

1 Yitai Hu (SBN 248085) (yitai.hu@alston.com)
 Sean P. DeBruine (SBN 168071) (sean.debruine@alston.com)
 2 C. Augustine Rakow (SBN 254585) (augie.rakow@alston.com)
ALSTON + BIRD LLP
 3 Two Palo Alto Square
 3000 El Camino Real, Suite 400
 4 Palo Alto, California 94306
 Telephone: 650-838-2000
 5 Facsimile: 650-838-2001

6 T. Hunter Jefferson (admitted *pro hac vice*)(hunter.jefferson@alston.com)
ALSTON + BIRD LLP
 7 One Atlantic Center
 1201 West Peachtree Street
 8 Atlanta, Georgia 30309-3424
 Telephone: 404-881-7000
 9 Facsimile: 404-881-7777

10 Attorneys for Plaintiff and Counterdefendant
 11 ELAN MICROELECTRONICS CORPORATION

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

16 ELAN MICROELECTRONICS CORPORATION,
 17 Plaintiff,
 18 v.
 19 APPLE, INC.,
 20 Defendant.

Case No. 09-cv-01531 RS
DECLARATION OF SEAN P. DEBRUINE IN SUPPORT OF ELAN MICROELECTRONICS CORPORATION'S AND MOTION TO STAY PENDING FINAL DETERMINATION BY THE ITC OF INVESTIGATION NO. 337-TA-714

Date: June 3, 2010
 Time: 1:30 p.m.
 Dept.: Courtroom 3, 17th Floor
 Judge: Richard Seeborg

21
 22 AND RELATED COUNTERCLAIMS
 23
 24

1 I, Sean P. DeBruine, declare as follows:

2 1. I am a partner in the law firm of Alston & Bird LLP, counsel to Plaintiff Elan
3 Corporation (“Elan”) in this action. I have personal knowledge of the following facts, except as
4 otherwise stated. If called to testify, I could and would testify competently to the matters stated
5 herein.

6 2. On March 29, 2010, Elan filed a Complaint against Apple under Section 337 of the
7 Tariff Act of 1930 as amended, in the International Trade Commission (ITC), styled In the Matter
8 of Certain Electronic Devices with Multi-Touch Enabled Touchpads and Touchscreens.

9 3. On April 23, 2010, in response to Elan’s ITC Complaint, the ITC issued a Notice of
10 Investigation stating that the Commission has instituted an investigation in which Apple is the
11 respondent (“the ITC Investigation”). A copy of that Notice is attached hereto as Exhibit A.

12 4. The ITC Investigation is to determine whether there is a violation of Section 337 in
13 the importation into the United States, the sale for importation or the sale within the United States
14 after importation of certain electronic devices with multi-touch enabled touchpads or touchscreens
15 that infringe one or more claims of U.S. Patent No. 5,825,352 (“the ’352 patent”) and whether an
16 industry in the United States exists. Apple is named as the only respondent.

17 5. The ’352 patent at issue in the ITC Investigation is one of the patents Elan
18 originally asserted in this action. The Apple multi-touch enabled products involved in the ITC
19 Investigation are the same as those accused of infringing the ’352 patent and the ’353 patent in this
20 action. Elan expects that the ITC Investigation will involve the same issues as are presented in
21 this action with respect to the infringement and validity of the ’352 patent and Apple’s defenses
22 and that discovery concerning the accused Apple products will be of a similar scope.

23 6. The ITC rules provide for a speedy discovery process, early hearing and an initial
24 determination by a set deadline. In particular, within a month of the Notice of Investigation the
25 presiding Administrative Law Judge (“ALJ”) must issue an order setting a “target date” for the
26 completion of the ITC’s investigation and issuance of its Final Determination. A target date may
27 be as early as 12 months from institution, while a target date more than 18 months after institution
28 must be supported by an express finding that the investigation is “more complex” than usual. In

1 this case, there is only one patent and one named respondent, the parties have been engaged in
2 substantial discovery relevant to the ITC investigation and the patent has been the subject of
3 litigation in the District Court. These factors favor a shorter target date, such that the evidentiary
4 hearing could take place by the end of the year, and a final decision could be due next spring.

5 7. Discovery in the ITC proceeds at a very fast pace. In general, responses to
6 discovery requests are due ten days after service. It is not uncommon for all discovery, including
7 experts, to be completed within six months of the institution of the investigation. On April 26,
8 Chief Administrative Judge Paul J. Luckern issued Order No. 1 in the ITC Investigation. A true
9 and correct copy of Order No. 1 is attached as Exhibit B (the Ground Rules for the investigation,
10 appended to Order No. 1, have been omitted). In this Order, the ALJ set a deadline of May 20,
11 2010 for the parties to file proposed Discovery Plans and scheduled a preliminary conference for
12 May 27, 2010. *Id.* After the preliminary conference the ALJ will set a target date and adopt a
13 procedural schedule. In this preliminary order, ALJ Luckern advises the parties to “commence
14 discovery at an early date.” *Id.* at 2. In order to accommodate the pace of discovery, ALJ Luckern
15 requires the parties to hold a telephonic conference with him before filing any motions to compel.
16 *Id.* As such, and discovery disputes related to the ‘352 patent will arise before and be decided by
17 ALJ Luckern.

18 8. Since April 8, 2010, Elan has been in communication with Apple’s counsel about
19 staying all or part of the district court action in light of Elan’s ITC complaint. On April 13, 2010, I
20 received an e-mail from Apple’s counsel stating that while the statutory period for Apple to elect a
21 stay would not run until 30 days after an investigation is instituted, Apple was disinclined to elect a
22 stay of this action on the ‘352 patent and, on the contrary, contended that the district court action
23 should proceed in full and on schedule. A true and correct copy of that e-mail is attached as
24 Exhibit C.

25 9. On April 26, 2010, upon learning of the Notice of Investigation, I again contacted
26 Apple’s counsel stating Elan’s intention to move for a stay and asking whether Apple would
27 consent. A true and correct copy of my email is attached hereto as Exhibit D. On April 27,
28

1 Apple's counsel responded, stating that Apple would review the motion before taking a position.
2 A true and correct copy of Ms. Mehta's e-mail is attached hereto as Exhibit E.

3 I swear under penalty of perjury under the laws of the United States of America that the
4 foregoing is true and correct. Executed at Palo Alto, California.

5 DATED: April 27, 2010

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/s/ Sean P. DeBruine

Sean P. DeBruine

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