	UNITED STATES DISTRICT COURT  NORTHERN DISTRICT OF CALIFORNIA  SAN JOSE DIVISION  SUN MICROSYSTEMS, INC., a  Plaintiff,  VS.  NO. C97-20884 PVT (ENE)
1	UNITED STATES DISTRICT COURT
2	NORTHERN DISTRICT OF CALIFORNIA
3	SAN JOSE DIVISION ONE
4	- EVES
5	SUN MICROSYSTEMS, INC., a )
6	Delaware corporation, ) $fOR^{K'}$
7	Plaintiff, )
8	vs. ) No. C97-20884 PVT (ENE)
9	MICROSOFT CORPORATION, a )
LO	Washington corporation, )
11	Defendant. )
13 14 15	ATTORNEYS EYES ONLY  Deposition Upon Oral Examination  BENJAMIN SLIVKA, Vol. 1, pgs. 1 - 248
16 17	Taken at 1201 Third Avenue, Suite 4600 Seattle,
18 19 20 21	Washington  Washington  Washington  Washington  Washington
22	MS98 0165638 CONFIDENTIAL
24	<u>DATE:</u> August 13, 1998
25	REPORTED BY: Peggy M. Fritschy, RPR CSR: FRITSPM422MB

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	FOR ATTORNEYS EYES ONLY, BENJAMIN SLIVKA	
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24	Q. So this E-Mail is titled "Microsoft Java	į
25	Strategy," and you begin saying "Charles F, Ben A, and I	
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brainstormed for 2 hours this morning. So Charles F is Charles Fitzgerald?

- A. Correct.
- Q. Ben A is Ben Algaze?
- A. Correct.

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- Q. Who is he?
  - A. Some kind of marketing guy or business \_ development guy. Something like that.
  - Q. Then you go on saying "We need to nail this down, and then start communicating the public aspects of this in a very crisp, coordinated fashion."

Why was it so important that this be communicated crisply and in a coordinated fashion?

- A. Well, if you read the next sentence, "So far Sun and Netscape have both wildly out-marketed us on Java. It cures cancer, et cetera. We need to bring some reality to the market perception."
- Q. Did you feel at this point that Microsoft had not done a very good job of articulating its message on Java?
  - A. Yes.
- Q. The Microsoft Java strategy message begins with four key things. And the first one is "Help drive IE market share with high-quality Java 'subset.'"

What subset are you referring to there?

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- A. Basically the same set of stuff that Navigator did for Java.
- Q. I'm not understanding what the term "subset" means in this context. Subset of what?
- A. Well, in -- I think at this time Sun was talking about lots of Java classes for anything from, I don't know, remote control toasters and Java -- I don't know if it was Java rings, but there was a ton of Java classes that Sun was talking about. Maybe they weren't shipping most of those. And so, I think when I said that here was focused on the set of things that basically IE needed to have to have a viable Java support for browsing the web.
  - Q. The Java applet environment?
- A. Right.

Q. No. 2 is "Get developers to write very rich Windows applications, controls, et cetera, in Java."

Why was that the focus rather than getting developers to write great cross-platform applications in Java?

A. Well, Windows is our platform. We have been very successful by continuing to enhance Windows, add new features, make Windows easier to use, and then encouraging developers to write programs for Windows. That's just sort of a continuation of that strategy.

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Q. Third one is "Focus corporate developers on server-side APPs (IStudio/Denali), render Java irrelevant on the client."

Why was that your goal, that is, to render Java irrelevant on the client? First of all, can you explain what that means?

- strategy, this was a set of brainstorming we did. So these were all proposals or things to think about doing. So to the extent that the point of this No. 3, "Focus corporate developers on server-side apps," the point was that if people wanted cross platform, they could do that with writing service side applications and working with dumb clients, basically web browsers, instead of writing lots of clients Java code. In fact, that's what the market did, sort of regardless of us. You know, that's what corporate developers and even web sites have sort of settled on these days.
- Q. Why was it, though, a goal of Microsoft's or a potentially advocated goal to render Java irrelevant on the client?
- A. Sun had been telling us in no uncertain terms that they were going to put Java everywhere. They were going to get every ISV in the world, every developer in the world to write Java programs, and then they were

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going to sell Java OS and basically render Windows irrelevant. So, it seemed like a natural thing for us to think about is for these cross-platform scenarios as rendering Java irrelevant.

Q. Under that it says "It is critical to get converged VB/Java/IStudio tool to market."

What were you referencing there?

- A. That was basically a development tool to be able to write these (server-side applications.)
- Q. Was there discussion about having a compiler that would compile both Java and Visual Basic?
- A. I don't know if we had that at this time.

  October. There was certainly some discussion at some point, but that's not what I'm trying to refer to here. In fact, I don't even understand why it says Java there as I read this now.
- Q. Okay. I'm sorry. I missed part of your answer. The question was whether there was discussion about having a compiler that could compile both Java source code and Visual Basic source code. Let me repeat the question and ask you to give it to me again. I missed part of it. Was there a discussion about having such a compiler or developing one?
- A. Well, there was at some point a discussion about how could we -- was there any way to build a

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development tool in a runtime environment that could support both VB and Java. Whether we talked specifically about the way you asked the question, I'm not so sure about that.

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- Q. My question was just whether a compiler would be capable of compiling both?
- A. A compiler is a fairly precise term, and so I don't know that that -- you have to think about how we actually thought about how we build something. So a more accurate answer would be to say there was certainly discussion about how could we have an optimized development tool in runtime environment in a platform that would be able to support both Visual Basic and Java code.
- Q. Okay. Specifically, though, was there any discussion that you remember about having a compiler that could compile both Java and Visual Basic source code?
- A. It would be hard to have one compiler that did both because the languages are different.
- MR. QUACKENBUSH: He's just asking about whether there was a discussion, you recall a discussion, whether it's possible or feasible.
- A. I don't know that I ever heard it phrased that way, the way you described it, so that's why I was

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- trying to describe what I, something that sounded like
- 2 what you were asking.
- Q. I appreciate that.
- 4 Let me just ask you one more pointed question.
- 5 Was there any discussion about having a compiler that
- 6 would have multiple configurations or modes, one mode of
- 7 which could compile Java source code and another mode or
- 8 configuration of which could compile Visual Basic code?
- 9 MR. QUACKENBUSH: Object, asked and answered.
- 10 A. Yeah. I tried to answer that same question,
- so I answered it in the way I thought was most accurate.
- 12 I can give you that same answer again if you want.
- 13 Q. The short and direct answer to that question
- 14 is no, you don't remember any such discussions?
- 15 A. I guess the short answer would be no.
- T e fourth thing on your four key things list
- 17 was "Let Java class library space fragment so that write
- once, run everywhere does not happen."
- We talked earlier about the fragmentation, but
- 20 when you say "Let Java class library space fragment" in
- 21 this context, what do you mean exactly?
- 22 A. Well, at this time there were already multiple
- 23 proposals from -- there were Java class libraries in
- 24 various spaces like databases or 2D graphics or 3D
- 25 graphics, or other things. That -- Sun had some

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- proposals. Other parties like Netscape, for example,
- 2 had their Netscape IFC, which was a competitor to Sun's
- 3 AWT, so the point was, you know, let that happen.
- 4 Don't, you know, don't necessarily back any one
- 5 particular API set.
- Q. And did you see the fragmentation of the Java
- 7 class library space as being useful because it was a
- 8 means to the end of defeating the write once, run
- 9 everywhere?
- 10 A. All this comes back to Windows and the threat,
- 11 you know, Sun's very direct threat to our Windows
- 12 platform, and the success of Windows on the client. So
- 13 this seemed like if the library space fragmented, the
- 14 write once, run anywhere I guess actually is what Sun
- called it, that would be a lot less probable.
- 16 (Record read back as requested.)
- Q. So is the answer yes?
- 18 A. I guess, the end was to protect the Windows
- 19 franchise, not to defeat the write once, run everywhere,
- 20 but, otherwise, I could answer yes to that.
- Q. Okay. The way you phrase it here is not a
- Java class library space fragment to save Windows. It's
- 23 so that write once, run everywhere does not happen.
- 24 A. Okay.
- Q. Are those two things really the same?

