

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-8**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**NETLIST, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**95-4812784**

(I.R.S. Employer Identification No.)

**51 Discovery  
Irvine, CA 92618**

(Address of Principal Executive Offices) (Zip Code)

**2008 Employment Inducement Award**  
(Full title of the plans)

**Chun K. Hong**  
**President, Chief Executive Officer and Chairman of the Board**  
**51 Discovery, Irvine, CA 92618**  
(Name and address of agent for service)

**(949) 435-0025**

(Telephone number, including area code, of agent for service)

**CALCULATION OF REGISTRATION FEE**

Title of securities to be registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (2)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock, par value \$0.001 per share, issuable upon exercise of options under individual option agreement	250,000	\$ 1.29	\$ 322,500	\$ 12.67

(1) These securities are issuable under an individual option agreement issued by Netlist, Inc., and not under Netlist, Inc.'s 2006 Equity Incentive Plan.

(2) Pursuant to Rule 457(h) under the Securities Act of 1933, as amended, the registration fee is computed upon the basis of the price at which the options may be exercised.

## Part II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference.

Netlist, Inc. (the "Registrant") hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the "SEC"):

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended December 29, 2007, as filed with the SEC on February 29, 2008;
- (b) The Registrant's Quarterly Report on Form 10-Q for the quarterly fiscal period ended March 29, 2008, as filed with the SEC on May 8, 2008;
- (c) The Registrant's Current Reports on Form 8-K, as filed with the SEC on:
  - April 15, 2008, and
  - May 12, 2008, respectively; and
- (d) The description of the Registrant's common stock contained in the Registrant's Registration Statement on Form 8-A filed with the SEC on November 27, 2006, including any amendments or reports filed for the purpose of updating such description;

All documents subsequently filed by the Registrant with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934 and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in any document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

#### Item 4. Description of Securities.

Not applicable.

#### Item 5. Interests of Named Experts and Counsel.

Not applicable.

#### Item 6. Indemnification of Directors and Officers.

The Registrant is incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a corporation may indemnify any persons who were, are or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

Section 145 of the Delaware General Corporation Law further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him or her under Section 145 of the Delaware General Corporation Law.

The Registrant's restated certificate of incorporation eliminates the personal liability of a director to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liabilities arising (a) from any breach of the director's duty of loyalty to the corporation or its stockholders; (b) from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (c) under Section 174 of the Delaware General Corporation Law; or (d) from any transaction from which the director derived an improper personal benefit. In addition, the Registrant's amended and restated bylaws provide for indemnification of directors, officers, employees and agents to the fullest extent permitted by Delaware law and authorize the Registrant to purchase and maintain insurance to protect itself and any director, officer, employee or agent of the Registrant or another business entity against any expense, liability, or loss, regardless of whether the Registrant would have the power to indemnify such person under its bylaws or Delaware law.

The Registrant has entered into indemnification agreements with each of its current directors and executive officers (the form of which is filed as Exhibit 10.12 to the Registrant's Registration Statement No. 333-136735 on Form S-1 filed with the SEC on August 18, 2006, as amended). These agreements will require the Registrant to indemnify these individuals to the fullest extent permitted under Delaware law against liabilities that may arise by reason of their service to the Registrant, and to advance expenses incurred as a result of any proceeding against them as to which they could be indemnified. The Registrant also intends to enter into indemnification agreements with its future directors and executive officers.

**Item 7. Exemptions from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

- 4.1 Restated Certificate of Incorporation of the Registrant, incorporated by reference to Exhibit 3.1 of the S-1 Registration Statement.
- 4.2 Amended and Restated Bylaws of the Registrant, incorporated by reference to Exhibit 3.2 of the S-1 Registration Statement.
- 4.3 Stock Option Agreement dated May 2, 2008 for options to purchase 250,000 shares of the Registrant's common stock awarded to James P. Perrott.
- 5.1 Opinion of Bingham McCutchen LLP as to the legality of the common stock registered hereby.
- 23.1 Consent of KMJ Corbin & Company LLP.
- 23.2 Consent of Bingham McCutchen LLP (included in Exhibit 5.1).
- 24.1 Power of Attorney (included on signature page hereto).

