

EXHIBIT 1

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11 ELAN MICROELECTRONICS
CORPORATION

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION
16

17 ELAN MICROELECTRONICS
18 CORPORATION,

19 Plaintiff,

20 v.

21 APPLE, INC.,

22 Defendant.

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

**ELAN MICROELECTRONICS
CORPORATION'S OBJECTIONS AND
RESPONSES TO APPLE, INC.'S
NOTICE OF DEPOSITION**

23 AND RELATED COUNTERCLAIMS
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1 Plaintiff Elan Microelectronics Corporation (“Elan”) objects and responds to Defendant
2 Apple, Inc.’s (“Apple”) Notice of Deposition to Elan Microelectronics Corporation (“Topics”) as
3 follows:

4 **GENERAL STATEMENTS AND OBJECTIONS**

5 1. Elan’s responses to Apple’s Notice of Depositions are based on Elan’s current
6 knowledge after a reasonable inquiry. Elan’s investigation with regard to the subject matter of this
7 action is ongoing, and Elan will supplement its responses and objections in accordance with
8 applicable law. The following responses are provided without prejudice to Elan’s right to introduce
9 at hearing or trial any evidence that is subsequently discovered relating to proof of currently known
10 facts and to produce and introduce all evidence whenever discovered relating to the proof of
11 subsequently discovered material facts. The following objections and responses do not constitute
12 any admission by Elan as to the relevance, materiality, or admissibility into evidence of the subject
13 matter or facts contained in any Topic or in Elan’s response. Elan reserves its right to refer to,
14 conduct discovery with reference to, or offer into evidence any and all facts, and information
15 notwithstanding the initial responses and objections interposed herein, consistent with applicable
16 law.

17 2. Elan’s responses are made subject to and without waiver of:

- 18 a. Elan’s right to object on any ground (e.g., relevance, etc.) to the use of Elan’s
19 responses or any portion thereof in any proceedings, including this or any other action; and
20 b. Elan’s right to object on any ground to any additional discovery requests that
21 may be served in this action.

22 3. Any statement made herein of an intent to produce documents is not, and shall not be
23 deemed, an admission of any factual or legal contention contained in any individual Topic, nor that
24 any particular documents exist or are relevant and admissible in this matter.

25 4. In addition to any specific objections which may be made on an individual basis in
26 the separate responses set forth below, Elan objects generally to each Topic to the extent that it
27 seeks to elicit information subject to and protected by the attorney-client privilege, the attorney
28 work product doctrine and/or any other applicable privilege, immunity, or protection. Any

1 inadvertent disclosure of such information shall not be deemed a waiver of the attorney-client
2 privilege, the work product doctrine, or any other applicable privilege or immunity.

3 5. Elan objects to the Topics, including without limitation the “Definitions” and
4 “Instructions” contained therein, to the extent that they seek to impose burdens or obligations upon
5 Elan beyond what is prescribed and/or required by applicable law or Commission rules.

6 6. Elan objects generally to each Topic to the extent it seeks information or documents
7 consisting of confidential, proprietary, or trade secret information of non-parties.

8 7. Elan objects generally to each Topic to the extent it seeks information that is not in
9 Elan’s possession, custody, or control, or information that would be burdensome to locate, retrieve,
10 prepare, review, and/or produce, where such burden outweighs any material benefit the information
11 would have to the Investigation.

12 8. Elan objects generally to each Topic to the extent that it contains any factual or legal
13 misrepresentations, or where they are vague and/or ambiguous.

14 9. These general objections are applicable to each and every one of the following
15 specific objections and responses, and failure to repeat an objection in response to a specific Topic
16 shall not be deemed a waiver of the objection. Further, if Elan specifically repeats one or more of
17 these general objections in response to a specific Topic, such specific response shall not be a waiver
18 of any other general objections.

19 10. Elan’s discovery responses are subject to any present or future Protective Order in
20 this case.

