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.

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TRANSCRIBED DEPOSITION EXCERPTS

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PENGAD-Bayonne, N. J.
GOVERNMENT EXHIBIT
1462

1 (DEPOSITION EXCERPTS OF JAMES VON HOLLE.)

2 MS. GIULIANELLI: SURE. DOES GATEWAY

3 BELIEVE THAT IT HAS ANY COMMERCIALLY VIABLE

4 ALTERNATIVES TO WINDOWS FOR ITS PERSONAL

5 COMPUTERS?

6 MS. WHEELER: SAME OBJECTION.

7 THE WITNESS: I DON'T BELIEVE SO.

8 BY MS. GIULIANELLI:

9 Q. WHY NOT?

10 A. THERE'S--THERE'S NOT ENOUGH SUPPORT IN

11 THE FORM OF APPLICATIONS IN THE MARKETPLACE

12 TO--TO RUN ON ALTERNATE OPERATING ENVIRONMENTS.

13 Q. AND WHY IS THE SUPPORT OF APPLICATIONS

14 IN THE MARKETPLACE A CONSIDERATION OF GATEWAY'S?

15 A. PRIMARY REASON FOR THAT IS THAT PEOPLE

16 NEED TO DO SOMETHING WITH THEIR COMPUTERS OTHER

17 THAN JUST HAVE A PC AND AN OPERATING SYSTEM, SO

18 THEY NEED AN APPLICATION TO PERFORM FUNCTIONS

19 WITH THEIR COMPUTERS.

20 Q. ARE THERE ANY OTHER REASONS THAT YOU

21 DON'T VIEW ANY COMMERCIALLY VIABLE ALTERNATIVES

22 TO WINDOWS FOR THE PERSONAL COMPUTERS?

23 A. NOT IN PARTICULAR, NO.

24 Q. WOULD GATEWAY LIKE TO SEE A CHOICE OF

25 OPERATING SYSTEM VENDORS FOR PERSONAL COMPUTERS?

1 A. I CAN'T SAY THAT--THAT THAT'S SOMETHING
2 WE GREATLY DESIRE, NO.
3 Q. WHY NOT?
4 A. I DIDN'T SAY WE DIDN'T.
5 Q. LET ME JUST MAKE SURE THAT I HAVE YOUR
6 TESTIMONY CLEAR IN THAT CASE. I BELIEVE THAT YOU
7 TESTIFIED THAT GATEWAY DOES NOT SEE ANY
8 COMMERCIALLY VIABLE ALTERNATIVES TO LOADING
9 WINDOWS ON ITS PERSONAL COMPUTERS; IS THAT
10 CORRECT?
11 A. CORRECT.
12 Q. OKAY. NOW, WOULD GATEWAY LIKE TO SEE
13 COMMERCIALLY VIABLE ALTERNATIVES TO WINDOWS FOR
14 ITS PERSONAL COMPUTERS?
15 A. IF--IF VIABLE ALTERNATIVES EMERGED, WE
16 WOULD EVALUATE THOSE.
17 Q. IS THAT SOMETHING THAT GATEWAY WOULD
18 LIKE TO SEE, THAT IS VIABLE ALTERNATIVES
19 EMERGING?
20 A. IT WOULD BE AN INTERESTING MARKET
21 DEVELOPMENT WE WOULD TRACK CLOSELY.
22 Q. WHY WOULD IT BE AN INTERESTING MARKET
23 DEVELOPMENT YOU WOULD TRACK CLOSELY?
24 A. WE LIKE TO MAKE SURE THAT OUR CUSTOMERS
25 ARE OFFERED A--A CHOICE OF PRODUCTS THAT BECOME

