

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Petitioner,

v.

MICROSOFT CORPORATION,

Respondent.

Supplemental to
Civil Action No. 94-1564

Hon. Thomas Penfield Jackson

**DECLARATION OF MARK C. GASPAR IN SUPPORT OF
REPLY BRIEF OF PETITIONER UNITED STATES OF AMERICA**

I, MARK C. GASPAR, declare as follows:

1. I am a paralegal employed by the Antitrust Division of the United States Department of Justice. I have been assisting the attorneys charged with the responsibility of investigating alleged violations of the Final Judgment entered by this Court on August 21, 1995 in *United States v. Microsoft Corporation*, Civil Action No. 94-1564 (1994).

**News Articles Describing Third Party Hardware
and Software Products as "Integrated" with Windows**

2. Attached as Exhibit 1 are copies of four press articles I have gathered from published sources and the Westlaw database, each of which describes a software or hardware product produced by a non-Microsoft company as "integrated" with Windows 95. Examples of such products include a software program for detecting viruses, a software program for capture and conversion of graphics, and a hardware device for scanning documents into a computer.

The Windows 95 Retail Boxes, Packaging, and Manuals

3. In November 1997, the Department of Justice purchased a copy of Windows 95 for PCs without Windows from Egghead Software, a retail store in San Francisco, California. Printed on the box in which the product came is a red patch that says: "Internet Explorer Starter Kit Included FREE! A \$24.95 value." The box further states that the Internet Explorer Starter Kit includes Internet Explorer, 30 days unlimited access via MSN, a reference card, and a Beginner's Guide to Microsoft Internet Explorer. Attached as Exhibit 2 are copies of the front and back sides of the box.

4. Inside the box I found two separate manuals: one for Windows 95 and another for the Internet Explorer Starter Kit. The index in the Windows 95 instruction manual contains only one reference to the term "Internet." The reference is to a page in the instruction manual with the heading "Connecting to the Internet." There is no discussion of Internet Explorer on this page. In addition, the instruction manual describes the procedure for "Setting up Windows 95," and does not mention Internet Explorer. Attached as Exhibit 3 are copies of the above-described pages from the Windows 95 instruction manual. I have reviewed the rest of the manual and found no discussion of Internet Explorer.

5. I also reviewed the Internet Explorer Starter Kit manual. On page v., the manual describes Internet Explorer as " a state-of-the-art Web browser. . . ." The manual also includes a glossary of Internet terms. It defines a "browser" as "[t]he program you use to view Web pages. Microsoft Internet Explorer is a Web browser." Attached hereto as Exhibit 4 are copies of the above-described pages from the Internet Explorer Starter Kit manual. I have reviewed the rest of the manual and found no advice to the user that Internet Explorer must be installed on Windows 95 in order for Windows 95 to function correctly.

6. Inside the Windows 95 box were also four packages of floppy disks. Three packages of disks were sealed in plastic and labeled "Windows 95" and contained disks numbered 1- 13. A separate package was labeled "Internet Explorer for Windows 95" and contained disks separately numbered 1-6.

7. Also inside the box was a CD-ROM containing the Internet Explorer Starter Kit. Nowhere on the CD-ROM package does it advise the user to install it in order for Windows 95 to function. Attached as Exhibit 5 is a copy of the cover of the CD-ROM package.

8. In November 1997, the Department of Justice also purchased a copy of the Windows 95 Upgrade for users of Windows from Egghead Software. The outside of the box in which the Windows 95 Upgrade came has a yellow sticker on it that states: "Now includes Microsoft Internet Explorer 4.0." Attached as Exhibit 6 is a copy of the front and back sides of the box.

9. Inside the box I found a Windows 95 manual. I compared it to the Windows 95 instruction manual described in paragraph 4, and discovered that they are identical.

10. Also inside the Windows 95 Upgrade box were two separate CD-ROMs. One came in a package labeled "Microsoft Windows 95 Upgrade," and the other came in a package labeled "Microsoft Internet Explorer 4.0." Neither package makes reference to the other. Attached hereto as Exhibit 7 is a copy of the jacket covers in which these two separate CD-ROMs were shipped.

Web Pages Downloaded from Microsoft's Website

11. On October 16, 1997, I accessed Microsoft's Website through the Internet by typing in www.microsoft.com. Attached as Exhibit 8 are a copies of a series of web pages from the Microsoft website that I accessed and downloaded in the following sequence. Upon accessing the Microsoft website, I went to the Microsoft "Products" section by clicking a hyperlink entitled "Products." The Microsoft Products web page contains different listings by category. It contains a listing for "Operating Systems & Servers" and a separate listing for "Online Products & Services." A copy of this web page is included in Exhibit 8.

12. I then clicked the "Operating Systems and Servers" link which took me to the web page listing those products. Nowhere on this web page is the Internet Explorer product listed. A copy of this web page is included in Exhibit 8.

13. I then went back to the "Products" web page and clicked the "Online Products & Services" link which took me to the web page listing those products. This web page lists, among several other products, several versions of Internet Explorer. This web page does not mention Windows 95. A copy of this web page is included in Exhibit 8.

