

Exhibit K

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

Before the Honorable Paul J. Luckern
Chief Administrative Law Judge

In the Matter of

CERTAIN ELECTRONIC DEVICES WITH
MULTI-TOUCH ENABLED TOUCHPADS
AND TOUCHSCREENS

Investigation No. 337-TA-714

**COMPLAINANT ELAN MICROELECTRONICS CORPORATION'S
POST HEARING BRIEF**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

G. Apple Employees Perform Multi-Finger Gestures on the Accused Apple Products

Apple is liable for direct infringement when its employees cause the accused devices to perform the steps of the claimed methods. Apple is also liable for inducing its customers to use the accused devices in an infringing manner. Infringement arises where a person performs all of the steps of the method. *Lucent Techs., Inc. v. Microsoft Corp.*, 580 F.3d 1301, 1317 (Fed. Cir. 2009). A finding of infringement may rest on as little as one instance of the method being performed. *Id.* Elan was not required to provide direct evidence of infringement. *Id.* at 1318 (citing *Moleculon Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 172 (Fed. Cir. 1986). In fact, “circumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence.” *Id.* In *Moleculon*, the circumstantial evidence of the direct

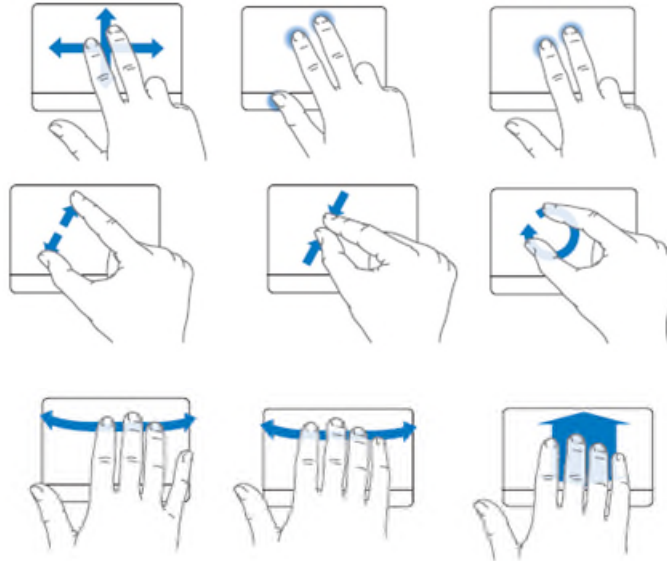
infringement of a method to solve the Rubik's Cube puzzle consisted of puzzle sales, and instruction sheet and brochures. *Id.* Similarly, in Lucent, the circumstantial evidence consisted of extensive sales, instruction manuals and expert testimony. *Id.* Under this standard, there is sufficient evidence to show that users of the Accused Apple Devices perform the steps of the claimed methods as described above.

Each of the Accused Apple Products is designed to be used with two fingers in contact with the touch sensor. Apple's 30(b)(6) witness, Wayne Westerman, testified that Apple's employees use the Accused Products in connection with their employment, including testing in the United States on production and prototype models.

- Q: Okay. Earlier in the deposition you pulled out an iPhone to illustrate part of your testimony. Do you use that iPhone in connection with your work for Apple?
- A: I use it to read e-mails.
- Q: Okay. Do you ever use it to make phone calls for work?
- A: Yeah.
- Q: You have colleagues at Apple that also have iPhones that they use in connection with their employment?
- A: Yes.
- Q: Do you have a computer that Apple has provided to you?
- A: Yes.
- Q: What kind of computer is that?
- A: MacBook Pro.
- Q: And do you use multi-finger gestures on the trackpad of the MacBook Pro?
- A: Yes.
- Q: You have colleagues who also have MacBook Pro laptops?
- A: Yup.
- Q: Those colleagues use multi-finger gestures?
- A: As far as I know, yeah. . . .

(CFF IV.137-143).

Some of these gestures are shown in the User Guides provided with the Accused Products. The Apple MacBook laptop computers are exemplary:

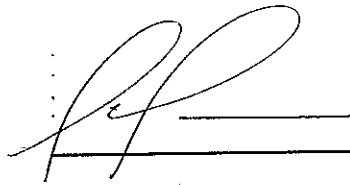


(CFF IV.419-424). The iPhone, iPod Touch, iPad, MacBook Air, Magic Mouse and Magic TrackPad products also detect and process gestures with two or more fingers in order to allow similar control functions (*see generally* CFF IV .404-418, CFF IV .428-430).

In demonstrating how an Apple iPhone touchpad may typically be used with two fingers, Apple's expert witness, Dr. Balakrishnan, demonstrated two fingers lined up on the touchscreen:

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