

# **EXHIBIT B**

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**From:** DeBruine, Sean [mailto:Sean.DeBruine@alston.com]  
**Sent:** Thursday, September 02, 2010 11:50 PM  
**To:** Mehta, Sonal; Apple ITC714 WGM Service; Kevin.Baer@usitc.gov  
**Cc:** Elan Apple Team  
**Subject:** RE: Claim Construction Meet and Confer

Sonal,

On the "means for providing an indication" we do not agree with your characterization of the steps as consistent with Apple's proposed construction of "in response to" despite Dr. Balakrishnan's attempted explanation. It appears we will have to brief this issue as well.

Thanks,

Sean

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**From:** Mehta, Sonal [mailto:Sonal.Mehta@weil.com]  
**Sent:** Thursday, September 02, 2010 9:03 PM  
**To:** DeBruine, Sean; Apple ITC714 WGM Service; Kevin.Baer@usitc.gov  
**Cc:** Elan Apple Team  
**Subject:** RE: Claim Construction Meet and Confer

Sean,

Thanks to you too for your efforts to narrow the disputes.

With respect to the identification steps (max/min/max), it appears we have agreement as to the narrowed dispute. Apple's position is that the finger profile must be defined before analysis commences and that the analysis must proceed temporally, but we understand that Elan disputes that.

On "means for providing an indication," it appears that there is some sort of dispute, but, to be candid, we do not see what it is. Apple proposes Fig. 8-1 as corresponding structure because the indication of two fingers is provided "in response to" the identification of two maxima under Apple's construction of "in response to." Dr. Balakrishnan explained this at length in his declarations. It is unclear what "caveat" Elan does not agree to -- please let us know what it is so we can try to resolve it. If not, we may have to brief this to try to flush that out.

On "means for selecting an appropriate control function," we cannot agree to Elan's proposed corresponding structure as stated.

Thanks,  
Sonal

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**From:** DeBruine, Sean [mailto:Sean.DeBruine@alston.com]  
**Sent:** Thursday, September 02, 2010 7:30 PM  
**To:** Mehta, Sonal; Apple ITC714 WGM Service; Kevin.Baer@usitc.gov  
**Cc:** Elan Apple Team  
**Subject:** RE: Claim Construction Meet and Confer

Sonal,

With respect to the proposed constructions of the identification steps I understand your corrections and we have your revised chart. We will use that as Apple's position. It appears that you are correct in summarizing the parties' remaining disputes, assuming that Apple does not intend to rely on the phrase "taken on" to require that the profile be defined before the analysis commences.

For claim 18, we are not willing to agree to the caveat you propose. My understanding of Dr. Balakrishnan's testimony is that the X scan and Y scan do not meet the "in response to" limitation as construed by Apple. We remain willing to agree to the steps 850 and 860 as corresponding structure. If you can clarify how those steps meet the "in response to" limitations proposed by Apple we would be happy to reconsider.

As for Claim 19, it is Elan's position that selecting a control function can be performed by software, firmware and/or hardware performing one or more of a combination of Figs 7A-7F (incl Col 13), 5,6,8, and 9 or equivalents.

Thank you for your ongoing efforts to narrow these disputes.

Best regards,

Sean

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**From:** Mehta, Sonal  
**Sent:** Thursday, September 02, 2010 6:32 PM  
**To:** DeBruine, Sean; Apple ITC714 WGM Service; Kevin.Baer@usitc.gov  
**Cc:** Elan Apple Team  
**Subject:** RE: Claim Construction Meet and Confer

Sean,

In reviewing your table below on the identification steps (max/min/max) again, it looks like there are actually two additional typos in your recitation of Apple's positions. We do not believe there is a substantive dispute on this, but for clarity, we provide the following corrected table.

<b>Claim term</b>	<b>Apple's Proposal</b>	<b>Elan's Proposal</b>
Identify a first maxima in a signal corresponding to a first finger	Identify a first peak value in a finger profile taken on a straight line obtained from scanning the touch sensor	Identify a first peak value in a finger profile taken on a straight line obtained from scanning the touch sensor
Identify a minima following the first maxima	Identify the lowest value in the finger profile taken on <u>said</u> straight line that occurs after the first peak value and before another peak value is identified	Identify the lowest value in the finger profile taken on a straight line that occurs after the first peak value

Identify a second maxima in a signal corresponding to a second finger following said minima	After identifying the lowest value in the finger profile taken on <u>said</u> straight line, identify a second peak value in the finger profile taken on said <u>straight line</u>	Identify a second peak value in the finger profile taken on a straight line following the minima.
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We also look forward to your response on the other points below.

