

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICROSOFT CORPORATION,

Defendant.

CA No. 98-1232 (CKK)  
Washington, DC  
January 28, 2009  
10:50 a.m.

---

STATE OF NEW YORK, ET AL,

Plaintiff,

vs.

MICROSOFT CORPORATION,

Defendant.

CA No. 98-1233 (CKK)

---

TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE COLLEEN KOLLAR-KOTELLY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Department of Justice:

AARON D. HOAG, ESQUIRE  
ADAM SEVERT, ESQUIRE  
U.S. Department of Justice  
600 E Street, NW  
Suite 9300  
Washington, DC 20530  
(202) 307-6153

APPEARANCES continued on following page.

APPEARANCES, continued

For Microsoft:

CHARLES F. RULE, ESQUIRE  
JONATHAN S. KANTER, ESQUIRE  
Cadwalader, Wickersham & Taft  
1201 F Street, NW  
Washington, DC 20004  
(202) 862-2420

For Microsoft:

KEVIN KEHOE, ESQUIRE  
JUDY JENNISON, ESQUIRE  
CRAIG SHANK  
ERICH ANDERSON  
ROBERT MUGLIA

For the New York Group:

ELLEN S. COOPER, ESQUIRE  
Assistant Attorney General  
Chief, Antitrust Division  
Office of Attorney General  
200 St. Paul Place  
Baltimore, MD 21202  
(410) 576-6470

RICHARD L. SCHWARTZ, ESQUIRE  
Deputy Bureau Chief, Antitrust  
Office of Attorney General  
120 Broadway, suite 2601  
New York, NY 10271-0332  
(212) 416-8284

For the California Group:

STEPHEN HOUCK, ESQUIRE  
Menaker & Herrmann LLP  
10 E. 40th Street  
New York, NY 10016

For the California Group:

CRAIG FARRINGER ESQUIRE (Calif)  
LAYNE LINDEBAK, ESQUIRE (Iowa)  
ADAM MILLER, ESQUIRE (Calif)  
KATHERINE E. BRITTON, ESQ.(DC)

Court Reporter:

Lisa M. Hand, RPR  
Official Court Reporter  
U.S. Courthouse, Room 6505  
333 Constitution Avenue, N.W.  
Washington, DC 20001  
(202) 354-3269

Proceedings recorded by mechanical stenography; transcript  
produced by computer-aided transcription

## 1 P R O C E E D I N G S

2 COURTROOM DEPUTY: Civil case 98-1232, the United  
3 States of America versus Microsoft Corporation, et al., and  
4 Civil case 98-1233, State of New York, et al. versus Microsoft  
5 Corporation, et al. Counsel, please identify yourselves for  
6 the record.

7 MR. SEVERT: Good morning, Your Honor. Adam Severt  
8 for the United States. With me at counsel table is Aaron  
9 Hoag.

10 THE COURT: Okay.

11 MS. COOPER: Good morning, Your Honor. Ellen  
12 Cooper for the New York Group, and with me at counsel table is  
13 Richard Schwartz from New York.

14 THE COURT: Good morning.

15 MR. HOUCK: Good morning, Your Honor. Steve Houck  
16 for the California Group. And just following up on your  
17 comment, I wanted to note that like the proverbial postman, my  
18 colleagues from the west and the midwest braved the rain,  
19 snow, sleet and hail to take their appointed positions in the  
20 courtroom today. And that would be Adam Miller from  
21 California, sitting at counsel table, and Layne Lindeback from  
22 Iowa. We also have here today, with a little less difficulty,  
23 two folks from the D.C. Attorney General's Office, Katherine  
24 Britton and Craig Farringer.

25 THE COURT: All right. You're probably more

1 accustom to the weather than we are.

2 MR. RULE: Good morning, Your Honor. Charles Rule,  
3 Cadwalader, here representing Microsoft. With me today is my  
4 partner, Jonathan Kanter. As well, showing their hardiness  
5 from the Pacific northwest, are folks from Microsoft, Bob  
6 Muglia, who Your Honor knows, who is now the President of the  
7 Server and Tools Business at Microsoft. Next to him is Kevin  
8 Kehoe, Senior Attorney in the Law and Corporate Group at  
9 Microsoft. Judy Jennison who is next to Kevin, who is a  
10 Senior Attorney as well in that group. And then on the bench  
11 we have Erich Anderson, who is Vice-President and Deputy  
12 General Counsel, and next to him is Craig Shank.

