

EXHIBIT 9

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ELAN MICROELECTRONICS CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELAN MICROELECTRONICS
CORPORATION,

Case No. 5:09-cv-01531-RS

Plaintiff,

V.

APPLE, INC.,

Defendant.

**ELAN MICROELECTRONICS
CORPORATION'S SUPPLEMENTAL
DISCLOSURE OF ASSERTED CLAIMS
AND INFRINGEMENT CONTENTIONS**

AND RELATED COUNTERCLAIMS

1 Plaintiff Elan Microelectronics Corporation (“Elan”) submits its Amended Disclosure of
2 Asserted Claims and Infringement Contentions regarding infringement of Elan’s U.S. Patent No.
3 5,825,352 (“the ’352 patent”) and U.S. Patent No. 7,274,353 (“the ’353 patent”) (collectively “Elan’s
4 patents”) in accordance with Patent Local Rule 3-1, the Joint Case Management Statement and Order
5 and the agreement of the parties. Discovery is ongoing in this matter between Elan and the Defendant
6 Apple, Inc. (“Apple”), and, therefore, Elan reserves its right to amend its disclosure of asserted claims
7 and infringement contentions.

8 **I. THE CLAIMS ASSERTED TO BE INFRINGED**

9 Pursuant to Patent L. R. 3-1(a), Elan presently asserts that Apple has been and is now infringing
10 Elan’s ’352 and ’353 patents. Specifically, Elan believes that Apple has been or is now infringing at
11 least claims 1-2, 4, 7, 10, 12, 14, 16, 18-19, 21, 24, 26, and 30 of the ’352 patent (“asserted claims of
12 ’352 patent”) under 35 U.S.C. §§271(a) and (b) and claims 1, 3-4, 6-7, 9-10, and 12 of the ’353 patent
13 (“asserted claims of the ’353 patent”) under 35 U.S.C. §§271(a). Discovery is ongoing between Elan
14 and Apple and other claims may be found to infringe Elan’s patents. Accordingly, Elan reserves its
15 right to assert additional claims of Elan’s patents upon completion of discovery in this matter.

16 **II. THE ACCUSED INSTRUMENTALITIES**

17 Pursuant to Patent L. R. 3-1(b), Elan asserts that certain of Apple’s MacBook, MacBook Pro,
18 MacBook Air, iBook G4, PowerBook G4, iPhone, iPod touch, and Magic Mouse products or product
19 families directly or indirectly infringe some or all of the asserted claims of the ’352 patent. Those
20 families of Apple’s products that Elan contends to infringe the asserted claims of the ’352 patent
21 include at least the MacBook series or family, including but not limited to the MacBook, MacBook
22 Air, and MacBook Pro, the iBook G4 (Mid 2005) series, and at least the PowerBook G4 series or
23 family released after February 2005, the iPhone series or family, including but not limited to iPhone,
24 iPhone 3G, and iPhone 3GS products, the iPod touch series or family, and the Magic Mouse series or
25 family.

26 Elan further asserts that Apple’s iPhone and iPod touch products or product families directly or
27 infringe the asserted claims of the ’353 patent. Those families of Apple products that Elan contends to
28 infringe the asserted claims include at least the iPhone series or family, including but not limited to the

1 iPhone, iPhone 3G, and iPhone 3GS products, and the iPod touch series or family. Discovery is
2 ongoing between Elan and Apple and other instrumentalities may be identified to infringe the Elan
3 patents. Accordingly, Elan reserves its right to assert additional claims of the Elan's patents upon
4 completion of discovery in this matter.

5 **III. INFRINGEMENT CHARTS**

6 Pursuant to Patent L. R. 3-1(c)-(e), **Exhibits A-G** set forth where in each of the accused
7 products each element of the asserted claims is found. Elan believes that each element of each asserted
8 apparatus claim is found within each of the Apple accused products in the touchpad or touch screen
9 devices alone or in combination with the products' associated hardware and instructions, including
10 software, firmware, and/or device drivers. Elan contends that each element of each asserted claim is
11 literally present or at a minimum present under the doctrine of equivalents in each of the Apple accused
12 products. Apple has directly infringed the asserted method claims through its own use of the accused
13 products to perform all of the steps of the claimed methods. The end users of the accused products in
14 the United States directly infringe by using the accused product to perform all of the steps of the
15 claimed methods. Apple has and continues to induce that direct infringement of the asserted method
16 claims by providing the accused products that are especially adapted and designed to practice the
17 claimed methods, and by instructing end users to use the accused Apple products to perform the
18 claimed methods through, *inter alia*, product documentation, help screens and/or files, and sales and
19 marketing material provided to the users. Apple has aided and abetted the users' direct infringement
20 with the intention that the users of its products will perform those patented methods and infringe the
21 asserted claims.

22 Discovery is ongoing between Elan and Apple and accordingly Elan reserves the right to amend
23 or otherwise modify its identification if further relevant information is revealed or circumstances
24 change.

25 **IV. PRIORITY DATE OF ELAN'S PATENTS**

26 Pursuant to Patent L. R. 3-1(e), the asserted inventions claimed in the '352 patent are entitled to
27 a priority date of at least January 4, 1996, when U.S. Patent Application No. 582,768 was filed and
28 submitted to the U.S. Patent and Trademark Office. The asserted inventions claimed in the '353 Patent

are entitled to a priority date of at least April 2, 2003, when application Taiwan Patent Application No. 92205217 U was filed to the Taiwan Intellectual Property Office.

V. ELAN'S ASSERTED PRACTICE OF THE CLAIMED INVENTIONS

Pursuant to Patent L. R. 3-1(g), Elan contends that at least Elan's KTP3, KTP5, KTP6, and SmartPad touchpad products practice at least claims 18-21, 24 and 28 of the '352 patent. When incorporated into computer systems and used as intended, end users in the United States practice at least method claims 1, 2, 6 and 7. Elan, at this time, does not intend to rely on the assertion that any of its products practice the asserted claims of the '353 patent. Elan is still conducting its investigation into its disclosures pursuant to Patent L.R. 3-1(g), and reserves the right to modify, amend, and/or supplement the disclosures contained herein.

VI. APPLE'S WILLFUL INFRINGEMENT

Pursuant to Pat. L. R. 3-1(h), Elan alleges that Apple's infringement of the '352 patent has been and continues to be willful. Apple was put on actual notice in August 2006 that its touchpad products infringed the '352 patent. Despite knowing of the objectively high risk that it was infringing the patent, Apple continued its infringing acts and, in fact, greatly expanded the number of products practicing the patent claims. On information and belief, Apple continued its infringing acts willfully or in reckless disregard of Elan's patent rights.

VII. ACCOMPANYING DOCUMENTS PRODUCTION

Pursuant to Patent L. R. Rule 3-2, Elan has produced and will continue to produce documents with its disclosure of asserted claims and infringement contentions.

Respectfully Submitted,

Dated: December 11, 2009

ALSTON + BIRD LLP

By: _____



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