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 14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN JOSE DIVISION
 18

19 ELAN MICROELECTRONICS
 CORPORATION,
 20
 21 Plaintiff,
 22 v.
 23 APPLE, INC.,
 24 Defendant.

Case No. 09-cv-01531 RS
**JOINT FURTHER CASE
 MANAGEMENT CONFERENCE
 STATEMENT**

DATE: August 4, 2011
 TIME: 1:30 p.m.
 CTRM: 3, 17th Floor

The Honorable Richard Seeborg

25 AND RELATED COUNTERCLAIMS
 26

1 Pursuant to the January 28, 2011 Case Management Scheduling Order, June 11, 2011
2 Clerk's Notice setting a further Case Management Conference ("CMC"), July 28, 2011 parties'
3 joint stipulation to continue the filing of the CMC Statement and Civil L.R. 16-9 and the Court's
4 standing Order regarding case management conferences, Plaintiff Elan Microelectronics
5 Corporation ("Elan") and Defendant Apple Inc. ("Apple") jointly file this Further CMC
6 Statement.

7 **I. CASE STATUS**

8 This is a case for patent infringement. On April 7, 2009, Elan filed suit alleging that
9 Apple infringes U.S. Patents No. 5,825,352 ("the '352 patent) and 7,274,353 ("the '353
10 patent"). Apple counterclaimed on July 1, 2009 alleging that Elan infringes two of its U.S.
11 Patents: 5,764,218 ("the '218 patent"), and 7,459,659 ("the '659 patent). [Dkt. No. 96].

12 The parties previously filed an initial Joint Case Management Conference Statement on
13 September 30, 2009 [Dkt. No. 41] and a further Joint Further Case Management Conference
14 Statement on January 20, 2011 [Dkt. No. 187]. Those Statements set forth the relevant factual
15 and legal issues, which are incorporated herein by reference.

16 A Case Management Conference was held on March 18, 2010. The Court issued a
17 Scheduling Order setting deadlines for disclosures and briefing under the Patent Local Rules
18 and for a Claim Construction Hearing. [Dkt. No. 74]. The Claim Construction Hearing was
19 held on June 23, 2010. On November 1, 2010 the Court issued its Claims Construction Order.
20 [Dkt. No. 183]. A further Case Management Conference was held on January 27, 2011. At that
21 conference, the Court set a further Case Management Conference to address the need and
22 procedure for further claim construction proceedings. That conference has now been set for
23 July 14, 2011.

24 **II. RELATED CASES**

25 Elan's '352 patent was one of the five patents at issue in the case of *Elantech Devices,*
26 *Inc. v. Synaptics*, Case No. C06-01839 PWT. During the pendency of that case, Elantech
27 Devices, Inc. was merged into Plaintiff Elan Microelectronics Corp. That case settled and was
28 dismissed in November 2008. However the parties do not believe this case is related to the

1 *Elantech Devices, Inc. v. Synaptics* case as defined in Civil L.R. 3-12.

2 On April 23, 2010 the United States International Trade Commission (“ITC”) instituted
3 an investigation to determine whether certain of the Apple products at issue in this case sold for
4 importation, imported or sold in the United States infringe the ‘352 patent and thus constitute a
5 violation by Apple of Section 337 of the Tariff Act, as amended (19 U.S.C. §1337). An
6 evidentiary hearing was held February 15-18, 2011. On April 29, 2011, Chief Administrative
7 Judge Luckern issued Final Initial and Recommended Determinations finding no violation of
8 Section 337 of the Tariff Act by Apple based on a determination of non-infringement of U.S.
9 Patent No. 5,825,352, which Elan also asserts against Apple in this action,¹ and a determination
10 that Elan has no domestic industry.

11 Following petitions for review of the Chief ALJ’s determination by the International
12 Trade Commission, the Commission issued on June 30, 2011 a notice terminating the
13 Investigation with a finding that Apple has not violated Section 337. The Commission
14 “determined to review and take no position on the ALJ’s claim construction ruling that the
15 ‘scanning’ step of independent claim 1 requires a specific temporal order for elements’ (a) to
16 (c), and his related finding of collateral estoppel” and “also determined to adopt the remainder
17 of the ID to the extent it is not based on these claim construction rulings.” Accordingly, the
18 Commission “determined to terminate the investigation with a finding that Apple has not
19 violated section 337.”

