

EXHIBIT 3

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable Paul J. Luckern
Chief Administrative Law Judge**

In the Matter of:

**CERTAIN ELECTRONIC DEVICES
WITH MULTI-TOUCH ENABLED
TOUCHPADS AND TOUCHSCREEENS.**

Inv. No. 337-TA-714

**RESPONDENT APPLE INC.'S SECOND NOTICE OF DEPOSITION
OF COMPLAINANT ELAN MICROELECTRONICS CORPORATION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

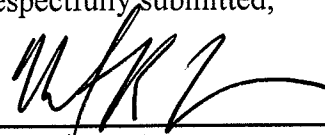
PLEASE TAKE NOTICE that Respondent Apple, by and through its counsel of record, will take the deposition upon oral examination of Complainant Elan Microelectronics Corporation. The deposition will commence at 9:30 A.M. on October 28, 2010, at the offices of Weil, Gotshal & Manges, LLP, 201 Redwood Shores Parkway, Redwood Shores, CA 94065, or at such other location and date(s) mutually agreed to by the parties or set by the Court.

PLEASE TAKE FURTHER NOTICE that, pursuant to 19 C.F.R. § 210.28, Elan Microelectronics Corporation is requested to designate one or more officers, directors, managing agents, or other persons who consent to testify on its behalf with respect to each of the topics listed in Attachment A (schedule of deposition topics).

The deposition will be taken before a notary public or other person authorized to administer oaths under law, and will continue day to day until completed. The deposition will be recorded by stenographic means and may also be videotaped.

Dated: October 11, 2010

Respectfully submitted,



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Counsel for Respondent Apple Inc.

ATTACHMENT A

DEFINITIONS AND INSTRUCTIONS

The following definitions apply to this Notice of Deposition:

- a. **“Apple”** means Respondent Apple Inc.
- b. **“Elan,” “you,” and “your”** means Complainant Elan Microelectronics Corporation, its predecessors and successors, past and present parents, subsidiaries, divisions, affiliates, and other organizational or operating units of any of the foregoing, and all past and present directors, officers, employees, agents, and representatives (including consultants and attorneys) of any of the foregoing.
- c. **“Respondent”** means any and all Respondents named or to be named in the future by Elan in this Investigation, including without limitation Apple.
- d. **“Investigation”** shall mean the above-captioned proceeding at the United States International Trade Commission, entitled Certain Electronic Devices with Multi-Touch Enabled Touchpads and Touchscreens, Investigation No. 337-TA-714.
- e. **“The Staff”** means the Commission Investigative Attorney designated to engage in investigatory activities in this Investigation or a related proceeding under 19 C.F.R. § 210 and the Commission Rules.
- f. **“The ‘352 Patent”** mean U.S. Patent No. 5,825,352.
- g. **“Prior art”** means all documents, information, or acts that qualify as prior art to the ‘352 Patent under any section or subsection of 35 U.S.C. §§ 102 and 103, or any system, method, apparatus, publication, patent or use which has been cited to Elan by any person or entity as prior art to the ‘352 Patent.
- h. **“Related Patents”** means all patents and patent applications relating to the ‘352 Patent, including any patents or patent applications (including all published and unpublished

pending and abandoned applications) from or through which the '352 Patent claims priority, including but not limited to any patents or patent applications (including all published and unpublished pending and abandoned applications) that claim priority from or through the '352 Patent, and any foreign counterpart patents or patent applications (including all published and unpublished pending and abandoned applications) of any of the foregoing.

i. **“Accused Products”** shall mean the products identified in paragraph 31 of the Complaint.

j. **“Communication”** means any form of oral or written interchange, whether in person, by telephone, by facsimile, by telex, by electronic email, or by any other medium.

k. **“Document”** shall be interpreted to the full extent permitted by the Commission's Rules of Practice and Procedures and the Federal Rules of Civil Procedure and includes, without limitation, e-mail, files stored on electronic media, copies of letters, notes and records of telephone conversations, intra-corporate communications, minutes, bulletins, specifications, instructions, advertisements, literature, patents, patent applications, specification sheets and diagrams, work assignments, reports, memoranda, memoranda of conversations, notes, notebooks, drafts, data sheets, work sheets, contracts and agreements, memoranda of agreements, assignments, licenses, sublicenses, opinions and reports of experts and consultants, books of account, orders, invoices, statements, bills, checks and vouchers, brochures, photographs, drawings, charts, catalogs, pamphlets, magazines, copies of magazines, decals, world-wide web and/or internet postings, trade letters, notices and announcements, and press releases, and all other printed, written, recorded, taped, electronic, graphic, computerized printout or other tangible materials of whatever kind known to, or in the possession, custody, or control of Elan. A draft or nonidentical copy is a separate document within the meaning of this term.

l. The words “**any**,” “**all**,” and “**each**” shall mean any, all, each, and every.

m. The phrases “**relates to**,” “**relating to**,” and “**related to**” shall mean in whole or in part constituting, containing, concerning, embodying, reflecting, describing, analyzing, identifying, stating, referring to, dealing with, or in any way pertaining to.

