

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,

Petitioner,

v.

NETLIST, INC.,

Patent Owner

IPR2026-00018
Patent 12,373,366

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

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1149	Email from counsel for Samsung to counsel for Patent Owner re: stipulation not to pursue certain invalidity defenses if an IPR proceeding is instituted
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2001	Joint Development and License Agreement, November 12, 2015
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2022	[intentionally omitted]

Exhibit #	Description
2023	“Netlist and SK hynix Enter into Strategic Agreements for Patents, Technology and Product Supply,” Netlist Press Release, April 5, 2021
2024	“Precedential designation of <i>Corning Optical Communications RF, LLC v. PPC Broadband Inc.</i> , IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (except for § II.E.1),” Memorandum from Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent Trademark Office John A. Squires, October 28, 2025
2025	Public Redated Version of Proposed First Amended Complaint for Declaratory Judgment of Non-Infringement, <i>Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.</i> , Case No. 1:25-cv-00626-JLH (D. Del.), July 29, 2025
2026	[intentionally omitted]
2027	Plaintiff’s Corporate Disclosure Statement, <i>Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.</i> , Case No. 1:25-cv-00626-JLH (D. Del.), May 20, 2025
2028	List of Patent Trial and Appeal Board proceedings listing Samsung Electronics America, Inc. as Petitioner, Docket Navigator, generated December 3, 2025
2029	Morris, A., “IPBC Global 2025: Acting USPTO Director says IPR use needs to change,” IAM, June 10, 2025, accessible at https://www.iam-media.com/article/ipbc-global-2025-acting-uspto-director-says-ipr-use-needs-change (last accessed June 16, 2025)
2030–39	[intentionally omitted]
2040	Judgment under Federal Circuit Rule 36, <i>Samsung Elecs. Co., Ltd. v. Netlist, Inc.</i> , Appeal No. 23-2133 (Fed. Cir.), March 5, 2025
2041	Judgment under Federal Circuit Rule 36, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , Appeal No. 25-1378 (Fed. Cir.), December 9, 2025
2042	[intentionally omitted]
2043	Complaint, <i>Netlist, Inc. v. Samsung Elecs. Co., Ltd. et al.</i> , Case No. 2:25-cv-00748-JRG (E.D. Tex.), July 28, 2025
2044–46	[intentionally omitted]

Exhibit #	Description
2047	Company Profile, Avnet, Inc., accessible at https://s23.q4cdn.com/291570380/files/doc_downloads/factsheet/2020/Avnet-Fact-Sheet.pdf (last accessed December 22, 2025)
2048	“Samsung Authorized Distributor Avnet Americas,” Avnet, Inc., accessible at https://www.avnet.com/americas/manufacturers/m/samsung/ (last accessed December 22, 2025)
2049–52	[intentionally omitted]
2053	Order Initiating <i>Sua Sponte</i> Director Review and Staying Proceeding, IPR2025-00145 (P.T.A.B. Dec. 22, 2025)
2054	Notice of Institution of Investigation, Inv. No. 337-TA-1472 (I.T.C. Dec. 29, 2025)
2055	Comparison of Claim 1 of U.S. Patent No. 12,373,366 with Claim 1 of U.S. Patent No. 11,232,054, Claim 1 of U.S. Patent No. 11,016,918, Claim 1 of U.S. Patent No. 8,874,831, and Claim 1 of U.S. Patent No. 8,301,833
2056	Petition for <i>Inter Partes</i> Review of U.S. Patent No. 11,232,054, IPR2022-00999 (P.T.A.B. May 17, 2022)
2057	Petition for <i>Inter Partes</i> Review of U.S. Patent No. 7,619,912, IPR2022-00615 (P.T.A.B. Feb. 17, 2022)
2058	Decision Granting Petitioner’s Request on Rehearing of Final Written Decision, IPR2022-00236 (P.T.A.B. Aug. 16, 2023)
2059	Initial Determination Setting the Target Date, Inv. No. 337-TA-1472 (I.T.C. Jan. 14, 2026)
2060	Proposed Procedural Schedule, Inv. No. 337-TA-1472 (I.T.C. Jan. 14, 2026)
2061	Defendants Samsung Semiconductor, Inc. and Samsung Electronics America, Inc.’s Motion to Dismiss for Improper Venue, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , Case No. 2:25-cv-00748-JRG (E.D. Tex.), November 19, 2025
2062	Amended Adopted Procedural Schedule, Inv. No. 337-TA-1472 (I.T.C. Feb. 6, 2026)
2063	Trial Transcript, Volume 3, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , Case No. 2:21-cv-00463-JRG (E.D. Tex.), April 18, 2023

