Exhibit 3

1   STEPHEN FEINER

2   IN THE UNITED STATES DISTRICT COURT
           FOR THE EASTERN DISTRICT OF TEXAS
3   TYLER DIVISION

4   ---------------------------------------X
     MIRROR WORLDS, LLC,
5
                    Plaintiff,
6
                    vs.   No. 6:08 CV 88
7
     APPLE, INC.,
8
                    Defendant.
9   ---------------------------------------X

10

11   **CONTAINS CONFIDENTIAL PORTION**

12   DEPOSITION OF STEPHEN FEINER

13   New York, New York

14   Thursday, January 7, 2010

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16   REPORTED BY: BARBARA R. ZELTMAN
                  Professional Stenographic Reporter
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18   Job Number: 27001

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2   developed. They include issues of trying to

3   incorporate them in a clear and consistent

4   way within the user interface, if we're

5   talking about a user interface facility or a

6   facility that has some kind of user

7   interface.

8   One reason would be that there

9   might be issues that would need to be

10   very carefully resolved to create an

11   extension that would not break things

12   that people were already familiar with.

13   So recalling the Mander paper,

14   for example, there's a number of issues

15   that are mentioned. I think I actually

16   discuss some of those in this document

17   here, which are ways about how one

18   manipulates a pile.

19   Looking at Page 16, Bates

20   number Feiner 203, I have some issues

21   here, such as whether piles are

22   distinctly manipulatable entities,

23   whether you can move a pile by clicking

24   and dragging, or whether you move the

25   document by clicking and dragging.

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2   and time that uniquely identifies each

3   document."

4   And in my description of

5   possible ways later on that one might

6   implement a timestamp that uniquely

7   identifies a document, I mentioned the

8   use of additional data in the form, for

9   example, of a counter, let's say, that

10   could be used to be sure that something

11   received a unique timestamp even if it

12   was being created at the exact same time

13   and the exact same date as something

14   else.

15   Q   So is it your opinion that a

16   timestamp does not need to be a unique date

17   and time value?

18   MR. BROWN: Objection.

19   A   In the context of the patent?

20   Q   Yes.

21   A   I think that a timestamp, in the

22   context of the patent, needs to, in some way,

23   be unique for each document, so that one

24   could not have two different documents that

25   received the same timestamp.

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2   One way to create a timestamp

3   would be that either you make sure you

4   could not somehow make two things or

5   receive two things at the same time, in

6   which case you should also make sure

7   that a person having set the time into

8   the future couldn't set it to the exact

9   same time again.

10   And you could do that -- you

11   know, I opined about this a little bit

12   later on in my report, on various ways

13   you could do things of that sort.

14   But I think that you could

15   create a timestamp which, taking the

16   date and time and adding additional

17   information, would make that timestamp

18   unique.

19   Q   So when you stated in your report

20   that, "A timestamp is a date and time" --

21   strike that.

22   When you stated in your report

23   that, "A timestamp is a date and time

24   value that uniquely identifies each

25   document," you were including the

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2   possibility of additional information

3   beyond the date and time?

4   A   I was including the possibility of

5   additional information beyond the date and

6   time, and so I'm qualifying value with date

7   and time. Because clearly, the timestamp

8   needs to actually indicate time and date

9   somehow.

10   But to make it unique, you

11   would either have to ensure that you're

12   never allowed to use that date and time

13   again once you've used it, which it

14   seems to me ...

15   For example, if I time tripped

16   into the future and I set the date and

17   time to a particular date and time, and

18   then I went back in the past, or if I

19   time tripped into the future and set the

20   date and time to a particular date and

21   time and then set it again to the same

22   date and time, and I created one thing

23   after setting it the first time and

24   created a second document after setting

25   it the second time, and the system then

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2   something like this from the standpoint

3   of how it would be implemented, and that

4   there are a number of subtleties, which

5   I think I discussed in my report.

6   And as well, I of course wasn't

7   being exhaustive in describing some ways

8   in which this could be done.

