

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
(ALEXANDRIA DIVISION)**

APPLE INC.,

Plaintiff,

- against -

ZERODENSITY YAZILIM ANONIM SIRKETI,

Defendant.

Civil Action No. \_\_\_\_\_

**PLAINTIFF APPLE INC.'S COMPLAINT**

Plaintiff Apple Inc. (“Apple” or “Applicant”), by and through the undersigned counsel, hereby alleges the following against Defendant ZeroDensity Yazilim Anonim Sirketi (“ZeroDensity” or “Defendant”).

**NATURE OF THE ACTION**

1. This district court appeal of a United States Trademark Trial and Appeal Board (the “TTAB”) proceeding arises out of ZeroDensity’s baseless attempt to prevent Apple from obtaining federal trademark registrations for Apple’s plainly suggestive and creatively coined REALITY COMPOSER and REALITY CONVERTER marks (the “Apple Marks”). Accordingly, Apple brings this action to seek a reversal of the TTAB’s decision and an order requiring the United States Patent and Trademark Office (the “USPTO”) to issue certificates of registration for the Apple Marks on the grounds that they are suggestive (and thus inherently distinctive) or, in the alternative, that they have acquired secondary meaning, and there is no likelihood of confusion with ZeroDensity’s purported trademark rights.

**A. REALITY COMPOSER and REALITY CONVERTER Are Suggestive**

2. Apple filed trademark applications in Class 9 for REALITY COMPOSER (Ser. No. 88/607,577) in connection with “[d]ownloadable computer software used in developing other software applications; downloadable application development software; downloadable computer software providing a library of virtual objects for use in developing other software applications; downloadable computer software used in producing animation and three-dimensional effects for use in other software applications,” and REALITY CONVERTER (Ser. No. 88/852,639) in connection with “[d]ownloadable computer software used in developing other software applications; downloadable application development software; downloadable computer software used in editing customizing and producing three-dimensional effects” (collectively, the “Apple Applications”).

3. The Examining Attorneys in the USPTO evaluated the Apple Applications and approved both as inherently distinctive marks without finding a conflict with any prior registrations or applications.

4. This makes sense, as the REALITY COMPOSER and REALITY CONVERTER marks are quintessentially suggestive terms—that is, they are made-up terms coined by Apple that do not describe the underlying software development tools on which Apple uses these trademarks. Instead, consumers must exercise imagination to understand how the nonsensical phrases “reality composer” and “reality converter”—which sound like science fiction impossibilities—relate to Apple’s products. They are suggestive, just as BURGER KING is a fast-food chain, not an actual monarch. The combination of two incongruous terms into one mark, which together require imagination in order to make sense practically, are hallmarks of a suggestive mark. In contrast, descriptive terms like RAISIN BRAN or AMERICAN AIRLINES straightforwardly describe the goods and services offered under the brand name (a cereal with

bran and raisins; an airline based in America). As innovative as Apple is, it cannot “compose” or “convert” reality.

5. Apple uses its REALITY COMPOSER mark in connection with a software development tool. The unusual pairing of the word REALITY with the word COMPOSER is an innovative combination of terms that does not indicate the purpose and functionality of the product. “Composer” is not a word commonly associated with software developer tools. Rather, Apple has taken a musical term and adapted it to its software development product in a creative way.

6. Dictionary definitions confirm the suggestive nature of the REALITY COMPOSER mark. “Reality” is defined by Merriam-Webster as “the quality or state of being real.” Merriam-Webster defines “composer” as “a person who writes music.” Even a broader definition of “composer” from Dictionary.com defines it as “a person or thing that composes.” Taken literally, the composite term of Apple’s mark could mean an impossibility—that is, it would mean “a person or thing who writes or creates (in other words, composes) reality.” Contrary to these definitions, Apple’s Reality Composer product has nothing to do with the “real” world, and it cannot be used to write music or create reality. Thus, the mark starkly differs from descriptive terms. Instead, the incongruous pairing of the nouns “reality” and “composer”—for a software product that has nothing to do with the physical world and is entirely unrelated to music—creates a suggestive trademark.

7. In addition, Apple’s competitors do not use the phrase “reality composer,” nor does this composite term appear in dictionaries, two further signs that the phrase is not descriptive and is not needed to describe similar products. The USPTO has also registered dozens of trademarks consisting of REALITY plus another word for marks used in connection

with software products, including those relating to virtual reality, without requiring a showing of acquired distinctiveness, meaning the USPTO found that the marks were at least suggestive.

Examples of such marks are attached as **Appendix A**.

8. Apple's coined REALITY CONVERTER mark is suggestive for similar reasons. Apple uses this mark in connection with a software product that allows consumers to download, view, and customize three-dimensional objects for the macOS operating system. As with REALITY COMPOSER, taken literally, the composite term REALITY CONVERTER could mean an impossibility, namely, "a person or thing who converts reality." It takes imagination and a few moments of thought to understand how this name relates to Apple's software product. As with the REALITY COMPOSER mark, the phrase is not used by Apple's competitors and does not appear in dictionaries. Accordingly, pairing the nouns "reality" and "converter" for a product that has nothing to do with the physical world creates a suggestive trademark.

**B. REALITY COMPOSER and REALITY CONVERTER Have Acquired Secondary Meaning**

9. The REALITY COMPOSER and REALITY CONVERTER marks are also registrable for the second, independent reason that they have acquired secondary meaning among potential consumers of Apple's products, namely, software developers. Apple has heavily invested in and promoted both marks since their inception. For example, Apple has used the REALITY COMPOSER and REALITY CONVERTER marks exclusively for over four years, since the products were first announced on June 3, 2019 and January 13, 2020, respectively. Both marks have also been heavily featured on Apple's frequently visited developer website, have been highlighted during Apple's high-profile Worldwide Developers Conferences, and have received media coverage on popular platforms for developers, such as *The Verge*, *Tech Crunch*, *CNET*, *Medium*, and *VentureBeat*.

