

# EXHIBIT 9

## Greenblatt, Nathan

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**From:** Walter, Derek  
**Sent:** Tuesday, July 26, 2011 8:03 PM  
**To:** Rathinasamy, Palani P.  
**Cc:** Elan Apple Team; Apple Elan WGM Service  
**Subject:** RE: Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Palani:

During our meet and confer, I repeatedly asked you in no uncertain terms whether you were in fact seeking every document generated by every use by any Apple engineer of either the [REDACTED] Tool or Multi-Touch tester tool. You confirmed repeatedly that this was precisely what you were seeking. Below, you explain that you understand these tools to have been available since at least 2003, and that this somehow appropriately limits the scope of your overbroad request. It does not. A request for us to search through the files of individual engineers going back as much as seven to eight years to try to determine whether some subset of Apple engineers may have generated one-off screenshots or log files using one of multiple software tools plainly reflects an overbroad and unduly burdensome request. Likewise, your identification of examples of the type of data you are requesting does nothing to limit the scope of your request or to alleviate the burden of asking Apple to undertake a search apparently aimed at identifying a needle in a haystack. Indeed, you confirmed unambiguously during the meet and confer that you were seeking every single instance of the types of documents you identified in your discovery request.

In fact, there is no reason why you cannot make some effort to reasonably narrow your request. Apple's production includes numerous documents related to the software tools in question, including correspondence regarding their use, which provides you with ample information as to the identities of the Apple engineers who used them. Notably, you have had these documents in your possession for at least a year; by now you should be able to identify the individuals that you believe are most likely to have generated information relevant to your case. The fact that you instead demand that Apple and its attorneys identify every engineer who may have used the tools in question and then search for and collect any data they may have generated is troubling. The notion that you would need remotely this much data for your case is not credible, and you provide no reason to suggest that the data from a targeted set of custodians would be insufficient for your purposes.

Additionally, we note again that Elan did not even serve RFPs 101-104 seeking data from these tools until June 14, 2011, more than two years into the case and long after Elan had notice of the tools in question. As noted above, Apple produced documents relating to these tools over a year ago, including documents that you acknowledge are precisely the sorts of testing results that you are seeking, based on our reasonable search. To the extent Elan claims it now needs more than that, it has not explained its failure to serve these requests until June 14, 2011, more than two months after Elan requested an emergency hearing with the Court demanding that Apple provide the [REDACTED] tool itself. Now, with just a few weeks left in discovery, you demand that Apple undertake a sweeping search through custodial files for every piece of available raw data that may have been generated on the fly from a pair of software tools that you acknowledge date back years and that Apple has already made available to Elan for inspection.

Given the foregoing, Apple's objections are well-founded. Nevertheless, in the interest of compromise, Apple remains willing to discuss a reasonable proposal that we go back and search again for additional data that may have been generated from the use of these testing tools. While Elan has declined to engage in a meaningful discussion on such a search, Apple would agree to search the files of Wayne Westerman and Stephanie Cinereski for additional raw data of the sort you seek, to the extent not already produced. We believe that our offer to go back again and look for such documents in their files is more than reasonable given the circumstances. Please confirm Elan agrees to this proposal or let us know specifically what additional information Elan is requesting.

Thanks,

Derek

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**From:** Rathinasamy, Palani P. [mailto:Palani.Rathinasamy@alston.com]  
**Sent:** Tuesday, July 26, 2011 5:50 PM  
**To:** Walter, Derek  
**Cc:** Elan Apple Team; Apple Elan WGM Service  
**Subject:** RE: Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Derek,

You repeatedly mischaracterize our meet and confer. As I explained during the meet and confer, we request all relevant documents produced by the Apple testing tools. These documents are relevant because Apple has argued and continues to argue that Elan has presented no evidence that Apple performs multi-finger gestures. As you know, the documents requested by Elan show Apple's use of the Accused Products in an infringing manner. Thus, to the extent that Apple continues to argue that Elan has not presented evidence that Apple employees use the Accused Products as claimed by Elan, Elan requests these documents regardless of how the document was generated or who generated the document. Those document are very likely to show Apple's direct infringement.

