# EXHIBIT G

BRIAN VON HERZEN, Ph.D.

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

ELAN MICROELECTRONICS CORPORATION,

Plaintiff,

vs.

APPLE, INC.,

Defendant.

/

AND RELATED COUNTERCLAIMS.

/

CASE NO:
C-09-01531 RS(PVT)

DEPOSITION OF BRIAN VON HERZEN, Ph.D.

Thursday, April 1, 2010

Pages 1 - 120

REPORTED BY JOANNE ICHIKI, CSR #11660

for a particular case?

A. From time to time, clients ask that I prepare a background of my C.V. so that we can discuss working on a new project together.

Q. And when you prepare such a C.V., do you take -- make every effort to make sure that that C.V. is correct?

A. No. I don't make every effort. I make reasonable efforts.

Q. Okay. And in your mind, what is a reasonable effort?

A. My reasonable effort is I open up the C.V., I take a look at it. If it looks like it's accurate, I save it and send it off.

Q. Okay. If we can turn to Exhibit 1, please, your declaration. The bottom of the second page, you begin your opinion regarding the level of ordinary skill in the art with reference to the '352 patent; is that correct?

A. Yes.

Q. And it is your opinion that such a person of ordinary skill in the art would have a bachelor's degree in computer science, electrical engineering, or mathematics, and three to five years in the area of signal processing or the design of touch

sensitive input devices, or a master's or Ph.D. and one to three years of experience in those fields; is that correct?

A. Yes.

Q. Okay. What is your basis for that opinion?

A. The basis for my opinion is based on my personal experience. It's also based on the levels of education and skill working in the field, and the speed at which the field changed and innovations were made in the field.

Q. Okay.

A. As well as sophistication of the technology and the prior art.

Q. Okay. We talked about your personal experience, which is your employment at Synaptics; correct?

A. We did discuss my employment at Synaptics.

Q. And that and the consulting work 15 years ago for Synaptics is the total of your experience in working on touch pads; correct?

MS. MEHTA: Objection. Mischaracterizes his testimony.

THE WITNESS: As I stated previously, I

patents-at-issue in this case?

Q. My question is as stated: One of ordinary skill in the art in January of 1996 would have known how to calculate a period of time during which a user -- an object is in contact with a touch pad; is that correct?

A. One of ordinary skill in the art at the time of -- time frame of January 1996 would be able to calculate time intervals based on the time duration of particular events.

Q. And the time duration of particular events being the beginning and ending of contact with the touch pad?

A. Depending on how that's defined, one could certainly measure time intervals of such events.

MR. DeBRUINE: Okay. We've been going for about an hour. Do you want to take a quick break?

MS. MEHTA: Sure.

THE VIDEOGRAPHER: Off the record at 10:25.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record at 10:41.

A. There may be fewer sensors than coordinates, so I don't believe that would be correct.

Q. Okay. So a native sensor coordinate may fall in between the physical sensors; correct?

A. In general, a coordinate system could comprise more coordinates than the intersections of X and Y sensors; that is correct.

Q. Well, in general, in the context of the terms "native sensor coordinates," it's your opinion, is it not, that the native sensor coordinates is not limited to the physical locations of the conductive sensors in the touch pad; is that correct?

A. Please repeat the question.

(Record read.)

THE WITNESS: Every native sensor coordinate corresponds to a physical location. There may be more sensor coordinates than there are sensors in the sense that interpolation enables the inference of many coordinates for any particular pair of sensors.

So in summary, the mapping of a touch pad surface into native sensor coordinates involves the mapping of a two-dimensional surface into a

coordinate system that can comprise many values. And those values, in general, can be more or less than the number of intersections of a set of wires or lines.

Q. Okay.

A. Nonetheless, they correspond to the sensor coordinates of the touch pad.

Q. So let's take a look at the top of Page 44 in your declaration, Exhibit 1, please, and the first full sentence that begins at Line 2. It says, "To one of ordinary skill in the art, this would have been understood to mean that the sensors are configured to map the touch pad into the physical - or native - coordinates of the sensors."

Do you see that?

A. Yes, I do.

Q. Just to confirm, you don't mean that to be limited to the physical coordinates of the actual conductive lines?

A. No. It's meant to be part of the coordinate system, as it states in Line 1. And rewinding here to the beginning of that sentence, "Here, the claim recites that these sensors are configured to map the touch pad surface into a specific coordinate system, namely, into 'native

Q. Okay. And do you understand that the portions of the specification that you cite there refer to an exemplary embodiment of the invention? Do you understand that in arriving at your opinion?

A. Yes, these are examples.

Q. Okay. Let's talk about the term "identify."

Can you -- what, in your opinion, is the proper construction of the term "identify"?

