

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

NETLIST, INC.,
Patent Owner

Case IPR2025-01431
U.S. Patent No. 10,025,731

DECLARATION OF DAVID KENNEDY

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Netlist EX2061
Samsung v. Netlist
IPR2025-01431

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I, David Kennedy, hereby declare as follows.

I. INTRODUCTION

1. I have been retained as an expert witness on behalf of Patent Owner Netlist, Inc. (“Patent Owner”) for the above-captioned *inter partes* review (IPR). I understand that this Declaration accompanies the Patent Owner’s Response filed in this IPR involving U.S. Patent No. 10,025,731 (“the ’731 patent”) (EX1001), which resulted from U.S. Patent Application No. 14/715,491 (“the ’491 application”), filed on May 18, 2015. I am being compensated for my time in connection with this IPR at my standard consulting rate. My compensation is not in any way tied to the content of this Declaration, the substance of my opinions, or the outcome of this proceeding. I have no other interest in this proceeding or with any of the parties.

2. I submit this Declaration to provide my expert opinion related to certain aspects of licensing activities involving the ’731 patent and its family members. I do not provide, nor was I asked to provide, legal or technical opinions related to whether any claim of the ’731 patent is obvious.

3. I reserve the right to supplement or amend my opinions, and bases for them, in response to any additional evidence, testimony, discovery, argument, and/or other additional information that may be provided to me after the date of this Declaration.

II. MY BACKGROUND AND QUALIFICATIONS

4. I am an expert in intellectual property (“IP”) valuation, licensing, and transactions. I have provided forensic consulting services in litigation matters and have testified as an expert witness at arbitration, in the Court of Federal Claims, and in state, federal, and bankruptcy courts regarding lost profits, reasonable royalties, and other forms of economic damages related to complex commercial litigation, intellectual property licensing, and valuation.

5. My opinions, encompassing hundreds of millions of dollars in damages, have been accepted by judges, juries, and arbitration panels, and in settlements of complex patent cases. I have been recognized by Intellectual Asset Management as one of The World’s Leading IP Strategists every year from 2011 to 2026. *See* EX2082.

6. My professional experience includes more than 40 years as a Certified Public Accountant (“CPA”), auditor and accounting consultant for corporations, financial institutions, government agencies, and law firms, performing audits, litigation support, asset valuation, IP management, and forensic accounting services. In addition, I have negotiated and/or served as advisor in over 200 IP-related transactions as an owner of IP and on behalf of companies, universities, and inventors.

7. I have reviewed and analyzed hundreds of license agreements to

determine appropriate licensing/royalty rates. I have a significant amount of experience serving as a licensing expert for major corporations, universities, inventors, and other patent owners. Specifically, my experience includes assisting in negotiations, valuing patent portfolios, and determining the effective royalty rates for license agreements that were negotiated to cover prior use and projected future use of patented technology.

8. My professional experience began 40 years ago as a CPA for Coopers & Lybrand (now PriceWaterhouseCoopers) and has included raising venture capital for several companies, including IP start-up companies (including both technology start-up venture and intellectual property holding entities), and advising on divestitures of patent assets. I have purchased patents and implemented licensing programs as an owner and manager of the patents and on behalf of investor groups. I have also assisted numerous large and small companies in designing and implementing patent licensing programs.

9. I co-founded an intellectual property valuation consultancy (InteCap), led its IP Transactions and Licensing Group, and served on its board of directors. I have also assisted IP-based companies with mergers, acquisitions, and IPOs. I have raised venture capital for these companies and served as a board member and financial advisor to several IP start-up companies advising on IP strategy and valuation.

10. I have also served as an IP valuation specialist for several consulting companies including Peterson Consulting, now a part of Navigant Consulting, and provided consulting services to numerous clients in the process of developing IP commercialization programs.

11. My education and professional credentials began with a degree in Business Administration from the University of Georgia, majoring in accounting. I am licensed as a CPA in Georgia, and I am a member of the American Institute of Certified Public Accountants (the "AICPA").

12. I am employed by J.S. Held, LLC ("JSH"). JSH carries out financial, economic, and accounting research and consulting services for firms, companies, and government bodies on a variety of issues, including the analysis of damages in connection with intellectual property disputes and consulting assignments related to negotiating IP transactions. I have testified numerous times as an expert on IP licensing issues and IP damages.

13. Additional information concerning my background, qualifications, and publications is described in my Curriculum Vitae, a copy of which is submitted as Exhibit 2062.

III. LIST OF DOCUMENTS CONSIDERED

14. In forming my opinions, I have considered the documents listed below in addition to any other documents cited in this Declaration.

