

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of)

CERTAIN DYNAMIC RANDOM)
ACCESS MEMORY)
SEMICONDUCTORS AND PRODUCTS)
CONTAINING THE SAME,)
INCLUDING MEMORY MODULES)

Investigation No. 337-TA-____

**VERIFIED COMPLAINT UNDER SECTION 337
OF THE TARIFF ACT OF 1930, AS AMENDED**

Complainants:

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I. INTRODUCTION

1. This Complaint is filed by Infineon Technologies AG (“Infineon”) and Infineon Technologies North America Corp. (“IFNA”) (collectively, “Complainants”) pursuant to Section 337 of the Tariff Act of 1930 (“Section 337”), 19 U.S.C. § 1337, based on the unlawful importation into the United States, the sale for importation, and the sale within the United States after importation of certain dynamic random access memory semiconductors (“DRAMs”) and downstream goods containing the same that use, without Infineon’s authorization, the inventions described and claimed in the following patents (“Infineon Patents”):

Patent Number	Abbreviated Reference	Title	Claims Infringed by Respondents
5,480,051	‘051 Patent or Hain Patent	Method For The Anisotropic Etching Of An Alumiferous Layer	1-16
5,422,309	‘309 Patent or Zettler Patent	Method For Producing A Metallization Level Having Contacts And Interconnects Connecting The Contacts	1-19
5,397,664	‘664 Patent or Noelscher Patent	Phase Mask For Projection Lithography And Method For The Manufacture Thereof	6-9, 11
7,071,074	‘074 Patent or Schmidt Patent	Structure And Method For Placement, Sizing And Shaping Of Dummy Structures	1-20

2. Infineon owns the entire right, title, and interest to the Infineon Patents.

3. The proposed respondents manufacture, sell for importation, import, and sell after importation certain DRAMs and downstream goods containing the same that use, without Infineon’s authorization, the inventions described and claimed in the Infineon Patents. Through these activities, the proposed respondents are infringing the Infineon Patents and acting in violation of 19 U.S.C. § 1337(a)(1)(B).

4. The proposed respondents (collectively “Respondents”) are (i) Elpida Respondents (Elpida Memory Inc., Elpida Memory (USA) Inc. and Rexchip Electronics

Corporation); (ii) Kingston Respondents (Kingston Technology Company Inc., Kingston Technology (Shanghai) Co. Ltd., Kingston Technology Far East Co. Ltd., Kingston Technology Far East (M) Sdn. Bhd., and Payton Technology Corp.); (iii) Apacer Respondents (Apacer Technology Inc. and Apacer Memory America Inc.); (iv) A-Data Respondents (A-Data Technology Co. Ltd. and A-Data Technology (USA) Co. Ltd.); (v) Buffalo Respondents (Buffalo Inc. and Buffalo Technology (USA)); (vi) Corsair Respondents (Corsair Memory and Corsair Memory (Taiwan)); (vii) Mushkin Respondents (Mushkin Inc. and Mushkin APAC (Malaysia)); and (viii) Transcend Respondents (Transcend Information Inc. and Transcend USA).

5. The Respondents cannot be viewed in isolation, for they act in concert to manufacture, import, sell for importation, and sell after importation certain DRAMs and downstream goods containing the same that infringe the Infineon Patents. For example, certain Respondents work together at the same facility to manufacture articles that infringe the Infineon Patents.

6. An industry in the United States relating to articles protected by the Infineon Patents exists, within the meaning of 19 U.S.C. §§ 1337(a)(2) and 1337(a)(3).

7. Complainants seek as permanent relief a general exclusion order excluding from entry into the United States all DRAMs manufactured by the Elpida Respondents (“Elpida DRAMs”) and downstream goods containing the same, including without limitation memory modules¹, that infringe the Infineon Patents. Other downstream products include without limitation circuit boards, motherboards, multichip packaged products, computers, laptops, and

¹ The term memory module generally refers to DRAM chips that are mounted on printed circuit boards. These circuit boards are designed to be used in personal computers, servers, laptops, notebooks, workstations and the like. Memory modules include SIMMs (single in-line memory modules), DIMMs (dual inline memory modules), SO-DIMMs (small outline DIMMs for use in laptops) and others.

servers. In the alternative, Complainants seek a limited exclusion order directed to each named Respondent (and its subsidiaries and affiliates) excluding from entry into the United States all Elpida DRAMs and all downstream goods, including without limitation memory modules, that infringe the Infineon Patents. Infineon also seeks a cease-and-desist order directed to each named Respondent (and its subsidiaries and affiliates) prohibiting the sale and distribution within the United States of Elpida DRAMs and downstream goods containing the same, including without limitation memory modules, that infringe the Infineon Patents.

8. Complainants have made every effort to identify infringing or potentially infringing articles. In order to facilitate this Investigation, Complainants hereby provide a list of the Elpida DRAMs that are believed to infringe one or more of the Infineon Patents:

- (i) All Elpida DRAMs manufactured using copper metallization;
- (ii) All Elpida DRAMs manufactured using aluminum metallization; and
- (iii) All Elpida DRAMs manufactured at technology nodes of 100nm or smaller, including but not limited to 100nm, 90nm, 70nm, 65nm, 50nm, 45nm, 40nm, 35nm, 30nm and 25nm, and equivalents thereto.

This list is not intended to be comprehensive or exhaustive, but merely reflective of the information available to Complainants. Complainants intend to identify additional infringing articles, including additional technology nodes, through discovery.

II. THE PARTIES

A. Complainants

1. Infineon Technologies AG

9. Infineon's corporate headquarters are located at Am Campeon 1-12, D-85579 Neubiberg, Germany. Infineon is one of the world's leading semiconductor companies. According to iSuppli, Infineon was the sixth-largest semiconductor company worldwide in 2008.

In fiscal year (“FY”) 2007/08 (October 1, 2007 to September 30, 2008), Infineon earned €4.3 billion, or more than \$6 billion, in global revenues, and had total assets valued at more than €7 billion, or about \$10 billion.

10. Infineon develops, manufactures, and markets a broad range of semiconductors and complete system solutions in a wide variety of microelectronic applications, including computer systems, telecommunications systems, consumer goods, automotive products, industrial automation and control systems, and chip card applications. Infineon’s products include both standard (commodity) and custom components.

11. Infineon has been at the forefront of the development and manufacture of semiconductors for nearly sixty years. Infineon was conceived at the dawn of the semiconductor era as Siemens AG’s Semiconductor Group. In 1952, five years after the invention of the transistor, Siemens built one of the first fabrication facilities (“fabs”) in the world to manufacture semiconductor products. In 1954, Siemens became the first company in the world to use silicon as the basis for semiconductor fabrication. Silicon is one of only a handful of materials that permit electrical current to flow under some conditions but not others (hence the name “semi” conductor). Today, silicon is used by the vast majority of all semiconductor manufacturers. In the early 1960s, Siemens pioneered the development of integrated circuits (“ICs”) for use in consumer products.

12. The company was also a pioneer in the field of dynamic random access memories, or “DRAMs,” which today are the mainstream semiconductor memory used in personal computers and many other products. In 1971, Siemens perfected the single transistor memory cell, which forms the basis of modern DRAMs. DRAMs form the main memory of all personal computers and many other electronic devices. The original Siemens memory cell is now used in

every DRAM, including every Elpida DRAM, sold worldwide. In 1985, Siemens was the first to market with a chipset that complied with the Integrated Services Digital Network (“ISDN”) standard that enabled traditional phone lines to carry voice, data and video. In 1990, Siemens was again the first to market an innovative chipset, in this case implementing the GSM standard for mobile telephony. In 1992, Siemens developed the first complete GSM single-chip logic device.

13. Siemens spun-off its semiconductor business in 1999 as an independent company, Infineon. From its inception, Infineon had a diversified strategy, bringing innovation to the market in areas as diverse as smart cards, wireless telecommunications, memory chips, and automotive applications. In 1999, Infineon was the first company to use 300 millimeter (mm) wafers for the production of DRAM chips, instead of the standard 200mm. By using larger wafers, Infineon could pack more ICs onto a single wafer and increase manufacturing efficiency. Three-hundred mm wafers quickly became standard practice in the semiconductor industry.

14. Siemens’ and Infineon’s inventions and innovations have enabled the exponential expansion of the global semiconductor market. In 1954, global sales of semiconductors were only \$5 million. In 2008, more than \$250 billion of semiconductors were sold worldwide. In 1972, one megabyte of computer memory cost more than the average house (\$80,000). Today, one megabyte of computer memory costs pennies. In 1972, one gigabyte of memory would have filled an area larger than a football field, and would have consumed enough electricity to power a town. Today, battery-operated, lightweight devices such as handheld computers, cellular telephones and music players often include several gigabytes of semiconductor memory. Each year, approximately 60 million semiconductor transistors are produced for every person on Earth.

15. Infineon has four primary operating segments: Automotive, Industrial & Multimarket, Chip Card & Security and Wireless Solutions. The Automotive (“ATV”) segment develops, manufactures, and markets semiconductors for use in automotive applications. The Industrial & Multimarket (“IMM”) segment develops, manufactures, and markets semiconductors and system solutions primarily for use in industrial applications and in applications with customer-specific product requirements. The Chip Card & Security (“CCS”) segment develops, manufactures, and markets semiconductors and system solutions primarily for use in chip card and security applications. The Wireless Solutions (“WLS”) segment develops, manufactures, and markets a wide range of ICs, other semiconductors, and system solutions for wireless communication applications.

16. Infineon’s success depends on its ability to obtain and enforce patents and other intellectual property rights (“IPRs”) covering its products, designs, and manufacturing processes. The semiconductor industry is highly cyclical and characterized by constant and rapid technological change, rapid product obsolescence, price erosion, evolving standards, and wide fluctuations in product supply and demand. The nature of the industry demands constant innovation. In the semiconductor industry, technological innovators are often able to achieve higher margins. Research and development (“R&D”) activities are therefore critical for developing high-margin products over the longer term. Patents and other IPRs enable Infineon to protect its technologies and processes and to realize the full benefit of its substantial investments in R&D. Infineon incurred €755 million, or more than \$1 billion, in research and development expenses in its 2008 fiscal year. Infineon’s R&D expenses represent 17.5 percent of its net sales in its 2008 fiscal year.

17. As of September 30, 2008, Infineon owned more than 21,600 patent applications and granted patents in over 40 countries. These patents belong to approximately 8,150 patent families (each family consisting of patents originating from the same core invention). Infineon filed first patent applications for approximately 710 inventions during FY 2007/2008.

18. Since March 13, 2000, Infineon's shares have traded on the Frankfurt Stock Exchange under the symbol "IFX." American Depositary Shares ("ADSs") representing Infineon's shares trade over-the-counter under the symbol "IFNNY."

2. Infineon Technologies North America Corp.

19. IFNA's corporate headquarters are located at 640 N. McCarthy Blvd., Milpitas, California 95035. Siemens incorporated IFNA, a wholly owned subsidiary of Infineon, in Delaware in September 1998.

20. IFNA develops, tests, markets, sells, and distributes a wide range of Infineon products in the United States. Like Infineon, IFNA has four operating segments: Automotive, Industrial & Multimarket, Chip Card & Security and Wireless Solutions. IFNA conducts its operations at facilities throughout the United States.

