

Exhibit 10

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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IN RE MICROSOFT CORP.
ANTITRUST LITIGATION

This Document Relates to:
Novell, Inc. v. Microsoft Corporation

Civil Action
No. JFM-05-1087

DEPOSITION OF:
WILLIAM HENRY GATES III

March 4, 2009

10:38 a.m.

VIDEOTAPED DEPOSITION BEFORE KELLY A.
HERRICK, at K&L Gates, 925 Fourth Avenue,
Suite 2900, Seattle, Washington, on Wednesday,
March 4, 2009, commencing at 10:38 a.m. in the
morning, pursuant to Notice.

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1 thought, okay, at this time everything they are
2 talking about will necessarily be there by the
3 time the product gets shipped.

4 Q Did you have any involvement in the
5 decision to tell the WordPerfect developers that
6 Microsoft had decided to document the shell
7 extensions?

8 MR. HOLLEY: Objection: Asked and
9 answered. I think we're on Round 6.

10 MR. JOHNSON: Just trying to get an
11 answer to the question.

12 MR. HOLLEY: I think you've gotten
13 one.

14 MR. JOHNSON: No, I haven't. I've
15 gotten a bunch of stuff about what happens
16 in the future.

17 BY MR. JOHNSON:

18 Q I want to know, did you -- were you
19 involved in that decision to tell the WordPerfect
20 developers that Microsoft had decided to document
21 the shell extensions, as Mr. Cole states, with
22 respect to his visit to WordPerfect on
23 November 15th?

24 A The notion of what features were going to
25 be in the shell was not decided at this time, and

1 so certainly I wasn't, nor was anybody else,
2 involved in the decision about exactly what would
3 be committed to in terms of features.

4 Q What's a beta software release,
5 Mr. Gates?

6 A It's an early release that's not complete.

7 Q Are there also alpha releases?

8 A Sometimes yes, sometimes no.

9 Q What distinguishes an alpha release
10 from a beta release?

11 A No particular criteria. They are both
12 flakier than the final release.

13 Q Were there alpha and beta releases
14 in connection with the development of Chicago?

15 A I know there was one we labeled beta. I
16 don't know if we labeled any of the earlier ones
17 alpha or not.

18 Q What's the purpose of giving ISVs
19 alpha and beta releases?

20 MR. HOLLEY: Object to the form of
21 the question.

22 THE WITNESS: It's a decision to
23 let them play around with it. You know
24 that things still can change in terms of
25 the user interface, the performance in the

1 features, but if you give them an early
2 version, maybe you'll get some feedback
3 that will help guide the tradeoffs you're
4 going to make, maybe they'll find some
5 problems that you can fix.

6 BY MR. JOHNSON:

7 Q Don't you want ISVs to take
8 advantage of the new product, sir?

9 A It's a tradeoff in terms of how early you
10 give it out because your uncertainty about what's
11 going to be in the final product is greater the
12 further you get back before it, but, yeah, part
13 of the reason you give out early releases is so
14 people have an awareness.

15 Q You hope they will take advantage
16 of the new features in the product, correct, sir?

17 A Not entirely. You've got to be careful
18 because the earlier you are, the more uncertain
19 you are about what features are going to be in
20 the product.

21 And, in fact, in all big software
22 projects like this, there's a lot of things that
23 are in the early stage of the product that don't
24 make it into the final product.

25 Q Can you tell me what an SDK is,

1 sir?

2 A That's an acronym for software development
3 kit.

4 Q What is an SDK? Beyond the
5 description as a software development kit what's
6 it used for?

7 A Software development.

8 Q Good answer. Is it possible to an
9 ISV who's trying to create a product for a new
10 operating system to have the SDK?

11 A Sometimes yes, sometimes no. The SDK,
12 often all you need is the product itself,
13 sometimes you want some extra tools that go with
14 it.

15 Q Does the SDK provide ISV developers
16 with information about how to take advantage of,
17 for instance, new APIs in the operating system?

18 A Usually that's in the documentation, which
19 might be separate from the SDK, it might come
20 from a third-party, or it might be included in
21 the SDK.

22 Q So that's one of the things that
23 could be included with the SDK, information that
24 ISV developers would use to take advantage of the
25 new APIs in the operating system, right?

1 A Sometimes you put documentation in it.
2 Sometimes that's a separate thing.

3 Q When does it make sense for an ISV
4 to begin developing an application for a new
5 operating system release, how many months before
6 the release?

