

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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.

APPLE INC.'S REPLY CLAIM CONSTRUCTION BRIEF
ON U.S. PATENT NO. 6,613,101 (THE "PILES" PATENT)

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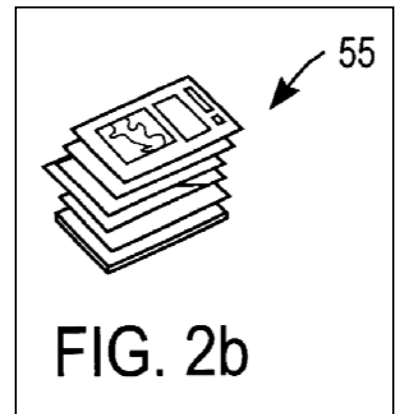
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I. INTRODUCTION

The primary disputed term for the Piles patent is “graphical iconic representation of a collection ... of documents.” The specification explains, for example, that “the graphical representation 55 of Fig. 2b includes a collection of document icons which have been stacked together ... to represent a pile or collection of documents.” Piles patent at 7:16-22. Accordingly, Apple proposes that “graphical iconic representation of a collection ... of documents” be construed to mean “a collection of two or more document icons displayed together.” In contrast, Mirror Worlds Technologies, Inc. (“MWT”) seeks to limit the phrase “graphical iconic representation of a collection ... of documents” to “a small static picture representing a collection of documents.”



In its Opposition, MWT acknowledges that its construction excludes the “dynamic graphical representation” that is the preferred embodiment of the patent. Opp. at 7; *see* Piles patent at 7:33-37 (“The graphical representation of the pile may be either a dynamic graphical representation, as in the *preferred embodiment*, or a static graphical representation, such as a typical icon.”) (emphasis added). MWT fails to provide the strong support needed to win such an uphill battle. *See MBO Labs., Inc. v. Becton, Dickinson & Co.*, 474 F.3d 1323, 1333 (Fed. Cir. 2007) (excluding the preferred embodiment is “rarely” correct); *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1305 (Fed. Cir. 2007) (same). Accordingly, MWT’s proposed construction should be rejected, and Apple’s adopted.

II. THE PHRASE “GRAPHICAL ICONIC REPRESENTATION” IS NOT LIMITED TO A SINGLE, SMALL, STATIC ICON

A. The Specification Contradicts MWT’s Argument That A “Graphical Iconic Representation” Must Be A Single Icon

Most of MWT’s arguments boil down to the assertion that the claim language “graphical iconic representation” necessarily refers to a single icon. Opp. at 6. But why would that be necessarily true? Nothing about the phrase “graphical iconic representation” requires a *single* icon. To the contrary, the phrase “graphical iconic representation” requires a graphical representation that uses icons, whether single or multiple.

The possibility of a “graphical iconic representation of a collection ... of documents” being made up of either a single icon representing the collection, or a of a group of individual icons, where the group of individual icons taken together represents the collection, is exactly what is contemplated by the specification. “The graphical representation of the pile may be either a dynamic graphical representation, as in the preferred embodiment, or a static graphical representation, such as a typical icon.” Piles patent at 7:33-37. In the preferred, “dynamic graphical representation” embodiment, there is an “icon for each document in the pile,” which “may be selected by positioning the cursor over the icon in the pile.” *Id.* at 7:42-44. In the alternative, “static graphical representation” embodiment, there is a single icon representing the collection of documents. *See* Opp. at 4; Piles patent at 7:33-37. Individual documents may be selected “based on a mapping of the height position of the cursor relative to the total height of the pile’s graphical representation.” Piles patent at 7:44-54; Opp. at 4. Thus, the middle document in the collection would be selected by positioning the cursor on the middle of the icon, and the bottom document would be selected by placing the cursor at the bottom of the collection.

Both of these embodiments use icons to present a graphical representation of a pile of documents. The difference between them is aptly captured by the specification’s labels for them.

One is a “dynamic graphical representation.” Because there are icons for each of the individual documents in the collection, this embodiment’s graphical representation of a collection is “dynamic,” getting larger as more documents are added to the pile, and smaller as documents are removed from it. The other embodiment uses a “static graphical representation.” Because there is just a single icon that represents the entire pile, this graphical representation is “static.” It does not visibly change as documents are added or removed from the pile.

The differences between the “static graphical representation” embodiment and the “dynamic graphical representation” embodiment only highlight the fact that both are graphical representations that use icons to depict a collection of documents. Both are thus “graphical iconic representations,” and both are within the scope of the asserted claims. There is simply no need to limit the phrase “graphical iconic representation” to a *single* icon, particularly when doing so would exclude the preferred embodiment from the first three independent claims in the Piles patent.

