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 13 Apple Inc.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

17 ELAN MICROELECTRONICS
 CORPORATION,
 18
 Plaintiff and Counterclaim
 19 Defendant,
 20 v.
 21 APPLE INC.,
 22 Defendant and Counterclaim
 Plaintiff.
 23

Case No. C-09-01531 RS (PSG)
**APPLE INC.'S MOTION FOR
 SUMMARY JUDGMENT OF
 INDEFINITENESS OF CLAIMS 24, 26,
 AND 30 OF U.S. PATENT NO. 5,825,352**
 DATE: October 20, 2011
 TIME: 1:30 p.m.
 JUDGE: Hon. Richard Seeborg
 CTRM: 3, 17th Floor

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1 **NOTICE OF MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE THAT, subject to the Court’s approval of the parties’
4 stipulation on scheduling (Dkt. No. 425), on October 20, 2011 at 1:30 p.m. Defendant Apple Inc.
5 (“Apple”) will and hereby does respectfully move for summary judgment that claims 24, 26, and
6 30 of Plaintiff Elan Microelectronics Corp.’s (“Elan”) U.S. Patent No. 5,825,352 (“the ’352
7 patent”) are indefinite. The motion is based on the points and authorities herein, the exhibits to
8 the Declaration of Nathan A. Greenblatt submitted concurrently herewith, evidence and argument
9 to be presented at the hearing, and all matters of which the Court may take judicial notice.

10 **I.**

11 **INTRODUCTION**

12 Elan asserts fourteen claims of the ’352 patent against Apple in this case, including
13 means-plus-function claims 24, 26, and 30. For each of these claims, Elan proposes a
14 corresponding structure of certain hardware elements and “software, firmware, or hardware
15 performing the claimed function,” without identify any algorithm in the specification for carrying
16 out the claimed functions. In so doing, Elan proposes exactly the same legally-flawed
17 constructions for claims 24, 26, and 30 that the Court previously rejected as “*plainly inadequate*”
18 for claim 19. *Compare* Exh. A [1st Am. JCCS, Exh. A] at 9-12 (proposing as corresponding
19 structure for claims 24, 26, and 30 “Analog multiplexor 45: Capacitance measuring circuit 70: A
20 to D convertor 80, Microcontroller 60 and/or software, firmware or hardware performing the
21 claimed function.”)¹ *with* D.I. 183 [Claims Construction Order] at 14, 16 (rejecting the identical
22 construction for claim 19 as “plainly inadequate” because “Elan is effectively attempting to use
23 the means-plus-function format to encompass any and all algorithms anyone might devise for
24 performing that function” and finding claim 19 indefinite as a result).² Not only is simply reciting

25 _____
26 ¹ All exhibit citations are to the Declaration of Nathan A. Greenblatt in Support of Apple’s
27 Inc.’s Motion For Summary Judgment Of Indefiniteness Of Claims 24, 26, And 30 Of U.S. Patent
28 No. 5,825,352. Emphasis added and citations omitted, unless otherwise noted.

² While the November 1, 2010 Claims Construction Order stated that “claim 18 of the ’352
patent is indefinite because there is no structure adequately disclosed in the specification to
perform the claimed functions,” D.I. 183 [Claims Construction Order] at 16, the Court entered a

1 “firmware, software or hardware” impermissible, but adding a restatement of the required
2 function adds nothing by way of a disclosure of the corresponding structure to one of ordinary
3 skill in the art. Therefore, regardless of what the ’352 patent specification discloses, Elan’s
4 constructions must be rejected as facially inadequate to satisfy Section 112 ¶ 6.

