

1 MATTHEW D. POWERS (Bar No. 104795)
 matthew.powers@weil.com
 2 GARLAND STEPHENS (admitted N.D.C.A.,
 Texas Bar No. 24053910)
 3 garland.stephens@weil.com
 NICHOLAS A. BROWN (Bar No. 198210)
 4 nicholas.brown@weil.com
 WEIL, GOTSHAL & MANGES LLP
 5 Silicon Valley Office
 201 Redwood Shores Parkway
 6 Redwood Shores, CA 94065
 Telephone: (650) 802-3000
 7 Facsimile: (650) 802-3100

8 Attorneys for Plaintiff
 APPLE COMPUTER, INC.

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

13 APPLE COMPUTER, INC.,
 14 Plaintiff,
 15 v.
 16 BURST.COM, INC.,
 17 Defendant.

Case No. C 06-0019 MHP
 DECLARATION OF NICHOLAS A.
 BROWN IN SUPPORT OF PLAINTIFF
 APPLE COMPUTER, INC.'S CLAIM
 CONSTRUCTION BRIEF
 Hon. Marilyn Hall Patel
 Complaint Filed: January 4, 2006
 Trial Date: February 26, 2008

1 I, Nicholas A. Brown, declare:

2 1. I am a member of the Bar of this Court and an attorney with the law firm of
3 Weil, Gotshal & Manges LLP, counsel of record for Apple Computer, Inc. in the above-captioned
4 matter. I submit this declaration based on personal knowledge and following a reasonable
5 investigation. If called upon as a witness, I could competently testify to the truth of each
6 statement herein.

7 2. Attached hereto as **Exhibit A** is a true and correct copy of APBU 1-125
8 [application history for U.S. Patent No. 4,963,995 (Lang), filed December 27, 1988].

9 3. Attached hereto as **Exhibit B** is a true and correct copy of Burst's
10 Preliminary Infringement Contentions, filed on May 22, 2006.

11 4. Attached hereto as **Exhibit C** is a true and correct copy of the deposition
12 transcript of Shelia Hemami, taken on November 14, 2006.

13 5. Attached hereto as **Exhibit D** is a true and correct copy of APBU 414882-
14 414945 [excerpts from DATA COMMUNICATIONS PRINCIPLES 607-669 (R. Gitlin, J. Hayes and S.
15 Weinstein eds., Plenum Press 1992)].

16 6. Attached hereto as **Exhibit E** is a true and correct copy of excerpts from
17 Robert F. Graf & William Sheets, VIDEO SCRAMBLING & DESCRAMBLING FOR SATELLITE &
18 CABLE TV 103 (2nd ed. 1998).

19 7. Attached hereto as **Exhibit F** is a true and correct copy of excerpts from
20 Edward A. Lee & David G. Messerschmitt, DIGITAL COMMUNICATION 598 (1988).

21 8. Attached hereto as **Exhibit G** is a true and correct copy of excerpts from
22 Bernard Sklar, DIGITAL COMMUNICATIONS: FUNDAMENTALS AND APPLICATIONS 519-523 (1988).

23 9. Attached hereto as **Exhibit H** is a true and correct copy of APBU 414957-
24 414959 [excerpt from the MODERN DICTIONARY OF ELECTRONICS (6th Ed.) (definition of "burst
25 transmission")].

26 10. Attached hereto as **Exhibit I** is a true and correct copy of APBU 807-813
27 [U.S. Patent No. 4,467,473 (Arnon), issued August 21, 1984].

28 11. Attached hereto as **Exhibit J** is a true and correct copy of APBU 1071-

1 1078 [U.S. Patent No. 4,521,806 (Abraham), issued June 4, 1985].

2 12. Attached hereto as **Exhibit K** is a true and correct copy of APBU 763-769
3 [U.S. Patent No. 4,300,161 (Haskell), issued November 10, 1981].

4 13. Attached hereto as **Exhibit L** is a true and correct copy of APBU 391-688
5 [application history for U.S. Patent No. 5,995,705 (Lang), filed July 18, 1997].

