

**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 ITS MOTION TO STRIKE THE
UNTIMELY SUPPLEMENTAL EXPERT REBUTTAL REPORT OF
JOHN LEVY, PH.D. REGARDING VALIDITY AND TO PRECLUDE DR. LEVY
FROM TESTIFYING TRIAL ABOUT HIS NEW OPINIONS**

Mirror Worlds' opposition confirms that Apple's Motion To Strike the Untimely Supplemental Expert Rebuttal Report of John Levy, Ph.D. should be granted.

First, Mirror Worlds erroneously contends that Apple agreed to permit the submission of Dr. Levy's supplemental report and is now reneging on the agreement. Opp. at 5. There was, however, no agreement to present supplemental expert reports on the eve of trial, let alone any supplemental report. In fact, the parties' agreement merely extended to the respective expert **declarations** that had been submitted in support of the parties' motions for summary judgment on invalidity. *See* Solo Decl., Ex. 1 (agreement on "declarations," not supplemental reports).

Second, Mirror Worlds attempts to justify Dr. Levy's untimely supplemental report, arguing that Apple's invalidity contentions were "enormous" and "unreasonable." Opp. at 5. Any such objections have, however, been waived, as Mirror Worlds "**agree[d] that good cause has been shown**" for Apple and Mirror Worlds Technologies to amend their respective invalidity contentions."¹ (Doc. No. 283 at 2 (emphasis added).)

Third, notwithstanding this waiver, Mirror Worlds' objections concerning the volume and number of the references are misplaced. While the majority of the newly cited references that Mirror Worlds' complains of merely show the evolution of various claim elements (e.g., three-dimensional perspective views and methods of indexing and searching documents), Apple subsequently agreed, on July 22, 2010, to limit the use of these background references and

¹ The majority of the newly cited references that Mirror Worlds' complains of merely showed the evolution and background of claim elements involving, for example, three dimensional perspective views and methods of indexing and searching documents. Moreover, Mirror Worlds' complaint regarding the number of pages lacks merit, as one reference alone (DX0284), which merely shows the state of the art, is almost 650 pages.

substantially reduce the primary prior art references at trial.² *See* Randall Decl. Ex. 10. As a result, Dr. Levy was merely asked by Mirror Worlds to address only 218 pages of prior art documents and two videos, which make up the basis for his new report. Mirror Worlds has failed to provide any legitimate justification for waiting two months to present a new supplemental report on this art, particularly on the eve of trial.

Fourth, Mirror Worlds erroneously argues that Apple will suffer no prejudice as it was on notice that Dr. Levy would supplement his invalidity report. Of course, Apple had no idea that Mirror Worlds planned to supplement its invalidity positions less than a week before trial, and Apple has been working for weeks to prepare its case presentation, exhibits, deposition designations and other evidence. Permitting Mirror Worlds to present these belated opinions will clearly prejudice Apple by forcing it to address these newfound positions on the eve of trial.

Finally, Mirror Worlds never sought leave from the Court to supplement Dr. Levy's expert report, and it has failed to demonstrate good cause for supplementation.

Apple respectfully requests that the Court grant Apple's motion to strike the untimely supplemental report and preclude Dr. Levy from testifying regarding the new opinions.

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² Of course, Apple agreed to reduce its prior art even though Mirror Worlds repeatedly refused to reduce the number of its asserted claims. In fact, notwithstanding Apple's repeated requests that Mirror Worlds reduce its asserted claims, Mirror Worlds maintained 54 asserted claims up until August 24, 2010, when it reduced the claims to 16 claims, and then on August 31, 2010 pursuant to the Court's ordered reduction, reduced the set 12 claims.

Dated: September 23, 2010

Respectfully submitted,

/s/ Jeffrey G. Randall

Jeffrey G. Randall

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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 23rd day of September, 2010. As of this date, all counsel of record had 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/ Jeffrey G. Randall

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