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
1476

1 (DEPOSITION EXCERPTS OF CARL STORK.)

2 Q. WERE THERE CONCERNS WITHIN MICROSOFT

3 ABOUT HAVING A RETAIL VERSION OF WINDOWS 95 THAT

4 DIFFERED FROM VARIOUS LATER OEM SERVICE RELEASES

5 OF WINDOWS 95?

6 MR. BURT: OBJECT TO THE QUESTION AS

7 LACKING PROPER FOUNDATION.

8 YOU CAN ANSWER.

9 BY MR. MALONE:

10 Q. GO AHEAD, IF YOU CAN.

11 A. WE DID HAVE SOME CONCERNS ABOUT THE

12 PRODUCTS DIFFERING. WE ATTEMPTED TO KEEP THE

13 DIFFERENCES AS FAR AS USER INTERFACES AND

14 PROGRAMMING INTERFACES MINIMAL.

15 (EXCERPT.)

16 Q. AND YOU SAID YOU DIDN'T HAVE A DIRECT

17 ROLE, AND ONE OF THE THINGS YOU MENTIONED WAS THE

18 BRANDED PRODUCTS. WHAT DID YOU MEAN BY THAT IN

19 THE CONTEXT OF INTERNET EXPLORER?

20 A. WELL, THE DEVELOPMENT TEAMS UNDER BRAD

21 SILVERBERG DEVELOPED A WHOLE HOST OF DIFFERENT

22 COMPONENTS THAT WERE PART OF OUR WINDOWS

23 OPERATING SYSTEM RELEASES. AND YOU CAN THINK OF

24 THOSE AS THE INTERNET TECHNOLOGIES, IF YOU WILL.

25 AND THE TERM "INTERNET EXPLORER" COULD BE VERY

1 CONFUSING SINCE IT'S BOTH A BRAND NAME FOR A
2 SPECIFIC PRODUCT IN THE MARKETPLACE AS WELL AS A
3 NAME FOR A DEVELOPMENT GROUP.
4 Q. WHEN YOU SAY ONE OF THE THINGS IT COULD
5 BE IS A BRAND NAME FOR A SPECIFIC PRODUCT IN THE
6 MARKETPLACE, WHAT DO YOU MEAN? WHAT PRODUCT ARE
7 YOU REFERRING TO THERE?
8 A. THE INTERNET EXPLORER PRODUCT.
9 Q. AND WHAT IS THAT WHEN YOU USE IT THAT
10 WAY?
11 A. IT'S A--IN THAT CASE AS WELL AS IT'S A
12 COLLECTION OF DIFFERENT TECHNOLOGIES THAT
13 TOGETHER DESCRIBE A WAY--A SET OF FEATURES THAT
14 CUSTOMERS CAN ACCESS THE INTERNET THROUGH.
15 Q. AND WHAT ARE THE PRODUCTS OR THE PIECES
16 THAT ARE PART OF THIS SET OF PRODUCTS THAT YOU
17 WOULD DESCRIBE AS INTERNET EXPLORER?
18 A. IN THE INSTANTIATION THAT IS PART OF
19 INTERNET EXPLORER 4, THEY'RE FAIRLY BROAD. THEY
20 INCLUDE ENHANCEMENTS TO THE WINDOWS SHELL, THEY
21 INCLUDE COMMUNICATIONS PIECES, THEY INCLUDE MEDIA
22 PLAYERS, NETSHOW. THEY INCLUDE MAIL CLIENTS,
23 NEWS READING CLIENTS. THEY INCLUDE WEB VIEWERS,
24 HTML RENDERING, ACTIVE CONTROLS. IT'S A
25 FAIRLY--THESE ARE THE ONES THAT COME TO MY HEAD

1 IMMEDIATELY. IT'S A FAIRLY BROAD SET OF
2 TECHNOLOGIES.
3 (EXCERPT.)
4 Q. WHAT ABOUT IN THE SIMPLEST TERMS A
5 BROWSER, A WEB BROWSER?
6 MR. BURT: OBJECT TO THE QUESTION AS
7 VAGUE.
8 WHAT ABOUT IT?
9 BY MR. MALONE:
10 Q. IS THAT A PIECE OR ONE OF THE SET OF
11 PRODUCTS THAT IS IN IE 4, TO STAY WITH YOUR
12 EXAMPLE?
13 A. I'M HESITANT TO USE THE WORD "BROWSER"
14 BECAUSE IT'S SO VAGUE. IN GENERAL, WHEN I
15 DESCRIBED THE TECHNOLOGIES, I DID SAY A METHOD
16 FOR VIEWING WEB PAGES AS PART OF IT. BUT IT
17 WOULD BE REALLY HARD TO DEFINE SOMETHING AS A
18 BROWSER.
19 Q. IN THE COURSE OF YOUR WORK AS GENERAL
20 MANAGER OF THE WINDOWS 9X PRODUCTS, DID YOU SORT
21 OF TYPICALLY IN THE COURSE OF BUSINESS USE THE
22 TERM "BROWSER"?
23 A. AMONG OTHER TERMS, I'M CERTAIN WE USED
24 THE TERM "BROWSER," TOO.
25 Q. WHEN YOU USE--YOU PERSONALLY FOR A

1 SECOND. WHEN YOU WOULD USE THE TERM "BROWSER" IN
2 THE COURSE OF YOUR WORK AS GENERAL MANAGER, WHAT
3 DID YOU MEAN? WHAT WERE YOU REFERRING TO?
4 MR. BURT: OBJECT TO THE QUESTION.
5 IT'S VAGUE AS TO TIME FRAME.
6 YOU CAN ANSWER, IF YOU UNDERSTAND.
7 THE WITNESS: I DON'T KNOW THAT WE EVER
8 REALLY HAD A PARTICULARLY ACCURATE DEFINITION OF
9 THE TERM. I THINK IT COULD HAVE MEANT ANYTHING
10 FROM THE ENTIRE COLLECTION OF INTERNET
11 TECHNOLOGIES TO SOMETHING NARROWER, AND
12 IT--DEPENDING ON CONTEXT, IT PROBABLY WAS VERY
13 DEPENDENT ON CONTEXT.
14 BY MR. MALONE:
15 Q. DID YOU FROM TIME TO TIME HEAR
16 DISCUSSIONS WITHIN MICROSOFT ABOUT THE COMPANY
17 BEING INVOLVED IN A BROWSER WAR OR BROWSER BATTLE
18 WITH NETSCAPE?
19 A. ON RARE OCCASION, WORDS LIKE THAT MIGHT
20 HAVE BEEN USED. PROBABLY TO EXPORT THE TROOPS,
21 SO TO SPEAK.
22 Q. IS THAT SOMETHING YOU RECALL HEARING
23 FROM TIME TO TIME, OR AT LEAST ON RARE OCCASIONS?
24 A. NOT PARTICULARLY FREQUENTLY, BUT
25 OCCASIONALLY.