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- 1 A. Which two things?
- Q. Saving Windows and defeating write once, run
- 3 everywhere.
- A. Well, no, because even if the write once, run
- 5 everywhere thing that had worked, there were issues
- 6 about performance and the set of features and the
- 7 development tools. There were a lot of things that Sun
- 8 had to execute well on in order for Java, the Java
- 9 platform to beat Windows.
- 10 Q. If all that's true, then why is it that you
- are saying here that you want the Java class library
- 12 space to fragment so that write once, run everywhere
- 13 doesn't happen?
- 14 A. This document isn't an attempt to have an
- exhaustive list of all the things that we could do to
- 16 combat the threat of Java towards Windows. And so this
- 17 point No. 4 is one of those points, but certainly not
- 18 the only point.
- 19 Q. I understand it's not the only point. You
- 20 didn't want write once, run anywhere to work; right?
- 21 A. Correct.
- 22 Q. You had discussions with people at Microsoft
- 23 and that was a consensus in Microsoft?
- A. If it had become the case that someone could
- 25 write a very rich application as rich as a native

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- 1 Windows application and it would run on any operating
- 2 system platform, then the benefits we had at that point
- 3 where Windows was very popular, that would be
- 4 diminished.
- Q. In the next section you say "Things to debunk
- 6 about Java," and the first one is "write once, run
- 7 anywhere. By debunk, what do you mean?
- 8 A. Debunking is that this was a myth, that these
- 9 were all sort of lies and promises about Java that were
- 10 not true.
- 11 Q. And so what were you advocating be done in
- 12 connection with the write once, run anywhere?
- 13 A. This is an educational effort to just talk to
- 14 analysts. I mean, a lot of analysts in the computing
- 15 community and corporate developers and even some ISVs
- had sort of drunk the Koolaid from Java software. Oh,
- write once, run anywhere, yeah, let's go do that.
- At this time -- this is almost two years ago,
- 19 so we were concerned on a couple points: one is that
- 20 there were -- we didn't believe this was true, that Sun
- 21 would be able to achieve that, and we were concerned
- 22 that, you know, that our customers would be confused and
- 23 distracted and sent down, you know, go down these wrong
- 24 business models, and that their companies would stop
- 25 making money or whatever, so there was a concern about

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that.

And there was also a concern that if Sun was able to somehow do that, which we didn't think Sun would be able to, there was obviously that concern about the threat to Windows.

The things to debunk is mostly a marketing point, that these are things, these are the flaws with Java, and we just wanted to make sure that the computing community at large understood both. there was the Sun spin and there was Microsoft's, you know, reality perspective on Java.

- Q. With respect to write once, run anywhere, you were advocating that analysts and ISVs and others in the community be told that it was not realistic?
- A. We should educate them about how that's not true, right.
  - Q. And Microsoft has made efforts to do that?
- A. Yes. In fact, that's been proven out.

  There's a lot of companies that tried that and failed.

  Corel tried that and failed. Netscape tried that and failed. There are a lot of companies, SAP, Bon, there's a whole bunch of companies that tried to write the Java programs and had them run everywhere, and it just didn't, it didn't work.
  - Q. The next item says "Issues/work items."

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- 1 A. Okay.
- 2 Q. And the first entry says "Should we hold back
- 3 Win16 Java?" And then under that it says "To extent
- 4 Java is adopted, will drive Win3.2 sales."
- 5 Can you explain what that means?
- A. Well, so the question is should we, you know,
- 7 should we do this Win16 Java and ship it? "To extent
- 8 Java is adopted, will drive Win3.2 sales. We were
- 9 trying to balance two concerns here. Again, this is all
- 10 thinking we were doing. One was that -- at that point
- 11 there wasn't a Win16 implementation of Java, so even
- 12 though that was the predominant Windows client platform
- 13 at this time in '96, Sun or Netscape, no one had shipped
- 14 a Wihl6 bit implementation of Java. So in fact the
- 15 write once, run anywhere was a total lie, you know, as
- 16 far as Win16 customers were concerned.
- 17 So on the one hand if we had done a 16-bit
- 18 version of Java, that would have helped Sun's write
- 19 once, run anywhere message. On the other hand, you
- 20 know, if people were excited about Java and it wasn't on
- 21 the Win16 -- let's see, Java ran way better we figured
- 22 on 32 bit Windows, so that would be good for us, because
- 23 people would be encouraged to upgrade from Win3.1 or
- 24 Win3X to Win95 or Windows NT.

