UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

PLAINTIFF,

V.

: C.A. NO. 98-1232

MICROSOFT CORPORATION,

DEFENDANT.

STATE OF NEW YORK, ET AL.,

PLAINTIFFS,

V.

: C.A. NO. 98-1223

MICROSOFT CORPORATION,

DEFENDANT.

. - - - - - - - - -MICROSOFT CORPORATION,

COUNTERCLAIM-PLAINTIFF, :

V.

DENNIS C. VACCO, ET AL.,

COUNTERCLAIM-DEFENDANTS.: JANUARY 13, 1999

VOLUME 37-B

TRANSCRIBED DEPOSITION EXCERPTS

COURT REPORTER:

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- 1	3.13
1	(DEPOSITION EXCERPTS OF DONALD HARDWICK.)
2	Q. AROUND THIS TIME, DID COMPAQ EVER
3	REMOVE THE INTERNET EXPLORER AND MSN ICONS FROM
4	WINDOWS?
5	A. YES, THEY DID, ON THEIR CONSUMER
6	MACHINES.
7	Q. IS THAT THE PRESARIO LINE OF MACHINES?
8	A. I BELIEVE THAT'S CORRECT AT THAT TIME.
9	Q. WHEN WAS THAT, IF YOU RECALL?
10	A. I'M TRYING TO REMEMBER THE EXACT DATE.
11	I THINK THAT THERE WAS QUITE A LENGTHY PERIOD OF
12	TIME, ACTUALLY, WHERE THEY HAD DONE THAT. I
13	DON'T REMEMBER THE SPECIFIC DATES, BUT IT WAS
14	TOWARD THE END OF '96, IF I REMEMBER CORRECT
15	(SIC), OR TOWARD THE BEGINNINGTHE END OF '95,
16	EXCUSE ME.
17	Q. THAT THEY REMOVED THE MSN?
18	A. YES.
19	Q. WAS IT BOTH THE MSN AND INTERNET
20	EXPLORER?
21	A. YES, IT WAS.
22	(EXCERPT.)
23	Q. IF YOU REMEMBER, DO YOU REMEMBER WHEN
24	YOU FIRST BECAME AWARE OF THE FACT THAT THEY HAD

REMOVED THE ICON--

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YOU SAID THAT THE FUNCTIONALITY IS NOT

1	READILY AVAILABLE. WHAT DO YOU MEAN BY THAT?
2	A. I'M NOT SPEAKING TECHNOLOGICALLY. I'M
3	SPEAKING STRICTLY AS AN END USER TAKING A LOOK AT
4	A SCREEN OR MACHINE AND GETTING A CONSISTENT LOOK
5	AND FEEL FROM ONE MACHINE TO THE NEXT.
6	SO WHAT THEY MAY COME TO EXPECT ON A
7	WINDOWS MACHINE, INDEED, WAS MISSING ON THOSE
8	MACHINES.
9	Q. SO, IF THE END USER WANTED TO USE
10	INTERNET EXPLORER, THEY WOULD NOT BE ABLE TO
11	BECAUSE THE ICON WAS REMOVED?
12	A. I BELIEVE TECHNOLOGICALLY THEY COULD
13	USE IT, BUT IT WOULD BE A DIFFERENT ROUTE TO GET
14	THERE. SO AGAIN, THE FUNCTIONALITY IS DIFFERENT.
15	IT'S NOT CLICKING ON AN ICON ON THE SCREEN AS WE
16	LED, YOU KNOW, THE MASS OF THE PUBLIC TO BELIEVE.
17	Q. WHAT ROUTES WOULD THEY HAVE TAKEN TO
18	GET THERE?
19	A. I'VE FORGOTTEN THE SPECIFIC STEPS, BUT
20	YOU CAN CERTAINLY GO TO THE MACHINE AND FIND THE
21	COMPONENTS THAT HAVE NOT BEEN REMOVED, JUST THE
22	ICON HAS BEEN REMOVED.
23	Q. WOULD THAT BE, SAY, THROUGH THE START
24	MENU OR
25	A. AGAIN, I MEAN, I'M SURE YOU CAN TALK TO

