UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, PLAINTIFF, V. MICROSOFT CORPORATION, DEFENDANT.	C.A. NO. 98-1232
STATE OF NEW YORK, ET AL., PLAINTIFFS, V. MICROSOFT CORPORATION, DEFENDANT.	C.A. NO. 98-1223
MICROSOFT CORPORATION, COUNTERCLAIM-PLAINTIFF, V. DENNIS C. VACCO, ET AL., COUNTERCLAIM-DEFENDANTS.	JANUARY 13, 1999 WASHINGTON, D.C.

VOLUME 37-B

TRANSCRIBED DEPOSITION EXCERPTS

COURT REPORTER: DAVID A. KASDAN, RMR
MILLER REPORTING CO., INC.
507 C STREET, N.E.
WASHINGTON, D.C. 20003
(202) 546-6666

GOVERNMENT EXHIBIT 1453
PENGAD-Bayonne, N. J.

1 (DEPOSITION EXCERPTS OF RICHARD BROWNRIGG, JR.)
2 Q. NOW, IN WINDOWS 98, DOES GATEWAY HAVE
3 A--HAVE A PLAN TO OFFER CUSTOMERS A CHOICE OF
4 BROWSERS DURING THE ISP SETUP PROCEDURE?
5 A. IN THE CURRENT IMPLEMENTATION?
6 Q. LET ME FIRST ASK ABOUT THE CURRENT
7 IMPLEMENTATION, AND THEN MY QUESTION WAS WHETHER
8 GATEWAY HAD A PLAN TO. SO, IF THERE'S A
9 DIFFERENCE, LET ME KNOW.
10 A. CURRENTLY, NO, WE DON'T. THE OCTOBER
11 19TH WILL.
12 Q. AND WHEN YOU SAY THE OCTOBER 19TH, DO
13 YOU MEAN THAT THAT IS WHEN THE MACHINES THAT
14 OFFER THE GATEWAY INTERNET SETUP PROCEDURE IN THE
15 BOOT SEQUENCE WILL BE--START SHIPPING?
16 A. YES.
17 Q. OKAY. NOW, IN OCTOBER, WHY WILL
18 GATEWAY BEGIN OFFERING USERS A BROWSER CHOICE?
19 A. IT'S GATEWAY'S DESIRE TO GIVE THE USER
20 A CHOICE FOR OUR INTERNET SERVICE.
21 Q. YOU SAID THAT IT'S GATEWAY'S DESIRE TO
22 GIVE THE USER A CHOICE FOR THE INTERNET SERVICE.
23 DID YOU MEAN A CHOICE OF BROWSERS?
24 A. YES.
25 Q. WHY DOES GATEWAY WANT TO GIVE USERS A

1 CHOICE OF BROWSERS?

2 A. GATEWAY HAS ALWAYS BEEN ABOUT CHOICE IN
3 EVERYTHING THAT WE DO, MACHINES, YOUR
4 CONFIGURATION, AND WE JUST WANT TO KEEP THAT
5 CONSISTENT WITH OUR INTERNET SERVICE.

6 Q. NOW, WHEN GATEWAY BEGINS TO OFFER THE
7 BROWSER CHOICE IN OCTOBER OF '98, WHAT WILL
8 HAPPEN IF THE USER SELECTS NETSCAPE NAVIGATOR?

9 A. THE USER'S INTERNET SERVICE WILL BE
10 CONFIGURED; THEIR MAIL, AND THEIR NEWS WILL BE
11 CONFIGURED; AND THE NETSCAPE ICON WILL BE PLACED
12 ON THE DESKTOP ALONG WITH THE INTERNET EXPLORER
13 AND THE OUTLOOK EXPRESS ICON UPON SUCCESSFUL
14 COMPLETION OF THE REGISTRATION.

15 Q. DID GATEWAY REQUEST OF MICROSOFT'S
16 FLEXIBILITY TO REMOVE THE INTERNET EXPLORER ICON
17 IF THE USER WERE JUST WERE (SIC) TO SELECT
18 NETSCAPE NAVIGATOR?

19 A. YES.

20 Q. WHY?

21 A. THE USERS--THE USABILITY STUDY THAT WE
22 DID, BASED ON THE CURRENT REGISTRATION PROCESS,
23 SHOWED THAT USERS WERE CONFUSED WHEN MORE ICONS
24 AND MORE OPTIONS WERE PRESENTED ON THEIR DESKTOP
25 FOR ACCESS TO THE INTERNET.

