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11 Attorneys for Plaintiff
12 DR. MICHAEL JAFFÉ,
13 *in his capacity as Insolvency Administrator*
14 *over the assets of*
15 QIMONDA AG

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **SAN FRANCISCO DIVISION**

16 DR. MICHAEL JAFFÉ
17 *in his capacity as Insolvency*
18 *Administrator over the assets of*
19 QIMONDA AG

19 Plaintiff,

20 v.

21 MAGNACHIP SEMICONDUCTOR CORP.,
22 MAGNACHIP SEMICONDUCTOR, INC.,
23 MAGNACHIP SEMICONDUCTOR S.A. and
24 MAGNACHIP SEMICONDUCTOR, LTD.,

24 Defendants.

Case No. 12-CV-03166-RS

**THIRD AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

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1 **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

2 1. For its Complaint against Defendants MagnaChip Semiconductor Corporation,
3 MagnaChip Semiconductor Inc., MagnaChip Semiconductor S.A. and MagnaChip
4 Semiconductor, Ltd. (collectively “Defendants” or “MagnaChip”), Plaintiff Dr. Michael Jaffé in
5 his capacity as Insolvency Administrator over the assets of Qimonda AG alleges as follows:

6 **NATURE OF THE CASE**

7 2. Plaintiff seeks injunctive relief and damages for acts of patent infringement by
8 MagnaChip, in violation of the patent laws of the United States.

9 **PARTIES**

10 **Plaintiff**

11 3. Qimonda AG (“Qimonda”) is a German corporation having a principal place of
12 business at Gustav-Heinemann-Ring 212, 81739 Munich, Germany. On January 23, 2009,
13 Qimonda filed for insolvency proceedings with the Munich Local Court – Insolvency Court
14 (*Amtsgericht München – Insolvenzgericht*), Germany (the “Insolvency Court”). On April 1,
15 2009, the Insolvency Court issued an Order that opened formal insolvency proceedings over the
16 estate of Qimonda and appointed Plaintiff as the formal insolvency administrator.

17 4. Prior to its insolvency, Qimonda was a global company that designed,
18 manufactured and distributed memory products worldwide. Qimonda and its subsidiaries
19 employed over ten thousand employees, a substantial percentage of which were dedicated to
20 research and development. Through its subsidiaries, Qimonda manufactured products,
21 including in the United States and Europe, according to many of Qimonda’s patented inventions
22 identified in this Complaint. Qimonda conducted its North American business through
23 Qimonda North America Corp. (“QNA”), a wholly-owned subsidiary of Qimonda, and its
24 wholly-owned subsidiary Qimonda Richmond LLC (“Qimonda Richmond”). Prior to
25 insolvency, Qimonda Richmond employed over two thousand employees and comprised a state-
26 of-the-art semiconductor manufacturing and research and development facility that
27 manufactured semiconductor integrated circuits according to many of Qimonda’s patented
28 inventions identified in this Complaint.

1 5. In 2008, Qimonda filed a complaint for patent infringement in the U.S.
2 International Trade Commission (“ITC”) (Inv. No. 337-TA-665) (“ITC Proceeding”) and a
3 companion case in the U.S. District Court for the Eastern District of Virginia (Case No. 3:08-
4 CV-735-JRS, Richmond Division) (the “District Court Action”). The District Court Action was
5 stayed pending the outcome of the ITC Proceeding. Qimonda filed for insolvency in Germany,
6 and Plaintiff was appointed insolvency administrator during the pendency of the ITC
7 Proceeding. In order to protect Qimonda’s United States assets, on June 15, 2009, Plaintiff filed
8 a proceeding under Chapter 15, Title 11 of the United States Code, seeking recognition of the
9 German insolvency proceedings. (See Civ. No. 09-14766-RGM, U.S. Bankruptcy Court for the
10 Eastern District of Virginia, Alexandria Division). On July 22, 2009, the U.S. Bankruptcy
11 Court for the Eastern District of Virginia (the “Bankruptcy Court”) issued an order granting Dr.
12 Jaffé’s petition and recognizing the German insolvency proceeding as a foreign main
13 proceeding. The Eastern District of Virginia court lifted the stay following the conclusion of the
14 ITC Proceeding and dismissed the District Court Action without prejudice on January 10, 2012.
15 That same day, Plaintiff filed the initial Complaint in this action in the U.S. District Court for
16 the Eastern District of Virginia.

