

# EXHIBIT A

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11 Apple Inc.

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

15 ELAN MICROELECTRONICS  
16 CORPORATION,

17 Plaintiff and Counterclaim  
18 Defendant,

19 v.

20 APPLE INC.,

21 Defendant and Counterclaim  
22 Plaintiff.

Case No. C-09-01531 RS (PVT)

**APPLE INC.'S THIRD AMENDED  
ANSWER, AFFIRMATIVE  
DEFENSES, AND COUNTERCLAIMS  
TO ELAN MICROELECTRONICS  
CORPORATION'S COMPLAINT FOR  
PATENT INFRINGEMENT**

Hon. Richard Seeborg

Demand for Jury Trial

1 Defendant Apple Inc. (“Apple”) by and through its undersigned counsel, hereby  
2 responds to Plaintiff Elan Microelectronics Corporation’s (“Elan”) Complaint for Patent  
3 Infringement (“Complaint”) as follows:

4 **I.**

5 **ANSWER**

6 **PARTIES**

7 1. Apple is without knowledge or information sufficient to form a belief as to  
8 the truth of the statements in Paragraph 1 of the Complaint, and, on that basis, denies those  
9 allegations.

10 2. Apple admits that U.S. Patent No. 5,825,352 (“the ’352 patent”) states on  
11 its face that it is entitled “Multiple Finger Contact Sending Method for Emulating Mouse Buttons  
12 and Mouse Operations on a Touch Sensor Pad.” Apple is without knowledge or information  
13 sufficient to form a belief as to the truth of the allegations concerning Elan’s purported ownership  
14 of all right and title to the ’352 patent and, therefore, denies those allegations. Except as so  
15 expressly admitted herein, Apple denies the allegations in Paragraph 2 of the Complaint.

16 3. Apple admits that U.S. Patent No. 7,274,353 (“the ’353 patent”) states on  
17 its face that it is entitled “Capacitive Touchpad Integrated with Key and Handwriting Functions.”  
18 Apple is without knowledge or information sufficient to form a belief as to the truth of the  
19 allegations concerning Elan’s purported ownership of all right and title to the ’353 patent and,  
20 therefore, denies those allegations. Except as so expressly admitted herein, Apple denies the  
21 allegations in Paragraph 3 of the Complaint.

22 4. Apple admits the allegations in Paragraph 4 of the Complaint.

23 **JURISDICTION AND VENUE**

24 5. Apple admits that Elan’s Complaint purports to be an action that arises  
25 under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, but denies any wrongdoing or  
26 liability on its own behalf for the reasons stated herein. Apple admits that this Court has subject  
27 matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a). Except as so expressly admitted herein,  
28 Apple denies the allegations in Paragraph 5 of the Complaint.



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- 19. Apple denies the allegations in Paragraph 19 of the Complaint.
- 20. Apple denies the allegations in Paragraph 20 of the Complaint.
- 21. Apple denies the allegations in Paragraph 21 of the Complaint.

**PRAYER FOR RELIEF**

22. Apple denies that Elan is entitled to any of the relief sought in its prayer for relief. Apple has not directly or indirectly infringed the '352 and '353 patents, either literally or by the doctrine of equivalents, willfully or otherwise. Elan is not entitled to recover statutory damages, compensatory damages, enhanced damages, an accounting, injunctive relief, costs, fees, interest, or any other type of recovery from Apple. Elan's prayer should, therefore, be denied in its entirety and with prejudice, and Elan should take nothing.

**DEMAND FOR JURY TRIAL**

23. Apple does not object to a trial by jury on all issues so triable.

**II.**

**DEFENSES**

As and for its affirmative defenses, Apple alleges as follows:

**FIRST DEFENSE – NON-INFRINGEMENT**

24. Apple does not infringe and has not directly or indirectly infringed any claims of the '352 and '353 patents, either literally or under the doctrine of equivalents, willfully or otherwise.

