

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 OPPOSITION TO PATENT OWNER'S MOTION FOR
ADDITIONAL DISCOVERY RE: REAL PARTY-IN-INTEREST**

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2059	<i>Curriculum Vitae</i> of Michael C. Brogioli
2060	Transcript of the Deposition of Andrew Wolfe, Ph.D., May 22, 2026
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I. INTRODUCTION

Netlist has the burden to show that its Motion for Additional Discovery (Paper 30) should be granted. *See* 37 C.F.R. §§ 42.20(c), 42.51(b)(2)(i). Netlist cannot meet its burden for three independent reasons: Netlist’s motion could have been filed 8 months ago and thus is untimely under 37 C.F.R. § 42.25(b); the Director already rejected Netlist’s arguments about real party-in-interest (“RPI”) and Netlist has not shown that discovery would lead to a different result; and Netlist’s proposed discovery is precisely the type of broad “litigation-style” requests that are impermissible under the *Garmin* and *Bloomberg* factors.

II. ARGUMENT

A. Netlist’s motion for RPI discovery should be denied as untimely under 37 C.F.R. § 42.25(b)

Netlist could have filed its motion for RPI discovery 8 months ago. *See, e.g.*, Final Rule, 77 Fed. Reg. 48,680, 48,695 (Aug. 14, 2012) (“The Office agrees with the comments that such a challenge [to real party-in-interest] should be brought before or with the filing of the patent owner preliminary response. During that period, the patent owner may seek authorization to take pertinent discovery.”).

Instead Netlist challenged RPI without discovery and lost, as discussed below (pp.3–8), and now Netlist is seeking discovery so that it can challenge RPI yet again based on nearly identical arguments. *Compare* Mot. at 2–5, *with* Paper 12 at 8–17.

But it is far too late for Netlist to seek discovery now, and that delay is a

sufficient basis to deny Netlist’s motion: “A party should seek relief promptly after the need for relief is identified. Delay in seeking relief may justify a denial of relief sought.” 37 C.F.R. § 42.25(b); *Apple Inc. v. Koss Corp.*, IPR2021-00255, Paper 29, at 4 (PTAB Sept. 1, 2021) (denying discovery where “Patent Owner...waited almost a month before seeking...discovery It already is too late for Patent Owner to include such information in its Patent Owner Responses”).

If Netlist believed that RPI discovery was needed, then Netlist should have sought that discovery months ago, before filing its POPR (Paper 12). But either Netlist did not believe RPI discovery was necessary, or Netlist intentionally delayed seeking RPI discovery so that it could have two bites at the apple on RPI. Either way, Netlist should not be allowed to pursue this belated discovery now.

Netlist’s delay is not just a procedural technicality; this delay is highly prejudicial to Samsung. As Netlist gleefully emphasizes throughout its motion, “[i]f a new filing date is accorded [due to identifying additional RPIs], the Petition is barred by 35 U.S.C. § 321(c).” Mot. at 1–2 & n.1. But that time-bar would exist only because Netlist waited 8 months before filing this motion. Netlist’s delay would thus transform a minor disagreement about RPI — which the Director already resolved in Samsung’s favor — into a potentially dispositive issue. Terminating this proceeding now based on RPI would prejudice Samsung not just in the PTAB, but also in the parties’ parallel ITC case. Because an ITC decision in Netlist’s favor

could result an exclusion order, Samsung has a strong interest in having this PGR reach a Final Written Decision quickly. Conversely, any delay or termination of these proceedings favors Netlist. Because Netlist has an incentive for delay, Netlist's belated submission of 27 overbroad discovery requests — after declining to seek pre-institution discovery — strongly suggests gamesmanship.

By requiring parties to bring motions promptly, 37 C.F.R. § 42.25(b) guards against strategic delays like Netlist's delay here. As such, and given the prejudice to Samsung, Netlist's motion should be denied under 37 C.F.R. § 42.25(b).

B. The Director already rejected Netlist's RPI theories and Netlist has not shown that discovery would lead to a different result

By instituting this PGR, the Director necessarily rejected the RPI arguments Netlist previously presented in its POPR (Paper 12). *See Fed. Express Corp. v. Qualcomm Inc.*, 174 F.4th 910, 914 n.5 (Fed. Cir. 2026) (“[T]he Director has determined that real party in interest disputes must be resolved before considering a petition.”). But Netlist's motion for discovery raises the same three RPI theories (SEA, Avnet, and foreign control) that Netlist unsuccessfully raised in its POPR. *Compare* Mot. at 2–5, *with* Paper 12 at 11–14 (“SEA is an unnamed RPI”), 14–15 (“Avnet is an unnamed RPI”), and 9 (“‘AIA proceedings should not be used by foreign adversaries,’ like Samsung”). Nothing has changed to call into question the Director's original institution decision, and Netlist has not shown that discovery would lead to a different result, so there is no need for the parties and the Board to

waste resources on discovery for theories that the Director already rejected.

