

VIDEOTAPED DEPOSITION EXCERPTS OF BILL GATES

13 BY MR. HOUCK:

14 QUESTION: IN OR ABOUT JUNE 1995,
15 MR. GATES, DID YOU BECOME INVOLVED IN THE
16 PLANNING FOR SOME MEETINGS WITH NETSCAPE?

17 ANSWER: NO.

18 QUESTION: THE E-MAIL I WANT TO ASK YOU
19 ABOUT FIRST, MR. GATES, IS DATED JUNE 1ST, 1995,
20 AND THE VERY TOP PORTION INDICATES THAT THE
21 BOTTOM PORTION IS BEING SENT TO YOU FOR YOUR
22 INFORMATION BY PAUL MARITZ, AND THE BOTTOM
23 PORTION IS AN E-MAIL FROM THOMAS REARDON, DATED
24 JUNE 1, 1995, ON THE SUBJECT OF WORKING WITH
25 NETSCAPE.

1 DO YOU RECALL RECEIVING THIS MEMORANDUM OR
2 E-MAIL?

3 ANSWER: E-MAIL, NO.

4 QUESTION: ALL RIGHT. I APOLOGIZE FOR USING
5 MY OLD-FASHIONED TERMINOLOGY.

6 YOU DON'T RECALL RECEIVING THIS E-MAIL
7 PARTICULARLY?

8 ANSWER: NO.

9 QUESTION: THE E-MAIL STATES, 'DAN AND BARB
10 AND I MET LATE YESTERDAY TO REVIEW OUR RECENT
11 DISCUSSIONS WITH NETSCAPE AND FORM OUR NEXT FEW
12 ACTION ITEMS. DAN IS MEETING WITH JIM BARKSDALE,
13 THEIR CEO, SHORTLY.'

14 DO YOU UNDERSTAND THE REFERENCE TO DAN TO BE
15 A REFERENCE TO DAN ROSEN?

16 ANSWER: PROBABLY.

17 QUESTION: IS THE REFERENCE TO BARBARA A
18 REFERENCE TO BARBARA FOX?

19 ANSWER: I MEAN, YOU COULD ASK THOMAS.
20 PROBABLY.

21 QUESTION: DO YOU HAVE ANY UNDERSTANDING,
22 SIR?

23 ANSWER: BASED ON--I HAVE NEVER SPOKEN WITH
24 THOMAS ABOUT THIS. I DON'T REMEMBER SEEING THE
25 E-MAIL.

1 QUESTION: DO YOU RECALL SPEAKING TO ANYONE
2 ABOUT THE MEETING REFERRED TO HERE BETWEEN DAN
3 ROSEN AND JIM BARKSDALE?

4 ANSWER: NO.

5 QUESTION: THE E-MAIL GOES ON TO LIST
6 WORKING GOALS, WHICH ARE, ONE, LAUNCH STT, OUR
7 ELECTRONIC PAYMENT PROTOCOL. GET STT PRESENCE ON
8 THE INTERNET. TWO, MOVE NETSCAPE OUT OF THE
9 WIN32 INTERNET CLIENT AREA. THREE, AVOID COLD OR
10 HOT WAR WITH NETSCAPE. KEEP THEM FROM SABOTAGING
11 OUR PLATFORM EVOLUTION.

12 DO YOU UNDERSTAND THE REFERENCE TO WIN32
13 INTERNET CLIENT TO BE A REFERENCE TO WINDOWS 95?

14 ANSWER: NO.

15 QUESTION: WHAT DO YOU UNDERSTAND IT TO BE A
16 REFERENCE TO?

17 ANSWER: WIN32.

18 QUESTION: AND CAN YOU DESCRIBE WHAT THAT
19 IS.

20 ANSWER: 32-BIT WINDOWS.

21 QUESTION: IS WINDOWS 95 A 32-BIT WINDOWS
22 PRODUCT?

23 ANSWER: IT'S ONE OF THEM.

24 QUESTION: WERE THERE ANY OTHER 32-BIT

25 PRODUCTS IN DEVELOPMENT IN JUNE OF 1995?

1 ANSWER: CERTAINLY.

2 QUESTION: WHICH ONES?

3 ANSWER: WINDOWS NT.

4 QUESTION: DO YOU KNOW WHETHER MR. REARDON
5 WAS REFERRING TO WINDOWS NT AND WINDOWS 30 AND
6 WINDOWS 95, OR ONE OR THE OTHER?

7 ANSWER: WIN32'S A TERM THAT REFERS TO ALL
8 THE 32-BIT PLATFORMS.

9 QUESTION: AND AS I UNDERSTAND YOUR
10 TESTIMONY THAT THE 32-BIT PLATFORMS UNDER
11 DEVELOPMENT IN JUNE OF 1995 WERE WINDOWS NT AND
12 WINDOWS 95; IS THAT CORRECT?

13 ANSWER: NO. WINDOWS NT WAS SHIPPING, AND
14 THERE WAS A NEW VERSION THAT WAS UNDER
15 DEVELOPMENT.

16 QUESTION: AND WINDOWS 95 WAS IN DEVELOPMENT
17 AT THIS TIME?

18 ANSWER: CERTAINLY."

19 (PAUSE.)

20 "QUESTION: IN THE PORTION OF THE E-MAIL
21 DENOMINATED NUMBER TWO, WHICH IS "MOVE NETSCAPE
22 OUT OF WIN32/WIN95, AVOID BATTLING THEM IN THE

23 NEXT YEAR," THERE APPEARS THE FOLLOWING STATEMENT
24 IN THE SECOND PARAGRAPH, QUOTE, THEY APPEARED TO
25 BE MOVING FAST TO ESTABLISH THEMSELVES IN THE

1 VALUE-ADD APP BUSINESS BY LEVERAGING NETSCAPE
2 ITSELF AS A PLATFORM.

3 DO YOU RECALL WHETHER YOU AGREED THAT THAT'S
4 WHAT NETSCAPE WAS DOING BACK IN JUNE '95?

5 ANSWER: AT THIS TIME I HAD NO SENSE OF WHAT
6 NETSCAPE WAS DOING."

7 (PAUSE.)

8 "QUESTION: DO YOU RECALL, AS YOU SIT HERE
9 TODAY, APART FROM JUST READING THESE E-MAILS,
10 ANYTHING THAT WAS REPORTED BACK TO YOU BY ANY OF
11 THE PARTICIPANTS FROM MICROSOFT AT THIS JUNE 21ST
12 MEETING?

13 ANSWER: WELL, I THINK SOMEWHERE ABOUT THIS
14 TIME SOMEBODY SAID TO ME THAT--ASKED IF IT MADE
15 SENSE FOR US TO CONSIDER INVESTING IN NETSCAPE,
16 AND I SAID THAT THAT DIDN'T MAKE SENSE TO ME. I
17 DIDN'T SEE THAT AS SOMETHING THAT MADE SENSE.

18 QUESTION: DO YOU RECALL WHO SAID THAT TO
19 YOU?

20 ANSWER: IT WOULD HAVE BEEN PROBABLY
21 SUGGESTED IN A PIECE OF E-MAIL FROM DAN, I THINK.

22 QUESTION: DO YOU RECALL WHEN YOU GOT THAT

23 SUGGESTION, WHETHER IT WAS BEFORE OR AFTER THE

24 MEETING?

25 ANSWER: OH, IT WOULD HAVE BEEN AFTER THE

1 MEETING.

2 QUESTION: DO YOU RECALL ANYTHING ELSE THAT
3 ANYONE TOLD YOU BACK IN JUNE '95 ABOUT THE
4 MEETING?

5 ANSWER: NO."

6 (PAUSE.)

7 "BY MR. BOIES:

8 QUESTION: YOU ARE AWARE THAT IT HAS BEEN
9 ASSERTED THAT AT THAT MEETING THERE WAS AN
10 ATTEMPT TO ALLOCATE MARKETS BETWEEN NETSCAPE AND
11 MICROSOFT; CORRECT, SIR?

12 ANSWER: MY ONLY KNOWLEDGE OF THAT IS THAT
13 THERE WAS AN ARTICLE IN THE WALL STREET JOURNAL
14 VERY RECENTLY THAT SAID SOMETHING ALONG THOSE
15 LINES. OTHERWISE, NO.

16 QUESTION: IS IT YOUR TESTIMONY THAT THE
17 FIRST TIME THAT YOU WERE AWARE THAT THERE WAS AN
18 ASSERTION THAT THERE HAD BEEN A MARKETABLE
19 ALLOCATION MEETING OR AN ATTEMPT TO ALLOCATE
20 MARKETS AT A MEETING BETWEEN REPRESENTATIVES OF
21 MICROSOFT AND NETSCAPE WAS A RECENT WALL STREET
22 JOURNAL ARTICLE?

23 ANSWER: I'M NOT SURE HOW TO CHARACTERIZE
24 IT. THE FIRST THING--THE FIRST I HEARD ANYTHING
25 ABOUT THAT MEETING AND SOMEBODY TRYING TO

1 CHARACTERIZE IT IN SOME NEGATIVE WAY WAS AN
2 ANDREESSEN QUOTE THAT WAS IN THE WALL STREET
3 JOURNAL VERY RECENTLY, AND IT SURPRISED ME.

4 QUESTION: ARE YOU AWARE OF ANY INSTANCES IN
5 WHICH REPRESENTATIVES OF MICROSOFT HAD MET WITH
6 COMPETITORS IN AN ATTEMPT TO ALLOCATE MARKETS?

7 MR. HEINER: OBJECTION.

8 THE WITNESS: I'M NOT AWARE OF ANY SUCH
9 THING. I KNOW IT'S VERY MUCH AGAINST THE WAY WE
10 OPERATE.

11 BY MR. BOIES:

12 QUESTION: IT WOULD BE AGAINST COMPANY
13 POLICY TO DO THAT?

14 ANSWER: THAT'S RIGHT."

15 (PAUSE.)

16 "QUESTION: LET ME ASK YOU, DID YOU--WHEN
17 YOU SAW THE WALL STREET JOURNAL ARTICLE THAT
18 TALKED ABOUT A MAY MEETING IN TERMS OF ALLEGEDLY
19 MARKET DIVIDING CONDUCT, DID YOU TRY TO FIND OUT
20 WHETHER THERE HAD BEEN A MAY MEETING BETWEEN
21 REPRESENTATIVES OF MICROSOFT AND REPRESENTATIVES
22 OF NETSCAPE?

23 ANSWER: WELL, AGAIN, I WOULDN'T
24 CHARACTERIZE THE ARTICLE IN THAT WAY. WHEN I
25 READ THE ARTICLE, WHAT IT SAID INTERESTED ME

1 ENOUGH AND CONCERNED ME ENOUGH I DID SEEK TO FIND
2 OUT IF THERE WAS A MAY MEETING, BUT I DON'T THINK
3 THE ARTICLE IS WHAT YOU'RE SUGGEST--SAID WHAT
4 YOU'RE SUGGESTING. I MEAN, WE SHOULD GET A COPY
5 OF THE ARTICLE. I DON'T REMEMBER IT THAT WAY. I
6 REMEMBER ANDREESSEN TALKING ABOUT HOW HE HAD BEEN
7 IN FEAR THAT DON CORLEONE HAD COME TO SEE HIM.

8 AND, YOU KNOW, ONCE I REALIZED THAT THERE
9 WAS NO MEETING IN MAY AND THAT IT WASN'T--YOU
10 KNOW, THAT HE, AFTER THE MEETING, SAID HE ENJOYED
11 THE MEETING AND THAT IT WAS, YOU KNOW, JUST A
12 GROUP OF OUR GUYS DOWN THERE TRYING TO TALK ABOUT
13 IF THERE WAS ANYWAY AREAS OF COOPERATION, IT
14 SEEMED--THE WHOLE THING SEEMED VERY STRANGE TO
15 ME.

16 QUESTION: DID YOU TALK TO PEOPLE TO FIND
17 OUT WHETHER THERE WAS A MAY MEETING?

18 ANSWER: YES.

19 QUESTION: WHO DID YOU TALK TO?

20 ANSWER: I CONSULTED WITH MY LAWYERS.

21 QUESTION: OTHER THAN CONSULTING WITH YOUR
22 LAWYERS, DID YOU TRY TO FIND OUT WHETHER THERE

23 WAS A MAY MEETING?

24 ANSWER: WELL, MY LAWYERS, THEN, TALKED TO

25 ALL THE PEOPLE THAT MIGHT HAVE MET WITH NETSCAPE,

1 AND I MADE SURE THEY DID THAT PRETTY BROADLY.

2 QUESTION: YOU WERE INFORMED THAT THERE WAS
3 NO MAY MEETING; IS THAT YOUR TESTIMONY?

4 ANSWER: THAT'S THE UNDERSTANDING I WAS
5 GIVEN, YES, AND THEN I WAS GIVEN SOME OTHER
6 INFORMATION THAT I HAVE ALREADY MENTIONED.

7 QUESTION: BUT ALL OF THAT INFORMATION CAME
8 FROM YOUR LAWYERS AND NOT FROM NONLAWYER
9 EMPLOYEES OF MICROSOFT; IS THAT WHAT YOU'RE
10 SAYING?

11 ANSWER: IT CAME TO ME THROUGH MY LAWYERS.

12 QUESTION: DID YOU EVER HAVE A CONVERSATION
13 WITH ANYONE IN THE LAST 12 MONTHS, OTHER THAN
14 YOUR LAWYERS, CONCERNING WHETHER THERE WERE
15 MEETINGS IN MAY OR JUNE OF 1995 WITH NETSCAPE,
16 AND IF SO, WHAT HAPPENED AT THOSE MEETINGS?

17 ANSWER: WELL, THERE MIGHT HAVE BEEN A POINT
18 AFTER I GOT ALL THE DATA FROM THE LAWYERS WHERE I
19 SAID TO SOME OF THE PR PEOPLE WHAT AN OUTRAGEOUS
20 SLANDER THAT ARTICLE HAD BEEN AND HOW UNFAIR I
21 FELT IT WAS. AND SO, I MAY HAVE MENTIONED THAT
22 TO THEM.

