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 11 ELAN MICROELECTRONICS
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12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

15
 16 ELAN MICROELECTRONICS
 CORPORATION,
 17
 Plaintiff and Counterdefendant,
 18
 v.
 19 APPLE, INC.,
 20
 Defendant and Counterplaintiff.

Case No. 5:09-cv-01531 RS (PSG)

**ELAN MICROELECTRONICS
 CORPORATION'S NOTICE OF
 MOTION AND MOTION TO COMPEL
 APPLE TO SUPPLEMENT ITS
 RESPONSE TO ELAN'S
 INTERROGATORY NO. 13**

Date: June 28, 2011
 Time: 10:00 a.m.
 Courtroom 5
 Hon. Paul S. Grewal

21
 22 AND RELATED COUNTERCLAIMS
 23

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1 **NOTICE OF MOTION AND MOTION**

2 TO APPLE, INC. AND ITS ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on June 28, 2011, at 10:00 a.m. or as soon thereafter as the
4 matter may be heard, in Courtroom 5, located at 280 South First Street, Fifth Floor, San Jose,
5 California, Plaintiff Elan Microelectronics Corporation (“Elan”) will and hereby does move this
6 Court, pursuant to L.R. 37-1(a) and Fed. R. Civ. P. 37(a)(1) and 37(a)(4) to Compel Apple to
7 provide a complete answer to Elan’s Interrogatory No. 13.

8 As its basis for this motion, as more fully set forth in the following Memorandum of Points
9 and Authorities, Elan states that this is a patent infringement action wherein the accused Apple
10 products are laptop computers, tablet computers, smartphones and other devices that include
11 touchpad or touchscreen input devices. On December 13, 2010, Elan served Interrogatory No. 13
12 requesting that Apple identify all product names, project codes, model names and model numbers
13 for each of Apple’s Accused Products. Apple has provided some information in its responses to
14 this interrogatory, at first providing only internal development codes for each product and its
15 associated touchpad or touchscreen. After repeated requests Apple has also provide a separate list
16 of external model names and model numbers. However, Apple simply refuses to correlate the
17 internal project code names with the external model numbers under which the resulting products
18 were sold and, more importantly, the numbers under which internal documentation and sales
19 information are maintained within Apple. Thus, Apple’s internal technical documents refer only
20 to the internal product codes, while external documents used to advertise those products, and
21 internal documents tracking sales of those documents, use the external product names and model
22 numbers. By its piecemeal response Apple is refusing to fully answer the interrogatory, and
23 refusing to provide basic, highly relevant information that is uniquely within its knowledge.
24 Accordingly, Elan respectfully requests that this Court compel Apple to provide a full and
25 complete response to Elan’s Interrogatory No. 13 which, at a minimum, will provide all external
26 product names and numbers along with all internal product names or codes, separately for each
27 accused Apple product.

28 This motion is based upon this Notice of Motion, Memorandum of Points and Authorities,

1 and the Declaration of Palani P. Rathinasamy (“Rathinasamy Decl.”) and on such other argument
2 and evidence as may be presented to the Court at or prior to the hearing on this motion.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION**

5 Elan is forced to bring this motion to obtain the most basic of information from Apple – a
6 list of the codes, names and model numbers Apple itself has used to identify its own products.
7 Over the six months since Elan served its interrogatory seeking this information, Apple has only
8 grudgingly identified its internal project codes for each general product name, and separately
9 provided a list of external model names and numbers. Apple simply refuses to provide a single,
10 complete response to this interrogatory in which, *for each product*, it identifies both the internal
11 codes and the external model names and numbers. This information is necessary for Elan to
12 understand the documents produced by Apple. While Apple’s internal technical documents refer
13 to the development code names, its website and user guides refer to Apple products by an external
14 name, such as a “MacBook 13” or a “MA254LL/A. Elan has no way to ensure that the technical
15 documents it has reviewed correlate to any particular product sold by Apple, and to ensure that it
16 has complete documentation for each such product. Certainly Apple has this information, as it
17 has been able to provide the components of a complete answer. Apple is simply refusing to
18 provide the key to correlate this information, a key only it possesses. Its refusal to provide this
19 basic information about its own products is nothing more than discovery obstruction. Because
20 discovery is to be completed in less than two months, Apple must be compelled to provide the
21 requested response immediately.