SOME OF OUR TECHNICAL FOLKS. THERE'S PROBABLY MORE THAN ONE ROUTE TO DO THAT, EITHER THROUGH THE START MENU OR THROUGH THE INTERNET -- OR EXCUSE ME, THROUGH THE EXPLORER, THE WINDOWS EXPLORER, BUT IT'S MORE CUMBERSOME. AND AGAIN, THE PRODUCT FUNCTIONALITY DOES APPEAR DIFFERENT, AND THE AVERAGE USER MAY NOT BE AWARE OF THOSE ROUTES. DO YOU HAVE ANY UNDERSTANDING AS TO WHETHER AVERAGE -- YOU SAID THE AVERAGE USER MAY NOT BE AWARE OF THOSE ROUTES. DO YOU HAVE ANY UNDERSTANDING AS TO HOW MANY USERS ACTUALLY ACCESSED THE CODE WHEN THE ICON WAS REMOVED? THAT'S SOMETHING I WOULD HAVE NO Α. KNOWLEDGE OF IT. DO YOU KNOW IF COMPAQ REMOVED THE INTERNET EXPLORER FROM THE START MENU? I DON'T REMEMBER. IT'S POSSIBLE. REALLY DON'T REMEMBER EXACTLY AT THIS POINT IN TIME. (EXCERPT.) WE'RE TALKING ABOUT TWO DIFFERENT THINGS, AND THAT'S THE INTERNET CONNECTION WIZARD AND THE ONLINE SERVICES FOLDER.

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- A. RIGHT.
- Q. AND I'LL GET TO THE INTERNET CONNECTION
 WIZARD SOON AND THE FACT THAT OEM'S CAN PLACE
 WHICHEVER ISP'S, OR WHATEVER YOUR TESTIMONY IS
 ABOUT THAT, I'LL ASK QUESTIONS ABOUT IT.

BUT AS TO THE ONLINE SERVICES FOLDER,

ARE OEM'S CURRENTLY PERMITTED TO REMOVE INTERNET

EX--OR EXCUSE ME--AOL FROM THE ONLINE SERVICES

FOLDER?

- A. I DO NOT BELIEVE SO.
- Q. WHY NOT?
- A. WE PROVIDE THE PRODUCT, AND WE ASK

 OEM'S TO--OR LICENSED OEM'S TO SHIP IT AS WE

 PROVIDE IT TO THEM. WHAT THE BUSINESS DECISIONS

 ARE BEHIND PUTTING THAT IN THERE IS NOT SOMETHING

 I'VE BEEN PARTICIPATING IN.
- Q. YOU SAID THAT YOU PROVIDE THE PRODUCT.
 SO ARE YOU INCLUDING AOL IN THAT DEFINITION?
- A. THE WAY WE DELIVER THE PRODUCT, IF IT INCLUDES AOL, WOULD BE OUR DISTRIBUTION OF THE PRODUCT, SO YES.

(EXCERPT.)

Q. LET ME BACK UP AND GO BACK TO THE
COMPAQ SITUATION THAT WE WERE TALKING ABOUT IN
'95 AND '96.

I'M NOW MARKING A LETTER WHICH HAS BEEN 1 LABELED MSV 0004946, AND I'M MARKING IT AS 2 3 GOVERNMENT EXHIBIT 328. 4 Α. OKAY. 5 AND IT'S DATED JUNE 25, '96, AND BEARS YOUR NAME AT THE BOTTOM. 6 7 Α. UH-HUH. 8 Ο. DID YOU SEND THIS LETTER TO COMPAQ? 9 Α. LET ME READ IT, PLEASE. 10 0. SURE. TAKE YOUR TIME. 11 Α. YES, I SENT THAT LETTER. COULD YOU DESCRIBE THE SUBSTANCE OF 12 13 THIS LETTER FOR THE RECORD. 14 WELL, THIS WAS A CONTINUANCE OF THE Α. DISCUSSION WE HAD THROUGH THE OTHER LETTERS HERE 15 16 WHERE WE HAD MADE AN OVERTURE TO CELESTE DUNN IN 17 WRITING THAT IF SHE WOULD FIX AND REPLACE THE 18 PRODUCT AS IT WAS ORIGINALLY DISTRIBUTED TO THEM, 19 THAT WE WOULD RESCIND THE NOTICE OF INTENT TO 20 TERMINATE. 21 SHE, IN TURN, DID RESPOND THAT THEY 22 WOULD BE DOING SUCH A THING, AND SO THIS LETTER 23 FORMALIZED THAT COMMENT, AND SAID THIS WAS GREAT, 24 WE WERE LOOKING FORWARD TO GETTING THIS ISSUE

