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2 IN THE UNITED STATES DISTRICT COURT

3 FOR THE DISTRICT OF COLUMBIA

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6 UNITED STATES OF AMERICA,)
)
7 Plaintiff,)
)
8 vs.) No. CIV 98-1232(TPJ)
)
9 MICROSOFT CORPORATION,)
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10 Defendant.)
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14 DEPOSITION OF JON KIES, a witness

15 herein, taken on behalf of the Plaintiffs, at

16 2:11 p.m., Friday, September 11, 1998, at 6041 Variel

17 Avenue, Woodland Hills, California, before

18 Georgette L. Urbano, CSR, RPR, pursuant to Subpoena.

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22 REPORTED BY:

23 Georgette Urbano,
CSR 8747
24 Our File No. 1-49415

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23 Q Are you familiar with a stipulation
24 between the Department of Justice and Microsoft that
25 was entered into in January of 1998, that gave

1 Packard Bell NEC new options with respect to how it
2 configures its machines?
3 A I am.
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17 Q And did you have an understanding as to
18 whether Packard Bell NEC was ever provided with the
19 option to also delete the Internet Explorer program
20 from the start menu?
21 MS. WHEELER: Objection. Vague as to
22 the term "program."
23 THE WITNESS: We understood that if we
24 eliminated it from the icon, we could eliminate the
25 menu item as well. That was our understanding.

1 Q BY MS. GIULIANELLI: Just to be clear
2 for the record, when I refer to a January of 1998
3 option, will you understand that I'm referring to the
4 option through which Packard Bell NEC was allowed to
5 delete the icon and the Internet Explorer from the
6 start menu?
7 A Yes.
8 Q Okay. Has Packard Bell NEC taken
9 advantage of that January, 1998, option?
10 A Yes, we have.
11 Q For which lines?
12 A For the Versa LX and SX.
13 Q How, if at all, will Packard Bell
14 NEC -- or let me rephrase that.
15 How, if at all, does Packard Bell NEC
16 deliver a browser to its SX and LX customers?
17 A We provide the opportunity for the
18 customer to choose either between Netscape
19 Communicator 4.0 or IE 4.0. We provide a separate
20 CD-ROM that we call "Applications and Drivers" CD and
21 we put the program code on that CD-ROM and provide
22 the customer with a way to install it from that CD.
23 Q Why did Packard Bell NEC take advantage
24 of the January, 1998, option?
25 A In November of '97, when I took on the

1 responsibility of software for Versa, we kind of
2 changed paths in Versa from the idea that we needed
3 to pre-load a lot of software on all of our
4 applications to really looking at the target market
5 that we were selling to and understanding what they
6 did with the notebooks once they received them.
7 And what we found was that our
8 customers preferred to receive only the base OS and
9 drivers and not have any of the other third party
10 applications pre-installed. And browsers are
11 considered by most of our customers as a third party
12 application.
13 Q When you say "third party application,"
14 are you including within that Microsoft applications?
15 A Yeah. Microsoft applications,
16 traveling software, lap link, media players, the
17 whole gamut of software that's not developed
18 in-house, not developed by Microsoft, but
19 developed -- excuse me, developed by Microsoft OS but
20 outside of that.
21 Q Are you including within your answer
22 Internet Explorer?
23 A Yes. Internet Explorer and Netscape as
24 well.
25 Q Why does Packard Bell NEC ship two

1 browsers on the separate CD to its Versa SX and LX
2 customers?
3 A Well, our market research recorded
4 that -- it was actually third party market research
5 based on communications and the trade organizations
6 and things like that -- that there was about
7 50 percent market share for Internet Explorer and
8 Netscape. So to respect that market share and to
9 make it easier for our customers, we decided to
10 exclude it.
11 Q I'm sorry. You decided to --
12 A Exclude it from the OS.
13 Q What do you mean by make it easier for
14 your customers? How would excluding it from the
15 operating system make it easier for your customers?
16 A If we pre-install either one of the
17 browsers, it would mean that we're missing it for
18 50 percent of the customers and they'd have to go and
19 uninstall it. And a lot of times customers don't
20 feel comfortable uninstalling programs.
21 They feel that not all the drivers and
22 all the code is pulled out of the operating system or
23 the notebook. And so they would prefer to have it
24 not installed and just choose the ones they want to
25 have installed themselves.