1 Q. AND IN THAT CONTEXT, WHEN YOU HEARD THE
2 TERM "BROWSER" USED THAT WAY, WHAT WAS YOUR
3 UNDERSTANDING OF WHAT IT WAS REFERRING TO?
4 A. I WOULD INTERPRET IT AS REFERRING TO A
5 COMPETITION TO PROVIDE A BROAD SET OF INTERNET
6 FUNCTIONALITY TO END USERS.
7 Q. WHEN YOU SAY BROAD SET OF INTERNET
8 FUNCTIONALITIES, WHAT DO YOU MEAN?
9 A. SOME OF THE THINGS I DESCRIBED EARLIER
10 IN THE EARLIER ANSWER. IF YOU WERE TO TRY TO SAY
11 THE BROWSER IS JUST VIEWING WEB PAGES, IT REALLY
12 WOULDN'T BE VERY INTERESTING FOR END USERS
13 BECAUSE THE INTERNET IS SO MUCH MORE THAN THAT.
14 Q. WHAT OTHER THINGS--AND I REALIZE YOU
15 LISTED SOME, BUT WHAT OTHER THINGS WOULD AN END
16 USER NEED IN ORDER FOR THEIR EXPERIENCE ON THE
17 WEB OR THEIR EXPERIENCE BROWSING, IF YOU WILL, TO
18 BE INTERESTING?
19 A. EVERYTHING FROM COMMUNICATIONS
20 PLUMBING, THINGS LIKE TCP/IP STACKS, DIALUP
21 NETWORKING, PPP. PROXY SERVER, PERHAPS. THINGS
22 LIKE URL RESOLUTION, HTML RENDERING, PLAYING WITH
23 VARIOUS FORMATS, WHETHER IT'S THINGS LIKE ACTIVE
24 SERVER PAGES OR ACTIVEX CONTROLS. JAVA OUTPUTS.
25 MEDIA STREAMS. SUPPORTIVE PROTOCOLS TO SEND AND

1 RECEIVE E-MAIL. THE ABILITY--POSSIBLY THE
2 ABILITY TO TRANSFER THROUGH THINGS LIKE FTP. I
3 DON'T KNOW IF I MENTIONED THE ABILITY TO HAVE
4 JAVA APPLETS.
5 I MEAN, FOR AN INTERNET EXPERIENCE--FOR
6 THINGS TO BE ATTRACTIVE, THINGS NEED TO WORK
7 SEAMLESSLY, WHICH MEANS YOU NEED A BROAD STREAM
8 OF CAPABILITIES.
9 (EXCERPT.)
10 Q. YOU MENTIONED A VARIETY OF THINGS LIKE
11 THE FAT32 CAPABILITIES AND SOME OTHER THINGS.
12 EXCLUDING THOSE, FROM THE STANDPOINT OF USING THE
13 INTERNET, WOULD A CUSTOMER WHO DOWNLOADED IE 3
14 ONTO A MACHINE THAT HAD OSR1 ON IT HAVE
15 SUBSTANTIALLY THE SAME EXPERIENCE AS A CUSTOMER
16 THAT BOUGHT A MACHINE THAT HAD OSR2 ON IT IN
17 TERMS OF THE IE 3 THAT EACH OF THEM WERE USING?
18 MR. BURT: OBJECT TO THE QUESTION AS
19 LACKING IN PROPER FOUNDATION.
20 YOU CAN ANSWER, IF YOU KNOW.
21 THE WITNESS: YOU NEVER TOLD ME WHAT A
22 FOUNDATION MEANT.
23 I'D CHARACTERIZE IT AS NOT THE SAME
24 EXPERIENCE AT ALL BECAUSE THE EFFORT TO DOWNLOAD
25 IE 3 WAS PAINSTAKING, TO BE HONEST, AND AT LEAST

1 PARTIALLY FRAUGHT WITH RISK IF THE PHONE
2 CONNECTION WASN'T VERY RELIABLE. CERTAINLY MUCH
3 GREATER CUSTOMER CONVENIENCE AND TRUST TO HAVE IT
4 PRE-INSTALLED THAN TO HAVE TO DO IT YOURSELF.
5 BY MR. MALONE:
6 Q. WHAT ABOUT A CUSTOMER WHO, FOR EXAMPLE,
7 BOUGHT THE RETAIL PRODUCT THAT YOU DESCRIBED
8 EARLIER, GOT IE 3 THAT WAY AND LOADED IT ONTO AN
9 OSR1 MACHINE COMPARED TO SOME SOMEONE WHO BOUGHT
10 A MACHINE WITH OSR2 WITH IE 3 PRE-INSTALLED?
11 WOULD THEIR EXPERIENCE DIFFER?
12 MR. BURT: SAME OBJECTION. LACK OF
13 FOUNDATION.
14 IF YOU KNOW THE ANSWER, YOU CAN ANSWER.
15 THE WITNESS: THERE'S NO QUESTION THAT
16 EVERY FORM OF DATA WILL SUPPORT THE FACT THAT THE
17 BEST CUSTOMER EXPERIENCE IS WHEN IT'S DELIVERED
18 PRE-INSTALLED TO THE CUSTOMER. FEWER SUPPORT
19 CALLS, THE LEAST TIME EXPENDED BY THE CUSTOMER,
20 THE GREATEST SATISFACTION, RECEIVING IT ON
21 PHYSICAL MEDIA SUCH AS CD-ROM AND INSTALLING IT
22 WILL BE MORE DESIRABLE THAN ATTEMPTING TO
23 DOWNLOAD OVER A PHONE LINE CERTAINLY.
24 BUT STILL, A SETUP PROCESS HAS
25 QUESTIONS TO ANSWER AND HAS THE POTENTIAL FOR

