Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,

Petitioner,

v.

NETLIST, INC.,

Patent Owner

IPR2025-01402
Patent 12,308,087

PETITIONER'S AUTHORIZED SUR-REPLY TO PATENT OWNER'S DISCRETIONARY DENIAL REQUEST

TABLE OF CONTENTS

Page

I. Netlist's retaliatory ITC action has not even been instituted, so the *Fintiv* factors favor this proceeding (DD Reply 1–2, 3–4) 1

II. The Petition correctly named all Real Parties in Interest, unlike Netlist (DD Reply 2–3, 4) 3

III. The Examiner made material errors (DD Reply 4) 4

TABLE OF AUTHORITIES

Page(s)

Cases

Apple Inc. v. Fintiv, Inc.,
IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) 1

Regulations

37 C.F.R. § 1.550(a).....2

37 C.F.R. § 42.8(a)(2).....3

37 C.F.R. § 42.8(b)(1).....3

EXHIBIT LIST

Exhibit #	Description
1001	U.S. Patent No. 12,308,087
1002	File History of U.S. Patent No. 12,308,087 (Application No. 17/694,649), *available at* <https://patentcenter.uspto.gov/applications/17694649/ifw/docs?application=>
1003	Declaration of Dr. Andrew Wolfe
1004	Curriculum Vitae of Dr. Andrew Wolfe
1005	File History of U.S. Provisional Application No. 61/409,893 (filed Nov. 3, 2010)
1006	File History of U.S. Patent Application No. 14/337,168 (filed July 21, 2014)
1007	File History of U.S. Patent Application No. 15/095,288 (filed Apr. 11, 2016)
1008	File History of U.S. Patent Application No. 15/602,099 (filed May 22, 2017)
1009	File History of U.S. Patent Application No. 16/412,308 (filed May 14, 2019)
1010	File History of U.S. Patent Application No. 17/157,903 (filed Jan. 25, 2021)
1011	U.S. Patent Application Publication No. 2008/0025137 to Rajan *et al.* (published Jan. 31, 2008)
1012	U.S. Patent Application Publication No. 2011/0193226 to Kirby *et al.* (filed Feb. 8, 2010, published Aug. 11, 2011)
1013	U.S. Patent Application Publication No. 2006/0259678 to Gervasi (published Nov. 16, 2006)
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1015	U.S. Patent No. 8,041,881 to Rajan *et al.* (filed June 12, 2007, issued Oct. 18, 2011)
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Exhibit #	Description
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1018	U.S. Patent Application Publication No. 2010/0195364 to Riho (published Aug. 5, 2010) ("Riho2")
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1031	U.S. Patent No. 7,532,537 to Solomon *et al.* (issued May 12, 2009)
1032	*SK hynix Inc. et al. v. Netlist, Inc.*, IPR2017-00667, Paper No. 38 (PTAB July 18, 2018) (Final Written Decision for 537 Patent)
1033	*SK hynix Inc. et al. v. Netlist, Inc.*, IPR2017-00668, Paper No. 36 (PTAB July 18, 2018) (Final Written Decision for 537 Patent)
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Exhibit #	Description
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1041	U.S. Patent No. 8,120,958 to Bigler *et al.* (filed Dec. 24, 2007)
1042	Transcript of deposition of Andrew Wolfe, Ph.D. (June 27–28, 2023) (EX2025 in IPR2022-01427 and -01428)
1043	U.S. Patent No. 8,593,899 to Ide (filed Feb. 28, 2011, issued Nov. 26, 2013)
1044	Amended Complaint in *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:21-cv-00463 (E.D. Tex. filed May 3, 2022)
1045	U.S. Patent No. 8,244,971 to Rajan *et al.* (filed Oct. 30, 2007, issued Aug. 14, 2012)
1046	Complaint in *Netlist, Inc. v. Micron Technology, Inc. et al.*, No. 2:22-cv-00203 (E.D. Tex. filed June 10, 2022)
1047	U.S. Patent No. 9,123,552 to Keeth *et al.* (filed Mar. 30, 2010, issued Sept. 1, 2015)

