EXHIBIT 32

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO)

APPLE COMPUTER, INC.,	)	
	)	
Plaintiff,	)	
	)	
-against-	)	Case No.
	)	C-06-00019
BURST.COM, INC.,	)	(MHP)
	)	
Defendant.	)	

DEPOSITION of JOEL HALPERN, an Expert Witness, taken by Defendant at the offices of Susman Godfrey, L.L.P., 590 Madison Avenue, New York, New York, on Monday, November 13, 2006, commencing at 10:11 a.m., before Charleane M. Heading, a Registered Professional Reporter and Notary Public within and for the State of New York.

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it.

Q Where does it say that? Help me out here because I don't see that language. Where does it say that?

A It says, "storing the compressed representation of the audio/video source information."

So you have to have compressed the whole program before you store it.

Q So the entire program that's being compressed, in your view, needs to be stored at some point, correct?

A That is certainly one of the things it says, yes.

Q So at some point you need to store the fully compressed source information, correct?

A You need to -- yes.

Q But you cannot start the storage process until compression has been fully completed under your construction, is that correct?

A The patent is written as a single set of steps. I'm sorry. Yes, that is -- you can't do it that way.

Q So what happens to those bits that

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are, are being compressed before they're stored? Where do they go?

A I don't know.

Q Is there any place they could possibly go before storage?

A That depends on what the construction of storage and random access storage would mean.

Q Well, it talks about storing the time compressed representation, correct?

A Uh-huh.

Q Okay. Where is the time compressed representation before it is stored?

A Not specified.

Q Where could it be?

A It's not specified.

Q Because it's a technical impossibility, correct?

I mean just, is there a way to fully compress it and not start the storage process before full compression takes place?

A Your question seems to presume that all storage in the machine is this storage. If that's true, then even if you do it in pieces the

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claim doesn't apply.

So the question is, the question -- I can't answer the question as you've asked it.

Q I'm sorry. I missed that. Why can't you answer my question?

A Because you're hypothesizing something about the way storage works and what constitutes the storage of the claim which is the storage of the complete program and I don't know, and you're then saying isn't it impossible to do something. Well, I don't know if it's impossible but the way you worded your question, anything would be impossible.

Q Well, the storage that's claimed is storage of the time compressed representation, right?

A Uh-huh.

Q We can at least agree on that point, right?

A Yes.

Q And -- are you okay on time?

A You can keep going through this series of questions.

Q Okay. I'm trying to figure out what

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would happen to the signal after, after it's time compressed in your world but before it's stored.

A I'm asked to hypothesize what they might have done. There are things they could do. There are things I could imagine but I'm stuck guessing and I don't --

Q What are they?

A -- as an expert choose to guess. Guessing is not what experts are supposed to do.

You're asking me to guess where it might be. There isn't the random access storage for the time compressed representation.

Q I'm trying to figure out under your view of the things that requires this lock step approach, how the claimed invention could ever operate, Mr. Halpern.

A That isn't the analysis I've performed.

Q Have you thought about that? Have you thought about whether your claim constructions, you know, make technical sense in the context of actually having an operable system?

A I believe you're asking two different questions.

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I have definitely thought about whether my claims constructions make technical sense.

Q In the context of a fully operable transceiver as claimed?

A I believe that's a different analysis.

Q And you haven't done that analysis yet?

A Correct.

Q Fair enough.

Under your claim constructions, the time compressed representation must be fully stored in random access storage before the transmission or output process begins. Correct?

A Correct.

Q Using your time compression construction, where would the time compression take place in the context of these claims?

A The time compression has to take place in the step that says compressing to a time compressed representation.

Q Okay. That's before the storage, correct?

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A Yes.

Q Okay. Is it your view that the time compressed representation, using your time compression, is stored in random access storage using the same bits as the audio/video source information?

A I'm sorry.

Q Okay. Let me start over then. That was a poor question.

You agree that claims require the storage of time representation?

A Yes.

Q When one performs time compression on the audio/video source information -- well, let me back up.

Are you saying that time compression is performed before storage in your constructions?

A The claims do require that.

Q Okay. Where is that performed?

A '995. "Compression means, coupled to said input means, for compressing said audio/visual source information into a time compressed representation thereof having an associated burst time period that is shorter than

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a time period associated with a real time representation of said audio/video source information."

That occurs after input and before storage.

Q Now, what type of time compression would create a time compressed representation before storage?

(Pause)

A Some form of time compression that produced a representation that could then be stored.

Q I want a specific type of time compression that can create a time compressed representation before storage. Can you give me one specific type?

A I'm sorry. I don't understand the question. What do you mean by type?