BEHIND US.

4 5

FURTHER, IT SAID WE DIDN'T EXPECT THEM
TO DO ANYTHING WITH THE SYSTEMS ALREADY IN THE
CHANNEL. WE TRIED TO WORK VERY REASONABLY WITH
THEM AND JUST TO ALLOW THEM TO FIX THE PROGRAM
GOING FORWARD.

(EXCERPT.)

- Q. AND WE'VE BEEN TALKING ABOUT WHY
 MICROSOFT WANTED COMPAQ TO REPLACE THE ICONS.
 - A. UH-HUH.
- Q. AND I BELIEVE THAT YOU'VE TOLD ME THAT
 CUSTOMERS EXPECT THEM TO BE THERE. MICROSOFT
 BELIEVED CUSTOMERS EXPECTED THEM TO BE THERE.
 ARE THERE ANY OTHER REASONS THAT MICROSOFT
 WANTED--
- A. THE MOST FUNDAMENTAL REASON WHY WE
 WANTED THEM BACK IS WE WANTED COMPAQ--AS WE
 WANTED OTHER OEM PARTNERS--TO ABIDE BY THE
 LICENSE AGREEMENTS AND SHIP THE PRODUCT IN THE
 MANNER THAT WE DISTRIBUTED IT TO THEM. SO WE
 SPEND OUR ENTIRE ENERGIES ON CREATING WHAT WE
 THINK IS AN EXCELLENT OPERATING SYSTEM, AND WE DO
 THE BEST WE CAN TO MAKE SURE THAT END USERS ARE
 AWARE OF THE FUNCTIONALITY AND CAPABILITIES OF
 THE OPERATING SYSTEM. AND THEREFORE, WHEN WE
 LICENSE THE PRODUCT, IT'S OUR EXPECTATION THAT

THAT'S HOW IT WILL BE DELIVERED.

- Q. DID THE REMOVAL OF THE ICONS HAVE ANY EFFECT ON THE FUNCTIONING OF THE OPERATING SYSTEM?
 - A. WELL, WE TALKED ABOUT THAT EARLIER.
- Q. AND WHAT WAS THAT BRIEFLY? I'M SORRY.

 I'M NOT--
 - A. SHOULD WE READ BACK?
- Q. NO. I'M TRYING TO FIGURE OUT WHETHER
 REMOVAL OF ICONS HAD ANY EFFECT ON THE
 FUNCTIONING OF THE OPERATING SYSTEM. AND IF YOU
 REMEMBER WHAT YOU SAID, I APOLOGIZE FOR ASKING IT
 AGAIN, BUT I DON'T.
- A. IF THE END USER WANTED TO USE INTERNET EXPLORER OR MSN, THEY WOULD HAVE HAD A DIFFICULT TIME OF BEING ABLE TO FIND THE PRODUCT, SO THEY WOULD NOT SEE IT AS THEY MIGHT HAVE EXPECTED.
- Q. OKAY. THEN I GUESS MY QUESTION SHOULD SHOULD BE--I DO RECALL THAT.

I GUESS MY QUESTION SHOULD HAVE BEEN WHETHER THERE WAS ANY OTHER EFFECT.

