

# **Randall Declaration**

## **Exhibit 12**

**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

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APPLE INC.

Counterclaim Plaintiff

v.

MIRROR WORLDS, LLC,  
MIRROR WORLDS TECHNOLOGIES, INC.

Counterclaim Defendants.

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**EXPERT REBUTTAL REPORT OF JOHN LEVY, Ph.D.**  
**REGARDING VALIDITY**

83. On October 26, 2007, Apple introduced Mac OS X Leopard, a follow-up to Tiger. (Bratic, p.56, ¶ 61). As noted by Mr. Bratic, Apple considered Cover Flow and Time Machine its “marquee features.” (Bratic, p.56, ¶ 61). Various publications, including the Wall Street Journal, New York Times, and USA Today stated that Time Machine and Cover Flow were among the most significant new features. (Bratic, p.57, ¶ 62). Leopard Sales far outpaced Tiger, previously the most successful Apple OS. (Bratic, p.57, ¶ 62).

84. As with the Tiger release, Apple conducted surveys, which, as noted by Mr. Bratic, showed that “Most Leopard users upgraded from Tiger to have the most up-to-date technology and new features, where Time Machine was mentioned the most; Time Machine is rated as the most beneficial Leopard feature, it exceeds expectations, and receives high marks for ease of use.” (Bratic, p. 106). Finder with Cover Flow was ranked by Apple as the number two top feature of Leopard. (Bratic, p. 108).

85. Mr. Bratic also noted, and I concur, that the three infringing features (Spotlight, Cover Flow, and Time Machine), in combination, provide synergistic benefits. (Bratic, p. 107).

86. Accordingly, it is my opinion that commercial success of the Leopard OS can be traced to the functionality of Spotlight, Cover Flow, and Time Machine, which individually, and in combination, infringe Mirror Worlds’ patents-in suit.

## **2. Long Felt Need**

87. I note that the Mirror Worlds Patents address a difficult problem that has existed in computer science for a very long time. The patents-in-suit recognize that conventional systems, which require users to access stored information through filenames and folders, become unwieldy when the amount of information stored on a computer becomes large, and that a new paradigm is needed for accessing and managing that information. The press has recognized this problem “In regard to the file-folder reporters generally acknowledge that **it is in desperate need**

**of an overhaul.”** (Bratic, p. 12) Apple, and the press, reviewing Spotlight also highlighted this need, e.g., Apple selected the following quote from David Pogue of the New York Times “Spotlight isn’t just a fast Find command. It’s an enhancement that’s so deep, convenient and powerful, it threatens to reduce the **20-year-old Mac/Windows system** of nested folders to irrelevance.” (Bratic, p. 33)

### **3. Failure of Others**

88. I note that the prior art cited by Apple describe various systems directed to information management and organization—to my knowledge, none of those systems, with the exception of Retrospect (which is a only an archiving utility), are currently implemented as commercial products.

### **4. Copying**

89. Apple looked to copy Mirror Worlds Technologies’ Scopeware software. (*See, e.g.*, Wednesday, 24 Sep 2003 email from: Dominic Giampaolo “Have you guys seen the Windows programs . . . or Scopeware? . . . I think we need . . . take a look at what they offer so that we don't miss the boat on features that people will want.I'd be curious to know what you think about them, APMW0938230). At least one press article recognized Apple’s copying of Dr. Gelernter’s patented ideas, “[b]ack in 2001, noted computer scientist David Gelernter started a company called Scopeware that proposed a similar scheme to view files in a time line. The market wasn't ready to rethink the desktop back then. Jobs and his team have refined Gelernter's vision and this time it looks far more promising.” (“Mac OS X: Leopard Lacks And Likes,” Thomas Claburn, InformationWeek, June 12, 2007, <http://www.informationweek.com/story/showArticle.jhtml?articleID=199903269>)

### **5. Praise**

90. Mr. Bratic's reports cites a plethora of articles that praised Mirror Worlds Technologies' Scopeware software that relates to the Mirror Worlds Patents. These articles praised the novelty and originality of the Scopeware software. See e.g. (Bratic, pp. 11-13, 82-84). Similar praise was later heaped upon Spotlight, Cover Flow, and Time Machine. See e.g. (Bratic, pp. 26-51, 87-101). It is my opinion that the press and the industry recognized the non-obviousness of the invention.

## **6. Industry Acceptance**

91. All Apple Mac operating systems made since 2005 incorporate Spotlight. All Apple Mac operating systems since 2007 incorporate Time Machine and Cover Flow. Apple holds a substantial market share in the relevant market.

## **7. Dr. Feiner's assertion that streams are a flawed metaphor is incorrect.**

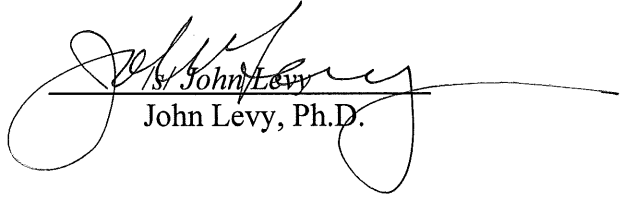
92. In the Secondary Considerations section of his report, Dr. Feiner's report attempts to discredit the value of the invention by setting up a straw man to knock down.

93. Dr. Feiner states, "These two premises [time-sequenced documents and no requirement for naming] belie a fundamental flaw in the lifestream metaphor: not all data is suitable for a purely temporal metaphor/organization. Some data is impractical for organizing in a temporal fashion. For example, suppose I create a PowerPoint presentation whose slides are created in a different order than the intended sequence for the presentation. Organizing these slides by their creation dates could create a nightmare for retrieving these slides in their intended presentation order." (Feiner report, p. 235)

94. Nothing in the stream concept requires a multi-part document (such as a slide presentation) to be broken apart and entered into the stream as individual components. A user

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

Executed on June 4, 2010 at New York, NY.

  
/s/ John Levy  
John Levy, Ph.D.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document is being served this 4th day of June 2010 via email upon counsel for Apple at the following address:

[MirrorWorlds@paulhastings.com](mailto:MirrorWorlds@paulhastings.com)

*/s/ Alexander Solo*