

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MIRROR WORLDS, LLC)
) DOCKET NO. 6:08cv88
)
-vs-)
) Tyler, Texas
) 9:00 a.m.
APPLE, INC.) August 26, 2010

TRANSCRIPT OF PRETRIAL HEARING
BEFORE THE HONORABLE LEONARD DAVIS,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

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1 P R O C E E D I N G S

2 THE COURT: Please be seated.

3 All right. Ms. Thompson, if you will call the case,
4 please.

5 THE CLERK: The Court calls Case No. 6:08cv88,
6 Mirror Worlds, LLC v. Apple, Inc.

7 THE COURT: Okay. Announcements.

8 MR. CARROLL: Your Honor, good morning. Otis
9 Carroll for Mirror Worlds with Deborah Race, and with us we
10 have Ken Stein and Ian DiBernardo. And we are here and ready
11 for pretrial.

12 THE COURT: Thank you. Okay.

13 MR. RANDALL: Your Honor, Jeff Randall for Apple.
14 With me are my partners Allan Soobert and Christian Platt.

15 THE COURT: All right. We have a little pretrial
16 here. Why don't we start by each side just giving me a very
17 brief five-minute sort of opening statement to clue me in as
18 to what the case is all about and where you are -- sort of a
19 mini version of what you do to the jury where I can see what
20 the real issues are going to be in the case, and then just
21 your thoughts on the best way to proceed with the pretrial.

22 MR. CARROLL: Your Honor, if the Court please, let
23 me take at least part of our time. And Mr. Stein might want
24 to clean up after me.

25 THE COURT: That's a big job, Mr. Carroll.

1 MR. CARROLL: Well, thank you. That's what my wife
2 says.

3 This case involves a patented technology which was
4 described back in the early '90s by a famous -- and you have
5 heard that before -- but by a famous computer scientist at
6 Yale named David Gelertner, G-E-L-E-R-T-N-E-R. And David
7 Gelertner wrote a book called Mirror Worlds, among others.

8 In this Mirror Worlds book Gelertner took to task
9 the state of the art in personal computing from the standpoint
10 of how illogical and unworkable and counter-intuitive the
11 notion and technique of file folders for storing information
12 was.

13 And in his book he said that instead of that very
14 artificial concept, he likened it to shoe boxes. You know,
15 when you put stuff in shoe boxes and label the shoe boxes and
16 then you are left with, you know, what did I really mean when
17 I labeled shoe boxes, you know, "my court stuff," you know,
18 what does that mean?

19 He said that a much more intuitive way to do it and
20 much more consistent with the way that I do it and you do it
21 and everybody in the world does it, is on a time stream or
22 what he called a life stream. For instance, he said that the
23 most common book most people are familiar with is a diary.
24 And he says a diary has three components; past, present, and
25 future. He said that is how computers ought to be able to

1 organize information.

2 His big problem was, his big objection was that
3 computers were artificially created to discourage otherwise
4 smart people from using them, and this was an example.

5 So Gelertner wrote this book in '92, and then he had
6 a life-changing experience. And I forgot exactly the year,
7 but it wasn't too long after that. By the way, the book got
8 big acclaim. It was written up in the New York Times and all
9 this kind of stuff.

10 For reasons he still isn't sure about, he was told
11 by the FBI, but he was a target of the Unabomber. One day he
12 opens up a box at Yale University and it explodes and blows
13 off a good chunk of his hand and blinds him in one eye and
14 almost kills him. And the Unabomber targets him because the
15 Unabomber says the way he targeted other people, that he
16 doesn't like smart people that are trying to overly technify
17 the world.

18 So Gelertner from that point realizes how short life
19 is and he gets to work on this concept, and he files these
20 patent applications in 1996.

21 And these patent applications result in the
22 patents-in-suit, and we say cause quite a stir to the point
23 that Steve Jobs, the head man at Apple, wrote two or three
24 important emails and essentially said we need these.

25 And today we have a lawsuit as to whether Steve Jobs

1 was right, whether they did, in fact, need them and, in fact,
2 use them. We say they did. And, of course, they say they
3 didn't. And that is, you know, why we are here; and hopefully
4 we will get a resolution from the jury.

5 And I take no credit for this, but my colleagues and
6 the good folks over at Paul Hastings have worked very hard on
7 the case. They have gotten to the point where all of the
8 exhibits -- and I fussed at our guys because there are way too
9 many -- but we have exchanged the way too many exhibits. We
10 haven't waded through the objections yet under your order. I
11 think we are supposed to have exchanged them by the 31st. We
12 are ahead of that, I am glad to say.

13 We have got dep clips exchanged -- or not exchanged?

14 MR. RANDALL: Exchanged.

15 MR. CARROLL: Exchanged. We talked about that this
16 morning. We haven't obviously agreed on what is what about
17 them, but we hope to do that pretty quick. And I talked to my
18 friends at Paul Hastings this morning about this, and
19 obviously it is whatever the Court's pleasure is, my thought
20 is that the most important thing that we could know after
21 today is whether we are still on track to get our jury on the
22 7th and whether we are still on track to start trial on the
23 20th.

24 And we don't need a whole a lot of help on the
25 motions in limine for jury pick. And if we are still on track

1 for the 20th, that leaves us a better part of three weeks to
2 see if we can wade through some more of these things. If we
3 can, great. If we can't, then unfortunately we would have to
4 bother you about that.

5 But the only thing that I can think of that we need
6 from our standpoint to get a jury would be some comfort that
7 our friends on the other side aren't going to talk about in
8 jury selection and throughout the whole case, but particularly
9 in jury selection, what is going on in the Patent Office
10 vis-a-vis reexam, their own patents other than the cited
11 patents for invalidity.

12 What were the other two, Ken?

13 MS. RACE: Rulings.

14 MR. CARROLL: Oh, yeah, any rulings by the Court.
15 You have done some violence to parts of our patent, and you
16 know, we are hopeful that the jury won't hear about that. And
17 any dismissals by us of claims, and we have way too many and
18 we cut them down --

19 THE COURT: Still do.

20 MR. CARROLL: We still have way too many. Couldn't
21 agree more, Judge. I think that is it.

22 MS. RACE: Inequitable conduct.

23 MR. CARROLL: And inequitable conduct. They have
24 got an inequitable conduct claim.

25 Is that it?

1 MS. RACE: Other litigation.

2 MR. CARROLL: Other litigation.

3 Okay. So that is my view of what we would need,
4 some comfort that we are not going to talk about that at least
5 at jury selection.

6 The last point -- and we talked about this yesterday
7 when Mr. Patterson's help -- Apple has a counterclaim, Your
8 Honor, against an earlier Mirror Worlds entity, which at one
9 point owned the patent, about a different patent of Apple's.
10 That entity we don't care about. So we are prepared, and I
11 told my friends over here that this morning and Patterson told
12 them last night, we are prepared to concede infringement,
13 admit validity.

14 And we would, you know, go whole hog and confess
15 judgment except for they don't have a damage model. They
16 don't have a damage expert. And the only thing I know -- I
17 have been told by my colleagues is that the accused sales,
18 guts, feathers and all are like \$50,000. So, you know, if
19 there was any way to base a reasonable royalty other than just
20 guessing, you know, we would go ahead and do that.

21 But our suggestion, my suggestion was that we go
22 ahead and get rid of that piece of the case. And if we can't
23 figure out a number to attach to the judgment, we would let
24 you make that call. But we don't think that has any place in
25 front of the jury. So that is where we are on that piece of

1 it.

2 THE COURT: Would that other -- would the
3 counterclaim -- you said it is another entity, would it affect
4 the judgment if plaintiff were to prevail in this case?

5 MR. CARROLL: Wouldn't even be an offset. It is a
6 completely different entity. You know, we wouldn't even get a
7 credit assuming we win.

8 THE COURT: Anything else?

9 MR. CARROLL: Thank you, Your Honor.

10 MR. STEIN: One point of clarification. Dr.
11 Gelertner's idea, as Mr. Carroll said, goes back to Mirror
12 Worlds -- he developed that over time and, you know, fleshed
13 it out and added lots of features to it. Some of the things
14 that Mr. Carroll --

15 THE COURT: I'm sorry. I'm not understanding you.

16 MR. STEIN: What I was saying is that the seeds of
17 Dr. Gelertner's ideas went back to the book that Mr. Carroll
18 mentioned, Dr. Gelertner's book from the early 1990's. But
19 over the course of time, he fleshed out those ideas, you know,
20 as Mr. Carroll explained --

21 THE COURT: You are not admitting that was prior art
22 then, right?

23 MS. RACE: No.

24 MR. CARROLL: He was afraid I talked us out of
25 court.

1 THE COURT: Okay. I understand. All right. Thank
2 you.

3 MR. RANDALL: Should I address --

4 THE COURT: Yes, that would be fine. Wherever you
5 would like to. Either podium, I will put it that way.

6 MR. RANDALL: Jeff Randall, Your Honor, for Apple.

7 Let me address your two issues. First, what this
8 case is about. The patents that have been asserted by Mirror
9 Worlds against Apple relate really to two main functionalities
10 or features. One is an allegedly new way to organize and
11 store documents on computer systems.

12 And the other feature is how -- an allegedly new way
13 to display those documents on a screen, the visual display of
14 the images of the documents. Those are the two main features
15 of all four patents; and common elements run through all of
16 the claims that are asserted, Your Honor.

17 And with respect to those two issues, the first
18 issue is the new way to organize documents. I think Mr.
19 Carroll was generally right that they claim that the old way
20 was a hierarchy of files and folders and you name the
21 documents, you name the folders, you have an issue with nested
22 folders, and sometimes you forget the name of your folders,
23 you don't know where they are.

