerfect
19 that deals with an end user customer, whether you're selling
20 to a corporation or not, the end user customer drives the
21 demand for that. If you can't let them know, you can't
22 reach out to customers and tell them that you have a
23 product, it's very difficult to generate that kind of demand
24 for them to be interested in what's your product. They
25 don't even know you're there without that advertising. It

1 is a very critical component.

2 Q In your position, how well did it seem to you that
3 Novell was able to integrate the old WordPerfect people into
4 the Novell organization?

5 A Integration was poor, I would characterize it. We were
6 a separate entity still. We certainly had reporting
7 relationships up through Novell, but it was very challenging
8 for us to kind of mesh the groups like we had aspired
9 initially when we heard about the acquisition. We had a
10 difficult time meeting with the NetWare people, getting
11 their time. So it was a challenge.

12 Q Did you attend any meetings yourself with senior
13 management in 1994 or into 1995 where management's attitude
14 towards WordPerfect was conveyed to you?

15 A Yes, I attended meetings on a fairly regular basis with
16 Novell senior management, particularly Bob Frankenberg, and
17 there was a fairly consistent attitude of impatience towards
18 us. They wanted things to get done. They wanted things to
19 get done quickly and on time.

20 Novell used a quarterly model because it had stock. It
21 was a publicly traded company. And the quarterly revenue
22 results were very significant in terms of driving the stock
23 price and the value of the company, and those kinds of
24 things. That was new to us at WordPerfect because we were a
25 privately held company. We aren't traded on the stock

1 market, so we didn't have that same kind of rhythm and
2 demand on our business. So there were many times when we
3 would meet near the end of the quarter and the demand was we
4 need to generate some revenue in order to meet our revenue
5 targets for this quarter. There was a lot of pressure along
6 those lines.

7 Q Was there any discussion at those meetings with
8 Mr. Frankenberg about a request to increase the budget, for
9 example, for marketing as a way of trying to increase
10 revenues?

11 A Yes. We consistently requested through Glen Mella, our
12 vice-president of marketing, to increase marketing budgets
13 so we could have this advertising outreach and get out and
14 talk to our customers in that sense, but we were told we had
15 to make do with what we had.

16 Q Mr. LeFevre, changing topics somewhat, do you recall a
17 time in 1994 when Microsoft provided Novell with a beta
18 version of what became Windows 95?

19 A Yes. In the summer of 1994, we first received builds
20 of what was then called Chicago, Windows 95's code name
21 before it was shipped. And so we had CDs of Chicago sent to
22 us there in Orem. I had some, Tom Creighton had that
23 software. And the two of us both installed it. There may
24 have been others, but we both had it and were able to
25 install it and use it in that summer.

1 Q What do you mean, Mr. LeFevre, when you say you were
2 able to install the beta version of Chicago?

3 A Microsoft sent us a CD that had the early, you know,
4 builds, the beta builds of Chicago. And I had a second
5 computer in my office that I used just for beta testing so
6 my production computer didn't get corrupted with all this
7 testing software. I put Chicago on that second computer and
8 therefore was able to try it and see what was different and
9 use the product in that early preview mode.

10 Q Mr. LeFevre, throughout 1994 and 1995, to the best of
11 your recollection, what kind of support did Microsoft
12 provide to Novell in connection with the Chicago beta?

13 A We had -- starting in 1994 all through 1995, we had an
14 employee at Microsoft who lived in Utah County whose job it
15 was to support us in this development effort. He was at our
16 offices so frequently that we finally gave him an office
17 with a telephone so he could come in and work when he needed
18 to. And he was just down the hall in my building, and we
19 saw him frequently.

20 We also had direct support to Microsoft's developer
21 relations group. So if we had questions, we could contact
22 them on the phone or e-mail and they would answer our
23 questions. We were very supported during this time.

24 One example I remember distinctly is that Tom Creighton
25 and I were able to fly to Redmond, and we spent an entire

1 day in building 22 of the Microsoft campus meeting with the
2 development team for Windows answering some critical
3 questions that Tom had about the product. They were very
4 happy to do this. They even paid for our flight and
5 everything to get up to Redmond and spend the day.

6 Q Mr. LeFevre, you said a moment ago that there was an
7 employee of Microsoft who lived in Utah County and he was
8 frequently at the WordPerfect Novell offices, correct?

9 A That's correct.

10 Q This was the person to whom you would actually given an
11 office and a telephone, et cetera?

12 A That's correct.

13 Q Do you happen to remember that person's name?

14 A I'm sorry, I don't.

15 Q Now, Mr. LeFevre, let me go back to the subject of
16 betas. You have been in the software industry for a long
17 time, sir?

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

19 THE WITNESS: Oh, yes.

20 BY MR. TULCHIN:

21 Q How long?

22 A Well, my first job was in 1994 in the software
23 industry. I wasn't in the software industry continuously,
24 but I would say well over 20 years.

25 Q And is it your understanding, Mr. LeFevre, that when a

1 developer of an operating system or other software sends out
2 a beta version of a product that's still under development,
3 that the developer, the company who is developing that
4 software, is free to make changes?

5 A Absolutely. Beta by definition is an early release or
6 a prerelease of a product that is subject to change. The
7 purpose of beta is to send it out to customers and partners
8 and other people who might need to have a preview of that in
9 order to test it, but also to get feedback from those
10 customers.

11 As you send this beta out and get feedback, it's very
12 common for people to change the product as a result of that
13 feedback and as a result of that testing. So there is no
14 promise that what is in an early beta or even a late beta
15 will be in the final product. And most betas -- all betas
16 that I'm aware of have an agreement that says something to
17 that effect. When you accept the beta, you sign that, that
18 something will probably change.

19 Q Mr. LeFevre, does it conform to your understanding of
20 practice in the software industry that once the developer
21 of, let's say, an operating system sends out a beta, that
22 the developer is, in effect, frozen, that whatever is in the
23 beta has to be in the final product?

24 A Absolutely not. The company that develops the beta
25 software has the right to make any changes they deem

1 necessary as a result of that testing period.

2 Q Does that apply, Mr. LeFevre, just to tinkering with
3 the product or would it apply as well to the removal, for
4 example, of a feature in an early version?

5 THE COURT: Sustained. Sustained.

6 Rephrase.

7 MR. SCHMIDTLEIN: Your Honor, also I would just
8 like an instruction to the jury there is no -- he's not
9 being asked to give a legal conclusion about this.

10 THE COURT: No. No. Obviously he's not being
11 asked to give a legal conclusion. You all are going to be
12 asked to decide what the effect of the beta release is. So
13 he's not giving an opinion.

14 MR. SCHMIDTLEIN: He made reference to they have a
15 right to do it, and I just wanted that to be --

16 THE COURT: I understood that to be he understood
17 that from his perspective from the industry. That's
18 something you all are going to have to decide.

19 Go ahead.

20 MR. TULCHIN: Thank you, Your Honor.

21 BY MR. TULCHIN:

22 Q Mr. LeFevre, does it conform to your understanding of
23 industry practice that a developer can make a change to a
24 feature that appeared in a beta version?

25 A Absolutely. Depending on the nature of the feedback

1 that you receive or a situation that the company is going
2 through at the time, beta software can be dramatically
3 changed, entire features can be removed. In some cases, the
4 software can be discontinued. So it's completely up to the
5 company what they want to do with the feedback they receive
6 during the beta process.

7 Q During the time that you worked at WordPerfect/Novell,
8 were you familiar of any instances where changes were made
9 to a beta version of software?

10 A Yes. With WordPerfect 5.1 for Windows, for example, I
11 ran the beta program. So my job was to receive that
12 customer feedback during the beta process and then give that
13 to the development team to help them make decisions about
14 what should be kept and what should be cut. We cut a number
15 of features in WordPerfect 5.1 as a result of that feedback.

16 Q I just want to make sure I understood that. You are
17 saying that WordPerfect sent out a beta version of
18 WordPerfect 5.1, correct?

19 A We sent out a beta version of all of our products
20 before they were released.

21 Q Well, this isn't an operating system, right, so why
22 would you send out a beta version?

23 A Because we cannot possibly test the software in all the
24 environments that our customers use. We do our best. We do
25 extensive testing. But we rely on these beta customers,

1 who, frankly, are brave volunteers to install this software
2 and try it and use it themselves. And then they tell us
3 what's working and what's not working both from a technical
4 perspective and just from an experience perspective. We
5 respect that feedback and make changes accordingly. So it's
6 a very significant part of our development effort.

7 Q In this instance that you testified about a moment ago
8 where you recall a change was made, was that a change that
9 WordPerfect made from the beta version to the release of the
10 final product?

11 A That's correct.

12 Q Now I want to shift your attention, Mr. LeFevre, to
13 Novell's efforts to develop PerfectOffice for Windows 95.
14 Are you with me?

15 A Yes.

16 Q Do you remember that, sir?

17 A Yes, sir.

18 Q To what extent were you personally involved as director
19 of marketing?

20 A For PerfectOffice, the version we were building for
21 Windows 95, my job was to work with the three development
22 leads, Tom Creighton, Gary Gibb -- and I'm blanking --

23 Q Was it Steve Weitzel.

24 A Yes, sir. Thank you. Steve Weitzel. Steve Weitzel,
25 Tom Creighton and Gary Gibb, the three of them were the

1 development leads. My job, as the marketing representative,
2 was to be the fourth person in that leadership team to help
3 decide what the products should be, what features made the
4 product, which ones got cut. So I was supposed to be the
5 voice of the customer in that entire experience, which was
6 challenging in many cases.

