

JOHN LEVY December 11, 2009

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

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MIRROR WORLDS, LLC,

Plaintiff,

VS.

No. 6:08 cv 88 LED

APPLE INC.,

Defendant.

-----x

December 11, 2009

9:10 a.m.

Videotaped deposition of JOHN LEVY, Ph.D, at the offices of Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York, before Nancy Mahoney, a Certified Court Reporter, Registered Professional Reporter, Certified LiveNote Reporter, and Notary Public within and for the States of New York and New Jersey.

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12

13

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14

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16 (Via Conference)

17

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20 Harris Teran, Videographer
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24

25

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12:18:43 1 is -- does not include the generating the
12:18:43 2 timestamp.

12:18:46 3 And so the structure for selecting
12:18:51 4 a timestamp is user-oriented and has only to do
12:19:15 5 with date and time values.

12:19:17 6 MR. STEIN: I don't mean to
12:19:19 7 interrupt your line of questioning, but my
12:19:22 8 failure to eat breakfast this morning has made
12:19:25 9 me very hungry, so whenever you want to take a
12:19:27 10 break, I'd appreciate it.

12:19:28 11 MR. CHERENSKY: That's fine. We
12:19:30 12 can take a break.

12:19:32 13 THE VIDEOGRAPHER: We're off the
12:19:35 14 record. Time is 12:19 p.m.

12:19:36 15 (Luncheon recess.)

13:21:46 16 THE VIDEOGRAPHER: We're back on
13:21:49 17 the record. Time is 1:21 p.m.

13:21:50 18 BY MR. CHERENSKY:

13:21:52 19 Q. Good afternoon, Dr. Levy.

13:21:54 20 A. Good afternoon.

13:21:57 21 Q. When we broke for lunch, we were
13:22:00 22 discussing the timestamp to identify limitations
13:22:06 23 that's on Page 12 of your declaration,
13:22:10 24 Paragraphs 36 to 38. Why don't you turn back
25 there, if you would.

13:22:17 1 A. Okay.

13:22:22 2 Q. In Paragraph 38 -- do you have
13:22:22 3 that?

13:22:23 4 A. Yes.

13:22:28 5 Q. -- about halfway through you talk
13:22:33 6 about the situation where a user might set the
13:22:35 7 date and time for the same value for more than
13:22:38 8 one document and, therefore, the date and time
13:22:44 9 alone cannot serve as a unique identifier.

13:22:49 10 And you agree that the timestamp
13:22:55 11 that's ultimately used to identify documents
13:22:58 12 needs to be unique for the documents to be
13:23:02 13 placed into a mainstream, correct?

13:23:03 14 A. Yes.

13:23:06 15 Q. Then you say that -- you continue
13:23:09 16 to say that, "In that case, further information
13:23:12 17 must used in addition to the date and time in
13:23:18 18 order to identify data units."

13:23:22 19 What -- what further information is
13:23:29 20 disclosed in the '227 specification to uniquely
13:23:46 21 identify data units?

13:23:47 22 MR. CHERENSKY: Off the record.

13:23:48 23 THE VIDEOGRAPHER: We're off the
13:23:50 24 record. Time is 1:23 p.m.

25 (Recess taken.)

13:34:00 1 THE VIDEOGRAPHER: We're back on
13:34:04 2 the record. Time is 1:34 p.m.

13:34:06 3 BY MR. CHERENSKY:

13:34:07 4 Q. Okay. Dr. Levy, we were talking
13:34:10 5 about timestamp to identify in Paragraph 38, and
13:34:15 6 I was asking you about the -- the statement in
13:34:20 7 your declaration in Paragraph 38, a little bit
13:34:23 8 more than halfway through that paragraph where
13:34:28 9 you state, "In that case" -- in that case being
13:34:31 10 the case where the date and time alone cannot
13:34:35 11 serve as a unique identifier -- "further
13:34:38 12 information must be used in addition to the date
13:34:42 13 in time in order to identify data units."

