

EXHIBIT D

From: DeBruine, Sean
Sent: Wednesday, June 02, 2010 3:01 PM
To: Mehta, Sonal
Cc: Elan Apple Team; Apple Elan WGM Service
Subject: RE: Dezmelyk declaration

Sonal:

I enjoyed my holiday weekend; I hope you did yours as well.

We disagree with your contentions regarding Mr. Dezmelyk's declaration. Apple was informed of the nature of his opinions and had a full day to explore them with him. That Apple chose to focus on certain areas of inquiry at the expense of others is not a grounds for excluding evidence.

We also are not in favor of the motion to shorten time. Apple has had Mr. Dezmelyk's declaration for nearly a month, more than enough time to have raised this on a regularly noticed motion to be heard on or before June 23. With that said, since I am sure the court would like to consider this before the Markman hearing, we are willing to discuss a briefing schedule. I am afraid that June 11 is not a convenient date for Elan's response. I would therefore propose that Elan's opposition be filed on June 14 with any Reply on June 16 or 17. Please let me know if that schedule suits Apple.

Best regards,

Sean

-----Original Message-----

From: Mehta, Sonal [mailto:Sonal.Mehta@weil.com]
Sent: Tuesday, June 01, 2010 7:46 PM
To: DeBruine, Sean
Cc: Elan Apple Team; Apple Elan WGM Service
Subject: Dezmelyk declaration

Sean:

I hope you had a nice Memorial Day weekend.

I am writing now regarding the Declaration of Robert Dezmelyk that Elan filed with its Opening Claim Construction Brief. Apple has reviewed the declaration, and believes that it improperly adds new opinions and additional analysis after the close of claim construction discovery, in violation of the Patent Local Rules. In particular, the opinions in Paragraphs 26-34 of the declaration were not disclosed pursuant to Patent Local Rule 4-3 and were not available to Apple prior to Mr. Dezmelyk's deposition. As such, Apple requests that Elan withdraw those paragraphs of Mr. Dezmelyk's May 7 declaration. Barring that, Apple intends to file a motion to strike those portions of Mr. Dezmelyk's declaration tomorrow. In addition, Apple plans to ask the Court to hear the motion to strike on a shortened briefing schedule, so that the motion can be heard on June 21st, along with the claim construction tutorial. Under Apple's proposed schedule, Elan's opposition brief, if any, will be due on June 11, and Apple's reply, if any, will be due on June 15.

Please let me know by 4pm tomorrow (1) whether Elan consents to withdraw Paragraphs 26-34 of Mr. Dezmelyk's May 7 declaration; and (2) if Elan does not consent, whether Elan will oppose Apple's proposed shortened briefing schedule. We are also available to discuss at any time tomorrow.

Best,
Sonal

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