**SECOND DEFENSE – INVALIDITY**

25. Elan's alleged claims for infringement of the '352 and '353 patents are barred because each and every claim of the '352 and '353 patents is invalid for failure to comply with the requirements of Title 35 of the United States Code, including but not limited to Sections 101, 102, 103, and/or 112.

**THIRD DEFENSE – LACHES**

26. Elan's claims for relief are barred in whole or in part by the doctrine of laches.

**FOURTH DEFENSE – ESTOPPEL**

1           27.     Elan's claims for relief are barred in whole or in part by the doctrine of  
2 equitable estoppel.

3                                   **FIFTH DEFENSE – STATUTE OF LIMITATIONS**

4           28.     To the extent Elan seeks damages for alleged infringement more than six  
5 years prior to filing of this action, the relief sought by Elan is barred by 35 U.S.C. § 286.

6                                   **SIXTH DEFENSE – NOTICE**

7           29.     To the extent Elan seeks damages for alleged infringement prior to its  
8 giving actual or constructive notice of the '352 and '353 patents to Apple, the relief sought by  
9 Elan is barred by 35 U.S.C. § 287.

10                                   **SEVENTH DEFENSE – NO INJUNCTIVE RELIEF**

11           30.     To the extent Elan seeks injunctive relief for alleged infringement, the  
12 relief sought by Elan is unavailable because any alleged injury to Elan is not immediate or  
13 irreparable and because Elan has an adequate remedy at law for any alleged injury.

14                                   **III.**

15                                   **COUNTERCLAIMS**

16           Counterclaim-Plaintiff Apple counterclaims against Counterclaim-Defendant Elan  
17 as follows:

18                                   **PARTIES**

19           31.     Apple is a corporation organized under the laws of the State of California  
20 and having a principal place of business at 1 Infinite Loop, Cupertino, CA 95014.

21           32.     Elan alleges that it is a corporation organized under the laws of Taiwan  
22 R.O.C. with a principal place of business at No. 12, Innovation 1st Road, Science Based  
23 Industrial Park, Hsinchu Taiwan R.O.C.

24                                   **JURISDICTION AND VENUE**

25           33.     These counterclaims arise under Title 35 of the United States Code. The  
26 Court has subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331,  
27 1338(a), 2201, and 2202.



1 head of R&D served as President and registered agent of EITG. *Id.* EITG directly purchases  
2 products from Elan and turns around to sell them to California companies. *Id.* Elan has caused  
3 its products to be imported into the United States, specifically to the Northern District of  
4 California. *Id.* Elan maintains a continuous business relationship with the United States through  
5 its EITG office. *Id.* Elan directs its customers in North America to contact EITG for products  
6 and services. *Id.*

7 **FIRST COUNTERCLAIM – DECLARATORY JUDGMENT**

8 **'352 PATENT**

9 40. Apple incorporates herein by reference the allegations of paragraphs 1 - 39  
10 of this Answer, Affirmative Defenses and Counterclaims (“Answer”).

11 41. Apple counterclaims against Elan pursuant to the patent laws of the United  
12 States, Title 35 of the United States Code, and the Declaratory Judgments Act, 28 U.S.C. §§ 2201  
13 and 2202.

14 42. In its Complaint, Elan alleges that Apple is now and has been directly  
15 and/or indirectly infringing the '352 patent by the sale of at least its iBook, PowerBook,  
16 MacBook, iPhone and iPod Touch products.

17 43. An actual controversy exists between Elan and Apple by virtue of the  
18 allegations of Elan’s Complaint and Apple’s Answer as to the validity and infringement of the  
19 '352 patent.

20 44. The '352 patent is invalid and not infringed, as set forth in paragraphs 24  
21 through 30 above.

22 45. Apple is entitled to judgment that the '352 patent is invalid and not  
23 infringed.

24 **SECOND COUNTERCLAIM – DECLARATORY JUDGMENT**

25 **'353 PATENT**

26 46. Apple incorporates herein by reference the allegations of paragraphs 1 - 45  
27 of this Answer.



