

# EXHIBIT U

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5

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GOOGLE INC.  
7

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 (OAKLAND DIVISION)  
11

12 GOOGLE INC.,

13 Plaintiff,

14 v.

15 NETLIST, INC.,

16 Defendant.

Case No. C 08-04144 SBA

**PLAINTIFF GOOGLE INC.'S  
RESPONSES TO NETLIST'S  
INTERROGATORIES, SET NO. TWO  
[NOS. 6-9]**

17 AND RELATED COUNTERCLAIMS.  
18

19 Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiff Google Inc.  
20 ("Google") hereby responds to Defendant Netlist, Inc.'s ("Netlist") Interrogatories, Set No. 2, as  
21 follows. These responses are based upon information presently available and are therefore made  
22 without prejudice to Google's right to use or rely upon subsequently discovered information. As  
23 permitted by the Federal Rules of Civil Procedure, these responses may be changed, modified, or  
24 supplemented. In responding to Netlist's Interrogatories, Google does not waive any objections  
25 on the grounds of privilege, competency, relevance, materiality, authenticity, or admissibility of  
26 the information contained in these responses. Google also expressly reserves the right to object  
27 later to the admissibility of any of this information into evidence on any permissible grounds,  
28 including grounds not identified herein.

1 **GENERAL OBJECTIONS**

2 Google's responses are subject to the following General Objections, which Google  
3 specifically incorporates into its responses to each of Netlist's interrogatories, whether or not such  
4 General Objection is expressly referenced. The incorporation by reference of any one of these  
5 General Objections shall not be construed to exclude the incorporation of any other General  
6 Objection. Moreover, Google does not waive its right to amend its objections.

7 1. Google objects to the Interrogatories and, in particular, to the Definitions and  
8 Instructions, to the extent they seek to impose obligations upon Google beyond those imposed by  
9 the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the  
10 Northern District of California, and/or the Court's scheduling Orders in this case. Google will  
11 respond to the Interrogatories only to the extent required by these Rules and Order.

12 2. Google objects to the Interrogatories insofar as they are vague, ambiguous,  
13 indefinite, overbroad, unduly burdensome, duplicative, cumulative, indefinite as to time or scope,  
14 unintelligible, or otherwise unclear as to the precise information sought.

15 3. Google objects to the Interrogatories insofar as they seek information that is neither  
16 relevant to a claim or defense of any party, nor reasonably calculated to lead to the discovery of  
17 admissible evidence.

18 4. Google objects to the Interrogatories to the extent that they seek documents  
19 protected by the attorney-client privilege or by the work-product doctrine, protected by any other  
20 applicable privilege or immunity, prepared in connection with settlement discussions, prepared in  
21 anticipation of adversarial proceedings such as litigation or for trial, prepared in connection with  
22 any applicable joint defense agreement, or not otherwise within the scope of permissive discovery  
23 under the Federal Rules of Civil Procedure and applicable Local Rules.

24 5. Google objects to the Interrogatories on the ground and to the extent they call for  
25 information that Google is under an obligation to third parties to not disclose.

26 6. Google objects to the Interrogatories on the ground and to the extent they seek to  
27 obtain information not in Google's possession, custody, or control.

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1           7.       Google objects to the Interrogatories on the ground and to the extent they seek  
2 information already in Netlist's possession or information that is a matter of public record or that  
3 is otherwise equally available to Netlist.

4           8.       Google objects to the Interrogatories to the extent they seek identification of "all  
5 documents" or "all persons" on the basis that they are overbroad and unduly burdensome.

6           9.       Google objects to the Interrogatories to the extent they call for a legal opinion or  
7 conclusion, particularly to the extent the Interrogatories include claim terms whose meanings are  
8 disputed by the parties and which have not yet been construed by the Court. Google neither  
9 expresses nor intends to express any legal opinion or conclusion by responding to Netlist's  
10 Interrogatories.

11          10.       Google objects to the Interrogatories to the extent that they fail to specify a relevant  
12 time period for which information is requested, and/or to the extent the specified period is  
13 irrelevant.

14          11.       Google objects to the Interrogatories to the extent they are premature under any  
15 relevant discovery and/or scheduling orders.

16          12.       Google objects to the Interrogatories to the extent that they use terms that are not  
17 defined or understood, or are vaguely and/or ambiguously defined, and therefore fail to identify  
18 with reasonable particularity the information sought. Google will not speculate as to the meaning  
19 to ascribe to such terms.

