UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MIRROR WORLDS, LLC
 	
             Plaintiff,
 	
    v.
 	
APPLE INC.
 	
             Defendant.
	Civil Action No. 6:08-CV-88 LED
	
	JURY TRIAL DEMANDED

APPLE INC.
 	
             Counterclaim Plaintiff
 	
    v.
 	
MIRROR WORLDS, LLC,
MIRROR WORLDS TECHNOLOGIES, INC.,
 	
             Counterclaim Defendants.	

MIRROR WORLDS, LLC'S RESPONSE TO
APPLE INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT OF
<u>INVALIDITY FOR INDEFINITNESS UNDER 35 U.S.C. § 112 ¶ 2</u>

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I.   PRELIMINARY STATEMENT

Plaintiff Mirror Worlds, LLC ("Mirror Worlds") submits this memorandum of law in opposition to Defendant Apple Inc.'s ("Apple") Motion for Summary Judgment of Invalidity for Indefiniteness. As explained herein, Apple's motion for summary judgment is without merit because (1) it relies upon attributing functional requirements to various claim limitations that are not in fact recited in those limitations; (2) it is rooted in a faulty interpretation of the law; (3) it is inconsistent with the specifications of Mirror Worlds' patents; and (4) it is contrary to the declaration of Mirror Worlds' expert, Dr. Levy, and the deposition testimony of Apple's expert, Dr. Feiner. Accordingly, Mirror Worlds respectfully requests that Apple's Motion for Summary Judgment be denied.

II.   OBJECTIONS TO APPLE'S STATEMENT OF UNDISPUTED MATERIAL FACTS

As an initial matter, Mirror Worlds objects to each of the supposed "undisputed material facts" identified by Apple on pages 2-3 of Apple's Motion. They are not "facts" relating to indefiniteness, but instead statements regarding Mirror Worlds' claim construction positions. As explained in the next section below, indefiniteness, like claim construction, is a legal issue for the Court to decide. Courts may consider certain evidence in determining the issue of indefiniteness, such as the specifications of the patents-in-suit and expert testimony regarding the structure in the specifications that corresponds to means-plus-function claim limitations. None of Apple's supposed "material facts" relate to such evidence.

With respect to the term "document organizing facility," Mirror Worlds position is that it is clearly not a means-plus-function limitation governed by 35 U.S.C. §112 ¶6. If, however, the Court construes it as such, there most certainly is structure in the specification that corresponds to that term.

In addition, Apple's assertion that Mirror Worlds' proposed corresponding structure "[f]or each of thirteen means-plus-function limitations of the '227 patent" is only "'computer hardware and executable code' or 'executable code' for performing the claimed function," is wrong—as set forth in Mirror Worlds' Opening Claim Construction Brief (Dkt. 151).

III.   LEGAL ARGUMENT

A.   Applicable Law

Invalidity due to indefiniteness of a claim term must be proven by <u>clear and convincing</u> evidence. *Budde v. Harley-Davidson, Inc.,* 250 F.3d 1369, 1376 (Fed. Cir. 2001); *Intel Corp. v. VIA Technologies, Inc.* 319 F.3d 1357, 1366 (Fed. Cir. 2003) ("Any fact critical to a holding on indefiniteness, moreover, must be proven by the challenger by clear and convincing evidence") (citations omitted). A claim is indefinite only if it is "insolubly ambiguous, and no narrowing construction can properly be adopted." *See Exxon Research and Eng'g Co. v. US,* 265 F.3d 1371, 1375 (Fed. Cir. 2001). With respect to means-plus-function limitations, "[w]hether or not the specification adequately sets forth structure corresponding to the claimed function necessitates consideration of that disclosure from the viewpoint of one skilled in the art." *Budde,* 250 F.3d at 1376. A claim limitation will not be indefinite as long as at least one embodiment discloses corresponding structure. *See Cardiac Pacemakers, Inc. v. St. Jude Med. Inc.,* 296 F.3d 1106, 1113-14 (Fed. Cir. 2002).

B.   Contrary to Apple's Position, The Terms "Means For Selecting A Timestamp to Identify" ('227 patent, claim 1) And "Means For Associating … Timestamp Which Identifies" ('227 patent, claim 25) Are Not Indefinite

1.   Apple Improperly Construes these Claim Terms to Require the Identification of Structure that Corresponds to Functions that Are Not Recited in the Claims.

