# EXHIBIT 3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Inventors: Freeman, et al.

Patent No.: 6,006,227

Filed: June 28, 1996

Title:  Document Stream Operating
System

REQUEST FOR EX PARTE REEXAMINATION
OF U.S. PATENT 6,006,227 UNDER
35 U.S.C. §§ 302-307 AND
37 C.F.R. § 1.510

Mail Stop *Ex Parte* Reexamination
ATTN: Central Reexamination Unit
Commissioner for Patents
P.O.  Box 1450
Alexandria, VA 22313-1450

**REQUEST FOR *EX PARTE* REEXAMINATION OF U.S. PATENT 6,006,227**

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| OTH-C | David Gelernter, "The Cyber-Road Not Taken," *The Washington Post*, April 1994. |

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| Inventors: Freeman, et al. | OF U.S. PATENT 6,006,227 UNDER |
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| Patent No.: 6,006,227 | 37 C.F.R. § 1.510 |
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**REQUEST FOR *EX PARTE* REEXAMINATION OF U.S. PATENT 6,006,227**

Dear Sir:

Third Party Requester, Apple Inc., hereby respectfully requests reexamination pursuant to 35 U.S.C. §§ 302-307, 37 C.F.R. § 1.510, of claims 1-6, 9-17, 20, 22, and 25-29 of U.S. Patent No. 6,006,227 ("the '227 patent") filed June 28, 1996 and issued December 21, 1999 to Eric Freeman, et al. (Exhibit PAT-A). Reexamination is requested in view of the substantial new questions of patentability ("SNQ") presented below. Requester reserves all rights and defenses available including, without limitation, defenses as to invalidity and unenforceability. By simply filing this Request in compliance with the Patent Rules, Requester does not represent, agree or concur that the '227 patent is enforceable,[1] and by asserting the SNQ herein, Requester specifically asserts that claims 1-6, 9-17, 20, 22, and 25-29 of the '227 patent are in fact not patentable and as such the U.S. Patent and Trademark Office (the "Office") should reexamine and find claims 1-6, 9-17, 20, 22, and

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[1] As alleged by Patent Owner in the below defined Underlying Litigation, and as required by 37 C.F.R. § 1.510(a), the '227 patent is still within its period of enforceability for reexamination purposes, to the extent that the '227 patent has not lapsed for failure to pay maintenance fees, has not been the subject of any Terminal Disclaimer, and has not yet been held unenforceable in a court of competent jurisdiction.

25-29 unpatentable and cancel claims 1-6, 9-17, 20, 22, and 25-29 of the '227 patent, rendering claims 1-6, 9-17, 20, 22, and 25-29 of the '227 patent null, void and otherwise unenforceable.

## I.     REQUIREMENTS FOR EX PARTE REEXAMINATION UNDER 37 C.F.R. § 1.510

Requester satisfies each requirement for *ex parte* reexamination of the '227 patent.

### A.     37 C.F.R. § 1.510 (B)(1) AND (B)(2): STATEMENT POINTING OUT EACH SUBSTANTIAL NEW QUESTION OF PATENTABILITY

A statement pointing out each substantial new question of patentability based on the cited patents and printed publication, and a detailed explanation of the pertinence and manner of applying the patents and printed publications to claims 1-6, 9-17, 20, 22, and 25-29 of the '227 patent is presented below in accordance with 37 C.F.R. § 1.510 (b)(1) and (b)(2).

1.   Mander anticipates claims 1-6, 10-17, 20, and 25-29.

Requester respectfully submits that claims 1-6, 10-17, 20, and 25-29 of the '227 patent are anticipated by the Mander.  The reference was not discussed or applied either by the Examiner or the Applicants during the original prosecution and raises a substantial new question of patentability with respect to the claims of the '227 patent because it is not cumulative of any art previously of record, and its teachings are such that a reasonable examiner would have considered Mander pertinent to deciding the question of patentability of the requested claims. As the claims of the '227 patent were only deemed patentable because the Examiner was not aware of prior art directed to the use of "chronological indicators" such as past, present and future to refine the organization of streams based on timestamps, Mander cannot be considered cumulative because it teaches this limitation, at least as argued by the Patent Owner in concurrent litigation. Specifically, Mander discloses that each document is indexed and an internal representation of the document is created.  Mander at 24:8-18.  The internal representation is a collection of metadata attributes derived from indexing the file used to determine characteristics of the file.  Mander at 3:62-4:5; 33:34-43.  These metadata attributes include, for example, "information typically maintained in a computer filing system such as the title of the document, the type of document, the amount of information

on the disk controlled by the filing system, <u>and the date the document was created</u> as well as an icon which is a representative of the document." Mander at 11:33-42 (emphasis added, examples omitted); 33:34-43. A claim chart setting forth the pertinency and manner of applying Cleaner 5 to these claims is submitted herewith as Exhibit CC-A.

2. Mander in view of Retrospect renders obvious claims 9 & 22.

Requester respectfully submits that claims 9 and 22 of the '227 patent are obvious over Mander in view of Retrospect. The references were not discussed or applied either by the Examiner or the Applicants during the original prosecution and raise a substantial new question of patentability with respect to the claims of the '227 patent because the combination is not cumulative of any art previously of record and its teachings are such that a reasonable examiner would have considered the combination pertinent to deciding the question of patentability of the requested claims. In addition to the non-cumulative nature of Mander, the combination is further not cumulative in view of Retrospect's teachings related to archival functions as recited by claims 9 and 22. A claim chart setting forth the pertinency and manner of applying Mander in view of Retrospect to these claims is submitted herewith as Exhibit CC-A.

3. Lucas in view of Lotus Magellan (as described in Using Lotus Magellan and Magellan Explorer's Guide) renders obvious claims 1-6, 9-17, 20, 22, and 25-29.

Requester respectfully submits that claims 1-6, 9-17, 20, 22, and 25-29 of the '227 patent are rendered obvious by Lucas in view of Lotus Magellan. The references were not discussed or applied either by the Examiner or the Applicants during the original prosecution and raise a substantial new question of patentability with respect to the claims of the '227 patent because it is not cumulative of any art previously of record, and its teachings are such that a reasonable examiner would have considered Lucas in view of Lotus Magellan pertinent to deciding the question of patentability of the requested claims. As the claims of the '227 patent were only deemed patentable because the Examiner was not aware of prior art directed to the use of "chronological indicators" such as past, present and future to refine the organization of streams based on timestamps, Lucas in view of Lotus Magellan cannot be considered cumulative because it teaches this limitation, at least as argued by the Patent Owner in concurrent litigation. Specifically, Magellan discloses the .IX2 and .IX4 files, which are associated with each document and contain meta-data about each document, including date and time

information. Magellan Explorer's Guide at pg. 186-187. A claim chart setting forth the pertinency and manner of applying Cleaner 5 to these claims is submitted herewith as Exhibit CC-B.

4. Mander in view of Lucas renders obvious claims 15, 16, 26, 27, and 28

Requester respectfully submits that claims 15, 16, 26, 27, and 28 of the '227 patent are obvious over Mander in view of Lucas. The references were not discussed or applied either by the Examiner or the Applicants during the original prosecution and raise a substantial new question of patentability with respect to the claims of the '227 patent because the combination is not cumulative of any art previously of record, and its teachings are such that a reasonable examiner would have considered the combination pertinent to deciding the question of patentability of the requested claims. In addition to the non-cumulative nature of Mander, the combination is further not cumulative in view of Lucas' teachings related to visual streams as recited by the claims. A claim chart setting forth the pertinency and manner of applying Mander in view of Retrospect to these claims is submitted herewith as Exhibit CC-C.

5. Thompson-Rohrlich in view of the Inside Macintosh Manual renders obvious claims 1-6, 10-17 and 20.

Requester respectfully submits that claims 1-6, 10-17 and 20 of the '227 patent are rendered obvious by Thompson-Rohrlich in view of the Inside Macintosh Manual. The references were not discussed or applied either by the Examiner or the Applicants during the original prosecution and raise a substantial new question of patentability with respect to the claims of the '227 patent because it is not cumulative of any art previously of record, and its teachings are such that a reasonable examiner would have considered Thompson-Rohrlich in view of the Inside Macintosh Manual pertinent to deciding the question of patentability of the requested claims. As the claims of the '227 patent were only deemed patentable because the Examiner was not aware of prior art directed to the use of "chronological indicators" such as past, present and future to refine the organization of streams based on timestamps, Thompson-Rohrlich in view of the Inside Macintosh Manual cannot be considered cumulative because it teaches this limitation, at least as argued by the Patent Owner in concurrent litigation. Specifically, a user can create "intelligent folders" that "collect aliases to groups of files such as… [f]iles not accessed in the past 12 months." Thompson-Rohrlich at 1:66-2:6; Fig. 3. Under the

broadest reasonable construction, this shows that files are associated with a chronological indicator; indeed, in the underlying litigation Patent Owner has accused Apple's Smart Folders of infringing. A claim chart setting forth the pertinency and manner of applying Cleaner 5 to these claims is submitted herewith as Exhibit CC-D.

### B.  37 C.F.R. § 1.510 (B)(3): COPY OF EVERY PATENT OR PRINTED PUBLICATION RELIED UPON TO PRESENT AN SNQ

A copy of every patent or printed publication relied upon to present an SNQ is submitted herein, pursuant to 37 C.F.R. §1.510(b)(3), as Exhibits PA-A through Exhibits PA-G, citation of which may be found on the accompanying Form PTO-SB/08 at Exhibit PTO-SB/08.  Each of these cited prior art publications constitutes effective prior art as to the claims of the '227 patent under 35 U.S.C. § 102 and 35 U.S.C. § 103.

### C.  37 C.F.R. § 1.510 (B)(4): COPY OF THE ENTIRE PATENT FOR WHICH REEXAMINATION IS REQUESTED

A full copy of the '227 patent is submitted herein as Exhibit PAT-A and its corresponding file history is submitted as PAT-B in accordance with 37 C.F.R. § 1.510(b)(4).

### D.  37 C.F.R. § 1.510 (B)(5): CERTIFICATION THAT A COPY OF THE REQUEST HAS BEEN SERVED IN ITS ENTIRETY ON THE PATENT OWNER

A copy of this request has been served in its entirety on the Patent Owner in accordance with 37 C.F.R. § 1.510(b)(5) at the following address:

> RICHARD S MILNER
> COOPER AND DUNHAM
> 1185 AVENUE OF THE AMERICAS
> NEW YORK NY 10036

### E.  37 C.F.R. § 1.510 (A): FEE FOR REQUESTING REEXAMINATION

In accordance with 37 C.F.R. § 1.510(a), a credit card authorization to cover the fee for reexamination of $2,520.00 is submitted with this request.  If this authorization is missing or defective, please charge the Fee to the Novak Druce and Quigg Deposit Account No. 14-1437.

## II. RELATED CO-PENDING LITIGATION REQUIRES TREATMENT WITH SPECIAL DISPATCH AND PRIORITY OVER ALL OTHER CASES

The '227 patent is presently the subject of litigation, *Mirror Worlds, LLC v. Apple, Inc.*, Civil Action No. 6:08-CV-88 (E.D. Tex.), filed March 14, 2008 ("the Pending Litigation"). *See* Complaint filed March 14, 2008 as Exhibit OTH-A. Pursuant to 35 U.S.C. § 305, Requester respectfully urges that this Request be granted and reexamination conducted not only with "**special dispatch**," but also with "**priority over all other cases**" in accordance with MPEP § 2261, due to the ongoing nature of the underlying litigation.

## III. RELATED REEXAMINATION PROCEEDINGS

Requester is concurrently submitting a request for an *ex parte* reexamination of U.S. Patent No. 6,638,313 ("the '313 patent"), a continuation of the '227 Patent. Requester is also concurrently submitting requests for *inter partes* reexaminations of U.S. Patent No. 6,725,427 ("the '427 Patent") and U.S. Patent No. 6,768,999 ("the '999 Patent"). The '427 Patent is a division of the '313 Patent. The '999 patent is a continuation-in-part of the '313 patent.

## IV. OVERVIEW OF THE '227 PATENT AND ITS PROSECUTION HISTORY

### A. SUMMARY OF THE DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS OF THE '227 PATENT

The '227 Patent is generally directed to an operating system in which documents are stored in chronologically ordered "streams" instead of in the familiar hierarchical folder structure typical of many operating systems. *See, e.g.* '227 patent at Abstract; 4:6-8. This is done so that that the location and nature of file storage is transparent to the user. *See, e.g.,* '227 patent at Abstract; 1:26-28 ("conventional operating systems require the user to invent pointless names for files and to construct organizational hierarchies that quickly become obsolete.") The '227 patent states that the operating system also allows for information to be organized as needed (instead of at the time the document is created), and for large groups of related documents to be summarized concisely for the user. '227

patent at Abstract. The '227 patent also contemplates that archiving of documents is automatic. '227 patent at Abstract.

The preferred embodiment of the '227 patent is a computer storage system for storing files in "a time-ordered sequence," or "stream." '227 patent at 4:6-8. Every document created by or sent to a person or entity's computer is stored in the "main stream," so that the main stream serves "as a diary of a person or an entity's electronic life." '227 patent at 4:8-10. The system also utilizes substreams, which contain subsets of the documents found in the mainstream. '227 patent at 5:1-19. Documents within the main stream and substreams are organized according to when the documents were created. '227 patent at 5:53-6:7. Documents in the main stream and substreams may be sorted according to the documents' chronological indicators. '227 patent at 3:3-10; 5:53-6:7. For example, a document that is considered a working document may be associated with the "present" chronological indicator if the document is identified by a timestamp that shows the document has been worked with recently. '227 patent at 5:54-57. Likewise, older documents may be associated with the "past" chronological indicator if they have an older timestamp, and documents with the "past" chronological indicator may also be archived. '227 patent at 5:57-60. Similarly, documents having a timestamp with a future date may be associated with the "future" chronological indicator. '227 patent at 5:66 – 6:3. In this way, the system of the preferred embodiment maintains a time ordered sequence of stored files.

As issued, the '227 Patent has a total of 33 claims. Requester is seeking reexamination of claims 1-6, 9-17, 20, 22, and 25-29, which are being asserted by Patent Owner in co-pending litigation. Of those claims, claims 1, 13 and 25 are independent claims and the remaining claims are dependent.

Independent claim 1 recites:

> 1. A computer system which organizes each data unit received by or generated by the computer system, comprising:
>
> means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream;
> means for receiving data units from other computer systems;
>
> means for generating data units by the computer system;

means for selecting a timestamp to identify each data unit;

means for associating each data unit with at least one chronological indicator having the respective timestamp;

means for including each data unit according to the timestamp in the respective chronological indicator in the main stream; and

means for maintaining the main stream and the substreams as persistent streams.

Independent claim 13 is a method claim that corresponds to each element of independent claim 1. Independent claim 25 is a system claim that includes additional limitations relating to the display of document representations relating to data units in the operating system on a display device and further action on particular document representations or groups of document representations by a user.

## B. SUMMARY OF THE FILE HISTORY

U.S. Patent 6,006,227 to Freeman and Gelernter was filed on June 28, 1996 and issued on December 21, 1999.

The initial application named only Eric Freeman as an inventor. The First Office Action is notable because the examiner (a) suggested David Gelernter should be added as inventor, and (b) rejected the pending claims based on a 1994 Washington Post article by David Gelernter, entitled "The Cyber-Road Not Taken" (the "Gelernter Article"). Specifically, the Examiner stated that "the paradigm of 'lifestreams' appears to have been generated by David Gelernter." The Examiner found that the application's concept of organizing a computer system around a "stream" of documents that serves "as a diary of a person or an entity's electronic life" had been described in 1994 in the Gelernter Article. '227 patent at 4:8-10; PAT-B, Pros. His., paper 4, Office Action dated 9/19/97, p. 2 and p. 3. The Examiner was right: the Gelernter Article does describe this concept, proposing that instead of organizing "computer documents into files," computer documents should be maintained in a "lifestream" that captures your whole life in terms of chunks of information: letters, documents, bills, bank statements, video footage of your son's first birthday party, a database, anything." Gelernter Article, p. C2.

Patent Owner responded by adding David Gelernter as an inventor and distinguishing the Gelernter article, as well as the other prior art cited by the examiner. PAT-B, Pros. His., paper 6, Amendment dated 3/23/98. The Examiner was not

persuaded, however, and maintained his rejections based on the Gelernter Article. PAT-B, Pros. His., paper 8, Office Action dated 4/17/98. The Examiner also maintained his rejections based on the Microsoft Outlook email program, and on Tobias, U.S. Patent No. 5,530,859. *Id.*

Patent Owner then filed a Continuation and a Preliminary Amendment. PAT-B, Pros. His., paper 8, Preliminary Amendment dated 10/16/98. Renewing its efforts to distinguish the Gelernter Article, Patent Owner argued to the Examiner that the conceptual disclosure of "lifestreams" in the Gelernter Article "neither teaches nor suggests any implementations of the [lifestreams] 'paradigm.'" Specifically, Patent Owner explained that it had amended the independent claims "to emphasize and more clearly recite: selecting a timestamp to <u>identify</u> each data unit, <u>associating</u> each data unit with a chronological indicator including the timestamp, <u>linking</u> each data unit into a data unit stream according to the timestamp, and <u>storing</u> the data unit stream according to the chronological indicators." PAT-B, Pros. His., paper 13 at p.15, Preliminary Amendment, 10/16/98. The Patent Owner then went on to explain that these specific steps were not taught by the prior art: "The Gelernter Article … does not teach or suggest the identification, association, linkage, and storage steps or means for data units or data unit streams as recited in the amended claims." *Id.* at p. 15, *see also id.* at p. 23 ("Outlook does not teach or suggest such timestamp/chronological indicator identification, association, linkage, and storage for data units of data units streams.")

The Examiner, however, maintained the existing rejections. PAT-B, Pros. His., paper 14, Office Action, 11/03/98. Following this, the applicants had an interview with the Examiner, and then filed a further Amendment. PAT-B, Pros. His., paper 15, Interview Summary, 1/20/99; PAT-B, Pros. His., paper 18, Amendment, 5/11/99. In this Amendment, the applicant changed tracks, arguing that the Gelernter article did not disclose the claimed "substreams," and that none of the other prior art was related to steams. PAT-B, Pros. His., paper 18, Amendment, 5/11/99, at p.12-13 ("the Gelernter Article lacks the substreams recited in the amended claims. Indeed, the Gelernter Article teaches away from substreams . . . .") and *id.* at p. 12 ("the other references are not related to streams … The only cited reference which contains a main stream is the Gelernter Article.")

At this point, the Examiner allowed the claims. In doing so, however, the Examiner made clear that his reason for allowing the '227 patent was not the use of main streams and substreams, but rather, was limited to the Patent Owner's argument that its invention as specifically directed to the use of "chronological indicators" such as past, present and future to refine the organization of streams based on timestamps:

> The use of timelines or timestamps to organize arbitrary records and documents is well known in the art, as evidenced by a number of the references cited. In particular, Reitz, USPAT 5,649,182, provides for the generation of subsets of the main stream of records organized by the timestamps and determined by attributes, which subsets correspond to persistent substreams. However, the prior art of record does not anticipate nor suggest the use of chronological indicators such as past, present, future to further categorize the timestamp organization of the stream.

PAT-B, Pros. His., paper 19, Notice of Allowability, 5/18/99. The Examiner's statement shows that he understood that it was known at the time that a system could be designed such that documents are organized according to timestamps,[2] and that it was known that a system with a main stream of documents organized according to timestamps could be filtered in order to generate substreams having particular attributes.[3] Thus, the Examiner made clear that the reason for allowance over the prior art was the use of chronological indicators such as past, present and future to organize documents within the streams, and not the use of main steams or substreams, or the use of timestamps to organize documents or files.

