Exhibit F

BEFORE THE

UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:	)	Investigation No.
CERTAIN ELECTRONIC DEVICES	)	337-TA-714
WITH MULTI-TOUCH ENABLED	)	
TOUCHPADS AND TOUCHSCREENS	)	

Hearing Room B

United States

International Trade Commission

500 E Street, Southwest

Washington, D.C.

Wednesday, August 18, 2010

MARKMAN HEARING, VOLUME I

The parties met, pursuant to the notice of the Judge, at 12:00 noon.

BEFORE: THE HONORABLE PAUL J. LUCKERN

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*** Index appears at end of transcript ***

P R O C E E D I N G S

(12:00 p.m.)

JUDGE LUCKERN: This is a Markman hearing in the matter of Certain Electronic Devices with Multi-Touch Enabled Touchpads and Touchscreens, Investigation 337-TA-714.

It is pursuant to Order Number 8, which was issued on June 22nd, 2010.

I would like to have the record reflect who is in the hearing room. So we will start out with Complainant, who filed the complaint. That's why we're here today. So let's hear from Complainant. They are the Complainant, who represents Complainant, and move down the line with Respondents and the Staff. Go ahead.

MR. DeBRUINE: Thank you, Your Honor. Good afternoon. Sean DeBruine from Alston & Bird on behalf of Elan Microelectronics. With me here today is my colleague, Adam Swain, from our office here in Washington, D.C., and also Alex Lasher. I should say Mr. Brinkman was unfortunately called away on a personal matter, and he sends his regards, but he is unable to be with us today.

To my left is Yitai Hu, who is my partner at Alston & Bird in Silicon Valley. And, finally, with us at counsel table is Wayne Jong, who is representing Elan Microelectronics. He is with us from Taiwan.

JUDGE LUCKERN: All right. Thank you. Please be seated. Let's hear from Respondents. You can stay seated if you want to or you can stand. It makes no difference to me.

MR. DeBRUINE: Your Honor, I forgot perhaps our most important guest, Robert Dezmelyk, Elan's expert, is here.

JUDGE LUCKERN: All right. Thank you. Let's hear from Respondents.

MR. POWERS: From Weil Gotshal, Matt Powers, Mark Davis, Jared Bobrow and Sonal Mehta. And from Apple, Noreen Krall.

JUDGE LUCKERN: Let's hear from the Staff.

MR. BAER: Good afternoon, Your Honor, Kevin Baer for the Staff.

JUDGE LUCKERN: All right. We're on the public record. But as you know, I would like to keep as much as we can on the public record, but if we have to go on the

I will read into the record JX-7.

JUDGE LUCKERN: I have it here. Let me get it, please. Again, I just -- all right. Well, I don't have JX-7. Go ahead. Well, I do have JX-7. Get me JX-7. I've got JX-7 in front of me.

MR. POWERS: JX-7 is Mr. Dezmelyk's deposition in the District Court case. And if you go to the page at the bottom which is JX-7.053, on that page, page 208 of the transcript, lines 17 to 23, there is a precise question about the actual function, and the question and answer is as follows:

"Question: And as part of these flowchart descriptions, is there any algorithm here that says I'm going to take this set of numbers and I'm going to perform this calculation in this way to come up with these statistics between these two points?

"Answer: No, because the practitioners already know how to do that."

That's a perfect example of what Aristocrats and other cases have said you can't do, which is add an algorithm from the supposed knowledge of one skilled in the art to what's

missing.

So the next citation, Your Honor, is in the means for calculating the centroids. That's from JX-7 at page 205, Your Honor. That appears at JX-7.052, line 22, continuing over to 206. For some reason I don't have that in front of me. Let me get it.

So, Your Honor, from the transcript at page 205, line 22, continuing over onto line page 206, line 12, the question is:

"Question: Now, is there any algorithm described performing that function of calculating first and second centroids corresponding to said first and second fingers?"

And the answer that starts on page 206, Your Honor, is:

"Answer: Well, there is an algorithm that explains how to calculate a certain example of calculating a centroid across a pair. But practitioners at the time would have known how to compute a centroid at a single peak as opposed to the whole set.