21. IFNA has two wholly-owned subsidiaries in the United States: Infineon Technologies Industrial Power Inc. ("ITIP") and Primarion, Inc. ITIP and Primarion were incorporated in Delaware in October 1991 and May 1999, respectively. ITIP is located at 1050 Rte. 22, Lebanon, New Jersey 08833, and Primarion is located at 2780 Skypark Drive, Suite 100, Torrance, California 90505. ITIP also owns 51 percent of Eupec Thermal Management Inc., which is located at 1050 Rte. 22, Lebanon, New Jersey 08833.

B. The Accused Products

22. The accused products include Elpida DRAMs and downstream goods containing the same, including without limitation memory modules, that infringe the Infineon Patents. The

Elpida DRAMs at issue include those DRAMs manufactured by the Elpida Respondents: (i) that use copper metallization, and/or (ii) that use aluminum metallization, and/or (iii) are manufactured at technology “generations” or “nodes” of 100nm or smaller, including Elpida’s 100nm, 90nm², 70nm, 65nm, 50nm, 45nm, 40nm, 35nm, 30nm and 25nm technology nodes, and equivalents thereto. Other downstream products include without limitation circuit boards, motherboards, multichip packaged products, computers, laptops, and servers.

23. The bases for Complainant’s conclusions as to infringement are set forth in the exemplary infringement claim charts attached as Exhibits 11-14 and in the *Declaration of Dr. Shukri J. Souri in Support of Infineon AG’s Complaint of Infringement of U.S. Patent Nos. 5,397,664, 5,422,309, 5,480,051, and 7,071,074* (“Souri Dec.”), attached as Exhibit 1.

24. The terms “65nm,” “50nm,” etc. refer generally to the size of the features (*i.e.*, individual elements such as transistors) that make up structures on a DRAM chip. In the industry, different generations of chips generally are referred to using these size designations. Therefore, the process used to manufacture a 65nm chip is known as a “65nm process technology.” It can also be referred to as a “65nm technology node” or “65nm process node.” *See Souri Dec. (Exhibit 1) at ¶ 22.*

25. Upon information and belief, all Elpida DRAMs manufactured using aluminum metallization infringe Infineon’s ‘051 Patent. *See Souri Dec. (Exhibit 1) at ¶ 43; Exhibit 11.*

26. Upon information and belief, all Elpida DRAMs manufactured using copper metallization infringe Infineon’s ‘309 Patent. *See Souri Dec. (Exhibit 1) at ¶ 37; Exhibit 12.*

² This includes so-called 90nm technology nodes “relaxed” to, for example, 100nm.

27. Upon information and belief, all Elpida DRAMs manufactured at technology nodes of 100nm and smaller infringe Infineon's '664 Patent. *See* Souri Dec. (Exhibit 1) at ¶ 32; Exhibit 13.

28. Upon information and belief, all Elpida DRAMs manufactured at technology nodes of 70nm and smaller infringe Infineon's '074 Patent. *See* Souri Dec. (Exhibit 1) at ¶ 47; Exhibit 14.

29. Upon information and belief, all Elpida DRAMs within a specific generation (100nm, 90nm, 70nm, 65nm, 50nm, 45nm, 40nm, 35nm, 30nm and 25nm) operate and are constructed in a substantially identical fashion. Any differences are not relevant to the Infineon Patents at issue except as described herein. *See* Souri Dec. (Exhibit 1) at ¶ 23.

30. In addition, upon information and belief, all Elpida DRAMs of different generations (100nm, 90nm, 65nm, 50nm, 45nm, 40nm, 35nm, 30nm and 25nm) also operate and are constructed in a similar fashion. Any differences are not relevant to the Infineon Patents at issue except as described herein. *See* Souri Dec. (Exhibit 1) at ¶ 23.

C. Proposed Respondents

1. Elpida Respondents

31. Elpida Memory Inc. ("Elpida") is a Japanese DRAM and memory module manufacturer that has its principal place of business at Sumitomo Seimei Yaesu Bldg. 3F, 2-1 Yaesu 2-chome, Chuo-ku, Tokyo 104-0028, Japan. On information and belief, Elpida is the only DRAM manufacturer in Japan, and it is the third-largest supplier of DRAMs in the world. Elpida earned \$1.67 billion in revenues through the sale of DRAMs in the third quarter of 2009. In the second quarter of 2008, Elpida sold more than \$1 billion of DRAMs, and had 15 percent of the global market for DRAMs.

32. Total U.S. imports of DRAMs from Japan were \$212 million in 2007 and rose to \$328 million in 2008. Based on information and belief, approximately 80 percent of the DRAMs imported from Japan in 2007 and 2008 were Elpida DRAMs.

33. Elpida also manufactures DRAMs in Taiwan. Based on information and belief, approximately \$60 million and \$104 million of Elpida DRAMs were imported from Taiwan in 2007 and 2008, respectively.

34. In the year ending March 31, 2009, Elpida sold \$715 million of DRAM products directly in North America, which represents 21 percent of its total sales. On information and belief, nearly all of these revenues were derived from sales in the United States.

35. Elpida was founded in Japan in 1999. Being a relative newcomer to semiconductors, Elpida necessarily must rely upon and use technology developed by the world's semiconductor innovators, including Infineon. Elpida has adopted wholesale, without Infineon's authorization, many of Infineon's patented inventions.

36. Elpida has expressed its intention to become the top supplier of DRAMs in the world. Elpida manufactures, imports into the United States, sells for importation into the United States, and sells within the United States after importation Elpida DRAMs and downstream goods containing the same, including memory modules, that infringe the Infineon Patents.

37. Elpida Memory (USA) Inc. ("Elpida USA") is a wholly-owned Elpida subsidiary that has its principal place of business at 1175 Sonora Court, Sunnyvale, California 94086. Elpida does not have any product development or production facilities in the United States. Elpida USA has sales offices in California (1175 Sonora Court, Sunnyvale, California 94086), North Carolina (105 Weatherly Place, Cary, North Carolina 27518-9009), Massachusetts (11 Daniel Lucy Way, Newburyport, MA 01950), and Texas (4100 Duval Road, Bldg. 1, Suite

102, Austin, TX 78759 and 363 N. Sam Houston Pkwy. E., Suite 770, Houston, Texas 77060).

On information and belief, Elpida USA imports into the United States and sells within the United States after importation Elpida DRAMs and downstream goods containing the same, including without limitation memory modules, that infringe the Infineon Patents.

38. Rexchip Electronics Corporation (“Rexchip”) is an Elpida subsidiary that manufactures DRAMs, including Elpida-branded DRAMs, and sell them for importation into the United States. Rexchip acts in concert with Elpida to manufacture and sell for importation into the United States certain Elpida DRAMs that infringe the Infineon Patents.

39. Rexchip has its principal place of business at No.429-1, Sanfong Rd., Houli Township, Taichung County, Central Taiwan Science Park, Taiwan. Rexchip, which was founded in Taiwan in November 2006, focuses on personal computer DRAM fabrication. Rexchip operates a 300mm DRAM fab in Taiwan that has a maximum capacity of 70,000 wafers per month. Rexchip is constructing additional, adjoining fabs to increase its capacity to 240,000 DRAM wafers per month. Once the new fabs are complete, Rexchip will have the largest 300mm production facility in the world. Rexchip manufactures and sells for importation into the United States certain Elpida DRAMs that infringe the Infineon Patents.

2. Kingston Respondents

40. Kingston Technology Company Inc.’s (“Kingston”) principal place of business is located at 17600 Newhope Street, Fountain Valley, California 92708. Kingston was founded in California in 1987. Its primary business is the manufacture of memory modules, many of which contain Elpida DRAMs. Kingston is the largest supplier of DRAM memory modules in the world. Kingston earned \$1.4 billion from the sale of DRAM memory modules in 2008, and had more than 28 percent of the global market. Kingston had nearly three times the revenues and market share of its closest competitor in 2008.

41. Kingston has manufacturing facilities in the United States, Taiwan, Malaysia, and China. Kingston manufactures, imports into the United States, sells for importation into the United States, and sells within the United States after importation downstream goods containing Elpida DRAMs, including memory modules, that infringe the Infineon Patents.

42. Kingston has multiple subsidiaries that manufacture Kingston-branded memory modules containing Elpida DRAMs and sell them for importation into the United States, including Kingston Technology (Shanghai) Co. Ltd. (“Kingston Shanghai”), Kingston Technology Far East Co. Ltd. (“Kingston Taiwan”), Kingston Technology Far East (M) Sdn. Bhd. (“Kingston Malaysia”), and Payton Technology Corp. (“Payton”). Kingston Shanghai, Kingston Taiwan, Kingston Malaysia, and Payton act in concert with Elpida to manufacture and sell for importation into the United States downstream goods containing Elpida DRAMs that infringe the Infineon Patents.

43. Kingston Shanghai is a subsidiary of Kingston that has its principal place of business at No.1, Yinglun Road, Pudong New District, Shanghai 200131, China. Kingston Shanghai, which was founded in 2005, owns and operates the world’s largest memory module manufacturing facility. Kingston Shanghai manufactures and sells for importation into the United States downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

44. Kingston Technology Far East Co. Ltd. (“Kingston Taiwan”) is a subsidiary of Kingston that has its principal place of business at No. 1-5, Li-Hsin Road., I, Science Based Industrial Park, Hsin-Chu, Taiwan. Kingston Taiwan was founded in 1997. Kingston Taiwan manufactures and sells for importation into the United States downstream goods containing

Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

45. Kingston Technology Far East (M) Sdn. Bhd. (“Kingston Malaysia”) is a subsidiary of Kingston that has its principal place of business at Plot 111-B Bayan Lepas Industrial Park, Lebuhraya Kampung Jawa, Bayan Lepas, Penang 11900, Malaysia. Kingston Malaysia was founded in 1999. Kingston Malaysia manufactures and sells for importation into the United States downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

46. Payton Technology Corp. (“Payton”) is a subsidiary of Kingston that has its principal place of business at 17665 Newhope St., Ste B, Fountain Valley, California 92708. Payton was founded in California in 2005. On information and belief, Payton and Kingston work together at the same facility to manufacture and sell for importation into the United States downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

3. Apacer Respondents

47. Apacer Technology Inc.’s (“Apacer”) principal place of business is located at 4F, 75, Sec. 1, Xintai 5th Rd., Xizhi City, 221 Taipei County, Taiwan. Apacer was founded in Taiwan in 1997. Its primary business is the manufacture and sale of memory modules. Apacer is among the ten largest suppliers of DRAM memory modules in the world. Apacer earned \$243 million from the sale of DRAM memory modules in 2008.

48. Apacer Memory America Inc. (“Apacer USA”) is a subsidiary of Apacer Technology Inc. that has its principal place of business at 386 Fairview Way, Suite 102, Milpitas, CA 95035.

49. On information and belief, Apacer and Apacer USA manufacture, import into the United States, sell for importation into the United States, and/or sell within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

4. A-Data Respondents

50. A-Data Technology Co. Ltd.'s ("A-Data") principal place of business is located at 18F., No.258, Lian Cheng Rd., Chung Ho City, 235 Taipei, Taiwan. A-Data was founded in Taiwan in 2001. Its primary business is the manufacture of memory modules, many of which contain Elpida DRAMs. A-Data is the second-largest supplier of DRAM memory modules in the world. A-Data earned more than \$500 million from the sale of DRAM memory modules in 2008, and had more than 9 percent of the global market.

51. A-Data Technology (USA) Co. Ltd. ("A-Data USA") is a subsidiary of A-Data that has its principal place of business at 17101 Gale Ave., Hacienda Heights, California 91745.

