

Issued by the
UNITED STATES DISTRICT COURT
Northern District of California – San Jose Division

ELAN MICROELECTRONICS
CORPORATION,

Plaintiff and Counterclaim Defendant,
vs.

APPLE INC.,

Defendant and Counterclaim Plaintiff.

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§

SUBPOENA IN A CIVIL CASE
Case No. C-09-01531 RS (PVT)

TO:

The Law Offices of James E. Eakin
855 Oak Grove Avenue
Suite 107
Menlo Park, CA 94025

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case pursuant to Rule 30(b)(1) of the Fed. R. Civ. P.

PLACE OF DEPOSITION

DATE AND TIME

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below: **See Exhibit A.**

PLACE

DATE AND TIME

WEIL, GOTSHAL & MANGES, LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065

May 20, 2010
9:00am

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure. 30(b)(6).

ISSUING OFFICER SIGNATURE AND TITLE

DATE



May 5, 2010

ATTORNEY FOR PLAINTIFF AND COUNTERCLAIM DEFENDANT

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Nathan A. Greenblatt
Weil, Gotshal & Manges LLP, 201 Redwood Shores Parkway, Redwood Shores, CA 94065
(650) 802-3000

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED ON (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2006:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing, or sampling may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing any or all of the designated materials or inspection of the premises — or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production, inspection, copying, testing, or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing, or sampling commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom

the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) (A) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) (A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

(e) CONTEMPT.

Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a nonparty to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A).

EXHIBIT A

DEFINITIONS

1. “Apple” means Defendant and Counterclaim Plaintiff Apple Inc., including as formerly known as Apple Computer, Inc.
2. “Elan” means Plaintiff and Counterclaim Defendant Elan Microelectronics, Corp., its predecessors and successors, including, but not limited to, its past and present parents, subsidiaries, divisions, affiliates, distributors, and other organizational or operating units of any of the foregoing, and all past and present directors, officers, employees, agents, and representatives (including consultants and attorneys) of any of the foregoing.
3. “Logitech” means, Logitech, Inc., its predecessors and successors, including, but not limited to, its past and present parents, subsidiaries, divisions, affiliates, distributors, and other organizational or operating units of any of the foregoing, and all past and present directors, officers, employees, agents, and representatives (including consultants and attorneys) of any of the foregoing.
4. “You” means the law firm of James E. Eakin, its predecessors and successors, including, but not limited to, its past and present parents, subsidiaries, divisions, affiliates, distributors, and other organizational or operating units of any of the foregoing, and all past and present directors, officers, employees, agents, and representatives (including consultants and attorneys) of any of the foregoing, including James E. Eakin personally.
5. The “352 patent” means U.S. Patent No. 5,825,352, including all associated applications filed in the patent office.

6. “Person” shall mean any natural persons, organizations, firms, corporations, partnerships, sole proprietorships, or other legal entities, and the acts “of a person” include the acts of owners, directors, officers, members, employees, agents, attorneys, representatives, and any other persons acting on the person’s behalf.

7. “Communication” means any form of oral or written interchange, whether in person, by telephone, by facsimile, by telex, by electronic email, or by any other medium.

8. “Document” shall be interpreted to the full extent permitted by the Federal Rules of Civil Procedure and includes, but is not limited to, electronically stored information, e-mail, attachments, files stored on any electronic media, copies of letters, notes and records of telephone conversations, sound recordings, intra-corporate communications, minutes, bulletins, specifications, instructions, advertisements, literature, patents, patent applications, specification sheets and diagrams, work assignments, reports, memoranda, memoranda of conversations, notes, notebooks, drafts, data sheets, work sheets, contracts and agreements, memoranda of agreements, assignments, licenses, sublicenses, opinions and reports of experts and consultants, books of account, orders, invoices, statements, bills, checks and vouchers, brochures, photographs, drawings, charts, catalogs, pamphlets, magazines, copies of magazines, decals, world-wide web and/or internet postings, trade letters, notices and announcements, and press releases, and all other printed, written, recorded, taped, electronic, graphic, computerized printout or other tangible materials of whatever kind known to, or in Your possession, custody, or control. A draft or non-identical copy is a separate Document within the meaning of this term.

9. “Thing” shall mean, consistent with the comprehensive meaning in Federal Rule of Civil Procedure 34, any physical specimen or tangible item, other than a Document.

10. “Prior art” is used herein in the same sense that it is used in 35 U.S.C. §§ 102-103, and includes, without limitation, any patent or printed publication, or any prior knowledge, prior use, prior sale or offer for sale in the United States, or other act, event, or thing defined in 35 U.S.C. § 102, taken individually or in combination, including without limitation, any system, method, apparatus, publication, patent or use which has been cited by any person or entity as prior art.

11. The word “and” and the word “or” shall be construed conjunctively or disjunctively as necessary to make a request inclusive rather than exclusive.

12. The words “any,” “all,” and “each” shall be construed to mean any, all, each, and every.

13. The words “identify,” “identity” and “identification” mean:

a) as applied to an individual, state the individual’s full name, present or last known address and telephone number, present or last known employer, and present or last known business address and telephone number;

b) as applied to a document, state the type of document, date of the document, names of the individuals who drafted, authored, or signed the document, names of the individuals to whom the document or a copy thereof was address or sent, a summary of the subject matter of the document, the number of

pages of the document, the present whereabouts of the document, and the name and address of the custodian of the document;

c) as applied to oral communications, state the name of the person making the communication and the name(s) of the person(s) present while the communication was made, and, where not apparent, the relationship of the person(s) present to the person making the communication, the date and place of the communication, and a summary of the subject matter of the communication.

14. “Relating to” or “Concerning” shall mean, without limitation, identifying, describing, comprising, consisting of, reflecting, assessing, discussing, reporting, constituting, disclosing, pertaining to and/or regarding.

15. The singular form of a word shall include the plural and vice versa, and terms in the present tense shall include terms in the past tense and vice versa.

16. A Protective Order was entered in this case on February 11, 2010, by the United States District Court for the Northern District of California (attached hereto as Exhibit B). This Order provides for the protection of confidential information produced by a third party to the litigation. Documents and Things provided by You may be so designated as provided for in the Protective Order.

DOCUMENTS REQUESTED

Request No. 1:

All documents relating to the preparation, filing, prosecution, and/or ongoing maintenance of all patents and patent applications in the chain of priority from or to any of the applications that issued as U.S. Patent No. 5,825,352.

Request No. 2:

All documents relating to the preparation, filing, prosecution, and/or ongoing maintenance of any patent applications filed outside of the United States (including international applications under the Patent Cooperation Treaty) that claim priority to any patent application in the chain of priority from or to any of the patent applications that issued as U.S. Patent No. 5,825,352.