23 QUESTION: DID YOU HAVE ANY CONVERSATIONS,
24 IN THE LAST 12 MONTHS, WITH ANY PERSON WHO WAS
25 DEALING WITH NETSCAPE IN 1995 ABOUT WHETHER THERE

1 WERE MAY OR JUNE MEETINGS, AND IF SO, WHAT
2 HAPPENED AT THOSE MEETINGS?

3 ANSWER: NO. I RELIED ON THE LAWYERS TO GO
4 AND MEET WITH THOSE PEOPLE AND GATHER THE FACTS
5 AND EDUCATE ME ABOUT WAS THERE A MAY MEETING AND
6 WHAT WAS THE AGENDA, WHAT WAS ANDREESSEN'S STATE
7 OF MIND AFTER THE MEETING, WHAT DID THE NOTES
8 LOOK LIKE. BUT THAT'S ALL VERY RECENT. THAT IS
9 AFTER THE JOURNAL ARTICLE.

10 QUESTION: NOW, HAVE YOU EVER READ THE
11 COMPLAINT IN THIS CASE?

12 ANSWER: NO.

13 QUESTION: HAVE YOU EVER RECEIVED A SUMMARY
14 OF THE COMPLAINT IN THIS CASE?

15 ANSWER: I WOULDN'T SAY I'VE RECEIVED A
16 SUMMARY, NO. I HAVE TALKED TO MY LAWYERS ABOUT
17 THE CASE, BUT NOT REALLY THE COMPLAINT.

18 QUESTION: DO YOU KNOW WHETHER IN THE
19 COMPLAINT THERE IS AN ASSERTION--I'M NOT TALKING
20 ABOUT THE WALL STREET JOURNAL ARTICLE. I'M
21 TALKING ABOUT THE COMPLAINT THAT WAS FILED LAST
22 MAY. DO YOU KNOW WHETHER IN THAT COMPLAINT THERE

23 ARE ALLEGATIONS CONCERNING A 1995 MEETING BETWEEN
24 NETSCAPE AND MICROSOFT REPRESENTATIVES RELATING
25 TO ALLEGED MARKET DIVISION DISCUSSIONS?

1 ANSWER: I HAVEN'T READ THE COMPLAINT, SO I
2 DON'T KNOW FOR SURE. BUT I THINK SOMEBODY SAID
3 THAT THAT IS IN THERE.

4 QUESTION: DID YOU FIND THAT OUT BEFORE OR
5 AFTER THE WALL STREET JOURNAL ARTICLE?

6 ANSWER: THE FIRST TIME I KNEW ABOUT THESE
7 ALLEGATIONS WAS THE WALL STREET JOURNAL ARTICLE,
8 SO--

9 QUESTION: THAT IS, THAT ARTICLE PRECEDED
10 ANY KNOWLEDGE THAT YOU HAD OR DIDN'T HAVE RELATED
11 TO THE COMPLAINT?

12 ANSWER: THAT'S RIGHT."

13 (PAUSE.)

14 "QUESTION: HAVE YOU EVER HAD DISCUSSIONS
15 WITHIN MICROSOFT ABOUT THE DESIRABILITY OF TRYING
16 TO UNDERMINE SUN BECAUSE OF WHAT SUN WAS DOING IN
17 JAVA?

18 ANSWER: I SAID TO YOU, PART OF OUR ACTIVITY
19 IS TO GO OUT AND WORK WITH CUSTOMERS TO SEE WHAT
20 IT TAKES TO HAVE THEM CHOOSE TO LICENSE OUR
21 PRODUCTS, AND THAT'S IN COMPETITION WITH MANY
22 OTHER COMPANIES, INCLUDING SUN."

23 (PAUSE.)

24 "QUESTION: I'M NOT NOW TALKING ABOUT WHAT

25 YOU DO IN COMPETITION WITH OTHER PRODUCTS OR

1 OTHER COMPANIES. WHAT I'M TALKING ABOUT IS
2 WHETHER OR NOT YOU'VE HAD DISCUSSIONS WITH PEOPLE
3 WITHIN MICROSOFT IN WHICH YOU TALKED ABOUT THE
4 NEED TO UNDERMINE SUN--USING THOSE WORDS, IF THAT
5 WILL HELP YOU--WITHIN MICROSOFT.

6 ANSWER: I DON'T REMEMBER USING THOSE WORDS.

7 QUESTION: YOU DON'T?

8 ANSWER: NO.

9 QUESTION: DO YOU THINK YOU DID USE THOSE
10 WORDS, OR YOU JUST DON'T KNOW, ONE WAY OR THE
11 OTHER?

12 ANSWER: I DON'T KNOW.

13 QUESTION: WOULD IT BE CONSISTENT WITH THE
14 WAY YOU FELT ABOUT JAVA, FOR YOU TO HAVE TOLD
15 PEOPLE THAT YOU WANTED TO UNDERMINE SUN?

16 ANSWER: AS I'VE SAID, ANYTHING ABOUT JAVA,
17 YOU'VE GOT TO SHOW ME A CONTEXT BEFORE I CAN
18 ANSWER, BECAUSE JUST THE TERM "JAVA" ITSELF CAN
19 MEAN DIFFERENT THINGS."

20 (PAUSE.)

21 "QUESTION: DID YOU HAVE DISCUSSIONS WITH
22 APPLE IN WHICH YOU WERE TRYING TO GET APPLE TO

23 AGREE TO HELP YOU UNDERMINE SUN?
24 ANSWER: THERE WAS SOME DISCUSSION ABOUT
25 WHAT RUNTIME API'S APPLE WOULD SUPPORT, WHETHER

1 THEY WOULD SUPPORT SOME OF OURS OR SOME OF SUN'S.
2 I DON'T THINK I WAS INVOLVED IN ANY DISCUSSIONS,
3 MYSELF, WITH APPLE ABOUT THAT.

4 QUESTION: WELL, LET ME SHOW YOU A DOCUMENT
5 AND TRY TO PROBE WHAT YOU MEAN BY BEING INVOLVED.
6 LET ME GIVE YOU A COPY OF A DOCUMENT THAT HAS
7 BEEN PREVIOUSLY MARKED AS GOVERNMENT EXHIBIT 265.

8 A PORTION OF THIS DOCUMENT IS AN E-MAIL
9 MESSAGE FROM YOU TO PAUL MARITZ AND OTHERS, AND
10 THE PORTION THAT I'M PARTICULARLY INTERESTED
11 IN--AND YOU CAN READ AS MUCH OF THE THREE-LINE
12 E-MAIL AS YOU WISH--IS THE LAST SENTENCE, WHICH
13 READS, QUOTE, DO WE HAVE A CLEAR PLAN ON WHAT WE
14 WANT APPLE TO DO TO UNDERMINE SUN, CLOSED QUOTES?

15 DID YOU SEND THIS E-MAIL, MR. GATES, ON OR
16 ABOUT AUGUST 8TH, 1997?

17 ANSWER: I DON'T REMEMBER SENDING IT.

18 QUESTION: DO YOU HAVE ANY DOUBT THAT YOU
19 SENT IT?

20 ANSWER: NO. IT APPEARS TO BE E-MAIL I
21 SENT.

22 QUESTION: DO YOU RECOGNIZE THAT THIS IS A

23 DOCUMENT PRODUCED FROM MICROSOFT'S FILES, DO YOU

24 NOT, SIR?

25 ANSWER: NO.

1 QUESTION: YOU DON'T?

2 ANSWER: WELL, HOW WOULD I KNOW THAT?

3 QUESTION: WELL, DO YOU SEE THE DOCUMENT
4 PRODUCTION NUMBERS DOWN AT THE BOTTOM?

5 ANSWER: I HAVE NO IDEA WHAT THOSE NUMBERS
6 ARE."

7 "QUESTION: LET ME GO BACK TO THE E-MAIL,
8 MR. GATES.

9 WHAT DID YOU MEAN WHEN YOU ASKED MR. MARITZ
10 WHETHER OR NOT, QUOTE, WE HAVE A CLEAR PLAN ON
11 WHAT WE WANT APPLE TO DO TO UNDERMINE SUN, CLOSED
12 QUOTE?

13 ANSWER: I DON'T REMEMBER.

14 QUESTION: DID YOU PERSONALLY PARTICIPATE IN

1 ANY CONVERSATIONS WITH APPLE IN 1997 AND 1998?

2 ANSWER: OF ANY KIND?

3 QUESTION: LET ME BE A LITTLE MORE SPECIFIC.

4 DID YOU PARTICIPATE IN ANY CONVERSATIONS

5 WITH APPLE IN 1997 OR 1998, CONCERNING WHAT APPLE

6 WOULD OR WOULD NOT DO THAT WOULD AFFECT MICROSOFT

7 COMPETITIVELY?

8 ANSWER: WELL, THERE WERE SOME CONVERSATIONS

9 WITH STEVE JOBS ABOUT MICROSOFT OFFICE AND

10 SOME--AND A RELATIONSHIP WE FORMED AROUND THAT

11 AND SOME OTHER ISSUES.

12 QUESTION: AND DID YOU PARTICIPATE IN THOSE

13 CONVERSATIONS?

14 ANSWER: I TALKED TO STEVE JOBS ON THE

15 PHONE, I THINK, TWICE.

16 QUESTION: AND WHAT WAS THE NATURE OF YOUR

17 CONVERSATIONS WITH MR. JOBS?

18 ANSWER: WELL, STEVE HAD--STEVE CALLED ME UP

19 AND SAID THAT HE HAD BECOME THE CEO OF APPLE,

20 SORT OF, AND THAT GIL AMELIO WASN'T THE CEO OF

21 APPLE. AND HE RAISED THE QUESTION OF WAS THERE

22 SOME BENEFICIAL AGREEMENT THAT WE COULD ENTER

23 INTO DIFFERENT THAN WE'D BEEN DISCUSSING WITH
24 GIL. AND IT WASN'T A VERY LONG CALL, BUT THE
25 CONCLUSION WAS THAT GREG MAFFEI WOULD GO SEE

1 STEVE."

2 (PAUSE.)

3 "QUESTION: AND WAS IT YOUR UNDERSTANDING
4 THAT MICROSOFT OFFICE FOR MACINTOSH WAS BELIEVED
5 BY APPLE TO BE VERY IMPORTANT TO THEM?

6 ANSWER: I REALLY HAVE A HARD TIME
7 TESTIFYING ABOUT THE BELIEF OF A CORPORATION. I
8 REALLY DON'T KNOW WHAT THAT MEANS.

9 QUESTION: WELL, SIR, IN MAKING THE
10 DECISIONS AS TO WHAT YOU WOULD ASK OF APPLE, DID
11 YOU BELIEVE THAT WHAT YOU WERE OFFERING APPLE
12 WITH RESPECT TO MICROSOFT OFFICE FOR MACINTOSH
13 WAS IMPORTANT ENOUGH TO APPLE SO THAT THEY OUGHT
14 TO GIVE YOU SOMETHING FOR IT?

15 ANSWER: I HAVE NO IDEA WHAT YOU'RE TALKING
16 ABOUT WHEN YOU SAY "ASK."

17 QUESTION: WELL, LET ME SHOW YOU A DOCUMENT
18 THAT HAS PREVIOUSLY BEEN MARKED AS GOVERNMENT
19 EXHIBIT 268. THIS IS A DOCUMENT BEARING
20 MICROSOFT DOCUMENT PRODUCTION STAMPS MS 98
21 0110952 THROUGH 53.

22 THE FIRST PART OF THIS PURPORTS TO BE A COPY

23 OF AN E-MAIL FROM DAN--DON BRADFORD TO BEN
24 WALDMAN, WITH A COPY TO YOU, MR. MARITZ AND
25 OTHERS, ON THE SUBJECT OF, QUOTE, JAVA ON

1 MACINTOSH/IE CONTROL.

2 DID YOU RECEIVE A COPY OF THIS E-MAIL ON OR
3 ABOUT FEBRUARY 13TH, 1998?

4 ANSWER: I DON'T KNOW."

5 "QUESTION: DO YOU HAVE ANY REASON TO DOUBT
6 THAT YOU RECEIVED A COPY OF THIS E-MAIL?

7 ANSWER: NO.

8 QUESTION: THE FIRST PARAGRAPH READS, QUOTE,
9 APPLE WANTS TO KEEP BOTH NETSCAPE AND MICROSOFT
10 DEVELOPING BROWSERS FOR MAC--BELIEVING IF ONE
11 DROPS OUT, THE OTHER WILL LOSE INTEREST (AND ALSO
12 NOT REALLY WANTING TO PICK UP THE DEVELOPMENT
13 BURDEN). GETTING APPLE TO DO ANYTHING THAT
14 SIGNIFICANTLY MATERIALLY DISADVANTAGES NETSCAPE
15 WILL BE TOUGH. DO YOU AGREE THAT APPLE SHOULD BE
16 MEETING--IT READS, DO AGREE THAT APPLE SHOULD BE
17 MEETING THE SPIRIT OF OUR CROSS-LICENSE AGREEMENT
18 AND THAT MACOFFICE IS THE PERFECT CLUB TO USE ON
19 THEM.

20 DO YOU HAVE AN UNDERSTANDING OF WHAT
21 MR. BRADFORD MEANS WHEN HE REFERS TO MACOFFICE
22 AS, QUOTE, THE PERFECT CLUB TO USE ON APPLE,

1 CLOSED QUOTE?

2 ANSWER: NO.

3 QUESTION: THE SECOND SENTENCE OF THAT
4 PARAGRAPH, THE ONE THAT READS 'GETTING APPLE TO
5 DO ANYTHING THAT SIGNIFICANTLY MATERIALLY
6 DISADVANTAGES NETSCAPE WILL BE TOUGH,' WAS IT
7 YOUR UNDERSTANDING IN FEBRUARY OF 1998 THAT
8 MICROSOFT WAS TRYING TO GET APPLE TO DO SOMETHING
9 TO DISADVANTAGE NETSCAPE?

