

United States District Court  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GOOGLE INC.,  
Plaintiff,  
v.  
NETLIST, INC.,  
Defendant.

No. C 08-04144 SBA

**ORDER FOR PRETRIAL  
PREPARATION IN PATENT CASES**

Pursuant to Rule 16(e) of the Federal Rules of Civil Procedure ("FRCP"), IT IS HEREBY ORDERED AS FOLLOWS:

**A. DISCOVERY CUT-OFF**

All discovery, except for expert discovery, shall be completed and all depositions taken on or before . The parties are responsible for scheduling discovery so that motions to resolve discovery disputes can be heard before the above discovery cut-off.

**B. EXPERT DESIGNATION AND DISCOVERY**

Plaintiff shall designate any experts by ; defendant by ; rebuttal disclosure by . Any expert not so named may be disallowed as a witness. No expert will be permitted to testify to any opinion, or basis or support for an opinion, that has not been disclosed in response to an appropriate question or interrogatory from the opposing party. Expert discovery shall be completed by .

**C. MOTION CUT-OFF**

All dispositive motions shall be heard on or before , at 1:00 p.m. The parties must meet and confer prior to filing any motion. The movant shall certify to the Court in its moving papers that it has complied with this requirement. Should the parties fail to meet and confer, the Court may decline to entertain the motion.

1 THIS COURT DOES NOT RESERVE MOTION HEARING DATES. The parties  
2 are advised to contact Judge Armstrong's Deputy Clerk, Lisa Clark, to determine the next available  
3 hearing date, particularly in the case of dispositive motion. The parties are advised not to wait until  
4 35 days prior to the law and motion cut-off date to file and serve their motion. As the Court's law  
5 and motion calendar tends to fill quickly, there is no guarantee that a hearing date within the law and  
6 motion cut-off date will be available.

7 Pursuant to Civil Local Rule 7-1, 7-2 and 7-3, all civil motions shall be noticed for a  
8 hearing not less than thirty-five (35) calendar days after service. The opposition and supporting  
9 papers shall be filed not less than twenty-one (21) days before the noticed hearing date. The reply  
10 shall be filed not less than fourteen (14) days before the hearing date. Documents not filed in  
11 compliance with these time specifications will not be considered by the Court.

12 The failure of the opposing party to file a memorandum of points and authorities in  
13 opposition to any motion shall constitute a consent to the granting of the motion.

14 The parties are not required to file a statement of undisputed facts in connection with  
15 a motion for summary judgment. However, if filed only one joint statement of undisputed facts  
16 signed by all parties, shall be filed. All separate statements will be stricken. If the parties are unable  
17 to agree that a fact is undisputed, they should assume that fact is in dispute.

18 Note that pursuant to Civil L.R. 7-1(b), the Court may, in its discretion, adjudicate  
19 motions without oral argument.

20 **D. MANDATORY SETTLEMENT CONFERENCES**

21 All parties are ordered to participate in a mandatory settlement conference during the  
22 following time period: .

23 **E. PRETRIAL CONFERENCE**

24 All Counsel who will try the case shall appear for a pretrial conference in Courtroom  
25 3 on , at 1:00 p.m. All counsel shall be fully prepared to discuss all aspects of the trial. Failure to  
26 file the requisite pretrial documents in advance of the pretrial conference may result in vacation of  
27 the pretrial conference and/or the imposition of sanctions. ***ALL PARTIES ARE REQUIRED TO  
28 ATTEND THE PRETRIAL CONFERENCE.***

**F. PRETRIAL PREPARATION DUE**

1. Not less that thirty-five (35) calendar days prior to the pretrial conference,  
Counsel shall meet and confer in good faith in advance of complying with the following pretrial  
requirements in order to clarify and narrow the issues for trial, arrive at stipulations of facts, simplify  
and shorten the presentation of proof at trial, and explore possible settlement. In addition, Counsel  
shall meet and confer regarding anticipated motions in limine, objections to evidence, jury  
instructions, and any other matter which may require resolution by the Court.

2. The following matters shall be accomplished no later than thirty-five (35)  
calendar days prior to the pretrial conference:

**a. Joint Pretrial Statement**

Counsel are required to file a pretrial conference statement which  
complies with Civil L.R. 16-15(b).

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**b. Trial Briefs**

Each party shall serve and file a trial briefs which shall briefly state their party's contentions, the relevant facts expected to be proven at trial, and the law on the issues material to the decision.

**c. Findings of Fact**

In non-jury cases, each party shall serve and lodge with the Court proposed findings of fact on all material issues and conclusions of law. Findings shall be brief, clear, written in plain English and free of pejorative language, conclusions and argument.

