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6	Attorneys for Defendant NETLIST, INC.		
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8	UNITED STATES DI	STRICT COURT	
9	NORTHERN DISTRICT	OF CALIFORNIA	
10	SAN FRANCISC	O DIVISION	
11			
12	GOOGLE, INC.,	Case No. 08-04144 MEJ	
13	Plaintiff,	NETLIST, INC.'S ANSWER TO	
14	v.	COMPLAINT AND COUNTERCLAIMS	
15	NETLIST, INC.,	DEMAND FOR JURY TRIAL	
16	Defendant.		
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1	Defendant and Counterclaimant Netlist, Inc. ("Netlist"), by and through its attorneys,		
2	states as follows:		
3	NIETI ICTIC ANGWED TO COOCI EIG COMBLAINT		
4		NETLIST'S ANSWER TO GOOGLE'S COMPLAINT	
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	(De	eclaratory 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	16.	Netlist admits the allegations of paragraph 16.	
2	17.	Netlist is without sufficient information or belief to enable it to answer the	
3	allegations contained in paragraph 17 of the Complaint, and, on such grounds, denies the		
4	allegations o	f the paragraph.	
5	18.	Netlist admits the allegations of paragraph 18.	
6	19.	Netlist admits the allegations of paragraph 19.	
7		SECOND CLAIM FOR RELIEF	
8		(Declaratory Judgment of Invalidity of U.S. Patent No. 7,289,386)	
9	20.	Netilst incorporates by reference, realleges and reasserts, as though set forth in	
10	full, Paragra	phs 1 through 19.	
11	21.	Netlist admits the allegations of paragraph 21.	
12	22.	Netlist is without sufficient information or belief to enable it to answer the	
13	allegations contained in paragraph 22 of the Complaint, and, on such grounds, denies the		
14	allegations of the paragraph.		
15	23.	Netlist denies the allegations contained in paragraph 23.	
16	24.	Netlist admits the allegations of paragraph 24.	
17	25.	Netlist admits the allegations of paragraph 25.	
18		AFFIRMATIVE DEFENSES	
19	Exce	pt where specifically noted below, each of the affirmative defenses alleged is asserted	
20	as to each purported Claim in the Complaint. By alleging the defenses set forth below, Netlist is		
21	in no way agreeing or conceding that it has the burden of proof or the burden of persuasion on		
22	any of the issues raised by the defenses. Netlist reserves all affirmative defenses under Rule 8(c)		
23	of the Federal Rules of Civil Procedure, and any other defenses, at law or in equity, that may be		
24	available now or may become available in the future based on discovery or any other factual		
25	investigation in the case.		
26		FIRST AFFIRMATIVE DEFENSE	
27	The Complaint and each purported claim alleged therein is barred by the doctrine of		
28	waiver.		

2	The Complaint and each purported claim alleged therein fails to state facts upon which	
3	relief can be granted.	
4	THIRD AFFIRMATIVE DEFENSE	
5	The Complaint and each purported claim alleged therein is barred on the ground that	
6	Google has unclean hands with respect to the matters alleged therein.	
7	FOURTH AFFIRMATIVE DEFENSE	
8	The Complaint and each purported claim alleged therein is barred under the doctrine of	
9	estoppel.	
10	NETLIST'S COUNTERCLAIMS AGAINST GOOGLE	
11	For its counterclaims against Google, defendant and counterclaimant Netlist alleges on	
12	knowledge as to its own conduct and on information and belief as to all other matters, as follows:	
13	<u>JURISDICTION</u>	
14	1. This action arises under the patent and antitrust laws of the United States.	
15	Subject matter jurisdiction is therefore proper in this Court pursuant to 15 U.S.C. §§ 15, 26 and	
16	28 U.S.C. §§ 1331, 1337, and 1338.	
17	<u>PARTIES</u>	
18	2. Netlist is a corporation organized and existing under the laws of the State of	
19	Delaware and has its principal place of business in Irvine, California. Netlist provides computer	
20	memory modules and technology to major computer manufacturers and users.	
21	3. Google is a corporation organized and existing under the laws of the State of	
22	Delaware and has its principal place of business in Mountain View, California.	
23	<u>VENUE</u>	
24	4. Google has sufficient contacts with this district to subject itself to the jurisdiction	
25	of this Court. Moreover, by bringing its complaint against Netlist in this Court, Google consented	
26	to the Court's jurisdiction. Personal jurisdiction and venue are therefore proper in this district	
27	pursuant to 28 U.S.C. §§ 1391, 1400(b).	