22 **II. STATEMENT OF MATERIAL FACTS**

23
24 Elan served its Second Set of Interrogatories on December 13, 2010. Interrogatory No. 13
25 simple seeks the internal and expert model names and numbers used by Apple to identify each of
26 the accused products:

27 Identify by each unique product name, product code, product model and/or any other
28 product nomenclatures each Apple Product designed, made, used, sold, offered for
sale, imported, or distributed by or for Apple.

1 (Declaration of Palani P. Rathinasamy (“Rathinasamy Decl.”), Ex. A [Elan’s Second Set of
2 Interrogatories to Apple Inc. [Nos. 13-15] at 6). On January 12, 2011 Apple responded to
3 Interrogatory No. 13 by identifying only the internal product names associated with broad family
4 of Accused Products (Rathinasamy Decl., Ex. B [Apple’s Resp.] at 5). Apple failed to identify any
5 external product names or model numbers, despite the express request for such information.

6 On March 15, 2011, Elan asked Apple to cure that deficient response, explaining:

7 While Apple has identified products by broad model name (e.g. PowerBook) and by
8 internal development code, it has not provided the full model names or the external
9 product numbers it used to differentiate among version of those products. For
10 example, Apple's web site lists three different specification sheets for PowerBook
11 computers released in April of 2004. Those include the PowerBook G4 12 Inch, 17
12 inch and 15 inch versions. Those specifications further refer to various model
13 numbers, for example M9183LL/A, M9184LL/A, M9421LL/A, M9422LL/A and
14 M9462LL/A. However, Interrogatory No. 13 requests all product model
15 names/numbers used to identify these products. As Apple did not identify at least
16 the aforementioned model numbers, Apple has not provided a complete response and
17 should immediately update these responses to include all external model names and
18 numbers used to identify the Accused Products. I am available this Thursday, 1:00
19 PM PST, to meet and confer regarding this issue.

20 (Rathinasamy Decl., Ex. C [3/15/2011 Rathinasamy E-Mail to Greenblatt]) (emphasis in
21 original).

22 After initially refusing to provide any additional information at all, (Rathinasamy Decl., Ex.
23 D [3/24/2011 Greenblatt E-mail to Rathinasamy]), Apple agreed to supplement its response
24 (Rathinasamy Decl., Ex. E [3/29/2011 Mehta E-mail to Rathinasamy]). On April 1, 2011, Apple
25 provided a Supplemental Response in which it identified only the external name for each Apple
26 product (Rathinasamy Decl., Ex. F [Apple’s Supp. Resp.] at 5-7). This supplemental response
27 does not correlate the newly provided external model names and numbers with the internal
28 product codes Apple previously supplied (*id.*)

Elan contacted Apple by e-mail on March 31, 2011 and the parties engaged in a telephonic
meet and confer on April 5, 2011 to discuss, amongst other things, the requested supplementation
(Rathinasamy Decl., Ex. G [3/31/2011 Bu E-mail to Walter]). Elan thereafter repeatedly asked
Apple to fully respond to Interrogatory No. 13 (Rathinasamy Decl., Ex. H [Rathinasamy
5/11/2011 and 5/4/2011 E-mail Exchange to Walter] at 1, 2-3; Ex. I [5/2/2011 Rathinasamy E-
mail to Walter]). Despite these requests Apple simply refuses to provide a complete response

1 (Rathinasamy Decl., Ex. J [5/6/2011 Walter Email to Rathinasamy]). Accordingly, Elan states
2 that it has satisfied its meet and confer obligation pursuant to L.R. 37-1(a) and Fed. R. Civ. P.
3 37(a)(1) and has no choice but to seek Court intervention to resolve this matter (Rathinasamy Decl.
4 at ¶ 15).