17 6. Plaintiff is the proper plaintiff in this action with standing to assert Qimonda’s
18 patents against infringers and to collect past and future damages for such infringement. When
19 granting the Plaintiff’s motion for Chapter 15 protection, on July 22, 2009, the Bankruptcy
20 Court issued a supplemental Order stating, among other things, that Plaintiff “shall be the sole
21 and exclusive representative of Qimonda AG in the United States and shall administer the assets
22 of Qimonda AG within the territorial jurisdiction of the United States.”

Defendants

24 7. On information and belief, MagnaChip Semiconductor Corporation is a Delaware
25 corporation having a principal place of business at 891 Daechi-don, Gangnam-gu, Seoul M5
26 135-738, Republic of Korea (c/o MagnaChip Semiconductor, Ltd.), and is the ultimate parent of
27 the remaining entities identified in this paragraph. On information and belief, MagnaChip
28 Semiconductor, Inc. is a California corporation having its principal place of business at 20400

1 Stevens Creek Blvd. Ste. 370, Cupertino, CA, 95014. On information and belief, MagnaChip
2 Semiconductor, S.A. is a Luxembourg corporation having a principal place of business at 74,
3 rue de Merl, Luxembourg N4 L-2146, Grand Duchy of Luxembourg. On information and
4 belief, MagnaChip Semiconductor, Ltd. is a Korean corporation having a principal place of
5 business at 1 Hyangjeong-dong, Hungkuk-gu, Cheongju-si M5 361-725, Republic of Korea. On
6 information and belief, MagnaChip is a semiconductor manufacturing company that
7 manufactures and sells analog and mixed-signal integrated circuits. On information and belief,
8 MagnaChip also provides fabrication services to third-parties.

9 **JURISDICTION**

10 8. This is an action for patent infringement arising under the patent laws of the
11 United States, Title 35, United States Code. Accordingly, the Court has subject-matter
12 jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

13 9. This Court has personal jurisdiction over MagnaChip Semiconductor, Inc.
14 because it is a California corporation having a principal place of business in this judicial district
15 and also conducts, transacts, and/or solicits business within this judicial district. On information
16 and belief, MagnaChip Semiconductor, Inc. has infringed and continues to infringe one or more
17 claims of the patents-in-suit within this judicial district by engaging in substantial activities,
18 including marketing, selling, and offering to sell the infringing products at least via distribution
19 channels in this judicial district. Personal jurisdiction is also proper because MagnaChip
20 Semiconductor, Inc., acting alone or in concert with third parties, has intentionally caused and
21 continues to cause injury in this judicial district.

22 10. This Court has personal jurisdiction over MagnaChip Semiconductor Corp.
23 because it conducts, transacts, and/or solicits business within this judicial district. On
24 information and belief, MagnaChip Semiconductor Corp. has infringed and continues to infringe
25 one or more claims of the patents-in-suit within this judicial district by engaging in substantial
26 activities, including selling and/or offering to sell the infringing products at least via distribution
27 channels in this judicial district. Personal jurisdiction is also proper because MagnaChip
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1 Semiconductor Corp., acting alone or in concert with third parties, has intentionally caused and
2 continues to cause injury in this judicial district.

3 11. This Court has personal jurisdiction over MagnaChip Semiconductor S.A.
4 because it conducts, transacts, and/or solicits business within this judicial district. On
5 information and belief, MagnaChip Semiconductor S.A. has infringed and continues to infringe
6 one or more claims of the patents-in-suit within this judicial district by engaging in substantial
7 activities, including selling and/or offering to sell the infringing products at least via distribution
8 channels in this judicial district. Personal jurisdiction is also proper because MagnaChip
9 Semiconductor S.A., acting alone or in concert with third parties, has intentionally caused and
10 continues to cause injury in this judicial district.

