

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 19, 2011  
10:05 a.m.

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STATE OF NEW YORK, ET AL,

Plaintiff,

vs.

MICROSOFT CORPORATION,

Defendant.

CA No. 98-1233 (CKK)

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

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## 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. Civil case  
4 98-1233, State of New York, et al. versus Microsoft  
5 Corporation. Counsel, would you please come forward and  
6 identify yourself for the record.

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

9 THE COURT: Good morning.

10 MS. COOPER: Good morning, Your Honor. Ellen  
11 Cooper from Maryland for the New York group.

12 THE COURT: All right.

13 MR. HOUCK: Good morning, Your Honor. Steve Houck  
14 for the California group, with me at counsel table are Layne  
15 Lindebak from Iowa and Adam Miller from California, and  
16 sitting behind them is Craig Farringer from the D.C. Attorney  
17 General's office.

18 THE COURT: All right.

19 MR. RULE: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MR. RULE: Charles Rule, Cadwalader, for Microsoft.  
22 With me at counsel table is Bob Muglia, President of the  
23 Server and Tools Division at Microsoft; next to him is Kevin  
24 Kehoe in the Legal Department at Microsoft; next to him is  
25 Fred Wurden, who is the General Manager of the Technical

1 Documentation Project; Judy Jennison from the Microsoft Legal  
2 Department; Ngoc Hulbig from Cadwalader; and Jonathan Kanter  
3 from Cadwalader.

4 THE COURT: All right. As I've been doing for the  
5 last several years, I will summarize the compliance since the  
6 last court hearing, based on the reports. I'll then have some  
7 comments, some questions, I'll call on counsel. This is a  
8 full compliance hearing and the report addressed that.  
9 Understandably, the focus at this point is Section III.E, the  
10 technical documentation.

11 We're only four months away from expiration of the  
12 Final Judgments, May 12, 2011. So, obviously the progress on  
13 the TDIs is very key. We were here last for an interim  
14 compliance hearing on October 13th, and we've set dates moving  
15 up -- not every month, but close to -- as we've come moving to  
16 the end.

17 Microsoft has filed two supplemental status  
18 reports, one in November, one in December, and then  
19 January 14th there was one filed, which was the joint status  
20 report in the two cases, which indicates the full compliance  
21 at this point. Obviously there's Section III.E, there's the  
22 middleware related issues, but I think frankly, Section III.E  
23 is key, and then the issues relating to, I think the  
24 complaint, is the only other thing that I would focus on  
25 particularly today.

1           And obviously when we talk about the technical  
2 committee, we're also including Mr. Hunt who has been with the  
3 California group has been working with us -- with the TC. So,  
4 let me start with the technical documentation. I'm only going  
5 to talk about where we were since the last report, I won't go  
6 back over all the dates, et cetera, in terms of the earlier  
7 milestones. We had set a series of milestones relating to  
8 resolving the TDIs, both in the context of less than 90 days,  
9 over 90 days, and a particular timing of it.

10           Microsoft evidently met the January 1st, 2011  
11 milestone. In other words, to reduce the number of TDIs older  
12 than 90 days to 15 percent of the level of April 30th.  
13 Microsoft did this by December 5th, so that was nearly a month  
14 ahead of schedule. So, that was very good on the one hand.  
15 On the other hand, because Microsoft met the January 1st  
16 milestone early and because we had set up that the TC would be  
17 stopping submitting new TDIs as of January 1, and then would  
18 shift its focus from correcting identified TDIs to identifying  
19 new TDIs, this would be their last time that they would  
20 identify any new TDIs.

21           So, we evidently had an enormous amount of TDIs, at  
22 least from my perspective looking at it, than expected.  
23 Significant increase is the way you worded it. New TDIs  
24 identified in December, more than the parties evidently  
25 expected. Now, my understanding is the plaintiff's view is

1 that the increase shouldn't be viewed as an indication that  
2 the technical documentation is an indication that there's a  
3 decline in the quality, but really a result of a Herculean  
4 effort, I guess, on the part of the TC before it shifted its  
5 focus to maximize their final review of new TDIs.

6 Evidently you agreed to several process changes, to  
7 address and mitigate the impact of these changes. They seem  
8 to be mostly communication issues, although I'd like to hear a  
9 little more about that. The parties agree that the spike in  
10 TDIs identified in December is going to affect the March 15th  
11 milestones and whether Microsoft will be able to meet them.

12 Microsoft indicates that it is devoting substantial  
13 resources to address the remaining TDIs, and that at least  
14 early indications, which include the closing, I believe in  
15 January, of over 2,087 TDIs that were active on December 31st.  
16 It's their view that Microsoft and the TC are well-equipped to  
17 address those TDIs. Both plaintiffs and Microsoft report that  
18 even with these process changes that have been put into place,  
19 as I've indicated, that the milestones for March 15 are  
20 unlikely to be met. However, both parties seem to think that  
21 they're not concerned as they expect Microsoft will be able to  
22 meet the April 15th milestones.