20 **III. MOTIONS**

21 Elan’s Motion For Partial Summary Judgment Of Infringement Of U.S. Patent 5,875,352
22 [Dkt. No. 212] is currently pending and scheduled to be heard on August 4, 2011, concurrently

23 ¹ In this matter, Elan has asserted an additional patent, the ‘353 patent, and has accused a
24 number of additional Apple products not accused in the ITC, including but not limited to certain
25 models of iBook G4, PowerBook G4, MacBook and MacBook Pro laptop computers. It is
26 Elan’s position that analysis of infringement under the ‘352 patent differs significantly for these
27 additional accused products as they operate differently from the Apple products accused in the
28 ITC. Elan has set forth its infringement position with respect to some of these products in
Elan’s Motion for Partial Summary Judgment of Infringement of U.S. Patent 5,875,352 [Dkt.
No. 212]. Apple has opposed Elan’s motion for summary judgment relating to these legacy
products. [Dkt. No. 281].

1 with the instant Further Case Management Conference. The parties expect that additional
2 motions for summary judgment on the issues of patent infringement and/or validity may be filed
3 prior to trial. Apple Inc.'s Motion To Compel (1) Discovery Relating To Elan's U.S. Sales; (2)
4 Documents Improperly Withheld On The Basis Of Privilege; And (3) Inventor Depositions and
5 Apple Inc.'s Motion To Compel Elan's Compliance With The Parties' Agreement That Elan
6 Employees Will Be Presented For Deposition In The Northern District Of California were heard
7 by Magistrate Judge Paul S. Grewal on July 5, 2011, and are pending. Elan also filed a Motion
8 to Compel Apple to produce iOS Apps Related Discovery noticed on August 23, 2011 and a
9 Motion to Compel Apple Regarding Various Discovery Issues noticed on August 30, 2011.
10 Both motions are also pending in front of Magistrate Judge Paul S. Grewal.

11 **IV. DISCOVERY**

12 The fact discovery cutoff is currently set on August 12, 2011. Each party has made a
13 significant production of documents, but ongoing document productions are taking place. A
14 number of depositions of the parties, party witnesses, inventors and non-parties are in the
15 process of being scheduled. Remaining areas of discovery include additional written discovery,
16 completion of document productions and additional depositions. In order to accommodate the
17 remaining outstanding discovery issues and depositions, the parties have jointly proposed to
18 extend the fact discovery cutoff to September 2, 2011, with a deadline to file any motions to
19 compel by September 9,² on the condition that no new written discovery requests will be served
20 by either side.

21 **A. Changes to Limitations on Discovery**

22 In their initial Joint Case Management Conference Statement, the parties proposed the
23 following changes to the presumptive discovery limits in the Federal Rules of Civil Procedure.
24 The Court has not addressed these proposed limits, but the parties have been conducting this
25 case pursuant to the following agreements. The parties have further agreed that discovery taken
26 in the ITC investigation may be used as if taken in this matter.

27 Requests for Admission: The parties propose that each party should be permitted to

28 ² Apple reserves the right to oppose any motion to compel on lack of diligence grounds.

1 propound up to fifty (50) requests for admission to each other party, excluding requests for
2 admission used solely for authentication, issues of hearsay, exceptions to hearsay and issues
3 relating to the best evidence rule and its exceptions. The parties agree to discuss a reasonable
4 approach to those exceptions as the case progresses.

5 Interrogatories: The parties propose that each party should be permitted to serve thirty
6 (30) interrogatories to each other party.

7 Depositions: The parties propose that each party should be permitted to take up to one
8 hundred (100) hours of deposition testimony of fact witnesses, with depositions requiring
9 translation counting as [Apple's position: half][Elan's position: two-thirds] time against the
10 time limit. The parties further propose the presumptive time limit of seven (7) hours per
11 deposition of non-inventors and a presumptive nine (9) hour limit for inventors. For Rule
12 30(b)(6) depositions of the parties, the parties propose a presumptive limit of twenty-one (21)
13 hours total per party being deposed. The parties further agree to work together to adjust limits
14 as reasonable and necessary under the circumstances.

15 **B. Foreign Named Inventors and Employees**

16 In their initial Joint Case Management Conference Statement, the parties agreed that
17 named inventors and employees of the parties that do not reside in the United States will be
18 made voluntarily available for deposition in the Northern District of California without
19 service of foreign process except as so identified to the opposing party no later than
20 September 18, 2009. No such witnesses were identified by that date.

