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

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

21 APPLE COMPUTER, INC.,  
22 Plaintiff/Counterdefendant,

23 v.

24 BURST.COM, INC.,  
25 Defendant/Counterclaimant.  
26

§  
§ CASE NO. C06-00019 MHP  
§  
§ PATENT LOCAL RULE 4-3  
§ JOINT CLAIM CONSTRUCTION AND  
§ PREHEARING STATEMENT  
§  
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§

1 Pursuant to Patent Local Rule (“PLR”) 4-3, Plaintiff Apple Computer, Inc. (“Apple”) and  
2 Defendant Burst.com, Inc. (“Burst”) jointly submit, through their respective counsel, this Joint  
3 Claim Construction and Prehearing Statement regarding the February 8, 2007, Claim  
4 Construction Hearing regarding U.S. Patent Nos. 4,963,995 (“the ’995 Patent”), 5,164,839 (“the  
5 ’839 Patent”), 5,995,705 (“the ’705 Patent”), and 5,057,932 (“the ’932 patent”), and the Pre-  
6 hearing Tutorial on February 1, 2007.  
7

8 **A. Agreed Claim Constructions (PLR 4-3(a)).**

9 The parties attach hereto their proposed constructions of the claim terms, phrases, and/or  
10 clauses on which the parties agree. *See* Exhibit A.  
11

12 **B. Disputed Claim Constructions and Joint Claim Construction Chart  
13 (PLR 4-3(b)).**

14 The parties attach hereto joint claim construction charts for each of the four patents that  
15 include each party’s proposed construction of each disputed claim term, phrase, or clause,  
16 together with an identification of all references from the specification or prosecution history that  
17 support that construction, and an identification of any extrinsic evidence known to the party on  
18 which it intends to rely either to support its proposed construction of the claim or to oppose the  
19 other party’s proposed construction of the claim. *See* Exhibits B - E. Burst believes that an  
20 alternative version of the charts attached as Exhibits B – E may assist the Court, and intends to  
21 provide a sample at the October 10, 2006, status conference. The issue of testimony of  
22 percipient and/or expert witnesses is addressed below in Section D.  
23

24 **C. Length of Time for Claim Construction Hearing (PLR 4-3(c)).**

25 The parties have not reached agreement on the length of time necessary for the Claim  
26 Construction Hearing. Burst believes that a total of four hours – two hours per side – is  
27

1 sufficient to present the parties' respective positions on construction of the important disputed  
2 terms. Apple believes that reserving five hours would be preferable and should be sufficient,  
3 given the disputes as presently articulated.

4  
5 **D. Need for Live Testimony at the Claim Construction Hearing (PLR 4-3(d)).**

6 The parties have agreed, as incorporated in the Court's scheduling order, that they will  
7 disclose the identities of their experts on October 20, 2006, when the parties exchange their  
8 expert reports. The expert reports, therefore, will include a summary of the experts' opinions in  
9 sufficient detail to permit a meaningful deposition of the expert, as required under Patent Local  
10 Rule 4-3(d). Neither party plans to call any percipient witnesses to testify at the Claim  
11 Construction Hearing. Burst did not plan to call any expert witnesses to testify live at the  
12 Hearing, but Apple has advised that it may do so, and therefore Burst may do so as well.  
13 However, these positions are subject to the parties' discussion with the Court at the upcoming  
14 Pre-hearing Conference on October 10, 2006, at which time the parties hope to learn the Court's  
15 preferences regarding both live testimony by experts at the Claim Construction Hearing and the  
16 total amount of Hearing time that the Court intends to schedule.

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19 **E. The Tutorial Prior to the Claim Construction Hearing (PLR 4-3(e)).**

20 With respect to the Pre-Hearing Tutorial scheduled for February 1, 2006, the parties  
21 agree that a total of two to three hours, or 60 to 90 minutes per side, is sufficient. Apple believes  
22 that a total of three hours would be preferable. At the Initial Case Management Conference  
23 ("ICMC"), the Court stated that the tutorial should be a non-argumentative, non-testimonial  
24 presentation on the technology at issue in the patents, the technology at the time the patents were  
25 filed, and the technology of the products and instrumentalities accused of infringement. At the  
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1 status conference on October 10, 2006, the parties wish to confirm their understanding of the  
2 Court's expectations regarding the content of the tutorials. The parties propose that each party  
3 be allowed to allocate its one-hour presentation as it wishes between presentation by counsel and  
4 a non-testimonial presentation by an expert. Burst anticipates that it will use an expert during  
5 part of its presentation at the tutorial. Apple anticipates making its presentation primarily  
6 through counsel.  
7

8 At the ICMC, the parties discussed with the Court the possibility that the parties might  
9 prepare and submit recorded tutorial presentations on DVD together with this Pre-hearing  
10 Statement and Joint Claim Construction Chart. At the ICMC, the Court expressed a willingness  
11 to consider such DVD presentations, but indicated that they should be non-argumentative.  
12 Following further discussions between the parties, and in light of the Prehearing Tutorial that  
13 will occur on February 1, 2006, the parties determined and agreed not to prepare and submit  
14 DVD tutorials.  
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18 Dated: October 3, 2006.

Respectfully submitted,

19           /s/ Parker C. Folse III

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CERTIFICATE OF SERVICE

I hereby certify that on the date written above, that I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system. The Court or the CM/ECF system will send notification of such filings to all CM/ECF participants.

/s/ Nicholas Brown\_\_\_\_\_