

# EXHIBIT 3

---

**From:** Mehta, Sonal  
**Sent:** Tuesday, March 02, 2010 12:07 PM  
**To:** Elan Apple Team  
**Cc:** Apple Elan WGM Service  
**Subject:** Elan's supplemental interrogatory responses

Augie,

Thank you for providing Elan's supplemental responses to Apple's first set of interrogatories. Apple appreciates Elan's efforts to correct the deficiencies in Elan's interrogatory responses. While Elan's supplemental responses provide some additional information, they are still deficient in many respects. We have identified those deficiencies that need to be addressed first below. Please confirm by March 5th that Elan will supplement its responses to correct these deficiencies no later than March 10, 2010. Although we would prefer not to involve the Court in this matter, we are left little choice but to do so based on the responses we have received to this point.

#### Apple's Interrogatory No. 1

Apple's first interrogatory seeks a description of the conception and reduction to practice of Elan's patent claims, including the dates on which Elan contends the claimed inventions were conceived and reduced to practice. Elan's only response is to cite to three pages of documents previously produced by Elan. This response is inadequate for several reasons. First, Elan's apparent reliance on Rule 33(d) is inappropriate. Apple cannot reasonably be expected to divine Elan's contentions about the conception and reduction to practice dates at issue from the three identified pages. This is particularly true because Elan refers to Chinese language documents, thereby imposing an unequal burden on Apple to translate and interpret these documents in violation of Rule 33(d). *See* Fed. R. Civ. P. 33(d) (burden of deriving the answer must be substantially the same for either party). Second, even if Apple were able to ascertain responsive information from those three pages, Elan's response would remain inadequate. Federal Rule of Civil Procedure 33(b)(3) obligates Elan to fully answer Apple's interrogatory—not simply a part of it that Elan chooses to answer. Thus, insofar as Elan's response fails to include any information whatsoever concerning the '352 patent, it is plainly inadequate. As such, Apple expects that Elan will fully answer Apple's first interrogatory by March 8, 2010, including by providing Elan's current contentions regarding conception and reduction to practice dates of both Elan Patents-in-Suit (as Apple provided to Elan its current contentions regarding conception and reduction to practice dates for Apple's patents some time ago), and a detailed description of the circumstances surrounding that alleged conception and reduction to practice.

#### Apple's Interrogatory No. 2

Apple's second interrogatory seeks identification of individuals that Elan contends conceived the subject matter of Elan's patent claims separately for each claim. In response, Elan refers to 13308 pages of a document production. Elan's reliance on Rule 33(d) is again inappropriate. Apple cannot reasonably be expected to derive the requested information from over 13000 pages of documents without undue burden, let alone with burden that is equal to Elan's. Perhaps even more disturbing than Elan's disregard for the letter and spirit of Rule 33(d) is that Elan's identification of these 13000 pages of documents appears not to have reflected even a good faith attempt to identify documents relating to conception of the Elan Patents-in-Suit. Of the several hundred Elan product specifications that comprise the identified 13000 pages, dozens, if not hundreds, are documents dated years after issuance of the '353 patent and have nothing to do with the subject matter of the '353 patent. Obviously, these production specifications do not reflect conception of the claimed inventions of those patents or allow Apple to ascertain who was involved in conception and how. This is not surprising--Elan is not relying on any of its products (let alone those reflected in these 13,000 pages) as embodying the '353 patent. Elan's response with respect to the '352 patent is even more deficient. None of the identified documents even purport to relate to the conception of the '352 patent, let alone provide an identification of individuals Elan contends were involved in conception of the claimed invention of those patents based on Elan's knowledge. Given the above, Apple expects that Elan will provide, separately for claim of the '352 and '353 patents, a list of names of the individuals that Elan contends conceived the subject matter of the claim or participated in the reduction to practice of the subject matter of that claim, along with a description of the individuals' specific contribution based on Elan's knowledge. Please confirm that we will receive this supplementation by March 8, 2010.

