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July 6, 2011

The Honorable Paul Singh Grewal  
280 South First Street  
Courtroom 5, 4th Floor  
San Jose, CA 95113

Re: **Elan v. Apple, C-09-01531 RS (PVT)**

Dear Judge Grewal:

I write in response to Elan's July 6, 2011 letter regarding the supplemental privilege logs it submitted just days before the parties' July 5, 2011 oral argument on Apple's motion to compel. In its letter, Elan argues that *in camera* review of the withheld documents is not necessary because Elan's last minute revisions to the logs allegedly "resolve" any privilege issues. Dkt. No. 325 at 2. The premise behind Elan's position—that it should be taken at its word on these issues—is not well taken.

The timing and content of Elan's revised privilege logs strongly suggest that the entries simply are not credible. It was only after Apple moved to compel that Elan changed its position and concluded that roughly 600 documents that it previously logged as privileged were, in fact, not privileged. Moreover, it was only after Apple filed its motion and demonstrated that Elan had failed to show involvement by U.S. attorneys that Elan "revised" the logs to state that U.S. lawyers were involved. For example, in its July 2010 privilege log, Elan described Item 404 as "Document prepared at direction of Elan legal department and/or counsel in anticipation of litigation and/or for purposes of seeking/providing legal advice." One year later, in response to Apple's motion, Elan changed the description to state unequivocally that a U.S. attorney was involved: "Document prepared under the instruction of U.S. counsel for purposes of conducting infringement analysis on Synaptics' U.S. patents in anticipation of the Elantech v. Synaptics litigation." Those descriptions differ significantly, and the differences suggest that the log entries simply are not credible.

In any event, Elan is wrong that its revised privilege logs adequately substantiate a claim of privilege. Indeed, as noted during oral argument, Elan's revised privilege logs still fail to identify by name even a single attorney that was involved in or that requested any of the disputed communications that Elan continues to withhold. In this regard, Elan's revised privilege log entries fail to include even the most basic information to back up a privilege claim. Therefore, in Apple's view, Elan has failed to

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establish a prima facie claim of privilege and the documents on which Apple moved to compel should be produced. At the very least, Apple respectfully requests that the Court conduct an *in camera* review of the categories of documents discussed at yesterday's hearing.

Respectfully submitted,

/s/ Jared Bobrow  
Jared Bobrow