11 12. This Court has personal jurisdiction over MagnaChip Semiconductor, Ltd.
12 because it conducts, transacts, and/or solicits business within this judicial district. On
13 information and belief, MagnaChip Semiconductor, Ltd. has infringed and continues to infringe
14 one or more claims of the patents-in-suit within this judicial district by engaging in substantial
15 activities, including selling and/or offering to sell the infringing products at least via distribution
16 channels in this judicial district. Personal jurisdiction is also proper because MagnaChip
17 Semiconductor, Ltd., acting alone or in concert with third parties, has intentionally caused and
18 continues to cause injury in this judicial district.

19 13. Further, MagnaChip Semiconductor Corporation and MagnaChip Semiconductor
20 Inc. have admitted that they are deemed to “reside” in this judicial district and are “subject to
21 personal jurisdiction” in this judicial district, because “all of the defendants in this case are
22 either headquartered or have significant operations in the NDCA.” These defendants moved to
23 transfer venue to this judicial district, thus waiving any objections to this Court’s exercise of
24 personal jurisdiction over them.

25 14. Venue in this judicial district is proper under 28 U.S.C. §§ 1391, 1400, and 1409.
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GENERAL ALLEGATIONS

15. MagnaChip is a developer and provider of integrated circuits and products containing the same.¹ MagnaChip has previously offered and/or is now currently offering Display Driver and LED Driver products for sale in this judicial district. MagnaChip also manufactures integrated circuit products for other parties.

16. Upon information and belief, MagnaChip's Display Driver products include and/or have included products in the TFT-LCD Source Driver, TFT-LCD Gate Driver, Timing Controller, LTPS, AMOLED, and a-Si TFT product families. Upon information and belief, MagnaChip's LED Driver products include the MAP3201, MAP3202, MAP3222, MAP3204, MAP3205, MAP3103, MAP3105, MAP3106C, and MAP3261.

17. On information and belief, MagnaChip's Display Driver products include the LG Display SW0632 product family.

18. On information and belief, MagnaChip's Display Driver products, as defined above ("the MagnaChip Accused Products"), are being offered for sale and/or have been sold throughout the United States. On information and belief, the MagnaChip Accused Products are integrated circuits and products containing integrated circuits that are especially made and/or adapted to be used as components in other products.

19. On information and belief, the MagnaChip Accused Products and products containing the MagnaChip Accused Products are sold to retailers, including Best Buy stores, which sell and offer to sell the MagnaChip Accused Products and products containing the MagnaChip Accused Products. On information and belief, MagnaChip intends that said retailers, including Best Buy, sell and offer to sell the MagnaChip Accused Products and products containing the MagnaChip Accused Products.

¹ The identification of products and parts in this Complaint is by way of example only. On information and belief, the exemplary parts identified in this Complaint are representative of all products and parts with reasonably similar functionality and/or architecture, whether discontinued, current or planned/future.

1 20. On information and belief, the MagnaChip Accused Products and products
2 containing the MagnaChip Accused Products are sold to manufacturers and downstream
3 designers, including LG Display, which incorporate those products into downstream products
4 sold to end users. On information and belief, MagnaChip intends that said manufacturers and
5 downstream designers manufacture, use, sell, and offer to sell said downstream products to end
6 users. On information and belief, MagnaChip intends that said end users use said downstream
7 products.

8 21. On information and belief, Defendants have, in various combinations, jointly
9 manufactured and/or designed products, including without limitation the MagnaChip Accused
10 products, and various combinations thereof. On information and belief, Defendants are jointly
11 and severably liable for the acts of patent infringement described in this Complaint.

12 **COUNT I - INFRINGEMENT OF U.S. PATENT NO. 5,851,899**

13 22. Plaintiff incorporates by reference, as if fully set forth herein, the allegations of
14 the preceding paragraphs of this Complaint.

