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37 UNITED STATES DISTRICT COURT  
 38 NORTHERN DISTRICT OF CALIFORNIA  
 39 (OAKLAND DIVISION)

40 NETLIST, INC.,

41 Plaintiff,

42 v.

43 GOOGLE INC.,

44 Defendant.

45 Case No. C 09-05718 SBA

46 **SUPPLEMENTAL JOINT CASE  
 47 MANAGEMENT CONFERENCE  
 48 STATEMENT**

49 Date: April 1, 2010

50 Time: 3:15 p.m

51 Dept.: Telephonic

1 AND RELATED COUNTERCLAIMS.

2  
3 Netlist, Inc. (“Netlist”) and Google Inc. (“Google”) hereby respectfully submit the  
4 following Supplemental Joint Case Management Statement.

5 **9. Discovery**

6 **C. Discovery Schedule**

7 The parties proposed the following schedule for the case through trial, which includes the  
8 schedule for discovery:

<b>EVENT</b>	<b>DATE</b>
<b>Infringement Contentions under 3-1</b>	<b>3/18/10</b>
<b>Invalidity Contentions under 3-3</b>	<b>4/30/10</b>
<b>Exchange Proposed Claim Terms under 4-1</b>	<b>5/14/10</b>
<b>Exchange Preliminary Constructions and Extrinsic Evidence under 4-2</b>	<b>6/4/10</b>
<b>Joint Claim Construction and Prehearing Statement under 4-3</b>	<b>6/25/10</b>
<b>End of Claim Construction Discovery under 4-4</b>	<b>7/9/10</b>
<b>Opening Claim Construction Brief</b>	<b>7/16/10</b>
<b>Responsive Claim Construction Brief</b>	<b>8/4/10</b>
<b>Reply</b>	<b>8/16/10</b>
<b>Tutorial/Markman Hearing</b>	<b>8/31/10</b>
<b>Notice re Advice of Counsel</b>	<b>10/13/10</b>

EVENT	DATE
Fact Discovery Cutoff	12/17/10
Expert Designations: Each party serves expert reports on those issues for which the party has the burden of proof	1/14/11
Expert Designations: Each party serves responsive expert report(s) addressing the other party's report(s)	1/28/11
Expert Discovery Completed	2/11/11
Motion Cutoff	3/4/11
Mandatory Settlement Conference	3/29/11
Pretrial Conference	5/13/11
Trial Commences	6/13/11

**21. Other issues**

Google's Position: In the Joint Case Management Statement filed with the Court on February 22, 2010 (Docket No. 33), the parties agreed to and proposed the case schedule set forth above under paragraph 9(c). Notwithstanding this agreement, Google believes that it is appropriate to bring to the Court attention in advance of the April 1, 2010 Case Management Conference that Netlist has not complied with the agreed-upon deadlines in this schedule. In particular, while Google served its initial disclosures on March 10, 2010 as provided for under paragraph 8 (and Fed. R. Civ. P. 26(a)(1)(A)), Netlist did not. Rather, Netlist served them on March 22, 2010, and only after Google first brought the delay to Netlist's attention. In addition, Plaintiff Netlist has not yet served its preliminary infringement contentions, which the parties had agreed, and had proposed to this Court, would be served on March 18, 2010. Although Google's counsel has made repeated attempts to meet-and-confer with Netlist's counsel regarding these issues, Netlist's counsel has either been unavailable or unilaterally postponed the discussion until this morning, wherein counsel had a meet-and-confer. Given that the Court has not yet assigned

1 a Magistrate Judge to handle discovery issues in this matter, Google is seeking assistance from  
2 the Court to enforce these deadlines and impose any remedies or relief it deems appropriate.  
3 Furthermore, Google does not believe any changes need to be made to the schedule outlined in  
4 paragraph 9(c). In fact, none have been identified by Netlist, which did not inform Google in  
5 advance that it would not adhere to the agreed upon schedule. Google is prepared to proceed with  
6 the case under the schedule presented to the Court.

7 Netlist's Position: The deadline for providing infringement contentions under Patent  
8 Local Rule 3-1 is 14 days after the Court holds its Initial Case Management Conference. When  
9 the Court canceled the previously scheduled conference, Netlist understood that the deadline for  
10 providing infringement contentions would similarly be deferred. Netlist also made its  
11 understanding known to Google several weeks ago. Nevertheless, Netlist has repeatedly offered  
12 to modify the originally-proposed schedule to accommodate Google's concerns. To date, Google  
13 has neither identified those concerns nor identified any alleged prejudice from cooperatively  
14 modifying the schedule. Nor has Google explained why it is purportedly imperative to adhere to  
15 the proposed schedule.

