

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

2008 DEC 18 P 4:35

CLERK OF DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES OF AMERICA,
Plaintiff,

v.

MICROSEMI CORPORATION,
Defendant.

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) Civil Action No. 1:08 cv 1311
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1:08 cv 1311
ATJ / JFA

VERIFIED COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain a temporary restraining order, preliminary injunction, and equitable and other relief against defendant Microsemi Corporation (“Microsemi”) to remedy the harm to competition caused by Microsemi’s acquisition of assets of Semicoa, Inc. (“Semicoa”). The United States alleges as follows:

I. NATURE OF ACTION

1. This lawsuit challenges Microsemi’s July 14, 2008 acquisition of substantially all of the assets of Semicoa, which has significantly harmed competition in the development, manufacture and sale of certain specialized high reliability electronic components used in aerospace and military applications. The transaction eliminated all competition for several types of transistors used in such applications – known as JANS and JANTXV small signal transistors – and substantially lessened competition for one type of diode used in such applications – known as JANS and JANTXV 5811 diodes. The high reliability transistors and diodes affected by the transaction are manufactured to exacting standards to ensure high performance under the most

demanding conditions, subject to a U.S. government system of qualification and certification that is relied upon to assure the required degree of reliability. These components are used by customers that include the military services and the national security agencies of the United States in a wide range of critical applications in space, in the air, on land, and on and under the sea. The largest and most complex military applications ever designed, ranging from satellites to submarines, depend on these components. Civilian space projects ranging from communications satellites to the spacecraft under development to return astronauts to the moon also require these components. Because failure of even a single one of these components could result in the failure of a vital, multibillion dollar mission – and potentially cost the lives of American servicemen and women and astronauts – components with lesser degrees of reliability cannot be substituted for the products at issue in this case.

2. The JANTXV and JANS small signal transistors and the JANTXV and JANS 5811 diodes at issue in this case are hereinafter referred to collectively as the “relevant products.” Through its acquisition of the Semicoa assets, Microsemi reduced the number of suppliers of JANTXV and JANS small signal transistors from two to one, and thereby acquired monopolies in the development, manufacture and sale of those products. The acquisition also substantially reduced competition for JANTXV and JANS 5811 diodes by terminating Semicoa’s attempt to enter into the manufacture and sale of these diodes. The acquisition has thus created monopolies in the development, manufacture and sale of JANTXV and JANS small signal transistors, and has substantially lessened competition in the development, manufacture and sale of all relevant products.

3. As a result of the transaction, prices for the relevant products have increased and likely

will continue to increase, delivery times have become less reliable, and terms of service likely will become less favorable. Accordingly Microsemi's acquisition of the Semicoa assets violated Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2.

II. JURISDICTION AND VENUE

4. The United States brings this action against defendant Microsemi under Section 4 of the Sherman Act and Section 15 of the Clayton Act, 15 U.S.C. §§ 4 and 25, as amended, to prevent and restrain Microsemi from continuing to violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2.

5. Microsemi develops, manufactures and sells the relevant products in the flow of interstate commerce. Microsemi's activities in developing, manufacturing and selling the relevant products substantially affect interstate commerce. This Court has subject matter jurisdiction over this action and over the defendant pursuant to Section 4 of the Sherman Act and Section 15 of the Clayton Act, 15 U.S.C. §§ 4 and 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

6. Venue is proper in this district pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22 and 28 U.S.C. § 1391(c), and venue is proper in this Division pursuant to Local Rule 3(C). Defendant is a corporation that transacts business within this judicial district and Division, including by making sales to customers located within this judicial district and Division.

III. PARTIES TO THE TRANSACTION

7. Microsemi is a Delaware corporation with its principal place of business in Irvine, California. Microsemi's sales were approximately \$514 million in fiscal year 2008. Microsemi manufactures a range of high reliability semiconductors, including JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes. Microsemi's facilities for the

manufacture of the relevant products are located in Massachusetts, California and Arizona.