7 Q Let me hand you what is Plaintiff's Exhibit 336.

8 MR. TULCHIN: And I believe this is in evidence
9 already, Your Honor.

10 BY MR. TULCHIN:

11 Q You will see this is an organization chart,
12 Mr. LeFevre?

13 A Yes.

14 Q The first page says, Novell business applications
15 division. There is a vice president of marketing, Glen
16 Mella. Do you see his name there?

17 A I do.

18 Q Then could you turn to the third page of the document
19 which shows Mr. Mella at the top. This is his organization,
20 correct, marketing?

21 A Correct.

22 Q It's a little difficult to read here.

23 MR. TULCHIN: Thank you for bringing that up.

24 BY MR. TULCHIN:

25 Q You see Mr. Mella there vice president for marketing.

1 Where were you on the chart?

2 A If you go down toward the bottom of that where the
3 cursor is just to the right, it says Dave LeFevre.

4 Q Let's see if we can bring that up.

5 A There it is, PMD, which means product marketing
6 director.

7 Q I should have said, Mr. LeFevre, that on the very first
8 page this is dated October 16, 1995. So as of that time,
9 according to this org chart, how many people reported to
10 you?

11 A I had 12 people on my staff in October.

12 Q Are these all marketing people?

13 A They were product -- yes, marketing people focused on
14 product planning, which was my area of expertise.

15 Q Am I reading this chart correctly, that you reported at
16 the time directly to Mr. Mella? I don't know if we can
17 bring that solid line up.

18 A That's correct, I reported to Glen, who was the vice
19 president of marketing at the time.

20 Q Sort of hard to follow, but the solid line from your
21 name goes all the way up to the top where there is an open
22 position. You see that, open?

23 A Yes. This never got filled. I always reported
24 directly to Glen.

25 Q Then from there you go directly to Mr. Mella at the top

1 of that organization?

2 A Correct.

3 Q All right. Now you had said a moment ago, Mr. LeFevre,
4 that you worked with Mr. Gibb, Mr. Weitzel, Mr. Creighton.
5 Do you remember that?

6 A Yes.

7 Q What was it that you were doing with them?

8 A My responsibility with those three gentlemen was to, as
9 I mentioned earlier, inject the customer perspective into
10 the development decisions we were making in relation to
11 PerfectOffice and WordPerfect 7 at that time, WordPerfect
12 for Windows 7. So we met on a regular basis early in the
13 process to try to define the scope of the product and what
14 were the priorities, those kind of things.

15 Then as the product progressed throughout the year,
16 1995, the meetings became daily where we would meet at the
17 end of each day to go through -- we called it a triage
18 meeting where we looked at the bugs that had been posted
19 that day by the testing organizations and tried to decide
20 which ones could would get fixed and which ones wouldn't,
21 and went through all the different product challenges of
22 managing that on a day-to-day basis.

23 Q Where were these triage meetings held, Mr. LeFevre?

24 A They were held in a conference room in building D on
25 the WordPerfect campus in Orem. Building D was where all

1 four of us had our offices at the time.

2 Q To the best of your recollection, when was it that
3 Novell/WordPerfect began a serious effort to develop
4 PerfectOffice for Windows 95?

5 A In 1994, we were still working on WordPerfect for
6 Windows 6.1 and the PerfectOffice Suite that we needed to
7 get out the door because of the 6.0 version that we shipped
8 earlier in 1994, it was really buggy and had a lot of
9 problems. So the 6.1 version was an all hands on deck
10 effort to fix those bugs and address the issues to try to
11 basically stop the bleeding that was going on from the poor
12 version that we had release earlier that year.

13 So everybody was working on that right up until the end
14 of 1994, and even into 1995 with localization and
15 translation issues and things. So we didn't begin our
16 WordPerfect for Windows 95 effort until well into 1995.

17 Q Now, Mr. LeFevre, you mentioned that these meetings
18 were held and became daily meetings, and Mr. Gibb was one of
19 the attendees, correct?

20 A Yes.

21 Q The jury has heard that he was a member at the time of
22 the shared code group?

23 A That's correct.

24 MR. SCHMIDTLEIN: Objection, that mischaracterizes
25 the testimony.

1 THE COURT: He said yes. Why don't you ask him.

2 BY MR. TULCHIN:

3 Q What's your recollection of what Mr. Gibb's job was in
4 1995?

5 A My recollection is that Gary Gibb worked with the
6 development team on a number of issues. I believe Tom
7 Creighton was the shared code development lead, but Gary
8 would have worked with Tom and others on a number of issues.

9 THE COURT: That's clarified. Thank you.

10 BY MR. TULCHIN:

11 Q Thank you, Mr. LeFevre. My apologies. I think I got
12 it wrong at the outset.

13 Mr. LeFevre, do you have a specific recollection of
14 some of the discussions that took place in these meetings
15 that you've talked about?

16 A Yes -- in the triage meetings and things?

17 Q Yes.

18 A Yes. We had -- it's always an interesting challenge
19 with a software product to decide what's going to make it in
20 the final version and what isn't. Those meetings are
21 particularly sometimes emotional and challenging because the
22 people that have worked on those features are very vested.
23 They are quite passionate about what they are doing. And
24 often we would bring them into the meetings and they would
25 lobby for their feature, you know, we need to keep this for

1 this reason. So we would try to bring other perspectives
2 and customer data and those kinds of things into the
3 discussion to make a decision. But they were always very
4 challenging. But you have to make the decisions -- you have
5 to make the hard decisions in order to get the product out
6 the door too, so --

7 Q Mr. LeFevre, during these meetings in 1995 that you
8 have described in building D on the campus in Orem, do you
9 recall discussions about problems that the shared code team
10 was having?

11 A Yes.

12 Q What do you recall?

13 A There were a number of challenges -- shared code in
14 WordPerfect was a set of code that was used by all the
15 different applications in suite, ideally, for common kinds
16 of tasks. For example, when you go to print a document,
17 there is a single print dialog and everybody can just use
18 that code instead of rewriting your own routines for each
19 application, or when you're opening a document or saving a
20 document. Those kinds of things can be done.

21 We also had a macro language, which was a programming
22 language within the suite so that you could program the
23 suite to do certain things in an automated way. Those are
24 all part of the shared code group, and many of those
25 features were very challenging to build for a number of

1 reasons and were often the subject of discussion in these
2 meetings because they weren't working, they weren't
3 progressing, there were a lot of bugs. So there were
4 particular challenges with those.

5 Q Do you recall any discussion in these meetings, again,
6 in 1995, about the file open dialog?

7 A Yes. The shared code team had initially proposed and
8 designed a file open and save dialog that would be a very
9 rich -- have rich functionality way beyond what would be
10 standard in Windows. And while appealing initially through
11 the design, because we thought it would provide customers,
12 for example, with the ability to go in and search for
13 documents on their hard drive and do different tasks, they
14 would be quite useful and could potentially provide us a
15 competitive edge. We also discovered during the development
16 process that they had bitten off more than they could chew.
17 It was really hard to do the things that they were wanting
18 to do. It continued to be a source of bugs and challenges
19 for us all through the development process.

20 At some point, I don't remember when we had this
21 discussion, but I became convinced that that was really no
22 longer a viable option for us, that what we needed to do was
23 just abandon that entire effort and use the standard Windows
24 dialog.

25 Windows comes with common code, shared code, as it

1 were, that allows developers to just call certain API and
2 the open dialog comes up. So with almost no work on our
3 part, we can take advantage of those things. And I became
4 an advocate for just going that route as opposed to trying
5 to do all those customizations that seemed to be taking way
6 too much time.

7 Q Mr. LeFevre, I think you said in your last answer that
8 you discovered or we discovered that they had bitten off
9 more than they could chew. Do you recall that?

10 A Yes.

11 Q Was this reference to the file open dialog itself?

12 A Yes, file open and save.

13 Q And I think you said that the members of the shared
14 code group were telling you at these meetings that they
15 wanted to continue working on a customized, let's say,
16 advanced file open dialog, correct?

17 A Correct.

18 MR. SCHMIDTLEIN: We're getting pretty leading
19 here.

20 THE COURT: It was. So watch out.

21 Move to your next question.

22 MR. TULCHIN: Thank you, Your Honor.

23 BY MR. TULCHIN:

24 Q Do you understand what reasons, if any, the shared code
25 people had for wanting to develop this customized advanced

1 file open dialog?

2 A Yes. The reasons were that they felt it gave us a
3 strong competitive advantage versus Microsoft Word and
4 Microsoft Office and other products that were in the market.
5 And I agreed with that assessment, that if it worked, it
6 would have provided a really nice competitive advantage and
7 an excellent user experience. But it wasn't working because
8 of the challenges that they were having. So that's why I
9 was an advocate for just cutting it and going with the
10 standard dialog.

11 Q As time progressed in 1995, do you recall expressing
12 that view that it would be better to use the Windows file
13 open dialog at these meetings?

14 A Yes, I recall expressing that on multiple occasions.

15 Q Do you recall what, if anything, Mr. Gibb or
16 Mr. Weitzel or Mr. Creighton said in response to your view
17 that it would be better to use what Windows was providing
18 Novell in Windows 95, the common file open dialog?

19 A As I recall, three of them were in agreement that the
20 potential competitive advantage outweighed the risk to the
21 schedule at the time. They continued to express confidence
22 that they would work the bugs out, that the developers would
23 solve these problems, and so wanted to give their developers
24 the full opportunity to implement that if it was possible.
25 So we delayed that decision -- well, it never happened

1 before I left the company.

2 Q Mr. LeFevre, as time went on in 1995, did you continue
3 to express this view that it would be better to use the file
4 open dialog that Microsoft was providing for free in
5 Windows?

