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
1470

1 (DEPOSITION EXCERPTS OF GAYLE MCLAIN.)

2 Q. NOW, DURING THIS TIME PERIOD I JUST

3 MENTIONED, 1997 AND EARLY '98, AFTER YOU BECAME

4 AN ACCOUNT MANAGER, DID GATEWAY EVER REQUEST

5 PERMISSION TO REMOVE THE INTERNET EXPLORER ICON

6 FROM THE WINDOWS DESKTOPS FOR THE MACHINES THAT

7 THEY SELL?

8 A. I DON'T KNOW THAT THEY ASKED FOR IT FOR

9 WINDOWS 95.

10 Q. DO YOU RECALL THEM ASKING FOR IT FOR

11 WINDOWS 95?

12 A. NO.

13 Q. DO YOU RECALL THEM ASKING FOR IT FOR

14 WINDOWS 98?

15 A. YES.

16 Q. WHAT DO YOU RECALL?

17 A. THEY ASKED IF THEY COULD TAKE THE ICON

18 OFF.

19 Q. WHEN YOU SAY "THEY," WHO DID YOU SPEAK

20 TO ABOUT THIS, IF YOU RECALL?

21 A. JIM VON HOLLE.

22 Q. AND WHO IS HE?

23 A. HE IS A DIRECTOR OF SOFTWARE IN THEIR

24 GLOBAL PRODUCTS ORGANIZATION.

25 Q. DO YOU RECALL WHEN THIS REQUEST WAS

1 MADE BY GATEWAY?

2 A. IT WOULD HAVE BEEN AROUND MID MARCH.

3 Q. OF THIS YEAR?

4 A. YEAH.

5 Q. AND WHAT SPECIFICALLY DID GATEWAY

6 REQUEST?

7 A. I THINK IT WAS COULD THEY TAKE THE ICON

8 OFF.

9 (EXCERPT.)

10 Q. I'D LIKE YOU TO TAKE A LOOK AT A

11 DOCUMENT THAT'S BEEN MARKED GOVERNMENT EXHIBIT

12 318, A COPY OF WHICH HAS BEEN PROVIDED TO

13 COUNSEL. IF YOU TAKE A MOMENT TO EXAMINE IT.

14 FOR THE RECORD, IT IS A DOCUMENT WITH

15 BATES NUMBERS MS98 0110186 THROUGH 188.

16 A. OKAY.

17 Q. WHAT IS THIS DOCUMENT, MS. MCLAIN?

18 A. IT'S AN E-MAIL FROM JIM VON HOLLE WITH

19 GATEWAY'S FEEDBACK ON WINDOWS 98.

20 Q. DO YOU HAVE AN UNDERSTANDING AS TO WHY

21 THIS DOCUMENT WAS CREATED BY MR. VON HOLLE AND

22 SENT TO YOU?

23 A. YES.

24 Q. WHAT IS THAT UNDERSTANDING?

25 A. AT THE BEGINNING OF THE YEAR, WE WERE

1 WANTING TO GET GATEWAY'S FEEDBACK ON WINDOWS 98.
2 THEY'RE AN IMPORTANT CUSTOMER, AND WE WANTED TO
3 MAKE SURE THAT THEY HAD LOOKED AT THE PRODUCT,
4 THAT WE GOT THEIR FEEDBACK. THE GOAL WAS TO GET
5 FEEDBACK IN TIME TO, YOU KNOW, MAKE ANY
6 MODIFICATIONS OR ANYTHING THAT MIGHT BE
7 APPROPRIATE.
8 AND I ASKED MR. VON HOLLE IF HE HAD THE
9 BETA, IF HE HAD SEEN THE PRODUCT. HE SAID YES.
10 I ASKED FOR FEEDBACK ON IT. I DIDN'T RECEIVE
11 ANYTHING.
12 SO, AROUND FEBRUARY-ARCH TIME FRAME, I
13 REQUESTED--MADE A RECOMMENDATION THAT THEY
14 ACTUALLY COME OUT TO MICROSOFT FOR A MEETING. WE
15 WOULD WALK THROUGH SOME SCREENS AND GET THEIR
16 FEEDBACK KIND OF AS A WAY TO ENSURE THAT WE GOT
17 SOME FEEDBACK FROM THEM.
18 WE MET AND TOOK NOTES WITH THEIR
19 FEEDBACK, AND THEN AS A FOLLOW-UP, JIM ACTUALLY
20 SENT US WHAT THEY HAD DOWN IN WRITING, WHICH WAS
21 REAL HELPFUL.
22 Q. AND THIS IS WHAT YOU REMEMBER JUST
23 REFERRING TO AS THE "IN WRITING"?
24 A. RIGHT, RIGHT.
25 Q. WHEN DID THIS MEETING YOU REFER TO

