

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of

CERTAIN DYNAMIC RANDOM ACCESS
MEMORY DEVICES, AND PRODUCTS
CONTAINING SAME

Investigation No. 337-TA-_____

COMPLAINT OF NANYA TECHNOLOGY CORPORATION UNDER SECTION 337
OF THE TARIFF ACT OF 1930, AS AMENDED

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| App. D | Certified copy of the prosecution history of U.S. Patent No. 6,664,634 and three copies thereof |
| App. E | Four copies of each technical reference identified in the prosecution history of U.S. Patent No. 5,677,566 |
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I. INTRODUCTION

1. Complainant Nanya Technology Corporation (“Nanya”) respectfully requests that the United States International Trade Commission (the “ITC” or the “Commission”) institute an investigation into violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by Elpida Memory, Inc. (“Elpida”), Elpida Memory (USA) Inc. (“Elpida USA”), and Kingston Technology Co., Inc. (“Kingston”) (collectively, “Proposed Respondents”) based on the unlawful and unauthorized importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of certain dynamic random access memory (“DRAM”) devices and products containing same that infringe at least one of the following claims of the following patents: at least independent claims 5, 6, 14, and 16, and dependent claims 7, 8, 9, 10, and 13 of United States Patent No. 5,677,566 (“the ’566 patent”); at least independent claims 1 and 9, and dependent claims 2-7 and 10-14 of United States Patent No. 6,399,983 (“the ’983 patent”); at least independent claims 1 and 4, and dependent claims 2 and 7 of United States Patent No. 6,586,796 (“the ’796 patent”); and at least independent claims 1, 4, 5, 9, 13, and 15, and dependent claims 2 and 6 of United States Patent No. 6,664,634 (“the ’634 patent”).¹ Nanya holds all right, title and interest in the ’566 patent, the ’983 patent, the ’796 patent, and the ’634 patent.

2. The products at issue here are certain DRAM devices and products containing same. In particular, and as explained in more detail below, the products at issue in this proceeding are DDR3 DRAM devices.²

¹ The ’566 patent, the ’983 patent, the ’796 patent, and the ’634 patent are collectively referred to as the “Asserted Patents.” The claims of the patents that are identified as infringed are collectively referred to as the “Asserted Claims.”

² The accused DDR3 devices and products containing same are collectively referred to herein as “Accused Products.”

3. The following chart identifies Kingston memory modules that contain infringing Elpida DDR3 DRAM devices recently purchased in the United States.

Exemplary Accused Products

| Kingston Part No. | Elpida Part No. |
|--------------------------|------------------------|
| KTAMB1066K2/8G | EDJ2108BCSE-DJ-F |
| KVR1333D3S0K2/8GR | EDJ2108BCSE-DJ-F |
| KTAMB1066K2/4G | EDJ1108BFBG-DJ-F |
| KTAMB1066K2/4GR | EDJ1108BFBG-DJ-F |
| KTAMB1066/2GR | EDJ1108BFBG-DJ-F |
| KHX1600C9D3B1K2/4GX | EDJ1108BFSE-DJ-F |
| KTAMB1066/4G | EDJ2108BCSE-DJ-F |

4. Each exemplary Accused Product identified above infringes all of the Asserted Claims of the Asserted Patents. Charts applying independent Asserted Claims of each patent to an exemplary Accused Product may be found attached as Exhibits 9 through 12.

5. The identification of a specific claim or product is not intended to limit the scope of this investigation or the scope of the remedy sought against Proposed Respondents. While Nanya was able to verify that the Asserted Claims are infringed by the exemplary Accused Products, it is not possible and/or practical to confirm at this time all of Proposed Respondents' products that practice any claim of the Asserted Patents, in part because such proof would require information that is not currently available to Nanya, as such proof is not publicly available (*e.g.*, source code, schematics, or circuit designs). If information establishing additional acts of infringement (either additional claims and/or products) becomes available to Nanya, through discovery in this case or otherwise, Nanya intends to seek permission to include such claims in the investigation, as appropriate.