1 POPULAR IN THE MARKETPLACE.

2 Q. ARE THERE OTHER WAYS THAT GATEWAY'S

3 CUSTOMERS WOULD BENEFIT FROM THE CHOICE OF

4 OPERATING SYSTEMS?

5 MS. WHEELER: OBJECTION, FORM OF THE

6 QUESTION.

7 THE WITNESS: COULD YOU--COULD YOU BE

8 MORE SPECIFIC?

9 BY MS. GIULIANELLI:

10 Q. SURE.

11 YOU TESTIFIED THAT YOU'D LIKE TO

12 SEE--THAT CUSTOMERS WOULD LIKE TO HAVE A CHOICE;

13 IS THAT CORRECT? OR IS THAT A

14 MISCHARACTERIZATION OF WHAT YOU SAID?

15 A. I THINK THAT'S A MISCHARACTERIZATION.

16 Q. OKAY. THEN WHY DON'T YOU GIVE ME YOUR

17 ANSWER AGAIN JUST SO THAT I'M CLEAR ON WHAT IT

18 WAS.

19 A. GATEWAY WOULD LIKE TO OFFER A CHOICE OF

20 POPULAR PRODUCTS FOR OUR CUSTOMERS.

21 Q. AND WOULD GATEWAY'S CUSTOMERS BENEFIT

22 FROM HAVING A CHOICE OF POPULAR PRODUCTS?

23 A. BENEFIT IN WHAT WAY?

24 Q. IN ANY WAY.

25 A. IT'S A DIFFICULT QUESTION TO ANSWER. I

1 MEAN, THEY--THEY MAY.

2 Q. HAVE YOU EVER ASSESSED WHETHER

3 GATEWAY'S CUSTOMERS BENEFIT FROM A CHOICE OF

4 PRODUCTS?

5 A. YES, WE HAVE.

6 Q. AND WHAT CONCLUSIONS DID YOU REACH, IF

7 ANY?

8 A. THE CUSTOMERS TYPICALLY WILL TAKE THOSE

9 CHOICES AND, YOU KNOW, BASED ON THEIR

10 PREFERENCES, USE THOSE PRODUCTS HOW THEY INTEND

11 TO USE THOSE PRODUCTS.

12 Q. IS THAT A BENEFIT TO GATEWAY'S

13 CUSTOMERS?

14 A. YES, GENERALLY IT IS.

15 (EXCERPT.)

16 Q. DO YOU RECOGNIZE THIS DOCUMENT?

17 A. YES, I DO.

18 Q. WHAT IS IT?

19 A. IT'S AN INTERNAL DOCUMENT THAT WAS

20 PREPARED IN ANTICIPATION OF A MEETING WITH

21 MICROSOFT.

22 Q. WHO PREPARED IT, IF YOU KNOW?

23 A. I DON'T KNOW ALL--ALL THE--ALL THE

24 PEOPLE WHO PREPARED IT, BUT I DID--I DID PREPARE

25 PARTS OF IT.

1 Q. OKAY. AND WAS THIS PREPARED ON OR
2 AROUND MARCH 25TH OF 1997?
3 A. YES, OKAY.
4 MR. LAVELLE: I THINK YOU MISSPOKE.
5 BY MS. GIULIANELLI:
6 Q. MARCH 21ST OF 1997, WHICH IS, FOR THE
7 RECORD, A DATE THAT APPEARS ON THE LOWER
8 RIGHT-HAND CORNER OF THE DOCUMENT. AND AT THE
9 TOP DOES IT SAY 3/25/97, MICROSOFT MEETING?
10 A. YES, IT DOES.
11 Q. AND THIS IS THE MEETING THAT IT WAS
12 PREPARED IN ANTICIPATION OF?
13 A. YES.
14 Q. AND IF YOU COULD PLEASE FLIP TO THE
15 SECOND PAGE, WOULD YOU READ TO YOURSELF THE
16 PAR--THE SECOND PARAGRAPH UNDER THE PORTION THAT
17 SAYS, "SLIP OF MEMPHIS AND SUPPORT FOR NEW
18 INDUSTRY DEVICES."
19 A. UMM-HMM.
20 Q. HAVE YOU HAD A CHANCE TO DO THAT?
21 A. YES.
22 Q. WHAT DID GATEWAY WANT MICROSOFT TO DO
23 AT THIS TIME?
24 A. WE WERE ASKING MICROSOFT TO RELEASE
25 HARDWARE SUPPORT AND--IN WINDOWS 95 FOR

1 CERTAIN--CERTAIN FEATURES THAT ARE LISTED HERE.
2 Q. AND WHAT ARE THE FEATURES THAT ARE
3 LISTED HERE FOR THE RECORD?
4 A. AGP GRAPHICS, DVD DISKS, AND DUAL
5 DISPLAYS.
6 Q. DID GATEWAY WANT MICROSOFT TO RELEASE
7 THIS HARDWARE SUPPORT BEFORE MEMPHIS WAS
8 RELEASED?
9 A. YES, WE WERE ASKING FOR THAT.
10 Q. AND DO YOU HAVE AN UNDERSTANDING AS TO
11 WHAT MEMPHIS WAS?
12 A. MEMPHIS WAS A CODE NAME FOR WINDOWS 98.
13 Q. DID GATEWAY BELIEVE THAT IT WOULD HAVE
14 BEEN TECHNICALLY POSSIBLE FOR MICROSOFT TO
15 UNBUNDLE THESE HARDWARE FEATURES FROM MEMPHIS,
16 THESE HARDWARE SUPPORT FEATURES?
17 A. WE--WE DID NOT DO ANY DETAILED
18 TECHNICAL ANALYSIS, NO.
19 Q. IF YOU COULD PLEASE LOOK AT THE LAST
20 PARAGRAPH RIGHT BEFORE THE MDA 97 THERE, DID YOU
21 WRITE--AUTHOR THIS PORTION OF THE DOCUMENT?
22 A. YES, I DID.
23 Q. OKAY. SEE WHERE YOU WROTE, "THE
24 MESSAGE TO MICROSOFT IS THAT THEY ARE SLOWING THE
25 PACE OF NEW PRODUCT INTRODUCTION IN THE INDUSTRY.