1 Q. AND HOW WOULD A USER CONFUSION CAUSED
2 BY MORE ICONS ON THE DESKTOP AFFECT GATEWAY?
3 A. DIRECTLY INCREASE TECH SUPPORT COSTS.
4 Q. ARE THERE OTHER WAYS THAT IT WOULD
5 AFFECT GATEWAY?
6 A. THAT'S THE ONLY ONE I'M REALLY
7 CONCERNED ABOUT DIRECTLY.
8 Q. AND YOU ARE CONCERNED ABOUT THE TECH
9 SUPPORT COSTS?
10 A. IT IS A GOAL OF MINE TO RELEASE A
11 QUALITY PRODUCT, TO KEEP TECH SUPPORT COSTS LOW,
12 AT A MINIMUM.
13 Q. WHAT ACTIONS DOES GATEWAY TAKE TO
14 ATTEMPT TO KEEP ITS TECHNICAL SUPPORT COSTS LOW?
15 A. I CAN ONLY ANSWER FOR MY SPECIFIC
16 GROUP.
17 Q. THAT'S FAIR.
18 A. WE HAVE A--WE HAVE A TEAM OF PEOPLE
19 THAT EVALUATE VARIOUS PROBLEMS, ISSUES AND
20 CONCERNS, AND DOES A ROOT CAUSE ANALYSIS AND
21 DETERMINES HOW WE CAN FIX THE PROBLEM.
22 Q. AND WHEN GATEWAY ASKED MICROSOFT FOR
23 THE FLEXIBILITY TO REMOVE THE VISIBLE MEANS OF
24 ACCESSING INTERNET EXPLORER, WHAT WAS MICROSOFT'S
25 RESPONSE?

1 A. NO.

2 Q. DID YOU HAVE ANY UNDERSTANDING AS TO

3 WHY MICROSOFT GAVE A NEGATIVE RESPONSE?

4 A. IT WAS STATED THAT THERE--IT WOULD

5 NOT--THERE WOULD NOT BE A CONSISTENT CUSTOMER

6 EXPERIENCE ACROSS ALL WINDOWS DESKTOPS.

7 Q. WHO GAVE GATEWAY THAT RESPONSE, IF YOU

8 KNOW?

9 A. GAYLE MCLAIN IS OUR REPRESENTATIVE THAT

10 RESPONDED TO OUR REQUEST.

11 Q. OKAY. ARE THERE ANY OTHER REASONS THAT

12 MICROSOFT GAVE GATEWAY, TO YOUR KNOWLEDGE, FOR

13 ITS REFUSAL TO ALLOW GATEWAY THIS FLEXIBILITY?

14 A. NO. THAT'S THE ONLY ONE I'M AWARE OF.

15 Q. NOW, AT SOME POINT--LET'S GO BACK TO

16 THE WINDOWS 95 TIME FRAME--WHEN GATEWAY HAD THE

17 INTERNET SELECTION BUTTON THAT APPEARED BEHIND

18 THE "WELCOME TO WINDOWS" SCREEN, DID MICROSOFT

19 COMPLAIN ABOUT THAT BUTTON?

20 A. YES.

21 Q. WHAT WAS MICROSOFT'S COMPLAINT?

22 A. IT WAS TOO BIG.

23 Q. DID MICROSOFT GIVE YOU OR GATEWAY ANY

24 REASONS FOR ITS COMPLAINT THAT IT WAS TOO BIG?

25 A. BASED ON THE LICENSING AGREEMENT, ANY

1 ITEMS THAT ARE ON THE DESKTOP HAVE TO BE THE SAME
2 SIZE, SHAPE, AND CONSISTENCY, ALL OF THE ICONS,
3 AND THAT WAS THEIR STATEMENT, THAT THIS WAS AN
4 ICON THAT WAS NOT--IT DID NOT CONFORM TO THOSE
5 REQUIREMENTS.
6 Q. SO, DID YOU HAVE AN UNDERSTANDING THAT
7 MICROSOFT WANTED A CONSISTENT CUSTOMER EXPERIENCE
8 WITH RESPECT TO THE ICONS AS WELL ACROSS
9 MACHINES?
10 A. IT WAS SPECIFICALLY STATED IT WAS DUE
11 TO THE LICENSING AGREEMENTS.
12 Q. OKAY. AND DID MICROSOFT, OTHER THAN
13 STATING THAT IT WAS DUE TO THE LICENSING
14 AGREEMENTS, COMMUNICATE TO GATEWAY THAT THE
15 REASON FOR THAT PROVISION IN THE LICENSING
16 AGREEMENT WAS TO MAINTAIN A CONSISTENT USER
17 EXPERIENCE?
18 A. I WAS NOT AWARE OF THAT.
19 Q. NOW, LET'S SKIP BACK TO THE BROWSER
20 CHOICE IN WINDOWS 98.
21 IF, IN OCTOBER, THE CHOICE THAT GATEWAY
22 IS PLAN ON GIVING, IF A USER DOES NOT SELECT A
23 PARTICULAR BROWSER, WHAT WILL HAPPEN?
24 A. THE DEFAULT BROWSER WILL BE INTERNET
25 EXPLORER.