21 The parties dispute the meaning and scope of the above statement, and that dispute is
22 addressed in Apple's motions to compel that are currently pending before Magistrate Judge
23 Grewal.

24 **V. RELIEF**

25 Elan contends that it is entitled to a judgment that certain of Apple's iBook, PowerBook
26 and MacBook laptop computers and its iPod touch, iPhone, Magic Mouse, Magic TrackPad and
27 iPad products infringe the '352 and/or '353 patents and that the infringement was and continues
28 to be willful. As a result Elan contends that it is entitled to damages in an amount not less than a

1 reasonable royalty, and to an injunction against any further infringement. Elan is also requesting
2 that any damage award be trebled as a result of Apple's willful infringement and that Apple be
3 ordered to pay Elan's costs and attorneys' fees.

4 Apple seeks a declaratory judgment that it has not and is not infringing any claim of
5 Elan's '352 and '353 patents, either directly or indirectly, willfully, contributorily or otherwise,
6 and that Elan's '352 and '353 patents are invalid for failure to comply with the requirements of
7 the Patent Laws of the United States, including but not limited to the provisions of 35 U.S.C. §§
8 101, 102, 03, and/or 112. Apple also seeks a judgment that certain of Elan's touch-sensitive
9 input devices, including without limitation the Smart-Pad, infringe the '218 and '659 patents
10 and that Elan's infringement has been and is willful. Apple seeks damages in an amount not
11 less than a reasonable royalty, damages for willful infringement pursuant to 35 U.S.C. § 284,
12 and an injunction against any further infringement of its '218 and '659 patents. Apple also
13 seeks costs and attorneys' fees.

14 Elan has also counterclaimed and seeks a declaratory judgment that it has not and is not
15 infringing any claim of Apple's '218 or '659 patent, and that Apple's '218 and '659 patents are
16 invalid for failure to comply with the requirements of the Patent Laws of the United States,
17 including but not limited to the provisions of 35 U.S.C. §§ 101, 102, 03, and/or 112.

18 **VI. SETTLEMENT**

19 The Court earlier referred this case to Magistrate Judge Spero for a settlement
20 conference, which took place on February 11, 2010 but did not result in settlement. [Dkt. No.
21 63]. In addition, pursuant to orders issued in the ITC matter, the principals of the parties have
22 met on three previous occasions. No settlement agreement has been reached.

23 **VII. CLAIM CONSTRUCTION**

24 The June 23, 2010 Claim Construction Hearing and November 1, 2010 Claims
25 Construction Order addressed nine claim construction disputes identified by the parties as most
26 significant to resolution of the case, while leaving open certain issues for resolution as the case
27 progresses. The parties' Joint Claim Construction Statement also identified a number of
28 additional claim construction and indefiniteness disputes that have not yet been presented to the

1 Court for resolution. [Dkt. No. 84].

2 **Elan's Position**

3 As explained in the parties' January 20 and July 7, 2011 Further Case Management
4 Conference Statements, Elan opposes Apple's request for further claim construction
5 proceedings. Elan contends that any remaining claim construction disputes are best identified
6 and resolved in the context of the substantive issue in which they arise. Therefore, Elan's
7 position remains that no additional claim construction hearing is necessary and most if not all of
8 the remaining disputes will be identified and can be dealt with in the context of motions for
9 summary judgment or partial summary judgment of infringement and/or invalidity of the
10 relevant claims.

11 Particularly, as set forth in its Reply Brief in Support of its Motion for Partial Summary
12 Judgment, Elan objects to any proceedings by which Apple seeks to materially change the claim
13 construction positions it asserted during the proceedings under the Patent Local Rules. In
14 particular, after briefing, expert discovery and a hearing, Apple now seeks to materially alter the
15 already determined construction of the term "scanning the touch sensor to (a) identify" and to
16 change its position regarding a previously agreed-to construction for "means for scanning the
17 touch sensor to" For instance, in addition to previously arguing and this Court adopting a
18 temporal requirement requiring that the claims are performed in a specific order, Apple now
19 argues that "scanning the touch sensor to (a) identify . . ." should be construed to require that the
20 algorithm specifically *search* for the requisite maxima and minima in addition to the temporal
21 requirement it advocated for [Doc. No. 183 (CC Order) at 9].