### Apple's Interrogatory No. 3

Apple's third interrogatory seeks identification and description of the first written description, offer for sale, sale, public disclosure of the claimed inventions of Elan's patents.

With respect to the '352 patent, Elan's response states merely that Elan "understands" that a first offer for sale . . . or disclosure occurred before Elan obtained the patent. Elan then states that Elan is "not aware of any information in its possession, custody, or control" describing the first offer for sale, etc. of the '352 patent. These statements are both facially inconsistent and curious in view of the prior litigation on the '352 patent. Elan's understanding that there were disclosures of the '352 patent prior to Elan's purchase of the patent is obviously based on information in its possession, custody, or control. Moreover, insofar as there was discovery relating to Logitech's activities with respect to the '352 patent in the Synaptic litigation (which we know from Elan's recent document production there was), Elan is likely to have additional responsive information. Please fully describe Elan's "understand[in]" regarding this interrogatory, including the dates of the first offer for sale, etc. and the basis for that understanding.

With respect to the '353 patent, Elan responds that it has not sold, offered for sale or publicly used a product embodying an invention claimed in the patent, and that "the first disclosure occurred with the filing of the underlying patent application." However, Elan is not clear as to whether this "first disclosure" is of the subject matter of the claimed invention of the '353 patent or something else. Please confirm that it is Elan's contention that the filing of the underlying patent application constituted the first written description, first offer for sale, first sale, first public disclosure, first public use, or first disclosure to another of the claimed invention of the '353 patent, or let us know right away if Elan's response was intended to narrow Apple's interrogatory in some unspecified way.

### Apple's Interrogatory No. 5

Apple's fifth interrogatory seeks Elan's contentions regarding marking of Elan's products. Elan responds only that it claims to have properly marked articles which Elan has made, offered for sale, or sold within the United States. This response is inadequate because it does not describe the marking of any licensed products or Elan products sold or distributed by others in the United States, for example. Elan's response is also inadequate because it refers to some future production of documents under Rule 33(d). We expect that Elan will fully answer this interrogatory by March 8, 2010.

### Apple's Interrogatory No. 7

Apple's seventh interrogatory seeks a detailed description of all facts and circumstances relating to Elan's licensing, contracts, and other communications with third parties. Elan's response merely lists six companies with whom Elan had communications regarding actual or potential infringement of the '352 patent, without providing even basic details, such as the time frames for these communications, whether a license was offered to any of the listed companies, or the identities of individuals involved in the communications. A mere statement that Elan "had communications" with a company does not provide in detail all facts and circumstances relating to that communication as requested. Please provide a full response by March 8, 2010.

### Apple's Interrogatory No. 11

Apple's eleventh interrogatory seeks a detailed description of the facts and circumstances relating to Elan's first awareness of Apple's patents, including the date Elan first became aware of the patents, the contents of any related communications, and any actions taken as a result. Elan responds that Nick Lin, a patent Engineer at Elan, prepared summaries of the Apple patents in late 2008 and early 2009, uploaded the summaries onto Elan's document management system, and circulated one of the summaries. This response is inadequate for a host of reasons. At the outset, Elan's response fails to state whether Mr. Lin's patent summaries were Elan's first awareness of the patents. Moreover, even with respect to Mr. Lin's patent summaries, Elan's response does not describe the dates upon which or the circumstances concerning the preparation of those summaries. Likewise, Elan's response does not describe who received Mr. Lin's summaries, where Mr.

Lin's summaries were uploaded or who had access to them, the content of any communications related to the summaries, or whether meetings or communications related to the summaries took place. Elan's response also does not state whether any actions were taken beyond Mr. Lin's preparation of the summaries. Please provide a full response by March 8, 2010.

#### Apple's Interrogatory No. 12

Apple's twelfth interrogatory seeks identification of Elan touch-sensitive input device products. As part of its response, Elan refers to a future production of documents under Rule 33(d). A future production of documents does not satisfy Elan's obligation to fully answer this interrogatory. Please supplement your response by March 8, 2010 so that Apple can evaluate Elan's response to this interrogatory.