6. An industry as required by 19 U.S.C. § 1337(a)(2) and (3)(A)-(C) exists in the United States relating to the technology protected by the Asserted Claims of the Asserted

Patents. As described more fully below and in Confidential Exhibit 8, the domestic industry exists based on, at least Nanya's substantial investment in, for example, exploitation of the Asserted Patents through engineering and research and development in the United States related to DRAM devices manufactured abroad.

7. The Accused Products are sold for importation into the United States, imported into the United States, and sold after importation into the United States by the Proposed Respondents, in violation of 19 U.S.C. § 1337(a)(1)(B), as the Accused Products infringe one or more claims of the valid and enforceable Asserted Patents.

8. As set forth more fully in paragraph 73, Nanya seeks as relief permanent exclusion orders barring importation into the United States of the Proposed Respondents' Accused Products, and barring the sale for importation into the United States, and sale after importation into the United States of such products. Nanya also seeks, as relief, cease and desist orders prohibiting the Proposed Respondents' sale for importation into the United States, importation, sale after importation into the United States, offers for sale, solicitation of sales, distribution, advertising, testing, technical support and other commercial activity related to the Proposed Respondents' Accused Products and products containing same that infringe the Asserted Claims of the Asserted Patents.

9. Certified copies of the Asserted Patents are attached as Exhibits 1 through 4. Certified copies of the recorded assignments demonstrating the chain of title and Nanya's ownership of the Asserted Patents are attached as Exhibits 5 through 6.³

³ Certified copies of the '566 patent and its prosecution history, and certified copies of the assignment records for the '566 and '796 patents were not available at the time of filing this complaint. Nanya will provide the certified copies of these materials when Nanya receives them from the Patent and Trademark Office.

II. COMPLAINANT NANYA TECHNOLOGY CORPORATION

10. Nanya is a corporation organized under the laws of Taiwan with its principal place of business at Hwa Ya Technology Park, 669, Fu Hsing 3rd Rd., Kueishan, Taoyuan 333, Taiwan. Nanya is a designer, developer, and manufacturer of computer memory products, including DRAM. Nanya and Nanya's United States subsidiaries conduct relevant design and development activities in the United States.

11. Nanya's business advantage lies in part in its expertise in efficiently manufacturing commodity DRAM. Nanya manufactures DRAM in its semiconductor fabrication facilities ("fabs") in Taiwan. Nanya is also engaged in a joint venture with Micron Technologies, Inc. ("Micron"), through which, among other things, Nanya and Micron cooperate on DRAM technology development and share output from fabs operated through the joint venture.

12. Through its relationship with Micron and otherwise, and as detailed more fully below and in Confidential Exhibit 8, Nanya and certain of its wholly owned subsidiaries conduct substantial engineering, research, development, and design activities related to DRAM at facilities in the United States.

13. Nanya sells its DRAM products worldwide. In the United States, Nanya products are sold by Nanya's United States subsidiary, Nanya Technology Corporation USA.

14. Nanya holds a number of United States and foreign patents related to DRAM technology. As indicated above, Nanya holds all rights, title and interest in the Asserted Patents.

III. PROPOSED RESPONDENTS ELPIDA, ELPIDA (USA), AND KINGSTON.

A. Elpida and Elpida USA

15. On information and belief, Proposed Respondent Elpida is a corporation organized under the laws of Japan with its principal place of business at Sumitomo Seimei Yaesu

Building, 3rd Floor, 2-1 Yaesu 2-chome Chuo-ku, Tokyo, Japan. On information and belief, Proposed Respondent Elpida USA is a corporation organized under the laws of Delaware, having its principal place of business at 1175 Sonora Court, Sunnyvale, California 94086. On information and belief, Elpida USA is a wholly-owned subsidiary of proposed Respondent Elpida.