24 So Mirror Worlds' inventors alleged to come up with
25 this new revolutionary and distinct way of organizing

1 documents; that instead of putting them in folders with file
2 names and using the typical hierarchical system used in
3 Apple's operating system, Microsoft's operating system and
4 Unix's operating system, that instead they had a system that
5 would keep all documents on the computer, all documents in a
6 chronological stream, and that stream would have, as Your
7 Honor construed it at Markman, would have a past, a present,
8 and a future section to it. That is what it had to have.

9 One of the things that -- one of the big issues in
10 this case is that Apple simply doesn't do that. That is a
11 different way of doing it. No doubt about it. That way has
12 some benefits, no question about it. But it also has a lot of
13 detriments. So there is pros and cons to using it. It is
14 different. Apple uses the same hierarchical storage and
15 organization of documents it has always used. Same with
16 Microsoft and Unix. So, number one, we simply don't do it.

17 Number two, that concept of storing documents in
18 this -- all of the documents in this chronological manner, is
19 not new. It is actually a crowded field. There is art out
20 there that did exactly the same thing that they claim in these
21 patents. It is a crowded field.

22 DEC, Digital Equipment Corporation had a system
23 called Workscape that is very elegant, very sophisticated. We
24 have got a video on it. We have got testimony from the
25 witness. We have a whole host of evidence on that. At MIT

1 they were doing work on the same issue. There is a gentleman
2 in Europe in London that had a system called Memoirs that
3 literally was a diary, an electronic diary of your life. You
4 could calendar your whole life, and this system also utilized
5 that same what they considered to be a unique and novel
6 functionality.

7 So with respect to that issue, it is a crowded
8 field. Apple simply doesn't use it though, but there are
9 other entities that had the same idea before Mirror Worlds.

10 With respect to the second aspect, Your Honor,
11 visually displaying the documents, they have in their patent
12 under I think Figure 1, a representation of images that they
13 claim is novel and unique. That is a large part of their
14 invention.

15 What it does is it places document images in a --
16 what they call a receding, foreshortened stack. So the
17 documents are set back, they recede back into the screen, and
18 they get smaller. So the stack of documents gets smaller as
19 it recedes back in showing those are the older documents,
20 these are the newer documents. They claim that is somehow
21 novel.

22 Well, again, the prior art shows exactly that; it
23 shows systems that do -- that lay their documents out in the
24 same manner, so that is not new either. But Apple simply
25 doesn't do it. The accused feature in the Apple products is

1 the way that they laid out albums in Cover Flow. And the way
2 they laid out albums is they laid them across the screen like
3 this (indicating).

4 Okay. There is no doubt in this case if you look at
5 the source code and everything else, that Apple's documents or
6 images of their albums are laid across the screen. They are
7 in the same plane. Okay. They don't go back in. They are
8 not foreshortened, they don't recede back in the screen. They
9 simply lay them across the same plane.

10 THE COURT: In other words, more two-dimensional
11 where you allege that the alleged dimension is more
12 three-dimensional.

13 MR. RANDALL: That's right. That is the element
14 that runs through all of the claims that are asserted in this
15 case. A Receding, foreshortened stack -- I'm sorry not all of
16 the claims but many of the claims. A Receding, foreshortened
17 stack. And there are a couple of elements we don't do. We
18 don't timestamp the documents.

19 I think Your Honor correctly construed one of the
20 elements in the case that runs through many of their claims is
21 that the documents are uniquely identified by date and
22 timestamp. It has to. For their system to work it has to
23 have that. That is what they claimed as an element; that each
24 document has a unique date and timestamp that uniquely
25 identifies that document from all other documents.

1 Apple doesn't use that system. Apple has other many
2 documents that could have the same date and timestamp. Apple
3 has metadata, yes, but they use a document ID number. That is
4 what Apple uses. They use a different system. They simply
5 don't use the system that is required in the claims. So we
6 have brought a number of motions for summary judgment here on
7 those issues.

8 With respect to -- and I have addressed a couple on
9 noninfringement, I have addressed a couple of invalidity
10 issues.

11 With respect to one thing to the covers of those
12 albums, Your Honor, across the same plane, you know, they say
13 things like, well, you know, they appear to be receding. They
14 have some shadowing and things like that, so there is some
15 perspective; but that is not what the claim language says, it
16 just isn't. We simply don't meet the claim language. It
17 shouldn't go to the jury.

18 There are other issues in this case, inequitable
19 conduct and certainly that is an issue ultimately to be
20 decided by Your Honor. But the inventors here submitted a
21 series of false declarations regarding inventorship. They
22 also did not disclose their earlier work and earlier writings
23 about their alleged invention.

24 So on one hand in one argument they may argue that
25 they had this earlier work, but then they didn't disclose it

1 to the Patent Office. So there is a host of issues regarding
2 inequitable conduct that the inventors engaged in.

3 Then, lastly, Your Honor, with respect to our
4 patent, Apple does have a patent. It covers the way in which
5 documents appear on a screen, the visual way, how you can sort
6 those documents; that you can sort them by date. You can
7 stack them up. You can flip them on their side. You can do a
8 whole host of manipulations, if you will, with the document
9 images on the screen. And that is the patent that we believe
10 that they infringe.

11 They have moved to sever that patent from this case
12 a number of times. That patent is an integral part of the
13 case because it is one of the primary references that Apple
14 relies on for invalidity, number one.

15 Number two, it is we certainly use aspects of the
16 Piles technology.

17 Number three, when Apple was aware generally of
18 Mirror Worlds and ultimately told Mirror Worlds, look, we are
19 going to utilize our own technology in this field and our own
20 patents, that is the patent, one of the patents certainly that
21 we are utilizing. So it relates -- there is a whole host of
22 issues that it relates to. But nonetheless we believe they do
23 infringe. We believe it is invalid. We believe with respect
24 to the damages issue there is a whole host of overlapping
25 issues.

1 The hypothetical negotiation in this case with
2 respect to their patents would have occurred around -- in June
3 of 2004. Slightly before that in September of 2003 the
4 hypothetical negotiation would have taken place with respect
5 to the Apple patent. And there is a host of issues with
6 respect to the hypothetical negotiation, what the parties
7 would have considered in regards to the hypothetical
8 negotiation, including perhaps a cross-license that are
9 relevant to both sets of damage claims.

10 And so they did raise this issue with me last night
11 through Mr. Patterson, who has been handling settlement
12 discussions. I won't get into those discussions, but he did
13 raise it to me late last night. I will say this: I haven't
14 had a chance to talk to my clients about their proposal. I
15 will say that we have consistently sought to keep the Piles
16 patent in our infringement case and all of the issues that
17 would be presented to the jury, including damages, in this
18 case.

19 We opposed their motion to sever. You denied their
20 motion to sever. I believe that we will continue to seek the
21 presentation of those issues to the jury, but I haven't got a
22 final answer from my client on this issue because it just came
23 up last night.

24 With respect, Your Honor, how to proceed in this
25 Pretrial Conference, we have exchanged the depo designations

1 and the exhibits and the objections, and we are in the middle
2 of making progress. I will say there has got to be a lot more
3 progress made on these issues, but at least the parties are
4 working on that.

5 With respect to the issues that are before Your
6 Honor right now, we do have motions for summary judgment, we
7 do have motions in limine, and we do have Daubert motions. We
8 are prepared to argue those, and we will do so if Your Honor
9 is willing to hear our argument. We can do it in a brief
10 fashion, if you like; but we would like to address them.

11 THE COURT: Let's start with Apple's Daubert motion
12 220 to limit the testimony and expert reports of John Levy.

13 MR. SOOBERT: Good morning, Your Honor. Allan
14 Soobert on behalf of Apple.

15 Apple's motion -- I will be brief. I will be happy
16 to entertain any questions, but raises a number of discrete
17 issues and topics which we believe are unreliable opinions
18 offered by Dr. Levy, who is Mirror Worlds's technical expert
19 in this case.

20 There are a number of bases for the opinions that
21 are not there. They are not in the report. And I will get to
22 those in a minute. There is incorrect applications of claim
23 constructions that were rejected during the Markman process;
24 and Your Honor considered those proposed constructions,
25 rejected them, and embraced Apple's constructions and Dr. Levy

1 has gravitated towards those constructions and misapplied
2 those as well.

3 Our view -- for example, Dr. Levy has taken your
4 definition of "stream" and at the Markman process Mirror
5 Worlds had sought to incorporate a limitation within that term
6 that the "stream" not be bounded -- unbounded. Dr. Levy
7 continues to advance that interpretation in order to
8 distinguish prior art and misapplies and ignores your
9 construction and applies his own. We think that is inherently
10 problematic and unreliable and ought to be excluded. Changes
11 his entire infringement analysis.

12 THE COURT: Let me hear a response to the issue
13 regarding the claim construction on "stream."

14 MR. STEIN: Dr. Levy was quite clear in his expert
15 report that he was, in fact, applying the Court's claim
16 construction. He set it out, and he explained his reasoning
17 in terms of the Court's claim construction.

18 With respect to -- I think there were two items that
19 Apple has identified in their briefs, which we responded to in
20 our briefs on this issue, which they call Dr. Levy on. One
21 was the one just mentioned by Mr. Soobert regarding a stream
22 being unbounded.

23 And the Court construed the "stream" to be a diary.
24 And one aspect of a diary is that there is -- you can keep
25 adding to it until you reach the limits of whatever the length

1 of the diary, whatever kind of physical limits there are. If
2 you designed your diary to be like a journal where you can
3 keep adding volumes, it is an essential characteristic of a
4 diary that you can keep adding to it. And so that is how the
5 concept of unbounded comes into Dr. Levy's opinion.

6 We had argued during Markman that the term "diary"
7 itself is, you know, a bit vague. What is the metes and
8 bounds of a diary? The Court recognized that the patent uses
9 that term in the patent in defining a "stream"; but it is sort
10 of a colloquial term. So how do you determine whether or not
11 something is a diary?