**d. Witnesses**

Each party shall serve and file with the Court a list of all persons who may be called as witnesses. The list shall include a summary of the substance of each witness' proposed testimony. (Civil L.R. 16-15(4)(A))

**e. Designation of Discovery Excerpts**

Each party expecting to use discovery excerpts as part of its case in chief shall serve and lodge with the Court a statement identifying (1) by witness and page and line, all deposition testimony and (2) by lodged excerpt, all interrogatory answers and request for admissions to be used as part of its direct case. Each interrogatory answer intended to be offered as an exhibit shall be copied separately and marked as an exhibit. The original of any deposition to be used at trial must be produced at the time of trial. (Civil L.R. 16-15(4)(E))

**f. Jury Instructions**

The parties shall file a joint set of jury instructions as to those instructions on which the parties have reached agreement. As to any disputed instructions, each party shall separately submit its "proposed" instruction(s) supported by a memorandum setting forth the authority for its use. Responses or objections to any "proposed" jury instruction shall be filed no later than the date of the pretrial conference. All instructions shall be written in plain English which is comprehensible to jurors, concise and free of argument, and shall be organized in a logical fashion so as to aid jury comprehension, and are also to be provided on a CD in a word format. The Court's practice is to utilize, whenever possible, instructions found in the Ninth Circuit Manual of Model Jury Instructions.

**g. Jury Voir Dire and Verdict Forms**

Each party shall submit proposed questions for jury voir dire and a proposed form of verdict.

**h. Exhibits**

Each party shall provide every other party one set of all exhibits, charts, schedules, summaries and diagrams and other similar documentary materials to be used at the trial together with a complete list of all such exhibits. The Court requires one original version of exhibits (as described above) for the Clerk and two copies (one for the Bench and one for the witness stand). All such versions of the exhibits, including the originals, should be indexed into a binder for easy and quick reference by all parties. The first page of each binder should have a copy of the exhibit list (see attached) appropriately completed with each exhibit description and its designated number. Plaintiffs shall refer to their exhibits numerically and Defendants shall label theirs alphabetically. Exhibit labels are also attached for your convenience. Exhibits should be brought to Court on the first day of trial.

3. The following matters shall be accomplished no later than twenty-eight (28) calendar days prior to the pretrial conference: Motions in Limine and Objections to Evidence due: . Each party anticipating making motion(s) in limine and/or objection(s) to any testimony or exhibits expected to be offered shall file and serve a statement briefly identifying each item objected to and the grounds for the objection.

4. Responses to objections to evidence or motions in limine shall be filed and served no less than twenty-one (21) calendar days prior to the pretrial conference due: .

**H. TRIAL DATE**

Trial before the will begin on , at 8:30 a.m., for an estimated trial days, or as soon thereafter as the Court may designate. The parties are advised that they must be prepared to go to trial on a trailing basis. The trial will take place in Courtroom 3 of the United States Courthouse, 1301 Clay Street, 3rd Floor, Oakland, California, 94612. The Court's trial hours are from 8:30 a.m. to 2:00 p.m., with two fifteen-minute breaks, on Monday, Wednesday, Thursday and Friday.

**I. TRANSCRIPTS**

If transcripts will be requested during or immediately after the trial, arrangements must be made with the Court Reporter Coordinator (Telephone No. 510-637-3534) at least one week before trial commences.

**J. STATUS AND DISCOVERY CONFERENCES**

Any party desiring to confer with the Court may, upon notice to all other parties, arrange a conference through the courtroom deputy (Telephone No. 510-637-3541). Conferences may be conducted telephonically, upon request (preferably in writing).

**K. SANCTIONS**

Failure to comply with this order may result in the imposition of sanctions pursuant to FRCP 16(f).

**L. OTHER DEADLINES**

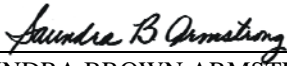
<u>Case Event</u>	<u>Date</u>
Parties will establish agreed-upon procedures for production of documents (Pat. L.R. 3-2)	February 12, 2009
Preliminary Infringement Contentions (Pat. L.R. B-1, 3-2)	February 26, 2009 <sup>1</sup>
Preliminary Invalidity Contentions (Pat. L.R. B-4)	April 13, 2009
Exchange Proposed Terms for Claim Construction (Pat. L.R. 4-1)	April 23, 2009
Exchange Preliminary Claim Constructions and Extrinsic Evidence (Pat. L.R. 4-2)	May 26, 2009
Joint Claim Construction and Prehearing Statement (Pat. L.R. 4-3)	June 12, 2009

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<u>Case Event</u>	<u>Date</u>
End of Claim Construction Discovery (Pat. L.R. 4-4)	July 20, 2009
Netlist serves Opening Claim Construction Brief (Pat. L.R. 4-5 and by stipulation of parties)	July 28, 2009
Google serves Responsive Claim Construction Brief (Pat. L.R. 4-5)	August 25, 2009
Netlist serves Reply Claim Construction Brief (Pat. L.R. 4-5)	September 22, 2009
Tutorial	11/12/09 @ 9:00 AM
Markman Hearing	11/12/09 @ 9:00 AM
Case Management Conference Following Markman Ruling	11/12/09 @ 9:00 AM

IT IS SO ORDERED.

Dated: 2/19/09

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge