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## Netlist wins computer chip sales ban

*Judge grants motion for preliminary injunction against Diablo Technologies*

By Kevin Lee

An Irvine-based memory channel chip manufacturer secured a rare sales ban on controller chips produced by Canada-based Diablo Technologies Inc. and used in memory modules offered by Milpitas-based SanDisk Corp.

The preliminary injunction for Netlist Inc. against Diablo and SanDisk was confirmed Monday after U.S. District Judge Yvonne Gonzalez Rogers in Oakland rejected a motion for reconsideration in the ongoing breach of contract and trade secrets misappropriation case. *Netlist Inc. v. Diablo Technologies Inc.*, 13-5962 (N.D. Cal., filed Dec. 26, 2013).

The injunction order prohibits the sales and distribution of Diablo chips, which are used in SanDisk's ULLtraDIMM solid state drive (SSD) product line.

Prior to litigation, Netlist and Diablo agreed in 2008 to collaborate and trade confidential information to develop digital memory products.

Netlist now claims Diablo breached those supply and non-disclosure contracts when it allegedly used Netlist designs to develop its own memory channel chips.

"As the Court reads the Supply Agreement, based on the evidence in the record, Diablo had no other right to use Netlist's Technology or to use or make the Netlist Chipset for itself or anyone other than Netlist," Gonzalez Rogers wrote in her injunction order.

"Thus, the evidence strongly indicates that Diablo breached the parties' agreements, and that these breaches allowed Diablo to bypass many months in normal development time to get its own product to market," Gonzalez Rogers continued later in the order.

Jury selection for the case is slated to begin in March. SanDisk, a Diablo customer, is not named as a party in the underlying lawsuit.

Benjamin K. Riley, Netlist's lead counsel and a San Francisco-based partner at Bartko, Zankel, Bunzel & Miller, said his team was pleased with the result.

"We proved that Diablo obtained an unfair advantage over Netlist by improperly using the memory channel technology it learned from Netlist under the parties' contract," Riley said. "The injunction will help eliminate the unfair head start in the market obtained by Diablo, allowing Netlist to develop and sell its own cutting-edge memory products."

Fabio E. Marino, Diablo's lead counsel and a Menlo Park-based partner at McDermott Will & Emery, did not return requests for comment.

Netlist is also pursuing patent infringement claims against SanDisk. The breach of contract and trade secrets misappropriation case against Diablo and the patent case against SanDisk are both before Gonzalez Rogers and have been joined for discovery

### Government

#### Who should replace AG Harris?

Attorney General Kamala Harris' announcement Tuesday that she would seek the U.S. Senate seat being vacated by Barbara Boxer has set off a flurry of speculation over whom might run to be California's next attorney general.

### Administrative/Regulatory

#### Plaintiffs' bar hopes for sympathetic ear on MICRA from new justices

With Mariano-Florentino Cuellar, Leandra Kruger and Goodwin Liu on the bench, the court is much younger and is perceived to be more liberal than any time since the Rose Bird court 30 years ago.

### Intellectual Property

#### Laches in patent disputes in doubt

The U.S. Court of Appeals for the Federal Circuit will decide whether laches will remain a defense to patent infringement, and, if so, to evaluate which remedies it would preclude. By **Craig Countryman**

### Mergers & Acquisitions

#### Dealmakers

A roundup of recent transactions across the state and the lawyers involved.

### California Courts of Appeal

#### Lockheed workers lose certification bid

In a unanimous decision, a state Court of Appeal did not revive a class action lawsuit that accused Girardi Keese of inflating fees and misappropriating funds from former clients in a \$131 million toxic tort employment suit.

### Litigation

#### Netlist wins computer chip sales ban

An Irvine-based cloud computing chip manufacturer secured a rare sales ban on memory controller chipset produced by Canada-based Diablo Technologies Inc. and used in memory drives offered by Milpitas-based SanDisk Corp.

### Judges and Judiciary

#### Cartoonists' killings raises old issue of where satire crosses the line for ex-judge

News of the Charlie Hebdo slayings struck a raw nerve for retired Santa Clara County Superior Court Judge LaDoris H. Cordell, who was privately reprimanded for her own political cartoons in 1999.

purposes. *Netlist Inc v. Smart Modular Technologies Inc.*, 13-5889 (N.D. Cal., filed Dec. 19, 2013).

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#### Obituaries

##### **Technology company general counsel, known for expertise and generosity, dies**

Jeffrey D. Adelman, 48, died Saturday after more than 14 years with j2 Global Inc., the Los Angeles-based technology company announced Tuesday.

#### Environmental

##### **How to make CEQA mitigation meaningful**

CEQA, as currently written, overpromises and underdelivers when it comes to significant impact mitigation. By **Philip J. Hess**

#### Native Americans

##### **'Rent-a-tribe' arrangements under fire**

Tribal sovereign immunity has confounded and frustrated many a lawyer and jurist. It has gotten so bad that in one case, four justices of the U.S. Supreme Court appeared ready to toss the doctrine altogether. By **Jeremy Robinson**

#### Criminal

##### **Is it winter in Paris for free speech?**

Although we causally use words like "cause" and "provoke" in everyday conversation, their precise criminal law meanings can offer much-needed guidance as the West responds to terror. By **Mitchell Keiter**

#### Judges and Judiciary

##### **Conservative stalwart reflects on his tenure**

In an interview Tuesday, newly retired state Supreme Court Justice Marvin R. Baxter was sanguine about the possibility that recent turnover on the court will usher in a progressive era - and the rollback of some of his rulings.