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14 Attorneys for Defendant/Counterclaimant
BURST.COM, INC.

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 APPLE COMPUTER, INC.,

19 Plaintiff/Counterdefendant,

20 v.
21

22 BURST.COM, INC.,

23 Defendant/Counterclaimant.
24

CASE NO. C06-00019 MHP

**DECLARATION OF BRUCE McFARLANE
IN OPPOSITION TO PLAINTIFF APPLE
COMPUTER, INC.'S SECOND MOTION
FOR SUMMARY JUDGMENT OF
INVALIDITY**

Hon. Marilyn Hall Patel

Complaint: January 4, 2006

Trial: February 26, 2008

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1 I, BRUCE McFARLANE, declare that:

2 1. I am a Managing Director with LitiNomics, a financial and economic consulting
3 firm. I have been retained by Defendant Burst.com, Inc. to provide expert analysis.

4 2. Appendix A is my curriculum vitae, documenting the details of my professional
5 experience in the areas of, among others, patent infringement damages. It also lists all of my
6 publications and matters in which I have consulted and given sworn testimony.

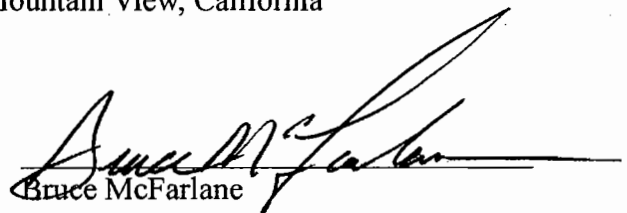
7 3. Appendix B reflects and summarizes sales data provided primarily by Plaintiff
8 Apple, Inc. of the principal accused products in this case, iPod, iTunes Music Store downloads, and
9 computers loaded with iTunes software. In some instances, the Apple data I received were
10 incomplete. In such circumstances, I have made certain assumptions and relied on third party sales
11 data (e.g., analyst reports) to fill in missing or incomplete Apple sales data. The data obtained from
12 Apple are, I understand, preliminary and sourced to Apple-produced data as of August 13, 2007.
13 My analysis of Apple sales of accused products is continuing as Apple produces additional sales
14 information.

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct.

17 Executed this 28th day of August, 2007 at Mountain View, California

18 Dated: August 28, 2007.

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Bruce McFarlane

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