Exhibit No.	Description
1001	U.S. Patent No. 10,025,731 to Lee <i>et al.</i>
2001	Joint Development and License Agreement, November 12, 2015
2002	Stock Purchase Warrant, November 18, 2015
2003	Senior Secured Convertible Promissory Note, November 18, 2015
2004	Security Agreement by and between Netlist, Inc. and SVIC No. 28 New Technology Business Investment L.L.P., November 18, 2025
2005	Samsung Venture Investment Corporation website, available at https://www.samsungventure.co.kr/english/jsp/company/company.jsp
2006	Recorded Assignment and IP Security Agreement, Reel No. 037150, Frame No. 0897, November 20, 2015
2009	Judgment, <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 8:20-cv-00993-JAK (C.D. Cal.), April 7, 2025
2062	<i>Curriculum Vitae</i> of David Kennedy
2063	Excerpts of Strategic Product Supply and License Agreement between Netlist, Inc. and SK hynix Inc.
2064	High Bandwidth Memory Company List, Mordor Intelligence, accessible at https://www.mordorintelligence.com/industry-reports/high-bandwidth-memory-market/companies
2073	“Global DRAM and HBM Market Share: Quarterly,” Counterpoint Technology Market Research, March 28, 2026
2075	Netlist, Inc. Form 10-K for the Fiscal Year Ended December 30, 2017

Exhibit No.	Description
2076	“Netlist’s (NLST) CEO Chuck Hong on Q4 2015 Results - Earnings Call Transcript,” Seeking Alpha, February 29, 2016, accessible at https://seekingalpha.com/article/3942336-netlists-nlst-ceo-chuck-hong-on-q4-2015-results-earnings-call-transcript
2077	“Netlist’s (NLST) CEO Chuck Hong on Q3 2016 Results - Earnings Call Transcript,” Seeking Alpha, November 14, 2016, accessible at https://seekingalpha.com/article/4023357-netlists-nlst-ceo-chuck-hong-on-q3-2016-results-earnings-call-transcript
2078	Order Re: Motions For Summary Judgment And Related Applications, <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 8:20-cv-00993 (C.D. Cal., Oct. 14, 2021), ECF No. 186
2080	Email from Kenny Han to JB Kim, May 18, 2015 (CONFIDENTIAL – PROTECTIVE ORDER MATERIAL)
2081	Technology Partnership and IP Cooperation Agreement – Term Sheet (Preliminary Outline), May 18, 2015 (CONFIDENTIAL – PROTECTIVE ORDER MATERIAL)
2082	David Kennedy - Patent 100, Intellectual Asset Management, accessible at https://www.iam-media.com/rankings/patent-1000/profile/person/david-kennedy
2084	“What is DRAM?”, Lenovo, accessible at https://www.lenovo.com/us/en/glossary/what-is-dram/
2085	“Introduction to Memory Chips: DRAM, NAND & NOR Flash,” Heisener Electronics, accessible at https://www.heisener.com/TechnologyDetail/Introduction-to-Memory-Chips-DRAM-NAND-NOR-Flash
2086	“Samsung,” Britannica Money, last updated May 26, 2026, accessible at https://www.britannica.com/money/Samsung-Electronics

Exhibit No.	Description
2087	Matei, M., “Samsung beats Intel in the semiconductor market for the first time in years,” SamMobile, April 14, 2022, accessible at https://www.sammobile.com/news/samsung-beats-intel-semiconductor-market-first-time-in-years/
2088	“Global DRAM Market Hits Record High,” BusinessKorea, May 27, 2026, accessible at https://www.businesskorea.co.kr/news/articleView.html?idxno=270184
2090	“Netlist’s (NLST) CEO Chuck Hong on Q4 2016 Results - Earnings Call Transcript,” Seeking Alpha, March 29, 2017, accessible at https://seekingalpha.com/article/4058995-netlists-nlst-ceo-chuck-hong-on-q4-2016-results-earnings-call-transcript
2091	“Netlist’s (NLST) CEO Chuck Hong on Q1 2017 Results - Earnings Call Transcript,” Seeking Alpha, May 16, 2017, accessible at https://seekingalpha.com/article/4073920-netlists-nlst-ceo-chuck-hong-on-q1-2017-results-earnings-call-transcript
2092	“Netlist’s (NLST) CEO Chuck Hong on Q2 2017 Results - Earnings Call Transcript,” Seeking Alpha, August 10, 2017, accessible at https://seekingalpha.com/article/4097767-netlists-nlst-ceo-chuck-hong-on-q2-2017-results-earnings-call-transcript
2093	Netlist Sales Data (HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES’ ONLY – PROTECTIVE ORDER MATERIAL)
2094	Email from Raymond Jiang to Neal Knuth, June 9, 2017 (CONFIDENTIAL – PROTECTIVE ORDER MATERIAL)
2095	“Gartner Says Worldwide Semiconductor Revenue Declined 11.9% in 2019,” Gartner Newsroom, January 14, 2020, accessible at https://www.gartner.com/en/newsroom/press-releases/2020-01-14-gartner-says-worldwide-semiconductor-revenue-declined-11-point-9-percent-in-2019

Exhibit No.	Description
2096	“Global NAND Flash Revenue Fell by 24.3% QoQ for 3Q23 as Suppliers Made Large Price Concessions That in Turn Impacted Their Results, Says TrendForce,” TrendForce Press Center, November 23, 2022, accessible at https://www.trendforce.com/presscenter/news/20221123-11467.html
2097	Shen, J., “Global DRAM sales to fall 18% in 2022, says IC Insights,” DigiTimes Asia, November 23, 2022, accessible at https://www.digitimes.com/news/a20221123VL200/dram.html
2098	Micron Investor Day 2022 Presentation, May 12, 2022, accessible at https://web.archive.org/web/20220821204814/https://investors.micron.com/static-files/8d23a61f-0c3d-46bf-81a1-c466525afd82
2099	“DRAM Market Anticipated to SurpassUSD 221.67 Billion by 2030, with aCAGR of 9.2% - Report by MarketResearch Future (MRFR),” GlobeNewswire, May 9, 2022, accessible at https://www.globenewswire.com/en/news-release/2022/05/09/2438836/0/en/DRAM-Market-Anticipated-to-Surpass-USD-221-67-Billion-by-2030-with-a-CAGR-of-9-2-Report-by-Market-Research-Future-MRFR.html
2100	“3D NAND Flash Memory Market is Projected to Reach \$78.42 Billion by 2030 – Allied Market Research,” Allied Market Research, 2022, accessible at https://www.alliedmarketresearch.com/press-release/3D-NAND-flash-memory-market.html
2101	Coughlin, T., “Digital Storage And Memory Projections For 2026, Part 2,” Forbes, accessible at https://www.forbes.com/sites/tomcoughlin/2026/01/02/digital-storage-and-memory-projections-for-2026-part-2/

