

**ONTARIO
SUPERIOR COURT OF JUSTICE**



JOSEPH QUINN and MICHAEL HARRIS

Plaintiff

- and -

SAMSUNG ELECTRONICS CO., LTD., SAMSUNG SEMICONDUCTOR, INC.,
SAMSUNG ELECTRONICS CANADA INC. HITACHI AMERICA, LTD., HITACHI LTD.,
HITACHI CANADA LTD., HYNIX SEMICONDUCTOR INC., HYNIX SEMICONDUCTOR
AMERICA INC., MICRON SEMICONDUCTOR PRODUCTS INC., MICRON
TECHNOLOGY, INC., MICRON SEMICONDUCTOR CANADA, MITSUBISHI ELECTRIC
AND ELECTRONICS U.S.A. INC., MITSUBISHI ELECTRIC CORPORATION
MITSUBISHI ELECTRIC SALES CANADA INC., RENESAS TECHNOLOGY AMERICA
INC., RENESAS TECHNOLOGY CORPORATION, RENESAS TECHNOLOGY CANADA
LIMITED, TOSHIBA AMERICA CORPORATION, TOSHIBA AMERICA ELECTRONICS
COMPONENTS INC., TOSHIBA CORPORATION, TOSHIBA OF CANADA LIMITED., and
WINBOND ELECTRONICS CORPORATION AMERICA INC.

Defendants

Proceeding under the *Class Proceedings Act 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$400.00 for costs and have the costs assessed by the court.

Date **MAY - 2 2007**

Issued by 
Local registrar

Address of Court House
court office 80 Dundas Street
London, ON N6A 6A1

TO: SAMSUNG ELECTRONICS CO. LTD.
Samsung Main Building 250-2ga
Taepyung-ro Chung-gu, Seoul, Korea

AND TO: SAMSUNG SEMICONDUCTOR, INC.
3655 North First Street
San Jose, California 95134

AND TO: SAMSUNG ELECTRONICS CANADA INC.
55 Standish Court
Mississauga, ON L5R 4B2

AND TO: HITACHI AMERICA LTD.
50 Prospect Avenue
Tarrytown, New York 10591

AND TO: HITACHI LTD.
6-1 Marunouchi Center Building 13F
Chiyoda-ku, Tokyo, 100-8220 Japan

- AND TO: HITACHI CANADA, LTD.**
2495 Meadowpine Boulevard
Mississauga, ON L5N 6C3
- AND TO: HYNIX SEMICONDUCTOR, INC.**
SAN 136-1, Ami-Ri Bubal-eub, Ichon-si
Kyonghi-do Korea
- AND TO: HYNIX SEMICONDUCTOR AMERICA, INC.**
3101 North First Street
San Jose, California 95134
- AND TO: MICRON SEMICONDUCTOR PRODUCTS, INC.**
8000 South Federal Way
Boise, Idaho 83716
- AND TO: MICRON TECHNOLOGY, INC.**
8000 South Federal Way
Boise, Idaho 83716
- AND TO: MICRON SEMICONDUCTOR CANADA**
1500-50 O'Connor Street
Ottawa, Ontario K1P 6L2
- AND TO: MITSUBISHI ELECTRIC & ELECTRONICS USA, INC.,**
500 Corporate Woods Parkway
Vernon Hills, Illinois 60061
- AND TO: MITSUBISHI ELECTRIC CORPORATION**
Tokyo Building 2-7-3, Marunouchi
Chiyoda-ku, Tokyo 100-8310 Japan
- AND TO: MITSUBISHI ELECTRIC SALES CANADA INC.**
4295 14th Avenue
Markham, Ontario L3R 0J2
- AND TO: RENESAS TECHNOLOGY AMERICA, INC.**
450 Holger Way
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- AND TO: RENESAS TECHNOLOGY CORPORATION**
Marunouchi Building, 4-1
Marunouchi 2-chome, Chiyoda-ku, Tokyo 100-6334 Japan
- AND TO: RENESAS TECHNOLOGY CANADA LIMITED**
7050 Weston Road, Suite 601
Woodbridge, Ontario L4L 8G7

