

1 Yitai Hu (SBN 248085) (yitai.hu@alston.com)  
2 Sean P. DeBruine (SBN 168071) (sean.debruine@alston.com)  
3 S.H. Michael Kim (SBN 203491) (michael.kim@alston.com)  
4 C. Augustine Rakow (SBN 254585) (augie.rakow@alston.com)  
5 ALSTON + BIRD LLP  
6 Two Palo Alto Square  
7 3000 El Camino Real, Suite 400  
8 Palo Alto, California 94306  
9 Telephone: 650-838-2000  
10 Facsimile: 650-838-2001

FILED

*paid*

2009 APR -7 P 3:16

*SA*

RICHARD W. WIEKING  
CLERK  
U.S. DISTRICT COURT  
NO. DIST. OF CA. S.D.

14

E-filing

7 Attorneys for Plaintiff  
8 ELAN MICROELECTRONICS CORPORATION

ADR

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

09 01531

11 SAN FRANCISCO DIVISION

RS

12 ELAN MICROELECTRONICS  
13 CORPORATION,

14 Plaintiff,

15 v.

16 APPLE, INC.,

17 Defendant.

) Case No.

) **COMPLAINT FOR PATENT  
INFRINGEMENT**

) **DEMAND FOR JURY TRIAL**

19  
20 Plaintiff Elan Microelectronics Corporation ("Elan") hereby complains against defendant Apple,  
21 Inc. ("Apple") and alleges as follows:

22 **PARTIES**

- 23 1. Elan is a corporation organized and existing under the laws of Taiwan, R.O.C. with a  
24 place of business at No. 12, Innovation 1st Road, Science Based Industrial Park, Hsinchu Taiwan R.O.C.  
25 2. Elan is the owner of all right and title to United States Patent No. 5,825,352 ("the '352  
26 patent) entitled "Multiple Finger Contact Sensing Method for Emulating Mouse Buttons and Mouse  
27 Operations on a Touch Sensor Pad."  
28

1 3. Elan is the owner of all right and title to United States Patent No. 7,274,353 (“the ‘353  
2 patent”) entitled “Capacitive Touchpad Integrated With Key and Handwriting Functions.”

3 4. Upon information and belief, Defendant Apple is a corporation organized under the laws  
4 of the State of California and has its principal place of business at 1 Infinite Loop, Cupertino, CA 95014  
5 and is doing business in this judicial district.

6 **JURISDICTION AND VENUE**

7 5. This is a patent infringement action arising under the patent laws of the United States, 35  
8 U.S.C. §1, *et seq.* This Court has jurisdiction over the subject matter under 28 U.S.C. §§1331 and  
9 1338(a).

10 6. Venue is appropriate in this district under 28 U.S.C. §§1391(b) and 1400(b) because  
11 defendant Apple resides in this district, has a regular place of business in this district and has committed  
12 acts of patent infringement in this district.

13 **THE DISPUTE**

14 7. Elan is a worldwide leader in the research and development of products that enable  
15 Smart Human-Machine Interface (“HMI”) solutions. Such solutions include Elan’s capacitive  
16 touchpads and transparent touchpads, such as its Smart-Pad – the Magic of Multifinger™ which  
17 incorporate Elan's proprietary eFinger™ and eStylus™ technologies. Elan and its predecessors  
18 pioneered the use of touchpad gestures involving multiple simultaneous finger touches for input devices,  
19 and touchscreens that easily switch between key and handwriting input modes.

20 8. Various multi-finger applications have been implemented in computer laptops, mobile  
21 phones and digital media players. The ‘352 patent is a fundamental patent to the detection of multiple  
22 fingers on a touchpad or touch-sensitive input device to enable the detection and use of multi-finger  
23 gestures in various applications. The invention of the ‘352 patent is embodied in Elan’s Capacitive  
24 Touchpad Multi-Finger Solution.

25 9. Apple designs, markets and sells computer and consumer electronics products including  
26 capacitive finger sensing input devices. These include at least the Apple iBook, PowerBook and  
27 MacBook portable computers, iPhone “smart” mobile phones and iPod Touch digital media player  
28 devices. Each of these devices includes a touch-sensitive input device capable of detecting the

1 simultaneous presence of two or more fingers or other capacitive objects using the structure and  
2 methods claimed in the '352 patent. Apple has been on notice of its infringement of the '352 patent  
3 since early 2007 and has continued to utilize the '352 patent invention without authorization. In  
4 addition, the Apple iPhone and iPod Touch also permit users to switch the capacitive touchscreen  
5 between keyboard and handwriting modes, and thus fall within the scope of the '353 patent.

6 **FIRST CLAIM**

7 **(Infringement - 35 U.S.C. § 271)**

8 10. Plaintiff repeats and re-alleges Paragraphs 1 through 9 immediately above.

9 11. Apple is now and has been directly and/or indirectly infringing the '352 patent by the sale  
10 of at least its iBook, MacBook, iPhone and iPod Touch products in this district and elsewhere in the  
11 United States.

12 12. As a result of Apple's infringement, Apple is liable to Elan for damages pursuant to 35  
13 U.S.C. §284.