## V.    CLAIM CONSTRUCTION

### A.    STANDARD

Requester notes that the '227 patent, for which reexamination is requested, is asserted in *Mirror Worlds, LLC v. Apple Inc.,* Civil Action No. 6:-08-CV-88 (E.D. Tex).

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[2]      *See e.g.* U.S. Patent No. 5,649,182 ("Reitz") at 1:47-52 (prior art describing "a processor operable to automatically organize the database records in a timeline sequence according to the calendar date associated with each of the database records").

[3]      *See e.g.* U.S. Patent No. 5,649,182 ("Reitz") at 2:30-35 ("selecting any number of filtering criteria such that only data messages having filtering identifiers in common with the selected filtering criteria are formed into a data message subset, and such that each of the data entries in the subset is sequentially organized by its associated calendar date.")

For purposes of this Request, the claim terms are presented by the Requester in accordance with 37 C.F.R § 1.555(b) and MPEP § 2111. Specifically, each term of the claims is to be given its "broadest reasonable construction" consistent with the specification. MPEP § 2111; *In re Trans Texas Holding Corp.*, No. 2006-1599, -1600, p.14 (Fed. Cir. August 22, 2007) (citing *In re Yamamoto*, 227 F.2d 1569, 1571 (Fed. Cir. 1984)). As the Federal Circuit noted in *Trans Texas*, the Office has traditionally applied this standard during reexamination, and does not interpret claims as a court would interpret claims. MPEP § 2111. The Office is not bound by any prior district court claim construction. *Trans Texas*, No.2006-1599 at 14, 19. Rather:

> the PTO applies to verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in applicant's specification.

*In re Morris,* 127 F.3d 1048, 1054-55, 44 U.S.P.Q.2d 1023, 1027-28 (Fed. Cir. 1997). The rationale underlying the "broadest reasonable construction" standard is that it reduces the possibility that a claim, after issue or certificate of reexamination, will be interpreted more broadly than is justified. 37 C.F.R § 1.555(b), MPEP § 2111.

Because the standards of claim interpretation used in the courts in patent litigation are different from the claim interpretation standards used in the Office in claim examination proceedings (including reexamination), any claim interpretations submitted herein for the purpose of demonstrating an SNQ are neither binding upon litigants in any litigation related to the '227 patent nor do such claim interpretations necessarily correspond to the construction of claims under the legal standards that are mandated to be used by the courts in litigation. *See* 35 U.S.C. § 314; *see also* MPEP § 2286 II (determination of an SNQ is made independently of a court's decision on validity because of different standards of proof and claim interpretation employed by the District Courts and the Office); *see also In re Trans Texas Holding Corp.*, No. 2006-1599, -1600, p.14 (Fed. Cir. August 22, 2007); *In re Zletz,* 893 F.2d 319, 322, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

Accordingly, the interpretation and/or construction of the claims in the '227 patent presented either implicitly or explicitly herein should not be viewed as constituting, in whole or in part, Requester's own interpretation and/or construction of

such claims, but instead, should be viewed as constituting an interpretation and/or construction of such claims that is consistent with the broadest reasonable construction of the claim language and/or with Patent Owner's own view of the claims in the co-pending litigation. In fact, Requester expressly reserves the right to present its own interpretation of such claims at a later time, which interpretation may differ, in whole or in part, from that presented herein.

### B.    CLAIM TERMS

In considering the patentability of the claims of the '227 patent, the Requester has applied certain claim constructions presented by the Patent Owner during prosecution of the '227 patent and on claim constructions derived from statements which indicate the Patent Owner's interpretation of the claim terms as a basis for its allegations of infringement in the co-pending litigation. *See* Mirror Worlds' Disclosure of Asserted Claims and Preliminary Infringement Contention Under Patent Rule 3-1 and Disclosures Under Patent Rule 3-2 in *Mirror Worlds, LLC v. Apple Inc.,* Civil Action No. 6:-08-CV-88 (E.D. Tex) filed August 15, 2008, OTH-B.

Requester presents these constructions for the convenience of the Office and does not agree that these interpretations are in fact the broadest reasonable interpretation of the presented terms. However, because they reflect Patent Owner's views as to the scope of the claims – including as Patent Owner seeks to enforce those claims in litigation – Requester submits that the claim terms presented below should be construed no narrower than presented herein for purposes of this proceeding.

### 1.  MAIN STREAM

During prosecution, Patent Owner explained that "[a] 'main stream' is a type of stream which receives every data unit," or "document," "<u>received by</u> (external) or <u>generated by</u> (internal) the computer system." PAT-B, Pros. His., paper 18, Response to Non-Final Rejection, 5/7/99, p. 11. Patent Owner also explained that each data unit, or document, "must be included in the main stream." PAT-B, Pros. His., paper 18, Amendment Under 37 C.F.R. § 1.115 In Response to November 3, 1998 Office Action, 5/3/99, p. 16; *see also* '227 patent at 4:8-10. For instance, the Applicant argued that email programs such as Outlook do not include a main stream since such programs only contain specific data units such as email or phone calls. PAT-B, Pros. His., paper 18, Response to Non-Final Rejection, 5/7/99, pp. 10-11.

In the concurrent litigation, however, Patent Owner has accused products of having a "main stream" if the products include an <u>index</u> of files on a computer. Specifically, Patent Owner accuses Requester's product SPOTLIGHT of having a "main stream" because SPOTLIGHT "indexes your hard drive." OTH-B, Attachment A-1, pg. 3. Patent Owner further notes that "[t]he Spotlight Store is a file system-level database that holds all of the meta-data attributes about the files, as well as an index of their contents, on a file system. As each file is created, copied, updated, or deleted, Spotlight will ensure that both the content index and the meta-data store entries for that file are updated." OTH-B, Attachment A-1, pg. 3.

As demonstrated by its own application of the "main stream" limitation, Patent Owner believes that the broadest reasonable construction of "main stream" would encompass either a collection of documents or a collection of information about documents, such as an index. As will be established by the arguments presented below, applying this broadest reasonable construction of the "main stream" limitation, main streams were well known in the art at the time of Patent Owner's alleged invention.

## 2. SUBSTREAM

Likewise, the nature and character of what can be considered a "substream" is dependent on the nature and character of the "main stream." During prosecution, Patent Owner argued that "[a] 'substream' is a type of stream having one or more data units <u>only</u> from the main stream." PAT-B, Pros. His., paper 18, Response to Non-Final Rejection, 5/7/99, p. 11. Patent Owner also took the position that substreams "allow a user to determine the data units of direct interest while also maintaining the data unit in the main stream of the computer system." PAT-B, Pros. His., paper 18, Amendment Under 37 C.F.R. § 1.115 In Response to November 3, 1998 Office Action, 6/3/99, p. 16-17.

On the other hand, in the concurrent litigation, Patent Owner has accused products of having a "substream" if the accused product enables a query of an index, produces search results, or organizes files by content and/or attributes. OTH-B, Attachment A-1, p. 3-4. For instance, Patent Owner alleges that SPOTLIGHT includes a "substream" because SPOTLIGHT "constructs the appropriate query expression for the search, specifies the scope of the search, how the data is to be grouped when it is returned, and then executes the query." OTH-B, Attachment A-1, p. 3. Patent Owner also argues that because you can "use Spotlight to search for items on your computer," SPOTLIGHT

contains a substream. OTH-B, Attachment A-1, p. 4. Furthermore, according to Patent Owner, because Smart Folders, a feature of SPOTLIGHT, "can organize files by their contents, as well by attributes that describe those contents and how they were created," Smart Folders must also include a substream. OTH-B, Attachment A-1, p. 4. In other words, a query of an index, search results, and files organized by content and/or attributes is a subset of the contents of the index, which Patent Owner maintains is a main stream in the concurrent litigation, and thus constitutes a "substream."

As demonstrated by its own application of the "substream" limitation, Patent Owner believes that the broadest reasonable construction of "substream" would encompass either a subset of a collection of documents, or a subset of the contents of an index, such as a search query of an index, search results, a Smart Folder, or a list of files organized by content and/or attributes. As will be established by the arguments presented below, applying this broadest reasonable construction of the "substream" limitation, substreams were well known in the art at the time of Patent Owner's alleged invention.

### 3. PERSISTENT STREAM

Both "main streams" and "substreams" may be persistent, or "dynamically updated by the addition of new data units," as argued by Patent Owner during prosecution. PAT-B, Pros. His., paper 18, Response to Non-Final Rejection, 5/7/99, p. 11. As argued by Patent Owner in the concurrent litigation, "persistent streams" occur where a "folder is updated automatically as you change, add, and remove files." OTH-B, Attachment A-1, p. 8. Patent Owner additionally alleges that the accused products include a "persistent stream" if they can "help you organize and access information on your computer." OTH-B, Attachment A-1, p. 8.

As demonstrated by its own application of the "persistent stream" limitation, Patent Owner believes that the broadest reasonable construction of "persistent streams" would include dynamically updating the stream. As will be established by the arguments presented below, applying this broadest reasonable construction of the "persistent stream" limitation, persistent streams, including at least automatically updated file maintenance systems, were well known in the art at the time of Patent Owner's alleged invention.

### 4. SELECTING A TIMESTAMP TO IDENTIFY EACH DATA UNIT

During prosecution, Patent Owner stated that "[a] 'timestamp' is a date/time used

to uniquely identify each data unit." PAT-B, Pros. His., paper 18, Response to Non-Final Rejection, 5/7/99, p. 11. In the concurrent litigation, Patent Owner argues that the accused products include a timestamp because an MDItem object in Requester's product SPOTLIGHT "'contains a dictionary of the various meta-data attributes of that file organized as unique keys,' *which includes timestamp information*." OTH-B, Attachment A-1, pg. 6 (emphasis added).

As demonstrated by its own application of the limitation of "selecting a timestamp to identify each data unit," Patent Owner believes that the broadest reasonable construction of "selecting a timestamp to identify each data unit" includes using a date/time to uniquely identify each data unit *or* indexing that data unit using meta-data attributes which include timestamp information. As will be established by the arguments presented below, applying this broadest reasonable construction of the "selecting a timestamp to identify each data unit" limitation, this limitation was well known in the art at the time of Patent Owner's alleged invention.

### 5. CHRONOLOGICAL INDICATOR

Although Patent Owner argued during prosecution that a "chronological indicator" includes a timestamp and is used to organize data units, Patent Owner has argued in litigation that a "chronological indicator" is a collection of meta-data, such as indexed meta-data, where that meta-data includes timestamps. PAT-B, Pros. His., paper 18, Preliminary Amendment, 10/16/98, p. 10. Specifically, Patent Owner alleges that Requester's product SPOTLIGHT has a chronological indicator, a MDItem, because a "MDItem is a simple wrapper around a file's meta-data attributes. A file's meta-data attributes include timestamp information." OTH-B, Attachment A-1, p. 6.

As a result, as demonstrated by its own application of the "chronological indicator limitation," Patent Owner believes that the broadest reasonable construction of "chronological indicator" includes not only chronological indicators such as past, present and future to organize documents within the streams, but also collections of meta-data that include timestamps. As will be established by the arguments presented below, this limitation was well known in the art at the time of Patent Owner's alleged invention.

### 6. CHRONOLOGICAL INDICATOR IN THE MAIN STREAM

Similarly, a "chronological indicator in the main stream" has been construed by Patent Owner as indexed meta-data within a file system. Particularly, in the concurrent

litigation, Patent Owner has alleged that Requester's product SPOTLIGHT includes a "chronological indicator in the main stream" because "[t]he Spotlight Store is a file system-level database that hold[s] all of the meta-data attributes about the files, as well as an index of their contents, on a file system." OTH-B, Attachment A-1, p. 7. Applying this broadest reasonable construction of the "chronological indicator in the main stream" limitation, this limitation was well known in the art at the time of Patent Owner's alleged invention.

### 7. FUTURE

During prosecution, Patent Owner argued that a future timestamp on a data unit is "a timestamp newer than the current time in the main stream of data units." PAT-B, Pros. His., paper 18, Amendment Under 37 C.F.R. § 1.115 In Response to November 3, 1998 Office Action, 6/3/99, p. 29. During litigation, Patent Owner has argued that one example of a file with a future timestamp is a calendar file. OTH-B, Attachment A-1, p. 9. For example, in the concurrent litigation, Patent Owner argues that "Spotlight indexes metadata for, *e.g.*, 'iCal calendar files.' Thus, Spotlight provides for future timestamps." OTH-B, Attachment A-1, p. 9 (citation omitted).

As demonstrated by its own application of "future," Patent Owner believes that the broadest reasonable construction of the "future" limitation includes calendar metadata for a future timestamp. As will be established by the arguments presented below, this limitation was well known in the art at the time of Patent Owner's alleged invention.

### 8. ARCHIVING A DATA UNIT ASSOCIATED WITH A TIMESTAMP OLDER THAN A SPECIFIED TIME POINT

Patent Owner has construed "archiving a data unit associated with a timestamp older than a specified time point" as referring to both archival and back-up, i.e. either moving or copying data to an archive or backup system. For instance, in the concurrent litigation, Patent Owner has alleged that Requester's product TIME MACHINE includes a means for archiving a data unit associated with a timestamp older than a specified time point because "Time Machine is an application that automatically and transparently backs up the user's files to a designated storage system." OTH-B, Attachment A-1, p. 10.

As demonstrated by its own application of "archiving a data unit associated with a timestamp older than a specified time point," Patent Owner believes that the broadest reasonable construction of this limitation includes both archival and back-up systems. As

will be established by the arguments presented below, this limitation was well known in the art at the time of Patent Owner's alleged invention.

### 9.  APPLICATION OF 35 U.S.C. § 112(6)

Patent Owner has taken the position in litigation that none of the claim limitations are means-plus-function limitations limited to their corresponding structure (or equivalents) under 35 U.S.C. § 112(6).  Under the Patent Local Rules governing the underlying litigation, Patent Owner was required to identify in its Infringement Contentions "each element that [a party claiming patent infringement] contends is governed by 35 U.S.C. § 112(6)."  E.D.T.X Patent Local Rule 3-1(c).  Patent Owner did not identify <u>any</u> claim limitation as being governed by § 112(6).  OTH-B, Attachment A-1.  This demonstrates that Patent Owner believes that the broadest reasonable construction of the many "means" limitations in one where those limitations are treated as ordinary limitations, and are not limited to any corresponding structure.[4]

Accordingly, while Third Party Requester believes that many of the limitations in the '227 patent should be governed by 35 U.S.C. § 112(6), this Request applies the Patent Owner's position that the broadest reasonable constructions of the various "means for" elements are not limited by that section.  Nonetheless, as shown in the discussion that follows, the prior art described in this request includes computer structure (algorithms and/or computer hardware) that performs the claimed functions.

## VI.  STATEMENT OF SUBSTANTIAL NEW QUESTIONS OF PATENTABILITY

As recognized by the Examiner during prosecution of the '227 patent, the concepts at the heart of the '227 patent were well-known in the art and were not novel at the time of the invention. As such, the Examiner made clear that his reason for allowing

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[4]      Patent Owner's position reflects the near-total absence of structure in the specification.  The specification states that one of its embodiments is "a computer program for organizing one or more data units" that can perform various functions, but it does not identify any specific algorithms or computer hardware.  *See Harris Corp. v. Ericsson Inc.*, 417 F.3d 1241, 1253-54 (Fed. Cir. 2005) ("WMS Gaming restricts computer-implemented means-plus-function terms to the algorithm disclosed in the specification") *citing WMS Gaming, Inc. v. Intern. Game Tech.*, 184 F.3d 1339, 1349 (Fed. Cir. 1999).  For example, the '227 patent does not provide any structure for implementing a "main stream."  While it describes a "main stream" functionally as "a time-ordered sequence" of "every document created by or sent to a person or entity's computer," it does not describe any algorithm and/or computer hardware that performs this function.  '227 patent at 4:6-30.  Similarly, while the '227 specification provides functional description of a "means for including each data unit according to the timestamp in the respective chronological indicator in the main stream," it does not describe any algorithm and/or computer hardware that performs this function.  '227 patent at 2:67-3:32.

the '227 patent was not merely the use of main streams and substreams to organize documents in a time-based manner, but rather, was limited to the Patent Owner's argument that its invention as specifically directed to the use of "chronological indicators" such as past, present and future to refine the organization of streams based on timestamps:

> The use of timelines or timestamps to organize arbitrary records and documents is well known in the art, as evidenced by a number of the references cited. In particular, Reitz, USPAT 5,649,182, provides for the generation of subsets of the main stream of records organized by the timestamps and determined by attributes, which subsets correspond to persistent substreams. However, the prior art of record does not anticipate nor suggest the use of chronological indicators such as past, present, future to further categorize the timestamp organization of the stream.

PAT-B, Pros. His., paper 19, Notice of Allowability, 5/18/99. The Examiner's statement shows that he understood that it was known at the time that a system could be designed such that documents are organized according to timestamps.[5] It was also known that a system with a main stream of documents organized according to timestamp could be filtered in order to generate substreams having particular attributes.[6] Thus, the Examiner made clear that the reason for allowance over the prior art was the use of chronological indicators such as past, present, and future to organize documents within the streams, and not the well-known and widespread use of timestamps to organize documents or files.

The claim limitations that provided the Examiner with this reason for allowance require "associating each data unit with at least one chronological indicator having the respective timestamp" and "including each data unit according to the timestamp in the respective chronological indicator in the main stream." The Patent Owner had repeatedly emphasized to the Examiner that these limitations distinguished its invention from the prior art. For example, Patent Owner emphasized to the Examiner in their October 16,

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[5]     *See e.g.* U.S. Patent No. 5,649,182 ("Reitz") at 1:47-52 (prior art describing "a processor operable to automatically organize the database records in a timeline sequence according to the calendar date associated with each of the database records").

[6]     *See e.g.* U.S. Patent No. 5,649,182 ("Reitz") at 2:30-35 ("selecting any number of filtering criteria such that only data messages having filtering identifiers in common with the selected filtering criteria are formed into a data message subset, and such that each of the data entries in the subset is sequentially organized by its associated calendar date.")

1998 Preliminary Amendment that they had amended the claims to emphasize not just selecting a timestamp to identify each data unit, but also "<u>associating</u> each data unit with a chronological indicator including the timestamp, <u>linking</u> each data unit into a data unit stream according to the timestamp, and <u>storing</u> the data unit stream according to the chronological indicators." PAT-B, Pros. His., paper 13 at p.15, Preliminary Amendment, 10/16/98. The Patent Owner then went on to explain that these steps were not taught by the prior art. *E.g. id.* at p. 15 ("The Gelernter Article … does not teach or suggest the identification, association, linkage, and storage steps or means …").

However, as described above, in the concurrent litigation, Patent Owner has argued that what it called the "associating"[7] and "linking"[8] claim limitations are satisfied by a collection of meta-data describing documents or files, such as an index of such meta-data, when that meta-data includes timestamps. Specifically, Patent Owner alleges that Requester's product SPOTLIGHT infringes the limitation "associating each data unit with at least one chronological indicator having the respective timestamp" because it contains a "meta-data store" that "represents each file as an MDItem object," where "MDItem is a simple wrapper around a file's meta-data attributes" that "includes timestamp information." OTH-B, Attachment A-1, p. 6. Patent Owner has further alleged that SPOTLIGHT infringes the limitation "including each data unit according to the timestamp in the respective chronological indicator in the main stream" because "the Spotlight Store is a file system-level database that holds all of the meta-data attributes about the files, as well as an index of their contents, on a file system." OTH-B, Attachment A-1, p. 6-7.