23 And at the end I'll raise a couple of issues that I  
24 have about that. In terms of the TC's prototype  
25 implementation activity, as of December 31st -- so the end of

1 the year -- there were a total of 7,071 outstanding TDIs, of  
2 which 2,242 were Priority 1. And those were submitted by the  
3 TC. 201 were self-identified by Microsoft. Of the 7,071 that  
4 are still, quote, outstanding, 828 have actually been resolved  
5 to the TC's satisfaction, but we have the system of they  
6 remain pending until there's publication of verification. So  
7 that the active TDIs that actually have to be worked on, as I  
8 understand, is 6,243.

9           And Microsoft also reports that as of the end of  
10 December, 5,979 of the active TDIs have been open to less than  
11 90 days, while 39 have been open for greater than 90 days.  
12 So, at least we're getting some of the older TDIs taken care  
13 of. Microsoft reports it continues to test the MCPPE  
14 documentation that has been released since Windows 7. They've  
15 continued with their interoperability lab plug-fest events.

16           Microsoft is going to be hosting an active  
17 directory and exchange plug-fest on January 24th through the  
18 28th, seven companies are registered to come. They are also  
19 going to host an interoperability lab for the Oracle file  
20 services development team the week of January 31st. And then  
21 various other resources have also been made available.

22           In terms of the MCPPE status, as of the last report  
23 there were a total of 51 companies licensing patents for  
24 communication protocols through the MCPPE program. Microsoft  
25 now reports there are a total of 49 companies licensing

1 patents. I don't know whether there was a drop of companies  
2 in here or I misunderstood what the report said, in terms of  
3 the 51 versus the 49. Twenty-eight have royalty bearing  
4 licenses, eight have fixed fee licenses, 13 have royalty free  
5 licenses, and 24 licensees are currently shipping products.  
6 Twenty-three licensees have elected to receive free technical  
7 account manager support from Microsoft, and six licensees have  
8 access to the Windows source code.

9           In terms of downloads in terms of Microsoft's  
10 protocols that are available. Now that we've corrected, in  
11 terms of what the figure is, it's 533,000 times, which is  
12 still quite a substantial amount that have been accessed. So,  
13 in terms of my observations, questions, I'm happy you met the  
14 January 1st milestone. I am concerned about the March 15th,  
15 the larger grouping. How confident the parties are that  
16 you're going to get this all reduced by April 15th.

17           We're getting very close to the expiration date,  
18 although we set a very tight schedule, we knew that there  
19 might be some slippage or things moving around. But are we  
20 really confident that this is going to happen, since May 12th  
21 is looming?

22           You've also indicated some process changes. I  
23 don't know that I necessarily need to know them, but it would  
24 be -- I would be interested in knowing what you're doing to  
25 make sure that this happens. And plaintiffs evidently



1 indicate that they are not concerned about the quality of the  
2 documentation, even though there's been an increase in TDIs.  
3 I would be interested in knowing that. Is that because it was  
4 more compact? If there's an increase, the natural assumption  
5 would be that there's potentially a problem. So, I would like  
6 an explanation why you're not concerned about this. Is it  
7 because they have actually looked at it and it's not a  
8 problem, or what is the reason for it?

9 Overall, I have some concerns, we never expected to  
10 have zero TDIs, and I understand that. But I wanted some  
11 period before the expiration where it would be a modest number  
12 so that we would be able to gauge the efficacy. And we're,  
13 frankly, moving up very close. And I expressed my concerns  
14 last time, but I am a little more concerned at this point, but  
15 I'll leave it to counsel for both sides to discuss this.

16 As I said, we're moving forward, and I do know that  
17 we set a very tight schedule in terms of doing this. And,  
18 frankly, I have to say that in general you all have been  
19 pretty much meeting it. So, to have one where there's some  
20 slippage, but you feel you can make up for it, gives me some  
21 confidence, but I still have some questions.

22 Really, the rest, nobody has raised any other  
23 issues, so I think in terms of hitting any of the other  
24 sections, they seem to be, you know, nothing seems to be going  
25 on there. I did want to raise the two complaints, one was one

1 that was made back in August and it concerned the marketing  
2 and technical management of toolbars and Internet Explorer 9,  
3 which gets to the Internet browser add-on, allowing the users  
4 to extend the functionality of their browser.