20          13.       Google objects to the Interrogatories to the extent they seek identification of "all  
21 persons," on the basis that this renders the interrogatories overbroad and unduly burdensome.

22          14.       Google objects to the definition of "Google," "you," or "your" (Definition No. 2)  
23 on the grounds and to the extent that it purports to encompass non-Google entities. For purposes  
24 of responding to these interrogatories, Google will interpret the terms "Google," "you," or "your"  
25 to refer to Google Inc., including without limitation all of its corporate locations and all  
26 predecessors, subsidiaries, parents, and affiliates, and all past or present directors, officers, agents,  
27 representatives, employees, consultants, attorneys, and others acting on behalf of Google Inc.

28       ///

1           15. Google objects to the definitions of “identify” and “identity” (Definition No. 7) as  
2 ambiguous, overly broad, unduly burdensome, and not reasonably calculated to lead to the  
3 discovery of admissible evidence. Google further objects to these definitions to the extent they  
4 purport to seek information not within Google’s personal knowledge or control, or documents or  
5 things not within Google’s possession, custody or control. Google will provide information that is  
6 presently available from a reasonable search of its own files likely to contain relevant or  
7 responsive documents and from a reasonable inquiry of its present employees.

8           16. Google objects to the definitions of “JEDEC Mode C” and “AMB Quad Rank  
9 Support” (Definition Nos. 17 and 20) as vague and ambiguous. Although Netlist purports to  
10 define these terms by reference to a JEDEC standard, Google further objects to their use in these  
11 Interrogatories to the extent such use is inconsistent with that standard.

12           17. Google objects to the definitions of “memory density multiplication” and “memory  
13 rank multiplication” (Definition Nos. 18 and 19) as over broad and unduly burdensome to the  
14 extent these terms refer to “any technology” that can be used to increase computer memory  
15 capacity, including concepts and techniques not claimed in the patent-in-suit.

16           18. Google objects to the definition of “memory rank decoding” (Definition No. 21) as  
17 over broad and unduly burdensome to the extent it includes “any technology,” whether or not  
18 claimed by the patent-in-suit. Google further objects to this definition to the extent it includes  
19 claim terms whose meaning is disputed by the parties and which have not yet been construed by  
20 the Court.

## 21                               RESPONSES TO INTERROGATORIES

### 22           INTERROGATORY NO. 6:

23           For each asserted claim of the '386 Patent for which Google asserts non-infringement or  
24 seeks a declaration of non-infringement, describe in detail all factual and legal bases for Google’s  
25 contention that the manufacture, use, offer for sale, and/or sale of accused products does not  
26 infringe that claim, including an explanation of why Google contends that the claim is not  
27 infringed literally or under the doctrine of equivalents by such manufacture, use, offer to sell, or  
28 sale on a claim element by claim element basis (e.g., in a “claim chart”); identify all documents

1 tending to support each such contention; and identify the person(s) employed by Google most  
2 knowledgeable concerning the facts underlying each such contention.

3 **RESPONSE TO INTERROGATORY NO. 6:**

4 Google incorporates each of the foregoing General Objections as if set forth fully in  
5 response to this Interrogatory. Google further objects to this Interrogatory to the extent it calls for  
6 information protected by the attorney-client privilege, the work product doctrine, or any other  
7 applicable exemption from discovery. Google further objects to this Interrogatory as prematurely  
8 calling for a legal conclusion to the extent it would require Google to take a position on the  
9 construction of certain claims on which the Court in this case has not yet ruled. Google further  
10 objects to this Interrogatory as over broad and unduly burdensome.

11 Subject to and without waiving the foregoing objections, Google responds as follows:  
12 Google does not infringe any claim of the '386 patent because one or more elements required to be  
13 present by each claim is missing from Google's accused products, both literally and under the  
14 doctrine of equivalents. For example, the accused products do not include a structure that meets  
15 the "logic element" limitation because they nowhere include the functionality that is claimed in  
16 that limitation. Netlist has not offered any evidence to directly contradict this assertion; at the  
17 time of this response, Netlist has not even made any specific allegations of the supposed  
18 infringement of its patents by any Google product. Its only infringement contentions to date have  
19 consisted entirely of general allegations concerning a *proposed* industry standard.

20 Google has produced supporting documents and things during the course of this litigation  
21 in the form of specifications, source code, and a server inspection.

22 Google identifies Mr. Robert Sprinkle as a person employed by Google who is  
23 knowledgeable about the structure and function of the accused products.

24 Google reserves the right to supplement this response at an appropriate time, after further  
25 discovery and after a claim construction Order in this case.

