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10 Attorneys for Defendant
 11 NETLIST, INC.

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

15 GOOGLE, INC.,
 16 Plaintiff,
 17 v.
 18 NETLIST, INC.,
 19 Defendant.

Case No. 08-04144 MEJ
**NETLIST, INC.'S ANSWER TO
 COMPLAINT AND
 COUNTERCLAIMS**
DEMAND FOR JURY TRIAL

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1 Defendant and Counterclaimant Netlist, Inc. (“Netlist”), by and through its attorneys,
2 states as follows:

3 **NETLIST’S ANSWER TO GOOGLE’S COMPLAINT**
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5 Netlist, by and through its attorneys, answers Google’s complaint for declaratory
6 judgment as follows:

- 7 1. Netlist admits the allegations of paragraph 1.
- 8 2. Netlist admits the allegations of paragraph 2.
- 9 3. Netlist admits the allegations of paragraph 3.
- 10 4. Netlist admits the allegations of paragraph 4.
- 11 5. Netlist admits the allegations of paragraph 5.
- 12 6. Netlist is without sufficient information or belief to enable it to answer the
13 allegations contained in paragraph 6 of the Complaint, and, on such grounds, denies the
14 allegations of the paragraph.
- 15 7. Netlist admits the allegations of paragraph 7.
- 16 8. Netlist admits the allegations of paragraph 8.
- 17 9. Netlist admits the allegations of paragraph 9.
- 18 10. Netlist admits the allegations of paragraph 10.
- 19 11. Netlist admits the allegations of paragraph 11.
- 20 12. Netlist admits the allegations of paragraph 12.
- 21 13. Netlist is without sufficient information or belief to enable it to answer the
22 allegations contained in paragraph 13 of the Complaint, and, on such grounds, denies the
23 allegations of the paragraph.

24 **FIRST CLAIM FOR RELIEF**

25 **(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,289,386)**

- 26 14. Netlist incorporates by reference, realleges and reasserts, as though set forth in
27 full, Paragraphs 1 through 13.
- 28 15. Netlist admits the allegations of paragraph 15.

1 **FACTS RELEVANT TO NETLIST'S COUNTERCLAIMS**

2 5. Prior to 2004, Netlist invested significant research and development time and
3 money in technology that would make computer memory modules less expensive and more
4 energy-efficient. In mid-2004, realizing that it had made significant advances on both fronts,
5 Netlist filed provisional patent applications, and in July of 2005, Netlist filed the application that
6 led to the issuance of United States Patent No., 7,289,386 (the "'386 patent"), entitled "Memory
7 Module Decoder." Netlist is the owner of the entire right, title, and interest in and to the '386
8 patent. A true and correct copy of the '386 Patent is attached as Exhibit 1 to Google's declaratory
9 judgment complaint.

10 6. Google is one of the largest users of server-type computers in the United States
11 and worldwide. These computers reside in its data centers and support its various Internet-based
12 product offerings, including Google searches. Because of its substantial use of these computers,
13 and because more memory is critical to allow these computers to operate at their full potential,
14 Google would be keenly interested in any techniques to reduce the expense (in both materials and
15 energy terms) of computer memory.

16 7. On information and belief, the majority of the computers in Google's data centers
17 are not purchased from companies like Hewlett-Packard, Dell or IBM, but instead are assembled
18 by Google subcontractors to Google's specifications. Google is thus one of the world's largest
19 manufacturers of server computers.

20 8. In early 2006, Netlist met with Google and disclosed under NDA some of the
21 inventions in the then-pending patent application that led to the '386 patent, explaining how those
22 inventions could provide significant savings to Google. Google ultimately informed Netlist that it
23 was uninterested in pursuing such technology.

24 9. On information and belief, Google nonetheless incorporated Netlist technology
25 claimed in the '386 patent (known in industry jargon as "4-Rank Fully-Buffered Dual Inline
26 Memory Modules," or "4-Rank FBDIMM") in the computers that Google began manufacturing in
27 large volumes in 2007.

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- 1 (d) that the Court preliminarily and permanently enjoin Google, its successors,
2 assigns, subsidiaries and transferees, and its officers, directors, agents, employees, as follows:
- 3 a. from selling or offering to sell any product falling within the scope of the claims of
4 the '386 patent;
 - 5 b. from importing any product into the United States which falls within the scope of
6 the claims of the '386 patent;
 - 7 c. from manufacturing any product falling within the scope of the claims of the '386
8 patent;
 - 9 d. from using any product or method falling within the scope of any of the claims of
10 the '386 patent;
 - 11 e. from inducing others to infringe any of the claims of the '386 patent;
 - 12 f. from engaging in acts constituting contributory infringement of any of the claims
13 of the '386 patent;
 - 14 g. from all other acts of infringement of any of the claims of the '386 patent;
- 15 (e) that the Court award treble damages to Netlist for the unlawful practices described
16 in this Complaint;
- 17 (f) that the Court enter judgment against Google for the maximum penalties
18 determined by the Court to be just and proper;
 - 19 (g) that the Court render judgment declaring this to be an exceptional case;
 - 20 (h) that Netlist be awarded its costs of suit, including reasonable attorneys' fees; and
 - 21 (i) that Netlist be awarded such other and further relief as the Court deems just and
22 proper.
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1 Dated: November 18, 2008

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By: /s/ Scott Oliver
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DEMAND FOR JURY TRIAL

In accordance with Rule 38 of the Federal Rules of Civil Procedure and Civil Local Rule 3-6, Netlist demands a jury trial of all issues so triable.

Dated: November 18, 2008

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L. SCOTT OLIVER
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