52. On information and belief, A-Data and A-Data USA manufacture, import into the United States, sell for importation into the United States, and/or sell within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

5. Buffalo Respondents

53. Buffalo Inc.'s ("Buffalo") principal place of business is located at 15, Shibata hondori 4-chome, Minami-ku, Nagoya, 457-8520, Japan. Buffalo was founded in 1975. Its primary business is the manufacture and sale of memory modules, and it is among the ten largest suppliers of DRAM memory modules in the world. Buffalo earned \$167 million from the sale of DRAM memory modules in 2008.

54. On information and belief, Buffalo Technology (USA), Inc. (“Buffalo Technology”) is a subsidiary of Buffalo that has its principal place of business at 11100 Metric Boulevard, Suite 750, Austin, Texas 78758.

55. On information and belief, Buffalo and Buffalo Technology manufacture, import into the United States, sell for importation into the United States, and/or sell within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

6. Corsair Respondents

56. Corsair Memory’s (“Corsair”) principal place of business is located at 46221 Landing Parkway, Fremont, California 94538. Corsair was founded in California in 1994. Corsair is among the 15 largest suppliers of DRAM memory modules in the world. Corsair earned \$148 million from the sale of DRAM memory modules in 2008.

57. Corsair Memory (Taiwan)’s (“Corsair Taiwan”) principal place of business is located at A-1, 5th Floor, 5 Hangsiang Road, Dayuan Township, Tao Yuan County 33747, Taiwan. Its primary business is the manufacture of memory modules.

58. On information and belief, Corsair and Corsair Taiwan manufacture, import into the United States, sell for importation into the United States, and/or sell within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

7. Mushkin Respondents

59. Mushkin Inc.’s (“Mushkin”) principal place of business is located at 317 Inverness Way South Suite 130, Englewood, Colorado 80112. Mushkin was founded in Colorado in 1994. Its primary business is the manufacture and sale of memory modules. Mushkin manufactures, imports into the United States, and sells within the United States after

importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

60. Mushkin APAC (“Mushkin Malaysia”) is a subsidiary of Mushkin Inc. that has its principal place of business at B-13-9, Megan Avenue II, No12, Jalan Yap Kwan Seng, 50450 Kuala Lumpur, Malaysia. Mushkin Malaysia manufactures and sells for importation into the United States downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

8. Transcend Respondents

61. Transcend Information Inc.’s (“Transcend”) principal place of business is located at No. 70, XingZhong Rd., NeiHu Dist., Taipei, Taiwan. Transcend was founded in Taiwan in 1988. Its primary business is the manufacture and sale of memory modules. Transcend is among the five largest suppliers of DRAM memory modules in the world. Transcend earned approximately \$400 million from the sale of DRAM memory modules in 2008.

62. On information and belief, Transcend Information, Inc. (USA) (“Transcend USA”) is a subsidiary of Transcend that has its principal place of business at 1645 North Brian Street, Orange, California 92867.

63. On information and belief, Transcend and Transcend USA manufacture, import into the United States, sell for importation into the United States, and sell within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

III. THE TECHNOLOGY AND PRODUCTS AT ISSUE

64. Integrated circuits, which are often referred to as “semiconductor chips” or simply “chips,” are miniaturized electronic circuits formed on a single, small piece of silicon. Semiconductor memory chips are a class of semiconductor chips used for data storage in

personal computers, portable electronics, and many other electronic products. The Infineon Patents cover, among other things, the design and manufacture of these semiconductor memory chips.

65. The products at issue are (1) semiconductor memory chips that were designed and manufactured using Infineon's patented technologies, and (2) downstream goods containing those semiconductor memory chips. The semiconductor memory chips designed and manufactured by Elpida that use Infineon's patented technologies include dynamic random access memory ("DRAM") chips. DRAM chips temporarily save data by storing it as an electronic charge in a capacitor. DRAM chips offer a better tradeoff of capacity, speed, ease of use and manufacturing cost than other semiconductors memory chips, and as such are used today as the main memory in personal computers, laptops, notebooks, servers, mobile devices, and many other kinds of electronics equipment.

66. After manufacture, many Elpida DRAM chips are assembled into downstream goods referred to as "memory modules" by Elpida or third parties. Such memory modules include one or more DRAM chips mounted on a printed circuit board, and may be used in, for example, digital consumer electronics such as personal computers, laptops, notebooks, servers, and many other information-communication and electronics equipment.

67. Elpida DRAM chips and memory modules containing the same are imported into the United States, sold for importation into the United States, and sold within the United States after importation. Elpida DRAM chips are imported, sold for importation, or sold after importation mounted on circuit boards and as components of downstream goods other than memory modules, including but not limited to personal computers, laptops, notebooks, servers,

mobile devices, handheld game consoles, media recorders, media players, and personal navigation devices.

68. The inventions described and claimed in the Infineon Patents may be used to design and manufacture non-DRAM semiconductor memory chips and other ICs for use in a wide variety of applications, including but not limited to personal computers, mobile devices, handheld game consoles, media recorders, media players, and personal navigation devices.

IV. THE PATENTS AT ISSUE AND NON-TECHNICAL DESCRIPTION OF THE PATENTS³

A. The '051 (Hain) Patent

69. The '051 Patent, entitled "Method for the anisotropic etching of an aluminum layer," issued on January 2, 1996. The '051 Patent expires on May 2, 2014 and is based on United States Patent Application No. 08/235,987, filed on May 2, 1994.

70. Infineon owns by assignment the entire right, title, and interest in the '051 Patent. Copies of the assignments of the '051 Patent from the inventors to Siemens AG and from Siemens AG to Infineon Technologies AG are attached as Exhibit 2.

71. Pursuant to Commission Rule 210.12(c), this Complaint also includes a certified copy of the '051 Patent, submitted as Exhibit 3. A copy of the U.S. Patent and Trademark Office file history for the '051 Patent and applicable pages of each technical reference mentioned in the file history, are submitted with this Complaint as Appendices A and B.

72. The '051 Patent has 3 independent claims and 14 dependent claims. An exemplary claim chart showing use of claim 1 of the '051 Patent by Infineon's products, which

³ The descriptions contained in this section provide general information regarding the patents; they are not intended as positions with respect to claim construction and/or other technical aspects of patent law.

provide the basis for the domestic industry relating to articles protected by the '051 Patent, is attached as Exhibit 15; *see also* Souri Dec. (Exhibit 1) at ¶ 43.

73. The '051 Patent is directed to a method for anisotropically etching aluminum layers during the fabrication of ICs, which allows for the manufacture of fine grids and interconnects without underetching. *See* Souri Dec. (Exhibit 1) at ¶¶ 18, 39-42.

74. Many ICs use aluminum or aluminum alloys for interconnects and contacts. These contacts are formed by starting with a layer of aluminum, then removing aluminum in unwanted areas through a process referred to as “selective etching” or “etching.” In selective etching, the wanted aluminum is covered with a mask, and the unwanted aluminum is left uncovered. The uncovered aluminum is removed by exposing it to a gas that reacts chemically with aluminum, and where the reaction results in an unstable byproduct that is desorbed from the surface. The end result of this process is the removal of the uncovered aluminum, leaving “sidewalls” of aluminum on either side of where the aluminum was removed. *See* Souri Dec. (Exhibit 1) at ¶¶ 18, 39-42.

75. During some aluminum etching processes, some of the material under the mask may undesirably be etched away, causing so-called “underetching”, which may cause the remaining aluminum feature to malfunction, or which may make it difficult to fill the gaps between the aluminum features so that the next, subsequent layer of the IC can be constructed. The inventors discovered that the addition of a volatile hydrocarbon to the etching gas would prevent underetching, and that controlling the amount of the volatile hydrocarbon in the etching gas allows for the control of the angle of the sidewalls (“etch profile”). Controlling underetching and the etch profile in this manner facilitates the manufacture of precise features including, for

example, grids and interconnects, the gaps between which are easy to fill. *See* Souri Dec. (Exhibit 1) at ¶¶ 18, 39-42.

76. Licensing agreements exist, or have existed, that cover all or a portion of Infineon's (and its predecessor's) patent portfolio, and may include the '051 Patent. Upon current information and belief, and as presently advised, the parties to these licensing agreements are identified in Exhibit 19.

77. The '051 Patent has the following foreign counterparts:

Foreign Patents	Status
DE 4317722	Granted

Upon information and belief, no other foreign counterpart applications corresponding to the '051 Patent have been filed, withdrawn, abandoned, or rejected.

B. The '309 (Zettler) Patent

78. The '309 Patent, entitled "Method for producing a metallization level having contacts and interconnects connecting the contacts," issued on June 6, 1995. The '309 Patent expires on December 16, 2013, and is based on United States Patent Application No. 08/167,020, filed on December 16, 1993.

79. Infineon owns by assignment the entire right, title, and interest in the '309 Patent. Copies of the assignments of the '309 Patent from the inventors to Siemens AG, from Siemens AG to Infineon Technologies AG are attached as Exhibit 4.

80. Pursuant to Commission Rule 210.12(c), this Complaint also includes a certified copy of the '309 Patent, submitted as Exhibit 5. A copy of the U.S. Patent and Trademark Office file history for the '309 Patent and applicable pages of each technical reference mentioned in the file history, are submitted with this Complaint as Appendices C and D.

81. The '309 Patent has 1 independent claim and 18 dependent claims. An exemplary claim chart showing use of claim 1 of the '309 Patent by Infineon's products, which provide the basis for the domestic industry relating to articles protected by the '309 Patent, is attached as Exhibit 16; *see also* Souri Dec. (Exhibit 1) at ¶ 37.

82. The '309 Patent is directed to a method for producing electrical contacts and interconnects in an integrated circuit that is highly tolerant to mask mis-alignments, avoids the creation of a boundary surface between the interconnect and the contact, saves processing steps, and improves planarization. *See* Souri Dec. (Exhibit 1) at ¶¶ 19, 34.

83. In ICs, including memory circuits, interconnects are the metal "wires" used to conduct electricity through the circuit. Interconnects typically run horizontally across the chip on multiple parallel layers, like the floors of a building. Modern chips often have eight or more layers of interconnects. Contacts, also known as vias, in turn, are used to connect an interconnect on one layer to an underlying substrate, such as another interconnect on a lower layer. It is important to maximize conductivity in interconnects and contacts to allow for smaller wires, which in turn leads to fitting more parts on a chip of a given size, and higher switching speeds. *See* Souri Dec. (Exhibit 1) at ¶¶ 19, 34.

84. Conventional processes suffered from significant problems due to the different geometries of interconnects (horizontal) and contacts (vertical). First, interconnects and contacts were formed in two separate steps, with two different materials (e.g., aluminum for interconnects, tungsten for contacts). This caused an impediment to the flow of electrical current at the interface between the two materials. Moreover, interconnects and contacts were formed by two different photomasks, and the dual-material process was not tolerant of misalignments

between the two masks. Excessive misalignments could lead to an intolerable increase in resistance and failure of the entire chip. *See* Souri Dec. (Exhibit 1) at ¶¶ 19, 34.

85. The ‘309 Patent teaches a method that produces contacts and interconnects that overlap without creating a boundary surface between the interconnect and the contact and that avoids cross-section constriction, which is now known throughout the industry as the “via-first, dual-damascene process.” The ‘309 Patented process has been widely adopted by the semiconductor industry as the industry standard process for forming copper interconnects and contacts. *See* Souri Dec. (Exhibit 1) at ¶¶ 34-36.

