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 ELAN MICROELECTRONICS CORPORATION

11
 12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

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

Case No. 09-cv-01531 RS
DECLARATION OF SEAN P. DEBRUINE IN SUPPORT OF ELAN MICROELECTRONICS CORPORATION'S OPPOSITION TO APPLE INC.'S MOTION TO DISMISS

DATE: August 5, 2010
 TIME: 1:30 p.m.
 JUDGE: Richard Seeborg
 CTRM: Courtroom 3, 17th Floor

21
 22 **AND RELATED COUNTERCLAIMS**
 23

24 I, Sean P. DeBruine, declare as follows:

25 1. I am a partner in the law firm of Alston & Bird LLP, counsel to Plaintiff Elan
 26 Microelectronics Corporation ("Elan"). I have personal knowledge of the following facts, except
 27 those facts stated on information and belief, which facts I believe to be true. If called to testify I
 28 could and would testify competently to the matters stated herein.

1 2. On May 25, 2010, Defendant Apple Inc. (“Apple”) filed its Third Amended
2 Answer, Affirmative Defenses, and Counterclaims to Elan Microelectronics Corporation’s
3 Complaint (Dkt. No. 96), in which Apple alleges that Elan is infringing claims 1, 2, 3 and 5 of U.S.
4 Patent No. 5,764,218 (“the ’218 patent”). Attached hereto as Exhibit A is a true and correct copy
5 of the ’218 patent.

6 3. On May 25, 2010, I took the deposition of Mr. Mark Della Bona, one of inventors
7 named on the ’218 patent. Attached hereto as Exhibit B are true and correct copies of selected
8 pages from the transcript of the May 25, 2010 deposition of Mr. Della Bona, designated by Apple
9 as “Confidential.” **(FILED UNDER SEAL)**.

10 4. After the deposition, Elan added the inequitable conduct allegations against the
11 ’218 patent inventors and others involved in prosecuting the ’218 patent application in its Answer
12 and Counterclaims in Response to Apple’s Third Amended Answer (Dkt. No. 118), which was
13 filed on June 8, 2010. Attached hereto as Exhibit C is a true and correct copy of Elan’s Answer
14 and Counterclaims in Response to Apple’s Third Amended Answer.

15 5. On May 24, 2010, Apple produced documents that it represented were found in the
16 files of the attorneys who prosecuted the ’218 patent. Among the documents produced were
17 detailed Interface Specifications for the GlidePoint® touch pad. In particular, those documents
18 included the “GlidePoint Serial/Parallel Interface SPECIFICATION,” (APEL0056352 –
19 APEL0056357) and “GlidePoint PS/2 Interface SPECIFICATION,” (APEL0056358 –
20 APEL0056367). Both documents were also entitled “Rev. 19940707,” indicating a date of July 7,
21 1994. Attached hereto as Exhibit D is a true and correct copy of the “GlidePoint Serial/Parallel
22 Interface SPECIFICATION,” designated by Apple as “Confidential.” (APEL0056352 –
23 APEL0056357). **(FILED UNDER SEAL)**. Attached hereto as Exhibit E is a true and correct
24 copy of the “GlidePoint PS/2 Interface SPECIFICATION,” designated by Apple as
25 “Confidential.” (APEL0056358 – APEL0056367). **(FILED UNDER SEAL)**.

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1 6. Attached hereto as Exhibit F is a true and correct copy of the '218 patent
2 application dated January 31, 2005 from the prosecution history of the '218 patent.

3 7. Attached hereto as Exhibit G is a true and correct copy of the text of an article
4 appearing in the May 17, 1994 edition of PC Magazine entitled "Touch 'n' Point." (ELN538901).

5 8. Attached hereto as Exhibit H is a true and correct copy of the text of an article
6 appearing in the July 1994 edition of PC World magazine entitled "Trackball Alternative: Let
7 Your Finger Do the Mousing." (ELN538902).

