

EXHIBIT P

From: DeBruine, Sean
Sent: Tuesday, May 24, 2011 1:42 PM
To: Walter, Derek; Rathinasamy, Palani P.
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: [REDACTED]

Dear Derek;

I am responding to your email below to Palani regarding Apple's ongoing, and unjustified, refusal to permit Mr. Dezmelyk to make even a preliminary inspection of the [REDACTED] tool, and continuing failure to produce the version of that tool for the iOS products for inspection on a timely basis. As it is clear that Apple has no intention to abide by its discovery obligations, we have sought the intervention of the Court. *Please Let me know immediately when Apple is available this afternoon before 3:30 for a call with Magistrate Judge Grewal to discuss this dispute.*

During that call we will make the following points:

Your email does not provide any justification for Apple's continued refusal to provide this basic discovery. Rather, it makes perfectly clear that Apple is simply refusing to abide by the requirements in the Federal Rules that it produce relevant documents and things when properly requested. There is no dispute, as you admit in your email, that the [REDACTED] program is relevant to the issues in this litigation. Surprisingly, you also admit that the program is not "source code" and is therefore not subject to the protective order provisions restricting Elan's access to "source code" to inspection at Apple's counsel's offices. Rather, in light of these admissions, Apple was obligated to produce a copy of that program, useable for all accused products, upon Elan's original request for production. We therefore demand that Apple produce a copy of this program immediately. Apple may designate that program "attorneys eyes only" under the protective order, as it has done for tens of thousands of pages of documents that likewise may reveal certain details about the accused products. That is the reason that the protective order is in place. Elan will be pleased to reimburse Apple at its cost for the computer the program is loaded on, supply such a computer, or agree to return the computer and the code at the conclusion of the litigation.

Moreover, even if there were any justification for the requirement that Elan have access to this relevant discovery only at counsel's offices, you provide no basis for requiring that any such inspection be conducted under Apple's video surveillance. There is simply no justification for such an intrusion into Elan's experts work, or into counsel's work product. Even with respect to the inspection of source code that is properly restricted to in-office inspection, the protective order provisions drafted by Apple specifically prohibit Apple's counsel from reviewing or interfering with that inspection in any way. The presence of an employee of the parties' counsel is limited to ensuring that no unauthorized copies are made.

Apple's concerns regarding any opinions Mr. Dezmelyk may express after a full opportunity to review and test the [REDACTED] tool do not justify Apple's refusal to make the tool available for even an initial inspection. First, we repeat that the proposed inspection is preliminary and Mr. Dezmelyk has no intention of asking that any data be saved or printed for future use. Moreover, Apple's concern is no different from any expert opinion based upon inspection of a product or process. Apple will have ample opportunity through expert reports, rebuttal reports and depositions to explore in great detail any use Mr. Dezmelyk may make of the [REDACTED] and any opinions he expresses based in part on that tool. Apple simply has no basis for insisting on the extraordinary conditions it seeks to impose, and has no basis for using these unjustified demands as a basis to effective refusal to provide relevant discovery.

Best regards,

Sean

-----Original Message-----

From: Walter, Derek [mailto:Derek.Walter@weil.com]
Sent: Tuesday, May 24, 2011 8:42 AM
To: Rathinasamy, Palani P.
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: [REDACTED]

Palani:

Although the [REDACTED] is a sensitive tool that reveals certain details about the inner-workings of Apple products, our request that any further [REDACTED] inspections be videotaped is not driven by some "presumption" that it is source code under the protective order.

In fact, our request that any expert witness testing be videotaped is driven by the nature of the tests and the unique issues in the case, which the parties have litigated at length in the parallel ITC Investigation. As you are no doubt aware, under the claim constructions set forth in Judge Seeborg's claim construction ruling, Elan's infringement theory relies upon the alleged existence of three very specific data patterns, which are allegedly generated when fingers contact the touchpad in only a certain way. One of the issues that came up at the ITC, and which we expect to come up again, are the circumstances in which, if ever, those hypothetical data patterns are encountered in operation of the products. Presumably, Mr. Dezmelyk will test the [REDACTED] tool, in part, for the purpose of determining how frequently, if at all, Elan's allegedly infringing data scenarios occur and/or what kinds of finger contact are necessary to generate the allegedly infringing scenarios. Regardless of whether Mr. Dezmelyk collects printed data, any testimony he offers on these issues will no doubt be informed by his testing. Indeed, the very fact that uses encountered during the inspection are not even alleged to infringe under Elan's theory goes to the viability of Elan's theory and credibility of Mr. Dezmelyk's testimony. Thus, to the extent Mr. Dezmelyk considers or relies upon the inspection in forming opinions as a testifying expert, Apple is entitled to test the bases for his opinions in deposition and on cross examination. Given that those bases will include what specific uses and conditions were and were not tested during the inspection, we cannot do so unless a thorough and detailed record of each inspection is created.