26 **INTERROGATORY NO. 7:**

27 State the date on which Google first became aware of the '386 patent, the patent  
28 application that issued as the '386 Patent, any patent application to which the '386 Patent claims

1 priority, and/or any Netlist patent application disclosing and/or claiming memory density  
2 multiplication, memory rank decoding, and/or memory rank multiplication; describe the  
3 circumstances leading to such first awareness, including the identity of the person(s) involved, the  
4 identity of all documents which refer or relate to such first awareness, and/or the circumstances  
5 leading to such first awareness.

6 **RESPONSE TO INTERROGATORY NO. 7:**

7 Google incorporates each of the foregoing General Objections as if set forth fully in  
8 response to this Interrogatory. Google further objects to this Interrogatory to the extent it calls for  
9 information protected by the attorney-client privilege, the work product doctrine, or any other  
10 applicable exemption from discovery. Google objects to this Interrogatory as calling for the  
11 production of information that is neither relevant nor likely to lead to the discovery of admissible  
12 evidence to the extent it requests information concerning patents other than the '386 patent in suit.  
13 Google will respond concerning the patent in suit only. Google further objects to this  
14 Interrogatory as vague and ambiguous as to at least the terms "memory density multiplication,"  
15 "memory rank decoding," and "memory rank multiplication." Google further objects to this  
16 Interrogatory as over broad and unduly burdensome to the extent it would require an investigation  
17 into the aforementioned irrelevant patents concerning vague and ambiguous subject matter, which  
18 have no bearing on this case.

19 Subject to and without waiving the foregoing objections, Google responds as follows:

20 Google was first made aware of the '386 patent in suit by an e-mail from Mr. Phileasher Tanner of  
21 JEDEC to various JEDEC mailing list recipients, including Mr. Rob Sprinkle and Mr. Andrew  
22 Swing of Google, on or about Jan. 10, 2008, forwarding a Netlist patent disclosure letter  
23 concerning the patent. This e-mail, and the attached letter, were produced by Google in this  
24 matter as GNET034096-97 and GNET269919-20.

25 **INTERROGATORY NO. 8:**

26 Identify all Google personnel who communicated with and/or received information from  
27 Netlist concerning memory density multiplication, memory rank multiplication, JEDEC Mode C,  
28 DxD technology, memory rank decoding, AMB Quad Rank Support and/or the subject matter

1 disclosed and/or claimed in the '386 Patent; provide the dates on which such communications  
2 occurred and/or such information was received; identify the substance of such communications  
3 and/or information, and identify all documents referring to or including such communications  
4 and/or information.

5 **RESPONSE TO INTERROGATORY NO. 8:**

6 Google incorporates each of the foregoing General Objections as if set forth fully in  
7 response to this Interrogatory. Google further objects to this Interrogatory to the extent it calls for  
8 information protected by the attorney-client privilege, the work product doctrine, or any other  
9 applicable exemption from discovery. Google further objects to this Interrogatory as requesting  
10 information that is neither relevant nor likely to led to the discovery of admissible evidence to the  
11 extent it requests information concerning various technologies for which Netlist has articulated no  
12 connection to the '386 patent in suit. Google further objects to this Interrogatory as assuming  
13 facts not in evidence, to the extent it assumes that such topics were ever discussed between Netlist  
14 and anyone at Google. Google further objects to this Interrogatory as vague and ambiguous as to  
15 at least the terms "memory density multiplication," "memory rank multiplication," "DxD  
16 technology," and "memory rank decoding." Google further objects to this Interrogatory as over  
17 broad and unduly burdensome to the extent it would require an investigation of communications  
18 "concerning" these vague and ambiguous terms.

19 Subject to and without waiving the foregoing objections, Google responds as follows:  
20 pursuant to Federal Rule 33(d), Google identifies the following documents, already produced in  
21 this action, that relate to and describe the interactions of which Google is aware and, to the best of  
22 its current knowledge and understanding, relate to the subject matter of this Interrogatory:  
23 GNET011948; GNET023456; GNET023542-44; GNET257906-07; GNET258209; and  
24 GNET269258. This answer is based only on the knowledge of Google the party, and excludes  
25 information that outside counsel may have derived from documents produced by Netlist and  
26 designated as "Confidential – Attorneys' Eyes Only" which therefore cannot be shown to  
27 Google's employees.

