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 IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT OF INVALIDITY FOR INDEFINITENESS UNDER 35 U.S.C. § 112 ¶ 2

It is not surprising, given the merits of the dispute, that Mirror Worlds' response to Apple's motion for summary judgment on indefiniteness does little to actually respond to Apple's arguments. Instead, Mirror Worlds devotes page after page, and a new declaration from its expert, to a series of issues that have little to do with the questions facing the Court. As shown below, Mirror Worlds' distractions and diversions ultimately cannot detract from the unassailable conclusion that its claims are indefinite as a matter of law.

I. MIRROR WORLDS DOES NOT MEANINGFULLY DISPUTE THAT THE SPECIFICATION DOES NOT DISCLOSE STRUCTURE FOR A TIMESTAMP THAT UNIQUELY IDENTIFIES EACH DATA UNIT

The first indefiniteness issue for the Court boils down to, simply, whether the specification of the '227 patent discloses any structure for the unique identification of documents by a timestamp. As demonstrated in Apple's motion, it does not. While it is undisputed that a "timestamp" consisting of a date-and-time value is a well-known and commonly-used computer software structure, it is also undisputed that a timestamp alone is insufficient to uniquely identify documents. Motion at 4-5; Response at 8-9. As a result, both parties' experts agree that there needs to be something more than just a date-and-time timestamp to ensure that each document is uniquely identified, and that the something more is not disclosed in the specification. *Id.*

Mirror Worlds' response does not meaningfully dispute this. Instead, Mirror Worlds offers two unrelated arguments for why its claims are not indefinite, notwithstanding the absence of any disclosure of a timestamp that uniquely identifies documents. Mirror Worlds' arguments are both baseless and beside the point.

First, Mirror Worlds attempts to side-step the absence of corresponding structure in the specification for a timestamp that uniquely identifies each document by arguing that Apple's indefiniteness position goes to the unrecited function of generating a timestamp, not the claimed functions of selecting a timestamp and associating a data unit with a timestamp. Response at 2-

6. This argument is a straw man. Apple's indefiniteness motion is not based on the absence of corresponding structure for generating a timestamp, it is based on the absence of corresponding structure for the timestamp itself. Because there is no disclosure in the specification of a timestamp that uniquely identifies each document, there can be no disclosure of how such a timestamp is selected or associated with each data unit.

Second, Mirror Worlds argues that the specification discloses sufficient structure for generating a timestamp to identify each data unit when supplemented by the knowledge of persons of ordinary skill in the art. Response at 7-10. This argument misses the mark. There is no dispute that, under Apple's proposed construction of the "timestamp to identify" limitation, a timestamp must include both a date-and-time value and additional information to uniquely identify each data unit. Motion at 4-7; Response at 8-9. The question is whether the '227 patent specification discloses the *particular structure* to be used to provide that additional information and *clearly links and associates* that structure with the claimed function, as required by Section 112(6). Motion at 6-7. Mirror Worlds' response does not dispute that the specification is silent on these critical issues.

Instead, Mirror Worlds attempts to avoid these legal requirements by instead relying on the knowledge of persons to "flesh out" the unspecified additional information that allows for selection of a timestamp that uniquely identifies each document. Response at 7-10. Mirror Worlds' position is again off-base. To be sure, the knowledge of persons of ordinary skill in the art can be used to flesh out "a *particular structural reference* in the specification for the purposes of satisfying the statutory requirement of definiteness." Response at 7 (citing *Creo Prods. Inc. v. Presstek, Inc.*, 305 F.3d 1337 (Fed. Cir. 2002)). But that does not mean that the knowledge of ordinary skill in the art as to the various different ways in which a function might be implemented can be substituted for the *particular* corresponding structure that must be

2

disclosed. Yet that is all Mirror Worlds has identified—a number of possible scenarios for "something in addition" to a timestamp to uniquely identify documents that can be conceived by a person of ordinary skill in the art, none of which is actually described, let alone clearly linked or associated, with the claimed function. Motion at 5-7; *see also* Declaration of John Levy, Ph.D In Support of Mirror Worlds' Opposition to Apple's Motion For Partial Summary Judgment of Invalidity For Indefiniteness Under 35 U.S.C. § 112, ¶ 2 ("Levy Indefiniteness Decl.") at ¶ 12 (Dr. Levy noting that he agrees with Apple's expert Dr. Feiner that a person of ordinary skill in the art could come up with methods of using additional information to make a timestamp unique). "That ordinarily skilled artisans could carry out the recited function in a variety of ways is *precisely why* claims written in 'means-plus-function' form *must disclose the particular structure* that is used to perform the recited function." *See Blackboard, Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1385 (Fed. Cir. 2009)).

