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

17 LONE STAR SILICON INNOVATIONS LLC,

18 Plaintiff,

19 v.

20 SEMICONDUCTOR MANUFACTURING
21 INTERNATIONAL CORPORATION, ET AL.,
22 Defendants.

Case No 3:17-cv-03980-WHA

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO CONSOLIDATE RELATED
CASES PURSUANT TO FED. R. CIV. P. 42(A)**

Date: November 2, 2017
Time: 8:00 AM
Place: Courtroom 8, 19th Floor
Judge: Hon. William H. Alsup

1 **PLAINTIFF’S NOTICE OF MOTION AND MOTION TO CONSOLIDATE**

2 **RELATED CASES PURSUANT TO FED. R. CIV. P. 42(A)**

3 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

4 PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 42(a), Plaintiff Lone
5 Star Silicon Innovations LLC moves the Court to consolidate Case Nos. 3:17-cv-03980-WHA, 3:17-cv-
6 03981-WHA, 3:17-cv-04032-WHA, 3:17-cv-04033-WHA, 3:17-cv-04034-WHA, and 3:17-cv-05458-
7 WHA (“Related Cases”). This Motion is noticed for hearing if necessary on Thursday, November 2, 2017,
8 at 8:00 am, at Courtroom 8, 19th Floor, San Francisco Courthouse, 450 Golden Gate Avenue, San
9 Francisco, CA 94102 before the Honorable William Alsup.

10 Plaintiff requests consolidation for all pretrial issues because the Related Cases involve the same
11 Plaintiff and have overlapping patents-in-suit. Consolidating these Related Cases, which share issues of
12 fact and law, will promote judicial economy, help preserve the resources of both the Court and the parties,
13 and prevent contradictory outcomes from numerous proceedings.

14 This Motion is based upon this Notice of Motion, the accompanying Memorandum of Points and
15 Authorities, the Declaration of Joseph F. Marinelli, the attached proposed order, all other pleadings and
16 papers on file in this action, and any other evidence and argument that may be presented before or during
17 the hearing on this Motion.

18
19 DATED: September 28, 2017

FITCH, EVEN, TABIN & FLANNERY LLP

20 /s/ Jon A. Birmingham

21 Jon A. Birmingham (Cal. Bar No. 271034)

22 *Attorneys for Plaintiff,*

23 LONE STAR SILICON INNOVATIONS LLC
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MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF RELIEF REQUESTED

Pursuant to Federal Rule of Civil Procedure 42(a), Plaintiff Lone Star Silicon Innovations LLC (“Lone Star” or “Plaintiff”), by and through its counsel, respectfully requests that the Court consolidate the following closely-related patent infringement actions currently pending in the Northern District of California for all pretrial issues in the lowest-numbered action, Case No. 3:17-cv-03980-WHA:

Case Name	Case No.
Lone Star Silicon Innovations LLC v. Semiconductor Manufacturing International Corporation, et al.	3:17-cv-03980-WHA
Lone Star Silicon Innovations LLC v. Renesas Electronics Corporation, et al.	3:17-cv-03981-WHA
Lone Star Silicon Innovations LLC v. Nanya Technology Corporation, et al.	3:17-cv-04032-WHA
Lone Star Silicon Innovations LLC v. United Microelectronics Corporation, et al.	3:17-cv-04033-WHA
Lone Star Silicon Innovations LLC v. Toshiba Corporation, et al.	3:17-cv-04034-WHA
Lone Star Silicon Innovations LLC v. Micron Technology, Inc., et al.	3:17-cv-05458-WHA

The above-referenced cases (the “Related Cases”) were transferred to this District from the United States District Court for the Eastern District of Texas. These actions involve the same plaintiff, many of the same patents, common witnesses and sources of discovery, and overlapping issues of claim construction and validity. Accordingly, the Related Cases involve common core legal and factual issues for which consolidation will save the Court and the parties substantial time and effort. Consolidation will also promote consistency in the determinations of facts and application of the law.

Furthermore, all but two of the Related Cases were consolidated for pretrial purposes before they were transferred to this District, and all of the Defendants except Renesas and Micron consent to consolidation.