1 THEY HAVE A RESPONSIBILITY TO THE INDUSTRY
2 BECAUSE OF THEIR DOMINANT MARKET SHARE IN THE
3 CORE OPERATING SYSTEM. THEY ARE NOT SPENDING THE
4 REQUIRED R&D TO KEEP THE PACE OF INNOVATION IN
5 THE OS CURRENT WITH THE INDUSTRY HARDWARE. THIS
6 WILL ESPECIALLY HURT GATEWAY BECAUSE OF OUR
7 FIRST-TO-MARKET SALES OF THE LATEST
8 TECHNOLOGIES."
9 WAS THIS YOUR VIEW AT THAT TIME THAT
10 YOU WROTE THIS DOCUMENT?
11 A. THIS WAS MY OPINION, YES.
12 Q. IS INNOVATION IN THE OPERATING SYSTEM
13 MARKET A GOOD THING FOR GATEWAY'S CUSTOMERS?
14 A. INNOVATION IN THE INDUSTRY IS GENERALLY
15 A GOOD THING, YES.
16 (EXCERPT.)
17 Q. WHY DID GATEWAY ASK TO REMOVE THE
18 INTERNET EXPLORER ICON FROM WINDOWS 95?
19 A. WE WERE ATTEMPTING TO, I GUESS, CLEAN
20 UP, IF YOU WILL, THE ICONS THAT WERE ON THE
21 DESKTOP AFTER THE CUSTOMER MADE CERTAIN
22 SELECTIONS.
23 Q. NOW, WHAT SELECTIONS ARE YOU REFERRING
24 TO IN THAT ANSWER?
25 A. WELL, IF THEY--IF THEY, FOR EXAMPLE,

1 CHOSE AN ALTERNATE BROWSER PRODUCT AS THEIR--AS
2 THEIR DEFAULT BROWSER, THEN WE WANTED THE OPTION,
3 IF THE CUSTOMER REQUESTED, TO BE ABLE TO DELETE
4 THE ICONS FOR PRODUCTS THAT THEY DID NOT INTEND
5 TO USE.
6 Q. DID GATEWAY HAVE ANY USER STUDIES THAT
7 SUPPORTED ITS--OR THAT WENT TO ITS DESIRE TO
8 CLEAN UP THE ICONS WITH THE DESKTOP?
9 A. YEAH. THE GENERAL USABILITY STUDIES
10 THAT WE DO INDICATE THAT THE LESS CLUTTERED THE
11 DESKTOP IS THE MORE--THE LESS--THE LESS CONFUSING
12 IT IS FOR THE CUSTOMER TO USE THE PRODUCT.
13 (EXCERPT.)
14 Q. DID GATEWAY HAVE A BUTTON THAT THE
15 USERS CLICKED ON IN ORDER TO ACCESS THE SIGNUP
16 PROCEDURE FOR GATEWAY.NET?
17 A. YES, WE DID.
18 Q. WHAT WAS IT CALLED?
19 A. THE INTERNAL NAME FOR THAT WAS THE--THE
20 BAB.
21 Q. OKAY. AND PERHAPS I SHOULD NOT ASK
22 THIS QUESTION, BUT WHAT DID BAB STAND FOR?
23 A. WELL, THAT WAS THE INTERNAL CODE NAME,
24 SO YOU UNDERSTAND. WE DID REFER THAT TO THE
25 BIG-ASS BUTTON.

1 Q. OKAY. AND THAT WAS BECAUSE IT WAS A
2 BIG BUTTON?
3 A. IT WAS A BIG BUTTON.
4 Q. OKAY. WAS THERE AN EXTERNAL NAME FOR
5 IT?
6 A. I THINK WE REFERRED TO IT AS THE
7 INTERNET REGISTRATION BUTTON.
8 (EXCERPT.)
9 Q. YOU DISCUSSED GATEWAY'S DESIRE TO
10 REMOVE THE INTERNET EXPLORER ICON AFTER THE SETUP
11 ROUTINE IF A USER WERE TO CHOOSE AN ALTERNATE
12 BROWSER.
13 DID GATEWAY, IN FACT, REMOVE THE
14 INTERNET EXPLORER ICON FROM WINDOWS 95 IF AN
15 ALTERNATE BROWSER WAS CHOSEN?
16 A. NO, WE DID NOT.
17 Q. WHY NOT?
18 A. WELL, TWO REASONS. AT THE TIME WE--WE
19 HAD NOT OFFERED AN ALTERNATE BROWSER, SO THAT
20 WAS--THAT WAS THE BIGGEST REASON.
21 Q. THAT'S A PRETTY GOOD ONE.
22 A. AND THE OTHER REASON WOULD HAVE BEEN IF
23 WE--IF WE--IF WE ULTIMATELY DID END UP OFFERING
24 AN INTERNET--AN ALTERNATE INTERNET BROWSER, OUR
25 TERMS WERE NOT WRITTEN TO ALLOW US TO DO THAT.

