

1 PARKER C. FOLSE III (WA Bar No. 24895 – *Pro Hac Vice*)

pfolse@susmangodfrey.com

2 IAN B. CROSBY (WA Bar No. 28461 – *Pro Hac Vice*)

3 icrosby@susmangodfrey.com

FLOYD G. SHORT (WA Bar No. 21632 – *Pro Hac Vice*)

4 fshort@susmangodfrey.com

DANIEL J. WALKER (WA Bar No. 38876 - *Pro Hac Vice*)

5 dwalker@susmangodfrey.com

6 SUSMAN GODFREY, L.L.P.

1201 Third Avenue, Suite 3800

7 Seattle, Washington 98101-3000

(206) 516-3880 Tel

8 (206) 516-3883 Fax

9 SPENCER HOSIE (CA Bar No. 101777)

10 shosie@hosielaw.com

BRUCE WECKER (CA Bar No. 078530)

11 bwecker@hosielaw.com

12 HOSIE McARTHUR LLP

One Market, 22nd Floor

13 San Francisco, CA 94105

(415) 247-6000 Tel.

14 (415) 247-6001 Fax

15 *(additional attorneys listed on signature page)*

16 Attorneys for Defendant/Counterclaimant

17 BURST.COM, INC.

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA  
20 SAN FRANCISCO DIVISION

21 APPLE COMPUTER, INC.,

22 Plaintiff/Counterdefendant,

23 v.

24 BURST.COM, INC.,

25 Defendant/Counterclaimant.

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CASE NO. C06-00019 MHP

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DECLARATION OF DANIEL J. WALKER

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IN SUPPORT OF BURST.COM INC.'S

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OPPOSITION TO APPLE COMPUTER,

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INC.'S SECOND MOTION FOR

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SUMMARY JUDGMENT

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TRIAL DATE: FEBRUARY 26, 2008

**DECLARATION OF DANIEL J. WALKER IN SUPPORT OF DEFENDANT  
BURST.COM, INC.'S OPPOSITION TO PLAINTIFF APPLE COMPUTER, INC.'S  
SECOND MOTION FOR SUMMARY JUDGMENT**

I, Daniel J. Walker, declare as follows:

1. I am an associate in the Seattle office of Susman Godfrey L.L.P. I represent defendant Burst.com, Inc. ("Burst") in the above captioned matter. I make this declaration based upon personal knowledge and, if called upon to do so, could testify competently to the facts set forth herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of an article published in the April 24, 2006 issue of *BusinessWeek*.

3. Attached hereto as Exhibit 2 is a true and correct copy of excerpts of the transcript of the deposition of Burst's Chief Executive Officer, Richard Lang, taken on January 8, 2007. (FILED UNDER SEAL)

4. Attached hereto as Exhibit 3 is a true and correct copy of "Your movie may come to you over the phone and 'compressed,'" published in the January 20, 1991 issue of *The Philadelphia Inquirer*.

5. Attached hereto as Exhibit 4 is a true and correct copy of Univercell Holdings, Inc.'s 10K for fiscal year 1997, filed on March 27, 1998.

6. Attached hereto as Exhibit 5 is a true and correct copy of "More Bang For Your Bandwidth," published in the September 1999 issue of *NewMedia*.

7. Attached hereto as Exhibit 6 is a true and correct copy of Apple's Supplemental Response to Burst's Interrogatory No. 21. (FILED UNDER SEAL)

8. Attached hereto as Exhibit 7 is a true and correct copy of Apple's "Power Mac G5: Buyer Profile Study," dated March 2004. (FILED UNDER SEAL)

1           9. Attached hereto as Exhibit 8 is a true and correct copy of an Apple Press Release, dated  
2 April 9, 2007, titled "100 Million iPods Sold."

3           10. Attached hereto as Exhibit 9 is a true and correct copy of "iPod, TheyPod: Rivals  
4 Imitate Apple's Success," published in the September 18, 2006 issue of *The Wall Street Journal*.  
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6           11. Attached hereto as Exhibit 10 is a true and correct copy of "Macs Power Up Earnings at  
7 Apple," published in the July 26, 2007 issue of *The Los Angeles Times*.

8           12. Attached hereto as Exhibit 11 is a true and correct copy of an Apple Press Release,  
9 dated July 31, 2007, titled "iTunes Store Tops Three Billion Songs."

