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 PSYSTAR CORPORATION
 6

7 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 8 SAN FRANCISCO DIVISION

9 APPLE INC., a California corporation,

10 *Plaintiff,*

11 v.

12 PSYSTAR CORPORATION,

13 *Defendants.*

14 AND RELATED COUNTERCLAIMS

CASE NO. CV-08-03251-WHA

**PSYSTAR CORPORATION'S
 RESPONSE IN OPPOSITION TO
 APPLE INC.'S MOTION TO
 DISMISS OR ENJOIN
 PROSECUTION OF THE
 RECENTLY-FILED FLORIDA
 ACTION AND TO RE-OPEN
 DISCOVERY FOR LIMITED
 PURPOSES**

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 17 **PSYSTAR'S RESPONSE IN OPPOSITION TO APPLE'S MOTION TO DISMISS OR
 ENJOIN PROSECUTION OF THE RECENTLY-FILED FLORIDA ACTION AND TO RE-
 18 OPEN DISCOVERY FOR LIMITED PURPOSES**

19 The case at bar involves Apple's challenge to the legality of Psystar computer systems that
 20 run Apple's Mac OS X Leopard. Fact discovery in this case has been completed: Apple has deposed
 21 the senior employees of Psystar, inspected Psystar products, and inspected the Psystar manufacturing
 22 facility in which Psystar assembles computer systems running Leopard; similarly, Psystar has
 23 deposed the senior engineers at Apple responsible for the design and implementation of the
 24 technological protection measures in Leopard that Apple alleges Psystar circumvented. Summary-
 25 judgment briefing is due in several weeks, expert depositions are proceeding next week, and trial is
 26 scheduled for January 10. Psystar opposes any continuance of the trial date necessary to allow
 27

28 PSYSTAR CORPORATION'S RESPONSE IN OPPOSITION TO APPLE INC.'S MOTION TO
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 RE-OPEN DISCOVERY FOR LIMITED PURPOSES (CV 08-03251 WHA)

1 Apple to remedy its strategic decision to litigate only Leopard in this action, a strategic decision that
2 it now regrets. It is Psystar that is prejudiced by a further delay in the trial date since it is Psystar's
3 business that is being harmed by the shroud of legal doubt that Apple has created by this action.

4 Apple controlled the schedule for the release of Snow Leopard. Apple elected not to take
5 steps to add Snow Leopard to this case by seeking a late pleadings amendment. Apple elected not to
6 raise the issue of Snow Leopard's impending release and its effect on the time needed for discovery
7 at the post-stay status conference, by motion to extend the time for discovery, or at a status
8 conference requested for that purpose. By contrast, the release of Snow Leopard was a surprise
9 event for Psystar. Psystar did not know when Snow Leopard would be released until Apple's public
10 announcement of a release date. And Psystar developed its new technology — selective
11 virtualization — in the days preceding and the week following the release of Snow Leopard. It is
12 simply incorrect to suggest that Psystar withheld any information or code during the discovery
13 period that might have induced Apple to seek a pleadings amendment sooner. And it would have
14 taken no great oracular capacity to predict that upon the release of Snow Leopard, Psystar would
15 have taken steps to get Snow Leopard running on Psystar systems. Psystar has never been opaque
16 about its intention to continue on in its business.

17 Apple had its opportunity to bring Snow Leopard into this case and chose not to. Apple
18 chose not to conduct discovery into Snow Leopard and stonewalled when Psystar asked questions at
19 depositions about Snow Leopard. Apple assumed that its new technological protection measures
20 would prevent Psystar from running Snow Leopard on Psystar computers. Placing its faith in its
21 security engineers — [REDACTED] —
22 Apple decided not to seek leave to amend its complaint or disclosures when Snow Leopard was
23 released or when a date certain was set for that release. Instead, Apple did nothing.

24 As a result, the Florida action is the first-filed case relating to Snow Leopard. Apple is free
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28 PSYSTAR CORPORATION'S RESPONSE IN OPPOSITION TO APPLE INC.'S MOTION TO
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1 to move for transfer and consolidation of the Florida action to this Court — but it must do so in
2 Florida. Apple has not done so yet. Apple is also free to file motions in the Florida action seeking to
3 give preclusive effect to this Court’s earlier rulings on Psystar’s antitrust counterclaims, to this
4 Court’s forthcoming rulings on motions for summary judgment, and to the eventual jury verdict.
5 While Psystar does not believe that there would be any substantial preclusion between this action
6 and the Florida action, preclusion doctrines are the proper way for a defendant in multiple actions to
7 avoid unnecessary re-litigation of issues or inconsistent results. What is improper is to ask this Court
8 to intrude on and, indeed, preempt the judgment of Judge Hoeveler of the United States District
9 Court for the Southern District of Florida. Judge Hoeveler and his Court are quite capable of hearing
10 and ruling on the various arguments that Apple has improperly advanced here.