Microsemi's relevant products are shipped to customers throughout the United States, represent a regular, continuous and substantial flow of interstate commerce, and have a substantial effect upon interstate commerce.

8. Semicoa was a California corporation with its principal place of business in Costa Mesa, California. Semicoa's sales in the United States were approximately \$14.7 million in 2007. Prior to the acquisition, Semicoa's products included a range of high reliability semiconductors. Semicoa's facilities for the manufacture of the relevant products were located in Costa Mesa, California. Its relevant products were shipped to customers throughout the United States and represented a regular, continuous and substantial flow of interstate commerce and had a substantial effect upon interstate commerce. After the sale of the high reliability semiconductor assets to Microsemi, the remainder of the Semicoa business was renamed Array Optronics, Inc..

IV. THE TRANSACTION

9. On July 14, 2008, Microsemi and Semicoa completed an asset sale by which Microsemi acquired from Semicoa all of its business engaged in the development, manufacture and sale of the relevant products. Microsemi announced plans to release most of Semicoa's employees and to relocate its operations within a year to Microsemi facilities.

V. TRADE AND COMMERCE

The Relevant Product Markets

10. Transistors and diodes are semiconductor devices used to control the flow of electric current. In their simplest forms, transistors can be viewed as switches and diodes can be viewed

as one-way valves. Both products begin as silicon wafers produced in a furnace, typically referred to as a foundry. They are then cut into small sections known as dies. These dies are packaged in various ways into transistors and diodes.

11. Small signal transistors are a class of transistors commonly used in communications and other signal processing applications. Small signal transistors operate at low power levels and are used to amplify electrical signals in a wide range of products, including critical military and civilian applications ranging from satellites to nuclear missile systems. Small signal transistors are produced using equipment, processes and skill sets specific to this type of transistor. Other types of transistors have different characteristics and cannot perform the tasks required of small signal transistors. A small but significant increase in the price of small signal transistors would not cause customers to switch to other types of transistors.

12. Rectifier diodes are a class of diodes also commonly used in communications and other signal processing applications. Rectifier diodes operate at low power levels and are used to convert alternating current to direct current in a wide range of products, including critical military and civilian applications ranging from satellites to nuclear missile systems. Ultrafast recovery rectifier diodes, of which the 5811 type ("5811 diode") is among the most common, are distinguished from other rectifier diodes by their extremely high alternating speeds, which minimize power loss and waste heat generation. Their ability to perform efficiently and without generating excess heat is especially important in applications such as satellites and missiles, where power availability is strictly limited and heat dissipation is challenging. The 5811 diode performs a specific set of functions not performed by other ultrafast recovery rectifier diodes; while there are other types of ultrafast recovery rectifier diodes, those diodes have different

characteristics and cannot perform the functions required of 5811 diodes. A small but significant increase in the price of 5811 diodes would not cause customers to switch to other types of diodes.

13. Highly reliable performance under demanding conditions is absolutely essential in military and space systems, where failure of a single component could result in failure of the mission. To ensure reliability and proper performance, production of these components for use in United States military and space applications is supervised by the Defense Supply Center Columbus ("DSCC"), a component of the Department of Defense. DSCC maintains a list of qualified components and their suppliers generally known as the Qualified Manufacturers List, or QML. While the QML is specifically intended for reference by military contractors, civilian space system manufacturers also require highly reliable components for use in a demanding environment, and therefore make use of the QML system and specify QML qualified components.

14. Products listed on the QML are organized into "slash sheets," which denote groups of components with similar characteristics. Microsemi and Semicoa were the only manufacturers on the QML slash sheets for small signal transistors. This Complaint hereinafter uses the term "small signal transistors" to describe the products on these slash sheets.

15. DSCC grants certifications and qualifications for different grades of QML components, known as Joint Army-Navy categories. These grades in general represent different levels of reliability. The highest reliability grade is Joint Army-Navy Space ("JANS"); one level below JANS is Joint Army-Navy Technical Exchange-Visual Inspection ("JANTXV"). There are two grades below JANTXV, but the distinction between those grades and JANTXV is not as stark as between JANTXV and JANS. Therefore, the term JANTXV will be used to refer to all

QML grades other than JANS.