21 **GENERAL OBJECTIONS TO APPLE’S DEFINITIONS AND INSTRUCTIONS**

22 Elan objects to Apple’s “Definitions” and “Instructions” set forth in Apple’s Notice of
23 Deposition as follows:

24 1. Elan objects to the definition of “**Elan**,” “**you**,” and “**your**” to the extent that these
25 terms are defined to include consultants and other categories of persons who are not parties to the
26 above-captioned matter. Elan understands the term “Elan” to mean Elan Microelectronics
27 Corporation, including its officers, directors, agents and representatives acting on its behalf. Elan
28 objects to any Topic that purports to impose any obligation to obtain responsive information from

1 non-parties. Elan will undertake to disclose responsive information, as further described below, that
2 is located within the possession, custody, or control of Elan.

3 2. Elan objects to the definition of “**Respondent**” as vague, and as overbroad and
4 unduly burdensome, to the extent that term is defined to include entities not named in the
5 Investigation.

6 3. Elan objects to the definition of “**Prior Art**” to the extent that term is defined to
7 include any system, method, apparatus, publication, patent or use which has been cited to Elan by a
8 person or entity as prior art to the 352 patent with no reasonable basis.

9 4. Elan objects to the definition of “**Related Patents**” as overbroad and unduly
10 burdensome. Elan objects to the definitions as they are used to seek information that is neither
11 relevant nor reasonably calculated to lead to the discovery of admissible evidence.

12 5. Elan objects to the definition of “**Communication**” as overbroad. Elan also objects
13 to this definition as vague and ambiguous with respect to the term, “any other medium,” which
14 prevents Elan from reasonably ascertaining the meaning and scope of the term “Communication.”

15 6. Elan objects to the definition of “**Document**” as overbroad and unduly burdensome
16 to the extent it encompasses documents not in Elan’s possession, custody or control.

17 **SPECIFIC OBJECTIONS AND RESPONSES TO TOPICS**

18 **TOPIC NO. 1:**

19 The design, development, structure, function, and operation of Elan Touchpads or
20 touchscreens that have been sold or offered for sale in, or imported into, the United States.

21 **RESPONSE TO TOPIC NO. 1:**

22 Elan incorporates by reference each of its foregoing General Objections. Elan further
23 objects to this Topic to the extent it seeks information that is not within Elan’s possession, control
24 or custody. Elan objects to this topic as vague and impossible for Elan to discern. Elan does not
25 have sufficient knowledge with respect to its touchpads or touchscreens that have been “sold,
26 offered for sale or imported into, the United States” as Elan does not directly sell its touch-sensing
27 products to downstream U.S. customers. Elan also objects to the Topic to the extent it is
28 redundant to the depositions already taken by Apple in the parallel ITC Action.

1 Subject to and without waiving the above general and specific objections, Elan will
2 designate and produce one or more witnesses to testify to Elan's knowledge of this Topic at a
3 time and place to be agreed upon by the parties to this action.

4 **TOPIC NO. 2:**

5 The sales and marketing of Elan Touchpads or touchscreens that have been sold or offered
6 for sale in, or imported into, the United States, including without limitation, all efforts to sell,
7 market or promote the inclusion or use of Elan Touchpads or touchscreens in products sold,
8 offered for sale, imported, or intended for sale, offer for sale, importation or use in the United
9 States.

10 **RESPONSE TO TOPIC NO. 2:**

11 Elan incorporates by reference each of its foregoing General Objections. Elan further
12 objects to this Topic to the extent it seeks information that is not within Elan's possession, control
13 or custody. Elan objects to this topic as vague and impossible for Elan to discern. Elan does not
14 have sufficient knowledge with respect to its touchpads or touchscreens that have been "sold,
15 offered for sale or imported into, the United States" as Elan does not directly sell its touch-sensing
16 products to downstream U.S. customers, and Elan does not have the knowledge whether other
17 parties "intend" to sell Elan touch-sensing products in the United States. Elan also objects to the
18 Topic to the extent it is redundant to the depositions already taken by Apple in the parallel ITC
19 Action.

20 Subject to and without waiving the above general and specific objections, Elan will
21 designate and produce one or more witnesses to testify to Elan's knowledge of this Topic at a time
22 and place to be agreed upon by the parties to this action.

23 **TOPIC NO. 3:**

24 Elan's communications and contacts with third parties relating to the actual or potential
25 supply or inclusion of Elan Touchpads or touchscreens in products that have been sold or offered
26 for sale in, or imported into, the United States.