13 THE COURT: All right. I will note that Mr. Himes  
14 wrote to me and indicated that he was leaving the AG's office  
15 and going into private practice, so I would have new people  
16 addressing me. All right. As has been my practice over the  
17 years, I'll summarize the status of the compliance and  
18 certainly as a court hearing. Based on the reports, I have a  
19 few questions and then I'll call on counsel.

20 When we were last in court on September 25th, that  
21 was a full compliance status hearing and this is an interim  
22 one, which generally is more focused. And we're looking also,  
23 now that we're in 2009, that the provisions that are still  
24 extant will be expiring on November 12th. Since the full  
25 compliance hearing, Microsoft has filed reports in October,

1 November and December, and then in January the Joint Status  
2 Report as well.

3           The specific focus, as it has been for quite a  
4 number of years at this point, is the developments with  
5 respect to Section III.E and the middleware-related provisions  
6 of the Final Judgment. Although other aspects of the sections  
7 are being reviewed, those seem to be the principal ones.  
8 Again, when I talk about the TC, I'm also including Mr. Hunt  
9 who has worked with them. So, let me start with -- and it's  
10 actually a fairly short report in terms of the focus of what  
11 we need to talk about.

12           III.E, in terms of the reset project. Since we  
13 were last here, Microsoft and the TC had finalized the two  
14 templates that will govern the preparation of the system  
15 documents. Microsoft also developed a project plan to  
16 complete all 19 system documents. Those should be done, as I  
17 understand it, by June 30th of this year, and includes seven  
18 milestones along the way for Plaintiffs and the Court to  
19 track. And on each of the completion of the milestones, the  
20 newly created documents will be made available to licensees  
21 immediately on request and included in the next readily  
22 scheduled revisions to the documentation.

23           At this point, Microsoft has completed system  
24 documents in the first two milestones. The TC has begun  
25 reviewing those documents. There will be feedback to

1 Microsoft. And Microsoft reports it's going to be on track to  
2 deliver Milestone 3 in -- I guess later in February. So,  
3 that's good news as long as these documents are good and are  
4 doing what we're supposed to.

5           On December 5th of '08, Microsoft delivered to the  
6 TC the updated technical documents in anticipation of the  
7 release of Windows 7 beta. And there's 30 new technical  
8 documents, 87 updated technical documents, and I guess between  
9 the scope of the work of looking at the Windows 7 documents  
10 and the new system documents, the TC evidently decided to set  
11 up a different review strategy. So, it's going to shift its  
12 focus going forward, giving the direct review of the documents  
13 to the TC's engineers. And then you will, as I understand it,  
14 continue to use validation and prototyping methods to  
15 supplement the direct review. Evidently the TC feels this is  
16 the most efficient method for identifying issues with the  
17 documentation and will also allow you to look at Windows 7,  
18 which is very important, as well, more thoroughly.

19           The prototype implementation activity as of  
20 December 31st, '08, there were a total of 1660 outstanding  
21 TDIs in the rewritten documentation, 301 were Priority 1  
22 submitted by the TC, 776 were self-identified by Microsoft.  
23 Microsoft points out that it spans the entire range of  
24 rewritten MCPP documentation, and it should be considered in  
25 the context of 20,000 pages. I have a few questions on that

1 one, but I'll get back to it.

2 In terms of testing of Cluster 7, that was  
3 completed on September 30th. The results were reviewed with  
4 the TC in October of '08. In addition, testing for Cluster 8  
5 was completed in early January, and they were reviewed with  
6 the TC on January 20th. And then the next one, as I  
7 understand it, will be March 31st. And they will be using  
8 newly created technical documentation, including Windows 7,  
9 will be tested using a similar method.

10 Microsoft is planning an active directory plug-fest  
11 for this week, five confirmed attendees. The MCPP status,  
12 their total of 51 companies now licensing patents for  
13 Communications Protocols, and 41 of those have royalty bearing  
14 licenses, so the number has gone up slowly, but gone up. As  
15 aware of 14 patent licensees shipping products under the MCPP,  
16 and Microsoft reports that 28 licensees have signed up to  
17 receive the free Technical Account Manager support, and eight  
18 have signed up for Windows source code access.