5 Now, the state plaintiffs and the TC were --  
6 because I believe that was where the complaint was being  
7 looked at -- were engaged in discussions with Microsoft and  
8 the complainant. The state plaintiffs now report they haven't  
9 completed the marketing component, but they have completed the  
10 technical management one. Microsoft has agreed to make the  
11 changes relating to this. And, so, subject to the TC looking  
12 to make sure that the implementation -- these changes have  
13 been done, then at least the technical aspect would be  
14 completed.

15 As I understood in reading it, the technical aspect  
16 related to new functionality that Microsoft added to Internet  
17 Explorer 9, which measures how long add-ons take to load. If  
18 I'm wrong about that, let me know. I guess the other question  
19 is, you know, how much longer will it take to resolve the  
20 marketing, are we well towards getting it finished.

21 As of January 10th Microsoft had received 68  
22 complaints or inquiries since the last period. There's only  
23 one that Microsoft has indicated relates to their compliance  
24 obligations and represents that the products in question are  
25 not Microsoft middleware under the Final Judgment. And that

1 even if they were, there's no undocumented APIs that are used  
2 by the products in question. And I understand plaintiffs have  
3 been provided details as to the complaint.

4           Now, I realize I'm usually out of the loop unless  
5 there's a problem, and so far you've been able to resolve it.  
6 But another question is, is this something that is going to  
7 get resolved prior to the end? So, part of it was just to get  
8 some sense of whether this would -- the state plaintiffs'  
9 investigation is moving along such that that will hopefully be  
10 done the next time we're in here, and does anybody have any  
11 concerns about the most recently received complaint?

12           In terms of compliance and resources, I didn't see  
13 anything that indicates that Microsoft is not devoting the  
14 resources that need to be devoted to it. And, certainly, the  
15 compliance officers -- there's new ones -- and they have been  
16 following through, as they have for quite some time, with what  
17 they need to do under the judgment. So, there's really no  
18 issues with that.

19           So we're really back to the TDI, as far as I can  
20 tell, and the issue of the complaint. So, let me call on  
21 counsel, and it's more the States, at least for the one  
22 complaint. So, let me hear from the Government first.

23           MR. SEVERT: Thank you, Your Honor. Let me start  
24 with your first question on how confident we are on the  
25 March -- sorry, the April 15th milestone. I think it's fair

1 to say that given the large number of TDIs there, there  
2 certainly is some concern. But I also think it's fair to say  
3 that since the end of the year that Microsoft has closed and  
4 resolved a very large number of TDIs.

5 I think Your Honor is correct that as of the end of  
6 the year there were over 6,000 active TDIs that Microsoft and  
7 the TC were working on. Since that time, it's only been 18  
8 days or so, they have closed 2500 of those. So, that's a very  
9 large number in a very short amount of time. So, I think  
10 Microsoft has shown that it has the ability to close a large  
11 number of TDIs quickly and the TC is now focused only on  
12 closing TDIs.

13 So, I think a large number of those will be closed  
14 in the ordinary course. There will, of course, be some that  
15 are more difficult than others that may take more time, but I  
16 think a large number will be closed relatively quickly. So,  
17 while there is some concern, to answer your question, on the  
18 April 15th deadline, just because -- you know, as you put it,  
19 it's an enormous number of TDIs that were found in December, I  
20 think that we believe that Microsoft working with the TC will  
21 be able to meet that deadline.

22 And part of it is because of the process changes  
23 that you alluded to. I can give you a little bit of an  
24 outline of the types of changes that we -- that the TC and  
25 Microsoft have made, and there are three of them. The first

1 enables sort of faster turnarounds on TDIs between Microsoft  
2 and the technical committee so that it enables more back and  
3 forth between them. So that I think will certainly help  
4 identify TDIs that might be problematic a little bit more  
5 quickly.

6 THE COURT: So, you have like a time line in which  
7 there's supposed to --

8 MR. SEVERT: Exactly. Sort of targets at which  
9 they're supposed to respond. The second is that there is more  
10 rapid member and Microsoft executive involvement in TDIs that  
11 have been back and forth a few times that used to -- in the  
12 past that had happened sort of at a later stage, and we moved  
13 it up a little bit to make sure that if there are issues that  
14 would be helpful to get senior level involvement in that can  
15 happen more quickly.

16 And the third is that there are a couple of process  
17 tools that have changed to enable more direct communication  
18 between Microsoft engineers and TC engineers so that if there  
19 are issues that might be better dealt with through just more  
20 direct communication, there are tools that that can happen a  
21 little more easily now. So, those are the nature of the  
22 process changes.