5 **III. ARGUMENT**

6 **A. Legal Standard**

7 “[P]arties may obtain discovery regarding any non-privileged matter that is relevant to any
8 party’s claim or defense” or “appears reasonably calculated to lead to the discovery of admissible
9 evidence.” Fed. R. Civ. P. 26(b)(1). Further, a motion to compel is appropriate when a party
10 provides an “incomplete disclosure, answer, or response” to an Interrogatory request. Fed. R. Civ.
11 P. 26(a)(3)(B)(iii) & (a)(4).

12 **B. Elan’s Requested Supplementation Is Highly Relevant to Elan’s** 13 **Infringement Analysis of Apple’s Products**

14 Apple’s website identifies Apple products by a general brand name, such as the MacBook,
15 PowerBook or iPad. Within these general brand names, there are often different discrete products
16 based on configuration, such as the MacBook with a 12” LCD screen versus one with a 14”
17 screen, or an iPad with 8 GB of memory versus one with 16 GB. Each different product is
18 referred to by an external product number, such as the MB061LL/B, MB062LL/B, or
19 MB063LL/B (Rathinasamy Decl., Ex. K [Screenshot from Apple.com] at 1]). Further, Apple’s
20 website describes the features and specifications available in Apple’s products and provides user
21 guides that instruct customers on how to use the products (*id.*). Those user guides are listed by
22 general product name and configuration, but do not reflect particular model numbers.

23 When those products are under development, Apple refers to the same products internally
24 by code names. Those code names differ significantly from the external commercial name or
25 number (Rathinasamy Decl., Ex. B [Apple’s First Response to Apple’s Interrogatory Nos. 13-15]
26 at 5). This internal nomenclature is used almost exclusively throughout Apple’s internal
27 engineering documents (*see, e.g.*, Rathinasamy Decl., Ex. L [Apple Schematics]) as well as
28 amongst communications between Apple employees without ever referring to the external product

1 name (*see, e.g.*, Rathinasamy Decl., Ex. M [Apple Internal E-mail]).

2 Thus, the technical documents revealing the structure and operation of the accused
3 products are grouped according to the internal code name, while the documents concerning
4 Apple’s marketing and sales of the accused products are grouped according to the external model
5 names and numbers. It is therefore clear that the correlation between the internal and external
6 product names is highly relevant. As Elan has explained to Apple, “given the multiple models of
7 trackpads used in different products with the same generic name, correlation between internal and
8 external names is necessary for tying externally described features with internal product numbers.”
9 (Rathinasamy Decl., Ex. H [5/11/2011 Rathinasamy E-mail to Walters] at 1).

10 This information wholly within Apple’s knowledge, and is precisely the type of
11 information best discovered through an interrogatory. Apple’s answer to this interrogatory is
12 necessary for Elan to fully understand and analyze the documents Apple has produced. There can
13 be no question that Elan is entitled to this information and Apple’s outright refusal to provide this
14 correlation is without justification.

15 **C. The Relevancy of the Correlation Information Outweighs Any Alleged**
16 **Burden Apple Faces to Obtain Such Information**

17 Apple fully admits that it is able to provide the correlation requested in Interrogatory No.
18 13. Apple’s only basis for refusing to provide that information is that it would be “highly
19 burdensome.” (Rathinasamy Decl., Ex. J [5/6/2011 Walter Email to Rathinasamy]). Apple has not
20 provided any factual justification for this alleged burden, and this claim is highly dubious. Apple
21 employees communicate internally by internal product codes and its marketing group
22 commercializes these products by external product or commercial names. While it might be a
23 “burden” for Apple’s counsel to request and obtain this information, there is no reason to believe
24 that this “burden” is any greater than is typical of other discovery requests.

25 More importantly, there is not basis whatsoever to assert that the minimal burden on Apple
26 would somehow outweigh the relevance of this information in this litigation. As stated in Section
27 III.B, correlating Apple’s external product specifications and user guides with Apple’s internal
28 documents is highly relevant to Elan’s infringement analysis and understanding of the other