1 ERRORS, ESPECIALLY IF THE CUSTOMER HAS MOVED
2 FILES OR DONE OTHER STRANGE THINGS. SO
3 PRE-INSTALLATION IS THE BEST FOR CUSTOMERS.
4 Q. AND HELP ME UNDERSTAND WHY THAT IS THE
5 CASE. YOU JUST GAVE ONE REASON ABOUT THE SETUP
6 PROCESS INJECTING SOME COMPLEXITY, IF THAT'S A
7 FAIR CHARACTERIZATION. ARE THERE OTHER REASONS
8 WHY PRE-INSTALLATION RESULTS IN A BETTER CUSTOMER
9 EXPERIENCE OVERALL THAN LOADING THROUGH SOME
10 OTHER MEANS FOR--LET'S STAY FOCUSED ON IE FOR
11 NOW.
12 A. MY FIRST ANSWER WAS GOING TO BE IT'S
13 VERY DEPENDENT ON THE QUALITY OF THE SETUP
14 PROGRAM. AND THE MAJOR AREA OF DIFFERENCE IS
15 GOING TO BE THE TIME SPENT, THE COMPLEXITY OR
16 CONFUSION THE CUSTOMER MAY EXPERIENCE, AND THE
17 POSSIBILITY OF INTRODUCING ERRORS.
18 I'LL EXPAND ON THAT THIRD POINT A
19 LITTLE BIT. IN A SYSTEM THAT A CUSTOMER HAS MADE
20 CHANGES ON, LOADED SOFTWARE ON AND FUTZED WITH
21 MAY NOT BE ONE THAT ANYONE HAS EVER TESTED
22 AGAINST, SO THE LIKELIHOOD OF SOMETHING GOING
23 WRONG IS JUST DRAMATICALLY HIGHER.
24 (EXCERPT.)
25 Q. BACK UP, IF YOU WOULD, ONE PAGE TO THE

1 PAGE NUMBERED TWO DOWN IN THE LOWER RIGHT-HAND
2 CORNER. THIS ALSO AT THE TOP HAS THE HEADING
3 "OBJECTIVES FOR MEMPHIS RELEASE." AND THE FINAL
4 BULLET POINT HERE, DOES THAT READ, "PROVIDE SHIP
5 VEHICLE FOR STRATEGIC INTERNET COMPONENTS"?
6 A. YES, IT DOES.
7 Q. WHAT DID YOU MEAN BY THAT STATEMENT?
8 A. THAT--IT'S, I THINK, SELF-EXPLANATORY.
9 IT PROVIDES A WAY FOR US TO DELIVER THE STRATEGIC
10 INTERNET FUNCTIONALITY WE'VE INTEGRATED INTO THE
11 OPERATING SYSTEM TO OUR CUSTOMERS.
12 Q. WHEN YOU USE THE TERM HERE, "STRATEGIC
13 INTERNET COMPONENTS," WHAT WERE YOU REFERRING TO?
14 A. THE WHOLE COLLECTION OF INTERNET
15 TECHNOLOGIES THAT ARE IN THE MEMPHIS RELEASE,
16 THAT ARE IN THE WINDOWS 98 RELEASE.
17 Q. WOULD THAT BE THE EQUIVALENT OF IE 4 OR
18 SOMETHING DIFFERENT?
19 MR. BURT: OBJECT TO THE QUESTION.
20 IT'S VAGUE AS TO TIME FRAME.
21 BY MR. MALONE:
22 Q. AT THE TIME YOU WROTE THIS.
23 A. WE GET INTO THE QUESTION OF BY IE 4 DO
24 YOU MEAN THE COMPONENTS DELIVERED BY THE IE 4
25 TEAM? DO YOU MEAN THE COMPONENTS THAT WE

1 DISTRIBUTE WITH THE INTERNET IE 4 RELEASE OR THE
2 INTERNET COMPONENTS DEVELOPED WITHIN MICROSOFT?
3 BECAUSE THERE ARE COMPONENTS THAT ARE
4 INTERRELATED THAT WERE DEVELOPED BY OTHER TEAMS.
5 AND I'D SAY IN THIS CONTEXT I MEANT ALL THE
6 IMPORTANT INTERNET COMPONENTS DEVELOPED BY ALL
7 THE TEAMS AT MICROSOFT, SO I WOULDN'T STRICTLY
8 REFER TO THE IE 4 TEAM, PER SE.
9 Q. JUST SO I UNDERSTAND EXACTLY WHAT
10 YOU'RE SAYING, WHEN YOU USE THE TERM "SHIP
11 VEHICLE" HERE, WHAT DID YOU MEAN BY THAT?
12 A. A METHOD FOR DISTRIBUTING THE
13 TECHNOLOGY TO END CUSTOMERS.
14 (EXCERPT.)
15 Q. LET'S TURN TO PAGE 5546, TO YOUR
16 MESSAGE NOW, DATED JANUARY 8, '97, AT 7:03. THE
17 FINAL PARAGRAPH ON THE BOTTOM OF THE PAGE, IF YOU
18 WOULD PLEASE LOOK AT WHAT I BELIEVE IS THE LAST
19 TWO SENTENCES.
20 "ONE IMPORTANT ISSUE IS WHETHER IE 4 IS
21 AVAILABLE AT RETAIL IN SKU'S OTHER THAN MEMPHIS.
22 IT WILL BE CONFUSING FOR CUSTOMERS, AND WILL
23 DETRACT FROM OEM PRE-INSTALLATIONS, IF THERE ARE
24 BOTH MEMPHIS AND AN IE 4 PRODUCT--IF WE CAN MAKE
25 MEMPHIS COMPELLING AND LOW-RISK, WE SHOULD