11
12 **I. This Case Does Not Cover Snow Leopard**

13 **A. Complaint and copyright registrations**

14 Apple’s amended complaint accuses Psystar of running Mac OS X Leopard on non-Apple
15 computers, circumventing the technological protection measures that protect Mac OS X Leopard,
16 and breaching the license agreement that accompanies Mac OS X Leopard. The amended complaint
17 nowhere mentions Snow Leopard. There is no way it could have mentioned Snow Leopard, since
18 Snow Leopard was released only several weeks ago, well after the amended complaint was filed.
19 The amended complaint cannot have encompassed Snow Leopard because — put simply and starkly
20 — neither Snow Leopard nor the Psystar computers that run Snow Leopard existed when it was
21 filed. *See Reiffin v. Microsoft Corp.*, 270 F. Supp. 2d 1132, 1162 (N.D. Cal. 2003) (pleadings
22 amendment was procedure by which to add claims for new products released after filing of the
23 original complaint).
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26 Apple’s amended complaint further cannot be construed to extend to Snow Leopard because
27 Apple had not registered any copyright in Snow Leopard before filing the complaint and, in fact, has
28 PSYSTAR CORPORATION’S RESPONSE IN OPPOSITION TO APPLE INC.’S MOTION TO
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1 not registered its copyright in Snow Leopard as of a search conducted on September 14. *See*
 2 Amended Complaint at ¶ 26 (listing copyright registrations); Ex. F (Affidavit of Jane Dryer re:
 3 search at copyright office). Copyright registration is a prerequisite to any action for infringement.
 4 17 U.S.C. § 411(a) (“no civil action for infringement of the copyright in any United States work shall
 5 be instituted until preregistration or registration of the copyright claim has been made in accordance
 6 with this title”); *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1211 (9th Cir. 1998). When a
 7 plaintiff files an infringement action based on an unregistered copyright, the appropriate remedy is
 8 dismissal of the action. *See Jefferson Airplane v. Berkeley Systems Inc.*, 886 F. Supp. 713, 714–17
 9 (N.D. Cal. 1994). At a minimum, the plaintiff must file an amended complaint alleging the
 10 registration, *see Zito v. Steeplechase Films, Inc.*, 267 F. Supp. 2d 1022, 1025 (N.D. Cal. 2003) —
 11 something that Apple has not even sought to do and that it should not be permitted to do at this late
 12 hour.
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15 **B. Discovery responses**

16 Throughout written discovery in this case, Apple has refused to answer questions, give
 17 admissions, or produce documents relating to versions of Mac OS X other than Mac OS X Leopard.
 18 For example, in response to a definition in interrogatories of “Mac OS” that included “all versions of
 19 Mac OS including, without limitation, Mac OS X, Mac OS 9, and Mac OS 8,” [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED] To this day, Apple has not

4 supplemented this response, even though it now contends that not only Leopard but also Snow

5 Leopard are within this action. In fact, Apple has not amended any of its answers to written

6 discovery so that they apply to Mac OS X Snow Leopard. And Apple has not produced documents

7 related to Snow Leopard. This is because all parties understood that Mac OS X Snow Leopard was

8 not included in this case. And, again, to this day, Apple has made no motion to amend the pleadings

9 to include Mac OS X Snow Leopard or the new Psystar products that allegedly infringe Snow

10 Leopard. Any such amendment would, of course, be improper under the very principles described

11 by Apple in its Florida Motion, since the first-filed case that addresses Snow Leopard is the case

12 currently pending in Florida.

13

14

15 **C. Stonewalling in depositions**

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
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[REDACTED]

After stonewalling in the depositions [REDACTED]

[REDACTED], Apple cannot claim that Snow Leopard has always been covered by this action. Snow Leopard is a new Apple product and the Psystar computers that run Snow Leopard are new Psystar products. If Apple wanted to amend its pleadings to include Snow Leopard and Psystar products running Snow Leopard, it should have moved to do so. Certainly Apple knew far better than Psystar when Snow Leopard was going to be released. Any such motion should be denied now, however, because it would necessarily upset the trial schedule in this case to the prejudice of Psystar and because the first-filed action addressing Snow Leopard is the case in Florida.

