

# **EXHIBIT B**

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**From:** DeBruine, Sean  
**Sent:** Wednesday, June 08, 2011 3:54 PM  
**To:** Mehta, Sonal; Apple Elan WGM Service  
**Cc:** Elan Apple Team  
**Subject:** RE: Elan's Motion for Summary Judgment

Sonal,

Since we received Apple's Opposition and Dr. Balakrishnan's near 50 page declaration, we have been considering whether we can adequately address the many issues raised without the time and expense of a deposition. As I mentioned, we have come to the conclusion that a deposition is necessary and will best frame the issues for the Court. While the stipulation did include a June 9 date for Elan's Reply, it was premised on a June 20 hearing date. There is simply no compelling reason for the reply to be filed more than a month before the hearing. We are therefore asking for the same courtesy we extended to Apple -- that our brief be filed approximately a week after the deposition is taken. Please let me know this afternoon if Apple will agree, or we will need to raise this with the Court.

Thanks.

Sean

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**From:** Mehta, Sonal [mailto:Sonal.Mehta@weil.com]  
**Sent:** Wednesday, June 08, 2011 2:54 PM  
**To:** DeBruine, Sean; Apple Elan WGM Service  
**Cc:** Elan Apple Team  
**Subject:** RE: Elan's Motion for Summary Judgment

Sean,

We are surprised to see your email below in which you now suggest that Elan's reply brief in support of its summary judgment motion is due on June 30 and request for the first time a deposition of Dr. Balakrishnan.

With respect to the hearing date, Elan's position is flatly inconsistent with the parties' prior discussions, the stipulation you signed, the order signed by Judge Seeborg entering that stipulation, and our conversation yesterday evening. In fact, when you called me yesterday evening to request a one-week extension for your reply brief, I specifically confirmed with you, and you expressly acknowledged, that Elan's reply brief is due tomorrow, June 9, and that Elan's request was for a one-week extension of that date to next Thursday, June 16. You also agreed that, with that extension, Elan would not take Dr. Balakrishnan's deposition. Your email below is a complete about-face from your statements on our call last night. More importantly, it is a complete about-face from the stipulation you signed and which Judge Seeborg entered.

Specifically, on May 19, the parties' presented to the Court a stipulated briefing schedule under which Elan's reply brief is due June 9 and not tied to the hearing date: "NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the parties, through their respective counsel, that the hearing date for Elan's motion for partial summary judgment be rescheduled to June 20, 2011 (subject to the Court's availability), with Apple's opposition to Elan's motion due on June 2, 2011 and Elan's reply brief due on June 9, 2011." See DI 205. You signed that stipulation on behalf of Elan. *Id.* On May 25, 2011, the Court's entered an order granting the stipulated relief with a change to only the hearing date and not to the date for either parties' brief. See DI 218. At that point, Elan was on notice that the hearing would not be until July 14, but did not raise or request any change to the June 2 and June 9 briefing deadlines agreed upon by the parties and entered by the Court. To the contrary, Elan sat silently and allowed Apple to file its opposition on June 2 in compliance with the stipulation and Judge Seeborg's Order. Your suggestion that Elan is now free to disregard that stipulation and

Order and unilaterally extend the date for its reply brief by three weeks after Apple has already served its opposition is in clear violation of the Court's Order and, frankly, smacks of gamesmanship. Indeed, such an extension would create significant prejudice to Apple. At this point, absent an order from Judge Seeborg extending the date, Elan is obligated to file its reply brief tomorrow. Please take this email as notice that, absent an such an order, Apple will move to strike any reply brief that is filed out of time.

Likewise, we were surprised to receive your request to depose Dr. Balakrishnan. At no point during the parties' extended meet and confer on the process or schedule for summary judgment proceedings did Elan even raise the possibility that it would seek a deposition of Dr. Balakrishnan if he submitted a declaration such that we could work together to build that into the schedule. In fact, you told me yesterday evening that Elan would not depose Dr. Balakrishnan if Apple would agree to a one-week extension for Elan's reply brief. In any event, Dr. Balakrishnan's declaration was filed last Thursday and Elan waited six days, until the day before its reply brief is due, to request a deposition. It is hard to see this request as anything more than an attempt by Elan to substantially delay filing its reply brief in a way that would prejudice Apple. That said, we are willing to consider your request for a deposition of Dr. Balakrishnan if Elan can provide an explanation for its failure to diligently pursue that deposition.

Regards,



**Sonal N. Mehta**

Weil, Gotshal & Manges LLP  
201 Redwood Shores Parkway  
Redwood Shores, CA 94065-1134  
[sonal.mehta@weil.com](mailto:sonal.mehta@weil.com)  
+1 650 802 3118 Direct  
+1 650 802 3100 Fax

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**From:** DeBruine, Sean [mailto:Sean.DeBruine@alston.com]  
**Sent:** Wednesday, June 08, 2011 12:20 PM  
**To:** Mehta, Sonal; Apple Elan WGM Service  
**Cc:** Elan Apple Team  
**Subject:** Elan's Motion for Summary Judgment

Sonal,

On further consideration after our conversation yesterday, we will need to take Dr. Balakrishnan's deposition concerning his declaration in opposition to the summary judgment motion. Please let me know when Dr. Balakrishnan will be available. Our strong preference would be to conduct the deposition next week. Because under the Local Rules our reply is due two weeks before the hearing, on June 30, we need to schedule the deposition for no later than June 24. I look forward to hearing from you.

Best regards,

**Sean DeBruine**  
Alston + Bird LLP  
275 Middlefield Road | Suite 150 | Menlo Park, CA 94025  
650-838-2121 Direct

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