

PLAINTIFF'S  
EXHIBIT  
176  
Comes v. Microsoft

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WORKING

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PERSONAL SYSTEMS

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DATE: 11/10

TO: John Sabol / Bill Gates

TELEPHONE #: \_\_\_\_\_

LOCATION: Microsoft

FROM: J. A. Cannavino

TELEPHONE #: \_\_\_\_\_

LOCATION: \_\_\_\_\_

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MESSAGE: \_\_\_\_\_  
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11/09 -  
BILL GATES  
Jim Cannanno

I. TRUE COMMITMENT TO IBM/MICROSOFT PARTNERSHIP

A. SHARED RISK/REWARD

- Equal Investment/Equal Return
- Inclusive of DOS, Windows, OS/2, Extended Services LAN Manager
- Compensation for and license to derivative work extensions

} DISCUSS  
POINT  
Conceptual  
Agreement  
w/ modifica

} AGREED

B. AFFORDABLE INVESTMENT

- Fewer Development Locations.
- Streamline Development Process

} AGREED - discussion  
Point

C. COMMON GOALS DURING PRODUCT DEVELOPMENT

} AGREED

D. STREAMLINED DECISION PROCESS - SINGLE "VIRTUAL" MANAGEMENT STRUCTURE

} AGREED

E. OPERATING SYSTEM DECISIONS INDEPENDENT FROM GOALS OF THEIR RESPECTIVE APPLICATIONS BUSINESSES

} AGREED

F. SINGLE IBM/MICROSOFT VOICE

- Publicly
- With ISV community
- With customers

} AGREED

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G. EACH COMPANIES ACTIONS SHOULD REFLECT OS/2 PRIORITY

- Development resource of IBM and Microsoft should be concentrated on OS/2 vs. functional enhancements to Windows. } AGREED
- Internal Use } AGREED
- Schedule/availability of applications and major enhancements - applications/enhancements must be brought out on PM first (including multimedia) } AGREED W/ SLIGHT MOD.
- Marketing presentations/customer calls } AGREED

H. AGREEMENT TO NEGOTIATE AND CLOSE CONTRACT INCLUSIVE OF POINTS WITHIN THIS MEMO BEFORE YEAR-END '89 } AGREED

2. AGREEMENT INTERNALLY/EXTERNALLY TO THE FOLLOWING:

Both companies agree that major development investments functional enhancements and new features will be geared to OS/2 development.

} AGREED

A. WINDOWS - CAP

- No major functional enhancements to Windows after Windows 3.0

} modified

- Windows 3.0 available coincident or after Cruiser

} modified

- No porthole in 1990 or public/private disclosure of it

} disagreed - changed word

- Windows 3.0 marketed/positioned for 1-2MB 30MB. Sold as an option for installed DOS customers, but OS/2 migration step sold first where customers will need the following functions over a 2-4 year horizon:

- database applications
- full multi-application and background processing support
- distributed processing solutions
- 32-bit application support
- full LAN client support
- full server support
- features such as threads, scalable fonts on demand, long file names, .....

} wording agreed to in 11/13 Press letter

**B. OS/2 16 BIT**

- Commitment to drive OS/2-16 to 2MB configuration } Discussion pt Agreement Reached
- Publicly state OS/2-16 bit minimum will never go below 2MB } Agreed - wordn per 11/13 press statement
- Today's OS/2 1.2 recommended for systems with at least 3MB, 30MB. } Agreed
- Acknowledgement that OS/2 1.2 with 4MB allows for advanced features:
  - high performance file system
  - expanded LAN client features
  - advanced applications
 } Agreed - wordn per 11/13 press statement
- OS/2 is the strategic operating system environment for new 286 purchases with 3MB+ } Wordn per press release
- Public acknowledgement that "DOS Compatibility Box" will free up 512K memory in early '90. } Agreed with Impr comment in Dec to YE '89

