

**Issued by the  
United States District Court**

DISTRICT OF CONNECTICUT

MIRROR WORLDS, LLC,

Plaintiff

v.

APPLE INC.,

Defendant.

**SUBPOENA IN A CIVIL CASE**

CASE NUMBER:<sup>1</sup> 6:08 cv 88 LED

(Eastern District of Texas, Tyler Division)

TO: **Scott Fertig**  
15 Flr Bsmt Ridge Rd  
Branford, CT 06405

YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

Weil Gotshal & Manges, LLP  
767 Fifth Avenue  
New York, NY 10022

DATE AND TIME

March 3, 2009  
9:30 am

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **See Attachment A.**

PLACE

Weil Gotshal & Manges, LLP  
767 Fifth Avenue  
New York, NY 10022

DATE AND TIME

February 16, 2009  
5:00 p.m.

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure. 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

ATTORNEY FOR DEFENDANT APPLE INC.

DATE

January 20, 2009

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Stefani C. Smith, Weil, Gotshal & Manges LLP, 201 Redwood Shores Parkway, Redwood Shores, CA 94065;  
Telephone (650) 802-3000

(See Rule 45, Federal Rules of Civil Procedure Parts C & D on Reverse)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

**PROOF OF SERVICE**

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

DATE

\_\_\_\_\_  
SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

**(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.**

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except

that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

**(B) If a subpoena**

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) required disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

**(d) DUTIES IN RESPONDING TO SUBPOENA.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

## ATTACHMENT A

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Defendant and Counterclaimant Apple Inc. hereby requests that Scott Fertig produce for inspection and copying the documents and things requested.

### DEFINITIONS

1. “Yale” means Yale University, its predecessors, successors, divisions, departments, and other organizational and operating units of any of the foregoing, and all past and present directors, officers, employees, agents, affiliates, representatives (including consultants and attorneys), and others purporting to act on its behalf.

2. “You” or “Your” means you, Scott Fertig, or anyone working on your behalf.

3. “Mirror Worlds” means Mirror Worlds LLC, Mirror Worlds Technologies, Inc., Lifestreams, Inc., Abacus Ventures, Recognition Interface, Inc., Recognition Interface LLC, Plainfield Specialty Holdings I, Inc., their predecessors, successors, past and present parents, subsidiaries, divisions, departments, and other organizational and operating units of any of the foregoing, and all past and present directors, officers, employees, agents, affiliates, representatives (including consultants and attorneys), and others purporting to act on their behalf.

4. “Dr. Gelernter” means Dr. David Gelernter, Ph.D., or anyone working on his behalf.

5. “Dr. Freeman” means Dr. Eric Freeman, Ph.D., or anyone working on his behalf.

6. “Nicholas Carreiro” means Nicholas Carreiro, or anyone working on his behalf.

7. “Randy Prager” means Randy Prager, or anyone working on his behalf.

8. “Peter Sparago” means Peter Sparago, or anyone working on his behalf.

9. “Christopher Hatchell” means Christopher Hatchell, or anyone working on his behalf.

10. “Nancy Pellegrino” means Nancy Pellegrino, or anyone working on her behalf.

11. The “Lifestreams Project” means all research, writing or work relating to the Yale Lifestreams Project (including without limitation as described at <http://cs-www.cs.yale.edu/homes/freeman/lifestreams.html>), or to research, writing or work relating to lifestreams by anyone associated with Yale or anyone affiliated with Yale, including without limitation, You, Dr. Gelernter, Dr. Freeman, Nicholas Carreiro, Randy Prager or Peter Sparago.

12. The “Patents-in-Suit” means all patents asserted or to be asserted in the future by Mirror Worlds in this action, including, without limitation, U.S. Patent No. 6,006,227 (“the ’227 patent”), U.S. Patent No. 6,638,313 (“the ’313 patent”), U.S. Patent No. 6,725,427 (“the ’427 patent”), and U.S. Patent No. 6,768,999 (“the ’999 patent”), individually and collectively.

13. “Related Patents” means all patents and patent applications relating to any of the Patents-in-Suit, including any patents or patent applications (including all published and unpublished pending and abandoned applications) from or through which any of the Patents-in-Suit claim priority, any patents or patent applications (including all published and unpublished pending and abandoned applications) that claim priority from or through any of the Patents-in-Suit, and any foreign counterpart patents or patent applications (including all published and unpublished pending and abandoned applications) of any of the foregoing.

14. “Document” shall have the meaning set forth in Federal Rule of Civil Procedure 34, and shall include without limitation, information stored in electronic, magnetic, or optical media, drafts, all translations of documents, and all materials relating to communications.