1 (EXCERPT.)

2 Q. NOW, THE INTERNET SELECTION BUTTON

3 APPEARED ON THE DESKTOP IN WINDOWS 95 AS YOU

4 TESTIFIED; IS THAT CORRECT?

5 A. YES.

6 Q. AND DID THIS ONLY--WAS THIS ONLY

7 ACTIVATED UPON A USER-INITIATED ACTION?

8 A. THE BUTTON?

9 Q. (NODS HEAD IN THE AFFIRMATIVE MANNER.)

10 A. YES.

11 Q. DID MICROSOFT AT SOME POINT COMPLAIN

12 ABOUT THE BUTTON IN ANY RESPECT?

13 A. YES, THEY DID.

14 Q. WHEN WAS IT THAT MICROSOFT COMPLAINED?

15 A. I DON'T RECALL THE EXACT TIME FRAME.

16 AFTER--AFTER WE--AFTER WE WERE SHIPPING THE

17 PRODUCT.

18 Q. WHEN DID YOU BEGIN SHIPPING THE

19 PRODUCT?

20 A. IN NOVEMBER OF '97.

21 Q. WHAT WERE MICROSOFT'S COMPLAINTS?

22 A. THEY FELT THAT WE WERE VIOLATING THE

23 TERMS OF OUR AGREEMENT IN--IN RESPECT TO THE SIZE

24 OF BUTTON.

25 Q. DID MICROSOFT HAVE ANY OTHER

1 COMPLAINTS?

2 A. NO, THAT WAS--THAT WAS THE PRIMARY

3 COMPLAINT.

4 Q. WHAT ABOUT THE SIZE OF BUTTON DID

5 MICROSOFT FEEL WAS IN VIOLATION OF THE AGREEMENT?

6 A. THEY FELT LIKE IT WAS AN ICON, AND THE

7 TERMS OF OUR AGREEMENT ALLOWED FOR ICONS TO BE

8 ADDED TO THE DESKTOP AS LONG AS THEY DID NOT

9 EXCEED THE SIZE OF--THE SIZE AS SPECIFIED IN OUR

10 AGREEMENT.

11 Q. AND I TAKE IT THAT THE ICON WAS BIGGER

12 THAN THE SIZE SPECIFIED IN THE AGREEMENT?

13 A. THE--THE BUTTON WAS BIGGER.

14 Q. THE BUTTON. WHEN MICROSOFT EXPRESSED

15 THIS COMPLAINT TO YOU, DID IT EXPRESS ANY REASONS

16 FOR THIS RESTRICTION?

17 A. THE REASONS WERE THAT THE CONTRACT

18 STATED THAT WE WOULD COMPLY WITH THE AGREEMENT.

19 Q. OKAY. OTHER THAN CITING THE CONTRACT,

20 DID MICROSOFT COMMUNICATE ANY JUSTIFICATIONS FOR

21 THE RESTRICTION ON THE SIZE OF YOUR BUTTON?

22 A. I DON'T RECALL THAT THERE'S ANYTHING

23 ELSE.

24 Q. I TAKE IT THAT GATEWAY WANTED THE

25 BUTTON TO BE LARGER THAN THE PRE-CONFIGURED ICONS

1 BY MICROSOFT?

2 A. YES, WE DID.

3 Q. WHY DID GATEWAY WANT THE BUTTON TO BE

4 LARGER?

5 A. WE WANTED TO PROMOTE OUR PRODUCT.

6 Q. AND HOW WOULD HAVING A LARGE BUTTON

7 HELP GATEWAY PROMOTE ITS PRODUCT?

8 A. IT WOULD BE MORE EASILY VIEWABLE,

9 VISIBLE TO THE CUSTOMER.

10 Q. AS A CONSEQUENCE OF MICROSOFT'S

11 COMPLAINT, DID GATEWAY ALTER THE SIZE OF THE

12 BUTTON IN ANY RESPECT?

13 A. YES, WE DID.

14 Q. DID GATEWAY MAKE IT SMALLER?

15 A. YES, WE MADE IT SMALLER.

16 (EXCERPT.)