22 Elan contends that Apple should not be permitted to alter agreed-upon or previously
23 decided constructions, and to the extent the Court finds additional claim construction
24 proceedings necessary, they should be limited to resolving previously identified but unresolved
25 claim constructions as necessary to the conclusion of this matter.

26 If the Court determines that it is necessary to conduct further claim construction
27 proceedings—which Elan still contends is not necessary—then Elan will request construction of
28 the following terms:

- 1 1. “operative coupling” (‘352 patent, preamble of claims 1 and 18).
- 2 2. “sensors configured to map the touch pad surface into native sensor coordinates”
- 3 (‘659 patent claim 1).
- 4 3. “one or more logical device units” (‘659 patent claim 1).

5 In addition, Elan disagrees with Apple’s proposed additional claim construction
6 schedule. The fact discovery cutoff is just five weeks away, and in that time the parties must
7 complete a large amount of discovery including as many as twelve to fifteen depositions. In
8 light of the large amount of discovery to be completed, it would severely prejudice Elan to be
9 forced to complete full briefing on claim construction issues, and a possible claim construction
10 hearing during the same five week period. Elan also notes that Apple has alone pressed for
11 additional claim construction proceedings, and has taken that position since January 20, 2011.
12 Yet Apple has not proposed any briefing schedule until July 6, 2011, when Apple first provided
13 the schedule it proposes herein to Elan. Elan will be unduly prejudiced if it is forced to brief
14 these issues urged by Apple in the unreasonable time frame Apple proposes.

15 Therefore, if the Court determines that it is necessary to conduct additional claim
16 construction proceedings, Elan respectfully requests that the Court modify the case schedule to
17 permit briefing on the remaining claim constructions, as well as expert declarations regarding
18 the parties’ claim construction positions, and a claim construction hearing *after* the close of fact
19 discovery and prior to expert discovery in this matter. Elan recognizes that such a proceeding
20 would require that the remaining dates in the case schedule for expert discovery, pretrial
21 motions, and trial be modified to permit this new claim construction period. If the Court is
22 inclined to hold additional claim construction proceedings, then Elan respectfully requests that
23 the Court adopt the parties’ jointly proposed case schedule set forth in Section VIII.

24 **Apple’s Position**

25 As explained in the parties’ January 20, 2011 Further Case Management Conference
26 Statement and at the January 27, 2011 Case Management Conference, Apple respectfully
27 submits that additional claim construction proceedings will be necessary to resolve a narrow set
28 of outstanding claim construction issues before dispositive motions are decided and/or before

1 trial, including on (i) disputes identified in parties' Joint Claim Construction Statement but not
2 addressed in prior claim construction proceedings, (ii) disputes that have become ripe as a result
3 of proceedings in the parallel ITC investigation, and (iii) disputes that have become ripe as a
4 result of Elan's pending motion for partial summary judgment. Specifically, Apple requests that
5 the Court undertake further claim construction proceedings on the following specific issues:

- 6 1. "scanning the touch sensor to identify (a) identify a first maxima in a signal
7 corresponding to a first finger, (b) identify a minima following the first maxima,
8 (c) identify a second maxima in a signal corresponding to a second finger
following said minima" ('352 Patent, Claim 1)

9 As set forth in Apple's Opposition To Elan's Motion For Partial Summary
10 Judgment of Infringement of U.S. Patent 5,875,352 [Dkt. No. 281], Apple
11 submits further claim construction is necessary to clarify that the scanning step is
12 performed to search for a first maxima, a minima and a second maxima in the
temporal order claimed.

- 13 2. "means for scanning the touch sensor to (a) identify a first maxima in a signal
14 corresponding to a first finger, (b) identify a minima following the first maxima,
and (c) identify a second maxima in a signal corresponding to a second finger
following said minima" ('352 Patent, Claim 18)

15 As set forth in Apple's Opposition To Elan's Motion For Partial Summary
16 Judgment of Infringement of U.S. Patent 5,875,352 [Dkt. No. 281], Apple
17 submits further claim construction is necessary to clarify the corresponding
18 structure for the full "means for scanning the touch sensor to ... said minima"
limitation based on the claim construction ruling and record in the parallel
International Trade Commission proceeding.

- 19 3. "means for detecting a distance between said first and second maxima" ('352
20 Patent, Claim 24)

21 Apple requests a ruling on the indefiniteness issue presented in the parties' May
22 7, 2010 First Amended Joint Claim Construction And Prehearing Statement [Dkt.
23 No. 84], and based on the International Trade Commission's final determination
that the claim is invalid as indefinite.