Exhibit #	Description
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1049	Provisional Application No. 61/366,806 (filed July 22, 2010) to U.S. Patent No. 9,665,507 to Shaeffer *et al.*, *available at* <https://patentcenter.uspto.gov/applications/61366806/ifw/docs?application=>
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1052	Transcript of deposition of Michael C. Brogioli, Ph.D. (Sept. 27–28, 2023) in IPR2022-01427 and -01428
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Exhibit #	Description
1063	Dictionary definition for "electrical"
1064	Dictionary definition for "communication"
1065	Final Written Decision, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2022-00639, Paper 45 (PTAB Oct. 18, 2023)
1066	Claim Construction Order, *Netlist, Inc. v. Micron Technology, Inc. et al.*, No. 2:22-cv-00203, ECF No. 249 (E.D. Tex. Oct. 22, 2023)
1067	Petitioner's Demonstratives for Oral Argument on January 11, 2024
1068	Claim Construction Order, *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:21-cv-00463, ECF No. 114 (E.D. Tex. Dec. 14, 2022) (EX2004 in IPR2022-01427 and -01428)
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1070	File History of U.S. Patent No. 8,787,060 (Application No. 13/288,850 filed Nov. 3, 2011)
1071	U.S. Patent No. 9,318,160 (issued Apr. 19, 2016)
1072	Final Written Decision, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2022-01428, Paper 48 (PTAB Apr. 1, 2024) (U.S. Patent No. 8,787,060)
1073	Final Written Decision, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2022-01427, Paper 48 (PTAB Apr. 1, 2024) (U.S. Patent No. 9,318,160)
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1076	Notice of Docketing, *Netlist, Inc. v. Samsung Electronics Co., Ltd.*, No. 2024-2240 (Fed. Cir. Aug. 20, 2024) (appeal from IPR2022-01427 of U.S. Patent No. 9,318,160)
1077	Samsung's Principal Brief, *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2024-2203 (Fed. Cir. Dec. 16, 2024)
1078	Netlist's Responsive Brief, *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2024-2203 (Fed. Cir. Mar. 28, 2025)

Exhibit #	Description
1079	Samsung's Reply Brief, *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2024-2203 (Fed. Cir. May 19, 2025)
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1084	Complaint in *Netlist, Inc. v. Micron Technology, Inc. et al.*, No. 2:25-cv-00552 (E.D. Tex. filed May 19, 2025) (U.S. Patent No. 12,308,087)
1085	Complaint in *Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.*, No. 1:25-cv-00626 (D. Del. filed May 20, 2025) (U.S. Patent No. 12,308,087)
1086	Complaint in *Micron Technology, Inc. et al. v. Netlist, Inc.*, No. 1:25-cv-00626 (D. Del. filed May 20, 2025) (U.S. Patent No. 12,308,087)
1087	Complaint in *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:25-cv-00557 (E.D. Tex. filed May 20, 2025) (U.S. Patent No. 12,308,087)
1088	Complaint in *Netlist, Inc. v. Micron Technology, Inc. et al.*, No. 2:25-cv-00558 (E.D. Tex. filed May 20, 2025) (U.S. Patent No. 12,308,087)
1089	Netlist's infringement contentions against Samsung in *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:25-cv-00557 (E.D. Tex. July 16, 2025) (U.S. Patent No. 12,308,087)
1090	[omitted]
1091	Declaration of Dr. Andrew Wolfe in IPR2022-01427 (EX1003 in IPR2022-01427)
1092	Declaration of Dr. Andrew Wolfe in IPR2022-01428 (EX1003 in IPR2022-01428)

Exhibit #	Description
1093	Invalidity claim chart by Dr. Andrew Wolfe
1094	Netlist Form 10-K (Annual Report) for 2023, *available at* <https://investors.netlist.com/filings-financials/sec-filings>.
1095	Netlist Form 10-K (Annual Report) for 2024, *available at* <https://investors.netlist.com/filings-financials/sec-filings>.
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1098	Final Written Decision, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2022-00996, Paper 49 (PTAB Dec. 6, 2023) (U.S. Patent No. 11,016,918)
1099	Order Denying Director Review, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2022-00996 and -00999, Papers 53 & 56 (PTAB Mar. 18, 2024) (U.S. Patent Nos. 11,016,918 and 11,232,054)
1100	Final Written Decision, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2022-00615, Paper 96 (PTAB Apr. 17, 2024) (U.S. Patent No. 7,619,912)
1101	Order Denying Director Review, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2022-00615, Paper 103 (PTAB July 10, 2024) (U.S. Patent No. 7,619,912)
1102	Final Written Decision, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2023-00454, Paper 45 (PTAB July 30, 2024) (U.S. Patent No. 11,093,417)
1103	Order Denying Director Review, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2023-00454, Paper 47 (PTAB Oct. 8, 2024) (U.S. Patent No. 11,093,417)
1104	Notice of Oral Argument on December 5, 2025, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, No. 2025-1378 (Fed. Cir. Oct. 21, 2025) (IPR2023-00847 of U.S. Patent No. 10,268,608)
1105	Order Granting Motion to Stay, *Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.*, No. 1:21-cv-01453 (D. Del. Dec. 1, 2023) (U.S. Patent No. 10,217,523)