1 POSITION MEMPHIS AS THE IE 4 DELIVERY VEHICLE."
2 DO YOU SEE THOSE TWO SENTENCES?
3 A. UH-HUH.
4 Q. WHEN YOU REFER TO WHETHER IE 4 IS
5 AVAILABLE AT RETAIL IN SKU'S OTHER THAN MEMPHIS,
6 WHAT DID YOU MEAN?
7 A. THE--I MEANT THAT THE TECHNOLOGY, THE
8 INTERNET TECHNOLOGIES IN THE OPERATING SYSTEM
9 UPGRADE THAT IE 4 REPRESENTS WOULD BE AVAILABLE
10 IN PRODUCTS SEPARATELY FROM WHAT BECAME
11 WINDOWS 98, AN INTERNET STARTER KIT KIND OF
12 PRODUCT.
13 Q. AND WHY DID YOU SAY IT WILL BE
14 CONFUSING FOR CUSTOMERS AND WILL DETRACT FROM OEM
15 PRE-INSTALLATIONS IF THERE ARE BOTH MEMPHIS AND
16 AN IE 4 PRODUCT?
17 A. I WANTED FOR A CUSTOMER TO, WHEN THEY
18 WENT TO THE STORE TO SAY, "I WANT TO GET THE
19 LATEST OPERATING SYSTEM UPGRADE," TO HAVE ONE
20 CHOICE, NOT TO HAVE TO SAY, "OKAY, DO YOU WANT
21 THE ONE THAT UPGRADES MAINLY THE INTERNET
22 COMPONENTS OR DO YOU WANT THE ONE THAT INTEGRATES
23 THE INTERNET COMPONENTS AND THE OTHER
24 COMPONENTS?" I THOUGHT THAT WAS CONFUSING. AND
25 IF THE PRICING COULD BE FAIRLY SIMILAR, WE SHOULD

1 HAVE A SINGLE SOLUTION FOR CUSTOMERS.

2 Q. DO YOU KNOW, WAS THAT, IN FACT, THE

3 COURSE THAT MICROSOFT PURSUED AS FAR AS

4 AVAILABILITY OF IE 4 AND WHAT WAS AT THIS POINT

5 CALLED "MEMPHIS"?

6 A. IT IS NOT THE PATH WE PURSUED IN THE

7 END.

8 Q. DO YOU KNOW WHY--WHY A DIFFERENT PATH

9 WAS CHOSEN?

10 A. FOR SEVERAL REASONS IN THE END. ONE,

11 BECAUSE WE MADE A DECISION TO MAKE THE

12 INTERNET-ONLY UPGRADES AVAILABLE AT A LOWER PRICE

13 THAN THE WHOLE--THAN THE LARGER SET THAT UPGRADES

14 WINDOWS 98. TWO, BECAUSE WE WANTED TO MAKE THEM

15 AVAILABLE AT AN EARLIER POINT IN TIME.

16 Q. WHY WERE THOSE DECISIONS MADE?

17 A. I'M NOT SURE I UNDERSTAND THE QUESTION.

18 I THINK--IT SEEMS TO BE SELF-REFERENTIAL.

19 Q. LET ME MAKE SURE I'M CLEAR.

20 THE FIRST THING YOU SAID WAS--AND

21 CORRECT ME IF I GET THIS WRONG, BUT THE DECISION

22 WAS TO MAKE THE INTERNET-ONLY UPGRADES AVAILABLE

23 AT A SEPARATE PRICE.

24 A. LOWER PRICE, RIGHT.

25 Q. LOWER PRICE, OKAY. AND WHY WAS THAT

1 DONE?

2 A. TO SPUR BROAD ADOPTION.

3 Q. BROAD ADOPTION OF WHAT?

4 A. OF THE INTERNET TECHNOLOGIES.

5 Q. AND WHEN THESE INTERNET-ONLY UPGRADES

6 WERE MADE AVAILABLE, WERE THEY AVAILABLE UNDER

7 THE NAME "INTERNET EXPLORER 4"?

8 A. I ACTUALLY THINK THAT THE PRODUCT--I'M

9 NOT POSITIVE, BUT I THINK THE PRODUCT NAMES WERE

10 ALWAYS SOMETHING LIKE "INTERNET STARTER KIT," BUT

11 I'M SURE YOU HAVE RECORDS FROM OTHER PEOPLE ON

12 WHAT THE PRODUCT NAMES WERE.

13 Q. WHEN YOU SAY THE REASON WAS TO SPUR

14 BROAD ADOPTION, WHAT DO YOU MEAN BY THAT?

15 A. WE WANTED TO GET--MAKE IT EASY AND

16 CONVENIENT FOR AS MANY CUSTOMERS AS POSSIBLE TO

17 GET THE IE 4 GENERATION OF OUR INTERNET

18 TECHNOLOGIES. AND THE MARKETPLACE HAD ALREADY

19 MADE THESE, MORE OR LESS, AVAILABLE AS FREE WEB

20 DOWNLOADS, SO THE RETAIL PRODUCT REALLY IS A

21 CONVENIENCE OF GETTING IT ON A CD AND NOT HAVING

22 TO DO THE DOWNLOAD. AND THOSE HAVE BEEN AT

23 FAIRLY LOW PRICES, REALLY MORE HANDLING MATERIAL

24 PRICES.

25 Q. WAS PART OF THE REASON THAT MICROSOFT

1 WANTED TO SPUR BROAD ADOPTION WHAT WE TALKED
2 ABOUT EARLIER, AND THAT IS TRYING TO--WHAT WE
3 REFERRED TO EARLIER--WAS PART OF THE REASON
4 MICROSOFT WANTED TO SPUR BROAD ADOPTION TO
5 INCREASE INTERNET EXPLORER MARKET SHARE?
6 A. THE REASON WE WANTED TO SPUR BROAD
7 ADOPTION IS THAT THE INTERNET REPRESENTS A
8 PLATFORM FOR DEVELOPMENT, BOTH SOFTWARE
9 DEVELOPMENT AND WEB-SITE DEVELOPMENT, AND WE
10 WANTED TO HAVE AN ATTRACTIVE PLATFORM THAT HAD
11 MANY USERS.
12 Q. WAS THAT SOMETIMES REFERRED TO, TO YOUR
13 KNOWLEDGE, WITHIN MICROSOFT AS WANTING TO
14 INCREASE BROWSER SHARE OR BROWSER MARKET SHARE?
15 A. THAT WOULD BE ONE OF THE CODE PHRASES
16 THAT WOULD REFER TO THAT CONCEPT.
17 Q. WERE THERE OTHER PHRASES YOU KNOW OF
18 THAT WERE USED TO REFER TO THAT CONCEPT OTHER
19 THAN BROWSER SHARE OR BROWSER MARKET SHARE?
20 A. SHARE WOULD PROBABLY BE THE PRIMARY
21 PHRASE. THERE PROBABLY WERE SOME OTHER WORDS
22 THAT WERE USED, BUT NOTHING THAT COMES TO
23 IMMEDIATE MIND.
24 (EXCERPT.)
25 Q. WHAT WAS YOUR UNDERSTANDING FROM WHAT