15. “Communication” means any form of oral or written interchange or attempted interchange, whether in person, by telephone, by facsimile, by telex, by electronic mail, or by any other medium.

16. “Concerning” means pertaining to, referring to, and/or relating to the matter specified.

### INSTRUCTIONS

1. This request seeks production of all documents and things described in the request which are in your possession, custody or control, whether prepared by you or anyone else, and in any location they may exist.

2. If you withhold any document or any portion thereof on a claim of privilege, provide a privilege log pursuant to Fed. R. Civ. P. 26.

3. If you contend that a portion of a document contains information which is immune from discovery, then produce the document with the immune portion redacted therefrom and describe the redacted portion in a privilege log pursuant to Fed. R. Civ. P. 26 (b)(5).

4. The words “and” and “or” shall be used conjunctively or disjunctively, whichever makes the request more inclusive.

5. The words “any,” “all,” or “each” shall be construed as “any, all, and each” inclusively.

6. The singular form of a word shall include the plural and vice versa.

## **REQUESTS FOR DOCUMENTS AND THINGS**

### **REQUEST NO. 1:**

All documents and things concerning You, Yale's, Dr. Gelernter's, Dr. Freeman's, Nicholas Carreiro's, Randy Prager's, Peter Sparago's, or anyone else's work, research, development or design relating to the Lifestreams Project.

### **REQUEST NO. 2:**

All documents and things concerning communications between or among You, Yale, Dr. Gelernter, Dr. Freeman, Nicholas Carreiro, Randy Prager, Peter Sparago, or anyone else concerning the Lifestreams Project.

### **REQUEST NO. 3:**

All documents and things relating to any product or system incorporating or embodying any ideas or concepts developed as part of the Lifestreams Project, including *inter alia*, documents and things concerning the research, development, design, engineering, manufacture, invention, patenting, testing, use, demonstration, purchase, sale, or offer for sale of ideas or concepts relating to the Lifestreams Project or any product, system, or software conceived or developed as part of the Lifestreams Project

### **REQUEST NO. 4:**

All documents and things concerning any publications, scientific articles, technical reports, presentations, demonstrations, or seminars, published, held, or given before June 28, 1996, by You, Yale, Dr. Gelernter, Dr. Freeman, Nicholas Carreiro, Randy Prager, Peter Sparago, or anyone else concerning the Lifestreams Project or any ideas, concepts, product, system or software conceived or developed as part of the Lifestreams Project.

**REQUEST NO. 5:**

All documents and things concerning meetings, conferences, discussion groups, and other events attended by, hosted by, or organized before June 28, 1996 by You, Yale, Dr. Gelernter, Dr. Freeman, Nicholas Carreiro, Randy Prager, Peter Sparago, or anyone else concerning the Lifestreams Project or any ideas, concepts, products, systems or software conceived or developed as part of the Lifestreams Project.

**REQUEST NO. 6:**

All documents and things concerning the webpage available at <http://cs-www.cs.yale.edu/homes/freeman/lifestreams.html>.

**REQUEST NO. 7:**

All documents and things concerning technical reports concerning the Lifestreams Project, including *inter alia*, Yale University Department of Computer Science Technical Report TR1070.

**REQUEST NO. 8:**

All documents and things concerning the distribution of any technical reports concerning the Lifestreams Project.

**REQUEST NO. 9:**

All documents and things relating to any actual or potential collaboration, partnership or joint venture between You, Yale, Dr. Gelernter, Dr. Freeman, Nicholas Carreiro, Randy Prager, Peter Sparago, or Mirror Worlds relating to any ideas, concepts, products, systems or software conceived or developed as part of the Lifestreams project.

**REQUEST NO. 10:**

All documents and things concerning any publications, articles, reports, meetings, conferences, discussion groups, memoranda, e-mail, seminars, communications, demonstrations, presentations, or other events where technical reports concerning the Lifestreams Project are disclosed or mentioned.

**REQUEST NO. 11:**

All documents and things concerning any patent applications, draft patent applications or issued patents relating to work by You, Yale, Dr. Gelernter, Dr. Freeman, Nicholas Carreiro, Randy Prager, or Peter Sparago relating to the Lifestreams Project.

**REQUEST NO. 12:**

All documents and things concerning the decision whether and when to seek patent protection for work relating to the Lifestreams Project, including without limitation, documents showing who participated in making the decision whether and when to seek patent protection for work relating to the Lifestreams Project and why You or Yale did not initially participate in seeking patent protection for work relating to the Lifestreams Project.

**REQUEST NO. 13:**

All documents and things relating to decisions concerning who should be named as an inventor on the Patents-in-Suit, Related Patents or draft patent applications relating to the Lifestreams Project, including *inter alia*, documents relating to why you are not named as an inventor on the Patents-in-suit, Related Patents or draft patent applications to relating to the Lifestreams Project.

