

JOHN LEVY December 11, 2009

Page 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

-----x

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.

1     A P P E A R A N C E S:

2             STROOCK & STROOCK & LAVAN  
3             Attorneys for Plaintiff  
4             180 Maiden Lane  
5             New York, New York 10038-4982

6             BY:     KENNETH STEIN, ESQ.

7             WEIL, GOTSHAL & MANGES  
8             Attorneys for Defendant  
9             201 Redwood Shores Parkway  
10             Redwood Shores, California 94065

11             BY:     STEVEN CHERENSKY, ESQ.

12

13

ALSO PRESENT:

14

15             Lisa Olle, Apple  
16             (Via Conference)

17

18             Jessica Choi, Paralegal

19

20             Harris Teran, Videographer  
21             Merrill Legal Solutions

22

23

24

25

26

27

28

29

30

31

32

## 1 I N D E X

2	WITNESS	PAGE
3	JOHN LEVY Ph.D.	
4	BY MR. CHERENSKY	5

## 7 EXHIBIT INDEX

8	DESCRIPTION	PAGE
9	Levy-1 Curriculum Vitae of	
10	John Levy Ph.D.	11
11	Levy-2 Declaration of John	
12	Levy Ph.D. Regarding Claim	
13	Construction	17
14	Levy-3 Joint Claim Construction and	
15	Pre-Hearing Statement Pursuant	
16	To Patent Reul 4-3	30
17	Levy-4 Declaration of Dr. John Levy in	
18	Support of Sun Microsystems, Inc.'s	
19	Responsive Claim Construction Brief	
20	Concerning the Sun Patent Claim	
21	Terms	64
22	Levy-5 Few pages from the American	
23	Heritage College Dictionary	195

11:52:24 1 A. I see that they used that phrase in  
11:52:36 2 this Paragraph 4.

11:52:42 3 Q. Okay. In Paragraph 32 -- now we're  
11:52:47 4 back to the substream section -- you state that  
11:52:55 5 the portion of Apple's proposed construction  
11:52:59 6 that a stream -- a substream is a stream that is  
11:53:03 7 a subset is superfluous.

11:53:11 8 Is that because that aspect of the  
11:53:14 9 construction -- well, strike that.

11:53:17 10 What did you mean by superfluous in  
11:53:20 11 that context?

11:53:25 12 A. It's not necessary to create a  
11:53:30 13 perfectly satisfactory construction for the word  
11:53:31 14 "substream."

11:53:35 15 Q. And that's because it's already a  
11:53:40 16 requirement of the claim that a stream is a  
11:53:43 17 subset -- I'm sorry -- a substream is a subset  
11:53:44 18 of a stream?

11:53:54 19 MR. STEIN: Objection.

11:53:56 20 A. Could you read that back?

11:53:57 21 Q. Sure.

11:53:59 22 By superfluous, what you mean is  
11:54:03 23 that it's not necessary to add those words to  
11:54:06 24 the construction because it's already clear that  
25 a stream -- I'm sorry -- a substream is a subset

11:54:10 1 of a stream?

11:54:22 2 MR. STEIN: Objection to form.

11:54:28 3 A. In the specification, they use

11:54:32 4 stream, mainstream and substream. So, for

11:54:36 5 understanding the invention, I think it's really

11:54:42 6 most important to understand the distinction

11:54:45 7 between a mainstream and a substream and,

11:54:51 8 therefore, construing a substream as a subset

11:54:55 9 data units or documents yielded by a filter on a

11:54:58 10 stream with the filter identifying certain

11:55:01 11 documents within the stream is entirely

11:55:02 12 sufficient.

11:55:05 13 Q. Okay. By superfluous, you don't --

11:55:07 14 you're not saying that you think that Apple's

11:55:10 15 language is wrong; you just think it's

11:55:11 16 unnecessary, correct?

11:55:13 17 A. I think it carries the danger that

11:55:18 18 there might be some implication of including it

11:55:21 19 that's -- that's not necessary or not relevant.

11:55:23 20 Q. But it's not wrong?

11:55:27 21 A. At the moment, I'm not sure.

11:55:29 22 Q. But isn't that what superfluous

11:55:31 23 means, that it's -- that it's not wrong but not

11:55:32 24 necessary?

25 A. It could mean that it might be

11:55:36 1 misleading.

11:55:36 2 Q. That's not what -- you haven't  
11:55:40 3 offered any opinions that it's misleading,  
11:55:40 4 right?

11:55:43 5 A. No, I mean superfluous --  
11:55:49 6 superfluous words can mislead.