Thanks,  
Sonal

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**From:** Mehta, Sonal [mailto:Sonal.Mehta@weil.com]  
**Sent:** Thursday, September 02, 2010 4:45 PM  
**To:** DeBruine, Sean; Apple ITC714 WGM Service; Kevin.Baer@usitc.gov  
**Cc:** Elan Apple Team  
**Subject:** RE: Claim Construction Meet and Confer

Sean,

With respect to the identification steps (max/min/max), we agree that the parties' positions are correctly set forth below, with one exception. Although we do not believe (and have never believed) there is a distinction between "straight line" and "axis," given Elan's prior position on that issue, Apple's proposal for the "identify a second maxima . . ." limitation should read "After identifying the lowest value in the finger profile taken on a straight line, identify a second peak value in the finger profile taken on said straight line." With that, we understand the remaining disputes are (1) whether the finger profile must be established before the identification steps such that the extrema are identified in the finger profile; and (2) whether identification of the first maxima, minima and second maxima must take place in temporal order.

With respect to Claim 18, it appears that the parties are in agreement, but we want to confirm the following understanding of the parties' positions to avoid any disputes in the future. Claim 18 requires providing an indication of two fingers in response to identification of two maxima. The parties have a separate dispute as to "in response to," which Judge Luckern will adjudicate. We have proposed Fig. 8-1 (specifically steps 850 and 860) as the corresponding structure because the indication of two fingers is provided "in response to" identification of two maxima under Apple's construction of "in response to," which we believe is correct. It appears that Elan agrees that those steps do provide the indication of two finger is provided "in response to" identification of two maxima under Apple's construction of "in response to," although we understand that Elan disagrees with that construction. Thus, it appears the private parties agree that the corresponding structure for claim 18 is Fig. 8-1 steps 850 and 860, subject to the dispute on "in response to." Please confirm that this is consistent with Elan's understanding.

With respect to Claim 19, note that our emails over the last couple of days have merely sought clarification as to Elan's proposal and do not reflect a proposal from Apple on the term. We are still trying to understand what Elan believes the corresponding structure to be. Is Elan's position that the entirety of the algorithms at "column 13 corresponding to Figs. 7A-7F in addition to the algorithms in Figs. 5,6, 8 and 9" or equivalents is required, or is Elan proposing that any one of the algorithms in Figs. 5, 6, 8, 9 or 7A-7F (including col. 13) or equivalents is adequate for performing the function?

Thanks,

**From:** DeBruine, Sean [mailto:Sean.DeBruine@alston.com]  
**Sent:** Thursday, September 02, 2010 2:44 PM  
**To:** Mehta, Sonal; Apple ITC714 WGM Service; Kevin.Baer@usitc.gov  
**Cc:** Elan Apple Team  
**Subject:** RE: Claim Construction Meet and Confer

Sonal-

Thank you for the thorough response.

With respect to the "identification" steps, Elan understands that the dispute regarding when the extrema are identified continues the parties' disagreement regarding whether the steps must be performed in the order recited. Subject to this continuing disagreement as to how the finger profile is obtained, it appears Elan can agree on the "finger profile take on a straight line" construction. I have set forth below what we understand to be the private parties' proposals reflecting this agreement. Please let me know if this is accurate.

<b>Claim term</b>	<b>Apple's Proposal</b>	<b>Elan's Proposal</b>
Identify a first maxima in a signal corresponding to a first finger	Identify a first peak value in a finger profile taken on a straight line obtained from scanning the touch sensor	Identify a first peak value in a finger profile taken on a straight line obtained from scanning the touch sensor
Identify a minima following the first maxima	Identify the lowest value in the finger profile taken on a straight line that occurs after the first peak value and before another peak value is identified	Identify the lowest value in the finger profile taken on a straight line that occurs after the first peak value
Identify a second maxima in a signal corresponding to a second finger following said minima	After identifying the lowest value in the finger profile taken on a straight line, identify a second peak value in the finger profile taken on said axis	Identify a second peak value in the finger profile taken on a straight line following the minima.

With respect to Claim 18, Elan cannot agree to the portion of Apple's construction that unduly limits the algorithm disclosed in 8-1. Elan submits that steps 850-860 do provide an indication of two fingers in response to identification of the first and second maxima as required by the claim. If Apple can agree to this construction, subject to the ongoing disagreement with respect to "in response to", Elan can agree to this compromise.