9   Q   In the example that we discussed

10   earlier in which you described how a user

11   would locate a particular document created

12   two weeks ago, does the user have to know the

13   timestamp assigned to that document in order

14   to locate the document?

15   A   The user in that specific example?

16   Q   Yes.

17   A   The user needs to know what specific

18   example -- we're talking about a time-based

19   search. And I don't think the user needs to

20   know exact bits in the timestamp. I don't

21   see anything indicating that they would need

22   to know that.

23   I think in that case, they need

24   to know the time at which the document

25   was created.

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2   And as I said, you could

3   imagine an example in which, because

4   there weren't a lot of documents created

5   over that time, if there were like, say,

6   only one document, for whatever reason,

7   created during that period of time,

8   they'd simply need to know both the

9   upper and lower bound on the time

10   period, and then maybe they would find

11   that single document.

12   If they found multiple ones,

13   then maybe they would position their

14   cursor over the objects that they saw on

15   the screen to be able to gain more

16   information about it and figure out

17   which one it was.

18   Q   Moving to Section D, labeled

19   Archiving, or titled Archiving, do you

20   consider yourself an expert in archiving?

21   A   I'm not sure what you mean by

22   "expert."

23   Q   You've been retained as an expert in

24   connection with this case by Apple, correct?

25   A   That is correct.

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2   So the devil is in the details

3   of exactly how you set U. Because

4   there's ways to set it that one might at

5   first think would work that are not

6   going to work in the context of this

7   kind of system, in which the user can

8   dial to the future, for example.

9   Q   How many different ways of creating

10   a unique timestamp did you describe here?

11   A   Let's see.

12   I described one in which --

13   well, I described one of a number of

14   methods -- rather, I described several

15   methods, one of which -- or rather, all

16   the ones I described used two values, a

17   system clock and a separate value of U

18   that ensures uniqueness at the very high

19   level described in terms of that second

20   sentence in this paragraph, which is the

21   first full paragraph on Page 11.

22   Again, at a very high level, I

23   mention the idea that any timestamp

24   that's given a value C that's the same

25   as that of at least one other timestamp

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2   needs to be given a U that's different

3   from that.

4   So one can imagine that if we

5   had two timestamps which had different

6   values of C -- rather, if there was only

7   a single timestamp that had a given

8   value C, that you could perhaps, even in

9   perhaps an attempt to try to save space,

10   not have to have a value of U associated

11   with it.

12   Maybe you might have to go back

13   and add one later or allow that one

14   without it could also be supplemented by

15   one with it.

16   I mention an approach in which

17   if you serialized requests so that one

18   place actually knew all the requests

19   being made, that you would then know the

20   previous value of U, and you could then

21   just bump it up by one and then reset it

22   to zero whenever you got a new C. That

23   is to say a C that was different from

24   the last C.

25   However, you know, this was an

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2   attempt to try to argue from first

3   principles and show how even in that

4   case there's a problem, because this is

5   not a system in which you go only by the

6   regular normal system clock, but it's

7   one in which the user can change the

8   so-called time cursor.

9   And because you can change the

10   time cursor, I can explicitly set the

11   times -- I mean we don't normally do

12   that -- and I could set the time cursor

13   to be a particular date in the future.

14   And then I could go back again and set

15   it to be the same date in the future and

16   make another document.

17   Or I could, after having made

18   that document in the future, go back in

19   the past. And then when that future

20   time came around and it created a new

21   document, I couldn't just do what I

22   described before, which is now that C is

23   changed, I'm going to start again at

24   zero because I might have something that

25   had U at zero already created.

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2   So I was describing that one

3   way that you can do that is to look to

4   see what values of U there are.

5   Another way you could do it is

6   to perhaps have U be incremented every

7   time starting with zero, for example.

8   In that case, U might get to be bigger

9   and bigger and bigger.

10   In fact, U might always be

11   unique, and there may never be recycled

12   values of U. But in that case, you

13   would need more bits, probably, for U.

14   So I think I have one approach

15   in which you set U to zero whenever a

16   timestamp is created where C is

17   different from the last request. I

18   describe how that one doesn't work.

