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 16 GOOGLE INC.

17 UNITED STATES DISTRICT COURT  
 18 NORTHERN DISTRICT OF CALIFORNIA  
 19 (OAKLAND DIVISION)

20 GOOGLE INC.,  
 21 Plaintiff,  
 22 v.  
 23 NETLIST, INC.,  
 24 Defendant.

Case No. C 08-04144 SBA  
**PLAINTIFF GOOGLE’S REPLY TO  
 COUNTERCLAIMS**  
**DEMAND FOR JURY TRIAL**

25 AND RELATED COUNTERCLAIMS.

26 Plaintiff Google Inc. (“Google”) hereby submits its Reply to Netlist, Inc.’s (“Netlist”) Answer to Complaint and Counterclaims and Demand for Jury Trial.

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1 **Fourth Defense**

2 **(Waiver)**

3 18. Netlist is barred by the equitable doctrine of waiver from enforcing the '386 patent  
4 against Google.

5 **Fifth Defense**

6 **(Estoppel)**

7 19. Netlist is barred by the equitable doctrine of estoppel from enforcing the '386  
8 patent against Google.

9 **PRAAYER FOR RELIEF**

10 Google denies that Netlist is entitle to any of the relief prayed for in paragraphs (a)-(i) of  
11 Netlist's Prayer for Relief.

12 Google prays for judgment against Netlist as follows:

- 13 (a) Declare that Google does not infringe any valid and enforceable claim of the '386  
14 patent;
- 15 (b) Declare that the '386 patent is invalid and unenforceable;
- 16 (c) Declare this case exceptional under 35 U.S.C. § 285 and award Google its costs,  
17 disbursements, and attorney fees in connection with this action under 35 U.S.C. § 285, and any  
18 other authority deemed appropriate by the Court;
- 19 (d) Award Google any other and further relief that this Court deems just and proper.

20 **JURY DEMAND**

21 Google hereby demands a trial by jury for all issues so triable.

22 Dated: December 8, 2008

FISH & RICHARDSON P.C.

24 By: /s/ David J. Miclean  
25 David J. Miclean

26 Attorneys for Plaintiff  
27 GOOGLE INC.

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