11:55:50 7 Q. How does the language that a stream  
11:55:55 8 is a subset -- a stream that is a subset, how is  
11:56:01 9 that language misleading in any way?

11:56:04 10 A. To the extent that the reader  
11:56:11 11 understands the constrict stream to mean  
11:56:14 12 something that is not essential to a substream.

11:56:16 13 Q. But you just testified a few  
11:56:18 14 minutes ago that every attribute of substream  
11:56:23 15 that you discuss -- I'm sorry -- every attribute  
11:56:26 16 of stream that you discuss in your declaration  
11:56:28 17 is also an attribute of a substream.

11:56:29 18 MR. STEIN: Objection, form.

11:56:31 19 A. That is my belief at the moment,  
11:56:35 20 but I have not studied that question to  
11:56:37 21 determine for sure whether it's accurate.

11:56:39 22 Q. Okay. So if you have no opin -- so  
11:56:42 23 if that's your opinion at the moment, it must  
11:56:48 24 also be your opinion at the moment that the  
25 language proposed by Apple, a stream that is a

11:56:55 1 subset, isn't misleading, it may be unnecessary,  
11:56:57 2 in your opinion, but you can't have any opinion  
11:57:01 3 that it's misleading if you agree that all the  
11:57:03 4 attributes of a stream are also attributes of  
11:57:04 5 substream.

11:57:05 6 Isn't that right?

11:57:07 7 A. Well, all of that is logical. I  
11:57:13 8 think it's always best to have the minimum  
11:57:21 9 wording in a construction.

11:57:25 10 Q. Let's talk about the timestamp to  
11:57:31 11 identify phrase, and you address that in  
11:57:38 12 Paragraphs 36 through 38 of your declaration.

11:57:40 13 Why don't you take a look at that  
11:57:43 14 and let me know when you're ready for me to ask  
11:58:04 15 some questions about those paragraphs.

11:58:13 16 A. Okay.

11:58:20 17 Q. You see that in the -- in the first  
11:58:26 18 sentence of Paragraph 38, you -- you state, you  
11:58:29 19 understand that Apple proposes that this term be  
11:58:32 20 construed to be "date and time value that  
11:58:40 21 uniquely identifies each document."

11:58:43 22 Do you disagree with that proposed  
11:58:44 23 construction?

11:58:44 24 A. Yes.

25 Q. Okay. You understand -- well, do

12:12:01 1 unit?

12:12:03 2 MR. STEIN: Objection to form.

12:12:04 3 A. No.

12:12:08 4 I'm saying that the selecting

12:12:15 5 doesn't necessarily designate a time and date

12:12:17 6 value that is unique.

12:12:23 7 Q. Okay. So what portion of -- of the

12:12:31 8 computer system described by Claim 1 assigns a

12:12:35 9 unique -- assigns a timestamp to uniquely

12:12:37 10 identify each data unit?

12:12:40 11 A. I think that's implied to one of

12:12:43 12 ordinary skill in the art, required by the

12:12:46 13 necessity to create an ordering.

12:12:48 14 Q. So, but which of these means would

12:12:52 15 have a structure that performed that function?

12:12:55 16 MR. STEIN: Objection to form.

12:12:58 17 A. Well, when we discuss the

12:13:06 18 structure, I think we can -- we can identify the

12:13:10 19 structure where a time and date value are found.

12:13:12 20 Q. But you just testified that you

12:13:15 21 thought that that -- not that you thought --

12:13:18 22 that it was your opinion that that selection

12:13:20 23 might not result in a unique -- in a timestamp

12:13:22 24 that uniquely identifies.

25 So where in what's described in the



12:15:26 1 A. I mean that the timestamp of  
12:15:32 2 Claim 1 need only be a time-based identifier.

12:15:34 3 Q. So there could be elements in the  
12:15:36 4 mainstream -- I'm sorry.

12:15:39 5 There could be data units in the  
12:15:40 6 mainstream -- strike that.

12:15:42 7 There can be multiple data units in  
12:15:45 8 the mainstream that each have the same timestamp  
12:15:47 9 in Claim 1.

12:15:48 10 Is that your --

12:15:49 11 A. I'm not saying that.

12:15:50 12 Q. Okay. Well --

12:15:53 13 A. I'm saying there may be multiple  
12:15:55 14 data units in the mainstream which have the same  
12:15:58 15 time and date value.

12:16:00 16 Q. But I'm asking about -- I'm not  
12:16:02 17 asking about time and date values. I'm asking  
12:16:04 18 about the timestamp.

