

Exhibit 1

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10 Attorneys for Defendant
11 NETLIST, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 GOOGLE, INC.,

16 Plaintiff,

17 v.

18 NETLIST, INC.,

19 Defendant.

Case No. 08-04144 SBA

**DEFENDANT NETLIST, INC.'S
DISCLOSURE OF ASSERTED
CLAIMS AND PRELIMINARY
INFRINGEMENT CONTENTIONS
(PATENT L.R. 3-1 AND 3.2)**

20 In accordance with Northern District Patent L.R. 3-1 and 3-2, Defendant Netlist, Inc.
21 ("Netlist") hereby submits the following Disclosure of Asserted Claims and Preliminary
22 Infringement Contentions regarding infringement of U.S. Patent No. 7,289,386 (the "'386
23 Patent") by Plaintiff Google, Inc. ("Google").

24 **I. DISCLOSURE OF ASSERTED CLAIMS AND PRELIMINARY
25 INFRINGEMENT CONTENTIONS (PLR 3-1)**

26 **(a) Claims Asserted to be Infringed (PLR 3-1(a))**

27 Netlist presently asserts that Google is liable under 35 U.S.C. §271 for infringement of
28 Claims 1 and 11 of the '386 Patent.

Netlist has yet to receive discovery from Google. Therefore, Netlist cannot at this time
make a complete and detailed disclosure of precisely how Google's 4-rank FBDIMMs infringe

1 the patent. Netlist accordingly reserves the right to amend or otherwise modify its identification
2 of claims infringed, as well as its responses under paragraphs (b) through (d) below, if and when
3 further relevant information is revealed or circumstances change.

4 **(b) Accused Instrumentality (PLR 3-1(b))**

5 Netlist presently alleges that Google's 4-rank FBDIMMs infringe each of the above-
6 specified claims of the '386 Patent both literally and under the doctrine of equivalents and each is
7 therefore the "Accused Instrumentality."

8 Google infringes the '386 Patent as follows:

9 1. By making, using and/or importing the Accused Instrumentality, Google is directly
10 infringing the asserted claims of the '386 Patent under section 271(a);

11 2. By executing software code implementing the Accused Instrumentality, Google is
12 directly infringing the asserted claims of the '386 Patent under section 271(a); and

13 3. By selling and offering to sell internet services provided by the Accused
14 Instrumentality, by executing the software code implementing the Accused Instrumentality to
15 provide those services, and by providing those internet services to customers, Google is actively
16 inducing infringement of the asserted claims of the '386 Patent under section 271(b).

17 As noted above, because Netlist has yet to receive discovery from Google, Netlist is
18 presently aware of the above-referenced Accused Instrumentality based largely on publicly-
19 available information. Because a number of Google's products consist of software and hardware
20 on Google servers to which Netlist does not have access, Netlist cannot without discovery
21 determine whether additional Google products infringe the '386 Patent. Netlist therefore reserves
22 the right to accuse additional Google products of infringing claims of the '386 Patent if discovery
23 yields information regarding infringing products of which Netlist is presently unaware.

24 **(c) Preliminary Infringement Contentions Chart (PLR 3-1(c))**

25 Attached as Exhibit A is a Preliminary Infringement Contentions Chart that, to the extent
26 currently possible, identifies specifically where or how each element of each asserted claim is
27 infringed by the Accused Instrumentality by showing that each claim element is practiced by
28 products compliant under the JEDEC FBDIMM Mode C proposed standard. Netlist asserts that

1 Google's 4-rank FBDIMMs are compliant with that proposed standard.

2 Exhibit A represents Netlist's present understanding of how the Accused Instrumentality
3 infringes each asserted claim of the '386 Patent. Especially as Netlist has yet to receive
4 production of documents or disclosure of Google, Netlist, reserves the right to modify its
5 Preliminary Infringement Contentions Chart as discovery yields further information regarding the
6 Accused Instrumentality.

7 **(d) Identification of Literal and Equivalent Elements (PLR 3-1(d))**

8 Based on information presently known to Netlist, Netlist alleges that each element of each
9 asserted claim is literally present in the Accused Instrumentality. To the extent the Court or trier
10 of fact finds that any element is not literally present, Netlist also alleges that any such element is
11 additionally present under the doctrine of equivalents.

12 **(e) Application Priority Dates of Claims (PLR 3-1(e))**

13 Each of the asserted claims of the '386 Patent is entitled to a priority date at least as early
14 as March 5, 2004.

15 **(f) Patentee's Asserted Practice of The Claimed Inventions (PLR 3-1(f))**

16 Netlist's 4-rank FBDIMMs practice the asserted claims of the '386 Patent.

17 **II. DOCUMENT PRODUCTION ACCOMPANYING DISCLOSURE (PLR 3-2)**

18 Based on a diligent search that is reasonable under the circumstances, Netlist will be
19 serving its Patent L.R. 3-2 production once the parties agree to a protective order. If Netlist
20 subsequently acquires or locates any further documents falling into the categories set forth in
21 Patent L.R. 3-2, Netlist will produce such documents to Google. Netlist reserves the right to rely
22 on any such subsequently acquired and produced documents.

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Dated: February 26, 2009

JAMES POOLEY
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MORRISON & FOERSTER LLP

By: Scott Oliver
L. SCOTT OLIVER

Attorneys for Defendant
NETLIST, INC.

1 **PROOF OF SERVICE**

2 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address
3 is 755 Page Mill Road, Palo Alto, California 94304-1018. I am not a party to the within cause,
4 and I am over the age of eighteen years.

5 I further declare that on February 26, 2009, I served a copy of: **DEFENDANT
6 NETLIST, INC.'S DISCLSOURE OF ASSERTED CLAIMS AND PRELIMINARY
7 INFRINGEMENT CONTENTIONS (PATENT L.R. 3-1 AND 3.2)**

8 **BY U.S. MAIL [Code Civ. Proc sec. 1013(a)]** by placing a true copy thereof
9 enclosed in a sealed envelope with postage thereon fully prepaid, addressed as
10 follows, for collection and mailing at Morrison & Foerster LLP, 755 Page Mill Road,
11 Palo Alto, California 94304-1018 in accordance with Morrison & Foerster LLP's
12 ordinary business practices.

13 I am readily familiar with Morrison & Foerster LLP's practice for collection and
14 processing of correspondence for mailing with the United States Postal Service, and
15 know that in the ordinary course of Morrison & Foerster LLP's business practice the
16 document(s) described above will be deposited with the United States Postal
17 Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP
18 with postage thereon fully prepaid for collection and mailing.

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I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed at Palo Alto, California, on February 26, 2009



Kim Olivares