Exhibit #	Description
1106	Samsung's Motion to Dismiss for Improper Venue, *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:25-cv-00557 (E.D. Tex. Nov. 24, 2025) (U.S. Patent No. 12,308,087)
1107	Micron's Motion to Dismiss for Improper Venue, *Netlist, Inc. v. Micron Technology, Inc. et al.*, No. 2:25-cv-00558 (E.D. Tex. July 22, 2025) (U.S. Patent No. 12,308,087)
1108	U.S. District Courts–Combined Civil and Criminal Federal Court Management Statistics (March 31, 2025), *available at* <https://www.uscourts.gov/data-news/data-tables/2025/03/31/federal-court-management-statistics/n-a-1>
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1110	ITC, Tolling of Deadlines (Nov. 14, 2025), *available at* <https://www.usitc.gov/press_room/2025_lapse_of_appropriations>
1111	Section 337 Statistics: Average Length of Investigations (Apr. 11, 2025), *available at* <https://www.usitc.gov/intellectual_property/337_statistics_average_length_investigations.htm>
1112	Memorandum re: Director Institution of AIA Trial Proceedings (Oct. 17, 2025), *available at* <https://www.uspto.gov/subscription-center/2025/director-institution-aia-trial-proceedings>
1113	Memorandum re: Interim Processes for PTAB Workload Management (Mar. 26, 2025), *available at* <https://www.uspto.gov/subscription-center/2025/uspto-issues-new-interim-process-concerning-institution-aia-proceedings>
1114	Memorandum re: Final Written Decision Procedures for AIA Trial Proceedings (July 29, 2025), *available at* <https://www.uspto.gov/subscription-center/2025/ptab-issued-memorandum-aia-trials>
1115	Samsung Semiconductor, About Us, *available at* <https://semiconductor.samsung.com/about-us/locations/us/>

Exhibit #	Description
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1122	PatentBots, Statistics for Examiner Hoang (Art Unit 2827), *available at* <https://www.patentbots.com/stats/examiner/2827-HOANG-HUAN>
1123	Memorandum re: Guidance on USPTO's recission of "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation" (Mar. 24, 2025), *available at* <https://www.uspto.gov/patents/ptab/resources>
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1125	Samsung's withdrawal of indefiniteness contentions, *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:25-cv-00557 (E.D. Tex. Dec. 16, 2025) (U.S. Patent No. 12,308,087)

Exhibit #	Description
1126	Declaration of James Kiczek (SEA), *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:25-cv-00557 (E.D. Tex. Sept. 11, 2025)
1127	Declaration of Danny Kim (SSI), *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, No. 2:25-cv-00557 (E.D. Tex. Sept. 11, 2025)
1128	Order determining Google is not a Real Party-in-Interest or Privy of Samsung, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, IPR2022-00615, Paper 64 (PTAB July 13, 2023)
1129	Complaint for Declaratory Judgment, *Samsung Electronics Co., Ltd. and Samsung Semiconductor, Inc. v. Netlist, Inc.*, No. 1:25-cv-01453 (D. Del. filed Oct. 15, 2021)
1130	Netlist's disclaimer of claims 24–28 of U.S. Patent No. 12,308,087 (Dec. 4, 2025), *available at* <https://patentcenter.uspto.gov/applications/17694649/ifw/docs?application=>
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Exhibit #	Description
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2012	Docket Control Order, *Netlist Inc. v. Samsung Electronics Co., Ltd.*, Case No. 2:25-cv-00557 (E.D. Tex.), July 25, 2025
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2017	Verdict Form, *Netlist, Inc. v. Samsung Electronics Co. et al.*, Case No. 2:22-cv-00293-JRG (E.D. Tex.), November 22, 2024
2018	List of Patent Trial and Appeal Board proceedings filed by Samsung Electronics Co., Ltd. against Netlist, Inc.'s Patents, Docket Navigator, generated November 3, 2025
2019	Notice of Proposed Rulemaking, 90 Fed. Reg. 48,335 (Oct. 17, 2025)
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Exhibit #	Description
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2033	Defendants Samsung Semiconductor, Inc. and Samsung Electronics America, Inc.'s Motion to Dismiss for Improper Venue, *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, Case No. 2:25-cv-00557-JRG (E.D. Tex.), November 24, 2025
2034	Plaintiff's Corporate Disclosure Statement, *Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.*, Case No. 1:25-cv-00626-JLH (D. Del.), May 20, 2025
2035	List of Patent Trial and Appeal Board proceedings listing Samsung Electronics America, Inc. as Petitioner, Docket Navigator, generated December 3, 2025
2036	Redline Comparison of Independent Claim 1 and Independent Claims 9, 13, 20, 23, and 24 of U.S. Patent No. 12,308,087

