

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

v.

GLOBALFOUNDRIES U.S. INC.,

Defendant.

Index No. _____

SUMMONS

The Index Number was purchased on
June __, 2021.

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to serve upon plaintiff's attorneys an answer to the complaint in this action within 20 days after the service of this summons, exclusive of the day of service, or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Plaintiff designates New York County as the place of trial. Venue is proper in this County pursuant to CPLR § 501 because the plaintiff and the defendant have expressly agreed to submit to the exclusive jurisdiction of any New York State court sitting in the County of New York for the resolution of any dispute arising from the agreements at issue in this action.

Dated: New York, New York
June 8, 2021

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COMPLAINT

Plaintiff International Business Machines Corporation (“IBM”), by and through its undersigned attorneys, for its Complaint against Defendant GLOBALFOUNDRIES U.S. Inc. (“GlobalFoundries”), alleges on personal knowledge as to matters relating to itself and on information and belief as to all other matters except as noted, as follows:

THE NATURE OF THE ACTION

1. This is an action for compensatory and consequential damages, restitution, equitable relief and punitive damages arising from the fraud and intentional breaches of contract committed by GlobalFoundries.

2. In 2015, IBM and GlobalFoundries entered into a long-term strategic relationship for researching, developing and manufacturing advanced semiconductor chips for IBM’s mainframes and other IBM servers. As part of a series of agreements by which IBM divested and GlobalFoundries acquired IBM’s semiconductor business, GlobalFoundries undertook to develop the next and successive generations of “High Performance” chips and become IBM’s sole-source supplier of the chips at the heart of IBM’s servers for ten years.

3. This was no mere supply arrangement. As one senior representative of GlobalFoundries told IBM, this was “a marriage, not a date.”

4. That was an apt and accurate description of the parties’ relationship - - at least as it was intended and as it was represented to by GlobalFoundries. With the benefit of IBM’s technology, semiconductor engineers and know-how, GlobalFoundries would become a multi-faceted developer, manufacturer and supplier of High Performance chips customized for IBM’s mainframes and other IBM servers and of other High Performance chips for other customers. To achieve its

objectives, this venture would require a devotion of substantial resources by GlobalFoundries - - capital and personnel - - to develop new generations of High Performance chips and then manufacture and supply those chips to IBM for many years to come.

5. Therefore, IBM would not agree, and did not agree, to form such a technology alliance until GlobalFoundries gave its representation and assurance that it had made a long-term strategic and financial commitment to the development of High Performance chips.

6. In numerous meetings and extensive discussions, GlobalFoundries made those representations to IBM. Those representations were an essential precondition to IBM entering into any relationship with GlobalFoundries, as GlobalFoundries had not been a significant player in the High Performance semiconductor business. Only by acquiring IBM's technology, employees and intellectual property, would GlobalFoundries be able to expand into making High Performance semiconductor chips for IBM and for others. Only with the express assurance that GlobalFoundries was committed to taking its business in that strategic direction would IBM consider consummating any agreement to sell its semiconductor business, selecting GlobalFoundries as its exclusive long-term supplier, and collaborating on joint research into future semiconductor technology.

7. To back up its pre-closing representations, GlobalFoundries agreed that it would use \$1.5 billion provided by IBM to satisfy GlobalFoundries' obligations to IBM under the strategic alliance, specifically including the development and manufacturing of 14 nanometer (nm) and 10nm High Performance chips.

8. In reliance on GlobalFoundries' representations about its strategic commitment to High Performance technology, and expecting that GlobalFoundries would act with integrity and would honor its representations and undertakings, IBM agreed to and consummated the collaborative technology alliance with GlobalFoundries in July 2015.

9. It did not take long for GlobalFoundries to betray its representations and breach its obligations - - and intentionally so. Within months of the closing in July 2015, and without any legal justification or excuse, GlobalFoundries announced that it would not develop or supply 10nm chips for IBM. To dodge its responsibility for violating the parties' development and supply agreements, GlobalFoundries promised that it would develop, as an alternative, 7nm chip technology. IBM reserved all its rights with respect to GlobalFoundries' breaches, and gave GlobalFoundries a chance to deliver on its latest promise.