- AND TO TOSHIBA AMERICA CORPORATION**
1251 Avenue of the Americas, Suite 4110
New York, New York 10020
- AND TO TOSHIBA AMERICA ELECTRONIC COMPONENTS, INC.**
1990 MacArthur Boulevard, Suite 400
Irvine, California 92612
- AND TO TOSHIBA CORPORATION**
1-1, Shibaura 1-chome, Minato-ku
Tokyo, 105-8001, Japan
- AND TO TOSHIBA OF CANADA LIMITED**
191 McNabb Street
Markham, Ontario L3R 8H2
- AND TO WINBOND ELECTRONICS CORPORATION AMERICA, INC**
2727 North First Street
San Jose, California 95134

CLAIM

1. The plaintiff claims, on behalf of itself and other persons in Canada who are similarly situated:
 - (a) general damages for conspiracy in the amount of \$125,000,000.00;
 - (b) general damages for intentional interference with economic interests in the amount of \$125,000,000.00;
 - (c) general damages for conduct that is contrary to Part VI of the *Competition Act*, R.S.C, 1985, c. 19 (2nd Supp.) in the amount of \$125,000,000.00;
 - (d) a declaration that the defendants have been unjustly enriched at the expense of the plaintiff and the other class members by their receipt of the illegal overcharge;
 - (e) a declaration that the defendants hold the illegal overcharge in a constructive trust for the benefit of the plaintiff and the other class members;
 - (f) an order directing the defendants to disgorge their ill-gotten overcharge;
 - (g) punitive and exemplary damages in the amount of \$15,000,000.00;
 - (h) costs of investigation pursuant to Part VI of the *Competition Act*, R.S.C, 1985, c. 19 (2nd Supp.) s. 36;
 - (i) pre-judgment interest at the rate of 10% compounded annually or as otherwise ordered by this court;
 - (j) costs of this action on a substantial indemnity basis; and
 - (k) such further and other relief as this court deems just.

NATURE OF THIS ACTION

2. This class action concerns the conspiracy among the defendants to fix the price at which Flash Memory or products containing Flash Memory (collectively "Flash Memory") were sold in Canada and worldwide. The plaintiff alleges that from at least January 1, 1999 through to the present (the "Relevant Period"), the defendants and their senior executives participated in illegal and secretive meetings and made agreements relating to price targets, specific price increases, market share divisions and production capacity for Flash Memory.

THE PLAINTIFF

3. The plaintiff, Joseph Quinn, is an individual resident in Ontario. Joseph Quinn purchased Flash Memory during the Relevant Period in the form of a flash drive for his personal computer.
4. The plaintiff, Michael Harris, is an individual resident in Ontario. Michael Harris purchased a digital camera during the Relevant Period containing Flash Memory.

THE DEFENDANTS

5. Various persons and/or firms not named as defendants herein, including but not limited to Mosel Vitelic Inc. and Winbond Electronics Corporation, may have participated as co-conspirators in the violation alleged herein and may have performed acts and made agreements in furtherance thereof. The defendants named herein are jointly and severally liable for the actions of, and damaged allocable to, their co-conspirators.

The Samsung Defendants

6. Samsung Electronics Co. Ltd. ("Samsung Electronics") is a business entity organized under the laws of South Korea, with its principal place of business in Seoul, Korea. During the Relevant Period, Samsung Electronics manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
7. Samsung Semiconductor, Inc. ("Samsung Semiconductor") is a subsidiary of Samsung Electronics with its principal place of business in San Jose, California. During the Relevant Period, Samsung Semiconductor manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

8. Samsung Electronics Canada Inc. ("Samsung Canada") is a subsidiary of Samsung Electronics with its principal place of business in Mississauga, Ontario. During the Relevant Period, Samsung Canada manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
9. The business of each of Samsung Electronics, Samsung Semiconductor and Samsung Canada (collectively the "Samsung Defendants") is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of Flash Memory in Canada and for the purposes of the conduct hereinafter described.

The Hitachi Defendants

10. Hitachi Ltd. ("Hitachi") is a business entity organized under the laws of Japan with its principal place of business in Tokyo, Japan. During the Relevant Period, Hitachi manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
11. Hitachi America Ltd. ("Hitachi America") is a subsidiary of Hitachi and is a business entity organized under the laws of New York, with its principal place of business in Tarrytown, New York. During the Relevant Period, Hitachi America manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
12. Hitachi Canada, Ltd. ("Hitachi Canada") is a subsidiary of Hitachi with its principal place of business in Mississauga, Ontario. During the Relevant Period, Hitachi Canada

manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

13. The business of each of Hitachi, Hitachi America and Hitachi Canada (collectively the "Hitachi Defendants") is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of Flash Memory in Canada and for the purposes of the conduct hereinafter described.