7 A Well, it's a tradeoff that they have to
8 make. If they -- the earlier they start, the
9 more you're at risk that things are going to get
10 delayed or change, and the later you start, that
11 probably means you'll have more certainty about
12 what's going to be in there, what's the
13 performance, and all that, but it probably means
14 that you're not starting as soon if you wait.

15 So people often wait until
16 something is completely done and shipping,
17 there's people who wait until a year after it's
18 been shipping to make absolutely sure that it's
19 solid and well done. Some people decide to start
20 early.

21 It's one of those decisions that
22 you have to make, given finite resources, is that
23 something you are choosing to do or not?

24 Q Do you recall being deposed in
25 February 2002 in connection with the California

PAGE SEPARATOR

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Civil Action
No. JFM-05-1087

DEPOSITION OF:
WILLIAM HENRY GATES, III
VOLUME II

May 19, 2009

9:49 a.m.

VIDEOTAPED DEPOSITION BEFORE ZOYA O.
SPENCER, at K & L GATES, 925 Fourth Avenue, Suite
2900, Seattle, Washington, on May 19, 2009,
commencing at 9:49 in the morning, pursuant to
notice.

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1 not separate applications.

2 Q So you knew when you made this
3 decision that the namespace extensions would
4 remain in Windows 95 for these MS-provided views,
5 correct?

6 A The decision here is that what we've ended
7 up with is so trivial that it won't affect
8 Chicago, it won't affect Capone, it does not
9 provide a high level of integration. And so the
10 decision here is, hey, this thing basically has
11 become unimportant. You can use it from things
12 that are inside Windows itself, but that's it.

13 Q So the answer to the question is
14 yes.

15 A Now, I'm sorry, ask me the question again.

16 Q You knew when you made this
17 decision that the namespace extensions would
18 remain in Windows 95, correct?

19 A I was -- it's not -- the decision I was
20 making in this memo is about: Is this an
21 important thing. And I'm saying that it's not.

22 The question of whether they kept
23 it around for internal usage, that's up to them.
24 We always had a policy that the way Windows calls
25 itself internally, we didn't commit that all

1 those things would stay the same. And so there's
2 about a hundred times as many interfaces internal
3 to Windows as there are published where we say,
4 okay, we are committing for application
5 compatibility we'll keep this around. So
6 certainly they could keep using that as an
7 internal interface, but I don't know if they --
8 if they chose to.

9 Q Mr. Gates, isn't it a fact that the
10 decision you were making was not to publish these
11 extensions?

12 A That was one of the -- I decided that they
13 had done so little in terms of the integration
14 opportunity that it didn't matter for any of the
15 products, and therefore that the applications
16 that shipped separately from us and others should
17 not call those APIs. And so that decision is --
18 is what this e-mail is.

19 And I say it won't affect Chicago,
20 won't affect Capone; let's try and come up with
21 something really meaningful, which is a high
22 level of integration. I was hoping that that
23 would happen in the future. And so yes, these
24 APIs I say are not -- are not -- these aren't
25 going to be published APIs and so our

1 applications won't use them, third party
2 applications won't use them.

3 Q But in fact the namespace
4 extensions would remain in Windows 95 for these
5 MS provided views; is that correct, sir?

6 A I don't know if they did or not. There's
7 a lot of internal interfaces inside of Windows
8 that are not published as APIs, and that's
9 because we can go and change those things without
10 breaking compatibility. And so there's a myriad
11 of internal interfaces of various types, and
12 yeah, they -- Windows does call into itself, it
13 has to, every piece of software does, in ways
14 that are different than what it commits to
15 maintain indefinitely.

16 Q I would like to draw your attention
17 to the next paragraph of this e-mail from you,
18 October the 3rd, 1994, where you add a few words
19 about the recent shell reorganization.

20 Are you with me, sir?

21 A Yeah, it looks like we didn't need to go
22 to another memo to realize that the shell
23 reorganization predated this October 3rd.

24 Q Actually that question had to do
25 with moving the Chicago API set to Windows NT.

1 A No, no, no.

2 Q It was a different question.

3 A No, sir. You are confused.

4 Q Was the decision --

5 A That was about the shell integration.
6 There were no APIs moved.

7 Q You state here in this paragraph,
8 quote, "Having the Office team really think
9 through the information intensive scenarios, and"
10 being -- "be a demanding client of systems is
11 absolutely critical to our future success. We
12 can't compete with Lotus and WordPerfect/Novell
13 without this."

