

EXHIBIT D

From: Bu, Jane
Sent: Wednesday, July 13, 2011 4:12 PM
To: Walter, Derek
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: Elan Microelectronics Corp. v. Apple Inc., C-09-01531-RS

Derek, Sonal:

As discussed in our meet and confer earlier, I write regarding the outstanding deficiencies in Apple's production. The discovery deadline is fast approaching, and we are concerned that Apple's delay in producing the documents you have already agreed to produce will make it impossible for us to prepare for upcoming depositions. We reserve the right to reschedule or retake depositions of any witnesses for whom we did not receive relevant documents in a timely fashion. Let me know if you will be available to discuss these issues tomorrow so that we can resolve these matters this week or promptly move to compel.

Document Request Nos. 73, 77, 79, 88, 90, 91, 93-95, & 97-98

You have repeatedly claimed that "[w]e have begun the process of generating documents containing the responsive information and will produce them as soon as they are available, which we expect to be within the next week or two", see your June 17 email below. Yet three weeks have passed and we have not yet received any discovery. Given that the fact-discovery cutoff date is approaching, Elan demands that Apple provide discovery responsive to these requests before the end of this week. If Apple is unable to produce its discovery in a timely fashion, then we will be forced to file a motion to compel, and to further extend the discovery deadline.

In addition, as I have stated in our last meet and confer, with respect to **RFP No. 77, 94 and 95** Elan is seeking pre-launch user studies, surveys and internal analyses that Apple conducted for the accused products during the design and development stage, particularly the studies relating to the Accused Instrumentality or the use of multiple fingers. To the extent Apple does not have such studies, surveys or related documents, please confirm so in writing no later than close of business Friday.

Document Requests Nos. 74-76 & 78

(discovery relating to profit, cost, pricing of the Accused Instrumentalities)

In your response below and during the meet and confer three weeks ago, Apple indicated that it will produce the responsive final information for **RFP No. 78**. To date, we have not seen any such production from Apple. Please provide the spreadsheets before the end of this week.

To streamline the discovery, and to address your initial objections, Elan is willing to further narrow the scope of **RFP Nos 74-76**.

Elan RFP Nos. 74 and 75 seek documents that analyze, study, or explain the profit, costs and losses of any accused products. The cost and pricing of the relevant components at issue, including the cost of the smallest unit Apple purchases for those components may be relevant to Elan's determination and analysis of the royalty base. Therefore, Elan requests that Apple, at minimum, produce pricing and cost information for each

Accused Instrumentality (e.g., touchpads, touchscreen, or parts thereof Apple incorporates into the accused products).

Elan RFP No. 76 seeks various financial forecast information. Apple's forecasts of its expected profitability of the accused products is relevant to the damages case. Particularly, how Apple perceived potential profits prior to the release of the accused products may be relevant to the hypothetical negotiation analysis. As such, Elan requests that Apple provide sales forecast analysis conducted for each of the accused products prior to its launch.

Document Request Nos. 80, 81, 92, 93; Interrogatory No. 22
(discovery relating to benefits of accused features)

We have reviewed Apple's production including the thousands of documents identified by Apple in its interrogatory responses. Most if not all of these documents are not responsive. Many of them relate to foreign buyer studies or general marketing materials which were not called for by these requests. As we discussed during the June 23 meet and confer, we have not seen any documents specifically relating to the features of the Accused Instrumentalities or surveys or studies that included the Accused Instrumentalities. Therefore, for **Interrogatory No. 22**, to the extent Apple has produced specific studies or surveys that actually relate to the Accused Instrumentalities, please identify them by bates number no later than Friday. To the extent Apple does not have such documents, please indicate so in writing no later than Friday.

In addition, for this category of discovery, Elan further requests that Apple provide, in native spreadsheet format, sales, pricing, profit and cost information for the accused products, and the non-accused older versions of the same products without the multi-touch function or without the use of multiple fingers. For example, we are requesting iPod Touch sales information compared to the iPod products without the multi-touch technology, and accused MacBook sales information compared to those older versions without the multi-touch function. We note that the non-accused products and their sales data are not part of the underlying damages calculation. However, the comparison of the sales and profits of products with and without the patented feature is highly relevant to our damages analysis for the Accused Products.

