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 11 ELAN MICROELECTRONICS CORPORATION

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

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 MOTION FOR AN ORDER SHORTENING TIME FOR HEARING ON ELAN'S MOTION TO STAY PENDING ITC INVESTIGATION NO. 337-TA-714

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 22
 23 **AND RELATED COUNTERCLAIMS**

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 as Exhibit A to the
12 Declaration of Sean P. DeBruine in Support of Elan’s Motion to Stay (Dkt. No. 79-1).

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

18 5. The ’352 patent at issue in the ITC Investigation is one of the patents Elan
19 originally asserted in this action. The Apple multi-touch enabled products involved in the ITC
20 Investigation –including the iPhone, iPod Touch, MacBook and Magic Mouse products—are also
21 accused of infringing the ’352 patent and the ’353 patent in this action. Elan expects that the ITC
22 Investigation will involve the same issues as are presented in this action with respect to the
23 infringement and validity of the ’352 patent and Apple’s defenses and that discovery concerning
24 the accused Apple products will be of a similar scope.

25 6. On April 7, 2010 Apple advised Elan that, in order to streamline this action, it
26 would drop its claims for infringement of U.S. Patent 6,933,929 and asked Elan to confirm that it
27 would drop its corresponding counterclaims for declaratory judgment that the ’929 patent is
28 invalid. Elan has advised that it would agree to drop its counterclaim relating to the ’929 patent if

1 Apple covenants not to sue Elan's customer whose product Apple accused of direct infringement
2 in its Infringement Contentions. As of today, Apple has not agreed to such a covenant.

3 7. Since April 8, 2010, Elan has been in communication with Apple's counsel about
4 staying all or part of the district court action in light of Elan's ITC complaint. On April 13, 2010, I
5 received an e-mail from Apple's counsel stating that while the statutory period for Apple to elect a
6 stay would not run until 30 days after an investigation is instituted, Apple was disinclined to elect a
7 stay of this action on the '352 patent and, on the contrary, contended that the district court action
8 should proceed in full and on schedule. A true and correct copy of that e-mail is attached as
9 Exhibit C to the Declaration of Sean P. DeBruine in Support of Elan's Motion to Stay (Dkt. No.
10 79-3).

11 8. On April 26, 2010, upon learning of the Notice of Investigation, I again contacted
12 Apple's counsel stating Elan's intention to move for a stay. Today, I reiterated that intention and
13 asked whether Apple would consent and whether Apple would consent to an Order Shortening
14 Time. Apple responded that is review this motion before stating its position. Similarly, Apple
15 would not state a position on the motion to shorten time. True and correct copies of this email
16 exchange are attached as Exhibits D and E to the Declaration of Sean P. DeBruine in Support of
17 Elan's Motion to Stay (Dkt. No. 79-4 and 5).

18 9. There have been several previous time modifications in this action. The schedule
19 was previously modified by stipulation to extend Apple's time to Respond to the Complaint
20 (Docket No. 7); to continue the Initial Case Management Conference by two weeks (Docket No.
21 11), and to continue the settlement conference with Magistrate Judge Spero by one month (Docket
22 No 46). The Court's October 1, 2009 Case Management Order (Docket No. 42) provided for
23 Opening Claim Construction briefs to be served on March 23, 2010. On March 18, 2010, the
24 Court held a Case Management Conference to discuss the timing and format of the claim
25 construction hearing. At this conference, the Court accepted Apple's proposal for two-stage claim
26 construction briefing and modified the claim construction schedule, resetting the Markman hearing
27 for June 23, 2010 with a tutorial on June 21, 2010. On April 14, 2010, the Court granted Elan's
28 Motion Pursuant to Civil L.R. 6-3 to Enlarge Claim Construction Briefing Deadlines and ordered

1 that Opening Claim Construction Briefs be filed on May 7 2010 and Oppositions be filed on May
2 28, 2010.

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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