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7 **Attorneys for:**
 8 Non-Party Exponent, Inc.

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 11 **UNITED STATES DISTRICT COURT**
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 13 **NORTHERN DISTRICT OF CALIFORNIA**

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 15 ADVANCED INTERNET TECHNOLOGIES,
 16 INC.,
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 18 Plaintiff,
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 20 v.
 21
 22 DELL, INC, and DELL FINANCIAL SERVICES,
 23 INC.
 24
 25 Defendants.

Case No.: CV 10 80078MISC

(Action pending in Eastern District of North Carolina)

26 **DECLARATION OF JAMES FICENEC**
 27 **IN SUPPORT OF EXPONENT, INC.'S**
 28 **RESPONSE TO MOTION FOR**
CONTEMPT

I, James J. Ficeneec, declare as follows:

1. I am an attorney at law licensed to practice in the State of California. I am a member of the law firm of SELLAR HAZARD MANNING FICENEC & LAI, attorneys of record for Non-Party Exponent, Inc.

2. The matters set forth in this declaration are known to me personally and if called as a witness herein, I could, and would, competently testify thereto.

3. Exponent is a science and engineering consulting firm with offices across the United States and in Europe and China. Exponent often provides services as an expert witness for litigation or

1 as a consulting (non-testifying) expert during or in anticipation of litigation. Exponent also provides
2 services unrelated to litigation.

3 4. The first information received from Exponent was that the Exponent employee working
4 on the Dell capacitor issue had just left on maternity leave. In light of the short deadlines sought to be
5 imposed by the subpoenas, I served Exponent's objections to preserve its client's right to protect its
6 work product and to advise AIT's counsel that Exponent's witness was on maternity leave.

7 5. After serving Exponent's objections, I began working with Exponent to determine
8 which projects might be responsive to AIT's document subpoena. Further, since Exponent is not a
9 party to this litigation, it was not aware whether Dell would contend that Exponent's work was
10 protected from discovery by the attorney work product doctrine. After reviewing files and speaking
11 with various Exponent personnel, Exponent identified the appropriate project files and I provided the
12 files to Dell's counsel to review for any potential work product objection. Dell's counsel has not
13 identified any documents reviewed so far fall within the work product doctrine and, concurrently with
14 this response, Exponent is producing those records.

15 6. Exponent is aware of documents relating to Exponent's inspections of facilities of
16 certain Dell vendors. Exponent believes that, as a condition of access to those facilities, Exponent
17 signed nondisclosure agreements with the operators of those facilities.

18 7. Once AIT's counsel has reviewed the records produced by Exponent, I will work with
19 AIT's counsel to ensure that an appropriate witness is produced for deposition if necessary.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing is
21 true and correct. Executed this 16th day of April, 2010, at Concord, California.

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23 /s/ James J. Ficene
24 JAMES J. FICENEC
25 Attorney For Non-Party
26 Exponent, Inc.
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