Indeed, in over 15 petitions against Netlist over the past four years in cases involving the same accused products, Samsung has always named the same RPIs as here: the Petitioner, SEC (Korea), which makes the accused products, *see* EX1127, ¶ 6, and SSI (California), which is responsible for marketing and facilitating sales of the accused products in the United States, *id.* ¶ 5. *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. SEA, in contrast, neither makes nor sells the accused products and thus has never been named as an RPI. EX1126, ¶ 7; Paper 16 at 1–4. Unsurprisingly, 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). 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. EX1128, 13–14, 23.

There is no reason to believe now — after the Director’s institution here, and 15 previous petitions naming the same RPIs — that further discovery would lead to a different result, as discussed below.

1. SEA

Netlist's arguments about SEA being a potential RPI are copied nearly verbatim from its unsuccessful POPR. *Compare, e.g.*, Mot. at 2 ("SEA...has a preexisting, established relationship with both Petitioner SEC and named RPI SSI."), *with* Paper 12 at 11 (same). The Director necessarily (and correctly) rejected this theory about SEA when instituting this PGR. As explained above (p.4), SEA is not responsible for the products accused of infringement. EX1126, ¶ 7; Paper 16 at 2–3. As a result, Netlist is completely wrong (and unsurprisingly provides no supporting citation) when it baldly asserts that "SEA faces the same infringement exposure as SEC and SSI." Mot. at 3. In the parallel litigation, Netlist named SEA as a token defendant merely 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 joined in mirror-image declaratory judgment actions asserting venue is proper in Delaware, *see* EX2031–32. But those disputes about venue do not make SEA a **real** party-in-interest here. *See* Paper 16 at 1–2. Further, the mere corporate relationships between SEA, Petitioner, and SSI are insufficient to make SEA an RPI. Paper 16 at 4 (quoting *Syngenta Crop Protection AG v. FMC Corp.*, PGR2020-0028, Paper 8 at 15 (PTAB Sept. 15, 2020)). Tellingly, Netlist also had a duty to disclose its RPIs, *see* 37 C.F.R. § 42.8(a)(2), (b)(1), yet Netlist has never disclosed its **own** subsidiaries as RPIs, showing that Netlist does not actually believe that a corporate relationship

is sufficient to make a subsidiary (like SEA) an RPI. *See* EX1133, 107 (Exhibit 21, *available at* EX2109, pages 51 & 95 of 99 (“Netlist, Inc. and its wholly-owned subsidiaries” — including “Netlist Electronics (Suzhou) Co., Ltd” in the “People’s Republic of China,” which Netlist did not identify as an RPI — “provide[] high-performance . . . modular memory solutions”)).

Netlist has not identified any change post-institution that would warrant second-guessing the Director’s institution decision. Netlist points to only one new post-institution development: a *Sotera* stipulation in the ITC, *see* Mot. at 3, but that stipulation was on behalf of the “Samsung respondents,” not individually by SEA. EX2129. The accused products in the ITC have not changed post-institution, so SEA is still just a token respondent/defendant with no responsibility for the products accused of infringement. EX1126, ¶ 7; Paper 16 at 2–3. Thus, the relevant factors here are still the ***opposite*** of *AIT/RPX*, given “[m]ost critically” that SEA did not “pa[y]” Petitioner to “reduce” its “exposure” and given that Petitioner has the “apparent risk of infringement liability” while SEA has little to none in comparison. Paper 16 at 4 (quoting *RPX*, IPR2015-01750, Paper 128, at 31; EX1128, 18–19).

2. Avnet

Netlist’s arguments about Avnet are also copied nearly verbatim from its unsuccessful POPR. *Compare, e.g.,* Mot. at 4 (“Avnet certified *collectively* with Samsung that it has an ‘immediate, real, and justiciable controversy’”), *with* Paper

12 at 15 (same). The Director necessarily (and correctly) rejected this theory about Avnet when instituting this PGR. As Samsung previously explained, Avnet is merely a third-party customer, *see* EX2032, 2, and thus not a “‘true defendant’ in the dispute.” Paper 16 at 1, 3; EX1128, 13–14, 23. Netlist’s infringement allegations against Avnet in the Eastern District of Texas based on products made by Petitioner — and Avnet’s corresponding addition to the Delaware case — do not change this analysis. *See id.* Netlist presents no new arguments concerning Avnet that it did not raise in its POPR. Because the Director has already considered and rejected Netlist’s theory concerning Avnet, discovery regarding Avnet is unwarranted.