Exhibit No.	Description
2102	“Gartner Forecasts Worldwide Semiconductor Revenue to Exceed \$1.3 Trillion in 2026,” Gartner Newsroom, April 8, 2026, accessible at https://www.gartner.com/en/newsroom/press-releases/2026-04-08-gartner-forecasts-worldwide-semiconductor-revenue-to-exceed-us-dollars-one-point-3-trillion-in-2026
2103	“NAND Flash Memory and DRAM Market Size, Share, Growth, and Industry Analysis, By Type (NAND Flash Memory, DRAM), By Application Smartphone, PC, SSD, Digital TV, Others), Regional Insights and Forecast to 2035,” Industry Research, last updated April 6, 2026, accessible at https://www.industryresearch.biz/market-reports/nand-flash-memory-and-dram-market-104109
2104	“Understanding Incremental Cost: Definition, Calculation & Business Impact,” Investopedia, last updated May 20, 2026, accessible at https://www.investopedia.com/terms/i/incrementalcost.asp
2105	“Working capital: What is it and why is it important?”, Bank of America, March 6, 2025, accessible at https://business.bankofamerica.com/en/resources/what-is-working-capital
2106	Fernando, J., “Working Capital: Formula, Components, and Limitations,” Investopedia, last updated February 21, 2026, accessible at https://www.investopedia.com/terms/w/workingcapital.asp
2107	Netlist, Inc. Form 10-K for the Fiscal Year Ended December 29, 2018
2108	Netlist, Inc. Form 10-K for the Fiscal Year Ended December 28, 2019
2109	Netlist, Inc. Form 10-K for the Fiscal Year Ended January 1, 2022

Exhibit No.	Description
2110	Lee, S., “As iPhone 8 looms, firms scramble to lock up memory chip supply,” Reuters, June 20, 2017, accessible at https://www.reuters.com/article/us-tech-chips-analysis-idUSKBN19B39S/
2111	“3Q16 Quarterly Earnings,” Samsung, October 27, 2016
2112	Netlist, Inc. Form 10-K for the Fiscal Year Ended December 27, 2014
2113	Netlist, Inc. Form 8-K, April 5, 2021
2114	Netlist Form 10-Q for the Quarterly Period Ended April 2, 2022
2115	Netlist Form 10-Q for the Quarterly Period Ended October 1, 2022
2116	Netlist, Inc. Report, Roth Capital Partners, April 8, 2021
2117	Netlist, Inc. Report, Craig-Hallum Capital Group LLC, April 8, 2021
2118	Netlist, Inc. Form 10-K for the Fiscal Year Ended January 2, 2016
2119	Netlist, Inc. Form 10-K for the Fiscal Year Ended December 31, 2016
2120	Netlist, Inc. Form 10-K for the Fiscal Year Ended December 30, 2017
2121	Netlist Form 10-Q for the Quarterly Period Ended October 1, 2022

IV. RELEVANT LEGAL UNDERSTANDING

15. I understand a patent claim is unpatentable if the claimed invention would have been obvious to a person of ordinary skill in the art (POSA) at the time of the alleged invention. I understand that objective indicia (also called secondary

considerations) can be important evidence as to whether a patent claim is obvious.

I understand that licensing is one such secondary consideration that weighs on the obviousness inquiry, and that actual licenses to the patented technology are highly probative because they most clearly reflect the economic value of the patented technology in the marketplace.

16. I am not a patent attorney or technical expert, and I reiterate that I do not provide legal or technical opinions related to whether any claim of the '731 patent is obvious. My opinions are limited to the analysis of Netlist's licensing activities set forth below.

V. OVERVIEW OF THE DRAM MARKET

17. DRAM (Dynamic Random Access Memory) types are volatile memory (i.e., memory that requires constant power in order to retain data) that is accessible by processing units (CPUs, GPUs, et al) at very high speed. DRAM is much faster than other forms of computer memory and is much denser in terms of capacity versus physical size. EX2084. For these reasons, DRAM is the dominant form of memory in computer clients and servers.

18. The DRAM market encompasses several DRAM types, each with different technical and market characteristics suitable for different applications. These products include, among others:

SDRAM	Synchronous DRAM (SDRAM). DRAM with an interface designed to be synchronized with the
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	computer bus to which it connects, generally allowing higher data rates and other advantages.
DDR SDRAM	Double Data Rate (“DDR”) SDRAM that transfers data at twice the rate of non-DDR DRAM.
DDR2, DDR3, DDR4, DDR5, ...	Evolutions of DDR SDRAM using a Dual In-line Memory Module (“DIMM”) form factor. Each generation offers improved performance along multiple metrics – faster data transfers, lower power, and higher data capacity.
HBM	High Bandwidth Memory.

