

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAMSUNG ELECTRONICS CO., LTD.,

Petitioner,

v.

NETLIST, INC.,

Patent Owner

IPR2026-00017

Patent 9,824,035

**PETITIONER'S AUTHORIZED SUR-REPLY
TO PATENT OWNER'S DISCRETIONARY DENIAL REQUEST**

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1004	Curriculum Vitae of Dr. Robert Wedig
1005	U.S. Patent Pub. No. 2010/0312925 to Osanai (“ <u>Osanai</u> ”) (Exhibit 1005 in IPR2022-00236, and Exhibit 2004 in IPR2023-00847)
1006	U.S. Patent No. 8,020,022 to Tokuhiko (“ <u>Tokuhiko</u> ”)
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1017	Declaration of Julie Carlson for JEDEC Standard 21-C

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1018	JEDEC Standard 21-C, DDR SDRAM Registered DIMM Design Specification (January 2002)
1019	Declaration of Julie Carlson for JESD79-3C
1020	JEDEC DDR3 SDRAM Standard, JESD79-3C (April 2008)
1021	Bruce Jacob et al., <u>Memory Systems: Cache, DRAM, Disk</u> (2008) (excerpts)
1022	Harold S. Stone, <u>Microcomputer Interfacing</u> (1982)
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1026	U.S. Patent No. 8,565,033 to Manohararajah
1027	U.S. Patent No. 7,808,849 to Swain
1028	U.S. Patent No. 9,536,579 to Iijima
1029	U.S. Patent Pub. No. 2007/0008791 to Butt (“ <u>Butt</u> ”)
1030	U.S. Patent Pub. No. 2010/0309706 to Saito (“ <u>Saito</u> ”)
1031	Final Written Decision, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-00639, Paper 45 (PTAB Oct. 18, 2023)
1032	Decision Denying Patent Owner’s Request on Rehearing of Final Written Decision, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-00639, Paper 48 (PTAB Feb. 9, 2024)
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1034	Decision Denying Patent Owner’s Request for Director Review of Final Written Decision, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-00615, Paper 103 (PTAB July 10, 2024)
1035	[omitted]
1036	[omitted]
1037	Joint Claim Construction Statement, <i>Netlist, Inc. v. Micron Technology, Inc. et al.</i> , No. 1:22-cv-00136 (W.D. Tex. Apr. 14, 2022)
1038	[omitted]
1039	[omitted]

Exhibit #	Description
1040	[omitted]
1041	[omitted]
1042	[omitted]
1043	[omitted]
1044	[omitted]
1045	Declaration of Dr. Robert Wedig Regarding U.S. Patent No. 10,860,506 (Exhibit 1003 in IPR2022-00711)
1046	U.S. Patent No. 10,860,506
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1048	Joint 4-3 Claim Construction and Prehearing Statement, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:21-cv-00463 (E.D. Tex. Aug. 19, 2022 and Aug. 23, 2022)
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1053	JEDEC AMB standard (March 2007) (Exhibit 1053 in IPR2022-00711)
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1056	U.S. Patent Pub. No. 2010/0312956 to Hiraishi (“ <u>Hiraishi</u> ”) (Exhibit 1005 in IPR2023-00847)
1057	U.S. Pat No. 10,268,608
1058	Declaration of Dr. Robert Wedig Regarding U.S. Patent No. 10,268,608 (Exhibit 1003 in IPR2023-00847)
1059	Petitioner's demonstratives for U.S. Patent No. 10,268,608 (Exhibit 1089 in IPR2023-00847)
1060	Final Written Decision, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2023-00847, Paper 42 (PTAB Dec. 10, 2024) (U.S. Patent No. 10,268,608)