16. Manufacturers pursuing JANTXV qualification for their components must be audited by DSCC. DSCC audits the manufacturer's facility, including fabrication, assembly and testing processes. If satisfied that the manufacturer is able to produce consistently reliable components at the highest levels of quality and performance, DSCC will issue a certification for those processes and authorize production of a particular component for qualification testing. The manufacturer produces a sample lot and submits test results to DSCC. Once satisfied with the manufacturer's test results—which may take several rounds of submissions and required corrections—DSCC will place the particular component from that manufacturer on the QML with a JANTXV qualification.

17. JANS grade products are required by customers for systems that demand the utmost reliability, such as satellites and nuclear missile systems. Components used in space must be of the highest quality and performance, because the space environment exposes components to extremes of temperature, pressure, radiation, and vibration during launch. Moreover, because failures in space are generally beyond reach of repair, these components must be extremely reliable.

18. Thus, while JANS components may perform functions similar to JANTXV components, obtaining JANS certification requires extensive additional qualification and testing beyond that required to obtain JANTXV certification. Each step in the manufacture of each JANS product must be thoroughly documented to ensure traceability in the event of a manufacturing defect. In addition, suppliers of JANS products must undergo far more demanding ongoing manufacturing and testing requirements than suppliers of other QML

components. As a result, JANS components are regarded by buyers as being substantially more reliable than JANTXV components and are much more expensive than JANTXV components.

19. Components for use in commercial applications differ substantially from their JANTXV or JANS counterparts. JANTXV and JANS components are produced to very narrow tolerances. Commercial components, in contrast, are produced to much wider tolerances and lack the extensive production control, testing and documentation of JANTXV and JANS components. Moreover, commercial components are often encased in plastic, whereas JANTXV and JANS components are hermetically sealed in glass or metal cases, a far more expensive and demanding process that ensures greater reliability. Because of these significant differences in production and quality control, JANTXV and JANS components are much more reliable and substantially more expensive than commercial components.

20. Customers determine whether their projects require commercial grade, JANTXV, or JANS components. Those customers that choose JANTXV or JANS components need their reliability and assured performance characteristics, as evidenced by their willingness to pay the much higher cost of these components compared to commercial grade components.

21. Commercial grade components lack the reliability and assured performance of JANTXV components because they have not been produced following the thorough and reliable procedures mandated by DSCC for JANTXV components. While extensive testing of commercial grade components might reduce the risk of failure posed by the use of such components, such testing would be costly and time consuming. It would delay the project, some degree of risk would still remain, and the cost associated with such extensive testing in practice would make use of the commercial grade far more costly than use of a JANTXV component.

Customers therefore do not consider the cost or availability of commercial grade components when designing systems requiring JANTXV components.

22. Because JANS components are much more expensive than JANTXV components, customers whose needs can be met with JANTXV components have no economic incentive to substitute JANS components.

23. A small but significant increase in the price of JANTXV small signal transistors would not cause customers to substitute commercial grade small signal transistors or JANS small signal transistors to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANTXV small signal transistors is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

24. A small but significant increase in the price of JANTXV 5811 diodes would not cause customers to substitute commercial grade 5811 diodes or JANS 5811 diodes to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANTXV 5811 diodes is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

25. Customers specifying JANS small signal transistors and JANS 5811 diodes for their projects will not substitute JANTXV components for JANS components because they do not have the extra reliability of JANS components, which results from the much more demanding and extensive testing and process control required of JANS components. While extensive testing of JANTXV components might reduce the risk of failure posed by the use of such components,

such testing would be costly and time consuming. It would delay the project, some degree of risk would still remain, and the cost associated with such extensive testing in practice would make use of the JANTXV component far more costly than use of a JANS component. Thus, when JANS parts are available, customers do not consider JANTXV components substitutes when designing systems requiring JANS components or purchasing components to build such systems. Because commercial grade components are of even lower quality, customers specifying JANS components also will not substitute commercial components.

