

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

-----X	
UNITED STATES OF AMERICA,	:
	:
PLAINTIFF,	:
	:
V.	: C.A. NO. 98-1232
	:
MICROSOFT CORPORATION,	:
	:
DEFENDANT.	:
-----X	
STATE OF NEW YORK, ET AL.,	:
	:
PLAINTIFFS,	:
	:
V.	: C.A. NO. 98-1223
	:
MICROSOFT CORPORATION,	:
	:
DEFENDANT.	:
-----X	
MICROSOFT CORPORATION,	:
	:
COUNTERCLAIM-PLAINTIFF,	:
	:
V.	:
	:
DENNIS C. VACCO, ET AL.,	:
	:
COUNTERCLAIM-DEFENDANTS.	: JANUARY 13, 1999
-----X	: WASHINGTON, D.C.

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TRANSCRIBED DEPOSITION EXCERPTS

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1 (DEPOSITION EXCERPTS OF SEAN SANDERS.)

2 Q. OKAY. YOU TALKED ABOUT, I GUESS, A  
3 TREND IN THE MARKET, THAT NETWORKING NEEDS WERE  
4 BECOMING MORE INTERNET-BASED. AM I RECALLING  
5 YOUR TESTIMONY CORRECTLY?

6 A. CORRECT.

7 Q. COULD YOU ELABORATE ON THAT A LITTLE  
8 BIT, THAT PHENOMENON IN THE MARKET.

9 A. OKAY. THE INTERNET HAS BECOME  
10 ESSENTIALLY A VERY LARGE NETWORK, AND IT IS THE  
11 NETWORK OF ALL NETWORKS. AND NOVELL'S CORE  
12 BUSINESS HAD BEEN IN CREATING SOFTWARE OPERATING  
13 SYSTEMS FOR WHAT WE CALLED LOCAL AREA NETWORKS,  
14 WHICH WERE KIND OF A LITTLE MORE SMALLER AND  
15 SELF-CONTAINED. AND IT BECAME CLEAR THAT PEOPLE  
16 WERE INTERESTED AND DESIRING TO EXPAND THEIR  
17 NETWORK TO INTERFACE WITH LARGER NETWORKS, AND AS  
18 SUCH, THAT--THAT MEANT THAT WE NEEDED TO MAKE  
19 SOME MODIFICATIONS TO HOW OUR PRODUCTS WORKED AND  
20 TRY TO WORK WITH SOME OF THE INTERNET TYPES OF  
21 SYSTEMS.

22 SO, WE BEGAN TO LOOK AT WAYS TO  
23 INCORPORATE THOSE KIND OF TECHNOLOGIES WITH OUR  
24 PRODUCT PRODUCTS SO NOVELL-BASED PRODUCTS,  
25 SPECIFICALLY NETWARE-BASED PRODUCTS, COULD

1 FUNCTION AND WORK MUCH MORE SEAMLESSLY WITH  
2 NETWORKS SUCH AS THE INTERNET, AS WELL AS ALLOW  
3 US TO CREATE STILL SMALLER, SELF-CONTAINED  
4 NETWORKS THAT INCORPORATED INTRANET TYPES OF  
5 TECHNOLOGIES.

6 Q. YOU REFERRED DURING THAT ANSWER TO  
7 LOCAL AREA NETWORKS. ARE THEY ALSO REFERRED TO  
8 AS LAN'S?

9 A. YES.

10 Q. DID--THIS TREND THAT YOU JUST DESCRIBED  
11 IN THE MARKET, WHEN--WHEN DID THAT BECOME  
12 NOTICEABLE? WHEN DID NOVELL NOTICE THAT THIS WAS  
13 GOING ON?

14 MS. ROTH: OBJECTION. LACK OF  
15 FOUNDATION.

16 BY MR. PEPPERMAN:

17 Q. IF YOU CAN, ANSWER MY QUESTION.

18 A. I JOINED THE COMPANY IN 1995, AS I  
19 MENTIONED, AND BY THAT TIME IT WAS BECOMING--IT  
20 WAS--I WOULD SAY THAT THAT WAS THE TALK IN THE  
21 HALLS. BEFORE THAT TIME, I CANNOT SAY.

22 Q. OKAY. ARE BOTH NETWARE AND  
23 INTRA-NETWARE SERVER OPERATING SYSTEM PRODUCTS?  
24 DO YOU CONSIDER THEM TO BE?

25 A. YES.

1 Q. WHAT IS A SERVER OPERATING SYSTEM?  
2 COULD YOU GIVE SORT OF A GENERAL DEFINITION THAT  
3 MAYBE A LAY JUDGE WOULD UNDERSTAND.