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SECOND AFFIRMATIVE DEFENSE

FACTS RELEVANT TO NETLIST'S COUNTERCLAIMS

- 5. Prior to 2004, Netlist invested significant research and development time and money in technology that would make computer memory modules less expensive and more energy-efficient. In mid-2004, realizing that it had made significant advances on both fronts, Netlist filed provisional patent applications, and in July of 2005, Netlist filed the application that led to the issuance of United States Patent No., 7,289,386 (the "'386 patent"), entitled "Memory Module Decoder." Netlist is the owner of the entire right, title, and interest in and to the '386 patent. A true and correct copy of the '386 Patent is attached as Exhibit 1 to Google's declaratory judgment complaint.
- 6. Google is one of the largest users of server-type computers in the United States and worldwide. These computers reside in its data centers and support its various Internet-based product offerings, including Google searches. Because of its substantial use of these computers, and because more memory is critical to allow these computers to operate at their full potential, Google would be keenly interested in any techniques to reduce the expense (in both materials and energy terms) of computer memory.
- 7. On information and belief, the majority of the computers in Google's data centers are not purchased from companies like Hewlett-Packard, Dell or IBM, but instead are assembled by Google subcontractors to Google's specifications. Google is thus one of the world's largest manufacturers of server computers.
- 8. In early 2006, Netlist met with Google and disclosed under NDA some of the inventions in the then-pending patent application that led to the '386 patent, explaining how those inventions could provide significant savings to Google. Google ultimately informed Netlist that it was uninterested in pursuing such technology.
- 9. On information and belief, Google nonetheless incorporated Netlist technology claimed in the '386 patent (known in industry jargon as "4-Rank Fully-Buffered Dual Inline Memory Modules," or "4-Rank FBDIMM") in the computers that Google began manufacturing in large volumes in 2007.

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10. In early 2008, Netlist contacted Google to discuss Google's use of this technology and the appropriate royalty for incorporating Netlist intellectual property into Google computers. During the course of those discussions, Google preemptively filed a declaratory judgment action in this Court against Netlist, and when the discussions ended without an amicable resolution, Netlist was forced to bring this action for patent infringement to stop Google's continuing infringement of its patent.

CLAIMS FOR RELIEF

CLAIM 1 – INFRINGEMENT OF NETLIST'S '386 PATENT

- 11. Netlist repeats and realleges each and every allegation contained in the paragraphs above with the same force and effect as if here set forth in full.
- 12. On information and belief, Google has infringed and continues to infringe; has induced and continues to induce others to infringe; and/or has committed and continues to commit acts of contributory infringement of, one or more of the claims of the '386 patent. Google's infringing activities in the United States and this District include the development, manufacture, use, importation, sale, and/or offer for sale of products with 4-Rank FBDIMM memory technology, and contributing to and inducing others to do the same. Such products have no substantial non-infringing use. Google's infringing activities violate 35 U.S.C. § 271.
- 13. On information and belief, Google's infringement has been, and continues to be, willful and deliberate, and has caused substantial damage to Netlist.
- 14. On information and belief, Google's infringement in violation of the federal patent laws will continue to injure Netlist unless otherwise enjoined by this Court.

PRAYER FOR RELIEF

- (a) that the Court render judgment declaring that Google has infringed, induced the infringement of, and contributorily infringed the '386 patent in violation of 35 U.S.C. § 271;
- (b) that the Court render judgment declaring Google's infringement of the '386 patent willful and deliberate:
- (c) that Netlist be awarded damages adequate to compensate Netlist for Google's infringement of the '386 patent;

1	Dated: November 18, 2008	JAMES POOLEY L. SCOTT OLIVER
2		MORRISON & FOERSTER LLP
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4		By: /s/ Scott Oliver L. SCOTT OLIVER
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6		Attorneys for Defendant NETLIST, INC.
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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 JAMES POOLEY L. SCOTT OLIVER MORRISON & FOERSTER LLP /s/ Scott Oliver L. Scott Oliver Attorneys for Defendant NETLIST, INC. pa-1295006