II. FACTUAL AND PROCEDURAL BACKGROUND

In the Related Cases, Lone Star alleges that Defendants directly or indirectly infringe one or more of the following patents related to the design of and the processes for fabricating semiconductor devices (collectively, the “patents-in-suit”) as indicated below:

	SMIC 3:17-cv- 03980- WHA	Renesas 3:17-cv- 03981- WHA	Nanya 3:17-cv- 04032- WHA	UMC 3:17-cv- 04033- WHA	Toshiba 3:17-cv- 04034- WHA	Micron 3:17-cv- 05458- WHA
5,872,038			✓			✓
5,912,188					✓	✓
5,973,372	✓			✓		
6,023,085					✓	✓
6,046,089		✓				
6,097,061			✓			✓
6,103,611	✓	✓	✓	✓		✓
6,153,933		✓				
6,326,231		✓	✓			✓
6,380,588		✓				
6,388,330	✓	✓	✓	✓	✓	✓
RE39,518					✓	

(*Id.* ¶4.) As shown above, U.S. Patent No. 6,388,330 (“the ’330 Patent”) is asserted against all of the Defendants. Several other of the patents-in-suit are asserted against multiple defendants. All of the patents-in-suit originated from a common assignee—Advanced Micro Devices Inc. (“AMD”)—and all are now under the common ownership of Lone Star. (*Id.* ¶5.)

Before these cases were transferred to this District, on December 20, 2016, the Eastern District of Texas consolidated the cases involving Defendants Toshiba, Nanya, UMC, and Micron for all pretrial issues except for venue. (*Id.* ¶6.) Lone Star’s cases against Defendants SMIC and Renesas were not consolidated with the other cases. (*Id.*)

Each of the Defendants other than Micron has proposed a case schedule in the course of preparing for the upcoming Case Management Conference. All of the proposed schedules are either identical for all dates or have only a few dates that differ by no more than a few days. All of the proposed schedules

1 propose the same claim construction briefing deadlines, claim construction hearing, and trial dates. (*Id.*
2 ¶7.)

3 Toshiba, SMIC, Nanya, and UMC defendants do not oppose Lone Star’s motion for consolidation.
4 The Renesas Defendants oppose consolidation. (*Id.* ¶8.) The Micron Defendants have neither consented
5 to nor opposed consolidation. (*Id.*)

6 **II. LEGAL STANDARD**

7 Rule 42(a) of the Federal Rules of Civil Procedure states that “[i]f actions before the court involve
8 a common question of law or fact, the court may: (1) join for hearing or trial any or all matters at issue in
9 the actions; (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or delay.”
10 Under Rule 42, a district court has “broad discretion” to consolidate cases pending in its district. *Pierce v.*
11 *County of Orange*, 526 F.3d 1190, 1203 (9th Cir. 2008); *In re Adams Apple, Inc.*, 829 F.2d 1484, 1487
12 (9th Cir. 1987). “While a district court does have broad discretion in determining whether consolidation
13 is appropriate, typically, consolidation is favored.” *Tse v. Apple, Inc.*, No. C 12-02653 SBA, 2013 U.S.
14 Dist. LEXIS 15646, at *9 (N.D. Cal. Feb. 5, 2013). Furthermore, Rule 42(a) only requires that cases
15 desired to be consolidated involve a common question of law or fact. *Ind. State Dist. Council of Laborers*
16 *& Hod Carriers Pension Fund v. Gecht*, Nos. C-06-7274 EMC, C-06-7453 EMC, and C-07-0698 EMC,
17 2007 U.S. Dist. LEXIS 26529, at *5 (N.D. Cal. Mar. 22, 2007). The “common question or questions do
18 not have to predominate.” *Id.* The district must only find the existence of the common questions and that
19 consolidation will be “beneficial.” *Id.* In determining whether to consolidate cases, the court “weighs the
20 saving of time and effort consolidation would produce against any inconvenience, delay, or expense that
21 it would cause.” *Huene v. United States*, 743 F.2d 703, 704 (9th Cir. 1984).

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