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Filing date: **03/10/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91188903
Party	Plaintiff Apple Inc.
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Submission	Other Motions/Papers
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Signature	/Alicia Grahm Jones/
Date	03/10/2010
Attachments	10-3-10-Apple-v-Fabasoftware- A. Jones Declaration in Support of Motion to Compel Responses.pdf (44 pages)(1345022 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/460,315
For the mark: APPLSTRUDL
Filed: April 29, 2008
Published: December 16, 2008

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APPLE INC.,	:	
	:	
Opposer,	:	
	:	
	:	Opposition No. 91188903
v.	:	
	:	
FABASOFT AG,	:	
	:	
Applicant.	:	
-----X		

**DECLARATION OF ALICIA GRAHN JONES IN SUPPORT OF OPPOSER’S
MOTION AND BRIEF IN SUPPORT FOR AN ORDER DEEMING
ITS REQUESTS FOR ADMISSION ADMITTED, TO COMPEL RESPONSES
TO ITS INTERROGATORIES AND REQUESTS FOR PRODUCTION, AND
TO COMPEL PRODUCTION OF DOCUMENTS**

I, Alicia Grahn Jones, declare as follows:

1. I am an attorney at the law firm of Kilpatrick Stockton LLP, and am one of the attorneys representing Apple Inc. (“Opposer”) in this action against Applicant Fabasoft AG (“Applicant”). I am over the age of twenty-one, I am competent to make this Declaration, and the facts set forth in this Declaration are based on my personal knowledge.

2. Opposer commenced this proceeding by filing a notice of opposition against Applicant’s application to register the mark APPLSTRUDL (Serial No. 77/460,315) on February 13, 2009. *See* Docket No. 1. Applicant’s Initial Disclosures were due on May 29, 2009. *See* Docket No. 2. Applicant failed to serve Initial Disclosures before the May 29, 2009 deadline. On June 30, 2009, Opposer emailed counsel for Applicant asking when Opposer

would receive Applicant's Initial Disclosures. *See Ex. A.* On June 30, 2009, counsel for Applicant advised that he had not received any information from Applicant regarding its Initial Disclosures.

3. On June 25, 2009, Opposer served written discovery, including document requests, requests for admission, and interrogatories, on counsel for Applicant. *See Ex. B.* Although Applicant's responses to Opposer's discovery requests were due on July 31, 2009, Applicant has yet to serve any response to Opposer's discovery requests or produced any responsive documents.

4. On August 7, 2009, Opposer informed counsel for Applicant that discovery responses were past due and advised that if Opposer did not receive Applicant's responses by August 12, 2009, Applicant would have no choice but to file a motion to compel. *See Ex. C.* Counsel for Applicant failed to respond to Opposer's August 7, 2009 correspondence.

5. On September 21, 2009, November 2, 2009, and December 28, 2009, the parties filed joint motions to suspend the proceedings pending settlement discussions. *See Docket Nos. 5,7,9.* The settlement negotiations were unsuccessful and the proceedings resumed on February 26, 2010. *See Docket No. 10.* Following the resumption of the proceedings, on February 26, 2010 and March 3, 2010, Opposer again informed counsel for Applicant that discovery responses were past due and advised that if Opposer did not receive Applicant's responses by March 3, 2010, Opposer would seek relief from the Board. *See Ex. D.* Despite Opposer's numerous requests, Opposer still has not received a single document or a single discovery response from Applicant.

6. This is not the only proceedings Opposer has brought against Applicant. Applicant defaulted in an opposition filed by Opposer (Opp. No. 91189904) against Applicant's

application to register the mark APPLSTRUDL (Serial No. 77/596,114). Moreover, on February 25, 2009, the Hamburg Regional Court issued an injunction against Applicant concerning its use of the APPL.STRUDL mark.

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

Dated: March 10, 2010

/s/ Alicia Grahn Jones
Alicia Grahn Jones

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/460,315
For the mark: APPLSTRUDL
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Opposer,	:
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	:
v.	:
	:
FABASOFT AG,	:
	:
Applicant.	:
-----X	

Opposition No. 91188903

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing DECLARATION OF ALICIA GRAHN JONES IN SUPPORT OF OPPOSER'S MOTION AND BRIEF IN SUPPORT FOR AN ORDER DEEMING ITS REQUESTS FOR ADMISSION ADMITTED, TO COMPEL RESPONSES TO ITS INTERROGATORIES AND REQUESTS FOR PRODUCTION, AND TO COMPEL PRODUCTION OF DOCUMENTS has been served on counsel for Fabasoft AG by depositing said copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Stewart J. Bellus
Collard & Roe, P.C.
1077 Northern Blvd
Roslyn, NY 11576-1614

This the 10th day of March, 2010.

/s/ Alicia Grahn Jones

Alicia Grahn Jones
Attorney for Opposer Apple Inc.

EXHIBIT A

From: Jones, Alicia
Sent: Tuesday, June 30, 2009 1:38 PM
To: 'sbellus@collardroe.com'
Cc: Graham, Michelle; Petersen, Joe; Coates, Stephen
Subject: FW: Apple Inc v Fabasoft – Challenge to US trademark application for APPLSTRUDL SN
77/460,315 (KS Ref.: 55671 / 366783)

Dear Stewart,

Further to my voicemail, Fabasoft's Initial Disclosures in Opposition No. 91188903 were due on May 29, 2009. Please advise when we can expect to receive the Initial Disclosures.

