

EXHIBIT F

From: DeBruine, Sean
Sent: Saturday, March 26, 2011 9:15 AM
To: Mehta, Sonal; Morris, John
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: Elan-Apple: Letter of S. DeBruine to S. Mehta re RFPs 20 and 21

onal,

Thank you for your response. While I appreciate you pointing out a small handful of responsive documents in Apple's production, your email effectively ignores the very specific requests made in my letter. First, I asked that Apple immediately produce a working copy of the [REDACTED], all documents relating to that tool and all documents including output taken from that tool. Please confirm that Apple will produce these items immediately.

As to your claim that "Apple produced numerous documents describing the [REDACTED], including documents that describe the tool and how it is used during testing and verification of Apple's products. Apple produced numerous documents describing the [REDACTED], including documents that describe the tool and how it is used during testing and verification of Apple's products" we have not seen those documents and they are not among the bates ranges you provided. Please identify the documents to which you refer and confirm that Apple has produced all such documents. If Apple has not made a complete production, please immediately provide a date certain by which that production will be complete.

Likewise, you do not address my point regarding usability studies. We have seen no documents regarding user testing of the multifinger gestures used in any of the accused Apple products relevant to the 352 patent, nor of the ability to switch modes relevant to the 353 patent. Please produce these documents.

Finally, your objection that certain videos are available to Elan from Apple's website does not excuse Apple from producing those videos and all other responsive documents. Unless Apple reconsiders and makes a full production of these items we will move to compel.

Best regards,

Sean

From: Mehta, Sonal [Sonal.Mehta@weil.com]
Sent: Friday, March 25, 2011 3:02 PM
To: Morris, John
Cc: Apple Elan WGM Service; Elan Apple Team; DeBruine, Sean
Subject: RE: Elan-Apple: Letter of S. DeBruine to S. Mehta re RFPs 20 and 21

Sean,

I write in response to your letter of March 17 regarding testing tools. Your letter includes a number of inaccuracies which I address below.

At the outset, we disagree with your statement that Apple has not produced responsive documents relating to testing. Even a cursory review of Apple's production reveals that Apple has produced numerous testing-relating documents, including merely by way of example,

emails, testing guidelines and test updates (e.g., APEL1770106-APEL1770170, APEL1753880-APEL1753906, APEL1619159-APEL1619206, APEL1242913-APEL1242943, APEL1465185-APEL1465232, APEL1594360-APEL1594449, APEL1596813-APEL1596862, APEL1612457- APEL1612506). With respect to your specific complaint that Apple has not produced documents relating to its [REDACTED], your letter again misstates the record. As Elan is well aware, and itself elicited during its direct examination of Dr. Westerman during the ITC evidentiary hearing, Apple has a tool for the [REDACTED] Apple's products. Apple produced numerous documents describing the [REDACTED], including documents that describe the tool and how it is used during testing and verification of Apple's products, and even documents that [REDACTED] using the tool (e.g., APEL0397519-APEL0397525, APEL0399166, APEL1749277, APEL1706214-APEL1706254, APEL1749323-APEL1749364, APEL1619159-APEL1619206, APEL1753880-APEL1753906, APEL1594360-APEL1594449). In short, Apple's production of testing-related documents has been substantial.

Given the above, the thrust of your letter appears to be your suggestion that "in its post-hearing brief in the ITC[,] Apple now argues that actual data of the type captured from this simulation tool is necessary to demonstrate the relevant operation of its products." This not only misstates Apple's position, but also the record of ITC proceedings. As Apple has consistently explained, noninfringement of Apple's products is demonstrated through the operation of Apple's algorithms, which operate the same way irrespective of the use. Those algorithms do not ever practice the claimed method, no matter what the size, shape, pressure, orientation, etc. of contacts on the touchpad. It is only under Elan's strained infringement theory that certain highly-specific, highly-constrained hypothetical uses are alleged to infringe. As a result, Elan bears the burden to prove such hypothetical uses have actually occurred in practice. Elan had ample opportunity to attempt to satisfy its burden of proof, including based on Apple's substantial production of testing-related documents, Elan's own testing of the accused products, or otherwise in discovery in the ITC action. Elan completely failed to satisfy that burden in the ITC and now appears to seek to shift blame on Apple for Elan's own failure of proof. We need not debate the merits of Elan's attempt to burden-shift here -- the ITC record speaks for itself, and CALJ Luckern and the Commission will soon decide whether Elan has satisfied its burden. With respect to the district court action, to the extent Elan continues to allege infringement based on narrow hypothetical uses, the burden remains on Elan to establish that the conditions required for such uses to fall within Elan's infringement theory have existed in the actual operation of Apple's accused products.

In any event, with respect to the issue of testing-relating discovery raised in your email, we encourage you to review our production of such documents, including documents in the categories noted above. If, after reviewing our production, you believe there are specific categories of documents that are missing or for which you would like us to check again, we would be happy to discuss your request at that time. Along the same lines, with respect to your request that Apple produce videos demonstrating the operation of Apple's products from Apple's website, the videos on Apple's website are equally accessible to Elan and we direct you to our website. To the extent Elan is seeking something beyond that, please let us know specifically what it is and why you believe you need it, and we will consider your request.

Regards,

[cid:image001.jpg@01CBEADE.1F1091D0]

Sonal N. Mehta

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From: Morris, John [mailto:John.Morris@alston.com]<mailto:[mailto:John.Morris@alston.com]>
Sent: Thursday, March 17, 2011 4:39 PM
To: Mehta, Sonal
Cc: Apple Elan WGM Service; Elan Apple Team; DeBruine, Sean
Subject: Elan-Apple: Letter of S. DeBruine to S. Mehta re RFPs 20 and 21

Dear Ms. Mehta:

Please see the attached letter from Sean DeBruine regarding RFPs 20 and 21.

Regards,

William (John) Morris
Legal Secretary to Sean P. DeBruine

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