EXHIBIT A

7

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

AT SEATTLE

_____

TIM and PENNY PATERSON, husband and wife and the marital community thereof,
 	
        Plaintiffs,
 	
    vs.
 	
LITTLE, BROWN AND COMPANY, a Massachusetts state corporation, TIME WARNER BOOK GROUP, a Delaware state corporation, HAROLD EVANS ASSOCIATES LLC, a New York state limited liability company, HAROLD EVANS and DAVID LEFER,
 	
        Defendants.
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	) No. 2:05-CV-01719-TSZ
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DEPOSITION UPON ORAL EXAMINATION OF

TIM PATERSON

_____

9:41 A.M.

JANUARY 18, 2007

8420 DAYTON AVENUE NORTH

SEATTLE, WASHINGTON

REPORTED BY: CHERYL J. HAMMER, CCR License No. 2512

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                                                          Page 2
 1                    A P P E A R A N C E S

 2

 3       FOR THE PLAINTIFF(S):

 4                    D. MICHAEL TOMKINS

 5                    Tomkins Nakkour & Associates

 6                    8420 Dayton Avenue North

 7                    Seattle, Washington 98103

 8

 9       FOR THE DEFENDANT(S):

10                    BRUCE E.H. JOHNSON

11                    Davis Wright Tremaine, LLP

12                    1501 Fourth Avenue, Suite 2600

13                    Seattle, Washington 98101

14

15       ALSO PRESENT:  KAUSTUV DAS; DIETRICH BIEMILLER

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1   and Microsoft, which I believe was addressing --

2   attempting to address the issue of getting these

3   latest versions. I'm not even exactly sure how those

4   pieces were supposed to have fit together.

5   Q.   Have you ever been a party to a lawsuit?

6   A.   Not other than this one, of course, and as

7   trustee of Paterson Lori trust.

8   Q.   That's the Yakima lawsuit?

9   A.   Right.

10   Q.   Have you ever testified in court?

11   A.   Yes, in the Seattle Computer case.

12   Q.   Any other times that you've testified in

13   court?

14   A.   No. A traffic ticket once.

15   Q.   I assume that you haven't been involved in

16   any criminal proceedings of any nature, correct?

17   A.   No.

18   Q.   Could you briefly state your educational

19   background for the record.

20   A.   I have a bachelor's degree in computer

21   science. I took some graduate school but didn't

22   complete any degree.

23   Q.   What year did you get your bachelor's

24   degree?

25   A.   1978.

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                                                      Page 14
 1          Q.    That was from the University of Washington?
 2          A.    Yes.
 3          Q.    Was that with honors or with any particular
 4   distinction?
 5          A.    Magna cum laude.  I guess I should
 6   specifically say it's a bachelor of science degree.
 7          Q.    Any other degrees that you have?
 8          A.    No.
 9          Q.    Prior to going to the University of
10   Washington, where did you attend school, high school
11   or --
12          A.    Ingraham High School in Seattle.
13          Q.    So you grew up in Seattle?
14          A.    Yes.
15          Q.    Born here?
16          A.    Yes.
17          Q.    What year were you born?
18          A.    1956.
19          Q.    Are you married?
20          A.    Yes.
21          Q.    How long have you been married?
22          A.    Eighteen and a half years.
23          Q.    I notice that your wife is listed as Penny
24   Paterson in the complaint.
25          A.    Yes.
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1   Q.   I'm just curious to know if you are aware
2 of any factual information she has that may relate to
3 this lawsuit or whether she's simply listed given that
4 there's a marital community involved.
5   A.   Strictly due to marital community.
6   Q.   Do you have any children?
7   A.   I have two stepchildren.
8   Q.   Have you been married before?
9   A.   Yes.
10   Q.   When was that?
11   A.   1979 to 1984.
12   Q.   What was the name of your wife?
13   A.   Judy, Judy Paterson while married.
14   Q.   Did that end in dissolution?
15   A.   Yes.
16   Q.   Do you know where the dissolution was
17 filed?
18   A.   Seattle.
19   Q.   So technically, you would have been a party
20 to that, quote, lawsuit, unquote, correct?
21   A.   I don't know. Is that a lawsuit? We
22 simply got one attorney for the both of us and made an
23 agreement, so...
24   Q.   I won't quibble with you. I assume there's
25 a court document somewhere that reflects the

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1   dissolution, correct?

2   A.   Yes.

3   Q.   Any other marriages?

4   A.   No.

5   Q.   When you were an undergraduate at the

6   University of Washington, did you take any graduate

7   level courses?

8   A.   I may have. I don't recall. I did take

9   graduate level courses after graduating and I don't

10   remember if I took some before as well or not.

11   Q.   That's actually a good question to move

12   towards. Subsequent to your graduation at the

13   University of Washington, I assume you took some sort

14   of education of some kind?

15   A.   I continued for two more quarters at the

16   University of Washington for the subsequent fall and

17   winter quarters in graduate school.

18   Q.   So that would have been in 1979, 1978 to

19   1979?

20   A.   Yeah, let's see. Right, right. Fall

21   quarter would have been 1978 and the winter quarter

22   would have been '79.

23   Q.   What department were you enrolled in?

24   A.   Computer science.

25   Q.   Were you enrolled in a degree program?

13

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1   -- it was easy. I was able to call Paul Allen and ask

2   if he wanted me to work there and he simply said yes.

3   So it was easy. It was work I knew was up my alley

4   because I had worked with those people and it was my

5   kind of -- my kind of work. I expected to enjoy it.

6   So it seemed like a good fit for me.

7   Q.   What were your duties while you were at

8   Microsoft during that period?

9   A.   Initially, I worked on the adaptation of

10   DOS to the IBM PC before it was released. Then when

11   that was complete, I worked on the 16-bit basic

12   compiler, specifically the run time for the compiler,

13   with two other guys, and then when that was complete,

14   we started a project on an update, a new version of

15   DOS for the IBM PC

16   Q.   The initial adaptation of DOS to the IBM PC

17   that you worked on, do you remember what version of

18   DOS you were working on at that point?

19   A.   Well, when I left Seattle Computer

20   Products, I believe I considered DOS to be about done

21   with what I had intended to accomplish and I simply

22   numbered it 1.00 at that time and so that's what we --

23   that's what at Seattle Computer Products it was being

24   called.

25   At Microsoft, I continued to add features

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1   to it, and had I used the same techniques, the same

2   style I had done at Microsoft or -- excuse me -- I had

3   done at Seattle Computer, I would have continued to

4   bump the number slightly as I made a change here and a

5   change there, but IBM was going to ship it as their

6   version 1.00 and that was all there was to that. So I

7   guess there was essentially different numbers being

8   used by different people for the same product.

9   Does that answer the question that you were

10   looking for?

11   Q.   It would be useful, I guess, to discuss

12   briefly the various versions of DOS and I'm not sure

13   when you'd like to do that, but we have things like

14   Q-DOS, 86-DOS and the like. Could you briefly provide

15   kind of a summary of the history of DOS?

16   A.   Okay. The best way to look at the name

17   Q-DOS is as a code word, an internal development term,

18   as Chicago is used for Windows 95. It was never

19   intended to be -- the product was never labeled that

20   as sold. When it came time to sell it, we chose --

21   Rod Brock and I kind of sort of brain-stormed and

22   decided to settle on 86-DOS. So that was the official

23   label when it was shipped.

24   IBM had no trouble deciding what they were

25   going to call it. They were going to call it IBM

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1 Personal Computer DOS. It's the same product.

2 Microsoft chose to call the same thing MS-DOS. So

3 these reflect the timeline of when companies chose a

4 name for marketing purposes of the same product.

5   Q.   What types of changes were there to the

6 product during that time, if any?

7   A.   Between the time that -- when Seattle

8 Computer first shipped 86-DOS to when I left Seattle

9 Computer, I continued to make what I considered

10 technically as substantial internal improvements.

11 Users may not notice any difference, but programmers

12 would notice significant improvements.

13   So while the only one selling it was

14 Seattle Computer and calling it 86-DOS, it went

15 through fairly hefty internal improvements.

16   Once I was at Microsoft and making -- the

17 changes were relatively minor, in my opinion, and so

18 what IBM shipped as PC-DOS 1.0 was not any

19 significantly different than what Seattle Computer had

20 used.

21   Then Microsoft didn't have a product --

22 didn't have an MS-DOS product until a little bit later

23 and the first one shipped was 1.25, which was

24 virtually identical to what IBM called their DOS 1.1,

25 and its improvements were fairly minor.

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1   To IBM the big change was handling higher

2   capacity floppy discs. They upgraded the -- the

3   floppy disc hardware was improved and they used the

4   new version of DOS. There was actually no

5   relationship between what kind of floppy disc you use

6   and what version of DOS you had. There needn't have

7   been any relationship, but IBM chose to tie this

8   together, where, okay, we have a new computer with

9   better stuff on it and we'll roll out a new DOS with

10   that. So to them in their version it was the version

11   that could handle a higher capacity floppy disc.

12   Q.   What's the earliest source code you have of

13   a DOS version?

14   A.   I believe 1.25 is the earliest version I

15   have a copy of.

16   Q.   Approximately when would that date from?

17   A.   March of '82.

18   Q.   Do you know if someone else has earlier

19   source code?