Document Request Nos. 82-85 & 96; Interrogatory Nos. 20-22
(discovery relating to iOS Apps, Apps with accused features compare to Apps w/o accused features)

As confirmed in today's meet and confer, the parties have reached an impasse on this issue and Elan will be seeking a motion to compel next week for these requests.

Document Request Nos. 89 and 90
(discovery relating to Apple licenses for the accused features and comparable features)

Federal Circuit case law establishes that licenses in the industry, licenses and royalties paid for similar or comparable non-accused technology of the same accused product, or licenses relating to comparable patents are very relevant to reasonable royalty analysis for the accused features of the products. *See, e.g., Lucent Techs. v. Gateway, Inc.*, 580 F.3d 1301, 1325-1326 and 1337 (Fed. Cir. 2009) (requiring comparison of patented versus non-patented feature for damages analysis and allowing analysis of comparable licenses) If it is Apple's position that there are no other Apple in-bound or out-bound licenses comparable to the technology at issue or comparable to the patents-in-suit, state so in writing no later than Friday or immediately produce all Apple in-bound or out-bound licenses for the Accused Products that Apple intent to rely on.

Similarly, **RFP 90** requests Apple produce documents relevant to Apple's general licensing policy, such as how Apple approaches license negotiations and how Apple determines royalty rates for its technology embodied in the accused products. This information is relevant to Elan's damages case and as such Elan demands that Apple immediately produce documents responsive to this request. To the extent Apple does not have such documents, please confirm so in writing no later than Friday.

Document Request No. 99 and Interrogatory No. 23
(discovery relating to U.S. patents that Apple claims embody the Accused Instrumentality)

The contribution of the patented technology to the value of an accused product versus the contribution of other patents to the same product is relevant to the damages case and highly probative to the Georgia Pacific analyses. Apple's response to **Interrogatory No. 23** was not on point and is inadequate. Elan did not request Apple to identify Apple patents that simply relate to touch-sensing input devices. Therefore, as already explained in my June 10 letter, and to further narrow this request, Elan requests that Apple identify any patents that it claims embodies the Accused Instrumentality. To the extent Apple cannot identify such patents, or takes the position there are no such patents, please indicate so in writing no later than Friday. If Apple refuses to provide this discovery, Elan will seek to exclude or strike any evidence Apple's expert will rely upon to the extent it argues that other patents and IP contributed to the value of the accused functionality.

Interrogatory 18 / Deposition Topic 12

As discussed in our meet and confer today, this discovery is relevant to the determination of a reasonable royalty base. In the spirit of efficiency, we have previously discussed the possibility of obtaining this discovery in written form, rather than by deposition. However, in lieu of providing a substantive description in its interrogatory response, Apple identified product hardware specifications, technical schematics, engineering requirements and BOMs for the accused products. We have reviewed all of these documents. These documents, including the BOMs, do not fully reveal the process by which Apple purchases the Accused Instrumentalities and assembles them into the final products. Accordingly, Elan requests that Apple supplement its response to this interrogatory with an actual substantive response. Also discussed in our meet and confer, if Apple has already produced this information or will be producing additional information responsive to this topic, please identify the documents by production range. While we are hopeful we can get the discovery we need from Apple's interrogatory response, we are entitled to depose a witness for this topic if warranted. Therefore, in the meantime, we request that Apple designate a responsive 30(b)(6) witness for this topic. If Apple adequately supplements this interrogatory prior to the deposition, then Elan will consider withdrawing this Rule 30(b)(6) topic.

Best,

Jane

From: Walter, Derek [mailto:Derek.Walter@weil.com]
Sent: Thursday, June 23, 2011 8:12 PM
To: Bu, Jane
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: Elan Microelectronics Corp. v. Apple Inc., C-09-01531-RS

Jane:

We appreciate you explaining why Elan believes discovery related to Apps is relevant. We will discuss your relevance theory with our client and get back to you.

