



NETLIST

Netlist Legal Proceedings Against SK hynix

Q&A

September 1, 2016

Additional details on Netlist's legal proceedings against Hynix can be found in the press release issued on September 1, 2016.

Safe Harbor Statement:

This news release contains forward-looking statements regarding future events and the future performance of Netlist. Words such as “anticipate,” “estimate,” “expect,” “project,” “intend,” “may,” “plan,” “predict,” “believe,” “should” and similar words or expressions are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. These forward-looking statements include any statements, other than statements of historical facts, included or incorporated in this news release regarding our plans relating to our intellectual property and patent strategy, including strategy for monetizing, expanding and defending our patent portfolio, our strategy, future operations, future revenues, projected costs, prospects, plans and objectives of management. All forward-looking statements reflect the present expectation of future events of our management and are subject to known and unknown risks, uncertainties and assumptions that could cause actual results to differ materially and adversely from those expressed in any forward-looking statement. These risks and uncertainties include, among others, changes in and uncertainty of customer acceptance of, and demand for, our existing products and technologies and our products and technologies under development; risks associated with the concentration of product sales among a limited number of customers; the success of product, joint development and licensing partnerships; continuing development, qualification and volume production of HybriDIMM™, EXPRESSvault™, NVvault™, HyperCloud® and VLP Planar-X RDIMM; the timing and magnitude of any continued decrease in our sales; our ability to leverage our NVvault™ and EXPRESSvault™ technology into a more diverse customer base; our need to raise additional capital and our ability to obtain financing when necessary; the rapidly-changing nature of technology in our industry; 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 and reviewed by the U.S. Patent and Trademark Office (“USPTO”) and Patent Trial and Appeal Board; volatility in the pricing of components of our products; 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 our and our customers' product releases and development; introductions of new products by competitors; changes in end-user demand for technology solutions; our ability to attract and retain skilled personnel; our reliance on suppliers of critical components and vendors in the supply chain; fluctuations in the market price of critical components; evolving industry standards; the political and regulatory environment in the People's Republic of China; and general economic and market conditions. Other risks

and uncertainties are described in greater detail under the heading “Risk Factors” in our annual report on Form 10-K and in our most recent quarterly report on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the U.S. Securities and Exchange Commission we make from time to time. These forward-looking statements represent our estimates and assumptions only as of the date made. Except as required by law, we undertake no obligation to publicly update or revise any forward-looking statements for any reason.

Background:

1. Why did you file these legal proceedings against Hynix?

During the past 15 years, we've built significant expertise in creating leading edge memory solutions to address the industry's need to manage and analyze the enormous amount of data being created today. This is reflected in the products we've brought to market and our valuable patent portfolio that covers the fundamental technology at the core of the industry's movement to high performance server memory, hybrid memory and storage-class memory solutions.

We believe a strong patent system is crucial for fostering innovation in small, creative companies like Netlist. We have a long history of protecting our intellectual property and haven't shied away from enforcing our patents when necessary, even against much larger adversaries.

We believe there is today widespread infringement of our intellectual property across various segments of the industry. In those market segments where we choose to license our patents, our preference is to negotiate arrangements that fairly reflect the value of our intellectual property without having to go to court. However, we understand that negotiations don't always lead to an acceptable outcome and litigation might become necessary to protect our intellectual property and ensure that its value is properly recognized for the company and its shareholders.

We took this approach with Hynix, where we have been in discussions since last year to license our intellectual property. During these discussions we provided Hynix with strong evidence that their RDIMM and LRDIMM products among others are using our patented technologies and made a licensing proposal with reasonable terms and conditions that are free of any unfair discrimination. Unfortunately, we have made no meaningful progress towards resolution despite our best efforts including months of substantive exchanges and negotiation. While we are prepared and willing to continue discussions with Hynix, we do not believe further negotiations alone will lead to a resolution and cannot allow Hynix to continue using our intellectual property without compensation. We have therefore taken the actions announced today.

In partnership with DLA Piper, our legal counsel in these proceedings, we have made extensive preparations and believe we have a strong legal position. We are at the beginning of these proceedings and will provide updates as the process moves forward and as we are able to do so.

2. What is the International Trade Commission ("ITC") and how is it different than the District Court?

The United States International Trade Commission is an independent, quasi-judicial Federal agency with broad investigative responsibilities on matters of trade. The Commission handles a variety of matters including adjudicating cases involving products imported into the United States that infringe intellectual property rights, referred to as Section 337 investigations. The primary remedy available in Section 337 investigations is an exclusion order that directs U.S. Customs and Border Protection to stop infringing products from entering the United States. ITC investigations are frequently combined with a district court case seeking monetary relief.

In district court patent cases, the court must apply a traditional four-factor test to determine whether injunctive relief for patent infringement is appropriate. In contrast, the ITC does not apply this test to issue exclusion or cease and desist orders.

Section 337 investigations proceed at a rapid pace. Unlike district court cases that can drag on for years, a trial-like evidentiary hearing in the ITC is commonly held within a year after filing. This schedule is mandated by law to be prompt.

Another difference is Section 337 investigations are tried before an Administrative Law Judge (“ALJ”) rather than a jury.