12:16:05 19 So is there something in the  
12:16:08 20 timestamp of Claim 1, in addition to time and  
12:16:16 21 date values?

12:16:18 22 A. There may be and there may not be.

12:16:21 23 Q. Well, what -- what does Claim 1  
12:16:27 24 require? Does Claim 1 require that timestamps  
25 have something in addition to date and time

12:16:30 1 information?

12:16:31 2 A. I'm sorry?

12:16:35 3 Q. Does Claim 1 require that the  
12:16:37 4 timestamps of that claim include more than date  
12:16:39 5 and time information?

12:16:42 6 A. Not necessarily.

12:16:46 7 Q. Well, it either requires it or it  
12:16:48 8 doesn't, so which is it?

12:16:50 9 A. To the extent that the date and  
12:16:55 10 time information produce unique values, then it  
12:16:57 11 does not require additional information.

12:17:00 12 Q. Okay. And if the date and time  
12:17:04 13 doesn't require additional -- I'm sorry.

12:17:06 14 If the -- if the timestamp requires  
12:17:11 15 additional values beyond date and time, are  
12:17:16 16 those additional values determined during -- by  
12:17:23 17 the means for selecting of Claim 1?

12:17:24 18 MR. STEIN: Objection.

12:17:27 19 If you need time to look at your  
12:17:31 20 report on the means for selecting information,  
12:18:13 21 please do so.

12:18:15 22 Have you found that part?

12:18:30 23 THE WITNESS: Yes.

12:18:33 24 A. So, the claim limitation means for  
25 selecting a timestamp to identify each data unit

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.)

14:20:39 1 Q. Sure.

14:20:41 2 A. So now the question was?

14:20:46 3 Q. The question is whether an  
14:20:50 4 abbreviated form of a document representation  
14:20:57 5 can simply be a smaller graphical depiction of  
14:21:02 6 that document representation?

14:21:11 7 A. One way of abbreviating -- an  
14:21:15 8 abbreviated version could well mean something  
14:21:16 9 that is smaller or something that is lower  
14:21:17 10 resolution.

14:21:19 11 Q. Is that what it means in this  
14:21:19 12 context?

14:21:22 13 A. It could mean -- possibly mean  
14:21:22 14 that.

14:21:24 15 Q. Is that the ordinary meaning of  
14:21:25 16 abbreviated?

14:21:29 17 A. I think -- I think abbreviated  
14:21:32 18 could mean a lot of different things in a  
14:21:38 19 context of a document representation. So those  
14:21:40 20 are some of the possibilities.

14:21:43 21 Q. If I asked you for an abbreviated  
14:21:50 22 version of your declaration, would you print it  
14:21:56 23 out in 8-point font instead of 12-point font?

14:21:58 24 A. Well, let's put it this way: If I  
25 were to hand you a small version that were not

14:22:05 1 8-and-a-half by 11 pages and call it an  
14:22:07 2 abbreviated version, I think that might well  
14:22:08 3 apply.

14:22:13 4 Q. You do? You think that that  
14:22:16 5 just -- a shrunk, an 8-point font version of  
14:22:20 6 your declaration would be -- you think a fair  
14:22:22 7 and accurate description of that would be an  
14:22:23 8 abbreviated version?

14:22:31 9 MR. STEIN: Objection.

14:22:35 10 A. I think that reducing the -- the  
14:22:39 11 pixel resolution of a document representation is  
14:22:45 12 one way of abbreviating a representation.

14:22:47 13 Q. If the court ordered you to submit  
14:22:50 14 an abbreviated version of your declaration,  
14:22:53 15 would you feel comfortable submitting the same  
14:22:56 16 document in 8 point font to the court?

14:22:58 17 MR. STEIN: Objection.

14:23:00 18 A. I would doubt that that's what the  
14:23:05 19 court wanted. I would also not submit it on a  
14:23:13 20 graphical screen.

14:23:15 21 MR. CHERENSKY: Okay. Tape change.

14:23:16 22 THE VIDEOGRAPHER: We're off the  
14:23:20 23 record. Time is 2:23 p.m. This is going to be  
14:23:23 24 the end of tape number two.

25 (Recess taken.)

15:11:25 1 operating system A utilizing subsystems from  
15:11:30 2 operating system B, that one can no longer  
15:11:34 3 necessarily draw a clean boundary between the  
15:11:36 4 two operating systems with regard to  
15:11:37 5 implementation of a particular feature.

15:11:44 6 Q. Is a document organizing facility  
15:11:45 7 software?

15:11:47 8 A. Yes.