20   A.   I strongly doubt it.

21   Q.   While you were at Microsoft during this

22   1981/1982 time period, you worked on the Microsoft

23   SoftCard for BASIC?

24   A.   Sorry. Could you say that again?

25   Q.   While you were at Microsoft, did you work

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1   just for purposes of the record?

2   A.   CPM is --

3   Q.   Or was.

4   A.   Was an operating system from Digital

5   Research for 8080-based micro computers.

6   Q.   Do you know whether Microsoft had access to

7   the source code for CPM at the time of that project?

8   A.   No, that is, I don't know.

9   Q.   Do you know whether Seattle Computer

10   Products had access to the source code for CPM at that

11   time?

12   A.   They did not.

13   Q.   Did you have access to CPM source code as

14   part of your work on this SoftCard project?

15   A.   No.

16   Q.   What did you do to prepare for this

17   deposition today, just generally?

18   A.   At my attorney's suggestion, I reviewed the

19   deposition I had given for Seattle Computer in '86,

20   and that is all.

21   Q.   So no other documents other than that

22   deposition?

23   A.   Right.

24   Q.   Did you look at your complaint that was

25   filed in this case?

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1   A.   We looked at it a couple weeks ago. I

2 guess that could have been considered preparation.

3   Q.   I assume you met with your attorney as part

4 of this preparation, correct?

5   A.   I have met with my attorney. I don't know

6 if I would characterize it as preparation for this

7 deposition.

8   Q.   Did you review any of the documents that

9 have been produced in this litigation, either by the

10 defendants or by you?

11   A.   Yes.

12   Q.   Which documents were those, if you recall?

13   A.   I have spent some time reviewing the

14 chapter of the book that's at issue and the Kildall

15 memoir that appears to be based on.

16   Q.   Any other documents that you reviewed as

17 part of this litigation?

18   A.   I've probably glanced at quite a few of the

19 documents that I've produced, not specifically

20 thinking of reviewing them.

21   Q.   Other than your lawyer, did you talk to

22 anyone as part of your preparation for this

23 deposition?

24   A.   No.

25   Q.   You used the term Q-DOS. What did that

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1   stand for?

2   A.   Quick and Dirty Operating System.

3   Q.   Who came up with that name?

4   A.   I did.

5   Q.   Do you remember when?

6   A.   When? Not specifically. We could pin it

7   down to the -- we can talk about the time frame that

8   it was written and assume it was in that time frame.

9   Q.   As I understand your testimony earlier,

10   this term Q-DOS was used only internally at Seattle

11   Computer Products?

12   A.   Right. Since it appeared in the source

13   code, however, then when other people saw the source

14   code, it had essentially leaked out the use of that

15   term. It was after that that I realized I needed to

16   adjust the source code title as well.

17   Q.   Now, over the years have you read books

18   written about the development of DOS?

19   A.   I've read a number of articles. I wouldn't

20   say there's any book that is about development of DOS

21   that I know of, if you see what I mean. I've seen

22   various chapters and articles about the development of

23   DOS.

24   Q.   But you've read books that include

25   discussions about the development of DOS?

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1   A.   Yes, that include, yes.

2   Q.   Have you seen any movies or television

3   programs that have dealt with that subject?

4   A.   In a way; that is, I believe it may have

5   been the show Revenge of the Nerds, which has an

6   extremely brief view of -- you know, a couple of

7   minutes of it are an impression of how DOS got

8   started.

9   Q.   That was a made-for-TV movie?

10   A.   I imagine.

11   Q.   Do you remember if you were actually

12   portrayed in that movie or not?

13   A.   According to the credits, no. They had a

14   guy that -- the cast listed a player playing Rod

15   Brock. That actor would have looked a lot more like

16   me and could have represented me, but they said he was

17   Rod Brock.

18   Q.   Did you provide any input into the

19   production at all?

20   A.   No.

21   Q.   When Microsoft licensed 86-DOS in early

22   1981, what was the name at that time of DOS that they

23   licensed?

24   A.   Seattle Computer Products called it 86-DOS.

25   Microsoft often, Paul Allen in particular, seemed to

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1   Q.   When was that and what?

2   A.   I wrote a multi-tasking operating system

3   for Z80 in college. I don't recall if it was in

4   graduate school or if it was senior undergraduate.

5   Q.   Was that part of a college course that you

6   did that in?

7   A.   Yes, it was an operating systems course. I

8   believe it was a graduate level course. I just don't

9   recall whether I had actually slipped it in as a

10   senior or when I was in graduate school and it was the

11   term project for the course.

12   Q.   Any other operating systems that you wrote

13   prior to DOS?

14   A.   No.

15   Q.   What were the features of this

16   multi-tasking operating system that you wrote?

17   A.   The description of the operating system was

18   actually provided by the instructor; that is, there

19   was a list of possible -- what term projects that we

20   could do and the projects were fairly specific and one

21   of them was to write an operating system and the

22   operating system was to have the functions with what

23   we called the function P, the function V, start

24   process, I guess an end process or there was something

25   like that and I/O and I could -- so I don't know if

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1   you want me to go into what those things are, but

2   that's what I wrote an operating system with those, I

3   believe, five specific functions and then additional

4   work to sort of test and improve it.

5   Q.   What chip would it run on?

6   A.   Z80.

7   Q.   Or chip set. Z80. What operating system

8   did you base, if any, did you base your operating

9   system on?

10   A.   Nothing, just the description provided by

11   the instructor.

12   Q.   Did you have a name for this operating

13   system?

14   A.   No.

15   Q.   Do you still have any source code for that?

16   A.   No.

17   Q.   Do you know if it still exists somewhere?

18   A.   I don't believe so.

19   Q.   Do you know whether 86-DOS shared any

20   features with this particular operating system?

21   A.   No, it didn't.

22   Q.   It did not?

23   A.   Huh-uh.

24   Q.   Prior to writing 86-DOS, what operating

25   systems did you work with or had you worked with?

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1   A.   Oh, I had worked with the CDC operating

2   system of the main computer system at the University

3   of Washington, which I believe was called Scope, or at

4   least the interactive form of it. I had used what

5   Crememco called the resident operating system, and I

6   guess before that there was IMZI[phonetic] had what

7   they called the self-contained system and then so from

8   the self-contained system to the Crememco resident

9   operating system to North Star DOS, which was my

10 primary operating system through college, and then at

11 Seattle Computer we started using Crememco C-DOS.

12   Q.   Do you remember when you first worked with

13 Crememco's C-DOS at Seattle Computer Products?

14   A.   No, not specifically. We also tried out

15 UCSDP system.

16   Q.   How about CPM?

17   A.   No, not other than -- C-DOS was a CPM

18 look-alike and so CPM programs ran with C-DOS, so we

19 did not use CPM provisional research. We bought this

20 look-alike from Crememco or it came with the computer

21 one or the other.

22   Q.   When you say that C-DOS was a CPM

23 look-alike, what do you mean by that?

24   A.   It ran all the CPM programs, which in

25 general, we stayed within -- I normally used Crememco

24

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1   programs, so I wouldn't have cared that it was able to

2   run other -- when I say CPM program, I do not mean a

3   program that is CPM or was written by Digital

4   Research. I mean a program that's required CPM to

5   run. It was typical of word processors or whatever to

6   count on CPM to be there for them to do their job and

7   so C-DOS could be there instead for these same

8   programs to run.

9   (Mr. Biemiller joined the proceedings)

10   MR. TOMKINS: This is Mr. Dietrich

11   Biemiller.

12   Q.   (BY MR. JOHNSON) One of the documents that

13   you've produced for us in this case is a document

14   called The Right Place, The Right Time. I made a copy

15   of it for purposes of this deposition and we've marked

16   it as Exhibit 1.

17   A.   Thank you.

18   Q.   Could you take a look at that and tell me

19   if that's The Right Place, The Right Time, which, as I

20   understand it, is a document that you've written?

21   A.   Yes, barring the possibility of subtle

22   changes that I wouldn't have -- you know, haven't had

23   the opportunity to verify, this appears to be the

24   document that I wrote.

25   Q.   When did you first start writing this?

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1   A.   The mid '80s.

2   Q.   Why was that?

3   A.   I wanted to have some memoirs of the

4   development process that I had gone through in

5   creating things that I had done.

6   Q.   Now, as I read it, it sounds like kind of a

7   journal. So my question, I guess, is was this based

8   upon some prior regular recordings that you had done

9   of what was going on during that particular time?

10   A.   No. The dates are synthetic; they may or

11 may not be real. They are just a guess after the

12 fact. So at one point I called it MS-DOS diary and

13 was trying to make it date oriented and then as I

14 decided that I really was making up the dates to a

15 great extent, I started backing down from doing that.

16 So it actually has some different tenors to it as far

17 as the style I was choosing to use at one time or

18 another.

19   Q.   Did you work with anybody else in writing

20 this particular document?