19 Evidently, as of January 21st documents describing  
20 the protocols available have been downloaded over 270,000  
21 times, which is quite an impressive figure. I am concerned,  
22 obviously, about the TDIs, and I realize that the more you  
23 look at it, the more these things are reviewed, but I am  
24 concerned that we do have a November 12th date looming now in  
25 this year. And I want to make sure that we see this as



1 getting resolved before that.

2           And I guess the next thing is whether -- my other  
3 question is whether Plaintiffs agree that Microsoft is on  
4 track on these various milestones, and the reviews that you  
5 have been doing, the ones that you did testing validation on  
6 Cluster 7 back in October and January, and you'll be doing one  
7 in March. Are you satisfied with what is being produced?  
8 That's important to know.

9           The next area is the competing middleware, and this  
10 is the Plaintiffs but not the United States, have received  
11 complaints about certain marketing programs that were  
12 announced by Microsoft from several companies that manufacture  
13 and sell a variety of products that work with Windows.  
14 Microsoft has informed the Plaintiffs that a number of changes  
15 have been made to these programs, I assume in response to  
16 this, it wasn't quite clear looking at the reports. And the  
17 other additional changes are being considered and Plaintiffs  
18 are monitoring it.

19           So, my first question is, of course, are the  
20 Plaintiffs satisfied with the changes? Are they directed and  
21 responsive to what the concerns are that have come up in terms  
22 of these marketing programs? Any reactions based on the TC's  
23 testing of Windows 7 or the beta of IE 8? There don't seem to  
24 be any new issues on the default browser override, if that's  
25 correct. And has the TC provided Microsoft with the new codes

1 for its simulator tool.

2           And the last one we had been talking quite a bit  
3 about, an ongoing confidential inquiry about a matter that  
4 evidently involved cross platform gaming, which Plaintiffs are  
5 now reporting has been resolved to their satisfaction and  
6 without any intervention from me. And, evidently, Microsoft  
7 has agreed to provide additional compliance training to some  
8 of the employees in the Windows organization who interact with  
9 hardware vendors. And one of Microsoft's executives will  
10 publicly affirm at an appropriate industry meeting scheduled  
11 to take place within the next two months, Microsoft's ongoing  
12 commitment to support game developers on Windows, whether or  
13 not those developers choose to use other platforms as well.  
14 So, that seems to be resolved.

15           Compliance officers, other than this one thing that  
16 evidently you're picking up in terms of doing it. The other  
17 thing is, there are media reports about cuts in jobs for  
18 Microsoft, hopefully they're not in my area. And I want to  
19 make sure that the commitment that has been made that we've  
20 been working on with Mr. Muglia continues and that we don't  
21 wind up with people being sliced from there, particularly,  
22 where, once again, deadlines are looming.

23           So, that's pretty much it. I think those are the  
24 key things that I saw in there. I have raised a few  
25 questions, but I'm interested in knowing the Plaintiff's

1 reactions to the various things that have been produced so  
2 far. So, let me start, as I always do, with Justice and then  
3 I'll move through the group.

4 MR. SEVERT: Thank you, your Honor. As you noted  
5 in your opening remarks, Mr. Himes is not with us today, he  
6 has finally followed through on his repeated threats and left  
7 the New York Attorney General's office. I just wanted to note  
8 for myself, and I know Mr. Hoag and the rest of us with the  
9 United States, that it was a pleasure working with Mr. Himes  
10 and we will certainly miss him. I also want to introduce  
11 Ellen Cooper who is going to be -- who has been working on  
12 this case for some time.

13 THE COURT: Yes. I certainly recognize her.

14 MR. SEVERT: Ms. Cooper will be taking a more  
15 active leadership role with the New York Group, and we look  
16 forward to continuing to work with her in her new role.

17 THE COURT: So, she's the new Mr. Himes?

18 MR. SEVERT: There is no new Mr. Himes, Your Honor.

19 THE COURT: Although, I think he's probably  
20 somewhat irreplaceable. I always enjoyed his answers to my  
21 questions and things that he brought up. Go ahead.

22 MR. SEVERT: To shift -- to focus on your  
23 questions, let me start with III.E. You mentioned that the  
24 TDI numbers have been rising steadily. I think from our  
25 perspective we view these as normal fluctuations in the

1 numbers of TDIs and don't view it as a cause for concern at  
2 this point.

3 THE COURT: Okay.

4 MR. SEVERT: In terms of -- are we still on track  
5 for November of this year. I can tell you we haven't reached  
6 that question yet.