Your e-mail requests that Elan somehow limit its request to specific custodians. However, you refused to identify *any* Apple custodians who would be involved with the generation of the type of documents requested by Elan. In fact, you failed to identify whether the data has yet been collected from Ms. Cinereski, the employee that I specifically identified and who created one of the tools in question. Regardless, only Apple is in a position to know which of its engineers possessed Apple's testing tools and to gather the requested *relevant* data generated by those engineers. It appears from our conversation that Apple has failed to do the most *basic* research to determine what information Apple itself possesses. This is particularly true when you stated during the meet and confer that Elan somehow knows the contents of Apple's documents better than Apple does.

Finally, your e-mail, not surprisingly, omits that Elan has provided significant guidance as to its request. First, you originally took the position that Elan's request was overly burdensome because it was not limited in time in that it requests data stretching back to 1995. As I explained during the meet and confer, it is our understanding that the [REDACTED] and [REDACTED] tool were created around late 2003 and late 2004 respectively, and that should therefore limit the request in terms of time. In addition, as I explained during the meet and confer, Elan has provided numerous examples of the types of relevant documents in its document request by pointing Apple to specific production ranges and asked that all such data be produced.

To the extent that Apple fails to do the most basic search and instead continues to rely on boilerplate objections, we are at an impasse and Elan will file a motion to compel on this issue.

Regards,

Palani

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**From:** Walter, Derek [mailto:Derek.Walter@weil.com]  
**Sent:** Tuesday, July 26, 2011 5:04 PM  
**To:** Rathinasamy, Palani P.  
**Cc:** Elan Apple Team; Apple Elan WGM Service  
**Subject:** RE: Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Palani:

I write to follow up on our meet and confer on Elan's RFP Nos. 101-04. During our call, you confirmed that you are asking Apple to identify and produce every instance of every document and/or data set generated by any Apple engineer who has ever used either the [REDACTED] or [REDACTED] tool. Put another way, you confirmed

that you were asking us to produce every instance of every document of the exemplary types identified in your discovery request. From the outset of the call, we explained that there was no central repository for such documents at Apple. Moreover, given the age of some of the tools in question, the nature of the data they generate (*i.e.*, seemingly random sets of numbers), and the fact that data from these tools is generated as one-off screenshots or data files ad hoc, it is extremely burdensome to search for the data you seek in the records of individual custodians, if it even exists. This burden is exacerbated by the fact that Elan has known about these tools from Apple's production for well over a year, but waited until the last few weeks of fact discovery to request that we undertake such a sweeping and burdensome search in compressed time.

We thus asked that you narrow your request in some way to make it reasonable. For example, we suggested that you could identify some possible custodians for us to search based on your review of our document production, a proposal we could then consider with our team and client. Although you declined to narrow your discovery requests on our call, we reiterate our willingness to discuss reasonable compromises taking into account the circumstances of your requests and what you are seeking. To the extent Elan declines to consider a reasonable compromise and insists that we search for all document ever generated by any of the tools identified in your discovery request, your request remains extremely overbroad and unduly burdensome, and Apple stands on its objections.

Thanks,

Derek

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**From:** Walter, Derek  
**Sent:** Tuesday, July 26, 2011 1:16 PM  
**To:** Rathinasamy, Palani P.  
**Cc:** Elan Apple Team; Apple Elan WGM Service  
**Subject:** RE: Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Palani:

Are you available at 1:30 today? If so, just call my office at (650) 802-3934.

Thanks,

Derek

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**From:** Rathinasamy, Palani P. [mailto:Palani.Rathinasamy@alston.com]  
**Sent:** Tuesday, July 26, 2011 10:45 AM  
**To:** Walter, Derek  
**Cc:** Elan Apple Team; Apple Elan WGM Service  
**Subject:** RE: Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Derek,

Let's talk at lunch today as I understand that you are sitting second chair in the deposition today. We need an affirmative position today on whether Apple will produce this relevant discovery in light of the fact that fact discovery is closing shortly and due to upcoming 30(b)(6) depositions relating to, inter alia, MT testing tools.