1 Q We talked about the option as providing
2 Packard Bell NEC with the option of removing the icon
3 and the Internet Explorer from the start menu. From
4 a marketing perspective, how does removal of the
5 Internet Explorer icon and Internet Explorer from the
6 start menu affect whether or not customers perceive
7 that the Internet Explorer is removed or not?
8 MS. WHEELER: Objection. Lack of
9 foundation.
10 THE WITNESS: Well, if we provide it
11 without Internet Explorer in the menu item, the
12 customers feel like there's no browser installed
13 whether or not the actual code may exist below the
14 surface or the user interface. So we wanted to give
15 our customers the idea that they were receiving as
16 clean an OS as we could provide them.
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3 Q BY MS. GIULIANELLI: And if the
4 Internet Explorer icon is not available on the
5 desktop, do the customers feel the same way, that the
6 browser is not there?
7 A Yes. That's correct.
8 Q What is the basis for your
9 understand -- that understanding?
10 A That would be from discussions with
11 customers during when we go out and talk with
12 customers or bring them to -- onto our site to
13 discuss it with them.
14 Q Do you recall any particular discussion
15 with customers about this issue?
16 A No. I wouldn't say I could identify a
17 specific customer.
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4 Q Does Packard Bell NEC represent to its
5 customers that its SX and LX lines are -- that they
6 are now receiving Windows 95 without Internet
7 Explorer?
8 A Yes.
9 Q Would Packard Bell NEC like the option
10 of removing Internet Explorer from Windows 98?
11 MS. WHEELER: Objection to the form of
12 the question.
13 THE WITNESS: To the extent that we
14 would like the same flexibility that we have
15 currently with Windows 95, yes, we would like that.
16 Q BY MS. GIULIANELLI: So let me take
17 into account Miss Wheeler's objection and ask a
18 different question.
19 Would -- to make the record clear,
20 would Packard Bell NEC like a similar option akin to
21 the January, 1998, option to remove -- strike that.
22 Would Packard Bell NEC like a similar
23 option with respect to Windows 98 as the January,
24 1998, option?
25 MS. WHEELER: For the Versa line?

1 MS. GIULIANELLI: For the Versa line.
2 Correct.
3 THE WITNESS: I believe we would.
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14 Q How does the fact, if at all, that
15 Windows 98 comes with Internet Explorer affect a
16 corporation that has standardized on Netscape
17 Navigator?
18 MS. WHEELER: Objection. Lack of
19 foundation.
20 THE WITNESS: Well, it would require
21 that end user to uninstall Internet Explorer 4.0 or
22 install next to it Netscape Communicator. And
23 this -- then they would have two browsers on it where
24 most companies would just prefer to support one
25 browser and, once again, go back into the training

1 issue. And most corporations would not -- would
2 prefer not to have any items in the user interface
3 that they're not ready to support.
4 Q BY MS. GIULIANELLI: What is the basis
5 for your understanding that it would entail more
6 support to have two browsers on there?
7 A Well, generally a company, like they're
8 developing an Intranet for their own in-house
9 information, will understand which browser they're
10 using or the company is using to access that
11 Intranet. And if they had standardized on
12 communicator and -- but some of their end users were
13 using Internet Explorer, the screens that came up
14 might not work the same. So although the products
15 are very similar, in some cases java applets or other
16 items that are tuned or customized to one of the two
17 primary browsers don't work. So that would be the
18 example.
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5 Q In one of your answers a while back,
6 you referred to Windows 98 as providing some
7 performance benefits.
8 A Right.
9 Q What performance benefits did you have
10 in mind?
11 A Faster application loading, the --
12 they've tuned the OS to bring up applications faster
13 than previous versions of Windows 95.
14 Q Are there any other performance
15 benefits?
16 A Well, there's usability benefits in
17 that it provides greater USB support and a new
18 Windows device manager architecture that conceptually
19 provides better usability for third party
20 peripherals.
21 Q Are those benefits that Packard Bell
22 NEC believes that its customers would be interested
23 in?
24 A Certainly.
25 Q Are those benefits that you've just

1 listed available separately from Windows 98?

2 MS. WHEELER: Objection to the form of

3 the question.