7 THE COURT: Okay.

8 MR. SEVERT: But we will be engaging with Microsoft  
9 over the next few months talking about what the path for the  
10 path to completion looks like.

11 THE COURT: Are you satisfied with the work that  
12 has been produced pursuant to these milestones? I'm assuming  
13 that people are satisfied with the two templates because we've  
14 now moved forward.

15 MR. SEVERT: Yes, Your Honor.

16 THE COURT: So, where are we in terms of the  
17 documentation that's been related to the milestones?

18 MR. SEVERT: Sure. You had asked about the Cluster  
19 7 and 8, and we are very satisfied with the work that has gone  
20 on there. And, in fact, that has generated a number of TDIs  
21 from that -- from that effort. The thing that's too early to  
22 talk about yet is the system documents. We've received four  
23 from Microsoft to date, and because of how complex they are,  
24 it will be still some more time before we are able to --  
25 before we are in a position to comment on the quality of those

1 documents. So, I think that's sort of the focus for the TC  
2 right now is the system documents.

3 And as Your Honor noted in your remarks, they have  
4 shifted their focus to this direct review, which will allow  
5 them to really focus on both the system documents and the  
6 Windows 7 documents, both the documents that are new for  
7 Windows 7 and have been changed for Windows 7, which we view  
8 as very high priority for the industry.

9 THE COURT: I agree.

10 MR. SEVERT: The other thing I just wanted to  
11 briefly address, unless you had any other questions on III.E?

12 THE COURT: No.

13 MR. SEVERT: Your Honor had asked about the  
14 announced job cuts at Microsoft, and when we read that we  
15 asked the same question and had been assured that none of the  
16 layoffs are involved in any of the Final Judgment efforts.

17 THE COURT: Okay. I'm sure that the European union  
18 would have something to say about it, too. Go ahead.

19 MR. SEVERT: Any further questions, Your Honor?

20 THE COURT: No. The only other thing was in terms  
21 of the one complaint about the marketing program. Reading the  
22 report, it wasn't clear to me whether you were satisfied with  
23 the response that Microsoft has come up with.

24 MR. SEVERT: Your Honor, are you referring to the  
25 marketing program or the cross --

1 THE COURT: Oh, that's not you. That's right.  
2 Sorry, I forgot. I keep forgetting. It's not the U.S., it's  
3 the wrong person.

4 MR. HOUCK: I'll address that, Your Honor.

5 THE COURT: That's right. I forgot about that.

6 MR. SEVERT: Thank you.

7 THE COURT: Okay. Ms. Cooper.

8 MS. COOPER: For my maiden speech, Your Honor, I  
9 don't really have very much to say in this matter. We're  
10 largely in agreement with the Department of Justice in terms  
11 of how we view how things are going with, in particular, the  
12 system documents and the TDIs. And Mr. Houck is going to be  
13 addressing the questions that you raised about the middleware  
14 complaints.

15 THE COURT: Okay. All right. Mr. Houck.

16 MR. HOUCK: I'd like to begin with two personal  
17 notes, one is that we also will miss Mr. Himes and his  
18 excellent work, and the other thing is to congratulate  
19 Mr. Muglia, who now is one of the very most senior people in  
20 Microsoft, he has a very impressive title. So, I want Your  
21 Honor to know you've got a top level guy sitting right here.

22 THE COURT: All right.

23 MR. HOUCK: First, briefly, with regard to the  
24 documents, the last time I was here we did express some  
25 concern about what we perceived to be the level of commitment

1 to Microsoft and Microsoft to working on this. I don't have  
2 that concern this time. Indeed, we are quite pleased as we  
3 see it from and hear it from Mr. Hunt and the technical  
4 committee, that Microsoft is working hard to get the documents  
5 into shape. We obviously remain concerned, as Your Honor  
6 does, about the level of the TDIs, but are satisfied that  
7 Microsoft is working well with the TC to get them down.

8           Now, Your Honor mentioned the November date that is  
9 coming up, and I actually promised Mr. Rule I was going to  
10 stay away from this subject today, and I will largely, but  
11 Your Honor raised it.

12           THE COURT: I raised it only in that we're now in  
13 the year once again.

14           MR. HOUCK: So, I just want to give you a little  
15 information, hopefully without breaking my promise to  
16 Mr. Rule. Actually, we're not really prepared to discuss it  
17 anyhow, but I will tell you what we told him, which is that we  
18 are thinking very hard about this. We, too, are aware that  
19 that date is coming up. And what our objective is is to be in  
20 a position to talk with you about this the next time we meet.  
21 So, that's all I'll say, and I apologize to Mr. Rule.