17 Q. OKAY. NOW I'M GOING TO ASK SOME

18 QUESTIONS ABOUT WINDOWS 98 IN THE WINDOWS 98 TIME

19 FRAME.

20 DO YOU HAVE AN UNDERSTANDING OF WHAT

21 TIME FRAME I'M TALKING ABOUT?

22 A. YES.

23 Q. HAS GATEWAY ALSO ASKED MICROSOFT FOR

24 SOME FLEXIBILITY TO REMOVE THE VISIBLE MEANS OF

25 ACCESSING INTERNET EXPLORER FROM WINDOWS 98?

1 A. IN CERTAIN CIRCUMSTANCES, WE'VE--WE'VE
2 HAD THOSE DISCUSSIONS.
3 Q. AND WHAT CIRCUMSTANCES HAVE THOSE BEEN?
4 A. IN PARTICULAR, WHERE WE WOULD OFFER
5 GATEWAY.NET ISP SERVICE TO A CUSTOMER AND THAT
6 CUSTOMER CHOSE A COMPETING BROWSER PRODUCT.
7 Q. SO, IF THE CUSTOMER WERE TO CHOOSE A
8 COMPETING BROWSER PRODUCT, WHAT DID GATEWAY WANT
9 TO DO?
10 A. WE WANTED TO HAVE THE OPTION AT THE
11 REQUEST OF THE CUSTOMER TO GO AHEAD AND REMOVE
12 THE ICONS FOR IE.
13 Q. AND WAS THIS AN OPTION THAT GATEWAY
14 REQUESTED OF MICROSOFT?
15 A. YES, WE DID.
16 Q. OKAY. WHEN WAS THAT?
17 A. PRIOR TO THE RELEASE OF WINDOWS 98.
18 Q. WHO MADE THOSE REQUESTS OF MICROSOFT?
19 A. PRIMARILY, IT WOULD HAVE BEEN MYSELF
20 AND RICK BROWNRIGG.
21 Q. AND WHO AT MICROSOFT DID YOU ASK?
22 A. OUR PRIMARY INTERFACES WERE OUR ACCOUNT
23 TEAM, GAYLE MCLAIN AND PASCAL MARTIN.
24 Q. WHAT WAS MICROSOFT'S RESPONSE TO YOUR
25 REQUEST TO REMOVE THE IE ICON FROM WINDOWS 98?

1 A. THEY--THEY DID NOT ALLOW US TO DO THAT.
2 Q. DID MICROSOFT COMMUNICATE TO YOU WHY
3 THEY DID NOT--THIS WAS SOMETHING THEY WOULD NOT
4 ALLOW?
5 A. YES, THEY DID.
6 Q. WHAT WERE THEIR REASONS?
7 A. IT WAS NOT IN COMPLIANCE WITH THE TERMS
8 OF OUR AGREEMENT.
9 Q. OTHER THAN THE FACT THAT IT WAS NOT IN
10 COMPLIANCE WITH THE TERMS OF THE AGREEMENT, DID
11 MICROSOFT GIVE YOU ANY OTHER REASONS FOR ITS
12 REFUSAL TO ALLOW GATEWAY TO DO THIS?
13 A. YEAH. THEY INDICATED THEY WOULD ALSO
14 LIKE TO GIVE THE CUSTOMER AN OPTION TO SELECT IE.
15 Q. AND HOW WOULD YOUR REMOVAL OF THE IE
16 ICON TAKE AWAY THIS OPTION?
17 A. IT WOULD NOT HAVE BEEN PRESENT ON THE
18 DESKTOP.
19 (EXCERPT.)
20 BY MS. GIULIANELLI:
21 Q. WHY DID GATEWAY REQUEST THIS OPTION OF
22 REMOVING INTERNET EXPLORER FROM THE DESKTOP?
23 A. GENERALLY, WE WANTED TO REMOVE THE
24 CLUTTER OF THE DESKTOP SO THAT IT WOULD BE AN
25 EASIER-TO-VIEW PRODUCT WHEN THE CUSTOMER RECEIVED

1 IT.

2 ALSO, WE WERE CONCERNED THAT IF A NEW

3 USER WHO PURCHASED THE SYSTEM AND DIDN'T

4 UNDERSTAND, THEY MIGHT HAVE A DIFFERENT

5 EXPERIENCE IF THEY CLICKED ONE ICON VERSUS

6 ANOTHER. WE WERE CONCERNED THAT THE CUSTOMERS

7 WOULD BE CONFUSED IF THEY HAD THEIR SYSTEMS SET

8 UP WITH NETSCAPE, FOR EXAMPLE, AND THEN

9 ACCIDENTALLY CLICKED ON THE IE ICON AND THEN WERE

10 PRESENTED A DIFFERENT ENVIRONMENT.

11 Q. IF GATEWAY'S CUSTOMERS DID BECOME

12 CONFUSED AS A RESULT OF HAVING BOTH BROWSERS ON

13 THERE, WOULD THERE HAVE BEEN ANY COSTS TO

14 GATEWAY?

15 A. TYPICALLY, OUR CUSTOMERS WOULD CALL US

16 IF THEY'RE CONFUSED AND NEED TO UNDERSTAND HOW TO

17 GET HELP WORKING WITH THEIR SYSTEM.

18 Q. AND THIS WAS SOMETHING GATEWAY WAS

19 ATTEMPTING TO AVOID?

20 A. WE--WE ATTEMPT TO REDUCE OUR SUPPORT

21 COSTS HOWEVER WE CAN.

22 (EXCERPT.)

