EXHIBIT 3

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE ACACIA MEDIA
TECHNOLOGIES CORPORATION

No. C-05-01114 JW (HRL)

MDL No. 1665

CERTIFIED
COPY

DEPOSITION OF ANDREW B. LIPPMAN

Los Angeles, California

Wednesday, August 31, 2005
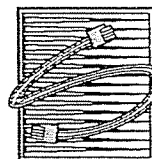
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BETH HANDWEILER
CSR No. 3492

JOB No. 38059

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1   UNITED STATES DISTRICT COURT
         NORTHERN DISTRICT OF CALIFORNIA
2   SAN JOSE DIVISION

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5   IN RE ACACIA MEDIA
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6   No. C-05-01114 JW (HRL)
                                 MDL No. 1665
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15   Deposition of ANDREW B. LIPPMAN, taken on behalf of

16   Plaintiff, at 555 South Flower Street, 50th Floor, Los

17   Angeles, California, beginning at 9:45 a.m. and ending

18   at 1:26 p.m. on Wednesday, August 31, 2005, before BETH

19   HANDWEILER, Certified Shorthand Reporter No. 3492.

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 2

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13   5   Declaration of Andrew Lippman, dated August   6
           25, 2005

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      6   Declaration of S. Merrill Weiss in Support   57
15   of Acacia's Opposition to Motion for Summary
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	1	A No. We discussed it over the telephone. That
	2	was done by telephone directly.
	3	Q You dictated your transceiver report over the
	4	telephone to Jones, Day word processors. Is that
09:55	5	correct?
	6	A Well, I wouldn't use the word dictate, because
	7	I said the words that I wanted used.
	8	Q But you didn't dictate. You mean you explained
	9	the points of your report?
09:55	10	A I composed the points. I phrased the points
	11	and I stated the points.
	12	Q Now, who was this person you were stating the
	13	points to for the purpose of --
	14	A I believe it was Charles Wong.
09:56	15	Q And who is Charles Wong?
	16	A The person seated two seats to my right.
	17	Q Do you understand Charles Wong to be a word
	18	processor?
	19	A Pardon?
09:56	20	Q Is he a word processor?
	21	A He's mighty good at it.
	22	Q So he's a typist?
	23	A He's mighty good at it. He can do it.
	24	Q Is he also a lawyer?
09:56	25	A I believe he is.

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1   Q   I'm just trying to understand what occurred

2 here.

3   A   That's okay.

4   Q   He's a lawyer who you explained the points to,

09:56   5 that then typed them down into a report form. Is that

6 how the process worked?

7   A   Substantially, yes.

8   Q   So am I correct that at no time did you prepare

9 any written document yourself, either in handwriting or

09:56 10 anything that you or someone at your direction other

11 than Jones, Day created, in the preparation of your

12 transceiver report?

13   A   I'm not exactly sure. Did I ever type my own

14 notes to myself?

09:57 15   Q   No.

16   A   Or did I ever send my writing to them

17 electronically?

18   Q   In terms of the initial preparation of your

19 transceiver report, you did not, yourself, physically

09:57 20 pen any language. Is that correct?

21   MR. McBRIDE: Objection. Vague and ambiguous.

22 BY MR. DORMAN:

23   Q   Can you answer the question? Do you know what

24 it means to write down? You yourself didn't write down

09:57 25 the language that was communicated to Jones, Day. You

15

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1   A   No, you didn't misstate what he said, but in

2   this case we may be using the word "function" in

3   slightly different ways. Okay? The word "function"

4   here is describing what you want it to do, okay, as

11:30   5   opposed to a function which is like a mathematical

6   transformation. Y is a function of X. So I

7   certainly -- fine. Enough said.

8   Q   Now, do you agree with the following statement?

9   That if one of ordinary skill in the art can determine

11:30 10   those three elements for a particular encoder, namely

11   the input function as you've described it --

12   A   Transformation.

13   Q   -- and output, he or she will know how a given

14   encoder is supposed to work.

11:30 15   A   In general, yes, but you might also want to

16   know where that output is directed. If that helps

17   describe what the output is more fully.

18   Q   Is it your testimony that if you don't know

19   where the output is directed, you can't know how a given

11:31 20   encoder is supposed to work, even though you know those

21   other three elements?

22   A   No, that's not what I said either.

23   Q   Do you agree that depending upon the type of

24   encoding to be done, one of ordinary skill in the art

11:31 25   may choose to implement the encoder in hardware or in

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1   software as appropriate to the system he or she is

2   building?

3   A   Say it again.

4   Q   Do you agree that depending upon the type of

11:31   5   encoding to be done, one of ordinary skill in the art

6   may choose to implement the encoder in hardware or in

7   software as appropriate to the system he or she is

8   building?