22           THE COURT: Okay. You can always respond to the  
23 Court and not break your promise to fellow counsel.

24           MR. HOUCK: Your Honor trumps Mr. Rule, as far as  
25 I'm concerned. I did want to talk a little bit about the

1 marketing complaints which Your Honor alluded to, and Your  
2 Honor said you weren't clear about them, and that's not your  
3 fault. I think the JSR was deliberately vague about what they  
4 are with some reason.

5 THE COURT: Okay.

6 MR. HOUCK: I will start off by saying that in the  
7 six plus years that we've been enforcing the decree, this  
8 particular issue is one in which we've gotten the most number  
9 of complaints and heard the most anxiety about what Microsoft  
10 is doing. And the subject matter, very generally, is various  
11 Microsoft marketing programs that impact or potentially impact  
12 non-Microsoft middleware and applications in the OEM channel.  
13 And I don't really want to say too much more about that  
14 because the programs are changing, but I at least wanted to  
15 give you enough to orient you to what it is that we're  
16 addressing.

17 THE COURT: Okay.

18 MR. HOUCK: And we have had complaints, both from  
19 significant ISVs and from significant OEMs about this. I  
20 thought it might also be a little bit helpful to try to put  
21 this in some chronological context for Your Honor. I actually  
22 first raised this back at the June 2008 Joint Status  
23 Conference, and Your Honor probably doesn't remember it  
24 because I raised it in a very glancing way. I said we had  
25 heard some concerns about some Microsoft marketing programs --



1           THE COURT: I don't think they were actually in the  
2 report and you had raised them separately.

3           MR. HOUCK: That's correct. So Your Honor does  
4 have a very good memory. And after the conference we were  
5 going to meet with Microsoft just to try to find out what was  
6 happening. At that point in time in the spring, that was  
7 really largely the problem, I think. It was very unclear to  
8 ISVs and OEMs exactly what Microsoft had in mind. I guess the  
9 communication wasn't very clear, and subsequently Microsoft  
10 remedied that and made it clearer. But the result of that  
11 was, I think that the concerns deepened out there when they  
12 actually realized what these programs were. And so we did  
13 hear quite a number of complaints and concerns at the end of  
14 the summer and in the early fall.

15           And as I think I mentioned to Your Honor before, we  
16 have quarterly -- we call them all-hands meetings in Redmond  
17 where we talk about various issues, and we asked Microsoft to  
18 put this on the agenda, and that meeting was last month in  
19 December in Redmond. When we got there it was a fairly brief  
20 conversation because Microsoft told us that they had made some  
21 significant changes in the programs and were about to announce  
22 them. Which they did. And, indeed, those changes I think did  
23 move things in a positive direction, but nevertheless, since  
24 then we have still been hearing from OEMs and ISVs that they  
25 continue to have concerns about these programs.

1           Microsoft had also told us when we met in Redmond  
2 that they were considering additional changes. So,  
3 essentially where we are right now is we're looking at a  
4 program that seems to us to be not finally settled, in a bit  
5 of flux. And even yesterday I sent an e-mail to Microsoft  
6 with some questions to help clarify for us how these programs  
7 work, to get some information from them about how they are  
8 working, and about their impact on ISVs. And we continue to  
9 talk with Microsoft, and we're setting up -- even this morning  
10 before we came in here, we talked about setting up a time to  
11 discuss some of these concerns.

12           THE COURT: Okay.

13           MR. HOUCK: So, that's the reason it's a little bit  
14 vague.

15           THE COURT: No. Usually the system we've set up is  
16 that you have an opportunity to resolve it and if you don't  
17 then you come to me.

18           MR. HOUCK: We're still talking and the programs  
19 are still being shaped, so we're not prepared to discuss them  
20 substantively yet but we just wanted to let Your Honor know  
21 this is happening and we're working on it.

22           THE COURT: But at least it sounds like -- what I  
23 couldn't tell from the report is whether -- the changes that  
24 Microsoft was making, you viewed at least as responsive to  
25 your concerns.

1           MR. HOUCK: Yes, we do. And they were affirmative  
2 positive changes, but they haven't eliminated all our  
3 concerns, so we're still discussing it with them.

