

1 GEORGE A. RILEY (S.B. #118304)
 2 DAVID EBERHART (S.B. #195474)
 3 O'MELVENY & MYERS LLP
 4 Embarcadero Center West
 5 275 Battery Street
 6 San Francisco, California 94111-3344
 7 Telephone: (415) 984-8700
 8 Facsimile: (415) 984-8701

9 Attorneys for Plaintiff
 10 Apple Computer, Inc.

FILED **SN**
 2004 DEC 14 AM 8:45
 KIRI TORRE, CLERK
 SUPERIOR COURT OF CALIFORNIA
 CO. OF SANTA CLARA
 BY: *[Signature]* DEPUTY

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **COUNTY OF SANTA CLARA**

13 Apple Computer, Inc.,
 14 Plaintiff,
 15 v.
 16 Doe 1, an unknown individual, and Does
 17 2-25, inclusive,
 18 Defendants.

Case No. 104-cv-032178

**SUPPLEMENT TO *EX PARTE*
 APPLICATION FOR AN ORDER
 FOR ISSUANCE OF COMMISSION
 AND GRANTING LEAVE TO SERVE
 SUBPOENAS AND MEMORANDUM
 OF POINTS AND AUTHORITIES IN
 SUPPORT OF SAME**

19 Pursuant to California Code of Civil Procedure Section 2025(b)(2) and
 20 California Rule of Court 379, Plaintiff Apple Computer, Inc. ("Apple") brings this
 21 supplement to its *ex parte* application for an order for issuance of commission and
 22 granting leave to serve subpoenas for documents on Powerpage.org, Appleinsider.com,
 23 and Thinksecret.com. Apple brings this *ex parte* application because the true identities of
 24 the defendants in this action cannot be ascertained without this discovery. This
 25 supplement sets forth the specific discovery needed and the basis for the same.

26 Apple's *ex parte* application is based on this supplement, the Memorandum
 27 of Points and Authorities set forth below, the Complaint, the previously-submitted *Ex*
 28 *Parte* application for discovery, the previously-submitted Declarations of Robin Zonic

1 and George A. Riley, and any other oral or documentary evidence that may be presented
2 at or prior to the hearing on the application.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 As set forth in Apple's original *ex parte* application, good cause exists for
5 immediate discovery to identify the proper defendant or defendants in this action. That
6 person (alone or in concert with others) has misappropriated Apple's trade secrets
7 regarding future product information, and those trade secrets have appeared on three
8 websites: Powerpage.org, Appleinsider.com, and Thinksecret.com. (Declaration of R.
9 Zonic ("Zonic Decl.") ¶¶ 12-17.) Apple's internal investigations have, to date, failed to
10 uncover the identity of any defendant. (*Id.* ¶ 18.)

11 Apple seeks document discovery from those three websites in an effort to
12 identify the person or persons who have misappropriated Apple's trade secrets and to
13 serve them with the Complaint. The proposed discovery to the three sites is very similar,
14 although it is tailored to the specific information posted at those sites and the individuals
15 who appear to have been involved with those postings.

16 **Discovery To Powerpage.org**

17 Information regarding the Apple trade secrets at issue first appeared on
18 Powerpage.org. (Zonic Decl. ¶ 12.) Postings regarding that trade secret future product
19 appeared on Powerpage.org on November 19, 22, 23, and 26, 2004. (*Id.* ¶¶ 12-14.) Apple
20 seeks leave to subpoena documents from Powerpage.org that will show the source of the
21 trade secret information. These requested documents include materials – documents,
22 images, and communications – that relate to the future product. The exact language of the
23 request, redacting only the trade secret information identifying the product, is as follows:

24 All documents relating to any information posted on
25 Powerpage.com (the "Website") relating to an unreleased
26 Apple product [REDACTED] (the "Product"), including
27 postings that appeared on the Website on November 19, 2004,
28 November 22, 2004, November 23, 2004, and November 26,
2004. These documents include:

1 (a) All documents identifying any individual or
2 individuals who provided information relating to the Product,
3 including: true name(s), address(es), internet protocol ("IP")
4 address(es), and e-mail address(es);

5 (b) All communications relating to the Product.

