

Netlist Files Appeal In Trade Secret Case Against Diablo Technologies

December 9, 2015

IRVINE, Calif., Dec. 9, 2015 /PRNewswire/ -- Netlist, Inc. (NASDAQ: NLST), announced today it has filed its opening brief in the U.S. Court of Appeals for the Federal Circuit, appealing the judgment of the United States District Court for the Northern District of California in Netlist's trade secret dispute with Diablo Technologies following a two week jury trial in March, 2015.



NETLIST

In its appeal, Netlist has asked the Federal Circuit to take a fresh look at the language of the contract and to find that Diablo's admitted use of Netlist's chips represents a clear breach of the agreement between the companies. Netlist has therefore asked the Federal Circuit to reverse the judgment of the District Court and remand the case for a trial on damages and injunction proceedings.

"We are pleased that the Federal Circuit will now have the opportunity to take a careful look at what happened at trial and the events that led up to it, particularly with respect to the clear language of our contract with Diablo," said Netlist's Chief Executive Officer, C.K. Hong. "We remain confident that after analyzing the record the Federal Circuit will come to the correct conclusion, that Diablo violated our agreement when it used Netlist chips in the design of the ULLtraDIMM."

Netlist filed motions earlier this year asking the District Court to correct the erroneous findings by the jury with respect to Netlist's breach of contract claims. Before trial, the District Court reviewed the contract and found based on the unambiguous language of the contract that Diablo had no right to use Netlist's chips—which Diablo admitted to doing—and as a result granted Netlist's request for a preliminary injunction. The jury, however, was not informed of the Court's prior interpretation of the contract. Faced with the task of deciphering the contract without any guidance from the Court as to Diablo's rights under the agreement, the jury found no breach. The District Court then refused to correct the jury's findings and denied Netlist's motions for Judgment as a Matter of Law in September, 2015.

Netlist's separate patent lawsuit against SanDisk and Diablo on the ULLtraDIMM product remains pending. The patent case is currently stayed awaiting Inter Partes Review of Netlist's seven asserted patents in the U.S. Patent and Trademark Office. Three of the patents asserted by Netlist have already survived review.

About Netlist, Inc.

Netlist creates solutions that accelerate turning data into information. We design and manufacture controller and software-based memory solutions for our OEM and Hyperscale customers in the server and storage space. Flagship products NVvault® and EXPRESSvault™ accelerate system performance and provide mission critical fault tolerance. HyperVault®, Netlist's next-generation architecture, expands the performance and capacity of memory channel storage. The company holds a portfolio of patents, many seminal, in the area of hybrid memory, rank multiplication and load-reduction, among others. To learn more, visit www.netlist.com

Safe Harbor Statement:

This news release contains forward-looking statements regarding future events and the future performance of Netlist. These forward-looking statements involve risks and uncertainties that could cause actual results to differ materially from those expected or projected. These risks and uncertainties include, but are not limited to, the launch and commercial success of our products, programs and technologies; the success of product partnerships; continuing development, qualification and volume production of HyperVault™, EXPRESSvault™, NVvault®, HyperCloud® and VLP Planar-X RDIMM; the timing and magnitude of the decrease in sales to our key customer; our ability to leverage our NVvault® and EXPRESSvault™ technology in a more diverse customer base; the rapidly-changing nature of technology; risks associated with intellectual property, including risks associated with the inherent uncertainty of the litigation process, patent infringement litigation against us as well as the costs and unpredictability of litigation over infringement of our intellectual property and the possibility of our patents being reexamined by the United States Patent and Trademark office; volatility in the pricing of DRAM ICs and NAND; changes in and uncertainty of customer acceptance of, and demand for, our existing products and products under development, including uncertainty of and/or delays in product orders and product qualifications; delays in the Company's and its customers' product releases and development; introductions of new products by competitors; changes in end-user demand for technology solutions; the Company's ability to attract and retain skilled personnel; the Company's reliance on suppliers of critical components and vendors in the supply chain; fluctuations in the market price of critical components; evolving industry standards; and the political and regulatory environment in the People's Republic of China. Other risks and uncertainties are described in the Company's annual report on Form 10-K filed on March 27, 2015, and subsequent filings with the U.S. Securities and Exchange Commission made by the Company from time to time. Except as required by law, Netlist undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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