

1 Joseph W. Cotchett (36324)
Steven N. Williams (175489)
2 Nancy L. Fineman (124870)
Joanna W. LiCalsi (288771)
3 **COTCHETT, PITRE & McCARTHY, LLP**
840 Malcolm Road
4 Burlingame, CA 94010
Telephone: (650) 697-6000
5 Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
6 swilliams@cpmlegal.com
nfineman@cpmlegal.com
7 jlicalsi@cpmlegal.com

8 *Counsel for Plaintiff Xilinx, Inc.*

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SANTA CLARA**

12
13 **XILINX, INC., a Delaware corporation with its**
14 **principal place of business in California,**

15 **Plaintiff,**

16 **v.**

17 **FLEXTRONICS INTERNATIONAL, LTD., a**
18 **Singapore corporation with its principal place**
19 **of business in California,**

20 **FLEXTRONICS INTERNATIONAL USA,**
21 **INC., a California corporation with its principal**
22 **place of business in California,**

23 **FLEXTRONICS CORPORATION, a Delaware**
24 **corporation with its principal place of business**
25 **in California**

26 **and DOES 1-50**

27 **Defendants.**
28

Case No. 173CV257431

COMPLAINT FOR:

- 1) FRAUD
- 2) NEGLIGENT MISREPRESENTATION
- 3) BREACH OF CONTRACT
- 4) BREACH OF IMPLIED-IN-FACT CONTRACT
- 5) BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
- 6) UNJUST ENRICHMENT
- 7) UNFAIR COMPETITION
- 8) CONVERSION

DEMAND FOR JURY TRIAL

(ENDORSED)
FILED
DEC 11 2013
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
By _____ Deputy
Cagliardi

TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3	I. INTRODUCTION.....1
4	II. PARTIES2
5	A. Plaintiff.....2
6	B. Defendants2
7	C. Doe Defendants.....2
8	D. Agents and Co-Conspirators..... 4
9	III. JURISDICTION AND VENUE.....4
10	IV. FACTUAL ALLEGATIONS.....5
11	A. Xilinx Background.....5
12	B. Xilinx’s Sales Procedures Are in Place to Ensure That Only Authorized End Customers May Purchase at Pre-Negotiated and Discounted Prices8
13	C. Flextronics Makes Fraudulent Purchases From Xilinx and Reaps Massive, Ill-Gotten Profits from Unauthorized Sales of Xilinx Products9
14	1. Flextronics Buys Xilinx Devices Purportedly for Airvana, But Actually Sells the Devices to Checkpoint for a Significant Profit9
15	D. Flextronics Sells To Unauthorized Purchasers In Asia And Puts Homeland Security At Risk10
16	E. Flextronics Buys and Sells Unauthorized Grey Market and Counterfeit Xilinx Devices11
17	1. Flextronics Sold Ericsson Remarketed Grey Market Xilinx Devices12
18	F. Flextronics Has Created an Inventory System Designed to Disguise the Origin of Its Wrongfully Acquired and Sold Xilinx Devices13
19	
20	
21	
22	VI. VIOLATIONS ALLEGED14
23	FIRST CAUSE OF ACTION (Fraud)14
24	SECOND CAUSE OF ACTION (Negligent Misrepresentation)15
25	THIRD CAUSE OF ACTION (Breach of Contract, California Uniform Commercial Code § 2201 et seq.)16
26	FOURTH CAUSE OF ACTION (Breach Of Implied-In-Fact-Contract).....18
27	
28	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**FIFTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing).....19**

**SIXTH CAUSE OF ACTION
(Unfair Competition, California Business and Profession Code §17200)20**

**SEVENTH CAUSE OF ACTION
(Conversion)21**

PRAYER FOR RELIEF.....21

DEMAND FOR JURY TRIAL.....22

1 Plaintiff Xilinx, Inc. ("Xilinx"), by and through its attorneys, based on its own experience
2 and investigation and the independent investigation of counsel and information and belief,
3 alleges against Defendants Flextronics International, Ltd. ("Flextronics Int'l"), Flextronics
4 International USA, Inc. ("Flextronics USA"), and Flextronics Corporation ("Flextronics Corp.")
5 (herein referred to collectively as "Flextronics") as follows:

6 **I. INTRODUCTION**

7 1. Xilinx brings this action as a result of Flextronics' fraudulent and unfair business
8 practices. Flextronics has engaged in a pattern and practice of purchasing Xilinx products based
9 upon misrepresentations about who the ultimate end-user of these products will be. Based upon
10 these misrepresentations, Flextronics is able to purchase Xilinx products at a more favorable
11 price than it is entitled to receive. It then sells the products to other customers at higher prices,
12 pocketing the difference. Because of this illicit practice Flextronics has obtained large,
13 wrongful profits at Xilinx' expense.

14 2. Flextronics has also dealt in grey market and counterfeit Xilinx devices.
15 Flextronics purchases these devices from unauthorized distributors and sells them to authorized
16 customers for large profits. Flextronics then turns around and takes the properly purchased
17 Xilinx devices for that authorized customer and sells them to unauthorized customers for even
18 more ill-gained profit. These devices are typically lower performance chips re-marked as more
19 highly performing chips, and are sold at the higher price that the higher performing chip would
20 sell for.