In addition, I understand that following the discovery conference with Steve Coates you intended to confer with your client regarding the developments in Europe. Please let us know if those developments will have any impact on our opposition proceeding.

You can reach me by phone at 404-815-6164.

Thanks,

Alicia

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/460,315
For the mark: APPLSTRUDL
Filed: April 29, 2008
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APPLE INC.,	X	
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Opposer,	:	
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v.	:	Opposition No. 91188903
	:	
FABASOFT AG,	:	
	:	
Applicant.	:	
	X	

OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to 37 C.F.R. § 2.116 and 2.120 and Rules 26 and 33 of the Federal Rules of Civil Procedure, Opposer Apple Inc. propounds the following interrogatories to be answered by Applicant Fabasoft AG under oath within thirty (30) days of service hereof.

DEFINITIONS

- A. "Opposer" refers to Apple Inc. and its employees, representatives or agents.
- B. "Applicant" refers to Fabasoft AG, each of its predecessors, successors, parents, divisions, affiliates, or wholly-owned or partially-owned subsidiaries, and each of their officers, directors, employees, representatives or agents.
- C. "You" or "Your" shall refer to Applicant as defined in paragraph B, above.

D. The singular and the plural shall be mutually interchangeable, and usage of words either in the singular or plural in the following Interrogatories shall not be construed to limit any Interrogatory.

E. "Person(s)" means any individual, firm, partnership, corporation, proprietorship, association, governmental body, or any other organization or entity.

F. "Identify" or "specify" when used in reference to a Person who is an individual, means to state his or her full name, present or last known address and phone number, and present or last known position or business affiliation.

G. "Identify" or "specify" when used in reference to a Person who is a firm, partnership, corporation, proprietorship, association, or other organization or entity, means to state its full name, the legal form of such entity or organization, its present or last known address and telephone number, and the identity of its chief executive officer, partners, or Persons in equivalent positions.

H. "Applicant's Mark" means the mark APPLSTRUDL that is the subject of Application Serial No. 77/460,315.

I. "Opposer's APPLE Marks" and "Opposer's Marks" shall refer individually and collectively to Opposer's family of APPLE-based word marks and its Apple logo including but not limited to the following marks:

TRADEMARK	REG. NO.	FILING DATE/ REG. DATE	GOODS/SERVICES
APPLE	1,078,312	March 25, 1977 Nov. 29, 1977	Class 9: Computers and computer programs recorded on paper and tape.

TRADEMARK	REG. NO.	FILING DATE/ REG. DATE	GOODS/SERVICES
	1,114,431	March 20, 1978 March 6, 1979	Class 9: Computers and computer programs recorded on paper and tape.
	2,715,578	July 1, 2002 May 13, 2003	Class 9: Computers hardware; computer hardware, namely, server, desktop, laptop, notebook and subnotebook computers; hand held and mobile computers; computer monitors; personal digital assistants; portable digital audio players; electronic organizers; computer keyboards, cables, modems; audio speakers; computer video control devices, namely, computer mice, a full line of computer software for business, home, education, and developer use; computer programs for personal information management; database management software; electronic mail and messaging software; database synchronization software; computer programs for accessing, browsing and searching online databases; operating system software; application development tool programs; blank computer storage media; fonts, typefaces, type designs and symbols recorded on magnetic media; computer software for use in providing multiple user access to a global computer information network for searching, retrieving, transferring, manipulating and disseminating a wide range of information; computer software for use as a programming interface; computer software for use in network server sharing; local and wide area networking software; computer software for matching, correction, and reproduction of color; computer software for use in digital video and audio editing; computer software for use in enhancing text and graphics; computer software for use in font justification and font quality; computer software for use to navigate and search a global computer information network, as well as to

TRADEMARK	REG. NO.	FILING DATE/ REG. DATE	GOODS/SERVICES
			<p>organize and summarize the information retrieved; computer software for use in word processing and database management. word processing software incorporating text, spreadsheets, still and moving images, sounds and clip art; computer software for use in authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organizing audio, video, still images and other digital data; computer software for analyzing and troubleshooting other computer software; children's educational software; computer game software; Computer graphics software; Web site development software; computer program which provides remote viewing, remote control, communications and software distribution within personal computer systems and across computer network; computer programs for file maintenance and data recovery; computer peripherals; instructional manuals packaged in association with the above</p>
	2,753,069	<p>July 23, 2002 August 19, 2003</p>	<p>Class 42: Application service provider (ASP), namely, hosting computer software applications of others; computer services, namely, displaying the web sites and images of others on a computer server; computer diagnostic services; installation of computer software; updating of computer software; maintenance of computer software; computer hardware development; integration of computer systems and networks; monitoring the computer systems of others for technical purposes and providing back-up computer programs and facilities; computer consultation, design, and testing services; consulting services in the field of design, selection, implementation and use of computer hardware and software systems for others; computer data recovery; computer programming for others; research and development of computer hardware and software;</p>