23 THE COURT: Okay.

24 MR. SEVERT: And your last question regarding the  
25 TDIs is, why aren't plaintiffs or the United States concerned

1 about the quality based on the large number of TDIs? And I  
2 think it's largely due to -- we've been tracking -- the TC has  
3 been tracking for a long time the number of TDIs per page that  
4 they're finding, and those numbers have been relatively  
5 constant. What changed in December is that the TC, one,  
6 because it was the last month, and two, because Microsoft met  
7 their milestone very early in the month, really focused their  
8 attention even more on identifying new TDIs before the end of  
9 the year, simply got through many, many, many more pages than  
10 anticipated.

11 I think it's fair to say that all parties,  
12 Microsoft, the United States, and the state plaintiffs and the  
13 TC, were very surprised at the large number of TDIs, but it  
14 was really a function of the TC getting through more pages --  
15 far more pages, in fact, than expected. And I think from the  
16 United States' perspective, that's good news. The more the  
17 technical documentation has been looked at very carefully,  
18 more issues have been resolved or identified so they can be  
19 resolved before the end of the Final Judgments.

20 THE COURT: Okay. I guess the question that I  
21 would have is, at least on this issue, is -- understanding  
22 that they have looked at a greater volume, I guess, is maybe  
23 the way to look at it. But is this indicative of sort of a  
24 constant that's going to be -- even if the Final Judgment  
25 expires, a constant that's going to be there going out?

1           My understanding is, as I said, that it would never  
2 be zero, but I expected a fairly modest number and we would  
3 get it down to a really -- I'm not sure what the modest number  
4 would be, but it certainly isn't what I've seen in the report.  
5 So, is there an expectation that once this is reviewed that we  
6 should see small -- a smaller number of TDIs as we move  
7 towards the March date, or is this going to be sort of a  
8 constant, taking into account you did a greater volume of  
9 review.

10           But even if you move back to what we had set out as  
11 a norm -- what we'll call a normal review -- is this pretty  
12 much what the numbers are going to be? In other words, is  
13 this what the expectation would be at the end of the judgment,  
14 that that's the number that's still going to be out there --  
15 if I make any sense?

16           MR. SEVERT: Let me try it. So, my expectation --  
17 the United States' expectation is that Microsoft is going to  
18 hit the milestones, and the large number of TDIs will be  
19 significantly reduced to the numbers in the milestones. In  
20 terms of -- is Your Honor asking about if the TC were to  
21 continue looking at documents?

22           THE COURT: Well, you know, at some point -- not at  
23 some point, we know we have a date that it's finished, the  
24 expiration date. And we've all accepted, as I've indicated,  
25 that it's -- we're never going to have it so there are zero

1 TDIs and there's nothing, there's always going to be  
2 something, and I'm willing to accept that.

3 My question was -- is that I had expected that once  
4 we got through these milestones that what would be left would  
5 be a fairly small number going forward with the expectation  
6 that that would be probably sort of maybe a constant number  
7 going.

8 MR. SEVERT: Sure. No, I --

9 THE COURT: This gives me an abrupt jolt of feeling  
10 that maybe that's not the way it's going to happen, and I have  
11 some concerns that at the end of the May 12th date that we  
12 still will have a fairly large group going forward even though  
13 it's expiring.

14 MR. SEVERT: So, let me try to answer that. So, I  
15 think that Your Honor is correct that there will always be  
16 some number of -- within the latent TDIs in the documentation,  
17 that's -- it would be --

18 THE COURT: And I've accepted that. Zero would be  
19 nice, but I don't think that's going to happen.

20 MR. SEVERT: Sure. So, when we set out the  
21 schedule of the milestones, the TC put together a schedule for  
22 itself to guide its review as to what the order and the  
23 documents it was going to review, and based upon how  
24 significant the particular documents or sections of the TDI  
25 were, the TC, because it had so much time in December to focus



1 on finding TDIs met and further exceeded its schedule, looked  
2 at far more of the technical documentation very carefully than  
3 it expected to.

4           So, I think that if the TC -- that to the extent  
5 that there are TDIs after the expiration of the Final  
6 Judgments, I think that there will be, they are far less  
7 significant because the TC has gotten through its schedule and  
8 given -- and gotten past its schedule, gone beyond what it  
9 originally planned to do.

10           THE COURT: Okay. And it's really the TC that's  
11 going to inform me for this, is whether they view that as they  
12 proceed, and to their credit, they really made evidently a  
13 Herculean effort in December to go through all this. Are they  
14 going to be satisfied? Because one thing I would want to  
15 know, as we get here, say in April and March, evidently there  
16 may be still a problem as we get to April, which is roughly a  
17 month beforehand. Are they satisfied that this is an  
18 acceptable number, whatever it is, as we move towards the  
19 expiration?

20           Maybe they can't predict it now, but I certainly  
21 would have -- the milestones would set up that we would reach  
22 that point, and I must say that it concerns me a little bit  
23 that that isn't going to happen.

