Exhibit B

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

APPLE COMPUTER, INC.,)

Plaintiff/Counterdefendant,)

)

vs.) CASE NO. C06-00019 MHP

)

BURST.COM, INC.,)

Defendant/Counterclaimant.)

ORAL VIDEOTAPED DEPOSITION

SHEILA HEMAMI

SEPTEMBER 4, 2007

VOLUME 2

ORAL VIDEOTAPED DEPOSITION OF SHEILA HEMAMI, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 4th day of September, 2007, from 8:22 a.m. to 2:03 p.m., before Dana Richardson, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Weil, Gotshal & Manges, L.L.P., 700 Louisiana, Suite 1600, Houston, Texas 77002, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Job No. 1601-84301

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APPEARANCES

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ALSO PRESENT:
Mr. George White, Videographer

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EXHIBITS

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08:21:50 THE VIDEOGRAPHER: Beginning the deposition of
08:21:51 Sheila Hemami. It is the 4th of September, year 2007. The
08:21:56 time is 8:22. We're on the record.
08:22:00 If the attorneys want to introduce themselves
08:22:02 for the record, then we can swear in the witness and go.
08:22:08 MR. STEPHENS: Garland Stephens of Weil,
08:22:10 Gotshal & Manges representing the plaintiff, Apple.
08:22:13 MR. PAYNE: Les Payne for defendant, Burst.
08:22:17 MR. STEPHENS: I should also mention that
08:22:19 present monitoring the deposition on the phone is Jayna Whitt,
08:22:22 in-house counsel for Apple.

SHEILA HEMAMI,
having been first duly sworn, testified as follows:

EXAMINATION

BY MR. STEPHENS:
08:22:32 Q. Good morning, Dr. Hemami.
08:22:34 A. Morning.
08:22:34 Q. I'd like to ask you first about your opinion about
08:22:37 the person of ordinary skill in the art as it relates to the
08:22:40 patents in this lawsuit. You summarized that opinion in
08:22:45 declarations that you filed in support of Burst's opposition
08:22:48 to Apple's motions for summary judgment; is that right?
08:22:52 A. I think it only appeared in the second declaration.
08:22:56 It certainly was in the second.
08:22:57 Q. Okay. Now, one of the things that you said is that a

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08:23:02 person of ordinary skill in the art at the time of the patent
08:23:08 application leading to the '995 patent was filed would have
08:23:12 had an understanding of digital communications technologies
08:23:15 and their available bandwidths and audio and/or video
08:23:19 compression techniques. Do you remember that?
08:23:21 A. Yes.
08:23:24 Q. What kind of digital communications technologies and
08:23:29 available bandwidths would a person of ordinary skill in the
08:23:32 art at the time the '995 patent application was filed have?
08:23:38 A. So, the digital communication techniques that I had
08:23:42 in mind were -- let me start off by sort of giving a -- a very
08:23:47 general classification. One would be the types of digital
08:23:51 communication techniques that one would learn about in, say,
08:23:55 an undergraduate overview course on digital communication.
08:24:00 So, various modulation strategies for over-the-air
08:24:07 communication, terrestrial and satellite; assorted air control
08:24:12 coding that might go with those techniques; and essentially,
08:24:18 at a lower level, digital signalling strategies. For example,
08:24:23 understanding the PCM in the context of digital communication
08:24:27 was a modulation technique. I believe that such a person
08:24:32 would also be aware of the various types of landline or
08:24:43 cables, physical media, rather than over-the-air propagation
08:24:49 media for digital communication, including both copper wire
08:24:54 and also fiber optic. So, I guess following up on that, one
08:25:01 would understand, one would know available bandwidths, the --

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Q. As a -- as a very general principle, that's true, right?
A. Well, in some applications, yes. It's the data movement, which is the bottleneck. In other applications, it may well be the -- the computing.
Q. Okay. But in many applications and particularly in many multimedia applications, it's how fast you can move data, right?
A. I think that multimedia has been also -- "hampered" is the wrong word. Multimedia has a lot of computational requirements, and I think that it's -- it's not fair to say it's solely data transfer speeds within the machine that that -- that have -- that are the issue for multimedia.
Q. Okay. But it's "an" issue for multimedia, right?
A. It is "an" issue for multimedia. But, again, as I mentioned, the driving data rate for MPEG was getting video off a CD.
Q. Okay. And, so, once I have a multimedia file on my hard drive and I want to copy it to another hard drive, what determines how fast that copy occurs?
A. Well, we have the -- the computer itself has to -- operating system has to deal with issuing commands and causing the copy to occur at a higher level. The disk drives have I/O speeds, as you mentioned, which are caused by both the fundamental physical read/write data rate off the disk as well