14. From the "Online Products and Services" web page I clicked the Internet Explorer 3.0 link. This took me to many web pages describing Internet Explorer 3.0. Internet Explorer 3.0 is described in these pages as a "browser." The web page entitled "Overview" describes Internet

Explorer 3.0 as providing the "richest feature set of any browser. . . ." A copy of these web pages is included in Exhibit 8.

15. Exhibit 9 contains copies of additional material that I downloaded from the Microsoft website. On October 16, 1997 I downloaded a comparison of the Internet Explorer 3.0 and Netscape Navigator 3.0 browsers from the Microsoft Website. I accessed this site by typing in www.microsoft.com/ie/press/NSCPrev.htm. A copy of this web page is included in Exhibit 9.

16. On October 29, 1997 I accessed a web page on the Microsoft website describing the retail version of Microsoft's latest browser, Internet Explorer 4.0. The Internet address to that page is www.microsoft.com/ie/plus/main.htm. The web page describes Internet Explorer 4.0 as "the new browser from Microsoft that's sweeping the competitive reviews against Netscape Communicator." A copy of this web page is included in Exhibit 9.

17. On November 4, 1997 I again accessed the Internet and went to the Microsoft website. I found a web page with links to product news rooms. The Internet address is www.microsoft.com/corpinfo/pressroom.htm. These news rooms are described as giving "[w]eekly news, information and resources about specific product families." Internet Explorer has its own separate news room. A copy of this web page is included in Exhibit 9.

18. On November 16, 1997 I again accessed Microsoft's Website. I went to the Website located at www.microsoft.com/windows/common/w95iesk.htm by entering that Internet address. I downloaded and printed that web page. At the top of the page appears a banner that states: "Windows 95 Now Includes the Microsoft Internet Explorer Starter Kit in the Box!" Nowhere on this page is Internet Explorer 3.0 described as an upgrade to Windows 95. A copy of this web page is included in Exhibit 9.

19. On November 18, 1997 I accessed the Internet and went to the www.microsoft.com/ie/challenge/easy/page by typing in that address. This page is entitled "The IE Challenge." This page discusses the ease with which Internet Explorer is uninstalled: "IE Uninstalls Easily if you want to use a newer version, or simply get rid of it (and so does Navigator!)." It also says: "Both Navigator and IE uninstall easily if you decide to only use one (and if you DO choose just one, might we recommend IE?)" A copy of this page is included in Exhibit 9.

20. On November 18, 1997 I also found a Microsoft press release, dated November 17, 1997, at the Microsoft website. This press release was found at

www.microsoft.com/corpinfo/press/1997/NOV97/ie40%Pr.htm. The press release is entitled: "Microsoft Internet Explorer Breaks 40 Percent Use Among Web Surfers Within Six Weeks of the Release of Internet Explorer 4.0: Independent Survey Shows Internet Explorer Also Most Popular Browsing Software Among Home PC Users." The Microsoft press release directly compares Internet Explorer 4.0's and Netscape Navigator 4.0's share of browser users. A copy of these web pages is included in Exhibit 9.

Microsoft Windows 95 Preview Program Book

21. I have reviewed a Microsoft manual entitled Microsoft Windows 95 Preview Program, published in 1995. The manual provides an overview of the features, functionality, and components of the not-yet-released Windows 95. Pages 3 through 7 of the manual give a summary of improvements over Windows 3.1 and DOS. On page 5, it states: "When you first boot Windows 95 it is immediately apparent that the old world of Windows running on top of MS-DOS is no more." On page 43-44, it describes the differences between the 32-bit Windows 95 operating system and the 16-bit Windows 3.1 plus MS-DOS operating system.

22. With respect to Internet features in Windows 95, the manual includes a chapter on Networking that contains the following statement on page 135:

"Windows 95 provides all the plumbing you need to access information on the world-wide Internet network. Built-in support for TCP/IP, Windows Socket services, and dial-up protocols such as Point to Point Protocol (PPP) and SLIP, make connecting to the Internet and the information highway just a mouse-click away with Windows 95. . . . "

It continues on to say: "Support for Windows Socket services in Windows 95 allows users to use any of the large collection of third party and public domain Internet utilities such as Mosaic, WinWAIS, and WinGopher. . . ." Copies of the relevant pages are attached as Exhibit 10. I reviewed the manual and found no mention of Internet Explorer.

Articles Regarding the Browser Wars and Browser Market Share

23. Attached as Exhibit 11 are various press articles detailing the "browser wars" between Netscape Navigator and Microsoft Internet Explorer, comparing the features of these two products, and comparing their respective shares among browser users.

**Industry Press Articles Commenting that Internet Explorer is not
"Integrated" with Windows 95**

24. Attached as Exhibit 12 are various press articles by industry observers commenting that Internet Explorer is not "integrated" with Windows.

OS/2 Warp Version 3.0 and the Bonus Pak

25. Attached as Exhibit 13 are copies of product literature obtained by the United States relating to IBM Corporation's OS/2 Warp Version 3.0 operating system product and an associated BonusPak product. Listed as an application included in the BonusPak is the "IBM Internet Connection for OS/2." This application includes the program "IBM WebExplorer."

I declare under penalty of perjury that the foregoing is true and correct. Executed in San Francisco, California on November ____, 1997.

MARK C. GASPAR