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14
15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17 SOUTHERN DIVISION

18 NETLIST INC., a Delaware
corporation,

19 Plaintiff,

20 v.

21 SAMSUNG ELECTRONICS CO.,
LTD., a Korean corporation,

22 Defendant.
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25
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27
28

Case No. 8:20-cv-00993-MCS (ADS)

**NETLIST INC.'S NOTICE OF EX
PARTE APPLICATION TO RESET
FINAL PRE-TRIAL CONFERENCE
DUE TO CONFLICT WITH
PREVIOUSLY SET TRIAL;
MEMORANDUM OF POINTS AND
AUTHORITIES**

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NOTICE OF EX PARTE APPLICATION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD: PLEASE TAKE NOTICE that, as soon as this matter may be heard, in Courtroom 7C of the United States District Court for the Central District of California, located at 350 W. 1st Street, Los Angeles, CA 90012, Plaintiff Netlist Inc. (“Netlist”) will and hereby does move to reset the Final Pre-Trial Conference (“FPTC”) scheduled for April 15, 2024 at 2 p.m. (when Netlist’s lead counsel and one of the two other primary trial counsel will be in a previously-set trial in Texas) to May 6, 2024.

This Motion is based on this Notice; the concurrently filed Memorandum of Points and Authorities; the Declaration of Jason Sheasby; the concurrently lodged Proposed Order; such matters of which this Court may take judicial notice; the other records, pleadings, and papers filed in this action; and any other documentary evidence or arguments that may be presented to this Court at hearing.

This motion is made following the conference of counsel pursuant to L.R. 7-3 and L.R. 7-19, which took place on March 26, 2024, during which counsel for Netlist orally informed counsel for Defendant Samsung Electronics Co. Ltd. that Netlist would be filing an ex parte application to reset the FPTC for May 6, 2024. Counsel for Samsung informed Netlist that Samsung opposes Netlist’s requested date of May 6, 2024. Pursuant to L.R. 7-19, the name, address, telephone number and e-mail address of counsel for Samsung are included below:

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21 Dated: March 26, 2024

Respectfully submitted,

IRELL & MANELLA LLP

Jason Sheasby
A. Matthew Ashley
Lisa S. Glasser
Michael Harbour

By: /s/ Jason Sheasby
Jason Sheasby

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Pursuant to Local Rule 7-19, Netlist respectfully requests that the Court reset
3 the Final Pretrial Conference (“FPTC”) currently scheduled for April 15, 2024 to May
4 6, 2024. Netlist’s lead counsel in this matter and another member of its trial team
5 will be in trial on April 15, 2024 in the Eastern District of Texas in the matter of *G+*
6 *Communications, LLC v. Samsung Electronics Co. LTD*, Case No. 2:22-cv-00078-
7 JRG. Sheasby Decl. ¶ 2. The same counsel have another trial in the Eastern District
8 of Texas set for trial on April 29, 2024: *Netlist, Inc. v. Micron Technology, Inc.* Case
9 No. 2:22-cv-00294-JRG. *Id.* The same attorney is lead counsel in both of these trials,
10 as well as the trial before this Court, and will be in Texas for trial preparation and trial
11 from April 4 through the April 29, 2024 trial. *Id.* ¶ 3.

12 This Court’s Standing Order states that moving a hearing date requires “good
13 cause.” Standing Order for Civil Cases § 4. Good cause exists here. On March 12,
14 2024, Samsung requested a continuance of the originally scheduled March 26, 2024
15 trial date. Dkt. 470. In a joint statement filed concurrently with that request, Netlist
16 informed the Court that the two members of its three-person trial team who were most
17 knowledgeable about the JDLA—Jason Sheasby and Lisa Glasser—had trials
18 scheduled for April 15, 2024 and April 29, 2024 before Judge Gilstrap in the Eastern
19 District of Texas. *Id.* at 4:18-5:8. On March 22, 2024, this Court issued an order
20 continuing the Final Pre-Trial Conference to April 15, 2024 and the trial to May 14,
21 2024. Dkt. 479. Given that Netlist’s lead counsel will be in Texas preparing back-to-
22 back trials starting on April 4 through the April 29 trial, the next available date that
23 lead counsel can attend the FPTC is May 6, 2024. Netlist will be substantially
24 prejudiced if its chosen counsel is unable to attend the FPTC due to a pre-existing
25 conflict.