5 The only remaining question is whether, setting aside Elan’s proposed constructions, the
6 patent specification discloses sufficient structure to render claims 24, 26, and 30 definite. The
7 ITC previously considered this question for claims 24 and 30.³ After prehearing briefing, live
8 expert testimony, post-hearing briefing, and a petition for review, the ITC concluded that “the
9 ’352 patent fails to disclose any structure for performing the described function of claim[s] [24,
10 and 30] as required by 35 U.S.C. § 112 ¶ 6, and hence, that said claim[s] [are] indefinite and thus
11 invalid.” Exh. B [ITC Indefiniteness Order] at 13, 15; *see also* Exh. C [ITC Final Initial
12 Determination] at 2. This result was not surprising, considering that *Elan’s expert squarely*
13 *admitted that the ’352 specification does not disclose an algorithm for either claim 24 or claim*
14 *30*. To wit, Elan’s expert took the legally-erroneous position that the patent “does not need to”
15 disclose an algorithm, because one of ordinary skill in the art would be capable of programming a
16 computer to perform the recited function. Elan took the same position for claim 26 before it
17 dropped the claim. However, the Court has already rejected this argument as “conflating the
18 requirement of *enablement* with definiteness.” *See* Claims Construction Order at 16 (citing
19 *Aristocrat*, 521 F.3d at 1336 (“Enablement of a device requires only the disclosure of sufficient
20 information so that a person of ordinary skill in the art could make and use the device. A section
21 112 paragraph 6 disclosure, however, serves the very different purpose of limiting the scope of
22 the claim to the particular structure disclosed, together with equivalents.”)). A legally-erroneous
23 reliance on the knowledge of one of ordinary skill cannot cure a lack of disclosure in the patent
24 specification. Accordingly, the Court should find claims 24, 26, and 30 indefinite as a matter of
25 law.

26 January 25, 2011 Order Amending Claims Construction Order that clarified that the Court found
27 claim 19 indefinite. D.I. 188 [Order Amending Claims Construction Order] at 1.

28 ³ Elan withdrew claim 26 from the ITC investigation two days before the *Markman*
Hearing.

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II.

CLAIMS 24, 26 AND 30 OF THE '352 PATENT ARE INDEFINITE

Indefiniteness is a question of law. *Praxair, Inc. v. ATMI, Inc.*, 543 F.3d 1306, 1319 (Fed. Cir. 2008). For means-plus-function claims, the scope of these claims must be “defined by the structure disclosed in the specification plus any equivalents of that structure; in the absence of structure disclosed in the specifications to perform those functions,” the claim is invalid for indefiniteness. *Aristocrat Techs., v. Int’l Game Tech.*, 521 F.3d 1328, 1331 (Fed. Cir. 2008). The purpose of limiting the scope of means-plus-functions claims to the structure disclosed in the specification “is to avoid pure functional claiming,” wherein the claim captures all possible methods of performing the recited function “unbounded by any reference to structure in the specification.” *Id.* at 1333 (quoting *Medical Instrumentation & Diagnostics Corp. v. Elekta AB*, 344 F.3d 1205, 1211 (Fed. Cir. 2003)).

For computer-implemented inventions, the Federal Circuit “has consistently required that the structure disclosed in the specification be more than simply a general purpose computer or microprocessor.” *Id.*; *see also Finisar Corp. v. DirecTV Group, Inc.*, 523 F.3d 1323, 1340-41 (Fed. Cir. 2008) (“Simply reciting ‘software’ without providing some detail about the means to accomplish the function is not enough.”); *Net MoneyIN, Inc. v. Verisign, Inc.*, 545 F.3d 1359, 1367 (Fed. Cir. 2008); *Blackboard, Inc. v. Desire2Learn, Inc.*, 574 F.3d 1371, 1383-85 (Fed. Cir. 2009). Rather, for computer-implemented inventions, the specification must disclose the specific algorithm or algorithms that are used to perform the claimed function. *See Encyclopaedia Britannica, Inc. v. Alpine Elecs., Inc.*, 355 Fed. Appx. 389, 393-94 (Fed. Cir. Dec. 4, 2009) (Exh. D) (citing *Aristocrat*, 521 F.3d at 1333). If the patent specification fails to disclose a specific algorithm, the claim is indefinite. *Aristocrat*, 521 F.3d at 1331. That is true “regardless of [the] simplicity” of the algorithm. *Encyclopaedia Britannica*, 355 Fed. Appx. at 395; *see also Minerva Indus., Inc. v. Motorola, Inc.*, 2010 WL 446502, at *15 (E.D. Tex. Feb. 3, 2010) (Exh. E) (“[T]he purported algorithm ‘begin recording’ is just a restatement of the claimed function ‘recording.’ Because the specification does not provide a sufficient algorithm to describe recording, this means-plus function term lacks a corresponding structure and is indefinite.”). If, on the other

1 hand, the patent specification discloses a specific algorithm, then “the corresponding structure for
 2 such claims is the algorithm disclosed in the specification.” *Encyclopaedia Britannica*, 355 Fed.
 3 Appx. at 393. In no case is a claim construction permitted that merely recites “software” as the
 4 structure. *Finisar*, 523 F.3d at 1340-41.