Thus, as demonstrated by its own application of the "associating" and "linking" claim limitations in the concurrent litigation, Patent Owner believes that the broadest reasonable construction of these limitations includes not only the what the Examiner saw as allowable—using chronological indicators such as past, present and future to further categorize time-organized streams—but also a collection of indexed meta-data when that meta-data includes timestamps. As will be established by the arguments presented below, applying Patent Owner's own construction of these limitations as applying to

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[7] "associating each data unit with at least one chronological indicator having the respective timestamp"

[8] "including each data unit according to the timestamp in the respective chronological indicator in the main stream"

indexed meta-data that includes timestamps shows that they were well known in the art years prior to Patent Owner's priority date. The Mander and Magellan references, in particular, provide detailed disclosure of compiling an index of meta-data, including timestamps, for the files on computer system.

Moreover, even what the Examiner saw as allowable—using chronological indicators such as past, present and future to further categorize time-organized streams—was well-known in the art at the time. For example, as demonstrated below, the Mander reference specifically describes creating piles of documents that are "dated after a certain date" based on its collection of indexed meta-data for the files in a computer system, in addition to sorting piles of documents based on their date. Mander at 22:34-46; 23:48-50; 20:60-65.

Claims 1-6, 9-17, 20, 22, and 25-29 of the '227 patent are fully anticipated under 35 U.S.C. § 102 and/or rendered obvious under 35 U.S.C. § 103 by the several different prior art references cited herein, which were not previously considered by the Examiner during the examination of the '227 patent application or which are discussed in a new light from the original prosecution of the '227 patent application. Claims 1-6, 9-17, 20, 22, and 25-29 of the '227 patent are set forth in detail in the attached claim chart (Exhibit CC-A) that compares the limitations of the claims of the '227 patent to the pertinent prior art references. As the claim chart demonstrates, claims 1-6, 9-17, 20, 22, and 25-29 are unpatentable under 35 U.S.C. §§ 102-103 in view of the prior art references under any reasonable interpretation of the claims.

Accordingly, as disclosed by the references below, the use of chronological indicators to further categorize streams and substreams was well known in the art at the time the '227 patent was filed.

### A. MANDER ANTICIPATES CLAIMS 1-6, 10-17, 20, AND 25-29 UNDER 35 U.S.C. §§ 102. [9]

Mander was filed on August 8, 1994 as a continuation of application No. 07/876,921 (filed on April 30, 1992) and published on June 5, 2001. Therefore, Mander is prior art under 35 U.S.C. §102(b). Mander was not before the Examiner during the prosecution of the '227 patent.

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[9]     Although Requester has detailed the bases for invalidity of the identified claims of the '227 patent herein, Requester has also included additional citations to the disclosure in Mander in Exhibit CC-A to assist the Office.

Mander discloses a system that indexes all files along with any metadata, and associates these files with folders called "piles." Mander at Fig. 15. Specifically, Mander discloses a system that organizes data units that are received by a computer system (e.g., electronic mail documents) or generated by a computer system (e.g., word processing documents). Mander at Abstract; 2:63-66; 24:8-18. Each data unit in the system is stored in a filing system which includes indexed data information, and the data units are placed into piles that may be further organized into one or more subpiles. Mander at 5:42-6:4; 25:21-37. The index stores information about the file that is useful in categorizing the file into a "pile," such as the frequency of each word's occurrence in a file. Mander at 24:34-42. Mander provides a detailed description of the algorithms used to create this index. Mander at 24:7-26:63.

Just as in the '227 patent, each file is associated with a timestamp, which is either selected by the system or by the user, and recorded in a date line field of the document or is recorded by the file system. Mander at 33:34-43. Documents may further be sorted into categories based on date. Mander at 23:39-5; 33:35-36. One example of such a category is a label categorizing the documents in a pile. Mander discloses that piles are described by scripts and may be controlled by labels. The labels are existing controls or criteria that may be selected, and upon selection, control the functioning of a pile. Mander at 23:39-51; 33:35-36. For example, a user may choose to include only files created after a certain date. Another example of a category based on date is a color coding scheme. Each data unit timestamped with an older date may be colored blue, while each data unit timestamped with a new date may be a brighter color. Mander at 33:42-62 ("the user selects the command "color by date" …"). Another example is creating a pile based on date. Mander at 22:43-47 ("if the user selects the option of collecting items which are dated April 19, 1991 …").

Mander also discloses a variety of visualization options for piles and the documents within them. Not only does Mander disclose scripts which describe the contents and/or organization of a particular pile, but Mander also discloses document views, called proxies. Mander at 3:21-25. The proxies can be any number of different forms, including a miniature representation of the document itself which can be paged through, or can be a sampling of the information in the document. *See* Mander at Fig. 4 (depicting several different embodiments).
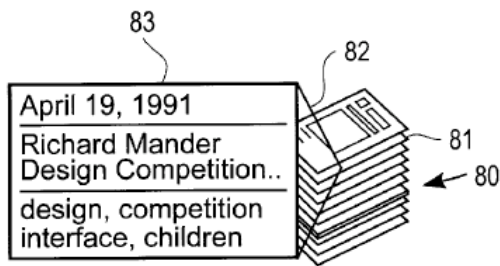
FIG. 4f
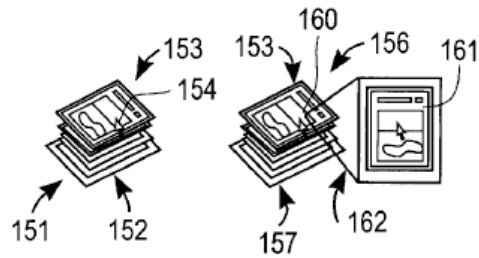


FIG. 4a

Mander is capable of seamless operation with an operating system, such as an Apple operating system. Mander at 36:56-37:4. Mander will utilize certain programs of the operating system to perform some of its functions. Mander is also capable of service in a networked environment. Mander at 8:14-16. Mander may be present on a client computer and rely on a network email server's email program to generate email documents to be received and indexed by Mander. Mander at 8:22-24.

In short, Mander discloses the essential concepts (and more) of the '227 Patent – organizing and displaying documents in a computer system according to timestamps and/or pre-assigned chronological labels, and automatically organizing new documents. Indeed, Mander anticipates each of claims 1-8, 10-18, 20-21, 23, 25-33. A detailed application of the prior art to each element of the requested claims is presented in Exhibit CC-A and below.

### 1. CLAIM 1

**1. A computer system which organizes each data unit received by or generated by the computer system, comprising:**

Mander discloses a computer filing system which has as its purpose organizing each document or file received or generated by the computer system. Mander at Abstract; 2:63-66; 25:21-37; 24:8-18.

**means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream;**

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of a "main stream" includes a collection of documents or a collection of information about documents, such as an index. Correspondingly, the broadest reasonable construction of "substream" includes a subset of a collection of documents, or a subset of the contents of an index, such as a search query of an index, search results, or a list of files organized by content and/or attributes. Applying the broadest reasonable constructions of these terms, Mander discloses a "means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream."

Mander discloses software and a processor for generating an index of each data unit received or generated by the system. Mander at 5:42-6:4; 25:21-37; Fig. 15. Mander also discloses one or more substreams, which are described as "piles" that contain only subsets of data units from the main stream. Mander at 8:47-55. According to Mander, "Fig. 15 shows one method according to the present invention for creating the internal representation used by the filing system for organizing piles, which internal representation is for each document in the filing system (or for a certain selected group of documents as specified by the user) and for every pile maintained in the filing system (or for piles which have been selected by the user to have their internal representation determined)." Mander at 24:8-22. Examples of "substreams" provided by Mander include a pile of documents that are "from Richard Mander," a pile of documents that are "dated April 19, 1991," and a pile of documents "dated after a certain date." Mander at 22:34-46; 23:48-50; *see also* Mander at 35:22-27 (describing the option of creating "subpiles" of a pile based on the dates of documents"); Mander at 20:63 (describing the option of "pile by date" to sort at pile).

**means for receiving data units from other computer systems;**

Mander discloses a means for receiving files from other computer systems, such as files received via an electronic mail system. Mander at 5:42-6:4; 8:15-16; 8:21-28.

**means for generating data units by the computer system;**

Mander also discloses that the computer system may create new documents when instructed by a user or an electronic mail program. Mander at 24:25-28.

**means for selecting a timestamp to identify each data unit;**

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of "selecting a timestamp to identify each data unit" includes indexing a data unit using an object containing meta-data attributes which include timestamp information. Applying the broadest reasonable constructions of these terms, Mander discloses selecting a timestamp to identify each data unit. Specifically, Mander discloses that the file system may select a timestamp for the document, or the timestamp may be selected by a user and recorded in a date line field of the document. Mander at 33:34-43. Mander also discloses that this timestamp information is indexed and can be used to sort and list documents by date, as well as to generate a pile of documents "dated after a certain date." *See, e.g.,* Mander at 33:34-63; 22:42-46; 23:48-50.

**means for associating each data unit with at least one chronological indicator having the respective timestamp;**

Applying the broadest reasonable construction of a chronological indicator as a collection of metadata, such as indexed metadata (see Section V.B (Claim Construction)), Mander also discloses a means for associating each data unit with at least one chronological indicator having the respective timestamp. Specifically, Mander discloses that each document is indexed and an internal representation of the document is created. Mander at 24:8-18. The internal representation is a collection of metadata attributes derived from indexing the file used to determine characteristics of the file. Mander at 3:62-4:5; 33:34-43. These metadata attributes include, for example, "information typically maintained in a computer filing system such as the title of the document, the type of document, the amount of information on the disk controlled by the filing system, and the date the document was created as well as an icon which is a representative of the document." Mander at 11:33-42 (emphasis added, examples omitted); 33:34-43.

**means for including each data unit according to the timestamp in the respective chronological indicator in the main stream; and**

As described in Section V.B (Claim Construction) above, indexed metadata falls within the scope of a chronological indicator in the main stream as that limitation is being applied by the Patent Owner in the concurrent litigation, and therefore falls within the broadest reasonable construction of that term for purposes of this Request. Applying that broadest reasonable construction, Mander discloses a system that stores a file's metadata attributes in an index, and further groups those attributes to create an internal representation which is used to organize the data units. Mander at 3:62-4:5; 25:21-37. Specifically, Mander discloses that the file system may select a timestamp for the document or the timestamp may be selected by a user and recorded in a date line field of the document. Mander at 33:34-43. Mander also discloses that this timestamp information is indexed and can be used to sort and list documents by date, as well as to generate a pile of documents "dated after a certain date." *E.g.* Mander at 33:34-63; 22:42-46; 23:48-50.

**means for maintaining the main stream and the substreams as persistent streams.**

Mander discloses that a new document received or generated by the computer system is automatically indexed by the system, and if the document belongs in any of the exiting piles, the system automatically places the document in the appropriate piles. Mander at 27:53-28:8; 35:14-17. Thus, Mander discloses maintaining the main streams and substreams as persistent streams.

### 2. CLAIM 2

**2. The computer system of claim 1, wherein each timestamp is selected from the group consisting of: past, present, and future times.**

As discussed above, Mander discloses that all files are indexed and that the file system maintains dates for these files. Mander further discloses that piles can be sorted according to certain criteria specified by the user, including date, and even that sorting according to date can be visually represented by coloring or shading document representations based on their date/age. Mander at 23:39-51; 20:35-43. Because Mander

includes all files, the timestamps used for sorting documents necessarily include past and present times. Additionally, to the extent the Patent Owner is applying the "future" limitation to future calendar entries in litigation, the timestamps in Mander could also be future timestamps for future calendar items. See Section V.B (Claim Construction) above.

### 3. CLAIM 3

**3. The computer system of claim 1, wherein each data unit includes textual data, video data, audio data and/or multimedia data.**

Mander discloses that documents may contain text, audio, video and/or multimedia data. Mander at 4:9-11; 36:54-55; 36:46-48.

### 4. CLAIM 4

**4. The computer system of claim 1, wherein the means for receiving further comprises means for receiving data units from the World Wide Web.**

Mander also discloses receiving documents from the World Wide Web. Specifically, Mander discloses receiving documents from another computer user, for example, by an electronic mail system. Mander at 8:22-24. A person of ordinary skill in the art at the time would have appreciated that one way to send and receive data units via electronic mail is through the World Wide Web.

### 5. CLAIM 5

**5. The computer system of claim 1, wherein said means for receiving further comprises means for receiving data units from a client computer.**

Mander discloses that documents can be received from a client computer over an electronic network system. Mander at 8:15-16; 8:21-28.

### 6. CLAIM 6

**6. The computer system according to claim 1, further comprising: means for displaying alternative versions of the content of the data units.**

Mander discloses that a document is displayed as a full-size reproduction or is alternatively displayed as, for example, a miniature of the first page of the document or as an icon of the document type.  Mander at 7:1-6; 9:45-61; 12:51-64.

### 7. CLAIM 10

**10. The computer system of claim 1, wherein the computer program further comprises: means for operating on any of the streams using a set of operations selected by a user.**

Mander discloses a variety of operations from which a user may select to perform functions on the piles.  Mander at 19:66-20:17; 20:44-54; 21:6-19; 21:66-23:21; 34:61-35:9; 29:4-29.   For example, Mander discloses operations such as sorting, changing coloring, creating subpiles, or editing the script which controls the way the pile works. Mander at 19:66-20:17; 20:44-54; 21:6-19; 21:66-23:21; 34:61-35:9; 29:4-29.

### 8. CLAIM 11

**11. The computer system of claim 1 further comprising: means to generate substreams from existing substreams.**

Mander discloses that subpiles can be created from existing piles according to criteria specified by the user or suggested by the system.  Mander at 3:60-64.

### 9. CLAIM 12

**12. A computer system as in claim 1, further comprising: means for generating a data unit comprising an alternative version of the content of another data unit; and**

Mander discloses that a document may be displayed as a full-sized reproduction, or may be alternatively displayed as, for example, a miniature of the first page of the document or as an icon of the document type.  Mander at 7:1-6; 9:45-61; 12:51-64.

**means for associating the alternative version data unit with the chronological indicator of the another data unit.**

Mander discloses a means for associating the alternative version data unit with the chronological indicator of the another data unit.  Because the alternative version data unit disclosed in Mander is associated with the original version of the data unit, the alternative version must also be associated with the chronological indicator of the original version.

Indeed, Mander discloses that documents may be included in more than one stream by using pointers to point to the document in multiple streams. Mander at 30:36-41.

**10. CLAIM 13**

**A method which organizes each data unit received by or generated by a computer system, comprising the steps of:**

Mander discloses a method which has as its purpose organizing each document or file received or generated by the computer system. Mander at Abstract; 2:63-66; 24:8-18.

**generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream;**

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of a "main stream" includes a collection of documents or a collection of information about documents, such as an index, and of "substream" as a subset of a collection of documents or a query, search results, sub-folders or a Smart Folders collection of information about documents, such as an index. Applying the broadest reasonable constructions of these terms, Mander discloses "generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream."

As discussed above in the context of claim 1, Mander discloses generating an index of each data unit received or generated by the system. Mander at 5:42-6:4; 25:21-37; Fig. 15. Mander also discloses one or more substreams, which are described as "piles," that contain only subsets of data units from the main stream. Mander at 8:47-55. According to Mander, "Fig. 15 shows one method according to the present invention for creating the internal representation used by the filing system for organizing piles, which internal representation is for each document in the filing system (or for a certain selected group of documents as specified by the user) and for every pile maintained in the filing system (or for piles which have been selected by the user to have their internal representation determined)." Mander at 24:8-22. Examples of "substreams" provided by Mander include a pile of documents that are "from Richard Mander," a pile of documents

that are "dated April 19, 1991," and a pile of documents "dated after a certain date." Mander at 22:34-46; 23:48-50; *see also* Mander at 35:22-27 (describing the option of creating "subpiles" of a pile based on the dates of documents); Mander at 20:63 (describing the option of "pile by date" to sort a pile).

### receiving data units from other computer systems;

Mander discloses receiving files from other computer systems, such as files received via an electronic mail system. Mander at 5:42-6:4; 8:15-16; 8:21-28.

### generating data units in the computer system;

Mander also discloses that the computer system may create new documents when instructed by a user or an electronic mail program. Mander at 24:25-28.

### selecting a timestamp to identify each data unit;

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of "selecting a timestamp to identify each data unit" includes using a date/time to uniquely identify each data unit or using an MDItem object containing meta-data attributes which necessarily include timestamp information. Applying the broadest reasonable constructions of these terms, Mander discloses selecting a timestamp to identify each data unit. Specifically, Mander discloses that the file system may select a timestamp for the document, or the timestamp may be selected by a user and recorded in a date line field of the document. Mander at 33:34-43. Mander also discloses that this timestamp information can be used to sort and list documents by date, as well as to generate a pile of documents "dated after a certain date." *See, e.g.,* Mander at 33:34-63; 22:42-46; 23:48-50.

### associating each data unit with at least one chronological indicator having the respective timestamp;

Applying the broadest reasonable construction of chronological indicator as collection of metadata such as indexed metadata (see Section V.B (Claim Construction)), Mander also discloses associating each data unit with at least one chronological indicator having the respective timestamp. Specifically, Mander discloses that each document is

indexed and an internal representation of the document is created. Mander at 24:8-18. The internal representation is a collection of metadata attributes derived from indexing the file used to determine characteristics of the file. Mander at 3:62-4:5; 33:34-43. These metadata attributes include, for example, "information typically maintained in a computer filing system such as the title of the document, the type of document, the amount of information on the disk controlled by the filing system, and <u>the date the document was created</u> as well as an icon which is a representative of the document." Mander at 11:33-42 (emphasis added; examples omitted); 33:34-43.

> **including each data unit according to the timestamp in the respective chronological indicator in at least the main stream; and**

As described in Section V.B (Claim Construction) above, indexed metadata falls within the scope of a chronological indicator in the main stream as that limitation is being applied by the Patent Owner in the concurrent litigation, and therefore falls within the broadest reasonable construction of that term for purposes of this Request. Applying that broadest reasonable construction, Mander discloses a system that stores a file's metadata attributes in an index, and further groups those attributes to create an internal representation, which is used to organize the data units. Mander at 3:62-4:5; 25:21-37. Specifically, Mander discloses that the file system may select a timestamp for the document, or the timestamp may be selected by a user and recorded in a date line field of the document. Mander at 33:34-43. Mander also discloses that this timestamp information is indexed and can be used to sort and list documents by date, as well as to generate a pile of documents "dated after a certain date." *E.g.* Mander at 33:34-63; 22:42-46; 23:48-50.

> **maintaining at least the main stream and the substreams as persistent streams.**

Mander discloses that a new document received or generated by the computer system is automatically indexed by the system, and if the document belongs in any of the exiting piles, the system automatically places the document in the appropriate piles. Mander at 27:53-28:8; 35:14-17. Thus, Mander discloses maintaining the main streams and substreams as persistent streams.

### 11. CLAIM 14

**14. The method of claim 13, wherein each timestamp is selected from the group consisting of: past, present, and future times.**

As discussed above, Mander discloses that all files are indexed and that the file system maintains dates for these files. Mander further discloses that piles can be sorted according to certain criteria specified by the user, including date, and even that sorting according to date can be visually represented by coloring or shading document representations based on their date/age. Mander at 23:39-51; 20:35-43. Because Mander includes all files, the timestamps used for sorting documents necessarily include past and present times. Additionally, to the extent the Patent Owner is applying the "future" limitation to future calendar entries in litigation, the timestamps in Mander could also be future timestamps for future calendar items. *See* Section V.B (Claim Construction) above.