3. Foreign control

Netlist’s motion repeats the baseless allegation from its POPR that Samsung is a “foreign adversar[y]” that should be precluded from filing a PGR. *Compare* Paper 12 at 9 (citing EX2030, 4), *with* Mot. at 2. But Netlist has waived this issue by failing to raise the argument in its Patent Owner Response. *See* Paper 31 at 5–21; Trial Practice Guide § II.C (“Once a trial is instituted, the Board may decline to consider arguments set forth in a preliminary response unless they are raised in the patent owner response.”). In any event, by instituting, the Director necessarily (and correctly) rejected Netlist’s assertion that Samsung is a “foreign adversar[y].”

Netlist’s motion points to an article stating that Korea’s National Pension Service (NPS) “holds a 7.75% stake in Samsung Electronics.” EX2136, 1; Mot. at

12–13. But NPS has expressly declared that it “does not exercise any influence on investee companies or directors,” EX1132, 16, so there is no support for Netlist’s bald assertion that NPS “may have controlled or had the opportunity to control this PGR.” Mot. at 13. Furthermore, a 7.75% stake is far less than needed to control a publicly traded company like Samsung, and is below the 10% threshold required for disclosure to the PTAB, *see Tianma Microelectronics Co. v. LG Display Co.*, IPR2025-01579, Paper 12, at 8 n.6 (PTAB Mar. 18, 2026) (precedential).

C. Netlist’s proposed discovery violates *Garmin* and *Bloomberg*

In addition to the above defects, Netlist’s motion should also be denied because Netlist has not carried its burden to show there is good cause for its 27 proposed discovery requests (numbered for reference at EX1131) which use broad, litigation-style language (e.g., “produce any...”, “identify all...”, “describe any and all...”). *See Bloomberg Inc. v. Markets-Alert Pty Ltd.*, CBM2013-00005, Paper 32 at 4 (PTAB May 29, 2013) (precedential) (discussing *Garmin* factors).

1. The requested discovery would not be “useful”

Factor 1: As discussed below, Netlist has not carried its burden to show “more than a possibility” that there is a “specific factual reason for expecting reasonably” that any of its 27 discovery requests will be “useful,” meaning “favorable in substantive value to” the RPI issue the Director has already considered. *Bloomberg*, CBM2013-00005, Paper 32 at 5.

a) Discovery into funding, control of, or coordination regarding, the Petition would not be “useful”

The Petition was prepared and filed solely by the Petitioner, SEC (Korea), who is the ultimate parent of both SEA and SSI, and is responsible for the products accused of infringement. See Paper 2; EX1127, ¶¶ 5–6; EX1126, ¶ 7. Netlist provides no specific factual reason for expecting that discovery would show that SEA, Avnet, or the Korean government was ever involved in preparing, funding, or controlling this Petition, as discussed above (pp.3–8).

Furthermore, Netlist’s framing of this category — combining together arguments about collaboration and coordination, with arguments about funding and control — obfuscates the proper legal inquiry. Mot. at 10–11. “The proper RPI analysis focuses on the degree to which the related non-named entity ***exercised, or could have exercised, control*** over the Petitions.” *Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68, at 14 (PTAB Aug. 18, 2015) (precedential except § II.E.1) (emphasis added) (cleaned up). Netlist cites no authority that collaboration or coordination — absent control — creates an RPI relationship. See Mot. at 10–11.

Thus, Netlist has not met the standard for RPI discovery under *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1244 (Fed. Cir. 2018). Under *Worlds*, Netlist is only entitled to discovery if Netlist “produce[s] *some* evidence that tends to show that a particular third party should be named a real party in interest.” *Id.* At most, Netlist

points to “evidence of collaboration” among co-defendants in litigation, *see* Mot. at 10, not evidence of control. Without any evidence of control, Netlist is left with “[a] mere assertion that a third party is an unnamed real party in interest,” which “is insufficient to put the issue into dispute.” *Worlds*, 903 F.3d at 1244.