TRADEMARK	REG. NO.	FILING DATE/ REG. DATE	GOODS/SERVICES
			<p>website design, creation and hosting services; computer services, namely, designing and implementing web sites for others; computer services, namely, providing search engines for obtaining data on a global computer network; providing use of on-line non-downloadable software for communications via local or global communications networks, including the Internet, intranets, and extranets; computer consultation, namely, analyzing data to detect, eradicate, and prevent the occurrence of computer viruses; computer consultation, namely, services relating to the protection of computer hardware, computer software, computer networks and computer systems against computer viruses, attacks, or failures; computer consultation, namely, services for optimizing the performance and functionality of computer software and communications networks; technical support services, namely, troubleshooting of computers, computer software, telecommunications, and the Internet systems; leasing of computers, computer peripherals and computer software; leasing computer facilities. providing information in a wide variety of fields over computer networks and global communication networks; computer services, namely, creating indexes of information, web sites and other information sources available on computer networks; providing information concerning a wide range of text, electronic documents, databases, graphics and audiovisual information.</p>
<p>APPLE</p>	<p>2,808,567</p>	<p>October 2, 2002 January 27, 2004</p>	<p>Class 42: Computer consultation, design, testing, research and advisory services; research and development of computer hardware and software; maintenance and repair of computer software applications; updating of computer software; computer programming services; providing information concerning computers and computer software over computer networks and global communication</p>

TRADEMARK	REG. NO.	FILING DATE/ REG. DATE	GOODS/SERVICES
			networks; computer services, namely, hosting web sites and providing web site operation and management services to others; computer services, namely, providing search engines for obtaining data on computer networks and global communication networks; leasing of computers, computer peripherals and computer software.
	3,298,028	August 2, 2006 September 25, 2007	<p>Class 35: Arranging and conducting trade shows, and trade show expositions and exhibitions in the fields of computers, computer software, online services, information technology, and consumer electronics</p> <p>Class 41: Education and training services, namely, conducting classes, workshops, conferences and seminars in the field of computers, computer software, online services, information technology, internet website design, video products and consumer electronics; arranging of exhibitions, seminars and conferences; arranging professional workshop and training courses; computer education training services; training in the use and operation of computers and computer software; providing a website for the uploading, sharing, viewing and posting of photographs, digital images, movies, videos, online journals, namely web blogs in general interest fields, and other related multimedia entertainment materials over a global computer network; providing fitness and exercise facilities; Physical fitness consultation and instruction; providing on-line publications in the nature of newsletters in the field of computers and education; providing information in the field of education via the internet; providing information in the field of entertainment via the Internet concerning movies, music, videos, television, celebrities, sports, news, history, science, politics, comedy, children's entertainment, animation, culture, current events</p>

K. “Applicant’s Goods and Services” shall refer individually and collectively to all goods and services offered, sold, or promoted under or in connection with Applicant’s Mark.

L. “Opposer’s Goods and Services” shall refer individually and collectively to all goods and services offered, sold, or promoted under or in connection with Opposer’s APPLE Marks.

M. The conjunctive form “and” and the disjunctive form “or” shall be mutually interchangeable and shall not be construed to limit any Interrogatory.

N. The terms “any” and “all” shall be mutually interchangeable and shall not be construed to limit any Interrogatory.

O. The term “including” shall mean “including without limitation.”

INSTRUCTIONS

A. If You refuse to answer any Interrogatory in whole or in part based on a claim that any privilege applies to the information sought, state the privilege and describe the factual basis for your claim of privilege with such specificity as will permit Opposer to determine the legal sufficiency of the claim of privilege.

B. Each paragraph and subparagraph hereof and the definitions herein are to be construed independently, and not by or with reference to any other paragraph or subparagraph or definition herein if such construction would limit the scope of any particular Interrogatory or the subject matter thereof.

C. If any of these Interrogatories cannot be answered in full, You are to answer to the fullest extent possible, specifying the reason for Your inability to answer the remainder,

and stating what information, knowledge or belief You have concerning the unanswered portion.

D. These Interrogatories shall be deemed to be continuing. You are under a duty to supplement, correct or amend your response to any of these Interrogatories if You learn that any response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to You during the discovery process or in writing.

INTERROGATORIES

1. Describe in detail the circumstances surrounding the selection, adoption, and intended use of Applicant's Mark, including but not limited to any other names or marks that were considered; how and why Applicant's Mark was selected; all steps taken by Applicant to determine whether Applicant's Mark was available for use and registration prior to adoption; when, where, and how Applicant's Mark is intended to be used; and identify each Person involved with or having knowledge of the selection, adoption, or first use of Applicant's Mark, and describe each such Person's knowledge.

2. Describe in detail when and how Applicant first become aware of Opposer or Opposer's APPLE Marks, including the identification of all individuals having knowledge thereof.

3. State the price of each of the goods or services for which Applicant has used or intends to use Applicant's Mark.

4. State the annual unit and dollar volume of sales, from the date of first use to the present, for Applicant's Goods and Services.

5. Identify Applicant's annual expenditures for each advertising or promotional medium used to promote Applicant's Goods and Services.

6. Identify by city, state, or other geographical region each area in which Applicant or its distributors, agents, or sales representatives have provided, sold, offered for sale, or intend to provide or offer for sale, Applicant's Goods and Services, and specify the dates or time periods during which such sales or offers of sale have been made on such goods or services.

7. Describe in detail each instance of which Applicant has actual or hearsay knowledge, directly or indirectly, of any communication, suggestion, or inquiry regarding an association, connection, or affiliation between Applicant, Applicant's Mark, or Applicant's Goods and Services, on the one hand, and Opposer, Opposer's APPLE Marks, or Opposer's Goods and Services, on the other hand, identify each Person involved in having knowledge of each such inquiry or communication.

8. Describe in detail all instances of which Applicant has actual or hearsay knowledge of any inquiry, complaint, or other communication regarding Applicant's business or any other inquiry, complaint, or other communication by any Person regarding the qualities, advantages, or lack of quality of Applicant's Goods and Services, and identify each Person involved in or having knowledge of such inquiry, complaint, or communication.

