

CIVIL COVER SHEET

JS 44 - CAND (Rev. 11/04)

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)

I. (a) PLAINTIFFS

APPLE COMPUTER, INC.

DEFENDANTS

BURST.COM, INC.

E-Filing

ADR

CO6 00019

JL

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Santa Clara (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Sonoma (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

WEIL, GOTSHAL & MANGES LLP Silicon Valley Office 201 Redwood Shores Parkway Redwood Shores, CA 94065 (650) 802-3000

ATTORNEYS (IF KNOWN)

Robert Yorio, Carr & Ferrell 2225 E. Bayshore Rd., Palo Alto, CA 94303 Spencer Hosie, Hosie Frost et al. One Market, 22nd Fl. San Francisco, CA 94105

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, and Citizen or Subject of a Foreign Country.

IV. ORIGIN (PLACE AN 'X' IN ONE BOX ONLY)

- Original Proceeding, Removed from State Court, Remanded from Appellate Court, Reinstated or Reopened, Transferred from Another district (specify), Multidistrict Litigation, Appeal to District Judge from Magistrate Judgment

V. NATURE OF SUIT (PLACE AN 'X' IN ONE BOX ONLY)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

VI. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY) 35 U.S.C. Sections 101, et seq., 28 U.S.C. Sections 2201 and 2202. Declaratory judgment of patent invalidity and noninfringement.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23 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 AN 'X' IN ONE BOX ONLY) SAN FRANCISCO/OAKLAND SAN JOSE

DATE SIGNATURE OF ATTORNEY OF RECORD

January 4, 2006

Handwritten signature of attorney of record.