Request No. 3:

All documents relating to the preparation, filing, prosecution, and/or ongoing maintenance of any patent applications filed outside of the United States (including international applications under the Patent Cooperation Treaty) to which the '352 patent claims priority.

Request No. 4:

All documents relating to any communications with Logitech or any named inventor relating to the subject matter of the '352 patent, including any predecessor or successor in interest to any of the foregoing.

Request No. 5:

All documents provided to or obtained by you concerning the preparation, drafting, filing, or prosecution of the '352 patent.

Request No. 6:

All documents and things relating to any communication, meeting or contact with the U.S. Patent Office or any foreign patent office relating to the '352 patent.

Request No. 7:

All documents and things prepared by or at the direction of the named inventors of the '352 patent relating to the subject matter of any claim of the '352 patent.

Request No. 8:

All documents and things relating to the identification, selection, or determination of the proper named inventors of the '352 patent.

Request No. 9:

All documents relating to all prior art searches and search results relating to the '352 patent, including without limitation, documents relating to who performed the search and when the search was performed.

Request No. 10:

All documents relating to prototypes, drawings, specifications, schematics diagrams, source code, materials, or models relating to software embodying or practicing the inventions claimed in the '352 patent.

Request No. 11:

All documents relating to the first public use, demonstration, sale or license, or offer to sell or license any product embodying any invention claimed in the '352 patent.

Request No. 12:

All documents relating to the first publication that describes the inventions claimed in the '352 patent.

Request No. 13:

All documents relating to any proposed or completed sale, license or assignment of any rights under the '352 patent, including without limitation all documents relating to any discussions or negotiations relating to the sale, license, or assignment of any such rights.

Request No. 14:

All documents relating to the scope, validity, infringement, enforceability, inventorship of, and/or construction of claim terms used in of any U.S. Patent No. 5,825,352 or any patent or patent application in the chain of priority from or to any of the patent applications that issued as U.S. Patent No. 5,825,352, including any opinions of counsel, claim construction analyses, briefs or decisions, any infringement, validity or enforceability contentions, claims or allegations, all documents offered in support of any argument or at any hearing relating to the construction of the claims of those patents or applications, and all documents that have been asserted by any Person or entity as constituting prior art to any of the claims of U.S. Patent No. 5,825,352 patents or patent applications.

Request No. 15:

All documents and things relating to the conception, reduction to practice, diligence in reducing to practice, and/or design or development of the subject matter disclosed and/or claimed in the '352 patent, including without limitation notes,

notebooks, drawings, schematics, specifications, memoranda, diagrams, computer files test results, and prototypes.

Request No. 16:

All documents relating to the receipt, discovery, and/or analysis of the references cited on the face of the '352 patent, including U.S patent documents, foreign patent documents, and other publications.

Request No. 17:

All documents relating to the decision of what references to submit or not submit and what materials to cite or not cite to the Patent Office during the prosecution of the '352 patent or the prosecution of any of the patent applications in the chain of priority from or to any of the patent applications that issued as the '352 patent, including, without limitation documents relating to who made that decision, when that decision was made and the reasons for that decision.

Request No. 18:

All documents and things relating to any patents, publications, or other materials about which there was a decision not to disclose to the patent office during the prosecution of any of the patent applications in the chain of priority from or to any of the patent applications that issued as the '352 patent.

Request No. 19:

All documents and things constituting or concerning prior art to U.S. Patent No. 5,825,352.

Request No. 20:

All documents relating to any analysis of U.S. Patent Nos. 5,764,218, 7,495,659, or 6,933,929.

Request No. 21:

Documents sufficient to identify all patent applications filed by you on behalf of either Logitech or the named inventors on U.S. Patent No. 5,825,352.

Request No. 22:

All documents concerning the litigation between Apple and Elan, Case No. C-09-01531, currently pending in the Northern District of California.

Request No. 23:

All documents concerning the litigation between Elan and Synaptics filed in the Northern District of California in 2006 (Case No. C06-1839).

1 Yitai Hu (SBN 248085)
(yitai.hu@alston.com)
2 Sean P. DeBruine (SBN 168071)
(sean.debruine@alston.com)
3 S.H. Michael Kim (SBN 203491)
(michael.kim@alston.com)
4 C. Augustine Rakow (SBN 254585)
(augie.rakow@alston.com)
5 **ALSTON & BIRD LLP**
Two Palo Alto Square
6 3000 El Camino Real, Ste 400
Palo Alto, CA 94306-2112
7 Phone: (650) 838-2000
Fax: (650) 838-2001

8
9 T. Hunter Jefferson (admitted pro hac vice)
(hunter.jefferson@alston.com)
ALSTON + BIRD LLP
10 One Atlantic Center
1201 West Peachtree Street
11 Atlanta, GA 30309-3424
Telephone: 404-881-7333
12 FACSIMILE: 404-253-8863

13 Attorneys for Plaintiff
ELAN MICROELECTRONICS
14 CORPORATION

MATTHEW D. POWERS (Bar No. 104795)
matthew.powers@weil.com
EDWARD R. REINES (Bar No. 135960)
edward.reines@weil.com
SONAL N. MEHTA (Bar No. 222086)
sonal.mehta@weil.com
WEIL, GOTSHAL & MANGES LLP
Silicon Valley Office
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Telephone: (650) 802-3000
Facsimile: (650) 802-3100

Attorneys for Defendant and
Counterclaim Plaintiff,
APPLE INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18
19 ELAN MICROELECTRONICS
CORPORATION,

20 Plaintiff and Counterclaim
21 Defendant,

22 v.

23 APPLE INC.,

24 Defendant and Counterclaim
25 Plaintiff.

Case No. C-09-01531 RS (PVT)

[XXXXXXXXXX] AMENDED STIPULATED
PROTECTIVE ORDER REGARDING
THE DISCLOSURE AND USE OF
DISCOVERY MATERIALS

26
27 Pursuant to the Court's January 25, 2010 Order, the parties hereby submit this
28 Amended Stipulated Protective Order Regarding The Disclosure And Use Of Discovery

1 Materials.

2 Elan Microelectronics Corporation (“Elan”) and Apple Inc. (“Apple”) anticipate
3 that documents, testimony, or information containing or reflecting confidential, proprietary, trade
4 secret, and/or commercially sensitive information are likely to be disclosed or produced during
5 the course of discovery in this litigation and request that the Court enter this Order setting forth
6 the conditions for treating, obtaining, and using such information.¹

7 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds
8 good cause for the following Protective Order Regarding the Disclosure and Use of Discovery
9 Materials (“Order”).

