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 ELAN MICROELECTRONICS
 11 CORPORATION

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

17 ELAN MICROELECTRONICS
 CORPORATION,
 18
 Plaintiff and Counterdefendant,
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 v.
 20 APPLE, INC.,
 21
 Defendant and Counterplaintiff.
 22

Case No. 5:09-cv-01531 RS (PSG)

**UNOPPOSED MOTION FOR LEAVE
 TO AMEND INFRINGEMENT
 CONTENTIONS PURSUANT TO PAT.
 L.R. 3-6**

Date: August 30, 2011
 Time: 10:00 AM
 Courtroom: 5
 Honorable Paul S. Grewal

23 AND RELATED COUNTERCLAIMS
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1 Pursuant to Pat. L.R. 3-6, Elan Microelectronics Corp. (“Elan”) hereby brings this
2 Unopposed Motion for Leave to Amend Its Infringement Contentions. In particular, Elan seeks to
3 update its infringement contentions to expressly accuse certain Apple products released after Elan
4 served its Infringement Contentions. While reserving its rights to contest whether the proposed
5 Amended Contentions provide sufficient detail under the Patent Local Rules and the merits of
6 Elan’s infringement allegations, Counsel for Apple, Inc. (“Apple”) has informed Elan that “Apple
7 does not oppose Elan’s request for leave to file its amended infringement contentions, but
8 disagrees with the substance of the allegations and reserves the right to object to the supplemental
9 contentions’ adequacy, accuracy, or otherwise as appropriate.”

10 **I. GOOD CAUSE EXISTS AS ELAN ACTED DILIGENTLY AND THERE IS**
11 **NO PREJUDICE TO APPLE**

12 Patent L.R. 3-6 provides that a party’s infringement contentions may be amended by order
13 of the Court upon a timely showing of good cause. A showing of good cause requires showing
14 diligence and lack of prejudice. *Tessera, Inc. v. Advanced Micro Devices, Inc.*, 2007 WL 1288199,
15 at *2 (N.D. Cal. April 30, 2007) (“Defendants show that they were diligent in seeking to amend
16 their preliminary contentions. Allowing them to amend their contentions at this point in the
17 litigation will promote the fair resolution of this cause without causing any prejudice to Plaintiff.”).
18 As explained below, good cause exists here as Elan timely provided notice to Apple, Elan accuses
19 the same functionality in the subsequently released products as in the products initially identified,
20 and there is no prejudice to Apple.

21 **A. ELAN ACTED DILIGENTLY IN PROVIDING APPLE TIMELY**
22 **NOTICE OF ITS AMENDED INFRINGEMENT CONTENTIONS**

23 Apple does not oppose Elan’s request for leave to file its amended infringement
24 contentions. As explained further below, good cause exists independent of the parties’ agreement.

25 Elan served its initial infringement contentions on October 22, 2009, specifically accusing
26 Apple’s MacBook, MacBook Pro, MacBook Air, iBook G4, PowerBook G4, iPhone (the original,
27 3G, 3GS models), iPod Touch, and Magic Mouse products of infringing U.S. Patent No.
28 5,875,352 (“the 352 patent”) (*see* Declaration of Palani P. Rathinasamy In Support of Elan’s

1 Unopposed Motion for Leave to Amend Infringement Contentions (“Rathinasamy Decl.”) at ¶¶ 1-
2 2). Elan and Apple disagreed as to the sufficiency of each party’s infringement contentions and
3 Elan thereafter provided supplemental infringement contentions subject to a stipulation on
4 December 11, 2009 (*id.*). Around January 2010 Apple announced its iPad product and released
5 the product around April 2010 (*id.* at ¶ 4). Shortly thereafter, on March 28, 2010, Elan filed an
6 ITC Complaint accusing, in addition to the products described in Elan’s initial infringement
7 contentions, the newly released Apple iPad (*id.*). Around June 2010 and July 2010, respectively,
8 Apple announced the release of its iPhone 4 and Magic Trackpad products (*id.* at ¶ 5).

