

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FAIRCHILD SEMICONDUCTOR
CORPORATION, and FAIRCHILD
(TAIWAN) CORPORATION,

Plaintiffs,

v.

POWER INTEGRATIONS, INC.,

C.A. No. 12-540 LPS

**FAIRCHILD SEMICONDUCTOR CORPORATION’S, and FAIRCHILD (TAIWAN)
CORPORATION’S NOTICE OF APPEAL**

Plaintiffs Fairchild Semiconductor Corporation, and Fairchild (Taiwan) Corporation (collectively “Fairchild”) file this Notice of Appeal as a protective measure in an abundance of caution because Power Integrations Inc. (“Power Integrations”) filed a premature and/or untimely notice of appeal. The Court has not resolved all substantive 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, Power Integrations filed a Notice of Appeal, and Federal Rule of Appellate Procedure 4 provides that “[i]f one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.” Fed. R. App. 4(a)(3). Although that Rule only applies when an appealable final judgment has been previously entered, 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). Fairchild has already filed in this Court a motion to strike Power Integrations' notice of appeal.

Pursuant to the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure, Plaintiffs Fairchild Semiconductor Corporation and Fairchild (Taiwan) Corporation ("Fairchild") hereby appeals to the United States Court of Appeals for the Federal Circuit from any 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 March 24, 2016 Order denying Fairchild's motion for a new trial (D.I. 484);
- The Judgment entered on August 7, 2015 (D.I. 427);
- The June 5, 2015 jury verdict (D.I. 402-403);
- The Court's Orders and memorandum opinions on summary judgment and motions to strike (D.I. 52-53, 295-296, 332, 338-339) and *Daubert* motions (D.I. 266-267);
- The Court's Claim Construction Order and memorandum opinion (D.I. 87-88);
- 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 may have now merged into the Court's Judgment, including but not limited to D.I. 331 (motions in limine), 400 (jury instructions).

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/s/ John G. Day

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