10 **1. PURPOSES AND LIMITATIONS**

11 (a) Protected Material designated under the terms of this Order shall be
12 used by a Receiving Party solely for this litigation, and shall be used only for purposes of
13 litigating this case, and shall not be used directly or indirectly for any other purpose whatsoever.

14 (b) The parties acknowledge that this Order does not confer blanket
15 protections on all disclosures during discovery. Designations under this Order shall be made with
16 care and shall not be made absent a good faith belief that the designated material satisfies the
17 criteria set forth below. If it comes to a Producing Party’s attention that designated material does
18 not qualify for protection at all, or does not qualify for the level of protection initially asserted,
19 the Producing Party must promptly notify all other parties that it is withdrawing or changing the
20 designation.

21 (c) The Parties also acknowledge that this Order does not confer
22 blanket protections on all disclosures or responses to discovery and that the protection it affords
23 extends only to the limited information or items that are entitled under the applicable legal
24 principles to treatment as confidential. The parties further acknowledge that this Order creates no

25 _____
26 ¹ The parties stipulate to the entry of this Protective Order in order to allow discovery to go
27 forward under the terms agreed by the parties. However, the parties have not reached agreement
28 on certain of the restrictions set forth in Section 6(b) regarding counsel’s participation in
reexamination proceedings before the US Patent and Trademark Office. If the parties are unable
to promptly resolve this issue, Elan anticipates, and expressly reserves its right, to promptly move
for modification of the order pursuant to Section 4(d).

1 entitlement to file confidential information as under seal; Civil Local Rule 79-5 sets forth the
2 procedures that must be followed and reflects the standards that will be applied when a party
3 seeks permission from the Court to file material under seal.

4 2. **DEFINITIONS**

5 (a) “Discovery Material” means all items or information, including
6 from any non-party, regardless of the medium or manner generated, stored, or maintained
7 (including, among other things, testimony, transcripts, or tangible things) that are produced,
8 disclosed, or generated in connection with discovery in this matter.

9 (b) “Outside Counsel” means (i) outside counsel who appear on the
10 pleadings as counsel for a Party, and (ii) partners, associates, employees, and staff of such counsel
11 to whom it is reasonably necessary to disclose the information for this litigation, including
12 supporting personnel employed by the attorneys, such as paralegals, legal translators, legal
13 secretaries, and legal clerks, or (iii) independent attorneys contracted to assist outside counsel in
14 connection with this action.

15 (c) “Patents-in-suit” means U.S. Patent No. 5,825,352, U.S. Patent No.
16 7,274,353, U.S. Patent No. 5,764,218, U.S. Patent No. 7,495,659, and U.S. Patent No. 6,933,929,
17 and any other patent asserted in this litigation, as well as any related patents, patent applications,
18 provisional patent applications, continuations, and/or divisionals.

19 (d) “Party” means any party to this action, including all of its officers,
20 directors, employees, consultants, retained experts, and Outside Counsel.

21 (e) “Producing Party” means any Party or other third-party entity who
22 discloses or produces any Discovery Material in this action.

23 (f) “Protected Material” means any Discovery Material that is
24 designated as “Confidential,” “Confidential – Attorneys’ Eyes Only,” or “Confidential –
25 Attorneys’ Eyes Only – Source Code” as provided for in this Order.

26 (g) “Receiving Party” means any Party who receives Discovery
27 Material from a Producing Party.

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1 (h) "Source Code" means computer code that defines or otherwise
2 describes in detail the algorithms or structure of software or hardware designs. Source code
3 includes computer code, scripts, assembly, object code, source code listings object code listings
4 and descriptions of object code, Hardware Description Language (HDL) or Register Transfer
5 Level (RTL) files that describe the hardware design of any ASIC or other chip, and similarly
6 sensitive implementation details that are afforded the same level of protection as source code in
7 the ordinary course of business.

8 3. **COMPUTATION OF TIME**

9 The computation of any period of time prescribed or allowed by this Order
10 shall be governed by the provisions for computing time set forth in Federal Rules of Civil
11 Procedure 6(a) and 6(e).

12 4. **SCOPE**

13 (a) The protections conferred by this Order cover not only Discovery
14 Material governed by this Order as addressed herein, but also any information copied or extracted
15 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
16 conversations, or presentations by parties or their counsel in Court or in other settings that might
17 reveal Protected Material.

18 (b) Nothing in this Order shall prevent or restrict a Producing Party's
19 own disclosure or use of its own Discovery Material for any purpose, and nothing in this Order
20 shall preclude any Producing Party from showing its Discovery Material to an individual who
21 prepared the Discovery Material.

22 (c) Nothing in this Order shall be construed to prejudice any Party's
23 right to use any Protected Material in Court or in any Court filing with consent of the Producing
24 Party or Order of the Court.

25 (d) This Order is without prejudice to the right of any Producing Party
26 to seek further or additional protection of any Discovery Material or to modify this Order in any
27 way, including, without limitation, an order that certain matter not be produced at all.

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5. **DURATION**

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Producing Party agrees otherwise in writing or a court order otherwise directs.

6. **ACCESS TO AND USE OF PROTECTED MATERIAL**

(a) Basic Principles. Protected Material shall be used solely for this litigation and the preparation and trial in this case, or any related appellate proceeding, and not for any other purpose whatsoever, including without limitation any other litigation, patent prosecution or acquisition, or any business or competitive purpose or function. Protected Material shall not be distributed, disclosed or made available to anyone except as expressly provided in this Order.

(b) Patent Prosecution Bar. Absent the written consent of the Producing Party, any Counsel that receives one or more items designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” shall not be involved in any of the following activities: preparing, prosecuting, drafting, editing, and/or amending of patent applications, specifications, claims, and/or responses to office actions, or otherwise affecting the disclosure in patent applications or specifications or the scope of claims in patents or patent applications relating to the functionality, operation, and design of touch-sensitive input device systems in computers and personal electronic devices, before any foreign or domestic agency, including the United States Patent and Trademark Office. This bar is not intended to preclude counsel from participating in reexamination proceedings on behalf of a Party challenging the validity of a patent, where counsel will not be involved in crafting claims, but it is intended to preclude counsel from participating directly or indirectly in reexamination proceedings on behalf of a patentee. This prohibition shall begin when access to “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SOURCE CODE” materials is first received by the affected individual, and shall end two (2) years after the final resolution of this action, including all appeals.

1 (c) Secure Storage. Protected Material must be stored and maintained
2 by a Receiving Party at a location and in a secure manner that ensures that access is limited to the
3 persons authorized under this Order.

