

EXHIBIT A

BEFORE THE
UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:) Investigation No.
CERTAIN ELECTRONIC DEVICES) 337-TA-714
WITH MULTI-TOUCH ENABLED)
TOUCHPADS AND TOUCHSCREENS)

Hearing Room B

United States
International Trade Commission
500 E Street, Southwest
Washington, D.C.

Thursday, August 19, 2010

MARKMAN HEARING, VOLUME II

The parties met, pursuant to the notice of the
Judge, at 9:00 a.m.

BEFORE: THE HONORABLE PAUL J. LUCKERN

1 first identifying said first maxima and said
2 minima? Do you understand what I am trying to
3 ask you?
4 THE WITNESS: Yes, I do, Your Honor.
5 JUDGE LUCKERN: And have you already
6 explained that in what you have said this
7 morning? If you have, you just say, Judge, I
8 have already gone into it, I don't have to say
9 anything more, and that's fine.
10 THE WITNESS: I would be happy to
11 explain it, Your Honor.
12 JUDGE LUCKERN: Well, have you
13 already --
14 THE WITNESS: I haven't gone into the
15 details of how one could do that, and I think
16 that's a good question.
17 JUDGE LUCKERN: All right. Would you
18 mind briefly doing it?
19 THE WITNESS: Not at all. The step of
20 searching for maxima, for instance, you could
21 find all of the maxima on a profile.
22 Algorithmically the process of finding a maxima
23 is looking for the top of a hill.
24 So you could find all the maxima. And
25 then the real question, the real test is is

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1 **A. Well, there is certainly a description**
2 **of algorithms for finding maxima. And there is**
3 **no particular requirement that you would have**
4 **to find and identify and choose the minima that**
5 **were located there. That is, you could look at**
6 **the pattern and the actual determination of the**
7 **depths and so forth later. There is no real**
8 **need to do it in a particular order.**
9 **There is also a notion of disclosure**
10 **in the patent of being a hardware**
11 **implementation. And if we look back at**
12 **Rympalski, for instance, Rympalski does a**
13 **hardware-based threshold determination, which**
14 **would identify all the maxima instantaneously**
15 **in parallel.**
16 **And there are other hardware**
17 **implementations where the determination of**
18 **maxima and minima is conducted in a parallel**
19 **operation. That may well be happening in the**
20 **inside of that neural network in the Synaptics**
21 **part.**
22 Q. Okay. In a number of your answers,
23 you have referred to the word "profile" this
24 morning.
25 **A. Yes.**

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1 there a valley between them? And is the valley
2 deep enough?
3 So there is no inherent need to find
4 them in a particular order. It is true if you
5 find two maxima, that pretty much inherently
6 there is some kind of a valley between them.
7 That's a result of finding the two maxima.
8 But you don't need to go find the
9 valley in between before you can find the two
10 maxima.
11 JUDGE LUCKERN: Okay. So that's your
12 answer to my question, huh?
13 THE WITNESS: Yes.
14 JUDGE LUCKERN: All right. Go ahead,
15 Mr. DeBruine.
16 BY MR. DeBRUINE:
17 Q. Just to clarify that answer a bit,
18 when you said one could do that, is it your
19 opinion that one of ordinary skill in the art
20 in January of 1996 would have known how to do
21 that?
22 **A. Yes.**
23 Q. And is there anything in the patent
24 that describes, that would instruct one of
25 ordinary skill in the art how to do that?

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1 Q. What do you mean in connection with
2 the '352 patent when you say profile?
3 **A. Well, a profile, the ordinary way we**
4 **use that term, is kind of the outline of a side**
5 **view. So one of the ways we commonly use**
6 **"profile" would be the outline of a side view**
7 **of a set of data.**
8 **And I have often described it as the**
9 **profile of a person's face, we look at them**
10 **from the side, we see the extent of the**
11 **greatest distance, you know, from the axis of**
12 **symmetry, shall we say, of their body.**
13 **If we look at hills, we would say the**
14 **profile of the hills goes along the top of the**
15 **hills. If we look at the other use of the term**
16 **commonly used by practitioners, it is a slice,**
17 **like a slice through a three-dimensional shape.**
18 **And in that case the profile becomes the values**
19 **along the top of the slice.**
20 **So in Bisset's discussion in the**
21 **earlier patent of sensing across the array,**
22 **then he calls or uses the term "profile" to**
23 **represent those ordered arrays of data that are**
24 **taken at slices through the data set.**
25 **So profile has those two meanings.**

