

EXHIBIT A

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

Before the Honorable Paul J. Luckern
Chief Administrative Law Judge

In the Matter of

CERTAIN ELECTRONIC DEVICES WITH
MULTI-TOUCH ENABLED TOUCHPADS
AND TOUCHSCREENS

Investigation No. 337-TA-714

**COMPLAINANT ELAN MICROELECTRONICS CORP.'S DISCOVERY
STATEMENT AND PROPOSED PROCEDURAL SCHEDULE**

Pursuant to Order No. 1, Complainant Elan Microelectronics Corporation (“Elan”) submits the following initial Discovery Statement.

Elan asked that this investigation be instituted to address respondent Apple, Inc.’s (“Apple”) longstanding, widespread infringement of Elan’s U.S. Patent No. 3,825,352 (the “352 patent”). The 352 patent discloses and claims a reliable and accurate method of detecting the presence of two or more fingers on a touch-sensitive input device, such as the touchpad on a laptop computer or the touchscreen on a handheld device. The 352 patent also discloses and claims several ways that user gestures on such an input device can be used to control the devices. Prior to the 352 patent, known methods could make at best limited use of such multifinger gestures. After the 352 patent, touch input devices could much more easily implement control functions that were difficult when pressing separate mechanical buttons was required. These included scrolling, panning, and selecting text or other items on the screen. Starting with its laptop computers in 2005 and expanding to its iPhone and iPod Touch product in 2007 and continuing through the launch this year of the Magic Mouse and iPad tablet computer, Apple has continued to rely on the multi-touch functionality of the 352 patent. Yet, despite repeated requests Apple has consistently refused to license the technology it has adopted. Elan therefore

seeks remedial orders excluding any products found to infringe the 352 patent from importation into the United States, and a cease-and-desist order barring the sale of any such products imported prior to the Exclusion Order

I. PROPOSED ISSUES TO BE LITIGATED

Elan submits that the following issues will be litigated in this investigation:

1. Whether Apple's MacBook laptop computers, iPhone smart phone products, iPad tablet computers, iPod Touch digital media players and/or Magic Mouse products (collectively "the accused products") infringe any of the asserted claims of the 352 patent;
2. Whether there is a violation of §337(a)(1)(B) by the importation into the United States, sale for importation or the sale within the United States after importation of any of the accused electronic devices with multi-touch enabled touchpads or touchscreens that infringe any of the asserted claims of the 352 patent;
3. Whether an industry exists in the United States protected by the 352 patent as required by §337(a);
4. Whether Apple has met its burden of proving any affirmative defense;
5. The terms on which a limited exclusion order should issue, and the amount of any bond for importation pending the Presidential review period.

II. GENERAL DESCRIPTION OF INFORMATION AND EVIDENCE THAT ELAN INTENDS TO SUBMIT TO PROVE ITS CASE

1. Evidence concerning the structure and function of the accused products showing that the products practice the asserted claims, including expert testimony;
2. Evidence showing the violation of §337 in the sale for importation, importation and sale in the United States after importation of the accused devices;

3. Evidence showing sales volume and inventory of the accused products in the United States;

4. Evidence and information showing that there is an industry in the United States relating to articles protected by the '352 patent;

5. Evidence and information rebutting any affirmative defense raised by Apple; and

6. Evidence and information concerning the appropriate scope of remedial orders and the amount of any bond during the Presidential review period.

Elan reserves the right to add to, delete from or otherwise modify the forgoing based upon further investigation and discovery and on the positions and issues raised during the investigation.

III. GENERAL DESCRIPTION OF INFORMATION AND EVIDENCE THAT ELAN SEEKS TO OBTAIN FROM OTHERS

At this stage in the investigation it is not possible for Elan to fully anticipate all of the information it may seek from others. However, at this junction Elan identifies the following categories of information it will seek.

A. Information from Apple

Elan has served document requests and interrogatories on Apple seeking discovery of information in certain of the categories listed above. In particular, Elan is seeking technical documents, including firmware and software source code, product specifications, engineering specifications, schematics and the like that show the relevant structure and function of the accused devices. Elan is also seeking information regarding the overseas manufacture of the accused products, the importation of the accused

products, including the entities responsible for their importation, and the sales and distribution channels for the products in the United States after importation.

B. Information from Third Parties

Elan can not yet be certain what information may be obtained only from third parties. However, Elan does intend to seek information from its domestic licensee, Synaptics, Inc., concerning Synaptics products protected under Synaptics' license to the '352 patent and Synaptics' investment in the domestic industry in those protected products. Elan may also seek information concerning the volume of sales and inventory of the accused products in the United States from third party distributors, resellers and retailers.