10. Thus, regardless of whether the Apple Marks are categorized as suggestive or descriptive, they have acquired secondary meaning and, accordingly, are valid, registrable marks.

### **C. The Underlying TTAB Proceedings**

11. After Apple's REALITY COMPOSER and REALITY CONVERTER marks were approved for publication by the USPTO, ZeroDensity opposed the registration of both marks in proceedings before the TTAB (the "Oppositions"). It alleged that the Apple Marks (a) are descriptive and (b) likely to cause confusion with ZeroDensity's own purported trademarks for REALITY ENGINE, REALITY CONTROL, REALITY KEYS, and REALITYHUB (the "Alleged ZeroDensity Marks"). Of these marks, only REALITYHUB is registered in the United States.<sup>1</sup> Notably, the USPTO granted ZeroDensity a registration for REALITYHUB without requiring ZeroDensity to prove secondary meaning. In other words, it found that ZeroDensity's mark consisting of REALITY plus another word was suggestive, the exact conclusion Apple seeks here with respect to its own REALITY-formative marks.

12. However, when it came to the Apple Marks, against the weight of the evidence, the TTAB decided to sustain the Oppositions. As a result, Apple has been left with no choice but to bring this appeal of the TTAB's decision in order to protect its investments and recognition in the Apple Marks.

13. Contrary to ZeroDensity's claim, the Apple Marks are not descriptive for the reasons previously stated. There also is no likelihood of confusion. *First*, the parties' marks are composed of different words (*e.g.*, REALITY COMPOSER and REALITY CONVERTER vs. REALITY ENGINE), and the only similarity between them is the inclusion of the common term

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<sup>1</sup> ZeroDensity has four pending trademark applications in the United States for REALITY ENGINE (Ser. Nos. 79/269,543; 79/254,744; 90/061,527; and 90/061,530) and one for REALITY KEYS (Ser. No. 79/272,376). ZeroDensity abandoned its trademark application for REALITY CONTROL in September 2023.

“reality,” a word which is used in connection with a plethora of marks registered with the USPTO. Essentially, ZeroDensity is trying to claim broad rights in the word “reality,” which no one entity can monopolize. *Second*, the marks are used in connection with different services. While the Apple Marks are used in connection with software development tools, the Alleged ZeroDensity Marks are used in connection with creating effects using green screens or blue screens during live television broadcasts. *Third*, the Apple Marks and the Alleged ZeroDensity Marks are used on products targeting different sets of highly sophisticated and discerning consumers. Apple’s products target software developers, while ZeroDensity targets consumers in the media, entertainment, and sports production spaces. *Fourth*, the only term that the Alleged ZeroDensity Marks share with the Apple Marks is the term “reality”; however, this term is frequently used in the software space and consumers would not associate this word exclusively with ZeroDensity. Indeed, there have been no instances of actual confusion with Apple or the Apple Marks despite years of coexistence.

14. Apple brings this action to appeal the TTAB ruling and obtain registrations of its marks. Although the USPTO frequently registers REALITY-formative trademarks, including ZeroDensity’s own REALITYHUB mark, on December 22, 2023, against the weight of the evidence, the TTAB found the Apple Marks descriptive in a decision captioned *ZeroDensity Yazilim Anonim Sirketti v. Apple Inc.*, Opposition Nos. 91266285 and 91266754, (T.T.A.B. Dec. 22, 2023) (the “Consolidated Opposition Proceeding”), and thus refused to register the Apple Marks. The TTAB made no findings as to whether the Apple Marks had acquired distinctiveness (i.e., secondary meaning), or whether confusion between the Apple Marks and the Alleged ZeroDensity Marks is likely. All of these issues are now properly before this Court, which will have the benefit of a more developed record than the TTAB did, as Apple intends to introduce

new documents, evidence, and testimony, including expert testimony, not presented to the TTAB.

15. Because Apple intends to introduce new arguments and evidence, the standard of review for this action is de novo. Thus, this Court can take a fresh look at the issues in this dispute and, in doing so, find that (a) REALITY COMPOSER and REALITY CONVERTER are not descriptive terms, but rather suggestive and inherently distinctive trademarks; (b) the Apple Marks have acquired secondary meaning; and (c) there is no likelihood of confusion between the Apple Marks and the Alleged ZeroDensity Marks.

16. Apple thus seeks (a) registration of the marks REALITY COMPOSER and REALITY CONVERTER pursuant to 15 U.S.C. § 1071(b)(1) and 37 C.F.R. §2.145(c) and reversal of the TTAB's decision preventing registration of these marks; and (b) a declaratory judgment that Apple's REALITY COMPOSER and REALITY CONVERTER marks are valid and enforceable trademarks.

### **PARTIES**

17. Plaintiff Apple is a California corporation with its principal place of business located at One Apple Park Way, Cupertino, California.

18. Defendant ZeroDensity Yazilim Anonim Sirketi is a foreign entity with a principal place of business located at Zafer SB Mah., Nilüfer Sok. No. 29/11, Ege Serbest Bölgesi Sit., Esbas B Blök, Turkey.

### **JURISDICTION AND VENUE**

19. This Court has subject-matter jurisdiction over this action pursuant to 15 U.S.C. § 1071(b), which provides that a party dissatisfied with a final decision of the TTAB may institute a civil action in a federal district court challenging such decision. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

20. This Court has personal jurisdiction over ZeroDensity under 15 U.S.C. § 1071(b)(4) because Defendant is a foreign entity that resides in Turkey.

