

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,

Petitioner,

v.

NETLIST, INC.,

Patent Owner

PGR2025-00071

Patent 12,308,087

**PETITIONER'S AUTHORIZED
REPLY TO PATENT OWNER'S PRELIMINARY RESPONSE**

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1109	ITC, Notice of Receipt of Complaint, 90 Fed. Reg. 51,406 (Nov. 17, 2025), <i>available at</i> < https://www.federalregister.gov/documents/2025/11/17/2025-19973/notice-of-receipt-of-complaint-solicitation-of-comments-relating-to-the-public-interest >
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1126 [NEW]	Declaration of James Kiczek (SEA), <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-00557 (E.D. Tex. Sept. 11, 2025)
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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
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2012	Docket Control Order, <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 2:25-cv-00557 (E.D. Tex.), July 25, 2025
2013	First Amended Complaint, <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 2:25-cv-00557 (E.D. Tex.), July 8, 2025
2014	Verdict Form, <i>Netlist, Inc. v. Samsung Electronics Co. et al.</i> , Case No. 2:21-cv-00463-JRG (E.D. Tex.), April 21, 2023
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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)
2020	Excerpts from PTAB 2025 Intelligence Report, Patexia, Inc.
2021	Ramkumar, A., “Trump Takes Aim at Chip Makers With New Plan to Throttle Imports,” <i>The Wall Street Journal</i> , September 26, 2025, accessible at https://www.wsj.com/economy/trade/trump-chip-tariffs-exemptions-90fa2ab3 (last accessed September 26, 2025)
2022	Netlist, Inc. Form 8-K, United States Securities and Exchange Commission, November 12, 2015
2023	“Netlist and SK hynix Enter into Strategic Agreements for Patents, Technology and Product Supply,” Netlist Press Release, April 5, 2021
2024	Comparison of Claim 1 of U.S. Patent No. 12,308,087 with Claim 1 of U.S. Patent No. 8,787,060 and Claim 1 of U.S. Patent No. 9,318,160

Exhibit #	Description
2025	Written Decision on Registration, Korean Patent Application No. 10-2017-0113355, mailed March 24, 2022
2026	U.S. Patent No. 10,026,724 to Kim et al., issued July 17, 2018
2027	Opening Brief for Appellant Netlist, Inc., <i>Netlist, Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 24-2240 (Fed. Cir.), February 4, 2025
2028	Joint Appendix Volume II of II, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 24-2240 (Fed. Cir.), May 28, 2025
2029	Morris, A., “IPBC Global 2025: Acting USPTO Director says IPR use needs to change,” <i>IAM</i> , 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	“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),” United States Patent and Trademark Office Memorandum, October 28, 2025
2031	Public Redated Version of 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.), May 20, 2025
2032	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
2033	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-00557-JRG (E.D. Tex.), November 24, 2025
2034	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
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, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , Case No. 2:21-cv-00463-JRG (E.D. Tex.), August 11, 2023
2039	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

REPLY TO PATENT OWNER’S PRELIMINARY RESPONSE (POPR)

I. The Petition correctly named the Real Parties in Interest (POPR 8–17)

Netlist is incorrect that the Petition “fails to name two real parties in interest: SEA and Avnet.” POPR 8. SEA and Avnet are merely alleged purchasers or users of the accused products, and not the **real** parties in interest, which the Petition correctly identifies as SEC (Korea) — the Petitioner, “responsible for manufacturing the Accused [Products]” — and SSI (California), the subsidiary of SEC (Korea) “responsible for marketing and facilitating sales of [the Accused Products] in the United States.” EX2033, 3–4; *see also* Paper 1, 1 (“The real parties in interest are the Petitioner, [SEC (Korea)], and [SSI (California)]”); Paper 2 (power of attorney recognizing SEC (Korea) as controlling the Petition).