4 A. SURE.

5 A SERVER OPERATING SYSTEM IS A SPECIAL  
6 SET OF SOFTWARE PROGRAMS THAT RUNS ON  
7 A--GENERALLY A DEDICATED PC THAT MANAGES THE  
8 RESOURCES OF A NETWORK OF COMPUTERS AND ALLOWS  
9 THOSE VARIOUS OTHER NETWORKED COMPUTERS TO SHARE  
10 RESOURCES WITH EACH OTHER.

11 Q. ARE NETWARE AND INTRA-NETWARE BOTH  
12 32-BIT OPERATING SYSTEMS?

13 A. YES.

14 (EXCERPT.)

15 Q. WOULD IT BE ACCURATE TO SAY THAT BOTH  
16 OPERATING SYSTEMS RUN ON INTEL-COMPATIBLE  
17 COMPUTERS?

18 A. YES.

19 (EXCERPT.)

20 Q. WERE THERE ANY FEATURES IN THE--IN  
21 NETWARE 3.2 THAT HAVE ANY RELATIONSHIP TO THE  
22 INTERNET?

23 MS. ROTH: OBJECTION. VAGUE.

24 THE WITNESS: YES.

25 BY MR. PEPPERMAN:

1 Q. WHAT WERE THOSE FEATURES?

2 A. IN THE NETWARE 3.2 PRODUCT, WE INCLUDED  
3 NETSCAPE NAVIGATOR, WHICH IS A BROWSER--A  
4 SOFTWARE BROWSER PRODUCT THAT PEOPLE CAN USE TO  
5 BROWSE THE INTERNET, THE WORLD WIDE WEB  
6 SPECIFICALLY.

7 Q. WAS THAT THE FIRST ONE OF THE 3.X  
8 VERSIONS OF NETWARE TO INCLUDE A BROWSER?

9 A. YES.

10 Q. SO, NONE OF THE PRIOR 3.X VERSIONS HAD  
11 A BROWSER?

12 A. CORRECT.

13 Q. AND YOU SAID THE SPECIFIC BROWSER  
14 THAT'S INCLUDED IS NETSCAPE NAVIGATOR?

15 A. CORRECT.

16 Q. IS THERE A SEPARATE CHARGE FOR THAT WEB  
17 BROWSER, OR IS IT PART OF THE--THE OVERALL PRICE  
18 FOR NETWARE 3.2?

19 A. IT IS INCLUDED IN THE PRICE FOR NETWARE  
20 3.2.

21 (EXCERPT.)

22 Q. DOES NETWARE 4.11 COME WITH A BROWSER?

23 A. NETWARE 4.11, I BELIEVE, DOES NOT.

24 MR. PEPPERMAN: I'D LIKE TO MARK AS  
25 SANDERS EXHIBIT 4 A DOCUMENT ENTITLED,

1 "INTRA-NETWARE FEATURES COMPARISON."

2 (EXHIBIT 4 WAS MARKED.)

3 (A DISCUSSION WAS HELD OFF THE RECORD.)

4 BY MR. PEPPERMAN:

5 Q. MR. SIR, HAVE YOU SEEN THIS DOCUMENT  
6 BEFORE?

7 A. YES.

8 Q. IS THIS ALSO FROM NOVELL'S WEB SITE?

9 A. YES, IT IS.

10 Q. CAN YOU DESCRIBE WHAT THIS IS DOCUMENT  
11 IS.

12 A. CERTAINLY. THIS DOCUMENT COMPARES  
13 SOME--SOME FEATURE DIFFERENCES BETWEEN OUR  
14 NETWARE FAMILY OF PRODUCTS, SPECIFICALLY NETWARE  
15 3.2, NETWARE 4.1, NETWARE 4.11, AND  
16 INTRA-NETWARE, AND IT HAS A LIST OF FEATURES ON  
17 IT AS WELL WHETHER--SOME INFORMATION AS TO  
18 WHETHER OR NOT THAT SPECIFIC FEATURE CAN BE FOUND  
19 IN THE PARTICULAR VERSION OF NETWARE.

20 (EXCERPT.)

21 Q. OKAY. THIS DOCUMENT, AT LEAST,  
22 INDICATES THAT A NETSCAPE BROWSER IS INCLUDED  
23 WITH NETWARE 4.11?

24 A. IT DOES INDICATE THAT.

25 Q. DOES THAT REFRESH ANY RECOLLECTION OF

1 YOURS?

2 A. TO BE HONEST, I--NO. I DON'T DOUBT  
3 THAT.

4 HERE AGAIN, I THINK IT'S A CASE--IF--I  
5 CERTAINLY KNOW THAT IT IS--WITH INTRA-NETWARE  
6 WITH--AS I MENTIONED EARLIER, EVEN--EVEN I  
7 SOMETIMES GET CONFUSED AS TO WHAT EXACTLY WE  
8 INCLUDED IN NETWARE 4.11, AND THAT WAS INCLUDED  
9 IN INTRA-NETWARE.