Netlist also fails to show good cause for its actual discovery requests. For example, Netlist does not explain why Samsung’s engagement agreement with Baker Botts L.L.P. or Dr. Wolfe are likely to be useful — Netlist says only that “such documents exist.” Mot. at 11; EX1131 (Nos. 1 and 4). Netlist’s requests about “joint defense agreements” would at most show collaboration, not control, as discussed above. EX1131 (Nos. 2–3). Netlist also does not justify its overbroad request to identify “all Board members and corporate officers of SEC, SEA, and SSI both currently and at the time of preparing and filing the Petition.” EX1131 (Nos. 5–10). Netlist’s requests for descriptions of “all communications and coordination” from various entities are also unlikely to be helpful because — if such communications exist — they would be privileged. *Id.* (Nos. 11–14). Because Netlist has not defended any of the actual requests put forward, Netlist has not carried its burden.

b) Discovery related to indemnification, manufacturing, or supply agreements would not be “useful”

Contrary to Netlist’s suggestion, *see* Mot. at 11–12, indemnification or supply agreements from Samsung to Avnet or SEA would be insufficient to make Avnet or SEA an RPI, and thus they are not “useful.” The Board in fact rejected Netlist’s

argument on this precise issue in a prior IPR: “[Samsung] provides compelling authority that a manufacturer-customer relationship alone does not establish privity, even with indemnity provisions.” EX1128 at 23 (June 30, 2023). Netlist did not address this prior Board decision, and Netlist cites no authority that indemnification, manufacturing, or supply agreements would make Avnet or SEA an RPI.

Contrary to Netlist’s argument, *see* Mot. at 13, *Savant* does not stand for the proposition that an “indemnification” agreement or “cooperation” is sufficient to create an RPI relationship or justify discovery. *See Savant Techs. LLC v. Feit Elec. Co.*, IPR2024-01357, Paper 73, at 11 (PTAB Apr. 30, 2026). Notably, the alleged direction of control in *Savant* was precisely the opposite of the facts here. In *Savant*, the alleged unnamed RPI was the **parent** of the petitioner, *see id.* at 2 (“failed to identify its Chinese parent company, MLS”), while here Netlist alleges that a **subsidiary** (SEA) of the Petitioner may be an RPI. *Savant* never suggests that a subsidiary (SEA) could have control over its parent (SEC), especially here where the parent (SEC) is responsible for the accused products and the subsidiary (SEA) has no responsibility for the accused products or for indemnifying SEC, as discussed above (pp.3–6).

Indeed, the sample invoice submitted by Netlist, *see* EX2138, confirms that SEA has no involvement with the accused products and that the Petition correctly named SEC (the manufacturer of the accused products and the ultimate parent

company) and SSI (which is responsible for marketing and facilitating sales of the accused products in the United States) as discussed above (pp.3–6). This sample invoice specifically refers to “SEC” as “Ship[ping]” the product, EX2138, 1, and provides that SSI — not SEA — would “defend or settle” claims against a customer if (among other conditions) the customer “cooperates in its defense as requested by Samsung [defined as Samsung Semiconductor, Inc. [SSI]],” *id.* at 2. The invoice further disclaims responsibility for settlements “made by Customer without [SSI’s] consent.” *Id.* Nothing in this invoice suggests that SEA (or a customer like Avnet) would control SEC or SSI.

There is also a significant disconnect between Netlist’s arguments in favor of discovery and Netlist’s actual discovery requests. Most prominently, the requests are not limited to “indemnification and manufacturing/supply agreements.” Mot. at 11. Instead, the actual discovery requests include broadening language covering “other agreements that exist.” EX1131 (Nos. 17–26). Netlist makes no arguments justifying the breadth of its actual discovery requests. And as discussed under Factors 4 and 5 below (pp.14–15), Netlist’s use of “any” in these requests renders them impermissibly overbroad. EX1131 (Nos. 15–26).

c) Discovery related to alleged foreign government ownership would not be “useful”

Netlist also seeks “[d]iscovery related to foreign government ownership of SEC,” Mot. at 12–13, but the only basis for that discovery is the allegation that the

Korean National Pension Service (NPS) may own 7.75% of SEC, which as discussed above is insufficient to justify discovery (pp.7–8). Netlist’s arguments about foreign government control are nothing but a “mere assertion” that “is insufficient to put the issue into dispute.” *Worlds*, 903 F.3d at 1244. As explained above (pp.7–8), NPS “does not exercise any influence on investee companies or directors.” EX1132, 16, so Netlist has not provided “a specific factual reason for expecting reasonably that the discovery will be ‘useful.’” *Bloomberg*, CBM2013-00005, Paper 32 at 5; *The Mangrove Partners Master Fund, Ltd. v. VirnetX Inc.*, IPR2015-01046, Paper 25, at 2–5 (PTAB Dec. 21, 2015) (denying motion for similar discovery), *reh’g granted-in-part*, Paper 37 (PTAB Feb. 26, 2016) (limiting discovery to one individual).

