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 NETLIST, INC.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 OAKLAND DIVISION

17 NETLIST, INC.,
 18 Plaintiff,
 19 v.
 20 GOOGLE, INC.,
 21 Defendant.

Case No. C 09-05718 SBA

[Related to Case No. C 08-04144 SBA]

**PLAINTIFF NETLIST, INC.'S UNOPPOSED
 MOTION TO CONTINUE THE CLAIM
 CONSTRUCTION HEARING DATE**

1 **I. INTRODUCTION.**

2 Plaintiff Netlist, Inc. (“Netlist”) brings this unopposed motion and requests that the Court
3 continue the claim construction hearing in this matter. The requested continuance is necessary to
4 provide Netlist’s newly substituted counsel, DLA Piper LLP (US) (“DLA Piper”), adequate time
5 to analyze the parties’ claims and defenses and prepare to address the complex technology that
6 will be at issue during the *Markman* hearing. Netlist has acted diligently in bringing this motion
7 and good cause exists for Netlist’s request. Moreover, this motion is unopposed and Defendant
8 Google Inc. (“Google”) will suffer no prejudice if the requested continuance is granted. Finally, a
9 continuance would have minimal impact on the case schedule—no trial date has been set and
10 there are no other outstanding Court deadlines. For these reasons, Netlist requests that the Court
11 continue the claim construction hearing currently scheduled for December 8, 2010 to March 17,
12 2011.¹

13 **II. GOOD CAUSE SUPPORTS NETLIST’S REQUESTED CONTINUANCE.**

14 The court may modify a scheduling order upon a showing of “good cause.” Fed. R. Civ. P.
15 16(b); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 608 (9th Cir. 1992). Good cause
16 supports the requested continuance given the sophisticated technology at issue and the very recent
17 substitution of Netlist’s counsel. The claim construction arguments raised by the parties involve
18 complex technical issues and will require a significant degree of expertise by counsel to address.
19 Given DLA Piper’s very recent substitution into this case on October 26, 2010 (*see* Dkt. No. 61),
20 Netlist requests a brief continuance so that its counsel can study the relevant technology, analyze
21 the parties’ claims and defenses, and prepare for the *Markman* hearing. (*See* Hindman Decl., ¶ 3.)
22 Good cause supports the requested continuance.

23 **III. NETLIST DILIGENTLY BROUGHT THIS MOTION.**

24 In considering a party’s motion to modify the scheduling order, the court should consider
25 the diligence of the party seeking the modification. *Aristocrat Techs. v. Int’l Game Tech.*, No. C-

26 _____
27 ¹ On October 27, 2010 DLA Piper contacted the Court’s calendar clerk and was informed that the Court would be
28 available on March 17, 2011 for a continued claim construction hearing. (*See* Declaration of Jesse Hindman
 (“Hindman Decl.”), ¶ 4.). The parties met and conferred and determined that the suggested alternative date of March
 17, 2011 would work for all the parties. (*See* Hindman Decl., ¶¶ 5, 6.).

1 06-03717 RMW, 2010 WL 3060162, at *3 (N.D. Cal. August 3, 2010). DLA Piper has acted
2 diligently in seeking a stipulation from Google and bringing this motion. The day following the
3 substitution (October 27), DLA Piper contacted the Court's calendar clerk and obtained available
4 dates for a continued hearing. (*See* Hindman Decl., ¶ 4.) DLA Piper communicated those dates
5 to Google the very next day. (*See* Hindman Decl., ¶ 5.) On October 29, Google's counsel
6 informed Netlist that consistent with the Court's availability, Google would be amenable to a
7 March 17 hearing. (*See* Hindman Decl., ¶ 6.) Google's counsel also indicated that Google was
8 not opposed to Netlist seeking a continued hearing date. (*See* Hindman Decl., ¶¶ 6, 7.) Netlist
9 promptly filed this motion.

10 **IV. A CONTINUANCE WILL AVOID PREJUDICE TO NETLIST.**

11 This case involves sophisticated computer memory module technology. Netlist's new
12 counsel only recently substituted into this case and the requested continuance would provide DLA
13 Piper adequate time to become familiar with the parties' claims and defenses, the evidentiary
14 record and the complex technology at issue. Under the current hearing date, DLA Piper will be
15 forced to gain a significant level of expertise in a very short amount of time resulting in prejudice
16 to Netlist. (*See* Hindman Decl., ¶ 8.) Moreover, because Google does not oppose this motion and
17 is amenable to a March 17, 2011 hearing date, Google will suffer no prejudice if the requested
18 relief is granted. The balance of harm in these circumstances clearly favors granting the
19 requested continuance.

20 **V. THE REQUESTED CONTINUANCE WILL HAVE LITTLE IMPACT ON THE
21 CASE SCHEDULE.**

22 Netlist's requested continuance will not delay or adversely affect the case schedule.
23 Claim construction briefing is complete and there are no other outstanding Court deadlines
24 besides the hearing at issue in this motion.² (*See* Dkt. Nos. 45, 48, 49, 50.) No trial date has been
25 set and the requested continuance should not impact when the trial date is scheduled. (*See*
26 Hindman Decl., ¶ 10.) Moreover, other than extensions granted during the pleadings stage of this
27 case, the only prior case schedule modification involved the Court vacating a September 9, 2010

28 ² A further case management conference is scheduled to take place immediately following the claim construction hearing. (*See* Dkt. No. 57.)

1 claim construction hearing date and, pursuant to the parties' stipulation, rescheduling the same for
2 December 8, 2010. (*See* Hindman Decl., ¶ 9; Dkt. No. 57.) In sum, the brief continuance
3 requested by Netlist would have minimal impact on the case schedule.

4 **VI. CONCLUSION**

5 For these reasons, Netlist respectfully requests that the Court vacate the December 8, 2010
6 claim construction hearing date and reschedule the hearing for March 17, 2011.

7 Dated: November 5, 2010

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8 By /s/ Sean C. Cunningham

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