12 So in Dr. Levy's opinion, he was just seeking to add
13 some, you know, more definitive --

14 THE COURT: Why is that important? I mean, I'm
15 having trouble seeing -- the question to both sides, I mean,
16 what is the -- they are saying that a diary should be
17 unbounded and, therefore, I guess you could continue to add to
18 it infinitely. Is that what you are saying? Is that what you
19 mean by "unbounded"?

20 MR. STEIN: Yes.

21 THE COURT: So what is your problem with a diary
22 that would continue as long as you are making entries to it,
23 I guess is what they are saying?

24 MR. SOOBERT: Your Honor, because Dr. Levy
25 essentially says and distinguishes the prior art that, unlike

1 their invention which has this sort of infinite recession of
2 the stream into the distance, which is, in their view,
3 unbounded he takes that and looks at the prior art because the
4 screen is not large enough or the stacks may not be big enough
5 and distinguishes the prior art on that basis; that this prior
6 art is not bound.

7 THE COURT: In other words, he says this prior art
8 is bounded --

9 MR. SOOBERT: Right.

10 THE COURT: -- Dr. Levy does, and you say the prior
11 art is unbounded?

12 MR. SOOBERT: That's correct. Your Honor, you hit
13 it right on the head. You said, why is that important? It is
14 really not important because it is not in the claim
15 construction. Your claim construction is very clear in saying
16 a "stream" is a time-ordered sequence that represents an
17 electronic diary of a person's life that includes past,
18 present, and future portions. It doesn't mention anything
19 about being bounded or unbounded.

20 And so Dr. Levy, and we have cited in our papers, in
21 his validity report at Paragraphs 115, 119, 184, 274 just as
22 examples -- and this is in our brief at Pages 9 through 10.
23 Distinguishes prior art on that basis. In our view it is
24 entirely improper to take a limitation that is not in the
25 construction and say, oh, okay, the prior art doesn't meet

1 that limitation because it is bounded.

2 And that is the problem we have. And the thing I
3 will add is that that construction was proposed and rejected
4 by Your Honor at Markman.

5 THE COURT: Well, they were proposing a definition
6 that -- they proposed "a time-ordered collection of data units
7 or documents, unbounded in number, in which the time
8 associated with the data unit can be in the past, present, or
9 future and the location of file storage is transparent to the
10 user." And then Apple contended it means a time-ordered
11 sequence of documents that functions as a diary of a person or
12 an entity's electronic life designed to have three main
13 portions; past, present, or future.

14 And the Court adopted Apple's proposed construction,
15 but I am not sure that the parties ever really focused in on a
16 claim scope question of whether that diary could be bounded or
17 unbounded. I don't recall that in the arguments or the
18 briefing from the Markman. Am I missing something, or was
19 that teed up?

20 MR. SOOBERT: I think that is a fair point. You
21 know, I don't know that it was squarely a dispute that -- over
22 the term "bounded" or "unbounded." But by the same token it
23 was proposed expressly in Mirror Worlds' proposed
24 construction. It was not adopted. Our view is by definition
25 if it is not in the construction, it ought not to be used to

1 distinguish the claim.

2 THE COURT: Response.

3 MR. STEIN: Well, our position with respect to the
4 prior art is that it cannot be a diary because a diary is
5 something that you can keep adding to; and that prior art
6 systems that Apple has identified is not a system where you
7 can keep adding documents to and still have them work, you
8 know, function the way they are supposed to function.

9 You know, our position -- that is part of being a
10 diary, and those prior art references do not disclose a
11 diary. Whether we think it is useful for Dr. Levy to be able
12 to say it is not a diary because of, you know, reasons X, Y,
13 and Z, those are characteristics of what a diary is, and the
14 prior art is lacking it.

15 Dr. Levy could just say that the prior art does not
16 disclose a diary and leave it at that. So to that extent the
17 importance of whether -- having this concept of "unbounded"
18 explicitly there is lessened but we definitely think it is
19 useful for Dr. Levy to explain what it is when he explains the
20 prior art doesn't disclose a diary, and this is one aspect of
21 it.

22 THE COURT: Well, I guess my concern, the Court did
23 define "stream" to be a diary and that it includes past,
24 present, and future. How could "future" be bounded?

25 MR. SOOBERT: That is our point, Your Honor.

1 THE COURT: Well, I am saying -- well, maybe I am
2 not following your point then because if -- I'm saying if
3 diary includes past, present, and future, it would seem that
4 diary -- and I'm not sure bounded or unbounded is the proper
5 description; but if you are talking about the future, I don't
6 see how it necessarily can have a limit to a diary.

7 MR. SOOBERT: Yeah, my --

8 MR. RANDALL: Your Honor, can I address the Court
9 briefly?

10 THE COURT: Sure.

11 MR. RANDALL: Let's just say, for example, you have
12 a diary, right, and the diary has 2010 -- 2008, '09, '10, '11,
13 and '12 and then it is bound by the end of the book, correct?
14 That has a past, it has a present, and it has a future. It is
15 bounded, right? It stops. That diary, physical diary of the
16 book is bounded. Maybe a system is bounded by the amount of
17 memory it has in it. Maybe a computer screen is somehow
18 bounded by the number of images it can hold at one time on the
19 screen.

20 It can still satisfy the claim elements if it has
21 the past, present, future portions even if it is bounded. And
22 so that is not a limit --

23 THE COURT: Isn't that just a fact question for the
24 jury to decide whether your prior art reference -- I thought
25 maybe you were getting at a true claim construction issue, but

1 I am beginning to think it may just be more of an evidentiary
2 issue that y'all are going to have to duke out with the jury.

3 MR. RANDALL: Well, the claim construction issue
4 that I am addressing that I think their expert is relying on,
5 is that their expert is relying on a claim construction
6 position that the stream and the diary specifically has to be
7 unbounded. If it is not unbounded, then it doesn't satisfy
8 the claim elements and, therefore, it distinguishes the art.

9 The issue about whether or not a stream has to be
10 unbounded is a claim construction issue, and he is going to
11 sit there and argue to the jury that that diary has to be
12 unbounded in order to classify some of the claim elements, and
13 some art may be unbounded and doesn't satisfy it. It is our
14 position that that is a claim construction issue. And,
15 frankly, if it is unbounded, if it is bounded, I think it
16 still satisfies the claim.

17 MR. CARROLL: I didn't hear that. You think it
18 still what?

19 MR. RANDALL: Is satisfies the claim limitations --

20 MR. CARROLL: Oh, I see.

21 MR. RANDALL: -- whether it is bounded or unbounded
22 as long as it has the elements of Your Honor's construction
23 that there is a past, present, and future portion to it. If
24 the electronic diary that is capable of handling documents and
25 storage past, present, and future for the next two years,

1 would fall within the claim limits and just because it is only
2 can take -- for future documents for the next two years, would
3 still mean the prior art would invalidate or that it would
4 infringe, it seems to me.

5 THE COURT: Anything further?

6 MR. CARROLL: Your Honor, at the expense of butting
7 in, I don't see what the fuss is about. I mean, you told us
8 it is a diary. Our man uses it as a diary. They concede that
9 it really doesn't matter if it is bounded or unbounded, you
10 pointed out it sounds like a fact issue. If it gets down to
11 your needing to tell the jury definitionally what a diary is
12 during the trial, you can do that. It seems like you are
13 right, it is a fact issue.

14 THE COURT: Anything further?

15 MR. STEIN: One thing. The diary described in the
16 patent is a diary in which new items are continually added.
17 It is not the diary that Mr. Randall just mentioned.

18 MR. SOOBERT: The one thing I would add on that,
19 Your Honor, is also Mr. Stein mentioned that there was no
20 disclosure of any diaries electronically in the prior art. In
21 1988 Mr. Landsdale, the professor that Mr. Randall mentioned,
22 disclosed a paper -- a number of papers and had a commercial
23 system which is in our invalidity --

24 THE COURT: That will all go to the merits. I am
25 just trying to figure out whether y'all have a claim scope

1 dispute that the Court needs to resolve by claim construction,
2 so --

3 MR. RANDALL: The only issue that we are concerned
4 about is their expert arguing to the jury and the lawyers
5 arguing to the jury that a claim limitation is that the diary
6 has to be unbounded and, therefore, they distinguish the prior
7 art. That is a claim limitation that they are importing into
8 the claim, and we don't think it belongs there.

9 THE COURT: You are saying it can be unbounded or
10 bounded?

11 MR. RANDALL: Correct, correct.

12 THE COURT: And so what is your -- and are you
13 saying that -- they are saying that it can be either bounded
14 or unbounded under the claim limitation. Are you saying it
15 has to be unbounded?

16 MR. STEIN: I am saying, yes, that that is -- that
17 is the diary that is described -- that is what the patent
18 means when it uses the term "diary" because it is referring to
19 a system where things are continuously added to the stream.
20 It doesn't say things are continuously added, as well as
21 future events, you know, coming in and people adding items to
22 the stream.

23 And, you know, part of the power of the invention is
24 that it just doesn't stop on a particular day. This is not --
25 the concept isn't for today or this year and next year or

1 today and tomorrow. It is a system in which documents are
2 continuously added, as actually recited in Claim 13 of the
3 '227 patent which says that each item, you know, received by
4 or generated by -- I believe those are the terms used in the
5 claim -- the computer system is added to the stream. That --
6 the claim itself indicates that that diary is unbounded. Not
7 restricted in the manner proposed by Apple right now.

8 THE COURT: Okay. All right. Let's move on to the
9 next one then. "Timestamp to identify."

10 MR. SOOBERT: Yes. We think that Dr. Levy is doing
11 a similar thing here. Your Honor construed "timestamp to
12 identify," a date and time value that uniquely identifies a
13 document. So it is simply a date and time value that must be
14 unique to identify that particular document.