10 ANSWER: NO.

11 QUESTION: DO YOU KNOW WHY MR. BRADFORD
12 WOULD HAVE WRITTEN THIS IN FEBRUARY OF 1998 AND
13 SENT A COPY TO YOU?

14 ANSWER: I'M NOT SURE.

15 QUESTION: DID YOU EVER SAY TO MR. BRADFORD,
16 IN WORDS OR IN SUBSTANCE, IN FEBRUARY OF 1988 OR
17 THEREAFTER, 'MR. BRADFORD, YOU GOT IT WRONG. WE
18 ARE NOT OUT TO SIGNIFICANTLY OR MATERIALLY
19 DISADVANTAGE NETSCAPE THROUGH APPLE?

20 ANSWER: NO.

21 QUESTION: DID YOU EVER TELL MR. BRADFORD OR
22 ANYONE ELSE IN FEBRUARY 1998 OR THEREAFTER THAT

23 THEY SHOULD NOT BE TRYING TO GET APPLE TO DO
24 THINGS THAT WOULD SIGNIFICANTLY OR MATERIALLY
25 DISADVANTAGE NETSCAPE?

1 ANSWER: NO.

2 QUESTION: WHAT WAS MR. BRADFORD'S POSITION
3 IN FEBRUARY OF 1998?

4 ANSWER: I THINK HE HAD A SMALL GROUP IN
5 CALIFORNIA THAT WORKED--I'M NOT SURE WHO HE
6 WORKED FOR. HE PROBABLY WORKED FOR SOMEBODY WHO
7 WORKED FOR SILVERBERG--NO. NO, I'M NOT SURE WHO
8 HE WORKED FOR.

9 QUESTION: LET'S BEGIN WITH WHAT COMPANY HE
10 WORKED FOR. HE CLEARLY WORKED FOR MICROSOFT;
11 CORRECT, SIR?

12 ANSWER: THAT'S RIGHT.

13 QUESTION: AND DO YOU KNOW WHAT HIS TITLE
14 WAS?

15 ANSWER: NO.

16 QUESTION: DO YOU KNOW WHO MR. WALDMAN IS?

17 ANSWER: YES.

18 QUESTION: WHAT WAS HIS TITLE IN FEBRUARY OF
19 1998?

20 ANSWER: I DON'T KNOW.

21 QUESTION: WHAT WERE HIS RESPONSIBILITIES IN
22 FEBRUARY OF 1998?

23 ANSWER: HE WAS--HE RAN A GROUP THAT WAS
24 DOING MACINTOSH SOFTWARE. NEITHER OF THESE GUYS
25 HAVE A TITLE LIKE `VICE PRESIDENT;' THAT I CAN

1 SAY FOR SURE. SO, THEY--YOU KNOW, THEY HAVE A
2 TITLE LIKE ENGINEER OR SOFTWARE ENGINEER,
3 SOFTWARE ENGINEER MANAGER, BUT I DON'T KNOW THEIR
4 TITLE. THEY'RE NOT EXECUTIVES.

5 QUESTION: IN ADDITION TO YOU AND
6 MR. MARITZ, COPIES OF THIS GO TO DAVID COLE, DAVE
7 REED, CHARLES FITZGERALD, AND JOHN DEVAAN.

8 DO YOU KNOW WHAT MR. COLE'S POSITION WAS IN
9 1998?

10 ANSWER: YES.

11 QUESTION: WHAT WAS IT?

12 ANSWER: HE WAS THE VP--ACTUALLY, I DON'T
13 KNOW VP OF WHAT, BUT HE WAS A VP WORKING FOR--I
14 DON'T KNOW IF WE REORGANIZED BY THEN. HE WAS IN
15 MARITZ'S ORGANIZATION SOMEWHERE."

16 (PAUSE.)

17 "QUESTION: AND MR. DEVAAN?

18 ANSWER: MR. DEVAAN WAS MANAGING THE OVERALL
19 OFFICE DEVELOPMENT.

20 QUESTION: DID YOU HAVE ANY CONVERSATIONS
21 WITH ANYONE WITHIN MICROSOFT AS TO WHAT POSITION
22 MICROSOFT SHOULD TAKE WITH APPLE IN TERMS OF WHAT

23 MICROSOFT SHOULD ASK APPLE FOR IN RETURN FOR

24 MICROSOFT DEVELOPING MACOFFICE?

25 ANSWER: WHAT TIME FRAME ARE YOU IN?

1 QUESTION: 1997 OR 1998.

2 ANSWER: WELL, IT ACTUALLY MAKES A BIG
3 DIFFERENCE. WE REACHED AN AGREEMENT WITH APPLE
4 IN 1997, AND THERE IS NO--I'M NOT AWARE OF ANY
5 AGREEMENT OTHER THAN THE 1997 ONE.

6 MR. BOIES: COULD I HAVE THE QUESTION READ
7 BACK.

8 (THE RECORD WAS READ AS FOLLOWS):

9 QUESTION: DID YOU HAVE ANY CONVERSATIONS
10 WITH ANYONE WITHIN MICROSOFT AS TO WHAT POSITION
11 MICROSOFT SHOULD TAKE WITH APPLE IN TERMS OF WHAT
12 MICROSOFT SHOULD ASK APPLE FOR IN RETURN FOR
13 MICROSOFT DEVELOPING MACOFFICE?

14 THE WITNESS: I'M NOT SURE WHAT YOU'RE
15 SAYING ABOUT MACOFFICE. WE DEVELOPED MACOFFICE
16 BECAUSE IT'S A PROFITABLE BUSINESS FOR US.

17 BY MR. BOIES:

18 QUESTION: WELL, YOU THREATENED TO CANCEL
19 MACOFFICE, DID YOU NOT, SIR?

20 ANSWER: NO.

21 QUESTION: YOU NEVER THREATENED APPLE THAT
22 YOU WERE GOING TO CANCEL MACOFFICE? IS THAT YOUR

23 TESTIMONY?

24 ANSWER: THAT'S RIGHT.

25 QUESTION: DID YOU EVER DISCUSS WITHIN

1 MICROSOFT THREATENING APPLE THAT YOU WERE GOING
2 TO CANCEL MACOFFICE?

3 ANSWER: YOU WOULDN'T CANCEL--NO."

4 "QUESTION: NOW, LET ME DIRECT YOUR
5 ATTENTION TO THE SECOND ITEM ON THE FIRST PAGE OF
6 THIS EXHIBIT. AND THIS PURPORTS TO BE AN E-MAIL
7 FROM MR. WALDMAN TO YOU, DATED JUNE 27, 1997; IS
8 THAT CORRECT, SIR?

9 ANSWER: THE SECOND ONE, UMM-HMM.

10 QUESTION: YOU HAVE TO ANSWER AUDIBLY YES OR
11 NO, MR. GATES.

12 ANSWER: YES, THE SECOND ONE.

13 QUESTION: NOW, IN THE SECOND PARAGRAPH OF
14 THIS E-MAIL TO YOU, THE SECOND SENTENCE READS,
15 QUOTE, THE THREAT TO CANCEL MACOFFICE 97 IS
16 CERTAINLY THE STRONGEST BARGAINING POINT WE HAVE,
17 AS DOING SO WILL DO A GREAT DEAL OF HARM TO APPLE
18 IMMEDIATELY,.

19 DO YOU SEE THAT, SIR?

20 ANSWER: UMM-HMM.

21 QUESTION: DO YOU RECALL RECEIVING THIS

1 E-MAIL IN JUNE OF 1997?

2 ANSWER: NOT SPECIFICALLY.

3 QUESTION: DO YOU HAVE ANY DOUBT THAT YOU
4 RECEIVED THIS E-MAIL IN JUNE OF 1997?

5 ANSWER: NO.

6 QUESTION: DO YOU KNOW WHY MR. WALDMAN WROTE
7 YOU IN JUNE OF 1997 THAT THE THREAT TO CANCEL
8 MACOFFICE 97 IS CERTAINLY THE STRONGEST
9 BARGAINING POINT WE HAVE, AS DOING SO WILL HAVE
10 DO A GREAT DEAL OF HARM TO APPLE IMMEDIATELY?

11 ANSWER: WELL, MR. WALDMAN WAS IN CHARGE OF
12 THIS UPDATE, AND THE MACOFFICE PRODUCT HAD BEEN
13 SHIPPING FOR OVER A DECADE BY NOW, AND THERE WAS
14 A FINANCIAL QUESTION OF WHETHER TO DO THIS
15 UPDATE. AND HE FELT IT MADE GOOD BUSINESS
16 SENTENCE TO DO IT. OTHER PEOPLE, IRRESPECTIVE OF
17 THE RELATIONSHIP WITH APPLE, HAD SAID THAT IT
18 DIDN'T MAKE SENSE TO DO THE UPDATE. AND SO,
19 THERE WAS SOME MAIL FROM BEN, INCLUDING THIS ONE,
20 WHERE HE WAS SAYING HE THOUGHT WE SHOULD GO AHEAD
21 AND FINISH THE PRODUCT.

22 I'M NOT SURE WHAT HE MEANS ABOUT THE

23 NEGOTIATIONS WITH APPLE. I'M NOT SURE WHAT WE

24 WERE NEGOTIATING WITH APPLE AT THIS POINT.

25 QUESTION: WAS THIS THE TIME THAT YOU WERE

1 NEGOTIATING WITH APPLE TO TRY TO FIND OUT WHAT
2 YOU COULD GET APPLE TO DO TO UNDERMINE SUN?

3 ANSWER: WELL, THE ONLY E-MAIL--THE ONLY
4 THING YOU'VE SHOWN ME WHERE THAT TERM WAS USED IS
5 AFTER WE REACHED A MACOFFICE AGREEMENT WITH
6 APPLE.

7 QUESTION: YOU'RE REFERRING TO YOUR E-MAIL
8 DATED AUGUST 8, 1997; IS THAT CORRECT?

9 ANSWER: THAT'S RIGHT.

10 QUESTION: THAT HAS BEEN MARKED AS
11 EXHIBIT 265; IS THAT CORRECT?

12 ANSWER: THAT'S RIGHT. THAT'S AFTER.

13 QUESTION: THAT'S AUGUST 8TH, 1997?

14 ANSWER: THAT'S RIGHT.

15 QUESTION: AND IT IS CLEAR FROM YOUR AUGUST
16 8TH, 1997, MEMO THAT YOU ARE STILL ATTEMPTING TO
17 GET APPLE TO DO ADDITIONAL THINGS, IS IT NOT,
18 SIR?

19 ANSWER: NO.

20 QUESTION: WELL, SIR, LET'S READ IT. IT IS
21 ONLY THREE LINES. YOU QUITE, QUOTE, I WANT TO
22 GET AS MUCH MILEAGE AS POSSIBLE OUT OF OUR

23 BROWSER AND JAVA RELATIONSHIP HERE.

24 AND WHEN YOU TALK ABOUT `HERE,' YOU'RE

25 TALKING ABOUT WITH APPLE, ARE YOU NOT, SIR?

1 ANSWER: I'M NOT SURE.

2 QUESTION: WELL, THE SUBJECT OF THIS IS `FW:

3 POST-AGREEMENT;' CORRECT, SIR?

4 ANSWER: YEAH. THAT'S WHAT MAKES ME THINK

5 THIS WAS PROBABLY POST-AGREEMENT.

6 QUESTION: POST-AGREEMENT WITH APPLE; RIGHT?

7 ANSWER: YES.

8 QUESTION: OKAY. SO, THE SUBJECT IS

9 POST-AGREEMENT WITH APPLE, AND THE VERY FIRST

10 SENTENCE SAYS, `I WANT TO GET AS MUCH MILEAGE AS

11 POSSIBLE OUT OF OUR BROWSER AND JAVA RELATIONSHIP

12 HERE.'

13 THE SECOND SENTENCE SAYS, `IN OTHER WORDS, A

14 REAL ADVANTAGE AGAINST SUN AND NETSCAPE.'

15 THE THIRD LINE SAYS, `WHO SHOULD AVI BE

16 WORKING WITH? DO WE HAVE A CLEAR PLAN ON WHAT WE

17 WANT APPLE TO DO TO UNDERMINE SUN?'

18 NOW, DO YOU HAVE ANY DOUBT THAT WHEN YOU

19 TALK ABOUT `I WANT TO GET AS MUCH MILEAGE AS

20 POSSIBLE OUT OF OUR BROWSER AND JAVA RELATIONSHIP

21 HERE,' YOU'RE TALKING ABOUT APPLE?

22 ANSWER: THAT'S WHAT IT APPEARS.

23 QUESTION: OKAY. DO YOU HAVE ANY
24 RECOLLECTION OF ANY DISCUSSIONS ABOUT THE SUBJECT
25 MATTER OF THIS E-MAIL IN OR ABOUT AUGUST OF 1997?

1 IF THE QUESTION WAS CONFUSING, I WOULD BE
2 HAPPY TO REPHRASE IT, MR. GATES.

3 ANSWER: GO AHEAD.

4 QUESTION: DID YOU SEND THIS E-MAIL?

5 ANSWER: IT APPEARS I DID.

6 QUESTION: DID YOU DISCUSS THIS E-MAIL WITH
7 ANYONE?

8 ANSWER: I DON'T REMEMBER THAT.

9 QUESTION: LET ME GO BACK TO EXHIBIT 263,
10 WHICH IS THE JUNE 27, 1997, E-MAIL FROM
11 MR. WALDMAN TO YOU.

12 DO YOU RECALL--AND I KNOW YOU'VE SAID YOU
13 DON'T RECALL RECEIVING THIS E-MAIL, BUT DO YOU
14 RECALL ANYONE DESCRIBING THE THREAT TO CANCEL
15 MACOFFICE 97 AS A BARGAINING POINT THAT YOU HAVE
16 IN DEALINGS WITH APPLE, IN OR ABOUT JUNE OF 1997?

17 ANSWER: I REMEMBER GOING TO MEETINGS WHERE
18 PAUL MARITZ TOOK THE POSITION THAT WE SHOULDN'T
19 DO THE UPDATE, AND--THE MACOFFICE 97 UPDATE.

