

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 RESPONSE TO
PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW OF
THE DIRECTOR'S DECISION GRANTING INSTITUTION**

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2011	Consolidation Order, <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 2:25-cv-00557 (E.D. Tex.), June 26, 2025
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
2015	Complaint, <i>In the Matter of Certain Dynamic Random Access Memory (DRAM) Devices, Products Containing the Same, and Components Thereof</i> , Investigation No. 337-TA-3854 (I.T.C.), September 29, 2025
2016	Samsung Defendants' P.R. 3-3 Invalidity Contentions, <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 2:25-cv-00557 (E.D. Tex.), September 24, 2025
2017	Verdict Form, <i>Netlist, Inc. v. Samsung Electronics Co. et al.</i> , Case No. 2:22-cv-00293-JRG (E.D. Tex.), November 22, 2024
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
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. INTRODUCTION

Netlist’s Request for Director Review (Paper 25) of the institution decision by the Director (Paper 22) should be denied. The Director *already* reviewed the papers in this case and rejected Netlist’s arguments about “discretionary considerations,” *see* Paper 20, at 2, and then rejected Netlist’s arguments on the “merits,” *see* Paper 22, at 2. Given the extensive briefing that the Director has already reviewed, *see* Papers 8, 11, 12, 16, 17, 18, 19, Netlist’s request for Director review of the Director’s own institution decision is really just a request for reconsideration, but as explained below, there have been no changes in the facts or the law that would warrant yet another review by the Director, especially given that Netlist’s request fails to “specifically identify all matters [Netlist] believes the Board [which includes the Director, *see* 35 U.S.C. § 6(a)] misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, a reply, or a sur-reply.” 37 C.F.R. § 42.71(d).

II. ARGUMENT

A. **The Director has already considered, and repeatedly rejected, Netlist’s argument that “Samsung’s Petition fails to name SEA as an RPI” (DR Req. 2–6)**

Netlist is incorrect that “Samsung’s Petition fails to name SEA as an RPI.” DR Req. 2–6. This is the same argument that the Director has already considered, and repeatedly rejected, not only in this PGR, *see* Paper 12 at 8–17; Paper 16 at 1–4; Paper 19 at 1–4; Paper 20, at 2; Paper 22, at 2, but also in IPR2025-01431, Paper

9 at 4–13; Paper 15 at 1–4; Paper 18 at 1–4; Paper 19, at 2; Paper 21, at 2. There has been no change in the facts or the law since those institution decisions on February 18th, and thus Netlist’s arguments are incorrect for the same reasons provided before, which are summarized here:

SEA is merely an alleged purchaser or user of the accused products, and not a *real* party 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. Netlist named SEA as a token defendant 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. 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 request for Director Review — 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 in cases involving HBM and DIMMs (the products accused of infringing the patents in this PGR and IPR2025-01431). *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. The

facts here are thus the opposite of the case cited by Netlist, *see* DR Req. 4, where the “Petitioner previously identified [another company named] 9219 as an RPI in an *inter partes* review pertaining to similar technology, and Petitioner provides no facts or evidence to show why the instant case should be treated differently.” *Aylo Freesites LTD v. DISH Techs. L.L.C.*, IPR2024-00940, Paper 71, at 7 (PTAB Jan. 9, 2026).

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 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 privy, 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,” Paper 12 at 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 is named as a token defendant or has a customer relationship, as explained above. The relevant factors here are 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. *RPX*, IPR2015-01750, Paper 128, at 31; EX1128, 18–19. Netlist argues that “nowhere . . . does Samsung provide evidence, or even a clear statement, that it is not representing SEA’s interest in avoiding liability for infringement,” DR Req. 5, but that ignores the evidence quoted above, *see* EX1127, ¶¶ 5–6; EX1126, ¶ 7, and that

is the same type of argument that the Board previously rejected when it “determine[d] that Petitioner [SEC (Korea)] is acting in its *own* interest to avoid liability and defend its ability to sell [the accused] memory modules,” EX1128, 18 (emphasis added).

In sum, Petitioner correctly named its RPIs, as the Director has repeatedly found by instituting this PGR and IPR2025-01431 after Netlist repeatedly raised this same argument in its pre-institution briefs. *See* Paper 12 at 8–17; Paper 16 at 1–4; Paper 19 at 1–4; IPR2025-01431, Paper 9 at 4–13; IPR2025-01431, Paper 15 at 1–4; IPR2025-01431, Paper 18 at 1–4.

B. Netlist waived its *Fintiv* arguments concerning Google and Super Micro (DR Req. 6–8)

Netlist has waived its *Fintiv* arguments concerning Google and Super Micro. *See* DR Req. 6–8. Tellingly, Netlist never “specifically identif[ies] [what Netlist] believes the Board [which includes the Director, *see* 35 U.S.C. § 6(a)] misapprehended or overlooked,” 37 C.F.R. § 42.71(d), because Netlist never presented these arguments to the Director in the first place, which is fatal: “The Director will not consider . . . new arguments not part of the official record.” *See* <<https://www.uspto.gov/patents/ptab/decisions/director-review-process>> (§ 3.E).

By way of background, Netlist’s briefs in support of discretionary denial made *Fintiv* arguments about Samsung, but Netlist’s briefs never mentioned Google or Super Micro (who are other companies that have also been sued by

Netlist), thus waiving any *Fintiv* arguments concerning them. *See* Paper 8 at 14–15; Paper 17 at 3–4. Samsung’s briefs, in turn, also never mentioned Google or Super Micro. *See* Paper 11 at 17–20; Paper 18 at 1. Instead, Samsung emphasized that “[t]his proceeding is far ahead of Netlist’s retaliatory ITC action,” and thus the *Fintiv* factors favored institution. *Id.* Indeed, at the time of the discretionary denial briefs in December, the ITC action had not even been instituted. *See* EX2054 (ITC institution on December 29, 2025).