16 At the Court is aware, this case is related to co-pending Case No. 08-04144-SBA (the '386  
17 Case) which concerns U.S. Patent No, 7,289,386, a parent to U.S. Patent No. 7,619,912 that is the  
18 subject of the present action. Discovery closes on March 30, 2010 in the '386 Case. During the  
19 last several weeks, Netlist has finally been able to obtain discovery needed to amend and more  
20 fully specify the nature of its infringement contentions in the '386 Case. This information will  
21 inform and will be included in the infringement contentions served in the present action, since the  
22 accused products are identical in the two cases. Netlist provided its amended infringement  
23 contentions in the '386 Case to Google on March 18, 2010. Netlist also explained that any delay  
24 in providing infringement contentions in the present action would ultimately inure to Google's  
25 benefit in the form of more fully developed and specified infringement contentions. Netlist's  
26 amendment of its infringement contentions in the '386 Case is the subject of a motion for leave to  
27 amend filed on March 30, 2010.

1 Google's apparent position is that the parties' proposed schedule became binding  
2 notwithstanding the fact that the Court did not enter it. Netlist disagrees, as many of the proposed  
3 deadlines are based on the Court's calendar and cannot be the subject of a stipulation absent  
4 Court order. Netlist remains willing to discuss and accommodate any legitimate scheduling  
5 concerns that Google may have. However, Google has yet to identify them. Google's proposal  
6 (as set forth above) to adhere to the existing schedule appears impractical given that it specifies a  
7 March 18 deadline for providing infringement contentions. Google states that it wishes to  
8 "enforce" the proposed schedule but has not specified what such "enforcement" would entail.  
9 The parties met and conferred telephonically on March 30, 2010, and Google could not explain  
10 what "enforcement" it sought.

11 Contrary to Google's statements herein, Netlist has actively engaged in a written meet and  
12 confer process with Google since Google first raised the issue of enforcing the proposed schedule  
13 on March 12. On Thursday, March 25, 2010, Google's counsel demanded a telephonic meet and  
14 confer to be held with Netlist's counsel the next day, Friday March 26, 2010, despite the fact that  
15 Netlist's counsel was traveling that day. The parties agreed to a telephonic discussion on March  
16 29, 2010. Netlist's counsel had to postpone the discussion by one day to prepare for and travel to  
17 a deposition of JEDEC on March 30, 2010, the date for which Google's counsel provided  
18 confirmation on the evening of March 25, 2010. Netlist's counsel informed Google's counsel  
19 that Netlist's counsel would be in the Washington D.C. office of Google's counsel on March 30,  
20 2010 for the JEDEC deposition and that the parties could meet and confer in person or by phone  
21 then. On the morning of March 30, 2010, the parties met and conferred telephonically. Thus,  
22 Netlist has actively engaged in the meet and confer process and has attempted to arrive at a  
23 mutually satisfactory resolution of the parties' differing views. Netlist requests that the Court set  
24 a deadline for its infringement contentions in accordance with the completion of the Initial Case  
25 Management Conference and the 14-day deadline set forth in Patent Local Rule 3-1 and that it  
26 make any other adjustments to the originally-proposed schedule as may be necessary in view  
27 thereof.  
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Dated: March 30, 2010

ADRIAN M. PRUETZ  
PRUETZ LAW GROUP LLP

By: /s/ Adrian M. Pruetz  
ADRIAN M. PRUETZ

Attorneys for Plaintiff  
NETLIST, INC.

Dated: March 30, 2010

KING & SPALDING LLP

By: /s/ Allison Altersohn  
ALLISON ALTERSOHN (pro hac vice)

Attorneys for Defendant  
GOOGLE INC.

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**DECLARATION OF CONSENT**

Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under penalty of perjury that concurrence in the filing of this document has been obtained from Adrian Pruetz.

Dated: March 30, 2010

KING & SPALDING LLP

By: /s/ Allison Altersohn  
ALLISON ALTERSOHN (pro hac  
vice)

Attorneys for Defendant  
GOOGLE INC.