21. Venue is proper in this District pursuant to 28 U.S.C. § 1391(c)(3).

### **FACTUAL BACKGROUND**

#### **A. Apple's Developer Program**

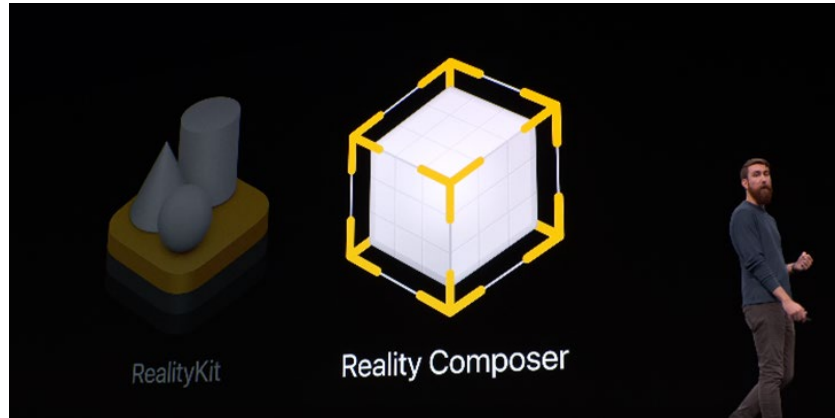
22. Incorporated in 1977, Apple is one of the most admired companies in the world. Since at least the early 1990s, Apple has organized a version of what is now known as the Apple Developer Program. The Developer Program is a platform and website maintained by Apple at [developer.apple.com](https://developer.apple.com) where software developers can obtain knowledge and tools that can be used to build software applications and games that are compatible with Apple's iOS, iPadOS, macOS, tvOS, watchOS, and visionOS operating systems, which power the iconic iPhone, iPad, Mac, Apple TV, Apple Watch, and Apple Vision Pro devices, respectively. Today, the Apple Developer Program has over 34 million registered developers.

23. For the past four decades, Apple has hosted an annual conference for its developers which is now known as the Worldwide Developers Conference ("WWDC"). WWDC is a large, week-long gathering of Apple developers, both in person and online, where Apple presents information about, among other things, advancements and innovations in Apple ecosystems. WWDC announcements are always covered widely by media and publications from all around the world. Each year, the WWDC includes keynote speeches, informational and educational sessions, and many other ways for developers to understand how best to use Apple's cutting-edge developer software and building tools. Apple provides free public access to recordings and transcripts of all WWDC events from the past several years on the Apple Developer website.



**B. Extensive Use, Promotion and Recognition of Reality Composer**

24. Nearly five years ago, on June 3, 2019, Apple announced at the 2019 WWDC, the launch of a new developer product named Reality Composer. Pictured below is an image from Apple's announcement of the Reality Composer product at the 2019 WWDC.



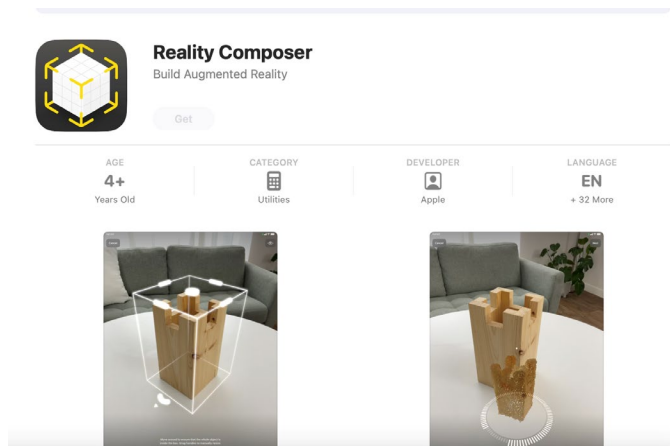
25. During the WWDC 2019 event, Apple featured multiple software developer sessions on the REALITY COMPOSER software development tool. The WWDC session that introduced REALITY COMPOSER can be viewed on the Apple Developer website at the video link <https://developer.apple.com/videos/play/wwdc2019/603/>, and users can also download a transcript of this session. At WWDC 2019, Apple also held a session entitled “Building AR Experiences with Reality Composer.” This session can be viewed on the Apple Developer site at the link <https://developer.apple.com/videos/play/wwdc2019/609/>, and users can also download a transcript from the Apple Developer site.

26. Following the unveiling at WWDC 2019, Apple issued a press release regarding REALITY COMPOSER, which states:

Reality Composer, a powerful new app for iOS, iPadOS and Mac, lets developers easily prototype and produce AR experiences with no prior 3D experience. With a simple drag-and-drop interface and a library of high-quality 3D objects and animations, Reality Composer lets developers place, move and rotate AR objects to assemble an AR

experience, which can be directly integrated into an app in Xcode or exported to AR Quick Look.

27. The Reality Composer tool is included with Xcode, Apple's integrated software development environment for macOS, and it is also available as a stand-alone app for use in the iOS and iPadOS platforms. Below is an image from the App Store where the Reality Composer stand-alone app for iOS and iPadOS is available for download:

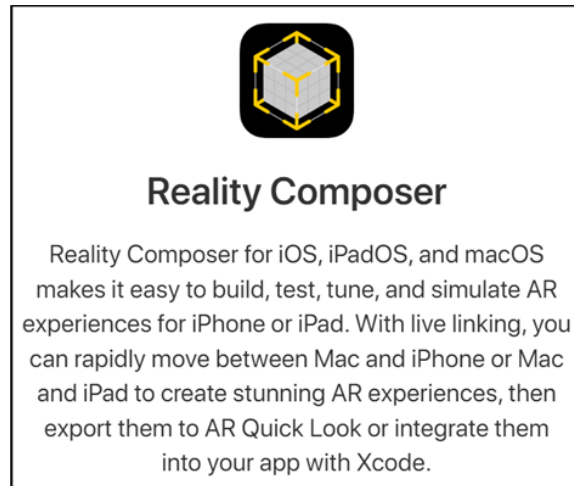


28. As described above, Apple's product allows software developers to create virtual 3D experiences. It does not involve any interaction with the "real" world. There is no direct reference or meaning that is obvious from looking at the name REALITY COMPOSER. Also, the word "composer" has no specific meaning to software developers and instead refers primarily to people who write music. The name only makes sense after consumers stop to think about the combination and realize the Reality Composer product allows developers to artistically create software in the same way a composer creates music.