Q Any, any apparatus or structure in your time compression world that would create a time compressed representation for storage?

A A structure that set up the necessary components for transmitting in a shorter time period with the same bits and stored, and

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associated with it a time period would constitute such a time compressed structure.

Q Describe for me what one such structure.

A I haven't -- that wasn't, I mean -- first off, that isn't, my job wasn't to form an expert opinion as to what kind of structure they might have described that they didn't describe.

We've already discussed the fact they didn't describe the time compression. They don't give the mechanism for doing it. Assuming they did it, then they could be stored.

Q You can't give any type of structure for me today that would accomplish your time compression before storage, is that correct?

MR. BROWN: Objection. That mischaracterizes his testimony. He just did that.

A I gave you an example of something where the compression structure sets up the necessary processing so that the later transmission would be at a higher rate and stores that time period with, marks the time period with the representation so that the right time

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compressed transmission would occur later.
Q What's --
A That's a time compressed representation.
Q What structure is it though? Describe it for me.
A In some other invention, it would probably be a processor with suitable programming. I don't know what it would be. Here they didn't include the structure.
Q In your time compression world, it's the same bits that are stored, correct?
A Yes.
Q If you look at the bits that represent the audio/video source information and you compare those bits to the time compressed representation, the bits are going to be the same, correct?
A Yes.
Q So what's the difference between the audio/video source information and the time compressed representation?
A Whatever is needed to cause it to be time compressed.

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Q What is it, sir? I can't figure it out. Can you tell me, please?
A I haven't formed -- I haven't attempted to answer that question.
Q Well, the claims talk about two different things: Number one, an audio/video source information and, number 2, a time compressed preparation. Correct?
A Yes.
Q And you've told me that those two things are, quote, "the same things," correct?
A They have to contain the same bits. The time compressed representation, for example, has to also include an associated burst time duration.
Q And where would that be included? Would there be other bits?
A Yes.
Q Where would those bits be?
MR. BROWN: Objection. Incomplete hypothetical. Vague.
A I don't know.
Q You don't know?
A Because it -- they would be in some

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structure other than what's disclosed because there is no structure disclosed for this. They'd end up in the storage -- sorry.
The other answer -- maybe I misunderstood your question. I thought you meant where would they be during the compression.
In the storage, they end up in the storage of the time compressed representation which we have the structure for in the report and that, those, that information would have to be in that information.
So DRAM, SRAM, CMOS memory or optical disk memory is where that would end up along with the other stored time compressed representation.
Q So does the patent spec disclose a random access storage that actually stores the time compressed representation as claimed?
A I believe it stores structure link for storing and that if the time compression mechanism existed, if you could get a time compressed representation, then we could get to storing that.
Q In your time compression world, are

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you saying additional bits are added to the time compressed representation?
A You asked me to guess one method. One way to do it would be that.
Q Well, what would those bits designate?
MR. BROWN: Asked and answered.
Q Well, let me just walk through this because I'm confused. I'm sorry.
You've got bits that represent the source information, correct?
A Uh-huh.
Q And you're saying those same bits are also contained in the time compressed representation, correct?
A Uh-huh.
Q Okay. And then you're saying the compression step ads additional bits, is that correct?
MR. BROWN: Asked and answered.
A You have to have associated duration and you might, one hypothetical -- you asked me to

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A I recall seeing it.
Q Okay. If Burst is correct that this term "input means" is not subject to Section 112, paragraph 6, would you agree with the Burst construction?
A I don't know. I haven't analyzed that case. That's, because you have to be careful about the meaning of terms.
If this is not a 112.6 term, I would have to step back and figure out what it would precisely mean and that isn't an analysis I've done and it would be unfair to you to say "yes" or "no" to that answer, to that question.
Q So you don't have an objection to the Burst construction nor do you endorse it if the claim limitation input means is not subject to 112.6, right?
A I have not analyzed it. I do not, therefore, at this time have an objection nor do I at this time agree with it.
Q Okay. Fair enough.
In the second paragraph, you mention a modem as being an input means. Is that correct?
A Yes.

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Q Is that -- that's the transceiver/receiver 22 shown in Figure 2, correct?
A I believe so.
Q I noticed in your construction on the next page on the '995 patent that you did not include the modem. Was that an error or was that intentional?
A I believe the modem should be listed there.
Q Okay. Well, so you believe part of your construction for input means in the '995 should include modem?
A Yes.
Q Should it include the word "modem" or the audio/video transceiver/receiver that's identified as item 22 in Figure 2?
A I used modem because in column 8, they refer to a modem.
Q As an example?
A As the actual structure for that.
Q Okay. So you would disagree with using the words audio/video transmitter/receiver, instead of modem?