1 DAVID COLE SAID IN THIS FRIENDLY DEBATE, IF YOU
2 WILL, ABOUT WHY HE WANTED TO POSITION IE 4 NOT AS
3 AN OS ITEM GRADE?
4 A. BECAUSE HE WANTED TO MINIMIZE THE
5 POTENTIAL OF CUSTOMER BARRIERS TO ADOPTION OF THE
6 IE 4 TECHNOLOGY.
7 Q. AND WHY, BASED ON WHAT HE TOLD YOU, WHY
8 DID HE WANT TO DO THAT? WHY WAS THAT IMPORTANT?
9 A. FOR THE POPULARITY OF THE PLATFORM.
10 Q. AND WAS THAT ULTIMATELY, AS ALLUDED TO
11 HERE, TO EFFECTIVELY COMPETE WITH NETSCAPE?
12 A. I DON'T SEE ANYTHING ABOUT NETSCAPE.
13 OH, YEAH, THERE WE GO. RIGHT. SO,
14 WHAT HE IS SAYING IS IF IT APPEARS TO USERS THAT
15 NETSCAPE IS ONLY AN APPLICATION BUT IE 4 IS AN
16 OPERATING SYSTEM UPGRADE, THAT IT WOULD BE HARDER
17 TO GET ADOPTION.
18 Q. AND WOULD THAT ULTIMATELY MEAN IT WOULD
19 BE HARDER TO EFFECTIVELY COMPETE WITH NETSCAPE,
20 THE WORDS HE USED HERE?
21 A. FOR A CUSTOMER MAKING A DECISION, YOU'D
22 BE AT A DISADVANTAGE.
23 Q. YOU BEING MICROSOFT?
24 A. RIGHT.
25 (EXCERPT.)

1 Q. THE FIRST OPTION UNDER NUMBER ONE ON
2 PAGE 3001, "HOLD MEMPHIS FOR IE 4.0 AND SHIP IN
3 AUGUST-DECEMBER."
4 DO YOU SEE THAT?
5 A. UH-HUH.
6 Q. THE FIRST PRO THAT IS LISTED IS, "THIS
7 IS ABSOLUTELY THE BEST WAY TO DRIVE IE 4
8 PENETRATION."
9 AT THE TIME YOU RECEIVED THIS, WHAT WAS
10 YOUR UNDERSTANDING OF WHAT DRIVE IE 4 PENETRATION
11 MEANT?
12 A. INCREASE THE SHARE OF THE INTERNET
13 TECHNOLOGIES THAT WERE DEVELOPED AS PART OF THE
14 IE 4 PROJECT.
15 Q. WOULD THAT BE THE SAME THING AS
16 INCREASING THE--WOULD THAT BE THE SAME THING AS
17 WHAT WAS REFERRED TO AT MICROSOFT AS INCREASING
18 THE BROWSER SHARE OF IE 4?
19 A. WITH THE CAVEAT, ONCE AGAIN, THAT
20 BROWSER IS NOT A WELL-DEFINED WORD, IF YOU
21 DEFINE--ONLY TO THE DEGREE YOU'RE WILLING TO
22 DEFINE "BROWSER" AS A MUCH BROADER SET OF
23 TECHNOLOGIES THAN WHAT IS COMMONLY SOMETIMES
24 ASSUMED.
25 Q. TO THE EXTENT YOU'RE FAMILIAR WITH THE

1 TERM "BROWSER SHARE" BEING USED AT MICROSOFT AT
2 ABOUT THIS TIME, WOULD INCREASING BROWSER SHARE
3 BE THE SAME THING AS WHAT YOU JUST DESCRIBED AS
4 TO WHAT IS MEANT BY DRIVE IE 4 PENETRATION?
5 A. AS COMMONLY USED, YES.
6 (EXCERPT.)
7 Q. LOOK, IF YOU WOULD, PLEASE, AT THE
8 THIRD PAGE OF THIS EXHIBIT 487, THE ONE WITH THE
9 NUMBER 9653 AT THE BOTTOM. THE TOP MESSAGE ON
10 THIS PAGE APPEARS TO BE FROM YOU TO MEGAN BLISS
11 AND A NUMBER OF OTHER PEOPLE.
12 DO YOU SEE THAT?
13 A. YES, I DO.
14 Q. THE SECOND PARAGRAPH, THE ONE THAT
15 BEGINS, "WE DO NOT HAVE," IF YOU WOULD PLEASE
16 LOOK AT THE THIRD SENTENCE THERE, THE ONE THAT
17 READS, "IE 4 IS NOT BEING DEVELOPED AS JOINED TO
18 MEMPHIS AT THE HIP--AT PRESENT MEMPHIS IS AN
19 AFTERTHOUGHT. IT IS NOT ONE OF THE FOUR MAIN
20 TEST PLATFORMS FOR IE 4. WE ARE BEING ENCOURAGED
21 BY THE IE 4 TEAM TO RELEASE A MEMPHIS BETA ONE
22 WITH THE OLD SHELL."
23 FIRST OF ALL, WHAT DID YOU MEAN WHEN
24 YOU WROTE IE 4 IS NOT BEING DEVELOPED AS JOINED
25 TO MEMPHIS AT THE HIP?