6 14. Attached hereto as **Exhibit M** is a true and correct copy of APBU 1613-
7 1628 [U.S. Patent No. 4,974,178 (Izeki), issued November 27, 1990].

8 15. Attached hereto as **Exhibit N** is a true and correct copy of APBU 159385-
9 159393 [Chen et al., "Scene Adaptive Coder," IEEE Transactions on Communications, COM-
10 32(3): 225-232 (1984)].

11 16. Attached hereto as **Exhibit O** is a true and correct copy of APBU 126-269
12 [application history for U.S. Patent No. 5,057,932 (Lang), filed May 5, 1989].

13 17. Attached hereto as **Exhibit P** is a true and correct copy of APBU 4915-
14 4946 [U.S. Patent No. 4,179,709 (Workman), issued December 18, 1979].

15 18. Attached hereto as **Exhibit Q** is a true and correct copy of APBU 832-1070
16 [U.S. Patent No. 4,516,156 (Fabris), issued May 7, 1985].

17 19. Attached hereto as **Exhibit R** is a true and correct copy of APBU 415188-
18 415233 [excerpts from the application history for European Patent No. 0,407,561 (Lang), filed on
19 December 27, 1989 (International Publication Pamphlet, dated July 12, 1990)].

20 20. Attached hereto as **Exhibit S** is a true and correct copy of APBU 415270-
21 415288 [excerpts from the application history for European Patent No. 0,407,561 (Lang), filed on
22 December 27, 1989 (Communication to EPO regarding claims, dated September 12, 1990)].

23 21. Attached hereto as **Exhibit T** is a true and correct copy of APBU 415340-
24 415352 [excerpts from the application history for European Patent No. 0,407,561 (Lang), filed on
25 December 27, 1989 (EPO communication, dated April 22, 1994)].

26 22. Attached hereto as **Exhibit U** is a true and correct copy of APBU 415364-
27 415391 [excerpts from the application history for European Patent No. 0,407,561 (Lang), filed on
28 December 27, 1989 (Response to EPO communication, dated May 5, 1995)].

1 23. Attached hereto as **Exhibit V** is a true and correct copy of APBU 415420-
2 415423 [excerpts from the application history for European Patent No. 0,407,561 (Lang), filed on
3 December 27, 1989 (EPO communication, dated June 30, 1995)].

4 24. Attached hereto as **Exhibit W** is a true and correct copy of APBU 415429-
5 415471 [excerpts from the application history for European Patent No. 0,407,561 (Lang), filed on
6 December 27, 1989 (Response to EPO communication, dated February 9, 1996)].

7 25. Attached hereto as **Exhibit X** is a true and correct copy of APBU 16623-
8 16665 [European Patent No. 0,407,561 (Lang), issued on December 2, 1998].

9 26. Attached hereto as **Exhibit Y** is a true and correct copy of APBU 17492-
10 17505 [U.S. Patent No. 5,440,334 (Walters et al.), issued on August 8, 1995].

11 27. Attached hereto as **Exhibit Z** is a true and correct copy of Judge Motz'
12 Claim Construction Order in *Burst.com v. Microsoft Corp.*, Civil No. JFM-02-2952, dated March
13 12, 2004.

14 28. Attached hereto as **Exhibit AA** is a true and correct copy of APBU 270-
15 390 [application history for U.S. Patent No. 5,164,839 (Lang), filed on October 11, 1991].

16 29. Attached hereto as **Exhibit BB** is a true and correct copy of APBU
17 191344-191347 [excerpts from Robert C. Faber, LANDIS ON THE MECHANICS OF PATENT CLAIM
18 DRAFTING App. D-14 (5th ed.)].

19 30. Attached hereto as **Exhibit CC** is a true and correct copy of U.S. Patent
20 No. 4,963,995 (Lang), filed December 27, 1988 with highlighting.

21 31. Attached hereto as **Exhibit DD** is a true and correct copy of U.S. Patent
22 No. 5,057,932 (Lang), filed May 5, 1989 with highlighting.

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

25 Executed this 8th day of December 2006 at Redwood Shores, California.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WEIL, GOTSHAL & MANGES LLP

By: /s/ Nicholas A. Brown
 Nicholas A. Brown