29. Third parties that offer software similar to the Reality Composer product do not use the phrase "reality composer." For example, competitors of the Reality Composer product include UniteAR, Byond Immersive Suite, and Lens Studio. A review of the websites and or applications for each platform immediately reveals that they do not utilize the term "reality composer." The phrase "reality composer" also does not appear in dictionaries of standard

American English. Nor are there any trademark applications or registrations containing the phrase REALITY COMPOSER other than those filed by Apple.

30. Apple has been using the REALITY COMPOSER name continuously and substantially exclusively since first announcing it in 2019. The Reality Composer software development tool is such an important developer product that Apple has dedicated a portion of its developer website to Reality Composer. By way of example, both current and historic images of the Apple Developer site are shown here.



**Images from 2020**

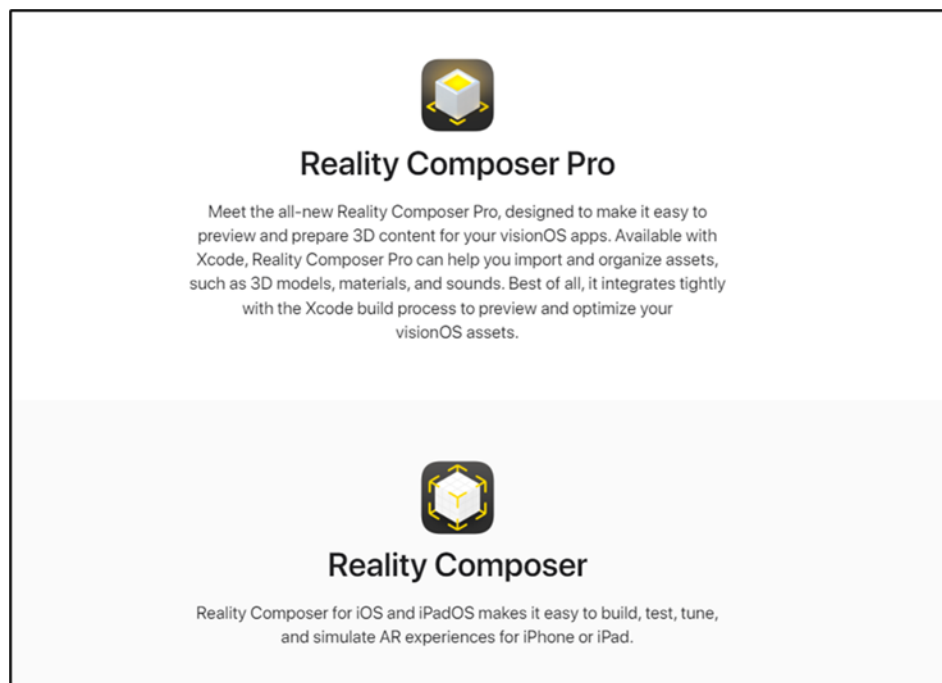
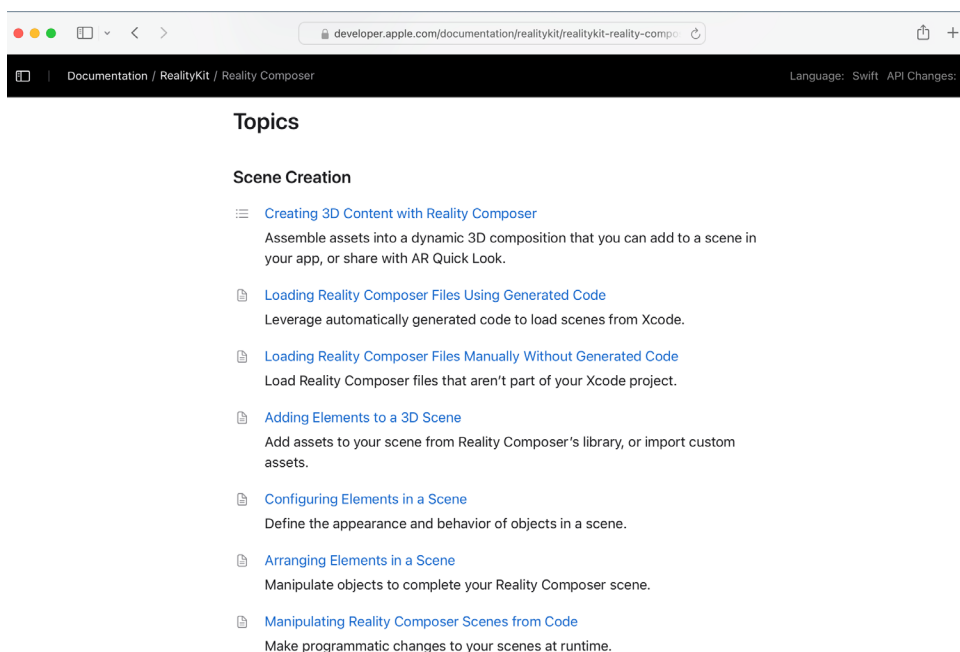


Image from 2024

31. In addition, Apple has consistently published materials to help developers use REALITY COMPOSER to create software applications for Apple's ecosystem. For example, a list of articles and materials concerning REALITY COMPOSER currently available on the Apple Developer site is as follows:



32. In a June 21, 2023 press release, Apple announced the availability of Reality Composer Pro, a new software tool to enable developers to create groundbreaking app experiences for Apple Vision Pro and the visionOS operating system. The press release stated: “To help developers optimize 3D content for their visionOS apps and games, an all-new tool available with Xcode called Reality Composer Pro lets them preview and prepare 3D models, animations, images, and sounds, so they look amazing on Vision Pro.”

33. Apple also released new tutorials to support this tool, for example: “Meet Reality Composer Pro” (2023) and “Work with Reality Composer Pro Content in Xcode” (2023).