1 A. THE IE 4 DEVELOPMENT TEAM WAS
2 DEVELOPING A SET OF TECHNOLOGIES THAT ONE OF
3 THEIR SHIP VEHICLES WAS AS A RETAIL UPGRADE FOR
4 WINDOWS 95. OR WHEN I SAY "RETAIL UPGRADE," AN
5 END-USER UPGRADE FOR WINDOWS 95. ANOTHER VEHICLE
6 WAS INCLUSION OF WINDOWS NT, ET CETERA.
7 SO THERE WERE--AS THEY DID THEIR
8 TECHNOLOGY DEVELOPMENT, THERE WERE A NUMBER OF
9 PRIORITIES FOR THE FORMS IN WHICH IT WOULD BE
10 RELEASED TO END USERS. AND THE FORM WHICH WAS,
11 IN EFFECT, THE OPERATING SYSTEM UPGRADE WAS A
12 HIGHER PRIORITY FOR THE DEVELOPMENT TEAM THAN FOR
13 INCLUSION IN THE NEW RELEASE THAT WE WERE MAKING.
14 Q. LET ME BE SURE I UNDERSTAND. WOULD IT
15 BE ACCURATE TO SAY THAT THE HIGHER PRIORITY WAS A
16 FORM OF WHAT YOU DESCRIBED AS A SET OF
17 TECHNOLOGIES DEVELOPED BY THE IE 4 TEAM THAT
18 WOULD BE MADE AVAILABLE IN VARIOUS WAYS SEPARATE
19 FROM A NEW--SEPARATE FROM MEMPHIS SPECIFICALLY?
20 A. RIGHT. AS YOU KNOW, THEY MADE IT
21 AVAILABLE AS AN OPERATING SYSTEM UPGRADE.
22 Q. AND WHEN YOU SAY THAT, YOU MEAN IT WAS
23 AVAILABLE THROUGH THINGS LIKE DOWNLOADING FROM
24 THE WEB, FOR EXAMPLE?
25 A. RIGHT.

1 Q. AND IN A RETAIL FORM OF SOME SORT?
2 A. WHICH WAS A DISK THAT HAD THE SAME
3 THING THAT YOU DOWNLOAD FROM THE WEB.
4 Q. AND I ASSUME ALSO ONE OF THE WAYS IN
5 WHICH IT WAS MADE AVAILABLE SEPARATELY LIKE THAT
6 WAS TO INTERNET SERVICE PROVIDERS, FOR EXAMPLE,
7 TO PROVIDE TO THEIR SUBSCRIBERS? IS THAT ANOTHER
8 SHIP VEHICLE, I THINK YOU USED THE TERM?
9 A. UH-HUH.
10 MR. BURT: OBJECT TO THAT QUESTION AS
11 LACKING IN PROPER FOUNDATION.
12 THE WITNESS: I DIDN'T REALLY WORK WITH
13 THE ISP'S.
14 BY MR. MALONE:
15 Q. DID YOU HAVE AN UNDERSTANDING, GENERAL
16 UNDERSTANDING, THAT ONE OF THE SEPARATE SHIP
17 VEHICLES FOR WHAT YOU DESCRIBED AS THE SET OF
18 TECHNOLOGIES DEVELOPED BY THE IE 4 TEAM WAS BY
19 MAKING IT AVAILABLE TO ISP'S TO DELIVER TO THEIR
20 SUBSCRIBERS?
21 MR. BURT: SAME OBJECTION. VAGUE AS TO
22 WHAT THE EXAMINER MEANS BY THE TERM "SHIP
23 VEHICLE."
24 BY MR. MALONE:
25 Q. USING YOUR TERM.

1 A. I'M NOT SURE I'M BEING ASKED TO ANSWER
2 NOW.
3 MR. MALONE: CAN YOU READ THE QUESTION
4 BACK.
5 (RECORD READ.)
6 THE WITNESS: MY UNDERSTANDING IS THAT
7 THE SAME SOFTWARE WHICH WAS AVAILABLE FOR END
8 USERS TO APPLY AS THEIR OPERATING SYSTEM UPGRADE
9 WAS ALSO AVAILABLE FOR OTHER PEOPLE, SUCH AS
10 ISP'S TO DISTRIBUTE.
11 BY MR. MALONE:
12 Q. WHEN YOU REFER TO THIS SOFTWARE, IS IT
13 THE CASE THAT THAT WAS MADE AVAILABLE IN THESE
14 WAYS BY MICROSOFT UNDER WHAT I THINK YOU
15 DESCRIBED EARLIER AS THE BRAND NAME INTERNET
16 EXPLORER 4 IN THIS CASE?
17 A. IT WAS MADE AVAILABLE UNDER THE BRAND
18 NAME INTERNET EXPLORER. I DON'T RECALL FOUR WAS
19 ACTUALLY PART OF THE BRAND NAME.
20 (EXCERPT.)
21 Q. DID MICROSOFT REPRESENTATIVES EVER
22 SUGGEST, IN ANY WAY, TO INTEL THAT THEY NOT
23 PURSUE FURTHER THEIR 3DR DEVELOPMENT OR 3DR
24 STRATEGY?
25 A. YOU'RE ASKING TO THE BEST OF MY