10 (EXCERPT.)

11 Q. YOU TESTIFIED EARLIER ABOUT COMPETITORS  
12 TO NOVELL'S PRODUCTS.

13 IS WINDOWS 95 A COMPETITIVE PRODUCT TO  
14 ANY OF NOVELL'S PRODUCTS?

15 A. NO.

16 Q. IS WINDOWS 98 A COMPETITIVE PRODUCT TO  
17 ANY OF NOVELL'S PRODUCTS?

18 A. NO.

19 Q. WHY DO YOU NOT CONSIDER WINDOWS 95 OR  
20 WINDOWS 98 TO BE COMPETITIVE PRODUCTS?

21 A. WINDOWS 95 AND WINDOWS 98 ARE DESKTOP  
22 OPERATING SYSTEMS. WE DO NOT DEVELOP, MARKET OR  
23 SELL DESKTOP SYSTEMS CURRENTLY. WE DEVELOP,  
24 MARKET AND SELL SERVER OPERATING SYSTEMS OR  
25 NETWORK OPERATING SYSTEMS WHICH ARE--IT'S A

1 DIFFERENT CLASS OF A SOFTWARE PROGRAM.

2 Q. HOW WOULD YOU DESCRIBE THAT CLASS?

3 A. WELL, A--A NETWORK OPERATING SYSTEM OR  
4 SERVER OPERATING SYSTEM IS A SPECIAL SET OF  
5 COMPUTER PROGRAMS THAT RUNS ON A--A SPECIAL  
6 COMPUTER THAT ALLOWS FOR THE MANAGEMENT AND  
7 ADMINISTRATION OF GENERALLY COMMONLY SHARED  
8 NETWORKED RESOURCES, WHICH COULD INCLUDE ACCESS  
9 TO OTHER NETWORKS, ACCESS TO COMMONLY USED  
10 SOFTWARE PROGRAMS AND ACCESS TO COMMONLY USED AND  
11 SHARED DATA FILES AND OTHER INFORMATION LIKE  
12 THIS.

13 I WOULD CONTRAST THAT TO A DESKTOP  
14 OPERATING SYSTEM WHICH, AGAIN, IS A SPECIAL SET  
15 OF COMPUTER PROGRAMS THAT ALLOWS FOR THE  
16 MANAGEMENT OF--IT SPECIFICALLY FOCUSES ON THE  
17 MANAGEMENT OF THE RESOURCES--COMPUTING RESOURCES  
18 THAT A SPECIFIC END USER WOULD USE ON THEIR  
19 DESKTOP PC. SO IT ALLOWS THEM TO KIND OF--BEHIND  
20 THE SCENES IT DOES SOME MANAGEMENT OF THE  
21 PHYSICAL COMPUTER SUCH AS MANAGING THE MEMORY,  
22 THE DISK DRIVE AND SOME OF THE OTHER TECHNICAL  
23 ASPECTS THAT ARE INCLUDED WITHIN THE BOX. BUT IT  
24 ALSO PROVIDES A--KIND OF A--GENERALLY A FRIENDLY  
25 FRONT END TO THE SYSTEM THAT THE USER CAN



1 MANIPULATE TO BETTER USE THEIR SOFTWARE PROGRAMS  
2 AND THE RESOURCES THAT ARE GENERALLY THERE  
3 SPECIFIC TO THE DESKTOP.

4 IT CAN ALSO PROVIDE ACCESS OR HELP  
5 ABILITY ACCESS TO NETWORKED RESOURCES, BUT IT  
6 USUALLY DOES NOT MANAGE THOSE RESOURCES. THOSE  
7 RESOURCES ARE MANAGED BY THE NETWORK OPERATING  
8 SYSTEM.

9 (EXCERPT.)

10 Q. WHEN A USER INSTALLS THE INTRA-NETWARE  
11 PRODUCT, DO THEY HAVE A CHOICE OF WHETHER TO  
12 INSTALL THE NETSCAPE NAVIGATOR?

13 A. YES, THEY DO.

14 Q. CAN THEY CHOOSE NOT TO INSTALL NETSCAPE  
15 NAVIGATOR AT ALL?

16 A. THEY CAN.

17 (EXCERPT.)