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18	Q. Down below, about the middle of the page
19	there's an entry "Sun's Strategy." No. 2 "Get critical
20	mass of new apps written to Java platform: Appeals to
21	developers because," and then you have A, B, C, D under
22	that, and A is "cross platform," and A1 is "Sun
23	compatibility test suite bound to fail. Doesn't
2 4	fully cover all their APIs."
25	What did you mean by that?  MS98 0165774  CONFIDENTIAL

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- 1 A. Well, basically there was this JCK, the Java
- 2 compatibility kit, and it was basically a very poor
- 3 piece of work.
- 4 Q. Because?
- 5 A. It didn't go anywhere near covering all the
- 6 boundary conditions and test cases that you need to do
- 7 to fully verify the set of Java APIs that Sun shipped in
- 8 JDK1.0.
- 9 Q. What do you mean by APIs in this context?
- 10 A. Class libraries. They're the set of objects
- 11 you could create and the methods you could call on those
- 12 objects.
- 13 Q. You say underneath that, "class library market
- 14 share will establish defacto standard."
- What do you mean by that?
- 16 A. This is kind of the standard thing in
- 17 platforms and operating systems, that whichever platform
- 18 the most developers target, that will be the most
- 19 popular and will establish a defacto standard.
- Q. What does that defacto standard get for you?
- 21 A. Well, in the way that Windows, for example, is
- very popular right now, so you get to sell more copies
- 23 of Windows that way.
- Q. So if you have a class library defacto
- 25 standard, developers are going to be economically

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1	incented to write to that class library space?
2	A. Well, to the extent there's a large market
3	share for that, there's a large opportunity for them to
4	sell their applications.
5	Q. And then customers in turn will be incented to
6	buy that class library space because there will be more
7	applications out there written to it; is that right?
8	A. Well, assuming that customers had to buy that
9	application set of class libraries in the first place.
10	In our case, these were things that just came with
11	Windows.
12	Q. So in that case, then customers would buy
13	Windows?
14	A. Right.
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- 4 Q. The third and final entry under "Sun Strategy"
- 5 is "Java OS beats Windows. License to Windows OEMs now
- 6 that Java apps are prevalent.
- What are you getting to there?
- 8 A. So, Sun has this kind of Trojan horse
- 9 strategy. Their idea was they would get their Java
- 10 platform onto all the popular operating systems, and
- 11 then they could encourage basically all the developers
- in the world to write Java programs that were cross
- 13 platform. They later introduced this market concept of
- 14 100 percent pure. And then the idea is that the
- operating system would have no value, and then they
- 16 could go out and sell Java OS and replace Windows.
- 17 Q. I may have misheard you. You said the
- operating system would have no value?
- 19 A. Right.
- Q. What did you mean by that?
- 21 A. There would be no distinguishing
- 22 characteristics between Windows and the Java OS or
- 23 Macintosh or Solaris, or anything else.
- Q. I see. So you saw their strategy as leveling
- 25 the OS playing field so that Java OS and WindowsOS could

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- just compete on their merits?
- 2 MR. QUACKENBUSH: Objection, misstates the
- 3 testimony.
- 4 A. Sun told us in no uncertain terms, Baratz told
- 5 us that that was absolutely their strategy, to get all
- 6 the applications in the world to be Java applications
- 7 and so that then they could sell a Java OS.
- 8 Q. If I understand the logic, though, it's if all
- 9 the applications out there are Java applications, then
- 10 the Java OS and the WindowsOS can compete on their
- 11 merits?
- 12 A. Well, there would be no application-installed
- 13 base advantage to Windows is the right way to say it.
- 14 Q. Under that it says "Microsoft Java Strategy."
- 15 Underneath that it says "Drive MS Java VM and class libs
- "(with Win3.2 extensions!)" to broad installed base."
- Why was the distribution to a broad installed
- 18 base important?
- 19 A. Well, so this -- this follows up on -- let's
- 20 see. We basically wanted people who wanted to write
- 21 Windows applications in Java to be able to use our
- 22 Virtual Machine for that.
- Q. But why was distribution to a broad installed
- 24 base important?
- 25 A. Developers hate shipping extra DLLs and files

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and bytes with their programs, so it's just easier if it's broadly distributed so that the individual application developer doesn't have to worry about that.