5 As set forth below, Elan has not identified—and the specification does not disclose—the
 6 specific algorithms disclosed for carrying out the claimed functions of claims 24, 26 and 30.
 7 Neither a generic reference to “software, firmware, or hardware performing the claimed function”
 8 nor the opinion of Elan’s expert can cure the inadequacy of the patent’s disclosure.

9 **A. The Specification Fails To Disclose Corresponding Structure For Claim 24**

| Claim Term | Apple’s Construction | Elan’s Construction |
|--|---|--|
| “means for detecting a distance between said first and said second maxima” | This limitation is governed by 35 U.S.C. § 112(6). The recited <u>function</u> is detecting a distance between said first and second maxima. Because the specification does not disclose a corresponding structure, this limitation is indefinite | This limitation is governed by 35 U.S.C. § 112(6). The recited <u>function</u> is detecting a distance between said first and second maxima. The <u>corresponding structure</u> is Analog multiplexor 45, Capacitance measuring circuit 70, A to D convertor 80, Microcontroller 60, and/or software, firmware, or hardware performing the claimed function. |

17
 18 The recited function for claim 24 is detecting a distance between said first and second
 19 maxima. The ’352 patent fails to set forth even a rudimentary algorithm for doing this. Exh. B
 20 [ITC Indefiniteness Order] at 10-13. In the ITC, Elan argued that “column 3, lines 21-26 and
 21 column 6, lines 59-67 in the ’352 patent are examples of disclosure of the function and structure”
 22 for claim 24. *Id.* at 11. Elan further argued that “basic or well-known steps need not be disclosed
 23 once it has been determined that an algorithm is disclosed in the specification.” *Id.* As explained
 24 below, the portions of the specification cited by Elan disclose, at most, (1) the possibility of
 25 determining the distance between a first and second maxima and (2) some reasons for needing to
 26 do so. Moreover, Elan’s argument that “well-known steps need not be disclosed” conflates the
 27 enablement requirement with the required Section 112 ¶ 6 disclosure, as this Court and the ITC
 28 have already concluded.

1 At the ITC *Markman* hearing, Elan’s expert testified as to his understanding of the
2 “textbook” definition of an algorithm:

3 Oh, absolutely. I don’t think there is any way that – an algorithm is a series of
4 steps or a description of the series of steps you would take to perform a
5 computation. And perhaps the textbook style of an algorithm is to set forth the
6 steps and the tests you make to decide which steps to perform. This is an exact
7 representation of an algorithm.

8 Exh. F [ITC *Markman* Tr.] at 242:10-19. The ’352 patent simply does not provide anything
9 approaching a description of a “series of steps” for computing the distance between two maxima.
10 Instead, the specification merely explains that “detection and location of two fingers will permit
11 the touchpad to report to a host system the distance between the two fingers. This can be used,
12 for example, in paint or other programs . . .” Exh. G [’352 Patent] at 3:21-26. Though alluding to
13 the possibility of determining a distance between two fingers, this is nonetheless not a disclosure
14 of an algorithm for actually doing so. Similarly, the patent explains that it is desirable to detect
15 the distance between peaks to “avoid artifacts,” to “limit the maximum distance between the
16 fingers,” and to “ensure that movement of a second or additional button finger is not mistaken for
17 movement of the first or other button finger.” *See id.* at 6:59-67, 8:41-45. However, mere
18 reasons for needing to detect the distance between two peaks still do not remotely reflect an
19 algorithm for carrying out this task. As the ITC concluded, these portions of the specification
20 merely “describe functions and do not disclose any algorithms for performing said functions.”
21 Exh. B [ITC Indefiniteness Order] at 12. Therefore, the ’352 specification fails to set forth even a
22 rudimentary algorithm for performing the recited function of claim 24.