II. The Florida Case Deals With A Different Apple Product, A Different Apple License, A New Psystar Technology (Selective Virtualization), New Psystar Devices, and A Different Relevant Market

1 Neither the parties nor the federal courts will waste effort by having issues related to Snow
 2 Leopard litigated in the Florida action while this case proceeds expeditiously to a trial at which the
 3 legality of Psystar’s past conduct regarding Leopard will be finally determined. This is because the
 4 evidence and legal issues surrounding Snow Leopard are radically different from those surrounding
 5 Leopard. Apple attempts to obviate these differences by skimming the surface of the legal issues in
 6 the two cases. Although they are superficially similar — both involve claims for copyright
 7 infringement and circumvention of technological protection mechanisms, both involve first-sale and
 8 § 117 arguments by Psystar — differences in the evidence and facts make analysis of these legal
 9 issues entirely different in the two cases. And as to the differences in Psystar’s products, Apple, of
 10 course, cannot know how different they are since Apple has not yet taken any discovery on Psystar
 11 systems that run Snow Leopard or on Psystar’s new selective virtualization technology for running
 12 Snow Leopard.
 13
 14

15 **A. Snow Leopard v. Leopard**

16 The Florida case involves Apple’s Snow Leopard product. Snow Leopard is different from
 17 Leopard in many respects. But, in particular, the technological protection mechanisms that Apple
 18 contends that Psystar circumvented [REDACTED]

19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]
 26 [REDACTED]

27 No discovery has been taken in this case on either side on the technical protection

1 mechanisms in Snow Leopard. The only evidence that Apple offers that these protection
2 mechanisms are at all similar [REDACTED]

3 [REDACTED]
4 [REDACTED] The nature of the technological protection measures in
5 Snow Leopard is an entirely new topic that has not been explored in discovery in this case, in large
6 part due to Apple's stonewalling. Discovery should not be reopened now simply because Apple has
7 changed its mind about whether it wishes to include Snow Leopard in this cause of action. At
8 minimum, Apple should be required to seek leave to amend its complaint — and if Apple did so,
9 such leave, because there is already a pending Snow Leopard action in Florida, should be denied.
10

11 **B. Snow Leopard License v. Leopard License**

12 Snow Leopard has a different “software license agreement” than Leopard. The different
13 agreements create legal differences not only for Apple's breach-of-contract claims, but also for
14 Apple's copyright-infringement and DMCA anti-circumvention claims. The Snow Leopard license,
15 *see* Ex. D, differs from the Leopard license, *see* Ex. E, in several relevant respects.
16

17 *Ownership of the copy sold.* One important legal issue is whether Apple sells copies of Mac
18 OS X or merely licenses the use of Mac OS X. As a matter of copyright law, this depends on
19 whether Apple ever sells a copy of the Mac OS X software, where copy is statutorily defined as the
20 physical object containing that software. Psystar contends that Apple does sell such copies in the
21 form of the physical DVD containing Mac OS X. Apple contends that it does not sell copies, but
22 merely licenses them. In the Leopard license, Apple expressly states that “[y]ou own the media on
23 which the Apple Software is recorded,” while, in the Snow Leopard license, this line has been
24 removed. This distinction may make a crucial legal difference in the cases because it is the sale of a
25 copy that triggers the § 117 (right to take steps to run software on your computer) and § 109 (first-
26 sale doctrine) rights on which Psystar and its customers rely.
27

1 *Enforceability of the license agreement.* The Snow Leopard license agreement, unlike the
2 Leopard agreement, states that returns of the software are governed by Apple’s online return policy,
3 and not by the return policies of individual retailers like Amazon or Best Buy. Apple’s return policy,
4 unlike that of many other retailers, permits the return of software after it has been opened. Thus, a
5 customer who buys a copy of Snow Leopard has a chance, under the Snow Leopard license, to open
6 the copy, run the software, read the license, reject it, and return the software to Apple. But a
7 customer who buys a copy of Leopard from a retailer who does not accept returns of opened
8 software has no such opportunity. This lack of an opportunity to return the software may affect the
9 enforceability of the license agreement.
10