15 23. On December 22, 1998, U.S. Patent No. 5,851,899 (“the ‘899 patent”), entitled
16 “Gapfill and Planarization Process for Shallow Trench Isolation,” was duly and legally issued
17 by the U.S. Patent and Trademark Office to the inventor, Peter Weigand. All right, title, and
18 interest in the ‘899 patent has been assigned to Qimonda and is held by Plaintiff by operation of
19 law, including the right to sue for and recover all past, present, and future damages for
20 infringement of the ‘899 patent. A copy of the ‘899 patent is attached as Exhibit A.

21 24. The ‘899 patent is currently in full force and effect.

22 25. In accordance with 35 U.S.C. § 282, the ‘899 patent, and each and every claim
23 thereof, is presumed valid.

24 26. On information and belief, the MagnaChip Accused Products contain elements
25 corresponding to all limitations of one or more of claims 1-23 of the ‘899 patent.²

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28 ² On November 23, 2012, Plaintiff served on MagnaChip “Plaintiff’s Disclosure Of Asserted
12-CV-03166-RS

1 27. On information and belief, MagnaChip has in the past infringed and continues to
2 directly infringe, literally or under the doctrine of equivalents, one or more of claims 1-23 of the
3 ‘899 patent by making, using, offering for sale, and/or selling in the United States, and/or
4 importing into the United States, the MagnaChip Accused Products and products containing the
5 MagnaChip Accused Products that are within the scope of one or more claims of the ‘899
6 patent.

7 28. On information and belief, MagnaChip has in the past infringed and continues to
8 infringe one or more of claims 1-23 of the ‘899 patent by actively inducing retailers to infringe
9 one or more claims of the ‘899 patent by offering for sale and/or selling in the United States the
10 MagnaChip Accused Products and products containing MagnaChip Accused Products that are
11 within the scope of one or more claims of the ‘899 patent.

12 29. On information and belief, MagnaChip has in the past infringed and continues to
13 infringe one or more of claims 1-23 of the ‘899 patent by actively inducing manufacturers and
14 downstream designers to infringe one or more claims of the ‘899 patent by manufacturing,
15 using, offering for sale, and/or selling in the United States the MagnaChip Accused Products
16 and products containing the MagnaChip Accused Products that are within the scope of one or
17 more claims of the ‘899 patent.

18 30. On information and belief, MagnaChip has in the past infringed and continues to
19 infringe one or more of claims 1-23 of the ‘899 patent by actively inducing end users to infringe
20 one or more claims of the ‘899 patent by using the MagnaChip Accused Products and products
21 containing the MagnaChip Accused Products that are within the scope of one or more claims of
22 the ‘899 patent.

23 31. On information and belief, MagnaChip has in the past contributorily infringed and
24 continues to contributorily infringe one or more claims of the ‘899 patent by making, using,
25 offering for sale, and/or selling in the United States the MagnaChip Accused Products and
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28 Claims and Preliminary Infringement Contentions Under Patent L.R. 3-1 and 3-2.”

1 products containing the MagnaChip Accused Products that are within the scope of one or more
2 claims of the '899 patent.

3 32. On information and belief, the infringement of the '899 patent by MagnaChip has
4 been with notice and knowledge of the patent since at least March 15, 2012, when it was served
5 with a copy of the '899 patent and a Complaint that identified representative infringing
6 products. On information and belief, MagnaChip's infringement therefore has been willful.

7 33. On information and belief, the MagnaChip Accused Products are especially made
8 and adapted for use in products infringing the '899 patent, constitute a material part of the
9 invention of the '899 patent, and have no substantially non-infringing use.

10 34. Plaintiff has been irreparably damaged and harmed by MagnaChip's
11 infringement, and this damage and harm will continue unless MagnaChip is enjoined by this
12 Court.

13 **COUNT II - INFRINGEMENT OF U.S. PATENT NO. 5,821,804**

14 35. Plaintiff incorporates by reference, as if fully set forth herein, the allegations of
15 the preceding paragraphs of this Complaint.