### 12. CLAIM 15

**15. The method of claim 13, further comprising the step of displaying the streams on a display device as visual streams.**

Mander discloses displaying on a display device a collection of documents as "piles." Mander's piles are graphical representations of the document collections that comprise a main stream and/or a substream; in other words, Mander's piles display the streams of claim 13 on a display device as visual streams. Mander at 5:58-62; Figs 2-5, 6-13, 22. For example, Mander discloses that if the cursor is pointed to a document in the pile, the system arranges the piles for viewing the document. Mander at 12:35-38; 26:66-27:15; Figs. 4g-4m.

### 13. CLAIM 16

**16. The method of claim 15, wherein the step of displaying the streams further comprises the steps of: a) receiving from a user one or more indications of one or more selected segments of the streams corresponding to one or more selected intervals of time, and**

Mander also discloses displaying on a display visual streams while receiving from a user one or more indications of one or more selected segments of the streams

corresponding to one or more selected intervals of time. For example, Mander discloses that a user may create labels which can be created to include only documents which correspond to a selected interval of time within a pile. Mander at 23:36-58.

**b) displaying the selected segments.**

Mander discloses that selected segments may be displayed. Mander at 5:58-62; 26:66-27:15; 12:35-38; Figs. 4g-4m.

### 14. CLAIM 17

**17. The method of claim 13, wherein each data unit includes textual data, video data, audio data and/or multimedia data.**

Mander discloses that documents may contain text, audio, video, and/or multimedia data. Mander at 4:9-11; 36:54-55; 36:46-48.

### 15. CLAIM 20

**20. The method of claim 13, further comprising the step of: displaying data from one of the data units in abbreviated form.**

Mander discloses that a document may be displayed as a miniature of the first page of the document or as an icon of the document type. Mander at 12:51-64; 7:1-6.

### 16. CLAIM 25

**A computer system for organizing each data unit received by or generated by the computer system, comprising:**

Mander discloses a computer filing system which has as its purpose organizing each document or file received or generated by the computer system. Mander at Abstract; 2:63-66; 25:21-37; 24:8-18.

**means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream; means for associating each data unit with at least one chronological indicator having a respective timestamp which identifies the data unit; means for including each data unit according to the timestamp in a respective chronological indicator in the main stream;**

**means for maintaining the main stream and the substreams as a persistent streams;**

At the outset, as described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of a "main stream" includes a collection of documents or a collection of information about documents, such as an index, and of "substream" as a subset of a collection of documents or a query, search results, sub-folders or Smart Folders collection of information about documents, such as an index. Applying the broadest reasonable constructions of these terms, Mander discloses a "means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream."

Mander discloses software and a processor for generating an index of each data unit received or generated by the system. Mander at 5:42-6:4; 25:21-37; Fig. 15. Mander also discloses one or more substreams, which are described as "piles" that contain only subsets of data units from the main stream. Mander at 8:47-55. According to Mander, "Fig. 15 shows one method according to the present invention for creating the internal representation used by the filing system for organizing piles, which internal representation is for each document in the filing system (or for a certain selected group of documents as specified by the user) and for every pile maintained in the filing system (or for piles which have been selected by the user to have their internal representation determined)." Mander at 24:8-22.

Mander also discloses a means for receiving files from other computer systems, such as files received via an electronic mail system. Mander at 5:42-6:4; 8:15-16; 8:21-28. Mander also discloses that the computer system may create new documents when instructed by a user or an electronic mail program. Mander at 24:25-28.

In addition, as described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of "selecting a timestamp to identify each data unit" includes using a date/time to uniquely identify each data unit or using an MDItem object containing meta-data attributes which include timestamp information. Applying the broadest reasonable constructions of these terms, Mander discloses selecting a timestamp to identify each data unit. Specifically, Mander discloses that the file system may select a timestamp for the document, or the timestamp may be selected

by a user and recorded in a date line field of the document. Mander at 33:34-43. Mander also discloses that this timestamp information is indexed and can be used to sort and list documents by date, as well as to generate a pile of documents "dated after a certain date." *See, e.g.,* Mander at 33:34-63; 22:42-46; 23:48-50.

Applying the broadest reasonable construction of a chronological indicator as a collection of metadata such as indexed metadata (see Section V.B (Claim Construction)), Mander also discloses a means for associating each data unit with at least one chronological indicator having the respective timestamp. Specifically, Mander discloses that each document is indexed and an internal representation of the document is created. Mander at 24:8-18. The internal representation is a collection of metadata attributes derived from indexing the file used to determine characteristics of the file. Mander at 3:62-4:5; 33:34-43. These metadata attributes include, for example, "information typically maintained in a computer filing system such as the title of the document, the type of document, the amount of information on the disk controlled by the filing system, and the date the document was created as well as an icon which is a representative of the document." Mander at 11:33-42 (emphasis added, examples omitted); 33:34-43.

Further, as described in Section V.B (Claim Construction) above, indexed metadata falls within the scope of a chronological indicator in the main stream as that limitation is being applied by the Patent Owner in the concurrent litigation, and therefore falls within the broadest reasonable construction of that term for purposes of this Request. Applying that broadest reasonable construction, Mander discloses a system that stores a file's metadata attributes in an index, and further groups those attributes to create an internal representation, which is used to organize the data units. Mander at 3:62-4:5; 25:21-37. Specifically, Mander discloses that the metadata index, including its timestamp information, can be used to sort and list documents by date, as well as to generate piles of documents based on criteria, such as a pile of documents "dated after a certain date." *E.g.* Mander at 33:34-63; 22:42-46; 23:48-50.

Finally, Mander discloses that a new document received or generated by the computer system is automatically indexed by the system, and if the document belongs in any of the exiting piles, the system automatically places the document in the appropriate piles. Mander at 27:53-28:8; 35:14-17. Thus, Mander discloses maintaining the main streams and substreams as persistent streams.

**means for representing one or more data units of a selected stream on a display device as document representations, each document representation including the timestamp of the respective data unit and the order of appearance of each data representation on the display device determined by the timestamp of the respective data unit;**

Mander discloses that a document may be displayed as a full-size reproduction or may be alternatively displayed as, for example, a miniature of the first page of the document or as an icon of the document type. Mander at 5:58-62; 12:51-64; 7:1-6. Mander further discloses displaying the timestamp of the document and displaying the documents in order as determined by the date stamp through sorting the pile. Mander at Fig. 4e; 33:35-43.

**means for selecting which data units are represented on the display device by selecting one of the document representations and displaying document representations corresponding to data units having timestamps within a range of a timepoint; and**

Mander discloses that a user may create labels which can be created to include only documents which correspond to a selected interval of time within a pile. Mander at 5:58-62; 23:36-58; 26:66-27:15; 12:35-38; Figs 4g-4m.

**means for selecting one or more of the document representations with a pointing device so that the data units represented by the selected document representations are further displayed with a second document representation comprising an alternative version of the content of the respective data unit.**

Mander discloses the well known prior art means for selecting with a pointing device by using a computer mouse. Mander at 6:29-49. Mander further discloses that, upon selection of the document representation with the mouse, the user can display a "proxy," or a second document representation, to the side of the first. Mander at 10:15-20. The proxy documents may take a variety of alternative forms, such as, for example, page miniatures, characteristic words, file information, exaggerated features, an icon, an animated "dicon," and document vectors, and can include the document's timestamp.

Mander at 7:1-6; 9:45-61; 9:65-10:1; 10:45-55; 11:56-60; 11:65-12:3; 36:50-55; Figs. 4(e), 4(f).

### 17. CLAIM 26

**26. A computer system as in claim 25, wherein the document representations form a visual stream having a three-dimensional effect.**

As discussed above in the context of claim 15, Mander discloses displaying on a display device a collection of documents as "piles." Mander's piles are graphical representations of the document collections that comprise a main stream and/or a substream; in other words, Mander's "piles" are displayed on a display device as visual streams of document representations. Mander at 5:58-62; Figs 2-5, 6-13, 22. Mander discloses that individual flat document representations are piled on top of each other to appear in three dimensions on the visual display. Mander at Figs. 2-5, 6-13, and 22.

### 18. CLAIM 27

**27. A computer system as in claim 26, wherein the three-dimensional effect further comprises a perspective view.**

Mander shows each pile as a vertical collection of non-rectangular parallelograms creating the visual effect that the far corner of the stack is further away from the viewer than the near corner. Mander at Figs. 2-5, 6-13, and 22.

### 19. CLAIM 28

**28. A computer system as in claim 25, wherein each document representation comprises a polygon and the polygons overlap to form a visual stream of polygons.**

Mander shows each document as 4-sided polygons which overlap to form a visual stream. Mander at Figs. 2-5, 6-13, and 22.

### 20. CLAIM 29

**A computer system as in claim 25, wherein the alternative version is an abbreviated version.**

Mander discloses that a document may be displayed as a full-size reproduction or may be alternatively displayed as, for example, a miniature or abbreviated version of the document. Mander at 12:51-64; 7:1-6.

<p style="text-align:center">*    *    *</p>

For the reasons set forth above and in Exhibit CC-A, Mander anticipates, or at a minimum, renders obvious each of claims 1-8, 10-18, 20-21, 23, 25-33. Claims 1-8, 10-18, 20-21, 23, 25-33 should be reexamined, rejected under 35 U.S.C. §§ 102 and/or 103, and canceled pursuant to this Request.

## B. CLAIMS 9 AND 22 ARE RENDERED OBVIOUS BY MANDER IN VIEW OF RETROSPECT UNDER 35 U.S.C. § 103

Retrospect is the name of Macintosh software for automatic backup of files that was widely distributed in the 1990s. The 1995 Retrospect User's Guide ("Retrospect") is a printed publication that is prior art under 35 U.S.C. §102(a) and (b) and is asserted under 35 U.S.C. § 103. Retrospect was not before the Examiner during the prosecution of the '227 patent.

### 1. A PERSON OF ORDINARY SKILL IN THE ART WOULD BE MOTIVATED TO COMBINE MANDER AND RETROSPECT

Both Mander and Retrospect were designed to work with the Macintosh computers of the 1990s, and one of ordinary skill would have been motivated to combine the file organization and user interface of Mander and the archiving functionality of Retrospect for several reasons.

#### (a) COMBINING PRIOR ART ELEMENTS ACCORDING TO KNOWN METHODS TO YIELD PREDICTABLE RESULTS

MPEP § 2141.III states that "[e]xemplary rationales that may support a conclusion of obviousness include … (A) Combining prior art elements according to known methods to yield predictable results." The combination of the prior art Macintosh file system in Mander with prior art archiving software would have been obvious under this rationale. Retrospect was specifically designed to perform backups for Macintosh systems, and the entire manual describes how this is done. Retrospect at p. v ("Introducing Retrospect"); p. 3 ("Retrospect requires System 7.0 or later Apple System software"). Thus, application of Retrospect to perform backups of a Macintosh file system was a known prior art method with known results.

Similarly, Mander was designed to work on a Macintosh computer's file system. Mander at 6:27-29 ("In the preferred embodiment of the present invention, the file system operates on a Macintosh computer of Apple Computer, Inc."). Thus, combining

Retrospect with Mander's preferred embodiment would be a combination of prior art elements according to the known methods of using Retrospect with a Macintosh computer's file system. The result of the combination of Retrospect's backup techniques with the Macintosh file system would yield predictable results that are described in the Retrospect reference, including that the archival method of backup employed by Retrospect ensures that backed up files are not deleted or written over until instructed by the user. Retrospect at p. v.

### (b) SUBSTITUTION OF ONE KNOWN ELEMENT FOR ANOTHER

One of ordinary skill in the art would be motivated to combine Mander with Retrospect as a substitution of one known element for another to obtain a predictable result. MPEP § 2141.III states that "[e]xemplary rationales that may support a conclusion of obviousness include … (B) Simple substitution of one known element for another to obtain predictable results." The automatic archival backup method of Retrospect is a compatible alternative to the manual back-up of files that would be required in Mander. Indeed, there are predictable positive results associated with substituting an automatic archival backup for a manual backup, such as back up that does not require that the user attend the computer during the backup and that the archival method of back up ensures that backed up files are not deleted or written over until instructed by the user. Retrospect at p. v. Accordingly, one skilled in the art would be motivated to substitute the known automatic archival backup method of Retrospect for the known manual back-up method required in a system using Mander to obtain the predictable result of automated backups that ensure that files are maintained until the user elects to write over or delete them.

### (c) USE OF KNOWN TECHNIQUE TO IMPROVE SIMILAR METHODS IN THE SAME WAY

MPEP § 2141.III states that "[e]xemplary rationales that may support a conclusion of obviousness include … (C) Use of known technique to improve similar devices (methods, or products) in the same way." Once again, one of ordinary skill in the art would have been motivated to use the known technique of Retrospect's automatic archival backup for the Macintosh operating system with the similar system disclosed in Mander in the same way. Design incentives would have prompted such a combination

because it was well known that being able to archive documents for later retrieval was desirable such as for backup/restore purposes, and also because it was well known that it was desirable to free expensive and scarce disk or memory space by archiving older files.

### (d) APPLYING A KNOWN TECHNIQUE TO A KNOWN DEVICE READY FOR IMPROVEMENT

MPEP § 2141.III states that "[e]xemplary rationales that may support a conclusion of obviousness include … (D) Applying a known technique to a known device (method or product) ready for improvement to yield predictable results." For the same reasons as above, one of ordinary skill in the art would have been motivated to use the known technique of Retrospect's automatic archival backup for the Macintosh operating system with the similar system disclosed in Mander. This is particularly true because Mander does not expressly disclose a method or archival or backup and would thus be ready for improvement. For example, with the ability to archive documents, users of the Mander system could keep seldom-used files at the same time as local hard drive or memory space is freed up; furthermore, reliability of the system described in Mander could be increased because archived documents can be retrieved in the event of a crash or failure.

In sum, based on the similarities between the two systems, and the well-known nature of archiving systems at the time the '313 patent was filed, a person of ordinary skill in the art would have considered it obvious to implement the Mander system with the archiving methods disclosed in Retrospect.

### 2. CLAIM 9

**9. A computer system according to claim 1 further comprising: means for archiving a data unit associated with a timestamp older than a specified time point while retaining the respective chronological indicator and/or a data unit having a respective alternative version of the content of the archived data unit.**

As shown above, Mander discloses all of the elements of claim 1. A person of ordinary skill in the art at the time the '227 patent was filed would have recognized the elements of dependent claim 9 to have been obvious in view of a combination of Mander and Retrospect.

As discussed above in Section V.B (Claim Construction), Patent Owner's own application of "means for archiving a data unit associated with a timestamp older than a specified time point" in litigation demonstrates that Patent Owner believes that the broadest reasonable construction of this limitation includes archival and back-up systems. Applying the broadest reasonable construction of the "means for archiving a data unit associated with a timestamp older than a specified time point" limitation, this limitation was well known in the art at the time of Patent Owner's alleged invention, including in Retrospect.

Retrospect discloses archiving software for archiving documents associated with a timestamp older than a specified time. Retrospect at pp. 151, 155. Because the archiving function is almost identical to a backup script, the archived file retains all the attributes of the original files. Retrospect at pp. 81-87, 98, 104. Further Retrospect also teaches retaining an alternative version of the documents by creating a catalog which indexes the archived files. Retrospect at pp. 21, 143.

### 3. CLAIM 22

**22. The method of claim 13, further comprising the step of: archiving data units having timestamps older than a specified time point.**

As discussed above, Mander discloses all of the elements of claim 13. A person of ordinary skill in the art at the time the '227 patent was filed would have recognized the elements of claim 22 to have been obvious in view of a combination of Mander and Retrospect.

As discussed above in Section V.B (Claim Construction), the broadest reasonable construction of archiving data units having timestamp older than a specified time point would include archival and back-up systems. As such, this limitation was well known in the art at the time of Patent Owner's alleged invention, including in Retrospect. Retrospect discloses archiving software for archiving documents associated with a timestamp older than a specified time. Retrospect at p. 151.

\*     \*     \*

For the reasons set forth above and in Exhibit CC-A, the combination of Mander and Retrospect renders obvious each of claims 9 and 22 of the '227 patent. Claims 9 and

22 should be reexamined, rejected under 35 U.S.C. §§ 103, and canceled pursuant to this Request.

### C.   LUCAS IN VIEW OF MAGELLAN RENDERS OBVIOUS CLAIMS 1-6, 9-17, 20, 22, AND 25 -29 UNDER 35 U.S.C. § 103. [10]

Lucas (U.S. 5,499,330) was filed September 17, 1993. Therefore, Lucas is prior art under 35 U.S.C. §102(b) and is asserted under 35 U.S.C. § 103. Lucas was not before the Examiner during the prosecution of the '227 patent.

Lucas discloses a system for displaying documents in three dimensions, particularly three-dimensional piles, to provide an "intuitively appealing" improvement over conventional user-interfaces where "folders or directories are used to organize files or documents into groups or hierarchies." Lucas 1:14-40; Figs. 5 & 3. Specifically, Lucas discloses a system that displays documents along a "strand" through a three-dimensional display space. Lucas at 1:55-61. The strand path is defined by a strand function that determines the shape of the three-dimensional display of documents. Lucas at 8:54-9:7. The strand mechanism can form any kind of continuous three-dimensional display of documents, including piles or documents "spiraling back to infinity." Lucas at 8:46-9:7; Figs. 5 & 3.
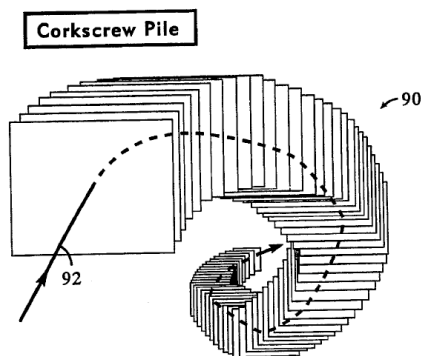


FIG. 5

Lucas also discloses a "pile and scroll tool" that allows a user to browse through a collection of documents displayed along a strand. Lucas at 10:43-51; Fig. 3. The pile and scroll tool allows the user to browse documents that are cycling through a U-shaped strand in response to input signals from a user-controlled mouse. Lucas at 10:61-11:17.

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[10]   Although Requester has detailed the bases for invalidity of the identified claims of the '227 patent herein, Requester has also included additional citations to the disclosure in Lucas and Magellan in Exhibit CC-B to assist the Office.
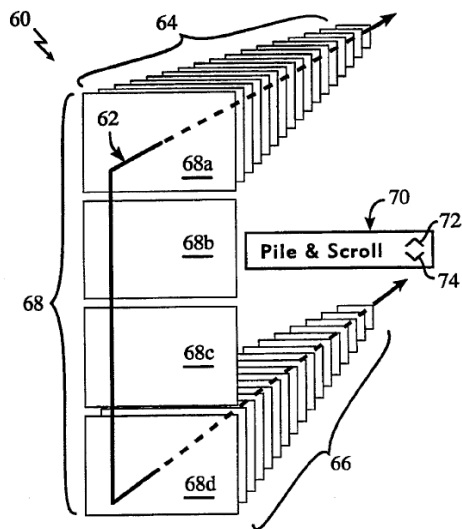
## FIG. 3

Lucas describes using these piles as a generic tool able to present any type of collection of documents, including for example the output of a "FIND" command. *E.g.* Lucas at 9:7-14. The user interface described in Lucas is designed to work with "repositories" and "workspaces" of documents, which can be kept either in local storage or accessed over a computer network. Lucas at 7:40-67.