SEA, in contrast, is a different subsidiary of SEC (Korea) that is **not** responsible for the Accused Products and instead “focuses on commercializing Samsung end-user products, such as consumer electronics products and mobile devices,” which are **not** accused of infringing the challenged patent. EX2033, 4. And Avnet, as Netlist admits, is merely an alleged “customer” of the Accused Products, POPR 14; EX2032, 2, and thus not a “‘true defendant’ in the dispute,” *In re Nintendo of Am., Inc.*, 756 F.3d 1363, 1365 (Fed. Cir. 2014). Netlist named SEA and Avnet as defendants to try to establish venue in the Eastern District of Texas, EX2013, ¶¶ 11–12, which Samsung disputes is proper, *see* EX2033, and is

why SEA and Avnet joined in mirror-image declaratory judgment actions asserting venue is proper in Delaware, *see* EX2031–32. In the original lawsuit, before disputes about venue in Texas, only SEC (Korea) and SSI (California) were named in Delaware, *see* EX1129, given they are the only **real** parties in interest.

Netlist has had in its possession for months — but failed to disclose in its POPR — declarations confirming the facts above, including the following:

- “SSI [California] is responsible for marketing and facilitating sales of Samsung HBM and dual in-line memory module (‘DIMM’) products in the United States....SEC [Korea] is responsible for manufacturing the Accused Products, and it does so only outside the United States.” EX1127, ¶¶ 5–6.
- “SEA focuses on end-user products. HBM and dual in-line memory modules (‘DIMMS’) are stand-alone DRAM components and are not end-user products. SEA has not designed, manufactured, marketed, offered for sale, or sold stand-alone DRAM products or imported them into the United States since at least 2019.” EX1126, ¶ 7.

Unsurprisingly, given these facts, Petitioner has consistently named only SEC (Korea) and SSI (California) as the real parties in interest, and never SEA or any customers, in over 15 petitions against Netlist over the past four years. *See, e.g.*, IPR2022-00062 to -64; IPR2022-00615; IPR2022-00639; IPR2022-00711; IPR2022-00996; IPR2022-00999; IPR2022-01427 to -28; IPR2023-00454 to -55; IPR2023-00847; IPR2025-00001 to -02. Netlist points to other petitions naming

SEA, *see* POPR 14, but they involved different patents and accused products.

Netlist has never argued, in any of the previous 15 petitions over the past four years, that SEA is a real party in interest under *AIT* or *RPX* (despite Netlist repeatedly naming SEA as a defendant in the related litigation). *See id.* And the Board has specifically rejected Netlist’s argument under *AIT* and *RPX* that a **customer** (such as Avnet or SEA) becomes a real party in interest or privy simply because Netlist has named that customer as a defendant in related litigation:

Petitioner [SEC (Korea)] contends that it is the real party-in-interest in this proceeding and that the relationship between [its customer] Google and Petitioner is nothing more than a ‘standard customer-manufacturer relationship for the [accused] product’ Petitioner’s and Google’s interests are aligned insofar as they have been accused of infringing the same patent, but the evidence shows that they are acting independently, and that Petitioner did not file the Petition at the behest of or on behalf of Google. . . . Petitioner provides compelling authority that a manufacturer-customer relationship alone does not establish privity, even with indemnity provisions.

EX1128, 13, 14, 23 (citing *Wi-Fi One, LLC v. Broadcom Corp.*, 887 F.3d 1329, 1340–41 (Fed. Cir. 2018); *WesternGeco LLC v. ION Geophysical Corp.*, 889 F.3d 1308, 1321 (Fed. Cir. 2018); *Samsung Elecs. Co. v. SEVEN Networks, LLC*, IPR2018-01108, Paper 22, at 11 (PTAB Nov. 28, 2018)); EX1100, 3.

There is no basis to permit Netlist to relitigate “real party in interest” and

privity under *AIT* and *RPX* now, after so many years and petitions, and after losing on these issues in the past as shown above. 37 C.F.R. § 42.73(d)(3). Netlist now argues that SEA is an RPI because “SEA is a . . . parent of SSI,” POPR 12, but that is incorrect: “The traditional rule is that mere status as a corporate parent is insufficient to render an entity an RPI (or even a privy).” *Syngenta Crop Protection AG v. FMC Corp.*, PGR2020-00028, Paper 8, at 15 (PTAB Sept. 15, 2020). Nor is it sufficient that SEA and Avnet are named as token defendants or have a customer relationship, as explained above. The relevant factors here are the **opposite** of *AIT/RPX*, given “[m]ost critically” that SEA and Avnet did not “pa[y]” Petitioner to “reduce” their “exposure” and given that Petitioner has the “apparent risk of infringement liability” while they have little to none in comparison. *RPX*, IPR2015-01750, Paper 128, at 31; EX1128, 18–19. In sum, Petitioner correctly named its RPIs and has clean hands, unlike Netlist, *see* Paper 11, 16–17.