6 (c) All documents relating to the Product.

7 (d) All images, including photographs, sketches,
8 schematics and renderings of the Product.

9 Apple also seeks leave to subpoena documents from Powerpage.org that will identify
10 individuals who may have knowledge regarding the source of the misappropriated trade
11 secret information. These persons include three specific individuals who were credited on
12 Powerpage.org as creating the text or images regarding Apple's future product: "Jason
13 O'Grady," "Bob Borries," and "Dr. Teeth and the Electric Mayhem." (See Zonic Decl. ¶¶
14 13-14, Ex. B.) Apple seeks this information because: (i) one or more of these persons
15 may be an Apple employee who had access to the trade secret information; and (ii) Apple
16 may return to the Court to seek leave to depose persons with knowledge of the trade secret
17 misappropriation. The exact language of the request is as follows:

18 All documents relating to the identity of any individual
19 or individuals who have knowledge regarding the source of
20 information regarding the Product. These documents include:

21 (a) All documents relating to the identity of any
22 individual or individuals associated with the Website who has
23 or have used the name "Jason O'Grady," including true
24 name(s), address(es), IP address(es), and email address(es) for
25 such individual(s).

26 (b) All documents relating to the identity of any
27 individual or individuals associated with the Website who has
28 or have used the name "Bob Borries," including true name(s),
address(es), IP address(es), and email address(es) for such
individual(s).

(c) All documents relating to the identity of any
individual or individuals associated with the Website who has
or have used the name "Dr. Teeth and the Electric Mayhem,"
including true name(s), address(es), IP address(es), and email
address(es) for such individual(s).

(d) All documents relating to the identity of any individual
or individuals who received and/or edited any information

1 relating to the Product, including true name(s), address(es), IP
2 address(es), and email address(es) for such individual(s).

3 Apple is informed and believes that Powerpage.org may be served through officers and/or
4 business locations in Texas.

5 **Discovery To Appleinsider.com**

6 Information regarding the Apple trade secrets at issue also appeared on
7 Appleinsider.com on November 23, 2004. (Zonic Decl. ¶ 15.) As with Powerpage.org,
8 Apple seeks leave to subpoena documents from Appleinsider.com that will show the
9 source of the trade secret information. These requested documents include materials –
10 documents, images, and communications – that relate to the future product. The exact
11 language of the request, redacting only the trade secret information identifying the
12 product, is as follows:

13 All documents relating to any information posted on
14 Appleinsider.com (the “Website”) relating to an unreleased
15 Apple product [REDACTED] (“the Product”), including
16 postings that appeared on the Website on November 23, 2004.
17 These documents include:

18 (a) All documents identifying any individual
19 or individuals who provided information that appeared on the
20 Website relating to the Product, including: true name(s),
21 address(es), internet protocol (“IP”) address(es), and e-mail
22 address(es);

23 (b) All communications relating to the Product.

24 (c) All documents relating to the Product.

25 (c) All images, including photographs, sketches,
26 schematics and renderings that appeared on the Website,
27 relating to the Product.

28 Apple also seeks leave to subpoena documents from Appleinsider.com that will identify
individuals who may have knowledge regarding the source of the misappropriated trade
secrets. These persons include two specific individuals who were credited on
Appleinsider.com as creating the text or images regarding Apple’s future product:
“Kasper Jade” and “Paul Scates.” (See Zonic Decl. ¶ 15, Ex. C.) As with the request to
Powerpage.org, Apple seeks this information because: (i) one or more of these persons

1 may be an Apple employee who had access to the trade secret information; and (ii) Apple
2 may return to the Court to seek leave to depose persons with knowledge of the trade secret
3 misappropriation. The exact language of the request is as follows:

4 All documents relating to the identity of any individual
5 or individuals who have knowledge regarding the source of
6 posts disclosing information about the Product. These
7 documents include:

8 (a) All documents relating to the identity of any
9 individual or individuals associated with the Website who has
10 or have used the name "Kasper Jade," including true name(s),
11 address(es), IP address(es), and email address(es) for such
12 individual(s).