For purposes of this Request, Lucas is analyzed in view of Lotus' Magellan software. Lotus' Magellan was a software system first released in the 1980s by Lotus Development Corporation. Magellan was disclosed in, among other references, "Using Lotus Magellan," by David P. Gobel (Que Corporation, 1989) and "Lotus Magellan's Explorer's Guide," by Lotus (Lotus Development Corporation, 1989). Therefore, Magellan is prior art under 35 U.S.C. § 102 and is asserted under 35 U.S.C. § 103. Lotus' Magellan was also not before the Examiner during the prosecution of the '227 patent.

Magellan discloses a system for indexing the entire contents of a computer system, including every word of every document in the system, and even allows the indexing of networked storage. Using Lotus Magellan at pp. 1-2. After indexing all of the files on a user's system, Magellan allows searching the index to find documents satisfying user-defined search criteria. Using Lotus Magellan at pp. *xi-xii*; Magellan Explorer's Guide at p. 19. In addition to indexing the contents of the files, Magellan also indexes file metadata, such as name, path, time, size, and date. Magellan Explorer's

Guide at p. 186. While Magellan had sophisticated indexing and searching capabilities, it did not have a graphical user interface.

## 1. A PERSON OF ORDINARY SKILL IN THE ART WOULD BE MOTIVATED TO COMBINE LUCAS AND MAGELLAN

One of ordinary skill would have been motivated to combine the display features of Lucas with the search and indexing features of Lotus' Magellan.

### (a) SUBSTITUTION OF ONE KNOWN ELEMENT FOR ANOTHER

One of ordinary skill in the art would be motivated to combine Lucas with Magellan as a substitution of one known element for another to obtain a predictable result. MPEP § 2141.III states that "[e]xemplary rationales that may support a conclusion of obviousness include … (B) Simple substitution of one known element for another to obtain predictable results." The user interface of Lucas is a compatible alternative to the user interface used by Magellan, including in particular because there are predictable positive results associated with substituting the Lucas user interface for a DOS-based user interface. Those predictable positive results include, among others, the positive results disclosed in Lucas, such as allowing users to "more easily manipulate documents in an environment like the real world of the desktop and to organize documents in a way that is intuitively appealing" and is "not based on artificial constructs imposed by the nature of computer storage of documents or two dimensional user interface designs." Lucas at 1:14-40. Accordingly, one skilled in the art would be motivated to substitute the known three-dimensional user interface of Lucas for the known DOS-based user interface of Magellan to obtain the predictable result of an enhanced user interface. This is particularly true because Lucas expressly contemplates the use of searches (which it describes using, for example, the FIND operation) to generate the content to be displayed. Lucas at 9:8-14.

### (b) APPLYING A KNOWN TECHNIQUE TO A KNOWN DEVICE READY FOR IMPROVEMENT

MPEP § 2141.III states that "[e]xemplary rationales that may support a conclusion of obviousness include … (D) Applying a known technique to a known device (method or product) ready for improvement to yield predictable results." For the same reasons as above, one of ordinary skill in the art would be motivated to use the

known technique of Lucas' user interface with search and organizing features of Magellan. This is particularly true because Magellan does not disclose a three-dimensional user interface that allows users to "more easily manipulate documents in an environment like the real world of the desktop and to organize documents in a way that is intuitively appealing," as disclosed in Lucas, and would thus be ready for improvement.

### (c) TEACHING, SUGGESTION OR MOTIVATION IN THE PRIOR ART

Finally, one of ordinary skill in the art would be motivated by the direct teaching of Lucas to combine it with Magellan. Lucas expressly contemplates the use of searches (which it describes using, for example, the FIND operation) to generate the content to be displayed. Lucas at 9:8-14. Magellan discloses a system for indexing the entire contents, including every word of every document, in a computer system and allowing the user to perform sophisticated searches to find documents satisfying user-defined search criteria. Using Lotus Magellan at pp. 1-2; Using Lotus Magellan at pp. *xi-xii*; Magellan Explorer's Guide at p. 19. One of ordinary skill in the art reading the disclosure of high-level search functionality in Lucas would have been motivated by that teaching to identify known techniques for sophisticated searching and indexing and to combine those techniques with Lucas.

In sum, based on the capabilities of the two systems and the well-known nature of both user interface and searching systems at the time the '313 patent was filed, a person of ordinary skill in the art would have considered it obvious to implement the Lucas display technique with the searching system disclosed in Magellan.

### 2. CLAIM 1

**1. A computer system which organizes each data unit received by or generated by the computer system, comprising:**

Lucas discloses a system that allows the user to organize and browse documents in an environment that resembles the real world of piles and papers. Lucas at 1:52-54. Lucas further discloses that "whenever a new document is scanned, faxed or sent through electronic mail, and then subsequently fetched to a workspace, the system will annotate that document to indicate that it has not been read." Lucas at 19:42-45. Similarly,

Magellan is a computer search program that organizes all data units or documents generated by a computer or received by a computer over a network in order to facilitate viewing and locating files.  Magellan Explorer's Guide at pp. 4, 63, and 191.

> **means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream;**

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of a "main stream" includes a collection of documents or a collection of information about documents, such as an index.  Correspondingly, the broadest reasonable construction of "substream" includes a subset of a collection of documents, or a subset of the contents of an index, such as a search query of an index, search results, or a list of files organized by content and/or attributes. Applying the broadest reasonable constructions of these terms, Magellan discloses a "means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream."

Magellan is a program which creates a main stream as a main index of data units on a hard disk where said data units were generated by a computer or received by a computer over a network.  Magellan Explorer's Guide at pp. 19-20, 186, and 191.

Further, when the main index is searched with Magellan's Explore command, the results of the search create a substream, which lists the relevant subset of documents from the main index, or main stream.  Magellan Explorer's Guide at pp. 96-97 and 109. Similarly, Lucas contemplates the use of searches (the FIND operation) to create piles for display.  Lucas at 9:8-14.

> **means for receiving data units from other computer systems;**

Magellan discloses receiving documents from other computer systems, such as files received via removable disks or from other networked computers.   Magellan Explorer's Guide at pp. 4 and 191.  Lucas also contemplates that data units may be

received from other computer systems or "repositories," including computers that are networked. Lucas at 7:58-8:2; 8:24-29; 18:30-42.

### means for generating data units by the computer system;

Magellan discloses a computer system which generates and stores new files, such as a new document created with Lotus Manuscript. Magellan Explorer's Guide at p. 4. Similarly, Lucas contemplates that its display techniques will be used in conjunction with documents generated by the computer system, including, for example, documents that are scanned into the system. Lucas at 4:43-48.

### means for selecting a timestamp to identify each data unit;

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of "selecting a timestamp to identify each data unit" includes indexing a data unit using an object containing meta-data attributes which include timestamp information. Applying the broadest reasonable constructions of this limitation, Magellan discloses selecting a timestamp to identify each data unit. Specifically, Magellan discloses an index which identifies the time and date that each document was created or last modified. Magellan Explorer's Guide at p. 29, Using Lotus Magellan at p. 36. In addition, Lucas contemplates that the files that it displays will include timestamp information. For example, in the case of scanned documents, Lucas contemplates that the scanned document will have an information sticker that includes the date on which the document was scanned. Lucas at 4:46-48. As another example, Lucas also contemplates the display of email messages that are sorted by timestamp. Lucas at 14:28-35.

### means for associating each data unit with at least one chronological indicator having the respective timestamp;

Applying the broadest reasonable construction of a chronological indicator as a collection of metadata such as indexed metadata, Magellan discloses a means for associating each data unit with at least one chronological indicator having the respective timestamp. *See* Section V.B (Claim Construction). Specifically, Magellan discloses the .IX2 and .IX4 files, which are associated with each document and contain meta-data

about each document, including date and time information. Magellan Explorer's Guide at pp. 186-187.

**means for including each data unit according to the timestamp in the respective chronological indicator in the main stream; and**

As described in Section V.B (Claim Construction) above, indexed metadata falls within the scope of a chronological indicator in the main stream as that limitation is being applied by the Patent Owner in the concurrent litigation, and therefore falls within the broadest reasonable construction of that term for purposes of this Request. Applying that broadest reasonable construction, Magellan discloses a means for including each data unit according to the timestamp in the respective chronological indicator in the main stream. Specifically, Magellan discloses that each document is included in the index and associated with a time stamp and a chronological indicator, files .IX2 and .IX4, so that the documents may be included in the main stream chronologically according to the time and date they were created or last modified. Magellan Explorer's Guide at pp. 29, 40 and 186.

**means for maintaining the main stream and the substreams as persistent streams.**

Magellan discloses using the Update command to maintain a persistent updated main stream and substreams. Magellan Explorer's Guide at p. 49. In addition, macros can be used to automatically update the index as a persistent stream. Magellan Explorer's Guide at p. 220; Using Lotus Magellan at p. 216.

### 3. CLAIM 2

**2. The computer system of claim 1, wherein each timestamp is selected from the group consisting of: past, present, and future times.**

As discussed above, Magellan discloses that all files are indexed and that the file system maintains timestamps for these files. Specifically, Magellan discloses a past group of files that resided on the hard drive prior to indexing the files, a present group of updated files after the initial indexing, and a future group of calendar entries. Magellan Explorer's Guide at pp. 19, 26, 29, 49, and 130. Applying the broadest reasonable

construction of "future" for this Request, Magellan would also disclose future timestamps for future calendar items. *See* Section V.B (Claim Construction) above.

### 4. CLAIM 3

**3. The computer system of claim 1, wherein each data unit includes textual data, video data, audio data and/or multimedia data.**

Magellan discloses that the indexed documents may contain at least textual data. Magellan Explorer's Guide at p. 186. Lucas contemplates that its technique can be used broadly for handling documents in a computer system, including documents that are typed, scanned, faxed, or emailed. Lucas at 1:49-52; 14:28-31.

### 5. CLAIM 4

**4. The computer system of claim 1, wherein the means for receiving further comprises means for receiving data units from the World Wide Web.**

Magellan discloses means for receiving documents in a network environment. Magellan Explorer's Guide at p. 191. Further, Lucas discloses that documents can be received from networked computers as well as by email. Lucas at 7:58-8:2; 8:24-29; 14:28-31. A person of ordinary skill in the art at the time would have appreciated that one way to send and receive data units via networked computers or electronic mail is through the World Wide Web.

### 6. CLAIM 5

**5. The computer system of claim 1, wherein said means for receiving further comprises means for receiving data units from a client computer.**

Both Magellan and Lucas disclose a means for receiving documents from other computers in a network environment, such as a client computer. Magellan Explorer's Guide at pp. 191-192; Lucas at 7:58-8:2; 8:24-29.

### 7. CLAIM 6

**6. The computer system according to claim 1, further comprising: means for displaying alternative versions of the content of the data units.**

Magellan discloses a computer search program that organizes all data units, or documents as construed by Patent Owner, generated by a computer or received by a computer over a network in order to facilitate viewing and locating files. Magellan Explorer's Guide at pp. 4, 63, and 191. Lucas discloses that alternative versions of the content of files can be displayed, including through use of its document renderers, which draw a rectangle of the screen object associated with each document in a workspace and render the interior of each screen object. Lucas 5:42-57. Lucas also discloses that a user can clip a document so as to restrict the viewable area of the screen object associated with that document in a view; clipping a document makes it look smaller without changing its position on the Z axis. Lucas at 19:26-33.

**means for displaying alternative versions of the content of the data units.**

Magellan discloses that a user can view a document with an alternative or a "preferred" viewer instead of the default viewer. Magellan Explorer's Guide at pp. 145 and 211. Lucas discloses a "workspace viewer" that manages the display of screen objects in the workspace, including by providing a means for arranging screen objects multi-dimensionally. Lucas at 5:42-57

### 8. CLAIM 9

**9. A computer system according to claim 1 further comprising: means for archiving a data unit associated with a timestamp older than a specified time point while retaining the respective chronological indicator and/or a data unit having a respective alternative version of the content of the archived data unit.**

As discussed above in Section V.B (Claim Construction), Patent Owner's own application of a "means for archiving a data unit associated with a timestamp older than a specified time point" in litigation demonstrates that Patent Owner believes that the broadest reasonable construction of this limitation includes archival and back-up systems. Applying the broadest reasonable construction of the "means for archiving a data unit associated with a timestamp older than a specified time point" limitation, this limitation was well known in the art at the time of Patent Owner's alleged invention, including in Magellan.

Magellan discloses a computer search program that organizes all data units, or documents as construed by Patent Owner, generated by a computer or received by a computer over a network in order to facilitate viewing and locating files. Magellan Explorer's Guide at pp. 4, 63, and 191. Magellan also "provides the file management tools you need to archive your data and remove any unnecessary files after finishing a project." Magellan Explorer's Guide at pp. 52, 57; Using Lotus Magellan at pp. 88-91.

### 9. CLAIM 10

**10. The computer system of claim 1, wherein the computer program further comprises: means for operating on any of the streams using a set of operations selected by a user.**

Magellan discloses a number of operations that can be performed on the indexes, or streams, such as compose, copy, delete, launch, sort, tree, and zoom. See Magellan Explorer's Guide at p. vi. Similarly, Lucas discloses the use of the FIND tool to generate the contents of a pile, the pile and scroll tool to browse through a collection of documents in a U-shaped strand, and scripts to modify the attributes of documents, perform basic mathematical and search operations, call other scripts and do other basic operations such as insert or remove documents from strands (streams). Lucas at 3:24-27; 9:8-14; 10:43-51.

### 10. CLAIM 11

**11. The computer system of claim 1 further comprising: means to generate substreams from existing substreams.**

Magellan discloses that a search result, or a substream, can be refined by changing the explore threshold setting so that different subsets of the search are displayed, thus generating a substream from an existing substream. Magellan Explorer's Guide at p. 144.

### 11. CLAIM 12

**12. A computer system as in claim 1, further comprising: means for generating a data unit comprising an alternative version of the content of another data unit; and**

Magellan discloses a means for generating a document comprising an alternative version of the content of another document by changing the program which launches the document, such as opening a Lotus 1-2-3 document as a WordPerfect document.

Magellan Explorer's Guide at pp. 122-123.  Alternatively, according to Magellan
Explorer's Guide, one may generate a document comprising an alternative version of the
content of another document by changing the file extension of the document, such as
changing the .wk extension for a Lotus 1-2-3 Worksheet to the .wp extension for a
WordPerfect document.  Magellan Explorer's Guide at pp. 122-123.

Similarly, Lucas discloses that alternative versions of the content of files can be
displayed, including through use of its document renderers, which draw a rectangle of the
screen object associated with each document in a workspace and which render the
interior of each screen object.  Lucas 5:42-57.  Lucas also discloses that a user can clip a
document so as to restrict the viewable area of the screen object associated with that
document in a view; clipping a document makes it look smaller without changing its
position on the Z axis.  Lucas at 19:26-33.

**means for associating the alternative version data unit with the chronological indicator of the another data unit.**

As discussed with respect to claim 1, the .IX2 and .IX4 files associated with each
document contain meta-data, including time and date information, and are thus
chronological indicators.  Because the alternative version of a document is associated
with the original document, the alternative version of a document is therefore associated
with the chronological indicator, the .IX2 and .IX4 files, of the original version.
Magellan Explorer's Guide at pp. 186-187.

Similarly, in Lucas, the screen objects rendered for display are associated with
each document.  Lucas 5:42-57.

### 12. CLAIM 13

**13.  A method which organizes each data unit received by or generated by a computer system, comprising the steps of:**

Lucas discloses a system that allows the user to organize and browse documents
in an environment that resembles the real world of piles and papers.  Lucas at 1:52-54.
Lucas further discloses that "whenever a new document is scanned, faxed or sent through
electronic mail, and then subsequently fetched to a workspace, the system will annotate
that document to indicate that it has not been read."  Lucas at 19:42-45.  Similarly,

Magellan is a computer search program that organizes all data units or documents generated by a computer or received by a computer over a network in order to facilitate viewing and locating files. Magellan Explorer's Guide at pp. 4, 63, and 191.

> **generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream;**

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of a "main stream" includes a collection of documents or a collection of information about documents, such as an index. Correspondingly, the broadest reasonable construction of "substream" includes a subset of a collection of documents, or a subset of the contents of an index, such as a search query of an index, search results, or a list of files organized by content and/or attributes. Applying the broadest reasonable constructions of these terms, Magellan discloses "generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream."

Magellan is a program which creates a main stream as a main index of data units on a hard disk, where said data units were generated by a computer or received by a computer over a network. Magellan Explorer's Guide at pp. 19-20, 186, and 191.

Further, when the main index is searched with Magellan's Explore command, the results of the search create a substream, which lists the relevant subset of documents from the main index, or main stream. Magellan Explorer's Guide at pp. 96-97 and 109. Similarly, Lucas contemplates the use of searches (the FIND operation) to create piles for display. Lucas at 9:8-14.

> **receiving data units from other computer systems;**

Magellan discloses receiving documents from other computer systems, such as files received via removable disks or from other networked computers. Magellan Explorer's Guide at pp. 4 and 191. Lucas also contemplates that data units may be

received from other computer systems or "repositories," including computers that are networked. Lucas at 7:58-8:2, 8:24-29, 18:30-42.

**generating data units in the computer system;**

Magellan discloses a computer system which generates and stores new files, such as a new document created with Lotus Manuscript. Magellan Explorer's Guide at pg. 4. Similarly, Lucas contemplates that its display techniques will be used in conjunction with documents generated by the computer system, including for example, documents that are scanned into the system. Lucas at 4:43-48.

**selecting a timestamp to identify each data unit;**

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of "selecting a timestamp to identify each data unit" includes indexing a data unit using an object containing meta-data attributes which include timestamp information. Applying the broadest reasonable constructions of this limitation, Magellan discloses selecting a timestamp to identify each data unit. Specifically, Magellan discloses an index which identifies the time and date that each document was created or last modified. Magellan Explorer's Guide at p. 29, Using Lotus Magellan at p. 36. In addition, Lucas contemplates that the files that it displays will include timestamp information. For example, in the case of scanned documents, Lucas contemplates that the scanned document will have an information sticker that includes the date on which the document was scanned. Lucas at 4:46-48. As another example, Lucas also contemplates the display of email messages that are sorted by timestamp. Lucas at 14:28-35.

**associating each data unit with at least one chronological indicator having the respective timestamp;**

Applying the broadest reasonable construction of a chronological indicator as a collection of metadata such as indexed metadata, Magellan discloses associating each data unit with at least one chronological indicator having the respective timestamp. *See* Section V.B (Claim Construction). Specifically, Magellan discloses the .IX2 and .IX4 files, which are associated with each document and contain meta-data about each

document, including date and time information. Magellan Explorer's Guide at pp. 186-187.

> **including each data unit according to the timestamp in the respective chronological indicator in at least the main stream; and**

As described in Section V.B (Claim Construction) above, indexed metadata falls within the scope of a chronological indicator in the main stream as that limitation is being applied by Patent Owner in the concurrent litigation, and therefore falls within the broadest reasonable construction of that term for purposes of this Request. Applying that broadest reasonable construction, Magellan discloses including each data unit according to the timestamp in the respective chronological indicator in the main stream. Specifically, Magellan discloses that each document is included in the index and associated with a time stamp and a chronological indicator, files .IX2 and .IX4, so that the documents may be included in the main stream chronologically according to the time and date they were created or last modified. Magellan Explorer's Guide at pp. 29, 40 and 186.