20 AND THE MAIN NEGOTIATION WE HAD WITH APPLE
21 AT THIS POINT WAS A DISCUSSION ABOUT A PATENT
22 CROSS-LICENSE, AND SO I SAID TO PAUL I WANTED TO

23 UNDERSTAND BETTER WHERE WE WERE ON THE PATENT
24 CROSS-LICENSE AND UNDERSTAND THE STATE OF THE
25 MACOFFICE DEVELOPMENT.

1 AND THEN IT APPEARS THAT THIS IS AN E-MAIL
2 THAT IS COMING AFTER THAT MEETING. I DON'T
3 REMEMBER SOMEBODY USING THOSE EXACT WORDS.

4 QUESTION: WHETHER YOU REMEMBER SOMEBODY
5 USING THE EXACT WORDS THAT MR. WALDMAN USES IN
6 HIS JUNE 27, 1997, E-MAIL TO YOU, DO YOU REMEMBER
7 PEOPLE TELLING YOU, IN SUBSTANCE, THAT THE THREAT
8 TO CANCEL MACOFFICE 97 WAS A STRONG BARGAINING
9 POINT THAT YOU HAD AGAINST APPLE AND THAT
10 CANCELING MACOFFICE 97 WOULD DO A GREAT DEAL OF
11 HARM TO APPLE IMMEDIATELY?

12 ANSWER: I KNOW THERE WAS THE INTERNAL
13 DEBATE ABOUT WHETHER TO DO THE UPDATE, AND I KNOW
14 THERE WAS THE PATENT DISCUSSION GOING ON. AND I
15 SAID THAT MAYBE--EVEN IF IT DIDN'T MAKE BUSINESS
16 SENSE TO DO THE UPDATE, MAYBE AS PART OF AN
17 OVERALL RELATIONSHIP WITH THE PATENT
18 CROSS-LICENSE, THAT WE SHOULD GO AHEAD AND DO IT.

19 AND SO, A COMMITMENT TO DO THE UPGRADE WAS
20 ONE OF THE THINGS THAT WE TOLD APPLE WE MIGHT
21 COMMIT TO AS PART OF THE PATENT CROSS-LICENSE
22 RELATIONSHIP.

23 QUESTION: AND DID YOU BELIEVE IN 1997 THAT
24 CANCELING MACOFFICE 97 WOULD DO A GREAT DEAL OF
25 HARM TO APPLE, AS MR. WALDMAN WRITES YOU IT

1 WOULD?

2 ANSWER: THERE WAS A QUESTION ABOUT WHETHER
3 TO DO THE UPGRADE AND WHETHER IT MADE BUSINESS
4 SENSE. I CAN'T REALLY SAY HOW MUCH IMPACT IT
5 WOULD HAVE ON APPLE OF US DOING THE UPGRADE OR
6 NOT. CERTAINLY BEN, AS THE PERSON IN CHARGE OF
7 THE UPGRADE, WAS VERY PASSIONATE ABOUT ITS
8 IMPORTANCE AND ITS DRAMATIC NATURE.

9 QUESTION: MY QUESTION TO YOU NOW, SIR, IS
10 WHETHER YOU BELIEVED THAT CANCELING MACOFFICE 97
11 WOULD DO A GREAT DEAL OF HARM TO APPLE.

12 ANSWER: WELL, I KNOW THAT APPLE WOULD
13 PREFER THAT WE HAVE A MORE UPDATED VERSION OF
14 MACOFFICE, THAT THAT WOULD BE A POSITIVE THING
15 FOR THEM, AND SO THAT'S WHY IT WAS PART OF THE
16 NEGOTIATION RELATIVE TO THE PATENT CROSS-LICENSE.

17 QUESTION: AND DID YOU BELIEVE THAT
18 CANCELING MACOFFICE 97 WOULD DO A GREAT DEAL OF
19 HARM TO APPLE?

20 ANSWER: I TOLD YOU I THINK IT WOULD BE
21 BETTER FOR APPLE TO HAVE EVERYBODY DOING MAJOR
22 UPGRADES LIKE THIS. I DOUBT--YOU KNOW, I

23 DON'T--I CAN'T CHARACTERIZE THE LEVEL OF BENEFIT
24 OF THE UPGRADE TO APPLE, BUT CERTAINLY IT'S
25 SOMETHING THEY WANTED US TO COMPLETE.

1 QUESTION: THE NEXT SENTENCE IN
2 MR. WALDMAN'S JUNE 27, 1997, E-MAIL TO YOU
3 BEGINS, 'I ALSO BELIEVE THAT APPLE IS TAKING THIS
4 THREAT PRETTY SERIOUSLY.'

5 DID SOMEONE TELL YOU, IN OR ABOUT JUNE OF
6 1997, THAT APPLE WAS TAKING MICROSOFT'S THREAT TO
7 CANCEL MACOFFICE 97 SERIOUSLY OR PRETTY
8 SERIOUSLY?

9 ANSWER: WELL, MARITZ HAD TAKEN THE POSITION
10 THAT IT DIDN'T MAKE BUSINESS SENSE TO FINISH THIS
11 UPGRADE, AND IT'S VERY POSSIBLE APPLE MIGHT HAVE
12 HEARD ABOUT MARITZ'S OPINION THERE AND,
13 THEREFORE, BEEN WORRIED THAT WE, BUSINESS-WISE,
14 DIDN'T SEE A REASON TO COMPLETE THE UPGRADE, AND
15 THAT THEY--THEY WOULD HAVE THE OLDER MACOFFICE AS
16 OPPOSED TO THIS NEW WORK THAT WE WERE PARTWAY
17 ALONG ON.

18 QUESTION: MR. GATES, MY QUESTION IS NOT
19 WHAT POSITION MR. MARITZ DID OR DID NOT TAKE. MY
20 QUESTION IS WHETHER ANYONE TOLD YOU, IN OR ABOUT
21 JUNE OF 1997, THAT APPLE WAS TAKING PRETTY
22 SERIOUSLY MICROSOFT'S THREAT TO CANCEL

23 MACOFFICE 97.

24 ANSWER: APPLE MAY HAVE KNOWN THAT SENIOR

25 EXECUTIVES AT MICROSOFT, MARITZ IN PARTICULAR,

1 THOUGHT THAT IT DIDN'T MAKE BUSINESS SENSE TO
2 COMPLETE THAT UPGRADE.

3 QUESTION: MR. GATES, I'M NOT ASKING YOU
4 WHAT APPLE MAY HAVE KNOWN OR MAY NOT HAVE KNOWN.
5 WHAT I'M ASKING YOU IS WHETHER ANYBODY TOLD YOU,
6 IN OR ABOUT JUNE OF 1997, THAT APPLE WAS TAKING
7 PRETTY SERIOUSLY MICROSOFT'S THREAT TO CANCEL
8 MACOFFICE 97.

9 ANSWER: THOSE PARTICULAR WORDS?

10 QUESTION: TOLD YOU THAT IN WORDS OR IN
11 SUBSTANCE.

12 ANSWER: I THINK I REMEMBER HEARING THAT
13 APPLE HAD HEARD ABOUT MARITZ'S VIEW THAT IT
14 DIDN'T MAKE SENSE TO CONTINUE THE UPGRADE,
15 BUT--AND THAT, YOU KNOW, THEY WANTED US TO
16 CONTINUE THE UPGRADE. BUT I--I DON'T REMEMBER
17 ANY OF THE--IT BEING PHRASED AT ALL THE WAY
18 YOU'RE PHRASING IT.

19 QUESTION: WELL, THE WAY I'M PHRASING IT IS
20 THE WAY THAT MR. WALDMAN PHRASED IT TO YOU IN HIS
21 E-MAIL OF JUNE 27 OF 1997; CORRECT, SIR?

22 ANSWER: WELL, IN READING IT, I SEE THOSE

23 WORDS, YES."

24 (PAUSE.)

25 "QUESTION: MR. GATES, MR. WALDMAN, ON JUNE

1 27, 1997, SENDS YOU AN E-MAIL THAT SAYS, `THE
2 THREAT TO CANCEL MACOFFICE 97 IS CERTAINLY THE
3 STRONGEST BARGAINING POINT WE HAVE, AS DOING SO
4 WILL DO A GREAT DEAL OF HARM TO APPLE
5 IMMEDIATELY. I ALSO BELIEVE THAT APPLE IS TAKING
6 THIS THREAT PRETTY SERIOUSLY,' CLOSED QUOTE.

7 DO YOU RECALL ANYONE--

8 ANSWER: DO YOU WANT TO FINISH THE SENTENCE
9 OR NOT?

10 QUESTION: YOU CAN, IF YOU THINK IT IS
11 NECESSARY TO ANSWER THE QUESTION.

12 DO YOU RECALL ANYONE TELLING YOU WHAT I HAVE
13 JUST QUOTED, IN WORDS OR IN SUBSTANCE, IN OR
14 ABOUT JUNE OF 1997?

15 ANSWER: NO."

16 (PAUSE.)

17 "QUESTION: OKAY. LET ME ASK YOU TO LOOK AT
18 A DOCUMENT PREVIOUSLY MARKED AS GOVERNMENT
19 EXHIBIT 260."

20 DID YOU SEND THIS E-MAIL, MR. GATES, ON OR
21 ABOUT JUNE 23, 1996?

22 ANSWER: I DON'T REMEMBER IT SPECIFICALLY,

23 BUT I DON'T HAVE ANY REASON TO DOUBT THAT I DID.

24 QUESTION: IN THE SECOND PARAGRAPH YOU SAY,
25 QUOTE, I HAVE TWO KEY GOALS IN INVESTING IN THE
26 APPLE RELATIONSHIP: ONE, MAINTAIN OUR
27 APPLICATIONS SHARE ON THE PLATFORM; AND TWO, SEE
28 IF WE CAN GET THEM TO EMBRACE INTERNET EXPLORER
29 IN SOME WAY, CLOSED QUOTE.

30 DO YOU SEE THAT?

31 ANSWER: YEAH.

32 QUESTION: DOES THAT REFRESH YOUR
33 RECOLLECTION AS TO WHAT YOUR TWO KEY GOALS WERE
34 IN CONNECTION WITH APPLE IN JUNE OF 1996?

35 ANSWER: FIRST OF ALL, JUNE OF 1996 IS NOT
36 IN THE TIME FRAME THAT YOUR PREVIOUS QUESTION
37 RELATED TO. AND CERTAINLY IN THE E-MAIL TO THIS
38 GROUP, I'M NOT TALKING ABOUT THE PATENT THING,
39 BUT BELIEVE ME, IT WAS OUR TOP GOAL IN THINKING
40 ABOUT APPLE FOR MANY, MANY YEARS BECAUSE OF THEIR

1 ASSERTIONS.

2 QUESTION: MY TIME FRAME IN MY QUESTION,
3 SIR, WAS A TIME FRAME BEGINNING IN 1996, WHEN YOU
4 BEGAN TO VIEW NETSCAPE OR THE JAVA RUNTIME THREAT
5 AS A COMPETITIVE THREAT TO MICROSOFT.

6 ANSWER: AND THAT WAS AFTER JUNE OF 1996.

7 QUESTION: AND IS IT YOUR TESTIMONY THAT IN
8 JUNE OF 1996 YOU DID NOT CONSIDER NETSCAPE TO BE
9 A COMPETITIVE THREAT TO MICROSOFT?

10 ANSWER: NETSCAPE WAS A COMPETITOR, BUT IN
11 TERMS OF JAVA AND ALL THE RUNTIME-RELATED ISSUES,
12 WE DIDN'T HAVE A CLEAR VIEW OF THAT AT ALL.

13 QUESTION: SO THAT--I WANT TO BE SURE I'VE
14 GOT YOUR TESTIMONY ACCURATELY.

15 IT IS YOUR TESTIMONY THAT IN JUNE OF 1996
16 YOU CONSIDERED NETSCAPE TO BE A COMPETITIVE
17 THREAT, BUT YOU DID NOT CONSIDER JAVA OR JAVA
18 RUNTIME TO BE A COMPETITIVE THREAT; IS THAT YOUR
19 TESTIMONY?

20 ANSWER: WE CONSIDERED NETSCAPE TO BE A
21 COMPETITOR, AND I TOLD YOU EARLIER THAT UNTIL
22 LATE '96, WE WERE UNCLEAR ABOUT OUR POSITION ON

- 23 VARIOUS JAVA RUNTIME THINGS AND WHAT OTHER
- 24 COMPANIES WERE DOING AND WHAT THAT MEANT FOR US
- 25 COMPETITIVELY.

1 QUESTION: DO YOU AGREE THAT IN JUNE OF
2 1996, THE TWO KEY GOALS THAT YOU HAD IN TERMS OF
3 THE APPLE RELATIONSHIP WERE, QUOTE, ONE, MAINTAIN
4 YOUR APPLICATIONS SHARE ON THE PLATFORM; AND TWO,
5 SEE IF YOU COULD GET APPLE TO EMBRACE INTERNET
6 EXPLORER IN SOME WAY?

7 ANSWER: NO.

8 QUESTION: DO YOU HAVE ANY EXPLANATION FOR
9 WHY YOU WOULD HAVE WRITTEN TO MR. MARITZ AND
10 MR. SILVERBERG ON JUNE 23, 1996, THAT THOSE WERE
11 YOUR TWO KEY GOALS IN THE APPLE RELATIONSHIP?

12 ANSWER: NO, THEY WEREN'T INVOLVED IN THE
13 PATENT ISSUE AT ALL, SO WHEN I WRITE TO THEM, I'M
14 FOCUSED ON THE ISSUES THAT RELATE TO THEM.

15 I DO MENTION PATENTS IN HERE, BUT THAT
16 CERTAINLY WAS THE PRIMARY GOAL AT THIS TIME AND
17 IN SUBSEQUENT TIMES.

18 QUESTION: LET ME BE CLEAR. WHEN YOU WRITE
19 TO MR. MARITZ AND MR. SILVERBERG, YOU TALK ABOUT
20 PATENTS, DO YOU NOT, SIR?