1 KNOWLEDGE?

2 Q. YES.

3 A. WE HAD--AND ACTUALLY, OVER TIME HAVE

4 CONTINUED TO HAVE A VARIETY OF TECHNICAL

5 INTERCHANGES, TECHNICAL, AND, I'LL SAY, DEVELOPER

6 STRATEGY INTERCHANGES WITH INTEL AND IN THE 3-D

7 GRAPHICS AREA, ACTUALLY BOTH PRIOR TO AND

8 SUBSEQUENT TO 3DR. I THINK THE MUTUAL GOALS OF

9 THOSE INTERCHANGES WOULD HAVE BEEN TO SOLICIT

10 SUPPORT BY EACH PARTY FOR EACH COMPANY FROM THE

11 OTHER COMPANY FOR THEIR TECHNICAL STRATEGY. THE

12 BELIEF BEING THAT, YOU KNOW, A SINGLE TECHNICAL

13 STRATEGY, SINGLE SET OF DRIVER INTERFACES AND

14 PROGRAMMING INTERFACES WOULD BE BEST FOR THE PC

15 PLATFORM.

16 THEREFORE, INTEL WOULD COME TO US

17 ASKING US TO SUPPORT WHAT THEY WOULD BE DOING AND

18 WE WOULD BE ASKING THEM TO SUPPORT WHAT WE WERE

19 DOING. IN CASES WHERE THAT DIVERGES, WE WOULD

20 HAVE, I EXPECT, SOUGHT TO BOTH ARTICULATE THE

21 TECHNICAL PROS AND CONS OF EACH OF OUR PRODUCTS

22 AND TO TRY TO COME TO A STATUS WHERE THERE IS A

23 CONSISTENT MESSAGE TO DEVELOPERS VERSUS A

24 FRAGMENTED MESSAGE. AND AGAIN, THIS APPLIES

25 EQUALLY TO HARDWARE AND SOFTWARE DEVELOPERS

1 BECAUSE HARDWARE DEVELOPERS ALSO MUST MAKE
2 SIGNIFICANT INVESTMENTS IN DRIVER INFRASTRUCTURE.
3 Q. AS PART OF THIS BROAD PROCESS YOU'VE
4 DESCRIBED, WAS THERE DISCUSSION BETWEEN MICROSOFT
5 REPRESENTATIVES AND INTEL REPRESENTATIVES SEEKING
6 TO PERSUADE INTEL TO SUPPORT THE MICROSOFT 3-D
7 RENDERING STANDARDS AND NOT PURSUE THEIR 3DR
8 STANDARD?
9 A. THE WORD "STANDARD" IS NOT USED
10 CORRECTLY IN THE QUESTION.
11 Q. I APOLOGIZE. CHANGE THAT TO
12 TECHNOLOGIES.
13 A. AS I SAID, WE DID STUDY INTEL'S
14 TECHNOLOGY AND FELT THAT IT DID NOT MEET THE
15 CUSTOMER NEEDS THAT WE WERE GOING AFTER.
16 AND WHILE I DON'T HAVE DIRECT PERSONAL
17 RECOLLECTION OR KNOWLEDGE AT THIS STAGE OF ANY
18 SPECIFIC STATEMENT, MEETING, LETTER OR ANYTHING
19 ELSE, GIVEN OUR TECHNICAL STRATEGY AND THE STATUS
20 OF THE TWO TECHNOLOGY BASES, THE CORRECT THING
21 FOR OUR DEVELOPER CUSTOMERS AND, I THINK, FOR
22 DEVELOPMENT OF THE PC MARKETPLACE WOULD HAVE BEEN
23 FOR US TO ENCOURAGE INTEL NOT TO EVANGELIZE AND
24 PRODUCTIZE 3DR. AND THEREFORE, WHILE I SAID I
25 DIDN'T HAVE DIRECT PERSONAL KNOWLEDGE, IT WOULD

1 HAVE MADE SENSE.

2 Q. I UNDERSTAND YOU DON'T HAVE DIRECT OR

3 SPECIFIC PERSONAL KNOWLEDGE. IS IT YOUR BEST

4 RECOLLECTION THAT THAT MESSAGE, IN FACT, IN SOME

5 WAY, GENERALLY WAS DELIVERED TO INTEL?

6 A. I--

7 MR. BURT: OBJECT TO THE QUESTION AS

8 CALLING FOR SPECULATION, LACKING IN PROPER

9 FOUNDATION.

10 DON'T GUESS OR SPECULATE, BUT IF YOU

11 HAVE A RECOLLECTION, YOU SHOULD PROVIDE A

12 RESPONSE TO THE QUESTION.

13 THE WITNESS: WITHOUT REMEMBERING ANY

14 ONE SPECIFIC THING, I GENERALLY RECALL THAT WE

15 RECOMMENDED TO INTEL NOT TO PRODUCTIZE 3DR.

16 BY MR. MALONE:

17 Q. AND JUST GOING BACK TO SOMETHING YOU

18 SAID EARLIER, DO YOU RECALL GENERALLY THAT

19 MICROSOFT SAID TO INTEL THAT IF THEY DID

20 PRODUCTIZE 3DR, MICROSOFT WOULD NOT SUPPORT IT IN

21 WINDOWS?

22 A. I SAID THAT WE WERE PLANNING TO SUPPORT

23 DIRECT 3D, INTO WHICH WE MADE SIGNIFICANT

24 INVESTMENT, AND OPEN GL. I DON'T KNOW THAT WE

25 SPECIFICALLY SAID ANYTHING FURTHER THAN THAT, BUT

1 YOU CAN DRAW THE CONCLUSIONS THAT YOU WANT TO
2 FROM THAT.
3 Q. WAS IT YOUR UNDERSTANDING THAT A
4 CONCLUSION FROM THAT WAS CLEARLY THAT MICROSOFT
5 WOULD NOT SUPPORT 3DR?
6 A. YES, I THINK WE--I THINK WE DID NOT
7 SUPPORT 3DR, AND I EXPECT WE COMMUNICATED WE
8 WOULD NOT SUPPORT 3DR, JUST LIKE WE ALSO DIDN'T
9 SUPPORT OTHER 3-D API'S. THERE ARE ABOUT TEN 3-D
10 API'S, AND THERE ARE MANY WE DON'T SUPPORT.
11 (EXCERPT.)
12 Q. ONE LAST FOLLOW-UP, AND THEN I THINK
13 WE'RE DONE. I WON'T SAY ONE LAST QUESTION.
14 LAWYERS ALWAYS MAKE THAT MISTAKE, BUT ONE LAST
15 AREA.
16 YOU SAID A LITTLE EARLIER, AND I WILL
17 PARAPHRASE, AND IF I GET IT WRONG, PLEASE CORRECT
18 ME. I'M TRYING TO GET US BOTH BACK TO WHERE WE
19 WERE. YOU SAID THAT THE POTENTIAL FOR JAVA
20 CROSS-PLATFORM CAPABILITIES WAS NOT NECESSARILY
21 IN INTEL'S BEST INTERESTS.
22 DO YOU RECALL THAT?
23 A. I SAID THAT.
24 Q. WHAT DID YOU MEAN BY THAT? WHY WAS IT
25 NOT NECESSARILY IN INTEL'S BEST INTERESTS?