1 OCCUR, MS. MCLAIN?

2 A. IT WAS SOMETIME IN MARCH OR--APRIL 10TH

3 IS--PROBABLY LATE MARCH, EARLY APRIL, BECAUSE I

4 THINK JIM SENT THIS TO ME PRETTY QUICKLY AFTER

5 THAT MEETING.

6 Q. WHO ATTENDED THAT MEETING, IF YOU

7 RECALL?

8 A. FROM GATEWAY, IT WAS JIM VON HOLLE AND

9 MIKE FLANNERY.

10 Q. AND FROM MICROSOFT?

11 A. PASCAL MARTIN, DENNIS CLARK, AUTUMN

12 NEAULT, N-E-A-U-L-T.

13 Q. WHAT IS DENNIS CLARK'S POSITION WITH

14 MICROSOFT?

15 A. HE IS THE SYSTEMS ENGINEER THAT WORKS

16 ON THE GATEWAY ACCOUNT FOR MICROSOFT.

17 Q. DO YOU REMEMBER HIS RESPONSIBILITIES?

18 A. HE WORKS WITH ME IN TERMS OF

19 IDENTIFYING BUSINESS OPPORTUNITIES AND HELPING

20 KIND OF UNDERSTAND WHAT TECHNOLOGY CAN HELP

21 GATEWAY ENTER CERTAIN MARKETS. SO, HE IS KIND OF

22 A SUPPORT POSITION PRIOR TO WHEN A PRODUCT GOES

23 INTO PRODUCTION. SO, FOR EXAMPLE, HE WORKS WITH

24 THEM VERY CLOSELY ON OPK'S BECAUSE THAT IS THE

25 KIT THAT HELPS GATEWAY INSTALL THE PRODUCT.

1 Q. AND MS. NEAULT, WHAT IS HER POSITION?
2 A. SHE IS IN THE OEM DIVISION AND IS KIND
3 OF A LIAISON BETWEEN US AND THE PRODUCT GROUPS AT
4 TIMES ON VARIOUS PROJECTS.
5 Q. WHAT WAS DISCUSSED AT THIS MEETING?
6 A. WINDOWS 98 ENHANCEMENTS.
7 LET ME STEP BACK FOR A SECOND. THE
8 ENHANCEMENTS TO WINDOWS 95, WHICH THEN
9 CONSTITUTED WINDOWS 98, SO HOW IS WINDOWS 98
10 GOING TO DIFFER FROM WINDOWS 95.
11 Q. WHAT SPECIFICALLY WAS DISCUSSED IN THAT
12 REGARD, HOW WINDOWS 98 WOULD DIFFER FROM
13 WINDOWS 95?
14 A. WE WENT THROUGH THE ENGINEER SCREENS,
15 SHOWED THEM THE WELCOME SCREEN, WHICH HAS A KIND
16 OF A TUTORIAL FOR NEW USERS ON IT. THERE'S A
17 "GET CONNECTED TO THE INTERNET" SELECTION ON THE
18 WELCOME SCREEN AND GATEWAY'S OPTIONS IN TERMS OF
19 GATEWAY PUTTING THEIR LOGOS ON THE SCREEN. THEY
20 COULD PUT A BUTTON ON THAT SCREEN; YOU KNOW,
21 THEIR OWN ITEM. THEY COULD ADD A MOUSE TUTORIAL
22 IN THE STARTUP.
23 SO, IT WAS A COMBINATION OF WHAT THE
24 PRODUCT IS AND THE FLEXIBILITY THAT GATEWAY HAD
25 IN TERMS OF, MORE OR LESS, BRANDING IT TO BE