IV. DESCRIPTION OF INFORMATION AND EVIDENCE ELAN BELIEVES CAN BE OBTAINED ONLY BY DEPOSITION, INTERROGATORY, SUBPOENA, OR REQUEST FOR ADMISSION

This investigation has grown out of a district court proceeding in which Complainant accused Apple of infringing the '352 patent. Elan has already propounded on Apple its First Set of Interrogatories seeking information and evidence relating to, *inter alia*, the structure and function of the accused products, and their importation, sale for importation and/or sale in the United States after importation. Elan has also propounded on Apple its First Set of Requests for Production to obtain evidence that Apple produced in the district court proceeding in order to jump-start discovery in this investigation as well as a Second Set of Requests for Production seeking information particularly of issue in this investigation. Elan will soon serve a subpoena for documents and deposition testimony on Synaptics, Inc. regarding Synaptics' domestic industry activities.

V. STATUS OF SETTLEMENT DISCUSSIONS

Although Elan hopes to resolve this dispute through a license to the '352 patent, the parties engaged in a settlement conference before Magistrate Judge Spero in the U.S. District Court for the District of Northern California in February, 2010 and did not reach agreement as a result of that conference, and no substantial progress made to lessen the parties' differences. There have been no further substantive discussions since that time.

VI. STATUS OF ANY LITIGATION THAT MAY AFFECT ANY ISSUE IN THIS INVESTIGATION

As mentioned above, Elan has asserted the 352 patent against the accused products in the U.S. District Court for the Northern District of California, Case No. 5:09-cv-01531 RS. Discovery has been underway for some time, and the parties' have exchanged opening claim construction briefs. Responsive claim construction briefs are due on May 28, 2010 and a *Markman* hearing is scheduled for June 23, 2010. Also pending is Elan's motion to stay the action with respect to its asserted patents, including the 352 patent.

VII. PROPOSAL FOR MODIFICATION OF, OR ADDITION TO, THE GROUND RULES ATTACHED TO THIS ORDER AND WHICH ARE IN EFFECT, PURSUANT TO THIS ORDER, FOR THIS INVESTIGATION

Elan has conferred and will continue to confer with Apple and the Staff with the goal of proposing a joint stipulation to make service and exchange of documents during discovery more efficient and manageable, regarding the handling of privileged documents and the production of expert report drafts, and regarding safeguards against the inadvertent production of documents that are protected by the attorney-client privilege and/or work product doctrine. This stipulation need not be incorporated into the Ground Rules.

VIII. PROPOSAL FOR ANY MODIFICATIONS OF THE PROTECTIVE ORDER

Elan has conferred and will continue to confer with Apple and the Staff with the goal of proposing a joint stipulation to protect highly confidential and proprietary trade electronic source code and similar information, to permit discovery in this action to be used in the pending District Court litigation, and to incorporate a provision barring attorneys with access to Confidential Business Information from preparing or prosecuting patent applications related to that information. The parties may request that this stipulation be incorporated into the Protective Order.

IX. POSITION AS TO TARGET DATE

Elan proposes a 12 month target date, subject to the availability of the ALJ and the Staff. Such an accelerated target date is appropriate in light of the advanced state of the District Court litigation and discovery that has already occurred. In particular, discovery in the District Court action has been progressing since the service of discovery requests in August, 2009 and the exchange of Initial Disclosures on September 2, 2009. To date the parties have exchanged approximately one million pages of documents, as well as responses to interrogatories. The parties made available for inspection the source code for the firmware or software that controls the many of the relevant functions in the accused devices, and that code has been inspected by the parties' experts. On December 7, 2009 Apple served detailed Invalidity Contentions addressing 23 patents, 15 printed publications and 7 allegedly prior art touch input systems Apple contends anticipate the asserted claims or render them obvious. Apple's contentions run to 55 pages exclusive of claim charts. Similarly, on October 22, 2009, Elan provided Apple with its infringement contentions

Because the parties have already had the opportunity to take significant discovery and to analyze that information and prepare their cases, this matter should be set for as early a hearing and final resolution as possible. For that reason Elan contends that a 12 month target date is appropriate.

X. POSITION ON THE ALJ'S ACTIVE PARTICIPATION IN SETTLEMENT NEGOTIATIONS

Elan does not oppose the active assistance of the ALJ may in any possible settlement negotiations.

May 20, 2010

/s/ Sean P. DeBruine

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day, a true and correct copy of the foregoing was served by the indicated means to the persons at the addresses below:

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DATED: May 20, 2010

/s/ John Morris
