

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF TEXAS
 MARSHALL DIVISION

TESSERA, INC.,

Plaintiff,

vs.

MICRON TECHNOLOGY, INC., a Delaware corporation, MICRON SEMICONDUCTOR PRODUCTS, INC., an Idaho corporation, INFINEON TECHNOLOGIES AG, a German corporation, INFINEON TECHNOLOGIES RICHMOND, LP, a Delaware corporation, and INFINEON TECHNOLOGIES NORTH AMERICA CORP., a Delaware corporation, and QIMONDA AG, a German corporation

Defendants.

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 § Civil Action No. 2-05cv-94
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 § The Honorable Leonard Davis
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 § Jury
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**TESSERA INC.’S SECOND AMENDED COMPLAINT FOR PATENT
 INFRINGEMENT, ANTITRUST VIOLATIONS AND STATE LAW CLAIMS,
AND JURY DEMAND**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff Tessera, Inc. (“Tessera”), by and through its undersigned attorneys, for its complaint against Defendants Micron Technology, Inc., Micron Semiconductor Products, Inc., Infineon Technologies AG, Infineon Technologies Richmond, LP, Infineon Technologies North America Corp., and Qimonda AG, alleges as follows:

INTRODUCTION

1. This is a case about a comprehensive assault on intellectual property and technology, carried out through willful patent infringement and admitted criminal anticompetitive conduct.

2. Tessera is a global leader in the development of semiconductor packaging technology. Semiconductor packages serve as the electrical interface between semiconductor chips and the systems in which they operate. They also protect delicate chips from damage,

contamination, and stress resulting from repeated heating and cooling. Tessera's technology allows companies around the world to meet the growing demand for smaller, faster, less expensive and more reliable electronic products, including cutting edge medical devices and critical military defense components. The United States Patent Office has awarded Tessera over 300 patents that reflect its innovation and protect the company's investment in the technology it has developed.

3. More than 50 semiconductor manufacturers and packaging companies such as Intel, Texas Instruments, Toshiba, Hitachi, Matsushita, Sanyo, Fujitsu, Hynix and Samsung have taken licenses to Tessera's patented technology. The rights granted by Tessera under its patents enable companies like Dell, Compaq, Nokia, Ericsson and Sony to continue to provide consumers with new generations of electronic products. Tessera's patented innovations have already been incorporated into more than four billion semiconductors sold throughout the world. Tessera's technology also enables defense contractors such as General Dynamics, as well as government agencies and the U.S. Army, to advance our nation's homeland defense and military preparedness.

4. Unlike the companies that behaved responsibly and with respect for Tessera's United States patents, the defendants chose a very different and illegal course of action. Initially, the defendants unlawfully colluded with others to eliminate from the market technologies competitive to their own, in an effort to restrain competition and put Tessera out of business. As described in detail below, the defendants conspired to boycott RDRAM, which at the time was a new and superior form of dynamic random access memory ("DRAM"). RDRAM, which incorporated a combination of both new circuit technology and new packaging technology, was selected by Intel Corporation for use with its microprocessors. Rather than pay their fair share of royalties for the technology used to produce RDRAM, including Tessera's patented inventions, the defendants jointly cut the supply of RDRAM chips to a trickle, colluded to increase the price of the RDRAM chips they did produce, and agreed to withhold royalties from holders of key technology used in RDRAM such as Tessera. The conspiracy crippled demand for RDRAM, harmed consumers and for many years wiped out

substantial portions of Tessera's income. It further enabled the defendants to artificially inflate the prices of their own inferior technology and thereby recoup and further benefit from their conspiracy.

5. The gravity of the defendants' illegal conduct is a matter of public record; at least five of the defendants' executives have entered criminal guilty pleas admitting their illegal conduct. Investigations conducted by the United States Department of Justice and the Federal Trade Commission uncovered a wealth of evidence demonstrating the defendants' conspiracy and its effectiveness in harming demand for RDRAM, including the Tessera technology it contained:

- The initial goal of the conspiracy was "RDRAM killing." (RX-1661.)¹
- To that end, DRAM manufacturers sought to "manage price competition, profitably" (RX-1208), wished to "influence the outcome" of what DRAM technologies were successful by "communicat[ing], cooperat[ing], and creat[ing] alternatives" (RX-1185), and agreed to create a "common roadmap" to resolve the "current uncertainty about the supply situation" (RX-1291).
- They hired consultants who advised them that "[f]ragmented competition undermines all DRAM manufacturers" (RX-1188), that "[c]ompetition will not resolve" perceived "problems" in the industry (RX-1204), and that DRAM manufacturers should exchange a "constant flow of information" regarding industry supply and production (RX-1232).
- The defendants and DRAM manufacturers also established a corporation to "[i]ndemnify member companies from anti-trust" (RX-1373A) and encouraged other sham "market coordinating" organizations to join this corporation, erroneously believing it could "provide antitrust protection" (RX-2284).

¹ All citations refer to documents and transcripts from the FTC investigation, *In the Matter of Rambus*, Docket No. 9302, as presented in the initial decision of the FTC found at 2004 WL 390657 (February 23, 2004) and the complaint dated May 5, 2004 filed in *Rambus Inc. v. Micron Technology, Inc.*, Case No. 04-431105, in the Superior Court of the State of California, County of San Francisco. Tessera is informed and believes, and thereon alleges, that these facts are correct.

- The defendants' scheme was successful in causing Intel to discontinue exclusive use of RDRAM with its processors and raising contract prices for DRAM chips from a low of less than \$1.00 in December 2001 to a high of around \$4.50 in May 2002.

6. Despite the considerable damage caused by the defendants' anticompetitive misconduct, Tessera survived. Over time, new forms of DRAM evolved and DRAM manufacturers, like the makers of other types of semiconductors, came to appreciate the considerable benefits provided by Tessera's packaging technology. Indeed, the two largest DRAM manufacturers in the world, Samsung and Hynix, have taken licenses to Tessera's patents. In contrast, after having unlawfully colluded to destroy synchronous DRAM technologies competitive to their own, including Tessera's, the defendants are now proceeding without any license or justification to commercialize Tessera's technology. They have made, and continue to make, extensive and profitable use of Tessera's patented advances without fairly compensating Tessera's shareholders. Tessera has accordingly been forced to bring this action.

PARTIES

7. Tessera is a Delaware corporation with its principal place of business in San Jose, California.

8. Tessera is informed and believes, and thereon alleges, that Micron Technology, Inc. is a Delaware corporation with its principal place of business in Boise, Idaho and that Micron Semiconductor Products, Inc. is an Idaho corporation with its principal place of business in Boise, Idaho. Micron Technology, Inc. and Micron Semiconductor Products, Inc. are referred to collectively as "Micron."

9. Tessera is informed and believes, and thereon alleges, that Infineon Technologies AG is a German corporation with its principal place of business in Munich, Germany, that Infineon Technologies Richmond, LP is a Delaware corporation with its principal place of business in Sandston, Virginia, that Infineon Technologies North America Corp. is a Delaware corporation with its principal place of business in San Jose, California, and

that Qimonda AG is a German corporation with its principal place of business in Munich, Germany. Infineon Technologies AG, Infineon Technologies Richmond, LP, Infineon Technologies North America Corp. and Qimonda AG are referred to collectively as “Infineon.”

JURISDICTION AND VENUE

10. Counts one and two arise under the patent laws of the United States, 35 U.S.C. § 101 *et seq.* Count three arises under the Sherman Act, 15 U.S.C. § 1 *et seq.* Count four arises under the Texas Free Enterprise and Antitrust Act of 1983, Tex. Bus. & Commerce Code § 15.01 *et seq.* Count five arises under Texas state common law.

11. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 in combination with 28 U.S.C. §§ 2201 and 2202. This Court has supplemental jurisdiction over Counts four and five pursuant to 28 U.S.C. § 1367.

12. Tessera is informed and believes, and thereon alleges, that each of the defendants has done business in this District, has committed and continues to commit anticompetitive acts and acts of patent infringement in this District, and has harmed and continues to harm Tessera, its licensing program and its licensees doing business in this District. Venue is therefore proper in this District under Sections 4, 12, 16 of the Clayton Act, 15 U.S.C. §§ 15, 22, and 26, respectively, and 28 U.S.C. §§ 1391(b), (c), and (d), and 1400(b).

TESSERA’S SEMICONDUCTOR PACKAGING TECHNOLOGY AND THE DRAM INDUSTRY

13. During the 1970s and 1980s, advances in microprocessor architecture and the resulting increases in available processing speed outpaced relatively minor improvements in memory chip technology. As a result, microprocessors often had to wait for their memory to catch up with them. The memory technology of the time became a bottleneck that was holding back the speed at which computer systems as a whole could perform.

14. As part of the solution to this problem, companies began to develop faster breeds of memory. One of these new memory types was synchronous DRAM, which generally speaking is a type of memory that works in coordination with an external clock. In other words, while asynchronous DRAM reacts immediately to changes in its control inputs,

synchronous DRAM waits for a clock pulse before responding to its control inputs. This potentially allows synchronous DRAM to have a more complex pattern of operation and greater performance, relative to plain DRAM.

15. In the early 1990s, Rambus, Inc. (“Rambus”) developed a form of synchronous DRAM circuitry known as Rambus DRAM, or “RDRAM,” which outpaced alternative circuitry technology then available. This synchronous DRAM circuitry, however, could not be sold or incorporated into computer systems without first being packaged.

16. During this same period, Tessera was developing and patenting a number of advanced semiconductor packaging technologies. These technologies turned out to be useful in a variety of applications, including the packaging of memory chips such as synchronous DRAM.

