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 Plaintiff APPLE INC.

11 Attorneys for Plaintiff and Counterdefendant
 12 ELAN MICROELECTRONICS
 CORPORATION

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

19 ELAN MICROELECTRONICS
 CORPORATION,
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 21 Plaintiff,
 22 v.
 23 APPLE, INC.,
 24 Defendant.

25 AND RELATED COUNTERCLAIMS
 26

Case No. 09-cv-01531 RS

**JOINT FURTHER CASE
 MANAGEMENT CONFERENCE
 STATEMENT**

DATE: January 27, 2011
 TIME: 10:00 a.m.
 CTRM: 3, 17th Floor

The Honorable Richard Seeborg

1 Pursuant to the November 10, 2010 Clerk’s Notice setting a further Case Management
2 Conference, and Civil L.R. 16-9 and the Court’s standing Order regarding case management
3 conferences, and Plaintiff Elan Microelectronics Corporation (“Elan”) and Defendant Apple Inc.
4 (“Apple”) jointly file this Further Case Management Conference Statement.

5 **I. CASE STATUS**

6 This is a case for patent infringement. Elan filed suit alleging that Apple infringes U.S.
7 Patents No. 5,825,352 (“the ‘352 patent) and 7,274,353 (“the ‘353 patent”). Apple has
8 counterclaimed alleging that Elan infringes two of its U.S. Patents: 5,764,218 (“the ‘218
9 patent”), and 7,459,659 (“the ‘659 patent). [Dkt. No. 96].

10 The parties previously filed an initial Joint Case Management Conference Statement on
11 September 30, 2009 [Dkt. No. 41]. That Statement set forth the relevant factual and legal
12 issues, which are incorporated herein by reference.

13 A Case Management Conference was held on March 18, 2010. The Court issued a
14 Scheduling Order setting deadlines for disclosures and briefing under the Patent Local Rules
15 and for a Claim Construction Hearing. [Dkt. No. 74]. The Claim Construction Hearing was
16 held on June 23, 2010. On November 1, 2010 the Court issued its Claim Construction Order.
17 [Dkt. No. 183].

18 **II. RELATED CASES**

19 Elan’s ‘352 patent was one of the five patents at issue in the case of *Elantech Devices,*
20 *Inc. v. Synaptics*, Case No. C06-01839 PWT. During the pendency of that case, Elantech
21 Devices, Inc. was merged into Plaintiff Elan Microelectronics Corp. That case settled and was
22 dismissed in November 2008. However the parties do not believe this case is related to the
23 *Elantech Devices, Inc. v. Synaptics* case as defined in Civil L.R. 3-12.

24 On April 23, 2010 the United States International Trade Commission (“ITC”) instituted
25 an investigation to determine whether certain of the Apple products at issue in this case sold for
26 importation, imported or sold in the United States infringe the ‘352 patent and thus constitute a
27 violation by Apple of Section 337 of the Tariff Act, as amended (19 U.S.C. §1337). Claim
28 construction proceedings and discovery in that investigation have concluded, and an evidentiary

1 hearing is scheduled for February 17-23, 2011. The ITC has set a target date of August 29,
2 2011 to issue its Final Determination and any remedial order.

3 **III. MOTIONS**

4 No motions are currently pending. The parties expect that motions for summary
5 judgment on the issues of patent infringement and/or validity may be filed prior to trial.

6 **IV. DISCOVERY**

7 The parties have undertaken substantial discovery. Each party has made voluminous
8 production of documents, and depositions of party witnesses, inventors and non-parties have
9 taken place. Much of this discovery has been undertaken in connection with the ITC
10 investigation. Remaining topics of discovery include completion of document productions,
11 depositions of certain individuals named as inventors and party witnesses relating to the accused
12 functionalities, as well as damages-related discovery including sales and profits derived from
13 the accused products.

14 **A. Changes to Limitations on Discovery**

15 In their initial Joint Case Management Conference Statement, the parties proposed the
16 following changes to the presumptive discovery limits in the Federal Rules of Civil Procedure.
17 The Court has not addressed these proposed limits, but the parties have been conducting this
18 case pursuant to the following agreements. The parties have further agreed that discovery taken
19 in the ITC investigation may be used as if taken in this matter.