**Item 9. Undertakings.**

(a) The undersigned registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post effective amendment to this registration statement:

- (i) To include any prospectus required by section 10(a)(3) of the Securities Act of 1933 (the "Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*Provided however*, that paragraphs (i) and (ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) That, for the purpose of determining liability of the registrant under the Securities Act to any purchaser in the initial distribution of the securities, the undersigned registrant undertakes that in a primary offering of securities of the undersigned registrant pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned registrant or used or referred to by the undersigned registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned registrant or its securities provided by or on behalf of the undersigned registrant; and

(iv) Any other communication that is an offer in the offering made by the undersigned registrant to the purchaser.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Irvine, State of California, on this 13th day of June, 2008.

NETLIST, INC.

By: /s/ Chun K. Hong

Chun K. Hong  
President, Chief Executive Officer  
and Chairman of the Board

## POWER OF ATTORNEY

Each person whose signature appears below hereby severally constitutes and appoints Chun K. Hong and Gail Itow, and each of them singly, his true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments (including post effective amendments) to this registration statement, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the SEC, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title(s)</u>	<u>Date</u>
<u>/s/ Chun K. Hong</u> Chun K. Hong	President, Chief Executive Officer and Chairman of the Board (Principal Executive Officer)	June 10, 2008
<u>/s/ Gail Itow</u> Gail Itow	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	June 10, 2008
<u>/s/ Nam Ki Hong</u> Nam Ki Hong	Director	June 10, 2008
<u>/s/ Thomas F. Lagatta</u> Thomas F. Lagatta	Director	June 10, 2008
<u>/s/ Alan H. Portnoy</u> Alan H. Portnoy	Director	June 10, 2008
<u>/s/ David M. Rickey</u> David M. Rickey	Director	June 10, 2008
<u>/s/ Preston Romm</u> Preston Romm	Director	June 10, 2008

## INDEX TO EXHIBITS

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## NETLIST, INC.

STOCK OPTION AGREEMENT  
(Employment Inducement Grant)

This NON-STATUTORY STOCK OPTION AGREEMENT, dated as of May 2, 2008 (this “Agreement”), is between NETLIST, INC., a Delaware corporation (the “Company”), and James P. Perrott (the “Optionee”).

## R E C I T A L S

- A. Optionee has not previously been an officer, director or employee of the Company, and this Option (as defined below) is granted to Optionee to attract and retain Optionee to serve the Company in the capacity of Senior Vice President of Sales and Marketing.
- B. This Agreement, and the grant of an Option to the Optionee pursuant to the terms and conditions hereof, have been approved by the Board of Directors of the Company (the “Board”).
- C. This Option is designated as a non-qualified stock option, and does **not** qualify as an incentive stock option within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the “Code”).

## A G R E E M E N T

In consideration of the foregoing recitals and of the mutual covenants contained herein, the parties, intending to be legally bound, agree as follows:

- Grant of Option. The Company hereby grants to the Optionee, as an inducement to accept employment with the Company pursuant to the terms and conditions of that certain employment agreement, dated April 7, 2008, between the Company and Optionee, an option (the “Option”) to purchase from the Company all or any number of an aggregate of 250,000 shares (the “Option Shares”), of the Company’s common stock, \$.001 par value per share, at a price of \$1.29 per share, on the terms and subject to the conditions of this Agreement. This grant is **not** made pursuant to the Company’s 2006 Equity Incentive Plan (the “Plan”). However, except as otherwise expressly provided herein, this grant is subject to the rules, terms and conditions of the Plan as if it were a grant made pursuant to and under the Plan, and all such rules, terms and conditions are hereby incorporated herein by reference as if set forth herein in their entirety. Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Plan. The Option is granted as of May 2, 2008 (the “Grant Date”).
  - Character of Option. The Option is **not** intended to be treated as an “incentive stock option” within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the “Code”).
  - Duration of Option. Unless subject to earlier expiration or termination pursuant to the terms of the Plan, the Option shall expire on the ten year anniversary of the Grant Date.
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4. Exercisability of Option. The Option may be exercised, at any time and from time to time until its expiration or termination, for any or all of those Option Shares in respect of which the Option shall have become exercisable, in accordance with the provisions set forth below in this Section 4, on or at any time prior to the date of any such exercise. Subject to the provisions of the Plan (including, without limitation, the provisions of Section 7.1(e) of the Plan), the Option shall become exercisable (i) in the amount of 62,500 shares of Common Stock on April 7, 2009, and (ii) in thirty-six (36) equal monthly installments thereafter until vested in full (or otherwise terminated), such that, on April 7, 2012, the Option shall be vested as to all of the Shares and fully exercisable. These installments shall be cumulative, such that Optionee may exercise the Option as to any or all of the Shares covered by any installment at any time or times after such installment vests and prior to termination of the Option. The foregoing notwithstanding, the Option shall cease vesting upon the termination of Optionee's status as an employee of the Company for any reason. Notwithstanding anything expressed or implied to the contrary in the foregoing provisions of this Section 4, the exercisability of the Option may, as provided in Section 7.1(d) of the Plan, at any time be Accelerated in the discretion of the Committee.