17. In 1996, Intel adopted RDRAM as the “next generation” memory technology for use with its processors. When Rambus introduced its third generation RDRAM circuitry later in 1996, that circuitry operated so quickly that conventional packaging technology was no longer adequate. Rambus therefore searched for suitable packaging technology to recommend to RDRAM manufacturers and concluded that Tessera’s technology was the solution. In 1998, Tessera’s packaging technology became part of the RDRAM reference design, which instructs semiconductor manufacturers how to build RDRAM. Tessera’s patented packaging technology therefore became a necessary component of RDRAM.

18. Tessera licenses its technology directly to DRAM manufacturers, not, for example, to Rambus. Tessera technology licenses typically provide that its customers will pay royalties dependent in some fashion on the number of semiconductors that are packaged using Tessera’s technology. Thus, Tessera’s income at the time depended in significant part upon sales of RDRAM, which was made using Tessera’s packaging.

**MICRON AND INFINEON CONSPIRED TO BOYCOTT RDRAM AND FIX THE
PRICE OF SYNCHRONOUS DRAM CHIPS**

19. In an effort to destroy competition in the synchronous DRAM technology and chip markets, avoid having to fairly compensate for use of others’ technology, and enable

themselves to sell inferior products at above market prices, the defendants engaged in an anticompetitive conspiracy to destroy RDRAM and the technologies upon which RDRAM was based, including Tessera's packaging technology. That conspiracy is extensively documented in the FTC decision in *In the Matter of Rambus*, Docket No. 9302, 2004 WL 390657 (February 23, 2004) (public version) and Rambus' complaint dated May 5, 2004 filed in the Superior Court of the State of California, County of San Francisco, *Rambus Inc. v. Micron Technology, Inc.*, Case No. 04-431105. All citations herein are to documents produced in *In the Matter of Rambus*.

The Defendants And Other DRAM Manufacturers Agree To Control

The Synchronous DRAM Technology And Chip Markets

20. In carrying out their scheme, the defendants and other DRAM manufacturers exploited established industry organizations and created sham organizations to conceal their secret, anticompetitive activities. In August 1995, for example, Micron and other DRAM manufacturers formed SyncLink Consortium. Siemens (whose DRAM operations were later separately incorporated into Infineon) joined later. The SyncLink Consortium presented itself to the public as "developing an open, royalty-free industry standard" for the next generation DRAM used in PCs and similar computers. (RX-765.) Nonetheless, the members privately agreed that SyncLink-related patents would only be freely available to members of the Consortium and its corporate successors, SLDRAM, Inc. and Advanced Memory, Inc. ("AMI2").

21. Through the SyncLink Consortium, alternatives to RDRAM were devised, including Double Date Rate Synchronous DRAM ("DDR SDRAM") and "SyncLink" DRAM ("SLDRAM"), which did not require Tessera's technology. Many industry participants considered these technologies inferior to RDRAM. For instance, in early 1996, an IBM engineer stated that the SyncLink device appeared to be "vaporware," unlike RDRAM. (RX-839.)

22. In 1996, after Intel's announcement that it would exclusively use RDRAM, defendants and other DRAM manufacturers exploited industry organizations, including the

SyncLink Consortium, SLD RAM, Inc., Advanced Memory International, Inc. (“AMI2”), M11 and M14, to stop the widespread commercial adoption of RDRAM.

23. Minutes from a December 3, 1996 SyncLink Consortium meeting attended by Micron state that “[m]any suppliers are paranoid over the prospect of a single customer, e.g., Intel, having control of the market. We can’t resist such a possibility individually. We need some united strategy.” (RX-808.)

24. Subsequently, manufacturers including Siemens and Micron agreed to hold a meeting of DRAM executives in Japan in January 1997. Before that meeting the SyncLink Consortium chairman sent an email stating: “As I have mentioned many times before, Intel does not make DRAMs, we do. And if all of us put our resources together, we do not have to go on this undesirable path.” He urged DRAM manufacturers to “stick together on this matter.” (RX-802.)

25. Terry Lee of Micron also urged forward the conspiracy: “We need a real organization now, can’t have everyone involved in rethinking every decision anymore. Have to act like a commercial company now.” (RX-855.) Indeed, reflecting Mr. Lee’s comments, the SyncLink Consortium members decided in September to “change status from Consortium to Company” due to possible “liability.” (RX-1011.) The members, including Micron and Siemens, reiterated their desire to “achieve a common set of messages for member’s spokesmen.” (*Id.*)

26. Mr. Lee discouraged Micron’s coconspirators from breaking ranks with this common message. He urged Micron’s purported competitor, Fujitsu, to stand firm with the “team” in withholding information from customers: “[W]e have heard even more disturbing information. From several customers, we have heard that Fujitsu has begun to speak negatively about the possibilities of SLD RAM. We have heard that Fujitsu feels that SLD RAM has taken a different direction, and that they do not support SLD RAM strongly. We are rather confused about the wisdom of such statements. We don’t believe that such dissent amongst suppliers is in the best interest of the industry, considering the current situation with Intel-Rambus. We

feel that DDR has some worse problems than SDRAM right now, but we have not yet shared this opinion with customers.” (RX-916.)