1 Q. WHY?

2 A. IT'S--BECAUSE IT'S DEFAULT ON THE

3 OPERATING SYSTEM, AND IT'S PART--IT'S JUST THEIR

4 PART IN THE OPERATING SYSTEM.

5 Q. NOW, AT SOME POINT BEFORE WINDOWS 98,

6 WAS GATEWAY PLANNING ON MAKING INTERNET EXPLORER

7 4.0 THE DEFAULT BROWSER ON ITS MACHINES?

8 A. COULD YOU CLARIFY THAT?

9 Q. SURE. AT SOME POINT BEFORE THE RELEASE

10 OF WINDOWS 98, WAS GATEWAY PLANNING ON GIVING

11 CUSTOMERS A BROWSER CHOICE?

12 A. YES.

13 Q. OKAY. AND PURSUANT TO THOSE PLANS, WAS

14 GATEWAY PLANNING ON MAKING INTERNET EXPLORER 4.0

15 THE DEFAULT BROWSER IF A USER DID NOT SELECT A

16 PARTICULAR BROWSER?

17 A. NO.

18 Q. WHY NOT?

19 A. WE WERE NOT PRE-INSTALLING INTERNET

20 EXPLORER 4.0.

21 Q. WHY NOT?

22 A. THE INHERENT--THE FIRST RELEASE, THERE

23 WERE SOME TECHNICAL-SUPPORT PROBLEMS THAT DROVE A

24 SIGNIFICANT NUMBER OF CALLS, AND WE DID NOT WANT

25 TO INSTALL IT.

1 AND WE ALSO LOOKED AT THE POSSIBLE
2 SYSTEM DEGRADATION DUE TO SOME OF THE DEFAULT
3 CONFIGURATIONS WE WERE REQUIRED TO IMPLEMENT AS
4 BEING NEGATIVE TO THE CUSTOMER.
5 Q. WHAT DEFAULT IMPLEMENTATIONS WAS
6 GATEWAY BEING REQUIRED TO IMPLEMENT THAT WOULD
7 LEAD TO POSSIBLE SYSTEM DEGRADATION?
8 A. THE IMPLEMENTATION OF THE CHANNELS.
9 Q. SO, AT SOME POINT, MICROSOFT TOLD
10 GATEWAY THAT IT WOULD HAVE TO SHIP IE 4 WITH THE
11 CHANNELS TURNED ON?
12 A. IF WE WANTED TO INSTALL IE 4, WE HAD TO
13 HAVE THE CHANNELS ACTIVATED, IS WHAT THE SETTING
14 IS.
15 Q. AND WHAT WOULD HAVE BEEN THE
16 CONSEQUENCE OF HAVING THE CHANNELS ACTIVATED ON
17 IE 4?
18 A. IT'S POSSIBLE TO DEGRADE THE SYSTEM
19 PERFORMANCE.
20 Q. AND HOW WOULD IT HAVE DEGRADED THE
21 SYSTEM PERFORMANCE?
22 A. DEPENDING ON THE SUBSCRIPTIONS THAT THE
23 USER CHOOSES, THE SYSTEM WILL SLOW DOWN AND
24 CAN--THE PERFORMANCE CAN DEGRADE.
25 Q. NOW, IF GATEWAY HAD BEEN REQUIRED TO