13:34:44 14 And my question is: What further
13:34:50 15 information is disclosed in the '227
13:34:52 16 specification for further -- what further
13:34:55 17 information is disclosed for -- in addition to
13:34:59 18 date and time in order to uniquely identify data
13:35:00 19 units?

13:35:02 20 A. Okay. By the way, I didn't use the
13:35:06 21 word "uniquely" in my sentence, but,
13:35:06 22 nonetheless.

13:35:09 23 The specification taken as a whole
13:35:17 24 and the specifics about identifying simply leave
25 one of ordinary skill in the art to understand

13:35:22 1 that when the date and time values are not
13:35:34 2 sufficient to create a unique identifier, that
13:35:36 3 something in addition will be needed.

13:35:39 4 Q. Okay. Is there any explicit
13:35:41 5 recognition in the '227 specification that date
13:35:45 6 and -- date and time may not be sufficient to
13:35:47 7 uniquely identify data units?

13:35:50 8 A. I don't believe that is explicit in
13:35:51 9 the specification.

13:35:53 10 Q. Also, there's no explicit
13:35:56 11 discussion in the specification regarding the
13:36:00 12 use of any additional information beyond date
13:36:04 13 and time in order to uniquely identify data
13:36:05 14 units.

13:36:06 15 Isn't that right?

13:36:08 16 MR. STEIN: Objection.

17 THE WITNESS: Could I hear that
13:36:32 18 one?

13:36:32 19 (Record read.)

13:36:35 20 A. Try to regard that as a simple
13:36:37 21 question. I think there is nothing that
13:36:39 22 identifies specific fields or values that would
13:36:43 23 be used that one of ordinary art -- skill in the
13:36:53 24 art would understand that needed to be used.

25 Q. You state in the last sentence in

13:37:00 1 Paragraph 38 that, "One of ordinary skill in the
13:37:04 2 art would also understand that timestamps, as
13:37:07 3 frequently used in various software
13:37:12 4 applications, identify data items on the basis
13:37:14 5 of timestamps based on the date and time, plus
13:37:16 6 additional information."

13:37:20 7 What additional information would
13:37:23 8 one of ordinary skill in the art understand
13:37:26 9 might be used?

13:37:30 10 A. Anything that suffices to make the
13:37:32 11 timestamp unique.

13:37:36 12 Q. Can you provide any examples?

13:37:40 13 A. Sure, I'll offer an example.

13:37:45 14 When the resolution of the clock is
13:37:51 15 not sufficient, then one could append a pseudo
13:37:55 16 random number, let's say a 32-bit number, which
13:37:58 17 would then be used as part of the unique
13:37:58 18 identifier.

13:38:00 19 Q. And it's your opinion that one of
13:38:03 20 ordinary skill in the art would understand that
13:38:11 21 that could be -- I'm sorry, did you say could be
13:38:13 22 appended to the timestamp -- to the date and
13:38:13 23 time?

13:38:14 24 A. That is the word I used.

25 Q. Okay. So, and one of ordinary

13:38:25 1 skill in the art would understand that this
13:38:29 2 32-bit pseudo random number could be appended to
13:38:31 3 the date and time specifically within the
13:38:36 4 context of the -- of Claim 1 of the '227 patent.

13:38:36 5 Is that right?

13:38:39 6 A. I'm not quite sure what you mean by
13:38:42 7 specifically to that claim.

13:38:42 8 Q. Sure.

13:38:44 9 So you testified that one of
13:38:45 10 ordinary skill in the art would understand that
13:38:51 11 if the resolution of the timestamp was
13:38:56 12 insufficient to uniquely identify, then a pseudo
13:39:00 13 random -- a 32-bit pseudo random number could be
13:39:02 14 appended to the date and time.

13:39:04 15 Would one of ordinary skill in the
13:39:08 16 art understand that that specific method could
13:39:10 17 be used in the context of Claim 1?