21 3. Flextronics has made unauthorized sales of Xilinx's highly advanced devices to
22 unknown purchasers in Asia. Xilinx devices have many aerospace and defense uses which
23 require sellers to acquire appropriate licenses pursuant to the Arms Export Control Act (AECA)
24 (22 U.S.C. § 2751 et seq.). Flextronics made these unauthorized sales without securing the
25 appropriate export licenses and in violation of United States export control laws. These
26 unauthorized sales pose a threat to United States homeland security.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. PARTIES

A. Plaintiff

4. Plaintiff Xilinx, Inc. is a Delaware corporation with its principal place of business at 2100 Logic Drive, San Jose, California.

B. Defendants

5. Defendant Flextronics International, Ltd. ("Flextronics Int'l") is a company incorporated under the laws of the Republic of Singapore with its principal place of business located at 6201 Americas Center Drive, San Jose, CA. Flextronics Int'l is the main corporate parent of all Flextronics entities named in this complaint.

6. Defendant Flextronics International USA, Inc. ("Flextronics USA") is a company incorporated under the laws of California with its principal executive offices located at 6201 Americas Center Drive, San Jose, CA. Flextronics USA is a wholly-owned subsidiary of Defendant Flextronics Int'l.

7. Defendant Flextronics Corporation ("Flextronics Corp.") is a Delaware corporation with its principal place of business located at 6201 Americas Center Drive, San Jose, CA. Flextronics Corp. is a wholly-owned subsidiary of Defendant Flextronics Int'l.

8. Defendants Flextronics USA, Flextronics Int'l, and Flextronics Corp. are collectively referred to herein as "Flextronics."

C. Doe Defendants

9. The Flextronics corporate family includes a multitude of wholly-owned subsidiaries and affiliated companies all over the world.

10. Top officers and board members, such as Mike McNamara, maintain executive positions at several Flextronics entities. Several Flextronics entities are headquartered in the same San Jose office location. Flextronics International, Ltd. shareholder meetings are held in San Jose, California, and proxy votes are sent to San Jose, California.

11. The Flextronics entities are so interwoven that they act and operate as a single entity. Flextronics Int'l's 2013 10-K, filed with the Securities and Exchange Commission on May 28, 2013 explains, "...references in this report to 'Flextronics,' 'the Company,' 'we,' 'us,'

1 'our' and similar terms mean Flextronics International, Ltd. and its subsidiaries."¹ It also boasts
2 of its superior competitive advantage by virtue of its "industrial park concept," which enables
3 various Flextronics entities to seamlessly manage projects from individual locations.²
4 Flextronics refers to its subsidiaries as part of a whole -- "an extensive, integrated network ... in
5 over 30 countries with approximately 149,000 employees."³ In another public filing, Flextronics
6 Int'l stated: "We conduct substantially all of our operations through our subsidiaries and depend
7 on cash flow from our subsidiaries to meet our obligations."⁴ It continues, "[a]s of March 31,
8 2013, approximately half of our cash and cash equivalents were held by foreign subsidiaries
9 outside of Singapore."⁵ The filings explain that audits and financial statements are consolidated
10 to reflect Flextronics International, Ltd. and its subsidiaries in a single assessment. The
11 Flextronics entities maintain various "intercompany accounts[,...]transactions...[and] balances,"
12 as well as extensively comingled corporate funds. In fact, many guarantor-subsidiaries
13 participate in rebalancing of corporate assets and debt attributable to the parent corporation,
14 Flextronics Int'l.⁶

15 12. Plaintiff is presently unable to confirm which of Flextronics other wholly-owned
16 subsidiaries and/or affiliated companies, Does 1 –30, are liable for the claims asserted herein.
17 Discovery will allow Plaintiff to proceed with naming additional Flextronics owned and
18 affiliated companies. Other persons and entities, Does 31 – 50 whose identities are presently
19 unknown to Plaintiff participated in the events alleged herein which give rise to the claims
20 asserted by Plaintiff.

21
22
23 _____
¹ Flextronics International, Ltd.'s 10-K (filed 5/28/13), p. 3.

24 ² *Id.* at p. 10.

25 ³ *Id.*

26 ⁴ Flextronics International, Ltd.'s Form 424B3 (filed with its Rule 424 Prospectus on 7/30/13); p. 12.

27 ⁵ *Id.*

28 ⁶ 10-K, at pp. 60, 102.

1 **D. Agents and Co-Conspirators**

2 13. At all times herein mentioned, each of the Defendants hereinabove was the agent,
3 servant, employee, partner, alter ego, aider and abettor, co-conspirator and/or joint venturer of
4 each of the remaining Defendants named herein and were at all times operating and acting within
5 the purpose and scope of said agency, service, employment, partnership, conspiracy and/or joint
6 venture, and each Defendant has ratified and approved the acts of each of the remaining
7 Defendants.

8 **III. JURISDICTION AND VENUE**

9 14. Jurisdiction over the Flextronics entities is proper under California Code of Civil
10 Procedure § 410.10.