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as the level of error correction and any other signal conditioning or pre- or post-processing they have to do on the data to get it off.
Q. Okay.
A. And, of course, you know, they are connected by some type of bus. So, we have the fundamental speed of the bus as well.
Q. But there's nothing in that process of copying a file from one disk to another that restricts the transfer speed to the time required or the speed required for playback; is that right?
MR. PAYNE: Objection, form.
A. Well, the -- speed required? Speed required for playback?
Q. (By Mr. Stephens) In other words, the -- the time it takes to transfer a multimedia file from one disk to another on a computer in the mid Eighties was not restricted to the amount of time required to play that file back, right?
MR. PAYNE: Objection, form, assumes facts.
A. I guess I don't know that. I mean, you could certainly imagine building a system where you did put some type of constraint on what was going on.
Q. (By Mr. Stephens) I'm not -- I'm not asking about an imaginary system. I'm asking about a typical multimedia -- a typical Unix workstation used by a person of ordinary skill in

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the art.
MR. PAYNE: Objection, form.
A. Well, first off, I don't know that the term "multimedia file" even existed --
Q. (By Mr. Stephens) Well, let's say audio file.
A. -- in the 1988 time frame. So, however the audio was represented, it was simply bits. And as far as the file system is concerned, bits are bits and the bits will be moved from Point A to Point B and there's no reason to expect that the bits that happen to belong to an audio file would be treated any better or any worse than the bits that belong to, say, a -- a user's dissertation file.
Q. So, the computer doesn't know how long it would take to play that audio file back when it's moving it from one disk to another, right?
A. A generic, ignorant computer without prior programming or special features, certainly it has no way to know anything. The -- what the computer knows about the data is really just the file system structure and how big it is and where it is.
Q. So, the transfer time would not be limited to or restricted to the amount of time required to play that file back, right?
MR. PAYNE: Objection, form, incomplete hypothetical.

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A. Sorry, I lost my train of thought. Can you repeat the question?
Q. (By Mr. Stephens) Sure. So, when you're copying an audio file from one disk to another disk in a Unix workstation in the mid Eighties, the time required to make that copy isn't restricted to the amount of time required to play that file back, right?
MR. PAYNE: Objection, form. Where -- what are you talking about, Unix-based workstations? That's not a declaration --
MR. STEPHENS: Make your objection. Stop --
MR. PAYNE: I'm going to instruct her not to answer the question.
MR. STEPHENS: You're going to -- okay.
MR. PAYNE: It's beyond the declaration.
MR. STEPHENS: All right. You're going to instruct her not to answer?
MR. PAYNE: If you've got a specific prior art --
THE WITNESS: I'm sorry, could I take a break and --
MR. STEPHENS: No. There's a question pending.
MR. PAYNE: -- you've got specific prior art in the declaration. You're suggesting hypotheticals that assume facts not in evidence. And, so, I have no choice but to

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10:23:59 1 instruct her not to answer.
10:24:00 2 Q. (By Mr. Stephens) Are you going to follow your
10:24:01 3 counsel's advice?
10:24:02 4 A. Yes.
10:24:01 5 Q. Okay.
10:24:02 6 THE WITNESS: Is it okay if we take a little
10:24:04 7 break?
10:24:05 8 MR. STEPHENS: Then we can take a break.
10:24:07 9 All right. I'll be asking for another day of
10:24:0910 deposition with this witness after we move to compel on this
10:24:1011 point.
10:24:1512 THE VIDEOGRAPHER: Off the record at 10:24.
10:24:1713 MR. PAYNE: And the objection stands.
14 (Recess taken)
10:35:2615 THE VIDEOGRAPHER: Beginning of Tape 3 to the
10:35:2816 deposition of Dr. Hemami. The time is 10:35. We're back on
10:35:3317 the record.
10:35:3318 Q. (By Mr. Stephens) Okay. Dr. Hemami, let's see, we
10:35:3719 were still talking about a person of ordinary skill in the art
10:35:4020 in the mid Eighties. Now, it would have been known to such a
10:35:4421 person that analog-to-digital and digital-to-analog convertors
10:35:5122 were things that were available to them, right?
10:35:5623 A. Yes. The existence of A to D and D to A would have
10:35:5924 been known.
10:36:0125 Q. And that's true both for audio and for video; is that