15 THE COURT: But if you have the same date and time,
16 what happens?

17 MR. SOOBERT: It is not unique. You need some kind
18 of resolution or something else in the date and time value
19 that would be very, very specific that is purely a date and
20 time value. You need to carry out the decimals. You need to
21 do something to -- under the construction to have the date and
22 time value uniquely identify that document.

23 THE COURT: So if you had 08-25-2010 and you had two
24 documents, do you have a 0.1 and .2 on the end to uniquely
25 identify it?

1 MR. SOOBERT: You would have to in order to have a
2 date and time value that solely is uniquely identifying those
3 documents, yes.

4 THE COURT: So, in other words, you are saying that
5 you can't have the same date and time without some additional
6 unique identifier so you will know which document you are
7 talking about?

8 MR. SOOBERT: Right. The construction says is it is
9 a date and time value that uniquely identifies a document.

10 THE COURT: So are you saying under the construction
11 you cannot have a 0.1 on it to identify it or you -- it would
12 not infringe?

13 MR. SOOBERT: What I am saying is that the -- if you
14 have a system in which the date and time, for example, is of
15 insufficient resolution -- just like the problem you posited,
16 which is typical in conventional systems and an Apple system
17 where you have -- and in windows a Unix system where the
18 documents come in and are dated 8-25, you download some
19 attachments all at the same time, say early in the morning and
20 there is like five of them, those date stamps there in the
21 conventional system as in the Apple system are not unique and
22 do not identify that document uniquely. That is --

23 THE COURT: Response?

24 MR. STEIN: Both parties' experts acknowledge that
25 in the situation where the date and time itself does not

1 distinguish two data units, additional information must be
2 used in order to distinguish those two units. And anyone
3 skilled in the art would appreciate that that is something
4 that must be done and is commonly done.

5 And I understood the Court's claim construction
6 decision to mean that the "timestamp to identify" doesn't
7 require a date, time, plus additional information. If the
8 date and time is enough, then that is -- then that is fine.
9 So it doesn't require the narrower construction as you said,
10 Your Honor said in the claim construction decision of
11 requiring all three elements.

12 Instead, it only required the broader construction
13 proposed by Apple, which is it only requires a date and time.
14 It doesn't exclude the possibility that additional information
15 might be needed to break ties in the case that the date and
16 time is the same and then, you know, both experts agree that
17 that would be -- that that is needed, and one skilled in the
18 art would know that that is something that would be needed in
19 that situation.

20 MR. CARROLL: Your Honor, again, at the expense of
21 butting in with my friend here, we believe that -- and I am
22 looking at your August 11th order, and this is significant to
23 me. Maybe not to anybody else. But you say -- you talk about
24 the parties' dispute and you say, what they say and what we
25 say to construe to include time and date and you use the noun

1 "values," time and date values. Then you say "plus additional
2 information." So you have identified the dispute as to
3 whether, as Apple says, you can only look to time and date
4 values or whether, as we say, you can add "additional
5 information."

6 What we think that our expert has done, and as Mr.
7 Stein says what their expert agrees with that one skilled in
8 the art would do, in the case of the tie breaker just like the
9 Court wondered about, is not add any additional information
10 but just give meaning to the value -- the word "values" of
11 time and date.

12 For instance, if you were to reconsider your motion
13 to sever their counter-claim, we all know what you would do.
14 We would have -- I forgot what the number of our case is, but
15 whatever it is, Mirror Worlds v. Apple, whatever that case
16 number is 123, and then we would have Mirror Worlds v. Apple
17 123A. We do it all of the time. We do it in Bate stamping.
18 We do it all of the time to give the value to that piece of
19 information.

20 So we say that is all our man is doing because, as
21 Mr. Stein pointed out, you know, it doesn't happen all the
22 time; but from time to time when you have a tie-breaker,
23 everybody knows, including their expert, that you have got to
24 give an additional value component for time and date to make
25 sense.

1 And, frankly, we think their argument is kind of a
2 gotcha.

3 THE COURT: Okay. Response?

4 MR. SOOBERT: A couple of points, Your Honor. The
5 expert testimony, our expert did not agree with that. They
6 were asking our expert Dr. Feiner a number of hypotheticals
7 about this very problem you have flagged, how in a
8 conventional system you might break the tie. And obviously
9 additional information would be needed in a conventional
10 system.

11 If we take a step back and look at the context of
12 this invention, this was a fundamentally new operating system
13 in which documents were organized and stored in a time-ordered
14 sequence, so every document has its unique timestamp. And the
15 timestamp has to have sufficient resolution, if you will, to
16 uniquely identify that document and put it in a time-ordered
17 sequence. That is their system.

18 All right. And conventional --

19 THE COURT: So are you saying in order for something
20 to infringe their system, you would have to have a timeclock
21 that went out to nanoseconds?

22 MR. SOOBERT: I'm not saying nanoseconds, but
23 sufficient resolution to distinguish between --

24 THE COURT: What would that be? Is that seconds?

25 MR. SOOBERT: It has got to be more than seconds.

1 THE COURT: Milliseconds?

2 MR. SOOBERT: Maybe at least -- I don't know. It
3 depends on the speed of your computer. It has got to be out
4 to a thousand.

5 THE COURT: Well, I am having a little trouble
6 because the Court did conclude in the last sentence, the Court
7 construes the term "timestamp to identify" to mean a date and
8 time value that uniquely identifies each document. And it
9 just seems like implicit in that construction would be if you
10 have got a tie, there has got to be something there that is
11 going to order it.

12 MR. RANDALL: Your Honor?

13 THE COURT: Yes.

14 MR. RANDALL: There could be a number of ways to
15 construct the system to make sure that each document that was
16 stored in your time-ordered sequence has a unique date and
17 timestamp. One of the ways you can do it is to say, look, we
18 are going to have a cache or some sort of a memory device that
19 makes sure that they are sequentially stamped and dated. You
20 could do that.

21 There is ways that you could do it. And in their
22 fundamental system they said it has got to have a timestamp to
23 identify it. They picked the claim language, the "timestamp
24 to identify." I think you correctly construed it as this data
25 and time value has to uniquely identify each document.

1 How you do that in order to accommodate their system, in
2 order to accommodate their claim language, is up to them to
3 describe in their spec. It is up to whoever is going to
4 infringe it. The issue is that conventional systems that
5 existed long before this invention, didn't do it that way. We
6 don't do it. Prior art conventional systems didn't do it.
7 There are ways it could be done.

8 You can sequence them. You can say that you have
9 got to apply a date and timestamp, and we are going to have
10 some sort of a memory device or some sort of software that
11 allows multiple documents to get out of the system to be
12 loaded sequentially. But that is one of the problems that
13 they have with their system. There are other problems that
14 they have with their system. There are. That is why people
15 didn't adopt it. But this is the claim language they chose.
16 You correctly construed it. I think they have to live with
17 it.

18 THE COURT: Anything else with regard to Mr. Levy?

19 MR. SOOBERT: Just a couple of quick points, Your
20 Honor. There is one or two things that Dr. Levy has put into
21 his, you know, report that is conclusory, it doesn't have any
22 analysis at all.

23 For example -- and we believe he shouldn't be
24 permitted to testify about it. And one of those examples is
25 indirect infringement. Apparently now Mirror Worlds is

1 contending that there is an indirect infringement claim here.
2 Dr. Levy didn't opine on indirect infringement. He didn't do
3 any analysis of it. He didn't cite any evidence. During his
4 deposition he was asked, why didn't you do that? He goes,
5 well, I wasn't ask to do an opinion on it, so I didn't do it.
6 He was asked what he thought the standards are and what it is.
7 He said I don't know what it is.

8 We don't think it is appropriate now to allow him to
9 come back and sort of backdoor some indirect infringement
10 analysis without it being in the body of his report.

11 THE COURT: Response?

12 MR. STEIN: First of all, indirect infringement was
13 always in the case. It wasn't something that was just added
14 recently. Dr. Levy's report and -- well, his report contains
15 numerous opinions regarding the factual predicates for
16 indirect infringement. You know, for example, how the system
17 actually is designed to operate and operates and how, you
18 know, a user would use the system.

19 All of those are factual predicates for indirect
20 infringement. They are trying to shut us off from I guess
21 arguing that users actually use the system; that the products
22 that they sell in the manner that was intended they be used.

23 Dr. Levy described how that system operates and how
24 it was intended to be used, you know, as reflected in the
25 materials produced by Apple. Those are all things that go to

1 indirect infringement. He should be able to testify --

2 THE COURT: You may have the predicate there, but
3 are you going to put up a claim chart that says that -- and he
4 is going to express an opinion and check off that they are
5 guilty of indirect infringement on claim such and such?

6 MR. STEIN: I don't believe that that was the form
7 that we had for the proposed verdict that he will check off
8 that the system itself has these different elements in it.

9 THE COURT: That would be direct infringement,
10 right?

11 MR. STEIN: Well, it is the system itself -- when
12 you are talking about a method claim in some cases it is the
13 user using a system sold by Apple, for example. So I think
14 they may be -- I'm not sure where they are going with their
15 indirect infringement. I mean, there is no doubt at all that
16 there is direct infringement of all of the accused features
17 here. I mean, Spotlight, Cover Flow, Time Machine --

18 THE COURT: Well, if direct infringement is so clear
19 and he didn't put indirect in his report, why do you need
20 testimony on it?

21 MR. STEIN: Well, I think they are trying to
22 preclude him from testifying -- testifying that these
23 different -- that these different elements are actually in the
24 product because maybe their argument is at the end of the day
25 that argument goes to indirect infringement. And, you know,

1 since he didn't specifically address the legal conclusion of
2 indirect infringement, he should not be able to testify to the
3 factual predicates for indirect infringement that are in his
4 report. He should be able to testify with respect to what is
5 in his report and what is in there are many factual predicates
6 for indirect infringement.