16 36. On October 13, 1998, U.S. Patent No. 5,821,804 ("the '804 patent"), entitled
17 "Integrated Semiconductor Circuit," was duly and legally issued from the U.S. Patent and
18 Trademark Office to the inventors, Wolfgang Nikutta and Werner Reczek. All right, title, and
19 interest in the '804 patent has been assigned to Qimonda and is held by Plaintiff by operation of
20 law, including the right to sue for and recover all past, present, and future damages for
21 infringement of the '804 patent. A copy of the '804 patent is attached as Exhibit B.

22 37. The '804 patent is currently in full force and effect.

23 38. In accordance with 35 U.S.C. § 282, the '804 patent, and each and every claim
24 thereof, is presumed valid.

25 39. On information and belief, the MagnaChip Accused Products contain elements
26 corresponding to all limitations of one or more of claims 1-8 of the '804 patent.²

27 40. On information and belief, MagnaChip has in the past infringed and continues to
28 directly infringe, literally or under the doctrine of equivalents, one or more of claims 1-8 of the

1 '804 patent by making, using, offering for sale, and/or selling in the United States, and/or
2 importing into the United States, the MagnaChip Accused Products and products containing the
3 MagnaChip Accused Products that are within the scope of one or more claims of the '804
4 patent.

5 41. On information and belief, MagnaChip has in the past infringed and continues to
6 infringe one or more of claims 1-8 of the '804 patent by actively inducing retailers to infringe
7 one or more claims of the '804 patent by offering for sale and/or selling in the United States the
8 MagnaChip Accused Products and products containing the MagnaChip Accused Products that
9 are within the scope of one or more claims of the '804 patent.

10 42. On information and belief, MagnaChip has in the past infringed and continues to
11 infringe one or more of claims 1-8 of the '804 patent by actively inducing manufacturers and
12 downstream designers to infringe one or more claims of the '804 patent by offering for sale
13 and/or selling in the United States the MagnaChip Accused Products and products containing
14 the MagnaChip Accused Products that are within the scope of one or more claims of the '804
15 patent.

16 43. On information and belief, MagnaChip has in the past infringed and continues to
17 infringe one or more of claims 1-8 of the '804 patent by actively inducing end users to infringe
18 one or more claims of the '804 patent by offering for sale and/or selling in the United States the
19 MagnaChip Accused Products and products containing the MagnaChip Accused Products that
20 are within the scope of one or more claims of the '804 patent.

21 44. On information and belief, MagnaChip has in the past contributorily infringed and
22 continues to contributorily infringe one or more claims of the '804 patent by making, using,
23 offering for sale, and/or selling in the United States the MagnaChip Accused Products and
24 products containing the MagnaChip Accused Products that are within the scope of one or more
25 claims of the '804 patent.

26 45. On information and belief, the infringement of the '804 patent by MagnaChip has
27 been with notice and knowledge of the patent since at least March 15, 2012, when it was served
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1 with a copy of the '804 patent a Complaint that identified representative infringing products.
2 On information and belief, MagnaChip's infringement therefore has been willful.

3 46. On information and belief, the MagnaChip Accused Products are especially made
4 and adapted for use in products infringing the '804 patent, constitute a material part of the
5 invention of the '804 patent, and have no substantially non-infringing use.

6 47. Plaintiff has been irreparably damaged and harmed by MagnaChip's
7 infringement, and this damage and harm will continue unless MagnaChip is enjoined by this
8 Court.

9 **COUNT III - INFRINGEMENT OF U.S. PATENT NO. 6,559,547**

10 48. Plaintiff incorporates by reference, as if fully set forth herein, the allegations of
11 the preceding paragraphs of this Complaint.

12 49. On May 6, 2003, U.S. Patent No. 6,559,547 ("the '547 patent"), entitled
13 "Patterning of Content Areas In Multilayer Metalization Configurations of Semiconductor
14 Components," was duly and legally issued from the U.S. Patent and Trademark Office to the
15 inventors, Matthias Uwe Lehr, Albrecht Kieslich, Peter Thieme, and Lars Volland. All right,
16 title, and interest in the '547 patent has been assigned to Qimonda and is held by Plaintiff by
17 operation of law, including the right to sue for and recover all past, present, and future damages
18 for infringement of the '547 patent. A copy of the '547 patent is attached as Exhibit C.