8 9. Attached hereto as Exhibit I is a true and correct copy of the text of an article
9 appearing in the November 7, 1994 edition of InfoWorld magazine entitled "Let your finger do the
10 pointing with GlidePoint." (ELN538905).

11 10. Attached hereto as Exhibit J is a true and correct copy of the text of an article
12 appearing in the October 17, 1994 edition of InfoWorld magazine entitled "Alps unveils
13 GlidePoint pad." (ELN538906).

14 11. Attached hereto as Exhibit K is a true and correct copy of the text of an article
15 appearing in the September 19, 1994 edition of Government Computer News magazine entitled
16 "Trackball getting on your nerves? Try GlidePoint." (ELN538903).

17 12. Attached hereto as Exhibit L is a true and correct copy of the text of an article
18 appearing in the September 13, 1994 edition of PC Magazine entitled "GlidePoint: finger
19 navigation." (ELN538904).

20 13. Attached hereto as Exhibit M is a true and correct copy of the text of an article
21 appearing in the May 30, 1994 edition of PC WEEK magazine entitled "We've Built A Better
22 Mouse; Now We Need A Better Trap," produced and designated by Apple as "Confidential."
23 (APEL0405502). **(FILED UNDER SEAL)**.

24 14. Attached hereto as Exhibit N is a true and correct copy of the text of an article
25 appearing in the May 9, 1994 edition of PC WEEK magazine entitled "Cirque's GlidePoint
26 technology could cure track ball-mung blues." (ELN538909).

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1 15. Attached hereto as Exhibit O is a true and correct copy of the text of an article
2 appearing in the November 1994 edition of PC World magazine entitled “POINTERS in the Right
3 Direction.” (ELN538910 – ELN538911).

4 16. Attached hereto as Exhibit P is a true and correct copy of the text of an article
5 appearing in the August 12, 1994 Chicago Tribune newspaper entitled “Cirque’s GlidePoint
6 Reinvents the Mouse Tap.” (ELN538915 – ELN538916).

7 17. Attached hereto as Exhibit Q is a true and correct copy of the text of an article
8 appearing in the June 5, 1994 Salt Lake Tribune newspaper. (ELN538917 – ELN538918).

9 18. Attached hereto as Exhibit R is a true and correct copy of the text of an article
10 appearing in the May 2, 1994 edition of Computerworld magazine entitled “Trackball alternative
11 shows promise,” produced and designated by Apple as “Confidential.” (APEL0405505).
12 **(FILED UNDER SEAL)**.

13 19. Attached hereto as Exhibit S is a true and correct copy of the text of an article
14 appearing in the June 1, 1994 edition of BYTE magazine entitled “News & Views: POINTING
15 DEVICES Apple, Cirque Unveil Trackball Alternative,” produced and designated by Apple as
16 “Confidential.” (APEL0405503). **(FILED UNDER SEAL)**.

17 20. Attached hereto as Exhibit T is a true and correct copy of “TECHNOLOGY
18 DEVELOPMENT AND LICENSE AGREEMENT between APPLE COMPUTER, INC. and
19 PROXIMA, INC.,” dated May 15, 1990, designated by Apple as “Confidential.”
20 (APEL0405576 – APEL0405594). **(FILED UNDER SEAL)**.

21 21. Attached hereto as Exhibit U is a true and correct copy of a letter between Mr.
22 Della Bona and Cirque’s president Mr. George Gerpheide regarding the interpretation of the
23 license agreement with respect to Cirque’s sale of the GlidePoint® touch pad and whether Cirque
24 could acknowledge to the public that Apple’s touch pad was based on Cirque’s design, dated June
25 2, 1994, designated by Apple as “Confidential.” (APEL0405498 – APEL0405499). **(FILED**
26 **UNDER SEAL)**.

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22. Attached hereto as Exhibit V is a true and correct copy of an Amendment dated December 23, 1996 from the prosecution history of the '218 patent.

I swear under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 15, 2010, at Menlo Park, California.

/s/ Sean P. DeBruine
Sean P. DeBruine