7 MR. SOOBERT: He can certainly testify, Your Honor,
8 to direct infringement to the extent he put that in his
9 report. He didn't address indirect infringement. He admitted
10 he didn't. He didn't put anything in his report about what
11 knowledge of what components are made or specially adapted for
12 use, required for contributory infringement. He didn't
13 provide any kind of facts that would express some intent or
14 encouragement or aiding and abetting of the infringement or
15 alleged infringement for inducement.

16 None of these facts or, quote, so-called predicate
17 facts are set forth anywhere in the report. And it is
18 simply -- I mean, it is inappropriate for them to come back
19 and say he is now going to testify to these things. They are
20 not in his report. He wasn't asked to provide an opinion. He
21 shouldn't be able to do that.

22 THE COURT: What is next?

23 MR. SOOBERT: Just a couple -- a similar issue on
24 source code. I know Your Honor hears a lot about source code.
25 We have a lot of products that are at issue in this case.

1 Apple has worked really diligently over a year producing
2 thousands and thousands and hundreds of thousands of lines of
3 code. We provided it to Dr. Levy.

4 And in this case they actually looked at the source
5 code. In fact, their source code expert spent 90-some days
6 looking at the source code. Okay. And nowhere in Dr. Levy's
7 report is there a citation to not one line of source code. So
8 he doesn't -- instead he concludes or admits during his
9 deposition, well, I didn't cite it, yeah, I didn't, I didn't
10 do it, I didn't discuss any source code, I didn't analyze it.
11 I don't think it is going to be helpful for the jury. So I
12 think --

13 THE COURT: All right. What is next?

14 MR. SOOBERT: Okay.

15 THE COURT: What about your products without
16 analysis?

17 MR. SOOBERT: I'm sorry?

18 THE COURT: You have a reference in there that he
19 did not provide an opinion on several of the accused products
20 regarding the claims. And I think that what this is getting
21 at is he offered opinions regarding the iPhone, iPods, iPad,
22 iTunes, and Safari for Claims 16 through 19, 32, 34; but the
23 joint pretrial drops the Apple TV and -- from the '427. And
24 so the question is, but the joint pretrial continues to
25 maintain infringement claims as to 22, 25, 26, 29, and 37.

1 So, as I understand it, there is some confusion as
2 to what accused products and what claims are going to be at
3 issue in this trial, so that is what I am -- I thought you had
4 addressed that in one of your Dauberts, did you not?

5 MR. SOOBERT: I did. And in this Levy report --
6 there has been a lot of products they have recently, you are
7 correct, pulled back some of the products for some of the
8 claims. In our motion for summary judgment of
9 noninfringement --

10 THE COURT: Is there anything you need me to help
11 you with as far as resolving that, or do y'all have that
12 worked out at this point?

13 MR. SOOBERT: I believe we might need your
14 assistance on the fact that he didn't address the iPhone, the
15 iPods, iPad, and iTunes for the remaining '427 asserted claims
16 to the extent those require a stream. He didn't address that.

17 MR. STEIN: Well, he addressed infringement under
18 each of the claims that we have identified in our pretrial.

19 THE COURT: Well, he has offered opinions with
20 regard to 16 through 19, 32, and 34 of the '427 is my
21 understanding. But he did not offer opinions as to Claims 22,
22 25, 26, 29, and 37. And I guess my question is, are you
23 abandoning those claims, because they are still listed --

24 MR. STEIN: There are claims we are not pursuing.
25 We are pursuing the claims that are identified in the joint

1 pretrial --

2 THE COURT: Those are -- it is my understanding
3 those that I just listed; 22, 25, 26, 29, and 37 are listed in
4 the joint pretrial but that Levy does not express any opinions
5 about those. Is that true?

6 MR. STEIN: He may not express opinions regarding
7 them with respect to specific products, but I believe those
8 claims are still in the case with respect to other accused
9 instrumentalities.

10 THE COURT: Does that resolve it or not? What do
11 you want the Court to do? Maybe I am misunderstanding whether
12 there is even an issue here or not.

13 MR. RANDALL: Your Honor, we moved for summary
14 judgment on a number of claims indicating that they have no
15 evidence and presented no evidence nor opinions as to
16 infringement on certain claims as to certain products. We
17 asked the Court to enter judgment on that of no infringement.

18 In response I believe they said, okay, we will just
19 pull them -- we will pull them back without prejudice to
20 assert them later. Our view on that issue is we have gone
21 through all of the discovery in the case, we do have a
22 counter-claim of noninfringement, and we have asserted our
23 counterclaim and said we don't infringe as to all products,
24 all claims.

25 But certainly as to those products and those claims

1 to which they didn't provide any evidence of infringement nor
2 any opinion of infringement, we are asking the Court to enter
3 judgment in our favor of noninfringement. That is what we are
4 asking.

5 THE COURT: Respond to that. Have you pulled back
6 some claims and said we are not going to assert these when
7 confronted with their summary judgments?

8 MR. STEIN: We didn't pull them back because of
9 their summary judgment motion. We pulled them back because
10 during the course of discovery, products described as --
11 described as having the Spotlight, for example, feature like
12 the iPhone -- of course, in discovery we learned there was a
13 very watered-down version of Spotlight on the iPhone.

14 So, you, know as Mr. Soobert alluded to, there has
15 been a lot of discovery in this case, a lot of source code, a
16 lot of depositions taken; and during the course of that, there
17 were positions that we had at the beginning of the case with
18 respect to infringement that we learned, you know, that we
19 shouldn't pursue at trial here. So we pulled back those
20 claims.

21 THE COURT: Okay. But they have got a counterclaim
22 of noninfringement.

23 I guess it is noninfringement is what you are
24 seeking?

25 MR. RANDALL: Correct.

1 THE COURT: Now, they have got a summary judgment
2 motion for noninfringement as to the claims you have pulled
3 back. Do you oppose that summary judgment?

4 MR. STEIN: Well, I mean, our position is we just
5 think it is unnecessary every time --

6 THE COURT: You think it is unnecessary, but they
7 obviously think it is necessary. So do you oppose it or not
8 oppose it? It is teed up. I mean, it is an issue in the
9 case.

10 MR. STEIN: I guess at the end of the day we are not
11 opposing it. But to me --

12 THE COURT: Which one is that, and the Court will
13 grant that one? Which one is that?

14 MR. STEIN: I -- I -- I would like -- can I say one
15 thing about it? To me it is just like any claim we pull back
16 now. They can make the same argument for any claim we drop in
17 this case. I personally don't feel that it is appropriate to
18 grant summary judgment on a claim that is just not in the
19 case.

20 THE COURT: Well, you should have worked out a
21 stipulation with them if that is how you wanted it to play
22 out. They still have live pleadings and live motion on those.

23 MR. SOOBERT: Your Honor, that is Docket No. 225,
24 Apple's motion for summary judgment. The claims are set forth
25 in our reply brief on Page 1. And, essentially, what they did

1 is they just withdrew the claims and said they were moot.

2 THE COURT: All right.

3 MR. STEIN: Well --

4 THE COURT: Any response to Apple's motion for
5 summary judgment, Docket No. 225?

6 MR. CARROLL: Your Honor, may I ask Mr. Stein a
7 question?

8 THE COURT: Okay. I tell you what, I'm going to
9 take about a five- or ten-minute recess and let y'all kind of
10 regroup on that. We are getting really bogged down on a lot
11 of details that, you know, if claims aren't in the case they
12 need to go away. So see if we can get this focused down so we
13 can get through here expeditiously. Be in recess.

14 (Recess was taken.)

15 THE COURT: Okay. Please be seated.

16 All right. Where are we as far as the claims? Have
17 we got that all -- I will make this general observation: I
18 think we have got this issue going on of there are too many
19 claims in the case, plaintiff and defendant have not gotten
20 together and boiled it down and either agreed to withdraw
21 claims without prejudice or agreeing to go forward on summary
22 judgments. We need to get that resolved today.

23 So where are we?

24 MR. STEIN: We did talk about possibly having a
25 stipulation to withdraw certain claims with prejudice. There

1 is an important point, though, with respect to doing it the
2 other way which would be with the summary judgment motion, is
3 that Apple's summary judgment brief basically moves for
4 summary judgment of all claims --

5 THE COURT: Right. I understand that. It would
6 have to be tailored to whatever claims there are, but I think
7 a stipulation with prejudice, a dismissal with prejudice,
8 y'all ought to be able to get together and just agree on that
9 and get them out of the case. They don't have to worry about
10 you coming back on them on those if you are not going to go
11 forward with them. You don't want to go forward on everything
12 you have got, so --

13 MR. STEIN: Right.

14 MR. CARROLL: Your Honor, we talked about this at
15 the break. We are dead on with exactly what you said for the
16 ones in this Motion 224.

17 MR. SOOBERT: 225.

18 MR. CARROLL: 225. We concede we are not going
19 forward, with prejudice, for those. What Mr. Stein has
20 pointed out and what the Court knows is we don't want that to
21 bleed over into the rest of our case.

22 MR. STEIN: A little clarification. Again, their
23 motion is broader than what we are willing --

24 THE COURT: I understand that. What I want to see
25 Monday morning -- y'all get together after the session today.

1 Sit down, plaintiff take your list of claims, you have got
2 yours that you oppose. Y'all go through and decide what you
3 are going to go to trial on, everything else gets dismissed
4 with prejudice, and there will be a stipulation filed by 5:00
5 o'clock Monday. Okay?

6 MR. CARROLL: We will do that, Your Honor, thank
7 you, sir.

8 THE COURT: Then we will know what we are trying.
9 And commensurate with that, how many of these summary
10 judgments of Apple's will that resolve? I guess it depends on
11 what you stipulate to, right?

12 MR. RANDALL: Yeah, Your Honor. There is one issue
13 that I can point out pretty quick on this issue that we are
14 discussing right now.