5. Transfer of Option. Other than as expressly permitted by the provisions of Section 6.4 of the Plan, the Option may not be transferred except by will or the laws of descent and distribution and, during the lifetime of the Optionee, may be exercised only by the Optionee.

6. Incorporation of Plan Terms. The Option is granted subject to all of the applicable terms and provisions of the Plan, which terms and provisions are incorporated herein by reference pursuant to Section 1 of this Agreement, including, but not limited to, the limitations on the Company's obligation to deliver Option Shares upon exercise set forth in Section 9.2 (Violation of Law), Section 9.3 (Corporate Restrictions on Rights in Stock), Section 9.4 (Investment Representations) and Section 9.7 (Tax Withholding).

7. Miscellaneous. This Agreement shall be construed and enforced in accordance with the internal, substantive laws of the State of Delaware and shall be binding upon and inure to the benefit of any successor or assign of the Company and any executor, administrator, trustee, guardian, or other legal representative of the Optionee.

IN WITNESS WHEREOF, the parties have executed this Stock Option Agreement as a sealed instrument as of the date first above written.

NETLIST, INC.

By: /s/ Gail Itow

Name: Gail Itow

Title: Chief Financial Officer

OPTIONEE

/s/ James P. Perrott

JAMES P. PERROTT

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June 13, 2008

Netlist, Inc.  
51 Discovery  
Irvine, CA 92618

Re: Registration Statement on Form S-8

Ladies and Gentlemen:

This opinion is furnished in connection with the registration, pursuant to a Registration Statement on Form S-8 under the Securities Act of 1933, as amended (the “Securities Act”), to be filed with the Securities and Exchange Commission on or about June 13, 2008 (the “Registration Statement”), of an aggregate of 250,000 shares (the “Shares”) of common stock, par value \$0.001 per share (the “Common Stock”), of Netlist, Inc., a Delaware corporation (the “Company”), which will be issuable to an officer of the Company upon the exercise of options for the purchase of Common Stock granted by the Board of Directors of the Company pursuant to that certain Stock Option Agreement, dated May 2, 2008 (the “Option Grant”).

We have acted as counsel to the Company in connection with the foregoing registration of the Shares. We have examined and relied upon originals or copies of such records, instruments, certificates, memoranda, and other documents as we have deemed necessary or advisable for purposes of this opinion and have assumed, without independent inquiry, the accuracy of those documents. In that examination, we have assumed the genuineness of all signatures, the conformity to the originals of all documents reviewed by us as copies, the authenticity and completeness of all original documents reviewed by us in original or copy form, and the legal competence of each individual executing such documents. We have further assumed that all options granted pursuant to the Option Grant will be validly granted in accordance with the terms of the Option Grant, that all of the Shares to be issued upon exercise of such options will be issued in accordance with the terms of such options and the Option Grant.

This opinion is limited solely to the Delaware General Corporation Law, as applied by courts located in Delaware, the applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting those laws.

Based upon and subject to the foregoing, we are of the opinion that:

Upon the issuance and the delivery of the Shares upon the exercise of the options granted pursuant to the Option Grant in accordance with the terms of such options and the Option Grant, and upon the Company’s receipt of the full exercise price therefor as specified in the documents governing the Option Grant, the Shares will be validly issued, fully paid, and nonassessable.

We consent to the filing of a copy of this opinion as an exhibit to the Registration Statement.

Very truly yours,

/s/ Bingham McCutchen LLP

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 of our reports dated February 27, 2008, relating to the consolidated financial statements and related consolidated financial statement schedule of Netlist, Inc. and subsidiaries as of December 29, 2007 and December 30, 2006 and for each of the three years in the period ended December 29, 2007 (which report on the consolidated financial statements expresses an unqualified opinion and includes an explanatory paragraph relating to the adoption of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes—an Interpretation of FASB Statement 109* and Statement of Financial Accounting Standards No. 123(R), *Share-Based Payment* ), which reports are included in Netlist, Inc.'s Annual Report on Form 10-K for the year ended December 29, 2007.

/s/ KMJ Corbin & Company LLP

Irvine, California

June 12, 2008

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