See, e.g., EX2084; EX2085.

19. Samsung and SK hynix dominate the HBM and broader DRAM markets. EX2064 (showing Samsung and SK hynix as two of the top HBM producers in 2024), 1-2; EX2073, 2-3 (showing Samsung and SK hynix as the top two companies in both HBM and broader DRAM markets by market share). Samsung has a long history in the semiconductor industry dating back to the late 1970’s when it established its semiconductor branch. EX2086, 2. By 2022, Samsung had grown to be a Korean technology giant with 12.3% of the global semiconductor market and a recorded \$73.1 billion in revenue in 2021 surpassing companies like Intel for the greatest revenue and market share. EX2087, 3. The global DRAM market size in the first quarter of 2026 reached an all-time high of \$97 billion, with Samsung and SK hynix holding the greatest market shares (a combined 67% of the market). EX2088, 1.

VI. SAMSUNG'S LICENSING OF NETLIST'S PATENT PORTFOLIO

A. Overview of licensing activity between Netlist and Samsung

20. On November 12, 2015, Netlist and Samsung entered into a Joint Development and License Agreement (“JDLA”) under which Netlist granted Samsung a license to its intellectual property, including patents (e.g., U.S. Patent No. 8,154,901 (“’901 patent”), the earliest non-provisional in the ’731 family), continuations, and pending applications in the ’731 family (e.g., U.S. Application No. 13/715,491 (“491 Application”), the application leading to the ’731 patent, which was pending at the time the JDLA was signed). EX2001, 1-2, 8; *see also* EX2006, 15 (listing the ’491 Application).

21. Under the JDLA, Samsung agreed to pay Netlist \$8 million in non-refundable, non-recurring engineering (NRE) fees. EX2001, 5. Samsung also agreed to “supply NAND and DRAM products to Netlist on Netlist’s request at a competitive price.” EX2001, 6. Netlist and Samsung also concurrently entered into an agreement for convertible note financing (“Purchase Agreement”) under the terms of the JDLA, EX2001, 1, which was executed by Samsung’s “venture investment arm”: Samsung Venture Investment Corporation (SVIC). EX2005. The Purchase Agreement included a number of sub-agreements, including: (1) a Stock Purchase Warrant; (2) a Senior Secured Convertible Promissory Note (“Promissory Note”); (3) a Security Agreement; and (4) an “Intellectual Property Security

Agreement.” EX2002; EX2003; EX2004; EX2006, 0005-16.

22. The Promissory Note provided Netlist with a \$15 million loan collateralized by Netlist’s patent portfolio. EX2003, 0001; EX2004, 2; EX2006, 0005. Specifically, the Intellectual Property Security Agreement granted Samsung a security interest in Netlist’s patents and patent applications, including “divisions, continuations,” and “continuations-in-part.” EX2006, 0005; EX2004. The individually identified assets included the pending application that led to the ’731 patent, as well as other members of the ’731 patent family. EX2006, 15-16 (listing the ’491 Application and the ’901 patent, as well as U.S. Patent Nos. 8,782,350 and 9,037,809). The agreement required that Netlist “[p]rotect, defend, and maintain the validity and enforceability” of the assets. EX2004, 8.

23. For purposes of this Declaration, I focus on the value of the supply agreement between Netlist and Samsung—specifically, Samsung’s agreement to “supply NAND and DRAM products to Netlist on Netlist’s request at a competitive price” during the term of the JDLA. EX2001, 6.

B. Value of the supply agreement between Netlist and Samsung

24. During negotiation of the JDLA, I understand that [REDACTED]
[REDACTED]. In particular, Samsung provided a

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. EX2081, 1. [REDACTED]

[REDACTED] agreement by Samsung to “supply NAND and DRAM products to Netlist on Netlist’s request at a competitive price” during the term of the JDLA. EX2001, 6. When supplying [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EX2080,1.

25. In my experience, this type of supply agreement is extremely rare and provided immense value to Netlist. After Netlist executed the JDLA with Samsung, it repeatedly talked with financial analysts and its investors about the value of Samsung’s supply obligation. This was especially important to Netlist given the supply uncertainty it expected from the market. As Netlist provided in its SEC annual report for year ending December 30, 2017:

From time to time, shortages in DRAM ICs and NAND flash have required some suppliers to limit the supply of these components. ... If we are unable to obtain a sufficient supply of DRAM ICs, NAND flash or other essential components to avoid interruptions or failures in the delivery of our products as required by our customers or the delivery of these components to customers to whom we resell them directly, these customers may reduce future orders for these products or not purchase

these products from us at all, which could cause our net product revenues to decline and harm our operating results. In addition, our reputation could be harmed due to failures to meet our customers' demands and, even assuming we are successful in resolving supply chain disruptions, we may not be able to replace any lost business and we may lose market share to our competitors. Further, if our suppliers are unable to produce qualification samples of our products on a timely basis or at all, we could experience delays in the qualification process with existing or prospective customers, which could have a significant impact on our ability to sell our products. Moreover, if we are not able to obtain these components in the amounts needed on a timely basis and at commercially reasonable prices, we may not be able to develop or introduce new products, we may experience significant increases in our cost of sales if we are forced to procure components from alternative suppliers and are not able to negotiate favorable terms with these suppliers, or we may be forced to cease our sales of products dependent on the components or resales of the components we sell to customers directly.

EX2075, 20.