21   A.   No.

22   Q.   So this was all done by you?

23   A.   Yes.

24   Q.   Have you ever had discussions with anyone

25 regarding the possibility of publishing The Right

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1   everything the same and how they did it. I know that

2   it looks alike. You could say a clone is definitely a

3   look-alike, you know, a look-alike is a less, maybe

4   less stringent. It could also -- as I said, normally

5   you use -- when you clone something, you're attempting

6   to -- I guess you're at least attempting to not

7   violate someone's intellectual property rights and by

8   making -- when I say look-alike I'm making no such

9   judgment. For all I know, it was CP/M and I didn't

10   know it. It was licensed, it was -- you know, I

11   wouldn't have known its relationship.

12   Q.   But in terms of using the terms look-alike

13   and clone, are those terms that you would commonly use

14   in describing at least the appearance of a particular

15   operating system or other software program?

16   A.   I'm not sure I understood the question.

17   Q.   I guess I'm asking whether this is a

18   subjective term or an objective term from your

19   standpoint?

20   A.   I'll use look-alike as a subjective term.

21   Q.   How about clone?

22   A.   Clone is a little more objective, and that

23   is an intentional choice of words, because I don't

24   know the background of the relationship of C-DOS to

25   CP/M.

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1   Q.   Do you know, I think you testified that

2   C-DOS was written to run on the Z80 chip?

3   A.   I didn't say that. It did run on a Z80

4   chip. I believe that it probably wouldn't have run on

5   an 8080.

6   Q.   That was my next question. So as far as

7   you know, it probably would not have run on an Intel

8   8080?

9   A.   Yeah, I can't recall if I ever looked --

10 what reason I have to think that, if I ever looked

11 inside some piece of it or why I would suspect that,

12 but that's the impression I came away with.

13   Q.   Do you know whether the Z80 chip provided

14 functionality that was not present in the 8080 chip?

15   A.   Yes.

16   Q.   What were these?

17   A.   What was the additional functionality? I

18 hardly recall.

19   Q.   So were the Z80 functions a superset of the

20 8080 functions?

21   A.   The Z80 was intended to be a significant

22 improvement on the 8080 and be completely compatible.

23 We did actually find at least one thing that wasn't --

24 when they designed the Z80, they thought they could

25 change and it wouldn't hurt anything and it actually

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1   broke Microsoft BASIC, but other than -- it was an

2   extremely strange quirk, but other than that it was

3   considered to be entirely compatible, that programs

4   that ran on the 8080 would also run on the Z80.

5   Q.   But as I understand it, a program written

6   for the 8080 would run on a machine with the Z80 chip

7   but not vice versa, then?

8   A.   If you took advantage of the new additional

9   Z80 features, it would not run on an 8080.

10   Q.   Take a look at page 40 of The Right Place.

11   It indicates that on or about September 7, 1979, in

12   your spare time you've been working on an interesting

13   project at home: a program to translate Z80 source

14   code into 8086 source code.

15   Would that translator also translate 8080

16   source code and 8086 source code?

17   A.   No, because the mnemonics used by the Z80

18   were different, even those that meant the same thing.

19   So that's just the textual appearance was different

20   from the 8080 even though it would have meant the

21   same.

22   Q.   What do you mean by mnemonics?

23   A.   These processors have a specific list of

24   instructions. The most common for the 8080 being what

25   we would verbalize as move, but it was spelled M-O-V,

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1   and you would then have some arguments. Where are you

2   moving from and where you're moving to, followed by

3   where you're moving from, as I recall, and you might

4   move A, coma, B, which moves the A register into the B

5   register.

6   When written in Z80, the very same

7   instruction was LD, load. So it was the same

8   instruction, but they gave it the different name and

9   my translator that I wrote understood the Z80 names

10 because it needed to understand the additional Z80

11 names of the new instructions. So it did not

12 understand the names that Intel had assigned.

13   Q.   We have been using the term operating

14 system and I think it's probably useful to define what

15 an operating system is or was at the time or times

16 we're talking about, as you understand it. Kind of

17 tell us what is an operating system, a computer

18 operating system?

19   A.   Well, in this time frame, an operating

20 system provided fundamental I/O capability,

21 input/output capability to programs. Input from a

22 keyboard, output to a screen, storage on a disc. That

23 was essentially the sort of minimum capability and

24 that's what you got in programs like CP/M and North

25 Star DOS and DOS, for that matter.

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1   Q.   Who produced North Star DOS?

2   A.   North Star.

3   Q.   Where were they located?

4   A.   I don't know.

5   Q.   Do you know when that product was on the

6   market?

7   A.   We bought ours in 1977. I produced manuals

8   as part of your request. You might find, for

9   instance, location information in the manual.

10   Q.   When did you receive those manuals, the

11   ones that you produced for us?

12   A.   When I bought the product in 1977.

13   Q.   What was your reason for developing 86-DOS?

14   A.   There was no operating system for 16-bit

15   computers, for 8086-based computers.

16   Q.   Now, you mentioned 8086. Could you

17   describe what you mean by that term?

18   A.   That's the name of a microprocessor

19   developed by Intel.

20   Q.   On page 44 of Exhibit 1 you make reference

21   to February 6, 1980, agreeing at a board meeting on

22   our strategy for an operating system for our 8086 CPU

23   card.

24   What do you mean by our 8086 CPU card?

25   A.   We had -- as discussed in the previous

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1   translated into 8086 instructions and that sequence of

2   8086 instructions that came out of that translation

3   process would in fact cause 86-DOS to also save a

4   file.

5   Q.   So on page 49 of The Right Place, you

6   discuss Q-DOS and the relationship between Q-DOS and

7   the CP/M system as, I believe, under the July 25, 1980

8   discussion, and you state since Q-DOS is emulating

9   CP/M system calls to achieve my translation

10   compatibility goal, the functions required in the I/O

11   system are logically the same as those in CP/M's BIOS.

12   Exactly what steps did you take to ensure

13   that the functions in 86 DOS's I/O system were the

14   same as those in CPM's BIOS?

15   A.   They were not the same without the word

16   logically. The functions were actually quite

17   different. Many of them were quite different. The

18   reason that term logically is so important is that

19   CP/M had this idea of an auxiliary device and a print

20   device and so in order to try to -- and those devices

21   were exposed at both the application program level to,

22   you know, word processor writers and they made their

23   way on through to here at the BIOS level, where if you

24   look at the table directly above that paragraph you're

25   reading, you'll see references to conin, conout,

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1   print, auxin, auxout.

2   That portion is extremely similar to CP/M

3   because CP/M provided this functionality at the

4   program interface level to talk to a device. They

5   call it the punch and the reader. I decided I didn't

6   necessarily have a punch and a reader, but I would

7   have an auxiliary device. So that set of stuff,

8   having an auxiliary, for instance, was driven by this

9   need to have some equivalent to this CP/M function of

10   talking to the punch and the reader.

11   For instance, the way discs are read and

12   written was completely -- abstracted in a completely

13   different way than CP/M had and vastly superior. So

14   the need to read and write disc and, you know, the

15   logical function of doing that was the same and that's

16   what I'm referring to, but the actual technique of the

17   interface was completely different.

18   Q.   What types of similarities were there

19   between function names and order between 86-DOS and

20   CP/M?

21   A.   Function names.

22   Q.   The names of the functions.

23   A.   Well, because they were performing the same

24   function, the names tended to be similar.

25   Q.   The order was the same as well or similar?

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1   A.   In order for it to be translation
2   compatible, the number assigned to a given function,
3   the registers it used to transfer data, the memory
4   structures used to pass information all needed to be
5   identical.

6   Q.   Do you recall which version of the CP/M
7   interface guide you had access to when you prepared
8   86-DOS, when you developed 86-DOS?

9   A.   I personally owned an older manual referred
10 to as the CP/M Interface Guide and it has a date of
11 1976 on it and I believe would refer to probably
12 version 1.4 or maybe the other version 1 versions of
13 -- version 1.3 others of CP/M. But I know that I must
14 have also had access to other manuals. Probably
15 possibly they could have been Crememco C-DOS manuals
16 or they could have simply been books published off the
17 shelf that described -- also described the interfaces,
18 because there were interfaces introduced in later
19 versions of CP/M that I did try to include in my
20 translation compatibility.

21   Q.   I'm going to show you what's been marked as
22 Exhibit 2 and ask if you can identify that document?

23   A.   The 86-DOS Programmers Manual Version 0.3.

24   Q.   I believe this is one of the documents you
25 produced in this litigation. Is that correct?

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1   A.   Yes.

2   Q.   On page 4 is a summary of the 86-DOS

3   functions. Do you see that?

4   A.   Yes.

5   Q.   Continues of course to page 5. You were

6   the person who devised the various functions and the

7   order of the functions, correct?

8   A.   Yes.

9   Q.   Just to sort of look at an example, take a

10   look at function 6, direct consult I/O.

11   A.   Okay.

12   Q.   Do you know if CP/M had the same function?

13   A.   I don't specifically recall. There are

14   cases where I added functionality and this is one of

15   the few that you could ask me that I wouldn't have

16   been sure CP/M had or not.

17   Q.   Well, let's just briefly walk through the

18   functions and if you recall whether or not CP/M had

19   the same functionality.

20   A.   I guess let me give you a general answer

21   first that I don't know CP/M well enough. I used the

22   manual to produce this 25 years ago. I don't know

23   CP/M well enough to actually recall whether they had

24   this. I will -- my response would be based solely on

25   the fact that since it's here, I will have presumably

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1   three, four, five and so forth, it appears that the

2   verb, if I can characterize it as that, is first and

3   the noun is second and then the reverse would be the

4   case for 86-DOS.