26. A small but significant increase in the price of JANS small signal transistors would not cause customers to substitute commercial grade or JANTXV small signal transistors to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANS small signal transistors is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

27. A small but significant increase in the price of JANS 5811 diodes would not cause customers to substitute commercial grade or JANTXV 5811 diodes to an extent that would make such a price increase unprofitable. Accordingly, the development, manufacture and sale of JANS 5811 diodes is a separate and distinct line of commerce and a relevant product market for the purpose of analyzing the effects of the acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

28. To the extent there were some customers that could substitute JANTXV components in response to a small but significant and nontransitory price increase on JANS small signal transistors or JANS 5811 diodes, Microsemi would be able to identify those customers and

charge them a lower price in order to avoid losing sales to them, while still raising the price to those customers who would not switch. Microsemi would not need to charge the lower price to all customers in order to avoid losing contested sales.

The Relevant Geographic Market

29. Customers that require JANTXV or JANS small signal transistors are located throughout the United States. Microsemi would be able to identify these customers and increase prices to them for JANTXV and JANS small signal transistors. Thus, under Section 7 of the Clayton Act and Section 2 of the Sherman Act, the relevant geographic market for JANTXV and JANS small signal transistors is the United States.

30. Customers that require JANTXV and JANS 5811 diodes are located throughout the United States. Microsemi would be able to identify these customers and increase prices to them for JANTXV and JANS 5811 diodes. Thus, under Section 7 of the Clayton Act and Section 2 of the Sherman Act, the relevant geographic market for JANTXV and JANS 5811 diodes is the United States.

Market Concentration

JANTXV and JANS Small Signal Transistors

31. Prior to the acquisition, Microsemi and Semicoa were the only suppliers of JANTXV small signal transistors in the world. Microsemi and Semicoa combined sold approximately \$15 million of JANTXV small signal transistors annually. The transaction was a merger to monopoly, and Microsemi faces no current competition.

32. Prior to the acquisition, Microsemi and Semicoa were the only suppliers of JANS small signal transistors in the world. Microsemi had approximately \$3.5 million in annual sales

and Semicoa had approximately \$3 million in annual sales. The transaction was a merger to monopoly, and Microsemi faces no current competition.

JANTXV and JANS 5811 Diodes

33. Microsemi manufactured JANTXV and JANS 5811 diodes until 2004, when it attempted to shift production from a plant in California to a plant in Arizona. Difficulties associated with that shift caused Microsemi to lose its JANTXV and JANS QML qualifications for that diode. As a result, there was no other firm qualified to make JANS 5811 diodes for several years. However, prior to 2004, Microsemi had built up its inventory of JANS 5811 diodes and continued to sell these products after its disqualification, making it the dominant supplier of these products since 2004.

34. After 2004, Microsemi's delivery times became very long. Customers who were unable to delay their programs further were forced to use less reliable commercial grade 5811 diodes at increased cost due to the need for additional testing. Microsemi produced almost all of the commercial grade products used by those customers.

35. In the meantime, Semicoa took significant steps to enter the production of JANTXV and JANS 5811 diodes in competition with Microsemi. The shortage led Semicoa to begin developing its own 5811 diodes to compete with Microsemi, with the assistance of a major customer that was dissatisfied with Microsemi as its sole source of supply. By July 2008, Semicoa was testing its 5811 diode and, had Microsemi not acquired Semicoa's assets later that month, Semicoa likely would have obtained JANTXV and JANS qualification and competed with Microsemi for JANTXV and JANS 5811 diodes. Semicoa already had received \$3 million in orders. One other manufacturer, with manufacturing operations based in Mexico, is JANTXV

qualified for 5811 diodes and may obtain JANS qualification, but would not be capable of satisfying those customers that require products manufactured in the United States, as discussed in Paragraph 41 below.

36. Microsemi regained JANTXV and JANS qualifications for its 5811 diodes in October 2008 after more than three years of effort. Had Microsemi not acquired the Semicoa assets in July 2008, Microsemi and Semicoa would have competed for the sale of these products.

