

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

MEMORYWEB, LLC,
Patent Owner.

Case No. IPR2022-00033
U.S. Patent No. 10,423,658

DECLARATION OF MATTHEW BIRDSELL

I. Introduction

I, Matthew Birdsell, hereby declare as follows:

1. My name is Matthew Birdsell. I have worked for Apple Inc. (“Apple”) since 2002 as either an independent contractor or as a full-time employee. I have been a full-time employee since June 2010. I have been asked to explain certain factual information known to me regarding the publication and dissemination of certain documentation related to Apple’s Aperture 3 product, specifically the Aperture 3 User Manual. I have not been asked to provide, and do not intend to provide, any description of either the technical content of the Aperture 3 User Manual or the operation of the Aperture 3 product.

2. I am currently a Content Manager at Apple. During the 2010 timeframe, I worked for the user publications group which dealt with Apple publications regarding Apple’s professional applications. I personally worked on Apple documentation and publications regarding each version of Aperture throughout its lifespan, including Aperture 3. As a result, I have personal knowledge of the following information as it relates to Apple’s publication and dissemination of the Aperture 3 User Manual.

II. The Aperture 3 Product and the Aperture 3 User Manual

3. My professional responsibilities between January and June of 2010 included involvement with the team responsible for producing and

distributing Aperture 3 documentation, including the Aperture 3 User Manual. I have personal knowledge of how the Aperture 3 User Manual was prepared and distributed by Apple during this time frame.

4. I am personally familiar with the Aperture 3 User Manual that was distributed with the Aperture 3 product. I have reviewed Exhibit 1005, and can confirm it is an accurate copy of the Aperture 3 User Manual that was distributed with the initial version of the Aperture 3 product (*i.e.*, version 3.0).

A. Public Sale of Aperture 3

5. Apple began selling Aperture 3 to members of the public in February of 2010. *E.g.*, EX1048 (“February 9, 2010—Apple® today introduced Aperture™ 3, the next major release of its powerful photo editing and management software, with over 200 new features including Faces, Places and Brushes.”); EX1021, 2 (a February 17, 2010 Archive.org capture of www.apple.com/aperture, showing a “Buy Now” link for Aperture 3). Apple advertised the release of Aperture 3 on its website and it was widely covered in the technical and software press. *E.g.*, 1021, 1 (a February 19, 2010 Archive.org capture of www.apple.com, showing an advertisement “Introducing Aperture 3”). Starting in early February 2010, Apple sold the Aperture 3 product in its retail stores, on the Apple web store, and distributed it in retail channels in the United States. During 2010, the Mac

App Store did not yet exist so the only way to obtain a copy of Aperture 3 product was to buy a retail box containing an Aperture 3 installer DVD.

6. There were several branded versions of the Aperture 3 retail product including the standard product, an “Academic” edition sold at a discounted price, and a “bundled” version that was not for retail sale. The three branded versions each contained the same Aperture 3 installer DVD, installed the same Aperture 3 application and contained the same documentation.

7. Aperture 3 was very popular and was purchased by a large number of users. Based on my experience with the utilization levels of the help resources on the Apple.com website at the time, I believe more than 100,000 customers had purchased and were using the Aperture 3 product between February and June of 2010.

B. The Aperture 3 User Manual

8. In connection with the release of the Aperture 3 product, Apple produced and publicly distributed a comprehensive user manual describing the features and operation of the Aperture 3 product, which was called the Aperture 3 User Manual. Apple distributed the Aperture 3 User Manual on the physical media in the Aperture 3 retail product and through the Apple.com website.

9. The Aperture 3 User Manual existed in at least two forms: an interlinked set of HTML files with their associated resources (*e.g.*, images),

and a PDF format file. Prior to the release of the Aperture 3 product, an XML-based document authoring system was used to produce the Aperture 3 User Manual in its HTML and PDF formats. For simplicity, I will refer to the set of interlinked HTML files and their associated resources as the Aperture 3 User Manual HTML file set in this declaration.

10. Based on my recollections of the Apple publishing process used in the February-March 2010 time frame, the Aperture 3 User Manual HTML file set was initially pushed to Apple staging servers. Then, once final approval for the Aperture 3 product release was provided, the Aperture 3 User Manual HTML file set was moved from the staging servers to publicly accessible Apple servers (*i.e.*, documentation.apple.com), where it could be retrieved and viewed by any member of the public.

11. Apple personnel would verify and confirm that the Aperture 3 documentation (including the HTML version of the Aperture 3 User Manual) was accessible to users after it had been posted on the public-facing Apple website. I do not recall any report of any problems with the public accessibility of the Aperture 3 documentation on www.apple.com, including the Aperture 3 User Manual. I thus believe that the Aperture 3 User Manual was available to the public via www.apple.com starting on the launch date of the Aperture 3 product in February 2010 and continuing past June 2010.

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