26. Samsung's supply agreement addressed many of these concerns, providing a steady supply of NAND and DRAM components to Netlist while allowing Netlist to control its costs, regardless of market supply and demand. As Netlist's employees noted in the year after the JDLA went into effect, "we continue to benefit from the unique access we have ... to certain Samsung products

in the enterprise space,” including “high density DRAM modules,” which allowed Netlist to reach “customers not previously accessible.” EX2076, 6; EX2077, 5-6. Netlist’s CEO anticipated in 2016 that the “Samsung Companion products [would] provide synergistic value” to Netlist’s product portfolio and would “open doors allowing our sales team to establish relationships with OEMs and data center customers, many of which may also be customers for NV4, EV3 and HybriDIMM.” EX2077, 6. He acknowledged that Netlist was “fortunate” to have “unique access” to the product offerings of Samsung, the “undisputed market leader in memory and SSD.” EX2090, 3. Netlist’s CEO further commented in 2016 that Netlist expected its supply agreement with Samsung will be a “key driver[] of improved revenue performance and incremental profitability moving forward,” and Netlist’s CFO explained that “[t]he year-over-year increase in product revenue ... is a direct result of our strategic relationship with Samsung.” EX2077, 6. In 2017, Netlist’s CEO noted that revenue continued to grow “driven by sales of Samsung’s high-end memory and storage products,” and Netlist’s CFO indicated a need for working capital to “support the growth in the product business volume, due mainly to the special access to Samsung high-performance memory modules.” EX2092, 3; EX2091, 6.

27. Netlist’s revenues in 2016 and 2017, as summarized in the table below, directly reflect the value of the supply agreement between Netlist and

28. In June 2017, Netlist acknowledged the critical role Samsung's supply played in supporting its business, noting that [REDACTED]

██████████. EX2094, 6.

29. In 2017, I understand that Samsung breached its supply agreement. EX2009, 1; EX2078, 4, 15. Had Samsung continued to honor its supply agreement, I estimate that Netlist would have achieved even greater profits during the remaining term of the JDLA and beyond.

30. To estimate the potential growth of Netlist sales after Q2 2017, I calculated the compound quarterly growth rates of Netlist purchases from each quarter, beginning with the first quarter of actual data (Q1 2016), through Q2 2017.

See EX2093. The lowest of these observed growth rates is [REDACTED]

[REDACTED], and applied to my estimates of Netlist but-for sales.

31. The actual sales include [REDACTED]
[REDACTED]. To estimate the quantity of products that would have been supplied to Netlist but for the breach, I first applied a growth rate of [REDACTED] on a quarterly basis through 2019. For purposes of this Declaration, I projected sales out to two alternative dates of 1) 5 years after the breach and 2) 10 years after the breach. The global DRAM and NAND markets experienced downturns in 2019 and 2022. EX2095, 1-2; EX2096, 1-5; EX2097, 1-2. However, due to these downturns occurring during the first 10 years of Netlist's agreement with Samsung, I expect that Netlist would still have achieved growth in its sales. Accordingly, I projected quarterly growth at [REDACTED] from Q1 2020 to Q4 2022 and quarterly growth at [REDACTED] from Q1 2023 to Q4 2025.

32. The DRAM and NAND industries have been expected to experience significant growth through this decade. A May 2022 Micron Investor Day presentation anticipated that the DRAM and NAND markets would grow from \$161 billion in 2021 to \$330 billion in 2030. EX2098, 9. Other industry reports anticipated the DRAM market would grow with a CAGR of 9.2% until 2030, while the 3D NAND Flash market would grow at a CAGR of 20.3% until 2030. EX2099;

EX2100, 1-2. A 2026 Forbes article noted that “[m]emory and storage technologies recovered from a severe recession in 2022 and 2023,” and 2025 “has seen demand grow ever more with shortages reported for all the major storage and memory technologies.” EX2101, 2. A 2026 Gartner report indicates that it forecasts global memory semiconductor revenue to grow from \$216.3 billion in 2025 to \$748.1 billion in 2027, with an over 18% growth in revenue from 2026 (\$633.3 billion) to 2027 (\$748.1 billion). EX2102, 1. Another 2026 industry report projected that the global NAND and DRAM markets would reach \$430 billion by 2035, growing at a 8.43% annual rate from \$207.6 billion in 2026. EX2103, 1-2. Considering the above forecasts, I estimated that during 2026-2027, Netlist revenue would grow [REDACTED] annually.

33. The table below summarizes these revenue calculations. *See* Appendix A, Table 1; Appendix B, Table 1, Row [A].

(\$ Millions) Q3 2017 Through	5 Years	10 Years
	Q2 2022	Q2 2027
But-For Sales [REDACTED] Growth	[REDACTED]	[REDACTED]

34. But-for and after the breach, Netlist would have incurred incremental costs or “the additional cost incurred to produce one more unit of a product.” Incremental costs are typically defined as “variable costs, which are costs that fluctuate with production volumes.” EX2104, 1. A few general examples include

“raw materials, labor, and utilities,” and “[s]hipping and packaging.” EX2104, 1-2.

Based on my analysis of the expenses recorded in Netlist’s public financial record, my understanding is that Netlist incurs little to no incremental costs in their resale business, as they are only responsible for the repacking and marketing of the product.