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A I believe the correct term or the correct structure from the patent is the modem.
Q Would you add the modem to your constructions for input means on the '705 and '932 patent as well?
A Certainly not on '932.
Q But on the '705 would you add it?
A I would have to go look.
(Pause)
A Yes, I believe I would.
Q So you wish to amend your report for the input means in the '995 and '705 to include modem, correct?
A They appear in my opinion and they should have appeared in the details.
Q Okay.
A But modem appears, again, in the '705 summary and it should have appeared in the details as well.
Q The Burst construction, if this phrase is construed under the 112.6, includes a microwave satellite transceiver?
A For which patent?
Q For the '995 patent, for example.

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A Okay.
Q Would you disagree with including a microwave satellite transceiver for the '995 input means? And specifically I'm looking at column 2, line 50 and line 51. That talks about satellite transmission or reception.
Do you see that, sir?
A I see that line. I believe there's no other reference to microwaves so that although it's described in the summary, it's not, it's not connected and it's not, the structure isn't clear.
Q So if that summary -- strike that.
Does the satellite transmission or reception passage that appears in the summary suggest to you that one type of suitable input means is a satellite transceiver?
A It suggests that at some point, they were thinking about the relevance of satellite transceivers but they did not, in spelling out the structures in the embodiment, carry through.
I -- that's why it's not there. I'm looking at '995.
Q Not there in your construction?
A Yes.

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Compound.

A I'm not -- I don't understand the question.

Q Well, you've referred to several prior art references in support of your time compression construction, correct?

A Yes. Yes.

Q If you look at how you've construed time compression, have you construed it in a manner that would cover the type of time compression that is taught in all of those references?

MR. BROWN: Same objection.

A I'm having trouble understanding a question. I'm sorry.

Q Okay. Well, you've given several examples of what you call time compression in these prior art references, right?

A Yes.

Q And I just want to understand whether those examples would fall within the scope of the claims as you've construed them for that specific time compression construction.

A I believe time compression, as it is

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used in all of the cited prior art, and time compression and time compressed representation as it is used in the claims refer to the same process.

Q In the '995, one example of the compressor/decompressor 26 is the A.M.D. chip, correct?

A Yes.

Q There is nothing in the specification of the '995 that suggests that Burst was trying to limit the compressor/decompressor to that specific A.M.D. chip, correct?

A I don't believe I can recall anything that limited it to only that one, but that is the only substantiation described for that.

Q So in 1988, would one of ordinary skill understand that other chips could perform data compression algorithms to achieve data compression as described in the '995 specification?

A My focus in the analysis was on what components were described, not what other things are equivalent as known by one of ordinary skill

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in the art.

I understand that's relevant, but that isn't what I did my report on and I haven't, I certainly haven't gone to try to determine what the best description of the equivalents. Does it have to be another fax chip or is it -- I don't know what the right set of things that would be equivalent precisely, because it's important to be precise, would be because that wasn't an analysis I had been asked to do.

Q Well, would you agree that in 1988, other chips existed that could perform data compression?

A Yes.

Q And specifically the type of data compression disclosed in the Burst patent, correct?

A There are other chips, there were other chips in 1988 that could do the same kind of data compression that the A.M.D. chip described in '995.

Q At the bottom of page 28 --

A Of my report?

Q Yes. You say, "'Compression' is a

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set of techniques; a means for compression is simply any structure that performs those techniques." Correct?

A Yes.

Q The means for compression that could perform the data compression could be, for example, the A.M.D. chip, right?

A That would perform data compression, yes.

Q Other chips could perform data compression, correct?

A Yes.

Q A CPU running a software algorithm could perform data compression in 1988, correct?

A Depending on the constraints of the data compression algorithm. Some algorithms could be performed by CPUs.

Q In 1988?

A In 1988.

Q Some decompression algorithms could be performed by CPUs, correct?

A Correct.

Q Those were actually implemented in that time frame, correct?

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A Yes.

Q Would one of ordinary skill in 1988 look at the compressor/decompressor 26 and understand it could be a CPU executing a compression software algorithm?

Let me, let me -- I didn't phrase that properly so I'll strike it.

In 1988, would one of ordinary skill look at the compressor/decompressor 26 and understand that it could be a CPU executing a data compression software algorithm?

A Not in the patent, not in the specification of these patents with the claims.

Q Let's not worry about the claims right now. You know, the spec talks about data compression, right? We've gone over that?

A Yes.

Q I think you told me that compressor/decompressor 26 could perform certain data compression, right?

A Yes.