For Claim 19, unfortunately Elan cannot agree with Apple's position even as clarified. We intended our propose to include the algorithms discussed in column 13 corresponding to Figs. 7A-7F, in addition to the algorithms in Figs. 5,6, 8 and 9.

Please let me know Apple's positions on these claims.

Best regards,

Sean

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**From:** Mehta, Sonal [mailto:Sonal.Mehta@weil.com]  
**Sent:** Thursday, September 02, 2010 11:12 AM  
**To:** DeBruine, Sean; Apple ITC714 WGM Service; Kevin.Baer@usitc.gov  
**Cc:** Elan Apple Team  
**Subject:** RE: Claim Construction Meet and Confer

Sean,

On the identification steps (max/min/max terms), we have always and continue to believe that a finger profile is generated from the values on a straight line of the touchpad. It appears, based on Mr. Dezmelyk's testimony, that the parties are in agreement on this point. However, the parties appear to dispute *when* the finger profile is generated relative to the identification of extrema. To be clear, Apple's position is that the max/min/max are identified in the finger profile, thus the finger profile is established before the identification of the max/min/max. If Elan does not agree, we will need Judge Luckern to adjudicate that issue. But that does not, in our view, negate the parties' agreement that the claims require a "finger profile taken on a straight line," which is a finger profile generated from the values on a straight line of the touchpad. Please confirm that this is consistent with Elan's understanding, and accordingly, that the private parties are in agreement that the claimed signal be construed to include "a finger profile taken on a straight line."

On the "means for selecting an appropriate control function limitation," our request for clarification was not intended to suggest that all of Figs. 7A-7F need be present for every control function. We intended to clarify that Elan's proposed corresponding structure includes both an algorithm from Figs. 7A-7F and the algorithms for cycling through scans of the touchpad and X and Y compute in Figures 5, 6, 8 and 9. To avoid any confusion down the line, please confirm that Elan's proposed corresponding structure is: (1) at least one of the algorithms in Figs. 7A-7F and 13:1-58 in addition to Figs. 5 and 6 and 12:37-67; OR (2) at least one of the algorithms in Figs. 7A-7F and 13:1-58 in addition to Figs. 8 and 9 and 12:37-67. If that is Elan's proposal, we believe the private parties can reach agreement on this construction.

With respect to "means for providing an indication," we appreciate Elan's further consideration of our proposed corresponding structure. It appears from your compromise proposal that the parties may be able to reach agreement that the corresponding structure is the algorithm disclosed in Figure 8-1 at steps 850 and 860. We note, however, that Elan's proposed compromise construction does not include the description of the algorithm proposed by Apple. If Elan confirms that it does not dispute that Fig. 8-1 steps 850 and 860 set a finger value equal to two directly after determining if a scan in either the X direction or the Y direction has detected two fingers, we can agree to Elan's proposed compromise construction of Fig. 8-1 at steps 850 and 860.

We look forward to hearing from you on the above.

Thanks,  
Sonal

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**From:** DeBruine, Sean [mailto:Sean.DeBruine@alston.com]  
**Sent:** Wednesday, September 01, 2010 10:47 AM  
**To:** Mehta, Sonal; Apple ITC714 WGM Service; Kevin.Baer@usitc.gov  
**Cc:** Elan Apple Team  
**Subject:** RE: Claim Construction Meet and Confer

Sonal,

With regard to the "identify" step, we are seeking clarity on Apple's use of the phrase "taken on" to describe the finger profile. Elan has always had a concern that this phrase is unclear, and could be read to require that the data values making up the profile be read from the sensor hardware directly to form the profile. Elan is seeking assurance that Apple does not take that position, but rather Apple will agree, consistent with its expert's deposition testimony, that the data making up a finger profile may be a subset of the full set of data resulting from a scan of the touch sensor or derived from that data. *See* Balakrishnan Depo at 76-79.

With respect to Claim 19, Elan agrees to the addition of the language of column 12:37-67 as part of the corresponding structure. However, we are not clear on Apple's proposal that the structure "requires the algorithm disclosed in 7A-7F and 13:51 as well as" the other disclosed algorithms. In particular, your use of the singular "algorithm" and "require" indicate that the corresponding structure would require all of these to be present at the same time which is not our intent. These figures/algorithms are disjunctive as they show the selection of distinct, exemplary control functions. Please provide some clarification in this regard.