1 GATEWAY-LIKE.

2 Q. AND DID GATEWAY REQUEST AT THIS MEETING

3 TO BE ABLE TO REMOVE THE INTERNET EXPLORER ICON

4 FROM THE WINDOWS 98 DESKTOP?

5 A. I DO NOT KNOW IF THEY MENTIONED IT AT

6 THE MEETING.

7 Q. I'D LIKE TO DIRECT YOUR ATTENTION TO

8 PAGE BATES STAMPED--THE LAST PAGE OF THIS

9 DOCUMENT. WE'LL SAVE READING BATES STAMPS INTO

10 THE RECORD.

11 I'D LIKE TO DIRECT YOUR ATTENTION TO

12 THE TOP TWO MAJOR BULLET POINTS ON THIS PAGE.

13 FIRST ONE READS, "NEED TO BE ABLE TO REMOVE ICONS

14 IF THE CUSTOMER DOES NOT CHOOSE THOSE OPTIONS."

15 AND THEN, "WE WANT TO REMOVE AS MUCH CLUTTER FROM

16 THE SCREEN AS POSSIBLE. EXAMPLE: IF THE

17 CUSTOMER CHOOSES AN ISP SERVICE WITH A BROWSER,

18 THEN THE IE ICON HAS NO ONGOING VALUE."

19 DOES THIS REFRESH YOUR RECOLLECTION AS

20 TO WHETHER MR. VON HOLLE REQUESTED TO BE ABLE TO

21 REMOVE THE INTERNET EXPLORER ICON FROM THE

22 DESKTOP?

23 A. HE HAS A REASON HERE, YEAH.

24 Q. SO, HE IS ASKING HERE--YOUR

25 UNDERSTANDING IS--TO REMOVE THE INTERNET EXPLORER

1 ICON FROM THE DESKTOP?
2 A. UH-HUH.
3 Q. DO YOU SEE BELOW THAT WHERE IT SAYS,
4 "WE WANT IE TO HAVE UNINSTALL (FOR AS MUCH OF THE
5 CODE AS CAN BE REMOVED WITHOUT DISABLING THE
6 SYSTEM"? DO YOU SEE THAT?
7 A. YES, UH-HUH.
8 Q. WHAT IS YOUR UNDERSTANDING OF THAT
9 SENTENCE?
10 A. HE WANTS IE TO HAVE UNINSTALL.
11 Q. WAS IT YOUR UNDERSTANDING THAT
12 WINDOWS 95 CONTAINED AN UNINSTALL CAPABILITY FOR
13 INTERNET EXPLORER?
14 A. I DON'T KNOW.
15 Q. YOU DON'T KNOW IF INTERNET EXPLORER
16 COULD BE UNINSTALLED IN WINDOWS 95?
17 A. IT DOESN'T REALLY COMPUTE BECAUSE
18 INTERNET EXPLORER IS PART OF THE WINDOWS
19 OPERATING SYSTEM, SO KIND OF THE PHILOSOPHY OF
20 UNINSTALL DOESN'T REALLY COMPUTE.
21 Q. ARE YOU AWARE IF WINDOWS 95 HAS A
22 FEATURE TO ALLOW USERS TO UNINSTALL PROGRAMS?
23 A. YES, WINDOWS 95 ALLOWS USERS TO
24 UNINSTALL SOME PROGRAMS THAT ARE SEPARATE
25 PROGRAMS.

1 Q. IS INTERNET EXPLORER ONE OF THE
2 PROGRAMS THAT WINDOWS 95 ALLOWS PEOPLE TO
3 UNINSTALL?
4 A. I DON'T KNOW.
5 Q. NOW, THE VERY FIRST--I'D LIKE TO DIRECT
6 YOUR ATTENTION TO A COUPLE OF THINGS ON THIS
7 DOCUMENT. DO YOU SEE WHERE IT SAYS, "WE WANT TO
8 REMOVE AS MUCH CLUTTER FROM THE SCREEN AS
9 POSSIBLE"?
10 A. UH-HUH.
11 Q. WHAT IS YOUR UNDERSTANDING OF THAT
12 SENTENCE?
13 A. THEY WANTED TO REMOVE ICONS--THEY WANT
14 TO REMOVE AS MUCH CLUTTER FROM THE SCREEN.
15 Q. IS THAT BECAUSE ICONS CAN CAUSE CLUTTER
16 ON THE SCREEN?
17 A. YEAH.
18 Q. INDEED, IF THERE ARE A LOT OF ICONS ON
19 THE SCREEN, CAN THAT CAUSE CONFUSION TO END
20 USERS?
21 A. IT DEPENDS ON WHEN THE ICONS ARE THERE.
22 SAY, FOR EXAMPLE, YOU MAY SEE A USER THAT HAS
23 BEEN USING THEIR SYSTEM FOR A LONG TIME THAT HAS
24 NUMEROUS ICONS. TO THAT USER, IT'S NOT
25 CONFUSING. IT'S NOT CLUTTER BECAUSE THEY PUT