15 THE COURT: All right.

16 MR. RANDALL: The issue is that we have presented a
17 motion for summary judgment saying they don't have any
18 evidence that the iPhone, iPad, or iPod have the required
19 stream that is necessary for all claims in all of their
20 patents. All right. And they have admitted that. They don't
21 have it.

22 So there is only one argument they make. That is
23 what the sticking point of the stipulation is going to be, and
24 I want to advise the Court of that. The sticking point is
25 that they now claim is that there are only a few of these

1 claims that actually don't require a stream. So they don't
2 want to stipulate to noninfringement with prejudice on all of
3 their patents against the iPhone, iPod, and iPad.

4 Now, the problem with that is that when they were
5 fighting, you may recall, when Apple moved for summary
6 judgment of indefiniteness and you granted that on some of the
7 claims, their expert filed a report. And in order to try to
8 avoid an indefiniteness summary judgment motion, their expert
9 filed a report and he admitted that the very claims that they
10 now say don't have a stream and, therefore, can preclude
11 summary judgment, he admitted that they had a stream. He said
12 that at Paragraphs 297, 298, 299, 300, and 301 of his report.
13 He said it -- and I could read it in the record. But he said
14 that a stream is required in Claim 8, Claim 16 in order to
15 avoid summary judgment and invalidity.

16 THE COURT: That ought to be good for
17 cross-examination, shouldn't it?

18 MR. RANDALL: Yeah, you're right, Your Honor.

19 THE COURT: What's that?

20 MR. RANDALL: You're correct, if it were in front of
21 Your Honor on claim construction. So the only issue is --
22 there are two issues.

23 One, they don't have evidence of a stream, which
24 means that all claims that require a stream should be
25 dismissed with prejudice on summary judgment or a stipulation.

1

2 The other claims that they are contesting that don't
3 require a stream, that is just a straight claim construction
4 issue. We believe that these other claims require a stream.
5 We believe their expert admitted it.

6 THE COURT: All right. Let me ask you to respond to
7 that? Has he teed it up properly that in -- generally
8 speaking, you are going to be dismissing with prejudice by
9 stipulation all that require a stream, and you are contending
10 now that some of the claims don't require a stream?

11 MR. STEIN: With respect to those particular
12 products he mentioned, yes.

13 THE COURT: Okay. All right. And they are saying
14 that that finite group now that is left, that as a claim
15 construction issue, they do require a stream. You say they
16 don't require a stream.

17 MR. STEIN: Well --

18 THE COURT: Is there any briefing on that yet before
19 me? I guess it is in your summary judgment, right?

20 MR. RANDALL: It is. But that is the sole issue to
21 eliminate from this case the iPod, iPhone, and iPad
22 completely.

23 THE COURT: All right.

24 MR. STEIN: I believe it was the subject of
25 briefing. Those claims do not recite a stream; whereas, the

1 other claims do. It is as simple as that.

2 THE COURT: All right. Okay. Direct me to your
3 summary judgment then that deals with those that they are
4 contending do not involve a stream and you contend they do.

5 MR. RANDALL: Okay. That, Your Honor, is addressed
6 at Docket No. 225, which is our motion for summary judgment.
7 And we addressed it at Page 3 of our reply brief. And I
8 actually have right here -- and I could read his statements,
9 their expert's statements, if I could -- it will be brief --
10 what he said in his expert report about whether those claims
11 require a stream.

12 THE COURT: Well --

13 MR. RANDALL: Or, Your Honor, if it would please the
14 Court, we could file by tomorrow or the next day a very short,
15 less than five-page brief, identifying why those claims that
16 they believe don't require a stream require a stream. They
17 could oppose it --

18 THE COURT: Can somebody list for me what claims we
19 are talking about?

20 MR. RANDALL: Yes, Your Honor. So, again, the
21 claims that they believe do not require a stream and the only
22 claims, are the '427 patent, Independent Claim 8 and Dependent
23 Claims 9 and 10, Independent Claim 16, and Dependent Claims 17
24 through 19, Independent Claim 32, and Dependent Claims 33
25 through 36. The only other claims in all of the patents that

1 they believe don't require a stream are in the '313 patent,
2 Independent Claim 9 and Dependent Claim 10. And we believe
3 that their expert has admitted that those claims -- we
4 believe, properly, those claims require a stream.

5 THE COURT: Okay. Do you agree with the numbers
6 that he just listed or do you even know?

7 MR. STEIN: I don't know.

8 THE COURT: All right. What I want y'all to do is
9 meet, confer, file by noon on Monday a joint order stipulating
10 to noninfringement of the ones that you agree involve a
11 stream, dismissing those with prejudice. I will enter that.

12 Also, by noon on Monday file a joint submission --
13 or let me just say plaintiff file a brief and defendant file a
14 brief dealing with the other claims; that there is
15 disagreement as to whether they involve a stream or not with
16 less than 12 pages per side. The Court will take a look at
17 your briefing and, that will be in the form of a summary
18 judgment and reply.

19 I want them both filed at the same time. Y'all have
20 already briefed this in other briefs. You are just kind of
21 shrinking it down so the Court can focus on that. And then
22 Apple is saying if the Court agrees with Apple, then that
23 takes the iPad, iPhone, and those other instrumentalities out
24 of the case.

25 MR. RANDALL: Yes, Your Honor.

1 THE COURT: Does the plaintiff agree with that?

2 MR. STEIN: Yes.

3 THE COURT: Huh?

4 MR. STEIN: Yes.

5 THE COURT: Okay. If that goes -- if that were to
6 go out of the case, what is left?

7 MR. STEIN: Apple's Mac computers -- there is a
8 number of other instrumentalities.

9 THE COURT: Okay. All right. And I will try to get
10 you a ruling on that.

11 Now, let's get back to -- we have been through the
12 Daubert. I will get you a ruling on the Daubert hopefully by
13 the early part of next week.

14 Anything else on the Daubert? I have got your
15 briefing on invalidity, scope, waiver, secondary
16 considerations. Any further argument?

17 MR. SOOBERT: No, Your Honor.

18 THE COURT: Okay. All right. Let's --

19 MR. SOOBERT: I'm sorry, not on Dr. Levy.

20 THE COURT: Go to Bratic and Ugone. Let's do those
21 together. Give it your best shot.

22 (This portion of the transcript was filed under Seal.

23 Motion - Docket No. 236.)

24 THE COURT: Okay. Thank you. All right. I will
25 take a look at Ugone's just on the papers.

1 Let's see where that leaves us. Are there any other
2 summary judgments that either side wants to argue --

3 MR. RANDALL: Yes, Your Honor.

4 THE COURT: -- versus submitting on the papers?
5 Okay.

6 MR. RANDALL: Your Honor, we would like to argue the
7 motion for summary judgment of noninfringement, which I
8 believe is Docket No. 225.

9 THE COURT: Okay.

10 MR. RANDALL: And we have selected, Your Honor,
11 certain features that form the core of their alleged
12 inventions and run through nearly all of the claims. The
13 first feature that Apple's products do not practice is the
14 required stream that we discussed earlier.

15 We certainly discussed that iPod, iPad, and iPhone
16 do not have the required stream; and they have now admitted
17 that after full discovery.

18 The Mac OSX operating systems also do not practice
19 the required stream. They simply don't have streams with a
20 past, present, and future portion, specifically, the future
21 portion. We simply don't have that. We don't organize our
22 documents that way. We did it the old-fashioned way, which is
23 by hierarchies and folders and everything else they were
24 trying to avoid.

25 In response to our motion on that issue, Your Honor,

1 they only point to really one issue. And they say, well, all
2 right, the system as a whole, the operating system as a whole
3 does not satisfy that stream limitation, period. And that is
4 that is uncontested I believe. I don't believe they have any
5 evidence that the overall system, the overall operating system
6 satisfies the stream limitation.

7 What they rely on in their opposition to our motion
8 for summary judgment is one application, this iCal or calendar
9 application. And they say that in this calendar application,
10 that calendar application exclusively, separate from the
11 entire system, separate from the other documents, that
12 application allows you to store due dates or -- to-do items or
13 due dates. That simply -- in that application those dates
14 don't transform the entire Mac operating system into a system
15 that satisfies the stream-based operating system that is
16 required by the claims.

17 One of the reasons why is because they, Mirror
18 Worlds, in the prosecution of this patent, distinguished their
19 claims from applications that only -- stored dates. So, for
20 instance, in the prosecution they distinguished -- and this is
21 in our papers, Your Honor -- they distinguished prior art
22 calendar systems on this very point. They claimed that the
23 prior art calendar systems only stored certain dates with
24 respect to -- in those applications, and that was patentably
25 distinct from their claims.

1 That is, at best, what they can argue with respect
2 to this one application. The other -- and that, by the way,
3 the stream limitation runs through all claims in this case.

4 The second basis for summary judgment, Your Honor --

5 THE COURT: That is what you are going to be
6 briefing for me on Monday, right, the stream application
7 whether it runs through all of the claims or not? You say it
8 does. They say it doesn't.

9 MR. RANDALL: Well, that is right. And that is --
10 that only relates to the products that we mentioned earlier,
11 the iPod, iPad, and iPhone. So you asked Counsel a good
12 question, which is what is left, right? If those products are
13 out of the case, what is -- completely, which we believe they
14 should be -- what is left is they also accuse the Apple
15 operating systems of infringement. And they claim, therefore,
16 our argument -- this argument on summary judgment of
17 noninfringement is that the operating systems, in addition to
18 those other products, that the operating systems of Apple do
19 not satisfy the stream limitation. They don't satisfy the
20 stream limitation because we simply don't organize documents
21 in streams pursuant to your construction with respect to
22 future date portions. We don't do that.