- A. THAT I'M NOT AWARE OF. SO THERE MAY HAVE BEEN OTHER TECHNOLOGICAL CHANGES THAT I'M NOT AWARE OF.
 - Q. DID YOU EVER HEAR ANYTHING FROM ANY OF

THE SYSTEMS ENERGIES ABOUT THE WINDOWS NOT FUNCTIONING OTHER THAN PEOPLE NOT BEING ABLE TO INVOKE INTERNET EXPLORER AND MSN?

- A. NOT THAT I REMEMBER.
- Q. WHERE DID MICROSOFT'S POLICY OF NOT ALLOWING OEM'S TO REMOVE ICONS COME FROM?
- A. WE DON'T HAVE A POLICY OF NOT ALLOWING OEM'S TO REMOVE ICONS, SO THAT'S NOT SOMETHING I'VE EVER HEARD OF A POLICY.

WE HAVE DISTRIBUTION LICENSE AGREEMENTS
THAT WE ARE VERY SPECIFIC THAT WE ASK OEM'S TO
SHIP THE PRODUCT IN THE MANNER THAT WE PROVIDE IT
TO THEM. SO, REMOVING THE ICONS DIFFERS FROM
THAT AS WOULD REMOVING ANYTHING ELSE.

Q. SURE.

ARE THERE ANY ICONS THAT MICROSOFT
SHIPS PRE-CONFIGURED WITH WINDOWS THAT OEM'S CAN
REMOVE ACCORDING TO THE LICENSE AGREEMENT?

- A. NOPE.
- Q. DO YOU HAVE ANY UNDERSTANDING AS TO WHY OEM'S CAN'T REMOVE ANY ICONS?
- A. SAME ANSWER. WE CREATE WHAT WE THINK

 IS THE BEST OPERATING SYSTEM. WE GIVE OEM'S A

 VERY LENGTHY OPPORTUNITY TO BETA TEST AND LOOK AT

 THESE OPERATING SYSTEMS PRIOR TO DISTRIBUTION,

AND SO IF THEY HAVE CONCERNS, THAT WOULD BE THE APPROPRIATE TIME TO SAY THEY SEE THINGS THERE THAT THEY PREFER NOT TO BE IN THERE.

(EXCERPT.)

- Q. AND I BELIEVE THAT YOU TESTIFIED THAT

 PART OF THE "WINDOWS EXPERIENCE" IS THAT OEM'S

 CAN'T HAVE ICONS ON THE DESKTOP THAT APPEAR

 SUBSTANTIALLY DIFFERENT FROM THE MICROSOFT ICONS,

 THAT IS LARGER OR--
- A. LET ME SAY WHAT OUR PERSPECTIVE IS. ON THE INITIAL BOOT SEQUENCE AND A CONSISTENT LOOK AND FEEL FOR CONSISTENCY, THE LICENSING AGREEMENT BETWEEN THE TWO COMPANIES IS THAT OTHER ICONS ADDED WILL HAVE THE SAME GENERAL SIZE, SHAPE AND LOOK AS THE OTHER ICONS.
 - Q. WHAT IS THE PURPOSE OF THAT PROVISION?
- A. I'M SURE THERE'S MORE THAN ONE. BUT I MEAN, JUST LOGICALLY, IT MAKES SENSE TO HAVE KIND OF A MENU SELECTION OF DIFFERENT ICONS VERSUS ONE THAT'S GIANT FLASHING ORANGE VERSUS ANOTHER ONE THAT'S TINY AND KIND OF OBFUSCATE EVERYTHING ELSE.

SO AGAIN, IT'S JUST TO MAKE IT EASIER FOR THE END USER TO USE THE PRODUCT.