1 THEM THERE. SO, THIS WOULD HAVE TO DO WITH
2 WHAT'S THE INITIAL--YOU KNOW, WHAT'S THE INITIAL
3 SETUP OF THE SYSTEM AND WHAT DO YOU WANT TO FOCUS
4 THE USER'S ATTENTION ON BEFORE THEY START
5 MODIFYING IT AND ACCOMMODATING IT TO THEIR OWN
6 NEEDS, WHICH THEY CAN DO.
7 Q. SO, A LOT OF ICONS ON THE SCREEN CAN
8 CAUSE CLUTTER FOR A NEW USER OF A COMPUTER?
9 A. POSSIBLY.
10 (EXCERPT.)
11 Q. ARE YOU AWARE OF ANY OEM THAT SHIPS
12 COMPUTERS WITH ITS--STRIKE THAT.
13 ARE YOU AWARE OF OEM'S THAT SHIP
14 MACHINES WHERE THE SCREEN HAS LITERALLY DOZENS OF
15 ICONS ON THEM?
16 A. I'M NOT AWARE OF THAT.
17 Q. HAVE YOU EVER SEEN THAT?
18 A. NO. I VERY SELDOM--EXCEPT FOR MACHINES
19 I BUY MYSELF, I VERY SELDOM SEE WHAT AN OEM SHIPS
20 THEIR MACHINE WITH.
21 Q. WHAT MACHINE DID YOU BUY FOR YOURSELF,
22 FOR EXAMPLE?
23 A. AS THE GATEWAY ACCOUNT MANAGER, I WOULD
24 LIKE NOT TO ANSWER THAT QUESTION.
25 Q. WELL, WE CAN--

1 A. MY LAST MACHINE WAS A COUPLE OF YEARS
2 AGO, SO--
3 Q. FAIR ENOUGH. WAS IT A WINDOWS MACHINE?
4 A. ABSOLUTELY. I LIKE WINDOWS.
5 Q. DID IT HAVE ICONS ON THE DESKTOP?
6 A. YES, IT DID.
7 Q. WAS THE SCREEN FULL OF ICONS?
8 A. NO, I WOULDN'T SAY IT WAS FULL.
9 Q. IF YOU REMEMBER, HOW MANY ICONS DID IT
10 HAVE ON IT, APPROXIMATELY?
11 A. I'M NOT SURE.
12 Q. LESS THAN 20?
13 A. PROBABLY, YEAH. IT'S BEEN A COUPLE OF
14 YEARS, AND I'VE MODIFIED IT SINCE.
15 Q. NOW, ISN'T IT TRUE THAT OEM'S PAY THEIR
16 OWN SUPPORT COSTS IN TERMS OF END USERS CALLING
17 THEM?
18 A. OEM'S PROVIDE SUPPORT FOR THE PRODUCTS.
19 Q. DOES MICROSOFT PROVIDE SUPPORT FOR THE
20 PRODUCTS?
21 A. FOR WHICH?
22 Q. DOES MICROSOFT REIMBURSE OEM'S, FOR
23 EXAMPLE, FOR THE COSTS OF CONSUMERS CALLING UP
24 GATEWAY AND RAISING ISSUES WITH GATEWAY ABOUT
25 THEIR MACHINE?

1 A. NOT DIRECTLY. THERE'S NO SUPPORT
2 REIMBURSEMENT, SO TO SPEAK.
3 Q. NOW, IS IT FAIR TO SAY THAT IF A NEW
4 USER, FOR EXAMPLE, IS CONFUSED BY THE NUMBER OF
5 ICONS ON THE SCREEN, THAT COULD LEAD THEM TO CALL
6 GATEWAY AND EXPRESS THEIR CONFUSION AND ASK FOR
7 CLARIFICATION?
8 A. ACCORDING TO GATEWAY, A NEW USER COULD
9 CALL REGARDING ALMOST ANYTHING.
10 Q. AND COULD CONFUSION CAUSED BY CLUTTER
11 ON THE DESKTOP BE ONE OF THOSE THINGS?
12 A. I THINK ANYTHING IS POSSIBLE.
13 Q. HAVE YOU SPECIFICALLY HEARD THAT HAVING
14 HAPPENED?
15 A. THAT SPECIFICALLY, ACTUALLY, I DON'T
16 KNOW THAT I'VE HEARD GATEWAY SAY USERS WERE
17 CALLING BECAUSE THERE WERE TOO MANY ICONS ON THE
18 DESKTOP AND THEY DIDN'T KNOW WHAT TO DO WITH
19 THEM.
20 Q. HAVE YOU EVER HEARD ANYONE AT MICROSOFT
21 ARTICULATE A LOT OF ICONS ON THE DESKTOP CAN
22 CAUSE CONSUMER CONFUSION?
23 A. NOT SPECIFICALLY.
24 Q. HAVE YOU SEEN A DOCUMENT THAT SAYS
25 THAT?

