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8 Attorneys for Defendant and Counterclaim Plaintiff,
 Apple Inc.

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

12 ELAN MICROELECTRONICS
 CORPORATION,
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 Plaintiff and Counterclaim
 14 Defendant,
 15 v.
 16 APPLE INC.,
 17 Defendant and Counterclaim
 18 Plaintiff.

Case No. C-09-01531 RS
 APPLE INC.'S MOTION TO SHORTEN
 TIME FOR ITS MOTION FOR LEAVE
 TO FILE A SURREPLY
 Hon. Richard Seeborg
 Demand for Jury Trial

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1 Apple respectfully submits this motion to shorten time with respect to its Motion
2 For Leave To File A Surreply to Elan's Reply In Support Of Its Motion To Dismiss Apple Inc.'s
3 Third, Fourth and Fifth Counterclaims Under Rule 12(b)(6) For Failure To State A Claim, Or In
4 The Alternative, For More Definite Statement Under Rule 12(e). Elan's motion to dismiss is
5 scheduled to be heard on August 26, 2009. Apple seeks an expedited schedule for its request to
6 submit a surreply relating to that motion so that both motions can be considered together.

7 As explained in Apple's Motion For Leave To File A Surreply, Apple requests
8 permission to file a surreply to ensure that the Court has the benefit of a balanced presentation on
9 the central issue presented in Elan's motion to dismiss. That issue was not addressed by Elan in
10 its opening brief, but instead, was argued by Elan for the first time on reply. As such, Apple
11 seeks the Court's permission to file a short surreply addressing Elan's new argument, authority
12 and evidence in advance of the August 26, 2009 hearing on Elan's motion to dismiss.

13 Apple requested Elan's consent to file its surreply, or at a minimum, to an
14 expedited schedule that would allow for the motion for leave to be heard simultaneously with the
15 underlying motion to dismiss. Declaration of Edward R. Reines In Support Of Motion to Shorten
16 Time ("Reines Decl."), Exh. A (August 19, 2009 email from S. Mehta to S. DeBruine). Elan
17 declined to consent. Reines Decl., Exh. B (August 20, 2009 email from S. DeBruine to S.
18 Mehta).

19 Accordingly, Apple hereby requests an expedited briefing schedule on its Motion
20 For Leave To File A Surreply wherein Elan's opposition to that motion be filed four calendar
21 days from the filing of the motion (i.e., by 5 pm on August 24, 2009) and Apple's reply, if any, be
22 filed twenty-four hours later (i.e., by 5 pm August 25, 2009).

23 Apple will be prejudiced if the Court does not grant this motion to shorten time
24 such that the Court can consider Apple's motion for leave to file its surreply with the underlying
25 motion to dismiss at the August 26, 2009 hearing. In contrast, Elan will not be prejudiced by the
26 shortened schedule. Four calendar days is ample time for Elan to prepare an opposition to
27 Apple's short Motion For Leave To File A Surreply. This is especially true because Apple's
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1 August 5, 2009 opposition brief put Elan on notice that any attempt to raise arguments for the
2 first time on reply would be improper.

3 The requested time modification for Apple's Motion For Leave To File A Surreply
4 would have no effect on the schedule for this case.

5 Dated: August 20, 2009

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By: /s/ Edward R. Reines
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Attorneys for Defendant and
Counterclaim Plaintiff Apple Inc.

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