27 **RESPONSE TO TOPIC NO. 3:**

28 Elan incorporates by reference each of its foregoing General Objections. Elan further

1 objects to this Topic to the extent it seeks information that is not within Elan's possession, control
2 or custody. Elan also objects to the Topic to the extent it is redundant of Topic 2 and of the
3 depositions already taken by Apple in the parallel ITC Action.

4 Subject to and without waiving the above general and specific objections, Elan will
5 designate and produce one or more witnesses to testify to Elan's knowledge of this Topic at a time
6 and place to be agreed upon by the parties to this action.

7 **TOPIC NO. 4:**

8 The transfer or acquisition of rights to or in US Patent No. 5,825,352, including without
9 limitation, all agreements by or between Logitech, Inc., K-Tech Devices Corp., Elantech Devices
10 Corp. and/or Elan.

11 **RESPONSE TO TOPIC NO. 4:**

12 Elan incorporates by reference each of its foregoing General Objections. Elan further
13 objects to this Topic to the extent it seeks information protected from disclosure by the attorney-
14 client privilege, the attorney work product doctrine or any other applicable privilege, immunity or
15 protection. Elan also objects to this Topic since it is redundant to the discovery, including
16 deposition testimony, already taken by Apple in the parallel ITC Action. Particularly, Elan directs
17 Apple to Mr. Wayne Chang's testimony given during his November 15-16, 2010 depositions and
18 the ITC Action.

19 Subject to and without waiving the above general and specific objections, Elan responds
20 that it is willing to meet and confer with Apple to determine what if any additional, relevant
21 information Elan might provide in response to this Topic.

22 **TOPIC NO. 5:**

23 The merger or acquisition of K-Tech Devices Corp. with or by Elantech Devices Corp.

24 **RESPONSE TO TOPIC NO. 5:**

25 Elan incorporates by reference each of its foregoing General Objections. Elan further
26 objects to this Topic to the extent it seeks information protected from disclosure by the attorney-
27 client privilege, the attorney work product doctrine or any other applicable privilege, immunity or
28 protection. Elan also objects to this Topic since it is redundant to the discovery, including

1 deposition testimony, already taken by Apple in the parallel ITC Action. Particularly, Elan directs
2 Apple to Mr. Wayne Chang's testimony given during his November 15-16, 2010 depositions and
3 the ITC Action.

4 Subject to and without waiving the above general and specific objections, Elan responds
5 that it is willing to meet and confer with Apple to determine what if any additional, relevant
6 information Elan might provide in response to this Topic.

7 **TOPIC NO. 6:**

8 The conception and reduction to practice of U.S. Patent No. 5,825,352.

9 **RESPONSE TO TOPIC NO. 6:**

10 Elan incorporates by reference each of its foregoing General Objections. Elan further
11 objects to this Topic to the extent it seeks information that is not within Elan's possession, control
12 or custody. Elan also objects to the Topic to the extent it is redundant to the depositions
13 previously taken by Apple. Particularly, Elan directs Apple to Mr. Steven Bisset and Mr. Paul
14 Haughey's depositions taken on September 27, 2010 and October 12, 2010 and to Apple's March
15 26, 2010 Subpoena issued to Logitech and any documents produced by Logitech in response to
16 that subpoena.

17 Subject to and without waiving the above general and specific objections, Elan responds
18 that Elan will not designate or produce additional witness(es) for this Topic. However, Elan is
19 willing to meet and confer with Apple to determine what if any additional, relevant information
20 Elan might provide in response to this Topic.

21 **TOPIC NO. 7:**

22 The conception and reduction to practice of U.S. Patent No. 7,274,353.

23 **RESPONSE TO TOPIC NO. 7:**

24 Elan incorporates by reference each of its foregoing General Objections. Elan further
25 objects to this Topic to the extent it seeks information that is not within Elan's possession, control
26 or custody. Particularly, none of the 353 patent inventors are still employed by Elan.

27 Subject to and without waiving the above general and specific objections, Elan will
28 designate and produce one or more witnesses to testify to Elan's knowledge of this Topic at a time

1 and place to be agreed upon by the parties to this action.

2 **TOPIC NO. 8:**

3 Licensing or efforts to license US Patent No. 5,825,352, US Patent No. 7,274,353 and
4 related patents, including without limitation, the nature, terms, and scope of any license or offer to
5 license; all efforts to license and all negotiations related to the licensing; discussions or
6 communications relating to possible business agreements or arrangements relating to or arising out
7 of licensing discussions; and discussions or communications with prospective licensees, including
8 but not limited to demand letters, notice letters, presentations and claim charts.