Accordingly, the Court should adopt Apple’s proposed construction, “a collection of two or more document icons displayed together,” which is intended to include both embodiments. Apple’s construction is drawn from the specification’s description of its figures, which include numerous examples of “graphical iconic representations” of collections of documents. For example, Apple’s construction is based statements such as this one: “The graphical representation 55 of Fig. 2b includes a collection of document icons which have been stacked together ... to represent a pile or collection of documents.” Piles patent at 7:16-22. As this passage shows, the graphical representation of the collection is made up of multiple smaller icons stacked together. And as the specification goes on to explain, this icon can either be dynamic or static, depending on the embodiment. *Id.* at 7:33-54.

B. The Specification Contradicts MWT’s Argument That A “Graphical Iconic Representation” Must Be Static

As described above, the preferred embodiment uses a “dynamic graphical representation” of a collection of documents. Piles patent at 7:33-37. Requiring the claimed “graphical iconic representation” to be “static” would exclude that embodiment, just as limiting it to a single icon would. There is nothing in the claim language “graphical iconic representation” that suggests that the representation must be static. MWT’s attempt to add a “static” limitation to the claims is unjustified for all the same reasons as its attempt to add a “single” limitation, and should be rejected. *See MBO Labs.*, 474 F.3d at 1333.

C. MWT’s Dictionary-Definition Approach To Claim Construction Undermines Its Proposed Construction

MWT’s claim construction argument is further marred by its legally and factually flawed reliance on dictionary definitions. MWT’s argument is legally improper because begins by focusing on dictionary definitions, instead of looking to the specification. *Opp.* at 6-7. This dictionary-first approach was squarely rejected in *Phillips v. AWH Corp.*, 415 F.3d 1303, 1320-21 (Fed. Cir. 2005)(*en banc*). In *Phillips*, the Federal Circuit explained that the dictionary-first approach, exemplified by *Texas Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193 (Fed. Cir. 2002), “improperly restricts the role of the specification in claim construction,” and thereby improperly “focuses the inquiry on the abstract meaning of words rather than on the meaning of claim terms within the context of the patent.” MWT’s approach to the “graphical iconic representation” suffers from this same improper focus, because it begins with an abstract analysis of the word “icon,” rather than looking to the context provided by the specification.

MWT’s use of dictionary definitions is also flawed factually, because the definitions that MWT relies on are definitions of a word, “icon,” that is not even in the claim. MWT never refers to the definitions for “graphical,” “iconic,” or “representation,” the words that that are

actually in the claim. Moreover, neither of the definitions that they rely on—one from the *Free On-Line Dictionary of Computing*, and one from a computer graphics textbook—state or imply that a “graphical iconic representation” must be “static.” Thus, even the definitions of “icon” that MWT chose to cite in its brief do not support its position.

MWT’s factually and legally flawed reliance on dictionary definitions undermines MWT’s argument that “graphical iconic representation” should be interpreted to exclude the preferred embodiment.

D. MWT’s File History Arguments Do Not Support Excluding The Preferred Embodiment

MWT cites portions of a page in the file history of the ‘101 patent that it claims support its effort to exclude the preferred embodiment. Opp. at 8-9. The passage cited by MWT is from the parent application to the ‘101 patent, where Apple was discussing claims not at issue here. In the cited passage, Apple pointed out that unlike the Piles patent, the prior art did not teach the ability to accomplish different results by selecting different positions on “the same icon.” Opp. at 8-9; ‘724 Patent File History at 724 FH 362.

Contrary to MWT’s argument, this ability is characteristic of both the “static graphical representation” embodiment, and the “dynamic graphical representation” embodiment: the word “icon” can be used to refer to the stacked collection of documents as a whole, and is plainly being used in that sense here. Thus, this passage does not support MWT’s implicit argument that Apple disclaimed coverage of its preferred embodiment by pointing out that the prior art did not teach browsing by positioning a cursor at different points over an icon representing a collection of documents. Indeed, as shown in Apple’s opening brief, Apple argued repeatedly and successfully to the Patent Office that its disclosure of browsing, which is a feature of both the “static graphical representation” embodiment and the “dynamic graphical representation”

embodiment, was novel. In short, the single passage from the file history that MWT cites does not support excluding the preferred embodiment at all, and certainly doesn't amount to the "disclaimer" that is required to restrict claim scope. *See Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005).