20 Requests for Admission: The parties propose that each party should be permitted to
21 propound up to fifty (50) requests for admission to each other party, excluding requests for
22 admission used solely for authentication, issues of hearsay, exceptions to hearsay and issues
23 relating to the best evidence rule and its exceptions. The parties agree to discuss a reasonable
24 approach to those exceptions as the case progresses.

25 Interrogatories: The parties propose that each party should be permitted to serve thirty
26 (30) interrogatories to each other party.

27 Depositions: The parties propose that each party should be permitted to take up to one
28 hundred (100) hours of deposition testimony of fact witnesses, with depositions requiring

1 translation counting as **[Apple's position: half][Elan's position: two-thirds]** time against the
2 time limit. The parties further propose the presumptive time limit of seven (7) hours per
3 deposition of non-inventors and a presumptive nine (9) hour limit for inventors. For Rule
4 30(b)(6) depositions of the parties, the parties propose a presumptive limit of twenty-one (21)
5 hours total per party being deposed. The parties further agree to work together to adjust limits
6 as reasonable and necessary under the circumstances.

7 **B. Foreign Named Inventors and Employees**

8 In their initial Joint Case Management Conference Statement, the parties agreed that
9 named inventors and employees of the parties that do not reside in the United States will be
10 made voluntarily available for deposition in the Northern District of California without
11 service of foreign process except as so identified to the opposing party no later than
12 September 18, 2009. No such witnesses were identified by that date.

13 **V. RELIEF**

14 Elan contends that it is entitled to a judgment that certain of Apple's iBook, PowerBook
15 and MacBook laptop computers and its iPod touch, iPhone, Magic Mouse and Magic TrackPad
16 products infringe the '352 and/or '353 patents and that the infringement was and continues to be
17 willful. As a result Elan contends that it is entitled to damages in an amount not less than a
18 reasonable royalty, and to an injunction against any further infringement. Elan is also requesting
19 that any damage award be trebled as a result of Apple's willful infringement and that Apple be
20 ordered to pay Elan's costs and attorneys' fees.

21 Apple seeks a declaratory judgment that it has not and is not infringing any claim of
22 Elan's '352 and '353 patents, either directly or indirectly, willfully, contributorily or otherwise,
23 and that Elan's '352 and '353 patents are invalid for failure to comply with the requirements of
24 the Patent Laws of the United States, including but not limited to the provisions of 35 U.S.C. §§
25 101, 102, 103, and/or 112. Apple also seeks a judgment that certain of Elan's touch-sensitive
26 input devices, including without limitation the Smart-Pad, infringe the '218 and '659 patents
27 and that Elan's infringement has been and is willful. Apple seeks damages in an amount not
28 less than a reasonable royalty, damages for willful infringement pursuant to 35 U.S.C. § 284,

1 and an injunction against any further infringement of its '218 and '659 patents. Apple also
2 seeks costs and attorneys' fees.

3 **VI. SETTLEMENT**

4 The Court earlier referred this case to Magistrate Judge Spero for a settlement
5 conference, which took place on February 11, 2010 but did not result in settlement. [Dkt. No.
6 63]. In addition, pursuant to orders issued in the ITC matter, the principals of the parties have
7 met on two previous occasions and met again today. No settlement agreement has been
8 reached.

9 **VII. CLAIM CONSTRUCTION**

10 The June 23, 2010 Claim Construction Hearing and November 1, 2010 Claims
11 Construction Order addressed nine claim construction disputes identified by the parties as most
12 significant to resolution of the case, while leaving open certain issues for resolution as the case
13 progresses. The parties' Joint Claim Construction Statement also identified a number of
14 additional claim construction and indefiniteness disputes that have not yet been presented to the
15 Court for resolution. [Dkt. No. 84].

16 **Elan's Position**

17 Elan believes that any remaining claim construction disputes are best identified and
18 resolved in the context of the issue in which they arise. As such, Elan suggests that most if not
19 all of the remaining disputes will be identified and can be dealt with in the context of motions
20 for partial summary judgment of infringement and/or invalidity of the relevant claims. Should
21 there be any claim construction issues remaining after the deadline for filing dispositive
22 motions, Elan suggests that the parties meet and confer to define those disputes and provide the
23 Court with a suggested schedule for briefing and hearing such at the issues may be decided prior
24 to trial.