9 **RESPONSE TO TOPIC NO. 8:**

10 Elan incorporates by reference each of its foregoing General Objections. Elan further
11 objects to this Topic to the extent it seeks information protected from disclosure by the attorney-
12 client privilege, the attorney work product doctrine or any other applicable privilege, immunity or
13 protection. Elan also objects to this Topic since it is redundant to the discovery, including
14 deposition testimony, already taken by Apple in the parallel ITC Action. Particularly, Elan directs
15 Apple to Mr. Wayne Chang's testimony given during his November 15-16, 2010 depositions and
16 the ITC Action. Elan further directs Apple to Elan's Second Supplemental response to Apple's
17 Interrogatory No. 7 dated May 13, 2011 where it states that Elan has not licensed or attempted to
18 license the 353 patent.

19 Subject to and without waiving the above general and specific objections, Elan responds
20 that it is willing to meet and confer with Apple to determine what if any additional, relevant
21 information Elan might provide in response to this Topic.

22 **TOPIC NO. 9:**

23 The settlement of any claim relating to US Patent No. 5,825,352, US Patent No. 7,274,353
24 and related patents, including without limitation, settlement negotiations.

25 **RESPONSE TO TOPIC NO. 9:**

26 Elan incorporates by reference each of its foregoing General Objections. Elan further
27 objects to this Topic to the extent it seeks information protected from disclosure by the attorney-
28 client privilege, the attorney work product doctrine or any other applicable privilege, immunity or

1 protection. Elan also objects to this Topic since it is redundant to the discovery, including
2 deposition testimony, already taken by Apple in the parallel ITC Action. Particularly, Elan directs
3 Apple to Mr. Wayne Chang's testimony given during his November 15-16, 2010 depositions and
4 the ITC Action. Elan further directs Apple to Elan's Second Supplemental response to Apple's
5 Interrogatory No. 7 dated May 13, 2011 where it states that Elan has not licensed or attempted to
6 license the 353 patent.

7 Subject to and without waiving the above general and specific objections, Elan responds
8 that it is willing to meet and confer with Apple to determine what if any additional, relevant
9 information Elan might provide in response to this Topic.

10 **TOPIC NO. 10:**

11 The revenues, sales, costs, profits, margins, expenses and other financial information for
12 the Elan Touchpads or touchscreens that have been sold or offered for sale in, or imported into, the
13 United States.

14 **RESPONSE TO TOPIC NO. 10:**

15 Elan incorporates by reference each of its foregoing General Objections. Elan further
16 objects to this Topic to the extent it seeks information that is not within Elan's possession, control
17 or custody. Elan objects to this topic as vague and impossible for Elan to discern. Elan does not
18 have knowledge of all of the Elan touchpads or touchscreens that have been "sold, offered for sale
19 or imported into, the United States" as Elan does not directly sell its touch-sensing products to
20 downstream U.S. customers.

21 Subject to and without waiving the above general and specific objections, Elan will
22 designate and produce one or more witnesses having knowledge responsive to Elan's financial
23 information for the Elan Touchpads or touchscreens at a time and place to be agreed upon by the
24 parties to this action.

25 **TOPIC NO. 11:**

26 Elan's knowledge of Apple's alleged infringement of each asserted claim of US Patent No.
27 5,825,352 and US Patent No. 7,274,353.

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1 **RESPONSE TO TOPIC NO. 11:**

2 Elan incorporates by reference each of its foregoing General Objections. Elan further
3 objects to this Topic to the extent it seeks information that is protected from disclosure by the
4 attorney-client privilege, the attorney work product doctrine or any other applicable privilege,
5 immunity or protection. To the extent there is any non-privileged information, Elan objects to this
6 Topic since it is redundant to the discovery, including deposition testimony, already taken by
7 Apple in the parallel ITC Action. Particularly, Elan directs Apple to Mr. Wayne Chang's
8 testimony given during his November 15-16, 2010 depositions and the ITC Action and Elan's
9 interrogatory responses to Apple.