II. MIRROR WORLDS IDENTIFIES NO STRUCTURE FOR THE "MEANS FOR SELECTING…WITHIN A RANGE OF A TIMEPOINT"

As explained in Apple's motion, the second indefiniteness issue for the Court is whether the specification's disclosure of a "graphical stream view" is structure corresponding to this claimed function of "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." Motion at 8. According to Mirror Worlds, the "graphical stream view" is adequate corresponding structure because the display of any documents around a selected document "necessarily involves the display of document representations within a range of a timepoint." Response at 11. Mirror Worlds' interpretation is inconsistent with both the claim language and common sense. The claim does not require merely that some additional documents around a timepoint be displayed—it requires specifically the *selection* of which documents are displayed by identifying a particular document and range of

3

documents around it. The mere incidental display of documents in some nonspecific range around a selected document does not allow for the claimed *selection*. Indeed, Mirror Worlds' interpretation would render that claimed selection meaningless.

III. MIRROR WORLDS HAS NOT EVEN PURPORTED TO IDENTIFY CORRESPONDING STRUCTURE FOR THE "DOCUMENT ORGANIZING FACILITY"

Mirror Worlds dedicates the majority of its response on the third indefiniteness issue before the Court to supporting its theory that "document organizing facility" is not governed. Section 112, ¶ 6.[1] On the indefiniteness issue itself, Mirror Worlds' only response is that Apple has failed to meet its burden of establishing indefiniteness because it has not identified the claimed function for the term. Response at 13. That is flatly wrong. Apple has identified the claimed functions for each of the "document organizing facility" limitations, and has noted that no corresponding structure is disclosed for performing those functions. *See* JCCS at Exhibit B, pp. 15-17. In contrast, Mirror Worlds' continued inability to identify any corresponding structure for the limitation speaks volumes.

IV. MIRROR WORLDS' IDENTIFICATION OF GENERIC SOFTWARE AND EXECUTABLE CODE FOR PERFORMING THE CLAIMED FUNCTIONS IS INADEQUATE

Mirror Worlds does not dispute that the specification does not disclose—and its proposed corresponding structure does not identify—any specific algorithm for performing the claimed functions of the thirteen means-plus-function limitations at issue. Response at 13-14. Thus, the fourth and final indefiniteness issue before the Court turns on the fundamental legal question of whether a patentee can avoid the requirement to disclose specific corresponding structure for performing the claimed function by merely pointing to generic computer hardware or executable

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[1] Apple has addressed that threshold claim construction question in its Claim Construction Brief Re Mirror Worlds' Patents and does not repeat that discussion here. *See* Apple's Claim Construction Brief Re Mirror Worlds' Patents at 24-25.

code for performing the function. As explained in Apple's motion, both the Federal Circuit and this Court have repeatedly rejected this approach as flying in the face of the definiteness requirement for computer-implemented means-plus-function claims. Motion at 10-11.

Rather than address this overwhelming authority, Mirror Worlds cites to a single case for the proposition that courts have adopted "executable code" as corresponding structure for performing the claimed function in construing means-plus-function limitations. Response at 15 (citing *IP Innovations, LLC v. Red Hat, Inc.*, No. 2:07 CV 447, 2009 WL 2460982, *12 (E.D. Tex. Aug. 10, 2009)). But rather than support Mirror Worlds' position, *IP Innovations* undercuts it. There, the specified function was not performed through interaction of a programmed computer with external elements, but rather as a part of a program of code that is executable on a computer and that provides the corresponding code for creating interactive menus and icons. *Id.* Thus, the Court found the "control means" was specifically, "executable computer code implementing selectable graphical user interface pop-up menus and icons and equivalents," not merely "executable code" for performing the claimed function as Mirror Worlds' claims. *Id.* Here, there is no executable code disclosed in the specification for performing any claimed function at all.

V.   CONCLUSION

For the reasons set forth above and in Apple's motion, Apple respectfully requests that the Court enter summary judgment of indefiniteness on each of the four requested grounds.

Dated: January 21, 2010   Respectfully submitted,

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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 21st 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*
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