II. Petitioner has not advanced inconsistent constructions (POPR 17–22)

Netlist is incorrect that “Samsung presents different claim construction positions” in district court. POPR 17. Samsung merely served preliminary indefiniteness contentions in district court, **not** its “claim construction[s].” EX2016, 1, 290–94. In any event, that was **before** the Board’s decisions in *Revvo* and *Tesla*, and Samsung has since **withdrawn** those contentions, *see* EX1125, and Netlist has **disclaimed** claims 24–28, mooted the issue, *see* EX1130; POPR 19.

Dated: December 18, 2025

/Eliot D. Williams/

Eliot D. Williams, Reg. #50,822

BAKER BOTTS L.L.P.

700 K Street, N.W.

Washington, D.C. 20001

T: (202) 639-1334

F: (202) 639-1167

Theodore W. Chandler

Reg. No. 50,319

BAKER BOTTS L.L.P.

1801 Century Park East

Suite 2400

Los Angeles, CA 90067

T: (213) 202-5702

F: (213) 202-5732

Ferenc Pazmandi

Reg. No. 66,216

BAKER BOTTS L.L.P.

101 California Street

Suite 3200

San Francisco, CA 94111

T: (415) 291-6255

F: (415) 291-6355

Mark A. Speegle

Reg. No. 77,512

BAKER BOTTS L.L.P.

401 South First Street, Suite 1300

Austin, Texas 78704

T: (512) 322-2536

F: (512) 322-3636

Counsel for Petitioner

Samsung Electronics Co., Ltd.

CERTIFICATE OF COMPLIANCE

I hereby certify that this **Petitioner's Authorized Reply to Patent Owner's Preliminary Response**, 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: "Petitioner 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 RPI and claim construction matters in the POPR." EX3101.

Dated: December 18, 2025

/Eliot D. Williams/
Eliot D. Williams, Reg. #50,822
BAKER BOTTS L.L.P.
700 K Street, N.W.
Washington, D.C. 20001
T: (202) 639-1334
F: (202) 639-1167

*Counsel for Petitioner Samsung
Electronics Co., Ltd.*

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 18th day of December, 2025, **Petitioner's Authorized Reply to Patent Owner's Preliminary Response** and **Exhibits 1126–30** were served by email on the following counsel for Patent Owner:

Richard M. Bemben (Reg. No. 68,658) STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1101 K Street NW, 10th Floor Washington, DC 20005 Phone: (202) 772-8549 Fax: (202) 371-2540 Email: PTAB@sternekessler.com rbemben-PTAB@sternekessler.com	Jennifer Meyer Chagnon (Reg. No. 55,440) STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1101 K Street NW, 10th Floor Washington, DC 20005 Phone: (202) 772-8890 Fax: (202) 371-2540 Email: PTAB@sternekessler.com jchagnon-PTAB@sternekessler.com
Richard C. Kim (Reg. No. 40,046) NETLIST, INC. 111 Academy Way, Suite 100 Irvine, California 92617 Phone: (949) 679-0124 Email: PTAB@sternekessler.com rkim@netlist.com	Raymond K. Chan (Reg. No. 66,164) NETLIST, INC. 111 Academy Way, Suite 100 Irvine, California 92617 Phone: (949) 679-0101 Email: PTAB@sternekessler.com rchan@netlist.com
Francisco A. Rubio-Campos (Reg. No. 45,358) NETLIST, INC. 111 Academy Way, Suite 100 Irvine, California 92617 Phone: (949) 377-0296 Email: PTAB@sternekessler.com frubio@netlist.com	

Dated: December 18, 2025

/Eliot D. Williams/
Eliot D. Williams, Reg. #50,822
BAKER BOTTS L.L.P.
700 K Street, N.W.
Washington, D.C. 20001
T: (202) 639-1334

F: (202) 639-1167

*Counsel for Petitioner Samsung
Electronics Co., Ltd.*