19 50. The '547 patent is currently in full force and effect.

20 51. In accordance with 35 U.S.C. § 282, the '547 patent, and each and every claim
21 thereof, is presumed valid.

22 52. On information and belief, the MagnaChip Accused Products contain elements
23 corresponding to all limitations of one or more of claims 1-12 of the '547 patent.²

24 53. On information and belief, MagnaChip has in the past infringed and continues to
25 directly infringe, literally or under the doctrine of equivalents, one or more of claims 1-12 of the
26 '547 patent by making, using, offering for sale, and/or selling in the United States, and/or
27 importing into the United States, the MagnaChip Accused Products and products containing the
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1 MagnaChip Accused Products that are within the scope of one or more claims of the '547
2 patent.

3 54. On information and belief, MagnaChip has in the past infringed and continues to
4 infringe one or more of claims 1-12 of the '547 patent by actively inducing retailers to infringe
5 one or more claims of the '547 patent by making, using, offering for sale, and/or selling in the
6 United States the MagnaChip Accused Products and products containing the MagnaChip
7 Accused Products that are within the scope of one or more claims of the '547 patent.

8 55. On information and belief, MagnaChip has in the past infringed and continues to
9 infringe one or more of claims 1-12 of the '547 patent by actively inducing manufacturers and
10 downstream designers to infringe one or more claims of the '547 patent by making, using,
11 offering for sale, and/or selling in the United States the MagnaChip Accused Products and
12 products containing the MagnaChip Accused Products that are within the scope of one or more
13 claims of the '547 patent.

14 56. On information and belief, MagnaChip has in the past infringed and continues to
15 infringe one or more of claims 1-12 of the '547 patent by actively inducing end users to infringe
16 one or more claims of the '547 patent by making, using, offering for sale, and/or selling in the
17 United States the MagnaChip Accused Products and products containing the MagnaChip
18 Accused Products that are within the scope of one or more claims of the '547 patent.

19 57. On information and belief, MagnaChip has in the past contributorily infringed and
20 continues to contributorily infringe one or more claims of the '547 patent by offering for sale
21 and/or selling in the United States the MagnaChip Accused Products and products containing
22 the MagnaChip Accused Products that are within the scope of one or more claims of the '547
23 patent.

24 58. On information and belief, the infringement of the '547 patent by MagnaChip has
25 been with notice and knowledge of the patent since at least March 15, 2012, when it was served
26 with a copy of the '547 patent and a Complaint that identified representative infringing
27 products. On information and belief, MagnaChip's infringement therefore has been willful.
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1 59. On information and belief, the MagnaChip Accused Products are especially made
2 and adapted for use in products infringing the '547 patent, constitute a material part of the
3 invention of the '547 patent, and have no substantially non-infringing use.

4 60. Plaintiff has been irreparably damaged and harmed by MagnaChip's
5 infringement, and this damage and harm will continue unless MagnaChip is enjoined by this
6 Court.

7 **COUNT IV - INFRINGEMENT OF U.S. PATENT NO. 6,413,886**

8 61. Plaintiff incorporates by reference, as if fully set forth herein, the allegations of
9 the preceding paragraphs of this Complaint.

10 62. On July 2, 2002, U.S. Patent No. 6,413,886 ("the '886 patent"), entitled "Method
11 for Fabricating a Microtechnical Structure," was duly and legally issued from the U.S. Patent
12 and Trademark Office to the inventors, Alfred Kersch and Georg Schulze-Icking. All right,
13 title, and interest in the '886 patent has been assigned to Qimonda and is held by Plaintiff by
14 operation of law, including the right to sue for and recover all past, present, and future damages
15 for infringement of the '886 patent. A copy of the '886 patent is attached as Exhibit D.

16 63. The '886 patent is currently in full force and effect.

17 64. In accordance with 35 U.S.C. § 282, the '886 patent, and each and every claim
18 thereof, is presumed valid.