**C. OS/2 32 BIT**

- Public intent to deliver a version of OS/2 which exploits 386 1486 in 1990 with availability of early development support by YE '89. Version to include:
  - Concurrent DOS applications
  - Demand paging
  - Ability for applications to exploit 32-bit flat memory model
 } WORDING AS PER 11/13 PRESS Release
- Public intent for Portable OS/2 } Agreed - wordn per 11/13 press release

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D. AGREEMENT TO WORK INTERNALLY ON DEVELOPMENT OF A PM SUBSET FOR DOS WITH A TARGET CONFIGURATION OF 1MB WITH MEMORY EXTENSION, APPLICATION SWAPPING THREAD TOLERANCE AND DLL SUPPORT.

} Disagreed. Alternate financial arrangement on DOS/WINDOWS proposed

E. PUBLICLY STATE INTENT TO CONVERGE OS/2 LAN SERVER AND MICROSOFT LAN MANAGER INTO A SINGLE PRODUCT, ENHANCED TO TAKE ADVANTAGE OF 32-BIT TECHNOLOGIES AND DESIGNED TO RUN ON OS/2 SE FOR BOTH SERVERS AND CLIENTS.

} Agreed - wording per 11/13 press-release

F. IBM AND MICROSOFT PUBLICLY STATE AGREEMENT TO WORK TOGETHER TO MAKE THE DATABASE AND COMMUNICATIONS FUNCTIONS OF IBM OS/2 EE AVAILABLE TO OS/2 SE USERS.

} Agreed - discussion on 11/13

G. TO CREATE/PROVIDE SUPPORT TOOLS, SEMINARS, TECHNICAL SUPPORT TO HELP CUSTOMERS AND ISV'S MIGRATE FROM WINDOWS OR DEVELOP FOR OS/2 ENVIRONMENT.

} Agreed

Additional Topics

#1. Joint Marketing Topics

#2. Multimedia

#3. Fonts

#4. Agreement to handle Crimin, UI 2.0 per. to Comdex  
Would like to also address Windows Royalty/MFN.  
and Toolkit with signatures as well.

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A. SHARED RISK/REWARD- EQUAL INVESTMENT/EQUAL RETURN

CONCEPTUAL AGREEMENT THAT IT IS VERY BENEFICIAL FOR BOTH COMPANIES TO BE EQUALLY INCENTED TO SHARE IN THE RISK/REWARD SO THE MOTIVATIONS AND PRIORITIES OF THE COMPANIES ARE SIMILAR. THE DISCUSSION INVOLVED SPLITTING THE DEVELOPMENT SO THAT MICROSOFT DEVELOPED THE MAJORITY OF THE KERNEL WHILE IBM DEVELOPED THE EXTENSIONS AND ~~DID THE SYSTEMS INTEGRATION AND TEST.~~ JIM PROPOSED THAT REGARDLESS OF THE DEVELOPMENT SPLIT BOTH COMPANIES SHOULD SHARE 50:50 IN THE FINANCIAL RETURN. DEVELOPMENT CONTRIBUTION WILL BE THE RESPECTIVE DEVELOPMENT EXPENDITURES OF IBM AND MICROSOFT. THE LEVEL OF AFFORDABILITY OF THE DEVELOPMENT EXPENDITURES SHOULD BE AGREED TO BY BOTH COMPANIES AND THERE SHOULD BE PENALTIES ASSOCIATED WITH OVERRUNNING OR UNDERRUNNING THESE AGREED TO LEVELS WITHOUT PRIOR AGREEMENT OF BOTH PARTIES. JIM PROPOSED THAT DECISIONS OF WHERE WE SHOULD DEVELOP PORTIONS OF FUTURE RELEASES OR PRODUCTS SHOULDN'T BE INFLUENCED BY AN ARRANGEMENT WHICH COULD PROVIDE FINANCIAL LEVERAGE IF THE WORKLOAD WAS SPLIT A CERTAIN WAY. THE FINANCIAL ARRANGEMENT SHOULD BE NEUTRAL TO THE DEVELOPMENT SPLIT ON A PARTICULAR PRODUCT. BILL DISAGREED. THE ISSUE WAS NOT RESOLVED.