"Question: And what I am asking is whether there is an algorithm in the '352

patent that says here is how you calculate the centroid for each of the two fingers as opposed to one centroid across the pair?

"Answer: No. Because the design people would have known exactly how to do that. You don't need to disclose that at the time."

In each case when there is a question about whether there is an algorithm for performing the exact function of a claim, the answer comes back, no, that's something that those skilled in the art would have known how to do.

And that's the problem we have, Your Honor.

MR. DeBRUINE: That, Your Honor, goes to claims we haven't even discussed yet. We haven't gotten to the particular claims he was saying there was an admission on.

I disagree that that is an admission that there is insufficient structure disclosed in the patent in any way, shape, or form. Mr. Dezmelyk will further explain why that is, when the entirety of the patent is read as would be understood by one of ordinary skill in the art, as opposed to someone who, you know, has no

A. Well, it discloses determining a distance between two points on the touchpad by subtracting the location.

In the case of a moving finger, you want to know the difference between where you were at the first moment and where you are at the second moment. So it shows there subtraction of the location.

Q. For example, would this be in figure 5? 510?

A. Yes, the subtraction and position is shown in figure 5. The detection of distance based on valley depth, I believe, is in 6-2, if I am correct.

Q. And let me pull up figure 5, please. 510, so we have JX-1, figure 5.

Can you point specifically where the calculation of the distance between two points on a touchpad is?

A. Sure. The distance calculation is shown at the bottom left in block 510, where the motion X is shown as the distance between the -- the subtraction of the current location in X minus the previous location in X is the change in X or Xmotion.

That's showing that we can determine -- and I think this is probably a pretty clear idea -- that the difference between two locations is the distance between them. That is, if you were at one location and you moved to another location, a subtraction gives you, of course, the distance you moved.

Q. Now, does the patent have a box like this that says compute distance between centroids?

A. No.

Q. In one of the flow charts?

A. No.

Q. Is that necessary to disclose an algorithm, in your opinion?

A. Well, it is not necessary to provide an explanation of how you get distance by subtracting. I think that's a pretty known -- it is not even a term of the art or something known in the art, it is just a known concept that if you have one location and another location, that you can subtract to get the distance between them.

Q. So is it your opinion that the disclosure of the patent when it talks about

competing that distance and discloses how distances are computed on the touchpad that it discloses structure for computing the distance between two maxima?

A. Yes, because it discloses how to identify the locations of the two maxima, and so when you have done that, when you found the value, the N corresponding to the first peak and the N corresponding to the second peak, you inherently know that there is a distance between them because you found them and they are two separate values of N. The subtraction between those two give you the distance between them.

Q. And did you create slides to illustrate that?

A. Yes, I did.

Q. Can we have CDX-149, please.

Is this a slide that you prepared?

A. This is figure 3, right? This is the slide that shows a profile. I am using figure 3 from the patent which shows an example profile with two maxima and a minima in between.

And even before we do much of a

calculation on it, we know that the two maxima have a distance. We have detected a distance between them, as soon as we find them.

Q. And how do you mean "we have detected a distance"?

A. Well, let's step on the next slide. I think we have showing where they are. Each -- in the algorithm, it is 6-2, the algorithm steps along by element to find which N is the N at the peak or at the maxima. The first one in this case, of course, is N equals 13.

And then when we get to the second maxima, this is at N equals 24. And at the point in time where you have made the determination that you have the two peaks, you have found these two values.

JUDGE LUCKERN: These two values are what?

THE WITNESS: N equal to 13 in this example. This is the 13th element. And then N equal to 24, the 24th element at 95 on the profile.

And to a practitioner, as soon as I have those two numbers, I have detected the distance, because I know the location of the

two items.

MR. DeBRUINE: Slight change in plans. We're going to do the two very brief means-plus-function claims on direct and allow cross, if that is acceptable to the Staff, and we can be sure to wrap up.