Q Okay. So my question is in 1988, would one of ordinary skill look at the compressor/decompressor 26 and understand that it

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could be a CPU executing a data compression software algorithm?

A I don't believe so.

Q Why is that?

A As I say in my report, there's multiple reasons. The patent specifically refers to the compression as occurring in 26 which is specifically identified as a separate structure from the CPUs that are discussed, CPU28 and CPU31.

Neither the CPU -- the CPUs that are identified aren't identified as doing compression. Similarly, given the performance requirements, a general purpose processor in 1988 simply couldn't do the job.

Q What performance requirements are you talking about?

A Having an effective solution that can cope with the media.

Q Can you be more specific?

A Well, the easiest analysis is to merely keep up with real time from the source and you can't even come close to keeping up with real time with any compression algorithm, any data compression algorithm at all in 1988 running on a

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general purpose processor, a CPU such as they refer to for other CPU functions in this patent.

Q You don't believe in 19 -- well, let's back up.

Where does the patent say that there's a requirement for real time compression?

A There are implications in the structure that suggested it would be likely to be built with the real time because there's only two pages, two video frames of RAM in the processing.

Also, if you're talking about 2 hour programs, it's not, it's not an effective device if it takes hours and hours and days to perform its job.

Very strange to have a device that takes days to compress something so that I can ship it faster than real time. I'm sorry. It doesn't make sense.

Q Is there some language in the specification in particular that would support a conclusion that real time compression is required by the invention?

A No.

MR. BROWN: Asked and

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answered.

A That's not what I said. I didn't say it was required.

Q Okay.

A But it would be, it's what one -- it's the order of that performance one would expect from the system and there are implications, not explicit language, but implications that lead one to that conclusion.

Q I want to be very clear about this. Is there a requirement with respect to the claimed inventions?

A There is an explicit requirement on the decompressor.

Q Of what?

A That it be able to function in real time.

Q I'm talking about the compression that was found.

A I believe it was implicit that it either be real time or at least near real time for the nature of the invention.

Q In 1988, is it your testimony that real time or near real time data compression could

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Q Okay. So you did actually analyze the A.M.D. spec sheet to figure out whether it could compress, data compress audio information, right?

A Yes.

Q And would it surprise you to learn that it could compress audio information?

A Yes.

Q Could chips that perform data. Compression back in 1988 compress audio in real time?

A That would have depended on the chip design.

Q Well, do you know if chip designs were available in 1988 to compress audio information in real time?

A I believe there were such chips.

Q Do you know whether there were data compression ships available in 1988 to compress full motion video in real time?

A I don't know.

Q You don't know one way or the other?

A No.

Q Would you agree with the concept

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that hardware and data compression circuits can compress faster than a CPU running a software algorithm?

A In 1988?

Q Yes. In 1988, thank you.

A In 1988, special purpose hardware circuitry, for example, for a specific data compression algorithm would generally outperform processors, general purpose processors.

Q On page 31, you say, "While the disclosure of a single means for data compression might have supported claims directed to data compression, the patent as issued lacks support for claims limited to time compression," correct?

I'm on lines 18, 19 and 20, sir.

A Yes.

Q I want you to assume that Burst is correct that the claims are directed to data compression and not to time compression, okay?

A I hear you.

Q Okay. Would it be your view if that assumption is correct that the specification discloses sufficient structure to achieve data compression?

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A If data compression were what were meant by the claims, then probably the A.M.D. chip that is disclosed is structure for data compression in the '995 patent.

Q What do you mean "probably"? Is there some hesitation? Why did you use the word "probably"?

A As we discussed, there's the question of capability to handle audio and video and whether that's relevant which I have not analyzed but which you raised and, therefore, raises questions in my head because you raised those questions.

Q Let's look at the '995 patent, please, specifically claims 20 which covers, in part, decompression means. Correct?

A Yes.

Q You mentioned before that you thought the, either the Burst claims or Burst specification suggested that real time decompression is a requirement.

Is that correct or not?

A I said that, yes.

Q So you do believe that on the

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decompression side, real time compression is a requirement?

A Real time.

Q I'm sorry. Real time decompression is a requirement.

A Yes.

Q Is that in the claims or the specification or both?

A I recall it specifically in the claims. I do not remember whether there is also explicit similar text in the specification.

Q You don't know of any express language in the specification that would suggest that real time decompression is required, is that correct?

A I do not recall.

Q Okay. Sitting here today, you can't think of any without, without going back and looking at the spec, right?

A As I said earlier, it's been a while and I have to go back and look.

Our earlier discussions have not been on the decompression side so I would have to look at those portions of the specification.