4 (d) Legal Advice Based on Protected Material. Nothing in this Order
5 shall be construed to prevent Counsel from advising their clients with respect to this litigation
6 based in whole or in part upon Protected Materials, provided Counsel does not disclose the
7 Protected Material itself except as provided in this Order.

8 (e) Limitations. Nothing in this Order shall restrict in any way a
9 Producing Party's use or disclosure of its own Protected Material. Nothing in this Order shall
10 restrict in any way the use or disclosure of Discovery Material by a Receiving Party: (a) that is or
11 has become publicly known through no fault of the Receiving Party; (b) that is lawfully acquired
12 by or known to the Receiving Party independent of the Producing Party; (c) previously produced,
13 disclosed and/or provided by the Producing Party to the Receiving Party or a non-party without
14 an obligation of confidentiality and not by inadvertence or mistake; (d) with the consent of the
15 Producing Party; or (e) pursuant to Order of the Court.

16 7. **DESIGNATING PROTECTED MATERIAL**

17 (a) Available Designations. Any Producing Party may designate
18 Discovery Material with any of the following designations, provided that it meets the
19 requirements for such designations as provided for herein: "CONFIDENTIAL,"
20 "CONFIDENTIAL – ATTORNEYS' EYES ONLY," or "CONFIDENTIAL – ATTORNEYS'
21 EYES ONLY – SOURCE CODE."

22 (b) Written Discovery and Documents and Tangible Things. Written
23 discovery, documents, and tangible things that meet the requirements for the confidentiality
24 designations listed in Paragraph 7(a) may be so designated by placing the appropriate designation
25 on every page of the written material prior to production. In the event that original documents are
26 produced for inspection, the Producing Party may produce the documents with a temporary
27 designation, provided that the documents are re-designated as necessary by placing the
28 appropriate legend on the documents in the copying process.

1 (c) Depositions and Testimony. Parties or testifying persons or entities
 2 may designate depositions and other testimony with the appropriate designation by indicating on
 3 the record at the time the testimony is given or by sending written notice that the testimony is
 4 designated within thirty (30) days of receipt of the transcript of the testimony. All information
 5 disclosed during a deposition shall be deemed CONFIDENTIAL – ATTORNEYS’ EYES ONLY
 6 until the time within which it may be appropriately designated as provided for herein has passed.
 7 Any designated Discovery Material that is used in the taking of a deposition shall remain subject
 8 to the provisions of this Order, along with the transcript pages of the deposition testimony dealing
 9 with such Discovery Material. In such cases, the Court reporter shall be informed of this Order
 10 and shall be required to operate in a manner consistent with this Order. In the event the deposition
 11 is videotaped, the original and all copies of the videotape shall be marked by the video technician
 12 to indicate that the contents of the videotape are subject to this Order, substantially along the lines
 13 of “This videotape contains confidential testimony used in this case and is not to be viewed or the
 14 contents thereof to be displayed or revealed except by order of the Court, or pursuant to written
 15 stipulation of the parties.”

16 **8. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL”**

17 (a) A Producing Party may designate Discovery Material as
 18 “CONFIDENTIAL” if it contains or reflects confidential, proprietary, and/or commercially
 19 sensitive information.

20 (b) Discovery Material designated as “CONFIDENTIAL” may be
 21 disclosed only to the following:

- 22 (i) The Receiving Party’s Outside Counsel;
- 23 (ii) In-house counsel for the Receiving Party, as well as their
 24 paralegals and staff, to whom disclosure is reasonably necessary for this litigation;
- 25 (iii) Any expert or consultant retained by the Receiving Party to
 26 assist in this action, provided that disclosure is only to the extent necessary to perform such work;
 27 and provided that: (a) such person has signed the acknowledgement form annexed hereto as
 28 Exhibit A, agreeing to be bound by the terms of this Order, and (b) no unresolved objections to

1 such disclosure exist after proper notice has been given to all parties as set forth in Paragraph
2 12(b) below;

3 (iv) Court reporters, stenographers and videographers retained to
4 record testimony taken in this action;

5 (v) The Court, jury, and Court personnel;

6 (vi) Graphics, translation, design, and/or trial consulting services
7 including mock jurors retained by a Party; and

8 (vii) Any other person with the prior written consent of the
9 Producing Party.

10 9. **DISCOVERY MATERIAL DESIGNATED AS "CONFIDENTIAL—**
11 **ATTORNEYS' EYES ONLY"**

12 (a) A Producing Party may designate Discovery Material as
13 CONFIDENTIAL – ATTORNEYS' EYES ONLY if it contains or reflects information that is
14 extremely confidential and/or sensitive in nature and the Producing Party reasonably believes that
15 the disclosure of such Discovery Material is likely to cause economic harm or significant
16 competitive disadvantage to the Producing Party.

17 (b) Discovery Material designated as "CONFIDENTIAL –
18 ATTORNEYS' EYES ONLY" may be disclosed only to:

19 (i) The Receiving Party's Outside Counsel;

20 (ii) Any expert or consultant retained by the Receiving Party to
21 assist in this action, provided that disclosure is only to the extent necessary to perform such work;
22 and provided that: (a) such person has signed the acknowledgement form annexed hereto as
23 Exhibit A agreeing to be bound by the terms of this Order, and (b) no unresolved objections to
24 such disclosure exist after proper notice has been given to all parties as set forth in Paragraph
25 12(b) below;

26 (iii) Court reporters, stenographers and videographers retained to
27 record testimony taken in this action;

28 (iv) The Court, jury, and Court personnel;

1 (v) Graphics, translation, design, and/or trial consulting
2 services, not including mock jurors, retained by a Party to whom disclosure is reasonably
3 necessary for this litigation, provided that each such person, including their staff, has signed the
4 acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms of this
5 Protective Order; and

6 (vi) Any other person with the prior written consent of the
7 Producing Party.

8 10. **DISCOVERY MATERIAL DESIGNATED AS "CONFIDENTIAL—**
9 **ATTORNEYS' EYES ONLY—SOURCE CODE"**

10 (a) To the extent production of Source Code becomes necessary to the
11 prosecution or defense of the litigation, a Producing Party may designate Source Code as
12 "CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE" if it comprises or
13 includes confidential, proprietary and/or trade secret Source Code.

14 (b) Nothing in this Order shall be construed as a representation or
15 admission that Source Code is properly discoverable in this action, or to obligate any party to
16 produce any Source Code.