Thanks,

Palani

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**From:** Walter, Derek [mailto:Derek.Walter@weil.com]  
**Sent:** Monday, July 25, 2011 7:57 PM  
**To:** Rathinasamy, Palani P.  
**Cc:** Elan Apple Team; Apple Elan WGM Service  
**Subject:** RE: Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Palani:

I will be in the Marriott deposition tomorrow. Are you available sometime in the early evening tomorrow? Alternatively, Wednesday is fairly open.

Thanks,

Derek

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**From:** Rathinasamy, Palani P. [mailto:Palani.Rathinasamy@alston.com]  
**Sent:** Monday, July 25, 2011 2:32 PM  
**To:** Walter, Derek  
**Cc:** Elan Apple Team; Apple Elan WGM Service  
**Subject:** Re: Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Derek,

Unfortunately 5:30 PM won't work for us today. Are you available tomorrow at 9:30 AM?

Best,

Palani

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**From:** Walter, Derek [mailto:Derek.Walter@weil.com]  
**Sent:** Sunday, July 24, 2011 03:13 PM  
**To:** Rathinasamy, Palani P.  
**Cc:** Elan Apple Team; Apple Elan WGM Service <Apple.Elan.WGM.Service@weil.com>  
**Subject:** RE: Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Palani:

I apologize, I meant to respond to the email below. Will 5:30 PM on Monday work for you?

Thanks,

Derek

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**From:** Rathinasamy, Palani P. [mailto:Palani.Rathinasamy@alston.com]  
**Sent:** Friday, July 22, 2011 11:07 AM  
**To:** Greenblatt, Nathan; Walter, Derek  
**Cc:** Elan Apple Team; Apple Elan WGM Service; Matthew.Powers@tensegritylawgroup.com  
**Subject:** RE: Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Hi Nathan,

How about 10:00 AM on Monday, July 25.

Thanks,

Palani

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**From:** Greenblatt, Nathan [mailto:nathan.greenblatt@weil.com]  
**Sent:** Friday, July 22, 2011 9:42 AM  
**To:** Rathinasamy, Palani P.; Walter, Derek  
**Cc:** Elan Apple Team; Apple Elan WGM Service; Matthew.Powers@tensegritylawgroup.com  
**Subject:** RE: Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Hi Palani,

I am sending this email on behalf of Derek Walter, who is out of the office. Thank you for your email. We are not available to meet and confer today at 1 p.m. Can you propose a time early next week?

Thanks,



**Nathan A. Greenblatt**

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**From:** Rathinasamy, Palani P. [mailto:Palani.Rathinasamy@alston.com]  
**Sent:** Thursday, July 21, 2011 5:43 PM  
**To:** Walter, Derek  
**Cc:** Elan Apple Team; Apple Elan WGM Service; Matthew.Powers@tensegritylawgroup.com  
**Subject:** Elan/Apple: Apple's Response to Elan's RFP Nos. 101-104

Dear Derek,

I write regarding Apple's July 14<sup>th</sup> objections to Elan's Request for Production Nos. 101-104. These requests require that Apple produce documents generated from the tool described in APEL0497107 (RFP 101), Apple's [REDACTED] Tool (RFP 102), Apple's [REDACTED] Tool (RFP 103), and Apple's [REDACTED] or [REDACTED] algorithm, such as those shown in APEL0497107, APEL0500763, APEL0500875, and APEL0501220. Apple has objected to producing these relevant documents as "overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, including without limitation, to the extent it seeks information available to Elan through other sources, including through the inspection or testing of the accused products and/or [Apple tool] made available by Apple, and to the extent it seeks documents and things not related to the accused functionalities of the accused products."

We disagree that this is a valid basis on which to withhold these plainly relevant documents. These documents are relevant to other issues, and will provide information not available to Elan through other sources. For example, this information is relevant and admissible to show that Apple's employees use the accused products in this country in an infringing manner. Apple's reliance on

Elan's inspection or testing of the accused products or Apple's testing tools is unavailing because, as you know, Elan's inspection of the product and testing tools would lead to data generated by Elan – not Apple employees. Thus, the information requested by Elan is both relevant and admissible and Elan requests that Apple immediately produce such documents. Please let us know if you are available to meet and confer tomorrow at 1:00 PM PST regarding this issue.

Best Regards,

Palani

Palani P. Rathinasamy

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