16. On information and belief, Elpida is one of the world's largest DRAM manufacturers. Elpida and Elpida USA are involved in the design, development, manufacture, sale for importation into the United States, importation into the United States, and sale after importation into the United States of infringing DRAM products including, but not limited to, the Accused Products. According to information distributed by Elpida, Elpida manufactures DRAM devices in Japan and Taiwan, alone or in conjunction with others, and sells DRAM devices through subsidiaries, including subsidiaries located in the United States. Exhibit 17.

17. On information and belief, Elpida has made and sold billions of dollars worth of DRAM devices, with revenues of more than \$6 billion for FY 2010. Exhibit 17.

18. On information and belief, Elpida and Elpida USA import into the United States, sell for importation into the United States, and/or sell after importation into the United States Elpida Accused Products manufactured abroad by Elpida. On information and belief, Elpida and Elpida USA perform services to support the importation and sale of the Accused Products into and within the United States, including marketing of the Accused Products, repair of the Accused Products, technical support, and other after-sale services, such as supporting and configuring the Accused Products, as well as interfacing with U.S.-based customers and distributors to conform the Accused Products to customer requests. Paragraphs 62-64 of this Complaint describe specific instance(s) of importation into the United States and/or sales in the United States after

importation of Accused Products. The specific instance(s) described are exemplary and, on information and belief, Elpida's and Elpida USA's violations of 19 U.S.C. § 1337 include sales for importation into the United States, importation into the United States, and sales after importation into the United States of other devices and products that infringe the Asserted Patents that will be revealed through discovery. Elpida and Elpida USA are not authorized to sell products that use or contain inventions claimed in the Asserted Patents.

B. Kingston Technology

19. On information and belief, Proposed Respondent Kingston is a corporation organized under the laws of Delaware with its principal place of business at 17600 Newhope Street, Fountain Valley, California 92708. Kingston claims to be the number one memory module supplier worldwide, achieving nearly \$5 billion in DRAM sales in 2010. Kingston claims a 46% share of the worldwide market for DRAM memory modules. Exhibit 18.

20. Kingston imports into the United States, sells for importation into the United States, and/or sells after importation into the United States consumer products, such as memory modules, that contain Elpida Accused Products. On information and belief, Kingston performs services to support the importation and sale of the Accused Products into and within the United States, including marketing of the Accused Products, repair of the Accused Products, technical support, and other after-sale services, such as supporting and configuring the Accused Products, as well as interfacing with U.S.-based customers and distributors to conform the Accused Products to customer requests. Paragraphs 62-64 of this Complaint describe specific instance(s) of importation into the United States and/or sales in the United States after importation of Accused Products. The specific instance(s) described are exemplary and, on information and belief, Kingston's violations of 19 U.S.C. § 1337 include sales for importation into the United States, importation into the United States, and sales after importation into the United States of

other devices and products that infringe the Asserted Patents that likely will be revealed through discovery. Kingston is not authorized to sell products that use or contain inventions claimed in the Asserted Patents.

IV. THE TECHNOLOGY AND PRODUCTS AT ISSUE

A. The Products at Issue

21. DRAM is the main memory in personal computers, laptop computers, and certain other types of electronic devices requiring computer memory, such as home gaming consoles. DRAM is a commodity product, and much of the functionality of DRAM devices is standardized by industry organizations. The DRAM at issue in this case is known as “synchronous” DRAM. Advances in DRAM technology lead to improved DRAM performance and new generations of standardized DRAM. The DRAM generation at issue in this case is known as DDR3 DRAM.

22. DRAM is sold in the United States and elsewhere, and is imported into the United States in various forms. For example, DRAM is sold directly by manufacturers (such as Elpida) or their domestic subsidiaries (such as Elpida USA) to customers in the United States. DRAM is also sold in “module” form, for example, by other parties such as consumer goods manufacturers and sellers who purchase DRAM directly from the manufacturers and then incorporate the DRAM devices into their own products. Proposed Respondent Kingston is one such purchaser of Elpida DRAM. Kingston incorporates Elpida DRAM into Kingston modules and then sells the modules under the Kingston brand name. Consumers may purchase DRAM for purposes of upgrading the memory capacity or performance of existing computer systems. DRAM is also sold as incorporated in personal or laptop computers when such computer systems are sold in, for example, consumer electronics stores. The following table lists some of the Kingston DDR3 DRAM modules that contain Elpida DRAM that were purchased in the United States.