6 A Yes. I can even recall bringing in some customer
7 feedback from some of our beta customers that said they
8 really didn't think that the things that the developers were
9 putting into the open dialog provided a significant
10 advantage. They were more interested in different kinds of
11 features that we were providing. So those didn't seem like
12 in the end they provided much customer interest anyway, and
13 yet we were expending a significant amount of time and
14 effort trying to get them to work.

15 Q Mr. LeFevre, in these meetings -- let me stop for a
16 minute.

17 To the best of your recollection, did the meetings
18 continue throughout the year 1995?

19 A Yes, the meetings continued on a nearly daily basis.

20 Q Would you say you had many dozens, maybe more than 100
21 of these meetings?

22 A Yes, many, many meetings.

23 Q At any of these meetings, to the best of your
24 recollection, did you ever hear Mr. Creighton or Mr. Gibb or
25 Mr. Weitzel say that the reason the shared code group was

1 having trouble doing the customized file open dialog was
2 because Microsoft had withdrawn support for certain APIs?

3 A No, I never heard anyone say anything like that. In
4 fact, the APIs in question were withdrawn in the early
5 builds of Chicago before we had even begun the serious
6 development work on our Windows 95 product. So those APIs
7 were not even available to us when we began work.

8 Q Do you recall, Mr. LeFevre, ever throughout 1995 in any
9 of these meetings, hearing Mr. Creighton or Mr. Weitzel or
10 Mr. Gibb say that it was something that Microsoft had done
11 to Novell which was impeding Novell's ability to write this
12 advanced customized file open dialog?

13 A No. The issue was never with anything Microsoft did or
14 didn't do. The issue was all with us having the ability to
15 implement this very complex set of software in the time that
16 we had and given the resources that we had.

17 Q Mr. LeFevre, when was it that you first heard that
18 Novell was blaming Microsoft's decision to withdraw support
19 for some APIs for the fact that Novell was not able to get
20 PerfectOffice for Windows 95 out to market in a more timely
21 way?

22 A The first time I heard that was in my deposition for
23 this case -- my initial deposition in 2008.

24 Q Now throughout 1995, was this issue that the shared
25 code team was having in building an advanced file open

1 dialog, was that the only reason, as far as you knew, that
2 Novell was having trouble finalizing PerfectOffice for
3 Windows 95?

4 A Not at all. The shared code was, of course, an issue
5 but far more significant issues had to do with our late
6 start with Windows 95. For example, as I mentioned, we
7 didn't begin coding until early '95, so that put us way
8 behind schedule. Initially the Windows 95 or Chicago
9 release of Windows was scheduled to come out earlier in the
10 year in 1995. In the end, it came out in August, which was
11 a blessing to us because it gave us a little more time. But
12 we had such a late start that we were under a lot of
13 pressure to even come close to hitting that date.

14 But a far larger factor in the delay of the product was
15 Quattro Pro. Quattro Pro, with us, shipped a version of
16 their spreadsheet in the fall of 1994, but because of the
17 way Quattro Pro was built and developed, in order to do
18 international versions, French, German, Japanese, or
19 whatever it might be, of their software, they had to spend
20 significant amounts of development time after we shipped the
21 English version, many months recoding the software for each
22 of those languages. So the Quattro Pro team didn't get
23 started on their Windows 95 efforts until well into 1995,
24 and there was no chance they were going to hit it.

25 So the challenge when you're shipping a suite of

1 products, I mean you have four or five things in the box,
2 they kind of all have to be done at the same time. So the
3 product that was causing the biggest problem was Quattro
4 Pro. They were the thing that was driving the schedule more
5 than anything else.

6 Q Mr. LeFevre, as best you remember it, was there ever a
7 discussion, a proposal at Novell to ship the PerfectOffice
8 Suite without Quattro Pro in it and instead to provide the
9 customer with a coupon?

10 A Yes. There was a proposal like that, not a very
11 serious one. You can imagine the experience of getting
12 two-thirds of your product with a coupon for the other third
13 to come later. It wasn't a serious proposal, but it
14 definitely was proposed by the development team as a way to
15 ship the rest of the product earlier and then wait for
16 Quattro Pro. But in the marketing department we rejected
17 that right away because that just won't fly with customers.

18 Q To the best of your recollection, did the company ever
19 decide to adopt that idea of shipping PerfectOffice without
20 Quattro Pro in it as part of the suite and instead just
21 providing a coupon?

22 A No, we never seriously considered that.

23 Q I want to hand you, sir, what's been marked earlier as
24 Defendant's Exhibit 211.

25 MR. TULCHIN: This is also in evidence, Your

1 Honor.

2 Your Honor, would you like a copy?

3 THE COURT: I don't need it.

4 BY MR. TULCHIN:

5 Q Now this document, Mr. LeFevre, is entitled project
6 proposals for Storm. And the jury has heard several times
7 that Storm was the code name for PerfectOffice for Windows
8 95?

9 A That's correct.

10 Q That's the way you remember it?

11 A Yes.

12 Q The document is not dated, but if you look at the top
13 of page 5, appendix A, it says right at the top, Storm is
14 the code name for our PerfectOffice release to follow the
15 PerfectOffice 3.0 product that is shipping December 1994,
16 and then it goes on.

17 Does this enable you to provide some rough time frame
18 for the preparation of this document?

19 A Yeah, this would have been prepared in advance of our
20 Windows 95 development efforts, probably in the fall of
21 1994.

22 Q Do you recall whether or not you participated in the
23 preparation of the document?

24 A I'm sure that I did.

25 Q Now let me direct your attention, again in Exhibit 211,

1 to the first page, proposal one, and you will see at the
2 top, proposal one calls for September 30, 1995. That would
3 have been a projected hope for release date, correct?

4 A That's correct.

5 Q And on the left-hand column just below it says
6 problems. The first problem just says, this results in an
7 aggressive time frame with a lot of release overhead for a
8 minimal amount of real development time.

9 Now what does that mean as far as you were concerned?

10 A Well, in our history of WordPerfect, we typically took
11 one and a half to two years to develop a product from start
12 to finish. So this proposal was saying we'll start in early
13 1995 in order to ship by September of '95, less than nine
14 months later. It was an incredibly aggressive schedule that
15 left very little development time. Ultimately that means
16 you can't do any real feature work, you can't put any new
17 features in because all you would have time to do is the
18 conversion to a 32-bit operating system, which is what
19 Windows 95 was. Moving from 16 to 32 bits would probably
20 take that entire three and a half months of development
21 time.

22 Q Then, Mr. LeFevre, again, under proposal one, the very
23 next item under the heading problems, item two says, QP
24 believes this is barely achievable with all their resources
25 and with no additional functionality.

1 Now how does this accord to your memory of what was
2 going on at the time?

3 A Well, in the fall of 1994, of course, we were still
4 trying to finish up WordPerfect 6.1 for Windows and the
5 PerfectOffice Suite that went with that release.

6 Q That was December, the PerfectOffice Suite 6.1?

7 A It ended up shipping in December --

8 Q I'm sorry, 3.0, PerfectOffice 3.0.

9 A 3.0, WordPerfect for Windows 6.1. A lot of numbers.
10 It gets confusing. But --

11 THE COURT: For a man with eight birthdays to
12 remember.

13 MR. TULCHIN: What about his own, Your Honor, that
14 would make nine.

15 THE WITNESS: Now I've got grandkids.

16 THE COURT: Whether you remember that or not is
17 not that important.

18 THE WITNESS: I'm sorry. What was the -- too much
19 fun here.

20 BY MR. SCHMIDTLEIN:

21 Q This is proposal one, and under the column problems,
22 this is the very second item. The first one said it's a
23 very aggressive time frame. This one says, Quattro Pro
24 believes this is barely achievable. And I asked you how did
25 this accord with your recollection of what was going on at

1 the time.

2 A Yes. So as we were finishing up the PerfectOffice 3
3 Suite in the latter part of 1994, Quattro Pro was then
4 having to do their development work. As I mentioned, into
5 1995, they were still going to be localizing the versions of
6 Quattro Pro for the other languages, producing Quattro Pro
7 for, you know, European languages, Japanese, Arabic,
8 whatever it might be. So they -- looking at this schedule,
9 they said, well, that's fine, you guys might be starting
10 early 1995, but we're not going to be able to start until
11 much later than that because we're still working on the
12 previous version. So it's an incredibly aggressive schedule
13 for them and there is no way that they could make a
14 September date. That was their assessment.

15 Q If you look at the next page, Mr. LeFevre, there's a
16 proposal two which refers to solution driven strategy for
17 January '96. Now would that be a release date of January
18 '96 for the product? Is that what's being proposed?

19 A Yeah. So the first proposal would be to ship in
20 September of '95. This one says let's give ourselves more
21 time to do it in January of '96. So what are the problems
22 and advantages with that date.

23 Q Then on page 3, again, Exhibit 211, there is a proposal
24 three, which is for April '96, correct?

25 A That's correct.

1 Q Let me ask you to turn to page 4 under the heading
2 recommendation. Do you see that?

3 A Yes.

4 Q It says, option two is the best option. This allows us
5 to produce and sell the next great solution. And option
6 two, which we just looked at, was a proposal to get
7 PerfectOffice for Windows 95 out in January 1996, correct?

8 A That's correct.

9 Q Now in your experience at WordPerfect, it was true, was
10 it not, that proposals were often made for ship dates, but
11 what happened typically?

12 A Ship dates are targets, and like anything, as you start
13 to work on the development of the software product itself,
14 those dates can change along the way as needed.