BILL ARTICULATED THAT MICROSOFT IS ENTERING THESE NEGOTIATIONS WITH A BUSINESS MODEL/PLAN WHICH ASSUMES A 70:30 SPLIT AND ~~WAS UNCOMFORTABLE THAT WE COULD REACH A~~ 50:50 AGREEMENT WHICH WOULD <sup>NOT</sup> ALLOW MICROSOFT TO RETAIN ITS BUSINESS GROWTH PROJECTIONS.

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BOTH AGREED THAT WE WOULD NEED TO RUN THE FINANCIAL MODELS WHICH TOOK INTO CONSIDERATION DOS/WINDOWS, OS/2, EXTENDED SERVICES, LAN AND PORTABLE OS. BILL WAS UNCOMFORTABLE INCLUDING ALL THESE TOGETHER, AND ~~WAS~~ <sup>WOULD</sup> SEPARATE ARRANGEMENTS WITH EACH PRODUCT ~~MIGHT~~ <sup>WOULD</sup> BE MORE APPROPRIATE, HOWEVER, WAS OPEN TO LOOK AT A POOLING PROPOSAL.

BILL INDICATED MICROSOFT WOULD NOT BE WILLING TO INCLUDE DOS IN THIS NEW NEGOTIATION. BILL ALSO SUGGESTED WE LOOK AT AN APPROACH WHICH MIGHT ALLOW US TO JOINTLY PACKAGE LAN AND/OR EXTENDED SERVICES AND USE SINGLE DISTRIBUTION POINT. IT WAS AGREED THAT OUR LEGAL TRAMS WOULD NEED TO DISCUSS THIS.

~~JIM WAS VERY SPECIFIC THAT REACHING A 50-50 AGREEMENT WAS AS IMPORTANT TO IBM AS KEEPING DOS OUT OF THE NEGOTIATIONS IS TO MICROSOFT.~~

JIM INDICATED THAT THE "PERFECT" MODEL WOULD BE A JOINT IBM/MICROSOFT SOFTWARE COMPANY, IF HE BACKED OFF THAT POSITION THAN SHARING THE DEVELOPMENT EXPENSES AND DISTRIBUTING THE FINANCIAL ROYALTIES/RETURN AND KEEPING THE PRODUCT DISTRIBUTION AND MARKETING SEPARATE MIGHT MAKE SENSE. BILL AND JIM AGREED THAT IBM TAKING AN ~~AGREEMENT~~ IN MICROSOFT ISN'T OUT OF THE QUESTION.  
EQUITY

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1.B. AFFORDABLE INVESTMENT

- FEWER DEVELOPMENT LOCATIONS  
JIM COMMITTED TO BILL THAT IBM WOULD REDUCE THE CURRENT NUMBER OF IBM OS/2 DEVELOPMENT LOCATIONS.

G. EACH COMPANIES ACTIONS SHOULD REFLECT OS/2 PRIORITY

- SCHEDULE/AVAILABILITY OF APPLICATIONS...

BILL STATED THE FOLLOWING SCHEDULE RE: RELEASE OF WINDOWS VS. PM APPLICATIONS FROM MICROSOFT:

- BETWEEN NOW AND MID-90: 2-3 MORE WINDOWS INTRODUCTIONS. PLAN ON PM ANNOUNCEMENT AT THE SAME TIME THE WINDOWS PRODUCT IS AVAILABLE...BUT AVAILABILITY OF WINDOWS APPLICATIONS WILL BE FIRST.
- AS OF MID-90 MICROSOFT WILL SHIP A PM VERSION AT THE SAME TIME OR SOONER THAN IT SHIPS WINDOWS VERSION.
- AS OF '91 APPLICATIONS WILL EXPLOIT OS/2 32-BIT FEATURES WHICH WINDOWS APPLICATIONS WILL NEVER GET.