10 Subject to and without waiving the above general and specific objections, Elan responds
11 that Elan will not designate or produce a witness for this Topic.

12 **TOPIC NO. 12:**

13 Elan's decision to bring this action against Apple, including, but not limited to, Elan's
14 decision to assert each of US Patent No. 5,825,352, US Patent No. 7,274,353 and related patents
15 against Apple.

16 **RESPONSE TO TOPIC NO. 12:**

17 Elan incorporates by reference each of its foregoing General Objections. Elan further
18 objects to this Topic to the extent it seeks information that is protected from disclosure by the
19 attorney-client privilege, the attorney work product doctrine or any other applicable privilege,
20 immunity or protection. To the extent there is any non-privileged information, Elan objects to this
21 Topic since it is redundant to the discovery, including deposition testimony, already taken by
22 Apple in the parallel ITC Action. Particularly, Elan directs Apple to Mr. Wayne Chang's
23 testimony given during his November 15-16, 2010 depositions and the ITC Action and Elan's
24 interrogatory responses to Apple.

25 Subject to and without waiving the above general and specific objections, Elan responds
26 that Elan will not designate or produce a witness for this Topic.

27 **TOPIC NO. 13:**

28 All efforts by or on behalf of Elan to satisfy the marking requirements of 35 U.S.C. § 287

1 for each of US Patent No. 5,825,352, US Patent No. 7,274,353 and related patents.

2 **RESPONSE TO TOPIC NO. 13:**

3 Elan incorporates by reference each of its foregoing General Objections. Subject to and
4 without waiving the above general and specific objections, Elan will designate and produce one or
5 more witnesses having knowledge responsive to this Topic at a time and place to be agreed upon
6 by the parties to this action.

7 **TOPIC NO. 14:**

8 Elan's first awareness of the Apple patents-in-suit and actions taken in response, including
9 without limitation, any study, investigation or analysis of the Apple patents-in-suit or related
10 patents.

11 **RESPONSE TO TOPIC NO. 14:**

12 Elan incorporates by reference each of its foregoing General Objections. Elan further
13 objects to this Topic to the extent it seeks information that is protected from disclosure by the
14 attorney-client privilege, the attorney work product doctrine or any other applicable privilege,
15 immunity or protection. To the extent there is any non-privileged information, Elan directs Apple
16 to Elan's response to Apple's Interrogatory No. 11.

17 Subject to and without waiving the above general and specific objections, Elan responds
18 that Elan will not designate or produce a witness for this Topic.

19 **TOPIC NO. 15:**

20 The demonstration, use, and identity of Elan products and literature shown, displayed
21 and/or demonstrated at tradeshows or conferences in the United States, including without
22 limitation, CES.

23 **RESPONSE TO TOPIC NO. 15:**

24 Elan incorporates by reference each of its foregoing General Objections. Subject to and
25 without waiving the above general and specific objections, Elan will designate and produce one or
26 more witnesses having knowledge responsive to this Topic at a time and place to be agreed upon
27 by the parties to this action.

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1 **TOPIC NO. 16:**

2 All indemnity agreements in which Elan has an indemnity obligation to another party
3 related to patent infringement in the United States, including without limitation, for the Apple
4 patents-in-suit.

5 **RESPONSE TO TOPIC NO. 16:**

6 Elan incorporates by reference each of its foregoing General Objections. Elan further
7 objects to this Topic to the extent it seeks information that is protected from disclosure by the
8 attorney-client privilege, the attorney work product doctrine or any other applicable privilege,
9 immunity or protection. Elan also objects to this Topic to the extent it seeks information that is
10 not within Elan's possession, control or custody.

11 Subject to and without waiving the above general and specific objections, Elan will
12 designate and produce one or more witnesses having knowledge responsive to this Topic at a time
13 and place to be agreed upon by the parties to this action.

14 **TOPIC NO. 17:**

15 Elan's use or reference to Apple, Apple products or Apple patents in the sales and
16 marketing of Elan products.

17 **RESPONSE TO TOPIC NO. 17:**

18 Elan incorporates by reference each of its foregoing General Objections. Elan further
19 objects to this Topic to the extent it seeks information that is protected from disclosure by the
20 attorney-client privilege, the attorney work product doctrine, common interest privilege or any
21 other applicable privilege, immunity or protection. Elan also objects to the Topic to the extent it is
22 redundant to the depositions already taken by Apple in the parallel ITC Action.