5   A.   Okay.

6   Q.   I guess my question is why reverse those

7   two?

8   A.   I chose names that I thought fit the

9   function without regard to what CP/M had chosen. I

10   gave no consideration to CP/M's names. They weren't a

11   factor in translation compatibility. The name of the

12   function is not a factor in translation compatibility

13   and I gave no consideration to what their name was.

14   Q.   So 22 for CP/M was create file and 22 for

15   you was create file as well?

16   A.   Yes.

17   Q.   That was done without regard to the fact

18   that the same name was used by Digital Research?

19   A.   Well, it's also -- create's also the name

20   used in BASIC. Create file is also the name used in

21   Windows XP. So what you're doing is creating a file.

22   Q.   It's also the same number?

23   A.   Yeah, the number is an essential part of

24   the translation compatibility.

25   Q.   The numbers that you didn't have in 86-DOS

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1   were 7 and 8 and apparently Digital Research for 7 and

2   8 had interrogate I/O status and alter I/O status

3   respectively.

4   Does that refresh your recollection as to

5   why you did not have 7 and 8 in 86-DOS?

6   A.   I don't remember what those functions did,

7   but I must have decided they weren't essential to

8   translation compatibility.

9   Q.   And 12 in the CP/M functionality was lift

10   disc head. Does that refresh your recollection as to

11   why you did not have a 12 in 86-DOS?

12   A.   Yes.

13   Q.   What was that?

14   A.   A physical storage directive like that has

15   no business being in an application program interface.

16   Q.   But that was used for a lot of software

17   written for CP/M version 2.0, I believe?

18   A.   Lift disc head was used?

19   Q.   2.X.

20   A.   It would be shocking to find lift disc head

21   was used by anyone, ever.

22   Q.   Let me show you 4, Exhibit 4. My question

23   relates to function 12 there and I guess why don't you

24   identify Exhibit 4 for the record.

25   A.   I've never seen it before. It says CP/M

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1   2.0 Interface Guide.

2   Q.   Okay. So you've never seen this one

3   before?

4   A.   No. I didn't use -- I know that whatever

5   additional manuals I may have used were not Digital

6   Research branded. As I say, may have been Crememco

7   C-DOS branded and it may have been just a book you can

8   buy at the computer store, but I've never seen this

9   manual before.

10   Q.   Did you have CP/M version 2.0 available to

11   you when you created 86-DOS?

12   MR. TOMKINS: Hold it. Could you

13   restate the question, please.

14   Q.   (BY MR. JOHNSON) Did you have CP/M version

15   2.0 available to you when you created 86-DOS?

16   MR. TOMKINS: Available to you. Okay.

17   A.   It's available in the sense that we could

18   have bought a copy, but we didn't. So it was not -- I

19   have never -- I had not used any, no.

20   Q.   (BY MR. JOHNSON) Is it your testimony then

21   that you did not have access to CP/M version 2.0 when

22   you created 86-DOS?

23   A.   Yes.

24   Q.   Well, let's take a look at Exhibit 4 and

25   specifically function 12.

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1   goes and that was like the major change that was --

2   you know, so that's the best ballpark I can give you

3   in terms of, you know, the core of DOS, how it may

4   have changed. At least the best I can give you off

5   the cuff.

6   Q.   When IBM released its personal computer,

7   was the software included with it called 86-DOS? I

8   think you testified that they at some point called it

9   --

10   A.   IBM released it as IBM personal computer

11   DOS.

12   Q.   That was done at the initial release --

13   A.   Well...

14   Q.   -- to the public?

15   A.   You know, their -- they had chosen that

16   name from the beginning, so every version that we

17   worked on and dealt with with IBM of course said that

18   to start with, so...

19   Q.   We just discussed changes between your

20   Q-DOS and MS-DOS 1.25. Do you know what changes there

21   were between Q-DOS that you had written back in 1980

22   and the IBM DOS 1.0?

23   A.   The major changes took place in this

24   evolution of Q-DOS from .1 to 1.0 and you can view IBM

25   and IBM PC-DOS and Microsoft MS-DOS as being based on

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1   that 1.0. So the changes we're talking about are the

2   same set of changes where this one particular

3   additional set of functionality was a large chunk and

4   probably lots of little things were done.

5   Q.   Now, Exhibit 3 is the CP/M Interface Guide

6   that we talked about that you believe you had in your

7   possession at the time you developed DOS, correct?

8   A.   Yes.

9   Q.   Is it your testimony that you had not seen

10   at all Exhibit 4 or the CP/M 2.0 Interface Guide,

11   which is identified as Exhibit 4, when you developed

12   DOS?

13   A.   I don't believe so. I guess -- I am not

14   sure. I'm not positive what source I used. I had a

15   source for CP/M 2 functionality, but I'm reasonably

16   certain it was not a Digital Research manual because I

17   had no business -- I had no Digital Research product

18   at all of any kind.

19   Q.   So to the best of your knowledge, what

20   would have been the source of the CP/M 2.0

21   functionality at that time?

22   A.   Either a Crememco manual or a manual or

23   book from a computer store. This stuff was widely

24   published and widely available, unlike the books claim

25   that it was listed as proprietary.

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1   Q.   That's the best of your recollection at
2 this point?
3   A.   That is the best. I don't know what manual
4 I used. I can only -- I only know for sure that the
5 manual I have in my possession isn't adequate because
6 it doesn't have functions 33 and 34, so I know I had
7 some other source. I have no idea. Other than I
8 didn't have Digital Research materials, I have no idea
9 where it came from.

10   MR. JOHNSON: Let's take about a five
11 minute break.
12   (Recess taken.)
13   (Deposition Exhibit Nos. 21 through
14   56 were marked for identification.)
15   Q.   (BY JOHNSON) Mr. Paterson, while we were
16 off the record you indicated you wanted to say
17 something else.
18   A.   Oh, about the function thing?
19   Q.   Correct.
20   A.   Well, I may have another answer to your
21 question on why I didn't -- what were we talking
22 about? Function 12. The version wasn't included and
23 I speculated, just speculated, that I may have used
24 the old manuals that I have a copy of for the lower
25 function numbers and only even referred to the newer

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1   manuals for the higher function numbers just sort of

2   blindly assuming that the old ones were all the same.

3   So it's just a possible explanation why I skipped 12,

4   because the return version number.

5   Q.   At this point are you just guessing and

6   speculating on that?

7   A.   Yes.

8   Q.   In your job history, when we were talking

9   earlier today, you indicated that you went to

10 Microsoft from May of 1981 through March of 1982 and

11 then you started your own company Falcon in June of

12 1983. Is that right?

13 A.   Yes, approximately.

14 Q.   What were you doing between 1982 and 1983?

15 A.   I was at Seattle Computer Products.

16 Q.   Then after -- strike that.

17   Then how long were you with Falcon

18 Technology?

19 A.   Until we closed down in mid '86.

20 Q.   Could you just briefly describe your

21 employment history since mid 1986 to date?

22 A.   As a result of the sale of Falcon assets to

23 Microsoft, that included my working at Microsoft for

24 the next two years. So I worked at Microsoft from, I

25 guess, August of '86 to August of '88.

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1   Then I took a year or so, year to year and

2   a half off, where I wrote several articles and tried

3   to establish myself independently as between authoring

4   and consulting projects, but that didn't provide

5   enough income. So I went back to work for Microsoft

6   in the first third of 1990, I guess, maybe around

7   April -- I'm not sure -- and stayed there until 1998.

8   Then retired from Microsoft and have been

9   recently in the past few years starting to build a

10   business out of my home.

11   Q.   Where do you live?

12   A.   Issaquah.

13   Q.   What business have you been trying to build

14   out of your home?

15   A.   Actually, when I took the time off in the

16   1989 time frame, I started work on a project for Test

17   Coverage and I have worked on it on and off. For

18   example, my entire time at Microsoft I was actually

19   only working a four day work week, with the extra day,

20   theoretically, allowing me to work on this side

21   project of the Test Coverage program.

22   So I have that program that I sell, but my

23   main thrust these days is equipment, small electronic

24   equipment related to home automation. I only have one

25   of those products working now, but I have other ones

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1   published by Microsoft Press. The author is Ray

2   Duncan, and the date of publication appears to be

3   1986.

4   Do you recall reading this on or about the

5   time it was published or at some point after that?

6   A.   No, I've never read it. I do believe I

7   have a copy, but I've never opened it. I was provided

8   a copy for free at one point by the publisher of the

9   book that -- whose chapter I wrote. They just shipped

10   a box full of books and this was among them. I had no

11   reason to read it myself. I already know how to

12   program DOS.

13   Q.   So you have a copy of it, but you never

14   read it?

15   A.   Yeah, I don't believe I even cracked the

16   cover.

17   Q.   Did you ever talk to anybody about what

18   this book said?

19   A.   No.

20   Q.   Let's take a look at the page that's

21   numbered 4 and it talks about the fact that the

22   printed progenitor of MS-DOS was an operating system

23   called 86-DOS.

24   Do you think progenitor is a correct

25   terminology in that context?

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1   A.   I have no idea what that word means.