> **maintaining at least the main stream and the substreams as persistent streams.**

Magellan discloses using the Update command to maintain a persistent updated main stream and substreams. Magellan Explorer's Guide at p. 49. In addition, macros can be used to automatically update the index as a persistent stream. Magellan Explorer's Guide at p. 220; Using Lotus Magellan at p. 216.

### 13. CLAIM 14

> **14. The method of claim 13, wherein each timestamp is selected from the group consisting of: past, present, and future times.**

As discussed above, Magellan discloses that all files are indexed and that the file system maintains timestamps for these files. Specifically, Magellan discloses a past group of files that resided on the hard drive prior to indexing the files, a present group of updated files after the initial indexing, and a future group of calendar entries. Magellan Explorer's Guide at pp. 19, 26, 29, 49, and 130. Applying the broadest reasonable

construction of "future" to this Request, Magellan also discloses future timestamps for future calendar items. *See* Section V.B (Claim Construction) above.

### 14. CLAIM 15

**15. The method of claim 13, further comprising the step of displaying the streams on a display device as visual streams.**

Lucas discloses a "system [that] uses a three dimensional workspace to provide a useful display of potentially thousands of documents. A workspace may display thousands of documents. In a preferred embodiment of a workspace, the workspace is wrapped at the edges, giving a fish-eye lens effect, so that every screen object that is not invisible has at least some portion of its rectangle within the screen display no matter what its position in the three dimensional workspace." Lucas at 5:14-21, Figs. 1, 3, 5.

In addition, Magellan Explorer's Guide discloses a visual list of all files on the index, or main stream, as well as a visual list of the results of a searched group of files, or a substream. Magellan Explorer's Guide at pp. 24 and 34.

### 15. CLAIM 16

**The method of claim 15, wherein the step of displaying the streams further comprises the steps of: a) receiving from a user one or more indications of one or more selected segments of the streams corresponding to one or more selected intervals of time, and**

Lucas discloses that, in the preferred embodiment, the workspace is wrapped at the edges, giving a fish-eye lens effect, so that every screen object that is not invisible has at least some portion of its rectangle within the screen display no matter what its position in the three dimensional workspace. Lucas at 5:14-21, Figs. 1, 3. In addition, users can specify certain subsets of documents to be displayed in "substrands." These substrands can be defined based on intervals of time, e.g., a substrand for "mail messages received after the specified date" or "received prior to the specified date." Lucas at 14:28-35.

In addition, Magellan Explorer's Guide discloses the Zoom command, which enables users to select a segment of an index, or a stream, according to a certain period of time, such as all documents between March 1988 and the present. Magellan Explorer's Guide at pp. 41-42.

**b) displaying the selected segments.**

Lucas discloses displaying strands and substrands in the three dimensional workspace. Lucas at 5:14-21. Magellan discloses displaying the selected segments in a List Window. Magellan Explorer's Guide at p. 42.

### 16. CLAIM 17

**17. The method of claim 13, wherein each data unit includes textual data, video data, audio data and/or multimedia data.**

Magellan discloses that the indexed documents may contain at least textual data. Magellan Explorer's Guide at p. 186. Lucas contemplates that its technique can be used broadly for handling documents in a computer system, including documents that are typed, scanned, faxed or emailed. Lucas at 1:49-52; 14:28-31.

### 17. CLAIM 20

**20. The method of claim 13, further comprising the step of: displaying data from one of the data units in abbreviated form.**

Magellan discloses a computer search program that organizes all data units, or documents as construed by Patent Owner, generated by a computer or received by a computer over a network in order to facilitate viewing and locating files. Magellan Explorer's Guide at pp. 4, 63, and 191. Lucas discloses that alternative versions of the content of files can be displayed, including through use of its document renderers, which draw a rectangle of the screen object associated with each document in a workspace and which render the interior of each screen object. Lucas at 5:42-57. Lucas also discloses that a user can clip a document so as to restrict the viewable area of the screen object associated with that document in a view; clipping a document makes it look smaller without changing its position on the Z axis. Lucas at 19:26-33.

### 18. CLAIM 22

**22. The method of claim 13, further comprising the step of: archiving data units having timestamps older than a specified time point.**

As discussed above in Section V.B (Claim Construction), Patent Owner's own application of "means for archiving a data unit associated with a timestamp older than a

specified time point" in litigation demonstrates that Patent Owner believes that the broadest reasonable construction of this limitation includes archival and back-up systems. Applying the broadest reasonable construction of the "means for archiving a data unit associated with a timestamp older than a specified time point" limitation, this limitation was well known in the art at the time of Patent Owner's alleged invention, including in Magellan.

Magellan discloses a computer search program that organizes all data units, or documents as construed by Patent Owner, generated by a computer or received by a computer over a network in order to facilitate viewing and locating files. Magellan Explorer's Guide at pp. 4, 63, and 191. Magellan also "provides the file management tools you need to archive your data and remove any unnecessary files after finishing a project." Magellan Explorer's Guide at pp. 52, 57; Using Lotus Magellan at pp. 88-91.

### 19. CLAIM 25

**25. A computer system for organizing each data unit received by or generated by the computer system, comprising:**

Lucas discloses a system that allows the user to organize and browse documents in an environment that resembles the real world of piles and papers. Lucas at 1:52-54. Lucas further discloses that "whenever a new document is scanned, faxed or sent through electronic mail, and then subsequently fetched to a workspace, the system will annotate that document to indicate that it has not been read." Lucas at 19:42-45. Similarly, Magellan is a computer search program that organizes all data units or documents generated by a computer or received by a computer over a network in order to facilitate viewing and locating files. Magellan Explorer's Guide at pp. 4, 63, and 191.

**means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream; means for associating each data unit with at least one chronological indicator having a respective timestamp which identifies the data unit; means for including each data unit according to the timestamp in a respective chronological indicator in the main stream; means for maintaining the main stream and the substreams as a persistent streams;**

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of a "main stream" includes a collection of documents or a collection of information about documents, such as an index. Correspondingly, the broadest reasonable construction of "substream" includes a subset of a collection of documents, or a subset of the contents of an index, such as a search query of an index, search results, or a list of files organized by content and/or attributes. Applying the broadest reasonable constructions of these terms, Magellan discloses a "means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream."

Magellan is a program which creates a main stream as a main index of data units on a hard disk where said data units were generated by a computer or received by a computer over a network. Magellan Explorer's Guide at pp. 19-20, 186, and 191. Magellan discloses receiving documents from other computer systems, such as files received via removable disks or from other networked computers. Magellan Explorer's Guide at pp. 4 and 191. Lucas also contemplates that data units may be received from other computer systems or "repositories," including computers that are networked. Lucas at 7:58-8:2; 8:24-29; 18:30-42. Magellan discloses a computer system which generates and stores new files, such as a new document created with Lotus Manuscript. Magellan Explorer's Guide at p. 4. Similarly, Lucas contemplates that its display techniques will be used in conjunction with documents generated by the computer system, including, for example, documents that are scanned into the system. Lucas at 4:43-48.

When the main index is searched with Magellan's Explore command, the results of the search create a substream, which lists the relevant subset of documents from the main index, or main stream. Magellan Explorer's Guide at pp. 96-97 and 109. Similarly, Lucas contemplates the use of searches (the FIND operation) to create piles for display. Lucas at 9:8-14.

In addition, as described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of "selecting a timestamp to identify each data unit" includes indexing a data unit using an object containing meta-data attributes which include timestamp information. Applying the broadest reasonable constructions of this limitation, Magellan discloses selecting a timestamp to identify each

data unit. Specifically, Magellan discloses an index which identifies the time and date that each document was created or last modified. Magellan Explorer's Guide at p. 29; Using Lotus Magellan at p. 36. Lucas contemplates that the files that it displays will include timestamp information. For example, in the case of scanned documents, Lucas contemplates that the scanned document will have an information sticker that includes the date on which the document was scanned. Lucas at 4:46-48. As another example, Lucas also contemplates the display of email messages that are sorted by timestamp. Lucas at 14:28-35.

Moreover, applying the broadest reasonable construction of a chronological indicator as a collection of metadata such as indexed metadata, Magellan discloses a means for associating each data unit with at least one chronological indicator having the respective timestamp. *See* Section V.B (Claim Construction). Specifically, Magellan discloses the .IX2 and .IX4 files, which are associated with each document and contain meta-data about each document, including date and time information. Magellan Explorer's Guide at pp. 186-187.

Further, as described in Section V.B (Claim Construction) above, indexed metadata falls within the scope of a chronological indicator in the main stream as that limitation is being applied by Patent Owner in the concurrent litigation, and therefore falls within the broadest reasonable construction of that term for purposes of this Request. Applying that broadest reasonable construction, Magellan discloses a means for including each data unit according to the timestamp in the respective chronological indicator in the main stream. Specifically, Magellan discloses that each document is included in the index and associated with a time stamp and a chronological indicator, files .IX2 and .IX4, so that the documents may be included in the main stream chronologically according to the time and date they were created or last modified. Magellan Explorer's Guide at pp. 29, 40 and 186.

Finally, Magellan discloses using the Update command to maintain a persistent updated main stream and substreams. Magellan Explorer's Guide at p. 49. In addition, macros can be used to automatically update the index as a persistent stream. Magellan Explorer's Guide at p. 220, Using Lotus Magellan at p. 216.

**means for representing one or more data units of a selected stream on a display device as document**

**representations, each document representation including the timestamp of the respective data unit and the order of appearance of each data representation on the display device determined by the timestamp of the respective data unit;**

Lucas contemplates that the files that it displays will include timestamp information. For example, in the case of scanned documents, Lucas contemplates that the scanned document will have an information sticker that includes the date on which the document was scanned. Lucas at 4:46-48. Lucas also contemplates the display of email messages that are sorted by timestamp. Lucas at 14:28-35.

Magellan Explorer's Guide discloses a Zoom command which allows the documents of an index, or a stream, to be displayed as document representations including the date and time that each file was created or modified. Magellan Explorer's Guide at p. 41. Magellan Explorer's Guide further discloses a command T which will sort and display the documents according to the timestamp of the respective document, or the date and time the document was created or last modified. Magellan Explorer's Guide at p. 40.

**means for selecting which data units are represented on the display device by selecting one of the document representations and displaying document representations corresponding to data units having timestamps within a range of a timepoint; and**

Magellan Explorer's Guide discloses using the sort and Zoom commands to select which documents are represented on the display and displaying document representations corresponding to documents having timestamps, or time and date information, within a range of dates, such as between March 1988 and the present, for example. Magellan Explorer's Guide at pp. 40-42. Lucas also contemplates the display of email messages that are sorted by timestamp. Lucas at 14:28-35.

**means for selecting one or more of the document representations with a pointing device so that the data units represented by the selected document representations are further displayed with a second document representation comprising an alternative version of the content of the respective data unit.**

Magellan Explorer's Guide discloses pressing keys to move a cursor, or using a pointing device, in order to select a document representation comprising an alternative version of the content of the respective document. Magellan Explorer's Guide at pp. 82, 122, and 145. Magellan Explorer's Guide further discloses a means for generating a document comprising an alternative version of the content of another document by changing the program which launches the document, such as opening a Lotus 1-2-3 document as a WordPerfect document. Magellan Explorer's Guide at pp. 122-123. Alternatively, according to Magellan Explorer's Guide, one may generate a document comprising an alternative version of the content of another document by changing the file extension of the document, such as changing the .wk extension for a Lotus 1-2-3 Worksheet to the .wp extension for a WordPerfect document. Magellan Explorer's Guide at pp. 122-123.

### 20. CLAIM 26

**26. A computer system as in claim 25, wherein the document representations form a visual stream having a three-dimensional effect.**

Lucas discloses displaying piles of screen objects having a three dimensional effect:
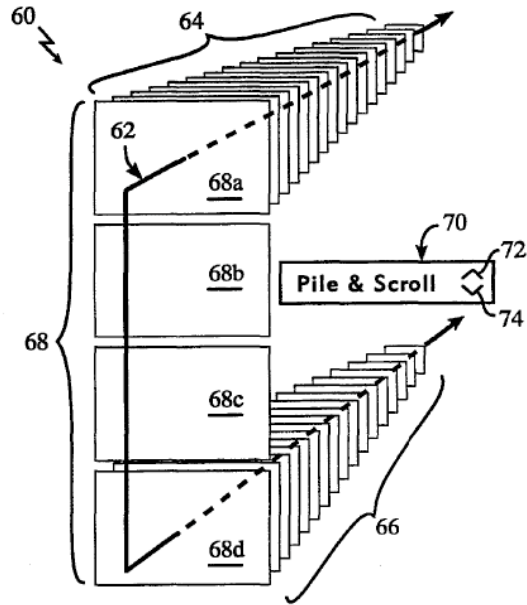
FIG. 3

Corkscrew Pile
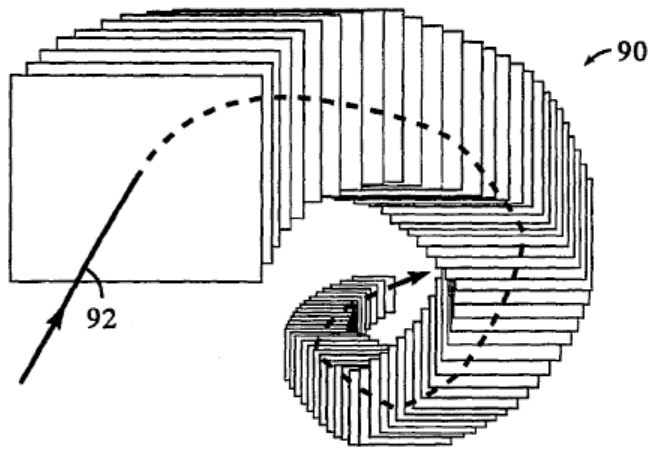


FIG. 5

**21. CLAIM 27**

**27. A computer system as in claim 26, wherein the three-dimensional effect further comprises a perspective view.**

Lucas discloses displaying piles of screen objects having a three dimensional effect comprising a perspective view:
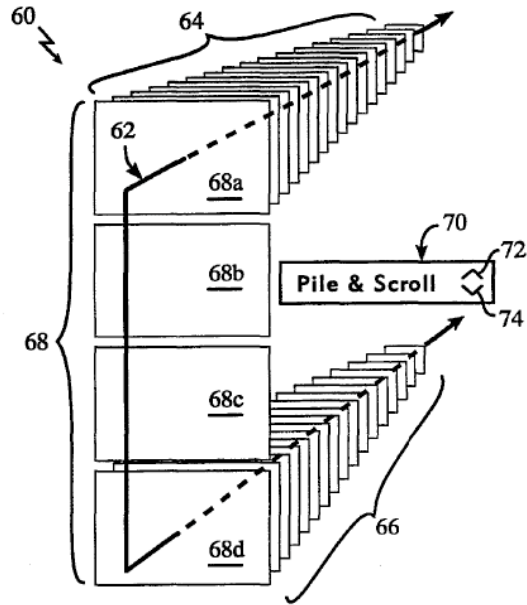
FIG. 3

Corkscrew Pile
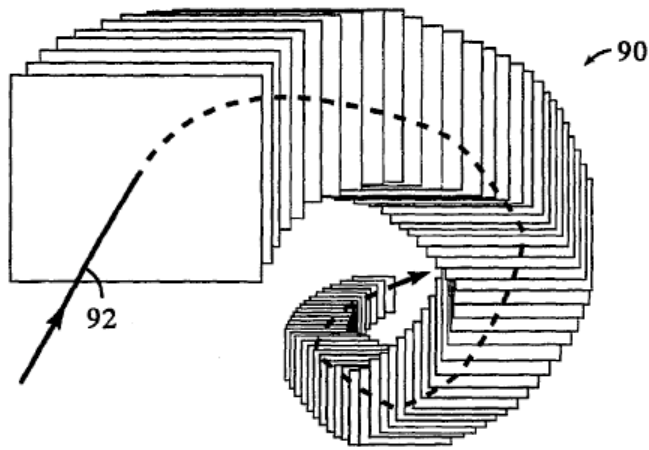


FIG. 5

## 22. CLAIM 28

**28.  A  computer  system  as  in  claim  25,  wherein  each document  representation  comprises  a  polygon  and  the polygons overlap to form a visual stream of polygons.**

Lucas shows each document as 4-sided polygons which overlap to form a visual stream.  Lucas at Figs. 3, 5.

### 23. CLAIM 29

**29. A computer system as in claim 25, wherein the alternative version is an abbreviated version.**

Magellan Explorer's Guide discloses the use of a generic binary viewer to display documents in an abbreviated form instead of using the primary viewer to view the full content of the document. Magellan Explorer's Guide at pp. 145 and 211. Lucas discloses that alternative versions of the content of files can be displayed, including through use of its document renderers, which draw a rectangle of the screen object associated with each document in a workspace and which render the interior of each screen object. Lucas at 5:42-57. Lucas also discloses that a user can clip a document so as to restrict the viewable area of the screen object associated with that document in a view; clipping a document makes it look smaller without changing its position on the Z axis. Lucas at 19:26-33.

\* \* \*

For the reasons set forth above and in Exhibit CC-B, the combination of Lucas and Magellan renders obvious each of claims 1-6, 9-17, 20, 22, and 25-29 of the '227 patent. Claims 1-6, 9-17, 20, 22, and 25-29 should be reexamined, rejected under 35 U.S.C. § 103, and canceled pursuant to this Request.

### D. CLAIMS 15, 16, 26, 27, AND 28 ARE RENDERED OBVIOUS BY MANDER IN VIEW OF LUCAS UNDER 35 U.S.C. § 103.[11]

The Mander and Lucas references are described above.

#### 1. A PERSON OF ORDINARY SKILL IN THE ART WOULD BE MOTIVATED TO COMBINE MANDER AND LUCAS

One of ordinary skill would be motivated to combine the file organization and user-interface of Mander with the user-interface functionality of Lucas for several reasons.

#### (a) SUBSTITUTION OF ONE KNOWN ELEMENT FOR ANOTHER

One of ordinary skill in the art would be motivated to combine Mander with Lucas as a substitution of one known element for another to obtain a predictable result.

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[11] Although Requester has detailed the bases for invalidity of the identified claims of the '227 patent herein, Requester has also included additional citations to the disclosure in Mander and Lucas in Exhibit CC-C to assist the Office.

MPEP § 2141.III states that "[e]xemplary rationales that may support a conclusion of obviousness include … (B) Simple substitution of one known element for another to obtain predictable results." The piles displayed in the user interface of Lucas are a compatible alternative to the piles displayed in the user interface in Mander. Indeed, both Mander and Lucas contemplate that their user interfaces allow users to interact with documents through a user interface which more closely resembles the traditional desktop metaphor. *See, e.g.,* Lucas at 1:14-40 (the interface can "more easily manipulate documents in an environment like the real world of the desktop and to organize documents in a way that is intuitively appealing" and is "not based on artificial constructs imposed by the nature of computer storage of documents or two dimensional user interface designs."); Mander at 1:9-4:17. Accordingly, one skilled in the art would have been motivated to substitute the known user interface of Lucas for the known user interface of Mander to obtain the predictable result of a three-dimensional interface for an enhanced user experience.

### (b) USE OF KNOWN TECHNIQUE TO IMPROVE SIMILAR METHODS IN THE SAME WAY

MPEP § 2141.III states that "[e]xemplary rationales that may support a conclusion of obviousness include … (C) Use of known technique to improve similar devices (methods, or products) in the same way." Once again, one of ordinary skill in the art would have been motivated to use the known user interface of Lucas with the similar system disclosed in Mander in the same way. Design incentives would have prompted such a combination because both Lucas and Mander highlight the benefits of a three-dimensional graphical display for documents in a file system based on the desktop metaphor.