1 A. I DON'T THINK SO.

2 Q. I'D LIKE YOU TO TAKE A LOOK AT A

3 DOCUMENT MARKED GOVERNMENT EXHIBIT 319, A COPY OF

4 WHICH HAS BEEN PROVIDED TO COUNSEL.

5 FOR THE RECORD, IT IS BATES STAMPED

6 MS98 0109448 THROUGH 468.

7 YOU MIGHT JUST TAKE A MOMENT TO FLIP

8 THROUGH IT, FAMILIARIZE YOURSELF OVERALL, AND

9 I'LL GET BACK TO SPECIFIC PORTIONS OF IT.

10 A. OKAY.

11 Q. BUT TAKE AS MUCH TIME AS YOU FEEL YOU

12 NEED.

13 HAVE YOU HAD A CHANCE TO REVIEW THE

14 DOCUMENT, MS. MCLAIN?

15 A. YES.

16 Q. WHAT IS IT?

17 A. IT'S A PRESENTATION ON THE WINDOWS 98

18 INITIAL BOOT PROCESS.

19 Q. AND TO WHOM WOULD THIS PRESENTATION

20 HAVE BEEN GIVEN?

21 A. IT WOULD HAVE BEEN GIVEN TO THE

22 APPROPRIATE OEM'S BY THEIR ACCOUNT MANAGERS.

23 Q. HAVE YOU SEEN THIS DOCUMENT BEFORE?

24 A. UH-HUH.

25 Q. DID YOU GIVE GATEWAY A PRESENTATION

1 USING WHAT APPEARS TO BE SLIDES?

2 A. WHEN THEY WERE OUT IN LATE MARCH, EARLY

3 APRIL FOR THAT MEETING, I--WE PRESENTED--AUTUMN

4 AND I PRESENTED A SIMILAR SET OF SLIDES

5 CUSTOMIZED FOR GATEWAY'S SITUATION.

6 Q. DO YOU KNOW WHO PREPARED THIS SET OF

7 SLIDES?

8 A. I DON'T.

9 Q. DO YOU SEE--STRIKE THAT.

10 WAS A SET OF SLIDES USED SIMILAR TO

11 THIS SET OF SLIDES?

12 A. IN THE MEETING WITH GATEWAY?

13 Q. YES.

14 A. YES.

15 Q. I'D LIKE TO DIRECT YOUR ATTENTION TO

16 THE BATES STAMPED PAGE ON THIS MS98 0109453.

17 A. UH-HUH.

18 Q. DO YOU SEE TOWARD THE BOTTOM OF THE

19 PAGE WHERE IT SAYS, "ONE ISP SIGNUP ICON ON THE

20 DESKTOP," AND THEN ANOTHER DIAMOND POINT INSIDE

21 OF THAT, "LESS CONFUSING FOR END USERS"?

22 A. RIGHT.

23 Q. WHAT DOES THAT MEAN?

24 A. I INTERPRET THAT TO MEAN THAT HAVING

25 ONE PLACE FOR THE USER TO SIGN UP FOR THE ISP IS

1 LESS CONFUSING.

2 Q. DOES THAT MEAN THAT TWO PLACES COULD

3 CAUSE CONFUSION?

4 A. IF THEY LOOK SIMILAR, THEY'RE IN THE

5 SAME PLACE, PROBABLY.

6 Q. SO, COULD, FOR EXAMPLE, TWO ICONS ON

7 THE DESKTOP FOR USERS TO SIGN UP WITH ISP'S CAUSE

8 THAT SORT OF CONFUSION?

9 A. POSSIBLY.

10 Q. DOES THAT APPEAR TO BE AN EXAMPLE OF

11 WHAT THIS IS TALKING ABOUT?

12 A. YEAH, I THINK THAT'S WHAT THAT IS

13 REFERRING TO.

14 Q. I ASKED YOU A LITTLE WHILE AGO ABOUT

15 OEM'S AND SUPPORT COSTS.

16 DO YOU RECALL THAT?

17 A. UH-HUH.

18 Q. NOW, OEM'S, THEY DON'T WANT TO CONFUSE

19 THEIR CUSTOMERS, DO THEY?