21 ANSWER: WHERE DO YOU SEE THAT?

22 QUESTION: WELL, DID YOU TALK ABOUT PATENTS?

23 ANSWER: DO YOU WANT ME TO READ THE ENTIRE

24 MAIL?

25 QUESTION: HAVE YOU READ IT ENOUGH TO KNOW

1 WHETHER YOU TALK ABOUT PATENTS?

2 ANSWER: I SAW THE WORD "PATENT" IN ONE
3 PLACE. IF I READ THE WHOLE THING, I COULD FIND
4 OUT IF IT'S IN THE OTHER PLACES AS WELL.

5 QUESTION: YOU DO TALK ABOUT PATENT
6 CROSS-LICENSE, DO YOU NOT, IN THIS MEMO? AND IF
7 YOU WANT TO LOOK AT THE LAST PAGE, FIVE LINES
8 FROM THE BOTTOM.

9 ANSWER: YEAH, THEY WEREN'T INVOLVED IN THE
10 PATENT ISSUES AT ALL, SO IT LOOKS LIKE IN THIS
11 MAIL I JUST MENTION THAT IN A SUMMARY PART, BUT
12 IT WAS OUR TOP GOAL IN OUR DISCUSSIONS WITH
13 APPLE.

14 QUESTION: WHEN YOU WRITE TO MR. MARITZ AND
15 MR. SILVERBERG, YOU DON'T DESCRIBE THAT AS YOUR
16 TOP GOAL. IN FACT, YOU DON'T EVEN DESCRIBE IT AS
17 ONE OF YOUR TWO OR THREE KEY GOALS; CORRECT, SIR?

18 ANSWER: THIS PIECE OF E-MAIL DOESN'T TALK
19 ABOUT THE PATENT GOAL AS THE TOP GOAL. IT'S MOST
20 LIKELY THAT'S BECAUSE THE PEOPLE COPIED ON THE
21 MAIL DON'T HAVE A THING TO DO WITH IT, AND I
22 WOULDN'T DISTRACT THEM WITH IT.

23 QUESTION: I WANT TO BE SURE I HAVE YOUR

24 TESTIMONY CORRECT.

25 IN JUNE OF 1996, WHAT WAS PAUL MARITZ'S

1 TITLE?

2 ANSWER: HE WAS INVOLVED IN PRODUCT
3 DEVELOPMENT ACTIVITIES.

4 QUESTION: HE WAS INVOLVED IN PRODUCT
5 DEVELOPMENT ACTIVITIES.

6 WHAT WAS HIS TITLE?

7 ANSWER: I DON'T KNOW. SYSTEMS.

8 QUESTION: SYSTEMS?

9 ANSWER: UMM-HMM.

10 QUESTION: DID HE HAVE A TITLE THAT WENT
11 WITH THAT?

12 ANSWER: SENIOR VICE PRESIDENT-SYSTEMS. I
13 DON'T KNOW.

14 QUESTION: SENIOR VICE PRESIDENT-SYSTEMS, I
15 SEE.

16 DID MR. SILVERBERG HAVE A POSITION IN JUNE
17 OF 1996?

18 ANSWER: HE WORKED FOR MR. MARITZ.

19 QUESTION: DID HE HAVE A TITLE?

20 ANSWER: I DON'T KNOW WHAT HIS TITLE WAS AT
21 THE TIME. HE WOULD HAVE BEEN AN OFFICER OF SOME
22 KIND.

23 QUESTION: AN OFFICER OF SOME KIND.
24 SO, YOU'RE WRITING A MEMO TO PAUL MARITZ, A
25 SENIOR VICE PRESIDENT; AND BRAD SILVERBERG, AN

1 OFFICER OF SOME KIND, AND YOU'RE SENDING COPIES
2 TO FOUR OTHER PEOPLE ON THE SUBJECT OF THE APPLE
3 MEETING. AND YOU SAY, 'I HAVE TWO KEY GOALS IN
4 INVESTING IN THE APPLE RELATIONSHIP.'

5 ANSWER: THAT'S QUITE DISTINCT THAN ANY
6 GOALS I MIGHT HAVE FOR A DEAL WITH APPLE. IT
7 SAYS, 'I HAVE TWO KEY GOALS IN INVESTING IN THE
8 APPLE RELATIONSHIP,' NOT, 'I HAVE TWO KEY GOALS
9 FOR A DEAL WITH APPLE.'

10 QUESTION: WELL, SIR, AT THE BOTTOM YOU SAY
11 WHAT YOU PROPOSE IN TERMS OF A DEAL, AND YOU TALK
12 ABOUT WHAT APPLE WILL GET OUT OF THE DEAL AND
13 WHAT MICROSOFT WILL GET OUT OF THE DEAL; CORRECT,
14 SIR?

15 ANSWER: DO YOU WANT ME TO READ TO YOU THE
16 E-MAIL? I MEAN, I DON'T KNOW ANYTHING MORE THAN
17 JUST WHAT IT SAYS IN THE E-MAIL. I'M GLAD TO
18 READ IT TO YOU.

19 QUESTION: WELL, SIR, DOES IT SAY AT THE
20 BOTTOM OF THE E-MAIL THAT YOU ARE PROPOSING
21 SOMETHING WITH APPLE AND YOU ARE IDENTIFYING WHAT
22 APPLE WOULD GET UNDER YOUR PROPOSED DEAL AND WHAT

23 MICROSOFT WOULD GET UNDER YOUR PROPOSED DEAL?

24 ANSWER: YEAH, THAT'S THE BOTTOM OF THE

25 E-MAIL.

1 QUESTION: IN FACT, THE BOTTOM OF THE E-MAIL
2 TALKING ABOUT A PROPOSED APPLE MICROSOFT DEAL,
3 YOU SAY, QUOTE, THE DEAL WOULD LOOK LIKE THIS,
4 AND THEN YOU GOT A COLUMN `APPLE GETS' AND A
5 COLUMN `MICROSOFT GETS' AND A COLUMN `BOTH GETS;'
6 RIGHT, SIR?

7 ANSWER: I'M READING THAT.

8 QUESTION: OKAY. NOW, IN THIS E-MAIL OF A
9 PAGE OR A PAGE AND A HALF IN WHICH YOU ARE
10 PROPOSING THIS DEAL, YOU DESCRIBE YOUR TWO KEY
11 GOALS AS MAINTAINING MICROSOFT'S APPLICATIONS
12 SHARE ON THE PLATFORM, AND GETTING APPLE TO
13 EMBRACE INTERNET EXPLORER; CORRECT?

14 ANSWER: NO, THAT'S WRONG.

15 QUESTION: THAT'S WRONG, OKAY.

16 ANSWER: THE WORD `DEAL' AND THE WORD
17 `RELATIONSHIP' ARE NOT THE SAME WORD. THIS SAYS,
18 `I HAVE TWO KEY GOALS IN INVESTING IN THE APPLE
19 RELATIONSHIP.' THIS DOWN HERE IS AN AGREEMENT
20 WHICH I THOUGHT WE COULD REACH WITH APPLE.

21 QUESTION: AND IS IT YOUR TESTIMONY HERE
22 TODAY UNDER OATH THAT YOUR TWO KEY GOALS IN

23 INVESTING IN THE APPLE RELATIONSHIP, WHICH YOU
24 MENTIONED IN THE SECOND PARAGRAPH OF THIS E-MAIL,
25 IS DIFFERENT THAN YOUR TWO KEY GOALS IN THE

1 PROPOSED DEAL THAT YOU DESCRIBE FIVE PARAGRAPHS
2 LATER?

3 ANSWER: I DON'T SEE ANYTHING IN HERE ABOUT
4 THE KEY GOALS--TWO KEY GOALS IN THE DEAL. I'VE
5 TOLD YOU THAT I'M CERTAIN THAT MY PRIMARY GOAL IN
6 ANY DEAL WAS THE PATENT CROSS-LICENSE.

7 QUESTION: MR. GATES, MY QUESTION IS WHETHER
8 IT IS YOUR TESTIMONY TODAY HERE UNDER OATH THAT
9 WHEN YOU TALK ABOUT YOUR TWO KEY GOALS IN
10 INVESTING IN THE APPLE RELATIONSHIP IN THE SECOND
11 PARAGRAPH OF THIS E-MAIL, THAT IS DIFFERENT THAN
12 WHAT YOUR KEY GOALS WERE IN THE DEAL THAT YOU
13 PROPOSED FIVE PARAGRAPHS LATER?

14 ANSWER: THAT'S RIGHT. INVESTING IN A
15 RELATIONSHIP IS DIFFERENT THAN THE DEAL.

16 QUESTION: NOW, YOU DON'T TELL MR. MARITZ OR
17 MR. SILVERBERG THAT YOUR GOALS FOR INVESTING IN
18 THE APPLE RELATIONSHIP ARE DIFFERENT THAN YOUR
19 GOALS IN THE PROPOSED DEAL, DO YOU, SIR?

20 ANSWER: BUT THE GOALS AND THE DEAL ARE
21 QUITE DIFFERENT, SO OBVIOUSLY, THEY WOULD HAVE
22 KNOWN THEY WERE QUITE DIFFERENT.

23 QUESTION: WELL, SIR, YOU SAY THE GOALS AND
24 THE DEAL ARE QUITE DIFFERENT. ONE OF YOUR TWO
25 KEY GOALS THAT YOU TALK ABOUT IN YOUR FIRST

1 PARAGRAPH--IN YOUR SECOND PARAGRAPH IS TO GET
2 APPLE TO EMBRACE INTERNET EXPLORER IN SOME WAY.
3 AND THE VERY FIRST THING UNDER WHAT MICROSOFT
4 GETS IN YOUR PROPOSED DEAL IS, QUOTE, APPLE
5 ENDORSES MICROSOFT INTERNET EXPLORER TECHNOLOGY.

6 DO YOU SEE THAT, SIR?

7 ANSWER: UMM-HMM.

8 QUESTION: NOW, DOES THAT REFRESH YOUR
9 RECOLLECTION THAT THE DEAL THAT YOU WERE
10 PROPOSING HAD SOME RELATIONSHIP TO THE TWO KEY
11 GOALS THAT YOU WERE IDENTIFYING?

12 ANSWER: SOME RELATIONSHIP, YES, BUT THEY
13 AREN'T THE SAME THING AT ALL."

14 (PAUSE.)

15 "QUESTION: AND WHEN YOU SAID IN YOUR
16 JUNE 23, 1996, E-MAIL, QUOTE, I HAVE TWO KEY
17 GOALS IN INVESTING IN THE APPLE RELATIONSHIP,
18 CLOSED QUOTE, YOU WERE TALKING ABOUT YOURSELF
19 PERSONALLY; IS THAT CORRECT?

20 ANSWER: YEAH. WHEN I SAY `INVESTING IN THE
21 APPLE RELATIONSHIP,' THAT MEANS SPENDING TIME
22 WITH APPLE AND GROWING THE RELATIONSHIP.

23 QUESTION: AND WHEN IN DESCRIBING THE DEAL
24 THE FIVE PARAGRAPHS LATER, THE VERY FIRST THING
25 THAT MICROSOFT GETS IS, QUOTE, APPLE ENDORSES

1 MICROSOFT INTERNET EXPLORER TECHNOLOGY, CLOSED
2 QUOTE, DID THAT INDICATE TO YOU THAT THAT WAS AN
3 IMPORTANT PART OF WHAT YOU WERE GETTING IN TERMS
4 OF THE DEAL?

5 ANSWER: NO SUCH DEAL WAS EVER STRUCK, SO
6 I'M NOT SURE WHAT YOU'RE SAYING.

7 QUESTION: WAS THAT AN IMPORTANT PART OF THE
8 DEAL THAT YOU WERE TRYING TO GET, SIR?

9 ANSWER: WE NEVER GOT AS FAR AS TRYING TO
10 GET THAT DEAL, UNFORTUNATELY.

11 QUESTION: YOU NEVER GOT AS FAR AS TRYING TO
12 GET THAT DEAL? IS THAT WHAT YOU'RE SAYING?

13 ANSWER: NO. WELL, IN THIS TIME FRAME, GIL
14 AMELIO'S TOTAL FOCUS WAS ON HIS NEW OS STRATEGY,
15 AND SO WHAT I OUTLINED HERE WE NEVER--WE NEVER
16 GOT THEM TO CONSIDER.

17 QUESTION: WELL, SIR, YOUR E-MAIL BEGINS,
18 'LAST TUESDAY NIGHT, I WENT DOWN TO ADDRESS THE
19 TOP APPLE EXECUTIVES;' CORRECT, SIR?

20 ANSWER: THAT'S RIGHT.

21 QUESTION: AND DOWN AT THE BOTTOM, WHEN
22 YOU'RE INTRODUCING THE DEAL, YOU SAY, QUOTE, I

23 PROPOSED.

24 NOW, YOU ARE REFERRING TO WHAT YOU PROPOSED

25 TO THE APPLE TOP EXECUTIVES, ARE YOU NOT, SIR?

1 ANSWER: YES.

2 QUESTION: OKAY. AND WHAT YOU PROPOSED WAS,
3 QUOTE, THE DEAL THAT YOU THEN DESCRIBE AT THE
4 BOTTOM OF THE FIRST PAGE AND THE TOP OF THE
5 SECOND PAGE; CORRECT, SIR?

6 ANSWER: THAT'S RIGHT.

7 QUESTION: AND THAT WAS A DEAL THAT YOU
8 PROPOSED THE TUESDAY NIGHT BEFORE JUNE 23, 1996,
9 TO WHICH YOU DESCRIBE AS THE TOP APPLE
10 EXECUTIVES; CORRECT, SIR?