III. MWT'S PROPOSED MEANS-PLUS-FUNCTION CONSTRUCTIONS ARE IMPROPER

The parties dispute the construction of three means-plus-function terms that appear in claim 5 of the Piles patent. As described below, Apple's constructions properly provide the required structure for the disputed terms, and MWT's do not. Thus, Apple's constructions should be adopted. In addition, for one of the disputed terms—"means for displaying a first indicia of a first document ..."—MWT improperly attempts to read a functional limitation into the claim that is not present.

A. Apple's Proposed Constructions Properly Provide Structure For The Three Disputed Means-Plus-Function Terms

Apple's proposed constructions of the three "display means" elements properly refer to the disclosed structures that perform the various "displaying" functions recited in the claims. As shown in Figure 1, these structures include a video display screen, labeled 19, and a display controller, labeled 18, that is coupled to the system bus.

MWT does not deny that these structures perform the recited "displaying" functions. Instead, MWT appears to argue that they are not corresponding structure because these structures "apply generally to the display of any images," instead of being specifically adapted to any of the three specific types of displaying functions recited in the claims. Opp. at 13; 14-15; 16. MWT provides no legal support for this argument, which is incorrect. Actual, specifically-identified structure which performs the claimed function does not get taken out of the ambit of "corresponding structure" simply because it can be used to perform other related functions as

well. For example, a microprocessor would not be excluded from being corresponding structure to a “means for generating random numbers,” even though it can perform other functions.

B. MWT’s “Executable Code That ...” Construction Does Not Provide The Required Structure For Any Of The Three Disputed Means-Plus-Function Terms

As explained in Apple’s opening brief, MWT’s proposals, which use the phrase “executable code that,” followed by a description of a function, cannot be correct. Purely functional claiming is not allowed. *Aristocrat Techs. Ltd. v. Int’l Game Tech.*, 521 F.3d 1328, 1334 (Fed. Cir. 2008); *Blackboard, Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1382-85 (Fed. Cir. 2009). The phrase “executable code” does not provide any structure by itself. *Id.* As a result, as explained in Apple’s opening brief, none of MWT’s proposed constructions provide structure, because all they do is recite the phrase “executable code” followed by a function. MWT’s only argument in support of its position is that there is at least one district court decision that has used the phrase “executable code” in defining a structure. Opp. at 13-14. This misses the point: it is not that the phrase “executable code” is objectionable, but that the phrase itself does not provide any concrete structure. Thus, the phrase “executable code” must be used in connection with something that is more than just a function in order not to violate the rule against purely functional claiming. MWT’s constructions do not do that, making them improper.

C. MWT’s Attempt To Read In An “Initiates Browsing” Limitation Into The Claim Should Be Rejected

A final problem with MWT’s proposed constructions is its attempt to limit the second “means for displaying” limitation to a function that is not recited in the claim. Specifically, MWT seeks to limit the element “means for displaying a first indicia of a first document ... by selecting a first position from said graphical iconic representation” to one where, prior to the display of the first indicia in response to the selection of a first position, the user must “initiate

browsing of a pile” by positioning the cursor “over the iconic graphical representation of the collection of documents (pile) for a predetermined period of time.” This attempt to read in a limitation is improper.

MWT tries to justify its position by noting, correctly, that in one embodiment described in the specification, a user needs to invoke the “browsing” mode before being able to slide the cursor up and down the stack to browse “indicia” (e.g. previews) of the documents in the stack. What MWT does not acknowledge, however, is that even in this embodiment, once browsing mode is enabled, the user can freely slide the cursor up and down the stack, and the “indicia” are displayed immediately, without waiting for a “predetermined period of time.” Piles patent at 10:20-25 (“Once browsing has been invoked, the user may quickly scan through the pile by moving the cursor up and down the pile; in this manner, each time the cursor comes to a representation of a document in the pile, the system displays the proxy for that document within the view cone 162”).

As this shows, the specification describes displaying an “indicia” of a document in a pile *both* immediately in response to positioning the cursor over a particular position in the pile, and “after a predetermined period of time” passes and browsing is invoked. It would be improper to limit the broad claim language to require a “predetermined period of time” when the specification discloses a displaying mechanism that does not require that period of time. *See e.g., IP Innovation, LLC v. Red Hat, Inc.*, 2009 WL 2460982, *6 (E.D.Tex. 2009) (“§ 112 ¶ 6 requires that a means-plus-function term be given the full scope of the structure described in the specification.”)

IV. CONCLUSION

For the reasons set forth above, Apple respectfully requests that the Court adopts Apple’s proposed claim constructions for each of the terms in dispute.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on this 18th day of January, 2010. As of this date, all counsel of record have consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

/s/ Stefani C. Smith

Stefani C. Smith