35. I first estimate cost of sales as [REDACTED] of Netlist but-for sales, as observed in Netlist’s sales data related to [REDACTED] [REDACTED] during Q1 2016 through Q2 2021. *See* EX2093 [REDACTED] [REDACTED] [REDACTED]. I present these costs over the two alternative terms described above. *See* Appendix A, Table 2; Appendix B, Table 1, Row [B].

(\$ Millions) Q3 2017 Through	5 Years	10 Years
	Q2 2022	Q2 2027
Cost of Sales Associated with But-For Sales [REDACTED] Growth	[REDACTED]	[REDACTED]

36. Additionally, my understanding from previous conversations with Netlist employees is that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. I

understand that these costs are based on a combination of actual Netlist documentation as well as market research. Salary costs are based on market prices, staffing costs are based on Netlist's actual headcount numbers, and warehouse square footage costs are based on the commercial real estate market as of 2022. I factor in these additional cost estimates in my analysis below to provide a more accurate estimate of Netlist's expected profits had Samsung not breached its supply agreement. These estimated incremental costs represent a small portion of Netlist's related sales. If actual incremental costs were to differ to some extent, my profit calculations below would be adjusted slightly but likely not materially impacted. *See Appendix B, Table 1, Row [E].*

37. To accommodate the rapid growth in business, Netlist would need to ensure it had the ability to properly finance itself, hence forth referred to as working capital. Working capital is defined as "the money available to meet your current, short-term obligations" and is calculated by subtracting current liabilities

(accounts payable and debts) from current assets (cash, accounts receivable, and inventories). EX2105, 1; EX2106, 9. In short, a “[p]ositive working capital generally means a company has enough resources to pay its short-term debts and invest in growth and expansion.” EX2106, 9.

38. I calculate an additional cost to Netlist to acquire the appropriate amount of net working capital to range from 2-5.5% dependent upon the funds being cash secured by accounts receivable respectively. For the purposes of my analysis, I have estimated these costs using 5.5%.

39. I also calculated the base costs that Netlist actually incurred for its resale of Samsung products. I calculated these costs as the reported annual Selling, general, and administrative (“SGA”) costs from the Netlist 10-Ks during 2017-2020, assuming that each quarter reflects 25% of the annual costs. I understand that Netlist entered into an agreement with SK Hynix in 2021, through which Netlist began selling SK Hynix memory products. For this reason, I did not rely upon the 2021 forward reported SGA costs from Netlist and instead projected the 2020 quarterly costs forward through my calculations. *See* EX2107; EX2108; EX2109; Appendix C, Table 1.

40. I calculated these total additional costs over the alternative dates described above. *See* Appendix A, Table 3; Appendix B, Table 1, Row [G].

(\$ Millions) Q3 2017 Through	5 Years	10 Years
	Q2 2022	Q2 2027
Others Costs Associated with But-For Sales Growth		

41. I calculated Netlist’s but-for profits over the two alternative time periods in the table below. *See* Appendix A, Table 4; Appendix B, Table 1, Row [H].

(\$ Millions) Q3 2017 Through	5 Years	10 Years
	Q2 2022	Q2 2027
But-For Profits Growth		

42. The benefits achieved by Netlist due to the supply agreement came at substantial cost to Samsung. When Samsung breached the supply agreement, the court found that the supply agreement “unambiguously create[d] a mandatory obligation on Samsung to supply certain types of products to Netlist on request,” and “to fulfill Netlist’s requests for NAND and DRAM products at a competitive

price”—regardless of the market demand or supply. EX2078, 7-8, 11. In other words, Samsung was obligated to provide products to Netlist at a competitive price even in times of low supply or high demand, which would cause Samsung to forgo price increases and profit that it would have otherwise been able to achieve in the market.

43. As previously discussed, while there were market downturns in 2019 and 2022, overall significant growth has been expected in the memory market through this decade. Currently, Gartner forecasts significant price increases for DRAM and NAND products in 2026 and 2027. EX2102. Further, near the beginning of the term of the JDLA, many outlets reported on increasing demand in the semiconductor market. A 2017 Reuters article noted that electronics makers were “scrambling” to procure memory chips in anticipation of the iPhone 8 launch and that Samsung planned to start “NAND production at a \$14 billion South Korea plant” in response to “strong demand for high-end data storage products.” EX2110, 3. In its Q3 2016 Quarterly Earnings presentation, Samsung itself reported that it expected its semiconductor segment to show “sturdy growth” related to “solid demand from DRAM NAND.” EX2111, 4.

44. Ultimately, in exchange for licenses to Netlist’s patent portfolio, the supply agreement between Netlist and Samsung provided immense value to Netlist. Even my conservative estimates of the value of the supply agreement far

exceed the other monetary payments that Samsung provided to Netlist under the terms of the JDLA.

VII. NETLIST’S 2021 LICENSE AGREEMENT WITH SK HYNIX

A. Summary of the Agreement

45. Netlist and SK hynix entered into a licensing agreement on April 5, 2021, under which Netlist granted SK hynix a license to its patent portfolio. EX2063, 1-2. Under the terms of the agreement, Netlist granted a term license to “any and all valid Patents owned or controlled by Netlist or any of its Subsidiaries at any time during the Term License Period,” which ran to April 5, 2026. EX2063, 1-2. Those licensed patents included the ’731 patent and its parents, which I understand issued prior to execution of the license. EX2063, 1-2; EX1001, Cover (45), (63).