Thanks,

Derek

From: Bu, Jane [mailto:Jane.Bu@alston.com]
Sent: Wednesday, June 22, 2011 5:35 PM
To: Walter, Derek
Cc: Apple Elan WGM Service; Elan Apple Team
Subject: RE: Elan Microelectronics Corp. v. Apple Inc., C-09-01531-RS

Derek: thank you for your response. Will you be available for a meet and confer tomorrow? I am available any time after 9:30am. If tomorrow does not work, please propose another time at your earliest convenience.

At the meet and confer, I would like to address Apple's responses and questions concerning each of the requests. However, I will address here Apple's blanket refusal to produce any discovery relating to the iOS apps. These requests are relevant to Elan's damages case. The use of apps necessarily requires the use of the touch-screen in the iOS products, which is precisely one of the accused instrumentalities in this case. Some of the apps are specifically designed with the touchscreen's technical specifications in mind. For example, certain apps have features that require the use of multiple finger input. As such, the price, revenue and cost for the apps is relevant to Elan's claims, particularly if there are differences in price and revenue between Apps that require the use of multiple fingers and those without such a requirement. In addition, details about the apps will also be relevant to consumer demand for the patented technology, the utility and advantages of the patented technology and the benefit of the invention and commercial success of the accused products. These are some of the key elements of a damages analysis. Elan is entitled to obtain discovery regarding any non-privileged matter that appears reasonably calculated to lead to admissible evidence. The discovery pertaining to iOS apps is relevant and at the minimum reasonably calculated to lead to admissible evidence. Therefore, we ask that Apple immediately agree to produce documents and information responsive to Elan's Document Requests Nos. 82-85 & 96 and Interrogatory Nos. 20-22.

Again, as I indicated in my June 10, 2011 letter, if Apple contends, as you suggested, that sales data about the apps are publicly available, complete and reliable, please direct us to the sources(s) of such data.

Best,

Jane

From: Walter, Derek [mailto:Derek.Walter@weil.com]
Sent: Friday, June 17, 2011 7:31 PM
To: Bu, Jane; Elan Apple Team
Cc: Apple Elan WGM Service
Subject: RE: Elan Microelectronics Corp. v. Apple Inc., C-09-01531-RS

Jane:

I write in response to your June 10, 2011 letter regarding Apple's response to Elan's latest discovery requests.

Document Request Nos. 73, 77, 79, 88, 90, 91, 93-95, & 97-98

As Apple stated in its responses to Elan's requests for production, Apple will produce documents containing responsive financial information (including costs and revenues) maintained in the ordinary course for the Apple products on a product line basis. We have begun the process of generating documents containing the responsive information and will produce them as soon as they are available, which we expect to be within the next week or two. With respect to the other requests for production you list, you have not identified with any specificity any particular documents you believe you are missing. At the same time, you have identified document requests for which Apple has plainly already produced responsive documents. For instance, with respect to Elan RFP No. 77, Apple has produced thousands of pages of customer surveys and market research. See APEL0107309 – APEL0162111. Likewise, for Elan RFP No. 88, which seeks documents related to royalty payments, Apple has already produced the relevant license agreements in its possession, which disclose the relevant royalty payments. See APEL0072987 – APEL0073076. As another example, in response to Elan RFP No. 93, Apple has already produced thousands of pages of advertising material that discusses MultiTouch™. Given the foregoing, please identify with additional specificity what additional documents you think you are missing that are responsive to these requests and we would be happy to consider your request.

Document Requests No. 75-76 & 78

With respect to Elan RFP No. 78, which seeks financial information related to the accused functionality, Apple will produce documents responsive to this request that are maintained in the ordinary course of business and within its possession, custody, or control, including documents relating to touchpad hardware components. Elan RFP No. 75 broadly seeks documents that "analyze or study the costs identified" in documents produced responsive to Elan RFP No. 73, which seeks financial information for the accused products generally. As Apple stated in its response to this request for production, the request is overbroad. That said, Apple has agreed to produce product line financial information. However, to the extent there are specific additional documents that you are seeking, we are happy to discuss. Finally, with respect to Elan RFP No. 76, which seeks various financial forecasting information, we have objected to the request on a number of grounds, including that it is overbroad, unduly burdensome, vague, and ambiguous. Please explain in more precise terms what you seeking and your theory of relevance for such information that you believe justifies the burden of collecting and producing it so we can consider the request.