15:11:53 9 Q. Is a display facility software?

15:11:55 10 A. In this limitation, I believe it  
15:11:57 11 is.

15:12:06 12 Q. Is -- in the context of software,  
15:12:10 13 what does the term "facility" mean?

15:12:12 14 MR. STEIN: If you need -- again,  
15:12:14 15 if you need to look at your report --

15:12:22 16 THE WITNESS: Yeah.

15:12:24 17 MR. STEIN: -- on that limitation,  
15:13:00 18 please do so.

15:13:18 19 Q. Just for the record, that's  
15:13:23 20 Paragraphs 112 and 113.

15:13:24 21 A. So could you ask your question  
15:13:25 22 again, please?

15:13:25 23 Q. Sure.

15:13:30 24 In the software context, what does  
25 the term "facility" mean?

15:13:54 1 A. It means a module or subsystem that  
15:13:59 2 provides some particular capability or  
15:14:00 3 facility -- well, feature.

15:14:02 4 Q. Okay, a feature.

15:14:03 5 A. Try another word, yeah.

15:14:03 6 Q. So -- right, okay.

15:14:07 7 So it's a modular subsystem that  
15:14:11 8 provides some particular capability or -- or  
15:14:12 9 feature, correct?

15:14:17 10 A. Okay.

15:14:22 11 Q. So that means it's some -- it's  
15:14:25 12 software, right, it's just code?

15:14:55 13 A. Code and related data structures.

15:14:58 14 Q. All right. Let's go back to  
15:15:02 15 Page 14 of your report and the term "archiving,"  
15:15:06 16 which is Paragraphs 45 and 46, so please take a  
15:15:09 17 look at those paragraphs and let me know when  
15:15:34 18 you're ready.

15:15:43 19 A. Okay.

15:15:46 20 Q. The -- the last sentence of  
15:15:51 21 Paragraph 46, in -- in that sentence, you state,  
15:15:54 22 "While an example of archiving described in the  
15:15:56 23 Mirror Worlds patent involves moving files to  
15:15:59 24 long-term storage, the term 'archiving' is not  
25 limited to that example."

15:16:09 1 The only example of archiving  
15:16:14 2 described in the specifications is, in fact,  
15:16:16 3 moving files to long-term storage.

15:16:18 4 Isn't that right?

15:16:21 5 A. I believe so.

15:16:24 6 Q. Okay. And that's described in  
15:16:37 7 Column 10, lines 17 through 23. Isn't that  
15:16:37 8 right?

15:16:38 9 MR. STEIN: And, again, if you feel  
15:16:41 10 that you need to review other portions of the  
15:19:19 11 specifications, please do so.

15:19:21 12 A. Well, that's the only one I can  
13 find at the moment.

15:19:22 14 Q. Okay.

15:19:32 15 A. This is from lines 16 through 35,  
15:19:34 16 approximately, in Column 10.

15:19:40 17 Q. Right, okay.

15:19:44 18 Let's move on to the term "glance  
15:19:52 19 views," which is Paragraphs 47 through 51. So  
15:19:54 20 why don't you read those paragraphs and let me  
15:20:53 21 know when you're ready.

15:20:54 22 A. Okay.

15:20:57 23 Q. In Paragraph 47, you state that,  
15:20:59 24 "One of ordinary skill in the art would  
25 understand that a glance view refers to an



15:40:22 1 the screen and that additional something is the  
15:40:22 2 glance view.

15:40:48 3 Isn't that right?

15:40:51 4 A. So, reading Claim 16, the portion  
15:40:57 5 of the third limitation says, "And responding to  
15:41:02 6 a user sliding without clicking the cursor or  
15:41:04 7 pointer over a portion of the displayed document  
15:41:09 8 representation to display the glance view of the  
15:41:12 9 document whose document representation is  
15:41:14 10 touched by the cursor or pointer."

15:41:17 11 If that's what you're referring to  
15:41:22 12 in terms of action and response to the action, I  
15:41:23 13 understand that part.

15:41:38 14 Q. Okay. So if a -- so it's your  
15:41:40 15 opinion that a -- it's your opinion that a  
15:41:42 16 glance view can be a document -- or is a  
15:41:43 17 document representation.

15:42:05 18 Is that right?

15:42:08 19 A. A glance view is a document  
15:42:11 20 representation, yes.

15:42:17 21 Q. Okay. And if you -- let's suppose  
15:42:20 22 that you have a stream and in that stream is  
15:42:24 23 document A, and so there's a -- and the stream  
15:42:27 24 is displayed on the screen and so there's a  
25 rep -- document representation of document A.