11 15. This Court has general personal jurisdiction over Flextronics Int'l because it has
12 had substantial and continuous business contacts with California, its nerve center is located in
13 San Jose, it is qualified to do business here, and the Plaintiff damaged by its actions is a Santa
14 Clara County company. President, CEO, and Flextronics Int'l board member, Mike McNamara,
15 and other executive officers maintain day-to-day operations from the San Jose location. In
16 addition, stockholder meetings are held and proxies are collected at the San Jose headquarters.

17 16. This Court has general personal jurisdiction over Flextronics USA because it is
18 incorporated under the laws of California, has had substantial and continuous business contacts
19 with California, its nerve center is located in San Jose, it is qualified to do business here, and the
20 Plaintiff damaged by its actions is a Santa Clara County company. President, CEO, and
21 Flextronics USA board member, Mike McNamara, and other executive officers maintain day-to-
22 day operations from the San Jose headquarters.

23 17. This Court has general personal jurisdiction over Flextronics Corp. because it has
24 had substantial and continuous business contacts with California, its headquarters and nerve
25 center is located in San Jose, it is qualified to do business here, and Plaintiff damaged by its
26 actions is a Santa Clara County company. President and CEO of Flextronics Int'l and
27 Flextronics USA, Mike McNamara, also serves as Chief Technology Officer, among other
28

1 positions, at Flextronics Corp. He and other executive officers maintain day-to-day operations
2 from the San Jose headquarters.

3 **IV. FACTUAL ALLEGATIONS**

4 **A. Xilinx Background**

5 18. Xilinx was founded in Silicon Valley and is the world's leading provider of
6 programmable platforms, including its revolutionary and highly advanced Field Programmable
7 Gate Array ("FGPA") semiconductor chips ("Devices"). Xilinx's programmable chips are the
8 innovation platform of choice for today's leading companies, and are used in tens of thousands
9 of products. Attached hereto as Exhibits A and B are pictures of Xilinx semiconductor chips.
10 Xilinx' award-winning programmable platforms are used by more than 20,000 companies
11 worldwide for a wide range of end markets and industries including communications, industrial,
12 scientific, medical, data processing, consumer, automotive, aerospace and defense. Xilinx'
13 products can be reprogrammed, enabling companies to rapidly update product features and
14 functions in response to changing market requirements and standards. Xilinx' customers include
15 Silicon Valley cornerstones such as Agilent Technologies, Inc. ("Agilent"), Cisco Systems, Inc.
16 ("Cisco"), and Alcatel-Lucent, Inc. ("Alcatel-Lucent"). Xilinx also sells its highly advanced
17 devices to aerospace, defense, security, and advanced technology companies like Lockheed
18 Martin. Xilinx has partnered with the United States Air Force Research Laboratory for various
19 aerospace and defense projects. Xilinx devices are used by the United States Air Force, Marine
20 Corps, and the Navy.

21 19. A small number of customers purchase Xilinx devices directly from Xilinx. Most
22 customers purchase through authorized distributors (or "channel partners").

23 20. Xilinx sales representatives and engineers monitor the market for upcoming
24 projects that might benefit from Xilinx products. These projects (or "Customer Design
25 Opportunities") are entered into Xilinx's Oracle/Siebel system called Compass, and tracked. As
26 the project is moved through the sales process, Xilinx analyzes market segment and potential
27 revenue. This allows Xilinx to understand the customer's end product, marketplace, market
28 opportunity, and potential volume. When the customer is ready for a quote, it provides specific

1 information aligned with the project. A quote is then approved and authorized (including price,
2 part number, quantity, and end-customer Opportunity). The end-customer may then authorize a
3 CM to purchase on its behalf, in accordance with the project-specific quote provided by Xilinx.

4 21. A limited number of large Xilinx customers (“preferred customers”) engage in
5 periodic price negotiations to determine special, discounted prices that Xilinx will charge those
6 customers for its devices, based in part on the customer’s purchase forecasts. These preferred
7 customers receive a substantial discount from the standard price because of the high volume of
8 Xilinx products that they purchase on an annual basis. Preferred customers also take part in the
9 Customer Design Opportunity process. They negotiate and execute annual volume purchase
10 agreements (“VPAs”) with Xilinx. Thereafter, that customer’s projects are all consolidated
11 within the system, and Xilinx provides a price list based on anticipated volumes.

12 22. These agreements with preferred customers can cover forecast volume and prices
13 of hundreds of different Xilinx devices to be used in a variety of applications. Therefore, the
14 price charged for a specific Xilinx device can vary substantially from customer to customer.

15 23. Xilinx works with several “contract manufacturers” (“CMs”) such as Flextronics
16 that are authorized to purchase Xilinx devices from Xilinx on behalf of end customers. CMs
17 order and pay Xilinx directly for the devices at the specified end-customer’s negotiated or quoted
18 price. The CM then receives the devices from Xilinx, or its authorized channel partner, at which
19 point it incorporates Xilinx FPGA chips into the end-customer’s electronic-system products for
20 its target markets. Xilinx’ customers frequently utilize CMs for this purpose. One such contract
21 manufacturer – Defendants Flextronics – purchases and incorporates Xilinx chips into electronic
22 systems for numerous Xilinx customers, such as Ericsson, Inc. (“Ericsson”), Cisco, Agilent,
23 Tellabs, Inc. (“Tellabs”), and Checkpoint Systems, Inc. (“Checkpoint”).

