

EXHIBIT A

TO DECLARATION OF TYLER GEE IN SUPPORT OF APPLE
INC.'S SUPPLEMENTAL BRIEF OPPOSING PSYSTAR'S MOTION
TO COMPEL AND IN SUPPORT OF APPLE'S CROSS MOTION
FOR PROTECTIVE ORDER

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Form 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended September 27, 2008

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: 000-10030

APPLE INC.

(Exact name of registrant as specified in its charter)

California
(State or other jurisdiction
of incorporation or organization)

94-2404110
(I.R.S. Employer
Identification No.)

1 Infinite Loop
Cupertino, California
(Address of principal executive offices)

95014
(Zip Code)

Registrant's telephone number, including area code: **(408) 996-1010**

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, no par value
(Title of class)

The NASDAQ Global Select Market
(Name of exchange on which registered)

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes
No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes
No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (section 229.405 of this chapter) is not contained herein, and will not be contained, to the best of the registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

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Gross margin for the three fiscal years ended September 27, 2008, are as follows (in millions, except gross margin percentages):

	<u>2008</u>	<u>2007</u>	<u>2006</u>
Net sales	\$ 32,479	\$ 24,006	\$ 19,315
Cost of sales	21,334	15,852	13,717
Gross margin	<u>\$ 11,145</u>	<u>\$ 8,154</u>	<u>\$ 5,598</u>
Gross margin percentage	34.3%	34.0%	29.0%

Gross margin percentage was relatively flat in 2008 as compared to 2007. Gross margin percentage of 34.0% in 2007 increased significantly from 29.0% in 2006. The primary drivers of this increase were more favorable costs on certain commodity components, including NAND flash memory and DRAM memory, higher overall revenue that provided for more leverage on fixed production costs and a higher percentage of revenue from the Company's direct sales channels.

The Company expects its gross margin percentage to decrease in future periods compared to levels achieved during 2008 and 2007, and anticipates gross margin levels of about 30% in 2009. This expected decline is due largely to the anticipated impact of product transitions, flat or reduced pricing on new and innovative products that have higher cost structures, both expected and potential future cost increases for key components, a stronger U.S. dollar, and higher logistical costs.

The foregoing statements regarding the Company's expected gross margin percentage are forward-looking and could differ from anticipated levels because of several factors, including but not limited to certain of those set forth below in Part I, Item 1A, "Risk Factors" under the subheading "*Future operating results depend upon the Company's ability to obtain key components including, but not limited to microprocessors, NAND flash memory, DRAM and LCDs at favorable prices and in sufficient quantities,*" which is incorporated herein by reference. There can be no assurance that targeted gross margin percentage levels will be achieved. In general, gross margins and margins on individual products will remain under downward pressure due to a variety of factors, including continued industry wide global product pricing pressures, increased competition, compressed product life cycles, product transitions and expected increases in the cost of key components including, but not limited to microprocessors, NAND flash memory, dynamic random access memory ("DRAM") and liquid crystal displays ("LCDs"), as well as potential increases in the costs of outside manufacturing services and a potential shift in the Company's sales mix towards products with lower gross margins. In response to these competitive pressures, the Company expects it will continue to take product pricing actions, which would adversely affect gross margins. Gross margins could also be affected by the Company's ability to manage product quality and warranty costs effectively and to stimulate demand for certain of its products. Due to the Company's significant international operations, financial results can be significantly affected in the short-term by fluctuations in exchange rates.

Operating Expenses

Operating expenses for the three fiscal years ended September 27, 2008, are as follows (in millions, except for percentages):

	<u>2008</u>	<u>2007</u>	<u>2006</u>
Research and development	\$ 1,109	\$ 782	\$ 712
Percentage of net sales	3.4%	3.3%	3.7%
Selling, general, and administrative	\$ 3,761	\$ 2,963	\$ 2,433
Percentage of net sales	11.6%	12.3%	12.6%

Research and Development ("R&D")

Expenditures for R&D increased 42% or \$327 million to \$1.1 billion in 2008 compared to 2007. These increases were due primarily to an increase in R&D headcount in the current year to support expanded R&D activities and higher stock-based compensation expenses. In 2008, \$11 million of software development costs were capitalized