9. Describe in detail any research, including any public opinion poll, survey, market research, or other analysis, Applicant has conducted or caused to be conducted with respect to Opposer's Marks or Applicant's Mark, including the nature, date, results, and individual in charge of conducting such research.

10. Identify the Person(s) most knowledgeable about the sales and marketing efforts with respect to Applicant's Goods and Services, and state the duties and position of each such individual.

11. Identify each Person who is now or has been responsible for or has participated in the creation, preparation, or development of Applicant's advertising or promotion for Applicant's Goods and Services, and the period(s) of time during which each such Person provided such services.

12. Describe in detail all facts evidencing, relating to, or tending to prove or disprove Applicant's claims or defenses, specifically identifying each action or omission on which each such claim or defense is based, and each witness or other Person having knowledge of such facts, actions, or omissions and identifying the facts or opinions about which each witness may be asked to testify.

13. Identify every Person believed by Applicant to have relevant information with respect to any issue in this lawsuit and identify the relevant information such persons are likely to possess.

Dated: June 25, 2009

KILPATRICK STOCKTON LLP

By: Alicia Grahn Jones

Joseph Petersen
Alicia Grahn Jones

31 West 52nd Street, 14th Floor
New York, New York 10019
Telephone: (212) 775-8715
Facsimile: (212) 775-8800

1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309
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Facsimile: (404) 815-6555
Attorneys for Opposer Apple Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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v.	:	
	:	
FABASOFT AG,	:	
	:	
Applicant.	:	
-----X		

**OPPOSER’S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO APPLICANT**

Pursuant to 37 C.F.R. § 2.116 and 2.120 and Rules 26 and 34 of the Federal Rules of Civil Procedure, Opposer Apple Inc. (“Opposer”) requests that Applicant Fabasoft AG (“Applicant”), answer the following Requests for Production of Documents and Things, and produce the requested documents at the offices of Kilpatrick Stockton LLP, 31 West 52nd Street, 14th Floor, New York, New York 10019, within thirty (30) days of service hereof, or such other time and place as may be agreed upon by counsel.

DEFINITIONS

- A. “Opposer” refers to Apple Inc. and its employees, representatives or agents.
- B. “Applicant” refers to Applicant Fabasoft AG, each of its predecessors, successors, parents, divisions, affiliates, or wholly-owned or partially-owned subsidiaries, and each of their officers, directors, employees, representatives or agents.

C. “You” or “Your” shall refer to Applicant as defined in paragraph B, above.

D. The singular and the plural shall be mutually interchangeable, and usage of words either in the singular or plural in the following Requests shall not be construed to limit any Request.

E. “Documents” includes “things” and is defined in the broadest sense permitted by the Federal Rules of Civil Procedure, including without limitation, written documents, audio or video recordings, and computer data. “Documents” includes each writing or record not identical to the original.

F. “Person(s)” means any individual, firm, partnership, corporation, proprietorship, association, governmental body, or any other organization or entity.

G. “Third Party” means any Person except Opposer and Applicant.

H. “Identify” or “specify” when used in reference to a Person who is an individual, means to state his or her full name, present or last known address and phone number, and present or last known position or business affiliation.

I. “Identify” or “specify” when used in reference to a Person who is a firm, partnership, corporation, proprietorship, association, or other organization or entity, means to state its full name, the legal form of such entity or organization, its present or last known address and telephone number, and the identity of its chief executive officer, partners, or Persons in equivalent positions.

J. “Applicant’s Mark” means the mark APPLSTRUDL that is the subject of Application Serial No. 77/460,315.

K. “Opposer’s APPLE Marks” and “Opposer’s Marks” shall refer individually and collectively to Opposer’s family of APPLE-based word marks and its Apple logo including but not limited to the following marks:

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	1,114,431	March 20, 1978 March 6, 1979	Class 9: Computers and computer programs recorded on paper and tape.
	2,715,578	July 1, 2002 May 13, 2003	Class 9: Computers hardware; computer hardware, namely, server, desktop, laptop, notebook and subnotebook computers; hand held and mobile computers; computer monitors; personal digital assistants; portable digital audio players; electronic organizers; computer keyboards, cables, modems; audio speakers; computer video control devices, namely, computer mice, a full line of computer software for business, home, education, and developer use; computer programs for personal information management; database management software; electronic mail and messaging software; database synchronization software; computer programs for accessing, browsing and searching online databases; operating system software; application development tool programs; blank computer storage media; fonts, typefaces, type designs and symbols recorded on magnetic media; computer software for use in providing multiple user access to a global computer information network for searching, retrieving, transferring, manipulating and disseminating a wide range of information; computer software for use as a programming interface; computer software for use in network server sharing; local and wide area

TRADEMARK	REG. NO.	FILING DATE/ REG. DATE	GOODS/SERVICES
			networking software; computer software for matching, correction, and reproduction of color; computer software for use in digital video and audio editing; computer software for use in enhancing text and graphics; computer software for use in font justification and font quality; computer software for use to navigate and search a global computer information network, as well as to organize and summarize the information retrieved; computer software for use in word processing and database management. word processing software incorporating text, spreadsheets, still and moving images, sounds and clip art; computer software for use in authoring, downloading, transmitting, receiving, editing, extracting, encoding, decoding, playing, storing and organizing audio, video, still images and other digital data; computer software for analyzing and troubleshooting other computer software; children's educational software; computer game software; Computer graphics software; Web site development software; computer program which provides remote viewing, remote control, communications and software distribution within personal computer systems and across computer network; computer programs for file maintenance and data recovery; computer peripherals; instructional manuals packaged in association with the above
	2,753,069	July 23, 2002 August 19, 2003	Class 42: Application service provider (ASP), namely, hosting computer software applications of others; computer services, namely, displaying the web sites and images of others on a computer server; computer diagnostic services; installation of computer software; updating of computer software; maintenance of computer software; computer hardware development; integration of computer systems and networks; monitoring the computer systems of others for technical