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1061	Notice of Docketing, <i>Samsung Electronics Co., Ltd. v Netlist, Inc.</i> , No. 2025-1378 (Fed. Cir. Jan. 21, 2025) (U.S. Patent No. 10,268,608)
1062	Appellant’s Principal Brief, <i>Samsung Electronics Co., Ltd v Netlist, Inc.</i> , No. 2025-1378 (Fed. Cir. Apr. 18, 2025) (U.S. Patent No. 10,268,608)
1063	Netlist’s Response Brief, <i>Samsung Electronics Co., Ltd. v Netlist, Inc.</i> , No. 2025-1378 (Fed. Cir. July 28, 2025) (U.S. Patent No. 10,268,608)
1064	Appellant’s Reply Brief, <i>Samsung Electronics Co., Ltd v Netlist, Inc.</i> , No. 2025-1378 (Fed. Cir. Sept. 15, 2025) (U.S. Patent No. 10,268,608)
1065	[omitted]
1066	Final Written Decision, <i>Micron Technology, Inc. et al. v. Netlist, Inc.</i> , IPR2022-00236, Paper 34 (PTAB June 20, 2023) (U.S. Patent No. 9,824,035)
1067	Decision Granting Petitioner’s Request on Rehearing of Final Written Decision, <i>Micron Technology, Inc. et al. v. Netlist, Inc.</i> , IPR2022-00236, Paper 36 (PTAB August 16, 2023) (U.S. Patent No. 9,824,035)
1068	Final Written Decision, <i>Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.</i> , IPR2022-00711, Paper 42 (PTAB Oct. 17, 2023) (U.S. Patent No. 10,860,506)
1069	Denying Patent Owner’s Request on Rehearing of Final Written Decision, <i>Samsung Electronics Co., Ltd. et al. v. Netlist, Inc.</i> , IPR2022-00711, Paper 44 (PTAB Dec. 20, 2023) (U.S. Patent No. 10,860,506)
1070	[omitted]
1071	[omitted]
1072	[omitted]
1073	[omitted]
1074	Transcript of Deposition of Dr. William Mangione-Smith (June 4, 2024) (Exhibit 1074 in IPR2023-00847)

Exhibit #	Description
1075	Transcript of Deposition of Dr. William Mangione-Smith on May 4, 2023 (Exhibit 1046 in IPR2022-00711 and Exhibit 1075 in IPR2023-00847)
1076	[omitted]
1077	Netlist’s Technology Tutorial (Exhibit 1047 in IPR2022-00711 and Exhibit 1077 in IPR2023-00847)
1078	[omitted]
1079	[omitted]
1080	[omitted]
1081	[omitted]
1082	[omitted]
1083	[omitted]
1084	U.S. Patent No. 7,215,584 to Butt et al. (incorporated by reference in [0047] of Exhibit 1029)
1085	Presentation on read leveling and write leveling for DDR3 memory modules (2008)
1086	Complaint, <i>In the Matter of Certain Dynamic Random Access Memory (DRAM) Devices, Products Containing the Same, and Components Thereof</i> , Inv. No. 337-TA-3854 (USITC filed Sept. 30, 2025) (U.S. Patent Nos. 9,824,035 and 10,268,608)
1087	Netlist Form 10-K (Annual Report) for 2023, available at < https://investors.netlist.com/filings-financials/sec-filings >.
1088	Netlist Form 10-K (Annual Report) for 2024, available at < https://investors.netlist.com/filings-financials/sec-filings >.
1089	Netlist Form 10-Q (Quarterly Report) through September 2025, available at < https://investors.netlist.com/filings-financials/sec-filings >.
1090	Final Written Decision, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-00999, Paper 51 (PTAB Dec. 5, 2023) (U.S. Patent No. 11,232,054)
1091	Final Written Decision, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-00996, Paper 49 (PTAB Dec. 6, 2023) (U.S. Patent No. 11,016,918)

