IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

APPLE COMPUTER, INC.,

Plaintiff and Counterdefendant,

vs. Case No. 3:06-CV-00019 MHP

BURST.COM, INC.,

Defendant and Counterclaimant,

/

AND RELATED COUNTERCLAIMS.

DEPOSITION OF GREG MULLINS

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FRIDAY, FEBRUARY 23, 2007

REPORTED BY: LOUISE MARIE SOUSOURES, CSR NO. 3575

only thing I can think of.

Q. So you don't know what the reference to variable rate in this sentence is referring to?

A. No.

Q. Okay.

MR. CROSBY: I think that's all I have today. Pass the witness.

MR. BROWN: All right. I have two or three questions briefly.

EXAMINATION BY MR. BROWN:

Q. Mr. Mullins, do you remember you were asked some questions earlier about the AIFF format?

A. Yes.

Q. Is AIFF a digital format?

A. Yes.

Q. So is audio digitized before it can be put into the AIFF format?

A. Yes.

Q. Do you consider digitization to be compression?

A. I consider it to be a form of compression, yes.

Q. To your knowledge, is the video -- I'm sorry.

To your knowledge, is the audio in AIFF

format compressed in any other way besides being digitized?

A. Not that I'm aware of.

MR. BROWN: That's all I have.

FURTHER EXAMINATION BY MR. CROSBY:

Q. So just to follow up on that, is it your understanding that the AIFF process occurs at the time of digitization of audio?

A. No. What I'm saying is that -- is it a compressed format, and differentiation between whether it's a compressed format or not to me is is it smaller than the original asset.

By digitizing it, you're actually losing some of the original information.

It's similar to YUV, you know, you're dropping components of the video 4:2:2.

Q. I guess -- so you said you considered digitization to be a form of compression, correct?

A. Yes.

Q. So taking the analog source and converting it to digital, in your mind, would be a form of compression?

A. Just like DV, yes.

Q. So in what sense is taking -- in your mind, is taking analog audio, which has no number of bits

associated with it, and converting it into a digital format that does have some number of bits associated with it?

In what sense do you view it as compression?

A. There's some information being dropped on the floor.

Q. For example, if you were encoding it at a high sampling rate and using a Lossless encoding technique you would still view it as being compression because the information in between the sample points is information that's lost; is that correct?

A. You're losing information from the original source, even if it's Lossy or Lossless.

Q. So you understand the term compression to be broader than simply reducing the number of bits to represent something, correct?

A. I consider compression to be if any of the original information is lost, and the resultant is smaller than the original, that is a form of compression.

Q. Well, in what sense is a digital representation of an analog audio source smaller than the original?

A. It has less information.

Q. Okay. But you described it as there being two attributes to compression as you understood it.

One is that information is lost and two is it's smaller than the original?

A. Then maybe I should retract the smaller than the original, just dropping information on the floor.

So it's not a full representation of the original information.

Q. So is it your view, then, a Lossless compression technique would not be compression? Is Lossless compression an oxymoron in your view?

A. It is a compression algorithm.

Q. But no information is lost?

A. I think if you were to put -- if you had a high end audio equipment and played the original in what was on Lossless, you would notice a difference in the quality.

Q. But the information is not lost, is it?

A. I don't really understand the specifics of the Lossless compression you might be referring to, but I do know there's a difference in the amount of information between the original and the resultant is different.

Q. Well, isn't it true that if I take, say for example, the Apple Lossless CODEC and I apply it to a

digital audio stream and then I reverse the process, that I'll have a bit-for-bit identical copy of the original audio stream?

A. I don't know that.

Q. Okay. So you don't know how Lossless compression works?

A. Not specifically.

Q. And you don't know whether information is lost or retained in the process?

A. I can't say that I know for sure that it's lost, but I mean it's not the original content.

Q. But you don't know whether that Losslessly-compressed file contains all the information that was there in the original source?

A. I don't know that.

Q. And similarly -- and to the -- is it your testimony that you believe that a digital -- a digitally sampled representation of an analog audio source is a compressed form of that original source; is that correct?

A. Well, I was specifically referring to AIFF and now we've generalized it to be anything.

Q. Well, I think that Mr. Brown's first question to you is whether you viewed digitization as being a form of compression; is that correct?

A. It can -- yes, it can be a form of compression.
Q. And your answer was that it can be a form of compression?
A. Yes, but it doesn't mean -- I don't want to generalize and say anything in that fashion, but I do think in that particular case it is.
And the same thing for digitizing video, you're dropping components of the information because it's considered irrelevant, you're not going to be able to distinguish whether color information has been dropped on the floor so why carry it around.
Q. But to be clear, your testimony is that converting analog source to digital format is always compression no matter what digital format it is, because information is lost, correct?
A. Yes.
Q. And it is in that sense alone that conversion from analog to digital is compression, correct?
A. Yes.
Q. Because the digital file is not smaller than the analog source information, correct?
MR. BROWN: Objection, vague.
THE WITNESS: I don't know.

BY MR. CROSBY:

Q. I mean that's like saying, you know, red is bigger than round, right?

A. I don't know.

Q. Analog source information doesn't have a size, does it?

A. I guess not.

Q. Okay. So to the extent you understand that process of digitization of analog source to be compression, you understand it to be that way only in the sense that information is removed, correct?

A. Yes.

Q. Okay. You don't understand it to be that way in the sense that any comparable measure of size is reduced, correct?

A. Yes.

Q. Okay.

MR. CROSBY: That's all.

MR. BROWN: Okay. I have no questions.

THE VIDEOGRAPHER: This is the end of volume 1 tape number 2 in the deposition of Greg Mullins. The original videotapes will be retained by Dan Mottaz Video Productions, LLC, 182 Second Street, Suite 202, San Francisco, California, 94105, telephone is 415-624-1300.

The time is now 12:06 and we are off the record.

(Whereupon, at 12:06 p.m. the FEBRUARY 23, 2007 deposition of GREG MULLINS was adjourned.)

GREG MULLINS

I, LOUISE MARIE SOUSOURES, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, do hereby certify: That the witness in the foregoing deposition was by me duly sworn to testify the truth in the within-entitled cause; that said deposition was taken at the time and place therein cited; that the testimony of the said witness was reported by me and was hereafter transcribed under my direction into typewriting; that the foregoing is a complete and accurate record of said testimony; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself or herself of the opportunity to sign or the signature has been waived.

I further certify that I am not of counsel, nor attorney for any of the parties in the foregoing deposition and caption named, nor in any way interested in the outcome of the cause named in said caption.

DATED: _____, 2007

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