In its motion, Apple collectively addresses two separate and distinct claim limitations:

i. "***means for selecting*** a timestamp to identify each data unit" (claim 1); and

ii. "***means for associating*** each data unit with at least one chronological indicator having a respective timestamp which identifies the data unit" (claim 25).

Neither one of these limitations recite a means ***for generating*** *a timestamp*, which is, in essence, the function that Apple claims these limitations have. The Federal Circuit has repeatedly held that reading such unrecited functions into the claims is improper. *See Creo Products, Inc. v. Presstek, Inc.*, 305 F.3d 1337, 1346 (Fed. Cir. 2002) ("This court has repeatedly held that it is improper to restrict a means-plus-function limitation by adopting a function different from that explicitly recited in the claim.").

<h3 style="text-align:center">a. "means for selecting a timestamp to identify each data unit"</h3>

With respect to the "means for selecting …," the claimed function is "*selecting a timestamp to identify each data unit*." The structure in the specifications that corresponds to this limitation is *executable code that selects a timestamp for a data unit based on the present time or a time designated by the user*. The '227 patent specifically discloses such structure—*i.e.*, selecting a timestamp based on (i) the present time (*see* Mirror Worlds' Opening Claim Construction Brief, Ex. 2 ("the '227 patent"), col. 4, ll. 35-43; col. 7, ll. 60-63) or (ii) a time selected by a user ('227 patent, col. 7, ll. 8-10, ll. 39-63; col. 11, ll. 57-64; and Figures 1, 4 and 5). *See also* Mirror Worlds' Opening Claim Construction Brief, (Dkt. 151), Ex. 6, Declaration Of John Levy, Ph.D. Regarding Claim Construction (the "Levy CC Decl."), ¶ 79.

For example, as the '227 patent explains, Figures 4 and 5 depict a user interface by which a user selects a timepoint which, in turn, results in a document with a particular timestamp. *See, e.g.,* '227 patent, col 7, ll. 39-63; *see also* '227 patent col. 6, ll. 2-4 ("The system allows users to dial to the future by ***selecting*** a future timepoint for a document."). The patent explains that the "time display" in Figure 4 "acts as a 'time' pull-down menu 190 that allows the user to set the

viewport time to the future or past via a calendar-based dialog box as illustrated in Fig. 5." *See id.* at col. 7, ll. 41-43. "The effect of setting the time to the future or past is to reset the time-cursor temporarily to a fixed position designated by the user. *See id.* at col. 7, ll. 54-56. The patent further explains, for example, that "[s]etting the time-cursor to the future allows the user to see documents in the future part of the stream" and "*[c]reating a document in the future results in a document with a future timestamp*." *Id.* at col. 7, ll. 57-60. Thus, the '227 patent describes, in connection with Figures 4 and 5, a mechanism for selecting a timestamp via a user interface operable by a user.

The '227 patent further explains that the present time can be selected, by, *e.g.*, "**selecting** the 'Set time to present' menu option in the time menu," which would result in a document with a present timestamp. The present time is also selected by default in the case that the user has not reset the timepoint. *See* '227 patent, col. 4, ll. 35-43 (explaining that "documents, by default, are added to the [stream] at the present timepoint"); col. 6, ll. 56-58 ("the New button creates a new document and adds the document to the stream at the 'present' timepoint"). *See also* Levy CC Decl. (Dkt. 151, Ex. 6), ¶ 79. The '227 patent, thus, also describes selecting a timestamp via the present time indicated by the clock.

In addition, the '227 patent describes selecting a timestamp using agent software. *See* '227 patent, col. 10, ll. 52-67; *see also* Levy CC Decl. (Dkt. 151, Ex. 6), ¶ 79.

Significantly, the term "timestamp" appears only three times in the specification of the '227 patent—namely, in col. 7, ll. 39-63 (as cited above)—and it is quite clear from the related description that a mechanism for selecting a timestamp is the clock depicted in the upper-right corner of Figure 1 and Figure 4, as possibly adjusted by the user.