Exhibit #	Description
2037	Word Counts of Petitions in IPR2025-01402 and PGR2025-00071, including image annotations
2038	Final Judgment, *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, Case No. 2:21-cv-00463-JRG (E.D. Tex.), August 11, 2023
2039	Trial Transcript, Volume 3, *Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.*, Case No. 2:21-cv-00463-JRG (E.D. Tex.), April 18, 2023
2040	Judgment under Federal Circuit Rule 36, *Samsung Elecs. Co., Ltd. v. Netlist, Inc.*, Appeal No. 23-2133 (Fed. Cir.), March 5, 2025
2041	Judgment under Federal Circuit Rule 36, *Samsung Electronics Co., Ltd. v. Netlist, Inc.*, Appeal No. 25-1378 (Fed. Cir.), December 9, 2025
2042	Netlist's Petition for the Director to Suspend the Rules and Deny the Request for Reexamination Under 35 U.S.C. §§ 303(a) and 325(d), *Ex Parte* Reexamination Control No. 90/015,449, filed October 17, 2025
2043	Complaint, *Netlist, Inc. v. Samsung Elecs. Co., Ltd. et al.*, Case No. 2:25-cv-00748-JRG (E.D. Tex.), July 28, 2025
2044	Complaint, *Samsung Elecs. Co., Ltd. et al. v. Netlist, Inc.*, Case No. 1:25-cv-01371-JLH (D. Del.), November 11, 2025
2045	Commission Determination, *In the Matter of Certain Unmanned Aerial Vehicles and Components Thereof*, Investigation No. 337-TA-1133 (I.T.C.), September 8, 2020

I. Netlist's retaliatory ITC action has not even been instituted, so the *Fintiv* factors favor this proceeding (DD Reply 1–2, 3–4)

Netlist is incorrect that "[t]he ITC is the best forum for resolving this dispute." Paper 17 ("DD Reply") at 1. Netlist's retaliatory ITC action has not even been instituted, *see* EX1124, so "[t]his proceeding is far ahead," Paper 11 ("DD Opp'n") at 13. Under *Fintiv* Factor 2, Netlist again focuses on the ITC's potential "hearing and initial determination" dates (assuming institution, which is speculative), *see* DD Reply 3, but Netlist does not dispute that the Board's *Fintiv* policy focuses on the ITC's "***final*** determination date," DD Opp'n 14, which Netlist does not dispute would be long ***after*** the statutory deadline here. For Factors 3 and 4, Netlist complains that Samsung "has not made *any* stipulation" or "agreed to forgo [invalidity] theories at the ITC," DD Reply 4, but ***there is no ITC action*** (because it has not been instituted) so there is nothing for Samsung to "stipulate[e]" or "forgo." Furthermore, Netlist does not dispute that even if the ITC action is instituted, the ITC will defer to the Final Written Decision here, "thus avoiding inconsistency and promoting efficiency," DD Opp'n 13, meaning Factor 1 favors institution. Netlist points to an unrelated "suit with Micron" scheduled for trial on March 15, 2027, *see* DD Reply 3, but again that is ***after*** the statutory deadline here, *see* DD Opp'n 14, and furthermore that suit is subject to a motion to dismiss for improper venue so there is no evidence that case has had (or will have) any overlap with this proceeding.

Netlist also does not dispute that "only 11 of the 28 challenged claims (i.e., 39%) are at issue in the ITC, *see* EX2015 at 3 (¶ 7), meaning 'the additional claims at issue here, but not in the ITC proceeding, weigh against exercising our discretion to deny institution.'" DD Opp'n 14. Nor does Netlist dispute that "[t]he large number and wide scope of the patents asserted in the district court [and ITC] litigation weighs against discretionary denial, as the Board is better suited to review a large number of patents involving diverse subject matter." *Id.* 15.