15 Q So am I right, Mr. LeFevre, that Exhibit 211 that we
16 were just looking at -- and you say that was prepared in
17 late 1994, is that about right?

18 A That's about right.

19 Q And is it your recollection, in part based on Exhibit
20 211, that even as of late 1994, the company, Novell, was
21 looking towards a proposed ship date for PerfectOffice 95 of
22 January 1996?

23 A That's correct. Because of our development effort on
24 WordPerfect 6.1 for Windows and PerfectOffice 3 that went
25 out late 1994, we knew there was no chance that we could

1 make an early ship date in conjunction with Windows 95
2 initially in May, and then as I said pushed back to August.
3 We knew we couldn't make those dates. So we were trying to
4 come up with what's the best case that we could make given
5 the situation we were in.

6 Q Let me ask you to look at what I'm about to hand you,
7 Exhibit 223.

8 MR. TULCHIN: This is also in evidence, Your
9 Honor.

10 BY MR. TULCHIN:

11 Q And, Mr. LeFevre, do you recall documents of this type,
12 market requirements document?

13 A Yes. Market requirements documents were something that
14 my team and the rest of the marketing department would
15 generate in conjunction with the development team prior to a
16 product release.

17 Q Would you look at the third page. Now this is entitled
18 signature sheet. And you see a number of names there,
19 correct?

20 A Yes.

21 Q Your name is one of them?

22 A Yes.

23 Q In the original of the document would the signatures
24 actually have appeared?

25 A Yes. We all met and signed this to agree to this

1 proposal.

2 Q Look at the next page, if you would, please,

3 Mr. LeFevre, document revision history.

4 A Yes.

5 Q Can you tell us what these dates mean?

6 A The dates are when we first began working the documents
7 and then doing various edits along the way. You can see
8 this particular document was started in December 16th, 1994.
9 So about the same time we were finishing up the English
10 version of PerfectOffice 3.

11 Q Your name is on the next line, and then there's a date
12 and it says editing. What does that stand for?

13 A So Damon did the first version of this document, the
14 first draft. And then I took the next version and did edits
15 and documented that on this date. Then you can see other
16 members of my team, and Todd Titensor wasn't a member of my
17 team, but also did some edits.

18 Q Mr. LeFevre, could I ask you to look -- this is Exhibit
19 223 -- at page 41, which is entitled appendix A:
20 Risks-Management Matrix. What's that all about?

21 A So this particular table is attempting to document the
22 risks to the product, the kinds of things that we might run
23 into that would cause this to be late or not be able to ship
24 it the way we wanted to, or in some way not meet the design
25 that we were proposing.

1 Q And the document, of course, is dated in March of 1995,
2 correct?

3 A Yes, March 23rd, 1995.

4 Q Was it your understanding that the people who were
5 listed on the page I showed you, the signature page, had all
6 signed off on agreement that these were the significant
7 risks to the project?

8 A I remember us meeting and having that signing activity,
9 yes.

10 Q Now under the title there's the words major risks in
11 project. Do you see that?

12 A Yes, sir.

13 Q And just to be clear about this, the project we're
14 talking about, as it says on the first page, is Storm,
15 correct?

16 A PerfectOffice 4.0, as we called it.

17 Q That's what you were working on, the PerfectOffice
18 Suite that was being built for Windows 95?

19 A That's correct.

20 Q And under the heading major risks in project, you will
21 see identified risk, one equals high, three equals low.
22 Then in capital letters it says, table is ordered by overall
23 risk. What does that mean?

24 A It means that all the -- there are four items
25 associated with each thing in the list. The likelihood of

1 that happening, the difficult early detection, will we find
2 it quick enough to do anything about it, the potential
3 impact of that thing happening. And, finally, the overall
4 risk.

5 When you add those numbers up, then it gives you a
6 total, which isn't here, but it's fairly easy to do that.
7 The column is simply -- the table, rather, is simply sorted
8 by the addition of those numbers. So the thing that's at
9 the top has the highest risk, meaning the lowest numbers.

10 Q Well, Mr. LeFevre, I want to just direct your attention
11 to some of these items. There are 12 items that are
12 identified as major risks, correct?

13 A Yes.

14 Q And some of the 12 are risks that have nothing to do
15 with Novell, correct? Item two would be a delay in the ship
16 date of Windows 95?

17 A Correct. That would be a risk --

18 Q That would be for Microsoft?

19 A -- for Microsoft.

20 Q The risk that really resided in Microsoft.

21 And item three is lack of stability. Again, in the
22 Microsoft operating system, Windows 95?

23 A It could have a dramatic impact on our ability to ship
24 for that operating system.

25 Q And the fourth risk is the competition raises the bar.

1 Again, that would be Microsoft, or maybe other companies as
2 well?

3 A That's correct.

4 Q Then number five is PerfectFit. Now what relationship,
5 if any, did PerfectFit have to what we've called the shared
6 code group or team?

7 A PerfectFit was the name that we gave to the shared code
8 group. So when we referred to it to customers we had a nice
9 marketing name, so we called it PerfectFit. It went with
10 the theme.

11 Q Now, Mr. LeFevre, according to this matrix, from March
12 of 1995 that you say you signed and so did other people
13 whose names are listed on page 3, the biggest risk, if I
14 understand your testimony, that the company then identified
15 to the project was Quattro Pro delivering late?

16 A That's correct. Sorry. Go ahead.

17 Q I'm sorry. On the right-hand column there's sort of
18 summation, overall risk. Do you see that?

19 A Yes.

20 Q And Quattro Pro is the first listed. But the fifth
21 risk, PerfectFit delivers late, is also given a rating of
22 one. Do you see that?

23 A Yes, I do.

24 Q Now why if --

25 MR. TULCHIN: No. No. No. No. Sorry.

1 PerfectFit delivers late. There we go. There we go. Thank
2 you, sir.

3 BY MR. TULCHIN:

4 Q I think you testified earlier that the overall risk of
5 Quattro Pro delivering late was rated higher, a bigger risk
6 by Novell than PerfectFit delivering late?

7 A That's correct.

8 Q How can you say that when they both have a number one
9 rating?

10 A The overall risk is just one of the measures that we
11 were looking at. The likelihood is a very significant
12 factor here. The likelihood of PerfectFit being late was
13 deemed to be lower than the likelihood of Quattro Pro being
14 late.

15 Q Lower or higher? The number is lower.

16 A The risk would be lower, but the number is certainly --
17 right, higher. But anyway --

18 Q Let me make sure I understand your testimony.

19 THE COURT: Ask him again.

20 MR. TULCHIN: I'm sorry, Your Honor?

21 THE COURT: Go ahead. Go ahead.

22 BY MR. TULCHIN:

23 Q There is a column that says likelihood, correct?

24 A Yes.

25 Q So it's the first column. For Quattro Pro the

1 likelihood is number one, that's rated one?

2 A Meaning for us, we expected them to be late.

3 Q And for PerfectFit it's rated two --

4 A Yes.

5 Q -- right?

6 A That's correct. So a lower risk, higher number.

7 Q If you look up just a little higher on the page, it's
8 on the screen, one is the highest risk and two is a little
9 bit lower, correct?

10 A Correct.

11 Q So how does this accord with what you testified to
12 earlier that in 1995 you believed that the biggest risk to
13 getting PerfectOffice for Windows 95 out to the market was
14 Quattro Pro?

15 A This demonstrates that we felt that certainly in 1995
16 and later on in the year I can testify that we were very
17 concerned about the whole ability of Quattro to ship the
18 suite. You can't ship a suite without all the products in
19 the box. So Quattro was the thing that was causing us the
20 most grief and concern all through this process.

21 Q I want to ask you, sir, do you remember a time when a
22 number of the developers who were working on the Quattro Pro
23 product resigned?

24 A Yes. In the fall of 1995, when Novell announced
25 publicly that they were going to sell the WordPerfect

1 division, the applications division, but had no buyer in
2 mind, that caused a lot of consternation among many
3 employees not only at WordPerfect in Orem, but at the
4 Quattro Pro team in Scotts Valley. They were especially
5 hard hit by this. The acquisition had not -- was a very
6 favorable experience for the Scotts Valley employees.

7 And so when Novell announced they were going to be
8 selling the division anyway, many Quattro Pro employees took
9 that as an opportunity to leave the company and go interview
10 elsewhere and find different jobs.

11 Q Mr. LeFevre, let me show you now Defendant's Exhibit
12 230.

13 MR. TULCHIN: This is also in evidence, Your
14 Honor.

15 And if we can bring up the top part of it, David,
16 that would be great.

17 There are a lot of Davids here. The witness, the
18 lawyer, the tech guy. Davids all over.

19 BY MR. TULCHIN:

20 Q This is an e-mail from Bruce Brereton, and you will see
21 it's to several people. Do you recognize those e-mail
22 aliases?

23 A Yes. The first one would be Bob Frankenberg. The
24 second would be Waxman, who is a Novell executive over the
25 business applications division.

1 Q This is dated December 23rd, '95, subject, update on
2 QP.

3 Now a moment ago you testified there was an
4 announcement in the fall. Was that around late October?

5 A That's my recollection, it was in October of 1995 when
6 Novell announced that they were going to be selling our
7 division.

8 Q So this is a little bit later than that. This is now
9 almost to Christmas?

10 A Yep, a couple months later.

11 Q If you look at item one just below, it says, on this
12 past Thursday, Friday, about 15 additional people submitted
13 their resignations.

14 Now the reference to additional people, does that
15 refer, as you remember it, to the incident you were
16 describing where people had already left after the October
17 announcement?

