

# Federal Court Orders Halt to Sales of New High-Speed Computer Chips Used by SanDisk, IBM and Other OEMs

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OAKLAND, Calif., Jan. 13, 2015 /PRNewswire/ -- A federal district court judge took the rare step of ordering a preliminary injunction against a Canadian company from manufacturing, using, distributing or selling high-speed memory controller chips used by SanDisk and other major computer manufacturers.

Netlist, Inc. (NASDAQ: NLST) announced that Judge Yvonne Gonzalez Rogers of the United States District Court for the Northern District of California granted Netlist's Motion for Preliminary Injunction against Diablo Technologies, Inc., for controller chips used by SanDisk in its high-speed ULLtraDIMM SSD product line. Under the Court's order, Diablo and SanDisk are prohibited from manufacturing and selling the controller chipset used by SanDisk in the ULLtraDIMM and as a result, from further sale or distribution of the ULLtraDIMM itself.

Judge Gonzalez Rogers found that "the evidence indicates that Netlist is likely to prevail by showing that the Netlist Technology ... was used by Diablo to develop" its controller chips. "By misusing the technology that Diablo had been given in confidence under the Supply Agreement [with Netlist], Diablo gained an advantage it would not have otherwise had." In the Court's Order, Judge Gonzalez Rogers rejected Diablo's arguments that it somehow had rights to use Netlist's chipset and technology under the agreements.

The judge also rejected SanDisk's motion for reconsideration, asking that it be allowed to sell existing inventory of the enjoined products. The Court found that the injunction properly barred SanDisk from selling these products after a careful review of the long contractual partnership between Diablo and SanDisk with respect to the ULLtraDIMM module, finding that SanDisk and Smart Storage "are 'persons who are in active concert with' Diablo."

The Court advanced the trial date by four months, to March 9, 2015, for Netlist's claims upon which the motion was decided, including claims against Diablo for trade secret misappropriation, breach of contract, and other causes of action related to the components supplied by Diablo for the ULLtraDIMM. The Court's order specifically identifies the ULLtraDIMM as well as the eXFlash modules from IBM, although the injunction affects all modules containing Diablo components. Other OEMs, including Huawei, Lenovo and Supermicro, have announced plans to offer ULLtraDIMMs in certain of their server platforms.

Netlist created and patented ground-breaking memory interface technology which significantly increases the speed of servers. It contracted with Diablo to implement a proprietary memory-controller chipset based on this technology, only to find that Diablo stole its trade secrets and incorporated them into Diablo's own products.

"We are very pleased with the court's decision", said C.K. Hong, Netlist's Chief Executive Officer. "We believe this extraordinary legal ruling is a validation of what we've said from the beginning about Diablo's flagrant actions. The ruling serves as a major step towards establishing the rightful ownership of the intellectual property contained in the ULLtraDIMM, and clears the path for Netlist products based on our proprietary memory interface technology. We look forward to the opportunity

to present all of the evidence to a jury, particularly given the court's assessment of our likelihood of prevailing."

A preliminary injunction requires proof of likelihood of success on the merits of the claims, and that irreparable injury will result if the motion is not granted. The Court found that the trade secret and breach of contract claims substantially overlap, and that Netlist's "conclusive showing on the contract claim means that the court need not reach the question of likelihood of success on the trade secret claims" in order to grant the preliminary injunction. The Court observed that "the showing of a head-start advantage to Diablo, based upon an improper use of Netlist's technology, is sufficient to establish" irreparable harm. The Court also considered how Diablo's unlawful conduct has harmed Netlist's efforts to develop and sell its own NVvault and HyperVault products. A permanent injunction may be issued after trial for the entire wrongful head-start period.

The decision follows another important legal victory by Netlist in the dispute. Last month, the United States Patent and Trademark Office (USPTO) denied petitions filed by SanDisk requesting Inter Partes Review (IPR) of Netlist patents asserted against the ULLtraDIMM in a separate patent infringement suit brought by Netlist against SanDisk and Diablo, before the same court. SanDisk and Diablo are now barred from filing additional IPRs on the four Netlist patents with claims that the PTAB refused to review.

### **About Netlist:**

Netlist, Inc. designs and manufactures high-performance, logic-based memory subsystems for server and storage applications for cloud computing. Netlist's flagship products include NVvault™ and EXPRESSvault™ family of hybrid memory products that significantly accelerate system performance and provide mission critical fault tolerance, HyperCloud®, a patented memory technology that breaks traditional performance barriers, and a broad portfolio of industrial Flash and specialty memory subsystems including VLP (very low profile) DIMMs and Planar-X RDIMMs. Netlist has steadily invested in and grown its worldwide IP portfolio, which now includes 81 issued and pending patents in the areas of high performance memory and hybrid memory technologies.

Netlist develops technology solutions for customer applications in which high-speed, high-capacity, small form factor and efficient heat dissipation are key requirements for system memory. These customers include OEMs and hyperscale datacenter operators that design and build servers, storage systems and high-performance computing clusters, engineering workstations and telecommunications equipment. Founded in 2000, Netlist is headquartered in Irvine, CA with manufacturing facilities in Suzhou, People's Republic of China. Learn more at [www.netlist.com](http://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, risks associated with the launch and commercial success of our products, programs and technologies; the success of product partnerships; continuing development, qualification and volume production of EXPRESSvault™, NVvault™, HyperCloud® and VLP Planar-X RDIMM; the timing and magnitude of the anticipated decrease in sales to our key customer; our ability to leverage our NVvault™ technology in a more diverse customer base; the rapidly-changing nature of technology; risks associated with intellectual property, including 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 18, 2014, 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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