

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 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 <i>Fintiv</i> 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

<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential)	1
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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), <i>available at</i> 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 <i>et al.</i> (published Jan. 31, 2008)
1012	U.S. Patent Application Publication No. 2011/0193226 to Kirby <i>et al.</i> (filed Feb. 8, 2010, published Aug. 11, 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”)
1019	JEDEC DDR3 SDRAM Standard, JESD79-3C (Nov. 2008)
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1031	U.S. Patent No. 7,532,537 to Solomon <i>et al.</i> (issued May 12, 2009)
1032	<i>SK hynix Inc. et al. v. Netlist, Inc.</i> , IPR2017-00667, Paper No. 38 (PTAB July 18, 2018) (Final Written Decision for 537 Patent)
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Exhibit #	Description
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1039	U.S. Patent No. 9,160,349 to Ma (filed Aug. 27, 2009)
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1043	U.S. Patent No. 8,593,899 to Ide (filed Feb. 28, 2011, issued Nov. 26, 2013)
1044	Amended Complaint in <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:21-cv-00463 (E.D. Tex. filed May 3, 2022)
1045	U.S. Patent No. 8,244,971 to Rajan <i>et al.</i> (filed Oct. 30, 2007, issued Aug. 14, 2012)
1046	Complaint in <i>Netlist, Inc. v. Micron Technology, Inc. et al.</i> , No. 2:22-cv-00203 (E.D. Tex. filed June 10, 2022)
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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 <i>et al.</i> , available at https://patentcenter.uspto.gov/applications/61366806/ifw/docs?application= >
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1062	U.S. Patent No. 7,024,518 to Halbert <i>et al.</i> (issued Apr. 4, 2006)

Exhibit #	Description
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1064	Dictionary definition for “communication”
1065	Final Written Decision, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-00639, Paper 45 (PTAB Oct. 18, 2023)
1066	Claim Construction Order, <i>Netlist, Inc. v. Micron Technology, Inc. et al.</i> , 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, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , 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)
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1072	Final Written Decision, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-01428, Paper 48 (PTAB Apr. 1, 2024) (U.S. Patent No. 8,787,060)
1073	Final Written Decision, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-01427, Paper 48 (PTAB Apr. 1, 2024) (U.S. Patent No. 9,318,160)
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1077	Samsung’s Principal Brief, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2024-2203 (Fed. Cir. Dec. 16, 2024)
1078	Netlist’s Responsive Brief, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2024-2203 (Fed. Cir. Mar. 28, 2025)

Exhibit #	Description
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1084	Complaint in <i>Netlist, Inc. v. Micron Technology, Inc. et al.</i> , No. 2:25-cv-00552 (E.D. Tex. filed May 19, 2025) (U.S. Patent No. 12,308,087)
1085	Complaint in <i>Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.</i> , No. 1:25-cv-00626 (D. Del. filed May 20, 2025) (U.S. Patent No. 12,308,087)
1086	Complaint in <i>Micron Technology, Inc. et al. v. Netlist, Inc.</i> , No. 1:25-cv-00626 (D. Del. filed May 20, 2025) (U.S. Patent No. 12,308,087)
1087	Complaint in <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-00557 (E.D. Tex. filed May 20, 2025) (U.S. Patent No. 12,308,087)
1088	Complaint in <i>Netlist, Inc. v. Micron Technology, Inc. et al.</i> , 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 <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , 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
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1105	Order Granting Motion to Stay, <i>Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.</i> , 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, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , 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, <i>Netlist, Inc. v. Micron Technology, Inc. et al.</i> , No. 2:25-cv-00558 (E.D. Tex. July 22, 2025) (U.S. Patent No. 12,308,087)
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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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Exhibit #	Description
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1125	Samsung’s withdrawal of indefiniteness contentions, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , 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), <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:25-cv-00557 (E.D. Tex. Sept. 11, 2025)
1127	Declaration of Danny Kim (SSI), <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , 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, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-00615, Paper 64 (PTAB July 13, 2023)
1129	Complaint for Declaratory Judgment, <i>Samsung Electronics Co., Ltd. and Samsung Semiconductor, Inc. v. Netlist, Inc.</i> , 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), <i>available at</i> ">https://patentcenter.uspto.gov/applications/17694649/ifw/docs?application=>
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Exhibit #	Description
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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
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	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), <i>Ex Parte</i> Reexamination Control No. 90/015,449, filed October 17, 2025
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	Complaint, <i>Samsung Elecs. Co., Ltd. et al. v. Netlist, Inc.</i> , Case No. 1:25-cv-01371-JLH (D. Del.), November 11, 2025
2045	Commission Determination, <i>In the Matter of Certain Unmanned Aerial Vehicles and Components Thereof</i> , 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 17. 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 17–18, 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 17, 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 18, 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 18. 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.* 19.

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 19, 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 16–17. 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 17; 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 argues the Examiner made “no material errors,” DD Reply 4, but Netlist’s recent disclaimer of several claims shows the opposite, *see* EX1130. The Examiner “materially erred by allowing claims that clearly lack written description,” DD Opp’n 7, and were clearly written “in hindsight to try to cover HBM technology” even though “Netlist has never made a single HBM product,” *id.* 9. Netlist criticizes the “KPop analogy,” DD Reply 4, but otherwise does not dispute that the Examiner’s “analysis was materially erroneous” because it relied on “hindsight” to pick and choose support from a “laundry list,” DD Opp’n 8–10.

With respect to obviousness, Netlist does not dispute that during prosecution it “rewrote virtually every word of the claim *after* [the Examiner’s] four searches, EX1002, 746–50, but the Examiner never searched for the newly added limitations, such as ‘unidirectional,’ despite later identifying that limitation in the reasons for allowance, *id.* 853–62.” DD Opp’n 14. Instead Netlist merely repeats the 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 14–15.

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.

Dated: December 22, 2025

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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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