17 (c) Discovery Material designated as "CONFIDENTIAL –
18 ATTORNEYS' EYES ONLY - SOURCE CODE" shall be subject to the provisions set forth in
19 Paragraph 11 below, and may be disclosed, subject to Paragraph 11 below, solely to:

20 (i) The Receiving Party's Outside Counsel;

21 (ii) Any expert or consultant retained by the Receiving Party to
22 assist in this action, provided that disclosure is only to the extent necessary to perform such work;
23 and provided that: (a) such person has signed the acknowledgement form annexed hereto as
24 Exhibit A, agreeing to be bound by the terms of this Order, and (b) no unresolved objections to
25 such disclosure exist after proper notice has been given to all parties as set forth in Paragraph
26 12(b) below;

27 (iii) Court reporters, stenographers and videographers retained to
28 record testimony taken in this action;

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(iv) The Court, jury, and Court personnel;

(v) Graphics and design services to whom disclosure is reasonably necessary for this litigation, provided that each such person, including their staff, has signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms of this Protective Order; and

(vi) Any other person with the prior written consent of the Producing Party.

11. DISCLOSURE AND REVIEW OF SOURCE CODE

(a) Source Code that is produced by Elan shall be made available for inspection at the Palo Alto, California and/or other domestic office of its outside counsel, Alston + Bird LLP, or any other location mutually agreed by the parties. Source Code that is produced by Apple Inc. will be made available for inspection at the Redwood Shores, California office and/or the Boston, Massachusetts office of its outside counsel, Weil, Gotshal & Manges LLP, or any other location mutually agreed by the parties. Prior to the first inspection of source code the Requesting Party shall provide the Producing Party with fifteen (15) days notice. The Producing Party will make a good faith effort to provide requested code for inspection within 15 days to the extent reasonably possible. The parties shall thereafter make every reasonable effort to accommodate requests to inspect Source Code, and generally agree that the Requesting Party shall provide three (3) days notice prior to any inspection. However, the parties recognize that deadlines such as responses to motions, rebuttal expert reports and preparation for hearings or trial may justify inspection on a shorter notice period and may require inspection on a lesser notice period, and agree to be reasonable in accommodating such requests. This agreement regarding Source Code production and inspection locations reflects a compromise reached by the parties at an early stage of this litigation. Either party may move the Court to modify the treatment of Source Code under this Order if the restrictions herein interferes with the party's ability to conduct discovery or prepare or present its case.

1 (b) Source Code that is designated "CONFIDENTIAL –
2 ATTORNEYS' EYES ONLY – SOURCE CODE" shall be produced for inspection and review
3 subject to the following provisions, unless otherwise agreed by the Producing Party:

4 (i) All Source Code shall be made available by the Producing
5 Party to the Receiving Party's Outside Counsel and/or experts in a secure room on a secured
6 computer without Internet access or network access to other computers, as necessary and
7 appropriate to prevent and protect against any unauthorized copying, transmission, removal or
8 other transfer of any Source Code outside or away from the computer on which the Source Code
9 is provided for inspection (the "Source Code Computer"). The Producing Party shall install tools
10 that are sufficient for viewing and searching the Source Code produced, on the platform
11 produced, if such tools exist and are presently used in the ordinary course of the Producing
12 Party's business. The Receiving Party's Outside Counsel and/or experts may request that
13 commercially available software tools for viewing and searching Source Code be installed on the
14 secured computer, provided, however, that such other software tools are reasonably necessary for
15 the Receiving Party to perform its review of the Source Code consistent with all of the protections
16 herein. The Receiving Party must provide the Producing Party with the CD or DVD containing
17 such licensed software tool(s) at least fourteen (14) days in advance of the date upon which the
18 Receiving Party wishes to have the additional software tools available for use on the Source Code
19 Computer.

20 (ii) No recording devices or recordable media will be permitted
21 inside the Source Code review room. The Receiving Party's Outside Counsel and/or experts shall
22 be entitled to take notes relating to the Source Code but may not copy the Source Code into the
23 notes and may not take such notes electronically on the Source Code Computer itself or any
24 computer that is connected to any network. No copies of all or any portion of the Source Code
25 may leave the room in which the Source Code is inspected except as otherwise provided herein.
26 Further, no other written or electronic record of the Source Code is permitted except as otherwise
27 provided herein. The Producing Party may visually monitor the activities of the Receiving Party's
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1 representatives during any Source Code review, but only to ensure that no unauthorized electronic
2 records of Source Code are being created or transmitted in any way.

3 (iii) The Producing Party shall make available a laser printer
4 with commercially reasonable printing speeds for on-site printing during inspection of the Source
5 Code. The Receiving Party may print portions of the Source Code only when reasonably
6 necessary to facilitate the Receiving Party's preparation of court filings, expert reports, and
7 related drafts and correspondences, and shall print only such portions as are relevant to the claims
8 and defenses in the case and are reasonably necessary for such purpose. The Receiving Party
9 shall not print Source Code in order to review blocks of Source Code elsewhere in the first
10 instance, i.e., as an alternative to reviewing that Source Code electronically on the Source Code
11 Computer, as the parties acknowledge and agree that the purpose of the protections herein would
12 be frustrated by printing portions of Source Code for review and analysis elsewhere, and that
13 printing is permitted solely to enable use of Source Code in filings and proceedings. Upon
14 printing any such portions of Source Code, the printed pages shall be collected by the Producing
15 Party. The Producing Party shall Bates number, copy, and label "CONFIDENTIAL –
16 ATTORNEYS' EYES ONLY – SOURCE CODE" any pages printed by the Receiving Party. If
17 the Producing Party objects that the printed portions are excessive and/or not reasonably necessary
18 to any case preparation activity, the Producing Party shall make such objection known to the
19 Receiving Party within fourteen (14) days. If, after meeting and conferring, the Producing Party
20 and the Receiving Party cannot resolve the objection, the Producing Party shall be entitled to seek
21 a Court resolution of whether the printed Source Code in question is narrowly tailored and
22 reasonably necessary to any case preparation activity as provided herein. The burden shall be on
23 the Receiving Party to demonstrate that such printed portions are no more than is reasonably
24 necessary for a permitted purpose and not merely printed for the purposes of review and analysis
25 elsewhere. In the absence of any objection, or upon resolution of any such dispute by the Court,
26 the Producing Party shall then provide one copy set of such pages to the Receiving Party within
27 seven (7) days. The printed pages shall constitute part of the Source Code produced by the
28 Producing Party in this action.

1 (iv) All persons who will review a Producing Party's Source
2 Code on behalf of a Receiving Party shall be identified in writing to the Producing Party at least
3 seven (7) days in advance of the first time that such person reviews such Source Code. Such
4 identification shall be in addition to any disclosure required under Paragraph 13 of this order. All
5 persons viewing Source Code shall, each day they view Source Code, sign a log that will include
6 the names of persons who enter the locked room to view the Source Code and when they enter
7 and depart. The Producing Party shall be entitled to a copy of the log.