2   Q.   There's a statement in the prior paragraph,

3   porting existing applications into the MS-DOS

4   environment is relatively simple, since the programmer

5   can choose to view MS-DOS as either a superset of CP/M

6   or a subset of UNIX.

7   Is that correct?

8   A.   More or less. That would refer only to

9   later versions of MS-DOS that obsoleted the CP/M

10   interface and had the UNIX style interface available.

11   Q.   The next paragraph that starts with the

12   word the progenitor says in order to ease the process

13   of porting 8-bit CPM-80 applications into the new

14   16-bit environment, 86-DOS was originally designed to

15   mimic CP/M-80 in both functions available and style of

16   operation. Consequently -- stop for a second.

17   Is that accurate?

18   A.   More or less. I'm not sure what is meant

19   by things like style of operation, so I don't know how

20   to take it exactly.

21   Q.   Next sentence. Consequently, the

22   structures of 86-DOS's file control blocks, program

23   segment prefixes, and executable files were nearly

24   identical to those of CP/M-80.

25   Is that accurate?

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1   A.   To some extent. It's not words I would
2   use, but it's not terribly inaccurate. To the
3   programmer, from the programmer's perspective, this is
4   appropriate terminology, because it tells the
5   programmer that you can count on these things to be
6   there in 86-DOS that you found in CP/M-80, but there
7   are a lot of differences.
8   It glosses over the set of differences that
9   the programmer doesn't necessarily need to know for
10   that compatibility. So that's why I'm hesitating as
11   far as this merely identical aspect.
12   Q.   Are there any inaccuracies in that
13   sentence?
14   A.   No.
15   Q.   The following page, which is numbered 6, in
16   the middle of the page this book says in spite of some
17   superficial similarities to its ancestor CP/M-80,
18   MS-DOS version 1.0 contained a number of improvements
19   over CP/M, including, and then it lists at least four
20   different improvements.
21   Is that sentence accurate?
22   A.   Other than the fact that there wasn't
23   actually MS-DOS version 1.0, that would -- it's
24   accurate. 86-DOS, you could substitute the words
25   86-DOS 1.0 or PC-DOS 1.0 and correct that sentence.

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1   Q.   But other than that, it's essentially

2   accurate?

3   A.   Yes.

4   Q.   Top of page 7, which is the next page,

5   references MS-DOS version 2.0 equivalent to PC-DOS

6   2.0, was first released in March 1983. It was, in

7   retrospect, a totally new operating system, and then

8   it just discusses some changes with MS-DOS 2.0.

9   I guess I'd like to ask a question of

10   terminology. This talks about a totally new operating

11   system. Would you agree that was a totally new

12   operating system or was it a version of the older one?

13   A.   It's still a version of the older one.

14   Virtually every bit of the old one is still there;

15   they just added a lot. So that's why he's saying it's

16   -- you know, that's where totally new comes from,

17   but...

18   Q.   As I understand it, your testimony was that

19   the last version of DOS you worked on was 1.25?

20   A.   Yes.

21   Q.   So you did not work directly or indirectly

22   on version 2.0?

23   A.   That's right

24   Q.   The next exhibit is 18. This is a February

25   10, 1986 article from the Seattle PI. Do you remember

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1   about it. I told you all the things I disagree with,

2   which is virtually every sentence, but... I guess

3   that's why, because I disagree with almost every

4   sentence.

5   Q.   In some way, correct?

6   A.   Yes. So that's what I mean by that.

7   That's all I mean by that.

8   Q.   All right. I was just trying to see if

9   there's anything behind entire intent.

10   Do you know the author?

11   A.   No.

12   Q.   The author makes reference to in the prior

13   column at the bottom the day the IBMers arrived. Do

14   you have any particular view one way or the other as

15   to what happened on that day with Mr. Kildall?

16   A.   No. I've read a lot of different stuff

17   over the years.

18   Q.   So you don't know -- you haven't got any

19   particular view one way or the other as to which is

20   accurate among all those different versions of the

21   story?

22   A.   No.

23   Q.   Exhibit 29 is an article from the Seattle

24   Post Intelligencer in 1991.

25   MR. DAS: Can we just go off the

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1   record for a second.

2   (Discussion off the record.)

3   Q.   (BY MR. JOHNSON) Do you remember reading

4   this article in 1991?

5   A.   No, I don't remember reading it.

6   Q.   Were you living in Seattle in 1991?

7   A.   Yes.

8   Q.   The Seattle area?

9   A.   The Seattle area. Redmond in 1991. I

10   likely read it, but I just don't remember it.

11   Q.   Take a look at the third page of this

12   article and at the bottom of the second column there's

13   a statement Kildall, still chief executive of Digital

14   Research, says there were, quote, remarkable

15   similarities, unquote, between MS-DOS and his CP/M

16   operating system.

17   Next paragraph. Ask Bill why function code

18   6 in DOS ends with a dollar sign, Kildall says. No

19   one in the world knows that but me. He says the

20   unusual symbol was a carryover from his days writing

21   mainframe computer languages and was used in his CP/M.

22   Do you remember that issue arising in 1991

23   or thereabouts?

24   A.   I remember hearing that quote that asked

25   about the dollar sign. I don't know if I saw it first

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1   here or if I saw it somewhere else, but I do remember

2   that coming up.

3   Q.   Do you remember, did you have a response to

4   it if anybody brought it up?

5   A.   I don't recall anyone ever asking me, at

6   least no press or anyone asking me. My response is

7   that because that was what was in the manual. They

8   published a manual; the manual said put a dollar sign

9   at the end. So I followed the manual.

10   Q.   Was that your response at the time or are

11   you simply reconstructing what you would have said?

12   A.   As I said, no one asked me that I can

13   recall, so there was no response at the time.

14   Q.   Were you interviewed for this article?

15   A.   I was noticing that the authors are

16   Erickson and Wallace. They were in 1991 starting

17   their research for their book, which was either Gates

18   or Hard Drive -- I've forgotten which one was which

19   now -- and they interviewed me, the authors of both

20   those books, so I know they're among them, interviewed

21   me extensively for those books.

22   So they could have interviewed me already

23   and used that material in preparation of this article

24   or that may have come later. They could have

25   interviewed me for this article separately in advance

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1   and I don't remember. I had been interviewed by those
2   guys, by at least one of those guys, but I don't
3   remember if I was specifically interviewed for this
4   article.
5   Q.   There is a quote that's just down the third
6   column a bit further from the quotes we were just
7   looking at about dollar sign and here it quotes you as
8   acknowledging that there was some, quote, low-level
9   borrowing, unquote, from Kildall's program and that
10 you made -- and that MS-DOS contained substantial
11 improvements over DRI's operating system.
12   Do you recall making those statements?
13   A.   No, I do not recall saying low-level
14 borrowing.
15   Q.   Do you have any reason to believe that
16 Messrs. Wallace and Erickson were not accurately
17 quoting you in 1991?
18   A.   I believe they may have misquoted me on
19 that. It's possible.
20   Q.   Did you contact them after the article came
21 out to take issue with the quote that they attributed
22 to you?
23   A.   No.
24   Q.   Did you write any letter to the editor to
25 take issue with that particular quote?

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1   A.   No.

2   Q.   What do you believe you said?

3   A.   I'm not sure what I would have said.

4   Q.   Are you denying that you actually said

5   low-level borrowing?

6   A.   I don't know if I said it or not. It would

7   not be typical of my language to say that. That to me

8   sounds like their paraphrasing of technical language

9   that I used and calling it a quote.

10   Q.   Have you ever met Gary Kildall?

11   A.   No.

12   Q.   Exhibit 30 is an August 1991 article from

13   InfoWorld. Again, what is InfoWorld?

14   A.   InfoWorld is a computer magazine.

15   Q.   You're quoted, I believe, on the second --

16   in the second column of this particular article. Do

17   you see the quotes attributed to you?

18   A.   This is Peggy Watt again. We have read

19   this quote in her article earlier too, the very same

20   ones.

21   Q.   The question is do you remember being

22   interviewed by Peggy Watt?

23   A.   As I've said before, I remember having -- I

24   remember the name Peggy Watt and so the fact that I

25   remember her, the name, suggests I probably was

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1   interviewed by her.

2   Q.   Let's take a look at the next exhibit,

3   which is Exhibit 31, and this is excerpts from Hard

4   Drive, which you referenced earlier, by Mr. Wallace

5   and Mr. Erickson. This was published in 1992.

6   Do you have a copy of that or did you get a

7   copy of that at some point?

8   A.   Yes.

9   Q.   Have you read it?

10   A.   I believe I have read most or all of it.

11   Q.   I see your picture is on the third page of

12   that particular exhibit. Do you see that?

13   A.   Yes.

14   Q.   Now, you remember being interviewed by Mr.

15   Wallace and Mr. Erickson in connection with this?

16   A.   I believe only one of the two interviewed

17   me, but yes, I was interviewed.

18   Q.   Excuse me. Do you remember which one

19   interviewed you?

20   A.   I believe it was Wallace.

21   Q.   What I'd like to do is focus your attention

22   to the page numbered 184. The paragraph starts just

23   as Gary Kildall has had to read over the years how he

24   lost the IBM deal, Paterson has had to read how he

25   ripped off CP/M in developing an operating system that

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1   became the industry standard.