TOPICS FOR TESTIMONY

1. The burden on third parties resulting from the exclusion of the products that Elan seeks to exclude in this Investigation.

2. The facts supporting or negating any of Elan’s claims that Elan has suffered or will suffer any injury, including but not limited to the nature and extent of such injury that was or will be caused by the importation of the Accused Products.

3. The “numerous awards” Elan has received for its innovations, the reasons why Elan received those awards, and the relationship, if any, between the awards and the ’352 patent. *See Complaint* ¶¶ 7, 9.

4. The research, design, development, implementation, and testing of any Elan product or technology (including, but not limited to, any product, apparatus, method, invention, system, service, prototype, drawing, design, schematic, invention, embodiment or item) allegedly covered by the ’352 Patent, including, but not limited to, the identity of each person who participated in or has knowledge of the research, design, development, implementation, and testing; and the identity, name, design, features, function, structure, and operation of any such products or technology.

5. The identity and the price, cost, and any other numerical valuation of touchpads and touchscreens allegedly covered by the ’352 Patent manufactured by, for, or under

authorization from Elan, including the relative value of these components as compared to the products that contain them.

6. Any attempts by Elan, persons employed by Elan, or persons acting on behalf of Elan to market, sell, or otherwise commercialize any product or prototype covered by the '352 Patent including, but not limited to, the first demonstration of such product, the first use of such product, the first sale or offer to sell or license of such product, the date(s) when Elan began marketing, offering for sale, or selling such product or prototype, the identity of each person involved in such marketing or selling, and Documents relating to any of the foregoing.

7. The facts and circumstances concerning Elan's acquisition of the '352 Patent.

8. The factual bases for Elan's allegation that "[i]n 2005, Apple began sourcing touchpads manufactured for it according to its own designs, rather than from its former supplier, Synaptics, Inc. ('Synaptics'). Apple was no longer authorized under various Synaptics patents, including patents covering single finger-user input gestures." *See* Complaint ¶ 18.

9. Elan's efforts to identify Apple products that Elan contends infringe the '352 Patent, any information or evaluation gathered or considered by Elan in its decision to accuse Apple of infringement, any reverse engineering or tests of Apple products or components performed or requested by Elan, the facts, circumstances, and date(s) of Elan's first awareness of Apple's alleged infringement, the identity of each person who has knowledge of any of the foregoing, and Documents relating to any of the foregoing.

10. The claim charts attached as Exhibit 10 to the Complaint, including, but not limited to, the identity of each person who was asked to supply information to be used in the construction of the claim chart, the identity of each person who supplied information used in the

construction of the claim charts, the identity of each person who has knowledge of any of the foregoing, and Documents relating to any of the foregoing.

11. All inspections, analyses, comparisons, examinations, reverse engineering, tests, or evaluations of Apple products, or any components contained therein, conducted by or for Elan.

12. The identification of all prior art to the '352 Patent known to Elan employees or officers, including, but not limited to, all prior art identified by any person in any legal proceeding concerning the '352 Patent or Related Patents; all prior art identified by any person during any license negotiations concerning the '352 Patent or Related Patents; the results of prior art searches, investigations, or analyses relating to the validity and/or enforceability of the '352 Patent or Related Patents; the identity of each person involved in conducting such prior art searches, investigations, or analyses; and Documents relating to any of the foregoing.

13. All facts relating to whether, with respect to the '352 Patent, there was long felt need, prior failure to invent, unexpected results, copying, contemporaneous independent invention, prior skepticism by experts, or praise for or commercial success of products covered by the '352 Patent (including any facts supporting a nexus between the claims of the '352 Patent and any such praise or commercial success), as well as any benefits allegedly generated by using a product or method covered by the '352 Patent as compared to what was known in the industry previously.

14. Any and all analyses or opinions conducted by, at the request of, or on behalf of Elan on the validity or invalidity, enforceability or unenforceability, infringement or non-infringement, patentability, or scope of the '352 Patent or any claim thereof, including, but not

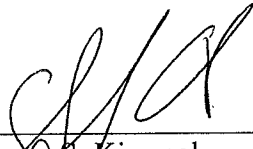
limited to, all advice of counsel regarding the enforceability of the '352 Patent upon which Elan may rely for any purpose in this Investigation.

15. The identities of persons knowledgeable about the above topics.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on October 11, 2010 as indicated, on the following:

<p><u>Via Hand Delivery (2 copies)</u> The Honorable Paul J. Luckern Office of the Administrative Law Judge U.S. International Trade Commission 500 E Street SW, Room 317-H Washington, D.C. 20436</p>	<p><u>Via Email and Hand Delivery</u> Kevin Baer, Esq. Office of Unfair Import Investigations U.S. International Trade Commission 500 E Street SW, Room 401-A Washington, D.C. 20436 kevin.baer@usitc.gov</p>
<p><u>Via Email and Hand Delivery</u> Paul F. Brinkman, Esq. Alston & Bird LLP The Atlantic Building 950 F Street, NW Washington, DC 20004 Elan.Apple.Team@alston.com</p>	



Gregory S. Kimmel
Paralegal