23 Subject to and without waiving the above general and specific objections, Elan will
24 designate and produce one or more witnesses having knowledge responsive to this Topic at a time
25 and place to be agreed upon by the parties to this action.

26 **TOPIC NO. 18:**

27 Communications or contacts with existing or potential customers regarding Apple products
28 or Apple patents.

1 **RESPONSE TO TOPIC NO. 18:**

2 Elan incorporates by reference each of its foregoing General Objections. Elan further
3 objects to this Topic to the extent it seeks information that is protected from disclosure by the
4 attorney-client privilege, the attorney work product doctrine, common interest privilege or any
5 other applicable privilege, immunity or protection. Elan also objects to the Topic to the extent it is
6 redundant to the depositions already taken by Apple in the parallel ITC Action.

7 Subject to and without waiving the above general and specific objections, Elan will
8 designate and produce one or more witnesses having knowledge responsive to this Topic at a time
9 and place to be agreed upon by the parties to this action.

10 **TOPIC NO. 19:**

11 The emulation, use, study, reverse-engineering, or other consideration of any Apple
12 product in the design and development of Elan products.

13 **RESPONSE TO TOPIC NO. 19:**

14 Elan incorporates by reference each of its foregoing General Objections. Elan further
15 objects to this Topic to the extent it seeks information that is protected from disclosure by the
16 attorney-client privilege, the attorney work product doctrine, common interest privilege or any
17 other applicable privilege, immunity or protection.

18 Subject to and without waiving the above general and specific objections, to the extent
19 there is non-privileged information, Elan will designate and produce one or more witnesses having
20 knowledge responsive to this Topic at a time and place to be agreed upon by the parties to this
21 action.

22 **TOPIC NO. 20:**

23 Authentication of documents and things regarding the foregoing topics.

24 **RESPONSE TO TOPIC NO. 20:**

25 Elan incorporates by reference each of its foregoing General Objections. Elan also objects
26 that this Topic is vague and ambiguous as to the “documents and things” Apple intends. Elan
27 further objects to this Topic as it is calling for a legal conclusion.

28 Subject to and without waiving the above general and specific objections, Elan will

1 CERTIFICATE OF SERVICE

2 I am employed in the County of San Mateo, State of California. I am over the age of 18 and
3 not a party to the within action; my business address is Alston & Bird LLP, 275 Middlefield Road,
4 Suite 150, Menlo Park, California 94025. On June 9, 2011, I served the foregoing document(s)
5 described as:

6 **ELAN MICROELECTRONICS CORPORATION'S OBJECTIONS AND**
7 **RESPONSES TO APPLE, INC.'S NOTICE OF DEPOSITION**

8 by the indicated means to the persons at the addresses listed:

9 Matthew D. Powers (matthew.powers@weil.com)

10 Edward R. Reines (edward.reines@weil.com)

11 Sonal N. Mehta (sonal.mehta@weil.com)

12 **WEIL, GOTSHAL & MANGES LLP**

13 201 Redwood Shores Parkway

14 Redwood Shores, California 94065

Via Overnight Courier

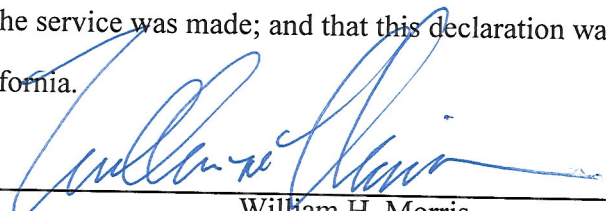
Via Hand Delivery

Via Facsimile

Via U.S. Mail

Via E-mail

15 I am readily familiar with our firm's practice for collection and processing of
16 correspondence via electronic mail and overnight courier. I caused the document(s) to be sent to
17 the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a
18 reasonable time after the transmission, any electronic message or other indication that the
19 transmission was unsuccessful. I declare under penalty of perjury under the laws of the United
20 States that the foregoing is true and correct; that I am employed in the office of a member of the
21 bar of this Court at whose direction the service was made; and that this declaration was executed
22 on June 9, 2011, at Menlo Park, California.

23 
24 _____
25 William H. Morris