Document Requests No. 80, 81 & 92

Generally speaking, these requests seek documents related to "customer acceptance" of Apple products, such as customer surveys and marketing documents. Apple has already produced thousands of pages of documents responsive to these requests, *see inter alia* APEL0107309 – APEL0162111, and it is unclear what additional information Elan is seeking. Nevertheless, Apple is checking to see if there are additional documents responsive to this request. To the extent there are such documents, Apple will produce them prior to the close of the discovery period.

Document Requests No. 82-85 & 96

By these requests, Elan seeks information relating to Apps sold for iOS devices, including *inter alia* revenues, usage rates, costs, and marketing information. However, you offer no explanation as to how or why this sort of information is relevant to Elan's case, let alone relevant enough to justify the burden of collecting such information. Indeed, such Apps are not the subject of any infringement allegation and are not relevant to the accused functionalities. In these circumstances, we simply cannot agree to provide wide ranging discovery on iOS Apps that may use MultiTouch™. In any event, much of the information you seek is available either publicly from Apple's website or more appropriately obtained from third party developers of iOS Apps. To the extent you believe information on iOS Apps is relevant and discoverable to the issues in this case, please explain specifically the theory of relevance so we can discuss further whether there is any relevant information Apple can and should provide responsive to these requests.

Document Requests No. 87 and 89

Elan RFP Nos. 87 and 89 seek documents related to licensing of the accused functionality. As noted above, Apple has already produced relevant licenses in its possession, custody, or control that relate to the accused functionality. See APEL0072987 – APEL0073076. With respect to Request No. 89 specifically, in your letter, you state that licensing information for aspects of Apple products "outside of the accused function" are relevant to Elan's damages case. To the extent you are asking that Apple produce licensing information that relates to any feature of any Apple accused product, we simply cannot agree to such a broad scope of discovery and you have not articulated any basis for such a request.

Document Request No. 99

Elan RFP No. 99 asks that Apple identify all U.S. patents utilized in the accused products. This request is overbroad and unduly burdensome, and Apple will stand on its objection. Nevertheless, to the extent there are specific patents you are interested in, we are happy to discuss further.

Interrogatory No. 16

After a reasonable search, Apple confirms that the licenses in the Bates range you identify constitute the relevant licenses we have produced to date.

Interrogatory No. 17

Interrogatory No. 17 asks Apple to identify the three most knowledgeable individuals regarding Apple licensing generally, including *inter alia* licensing related to the accused functionality, MultiTouch™, Apple patents, and related patents. As we stated in our discovery responses, this request is overbroad. Nevertheless, if, after review of the licensing agreements Apple has already produced, Elan is willing to narrow its request, Apple can discuss possibly identifying an appropriate individual in response to this Interrogatory.

Interrogatory No. 19

Interrogatory No. 18 seeks information regarding the total units of the Accused instrumentality sold, and you ask that Apple provide a date certain by which it will produce these documents. As stated above, we can confirm that we have long since begun the process of generating documents containing the responsive information and will produce them as soon as they are available, which we expect to be within the next couple of weeks.

Interrogatory Nos. 20-22

These discovery requests again seek discovery related to iOS Apps. Apple's response here is the same as for Elan RFP Nos. 82-85 & 96 above.

Interrogatory No. 23

Similar to Elan RFP No. 99, this discovery request seeks information regarding U.S. patents that are used in the accused Apple products. As we stated in our discovery response, this request is overbroad and unduly burdensome and seeks expert opinion and legal conclusions not appropriately provided in an interrogatory response. Nevertheless, to the extent there are specific patents you are interested in, we are happy to discuss further.

Thanks,

Derek

From: Englund, Jason [<mailto:Jason.Englund@alston.com>]
Sent: Friday, June 10, 2011 5:29 PM
To: Mehta, Sonal
Cc: Bu, Jane; Apple Elan WGM Service; Elan Apple Team
Subject: Elan Microelectronics Corp. v. Apple Inc., C-09-01531-RS

Counsel:

Attached please find a letter from Jane Bu.

Regards,

Jason A. Englund
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