19   I corrected it by saying one

20   approach would be when you're creating a

21   new timestamp, you could look at all

22   those timestamps that are associated

23   with files that have the same C and make

24   sure you use a U that's different.

25   Or another alternative is you

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2   could, at the very beginning of time, so

3   to speak, initialize U to zero and then

4   just increment it with every single

5   timestamp. That probably would make you

6   have to have more bits associated with

7   it independent of the value of C.

8   Q   So those second two approaches would

9   work to create a unique timestamp, correct?

10   A   Those approaches would work.

11   Now, since I had not actually

12   implemented streams and I had not

13   actually implemented the software in the

14   system, one of the things that we

15   usually do in computer science is for

16   people who are experimentalists, who are

17   writing for conferences, for example, in

18   which we have to actually -- we're

19   talking about software.

20   Very rarely, except

21   publications that are on so-called paper

22   prototypes, ones in which a person waves

23   their hands and says, "I could do this,"

24   or, "I could do that," precisely because

25   it's very easy, when you wave your hands

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2   want to see a description of how to do

3   this at least one way in the patent, and

4   I don't see it there.

5   Q   Just looking at the second idea or

6   the second method that I believe you

7   testified would work, which is that you

8   initialize U to zero and increment it with

9   the creation of each timestamp, which would

10   result in a unique value of U, how long did

11   it take you to come up with that idea?

12   A   I don't remember.

13   Q   Is that a fairly straightforward

14   solution?

15   A   It depends what you mean by

16   "straightforward."

17   I think a person of ordinary

18   skill in the art would be able to come

19   up with that solution.

20   Q   What about the second method, in

21   which you determine the values of U for each

22   C to ensure that the U is unique for each C?

23   A   I think a person of ordinary skill

24   in the art would be able to come up with

25   that. I don't think a person of ordinary

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2   skill in the art would look at that

3   description and say, "Wow, that's incredibly

4   inventive and novel, and I can't imagine

5   anyone having thought about that without

6   having incredible skill."

7   I'm not sure that I would

8   imagine a person who was not of ordinary

9   skill in the art would necessarily be

10   able to come up with these.

11   And as I said, you know,

12   there's tradeoffs. For each of those, I

13   suggested what some of those tradeoffs

14   may be in terms of the amount of time it

15   takes to determine which values have

16   already been used, which would even

17   include issues of what happens if I

18   delete a document, if I really delete a

19   document as in the standard method of

20   deletion of documents we have right now?

21   Do we not have holes, for

22   example, in that sequence, the U

23   sequence? Possibly.

24   Does it get reassigned? I

25   don't know.

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2   kind of document.

3   There may be some kind of other

4   information, perhaps a link list of some

5   sort, which is used in conjunction with

6   the things that elements of that link

7   list point to, which could ultimately be

8   the documents that are part of that main

9   stream.

10   Q   Do you know how to generate an

11   instance of a data structure in software?

12   A   There is more than one way to

13   generate an instance of a data structure in

14   software.

15   Q   Can you name one?

16   A   Sure.

17   One way to generate an instance

18   of a data structure in software is to

19   have some prototype of that data

20   structure that, you know, would tell the

21   computer how much space needs to be

22   allocated and then make a call to some

23   facility that generates that amount of

24   space and returns the address of that

25   space so I can then set a pointer to

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2   of "iconic" that he gives over here,

3   he's referring to the notion of an

4   interface that uses icons, referable

5   icons, to represent things that perhaps

6   in other interfaces that would not be

7   considered iconic might be represented

8   with text, for example, as opposed to

9   with graphic icons.

10   Q   And what is an icon?

11   A   An icon in this context is a

12   graphical representation of some entity in

13   the computer system. And that entity usually

14   can be viewed and manipulated interactively

15   by the user of that computer system.

16   Q   How can you tell whether something

17   is an icon or not?

18   MR. BROWN: Objection.

19   A   I'm trying to give you as general an

20   answer as I possibly can.

21   An icon is usually some kind of

22   stylized representation of something.

23   So if I were looking at, for

24   example, the full page of a document

25   that I was editing perhaps in a mode