IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, Plaintiff, vs. MICROSOFT CORPORATION, Defendant.	No. CIV 98-1232(TPJ) VOLUME I (Pages 1 - 290)

DEPOSITION OF BENJAMIN SLIVKA, a witness herein, taken on behalf of the plaintiffs at 9:17 a.m., Thursday, September 3, 1998, at One Microsoft Way, Redmond, Washington, before Katherine Gale, CSR, pursuant to Subpoena.

REPORTED BY:
Katherine Gale
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Our File No. 1-49218

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What I want to understand right now is, in your own words, how is the Web as an application platform, to the extent the browser is part of this application platform, how does that pose a threat to the Windows operating system?

A Okay.

MR. AESCHBACHER: And you're asking about what was his thinking back in May of '95, this time frame we're in; right?

Q BY MR. WILSON: Has it changed at all, first? Has your view changed?

A Probably in some subtle ways, certainly.

Q But would the concept still be pretty much the same?

A Yes.

Q If you can explain to us that concept, then we can move forward.

MR. AESCHBACHER: Asked and answered.

Go ahead.

THE WITNESS: Okay. So now I'm going to read this paragraph because these are my words. I think they -- you know, I probably have some copyright privileges to these, so I thought these were very expressive. So let me just do that, and then if some further clarification you need, we can do that.

> "My nightmare scenario is that the Web grows into a rich application platform in an operating system-neutral way, and then a

company like Siemens or Matsushita comes out with a $500," quote, "'WebMachine,'" unquote, "that attaches to a TV. This WebMachine will let the customer do all the cool Internet stuff, plus manage home finances," open paren, "(all the storage is at the server side)," close paren, "and play games. When faced with the choice between a $500 box" -- then I have some technical specs about what that is versus a two dollar -- "a $2KPentium/P6 Windows machine, the 2/3rds of homes that don't have a PC may find the $500 machine pretty attractive!"

Q BY MR. WILSON: Then with respect to what you just read into the record, what you described as growing "into a rich application platform in an operating system-neutral way," the -- this "operating system-neutral way" that you described, what does that refer to?

A So Windows has become very popular over the years because there are -- for several reasons: There's a variety of very inexpensive hardware that

it runs on; there's a growing base of applications that solve customer problems; and Windows itself in terms of how it makes the system easier to manage and configure and use. You know, so all those things have contributed to making Windows, at least today, much more popular than OS/2, than Macintosh, for example.

That's not to say that Windows will always be that popular. Windows certainly has lots of problems today in terms of reliability. Configuring Windows machines is hard. We've heard about out videographer's problems with some machines. So Windows still has lots of problems, and there's still a lot of threats to Windows from other operating systems that are either shipping today or maybe there's someone in a garage, you know, building an operating system that will be much better than Windows.

So Windows is very popular today. Now, an aspect of that Windows popularity is that there are a broad class of applications available for Windows. And so that makes people, when they go out to choose what machine to buy, what operating system to buy, they don't typically choose it for the purpose of the operating system itself. They're

typically choosing, you know, how does this machine solve my problems?

So to the extent that the Web grows into a rich application platform that is operating system-neutral, that runs on any operating system, then -- and to the extent that the main reason people are interested in buying computers is for running these Web applications. And my point here in this paragraph was that for many people in homes today computers to write Word documents or compute big spreadsheets or a lot of the other sort of productivity applications that Windows and Macintosh and other systems support today, a lot of people in homes aren't compelled by those applications. They don't care about those.

But the Internet with these rich content and service-based applications and including things like e-mail and maybe other kind of collaborative applications, those are things that people at home might be pretty interested in.

And so if -- if this Web platform becomes very popular, then sort of Windows doesn't have any kind of distinguishing values anymore. And so it would be less popular.

Q So is part of the threat -- does that

lie in the ability for a user who wants to access the Internet to use a browser that runs on a non-Windows operating system?

A Well, the -- the threat is that you could use -- these Web applications, they don't care about what operating system they're on.

Q BY MR. WILSON: So to the extent that an Internet browser can operate on multiple operating

systems, does that contribute to this Web-as-an-application-platform threat to Windows that you described?

MR. AESCHBACHER: Vague and ambiguous.

Go ahead.

THE WITNESS: That -- that -- that would contribute to that t

MR. AESCHBACHER: The fact that it was cross-platformed? Is that what -- was that the question?

MR. WILSON: No, that was not the question.

MR. AESCHBACHER: Okay.

MR. WILSON: Just so that we're clear, let's try this again then.

THE WITNESS: Yeah.