1           55. Upon information and belief, Elan's touch-sensitive input devices or  
2 touchpads and related components employ the methods and/or apparatuses claimed in the '218  
3 patent, including but not limited to the Smart-Pad product, employ the methods and/or  
4 apparatuses claimed in the '218 patent by detecting contact intervals for touches on the touchpad,  
5 detecting gap intervals between such contact intervals, and based on the duration of those  
6 intervals, distinguishing between three or more gestures (e.g., "vertical scroll," "tapping,"  
7 "magnifier") and reporting the gesture that has been identified to the host device (e.g., laptop  
8 computer). In addition, driver software for Elan's touch-sensitive input devices such as the  
9 Smart-Pad allows a user to enable one-finger, two-finger, and three-finger tapping and to select  
10 which laptop control operations correlate to different gestures.

11           56. Laptop computers employing Elan's touch-sensitive input devices or  
12 touchpads and related components employing the methods and/or apparatuses claimed in the '218  
13 patent, including but not limited to the Smart-Pad product, are imported into, offered for sale, sold  
14 and used in the United States.

15           57. Upon information and belief, Elan has been and is currently directly  
16 infringing, in violation of 35 U.S.C. § 271, the '218 patent through its use, importation, offer for  
17 sale and/or sale of touch-sensitive input devices or touchpads and related components employing  
18 the methods and/or apparatuses claimed in the '218 patent, including but not limited to the Smart-  
19 Pad product, in the United States, including through its agent EITG.

20           58. Elan has had actual knowledge of the '218 patent since at least September  
21 24, 2008, when an Elan patent engineer prepared a summary of the '218 patent and uploaded it  
22 onto Elan's document management system.

23           59. Upon information and belief, Elan has been and is currently indirectly  
24 infringing, in violation of 35 U.S.C. § 271, the '218 patent. Upon information and belief, the  
25 '218 patent is directly infringed by, without limitation, manufacturers and others in the  
26 distribution channel of laptop computers, using, selling, offering for sale and/or importing in the  
27 United States, Elan's touch-sensitive input devices or touchpads employing the methods and  
28 apparatuses claimed in the '218 patent through their processing of gestures, including but not

1 limited to the Smart-Pad product. Upon information and belief, Elan induces that infringement  
2 through its intentional marketing, sale and/or support, including technical support, of such devices  
3 in the United States, including through EITG, and through the intentional design, marketing,  
4 manufacture, sale and/or support, including technical support, of such devices abroad to induce  
5 direct infringement in the United States. Upon information and belief, Elan's inducement  
6 includes, without limitation, active encouragement of the use, sale, offer for sale and/or  
7 importation in the United States, of such devices to enable gestures that infringe the '218 patent  
8 on such devices, including through the promotion and provision of software drivers and  
9 marketing literature that induces direct infringement. Upon information and belief, Elan has  
10 known or should have known that these actions would cause direct infringement of the '218  
11 patent and did so with specific intent to encourage direct infringement.

12           60. Apple has suffered, and will continue to suffer, irreparable injury as a  
13 result of Elan's infringement. Pursuant to 35 U.S.C. §§ 283 and 284, Apple is entitled to  
14 damages for infringement and to a permanent injunction against further infringement.

15           61. Elan's infringement of the '218 patent is and has been willful. Upon  
16 information and belief, notwithstanding its knowledge of Apple's patent rights and Elan's  
17 infringement of those rights, Elan continues to use the patented technology with existing and new  
18 products. Elan has acted and is acting despite an objectively high likelihood that its actions  
19 constituted infringement, and Elan knew or should have known that its actions constituted  
20 infringement of a valid and enforceable patent.

21           62. This case is exceptional, and therefore, Apple is entitled to attorneys' fees  
22 pursuant to 35 U.S.C. § 285.

#### 23                           **FOURTH COUNTERCLAIM – PATENT INFRINGEMENT**

##### 24                                           **'659 PATENT**

25           63. Apple incorporates herein by reference the allegations of paragraphs 1 - 61  
26 of this Answer.