| Kingston Part No. | Elpida Part No. |
|--------------------------|------------------------|
| KTAMB1066K2/8G | EDJ2108BCSE-DJ-F |
| KVR1333D3S0K2/8GR | EDJ2108BCSE-DJ-F |
| KTAMB1066K2/4G | EDJ1108BFBG-DJ-F |
| KTAMB1066K2/4GR | EDJ1108BFBG-DJ-F |
| KTAMB1066/2GR | EDJ1108BFBG-DJ-F |
| KHX1600C9D3B1K2/4GX | EDJ1108BFSE-DJ-F |
| KTAMB1066/4G | EDJ2108BCSE-DJ-F |

B. The Technology at Issue

23. The technology at issue generally relates to improvements in DRAM design and performance. As set forth more fully below, the Asserted Patents claim inventions related to various aspects of DRAM structures and circuitry.⁴

24. On information and belief, the Proposed Respondents manufacture, import into the United States, sell for importation into the United States and/or sell after importation into the United States DRAM devices including the Accused Products, and products or components containing same, which use the technology described and claimed in the Asserted Patents. The infringement of the Asserted Patents by the Accused Products is described further in paragraphs 57-61 of the Complaint and Exhibits 9 through 12.

V. THE ASSERTED PATENTS

A. U.S. Patent No. 5,677,566

1. Identification and Ownership of the '566 Patent

25. United States Patent No. 5,677,566, entitled "Semiconductor Chip Package," issued on October 14, 1997 from Application No. 436,522, filed on May 8, 1995. A certified copy of the '566 patent is attached as Exhibit 1.

⁴ The text of this Complaint, including the descriptions of the technology at issue, is not intended to interpret the meaning or limit the scope of the claims in the Asserted Patents.

26. Nanya owns all right, title and interest in the '566 patent. Certified copies of the recorded assignments demonstrating the chain of title of the '566 patent are attached as Exhibit 5.

27. The '566 patent has 18 claims, including 5 independent claims and 13 dependent claims. At this time, Nanya has identified independent claims 5, 6, 14, and 16, and dependent claims 7, 8, 9, 10, and 13 as infringed, though Nanya anticipates that during the course of the investigation, discovery will show that additional claims are infringed, and those additional claims should likewise be the subject of this investigation.

28. The Asserted Claims of the '566 patent are valid, enforceable, and currently in full force. The '566 patent expires on May 8, 2015.

29. Pursuant to Commission Rule 210.12(c), this Complaint is accompanied by a certified copy of the prosecution history of the '566 patent and three copies thereof. Appendix A. Further, this Complaint is accompanied by four copies of each technical reference identified in the prosecution history of the '566 patent. Appendix E.

2. Non-Technical Description of the Invention Claimed in the '566 Patent

30. The '566 patent discloses a semiconductor chip package that includes discrete conductive leads in electrical contact with bond pads on a semiconductor chip. The disclosed package includes encapsulating material that encapsulates the semiconductor chip and the conductive leads and provides openings for solder balls in electrical contact with an external circuit board.

3. Foreign Counterparts

31. There are no known foreign patents, foreign patent applications, or foreign patent applications that have been denied, abandoned, or withdrawn that correspond to the '566 patent.

4. Licenses

32. A list of known licensed entities is attached to this Complaint as Confidential Exhibit 7.

B. U.S. Patent No. 6,399,983

1. Identification and Ownership of the '983 Patent

33. United States Patent No. 6,399,983, entitled "Reduction of Shorts Among Electrical Cells formed on a Semiconductor Substrate," issued on June 4, 2002, from Application No. 09/389,294, filed on September 2, 1999. A certified copy of the '983 patent is attached as Exhibit 2.

34. Nanya owns all right, title and interest in the '983 patent. Certified copies of the recorded assignments demonstrating the chain of title of the '983 patent are attached as Exhibit 6.

