

1 Yitai Hu (SBN 248085)
 (yitai.hu@alston.com)
 2 Sean P. DeBruine (SBN 168071)
 (sean.debruine@alston.com)
 3 S.H. Michael Kim (SBN 203491)
 (michael.kim@alston.com)
 4 C. Augustine Rakow (SBN 254585)
 (augie.rakow@alston.com)

5 **ALSTON & BIRD LLP**
 Two Palo Alto Square
 3000 El Camino Real, Ste 400
 Palo Alto, CA 94306-2112
 Phone: (650) 838-2000
 Fax: (650) 838-2001

8 T. Hunter Jefferson (admitted pro hac vice)
 (hunter.jefferson@alston.com)

9 **ALSTON + BIRD LLP**
 One Atlantic Center
 1201 West Peachtree Street
 Atlanta, GA 30309-3424
 Telephone: 404-881-7333
 FACSIMILE: 404-253-8863

13 Attorneys for Plaintiff
 ELAN MICROELECTRONICS
 CORPORATION

MATTHEW D. POWERS (Bar No. 104795)
 matthew.powers@weil.com
 EDWARD R. REINES (Bar No. 135960)
 edward.reines@weil.com
 SONAL N. MEHTA (Bar No. 222086)
 sonal.mehta@weil.com
WEIL, GOTSHAL & MANGES LLP
 Silicon Valley Office
 201 Redwood Shores Parkway
 Redwood Shores, CA 94065
 Telephone: (650) 802-3000
 Facsimile: (650) 802-3100

Attorneys for Defendant and
 Counterclaim Plaintiff,
 APPLE INC.

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

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

Case No. C-09-01531 RS (PVT)
 JOINT CLAIM CONSTRUCTION AND
 PREHEARING STATEMENT
 Hon. Richard Seeborg
 Claim Construction Hearing:
 May 12, 2010, 9:30 am

1 Pursuant to Northern District of California Patent Local Rule 4-3, Elan
2 Microelectronics Corporation (“Elan”) and Apple Inc. (“Apple”) jointly submit this Joint Claim
3 Construction and Prehearing Statement.

4 I. PROPOSED CLAIM CONSTRUCTIONS AND SUPPORTING EVIDENCE

5 Pursuant to Patent Local Rule 4-2(c), the parties have met and conferred regarding
6 the submission of this Joint Claim Construction and Prehearing Statement. The proposed
7 constructions and supporting evidence for U.S. Pat. Nos. 5,825,352 (“the ‘352 patent”), 7,274,353
8 (“the ‘353 patent”), 5,764,218 (“the ‘218 patent”), 7,495,659 (“the ‘659 patent”), and 6,933,929
9 (“the ‘929 patent”), including agreed constructions, are identified in Exhibits A to E hereto,
10 respectively. As noted in Exhibits A to E, the parties anticipate proffering expert evidence on
11 claim construction. The parties have agreed to exchange expert reports concerning the
12 construction of disputed terms on February 19, 2010.

13 Pursuant to Patent Local Rule 4-3(c), the parties jointly identify the following
14 terms as most significant to resolution of the case:

- 15 1. ‘353 patent: “a first pattern on said panel for representing a mode switch to
16 switch said touchpad between a key mode and a handwriting mode,” “a
17 first pattern on said panel for representing a mode switch to switch said
18 touchpad between a key mode and a mouse mode,” and “a first pattern on
19 said panel for representing a mode switch to switch said touchpad between
20 a mouse mode and a handwriting mode”¹ **(identified by both parties)**
- 21 2. ‘353 patent: “a plurality of second patterns on said plurality of regions for
22 operation in said key and handwriting modes,” “a plurality of second
23 patterns on said plurality of regions for operation in said key and mouse
24 modes,” and “a plurality of second patterns on said plurality of regions for
25 operation in said mouse and handwriting modes”² **(identified by both
26 parties)**
- 27 3. ‘352 patent: “identify a first maxima in a signal corresponding to a first
28 finger,” “identify a minima the following the first maxima” and “identify a
second maxima in a signal corresponding to the second finger following
said minima”³ **(identified by Apple)**

1 The parties contemplate that these terms will be briefed together because the dispute is the same for each of the parallel limitations.

2 The parties contemplate that these terms will be briefed together because the dispute is the same for each of the parallel limitations.

3 Apple contemplates that these terms will be briefed together because the dispute is the same for each of the parallel limitations.

- 1 4. '352 patent: "identify" (**identified by Apple**)
- 2 5. '352 patent: "in response to" (**identified by Apple**)
- 3 6. '352 patent: "means for selecting an appropriate control function"
4 (**identified by Apple**)
- 5 7. '218 patent: "cursor control operation" (**identified by Elan**)
- 6 8. '659 patent: "sensors configured to map the touchpad surface into native
7 sensor coordinates" (**identified by Elan**)
- 8 9. '659 patent: "logical device units" (**identified by Elan**)
- 9 10. '929 patent: "housing" (**identified by Elan**)

10 **II. CLAIM CONSTRUCTION HEARING AND BRIEFING SCHEDULE**

11 The Court's October 1, 2009 Case Management Scheduling Order sets the
12 following schedule for claim construction:

13 Completion of Claim Construction Discovery: March 8, 2010

14 Opening Briefs: March 26, 2010

15 Responsive Briefs: April 16, 2010

16 Reply Briefs: April 30, 2010

17 Tutorial: TBD

18 Claim Construction Hearing: May 12, 2010

19 **III. REQUEST FOR CONFERENCE TO DISCUSS CLAIM CONSTRUCTION 20 LOGISTICS**

21 Patent Local Rule 2-1 suggests that, in conjunction with the Initial Case
22 Management Conference, the parties discuss with the Court the format for the claim construction
23 hearing. Because there was no Initial Case Management Conference in this case, the parties'
24 respectfully request a conference with the Court to discuss the overall structure and format for
25 claim construction proceedings. Specifically, the parties wish to discuss and obtain the Court's
26 guidance on which and on how many terms the Court would like oral argument at the hearing,
27 especially in view of the fact that there are five patents at issue; whether and in what format
28 expert evidence and/or a tutorial would be most helpful to the Court; and, based on overall scope
and format for the proceedings, the appropriate length of the hearing and for the parties' claim

1 construction briefing.

2 Elan estimates that a tutorial will take no more than one hour and that the claim
3 construction hearing should take no more than two hours. Apple estimates that the tutorial will
4 take approximately two hours and that the claim construction hearing should take no more than
5 six hours depending on the scope of terms at issue and to be addressed.

6

7 DATED: February 5, 2010

_____/s/ Sean P. DeBruine

Sean P. DeBruine

8

ALSTON & BIRD LLP

Attorneys For Elan Microelectronics Corporation

9

10

11 DATED: February 5, 2010

_____/s/ Edward R. Reines

Edward R. Reines

12

WEIL, GOTSHAL & MANGES LLP

Attorneys for Apple Inc.

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FILER'S ATTESTATION

I, Edward R. Reines, am the ECF User whose ID and password are being used to file this **JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT**. In compliance with General Order 45, paragraph X.B. I hereby attest that Sean DeBruine has concurred in this filing.

By: /s/ Edward R. Reines
 Edward R. Reines