23 Q. NOW, IF YOU COULD LOOK AT THE

24 INTERROGATORIES WHICH YOU HAVE--THE INTERROGATORY

25 RESPONSES THAT YOU HAVE IN FRONT OF YOU WHICH ARE

1 LABELED AS TRIAL EXHIBIT 652, IF YOU WOULD PLEASE
2 LOOK AT INTERROGATORY RESPONSE TEN, WHICH IS ON
3 PAGE 15.
4 NOW, AGAIN, WHEN YOU SIGNED THESE
5 INTERROGATORY RESPONSES, YOU BELIEVED THAT THEY
6 WERE TRUE AND ACCURATE TO THE BEST OF YOUR
7 KNOWLEDGE; ISN'T THAT RIGHT?
8 A. THAT'S RIGHT.
9 Q. OKAY. NOW I'M GOING TO POINT YOU TO
10 THE PARAGRAPH IN THE MIDDLE OF PAGE 15 WHICH
11 SAYS, WITH REGARD TO COMMUNICATIONS REGARDING
12 GATEWAY'S OFFER OR INSTALLATION OF PRODUCTS OF
13 SOFTWARE MANUFACTURERS OTHER THAN MICROSOFT,
14 AFTER GATEWAY BEGAN OFFERING NETSCAPE NAVIGATOR,
15 A COMPETITIVE BROWSER PRODUCT, WITH ITS SYSTEMS,
16 MICROSOFT REPRESENTATIVES REPEATEDLY TOLD GATEWAY
17 REPRESENTATIVES THAT MICROSOFT CONSIDERS
18 GATEWAY'S OFFER OF THE COMPETITIVE PRODUCT A,
19 QUOTE, SERIOUS, UNQUOTE, ISSUE THAT WOULD, QUOTE,
20 AFFECT OUR WORKING RELATIONSHIP, UNQUOTE.
21 MR. LAVELLE: THAT COULD.
22 Q. DO YOU SEE THAT PARAGRAPH?
23 A. YES, I DO.
24 Q. OKAY. AND THAT PARAGRAPH ALSO REFERS
25 TO THE HIGH VISIBILITY THAT GATEWAY'S OFFERING OF

1 NETSCAPE'S PRODUCTS HAD AT MICROSOFT; IS THAT
2 TRUE?
3 A. THAT'S--THAT'S TRUE. THAT PARAGRAPH
4 INDICATES THAT.
5 Q. WHEN YOU SIGNED THIS INTERROGATORY, DID
6 YOU BELIEVE THAT THE INSTANCES REFERRED TO IN
7 THIS PARAGRAPH WERE TRUE?
8 A. TO THE BEST OF MY KNOWLEDGE, YES.
9 (EXCERPT.)
10 Q. I'M NOW GOING TO SHOW YOU A DOCUMENT
11 THAT I'M LABELING AS GOVERNMENT EXHIBIT 1307, AND
12 IT IS GW 027304. IT APPEARS TO BE AN E-MAIL
13 DATED FEBRUARY 28TH, 1997, AND YOU APPEAR AS ONE
14 OF THE RECIPIENTS; IS THAT RIGHT?
15 A. YES, THAT'S RIGHT.
16 Q. DO YOU RECOGNIZE THIS DOCUMENT? TAKE
17 YOUR TIME TO READ IT, IF YOU NEED TO.
18 A. OKAY, YES.
19 Q. WHAT WERE THE CIRCUMSTANCES SURROUNDING
20 THIS E-MAIL?
21 A. WELL, I'M NOT--I'M NOT REAL FAMILIAR
22 WITH THOSE. I HAD ONLY BEEN WITH THE COMPANY
23 LESS THAN--LESS THAN A MONTH AT THE TIME OF
24 THIS--THIS DOCUMENT.
25 Q. WAS THERE A TIME THAT GATEWAY OFFERED