TRADEMARK	REG. NO.	FILING DATE/ REG. DATE	GOODS/SERVICES
			<p> purposes and providing back-up computer programs and facilities; computer consultation, design, and testing services; consulting services in the field of design, selection, implementation and use of computer hardware and software systems for others; computer data recovery; computer programming for others; research and development of computer hardware and software; website design, creation and hosting services; computer services, namely, designing and implementing web sites for others; computer services, namely, providing search engines for obtaining data on a global computer network; providing use of on-line non-downloadable software for communications via local or global communications networks, including the Internet, intranets, and extranets; computer consultation, namely, analyzing data to detect, eradicate, and prevent the occurrence of computer viruses; computer consultation, namely, services relating to the protection of computer hardware, computer software, computer networks and computer systems against computer viruses, attacks, or failures; computer consultation, namely, services for optimizing the performance and functionality of computer software and communications networks; technical support services, namely, troubleshooting of computers, computer software, telecommunications, and the Internet systems; leasing of computers, computer peripherals and computer software; leasing computer facilities. providing information in a wide variety of fields over computer networks and global communication networks; computer services, namely, creating indexes of information, web sites and other information sources available on computer networks; providing information concerning a wide range of text, electronic documents, databases, graphics and audiovisual information. </p>

TRADEMARK	REG. NO.	FILING DATE/ REG. DATE	GOODS/SERVICES
<p style="text-align: center;">APPLE</p>	<p style="text-align: center;">2,808,567</p>	<p>October 2, 2002 January 27, 2004</p>	<p>Class 42: Computer consultation, design, testing, research and advisory services; research and development of computer hardware and software; maintenance and repair of computer software applications; updating of computer software; computer programming services; providing information concerning computers and computer software over computer networks and global communication networks; computer services, namely, hosting web sites and providing web site operation and management services to others; computer services, namely, providing search engines for obtaining data on computer networks and global communication networks; leasing of computers, computer peripherals and computer software.</p>
	<p style="text-align: center;">3,298,028</p>	<p>August 2, 2006 September 25, 2007</p>	<p>Class 35: Arranging and conducting trade shows, and trade show expositions and exhibitions in the fields of computers, computer software, online services, information technology, and consumer electronics</p> <p>Class 41: Education and training services, namely, conducting classes, workshops, conferences and seminars in the field of computers, computer software, online services, information technology, internet website design, video products and consumer electronics; arranging of exhibitions, seminars and conferences; arranging professional workshop and training courses; computer education training services; training in the use and operation of computers and computer software; providing a website for the uploading, sharing, viewing and posting of photographs, digital images, movies, videos, online journals, namely web blogs in general interest fields, and other related multimedia entertainment materials over a global computer network; providing fitness and exercise facilities; Physical fitness consultation and instruction; providing on-line publications in the nature of newsletters in the field of computers and education; providing</p>

TRADEMARK	REG. NO.	FILING DATE/ REG. DATE	GOODS/SERVICES
			information in the field of education via the internet; providing information in the field of entertainment via the Internet concerning movies, music, videos, television, celebrities, sports, news, history, science, politics, comedy, children's entertainment, animation, culture, current events

L. "Applicant's Goods and Services" shall refer individually and collectively to all goods and services offered, sold, or promoted under or in connection with Applicant's Mark.

M. "Opposer's Goods and Services" shall refer individually and collectively to all goods and services offered, sold, or promoted under or in connection with Opposer's APPLE Marks.

N. The conjunctive form "and" and the disjunctive form "or" shall be mutually interchangeable and shall not be construed to limit any Interrogatory.

O. The terms "any" and "all" shall be mutually interchangeable and shall not be construed to limit any Interrogatory.

P. The term "including" shall mean "including without limitation."

INSTRUCTIONS

A. Documents should be produced as they are kept in the usual course of business or organized and labeled to correspond with the numbered categories of these Requests.

B. With respect to any document withheld from production upon a claim of privilege, state for each such document:

- i. the type of document;
- ii. the date of the document;

- iii. the name, address, and job title of the author of the document;
- iv. the name, address, and job title of each recipient of the document for purposes of permitting Opposer to evaluate the privilege claimed;
- v. the name, address, and job title of each person who received a copy of the document;
- vi. a brief summary of the subject matter of the document; and
- vii. the present whereabouts of the document and name, address, and title of the custodian thereof.

C. These Requests shall be deemed to be continuing. Applicant is under a duty to supplement, correct, or amend their response to any of these Requests if they learn that any response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Opposer during the discovery process or in writing. If after producing documents, Applicant become aware of documents responsive to these Requests, such documents shall be produced whether such documents were newly discovered, newly created, or otherwise.