27. The conspiracy expanded past the confines of the Consortium. In April 1998, Bert McComas, an industry consultant, gave an “exclusive and important” seminar for DRAM manufacturers about Intel’s selection of RDRAM. (RX-1138.) Mr. McComas urged the DRAM manufacturers to jointly agree to restrict output thereby raising prices. As a “possible strateg[y],” Mr. McComas suggested that DRAM manufacturers “[t]ape out but do not fully productize or cost reduce” the RDRAM device to “resist popular deployment” of RDRAM. (RX-1482.)

28. Mr. McComas also spoke at a June 25, 1998 SDRAM Executive Summit and advised that “[f]ragmented competition undermines all DRAM manufacturers.” (RX-1188.) Another industry consultant affirmed that “many of the problems are industry problems, not company problems. Competition will not resolve them.” (RX-1204.)

29. After these presentations, documents reflect that DRAM manufacturers discussed Mr. McComas’s proposals, including one “to collect each DRAM vendor’s production plan of Rambus DRAM’s for the next year, in order to check whether we are facing an oversupply situation.” (RX-1208.) DRAM manufacturers also discussed the “tactical problem[.]” of “manag[ing] price competition, profitably.” (*Id.*)

30. Slides presented at this executive meeting also exhorted DRAM manufacturer executives to “influence the outcome” by “communicat[ing], cooperat[ing], and creat[ing] alternatives.” (RX-1185.)

31. In August 1998, Mr. McComas sent the SyncLink Consortium chairman a draft email addressed to all DRAM manufacturers advising that “[d]uring the critical production ramp-up phase of Direct Rambus, DRAM vendors will need a constant flow of information to help make wise decisions and to walk the fine line between a pleasant shortage and a disastrous over-supply.” (RX-1232.) The chairman responded that the advice would please DRAM manufacturers because “[p]rices go up.” (Tabrizi Transcript at 9077.)

32. In October 1998, representatives of Siemens, Micron and others met and discussed joint research on DRAM technology. Siemens' notes, however, reveal an alternative purpose for the meeting: to agree on a "common roadmap" to resolve the "current uncertainty about the supply situation." (RX-2191.)

The Defendants And DRAM Manufacturers Implement Their Scheme Successfully

33. The defendants and other DRAM manufacturers not only discussed the benefits of "sticking together" and not competing, they took collective action to boycott RDRAM (which as explained above incorporated Tessera's technology), restrict supply to increase RDRAM chip price and reduce downstream consumer demand. When consumers had no choice but to switch to the defendants' inferior technology, *i.e.* DDR SDRAM and SLDRAM, which did not require Tessera's packaging technology, they then raised the price of these chips.

34. The defendants implemented their scheme by, among other things, intentionally overstating their production volumes and defaulting on their production commitments. For instance, an Infineon report about an October 1998 meeting attended by Micron and others states: "Hyundai has given Rambus ASP projections for end of next year of 2-3 times of today's SDRAM prices; they also gave Intel a production projection of three times their actual plans => they encourage every DRAM manufacturer to do the same in order to let Intel not generate a Rambus oversupply." (RX-2192.)

35. Computer manufacturers, like Compaq, asked DRAM manufacturers to increase output. As they did with Intel, DRAM manufacturers responded to the computer manufacturers with deceit, in a calculated effort to maintain artificially high prices for RDRAM. For instance, Micron committed to produce 15,000 RDRAM units for Compaq. According to Compaq, despite these commitments, Micron, Infineon and other DRAM manufacturers would not actually "increase their output at the rate at which we needed to support our systems." (Gross Transcript at 2345-46.)

36. In fact, Intel concluded that Micron's plan was intended to "create as much turmoil to prevent rdram [sic] as possible." (RX-1453.)

37. The defendants' scheme was successful. Compaq decided to abandon plans to implement RDRAM and instead switched to DDR SDRAM because the price of RDRAM did not decrease. Likewise, in May 2000, Dell moved away from RDRAM because "[t]he memory vendors have shown no desire to drop prices." (RX-1630.) Similarly, Advanced Micro Devices, the world's second largest microprocessor manufacturer, terminated plans to adopt RDRAM because, based on information from DRAM manufacturers, DDR SDRAM, not RDRAM, would become the commercially viable computer memory technology.

38. Eventually, in June 1999, Intel publicly ceased its exclusive support of RDRAM and announced that its Pentium III processor would also support SDRAM.

39. Having injured the market for RDRAM and the technologies it incorporated, the defendants' conspiracy continued on to its next phase: raising the prices of DRAM incorporating the defendants' inferior technologies. SLDRAM, Inc. was reconstituted as AMI2 in 1999. AMI2 was formed because: "[i]n the DRAM industry, [DRAM manufacturers] are clearly stronger together than we are individually." (RX-1373.) AMI2's "new focus" included "[c]o-ordinat[ing] instead of developing new technology." (*Id.*) Members also erroneously believed the organization could "[i]ndemnify member companies from anti-trust" (RX-1373A.)