#### Apple's Interrogatory No. 13

Apple's thirteenth interrogatory seeks identification of each sale, license, or other instance in which a customer or other third party has obtained rights to the products or designs requested by Interrogatory No. 12. Elan responds that no customer or third party has "obtained rights" to any Elan product or design, as Elan understands that term to be used. However, Elan fails to describe the sales and licenses of Elan's products as requested. Please answer this interrogatory in full by March 8, 2010, including by describing each sale or license of the products or designs of Interrogatory No. 12. If Elan does not understand the terms "sale" or "license," or is withholding responsive information reasonably requested by this interrogatory on the basis of Elan's understanding of the term "obtained rights," please explain your position so we can meet and confer.

#### Apple's Interrogatory No. 14

Apple's fourteenth interrogatory seeks, *separately for each Elan product or design identified in response to Interrogatory No. 12*, the identity and roles of individuals that participated in product design or development. Elan's response lists names and roles but does not identify which individuals worked on which products. Given that Elan has identified only four products in response to Interrogatory No. 12 and a total of fewer than twenty people who have worked on these products, it should not be difficult to identify which of these individuals worked on which product. Please provide the requested information by March 8, 2010

#### Apple's Interrogatory No. 15

Apple's fifteenth interrogatory requests the total quantity of each product or design requested by Interrogatory No. 12 made, used, sold, offered for sale, imported, exported, leased, distributed, or licensed in the United States, and the gross and net revenues derived from each such activity (including documents and persons with knowledge). Elan's only response is that *Elan* has not made, used, sold, offered for sale, . . . or licensed in the United States any of its products identified in the response to Interrogatory No. 12. Yet we know Elan's touch-sensitive input device products are available for purchase in the United States. Elan's response is thus plainly inadequate. Apple's interrogatory is unmistakably *not* limited solely to *Elan's* activities, but includes sales, distribution, and the other enumerated activities whether performed by Elan or whether performed by a third party. Please fully answer this interrogatory by March 8.

#### Apple's Interrogatory No. 16

Apple's sixteenth interrogatory seeks Elan's non-infringement contentions. Elan responds only that it will retain an expert and disclose the expert's opinions in future. Elan's response is inadequate. Unlike Elan, Apple has provided detailed infringement contentions that provide Elan with the specific bases for Apple's infringement contentions. Apple is thus entitled to know now, during discovery and development of Apple's case, Elan's current non-infringement contentions, if any, and the bases for those contentions. Of course, if Elan has no basis for its non-infringement defense other than Elan's Invalidity Contentions, we need to know that too. Please fully answer this interrogatory by March 8.

#### Apple's Interrogatory No. 17

Apple's seventeenth interrogatory seeks a detailed description of Elan's activities and business in the United States with regard to Elan Accused Products. Elan responds that Elan has not sold in the United States any Elan Accused Product, and that Elan employees have met with employees at Dell, Samsung, Motorola and Palm in the United States and have attended various Computer Electronics Shows in Las Vegas. Elan further states that it will produce business records pursuant to Rule 33(d). Elan's response is insufficient. Elan fails to describe the nature of its employees' meetings at Dell, Samsung, Motorola, and Palm. Elan also fails to fully describe the activities and business in the United States with regard to Elan Accused Products, such as any sales or distribution of Elan Accused Products in the United States by third parties. Elan fails to describe which products or product literature was exhibited at CES or the names of employees who attended the Consumer Electronics Shows. Moreover, Elan's reference to some future production of documents is plainly insufficient. Please supplement your response by March 8, 2010.

The foregoing deficiencies are the most pressing, and Apple reserves its right to raise other issues. We look forward to working with you to resolve these and any other discovery issues that may arise.

Regards,  
Sonal N. Mehta  
Weil Gotshal & Manges  
201 Redwood Shores Pkwy  
Redwood Shores, CA 94065  
t: (650) 802-3118  
f: (650) 802-3100  
[sonal.mehta@weil.com](mailto:sonal.mehta@weil.com)