Q BY MR. WILSON: I'll try from a different perspective. The fact that there are browsers that run on more than one operating system platform, does that contribute to this Web-as-an-application-platform threat to Windows that you've described?

MR. AESCHBACHER: Vague. Ambiguous. Assumes facts. Are you saying that there's a given browser that runs on more than one or that there's

browsers available on different operating systems?

Q BY MR. WILSON: There are browsers -- is -- okay. Is it correct that there are browsers that are available on more than just the Windows operating system? Is that rephrased?

MR. AESCHBACHER: I'm confused, I guess. I don't mean to be causing trouble.

MR. WILSON: No. No, actually I appreciate it, if there's any questions.

MR. AESCHBACHER: Is the question that there's browsers that exist for a -- for OS/2 and, you know, all these different platforms? Or is your question that a given browser exists that runs on several platforms?

MR. WILSON: The former.

MR. AESCHBACHER: Okay.

Do you understand?

MR. WILSON: That there are browsers that exist on mult --

THE WITNESS: Okay. But the biggest threat is that applications -- that Web applications -- that compelling Web applications become available and become predominant kind of applications which customers are interested in running and that those things can run on any

operating system. That would be the biggest threat to Windows because an advantage Windows has today in the marketplace and why customers prefer Windows today over Macintosh OS or some other operating systems is that there are a large number of applications that customers need today that are available primarily on Windows or have their best expression on Windows. So that's the biggest threat.

So now part of that is those other operating systems would need to be able to run those Web applications whether they had a Web browser or some other technology way of doing that, you know, doesn't matter. It's just their ability to run those Web applications.

Q BY MR. WILSON: So the -- so the Web itself does not pose a direct threat to Windows -- to the Windows operating system?

MR. AESCHBACHER: Objection. Vague and ambiguous. And I think it is in conflict with the testimony he's been giving, but he can answer.

THE WITNESS: Well, we're -- we've been talking about the Web as an application platform and, I guess, by that we should be specific. We're talking about technologies like HTTP, NHTML, MIME types, other data types like JPEGs and GIFs and

PNGs, various audio streams and video streams, emerging standards like XML. Those technologies together, regardless of who supplies them, provided a platform for -- for application, development, and deployment that -- and, again, sort of -- you know, if you think about Windows as it existed in May of 1995, those growing collection of technologies were a threat to the Windows platform.

Q BY MR. WILSON: So it -- is it the case that because there are multiple suppliers of this platform, this Web application platform you've described, is it -- does that pose a threat to the Windows operating system?

MR. AESCHBACHER: Vague. Ambiguous.

THE WITNESS: Not necessarily. And, I mean, I'll be very explicit. If you know Netscape's -- Netscape's browser at one point was very, very popular. And they were -- they were in control of the Web platform in many ways. So we could argue in some ways that that's a bigger threat than -- to the Windows platform than if there had been several competing vendors of Web technology.

Q BY MR. WILSON: In the scenario you just described, is it the case that Netscape's browser could replace the Windows operating system?

A Well, Marc Andreessen was quoted a number of times as saying that Windows was just a poorly debugged set of device drivers. And so he's on -- he was on record, at least in I think '94 and '95, talking about how the Netscape platform would kill Windows. So he was certainly of that opinion.

MR. WILSON: Could we have the question read back?

(Question read.)

THE WITNESS: And I answered the question with, you know, Netscape's perspective, at least as I understood it from reading the press back in '94 and '95.

Q BY MR. WILSON: It might be a matter of public record, we've already taken the deposition of Netscape. And we're here taking the deposition of you today. And so we need to have your testimony. And I'm trying to get an understanding that when you take this position that the Web as an application platform is a threat to the operating system and you describe Netscape's Navigator as an example of this Web as an application platform --

A Correct.

Q What's the likelihood of Navigator replacing the Windows operating system?

MR. AESCHBACHER: Objection. Calls for speculation. Vague. Ambiguous. Incomplete hypothetical. Seeks opinion testimony improperly.

THE WITNESS: Wow. I'm not sure if I'm supposed to answer now.

Well, you know, if you look back in '94 and '95, if Microsoft had done nothing about the Internet and had stuck to, you know, we're not going to build Web browsers, we're not going to do HTML, we're not going to do HTTP, if we had done none of the things that we did in 1994, '95, '96, you know, '97, '98 here, if we had done nothing, I think there was certainly a possibility that Windows would have become irrelevant and that -- you know, the history is littered with companies, technology companies or otherwise, who didn't adapt to shifts in the marketplace and shifts in technology.