14 Why did you state that, sir?

15 A I'm sorry?

16 Q Why did you state that?

17 A I wanted Office to be a group that was
18 coming up with new ideas and, you know, asking us
19 to push the state of the art.

20 Q And why didn't you think MS Office
21 could compete with Novell and WordPerfect without
22 this?

23 A I -- without innovation, without the
24 Office group thinking ahead to new scenarios, I
25 didn't think that our software would end up being

1 the best. And so I liked the Office team
2 thinking through information intensive scenarios;
3 that's basically what Office does. They come in
4 and think, okay, I have this business decision to
5 make. This is an information intensive scenario,
6 I've got to think, okay, what am I to write in
7 way of applications.

8 And so saying that the Office team
9 should really think through the information --
10 information intensive scenarios, that's what the
11 Office group does, that's key to their
12 competition. They have to be the ones that are
13 anticipating the needs of information workers
14 better than anybody else.

15 Q Isn't it a fact, sir, that what you
16 wanted to do was have Office take advantage of
17 the new shell features first?

18 A No, they -- as you can see in this memo, I
19 say that we weren't -- what had become -- what
20 had been done was so trivial that it was not a
21 high level of integration, it didn't matter, our
22 applications did not use it, it did not come up
23 in any competitive sense. These were not called
24 by our applications.

25 Q Isn't it a fact, sir, that the

1 Office96 was planning to use the namespace
2 extensions developed for Chicago that you had
3 decided to pull?

4 MR. HOLLEY: Object to the form of
5 the question.

6 THE WITNESS: That Cairo had a type
7 of integration that was actually quite
8 different, and they were still playing
9 around with that. And if they had
10 succeeded, it might have become a high
11 level integration. But it was quite
12 different and actually quite a bit more
13 ambitious than anything being discussed
14 here. That's the work that -- that was
15 cancelled.

16 BY MR. JOHNSON:

17 Q I hand you now what has been marked
18 as Gates Exhibit 15. This is a document -- this
19 is actually the document that we were talking
20 about when the first session ended. This is a
21 document entitled Chicago Explorer Superset and
22 Replacement.

23 MR. HOLLEY: So this has already
24 been marked as 15?

25 MR. JOHNSON: Correct. Do you have

1 that?

2 MR. HOLLEY: I have one, yes,
3 thanks. Steve may --

4 THE WITNESS: Is there a date on
5 this thing?

6 BY MR. JOHNSON:

7 Q Mr. Gates, I must say one thing,
8 you're consistent. That's the first thing you
9 asked the last time I showed it to you. And yes,
10 it does have some revision dates on the fourth or
11 fifth page, but be that as it may.

12 This is the exhibit we were talking
13 about at the conclusion of your last deposition,
14 Mr. Gates and --

15 A I don't remember that.

16 Q And if you'll look at the page with
17 the Bates stamp ending 800, sir. And drawing
18 your attention towards the bottom of the page
19 after the eight listed items that are numbered.
20 Quote, "The Office Explorer implementation
21 strategy is to leverage the Chicago shell team's
22 work as much as possible. Chicago provides some
23 of the crucial interfaces that will simplify our
24 work, these include: IShellFolder" -- and if you
25 go to the next page -- IShellView.

1 going to ask questions about the e-mail I
2 actually handed you, which is Gates Exhibit 27.

3 This is an e-mail chain involving
4 Brad Silverberg, Russell Siegelman and yourself?

5 A And Paul Maritz, right. Yeah, the top
6 e-mail. And then the bottom e-mail has more
7 people.

8 Q And it concerns -- the subject
9 matter is a proposed iShellBrowser solution for
10 Marvel. And apparently Mr. Siegelman -- what was
11 his position at that time?

12 A He was involved in the Marvel work.

13 Q He tells you that there's only one
14 solution that avoids risk to Marvel: Using the
15 Chicago implementation of the iShellBrowser.

16 Do you see that, sir?

17 A Yes.

18 Q And you understood from
19 Mr. Siegelman at least, that if Marvel was forced
20 to write their own extensions, that it was quite
21 possible that Marvel would not make Chicago?

22 A That's what he's saying in the bottom
23 e-mail that goes to more people, right.

24 Q Do you have any doubts about that?

25 A I have no doubt that's what he was saying

1 in the bottom e-mail.

