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June 1, 2010

BY E-FILE

The Honorable Richard Seeborg
450 Golden Gate Ave.
Courtroom 3, 17th Floor
San Francisco, CA 94102

Re: Elan v. Apple, C-09-01531 RS (PVT)

Dear Judge Seeborg:

In advance of the June 3, 2010 hearing on Elan's Motion to Stay (D.I. 78), I write to update you on certain positions Elan has taken in the International Trade Commission ("ITC"), where Elan is represented by the same counsel representing Elan here. These positions bear directly on positions Elan has taken in support of its stay motion.

Specifically, in seeking an accelerated schedule in the ITC, Elan asserted in its ITC Discovery Statement and Proposed Procedural Schedule (attached hereto as Exhibit A) that "an accelerated target date is appropriate in light of the *advanced state of the District Court litigation* and discovery that has already occurred." Exh. A at 6 (emphasis added). Elan further noted that in the District Court the parties have already exchanged over one million pages of documents, responded to interrogatories, made source code available for inspection, and served invalidity and infringement contentions. *Id.* With respect to Apple's invalidity contentions specifically, Elan explained that they are "detailed Invalidity Contentions addressing 23 patents, 15 printed publications and 7 allegedly prior art touch input systems" that "run to 55 pages exclusive of claim charts." *Id.* Summing up, Elan argued that the ITC action should be set for as early a hearing as possible "[b]ecause the parties have already had the opportunity to take significant discovery and to analyze that information and prepare their cases . . ." *Id.* at 7.

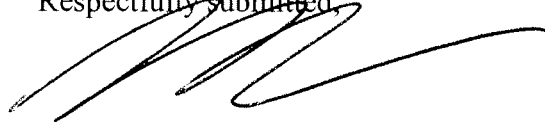
This evidence and argument is in tension with the position Elan took in its Reply Brief in support of its Motion to Stay (D.I. 95). There, Elan argued that this case

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should be stayed because the “*district court case is still in its early stages.*” D.I. 95 at 3 (emphasis added). Similarly, Elan argued at length that this case has “languished for much of [the last] year,” and that Apple has “use[d] its substantial resources to delay discovery in the district court as much as possible” *Id.* at 4, 7.

In Apple’s view, the detailed facts Elan set forth in the ITC more accurately reflect the advanced stage of this litigation.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Matthew D. Powers', written over the typed name below.

Matthew D. Powers