23 Unable to point to an algorithm in the specification itself, at the ITC *Markman* hearing
24 Elan’s expert instead relied upon the knowledge of one skilled in the art, and devised his own
25 algorithm. *See id.* at 12 (“Elan also argued that the well-known step of calculating distance via
26 subtraction need not appear in the specification.”). Briefly, Elan’s expert testified that you could
27 determine the distance between two centroids by, first, identifying the “N” values of the trace
28 elements corresponding to the maxima and then, based on the locations of these “N” values,
computing the distance between the two centroids. *See* Exh. F [ITC *Markman* Tr.] at 342:15-
344:1. However, in describing this algorithm, Mr. Dezmelyk failed to cite anywhere in the

1 specification where it was disclosed. And, on cross-examination, Mr. Dezmelyk conceded that
2 such an algorithm was not actually disclosed in the '352 patent, purportedly because it “doesn’t
3 need to be”:

4 **Q. In fact, it is your opinion, isn’t it, that there is no algorithm disclosed in**
5 **the '352 patent for calculating the distance between two maxima, and you have**
6 **to rely upon the knowledge of one skilled in the art to provide that information?**
7 **Isn’t that your testimony.**

8 **A. Well, it is also true – that is also my testimony.**

9 **Q. So you agree it is not actually disclosed; you have to rely upon one skilled**
10 **in the art would know?**

11 **A. That they would know how to subtract between the two locations where**
12 **the peaks are, yes.**

13 **Q. And that that’s not disclosed in the patent?**

14 **A. It doesn’t need to be.**

15 *Id.* at 361:2-19; *see also id.* at 341:8-13 (Elan’s expert admitting that the patent does not even
16 have a single relevant box in a flow chart: “Q. Now, does the patent have a box like this that says
17 compute distance between centroids? A. No. Q. In one of the flow charts? A. No.”); *id.* at
18 356:2-14 (Elan’s expert confirms on cross-examination that Figure 5 of the '352 patent discloses
19 only “distance between movement of fingers” and not “the distance between a first and second
20 maxima”).

21 As the Court has already held, such reliance on the knowledge of one skilled in the art is
22 insufficient to fulfill Section 112 ¶ 6, regardless of how simple the disclosed function may be to
23 those of skill in the art. *See* Claims Construction Order at 16 (stating that “Elan is conflating the
24 requirement of *enablement* with definiteness.”). The Federal Circuit has unambiguously held that
25 “[a] patentee cannot avoid providing specificity as to structure simply because someone of
26 ordinary skill in the art would be able to devise a means to perform the claimed function.”
27 *Blackboard*, 574 F.3d at 1385. Because Elan points only to the knowledge of one skilled in the
28 art and not to a disclosure in the specification of an appropriate algorithm, it has failed to identify
corresponding structure for claim 24. *See Encyclopaedia Britannica*, 355 Fed. Appx. at 395
 (“Indeed, it is well settled that the specification must disclose the algorithm that transformed the

1 general purpose microprocessor to a ‘special purpose computer programmed to perform the
 2 disclosed algorithm,’ regardless of its simplicity.”) (citation and internal quotations omitted); *see*
 3 *also* Exh. B [ITC Indefiniteness Order] at 12 (“However, the Federal Circuit made clear in
 4 *Encyclopaedia Britannica*, discussed *supra*, that regardless of the simplicity of the algorithm
 5 involved, the specification must “explicitly disclose” an algorithm for performing the claimed
 6 function.”). Accordingly, claim 24 is indefinite.

7 **B. The Specification Fails To Disclose Corresponding Structure For Claim 26**

| Claim Term | Apple’s Construction | Elan’s Construction |
|--|--|---|
| “means for providing a click function in response to the removal and reappearance of said second maxima within a predetermined period of time” | This limitation is governed by 35 U.S.C. § 112(6). The recited <u>function</u> is providing a click function in response to the removal and reappearance of said second maxima within a predetermined period of time. Because the specification does not disclose a corresponding structure, this limitation is indefinite | This limitation is governed by 35 U.S.C. § 112(6). The recited <u>function</u> is providing a click function in response to the removal and reappearance of said second maxima within a predetermined period of time. The <u>corresponding structure</u> is Analog multiplexor 45, Capacitance measuring circuit 70, A to D convertor 80, Microcontroller 60, and/or software, firmware, or hardware performing the claimed function. |

16
 17 The ’352 patent fails to disclose any corresponding structure for performing the function
 18 of “providing a click function in response to the removal and reappearance of said second
 19 maxima within a predetermined period of time.” The claimed function requires that the click
 20 function be provided in response to the removal and reappearance of a second maxima “*within a*
 21 *predetermined period of time.*” Thus, structure corresponding to this function must include some
 22 sort of algorithmic steps or methods for determining the amount of time between touchpad events.
 23 However, as noted above, the patent includes no such disclosure for determining the elapsed time.