11 *Decryption and reverse engineering.* The Snow Leopard license agreement, unlike the
12 Leopard agreement, contains an express prohibition on decompiling, decrypting, reverse
13 engineering, disassembling, or attempting to derive the source code of Mac OS X. This clause will
14 be available to Apple with respect to Psystar computers that run Snow Leopard, but not with respect
15 to computers that run Leopard. And it raises entirely new issues to be briefed on summary judgment
16 about the enforceability of such a clause in the face of the Digital Millennium Copyright Act’s
17 express grant of a right to owners of copies of software programs to reverse engineer them for
18 purposes of interoperability. *See* 17 U.S.C. § 1201(f).
19
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21 *Choice of law.* The Snow Leopard license agreement contains a survivorship clause that says
22 that the choice-of-law provisions of that agreement survive its termination on account of an end
23 user’s breach of its terms. The Leopard license agreement contains no such survivorship clause.
24 Thus, if a Mac OS X license terminates because the end user has breached it (say, on Apple’s view,
25 by running Mac OS X on non-Apple hardware), then the Snow Leopard license provides that the
26 choice-of-law provision selecting California law survives while the Leopard license provides no such
27 thing. This may affect — and certainly requires different summary-judgment briefing on — the law
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1 that applies to some or all of Apple’s state-law claims.

2 In short, the differences between the license agreement that applies to Snow Leopard and the
3 agreement that applies to Leopard make this case and the Florida case quite different legally.

4 **C. Virtualization v. Hook Function**

5 The method by which Psystar computers run Mac OS X is completely different for Snow
6 Leopard than it was for Leopard. For Leopard, Psystar computers invoked a particular Apple
7 function [REDACTED] to cause Mac OS X to [REDACTED] function
8 properly. This was accomplished through the Psystar-written kernel extension OpenCojones.kext.
9 For Snow Leopard, Psystar uses new code to instead virtualize (that is, simulate) parts of the system
10 management chip (SMC) to “convince” Mac OS X that it is running on Apple hardware.
11 Virtualization like this is the backbone of a large part of the modern computing industry; indeed, it is
12 how Apple’s Macintosh computers are able to run Windows and Windows applications. *See, e.g.,*
13 <http://www.vmware.com/techonology/virtualization.html> (description of virtualization from the
14 leading company in the field, VMware). As this brief description makes clear, the Psystar
15 technology in the Florida case is entirely different from the Psystar technology at issue here.

16 **D. New Psystar Devices**

17 One of the issues to be litigated in the Florida case is the legality of Psystar’s “dongles” (an
18 industry term in wide use). Psystar’s dongles are USB sticks containing virtualization software that
19 allow end users to run Mac OS X on computers of their choice, not just computers purchased from
20 Psystar. The end user would buy a dongle from Psystar and a copy of Mac OS X from Apple or a
21 reseller like Amazon or Best Buy and would then be able to run that copy of Mac OS X on their
22 personal non-Apple computer. Psystar has worked out a design for a dongle that it intends to test,
23 manufacture, and sell in the near future, possibly depending on the progress made in the Florida
24 action. The dongle, of course, would be an entirely new product that is different in kind from the
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1 Psystar computer systems at issue in this action.

2 **III. Preclusion Doctrines Raised By Motion In Florida Are The Appropriate Way For**
3 **Apple To Assert Its Objections To The Antitrust Claims In The Florida Case**

4 A surprisingly large part of Apple’s present motion is devoted not to the copyright, anti-
5 circumvention, trademark infringement, or breach-of-contract claims that Apple asserts in this case,
6 but to the antitrust claims that Psystar has asserted in Florida. Apple contends that these antitrust
7 claims are barred by this Court’s prior dismissal of the antitrust counterclaims that Psystar asserted
8 earlier in this case and that Psystar’s new antitrust claims are, in any event, compulsory
9 counterclaims that Psystar was required to bring in this Court. Neither contention is correct. But,
10 more importantly, both contentions can and should be raised by Apple, if at all, by motion in the
11 Florida court: to the extent this Court’s prior order raises issue or claim preclusion issues relevant to
12 the new antitrust claims, Apple can move to dismiss or for summary judgment in Florida; to the
13 extent the new antitrust claims are in fact compulsory counterclaims, Apple can move to dismiss in
14 Florida. There is no cause for this Court to intervene in matters that should be decided by Judge
15 Hoeveler and the United States District Court for the Southern District of Florida.

