

**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, Suite 150  
Irvine, CA 92618**  
(Address of Principal Executive Offices) (Zip Code)

**Netlist, Inc. 2006 Equity Incentive Plan**  
(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)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer       Accelerated filer       Non-accelerated filer       Smaller reporting company   
(Do not check if a smaller reporting company)

**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	500,000	\$ 0.58	\$ 290,000	\$ 16.18

- (1) In accordance with Rule 416(a) of the Securities Act of 1933, as amended, this registration statement shall also cover any additional shares of common stock which become issuable under the 2006 Plan by reason of any stock dividend, stock split, recapitalization or similar transaction.
- (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 4, 2009.

## EXPLANATORY NOTE

This Registration Statement on Form S-8 is filed pursuant to General Instruction E to Form S-8 for the purpose of registering an additional 500,000 shares of common stock, par value \$.001 per share ("Common Stock"), of Netlist, Inc. (the "Company") that may be offered and sold under the Netlist, Inc. 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 by such smaller number of shares as may be determined by the Company's board of directors).

The contents of the Company's previously filed Registration Statement on Form S-8 (Registration No. 333-139435) filed with the Securities and Exchange Commission (the "Commission") on December 18, 2006 relating to the Plan, is hereby incorporated by reference herein to the extent not otherwise amended or superseded by the contents hereof.

### Part II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

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

The following documents filed with the Commission, are incorporated herein by reference as of their respective dates of filing, except for the portions thereof that are "furnished" rather than filed with the Commission (File No. 1-33170):

- the Company's Annual Report on Form 10-K for the fiscal year ended January 3, 2009;
- the Company's Quarterly Reports on Form 10-Q for the periods ended April 4, 2009 and July 4, 2009;
- the Company's Current Reports on Form 8-K filed on January 30, 2009 and June 4, 2009 and portions of the Company's Current Report on Form 8-K filed on May 28, 2009; and
- the description of the Company's Common Stock contained in the Company'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 Company pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), prior to the filing of a post-effective amendment which indicates that all Common Stock offered hereunder has been sold or which deregisters all Common Stock then remaining unsold hereunder, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of the filing of such documents, except for the documents, or portions thereof, that are "furnished" rather than filed with the Commission.

Any statement contained herein or in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or suspended for purposes of this Registration Statement to the extent that a statement contained in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement.

**Item 8. Exhibits.**

- 4.1 Restated Certificate of Incorporation (Incorporated by reference to the Company's registration statement on Form S-1 (No. 333-136735) filed with the Securities and Exchange Commission on October 23, 2006).
- 4.2 Amended and Restated Bylaws (Incorporated by reference to the Company's registration statement on Form S-1 (No. 333-136735) filed with the Securities and Exchange Commission on October 23, 2006).
- 5.1 Opinion of Bryan Cave LLP.
- 10.1 Netlist, Inc. 2006 Equity Incentive Plan (Incorporated by reference to the Company's registration statement on Form S-1 (No. 333-136735) filed with the Securities and Exchange Commission on October 23, 2006).
- 23.1 Consent of KMJ Corbin & Company LLP.
- 23.2 Consent of Bryan Cave LLP (Included in Exhibit 5.1).
- 24.1 Power of Attorney (Contained 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 8<sup>th</sup> day of September, 2009.

NETLIST, INC.

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

## POWER OF ATTORNEY

We, the undersigned officers and directors of Netlist, Inc., hereby severally constitute and appoint Chun K. Hong and Gail Itow and each of them singly, our true and lawful attorneys-in-fact and agents with full power and authority to sign any and all amendments (including post-effective amendments) and supplements to this Registration Statement, and any additional registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933, as amended, for the same offering contemplated by this Registration Statement, and to file the same, with exhibits and any and all other documents and instruments filed with respect thereto, with the Securities and Exchange Commission (or any other governmental or regulatory authority), granting unto said attorneys-in-fact and agents, and each of them, full power and authority in the name and on behalf of each of the undersigned to do and to perform each and every act and thing requisite and necessary or advisable to be done in order to effectuate the same as fully as to all intents and purposes as he might or could do if personally present, hereby ratifying and confirming all that said attorneys-in-fact and agents, and/or any of them or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following Pursuant to the requirements of the Securities Act of 1933, 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)	September 8, 2009
<u>/s/ Gail Itow</u> Gail Itow	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	September 8, 2009
<u>/s/ Nam Ki Hong</u> Nam Ki Hong	Director	September 8, 2009
<u>/s/ Thomas F. Lagatta</u> Thomas F. Lagatta	Director	September 8, 2009
<u>/s/ Alan H. Portnoy</u> Alan H. Portnoy	Director	September 8, 2009