24 24. Sometimes Xilinx uses authorized distributors such as Avnet, Inc. (“Avnet”), and
25 in the case of Ericsson, an approved distributor called Arrow Electronics, Inc. (“Arrow”). These
26 authorized distributors receive and complete orders for Xilinx devices placed by CMs on behalf
27 of the end-customer. Authorized distributors receive the physical devices from Xilinx, and then
28 ship them out to the CMs. The CM pays the authorized distributor at the approved price for the

1 end-customer, who pays Xilinx for the parts. Authorized distributors provide sales, technical
2 support, and logistic services.

3 25. Once a customer has authorized a CM to build a product and make purchases on
4 its behalf, the CM receives the customer's parts list (or "Bill of Materials"), which includes
5 customer-specific pricing.

6 26. In order to purchase Xilinx devices on behalf of a customer, such as Cisco, a CM
7 such as Flextronics must submit a purchase order ("PO") to Xilinx or an authorized distributor.
8 If the order is placed with Xilinx, the PO is submitted through an online ordering system, which
9 assists with order information collection and consolidation.

10 27. When Flextronics (or any CM) submits a PO on behalf of an end-customer, it
11 must provide either: a) the end-customer's name; b) the end-customer's unique and confidential
12 customer identification code; or c) the end-customer's part number. These are formulated in
13 such a way as to identify the end-customer. For instance, if Flextronics is placing an order for
14 Ericsson, the part number would begin with a unique identifier such as "ERC". In order to verify
15 the correct price, one of these pieces of information must be submitted with the PO, otherwise it
16 will be rejected.

17 28. Providing this information allows Flextronics to purchase Xilinx devices at the
18 discounted prices that have been separately negotiated between Xilinx and, for example, Cisco
19 for use solely in Cisco's end products.

20 29. After the PO is submitted, Xilinx provides Flextronics with a PO
21 Acknowledgement. The Acknowledgement includes reference to the PO number, order number
22 and line items, devices, quantities, and factory schedule.

23 30. If the order has been recorded properly, as confirmed through the PO
24 Acknowledgement, the goods are shipped and an invoice is sent to Flextronics, which includes
25 reference to the PO number, devices, quantities, and customer-specific price.
26
27
28

1 **B. Xilinx's Sales Procedures Are in Place to Ensure That Only Authorized End**
2 **Customers May Purchase at Pre-Negotiated and Discounted Prices**

3 31. Certain Xilinx customers are provided with a unique and confidential customer
4 identification number that their CMs use to purchase Xilinx devices at the discounted prices that
5 have been pre-negotiated between Xilinx and each customer for specific devices. Thus, when
6 Flextronics buys Xilinx devices for Cisco (a preferred customer), it provides Xilinx with either
7 Cisco's name, identification number, or customer-specific part number which allows Flextronics
8 to purchase those devices at Cisco's negotiated discount from the regular price that Xilinx would
9 otherwise charge to Flextronics.

10 32. Therefore, Flextronics pays a lower price for devices it purchases on behalf of
11 Cisco than it would pay for those same devices purchased on behalf of other customers.

12 33. Because Flextronics is authorized as a CM to make purchases on behalf of a
13 number of customers, it has access to Xilinx's confidential and proprietary pricing information
14 for those Xilinx's customers for whom they provide manufacturing services. When Flextronics
15 provides the customer's name, customer identification number, or customer ordering part
16 number in the course of a Xilinx device purchase, Xilinx relies on this representation in order to
17 charge Flextronics the appropriate negotiated price for that specifically identified customer.
18 Xilinx relies on Flextronics' representation that the purchase is being made on behalf of the
19 specific end-customer who is entitled to that pricing.

20 34. Beginning at a time presently unknown to Xilinx, Flextronics has been
21 fraudulently purchasing Xilinx products and making unauthorized sales of Xilinx devices. This
22 practice has permitted Flextronics to earn large and ill-gotten profit. Flextronics does this by
23 entering unique and confidential customer identification information for high-volume end-
24 customers, purchasing products at those customers' discounted prices, and then selling the
25 products to other customers for prices higher than the prices at which Flextronics has obtained
26 the products from Xilinx. Flextronics also orders inflated quantities of products under the
27 misrepresentation that these are being ordered for certain customers, in order to secure surplus
28 product which can then be sold to other, unauthorized customers at higher prices.

1 35. Flextronics is also selling authorized end-customers grey market and counterfeit
2 Xilinx devices which were purchased through unauthorized distributors. Many of these devices
3 are incorrectly remarked in order to appear to be more expensive, higher performing devices in
4 order to sell for a higher price. Because some of these devices are defective, Xilinx incurs
5 additional damages upon the warranty-mandated replacement of these devices with authorized
6 Xilinx devices.

7 **C. Flextronics Makes Fraudulent Purchases From Xilinx and Reaps Massive, Ill-
8 Gotten Profits from Unauthorized Sales of Xilinx Products**

9 36. For at least the last two years, Flextronics has fraudulently purchased and
10 unlawfully profited from unauthorized sales of fraudulently purchased Xilinx devices.

