

# Microsoft case final arguments heard

■ **The judge has offered no insight on what his decision will be.**

WASHINGTON (AP) — As the government and Microsoft Corp. wrapped up their historic antitrust trial Tuesday, lawyers alternately portrayed the software producer as a vigilant monopolist or as a company that fights tough but legally in the bareknuckles high-tech industry.

Citing dozens of internal e-mails and sworn testimony already in evidence, government lawyers portrayed Microsoft as ruthless in trying to protect the dominance of its Windows software.

Microsoft's flagship product runs most personal computers and is largely responsible for the vast wealth of the world's richest man, billionaire company chairman Bill Gates.

"There are no other lawful situations in which a company has done what Microsoft has done," Justice Department lawyer David Boies said. He accused the company of having

"used its power to squelch potential competitors, to keep them from emerging."

Microsoft lawyer John Warden criticized what he called the government's "astounding failures of proof," together with "red herrings, misstatements and omissions" presented during 76 days of courtroom testimony.

Warden charged that the antitrust case, filed under the Sherman Act, was largely driven by complaints from Microsoft's jealous industry rivals, including America Online Inc., the former Netscape Communications Corp., Sun Microsystems Inc., Apple Computer Inc. and IBM.

"The government should not be siding with Microsoft's opponents," Warden said. He said they are "entirely capable of taking care of themselves."

AOL recently bought Netscape for \$10 billion and hired a top Sun executive as its chief technology officer.

Tuesday marked the last time lawyers will meet in the courtroom prior to U.S. District Judge Thomas

Penfield Jackson's first of a two-phase verdict, which could come as early as next month.

The judge, unusually quiet Tuesday, offered no insight into how he is formulating his decision.

During the trial, Jackson often asked pointed questions of witnesses and lawyers, sometimes even affecting financial markets by the tenor of his voice.

But before a packed courtroom gallery Tuesday, he remained inscrutable through five hours of closing arguments.

Stephen Houck, lead lawyer for 19 states suing Microsoft with the Justice Department, told the judge the company's "unshakable stranglehold" over such software "has cost consumers untold millions — probably hundreds of millions of dollars."

"Microsoft is like the emperor without clothes," said Houck, who gave part of the government's tag-team closing arguments. "Everyone knows, including Microsoft, that it's a monopoly."

The lawyers generally focused their closing arguments on what

“*There are no other lawful situations in which a company has done what Microsoft has done.*”

DAVID BOIES  
Justice Department lawyer

antitrust experts believe to be each side's strongest claims.

The government pointed out the obvious dominance of Windows as evidence that the company wields monopoly power, a crucial legal test for its lawsuit. It also questioned the credibility of Microsoft's trial witnesses, often contradicted by company documents or other industry executives.

Houck told the judge Microsoft suffered from two problems: "the done-in-by-your-own-exhibit" trouble and "doggone witness" trouble.

Microsoft challenged the notion that its actions have hurt consumers, and Warden denied that Microsoft

ever discouraged the nation's computer makers and other companies from distributing Netscape's Internet software.

Warden also reminded the judge of last spring's decision by a federal appeals court that Microsoft's bundling of its Internet software with Windows was legal and a "genuine integration" because consumers benefited.

The judge is expected to announce his first verdict — a decision about the facts of the case — within four to eight weeks. The lawsuit is certain to drag through federal appeals courts for years unless the sides settle.



## Studies: Resistant strains of AIDS rising

CHICAGO (AP) — Highly drug-resistant strains of the AIDS virus are on the rise, showing up in as many as 4.5 percent of newly infected patients in two new studies.

"Resistance is slowly increasing," said Dr. Roger J. Pomerantz, an expert not involved with either study, "If you were looking at this five years ago, you would see zero."

The studies — published in today's Journal of the American Medical Association — involve mostly gay, white men. Resistance, however, may be more prevalent in other groups, such as drug users and their sex partners, researchers said.

About 40,000 new HIV infections occur yearly in the United States. In recent years, powerful drug cocktails have subdued the virus to undetectable levels in many patients.

But studies have found the virus persists or comes roaring back in 10 percent to 50 percent.

The complicated drug regimen has proved difficult to adhere to, and many patients who missed doses or quit taking their medicines developed drug-resistant infections that are now being passed along to others.

"I wasn't that surprised. This is what happens in infectious disease," said Pomerantz, director of the Center for Human Virology at Jefferson Medical College in Philadelphia.

HIV is still so new that scientists disagree about even how to define resistance. And since both studies used laboratory tests, no one really knows how the definitions will translate into patient care. Giving high doses of a drug may be enough to overwhelm a virus' resistance, Pomerantz said.

In one study, researchers at the University of California at San Diego defined resistance as a tenfold increase in HIV's ability to withstand a drug when compared with a laboratory strain. That study tested 141 patients in San Diego, Los Angeles, Dallas, Denver and Boston and found that three (2 percent) had HIV with at least tenfold greater resistance to one or more drugs.

An additional 36 patients (26 percent) had HIV that was 2.5 to 10 times more resistant. In the other study, researchers at Rockefeller University in New York defined resistance as a threefold increase in HIV's ability to withstand a drug.