

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SEMCON TECH, LLC,

Plaintiff,

v.

SEMICONDUCTOR MANUFACTURING
INTERNATIONAL CORPORATION,
SEMICONDUCTOR MANUFACTURING
INTERNATIONAL (SHANGHAI)
CORPORATION, SEMICONDUCTOR
MANUFACTURING INTERNATIONAL
(BEIJING) CORPORATION,
SEMICONDUCTOR MANUFACTURING
INTERNATIONAL (TIANJIN)
CORPORATION, SEMICONDUCTOR
MANUFACTURING INTERNATIONAL
(SHENZHEN) CORPORATION, SILTECH
SEMICONDUCTOR (SHANGHAI)
CORPORATION LIMITED, AND SMIC,
AMERICAS,

Defendants.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.*, in which Plaintiff Semcon Tech, LLC makes the following allegations against Defendants Semiconductor Manufacturing International Corporation (“SMIC Cayman”), Semiconductor Manufacturing International (Shanghai) Corporation (“SMIC Shanghai”), Semiconductor Manufacturing International (Beijing) Corporation (“SMIC Beijing”), Semiconductor Manufacturing International (Tianjin) Corporation (“SMIC Tianjin”), Semiconductor Manufacturing International (Shenzhen) Corporation (“SMIC Shenzhen”), SilTech Semiconductor

(Shanghai) Corporation Limited (“SilTech”), and SMIC, Americas (“SMIC U.S.”) (collectively, “Defendants”):

PARTIES

1. Plaintiff Semcon Tech, LLC (“Semcon”) is a Delaware limited liability company.

2. On information and belief, Defendant SMIC Cayman is a Cayman Islands corporation, whose principal place of business is No. 18 Zhangjiang Road, Pudong New Area, Shanghai, 201203, People’s Republic of China. On information and belief, SMIC Cayman provides, among other services and products, semiconductor foundry services to other semiconductor firms, including in the United States, directly or through its subsidiaries, the relevant ones of which are also named defendants in this action.

3. Upon information and belief, Defendant SMIC Shanghai is a corporation organized under the laws of the People’s Republic of China, whose principal place of business is identical to SMIC Cayman’s, that is, No. 18 Zhangjiang Road, Pudong New Area, Shanghai, 201203, People's Republic of China. Upon information and belief, SMIC Shanghai is a wholly-owned subsidiary of SMIC Cayman whose board members are appointed exclusively by SMIC Cayman. Upon information and belief, at least some of SMIC Shanghai’s executive officers and/or directors also hold executive officer and/or director positions with SMIC Cayman. Upon information and belief, SMIC Shanghai operates in the United States through SMIC U.S.

4. Upon information and belief, Defendant SMIC Beijing is a corporation organized under the laws of the People’s Republic of China, whose principal place of business is No. 18 Wenchang Avenue, Economic-Technological Development Area,

Beijing 100176, People's Republic of China. Upon information and belief, SMIC Beijing is a wholly-owned subsidiary of SMIC Cayman whose board members are appointed exclusively by SMIC Cayman. Upon information and belief, at least some of SMIC Beijing's executive officers and/or directors also hold executive officer and/or director positions with SMIC Cayman. Upon information and belief, SMIC Beijing operates in the United States through SMIC U.S.

5. Upon information and belief, Defendant SMIC Tianjin is a corporation organized under the laws of the People's Republic of China, whose principal place of business is No. 19 Xinghua Avenue, Xiqing Economic Development Area, Tianjin 300385, People's Republic of China. Upon information and belief, SMIC Tianjin is a wholly-owned subsidiary of SMIC Cayman whose board members are appointed exclusively by SMIC Cayman. Upon information and belief, at least some of SMIC Tianjin's executive officers and/or directors also hold executive officer and/or director positions with SMIC Cayman. Upon information and belief, SMIC Tianjin operates in the United States through SMIC U.S.