24           MR. SEVERT: Sure. What I can say is that our  
25 level of satisfaction, as least speaking for the United

1 States, is a result of our interactions and conversations with  
2 the TC members and managers, and I think it is fair to say  
3 that they are satisfied that the quality level of the  
4 technical documents has not declined, it's in fact been  
5 improving.

6 They've gotten through their schedule, which they  
7 created trying to identify the areas that are, one, most  
8 useful for licensees and potentially users, and two, most  
9 difficult likely to have issues. And they've gone -- been  
10 able to do more than they expected, and the documents are --  
11 will be in good shape after the identified TDIs are resolved.

12 THE COURT: Okay. Because the new ones -- we did  
13 these priority things, so presumably -- and the Priority 1's  
14 seem to be in the larger groupings. So, that's why it seemed  
15 to me it wasn't just something that -- you know, small little  
16 things, because you've put them as a Priority 1. Okay. All  
17 right.

18 MR. SEVERT: Thank you.

19 THE COURT: Anything else? No? Okay. Ms. Cooper.  
20 I always think of you as addressing the TC issues. So,  
21 perhaps you can add on if there's particular issues for me.

22 MS. COOPER: Yes, Your Honor, that is my job. What  
23 I want to add is that the completion bonus program is still  
24 working well, and that at this point all but one of the TC  
25 engineer slots is still filled. And that means that they're

1 all working on TDIs, they are all meeting their own targeted  
2 deadlines. And, in fact, the TC staff will be working  
3 overtime to ensure that Microsoft's responses to the TDIs are  
4 turned around quickly. And as Mr. Severt discussed, they're  
5 on a new accelerated turnaround schedule.

6           So, because of this and because of Microsoft's  
7 strong efforts throughout the month of January, as Mr. Severt  
8 indicated, the New York group also believes that with  
9 additional strong effort that we can get very close to the  
10 milestones at least by April. I'm not sure that we will be at  
11 exactly the number that we had indicated early on, but I think  
12 we will be close.

13           THE COURT: Okay. All right.

14           MS. COOPER: Your Honor, I think, had some  
15 questions about the middleware --

16           THE COURT: Right.

17           MS. COOPER: -- complaint? And your questions were  
18 about the --

19           THE COURT: One was the one in August, and one  
20 issue seems to have been resolved, the technical issue, the  
21 rest was a marketing issue that was left.

22           MS. COOPER: There were two complaints that came in  
23 at the same time. The first, the technical part, has in fact  
24 been resolved satisfactorily. And so long as the TC is able  
25 to verify that Microsoft has done what it has agreed to do,

1 and I think that's probable. That complaint will be closed.  
2 The other complaint, the marketing complaint, required some  
3 discovery as did the technical complaint, and that production  
4 was a rolling production, it has just been completed  
5 yesterday.

6 And so it has taken a little bit longer than  
7 anticipated to get all the documents that we need to review,  
8 but we are hopeful that by the next time we meet we'll be able  
9 to have a resolution for you. It really just depends on what  
10 we see in the documents.

11 THE COURT: Okay. There was another one that I  
12 think that came to Microsoft that Microsoft had identified  
13 itself. Is that one that you all are working on or what? I  
14 believe I'm correct, Microsoft -- as of January 10th there are  
15 68 complaints, there was only one of them that related to some  
16 degree with the compliance obligations. And my understanding  
17 is you have been provided details, is that something you're  
18 working out, too?

19 MS. COOPER: Microsoft has informed us about this  
20 complaint. I can't say, in all honesty, that we have focused  
21 on it as yet, but we will do so.

22 THE COURT: Okay. All right, Mr. Houck.

23 MS. COOPER: Thank you, Your Honor.

24 MR. HOUCK: I wanted to talk mainly today about the  
25 three issues, because as Your Honor points out, this is a very

1 important subject as we are getting close to the expiration of  
2 the Final Judgment. I'm sure I'm going to repeat some of what  
3 you heard, but I'll undertake that risk. With respect to the  
4 middleware complaints, I agree with what Ms. Cooper said, we  
5 have finished looking at the technical, IE-9, aspect of the  
6 complaint and reached a resolution with Microsoft.

7           The other portion has taken a little bit longer,  
8 there's actually a glitch in Microsoft's document production  
9 efforts and their document production software, so the  
10 production was delayed a little bit, but it's now complete and  
11 we will be looking at it shortly, and certainly anticipate  
12 being able to report to Your Honor, and hopefully have it  
13 resolved one way or the other by the next time we see Your  
14 Honor.

15           I believe the other complaint you're referring to  
16 is one that Microsoft called to our attention. We have looked  
17 at it just briefly, it does not on its surface look like it's  
18 going to be that significant, so it shouldn't delay the  
19 termination of the Final Judgment, if that's Your Honor's  
20 concern, that we will be looking at that more carefully, it  
21 just came to our attention in the last week or so.