86. The method of the ‘309 Patent uses the same material for interconnects and contacts, thus eliminating the problem of resistance at the interface between dissimilar materials. Also, interconnects and contacts are formed in a single metal deposition step, thus simplifying the process. The sequence of steps is such that even substantial misalignments between masks cause little or no increase in resistance. This relaxes requirements on photolithography alignment systems, reduces costs and improves manufacturing yield. Finally, the process results in a well-planarized surface, which is necessary for the reliable formation of subsequent layers of contacts and interconnects. *See* Souri Dec. (Exhibit 1) at ¶¶ 34-36.

87. Licensing agreements exist, or have existed, that cover all or a portion of Infineon’s (and its predecessor’s) patent portfolio, and may include the ‘309 Patent. Upon current information and belief, and as presently advised, the parties to these licensing agreements are identified in Exhibit 19.

88. The ‘309 Patent has the following foreign counterparts:

Foreign Patents	Status
DE4301260.4	Abandoned
JP 06-017915	Abandoned
TW 81387	Granted

EP DE 59308407.1	Abandoned
EP FR 609496	Abandoned
EP GB 609496	Abandoned

Upon information and belief, no other foreign counterpart applications corresponding to the ‘309 Patent have been filed, withdrawn, abandoned, or rejected.

C. The ‘664 (Noelscher) Patent

89. The ‘664 Patent, entitled “Phase mask for projection lithography and method for the manufacture thereof,” issued on March 14, 1995. The ‘664 Patent expires on March 14, 2012, and is based on United States Patent Application No. 08/125,805, filed on September 23, 1993, which is a division of United States Patent Application No. 08/667,264, filed on March 11, 1991.

90. Infineon owns by assignment the entire right, title, and interest in the ‘664 Patent. Copies of the assignments of the ‘664 Patent from the inventors to Siemens AG, from Siemens AG to Infineon Technologies AG are attached as Exhibit 6.

91. Pursuant to Commission Rule 210.12(c), this Complaint also includes a certified copy of the ‘664 Patent, attached as Exhibit 7. A copy of the U.S. Patent and Trademark Office file history for the ‘664 Patent and applicable pages of each technical reference mentioned in the file history, are submitted with this Complaint as Appendices E and F.

92. The ‘664 Patent has 4 independent claims and 7 dependent claims. An exemplary claim chart showing use of claim 11 of the ‘664 Patent by Infineon’s products, which provide the basis for the domestic industry relating to articles protected by the ‘664 Patent, is attached as Exhibit 17; *see also* Souri Dec. (Exhibit 1) at ¶ 32; *Declaration of Thomas Struck* (“Struck Dec.”) at ¶¶ 5-9, attached as Exhibit 20.

93. The '664 Patent is directed to a photolithography mask and a method for manufacturing a mask. Photolithography is the process of printing patterns on a surface by optical means. Photolithography masks, or "photomasks," are critical and necessary to the manufacturing of semiconductor chips, and have been in widespread use since the dawn of the semiconductor era. *See* Souri Dec. (Exhibit 1) at ¶¶ 5-15, 25-32.

94. A chip is formed from many patterned layers manufactured on top of each other, just as a building is made of floors stacked on each other. However, while most floors on a building have a floor plan identical, or at least similar, to many other floors, each layer on a chip has a unique pattern. Each mask carries the image related to a single layer of the chip. The design of a chip takes place on a computer-aided design (CAD) system by which engineers draw the pattern of each layer. The first step in manufacturing the chip is the fabrication of a set of masks, each mask carrying one of these patterns. Several dozen different masks are used during the manufacture of a single chip. *See* Souri Dec. (Exhibit 1) at ¶¶ 5-6.

95. During chip manufacturing, a pattern is transferred from each mask to a physical layer made of a material such as silicon, aluminum or silicon dioxide (glass). The patterning process transforms a blanket coating into a functional layer, such as metal lines, gate stacks, interconnects, isolation structures, and the like. *See* Souri Dec. (Exhibit 1) at ¶ 10.

96. The patterning process is always customized to the physical properties of each layer, but all patterning steps share the same general outline. First, a layer of photo-sensitive material, called a "photoresist," "resist," "photo lacquer," "lacquer," or the like is formed on a substrate. A lithography mask that contains the pattern to be transferred onto the substrate is placed between the substrate and a light source. The light passes through certain features on the lithography mask and is blocked by other features on the lithography mask. Typically, a metal

such as chromium is used to form blocking patterns on the lithography mask since it is virtually opaque to light. The pattern in the mask is thereby transferred to the photo resist, which changes its chemical properties in response to being illuminated with light. *See* Souri Dec. (Exhibit 1) at ¶ 10.

97. The photolithography process must meet very demanding standards of accuracy. Features on semiconductor chip have continued to shrink with each new generation. Today, the smallest features that must be patterned on semiconductor wafer are under 50 nanometers (“nm”). A nanometer is a measure of length, namely one billionth of a meter. To put this in perspective, a typical water molecule (H₂O) is slightly less than 1 nm wide and a human hair is about 100,000 nm wide. Photolithography must then be capable of forming patterns with nanometer-level accuracy in a repeatable way for each of the billions of transistors that compose a modern chip. *See* Souri Dec. (Exhibit 1) at ¶¶ 12-15.

98. The main obstacle to an improvement in accuracy in photolithography is the light being used in the process, which has fixed and pre-determined wavelengths. Red light, for example, has a wavelength of about 700 nm. It will not transmit through an opening on a mask that is only 50 nm wide. It is therefore extremely difficult to pattern very small features using light. Even the most advanced ultraviolet light sources used in state-of-the-art photolithography systems have wavelengths around 200 nm. *See* Souri Dec. (Exhibit 1) at ¶¶ 12-15.

99. The ‘664 Patent solved fundamental problems in mask design and manufacturing. The ‘664 Patent teaches a simple way to manufacture masks that use phase-shifting technology to increase resolution. *See* Souri Dec. (Exhibit 1) at ¶¶ 25, 29-32.

100. Conventional photomasks typically use a plate made of a material that transmits light, parts of which are covered with a non-transmitting, or blocking, material such as

chromium. This creates a pattern on the semiconductor wafer when illuminated. Phase-shift masks improve image resolution by purposely changing the phase of the light passing through different areas of the mask. If the correct amount of phase shift is introduced, the effect known as destructive interference causes light waves of different phases to cancel each other, creating “dark spots” that can be used to improve the contrast of the resulting pattern. Phase-shifting is thus a way to extend the resolution of light. *See* Souri Dec. (Exhibit 1) at ¶¶ 11-15, 26.

101. The ‘664 Patent, which has a 1990 priority date, teaches that instead of using a single, transparent plate having the same thickness everywhere and then adding a separate phase-shifting layer, the plate itself can be modified to create the appropriate phase shift. For example, a composite carrier can be used as a plate, comprising two layers that have different properties, such as optical and etch properties. The ‘664 Patent further teaches a simple way to manufacture a phase-shifting mask using two etching steps, one for the non-light-transmitting layer and one for the carrier. *See* Souri Dec. (Exhibit 1) at ¶¶ 15, 25. 29-31.

102. Agreements exist, or have existed, that may grant licenses to all or a portion of Infineon’s (and its predecessor’s) patent portfolio, and may include the ‘664 Patent. Upon current information and belief, and as presently advised, the parties to these licensing agreements are identified in Exhibit 19.

103. The ‘664 Patent has the following foreign counterparts:

Foreign Patents	Status
IE 75223	Granted
JP 3181616	Granted
KR 190358	Granted
EP DE 59010548.5	Abandoned
EP FR 45 13 07	Abandoned
EP GB 45 13 07	Abandoned
EP IT 45 13 07	Abandoned
EP NL 45 13 07	Abandoned

The '664 Patent is also related to U.S. Patent 5,284,724. Upon information and belief, no other foreign counterpart applications corresponding to the '664 Patent have been filed, withdrawn, abandoned, or rejected.

D. The '074 (Schmidt) Patent

104. The '074 Patent entitled "Structure and method for placement, sizing and shaping of dummy structures," issued on July 4, 2006. The '074 Patent expires on September 24, 2023 and is based on United States Patent Application No. 10/671,123 filed on September 24, 2003.

105. Infineon owns by assignment the entire right, title, and interest in the '074 Patent. Copies of the assignments of the '074 Patent from the inventors to Infineon Technologies North America Corp. ("IFNA") and from IFNA to Infineon Technologies AG, are attached as Exhibit 8.

106. Pursuant to Commission Rule 210.12(c), this Complaint also includes a certified copy of the '074 Patent, submitted as Exhibit 9. A copy of the U.S. Patent and Trademark Office file history for the '074 Patent and applicable pages of each technical reference mentioned in the file history, are submitted with this Complaint as Appendices G and H.

107. The '074 Patent has 2 independent claims and 4 dependent claims. An exemplary claim chart showing use of claim 1 of the '074 Patent by Infineon's products, which provide the basis for the domestic industry relating to articles protected by the '074 Patent, is attached as Exhibit 18; *see also* Souri Dec. (Exhibit 1) at ¶ 47.

108. The '074 Patent is generally directed to a method for the placement, sizing and shaping of dummy structures in ICs. The method involves the determination of the placement of dummy structures based at least on the density of functional structures on the chip. Size and shape of the dummy structures is determined based on the placement. *See* Souri Dec. (Exhibit 1) at ¶¶ 20-21, 45.

109. Chips are formed by a sequence of layers, each of which bears a unique pattern. For manufacturing reasons, it is often desirable that such patterns be uniformly dense and regular. For example, certain processes should be conducted at uniform rates across the surface of the wafer on which chips are fabricated. This often proves challenging, as the size and layout of structures used to create functional parts of the chips vary in density and uniformity across a given wafer. This variation in uniformity, in turn, may result in the non-uniformity of the development of, for example, an exposure pattern in a photoresist layer, the etching of a material layer, and the polishing of material layers of a wafer. Another example is the photolithography process, which works best with regularly spaced structures of uniform width, as opposed to an irregular combination of narrow and wide structures. *See* Souri Dec. (Exhibit 1) at ¶¶ 20-21, 45.

110. To achieve uniformity without modifying the chip's design, engineers add to each pattern "dummy structures." Dummy structures are simply additional patterns that do not result in functional parts of the chip, but improve manufacturability. Dummy patterns can be automatically added by a computer-aided-design (CAD) system during the physical layout of the chips. *See* Souri Dec. (Exhibit 1) at ¶¶ 20-21, 45.

111. The '074 Patent teaches a method for determining the placement, size and shape of "dummy structures" on a material layer during the fabrication process to improve yield and reliability. The inventors discovered that the choosing size, placement and shape of dummy structures impacted the yield and reliability. The inventors devised a method that uses the density, size and location of functional structures on the layer to determine the density and size of "dummy structures," as well as where they should be placed, to improve yield and reliability. *See* Souri Dec. (Exhibit 1) at ¶¶ 20-21, 45.

112. Licensing agreements exist, or have existed, that cover all or a portion of Infineon's (and its predecessor's) patent portfolio, and may include the '074 Patent. Upon current information and belief, and as presently advised, the parties to these licensing agreements are identified in Exhibit 19.

113. The '074 Patent has no foreign counterparts. The '074 Patent is related to U.S. Patent 7,494,930 and U.S. Patent Application 12/353,193.

V. UNLAWFUL AND UNFAIR ACTS OF RESPONDENTS -- INFRINGEMENT OF THE INFINEON PATENTS

114. The Respondents manufacture, import into the United States, sell for importation, and sell within the United States after importation Elpida DRAMs and downstream goods containing the same that infringe the Infineon Patents. These activities by Respondents constitute direct infringement, pursuant to 35 U.S.C. § 271(a). Respondents' importation into the United States and sale within the United States of such infringing articles constitutes a violation of § 337 pursuant to 19 U.S.C. § 1337(a)(1)(B).

