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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:

Following last week's claim construction hearing, there have been two related developments in the parallel International Trade Commission investigation on Elan's '352 patent to which we wish to alert the Court.

First, Chief Administrative Law Judge Luckern has ordered that claim construction proceedings on the '352 patent will go forward in the ITC commencing immediately and culminating in a claim construction hearing on August 18, 2010. *See* Exhibit A (Markman Procedural Schedule). Second, pursuant to that order, Apple and Elan exchanged proposed claim constructions for the '352 patent yesterday afternoon. While Apple's proposed constructions are identical to those proffered in this case, Elan has once again changed several of its proposed constructions. *See* Exhibits B, C (Proposed Constructions). Elan's new claim constructions are fundamentally different from both the constructions it advocated and won in the *Synaptics* litigation and from the constructions it advocated before Your Honor at last week's claim construction hearing. *See, e.g.*, Exhibit C (construing "identify a second maxima in a signal corresponding to a second finger following said minima" as "identify a second highest absolute value in a set of values derived from the coupling of a second finger with the touch sensor that follows the minima").

Setting aside the threshold question of whether Elan's attempt to pursue yet a third set of proposed claim constructions for its patent by initiating an investigation in the ITC is viable, Apple believes that claim construction proceedings before Chief

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Administrative Law Judge Luckern would benefit from this Court's claim construction rulings and rationale. Thus, while Apple is cognizant of the many demands on the Court's time and resources, Apple respectfully requests that the Court consider whether it may be able to issue its claim construction ruling on at least the '352 patent before the August 18, 2010 claim construction hearing in the ITC. Apple appreciates the Court's consideration in this regard.

Respectfully submitted,

/s/ Matthew D. Powers

Matthew D. Powers