13:39:12 18 A. Well, I'm speaking of one of
13:39:15 19 ordinary skill in the art using timestamps in a
13:39:21 20 variety of software applications. And so, by
13:39:22 21 implication, that would include the type of
13:39:25 22 system referred to in Claim 1.

13:39:27 23 Q. Can you identify any specific
13:39:32 24 applications that append a 32-bit pseudo random
25 number to a date and time in order to uniquely

13:39:36 1 identify data units?

13:39:38 2 A. No, I'm not prepared to do that
13:39:44 3 today.

13:39:46 4 Q. All right. So that's one method
13:39:50 5 that could be used to provide additional
13:39:53 6 information to date and time in order to
13:39:55 7 uniquely identify data units.

13:39:57 8 Can you provide any other examples
13:40:01 9 of methods that could be used to provide
13:40:03 10 additional information to date and time in order
13:40:06 11 to uniquely identify data units?

13:40:08 12 A. Yes.

13:40:12 13 One could use some other field that
13:40:20 14 already existed in the data unit that would,
13:40:23 15 when appended to the date and time, make it
16 unique --

13:40:24 17 Q. And --

13:40:27 18 A. -- make -- make a unique timestamp.

13:40:29 19 Q. Do you have any particular date --
13:40:31 20 any particular fields in mind that could be used
13:40:36 21 for that function?

13:40:38 22 A. Well, I haven't thought about it
13:40:44 23 very much, but the size of the data unit, if it
13:40:51 24 were there, might be a field one could use.
25 There could be others.

13:40:55 1 Q. How would one of ordinary skill in
13:40:59 2 the art know that using the size of the data
13:41:05 3 unit appended to the date and time would
13:41:07 4 uniquely identify data units?

13:41:07 5 A. Well, it depends --

13:41:09 6 MR. STEIN: Objection.

13:41:12 7 A. -- it depends on what type of data
13:41:18 8 units we're talking about. If they were -- if
13:41:24 9 they were, say, text files, typically most text
13:41:27 10 files differ in length from each other; and,
13:41:29 11 therefore, for two text files that happen to
13:41:32 12 have the same date and time, it would be
13:41:35 13 unlikely for them to have the same length. But
13:41:37 14 that's just an example.

13:41:39 15 Q. It would be possible that two text
13:41:41 16 files have the same size and the same date and
13:41:42 17 time.

13:41:43 18 Isn't that right?

13:41:43 19 A. Yes.

13:41:47 20 Q. Okay. Can you -- I'm sorry. Did I
13:41:48 21 interrupt?

13:41:50 22 A. Yes. I -- I was only using that as
13:41:51 23 one example.

13:41:54 24 In fact, any field in which those
25 data units which have the same date and time,

13:42:04 1 any field which would then distinguish between
13:42:07 2 those which have the same date and time would be
13:42:08 3 sufficient.

13:42:14 4 Q. Do you know of any applications
13:42:21 5 that use a field in the data unit in combination
13:42:25 6 with date and time in order to uniquely identify
13:42:31 7 data units?

13:42:33 8 A. Well, I'm not sure I can name an
13:42:35 9 application to you, but there's a classification
13:42:40 10 of applications that involve managing messages
13:42:44 11 being stored and forwarded where, in order to
13:42:48 12 identify a message, one needs a unique
13:42:55 13 identifier, and that may be constructed from a
13:43:03 14 time and date plus additional information.

13:43:05 15 Q. But you don't have any specific
13:43:08 16 applications in mind that use that method?

13:43:09 17 MR. STEIN: Objection.

13:43:13 18 A. I'm not prepared to name any today.

13:43:16 19 Q. Okay. And you don't know what
13:43:18 20 additional information might be used in any of
13:43:25 21 those unnamed applications in order to append to
13:43:28 22 date and time to uniquely identify data units,
13:43:29 23 do you?

13:43:34 24 MR. STEIN: Objection to form.