40. In addition, DRAM manufacturers met through other industry organizations including M14, in which manufacturers agreed that the group of purported competitors needed to do "benchmarking" of the "price – cost – availability" of DDR SDRAM. (RX-1390.)

41. An AMI2 presentation in early 1999 urged the DRAM industry to continue to "work[] together for a more profitable future." (RX-2284.) The presentation also discussed "marketing coordination" as one of AMI2's "specific focus areas," and stated that M11 and M14, which had provided such "marketing coordination," "should be folded into the corporation, if for no other reason than to provide antitrust protection." (*Id.*)

42. Indeed, such market coordination is evidenced by DRAM manufacturers jointly raising prices for DDR SDRAM in 2001 after the success of the defendants' joint effort to cripple RDRAM. In a November 26, 2001 email, Micron announced: "We will be increasing

prices [for DDR SDRAM chips] to all [computer manufacturer] customers.” The email explained the DRAM manufacturers’ coordinated efforts: “Most [computer manufacturers] prefer to negotiate pricing for the 1st and 15th of each month.... We will begin price discussions with the [computer manufacturers] today. Infineon [sic] has already laid the ground work by trying to lift pricing a few weeks ago. We believe that they have been successful with only a couple of [computer manufacturers] to date. Samsung has also had discussions with [computer manufacturers] early last week and is preparing them for increases in the first part of December. The consensus from all suppliers is that if Micron makes the move, all of them will do the same and make it stick.” (RX-1922.)

43. The price fixing continued in 2002. On or about January 7, 2002, Hynix raised its contract prices for the third time in a month. Micron reportedly stated that if buyers accepted Hynix’s price increase Micron would likely follow suit.

44. In fact, contract prices for DRAM chips went from less than \$1.00 in December 2001 to a high of around \$4.50 in May 2002.

45. The defendants’ market coordination activities continued at least until May 2002, when the defendants planned to hold a “market review exchange meeting,” at which executives of the two companies would participate in a “roadmap exchange” and would discuss such topics as “Market Segmentation,” “DRAM Supply Development,” and “Supply/Demand Ratio Short and Long Term.” (RX-2031.)

46. Following a United States Department of Justice criminal investigation into these events, Infineon, Infineon executives, and a Micron executive each entered criminal guilty pleas. Some of these executives were required, among other things, to acknowledge their criminal violation of antitrust laws, serve time in prison and pay substantial criminal fines.

INFINEON AND MICRON TARGET TESSERA’S PATENT RIGHTS

47. Long ago the defendants knew they would need sophisticated packaging technologies for their semiconductor products. Their anticompetitive scheme was thus directed not only at controlling markets and forcing consumers to adopt the defendants’ own inferior

synchronous DRAM technology, but more broadly at facilitating their misappropriation and infringement of Tessera's patented packaging technology.

48. By engaging in unlawful conduct to prevent Tessera from benefiting from commercial adoption of RDRAM, a key component of which is Tessera's technology, Micron and Infineon inhibited the full commercial success of Tessera's patented packaging inventions. Moreover, through their anticompetitive conduct, the defendants weakened Tessera's negotiating positions in patent licensing discussions with actual and potential licensees of its technology and harmed Tessera's ability to enforce its patents and collect fair royalties from infringers.

49. Indeed, the defendants' scheme remains ongoing, and the defendants have adopted new strategies to sabotage Tessera's business and bargaining power. For example, Tessera has been working closely with a business partner to develop a commercial process involving Tessera's patented packaging technology. Infineon had been providing the silicon wafers necessary for this development project, but recently cut off that supply and informed Tessera's business partner that it will not provide further wafers for any Tessera-related project.

50. Further, the defendants and others colluded in refusing to license Tessera's packaging technology. The defendants have been and are currently commercializing Tessera's technology in willful violation of Tessera's patent rights.

THE PATENTS-IN-SUIT

51. United States Patent No. 5,679,977 ("977 patent"), entitled "Semiconductor Chip Assemblies, Methods Of Making Same And Components For Same" was duly and legally issued on October 21, 1997. Tessera is the owner by assignment of all right, title and interest in and to the '977 patent. A copy of the '977 patent is attached as Exhibit A.

52. United States Patent No. 5,852,326 ("326 patent"), entitled "Face-Up Semiconductor Chip Assembly" was duly and legally issued on December 22, 1998. Tessera is the owner by assignment of all right, title and interest in and to the '326 patent. A copy of the '326 patent is attached as Exhibit B.

53. United States Patent No. 6,133,627 (“’627 patent”), entitled “Semiconductor Chip Package With Center Contacts” was duly and legally issued on October 17, 2000. Tessera is the owner by assignment of all right, title and interest in and to the ’627 patent. A copy of the ’627 patent is attached as Exhibit C.

54. United States Patent No. 6,433,419 (“’419 patent”), entitled “Face-Up Semiconductor Chip Assemblies” was duly and legally issued on August 13, 2002. Tessera is the owner by assignment of all right, title and interest in and to the ’419 patent. A copy of the ’419 patent is attached as Exhibit D.