9   MR. McBRIDE: Objection.   Vague and ambiguous.

11:32 10   THE WITNESS: That's a hard sentence to

11   disagree with.   It doesn't say much.

12   BY MR. DORMAN:

13   Q   Do you agree that the person of ordinary skill

14   in the art we're talking about is capable of building an

11:32 15   identification encoder if the input, function and output

16   is disclosed?

17   MR. McBRIDE: Same objection.

18   THE WITNESS: Do I believe that someone of

19   ordinary skill in the art could build it --

11:32 20   BY MR. DORMAN:

21   Q   If the input, function and output --

22   A   If the input, the transformation and the output

23   were described, I suppose depending on the complexity of

24   the encoder, they may or may not, but in general often

11:32 25   one would hope, yes.   But I can give you an example.

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1   MR. McBRIDE: It's completely unclear to me. I

2   don't know that any term was coined. Certainly

3   "identification encoder," as I understand the word

4   coined, was not coined in the specification.

11:35   5   BY MR. DORMAN:

6   Q   Let me go to some issues relevant to an

7   expert's engagement. Are you an employee of MIT?

8   A   Yes.

9   Q   And I take it you receive income from MIT

11:35   10   itself?

11   A   Some would call it that.

12   Q   I'm just trying to understand who your -- I

13   mean the actual check you get is from MIT?

14   A   Absolutely.

11:35   15   Q   The MIT Communications Futures Program, you're

16   actively involved in that, correct?

17   A   I certainly am.

18   Q   Did you co-found that?

19   A   Yes.

11:36   20   Q   Are you involved with the process of raising

21   money for that program?

22   A   Yes.

23   Q   And I understand from your declaration that the

24   budget for that program is funded in part by Cambridge

11:36   25   MIT Institute and also by industrial sponsors. Is that

73

1   correct?

2   A   That's correct.

3   Q   And is part of your job to actually go to

4   potential industrial sponsors and ask for money?

11:36   5   A   I ask them to join the program. I encourage

6   them to join the program.

7   Q   And if they join the program, is there a

8   certain amount they customarily pay to join?

9   A   Yes.

11:36   10   Q   How much is that per year?

11   A   It depends on the style of membership, but

12   generally either $100,000 per year or $200,000 per year.

13   Q   Who is the person principally responsible for

14   soliciting those funds? Is that you?

11:37   15   A   For soliciting -- you mean for approaching

16   companies and asking them to join the program?

17   Q   Yes.

18   A   We prefer to use the phrase "join the program"

19   as opposed to saying "solicit funds."

11:37   20   Q   All right.

21   A   There are four people who are what you would

22   call the principals who would be principally charged

23   with that, and I am certainly one of them.

24   Q   Now, are you familiar with the yearly budget of

11:37   25   the program?

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  1        A    Yes.

  2        Q    What is the yearly budget of the program?

  3        A    When I say that I don't budget it by year,

  4   because there is -- it's not like a contract that has to

11:37  5   wind down and spend exactly so much money per year.  In

  6   other words, the amount of money that the program has

  7   for its research can be extended.

  8        Q    It's not exactly yearly --

  9        A    My point is to make the budget income exceed

11:38 10   the outflow.  The burn rate has to be less than what we

 11   expect to have for the length that we want to run it.

 12             On the order of $2 million a year.  A little

 13   less.  Sometimes that number is a mix of what we hope to

 14   sign as sponsors --

11:38 15        Q    Of that approximate $2 million a year, what

 16   percentage of that comes from the Cambridge MIT

 17   Institute and what percentage from sponsors, roughly?

 18        A    Well, it's about $700,000, $800,000 from the

 19   industrial sponsors for this year.  On the order of

11:38 20   that, plus a little from CMI, Cambridge MIT Institute.

 21        Q    Are there any sponsorships less than $100,000

 22   per year?  Is that the minimum?

 23        A    If you join the program you either join it as

 24   an affiliate for $100,000, or you are joining it as a

11:39 25   full sponsor for $200,000.  If you are a sponsor of the
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	1	MIT media laboratory, then you are adding it to
	2	essentially your support of our programs, so that
	3	increment would be $100,000. I could allow a company in
	4	for nothing if I wanted, if I wanted their presence.
11:39	5	But there are currently no supporting industrial
	6	sponsors of the program who have signed a contract for
	7	less than $100,000.
	8	Q Can you tell me who the current industrial
	9	sponsors are?
11:39	10	A Well, there is Samsung, Motorola, Comcast. I
	11	apologize but I'm not good at enumerating the entire
	12	list.
	13	Q Would you take a minute and look at the list of
	14	defendants in this case and tell me if any of these
11:40	15	defendants are --
	16	A Sponsors of CFP?
	17	Q Yes.
	18	A Sure. Somebody else will have to correct me if
	19	I'm wrong as to whether they're parties in this case.
11:40	20	Comcast is a sponsor of the Communications Futures
	21	Program. I already mentioned them. At MIT for a
	22	sponsored research program it's -- I'd like to grow the
	23	program. Maybe I can put it in a simple way. I'd like
	24	to grow the program, and can I keep this list and ask
11:41	25	them -- the ones who aren't are ones that we would

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1   that the term "unique identification code" in the '702

2   patent is ambiguous because it is functionally

3   indistinguishable from the "unique address code?"

