

NETLIST INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 9/18/2007

CIK	0001282631
Industry	Semiconductors
Sector	Technology

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**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)

2006 Equity Incentive Plan of Netlist, Inc.
(Full title of the plans)

Chun Ki 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 under the 2006 Equity Incentive Plan (3)	500,000	\$ 1.82	\$ 910,000	\$ 27.94

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended, this registration statement shall also cover any additional shares of Common Stock which become issuable upon exercise of options granted under the 2006 Equity Incentive Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the receipt of consideration which results in an increase in the number of the outstanding shares of Common Stock of Netlist, Inc.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(h)(1) and 457(c), based on the average of the high and low sales prices of the Company's Common Stock on September 13, 2007.
- (3) Represents shares of Common Stock that were automatically added to the shares authorized for issuance under our 2006 Equity Incentive Plan on January 1, 2007 pursuant to an "evergreen" provision contained therein.

EXPLANATORY NOTE

This Registration Statement on Form S-8 is being filed for the purpose of registering an additional 500,000 shares of Common Stock, par value \$0.001 per share, of Netlist, Inc. (the "Company"), issuable pursuant to the Company's 2006 Equity Incentive Plan (the "Plan"). The terms of the Plan provide that that the number of shares of Common Stock issuable pursuant to the Plan will automatically increase on the first day of each year by 500,000 shares (or such smaller number of shares as may be determined by the Company's board of directors).

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

Pursuant to General Instruction E to Form S-8 regarding the registration of additional securities of the Company, the Company hereby incorporates herein by reference the contents of the Registration Statement of the Company on Form S-8 filed with the Securities and Exchange Commission on December 18, 2006, Registration No. 333-139435, with respect to the Company's Amended and Restated 2000 Equity Incentive Plan and 2006 Equity Incentive Plan.

Item 8. Exhibits.

- 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 (formerly Corbin & Company, LLP).
- 23.2 Consent of Deloitte & Touche LLP.
- 23.3 Consent of Bingham McCutchen LLP (included in Exhibit 5.1).
- 24.1 Power of Attorney (included on signature page hereto).

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 17th day of September, 2007.

NETLIST, INC.

By: /s/ Chun K. Hong
Chun K. Hong
President, Chief Executive Officer
and Chairman of the Board

INDEX TO EXHIBITS

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- 24.1 Power of Attorney (included on signature page hereto).

September 17, 2007

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 September 18, 2007 (the “Registration Statement”), of an aggregate of 500,000 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 employees, directors and consultants of the Company upon the exercise of options granted pursuant to the Company’s 2006 Equity Incentive Plan (the “Plan”) or which the Company may issue as restricted stock or pursuant to awards of restricted stock units under the Plan.

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 or to be granted pursuant to the Plan were or will be validly granted in accordance with the terms of the Plan, 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 Plan, and that all of the Shares to be sold or granted as restricted stock or pursuant to awards of restricted stock units will be sold or granted in accordance with the terms of the Plan.

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:

1. Upon the issuance and the delivery of the Shares upon the exercise of options granted pursuant to the Plan in accordance with the terms of such options and the Plan, and upon the Company’s receipt of the full exercise price therefor, as determined by the Board of Directors of the Company and as specified in the documents governing such grants and the Plan, the Shares will be validly issued, fully paid, and nonassessable.
2. Upon the issuance and delivery of the Shares in the form of restricted stock in accordance with the terms of the Plan, and upon the Company’s receipt of valid consideration therefor, as determined by the Board of Directors of the Company and as specified in the documents governing such awards and the Plan, the Shares will be validly issued, fully paid, and nonassessable.
3. Upon the issuance and delivery of the Shares pursuant to awards of restricted stock units in accordance with the terms of the awards of such restricted stock units and the Plan, and upon the company’s receipt of valid consideration therefor, as determined by the Board of Directors of the Company and as specified in the documents governing such awards and the Plan, 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

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, 2007, relating to the consolidated financial statements and related financial statement schedule of Netlist, Inc. and subsidiaries as of December 30, 2006 and December 31, 2005 and for each of the years in the two-year period ended December 30, 2006, which reports are included in Netlist, Inc.'s Annual Report on Form 10-K for the year ended December 30, 2006.

/s/ KMJ CORBIN & COMPANY LLP (formerly Corbin & Company, LLP)

Irvine, California
September 17, 2007

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 March 1, 2006 relating to the consolidated financial statements and financial statement schedule of Netlist, Inc. and subsidiaries for the year ended January 1, 2005, appearing in the Annual Report on Form 10-K of Netlist, Inc. and subsidiaries for the year ended December 30, 2006.

/s/ DELOITTE & TOUCHE LLP

Costa Mesa, California
September 17, 2007