Below, you express concern that videotaping Mr. Dezmelyk's inspection will compromise your ability to protect as work product any conversations you have with him during the inspection. However, we will be happy to provide a breakout room for you so that you can conduct private conversations with Mr. Dezmelyk.

Finally, you express concern that unless Mr. Dezmelyk is able to inspect the [REDACTED] tool on May 25, he will have to make an additional trip at a later date to the west coast. We are happy to work with you to schedule an inspection for Mr. Dezmelyk's next trip to California or to try to schedule something in Boston next time one of our team members is on the East Coast.

We trust that this removes any further objections Elan has to videotaped expert inspections of the [REDACTED] tool. We will work promptly to get this set up.

Thanks,

Derek

-----Original Message-----

From: Rathinasamy, Palani P. [mailto:Palani.Rathinasamy@alston.com]
Sent: Monday, May 23, 2011 2:46 PM
To: Walter, Derek
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: [REDACTED]

Derek,

We don't agree with your presumption that the [REDACTED] Tool is source code under the protective order as it is a tool [REDACTED] on Apple's touch sensors - not source code operating within the Accused Products. In addition, once the program is loaded into the computer, we are then dealing with the object code, not source code, which cannot be read by us, nor are we trying to read the source code of the Tool. Regardless, Apple's proposal of videotaping Mr. Dezmelyk is improper.

First, Elan's counsel will be present during Mr. Dezmelyk's inspection and will have conversations with him regarding the Accused Products and the tool. As the parties have agreed that expert's work product and communications between experts and counsel are not discoverable, any such videotaping would violate this agreement.

Second, even assuming that the [REDACTED] tool is source code, which it is not, the stipulated protective order between the parties bars any such videotaping. That agreement states in relevant part that "[t]he Producing Party may visually monitor the activities of the Receiving Party's representatives during any Source Code review, but only to ensure that no unauthorized electronic records of Source Code are being created or transmitted in any way." See Stipulated Protective Order at 11(b)(ii). Thus, Apple's proposal to videotape is contrary to the stipulation.

Finally, Elan's inspection is entirely consistent with the protective order. Counsel and Mr. Dezmelyk will inspect the [REDACTED] Tool and Mr. Dezmelyk will print out any relevant collected data. See Stipulated Protective Order at 11(b)(iii). As has been the case throughout this litigation, including in the ITC, Apple can review any printouts that Mr. Dezmelyk makes and depose him to understand the basis for any testimony that he ultimately provides.

Because videotaping any inspection by Mr. Dezmelyk is improper for the reasons stated above and because you already have the [REDACTED] tool on the MacBook Pro available for inspection, please confirm that Apple will make the [REDACTED] tool available for inspection by Elan's counsel and Mr. Dezmelyk on Wednesday, May 25. As Mr. Dezmelyk has traveled to the Bay Area from Boston for a deposition at Apple's request, we would like to have him view the tool during his trip instead of having him travel here at a later date. Should Apple refuse to provide for inspection this week, we will seek the costs for an additional trip.

Apple's response regarding a delay for the iPhone and iPad is perplexing considering that during our inspection, Apple only provided the tool on one of the Apple Accused Products instead of all the products. Furthermore, we specifically inquired about this issue during our inspection on Wednesday, May 11 - nearly two weeks ago. Thus, any delay is due to Apple's own doing. As our understanding is that this tool is used regularly within Apple, please explain the additional steps necessary to make this tool available for inspection on the iPhone and iPad.

Please confirm that Apple will allow for inspection by Elan's counsel and Mr. Dezmelyk by close of business today. If Apple does not agree, we will move to compel tomorrow.

Best,

Palani

-----Original Message-----

From: Walter, Derek [mailto:Derek.Walter@weil.com]
Sent: Monday, May 23, 2011 10:45 AM
To: Rathinasamy, Palani P.; Elan Apple Team
Cc: Apple Elan WGM Service
Subject: RE: [REDACTED]

Palani:

As indicated in your April 12 email below, it was contemplated that there would be additional meet and confer regarding the contours and details of Elan's ongoing testing of the [REDACTED] tool following your initial informal inspection.

Two additional issues are raised by your request to continue your [REDACTED] inspection on May 25.

First, and most important, you state that you would like to have your expert witness review the tool on May 25. Unfortunately, any inspection by your expert witness is materially different from the informal inspection that you recently conducted. In particular, any inspection by your expert, regardless of whether he is able to collect printed data, will inform and provide the basis for the testimony he ultimately provides in this case. As such, it would be to the benefit of both parties if a detailed and thorough record of any such inspections is made. To this end, Apple proposes that any expert inspections be videotaped. Unfortunately, we will not be able to set this up by May 25.