14 13. Apple's infringement of the '352 patent has caused, and unless preliminarily and  
15 permanently enjoined, will continue to cause Elan irreparable harm.

16 14. Apple's infringement of the '352 patent is and has been willful.

17 15. As a result of at least Apple's willful infringement this is an exceptional case pursuant to  
18 35 U.S.C. §285.

19 **SECOND CLAIM**

20 **(Infringement – 35 U.S.C. §271)**

21 16. Plaintiff repeats and re-alleges Paragraphs 1 through 15 immediately above.

22 17. Apple is now and has been directly and/or indirectly infringing the '353 patent by the sale  
23 of its iPhone and iPod Touch products in this district and elsewhere in the United States.

24 18. As a result of Apple's infringement, Apple is liable to Elan for damages pursuant to 35  
25 U.S.C. §284.

26 19. Apple's infringement of the '353 patent has caused and, if not enjoined, will continue to  
27 cause Elan irreparable harm.

28 20. On information and belief, Apple's infringement of the '353 patent is and has been

1 willful.

2 21. As a result of at least Apple's willful infringement this is an exceptional case pursuant to  
3 35 U.S.C. §285.

4 **PRAYER FOR RELIEF**

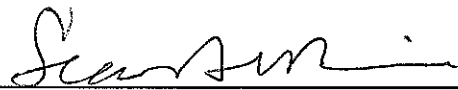
5 WHEREFORE, Elan prays for judgment:

- 6 1. that Apple infringes, directly and/or indirectly, one or more claims of the '352 patent;
- 7 2. that Apple infringes, directly and/or indirectly, one or more claims of the '353 patent;
- 8 3. that Apple be temporarily and permanently enjoined from any further infringement;
- 9 4. that Apple is liable to Elan for monetary damages, no less than a reasonable royalty;
- 10 5. for enhanced damages up to treble Elan's actual damages;
- 11 6. that this is an exceptional case and therefore that Apple pay Elan's costs, expenses and
- 12 attorneys fees incurred in this matter; and
- 13 7. granting such other and further relief as the Court may deem just and appropriate.

14  
15 Dated: April 7, 2009

Respectfully submitted,

16 ALSTON + BIRD LLP

17  
18 By:   
Sean P. DeBruine

19 Attorneys for Plaintiff  
20 ELAN MICROELECTRONICS CORPORATION  
21  
22  
23  
24  
25  
26  
27  
28

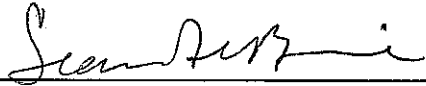
**DEMAND FOR JURY TRIAL**

Plaintiff Elan Microelectronics Corporation hereby demands a jury trial for all issues so triable.

Dated: April 7, 2009

Respectfully submitted,

ALSTON + BIRD LLP

By:   
Sean P. DeBruine

Attorneys for Plaintiff  
ELAN MICROELECTRONICS CORPORATION

#31246704

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CIVIL COVER SHEET**

JS 44 (Rev. 12/07) (cand rev 1-5-08)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

<p><b>I. (a) PLAINTIFFS</b> Elan Microelectronics Corporation, a Taiwanese corporation</p>	<p><b>DEFENDANTS</b> Apple, Inc., a California corporation</p>
<p><b>(b)</b> County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)</p>	<p>County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p>
<p><b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number) Sean P. DeBruine Alston + Bird LLP 3000 El Camino Real, Two Palo Alto Square, Ste. 400, Palo Alto, CA 94306; Telephone: (650) 838-2000</p>	<p>Attorneys (If Known) <b>C 09 01531</b></p>

E-filing

RS

<p><b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p><b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input checked="" type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<p><b>CONTRACT</b></p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment &amp; Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p><b>TORTS</b></p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel &amp; Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><b>PERSONAL INJURY</b></p> <p><input type="checkbox"/> 362 Personal Injury—Med. Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury—Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p><b>PERSONAL PROPERTY</b></p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p><b>FORFEITURE/PENALTY</b></p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food &amp; Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R.R. &amp; Truck</p> <p><input type="checkbox"/> 650 Airline Regs.</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p> <p><b>LABOR</b></p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt. Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt. Reporting &amp; Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p> <p><b>IMMIGRATION</b></p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 463 Habeas Corpus—Alien Detainee</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p><b>BANKRUPTCY</b></p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p><b>PROPERTY RIGHTS</b></p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input checked="" type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p> <p><b>SOCIAL SECURITY</b></p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p> <p><b>FEDERAL TAX SUITS</b></p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>	<p><b>OTHER STATUTES</b></p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
--	---	--	--	--

**V. ORIGIN** (Place an "X" in One Box Only)

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from another district (specify)     6 Multidistrict Litigation     7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
35 U.S.C. Section 271

Brief description of cause:  
Patent Infringement

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23    DEMAND \$    CHECK YES only if demanded in complaint: JURY DEMAND:     Yes     No

**VIII. RELATED CASE(S) IF ANY**    PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**     SAN FRANCISCO/OAKLAND     SAN JOSE

DATE: April 7, 2009    SIGNATURE OF ATTORNEY OF RECORD: Sean P. DeBruine