After this PGR was instituted on February 18, 2026, Samsung faced a deadline on March 4th to respond to Netlist’s interrogatory in the ITC concerning invalidity. But as Netlist already knew from the pre-institution briefing, Samsung had no reason to pursue invalidity arguments in the ITC, given that the broad statutory estoppel under 35 U.S.C. § 325(e)(2) would apply *months* before the Initial Determination date in the ITC of “May 3, 202[7].” EX2062, 2 (amending EX2059). Thus, unsurprisingly, on March 4th, Samsung did not serve *any* invalidity contentions in the ITC for the challenged patent, and Samsung expressly stipulated that it would not do so in the future so long as this PGR was not de-instituted, ensuring that this PGR would be a “true alternative” to the ITC proceeding. In addition, neither Samsung, Netlist, nor any respondent has proposed any claim constructions in the ITC for the challenged patent, consistent with the PGR, *see* Pet. 11–12, thus mooting Netlist’s speculation about the

possibility of “inconsistent claim constructions” in the ITC, DR Req. 8.

Netlist argues that Samsung’s “stipulation is untimely and should not be considered,” DR Req. 7, yet it was Netlist that raised the stipulation in its request for Director Review, not Samsung. In any event, the stipulation is not untimely because as explained above it was in response to the March 4th deadline to respond to Netlist’s interrogatory in the ITC concerning invalidity, and the stipulation merely explained why Samsung was not providing any invalidity contentions in the ITC (consistent with what Samsung had already explained in its pre-institution briefing).

Netlist argues that Samsung’s stipulation not to pursue invalidity in the ITC “is illusory because it covers only the Samsung entities involved in the dispute with Netlist (i.e., SEC, SEA, and SSI) but does not bind the other respondents at the ITC, Google and Super Micro.” DR Req. 6–7.

But as explained above, Netlist has waived any arguments concerning Google and Super Micro: Netlist’s suit against Google and Super Micro was filed back in September, *see* EX2015, 17–18 (¶¶28–34), but Netlist never mentioned Google or Super Micro in any of its discretionary denial briefs filed in November and December, *see* Paper 8 at 14–15; Paper 17 at 3–4, thus waiving such arguments for purposes of Director review as explained above. Furthermore, Google and Super Micro responded to the ITC complaint on February 3rd (before

the institution decision on February 18th), but Netlist again never raised any arguments about Google or Super Micro. It is improper for Netlist to wait to see the results of the institution decision, and then to request a second bite at the apple simply because it is disappointed with the results of its first bite.

In any event, Netlist's argument is entirely speculative — the ITC action is at its earliest stages, so it is speculative the extent to which other respondents may actually pursue invalidity arguments as the ITC action progresses — and Netlist's belated argument does not support discretionary denial, since Samsung does not control Google or Super Micro, and it was Netlist's decision to complicate the ITC action by naming Google and Super Micro as respondents, not Samsung's decision. *See, e.g., Innolux Corp. v. Phenix Longhorn LLC*, IPR2025-00043, Paper 10, at 12 (PTAB May 15, 2025) (finding that petitioner's *Sotera* stipulation supported the conclusion that “the facts underlying [*Fintiv* factor 4] weigh against exercising our discretion to deny institution,” despite the patent owner's argument that “other defendants are not subject to Petitioner's stipulation or bound to this proceeding's results”); *Samsung Elecs. Co. v. One-E-Way, Inc.*, IPR2025-01540, Paper 10, at 2 (PTAB Jan. 27, 2026) (Director decision not to discretionarily deny institution, despite the argument by the patent owner in Paper 6 at 14 that “Petitioner's expected *Sotera* stipulation does not mitigate issues of duplication of efforts because it is not binding on Petitioner's co-defendants in the related

litigation,” and consistent with the argument by the petitioner in Paper 9 at 6–7 that “there is no set deadline for stipulations” and “this factor favors institution *even if* other defendants are not bound [by the stipulation]”); *Samsung Elecs. Co. v. Wilus Inst. of Standards & Tech. Inc.*, IPR2025-01165, Paper 11, at 2 (PTAB Nov. 20, 2025) (Director decision not to discretionarily deny institution, despite the argument by the patent owner in Paper 6 at 13 that the petitioner’s *Sotera* stipulation “does not prevent the same references from being raised in the Co-Pending Litigation by another Defendant,” and consistent with the argument by the petitioner in Paper 8 at 18 that it would be “unreasonable and unsupported by PTAB precedent” to expect a petitioner to “control co-defendants’ actions”).

III. CONCLUSION

Netlist’s Request for Director Review (Paper 25) should be denied.

Dated: March 12, 2026

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CERTIFICATE OF COMPLIANCE

I hereby certify that this **Petitioner’s Authorized Response to Patent Owner’s Request for Director Review of the Director’s Decision Granting Institution**, excluding the parts of the brief exempted by 37 C.F.R. § 42.24, complies with the page limits provided by the Director’s email on March 5, 2026, which stated: “Petitioner is authorized to submit a response limited to the issues raised in the Director Review request, of no more than 15 pages, to be filed within five business days of this email. Any such response must be filed in P-TACTS, i.e., by selecting the ‘Other: Other’ paper type and the paper must be titled ‘Authorized Response to Director Review Request’ or it may not be considered. No new evidence is permitted. No further briefing is authorized at this time.” EX3102.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 12th day of March, 2026, **Petitioner’s Authorized Response to Patent Owner’s Request for Director Review of the Director’s Decision Granting Institution** was served by email on the following counsel for Patent Owner:

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