18 A People had been leaving prior to the October
19 announcement, but a large number of people began to leave
20 after the announcement, and this is indicative of that.

21 Q Could you look at item four?

22 MR. TULCHIN: Let's just show the whole top part
23 of it, David, if you would.

24 Whoops. Sorry. I hope I didn't mess you up.

25 //

1 BY MR. TULCHIN:

2 Q The type is a little small, but item four refers to
3 people who are going to be sent out to Scotts Valley,
4 correct?

5 A Yes, that's what it says.

6 Q Do you remember this, that around Christmas a number of
7 additional developers at Scott Valley, Quattro Pro people,
8 had announced that they were resigning?

9 A Yes.

10 Q And this says, the people going out there will be
11 working closely with whoever is left at QP, in quotation
12 marks, group, such that they can get familiar with the
13 product as fast as possible.

14 Now --

15 A As it says in the very first paragraph, when the 15
16 people leave, this leaves us with just two people. So we
17 were -- it required that we send some people out there so
18 any development work could continue on Quattro Pro.

19 Q As of late 1995, you were still one of the directors of
20 marketing at Novell, correct?

21 A That's correct.

22 Q And I think you said earlier to the jury that you left
23 Novell in March of 1996?

24 A March 8th, 1996.

25 Q As of the time you left, March 8th, 1996, was the

1 Quattro Pro component for PerfectOffice for Windows 95 ready
2 to go?

3 A It was not.

4 Q Was Quattro Pro as a stand-alone product ready to be
5 shipped as of the time you left in March of 1996?

6 A It was not.

7 Q Did you gain any understanding as to why that was so?

8 A It goes to the reasons that we've mostly mentioned
9 already, the fact that they got such a late start on their
10 Windows 95 development, the fact, as you can see here, that
11 they left -- many of the developers left the company. It
12 wasn't just developers, it was testers. It was a number of
13 people.

14 If you live in Scotts Valley, Silicon Valley is not
15 very far away. At that time, there was a lot of hiring
16 going on in Silicon Valley, and many of them left -- the
17 memo says that most of them went to Oracle, and that's what
18 I remember, that many of them went to competing companies
19 who had similar technologies where their skills would be
20 used.

21 MR. TULCHIN: Nothing else, Your Honor, on direct.

22 THE COURT: Mr. Schmidtlein.

23 MR. SCHMIDTLEIN: Just give me one moment here,
24 Your Honor.

25 //

1 CROSS-EXAMINATION

2 BY MR. SCHMIDTLEIN:

3 Q Good morning, Mr. LeFevre.

4 A Good morning.

5 Q I want to ask you a couple of questions about this
6 subject that you were just talking about with Mr. Tulchin.
7 You never worked in the Quattro Pro development group,
8 right?

9 A That's correct.

10 Q And certainly nobody who is in that group reported
11 directly to you, correct?12 A Also correct. I did have a -- just to clarify, I did
13 have a product planner on my team who worked with the
14 Quattro Pro development team. So indirectly I had that
15 interaction with them, but it was through this person on my
16 team.17 Q And in terms of the work that was being done on Quattro
18 Pro in this late '95, early 1996 time period, do you know
19 specifically what development work was being done at that
20 time?

21 A I do not.

22 Q So you don't know, for example, whether it was
23 internationalization issues or other issues going on at that
24 time, correct?

25 A I don't recall the specific issues that were factoring

1 in in that period of time, no.

2 Q If you will go back to Exhibit 223, DX223, the
3 marketing requirements document. Do you see that?

4 A Yes, sir, I have that.

5 Q If you will go back to that page 41 that you were asked
6 some questions about.

7 Are you with me?

8 A Yes. The printed version is upside down, but I'll rely
9 on the screen. Thank you.

10 Q I didn't -- you'll have to take that up with
11 Mr. Tulchin.

12 A Yeah. There it is.

13 Q And I know you were asked some questions about the --
14 they call it the risk management matrix; is that right?

15 A Yes, sir.

16 Q And you were asked some questions about sort of the
17 rankings over here and the various categories, likelihood,
18 difficult early detection, potential impact, and overall
19 risk?

20 A Yes.

21 Q What does difficult early detection mean?

22 A That means that how quickly could we discover that that
23 risk is actually affecting us.

24 Q And potential impact, what is potential -- what does
25 that refer to?

1 A Potential impact to our ability to deliver the products
2 on time and with the features that we desired.

3 Q And so am I right that for potential impact, Quattro
4 Pro delivering late was a one and PerfectFit was a one as
5 well, correct?

6 A That's correct.

7 Q And PerfectFit, I think you testified earlier, is
8 another way of saying shared code?

9 A Shared code is PerfectFit, correct.

10 Q Both Quattro Pro and PerfectFit also were number ones
11 for overall risk, right?

12 A That's correct.

13 MR. SCHMIDTLEIN: And, Mr. Goldberg, if you could
14 just scroll down a little bit on this same page. Great.

15 BY MR. SCHMIDTLEIN:

16 Q Then there's another box there at the bottom called
17 risk management matrix. Do you see that?

18 A I do.

19 Q That first risk there, this is sort of going over some
20 of the same risks that were enumerated above; is that right?

21 A Yes, but these are ways to deal with the risks.

22 Q Right. Okay. And the first one there refers to
23 Quattro Pro, right?

24 A Correct.

25 Q And it talks about preventive help QP where possible,

1 right?

2 A Yes.

3 Q And contingency, that's the coupon QP that you talked
4 about earlier?

5 A Yeah. Again, a proposal in March of 1995, but never
6 seriously considered.

7 Q And then at the far right there it says owner. Do you
8 see that?

9 A Yes.

10 Q What does owner refer to there?

11 A The person that would be in charge of implementing that
12 contingency or making sure that it happened.

13 Q And doesn't this document reflect that sort of the
14 person on the Storm management team that was sort of a
15 assigned to keep a particular eye on Quattro Pro was
16 Mr. Gibb?

17 A That's what this document would indicate, yes.

18 Q In fact, you worked with Mr. Gibb, didn't you?

19 A I worked with Gary daily.

20 Q And he was also a member of the project Storm team,
21 correct?

22 A That's correct.

23 Q In fact, Mr. Gibb was the project leader; is that
24 right?

25 A I would characterize him in that way, yes.

1 Q He is the executive who was put in charge -- overall
2 charge of the PerfectOffice 95 or the project Storm
3 development project, correct?

4 A Gary was the lead project manager is probably a better
5 way of describing his responsibilities, yes.

6 Q Okay. Now sticking with Quattro Pro here for a second,
7 you agreed initially when Quattro Pro was first acquired
8 from Borland that that was a good thing, correct?

9 A It was relatively good, that is we knew we needed a
10 spreadsheet to be competitive in the suite market. We
11 couldn't get Excel, that was the number one spreadsheet on
12 the market, because that's Microsoft's product. We couldn't
13 get Lotus 1-2-3. That was Lotus's product. Quattro Pro was
14 the next best choice. It was a distant third,
15 unfortunately, in the spreadsheet market, but it was the
16 best that we could do.

17 Q In fact, you thought that the acquisition of
18 Quattro Pro from Borland was a good thing because it was
19 going to help Novell compete in the suite market against
20 Microsoft, right?

21 A It gave us the opportunity to have a suite at all.
22 Without Quattro Pro, we didn't have that opportunity. So it
23 was good in that sense, but we knew there was a lot of risk
24 in taking on a third rate product.

25 MR. SCHMIDTLEIN: Will you pull up his deposition

1 on page 59.

2 MR. TULCHIN: I'm sorry, Your Honor. I wonder if
3 I could ask Novell if they have an extra copy. I don't have
4 one.

5 THE COURT: I would be very surprised if you don't
6 have one.

7 MR. TULCHIN: I do. Mr. Paris is way ahead of me.

8 MR. SCHMIDTLEIN: Too much credit then.

9 THE COURT: Good for him.

10 BY MR. SCHMIDTLEIN:

11 Q I'm happy to give you a copy as well.

12 A I can see this fine on the screen. Thank you.

13 Q If you would like a copy, just let me know.

14 Go to page 59 there, and starting on line 16, you
15 answered a question and gave the following answer. We made
16 an arrangement with Borland prior to the Novell acquisition
17 to have a partnership and Borland Quattro Pro became the
18 spreadsheet in our box. WordPerfect had a spreadsheet, but
19 it was substandard, let's just say, and Quattro Pro was a
20 better offering. The one thing that Novell did after the
21 acquisition was Quattro Pro. That was a good thing.

22 Do you recall giving that testimony?

23 A Yes.

24 Q Now isn't it true that in that sort of initial time
25 period, that after Novell acquired Quattro Pro, during that

1 sort of '94, '95 development time period, that WordPerfect
2 didn't make any significant changes to Quattro Pro because
3 they were in the middle of developing the Windows for 95
4 product and were looking to get that out, correct?

5 A In the 1995 time frame?

6 Q Yes.

7 A Yes, that's correct.

8 Q So the point was we've acquired Quattro Pro, we're
9 going to integrate it, but we're certainly not going to slow
10 down the development process by adding lots of new bells and
11 whistles to Quattro Pro, correct?

12 A That's correct. In 1995, the priority was in getting a
13 Windows 95 version ready. So we postponed a lot of the
14 integration things we wanted to do to make Quattro Pro
15 similar to WordPerfect in terms of interface and user
16 experience, we postponed those to what we call version 8,
17 the next one after that.

18 Q Now I believe you also testified that at the time of
19 the merger, you believed the combination of Novell and
20 WordPerfect offered real possibilities; is that right?