16
17 Both claims of preclusion — preclusion because of the prior dismissal in this case and
18 preclusion under the compulsory-counterclaim rule — fail for the same reason: the antitrust claims
19 that Psystar is asserting in the Florida case relate to Apple’s conduct surrounding Snow Leopard and
20 therefore did not exist at the time the antitrust counterclaims in this case were filed or dismissed.
21 Rule 13, likewise, makes compulsory counterclaims only those counterclaims “that—at the time of
22 its service—the pleader has against an opposing party.” Counterclaims that arise after service of the
23 answer are, by definition, not compulsory. *See, e.g., Dillard v. Security Pacific Brokers, Inc.*, 835
24 F.2d 607, 609 (5th Cir. 1988); *Pike v. Greeman*, 266 F.3d 78, 92 n.17 (2d Cir. 2001). Likewise,
25 “[R]es judicata does not bar claims that did not exist at the time of the prior litigation.” *Meekins v.*
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1 *United Transportation Union*, 946 F.2d 1054, 1058 (4th Cir. 1991); *see also National Resources*
2 *Defense Council v. U.S. E.P.A.*, 437 F. Supp. 2d 1137, 1155 (C.D. Cal. 2006) (“Claim preclusion
3 does not bar litigants from bringing claims based on conduct that occurred after the settlement of a
4 prior suit.”).

5
6 As the Supreme Court explained in an antitrust case, this is so even though “both suits
7 involved essentially the same course of wrongful conduct.” *Lawlor v. National Screen Service*
8 *Corp.*, 349 U.S. 322, 327 (1955). Even in such a case, a prior judgment “precludes recovery on
9 claims arising prior to its entry, it cannot be given the effect of extinguishing claims which did not
10 even then exist and which could not possibly have been sued upon in the previous case.” *Id.* at 328.
11 The Ninth Circuit, too, has held that a later-arising cause of action cannot be barred by a prior
12 judgment even if the later-arising action involves the same basic course of conduct. “A claim arising
13 after the date of an earlier judgment is not barred, even if it arises out of a continuing course of
14 conduct that provided the basis for the earlier claim.” *Frank v. United Airlines, Inc.*, 216 F.3d 845,
15 851 (9th Cir. 2000). Apple’s notion that the antitrust claims in the Florida action are somehow
16 precluded by this Court’s dismissal of the anyway very different antitrust counterclaims filed here is
17 simply without legal foundation.

18
19 It is also worth noting that, at a factual level, the antitrust claims in Florida are quite different
20 from the antitrust claims that were asserted in this case. The Florida claims assert that Apple has
21 made attempts to monopolize a different market: the market for “premium computers,” defined as
22 computers priced at more than \$1,000. Psystar plans to amend the Florida complaint shortly to assert
23 further market definitions, including one defining the market in personal computers running UNIX-
24 based operating systems. Windows is not a UNIX-based operating system. And, although there are
25 several other UNIX-based operating systems in the market, including the various flavors of Linux, it
26 turns out that this, too, is a market in which Apple has, and has taken anticompetitive acts to obtain
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1 and maintain, an effective monopoly. But these are issues for the Florida Court.

2 **IV. Conclusion**

3 It is within this Court's power to enjoin prosecution of a suit in a different federal forum. But
4 this should be done only when the second suit involves the same claims, the same facts, and the same
5 parties to such a degree that, in this Court's discretion, it would be a waste of the federal judiciary's
6 resources to have the cases proceed in parallel. An injunction barring Psystar from prosecuting the
7 Florida case would be appropriate if that case were simply a mirror image of this case, raising the
8 same legal questions on the same evidence. But the Florida case is nothing like that. The Florida
9 case concerns a new Apple product, Snow Leopard; a new series of Psystar products, including both
10 computers running Snow Leopard and dongles permitting end users to run their own copies of Snow
11 Leopard on their own non-Psystar computers; a new virtualization technology developed by Psystar;
12 a new license for Snow Leopard with at least four major differences from the Leopard license
13 affecting everything from choice of law to the enforceability of the license to whether the first-sale
14 doctrine and § 117 apply; and entirely new market definitions for the antitrust claims.
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17 Moreover, as to Snow Leopard, the first-to-file rule, properly applied, leads to the conclusion
18 that it is the Florida court in which all Snow Leopard-related disputes should be centered. Apple
19 actively refused to engage in discovery on Snow Leopard in this case, both in its responses to written
20 discovery and at depositions. Instead, Apple took the position that Snow Leopard was not part of
21 this case because it had not yet been released. *Cf. MedImmune, Inc. v. Genentech, Inc.*, 535 F. Supp.
22 2d 1000, 1009 (C.D. Cal. 2008) ("The Plaintiff has not demonstrated that NuMax is in fact part of
23 the actual controversy in this case. Indeed, MedImmune has always directed its pleadings
24 exclusively to Synagis and has never amended its pleading to reference NuMax. Furthermore,
25 Genentech states that MedImmune until very recently has refused to provide any discovery related to
26 NuMax."). Having taken this position, Apple cannot now object to the filing of a new case in
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1 Florida centered on the very questions it sought to avoid here.