25 **Apple's Position**

26 Apple respectfully submits that additional claim construction proceedings will be
27 necessary to resolve certain claim construction issues before dispositive motions are decided
28 and/or before trial, including issues that remain open based on the Court's Claims Construction

1 Order and the construction of certain means-plus-function limitations in Elan's '352 patent for
2 which there is an ongoing dispute as to whether the limitations are indefinite as Apple proposes,
3 or whether the patent discloses adequate corresponding structure and, if so, what it is. Apple
4 requests that the Court establish a process and schedule for the parties to meet and confer to
5 discuss, and for the Court to consider, the scope of further claim construction proceedings.

6 Elan does not dispute that the parties should meet and confer regarding further claim
7 construction proceedings, but does appear to dispute Apple's proposal that the Court establish a
8 schedule for that process at this stage. Apple respectfully submits that it will be most efficient
9 for the Court and the parties to establish now an orderly process for the parties to discuss and
10 the Court to decide the scope of additional claim construction proceedings. Setting a schedule
11 for that process now will help ensure that further claim construction proceedings can go forward
12 in a timely manner consistent with the overall schedule for the case, and will avoid the need for
13 significant modifications to the case schedule down the road. Thus, as set forth below, Apple
14 requests that the Court set a deadline for the parties to meet and confer and advise the Court as
15 to their proposals on the scope of further claim construction proceedings, and that the Court set
16 a tentative date for a further claim construction hearing should the parties request and the Court
17 wish to proceed with a hearing at that time:

Event	Proposed Date
Deadline for parties to meet and confer regarding need for and scope of further claim construction proceedings and submit joint statement and proposed briefing schedule to the Court	April 29, 2011
Further Claim Construction Hearing (if needed and approved by the Court)	On or after June 8, 2011 ¹ at the Court's convenience

25 **VIII. SCHEDULING**

26 The parties agree on, and therefore propose to the Court, the following schedule for the
27

28 ¹ Lead trial counsel for Apple is unavailable on June 22 and 29, 2011 due to a tutorial and claim construction hearing scheduled in another matter.

1 case. Each party expressly reserves its rights to move for a change in the schedule as
2 appropriate.

Event	Proposed Date
Fact Discovery Cut-Off	July 15, 2011
Expert Reports	September 2, 2011
Rebuttal Expert Reports	October 7, 2011
Expert Discovery Cut-Off	October 28, 2011
Deadline for filing dispositive motions	November 10, 2011
Deadline for oppositions to dispositive motions	November 29, 2011
Deadline for reply briefs	December 8, 2011
Hearing on dispositive motions	December 15, 2011 or December 22, 2011 at the Court's convenience
Deadline for motions in limine	January 5, 2012
Deadline for oppositions to motions in limine	January 12, 2012
Pretrial Conference	On or after January 19, 2012 at the Court's convenience
Trial	On or after February 9, 2012 at the Court's convenience ²

17 **IX. TRIAL**

18 A jury demand has been made. The parties believe that 8-10 trial days would be
19 necessary to try all remaining issues to a jury.

20 **X. DISCLOSURE OF NON-PARTY INTERESTED PERSONS OR ENTITIES**

21 The parties have filed their Certifications of Interested Entities or Persons which are
22 attached hereto as Exhibit A.

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28 ² Lead trial counsel for Apple is unavailable between April 30 and May 11, 2011 due to a
trial scheduled in another matter.

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DATED: January 20, 2011

Respectfully submitted,
ALSTON & BIRD LLP

By: /s/ Sean P. DeBruine
Sean P. DeBruine
Attorneys for Plaintiff
ELAN MICROELECTRONICS CORPORATION

DATED: January 20, 2011

Respectfully submitted,
WEIL, GOTSHAL & MANGES LLP

By: /s/ Sonal N. Mehta
Sonal N. Mehta
Attorneys for Defendant and Counterclaim Plaintiff
APPLE INC.

FILER'S ATTESTATION

Pursuant to General Order No. 45, Section X (B) regarding signatures, I, Sean P. DeBruine, attest that concurrence in the filing of this document has been obtained.

 /s/ Sean P. DeBruine
Sean P. DeBruine