115. Elpida DRAMs are known to be especially made and adapted for use in an infringement of the Infineon Patents, and not staple articles of commerce suitable for substantial non-infringing use.

116. Respondents' activities constitute contributory infringement, pursuant to 35 U.S.C. § 271(c). Respondents' importation into the United States and sale within the United States of such infringing articles constitutes a violation of § 337 pursuant to 19 U.S.C. § 1337(a)(1)(B).

117. The Elpida Respondents are aware of the Infineon Patents and actively and knowingly aid, abet, and induce infringement of the Infineon Patents by third parties, which activities constitute active inducement to infringe under 35 U.S.C. § 271(b). Respondents'

importation into the United States and sale within the United States of such infringing articles constitutes a violation of § 337 pursuant to 19 U.S.C. § 1337(a)(1)(B).

118. The Respondents import into the United States, offer to sell, sell or use within the United States Elpida DRAMs and products containing the same made by processes claimed in the Infineon Patents. These activities by the Respondents constitute direct infringement under 37 U.S.C. § 271(g). Respondents' importation into the United States and sale in the United States after importation of such Elpida DRAMs and products containing the same made, produced or processed under or by means of such processes claimed in the Infineon Patents constitutes a violation of § 337 pursuant to 19 U.S.C. § 1337(a)(1)(B).

A. The '051 (Hain) Patent

119. The manufacture, importation into the United States, sale for importation, and sale within the United States after importation of certain Elpida DRAMs and downstream goods containing the same by Respondents infringe at least exemplary claims 1-16 of the '051 Patent. A claim chart applying exemplary independent claims 1, 7 and 11 of the '051 Patent to infringing Elpida DRAMs is attached as Exhibit 11; *see also* Souri Dec. (Exhibit 1) at ¶¶ 38-43. On information and belief, all Elpida DRAMs that are manufactured using aluminum metallization infringe at least claims 1-16 of the '051 Patent. *See* Souri Dec. at ¶ 43.

120. Upon information and belief, Respondents are liable for direct infringement, contributory infringement, and aiding, abetting, and inducing infringement of Infineon's '051 Patent by manufacturing, importing into the United States, selling for importation, and selling within the United States after importation products that use the inventions of the '051 Patent.

B. The '309 (Zettler) Patent

121. The manufacture, importation into the United States, sale for importation, and sale within the United States after importation of Elpida DRAMs or products containing such Elpida

DRAMs by Respondents infringe at least exemplary claims 1-19 of the '309 Patent. A claim chart applying exemplary independent claim 1 of the '309 Patent to infringing Elpida DRAMs, including, for example, Elpida's EDJ1108BASE-MNH-E 1 Gb DDR3 SDRAM, which is manufactured at Elpida's 70nm technology node and which employs copper metallization, is attached as Exhibit 12; *see also* Souri Dec. (Exhibit 1) at ¶¶ 33-37. On information and belief, all Elpida DRAMs that are manufactured using copper metallization infringe at least claims 1-19 of the '309 Patent. *See* Souri Dec. (Exhibit 1) at ¶ 37. Certain Elpida DRAM chips contain both copper metallization and aluminum metallization and thus infringe at least claims 1-19 of the '309 Patent and claims 1-16 of the '051 Patent. *See* Souri Dec. at ¶¶ 37, 43 and exemplary claim charts attached as Exhibits 11 and 12.

122. Upon information and belief, Respondents are liable for direct infringement, contributory infringement, and aiding, abetting, and inducing infringement of Infineon's '309 Patent by manufacturing, importing into the United States, selling for importation, and selling within the United States after importation products that use the inventions of the '309 Patent.

C. The '664 (Noelscher) Patent

123. The manufacture, importation into the United States, sale for importation, and sale within the United States after importation of certain Elpida DRAMs and downstream goods containing the same by Respondents infringe at least exemplary claims 6-9 and 11 of the '664 Patent. A claim chart applying exemplary independent claims 6 and 11 of the '664 Patent to infringing Elpida DRAMs is attached as Exhibit 13; *see also* Souri Dec. (Exhibit 1) at ¶¶ 24-32. On information and belief, all Elpida DRAMs manufactured at or below the 100nm technology node infringe at least claims 6-9 and 11 of the '664 Patent. *See* Souri Dec. (Exhibit 1) at ¶ 32.

124. Upon information and belief, Respondents are liable for direct infringement, contributory infringement, and aiding, abetting, and inducing infringement of Infineon's '664

Patent by manufacturing, importing into the United States, selling for importation, and selling within the United States after importation products that use the inventions of the '664 Patent.

D. The '074 (Schmidt) Patent

125. The manufacture, importation into the United States, sale for importation, and sale within the United States after importation of certain Elpida DRAMs and downstream goods containing the same by Respondents infringe at least exemplary claims 1-20 of the '074 Patent. A claim chart applying exemplary independent claims 1, 3 and 14 of the '074 Patent to infringing Elpida DRAMs at the exemplary 70nm and 65nm technology generations is attached as Exhibit 14; *see also* Souri Dec. (Exhibit 1) at ¶¶ 44-47. On information and belief, all Elpida DRAMs manufactured at or below the 70nm technology node infringe at least claims 1-20 of the '074 patent. *See* Souri Dec. (Exhibit 1) at ¶¶ 47.

126. Upon information and belief, Respondents are liable for direct infringement, contributory infringement, and aiding, abetting, and inducing infringement of Infineon's '074 Patent by manufacturing, importing into the United States, selling for importation, and selling within the United States after importation products that use the inventions of the '074 Patent.

VI. RELATED LITIGATION

127. To the best of Infineon's knowledge, information, and belief, none of the Infineon Patents asserted in this investigation have been the subject of litigation.

VII. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

128. The Respondents manufacture, sell for importation, import, and sell within the United States after importation Elpida DRAMs and/or downstream goods containing the same, including without limitation memory modules, that infringe the Infineon Patents. Through these activities, the Respondents are violating 19 U.S.C. § 1337(a)(1)(B).

A. Kingston Respondents

129. The Kingston Respondents manufactures, sells for importation, imports, and sells within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

1. Kingston KVR1333D Memory Module

130. Complainants have obtained a Kingston KVR1333D3N9 1G DDR3 1333 MHZ CL9 memory module, which was shipped to IFNA in the United States. *See* Exhibit 22.

The Kingston KVR1333D3N9 1G DDR3 1333 MHZ CL9 memory module bears the label “Assy in China,” indicating that it was assembled in China and imported into the United States. *See id.*

131. Complainants evaluated the Kingston KVR1333D3N9 1G DDR3 1333 MHZ CL9 memory module and found it to contain multiple Elpida DRAM chips (specifically, Elpida J1108BABG-DJ-E 1Gb DDR3 SDRAM chips), each chip indicating “TWN” (Taiwan) as its source of origin. *See* Exhibit 22. The Taiwan label indicates that each chip was manufactured in Taiwan and imported into the United States. Complainants also found that these chips are manufactured at the 70nm technology node using aluminum metallization and infringe, directly or indirectly, one or more claims of at least the following Infineon Patents: exemplary claims 1-16 of the Hain ‘051 Patent, exemplary claims 6-9 and 11 of the Noelscher ‘664 Patent, and exemplary claims 1-20 of the Schmidt ‘074 Patent. *See* Exhibit 22; exemplary claim charts that are attached as Exhibits 11, 13 and 14; and Souri Dec. (Exhibit 1) at ¶¶ 32, 43, 47.

2. Kingston KHX11000D Memory Module

132. Complainants have also obtained a Kingston KHX11000D3LLK2 2G 2GB DDR3 memory module, which was shipped to IFNA in the United States. *See* Exhibit 23.

133. Complainants evaluated the Kingston KHX11000D3LLK2 2G 2GB DDR3 memory module and found it to contain multiple Elpida DRAM chips (specifically, Elpida

J5308BASE-AE-E 512Mb DDR3 SDRAM chips) that each indicate “JPN” (Japan) as their source of origin. *See* Exhibit 23. The Japan label indicates that each chip was manufactured in Japan and imported into the United States. Complainants also found that these chips are manufactured at the 70nm technology node using aluminum metallization and infringe, directly or indirectly, one or more claims of at least the following Infineon Patents: exemplary claims 1-16 of the Hain ‘051 Patent, exemplary claim 6-9 and 11 of the Noelscher ‘664 Patent, and exemplary claims 1-20 of the Schmidt ‘074 Patent. *See* Exhibit 23; exemplary claim charts that are attached as Exhibits 11, 13 and 14; and Souri Dec. (Exhibit 1) at ¶¶ 32, 43, 47.

3. Kingston KHX16000D Memory Module

134. Complainants have also obtained a Kingston KHX16000D3ULT1K3 6GX 6GB DDR3 memory module, which was shipped to IFNA in the United States. *See* Exhibit 24.

135. Complainants evaluated the Kingston KHX16000D3ULT1K3 6GX 6GB DDR3 memory module and found it to contain multiple Elpida DRAM chips (specifically, Elpida J1108BASE-MGH-E Hyper 1Gb DDR3 SDRAM chips), each chip indicating “JPN” (Japan) as its source of origin. *See* Exhibit 24. The Japan label indicates that each chip was manufactured in Japan and imported into the United States. Complainants also found that these chips are manufactured at the 70nm technology node using both copper and aluminum metallization and infringe, directly or indirectly, one or more claims of at least the following Infineon Patents: exemplary claims 1-16 of the Hain ‘051 Patent, exemplary claims 1-19 of the Zettler ‘309 Patent, exemplary claims 6-9 and 11 of the Noelscher ‘664 Patent, and exemplary claims 1-20 of the Schmidt ‘074 Patent. *See* Exhibit 24; exemplary claim charts that are attached as Exhibits 11-14; and Souri Dec. (Exhibit 1) at ¶¶ 32, 37, 43, 47.

136. On information and belief, Kingston manufactures, sells for importation, imports, and sells within the United States after importation Kingston-branded downstream goods similar

or identical to the Kingston KVR1333D3N9 1G DDR3 1333 MHZ CL9 memory module, Kingston KHX11000D3LLK2 2G 2GB DDR3 memory module, and Kingston KHX16000D3ULT1K3 6GX 6GB DDR3 memory module that infringe the Infineon Patents.

137. On information and belief, Kingston Shanghai, Kingston Taiwan, Kingston Malaysia, and Payton manufacture and sell for importation into the United States Kingston-branded downstream goods similar or identical to the Kingston KVR1333D3N9 1G DDR3 1333 MHZ CL9 memory module, Kingston KHX11000D3LLK2 2G 2GB DDR3 memory module, and Kingston KHX16000D3ULT1K3 6GX 6GB DDR3 memory module containing Elpida DRAMs that infringe the Infineon Patents.

138. On information and belief, most of the Kingston Respondents' manufacturing facilities are located overseas. Thus, on information and belief, most or nearly all Kingston-branded downstream goods containing Elpida DRAMs made available for purchase within the United States were manufactured overseas and imported into the United States. Moreover, all Elpida DRAM chips, including those used in the Kingston Respondents' downstream goods, are manufactured overseas and thus were imported into the United States.

139. Complainants have made every effort to identify infringing or potentially infringing articles. The articles identified with specificity herein are not intended to be exhaustive, but instead merely reflective and representative of a broader set of infringing articles. Through discovery, Complainants intend to identify additional infringing articles manufactured, imported, and sold by the Kingston Respondents. In addition, Complainants intend to identify through discovery additional claims and patents infringed by the Kingston Respondents' downstream goods containing Elpida DRAMs.