4           THE COURT: And then the one that we've been  
5 talking for quite some time has been resolved successfully.

6           MR. HOUCK: Correct.

7           THE COURT: All right. Anything else?

8           MR. HOUCK: Thank you very much.

9           THE COURT: Okay. Mr. Rule.

10          MR. RULE: Good morning, Your Honor.

11          THE COURT: Good morning.

12          MR. RULE: I want to thank Steve for certainly  
13 keeping his word, although, I grant Your Honor -- responding  
14 to your questions is more important. I also want to  
15 acknowledge Mr. Himes' absence here for the first time, and I  
16 think I can honestly say we will miss him, too. But we're  
17 glad that Ms. Cooper has stepped into his shoes, figuratively  
18 speaking, and we look forward to working with her on an  
19 ongoing basis as well as with all of our other colleagues on  
20 the Plaintiff's side.

21                 Your Honor, again, just a brief note before I hit  
22 the two areas that you have raised in your questions. Again,  
23 when we come here every three months or so, we talk about  
24 issues that have arisen. I think it's always heartening to  
25 hear Your Honor also report some other statistics that I think

1 reflect the fact, and certainly we should pay some attention  
2 to, that the program by certain measurements, that is to say,  
3 the MCPP program is working.

4 I think the 270,000 downloads that Your Honor  
5 noticed is a pretty impressive number. I think in one of our  
6 interim reports, I believe in November, we pointed out that in  
7 a blog entry on Samba -- one of the main developers of Samba  
8 made the point that while they're still working for  
9 interoperability, the bottleneck may be due to the other  
10 factors other than the MCPP program, and that they don't think  
11 it's due to missing documentation. So, I think that's  
12 positive.

13 THE COURT: That is.

14 MR. RULE: So, there are some I think real  
15 positives in this program that we don't want to lose sight of  
16 and we hope Your Honor doesn't lose sight of either. Moving  
17 to the TDI issue, Your Honor, I'm going to let Mr. Muglia  
18 address that in some detail. But as I understand it, the  
19 number of TDIs that are being reported are sort of to be  
20 expected, given certain other developments, like the testing  
21 program for Microsoft, the fact that we have produced to the  
22 Plaintiffs the new Windows 7 documents, 30 new documents and  
23 87 updated documents. And a change in allocation of resources  
24 at the TC.

25 Mr. Muglia can address that more, but we are

1 confident that the quality is there and that this process is  
2 improving that quality. And, also, I'll let Mr. Muglia  
3 address the commitment of the company. That notwithstanding  
4 Microsoft, like many other companies these days, has announced  
5 some layoffs, those layoffs will not affect the company's  
6 commitment to this Court and its obligations under the decree.

7           Let me move to the marketing issue, which I will  
8 address, and is not really Mr. Muglia's area, so I will  
9 attempt to address that. We are going to continue to discuss  
10 this with the Plaintiffs, so let me say that at the outset,  
11 and work with them. But I think it's worthwhile putting this  
12 into a little bit of context. Your Honor may recall that when  
13 Windows Vista was first introduced there were issues that  
14 revealed themselves in the marketplace of some consumer  
15 dissatisfaction and things like boot times and compatibility  
16 of the programs.

17           And it's an issue that Microsoft, and frankly,  
18 everybody in the PC ecosystem was very concerned about and  
19 very focused on, and Microsoft is going to address those  
20 issues very directly and hopefully very successfully in  
21 Windows 7. But as part of that process there were issues of  
22 compatible boot time, and Microsoft wanted to work with the  
23 OEMs and the ISV community to alleviate, if not eliminate,  
24 those issues, and to that extent -- to that end they developed  
25 certain tests. And initially asked OEMs to engage in some

1 testing and reporting with the expectation that in future  
2 cycles those -- compliance with those tests, meeting those  
3 tests, would factor into receiving marketing dollars.

4           The purpose of this was goodness, which is to say,  
5 to improve the performance of PCs for consumers, which we  
6 think benefits everyone in the ecosystem, but we did get  
7 feedback from the industry, as well as from regulators. And  
8 based on that, Microsoft took certain steps to avoid certain  
9 unintended business consequences from the way the program was  
10 designed originally. And principally that meant that no  
11 longer will -- we are not intending to tie marketing dollars  
12 to compliance with the test, we're still asking OEMs to test  
13 and report, but marketing dollars will not be tied to the  
14 outcome of those tests.

