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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13	_____	)	CASE NO.: 8:09-cv-00275-AG-AN
14	UNITED STATES OF AMERICA,	)	
15	Plaintiff,	)	<b>STIPULATION MODIFYING</b>
16	v.	)	<b>ORDER TO PRESERVE AND</b>
17	MICROSEMI CORPORATION,	)	<b>MAINTAIN ASSETS</b>
18	Defendant.	)	
19	_____	)	Hon. Andrew J. Guilford

20  
21 It is hereby stipulated and agreed by and between the  
22 undersigned parties, subject to approval and entry by the  
23 Court, that the December 24, 2008 Order to Preserve and  
24 Maintain Assets shall be modified to read as follows:

25 **ORDER TO PRESERVE AND MAINTAIN ASSETS**

26 1. Plaintiff United States filed a complaint on  
27 December 18, 2008, alleging that Defendant Microsemi

1 Corporation's ("Microsemi") acquisition of substantially all  
2 of the assets of Semicoa, Inc. ("Semicoa") violated Section 7  
3 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the  
4 Sherman Act, 15 U.S.C. § 2.

5 2. Plaintiff seeks preliminary and permanent equitable  
6 and other relief to remedy the alleged harm to competition,  
7 including the divestiture of the acquired assets.

8 3. Defendant Microsemi has agreed to preserve and  
9 maintain the assets it acquired from Semicoa pending a  
10 resolution on the merits of this action.

11 4. Microsemi agrees to this Order.

12 WHEREFORE, for good cause shown, it is hereby ORDERED:

13 For the purpose of this Order, the following definitions  
14 shall apply:

15 A. "Microsemi" means Defendant Microsemi Corporation, a  
16 Delaware corporation with its headquarters in Irvine, CA, its  
17 successors and assigns, and its subsidiaries, divisions,  
18 groups, affiliates, partnerships and joint ventures, and their  
19 directors, officers, managers, agents, and employees.

20 B. "Semicoa" means Semicoa, Inc., a California  
21 corporation with its headquarters in Costa Mesa, CA, its  
22 successors and assigns, and its subsidiaries, divisions,  
23 groups, affiliates, partnerships and joint ventures, and their  
24 directors, officers, managers, agents, and employees.

25 C. "Semicoa Assets" means all assets acquired by  
26 Microsemi from Semicoa on July 14, 2008, including but not  
27

1 limited to:

2 (1) all specifications, manufacturing plans,  
3 assembly instructions, standard operating  
4 procedures, and work instructions related to  
5 the manufacturing process, including all right,  
6 title and interest in or to all other assets of  
7 every kind and nature used or intended to be  
8 used in the operation of Semicoa's business,  
9 including, but not limited to, any finished or  
10 unfinished devices, any materials, data or  
11 know-how wherever found or of whatever kind  
12 reasonably required to manufacture and sell the  
13 goods and services previously produced by  
14 Semicoa as well as all books and records, and  
15 all files, documents, papers and agreements  
16 that are material to the continuing operation  
17 of Semicoa's business;

18 (2) all finished goods, works in progress, piece  
19 parts and materials inventory, packaging, and  
20 labels, supplies and other related personal  
21 property;

22 (3) all equipment, machinery or software used in  
23 the development, design, manufacturing and  
24 testing of goods previously manufactured by  
25 Semicoa;

26 (4) all right, title and interest in, and all  
27

1 information related to, any tooling, molds,  
2 equipment and proprietary specifications  
3 Semicoa previously had with any and all vendors  
4 from which Semicoa purchased goods or services,  
5 whether or not there are any "open" purchase  
6 orders issued to such vendors, as well as names  
7 and other information concerning any vendor  
8 that provides goods or services that were  
9 material to the operation of Semicoa's  
10 business;

11 (5) any list of customers to which Semicoa  
12 previously sold products or provided services  
13 over the three years prior to July 14, 2008,  
14 whether or not there are any "open" sales  
15 orders from such customers;

16 (6) all sales, marketing and promotional  
17 literature, cost and pricing data, promotion  
18 list, marketing data and other compilations of  
19 names and requirements, customer lists and  
20 other sales-related materials;

21 (7) all intellectual property ("IP") assets or  
22 rights that have been used in the development,  
23 production, servicing, and sale of transistors  
24 and diodes, including but not limited to: all  
25 licenses, rights, and sublicenses, trademarks,  
26 trade names, service marks, service names,  
27  
28

1 technical information, computer software and  
2 related documentation, know-how, trade secrets,  
3 approvals, certifications, advertising  
4 literature, and all manuals and technical  
5 information provided to the employees,  
6 customers, suppliers, agents, or licensees of  
7 Semicoa and used in connection with the  
8 development, design, manufacture, testing,  
9 markets, sale or distribution of transistors or  
10 diodes;

11 (8) all rights under all contracts, licenses,  
12 sublicenses, agreements, leases, building  
13 leases, commitments, purchase orders, bids and  
14 offers; and

15 (9) all rights acquired pursuant to municipal,  
16 state and federal franchises, permits,  
17 licenses, agreements, waivers and  
18 authorizations.