1 NETSCAPE NAVIGATOR ON ITS INTRANET FOR INTERNAL
2 USE?
3 A. YES.
4 Q. DID THIS STRAIN RELATIONSHIPS WITH
5 MICROSOFT?
6 A. AGAIN, I WAS ONLY WITH THE COMPANY LESS
7 THAN 30 DAYS AT THE TIME OF THIS DOCUMENT BEING
8 ISSUED, SO I--I DON'T KNOW A REFERENCE POINT WHEN
9 YOU SAY DID THIS STRAIN THE RELATIONSHIP.
10 Q. OKAY. DID MICROSOFT COMPLAIN ABOUT
11 GATEWAY'S USAGE OF NETSCAPE NAVIGATOR INTERNALLY?
12 A. YES, ACCORDING TO THIS DOCUMENT, THEY
13 DID.
14 Q. COULD YOU LOOK AT YOUR INTERROGATORY
15 RESPONSES AGAIN, PLEASE.
16 A. YES.
17 Q. PAGE 15.
18 MR. SCHECHTER: OOPS. WHICH EXHIBIT
19 WAS THAT?
20 MS. GIULIANELLI: IT WAS TRIAL
21 EXHIBIT 652, I BELIEVE.
22 BY MS. GIULIANELLI:
23 Q. AND I'M GOING TO REFER YOU TO THE
24 SECOND TO LAST PARAGRAPH OF YOUR ANSWER--
25 MR. SCHECHTER: PAGE?

1 MS. GIULIANELLI: TO RESPONSE TEN.
2 FIFTEEN.
3 BY MS. GIULIANELLI:
4 Q. SEE WHERE IT SAYS, IN ADDITION, WHEN
5 GATEWAY ELECTED TO USE NETSCAPE NAVIGATOR AS THE
6 BROWSER ON ITS INTRANET, MICROSOFT
7 REPRESENTATIVES AGAIN STRENUOUSLY OBJECTED. IN
8 FACT, MICROSOFT REPRESENTATIVES STRONGLY IMPLIED
9 TO TROY MILLER OF GATEWAY THAT MICROSOFT WOULD
10 COMPENSATE GATEWAY FOR ITS, QUOTE, INVESTMENT IN
11 NETSCAPE, UNQUOTE.
12 MR. SCHECHTER: WITH NETSCAPE.
13 MS. GIULIANELLI: WITH NETSCAPE, EXCUSE
14 ME.
15 BY MS. GIULIANELLI:
16 Q. IF GATEWAY WOULD REMOVE THE NETSCAPE
17 BROWSER AND REPLACE IT WITH IE. IN ADDITION,
18 MICROSOFT REPRESENTATIVES THREATENED THAT
19 MICROSOFT WOULD AUDIT GATEWAY'S INTERNAL USE OF
20 MICROSOFT PRODUCTS AND, CONTRARY TO A VERBAL
21 AGREEMENT BETWEEN EXECUTIVES OF THE COMPANIES,
22 MICROSOFT WOULD CHARGE GATEWAY A ROYALTY FOR EACH
23 COPY OF AN (SIC) MICROSOFT PRODUCT USED AT A
24 GATEWAY FACILITY.
25 DOES THIS--DOES THIS REFLECT YOUR--DOES

1 THIS REFRESH YOUR RECOLLECTION AS TO WHAT
2 HAPPENED AT THE TIME THAT GATEWAY USED NETSCAPE
3 NAVIGATOR INTERNALLY?
4 MS. WHEELER: OBJECTION. FORM OF THE
5 QUESTION.
6 THE WITNESS: I--I WASN'T DIRECTLY
7 INVOLVED IN ALL THESE DISCUSSIONS.
8 AND MANY OF THESE RESPONSES TO THE
9 INTERROGATORY WERE PREPARED BY OTHER PARTIES AT
10 GATEWAY. AND TO THE BEST OF MY KNOWLEDGE, ALL
11 THOSE PARTIES WERE TRUTHFUL.
12 BY MS. GIULIANELLI:
13 Q. SO, DO YOU HAVE ANY REASON TO DOUBT THE
14 TRUTHFULNESS OR VALIDITY OF THIS STATEMENT?
15 A. I--I DON'T.
16 (EXCERPT.)
17 Q. OKAY. HAS GATEWAY BEEN CONCERNED THAT
18 OFFERING A BROWSER CHOICE TO ITS USERS WOULD
19 STRAIN ITS RELATIONSHIP WITH MICROSOFT?
20 A. WE WOULD BE CONCERNED ABOUT THAT, YES.
21 (EXCERPT.)
22 Q. OKAY. HOW LARGE WAS THE SQUARE BUTTON?
23 A. I DON'T RECALL PRECISELY. IT WAS
24 LARGER THAN THE ICONS THAT WERE ON THE DESKTOP.
25 Q. WAS IT ALMOST TO THE SIZE OF THE

1 "WELCOME TO WINDOWS" BOX?

2 A. I'D SAY APPROXIMATELY, THAT'S RIGHT.

3 (EXCERPT.)