11 37. Flextronics has engaged in a pattern and practice of using preferred customers'
12 unique and confidential identification numbers, name, and/or end-customer ordering part
13 numbers, in order to fraudulently secure lower prices on Xilinx devices. Flextronics buys the
14 devices from Xilinx at the pre-negotiated customer-specific price, then sells these devices at
15 higher prices to customers who are not entitled to the preferred prices, resulting in substantial
16 and fraudulent gains for Flextronics.

17 38. Flextronics also engages in a practice of ordering higher quantities of parts on
18 behalf of preferred customers, so Flextronics can sell the excess devices to other customers at
19 higher prices.

20 39. For example, in June 2013, Xilinx became aware of large discrepancies between
21 sales forecasts and actual consumption levels for two customers, Airvana Network Solutions
22 ("Airvana") and Checkpoint.

23 **1. Flextronics Buys Xilinx Devices Purportedly for Airvana, But Actually Sells
24 the Devices to Checkpoint for a Significant Profit**

25 40. Xilinx performed an analysis of Flextronics' purchasing history of its highest
26 volume parts. Flextronics had approached Xilinx requesting a price quote for an approximately
27 50,000 part order for Checkpoint. Flextronics never actually executed this order for Checkpoint.
28

1 41. Airvana is a preferred customer of the same Xilinx part for which Flextronics
2 sought a price quote on behalf of Checkpoint. Airvana pre-negotiated with Xilinx and receives a
3 discounted high volume price of \$7.00 for this particular device. Checkpoint pays \$11.50 for the
4 same device.

5 42. According to Xilinx's records, Airvana appeared to be purchasing the device in
6 excess of approximately 60,000, meaning Airvana was recorded as having purchased
7 approximately 60,000 more devices than what its sales forecast deemed necessary. Xilinx was
8 able to confirm that at the time that these orders were placed Checkpoint had in stock
9 approximately 40,000 more of those same Xilinx devices than Xilinx had tracked in its order
10 histories. Checkpoint made it known to Xilinx that these purchases were made through
11 Flextronics.

12 43. Flextronics purposely deceived Xilinx by fraudulently placing large orders
13 purportedly on behalf of Airvana at a highly discounted price by giving Xilinx Airvana's name,
14 for the orders it was really placing for resale to Checkpoint.

15 44. Upon information and belief, Checkpoint was unaware that Flextronics
16 fraudulently acquired the devices, resulting in these unauthorized sales to Checkpoint.

17 45. Upon information and belief, Flextronics engages in this deceitful behavior on a
18 regular basis with various customers, continuously damaging Xilinx.

19 **D. Flextronics Sells to Unauthorized Purchasers in Asia and Puts Homeland**
20 **Security at Risk**

21 46. The United States has long been concerned about the export of "sensitive
22 equipment, software and technology" which could be used to threaten national security. In order
23 to prevent certain items from getting into the wrong hands, the United States controls these
24 exports "as a means to promote our national security interests... [and limit] access to the most
25 sensitive U.S. technology and weapons."⁷ In order to maintain our country's safety, all exports
26 falling under these categories must be licensed by one if not more government departments (e.g.,
27

28 ⁷ <http://www.state.gov/strategictrade/>

1 State, Commerce, and the Treasury). License requests “go through an extensive review process,
2 including review by interested U.S. government agencies, such as the Department of Defense,
3 Department of Energy, the intelligence community, and NASA, as well as interested bureaus
4 within the Department of State.”⁸ A main consideration of these reviews is the parties involved
5 in the transactions and the “appropriateness of the quality and quantity of the proposed export to
6 the end-user and stated end-use.”⁹ Licensing, and export control law in general, is regulated by
7 the Arms Export Control Act (AECA) (22 U.S.C. § 2751 et seq.).

8 47. Xilinx actively communicates and collaborates with its authorized distributors,
9 CMs, and Xilinx employees in order to promote strict compliance with United States export laws
10 and regulations. In fact, Xilinx works with federal authorities in such investigations, providing
11 support and sharing information.

12 48. Upon information and belief, Flextronics has made unauthorized sales of Xilinx
13 devices to buyers in Asia. This is especially alarming because of the highly advanced aerospace
14 and defense uses for these powerful devices. Unauthorized sales of these devices to the wrong
15 purchaser can pose a national security threat to the United States.

16 49. Upon information and belief, Flextronics sold Xilinx devices subject to United
17 States’ export control laws without securing the appropriate export licenses, in violation of the
18 AECA.

19 **E. Flextronics Buys and Sells Unauthorized Grey Market and Counterfeit Xilinx**
20 **Devices**

21 50. Xilinx has become a leader in the semiconductor market by manufacturing
22 extremely high quality devices with long lifespans. One way that Xilinx maintains its stellar
23 reputation among customers and competitors is through vigilant monitoring of grey market and
24 counterfeit sales of its devices.