Anticompetitive Effects of the Acquisition

JANTXV and JANS Small Signal Transistors

37. Prior to the acquisition, Semicoa was the only alternative source to Microsemi for JANTXV and JANS small signal transistors, and customers benefitted from robust competition between the firms. In the two years preceding the acquisition, Semicoa made significant investments in capacity expansion, purchasing new equipment and increasing its workforce to increase production and improve delivery times. Semicoa's shipments of JANTXV and JANS small signal transistors rose by more than 40 percent between 2005 and 2007. Semicoa aggressively priced its small signal transistors to take business from Microsemi, constraining Microsemi's prices.

38. Post-acquisition, Microsemi has raised prices significantly on JANTXV and JANS small signal transistors. Without Semicoa as a competitive constraint, Microsemi has the power to selectively raise prices to customers that Microsemi is aware cannot substitute lower grade components for JANTXV and JANS small signal transistors. In addition, Microsemi has announced that it intends to impose on these JANTXV and JANS customers less favorable terms of service than were provided before the acquisition. Customers will not be able to avoid these

terms because they no longer possess an alternative to Microsemi to ensure timely delivery of their small signal transistors. The acquisition is likely to lead to lengthened delivery times and less certain delivery, imposing huge risks and delays on critical military and space-related programs.

39. Through its acquisition of the Semicoa assets, Microsemi has substantially lessened competition in the markets for JANTXV and JANS small signal transistors, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and willfully acquired a monopoly in violation of Section 2 of the Sherman Act, 15 U.S.C. § 2.

JANTXV and JANS 5811 Diodes

40. 5811 diodes are produced using processes, skill sets and equipment unique to this kind of diode. Microsemi is the sole supplier of JANS 5811 diodes, and one of only two suppliers of JANTXV 5811 diodes. Before the acquisition, Semicoa had the capability to enter the markets for JANTXV and JANS 5811 diodes, and was well along the way toward completing that entry. Microsemi's purchase of the Semicoa assets eliminated Semicoa's likely entry to these markets, thereby leaving Microsemi alone in the market, and facing the potential entry of only one other firm, which would manufacture these products in Mexico. As a result, the transaction reduced from three to two the number of competitors that were likely to compete in these markets.

41. Competition from the firm with manufacturing facilities in Mexico will not be sufficient to constrain Microsemi's ability to raise the prices of JANTXV and JANS 5811 diodes. As the only other domestic supplier of JANTXV and JANS 5811 diodes, Semicoa would have been the best alternative source to Microsemi for these customers. Because of concerns relating

to classified data, sensitive end uses, and lack of the ability of the United States government to prioritize delivery of product, many customers will hesitate to purchase these products from the firm with manufacturing facilities in Mexico.

42. Semicoa's entry into the market for JANTXV and JANS 5811 diodes likely would have benefited customers with lower prices, shorter delivery times, and more favorable terms of service, just as Semicoa's competition for sales of JANTXV and JANS small signal transistors benefited customers for those products. Microsemi's acquisition of the Semicoa assets prevented this entry and therefore substantially lessened competition in the markets for JANTXV and JANS 5811 diodes, in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

Entry into the Development, Manufacture and Sale of the Relevant Products

43. Entry into the development, manufacture and sale of JANTXV small signal transistors and JANTXV 5811 diodes will not be timely, likely, and sufficient to counter the anticompetitive effects of the acquisition. The process required to obtain QML certification and DSCC qualification for JANTXV small signal transistors and JANTXV 5811 diodes is lengthy. Entry resulting in significant market impact likely would take more than two years.

44. Entry into the development, manufacture and sale of JANS small signal transistors and JANS 5811 diodes sold to United States is even less likely to be timely, likely, and sufficient to counter the anticompetitive effects of the acquisition. The additional process required to obtain DSCC certification and qualification at the JANS level would require at least another year following JANTXV certification and qualification. Moreover, because JANS parts are used for the most demanding and critical applications, customers are unlikely to shift significant amounts of JANS purchases to an entrant until that entrant has established a record of quality, consistency,

and reliability at the JANS level. Entry resulting in significant market impact likely would take more than three years for firms that, unlike Semicoa as to 5811 diodes, did not already have JANS qualification for other products and significant backing from important customers.