B. Elpida Respondents

140. Elpida manufactures, sells for importation, imports, and sells within the United States after importation Elpida DRAMs and downstream goods containing the same, including without limitation memory modules, that infringe the Infineon Patents. Complainants have obtained an Elpida-branded EBJ10UE8BAFA-DJ-E 1GB DDR3 memory module, which was shipped to IFNA in the United States. *See* Exhibit 25. The label on the Elpida EBJ10UE8BAFA-DJ-E 1GB DDR3 memory module indicated its origin as “Japan.” *See id.* The “Japan” label indicates that the Elpida EBJ10UE8BAFA-DJ-E 1GB DDR3 memory module was manufactured in Japan and imported into the United States.

141. Complainants evaluated the Elpida EBJ10UE8BAFA-DJ-E 1GB DDR3 memory module and found it to contain multiple Elpida DRAM chips (specifically, Elpida J1108BASE-DJ-E 1Gb DDR3 SDRAM chips), each chip indicating that its origin is “TWN” (Taiwan). *See* Exhibit 25. The Taiwan label indicates that each chip was manufactured in Taiwan and imported into the United States. On information and belief, this Elpida DRAM chip is the same as the Elpida DRAM chip used in the Kingston KVR1333D memory module described above, except that it has a slightly different packaging, which is not relevant to the Infineon Patents.⁴ Complainants found that these chips are manufactured at the 70nm technology node using aluminum metallization and infringe, directly or indirectly, one or more claims of at least the following Infineon Patents: exemplary claims 1-16 of the Hain ‘051 Patent, exemplary claims 6-9 and 11 of the Noelscher ‘664 Patent, and exemplary claims 1-20 of the Schmidt ‘074 Patent.

⁴ On information and belief, the differing “BASE” versus “BABG” suffix identification on the chips represent a slight difference in packaging. *See* Elpida Part Number Decoder, attached as Exhibit 10. In all relevant respects regarding the Infineon Patents, however, the Elpida J1108BASE-DJ-E DRAM chip and Elpida J1108BABG-DJ-E chips are believed to be identical.

See Exhibit 25; exemplary claim charts that are attached as Exhibits 11, 13 and 14; and Souri Dec. (Exhibit 1) at ¶¶ 32, 43, 47.

142. On information and belief, Elpida manufactures, sells for importation, imports, and sells within the United States after importation additional Elpida-branded DRAMs similar or identical to the Elpida J1108BASE-DJ-E 1Gb DDR3 SDRAM and Elpida-branded downstream goods similar or identical to the Elpida EBJ10UE8BAFA-DJ-E 1GB DDR3 memory module that infringe the Infineon Patents.

143. On information and belief, Rexchip manufactures and sells for importation into the United States Elpida-branded DRAMs similar or identical to the Elpida J1108BASE-DJ-E 1Gb DDR3 SDRAM that infringe the Infineon Patents.

144. On information and belief, Elpida USA imports into the United States and sells within the United States after importation Elpida-branded DRAMs similar or identical to the Elpida J1108BASE-DJ-E 1Gb DDR3 SDRAM and Elpida-branded downstream goods similar or identical to the Elpida EBJ10UE8BAFA-DJ-E 1GB DDR3 memory module that infringe the Infineon Patents.

145. All of the Elpida Respondents' manufacturing facilities are located overseas. Thus, all Elpida DRAMs and Elpida-branded downstream goods containing the same made available for purchase or sold within the United States were manufactured overseas and imported into the United States.

146. Complainants have made every effort to identify infringing or potentially infringing articles. The articles identified with specificity herein are not intended to be exhaustive, but instead merely reflective and representative of a broader set of infringing articles. Through discovery, Complainants intend to identify additional infringing articles manufactured,

imported, and sold by the Elpida Respondents. In addition, Complainants intend to identify through discovery additional claims and patents infringed by the Elpida Respondents' DRAMs and downstream goods containing Elpida DRAMs.

C. Apacer Respondents

147. Apacer manufactures, sells for importation, imports, and sells within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

148. Complainants have obtained an Apacer PC3-10600, Part No. 78.A1GC6.421 (2GB) memory module, which was shipped to IFNA in the United States. *See* Exhibit 26. Although this memory module did not bear a country of origin label, on information and belief, the Apacer PC3-10600, Part No. 78.A1GC6.421 (2GB) memory module was manufactured overseas and imported into the United States because all of the Apacer Respondents' manufacturing facilities are believed to be located overseas.

149. Complainants evaluated the Apacer PC3-10600, Part No. 78.A1GC6.421 (2GB) memory module and found it to contain multiple Elpida DRAM chips (specifically, Elpida J1108BABG-DJ-E 1Gb DDR3 SDRAM chips) each chip indicating "TWN" (Taiwan) as its source of origin. *See* Exhibit 26. The Taiwan label indicates that each chip was manufactured in Taiwan and imported into the United States. This Elpida DRAM chip appears to be the same as the Elpida DRAM chip used in the Kingston KVR1333D memory module described above. Complainants found that these chips are manufactured at the 70nm technology node using aluminum metallization and infringe, directly or indirectly, one or more claims of at least the following Infineon Patents: exemplary claims 1-16 of the Hain '051 Patent, exemplary claims 6-9 and 11 of the Noelscher '664 Patent, and exemplary claims 1-20 of the Schmidt '074 Patent.

See Exhibit 26; exemplary claim charts that are attached as Exhibits 11, 13 and 14 and Sourin Dec. (Exhibit 1) at ¶¶ 32, 43, 47.

150. On information and belief, Apacer manufactures, sells for importation, imports, and sells within the United States after importation Apacer-branded downstream goods similar or identical to the Apacer PC3-10600, Part No. 78.A1GC6.421 (2GB) memory module that infringe the Infineon Patents.

151. On information and belief, Apacer USA imports and sells within the United States after importation Apacer-branded downstream goods similar or identical to the Apacer PC3-10600, Part No. 78.A1GC6.421 (2GB) memory module that infringe the Infineon Patents.

152. Complainants have made every effort to identify infringing or potentially infringing articles. The articles identified with specificity herein are not intended to be exhaustive, but instead merely reflective and representative of a broader set of infringing articles. Through discovery, Complainants intend to identify additional infringing articles imported and sold by the Apacer Respondents. In addition, Complainants intend to identify through discovery additional claims and patents infringed by the Apacer Respondent's downstream goods containing Elpida DRAMs.

D. A-Data Respondents

153. On information and belief, A-Data manufactures, imports into the United States, sells for importation into the United States, and sells within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents. On information and belief, A-Data USA imports and sells within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

154. Complainants have obtained evidence demonstrating that the A-Data Respondents incorporate Elpida DRAMs into their memory modules. On their website, the A-Data Respondents describe their collaboration with Elpida. *See* Exhibit 27. Electronics manufacturers identify, as a qualified vendor, A-Data memory modules that contain Elpida DRAMs. *See id.* Moreover, an A-Data USA representative confirmed that A-Data sells in the United States memory modules that contain Elpida DRAMs. On information and belief, downstream sellers sell A-Data branded memory modules that contain infringing Elpida DRAM in the United States. *See id.*

155. On information and belief, all of the A-Data Respondents' manufacturing facilities are located overseas. Thus, all A-Data-branded downstream goods containing Elpida DRAMs made available for purchase or sold within the United States were manufactured overseas and imported into the United States. In addition, all Elpida DRAM chips are manufactured overseas. As a result, all A-Data branded downstream good containing Elpida chips that are made available for purchase or sold within the United States contain DRAM chips that were manufactured overseas and imported into the United States.

156. Complainants have made every effort to identify infringing or potentially infringing articles. The articles identified with specificity herein are not intended to be exhaustive, but instead merely reflective and representative of a broader set of infringing articles. Through discovery, Complainants intend to identify infringing articles manufactured, imported, and sold by the A-Data Respondents. In addition, Complainants intend to identify through discovery additional claims and patents infringed by the A-Data Respondents' downstream goods containing Elpida DRAMs.

E. Buffalo Respondents

157. On information and belief, the Buffalo Respondents manufacture, import into the United States, sell for importation into the United States, and sell within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

158. Complainants have obtained a Buffalo D2U800C-E2G 2G PC2-6400U-555 memory module, which was shipped to IFNA in the United States by Buffalo Technology. *See* Exhibit 28. The memory module bears a label “Assembled in Japan” indicating that the memory module as assembled in Japan and imported into the United States. *See id.*

159. Complainants evaluated the Buffalo D2U800C-E2G 2G PC2-6400U-555 memory module and found it to contain multiple Elpida DRAM chips (specifically, Elpida E1108ACBG-8E-E SDRAM chips) each chip indicating “TWN” (Taiwan) as its source of origin. *See* Exhibit 28. The Taiwan label indicates that each chip was manufactured in Taiwan and imported into the United States. On information and belief, Complainants believe that these chips were manufactured at the 70nm technology node using aluminum metallization and infringe, directly or indirectly, one or more claims of at least the following Infineon Patents: exemplary claims 1-16 of the Hain ‘051 Patent, exemplary claims 6-9 and 11 of the Noelscher ‘664 Patent, and exemplary claims 1-20 of the Schmidt ‘074 Patent. *See* Exhibit 28; exemplary claim charts that are attached as Exhibits 11, 13 and 14; and Souri Dec. (Exhibit 1) at ¶¶ 32, 43, 47.

160. On information and belief, Buffalo manufactures, sells for importation, imports, and sells within the United States after importation Buffalo-branded downstream goods similar or identical to the Buffalo PC2-6400U-555 memory module that infringe the Infineon Patents.

161. On information and belief, Buffalo Technology imports and sells within the United States after importation Buffalo-branded downstream goods similar or identical to the Buffalo PC2-6400U-555 memory module that infringe the Infineon Patents.

162. Complainants have made every effort to identify infringing or potentially infringing articles. The articles identified with specificity herein are not intended to be exhaustive, but instead merely reflective and representative of a broader set of infringing articles. Through discovery, Complainants intend to identify additional infringing articles imported and sold by the Buffalo Respondents. In addition, Complainants intend to identify through discovery additional claims and patents infringed by the Buffalo Respondent's downstream goods containing Elpida DRAMs.

F. Corsair Respondents

163. Corsair manufactures, imports into the United States, sells for importation into the United States, and sells within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents. Corsair Taiwan manufactures and sells for importation into the United States downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

1. Corsair Dominator-GT 6144MB PC15000 DDR3 1866MHz Memory Module

164. Complainants have obtained a Corsair Dominator-GT 6144MB PC15000 DDR3 1866MHz memory module, which was shipped to IFNA in the United States. *See Exhibit 29.* Although this memory module did not bear a country of origin label, on information and belief, this memory module was manufactured overseas and imported into the United States because it is believed that all of the Corsair Respondents' manufacturing facilities are located overseas.