Thanks,

Sean

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**From:** Mehta, Sonal [mailto:Sonal.Mehta@weil.com]  
**Sent:** Wednesday, September 01, 2010 7:00 AM  
**To:** DeBruine, Sean; Apple ITC714 WGM Service; Kevin.Baer@usitc.gov  
**Cc:** Elan Apple Team  
**Subject:** RE: Claim Construction Meet and Confer

Sean,

Thanks for your email regarding possible agreements on claim construction issues. We are considering Elan's proposals and have a couple of follow-up questions.

First, with respect to the "identifying steps" (aka max/min/max terms) of claims 1 and 18, it is unclear what Elan intends to qualify through its request for confirmation that "Apple intends no limitation on how values in a profile are obtained by the phrase 'taken on.'" If you mean to confirm that Apple is not imposing any limitation on the hardware that generates the finger profile values, we agree. If there is some other qualification you have in mind, please let us know so we can discuss it. Given the history, I think we all can agree that everyone will benefit from clarity as to a meeting of the minds or remaining dispute.

Second, on the "means for selecting an appropriate control function" limitation, Elan's corresponding structure remains unclear in that it lists "software, firmware and/or hardware selecting control functions as shown in Figures 7A-7F by the algorithms disclosed in Figure 5, Figures 6-1 & 6-2, Figures 8-1 & 8-2, and Figures 9-1 & 9-2 and the algorithms disclosed in the written description at 13:1-58." Please confirm that Elan's proposed corresponding structure requires the algorithm disclosed in Figs. 7A-7F and 13:1-58, as well as the algorithm disclosed in Figure 5, Figures 6-1 & 6-2, Figures 8-1 & 8-2, and Figures 9-1 & 9-2. Also, with respect to the algorithm at Figs. 7A-&7F, does Elan intend to include the disclosure at 12:37-67 regarding the series of scans?

Please let us know your response to these questions as soon as you can so we can consider and bottom out on these constructions on this end and get back to you promptly.

Thanks,  
Sonal

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**From:** DeBruine, Sean [mailto:Sean.DeBruine@alston.com]  
**Sent:** Tuesday, August 31, 2010 8:52 PM  
**To:** Apple ITC714 WGM Service; Kevin.Baer@usitc.gov  
**Cc:** Elan Apple Team  
**Subject:** Claim Construction Meet and Confer

Counsel,

We have further considered the positions expressed in our meet and confer yesterday and reviewed the record, and make the following proposals for possible agreement as to construction of certain claims. Please let me know your thoughts. We are available to discuss any of these proposals.

### Claim 1 and 18 "identifying" steps

Subject to agreement that Apple intends no limitation on how values in a profile are obtained by the phrase "taken on," Elan is willing to agree that the identification steps be "in a profile taken on a straight line."

### Claim 18: "Means for providing an indication . . ."

#### **Apple's Current Construction**

- This limitation is governed by 35 U.S.C. § 112(6).
- The recited function is providing an indication of the simultaneous presence of two fingers in response to identification of said first and second maxima.
- The corresponding structure is the algorithm found in Fig. 8-1, which sets a finger value equal to two after determining if a scan in either the X direction or the Y direction has detected two fingers.

#### **Staff's Current Construction**

- This limitation is governed by 35 U.S.C. § 112(6).
- The recited function is providing an indication of the simultaneous presence of two fingers in response to identification of said first and second maxima.
- The corresponding structure is a microcontroller programmed as shown in Fig. 5 (items 450-540) or as shown in Fig. 8-1 (item 850) to Fig. 8-2 (915).

#### **Elan's Proposed Construction**

- This limitation is governed by 35 U.S.C. § 112(6).
- The recited function is providing an indication of the simultaneous presence of two fingers in response to identification of said first and second maxima.
- The corresponding structure is software, firmware and/or hardware implementing the algorithms disclosed in Figure 8-1, steps 850 to 860.

### Claim 19: "Means for selecting a control function . . ."



## Apple & Staff's Current Construction

- This limitation is governed by 35 U.S.C. § 112(6).
- The recited function is selecting an appropriate control function based on a combination of a number of fingers detected, an amount of time said fingers are detected, and any movement of said fingers.
- Indefinite under 112

## Elan's Proposed Construction

- This limitation is governed by 35 U.S.C. § 112(6).
- The recited function is selecting an appropriate control function based on a combination of a number of fingers detected, an amount of time said fingers are detected, and any movement of said fingers.
- The corresponding structure is software, firmware and/or hardware selecting control functions as shown in Figures 7A-7F by the algorithms disclosed in Figure 5, Figures 6-1 & 6-2, Figures 8-1 & 8-2, and Figures 9-1 & 9-2 and the algorithms disclosed in the written description at 13:1-58.

## Sean DeBruine

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