UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

NETLIST, INC.,
Patent Owner

Case PGR2025-00071
U.S. Patent No. 12,308,087

PATENT OWNER'S MOTION TO SEAL AND ENTER MODIFIED PROTECTIVE ORDER

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

I. INTRODUCTION 1
II. GOVERNING RULES AND PTAB GUIDANCE 1
III. MOTION TO ENTER MODIFIED PROTECTIVE ORDER 2
IV. GOOD CAUSE EXISTS FOR SEALING THE CONFIDENTIAL INFORMATION IN PATENT OWNER'S RESPONSE AND EXHIBITS 2061, 2080, 2081, 2093, AND 2094. 5
V. CERTIFICATION OF NONPUBLICATION 7
VI. RELIEF REQUESTED 8

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, Patent Owner Netlist, Inc. ("Patent Owner") respectfully submits this Motion to Seal the confidential version of the Patent Owner's Response (Paper 31); the confidential version of Exhibit 2061; and Exhibits 2080, 2081, 2093, and 2094. Concurrent with the filing of this Motion, Patent Owner is filing public, redacted versions of its Patent Owner's Response and Exhibit 2061. Patent Owner also respectfully requests entry of the Modified Protective Order attached to this Motion as Appendix A. A redline version of the Modified Protective Order showing the differences between the Modified Protective Order and the Default Protective Order is attached to this Motion as Appendix B. The parties have conferred and agreed to entry of the Modified Protective Order. Each of the parties has certified that the party accepts and agrees to the terms of the Modified Protective Order.

II. GOVERNING RULES AND PTAB GUIDANCE

37 C.F.R. § 42.54 states: "A party intending a document or thing to be sealed shall file a motion to seal concurrent with the filing of the document or thing to be sealed. The document or thing shall be provisionally sealed on receipt of the motion and remain so pending the outcome of the decision on the motion." In determining whether to grant a Motion to Seal, the Board must find "good cause," 37 C.F.R. § 42.54(a), and "strike a balance between the public's interest in

maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information," Trial Practice Guide,[1] ("TPG"), § I.E. The Board identifies confidential information in a manner "consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for . . . confidential research, development, or commercial information." TPG, § I.E.2.

Based on the procedure provided in the TPG, Patent Owner seeks to prevent the disclosure of confidential, sensitive business information contained in Exhibits 2061, 2080, 2081, 2093, and 2094.

III. MOTION TO ENTER MODIFIED PROTECTIVE ORDER

The TPG states, "[t]he parties may propose modifications to the Default Protective Order" and the Board "generally will accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings." TPG, App'x B(j). "For example, the parties may agree to modify the Default Protective Order to provide additional tiers or categories of confidential information, such as 'Attorneys' Eyes Only.' The Board will presumptively accept agreed-to changes that provide additional categories of confidentiality as long as they are reasonable and adequately define what types of materials are to be included in the additional categories." *Id.* In accordance with the above rules and procedures, Patent Owner conferred with Petitioner, and Petitioner does not oppose

[1] Available at https://www.uspto.gov/patents/ptab/trial-practice-guide

entry of the proposed Modified Protective Order attached hereto, which adds an additional tier for "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY" information, consistent with the Protective Order agreed to by the parties in district court.

Good cause exists for entry of a Protective Order because the information sought to be sealed relates to sensitive commercial sales information and licensing agreement negotiations that have not been made public. Disclosure of this information to the public would expose Patent Owner's business models and confidential business activities. Without assurance that this confidential information will be protected, Patent Owner's business may be adversely affected. *See, e.g.*, *Coolpad Techs., Inc. v. Bell N. Research, LLC*, IPR2019-01319, Paper 60, at 4–5 (PTAB Aug. 4, 2020) (sealing "license agreements"); *Stride Rite Children's Grp., LLC v. Shoes by Firebug LLC*, IPR2017-01809, Paper 63, at 3–4 (PTAB Jan. 4, 2019) (sealing license agreements); *Snap-On Inc. v. Milwaukee Elec. Tool Corp.*, IPR2015-01242, Paper 74, at 2–3 (PTAB Sept, 23, 2016) (sealing "sales information," "licensing agreements," and "development documents"); *HBPSI - Hong Kong Ltd. v. SRAM, LLC*, IPR2013-00174, Paper 19, at 2 (PTAB June 11, 2013) (sealing a confidential "Settlement and License Agreement").