15           This is an ongoing process. We're going to  
16 continue to talk to ISVs. We're going to continue to talk to  
17 OEMs. They're going to continue to talk to us, that's  
18 absolutely clear. And we're going to continue to talk to the  
19 regulators and the folks who we are working with. And we'll  
20 continue to try to refine the program to make sure that it  
21 accomplishes its objective, which is improving the PC  
22 ecosystem, making PCs more attractive to consumers, and moving  
23 forward along that line, which I think is something that we  
24 can all agree is a good thing, but make sure that it doesn't  
25 have unintended consequences. So, we look forward to working

1 with the Plaintiffs and others to make sure that this effort  
2 achieves its objective.

3 THE COURT: All right.

4 MR. RULE: I'll ask Mr. Muglia to come up unless  
5 Your Honor has any other questions?

6 THE COURT: No, I'll wait to see how it works out  
7 since at this point the Plaintiffs and the TC seem satisfied  
8 with the initial response, I'll wait to see how it develops.

9 MR. RULE: All right. Thank you.

10 THE COURT: Mr. Muglia. Let me start by  
11 congratulating you.

12 MR. MUGLIA: Thank you, Your Honor, and good  
13 morning.

14 THE COURT: Good morning.

15 MR. MUGLIA: Well, let me first address the  
16 question that you asked about the impact of the job cuts, the  
17 recent announcement of Microsoft and job cuts on this program.  
18 And, once again, give you my assurance that in no way will any  
19 changes in staffing that Microsoft is taking or also any  
20 changes we're doing in some of the contract development that  
21 we may be spending, will that affect our commitment to the  
22 program and our continued application of resources to meet all  
23 the objectives of the program that we're working on with the  
24 TC and the Plaintiffs. I've said before, this is our highest  
25 priority and it will remain so through everything.

1 THE COURT: All right.

2 MR. MUGLIA: In terms of the TDIs and the question  
3 of the current number. I will start by saying again that  
4 we're working through an engineering process and if Your Honor  
5 might recall in our past two sessions I had indicated that it  
6 was likely that the number of outstanding TDIs would continue  
7 to increase as we move forward with our testing process. We  
8 were aware that the last two quarters of last year, the last  
9 two clusters of tests that completed at the end of September  
10 and the end of December had the largest number of documents  
11 coming through the process. So, it was our expectation based  
12 on the TDIs that we had been finding on an ongoing rate that  
13 the number of TDIs would increase through this period, and in  
14 fact they have. We have largely -- our engineering teams have  
15 largely kept up with that and are working through the process  
16 of resolving those TDIs on an ongoing basis.

17 Now, as we move forward with our own testing, we  
18 are in the process of the final testing cluster on the  
19 original Blue Line project, and there are actually somewhat  
20 less number of documents in this test cluster than there had  
21 been in the previous ones. So, it's our expectations that our  
22 incoming rate of TDIs, as reported by Microsoft, will decrease  
23 during this period -- during -- between now and March. And  
24 then post that we will begin in full our efforts of testing  
25 the Windows 7 based documentation.



1           The other thing that is important that has been  
2 noted a couple of times today is that the technical committee  
3 has shifted some of its resource as they move from defining  
4 the templates on the systems documents and some other  
5 projects, they have shifted their resource on to directly  
6 testing the documents -- the protocol documents, and this has  
7 caused a recent increase in the number of TDIs they have  
8 reported.

9           We remain committed to working with the technical  
10 committee and resolving those issues as quickly as possible.  
11 It is our expectation that we will be able to continue to do  
12 so. I don't know at this point exactly what their incoming  
13 rate will be in the coming months and quarters, but regardless  
14 of what it is, it is our commitment that we'll resolve all of  
15 those issues on an ongoing basis. So, this is part of a  
16 standard engineering process. We are actually winding down  
17 our test work on the original Blue Line documents. The TDI  
18 rates will reduce associated with that wind down, but they  
19 will increase as we go to Windows 7.

20           THE COURT: All right.

21           MR. MUGLIA: Are there any other questions that  
22 Your Honor might have on TDIs?

23           THE COURT: No, I think that's it.

24           MR. MUGLIA: And there was one other question that  
25 Your Honor has asked, and I don't think it was answered at

1 this point, which is that there was a simulator tool that the  
2 TC had built. And Your Honor asked the question whether that  
3 had been supplied to Microsoft, and the answer to that is yes,  
4 and our engineers are working on that right now and doing  
5 validation on that. And we expect to be able to release that  
6 broadly to the community shortly.

