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 12 ELAN MICROELECTRONICS
 CORPORATION

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

ELAN MICROELECTRONICS
 CORPORATION,

 Plaintiff,

 v.
 APPLE, INC.,

 Defendant.

Case No. 09-cv-01531 RS (PSG)

**DECLARATION OF SEAN P.
 DEBRUINE IN SUPOPT OF ELAN'S
 MOTION TO CONTINUE DEADLINE
 FOR FILING OF ELAN'S REPLY BRIEF
 IN SUPPORT OF ELAN'S MOTION
 FOR PARTIAL SUMMARY JUDGMENT**

AND RELATED COUNTERCLAIMS

1 I, Sean P. DeBruine, declare as follows:

2 1. I am a partner with the law firm of Alston & Bird LLP, counsel to plaintiff Elan
3 Microelectronics Corporation in this matter. I have personal knowledge of the following facts
4 and, if called, I could and would testify competently to the matters stated herein.

5 2. Elan filed its Motion for Partial Summary Judgment of Infringement of U.S. Patent
6 No. 5,825,352 on May 5, 2011. The following week Apple requested that it be permitted to take
7 the deposition of Elan's expert and that the date for filing of its Opposition be delayed. I agreed
8 and proposed that the deposition take place on May 18, 2011. Apple rejected that date as
9 inconvenient, and the deposition was scheduled and took place on May 24, 2011. A true and
10 correct copy of counsel's email exchange is attached hereto as Exhibit A.

11 3. Apple requested, and again Elan agreed, that Apple's Opposition would be due on
12 June 2, 2011. Based on that date, under the Local Rules, Elan's Reply would be due on June 9,
13 2011. Apple, however, was unavailable for the next available hearing date, June 23, 2011.
14 Therefore, on May 19, 2011 the parties filed a Stipulation requesting that Elan's motion be heard
15 on June 20, 2011. [Dkt. No. 205 & 218].

16 4. Late on June 2, Elan received notice that Apple had filed its Opposition and
17 supporting declarations. Included was a 158 paragraph declaration from Apple's expert witness, Dr.
18 Balakrishnan. After a review of Apple's Opposition and Dr. Balakrishnan's declaration, Elan found
19 them to be replete with new and unanticipated positions. Moreover, Elan found Dr. Balakrishnan's
20 declaration in many instances to be unclear and misleading regarding his description of the
21 operation of the accused Apple products. Elan's preference would be to rebut those opinions on the
22 papers, and Elan initially requested an agreement from Apple to extend the date for Elan's reply for
23 that purpose. However, after further consideration and before Apple responded to Elan's request to
24 extend its Reply by one week, Elan concluded that the deposition of Dr. Balakrishnan is necessary
25 in order to fully understand and clarify the issues raised in Dr. Balakrishnan's declaration so that
26 they may be presented to the Court in an understandable manner. In an email to counsel for Apple
27 this morning, I asked for agreement to an extension of Elan's Reply and a date prior to June 24,
28 2011 when Dr. Balakrishnan would be available. Rather than agree to this simple request, counsel

1 for Apple took the position that Apple would oppose any request to continue the deadline for the
2 filing of Elan's Reply. Apple indicated that it would "consider" a deposition of Dr. Balakrsihnan. A
3 true and correct copy of that email correspondence is attached hereto as Exhibit B. On Wednesday
4 evening I attempted to call Apple's counsel in a last attempt to resolve this issue. There was no
5 answer and as of the filing of this motion I have not received a return phone call. As of the time of
6 this filing Apple has not agreed to the requested extension nor to Elan's request for the deposition of
7 Dr. Balakrishnan.

8 I swear under penalty of perjury under the laws of the United States of America that the
9 foregoing is true and correct. Executed this 8th of June, 2011 at Menlo Park, California.

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/s/ Sean P. DeBruine

Sean P. DeBruine

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