25 51. Flextronics has been dealing in imported grey market and counterfeit Xilinx
26 chips. In bad faith, Flextronics has perpetrated a pattern of fraud and affirmative efforts to

27 ⁸ *Id.*

28 ⁹ *Id.*

1 deceive Xilinx customers into believing they are buying quality Xilinx devices procured through
2 authorized sales channels as represented to them by Flextronics. Instead, Flextronics engages in
3 two distinct illegal and deceptive practices: 1) fraudulent purchases and sales of Xilinx devices
4 (including some defective devices) which have been remarked as more expensive and higher
5 performing Xilinx devices; and 2) fraudulent purchases and sales of counterfeit Xilinx devices.
6 By knowingly misrepresenting Xilinx products to authorized and valued customers, Flextronics
7 damages the Xilinx brand, its reputation, and the trust in the quality of its products that Xilinx
8 has worked so hard to earn.

9 **1. Flextronics Sold Ericsson Remarketed Grey Market Xilinx Devices**

10 52. Arrow is a Xilinx approved distributor for Ericsson, a highly valued Xilinx
11 customer. This means if Ericsson wants a Xilinx device incorporated into a product, Ericsson
12 tells Arrow what its needs are, then Xilinx ships those needs into the Arrow facility. The Arrow
13 facility then sells to Ericsson's authorized CMs. This is done when the CM identifies the
14 customer's name, specific customer identification number, and/or the end-customer's ordering
15 part number. The contract manufacturer then purchases the devices and incorporates them into
16 Ericsson end-products, for sale to Ericsson.

17 53. In May 2013, Flextronics contacted Xilinx regarding a defective Xilinx chip
18 which was claimed to have failed a Flextronics quality test in a product it was building for
19 Ericsson. Flextronics sent Xilinx a picture of the defective chip. Xilinx cross-checked the lot
20 number listed on the top of the device against the lot number entered into its system for the
21 corresponding Ericsson sale. The lot numbers did not match. Xilinx then had Flextronics send
22 the device to Xilinx for replacement.

23 54. After extensive testing, it was determined that the defective device was a Xilinx
24 part which had been remarked and mislabeled as a different, more highly performing and
25 expensive Xilinx device. Xilinx was also unable to track the device in its system, confirming it
26 was an untraceable grey market product.

27 55. Xilinx confirmed proper inventory and shipments of Xilinx devices to Arrow, and
28 Arrow's product inventory and shipments with Flextronics confirmed that Flextronics got the

1 correct devices for system incorporation and sale to Ericsson. It was at Flextronics that the
2 device was switched with a defective and remarked chip in order to permit Flextronics to make a
3 higher profit from selling to Ericsson. Flextronics then sold the original, authorized Xilinx chip
4 to an unauthorized customer for an even more substantial profit.

5 56. Flextronics' conduct not only violates Xilinx's intellectual property rights, but
6 Xilinx is further damaged by virtue of its duty to replace these defective grey market chips under
7 customer warranties. This results in substantial loss of profits and good will amongst customers
8 receiving defective and mislabeled devices.

9
10
11
12 **F. Flextronics Has Created an Inventory System Designed to Disguise the Origin of Its**
13 **Wrongfully Acquired and Sold Xilinx Devices**

14 57. Flextronics' Flex Cost Procurement ("FCP") system is designed so as to make it
15 impossible to trace from where it is getting parts.

16 58. Upon information and belief, unauthorized Xilinx devices are acquired through
17 the FCP system.

18 59. The implementation of this program begins with Flextronics securing the
19 participation of approximately 8-10 unauthorized, independent distributors.

20 60. When Flextronics receives an order for Xilinx devices, it sends the list of parts out
21 to these unauthorized distributors in search of an offer to sell to Flextronics at the lowest price.
22 Once the lowest price is offered, Flextronics purchases these grey market devices for resale at
23 higher prices.

24 61. Internally, the PO lists "America II" (an unauthorized distributor), for example, as
25 the source of the devices. However, once the order comes into Flextronics, the template is
26 changed to read "FCP." Recording the transaction as "FCP" makes it appear as though an
27 internal transfer of goods has taken place while disguising the purchase and delivery history of
28 Xilinx products.

1 volume customers, Xilinx would sell Flextronics those parts at the prices that Xilinx had agreed
2 upon with those other customers. Flextronics had reason to expect that Xilinx would rely on the
3 misrepresentations that it made to them because of the continuous contractual relationship
4 between Xilinx and Flextronics.

5 69. Xilinx reasonably relied upon the representations Flextronics made while placing
6 orders on authorized customers' behalf.

7 70. Xilinx was justified in relying upon Flextronics's representations that it was
8 purchasing Xilinx parts on behalf of high-volume discounted purchasers because Flextronics was
9 authorized by those customers to purchase parts from Xilinx on their behalf.

10 71. Xilinx has been substantially harmed by Flextronics' misrepresentations because
11 it sold Flextronics Xilinx parts at specifically identified customers' lower prices rather than at the
12 higher price that Flextronics otherwise would have paid.

13 WHEREFORE, Plaintiff prays for relief as set forth below.

14 **SECOND CAUSE OF ACTION**

15 **(Negligent Misrepresentation)**

16 72. Plaintiff incorporates and re-alleges every allegation set forth in Paragraphs 1- 63.