10. GlobalFoundries did not. After waiting to receive the last installment of the \$1.5 billion in December 2017, GlobalFoundries suddenly, without warning, in derogation of its representations and obligations, and without regard to the impact on its partner IBM, announced in 2018 that it would not make a 7nm chip for IBM, or any future generation High Performance technology.

11. Once again, GlobalFoundries had no explanation for deliberately backtracking on its representations and breaching the parties' agreements - - other than its own arrogance and greed. GlobalFoundries admitted that it "never planned to be a leading producer of 7-nm chips in terms of volume." As evidenced by GlobalFoundries'

inexcusable abandonment of the 10nm and 7nm chips, it turns out that GlobalFoundries was never committed to developing High Performance semiconductors for the long term.

12. Having taken the \$1.5 billion and extracted the benefits of the best-in-class technology, engineers, and intellectual property from IBM, GlobalFoundries revealed that its representations about being committed to High Performance technology were false. GlobalFoundries misled IBM in order to acquire IBM's semiconductor business and form an ostensibly mutually beneficial alliance, which GlobalFoundries then deliberately and dishonorably discarded when it suited GlobalFoundries' purposes.

13. GlobalFoundries has done nothing to cure its breaches or remedy its fraud. Now that GlobalFoundries has been caught in its lies and deceptions, it is time for it to make amends. As it will not do so voluntarily, IBM brings this action to recover what it is due: among other things, the \$1.5 billion that IBM paid to GlobalFoundries, which GlobalFoundries had agreed to use to satisfy its obligations to IBM; *plus* an accounting of what GlobalFoundries actually did with that money; compensatory and consequential damages for GlobalFoundries' intentional violations of contract and fraud; and punitive damages for fraud.

Jurisdiction and Venue

14. Pursuant to the Master Transaction Agreement, described in more detail *infra*, the parties agreed that any action arising from the agreements at issue in this matter be brought exclusively in the United States District Court for the Southern District of New York, or if there is no federal jurisdiction, any New York State court sitting in the County of New York.

Submission to Jurisdiction. As part of the consideration for value received, each party hereto, subject to Section 12.5, irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the United States District Court for the Southern District of New York or, if there is no jurisdiction in such court, any New York State court sitting in the County of New York, for the purposes of any Legal Proceeding arising out of or relating in any manner to this Agreement (and each agrees that no such Legal Proceeding relating to this Agreement shall be brought by it except in such courts). MTA § 12.3.

15. Pursuant to CPLR § 301, this Court has personal jurisdiction over GlobalFoundries because GlobalFoundries' principal place of business is in Malta, New York.

16. Pursuant to CPLR § 501, venue properly lies in New York County because IBM and GlobalFoundries expressly agreed to submit to the exclusive jurisdiction of any New York State court sitting in the County of New York for the resolution of any dispute arising from the agreements at issue in this matter.

The Parties

17. IBM is a New York corporation with its principal place of business located in Armonk, New York.

18. GlobalFoundries is a Delaware corporation with its principal place of business located in Malta, New York.

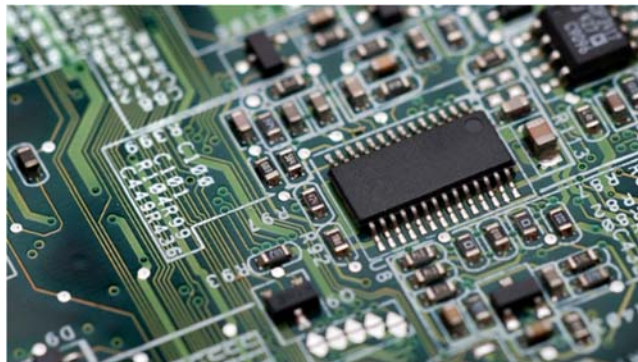
19. GlobalFoundries is owned by Mubadala Technology (formerly known as Advanced Technology Investment Company), a specialist investment company created by the Government of Abu Dhabi and owned by Mubadala Investment Company ("Mubadala"), a sovereign investor that manages assets and investments on behalf of the Government of Abu Dhabi.