2   Do you recall reading that at the time the

3   book was published?

4   A.   I don't specifically recall reading that,

5   but I did read the book and I read this section of the

6   book when it was fairly new.

7   Q.   Do you recall talking to one of the authors

8   about how you had to read about how you had ripped off

9   CP/M?

10   A.   I don't specifically recall.

11   Q.   The book goes on to discuss an unidentified

12   Digital employee who was quoted in 1990 that depicted

13   Gates as a silicon bully, and it goes on with a quote.

14   We never tried to patent CP/M. Nobody was patenting

15   software then. It was almost unethical, but if we

16   had, Microsoft probably couldn't have developed MS-DOS

17   because parts of the original source code looked a lot

18   like CP/M's. How else did Paterson and Gates come up

19   with that nice new operating system overnight?

20   Did you take issue with this quote when you

21   read that at the time?

22   A.   Well, let's see. I didn't do anything

23   about that quote. Somebody is lying, but the quote

24   itself is accurate, I assume. I assume that Wallace

25   and Erickson got this lie correct.

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1   Q.   Well, part of the quote is I just took his
2   printed documentation and did something that did the
3   same thing, unquote.
4   A.   Which quote is this?
5   Q.   The one we were just talking about.
6   A.   We were talking about once you translated
7   these programs. Oh, we're back on the previous.
8   Q.   I'm sorry. Go back to the prior page on
9   184 and the quote I'm asking about was the one we were
10   talking about before.
11   A.   Yeah.
12   Q.   I just took his printed documentation and
13   did something that did the same thing. Do you recall
14   making that statement at the time?
15   A.   I don't recall making the statement, but it
16   more or less accurately represents the situation.
17   Q.   You testified earlier what printed
18   documentation you had from Digital Research at the
19   time. Do you have any further recollections based on
20   this?
21   A.   No.
22   Q.   Page 185, you say in the first full
23   paragraph, the last sentence, I never looked at
24   Kildall's code, just his manual.
25   Was that your position at the time in 1992?

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1   A.   Yes.

2   Q.   I take it that's still your position today?

3   A.   Yes.

4   MR. JOHNSON: Off the record for a

5   second.

6   (Discussion off the record.)

7   Q.   (BY MR. JOHNSON) Exhibit 32 is a book

8   written in 1993 by Paul Andrews and Stephen Manes

9   entitled Gates, How Microsoft's Mogul Reinvented an

10   Industry and Made Himself the Richest Man in America.

11   Did you have a copy of this book?

12   A.   Yes.

13   Q.   When did you get a copy of this book?

14   A.   When it was new.

15   Q.   Do you know if you were interviewed for

16   this article -- excuse me -- interviewed for this

17   book?

18   A.   Yes. I believe I spoke with Manes on the

19   phone, but was interviewed in person by Andrews.

20   Q.   Do you know if you did this when -- I

21   believe Mr. Andrews worked for the Seattle Times

22   before?

23   A.   Yeah, he worked for the Seattle Times up to

24   fairly recently, so he would have been working for

25   them then.

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1   Q.   Do you recall if this interview was on the

2   phone or these interviews were on the phone or were --

3   A.   Well, as I said, I believe I may have

4   spoken with Manes on the phone, but I interviewed

5   personally with Andrews, as I recall. I believe.

6   Q.   Page 157 of this book, which we've copied,

7   discusses the relationship between Q-DOS and CP/M and

8   what I'd like to focus your attention on is two/thirds

9   of the way down the page, the second from last

10 paragraph. Paterson set out to clone CP/M on his own.

11 The result was what he called Q-DOS, Quick and Dirty

12 Operating System. Do you see that?

13   A.   No, I haven't found that yet. You said the

14 second to last paragraph?

15   Q.   Correct.

16   A.   One-fifty-seven?

17   Q.   Page 157.

18   A.   Oh, the very end of the paragraph.

19   Q.   The last two sentences. Could you read

20 those last two sentences and tell me if those two

21 sentences are accurate?

22   A.   No, it's not accurate that I set out to

23 clone CP/M.

24   Q.   In what way is it not accurate?

25   A.   86-DOS is not a clone.

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1   Q.   Why do you believe it is not a clone?

2   A.   The simulator between 86-DOS and CP/M is

3   limited to the translation compatibility of the

4   interface. It doesn't copy, mimic or emulate any of

5   the internal operations, such as file operations, file

6   storage format, BIOS interface. It's in no way a

7   clone.

8   Q.   Did you talk to the authors of this book

9   afterwards regarding your disagreement with that

10   statement?

11   A.   I don't recall having done so. If I spoke

12   with them again in passing I may have registered a

13   complaint, but I wouldn't have considered it egregious

14   enough to have instigated conversation on this alone.

15   Q.   The next paragraph, the first sentence says

16   Q-DOS wasn't an absolute clone of CP/M.

17   Do you agree with that?

18   A.   Well, being that's it's not a clone at all,

19   I guess it's true that it's not an absolute clone.

20   Q.   Do you believe that this is a false

21   statement of fact to say that this was a clone in any

22   way?

23   A.   Yes.

24   Q.   The following page is 158 and this

25   discusses various similarities between Q-DOS and CP/M,

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1   and it says but for programmers' convenience, Q-DOS

2   mimicked every last internal function call of CP/M,

3   along with many other technical aspects. So close a

4   clone was Q-DOS that the preliminary user's manual for

5   its public unveiling as 86-DOS, disc operating system,

6   closed paren, carried this disclaimer.

7   And the disclaimer goes on to say 86-DOS is

8   not related to the popular CP/M operating system of

9   Digital Research. Disc directory, formatting and

10   space allocation are completely different and

11   incompatible. 86-DOS does, however, provide a utility

12   called RD CP/M which will transfer files from CP/M

13   discs to 86-DOS discs. Further, operating system

14   calls and calling conventions have been provided,

15   which make possible automatic translation of Z80

16   programs written for CP/M into 8086 programs that run

17   under 86.

18   Do you agree with the language in that

19   disclaimer?

20   A.   Yes. I wrote that disclaimer. You'll find

21   it in those manuals that we looked at earlier.

22   Q.   The prior sentence, which discusses the

23   fact that Q-DOS, quote, mimicked every last internal

24   function call of CP/M, unquote, along with, quote,

25   many other technical aspects, unquote, do you agree or

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1   disagree with that sentence?

2   A.   I disagree.

3   Q.   In what way do you disagree?

4   A.   The translation compatibility interface did

5   not include, as we've noted earlier, every function

6   that CP/M had. I guess the use of the term mimic is

7   marginally acceptable as a way to reference the

8   compatibility interface.

9   Q.   In fact, you've used that term to describe

10   the relationship, have you not?

11   A.   I don't remember. I may have.

12   Q.   Any other parts of that sentence you take

13   issue with?

14   A.   Of that sentence, no. Then the next

15   sentence where it refers to as a clone, as you know, I

16   take issue with that.

17   Q.   The prior paragraph refers to C-DOS as a

18   CP/M clone. Do you know whether that is accurate or

19   not?

20   A.   I don't -- I don't know whether that is

21   accurate. I would consider it likely to be. I think

22   I viewed it as a clone at the time.

23   Q.   Did you have any personal knowledge as to

24   whether it was or was not a clone?

25   A.   No. From the standpoint of, I guess, what

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1   we're talking about here, the distinction we're

2   talking about here is, really, C-DOS was either a

3   clone or it was CP/M, essentially, because it acted

4   completely like it.

5   So I guess I'm not trying to say it's less

6   than a clone. It's either a clone or more than a

7   clone. I don't know the relationship for sure.

8   Q.   I take it that the next sentence that

9   refers to Q-DOS as being, quote, so close a clone,

10   unquote, to CP/M is another statement you take issue

11   with?

12   A.   Yes, I mentioned that.

13   Q.   Page 172 of these excerpts from this 1993

14   book describes a falling out that you had with Rod

15   Brock.

16   Do you recall having a falling out with Rod

17   Brock?

18   A.   Yeah, that refers to my dissatisfaction

19   with their marketing plan of using -- going direct

20   sales, mail order sales, versus my belief that sales

21   through dealers was important. So I guess that's a

22   falling out.

23   Q.   Take a look at page 173 and we have a

24   paragraph that starts with but now Bill Gates. Do you

25   see that paragraph?

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1   A.   Yes.

2   Q.   It refers to Q-DOS as an operating system

3   that, quote, turned out to borrow ideas and terms

4   freely from DRI's operating system, but this was back

5   in the days before some heavy-duty lawsuits made

6   programmers more cautious about doing knockoffs of

7   someone else's work.

8   Do you recall -- strike that. Do you agree

9   with those sentences?

10   A.   No.

11   Q.   In which way do you disagree with those

12   sentences?

13   A.   Oh, well, it's clearly implying that what

14   was borrowed. Borrowing ideas is clearly implying

15   that that was making it a knockoff. To me that's what

16   it implies, and in no way was DOS a knockoff and so

17   the whole suggestion to me that there could have been

18   anything inappropriate -- I believe this strongly

19   promotes that suggestion that there was something

20   inappropriate there and that suggestion is incorrect.