19 65. On information and belief, the MagnaChip Accused Products contain elements
20 corresponding to all limitations of one or more of claims 1-15 of the '886 patent.²

21 66. On information and belief, MagnaChip has in the past infringed and continues to
22 directly infringe, literally or under the doctrine of equivalents, one or more of claims 1-15 of the
23 '886 patent by making, using, offering for sale, and/or selling in the United States, and/or
24 importing into the United States, the MagnaChip Accused Products and products containing the
25 MagnaChip Accused Products that are within the scope of one or more claims of the '886
26 patent.

27 67. On information and belief, MagnaChip has in the past infringed and continues to
28 infringe one or more of claims 1-15 of the '886 patent by actively inducing retailers to infringe

1 one or more claims of the '886 patent by offering for sale and/or selling in the United States the
2 MagnaChip Accused Products and products containing the MagnaChip Accused Products that
3 are within the scope of one or more claims of the '886 patent.

4 68. On information and belief, MagnaChip has in the past infringed and continues to
5 infringe one or more of claims 1-15 of the '886 patent by actively inducing manufacturers and
6 downstream designers to infringe one or more claims of the '886 patent by offering for sale
7 and/or selling in the United States the MagnaChip Accused Products and products containing
8 the MagnaChip Accused Products that are within the scope of one or more claims of the '886
9 patent.

10 69. On information and belief, MagnaChip has in the past infringed and continues to
11 infringe one or more of claims 1-15 of the '886 patent by actively inducing end users to infringe
12 one or more claims of the '886 patent by offering for sale and/or selling in the United States the
13 MagnaChip Accused Products and products containing the MagnaChip Accused Products that
14 are within the scope of one or more claims of the '886 patent.

15 70. On information and belief, MagnaChip has in the past contributorily infringed and
16 continues to contributorily infringe one or more claims of the '886 patent by making, using,
17 offering for sale, and/or selling in the United States the MagnaChip Accused Products and
18 products containing the MagnaChip Accused Products that are within the scope of one or more
19 claims of the '886 patent.

20 71. On information and belief, the infringement of the '886 patent by MagnaChip has
21 been with notice and knowledge of the patent since at least March 15, 2012, when it was served
22 with a copy of the '886 patent and a Complaint that identified representative infringing
23 products. On information and belief, MagnaChip's infringement therefore has been willful.

24 72. On information and belief, the MagnaChip Accused Products are especially made
25 and adapted for use in products infringing the '886 patent, constitute a material part of the
26 invention of the '886 patent, and have no substantially non-infringing use.

1 73. Plaintiff has been irreparably damaged and harmed by MagnaChip's
2 infringement, and this damage and harm will continue unless MagnaChip is enjoined by this
3 Court.

4 **COUNT V - INFRINGEMENT OF U.S. PATENT NO. 5,646,434**

5 74. Plaintiff incorporates by reference, as if fully set forth herein, the allegations of
6 the preceding paragraphs of this Complaint.

7 75. On July 8, 1997, U.S. Patent No. 5,646,434 ("the '434 patent"), entitled
8 "Semiconductor Component with Protective Structure for Protecting Against Electrostatic
9 discharge," was duly and legally issued from the U.S. Patent and Trademark Office to the
10 inventors, Ioannis Chrysostomides, Xaver Guggenmos, Wolfgang Nikutta, Werner Reczek,
11 Johann Rieger, and Johannes Stacker and Hartmud Terletzki. All right, title, and interest in the
12 '434 patent has been assigned to Qimonda and is held by Plaintiff by operation of law, including
13 the right to sue for and recover all past, present, and future damages for infringement of the '434
14 patent. A copy of the '434 patent is attached as Exhibit E.

15 76. The '434 patent is currently in full force and effect.

16 77. In accordance with 35 U.S.C. § 282, the '434 patent, and each and every claim
17 thereof, is presumed valid.

18 78. On information and belief, the MagnaChip Accused Products contain elements
19 corresponding to all limitations of one or more of claims 1-11 of the '434 patent.²

20 79. On information and belief, MagnaChip has in the past infringed and continues to
21 directly infringe, literally or under the doctrine of equivalents, one or more of claims 1-11 of the
22 '434 patent by making, using, offering for sale, and/or selling in the United States, and/or
23 importing into the United States, the MagnaChip Accused Products and products containing the
24 MagnaChip Accused Products that are within the scope of one or more claims of the '434
25 patent.