7 THE COURT: All right.

8 MR. MUGLIA: Anything else, Your Honor?

9 THE COURT: No, I think that covers it.

10 MR. MUGLIA: Thank you very much.

11 THE COURT: Is there anything else anybody wants to  
12 say? If not, I think we seem to be moving. I'm happy to hear  
13 that the staffing is going to remain at the level that they  
14 are. I'm happy that the templates have been completed and  
15 everybody seems to have set out a plan and we're working  
16 towards it. What I'd like to do in terms of -- with the  
17 idea -- the ever-looming November date, is to suggest that in  
18 terms of our next periods to come in, without picking a date,  
19 would be to bring you in in April, July and October. Does  
20 that work in terms of how -- I'm trying to figure out sort of  
21 a system in terms of having certain goals that will be  
22 completed. We can shift these around if these are not the  
23 months that -- it would be better to have different months in  
24 terms of what you'd report on. But certainly to have it in  
25 October, with the idea that the November date would be coming

1 up, just to sort of see where we are and not have this done at  
2 the last minute.

3 But if that would be -- as I said, we can pick  
4 dates specific within those months. But are those months that  
5 would work in terms of what you have projected to finish or do  
6 you want to put different dates? Because we basically have  
7 about three other -- it seems to me, three other, one full  
8 one, one interim and sort of the last full one -- if that  
9 works. Okay.

10 MR. HOUCK: That works for the Plaintiffs, Your  
11 Honor.

12 THE COURT: As I said, you know better in terms of  
13 when these things are -- when accomplishments will be done so  
14 that you'd be in a position to report it to the Court. Do you  
15 want to pick -- we can pick the three days in the months now  
16 or we could just pick April and take a look -- it may be that  
17 moving out is harder to do.

18 MR. RULE: Your Honor, I think we are prepared to  
19 pick the April date. I think it's a little more difficult  
20 with Mr. Muglia's schedule to pick the others.

21 THE COURT: Not a problem. And I forgot whether  
22 it's better for you all to -- I should know this by now, but  
23 where it is --

24 MR. HOUCK: Monday or Friday isn't better for the  
25 people flying.

1 THE COURT: I think what happened is we wind up  
2 having to change -- did we change this date from last week?  
3 We had already set it. Okay. I had to reschedule some things  
4 because I'm on another court and I needed to do that. How  
5 about if we did April 10th? I'm not sitting on the 24th.  
6 April 10th, does that work?

7 MR. HOUCK: That's a Friday, and I think the west  
8 coast people prefer the middle of the week.

9 THE COURT: Oh, middle of the week. I'm sorry. I  
10 thought you didn't want -- I thought you wanted Monday --

11 MR. RULE: Your Honor, just speaking on behalf of  
12 our west coast contingent, I believe their west coast  
13 contingent -- the April 10th works, so --

14 THE COURT: Do you want to talk for a few minutes?  
15 The 23rd and 24th don't work for me.

16 MR. HOUCK: April 10th works. Ellen says it's Good  
17 Friday Easter weekend.

18 THE COURT: That's not a good. It's also sometimes  
19 a spring recess day for the Court, so let's pick another time.  
20 We don't want to pick tax time, the 15th, unless you want to  
21 do it the 16th, or we can do it the 22nd.

22 MR. RULE: That works for us.

23 THE COURT: The 16th?

24 MR. RULE: No, the 22nd.

25 THE COURT: I can do it the 22nd. Does that work?

1 MR. HOUCK: Yes, Your Honor.

2 THE COURT: So, we'll do it April 22nd, and we'll  
3 do our 10:30 time. Okay. Then I'll see you back at that  
4 point. And I would just ask if you can get the report done,  
5 say, by April 16th, that will work. All right. If there's  
6 nothing else then let me excuse you all. Have a good day and  
7 safe journey back.

8 END OF PROCEEDINGS AT 11:30 A.M.

9

10

11 C E R T I F I C A T E

12 I, Lisa M. Hand, RPR, certify that the  
13 foregoing is a correct transcript from the record of  
14 proceedings in the above-titled matter.

15

16

17

18

19

---

Lisa M. Hand, RPR

20

21

22

23

24

25