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2A. WINDOWS

- BILL SAID THAT HIS FUTURE PLANS FOR WINDOWS ARE CONSISTENT WITH IBM'S GOALS FOR OS/2 AND THAT FUTURE ENHANCEMENTS TO WINDOWS WILL NOT DUPLICATE ADVANCED OS/2 FUNCTIONS. FUTURE ENHANCEMENTS TO WINDOWS AND OS/2 WILL BE DETERMINED BY THE ARCHITECTURAL REVIEW BOARD. CURRENT PLAN IS A WINDOWS 3.0 ANNOUNCEMENT/ AVAILABILITY 2/5 AND CRUISER 6/90. <sup>IS OPEN TO</sup> BILL ~~INTERPRETS~~ A DELAY 30-60 DAYS AND CONTINUE BETA-TEST. HE WOULD LIKE TO SHIP CONCURRENT CRUISER BUT DOES NOT WANT TO HOLD UP WINDOWS. THIS ITEM WAS NOT FINALIZED/RESOLVED.

- BILL EXPLAINED THAT MICROSOFT PLANS ON INTRODUCING THREE VERSIONS OF PORTHOLE:

- A. WINWORD - SHIP WITH APPLICATIONS  
GA 3-4/90 AVAILABLE TO DEVELOPERS TODAY DEMO AT COMDEX.
- B. 95% WINDOWS CALLS - SHIP WITH APPLICATIONS  
SHIP TO ISV'S IN 2-3/90.  
ALLOWS MIGRATION TO 16-BIT OS/2.
- C. 100% WINDOWS CALLS - SHIP WITH CRUISER  
CRUISER COMMITMENT NOT LOCKED IN CONCRETE (500 LOC'S).

- JIM AGREED THAT MICROSOFT SHOULD SOLIDIFY THE CRUISER/PORTHOLE FOR. WHILE PORTHOLE MIGHT BE GOOD FOR SOME CUSTOMERS, AND IS GOOD FOR WINDOWS, IT MAY HAVE A NEGATIVE IMPACT ON ISV INVESTMENTS STREAMS FOR OS/2 EXPLOITING APPLICATIONS DEVELOPMENT.

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II.B OS/2 16 BIT

- INTERNALLY BOTH COMPANIES AGREED TO A "SWIZZLE TEAM" OF ~~APPROXIMATELY~~ 20 OR LESS PEOPLE TO WORK ON DRIVING TO A 2 MB ENTRY LEVEL 16 BIT OS/2. PUBLICLY THE WORDING WILL BE THE SAME AS IN THE 11/13 PRESS RELEASE AND OGA'S.

II.D PM DOS SUBSET

to license WINDOWS to IBM

- BILL OFFERED ~~IBM'S FINANCIAL PARTICIPATION IN~~ ~~DOS/WINDOWS~~. BILL BELIEVED IBM'S (ACIS'S) CURRENT DOS WINDOWS CONTRACT REQUIRED A \$12/COPY ROYALTY PAYMENT. ~~BILL EXPLAINED THAT MICROSOFT WOULD BE WILLING TO EXECUTE~~ A MOST FAVORED NATIONS CONTRACT BELOW THE \$12/COPY PAYMENT. <sup>WOULD BE A PROBLEM BECAUS</sup> MICROSOFT <sup>EXISTIAL</sup> PREFERENCES IBM DOESN'T BUNDLE WINDOWS WITH THE HARDWARE <sup>CONTR</sup> AND THAT WE OFFER 2 SKU'S--ONE WITH <sup>WINDOWS</sup> DOS AND ONE WITHOUT <sup>WINDOWS</sup> DOS. MICROSOFT WAS WILLING TO WORK OUT A FINANCIAL ARRANGEMENT THAT AT LEAST BROKE EVEN WITH OUR OS/2 16-BIT PROFITABILITY. BILL EXPLAINED HOW IBM COULD MAKE AS MUCH MONEY SELLING WINDOWS AS SELLING 16 BIT OS/2