- Q. Does it come back to the idea of creating a defacto standard?
  - A. Sure.

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Q. No. 2 is "Don't encourage new cross-platform Java classes; especially don't help get great Win3.2 implementations written/deployed."

The concern there was what?

A. That's funny. We sort of later didn't do this and then we did do this. We were schizophrenic on this point.

So "Don't encourage new cross-platform Java classes," the point is let's not help -- to the extent that these cross-platform Java classes are possible, let's not us help Sun with that. Since Sun's overall goal is to kill Windows, it's not in our best interest to help them kill Windows.

And then the second point, "Especially don't help get great Win3.2 implementations written/deployed," the thinking here was that, you know, Sun's implementation here so far, the performance was not very good, and so, you know, there were several problems with Sun's strategy. The biggest one was that these programs

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1	written in Java were had fewer features and were
2	slower and were less reliable than Windows'
3	applications. So, the second point was we didn't want
4	to help Java be better on Windows.
5	Q. Even though that would allow developers to
6	write rich programs that would run on the Windows
7	platform?
8	A. No. The point is this is these cross-platform
9	Java classes. We didn't want to do a great job of that,
10	although, in fact, what we actually executed on for IE4
11	was that we did the best implementation of all the
12	standards Sun-applied Java classes, so we actually
13	didn't follow this recommendation in terms of what we
14	did for IE4.
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10	Q. Let me ask you to turn to the next page.
11	About halfway down there's "Microsoft Levers for Java,"
12	do you see that heading?
L3	A. Yes.
L <b>4</b>	Q. First of all, what did you mean by "levers for
L <b>5</b>	Java"?
16	A. These were things under our control that we
L <b>7</b>	could use to battle Java in its fight to kill Windows.
8	Q. The first was "Distribution (with Windows.)"
9	First of all, distribution of what with Windows?
20	A. Of our Java VM and class libraries.
21	Q. Why is that a lever?
2	A. Well, you can see the three points before,
23	that we don't want to ship every Java class in the known
24	universe, and we do want to ship a world-class VM, and
25	world-class core class libraries for these, basically

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for Java applets, and then the Win3.2 extensions. And then we also wanted to ship lots of additional Win3.2 Java wrappers so that Java developers could easily call Windows-only services like Direct Draw, Direct 3D, Direct Play, Active Animation, Active Movie, and those kinds of things.

Q. Did you believe, though, that -- strike that, please.

I guess there may be two separate issues here. One is what you believe Microsoft should and shouldn't ship, and the other is whether distribution with Windows added some extra lever, and I'm interested in getting to that second issue to the extent that it's a separable issue. So this heading No. 1 said "Distribution (with Windows.)" Was that in itself in your view a lever in your efforts with respect to Java?

- A. Well, Microsoft defines what's in Windows, so to the extent since we have control over that, we should think about, you know, what to include in Windows and what not to include in Windows when it came to Java.
- Q. Was it your sense, though, that given the enormous market share of Windows, that shipping things with Windows could create a defacto standard?
- A. Well, shipping things with Windows did create defacto standards.

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- 1 Q. That was your perception at the time?
- 2 A. Yes.
- Q. Is that why you are putting this down as one
- 4 of Microsoft's levers for Java?
- 5 A. Yes.
- 6 Q. On 1B you say "Do ship world-class VM
- 7 (interpreter, JIT, ActiveX integration,) and world-class
- 8 core class libs."
- 9 What did you mean by core class libs?
- 10 A. Well, in parentheses I said "Necessary for
- 11 high-volume 'HTML applets,'" so those are basically the
- 12 Java applets that run on web pages that are running in
- 13 the sandbox and are 100 percent Java.
- Q. Okay. And then point 1C is "Do ship lots of
- Win3.2 Java wrapper classes." What does that refer to?
- 16 A. That's the part I said earlier where there are
- 17 a lot of services that Windows provides that the class
- 18 libraries from Sun didn't expose at all because they
- 19 weren't available on Solaris or Macintosh or other
- 20 platforms, so we just wanted to make sure that Java
- 21 developers who wanted to write Windows applications
- 22 could call those services very, very easily.
- Q. They could call them if you had written a
- 24 wrapper for them?
- 25 A. Yes. Wrapper class was just a phrase. It's