The Hynix Defendants

14. Hynix Semiconductor, Inc. ("Hynix Semiconductor") is a business organized under the laws of South Korea, with its principal place of business in Kyonghi-do, Korea. During the Relevant Period, Hynix Semiconductor manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
15. Hynix Semiconductor America, Inc. ("Hynix America") is a subsidiary of Hynix Semiconductor with its principal place of business in San Jose, California. During the Relevant Period, Hynix America manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
16. The business of each of Hynix Semiconductor and Hynix America (collectively the "Hynix Defendants") is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of Flash Memory in Canada and for the purposes of the conduct hereinafter described.

The Micron Defendants

17. Micron Technology, Inc. (“Micron Technology”) is a Delaware Corporation with its principal place of business in Boise, Idaho. During the Relevant Period, Micron Technology manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
18. Micron Semiconductor Products Inc. (“Micron Semiconductor”) is a subsidiary of Micron Technology with its principal place of business in Boise, Idaho. During the Relevant Period, Micron Semiconductor manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
19. Micron Semiconductor Canada, Inc. (“Micron Canada”) is a subsidiary of Micron Technology with its principal place of business in Kanata, Ontario. During the Relevant Period, Micron Canada manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
20. The business of each of Micron Technology, Micron Semiconductor and Micron Canada (collectively the “Micron Defendants”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of Flash Memory in Canada and for the purposes of the conduct hereinafter described.

The Mitsubishi Defendants

21. Mitsubishi Electric Corporation (“Mitsubishi”) is a business entity organized under the laws of Japan, with its principal place of business in Tokyo, Japan. During the Relevant Period, Mitsubishi manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
22. Mitsubishi Electric & Electronics USA (“Mitsubishi USA”) is a subsidiary of Mitsubishi and is a business entity organized under the laws of Delaware, with its principal place of business at Vernon Hills, Illinois. During the Relevant Period, Mitsubishi USA manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
23. Mitsubishi Electric Sales Canada (“Mitsubishi Canada”) is a subsidiary of Mitsubishi with its principal place of business in Markham, Ontario. During the Relevant Period, Mitsubishi Canada, manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
24. The business of each of Mitsubishi, Mitsubishi USA and Mitsubishi Canada (collectively the “Mitsubishi Defendants”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of Flash Memory in Canada and for the purposes of the conduct hereinafter described.

The Renesas Defendants

25. Renesas Technology Corporation (“Renesas”) is a business entity organized under the laws of Japan with its principal place of business in Tokyo, Japan. During the Relevant

Period, Renesas manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

26. Renesas Technology America, Inc. (“Renesas America”) is a subsidiary of Renesas with its principal place of business in San Jose, California. During the Relevant Period, Renesas America manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
27. Renesas Technology Canada Limited (“Renesas Canada”) is a subsidiary of Renesas with its principal place of business in Woodbridge, Ontario. During the Relevant Period, Renesas Canada manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
28. The business of each of Renesas, Renesas America and Renesas Canada (collectively the “Renesas Defendants”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of Flash Memory in Canada and for the purposes of the conduct hereinafter described.

The Toshiba Defendants

29. Toshiba Corporation (“Toshiba”) is a business entity organized under the laws of Japan, with its principal place of business in Tokyo, Japan. During the Relevant Period, Toshiba manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

30. Toshiba America Corporation (“Toshiba America”) is a subsidiary of Toshiba with its principal place of business in New York, New York. During the Relevant Period, Toshiba America manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
31. Toshiba America Electronic Corporation (“Toshiba Electronic”) is a subsidiary of Toshiba with its principal place of business in Irvine, California. During the Relevant Period, Toshiba Electronic manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
32. Toshiba of Canada Limited (“Toshiba Canada”) is a subsidiary of Toshiba with its principal place of business in Markham, Ontario. During the Relevant Period, Toshiba Canada manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
33. The business of each of Toshiba, Toshiba America, Toshiba Electronic and Toshiba Canada (collectively the “Toshiba Defendants”) is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of Flash Memory in Canada and for the purposes of the conduct hereinafter described.

Winbond Electronics Corporation America, Inc.