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1092	Order Denying Director Review, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-00996 and -00999, Papers 53 & 56 (PTAB Mar. 18, 2024) (U.S. Patent Nos. 11,016,918 and 11,232,054)
1093	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)
1094	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)
1095	Order Denying Director Review, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2022-01427 and -01428, Paper 52 (PTAB June 17, 2024)
1096	Final Written Decision, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2023-00454, Paper 45 (PTAB July 30, 2024) (U.S. Patent No. 11,093,417)
1097	Order Denying Director Review, <i>Samsung Electronics Co., Ltd. v. Netlist, Inc.</i> , IPR2023-00454, Paper 47 (PTAB Oct. 8, 2024) (U.S. Patent No. 11,093,417)
1098	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)
1099	Order Granting Request for <i>Ex Parte</i> Reexamination, No. 90/015,449 (Nov. 21, 2025) (U.S. Patent No. 10,268,608)
1100	Complaint, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2:21-cv-00463 (E.D. Tex. filed Dec. 20, 2021)
1101	Judgment Affirming Final Written Decision in IPR2022-00711, <i>Netlist, Inc. v. Samsung Electronics Co., Ltd. et al.</i> , No. 2024-1521 (Fed. Cir. Dec. 9, 2025) (U.S. Patent No. 10,860,506)
1102	Notice of Institution of Investigation No. 337-TA-1472, 91 Fed. Reg. 155 (Jan. 2, 2026), available at https://www.federalregister.gov/documents/2026/01/02/2025-24146/certain-dynamic-random-access-memory-dram-devices-products-containing-the-same-and-components >

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1103	Order No. 11: Initial Determination Amending the Target Date, <i>In the Matter of Certain Dynamic Random Access Memory (DRAM) Devices, Products Containing the Same, and Components Thereof</i> , Inv. No. 337-TA-1472 (USITC Jan. 27, 2026), available at < https://edis.usitc.gov/external/search/advanced.html?invId=8817 >
1104	Memorandum re: Director Institution of AIA Trial Proceedings (Oct. 17, 2025), available at < https://www.uspto.gov/subscription-center/2025/director-institution-aia-trial-proceedings >
1105	Memorandum re: Interim Processes for PTAB Workload Management (Mar. 26, 2025), available at < https://www.uspto.gov/subscription-center/2025/uspto-issues-new-interim-process-concerning-institution-aia-proceedings >
1106	Memorandum re: Final Written Decision Procedures for AIA Trial Proceedings (July 29, 2025), available at < https://www.uspto.gov/subscription-center/2025/ptab-issued-memorandum-aia-trials >
1107	Memorandum re: Guidance on USPTO’s recission of “Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation” (Mar. 24, 2025), available at < https://www.uspto.gov/patents/ptab/resources >
1108	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)
1109	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)
1110	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)
1111	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)
1112	Samsung Semiconductor, About Us, available at < https://semiconductor.samsung.com/about-us/locations/us/ >

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1113	Samsung Semiconductor, Inc., Articles of Incorporation in California (July 13, 1992), <i>available at</i> < https://bizfileonline.sos.ca.gov/search/business >
1114	Samsung Semiconductor, Inc., California Statement of Information (Apr. 15, 2025), <i>available at</i> < https://bizfileonline.sos.ca.gov/search/business >
1115	Samsung investments in the United States, <i>available at</i> < https://semiconductor.samsung.com/sas/company/taylor/ >
1116	U.S. Patent No. 10,025,731
1117	Samsung Electronics America, Inc. (“SEA”)’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)
2001	Joint Development and License Agreement, November 12, 2015
2002	Stock Purchase Warrant, November 18, 2015
2003	Senior Secured Convertible Promissory Note, November 18, 2015
2004	Security Agreement by and between Netlist, Inc. and SVIC No. 28 New Technology Business Investment L.L.P., November 18, 2025
2005	Samsung Venture Investment Corporation website, available at https://www.samsungventure.co.kr/english/jsp/company/company.jsp (last accessed October 12, 2025)
2006	Recorded Assignment and IP Security Agreement, Reel No. 037150, Frame No. 0897, November 20, 2015
2007	Release of Assignment, Reel No. 065629, Frame No. 0330, November 20, 2023
2008	Redacted First Amended Complaint for Breach of Contract and Declaratory Relief, <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 8:20-cv-00993-JAK (C.D. Cal.), August 31, 2020
2009	Judgment, <i>Netlist Inc. v. Samsung Electronics Co., Ltd.</i> , Case No. 8:20-cv-00993-JAK (C.D. Cal.), April 7, 2025
2010	Median time to trial statistics for the International Trade Commission, Docket Navigator report generated October 6, 2025
2011–13	[intentionally omitted]
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