8 (v) Unless otherwise agreed in advance by the parties in
9 writing, following each day on which inspection is done under this Order, the Receiving Party's
10 Outside Counsel and/or experts shall remove all notes, documents, laptops, and all other materials
11 from the room that may contain work product and/or attorney-client privileged information. The
12 Producing Party shall not be responsible for any items left in the room following each inspection
13 session, and the Receiving Party shall have no expectation of confidentiality for any items left
14 in the room following each inspection session without a prior agreement to that effect.

15 (vi) Other than as provided in Paragraph 11(b)(iii) above, the
16 Receiving Party will not copy, remove, or otherwise transfer any Source Code from the Source
17 Code Computer including, without limitation, copying, removing, or transferring the Source Code
18 onto any other computers or peripheral equipment. The Receiving Party will not transmit any
19 Source Code in any way from the Producing Party's facilities or the offices of its Outside
20 Counsel.

21 (vii) The Receiving Party's Outside Counsel may make no more
22 than five (5) copies of any portions of the Source Code received from a Producing Party pursuant
23 to Paragraph 11(b)(iv), not including copies attached to Court filings or used at depositions, and
24 shall maintain a log of all paper copies of the Source Code received from a Producing Party that
25 are delivered by the Receiving Party to any qualified person under Paragraph 10 above. The log
26 shall include the names of the reviewers and/or recipients of paper copies and locations where the
27 paper copies are stored. A copy of the log must be made available for inspection by the Producing
28 Party at the Producing Party's request.

1 (viii) The Receiving Party's Outside Counsel and any person
2 receiving a copy of any Source Code shall maintain and store any paper copies of the Source
3 Code at their offices in a manner that prevents duplication of or unauthorized access to the Source
4 Code, including, without limitation, storing the Source Code in a locked room or cabinet at all
5 times when it is not in use.

6 (ix) All paper copies of Source Code shall be securely destroyed
7 in a timely manner if they are no longer in use (e.g., at the conclusion of a deposition). Copies of
8 Source Code that are marked as deposition exhibits shall not be provided to the Court Reporter or
9 attached to deposition transcripts; rather, the deposition record will identify the exhibit by its
10 production numbers.

11 (x) The Producing Party shall make a computer with the Source
12 Code and software tools as described in paragraph 10(b)(i), along with a monitor or other display
13 of a size capable of being viewed by several people simultaneously, available during the
14 deposition(s) of representative(s) of the Producing Party regarding the structure, function and
15 operation of the Source Code, or the author(s) of any such Source Code, where requested in the
16 Notice of Deposition.

17 (xi) Except as provided in this sub-paragraph, absent express
18 written permission from the Producing Party, the Receiving Party may not create electronic
19 images, or any other images, or make electronic copies, of the Source Code from any paper copy
20 of Source Code for use in any manner (including by way of example only, the Receiving Party
21 may not scan the Source Code to a PDF or photograph the code). Images or copies of Source
22 Code shall not be included in correspondence between the parties (references to production
23 numbers shall be used instead), and shall be omitted from pleadings and other papers whenever
24 possible. If a party reasonably believes that it needs to submit a portion of Source Code as part of
25 a filing with the Court, the parties shall meet and confer as to how to make such a filing while
26 protecting the confidentiality of the Source Code and such filing will not be made absent
27 agreement from the Producing Party that the confidentiality protections will be adequate. If a
28 Producing Party agrees to produce an electronic copy of all or any portion of its Source Code or

1 provide written permission to the Receiving Party that an electronic or any other copy needs to be
2 made for a Court filing, the Receiving Party's communication and/or disclosure of electronic files
3 or other materials containing any portion of Source Code (paper or electronic) shall at all times be
4 limited to solely individuals who are expressly authorized to view Source Code under the
5 provisions of this Protective Order. Where the Producing Party has provided the express written
6 permission required under this provision for a Receiving Party to create electronic copies of
7 Source Code, the Receiving Party shall maintain a log of all such electronic copies of any portion
8 of Source Code in its possession or in the possession of its retained consultants, including the
9 names of the reviewers and/or recipients of any such electronic copies, and the locations where
10 the electronic copies are stored. A copy of the log must be made available for inspection by the
11 Producing Party at the Producing Party's request. Additionally, any such electronic copies must
12 be labeled "CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE" as provided
13 for in this Order.

14 **12. EXPERTS AND CONSULTANTS**

15 (a) Experts or consultants receiving Protected Material shall not be a
16 current officer, director or employee of a Party or of a competitor of a Party, nor anticipated at the
17 time of retention to become an officer, director or employee of a Party or of a competitor of a
18 Party.

19 (b) Prior to disclosing any Protected Material to any outside experts or
20 consultants, the party seeking to disclose such information shall provide the Producing Party or
21 Parties with written notice that includes: (i) the name of the person; (ii) the present employer and
22 title of the person; and (iii) an up-to-date curriculum vitae of the person. Said written notice shall
23 include an identification of any individual or entity with or for whom the person is employed or to
24 whom the person provides consulting services relating to the design, development, operation, or
25 patenting of touch-sensitive input device systems in computers and personal electronic devices, or
26 relating to the acquisition of intellectual property assets relating to such systems. The party
27 seeking to disclose Protected Material shall provide such other information regarding the person's
28 professional activities reasonably requested by the Producing Party for it to evaluate whether

1 good cause exists to object to the disclosure of Protected Material to the outside expert or
2 consultant. During the pendency of and for a period of two (2) years after the final resolution of
3 this action, including all appeals, the party seeking to disclose Protected Material shall provide
4 written notice of any change it becomes aware of with respect to the outside expert or
5 consultant's involvement in the design, development, operation or patenting of touch-sensitive
6 input device systems in computers and personal electronic devices, or the acquisition of
7 intellectual property assets relating to such systems. Counsel for the party seeking to disclose
8 Protected Material shall make reasonable efforts to ensure that outside experts and consultants are
9 aware of their obligation to provide notice of any such change. Counsel for the party seeking to
10 disclose Protected Material shall notify the Producing Party within fourteen (14) days of learning
11 of the change.

12 (c) Within fourteen (14) days of receipt of the disclosure of the
13 proposed outside expert or consultant, the Producing Party or Parties may object in writing to the
14 proposed outside expert or consultant for good cause. In the absence of an objection at the end of
15 the fourteen (14) day period, the person shall be deemed approved under this Order. There shall
16 be no disclosure of Protected Material to any expert or consultant prior to expiration of this
17 fourteen (14) day period. If the Producing Party objects to disclosure to the expert or consultant
18 within such fourteen (14) day period, the parties shall meet and confer via telephone or in person
19 within seven (7) days following the objection and attempt in good faith to resolve the dispute on
20 an informal basis. If the dispute is not resolved, the party objecting to the disclosure will have
21 seven (7) days from the date of the meet and confer to seek relief from the Court. If relief is not
22 sought from the Court within that time, the objection shall be deemed withdrawn. If relief is
23 sought, designated materials shall not be disclosed to the proposed expert or consultant in
24 question until the objection is resolved by the Court.