Second, you request that Apple make the tool available with an iPhone and iPad. We have investigated whether the tool can be used with these products, and we have determined that there are a number of additional steps that must be carried out before it will even be possible for us to do this. While we are continuing to investigate this possibility, we will not be able to make the tool available for use with these products on May 25.

Given the foregoing, we cannot provide the [REDACTED] for inspection on May 25. However, if you confirm that you will agree to the videotaping of any expert inspections, we will continue to work on providing the [REDACTED] tool with a iPhone and iPad. In addition, we will work with you to identify another mutually agreeable date for your ongoing inspection.

Thanks,

Derek

-----Original Message-----

From: Rathinasamy, Palani P. [mailto:Palani.Rathinasamy@alston.com]
Sent: Wednesday, May 18, 2011 5:11 PM
To: Walter, Derek
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: [REDACTED]

Derek,

As you know, we made a brief inspection of one version of the [REDACTED] tool last week. While the software was running on a MacBook and its associated touch screen, there was no capacity to use the tool with any iOS products (iPhone, iPad, etc.). Your colleague who was present said that he would look into making the tool available for those products, but we have heard nothing further.

We would like to continue our inspection on Wednesday, May 25 at 9:30 AM. We request that the tool be made available on an iPhone and iPad in addition to the MacBook Pro. As Mr. Dezmelyk will be in Silicon Valley for his deposition, he will join us at this inspection. Consistent with our earlier agreement that we will make no printouts of the data we view. Thereafter, we can meet and confer regarding how Elan will specify data from the [REDACTED] tool for production. Please confirm that this date will work for Apple.

Thanks,

Palani

-----Original Message-----

From: Walter, Derek [mailto:Derek.Walter@weil.com]
Sent: Tuesday, May 03, 2011 6:01 PM
To: Rathinasamy, Palani P.
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: [REDACTED]

Palani:

We can make the tool available for inspection on Wednesday, May 11 at 9:30 AM. Please confirm that this date will work for Elan.

Thanks,

Derek

-----Original Message-----

From: Rathinasamy, Palani P. [mailto:Palani.Rathinasamy@alston.com]
Sent: Monday, May 02, 2011 6:48 PM
To: Walter, Derek
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: [REDACTED]

Derek,

Please change our request to inspect the [REDACTED] tool to Tuesday, May 10th at 9:30 AM at Weil's Silicon Valley Offices.

Thanks,

Palani

-----Original Message-----

From: Rathinasamy, Palani P.
Sent: Monday, May 02, 2011 12:02 PM
To: 'Walter, Derek'
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: [REDACTED]

Derek,

We would like to inspect the [REDACTED] tool on Monday, May 9th at 9:30 AM at Weil's Silicon Valley Offices. Can the review room be available then?

Best,

Palani

-----Original Message-----

From: Walter, Derek [mailto:Derek.Walter@weil.com]
Sent: Friday, April 15, 2011 5:38 PM
To: Rathinasamy, Palani P.; Elan Apple Team
Cc: Apple Elan WGM Service
Subject: RE: [REDACTED]

Palani:

We can provide Elan with an informal inspection of the [REDACTED] tool, subject to a few additional parameters. As you state below, your initial inspection is simply for the purposes of getting familiar with the tool and its capabilities. As such, the initial inspection will not be for the purpose of collecting any evidence. For instance, to the extent the [REDACTED] tool is capable of generating data printouts, no such printouts will be allowed during the initial inspection. In these circumstances, the initial inspection will be restricted to outside counsel only, and not expert witnesses.

During the initial inspection, outside counsel for Apple will be present not just to monitor, but to answer any basic questions you may have regarding operation of the tool. To the extent we are unable to answer your questions, we will do our best to find answers as quickly as possible.

We propose to conduct the inspection here at Weil's Silicon Valley Offices.

Thanks,

Derek

-----Original Message-----

From: Rathinasamy, Palani P. [mailto:Palani.Rathinasamy@alston.com]
Sent: Tuesday, April 12, 2011 7:41 AM
To: Walter, Derek
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: [REDACTED]

Derek,

We have re-reviewed the documents you identified during the meet and confer last Tuesday, April 5, regarding the [REDACTED] tool. As we discussed during the call, although we are agreeable to the method Sonal proposed for the inspection of the tool, without seeing or using the actual tool, we cannot meaningfully propose a test protocol as requested. As such, for a starting point, we propose to have an initial inspection of the tool, at the facility of Apple's choice, subject to the source code provision of the protective order, for our outside counsel and/or expert to simply get familiar with the operation of the tool. After the initial inspection, the parties then can meet and confer to agree upon the contour and details of the live testing and the related document production resulted from such tests. Please let us know by Friday, April 15, whether you are agreeable to this proposal.

Thanks,

Palani

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