35. The '983 patent has 15 claims, including 2 independent claims and 13 dependent claims. At this time, Nanya has identified independent claims 1 and 9, and dependent claims 2-7 and 10-14 as infringed, though Nanya anticipates that during the course of this investigation, discovery will show that additional claims are infringed, and those additional claims should likewise be the subject of this investigation.

36. The Asserted Claims of the '983 patent are valid, enforceable, and currently in full force. The '983 patent expires on September 2, 2019.

37. This Complaint is accompanied by a certified copy of the prosecution history of the '983 patent and three copies thereof. Appendix B. Further, this Complaint is accompanied by four copies of each technical reference identified in the prosecution history of the '983 patent. Appendix F.

2. Non-Technical Description of the Invention Claimed in the '983 Patent

38. The '983 patent relates to a semiconductor structure that reduces shorts between adjacent capacitors. The structure includes a contoured isolation layer that creates a longer surface path between adjacent capacitors. In one embodiment, the lower portion of a cell container capacitor is tapered inward, away from an adjacent capacitor. In another embodiment, the portion of the isolation layer between adjacent capacitors extends downward to a plane encompassing the lower portions of two adjacent cell container capacitors. In both cases, a longer surface path is achieved, thus reducing the likelihood that current flows from one capacitor to the next, and similarly the likelihood of short-circuits occurring.

3. Foreign Counterparts

39. There are no known foreign patents, foreign patent applications, or foreign patent applications that have been denied, abandoned, or withdrawn that correspond to the '983 patent.

4. Licenses

40. A list of known licensed entities is attached to this Complaint as Confidential Exhibit 7.

C. U.S. Patent No. 6,586,796

1. Identification and Ownership of the '796 Patent

41. United States Patent No. 6,586,796, entitled "Capacitor with High Dielectric Constant Materials," issued on July 1, 2003, from Application No. 10/115,340, filed on April 2, 2002. A certified copy of the '796 patent is attached as Exhibit 3.

42. Nanya owns by assignment all right, title and interest in the '796 patent. Certified copies of the recorded assignments demonstrating the chain of title of the '796 patent are attached as Exhibit 5.

43. The '796 patent has 8 claims, including 4 independent claims and 4 dependent claims. At this time, Nanya has identified independent claims 1 and 4 and dependent claims 2 and 7 as infringed, though Nanya anticipates that discovery in this investigation will show that additional claims are infringed, and those additional claims should likewise be the subject of this investigation.

44. The Asserted Claims of the '796 patent are valid, enforceable, and currently in full force. The '796 patent expires on July 11, 2021.

45. This Complaint is accompanied by a certified copy of the prosecution history of the '796 patent and three copies thereof. Appendix C. Further, this Complaint is accompanied by four copies of each technical reference identified in the prosecution history of the '796 patent. Appendix G.

2. Non-Technical Description of the Invention Claimed in the '796 Patent

46. The '796 patent discloses a more stable DRAM and capacitor that has improved leakage current characteristics. The '796 patent accomplishes this through the use of non-oxide electrodes and high dielectric constant oxide dielectric materials. The '796 patent helps balance the need for greater storage capacity while at the same time decreasing cell area.

3. Foreign Counterparts

47. There are no known foreign patents, foreign patent applications, or foreign patent applications that have been denied, abandoned, or withdrawn that correspond to the '796 patent.

4. Licenses

48. A list of known licensed entities is attached to this Complaint as Confidential Exhibit 7.

D. U.S. Patent No. 6,664,634

1. Identification and Ownership of the '634 Patent

49. United States Patent No. 6,664,634, entitled "Metal Wiring Pattern for Memory Devices," issued on December 16, 2003. A certified copy of the '634 patent is attached as Exhibit 4.

50. Nanya owns all right, title and interest in the '634 patent. Certified copies of the recorded assignments demonstrating the chain of title of the '634 patent are attached as Exhibit 6.