55. United States Patent No. 6,465,893 (“’893 patent”), entitled “Stacked Chip Assembly” was duly and legally issued on October 15, 2002. Tessera is the owner by assignment of all right, title and interest in and to the ’893 patent. A copy of the ’893 patent is attached as Exhibit E.

56. The ’977 patent, ’326 patent, ’627 patent, ’419 patent and ’893 patent are hereafter referred to as the “Tessera Patents.”

RELEVANT MARKET AND HARM TO COMPETITION

57. The conspiracy among the defendants and other DRAM manufacturers has proximately caused harm to competition in the relevant markets. The relevant product markets in which competition has been restrained include: (1) the market for synchronous DRAM technology and all relevant markets therein and (2) the market for synchronous DRAM chips and all relevant markets therein. Synchronous DRAM technology is an input into the synchronous DRAM chip market. Demand for such technology is derived from demand for such chips. Synchronous DRAM is the type of computer memory used in personal computer systems, workstations, and servers during the relevant time period of the alleged antitrust violations and includes, for example, RDRAM, SDRAM, DDR SDRAM, and DDR2 SDRAM.

58. The geographic scope of the market for synchronous DRAM technology and the market for synchronous DRAM chips is the world.

59. Tessera, Micron, and Infineon compete within the market for synchronous DRAM technology by developing and licensing such technology. Micron and Infineon are also

customers in the market for synchronous DRAM technology. Further, Micron and Infineon compete in the market for synchronous DRAM chips by manufacturing such chips. Tessera is a participant in the synchronous DRAM chip market through its licensing agreements.

60. By unlawfully restricting the output and fixing the price of RDRAM, an important component of which is Tessera's technology as explained above, Micron and Infineon created shortfalls in RDRAM supply and increased RDRAM prices. These unlawful actions eliminated RDRAM and the technologies used to manufacture and package it as a viable choice for most makers of computers and other electronic devices using synchronous DRAM. Micron and Infineon's unlawful actions thus enabled them to capture the market for synchronous DRAM chips and synchronous DRAM technologies and transform them from markets with healthy competition among competing chips and technologies into markets controlled by defendants and other DRAM manufacturers.

61. Competition in each of the relevant markets is being harmed and will continue to be restrained by the defendants' conduct. Competition in each of the relevant markets has been and will be further reduced because of the defendants' conspiracy.

62. As a direct and proximate result of defendants' unlawful conduct, consumers have been deprived of the benefit of free and open competition in the synchronous DRAM technology and the synchronous DRAM chip markets and have been injured in their business and property, for example, by:

- (a) paying more for RDRAM chips (which incorporate Tessera technology) than they would have paid in the absence of the defendants' unlawful conspiracy;
- (b) paying more for SDRAM and DDR SDRAM chips and certain technologies used in manufacturing these chips than they would have paid in the absence of the defendants' unlawful conspiracy; and

being denied the benefit of computer memory chips based on alternative, superior synchronous DRAM technologies.

TRADE AND COMMERCE

63. Defendants' conduct has a direct, substantial, and reasonably foreseeable effect on commerce with the United States and elsewhere, and competition in such commerce has been and continues to be substantially reduced.

64. Defendants' conduct has a direct substantial, and reasonably foreseeable effect on commerce within the State of Texas and elsewhere, and competition in such commerce has been and continues to be substantially reduced.

DAMAGES

65. Tessera's injuries are unique and are in addition to, not duplicative or derivative of, any injuries suffered by Rambus or other licensors of synchronous DRAM technologies.

66. There is a direct causal connection between the defendants' antitrust violations and the harm to Tessera. Defendants targeted a market in which Tessera participates, intended to harm Tessera, and such harm was reasonably foreseeable.

67. As a direct and proximate result of, among other things, depriving Tessera of the opportunity to compete in a fair and open market, colluding not to take licenses to Tessera's patents and to willfully infringing Tessera's patents, the defendants' anticompetitive and unlawful conduct has had a dramatic adverse effect on the royalties Tessera has collected and will collect as a result of the sale of RDRAM, other synchronous DRAM chips, and other semiconductors using Tessera's technologies. Among other things, the defendants' conduct directly and proximately caused Intel and computer manufacturers to abandon their support for RDRAM as the DRAM design of choice for use with future Pentium processors. Defendants' conduct further devalued Tessera's business, reduced the rates at which it was able to license its patents, raised its cost of capital, and deprived Tessera of business opportunities, market share, royalties and other profits, in an amount to be determined at trial.