One other question, though, on --

JUDGE LUCKERN: Let me ask the witness this: Of course, Apple in its memorandum in support of the motion for summary determination and claim construction in connection with the claim phrase "means for detecting a distance between said first and second maxima" at page 56, I mean, I can show it to you. Presumably you know what they said. They said the '352 patent fails to set forth even a rudimentary algorithm for doing this.

To the contrary, the specification discloses a most, et cetera, et cetera, et cetera.

Did you get into this in your two declarations, CX-24 and CX-25? Have you elaborated on that in those two declarations?

THE WITNESS: I know, Your Honor, in CX-25 where I am rebutting their position.

JUDGE LUCKERN: Where is it in CX-25?
THE WITNESS: Let me look at that.
JUDGE LUCKERN: What paragraph?
MR. DeBRUINE: We can look on page 24, I believe would be where it begins, Your Honor.
THE WITNESS: Thank you. Your Honor, CX-25 beginning at paragraph 43 and continuing through paragraph 47.
JUDGE LUCKERN: In other words, it would be 43 and 44, 45, 46 and 47?
THE WITNESS: 43, 44, 45, 46, and 47.
JUDGE LUCKERN: All right. Anything in CX-24?
THE WITNESS: I don't recall immediately. I can look for you. Hang on.
JUDGE LUCKERN: Well, we're under a tremendous time bind. You can look quickly.
MR. BAER: You may want to look at CX-24, page 23.
JUDGE LUCKERN: Can you look at that and tell me what the record, what paragraph that is?
THE WITNESS: It is, Your Honor, CX-24, paragraph 33. That paragraph. The single paragraph.

JUDGE LUCKERN: That's it? All right.

Go ahead, Mr. DeBruine, with what you were saying. I interrupted you. Hold on a minute.

You said, you said the question, "Slight change in plans. We're going to do the two" -- well, what about cross-examination?

MR. POWERS: The question really is up to you, Your Honor. Mr. DeBruine asked if he could do two terms at once. I said I had no objection. If you would rather do it term by term, we will do it term by term.

JUDGE LUCKERN: However you people have been living in this matter and close to it. I want to make sure you and Mr. Baer get an opportunity to do cross-examination. So I have an open mind. Whatever you people are agreeable to, it is fine with me.

Mr. DeBruine said we're going to do the two very brief means-plus-function claims on direct and allow cross, if that is acceptable to the Staff.

Then I guess you are going to cross on this term tomorrow morning. Is that what you want to do?

MR. POWERS: Actually, no. If we can finish these both terms tonight, then I would agree to the proposal.

If Mr. DeBruine's direct is five minutes or so, I think we will have no problem. If he is going to do 10 or 15 minutes direct on this term, then we won't finish cross, and I would rather do it term by term.

MR. DeBRUINE: We should be done with direct in five minutes on the next and last means-plus-function term, Your Honor.

MR. POWERS: In that case, I have no objection proceeding that way. It is really up to you.

JUDGE LUCKERN: Are you going to have an opportunity to do any cross on this term?

MR. POWERS: Exactly.

JUDGE LUCKERN: The term we just finished.

MR. POWERS: Yes. If Mr. DeBruine is only five minutes on the next term, I will have time to do cross on both terms and finish it today.

And I don't know how much time Mr. Baer has. So if he has more time, then I think

we should do it term by term, because we should finish a term.

JUDGE LUCKERN: How about the cross-examination of what we just finished this witness testifying to? Are you going to do any cross on that?

MR. POWERS: Oh, yes.

JUDGE LUCKERN: When do you plan to do that in this scenario you are doing now?

MR. POWERS: If Mr. DeBruine finishes in five minutes with the next term, I would cross on both terms, and I can finish, leaving Mr. Baer at least five to seven minutes for both. If that's not enough, we should do it term by term.

JUDGE LUCKERN: I want to say this. You people have been living with this matter for months. You are well familiar with it. I don't want to deprive anybody of any cross-examination or redirect they want.

So I am not going to bring it up again. But you got to bring it up to me because I certainly, if you want cross, you are going to get it.