4 Q. IN WINDOWS 95, THE BUTTONS THAT WE

5 TALKED ABOUT, THE TWO ITERATIONS OF THE BUTTONS

6 FOR SIGNING UP FOR GATEWAY.NET, WAS AN END USER

7 EVER GIVEN A CHOICE OF SIGNING UP FOR NETSCAPE

8 COMMUNICATOR OR INTERNET EXPLORER 4.0 AS THEIR

9 DEFAULT BROWSER?

10 A. NO.

11 Q. SO, YOU TESTIFIED THIS MORNING THAT THE

12 REASON THAT GATEWAY ASKED MICROSOFT TO REMOVE THE

13 INTERNET EXPLORER ICON FROM WINDOWS 95 WAS THAT

14 IT WANTED TO OFFER A BROWSER CHOICE; IS THAT

15 CORRECT?

16 A. WE WANTED THE FLEXIBILITY OR

17 OPPORTUNITY TO DO THAT, YES.

18 Q. OKAY. BUT GATEWAY DIDN'T DO THAT?

19 A. WE DID NOT DO THAT.

20 Q. WHY NOT?

21 A. IT'S MOSTLY A MATTER OF CODE

22 DEVELOPMENT, CODE DEVELOPMENT AND SCHEDULES, SO

23 WE WERE--WE WERE WORKING TO PUT THE--PUT THE

24 PRODUCT CODE TOGETHER AND NEVER COMPLETED THAT IN

25 THE WINDOWS 95 ENVIRONMENT.

1 (EXCERPT.)

2 Q. ALL RIGHT. NOW, MS. GIULIANELLI ASKED

3 YOU SOME QUESTIONS THIS MORNING ABOUT GATEWAY

4 ASKING TO REMOVE THE INTERNET EXPLORER ICON FROM

5 WINDOWS 98.

6 DO YOU RECALL THAT?

7 A. I THINK SO.

8 Q. NOW, IF YOU'LL LOOK AT PAGE 19 OF YOUR

9 DEPOSITION ON APRIL 30TH, YOU TESTIFIED, QUOTE,

10 IF THERE'S AN INTERNET EXPLORER OR ICON

11 SPECIFICALLY LABELED, QUOTE, INTERNET EXPLORER,

12 OR THAT IS NOT CONFUSING WITH SOME OTHER PRODUCT

13 THAT IS ALSO ON THEIR DESKTOP, WE HAVE LESS

14 CONCERN. OUR CONCERN IS THAT THERE WOULD BE AN

15 ICON LABELED, QUOTE, CONNECT TO THE INTERNET THAT

16 REMAINS ON THE DESKTOP.

17 IS IT YOUR TESTIMONY THAT YOUR--THAT

18 GATEWAY WAS STILL CONCERNED WITH THE INTERNET

19 EXPLORER ICON BEING ON THE DESKTOP?

20 A. IT'S A CONCERN, BUT IT'S LESS OF A

21 CONCERN. IT STILL ALLOWS FOR AN AREA OF

22 CONFUSION FOR THE CUSTOMER TO CLICK THERE AND

23 THEN START USING THE INTERNET IN A DIFFERENT VIEW

24 THAN THEY MIGHT--MIGHT BE ACCUSTOMED TO IF THEY

25 HAD SELECTED NETSCAPE, NETSCAPE'S BROWSER AS

1 THEIR DEFAULT.

2 Q. AS FAR AS REMOVING ICONS, DOES THIS

3 REFRESH YOUR RECOLLECTION THAT YOUR PRIMARY

4 CONCERN WAS THE "CONNECT TO THE INTERNET" ICON?

5 A. AT THIS TIME, THAT'S RIGHT.

6 (EXCERPT.)

7 Q. HAS ANYONE AT MICROSOFT ASKED GATEWAY

8 NOT TO PROVIDE A CHOICE OF BROWSERS?

9 A. NO.

10 MS. GIULIANELLI: SINCE MAY 26TH OR

11 EVER?

12 MS. WHEELER: SINCE MAY 26TH.

13 THE WITNESS: NOT--NOT ME. THEY

14 HAVEN'T ASKED ME.

15 Q. HAS ANYONE AT MICROSOFT EVER ASKED YOU

16 NOT TO PROVIDE A CHOICE OF BROWSERS?

17 A. NO.

18 (EXCERPT.)

19 Q. HAVE YOU HAD ANY CONVERSATIONS WITH

20 ANYONE AT MICROSOFT WHERE MICROSOFT ASKED GATEWAY

21 NOT TO LOAD NETSCAPE ON A PC SOLD TO AN END USER?

22 A. NOT THAT I RECALL.

23 Q. ARE YOU AWARE OF ANY THREATS FROM

24 MICROSOFT AS A RESULT OF GATEWAY'S DECISION TO

25 ALLOW USERS TO CHOOSE THEIR BROWSER AS PART OF

1 THE GATEWAY.NET SIGNUP PROCESS?

2 A. I'M NOT AWARE OF ANY, NO.

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