

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

MIRROR WORLDS, LLC,

Plaintiff,

v.

APPLE INC.,

Defendant.

JURY TRIAL DEMANDED

Case No. 6:08-cv-88 (LED)

APPLE INC.,

Counterclaim Plaintiff,

v.

MIRROR WORLDS, LLC,
MIRROR WORLDS TECHNOLOGIES, INC.,

Counterclaim Defendants.

DECLARATION OF JOHN LEVY, Ph.D.

I, John Levy, hereby declare that:

1. I have been retained by Mirror Worlds Technologies, Inc. (“MWT”) to serve as an expert in the above-captioned case. I make this declaration to offer my opinions regarding the validity of Apple’s U.S. Patent No. 6,613,101 (“the ‘101 patent” or “the Apple Patent”).

2. This declaration is based upon information currently known to me and I reserve the right to rely upon any additional information I become aware of after the date of this declaration and to respond to any arguments or opinions regarding the subject matter of my declaration raised by Apple or its experts after the date of this declaration, including at trial.

I. PROFESSIONAL BACKGROUND AND QUALIFICATIONS

3. I am the sole proprietor of John Levy Consulting, a consulting firm that specializes in consulting on managing development of high tech products, including computers and software.

4. I have a Bachelor of Engineering Physics degree from Cornell University, a Master of Science degree in Electrical Engineering from the California Institute of Technology, and a Ph.D. in Computer Science from Stanford University.

5. I have spent over thirty years in the computer systems, software and storage industry. After earning my doctorate from Stanford University in Computer Science, I worked as an engineer at a number of leading companies in the computer and hard disk industry, including Digital Equipment Corporation, Tandem Computer, Inc., Apple Computer, Inc., and Quantum Corporation.

6. During my employment at Stanford Linear Accelerator Center while I was a graduate student at Stanford University, I was a programmer and I participated in the design and implementation of a real-time operating system for use in data acquisition and display. In my course work at Caltech and at Stanford, I studied the structure and operation of operating systems. At Digital Equipment Corporation for approximately one and a half years I was Supervisor of development of the operating systems RSX-11D and IAS. During my employment at Quantum, I was involved in the design of file systems and of hard disk input/output drivers used in personal computers.

7. I am a named inventor on seven United States patents. I have been disclosed as a witness in over 25 cases and have testified at trial and deposition. I also have served as a

technical advisor to two United States District Judges. A complete copy of my curriculum vitae, which includes a list of my publications, is attached as Exhibit 1.

II. MATERIALS CONSIDERED

8. I considered the following information in connection with this declaration:

- The '101 Patent;
- The prosecution file history of the application that issued as the '101 Patent, including the references cited therein;
- U.S. Patent No. 6,243,724 (“the '724 patent”), which is the parent to the '101 Patent;
- The prosecution file history of the application that issued as the '724 patent, including the references cited therein; and
- The Court’s February 16, 2010 Order concerning claim construction of, *inter alia*, the '101 Patent (D.E. 178) (The “Preliminary Order”).

9. In addition, I base my opinions below on my education, training and experience and my review of documents and materials produced in this litigation, as well as documents I uncovered in researching the assignment.

II. LEVEL OF ORDINARY SKILL IN THE ART

10. Based on my experience, it is my opinion that a person of ordinary skill in the art of the Apple Patent would have a bachelor’s degree in computer science, computer engineering or the equivalent, and 3-5 years of experience in the field of computer operating systems, or a post-graduate degree in computer science, computer engineering or the equivalent, and 1-2 years of experience in the field of computer operating systems.

III. APPLE'S '101 PATENT'S CLAIM CONSTRUCTION AND PROSECUTION HISTORY

11. I have been informed by counsel to Mirror Worlds Technologies, Inc. ("MWT") that claim construction is a matter of law to be decided by the Court and that the Court has issued a preliminary claim construction of the terms in the '101 Patent, which is set forth in the Court's Preliminary Order, which I have reviewed.

12. In its Preliminary Order, I understand that the Court adopted a meaning of the term "a graphical iconic representation of a collection of said first plurality of documents" that was advanced by Apple, namely "a collection of two or more document icons displayed together."

13. I have been informed that Apple has stated that it never sold any products embodying the claims of the '101 Patent.

14. As noted above, I have reviewed the '101 patent and its file history, as well the file history of the application that issued as the '724 Patent, which is the parent of the '101 Patent.

15. I note that parent application claim 81 recites:

"displaying a graphical iconic representation of a collection of said first plurality of documents;

displaying a first indicia of a first document of said collection by selecting a first position from **said graphical iconic representation**, said first indicia of said first document being selected for display regardless of said **first position on said graphical iconic representation.**"

APMW0025545 (emphasis added).