3. *Does this signal a change in your core strategy with respect to your products business?*

No. We’re proud of Netlist’s long history of bringing innovative products and technologies to market. Since inception, the company has shipped more than \$700M of high performance memory products, over 75% of which was sold to global OEMs such as Dell, HP, IBM, Apple and Lenovo. We currently offer a wide range of non-volatile memory, embedded flash, and specialty DIMM products including our NVvault® DDR4 NVDIMM-N and ExpressVault® PCIe products. We also recently announced our new Storage Class Memory product, HybriDIMM™.

4. *Does this signal a change in your intellectual property monetization strategy and approach?*

No. As we’ve discussed publicly for the last several years, we continue to pursue opportunities for licensing in certain markets where the unauthorized use of our valuable intellectual property is widespread. Our preference is to negotiate arrangements that fairly reflect the value of our IP without having to go to court. Unfortunately, once it became clear that negotiations with Hynix were unlikely to lead to an acceptable resolution, we were faced with either allowing the infringement to continue indefinitely, or taking additional steps to defend our IP. We believe we had no choice but to take action.

5. *Do you expect to file additional proceedings in the ITC against other companies?*

We are focused on the proceedings announced today against Hynix, and cannot comment on any future litigation strategies. As we have previously stated, in those market segments where we choose to license our patents, our preference is to negotiate arrangements that fairly reflect the value of our IP without having to go to court.

6. *Does this action against Hynix have any impact in any other legal proceedings you currently have ongoing?*

The actions announced today against Hynix are independent of any other legal proceedings we are currently involved in.

7. *What impact will these legal proceedings have on your current and potential customers?*

These proceedings have been brought against Hynix only. We have strong relationships with our customers and it is business as usual for these relationships.

The Proceedings:

8. *Where did Netlist file the proceedings? What patents did Netlist assert?*

We filed two lawsuits today against Hynix, alleging infringement of a total of six patents:

- An investigation in the U.S. International Trade Commission in Washington, D.C. alleging infringement of six patents: United States Patent Nos. 8,756,364, 8,516,185, 8,001,434, 8,359,501, 8,689,064, and 8,489,837.
- A case in the U.S. District Court for the Central District of California, alleging infringement of the same patents asserted in the ITC.

In preparing to bring these actions, we developed strong evidence of infringement through extensive analysis including testing Hynix products in our labs as shown in the representative claim charts attached as exhibits to our ITC complaint.

Documents filed in the ITC are available online using the Electronic Document Information System (EDIS) at <https://edis.usitc.gov/edis3-external/app>.

9. *Who did you file the proceedings against?*

We filed against SK hynix Inc. and its wholly owned subsidiaries SK hynix America Inc. and SK hynix memory solutions Inc. (referred to collectively as “Hynix”).

10. *Why did you select these patents?*

Netlist has a valuable patent portfolio that reflects years of investment in research and development and our long track record of bringing disruptive new products to market. Netlist’s battle-tested patents have achieved a notable track record of success in post-grant validity challenges before the USPTO and federal courts, including patents that have survived Inter Partes Review (“IPR”) as well as Inter Partes Reexamination.

The six patents that were asserted cover key features of RDIMM and LRDIMM. We believe the evidence of infringement is strong, as shown in the representative claim charts attached as exhibits to our ITC complaint. We are also confident in the validity of these patents. In fact, three of the asserted patents survived multiple IPRs brought by SanDisk and Smart Modular.

11. *What remedies are you seeking?*

In the ITC, we are seeking an exclusion order that would prohibit the importation of infringing Hynix RDIMM and LRDIMM products into the U.S. We are also seeking a cease and desist order prohibiting Hynix from importing, selling, offering for sale, advertising, promoting, servicing and other activities related to the infringing products.

The cease and desist order will, among other things, prohibit the sale of infringing Hynix products that have already been imported.

In the U.S. District Court for the Central District of California, we are principally seeking damages.

12. Are the accused products important to Hynix?

We believe RDIMM and LRDIMM are important product lines for Hynix that together represent a significant portion of its sales in enterprise memory. Hynix is a major player in the worldwide server memory market which had a TAM of nearly \$8B in 2015 according to De Dios and Associates.

13. Why did you file in both the ITC and District Court?

The remedies available in these jurisdictions are different and complementary. In the ITC, we are primarily seeking an exclusion order that would prohibit the importation of infringing Hynix products. However, the ITC does not have the ability to award damages. We therefore also filed suit in the U.S. District Court for the Central District of California, where damages are available for infringement. We expect that the district court action will be stayed until the conclusion of the ITC proceedings.

14. What are the expected next steps in these proceedings?

The ITC has 30 days to decide if it will initiate an investigation on the basis of our complaint. If an investigation is instituted, Hynix will then respond to the complaint and a schedule will be set soon after by the ALJ assigned to the investigation.

We expect to provide updates when the ITC and courts establish their respective schedules and as the proceedings move forward.

15. How long will the ITC proceedings take to reach a conclusion?

A trial-like evidentiary hearing in the ITC is commonly held within a year after filing, with an Initial Determination from the ALJ issued a few months later. A Final Determination commonly issues within 17 months after filing.

16. How much will it cost to bring these legal actions against Hynix and how will you fund it?

Patent litigation is very expensive, though the total cost of enforcement can vary widely. A variety of events can impact total costs such as decisions made by the courts and particular strategies employed by the defendants. We have reached an arrangement with our legal counsel, DLA Piper, that will significantly reduce our out-of-pocket costs. DLA Piper is one of the largest law firms in the world and its team of attorneys has extensive experience in the ITC and district court.