20 A. I COULD ONLY SPECULATE THAT TO BE TRUE.

21 Q. THEY BEAR THEIR SUPPORT COSTS; RIGHT?

22 A. YES.

23 Q. AND IF THEY CONFUSE THEIR CONSUMERS,

24 THEY WILL CALL THEM MORE FREQUENTLY; RIGHT?

25 A. POSSIBLY.

1 Q. SO, DOES THAT SUGGEST TO YOU THAT OEM'S
2 DON'T WANT TO CONFUSE THEIR CONSUMERS?
3 A. SEEMS LIKE A LOGICAL TRAIL OF THINKING.
4 (EXCERPT.)
5 Q. AT THE TIME THIS DOCUMENT WAS WRITTEN,
6 WAS GATEWAY ALLOWED TO DO THAT WHICH YOU
7 DESCRIBED EARLIER, WHICH IS PROVIDE BROWSER
8 CHOICE IN THE STARTUP SEQUENCE?
9 A. THEY WEREN'T ALLOWED TO MAKE ANY
10 CHANGES TO THE INITIAL BOOT PROCESS.
11 (EXCERPT.)
12 Q. NOW, IS IT YOUR UNDERSTANDING THAT
13 MICROSOFT--BACK TO THE STANDARD DESKTOP FOR A
14 MOMENT, SO YOU KNOW WHERE I AM.
15 A. THAT'S GOOD.
16 Q. --THAT MICROSOFT REQUIRES ICONS ON THE
17 NORMAL DESKTOP TO BE SUBSTANTIALLY THE SAME
18 SHAPE?
19 A. YEAH, IN THE STANDARD LANGUAGE, THAT'S
20 TRUE.
21 Q. WAS THERE EVER A CONTEMPLATION OF
22 ALLOWING AN EXCEPTION TO GATEWAY TO ALLOW THEM TO
23 HAVE ICONS OF DIFFERENT SHAPES?
24 A. YES, ABSOLUTELY.
25 Q. AND PLEASE TELL ME ABOUT THAT.

1 A. WELL, BASICALLY WE LOOKED AT THE
2 LANGUAGE, AND THE LANGUAGE SAID THAT THEY HAD TO
3 BE THE SAME SIZE AND SHAPE. AND THE SAME SIZE IS
4 APPARENT, THE IMPORTANCE OF THAT. THE SAME
5 SHAPE, THOUGH, I MEAN, IN TERMS OF--I MEAN, AS
6 LONG AS IT'S THE SAME SIZE--I MEAN, A GLOBE CAN
7 BE DIFFERENT--IF GATEWAY WANTED TO PUT A LITTLE
8 COW THERE, YOU KNOW, I MEAN, THAT SEEMED LOGICAL.
9 SO WE--I BELIEVE THE ORIGINAL LANGUAGE
10 WAS SAME--IDENTICAL SIZE AND SIMILAR SHAPE. AND
11 WE JUST GOT RID OF THE SIMILAR SHAPE AND FIGURED
12 AS LONG AS IT'S THE SAME SIZE, IT ACCOMPLISHES
13 THE GOAL.
14 (EXCERPT.)
15 Q. ARE YOU SAYING THE DISPLAY OF THE
16 SPLASH SCREEN IS A MINOR TRANSGRESSION OF THE
17 "WINDOWS EXPERIENCE?"
18 A. YES. IT'S THE APPEARANCE OF THE SPLASH
19 SCREEN AS PART OF THE INITIAL BOOT PROCESS THAT
20 CAUSES CONFUSION.
21 (EXCERPT.)
22 Q. WELL, IF A USER SIGNS UP FOR AN ISP
23 THROUGH THE INTERNET CONNECTION WIZARD WHICH THEY
24 ACCESS THROUGH THE "WELCOME TO WINDOWS" SCREEN,
25 ARE THEY LESS LIKELY TO INVOKE THE INTERNET

1 CONNECTION WIZARD FROM THE DESKTOP?

2 A. RIGHT, BECAUSE ONCE YOU'VE BEEN THROUGH

3 IT, YOU'RE SET UP, SO YOU DON'T NEED TO BE SET UP

4 AGAIN.

5 (EXCERPT.)

