

# Appeals Court Refuses to Halt Injunction Against Controller Chips Used in SanDisk's ULLtraDIMM SSD

February 11, 2015

IRVINE, Calif., Feb. 11, 2015 /PRNewswire/ -- Netlist, Inc. (NASDAQ: NLST) announced today that the U.S. Court of Appeals for the Federal Circuit denied an emergency motion from Diablo Technologies, Inc., asking the Federal Circuit to stay the preliminary injunction entered against controller chips used by SanDisk in its high-speed ULLtraDIMM SSD product line. The injunction blocks Diablo from supplying SanDisk the chipset upon which the ULLtraDIMM is built.

The preliminary injunction was ordered January 12, 2015 by Judge Yvonne Gonzalez Rogers of the U.S. District Court for the Northern District of California after a lengthy briefing and a full hearing. Diablo asked the Federal Circuit to stay the injunction pending resolution of their appeal and further asked for an expedited briefing schedule, all of which Netlist vigorously opposed. The Federal Circuit denied Diablo's requests, leaving the injunction intact, and further denied their request to expedite the appeal.

SanDisk filed a narrower appeal, asking the Federal Circuit to allow SanDisk to sell its existing inventory of controller chips purchased from Diablo prior to the injunction, and also asked for an expedited appeal. Netlist opposed these motions as well. The Federal Circuit denied the motion to expedite the appeal, but granted the motion to stay the injunction as to SanDisk's existing inventory of the now enjoined controller chips. SanDisk will not, however, be able to acquire additional parts from Diablo once SanDisk's existing inventory is exhausted. Further, the Federal Circuit specifically noted that "[t]his order should not be construed to preclude Netlist from moving at the district court to hold any entity in contempt for aiding and abetting in the violation of the injunction."

"We are very pleased that the appeals court sided with the district court in rejecting this latest attempt by Diablo to lift the injunction", said C.K. Hong, Netlist's Chief Executive Officer. "Our opponents have used every legal maneuver to delay and avoid justice in this case. They are now out of options – the injunction will stand until we get our day in court. We are confident of prevailing at trial and securing a permanent injunction that will prevent future unauthorized use of Netlist's intellectual property."

The jury trial is set to begin March 9, 2015 in Oakland, California and pertains to trade secret misappropriation and breach of contract. Many of the underlying issues were already considered by the Court and decided in Netlist's favor in the course of its issuance of the preliminary injunction. The injunction order specifically identified ULLtraDIMM as well as IBM's eXFlash modules, 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.

## **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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