- 24 4. "means for providing a click function in response to the removal and
25 reappearance of said second maxima within a predetermined period of time"
('352 Patent, Claim 26)

26 Apple requests a ruling on the indefiniteness issue presented in the parties' May
27 7, 2010 First Amended Joint Claim Construction And Prehearing Statement [Dkt.
28 No. 84], and based on the International Trade Commission's final determination
that the claim is invalid as indefinite.

- 1 5. “means for calculating first and second centroids corresponding to said first and
2 second fingers” (‘352 Patent, Claim 30)

3 Apple requests a ruling on the indefiniteness issue presented in the parties’ May
4 7, 2010 First Amended Joint Claim Construction And Prehearing Statement [Dkt.
5 No. 84], and based on the International Trade Commission’s final determination
6 that the claim is invalid as indefinite.

- 6 6. “means for detecting contact intervals” (‘218 Patent, Claim 5)

7 Apple requests a ruling on the corresponding structure for this limitation as set
8 forth in the parties’ May 7, 2010 First Amended Joint Claim Construction And
9 Prehearing Statement [Dkt. No. 84] so that the parties may apply that
10 corresponding structure in the infringement and invalidity analyses in upcoming
11 expert reports.

- 11 7. “means for detecting gap intervals” (‘218 Patent, Claim 5)

12 Apple requests a ruling on the corresponding structure for this limitation as set
13 forth in the parties’ May 7, 2010 First Amended Joint Claim Construction And
14 Prehearing Statement [Dkt. No. 84] so that the parties may apply that
15 corresponding structure in the infringement and invalidity analyses in upcoming
16 expert reports.

- 15 8. “means for distinguishing . . . and reporting” (‘218 Patent, Claim 5)

16 Apple requests a ruling on the corresponding structure for this limitation as set
17 forth in the parties’ May 7, 2010 First Amended Joint Claim Construction And
18 Prehearing Statement [Dkt. No. 84] so that the parties may apply that
19 corresponding structure in the infringement and invalidity analyses in upcoming
20 expert reports.

19 Although Elan previously objected to Apple’s proposal that the Court establish a
20 schedule and procedure for further claim construction proceedings and continues to object that
21 further claim construction proceedings are necessary, Elan agrees that there are ripe claim
22 construction disputes remaining for the Court to decide. Specifically, beyond the above
23 disputes, Elan submits that there are ripe disputes on the following terms:

- 24 9. “operative coupling” (‘352 Patent, Claims 1 and 18)

25 Apple agrees that, based on the record in the International Trade Commissions
26 proceedings, there appears to be a substantive dispute between the parties as to
27 the meaning of “operative coupling” in the ‘352 patent.

- 27 10. “sensors configured to map the touch pad surface into native coordinates”

28 As the Court recognized in its November 1, 2010 Claims Construction Order,

1 that Order has resolved the parties' substantive disputes. While the Court
2 recognized that further proceedings may be required at an appropriate juncture in
3 the proceedings, Apple respectfully submits that there are no additional
substantive disputes to be resolved at this juncture.

4 11. "one or more logical device units"

5 As the Court recognized in its November 1, 2010 Claims Construction Order, it
6 seems that the parties may not have any significant substantive dispute over what
7 the term means. While the Court recognized that further proceedings may be
8 required at a future juncture in the proceedings, Apple respectfully submits that
9 there are no substantive dispute to be resolved at this juncture.

10 In view of the above claim construction disputes, Apple respectfully requests that the
11 Court set further claim construction proceedings to resolve the specific disputes identified in
12 advance of the start of expert discovery. Apple proposes that the parties complete this
13 additional claim construction in accordance with the schedule set forth in Section VIII below.

14 **VIII. SCHEDULING**

15 Due to the outstanding discovery at issue and counsel's unavailability for trial, the
16 parties have met and conferred and jointly propose the following modifications to the case
17 schedule:

18 Event	19 Scheduled Date³	20 Parties' Proposed Dates
21 Opening claim construction 22 brief (to the extent Court deems 23 necessary)	N/A	September 8, 2011
24 Responsive claim construction 25 brief (to the extent Court deems 26 necessary)	N/A	September 22, 2011
27 Further claim construction (to 28 the extent Court deems necessary)	N/A	On or after September 29, 2011, at Court's convenience
All non-expert discovery shall be completed by the parties	August 12, 2011	September 2, 2011
Plaintiff shall disclose expert testimony and reports in accordance with Federal Rule of Civil Procedure 26(a)(2) (Opening Expert Reports)	September 9, 2011	October 28, 2011

³ Set pursuant to the January 28, 2011 Case Management Scheduling Order [Dkt. No. 192] and the June 22, 2011 Order Modifying Case Management Scheduling Order [Dkt. No. 308].