REQUESTS FOR PRODUCTION

The documents and things or categories designated for production are the following:

1. Documents that constitute, evidence, describe, discuss, refer or relate to the creation, development, selection, design, or adoption by Applicant of Applicant's Mark, including but not limited to any trademark searches, investigations, market research or studies, written opinions or reports, artwork, sketches, drafts, drawings or images.
2. Documents that constitute, evidence, describe, discuss, refer or relate to proposed use in the United States by Applicant of Applicant's Mark.

3. Documents that consist of, evidence, describe, discuss, refer, or relate to any business, franchise, or marketing plans that concern, refer, or relate to any past, present, or future use of Applicant's Mark.

4. Documents that consist of, evidence, describe, discuss, refer to, or relate in any way to any applications filed by or on behalf of Applicant to register any name, mark or designation which consists of or incorporates the letter string APPL or APP including but not limited to U.S. Trademark Applications Serial No. 77/460,315.

5. Documents that constitute, evidence, describe, discuss, or relate to any licenses, assignments, or other agreements concerning, referring, or relating in any way to Applicant's Mark.

6. Documents sufficient to identify each person or entity that is a franchisee or licensee of Applicant.

7. A representative sample of each proposed use of Applicant's Mark, including but not limited to representative samples of labeling, packaging, point-of-sale displays, menus, table tents, invoices, price lists, fliers, brochures, catalogs, advertisements, commercials, Internet web pages, yellow pages listings, or other sales or promotional materials depicting or referring to Applicant's Mark; and documents sufficient to identify when and in what geographic location each such label or packaging is proposed to be used.

8. A representative sample of each product Applicant proposes to sell or advertise under Applicant's Mark and documents sufficient to identify the method by which each such product will be sold or advertised in the United States.

9. Documents that constitute, evidence, describe, discuss, refer or relate to any alternative names, phrases, logos, designs or words considered by Applicant, whether or not adopted, in connection with the process that resulted in the adoption of Applicant's Mark.

10. Documents sufficient to show the channels of trade through which Applicant distributes, has distributed, or intends to distribute, any goods under or in connection with Applicant's Mark, including but not limited to documents sufficient to identify the sales agents, dealerships, distributors or other outlets through which any goods or services are or have been sold.

11. Documents that evidence or describe the intended customers, purchasers, or end users, or who are or may be expected to be customers, purchasers, or end users, of goods or services sold under or in connection with Applicant's Mark including, but not limited to, any research or studies related to such purchasers or users.

12. Documents that refer or relate to, or are evidence of the geographic areas in which Applicant's Goods and Services are or at any time have been distributed or offered for sale.

13. Price lists and other documents that show the prices, both wholesale, suggested retail, and any other price category utilized by Applicant, at which goods or services bearing Applicant's Mark are proposed to be sold or offered for sale.

14. Documents sufficient to show unit and dollar sales of each product or service sold or offered for sale under Applicant's Mark for the past three years.

15. Documents sufficient to show Applicant's advertising or promotional expenditures relating to any goods or services sold or offered for sale under Applicant's Mark for the past three years.

16. Documents sufficient to show each type of advertising medium or promotional means used by Applicant to promote goods or services under Applicant's Mark.

17. Documents that refer or relate to, or are evidence of actual or threatened litigation in the United States involving trademark infringement or unfair competition claims in which Applicant has been engaged.

18. Documents that refer or relate to, or are evidence of any public opinion poll, study, survey, market research or other analysis conducted or caused or proposed to be conducted by or for Applicant with respect to Applicant's Mark.

19. Documents that consist of, evidence, describe, discuss, refer, or relate to any inquiry, complaint, or other communication regarding the qualities, advantages, or lack of quality of goods or services sold by Applicant under Applicant's Mark.

20. Documents that refer or relate to Opposer, Opposer's Goods and Services, or Opposer's Marks.

21. Documents that consist of, evidence, contain, describe, discuss, refer or relate to any communication, suggestion, or inquiry regarding an association, connection, or affiliation between Applicant, Applicant's Goods and Services, or Applicant's Mark on the one hand, and Opposer, Opposer's Goods and Services, or Opposer's Marks on the other hand, including but not limited to any question, inquiry, statement, or belief by any person concerning a possible relationship, affiliation, connection, or sponsorship between Opposer and Applicant, Opposer's Marks and Applicant's Mark, or Opposer's Goods and Services and Applicant's Goods and Services. For illustrative purposes only and without limiting the foregoing, such instances would include misdirected inquiries, orders, cancellations or

returns; misassumptions as to source or origin; and comments, complaints, or expressions by any person indicating an assumption or belief as to association or connection.

22. All documents that constitute, evidence, refer, or relate to any investigations, surveys or inquiries that Applicant has conducted and/or had conducted on its behalf relating to whether there is or may be any likelihood of confusion between Opposer's Marks and Applicant's Mark.

23. All documents that evidence, describe, discuss, refer or relate to any instances of actual confusion between the Applicant's Mark and Opposer's Marks.

24. All documents identified, or required to identify, in response to Opposer's First Set of Interrogatories, served contemporaneously herewith.