25 A. Well, I -- I don't think that's

13:43:39 1 quite fair. I believe I -- I could go on with
13:43:42 2 additional examples and eventually I might
13:43:45 3 recall an application I've worked on where one
13:43:48 4 particular kind was used.

13:43:55 5 Q. And this appending of the contents
13:43:57 6 of a field of the data unit to the date and time
13:44:02 7 information in order to uniquely identify data
13:44:05 8 units isn't discussed anywhere in the '227
13:44:07 9 specification, is it?

13:44:13 10 A. Only by implication.

13:44:15 11 Q. And by implication, are you
13:44:17 12 referring to your opinion that one of ordinary
13:44:21 13 skill in the art would know that date and time
13:44:24 14 alone might not be sufficient, so something else
13:44:27 15 might need to be done, or is there something
13:44:29 16 more specific that you have in mind?

13:44:37 17 A. No, I think that's generally it.

13:44:39 18 Q. Are there any other examples,
13:44:44 19 beyond the two that you've testified about, that
13:44:47 20 you're aware of for additional information to be
13:44:52 21 used along with date and time in order to
13:44:56 22 uniquely identify data units?

13:44:58 23 A. Yes.

13:45:00 24 In the case where the date and time
25 are set by a user -- or selected by a user, the

13:45:13 1 system clock may well have additional time
13:45:18 2 resolution which could then be used at the time
13:45:26 3 of the creation of the stamp, in other words,
13:45:30 4 the low order bits of a realtime clock could be
13:45:37 5 used as the appended differentiating data field.

13:45:39 6 Q. Is that method of uniquely
13:45:43 7 identifying data units discussed anywhere in the
13:45:46 8 '227 specification?

13:45:49 9 A. I don't believe so.

13:45:54 10 Q. Anything else that you have in mind
13:45:56 11 as an example of additional information that
13:46:00 12 could be used in -- along with date and time to
13:46:05 13 uniquely identify data units?

13:46:11 14 A. Well, in the -- not an additional
13:46:14 15 type of -- of field, but in the case where an
13:46:19 16 agent or some software activity applies a
13:46:24 17 timestamp -- is generating a timestamp, when the
13:46:29 18 clock is sufficiently fine-grained, then it's
13:46:32 19 not even necessary to add another field to make
13:46:35 20 sure it's differentiated and unique.

13:46:40 21 Q. Does the '227 specification discuss
13:46:47 22 anywhere that a clock of finer resolution would
13:46:51 23 be used to set date and time by an agent versus
13:46:56 24 that that would be otherwise set?

25 A. No. This is merely something that

17:22:34 1 disclosed in the '227 specification for -- that
17:22:38 2 creates data units -- I'm sorry -- that
17:22:44 3 generates data units by the computer system?

17:22:47 4 A. Well, I believe these applications
17:22:51 5 all generate data units, and so the reference to
17:22:55 6 an application program that generates data units
17:23:00 7 is a reference to that package, which includes
17:23:01 8 executable code.

17:23:03 9 Q. But the executable code itself
17:23:06 10 isn't disclosed in the '227 application, is it?

17:23:11 11 A. Only by inference.

17:23:13 12 Q. Okay. Let's move on to the next
17:23:17 13 limitation, the means for selecting a timestamp
17:23:24 14 to identify each data unit. That's Paragraph 79
17:23:29 15 through 81 of your declaration.

17:23:31 16 Why don't you read those paragraphs
17:24:14 17 and let me know when you're ready.

17:24:14 18 A. All right.

17:24:15 19 Q. In the second sentence of
17:24:19 20 Paragraph 79, you state that, "If this term is
17:24:22 21 interpreted as a means plus function limitation,
17:24:24 22 then the corresponding structure is executable
17:24:28 23 code that selects a timestamp for a data unit
17:24:31 24 based on the present time or a time designated
25 by the user."