25 (d) For purposes of this section, "good cause" shall include an
26 objectively reasonable concern that the proposed outside expert or consultant will, advertently or
27 inadvertently, use or disclose Discovery Materials in a way or ways that are inconsistent with the
28 provisions contained in this Order.

1 (e) Prior to receiving any Protected Material under this Order, the
2 proposed outside expert or consultant must execute a copy of the "Agreement to Be Bound by
3 Protective Order" (Exhibit A hereto).

4 **13. CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

5 (a) A Party shall not be obligated to challenge the propriety of any
6 designation of Discovery Material under this Order at the time the designation is made, and a
7 failure to do so shall not preclude a subsequent challenge thereto.

8 (b) Any challenge to a designation of Discovery Material under this
9 Order shall be written, shall be served on Outside Counsel for the Producing Party, shall
10 particularly identify the documents or information that the Receiving Party contends should be
11 differently designated, and shall particularly identify the grounds for the objection. Thereafter,
12 further protection of such material shall be resolved in accordance with the following procedures:

13 (i) The objecting party shall have the burden of conferring
14 either in person, in writing, or by telephone with the Producing Party claiming protection (as well
15 as any other interested party) in a good faith effort to resolve the dispute. The designating party
16 shall have the burden of justifying the disputed designation;

17 (ii) Failing agreement, the objecting party may bring a motion
18 to the Court for a ruling that the Discovery Material in question is not entitled to the status and
19 protection of the Producing Party's designation. The parties' entry into this Order shall not
20 preclude or prejudice either party from arguing for or against any designation, establish any
21 presumption that a particular designation is valid, or alter the burden of proof that would
22 otherwise apply in a dispute over discovery or disclosure of information;

23 (iii) Notwithstanding any challenge to a designation, the
24 Discovery Material in question shall continue to be treated as designated under this Order until
25 one of the following occurs: (a) the party who designated the Discovery Material in question
26 withdraws such designation in writing; or (b) the Court rules that the Discovery Material in
27 question is not entitled to the designation.

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1 **14. SUBPOENAS OR COURT ORDERS**

2 (a) If at any time Protected Material is subpoenaed by any court,
3 arbitral, administrative, or legislative body, the person to whom the subpoena or other request is
4 directed shall immediately give written notice thereof to every party who has produced such
5 Discovery Material and to its counsel and shall provide each such party with an opportunity to
6 move for a protective order regarding the production of confidential materials.

7 **15. FILING PROTECTED MATERIAL**

8 (a) Absent written permission from the Producing Party or a Court
9 order secured after appropriate notice to all interested persons, a Receiving Party may not file in
10 the public record any Protected Material.

11 (b) Any Receiving Party is authorized under Civil L.R. 79-5 to file
12 under seal with the Court any brief, document or materials that are designated as Protected
13 Material under this Order. Nothing in this section shall in any way limit or detract from the
14 requirements as to Source Code set forth above.

15 **16. INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

16 Each party shall make efforts that are “reasonably designed” to protect its
17 privileged materials. *See Gomez v. Vernon*, 255 F.3d 1118, 1131-32 (9th Cir. 2001). What
18 constitutes efforts that are reasonably designed to protect privileged materials depends on the
19 circumstances; the law does not require “strenuous or Herculean efforts,” just “reasonable
20 efforts.” *See, e.g., Hynix Semiconductor, Inc. v. Rambus, Inc.* 2008 WL 350641, *1-*2 (ND Cal.,
21 Feb. 2, 2008); *see also*, Fed.R.Civ.Pro. 26(f)(3) advisory committee’s notes to 2006 amendments
22 (discussing the substantial costs and delays that can result from attempts to avoid waiving
23 privilege, particularly when discovery of electronic information is involved). When a particular
24 Rule 34 request requires a production or inspection that is too voluminous, expedited or complex
25 (such as certain electronic productions) to allow for an adequate pre-production review, the
26 parties may enter into non-waiver agreements for that particular production. If the requesting
27 party is unwilling to enter into such an agreement, the Producing Party may move the court for a
28 non-waiver order.

1 In the event that, despite reasonable efforts, a Producing Party discovers it has
2 inadvertently produced privileged materials, then within 30 calendar days the Producing Party
3 shall notify the Receiving Party that the document(s) or materials should have been withheld on
4 the grounds of privilege. After the Receiving Party receives this notice from the Producing Party
5 under this paragraph, the Receiving Party shall not disclose or release the inadvertently produced
6 materials to any person or entity pending resolution of the Producing Party's claim of privilege.
7 The parties shall hold a meet and confer, as defined in Civil Local Rule 1-5(n), as soon as
8 reasonably possible after a notice of inadvertent production. If the Producing Party and
9 Receiving Party agree that the inadvertently produced materials is privileged, and was disclosed
10 despite efforts by the Producing Party that were "reasonably designed" to protect the materials,
11 then the Receiving Party shall return or certify the destruction of all copies (including summaries)
12 of such material. If no agreement is reached, then within 10 court days after the meet and confer,
13 the Producing Party must seek a ruling from this court to establish that the material is privileged
14 and that the Producing Party did not waive the privilege by inadvertently producing the material.
15 If the Producing Party seeks such a ruling, the Receiving Party shall not disclose or release the
16 inadvertently produced material to any person or entity pending the court's ruling on the
17 Producing Party's motion.

18 **17. INADVERTENT FAILURE TO DESIGNATE**

19 (a) The inadvertent failure by a Producing Party to designate Discovery
20 Material as Protected Material with one of the designations provided for under this Order shall
21 not waive any such designation provided that the Producing Party notifies all Receiving Parties
22 that such Discovery Material is protected under one of the categories of this Order within fourteen
23 (14) days of the Producing Party learning of the inadvertent failure to so designate.

24 (b) A Receiving Party shall not be in breach of this Order for any use
25 of such Discovery Material before the Receiving Party receives notice of the inadvertent failure to
26 designate. Once a Receiving Party has received notice of the inadvertent failure to designate
27 pursuant to this provision, the Receiving Party shall treat such Discovery Material (subject to the
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1 exception in Paragraph (c) below) at the appropriately designated level pursuant to the terms of
2 this Order.