46. As part of the agreements, SK hynix agreed to pay Netlist \$40,000,000 and entered into a supply agreement in which it agreed to “supply, or cause its Subsidiaries to supply, OEM-grade ... DRAM and NAND wafers, components, and finished products, as well as associated technical support, to Netlist.” EX2063, 2; EX2113, 2. The Product Purchase and Supply Agreement “entitle[d] Netlist to purchase up to \$600,000,000 of SK hynix memory products” during the five-year term of the agreements. EX2113, 2.

B. Analysis of the Value of the SK Hynix Agreement

47. When the Netlist-SK Hynix agreement was announced, analysts

remarked on the value of the deal. A Roth Capital analyst described this supply agreement as “favorable” and estimated that Netlist’s cash balance would “grow to north of \$50m with this consideration and fund the company well to execute on its operating plan.” EX2116, 1. Further, the analyst noted that Netlist would “have access to up to \$600 million of Hynix memory and storage product supply over the terms of the agreement (\$~30 m/quarter).” EX2116, 1. The Roth Capital analyst expected “re-sales revenues to ramp up over the next few quarters and boost existing re-sale revenue as [Netlist] establishes supply-chain logistics with Hynix” EX2116, 1. On the same day, a Craig-Hallum report indicated that they had expected the settlement license agreement to potentially provide over \$100M in value to Netlist. Though the \$40 million fee was “well below that,” they saw “considerable value to the supply agreement to [Netlist], both supporting its current/future products for years, but also to be able to resell products with some gross profit (as it does with Samsung).” EX2117, 1.

48. After the agreement, Netlist attributed substantial sales growth to the SK Hynix agreement in its Q1 2022 quarterly report: “Net product sales increased by approximately \$35.3 million during the first quarter of 2022 compared to the same quarter of 2021, primarily as a result of a \$35.2 million increase in re-sale of SK Hynix products and a \$1.1 million increase in sales of Netlist’s flash and SSD products, offset by a \$1.0 million decrease in sales of low profile memory

subsystem products.” EX2114, 19. In its Q3 2022 Quarterly Report, Netlist further commented that the \$74.0 million net product sales increase for Q1-Q3 2022 compared to prior year was primarily due to a “\$84.0 million increase in re-sale of SK hynix products and a \$8.1 million increase in sales of Netlist’s flash and SSD products, offset by a \$18.0 million decrease in sales of low-profile memory subsystem products.” EX2115, 22.

49. As demonstrated above, the value of the SK Hynix supply agreement provided to Netlist in exchange for IP licenses was immense and confirmed that Netlist’s technology was recognized as valuable to the industry.

VIII. CONCLUSION

In signing this Declaration, I recognize that the Declaration will be filed as evidence in a post-grant review before the Patent Trial and Appeal Board of the United States Patent and Trademark Office. I also recognize that I may be subject to cross-examination in the case and that cross-examination will take place within the United States. If cross-examination is required, I will appear for cross-examination within the United States during the time allotted.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Executed on this 3rd day of June 2026, in Marshall, Texas.



David Kennedy

Appendix A - Table 1

Summary of Netlist Sales But-For JDLA Breach

Q3 2017 Through Q2 2027

(\$ Millions)	5 Years	10 Years
	Q2 2022	Q2 2027
Q3 2017 Through		
But-For Sales		
[A] [REDACTED] Growth	[REDACTED]	[REDACTED]

Notes and Sources:

[A] Appendix B - Table 1: Row [A]

Appendix A - Table 2

Summary of Netlist Costs Associated with Netlist Sales But-For JDLA Breach

Q3 2017 Through Q2 2027

	(\$ Millions)	5 Years	10 Years
	Q3 2017 Through	Q2 2022	Q2 2027
	Cost of Sales Associated with But-For Sales		
[A]	■ Growth	■	■

Notes and Sources:

[A] Appendix B - Table 1: Row [B]

Appendix A - Table 3

Summary of Netlist Costs Associated with Netlist Sales But-For JDLA Breach

Q3 2017 Through Q2 2027

(\$ Millions)	5 Years	10 Years
	Q2 2022	Q2 2027
Q3 2017 Through		
Other Costs Associated with But-For Sales		
[A] ■ Growth	■	■

Notes and Sources:

[A] Appendix B - Table 1: Row [G]

Appendix A - Table 4

Summary of Netlist Gross Profits But-For JDLA Breach

Q3 2017 Through Q2 2027

(\$ Millions)	5 Years	10 Years
	Q2 2022	Q2 2027
Q3 2017 Through		
But-For Profits		
[A] █████ Growth	█████	██████

Notes and Sources:

[A] Appendix B - Table 1: Row [H]

Appendix B - Table 1
Summary of Netlist Profits But-For JDLA Breach
Q3 2017 - Q2 2027

Through Q2-2027			Q1-2016	Q2-2016	Q3-2016	Q4-2016	Q1-2017	Q2-2017	Q3-2017	Q4-2017	Q1-2018	Q2-2018	Q3-2018	Q4-2018
But-For Sales	[A]													
Cost of Sales	[B]=[A]*													
Commissions	[C]=[A]*													
SGA	[D]													
Increased SGA	[E]													
Increased NWC	[F]													
Total Other Costs	[G]=[C]+[D]+[E]+[F]													
Gross Profits	[H]=[A]-[B]-[G]													

Notes and Sources:

[A] EX2093. The Q2 2017 figure is projected forward with through 2019. Q1 2020-Q4 2022 is projected forward with ; Q1 2023-Q4 2025 is projected forward with . Q1 2026-Q2 2027 is projected forward at .