11 ANSWER: I PUT FORWARD SOME OF THOSE POINTS.

12 QUESTION: WELL, YOU PUT THEM FORWARD, AND
13 YOU DESCRIBE THEM AS PROPOSING A DEAL; CORRECT,
14 SIR?

15 ANSWER: THAT'S HOW I DESCRIBE IT HERE, YES.

16 QUESTION: ALL RIGHT, SIR. NOW, YOU'D SAID
17 THAT THE DEAL THAT YOU WERE TALKING ABOUT NEVER
18 GOT DONE.

19 DID YOU EVER GET APPLE TO ENDORSE MICROSOFT
20 INTERNET EXPLORER TECHNOLOGY?

21 ANSWER: YOU'RE TRYING TO JUST READ PART OF
22 THAT?

23 QUESTION: I'M ACTUALLY--WHAT I'M DOING IS
24 ASKING A QUESTION RIGHT NOW, SIR. I'M ASKING
25 WHETHER IN 1996 OR OTHERWISE, AT ANY TIME, DID

1 YOU GET APPLE TO ENDORSE MICROSOFT INTERNET
2 EXPLORER TECHNOLOGY?

3 ANSWER: WELL, YOU CAN GET A COPY OF THE
4 AGREEMENT WE REACHED WITH APPLE AND DECIDE IF, IN
5 READING THAT, YOU THINK IT MEETS THAT CRITERIA OR
6 NOT.

7 QUESTION: SIR, I'M ASKING YOU--AS THE CHIEF
8 EXECUTIVE OFFICER OF MICROSOFT, I'M ASKING YOU
9 WHETHER YOU BELIEVE THAT YOU ACHIEVED THAT
10 OBJECTIVE.

11 ANSWER: WE DID NOT GET SOME EXCLUSIVE
12 ENDORSEMENT. WE DID GET SOME--THERE'S SOME PART
13 OF THE DEAL THAT HAS TO DO WITH INTERNET EXPLORER
14 TECHNOLOGY.

15 QUESTION: DO YOU KNOW WHAT THAT PART OF THE
16 DEAL IS?

17 ANSWER: NOT REALLY. IT HAS SOMETHING TO DO
18 WITH THEY WILL AT LEAST SHIP IT ALONG WITH OTHER
19 BROWSERS.

20 QUESTION: DOES THE DEAL PROHIBIT THEM FROM
21 SHIPPING NETSCAPE'S BROWSER WITHOUT ALSO SHIPPING
22 INTERNET EXPLORER?

23 ANSWER: I'D HAVE TO LOOK AT THE DEAL TO

24 UNDERSTAND.

25 QUESTION: IT'S YOUR TESTIMONY, SITTING HERE

1 TODAY UNDER OATH, THAT YOU SIMPLY DON'T KNOW, ONE
2 WAY OR THE OTHER, WHETHER APPLE IS TODAY FREE TO
3 SHIP NETSCAPE'S BROWSER WITHOUT ALSO SHIPPING
4 INTERNET EXPLORER?

5 ANSWER: THAT'S RIGHT.

6 QUESTION: WHEN YOU IDENTIFY THINGS AS `KEY
7 GOALS,' DO YOU TYPICALLY TEND TO FOLLOW UP AND
8 SEE TO WHAT EXTENT THOSE GOALS HAVE BEEN
9 ACHIEVED?

10 ANSWER: IN A VERY GENERAL SENSE, YES."

11 (PAUSE.)

12 "QUESTION: DID YOUR GOALS CHANGE?

13 ANSWER: GOALS FOR WHAT? FOR INVESTING IN
14 THIS RELATIONSHIP?

15 QUESTION: YOU SAY IN THIS E-MAIL THAT YOU
16 HAVE TWO KEY GOALS FOR INVESTING IN THE APPLE
17 RELATIONSHIP. ONE OF--

18 ANSWER: IN INVESTING IN THE APPLE
19 RELATIONSHIP.

20 QUESTION: ONE OF THEM IS TO GET APPLE TO
21 EMBRACE INTERNET TECHNOLOGY IN SOME WAY. WHAT
22 I'M ASKING YOU IS WHETHER THAT CHANGED AFTER THIS

23 PERSON GOT FIRED.

24 ANSWER: WE RE-EVALUATED ALL OF OUR THOUGHTS

25 ABOUT WORKING WITH APPLE BASED ON WHAT THE NEW

1 MANAGEMENT WAS GOING TO DO, WHETHER THEY WERE
2 GOING TO TARGET THE MACHINES, WHAT THEY WERE
3 GOING TO DO WITH THEIR MACHINES. SINCE THEY
4 CONTINUED TO SAY THAT WE WERE IN VIOLATION OF
5 THEIR PATENTS, IT CONTINUED TO BE OUR TOP GOAL TO
6 GET SOME TYPE OF PATENT CROSS-LICENSE.

7 MR. BOIES: READ THE QUESTION BACK, PLEASE.

8 (THE RECORD WAS READ AS FOLLOWS:)

9 QUESTION: YOU SAY IN THIS E-MAIL THAT YOU
10 HAVE TWO KEY GOALS FOR INVESTING IN THE APPLE
11 RELATIONSHIP. ONE OF--

12 ANSWER: IN INVESTING IN THE APPLE
13 RELATIONSHIP.

14 QUESTION: ONE OF THEM IS TO GET APPLE TO
15 EMBRACE INTERNET TECHNOLOGY IN SOME WAY. WHAT
16 I'M ASKING YOU IS WHETHER THAT CHANGED AFTER THIS
17 PERSON GOT FIRED.

18 THE WITNESS: YOU KEEP, EITHER INTENTIONALLY
19 OR UNINTENTIONALLY, TRYING TO CONFUSE MY GOALS
20 FOR INVESTING IN THE RELATIONSHIP WITH THE GOALS
21 WE HAD OVERALL FOR VARIOUS DEALINGS WITH APPLE.
22 CERTAINLY, THE GOALS I HAD FOR INVESTING IN THE

23 RELATIONSHIP, THAT I HAD TO START OVER AND
24 RETHINK BECAUSE THE INVESTMENT WAS TO SPEND TIME
25 WITH THE CEO WHO HAD BEEN FIRED.

1 BY MR. BOIES:

2 QUESTION: MR. GATES, NEITHER IN THIS E-MAIL
3 NOR IN ANY OTHER DOCUMENT THAT EITHER OF US IS
4 AWARE OF, DO YOU MAKE THAT DISTINCTION THAT
5 YOU'RE MAKING NOW; CORRECT?

6 MR. HEINER: OBJECTION.

7 BY MR. BOIES:

8 QUESTION: DO YOU UNDERSTAND THE QUESTION
9 I'M ASKING?

10 ANSWER: THIS DOCUMENT DOES NOT SAY THAT MY
11 GOALS FOR DEALING--DOES NOT STATE MY GOALS FOR
12 DEALING WITH APPLE UP HERE. IT STATES MY GOALS
13 IN INVESTING IN THE APPLE RELATIONSHIP. SO,
14 THERE IS A CLEAR DISTINCTION RIGHT THERE IN THAT
15 DOCUMENT.

16 QUESTION: MR. GATES, THIS DOCUMENT DEALS
17 WITH A PROPOSED DEAL THAT YOU MADE TO TOP APPLE
18 EXECUTIVES; CORRECT?

19 ANSWER: THAT'S ONLY ONE PART OF WHAT IS IN
20 THE DOCUMENT. THERE IS A PART WHERE IT TALKS
21 ABOUT--YOU NEVER MENTIONED IT, BUT THE FIRST GOAL
22 IS MAINTAIN OUR APPLICATIONS SHARE ON THE

23 PLATFORM. THAT'S SOMETHING I'M DOING IN
24 INVESTING IN THE APPLE RELATIONSHIP, AND THAT'S
25 NOT RELATED TO THE DEAL THAT'S GIVEN--THE

1 PROPOSED DEAL THAT'S DISCUSSED BELOW IN THE
2 E-MAIL.

3 SO, THOSE ARE CLEARLY TWO SEPARATE THINGS.
4 RELATED, BUT SEPARATE.

5 QUESTION: WHAT I THINK I'VE DONE IS I THINK
6 I HAVE MENTIONED THE FIRST GOAL A NUMBER OF
7 TIMES.

8 ANSWER: I DON'T THINK SO."

9 "QUESTION: NOW, YOU SAY HERE, 'I HAVE TWO
10 KEY GOALS IN INVESTING IN APPLE RELATIONSHIP, ONE
11 OF WHICH WAS TO GET APPLE TO EMBRACE INTERNET
12 EXPLORER TECHNOLOGY IN SOME WAY.'

13 DID THAT CONTINUE TO BE A GOAL THAT YOU HAD
14 AFTER 1996?

15 ANSWER: IT WASN'T A GOAL IN INVESTING IN
16 THE APPLE RELATIONSHIP IN TERMS--IN THE SENSE I
17 MEANT IT HERE. IT WAS A GOAL FOR OUR OVERALL
18 DEALING WITH APPLE.

19 QUESTION: OKAY.

1 ANSWER: ONE OF MANY.

2 QUESTION: OKAY. WAS IT A KEY GOAL?

3 ANSWER: I'M NOT SURE WHAT YOU MEAN BY 'KEY
4 GOAL.' IT WAS A GOAL.

5 QUESTION: WHAT I MEAN BY KEY GOAL IS WHAT
6 YOU MEANT BY KEY GOAL IN YOUR JUNE 23, 1996,
7 E-MAIL, MR. GATES.

8 ANSWER: THAT'S ABOUT INVESTING IN THE APPLE
9 RELATIONSHIP, WHICH MEANT SPENDING TIME WITH GIL
10 AMELIO, SO I DON'T KNOW WHY YOU CAN TAKE THE WORD
11 OUT OF THERE AND APPLY IT TO A COMPLETELY
12 DIFFERENT CONTEXT.

13 QUESTION: BUT, SIR, WHEN YOU SAY A
14 COMPLETELY DIFFERENT CONTEXT, LET'S BE CLEAR
15 ABOUT WHAT WE ARE TALKING ABOUT.

16 THE COMPLETELY DIFFERENT CONTEXT THAT YOU'RE
17 TALKING ABOUT IS THE DIFFERENCE BETWEEN INVESTING
18 IN THE APPLE RELATIONSHIP AND DOING A DEAL WITH
19 APPLE; IS THAT WHAT YOU'RE SAYING?

20 ANSWER: NO. WE HAVE GOALS FOR OUR GENERAL
21 DEALINGS WITH APPLE, WHICH CAME TO A DEAL--WE
22 ACTUALLY REACHED A DEAL EITHER IN LATE JULY '97

23 OR EARLY AUGUST. BUT THERE WAS A SEPARATE THING
24 OF WHAT WAS THAT DEAL, WHAT WERE WE ABLE TO
25 ACHIEVE, WHAT WERE WE TRYING TO ACHIEVE WHEN WE

1 WERE NEGOTIATING WITH THE PREVIOUS MANAGEMENT A
2 DEAL, AND WHAT I'M TRYING TO DO IN TERMS OF
3 SPENDING MY TIME INVESTING IN THE APPLE
4 RELATIONSHIP.

5 QUESTION: AND WHAT YOU'RE SAYING IS, IT IS
6 YOUR TESTIMONY UNDER OATH, AND ALTHOUGH YOU CAN'T
7 RECALL ACTUALLY HAVING SENT THIS E-MAIL, YOU'RE
8 CONFIDENT WHEN YOU WROTE THIS AND REFERRED TO
9 INVESTING IN THE APPLE RELATIONSHIP, YOU MEANT
10 ONLY WHAT YOU EXPECTED TO GET OUT OF SPENDING
11 TIME WITH THE APPLE EXECUTIVES; IS THAT YOUR
12 TESTIMONY?

13 ANSWER: YEAH, I WAS EXPLAINING WHY I WAS
14 SPENDING TIME WITH GIL AMELIO.

15 QUESTION: AND THAT'S ALL YOU MEANT TO BE
16 SAYING HERE, IS YOUR TESTIMONY?

17 ANSWER: THAT'S WHAT--IN READING THIS,
18 THAT'S WHAT I BELIEVE I WAS TRYING TO COMMUNICATE
19 TO THE RECIPIENTS OF THE E-MAIL.

20 QUESTION: ALL RIGHT, SIR. LET ME ASK YOU
21 TO LOOK AT A DOCUMENT PREVIOUSLY MARKED AS
22 GOVERNMENT EXHIBIT 255."

1 "QUESTION: THIS PURPORTS TO BE AN E-MAIL,
2 AND THE SECOND ITEM ON THE E-MAIL IS AN E-MAIL
3 FROM JOHN LUDWIG TO DON BRADFORD, DATED AUGUST
4 21, 1997, AND THE SUBJECT IS `CONVERSATIONS WITH
5 BILLG LAST NIGHT.'

6 AND THE BILLG REFERRED TO THERE IS YOU;
7 CORRECT, SIR?

8 ANSWER: YES.

9 QUESTION: AND IT BEGINS, `I WAS AT THE EXEC
10 STAFF MEETING LAST NIGHT.'

11 AND CAN YOU EXPLAIN FOR THE RECORD WHAT THE
12 `EXEC STAFF MEETING' WAS.

13 ANSWER: HE IS REFERRING TO A REGULAR
14 GET-TOGETHER FOUR TIMES A YEAR OF THE MICROSOFT
15 EXECUTIVE STAFF.

16 QUESTION: AND HE GOES ON TO SAY THAT THERE
17 WERE THREE INTERESTING EXCHANGES WITH BILL AND
18 THE WHOLE GROUP ABOUT APPLE. DO YOU SEE THAT?

19 ANSWER: I SEE IT.

20 QUESTION: AND NUMBER ONE IS, QUOTE, BILL'S
21 TOP PRIORITY IS FOR US TO GET THE BROWSER IN THE
22 OCTOBER OS RELEASE FROM APPLE. WE SHOULD DO

23 WHATEVER IT TAKES TO MAKE THIS HAPPEN. IF WE ARE
24 GETTING SHUT OUT, WE SHOULD ESCALATE TO BILL.

1 YOU SHOULD MAKE SURE THAT WE ARE ENGAGING DEEPLY
2 WITH APPLE ON THIS ONE AND RESOLVING ANY AND ALL
3 ISSUES, CLOSED QUOTE.

