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10 *Attorneys for Defendants Fairchild Semiconductor Int'l, Inc.,*  
11 *Fairchild Semiconductor Corp., and Fairchild (Taiwan) Corp.*

12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 POWER INTEGRATIONS, INC.,

16 Plaintiff,

17 v.

18 FAIRCHILD SEMICONDUCTOR  
INTERNATIONAL, INC., FAIRCHILD  
19 SEMICONDUCTOR CORPORATION, and  
FAIRCHILD (TAIWAN) CORPORATION,

20 Defendants.  
21

Case No. C 09-5235-MMC

**FAIRCHILD'S NOTICE OF APPEAL**

**NOTICE OF APPEAL**

Defendants Fairchild Semiconductor International, Inc., Fairchild Semiconductor Corporation, and Fairchild (Taiwan) Corporation (collectively “Fairchild”) file this Notice of Appeal as a protective measure in an abundance of caution because of an ambiguity in Federal Rule of Appellate Procedure 4. The Court has not resolved all post-trial issues or entered final judgment and thus, in Fairchild’s view, there is no appealable “final decision” in the case under 28 U.S.C. § 1295(a)(1). *PODS, Inc. v. Porta Stor, Inc.*, 484 F.3d 1359, 1365 n.4 (Fed. Cir. 2007). Nonetheless, this Court has denied Fairchild’s motions for judgment as a matter of law and new trial under Federal Rule of Civil Procedure 50(b) and 59, and Federal Rule of Appellate Procedure 4 provides that “the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion.” Fed. R. App. 4(a)(4)(A). Although that Rule presumably should apply only when an appealable final judgment has been previously entered, the Rule does not so state, and Fairchild wishes to avoid any risk of error in its interpretation of a jurisdictional rule. Accordingly, it files this Notice of Appeal as a protective measure. A notice of appeal that is deemed premature does not divest the district court of jurisdiction. *Burger King Corp. v. Horn & Hardart Co.*, 893 F.2d 525, 527 (2d Cir. 1990).

Pursuant to the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure, Fairchild hereby appeals to the United States Court of Appeals for the Federal Circuit from the judgment, and any and all orders, decisions, and rulings that are adverse to Fairchild in whole or part (whether merged into such judgment or otherwise), including but not limited to the following:

- The Court’s August 24, 2016 Order Denying Defendants’ Renewed Motion For Judgment As A Matter of Law, New Trial And/Or Remittitur; Granting In Part And Denying In Part Plaintiff’s Motion for Prejudgment Interest (Dkt. 986);
- The December 17, 2015 jury verdict (Dkt. 918) and the accompanying December 18, 2015 Judgment In A Civil Case entered on that verdict (Dkt. 922);
- Any other rulings, judgments, or orders adverse to Fairchild, including rulings on evidentiary matters, jury instructions, and the verdict form before or during trial which

1 have now merged into the Court's September 9, 2014 Order (Dkt. 632), the Court's  
2 August 24, 2016 Order (Dkt. 986) and December 18, 2015 Judgment In A Civil Case  
3 (Dkt. 922);

- 4 • The Court's October 8, 2015 Order Re: Motions To Exclude Expert Testimony (Dkt. 747)  
5 and the Court's November 26, 2013 Order Denying Fairchild's Motion to Exclude The  
6 Opinions and Testimony Of Jonathan D. Putnam (Dkt. 348);
- 7 • The Court's January 26, 2015 Order Denying Motion For Finding Of Unenforceability  
8 Due To Inequitable Conduct with respect to U.S. Patent No. 6,538,908 (Dkt. 678 and  
9 680);
- 10 • The Court's November 25, 2014 Order Granting In Part And Denying In Part Fairchild's  
11 Renewed Motion For Reconsideration On Damages Issues (Dkt. 666);
- 12 • The Court's September 9, 2014 Order Re: Post-Trial Motions (Dkt. 632), including but  
13 not limited its denial of Fairchild's motions for JMOL and/or a new trial regarding (i)  
14 infringement of U.S. Patent No. 5,474,977, (ii) non-infringement and invalidity of U.S.  
15 Patent No. 6,212,079, (iii) non-infringement and invalidity of U.S. Patent No. 6,538,908;  
16 and (iv) no inducement;
- 17 • The March 4, 2014 jury verdict adverse to Fairchild (Dkt. 551);
- 18 • The Court's November 26, 2013 Order Granting In Part And Denying In Part Fairchild's  
19 Motion For Summary Judgment (Dkt. 350);
- 20 • The Court's November 26, 2013 Order Granting In Part And Denying In Part Power  
21 Integrations' Motion For Summary Judgment (Dkt. 349) including its grant of summary  
22 judgment of non-infringement of U.S. Patent No. 8,179,700;
- 23 • The Court's November 26, 2013 Order Denying Fairchild's Motion For De Novo Review  
24 Of The Magistrate Judge's Orders (Dkt. 345 and 352) and Magistrate Judge's Orders  
25 (Dkt. 231, 241 and 269);
- 26 • The Court's May 6, 2013, May 9, 2012, August 30, 2011, and July 13, 2011 Claim  
27 Construction Orders (Dkt. 215, 212, 148 132, 128 and 121);

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- Rulings adverse to Fairchild on the Entire Market Value Rule and Judge Chesney's ruling lifting the protective order and allowing Dr. Putnam to offer an opinion on the Entire Market Value Rule, the latter appears in the trial record at, for example, Dkt. 889 at 1022-1043; and
- Rulings adverse to Fairchild on proposed jury instructions and verdict forms (including issues identified in Dkt. 414, 455, 458, 476, 478, 517, 518, 559 at 3026-3076, 558 at 2800-2808, 556 at 2106-2241, 893, 901, 906, 912, 924 at 1599-1606 and 925 at 1612-1642, 1647-1649).

Dated: September 22, 2016

Respectfully submitted,

By: */s/ Blair M. Jacobs*

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