18 Q. DO YOU KNOW WHY NOVELL HAS CHOSEN TO  
19 MAKE JVM AND JDK AVAILABLE TO ITS CUSTOMERS?

20 A. YES, I DO. NOVELL IS A STRONG  
21 PROPONENT OF THE BUSINESS VALUE OF JAVA AND HOW  
22 IT IS SOMETHING THAT CAN BE OF GREAT VALUE TO OUR  
23 CUSTOMERS. IT ESSENTIALLY IS--PROVIDES THE  
24 BENEFIT OF AN APPLICATION-RUNNING ENVIRONMENT  
25 THAT WOULD ALLOW PEOPLE TO RUN APPLICATIONS

1 INDEPENDENT OF ANY KIND OF OPERATING SYSTEM OR  
2 CPU TYPE OF RESTRAINTS THEY MAY CURRENTLY BE  
3 FACING.

4 SO THIS WOULD HELP US, NOVELL'S  
5 COMPANY, BE ABLE TO RUN A MUCH LARGER SET OF  
6 SOFTWARE OF SERVER-BASED APPLICATIONS ON  
7 NOVELL-BASED SERVERS THAN WE CURRENTLY OFFER,  
8 WHICH WOULD MAKE OUR PRODUCTS SUBSEQUENTLY MUCH  
9 MORE DESIRABLE IN THE MARKETPLACE.

10 Q. WHY WOULD THE AVAILABILITY OF MORE  
11 APPLICATIONS THAT RUN ON NOVELL SOFTWARE HELP  
12 NOVELL IN THE MARKETPLACE?

13 A. THE MARKETPLACE AND CUSTOMERS ARE--ARE  
14 GENERALLY IN BUYING SOLUTIONS TO HELP THEM WITH  
15 THEIR BUSINESS CHALLENGES AND PROBLEMS AND THEIR  
16 PROCESSES. AND GENERALLY THE SOLUTION IS THE  
17 SOFTWARE APPLICATION THAT HELPS THEM WITH THAT  
18 PROBLEM.

19 SO THEY OFTEN TEND TO--TO LOOK AT  
20 BUYING THE SPECIFIC SOFTWARE APPLICATION THAT  
21 WILL WORK FOR THEM AND THEN--WILL THEN BUY THE  
22 OPERATING SYSTEMS AND HARDWARE ON WHICH  
23 THAT--THAT SOFTWARE APPLICATION WILL RUN. SO, IF  
24 THAT APPLICATION IS NOT AVAILABLE ON A  
25 NETWORK-BASED--IF THERE IS NOT A NETWORK-BASED

1           VERSION OF THAT APPLICATION, THEN WE PROBABLY  
2           WOULD NOT BE IN THE RUNNING FOR THAT CUSTOMER TO  
3           END UP BUYING A NETWARE OPERATING SYSTEM FOR THEM  
4           TO RUN THEIR APPLICATION.

5                       IF THERE IS A MUCH LARGER FAMILY OF  
6           APPLICATIONS FROM WHICH TO CHOOSE FROM THAT RUN  
7           ON NETWARE, SUCH AS APPLICATIONS THAT ARE--THAT  
8           ARE BUILT USING JAVA, THEN SUDDENLY THE  
9           MARKETPLACE WILL--WELL, THE NUMBER OF  
10          APPLICATIONS THAT RUN ON NETWARE COULD GROW  
11          SUBSTANTIALLY, AND SUBSEQUENTLY, WE COULD TEND  
12          TO--TEND TO REALIZE A LOT POPULAR BUSINESS FROM  
13          PEOPLE WHO END UP BUYING A JAVA-BASED APPLICATION  
14          THAT RUNS ON NETWARE, AND ESPECIALLY IF WE CAN  
15          TUNE AND MAKE NETWARE A MUCH MORE EFFICIENT AND  
16          RESPONSIVE OPERATING SYSTEM FOR RUNNING  
17          JAVA-BASED APPLICATIONS.

18                      Q.   HOW DOES THE DESIRE FOR A LARGER FAMILY  
19          OF APPLICATIONS THAT RUN ON NOVELL OPERATING  
20          SYSTEMS RELATE TO NOVELL'S DECISION TO MAKE THE  
21          JAVA VIRTUAL MACHINE AND JDK AVAILABLE TO ITS  
22          CUSTOMERS?

