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 ELAN MICROELECTRONICS CORPORATION

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 13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 15 SAN JOSE DIVISION

16 ELAN MICROELECTRONICS  
 17 CORPORATION,  
 18 Plaintiff and Counterdefendant,  
 19 v.  
 20 APPLE, INC.,  
 21 Defendant and Counterclaimant.

Case No. 09-cv-01531 RS  
**SUPPLEMENTAL DECLARATION OF  
 SEAN P. DEBRUINE IN SUPPORT OF  
 ELAN MICROELECTRONICS  
 CORPORATION'S OPPOSITION TO  
 APPLE INC.'S OPENING CLAIM  
 CONSTRUCTION BRIEF**

DATE: June 23, 2010  
 TIME: 1:30 p.m.  
 JUDGE: Richard Seeborg  
 CTRM: 3, 17<sup>th</sup> Floor

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 23 **AND RELATED COUNTERCLAIMS**  
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1 I, Sean P. DeBruine, declare as follows:

2 1. I am a partner in the law firm of Alston & Bird LLP, counsel to Plaintiff Elan  
3 Corporation (“Elan”) in this action. I was also counsel for Elan’s predecessor, Elantech Devices  
4 Corp. (“Elantech”) in *Elantech Devices Corp. v. Synaptics, Inc.* case no. C06-01839 CRB (“the  
5 *Synaptics case*” or “*Synaptics*”). I have personal knowledge of the following facts, except as  
6 otherwise stated. If called to testify, I could and would testify competently to the matters stated  
7 herein.

8 2. The claim construction proposed by Elantech in the *Synaptics* case included the  
9 disputed claim language. The parties did not contest that aspect during claim construction or  
10 summary judgment. However, the parties did contest Synaptics’ proposal that the term “scanning  
11 the touch sensor” require that the scan proceed “in scan order.” In opposition to that position, Elan  
12 raised claim construction arguments consistent with those presented here, namely that the term  
13 “following” in the claim limitation “identify a minima following the first maxima” refers only to a  
14 conceptual relationship, and does not impose any order on how the method is carried out. *See*  
15 Elantech’s Reply Claim Construction Brief at 5 (Exhibit L to my May 7, 2010 Declaration), Dkt.  
16 No. 88-12 at 5:5-18. Elantech prevailed on that argument, and no order was imposed in the  
17 “scanning the touch sensor” limitation.

18 3. Throughout the argument on the parties’ motions for summary judgment, and  
19 Elan’s motion for preliminary injunction, the order of the “identify” steps was not at issue. While  
20 certain of the Synaptics’ products were found to meet the limitations as construed by the court,  
21 there was no dispute or discussion on this point. As such, Elantech would have prevailed, the  
22 extent it did, if it had secured the claim construction it advocates here.

23 4. I was involved in a series of discussions and email exchanges with counsel for  
24 Apple regarding the parties’ claim construction positions. Those discussions involved some thirty  
25 disputed claim terms or phrases from five different patents. Very shortly before the deadline for  
26 filing the parties’ Joint Claim Construction Statement, Apple proposed an entirely new  
27 construction of the terms “identify a first maxima . . .,” “identify a minima . . .,” and “identify a  
28 second maxima . . .” appearing in claim 1 of Elan’s ’352 patent. When Apple provided a revised

1 draft of the chart setting forth the parties' positions on the '352 patent claims for the Joint Claim  
2 Construction Statement, there was no reference to a requirement that the step of "identify[ing] a  
3 minima following the first maxima" be performed after the identification of the first maxima. It  
4 was not until March 31, 2010 that Apple raised this aspect of its proposed construction,  
5 characterizing the omission as a typographical error. Attached hereto as Exhibit A is a true and  
6 correct copy of an email I received from Sonal Mehta, counsel for Apple, on March 31, 2010.  
7 That email also makes reference to other changes Apple proposed to make to its construction of  
8 other claim terms. As Apple notes, I responded to Ms. Mehta on April 8, 2010 indicating that Elan  
9 did not agree to include this limitation in its proposed construction.

10 5. Attached hereto as Exhibit B is a true and correct copy of Elantech's Notice of  
11 Motion and Motion for Partial Summary Judgment of Infringement, filed on November 20, 2007  
12 in the *Synaptics* case.

13 6. Attached hereto as Exhibit C is a true and correct copy of Elantech's Reply  
14 Memorandum in Support of Its Motion for Partial Summary Judgment of the '352 Patent, filed on  
15 December 28, 2007 in the *Synaptics* case.

16 7. Attached hereto as Exhibit D is a true and correct copy of the patent application  
17 filed on November 25, 2003 from the certified file history of U.S. Patent No. 7,495,659 B2 (Bates  
18 No. APEL1572-1621)

19 8. Attached hereto as Exhibit E is a true and correct copy of the April 12, 2007  
20 Amendment After Final Action Under 37 C.F.R. 1.116, from the certified file history of the '659  
21 patent. I note that either the patent office misfiled the pages of this document, or the pages were  
22 taken out of order in the reproduction process when produced by Apple. In Exhibit C, we place  
23 the document in its original order, such that the Bates numbers are non-sequential. APEL 2836-  
24 2849.

25 9. Attached hereto as Exhibit F is a true and correct copy of the Court's October 6,  
26 2008 Order on Stipulation to Extend Fact Discovery Cutoff Date and Remaining Deadline, filed in  
27 the *Synaptics* case.

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10. Attached hereto as Exhibit G is a true and correct copy of the Court's November 12, 2008 Stipulated Order Dismissing Action with Prejudice, filed in the *Synaptics* case.

I swear under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 2, 2010, at Palo Alto, California.

*/s/ Sean P. DeBruine*  
Sean P. DeBruine

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