10           13. Attached hereto as Exhibit 12 is a true and correct copy of "Apple unveils digital music  
11 device," published by BBC News, dated October 24, 2001.  
12

13           14. Attached hereto as Exhibit 13 is a true and correct copy of an Apple Press Release,  
14 dated October 23, 2001, titled "Apple Presents iPod."

15           15. Attached hereto as Exhibit 14 is a true and correct copy of an Apple Press Release,  
16 dated October 30, 2002, titled "Apple's iPod Now Available at All Target Stores."  
17

18           16. Attached hereto as Exhibit 15 is a true and correct copy of a marketing document for  
19 Apple's project "Jupiter." (FILED UNDER SEAL)

20           17. Attached hereto as Exhibit 16 is a true and correct copy of a market research study,  
21 dated March 30, 2001, conducted for the original iPod, which was codenamed "Dulcimer."  
22 (FILED UNDER SEAL)  
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24           18. Attached hereto as Exhibit 17 is a true and correct copy of excerpts of the transcript of  
25 the deposition of Apple employee Max Muller, taken on July 20, 2007, pursuant to F.R.C.P.  
26 30(b)(6). (FILED UNDER SEAL)  
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1        19. Attached hereto as Exhibit 18 is a true and correct copy of excerpts of the transcript of  
2 the deposition of Apple employee Frank Casanova, taken on September 22, 2006, both in his  
3 individual capacity and on behalf of Apple pursuant to F.R.C.P. 30(b)(6). (FILED UNDER  
4 SEAL)  
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6        20. Attached hereto as Exhibit 19 is a true and correct copy of a customers survey  
7 conducted by Apple. (FILED UNDER SEAL)  
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9        21. Attached hereto as Exhibit 20 is a true and correct copy of a product user manual from  
10 CompuSonics Corp.  
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12        22. Attached hereto as Exhibit 21 is a true and correct copy of excerpts of the transcript of  
13 the deposition of David Schwartz, a former employee of CompuSonics Corp., dated August 4,  
14 2007. (FILED UNDER SEAL)  
15

16        23. Attached hereto as Exhibit 22 is a true and correct copy of United States Patent No.  
17 4,963,995.  
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19        24. Attached hereto as Exhibit 23 is a true and correct copy of United States Patent No.  
20 5,057,932.  
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22        25. Attached hereto as Exhibit 24 is a true and correct copy of United States Patent No.  
23 5,164,839.  
24

25        26. Attached hereto as Exhibit 25 is a true and correct copy of United States Patent No.  
26 5,995,705.  
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28        27. Attached hereto as Exhibit 26 is a true and correct copy of an Information Disclosure  
Statement, filed with the Patent & Trademark Office, showing that the Walter patent was  
disclosed during prosecution of Patent No. 5,995,705.

28. Attached hereto as Exhibit 27 is a true and correct copy of an Information Disclosure Statement, filed with the Patent & Trademark Office, showing that the Walter patent was disclosed during prosecution of Patent No. 5,057,932.

29. Attached hereto as Exhibit 28 is a true and correct copy of an Information Disclosure Statement, filed with the Patent & Trademark Office, showing that the Walter patent was disclosed during prosecution of Patent No. 5,164,839.

30. Attached hereto as Exhibit 29 is a true and correct copy of an excerpt from the *Manual of Patent Examining Procedure*.

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

DATED this 28th day of August, 2007.

/s/ Daniel J. Walker  
Daniel J. Walker

*Additional Counsel:*

MICHAEL F. HEIM (TX Bar No. 9380923-  
*Pro Hac Vice*)

LESLIE V. PAYNE (TX Bar No. 0784736-  
*Pro Hac Vice*)

ERIC ENGER (TX Bar No. 24045833-  
*Pro Hac Vice*)

HEIM, PAYNE & CHORUSH, L.L.P.  
600 Travis Street, Suite 6710  
Houston, TX 77002  
(713) 221-2000 Tel.  
(713) 221.2021 Fax

ROBERT J. YORIO (CA Bar No. 93178)  
V. RANDALL GARD (CA Bar No. 151677)  
COLBY B. SPRINGER (CA Bar No. 214868)  
CARR & FERRELL LLP

1 2200 Geng Road  
2 Palo Alto, CA 94303  
3 (650) 812-3400 Tel.  
(650) 812-3444

4 *Attorneys for Defendant/Counterclaimant Burst.com, Inc.*

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