51. The '634 patent has 19 claims, including 14 independent claims and 5 dependent claims. At this time, Nanya has identified independent claims 1, 4, 5, 9, 13, and 15, and dependent claims 2 and 6 as infringed, though Nanya anticipates that during the course of this investigation discovery will show that other claims are infringed, and those additional claims should likewise be the subject of this investigation.

52. The Asserted Claims of the '634 patent are valid, enforceable, and currently in full force until the '634 patent expires on August 2, 2021.

53. This Complaint is accompanied by a certified copy of the prosecution history of the '634 patent and three copies thereof. Appendix D. Further, this Complaint is accompanied by four copies of each technical reference identified in the prosecution history of the '634 patent. Appendix H.

2. Non-Technical Description of the Invention Claimed in the '634 Patent

54. The '634 patent relates generally to improved metal wiring patterns for increasingly dense integrated circuit memory devices to improve signal transmission speed and reduce cross-talk among signal traces. More specifically, the '634 patent discloses an integrated

circuit memory device that includes three layers of metallization and various signal trace layout structures instead of polysilicon conductors to improve system performance. The inventions claimed in the '634 patent reduce the signal resistance and capacitance of key signals and, consequently, increase the speed of an integrated circuit memory device.

3. Foreign Counterparts

55. There are no known foreign patents, foreign patent applications, or foreign patent applications that have been denied, abandoned, or withdrawn that correspond to the '634 patent.

4. Licenses

56. A list of known licensed entities is attached to this Complaint as Confidential Exhibit 7.

VI. PROPOSED RESPONDENTS' UNLAWFUL AND UNFAIR ACTS – PATENT INFRINGEMENT

57. The Proposed Respondents have engaged in unfair trade practices, including the sale for importation into the United States, importation into the United States, and sale after importation into the United States of certain DDR3 devices and products containing same that infringe the Asserted Claims of the Asserted Patents. Charts that apply the independent Asserted Claims to an exemplary Accused Product are attached to this Complaint as Exhibits 9 through 12.

58. Upon information and belief, this investigation will show that products manufactured and sold by Elpida, Elpida USA, and/or Kingston infringe other claims of the Asserted Patents that have not currently identified as infringed, and Nanya intends to include such assertions in this investigation, as appropriate.

59. The Asserted Claims are infringed when Elpida, Elpida USA, Kingston, or any other party, makes, uses, offers to sell, or sells the Accused Products within the United States or

imports the Accused Products into the United States. On information and belief, Elpida and Elpida USA directly infringe the Asserted Claims of the Asserted Patents because Elpida and Elpida USA use, offer to sell, and sell the Accused Products within the United States, and import the Accused Products into the United States. For example, on information and belief, Elpida and/or Elpida USA test the Accused Products in the United States, and therefore use the Accused Products in an infringing manner. Additionally, Elpida and/or Elpida USA import the Accused Products into the United States, offer them for sale and sell them in the United States.

60. Additionally, on information and belief, Kingston directly infringes the Asserted Claims of the Asserted Patents because Kingston uses, offers to sell, and sells certain of the Accused Products within the United States, and imports certain of the Accused Products into the United States in the form of, among other things, Kingston memory modules. For example, on information and belief, Kingston tests memory modules containing the Accused Products in the United States, and therefore uses the Accused Products in an infringing manner. Additionally, Kingston imports into the United States, offers for sale and sells in the United States certain of the Accused Products incorporated into Kingston memory modules.

VII. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

61. Each of the Proposed Respondents has sold for importation into the United States, imported into the United States, and/or sold after importation into the United States at least one Accused Product, as identified below.

62. On information and belief, Elpida manufactures Accused Products abroad and sells them for importation into the United States, imports them into the United States, and sells them after importation into the United States. Exhibit 17. Elpida also sells Accused Products to other parties outside the United States, such as Kingston, with the knowledge and expectation that such other parties will import into the United States the Elpida Accused Products. Elpida

USA also sells the Elpida Accused Products to customers in the United States after Elpida USA or Elpida imports the Accused Products into the United States.