22           THE COURT: Okay.

23           MR. HOUCK: With respect to III.E issues, the last  
24 six weeks, December through mid-January, have probably been  
25 the most extraordinary six weeks in the history of the entire

1 program. We had seemed to be on a fairly even glide path down  
2 to resolution. And, in fact, in September, October and  
3 November, the three prior months, the TC had opened an average  
4 of 619 TDIs a month, and that soared in December to 5,469,  
5 which is nine times the average in the prior three months.

6           So, as the others have said, we're all -- all the  
7 plaintiff groups and Microsoft were greatly surprised at that.  
8 And just to reiterate again, it's our view as well that the  
9 cause of that is not a decline in quality because the number  
10 of TDIs per page looked at seems to be pretty consistent.

11           From our perspective, the surge in TDIs is due to  
12 two things. One is the complete focus of the TC staff on  
13 looking for TDIs, rather than assisting Microsoft in closing  
14 them. And probably more important, as Your Honor pointed  
15 out -- I'm not sure I'm going to say this right -- Herculean  
16 effort -- an all out effort by the TC staff, a lot of  
17 overtime, to finish the program the TC had set up to review  
18 the documents before year end when their status as TDI hunters  
19 expired.

20           And so what happened was the TC had a set of  
21 documents that they had planned for review, and I guess it got  
22 a little behind that because of the earlier effort to assist  
23 Microsoft in meeting earlier milestones. So, what happened is  
24 that you're really concentrating a lot of efforts in meeting  
25 the TC's goals to assure that the documentation is good

1 quality. And they, as I understand it, met those or came very  
2 close to those goals. So, they finished the planned program,  
3 and the result being this very large number of TDIs.

4 As Mr. Severt said, the good thing about that is,  
5 if it identified issues in the documents which have corrected,  
6 will greatly improve the documentation. The potential  
7 downside, which is of concern to Your Honor and was very much  
8 of concern to us, is the jeopardy it might put the termination  
9 of the Final Judgment in May.

10 So, we're all very concerned about that. And all  
11 of us being the plaintiffs, and Microsoft and Microsoft's  
12 inside counsel, Mr. Kehoe and Ms. Jennison, were good enough  
13 to fly here to Washington, D.C. last week to meet with us to  
14 talk about that issue and see how we could overcome it. And  
15 one of the things that we agreed on were some of these process  
16 changes that Mr. Severt outlined.

17 So, hopefully, Your Honor had asked if we were  
18 really confident that we would meet the end date in May. And  
19 one thing I've learned in this case is not to be confident  
20 about anything, but I think it's fair to say that the  
21 California group is reasonably confident. That  
22 notwithstanding the very large number of TDIs in December, we  
23 still are very hopeful of making the May date, and as getting  
24 the TDIs down to, if not zero, a modest number, I don't know  
25 what that number is either. We haven't really come to a

1 determination about what that is, but hopefully it will be  
2 fairly low.

3           And the reasons I say that we are reasonably  
4 confident are several, one is the change in procedures that  
5 have been outlined, but that's probably the least of the  
6 reasons. Another reason is the fact that the TC's only  
7 priority now really is helping Microsoft fix already  
8 identified TDIs, not to continue to look for others.

9           So, there will be no additional TDIs in the coming  
10 months. Another reason we feel reasonably confident is we've  
11 been told all along, I assume it's still true by Microsoft,  
12 that closing TDIs is priority number one for them. And one  
13 would hope and think that as the finish line comes into view,  
14 they have even a greater incentive to get to that finish line.

15           And indeed, as has been pointed out, they have been  
16 closing TDIs at a record number. As remarkable as December  
17 was for finding TDIs, January was equally remarkable for  
18 closing TDIs. In fact, through yesterday the average -- if  
19 you do it by weekly, they have closed an average of 900 per  
20 week.

21           And if one contemplates the fact that there are 14  
22 weeks left between the beginning of next week and May 1st to  
23 the end of the Final Judgment or to May 1st, and there are  
24 currently 3,632 TDIs left open as of yesterday, Microsoft  
25 needs to close 260 a week to get down to zero. As we said,



1 maybe not zero, but some modest number.

2 Now, certainly, one would presume that they are  
3 closing the easiest TDIs first, so I'm not sure the California  
4 group expects them to continue at a rate of 900 a week, but it  
5 seems like there is enough of a margin built in. So, they  
6 really should, by working hard, be able to get the number down  
7 to a number that would be acceptable to the plaintiffs and the  
8 technical committee and to Your Honor.