For similar reasons, good cause further exists to deviate from the Default

Protective Order in this case. The Modified Protective Order jointly agreed to by the parties provides for the further protection of specified material as "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY." This level of protection is commensurate with the Protective Order governing the parties' litigation in district court and is appropriate given the sensitive confidential nature of the commercial sales information in Exhibit 2093 that Patent Owner seeks to protect. *See, e.g.*, *Lutron Elecs. Co. v. Geigtech East Bay LLC*, PGR2020-00013, Paper 52, at 3–4 (PTAB Apr. 15, 2021) (granting Modified Protective Order that provided "comparable protections" to related litigation); *Bio-Rad Laboratories, Inc., v. 10X Genomics, Inc.*, IPR2019-00565, Paper 23, at 3–5 (PTAB July 22, 2019) (granting Modified Protective Order to match order in parallel proceeding, finding "no reason to diminish the effectiveness of the ITC protective order").

Under the Modified Protective Order, the higher level of protection is specifically limited to material that is "of a commercially sensitive nature such as a trade secret that a designating party determines, in good faith, should be afforded a level of protection exceeding that for 'PROTECTIVE ORDER MATERIAL' because it is likely to cause significant competitive harm to its existing or prospective commercial relationships if disclosed to third parties or select employees or agents of the receiving party. Such documents may include but are not limited to non-public financial, marketing, strategic, organizational, operational

or competitive information; and highly sensitive technical information relating to the design, development, research, testing and production of products." *See* Appendix A. The Board, outside counsel, and experts for the parties who have signed an Acknowledgement would still be able to access the "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL'S EYES ONLY" material, and therefore this additional designation would not meaningfully impact either party's ability to use such material in this matter. For these reasons, and because the parties have agreed to the modifications, good cause exists for entry of the Modified Protective Order attached hereto.

IV. GOOD CAUSE EXISTS FOR SEALING THE CONFIDENTIAL INFORMATION IN PATENT OWNER'S RESPONSE AND EXHIBITS 2061, 2080, 2081, 2093, AND 2094.

Patent Owner requests that Exhibit 2093 and the confidential versions of Patent Owner's Response and Exhibit 2061 be sealed and treated as HIGHLY CONFIDENTIAL - OUTSIDE COUNSEL'S EYES ONLY under the terms of the Proposed Modified Protective Order. Good cause exists for this treatment because Exhibit 2093 contains Patent Owner's confidential commercial sales information that is likely to cause significant competitive harm to Patent Owner's existing or prospective commercial relationships if disclosed to third parties or agents of the receiving party. Patent Owner considers and treats this information as proprietary and confidential, as it would have competitive value to entities seeking to duplicate

their efforts. Petitioner is a participant in the market for the sale of memory devices, and this type of sensitive information reveals pricing and other internal business strategies that would unfairly disadvantage Patent Owner in its commercial activities.

Patent Owner further requests that Exhibits 2080, 2081, and 2094 be sealed and treated as PROTECTIVE ORDER MATERIAL under the terms of the Proposed Modified Protective Order. These exhibits contain confidential communications and information related to licensing and partnership agreements between Petitioner and Patent Owner, including details of negotiations between the parties, and business forecasts based on the parties' agreements. Public disclosure of this information has the potential to cause harm to Patent Owner and/or Petitioner by providing third parties with direct insight into the parties' business and negotiation tactics and previous strategic relationship. This is the type of confidential commercial information contemplated by F.R.C.P. 26(c)(1)(G).

The public's interests would not be harmed by sealing these documents. The confidential information sought to be sealed is competitively-sensitive business information. The public has little need or right to know the precise details of communications concerning licensing and partnership agreements between the parties or Patent Owner's detailed commercial sales information. The public version of Patent Owner's Response is largely unredacted and provides a full

record and understanding of the case to the public. Thus, sealing these documents would still "strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." TPG, § I.E.

V. CERTIFICATION OF NONPUBLICATION

Undersigned counsel, on behalf of Patent Owner, certifies that the information sought to be sealed has not, to their knowledge, been published or otherwise made public by Patent Owner.

VI. RELIEF REQUESTED

For the foregoing reasons, Patent Owner respectfully requests that the Board enter the Modified Protective Order attached as Appendix A and seal the confidential version of the Patent Owner's Response (Paper 31); the confidential version of Exhibit 2061; and Exhibits 2080, 2081, 2093, and 2094. Patent Owner further requests that the Board seal and protect the confidential information in these documents until such time as it receives and rules on this Motion.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/*Richard M. Bemben*/

Richard M. Bemben
Registration No. 68,658
Lead Attorney for Patent Owner

Date: June 8, 2026

1101 K Street, NW, 10th Floor
Washington, DC 20005
(202) 371-2600

CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

I certify that the above-captioned **PATENT OWNER'S MOTION TO SEAL AND ENTER MODIFIED PROTECTIVE ORDER** was served in its entirety on June 8, 2026, upon the following parties via electronic mail:

Eliot D. Williams (Lead Counsel)
Theodore W. Chandler (Back-up Counsel)
Ferenc Pazmandi (Back-up Counsel)
Mark A. Speegle (Back-up Counsel)
BAKER BOTTS, L.L.P.
DLSamsungNetlistIPRs@BakerBotts.com

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX PLLC

/*Richard M. Bemben*/

Richard M. Bemben
Registration No. 68,658
Lead Attorney for Patent Owner

Date: June 8, 2026

1101 K Street, NW, 10th Floor
Washington, DC 20005
(202) 371-2600

APPENDIX A

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

NETLIST, INC.,
Patent Owner

Case PGR2025-00071
U.S. Patent No. 12,308,087

MODIFIED PROTECTIVE ORDER

MODIFIED PROTECTIVE ORDER

This modified protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked either "PROTECTIVE ORDER MATERIAL" or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES' ONLY."

2. Access to confidential information designated "PROTECTIVE ORDER MATERIAL" is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

(B) Outside Counsel. Outside Counsel of record for a party in the proceeding.

(C) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

(D) In-house counsel. In-house counsel of a party.

(E) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are

reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Modified Protective Order by the person they are supporting who receives confidential information.

(F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in (2)(A)–(E), shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person and after signing the Acknowledgment. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. A party may designate a document as "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES' ONLY" only if the document contains information

of a commercially sensitive nature such as a trade secret that a designating party determines, in good faith, should be afforded a level of protection exceeding that for "PROTECTIVE ORDER MATERIAL" because it is likely to cause significant competitive harm to its existing or prospective commercial relationships if disclosed to third parties or select employees or agents of the receiving party. Such documents may include but are not limited to non-public financial, marketing, strategic, organizational, operational or competitive information; and highly sensitive technical information relating to the design, development, research, testing and production of products. Access to confidential information designated "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES' ONLY" is limited to the individuals defined in paragraphs 2(B) ("Outside Counsel") and 2(C) ("Experts") who have executed the acknowledgment appended to this order, and to the individuals defined in paragraphs 2(E) ("Support Personnel") and 2(F) ("The Office"). For confidential information designated "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES' ONLY," paragraph 2(E) ("Support Personnel") shall be limited to the support personnel of the individuals defined in paragraphs 2(B) ("Outside Counsel") and 2(C) ("Experts").

5. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

6. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the

information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) Documents and Information Exchanged Among the Parties.

Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as "PROTECTIVE ORDER MATERIAL" or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES' ONLY" and shall be produced in a manner that maintains its confidentiality.

7. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

8. Standard Acknowledgement of Modified Protective Order.

The following form may be used to acknowledge a modified protective order and gain access to information covered by the modified protective order:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

NETLIST, INC.,
Patent Owner

Case PGR2025-00071
U.S. Patent No. 12,308,087

ACKNOWLEDGEMENT

Standard Acknowledgment
for Access to Protective Order Material or
Highly Confidential – Outside Counsel Eyes' Only Information

I _____, affirm that I have read the Modified Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Modified Protective Order; that I am personally responsible for the requirements of the terms of the Modified Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Modified Protective Order and providing remedies for its breach.

_____ Date: _____

APPENDIX B

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

NETLIST, INC.,
Patent Owner

Case PGR2025-00071
U.S. Patent No. 12,308,087

MODIFIED PROTECTIVE ORDER

~~The following Default Protective Order will govern the filing and treatment of confidential information in the proceeding:~~

~~Default Protective Order~~

MODIFIED PROTECTIVE ORDER

This modified protective order governs the treatment and filing of confidential information, including documents and testimony.

1. Confidential information shall be clearly marked either "PROTECTIVE ORDER MATERIAL" or "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES' ONLY."

2. Access to confidential information designated "PROTECTIVE ORDER MATERIAL" is limited to the following individuals who have executed the acknowledgment appended to this order:

(A) Parties. Persons who are owners of a patent involved in the proceeding and other persons who are named parties to the proceeding.

~~Party Representatives. Representatives~~(B) Outside Counsel. Outside Counsel of record for a party in the proceeding.

(C) Experts. Retained experts of a party in the proceeding who further certify in the Acknowledgement that they are not a competitor to any

party, or a consultant for, or employed by, such a competitor with respect to the subject matter of the proceeding.

(D) In-house counsel. In-house counsel of a party.

(E) Support Personnel. Administrative assistants, clerical staff, court reporters and other support personnel of the foregoing persons who are reasonably necessary to assist those persons in the proceeding shall not be required to sign an Acknowledgement, but shall be informed of the terms and requirements of the Modified Protective Order by the person they are supporting who receives confidential information.