63. On information and belief, Kingston assembles abroad memory modules incorporating Elpida Accused Products. Kingston then imports into the United States certain of the Accused Products and sells certain of the Accused Products after importation into the United States. On information and belief, Kingston also sells abroad to other parties memory modules containing Accused Products with the knowledge and expectation that such other parties will import Kingston Accused Products into the United States.

64. A representative of Complainant Nanya purchased in the United States the exemplary infringing Kingston Accused Products specified below. The Accused Products imported by Kingston are memory modules that include the Elpida Accused Products. Photographs of the purchase receipts, and shipping documents for the exemplary Accused Products are included in Exhibits 19 and 20. As indicated in the photographs attached as Exhibit 19, the exemplary Accused Products imported by Kingston indicate that they were all manufactured or assembled in either China or Taiwan. Exhibit 19.

Exemplary Elpida and Kingston Accused Products

| Kingston Part No. | Elpida Part No. |
|--------------------------|------------------------|
| KTAMB1066K2/8G | EDJ2108BCSE-DJ-F |
| KVR1333D3S0K2/8GR | EDJ2108BCSE-DJ |
| KTAMB1066K2/4G | EDJ1108BFBG-DJ-F |
| KTAMB1066K2/4GR | EDJ1108BFBG-DJ-F |
| KTAMB1066/2GR | EDJ1108BFBG-DJ-F |
| KHX1600C9D3B1K2/4GX | EDJ1108BFSE-DJ-F |
| KTAMB1066/4G | EDJ2108BCSE-DJ-F |

VIII. HARMONIZED TARIFF SCHEDULE ITEM NUMBERS

65. On information and belief, the Harmonized Tariff Schedule of the United States (“HTSUS”) item number under which the infringing products, systems and products containing same have been imported into the United States may include at least the following HTSUS numbers: 8542.32.00 (memory devices) and 8473.30.11 (memory modules).

IX. RELATED PROCEEDINGS

66. The unfair methods of competition and unfair acts alleged herein are not and have not been the subject of any other court or agency litigation.

X. DOMESTIC INDUSTRY

A. Nanya’s Domestic Industry Products

67. The domestic industry within the meaning of 19 U.S.C. § 1337(a)(2) and (3)(A)-(C) consists of DDR3 products that practice the Asserted Claims of the Asserted Patents (“Domestic Industry Products”). Exemplary Domestic Industry Products include Nanya DDR3 part numbers NT5CB512M4xx and NT5CB256M8xx. Charts comparing exemplary Domestic Industry Products to exemplary Asserted Claims are attached hereto as Confidential Exhibits 13 through 16.

B. Nanya’s Significant Investment in the Domestic Industry

1. Plant and Equipment

68. Within the meaning of 19 U.S.C. § 1337(a)(3)(A), Nanya’s United States subsidiaries have made significant investments in plant and equipment associated with, among other things, research, development, design, engineering, and testing related to the Domestic Industry Products.

69. For example, one of Nanya’s wholly owned United States subsidiaries, Nanya Technology Corporation Delaware (“Nanya DE”), has offices in Burlington, Vermont; Houston,

Texas; and Santa Clara, California. In these facilities, Nanya DE employees are engaged in research and development activities related to the Domestic Industry Products, among other Nanya products. Attached hereto as Confidential Exhibit 8 is further detail regarding Nanya's investments in plant and equipment in the United States relating to Nanya's Domestic Industry Products.

2. Labor or Capital

70. A domestic industry also exists independently as a result of Nanya DE's significant employment of labor or capital related to the Domestic Industry Products within the meaning of 19 U.S.C. § 1337(a)(3)(B). Nanya DE has made substantial investments in labor costs attributable to research and development of the Domestic Industry Products. Nanya DE's investment in labor includes salaries paid to engineers involved in research, design, testing, and other work related to the development of the Domestic Industry Products. Attached hereto as Confidential Exhibit 8 is more detailed information regarding Nanya DE's investment in labor and capital related to the Domestic Industry Products.

