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October 6, 2010

The Honorable Richard Seeborg
United States District Court
Courtroom 3, 17th Floor
450 Golden Gate Avenue
San Francisco, California 94102

Re: Elan Microelectronics Corporation v. Apple, Inc.
U.S.D.C. (N.D. Cal.), Case No.: 5:09-cv-01531-RS

Dear Judge Seeborg:

I write in response to the September 30, 2010 letter from counsel for Apple, Inc. regarding developments in the ongoing investigation before the U.S. International Trade Commission.

While Apple has provided your Honor copies of recent initial determinations made by the presiding Chief Administrative Law Judge, it did not put those initial determinations in context. In particular, the rulings of the CALJ are not the decision of the ITC in such investigations. Rather, as to any initial determination the Commission may review and reverse, modify or adopt such initial determination. *See* 19 C.F.R. § 210.43 Elan today filed its Petition for Review of both of the ALJ's initial determinations. These petitions are attached hereto as Exhibits A and B. Pursuant to the ITC rules, Apple will have five business days to respond to that petition. *Id.* The Commission may then grant or deny review within 30 days of service of the initial determinations. *Id.*

As set forth in its petitions for review, Elan believes there is ample ground for the Commission to review and reverse the initial determinations. For example, Apple's new expert admitted that the specification of the '352 patent discloses numerous algorithms for selecting an appropriate control function corresponding to the means plus function element of claim 19. Notwithstanding that admission, thus rendering Apple's entire argument baseless, the ALJ determined that there is no algorithm disclosed in the patent. This is the sort of clear error Commission review is intended to correct.

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Because these rulings are necessarily tentative, they do not form any basis on which this Court should rely in arriving at its determination on these issues.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Sean P. DeBruine".

Sean P. DeBruine

SPD:whm

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