34. Winbond Electronics Corporation America, Inc. (“Winbond America”) is a business entity with its principal place of business in San Jose, California. Winbond America is a subsidiary of Winbond Electronics Corporation, a corporation with its principal place of

business in Hsinchu, Taiwan. During the Relevant Period, Winbond America manufactured, marketed, sold and/or distributed Flash Memory in Canada, either directly or indirectly through its predecessors, affiliates or subsidiaries.

FACTUAL BACKGROUND

35. Flash Memory is a rewritable memory chip that holds its content without power. Flash memory is widely use for storage modules such as USB drives and digital cameral memory cards. Flash memory offers fast read access times and better kinetic shock resistance than hard disks. Common flash memory parts range widely in capacity from kilobits to several gigabits each and are available in different speeds. Flash memory is found in some personal computers, digital audio players, digital cameras, mobile phones, and home videogame consoles.

THE CONSPIRACY AND TORTIOUS INTERFERENCE WITH ECONOMIC INTERESTS

36. During the Relevant Period, senior executives and employees of the defendants and unnamed co-conspirators, acting in their capacities as agents for the defendants and unnamed co-conspirators, engaged in communications, conversations and attended meetings with each other at times and places, some of which are unknown to the plaintiffs, and as a result of these communications and meetings, the defendants and unnamed co-conspirators unlawfully agreed to:

- (a) fix, increase and/or maintain at artificially high levels the prices at which the defendants would sell Flash Memory in Canada and for inclusion in products sold in Canada;
- (b) exchange information in order to monitor and enforce adherence to the agreed-upon prices for Flash Memory;
- (c) allocate the market share, customers and/or to set specific sales volumes of Flash Memory that each defendant would manufacture and supply in Canada and elsewhere; and

- (d) prevent or lessen, unduly, competition in the manufacture, sale and distribution of Flash Memory in Canada, the United States and elsewhere by reducing the supply of Flash Memory.

37. In furtherance of the conspiracy, during the Relevant Period, the following acts were done by the defendants, their servants and agents and unnamed co-conspirators:

- (a) they fixed, increased and/or maintained at artificially high levels the price of Flash Memory and to coordinate price increases for the sale of Flash Memory;
- (b) they allocated the volumes of sales of, and customers and markets for Flash Memory among themselves;
- (c) they reduced the supply of Flash Memory;
- (d) they met secretly to discuss prices and volumes of sales of Flash Memory;
- (e) they exchanged information regarding the process and volumes of sales of Flash Memory for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;
- (f) refrained from submitting truly competitive bids for Flash Memory in Canada, the United States and elsewhere;
- (g) submitted collusive, non-competitive and rigged bids for Flash Memory in Canada, the United States and elsewhere
- (h) they instructed members of the conspiracy at meetings not to divulge the existence of the conspiracy; and
- (i) they disciplined any corporation which failed to comply with the conspiracy.

38. The defendants and unnamed co-conspirators were motivated to conspire and their predominant purposes and predominant concerns were:

- (a) to harm the plaintiff and others similarly situated by requiring them to pay artificially high prices for Flash Memory and for products containing Flash Memory; and
- (b) to illegally increase their profits on the sale of Flash Memory.

39. The Canadian subsidiaries of the foreign Defendants participated in and furthered the objectives of the conspiracy knowingly modifying their competitive behaviour in

accordance with instructions from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.

40. The acts particularized in paragraphs 36 to 39 were also in breach of Part VI of the *Competition Act* RS 1985 c. C-34 and render the defendants liable to pay the damages pursuant to s.36 of the *Competition Act*. Further, or alternatively, the Canadian subsidiaries of the foreign defendants are liable to the plaintiff and the other class members pursuant to s.36 of the *Competition Act* for acts in contravention of s.46(1) of the *Competition Act*.
41. Further, or alternatively, the acts particularized in paragraphs 36 to 39 were unlawful acts directed towards the plaintiff and other purchasers of Flash Memory or products containing Flash Memory in Canada which unlawful acts the defendants knew in the circumstances would likely cause injury to the plaintiff and other purchasers of Flash Memory or products containing Flash Memory, and the defendants are liable for the tort of civil conspiracy.
42. Further, or alternatively, the acts particularized in paragraphs 36 to 39 were unlawful acts intended to cause the plaintiff and others similarly situated economic loss and constituted tortious interference with the economic interests of the plaintiff and others similarly situated and render the defendants liable to pay the resulting damages.