4 DO YOU RECALL CONVEYING TO YOUR EXECUTIVE
5 STAFF, IN OR ABOUT AUGUST OF 1997, THAT YOUR TOP
6 PRIORITY WAS TO GET MICROSOFT'S BROWSER IN THE
7 OCTOBER OS RELEASE FROM APPLE?

8 ANSWER: NO, I DON'T RECALL THAT.

9 QUESTION: THE TOP E-MAIL, WHICH IS FROM DON
10 BRADFORD TO A NUMBER OF PEOPLE, DATED AUGUST 21,
11 1997, AND IS ALSO ON THE SUBJECT OF, QUOTE,
12 CONVERSATIONS WITH BILLG LAST NIGHT, CLOSED
13 QUOTE, SAYS THAT MR. BRADFORD AND SOMEONE ELSE,
14 MOHAN THOMAS, QUOTE, WILL TAKE THE LEAD ON
15 WORKING OUT THE APPLE BUNDLE DEAL, CLOSED QUOTE.
16 DO YOU SEE THAT?

17 ANSWER: YES.

18 QUESTION: DID YOU INSTRUCT YOUR EXECUTIVE
19 STAFF, IN OR ABOUT AUGUST OF 1997, TO WORK OUT A,
20 QUOTE, APPLE BUNDLE DEAL, CLOSED QUOTE?

21 ANSWER: WELL, I THINK THIS IS POST THE
22 AUGUST AGREEMENT, LATE JULY OR EARLY AUGUST

23 AGREEMENT WE REACHED WITH APPLE. AND I THINK
24 THERE WERE SOME CIRCUMSTANCES UNDER WHICH THEY
25 WOULD INCLUDE OR BUNDLE IE WITH SOME OF THEIR

1 SHIPMENTS. I THINK THAT'S WHAT THAT'S REFERRING
2 TO.

3 QUESTION: AND IS THAT WHAT YOUR PRESENT
4 RECOLLECTION IS THAT YOU TOLD YOUR EXECUTIVE
5 STAFF IN AUGUST OF 1997?

6 ANSWER: WELL, I DON'T RECALL SPECIFICALLY
7 WHAT I SAID TO THE EXECUTIVE STAFF ABOUT APPLE,
8 BUT IT APPEARS LUDWIG TOOK OUT OF THAT THAT HE
9 WAS SUPPOSED TO MAKE SURE THAT WHATEVER OUTS THAT
10 APPLE HAD UNDER THE PREVIOUS AGREEMENT FOR NOT
11 SHIPPING OUR TECHNOLOGY, THAT WE AVOIDED THOSE
12 BEING A PROBLEM THAT PREVENTED THEM FROM SHIPPING
13 OUR TECHNOLOGY.

14 QUESTION: WELL, APPLE WASN'T PROHIBITED
15 FROM SHIPPING YOUR TECHNOLOGY IN AUGUST OF 1997,
16 WAS IT, SIR?

17 ANSWER: NO. I ACTUALLY THINK THERE WAS--IF
18 WE--I DON'T KNOW THE APPLE AGREEMENT, I HAVEN'T
19 READ IT, BUT I THINK THERE IS SOMETHING IN THERE
20 THAT IF WE GOT CERTAIN THINGS DONE AND IF THERE
21 WERE NO PROBLEMS AND IT PASSED TESTS AND WE WERE
22 READY IN TIME, THAT THEY WOULD ACTUALLY

23 AFFIRMATIVELY INCLUDE SOME OF OUR TECHNOLOGY IN
24 VARIOUS OS RELEASES. AND THIS APPEARS TO BE A
25 DISCUSSION ABOUT WHETHER OR NOT WE ARE GOING TO

1 BE ABLE TO MEET THE REQUIREMENTS ON US RELATED TO
2 THAT.

3 QUESTION: IT IS CLEAR THAT GETTING THE
4 BROWSER IN THE OCTOBER OS RELEASE FROM APPLE WAS
5 SOMETHING THAT YOU, BILL GATES, AND MICROSOFT
6 WANTED; CORRECT, SIR?

7 ANSWER: YES, THAT'S SOMETHING THAT WE
8 WANTED.

9 QUESTION: OKAY. THE LAST SENTENCE OF THE
10 SECOND PARAGRAPH SAYS, 'BILL WAS CLEAR THAT HIS
11 WHOLE GOAL HERE IS TO KEEP APPLE AND SUN SPLIT.
12 HE DOESN'T CARE THAT MUCH ABOUT BEING ALIGNED
13 WITH APPLE. HE JUST WANTS THEM SPLIT FROM OTHER
14 POTENTIAL ALLIES.'

15 AND THAT RELATES TO JAVA, DOES IT NOT, SIR?

16 ANSWER: I DON'T HAVE A DIRECT RECOLLECTION,
17 BUT IF YOU READ THE SENTENCE IN FRONT OF IT, THAT
18 PARAGRAPH SEEMS TO RELATE TO JAVA RUNTIME.

19 QUESTION: NOW, DO YOU HAVE A RECOLLECTION
20 OF TELLING YOUR EXECUTIVE STAFF, IN OR ABOUT
21 AUGUST 21, THAT YOUR WHOLE GOAL WITH RESPECT TO
22 APPLE RELATING TO JAVA RUNTIME WAS TO KEEP APPLE

23 AND SUN SPLIT?

24 ANSWER: NO.

25 QUESTION: WHO WAS AT THIS EXECUTIVE STAFF

1 MEETING?

2 ANSWER: PROBABLY MEMBERS OF THE EXECUTIVE
3 STAFF.

4 QUESTION: AND WHO WERE THEY?

5 ANSWER: IT'S ABOUT 40 TO 50 PEOPLE. I
6 DOUBT YOU WANT TO TAKE THE TIME FOR ME TO GUESS.
7 WE GENERALLY GET ABOUT 70 PERCENT ATTENDANCE.
8 LOOKING AT THIS DOCUMENT, I THINK IT'S VERY
9 LIKELY THAT I WAS THERE AND JOHN LUDWIG WAS
10 THERE, BUT AS TO THE REST OF THE EXECUTIVE STAFF,
11 I'D JUST BE GUESSING.

12 IT'S VERY RARE FOR US TO HAVE NONEXECUTIVE
13 STAFF MEMBERS AT THOSE MEETINGS, ALTHOUGH
14 SOMETIMES IT HAPPENS.

15 QUESTION: IS MR. LUDWIG SOMEBODY WHO YOU
16 BELIEVE IS AN HONEST AND COMPETENT PERSON?

17 ANSWER: IN GENERAL, YES.

18 QUESTION: DO YOU HAVE ANY REASON TO BELIEVE
19 THAT HE WOULD MAKE UP ANYTHING ABOUT WHAT YOUR
20 STATEMENTS WERE?

21 ANSWER: NO."

1 "QUESTION: LET ME ASK YOU TO LOOK AT A
2 DOCUMENT THAT HAS BEEN PREVIOUSLY MARKED AS
3 GOVERNMENT 58.

4 THIS IS AN E-MAIL TO YOU FROM DAN SLIVKA,
5 DATED APRIL 14, 1997. AND THE SUBJECT IS, QUOTE,
6 JAVA REVIEW WITH YOU, CLOSED QUOTE.

7 DID YOU RECEIVE THIS E-MAIL IN OR ABOUT
8 APRIL OF 1997, MR. GATES?

1 ANSWER: I DON'T REMEMBER.

2 QUESTION: THE E-MAIL BEGINS THAT THE AUTHOR
3 IS WORKING WITH PAUL MARITZ TO SET UP A TWO- TO
4 THREE-HOUR REVIEW FOR YOU ON YOUR JAVA EFFORTS.
5 DO YOU SEE THAT?

6 ANSWER: ON OUR JAVA EFFORTS.

7 QUESTION: ON MICROSOFT'S JAVA EFFORTS.

8 ANSWER: NO, I THINK IT'S BEN SLIVKA'S
9 GROUP.

10 QUESTION: AND HE IS A MICROSOFT GROUP;
11 RIGHT?

12 ANSWER: YES. HE'S PART OF MICROSOFT, BUT
13 NOT ALL OF MICROSOFT.

14 QUESTION: SO, YOU WOULD INTERPRET THIS THAT
15 HE IS WORKING WITH PAUL MARITZ TO SET UP A TWO-
16 TO THREE-HOUR REVIEW FOR YOU OF PART OF
17 MICROSOFT'S JAVA EFFORTS BUT NOT ALL OF
18 MICROSOFT'S JAVA EFFORTS; IS THAT WHAT YOU'RE
19 SAYING?

20 ANSWER: YEAH, THE WORK HIS GROUP IS DOING.

21 QUESTION: THE WORK HIS GROUP IS DOING ON
22 JAVA; RIGHT?

23 ANSWER: RIGHT.

24 QUESTION: OKAY. AND HE LISTS WHAT HE

25 DESCRIBES AS SOME PRETTY POINTED QUESTIONS THAT

1 YOU, MR. GATES, HAD ABOUT JAVA. DO YOU SEE THAT?

2 ANSWER: WELL, I'M NOT SURE THOSE ARE THE
3 POINTED QUESTIONS. IT SAYS, 'I WANT TO MAKE SURE
4 I UNDERSTAND YOUR ISSUES/CONCERNS.'

5 QUESTION: WELL, THAT'S ACTUALLY THE LAST
6 PART OF A SENTENCE THAT BEGINS, QUOTE, WHEN I MET
7 WITH YOU LAST, YOU HAD A LOT OF PRETTY POINTED
8 QUESTIONS ABOUT JAVA, SO I WANT TO MAKE SURE I
9 UNDERSTAND YOUR ISSUES/CONCERNS.

10 THAT'S WHAT THE SENTENCE SAYS; CORRECT, SIR?

11 ANSWER: RIGHT.

12 QUESTION: AND WHEN MR. SLIVKA SAYS, 'I MET
13 WITH YOU LAST,' HE'S TALKING ABOUT YOU,
14 MR. GATES; CORRECT, SIR?

15 ANSWER: YES.

16 QUESTION: AND WHEN HE SAYS, 'YOU HAD A LOT
17 OF PRETTY POINTED QUESTIONS ABOUT JAVA,' HE'S
18 AGAIN TALKING ABOUT YOU, MR. GATES; CORRECT?

19 ANSWER: RIGHT.

20 QUESTION: AND THEN HE LISTS WHAT HE REFERS
21 TO AS A START: 'ONE, WHAT IS OUR BUSINESS MODEL
22 FOR JAVA? TWO, HOW DO WE WREST CONTROL OF JAVA

- 23 AWAY FROM SUN?'
24 DO YOU SEE THAT?
25 ANSWER: UMM-HMM.

1 QUESTION: SOMETIME PRIOR TO APRIL 14, 1997,
2 HAD YOU CONVEYED TO MR. SLIVKA THAT ONE OF YOUR
3 POINTED QUESTIONS ABOUT JAVA WAS, QUOTE, HOW DO
4 WE WREST CONTROL OF JAVA AWAY FROM SUN?

5 ANSWER: I DON'T THINK THAT I WOULD HAVE PUT
6 IT THAT WAY. CERTAINLY, IT WAS AN ISSUE ABOUT
7 THE POPULARITY OF SUN'S RUNTIME API'S VERSUS OUR
8 RUNTIME API'S."

9 (PAUSE.)

10 "QUESTION: I TAKE IT YOU KNOW MR. SLIVKA?

11 ANSWER: UMM-HMM.

12 QUESTION: YOU'VE GOT TO ANSWER YES OR NO
13 AUDIBLY SO THE REPORTER CAN TAKE IT DOWN.

14 ANSWER: YES.

15 QUESTION: AND YOU BELIEVE HIM TO BE A
16 PERSON OF COMPETENCE AND INTEGRITY?

17 ANSWER: YES.

18 QUESTION: DO YOU HAVE ANY REASON TO BELIEVE
19 THAT HE WOULD HAVE MISSTATED WHAT YOU TOLD HIM
20 WHEN YOU MET WITH HIM LAST, BEFORE APRIL 14,
21 1997?

22 ANSWER: IN NO WAY DOES THIS PURPORT TO BE

23 A RESTATEMENT OF THINGS I SAID TO BEN SLIVKA.
24 QUESTION: WELL, MR. GATES, WHAT THIS
25 MEMORANDUM SAYS IS, QUOTE, WHEN I MET WITH YOU

1 LAST, YOU HAD A LOT OF PRETTY POINTED QUESTIONS
2 ABOUT JAVA, SO I WANT TO BE SURE I UNDERSTAND
3 YOUR ISSUES AND CONCERNS. HERE IS A START. CAN
4 YOU PLEASE ADD ANY THAT I'M MISSING? AND THEN HE
5 LISTS SIX, THE SECOND OF WHICH IS, 'HOW DO WE
6 WREST CONTROL OF JAVA AWAY FROM SUN?'

7 YOU SEE THAT IN THE EXHIBIT, DO YOU NOT,
8 SIR?

9 ANSWER: UMM-HMM, YES."

10 "QUESTION: DID YOU HAVE PERSONALLY ANY
11 DISCUSSIONS WITH APPLE WITH REGARD TO TRYING TO
12 AGREE WITH APPLE AS TO THE EXTENT TO WHICH APPLE
13 AND MICROSOFT WOULD COMPETE WITH RESPECT TO
14 APPLE'S QUICKTIME SOFTWARE?

15 ANSWER: NO.

16 QUESTION: DO YOU KNOW IF ANYONE FROM
17 MICROSOFT HAD SUCH DISCUSSIONS WITH ANYONE AT

1 APPLE?

2 ANSWER: I KNOW OVER A COURSE OF YEARS WE'VE
3 TALKED TO THEM ABOUT WHAT THEIR PLANS ARE FOR
4 QUICKTIME, BUT THAT'S ALL.

5 QUESTION: DOES MICROSOFT HAVE SOFTWARE THAT
6 COMPETES WITH QUICKTIME?

7 ANSWER: SINCE QUICKTIME'S A FREE RUNTIME,
8 YOU CAN ANSWER THAT EITHER YES OR NO. IT'S NOT A
9 REVENUE SOURCE FOR APPLE. BUT THERE IS AN APPLE
10 TECHNOLOGY THAT HAS SOME COMMON THINGS WITH SOME
11 MICROSOFT TECHNOLOGIES.