23                      A.   WELL, AS I MENTIONED, NOVELL WOULD  
24          STAND TO BENEFIT FROM INCREASED NETWARE SALES  
25          WITH A PROLIFERATION OF JAVA-BASED APPLICATIONS,

1 AND ONE OF THE THINGS WE'VE DONE IS TRY TO MAKE  
2 SURE THAT OUR NETWARE-BASED OPERATING SYSTEM AND  
3 THE TOOLS THAT WE HAVE TO HELP IT RUN JAVA  
4 ARE--WELL, WE WERE TRYING TO BE AS FRIENDLY TO  
5 HOSTING JAVA-BASED APPLICATIONS AND FOR THE  
6 DEVELOPMENT OF JAVA-BASED APPLICANTS AS WE CAN.  
7 WE CAN DO THAT BY OPTIMIZING THE WAY THAT THE  
8 JAVA VIRTUAL MACHINE RUNS ON NETWARE. THE JAVA  
9 VIRTUAL MACHINE IS ESSENTIALLY YET ANOTHER  
10 SOFTWARE LAYER THAT ALLOWS PEOPLE TO RUN  
11 JAVA-BASED APPLICATIONS AND TO HELP THEM--PROVIDE  
12 THEM THE TOOLS THAT THEY COULD USE TO YET BUILD  
13 AND DEVELOP AND TO--FOR OPTIMIZATION OF ANY OTHER  
14 JAVA APPLICATIONS THAT THEY MIGHT WANT TO  
15 DEVELOP.

16 Q. IS THE WIDESPREAD DISTRIBUTION OF JAVA  
17 VIRTUAL MACHINES IMPORTANT TO NOVELL?

18 A. IT WOULD HELP--I WOULD SAY IT WOULD  
19 HELP NOVELL, YES.

20 (EXCERPT.)

21 Q. BOTH MR. KLEIN AND MS. ROTH ASKED YOU  
22 SOME QUESTIONS ABOUT THE RELATIONSHIP AMONG THE  
23 VARIOUS COMPONENTS OF NOVELL'S OPERATING SYSTEM  
24 PRODUCTS, FOR EXAMPLE, WHETHER THOSE PRODUCTS  
25 COULD BE UNINSTALLED OR WHETHER THE USER HAD A

1 CHOICE TO INSTALL THEM OR NOT AND WHAT THE EFFECT  
2 WOULD BE OF UNINSTALLING THOSE COMPONENTS.

3 DO YOU REMEMBER THOSE LINE (SIC) OF  
4 QUESTIONS?

5 A. YES.

6 Q. IN ANSWERING THOSE QUESTIONS, WERE YOUR  
7 ANSWERS DIRECTED TO THE TECHNICAL  
8 RELATIONSHIP--WITHDRAWN.

9 WERE YOUR ANSWERS DIRECTED TO  
10 EXCLUSIVELY NOVELL PRODUCTS?

11 A. YES.

12 Q. YOU WEREN'T ATTEMPTING TO CHARACTERIZE  
13 MORE GENERALLY WHAT THE RELATIONSHIPS ARE AMONG  
14 THE VARIOUS COMPONENTS OF OTHER OPERATING SYSTEM  
15 PRODUCTS, WERE YOU?

16 A. NO, I WAS NOT.

17 (EXCERPT.)

18 Q. WHY DOES NOVELL GIVE END USERS THE  
19 OPTION OF CHOOSING WHETHER TO INSTALL CERTAIN  
20 COMPONENTS OF THE INTER-NETWARE--INTRA-NETWARE  
21 PRODUCT?

22 A. SOME USERS DO NOT HAVE DESIRE TO USE  
23 ALL OF THE FUNCTIONALITY THAT COMES IN THE ENTIRE  
24 BUNDLE THAT IS INTRA-NETWARE, AND AS SUCH, WE  
25 PROVIDE THEM WITH THE OPTION TO MAKE THOSE

1 DECISIONS AS TO WHAT THEY WOULD CHOOSE TO USE AND  
2 NOT TO USE.

3 Q. WHAT IS THE BASIS FOR YOUR TESTIFYING  
4 THAT SOME CONSUMERS DO NOT WANT TO USE SOME OF  
5 THE FUNCTIONALITY INCLUDED IN INTRA-NETWARE?

6 A. MARKET RESEARCH THAT HAS BEEN CONDUCTED  
7 TO--WITH CUSTOMERS TO FIGURE OUT WHAT KIND OF  
8 NEEDS THEY HAVE AND HOW THEY WOULD LIKE TO BE  
9 ABLE TO USE THEIR NETWORKING SOLUTIONS.

10 Q. IS IT YOUR UNDERSTANDING THAT THERE ARE  
11 CUSTOMERS WHO DO NOT WANT TO USE NETSCAPE  
12 NAVIGATOR?

13 A. YES.  
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