O. HAVE YOU HAD ANY DISCUSSIONS WITH

1	ANYONE WITHIN MICROSOFT ABOUT THE PURPOSE OF THAT
2	PROVISION?
3	A. YEAH, JUST TO THE EXTENT WE'VE JUST
4	TALKED. I'VE ALSO TALKED TO OEM CUSTOMERS ABOUT
5	IT. IT NEVER APPEARED TO BE A POINT OF
6	CONTENTION, I THINK. EVERYBODY I TALKED TO
7	PRETTY MUCH AGREES THAT MAKES LOGICAL SENSE.
8	Q. WHICH OEM CUSTOMERS HAVE YOU TALKED TO
9	ABOUT IT?
10	A. I'M TRYING TO REMEMBER SPECIFICALLY. I
11	DON'T REMEMBER SPECIFICALLY. I MEAN, I CAN
12	GUESS. I'M SURE I'VE TALK TO MORE THAN ONE.
13	IT'S ALMOST A NONISSUE IS WHY IT DOESN'T STICK IN
14	MY MIND OF WHO AND WHEN I HAD THAT DISCUSSION.
15	Q. IS IT A NONISSUE BECAUSE NO OEM'S HAVE
16	ASKED TO HAVE LARGER, FLASHIER ICONS?
17	A. NONE THAT HAVE EXPERIENCE DIRECTLY HAVE
18	FELT THAT THAT WAS AN IMPORTANT SITUATION.
19	Q. IS THAT BECAUSE OEM'S DON'T WANT TO DO
20	ANYTHING THAT WOULD CAUSE CONFUSION FOR THEIR
21	CUSTOMERS?
22	A. I'M CERTAINLY ASSUMING THAT.
23	Q. AND THEY BEAR THE SUPPORT COSTS IF THE
24	CUSTOMERS DO BECOME CONFUSED?
25	A. YES.
11	

1	Q. IF THE CUSTOMERS CALL THEM AND
2	A. THAT COULD BE PART OF THEIR MOTIVATION
3	AS WELL. I THINK THEY WANT TO DELIVER A GOOD
4	PRODUCT TO THEIR END USERS EVERY BIT AS MUCH AS
5	WE DO. AND THAT DOESN'T SEEM TO MAKE SENSE TO
6	HAVE SOME BUTTONS OR ICONS THAT LOOK TOTALLY
7	DIFFERENT THAN OTHERS. IT'S NOT INTUITIVE. IT'S
8	NOT EASY TO USE.
9	(EXCERPT.)
LO	BY MS. GIULIANELLI:
1	Q. WE WERE TALKING ABOUT PACKARD-BELL AND
ر2	NAVIGATOR SHELL AND THE NAVIGATOR SHELL.
١3	HAS PACKARD-BELL ASKED FOR ANY OTHER
L4	EXCEPTION TO THE BOOTUP SEQUENCE?
15	A. AT WHAT POINT IN TIME?
١6	Q. EVER.
١7	A. WELL, I CAN ONLY SPEAK TO THE PERIOD OF
18	TIME THAT I'VE BEEN WORKING FOR THEM. AND
19	RECENTLY, YES, THEY'VE ASKED FOR SOME CHANGES TO
20	THE BOOTUP SEQUENCE.
21	Q. AND WHAT HAVE THEY ASKED FOR RECENTLY?
22	A. THEY WANTED TO MAKE SOME MODIFICATIONS
23	TO THE USER REGISTRATION PROCESS AND TO THE ISP
24	SIGNUP PROCESS.
25	O. WHEN WAS THAT? IN THE SPRING OF '98?

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- A. I DON'T REMEMBER THE EXACT DATES.