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1 **One is a view of a data set showing either some**
2 **derivative result like adding up the values to**
3 **the data set or determining the maximum or**
4 **otherwise constructing the view across the**
5 **data, and it has the other meaning of a slice**
6 **through the data, a set of slices through the**
7 **data.**

8 Q. Okay. And could one analyze --

9 JUDGE LUCKERN: Let me ask you this
10 question. I am going to interrupt Mr.
11 DeBruine. Apple in its supporting memorandum
12 with respect to its motion for summary
13 determination at page 11 states that "the
14 claims, specification, and prosecution history
15 of the '352 patent confirm conclusively that
16 the claims require a finger profile and that a
17 finger profile is a one-dimensional
18 representation of finger contact taken along an
19 axis of the touchpad."

20 Now, do you agree that the claims
21 require a finger profile?

22 THE WITNESS: I think that the use of
23 the term "profile" is fine. I don't agree that
24 it has to be taken on an axis.

25 JUDGE LUCKERN: And then you don't

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1 THE WITNESS: No, Your Honor. But I
2 think it is important to make it clear that the
3 one-dimensional seems to be coming in because
4 it is a line. In other words, the profile is
5 along a line, and a line by itself, of course,
6 is one-dimensional. But I think it is better
7 to say like a straight line or a line instead
8 of one-dimensional, because there may be some
9 confusion because we maybe are using
10 "dimensional" in other places in this type of
11 discussion amongst practitioners.

12 JUDGE LUCKERN: Okay. Thank you. Go
13 ahead, Mr. DeBruine.

14 MR. DeBRUINE: I have nothing more for
15 Mr. Dezmelyk.

16 JUDGE LUCKERN: Oh, boy. That's a
17 present for me. Mr. Powers, let's proceed with
18 cross-examination.

19 Are you doing all right? Does anybody
20 want a break? We have been going since 9:00
21 o'clock. I am fine. The reporter certainly
22 has been doing a fantastic job. Mr. Powers?

23 MR. POWERS: Would you like to take a
24 break?

25 THE WITNESS: I am fine.

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1 agree that the claims require a finger profile?
2 A finger profile?

3 THE WITNESS: Well, the profile of
4 capacitance, I think a finger profile in this
5 case is, what they mean is the profile of
6 capacitance. So I don't have a quibble with
7 finger.

8 JUDGE LUCKERN: All right. Well, how
9 about the definition that Apple says the patent
10 confirms to a person of ordinary skill in the
11 art that finger profile is a one-dimensional
12 representation of finger contact taken along an
13 axis of the touchpad? Would you agree with
14 that?

15 THE WITNESS: I don't agree with the
16 "taken along an axis" part.

17 JUDGE LUCKERN: And that's because of
18 what you have already testified this morning?

19 THE WITNESS: Right.

20 JUDGE LUCKERN: But you agree -- well,
21 there is not much left in this definition --
22 one-dimensional representation of finger, and
23 it says something to do with a touchpad. You
24 don't quibble with that phraseology used in
25 Apple's definition, correct?

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1 MR. POWERS: I am ready to start.

2 JUDGE LUCKERN: All right. Nobody
3 wants a break? Fine with me. Let's continue.
4 Go ahead, Mr. Powers.

5 MR. POWERS: Thank you, Your Honor.
6 CROSS-EXAMINATION

7 BY MR. POWERS:

8 Q. Mr. Dezmelyk, we have RDX-303 up on
9 the screen, which is a depiction of the term
10 and the proposed constructions from all three
11 parties in the case. Do you see that?

12 **A. Yes, I do.**

13 Q. And you have reviewed those proposed
14 constructions?

15 **A. I have seen them, yes.**

16 Q. All right. And I want to first just
17 confirm what I think you said in response to
18 Judge Luckern's questions. One difference
19 between Apple and the Staff's construction on
20 the one hand and Elan's on the other, with
21 regard to each of these terms of identify a
22 first maxima, identify a minima, and identify a
23 second maxima, is that Apple and the Staff's
24 construction says identify a first peak value
25 in a finger profile, the phrase "in a finger

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1 profile" appears in each of those constructions
2 and is absent from Elan's. Do you see that?