17:24:36 1 Is there any executable code
17:24:40 2 disclosed anywhere in the '227 specification
17:24:43 3 that selects a timestamp for a data unit based
17:24:46 4 on the present time or a time designated by the
17:24:59 5 user?

17:25:06 6 A. As in the other examples, with
17:25:15 7 software, the functional description implies the
17:25:18 8 underlying executable code.

17:25:20 9 Q. But there's no explicit disclosure
17:25:23 10 of any executable code for performing that
17:25:24 11 function, is there?

17:25:27 12 A. There is no listing at the detailed
17:25:31 13 level of executed code -- executable code.

17:25:33 14 Q. Okay. Let's move on to the next
17:25:40 15 limitation, means for associating each data unit
17:25:43 16 with at least one chronological indicator having
17:25:53 17 the respective timestamp, and that's
17:25:59 18 Paragraph 82 through 84 of your declaration.

17:26:00 19 And you can review those
17:26:02 20 paragraphs, and I'll ask the same sort of
17:26:35 21 questions I've been asking.

17:26:35 22 A. Okay.

17:26:44 23 Q. In Paragraph 83, you state, "While
17:26:48 24 I disagree with Apple's position, if it is
25 interpreted in that manner, then the

17:26:55 1 corresponding structure would be executable code
17:26:59 2 implementing the mainstream," and I think we --
17:27:04 3 well, by -- earlier -- in an earlier term, you
17:27:06 4 talked about instantiating the mainstream.

17:27:09 5 Is implementing the mainstream and
17:27:43 6 instantiating the mainstream the same thing?

17:27:46 7 A. Not necessarily. The -- as this
17:27:48 8 says, the mainstream is a data structure
17:27:53 9 comprised of various things, including
17:27:55 10 chronological indicators.

17:27:56 11 So, here, implementing the
17:28:10 12 mainstream includes -- or means, in part,
17:28:14 13 populating it. So as a daily unit is pop --
17:28:19 14 being populated, it's associated with at least
17:28:23 15 one chronological indicator having respective
17:28:24 16 timestamps.

17:28:28 17 Q. Okay. Is there any executable code
17:28:34 18 expressly disclosed in the '227 specification
17:28:38 19 for implementing the mainstream, as you've
17:28:43 20 used -- defines that term "implementing" here.

17:28:43 21 MR. STEIN: Objection.

17:28:46 22 A. There is no detailed code listing
17:28:50 23 here.

17:28:54 24 Q. The -- it's your opinion that this
25 claim is -- should not be construed as a --

17:37:20 1 the record. Time is 5:37 p.m.

17:37:20 2 BY MR. CHERENSKY:

17:37:22 3 Q. Okay, I'm actually going to move on
17:37:28 4 to limitation Z, so -- which is Paragraphs 88
17:37:33 5 through 90 of your declaration.

17:37:37 6 I'm really only going to ask about
17:37:40 7 Paragraph 88, but review those paragraphs and
17:39:48 8 let me know when you're ready.

17:39:49 9 A. All right.

17:39:51 10 Q. Okay. You state in Paragraph 88
17:39:55 11 that, "The structure in the specifications that
17:39:59 12 correspond to this limitation is executable code
17:40:01 13 that dynamically updates the mainstream and
17:40:06 14 executable code that dynamically updates
17:40:07 15 substreams."

17:40:13 16 Is there any executable code,
17:40:18 17 Dr. Levy, disclosed in the '227 specification
17:40:22 18 that dynamically updates the mainstream and
17:41:32 19 dynamically updates substreams?

17:41:39 20 A. Let's take, for example, Column 5
17:41:46 21 at lines 1 to 13. Your -- your specification is
17:42:01 22 describing the operation of substreams.

17:42:03 23 So a person of ordinary skill, of
17:42:05 24 course, will understand that all of the
25 operation here is implemented by executable

17:42:12 1 code. And so this is giving a fair amount of
17:42:16 2 information about how that executable code is to
17:42:29 3 operate, such as automatic monitoring of
17:42:35 4 information and automatic collecting --
17:42:39 5 automatically collecting all arriving mail, and
17:42:44 6 so on.