Exhibit #	Description
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	[intentionally omitted]
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 10, 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	[intentionally omitted]
2023	“Netlist and SK hynix Enter into Strategic Agreements for Patents, Technology and Product Supply,” Netlist Press Release, April 5, 2021
2024	“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),” Memorandum from Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent Trademark Office John A. Squires, October 28, 2025
2025–26	[intentionally omitted]
2027	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
2028	List of Patent Trial and Appeal Board proceedings listing Samsung Electronics America, Inc. as Petitioner, Docket Navigator, generated December 3, 2025
2029–39	[intentionally omitted]

Exhibit #	Description
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
2042–43	[intentionally omitted]
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
2045–48	[intentionally omitted]
2049	Final Written Decision, <i>Micron Technology, Inc. v. Netlist, Inc.</i> , IPR2022-00236 (P.T.A.B. June 20, 2023)
2050	Decision Granting Petitioner’s Request on Rehearing of Final Written Decision, <i>Micron Technology, Inc. v. Netlist, Inc.</i> , IPR2022-00236 (P.T.A.B. Aug. 16, 2023)
2051	Record of Oral Hearing, <i>Samsung Elecs. Co., Ltd.</i> , IPR2023-00847 (P.T.A.B. Nov. 21, 2024)
2052	Appellant’s Principal Brief, <i>Samsung Elecs. Co., Ltd. v. Netlist, Inc.</i> , Appeal No. 25-1378 (Fed. Cir.), April 18, 2025
2053	Order Initiating <i>Sua Sponte</i> Director Review and Staying Proceeding, IPR2025-00145 (P.T.A.B. Dec. 22, 2025)
2054	Notice of Institution of Investigation, Inv. No. 337-TA-1472 (I.T.C. Dec. 29, 2025)
2055	Disclaimer filed in U.S. Patent No. 9,824,035, January 29, 2026
2056	Amended Proposed Procedural Schedule, Inv. No. 337-TA-1472 (I.T.C. Jan. 27, 2026)
2057	“Enforcement and Non-Waiver of 37 C.F.R § 42.104(B)(4) and Permissible Uses of General Knowledge in <i>Inter Partes</i> Reviews,” United States Patent & Trademark Office Memorandum, July 31, 2025
2058	Docket, <i>Samsung Elecs. Co., Ltd. et al. v. Netlist, Inc.</i> , Case No. 1:25-cv-01371-JLH (D. Del.), November 11, 2025
2059	Disclaimer filed in U.S. Patent No. 9,824,035, February 4, 2026

SUR-REPLY TO DISCRETIONARY DENIAL REQUEST

Netlist provides no “good cause” for why the Director should consider its belated disclaimer of claims 14 and 17–20 (EX2059) *after* the deadline for its brief on discretionary denial. Netlist previously disclaimed claim 9 (EX2055) shortly *before* the deadline for its brief on discretionary denial, but Netlist fails to explain why it did not also disclaim claims 14 and 17–20 at the same time if it wanted that disclaimer considered for purposes of discretionary denial.

And if the Director does consider Netlist’s belated disclaimer of claims 14 and 17–20, that disclaimer merely confirms the material errors by the Examiner with respect to the remaining claims, 2–8 and 15–16, as explained in Petitioner’s opposition to discretionary denial. *See* Paper 10 at 2–3, 7–9. The Examiner allowed *all* claims based solely on the limitations in claim 1, which the Board later found obvious. *Id.* at 2. The Examiner never searched the prior art for a “sampler” as found in dependent claims 15 and 16. *Id.* at 7. And neither the Examiner nor the Board considered the Butt reference that teaches the claimed “*memory write operation*” in claims 2–8. *Id.* at 8–9. Furthermore, the disclaimer of claims 14 and 17–20 does not materially change the rest of the discretionary factors favoring institution. *Id.* at 9–20. For example, only 2 of the 9 challenged claims (i.e., 22%) are at issue in the ITC, which weighs against discretionary denial. *Id.* at 11.

Dated: February 13, 2026

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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 February 9, 2026, which stated: “Petitioner is authorized a 1-page sur-reply, due no later than Friday, February 13, 2026.” EX3101.

Dated: February 13, 2026

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 13th day of February, 2026, **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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