Also, notably, from a user's point of view, only the selection of the time-based information in the timestamp is significant for identification purposes, not the additional information that may be present to make a timestamp unique. That is because, as described in the '227 patent, time-based ordering is a natural guide to experience and therefore useful for locating information. '227 patent, col. 4, ll. 21-23. However, as even Apple's expert acknowledges, users do not identify a document by directly using the document's timestamp. *See* Solo Ex. 3, [Feiner Tr.] at 199:19-22 ("I don't think the user needs to know exact bits in the timestamp."). Instead, the user identifies a particular document in a stream by roughly knowing the time information reflected in the document's timestamp and then browsing the documents in the vicinity of that timepoint. *See* Solo Ex. 3, [Feiner Tr.] at 200:8-11("[users would] simply need to know both the upper and lower bound on the time period, and then maybe they would find that single document."). Users do not need to know about or use other timestamp information, which is tangential to the invention.

Accordingly, as described above, the '227 patent plainly discloses a means for ***selecting*** a timestamp. The term is not "insolubly ambiguous" and there are, in fact, embodiments described in the Mirror Worlds Patents for selecting a timestamp. *See, e.g., Exxon Research and Eng'g Co. v. U.S.,* 265 F.3d at 1375 (a claim is indefinite only if it is "insolubly ambiguous, and no narrowing construction can properly be adopted"); *Cardiac Pacemakers, Inc. v. St. Jude Med. Inc.,* 296 F.3d at 1114 (claim limitation is not indefinite as long as at least one embodiment discloses corresponding structure). This is not one of those rare situations in which a claim term must be held indefinite.

     b. **"means for associating each data unit with at least one chronological indicator having a respective timestamp which identifies the data unit"**

With respect to the "means for associating ..." in claim 25 of the '227 patent, the recited function is "***associating*** each data unit with at least one chronological indicator having a respective timestamp." While the parties disagree as to the identification of corresponding structure for the "associating" function, Apple does not dispute that sufficient structure for performing that function is, in fact, disclosed in the Mirror Worlds Patents. *See, e.g.*, Apple's Claim Construction Brief Re Mirror Worlds Patents (Dkt. 160), Appendix A, 1st page (addressing a similar limitation in claim 1 that recites, "means for associating each data unit with at least one chronological indicator having the respective timestamp").

The dispute here, as above, is whether this limitation also requires a ***means for generating*** a timestamp. There is again, however, simply nothing in the plain claim language that recites such a function, and it is improper for Apple to add that function to this limitation. *See Creo*, 305 F.3d at 1346.

Indeed, the sole difference between this limitation in claim 25 and the similar limitation in claim 1 ("means for associating each data unit with at least one chronological indicator having the respective timestamp") is that the claim 25 limitation recites "a respective timestamp *which identifies the data unit*," instead of simply "a respective timestamp." *See* '227 patent, no. 25. However, the claim 1 also recites a timestamp "to identify each data unit." There is therefore, no meaningful difference between the "means for associating" limitations in claims 1 and 25. This limitation should, accordingly, be given the same construction as the corresponding term in claim 1—which, again, Apple does not claim is indefinite.

> **2.** **Even if the Court Construes These Limitations to Include the Function of *Generating a Timestamp*, as Apple Essentially Asserts, the Limitations Still are Not Indefinite**
>
> > **a.** **The Caselaw Cited by Apple Supports Mirror Worlds' Position that the Claims are Not Indefinite.**

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Apple apparently recognizes, but never directly addresses, a meaningful distinction in the case law between relying on the knowledge of one of ordinary skill in the art to *supplement* a patent disclosure of corresponding structure and a disclosure lacking *any* description of such structure. Apple's argument ignores settled law that "knowledge of one skilled in the art can be called upon to flesh out a particular structural reference in the specification for the purpose of satisfying the statutory requirement of definiteness." *Creo*, 305 F.3d at 1347. Detailed descriptions of well-known structures that are readily implemented by persons of ordinary skill in the art are unnecessary. *See S3 Inc. v. NVIDIA,* 259 F.3d 1364, 1370-71 (Fed. Cir. 2001) (reference to a "selector" is sufficient because it is a "well known electronic structure").

Apple overlooks this settled law and instead relies on inapplicable case citations that relate to scenarios, unlike the present one, where the patents at issue had **no** disclosure of corresponding structure. *See*, *e.g.*, Apple's Brief at page 7 (quoting *Biomedino* ("[T]he testimony of one of ordinary skill in the art cannot supplant the ***total absence*** of structure from the specification." (emphasis added)); and at page. 11 (quoting *i4i* ("In total, the specification ***does not disclose any algorithm***, as it merely states that a computer programmed [to provide a function] is capable of [providing that function] . . . ." (emphasis added)); *see also*, *Aristocrat Techs. Ltd.* v. *Int'l Game Tech.,* 521 F. 3d 1328, 1337 (Fed. Cir. 2008) ("The question thus is not whether the algorithm that was disclosed was described with sufficient specificity, but whether an algorithm was disclosed ***at all***.") (emphasis added) (cited in Apple's Brief at page 10); *Finisar Corp. v. DirecTV Group, Inc.*, 523 F. 3d 1323, 1341 ("[I]in this case, the claims are already quite vague. Without ***any*** corresponding structure, one of skill simply cannot perceive the bounds of the invention.") (emphasis added) (cited in Apple's Brief at page 11). In the proper legal context, the sufficiency of the patent disclosure is unquestionable.