23 THE COURT: You are saying the only place that they
24 argue that it does is in the calendar application.

25 MR. RANDALL: That's right. We don't think that

1 that satisfies the limitations, but let's just say for a
2 moment that it does. They say it does. It doesn't satisfy
3 the obligation, but it doesn't transform the entire operating
4 system into an infringing system. They have already
5 distinguished in the prosecution history, calendar
6 applications that store future dates. They distinguish that
7 in the prosecution. So they can't come now and say Apple has
8 a huge operating system, albeit it doesn't have a stream. But
9 this application over here that stores to-do dates by itself,
10 application specific, somehow transforms the entire system
11 into a stream-based system that satisfies a claim. Can't do
12 it.

13 That would eliminate all of the products from this
14 case. And that is the only thing they come up with in terms
15 of their argument.

16 THE COURT: Okay. Response?

17 MR. STEIN: My response is that we disagree with
18 basically everything that Mr. Randall just said. Our argument
19 with respect to the stream is that there is something within
20 Apple's operating system called the Spotlight Store. And our
21 argument is that is a stream, and it also meets main stream
22 limitation of the claims. And the Spotlight Store also stores
23 information about these calendar entries that Mr. Randall just
24 mentioned. So it is in a centralized database. It is not
25 limited just to the iCal program.

1 And our expert explained that in his opinion, and I
2 think it is clearly -- to the extent they dispute that the
3 Spotlight Store is a stream is an issue of fact and should be
4 heard by the jury.

5 THE COURT: Okay. Thank you.

6 Any further response?

7 MR. RANDALL: On that issue, no. There are other
8 grounds for noninfringement, Your Honor.

9 THE COURT: Okay.

10 MR. RANDALL: I believe I have made my point.

11 THE COURT: Go ahead.

12 MR. RANDALL: The other issue is that the claims --
13 Apple's products don't infringe the claims of the '227 patent.
14 When I say Apple's products, I really believe it is the
15 operating systems because we don't use time value -- date and
16 time value that uniquely identifies each document. And that
17 runs through the claims -- all of the claims of the '227, Your
18 Honor.

19 So with respect to all of the claims of the '227 and
20 because we don't satisfy the timestamp requirement that Your
21 Honor construed as a date and time value that uniquely
22 identifies each document. Now, we talked about this earlier.
23 If you recall Counsel admitted and I think he has to admit,
24 that all conventional systems, they use other things to
25 identify documents.

1 And Your Honor pinpointed this issue, too. That is
2 true. That is true. Prior art systems use a host of
3 information to uniquely identify documents, conventional
4 systems do. But we are not talking about conventional
5 systems. We are talking about their patent, their invention,
6 their patent. They said they came up with a unique, brand new
7 operating system, and that unique, brand new operating system
8 has to organize all documents on the system in a time-ordered
9 sequence.

10 Now, they could have claimed in their patent a lot
11 of different ways how to time order these documents in a
12 sequence, and they did it based on a timestamp, and they said
13 it is a "timestamp to identify," which has been construed as a
14 date and time value that uniquely identifies each document.

15 We don't have a timestamp that uniquely identifies
16 each document. We simply don't. We use a document ID
17 number. We organize and store our documents by a unique
18 document ID number.

19 So what they are saying is, well, okay, but we can
20 find documents, unique documents on your system by using the
21 unique document ID number and the date and timestamp. Well,
22 you can find it using the unique ID number, period. I mean
23 that is like saying if you have a DNA lab and the DNA -- the
24 exact DNA uniquely identifies individuals, okay, that is what
25 you need to identify individuals. They go, okay, but we are

1 also using a birth date, you know, in this database. Well,
2 the birth date is not going to uniquely identify millions and
3 millions of individuals.

4 Just like a typical date in a metadata in
5 conventional operating systems is not going to uniquely
6 identify a document. It is the unique document ID in the
7 Apple system which uniquely identifies a document. So,
8 therefore, under their system under the claims they wrote, we
9 simply don't have that limitation.

10 They can't somehow transform it by saying, well, no,
11 we can find your documents by using the unique document ID,
12 and we throw in a date. Well, the date isn't doing the job.
13 It is not satisfying the limitation of uniquely identifying a
14 document.

15 THE COURT: Thank you.

16 I want to ask the plaintiff does -- do you agree
17 with Apple that their documents are organized based on their
18 unique document ID number?

19 MR. STEIN: No. I think Apple's Counsel is
20 injecting the document ID incorrectly into the discussion or
21 the explanation that our expert Dr. Levy gave of how their
22 system provides a time-ordered stream of documents. Dr.
23 Levy's report explains in detail how, in fact, Apple does
24 that, how, you know, documents are identified within the --
25 this time-ordered stream by date and time.

1 And then if the date and time for two documents
2 within the stream is the same, it uses something called a
3 CFUUID, not the document ID as the thing to order those -- you
4 know, to break the tie. So it is something specific that --
5 an additional piece of information that Apple specifically
6 uses in that situation to order the documents uniquely within
7 the stream and identify the documents within the stream.

8 With regard to document ID's in their system -- I
9 wouldn't say that they are -- there is all sorts of
10 identifiers within Apple's operating system, you know, they
11 have to identify for other purposes -- that doesn't mean they
12 don't infringe the patent and have the features that are
13 claimed in the patent. And Dr. Levy explains his position in
14 detail. To the extent they dispute it, again, I believe that
15 is a fact issue. That should be decided by the jury.

16 THE COURT: Thank you.

17 MR. RANDALL: Briefly, Your Honor. This limitation,
18 this timestamp runs through all claims of the '227 patent. In
19 an Apple system you can do a search for author. It is in the
20 metadata. You can do a search for author and you will come up
21 with -- I don't know. It depends on how many authored
22 documents. You can come up with a lot of documents. You can
23 run a search for date on documents, and you come up with a lot
24 of documents, too. It simply doesn't uniquely identify the
25 document to satisfy the claim element.

1 The next ground for summary judgment of
2 noninfringement, Your Honor, is that Apple's products do not
3 have the required receding, foreshortened stack. That appears
4 in -- it doesn't appear in the '227. It appears in the claims
5 of the '427, the '313, and '999. And that issue, Your Honor,
6 relates to whether or not the representations of these
7 documents are -- gets smaller in the stack.

8 And this is the visual representations of the
9 documents on the screen. Do those documents -- are those
10 documents displayed in a receding, foreshortened stack? So do
11 they recede back into the screen, and do they get shorter in
12 size as they move back in the screen?

13 We have demonstrated in our brief, Your Honor, we
14 provided the Court the source code representation showing that
15 our images of our Cover Flow -- and that is the image they are
16 referring to, are all on the same plane right across. So each
17 album cover, if you will, is on the same plane and is the same
18 size. So it is not foreshortened, and it doesn't go back in
19 the screen. It is not receding.

20 For them to somehow say -- their argument is, it has
21 got a perspective nature to it, and it has got some shading
22 and things like that. Well, that simply doesn't cut it for
23 patent litigation.

24 How is anyone to know what type of shading falls
25 within the scope of the claims? What type of shading falls

1 outside? What perspective is inside the claims? What
2 perspective is outside? We are going to get in a mess in the
3 discussion about this. But the clear language in the claim,
4 is it a receding, foreshortened stack? Does it recede back
5 into the screen? And does it -- are the document images
6 shorter as it goes back? And the answer is, no.

7 They also when they prove that, they also
8 distinguished in the prosecution history -- they distinguished
9 the Cowart reference and argued that Cowart's display
10 documents did not get smaller toward the bottom of the stack.
11 So they argued in Cowart the windows do not get smaller to the
12 bottom of the stack. This important distinction highlights a
13 key aspect of the streams. That is what we don't do. That is
14 why we don't infringe those claims that require the receding,
15 foreshortened stack in '427, '313 and '999 patents.

16 THE COURT: Thank you.

17 Response?

18 MR. STEIN: Mirror Worlds' expert Dr. Levy
19 identified -- I'm not looking right now, but I think it is
20 eight, maybe a dozen different aspects of Apple's Cover Flow
21 display that embodied the receding, foreshortened stack
22 limitation. To recede -- and, again, that is the limitation
23 that the parties had brought up during claim construction, and
24 we believe that it is -- that a jury is capable of
25 understanding that limitation. And the Court agreed.

1 Apple had proposed that it was limited to a
2 situation in which documents get -- that the documents get
3 smaller as they move further away from the user. And that
4 construction was not adopted by the Court because it is too
5 limited, and there are other aspects of what was meant by the
6 receding, foreshortened stack limitation that don't require
7 the individual items within the stack to get smaller.

8 The bottom line is that you look at the Cover Flow
9 display and it has striking similarities to the display that
10 is shown in Figure 1 of the patent. And, you know, even
11 picking it apart there are aspects of it where the items are,
12 in fact, getting smaller under Apple's construction. They
13 are -- the first item in the stack is -- it starts in
14 embodiment -- or it starts in figures in Apple's Cover Flow
15 display is larger than other ones. They have this effect
16 where if you look at the stack as a whole the shading on the
17 bottom fades out so it does look like the images are getting
18 smaller.

19 It is clearly -- the shading clearly gives an effect
20 of the items getting further away from the viewer, the user of
21 the computer. Apple's expert even acknowledged that there
22 were aspects of foreshortening in the Cover Flow display. He
23 discounted them as they didn't count according to him because
24 they don't support Apple's noninfringement position, but he
25 acknowledged that there are aspects of foreshortening there.

1 I think at the end of the day, once again, is we
2 have expert testimony -- or we have an expert who opined this
3 element is met. Apple disagrees, but, again, it is an issue
4 of fact for the jury.

5 THE COURT: Okay.

6 MR. RANDALL: Your Honor, very brief. The
7 limitation of receding, foreshortened stack, and their expert
8 ignores -- what he says, he says things around that issue.
9 But he doesn't directly and squarely address it. He says,
10 well, the covers -- the cover albums overlap each other. That
11 doesn't satisfy the claim element. He says, well, they appear
12 larger and closer to the viewer. They appear. That doesn't
13 satisfy it. He says, well, some are darker than others, it
14 creates this perspective effect.