17:42:48 7 Q. There is no actual executable code
17:42:51 8 disclosed in the paragraph you just referred to
17:42:58 9 on the top of Column 5 for dynamically updating
17:43:02 10 the mainstream or dynamically updating
17:43:02 11 substreams, is there?

17:43:04 12 A. While there's no -- there's no
17:43:08 13 detailed code listed here, one of ordinary skill
17:43:10 14 in the art would certainly understand that
17:43:12 15 that's what's underlying each of these
17:43:25 16 operations.

17:43:27 17 Q. Okay. Let's move on to limitation
17:43:30 18 AA, means for displaying alternate version of
17:43:34 19 the content of the data units. That's
17:43:39 20 Paragraphs 91 through 93 of your report.

17:43:41 21 Please take a look at those
17:44:12 22 paragraphs. I'll have a few questions for you.

17:44:13 23 A. All right.

17:44:15 24 Q. First of all, what is an alternate
25 version of the content of the data units as

17:56:01 1 A. There's -- there's further
17:56:03 2 discussion of browse cards at Column 7 at the
17:56:06 3 bottom, as I think you may have pointed out,
17:56:14 4 starting at 64, and the purpose of it is to help
17:56:17 5 user identify a document by providing the user
17:56:21 6 some idea of the document's contents in a small
17:56:25 7 window.

17:56:29 8 So, anyway, I believe those give
17:56:33 9 you some examples of ways in which alternative
17:56:43 10 view -- excuse me -- alternative versions of the
17:56:46 11 content of data units are displayed.

17:56:48 12 Q. Okay. Let's move on to
17:56:51 13 limitation BB, the means for archiving a data
17:56:58 14 unit associated with a timestamp older and a
17:57:00 15 specified time point, and it goes on.

17:57:04 16 That's Paragraphs 94 through 96 of
17:57:09 17 your declaration. Feel free to read those
17:57:12 18 paragraphs. I'm just going to ask you about
17:57:51 19 Column -- I'm sorry -- Paragraph 95.

17:57:51 20 A. Okay.

17:57:55 21 Q. In Paragraph 95, second sentence,
17:57:57 22 you state, "While I disagree" -- referring to
17:58:00 23 Apple's position -- "if it is interpreted in
17:58:02 24 that manner, then the corresponding structure
25 would be computer hardware and executable code

17:58:09 1 implementing archive of data units."

17:58:12 2 Dr. Levy, there is no computer

17:58:17 3 hardware or executable code explicitly disclosed

17:58:20 4 in the '227 specification for implementing

17:58:23 5 archiving of data units, is there?

17:58:59 6 MR. STEIN: Objection to form.

17:59:00 7 A. Oh, by the way, I found the

17:59:03 8 paragraph in which the time order was reversed.

17:59:11 9 It's Column 10, lines 13, 15 -- 12 to 15.

17:59:15 10 So the reference to Column 10, 16

17:59:26 11 to 33, describes the actions taking place when

17:59:29 12 archiving -- an example of how archiving may be

17:59:32 13 done.

17:59:35 14 Q. But there's no explicit disclosure

17:59:41 15 of computer hardware or executable code there,

17:59:42 16 is there?

17:59:43 17 MR. STEIN: Objection.

17:59:46 18 A. Well, again, in line -- Column 10,

17:59:59 19 line 28, "Streams operating system monitors

18:00:03 20 remaining disk space," and that implicitly

18:00:04 21 refers to code -- programs.

18:00:06 22 Q. My question specifically asked

18:00:09 23 about explicit disclosure of executable code.

18:00:12 24 There's no explicit disclosure of

25 executable code implementing archiving of data

18:00:17 1 units in the '227 specification, is there?