34. There has also been extensive press coverage for the Reality Composer product since its launch. For example, on June 12, 2019, *Business Insider* released an article discussing the tech launched at Apple’s WWDC conference, which included a discussion of Reality Composer in the post pictured below. According to public sources, *Business Insider* has over 104 million global monthly unique visitors and 260 million followers across its social media accounts.

**Reality Composer** is a new app that Apple built for iOS, Mac, and the new iPadOS. It lets developers build and prototype their AR experiences even if they've never built a 3D app before, thanks to simple tools like dragging and dropping.



Apple

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<sup>2</sup> Davis Smith, *At Its Biggest Conference of the Year, Apple Quietly Laid the Groundwork for a Pair of Smart Glasses*, *Business Insider* (June 12, 2019 8:30 AM), <https://www.businessinsider.com/apple-glasses-hints-from->

35. In addition, numerous heavily circulated publications and online tech forums, such as *VentureBeat*, *Business Wire*, and the *Silicon Valley Business Journal* have published articles discussing Apple's Reality Composer product. According to public sources, as of 2019, *VentureBeat* alone has 6 million unique monthly viewers, 12 million monthly page views, and over a million followers across its social media platforms.<sup>3</sup> Excerpts from some of these publications are below:

- On June 3, 2019, VentureBeat wrote: "Reality Composer lets developers build interactive scenes with full AR support, and includes hundreds of virtual objects, with the ability to import and customize USDZ files. Virtual objects within scenes can be animated and made responsive to taps, proximity, and other triggers. Developers will be able to run Reality Composer both in Xcode and as an iOS app."
- On June 8, 2019, TechRepublic wrote: "Reality Composer allows you to breathe new life into existing scenes and make them more lifelike and interactive—you can change the 3D object's size, style, and more, as well as add animations and audio."
- On Jan 29, 2020, Alexandre Oge published an article on Medium stating: "What is Reality Composer? Reality Composer is an application that ships with Xcode 11 and lets anyone proto-type and/or build AR experiences."
- On June 21, 2023, Business Wire wrote: "To help developers optimize 3D content for their visionOS apps and games, an all-new tool available with Xcode called Reality Composer Pro(TM) lets them preview and prepare 3D models, animations, images, and sounds, so they look amazing on Vision Pro."
- On June 6, 2023, Silicon Valley Business Journal quoted Apple's Vice President of Worldwide Development Relations, Susan Prescott, who stated that "[d]evelopers can get started building visionOS apps using the powerful frameworks they already know, and take their development even further with new innovative tools and technologies like Reality Composer Pro, to design all-new experiences for their users."

36. Moreover, the Reality Composer product has been downloaded millions of times in the United States.

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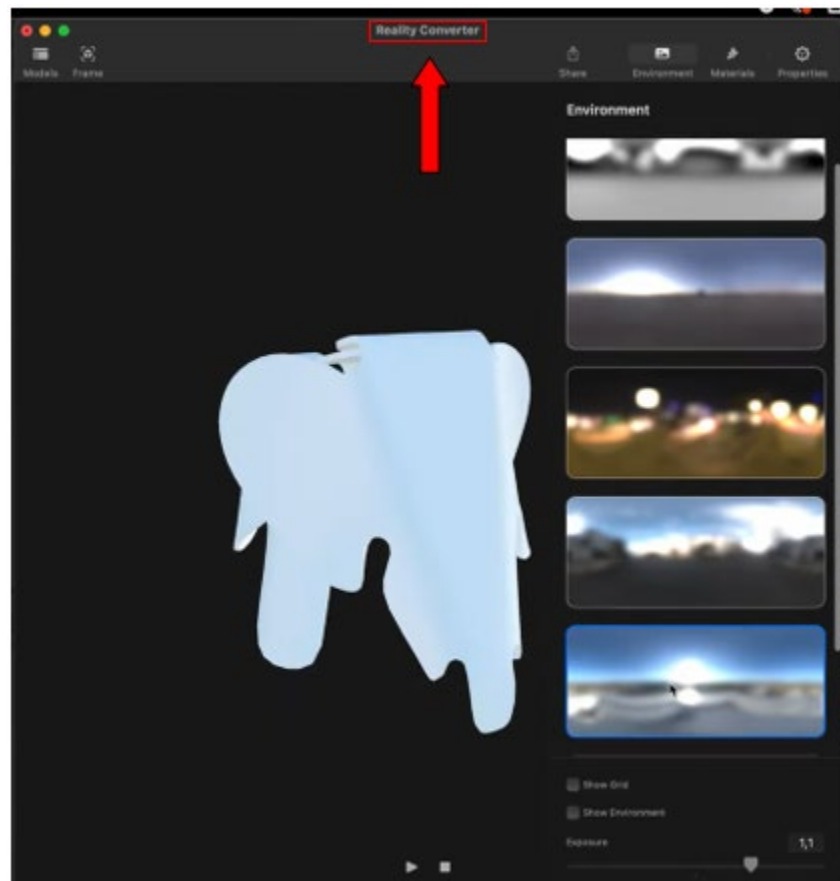
wwdc-2019-2019-6#reality-composer-is-a-new-app-that-apple-built-for-ios-mac-and-the-new-ipados-it-lets-developers-build-and-prototype-their-ar-experiences-even-if-theyve-never-built-a-3d-app-before-thanks-to-simple-tools-like-dragging-and-dropping-7.

<sup>3</sup> *About*, VentureBeat, <https://venturebeat.com/about/>.

37. As a result of Apple's immense global reach, promotional efforts, extensive third-party press coverage, significant number of downloads, and years of substantially exclusive use, relevant consumers (*i.e.*, software developers) have come to associate the REALITY COMPOSER mark exclusively with Apple.

**C. Extensive Use, Promotion, and Recognition of Reality Converter**

38. In January 2020, Apple announced a new companion product to the Reality Composer software for developers interested in creating 3D software environments, named REALITY CONVERTER. The Reality Converter product allows developers to create files that are compatible with the Reality Composer application from other 3D file formats and manipulate the 3D images with various lighting and material/texture tools. An image of the Reality Converter product in use with a red box around the trademark are below.

