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 BURST.COM, INC.

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

19 APPLE COMPUTER, INC.,  
 20 Plaintiff and  
 Counterdefendant,  
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22 v.

23 BURST.COM, INC.,  
 24 Defendant and  
 Counterclaimant.

Case No. 06-CV-00019 MHP

**STIPULATION AND [PROPOSED]  
 CASE MANAGEMENT ORDER**

Complaint filed: January 4, 2006  
 Trial Date: Not Yet Set

Hon. Marilyn Hall Patel

1 On May 8, 2006, the Court conducted an Initial Case Management Conference.  
 2 The parties were represented by counsel and were given an opportunity to be heard as to all  
 3 matters encompassed by the Joint Case Management Statement and this Order. Based on  
 4 guidance provided by the Court at the Case Management Conference, the parties stipulate to  
 5 adoption of this proposed order as the Case Management Order in this action in accordance with  
 6 Civ. L.R. 16 and other applicable Local Rules.  
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8 1. The following schedule shall govern through the Claim Construction  
 9 Hearing:

<b>DATE</b>	<b>EVENT</b>
<b>May 22, 2006</b>	<b>Parties comply with Rule 26(a)(1) initial disclosures</b>
<b>May 22, 2006</b>	<b>Burst serves PLR 3-1 disclosures</b>
<b>May 22, 2006</b>	<b>Burst produces documents specified in PLR 3-2</b>
<b>July 6, 2006</b>	<b>Apple serves PLR 3-3 disclosures</b>
<b>July 6, 2006</b>	<b>Apple produces documents specified in PLR 3-4</b>
<b>July 20, 2006</b>	<b>Parties exchange PLR 4-1(a) information on claim terms</b>
<b>August 18, 2006</b>	<b>Parties exchange preliminary claim constructions under PLR 4-2(a)</b>
<b>August 18, 2006</b>	<b>Parties provide preliminary identification of extrinsic evidence under PLR 4-2(b), except with respect to disclosure of experts</b>
<b>October 3, 2006</b>	<b>Parties file Joint Claim Construction and Prehearing Statement and comply with PLR 4-3, except with respect to disclosure of experts under PLR 4-3(d)</b>
<b>October 10, 2006, at 3:00 p.m.</b>	<b>Post-Discovery/Pre-Claim Construction Conference</b>
<b>October 20, 2006</b>	<b>Parties identify experts and serve expert reports, as required by PLR 4-3(d)</b>
<b>November 6, 2006</b>	<b>Deadline for completion of discovery relating to claim construction, including depositions of any witnesses (including experts) identified in the Joint Claim Construction and Prehearing Statement (PLR 4-4)</b>
<b>November 22, 2006</b>	<b>Burst files claim construction brief and supporting evidence (PLR 4-5(a))</b>
<b>December 8, 2006</b>	<b>Apple files responsive claim construction brief and supporting evidence (PLR 4-5(b))</b>
<b>December 22, 2006</b>	<b>Burst files reply brief and rebuttal evidence on claim construction (PLR 4-5(c))</b>
<b>January 31, 2007, at 2:00 p.m.</b>	<b>Tutorial (presentation by counsel)</b>

<b>February 8, 2007, at 9:00 a.m.</b>	<b>Claim Construction Hearing</b>
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2. Pursuant to the Court's instruction at the Case Management Conference to assume that a claim construction order will issue approximately 30 days after the Claim Construction hearing, the parties have agreed to the following schedule, which will accommodate a claim construction order issued within 60 days of the claim construction hearing. The schedule has blanks for the Hearing on Dispositive Motions, Pretrial Conference, and Trial Date, to be filled in by the Court.

The parties further agree that in the event the Court issues a claim construction ruling more than 60 days after the claim construction hearing, or in the event of other currently unanticipated scheduling changes, they will meet and confer regarding the schedule and submit a revised scheduling proposal to the Court.