2 Q Mr. Siegelman also told you that if
3 a private version -- version of the extensions
4 were made for Marvel, the only acceptable risk
5 would be to have the Chicago team do it, correct?

6 A Yeah, I don't know what he means by that.

7 Q Well, he states, quote -- this is
8 on the second page Bates stamped 46 at the end --
9 "It would be crazy to try to have the Marvel team
10 maintain a private version of code that the
11 Chicago team wrote and maintains, especially at
12 this late date," close quote.

13 Do you see that, sir?

14 A Yeah, but I don't know what he means by a
15 private version. I don't -- that doesn't make
16 any sense to me. But he's -- he's -- has a
17 problem, and he's trying to suggest some
18 solutions. And it's not clear what alternative 3
19 would mean, but he does give other choices as
20 well.

21 Q In fact he characterizes the
22 creation of a private version of the extensions
23 for Marvel as lunacy, correct, sir?

24 A Where do you see that?

25 Q On the same page we were just

1 looking at, the next paragraph down, quote, "This
2 solution may sound like lunacy, but that should
3 give us some pause for the approach that we are
4 taking," close quote.

5 A He certainly thought some of the
6 approaches that we were suggesting were lunacy.

7 Q Now Mr. Silverberg jumps into the
8 debate again in a response to Mr. Siegelman with
9 a cc to you and Mr. Maritz and he argues again
10 that the extensions should be made public, right?

11 A Yes, but the problem is that you usually,
12 when you make an API public, are suggesting that
13 that API will be maintained in the future. It's
14 kind of a strange thing to make an API public and
15 say, hey, by the way, this is going to break in
16 the future, because most of the APIs are the
17 things that you're trying to preserve going
18 forward for application compatibility. And so
19 it -- it's not an attractive solution to say,
20 okay, here's this API but, by the way, it might
21 break in the future.

22 It's a possible thing to do, but
23 it's not something that I recall that we did on a
24 regular basis. And so it wouldn't be public in
25 the normal sense. It would be public in the

1 sense of, okay, here it is, you can use it, but
2 it -- it may break. Or we could make the
3 commitment for the future, but Brad knew there
4 were people who thought that was more trouble
5 than it was worth because the whole thing had
6 gotten so trivial since the key features were
7 never done. The whole topic, you know, wasn't
8 going to affect Chicago's success, Capone's
9 success. No applications were going to use this
10 thing.

11 Q And this trivial thing was one of
12 the APIs -- set of APIs that were transferred in
13 toto from the Chicago code to NT, right?

14 A No, no. The -- we used the same code base
15 for the shell. We didn't transfer, we used the
16 same code base.

17 Q Okay. I will express it that way.
18 You used the same code base in NT that had been
19 used in Chicago, including the namespace
20 extensions; correct, sir?

21 A We used the same shell code base.

22 Q Including the namespace extensions;
23 correct, sir?

24 A The -- whatever happened to the namespace
25 extensions would be the same in Chicago and NT.

1 Q And Mr. Silverberg also informed
2 you that the ISVs that are using these extens- --
3 extensions include WordPerfect, Lotus, Semantec
4 and Oracle; isn't that correct, sir?

5 A Yeah. I think it turned out he was
6 exaggerating, but that's what this e-mail says.

7 Q Mr. Silverberg was exaggerating; is
8 that your testimony, sir?

9 A On this particular topic I think it turned
10 out that that was an exaggeration.

11 Q Really? What is the basis for your
12 believer that Mr. Silverberg was exaggerating to
13 you?

14 A Hmm, I think when it was all revolved that
15 the number of ISVs using it was -- was very few.

16 Q Did you ever talk to anybody at
17 WordPerfect about their use of these namespace
18 extensions?

19 A No.

20 Q Mr. Silverberg also informs you
21 that the Chicago shell needs these extensions and
22 they haven't figured a way to take them out;
23 correct, sir?

24 A Well, there was never a discussion about
25 not letting the shell internally call some of

1 these capabilities. That was never considered,
2 that's just an internal issue. The issue is do
3 you have applications using them. And of course
4 the decision had already been made that the
5 applications, which are Word, Excel, Office,
6 would not use them. And so, you know, Microsoft
7 applications in fact never did use any of these
8 APIs.

9 Q Do you think Mr. Nakajima would be
10 knowledgeable about whether Microsoft
11 applications used the namespace extensions?