If you look at, you know, IBM, they had some prominence obviously in their mainframes. And the PCs they really never really embraced as aggressively as they might have. If you look at Digital Equipment Corporation, they were, you know, the highflier among minicomputers. And then when the PC, the microcomputer era came, their chairman Ken Olsen just said, "Ah, nobody wants to buy a personal

computer." And that company flailed and lost money and lost employees and eventually got bought by Compaq.

If you look at Wang, in the Massachusetts area, and they were a leading supplier of word processing systems that were -- typically involved minicomputers and, you know, probably most lawyers older than a certain age are very familiar with Wang technology. That company is kind of moribund, and they're -- they're not in that business anymore.

So I think if Microsoft had done nothing about the Internet and the Web, you know, Windows could be a much less important operating system today than it is.

Is it correct then that what you're describing is the browser is a threat to the operating system because it opens up opportunities for other operating systems to provide this Web application platform?

A Well, the -- I mean, we've kind of been over this, but I'll try some other attacks on this.

The -- there's some books I could recommend that you could read. One book is called

"The Innovator's Dilemma." It was published a year or two ago by a guy at Harvard Business School. He talks about technology changes. You know, who are the market-leading companies? Technology changes came in, where did they originate? Which companies took advantage of it, et cetera. And some of these things are-- can happen in a year or two years or three years. Other of these things can take 25 years to manifest a difference. So -- and I don't think certainly in the, you know, some of the materials you've seen today, I haven't tried to make a -- I didn't try to make an assertion about what the time frame was when -- when, you know, the Web would kill Windows.

So the point is not that the little tiny Web browser, you know, whether it was Navigator 1 or Navigator 2 or Navigator 3, the point was not that that thing by itself as it stood then would immediately kill Windows. That wasn't the point. The point was that that thing could grow and blossom and provide an application development platform which was more popular than Windows. So let me just take you through the scenario about how this happens.

So Microsoft does nothing about the Web, and Netscape has its browser and continues to

enhance that and refine that. It gets developers to write tools that target the Netscape platform, both their Web-server products, their commerce-server products, their collaboration products that are client and server.

And so in the same way that the Macintosh sort of faded away to irrelevance, in most people's opinion, because developers focused less and less on writing Macintosh applications, developers would focus less and less on writing Windows applications. And they would focus on Netscape applications.

And actually it doesn't even have to be cross-platformed. I mean, Netscape could have only provided their browser maybe on Windows or maybe on Macintosh, something else.

And so the -- if all the developers were focused on building Netscape applications as opposed to Windows applications, then eventually, you know, Netscape decides, hey, we're going to get in the operating system business. And so they build an operating system, and now that's installed. That can get preinstalled on computers so they can sell it at retail, however they decide to distribute that.

And so then eventually just as today

Windows is very popular and Macintosh is fairly dormant -- which is not to say that Apple can't suddenly party and add all sorts of cool things to Mac OS and do lots of other stuff. But if Microsoft did not invest in Windows, then eventually the Netscape platform would be the thing that was relevant.

Let me give you another example which is -- which is the Java promise and -- or the Java stuff that Sun is doing.

Java -- Sun has been very clear about what their strategy is: They want to get this Java platform everywhere, they want to convince all the developers in the world to write Java programs, and then they want to go sell client operating systems and server operating systems and -- and get all that revenue from doing that.

So that's another example of -- you know, that's what Sun's trying to do with Java.

So that as well is a threat to Windows popularity.

Q BY MR. WILSON: But returning back to the Web as an application platform that you've described and this potential threat to the Windows operating system that you've also described, by controlling the Windows application -- by controlling the Web application platform, does Microsoft then ensure that the Windows operating system continues?

MR. AESCHBACHER: Vague. Ambiguous. Calls for speculation. Seeks improper opinion testimony.

Go ahead.

THE WITNESS: Continues what?

Q BY MR. WILSON: To be important.

MR. AESCHBACHER: Same objections.

THE WITNESS: It certainly doesn't guarantee it.

Q BY MR. WILSON: Were you a part of any discussions where the issue of controlling the Web application platform was discussed?

MR. AESCHBACHER: Vague and ambiguous.

THE WITNESS: What do you mean by "controlling"?

Q BY MR. WILSON: That Microsoft would be the supplier of the platform and all the associated protocols that you described that are associated with the Web application platform.

MR. AESCHBACHER: Same objections.

THE WITNESS: Well, certainly we've been through materials today, and you may have seen other materials at other depositions. Our strategy for the Internet was to embrace and extend. And what we wanted to do was be the best provider of Internet standard technologies as well as enhance those technologies over time to provide an even more compelling application platform so that customers would prefer to use -- you know, to buy our operating systems and developers would continue to prefer to target our operating systems. That was a definite ongoing effort on our part.