9 On October 8, 2010, Elan supplemented an interrogatory response in the parallel ITC
10 investigation to identify the iPhone 4 and Magic Trackpad products as infringing products and
11 providing a claim chart showing infringement of the Magic Trackpad product (*id.*). Elan provided
12 a claim chart confirming that the iPhone 4 infringed for the same reasons as the previous iPhone
13 versions on November 4, 2010 (*id.*). The parties have agreed that discovery provided in the ITC
14 case may be considered as provided in this case as well. As such, Elan has been diligent in
15 providing Apple notice of its contentions. Around March 2011, Apple announced the release of
16 its iPad 2 product and on June 14, 2011 Elan provided notice to Apple that it planned to amend its
17 infringement contentions to include the iPad 2 product (*id.* at ¶¶ 6-7, Exhibit A¹). On July 13,
18 2011 Elan provided claim charts showing infringement of the iPad 2 product (*id.* at ¶ 8, Exhibit B).

19 Thus, as each new Apple product has been released, Elan has provided timely notice to
20 Apple of its infringement contentions. By the proposed supplemental contentions, Elan seeks
21 leave only to consolidate its infringement contentions from the ITC investigation, consolidate its
22 infringement contentions from its motion for partial summary judgment, and add Apple’s newly
23 released iPad 2 product (*id.* at ¶¶ 10-11, Exhibits C-E).

24 Elan’s original Infringement Contentions also included its allegations with regard to U.S.
25 Patent No. 6,274,353 (“the 353 patent”). Elan accused Apple’s iPhone (original, 3G and 3GS
26 models) and iPod Touch products of infringement (*id.* at ¶ 3). Those products both ran on Apple’s

27 ¹ All citations to Exhibits are attached to the Rathinasamy Declaration concurrently filed
28 herewith.

1 “iOS” operating system and the features accused of infringement are identical among them (*id.* at
2 ¶ 15). Elan’s amended contentions formally accuse the subsequently-released Apple products
3 running the iOS operating system, each having the same accused features; namely the iPhone 4,
4 iPad and iPad 2 (*id.* at ¶¶ 12, 15, Exhibit F). Elan does not seek to change the substance of its
5 allegations, and is not seeking to add any additional claims (*id.*). Because these are simply new
6 products within Apple’s product lines with the same accused functionality, Apple has in effect
7 been on notice of Elan’s contentions since Elan’s original infringement contentions were served
8 on October 22, 2009. Under the rules of this Court, the introduction of new, related products with
9 similar functionality provides good cause to supplement infringement contentions. *See 3COM*
10 *Corp. v. D-Link Sys. Inc.*, 2007 U.S. Dist. LEXIS 26542, at *22 (N.D. Cal. Mar. 27, 2007)
11 (holding that there is no prejudice to adding new products explaining that “[t]his is especially true
12 if a defendant is put on notice by the naming of several products within a line of products
13 possessing similar functionality.”); *Network Appliances, Inc. v. Sun Microsystems Inc.*, 2009 U.S.
14 Dist. LEXIS 107382, at *10-11 (N.D. Cal. Aug. 31, 2009) (granting leave to amend infringement
15 contentions to add a new group of products released by defendant after plaintiff served
16 infringement contentions). Thus, as Elan accuses the new Apple products of infringing of the
17 same patent claims based on the same functionality as set forth in its initial contentions. Elan has
18 provided timely notice of its infringement contentions and Elan seeks leave here to add
19 infringement of Apple’s subsequently released iPhone 4, iPad, and iPad 2 products.

20 **B. APPLE WILL NOT SUFFER UNDUE PREJUDICE**

21 Apple will not be prejudiced or burdened by Elan’s proposed amended infringement
22 contentions. Elan’s discovery requests have sought, and Apple was obligated to produce,
23 discovery related to these new products. Moreover, significant discovery related to these products
24 has already been produced in the parallel ITC investigation. Apple has agreed to make an
25 additional production related to the iPad 2, but that production is already mandated by Elan’s
26 outstanding discovery requests, which cover any productions with similar functionality as that in
27 the originally accused products. *See Advanced Micro Devices, Inc. v. Samsung Elecs. Co.*, 2009
28 U.S. Dist. LEXIS 53942 (N.D. Cal. June 24, 2009) (“failure to specifically accuse the processor