4 A Not to my knowledge they're not.

5 Q Would Packard Bell NEC like to provide

6 those benefits to customers without having to ship a

7 browser with Windows 98?

8 A Yes, we would.

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20 Q Okay. Do you have an understanding as
21 the senior product manager for Packard Bell NEC as to
22 whether or not it is convenient for Packard Bell
23 NEC's customers to have a browser pre-installed on
24 their computers when they buy them?
25 MS. WHEELERS: All customers? Any

1 customers? Versa customers?

2 Q BY MS. GIULIANELLI: Versa customers.

3 A I would say that individual purchasers

4 who are not as specific about their choice of

5 browsers may find it more convenient to have a

6 browser pre-installed but that corporate users who

7 are very particular about the applications they

8 pre-load and represent the majority of our sales

9 would prefer not to have a browser pre-loaded.

10 Q Do individual users in your experience

11 sometimes have a preference for one browser over

12 another?

13 A Absolutely.

14 Q Is there an ideal option regarding

15 browser choice that Packard Bell NEC would like to

16 offer its individual Versa Note customers?

17 A In an ideal choice, what we would most

18 prefer is if we had Netscape and IE available to the

19 end user during the installation process such that a

20 prompt would come up and ask the question "Which

21 browser would you like installed at this time?"

22 Q Why would that choice be attractive?

23 A Then we would be able to meet the

24 requirements of the individual purchasers to have a

25 pre-installed version without going through inserting

1 or removing CD-ROMs that would limit the initial
2 boot-up process to simply making a few choices and
3 then the computer would be working.
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10 Does Packard Bell remove anything other
11 than the Internet Explorer icon from the desktop and
12 the start menu on its Versa SX and LX lines?
13 A Not to my knowledge.
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9 Q So if a customer purchases a Versa
10 computer, an SX or LX, with Windows 95 installed, do
11 you know if it comes with the Internet Explorer
12 files?
13 A My assumption is that they do come with
14 the files but the icon has been deleted from the --
15 and the start menu item have been deleted.
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25 Q Okay. If you'll turn back to Exhibit 1

1 and look at paragraph 5, the first sentence,
2 "Second," comma, "it would be wrong to characterize
3 PBN's deletion of icons from the Windows desktop and
4 start menu on these new lines of notebook computers
5 as the," quote, "'removal,'" unquote, "of Internet
6 Explorer from Windows 95."
7 Do you agree with that statement?
8 A Yes.
9 Q And why do you believe that's a true
10 statement?
11 A Because we have done nothing to
12 eliminate the underlying code.
13 Q Which code are you referring to?
14 A To Internet Explorer 3.0.
15 Q And do you know why Packard Bell didn't
16 do anything to eliminate the Internet Explorer 3.0
17 code from Windows 95?
18 A Our goal was to provide the user with
19 the interface as clean as possible. We did not want
20 to spend additional time researching or determining
21 which files could be safely deleted. The
22 presentation to the end user to us was more important
23 than the actual deletion of a code.
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11 Q Is it your understanding that the web
12 browsing functionality provided by Internet Explorer
13 is still in the operating system although the icons
14 have been removed?
15 MS. GIULIANELLI: Objection. Lack of
16 foundation.
17 THE WITNESS: Yes, it's my
18 understanding.
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9 Q BY MS. WHEELER: Is there anything in
10 any of the license agreements with Microsoft or the
11 OPKs that would prevent Packard Bell NEC from
12 pre-installing Netscape Navigator or communicator on
13 the Versa Note line of computers?
14 A No, there is not.
15 Q So if Packard Bell NEC wanted to
16 provide Versa Note customers with a choice of IE or
17 Netscape, all Packard Bell has to do is pre-install
18 Netscape Navigator; is that correct?
19 A That's correct.
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24 Q You were also asked whether Packard
25 Bell NEC could simply pre-install Netscape Navigator

1 if it wanted.

2 Do you recall that?

3 A Yes, I do.

4 Q If Internet Explorer is already

5 pre-installed, would Packard Bell NEC likely

6 pre-install Netscape Navigator as well?

7 A No.

8 Q Why not?

9 A It wouldn't make sense to have two very

10 large programs installed using up the hard disk drive

11 and it might be confusing to the end user as to why

12 two of the same applications were included.

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