24 Elan acknowledged as much during the earlier *Markman* hearing in this case, where, in
 25 attempting to address this issue in the context of claim 19, Elan resorted strictly to the knowledge
 26 of one skilled in the art and disclosures in certain extrinsic evidence. Specifically, Elan was
 27 unable to identify any disclosure pertaining to determining the amount of time the fingers are in
 28 contact with the touchpad, nor was it able to identify any other disclosure pertaining to an

1 algorithm for monitoring the amount of time between touchpad events. Instead, Elan simply
2 asserted that this is something that would be within the knowledge of one skilled in the art and
3 pointed to disclosures related to this issue in references that are completely extrinsic to the '352
4 patent, such as prior art computing devices and patent applications. *See, e.g.*, June 23, 2010 CC
5 Hearing Tr. at 76:19-77:25. In fact, Elan's expert squarely admitted in deposition that the patent
6 discloses no algorithm for performing claim 26. *See* Exh. H [Aug. 17, 2010 Dezmelyk Dep.] at
7 175:3-176:3 (“[Q.] [I]s there any algorithm that considers whether removal and replacement of
8 the maxima happens at a predetermined time as a factor in deciding whether to provide a click
9 function? [A.] *No. But . . . the practitioners would know how to do that.*”). However, as noted
10 above, this sort of reliance on the knowledge of one skilled in the art cannot substitute for a
11 genuine disclosure of corresponding structure. *See, e.g., Blackboard*, 574 F.3d at 1385.

12 In the ITC, Elan likewise failed to identify any disclosure in the '352 patent of an
13 algorithm for providing a click function in response to the removal and reappearance of said
14 second maxima within a predetermined period of time. Instead, Elan asserted that the '352 patent
15 “discusses the *utility* of using the second finger to invoke a ‘click’ function” Exh. I [Elan's
16 Opening ITC Memorandum] at 24. However, the “utility” of carrying out a function is, of course,
17 not the same thing as a disclosure of an algorithm for carrying out the function. In addition, Elan
18 resorted to a discussion of the extrinsic evidence, asserting that “the prior art is replete with
19 examples of touchpads in which the length of times between contacts is used to emulate a button
20 click.” *Id.* Perhaps this is so, but this says nothing whatsoever about the critical question of
21 whether the '352 patent itself includes a disclosure of an algorithm for carrying out the claimed
22 function. *See Aristocrat*, 521 F.3d at 1336 (explaining the difference between an enabling
23 disclosure and a disclosure that satisfies Section 112 ¶ 6 and noting “the pertinent question in this
24 case is whether Aristocrat's patent discloses structure that is used to perform the claimed
25 function.”). Finally, Elan cited to the material at 11:24-28 in the '352 patent, which, far from
26 being a disclosure of an algorithm, is a single sentence asserting that various control functions
27 have been implemented in the prior art. Utterly failing to identify anything in the '352 patent that
28 constitutes the disclosure of an algorithm for carrying out the function of this claim element, Elan

1 essentially acknowledged that Claim 26 is indefinite, and, two days before the ITC *Markman*
 2 hearing, unceremoniously dropped the claim from those proceedings. *See also* Exh. J [Staff’s
 3 ITC CC Memorandum] at 21 (“Elan’s argument simply confirms that the specification is devoid
 4 of corresponding structure.”). Claim 26 is indefinite.

5 **C. The Specification Fails To Disclose Corresponding Structure For Claim 30**

| Claim Term | Apple’s Construction | Elan’s Construction |
|---|--|---|
| “means for calculating first and second centroids corresponding to said first and second fingers” | <p>This limitation is governed by 35 U.S.C. § 112(6).</p> <p>The recited <u>function</u> is calculating first and second centroids corresponding to said first and second fingers.</p> <p>Because the specification does not disclose a corresponding structure, this limitation is indefinite</p> | <p>This limitation is governed by 35 U.S.C. § 112(6).</p> <p>The function is calculating first and second centroids corresponding to the first and second fingers.</p> <p>The <u>corresponding structure</u> is Analog multiplexor 45, Capacitance measuring circuit 70, A to D convertor 80, Microcontroller 60, and/or software, firmware, or hardware performing the claimed function.</p> |