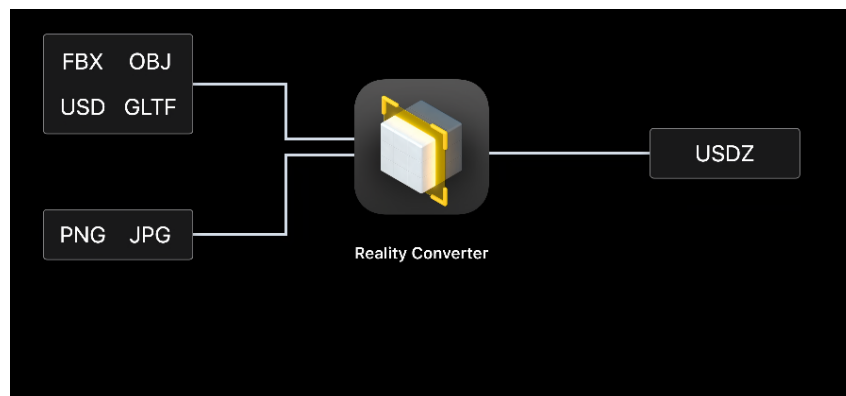


39. Like Reality Composer, the Reality Converter product targets developers designing software for Apple operating systems. It is available via download through Apple’s website and can be used only with an Apple operating system on Apple’s devices such as Mac computers, iPad tablets, and iPhone smart phones.

40. The suggestive REALITY CONVERTER name, coined by Apple, requires imagination for consumers to understand what it means in connection with Apple’s software, as the product does not actually change reality. In other words, the REALITY CONVERTER name does not accurately describe the product that it is used in connection with. Competitors, such as Blender and Sketchfab, also do not use the phrase “reality converter” in connection with their products. The phrase “reality converter” also does not appear in dictionaries for standard American English, and no one other than Apple has filed trademark applications containing this phrase.

41. The REALITY CONVERTER mark has also acquired recognition in the developer community. Apple announced the launch of the Reality Converter product in a press release on its website on January 13, 2020 and has used the mark substantially exclusively since then.

42. Apple also marketed the Reality Converter product to developers at the 2020 WWDC, as shown in the following excerpt from the “The Artist’s AR Toolkit” presentation:





43. Like the Reality Composer product, the Reality Converter product is also featured on Apple's website and has been for many years.

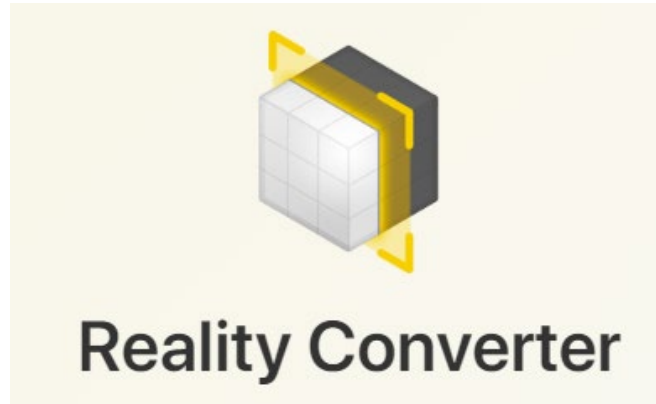
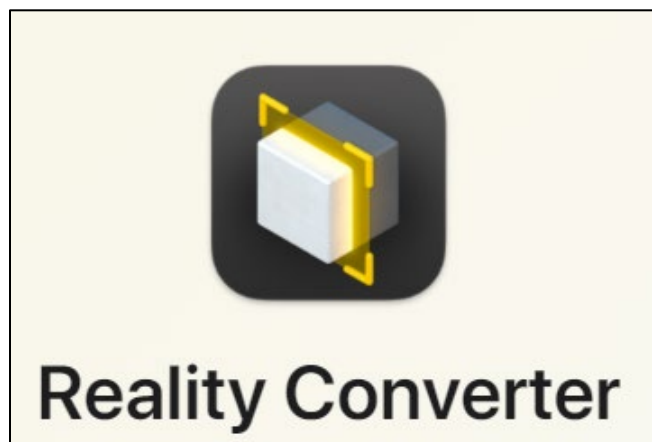


Image from 2020

## Creation tools for spatial apps

Discover how to preview, prepare, convert, and create spatial content for your visionOS and iOS apps with Reality Composer Pro, Reality Composer for iOS, and Reality Converter.



Images from 2024

44. The Reality Converter product has also similarly generated significant attention and unsolicited coverage in the developer space, with heavily circulated online news platforms, such as *Medium*—which, per public sources, has over 100 million monthly users<sup>4</sup>— and Benzinga publishing articles discussing the new product.

- On Jan. 13, 2020, 9To5Mac wrote: “Reality Converter is designed to be used in conjunction with Reality Composer, which is Apple’s tool for allowing developers to prototype and produce content for AR experiences. Reality Composer was introduced alongside the RealityKit framework at WWDC in June. The goal is to make it easier for developers to integrate 3D content into their apps.”
- On January 14, 2020, IClarified wrote about the launch of the app in an article titled “Apple Releases New ‘Reality Converter’ App.”
- On May 26, 2022, in an article titled “This Is How We Used Apple’s Reality Converter to Create Animated 3D Objects for Cubemint,” a writer at Medium wrote extensively about how to use Apple’s Reality Converter application, using REALITY CONVERTER as a trademark to identify Apple as the source of the product, and included various screenshots of the application in use.

45. As with Apple’s Reality Composer product, the launch of the Reality Converter product generated excitement within Apple’s developer community.

46. In addition, a significant number of developers in the United States have downloaded the Reality Converter product.

47. As with the REALITY COMPOSER mark, Apple’s immense global reach, its promotional efforts, third-party coverage, the significant number of downloads, and Apple’s years of substantially exclusive use, have led the relevant consuming public (namely, developers) to associate the REALITY CONVERTER mark exclusively with Apple.