UNJUST ENRICHMENT, WAIVER OF TORT AND CONSTRUCTIVE TRUST

43. In the alternative, the plaintiff waives the tort and pleads that it and the others similarly situated are entitled to recover under restitutionary principles.

44. The defendants have each been unjustly enriched by the receipt of the artificially induced overcharge on the sale of Flash Memory. The plaintiff and others similarly situated have suffered a deprivation in the amount of such overcharge attributable to the sale of Flash Memory and products containing Flash Memory in Canada.
45. Since the artificially induced overcharge received by the defendants from the plaintiff and others similarly situated resulted from the defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the defendants' retaining any part of such overcharge and in particular, any contracts upon which the defendants purport to rely to receive the illegal overcharge are void and illegal.
46. The defendants are constituted as constructive trustees in favour of the plaintiff and others similarly situated for all of the artificially induced overcharge from the sale of Flash Memory because, among other reasons:
 - (a) the defendants were unjustly enriched by the artificially induced overcharge;
 - (b) the plaintiff and others similarly situated suffered a deprivation because of the artificially induced overcharge;
 - (c) the defendants engaged in inappropriate conduct and committed a wrongful act in conspiring to fix the price of Flash Memory and allocate market share and volume of Flash Memory;
 - (d) the artificially induced overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;
 - (e) justice and good conscience require the imposition of a constructive trust;
 - (f) the integrity of the marketplace would be undermined if the court did not impose a constructive trust; and
 - (g) there are no factors that would, in respect of the artificially induced overcharge, render the imposition of a constructive trust unjust.

47. The plaintiff pleads that equity and good conscience requires the defendants to hold in trust for the plaintiff and the others similarly situated all of the artificially induced overcharge from the sale of Flash Memory and to disgorge this overcharge to the plaintiff and the others similarly situated.

DAMAGES

48. The plaintiff and others similarly situated have suffered damages as a result of the foregoing conspiracy, which had the effect of raising, maintaining and stabilizing prices of Flash Memory at artificial and non-competitive levels.

49. During the Relevant Period, the plaintiff and others similarly situated have directly or indirectly purchased Flash Memory in Canada. By reason of the alleged violations of the *Competition Act* and unlawful conduct at common law, the plaintiff and others similarly situated paid more for Flash Memory and/or products containing Flash Memory than they would have paid in the absence of the unlawful conduct and, as a result, have been injured in their business and property, and have suffered damages in an amount presently undetermined.

50. The plaintiff asserts that the combined damages of itself and of the others similarly situated are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by the defendants for Flash Memory and the prices which would have been obtained in the absence of the illegal agreements.

PUNITIVE DAMAGES

51. The defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, and in disregard of the plaintiff's rights and

the rights of others who are similarly situated, and as such, renders the defendants liable to pay aggravated, exemplary and punitive damages.

52. The plaintiff's damages and those of other persons who are similarly situated have been suffered in the province of Ontario and elsewhere in Canada.

RELEVANT STATUTES

53. The plaintiff pleads and relies on the *Class Proceedings Act, 1992*, S.O. 1992, c.6, as amended, the *Competition Act*, R.S.C. 1985, c.19 (2nd Supp), ss. 36 & 45, as amended and the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
54. The plaintiff pleads and relies on clauses 17.01 (g) (h), (o) and (p) of the *Rules of Civil Procedure*, allowing for service ex juris of the foreign defendants. Specifically, this originating process may be served without court order outside Ontario in that the claim is:
- (a) in respect of a tort committed in Ontario (rule 17.02(g));
 - (b) in respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
 - (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
 - (d) against a person carrying on business in Ontario (rule 17.02(p)).
55. The plaintiff states that they are representative of persons in Canada who purchased Flash Memory including products containing Flash Memory in Canada during the Relevant Period.

56. The plaintiff proposes that this action be tried at London, Ontario.

May 2, 2007.

Siskinds ^{LLP}
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Solicitors for the Plaintiffs

Joseph Quinn and Michael Harris
Plaintiff

Samsung Electronics Co. Ltd. et al
Defendants

Court File No:

54053 CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

STATEMENT OF CLAIM

Siskinds ^{LLP}
Barristers & Solicitors
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Solicitors for the Plaintiff