

EXHIBIT 22

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September 17, 2010

VIA E-MAIL

Nathan Greenblatt, Esq.
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Dear Nathan:

I write in response to your September 9, 2010 email to Sean DeBruine regarding Elan's Privilege Logs dated July 1, 2010 and September 1, 2010. I will address in detail below each point raised in your email. However, please be mindful that Apple's own privilege logs dated July 1, 2010 and July 9, 2010 also contain many incomplete entries. In the second part of my letter, I address these deficiencies and request that Apple correct these deficiencies within ten days from the receipt of this letter.

Response to Apple's comments

Entries identified by Apple in which an author or recipient appears to be a third party

As indicated in Elan's privilege logs, many documents (including entry Nos. 262, 263, 274-276, 280-281, 287-288, 289, 297 and 389-395) were authored by Elan's agents (e.g. Sinbo) and/or third party contractors (e.g. Chipworks, Inc.). Particularly, many entries on Elan's logs refer to Sinbo employees who were in charge of certain markets for Elan. As functional employees of Elan, these individuals also have Elan email addresses. As a result, certain entries (e.g. No. 557) contain two email addresses for the same individual. These individuals were heavily involved in all facets of Elan's operations, as such, the attorney-client privilege and work product protection apply to privileged communications with these individuals. See *United States v. Graf*, 610 F.3d 1148, 1158-59 (9th Cir. 2010) (when a non-employee is the functional equivalent of an employee, or an advisor/agent of the company, the company's attorney-client privilege reaches to that person). In addition, the communications and documents exchanged between Elan's agents/contractors and Elan were prepared either under the direction or request of Elan's counsel, in anticipation of litigation and/or for purposes of seeking or providing legal advice. *Id.* Accordingly, these documents and communications are subject to the protection of attorney-client privilege and/or the work product doctrine.

In other instances, the communications from certain entries Apple identified were not with third parties as characterized by Apple. For example, Fumiaki Karasawa (No. 671) was, in fact, an Elantech employee.

Finally, certain third party communication entries referenced in your email are subject to the common interest doctrine. These entries reflect Elan attorney-client privileged information and work product disclosed to the third parties having a common legal interest with Elan. *See Pulse Eng'g, Inc. v. Mascon, Inc.*, 2009 U.S. Dist. LEXIS 92971, *8 (S.D. Cal. Oct. 1, 2009); *Britesmile, Inc. v. Discus Dental, Inc.*, 2004 U.S. Dist. LEXIS 20023, *9-10 (N.D. Cal. Aug. 10, 2004); *Hewlett-Packard Co. v. Bausch & Lomb, Inc.*, 115 F.R.D. 308, 309 (N.D. Cal. 1987). Accordingly, these documents and communications are subject to the common interest / joint privilege protection. However, to provide further clarification, we will ensure that all of the entries in our privilege log where we claim the common interest doctrine are clearly stated.

37 sets of redacted documents

Contrary to the allegation in your email, these documents were not improperly redacted. Most of these documents, authored by Mr. Wayne Chang, the general counsel of Elan, were standalone work product contained in Elan custodian's files. They were not email attachments to any third parties. After a reasonable investigation, it appears that only a few of these documents were attachments to emails. Therefore, Elan will make the appropriate edits to the corresponding privilege log entries, including identifying the recipient(s) of the email and the original email. To the extent if any of these documents were distributed to third parties, as already adequately described in Elan's logs, the redacted portions are subject to the common interest doctrine because they were "prepared by Elan for third parties having a common legal interest with Elan, containing communications with counsel regarding patent analysis in anticipation of litigation and/or for purposes of seeking/providing legal advice." *See Id.* Accordingly, the redacted documents and Elan's privilege logs are in accordance with the relevant laws governing the common interested doctrine.

Insufficient information regarding author or recipient in the entries

We will look into the entries and make any appropriate adjustment to the privilege log to the extent that the complete author and/or recipient data can be retrieved within reasonable efforts.

Opinions concerning infringement related to Apple patents provided by Elan to third parties

Similar to the discussion responding to subsections (1) and (2) from your email, the infringement opinions referenced by you and any otherwise Elan privileged documents and work product provided to limited recipients from third parties with a

common legal interest with Elan are subject to the common interest doctrine. Therefore, Elan will not produce these opinions. *See Pulse Eng'g, Inc.*, 2009 U.S. Dist. LEXIS 92971, *11 (S.D. Cal. Oct. 1, 2009) (“where the disclosing party and the third party share a common interest, there is no waiver of the work product privilege”).

While this letter set forth Elan’s basis of privilege assertion for the identified documents from subsections (1) to (4) in your email, as a courtesy, we will a) make the appropriate clarifications and edits discussed above and b) correct any inadvertent errors if there are any on the privilege logs and the corresponding document’s production designation if necessary.

Finally, as Elan’s document production is still ongoing, additional privilege logs will be produced accordingly.

Deficiencies in Apple’s Privilege Logs dated July 1, 2010 and July 9, 2010

Entries lacking information regarding author and/or recipient

For the following *representative* entries, Apple failed to provide information with respect to author and/or recipient:

Example Entry No.	Deficiency
No. 111, July 1 Privilege Log	No author
No. 349, No. 524, 535 of Apple’s July 1 Privilege Log	No author, no recipient
No. 197, 292 – No. 323, 534 of Apple’s July 1 Privilege Log; No. 7 – No. 17 of Apple’s July 9 Privilege Log	No recipient

For these and all other entries lacking this information, please provide us the author and/or recipient information or other data sufficient to support Apple’s privilege assertions.

Entries with insufficient information to reflect whether Apple’s legal counsel is involved

There are many entries contain no Apple legal and/or outside counsel as the author and/or recipient such that there is insufficient information for Elan to evaluate Apple’s privilege assertion. *Representative* entries include: Nos. 15, 16, 24, 25, 56, 223-228, 330-334, 340-346, 348, 349, 360-380, 393, 513, 523 of Apple’s July 1 Privilege

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Log; Entry Nos. 6-17, 58, 59, 62, 208-215, 224-228. For example, without further information regarding recipient of the document or the audience of the referenced keynote presentation in Entry No. 94 of Apple's July 1 Log, Elan simply cannot ascertain if Apple is entitled to maintain the privilege assertion of this document. Please provide us additional information to support Apple's privilege assertion for all such entries or produce these documents accordingly.

Entries claiming only a portion of the document as being privileged, but no redacted version was produced

Many entries on Apple's privilege logs claim only a portion of the document as being privileged. *Representative* entries include Nos. 28-30, 104-105, 197, 223-224, 523, 534-538 of Apple's July 1 Log and Nos. 6-17, 57-58, 62, 64, 212-215 of Apple's July 9 Log. We request that you produce the redacted versions of these documents immediately or identify the production number of these documents if they were already produced.

Very truly yours,



Jane Bu

JB:whm

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