26 80. On information and belief, MagnaChip has in the past infringed and continues to
27 infringe one or more of claims 1-11 of the '434 patent by actively inducing retailers to infringe
28 one or more claims of the '434 patent by offering for sale and/or selling in the United States the
12-CV-03166-RS

1 MagnaChip Accused Products and products containing the MagnaChip Accused Products that
2 are within the scope of one or more claims of the '434 patent.

3 81. On information and belief, MagnaChip has in the past infringed and continues to
4 infringe one or more of claims 1-11 of the '434 patent by actively inducing manufacturers and
5 downstream designers to infringe one or more claims of the '434 patent by offering for sale
6 and/or selling in the United States the MagnaChip Accused Products and products containing
7 the MagnaChip Accused Products that are within the scope of one or more claims of the '434
8 patent.

9 82. On information and belief, MagnaChip has in the past infringed and continues to
10 infringe one or more of claims 1-11 of the '434 patent by actively inducing end users to infringe
11 one or more claims of the '434 patent by offering for sale and/or selling in the United States the
12 MagnaChip Accused Products and products containing the MagnaChip Accused Products that
13 are within the scope of one or more claims of the '434 patent.

14 83. On information and belief, MagnaChip has in the past contributorily infringed and
15 continues to contributorily infringe one or more claims of the '434 patent by making, using,
16 offering for sale, and/or selling in the United States the MagnaChip Accused Products and
17 products containing the MagnaChip Accused Products that are within the scope of one or more
18 claims of the '434 patent.

19 84. On information and belief, the infringement of the '434 patent by MagnaChip has
20 been with notice and knowledge of the patent since at least March 15, 2012, when it was served
21 with a copy of the '434 patent and a Complaint that identified representative infringing
22 products. On information and belief, MagnaChip's infringement therefore has been willful.

23 85. On information and belief, the MagnaChip Accused Products are especially made
24 and adapted for use in products infringing the '434 patent, constitute a material part of the
25 invention of the '434 patent, and have no substantially non-infringing use.

26 86. Plaintiff has been irreparably damaged and harmed by MagnaChip's
27 infringement, and this damage and harm will continue unless MagnaChip is enjoined by this
28 Court.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff demands a trial by jury on all issues so triable.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff requests the following relief:

5 A. That the Court enter a judgment in favor of Plaintiff, declaring that MagnaChip
6 has infringed, induced the infringement of, and/or contributorily infringed the '899, '804, '886,
7 '434 and '547 patents, as set forth in this Complaint;

8 B. That the Court enter a judgment in favor of Plaintiff, declaring that MagnaChip's
9 infringement of the '899, '804, '886, '434 and '547 patents has been willful at least as of March
10 15, 2012, the foregoing trebling damages awarded to Plaintiff as provided by 35 U.S.C. § 284;

11 C. That the Court preliminarily and permanently enjoin MagnaChip, and all others in
12 active concert or participation with it, from infringing the '899, '804, '886, '434 and '547
13 patents;

14 D. That the Court award Plaintiff all damages adequate to compensate Qimonda for
15 all acts of infringement of the '899, '804, '886, '434 and '547 patents, but in no event less than a
16 reasonable royalty, together with prejudgment and post-judgment interest and costs fixed by the
17 Court, as provided by 35 U.S.C. § 284;

18 E. That the Court declare that this is an exceptional case and grant Plaintiff an award
19 of its attorneys' fees incurred in prosecuting this action, as provided by 35 U.S.C. §285; and

20 F. That the Court grant Plaintiff such other and further relief as justice may require.
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1 Respectfully submitted this 18th day of January 2013.

2 DR. MICHAEL JAFFÉ
3 in his capacity as Insolvency
4 Administrator over the assets of
QIMONDA AG,

5 By: /s/ Robert Whitman /s/

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