6 Q. I'D LIKE TO TURN YOUR ATTENTION TO

7 GOVERNMENT EXHIBIT 319 AND DRAW YOUR ATTENTION TO

8 THE PAGE BATES STAMPED MS98 0109453.

9 DO YOU SEE WHERE IT SAYS, "ONE ISP

10 SIGNUP ICON ON THE DESKTOP. LESS CONFUSING FOR

11 END USERS"?

12 A. UH-HUH.

13 Q. WHAT DOES THAT MEAN?

14 A. THAT--OUR VISION IS THAT WE WOULD

15 ELIMINATE REDUNDANCY OF THE ICONS ON THE DESKTOP.

16 Q. IS THAT BECAUSE REDUNDANCY OF ICONS ON

17 A DESKTOP MAY BE CONFUSING TO END USERS?

18 A. UH-HUH, RIGHT.

19 AND THAT PERTAINS TO MICROSOFT ICONS

20 SPECIFICALLY. SO, I MEAN, THIS WASN'T

21 NECESSARILY SAYING OEM'S OR MICROSOFT ICONS. I

22 MEAN, OUR VISION IS TO REDUCE MICROSOFT ICONS AS

23 WELL AS THAT PROVIDE SIMILAR FUNCTIONS.

24 Q. SO, THIS IS BASICALLY SAYING YOU WANT

25 TO HAVE FEWER ICONS THAT ALLOW USERS TO SIGN UP

1 TO THE INTERNET. YOU WANT TO CENTRALIZE IT?
2 MS. D'ARCANGELO: OBJECTION.
3 MR. POPOFSKY: STRIKE THAT.
4 BY MR. POPOFSKY:
5 Q. IS IT YOUR UNDERSTANDING, THEN, THAT
6 WHAT IS LESS CONFUSING TO THE END USER IS HAVING
7 A CENTRALIZED LOCATION FOR SIGNING UP TO THE
8 INTERNET?
9 A. I WOULD PHRASE IT AS WHAT IS LESS
10 CONFUSING IS TO NOT HAVE REDUNDANCY OF FUNCTION
11 IN VARIOUS PLACES.
12 (EXCERPT.)
13 Q. WHY WAS GATEWAY SELECTED TO BE PART OF
14 THE TEST PROGRAM?
15 A. WELL, I THINK THEY'VE GOT A GOOD HANDLE
16 ON THEIR CUSTOMERS. THEY HAVE THEIR OWN ISP
17 SERVICE, SO THEY HAVE A SERVICE THEY WANT TO
18 CONNECT THE CUSTOMER TO. THEY HAVE SOME IDEAS,
19 SO I THINK THEY'RE--AND THE CAPABILITIES TO DO
20 IT.
21 JUST MY PERSONAL OPINION IS MOST OEM'S
22 PROBABLY DON'T WANT TO DO ANYTHING LIKE THIS. I
23 MEAN, IT'S PRETTY EXTENSIVE, SO--AND GATEWAY HAS
24 THE RESOURCES AND THE PEOPLE TO WANT TO DO IT AND
25 TO WORK ON IT.

1 Q. AND THESE WERE CRITERIA THAT WERE
2 CONSIDERED IN ALLOWING GATEWAY TO TAKE ADVANTAGE
3 OF THIS OPTION?
4 A. I ACTUALLY DON'T KNOW WHAT THE CRITERIA
5 WAS, BUT IT WAS KNOWN THAT GATEWAY WAS VERY
6 INTERESTED AND HAD COME TO US WITH THIS KIND OF
7 BUSINESS OBJECTIVE IN TERMS OF SIGNING PEOPLE UP
8 TO THEIR INTERNET SERVICE.
9 (EXCERPT.)
10 Q. YOU SAID GATEWAY'S GOAL IS TO GET USERS
11 TO USE GATEWAY.NET. HOW WILL IMPLEMENTING A
12 SIGNUP SCREEN THAT COMES UP BEFORE THE "WELCOME
13 TO WINDOWS" SCREEN ACCOMPLISH THAT GOAL?
14 A. IT FORCES THE CUSTOMER TO GO THROUGH
15 THAT OPTION. SO, IF THEY DID NOT IMPLEMENT THIS,
16 YOU'D GET THE WELCOME SCREEN, AND YOU'D HAVE THE
17 OPTION OF CONNECTING TO AN ISP OR NOT. WHAT
18 GATEWAY PUTTING THE CODE IN THE INITIAL BOOT
19 PROCESS MEANS IS THAT THE CUSTOMER GOES THROUGH
20 THAT CODE WHETHER THEY'VE CHOSEN IT OR NOT.
21 Q. AND THEY'RE, THEREFORE, MORE LIKELY TO
22 SELECT GATEWAY.NET THAN THEY WOULD HAVE IF IT
23 HADN'T BEEN ON THE DESKTOP, FOR EXAMPLE, BEFORE
24 THE "WELCOME TO WINDOWS" SCREEN?
25 MS. D'ARCANGELO: OBJECTION. CALLS FOR

1 SPECULATION.

2 BY MR. POPOFSKY:

3 Q. YOU CAN, NONETHELESS, ANSWER THE

4 QUESTION.

5 A. YEAH, I SUPPOSE.

6 (EXCERPT.)