<b>55 days after claim construction order</b>	<b>Fact discovery to be substantially completed (as discussed at the Case Management Conference)</b>
<b>60 days after claim construction order (+5days)</b>	<b>Mediation deadline</b>
<b>80 days after claim construction order (+20days)</b>	<b>Disclosure of expert witnesses, service of reports, and production of documents regarding expert testimony on issues as to which each party bears the burden of proof (FRCP 26(a)(2))</b>
<b>98 days after claim construction order (+18days)</b>	<b>Deadline by which all burden-of-proof experts must be produced for deposition</b>
<b>112 days after claim construction order (+14 days)</b>	<b>Disclosure of expert witnesses, service of reports, and production of documents regarding expert testimony in response to disclosures regarding burden-of-proof experts (FRCP 26(a)(2))</b>
<b>117 days after claim construction order (+5days)</b>	<b>Deadline for completing clean-up fact discovery (as discussed at the Case Management Conference)</b>
<b>126 days after claim construction order (+9days)</b>	<b>Deadline by which all responsive experts must be produced for deposition</b>
<b>126 days after claim construction order</b>	<b>Deadline for completing expert discovery</b>
<b>147 days after claim</b>	<b>Deadline for filing dispositive motions</b>

1	<b>construction order (+21days)</b>	
2	<b>177 days after claim construction order (+30days)</b>	<b>Due date for responses to dispositive motions</b>
3		
4	<b>191 days after claim construction order (+14days)</b>	<b>Due date for reply briefs in support of dispositive motions</b>
5		
6	<b>_____, 2007 (approximately 2 weeks after reply briefs on dispositive motions)</b>	<b>Hearing on dispositive motions.</b>
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8	<b>49 days before trial</b>	<b>(1) File joint final pretrial conference statement and proposed order; (2) Lodge exhibits and other trial material; (3) Serve and file requests for voir dire questions, jury instructions, and verdict forms; (4) Serve and file statements designating deposition excerpts, interrogatory answers, and responses to requests for admission to be used at trial;</b>
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13	<b>35 days before trial</b>	<b>(1) Serve objections to admission of exhibits and deposition testimony (2) Serve and file counterdesignations to deposition designations (3) Serve and file motions in limine</b>
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16	<b>21 days before trial</b>	<b>(1) File objections to counterdesignations and any other objections requiring action by the Court (2) Serve and file oppositions to motions in limine</b>
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18	<b>_____, 2008 (approximately 14 days before trial)</b>	<b>Final pretrial conference</b>
19	<b>February __, 2008</b>	<b>Trial begins</b>

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21 3. As reflected in the previously filed Joint Case Management Statement, the

22 parties have agreed as follows regarding written and deposition discovery:

- 23 a. The parties will adhere to the numerical and temporal limits on deposition
- 24 discovery in Fed. R. Civ. P. 30, except that each side may identify one witness
- 25 whom it may depose for up to two days of seven hours each (thus giving each
- 26 party a total of eleven days of depositions). The parties reserve all rights to object
- 27 to particular depositions, including the right to object that the particular witness
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chosen by the other side for the two-day deposition should not be deposed for two days. The depositions of expert witnesses shall not count against the numerical limitations of Fed. R. Civ. P. 30(a)(2).

b. Every seven hours or fraction thereof of deposition testimony pursuant to Fed. R. Civ. P. 30(b)(6) shall count as one day of deposition testimony for purposes of Fed. R. Civ. P. 30(a)(2), except that with respect to all depositions taken pursuant to Burst’s Notice of Deposition Under Fed. R. Civ. P. 30(b)(6) to Plaintiff Apple Computer, Inc., dated June 16, 2006, the parties agree that every segment of three and a half (3 ½) hours or less of deposition testimony taken pursuant to Fed. R. Civ. P. 30(b)(6) shall count as one half (1/2) day of deposition testimony for purposes of Fed. R. Civ. P. 30(a)(2).

c. The parties will adhere to the numerical limitations on interrogatories set forth in Fed. R. Civ. P. 33(a).

By his signature below, counsel for Apple Computer, Inc. attests under penalty of perjury that counsel for Burst.com, Inc. concurs in the filing of this Stipulation.

Dated: September 11, 2006

Respectfully submitted,

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated:

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The Honorable Marilyn Hall Patel  
United States District Court Judge