15:42:33 1 All right?

15:42:34 2 A. Okay.

15:42:40 3 Q. Okay. Now, you can slide the

15:42:45 4 cursor over the document representation, and

15:42:52 5 when you -- when the cursor is over the document

15:42:56 6 representation, corresponding to document A,

15:42:58 7 now, in addition to that existing document

15:43:04 8 representation that's -- that's already there, a

15:43:07 9 glance view now appears on the screen resulting

15:43:12 10 from the mouse cursor being placed over document

15:43:13 11 representation A.

15:43:15 12 MR. STEIN: Objection.

15:43:18 13 A. I think that generally represents

15:43:21 14 what this limitation is talking about.

15:43:25 15 Q. Okay. And so now we have on the

15:43:30 16 screen, on the display, in addition to other

15:43:33 17 document representations, we have a document

15:43:40 18 representation corresponding to document A and a

15:43:43 19 glance view corresponding to document A, and

15:43:48 20 those two -- those are two different bit

15:43:52 21 patterns -- or two distinct bit patterns that

15:43:53 22 are on the display.

15:43:55 23 MR. STEIN: Objection.

15:43:58 24 A. Well, let's use the term "stream

25 view document representation" for the one that's

15:44:01 1 there --

2 Q. Okay.

15:44:02 3 A. -- earlier --

15:44:05 4 Q. Right.

15:44:08 5 A. -- and glance view for the one that  
15:44:09 6 comes up later.

15:44:10 7 Q. Okay.

15:44:11 8 A. I don't think it's necessary for  
9 them to be two different bit patterns --

15:44:13 10 Q. Well --

15:44:15 11 A. -- within their borders.

15:44:16 12 Q. -- so -- again, I don't want to  
15:44:18 13 get -- I don't want to hung up on different.

15:44:20 14 I just mean there's one  
15:44:24 15 instantiation that's in the document, that's the  
15:44:26 16 document stream representation, and there's  
15:44:30 17 another instantiation on the display that is the  
15:44:34 18 glance view and you can point to two things on  
15:44:35 19 the screen.

15:44:37 20 You can point to a first thing,  
15:44:39 21 that's a document stream representation, and you  
15:44:42 22 can point to a second thing, that's a glance  
15:44:45 23 view that corresponds to that document stream  
15:44:47 24 representation, correct?

25 MR. STEIN: Objection.

15:44:50 1 A. When you say "you can point," you  
2 mean like I as a human can --

15:44:51 3 Q. Correct.

15:44:54 4 A. -- say, oh, here's one of them and  
15:44:57 5 here's the other? In that sense, I do believe  
15:45:22 6 that's true.

15:45:24 7 Q. Okay. Let's move on to the  
15:45:34 8 receding foreshortened stack term. That's  
15:45:37 9 Paragraphs 52 and 53 of your declaration. Why  
15:45:40 10 don't you read those two paragraphs and let me  
15:45:41 11 know when you're ready.

15:45:44 12 MR. STEIN: Can we take a break  
15:45:45 13 now?

15:45:46 14 MR. CHERENSKY: Sure. That's fine.

15:45:47 15 THE VIDEOGRAPHER: We're off the  
15:45:49 16 record. Time is 3:45 p.m.

15:57:45 17 (Recess taken.)

15:57:57 18 THE VIDEOGRAPHER: We're back on  
15:58:01 19 the record. Time is 3:58 p.m.

15:58:03 20 THE WITNESS: I'd like to say  
15:58:03 21 something.

15:58:03 22 BY MR. CHERENSKY:

15:58:03 23 Q. Okay.

15:58:05 24 A. As I was leaving the room, I  
25 realized that I may have -- I was referring to

15:58:16 1 Figure 1 and not focusing solely on Claim 16 of  
15:58:20 2 the '427, so I may have misspoken in terms of my  
15:58:24 3 understanding of whether Claim 16 itself  
15:58:30 4 requires the glance view and the displayed  
15:58:33 5 document representation to be distinct and  
15:58:35 6 separate items.

15:58:40 7 Q. So, Dr. Levy, wasn't I very, very  
15:58:44 8 clear before your last set of answers that I  
15:58:49 9 wanted you to focus on Claim 16 and not Claim 1?  
15:58:50 10 Didn't I say that very clearly?

15:58:52 11 A. You did say that very clearly, but,  
15:58:54 12 unfortunately, I had this in front of me at the  
15:59:00 13 same time and I kept referring to that.