I. THE BACKGROUND OF THE PARTIES' TECHNOLOGY ALLIANCE

A. Semiconductor Chips

20. The parties' technology alliance was formed to research, develop, manufacture, and supply semiconductors for, *inter alia*, IBM's mainframes and other IBM servers.

21. A semiconductor chip (pictured below) is a tiny microelectronic device that can process enormous amounts of data in the form of an electrical current traveling along a circuit. Semiconductor chips are used to process information for everything from large-scale computer servers and data centers for large corporate enterprises and government agencies (many made or managed by IBM), to automobiles, mobile phones and refrigerators.



22. Among the significant advances in semiconductor technology over the last 50 years has been the ability to continually reduce the size of chips. According to Moore's law, the capacity of each chip roughly doubles every two years. This exponential improvement in manufacturing - - which requires substantial, capital-intensive research and innovation - - has in large part driven the digital revolution.

23. Manufacturing semiconductor chips is a highly intricate and expensive process that can require more than 1,000 steps *per chip*. Typically, the first

step involves melting silicon into cylindrical ingots, which are then sliced into thin “wafers.”

24. The features etched into the wafers that are cut into chips are microscopic and, accordingly, are measured in nanometers (nm), one-billionth of a meter. The first semiconductor chip in 1971 was 10,000nm. By 2001, 130nm chips were being developed. More recent generations of chips include: 22nm (launched in 2012), 14nm (launched in 2014), and 10nm (launched in 2016).

25. Among many other variables, chips can be designed and engineered for “Low Power” applications, including mobile devices and automobiles, or “High Performance” applications, including high-capacity systems such as IBM’s mainframes and other IBM servers.

26. Chips are manufactured in large, highly specialized facilities called “fabs” (pictured below), which can cost billions of dollars to build.



B. IBM's Microelectronics Business

27. IBM is a global information technology company with cloud and AI, hardware, software and services businesses that has been a leading innovator in information technology for over a century.

28. IBM's Systems business has for decades designed, developed and manufactured high-performing computer servers - - including IBM's mainframes and other IBM servers - - for customers like insurance companies and banks, and government agencies.

29. Mainframes are high-performance computer server systems that offer extremely high reliability, availability and serviceability. Mainframes come in different sizes, and can be very large, holding massive amounts of memory, processing huge workloads, and performing billions of calculations and transactions in real time. IBM's mainframes can process up to one trillion online transactions daily with the highest levels of security and reliability.

30. IBM's mainframes and other IBM servers require customized High Performance semiconductor chips. Prior to July 2015, IBM designed and manufactured its own server chips in its Microelectronics business. IBM's Microelectronics business also manufactured semiconductor chips for original equipment manufacturers ("OEMs").

31. Because of the substantial, and increasing, capital investment needed to support semiconductor manufacturing and constant advances in semiconductor technology, scale is critical to offset the significant costs of manufacturing server chips.

32. While IBM had a long history of developing highly advanced semiconductor technology, and maintained the skilled personnel, intellectual property,

facilities and equipment to make its own server chips and the chips for its OEM business, at a certain point in time the limited scale of the IBM Microelectronics operation was not profitable.

33. IBM therefore sought a trusted technology collaborator and long-term manufacturing supplier that could combine its scale with IBM's leading technology and know-how to develop, manufacture and supply the specialized High Performance semiconductors designed for IBM's mainframes and other IBM servers.

C. GlobalFoundries

34. GlobalFoundries was established in March 2009 as a joint venture between Advanced Micro Dynamics (AMD) and one of its large investors, Advanced Technology Investment Company (ATIC). ATIC, now known as Mubadala Technology, was a specialist investment company created by the Government of Abu Dhabi to focus on investments in the technology sector. ATIC, in turn, was (and Mubadala Technology still is) owned by Mubadala Investment Company, a sovereign investor that manages a global portfolio of assets and investments on behalf of Abu Dhabi.

35. The AMD-ATIC joint venture sought to combine AMD's semiconductor manufacturing capabilities with the long-term financial focus of ATIC to become a global contract manufacturer of semiconductor products, or "foundry."

36. Over the next several years, GlobalFoundries increased its manufacturing scale, expanding in size and geography. By 2014, GlobalFoundries had fabs in Singapore, Germany and the United States.