Exhibit #	Description
2064	Complaint for Declaratory Judgment of Non-Infringement, <i>Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.</i> , Case No. 1:25-cv-00626-JLH (D. Del.), June 9, 2025

SUR-REPLY TO DISCRETIONARY DENIAL REQUEST

1. *Timing of the Sotera stipulation (EX1149):* The Director’s email asked “why [Samsung] did not provide a stipulation until March 4, 2026.” EX3101. The reason is that in the ITC action, Netlist served a totally unnecessary interrogatory forcing Samsung to provide invalidity contentions on March 4 — and thus a *Sotera* stipulation not to pursue those invalidity contentions if this PGR is instituted — when Netlist should have simply waited a few weeks for the Director’s institution decision, which would entirely moot the issue, as Samsung explained in its opposition to discretionary denial: “[E]veryone (including the ITC) will know as soon as this proceeding is instituted that Samsung will be estopped under § 315(e)(2) **months** before the target date for the ITC to decide validity, thus obviating any reason for . . . Samsung to ever pursue invalidity arguments that will be estopped.” Paper 11, at 10 (citing *Unmanned Aerial Vehicles*). Netlist’s stunt of serving a totally unnecessary interrogatory helps explain how it has racked up over \$100 million in legal fees. *Id.* at 16–17. Tellingly, Netlist was the one that wanted further briefing about this stipulation, not Samsung. The stipulation does not change Samsung’s argument above in opposition to discretionary denial. Netlist just wanted more bites at the apple on discretionary denial briefing.

2. *SEA is not an unnamed RPI (DD Reply at 1):* Netlist is incorrect that SEA is an unnamed RPI simply because Netlist has named SEA as a token

defendant in parallel litigation, as already explained by Paper 11 at 12–16. Indeed, this is the same argument the Director rejected by instituting PGR2025-00071 (*see*, in that PGR, Paper 12 at 8–17; Paper 16 at 1–4; Paper 19 at 1–4; Paper 20, at 2; Paper 22, at 2) and IPR2025-01431 (*see*, in that IPR, Paper 9 at 4–13; Paper 15 at 1–4; Paper 18 at 1–4; Paper 19, at 2; Paper 21, at 2).

3. *Google and Super Micro (DD Reply at 1–2)*: Netlist has waived its *Fintiv* arguments concerning Google and Super Micro by not raising those arguments in its discretionary denial brief, *see* Paper 8, despite suing Google and Super Micro back in September, *see* EX2015, 17–18 (¶¶28–34). In any event, Netlist’s arguments are incorrect. The ITC action is at its earliest stages, so it is speculative whether Google and Super Micro will actually pursue invalidity as the ITC action progresses. They have already stated that “if PGR2026-00001 or IPR2026-00018 is instituted, the Google-SMCI Respondents will not pursue in [the ITC] any invalidity defense that overlaps with the instituted grounds . . . and the Google-SMCI Respondents will continue to evaluate which remaining disclosed invalidity defenses, if any, they will pursue for the ’366 Patent in [the ITC].” Furthermore, Samsung’s *Sotera* stipulation was not “untimely,” as explained above, and Samsung does not control Google or Super Micro, so *Fintiv* still favors institution for Samsung. *See, e.g., Innolux Corp. v. Phenix Longhorn LLC*, IPR2025-00043, Paper 10, at 12 (PTAB May 15, 2025).

Dated: March 13, 2026

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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 March 9, 2026, which stated: "Patent Owner may submit a Reply to Samsung's Discretionary Denial Opposition Brief, limited to addressing the impact of the stipulation on the discretionary denial arguments. Patent Owner's Reply is limited to two pages, and is due on Wednesday, March 11, 2026. Petitioner may file a sur-reply limited to addressing the same issue. Petitioner should also explain why it did not provide a stipulation until March 4, 2026. Petitioner's sur-reply is limited to two pages, and is due on Friday, March 13, 2026." EX3101.

Dated: March 13, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 13th day of March, 2026, **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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