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11  ELAN MICROELECTRONICS CORPORATION

12
                      UNITED STATES DISTRICT COURT
13
                    NORTHERN DISTRICT OF CALIFORNIA
14
                           SAN JOSE DIVISION
15

16  ELAN MICROELECTRONICS              Case No. 09-cv-01531 RS
    CORPORATION,
17                                     **REBUTTAL DECLARATION OF**
                                       **ROBERT DEZMELYK IN SUPPORT**
18          Plaintiff,                 **OF ELAN MICROELECTRONICS**
         v.                            **CORP.S OPPOSITION TO APPLE'S**
19                                     **OPENING CLAIM CONSTRUCTION**
    APPLE, INC.,                       **BRIEF**
20
            Defendant.                 DATE:    June 23, 2010
21                                     TIME:    1:30 p.m.
                                       JUDGE:   Richard Seeborg
22  AND RELATED COUNTERCLAIMS          CTRM:    3, 17th Floor

23

24  I, Robert Dezmelyk, declare and state as follows:

25          1.      I have been retained by Elan Microelectronics Corp. ("Elan") as an expert witness in

26  this lawsuit.  I am providing this declaration to describe the technology relevant to an understanding

27  of the patents in suit and to state my opinion regarding the level of ordinary skill in the art to which

28  the patents are addressed and the meanings that terms or phrases used in certain patents would have

REBUTTAL DECLARATION OF ROBERT DEZMELYK IN
SUPPORT OF ELAN MICROELECTRONICS CORPORATION'S          1          Case No. 09-cv-01531 RS
OPPOSITION TO APPLE'S CLAM CONSTRUCTION BRIEF

1  to one of ordinary skill in the art to which the patents pertain.  I provide this Supplemental

2  Declaration to provide information relevant to certain of the arguments made by Apple in its

3  Opening Claim Construction Brief.

4       2.      My background and qualifications are set forth in my earlier Declaration In Support

5  of Elan Microelectronics Corporation's Opening Claim Construction Brief.  In that earlier

6  declaration I also set forth my understanding of the level of ordinary skill in the art for purposes of

7  construing the claims of the patents at issue here.  I provide this Rebuttal Declaration to address

8  instances where Apple's Brief uses terms in a way other than how they would be understood by

9  those of ordinary skill in the art.

10      3.      I understand that Apple proposes a construction of the terms "identify a first maxima

11  in a signal corresponding to a first finger," "identify a minima following the first maxima" and

12  "identify a second maxima in a signal corresponding to the second finger following said maxima" to

13  require the analysis of a profile "taken on an axis."  Apple Brief at 6.  However, from reviewing

14  Apple's argument in support of that position, it is clear to me that Apple is using the term "axis" in a

15  way that is different from the understanding one of ordinary skill in the art would give that term.

16  One of ordinary skill in the art would understand an axis to be one of the lines along which

17  coordinates are defined in a coordinate system.  Thus, in a system where points are described as x

18  and y coordinates, the term "axis" would refer to either the x-axis or the y-axis.  *See, e.g. McGraw-*

19  *Hill Dictionary of Scientific and Technical Terms, 3d Ed.* (1984) at 136, attached hereto as Exhibit

20  1. Apple appears to be using the term axis to refer to any other line drawn in the coordinate space.

21  *See* Apple Brief at 11 (referring to a hypothetical "axis" diagonal to the x- and y-axes").  Apple

22  states that an analysis "along a direction" is the same as "on an axis."  This is not how the word

23  "axis" is used by those skilled in the art.

24      4.      I also note that nothing in the claim language "scanning the touch sensor to . . .

25  identify" the maxima or minima would be understood by one skilled in the art to necessarily require

26  scanning in an angular direction.  Rather, to "scan" is to make an orderly examination of the entire

27  space, in this instance an orderly examination of the capacitance values from the touch sensor.  A

28  typical "scan" order well-known at the time of the 352 patent was the "raster scan" where a video

1 image was created picture element by picture element, starting in a row a the top corner of the

2 screen and proceeding in a back and forth manner across and down the screen until the lower corner

3 opposite the starting point was reached.  This was also a well-known method of traversing the

4 values stored in a data matrix.  *See, e.g. McGraw-Hill Dictionary* at 1420, attached as Exhibit 1.

5      I declare under penalty of perjury under the laws of the United States of America that the

6 foregoing is true and correct.  Executed on June 2, 2010, at Newton, New Hampshire.

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                          */s/ Robert Dezmelyk*

9                           Robert Dezmelyk

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**FILER'S ATTESTATION**

Pursuant to General Order No. 45, Section X (B) regarding signatures, I, Sean P. DeBruine, attest that concurrence in the filing of this document has been obtained.

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

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