As explained below in this case, the specification does in fact disclose structure for the timestamp.

b. The '227 Patent Discloses Sufficient Structure for Generating a "Timestamp to Identify" Each Data Unit.

As an initial matter, Apple's entire argument regarding the terms "means for selecting a timestamp to identify" ('227 claim 1) and "means for associating … timestamp which identifies" ('227 claim 25) is based on an incorrect construction of the phrase "timestamp to identify." Apple asserts that "a person of ordinary skill reviewing the '227 patent would understand that the phrase "timestamp to identify" *refers to **'a date and time value** that **uniquely** identifies each document.'"* (Apple's Brief, pp. 4-5). Not even Apple's own expert, Dr. Feiner, agrees with that construction. See Solo Ex. 3, [Feiner Tr.] at 194:21-23; 264:6-7. Indeed, he testified in no uncertain terms that the term "timestamp," as used in the '227 patent, refers to a date and time value *and* further additional information that may be required to ensure uniqueness:

> Q When you stated in your report that, "A timestamp is a date and time value that uniquely identifies each document," you were including the possibility of additional information beyond the date and time?
>
> A I was including the possibility of additional information beyond the date and time, and so I'm qualifying value with date and time. Because clearly, the timestamp needs to actually indicate time and date somehow.

See Solo Ex. 3, [Feiner Tr.] at 196:22-197:7.

Apple apparently does not dispute that the '227 patent discloses sufficient structure for a timestamp that includes a data and time value alone. *See*, *e.g.,* Apple's SJ Brief p. 5 ("timestamp" consisting of a date and time value is a well-known and commonly-used computer software structure . . . .). The question, therefore, is whether one of ordinary skill in the art would be able to "flesh out" the disclosure of that structure with the additional information that

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may be needed to make sure a timestamp unique. *Creo*, 305 F.3d at 1347. Based on the testimony of both Mirror Worlds' expert and Apple's expert, the answer to the question is clearly yes. S*ee* Solo Ex. 1, Levy Dec. at ¶¶ 10-12; Solo Ex 3, [Feiner Tr.] at 222:11-226:10; Solo Ex. 2 [Levy Tr.] at 113:13-18.

For example, Mirror Worlds' expert, Dr. Levy, stated that "[o]ne of ordinary skill in the art would ... understand that timestamps, as frequently used in various software applications, identify data items on the basis of timestamps based on the date and time plus additional information." Levy CC Decl. (Dkt. 151, Ex. 6), ¶ 38; Solo Ex. 1 Levy Dec. at ¶¶ 10-12. Dr. Levy also provided examples of how one of ordinary skill in the art would create a unique timestamp after reading the specification of the '227 patent. *See* Solo Ex. 2, [Levy Tr.] at 113:13-18.

Similarly, Apple's expert, Dr. Feiner, testified that "I think that a timestamp, in the context of the patent, needs to, in some way, be unique for each document . . ." and that "I think that you could create a timestamp which, taking the date and time and adding additional information, would make that timestamp unique." *See* Solo Ex. 3, [Feiner Tr.] at 194:21-23; 264:6-7. Dr. Feiner also provided examples of how one of ordinary skill in the art would create a unique timestamp after reading the specification of the '227 patent. See Solo Ex. 3, [Feiner Tr.] at 222:11-226:10. In fact, Dr. Feiner testified that his own proposed method of creating a unique timestamp was neither "inventive" nor "novel" and that "a person of ordinary skill in the art would be able to come up with that solution." See Solo Ex. 3, [Feiner Tr.] at 229:25-230:6; 229:17-19.

