

1 Yitai Hu (SBN 248085) (yitai.hu@alston.com)
 Sean P. DeBruine (SBN 168071)
 2 (sean.debruine@alston.com)
 S.H. Michael Kim (SBN 203491)
 3 (michael.kim@alston.com)
 C. Augustine Rakow (SBN 254585)
 4 (augie.rakow@alston.com)
ALSTON & BIRD LLP
 Two Palo Alto Square
 5 3000 El Camino Real, Ste 400
 Palo Alto, CA 94306-2112
 6 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
 10 1201 West Peachtree Street
 Atlanta, GA 30309-3424
 11 Telephone: 404-881-7333
 FACSIMILE: 404-253-8863

12 Attorneys for Plaintiff and Counterclaim
 13 Defendant Elan Microelectronics Corporation

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

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

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.

Case No. C-09-01531 RS (PVT)
 JOINT CASE MANAGEMENT
 CONFERENCE STATEMENT
 REGARDING CLAIM CONSTRUCTION
 LOGISTICS
 Date: March 18, 2010
 Time: 10 am
 JURY TRIAL DEMANDED
 Hon. Richard Seeborg

1 Pursuant to the Court's February 8, 2010 and February 18, 2010 Orders, the parties
 2 hereby submit the following joint proposal regarding all issues of claim construction logistics
 3 described in their Joint Claim Construction and Prehearing Statement. The parties look forward
 4 to discussing and receiving the Court's guidance on these issues at the March 18, 2010 Case
 5 Management Conference.

6 **I. Claims To Be Addressed By The Court**

7 Patent Local Rule 4-3(c) requires identification of up to 10 claim terms whose
 8 construction will be most significant to the resolution of the case. The parties identified the
 9 following 10 terms in the February 5, 2010 Joint Claim Construction and Prehearing Statement,
 10 Dkt. 60:

- 11 1. '353 patent: "a first pattern on said panel for representing a mode switch to
 12 switch said touchpad between a key mode and a handwriting mode," "a
 13 first pattern on said panel for representing a mode switch to switch said
 14 touchpad between a key mode and a mouse mode," and "a first pattern on
 15 said panel for representing a mode switch to switch said touchpad between
 16 a mouse mode and a handwriting mode" (**identified by both parties**)
- 17 2. '353 patent: "a plurality of second patterns on said plurality of regions for
 18 operation in said key and handwriting modes," "a plurality of second
 19 patterns on said plurality of regions for operation in said key and mouse
 20 modes," and "a plurality of second patterns on said plurality of regions for
 21 operation in said mouse and handwriting modes" (**identified by both**
 22 **parties**)
- 23 3. '352 patent: "identify a first maxima in a signal corresponding to a first
 24 finger," "identify a minima the following the first maxima" and "identify a
 25 second maxima in a signal corresponding to the second finger following
 26 said minima" (**identified by Apple**)
- 27 4. '352 patent: "identify" (**identified by Apple**)
- 28 5. '352 patent: "in response to" (**identified by Apple**)
6. '352 patent: "means for selecting an appropriate control function"
 (**identified by Apple**)
7. '218 patent: "cursor control operation" (**identified by Elan**)
8. '659 patent: "sensors configured to map the touchpad surface into native
 sensor coordinates" (**identified by Elan**)
9. '659 patent: "logical device units" (**identified by Elan**)
10. '929 patent: "housing" (**identified by Elan**)

1 The parties agree that the claim construction hearing should focus on these ten
2 claim construction disputes that are most significant for resolution of this case

3 **II. Schedule and Page Limits For Claim Construction Briefing**

4 Elan's Position: Elan proposes claim construction briefing proceed in three
5 rounds as provided in Patent Local Rule 4-5, comprising opening briefs, opposing briefs and
6 reply briefs,. Apple offers no explanation why "consolidated" briefing would be more helpful to
7 the Court in this case. Elan believes the page lengths provided in Civil Local Rule 7 are
8 appropriate in this case.