Dated: June 25, 2009

KILPATRICK STOCKTON LLP

By: Alicia Grahn Jones
Joseph Petersen
Alicia Grahn Jones

31 West 52nd Street, 14th Floor
New York, New York 10019
Telephone: (212) 775-8715
Facsimile: (212) 775-8800

1100 Peachtree Street
Suite 2800
Atlanta, Georgia 30309
Telephone: (404) 815-6500
Facsimile: (404) 815-6555
Attorneys for Opposer Apple Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 77/460,315
For the mark: APPLSTRU DL
Filed: April 29, 2008
Published: December 16, 2008

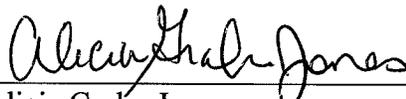
-----X
APPLE INC., :
 :
Opposer, :
 :
 :
v. : Opposition No. 91188903
 :
FABASOFT AG, :
 :
Applicant. :
-----X

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO APPLICANT has been served on counsel for Fabasoft AG by depositing said copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Stewart J. Bellus
Collard & Roe, P.C.
1077 Northern Blvd
Roslyn, NY 11576-1614

This the 25 day of June, 2009.



Alicia Grahn Jones
Attorney for Opposer Apple Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 77/460,315
For the mark: APPLSTRUDL
Filed: April 29, 2008
Published: December 16, 2008

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APPLE INC.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No. 91188903
	:	
FABASOFT AG,	:	
	:	
Applicant.	:	
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OPPOSER’S FIRST REQUESTS FOR ADMISSION TO APPLICANT

Opposer Apple Inc. through counsel and pursuant to Rule 2.120 of the Trademark Rule of Practice and Rule 36 of the Federal Rules of Civil Procedure, hereby requests that Applicant Fabasoft AG admit the truth of the matters designated below within thirty (30) days if service hereof.

DEFINITIONS

Opposer hereby incorporates by reference, as if fully set forth herein, the Definitions set forth in Opposer’s First Set of Interrogatories to Applicant, served contemporaneously herewith.

REQUESTS

1. Admit that Opposer owns trademark Registration No. 1,078,312.
2. Admit that Registration No. 1,078,312 is valid.

3. Admit that Registration No. 1,078,312 is incontestable.
4. Admit that Opposer began using the APPLE mark reflected in Registration No. 1,078,312 in commerce as early as 1976.
5. Admit that Opposer's trademark Registration No. 1,078,312 was registered before Applicant adopted Applicant's Mark.
6. Admit that Opposer's trademark Registration No. 1,078,312 was registered before Applicant filed Application Serial No. 77/460,315.
7. Admit that Opposer owns Registration No. 1,114,431.
8. Admit that Registration No. 1,114,431 is valid.
9. Admit that Registration No. 1,114,431 is incontestable.
10. Admit that Opposer began using the Apple Logo reflected in Registration No. 1,114,431 in commerce as early as 1977.
11. Admit that Opposer's trademark Registration No. 1,114,431 was registered before Applicant adopted Applicant's Mark.
12. Admit that Opposer's trademark Registration No. 1,114,431 was registered before Applicant filed Application Serial No. 77/460,315.
13. Admit that Opposer owns Registration No. 2,715,578.
14. Admit that Registration No. 2,715,578 is valid.
15. Admit that Registration No. 2,715,578 is incontestable.
16. Admit that Opposer began using the Apple Logo reflected in Registration No. 2,715,578 in commerce as early as 1977.
17. Admit that Opposer's trademark Registration No. 2,715,578 was registered before Applicant adopted Applicant's Mark.

18. Admit that Opposer's trademark Registration No. 2,715,578 was registered before Applicant filed Application Serial No. 77/460,315.

19. Admit that Opposer owns Registration No. 2,753,069.

20. Admit that Registration No. 2,753,069 is valid.

21. Admit that Opposer began using the Apple Logo reflected in Registration No. 2,753,069 in commerce as early as 1980.

22. Admit that Opposer's trademark Registration No. 2,753,069 was registered before Applicant adopted Applicant's Mark.

23. Admit that Opposer's trademark Registration No. 2,753,069 was registered before Applicant filed Application Serial No. 77/460,315.

24. Admit that Opposer owns Registration No. 2,808,567.

25. Admit that Registration No. 2,808,567 is valid.

26. Admit that Opposer began using the Apple Logo reflected in Registration No. 2,808,567 in commerce as early as 1980.

27. Admit that Opposer's trademark Registration No. 2,808,567 was registered before Applicant adopted Applicant's Mark.

28. Admit that Opposer's trademark Registration No. 2,808,567 was registered before Applicant filed Application Serial No. 77/460,315.

29. Admit that Opposer owns Registration No. 3,298,028.

30. Admit that Registration No. 3,298,028 is valid.

31. Admit that Opposer began using the Apple Logo reflected in Registration No. 3,298,028 in commerce as early as 1980.

32. Admit that Opposer's trademark Registration No. 3,298,028 was registered

before Applicant adopted Applicant's Mark.

33. Admit that Opposer's trademark Registration No. 3,298,028 was registered before Applicant filed Application Serial No. 77/460,315.

34. Admit that beginning over thirty years ago, Opposer has expended considerable sums of money into developing consumer brand recognition of Opposer's APPLE Marks.

35. Admit that since prior to Applicant's filing date and date of first use, and as a result of widespread advertising and promotion by Opposer, Opposer's APPLE Marks have acquired a high degree of recognition and fame as symbols of high quality products and services offered by Opposer.

36. Admit that Opposer's APPLE Marks are famous throughout the United States.

37. Admit that the public is familiar with and identifies Opposer's APPLE Marks with Opposer, and by reason of this identification, products and services associated with Opposer's APPLE Marks are understood by the public to originate from Opposer.

38. Admit that Applicant's Mark creates the same commercial impression as Opposer's APPLE Marks.

39. Admit that the goods and services cited in Applicant's Application Serial No. 77/345,886 are similar to the goods and services offered under Opposer's APPLE Marks.