165. Complainants evaluated the Corsair Dominator-GT 6144MB PC15000 DDR3 1866MHz memory module found it to contain multiple Elpida DRAM chips (specifically, Elpida JPN J1108BASE-MNH-E Hyper SDRAM chips), each chip indicating “JPN” (Japan) as its source of origin. *See* Exhibit 29. The Japan label indicates that each chip was manufactured in Japan and imported into the United States. On information and belief, this chip is identical in all relevant respects to the Elpida J1108BASE-MGH-E Hyper chip used in the Kingston KHX1600D memory module described above.⁵ Complainants found that the Elpida J1108BASE-MNH-E Hyper chips are manufactured at the 70nm technology node using both copper and aluminum metallization and infringe, directly or indirectly, one or more claims of at least the following Infineon Patents: exemplary claims 1-16 of the Hain ‘051 Patent, exemplary claims 1-19 of the Zettler ‘309 Patent, exemplary claims 6-9 and 11 of the Noelscher ‘664 Patent, and exemplary claims 1-20 of the Schmidt ‘074 Patent. *See* Exhibit 29; exemplary claim charts that are attached as Exhibits 11-14 and Souri Dec. (Exhibit 1) at ¶¶ 32, 37, 43, 47.

2. Corsair Dominator-GT 6G CMG6GX3M3A2000C8 PC3-1600 Memory Module

166. In addition, Complainants have obtained a Corsair Dominator-GT 6G CMG6GX3M3A2000C8 PC3-1600 memory module, which was shipped to IFNA in the United States. *See* Exhibit 30. Although this memory module did not bear a country of origin label, on information and belief, this memory module was manufactured overseas and imported into the United States because it is believed that all of the Corsair Respondents’ manufacturing facilities are located overseas.

⁵ On information and belief, the differing “MGH” versus “MNH” suffix identification on the chips represent a slight difference in clocking speeds. *See* Elpida Part Number Decoder, attached as Exhibit 10. In all relevant respects regarding the Infineon Patents, however, the Elpida J1108BASE-MGH-E Hyper and Elpida J1108BASE-MNH-E Hyper chips are believed to be identical.

167. Complainants evaluated the Corsair Dominator-GT 6G CMG6GX3M3A2000C8 PC3-1600 memory module found it to contain multiple Elpida DRAM chips (specifically, Elpida JPN J1108BASE-MNH-E Hyper SDRAM chips) each chip indicating “JPN” (Japan) as its source of origin. *See* Exhibit 30. The Japan label indicates that each chip was manufactured in Japan and imported into the United States. On information and belief, this chip is identical in all relevant respects to the Elpida J1108BASE-MGH-E Hyper chip used in both the Corsair Dominator-GT 6144MB PC15000 DDR3 1866MHz and Kingston KHX1600D memory modules described above.⁶ Complainants found that the Elpida J1108BASE-MNH-E Hyper chip was manufactured at the 70nm technology node using both copper and aluminum metallization and it infringes, directly or indirectly, one or more claims of at least the following Infineon Patents: exemplary claims 1-16 of the Hain ‘051 Patent, exemplary claims 1-19 of the Zettler ‘309 Patent, exemplary claims 6-9 and 11 of the Noelscher ‘664 Patent, and exemplary claims 1-20 of the Schmidt ‘074 Patent. *See* Exhibit 30; exemplary claim charts that are attached as Exhibits 11-14; and Souris Dec. (Exhibit 1) at ¶¶ 32, 37, 43, 47.

168. On information and belief, Corsair manufactures, sells for importation, imports, and sells within the United States after importation Corsair-branded downstream goods similar or identical to the Corsair Dominator-GT 6G CMG6GX3M3A2000C8 PC3-1600 memory module and the Corsair Dominator-GT 6144MB PC15000 DDR3 1866MHz memory module that infringe the Infineon Patents.

⁶ On information and belief, the differing “MGH” versus “MNH” suffix identification on the chips represent a slight difference in clocking speeds. *See* Elpida Part Number Decoder, attached as Exhibit 10. In all relevant respects regarding the Infineon Patents, however, the Elpida J1108BASE-MGH-E Hyper and Elpida J1108BASE-MNH-E Hyper chips are believed to be identical.

169. Complainants have made every effort to identify infringing or potentially infringing articles. The articles identified with specificity herein are not intended to be exhaustive, but instead merely reflective and representative of a broader set of infringing articles. Through discovery, Complainants intend to identify additional infringing articles imported and sold by the Corsair Respondents. In addition, Complainants intend to identify through discovery additional claims and patents infringed by the Corsair Respondent's downstream goods that contain Elpida DRAMs.

G. Mushkin Respondents

170. The Mushkin Respondents manufacture, import into the United States, sell for importation into the United States, and/or sell within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

171. Complainants have obtained a Mushkin 998691 6GB (3 x 2GB) DDR3 memory module, which was shipped to IFNA in the United States. *See* Exhibit 31. Although this memory module did not bear a country of origin label, on information and belief, this memory module was manufactured overseas and imported into the United States because it is believed that all of the Mushkin Respondents' manufacturing facilities are located overseas.

172. Complainants evaluated the Mushkin 998691 6GB (3 x 2GB) DDR3 memory module and found it to contain multiple Elpida DRAM chips (specifically, Elpida J1108BBSE-DJ-F 1G DDR3 SDRAM chips), each indicating "TWN" (Taiwan) as its source of origin. *See* Exhibit 31. The Taiwan label indicates that each chip was manufactured in Taiwan and imported into the United States. Complainants found that these chips are manufactured at the 65nm technology node using aluminum metallization and infringe, directly or indirectly, one or more claims of at least the following Infineon Patents: exemplary claims 1-16 of the Hain '051 Patent,

exemplary claims 6-9 and 11 of the Noelscher '664 Patent, and exemplary claims 1-20 of the Schmidt '074 Patent. *See* Exhibit 31; exemplary claim charts that are attached as Exhibits 11-14; and Souri Dec. (Exhibit 1) at ¶¶ 32, 37, 43, 47.

173. On information and belief, the Mushkin Respondents manufacture, sell for importation, import, and sell within the United States after importation additional Mushkin-branded downstream goods similar or identical to the Mushkin 998691 6GB (3 x 2GB) DDR3 memory module that infringe the Infineon Patents.

174. On information and belief, Mushkin manufactures, imports into the United States, and sells within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents. On information and belief, Mushkin Malaysia manufactures and sells for importation into the United States downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

175. Complainants have made every effort to identify infringing or potentially infringing articles. The articles identified with specificity herein are not intended to be exhaustive, but instead merely reflective and representative of a broader set of infringing articles. Through discovery, Complainants intend to identify additional infringing articles manufactured, imported, and sold by the Mushkin Respondents. In addition, Complainants intend to identify through discovery additional claims and patents infringed by the Mushkin Respondents' downstream goods containing Elpida DRAMs.

H. Transcend Respondents

176. On information and belief, the Transcend Respondents manufacture, import into the United States, sell for importation into the United States, and/or sell within the United States

after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

177. Complainants have obtained evidence demonstrating that the Transcend Respondents incorporate Elpida DRAMs into their memory modules. The Transcend Respondents' product guide displays multiple memory modules containing Elpida DRAMs, including the 240-PIN DD3-1333/1066 Registered DIMM memory module, the 214-PIN DDR2-533 Micro-DIMM memory module, and the 144-PIN EDO SO-DIMM memory module. *See* Exhibit 32.

178. On information and belief, downstream sellers sell Transcend-branded memory modules in the United States. *See* Exhibit 32.

179. On information and belief, all of the Transcend Respondents' manufacturing facilities are located overseas. Thus, all Transcend-branded downstream goods containing Elpida DRAMs made available for purchase or sold within the United States were manufactured overseas and imported into the United States. On information and belief, Transcend manufactures, imports into the United States, sells for importation into the United States, and sells within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents. In addition, all Elpida DRAM chips are manufactured overseas, so all Transcend branded downstream good containing Elpida chips that are made available for purchase or sold within the United States contain DRAM chips that were manufactured overseas and imported into the United States. On information and belief, Transcend USA imports and sells within the United States after importation downstream goods containing Elpida DRAMs, including without limitation memory modules, that infringe the Infineon Patents.

180. Complainants have made every effort to identify infringing or potentially infringing articles. The articles identified with specificity herein are not intended to be exhaustive, but instead merely reflective and representative of a broader set of infringing articles. Through discovery, Complainants intend to identify additional infringing articles manufactured, imported, and sold by the Transcend Respondents. In addition, Complainants intend to identify through discovery additional claims and patents infringed by the Transcend Respondents' downstream goods containing Elpida DRAMs.

VIII. TARIFF CLASSIFICATION

181. The Elpida DRAMs and downstream goods that contain the same that infringe the Infineon Patents are believed to fall within at least the following headings of the Harmonized Tariff Schedules of the United States ("HTSUS"). Complainants have made every effort to identify relevant HTSUS headings. The HTSUS headings identified with specificity herein are not intended to be exhaustive, but instead merely reflective and representative of a broader set of HTSUS headings. Complainants intend to identify additional HTSUS headings through discovery.

- Heading 8542 (electronic integrated circuits; parts thereof), *et seq.*, for example 8542.32.00 (memories: dynamic read-write random access) *et seq.*;
- Heading 8469 (typewriters other than printers of heading 8443; word processing machines);
- Heading 8470 (calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers) *et seq.*;

- Heading 8471 (automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included), *et seq.*; and
- Heading 8473 (parts and accessories (other than covers, carrying cases and the like) suitable for use solely or principally with machines of headings 8469 to 8472), *et seq.*, for example 8473.10 (parts and accessories of the machines of heading 8469: parts of word processing machines), 8473.21.00 (parts and accessories of the machines of heading 8470: of the electronic calculating machines of subheading 8470.10, 8470.21 or 8470.29) and 8473.30.11 (printed circuit assemblies: memory modules suitable for use solely or principally with machines of heading 8471).

IX. DOMESTIC INDUSTRY

182. In accordance with 19 U.S.C. §§ 1337(a)(2) and 1337(a)(3), an industry in the United States, relating to the articles protected by the Infineon Patents exists or is in the process of being established. Complainants have made significant investments in plant, equipment, labor, and capital in the United States with respect to Infineon products protected by the Infineon Patents. In addition, Complainants have made substantial investments in the exploitation of the Infineon Patents in the United States through research and development, engineering, licensing, product development, testing and quality control.

183. The facts setting forth Complainants' domestic industry are set forth in the *Declaration of Andrew Prillwitz* ("Prillwitz Dec."), attached as Exhibit 21; the Souri Dec. (Exhibit 1); the Struck Dec. (Exhibit 20); and exemplary claims charts showing Complainants' use of exemplary Claim 1 of the Hain '051 Patent (Exhibit 15), Complainants' use of exemplary Claim 1 of the Zettler '309 Patent (Exhibit 16); Complainants' use of exemplary Claim 11 of the

Noelscher '664 Patent (Exhibit 17); and Complainants' use of exemplary Claim 1 of the Schmidt '074 Patent (Exhibit 18).

A. The Hain '051 Patent

184. Complainants practice the '051 Patent in at least their XC161CS, XC161CJ, XC164CS and XC167CI products. An exemplary claim chart applying exemplary claim 1 of the Hain '051 Patent to Complainants' products is attached as Exhibit 15.

185. A domestic industry exists in the United States by virtue of Complainants' significant investments in the United States in plant and equipment, labor and capital, research and development, engineering, testing, quality control and licensing related to the '051 Patent. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 3-7, 10-13, 18-36, 48-56, 72-75, 85 and 91-98.

B. The Zettler '309 Patent

186. Complainants practice the '309 Patent in at least their 90nm (L90) products and their 65nm (C65) products. An exemplary claim chart applying exemplary claim 1 of the Zettler '309 Patent to Complainants' products is attached as Exhibit 16.

187. A domestic industry exists in the United States by virtue of Complainants' significant investments in the United States in plant and equipment, labor and capital, research and development, engineering, testing, quality control and licensing related to the '309 Patent. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 3-9, 18-47, 76-79, 85-89 and 99-107.