6. Upon information and belief, Defendant SMIC Shenzhen is a corporation organized under the laws of the People's Republic of China, whose principal place of business is located in the Shenzhen Export Processing Zone, Shenzhen Pingshan New Area, Guangdong, People's Republic of China. Upon information and belief, SMIC Shenzhen is a wholly-owned subsidiary of SMIC Cayman whose board members are appointed exclusively by SMIC Cayman. Upon information and belief, at least some of SMIC Shenzhen's executive officers and/or directors also hold executive officer and/or

director positions with SMIC Cayman. Upon information and belief, SMIC Shenzhen operates in the United States through SMIC U.S.

7. Upon information and belief, Defendant SilTech is a corporation organized under the laws of the People's Republic of China, whose principal place of business is No. 965 Guoshoujing Road, Pudong New Area, Shanghai, 201203, People's Republic of China. Upon information and belief, SilTech is a wholly-owned subsidiary of SMIC Cayman whose board members are appointed exclusively by SMIC Cayman. Upon information and belief, at least some of SilTech's executive officers and/or directors also hold executive officer and/or director positions with SMIC Cayman. Upon information and belief, SilTech operates in the United States through SMIC U.S.

8. Upon information and belief, Defendant SMIC U.S. is a corporation organized and existing under the laws of the State of California that maintains its principal place of business at 2600 Augustine Dr, Santa Clara, CA 95054. Upon information and belief, SMIC U.S. can be served through its registered agent, Michael Rekuc, 3500 Palmilla Dr Unit 5008, San Jose, CA 95134. Upon information and belief, SMIC U.S. is a wholly-owned subsidiary of SMIC Cayman whose board members are appointed exclusively by SMIC Cayman. On information and belief, SMIC U.S. acts as the exclusive sales and marketing agent in the United States for SMIC Cayman, SMIC Shanghai, SMIC Beijing, SMIC Tianjin, SMIC Shenzhen, and SilTEch and thereby indirectly provides, among other services and products, semiconductor foundry services to other semiconductor firms in the United States.

9. Upon information and belief, at all pertinent times herein mentioned, Defendants, and each of them, were the agents and/or alter egos of their Co-Defendants

and shared a unity of interest with their Co-Defendants, and, in doing the things hereinafter alleged, were acting within the course and scope of such agency and with the permission and consent of their Co-Defendants. Defendants, and each of them, had and have actual or constructive knowledge of the events, transactions and occurrences alleged herein, and either knew or should have known of the conduct of their Co-Defendants and cooperated in, benefited from and/or ratified such conduct.

10. At all pertinent times, SMIC Cayman on the one hand and SMIC Shanghai, SMIC Beijing, SMIC Tianjin, SMIC Shenzhen, and SilTEch on the other hand have been indistinguishable entities for purposes of the claims and allegations herein. Although SMIC Shanghai, SMIC Beijing, SMIC Tianjin, SMIC Shenzhen, and SilTEch purport to own and operate semiconductor manufacturing facilities, SMIC Cayman has repeatedly held itself out as responsible for the semiconductor manufacturing achievements and operations of SMIC Shanghai, SMIC Beijing, SMIC Tianjin, SMIC Shenzhen, and SilTEch; SMIC's announcements of technology licensing agreements with other companies have been on behalf of SMIC Cayman, not SMIC Shanghai, SMIC Beijing, SMIC Tianjin, SMIC Shenzhen, and SilTEch; SMIC Cayman regularly refers to the manufacturing facilities in China purportedly owned by SMIC Shanghai, SMIC Beijing, SMIC Tianjin, SMIC Shenzhen, and SilTEch as its own; SMIC Cayman has described its business to the U.S. Securities and Exchange Commission as "Semiconductor Manufacturing"; and, upon information and belief, a number of SMIC Cayman's officers and directors are also officers and/or directors of SMIC Shanghai, SMIC Beijing, SMIC Tianjin, SMIC Shenzhen, and SilTEch.