9 In closing, I would just observe an irony here,  
10 which is that now it seems like we've finally learned how to  
11 make good sausage -- good quality sausage, and to do it  
12 efficiently, but it looks like we may well have to close down  
13 the sausage factory in May. And we're hopeful that's going to  
14 happen, and we will be working very closely with Microsoft to  
15 assure that end as the best we can. That's all I have to say,  
16 Your Honor. Any questions?

17 THE COURT: No, I think that answered my question.

18 MR. HOUCK: Thank you.

19 THE COURT: All right. Mr. Rule.

20 MR. RULE: Good morning, Your Honor.

21 THE COURT: Good morning.

22 MR. RULE: Let me try to briefly address a couple  
23 of the issues that you raised. First off, you asked the  
24 question of the 49 licensees --

25 THE COURT: Unless I didn't read this correctly.

1           MR. RULE: I think you did read it correctly. The  
2 number does fluctuate over time. Over this period I  
3 understand there were three terminations, I don't have the  
4 identity of the licensees.

5           THE COURT: That's okay.

6           MR. RULE: One new one. So there was a net change  
7 of two. But, you know, from time to time some of these  
8 companies go out of business, some of them merge and that sort  
9 of thing, and so you did read it correctly, there was a net  
10 change.

11           Let me also, before turning to the III.E issues,  
12 you asked about the complaints, I think the plaintiffs have  
13 addressed the toolbar issues, but I'll be happy to answer any  
14 questions about that. The other complaint was one that came  
15 in to Microsoft, it had to do with the question, as Your Honor  
16 I think noted, of documentation of APIs. The products that  
17 were involved were not middleware, nevertheless we did confirm  
18 that they are -- that product is calling on documented APIs.

19           We have disclosed this and the information  
20 surrounding it to the plaintiffs, and I think, as the  
21 plaintiffs indicated, if they have any issues, we're ready and  
22 willing to listen to them.

23           THE COURT: Okay.

24           MR. RULE: But we believe that it is not -- should  
25 not be a concern. That then takes me to III.E. I think the

1 plaintiffs have all addressed the nature of this unusual spike  
2 in December and how it's being followed up by an unusual spike  
3 in resolution. I think, though, rather than me trying to  
4 address it, since Mr. Muglia has joined us today, it's a good  
5 idea to have him come up and assure the Court, as the  
6 plaintiffs have noted, that this is priority number one.

7 I should also say, you may have read over the last  
8 few weeks, Mr. Muglia announced that he is going to be leaving  
9 Microsoft later this year. However, he --

10 THE COURT: But not before the end of this.

11 MR. RULE: That's what I wanted to --

12 THE COURT: I did note that.

13 MR. RULE: -- that's what I want to assure the  
14 Court. He is going to stay through May and this is an  
15 important priority in his remaining days at Microsoft.

16 THE COURT: Okay.

17 MR. MUGLIA: Good morning, Your Honor.

18 THE COURT: Good morning. I noted, with interest,  
19 but I didn't want to bring it up, but since you have I was  
20 happy to see it was not going to affect our effort together  
21 here.

22 MR. MUGLIA: Thank you, Your Honor. In fact, it's  
23 good to be back here. And the primary reason I'm back here  
24 today is because Mr. Wurden and his team are fully capable of  
25 working the issues that are on the table with regard to III.E,

1 but the primary reason I'm back here was really to assure you  
2 that I would stay focused on this project through the  
3 termination and the finish of the consent decree.

4           My plan is to leave the company later this summer,  
5 which should, we all hope, be well after the consent decree is  
6 finished. And I'll continue to oversee it from an executive  
7 perspective. With regard to your question that you asked  
8 about -- boy, there's a lot of TDIs that came in, what does  
9 this really mean? The questions have really been answered to  
10 a large sense from the plaintiffs, so I won't go through the  
11 specific details and repeat what they said because they were  
12 quite clear and I thought did a great job of answering those  
13 questions.

14           But what I did want to sort of describe is what I  
15 think you can -- one way to really look at this, which is sort  
16 of taking you back to the first time I had the honor to be in  
17 front of you to talk about the fact that this is an  
18 engineering project. And what we are doing here is  
19 effectively building a product, a product for a set of  
20 customers. In this case the customers are licensees, and now  
21 in fact the broad community of developers that wish to build  
22 products that interoperate with Microsoft software.

23           The goal always has been to do a top notch, A-plus  
24 quality job on building documentation that enables that level  
25 of interoperability. And as has been stated, the

1 documentation in its current form is quite capable of doing  
2 that, and in fact, there's a lot of demonstration in the  
3 industry that that is exactly happens.