37. Prior to forming its alliance with IBM, GlobalFoundries primarily produced Low Power semiconductors for low-intensity, high-volume applications, such

as cellphones. In or around 2013, GlobalFoundries purportedly was seeking to expand its presence in the High Performance market.

D. IBM and GlobalFoundries Form a Long-Term Technology Alliance

38. IBM and GlobalFoundries had numerous discussions about some kind of collaborative venture to develop and manufacture High Performance semiconductors. Those discussions accelerated in 2013 and came to fruition in July 2015.

39. As alleged more fully below, on the basis of GlobalFoundries' representations that it had made a long-term strategic commitment to developing and manufacturing chips for the High Performance technology market, IBM agreed to negotiate and then form a multi-part technology alliance with GlobalFoundries.

40. Pursuant to a series of arrangements and agreements (alleged in detail below), which the parties collectively defined as the "Transactions" and closed in July 2015, the parties' alliance was designed to develop the next generation of High Performance chips, manufacture and supply those chips for IBM on a long-term basis (at least 10 years), and jointly conduct cutting-edge research into future semiconductor technologies.

41. As conceived, this technology collaboration had several components, including:

(a) IBM would divest, and GlobalFoundries would acquire, IBM's Microelectronics business; IBM would transfer to GlobalFoundries thousands of highly skilled technologists and engineers, numerous patents and patent applications, and two fabs along with their manufacturing tools and equipment; and IBM would provide

GlobalFoundries \$1.5 billion in additional cash consideration. These and other terms were memorialized in a Master Transaction Agreement, as alleged in detail below.

(b) In turn, GlobalFoundries would use the \$1.5 billion from IBM to fulfill its obligations, including developing, manufacturing and supplying IBM with High Performance semiconductor chips - - specifically, 14nm and 10nm chips. As part of this long-term relationship, GlobalFoundries would serve as IBM's sole-source supplier of High Performance chips at the heart of IBM's servers for at least 10 years. These terms were memorialized in a Technology Cooperation Agreement and Foundry Supply Agreement, as alleged in detail below.

(c) The parties would conduct joint research into future semiconductor technologies at the Center for Semiconductor Research ("CSR"), a technology research facility that IBM operated jointly with The Research Foundation for the State University of New York, in Albany, New York (the "Albany Research Facility"). The parties would share the cost of their collective research activities at the Albany Research Facility [REDACTED]

[REDACTED] These terms were memorialized in an Albany Cooperation Agreement, as alleged in detail below.

42. As described by the parties at the time, these contemplated arrangements and undertakings would "enable[] GlobalFoundries to become a world leader in semiconductor foundry technology," while allowing IBM to "focus on fundamental semiconductor research and systems innovation."

43. Specifically, GlobalFoundries received valuable assets from IBM, intended to be used for the benefit of both parties, including:

(a) Intellectual property, including approximately 16,000 IBM patents and patent applications, providing GlobalFoundries with a large semiconductor patent portfolio. The intellectual property acquired by GlobalFoundries was, according to a GlobalFoundries executive, viewed as “a large part of the value” in the Transactions.

(b) More than [REDACTED] highly trained semiconductor engineers and specialized employees, described by GlobalFoundries as “one of the best technical teams in the semiconductor industry,” and which included “numerous world-class technologists.”

(c) A fab in East Fishkill, New York.

(d) A fab in Essex Junction, Vermont.

44. In collaboration with IBM, GlobalFoundries also stood to benefit from GlobalFoundries’ unique access to the state-of-the-art Albany Research Facility, authority to control certain of the work that was conducted at the Albany Research Facility, and exclusive licensing rights to the results of joint semiconductor technology research programs conducted there.

45. As GlobalFoundries’ former CEO Sanjay Jha stated, the Transactions “solidifie[d] GlobalFoundries’ leadership position in semiconductor technology development and manufacturing,” while obligating GlobalFoundries to become “IBM’s exclusive server processor semiconductor technology provider for . . . 14nm and 10nm semiconductors for the next 10 years.”