C. The Noelscher '664 Patent

188. Complainants practice the '664 Patent in their sub-130nm products. *See* Struck Dec. (Exhibit 20) at ¶¶ 5-9. An exemplary claim chart applying exemplary claim 11 of the Noelscher '664 Patent to Complainants' products, research and development and product development is attached as Exhibit 17.

189. A domestic industry exists in the United States by virtue of Complainants' significant investments in the United States in plant and equipment, labor and capital, research and development, engineering, testing, quality control and licensing related to the '664 Patent. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 3-9, 14-36, 57-71, 81-83, 85-89, 99-106 and 109.

D. The Schmidt '074 Patent

190. The '074 Patent is subject to Complainants' research and development and product development in the United States. An exemplary claim chart applying exemplary claim 1 of the Schmidt '074 Patent to Complainants' research and development and product development is attached as Exhibit 18.

191. A domestic industry exists in the United States by virtue of Complainants' significant investments in the United States in plant and equipment, labor and capital, research and development, engineering, testing and licensing related to the '074 Patent. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 4-7, 18-36, 84, 102-106, 108 and 110.

E. Complainants' Investments in Plant and Equipment Related to the Asserted Patents

192. Complainants have made significant investments in property, plant, and equipment throughout the United States relating to Infineon products protected by the Infineon Patents. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 85-105.

193. IFNA maintains a large facility in Milpitas, California. IFNA has obtained valuable tools and equipment for the use of its employees at the Milpitas facility. IFNA employees use a significant percentage of this property, plant, and equipment to engage in various activities relating to Infineon products protected by the Hain Patent, Zettler Patent, and Noelscher Patent. A significant percentage of the total facility costs incurred by IFNA in

Milpitas over the past four years relate to Infineon products protected by the Hain Patent, Zettler Patent, and Noelscher Patent. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 85-93.

194. IFNA maintains a large facility in Livonia, Michigan. IFNA has obtained valuable tools and equipment for the use of its employees at the Livonia facility. IFNA employees use a significant percentage of this property, plant, and equipment to engage in various activities relating to Infineon products protected by the Hain Patent and Noelscher Patent. A significant percentage of the total facility costs incurred by IFNA in Livonia over the past four years relate to Infineon products protected by the Hain Patent and Noelscher Patent. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 94-98.

195. IFNA maintains a large facility in Allentown, Pennsylvania. IFNA has obtained valuable tools and equipment for the use of its employees at the Allentown facility. IFNA employees use a significant percentage of this property, plant, and equipment to engage in various activities relating to Infineon products protected by the Zettler Patent and Noelscher Patent. A significant percentage of the total facility costs incurred by IFNA in Allentown over the past four years relate to Infineon products protected by the Zettler Patent and Noelscher Patent. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 99-101.

196. IFNA maintains additional facilities in other cities in the United States where IFNA employees engage in various activities relating to the Infineon Patents. With respect to these facilities, IFNA incurs at least tens of thousands of dollars in expenses each year. *See, e.g.,* Prillwitz Dec. (Exhibit 21) at ¶¶ 102.

F. Complainants' Investments in Labor and Capital Related to the Asserted Patents

197. Complainants have made significant investments in labor in the United States with respect to Infineon products protected by the Infineon Patents. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 18-84, 106-109.

198. IFNA employs dozens of engineers and other persons who engage in design, development, engineering, marketing, sales, logistics, and other activities relating to Infineon products practicing the Infineon Patents. With respect to these employees, IFNA incurs millions of dollars in salaries and employment-related expenses each year. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 18-84, 106-109.

G. Complainants' Investments in Exploitation of the Asserted Patents

199. Complainants have made substantial investments in the exploitation of the Infineon Patents through long-term strategic alliances with third parties. Developing new manufacturing processes and product designs for leading-edge technologies requires considerable R&D expenditures. Complainants have established alliances with third parties to share the costs and risks of R&D. These alliances provide Complainants with a number of important benefits, including reductions in Complainants' capital requirements, acquisitions of technical know-how, and access to additional production facilities. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 102-110.

200. In 1990, Infineon, through its predecessors, entered into the first of many cooperation arrangements with U.S. technology companies. The initial agreement was directed to the co-development of a 64 megabit DRAM chip, which, at the time, was a significant industry advancement. This R&D alliance ("Alliance") continues to this day, though the targets

for research and development have shifted to smaller geometries and more advanced technologies. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 102-110.

201. Historically, the Alliance conducted research and development in Burlington, Vermont and upstate New York. Today, the Alliance's R&D activities are concentrated in upstate New York. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 102-110.

202. Complainants have made a substantial investment in the exploitation of the Infineon Patents through its capital investments in Alliance R&D activities in upstate New York. Since 1997, Complainants have invested tens of millions of dollars to participate in the Alliance, to fund research projects that led to breakthrough innovations, and to obtain rights to inventions resulting from joint R&D activities. A significant percentage of Complainants' capital investments consist of R&D activities relating to the Infineon Patents. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 102-110.

203. Complainants have made a substantial investment in the exploitation of the Infineon Patents through their employment of a significant number of persons in upstate New York, all of whom participate in or support Alliance R&D activities. With respect to these employees, Complainants have incurred millions of dollars in salaries and employment-related expenses. *See* Prillwitz Dec. (Exhibit 21) at ¶¶ 102-110.

204. As a direct result of the Alliance's R&D activities, the U.S. Patent & Trademark Office ("USPTO") has issued more than 1000 patents to Infineon. The USPTO has issued another 400 patents jointly to Infineon and a third party for inventions arising out of Alliance R&D activities.

205. The Schmidt Patent is the direct result of Complainants' significant investments* in R&D in upstate New York. The inventions described and claimed in these patents were developed entirely in the United States. *See* Prillwitz Dec. (Exhibit 21) at ¶ 110.

206. Infineon's success depends on its ability to obtain and enforce patents and other IPRs covering its products, designs, and manufacturing processes. The semiconductor industry is highly cyclical and characterized by constant and rapid technological change, rapid product obsolescence, price erosion, evolving standards, and wide fluctuations in product supply and demand. The nature of the industry demands constant innovation. In the semiconductor industry, technological innovators are often able to achieve high margins. Research and development ("R&D") activities are therefore critical for developing high-margin products over the longer term. Patents and other IPRs enable Infineon to protect its technologies and processes and to realize the full benefit of its substantial investments in R&D. Infineon incurred €755 million, or more than \$1 billion, in research and development expenses in its 2008 fiscal year. Infineon's R&D expenses represent 17.5 percent of its net sales in its 2008 fiscal year. Infineon's ability to compete has been significantly damaged by the acts identified in this complaint.

X. GENERAL EXCLUSION ORDER

207. A general exclusion order is necessary to prevent the circumvention of an exclusion order limited to the named respondents.

208. There is a widespread pattern of violation of the governing statute. Specifically, infringing Elpida DRAMs and downstream goods containing the same are routinely imported into the United States, sold for importation into the United States, and sold within the United States after importation by a multiplicity of foreign manufacturers.

209. It is difficult to identify the source(s) of downstream goods containing infringing Elpida DRAMs.

210. The business conditions in the semiconductor market indicate that foreign manufacturers other than the named respondents will attempt to enter the U.S. market with infringing Elpida DRAMs and downstream goods containing the same. There is an established demand for DRAMs (and downstream goods containing the same) that practice one or more claims of the Infineon Patents. Marketing and distribution networks are widely available to foreign manufacturers. Indeed, most importers market more than one type of DRAM, intermediate products like memory modules, and end products (*e.g.*, portable DVD players).

211. The cost of building a new plant, or retooling an existing plant, to manufacture downstream goods containing infringing Elpida DRAMs is comparatively low. Given the state of the economy, there are a large number of facilities available for retooling to manufacture downstream goods containing infringing Elpida DRAMs.

212. Elpida DRAMs have a high value compared to the downstream goods in which they are contained. Elpida DRAMs may constitute a significant portion of the cost of intermediate products like memory modules or inexpensive end products (*e.g.*, portable DVD players). Moreover, downstream goods typically cannot function without the Elpida DRAMs.

213. There is a vast number of companies that already manufacture downstream goods containing infringing Elpida DRAMs. Additional companies could enter the market without difficulty.

214. Section 337 favors the enforcement of intellectual property rights like the Infineon Patents. Infineon's success depends on its ability to obtain and enforce patents and other IPRs covering its products, designs, and manufacturing processes. Patents and other IPRs

enable Infineon to protect its technologies and processes and to realize the full benefit of its substantial investments in R&D.

215. The respondents have no right to use the inventions described and claimed in the Infineon Patents without Infineon's authorization. Infineon has concluded a number of license agreements, and remains willing to negotiate fair and reasonable license agreements with the respondents.

216. Consumers would not suffer any prejudice from the issuance of a general exclusion order. Consumers have the option of purchasing non-infringing and licensed DRAMs and downstream goods containing the same, which are widely available throughout the United States.

217. Comparatively few DRAMs are imported into the United States, sold for importation into the United States, and sold within the United States after importation as standalone DRAMs. The vast majority of DRAMs are imported in the form of downstream goods like memory modules.

218. Infineon has evaluated numerous downstream goods and found them to infringe the Infineon Patents. All ICs of the same technology generation or node are extremely likely to share the vast majority of structural features, and fabrication processes, and subsequent generations of ICs typically re-use, whenever possible, the same structural features, and fabrications processes from previous generations.

219. Customs and Border Protection ("CBP") has decades of experience enforcing exclusion orders against semiconductors, computer parts, and similar downstream goods.

XI. RELIEF

WHEREFORE, by reason of the foregoing, Complainants requests that the United States International Trade Commission:

A. Institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, with respect to Respondents' violations of Section 337 based on the importation into the United States, sale for importation into the United States, and sale within the United States after importation of Elpida DRAMs and downstream goods containing the same that infringe the following patents and claims:

Patent Number	Abbreviated Reference	Title	Claims Infringed by Respondents
5,480,051	'051 Patent or Hain Patent	Method For The Anisotropic Etching Of An Alumiferous Layer	1-16
5,422,309	'309 Patent or Zettler Patent	Method For Producing A Metallization Level Having Contacts And Interconnects Connecting The Contacts	1-19
5,397,664	'664 Patent or Noelscher Patent	Phase Mask For Projection Lithography And Method For The Manufacture Thereof	6-9, 11
7,071,074	'074 Patent or Schmidt Patent	Structure And Method For Placement, Sizing And Shaping Of Dummy Structures	1-20

B. Schedule and conduct a hearing on relief pursuant to 19 U.S.C. § 1337(d) and (f) of the Tariff Act of 1930;

C. Issue a general exclusion order, pursuant to 19 U.S.C. § 1337(d), excluding from entry into the United States Elpida DRAMs and all downstream goods containing the same that infringe the Infineon Patents;

D. Issue a limited exclusion order specifically directed to each named Respondent and its subsidiaries and affiliates, pursuant to 19 U.S.C. § 1337(d), excluding from entry into the United States Elpida DRAMs and all downstream goods containing the same that infringe the Infineon Patents;

E. Issue a cease-and-desist order, pursuant to 19 U.S.C. § 1337(f), prohibiting the sale and distribution within the United States of Elpida DRAMs and all downstream goods containing the same that infringe the Infineon Patents; and

F. Issue such other and further relief as the Commission deems just and proper under the law, based upon the facts determined by the investigation and the authority of the Commission.

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Respectfully submitted,



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