

Software thievery claimed

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IBM Corp. set out to destroy **Compuware Corp.** by stealing its technology and undercutting the Detroit-based company's prices, Compuware attorneys said Wednesday during opening statements in the trial between the tech companies.

IBM attorneys denied the claims of theft, saying IBM increased competition and -- to Compuware's dismay -- drove down the price of software when it introduced competing products.

The opening statements began a trial over software used for mainframe computers, powerful machines that government agencies and corporations use to process and store volumes of information.

The case is being tried before U.S. District Judge George Steeh in Detroit. It is closely watched not only in technology circles but also by Detroiters because of Compuware's growing influence downtown with its new headquarters on Woodward Avenue.

After three years of legal wrangling, a jury is to decide if Armonk, N.Y.-based IBM stole information from Compuware to develop its own software to compete with Compuware and force the software on Compuware customers with deep discounts.

For damages, Compuware is asking for millions of dollars it considers lost profits. If the two sides had negotiated a licensing agreement for the software, Compuware argues, the deal would have been worth \$500 million.

"This case is real simple. This is about theft of technology worth millions and millions of dollars," Compuware attorney Daniel Johnson told the jury. "This is about IBM, one of the largest companies in the world, going out and embarking on a plan -- not an accident -- a plan to kill Compuware."

Johnson, who is from Mountain View, Calif.-based law firm **Fenwick & West LLP**, said that IBM hired former Compuware employees to share what the company considered trade secrets about two Compuware products, File-AID and Abend-AID. File-AID manages data on mainframe computers. Abend-AID diagnoses and solves problems on mainframes. Together the two products accounted for 24.4 percent of Compuware's revenue in the year ending in March 2004, its annual report shows. IBM's goal was to crush Compuware, Johnson said, referring to an IBM document that dubbed the new product releases as "Compuware Killer."

"They called it a plan to displace Compuware's most successful products," said Johnson, who also introduced the jury to Compuware Chairman and CEO Peter Karmanos Jr., whom he described as starting the company with a refund check from the IRS in the early 1970s. IBM tied the sale of its software to its hardware, Johnson said, and in some cases charged nothing. The strategy, he said, "caused millions and millions of dollars in business to shift from Compuware to IBM."

IBM attorneys said the company got into the mainframe software market because it heard from customers that Compuware was charging too much for its software, and that kept the overall cost of mainframes high,

threatening IBM's hardware business.

After IBM marketed its products, called File Manager and Fault Analyzer, the price of that software came down, said IBM attorney Evan Chesler.

"The prices for the tools have come down dramatically and the qualities of the products, including Compuware's and ours, has gone up," he said.

IBM did not steal software from Compuware, Chesler said. Instead, the company used decades-old IBM technology as the foundation for those products, he said.

Former Compuware employees did not divulge secret information but used their "general knowledge" at another company, said IBM attorney Thomas Rafferty.

"They're entitled to make a living. They did nothing wrong," he said.

IBM attorneys also said some of the information Compuware called secret in the case had been widely available on its own Web site.

Rafferty said Compuware's own products legally contain IBM's information. He showed the jury a page of software code that includes an IBM copyright notice.

All three attorneys who spoke on behalf of IBM are from New York-based **Cravath, Swaine & Moore LLP**.

In response to Compuware's claim that IBM tied the sale of its software to other products, IBM attorney Rowan Wilson said the company simply packaged the software with other IBM products, similar to a buy-one-get-one free offer.

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