16. I further note that parent application claim 84 further recites

“wherein said selecting from said graphical iconic representation comprises positioning a cursor on said graphical icon representation”; and

“displaying in series a second indicia of a second document and a third indicia of a third document by positioning said cursor first on a second position on said graphical iconic representation next on a third position on said graphical iconic representation.”

APMW0025546.

17. The above limitations of parent application claims 81-86 are similar to the following limitations of independent claims 1, 5, and 9 of the ‘101 patent:

(i) “displaying a **graphical iconic representation of a collection of said first plurality of documents**”;

(ii) “**displaying a first indicia of a first document** of said collection by selecting a first position from **said graphical iconic representation**, wherein **said first position on said graphical iconic representation** is capable of being at any one of a plurality of locations on said graphical iconic representation and wherein selecting from said graphical iconic representation comprises positioning a cursor on said graphical iconic representation,” and

(iii) “displaying in series a second indicia of a second document and a third indicia of a third document by positioning said cursor first on a second position on said graphical iconic representation next on a third position on said graphical iconic representation.”

APMW0010239 (emphasis added).

18. During the prosecution of the parent application, the Examiner rejected parent application claims 81-86 as being unpatentable over Nicol et al. ([U.S. Patent No. 5,287,448]) in view of Levine et al. ([U.S. Patent No. 5,060,135])” on the following bases:

With respect to independent claim 81 and dependent claim 82 and 83, Nicol shows:

-graphical iconic collection representation is shown [in] fig. 2.

-displaying indicia of document by selecting position from representation is shown [in] fig. 2.

-regardless of position on representation is shown [in] fig. 2 in which help is provided regardless of position.

-concurrent adjacent display of representation and indicia is shown [in] fig 2.

but does not show document collection. Levine shows a graphical document collection in an analogous art for the purpose of presenting documents. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply Levine's document collection to Nicol's help system because of the generic use of a help system such as Nicol's to any graphic interface such as Levine's.

-Dependent claims 84 to 86 are substantially similar to claims 81 to 83 except for applying to multiple instances inherent in the applied reference and are similarly rejected.

APMW0025565-66 (emphasis in the original).

19. During the prosecution of the parent application, Apple argued that Nicol does not disclose displaying different indicia based on moving the cursor to select different positions on a single icon (graphical object):

Nicol discloses the provision of help information when a graphical object is selected, but Nicol does not disclose that a different help message will be displayed depending on which portion of the graphical object is selected. Therefore, the combination of Levine and Nicol results in the display of help information regarding a stack of stamps when the stack of stamps is selected, and the provision of separate help messages for each stamp within the stack is not taught or suggested.

APMW0025611-12 (emphasis added).

The Nicol reference teaches a help system which displays a help message when an icon is selected. There is simply no teaching in Nicol that a different help message is displayed when a different position for the same icon is selected. In fact, this would confuse a user and thus is not even conceivable from the teachings of Nicol. Similarly, Levine fails to teach this feature. Thus the combination cannot teach this feature.

APMW0025673 (emphasis in the original).

IV. THE CLAIMS OF THE '101 PATENT ARE INVALID

20. It is my opinion that claims 1-12 of the '101 Patent, as construed by the Court in its preliminary claim construction order, are obvious over Nicol in view of Levine. During the prosecution of the '101 patent's parent application ("the parent application"), Apple distinguished Nicol and Levine by arguing that those patents do not disclose displaying different indicia based on selecting different positions on a "graphical iconic representation of a collection of said plurality of documents." In particular, Apple argued that Nicol and Levine do not disclose displaying different indicia based on the *selection of different positions on a single icon*. APMW025673, APMW0025611-12. That argument no longer applies in this litigation because, under the Court's preliminary claim construction, a "graphical iconic representation of a collection of said first plurality of documents" may be multiple document icons, not just a single icon. In that case, Nicol plainly describes displaying different indicia when different icons are selected—eliminating the point of distinction that Apple drew between the application claims and Nicol.

21. Under the Court's construction, Nicol, in combination with Levine, meet the limitations of claim 1. In particular, Nicol Figs. 2 and 3 depict "a **collection of two** or more document icons **displayed together**" and the bubble in the Fig. 2 (shown below) illustrates indicia associated with a selected icon.