21   Q.   Did you ever have any communications with

22   Paul Carroll regarding this particular issue?

23   A.   No, no.

24   Q.   The bottom of the same page refers to

25   Microsoft ultimately buying the system, paying about

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1     $75,000. Is that your recollection of how much they

2   paid for it?

3   A.   Including the fees that were paid before

4   and then the fees that were paid later, except I

5   actually view it as being a little over a million

6   because they also paid for the DOS license, which they

7   paid almost a million dollars to get back. So I

8   consider the number to be approximately a million

9   dollars.

10   Q.   The book points out that IBM in foregoing

11   the chance to buy what became DOS missed an

12   opportunity that made Microsoft's value go from a

13   pittance to a stockmarket value of some 27 billion

14   dollars as of that date, making Gates the richest man

15   in the United States.

16   Any reason to disagree with that statement?

17   A.   I don't understand where they get the idea

18   that IBM had a chance to buy DOS, particularly, so I

19   don't understand where that's coming from. It's

20   Microsoft that was the licensee to Seattle Computer.

21   Q.   The next exhibit is Exhibit 34. This is

22   the Second Edition of Undocumented DOS or portions

23   thereof. Now, the second edition apparently you are

24   no longer a coauthor in. I take it this is not

25   because of any disagreement between you and your

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1   coauthors but simply because you had nothing further

2   to say.

3   A.   That's correct.

4   Q.   Page 181 has a sentence that starts right

5   below the subheading about from CP/M to Dr. Doss to

6   Novell DOS, and it says the funny thing is, MS-DOS

7   itself started out as a clone of the CP/M operating

8   system from DRI. The story has been told many times

9   of how Tim Paterson, a coauthor, incidentally, of the

10   first edition of this book, now at Microsoft, but in

11   1980 an engineer at Seattle Computer Products, in two

12   months wrote Quick and Dirty DOS, Q-DOS, how this

13   became 86-DOS, to which Microsoft purchased

14   nonexclusive rights and how this became MS-DOS 1.0 for

15   the then new IBM PC.

16   Stephen Manes and Paul Andrews' history of

17   Microsoft, Gates, has all the details, even a

18   photograph of the original Seattle Computer order form

19   for Microsoft's purchase of 86-DOS sale rights.

20   Price? $50,000.

21   Let me start with the first sentence.

22   MS-DOS started out as a clone of the CP/M operating

23   system from DRI. Do you recall reading this on or

24   about the time it was published?

25   A.   No, I've never read this book.

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1   Q.   So you never looked at the second edition

2   of the book that you've been a coauthor of on the

3   first edition?

4   A.   That's correct.

5   Q.   Did anybody report to you that this

6   allegation or this assertion was contained in the

7   second edition of this book?

8   A.   No.

9   Q.   When was the first time you learned that

10   this statement was in this particular education of the

11   book?

12   A.   Right now.

13   Q.   Two paragraphs on, the paragraph starts

14   somewhat understandably, Digital Research was upset

15   when it found that Microsoft's new operating system

16   for the IBM PC was a clone of CP/M. Apparently

17   Digital's Gary Kildall, called Kindall, even

18   considered suing IBM over the similarity of MS-DOS to

19   CP/M.

20   As I understand it, you disagree with the

21   use of the term clone in this particular sentence?

22   A.   Yes.

23   Q.   You also disagree with it in the prior

24   paragraph, correct?

25   A.   Yes.

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1   at that time?

2   A.   DOS was done before -- I shouldn't say

3   done. DOS was working. The APIs were done before IBM

4   was even involved in looking for an operating system.

5   Q.   So this last sentence is inaccurate?

6   A.   Yes, it's inaccurate.

7   Q.   Take a look at page 367, the top of that

8   page. It says that Tim Paterson realized the value of

9   the BIOS technique and implemented it in SCP-DOS, from

10   which it found its way into PC-DOS. Is that statement

11   accurate?

12   A.   Not very.

13   Q.   In what way?

14   A.   Well, one needs to look at the previous

15   paragraph to understand the term BIOS technique, and

16   what's inaccurate is the implication that this was

17   some invention of CP/M that I chose to, essentially,

18   copy the form of. This was a -- this jump table

19   technique was standard practice and I used it and CP/M

20   used it and North Star DOS used it before them.

21   So it's the way this job was done. The

22   details were quite different. So it's not sensible to

23   compare it specifically to CP/M because it was no more

24   like CP/M than it would have been like the North Star

25   equivalent.

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1   Q.   I'm going to show you Exhibit 53, which is
2   the article that you wrote, I believe, in 2000 for the
3   Encyclopedia of Computers and Computer History. Take
4   a look at that and see if that's your article.
5   A.   Appears to be.
6   Q.   I asked that question in part because you
7   seem to talk about yourself in the third person.
8   Paterson had graduated, Paterson's primary objective,
9   and so forth.
10   A.   Well, it is an article for an encyclopedia,
11   so it's intended to be generic and if I start using I,
12   then you got to go look up and see who wrote it.
13   Q.   How did you come to write this article?
14   A.   I was approached by the editor of the
15   encyclopedia to write the article.
16   Q.   Had you written a prior version of it
17   anywhere or was this the first time?
18   A.   This was the first time.
19   Q.   Did you talk to anyone else as you wrote
20   the article to get additional information or is this
21   basically information that is yours alone?
22   A.   I don't believe I talked to anyone else.
23   Q.   Going to the second page you say in the
24   fourth full paragraph Paterson's primary objective in
25   the design of DOS was to make it as easy as possible

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1   for software developers to write applications for it.

2   To achieve this, Paterson sought to make the

3   application program interface, API, closed paren,

4   compatible with CP/M.

5   These are your words at that time?

6   A.   Yes, yes.

7   Q.   This is your position as to what your

8   objective was in the design of DOS and how you

9   achieved it?

10   A.   Yes.

11   Q.   Where was this encyclopedia published, if

12   you know?

13   A.   I don't know.

14   Q.   Do you know who published it?

15   A.   No.

16   Q.   Did you get -- go ahead.

17   A.   I recently, in the past few months, I

18   think, happened to think about this article and say to

19   myself, I wonder if it was ever published, because I

20   had never seen it. I happened to look on Amazon and

21   there it was. So I know you can buy it from Amazon.

22   Q.   You further go on and say that CP/M

23   compatibility of the API was key to making the

24   translated program run correctly. That's true,

25   correct?

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1   A.   Yes.

2   Q.   The next sentence, also, it was hoped that

3   the familiarity of the CP/M style API would make it

4   easier for developers to learn to write programs for

5   DOS.   Those are your words?

6   A.   Yes.

7   Q.   Why did you say it was hoped? Was that

8   simply a use of the passive frame? Any reason? To

9   refer to somebody other than you, perhaps?

10   A.   Well, as I mentioned, as an encyclopedia

11   article, I'm not trying to put this, you know, in a

12   book full of articles without making it dependent on

13   the reader knowing who wrote it. I chose not to say I

14   hoped. Is that what you're asking?

15   Q.   I think it was, yeah.

16   A.   I guess it would be more than I; it would

17   be we at Seattle Computer.

18   Q.   But it was a -- the familiarity of the CP/M

19   style API was an asset to DOS, as you understand it?

20   A.   We believed it would be.

21   Q.   Then you go on and say the secondary

22   objective in the design of DOS was to make it fast and

23   efficient, so it was written entirely in 8086 assembly

24   language.

25   Could you tell me what you mean by that?

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1   A.   By which phrase? The first or the second?

2   Or the whole thing?

3   Q.   The whole thing, the sentence.

4   A.   Is there more to say about an objective of

5   making it fast and efficient?

6   Q.   I guess I need to understand the 8086

7   assembly language portion.

8   A.   So yeah, it's the second part you're asking

9   about there. That's the fundamental language of the

10 microprocessor. I am not sure how to explain it. As

11 opposed to today, I program in the C programming

12 language or C plus plus or C sharp or you can program

13 in BASIC and these programming languages can be used

14 on all kinds of different machines and then you run it

15 through a translator to focus it for a given one.

16 This is you've done the translation yourself. You're

17 writing at the lowest level to get -- for maximum

18 effect, for the most compact and fastest way of

19 getting things done.

20   Q.   In this article when you explain how you

21 made the API compatible with CP/M, were you in any way

22 thinking of refuting or responding to the allegations

23 that we've seen having been made by Mr. Kildall and

24 Mr. Wharton several years earlier?

25   A.   That's probably in the back of my mind, in

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1   the sense that I want to use a thorough enough
2   explanation to cover that ground. I want to explain
3   what is similar and what is not. I want to try and
4   make that clear. So that aspect of is it a clone and
5   is it, you know, a rip off and stuff, that's in my
6   mind writing this, thinking if I explain it, you know,
7   fully and in detail people will understand.

8   Q.   The last page of Exhibit 53 is your
9   bibliography and this includes the book Gates and the
10   book Hard Drive. I assume that you read those in
11   preparation for this particular article?

12   A.   I may have just not necessarily read them.
13   In 2000 again I had them already on my website as
14   bibliographic references and if I had concluded they
15   were okay to put on the website, they were okay to put
16   in the article and just snapped them in there. The
17   other two are from the website, so...