EQUITABLE TOLLING AND CONTINUING CONSPIRACY

68. Tessera's discovery of the wrongful conduct by the defendants and others was delayed by the defendants' continuing conspiracy, fraudulent concealment, deceptive acts, practices, and omissions. Until after the release of court documents around the time of the

FTC's initial decision in *In the Matter of Rambus, Inc.*, Docket No. 9302, on February 23, 2004, Tessera had no knowledge of the defendants' secret agreements to restrict production and raise the price of RDRAM, to subsequently increase the price of SDRAM and DDR SDRAM after they supplanted RDRAM, or to collectively refuse to license Tessera's patented technology. Tessera further had no knowledge of any facts that might have led to the discovery of the defendants' wrongful conduct in the exercise of reasonable diligence. The evidence of that wrongful conduct was in the possession, custody and control of the defendants and other third parties and could not have been discovered by Tessera in the exercise of reasonable diligence.

69. The defendants and others took affirmative steps to conceal their anticompetitive conspiracy, including (a) making, or paying others to make, false or misleading statements that blamed shortfalls in RDRAM production or high RDRAM costs and prices on non-existent or greatly exaggerated problems; (b) holding secret meetings; and (c) forming sham entities to facilitate secret communications among defendants and others.

70. In addition, the wrongdoing alleged herein involved multiple, continuous deceptive acts and practices by defendants and others that occurred over many years, and are continuing.

71. As a result of defendants and others' fraudulent concealment and continuing conspiracy, all applicable statutes of limitations have been tolled.

COUNT I – PATENT INFRINGEMENT BY MICRON

72. Tessera realleges and incorporates by reference paragraphs 1 through 71 as if set forth herein in full.

73. Tessera is informed and believes, and thereon alleges, that in violation of 35 U.S.C. § 271 Micron has been and is currently directly infringing, contributorily infringing and/or inducing infringement of the Tessera Patents by, among other things, making, using, offering to sell, selling and/or importing without authority or license from Tessera infringing packaged semiconductor components and assemblies thereof, including semiconductor chips

having ball grid array packages and modules containing semiconductor chips having ball grid array packages.

74. Micron was put on actual notice of Tessera's patents and its need for a license to those patents prior to the filing of this lawsuit through, among other things, discussions, presentations and licensing negotiations with Tessera, as set forth in Tessera's interrogatory responses in this matter.

75. Tessera is informed and believes, and thereon alleges, that Micron's infringement of the Tessera Patents has been and continues to be willful.

76. Unless enjoined, Micron will continue to infringe the Tessera Patents, and Tessera will suffer irreparable injury as a direct and proximate result of Micron's conduct.

77. Tessera has been damaged by Micron's conduct, and until an injunction issues will continue to be damaged in an amount yet to be determined.

COUNT II – PATENT INFRINGEMENT BY INFINEON

78. Tessera realleges and incorporates by reference paragraphs 1 through 71 as if set forth herein in full.

79. Tessera is informed and believes, and thereon alleges, that in violation of 35 U.S.C. § 271 Infineon has been and is currently directly infringing, contributorily infringing and/or inducing infringement of the Tessera Patents by, among other things, making, using, offering to sell, selling and/or importing without authority or license from Tessera infringing packaged semiconductor components and assemblies thereof, including semiconductor chips having ball grid array packages and modules containing semiconductor chips having ball grid array packages.

80. Infineon was put on actual notice of Tessera's patents and its need for a license to those patents at least as early as September 2002 through, among other things, discussions, presentations and licensing negotiations with Tessera.

81. Tessera is informed and believes, and thereon alleges, that Infineon's infringement of the Tessera Patents has been and continues to be willful.

82. Unless enjoined, Infineon will continue to infringe the Tessera Patents, and Tessera will suffer irreparable injury as a direct and proximate result of Infineon's conduct.

83. Tessera has been damaged by Infineon's conduct, and until an injunction issues will continue to be damaged in an amount yet to be determined.

COUNT III – VIOLATION OF SHERMAN ACT SECTION ONE (15 U.S.C. § 1)

BY MICRON AND INFINEON

84. Tessera realleges and incorporates by reference paragraphs 1 through 71 as if set forth herein in full.

85. This claim is brought to recover treble damages for Micron and Infineon's violation of Section 1 of the Sherman Act and to enjoin Micron and Infineon from violations in the future.

86. Beginning at a date unknown to Tessera, but by 1996, and continuing to the present, the defendants and their coconspirators, by and through their officers, directors, employees, agents or other representatives, entered into a continuing horizontal agreement, contract, combination, and conspiracy, with and among each other, to boycott technologies for producing RDRAM chips, including Tessera's technology which is a component of RDRAM, to restrict the production and sale of RDRAM chips and technology, to fix, raise and maintain the price of synchronous DRAM chips and technology, to collectively refuse to license Tessera technology, and to allocate the markets for DRAM technologies and chips in the United States and worldwide. This conduct constitutes a contract, combination, and conspiracy to boycott RDRAM chips and technologies used to manufacture these chips and to raise, fix, peg or stabilize prices for such chips and technology that is both an unreasonable restraint of trade in the relevant markets alleged above and a *per se* violation of Sherman Act Section 1.

87. As a proximate result of Micron and Infineon's violation of Sherman Act Section 1, Tessera has been substantially injured in its business and property and is likely to be injured further in its business and property. The amount of such injury will be determined at

trial. Unless the defendants are enjoined from further violation of the Sherman Act, Tessera will continue to suffer injury from the illegal acts of the defendants.