17 73. Flextronics misrepresented to Xilinx that it was purchasing certain Xilinx
18 parts on behalf of high-volume discounted customers, when it was in fact purchasing those
19 parts on behalf of different customers. Flextronics has made such misrepresentations by
20 placing orders on Xilinx' system using either the end-customer's name, unique part code, or
21 specific unique and confidential customer identification numbers along with the quantity and
22 numeric identification of the Xilinx parts.

23 74. Flextronics had no reasonable grounds to believe that these misrepresentations
24 were true. The parts that Flextronics purported to purchase on behalf of Xilinx's high-volume
25 customers were either not being used at all or were being used in much smaller quantities than
26 the amount that Flextronics was purchasing.

27 75. Flextronics intended to induce Xilinx to rely on its misrepresentations.
28 Flextronics knew that because of its representation that it was purchasing Xilinx parts on

1 behalf of high-volume discount customers, Xilinx would sell Flextronics those parts at the
2 price Xilinx had agreed upon with those other customers. Flextronics knew that Xilinx
3 would rely on the misrepresentations made to it because Flextronics used unique and
4 confidential customer identification numbers when purchasing Xilinx devices.

5 76. Xilinx was justified in relying upon Flextronics' representations that it was
6 purchasing Xilinx parts on behalf of high-volume discount customers because Flextronics was
7 authorized by those customers to purchase parts from Xilinx on their behalf.

8 77. Xilinx has been substantially harmed by Flextronics' misrepresentations
9 because it sold Xilinx parts to Flextronics at the lower prices agreed to between Xilinx and
10 high-volume discount purchasers rather than at the higher price agreed to between Xilinx
11 and the unauthorized purchasers.

12 WHEREFORE, Plaintiff prays for relief as set forth below.

13 **THIRD CAUSE OF ACTION**

14 **(Breach of Contract, California Uniform Commercial Code § 2201 et seq.)**

15 78. Plaintiff incorporates and re-alleges every allegation set forth in Paragraphs 1-63.

16 79. Plaintiff is a merchant engaged in the design, manufacture, and sale of
17 semiconductor chips and other highly advanced technological devices.

18 80. Defendants Flextronics is a merchant engaged in the manufacture, integration, and
19 sale of integrated electronic systems.

20 81. Each time Flextronics initiated a purchase order for Xilinx devices, an offer was
21 made. The terms of the offer are expressly contained in that purchase order. End-customer
22 identification is a material term of the contract because it directly determines price.

23 82. Upon Xilinx sending Flextronics a purchase order acknowledgement, including
24 the quantity, end-customer identity, and corresponding, pre-negotiated price, Xilinx agreed to
25 those express and material terms – that Flextronics would sell the devices to the specified end-
26 customer at that customer's agreed upon price.

27 83. Flextronics did not object to the terms contained therein, nor did it refuse
28 shipment. Additionally, Flextronics made payments to Xilinx for the goods. Therefore, a valid

1 contract existed between the parties for the sale of Xilinx devices to Flextronics at prices
2 explicitly determined by the identity of the end-customer.

3 84. This pricing method has been utilized by Xilinx and Flextronics in their dealings
4 for over a decade, and it is a customary practice within the technology industry.

5 85. Flextronics is aware of price differentials among customers, and in representing to
6 Xilinx which end-customer would be purchasing the devices and its corresponding, pre-
7 negotiated price, Flextronics expressly agreed to pay for the particular devices for resale to only
8 that end-customer identified in the purchase order. Because Flextronics' price is conditional
9 upon the end-customer's identity, Flextronics' end-customer representation is an express and
10 material term that became a part of the contract.

11 86. Xilinx reasonably relied on Flextronics' representations regarding the identity of
12 the end-customer in its price setting.

13 87. Plaintiff fully performed its part in these numerous agreements, in that Plaintiff
14 delivered the ordered goods to Defendants at the time and place agreed upon by the parties.

15 88. Flextronics, in violation of its explicit promises contained in the agreements,
16 repeatedly accepted goods from Plaintiff, paid a specified end-customer price, and then breached
17 the contracts by reselling the goods to unauthorized end-customers.

18 89. Flextronics also breached these contracts by ordering higher quantities than the
19 end-customer actually wanted, in order to acquire excess Xilinx devices for sale to others at
20 higher prices.

21 90. Flextronics proceeded to resell the goods at higher prices, and to end-customers
22 unknown and not agreed upon by Plaintiff, reaping a windfall of ill-gotten and substantial profit.

23 91. As a direct and proximate result of Flextronics' continuous breaches, Plaintiff has
24 suffered extreme financial losses in the form of lost profits. Had Plaintiff been able to sell those
25 devices to the non-discount end-customers actually in receipt of the goods, Plaintiff would have
26 substantially profited from such legitimate sales. Instead, Flextronics' bad faith breaches
27 resulted in Flextronics unfairly profiting from unauthorized sale of Xilinx's devices.

28 WHEREFORE, Plaintiff prays for relief as set forth below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FOURTH CAUSE OF ACTION

(Breach Of Implied-In-Fact-Contract)

84. Plaintiff incorporates and re-alleges every allegation set forth in Paragraphs 1-63.

85. By their actions, Flextronics and Xilinx entered into a contract whereby Flextronics is permitted to purchase Xilinx parts on behalf of Xilinx customers at the respective price agreed upon by Xilinx and each specific customer, as long as Flextronics accurately identifies the customer for whom it is purchasing and using the Xilinx parts so that Xilinx can charge the correct price for those parts.