FIG 3

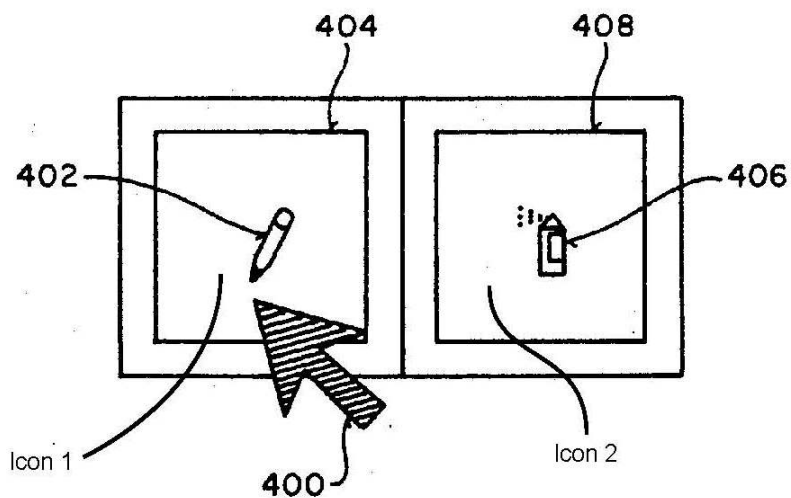
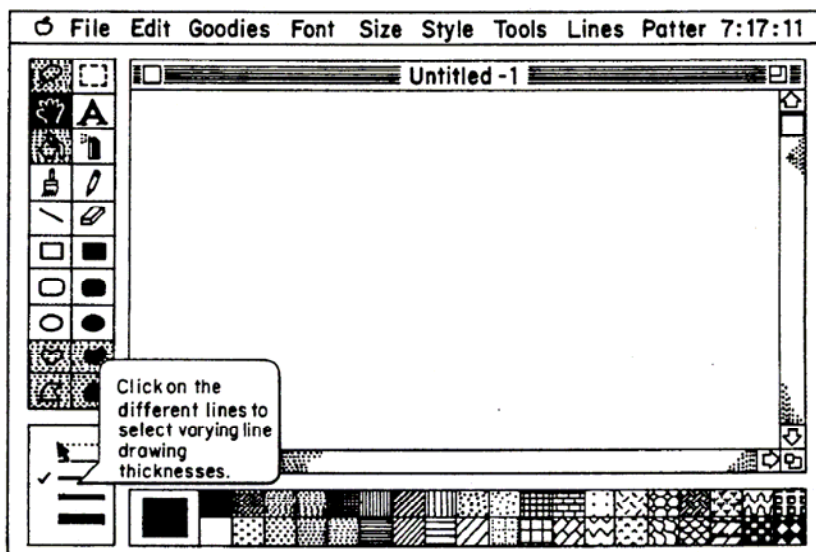


FIG 2



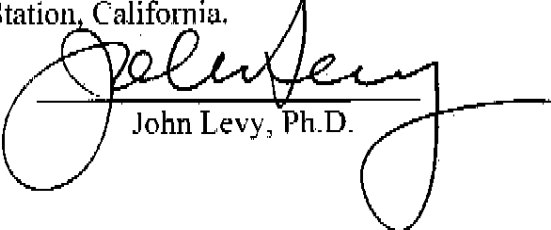
22. The Nicol icons are not necessarily “document icons,” but, according to the Examiner’s rejection of the ‘101 patent’s parent application, Levine depicts a graphical document collection. APMW0025565-66. In addition, the Examiner concluded that it would be obvious to combine Nicol with the graphical document collection of Levine. APMW0025565.

23. Thus, as set forth in the Court's preliminary construction, Fig. 3 of Nicol in view of Levine discloses a "collection of two or more document icons displayed together" – e.g., Icon 1 and Icon 2 in annotated Fig. 3 above. Nicol also discloses that different help messages will be displayed when a user positions a cursor over Icon 1 (the pencil in Fig. 3), than when the user positions the cursor over Icon 2 (the spray can in Fig. 3). *See Nicol*, 6:23-28. Also, yet, another message will be displayed when the cursor is positioned over a third icon. Accordingly, Apple's proffered claim construction, as adopted by the Court, eliminates the arguments Apple used to distinguish the claims of the '101 patent's parent application over Nicol and Levine. As a result, claims 1-12 of the '101 patent are invalid over Nicol in view of Levine.

24. Attached as Exhibit 2 is a claim chart, identifying where each limitation of claims 1-12 of the '101 patent is found in Nicol and Levine. It is my opinion that claims 1-12 of the '101 Patent, as construed by the Court in its Preliminary Order, are obvious over Nicol in view of Levine as set forth in Exhibit 2.

25. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 1, 2010 at Point Reyes Station, California.


John Levy, Ph.D.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document this 1st day of July, 2010, via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Alexander Solo