14 The ’352 patent also fails to disclose any algorithm for “calculating first and second
 15 centroids corresponding to said first and second fingers.” In fact, purportedly for the purpose of
 16 “clarity,” the ’352 patent specifically omits a description of an algorithm for performing this
 17 function:

18 In accordance with the present invention, two approaches may be used in
 19 calculating centroid values. ***In a first implementation, only a single centroid***
 20 ***value is calculated*** for the combination of one or more fingers. In this
 21 arrangement, it will be apparent that, when a second finger contacts the touchpad,
 22 the centroid ‘jumps’ laterally approximately to the midpoint of the two fingers. ***In***
 23 ***a second implementation, a centroid value may be calculated for each maxima,***
 24 ***yielding multiple centroid values when multiple fingers interact with the pad. For***
 25 ***purposes of clarity, the following description will be limited to the first***
 26 ***implementation.***

27 *See* Exh. G [’352 Patent] at 10:31-45 (emphasis added). Explicitly limiting the disclosure to the
 28 description of an algorithm for calculating “only a single centroid value,” the ’352 patent all but
 acknowledges that there is no disclosure of an algorithm for calculating two centroids. In these
 circumstances, claim 30 must be held indefinite.

At the ITC *Markman* hearing, Elan’s expert appeared to take the position that

1 corresponding structure for this means-plus-function element actually includes Figs. 6-2 and 9-2.
2 Exh. F [ITC *Markman* Tr.] at 350:7-17. Strangely, although Mr. Dezmelyk took this position, he
3 acknowledged that these figures *did not actually disclose calculating two centroids*, but instead
4 “calculating centroid across all of the number of fingers that are present.” *Id.* As to the actual
5 calculation of two separate centroids, Mr. Dezmelyk failed to cite any portion of the specification
6 that disclosed this process or that provided this alleged definition. He ultimately conceded on
7 cross-examination that the patent did not disclose how to compute a first and second centroid:

8 Q. All right. And you then cited to column 10, lines 31 to 51, for the
9 proposition that the patent says you can calculate the centroids for two fingers.
Do you recall that?

10 A. That’s correct.

11 Q. But at that column 10, line 31 to 51, it does not say how to do so, does it?

12 A. It does not because *it does not need to*.

13 Q. *In fact, nowhere in the ’352 patent is there a disclosure of how to*
14 *compute the centroids, first and second centroids corresponding to the first and*
15 *second fingers. You are relying upon the knowledge of skill in the art to supply*
that information, aren’t you?

16 A. *Because, yes, because a person of skill in the art already knows what*
that means when they say that.

17 *Id.* at 362:15-363:7. Thus, rather than rely on the disclosure of the ’352 patent itself, Mr.
18 Dezmelyk again ultimately relied only on the knowledge of one skilled in the art. *See also id.* at
19 117:8-118:6 (Apple explains that Mr. Dezmelyk conceded in his district court deposition that
20 there was no disclosed algorithm for calculating the centroid for each of the two fingers as
21 opposed to one centroid “[b]ecause the design people would have known exactly how to do that”
22 and because “[y]ou don’t need to disclose that at the time”). However, as the Court has already
23 concluded, this sort of reliance on the knowledge of one skilled in the art is insufficient,
24 regardless of how simple the disclosed function is. *See* Claims Construction Order at 16 (stating
25 that “Elan is conflating the requirement of *enablement* with definiteness.”); *see also* Exh. B [ITC
26 Indefiniteness Order] at 12 (“However, the Federal Circuit made clear in *Encyclopaedia*
27 *Britannica*, discussed *supra*, that regardless of the simplicity of the algorithm involved, the
28 specification must “explicitly disclose” an algorithm for performing the claimed function.”).

1 Thus, there is no corresponding structure for claim 30 and the Court should rule accordingly.

2

III.

3

CONCLUSION

4

For the above reasons, summary judgment should be granted that claims 24, 26 and 30 of

5

Elan's '352 patent are indefinite.

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Dated: September 14, 2011

TENSEGRITY LAW GROUP LLP

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WEIL, GOTSHAL & MANGES LLP

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By: /s/ Jared Bobrow

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Jared Bobrow

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Attorneys for Defendant and
Counterclaim Plaintiff Apple Inc.

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