21 A Yes. When I first heard of the acquisition, I thought
22 there was some potential positives there.

23 Q You thought there were potentially some synergies
24 between some of the Novell products and the WordPerfect
25 products, correct?

1 A Particularly NetWare because WordPerfect could take
2 advantage of NetWare services to offer some functionality to
3 customers that would be fairly unique in the market. So,
4 yeah, it looked promising.

5 Q I believe you testified earlier today that one of the
6 things that you thought was a real potential possibility was
7 integration with GroupWise; is that right?

8 A Well, it was -- if I recall what I said, GroupWise was
9 something Novell was interested in integrating with their
10 network product, yes.

11 Q Did GroupWise get integrated with PerfectOffice?

12 A It was part of PerfectOffice.

13 Q You thought that -- or people at Novell thought that
14 integrating GroupWise into PerfectOffice was going to make
15 the product more competitive, right?

16 A We had already made that integration before the Novell
17 acquisition. So I don't know what their opinion would be on
18 the matter, but that was already a done deal before June of
19 1994 when Novell acquired it.

20 Q The merger was certainly going to make that a better
21 fit, correct?

22 A Well, the merger wouldn't have any impact on the
23 PerfectOffice Suite in that sense. The merger was more
24 about Novell being able to have some control over GroupWise
25 and integrate it with NetWare as opposed to with our

1 PerfectOffice Suite.

2 Q Now Mr. Tulchin has referred to you I think a number of
3 times as the director of marketing, right?

4 A Yes.

5 Q And I think we went through -- you certainly weren't
6 the head of marketing, right?

7 A No. Glen Mella was the vice president of marketing. I
8 reported to Glen. There were several of us that were
9 directors. Scott Nelson, Chris Grazio and others.

10 Q During the time when you worked at WordPerfect and
11 Novell, you never worked in sales, right?

12 A No.

13 Q You never worked in software development, correct?

14 A At WordPerfect, well, my testing position the first two
15 years was part of the software development organization.

16 Q I'm sorry. Let me ask a better question. You weren't
17 actually writing any software code?

18 A I was never a software developer, that's correct.

19 Q You never worked in the shared code group, right?

20 A Only as a tester.

21 Q Never worked in the WordPerfect engine group, correct?

22 A That's correct.

23 Q And I think you said earlier you never actually worked
24 on coding or specifically the development of the Quattro Pro
25 product?

1 A That's correct.

2 Q And your entire time, after you sort of got out of
3 testing, was spent in the marketing department, right?

4 A Correct.

5 Q You talked a little bit about -- I think this morning
6 you testified a little bit about the Novell distribution
7 channel, the VARs; is that right?

8 A That's correct.

9 Q And at the time of the merger, of course, Novell
10 thought that emphasizing or going to a distribution model
11 that made use of the existing VAR channel it had was going
12 to be a good thing for WordPerfect, right?

13 A That was their proposal, yes.

14 Q Novell retained a number of WordPerfect salespeople to
15 work with the VAR channel, correct?

16 A They retained some of our sales folks, yes. Again,
17 sitting here today, I don't remember the percentage, but the
18 majority of the salesforce was let go. But they certainly
19 did retain some of them.

20 Q And I believe -- well, I'm not sure if you testified,
21 you stayed on after the merger, correct?

22 A Yes.

23 Q And you worked at Novell all the way through the sale
24 to Corel; is that right?

25 A I stayed through the Corel acquisition, and about two

1 weeks after the Corel acquisition is when I left.

2 Q The reason you left Corel was because Corel actually
3 changed the marketing and sale of the product in a way that
4 you thought was significant, right?

5 A Corel made an even more dramatic change in that they
6 decided they were going to only go to retail.

7 THE COURT: I'm sorry. To retail?

8 THE WITNESS: Retail. Meaning they would sell it
9 through, you know, stores, Costco, BestBuy, whatever, those
10 kind of stores. That would be the only place you could buy
11 WordPerfect.

12 Retail sales accounted for about 15 percent of our
13 revenue. So I said, you're cutting off, you know, the vast
14 majority of our revenue by having no salesforce whatsoever
15 and going only to retail. We're just going to lose dramatic
16 amounts of money. And they said, we don't think so. That
17 was our disagreement.

18 BY MR. SCHMIDTLEIN:

19 Q That was your disagreement with Corel?

20 A With Corel.

21 Q And you quit because of that, correct?

22 A And other reasons. That was the last straw.

23 Q Now when Corel took over WordPerfect from Novell, they
24 also let go a number of WordPerfect product managers, right?

25 A Yes.

1 Q And these were original sort of legacy WordPerfect
2 product managers, right?

3 A That's correct.

4 Q These were, in your judgment, important people in the
5 organization, right?

6 A Very, very significant people in the organization.

7 Q And I know you talked about some lay-offs earlier in
8 your testimony, but these very, very significant people who
9 had been at WordPerfect had actually been retained and had
10 stayed on at Novell during the time you were there, correct?

11 A For the most part. Novell did institute a round of
12 lay-offs in November of 1995. So just after the
13 announcement that they wanted to sell the WordPerfect
14 division, then they laid off a number of people. For
15 example, in my team, I had 12 people reporting to me, I had
16 to layoff ten of them in that month.

17 So by the time Corel acquired us, the marketing
18 department had already been stripped down very, very lean,
19 and then Corel let go most of the rest of them. So we were
20 left with very few people.

21 Q And the lay-offs that happened you said in your group
22 were in November '95, correct?

23 A November of 1995.

24 Q Your group didn't have anybody laid off after the
25 original Novell/WordPerfect merger, right?

1 A That's correct. In 1994, I didn't experience any
2 lay-offs.

3 Q And the people that were -- the timing of that
4 November 1995 layoff in your group, that occurred after your
5 group had finished all of its work on the WordPerfect for
6 Windows 95 products, correct?

7 A Not correct. We were still in the middle of the
8 development work. As a product planning team, our job was
9 to do kind of advanced research and provide information to
10 the developers, you know, about what's in the next version.
11 So that was our primary focus. But we were also focused on
12 helping them make those day-to-day decisions, as I've talked
13 about, in those meetings, which bugs should be fixed and all
14 those things.

15 So I would say, if I could characterize it, the
16 majority of our work for the Windows 95 effort was done, but
17 we were still very involved in those kind of triage
18 discussions.

19 Q Sir, would it be fair to say that the layoff of the
20 people on your staff that happened in November '95 while you
21 were at Novell did not impact the delivery of a WordPerfect
22 product for Windows 95?

23 A I think that would be fair.

24 Q The real focus of your group by November '95 were the
25 next versions of Windows, right?

1 A We had already started looking at version 8, as we
2 called it.

3 Q The next versions of WordPerfect for Windows?

4 A Oh, WordPerfect for Windows, not Windows itself
5 obviously, but WordPerfect for Windows, and the next version
6 of the suite and how we would better integrate Quattro,
7 those are the kinds of things that my team had been focused
8 on in the fall of 1995.

9 Q Now you mentioned there were some lay-offs that
10 occurred at WordPerfect prior to the Novell merger; is that
11 right.

12 A Yes.

13 Q Those were primarily cuts in the salesforce; is that
14 right?

15 A No. They were primarily -- well, my recollection is
16 they were pretty much across the board. Under Ad Rietveld's
17 leadership, we instituted those lay-offs in the fall of
18 1993. It seemed like it was pretty much like a ten-percent
19 cut or something, I don't remember the number, but some
20 percentage cut across the board.

21 Q Sitting here today, you don't know if any of the people
22 who were laid off at that time came from the shared code
23 group, do you?

24 A I don't.

25 Q Or the WordPerfect engine group, correct?

1 A No, I don't recall.

2 Q You can't -- sitting here today, you can't identify
3 some particular number of people who were providing software
4 code at that time who were laid off, correct?

5 A That's correct, I couldn't do that.

6 Q Is the same true with respect to the cuts that were
7 done and the lay-offs that you testified to, that happened
8 early on after of the Novell merger? In other words,
9 sitting here today, you can't say whether they were people
10 who were cut from the shared code group or the WordPerfect
11 engine group, correct?

12 A That's correct, I couldn't give you those details.

13 Q You can't say for sure whether anybody was cut from
14 those groups, correct?

15 A That's probably correct.

16 Q Now after Corel bought WordPerfect from Novell, did you
17 get to know somebody from Corel named Paul Skillen?

18 A Yes.

19 Q And who was Mr. Skillen?

20 A Paul Skillen was the person sent by Corel to run the
21 WordPerfect division basically that they had acquired. So
22 he replaced Glen Mella, who -- well, Mark Calkins was the
23 first general manager. Mark was let go with the November
24 lay-offs -- well, actually with the announcement in October
25 of the sale of WordPerfect. Then Glen Mella was made acting

1 general manager. When Corel acquired the company, Glen was
2 let go and Paul Skillen replaced him.

3 Q And do you recall forming an opinion about Mr. Skillen
4 and his knowledge of the software industry?

5 A Yes. I only worked with Paul two or three weeks before
6 I left, but we had a lot of interactions in those two or
7 three weeks. He did offer me a job. I was given a position
8 in Corel if I wanted it. I liked Paul personally in the
9 time that I spent with him. In fact, later, much later,
10 four or five years later, he applied for a job at Microsoft,
11 and called me to see if I would be a reference for him, and
12 I was happy to do that.

13 So I had a high opinion of him personally, but I didn't
14 believe that Paul had any kind of knowledge of our business.
15 And I think Paul acknowledged that this was all new for him
16 and he was heavily relying on us to provide him some kind of
17 background information. He understood Corel's business, the
18 graphics business, but he didn't know anything about the
19 word processing and spreadsheets, or anything.