If nobody says anything, Mr. Baer, you

say nothing tomorrow, and where we go, I am not going to say, Hey, what about this?

Do you understand what I am saying, Mr. Powers?

MR. POWERS: I do.

JUDGE LUCKERN: You have got enough smart lawyers over there. They are not going to let you forget anything.

I want to make sure -- so right now you are agreeable to what Mr. DeBruine wants to do; is that correct, Mr. Powers?

MR. POWERS: Yes, it is.

JUDGE LUCKERN: You are agreeable, Mr. Baer? And you heard me. You are entitled to cross. I want you to do whatever cross you want to do, but you have to bring it up the me. Do you understand what I am saying?

MR. BAER: Yes, Your Honor.

JUDGE LUCKERN: Are you agreeable with what Mr. DeBruine wants to do right now?

MR. BAER: Yes.

JUDGE LUCKERN: Let's move on. It is 20 minutes to 8. But go ahead.

BY MR. DeBRUINE:

Q. Let's move to the next slide, please.

Sir, are you familiar with claim 30 of the '352 patent which reads, "the sensor of claim 18 further comprising means for calculating first and second centroids corresponding to said first and second fingers"?

A. Yes, I am.

Q. Can you explain where the patent discloses how one calculates first and second centroids corresponding to the first and second fingers?

A. Well, the patent discloses calculating centroid across all of the number of fingers that are present.

Q. And does it do that in figure 6-2 and 9-2?

A. Right.

Q. Can we go to CDX-154, please.

Can you briefly describe what is shown here?

A. Right. Quickly, in 6-2, 9-2 is the same, very similar in terms of this. Block 295, the calculation is made of, after we have summed up in 6-1, the elements of the centroid calculation, we divided the weighted sum by the

sum and we get the exposition.

Q. So the centroid calculation will be affected by how many of the, in this case, the X measurements are used in the calculation; is that correct?

A. Right. It would be clearer on, if we look at 6-1, but, yes.

Q. All right. Let's pull up JX-1 and get figure 6-1, please.

Okay. And can you explain where, how the centroid calculation is shown in 6-1?

A. The key element in centroid calculations is the steps at 215 and 220 where the X sum is created for each element in X, and then the weighted sum is created by adding up and adding together the line number or position in the profile times value of the capacitance measured at that point.

Q. And in this, I think you said in this algorithm it assumes a centroid calculated across all of the N locations; is that correct?

A. That's correct.

Q. All of the X locations.

Does the patent discuss calculating separate centroids for two different fingers?

A. It certainly says you can do it.

Q. And if we pull up CDX-155. Here we're showing the '352 patent at column 10, line 31 to 51.

Is there a discussion here of calculating the centroids for two separate fingers?

A. Yes, there is. It reads: "In a second implementation, a centroid value may be calculated for each maxima, yielding multiple centroid values when multiple fingers interact with the pad."

Q. Okay. And so, in your view, does the patent disclose the structure for calculating a first and second centroid?

A. Yes, it does.

Q. And go ahead.

A. The reason is that if we go back to look at very specifically, if we look at 6-1, the formula for a centroid is that you move through a profile and you add up the products of each, for each of the elements going element-by-element here, and all you have to do, to do two of them, is start at the beginning and stop, when you get to the

minimum. Because that, of course, that valley point is the difference between the first and the second.

And it is not like maybe you can do it that way or sort of do it that way. That would be the definition of a centroid for each of the two maxima.

So you simply compute the centroid on the first half until you get to the minimum point, and you know the minimum point right here (indicating). Because the valley point --

JUDGE LUCKERN: Right here?

THE WITNESS: Right here at 262.

JUDGE LUCKERN: Thank you.

THE WITNESS: My apologies. You know at that point when you make this determination that you have now found the valley, the N, the value of N that causes the valley is the point at which you are now going uphill on to the hill of the second maxima.

So you simply compute the centroid for the first half of the data and then the centroid for the second half.

BY MR. DeBRUINE:

Q. Did you create a slide to illustrate

that concept?

A. Yes, I did.

Q. Can we have CDX-51, please.

Can you explain what you show here?