1 SHIP INTERNET EXPLORER 4 WITH THE CHANNELS
2 ACTIVATED, WOULD THAT HAVE BEEN AN IMPEDIMENT TO
3 LOADING NETSCAPE'S BROWSER PRODUCT FOR GATEWAY?
4 A. YES.
5 (EXCERPT.)
6 Q. OKAY. I WANT TO TALK SOME ABOUT THE
7 POSSIBLE SYSTEM DEGRADATION FROM THE CHANNELS
8 THAT YOU TALKED ABOUT. CAN YOU EXPLAIN TO ME IN
9 TECHNICAL TERMS WHAT THE PROBLEM WAS WITH THE
10 CHANNELS AND RUNNING NETSCAPE NAVIGATOR.
11 A. IN OUR TESTS, SHOULD A USER SUBSCRIBE
12 TO SOME OF THE CHANNELS, AND SOME OF THE MORE
13 POPULAR ONES THAT ARE EXPOSED IN THE DESKTOP, THE
14 WB, THE--THE DISNEY, AND THE--THERE'S SOME OF THE
15 MORE COLORFUL, MORE EYE-CATCHING CHANNELS, THOSE
16 WERE CONSTANTLY POLLING THE CPU FOR ANY
17 SUBSCRIPTION DATA THAT THE CHANNEL MIGHT HAVE.
18 THIS POLLING AND REQUEST FOR CPU CYCLES DEGRADED
19 THE SYSTEM TO THE POINT WHERE IT WAS NOTICEABLE
20 WHEN LAUNCHING OTHER APPLICATIONS OR UTILIZING
21 OTHER APPLICATIONS.
22 Q. ARE YOU AWARE OF ANY OTHER OEM'S THAT
23 HAD THESE PROBLEMS WITH THE CHANNEL BAR AND
24 SYSTEM DEGRADATION?
25 A. NO.

1 Q. DID YOU DISCUSS THESE PROBLEMS WITH
2 MICROSOFT?
3 A. YES.
4 Q. AND DID YOU PROVIDE YOUR TESTS TO
5 MICROSOFT FOR THEIR ANALYSIS?
6 A. NO, WE DID NOT.
7 Q. WHY NOT?
8 A. IT WAS--WE REQUESTED TO REMOVE THE
9 CHANNELS, AND THE REASON WE STATED WAS THE
10 DEGRADATION. WE STATED WE DIDN'T--COULDN'T
11 REMOVE THE CHANNELS SO THE DISCUSSION STOPPED.
12 Q. DID YOU HAVE DISCUSSIONS WITH MICROSOFT
13 ABOUT WHETHER ANY OTHER OEM WAS EXPERIENCING THIS
14 SYSTEM DEGRADATION?
15 A. NOT TO MY KNOWLEDGE.
16 Q. DID MICROSOFT OFFER ANY SUGGESTIONS AS
17 TO, YOU KNOW, HOW TO FIX THIS ISSUE?
18 A. NOT THAT I'M AWARE OF, NO.
19 Q. THIS WAS ONLY IN WINDOWS 95 YOU HAD
20 THIS PROBLEM?
21 A. THAT IS CORRECT.
22 Q. AND THE PROBLEM WAS ONLY CAUSED WHEN
23 NETSCAPE NAVIGATOR WAS INSTALLED?
24 A. NO. IF THE CHANNELS--IF CHANNELS ARE
25 INSTALLED, CHANNELS BEING THE CHANNEL BAR, WERE

1 INSTALLED, THAT'S WHEN THE PROBLEM AROSE. AND IT
2 WAS JUST--IT WAS JUST DUE, IF THE CUSTOMER
3 SUBSCRIBED TO CHANNELS. IF THEY DID NOT
4 SUBSCRIBE TO ANY CHANNELS, NOTHING--THERE WAS NO
5 DEGRADATION, BUT WITH THE ATTRACTIVE NATURE OF
6 CERTAIN BUTTONS, USERS WOULD CLICK ON THEM AND
7 THE DEFAULT MESSAGE WAS TO SUBSCRIBE, AND
8 THEREFORE THEY WERE NOW IN THE PROCESS OF POLLING
9 AND RECEIVING INFORMATION.
10 Q. OKAY. SO, THIS SYSTEM DEGRADATION THAT
11 YOU'RE TALKING ABOUT HAD NOTHING TO DO WITH
12 WHETHER THE USER WAS UTILIZING NETSCAPE NAVIGATOR
13 OR INTERNET EXPLORER?
14 A. NO.
15 MS. GIULIANELLI: MISCHARACTERIZING HIS
16 TESTIMONY, I BELIEVE.
17 BY MS. WHEELER:
18 Q. THE ANSWER IS NO?
19 A. NO.
20
21
22
23
24
25