12 QUESTION: DO YOU BELIEVE THAT QUICKTIME
13 SOFTWARE COMPETES WITH ANY SOFTWARE DISTRIBUTED
14 BY MICROSOFT?

15 MR. HEINER: OBJECTION.

16 THE WITNESS: DEPENDS ON WHAT YOU MEAN
17 COMPETE.

18 BY MR. BOIES:

19 QUESTION: USING THAT IN THE WAY THAT YOU
20 WOULD ORDINARILY UNDERSTAND IT IN THE OPERATION
21 OF YOUR BUSINESS, SIR.

22 ANSWER: NO.

23 QUESTION: DID YOU MAKE ANY EFFORT, OR DID
24 MICROSOFT MAKE ANY EFFORT, TO GET APPLE TO AGREE
25 NOT TO MARKET QUICKTIME IN ANY RESPECT, OR TO

1 LIMIT THE MARKETING OF QUICKTIME IN ANY RESPECT?

2 ANSWER: THERE WERE DISCUSSIONS ABOUT
3 WHETHER WE COULD HELP THEM WITH THEIR QUICKTIME
4 GOALS AT VARIOUS POINTS IN TIME. AND, IN FACT,
5 THEY ENCOURAGED US TO DO SOMETHING WHERE WE'D
6 ACTUALLY, BY WORKING WITH THEM, MAKE QUICKTIME
7 EVEN MORE POPULAR THAN IT IS.

8 MR. BOIES: COULD YOU READ BACK MY QUESTION,
9 PLEASE.

10 (THE RECORD WAS READ AS FOLLOWS:)

11 QUESTION: DID YOU MAKE ANY EFFORT, OR DID
12 MICROSOFT MAKE ANY EFFORT, TO GET APPLE TO AGREE
13 NOT TO MARKET QUICKTIME IN ANY RESPECT, OR TO
14 LIMIT THE MARKETING OF QUICKTIME IN ANY RESPECT?

15 BY MR. BOIES:

16 QUESTION: CAN YOU ANSWER THAT QUESTION,
17 SIR?

18 MR. HEINER: OBJECTION.

19 THE WITNESS: I'M NOT AWARE OF ANYTHING THAT
20 IS DIRECTLY AIMED AS THOSE THINGS, NO.

21 BY MR. BOIES:

22 QUESTION: ARE YOU AWARE OF ANYTHING THAT

23 WAS INDIRECTLY AIMED AT THOSE THINGS?

24 ANSWER: NO.

25 QUESTION: DID, TO YOUR KNOWLEDGE, ANY

1 REPRESENTATIVE OF MICROSOFT TRY TO CONVINCЕ APPLE
2 NOT TO SELL OR PROMOTE QUICKTIME FOR USES FOR
3 WHICH MICROSOFT PROMOTES THE USE OF NETSHOW?

4 ANSWER: THERE WAS SOME DISCUSSION ABOUT THE
5 FUTURE DEVELOPMENT OF THE RUNTIME CODE AND
6 WHETHER WE COULD WORK TOGETHER ON THE WINDOWS
7 SIDE OF THAT RUNTIME CODE THAT WOULD ENHANCE
8 THEIR GOALS AND OUR GOALS.

9 QUESTION: AND WAS THERE A DISCUSSION IN
10 THAT CONTEXT ABOUT APPLE AGREEING NOT TO SELL OR
11 PROMOTE QUICKTIME FOR USES THAT MICROSOFT WAS
12 PROMOTING NETSHOW TO FULFILL?

13 ANSWER: NOT THAT I'M AWARE OF.

14 QUESTION: INsofar AS YOU'RE AWARE, DID
15 MICROSOFT REPRESENTATIVES TELL APPLE
16 REPRESENTATIVES THAT IF APPLE WOULD AGREE NOT TO
17 SELL OR PROMOTE QUICKTIME FOR USES FOR WHICH
18 MICROSOFT OFFERED NETSHOW, THAT MICROSOFT WOULD
19 HELP APPLE IN OTHER AREAS?

20 ANSWER: WELL, THE QUICK--AS FAR AS I KNOW,
21 THE QUICKTIME RUNTIME IS FREE. SO, WHEN YOU SAY
22 `SELL,' I DON'T KNOW--I'M NOT SURE WHAT YOU MEAN

23 THERE.

24 QUESTION: I THINK I SAID SELL OR PROMOTE, I

25 CERTAINLY MEANT TO, BUT I WILL USE THE WORD

1 'DISTRIBUTE,' IF THAT WILL HELP.

2 ANSWER: I THINK THERE WAS A TECHNICAL
3 DISCUSSION ABOUT WHETHER A COMMON RUNTIME WAS
4 ACHIEVABLE WHICH WOULD HAVE ENHANCED THEIR
5 QUICKTIME GOALS.

6 QUESTION: WHEN YOU SAY 'A COMMON RUNTIME,'
7 WOULD YOU EXPLAIN WHAT YOU MEAN BY THAT.

8 ANSWER: I MEAN THAT THE WINDOWS MEDIA
9 PLAYER RUNTIME WOULD COMBINE TECHNOLOGY FROM THEM
10 AND FROM US THAT MET ALL OF THEIR GOALS FOR
11 QUICKTIME.

12 QUESTION: AND SO THERE WOULD BE A WINDOWS
13 MEDIA PLAYER THAT WOULD BE DISTRIBUTED, AND APPLE
14 WOULD STOP DISTRIBUTING QUICKTIME FOR PURPOSES
15 FOR WHICH THE WINDOWS MEDIA PLAYER WAS
16 DISTRIBUTED; IS THAT WHAT YOU'RE SAYING?

17 ANSWER: NO, THEY WOULDN'T HAVE TO STOP
18 ANYTHING. THERE WOULD JUST BE A NEW RUNTIME THAT
19 MIGHT INCORPORATE SOME OF THEIR TECHNOLOGY AND
20 HELP THEM WITH THEIR QUICKTIME GOALS.

21 QUESTION: WELL, WHEN YOU SAY THERE WOULD BE
22 A NEW PROGRAM THAT WOULD INCORPORATE OR MIGHT

23 INCORPORATE SOME OF THEIR TECHNOLOGY, WOULD THAT
24 RESULT IN THEM STOPPING THE DISTRIBUTION OF THEIR
25 EXISTING QUICKTIME TECHNOLOGY?

1 ANSWER: THERE'S NO REASON IT WOULD NEED TO.

2 QUESTION: WAS THAT PART OF THE DISCUSSIONS?

3 ANSWER: I DON'T THINK SO, BUT AS I TOLD

4 YOU, I WASN'T PART OF ANY OF THOSE DISCUSSIONS.

5 QUESTION: WERE YOU AWARE OF THOSE

6 DISCUSSIONS WHILE THEY WERE GOING ON?

7 ANSWER: I KNEW THAT APPLE HAD A--HAD THE

8 QUICKTIME RUNTIME FOR WINDOWS. AND THERE WAS

9 ALWAYS A QUESTION OF WHETHER WE COULD CREATE A

10 WINDOWS RUNTIME THAT COMBINED WHAT THEIR GOALS

11 WERE THERE AND WHAT THEY HAD DONE WELL THERE FOR

12 THE WORK WE WERE DOING. AND I KNOW WE TALKED TO

13 APPLE ABOUT WHETHER WE COULD HELP EACH OTHER IN

14 AN EFFORT LIKE THAT.

15 QUESTION: WHEN YOU TALK ABOUT HELPING EACH

16 OTHER, WOULD THAT RESULT IN A SINGLE PRODUCT THAT

17 WOULD THEN BE DISTRIBUTED IN PLACE OF BOTH

18 QUICKTIME AND NETSHOW?

19 ANSWER: NO. PEOPLE COULD STILL DISTRIBUTE

20 THEIR OLD THINGS, BUT IF YOU CREATE A NEW THING

21 THAT'S BETTER, IT MIGHT--SOME PEOPLE MIGHT USE

22 IT.

23 QUESTION: WELL, WAS THE PURPOSE OF CREATING
24 THE NEW WINDOWS MEDIA PLAYER THAT YOU REFERRED
25 TO, TO OBSOLETE QUICKTIME?

1 ANSWER: WHATEVER FUNCTIONALITY QUICKTIME
2 HAD PREVIOUSLY WOULD BE UNAFFECTED BY ANY SUCH
3 EFFORT.

4 QUESTION: THAT REALLY WASN'T MY QUESTION,
5 MR. GATES. MAYBE I CAN STATE IT MORE CLEARLY.

6 DID MICROSOFT TRY TO CONVINCING APPLE TO TAKE
7 ACTIONS WHICH WOULD HAVE RESULTED IN APPLE NO
8 LONGER DISTRIBUTING QUICKTIME TO PEOPLE TO WHOM
9 MICROSOFT WAS DISTRIBUTING NETSHOW OR A SUCCESSOR
10 MICROSOFT PRODUCT?

11 ANSWER: I'M NOT AWARE OF ANYTHING THAT
12 WOULD HAVE STOPPED THEM FROM DISTRIBUTING THE
13 QUICKTIME THEY HAD, BUT IT WAS POSSIBLE WE COULD
14 COME UP WITH SOMETHING THAT WOULD BE HELPFUL TO
15 BOTH COMPANIES IN TERMS OF A PRODUCT THAT TOOK
16 SOME OF THEIR TECHNOLOGY AND OURS AND WAS BETTER
17 FOR USERS.

18 QUESTION: DID MICROSOFT OFFER TO HAVE APPLE
19 CONTINUE TO OFFER A MULTIMEDIA PLAYER FOR THE MAC
20 PLATFORM AND TO ASSIST APPLE IN THAT IF APPLE
21 WOULD AGREE NOT TO DISTRIBUTE THAT MULTIMEDIA
22 PLAYER FOR THE WINDOWS PLATFORM?

23 ANSWER: AS I SAID, I DON'T THINK THERE WAS
24 ANY DISCUSSIONS ABOUT NOT DISTRIBUTING SOME OLD
25 THING, BUT, RATHER, A QUESTION WAS COULD

1 SOMETHING NEW BE CREATED WHICH WOULD BE BETTER
2 FOR BOTH COMPANIES.

3 QUESTION: WAS THE IDEA THAT ONCE THIS NEW
4 THING WAS CREATED, THE OLD THING THAT APPLE WAS
5 DISTRIBUTING WOULD NO LONGER BE DISTRIBUTED BY
6 APPLE?

7 ANSWER: AS I SAID, I DON'T THINK THAT WAS
8 PART OF THE DISCUSSION.

9 QUESTION: HAVE YOU EVER BEEN TOLD ANYTHING,
10 OR HAVE YOU READ ANYTHING, ABOUT ANY CONTENTION
11 THAT APPLE MAY OR MAY NOT MAKE CONCERNING THESE
12 DISCUSSIONS?

13 ANSWER: NO."

14 (PAUSE.)

15 "QUESTION: ARE YOU AWARE OF ANY ASSERTIONS
16 BY APPLE REPRESENTATIVES THAT MICROSOFT
17 REPRESENTATIVES TRIED TO GET THEM TO AGREE TO
18 DIVIDE THE MARKET?

19 ANSWER: NO.

20 QUESTION: NO ONE HAS EVER TOLD YOU THAT?

21 ANSWER: THAT'S RIGHT.

22 QUESTION: AND YOU'VE NEVER HEARD THAT FROM

23 ANY SOURCE?

24 ANSWER: THAT'S RIGHT.

25 QUESTION: DO I TAKE IT FROM WHAT YOU SAID

1 YESTERDAY THAT IF, IN FACT, MICROSOFT
2 REPRESENTATIVES HAD ATTEMPTED TO GET APPLE
3 REPRESENTATIVES TO PARTICIPATE IN A MARKET
4 DIVISION, THAT WOULD BE CONTRARY TO MICROSOFT
5 POLICY?

6 MR. HEINER: OBJECTION.

7 THE WITNESS: THAT'S RIGHT.

8 BY MR. BOIES:

9 QUESTION: AND I TAKE IT THAT IF YOU FOUND
10 OUT THAT PEOPLE HAD DONE THAT CONTRARY TO
11 MICROSOFT'S POLICY, THEY WOULD BE APPROPRIATELY
12 DEALT WITH?

13 ANSWER: YES.

14 QUESTION: ARE YOU A REGULAR READER OF THE
15 WALL STREET JOURNAL?

16 ANSWER: SOME DAYS I READ THE WALL STREET
17 JOURNAL.

18 QUESTION: ARE YOU AWARE OF A WALL STREET
19 JOURNAL ARTICLE THAT DISCUSSES ASSERTIONS BY
20 APPLE CONCERNING ALLEGED EFFORTS BY MICROSOFT TO
21 GET APPLE TO AGREE TO DIVIDE MARKETS?

22 ANSWER: NO.

23 QUESTION: LET ME JUST REFER YOU TO A WALL
24 STREET JOURNAL ARTICLE OF JULY 23, 1998, ENTITLED
25 `U.S. PROBING MICROSOFT'S MULTIMEDIA ROLE.'

1 DOES THAT REFRESH YOUR RECOLLECTION AS TO
2 WHETHER YOU EVER SAW A--A WALL STREET JOURNAL
3 ARTICLE ABOUT ALLEGED MARKET DIVISION ATTEMPTS
4 BETWEEN MICROSOFT AND APPLE?

5 MR. HEINER: DO YOU WANT TO SHOW US THE
6 ARTICLE?

7 MR. BOIES: I HAVE NO OBJECTION TO SHOWING
8 IT. AND I HAVE NO OBJECTION TO MARKING IT.

9 MR. HEINER: I DON'T CARE IF IT'S MARKED OR
10 NOT.

11 MR. BOIES: MY PURPOSE IS JUST TO TRY TO
12 REFRESH HIS RECOLLECTION TO SEE WHETHER HE
13 RECALLS HAVING EVER SEEN THIS.

14 THE WITNESS: NO."