In sum, based on the similarities between the two systems and the well-known nature of archiving systems at the time the '227 patent was filed, a person of ordinary skill in the art would have considered it obvious to implement the Mander system with the user interface of Lucas.

### 2. CLAIM 15

**15. The method of claim 13, further comprising the step of displaying the streams on a display device as visual streams.**

Mander discloses displaying on a display device a collection of documents as "piles." Mander's piles are graphical representations of the document collections that comprise a main stream and/or substream; in other words, Mander's piles display the streams of claim 13 on a display device as visual streams. Mander at 5:58-62; Figs 2-5, 6-13, 22. For example, Mander discloses that if the cursor is pointed to a document in the pile, the system arranges the piles for viewing the document. Mander at 12:35-38; 26:66-27:15; Figs. 4g-4m.

Mander is not the only reference that discloses visual streams for displaying main streams and substreams. Such visual streams were well known in the art at the time of the '227 Patent. As discussed above, the Lucas reference is another example of a reference that discloses the display of main streams and substreams as visual streams.
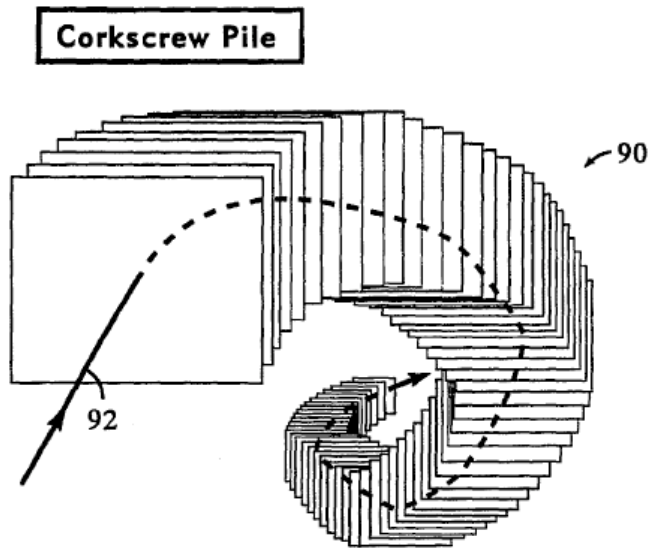


FIG. 5

To the extent Mander does not itself disclose the display of visual streams in the form of piles, it would have been known to one of ordinary skill in the art that the stream of Mander could be visually represented in other ways, including as depicted in Lucas. Lucas discloses a "system [that] uses a three dimensional workspace to provide a useful display of potentially thousands of documents. A workspace may display thousands of documents." Lucas at 5:14-21; Figs. 1, 3, 5.

### 3. CLAIM 16

**16. The method of claim 15, wherein the step of displaying the streams further comprises the steps of: a) receiving from a user one or more indications of one or more**

**selected segments of the streams corresponding to one or more selected intervals of time, and**

Mander also discloses displaying visual streams on a display while receiving from a user one or more indications of one or more selected segments of the streams corresponding to one or more selected intervals of time. For example, Mander discloses that a user may create labels which can be created to include only documents which correspond to a selected interval of time within a pile. Mander at 23:36-58.

Further, Lucas discloses that, in one preferred embodiment, users can specify certain subsets of documents to be displayed in "substrands." These substrands can be defined based on intervals of time, e.g., a substrand for "mail messages received after the specified date" or "received prior to the specified date." Lucas at 14:28-35.

**b) displaying the selected segments.**

Mander discloses that selected segments may be displayed. Mander at 5:58-62; 26:66-27:15; 12:35-38; Figs. 4g-4m. Lucas discloses displaying strands and substrands in the three dimensional workspace. Lucas at 5:14-21.

### 4. CLAIM 26

**26. A computer system as in claim 25, wherein the document representations form a visual stream having a three-dimensional effect.**

As discussed above in the context of claim 15, Mander discloses displaying on a display device a collection of documents as "piles." Mander's piles are graphical representations of the document collections that comprise a main stream and/or substream; in other words, Mander's piles display of the streams of claim 13 on a display device as visual streams. Mander at 5:58-62; Figs 2-5, 6-13, 22. Mander discloses that individual flat documents are piled on top of each other to appear in three dimensions on the visual display. Mander at Figs. 2-5,6-13, and 22.

In addition, Lucas discloses displaying piles of screen objects having a three-dimensional effect:

**FIG. 3**
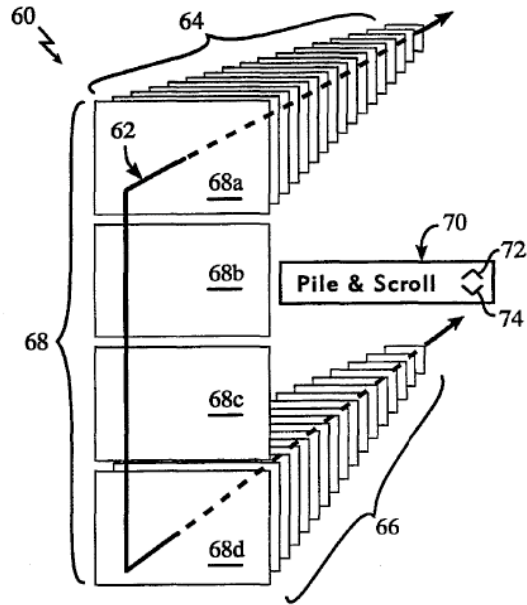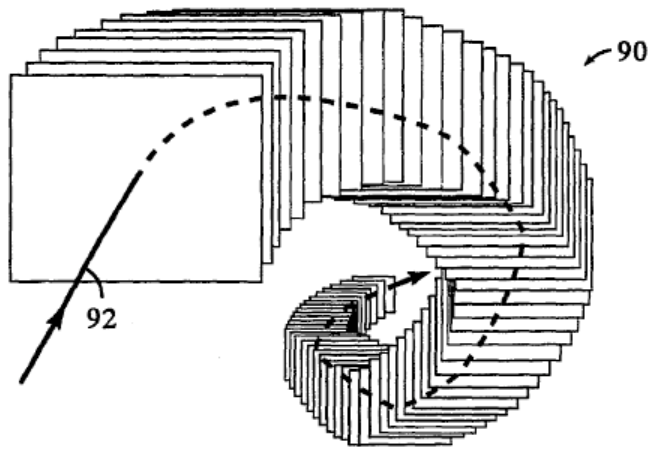
Corkscrew Pile



**FIG. 5**

## 5. CLAIM 27

**27. A computer system as in claim 26, wherein the three-dimensional effect further comprises a perspective view.**

Mander shows each pile as a vertical collection of non-rectangular parallelograms creating the visual effect that the far corner of the stack is further away from the viewer than the near corner. Mander at Figs. 2-5, 6-13, and 22.

Similarly, Lucas discloses displaying piles of screen objects having a three dimensional effect comprising a perspective view.  Lucas at Figs. 3, 5.

### 6.  CLAIM 28

**28.  A computer system as in claim 25, wherein each document representation comprises a polygon and the polygons overlap to form a visual stream of polygons.**

Both Mander and Lucas show each document as 4-sided polygons which overlap to form a visual stream.  Mander at Figs. 2-5,6-13, and 22; Lucas at Figs. 3, 5.

<p style="text-align:center">*        *        *</p>

For the reasons set forth above and in Exhibit CC-C, the combination of Mander and Lucas renders obvious each of claims 15, 16, 27, 28, and 29 of the '227 patent. Claims 15, 16, 27, 28, and 29 should be reexamined, rejected under 35 U.S.C. §§ 103, and canceled pursuant to this Request.

### E.    THOMPSON-ROHRLICH IN VIEW OF THE INSIDE MACINTOSH MANUAL RENDERS OBVIOUS CLAIMS 1-6, 10-17 AND 20 UNDER 35 U.S.C. § 103. [12]

Thompson-Rohrlich (U.S. 5,504,852) was filed by Apple on March 2, 1995 as a continuation of Ser. No. 150,743 (filed on November 12, 1993) which is a continuation of Ser. no. 756,934 (filed on September 9, 1991), which were both abandoned.  Therefore, Thompson-Rohrlich is prior art under 35 U.S.C. § 102(b), and is asserted under 35 U.S.C. § 103.  Thompson-Rohrlich was not before the Examiner during the prosecution of the '227 patent.

Thompson-Rohrlich discloses a system for organizing and displaying information about files stored on a computer," aimed at providing an "automatic method of organizing and representing files in categories relevant to the computer user, and continuously updating this representation as the files change."  Thompson-Rohrlich at 1:12-13; 1:27-30.  Specifically, Thompson-Rohrlich discloses the use of a "Viewer" which "acts as an intelligent folder" (what Apple now calls a "smart folder"). Thompson-Rohrlich at 1:59-60.  An "intelligent folder" is a folder whose contents is

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[12]     Although Requester has detailed the bases for invalidity of the identified claims of the '227 patent herein, Requester has also included additional citations to the disclosure in Thompson-Rohrlich and the Inside Macintosh Manual in Exhibit CC-D to assist the Office.

defined not by what was put into them by a user, but rather based on criteria established by the user. Thus, a user could create an "intelligent folder" called "today" that included all files modified today, or one called progress reports that contained all documents whose text included the words "progress report." Thompson-Rohrlich at 1:65-2:11; Fig. 2; 2:54-67. These "intelligent folders" are kept up-to-date even as new files are added to the file system. Thompson-Rohrlich at 1:40-45.

For purposes of this Request, Thompson-Rohrlich is analyzed in view of the Apple HFS file system described in the Inside Macintosh Manual. The Inside Macintosh Manual was published in 1992, is prior art under 35 U.S.C. § 102(b), and is asserted under 35 U.S.C. § 103. Thompson-Rohrlich's claimed invention was specifically and explicitly designed for use with existing file systems, including the HFS file system used by Apple System 7 Finder. Thompson-Rohrlich at 5:13-14 ("The Viewers were built as a System 7 Finder extension.").

Just as in the '227 patent, Thompson-Rohrlich, in combination with the HFS file system disclosed in the Inside Macintosh Manual, discloses a system that indexes all files along with any metadata and associates these files with aliases displayed in Viewers. Thompson-Rohrlich at 4:62-5:50. The combination of Thompson-Rohrlich and Inside Macintosh further discloses a means for generating a main stream of data units and at least one substream. Specifically, Inside Macintosh discloses the main stream of data units received by or generated by the computer system in the form of a "catalog file [that] lists all the files and directories on a volume, as well as some of the attributes of those files and directories." Inside Macintosh at pp. 2-53. Thompson-Rohrlich generates at least one substream from this main stream. Thompson-Rohrlich at 1:55-2:11; 4:62-5:50. Specifically, Thompson-Rohrlich discloses a "method to create and represent this secondary organization occurs by … searching the stored files for specific characteristics," wherein each substream (e.g., "Viewer") contains only data units from the main stream. Thompson-Rohrlich at 4:62-5:50. Thompson-Rohrlich also discloses a means for maintaining the main stream and the substreams as persistent streams. Specifically, "[t]he computer continues to perform these searching and organizing functions as the computer is used, so that the information presented is current and up-to-date." Thompson-Rohrlich at 1:48 – 51.

Also, just as in the '227 patent, Thompson-Rohrlich discloses generating and

receiving data units, selecting a timestamp for the data units, and associating a chronological indicator with the data units. Thompson-Rohrlich at 2:58-67; 3:25-31; 1:66-2:6.

Thus, much like Mander, Thompson-Rohrlich discloses the fundamental concepts of the '227 Patent – organizing and displaying documents in a computer system according to timestamps and/or pre-assigned chronological labels, and for automatically organizing new documents. A combination of Thompson-Rohrlich and the Inside Macintosh Manual renders obvious each of claims 1-6, 10-17, and 20 of the '227 patent. A detailed application of the prior art to each element of the requested claims is presented in Exhibit CC-D and below.

### 1. A PERSON OF ORDINARY SKILL IN THE ART WOULD BE MOTIVATED TO COMBINE THOMPSON-ROHRLICH AND INSIDE MACINTOSH

One of ordinary skill would be motivated to combine Thompson-Rohrlich with Inside Macintosh.

### (a) COMBINING PRIOR ART ELEMENTS ACCORDING TO KNOWN METHODS TO YIELD PREDICTABLE RESULTS

MPEP § 2141.III states that "[e]xemplary rationales that may support a conclusion of obviousness include … (A) Combining prior art elements according to known methods to yield predictable results." The combination of the prior art file organization and display features of Thompson-Rohrlich with the file system of Inside Macintosh was a well-known method yielding predictable results. Such a combination would have resulted in a well-known method yielding predictable results, just as described in the Thompson-Rohrlich reference. For example, Thompson-Rohrlich describes the use of its method for organizing and displaying information in conjunction with a file system that supports an "alias" function, and specifically identifies the System 7.0 operating system for the Apple Macintosh family of computers as one such system. The Inside Macintosh reference describes the hierarchical file system of Macintosh Operating System, including System 7.0. Inside Macintosh at pp. xv, 1-3. Inside Macintosh specifically describes the use of an alias function in the file system. Inside Macintosh at p. xv, Chapter 4. Design incentives also would have prompted such a combination.

The result of a combination of Thompson-Rohrlich and the file system described in Inside Macintosh would also be predictable to a person of skill in the art. With the ability to organize documents more usefully, users of the Thompson-Rohrlich could automatically organize information in a file system based on searches or criteria crafted by the user and to have that organization remain up-to-date even as the files in the file system change over time. Thompson-Rohrlich at 1:27-30; 2:40-54. This would enhance the usefulness and usability of a traditional file system and would overcome the drawbacks described in the Thompson-Rohrlich patent, including that a user seeking to organize files would traditionally have to go to where a file is originally located in the file system to access it. Thompson-Rohrlich at 1:16-26.

### (b) TEACHING, SUGGESTION OR MOTIVATION IN THE PRIOR ART

As noted above, one of ordinary skill in the art would be motivated by the direct teaching of Thompson-Rohrlich to combine its file organization and display features with the file system of Inside Macintosh. Indeed, Thompson-Rohrlich expressly describes its invention as a "method for organizing and displaying information about files stored on a computer," aimed at providing an "automatic method of organizing and representing files in categories relevant to the computer user, and continuously updating this representation as the files change." Thompson-Rohrlich at 1:12-13; 1:27-30. In the Summary of the Invention, Thompson-Rohrlich goes on to describe the method of the invention as "creating and organizing aliases for files stored on a computer system" where "the stored files are searched according to defined search criteria." Thompson-Rohrlich at 1:40-45. In short, Thompson-Rohrlich characterizes its very invention as a method for organizing and displaying files that already exist in a file system. One of ordinary skill in the art reading the disclosure in Thompson-Rohrlich would have been motivated by that teaching to identify known file systems for and to combine such a file system with Thompson-Rohrlich.

In sum, based on the very character of Thompson-Rohrlich as a system that sits atop a traditional file system, a person of ordinary skill in the art would have considered it obvious to implement the file organization and display features of Thompson-Rohrlich with the file system disclosed in Inside Macintosh.

## 2. CLAIM 1

**1. A computer system which organizes each data unit received by or generated by the computer system, comprising:**

The file system of a computer—such as the HFS file system described in Inside Macintosh—organizes all the files on the computer. Reflecting this, Inside Macintosh discloses a computer system (e.g., "Macintosh Operating System") which organizes each data unit received by or generated by the computer system. Specifically, "the File Manager uses a special file located in a volume to maintain the hierarchical organization of files and folders in that volume." Inside Macintosh at pp. 1-4 and 2-53. Similarly, Thompson-Rohrlich discloses a method for organizing files stored on a computer system. Thompson-Rohrlich at 7:2-29 (claim 1).

**means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream;**

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of a "main stream" includes a collection of documents or a collection of information about documents, such as an index. The broadest reasonable construction of "substream" includes a subset of a collection of documents or a query, search results, sub-folders or "Smart Folders" collection of information about documents, such as an index. Applying the broadest reasonable constructions of these terms, the combination of Inside Macintosh and Thompson-Rohrlich discloses a "means for generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream."

Inside Macintosh discloses a main stream of data units (e.g., "the catalog file"). Inside Macintosh at pp. 1-4 and 2-53. The main stream includes each data unit received by or generated by the computer system. Specifically, "the catalog file lists all the files and directories on a volume, as well as some of the attributes of those files and directories." Inside Macintosh at p. 2-53.

Thompson-Rohrlich discloses a means for generating at least substream of that mainstream. Thompson-Rohrlich generates substreams using a "Viewer," which "acts as an intelligent folder that continually searches for files meeting a specification supplied by the user." Thompson-Rohrlich at Abstract; 1:55-2:11; 4:62-5:50. Thompson-Rohrlich further discloses that each substream (e.g., "Viewer") contains only data units from the main stream. Specifically, "[t]he method to create and represent this secondary organization occurs by... searching the stored files for specific characteristics." Thompson-Rohrlich at 4:62-5:50. Because only the stored files are searched and the main stream contains all stored files, each substream contains only data units from the main stream.

**means for receiving data units from other computer systems;**

Thompson-Rohrlich discloses a means for receiving data units from other computer systems through a computer network. Specifically, "[a]liases to these files are created and stored in one folder, even though the original files may reside in many different places or on many different storage devices, including networked devices." Thompson-Rohrlich at 2:58-67 (emphasis added); *see also id.* at 3:21-22; 7:31-32.

**means for generating data units by the computer system;**

Thompson-Rohrlich discloses a means for generating data units by the computer system. Specifically, Thompson-Rohrlich discloses that "the computer continues to perform these searching and organizing functions as the computer is used, so that the information presented is current and up-to-date." Thompson-Rohrlich at 1:47-51. It also discloses that "as progress reports are sent to the supervisor, or as they are deposited on storage devices where they will be found by the searching programs, they are discovered, aliased, and appear in the window." These passages show that Thompson-Rohrlich's system is designed to handle data units that are generated by the computer system and saved therein. Thompson-Rohrlich at 3:25-31.

**means for selecting a timestamp to identify each data unit;**

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of "selecting a timestamp to identify each data unit" includes using a date/time to uniquely identify each data unit or using an MDItem object containing a meta-data attributes which include timestamp information. Applying the broadest reasonable constructions of this limitation, Thompson-Rohrlich discloses selecting a timestamp to identify each data unit. Specifically, Thompson-Rohrlich discloses a means for selecting a timestamp (e.g. last modified date and/or last accessed date) to identify each data unit, as well as the ability to search for and identify data units by means of that timestamp. Thompson-Rohrlich at 2:4-11 (listing "Files modified today" and "Files not accessed in the past 12 months" as examples of intelligent folders); 3:13-16; Fig. 2. Inside Macintosh confirms that both the "last modified date" and the "last accessed date" are maintained by the HFS file system for all files in the system. Inside Macintosh at p. 1-26.

### means for associating each data unit with at least one chronological indicator having the respective timestamp;

Applying the broadest reasonable construction of a chronological indicator as a collection of metadata such as indexed metadata, Thompson-Rohrlich discloses a means for associating each data unit with at least one chronological indicator having the respective timestamp. *See* Section V.B (Claim Construction). Specifically, a user can create "intelligent folders" that "collect aliases to groups of files such as… [f]iles not accessed in the past 12 months." Under the broadest reasonable construction, this shows that files are associated with a chronological indicator; indeed, in the underlying litigation, Patent Owner has accused Apple's Smart Folders of infringing. Since files may be associated with a chronological indicator, the files are also necessarily associated with a timestamp that is within that chronological indicator. Thompson-Rohrlich at 1:66-2:6; Fig. 3.