3 (c) Protected Material produced without the designation of
4 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "CONFIDENTIAL – ATTORNEYS'
5 EYES ONLY – SOURCE CODE" may be so designated subsequent to production when the
6 producing party failed to make such designation at the time of production through inadvertence or
7 error. If discovery material is designated subsequent to production, the receiving party promptly
8 shall collect any copies that have been provided to individuals so that they can be re-labeled with
9 the "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "CONFIDENTIAL – ATTORNEYS'
10 EYES ONLY – SOURCE CODE" designation. Notwithstanding the above, such subsequent
11 designation of "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "CONFIDENTIAL –
12 ATTORNEYS' EYES ONLY – SOURCE CODE" shall apply on a going forward basis and shall
13 not disqualify anyone who reviewed "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
14 "CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE" materials while the
15 materials were not marked "CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
16 "CONFIDENTIAL – ATTORNEYS' EYES ONLY – SOURCE CODE" from engaging in the
17 activities set forth in Paragraph 6(b).

18 **18. INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

19 (a) In the event of a disclosure of any Discovery Material pursuant to
20 this Order to any person or persons not authorized to receive such disclosure under this Order, the
21 party responsible for having made such disclosure, and each party with knowledge thereof, shall
22 immediately notify counsel for the Producing Party whose Discovery Material has been disclosed
23 and provide to such counsel all known relevant information concerning the nature and
24 circumstances of the disclosure. The responsible disclosing party shall also promptly take all
25 reasonable measures to retrieve the improperly disclosed Discovery Material and to ensure that no
26 further or greater unauthorized disclosure and/or use thereof are made.

1 (b) Unauthorized or inadvertent disclosure does not change the status
2 of Discovery Material or waive the right to hold the disclosed document or information as
3 Protected.

4 **19. FINAL DISPOSITION**

5 (a) Not later than ninety (90) days after the final disposition of this
6 litigation, (including after any appeals), each party shall return all Discovery Material of a
7 Producing Party to the respective Outside Counsel of the Producing Party or destroy all such
8 material.

9 (b) All parties that have received any such Discovery Material shall
10 certify in writing that all such materials have been returned to the respective Outside Counsel of
11 the Producing Party or destroyed. Notwithstanding the provisions for return or destruction of
12 Discovery Material, Outside Counsel may retain pleadings, transcripts and attorney and
13 consultant work product for archival purposes.

14 **20. DISCOVERY RULES REMAIN UNCHANGED**

15 Nothing herein shall alter or change in any way the discovery provisions of
16 the Federal Rules of Civil Procedure, the Civil Local Rules of the Northern District of California,
17 the Patent Local Rules for the Northern District of California, or any deadlines or procedures
18 ordered by the Court for this litigation.

19 **21. MISCELLANEOUS**

20 (a) Right to Further Relief. Nothing in this Order abridges the right of
21 any person to seek modification of the Order by the Court in the future. By stipulating to this
22 Order, the Parties do not waive the right to argue that certain material may require additional or
23 different confidentiality protections than those set forth herein.

24 (b) Termination of Litigation and Retention of Jurisdiction. The Parties
25 agree that the terms of this Order shall survive and remain in effect after the termination of the
26 above-captioned matter. The Court shall retain jurisdiction after termination of this matter to hear
27 and resolve any disputes arising out of this Order.

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1 (c) Successors. This Order shall be binding upon the Parties hereto,
2 their attorneys, and their successors, executors, personal representatives, administrators, heirs,
3 legal representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and
4 experts, and any persons or organizations over which they have direct control.

5 (d) Right to Assert Other Objections. By stipulating to the entry of this
6 Order, no Party waives any right it otherwise would have to object to disclosing or producing any
7 information or item. Similarly, no Party waives any right to object on any ground to the use in
8 evidence of any of the material covered by this Order. This Order shall not constitute a waiver of
9 the right of any party to claim in this action or otherwise that any Discovery Material, or any
10 portion thereof, is privileged or otherwise non-discoverable, or is not admissible in evidence in
11 this action or any other proceeding.

12 (e) Burdens of Proof. Notwithstanding anything to the contrary above,
13 nothing in this Order shall be construed to change the burdens of proof or legal standards
14 applicable in disputes regarding whether particular Discovery Material is confidential, which
15 level of confidentiality is appropriate, whether disclosure should be restricted, and, if so, what
16 restrictions should apply.

17 (f) Modification by Court. This Order is subject to further court order
18 based upon public policy or other considerations, and the Court may modify this Order *sua sponte*
19 in the interests of justice. The United States District Court for the Northern District of California,
20 San Jose Division, is responsible for the interpretation and enforcement of this Order. All disputes
21 concerning Protected Material, however designated, produced under the protection of this Order
22 shall be resolved by the United States District Court for the Northern District of California, San
23 Jose Division.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: February 11, 2010

/s/ Sean P. DeBruine
Sean P. DeBruine

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ALSTON & BIRD LLP
Attorneys For Elan Microelectronics Corporation

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8 DATED: February 11, 2010

/s/ Sonal N. Mehta
Sonal N. Mehta

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WEIL, GOTSHAL & MANGES LLP
Attorneys for Apple Inc.

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13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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16 DATED: February 11, 2010

Patricia V. Trumbull

Honorable Patricia V. Trumbull
United States Magistrate Judge

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EXHIBIT A

I, [INSERT NAME], acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *Elan Microelectronics Corporation v. Apple Inc.*, United States District Court, Northern District of California, San Jose Division, Civil Action No. 09-01531 (RS). Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

[FOR EXPERTS AND CONSULTANTS: I further acknowledge that I have notified counsel for the party that has retained me of any individual or entity with or for whom I am employed or to whom I provide consulting services relating to the design, development, operation, or patenting of touch-sensitive input device systems in computers and personal electronic devices, or relating to the acquisition of intellectual property assets relating to such systems. For the duration of this case and for a period of two (2) years after the final resolution of this action, including all appeals, I agree to promptly notify counsel for the party that has retained me of any change with respect to my involvement in the design, development, operation or patenting of touch-sensitive input device systems in computers and personal electronic devices, or the acquisition of intellectual property assets relating to such systems.]

Name of Individual: _____

Present occupation/job description: _____

Name of Company or Firm: _____

Address: _____

Dated: _____

[Signature]

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FILER'S ATTESTATION

I, Sonal N. Mehta, am the ECF User whose ID and password are being used to file this **AMENDED STIPULATED PROTECTIVE ORDER**. In compliance with General Order 45, paragraph X.B. I hereby attest that Sean DeBruine has concurred in this filing.

By: /s/ Sonal N. Mehta
 Sonal N. Mehta