26 In contrast, Samsung will suffer no prejudice if the FPTC is reset for May 6,
27 2024. Netlist reached out to Samsung on March 22, 2024—the day the Court’s order
28 setting the FPTC date was issued. Sheasby Decl. ¶ 4. Samsung did not substantively

1 respond until March 25, 2024, when it declined to agree. On March 26, 2024 the
2 parties orally met and conferred. *Id.* Samsung acknowledged that it has no conflict on
3 May 6, 2024. Samsung’s only basis for opposing Netlist’s request is that May 6, 2024
4 is just over one week before the beginning of trial. *Id.* ¶ 5.

5 Samsung’s concern is unfounded and directly contradicted by its prior
6 representation to this Court that the FPTC should take place one week before trial.
7 The original FPTC date (March 18, 2024) was set with exactly this spacing before the
8 original trial date (March 26, 2024) *at the request of Samsung’s own counsel.* Dkt.
9 391 (MSJ Hearing Tr.) at 12: 2-4 (“The only request that I would make, Your Honor,
10 is if we could do the final pretrial conference just the week before because of
11 scheduling issues, that would be appreciated.”). This spacing of the trial and FPTC
12 dates requested by Samsung to accommodate its own counsel’s schedule, and adopted
13 by the Court, is equally appropriate now. Samsung claims that the case has somehow
14 become more complicated, but the case is largely unchanged since the original setting.
15 Moreover, Samsung has a large legal team (at least seven attorneys attended the last
16 hearing, including four partners at counsel table) that should have no difficulty
17 preparing for a 3-4 day trial starting more than a week after May 6.

18 Samsung asked Netlist to include in this submission a statement that Samsung
19 “does not oppose accommodating Netlist’s April 15 trial conflict.” Sheasby Decl., Ex.
20 A at 1. Samsung’s requested statement is not accurate. Samsung stated during meet-
21 and-confer that its “accommodation” is to set the FPTC on April 8 or 22—dates on
22 which Samsung is aware that Netlist’s key trial team members will be in Texas. *Id.* at
23 2-3. Samsung stated that Netlist should be able to appear because, at the status
24 conference, while Netlist stated that while it could not start trial on April 9 due to the
25 Texas trials, it also asked if the Court had availability a few days earlier. Dkt. 476 at
26 23:9-12. Samsung stated that it could not be prepared for an early April trial setting.
27 Netlist’s counsel is now scheduled to be in Texas continuously from April 8 through
28 the April 29 trial for the intensive trial preparation associated with the two back-to-

1 back April trials. Samsung’s refusal to agree to re-set the FPTC to May 6 has the
2 effect (regardless of intent) of using scheduling of a hearing as a bludgeon. There is
3 no basis to prejudice Netlist in this matter, or harm preparation for the other two trials,
4 particularly given that the spacing of the FPTC and trial date Netlist is proposing is
5 *exactly* the spacing that Samsung requested, and the Court adopted, for the March 26
6 trial date.

7 Netlist thus respectfully requests that the Application be granted.

8
9 Dated: March 26, 2024

Respectfully submitted,

10 IRELL & MANELLA LLP
11 Jason Sheasby
12 A. Matthew Ashley
13 Lisa S. Glassser
14 Michael Harbour

15
16 By: /s/ Jason Sheasby

17 Jason Sheasby

18 **PROOF OF SERVICE**

19 I, Jason Sheasby, am employed in the County of Los Angeles, State of
20 California, I am over the age of 18 and not a party within this action. My business
21 address is 1800 Avenue of the Stars, Suite 900, Los Angeles, California 90067-4276.
22 On March 26, 2024, I served the foregoing document on Defendant’s counsel of
23 record as listed below.

24 /s/ Jason Sheasby

25 Jason Sheasby

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