II. THE REPRESENTATIONS GLOBALFOUNDRIES MADE BEFORE IBM AGREED TO ENTER INTO THE PARTIES' ALLIANCE

46. At the time discussions between IBM and GlobalFoundries about forming a long-term alliance began to take shape in 2013 and 2014, GlobalFoundries did not have the technology, infrastructure or personnel to develop the High Performance semiconductors IBM required for IBM's mainframes and other IBM servers.

GlobalFoundries did not have a long or particularly successful track record in High Performance technology, as it focused primarily on Low Power technology.

47. Accordingly, GlobalFoundries was going to need to acquire IBM's advanced semiconductor technology, engineers and employees if it was to develop the next generation of High Performance semiconductors - - starting with 14nm and 10nm - - and to become IBM's exclusive, long-term manufacturer and supplier.

48. As GlobalFoundries' then-CEO Sanjay Jha would say after the consummation of the Transactions in July 2015: "We have added world-class technologists and differentiated technologies . . . to meet our customers' needs and accelerate our progress toward becoming a foundry powerhouse."

49. For IBM, GlobalFoundries' commitment to develop and supply High Performance technology and chips was a fundamental principle and an essential precondition of any potential transaction and, as such, it was one of IBM's absolute "Walk-away" requirements to any deal with GlobalFoundries.

50. Therefore, in order to enter into a 10-year collaborative relationship with GlobalFoundries, IBM first needed express assurances that GlobalFoundries was committed to taking its business in the strategic direction of

developing and manufacturing High Performance semiconductors. Given that High Performance technology had not been the focus of GlobalFoundries' business, IBM would not otherwise have had confidence that GlobalFoundries would be in the position to fulfill its roles in the contemplated long-term alliance.

51. Likewise, IBM would not have sold its Microelectronics business - - along with its assets, cutting edge know-how, intellectual property, and best-in-class technologists and employees - - without GlobalFoundries' assurance that High Performance technology was going to be a priority and part of GlobalFoundries' forward-looking strategic plan. Without that assurance and commitment, IBM would not have pursued or consummated the Transactions with GlobalFoundries.

52. IBM's need to be persuaded of GlobalFoundries' strategic commitment to High Performance technology took on added importance in January 2014 when GlobalFoundries announced the appointment of its new Chief Executive Officer, Sanjay Jha. Jha was not trained or experienced in the High Performance semiconductor business. Rather, he was coming most recently from the cellular phone business (Motorola) and Low Power semiconductor business (Qualcomm).

53. During the course of the parties' negotiations, and in 2014 in particular, GlobalFoundries' executives and board members, and representatives of ATIC, repeatedly communicated and represented to IBM that GlobalFoundries was committed for the long-term to expand its presence, capacity and investment in the High Performance semiconductor market.

54. Those assurances and representations were made by GlobalFoundries on numerous occasions, including:

(a) On or about February 6, 2014, in Dresden, Germany, John Kelly (IBM's then-Senior Vice President and Director of Research), Kevin Reardon (IBM Vice President of Corporate Development), and other IBM executives met with Sanjay Jha (CEO of GlobalFoundries) and Ibrahim Ajami (CEO of ATIC) to discuss the framework for the sale of IBM's Microelectronics business and GlobalFoundries' technology plan. It was Kelly's first in-person meeting with Jha. Kelly and Jha met again in Saratoga Springs, New York on or about February 24, 2014.

(b) Beginning in February 2014, including at the Saratoga Springs meeting, and throughout discussions in March 2014 through September 2014 (as alleged below), Jha and other executives and representatives at GlobalFoundries and ATIC represented to IBM that GlobalFoundries was committed to a High Performance technology strategy. Jha would later say much the same publicly, promising that GlobalFoundries would invest \$10 billion in 2014 and 2015 alone to develop 14nm and 10nm technologies and, with "the talent and know-how of our former IBM Microelectronics colleagues and the world-class R&D pipeline from our research alliance [with IBM] . . . [n]o other foundry can match our legacy of manufacturing high performance chips."

(c) After GlobalFoundries sent its initial term sheet for "Project Next" (one of the code names for the Transactions) near the end of February 2014, the parties had frequent exchanges of proposals and in-person meetings during the spring of 2014.