13 (b) All documents relating to the identity of any
14 individual or individuals associated with the Website who has
15 or have used the name "Paul Scates," including true name(s),
16 address(es), IP address(es), and email address(es) for such
17 individual(s).

18 (c) All documents relating to the identity of any
19 individual or individuals who received and/or edited any
20 information relating to the Product, including true name(s),
21 address(es), IP address(es), and email address(es) for such
22 individual(s).

23 Apple is informed and believes that Appleinsider.com may be served through officers
24 and/or business locations in California.

25 Discovery To Thinksecret.com

26 Information regarding the Apple trade secrets at issue also appeared on
27 Thinksecret.com on November 24, 2004. (Zonic Decl. ¶ 16.) As with Powerpage.org and
28 Appleinsider.com, Apple seeks leave to subpoena documents – including images and
communications – from Thinksecret.com that will show the source of the trade secret
information. The exact language of the request, redacting only the trade secret
information identifying the product, is as follows:

All documents relating to any information posted on
Thinksecret.com (the "Website") relating to an unreleased
Apple product [REDACTED] (the "Product").), including
postings that appeared on the Website on November 24, 2004.
These documents include:

1 (a) Any documents identifying an individual or individuals
2 who provided information relating to the Product, including:
3 true name(s), address(es), internet protocol ("IP") address(es),
4 and e-mail address(es);

5 (b) All communications relating to the Product.

6 (c) All documents relating to the Product.

7 (d) All images, including photographs, sketches,
8 schematics and renderings that appeared on the Website,
9 relating to the Product.

10 Apple also seeks leave to subpoena documents from Thinksecret.com that will identify
11 individuals who may have knowledge regarding the source of the misappropriated trade
12 secrets. These persons include: (i) the individual who was credited as posting the
13 information on Thinksecret.com, "Mac+"; and (ii) the person who posted a message on
14 Thinksecret.com taking credit for the image of Apple's future product displayed on
15 Appleinsider.com, "pscates2.0." (See Zonic Decl. ¶ 16, Ex. D.) As with the request to
16 Powerpage.org, Apple seeks this information because: (i) one or more of these persons
17 may be an Apple employee who had access to the trade secret information; and (ii) Apple
18 may return to the Court to seek leave to depose persons with knowledge of the trade secret
19 misappropriation. The exact language of the request is as follows:

20 All documents relating to the identity of any individual
21 or individuals who have knowledge regarding the source of
22 posts disclosing information about the Product. These
23 documents include:

24 (a) All documents relating to the identity of any
25 individual or individuals associated with the Website or the
26 linked "message board" who has or have used the name "Mac
27 +," including true name(s), address(es), telephone number(s),
28 IP address(es), and email address(es) for such individual(s).

(b) All documents relating to the identity of any
individual or individuals associated with the Website or the
linked "message board" who has or have used the name
"pscates2.0," including true name(s), address(es), telephone
number(s), IP address(es), and email address(es) for such
individual(s).

(c) All documents relating to the identity of any
individual or individuals who received and/or edited any
information relating to the Product, including true name(s),

1 address(es), telephone number(s), IP address(es), and email
2 address(es) for such individual(s).

3 Apple is informed and believes that Thinksecret.com may be served through officers
4 and/or business locations in New York.


5
6 **Conclusion**

7 For the reasons set forth above, Apple respectfully requests that the Court
8 grant the *ex parte* application for discovery and give Apple leave to subpoena, directly or
9 through commission:

- 10 1. the specific documents from Powerpage.org set forth above,
11 2. the specific documents from Appleinsider.com set forth above, and
12 3. the specific documents from Thinksecret.com set forth above.

13 Dated: December 14, 2004

14 GEORGE A. RILEY
15 DAVID EBERHART
16 O'MELVENY & MYERS LLP

17 By 
18 David Eberhart
19 Attorney for Plaintiff
20 Apple Computer, Inc.
21
22
23
24
25
26
27
28