20 Q Now I think you've testified before that your marketing
21 budget was cut at some point after the Novell merger; is
22 that right?

23 A That's correct.

24 Q And even after your marketing budget was cut, isn't it
25 true that the marketing budget at Novell was well over \$100

1 million?

2 A No -- well, you are talking about the WordPerfect
3 marketing budget?

4 Q The total marketing budget for Novell.

5 A I don't know the total marketing budget for Novell.

6 Q Isn't it true that -- strike that.

7 Do you have a recollection of what the marketing budget
8 was for WordPerfect?

9 A Yes. 1.5 million. That's all we had to work with.
10 Sounds like a lot, but it's not.

11 Q Now you were asked some questions about beta features
12 and the practice of some people changing functionality in
13 products between a beta and a final version; is that right?

14 A Correct?

15 Q You talked about that you thought there were some
16 instances where WordPerfect cut features in a beta version
17 prior to the final release of the product?

18 A That's correct.

19 Q Sitting here today, can you remember exactly what those
20 features were?

21 A See if I can remember an example. In the WordPerfect
22 5.1 for Windows product, when I was running the beta, one of
23 the features that we had was a very -- we thought was a very
24 innovative feature where you could take any document and
25 pick a number of pages you wanted it to be, and click a

1 button and it would just make it that number of pages. We
2 called it Make It Fit.

3 THE COURT: Lawyers would love that since they
4 have limits on pages.

5 THE WITNESS: Frankly, Your Honor, that's where we
6 got the idea was from watching attorneys.

7 THE COURT: That's why I wear glasses.

8 THE WITNESS: Lawyers were a big audience of
9 WordPerfect and they loved our product. And in watching
10 them work, you know, we said, well, look, they do this all
11 the time. So we had an early implementation of that in
12 WordPerfect for Windows 5.1, as I recall, and it had a lot
13 of problems. When you pushed that button, weird things
14 happened. We couldn't really resolve those. So we ended up
15 cutting that feature. It did get in a later version of the
16 product, but we worked it out and got it in the later
17 versions. One of my favorite features. College students
18 love it.

19 BY MR. SCHMIDTLEIN:

20 Q During the time that you were at WordPerfect --

21 THE COURT: In reverse.

22 THE WITNESS: Right. This has to be six pages,
23 oh, no, have to make the font bigger, or something.

24 BY MR. SCHMIDTLEIN:

25 Q During the time that you were at WordPerfect, are you

1 aware of any instance where WordPerfect withdrew features
2 from a beta version of the WordPerfect product --

3 A Oh, yes.

4 Q -- in order -- I'm sorry. I'm not done.

5 A I'm sorry.

6 Q In order to advantage WordPerfect and harm one of
7 WordPerfect's competitors?

8 A No -- where we withdrew a feature that was in a beta?

9 Q Right.

10 A Any feature that we put in beta would be something that
11 we put there because we thought it would be to our
12 advantage. Withdrawing it was usually a painful thing,
13 like, rats, we can't make this work or something. So
14 pulling a feature out as a result of beta feedback was
15 usually something we didn't like to do. We did it with
16 reluctance.

17 Q I believe you testified earlier about -- I think with
18 respect to the file open dialog that WordPerfect developers
19 were working on the PerfectOffice 95 version on a file open
20 dialog that was full of rich functionality, right?

21 A That's correct.

22 Q And they were working on a version that was going to
23 offer functionality that was going to be greater than what
24 Microsoft's Word was offering, correct?

25 A Yes, because Microsoft Word used the common Windows

1 dialogs, and ours had potential integrations way beyond
2 that. Actually it was a great idea.

3 Q That sort of thing -- the desire by people at
4 WordPerfect to develop features and functionalities that
5 exceeded what Microsoft was doing, that was something that
6 WordPerfect took a lot pride in, didn't they?

7 A Yes, it did. Microsoft was our most serious
8 competitor. We wanted to do everything we could to be in a
9 competitive market and regain the market share we had prior
10 to 1992.

11 Q And you certainly understood that as the competition
12 with Microsoft Word was heating up, the need to offer your
13 customers functionality that was trying to stay one step
14 ahead of what was Microsoft was doing was going to be
15 important for WordPerfect's success in the market, correct?

16 A Yes, that's correct.

17 Q WordPerfect needed to differentiate itself from
18 Microsoft Word, particularly with the movement to the
19 Windows platform, correct?

20 A Right. The customers purchase a product when they see
21 some advantage to it over a different product. We were
22 trying to provide as many of those reasons as we could.

23 Q Let me show you what we've marked as PX110.

24 MR. TULCHIN: Your Honor, I'm not sure this should
25 be on the screen that the jury is seeing. I haven't heard a

1 question yet, but I don't think it's in evidence.

2 THE COURT: You're right based upon what I said
3 before, but this is a different witness in a different
4 context. He hasn't had somebody say, look, I don't agree
5 with what, but this is fine.

6 MR. SCHMIDTLEIN: This is in evidence.

7 BY MR. SCHMIDTLEIN:

8 Q Do you recognize PX110?

9 A Yes.

10 Q Can you tell the jury what it is?

11 A This is a computer magazine at the time, PC Computer
12 Magazine. It was a consumer oriented journal where they
13 would write about different company software products.

14 Q This PX110 is a review for WordPerfect 6.0 for Windows,
15 right?

16 A That's correct.

17 Q And that was -- do you recall when WordPerfect 6.0 for
18 Windows was released?

19 A It was in early 1994, just prior to the Novell
20 acquisition.

21 Q If I told you that it was October 1993, does that sound
22 familiar?

23 A No, but it was in that time frame, late 1993, early
24 '94. I would be fine with either one.

25 Q The only reason I say that I think the magazine -- if

1 we go back to the first page in the upper --

2 A Yes, it says December 1993 on the cover, but they often
3 wrote the reviews before the software actually shipped.

4 Q Now turning to -- do you recall that at least in the
5 press WordPerfect 6.1 got some positive reviews, right --
6 6.0?

7 A 6.0 is what we're referring to here. It initially got
8 some positive reviews, that's correct.

9 Q I know you testified that there were some bugs that
10 were in 6.0 and you subsequently wound up releasing I think
11 version 6.0A and 6.1 that improved on this product, right?

12 A There were some significant bugs both in terms of the
13 product crashing and not working for people as well as
14 performance issues with WordPerfect 6 customers perceived to
15 be very slow and sluggish.

16 Q The slow and sluggish came from if a user was using
17 WordPerfect 6.0 on a slightly older machine that didn't have
18 as much memory and didn't run as quickly, correct?

19 A I don't recall the nature of the complaints of
20 sluggishness. They were fairly general.

21 Q If you'll take a look on that first page there, the far
22 left column at the very bottom --

23 A Far left column at the very bottom.

24 Q I'm going to try to blow it up for you there.

25 Do you see that?

1 A Yes.

2 Q It says, Microsoft would have us use common icons for
3 open, printing, and saving, LeFevre says, but we have no
4 reservations about varying from the standard if we had
5 something better.

6 Is the LeFevre there yourself?

7 A That would be me.

8 Q During this time you were in the marketing department,
9 right?

10 A That's correct.

11 Q And it was one of your jobs talking to, from time to
12 time, people who wrote reviews like this?

13 A Yes. One of my responsibilities was to do press and
14 analyst visits. So I went out with two people, typically
15 Liz Hunsaker, who was our PR person, and Jeff -- or, excuse
16 me, Liz Tanner. Wrong name. Liz Tanner. And then Jeff
17 Hunsaker was the other marketing person, and we would go out
18 together. Jeff was our demo man because he was very good at
19 giving exciting wonderful demos to these people, and I was
20 there to answer all the technical questions that came as a
21 result of the demonstration.

22 Q And this is -- we were talking just a few moments ago,
23 this is sort of one of those examples of WordPerfect sort of
24 extolling the fact that it wanted to and was prepared to
25 develop features that went well beyond what sort of

1 Microsoft was suggesting or Word was offering, correct?

2 A That's correct.

3 Q And if you would go back there and look at that --

4 A I was going to say there's even a picture of it.

5 Q That's right.

6 And this figure here in the ad, it says, unlike Word or
7 any other word processor, WordPerfect's open file dialog box
8 includes one long file names, and makes file maintenance
9 functions available as a pop-up menu.

10 Again, that was one of the differentiating features
11 that WordPerfect felt it had that gave it a competitive
12 advantage over Microsoft Word, right?

13 A That's correct. I remember this interview actually.
14 It was quite fun.

15 Q You must have more fun talking to reporters than I do.

16 A Well, again, we were showing -- in this interview, we
17 were showing a prerelease version of WordPerfect 6.0 for
18 Windows and demonstrating that to the press. This review is
19 not a result of the press person actually having his hands
20 on it.

21 So the negative reviews that came later were when we
22 shipped and they started using it for themselves. So these
23 kind of articles that we initially got, which were so
24 glowingly positive because of the really nice functionality
25 that was in the product, became much more negative later on

1 as they actually used them.

2 Q The bugs and some of the issues that you are referring
3 to there got fixed in subsequent releases in 1994, correct?

4 A That's right.

5 Q Do you recall what WordPerfect sales were in 1994?

6 A Lower than 1993. But, no, I don't remember specific
7 numbers. We were trending downward, though, from 1992 on.

8 THE COURT: Do you want to focus on the Windows
9 product. I don't know whether --

10 MR. SCHMIDTLEIN: We're going to get there.

11 BY MR. SCHMIDTLEIN:

12 Q Now in 1994, we just talked about WordPerfect 6.0
13 released sometime -- the dates I've got from people who know
14 this a lot better than I do, was October 1993. WordPerfect,
15 in 1994, released a number of products for the Windows
16 platform, correct?