JURISDICTION AND VENUE

11. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

12. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Delaware Long Arm Statute, due to having availed themselves of the rights and benefits of Delaware due to their substantial business in this forum, including: (i) having offered for sale and/or sold products made by an infringing process in Delaware and in this District, having purposely imported/shipped or caused to be imported/shipped products made by an infringing process into Delaware and this District through established distribution channels, and/or having committed acts in this State and District that are the subject of the count set forth herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware and in this District.

13. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). On information and belief, all Defendants have transacted business in this district and have committed acts of patent infringement in this District.

14. There is such a unity of interest among SMIC Cayman, SMIC Shanghai, SMIC Beijing, SMIC Tianjin, SMIC Shenzhen, and SilTEch on the one hand, and SMIC U.S. on the other hand, that in reality no separate entities exist, and fraud or injustice would result if the Court were to recognize these entities as separate.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,156,717

15. Plaintiff Semcon realleges and incorporates by reference paragraphs 1-14 above, as if fully set forth herein.

16. Plaintiff Semcon is the owner by assignment of United States Patent No. 7,156,717 (“the ‘717 Patent”) titled “[In] Situ Finishing Aid Control.” The ‘717 Patent was duly and legally issued by the United States Patent and Trademark Office on January 2, 2007. A true and correct copy of the ‘717 Patent is included as Exhibit A.

17. Defendants make, use, sell, offer for sale, and/or import into the United States integrated circuits. Defendants, alone and/or in conjunction with their corporate affiliates, fabricate integrated circuits, including in Shanghai, China, Beijing, China, Tianjin, China, and Shenzhen, China.

18. At least some of the integrated circuits made, used, sold, offered for sale, and/or imported into the United States by Defendants are fabricated using, in part, a process known as chemical-mechanical polishing (“CMP”) performed with the use of Applied Materials Reflexion LK and/or GT CMP systems.

19. On information and belief, Defendants have sold and continue to sell and/or offer for sale integrated circuits fabricated by Defendants and/or Defendants’ corporate affiliates using, in part, CMP performed with the use of Applied Materials Reflexion LK and/or GT CMP systems to customers in the United States or whom Defendants know or should know import such integrated circuits into the United States. Such customers include, without limitation, Qualcomm Incorporated, Broadcom Corporation, Infineon Technologies AG, Elpida Memory, Inc., Toshiba Semiconductor &

Storage Products Company, Fujitsu Limited, Brite Semiconductor (Shanghai) Corporation, and GalaxyCore Microelectronics Inc.

20. On information and belief, Defendants have infringed and continue to infringe the '717 Patent by, among other things, making, using, offering for sale, selling and/or importing into the United States integrated circuits made by a process patented under the '717 Patent. Such integrated circuits include, by way of example and without limitation, integrated circuits fabricated using, in part, CMP performed with the use of Applied Materials Reflexion LK and/or GT CMP systems through a process covered by one or more claims of the '717 Patent, including but not limited to claim 1. By making, using, offering for sale, selling and/or importing into the United States integrated circuits made by a process patented under the '717 Patent, Defendants have injured Semcon and are liable to Semcon for infringement of the '717 Patent pursuant to 35 U.S.C. § 271(g).

21. As a result of Defendants' infringement of the '717 Patent, Plaintiff Semcon is entitled to monetary damages in an amount adequate to compensate for Defendants' infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendants, together with interest and costs as fixed by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Semcon respectfully requests that this Court enter:

a. A judgment in favor of Plaintiff that Defendants have infringed, either literally and/or under the doctrine of equivalents, the '717 patent;

b. A judgment and order requiring Defendants to pay Plaintiff its damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the '717 patent as provided under 35 U.S.C. § 284; and

c. A judgment and order requiring Defendants to provide an accounting and to pay supplemental damages to Semcon, including without limitation, prejudgment and post-judgment interest; and

d. Any and all other relief as the Court may deem appropriate and just under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

April 18, 2013

BAYARD, P.A.

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