## INDEX TO EXHIBITS

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**Bryan Cave LLP**

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**Bryan Cave Strategies**

*A GOVERNMENT RELATIONS AND  
POLITICAL AFFAIRS SUBSIDIARY*

www.bryancavestrategies.com  
Washington, DC  
St. Louis

September 10, 2009

Netlist, Inc.  
51 Discovery, Suite 150  
Irvine, California 92618

**Re: Registration Statement on Form S-8**

Ladies and Gentlemen:

We have acted as special counsel to Netlist, Inc., a Delaware corporation (the “Company”), in connection with the registration under the Securities Act of 1933, as amended (the “Act”), of 500,000 shares of the Company’s common stock, par value \$.001 per share (the “Shares”), issuable from time to time to participants (“Plan Participants”) under the Company’s 2006 Equity Incentive Plan (the “Plan”), by means of a registration statement on Form S-8 (the “Registration Statement”).

In connection herewith, we have examined:

- (1) the Plan; and
- (2) the Registration Statement.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of the Restated Certificate of Incorporation and the Amended and Restated Bylaws of the Company, each as currently in effect, and such other corporate records, agreements and instruments of the Company, certificates of public officials and officers of the Company, and such other documents, records and instruments, and we have made such legal and factual inquiries, as we have deemed necessary or appropriate as a basis for us to render the opinions hereinafter expressed. In our examination of the foregoing, we have assumed the genuineness of all signatures, the legal competence and capacity of natural persons, the authenticity of all documents submitted to us as originals and the conformity with authentic original documents of all documents submitted to us as copies. When relevant facts were not independently established, we have relied without independent investigation as to matters of fact upon statements of governmental officials and certificates and statements of appropriate representatives of the Company.

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Based upon the foregoing and in reliance thereon, and subject to the assumptions, comments, qualifications, limitations and exceptions set forth herein, we are of the opinion that the Shares have been duly authorized for issuance to the Plan Participants, and upon issuance and delivery and the receipt by the Company of all consideration therefore in accordance with the terms of the Plan and any applicable award thereunder, will be validly issued, fully paid and non-assessable.

This opinion is limited to the applicable General Corporation Law of the State of Delaware. The opinion set forth herein is made as of the date hereof and is subject to, and may be limited by, future changes in the factual matters set forth herein, and we undertake no duty to advise you of the same. The opinion expressed herein is based upon the law in effect (and published or otherwise generally available) on the date hereof, and we assume no obligation to revise or supplement this opinion should such law be changed by legislative action, judicial decision or otherwise.

We do not render any opinions except as set forth above. This opinion letter is being delivered by us solely for purposes of the filing of the Registration Statement with the Securities and Exchange Commission. We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. We also consent to your filing copies of this opinion letter as an exhibit to the Registration Statement with agencies of such states as you deem necessary in the course of complying with the laws of such states regarding the offering and sale of the Shares. In giving such consent, we do not thereby concede that we are within the category of persons whose consent is required under Section 7 of the Act or the Rules and Regulations of the Securities and Exchange Commission thereunder.

Very truly yours,

/s/ Bryan Cave 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 report dated March 30, 2009, relating to the consolidated financial statements of Netlist, Inc. and subsidiaries as of January 3, 2009 and December 29, 2007 and for each of the years then ended (which report 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* ), which report is included in Netlist, Inc.'s Annual Report on Form 10-K for the year ended January 3, 2009.

*KMJ Corbin & Company LLP*

KMJ Corbin & Company LLP

Costa Mesa, California  
September 10, 2009

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