9 The briefing deadlines are currently set for March 26, April 16 and April 30, 2010,
10 respectively. Case Management Scheduling Order, Dkt. 42. However, Elan intends to move to
11 exclude the testimony of Apple's expert Mr. Herzen for the reasons discussed in Section IV
12 below. Elan would not oppose a motion to continue the claim construction briefs and hearing
13 sufficiently to permit Elan to depose Mr. Van Herzen.

14 Apple's Position: Although the schedule currently contemplates three rounds of
15 briefing for each set of asserted patents (the patent-holder's opening briefs, accused infringer's
16 answering briefs and patent-holder's reply briefs), Apple respectfully submits that the briefing
17 will be more helpful to the Court if it is consolidated into two rounds. Specifically, Apple
18 proposes that the parties simultaneously exchange one opening brief per side on all claim
19 construction disputes and one responsive brief per side on all claim construction disputes. Apple
20 believes that a simultaneous exchange of briefs across patents will allow the parties to better
21 frame and present the disputed issues while also streamlining the submissions before the Court.
22 Under this approach, Apple respectfully submits that the parties' briefs should be limited to 35
23 pages total for opening briefs and 30 pages total for responsive briefs. Under these pages limits,
24 the total volume of claim construction briefing would remain unchanged from the presumptive
25 limits of Local Rule 7.

26 In the event that the Court is inclined to have claim construction briefing proceed
27 in three rounds as Elan proposes, Apple agrees that the page lengths provided in Civil Local Rule
28 7 are appropriate in this case. The briefing deadlines are currently set for March 26, April 16 and

1 April 30, 2010. As discussed in Section IV below, Apple has agreed to request that the Court
2 continue the claim construction briefs and hearing in an effort to resolve the scheduling dispute
3 surrounding depositions of both sides' claim construction experts.

4 **III. Duration Of Claim Construction Hearing**

5 Elan's Position: Elan believes the claim construction hearing should take no
6 more than 3 hours.

7 Apple's Position: In the event that the Court agrees that the claim construction
8 proceeding should focus on the terms that have been identified as most significant for resolution
9 of this dispute in the Joint Claim Construction and Prehearing Statement, Apple proposes that,
10 given the importance of the issues, complexity of the technology and number of patents at issue,
11 four hours should be set aside for the claim construction hearing.

12 **IV. Expert Evidence**

13 Elan's Position: Elan intends to move to exclude the testimony of Apple's expert,
14 Mr. Van Herzen, unless Apple successfully moves the Court to postpone the claim construction
15 briefing and hearing sufficiently to permit Elan to depose Mr. Van Herzen. On February 26,
16 2010, Apple requested Elan accommodate Apple with a "slight extension" so that Mr. Van
17 Herzen's deposition could take place on March 11, three days after the March 8 deadline for
18 claim construction discovery. On March 8, Apple then denied it had committed to produce Mr.
19 Van Herzen on March 11, and asserted Mr. Van Herzen would not be available until March 24,
20 two days before the March 26, 2010 deadline for opening claim construction briefs. Apple's
21 failure to produce Mr. Van Herzen for deposition prevents Elan from deposing Mr. Van Herzen
22 before preparing claim construction briefs. Elan will therefore move the Court to exclude Mr.
23 Van Herzen's testimony, absent an order from the Court to postpone the briefing schedule
24 sufficiently to permit Elan to depose Mr. Van Herzen and prepare briefs in light of his deposition.

25 As discussed below, Elan proposes that the parties' experts present the technology
26 tutorial to the Court if the Court chooses to have one, but not present oral testimony during the
27 claim construction hearing.

28 Apple's Position: The parties have exchanged lengthy written submissions from

1 their respective claim construction experts and are in the process of scheduling depositions for
2 these experts as discussed herein. Because the expert's opinions will be well-developed in
3 advance of the claim construction briefing, Apple respectfully submits, subject to the Court's
4 guidance, that live expert testimony at the claim construction hearing will not be useful to the
5 Court's consideration of the disputes. Apple believes that the parties' expert submissions and
6 cross-examination at deposition, as presented in the parties' briefing, will provide the Court with
7 the most focused and helpful presentation of expert evidence relevant to the issues.