15 But the point is it just -- in concrete -- whether
16 we satisfy the limitation or not, we show on Page 13 of our
17 brief exactly what the source code requires of the
18 presentation of the images. And it requires that our images
19 are on the same plane so they don't recede, and they are the
20 same size so they are not foreshortened and, therefore, we
21 don't infringe.

22 THE COURT: Okay. What else?

23 MR. RANDALL: The next and last issue, Your Honor --

24 THE COURT: Just a moment.

25 Yes?

1 MR. DIBERNARDO: If I may, just one comment on the
2 last point. This is pointed out in our briefs. But the view
3 shown at Page 13 of Apple's brief, which Counsel just referred
4 to, the one view, our expert Dr. Levy shows another view. And
5 it is Exhibit 5 to his declaration, which clearly shows images
6 of different sizes.

7 THE COURT: Okay. Thank you.

8 MR. RANDALL: Your Honor, the last issue that is the
9 subject of our summary judgment of noninfringement is that the
10 iPhone, iPods, and iPad do not display a cursor or pointer,
11 which is required by the claims. That is required by all of
12 the '427, '313 and '999 claims, I believe.

13 And with respect to that element, the claim element
14 requires the display of a cursor or pointer, and our devices,
15 which I just went through, the iPhone -- iPhone, iPod, and
16 iPad do not display a cursor or pointer. And their argument
17 is, well, it creates an interface. These are touch pads,
18 right. So at least a number of those are.

19 And so there is not a cursor, and there is not a
20 pointer that is displayed. Now their expert says a whole host
21 of things, but he doesn't say there is a cursor or pointer
22 displayed on those products. He says, well, some of it is in
23 interfacing with the touch screen and so forth. But we simply
24 don't display a cursor or pointer.

25 And what they try to claim is somehow by the

1 doctrine of equivalents you don't need to. And, again, we
2 have pointed out in our brief that that vitiates the claim
3 element if you say simply that the requirement of displaying a
4 cursor or pointer somehow the equivalent is not displaying a
5 cursor or pointer. That simply doesn't satisfy the case law,
6 Your Honor.

7 THE COURT: Okay.

8 MR. STEIN: Mirror Worlds's expert Dr. Levy
9 explained in detail with respect to the last point, how the
10 accused products infringe under the doctrine of equivalents.
11 Actually, I don't believe that Apple's expert even disputed
12 his argument, you know, to that effect. But in any event,
13 even if Apple's expert did, there is still an issue of fact
14 there for the jury as to whether or not there is infringement
15 under the doctrine of equivalents.

16 Apple is basically picking apart with one term --
17 one or two words in the claim that the claim term itself read
18 as a whole is met under -- certainly under the doctrine of
19 equivalents by the accused products. And we believe there is
20 an issue of fact precluding summary judgment here.

21 MR. RANDALL: Nothing further.

22 THE COURT: Okay. All right. Any other motions
23 either side wants to bring before the Court for pretrial?

24 MR. RANDALL: Your Honor --

25 THE COURT: All right.

1 MR. RANDALL: I'm sorry.

2 THE COURT: Go ahead.

3 MR. RANDALL: There is one. The no willful
4 infringement issue. If you would like to hear argument, I
5 will. If you are satisfied based on --

6 THE COURT: Very briefly. What is the docket
7 number? 226.

8 MR. RANDALL: Yes, Your Honor, sorry about that.

9 Your Honor, Apple is moving for summary judgment
10 that there is no willful infringement in this case, and it
11 shouldn't be presented to the jury under the Seagate
12 standard.

13 And I recognize the decision that you made in the
14 Microsoft case. Let me distinguish that matter. These are
15 not simply creative defenses that we have come up with. We
16 have absolutely clear defenses to infringement. And the
17 infringement defenses that we have, based on our products,
18 would be obvious to anyone looking at our products and looking
19 at the claims. These aren't creative in any way. I don't
20 take any credit for that because they are not creative.

21 It goes to the core of their patent. We simply
22 don't organize documents the way they claim, and they claim
23 that they have this brand new operating system that organizes
24 documents in a new way and displays them in a new way.

25 Well, number one, we do it the same way we have done

1 it all along. We don't satisfy the claim elements. We simply
2 don't. We don't organize the documents the way they claim
3 this new system operates. We also don't display the documents
4 in the same way that their claims say. And on top of that --
5 we haven't seen it -- but it is in our papers on summary
6 judgment of invalidity, there are a host of other references
7 that actually try to organize the documents in time-ordered
8 sequence, and there are other strikingly similar references in
9 prior art that have nearly identical presentation of
10 documents, unlike Apple's but nearly identical to the patent.

11 So simply looking at their allegedly revolutionary
12 way of organizing documents, we don't do it that way. And
13 that would be objectively clear to anyone. The same thing
14 with the presentation of documents, it is strikingly similar
15 what is out there in the prior art, Your Honor.

16 With respect to our inequitable conduct arguments,
17 you know, they clearly -- and you can read this from the
18 prosecution history, if you read the prosecution history of
19 the '227 the examiner came up and said, wait a minute, I have
20 looked at your application, I went to the website, I have
21 looked, I have seen information about Gelertner. He should be
22 an inventor. What is going on there? Then all of a sudden,
23 okay, we will do an amendment. So there is a host of
24 inequitable conduct issues, which we have moved for summary
25 judgment on, which I don't want to --

1 THE COURT: Okay. Anything further?

2 MR. RANDALL: But all of these are objectively
3 obvious from reading the file history and looking at our
4 products, looking at the patents.

5 THE COURT: Okay. Thank you.

6 Anything further?

7 MR. STEIN: Do you want me to respond?

8 THE COURT: That is up to you.

9 MR. STEIN: I can respond briefly. The i4i case
10 that Mr. Randall mentioned states that you assess objective
11 reasonableness at the time that the infringement occurred and
12 not that a company basically, you know, can see a patent,
13 ignore it, you know, violate it, and then years later -- or,
14 you know, sometime later, whenever it is, when they are faced
15 with an infringement suit, come along and come up with
16 something and use that as a defense against willful
17 infringement.

18 At the time they learned of the patent, they didn't
19 know about of any of these defenses. They never mentioned at
20 the time that they had meetings with Mirror Worlds
21 Technologies that they thought these patents were invalid.
22 Instead, all they did was express interest in the technology
23 and continue to follow the technology throughout the
24 development of the accused products.

25 THE COURT: Okay. All right. Thank you.

1 Any further motions? Y'all get together on your
2 motions in limine, and I will -- any that would have to be
3 resolved prior to jury selection, I will take up the morning
4 before jury selection.

5 What about Apple's motion to limit the number of
6 claims asserted? Are we going to get this thing boiled down
7 to something manageable?

8 MR. STEIN: We --

9 THE COURT: It just seems like the plaintiff is
10 really shot-gunning this thing at this point, to me. Are you
11 going to be able to get it focused down?

12 MR. STEIN: We have narrowed the claims down and
13 have given Apple a reduced set. On our side they have --

14 THE COURT: If you would, you might want to stand.

15 MR. STEIN: I'm sorry. On our side they have -- I
16 don't know how many dozens of prior art references to try --

17 THE COURT: Are you going to get your prior art
18 references down?

19 MR. RANDALL: Your Honor, if they would -- yes, the
20 answer is if they limit their claims, we limit our prior art
21 reference and we will know what we are shooting at.

22 THE COURT: Y'all meet and confer. Submit me a
23 stipulation as to what you have limited it to by noon on
24 Monday.

25 All right. Okay. Once I get those, I will enter an

1 order regarding trial times, and I would encourage both sides
2 to really work hard at limiting that. This case is just kind
3 of everywhere, it seems to me.

4 We will -- jury selection is on the 7th with trial
5 to begin on the 20th. But I had three cases, one of them
6 has -- they decided to just appeal, so it has gone away. The
7 other one will be ahead of y'all, the SHURflo case. So it is
8 a lower number. I am having a pretrial on it on next Tuesday.
9 I will have a better idea on it, so that is all I can tell you
10 regarding times right now.

11 MR. RANDALL: Thank you, Your Honor.

12 MR. CARROLL: Will they -- I am in that one, too, so
13 will the SHURflo case get the jury first --

14 THE COURT: That is my thinking, but I am not going
15 to commit myself to that until after I have their pretrial and
16 sort of see which case --

17 MR. CARROLL: I'm going to ask the question you know
18 is coming, can we get the list before the 7th?

19 THE COURT: No.

20 Okay. Anything further?

21 MR. RANDALL: No, Your Honor, thank you.

22 THE COURT: All right. Very well. We will be in
23 recess. Oh, I forgot to ask y'all.

24 Be seated.

25 Where are you on mediation with this case?

1 MR. RANDALL: Your Honor, we met with Mr. Patterson,
2 a while back we met with him. Then we met with him about
3 three weeks ago or so. And then he just contacted me last
4 night as well.

5 So we are in contact with him. He says he is going
6 to stay on top of it. We are miles apart on that issue. And
7 I think he is going to make all efforts he can make, but there
8 are parties still a long ways apart.

9 MR. CARROLL: I owe him a call after we get out of
10 court today, Your Honor.

11 THE COURT: I would encourage y'all to make your
12 best efforts to get this resolved.

13 MR. CARROLL: Thank you, Your Honor.

14 (Hearing concluded.)

15

16 C E R T I F I C A T I O N

17

18 I certify that the foregoing is a correct transcript from the
19 record of proceedings in the above-entitled matter.

20

21

22 /s/ Shea Sloan

23 SHEA SLOAN, CSR, RPR
24 OFFICIAL COURT REPORTER
STATE OF TEXAS NO. 3081

25