ADDITIONAL TOPICS

1) JOINT PROMOTION

- IT WAS AGREED THAT IT IS IN THE INTEREST OF BOTH COMPANIES TO ACTIVELY PROMOTE THE EXPANDED PARTNERSHIP AND OS/2. ACTIVITIES DISCUSSED:
  - JOINT VIDEOTAPE FOR SALE FORCES
  - JOINT CUSTOMER CALLS
  - JOINT TRACKING OF MAJOR OS/2 OPPORTUNITIES
  - FOCUS ACCOUNT MARKETING ON KEY FORTUNE 500 CUSTOMER SET.
  - JOINT EDUCATION/SEMINARS FOR OUR FIELD FORCE/SPECIALISTS

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THESE JOINT ACTIVITIES WOULD NEED TO BE INDEPENDENT FROM DISCUSSIONS OR ENDORSEMENTS OF APPLICATIONS OR OF HARDWARE IN ORDER TO KEEP THE PLAY FIELD NEUTRAL FOR OTHER ISV'S OR OEM HARDWARE VENDORS.

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2) MULTIMEDIA

THE MICROSOFT CONCERNS WERE STATED AS:

- CONCERN THAT MULTIMEDIA ISN'T HAPPENING FAST ENOUGH.
- CONCERN THAT WE NEED ISV COMMITMENT AND APPLICATIONS BY MID-91 (AT LEAST).
- CONCERN THAT AN OS/2 MULTIMEDIA TOOL KIT IS AT LEAST 6 MOS. BEHIND A WINDOWS TOOL KIT.
- CONCERN THAT THE OS/2 MULTIMEDIA DESIGN/SPECIFICATIONS ARE STILL BEING FORMULATED.

THE IBM CONCERNS WERE STATED AS:

- CONCERN THAT WE STATE OS/2 IS THE FUTURE PLATFORM OF CHOICE AND THAT INTERNALLY EACH COMPANIES APPLICATIONS DEVELOPMENT STREAM/SCHEDULE WILL REFLECT THAT PRIORITY BUT THAT A MAJOR NEW THRUST IN MULTIMEDIA WILL COME OUT ON WINDOWS FIRST.
- BILL INDICATED THAT MICROSOFT IS WORKING ON ASSYMETRIX (TOOLBOOK), MACROMIND (DIRECTOR) AND DLL'S AND TARGETING TO HAVE WINDOWS TOOL KITS IN THE ISV'S HANDS BY 5-6/90. CURRENTLY THE BEST OS/2 PLAN GETS TOOL KITS IN ISV'S HANDS 8-9 MONTHS LATER. BILL AGREED TO SEE IF WE COULD IMPROVE THE OS/2 TOOL KIT TO 12/90.
- JIM SUGGESTED THAT WE MIGHT WANT TO TARGET A DIFFERENT ISV SET WITH OUR OS/2 TOOL KIT. THE JOINT OBJECTIVE SHOULD BE TO HAVE OS/2 CAPABLE MULTIMEDIA APPLICATIONS BY MID-91. THIS IS THE CURRENT PLANNED INTRODUCTION FOR IBM'S MULTIMEDIA BASED SYSTEM.
- BILL GATES WOULD LIKE TO GET EDUCATED ON AVC AND TO WORK WITH IBM ON OTHER MULTIMEDIA APPROACHES WHICH MAY INCLUDE INFOWINDOW, OLYMPIAN, AND THE AVC TECHNOLOGIES.
- BILL INDICATED THAT MICROSOFT IS WILLING TO DO 90% OF THE MULTIMEDIA CODE.

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3) FONTS

- JIM EXPLAINED THAT THE IBM COMPANY HAS COLLECTED TECHNICAL AND BUSINESS REQUIREMENTS FROM ALL AFFECTED IBM ORGANIZATIONS AND THAT WE HAVE NOT CONCLUDED THIS ANALYSIS AND THEREFORE WILL NOT MAKE AN ANNOUNCEMENT AT COMDEX.

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