27           64. Apple is the owner of the entire right, title and interest in and to U.S. Patent  
28 No. 7,495,659 ("the '659 patent") entitled "Touch Pad For Handheld Device," which was duly

1 and legally issued on February 24, 2009 in the name of inventors Greg Marriott, Guy Bar-Nahum,  
2 and Steven Bollinger. A copy of the '659 patent is attached as Exhibit B hereto.

3 65. The '659 patent claims methods and apparatuses for a touchpad system that  
4 maps the touchpad into native sensor coordinates and produces native values of the native sensor  
5 coordinates when events occur on the touchpad. The system further includes filtering the native  
6 values of the native sensor coordinates based on the type of events that occur on the touchpad.  
7 The system additionally includes generating a control signal based on the native values of the  
8 native sensor coordinates when a desired event occurs on the touch pad.

9 66. Upon information and belief, Elan's touch-sensitive input devices or  
10 touchpads and related components employ the methods and/or apparatuses claimed in the '659  
11 patent, including but not limited to the Smart-Pad product, employ the methods and/or  
12 apparatuses claimed in the '659 patent by including a touchpad and controller that defines a  
13 logical device unit associated with the surface of a touchpad, receives native values associated  
14 with native sensor coordinates based on touches to the touchpad, filters those values, adjusts the  
15 native values to a new value associated with the logical device unit, and reports the new, filtered  
16 values to the host processor on the laptop such that the amount of data sent based on values  
17 associated with the logical device unit is less than the native values associated with sensor  
18 coordinates on the touchpad.

19 67. Laptop computers employing Elan's touch-sensitive input devices or  
20 touchpads and related components employing the methods and/or apparatuses claimed in the '218  
21 patent, including but not limited to the Smart-Pad product, are imported into, offered for sale, sold  
22 and used in the United States.

23 68. Upon information and belief, Elan has been and is currently directly  
24 infringing, in violation of 35 U.S.C. § 271, the '659 patent through its use, importation, offer for  
25 sale and/or sale of touch-sensitive input devices or touchpads employing the methods and/or  
26 apparatuses claimed in the '659 patent, including but not limited to the Smart-Pad product, in the  
27 United States, including through its agent EITG.

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1           69. Elan has had actual knowledge of the '659 patent since at least February  
2 25, 2009, when an Elan patent engineer prepared a summary of the '659 patent, uploaded it onto  
3 Elan's document management system, and circulated it.

4           70. Upon information and belief, Elan has been and is currently indirectly  
5 infringing, in violation of 35 U.S.C. § 271, the '659 patent. Upon information and belief, the  
6 '659 patent is directly infringed by, without limitation, manufacturers and others in the  
7 distribution channel of laptop computers, using, selling, offering for sale and/or importing in the  
8 United States, Elan's touch-sensitive input devices or touchpads employing the methods and  
9 apparatuses claimed in the '659 patent through their processing of touches, including but not  
10 limited to the Smart-Pad product. Upon information and belief, Elan induces that infringement  
11 through its intentional marketing, sale and/or support, including technical support, of such devices  
12 in the United States, including through EITG, and through the intentional design, marketing,  
13 manufacture, sale and/or support, including technical support, of such devices abroad to induce  
14 direct infringement in the United States. Upon information and belief, Elan's inducement  
15 includes, without limitation, active encouragement of the use, sale, offer for sale and/or  
16 importation in the United States of such devices to enable processing of touches that infringe the  
17 '659 patent on such devices, including through the promotion and provision of touchpads and  
18 related controllers and marketing literature that induces direct infringement. Upon information  
19 and belief, Elan has known or should have known that these actions would cause direct  
20 infringement of the '659 patent and did so with specific intent to encourage direct infringement.

21           71. Elan's infringement of the '659 patent is and has been willful. Upon  
22 information and belief, notwithstanding its knowledge of Apple's patent rights and Elan's  
23 infringement of those rights, Elan continues to use the patented technology with existing and new  
24 products. Elan has acted and is acting despite an objectively high likelihood that its actions  
25 constituted infringement, and Elan knew or should have known that its actions constituted  
26 infringement of a valid and enforceable patent.