A. "Identify" means to recognize a value to be.

Q. And in the context of the claim, you recognize the value to be what?

A. A maxima or a minima, for example.

Q. Okay. Now, you give a different definition of that term -- well, all right. You initially don't, I guess.

I guess what I'm looking for here on Page 7, the sentence from -- beginning on Line 8, you say that "One of ordinary skill would have understood in the context of these claims that 'identify' or 'identifying' values would typically involve setting corresponding variables (such as 'first maxima' variable) to the recognized values."

Do you see that sentence?

A. Yes, I do.

Q. And just so we're clear, in your opinion, does the term -- should the term "identify" be construed to require setting a variable to the recognized value?

A. Well, this is really an engineering context of Patent '352. It's referring to recognizing a value to be a maximum or a minimum, for example. And then there are examples such as figures of the '352 that then assign a variable to the maximum or minimum, for example -- let's see if I can find it here.

Figure 9 shows the setting of a variable to valleys or peaks corresponding to minima or maxima respectively.

Q. In your opinion, sir, does the step of identifying or identify as used in the claims of the '352 patent require the setting of a variable? Is it limited to the setting of a variable, in your opinion?

A. The '352 patent describes setting corresponding variables to recognize values, and in fact shows an example of that, for example, in Figure 9.

Q. I don't mean to interrupt, but I think

we're about to run out of the tape.

Are you done with your answer?

A. I was still considering the full, complete response.

Q. Can we take a quick break to change the tape and then let you continue to consider and we'll come back to that question?

A. Yes.

THE VIDEOGRAPHER: This is the end of Volume I, Videotape No. 2 in the deposition of Brian Von Herzen on April 1, 2010. The time is 2:44. We are off the record.

(Recess taken.)

THE VIDEOGRAPHER: This is the beginning of Volume I, Videotape No. 3 in the deposition of Brian Von Herzen on April 1, 2010. The time is 2:48. We are back on the record.

BY MR. DeBRUINE:

Q. Do you have more to add to your answer?

A. Yes. I construed "identify" to be recognize a value to be. That recognition process could involve setting of a variable in order to recognize that value.

I have not fully considered whether setting a variable would be required in all

circumstances. However, given the claim limitations that require sequentially identifying maxima and minima, some state information would be preserved in order to sequentially identify such elements.

So the answer would really depend upon a variable in the context of state information and how that would be applied.

Q. None of that is discussed in your declaration, is it?

A. I believe my declaration does discuss many embodiments that involve setting a state variable to identify a maximum or minimum.

Q. Okay. Can I have that answer read back, please?

(Record read.)

MR. DeBRUINE: Actually, I needed the answer before that.

(Record read.)

BY MR. DeBRUINE:

Q. Is there any discussion in your declaration about sequentially identifying maxima and minima?

A. Yes.

Q. And where do you express an opinion that

Q. I think this would be a good time to take a break.

THE VIDEOGRAPHER: Off the record at 2:59.

(Recess taken.)

THE VIDEOGRAPHER: We are back on the record at 3:12.

BY MR. DeBRUINE:

Q. Okay. Let's turn to the phrase "in response to."

In your opinion, what does the -- how should the phrase "in response to" be construed?

A. After and in reaction to.

Q. Okay. In your opinion, is there an additional limitation that "in response to" must be immediately after and in direct reaction to?

A. It must be in direct reaction to.

Q. Okay. But that's not -- so your opinion is "after and in direct reaction to"?

A. "In direct reaction to," yes.

Q. That's not -- I just want to clarify. That's not what -- that's the opinion you expressed here.

And what is the basis for requiring that the word "response" require a direct reaction?

A. As discussed in Page 10, Lines 16 through 21, "based on the claim language, specification, and file history, one of ordinary skill would have understood 'in response to' to mean that the indication of two fingers is based directly on the identification of the first and second maxima, that is, identification of the first and second maxima is determinative of the indication being provided."

Q. How does the fact that the identification of the first and second maxima is determinative of the presence of two fingers require that the indication be provided in direct reaction to that identification?

A. Can you read back the question, please?

(Record read.)

THE WITNESS: Well, in the file history of this patent, in the April 8, 1999 -- correction -- 1998 amendment and response, Exhibit H at Page 4, I believe that it describes this in detail in saying that the indication of two fingers is determined by the two maxima.

BY MR. DeBRUINE:

Q. And where in the file history does it say that?

MS. MEHTA: Okay. We're happy to end early.

MR. DeBRUINE: Thought you might.

THE VIDEOGRAPHER: This is the end of Volume I, Tape Number 3. This concludes the deposition of Brian Von Herzen. The original videotapes will be retained by Dan Mottaz Video Productions, LLC, 182 Second Street, Suite 202, San Francisco, California 94105. (415) 624-1300. The time is 3:33. We are off the record.

(Whereupon, the April 1, 2010 deposition of BRIAN VON HERZEN, Ph.D. ended at 3:33 p.m.)

BRIAN VON HERZEN, Ph.D.