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

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

16 APPLE COMPUTER, INC.,

17 Plaintiff/Counterdefendant,

18 v.

19 BURST.COM, INC.,

20 Defendant/Counterclaimant.

CASE NO. C06-00019 MHP

**BURST.COM, INC.'S, ANSWER TO  
APPLE COMPUTER, INC.'S, AMENDED  
COUNTERCLAIM FOR  
DECLARATORY JUDGMENT**

**JURY TRIAL DEMANDED**

22 **BURST.COM, INC.'S, ANSWER TO APPLE COMPUTER, INC.'S, AMENDED  
23 COUNTERCLAIM FOR DECLARATORY JUDGMENT**

24 Defendant Burst.com, Inc. (“Burst”) replies to the amended counterclaim for declaratory  
25 judgment on U.S. Patents Nos. 4,963,995 (the “995 patent”), 5,057,932 (the “932 patent”),  
26 5,164,839 (the “839 patent”), 5,995,705 (the “705 patent”), asserted by Plaintiff Apple Computer,  
27 Inc. (“Apple”) in Apple’s “Amended Answer to Burst.com, Inc.’s Amended Counterclaim and  
28 Counterclaim for Declaratory Judgment” (Docket No. 171), as follows:

1 1-48. Paragraphs 1 through 48 do not assert claims to which a response is required except  
2 to the extent later realleged in support of Apple's Counterclaims. Paragraphs 1-31 set forth  
3 admissions, denials, and affirmative defenses in reply to the counterclaim asserted in Burst's  
4 "Amended Answer and Counterclaim" (Docket No. 42), but do not set forth affirmative allegations  
5 of fact, and therefore do not require reply. In the alternative, to the extent that the admissions,  
6 denials, and affirmative defenses set forth in paragraphs 1-31 constitute "allegations" in support of  
7 Apple's counterclaim, Burst replies by re-alleging and adopting by reference the entirety of Burst's  
8 Counterclaim, Prayer for Relief, and Demand for Jury Trial, and by denying all of Apple's  
9 affirmative defenses.

10 32. Denied.

11 33. To the extent this paragraph accurately quotes deposition transcripts and/or  
12 documents, Burst admits that the transcripts and/or documents so state. In all other respects, denied.

13 34. To the extent this paragraph accurately quotes deposition transcripts and/or  
14 documents, Burst admits that the transcripts and/or documents so state. In all other respects, denied.

15 35. Denied.

16 36. Denied.

17 37. To the extent this paragraph accurately quotes deposition transcripts and/or  
18 documents, Burst admits that the transcripts and/or documents so state. Burst admits that the EPO  
19 rejected the then-pending claims of Burst's Application No. 90 902 741.9 in an Office Action dated  
20 April 22, 1994. In all other respects, denied.

21 38. To the extent this paragraph accurately quotes deposition transcripts and/or  
22 documents, Burst admits that the transcripts and/or documents so state. Burst admits that Lang and  
23 Hein were aware of the rejections in the EPO. In all other respects, denied.

24 39. To the extent this paragraph accurately quotes deposition transcripts and/or  
25 documents, Burst admits that the transcripts and/or documents so state. Burst admits that Lang and  
26 Hein first disclosed Walter to the PTO in an Information Disclosure Statement on May 6, 1991. In  
27 all other respects, denied.

28

1 40. To the extent this paragraph accurately quotes deposition transcripts and/or  
2 documents, Burst admits that the transcripts and/or documents so state. In all other respects, denied.

3 41. To the extent this paragraph accurately quotes deposition transcripts and/or  
4 documents, Burst admits that the transcripts and/or documents so state. Burst is without knowledge  
5 of and on that basis denies the allegations regarding the development, capabilities, and public  
6 demonstration of DVI. In all other respects, denied.

7 42. To the extent this paragraph accurately quotes deposition transcripts and/or  
8 documents, Burst admits that the transcripts and/or documents so state. Burst admits that it was  
9 attempting to build a prototype of its system around September 1990. Burst admits that it adopted  
10 DVI for use in its prototypes. In all other respects, denied.

11 43. Burst is without knowledge of and on that basis denies the allegations regarding the  
12 development and publicization of DVI years before the Burst patents were filed. In all other  
13 respects, denied.

14 44. Burst is without knowledge of and on that basis denies the allegations regarding  
15 nondisclosure of printed publications describing DVI technology that was in development and  
16 displayed to the public before the filing of the Burst patents. In all other respects, denied.

17 45. Burst admits that in an Office Action dated April 22, 1994 for Application No. 90 902  
18 741.9, the EPO cited and discussed prior art references including IEEE Transactions on Consumer  
19 Electronics, "1988 International Conference on Consumer Electronics, Part 1", 34 (1988) August,  
20 No. 3, New York, U.S., pages 838-845; Hildering et al.: "Programmable Compact Disk Picture  
21 Memory and Video Processing System" ("Hildering"); EP-A-0 283 727 ("Parker"); and EP-A-0 082  
22 077 ("Gremillet EP"). In all other respects denied.

23 46. Denied.

24 47. Denied.

25 48. Denied.

1 49. Paragraph 49 restates, realleges, and incorporates by reference the allegations set forth  
2 in paragraphs 1 through 48. In response, Burst restates, realleges, and incorporates by reference its  
3 responses to paragraphs 1 through 48.

4 50. Burst admits that Apple counterclaims against Burst for declaratory judgment, and  
5 that declaratory judgment is a remedy contemplated in the patent laws of the United States and the  
6 Federal Rules of Civil Procedure, including Title 35 of the United States Code; 28 U.S.C. §§ 1331,  
7 1338(a), 2201, 2202; and Fed. R. Civ. P. 13. Burst denies that Apple is entitled to the remedy  
8 sought.

9 51. Denied.

10 52. Denied.

11 53. Denied.

12 54. Denied.

13 55. Burst denies that Apple is entitled to any relief from Burst and in particular to any of  
14 the relief requested in paragraphs 1 through 6 of Apple's Prayer for Relief.

15  
16 Dated October 9, 2007.

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17 /s/ Ian B. Crosby

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