2 If it turns out that there are any overlapping factual or legal issues, both Apple and Psystar
3 can address those issues in Florida by seeking agreement or orders limiting discovery in that case to
4 issues not fully explored here and by filing motions to dismiss or for summary judgment when
5 preclusion doctrines warrant doing so. Ordinary steps like these that will adequately protect against
6 a waste of federal judicial resources make the extraordinary step of an injunction against the
7 prosecution of an action in a co-ordinate United States District Court entirely unnecessary.
8 Moreover, enjoining the Florida action would be prejudicial to Psystar because it would necessitate
9 reopening discovery in this case and, as this Court stated at the September 4 hearing, continuing the
10 trial date beyond January. This case, and the legal doubt it creates about Psystar's business, is an
11 extraordinary burden on Psystar. Having gotten through discovery on all issues surrounding
12 Leopard, Psystar wishes to get on with trial and achieve some final resolution of the legality of its
13 activities to date. Apple should not be permitted to delay this day of reckoning by its last-minute
14 attempt to add Snow Leopard into this case.
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17 Psystar respectfully requests that Apple's motion be denied in full.
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1 Dated: September 18, 2009

Respectfully submitted,

2 CAMARA & SIBLEY LLP

3
4 By: /s/ K.A.D. Camara _____
K.A.D. Camara

5
6 *Attorney for Defendant / Counterclaimant*
7 *Psystar Corporation*

1 **CERTIFICATE OF SERVICE**

2 I, Michael Wilson, declare I am employed in the City of Houston and County of Harris, Texas
3 in the office of Camara & Sibley. I am over the age of eighteen and not a party to this action. My
4 business address is Camara & Sibley, 2339 University Boulevard, Houston, Texas 77005.

5 I served the following document(s):

6 **PSYSTAR CORPORATION'S RESPONSE IN OPPOSITION TO APPLE INC.'S MOTION
7 TO DISMISS OR ENJOIN PROSECUTION OF THE RECENTLY-FILED FLORIDA
8 ACTION AND TO RE-OPEN DISCOVERY FOR LIMITED PURPOSES**
9 Case No. CV 08-03251 WHA

10 on the interested parties in this action by placing a true and correct copy thereof, on the above date,
11 enclosed in a sealed envelope, following the ordinary business practice of Camara & Sibley LLP. I
12 sent the document(s) to the following:

<p>13 James G. Gilliland, Jr. 14 TOWNSEND AND TOWNSEND AND CREW LLP 15 Two Embarcadero Center, 8th Floor 16 San Francisco, California 94111 17 Telephone: (415) 576-0200 18 Facsimile: (415) 576-0300</p>	<p>19 email: jggilliland@townsend.com</p>
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20 [By First Class Mail] I am readily familiar with my employer's practice for collecting
21 and processing documents for mailing with the United States Postal Service. On the date listed herein,
22 following ordinary business practice, I served the within document(s) at my place of business, by
23 placing a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, for
24 collection and mailing with the United States Postal Service where it would be deposited with the
25 United States Postal Service that same day in the ordinary course of business.

26 [By Overnight Courier] I caused each envelope to be delivered by a commercial carrier
27 service for overnight delivery to the offices of the addressee(s).

28 [By Hand] I directed each envelope to the party(ies) so designated on the service list to
be delivered by courier this date.

[By Facsimile Transmission] I caused said document to be sent by facsimile
transmission to the fax number indicated for the party(ies) listed above.

[By Electronic Transmission] I caused said document to be sent by electronic
transmission to the e-mail address indicated for the party(ies) listed above via the court's ECF
notification system.

I declare under penalty of perjury under the laws of the United States of America that the
foregoing is true and correct, and that this declaration was executed on September 18, 2009 at
Houston, Texas.

/s/ Michael Wilson
Michael Wilson