15:59:02 14 Q. And by this, you mean the --

15:59:07 15 A. Figure 1 of the '227 patent.

15:59:09 16 Q. So are you saying you want to  
15:59:13 17 change your testimony regarding my question to  
15:59:15 18 you about Claim 16?

15:59:15 19 A. Yes.

15:59:17 20 Q. Did you -- before you -- before you  
15:59:20 21 make that correction, let me ask: Did you  
15:59:27 22 discuss your testimony about the glance view and  
15:59:28 23 the document -- document representation with  
15:59:31 24 counsel during the break?

25 A. As -- after we left the room, I

15:59:39 1 said to counsel I thought I may have  
15:59:43 2 misrepresented Claim 16 because I was referring  
15:59:45 3 to Figure 1.

15:59:46 4 Q. Did -- oh, I'm sorry.

15:59:49 5 A. So counsel encouraged me to correct  
15:59:51 6 my testimony if that was the case.

15:59:53 7 Q. Did counsel ask you about that  
15:59:57 8 testimony before you said that you might have  
15:59:58 9 been unclear in your answer?

16:00:04 10 A. He did not.

16:00:10 11 Q. So what -- how would you like to  
16:00:16 12 correct your testimony regarding Claim 16?

16:00:19 13 A. I think that the third limitation  
16:00:22 14 in Claim 16, which is the one we were  
16:00:29 15 discussing, mentions both a display document  
16:00:33 16 representation and a glance view.

16:00:36 17 And in my understanding of this,  
16:00:39 18 they may or may not be separate and distinct  
16:00:43 19 graphical elements on the screen.

16:00:45 20 Q. Okay. Well, then let's go back  
16:00:49 21 over it -- well, I'm sorry. Before I do that,  
16:00:51 22 is there anything else?

16:00:53 23 A. I think that's the most important  
16:00:55 24 thing.

25 Q. Okay. Well, I guess let's just get

16:01:01 1 it all out.

16:01:02 2 So, without regard to whether it's  
16:01:05 3 the most important thing, is there anything  
16:01:06 4 about Claim 16 that -- your testimony about  
16:01:13 5 Claim 16 that you'd like to change?

16:01:15 6 A. I don't think so.

16:01:20 7 Q. Okay. Now, you agree that what  
16:01:28 8 that third indented paragraph in Claim 16  
16:01:34 9 describes is that the glance view is displayed  
16:01:39 10 on the screen as a result of the cursor or  
16:01:43 11 pointer being positioned over the displayed  
16:01:45 12 document representation?

16:01:56 13 You agree with that, don't you?

16:01:59 14 A. It says responding to the sliding  
16:02:02 15 cursor or pointer over a portion of a displayed  
16:02:05 16 document representation to display the glance  
16:02:09 17 view, yes, that is right.

16:02:12 18 Q. Okay. And you agree, don't you,  
16:02:17 19 that the glance view of a displayed document  
16:02:27 20 representation is not visible on the display if  
16:02:32 21 the cursor or pointer is not positioned over the  
16:02:41 22 displayed document representation, don't you?

16:02:41 23 MR. STEIN: Objection.

16:02:45 24 A. Well, I think this -- this section  
25 of this claim is kind of -- is moot on that. I

16:03:00 1 think it implies that the glance view, as you've  
16:03:02 2 said before, is generated in response to a  
16:03:04 3 positioning operation.

16:03:09 4 Q. Okay. So -- and -- and this claim  
16:03:11 5 language that we're talking about, the third  
16:03:15 6 indented paragraph, wouldn't make any sense if  
16:03:21 7 the glance view of the displayed representation  
16:03:24 8 was always on the display no matter where you  
16:03:28 9 put the mouse pointer -- the mouse cursor,  
16:03:29 10 correct?

16:03:32 11 I mean, it would be meaningless,  
16:03:35 12 wouldn't it?

16:03:36 13 A. Well, I don't know whether it would  
16:03:41 14 be meaningless or not.

16:03:44 15 I do agree that -- I do believe  
16:03:55 16 that this is describing a manner of designating  
16:04:00 17 a display document representation, of which a  
16:04:03 18 glance view is to be generated.

16:04:05 19 Q. Okay. And you testified that the  
16:04:12 20 glance view is generated in response to a  
16:04:15 21 positioning operation that is placing the mouse  
16:04:18 22 cursor over the displayed document  
16:04:22 23 representation, right?

16:04:23 24 MR. STEIN: Objection.

25 A. Well, it says cursor or pointer.



16:04:27 1 It doesn't mention mouse.

16:04:29 2 Q. Okay, cursor or pointer.