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1	basically the DirectX and Active Animation, these other
2	things were either COM things or straight C and C++
3	APIs. Well, actually C APIs. So a Java developer would
4	have to do a lot of work to be able to call those from
5	Java. So we wanted to make that a lot easier.
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19	Q. In the middle of Mr. Muglia's response to	
20	Mr. Baratz's statement about Microsoft will not do	
21	anything that is platform specific, 1, 2, 3, 4th line in	
22	the paragraph says "MS has to pass Sun test suite, -	
23	revise our Java VM - we will fulfill the obligations of	
24	our contract." What specifically do you understand the	
25	phrase "revise our Java VM" to mean in that context?	MS

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- 1 A. I'm not sure.
- Q. Do you have any memory of what was said about
- 3 that?
- A. Oh, I think -- let me read the whole phrase
- 5 here so we have it in context. Alan just talked about
- 6 this thing where he doesn't want Microsoft doing
- 7 anything that's platform specific. Bob said, Our goal
- 8 is promoting Windows. That's a \$4 million business for
- 9 us. Microsoft covers the same markets as Java OS with
- 10 Windows CE. So his point is, you know, don't give me
- any nonsense about how your operating system things
- 12 aren't competitive with Windows because they are. Bob
- continues, "Sun goal is a new platform. Xplatform is
- your lever to establish a new platform."
- 15 So then he says "Microsoft has to pass the Sun
- 16 test suite, revise our Java VM. We will fulfill the
- obligations of our contract. So his point is we are
- 18 going to do what the contract requires us to do.
- 19 Q. Okay. Let me just come back to the same
- 20 question, though. What I'm trying to understand is what
- 21 the phrase "Revise our Java VM" means in that context.
- 22 You just have no idea as you sit here?
- 23 A. Right.
- 24 O. A few lines down it says, "MS views Java as
- the No. 2 platform to Windows (ahead of Mac, Unix, OS2,

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et cetera.) Was Mr. Muglia saying in this meeting that Microsoft views Java as its No. 1 competitor in terms of Windows' OS platform?

- A. I just wrote down what Bob said, so -- if Bob was actually thinking that, I would have to be speculating.
- Q. Is that what you understand him to mean, though, by saying that MS views Java as No. 2 platform, does that mean that the Java platform is the No. 1 competitor to the Microsoft Windows platform?
- A. I think the next sentence is a good one. Bob said, "We can go down the path of just being competitors, fulfilling the contract, or we can cooperate technically to help our common customers."
  - Q. Does that answer the question?
- A. I think it does, because you were -- I think in this, at least as I recorded what Bob said, he says Hey, we can just be competitors, or we can figure out how to cooperate technically to help our common customers. So my point is that the Java platform wouldn't have had to be a strict competitor to Windows.
- Q. I understand that point. From the competitive perspective, though, Microsoft did perceive Java as the biggest threat?

MR. QUACKENBUSH: Objection, no foundation.

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A. Well, all I can say is Bob Mu said at this --

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2	all I can tell you is what I recorded Bob Mu saying.
3	Q. What was your perception at the time?
4	A. This is October '96. I would say that Java
5	was certainly a threat. I also think the web platform
6	in general, HTML and HTP, was another threat. I don't
7	remember at this point whether I would have weighed the
8	web platform as a bigger threat to Win3.2 than Java, or
9	not.
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23	Q. The last paragraph you say "If Sun and we	MS98 0165839
24	disagree on this and diverge in these areas" first of	MS98 0165839 CONFIDENTIAL
25	all, by "this," do you mean language extensions?	

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1	۸.	ies.	
2	Q.	*If Sun and we disagree on this and diverge in	
3	these are	as, as long as Netscape doesn't buddy up with	
4	Sun, that	is a super outcome for us (more	
5	fragmenta	tion.) *	
6		Why would that be a super outcome?	
7	λ.	Because it would just confuse Java developers	
8	about whi	ch Java platform they should write for.	
9	Q.	That was a good thing from Microsoft's	
10	perspecti	ve?	
11	λ.	Correct.	
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