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 ELAN MICROELECTRONICS
 11 CORPORATION

12
 13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION
 16

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

Case No. 5:09-cv-01531 RS (PSG)
**DECLARATION OF PALANI P.
 RATHINASAMY IN SUPPORT OF
 PLAINTIFF ELAN
 MICROELECTRONICS
 CORPORATION'S MOTION TO
 COMPEL APPLE, INC. TO PRODUCE
 TESTING TOOL**

[PUBLIC VERSION]

23
 24 AND RELATED COUNTERCLAIMS
 25
 26
 27
 28

Date: June 7, 2011
 Time: 2:00 p.m.
 Courtroom 5
 Hon. Paul S. Grewal

1 I, Palani P. Rathinasamy, declare as follows:

2 1. I am an attorney with the law firm of Alston & Bird LLP, counsel to Elan
3 Microelectronics Corporation (“Elan”) in this action. I have personal knowledge of the following
4 facts and, if called to testify, I could and would testify competently to the matters stated herein.

5 2. Elan is alleging that Apple, Inc. (“Apple”) infringes two patents, including United
6 States Patent No. 5,825,352 (“the 352 patent”) by selling certain products including capacitive
7 finger sensing input devices (Dkt. No. 1). The accused Apple products include at least its
8 MacBook line of laptop computers, as well as the products with a touch screen input, such as the
9 iPhone and iPod touch. Also accused are other peripheral touch sensors, such as the Magic
10 TrackPad and Magic Mouse.

11 3. Attached as Exhibit A is a true and correct copy of Elan Microelectronics
12 Corporation’s First Request for Documents and Things to Apple, Inc. [Nos. 1-65] Request Nos. 20
13 and 21, dated August 6, 2009.

14 4. Attached as Exhibit B is a true and correct copy of Apple Inc.’s Responses and
15 Objections to Request Nos. 20 and 21 from Elan Microelectronics Corporation’s First Request for
16 Documents and Things to Apple, Inc. [Nos. 1-65], dated September 8, 2009.

17 5. Elan instigated an investigation in the United States International Trade
18 Commission (“ITC”) on Apple’s infringement of the 352 patent, *Certain Electronic Devices with*
19 *Multi-Touch Enabled Touchpads and Touchscreens*, Inv. No. 337-TA-714. The discovery cut off
20 in the ITC case was November 15, 2010, with a November 10, 2010 deadline for motions to
21 compel. Apple produced a user manual relating to the [REDACTED] on November 12,
22 2010 along with more than 250,000 pages of other documents. Elan deposed Mr. Wayne
23 Westerman on November 17, 2010 and expert depositions were conducted in early December,
24 2010. The evidentiary hearing was conducted from February 15-18, 2011.

25 6. Attached as Exhibit C is a true and correct copy of excerpts from the trial transcript
26 of Wayne Westerman in the parties’ parallel case in the USITC, *Certain Electronic Devices with*
27 *Multi-Touch Enabled Touchpads and Touchscreens*, Inv. No. 337-TA-714, dated February 16,
28 2011. **(Filed Under Seal)**

1 7. Attached as Exhibit D is a true and correct copy of relevant pages from Apple's
2 Posthearing Brief in the parties' parallel case in the USITC, *Certain Electronic Devices with*
3 *Multi-Touch Enabled Touchpads and Touchscreens*, Inv. No. 337-TA-714, dated March 4, 2011.

4 **(Filed Under Seal)**

5 8. Attached as Exhibit E is a true and correct copy of a letter from Elan's counsel, Mr.
6 Sean P. DeBruine to Apple's counsel, Ms. Sonal N. Mehta, dated March 17, 2011. **(Filed Under**
7 **Seal)**

8 9. Attached as Exhibit F is a true and correct copy of an email from Mr. DeBruine to
9 Ms. Mehta, dated March 26, 2011. **(Filed Under Seal)**

10 10. Attached as Exhibit G is a true and correct copy of an email from Ms. Mehta
11 responding to Mr. DeBruine, dated April 4, 2011. **(Filed Under Seal)**

12 11. On April 5, 2011, I participated in a telephonic meet and confer with Counsel from
13 Apple. In that call, Apple would not produce a copy of the [REDACTED] and
14 requested an inspection procedure for the tool at Apple's facility or at Apple's counsel's office. I
15 understood that Apple was requesting a procedure consistent with the provisions in the Amended
16 stipulated Protective Order governing Source Code. In an effort of compromise, the parties agreed
17 that Elan would propose an inspection procedure for the [REDACTED].

18 12. Attached as Exhibit H is a true and correct copy of an email from me to Apple's
19 counsel, Mr. Derek Walter, dated April 12, 2011. **(Filed Under Seal)**

20 13. Attached as Exhibit I is a true and correct copy of an email from Mr. Walter to me,
21 dated April 15, 2011. **(Filed Under Seal)**

22 14. Attached as Exhibit J is a true and correct copy of an email from me to Mr. Walter,
23 dated May 2, 2011. **(Filed Under Seal)**

24 15. On May 11, 2011, my colleague Mr. Sean DeBruine and I inspected the [REDACTED]
25 [REDACTED] at Apple's counsel's office in Redwood Shores. During the inspection, Apple
26 provided only the [REDACTED] running on a MacBook computer and working only
27 with the touchpad on that computer. Apple's Counsel did not have the [REDACTED] tool available
28 for use with any of the other Accused Products. Mr. DeBruine asked Apple's Counsel that the