 WE'VE BEEN TALKING TO THEM FOR PROBABLY TWO OR

 THREE MONTHS ABOUT THAT, I THINK.
- Q. WHAT CHANGES DID PACKARD-BELL WANT TO MAKE TO THE USER REGISTRATION PROCESS?
- A. THEY WANT TO USE THEIR OWN SOFTWARE VERSUS THE SOFTWARE THAT'S ALREADY PART OF WINDOWS 98 TO DO THAT.
- Q. DO YOU HAVE ANY UNDERSTANDING AS TO WHY THEY WANT TO USE THEIR OWN SOFTWARE?
- A. NOT IN HUGE DETAIL. BUT BASICALLY A
 COUPLE OF THINGS IS THEY WANT TO USE THEIR OWN
 SOFTWARE BECAUSE THEY WANT TO NOT INCUR COSTS TO
 HAVE SOMEBODY ELSE DEVELOP A REGISTRATION
 PROCESS. I THINK THEY ALSO JUST LIKE THE WAY
 THEIR REGISTRATION IS DONE AND KIND OF FEEL GOOD
 ABOUT THAT.
- Q. AND HAS MICROSOFT GRANTED THIS REQUEST AS TO THE USER REGISTRATION PROCESS?
- A. WE AGREED TO WORK WITH THEM TO LET THEM MODIFY HOW THE PROCESS HAS GONE, NOT TO MODIFY OUR WINDOWS OPERATING SYSTEM, BUT TO ALLOW THEM TO ALSO ADD IN THEIR OWN REGISTRATION PROCESS.
- Q. WHERE WOULD THEIR REGISTRATION PROCESS APPEAR?

1	A. I DON'T REMEMBER EXACTLY WHEN IT
2	HAPPENS. IT HAPPENS DURING THE REGISTRATION
3	PROCESS.
4	Q. IS THAT SOMEWHERE IN THE BOOTUP
5	SEQUENCE?
6	A. YES, IT IS.
7	Q. AND THEN HOW DOES IT APPEAR TO THE END
8	USER?
9	A. I DON'T KNOW EXACTLY BECAUSE WE'RE
10	STILL WORKING WITH THE PACKARD-BELL ON THAT.
11	RIGHT NOW THEY'VE GOTTHE REGISTRATION SHOWS UP
12	IT GOES INTO THEIR REGISTRATION PROCESS. IT'S A
13	LITTLE BIT BROKEN FROM OUR PERSPECTIVE AS FAR AS
14	HAVING THE CODE WORK SEAMLESSLY, SO WORK WITH
15	THEM TO GET IT TO A FINAL VERSION NOW.
16	Q. WHEN IT GOES INTO THE PACKARD-BELL
17	REGISTRATION PROCESS, WOULD IT BE A
18	PACKARD-BELL-CREATED INTERFACE?
19	A. AT THIS POINT IN TIME, YES, I BELIEVE
20	SO.
21	Q. AND THAT WOULD BE IN THE BOOTUP
22	SEQUENCE?
23	A. UH-HUH.
24	Q. IS MICROSOFT CONCERNED THAT THAT WILL
25	CAUSE CUSTOMER CONFUSION?

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A. YES.

Α.

PARTNER.

Q. AND WHY IS MICROSOFT--WHY IS MICROSOFT
WORKING WITH PACKARD-BELL TO IMPLEMENT THIS
PROCESS?

WE ARE WORKING WITH THEM TO FIND A WAY

 TO LET THEM ACCOMMODATE THEIR GOALS AND OUR GOALS OF CONSISTENCY AT THE SAME TIME. SO THEY'VE COME TO US AND SPECIFICALLY REQUESTED THE ABILITY TO DO SOMETHING THAT THEY THINK HELPS THEIR BUSINESS. TO THE EXTENT WE CAN DO THAT AND NOT CAUSE DETRIMENT TO OUR PRODUCT, WE'RE QUITE WILLING TO WORK WITH THEM. THEY'RE OUR VALUED

Q. WILL THIS ALTERNATE INTERFACE DURING
THE SIGNUP PROCESS CAUSE PACKARD-BELL MACHINES
LOADED WITH WINDOWS TO LOOK DIFFERENT THAN
MACHINES FROM OTHER OEM'S THAT ARE LOADED WITH
WINDOWS?

A. DURING THE VERY SPECIFIC REGISTRATION PROCESS, YES, THAT PROCESS COULD LOOK DIFFERENT. BUT AS FAR AS THE ULTIMATE LOOK AND FEEL OF THE

PRODUCT, WHEN IT'S DONE WITH ITS BOOT SEQUENCE,

Q. SOME OF THE BOOT SEQUENCE IS DIFFERENT?

A. CERTAINLY WITH THE REGISTRATION

NO, IT WILL BE THE SAME.

1 PROCESS, YES.

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