[D] Quarterly SGA based on 2017-2020 annual SGAs reported in Netlist 10-Ks divided by 4 for Q3 2017 through Q4 2020. 2020 quarterly SGA costs projected forward with 0% quarterly growth for Q1 2021 through Q2 2027. See Appendix C - Table 1.

[E] Selling, general, and administrative costs are expected to grow when but-for sales exceed Q2-2017 sales by \$30MM. See my Declaration.

[F] Increased net working capital costs. See my Declaration.

Appendix B - Table 1
Summary of Netlist Profits But-For JDLA Breach
Q3 2017 - Q2 2027

Through Q2-2027		Q1 -2019	Q2-2019	Q3-2019	Q4-2019	Q1 -2020	Q2-2020	Q3-2020	Q4-2020	Q1 -2021	Q2-2021	Q3-2021	Q4-2021
But-For Sales	[A]												
Cost of Sales	[B]=[A]*												
Commissions	[C]=[A]*												
SGA	[D]												
Increased SGA	[E]												
Increased NWC	[F]												
Total Other Costs	[G]=[C]+[D]+[E]+[F]												
Gross Profits	[H]=[A]-[B]-[G]												

Appendix B - Table 1
Summary of Netlist Profits But-For JDLA Breach
Q3 2017 - Q2 2027

Through Q2-2027		Q1 -2022	Q2-2022	Q3-2022	Q4-2022	Q1 -2023	Q2-2023	Q3-2023	Q4-2023	Q1 -2024	Q2-2024	Q3-2024	Q4-2024
But-For Sales	[A]												
Cost of Sales	[B]=[A]*												
Commissions	[C]=[A]*												
SGA	[D]												
Increased SGA	[E]												
Increased NWC	[F]												
Total Other Costs	[G]=[C]+[D]+[E]+[F]												
Gross Profits	[H]=[A]-[B]-[G]												

Appendix B - Table 1
Summary of Netlist Profits But-For JDLA Breach
Q3 2017 - Q2 2027

Through Q2-2027		Q1 -2025	Q2-2025	Q3-2025	Q4-2025	Q1 -2026	Q2-2026	Q3-2026	Q4-2026	Q1 -2027	Q2-2027
But-For Sales	[A]										
Cost of Sales	[B]=[A]*										
Commissions	[C]=[A]*										
SGA	[D]										
Increased SGA	[E]										
Increased NWC	[F]										
Total Other Costs	[G]=[C]+[D]+[E]+[F]										
Gross Profits	[H]=[A]-[B]-[G]										

Appendix C - Table 1

Netlist, Inc. Consolidated Statements of Operations from Public Financials

FY 2013-Q3 2022

	[A]	[B]	[C]	[D]	[E]	[F]	[G]	[G]	[G]	[H]
	Year Ended:									Nine Months Ended:
(in thousands)	December 28, 2013	December 27, 2014	January 2, 2016	December 31, 2016	December 30, 2017	December 29, 2018	December 28, 2019	January 2, 2021	January 1, 2022	October 1, 2022
Net Sales	\$ 23,048	\$ 19,195	\$ 6,869	\$ 12,798	\$ 38,322	\$ 33,529	\$ 26,103	\$ 47,234	\$ 102,355	\$ 139,982
License Fee									\$ 40,000	
Non-recurring engineering revenues		-	1,143	6,857						
Total net revenues	23,048	19,195	8,012	19,655	38,322	33,529	26,103	47,234	142,355	139,982
Cost of Sales	19,943	15,231	5,915	12,259	35,866	31,228	23,533	40,503	93,458	129,691
Gross Profit	3,105	3,964	2,097	7,396	2,456	2,301	2,570	6,731	48,897	10,291
Operating expenses:										
Research and development	4,568	4,586	6,049	6,287	5,231	2,899	2,383	2,953	7,241	7,679
Intellectual property legal fees	2,115	6,387	5,588	3,110	2,705	8,918	4,131	2,368	19,494	11,716
Selling, general and administrative	6,267	6,796	7,841	9,033	7,374	6,856	7,546	8,247	10,779	11,429
Total operating expenses	12,950	17,769	19,478	18,430	15,310	18,673	14,060	13,568	37,514	30,824
Operating gain (loss)	(9,845)	(13,805)	(17,381)	(11,034)	(12,854)	(16,372)	(11,490)	(6,837)	11,383	(20,533)
Other expense, net:										
Interest expense, net	(932)	(1,574)	(2,064)	(578)	(564)	(739)	(945)	(531)	(568)	38
Other income (expense), net	20	-	(1,081)	386	4	(11)	(4)	101	643	74
Total other expense, net	(912)	(1,574)	(3,145)	(192)	(560)	(750)	(949)	(430)	75	112
Loss before provisions for income tax	(10,757)	(15,379)	(20,526)	(11,226)	(13,414)	(17,122)	(12,439)	(7,267)	11,458	(20,421)
Provision for income taxes	9	2	1	5	6	(2)	13	1	6,627	1
Net loss	(10,766)	(15,381)	(20,527)	(11,231)	(13,420)	(17,120)	(12,452)	(7,268)	4,831	(20,422)

Sources:

- [A] EX2112.
- [B] EX2118.
- [C] EX2119.
- [D] EX2120.
- [E] EX2107.
- [F] EX2108.
- [G] EX2109.
- [H] EX2121.