45. The uncertainties and risks associated with any entry, and the likelihood that such entry would not be timely in any event, is demonstrated by Microsemi's own inability to transfer production of JANTXV and JANS 5811 diodes without losing QML qualification. Although Microsemi is a large and diversified manufacturer of QML products, and attempted to transfer production to a facility in Arizona from a facility that it had used to manufacture QML components for many years, Microsemi lost its qualification and needed three to four years to requalify to produce these components.

46. Further, to provide the degree of price competition that would have existed absent the acquisition, entrants would have to reach a scale sufficient to achieve production costs comparable to those of Semicoa. This would require significant investment, particularly in equipment dedicated to automated production, and is unlikely to occur given the small size of the potential markets.

VI. FIRST CAUSE OF ACTION

(Violation of Section 7 of the Clayton Act)

47. The United States incorporates the allegations of paragraphs 1 through 46 above.

48. Microsemi's acquisition of the assets of Semicoa used in the development, manufacture and sale of JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes has substantially lessened competition in interstate trade and commerce in violation of Section 7 of the Clayton Act.

49. The transaction has had the following effects, among others:

- a. competition between Microsemi and Semicoa in the development, manufacture and sale of JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes has been eliminated;
- b. prices for JANTXV and JANS small signal transistors and JANTXV and JANS 5811 diodes have increased and likely will continue to increase, delivery times likely will lengthen, and terms of service likely will become less favorable.

VII. SECOND CAUSE OF ACTION

(Violation of Section 2 of the Sherman Act)

50. The United States incorporates the allegations of paragraphs 1 through 46 above.

51. On or about July 14, 2008, Microsemi willfully obtained monopoly power by acquiring the assets of Semicoa used in the development, manufacture and sale of JANTXV and JANS small signal transistors. Semicoa was Microsemi's only competitor, and the effect of this acquisition has been to create a monopoly in violation of Section 2 of the Sherman Act.

52. The transaction has had the following effects, among others:

- a. the combination created a monopoly for the development, manufacture and sale of JANTXV and JANS small signal transistors;
- b. competition between Microsemi and Semicoa in the development, manufacture and sale of JANTXV and JANS small signal transistors has been eliminated; and
- c. prices for JANTXV and JANS small signal transistors have increased and

likely will continue to increase, delivery times likely will lengthen, and terms of service likely will become less favorable.

XII. REQUESTED RELIEF

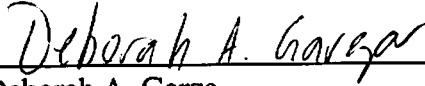
53. The United States requests that this Court:

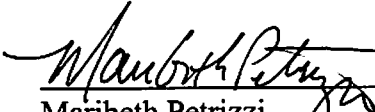
- a. Adjudge and decree the acquisition of the assets of Semicoa by defendant Microsemi to violate Section 7 of the Clayton Act, 15 U.S.C. § 18 and Section 2 of the Sherman Act, 15 U.S.C. § 2;
- b. Compel Microsemi to divest all of Semicoa's tangible and intangible assets related to the development, manufacture and sale of the relevant products, and to take any further actions necessary to restore the markets to the competitive position that existed prior to the acquisition;
- c. Award such temporary and preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of the dissipation of Semicoa's tangible and intangible assets during the pendency of this action and to preserve the possibility of effective final relief;
- d. Award the United States the cost of this action; and
- e. Grant the United States such other and further relief as the case requires and the Court deems just and proper.


Respectfully submitted,

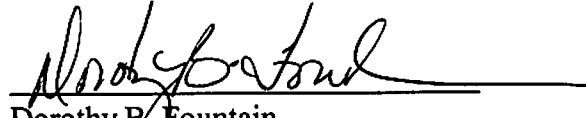
DATE: December 18, 2008


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