Since implementations of unique timestamps are well known in the art, it is not surprising that the specification of the '227 patent did not focus on the "additional information" that could

be used to make the timestamp unique. The inventors instead focused on the use of timestamps in streams. Just as the knowledge of those skilled in the art can supplement the explicit disclosure of timestamps, in *Intel Corp. v. VIA Technologies, Inc.*, the Federal Circuit held that a claim was not indefinite just because it did not disclose any of an "unlimited number of implementations" to a perform a claimed feature. *See* 319 F.3d 1357, 1366-67 (Fed. Cir. 2003) ("how to modify the core logic to perform [the claimed feature] on the circuitry level may also be properly left to the knowledge of those skilled in the art, and need not be specified in the patent").

Accordingly, even if the above limitations are construed to include the function of ***generating a timestamp***, the specification of the '227 patent contains sufficient structure for performing that function and, therefore, the claims are not indefinite.

C. Contrary to Apple's Position, The Term "Means For Selecting . . . Within A Range Of A Timepoint" Is Not Indefinite

Apple asserts that the "means for selecting ..." limitation in claim 25 of the '227 patent is indefinite because "the claim language requires enabling the user to select a set of documents based on a desired time range" and "[a]ll that the patent discloses ... is the selection of a particular document." Apple's SJ Brief, p. 8. In so doing, Apple once again improperly reads an unrecited function into the claims—this time "enabling the user to select a set of documents based on a desired time range. *See Creo*, 305 F.3d at 1346.

The parties have, in fact, agreed that, if this limitation is construed under 35 U.S.C. §112 ¶6, the recited function is "***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." That function

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simply does not involve "select[ing] a set of documents *based on a desired time range*," as Apple asserts, and there is no language in claim 25 that recites such a function.

Significantly, Apple acknowledges that the '227 patent in fact discloses "the selection of a particular document," as well as the display of "additional documents ... to fill the screen." Apple's SJ Brief, p. 8. The latter necessarily involves the display of document representations within a range of a timepoint. In particular, as explained in Mirror Worlds' Opening Claim Construction Brief at page 28, the structure in the specification that corresponds to this limitation is *the graphical stream view*. As shown, *e.g.*, in Fig. 1 and described in the specification, the graphical stream view provides various interfaces for selecting a document representation (which determines a timepoint), including a scroll bar, a cursor, a pointer and a user-adjustable clock. *See, e.g.*, '227 patent, Figs. 1, 4, 5; col. 3, ll. 7-10; col. 6, ll. 7-36; col. 7, ll. 39-63; col. 9, ll. 46 – col. 10, l. 2; col. 14, ll. 11-16. The graphical stream view then displays document representations within a range of the timepoint—for example, Fig. 1 displays a range of document representations that comprise a segment of the entire stream. That is all the claim requires—it is not indefinite.

D.   The Term "Document Organizing Facility" Is Not Governed By 35 U.S.C. §112 ¶6

Apple asserts that (i) the term "document organizing facility" should be construed as a means-plus-function limitation and (ii) then ruled indefinite because "[n]either Mirror Worlds nor its expert Dr. Levy has identified any structure corresponding to it. Apple's SJ Brief, pp. 8-9. Apple is wrong on both counts.

First, as explained in Mirror Worlds' Opening Claim Construction Brief at pages 29-30, the term "document organizing facility" is plainly not a means-plus-function limitation subject to the requirements of 35 U.S.C. §112 ¶6. The Federal Circuit has repeatedly held that there is a

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"***strong***" presumption against the applicability of §112 ¶6 to construe claim terms that do not use the "means-for" language, which is the case with the claim term "document organizing facility" here. *See, e.g., Lighting World v. Birchwood Lighting, Inc.,* 382 F.3d 1354, 1358 (Fed. Cir. 2004); *see also Roy-G-Biv*, No. 2:07-CV-418, 2009 WL 2971097, at *28 (E.D. Tex. Aug. 25, 2009) ("The Federal Circuit has made it clear that 'the presumption flowing from the absence of the term 'means' is a strong one that is not readily overcome.'"). This is not one of those rare instances where a limitation without the term "means" should nonetheless be construed under §112 ¶6.

Indeed, the use of "document organizing facility" in this case is similar to cases where courts have held that §112 ¶6 did not apply. For example, in *Roy-G-Biv, Corp. v. Fanuc Ltd.*, Judge Folsom held that, "in the parlance of software design," the claim term "'command generating module' sufficiently designates structure" and that, therefore, "§112 ¶6 treatment is inappropriate." 2009 WL 2971097, at *28 (E.D. Tex. Aug. 25, 2009). As Judge Folsom explained:

> [I]t is sufficient if the claim term is used in common parlance or by persons of skill in the pertinent art to designate structure, even if the term covers a broad class of structure and even if the term identifies structure by their function.