1 A. INTEL MAKES A SIGNIFICANT PORTION OF
2 THEIR PROFITS SELLING CPU'S OR PROCESSORS THAT
3 IMPLEMENT THE X86 INSTRUCTION SET. THEREFORE,
4 IT'S IN INTEL'S BEST INTERESTS FOR THERE TO BE AS
5 MUCH COMPUTER PROGRAMMING THAT'S BEEN COMPILED TO
6 THE X86 INSTRUCTION SET AS POSSIBLE AND SO
7 MAKE--HAVE RELATIVELY HIGH BARRIERS TO MOVING TO
8 ANY OTHER COMPUTER ARCHITECTURE.
9 Q. HOW, IF AT ALL, WOULD JAVA POTENTIALLY
10 AFFECT THAT?
11 A. ONE OF JAVA'S PROMISES IS THE ABILITY
12 TO WRITE COMPUTER PROGRAMMING THAT CAN RUN
13 WITHOUT MODIFICATION OR WITH MINIMUM MODIFICATION
14 ON OTHER COMPUTER ARCHITECTURES.
15 Q. AND WHAT EFFECT, IF ANY, WOULD THAT
16 HAVE ON ANY RELATIVELY HIGH BARRIERS, AS YOU
17 DESCRIBED IT, THAT MIGHT EXIST TO MOVING TO
18 ANOTHER ARCHITECTURE?
19 A. THE MORE SOFTWARE THAT'S PORTABLE TO
20 OTHER CPU'S, THE EASIER IT IS FOR OEM'S AND
21 CUSTOMERS TO MOVE TO ANOTHER CPU.
22 Q. IS IT THE CASE THAT IN THE ABSENCE OF
23 JAVA--FORGET ABOUT JAVA FOR A MINUTE--THAT THERE
24 ARE RELATIVELY HIGH BARRIERS TO OEM'S AND OTHERS
25 MOVING TO ANOTHER CPU, AS YOU JUST DESCRIBED?

1 MR. BURT: OBJECT TO THE QUESTION.
2 CALLS FOR SPECULATION. CALLS FOR IMPROPER
3 OPINION TESTIMONY. LACKS PROPER FOUNDATION.
4 BY MR. MALONE:
5 Q. IF YOU CAN ANSWER, GO AHEAD.
6 A. REPEAT THE QUESTION.
7 Q. SURE.
8 MR. MALONE: COULD YOU READ IT BACK.
9 (RECORD READ.)
10 THE WITNESS: THERE ARE (SIC) A VARIETY
11 OF CPU ARCHITECTURES AVAILABLE TODAY. MACINTOSH,
12 FOR EXAMPLE, USES THE POWER PC. SUN USES THE
13 SPARK (SIC) ARCHITECTURE. DIGITAL, NOW OWNED BY
14 COMPAQ, USES THE ALPHA ARCHITECTURE. AND THERE
15 ARE (SIC) A VARIETY OF OTHERS.
16 THE X86 ENVIRONMENT HAS ACHIEVED
17 ENORMOUS ECONOMIES OF SCALE. AND FOR A VERY
18 LARGE SEGMENT OF THE MARKET, IT'S MUCH MORE
19 COST-EFFECTIVE AND HAS THE BROADEST LEVEL OF
20 SOFTWARE SUPPORT. SO, FOR SPECIFIC MARKET
21 SEGMENTS, OTHER ARCHITECTURES ARE VERY, VERY
22 COMPETITIVE. BUT FOR SOME SEGMENTS, THE X86
23 ARCHITECTURE HAS A CLEAR ADVANTAGE.
24 Q. WHEN YOU SAY THE X86 ENVIRONMENT HAS
25 THE BROADEST LEVEL OF SOFTWARE SUPPORT, WHAT DO

1 YOU MEAN?

2 A. I MEAN THERE IS MORE X86 SOFTWARE THAN

3 SOFTWARE FOR OTHER ARCHITECTURES, ESPECIALLY

4 PACKAGED SOFTWARE. BY "PACKAGED SOFTWARE," I'M

5 THINKING THE SORT OF STUFF YOU CAN EASILY GO BUY

6 FROM THE INTERNET. WE USED TO USE THE TERM

7 "SHRINK-WRAPPED," BUT WHAT DOES THAT MEAN

8 ANYMORE, BECAUSE MOST SOFTWARE IS NOT SOLD

9 THROUGH RETAIL ANYMORE. BUT THAT'S WHAT I MEAN.

10 Q. WHAT IMPACT DOES THE BROAD AVAILABILITY

11 FOR THE X86 ENVIRONMENT HAVE ON WHETHER OR NOT

12 USERS OF X86 COULD OR WOULD SWITCH TO ONE OF

13 THESE OTHER CPU ARCHITECTURES YOU DESCRIBED?

14 MR. BURT: OBJECT TO THE QUESTION.

15 CALLS FOR IMPROPER OPINION TESTIMONY. LACKS

16 PROPER FOUNDATION. CONTAINS VAGUE AND AMBIGUOUS

17 TERMS.

18 YOU CAN ANSWER.

19 THE WITNESS: PLEASE READ ME THE

20 QUESTION AGAIN.

21 (RECORD READ.)

22 BY MR. MALONE:

23 Q. AND IT SHOULD BE BROAD AVAILABILITY OF

24 SOFTWARE FOR THE X86 ENVIRONMENT.

25 A. THE BROAD AVAILABILITY OF THE SOFTWARE

1 IS CERTAINLY A BIG SELLING POINT FOR PURCHASING
2 OF X86-BASED COMPUTERS, NO QUESTION ABOUT THAT.
3 THERE ARE ALTERNATIVES AVAILABLE.
4 Q. WHEN YOU USED THE TERM RELATIVELY HIGH
5 BARRIERS EARLIER IN YOUR ANSWER, WHAT DID YOU
6 MEAN BY THAT?
7 A. IT WOULD TAKE A LONG AMOUNT OF TIME TO
8 DEVELOP SUCH A BROAD BASE OF SOFTWARE ON ANOTHER
9 ARCHITECTURE.
10 Q. AND WHAT DO YOU MEAN BY DESCRIBING THAT
11 AS A RELATIVELY HIGH BARRIER? WHAT DOES THAT
12 MEAN?
13 A. THAT IT WOULD--I'M SAYING IT WOULD TAKE
14 A LONG TIME FOR ANOTHER ARCHITECTURE TO HAVE THE
15 SAME AMOUNT OF SOFTWARE.
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