

NETLIST INC  
Form 10-Q/A  
August 24, 2011

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q/A**

Amendment No. 2

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended October 2, 2010

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from            to

Commission file number 001-33170

## 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)

**(949) 435-0025**

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (section 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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 definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check One):

Large accelerated filer

Accelerated filer

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

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes  No

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The number of shares outstanding of each of the registrant's classes of common stock as of the latest practicable date:

Common Stock, par value \$0.001 per share

25,305,603 shares outstanding at November 1, 2010

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**EXPLANATORY NOTE**

The registrant has prepared this Amendment No. 2 to its Quarterly Report on Form 10-Q for the quarterly period ended October 1, 2010 (the Form 10-Q ) for the purpose of re-filing Exhibit 10.2 to the Form 10-Q. No other changes have been made to the Form 10-Q. This Amendment No. 2 to the Form 10-Q speaks as of the original filing date and has not been updated to reflect events occurring after the original filing date.

**PART II. OTHER INFORMATION**

**Item 6. Exhibits**

| <b>Number</b> | <b>Description of Document</b>  |
|---------------|---|
| 3.1(1)        | Restated Certificate of Incorporation of Netlist, Inc.  |
| 3.2(1)        | Amended and Restated Bylaws of Netlist, Inc.  |
| 10.1(2)       | Amendment to Loan Documents entered into as of September 30, 2010, by and between Silicon Valley Bank and Netlist, Inc.   |
| 10.2(3)*      | ASIC Design and Production Agreement between Open Silicon, Inc. and Netlist, Inc.   |
| 10.3(4)*      | Design and Production Agreement relating to Register ASIC (the Production Register Agreement ), dated July 31, 2008, by and between Netlist, Inc. and Toshiba America Electronic Components, Inc. ( Toshiba ).                    |
| 10.4(4)*      | Amendment #1 to the Production Register Agreement, dated May 22, 2009, by and between Netlist, Inc. and Toshiba.  |
| 10.5(4)*      | Amendment #1 to the Production Register Agreement, dated January 28, 2010, by and between Netlist, Inc. and Toshiba.  |
| 10.6(4)*      | Amendment #2 to the Production Register Agreement, dated March 10, 2010, by and between Netlist, Inc. and Toshiba.  |
| 10.7(4)*      | Design and Production Agreement relating to ID ASIC (the Production ID Agreement ), dated July 31, 2008, by and between Netlist, Inc. and Toshiba.  |
| 10.8(4)*      | Amendment #1 to the Production ID Agreement, dated January 28, 2010, by and between Netlist, Inc. and Toshiba.  |
| 10.9(4)*      | Amendment #2 to the Production ID Agreement, dated March 10, 2010, by and between Netlist, Inc. and Toshiba.  |
| 10.10(4)*     | Development and Supply Agreement, dated as of September 10, 2008, by and between Netlist, Inc. and Diablo Technologies, Inc. ( Diablo ).  |
| 10.11(4)*     | Settlement Agreement and Amendment to Development and Supply Agreement, dated January 12, 2010, between Netlist, Inc. and Diablo.   |
| 31.1(3)       | Certification of Chief Executive Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as Amended.  |
| 31.2(3)       | Certification of Chief Financial Officer pursuant to Rule 13a-14(a) and Rule 15d-14(a) of the Securities Exchange Act, as Amended.  |
| 32(2)         | Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and furnished herewith pursuant to SEC Release No. 33-8238. |

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- (1) Incorporated by reference to the corresponding exhibit number of the registration statement on Form S-1 of the registrant (No. 333-136735) filed with the Securities and Exchange Commission on October 23, 2006.
- (2) Incorporated by reference to the corresponding exhibit number of the quarterly report on Form 10-Q of the registrant filed with the Securities and Exchange Commission on November 16, 2010.
- (3) Filed herewith.

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- (4) Incorporated by reference to the corresponding exhibit number of the quarterly report on Form 10-Q/A of the registrant filed with the Securities and Exchange Commission on April 1, 2011.

\* Confidential treatment has been requested with respect to portions of this exhibit pursuant to Rule 24b-2 of the Securities Exchange Act of 1934 and these confidential portions have been redacted from the filing made herewith. A complete copy of this exhibit, including the redacted terms, has been separately filed with the Securities and Exchange Commission.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: August 24, 2011

NETLIST, INC.  
a Delaware corporation  
(Registrant)

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

By: */s/ Gail M. Sasaki*  
**Gail M. Sasaki**  
**Vice President and Chief Financial**  
**Officer**  
**(Principal Financial Officer)**

**EXHIBIT INDEX**

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