Netlist’s proposed discovery request is also overbroad and disconnected from its argument about NPS. See EX1131 (No. 27). Netlist only presented one argument specific to NPS, see Mot. at 12–13, which would not justify discovery about “all shareholders in SEC that are foreign governments, foreign governmental agencies, other state-linked entities, and/or included on the United States Department of Commerce’s Bureau of Industry and Security (BIS), as well as the percentage and type of shares owned by each of the identified shareholders.” EX1131 (No. 27).

2. Litigation positions

Factor 2: Netlist’s conclusory assertion that it is not “seek[ing] SEC’s or Avnet’s litigation positions” does not resolve this factor. Mot. at 13. Instead,

because the proposed discovery “falls under a privilege as attorney work product, *Garmin* factor 2 weighs strongly against Patent Owner.” *Twitter, Inc. v. Palo Alto Rsch. Ctr. Inc.*, IPR2021-01398, Paper 33, at 14 (PTAB Nov. 18, 2022). At least Netlist’s requests 1–3, 5–8, and 11–14 encompass privileged communications, either directly between counsel and Samsung, or under a hypothetical joint defense group. EX1131 (Nos. 1–3, 5–8, 11–14).

3. Equivalent information resolves Netlist’s RPI theories

Factor 3: The existing record (as discussed above, pp.3–8) already contains sufficiently equivalent information to resolve Netlist’s RPI allegations, as the Director did when instituting this PGR. Netlist also did not seek any RPI discovery before raising these same theories in its POPR, further confirming that the existing record contains sufficient information on the subject (as discussed above, pp.1–3).

4. Netlist’s 27 litigation-style requests are not easily understandable

Factor 4: Netlist’s 27 requests — spanning five pages, *see* EX1131 — are far from “easily understandable,” Mot. at 14. Netlist’s requests include vague terminology, subject to multiple interpretations. *See, e.g.*, EX1131 (Nos. 2–3, 5, and 7–9 calling for agreements “that relate to” certain disputes, for documents showing “any coordination...”, and for an identification of all persons “involved in funding...”). Netlist also capitalized certain terms like “Persons” and “Entities,” suggesting that that these are defined terms, but no definitions were provided. *Id.*

(Nos. 6, 9). And as discussed below with Factor 5, the repeated use of “any” and “all” throughout the discovery requests makes them difficult to understand.

5. Netlist’s discovery would impose a substantial burden

Factor 5: Netlist’s 27 discovery requests are *not* “limited to specific document(s)” or “easily identifiable information,” Mot. at 15. Aside from Request Nos. 1 and 4 (seeking the engagement letters with Baker Botts and Samsung’s expert), none of the 27 requests target specific, identifiable information. See EX1131. Netlist’s requests instead reflect litigation-style discovery calling for “any” and “all” documents, exactly what *Garmin* and *Bloomberg* were designed to preclude. See, e.g., *Bloomberg*, CBM2013-00005, Paper 32, at 2 (“strong public policy to limit discovery”), 11 (rejecting “overly broad” requests); *WaveMarket Inc. v. LocationNet Sys. Ltd.*, IPR2024-00199, Paper 34, at 6–9 (PTAB Aug. 11, 2014).

Indulging Netlist’s belated discovery request at this point — after its Patent Owner Response has been filed — would then require additional briefing outside of the normal schedule to address Netlist’s RPI theories. This additional briefing and any associated delays would prejudice Samsung, especially given that Netlist is seeking an exclusion order in the parallel ITC case. The Board should not condone Netlist’s strategic decision to wait so long and to request such overbroad discovery.

III. CONCLUSION

Netlist’s motion for additional discovery should be denied.

Dated: June 19, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify that this **Petitioner's Opposition to Patent Owner's Motion for Additional Discovery re: Real Party-in-Interest**, 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 May 28, 2026, which stated: "Patent Owner is authorized to file a motion for additional discovery pursuant to 37 C.F.R. § 42.51(b)(2) on the issue of real party-in-interest. Petitioner is authorized to file a responsive opposition. The parties papers shall be limited to 15 pages. Patent Owner's motion shall be due on June 5, 2026. Petitioner's opposition shall be due on June 19, 2025 [sic]. No Reply is authorized at this time." EX3105.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 19th day of June, 2026,

Petitioner's Opposition to Patent Owner's Motion for Additional Discovery re: Real Party-in-Interest and Exhibits 1131-33 were served by email on the following counsel for Patent Owner:

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