4   A   Have I changed my opinion from what I've

12:09 5   written in that sentence?

6   Q   Yes.

7   A   I have not.

8   Q   Did you hear what Peter Alexander said on that

9   issue yesterday?

12:09 10   A   I was there.

11   Q   You don't recall what he said?

12   A   I don't think that I would want to be quizzed

13   on it. I haven't read it or thought about it since.

14   Q   Turn to your paragraph 62. We're moving into

12:10 15   sequence encoder. You say that claim 7 recites that the

16   "sequence encoder transforms digital data blocks into a

17   group of addressable data blocks." Do you see that?

18   A   Yes.

19   Q   Is the time encoder disclosed in the patent

12:10 20   capable of this function?

21   MR. McBRIDE: Objection. Vague and ambiguous.

22   BY MR. DORMAN:

23   Q   To one of ordinary skill in the art reading the

24   specification of the '702 patent, is the time encoder

12:11 25   disclosed to be capable of performing this function?

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1   A   I think that quote there in claim 7 mirrors

2   text in the patent.

3   Q   That's the text from claim 7?

4   A   Yes.

12:11   5   Q   But my question used the word time encoder, not

6   sequence encoder.

7   A   I would have to look at the spec for the

8   patent.

9   Q   Let me help you. Go to column 7, line 57.

12:12   10   A   Um-hum.

11   Q   And read that to yourself, and then if the

12   court reporter will reread my question.

13   (Record read as follows:

14   "Question: To one of ordinary skill

12:11   15   in the art reading the specification

16   of the '702 patent, is the time

17   encoder disclosed to be capable of

18   performing this function?")

19   THE WITNESS: The time encoder described in

12:12   20   that sentence performs the same function. It's claimed

21   to perform the same function. Uses the same words.

22   BY MR. DORMAN:

23   Q   Do you recall Mr. Alexander's testimony

24   yesterday where he talked about a data block being

12:13   25   synonymous with a frame, or words to that effect?

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BY MR. DORMAN:

Q   You don't see where it says it's done by the time encoder?

A   Actually it doesn't even really say that, does it?

12:23

Q   It says, "The sequence of addressable data blocks which was time encoded and output by time encoder."

A   Right. But that doesn't imply that the sequence -- the sequence of addressable data blocks

12:24

could have arrived at the time encoder in sequence, in which case the time encoder would have done nothing to them and passed them on.

Q   On paragraph 67 of your declaration you say,

12:25

"The term 'sequence encoder' does not appear in the specification of the '702 patent. Because the term 'sequence encoder' has no ordinary meaning, and the term is not defined in the specification, a person of ordinary skill in the art cannot understand what is

12:25

meant by a sequence encoder."

Would you agree with the statement that is identical to your paragraph 67, but which included the words "at all" after the word "understand"?

MR. McBRIDE: Objection. Vague and ambiguous.

12:25

THE WITNESS: "A person of ordinary skill

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	1	cannot understand at all what is meant by a sequence
	2	encoder"?
	3	BY MR. DORMAN:
	4	Q Yes. Would you agree with that statement?
12:26	5	MR. McBRIDE: Same objection.
	6	THE WITNESS: That's a good question. I would
	7	have to think about that. This is similar to the kind
	8	of question you asked me before, where it said would it
	9	provide no insight. I'm not sure. I would have to
12:26	10	think about it.
	11	Can you rephrase it and put it in a way that --
	12	BY MR. DORMAN:
	13	Q No, that's the question. This gets back to
	14	why -- you're not able to answer that question?
12:27	15	A It's a lovely question. I would love to think
	16	about it.
	17	Q This is the topic of your expert testimony,
	18	so --
	19	A The topic isn't the word "at all." I mean if I
12:27	20	felt strongly and had thought about it, I would have
	21	been happy to include the word "at all" if it applied.
	22	So I think it's fair to say that I ought to be able to
	23	reflect on it. I guess I can't agree with that, because
	24	in claim 7 there is a statement made as to what the
12:27	25	sequence encoder does that casts more light than zero on

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