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15 Attorneys for Defendant
16 BURST.COM, INC.

17 UNITED STATES DISTRICT COURT

18 FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO)

19 APPLE COMPUTER, INC.,

20 Plaintiff/Counterdefendant,

21 BURST.COM, INC.,

22 Defendant/Counterclaimant.

§ Case No. 3:06-CV-00019 MHP
§
§ **DECLARATION OF LESLIE V.**
§ **PAYNE IN SUPPORT OF**
§ **DEFENDANT BURST.COM, INC.'S**
§ **OPENING BRIEF ON**
§ **CLAIM CONSTRUCTION**

1 I, Leslie V. Payne, submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

2 1. I am a partner of the law firm Heim, Payne & Chorush, L.L.P., counsel for Burst.com,
3 Inc. ("Burst") in the above-captioned action. I make this declaration in support of Burst's
4 Opening Brief on Claim Construction. I have personal knowledge of the facts stated
5 herein, and, if called to testify as a witness, I could and would testify competently thereto.
6

7 2. Attached here as Exhibit 1 is a true and correct copy of U.S. Patent No. 4,963,995 (the
8 "995 patent").

9 3. Attached here as Exhibit 2 is a true and correct copy of U.S. Patent No. 5,057,932 (the
10 "932 patent").

11 4. Attached here as Exhibit 3 is a true and correct copy of U.S. Patent No. 5,164,839 (the
12 "839 patent").

13 5. Attached here as Exhibit 4 is a true and correct copy of U.S. Patent No. 5,995,705 (the
14 "705 patent").

15 6. Attached here as Exhibit 5 is a true and correct copy of the Claim Construction Expert
16 Report of Dr. Sheila S. Hemami.

17 7. Attached here as Exhibit 6 is a true and correct copy of excerpts from the Expert Report
18 of Joel Halpern re: Claim Construction of U.S. Patent Nos. 4,963,995, 5,057,932,
19 5,164,839, and 5,995,705.
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21 8. Attached here as Exhibit 7 is a true and correct copy of excerpts from the deposition
22 transcript of Sheila Hemami dated November 14, 2006.

23 9. Attached here as Exhibit 8 is a true and correct copy of excerpts from the deposition
24 transcript of Joel Halpern dated November 13, 2006.
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- 1 10. Attached here as Exhibit 9 is a true and correct copy of *Amendment "A," '995 Patent File*
2 *History*, (March 12, 1990).
- 3 11. Attached here as Exhibit 10 is a true and correct copy of *Amendment "A," '932 Patent*
4 *File History*, (May 7, 1990).
- 5 12. Attached here as Exhibit 11 is a true and correct copy of *Amendment "B," '932 Patent*
6 *File History*, (January 4, 1991).
- 7 13. Attached here as Exhibit 12 is a true and correct copy of *Preliminary Amendment, '705*
8 *Patent File History*, (August 4, 1997).
- 9 14. Attached here as Exhibit 13 is a true and correct copy of *Amendment and Response, '705*
10 *Patent File History*, (June 1, 1998).
- 11 15. Attached here as Exhibit 14 is a true and correct copy of definitions from the *American*
12 *Heritage Dictionary* (2d College ed. 1982).
- 13 16. There is no Exhibit 15.
- 14 17. Attached here as Exhibit 16 is a true and correct copy of definitions from the *IEEE*
15 *Standard Dictionary of Electrical and Electronics Terms* (4th ed. 1988).
- 16 18. Attached here as Exhibit 17 is a true and correct copy of definitions from the *Modern*
17 *Dictionary of Electronics* (6th ed. 1984).
- 18 19. Attached here as Exhibit 18 is a true and correct copy of definitions from the *Webster's*
19 *New Collegiate Dictionary* (1981).
- 20 20. Attached here as Exhibit 19 is a true and correct copy of the List of Agreed Terms.
- 21 21. Attached here as Exhibit 20 is a true and correct copy of a Fibonacci Delta paper.
- 22 22. Attached here as Exhibit 21 is a true and correct copy of excerpts from Microsoft's
23 *Response Claim Construction Brief in the Burst/Microsoft case*.
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23. Attached here as Exhibit 22 is a true and correct copy of excerpts from Burst.com's
Opening Claim Construction Brief in the Burst/Microsoft case.

24. Attached here as Exhibit 23 is a true and correct copy of the March 12, 2004 letter from
Judge Motz in the Burst/Microsoft case.

25. Attached here as Exhibit 24 is a true and correct copy of the June 22, 2004 letter from
Judge Motz in the Burst/Microsoft case.

26. Attached here as Exhibit 25 is a true and correct copy of the CCITT Group IV Standard.

27. Attached here as Exhibit 26 is a true and correct copy of the specification sheet on the
AMD Compression Processor.

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

Executed November 22, 2006



Leslie V. Payne

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