A. I am just showing from the example profile in the patent where 90 shows the location in the minimum. You simply, if you want to compute two separate centroids, you simply compute the centroid for the first profile using the exact same algorithm summing up and so forth that is set in that same exact step of multiplying the value of N, the trace, times the capacitance, adding them up, and then you start again and do the exact same thing for the second one.

It is such a minimum point change to a practitioner you know by definition when somebody tells you to compute a centroid for a particular object that you simply start at the beginning of it and go to the end of it.

In this case, that first maxima is all over the capacitance values until you get to the minima, which is separating the two, the two peaks.

MR. DeBRUINE: No further questions --

JUDGE LUCKERN: All right.

MR. DeBRUINE: -- on this claim element.

JUDGE LUCKERN: Go ahead, Mr. Powers.

MR. POWERS: Thank you, Your Honor. I will begin with claim 24.

So, Matt, if we could bring that up.

And, Your Honor, this is the term of means for detecting a distance between first, said first and second maxima.

JUDGE LUCKERN: Okay.

CROSS-EXAMINATION

BY MR. POWERS:

Q. Mr. Dezmelyk, you were asked on your direct testimony a very carefully asked series of questions about whether the patent teaches how to detect a difference between two points on a touchpad.

Do you recall that line of questions and your answers?

A. Yes.

Q. That's not what the claim 24 says, is it? It says specifically detecting the distance between first and second maxima. Right?

A. That's correct.
Q. And you gave us two examples in your direct testimony. One was in figure 5 which detects or computes the difference between movement of the cursor, right, or movement of the fingers?
A. What I gave there was an example of subtraction to show distance.
Q. And specifically distance between movement of fingers, right?
A. Between the locations of fingers, yes.
Q. Not the distance between a first and second maxima, right?
A. Right.
Q. The second example and last example you gave is from 6-2, which is measuring the distance between a peak and a valley, true?
A. No. I think that -- and I'm sorry, I don't have a tape to look at, but what I was attempting to explain is that the patent teaches that the difference in height between peak and valley is a measure of distance for close separation and that they explain that in the text.
And then they show that you can test

based on that. You can detect the distance and, therefore, know if you are too close by making a comparison of that measure or detection of distance.

Q. Nothing in 6-2 that you were relying upon discusses in any way computing the distance between a first and second maxima, does it, as claim 24 requires?

A. I disagree.

Q. It doesn't --

A. If we look at 6-2, I would be happy to direct you to the spot where your --

Q. Your last testimony was not about the distance between one maxima and another but between the height of the maxima and the valley, right?

A. No. You are misinterpreting my testimony.

Q. Let's go to 6-2 and blow it up.

Show us what in figure 6-2 discusses measuring the distance between the two maxima. That's the question.

A. 305.

Q. And where does it do so?

A. Well, the patent explains in text, and

we can find the citation, that this measure, that is, the distance, the height variation --

JUDGE LUCKERN: You are referring to 305?

THE WITNESS: Perhaps it would be helpful to find the citation for you and make my answer clearer.

BY MR. POWERS:

Q. When you say the "height variation," you are referring to the distance, the difference in height between the peak and the valley, right?

A. No. Let me take a moment to find the citation, if I can, sir.

Q. Where it says Xpeak1 --

JUDGE LUCKERN: He is looking for something that he wants to find, Mr. Powers. And then you can continue, Mr. Powers.

BY MR. POWERS:

Q. You might want to look at column 10, line 52.

A. Right. That's one part of it. But there is another citation I am looking for.

Q. All I am looking for is the part you are relying upon to say that figure 6-2 in some

way expressly discusses measuring the distance between two maxima. That's all I am looking for.

MR. DeBRUINE: Might I suggest the witness look at the bottom of column 6?

JUDGE LUCKERN: Speak up.

MR. DeBRUINE: Suggesting that the witness look at the bottom of column 6 of the patent.

MR. POWERS: I will object to the leading during cross. The question is, what is the witness relying on?

THE WITNESS: The bottom of column 6, which I was having a hard time finding.