Inside Macintosh confirms that both the "last modified date" and the "last accessed date" are maintained by the HFS file system for all files in the system. Inside Macintosh at p. 1-26. Inside Macintosh further confirms that these timestamps are indexed into the HFS catalog of metadata about each file: in other words, for each file in the system (i.e. data unit) the HFS file system maintains includes a "creation date" and

"modification date" (i.e. timestamp) in a chronological indicator (e.g., the "catalog entry") in the main stream (e.g., the "catalog file").  Inside Macintosh at p. 1-26.

**means for including each data unit according to the timestamp in the respective chronological indicator in the main stream; and**

As described in Section V.B (Claim Construction) above, indexed metadata that includes timestamps falls within the scope of a chronological indicator in the main stream as that limitation is being applied by the Patent Owner in the concurrent litigation and therefore falls within the broadest reasonable construction of that term for purposes of this Request.  Applying that broadest reasonable construction, Inside Macintosh discloses a means for including each data unit according to the timestamp in the respective chronological indicator in the main stream. Specifically, each data unit includes a timestamp (e.g., "creation date" or "modification date") for inclusion in the chronological indicator (e.g., the "catalog entry") in the main stream (e.g., the "catalog file").  Inside Macintosh at p. 1-26.  Inside Macintosh also discloses a PCCatSearch function which looks at all the entries in the volume's catalog file (i.e. its indexed metadata) and returns a list of all files or directories that match the criteria specified by the user.  Inside Macintosh at pp. 2-13, 2-38. Thompson-Rohrlich discloses applying this catalog search functionality to allow "intelligent folders."  Thus, Thompson-Rohrlich discloses the ability to search for and identify data units (files) by means of the timestamps (e.g. "creation date" or "modification date") associated with each of them.  Thompson-Rohrlich at 2:4-11 (listing "Files modified today" and "Files not accessed in the past 12 months" as examples of "intelligent folders"); 3:13-16; Fig. 2.

**means for maintaining the main stream and the substreams as persistent streams.**

Inside Macintosh discloses that a new document received or generated by the computer system is automatically indexed by the system in a catalog file that is a main stream that includes each data unit received by or generated by the computer system. Inside Macintosh at pp. 1-4 and 2-53 ("The catalog file lists all the files and directories on a volume, as well as some of the attributes of those files and directories."). Thompson-Rohrlich discloses a means for maintaining the main stream and the

substreams as persistent streams. Specifically, "[t]he computer continues to perform these searching and organizing functions as the computer is used, so that the information presented is current and up-to-date." Thompson-Rohrlich at Abstract; 1:48-51; 2:51-53. As one example, Thompson-Rohrlich describes an "intelligent folder" or "Viewer" that is a persistent stream of "[a]ll files modified yesterday," which would be notified of file system changes and would also be re-searched at the start of each new day to keep the Viewer up-to-date. Thompson-Rohrlich at 6:30-35.

### 3. CLAIM 2

**2. The computer system of claim 1, wherein each timestamp is selected from the group consisting of: past, present, and future times.**

As discussed above, Inside Macintosh discloses that all files are indexed and that the file system maintains dates for these files. Thompson-Rohrlich further discloses that files can be searched and organized according to certain criteria specified by the user, including date. Inside Macintosh at pp. 2-13 and 2-38. Because Inside Macintosh includes all files, the timestamps used for sorting documents in Thompson-Rohrlich necessarily include past and present times. Indeed, Thompson-Rohrlich discloses that a timestamp may be selected from past times (e.g., "[f]iles not accessed in the past 12 months") and present times (e.g., "[f]iles modified today"). Thompson-Rohrlich at 1:66-2:6. In addition, to the extent the Patent Owner is applying the "future" limitation to future calendar entries in litigation, the timestamps in Inside Macintosh could also be future timestamps for future calendar items. *See* Section V.B (Claim Construction) above.

### 4. CLAIM 3

**3. The computer system of claim 1, wherein each data unit includes textual data, video data, audio data and/or multimedia data.**

Thompson-Rohrlich discloses that a data unit may be textual data (e.g., "text contains the words 'progress report'"). Thompson-Rohrlich further discloses that the data unit may be "many file types known to the computer operating system" which would be understood to include video data, audio data, and multimedia data. Thompson-Rohrlich at 1:66-2:6; 3:59-62; Fig. 4.

### 5. CLAIM 4

**4. The computer system of claim 1, wherein the means for receiving further comprises means for receiving data units from the World Wide Web.**

Thompson-Rohrlich also discloses receiving documents from the World Wide Web. Specifically, Thompson-Rohrlich discloses receiving documents from another computer user, for example, by an electronic mail system (e.g., "mail"). Thompson-Rohrlich at 6:44-48. A person of ordinary skill in the art at the time would have appreciated that one way to send and receive data units via electronic mail is through the World Wide Web.

### 6. CLAIM 5

**5. The computer system of claim 1, wherein said means for receiving further comprises means for receiving data units from a client computer.**

Thompson-Rohrlich discloses receiving data units from a client computer. Specifically, "[a]liases to these files are created and stored in one folder, even though the original files may reside in many different places or on many different storage devices, including networked devices." Thompson-Rohrlich at 2:58-67. Indeed, Thompson-Rohrlich contemplates that "both local and remote storage devices can be searched at various periodic intervals" and that "searching [can] include[] attached computer systems." Thompson-Rohrlich at 3:21-22; 7:31-32 (claim 2).

### 7. CLAIM 6

**6. The computer system according to claim 1, further comprising: means for displaying alternative versions of the content of the data units.**

Thompson-Rohrlich discloses displaying alternate versions of the content of the data units. FIG. 1 shows a graphical display and FIG. 2 shows a textual display. Thompson-Rohrlich at 2:28-30; 2:54-55; 3:34-52; Figs. 1-3.

### 8.  CLAIM 10

**10. The computer system of claim 1, wherein the computer program further comprises: means for operating on any of the streams using a set of operations selected by a user.**

Thompson-Rohrlich discloses a means for operating on any of the streams using a set of operations selected by the user.  Specifically, Thompson-Rohrlich discloses that different presentations of organized collections of information can be used and can "vary widely depending on the characteristics of the environment in which the user interacts with the computer system," including other icons, special labeling or additional labels that can be used to identify collections of information.  Thompson-Rohrlich at 3:31-51; Figs. 2 and 3.

### 9.  CLAIM 11

**11. The computer system of claim 1 further comprising: means to generate substreams from existing substreams.**

As discussed above, the broadest reasonable construction of "substream" for purposes of this Request includes within its scope a subset of a collection of documents or a query, search results, sub-folders or Smart Folders collection of information about documents, such as an index.  Under this broadest reasonable construction, Thompson-Rohrlich discloses a means to generate a substream from an existing substream.  Specifically, "[a] Viewer created within a Viewer would work only on the files in the parent Viewer.  If the parent Viewer collected, for example, mail, then new Viewers could be created within the Mail Viewer to further sort the mail by subject, addressee, time received, and so forth."  Thompson-Rohrlich at 6:44-48.

### 10. CLAIM 12

**12. A computer system as in claim 1, further comprising: means for generating a data unit comprising an alternative version of the content of another data unit; and**

Thompson-Rohrlich discloses a means for generating a data unit comprising an alternative version of the content of another data unit.  Specifically, "[f]or each file found, an alias is created and this alias appears in the Viewer's folder and window." The "alias" is a data unit that comprises an alternate version of the content of another data unit (e.g., "file"). Thompson-Rohrlich at 1:55-2:11.

**means for associating the alternative version data unit with the chronological indicator of the another data unit.**

As discussed above, the broadest reasonable construction of "chronological indicator" for purposes of this Request is a collection of meta-data, such as indexed meta-data. Applying this broadest reasonable construction, Thompson-Rohrlich discloses a means for associating the alternative version data unit ("alias") with the chronological indicator of the another data unit ("file"). Specifically, a user can "collect aliases to groups of files such as… [f]iles not accessed in the past 12 months." Thompson-Rohrlich at 1:66-2:6. Thus, the aliases are associated with the chronological indicators of the respective files.

### 11. CLAIM 13

**13. A method which organizes each data unit received by or generated by a computer system, comprising the steps of:**

The file system of a computer—such as the HFS file system described in Inside Macintosh—organizes all the files on the computer. Reflecting this, Inside Macintosh discloses a computer system (e.g., "Macintosh Operating System") which organizes each data unit received by or generated by the computer system. Specifically, "the File Manager uses a special file located in a volume to maintain the hierarchical organization of files and folders in that volume." Inside Macintosh at pp. 1-4 and 2-53. Similarly, Thompson-Rohrlich discloses a method for organizing files stored on a computer system. Thompson-Rohrlich at 7:2-29 (claim 1).

**generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream;**

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of a "main stream" includes a collection of documents or a collection of information about documents, such as an index. The broadest reasonable construction of "substream" includes a subset of a collection of documents or a query, search results, sub-folders or a Smart Folders collection of information about

documents, such as an index. Applying the broadest reasonable constructions of these terms, the combination of Inside Macintosh and Thompson-Rohrlich discloses "generating a main stream of data units and at least one substream, the main stream for receiving each data unit received by or generated by the computer system, and each substream for containing data units only from the main stream."

Inside Macintosh discloses a main stream of data units (e.g., "the catalog file"). Inside Macintosh at pp. 1-4 and 2-53. The main stream includes each data unit received by or generated by the computer system. Specifically, "the catalog file lists all the files and directories on a volume, as well as some of the attributes of those files and directories." Inside Macintosh at p. 2-53.

Thompson-Rohrlich discloses generating at least one substream of that mainstream. Thompson-Rohrlich generates substreams using a "Viewer," which "acts as an intelligent folder that continually searches for files meeting a specification supplied by the user." Thompson-Rohrlich at Abstract; 1:55-2:11; 4:62-5:50. Thompson-Rohrlich further discloses that each substream (e.g., "Viewer") contains only data units from the main stream. Specifically, "[t]he method to create and represent this secondary organization occurs by… searching the stored files for specific characteristics." Thompson-Rohrlich at 4:62-5:50. Because only the stored files are searched and the main stream contains all stored files, each substream contains only data units from the main stream.

### receiving data units from other computer systems;

Thompson-Rohrlich discloses receiving data units from other computer systems through a computer network. Specifically, "[a]liases to these files are created and stored in one folder, even though the original files may reside in many different places or on many different storage devices, including networked devices." Thompson-Rohrlich at 2:58-67 (emphasis added); *see also id.* at 3:21-22; 7:31-32.

### generating data units in the computer system;

Thompson-Rohrlich discloses generating data units in the computer system. Specifically, Thompson-Rohrlich discloses that "the computer continues to perform these searching and organizing functions as the computer is used, so that the information

presented is current and up-to-date." Thompson-Rohrlich at 1:47-51. It also discloses that "as progress reports are sent to the supervisor, or as they are deposited on storage devices where they will be found by the searching programs, they are discovered, aliased, and appear in the window." These passages show that Thompson-Rohrlich's system is designed to handle data units that are generated by the computer system and saved therein. Thompson-Rohrlich at 3:25-31.

### selecting a timestamp to identify each data unit;

As described in more detail in Section V.B above (Claim Construction), the broadest reasonable construction of "selecting a timestamp to identify each data unit" includes using a date/time to uniquely identify each data unit or using an MDItem object containing meta-data attributes which include timestamp information. Applying the broadest reasonable constructions of this limitation, Thompson-Rohrlich discloses selecting a timestamp to identify each data unit. Specifically, Thompson-Rohrlich discloses a means for selecting a timestamp (e.g. last modified date and/or last accessed date) to identify each data unit, as well as the ability to search for and identify data units by means of that timestamp. Thompson-Rohrlich at 2:4-11 (listing "Files modified today" and "Files not accessed in the past 12 months" as examples of intelligent folders); 3:13-16; Fig. 2. Inside Macintosh confirms that both the "last modified date" and the "last accessed date" are maintained by the HFS file system for all files in the system. Inside Macintosh at p. 1-26.

### associating each data unit with at least one chronological indicator having the respective timestamp;

Applying the broadest reasonable construction of chronological indicator as indexed metadata that includes timestamps, Thompson-Rohrlich discloses associating each data unit with at least one chronological indicator having the respective timestamp. *See* Section V.B (Claim Construction). Specifically, a user can create "intelligent folders," which "collect aliases to groups of files such as… [f]iles not accessed in the past 12 months." Under the broadest reasonable construction, this shows that files are associated with a chronological indicator; indeed, in the underlying litigation, Patent Owner has accused Apple's Smart Folders of infringing. Moreover, since files may be

associated with a chronological indicator, the files are also necessarily associated with a timestamp that is within that chronological indicator. Thompson-Rohrlich at 1:66-2:6; Fig. 3.

Inside Macintosh confirms that both the "last modified date" and the "last accessed date" are maintained by the HFS file system for all files in the system. Inside Macintosh at p. 1-26. Inside Macintosh further confirms that these timestamps are indexed into the HFS catalog of metadata about each file: in other words, for each file in the system (i.e. data unit) the HFS file system maintains includes a "creation date" and "modification date" (i.e. timestamp) in a chronological indicator (e.g., the "catalog entry") in the main stream (e.g., the "catalog file"). Inside Macintosh at p. 1-26.

### including each data unit according to the timestamp in the respective chronological indicator in at least the main stream; and

As described in Section V.B (Claim Construction) above, indexed metadata falls within the scope of a chronological indicator in the main stream as that limitation is being applied by the Patent Owner in the concurrent litigation, and therefore falls within the broadest reasonable construction of that term for purposes of this Request. Applying that broadest reasonable construction, Inside Macintosh discloses including each data unit according to the timestamp in the respective chronological indicator in the main stream. Specifically, each data unit includes a timestamp (e.g., "creation date" or "modification date") for inclusion in the chronological indicator (e.g., the "catalog entry") in the main stream (e.g., the "catalog file"). Inside Macintosh at p. 1-26. Inside Macintosh also discloses a PCCatSearch function which looks at all the entries in the volume's catalog file and returns a list of all files or directories that match the criteria specified by the user, e.g., last modified date. Inside Macintosh at pp. 2-13, 2-38.

### maintaining at least the main stream and the substreams as persistent streams.

Inside Macintosh discloses that a new document received or generated by the computer system is automatically indexed by the system in a catalog file that is a main stream that includes each data unit received by or generated by the computer system. Inside Macintosh at pp. 1-4 and 2-53 ("The catalog file lists all the files and directories

on a volume, as well as some of the attributes of those files and directories."). Thompson-Rohrlich discloses maintaining the main stream and the substreams as persistent streams. Specifically, "[t]he computer continues to perform these searching and organizing functions as the computer is used, so that the information presented is current and up-to-date." Thompson-Rohrlich at Abstract; 1:48-51; 2:51-53. As one example, Thompson-Rohrlich describes an "intelligent folder" or "Viewer" that is a persistent stream of "[a]ll files modified yesterday." This "intelligent folder" would be notified of file system changes and would also be re-searched at the start of each new day to keep itself up-to-date. Thompson-Rohrlich at 6:30-35.

### 12. CLAIM 14

**14. The method of claim 13, wherein each timestamp is selected from the group consisting of: past, present, and future times.**

As discussed above, Inside Macintosh discloses that all files are indexed and that the file system maintains dates for these files. Thompson-Rohrlich further discloses that files can be searched and organized according to certain criteria specified by the user, including date. Inside Macintosh at pp. 2-13 and 2-38. Because Inside Macintosh includes all files, the timestamps used for sorting documents in Thompson-Rohrlich necessarily include past and present times. Indeed, Thompson-Rohrlich discloses that a timestamp may be selected from past times (e.g., "[f]iles not accessed in the past 12 months") and present times (e.g., "[f]iles modified today"). Thompson-Rohrlich at 1:66-2:6. In addition, to the extent the Patent Owner is applying the "future" limitation to future calendar entries in litigation, the timestamps in Inside Macintosh could also be future timestamps for future calendar items. *See* Section V.B (Claim Construction) above.

### 13. CLAIM 15

**15. The method of claim 13, further comprising the step of displaying the streams on a display device as visual streams.**

Thompson-Rohrlich discloses displaying the streams on a display device as visual streams. These visual streams are lists or graphical representations of the document

collections that comprise a main stream and/or substream. Thompson-Rohrlich at 2:28-30; Figs. 1-2.

### 14. CLAIM 16

**16. The method of claim 15, wherein the step of displaying the streams further comprises the steps of: a) receiving from a user one or more indications of one or more selected segments of the streams corresponding to one or more selected intervals of time, and**

Thompson-Rohrlich discloses receiving an indication of a selected segment of the stream corresponding to a selected interval of time by the user. Specifically, "[t]he user can define the search criteria to be used in searching and organizing files" and the search criteria may include a selected interval of time (e.g., "[f]iles not accessed in the past 12 months"). Thompson-Rohrlich at 1:42-54; 1:66-2:6.

**b) displaying the selected segments.**

Thompson-Rohrlich discloses displaying the selected segments. Specifically, "the aliases are organized together in a special display window for presenting the results of the search to the computer user." Thompson-Rohrlich at 1:42-54.

### 15. CLAIM 17

**17. The method of claim 13, wherein each data unit includes textual data, video data, audio data and/or multimedia data.**

Thompson-Rohrlich discloses that a data unit may be textual data (e.g., "text contains the words 'progress report'"). Thompson-Rohrlich further discloses that the data unit may be "many file types known to the computer operating system," which would be understood to include video data, audio data, and multimedia data. Thompson-Rohrlich at 1:66-2:6; 3:59-62; Fig. 4.

### 16. CLAIM 20

**20. The method of claim 13, further comprising the step of: displaying data from one of the data units in abbreviated form.**

Thompson-Rohrlich discloses the step of displaying data from one of the data units in abbreviated form. Specifically, FIG. 2 shows a textual display of data from data units in abbreviated form (e.g., the name of a progress report is curtailed). Thompson-Rohrlich at 2:28-30; 2:54-61; Figs. 1-3.

*    *    *

For the reasons set forth above and in Exhibit CC-D, the combination of Thompson-Rohrlich and the Inside Macintosh Manual renders obvious each of claims 1-6, 10-17, 20, 25, and 29 of the '227 patent. Accordingly, claims 1-6, 10-17 and 20 should be reexamined, rejected under 35 U.S.C. §§ 103, and canceled pursuant to this Request.

## VII.   CONCLUSION

The prior art documents presented in the above Request were either not previously considered by the Office or are now being presented in a new light pursuant to MPEP §2242 (II). The claims of the '227 patent are not patentable over the prior art documents cited herein. The prior art documents teach the subject matter of the '227 patent in a manner such that substantial new questions of patentability for claims 1-6, 9-17, 20, 22, and 25-29 are raised by this Request.

In view of the foregoing, it is respectfully submitted that a substantial new question of patentability of Claims 1-6, 9-17, 20, 22, and 25-29 of Patent No. 6,006,227 has been raised by this Request. Accordingly, the Office is requested to grant this Request and to initiate reexamination with special dispatch. Claims 1-6, 9-17, 20, 22, and 25-29 should be reexamined, rejected under 35 U.S.C. §§ 102-103, and canceled pursuant to this Request.

As an aid to the application of the presented prior art to claims of the '227 patent, corresponding claim charts are provided as Exhibits CC-A to CC-D attached hereto.

Enclosed is a credit card authorization to cover the Fee for reexamination. If this authorization is missing or defective please charge the Fee to the Novak Druce Deposit Account No. 14-1437.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Request for *Ex Parte* Reexamination, together with all exhibits and attachments and supporting documentation, has been served via first class mail on the 23rd day of April 2009, upon the following:

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