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1 **INTERROGATORY NO. 9:**

2 For each request for admission that Google did not admit in Netlist's First Set of Requests  
3 for Admission of Plaintiff Google, Inc., served September 10, 2009, please explain why Google  
4 did not admit the request, and identify all documents that support the basis for Google's response  
5 to the request and persons with knowledge of the basis for Google's response to the request.

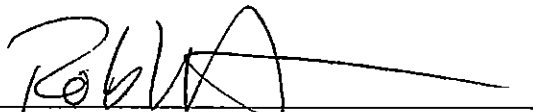
6 **RESPONSE TO INTERROGATORY NO. 9:**

7 Google incorporates each of the foregoing General Objections as if set forth fully in  
8 response to this Interrogatory. Google further objects to this Interrogatory to the extent it calls for  
9 information protected by the attorney-client privilege, the work product doctrine, or any other  
10 applicable exemption from discovery. Google further objects to this Interrogatory as over broad,  
11 unduly burdensome, and duplicative to the extent it requests Google to re-state information that it  
12 has previously provided, or is concurrently providing, elsewhere.

13 Subject to and without waiving the foregoing objections, Google responds as follows:  
14 Google's responses and objections to Netlist's First Set of Requests for Admission are fully  
15 compliant with the requirements of Federal Rule 36, and as such, those responses and objections  
16 adequately disclose the reasons for Google's denials and partial denials. Google incorporates  
17 those responses and objections here by reference.

18  
19 Dated: October 27, 2009

FISH & RICHARDSON P.C.

20  
21 By:   
22 Robert J. Kent

23 Attorneys for Plaintiff  
24 GOOGLE INC.

25 50675858.doc

26  
27  
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1 **PROOF OF SERVICE**

2 I am employed in the County of San Mateo. My business address is Fish & Richardson  
3 P.C., 500 Arguello Street, Suite 500, Redwood City, California 94063. I am over the age of 18  
and not a party to the foregoing action.

4 I am readily familiar with the business practice at my place of business for collection and  
5 processing of correspondence for personal delivery, for mailing with United States Postal Service,  
for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight  
6 service.

7 On October 27, 2009, I caused a copy of the following document(s):

8 PLAINTIFF GOOGLE INC.'S RESPONSES TO NETLIST'S INTERROGATORIES,  
SET NO. TWO [NOS. 6-9]

9 to be served on the interested parties in this action by placing a true and correct copy thereof,  
10 enclosed in a sealed envelope, and addressed as follows:

11 Erica J. Pruetz Attorneys for Defendant and  
Email: [ejpruetz@pruetzlaw.com](mailto:ejpruetz@pruetzlaw.com) Counterclaimant  
Adrian M. Pruetz NETLIST, INC.  
12 Email: [ampruetz@pruetzlaw.com](mailto:ampruetz@pruetzlaw.com)  
Pruetz Law Group LLP  
13 200 N. Sepulveda Blvd., Suite 1525  
El Segundo, CA 90245  
14 Telephone: (310) 765-7650  
Facsimile: (310) 765-7641

15 Enoch H. Liang Attorneys for Defendant and  
16 Email: [ehl@ltlcounsel.com](mailto:ehl@ltlcounsel.com) Counterclaimant  
Steven R. Hansen NETLIST, INC.  
17 Email: [srh@ltlcounsel.com](mailto:srh@ltlcounsel.com)  
Lee Tran & Liang APLC  
18 601 S. Figueroa Street, Suite 4025  
Los Angeles, CA 90017  
19 Telephone: (213) 612-3737  
Facsimile: (213) 612-3773

21  **MAIL:** Such correspondence was deposited, postage fully paid, with the  
22 United States Postal Service on the same day in the ordinary course  
of business.

23  **PERSONAL:** Such envelope was delivered by hand to the offices of the addressee.

24  **FACSIMILE:** Such document was faxed to the facsimile transmission machine  
25 with the facsimile machine number stated above. Upon completion  
26 of the transmission, the transmitting machine issued a transmission  
report showing the transmission was complete and without error.

27  **ELECTRONIC** Such document was transmitted by electronic mail to the addressees'  
28 **MAIL:** email addresses as stated above.

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**FEDERAL EXPRESS:**  
**EXPRESS MAIL:**  
**OVERNIGHT DELIVERY:**

Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by Federal Express.  
Such correspondence was deposited on the same day in the ordinary course of business with a facility regularly maintained by the United States Postal Service.  
Such correspondence was given on the same day in the ordinary course of business to an authorized courier or a driver authorized by that courier to receive documents.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct. Executed on October 27, 2009, at Redwood City, California.

  
Cheryl Marchesi-Sherwood

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