12 A I have no idea. He's not in the
13 applications group, so he's not the first person
14 or even the hundredth person that you would want
15 to ask that question to. He's not involved.

16 (Exhibit No. 28 was marked.)

17 MR. JOHNSON: Let me show you what
18 has been marked Gates Exhibit 28. That's
19 the one you had, Steve.

20 MR. HOLLEY: Okay, thanks.

21 BY MR. JOHNSON:

22 Q You've now been handed Gates
23 Exhibit 28 which is an e-mail chain from November
24 of 1994 involving you and Mr. Brian Fleming and
25 Mr. Maritz, which was the questions I started out

1 earlier with but we weren't looking at the right
2 document but now we are.

3 Again I had asked you about
4 Mr. Fleming. You said he was a Microsoft
5 employee but you didn't know what he did.

6 A At this particular time. There was a
7 period he was my technical assistant, as I said.

8 Q Your personal technical assistant?
9 I don't quite understand the title. What did he
10 do?

11 A It's -- if I wanted somebody to go look
12 into something technical, he would go and do it.
13 But it's -- it's not a management position, but
14 it's a person who helped me out with things. But
15 it's not an assistant in the sense of a
16 secretary, it requires an engineering background.

17 Q So Mr. Maritz tells you that Marvel
18 can't ship on time unless it uses the iShell
19 extensions, correct?

20 A Yeah, Mr. Maritz explains how the whole
21 thing finally came out. We finally get to the
22 end and we see that -- what -- what's happened
23 here.

24 Q And Mr. Maritz talks about docu- --
25 not documenting them in regular documentation but

1 will have them documented in a resource kit so
2 that if somebody really, really does want to use
3 them, they can. And he goes on to say that in
4 theory someone could have done likewise.

5 Apart from theory, are you aware of
6 any of ISV other than Microsoft that actually
7 used the unpublished namespace extensions at any
8 time in 1995?

9 A I don't believe we ever used them in any
10 application, so I don't know what you're --
11 you're trying to imply by talking about
12 Microsoft.

13 Q Well, we already know that they
14 were being used from Microsoft-provided views
15 within Chicago, right?

16 A That's not an application, that's just an
17 internal interface.

18 Q I didn't say it was an application
19 Mr. Gates. I said we already know --

20 A It's not being used as an API. Internal
21 interfaces are not APIs, so it's completely
22 incorrect to say when a piece of software calls
23 inside itself that that's using an API.

24 Q And we also know that Capone and
25 Marvel were using them, correct? In fact, this

1 e-mail is about the fact that Marvel has to use
2 them in order to ship on time, right?

3 MR. HOLLEY: Objection, misstates
4 the substance of the document.

5 THE WITNESS: I think if you look
6 at this e-mail, it says that Capone did
7 not use them. It's a very easy thing to
8 factually check, to go look at Capone and
9 see if it used this or not. It's very
10 easy to get that data.

11 It looks like from Maritz's e-mail
12 that the only thing that he knows about
13 that's using this thing is a piece of
14 Windows itself, Marvel, which ships with
15 Windows itself, and that he's decided that
16 the resource kit will document it and so
17 people can use it if they want, but we
18 will properly warn people that, unlike
19 most all the other APIs in the system,
20 that this one we do not say there will be
21 upwards compatibility.

22 BY MR. JOHNSON:

23 Q This resource kit, have you ever
24 seen any resource kit containing the namespace
25 extensions prior to the release of Windows 95 in

1 August of 1995?

2 A I don't have personal knowledge of what
3 was in particular resource kits during this time
4 frame.

5 Q Mr. Maritz says that ISVs would
6 only have the capability of opening in a separate
7 window, like Marvel.

8 Do you see that, sir?

9 A Yeah, that's the way they ended up being
10 implemented. It was all top-level window.

11 Q I see. Do you recall, sir, that
12 Athena, however, was able to integrate itself
13 directly into the explorer?

14 A What are you talking about? What do you
15 mean when you say "Athena"?

16 Q Athena. You're not familiar with
17 the Athena product?

18 A No. What is Athena?

19 Q You state in your response to
20 Mr. Brian Fleming that basically Microsoft,
21 quote, "gave up because of marvel and paul will
22 check into the add on pack," close quote.

23 What is the add-on pack you were
24 referring to? Is that the same as the resource
25 kit or is that something different?