**REQUEST NO. 14:**

All documents and things concerning the Patents-in-Suit or Related Patents.



**REQUEST NO. 15:**

All documents and things relating to the assignment of rights to the Patents-in-Suit or Related Patents.

**REQUEST NO. 16:**

All documents and things relating to any sale or transfer of any right or interest in the Patents-in-Suit or Related Patents.

**REQUEST NO. 17:**

All documents and things relating to actual or potential licenses to the Patents-in-Suit or Related Patents, including without limitations, any offers to license the Patents-in-Suit or Related Patents.

**REQUEST NO. 18:**

All documents and things relating to any security interest in or lien against the Patents-in-Suit.

**REQUEST NO. 19:**

Documents sufficient to show whether You have or have had any past, present or future rights or interest in the Patents-in-Suit or Related Patents, the time period during which you had or have such rights or interest, from whom you obtained such rights or interest and, if applicable, to whom you assigned such rights or interest.

**REQUEST NO. 20:**

All documents and things relating to communications between or among Abacus, Lifestreams, Mirror Worlds LLC, Mirror Worlds Technologies, Plainfield, and Recognition Interface relating to the Patents-in-Suit or Related Patents.

**REQUEST NO. 21:**

All documents and things relating to communications between or among Abacus, Lifestreams, Mirror Worlds LLC, Mirror Worlds Technologies, Plainfield, and Recognition Interface, on the one hand, and any third party, on the other hand, relating to the Patents-in-Suit or Related Patents.

**REQUEST NO. 22:**

All documents and things relating to the value of the Patents-in-Suit or Related Patents.

**REQUEST NO. 23:**

All documents and things relating to any valuation, due diligence, analysis, assessment, or investigation by Abacus, Lifestreams, Mirror Worlds LLC, Mirror Worlds Technologies, Plainfield, and Recognition Interface or any other person or entity as to the value of any of the Patents-in-Suit or Related Patents, including without limitation, any due diligence, valuation or assessment in conjunction with any acquisition or transfer of rights to the Patents-in-Suit or in conjunction with the filing of documents with the Securities and Exchange Commission or Internal Revenue Service.

**REQUEST NO. 24:**

All documents and things relating to any formal or informal investigation, search, analysis, opinion, report, study, or observation regarding the scope, validity, infringement, enforceability, patentability, or inventorship of any of the Patents-in-Suit or any Related Patents.

**REQUEST NO. 25:**

All documents and things relating to the subject matter disclosed or claimed in any of the Patents-in-Suit or any Related Patents, including, without limitation, patents, patent

applications, articles, abstracts, publications, books, manuscripts, papers, posters, presentations, speeches, technical disclosures, or technical publications.

**REQUEST NO. 26:**

All documents and things evidencing or otherwise relating to the conception and reduction to practice of the subject matter of any claim of any of the Patents-in-Suit, including without limitation any act of diligence leading to the reduction to practice, including but not limited to, any engineering or laboratory notebooks, log books, record books, memoranda, design reviews, progress reports, technical reports, drawings, schematics, specifications, diagrams, computer records, diaries, calendars, test results, invention disclosures, patent prosecution records, or any other documents or things which corroborate, or otherwise relate to, the conception.

**REQUEST NO. 27:**

All documents and things concerning Your, Yale's, Dr. Gelernter's, Dr. Freeman's, Nicholas Carreiro's, Randy Prager's, or Peter Sparago's past or present relationship with Mirror Worlds, including without limitation, any compensation received from Mirror Worlds.

**REQUEST NO. 28:**

All documents and things relating to any past, present or future relationship between or among Abacus, Lifestreams, Mirror Worlds LLC, Mirror Worlds Technologies, Plainfield and Recognition Interface, including without limitation, documents and things relating to corporate or financial relationships between or among any of the above entities.

**REQUEST NO. 29:**

All documents and things concerning communications between You and Mirror Worlds LLC or its attorneys.

**REQUEST NO. 30:**

All documents and things concerning Mirror Worlds or Mirror Worlds' products.

**REQUEST NO. 31:**

All documents and things relating to any Scopeware product or any product or system incorporating or embodying the claimed invention of any claim of any of the Patents-in-Suit or any Related Patent.

**REQUEST NO. 32:**

All documents and things relating to any marking of any product or related materials with the patent number of any of the Patents-in-Suit, including, but not limited to, all documents and things relating to any efforts by or on behalf of Mirror Worlds Technologies to satisfy the marking requirements of 35 U.S.C. § 287.