4           Over 550,000 downloads of the documentation -- we  
5 are actually seeing people using the documentation broadly and  
6 reporting a very, very small number of TDIs against it. Those  
7 outside of Microsoft and the TC are reporting, I believe, an  
8 average of about 15 TDIs a month, and that has remained  
9 constant. And I think you can just see in the industry today  
10 the kinds of many, many products that are interoperating with  
11 Microsoft software, be it in the consumer space or in the  
12 business space.

13           So, the goal of what we attempted to achieve so  
14 many years ago I think has in many ways already been achieved,  
15 but of course, we need to go through the process and validate,  
16 and that's why this is an engineering project, and that's the  
17 purpose of the work that Microsoft's teams together with the  
18 TC are doing.

19           And in terms of the large number of TDIs that were  
20 reported in December, while it was not expected, as has been  
21 said, I will say that it is not the first time I've seen a  
22 spike of issues raised in the process of a product. We often,  
23 as we are building products and we reach a point where we're  
24 nearing conclusion, not at conclusion but close to conclusion,  
25 take our engineering teams, and instead of having them develop

1 new things, have them all work for a period of time on  
2 assessing the quality of the software and report what we would  
3 term as bugs in a product.

4           And it is not unusual to see a large spike when an  
5 entire team is able to focus on that for a brief period of  
6 time. And very typically it's possible to work through that  
7 at a fairly rapid pace and to get those number of, in this  
8 case, TDIs down.

9           Now, if you look at the trajectory of the TDIs when  
10 we had originally anticipated this as the schedule was laid  
11 out last year, we had done some on the expectation that the  
12 number of TDIs reported by the TC would remain roughly  
13 constant. Obviously, it went up in December. So, we will --  
14 the slope of the curve will actually be steeper, but as we  
15 looked at the time it will take for us to work together with  
16 the TC to close those TDIs, we did not feel comfortable  
17 feeling we could meet the March milestones as originally set  
18 out, but we have a high degree of comfort in our ability to  
19 meet the April milestone.

20           Nothing is ever assured -- as Mr. Houck said,  
21 nothing is ever assured, but we have a very high degree of  
22 comfort that we can do it. And I can tell you, having talked  
23 to a number of the engineering leaders within the organization  
24 that are working on this, that they have shifted considerable  
25 resource and considerable time on to resolving those, as has

1 been demonstrated in the last two weeks where 2500 have been  
2 closed.

3           You know, finally, the most important thing that  
4 will help get it closed is the fact that Microsoft and the TC  
5 are now both focused together on closing the existing TDIs,  
6 and there will be no new ones coming in. So, that provides us  
7 with a higher degree of assurance that we'll be able to  
8 numerically meet the objectives that we set. At the same time  
9 remembering that all of this is just an indicator of what we  
10 really care about, which is making high quality documentation  
11 available to the industry.

12           THE COURT: All right. Thank you. That was  
13 actually very helpful in terms of getting a -- from a  
14 different perspective.

15           MR. MUGLIA: Thank you very much, Your Honor.

16           THE COURT: All right. Thank you. I had a few  
17 concerns when I came in, I think I'm assured that we're on the  
18 right track and that I shouldn't be as concerned as I was  
19 originally when I looked at this. In terms of the increase,  
20 although, I must say that the close-out has been -- Microsoft  
21 has been very responsible, along with the TC, in terms of  
22 really putting the effort in and closing out a large number of  
23 the -- with the spike -- also closing out a large number.

24           So, I think at this point I will wait -- we have a  
25 hearing I believe in March that we have already set, so we'll

1 proceed with that date. I don't think that needs to be moved.  
2 I think we had set it around -- after the March thing, so  
3 we'll have a much better idea of how close you will have been  
4 able to reach the March one and probably a better projection  
5 of how this is going to look for April than we are here now in  
6 January.

7           But I think we seem to be on track. And as this  
8 has moved towards its closing, we're narrowing down in terms  
9 of the number of issues that we have to discuss, certainly I  
10 went back and I keep these reports over the years and I was  
11 flipping through some of the earlier ones where we have far  
12 greater issues with the other sections. We're now really down  
13 to III.E and occasionally, you know, an issue with a  
14 complaint, but even the complaints are a much smaller number  
15 than we had originally.

16           So, I think we're successfully moving, I hope, to  
17 having this closed. I won't use success because that probably  
18 depends on how you want to define it, but at least meeting the  
19 goals that we've set out, which I think was in combination of  
20 the plaintiffs and what they wanted and the TC, which is  
21 technically indicated to them what they view as an appropriate  
22 end to the consent judgment, and Microsoft in terms of the  
23 their efforts on their end.

24           All right. So, I will see you in March. Take care.  
25 END OF PROCEEDINGS AT 10:53 A.M.



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C E R T I F I C A T E

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

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Lisa M. Hand, RPR