3 **A. Yes.**

4 Q. I take it from your answer to Judge
5 Luckern's question, you agree the language "in
6 a finger profile" is an appropriate
7 construction for these terms in this patent
8 based on the intrinsic evidence and your
9 understanding?

10 **A. Yes, and it is essentially equivalent**
11 **to Elan's construction in the same section.**

12 MR. POWERS: I would move to strike,
13 Your Honor, because he has not expressed an
14 opinion about Elan's construction in this case,
15 and I don't want him to. And my question did
16 not ask him about Elan's construction. I
17 merely asked about whether he agreed with "in a
18 finger profile," and I would move to strike any
19 testimony that regards Elan's most recent
20 proposed construction on this term, because he
21 has not expressed an opinion on it.

22 JUDGE LUCKERN: Mr. Baer, where do you
23 stand on the motion to strike?

24 MR. BAER: Staff supports the motion,
25 Your Honor.

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1 appropriateness or interpretation of Elan's
2 construction even in any of the multitudinous
3 reports that he submitted or declarations. Is
4 that correct? You certainly are familiar with
5 what's gone on in the past.

6 MR. DeBRUINE: Yes, Your Honor. He
7 has put in two declarations in connection with
8 this. He has discussed at length why Apple's
9 construction is --

10 JUDGE LUCKERN: No, we're talking
11 about Elan's construction, not Apple's
12 construction. I have asked you about Elan's
13 construction, Complainant's construction.
14 That's the point.

15 And I hear Mr. Powers saying that the
16 witness has never expressed any opinion with
17 respect to Complainant's construction until we
18 have heard something a few minutes ago. Is
19 that correct?

20 MR. DeBRUINE: Well, Your Honor, be
21 that as it may, Apple has, in fact, put these
22 constructions in front of this witness.

23 JUDGE LUCKERN: But you haven't
24 answered my question, though. I know -- well,
25 this is cross-examination, that's true, but the

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1 JUDGE LUCKERN: Mr. DeBruine, what is
2 your position on the motion to strike?

3 MR. DeBRUINE: Our position, Your
4 Honor, is that the expert should be allowed to
5 provide his full and complete testimony.
6 Again, Apple took extensive deposition of this
7 expert on these very topics on Tuesday. There
8 is no surprise here.

9 I think we should have a complete
10 record.

11 MR. POWERS: Your Honor, we took a
12 deposition on the positions and opinions he had
13 expressed. He carefully did not ever express
14 an opinion about the appropriateness or
15 interpretation of Elan's construction. Ever.
16 In any of the multitudinous reports that he
17 submitted or declarations.

18 So we have not had a chance to depose
19 on that. And it would be inappropriate for him
20 now on the second day of a Markman hearing to
21 all of a sudden start expressing opinions about
22 a construction he has not before opined about.

23 JUDGE LUCKERN: Mr. DeBruine,
24 Mr. Powers has said that the witness carefully
25 did not ever express an opinion about the

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1 question was directed to a certain aspect and
2 then we have more testimony, so I am just
3 asking you in the past has the witness ever
4 expressed an opinion with respect to
5 Complainant's construction? That's all I want
6 to know, yes or no or you don't know.

7 MR. DeBRUINE: He has not, Your Honor.

8 JUDGE LUCKERN: Then I am going to
9 grant the motion to strike. Go ahead,
10 Mr. Powers.

11 MR. POWERS: Thank you, Your Honor.

12 BY MR. POWERS:

13 Q. Now, the second part of that
14 difference is "taken on an axis." And as I
15 understand your testimony on direct and
16 particularly in response to Judge Luckern's
17 question, if Apple's proposed construction were
18 changed to say "taken on a straight line," you
19 would agree with it?

20 **A. Right. I don't have a problem with**
21 **"taken on a straight line."**

22 Q. All right. Now, in your
23 understanding, claim -- this language, these
24 three terms of claim 1 and 18 require that you
25 identify this first maxima, the minima, and the

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