16:04:33 3 So you agree that the glance view  
16:04:35 4 is generated when the cursor or pointer is  
16:04:39 5 positioned over the displayed document  
16:04:42 6 representation?

16:04:43 7 A. Okay. I'm sorry, could you read  
16:04:44 8 that one?

9 Q. I'll just restate it.

16:04:46 10 A. Okay.

16:04:48 11 Q. You agreed, and you testified, that  
16:04:52 12 the glance view is generated as a result of the  
16:04:56 13 positioning of the pointer over the displayed  
16:04:59 14 document representation?

16:05:00 15 A. Yeah, that is my understanding of  
16:05:04 16 the meaning of responding to a user sliding, and  
16:05:07 17 so on, to display the glance view.

16:05:09 18 Q. Okay. So the glance view isn't  
16:05:15 19 visible on the display until the cursor or  
16:05:18 20 pointer is positioned over a portion of the  
16:05:20 21 displayed document representation.

16:05:21 22 Isn't that right?

16:05:27 23 A. That is what this claim says, yes.

16:05:35 24 Q. Okay. So then -- and it becomes  
25 visible when the position -- I'm sorry.

16:05:42 1 It becomes visible when the cursor

16:05:44 2 or -- or pointer is positioned over the

16:05:45 3 displayed document representation?

16:05:46 4 A. Yes.

16:05:49 5 Q. So you can point on the display to

16:05:53 6 the glance view when the cursor or pointer is

16:05:56 7 positioned over the displayed document

16:05:59 8 representation, but you can't point to it before

16:06:01 9 the cursor or pointer is positioned over the

16:06:03 10 displayed document representation.

16:06:04 11 Isn't that right?

16:06:08 12 A. Well, we've moved now into the

16:06:09 13 human pointing --

16:06:09 14 Q. Yes.

16:06:11 15 A. -- with a finger?

16:06:12 16 Q. Yes, yes.

16:06:14 17 A. Perhaps we better say you can't see

16:06:16 18 the glance view until a document representation

16:06:18 19 has been selected by some means.

16:06:22 20 Q. Okay. And when the glance view is

16:06:28 21 visible on the display, the -- is the displayed

16:06:31 22 document representation also visible on the

16:06:32 23 display?

16:06:35 24 A. I don't believe this claim

25 specifies what happens to the document

16:06:43 1 representation.

16:06:50 2 Q. But what the user -- what the --  
16:06:57 3 what the user sees as the -- when the -- well,  
16:06:57 4 strike that.

16:07:02 5 The positioning of the pointer over  
16:07:04 6 a portion of the displayed document  
16:07:09 7 representation change what the user sees on the  
16:07:09 8 display.

16:07:12 9 Isn't that right?

16:07:15 10 A. It changes it in the sense that a  
16:07:18 11 glance view is displayed.

16:07:22 12 Q. And before the glance -- before the  
16:07:24 13 cursor is positioned over the document  
16:07:26 14 representation, the glance view is not  
16:07:28 15 displayed?

16:07:31 16 A. That is my understanding.

16:07:33 17 Q. And --

16:07:36 18 A. I'm not sure that's required, but  
16:07:41 19 the glance view of the document representation  
16:07:44 20 being selected may not be there. It may be some  
16:07:46 21 other glance view.

16:07:49 22 Q. And it's your understanding that a  
16:08:00 23 user of a system corresponding to Claim 16 will  
16:08:04 24 notice a difference on the display when the  
25 glance view of the displayed document

16:04:27 1 It doesn't mention mouse.

16:04:29 2 Q. Okay, cursor or pointer.

16:04:33 3 So you agree that the glance view  
16:04:35 4 is generated when the cursor or pointer is  
16:04:39 5 positioned over the displayed document  
16:04:42 6 representation?

16:04:43 7 A. Okay. I'm sorry, could you read  
16:04:44 8 that one?

9 Q. I'll just restate it.

16:04:46 10 A. Okay.

16:04:48 11 Q. You agreed, and you testified, that  
16:04:52 12 the glance view is generated as a result of the  
16:04:56 13 positioning of the pointer over the displayed  
16:04:59 14 document representation?

16:05:00 15 A. Yeah, that is my understanding of  
16:05:04 16 the meaning of responding to a user sliding, and  
16:05:07 17 so on, to display the glance view.

16:05:09 18 Q. Okay. So the glance view isn't  
16:05:15 19 visible on the display until the cursor or  
16:05:18 20 pointer is positioned over a portion of the  
16:05:20 21 displayed document representation.