JUDGE LUCKERN: Wait a minute now. We have got an objection. Leading during cross.

I am going to overrule that objection. He is just trying to help. Look at column 6.

So whatever you want to do, you got lines, Mr. DeBruine, to refer to in column 6?

MR. POWERS: Let's put Mr. DeBruine under oath, and I will cross-examine him.

THE WITNESS: Okay. I still don't have the exact citation I want, but I am going to testify in the hope that we can locate or

perhaps I can locate or point to this.

The patent discloses that --

BY MR. POWERS:

Q. I am not asking -- no, no, let's be clear what the question is.

I am asking for a very specific citation where the patent discloses expressly computing the distance between two maxima. I don't want generalizations. I want you to show me where it is.

A. Well --

Q. Can you do that? Yes or no.

A. Yes.

Q. Where?

A. And my answer is that this step is a measure or a test --

JUDGE LUCKERN: 305 step.

THE WITNESS: 305, because the patent teaches, and I can find the citation, given a few more moments, that as the fingers get close together, the depth of the valley varies with the separation.

That is, the difference between the peak and the valley is proportional between the difference between the peaks, the fingers.

BY MR. POWERS:

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

A. Well, it is also true -- that is also my testimony.

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

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

Q. And that that's not disclosed in the patent?

A. It doesn't need to be.

Q. But it is not disclosed, is it?

A. It is -- the patent does not tell the practitioner you need to subtract the locations to get the distance between the location of the first peak and second peak. You need to subtract the two numbers.

Q. All right. So let's go then to claim 30. Matt, could you put that up, please.

Claim 30 requires means for calculating first and second centroids corresponding to said first and second fingers.

And in your testimony you cited box 215 and 220 of 6-1. Do you recall that?

A. Yes.

Q. That's a means for computing the centroid for the entire touchpad, isn't it, not two fingers?

A. I explained that -- well --

Q. Answer the question, please.

A. Yes.

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

A. That's correct.

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

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

Q. In fact, nowhere in the '352 patent is there a disclosure of how to compute the

centroids, first and second centroids corresponding to the first and second fingers. You are relying upon the knowledge of skill in the art to supply that information, aren't you?

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

MR. POWERS: No further questions, Your Honor.

JUDGE LUCKERN: All right. Mr. Baer?

EXAMINATION BY COUNSEL FOR ITC STAFF

BY MR. BAER:

Q. Could I get you to look at the patent, figure 5. It may magically appear. Comes up on the screen.

A. Okay, thank you.

Q. And box 520.

A. Yes.

Q. That's measuring the motion of one finger being pulled across the screen; is that correct?

A. That's correct. And I think there may be some confusion.

The reason I cited to that is it explains -- it is a disclosure of how

CERTIFICATE OF REPORTER

TITLE: Certain Electronic Devices w/Multi-Touch enabled Touchpads & Touchscreens
INVESTIGATION NO: 337-TA-714

HEARING DATE: August 18, 2010

LOCATION: Washington, DC

NATURE OF HEARING: Markman Hearing

I hereby certify that the foregoing/attached transcript is a true, correct and complete record of the above-referenced proceedings of the U.S. International Trade Commission.
Date: 8/18/10

SIGNED:KAREN BRYNTESON_____

Signature of the Contractor of the Authorized Contractor's Representative
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I hereby certify that I am not the Court Reporter and that I have proofread the above-referenced transcript of the proceedings of the U.S. International Trade Commission, against the aforementioned Court Reporter's notes and recordings, for accuracy in transcription in the spelling, hyphenation, punctuation and speaker identification and did not make any changes of a substantive nature. The foregoing/attached transcript is a true, correct and complete transcription of the proceedings.

SIGNED:JOHN D. LASHER _____
Signature of Proofreader

I hereby certify that I reported the above-referenced proceedings of the U.S. International Trade Commission and caused to be prepared from my tapes and notes of the proceedings a true, correct and complete verbatim recording of the proceedings.

SIGNED:KAREN BRYNTESON _____
Signature of the Court Reporter