

Exhibit BB

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9 Attorneys for Plaintiff
GOOGLE INC.

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 (OAKLAND DIVISION)

14
15 GOOGLE INC.,

16 Plaintiff,

17 v.

18 NETLIST, INC.,

19 Defendant.

Case No. C 08-04144 SBA

**PLAINTIFF GOOGLE'S REPLY TO
COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

20 AND RELATED COUNTERCLAIMS.
21

22
23 Plaintiff Google Inc. ("Google") hereby submits its Reply to Netlist, Inc.'s ("Netlist")
24 Answer to Complaint and Counterclaims and Demand for Jury Trial.

25 ///

26 ///

27 ///

1 10. Google admits that it filed a declaratory judgment action against Netlist in this
2 Court. Google denies that it is infringing or has infringed any valid and enforceable claim of the
3 '386 patent. Google denies the remaining averments of paragraph 10.

4 **CLAIMS FOR RELIEF**

5 **CLAIM 1**

6 11. Google incorporates by reference and repeats its responses to paragraphs 1 through
7 10, above, as if fully set forth herein.

8 12. Denied.

9 13. Denied.

10 14. Denied.

11 **AFFIRMATIVE AND OTHER DEFENSES**

12 Google raises the following affirmative and other defenses to Netlist's counterclaim. In
13 raising these defenses, Google does not assume any burden of proof. Google further reserves the
14 right to raise additional defenses as facts are obtained during the course of discovery.

15 **First Defense**

16 **(Invalidity of the '386 Patent)**

17 15. The claims of the '386 patent are invalid for failure to comply with the conditions
18 and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to the
19 requirements of one or more of 35 U.S.C. §§ 101, 102, 103 and/or 112.

20 **Second Defense**

21 **(No Infringement of the '386 Patent)**

22 16. Google does not infringe and has not infringed, whether directly, indirectly,
23 contributorily, or otherwise, any valid and enforceable claim of the '386 patent.

24 **Third Defense**

25 **(Unclean Hands)**

26 17. Netlist is barred by the equitable doctrine of unclean hands from enforcing the '386
27 patent against Google.

Fourth Defense

(Waiver)

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

Fifth Defense

(Estoppel)

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

PRAAYER FOR RELIEF

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

Google prays for judgment against Netlist as follows:

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

JURY DEMAND

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

Dated: December 8, 2008

FISH & RICHARDSON P.C.

By: /s/ David J. Miclean
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