(F) The Office. Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other persons acting on behalf of the Office.

3. Employees (e.g., corporate officers), consultants, or other persons performing work for a party, other than those persons identified above in (~~d)~~(2)(A)–(E), shall be extended access to confidential information only upon agreement of the parties or by order of the Board upon a motion brought by the party seeking to disclose confidential information to that person and after signing the Acknowledgment. The party opposing disclosure to that person shall have the burden of proving that such person should be restricted from access to confidential information.

4. A party may designate a document as "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES' ONLY" only if the document contains information of a commercially sensitive nature such as a trade secret that a designating party determines, in good faith, should be afforded a level of protection exceeding that for "PROTECTIVE ORDER MATERIAL" because it is likely to cause significant competitive harm to its existing or prospective commercial relationships if disclosed to third parties or select employees or agents of the receiving party. Such documents may include but are not limited to non-public financial, marketing, strategic, organizational, operational or competitive information; and highly sensitive technical information relating to the design, development, research,

testing and production of products. Access to confidential information designated "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES' ONLY" is limited to the individuals defined in paragraphs 2(B) ("Outside Counsel") and 2(C) ("Experts") who have executed the acknowledgment appended to this order, and to the individuals defined in paragraphs 2(E) ("Support Personnel") and 2(F) ("The Office"). For confidential information designated "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES' ONLY," paragraph 2(E) ("Support Personnel") shall be limited to the support personnel of the individuals defined in paragraphs 2(B) ("Outside Counsel") and 2(C) ("Experts").

5. Persons receiving confidential information shall use reasonable efforts to maintain the confidentiality of the information, including:

(A) Maintaining such information in a secure location to which persons not authorized to receive the information shall not have access;

(B) Otherwise using reasonable efforts to maintain the confidentiality of the information, which efforts shall be no less rigorous than those the recipient uses to maintain the confidentiality of information not received from the disclosing party;

(C) Ensuring that support personnel of the recipient who have access to the confidential information understand and abide by the obligation

to maintain the confidentiality of information received that is designated as confidential; and

(D) Limiting the copying of confidential information to a reasonable number of copies needed for conduct of the proceeding and maintaining a record of the locations of such copies.

6. Persons receiving confidential information shall use the following procedures to maintain the confidentiality of the information:

(A) Documents and Information Filed With the Board.

(i) A party may file documents or information with the Board along with a Motion to Seal. The Motion to Seal should provide a non-confidential description of the nature of the confidential information that is under seal, and set forth the reasons why the information is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The documents or information shall remain under seal unless the Board determines that some or all of it does not qualify for confidential treatment.

(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, together with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential and should not be made available to the public. A party may challenge the confidentiality of the information by opposing the Motion to Seal. The non-confidential version of the submission shall clearly indicate the locations of information that has been redacted. The confidential version of the submission shall be filed under seal. The redacted information shall remain under seal unless the Board determines that some or all of the redacted information does not qualify for confidential treatment.

(B) Documents and Information Exchanged Among the Parties. Documents (including deposition transcripts) and other information designated as confidential that are disclosed to another party during discovery or other proceedings before the Board shall be clearly marked as "PROTECTIVE ORDER MATERIAL" or "HIGHLY CONFIDENTIAL –

OUTSIDE COUNSEL EYES' ONLY" and shall be produced in a manner that maintains its confidentiality.

~~1.~~ 7. Within 60 days after the final disposition of this action, including the exhaustion of all appeals and motions, each party receiving confidential information must return, or certify the destruction of, all copies of the confidential information to the producing party.

8. Standard Acknowledgement of Modified Protective Order.

The following form may be used to acknowledge a modified protective order and gain access to information covered by the modified protective order:

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,
Petitioner

v.

NETLIST, INC.,
Patent Owner

Case PGR2025-00071
U.S. Patent No. 12,308,087

ACKNOWLEDGEMENT

Standard Acknowledgment
for Access to Protective Order Material or
Highly Confidential – Outside Counsel Eyes' Only Information

I _____, affirm that I have read the Modified Protective Order; that I will abide by its terms; that I will use the confidential information only in connection with this proceeding and for no other purpose; that I will only allow access to support staff who are reasonably necessary to assist me in this proceeding; that prior to any disclosure to such support staff I informed or will inform them of the requirements of the Modified Protective Order; that I am personally responsible for the requirements of the terms of the Modified Protective Order and I agree to submit to the jurisdiction of the Office and the United States District Court for the Eastern District of Virginia for purposes of enforcing the terms of the Modified Protective Order and providing remedies for its breach.

_____ Date: _____