**REQUEST NO. 33:**

All documents and things relating to any conference, seminar, exhibition, convention, or trade show at which any product, device, apparatus, method, process, or system that allegedly embodies, falls within the scope of, or is practiced in accordance with the subject matter of any claim of any of the Patents-in-Suit or any Scopeware product are or were discussed, referred to, advertised, displayed, demonstrated, or shown, including, without limitation, advertisements, brochures, articles, pamphlets, price lists, product specifications, or other promotional, marketing, or presentation materials.

**REQUEST NO. 34:**

All documents and things relating to the research, design, development, manufacture, assembly, testing, or operation, by You or any other person or entity, of any device, prototype, product or system that allegedly embodies, falls within the scope of, or is practiced in accordance with the subject matter of any claim of any of the Patents-in-Suit or any Scopeware product, including, without limitation, any engineering or laboratory notebooks, log books, record books, memoranda, design reviews, progress reports, technical reports, drawings, schematics, specifications, diagrams, computer records, diaries, calendars, or test results.

**REQUEST NO. 35:**

All documents and things relating to any analysis, consideration, or evaluation of whether any Apple products, devices, apparatuses, methods, processes, or systems infringe any claim of any of the Patents-in-Suit, including, without limitation, all reports, opinions, letters, investigations, studies, tests, evaluations, or analyses relating to any Apple product, device, apparatus, method, process, or system conducted by or prepared by You, Mirror Worlds, counsel for You or Mirror Worlds, or otherwise on Your or Mirror Worlds' behalf.

**REQUEST NO. 36:**

All documents and things relating to the research, design, development, manufacture, assembly, testing, or operation, by You or any other person or entity, of any Scopeware product, including, without limitation, any engineering or laboratory notebooks, log books, record books, memoranda, design reviews, progress reports, technical reports, drawings, schematics, specifications, diagrams, computer records, diaries, calendars, or test results.

**REQUEST NO. 37:**

All documents and things relating to any third party's research, design, development, manufacture, testing, operation, sale, marketing, performance, or installation of any product, device, apparatus, method, process, or system that embodies, falls within the scope of, or is practiced in accordance with any subject matter disclosed or claimed in any of the Patents-in-Suit.

**REQUEST NO. 38:**

All documents identifying individuals who assisted or participated in the design, development, manufacture and/or testing of any prototype or commercial product that embodies, falls within the scope of or is practiced in accordance with one or more claimed inventions of any of the Patents-in-Suit and/or of any Scopeware product, including, without limitation, all documents relating to the actual consultancy, participation or assistance.

**REQUEST NO. 39:**

All prior art relating to the claimed inventions of any claims of any of the Patents-in-Suit or Related Patents.

**REQUEST NO. 40:**

All documents and things relating to any evaluation, analysis, or review of any prior art relating to any of the Patents-in-Suit or Related Patents.

**REQUEST NO. 41:**

All documents or things You have considered, or any person or entity has asserted or identified, as potentially embodying prior art, or relating to prior art, to the subject matter of any claim of any of the Patents-in-Suit or any Related Patent.

**REQUEST NO. 42:**

All documents and things relating to technical or scientific writings, whether published or not, that were authored by, attributed to, or given in whole or in part by any of the named inventors of any of the Patents-in-Suit or by You, relating to, in whole or in part, the subject matter of any of the Patents-in-Suit, including without limitation, patents, patent applications, articles, abstracts, publications, manuscripts, papers, posters, presentations, speeches, technical disclosures, or Yale University internal technical publications or reports.

**REQUEST NO. 43:**

All documents and things relating to any information, including without limitation, patents, publications, prior knowledge, public uses, sales, or offers for sale, that may constitute, contain, disclose, refer to, relate to, or embody any prior art to the subject matter of any claim of any of the Patents-in-Suit.

**REQUEST NO. 44:**

All documents and things evidencing or otherwise relating to the first prototype, first experimental use, first demonstration, first offer for sale, first manufacture, first use, first sale, first public use, first shipment, first announcement, and/or first public disclosure of each embodiment of any invention claimed in any of the Patents-in-Suit and/or of any Scopeware product in the United States.

**REQUEST NO. 45:**

All documents and things relating to any disclosure or publication of the subject matter of any claim of any of the Patents-in-Suit and/or of any Scopeware product to any person or entity other than You, including, without limitation, any pre-filing sales, offers for sale, public

uses, demonstrations, announcements, advertisements, correspondence with potential customers, or publications.

**REQUEST NO. 46:**

All documents and things relating to market studies, reports or analyses relating to product design, competition, consumers surveys, outside consultant surveys, advertising campaigns, promotional and sales training material, market segments, market share, or market revenue (actual or predicted), relating to the subject matter of any claim of any of the Patents-in-Suit or Related Patents.