86. Because Flextronics was required to use these confidential customer identification numbers in order to purchase Xilinx parts at the discounted price, Flextronics knew or had reason to know that it was required to accurately identify the customer for whom it was purchasing and using the Xilinx parts.

87. When purchasing Xilinx parts, Flextronics did in fact use the high-volume discount customers' confidential customer identification numbers. Xilinx then provided Flextronics the parts that Flextronics ordered at the price agreed upon by Xilinx and that specific customer. Xilinx duly performed its duties under the implied-in-fact contract.

88. Flextronics breached the implied-in-fact contract with Xilinx through its fraudulent conduct in which it identified one entity as the customer for whom it was purchasing and using Xilinx parts on occasions when it was in fact actually purchasing those Xilinx parts to resell to other companies. Additional breaches occurred when Flextronics ordered higher quantities than the end-customer actually wanted, in order to acquire excess Xilinx devices for sale to others at higher prices.

89. Xilinx has been harmed by Flextronics' breach. Based on Flextronics' conduct, Xilinx was led to believe that its devices were going to specifically identified customers and, in turn, that Xilinx would receive the appropriate negotiated payment for those devices. Had Flextronics purchased those Xilinx parts directly from Xilinx rather than by misusing high-

1 volume discount customers' identification numbers, Flextronics would have paid Xilinx more
2 for those same parts.

3 WHEREFORE, Plaintiff prays for relief as set forth below.

4 **FIFTH CAUSE OF ACTION**

5 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

6 90. Plaintiff incorporates and re-alleges every allegation set forth in Paragraphs 1-63.

7 91. Flextronics and Xilinx entered into contracts whereby Flextronics purchases
8 Xilinx parts on behalf of Xilinx customers at the respective price agreed upon by Xilinx and
9 each specific customer. In fulfilling its duty to act in good faith (a higher standard amongst
10 merchants), Flextronics must accurately identify the customer for whom it is purchasing and
11 using the Xilinx parts so that Xilinx can charge the correct price for those parts.

12 92. Flextronics must also provide the accurate quantity desired by the end-
13 customer so as not to intentionally end up with excess devices.

14 93. Flextronics was required to use confidential customer information in order to
15 purchase Xilinx parts at discounted prices.

16 94. Flextronics knew or had reason to know that it was required to accurately identify
17 the customer for whom it was purchasing and using the Xilinx parts, as well as the true quantity.

18 95. Flextronics knew or had reason to know that the price of devices is directly
19 dependent upon the end-customer on whose behalf the purchase is being made.

20 96. When purchasing Xilinx parts, Flextronics did in fact use the high-volume
21 preferred customers' confidential customer information. Xilinx then provided Flextronics the
22 parts that Flextronics ordered at the price agreed upon by Xilinx and that specific customer.
23 Xilinx duly performed its duties under the contract.

24 97. Flextronics breached the covenant of good faith and fair dealing governing every
25 contract with Xilinx by identifying one entity as the customer for whom it was purchasing, when
26 it was in fact purchasing those Xilinx parts to resell to other companies for massive and ill-gotten
27 profits.

28

1 **SEVENTH CAUSE OF ACTION**

2 **(Conversion)**

3 104. Plaintiff incorporates and re-alleges every allegation set forth in Paragraphs 1-63.

4 105. Flextronics willfully interfered with Xilinx's rights to its personal
5 property. Defendants willfully interfered through a fraudulent scheme involving the
6 purchase of Xilinx parts purportedly on behalf of high-volume discount purchasers, with
7 full knowledge that it would be selling to unauthorized purchasers for more money,
8 thereby stealing the profit owed to Xilinx.

9 106. Defendants' intentional and deceitful acts enabled it to dispose of the
10 property in a manner inconsistent with Plaintiff's property rights. These property rights
11 include sale at a designated price.

12 107. Defendants' unauthorized sale and transfer of Xilinx's property caused
13 substantial damages to Plaintiff.

14 WHEREFORE, Plaintiff prays for relief as set forth below.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for relief as set forth below:

17 A. Actual damages, statutory damages, punitive or treble damages, and such other
18 relief as provided by the statutes cited herein;

19 B. Pre-judgment and post-judgment interest on such monetary relief;

20 C. Equitable relief in the form of an injunction prohibiting the illicit conduct
21 described herein;

22 D. The costs of bringing this suit, including reasonable attorneys' fees; and

23 E. All other relief to which Plaintiff may be entitled at law or equity.

24 DATED: December 11, 2013

COTCHETT, PITRE & McCARTHY, LLP

25 By: Steve Williams
26 STEVE N. WILLIAMS

27 *Counsel for Plaintiff Xilinx, Inc.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby requests a jury trial on any and all claims so triable.

DATED: December 11, 2013

COTCHETT, PITRE & McCARTHY, LLP

By: 
STEVE N. WILLIAMS

Counsel for Plaintiff Xilinx, Inc.

EXHIBIT A



EXHIBIT B



KINTEX

VIRTEx

ARTIX