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10 Attorneys for Defendant and Counterclaim Plaintiff
 11 Apple Inc.

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

15 ELAN MICROELECTRONICS
 CORPORATION,
 16
 17 Plaintiff and Counterclaim
 Defendant,
 18 v.
 19 APPLE INC.,
 20 Defendant and Counterclaim
 21 Plaintiff.
 22

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

**DECLARATION OF DOUGLAS E.
 LUMISH IN SUPPORT OF APPLE'S
 OPPOSITION TO ELAN'S MOTION
 TO EXCLUDE DOCUMENTS OR, IN
 THE ALTERNATIVE, FOR COSTS**

Hon. Patricia V. Trumbull

Date: August 24, 2010
 Time: 10:00 a.m.
 Courtroom 5, 4th Floor

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1 I, Douglas E. Lumish, declare:

2 I am an attorney with the law firm of Weil, Gotshal & Manges LLP, counsel of
3 record for Defendant and Counter-Claimant Apple Inc. (“Apple”) in the above-captioned matter.
4 I submit this declaration based on personal knowledge and following a reasonable investigation.
5 If called upon as a witness, I could competently testify to the truth of each statement herein.

6 1. On June 14, 2010, I met with Jay Hamlin to prepare Mr. Hamlin for his
7 deposition in this action. In that meeting, the topic of documents in Mr. Hamlin’s possession,
8 custody or control was raised.

9 2. On June 15, 2010, Mr. Hamlin provided to me a folder of hardcopy
10 documents and CD-ROMs with archived computer files related to the touchpad work he did for
11 Apple. The following day, I arranged for personnel from my office to collect from Mr. Hamlin
12 hard disk drives with archived computer files.

13 3. On June 15, 2010, shortly after 9:00 a.m., I arrived with Mr. Hamlin at the
14 Palo Alto offices of Elan’s attorneys, Alston & Bird. Mr. Hamlin was prepared to sit for his
15 deposition that morning and I was prepared to defend it. I was told from an Alston & Bird
16 employee that the deposition would not proceed and that the court reporter and videographer had
17 already been sent home.

18 4. On July 28, 2010, I had a meet and confer teleconference with Sean
19 DeBruine, counsel for Elan. During that call, I asked Mr. DeBruine whether Elan would
20 withdraw its motion if Apple would agree to pay the approximately \$900 in costs requested by
21 Elan. Mr. DeBruine said that Elan would not agree.

22 5. I defended the deposition of Jonathan Dorfman, one of the inventors on the
23 ‘218 patent, on June 12, 2010 in New York. Mr. DeBruine, an Alston partner resident in the Palo
24 Alto office, took that deposition. I also defended the deposition of Mark Della Bona, another of
25 the inventors on the ‘218 patent, on May 25, 2010 in Palo Alto. Mr. DeBruine also took that
26 deposition.

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