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10:36:03 1 right?
10:36:07 2 A. Yes. Although, the A-to-D conversion video were
10:36:13 3 substantially more specialized and difficult to get; but they
10:36:16 4 would be aware that it was possible to do that.
10:36:19 5 Q. Okay. And I think we've already talked about the use
10:36:29 6 of disk drives being well known at the time to store digital
10:36:35 7 data; is that right?
10:36:36 8 A. Yes.
10:36:40 9 Q. Now, was it known to use external storage devices
10:36:4310 like disk drives on a SCSI interface?
10:36:5411 A. Storage external to a computer that contained the CPU
10:37:0412 unit was known, yes.
10:37:1213 Q. And the Small Computer Systems Interface or SCSI
10:37:1414 interface, that was also known, right?
10:37:1815 A. I don't know what the time was on the SCSI interface.
10:37:2016 Q. Would you agree that, at least with respect to
10:37:2317 personal computers, the primary types of personal computers in
10:37:2718 the marketplace at the time were PCs and Apple Macintoshes?
10:37:3219 A. I think we called them IBMs at the time.
10:37:3420 Q. Okay.
10:37:3621 A. Certainly the -- well, there were actually quite a
10:37:3822 lot of computers. I had several Commodore computers. I think
10:37:4423 that Radio Shack's Tandy brand had a fair chunk of the market.
10:37:4924 And I think we -- we referred to IBMs and IBM clones.
10:37:5325 Q. Okay. And Apple Macintoshes were available?

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10:37:58 1 A. They were available; but they certainly did not have,
10:38:01 2 I think, really very much market base.
10:38:03 3 Q. Okay.
10:38:04 4 A. They were expensive. I -- they were also, I think,
10:38:08 5 really marketed very much to academic institutions and perhaps
10:38:13 6 not so much to the general public.
10:38:15 7 Q. So, a person who had recently graduated with a
10:38:20 8 electrical engineering degree might well have owned an Apple
10:38:25 9 Macintosh, right?
10:38:2610 A. No, I don't think I would say they might well have
10:38:2711 owned. They may have used one, depending on what institution
10:38:3312 they went to.
10:38:3313 Q. Okay. Well, they were commonly known at least,
10:38:3614 right?
10:38:3615 A. Certainly after the commercial during the Super Bowl,
10:38:3916 I think they were commonly known.
10:38:4117 Q. And that was the Big Brother commercial you're
10:38:4418 referring to?
10:38:4519 A. Yes.
10:38:4620 Q. And Apple Macintoshes had SCSI ports so that you
10:38:5021 could use an external disk drive; is that right?
10:38:5322 A. I do not know if that's right or not. I do not
10:38:5523 remember what was on the back of those units.
10:38:5724 Q. Okay. Well, certainly SCSI interfaces for external
10:39:0125 computer drives were available on many platforms, right?

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10:39:04 1 A. I don't know that. I don't actually know what -- I
10:39:06 2 don't remember what was sitting off the back of those units.
10:39:09 3 Q. Okay. Fair enough. Amigas were another type of
10:39:13 4 computer that was available at the time; is that right?
10:39:15 5 A. Amigas did exist, yes.
10:39:29 6 Q. Now, for any given file representing audio, there is
10:39:36 7 some rate at which it will be transferred faster than
10:39:39 8 real-time, right?
10:39:44 9 A. I -- this question is a little bit vague. Perhaps
10:39:4810 you could be more specific for the -- what's going on.
10:39:5011 Q. Okay. Fair enough. Sure. In your -- your tutorial,
10:39:5212 you talked about faster-than-real-time transmission being
10:39:5713 determined by simply taking the amount of time it takes to
10:40:0014 transmit a file and comparing that to the amount of time it
10:40:0215 takes to play back that file and if it's -- if the time
10:40:0816 required to transfer is less than the time required to play
10:40:1117 back, then you've transmitted faster than real-time. Do you
10:40:1318 remember that?
10:40:1419 A. Yes. That's -- that's an accurate representation of
10:40:1620 what I said in my tutorial.
10:40:1821 Q. Okay. So, for any given file, there's some
10:40:2022 transmission rate at which it will be transmitted faster than
10:40:2423 real-time, correct?
10:40:2524 A. According to how I explained it, yes, that's correct.
10:40:3225 Q. And there's generally going to be at least an average

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I declare under penalty of perjury that the foregoing is true and correct.

_____
SHEILA HEMAMI

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by the witness, SHEILA HEMAMI, on this the _____ day of _____, _____.

_____
NOTARY PUBLIC IN AND FOR
THE STATE OF _____

My Commission Expires: _____

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STATE OF TEXAS
COUNTY OF HARRIS

REPORTER'S CERTIFICATE

I, Dana Richardson, a Certified Shorthand Reporter in and for the State of Texas, do certify that this deposition transcript is a true record of the testimony given by the witness named herein, after said witness was duly sworn by me. The witness was requested to review the deposition.

I further certify that I am neither attorney or counsel for, related to, nor employed by any parties to the action in which this testimony is taken and, further, that I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

I further certify that the amount of time used by each party at the deposition is as follows:

Mr. Garland T. Stephens - 04:42

SUBSCRIBED AND SWORN TO under my hand and seal of office on this the _____ day of _____,

Dana Richardson

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