EXHIBIT B

UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

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THE APPLE iPOD iTUNES ANTI-TRUST LITIGATION,

No. C-050037-JW(RS)

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DEPOSITION OF ROGER G. NOLL, Ph.D.

Taken before EARLY K. LANGLEY, RPR, RMR

CSR No. 3537

September 19, 2008

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advantage. I don't know.

Q. Okay. Are you sure that the yardstick method can be implemented in this case?

A. As I have said in my report, that is the one I'm least happy about, all right, in that it requires identifying the appropriate comparative products. And my -- I believe that's -- that's the hangup, is identifying the appropriate benchmark products. 11:33

But, you know, as I've said in the report, there are some candidates out there. If the plaintiffs had completed the market correctly, then the most obvious candidates are the products that are the closest functionally to portable digital media players, but that are not in the same market. 11:34 11:34

Q. Okay.

A. And I also gave an explanation of why it's possible, although you normally don't do it, you might even be able to use products in the same market because of the effect that tying has in segmenting the market, so that even though in the absence of anticompetitive acts, all the products would be in the same market, the anticompetitive act may have reduced competition among portable 11:34 11:34

digital media players sufficiently such that you can actually use the -- some of the competitors in the portable digital media player market as a yardstick. So that's possible, but, again, it requires data that I'm not sure exists. 11:35

So, I would say that's a candidate, someone should pursue it, if they were going to estimate damages, but I have more doubts that that one will work than the other two.

Q. Have you done enough work to determine if the markup method can, in fact, be implemented in this case? 11:35

A. Well, actually, I'm not the one who did the work. I cited a paper that I found that was fairly recently written that -- that essentially does this. 11:35

Now, it doesn't have internal data, unfortunately. It has -- what they did is they tried to build up the cost.

Q. Okay. Can you just answer the question? And the question is: Have you done enough work -- have you seen enough work to determine if the markup method can, in fact, be implemented? 11:35

A. Yes.

MS. SWEENEY: Object. He was answering 11:35

income, the penetration of complementary products like personal computers and then there's market level phenomenon such as the price of alternatives.

Q. All right. Anything else that you would list as factors that you would need to include, or at least test in your regression analysis? 11:46

A. No. That's it. I mean, it's -- it's the standard approach to supply and demand analysis where you look at the way costs and the way demand affects price. 11:46

Q. Okay. Do you also look at the reason that people buy iPods?

A. Well, the reason that people buy iPods is background information to what the demand curve looks like. So you don't go out and measure people's moods and things like that. You measure the qualitative attributes of the product and the conditions in the market as a way to capture what their demand is. What their reasons are in some sort of psychological sense is irrelevant. 11:46 11:47

Q. Okay. What are the qualitative factors or the attributes that you would look at?

A. The, first of all, the functional features of a product, what -- 11:47

somebody had trouble with some particular program isn't sufficient. You really have to do a serious comparative analysis.

Q. You're aware that the iPod was offered for sale some 18 months before the Music Store was launched; right? 14:07

A. At least, yeah.

Q. Is it possible that the demand for the iPod after April 2003, was caused by the same factors as the demand for the iPod before April 2003? 14:07

A. Well, is it possible, yes.

Q. Plausible?

A. I want to say that the demand for the iPod was unaffected by the launching of iTunes Music Store would be ridiculous. 14:07

Q. Okay. Let's say that on April 1st, 2003, hypothetically, three things happened, the Music Store was launched.

A. No, it wasn't. Not April 1st. April 20 something. 14:08

Q. That will not matter for purposes of this hypothetical.

Music Store was launched, it included something that resulted in a differential ease of 14:08

entry, and a new iPod version was introduced that had some functional improvement.

Part of your task will be to try and determine the impact on the demand for the iPod from each of those three things; right? 14:08

A. What was the third?

Q. The new iPod.

A. Well, the new iPod, I understand, and the launch of iTMS, I understand. What's the third?

Q. Two aspects of iTMS. One is just the existence of a new supply for music for an iPod and the other is the differential ease of entry aspect that we talked about this morning. 14:08

A. Right.

Q. So of those three aspects of what happened in this hypothetical in April of 2003, one of your tasks will be to separate the impact on the demand for the iPod of those three factors. 14:09

A. That's correct.

Q. And how are you going to do that? 14:09

A. Well, the -- let's go back a step as to why this is a problem. All right.

So, the econometric problem here is to separate out the fact, assuming that everything is as stated in the hypothetical. So three things 14:09

happened simultaneously. How does one separate the effects, and the only plausible way that I know to do that is to look at subsequent events that may have affected some but not all of the demand, and try to estimate what they did to 14:09
demand and use that as a mechanism for representing -- for estimating the effects of just the availability in general of digital downloads.

With regard to the new model of the iPod, I -- that doesn't strike me as the hard problem 14:10
because that's -- that's fairly easy to do based on functionality. The harder problem is to separate out exclusivity from simply the existence of digital downloads.

So, but, having said that, there were 14:10
other forms of digital downloads that existed. It's not a -- it didn't go from all -- from nothing to all. But as I said earlier, it went from relatively little being available to relatively lot. And, so, there would be -- one of 14:10
the explanatory variables you would attempt to use would be some measure of the scope of availability of permanent downloads over the Internet, which it wasn't that it was zero before iTunes Music Store; it was just that it dramatically increased with 14:11

iTunes Music Store.

Q. Does the before-after method work when the price of the reference product, here iPods, is declining over time?

A. Yes, because there -- obviously the relevant factor is its profitability, its markup. And all electronic products have declining prices over time. Every Information Technology Case I've ever known about, the issue has been would it have fallen faster. 14:11

Q. The claim for damages in this case, as you understand it, is an alleged overcharge for iPods; is that right?

A. Yes.

Q. Who made that decision that that was going to be the claim for damages? 14:11

A. I don't know. How would I know that?

Q. Well, I mean, one possibility would be that you made it. So let me -- let's rule that out. 14:11

A. Which of my law degrees did I use to decide that?

Q. How did it come to pass that you have focused on performing or strike that.

How did you decide to address your report 14:12