7 Q. I'D LIKE TO DIRECT YOUR ATTENTION TO--I

8 THINK THE DOCUMENT IS STILL IN FRONT OF YOU, 323,

9 PAGE MS98 0113895. NEAR THE VERY BOTTOM, SECOND

10 TO LAST BULLET POINT READS, "ALTERNATE ISP SIGNUP

11 PROCESS SHALL CONTAIN NO THIRD-PARTY ADVERTISING

12 OR PRODUCT PROMOTIONS OTHER THAN THOSE FROM

13 COMPANY, COMPANY SUBSIDIARY BRANDS, OR THE ISP

14 BEING SIGNED UP."

15 A. RIGHT.

16 Q. IS IT YOUR UNDERSTANDING THAT UNDER

17 THIS TERM AS SET OFF BY THIS BULLET POINT,

18 GATEWAY COULD ADVERTISE FOR GATEWAY?

19 A. YES.

20 Q. BUT GATEWAY COULD NOT ADVERTISE FOR

21 NETSCAPE?

22 A. THEY COULD NOT ADVERTISE FOR A

23 NON-GATEWAY COMPANY.

24 Q. WHAT IS YOUR UNDERSTANDING OF THE

25 REASON BEHIND THE LIMITATION ON ADVERTISING IN

1 THE ALTERNATIVE SIGNUP PROCESS?

2 A. AGAIN, IT'S SPECULATION, BUT, YOU KNOW,

3 THE ABILITY THAT WE'RE PROVIDING IS TO HELP THE

4 OEM ACHIEVE, YOU KNOW, A BUSINESS OBJECTIVE.

5 IT'S NOT, FOR EXAMPLE, TO ALLOW THEM TO START

6 PUTTING INTERNET BANNERS AND CHARGING--YOU KNOW,

7 GETTING INCOME FROM THIRD PARTIES OR WHATEVER.

8 IT IS TO HELP THE END USER GET CONNECTED TO THE

9 INTERNET. AND I PERSONALLY DON'T SEE HOW

10 ADVERTISING HELPS THE CUSTOMER DO THAT.

11 Q. WELL, DID--WITHDRAW THE QUESTION.

12 A. THIS DOES NOT PRECLUDE PROVIDING

13 BROWSER CHOICE.

14 Q. THAT WAS--

15 A. IT'S JUST ADVERTISING.

16 Q. MOVE TO STRIKE THE LAST COMMENT AS

17 NONRESPONSIVE.

18 (EXCERPT.)

19 BY MR. POPOFSKY:

20 Q. OKAY, MS. MCLAIN, JUST A FEW FINAL

21 WRAP-UP QUESTIONS.

22 WE WERE TALKING A FEW MINUTES AGO ABOUT

23 GATEWAY'S ABILITY TO DO AN ALTERNATIVE SIGNUP IN

24 THE BOOTUP PROCESS.

25 IS GATEWAY, UNDER THAT PROCEDURE,

1 ALLOWED TO MAKE THE IE ICON ON THE DESKTOP
2 DISAPPEAR IF A USER SIGNS UP WITH GATEWAY.NET?
3 A. NO.
4 Q. WHY NOT?
5 A. FOR THE REASONS WE DISCUSSED BEFORE,
6 THE IE ICON NEEDS TO STAY ON THE DESKTOP.
7 Q. UNDER THIS POLICY OF ALLOWING CERTAIN
8 OEM'S TO DO ALTERNATIVE ISP SIGNUP PROCEDURES IN
9 THE BOOTUP PROCESS, IT'S POSSIBLE YOU'LL HAVE
10 DIFFERENT OEM'S PRESENTING DIFFERENT THINGS TO
11 END USERS; CORRECT?
12 A. THE OEM'S ARE PROVIDED SOME
13 FLEXIBILITY.
14 Q. AND SIMILARLY, OEM'S ARE ALLOWED TO
15 CUSTOMIZE THE ACTIVE DESKTOP; CORRECT?
16 A. CORRECT.
17 Q. THEY COULD PUT DIFFERENT ACTIVE DESKTOP
18 ITEMS ON THEM?
19 A. UH-HUH.
20 Q. AND GATEWAY CAN SUBSTITUTE DIFFERENT
21 CHANNELS FOR THE CHANNELS THAT ARE THERE AS A
22 DEFAULT?
23 A. IF THEY DECIDE TO TURN THE CHANNEL BAR
24 OFF, THEY CAN PROVIDE THEIR OWN CHANNELS.
25