18   Q.   All five of these articles are referenced
19   on your website?

20   A.   Yeah. The three are referenced, the two
21   are actually present.

22   Q.   We've discussed, I believe, all five of
23   them during this deposition?

24   A.   Yeah.

25   Q.   Next exhibit is 54. These are book reviews

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1   from Transactions on Professional Communication,

2   February/March of 2000. Are you familiar with that

3   publication?

4   A.   No.

5   Q.   This book review refers to two books on

6   Silicon Valley by Mr. Kaplan and someone named Po

7   Bronson and on page 11 -- excuse me -- on page 111 at

8   the very bottom right the following statement is made.

9   At any rate, when IBM went back to Microsoft, the

10   young company saw the opening and went for it. Paul

11   Allen knew Tim Paterson of Seattle Computer Products,

12   who had written Q-DOS, Quick and Dirty Operating

13   System. Q-DOS was basically a rip off of Kildall of

14   CP/M, but Kildall had never gotten around to suing.

15   Do you see that?

16   A.   Yes.

17   Q.   Just as preface, were you a friend of Mr.

18   Allen?

19   A.   We were acquaintances.

20   Q.   Well, I asked you earlier if you were a

21   friend of Bill Gates. Would it be fair to say that

22   you knew Mr. Allen more than you knew Bill Gates?

23   A.   At this time, maybe a little, but hardly

24   either -- acquainted with both of them from earlier

25   work where we used our equipment at their office, but

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1   A.   Yes.

2   Q.   What was your reaction?

3   A.   I was very angry that I was being called a

4   thief and that someone could write those things

5   without ever bothering to hear my side.

6   Q.   Any other recollection?

7   A.   I don't have any other recollection, no.

8   Q.   What damages have you suffered because of

9   the publication of They Made America?

10   A.   I am concerned about the image of a thief

11   being one that people will not want to buy their

12   products from. I use my position as father of DOS as

13   a marketing element to attempt -- in an attempt to

14   create a belief that I know what I'm doing, and I'm

15   concerned that by a widespread belief that I actually

16   stole the work, that backfires and becomes a negative

17   rather than a positive.

18   It's very hard to quantify. You don't get

19   a feel for who isn't buying because they have seen

20   something like that, but... As my business grows, I'm

21   concerned about it more and more, and even further as

22   it grows the possible impact when I need to grow to

23   the point where I want venture capital to grow

24   further.

25   Q.   Have you done any quantification of the

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1   damages, the amount?

2   A.   No, I haven't.

3   Q.   Do you have any notion or idea today what

4   your damage claim is, the amount?

5   A.   No, I don't think so.

6   Q.   Has anyone you've approached for funding

7   since the publication of the book mentioned the book

8   or the chapter on Gary Kildall in response or in

9   reaction to the funding request?

10   A.   No. I haven't asked for funding yet at

11   this point.

12   Q.   Has anyone come and spoken to you about

13   their reaction to the book or having read the book?

14   A.   I have been in -- only media. I have been

15   in contact with -- at least a local reporter has

16   talked to me about it and I think I may -- well, there

17   may have been a reporter or two who's asked me about

18   it.

19   Q.   Anyone else?

20   A.   Not that I recall mentioning the book

21   specifically, no.

22   Q.   Anybody who hasn't mentioned the book

23   specifically but simply mentioned the statements

24   contained in this chapter since the publication?

25   A.   No. I have on occasion, on rare occasion,

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1   received like an e-mail commenting on this idea that

2   DOS is just stolen or a clone, but I don't recall --

3   it's been rare enough I don't recall having received

4   one since the book's been out.

5   Q.   So you have received e-mail or e-mails

6   about that subject, but that was prior to the

7   publication of the book?

8   A.   Yes.

9   Q.   Do you have a copy of any of these e-mails?

10   A.   Probably not. I don't retain that long.

11   Q.   Do you remember who sent them to you?

12   A.   No. I don't recall it being anyone in

13   particular; in other words, it was just as far as I

14   know a Joe with an opinion.

15   Q.   Do you know which of the statements or

16   publications they were responding to when they sent

17   the e-mail to you?

18   A.   At least one referred to Microprocessor

19   Report, which is again quoted in the book.

20   Q.   The Microprocessor Report in question, was

21   that the initial report or the reply by Mr. Wharton

22   that they were referring to?

23   A.   I think it had -- it was the person had

24   seen all three articles, you know, the article, my

25   letter and his response.

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 1   Q.   And do you remember what they said?

 2   A.   No, not specifically.

 3   Q.   Did you contact any of the defendants

 4   before filing suit about the publication They Made

 5   America?

 6   A.   No.

 7   Q.   Have you consulted any physician or

 8   received any medical care relating to any pain or

 9   anguish or emotional distress arising from the

10   publication in question?

11   A.   No.

12   Q.   Are you planning to see any health care

13   provider regarding that?

14   A.   No.

15   Q.   You make an allegation that you have been

16   greatly injured in your character and reputation and

17   the loss of potential business opportunities. And I'm

18   referring to paragraph 1.8 of your complaint.

19   Could you list the loss of potential

20   business opportunities that you have suffered?

21   A.   This would refer -- this would be the same

22   things I was talking about a minute ago, with the

23   potential for -- the unknown extent of the potential

24   for lost sales and difficulty in raising venture

25   capital in the future.

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1   Q.   So there is no specific business

2   opportunity that you have lost; you are simply

3   referring to the potential of losing business

4   opportunities. Is that correct?

5   A.   I am -- I don't know what the effect may

6   have been on sales and that's an unknown loss and then

7   there are other losses that are potential losses.

8   Venture capital is a potential loss and difficulty in

9   getting venture capital.

10   Q.   Let me home in a bit further. Is there any

11   particular sale you can point to, any particular lost

12   sale that you can point to that you can say came

13   directly from --

14   A.   No, I'm not -- I don't normally -- I don't

15   feel like I'm going to find out who is choosing not to

16   buy, so I don't have a way of knowing when I'm losing

17   a sale.

18   Q.   The same question with regard to the

19   business opportunities, such as not just sales, but

20   investments and other things. Any specific

21   opportunity?

22   A.   No, no, I haven't attempted -- I haven't

23   yet made the attempt to raise venture capital. It's a

24   concern for the future, possibly coming later this

25   year.

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1   Q.   Have you ever seen or heard Mr. Evans in

2   any particular medium other than the book in question?

3   A.   No.

4   Q.   Have you read any other books or

5   publications by Mr. Evans?

6   A.   Not that I recall.

7   Q.   Has anyone that you interact with on a

8   regular basis treated you differently as a result of

9   the publication of They Made America, to your

10 knowledge?

11   A.   No.

12   Q.   I've asked this question in different

13 contexts, but I just want to ask it one more time.

14 Has anyone refused you funding based on the chapter

15 that appears in They Made America on Gary Kildall?

16   A.   No.

17   MR. JOHNSON: Let's take a very brief

18 break.

19   (Recess taken.)

20   MR. JOHNSON: I only have a few more

21 questions at this time.

22   Q.   (BY MR. JOHNSON) One question. Do you

23 recall any other interviews you've done with members

24 of the media during the last 30 some years regarding

25 MS-DOS? I mean, we've gone through a series of books

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1   and writings and so forth. I'm just curious if

2   there's anything else out there that you remember.

3   A.   I remember having done a bunch of

4   interviews over this period of time and I remember --

5   don't remember, generally don't remember specifics.

6   Presumably, they would have, especially as

7   thorough as your search appeared to be, that you've

8   probably hit the results of those interviews. I

9   couldn't tell you -- I guess, probably the thing

10   you're looking for most is I can tell you no, I did

11   another interview that didn't show up here. I can't

12   remember such a thing.

13   Q.   The next question. Do you have any notes

14   of any of these interviews, potentially, that would

15   establish who these people were?

16   A.   No.

17   MR. JOHNSON: Anyway, I don't have any

18   further questions at this time. There may be further

19   additional questions as the case progresses, but at

20   this point we're finished.

21   MR. TOMKINS: Thank you for your

22   courtesy. We'll not waive and take a copy if it's

23   ordered. I guess that concludes -- off the record.

24   (Signature reserved.)

25   (Deposition concluded at 5:25 p.m.)

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1   REPORTER'S CERTIFICATE

2

3   I, CHERYL J. HAMMER, the undersigned Certified

4   Court Reporter and Notary Public, do hereby certify:

5   That the testimony and/or proceedings, a

6   transcript of which is attached, was given before me

7   at the time and place stated therein; that any and/or

8   all witness(es) were by me duly sworn to tell the

9   truth; that the sworn testimony and/or proceedings

10 were by me stenographically recorded and transcribed

11 under my supervision, to the best of my ability; that

12 the foregoing transcript contains a full, true, and

13 accurate record of all the sworn testimony and/or

14 proceedings given and occurring at the time and place

15 stated in the transcript; that I am in no way related

16 to any party to the matter, nor to any counsel, nor do

17 I have any financial interest in the event of the

18 cause.

19   WITNESS MY HAND AND SEAL this 1st day of February

20 2007.

21 _____

22 CHERYL J. HAMMER
    Certified Court Reporter
23 CCR No. 2512
    Notary Public in and for the
24 State of Washington, residing
    in Snohomish County. Commission
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