19 It is FURTHER ORDERED that:

20 A. Unless the United States consents in writing,  
21 Microsemi, and its officers, agents, servants, employees, and  
22 attorneys, and those persons in active concert or participation  
23 with Microsemi who receive actual notice of this Order by  
24 personal service or otherwise, are hereby ordered to preserve  
25 and maintain the Semicoa Assets, and are restrained from

26 (1) licensing or encumbering any such asset;  
27

1 (2) removing, selling, leasing, assigning,  
2 transferring, pledging, or otherwise disposing  
3 of any such asset, other than in the ordinary  
4 course of business;

5 (3) transferring or reassigning to other facilities  
6 of Microsemi, or dismissing except for cause,  
7 employees previously employed by Semicoa; and

8 (4) idling any fabrication, assembly or testing  
9 lines (or equipment comprising those lines)  
10 other than in the ordinary course of business;

11 or causing or assisting others in carrying out any of these  
12 prohibited activities.

13 B. Unless the United States consents in writing,  
14 Microsemi, and its officers, agents, servants, employees, and  
15 attorneys, and those persons in active concert or participation  
16 with Microsemi who receive actual notice of this Order by  
17 personal service or otherwise, are hereby ordered

18 (1) to provide the United States ten (10) days'  
19 advance notice of any dismissal for cause of an  
20 employee of the Semicoa Assets;

21 (2) to take all commercially reasonable steps  
22 necessary to ensure that the Semicoa Assets are  
23 fully maintained in an operable condition and  
24 to maintain and adhere to normal repair and  
25 maintenance schedules for the Semicoa Assets;  
26 and

1 (3) to take all commercially reasonable steps  
2 necessary to ensure that the Semicoa Assets  
3 retain all regulatory approvals, including but  
4 not limited to certifications and  
5 qualifications granted by the Defense Supply  
6 Center Columbus.

7 C. Microsemi is hereby ordered to appoint a person or  
8 persons to oversee the Semicoa Assets who will be responsible  
9 for Microsemi's compliance with this Order and shall have  
10 complete managerial responsibility for such assets.

11 D. The United States may consent to a divestiture of  
12 the Semicoa Assets by Microsemi if the United States  
13 determines, in its sole discretion, that the Semicoa Assets can  
14 and will be used by the acquirer of the Semicoa Assets as part  
15 of a viable, ongoing business engaged in the development,  
16 manufacture, and sale of transistors and diodes and that such  
17 divestiture will remedy the competitive harm alleged in the  
18 complaint. Any divestiture of the Semicoa Assets: (1) shall be  
19 made to an acquirer that, in the United States's sole judgment,  
20 has the intent and capability (including the necessary  
21 managerial, operational, technical, and financial capability)  
22 of competing effectively in the business of developing,  
23 manufacturing, and selling transistors and diodes; and (2)  
24 shall be accomplished so as to satisfy the United States, in  
25 its sole discretion, that none of the terms of any agreement  
26 between an acquirer and Microsemi gives Microsemi the ability  
27

1 unreasonably to raise the acquirer's costs, to lower the  
2 acquirer's efficiency, or otherwise to interfere in the ability  
3 of the acquirer to compete effectively.

4 E. This Order shall not expire until Judgment is  
5 entered in this matter and any appeals are final.

6 F. This Order is without prejudice to the United States  
7 seeking additional relief at any time pending a final  
8 determination of the merits.

9  
10 Dated: July 31, 2009

By: \_\_\_\_\_/s/\_\_\_\_\_  
Lowell R. Stern  
Attorney for Plaintiff

11  
12 Dated: July 31, 2009

By: \_\_\_\_\_/s/\_\_\_\_\_  
Michael Antalics  
Attorney for Defendant



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th August of July, 2009, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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\_\_\_\_\_/s/\_\_\_\_\_  
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