**COUNT IV – VIOLATION OF TEXAS BUSINESS AND
COMMERCE CODE § 15.05(a) BY MICRON AND INFINEON**

88. Tessera realleges and incorporates by reference paragraphs 1 through 71 as if set forth herein in full.

89. This claim is brought to recover treble damages for Micron and Infineon's violation of the Texas Free Enterprise and Antitrust Act of 1983 and to enjoin Micron and Infineon from violations in the future for acts occurring partly within the State of Texas.

90. Beginning at a date unknown to Tessera, but by 1996, and continuing to the present, the defendants and their coconspirators, by and through their officers, directors, employees, agents or other representatives, entered into a continuing horizontal agreement, contract, combination or conspiracy, with and among each other, to boycott technologies for producing RDRAM, including Tessera's technology, to restrict the production and sale of RDRAM chips and technology, to fix, raise and maintain the price of synchronous DRAM chips and technology, to collectively refuse to license Tessera technology, and to allocate the markets for DRAM technologies and chips, in the State of Texas, the United States and worldwide. This conduct constitutes a contract, combination or conspiracy to boycott RDRAM chips and technologies used to manufacture these chips and to raise, fix, peg or stabilize prices for such chips and technology that is an unreasonable restraint of trade in the relevant markets alleged above and a *per se* violation of the Texas Business and Commerce Code §15.05(a).

91. As a proximate result of Micron and Infineon's violation of the Texas Business and Commerce Code §15.05(a), Tessera has been substantially injured in its business and property and is likely to be injured further in its business and property. The amount of such injury will be determined at trial. Unless the defendants are enjoined from further violation of the Texas Free Enterprise and Antitrust Act, Tessera will continue to suffer injury from the illegal acts of the defendants.

**COUNT V – TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONS
AND/OR PROSPECTIVE BUSINESS RELATIONS UNDER TEXAS COMMON LAW
BY MICRON AND INFINEON**

92. Tessera realleges and incorporates by reference paragraphs 1 through 71 as if set forth herein in full.

93. Tessera had and has contractual relations and also prospective business relations, including licensing and development agreements for its packaging technology with DRAM manufacturers, computer manufacturers and other semiconductor companies, subject to interference.

94. Micron and Infineon willfully and intentionally interfered with these relations by, among other things, creating artificial shortages in production of chips utilizing Tessera's packaging technology, raising price of RDRAM chips and technologies used to manufacture those chips, including Tessera's technology, inventing and exaggerating technical problems with the production of RDRAM chips, and refusing to supply components to third parties for Tessera-related projects.

95. As a result of Micron and Infineon's intentional and wrongful acts, third parties, including Intel, computer manufacturers and other semiconductor manufacturers, abandoned and failed to adopt Tessera's packaging technology. The contractual relations and prospective business relations between Tessera and third parties, including licensing agreements for packaging technology, were thereby disrupted.

96. Micron and Infineon's interference with Tessera's contractual relations and prospective business relations has proximately caused actual damage or loss to Tessera, including loss of royalties under licensing agreements for its packaging technologies.

DEMAND FOR JURY TRIAL

Tessera hereby demands a trial by jury on all issues triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Tessera prays for relief as follows:

A. For a judicial determination and declaration that the Tessera Patents are valid and enforceable;

B. For a judicial determination and a declaration that Micron and Infineon directly, contributorily and through inducement infringe the Tessera Patents, and that their infringement is willful;

C. For an order preliminarily and permanently enjoining Micron and Infineon, and their directors, officers, employees, attorneys, agents and all persons in active concert or participation with any of the foregoing from further acts of direct infringement, contributory infringement, or inducement of infringement of the patent-in-suit;

D. For damages resulting from infringement of the patent-in-suit by Micron and Infineon in an amount to be determined at trial, and the trebling of such damages due to the willful nature of their infringement;

E. For an order permanently enjoining Micron and Infineon, and their directors, officers, employees, attorneys, agents and all persons in active concert or participation with any of the foregoing from further acts in violation of Sherman Act Section One and Texas Business and Commerce Code Section 15.05(a);

F. For damages resulting from Micron and Infineon's violation of Sherman Act Section One and Texas Business and Commerce Code Section 15.05(a) in an amount to be determined at trial, and the trebling of such damages;

G. For damages resulting from Micron and Infineon's tortious interference with Tessera's contractual relations and/or prospective business relations in an amount to be determined at trial, and punitive damages;

H. For an award of interest on damages;

I. For a declaration that this case is exceptional pursuant to 35 U.S.C. § 285 and an award of attorneys' fees and costs, and pursuant to 15 U.S.C. § 15 an award of attorneys' fees and costs; and

J. For an award of such other and further relief as this Court deems just and proper.

Dated: May 10, 2006

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this documents via the court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by overnight delivery this 10th day of May, 2006.

/s/ Otis Carroll