16:05:21 22 Isn't that right?

16:05:27 23 A. That is what this claim says, yes.

16:05:35 24 Q. Okay. So then -- and it becomes  
25 visible when the position -- I'm sorry.

17:06:00 1 of a mainstream data structure.

17:06:05 2 And so whether -- a data structure  
17:06:06 3 which is a mainstream.

17:06:09 4 Q. When you say we don't have  
17:06:12 5 disclosed here, you mean the '227 patent doesn't  
17:06:15 6 disclose a particular implementation of a data  
17:06:17 7 structure that constitutes a mainstream?

17:06:32 8 A. Right.

17:06:38 9 Q. So I guess then you don't know  
17:06:40 10 if -- well, let's go back to the executable code  
17:06:41 11 question.

17:06:44 12 So you listed some -- you referred  
17:06:46 13 to operating systems and -- but you're not sure  
17:06:49 14 whether those operating systems can instantiate  
17:06:52 15 a mainstream, as I understand your testimony.

17:06:55 16 Is there any executable code that  
17:07:00 17 is disclosed in the '227 patent that, in your  
17:07:07 18 opinion, does instantiate a mainstream?

17:07:09 19 A. Could you clarify what you mean by  
17:07:16 20 disclose -- executable code disclosed?

17:07:19 21 Q. So, by executable code, I'm  
17:07:20 22 referring to, you know, the language that you've  
17:07:24 23 used in your declaration, so Paragraph 64, the  
17:07:29 24 second to last sentence, "Accordingly,  
25 mainstream is a data structure that is

17:07:34 1 instantiated by executable code."

17:07:36 2 So, with that understanding of  
17:07:41 3 executable code, is there any executable code  
17:07:45 4 that appears anywhere in the '227 specification  
17:07:49 5 that instantiates a mainstream?

17:07:54 6 A. Well, '227 specification doesn't  
17:07:58 7 have any code listed. So, in a trivial sense,  
17:08:01 8 there is no executable code disclosed in that  
17:08:09 9 manner.

17:08:15 10 Q. Paragraph 65, last sentence, second  
17:08:19 11 sentence, you state, "While I disagree, if it is  
17:08:22 12 interpreted in that manner" -- the manner that  
17:08:25 13 Apple proposes -- "then the corresponding  
17:08:27 14 structure could be the computer hardware and  
17:08:30 15 executable code implementing a mainstream of  
17:08:31 16 data units."

17:08:33 17 So I've asked you about the  
17:08:36 18 executable code. Now I'd like to ask you about  
17:08:37 19 the computer hardware.

17:08:40 20 What computer hardware is disclosed  
17:08:44 21 in the '227 specification for implementing a  
17:08:49 22 mainstream of data units?

17:08:52 23 A. The '227 specification does not  
17:09:03 24 disclose a particular computer hardware.

25 Q. Okay. Let's move on to the means

17:49:36 1 So with that discussion of browse  
17:49:43 2 cards in mind and your proposed construction of  
17:49:45 3 glance view, which we discussed earlier, do you  
17:49:47 4 understand browse card as described at the  
17:49:49 5 bottom of Column 7 and the top of Column 8 to be  
17:49:55 6 the same thing as a glance view?

17:49:55 7 MR. STEIN: Objection.

17:49:59 8 A. I think it's -- for the moment, for  
17:50:01 9 the rest of this discussion, let's accept --  
17:50:04 10 let's stipulate that a browse card and a glance  
17:50:08 11 view are the same thing.

17:50:10 12 Q. Okay. Then, going back to your  
17:50:14 13 statement in the second sentence of Paragraph 92  
17:50:19 14 that the corresponding structure for the means  
17:50:23 15 for displaying alternate versions of the content  
17:50:26 16 of the data units, if that phrase is to be  
17:50:33 17 interpreted pursuant to 112, 6, is browse  
17:50:36 18 card/glance views, does that mean -- so then  
17:50:42 19 what are -- what are browse cards/glance views  
17:50:48 20 alternative versions to?

17:50:51 21 A. Browse cards/glance views can take  
17:50:54 22 on different forms, and that would be the  
17:50:58 23 alternative versions.

17:51:03 24 Q. Are different forms of browse cards  
25 or glance views disclosed anywhere in the '227

C E R T I F I C A T E

STATE OF NEW YORK )

: ss.

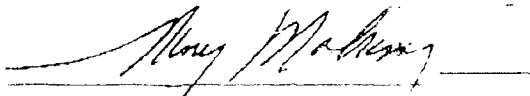
COUNTY OF NEW YORK )

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