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<sup>4</sup> *About, Medium*, <https://medium.com/about>.

**D. Zero Density's Use of the REALITY ENGINE mark**

48. On information and belief, Defendant is a Turkish technology company focusing largely on the broadcasting, live event, and e-sports industries. On information and belief, it provides a broadcast compositing system called REALITY ENGINE (the "System") that companies can use to create effects using green or blue screens on the walls and floors of a room. For example, on information and belief, the product is something The Weather Channel uses to project images of rain clouds and weather systems during live broadcasts. An image of ZeroDensity's System as shown on ZeroDensity's website is included by way of example:



49. On information and belief, the System is not intended for use by software developers and does not allow users to create software applications, and has nothing to do with augmented reality. In fact, in the TTAB, ZeroDensity submitted testimony admitting that the "virtual studio" built with its system

is different than virtual reality. With virtual reality, a user puts on a headset, sees the computer-generated 3d environment by his own eyes and is totally immersed in a digital created environment representing the whole virtual world, or fantasy experience. Whereas in a virtual studio each individual person sees the same final composite from the

shooting camera's point of view on a display device (usually a TV screen) at the same time during the broadcast. In virtual reality, every user sees the virtual world from different point of view in any time they wear their virtual reality headset.

50. On information and belief, the System requires highly sophisticated equipment, computers, and computer software to function. It also requires, on information and belief, detailed setups, accurate calibrations, and proper training for the operators and designers.

51. Upon information and belief, unlike Apple, ZeroDensity has never used the phrases “reality converter” or “reality composer” for any products or services, has no promotional materials containing these phrases, and has no trademark applications or registrations for the terms REALITY CONVERTER or REALITY COMPOSER.

52. Further, on information and belief, ZeroDensity's purported rights in its Alleged ZeroDensity Marks are weak in the United States. Not only is REALITY—the only term that both ZeroDensity and Apple use—a frequently used word in the software space, on information and belief, ZeroDensity also has limited users and advertising in the United States.

53. Further, even in Europe, which, upon information and belief, is ZeroDensity's primary market, the European Union Intellectual Property Office (the “EUIPO”) has registered both the Alleged ZeroDensity Marks and the Apple Marks, conferring rights to both parties in all member European countries.<sup>5</sup> A complete list of all countries, according to the World Intellectual Property Organization database, in which both the Apple Marks and the Alleged ZeroDensity Marks are registered is attached as **Appendix B**.

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<sup>5</sup> Registrations with the EUIPO confer rights in the following European countries: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

**E. The TTAB Opposition Proceeding**

54. On September 10, 2019, Apple applied for federal registration of the REALITY COMPOSER mark based on use in commerce since June 3, 2019, claiming a priority date of March 7, 2019 pursuant to Section 44(d) of the Trademark Act. The application covers “[d]ownloadable computer software used in developing other software applications; downloadable application development software; downloadable computer software providing a library of virtual objects for use in developing other software applications; downloadable computer software used in producing animation and three-dimensional effects for use in other software applications” in Class 9. On August 4, 2020, Apple’s REALITY COMPOSER mark was published on the Principal Register.

55. On March 30, 2020, Apple applied for federal registration of the REALITY CONVERTER mark based on use in commerce since January 13, 2020, claiming a priority date of October 2, 2019 pursuant to Section 44(d) of the Trademark Act. The application covers “[d]ownloadable computer software used in developing other software applications; downloadable application development software; downloadable computer software used in editing, customizing, and producing three-dimensional effects” in Class 9. On June 30, 2020, REALITY CONVERTER was published on the Principal Register.

56. On December 2, 2020, Defendant filed an opposition against Apple’s REALITY COMPOSER application. Then, on December 28, 2020, Defendant filed an opposition against Apple’s REALITY CONVERTER application. On August 29, 2022, ZeroDensity requested that the Board consolidate its oppositions to both applications. That request was granted on August 31, 2022, and the actions were consolidated.

57. During the TTAB proceedings, ZeroDensity opposed the Apple Applications on the grounds that (a) the Apple Marks are descriptive and (b) are likely to cause confusion with the Alleged ZeroDensity Marks.

58. Apple refuted these claims with arguments and evidence, including third-party news articles and online dictionary definitions of the terms contained within the Apple Marks.

59. On December 22, 2023, the TTAB sustained ZeroDensity's opposition to the Apple Marks, finding, contrary to the evidence, that the Apple Marks were descriptive. In doing so, it (a) ignored Apple's dictionary evidence, (b) incorrectly equated "augmented reality" with "reality," and (c) failed to consider that ZeroDensity does not even use the phrases REALITY CONVERTER or REALITY COMPOSER. The TTAB made no findings with respect to secondary meaning or the likelihood of confusion.

60. Apple intends, in this proceeding, to introduce new evidence not before the TTAB with respect to all three of these issues—suggestiveness vs. descriptiveness, secondary meaning, and likelihood of confusion.

**COUNT I**  
**REQUEST FOR REGISTRATION AND REVERSAL OF THE TTAB DECISION**  
**(15 U.S.C. § 1071(b)(1) AND 37 CFR § 2.145(c))**

61. Apple repeats and realleges the allegations of Paragraphs 1-60 as if fully set forth herein.

62. The facts stated herein demonstrate that ZeroDensity cannot meet its burden of establishing that the Apple Marks are descriptive rather than suggestive. The marks do not immediately convey a characteristic of Apple's software applications, require imagination to understand how they relate to the underlying products, are not used by competitors, and are not found in dictionaries. Therefore, the Apple Marks are registrable as suggestive terms.

63. The facts stated herein demonstrate that the Apple Marks have acquired secondary meaning. The REALITY COMPOSER and REALITY CONVERTER products were well publicized, received significant coverage in the developer community, have been downloaded numerous times, and have been used by Apple substantially exclusively for over four years. Therefore, whether the Apple Marks are descriptive or suggestive, the Apple Marks are registrable because they have acquired secondary meaning.