Netlist argues that "Samsung is estopped from challenging two of the six ITC patents," DD Reply 1 (referring to the '523 and '608 patents), but Netlist does not dispute that (1) "the '523 patent . . . has been stayed in district court ***for over two years*** (without Netlist filing an ITC action until now), EX1105, showing its lack of importance to the parties' dispute," DD Opp'n 15, and (2) the '608 patent is the subject of an ongoing *ex parte* reexam, *see* No. 90/015,449, which was filed months before Netlist's ITC action and "will be conducted with special dispatch," 37 C.F.R. § 1.550(a), meaning it should also beat the ITC. Netlist argues that the "reexam [against the '608 patent] should…be terminated as an improper serial challenge," DD Reply 2, but omits that the Office specifically considered and rejected that argument when it granted the reexam, *see* No. 90/015,449. Netlist points to no authority for its argument that "the Director should order Samsung to confirm that it did not play *any role* in requesting this reexam," DD Reply 2, but in

any event Samsung can confirm it did not play any role in requesting that reexam.

II. The Petition correctly named all Real Parties in Interest, unlike Netlist (DD Reply 2–3, 4)

Netlist is incorrect that the Petitions "fail to name all RPIs," DD Reply 2–3, as explained in Paper 16 (filed before Netlist's argument). In particular, SEA (a separate subsidiary) and Avnet (a third-party customer) are not ***real*** parties in interest, they are just token defendants Netlist named to try to establish venue in the Eastern District of Texas. *See* Paper 16, 1–4; EX1127, ¶¶ 5–6; EX1126, ¶ 7; EX2033, 3–4; EX1128, 13–14, 18–19. Thus, Petitioner correctly named its RPIs and has clean hands, unlike Netlist, *see* DD Opp'n 12–13. Netlist does not dispute that "[g]iven [its] lack of money…clearly someone other than Netlist is funding the repeated assertion of invalid patents against Samsung, but Netlist has not identified who it really is." *Id.* Instead Netlist argues the PTAB "is not the right forum" to address that issue. DD Reply 4. But the law requires Patent Owners (not just petitioners) to disclose any "real party-in-interest," *see* 37 C.F.R. § 42.8(a)(2), (b)(1), and Netlist's evasive response fails to show that Netlist actually complied with this requirement, *see* DD Reply 4, which raises "national security concerns" given "Samsung's critical contributions to this country's dominance in AI technology," DD Opp'n 13; EX1118; EX2030, 2 ("Opaque investment structures have been used by foreign adversaries to gain influence over…U.S. intellectual-property assets and proceedings….in sectors such as…artificial intelligence….").

III. The Examiner made material errors (DD Reply 4)

Netlist is incorrect the Examiner made "no material errors." DD Reply 4. Netlist repeats its argument that "two of the three references…were before the examiner." DD Reply 4. But Netlist does not dispute that (1) Shaeffer, which discloses a "unidirectional interconnect" — part of the "reasons for allowance" — was "neither cited nor discussed" by the Examiner, (2) "the Examiner never considered the combination of Keeth and Shaeffer presented in the Petition," and (3) the Examiner "materially erred by overlooking certain teachings" in Keeth. DD Opp'n 10–11. Netlist argues that "Keeth's double-headed arrows" (for ***data***, *see* Pet. 42–44) fail to disclose "the 'unidirectional' elements" of the claims, DD Reply 4, but that ignores Shaeffer, which Netlist does not dispute ***does*** teach "unidirectional" ***command and control*** signals (called "TRS/EDC" 130), *see* DD Opp'n 10; Pet. 67–68. Netlist also does not dispute a POSITA would have been motivated to combine Shaeffer's "unidirectional" command and control signals with Keeth, *see* Pet. 69 (citing Pet. 11–24), especially since "Keeth does not provide details of the signaling protocols," Pet. 15, while Shaeffer does, *id.* 17–24. Nothing in Keeth teaches away from unidirectional ***command and control*** signals, which were common. *See* Pet. 23 ("RDQS and WDQS"); Pet. 39–40 (Keeth's "paths 505 through 508" may be used for unidirectional "command and/or address signals"); Pet. 18–23 ("separate [command/address] and data lines" was standard).

Dated: December 22, 2025

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CERTIFICATE OF COMPLIANCE

I hereby certify that this **Petitioner's Authorized Sur-Reply to Patent Owner's Discretionary Denial Request**, excluding the parts of the brief exempted by 37 C.F.R. § 42.24, complies with the page limits provided by the Board's email on December 16, 2025, which stated: "Patent Owner is authorized to file a 4-page reply in PGR2025-00071, IPR2025-01402, and IPR2025-01431, due no later than Thursday, December 18, 2025, limited to addressing the below matters in Petitioner's Opposition to Discretionary Denial. Petitioner is authorized to file a 4-page sur-reply, due no later than Monday, December 22, 2025." EX3101.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 22nd day of December, 2025, **Petitioner's Authorized Sur-Reply to Patent Owner's Discretionary Denial Request** was served by email on the following counsel for Patent Owner:

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