Id. see also Lighting World, 382 F.3d at 1361 ("[T]hat the term may encompass a multitude of structures, does not make the term…any less a name for structure.")

Here, as explained by Dr. Levy in his declaration, one of ordinary skill in the art in the field of this invention would understand that the term "document organizing facility" refers to a software module or set of modules that organizes documents. *See* Levy CC Decl. (Dkt. 151, Ex. 6), ¶ 112. Apple's own claim expert, Dr. Feiner, in fact referred during his deposition to software structures in the same way, e.g., ". . . we're talking about a user interface *facility* or a

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facility that has some kind of user interface . . .,"and "make a call to some *facility* that generates

that amount of space and return the address of that space." Solo Ex. 3, [Feiner Tr.] at 90:5-7;

253:22-24(emphasis added). Accordingly, the term "document organizing facility" is not a

means-plus-function limitation and, therefore cannot be indefinite on the basis asserted by Apple.

Second, even if "document organizing facility" is construed as a means-plus-function

limitation (which it clearly is not), Apple has completely failed to meet its burden of establishing

by clear and convincing evidence that the limitations in which that term appears would be

indefinite. Apple has not even attempted to meet that burden. Instead, Apple argues solely that

Mirror Worlds has not "identified any structure corresponding to the 'document organizing

facility' limitation." Apple's SJ Brief, p. 9. In so doing, Apple not only attempts to shift the

burden of proof to Mirror Worlds, but also does not even state the proper inquiry. In particular,

Apple has not identified the "function" of the "document organizing facility" supposedlyrecited

in the claims, much less attempt to identify the structure in the specification that performs that

function—as Apple must do to properly analyze this term as a means-plus-function limitation.

Apple's failure to do so is fatal to its argument that this limitation is indefinite.

E. Claims 1, 6, 9, 10, 11, 12 and 25 of the '227 Patent Are Not Indefinite.

Apple asserts that thirteen limitations of the '227 patent, in addition to those addressed

above, are indefinite because Mirror Worlds "identified only generic 'executable code' or

'computer hardware and executable code' for performing the claimed function." Apple's SJ

Brief, pp. 9-10. Apple is wrong—Mirror Worlds did in fact properly identify corresponding

structure. But more importantly, Apple does not contend that the '227 patent lacks a description

of corresponding structure for those limitations. Indeed, in Appendix A to Apple's Claim

Construction Brief Re Mirror Worlds' Patents (Dkt 160), Apple identifies the structure that it

contends correspond to those limitations.

The issue, therefore, is not whether corresponding structure exists (and, accordingly, whether the claims are indefinite), but instead, what the corresponding structure is. That is an issue of claim interpretation, not indefiniteness. It is properly addressed in the parties' briefing and submissions regarding claim construction, not in Apple's motion for summary judgment of indefiniteness.

In any event, Mirror Worlds' identification of corresponding structure for the thirteen limitations identified by Apple is set forth in Exhibit 1 of Mirror Worlds' Opening Claim Construction Brief at pages 4-15. As is quite apparent from that exhibit, Mirror Worlds did not simply identify "generic 'executable code' or 'computer hardware and executable code' *for performing the claimed function*," as Apple asserts. In addition, to the extent that Apple asserts that the use of the phrase "executable code that ..." is improper, courts have adopted similar formulations in construing means-plus-function limitations. *See, e.g., IP Innovation, LLC v. Red Hat, Inc.*, No. 2:07 CV 447, 2009 WL 2460982, at *12 (E.D. Tex., Aug. 10, 2009) (Ex. 5) (construing the structure of "[c]ontrol means for causing the display to present a ... set of the display objects (including control means 'further being for,' as specified)" as "*executable computer code* implementing selectable graphical user interface pop-up menus and icons and equivalents").

IV.   CONCLUSION

For the foregoing reasons, Mirror Worlds respectfully requests that Apple's motion for

summary judgment of invalidity for indefiniteness be denied.

Dated: January 15, 2009

Respectfully submitted,
/s/ Kenneth L. Stein

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document is being served this 15th day of January 2010 via email upon counsel for Apple at the following address: Mirror.Worlds.Apple.Service@weil.com.

/s/ Alexander Solo

Alexander Solo