8 As to the scheduling of expert depositions, Apple believes that a modest extension
9 of the claim construction schedule will resolve any dispute the parties may have on this issue. To
10 this end, Apple has conferred with Elan regarding the length of the extension and Elan has stated
11 that a three-week extension would be appropriate. Accordingly, Apple is filing herewith an
12 unopposed motion to extend the claim construction schedule by three weeks. Should the Court
13 grant Apple's motion, any dispute between the parties on this issue will be moot.

14 Apple does not wish to trouble the Court with an extended presentation of the
15 history of discussions between the parties on expert deposition scheduling. Suffice it to say, Elan
16 mischaracterizes the parties' discussions regarding expert deposition scheduling. In the event that
17 Elan moves to exclude Dr. Von Herzen's testimony, Apple will provide a detailed explanation
18 and evidence showing that any scheduling issues relating to the deposition of Apple's expert
19 arose from Elan's own lack of diligence in scheduling that deposition. Likewise, should the claim
20 construction schedule not be extended, Apple may move to exclude any evidence from Elan's
21 claim construction expert as a result of Elan's unilateral cancellation of the deposition of Elan's
22 expert that had been confirmed by Apple in writing.

23 **V. Tutorial**

24 Elan's Position: Elan believes a technology tutorial, presented shortly before or at
25 the time of the claim construction hearing, would facilitate the Court's understanding of the claim
26 construction disputes. Elan believes that such a tutorial would take no more than 45 minutes per
27 side.

28 Apple's Position: Although Apple is happy to provide a tutorial should the Court

1 request one, Apple respectfully submits that the Court's understanding of the underlying
 2 technology and patents-in-suit will best be facilitated by the parties' briefing and by the parties'
 3 explanation of such issues as part of the claim construction proceedings. Apple expects that a
 4 focused presentation of the technology as it relates to the issues before the Court will be most
 5 helpful to the Court. Should the Court request a tutorial, Apple expects that such a tutorial would
 6 take approximately 45 minutes per side.

7 **V. Indefiniteness Under Section 112(2)**

8 Elan's Position: Elan proposes that neither party be permitted to submit motions
 9 for summary judgment of invalidity for indefiniteness until the Court construes the disputed claim
 10 terms and issues a claim construction order.

11 Apple's Position: As noted in the Joint Claim Construction and Prehearing
 12 Statement, Apple has proposed that several limitations in the '352 patent asserted by Elan are
 13 invalid as indefinite for failure to disclose and link adequate corresponding structure for means-
 14 plus-function limitations. For each of these means-plus-function limitations, the claim
 15 construction dispute is the same. A representative limitation has been included in the parties' list
 16 of ten claim construction disputes that are most significant for resolution of this case. Apple
 17 respectfully requests permission to file concurrently with its claim construction briefing on Elan's
 18 patents-in-suit, and to be heard as part of the claim construction hearing, a motion for summary
 19 judgment of invalidity for indefiniteness for these limitations. Apple believes that such a motion
 20 would, if granted, significantly streamline the issues in this case and is properly heard as
 21 indefiniteness issues are considered during claim construction.

22 DATED: March 11, 2010

/s/ Sean P. DeBruine

Sean P. DeBruine

ALSTON & BIRD LLP

Attorneys for Elan Microelectronics Corporation

26 DATED: March 11, 2010

/s/ Sonal N. Mehta

Sonal N. Mehta

WEIL, GOTSHAL & MANGES LLP

Attorneys for Apple Inc.

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FILER'S ATTESTATION

I, Sonal N. Mehta, am the ECF User whose ID and password are being used to file this JOINT CASE MANAGEMENT CONFERENCE STATEMENT. In compliance with General Order 45, paragraph X.B. I hereby attest that Sean DeBruine has concurred in this filing.

By: /s/ Sonal N. Mehta
 Sonal N. Mehta