3. Exploitation of the Asserted Patents Through Engineering, Research, and Development

71. A domestic industry also exists within the meaning of 19 U.S.C. § 1337(a)(3)(C) as a result of Nanya DE's substantial investment in the exploitation of the Asserted Patents including through engineering and research and development conducted in connection with Domestic Industry Products.

72. Engineers in Nanya DE facilities in Burlington, Vermont, Houston, Texas, and Santa Clara, California, for example, are engaged in engineering and research and development of Domestic Industry Products. Further, Nanya and Nanya DE engineers are assigned to work with Micron engineers at a Micron facility in Boise, Idaho. These engineers are engaged in

activities related to design of the Domestic Industry Products. Confidential Exhibit 8 contains additional detail regarding Nanya's substantial investment in the Domestic Industry Products through exploitation of the Asserted Patents.

XI. RELIEF REQUESTED

73. WHEREFORE, by reason of the foregoing, Nanya respectfully requests that the United States International Trade Commission:

(a) Institute an immediate investigation, pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337(a)(1)(B)(i) and (b)(1), with respect to the violations of Section 337 by the Proposed Respondents based upon their sale for importation, importation and/or sale after importation into the United States of Accused Products, including Elpida DDR3 products, and products containing same, that infringe claims of the Asserted Patents, including at least the following claims: independent claims 5, 6, 14, and 16, and dependent claims 7, 8, 9, 10, and 13 of United States Patent No. 5,677,566 ("the '566 patent"); at least independent claims 1 and 9, and dependent claims 2-7 and 10-14 of United States Patent No. 6,399,983 ("the '983 patent"); at least independent claims 1 and 4, and dependent claims 2 and 7 of United States Patent No. 6,586,796 ("the '796 patent"); at least independent claims 1, 4, 5, 9, 13, and 15, and dependent claims 2 and 6 of United States Patent No. 6,664,634 ("the '634 patent").

(b) Schedule and conduct a hearing on said unlawful acts and, following said hearing;

(c) Issue limited exclusion orders pursuant to 19 U.S.C. § 1337(d)(1), barring from entry into the United States Accused Products, including Elpida DDR3 products, and products containing same that infringe claims of the Asserted Patents, including at least the following claims: independent claims 5, 6, 14, and 16, and dependent claims 7, 8, 9, 10, and 13 of the '566 patent; at least independent claims 1 and 9, and dependent claims 2-7 and 10-14 of

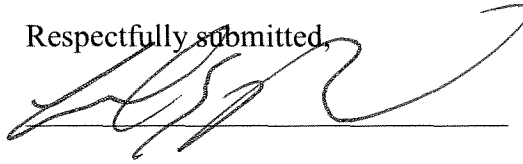
the '983 patent; at least independent claims 1 and 4, and dependent claims 2 and 7 of the '796 patent; at least independent claims 1, 4, 5, 9, 13, and 15, and dependent claims 2 and 6 of the '634 patent.

(d) Issue permanent cease and desist orders, pursuant to 19 U.S.C. § 1337(f), directing the Proposed Respondents to cease and desist from selling for importation into the United States, importing, selling after importation into the United States, offering for sale, marketing, advertising, demonstrating, sampling, warehousing inventory for distribution, distributing, licensing, testing, providing technical support, use, or other related commercial activity involving imported Accused Products, including Elpida DDR3 products, and products containing same that infringe claims of the Asserted Patents, including at least independent claims 5, 6, 14, and 16, and dependent claims 7, 8, 9, 10, and 13 of the '566 patent; at least independent claims 1 and 9, and dependent claims 2-7 and 10-14 of the '983 patent; at least independent claims 1 and 4, and dependent claims 2 and 7 of the '796 patent; at least independent claims 1, 4, 5, 9, 13, and 15, and dependent claims 2 and 6 of the '634 patent; and

(e) Grant such other and further relief as the Commission deems just and proper based on the facts determined by the investigation and the authority of the Commission.

Dated: November 21, 2011

Respectfully submitted,



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