64. The facts stated herein demonstrate that the Apple Marks are not likely to cause confusion with the Alleged ZeroDensity Marks. On information and belief, the parties' marks are different and share only the common word "reality;" the parties' products are different, and Apple's products are available for use only in Apple-branded environments; the parties' target customers are different; the parties' consumers are sophisticated; ZeroDensity's rights, if any, are weak; and there has been no actual confusion. Therefore, the Apple Marks are registrable, as there is no likelihood of confusion with the ZeroDensity Asserted Marks.

65. The TTAB issued a final decision in *ZeroDensity Yazilim Anonim Sirketti v. Apple Inc.*, Opposition Nos. 91266285 and 91266754, on December 22, 2023 holding that the Apple Marks could not be registered because they are descriptive. The TTAB erred.

66. In this case, the facts described above, as well as the evidence Apple intends to submit in this proceeding, including evidence not submitted to the TTAB, demonstrate that the December 22, 2023 TTAB decision should be reversed, and the Court should enter an order requiring the USPTO to issue certificates of registration for Apple's REALITY COMPOSER and REALITY CONVERTER marks (Ser. Nos. 88/607,577 and 88/852,639).

**COUNT II**  
**DECLARATORY JUDGEMENT OF VALIDITY AND ENFORCEABILITY AND LACK  
OF A LIKELIHOOD OF CONFUSION**

67. Apple repeats and realleges the allegations of Paragraphs 1-60 as if fully set forth herein.

68. The Apple Marks are valid and enforceable as (1) they are suggestive, not descriptive; (2) they have acquired secondary meaning; and (3) there is no likelihood of confusion between the Apple Marks and the ZeroDensity Asserted Marks.

69. The USPTO evaluated the Apple Applications and approved both for publication without requiring proof of secondary meaning.

70. The Apple Marks do not immediately convey a quality or characteristic of Apple's Reality Composer or Reality Converter software applications, which are used for displaying three-dimensional images. Rather, the names conjure many different ideas about the underlying products and require a leap of the imagination to understand what Apple's products are.

71. Common American English dictionaries do not contain definitions for either "reality converter" or "reality composer." Third parties that offer software similar to those offered in connection with the Apple Marks also do not use the phrases "reality composer" or "reality converter."

72. Thus, the phrases REALITY COMPOSER and REALITY CONVERTER are not descriptive. Rather, they are suggestive coined terms and, thus, are inherently distinctive.

73. Alternatively, if the Apple Marks are deemed to be descriptive (which Apple contends they are not), they have acquired distinctiveness and, thus, are registrable pursuant to Section 2(f) of the Lanham Act, 15 U.S.C. § 1052(f).



74. Apple has invested and promoted its Marks across its social media platforms and at its widely publicized WWDC event. Apple has been using the REALITY COMPOSER and REALITY CONVERTER marks substantially exclusively for nearly five years. There has also been widespread unsolicited third-party news and social media coverage of the REALITY CONVERTER and REALITY COMPOSER marks, particularly in the developer community.

75. All of the foregoing has resulted in relevant consumers associating the REALITY COMPOSER and REALITY CONVERTER marks exclusively with Apple.

76. Accordingly, the Apple Marks have acquired distinctiveness.

77. Further, as admitted by ZeroDensity during the TTAB proceedings, there has been a complete and utter lack of confusion between the Apple Marks and the Alleged ZeroDensity Marks.

78. Nor is confusion likely here given that (a) the Apple Marks are only used in connection with products and services offered on Apple's Developer website, may only be used by Apple's subscribers to its Developer Program, and may only be used on Apple devices; (b) the marks look and sound different, and have different connotations and overall commercial impressions; (c) the products and services offered under the respective marks are significantly different; (d) the target consumers of Apple's products are distinct from the target customers of ZeroDensity's products; (e) the parties' consumers are sophisticated; and (f) ZeroDensity's purported rights, if any, are weak.

79. Accordingly, Apple is entitled to a declaration that the Apple Marks are valid and enforceable and that there is no likelihood of confusion with the Alleged ZeroDensity Marks.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Apple Inc. respectfully requests that the Court enter an Order:

1. Declaring that the REALITY CONVERTER mark is suggestive, not descriptive;

2. Declaring that the REALITY COMPOSER mark is suggestive, not descriptive;
3. Declaring that the REALITY COMPOSER mark has acquired distinctiveness in connection with Apple's goods and services;
4. Declaring that the REALITY CONVERTER mark has acquired distinctiveness in connection with Apple's goods and services;
5. Declaring that the REALITY COMPOSER mark is not likely to cause confusion with the Alleged ZeroDensity Marks;
6. Declaring that the REALITY CONVERTER mark is not likely to cause confusion with the Alleged ZeroDensity Marks;
7. Reversing and vacating the TTAB decision in *In re Application of Apple Inc.*, Application No. 86/857,587;
8. Requiring the Director of the USPTO to pass Apple's REALITY COMPOSER mark (Serial No. 88/607,577) onto publication for registration on the Principal Register;
9. Requiring the Director of the USPTO to pass Apple's REALITY CONVERTER mark (Serial No. 88/852,639) onto publication for registration on the Principal Register; and
10. Awarding to Apple such other and further relief as the Court deems just and equitable.

**NOTICE OF NEW EVIDENCE AND REQUEST FOR *DE NOVO* REVIEW**

As mentioned above, Apple intends to (a) introduce new arguments and evidence in this case, beyond that which was considered by the USPTO; and (b) develop and pursue such new arguments and evidence to the full extent permitted by the Federal Rules of Civil Procedure and Federal Rules of Evidence. Apple thus requests that this Court undertake *de novo* review of all arguments and evidence in this case.

Dated: February 23, 2024

/s/ Robert E. Scully, Jr.

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