18:00:20 2 A. Well, again, every time the
18:00:23 3 operating system is described as taking an
18:00:26 4 action, a person of ordinary skill in the art
18:00:29 5 understands that executable code is what enables
18:00:30 6 it to take that action.

18:00:32 7 Q. Okay. I'm not asking you what one
18:00:35 8 of ordinary person skill -- skilled in the art
18:00:37 9 understands. I'm asking you about explicit
18:00:40 10 disclosure in the specification. All right?

18:00:42 11 There is no explicit disclosure in
18:00:46 12 the specification of executable code
18:00:51 13 implementing archiving of data units, is there?

18:00:53 14 A. In the same terms as we spoke of
18:00:56 15 before, I do not see a detailed listing here
18:00:58 16 showing the lines of code.

18:01:00 17 Q. Okay. And there's no executable
18:01:04 18 code implementing user selectable operations on
18:01:07 19 streams -- there's no explicit disclosure of
18:01:11 20 executable code implementing user selectable
18:01:14 21 operations on streams in the '227 specification,
18:01:14 22 is there?

18:01:21 23 MR. STEIN: Objection.

18:01:22 24 A. I'm sorry. Where -- where is that
25 in my report? Could you point me to it?

18:01:27 1 Q. Well, I -- I'm trying to move on.

18:02:09 2 So this is Paragraph 98.

18:02:09 3 A. Okay.

18:02:11 4 There is no detailed listing of
18:02:12 5 such executable code.

18:02:14 6 Q. Okay. And there's no executable
18:02:19 7 code explicitly disclosed in the '227
18:02:22 8 specification for implementing incremental
18:02:25 9 substreams, is there, Dr. Levy?

18:02:27 10 And I'm referring to Paragraph 100
18:02:27 11 now.

18:03:07 12 MR. STEIN: Objection.

18:03:11 13 A. Again, the last sentence in the
18:03:21 14 paragraph ending at Column 7 at 30 talks about
18:03:24 15 what operation is required to do this type of
18:03:28 16 incremental substreams, and that implies the
18:03:29 17 underlying code.

18:03:32 18 Q. But there's no explicit disclosure
18:03:34 19 of executable there, is there?

18:03:35 20 MR. STEIN: Objection.

18:03:36 21 A. There -- there is not a listing of
18:03:37 22 detailed code.

18:03:41 23 Q. Okay. Last -- lastly, there is no
18:03:44 24 explicit disclosure of executable code
25 implementing alternative versions of data units

18:03:54 1 in the '227 specification? And I'm referring to
18:04:44 2 Paragraph 102 here.

18:04:46 3 A. Okay. Well, the references --
18:04:52 4 citations to the '227 patent at Column 4 and at
18:04:56 5 Column 11, again, give a description of the
18:04:59 6 operations to be taken, those operations
18:05:02 7 understood to be implemented by executable code.

18:05:05 8 Q. But that executable -- there's no
18:05:08 9 explicit disclosure of that executable code in
18:05:10 10 the '227 specification, is there?

18:05:12 11 A. There are no examples of detailed
18:05:14 12 code listings here.

18:05:15 13 MR. CHERENSKY: Okay. I have no
18:05:18 14 further questions. Thank you for your time.

18:05:22 15 THE VIDEOGRAPHER: This concludes
18:05:24 16 today's videotaped deposition. Time is
18:05:29 17 currently 6:05 p.m. This is going to be the end
18:05:32 18 of tape four of four. We're now off the record.

18:05:33 19 (Time noted: 6:05 p.m.)

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JOHN LEVY Ph.D.

22 Subscribed and sworn to before me

23 this ____ day of _____, 2009.

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.


COUNTY OF NEW YORK)

I, NANCY MAHONEY, a Certified Court Reporter, Registered Professional Reporter, Certified LiveNote Reporter, and Notary Public within and for the States of New York and New Jersey, do hereby certify:

That JOHN LEVY Ph.D., the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of December 2009.



NANCY MAHONEY, CSR/RPR