1 2 3	Defendant shall disclose expert testimony and reports in accordance with Federal Rule of Civil Procedure 26(a)(2) (Responsive Expert Reports)	October 14, 2011	November 23, 2011
4 5 6	All discovery of expert witnesses pursuant to Federal Rule of Civil Procedure 26(b)(4) shall be completed	November 4, 2011	December 16, 2011
7	Deadline for pretrial motions to be heard	December 15, 2011	On or after January 26, 2012, at Court's convenience
8	Joint pretrial statement shall be filed	February 2, 2012	March 2, 2012
9 10	Final pretrial conference	February 16, 2012, at 10:00 a.m.	March 16, 2012, at 10:00 a.m., at Court's convenience
11 12	Trial	February 27, 2012 at 9:00 a.m.	March 26, 2012 at 9:00 a.m., at Court's convenience

13 **IX. TRIAL**

14 A jury demand has been made. The parties believe that 8-10 trial days would be
15 necessary to try all remaining issues to a jury.

16 **Elan's Position**

17 Elan respectfully requests that the Court bifurcate the issues for trial, holding a trial on
18 Elan's asserted patents followed by trial on Apple's asserted patents. Such an arrangement is
19 warranted because, although all of the patents-at-issue relate to touch-sensing input device
20 technology, each of the patents claim distinct subject matter, and forcing a single jury to address
21 the different technology in all four patents in the same proceeding would be confusing and
22 burdensome. Moreover, the nature of the parties' accused products are quite different, as Elan
23 makes only components added to other parties' final products, while Apple's accused products
24 are final downstream products. Further, the damages cases will be quite different as Apple
25 imports and sells its products directly in the United States, and Elan sales occur only in Taiwan,
26 with other third parties allegedly importing their own products into the United States that
27 include Elan touchpads. Therefore, it is Elan's position that such bifurcation will be necessary
28 to streamline each party's claims and defenses and avoid jury confusion

1 **Apple's Position**

2 Apple submits that it is premature to decide the structure and staging of a trial in this
3 matter, especially because Apple expects that additional dispositive motions may be filed that
4 may impact the number and nature of claims remaining for any trial. Moreover, although there
5 are four patents-in-suit at issue in this case, all four patents relate to touchpad and touchscreen
6 technology. As a result, there is substantial overlap in the basic concepts and technologies at
7 issue such that a joint trial on all four patents may substantially conserve judicial resources and
8 streamline the jury's understanding of the issues. Moreover, to the extent the Court considers a
9 request for staged trials, Apple submits that it may make sense to try certain Apple claims and
10 Elan claims together based on the technological and subject matter overlap between those
11 claims. Indeed, the subject matter of the two Elan asserted patents are not related to one another
12 and thus are not well-suited to joint trial separate from that on Apple's asserted patents.
13 Regardless, Apple submits that determinations as to what claims should and should not be tried
14 together are best left for pretrial proceedings once it is clear what claims will remain to be tried.

15 **X. DISCLOSURE OF NON-PARTY INTERESTED PERSONS OR ENTITIES**

16 The parties have filed their Certifications of Interested Entities or Persons.

17 DATED: August 1, 2011

Respectfully submitted,

18 ALSTON & BIRD LLP

19
20 By: /s/ Sean P. DeBruine

Sean P. DeBruine

Attorneys for Plaintiff

21 ELAN MICROELECTRONICS CORPORATION
22

23 DATED: August 1, 2011

Respectfully submitted,

24 WEIL, GOTSHAL & MANGES LLP

25
26 By: /s/ Sonal N. Mehta

Sonal N. Mehta

Attorneys for Defendant and Counterclaim Plaintiff

27 APPLE INC.
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FILER'S ATTESTATION

Pursuant to General Order No. 45, Section X (B) regarding signatures, I, Sean P. DeBruine, attest that concurrence in the filing of this document has been obtained.

/s/ Sean P. DeBruine
Sean P. DeBruine