17 A A number of products --

18 Q For the Windows platform.

19 A Well, we had WordPerfect 6.0 and 6.1 for Windows. We
20 had presentations for Windows, which was in conjunction with
21 the -- or at that time. But in early '94, of course, it was
22 called Borland Office. After the acquisition, we changed
23 the name to PerfectOffice for Novell.

24 Q In fact, PerfectOffice 3.0 was released in
25 December 1994, correct?

1 A That's correct.

2 Q So that right after the Novell acquisition, both
3 WordPerfect and the Quattro Pro acquisition happened not
4 long after; is that right?

5 A Shortly after the Novell purchase, right. It was part
6 of the deal.

7 Q The developers at WordPerfect had a very, very busy
8 1994, didn't they?

9 A Oh, yes.

10 Q They worked very, very hard to get out additional
11 releases of the products for the Windows platform, didn't
12 they?

13 A That's correct.

14 Q And those products were very, very well reviewed,
15 weren't they?

16 A The products -- the 6.1 products and the PerfectOffice
17 Suite 3.0 were well reviewed and well received by the press.

18 Q So as of the end of 1994, do you recall what
19 WordPerfect's sales were for products that ran on the
20 Windows platform?

21 A I couldn't give you numbers, but, again, my impression
22 is our sales were declining as the year went on.

23 THE COURT: But I assume -- the reason I question,
24 I assume that's because DOS sales were going down, but the
25 Windows product, do you know whether they were going up? I

1 understand if you don't.

2 THE WITNESS: No. I couldn't say sitting here
3 today. Sorry.

4 Just to be clear, my responsibility in the
5 marketing team was not to track sales.

6 BY MR. SCHMIDTLEIN:

7 Q We're getting there.

8 A Wouldn't have had those numbers even in my head
9 probably in 1994.

10 Q Let me show you -- I think we've marked this as
11 demonstrative DL1.

12 I'm sorry. I've been told it's been marked as
13 demonstrative Exhibit 18.

14 Mr. LeFevre, this is a chart that was put together
15 based on IDC data. You're family with IDC data, right?

16 A Yes.

17 Q What's IDC?

18 A I don't know. I don't remember -- industry data
19 corporation I think, or something like that. Please, you
20 can fill me in.

21 Q International Data Corporation?

22 A There you go.

23 Q International Data Corporation was a very well known
24 and respected market analyst who went out and gathered
25 market data, correct?

1 A Yes, and we worked with them all the time for
2 information reports.

3 Q You guys regularly got reports and you used those as
4 part of your business, didn't you?

5 A Yes.

6 Q You used it to track what was going on in the market,
7 correct?

8 A Yes.

9 Q And this is a chart that we put together that shows the
10 IDC data, and you'll see there in the yellow bars were
11 WordPerfect revenues for sales to the DOS platform. Do you
12 see that?

13 A I do.

14 MR. TULCHIN: Your Honor, I know this is just a
15 demonstrative, but if it's clear that that's all this is, I
16 have no objection. But no witness for Novell put in
17 evidence of the sales figures. So I don't really know what
18 it is.

19 THE COURT: Okay. It's demonstrative. I don't
20 know. I just -- I assume you're right. I just don't know.
21 This is a demonstrative exhibit.

22 MR. SCHMIDTLEIN: -- has spoke to this and we
23 have --

24 THE COURT: I don't remember, but, in any event,
25 you certainly can use it now.

1 BY MR. SCHMIDTLEIN:

2 Q And this is consistent, I think, with your
3 recollection, and testimony has been given that showed that
4 in the sort of late '80s, early '90s, WordPerfect was
5 focused on the DOS platform, right?

6 A That's correct.

7 Q WordPerfect was sort of the king of DOS?

8 A When I was hired in 1990, WordPerfect 5.1 was the
9 dominant player in the word processing market by far.

10 Q And over time the DOS platform declined as people
11 bought Windows, right?

12 A That's correct.

13 Q And this chart sort of reflects that during this time
14 period WordPerfect sales on DOS began declining, correct?

15 A That's what it shows, yes.

16 Q And that tracks the decline in DOS operating system
17 sales, right?

18 A In general, right.

19 Q WordPerfect during this time period wasn't losing
20 market share on DOS, was it?

21 A No. We were still the majority word processor on DOS,
22 such as it was, but the DOS market itself was in decline
23 because people were switching to Windows.

24 Q So we have -- if you sort of think of this as sort of
25 like a pie, the DOS pie which used to be --

1 A Most of the market.

2 Q -- most of the market, you all at WordPerfect sort of
3 had most of that pie, didn't you?

4 A That's correct.

5 Q But that pie, over this time period, was shrinking,
6 right, so you had still a very, very large percentage, but
7 it was a much smaller pie?

8 A That's correct.

9 Q And the Windows pie was growing?

10 A Right.

11 Q And initially, you see there in 1991, it shows that
12 WordPerfect had smaller sales on the Windows platform. That
13 accords with your recollection of what was going on in 1991,
14 right?

15 A That was the year we first released WordPerfect for
16 Windows.

17 Q That was, what, WordPerfect 5.1?

18 A We called it the same number so it matched with the DOS
19 version.

20 Q And then in 1992, WordPerfect for Windows sales went up
21 significantly, didn't it? That accords with your
22 recollection, right?

23 A Yes. That was WordPerfect 5.2 for Windows.

24 Q And that was viewed as a much better product than 5.1,
25 right?

1 A Yes.

2 Q Then we go to 1993, and WordPerfect sales are going up
3 again on the Windows platform, correct?

4 A That's what this chart shows, correct.

5 Q That accords with your recollection during the time
6 period, that as you all were rolling out more products,
7 better products for the Windows platform, you're sales were
8 going up for the Windows platform; is that right?

9 A Yeah. We didn't -- again, my recollection is, in 1993,
10 we didn't release any new versions of WordPerfect. So this
11 would have been sales of WordPerfect 5.2 all through 1993.

12 Q I think -- and, again, I don't want to --

13 A Even if we released it in the last part of '93, it's
14 not going to have a significant impact.

15 Q You might have a little bit of sales for Windows of the
16 6.0 version --

17 A Maybe.

18 Q -- at the end of '93?

19 A Maybe.

20 Q And then by '94, where you have rolled out these
21 additional products, the WordPerfect for Windows sales are
22 increasing, correct?

23 A That's what this chart shows.

24 Q I think you've anticipated one of my questions before,
25 even though you were in the marketing department, you

1 weren't sort of in charge of keeping track of the sales
2 figures every month?

3 A Absolutely not.

4 Q And then in 1995, we see a little bit of a -- we see
5 obviously a big decline sort of in the '94, '95 time period
6 on DOS, but then there's a drop in Windows for --
7 WordPerfect for Windows sales in '95, correct?

8 A Correct.

9 Q And do you recall in 1995 that the market was sort of
10 in a little bit of -- was frozen a little bit as people were
11 kind of waiting to see what was going to happen with Windows
12 95?

13 A I do recall that. The anticipation of what Windows 95
14 would bring did cause a lot of people to just kind of lock
15 their sales for that year and wait to see what happened,
16 rather than investing in current technology and having it be
17 outdated a few months later.

18 Q There had been a number of delays in the projected
19 release date for Windows 95, right?

20 THE COURT: At least in its release date. Go
21 ahead. I don't know whether its projected release -- excuse
22 me, but in any event, it was not released when people
23 thought it was going to be released. I'm sorry. Your
24 question was fine.

25 THE WITNESS: Thank you, Your Honor. I would just

1 say that the dates we were initially given by Microsoft did
2 change over time as the product was developing.

3 BY MR. SCHMIDTLEIN:

4 Q Windows 95 was supposed to release back in 1993, at
5 least according to the initial announcements, right?

6 A I don't recall that, no.

7 Q It was certainly well before August of '95?

8 A Yes, it was before August of '95.

9 Q So sort of these delays kept occurring, it sort of made
10 things a little bit difficult for some of your customers
11 because they couldn't decide whether they wanted to upgrade
12 with sort of an earlier version of your software for
13 Windows 3.0 or for Windows 3.1, or whether they were going
14 to wait, buy Windows 95, and then buy a new product that was
15 made specifically for Windows 95, right?

16 A Yeah, I think that's fair. I recall having
17 conversations with customers during this period of time when
18 they were saying we're kind of on hold. We're waiting to
19 see what happens.

20 Q And in that respect, Windows 95 offered sort of
21 everybody in the market, Microsoft, WordPerfect, Lotus, it
22 sort of offered everybody kind of a big opportunity to make
23 a lot of sales, didn't it?

24 A Anytime you have a change of operating systems, then
25 there's an opportunity -- there's always a lag because

1 companies don't -- you know, in August of 1995, very few
2 companies were running Windows 95. It takes times for them
3 to test and run it. But the potential was there for a new
4 operating system to kind of let people reset and rethink
5 their purchase decisions.

6 Q And there was certainly a lot of excitement and a lot
7 of anticipation that there was going to be big sales for
8 Windows 95, right?

9 A Yes. We anticipated that I think most companies in the
10 industry at that time expected that.

11 MR. SCHMIDTLEIN: Your Honor, obviously I'm going
12 to go through the lunch break. Now is as good a time as
13 any.

14 THE COURT: The jury will take their lunch break.
15 Now is as good a time as any.

16 MR. SCHMIDTLEIN: Thank you.

17 (Recess)

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