1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 NORTHERN DISTRICT OF CALIFORNIA 10 SAN JOSE DIVISION 11 ELAN MICROELECTRONICS Case No.: C 09-01531 RS (PSG) 12 CORPORATION, ORDER DENYING PLAINTIFF ELAN 13 Plaintiff, DRPORATION'S MOTION TO v. SHORTEN TIME 14 APPLE, INC., 15 (Docket No. 343) Defendant. 16 17 Plaintiff Elan Microelectronics Corporation ("Elan") moves to shorten time on its motion to compel discovery related to Apple iOS applications for the accused products. Apple, Inc. ("Apple") 18 19 opposes the motion. Having reviewed the papers and considered the arguments of counsel, Elan's 20 motion to shorten time is DENIED. 21 Elan states that Apple refuses to produce any financial data for the iOS applications that 22 operate on accused products. Elan argues that the discovery sought is relevant because, under 23 *Uniloc USA, Inc. v. Microsoft Corp.*, it needs to compare the financial performance of iOS 24 applications that make use of the multifinger input features covered by Elan's asserted patent to 25 those that do not. In support of its motion to shorten time, Elan argues that all fact discovery must 26 be completed by August 12, 2011 and Elan's expert report on damages is due on September 9, 2011. 27 On a regular 35-day hearing schedule, the earliest date that Elan's motion to compel could be heard 28 632 F.3d 1292, 1318 (Fed. Cir. 2011). ORDER, page 1

is August 23, 2011, only three weeks before the deadline to disclose its expert report on damages. Elan also notes that its discovery requests implicate a Rule 30(b)(6) deposition that includes topics on Apple's iOS application financial data.

Apple opposes the motion on shortened time on the grounds that Elan has failed to show substantial harm or prejudice if its motion to compel is heard on a regular briefing schedule. Apple notes that notwithstanding that the action was originally filed two years ago, Elan waited until April 12, 2011 to serve Apple with its discovery responses related to iOS apps. After Apple served objections on May 12, 2011, Elan waited until June 10, 2011 to follow up. Apple argues that Elan was not diligent in seeking the discovery and any prejudice is of Elan's own making.<sup>2</sup>

Civ. L.R. 6-3 requires that a motion to shorten time "identif[y] the substantial harm or prejudice that would occur if the court did not change time." Here, Elan has not shown substantial harm or prejudice that would occur if its motion is not heard earlier than August 23, 2011, or that would justify the understandable frustrations of others in the court's motion queue who would necessarily get bumped. Accordingly, Elan's motion to shorten time is denied.

## IT IS SO ORDERED.

Dated: July 18, 2011

United States Magistrate Judge

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While not in any way commenting on the merits of Elan's underlying motion, the court notes that Apple's argument suggests that it would have no problem producing the data requested on an expedited basis, if compelled to do so.