40. Admit that the goods and services cited in Applicant's Application Serial No. 77/345,886 are directly competitive to the goods and services offered under Opposer's APPLE Marks.

41. Admit that the goods and services cited in Applicant's Application Serial No. 77/345,886 and the goods and services offered under Opposer's APPLE Marks are promoted

through the same channels of trade.

42. Admit that the goods and services cited in Applicant's Application Serial No. 77/345,886 and the goods and services offered under Opposer's APPLE Marks are sold to the same end-users and to the same class of purchasers.

43. Admit that Applicant's Mark is confusingly similar to Opposer's APPLE Marks.

44. Admit that Opposer will be damaged by the registration of Applicant's Mark because it is confusingly similar to Opposer's APPLE Marks.

45. Admit that persons familiar with Opposer's APPLE Marks are likely to believe erroneously that products bearing or services associated with Applicant's Mark are those of Opposer or are endorsed, sponsored, or licensed by Opposer.

46. Admit that consumers are likely to believe that there is a connection, association, or affiliation between Applicant and Opposer because of the similarities between Applicant's Mark and Opposer's APPLE Marks.

47. Admit that Opposer has used Opposer's APPLE Marks in connection with computer software.

48. Admit that Opposer has used Opposer's APPLE Marks in connection with education services.

49. Admit that Opposer has used Opposer's APPLE Marks in connection with education services.

50. Admit that Opposer has used Opposer's APPLE Marks in connection with the provision of information regarding computers and software.

51. Admit that Applicant was aware of Opposer's APPLE Marks before Applicant

filed Application Serial No. 77/460,315.

52. Admit that Applicant was aware of Opposer's APPLE Marks before Applicant adopted Applicant's Mark.

53. Admit that Applicant filed Application Serial No. 77/460,315 on April 29, 2008.

54. Admit that Applicant's Mark contains the letter string "APPL".

55. Admit that Opposer has never explicitly or implicitly given Applicant permission to use any of Opposer's APPLE Marks.

56. Admit that Opposer has never explicitly or implicitly given Applicant permission to register Applicant's Mark.

57. Admit that Opposer has never endorsed, sanctioned, or in any manner approved of Applicant's use of Applicant's Mark.

58. Admit that Opposer has at all times diligently protected its trademark rights in Opposer's APPLE Marks.

59. Admit that Applicant selected Applicant's Mark because of its similarity to Opposer's APPLE Marks.

60. Admit that Applicant selected Applicant's Mark because the public is familiar with Opposer's APPLE Marks.

61. Admit that Applicant has not used Applicant's Mark in commerce in the United States.

62. Admit that Applicant does not intend to sell software bearing Applicant's Mark in the United States.

63. Admit that Applicant does not intend to offer educational services under

Applicant's Mark in the United States.

64. Admit that Applicant does not intend to offer Computer and technical consulting and support services under Applicant's Mark in the United States.

65. Admit that Applicant has purchased products or services from Opposer.

Dated: June 25, 2009

KILPATRICK STOCKTON LLP

By: Alicia Grahn Jones

Joseph Petersen

Alicia Grahn Jones

31 West 52nd Street, 14th Floor

New York, New York 10019

Telephone: (212) 775-8715

Facsimile: (212) 775-8800

1100 Peachtree Street

Suite 2800

Atlanta, Georgia 30309

Telephone: (404) 815-6500

Facsimile: (404) 815-6555

Attorneys for Opposer Apple Inc.

EXHIBIT C

From: Jones, Alicia
Sent: Friday, August 07, 2009 6:23 PM
To: 'sbellus@collardroe.com'
Cc: Petersen, Joe; Garcia, Alberto
Subject: Apple Inc v Fabasoft -- Challenge to US trademark application for APPLSTRUDL SN 77/460,315
(KS Ref.: 55671 / 366783)

Dear Stewart,

On June 25, 2009, Apple Inc. served on Fabasoft a first set of interrogatories, document requests, and requests for admission in Opposition No. 91188903. Fabasoft's responses were due on July 30, 2009. If we do not receive Fabasoft's discovery responses before August 12, 2009, Apple will have no choice but to file a motion to compel with the Board.

Please feel free to call me if you wish to discuss this matter.

Sincerely,

Alicia Grahn Jones



Alicia Grahn Jones
Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, GA 30309-4530
t 404 815 6164
f 404 541 3292

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EXHIBIT D

From: Jones, Alicia
Sent: Wednesday, March 03, 2010 12:44 PM
To: 'sbellus@collardroe.com'
Cc: Petersen, Joe; Graham, Michelle; Garcia, Alberto
Subject: FW: Apple v. Fabasoft AG, Opposition No. 91188903

Dear Stewart,

In response to your email to Michelle Graham below, the opposition proceedings already resumed on February 26th. We will contact our client regarding the possibility of another extension and get back to you as soon as possible.

In the meantime, I have not received a response to my February 26th email to you regarding Fabasoft's discovery responses. We still have not received Fabasoft's discovery responses, which were due on July 30, 2009. As I mentioned in my February 26th email, if we do not receive Fabasoft's discovery responses by March 3rd and if the proceedings are not suspended, Apple intends to seek relief from the Board.

Thanks,
Alicia



Alicia Grahn Jones
Kilpatrick Stockton LLP
Suite 2800
1100 Peachtree Street
Atlanta, GA 30309-4528
t 404 815 6164
f 404 541 3292

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