(d) On or about March 3, 2014, to satisfy IBM's fundamental principle that GlobalFoundries commit to High Performance technology, GlobalFoundries represented that it would [REDACTED]

[REDACTED] GlobalFoundries'

assurance that it had made a strategic and financial commitment to the next generation of High Performance semiconductors - - specifically, 10nm semiconductors - - was critical to IBM's decision to proceed with GlobalFoundries.

(e) On or about March 3, 2014, at the law offices of Weil Gotshal LLP in Redwood Shores, California, representatives of IBM, including Kevin Reardon, met with representatives of GlobalFoundries, including Marco Chisari (then the Head of M&A and Business Development for ATIC, who also served as the Head of M&A and Corporate Development at GlobalFoundries) and Gregg Bartlett (GlobalFoundries' then-Chief Technology Officer). The discussion focused primarily on five issues, including IBM's concern about GlobalFoundries' commitment to High Performance technology. On that issue, Bartlett represented to Reardon that GlobalFoundries was "locked in" to developing a High Performance 14nm chip and committed to developing a High Performance 10nm chip.

(f) On or about April 14, 2014, also at the law offices of Weil Gotshal LLP in Redwood Shores, California, representatives of IBM, including John Kelly, met with representatives of GlobalFoundries, including Sanjay Jha, to discuss the latest exchange of deal terms. Jha again represented that GlobalFoundries was committed to the next generation of High Performance technologies.

(g) On or about May 23, 2014, at GlobalFoundries' facility in Malta, New York, representatives of IBM, including John Acocella (IBM's VP of Systems Hardware and Technology Development) and Wayne Howell (IBM's VP of Design & Engineering), met with representatives of GlobalFoundries, including David Bennett

(Vice President of Strategic Alliances and Agreements) and Emma Cheer (then-Deputy Director and Sales Account Manager). The discussions again addressed IBM's concern that GlobalFoundries had made a commitment to develop High Performance chips.

(h) On or about June 11, 2014, in San Diego, California, representatives of IBM, including John Kelly and Kevin Reardon, met with representatives of GlobalFoundries, including Sanjay Jha and Marco Chisari. The IBM team expressed its concern with GlobalFoundries' level of commitment to developing and manufacturing High Performance technology. For contracting purposes, the GlobalFoundries' team at the meeting proposed [REDACTED], but they stood by GlobalFoundries' representation that it was strategically and financially committed to developing and manufacturing 14nm and 10nm High Performance chips.

55. Based on and in reliance on these and other representations regarding GlobalFoundries' long-term commitment to develop High Performance technology, IBM concluded in or about September 2014 that its "Walk-away" requirement had been satisfied.

56. As alleged further below, GlobalFoundries confirmed its representations regarding its commitment to High Performance technology by agreeing that the \$1.5 billion that IBM would, in the event the Transactions closed, pay to GlobalFoundries as additional consideration, would be used to fund the development and manufacturing of both 14nm and 10nm High Performance chips.

57. Based on the above and numerous other discussions and communications with IBM, GlobalFoundries (including its representatives Sanjay Jha,

Marco Chisari, Ibrahim Ajami and others at GlobalFoundries and ATIC) knew and fully understood that IBM would not enter into an alliance with GlobalFoundries if GlobalFoundries did not assure IBM that GlobalFoundries had a long-term strategic commitment to the development and supply of High Performance technology, including successive generations of High Performance chips.

58. Based on the above representations and others, IBM agreed to consummate the series of agreements forming the parties' collaborative alliance and agreed to close the Transactions in July 2015.

59. Furthermore, as alleged below, based on the above and other representations, IBM paid \$1.5 billion in additional consideration, [REDACTED], to GlobalFoundries between 2015 and 2017.

60. But for the above and other representations by the executives and representatives of GlobalFoundries, IBM would not have consummated the Transactions with GlobalFoundries in July 2015; would not have transferred its Microelectronics assets, technology, know-how and employees to GlobalFoundries; and would not have paid more than \$1.5 billion to GlobalFoundries.

61. As alleged below, GlobalFoundries' assurances and representations that it was strategically committed to High Performance technology for the long-term, and its representation and agreement that it would use the \$1.5 billion in additional consideration to develop and supply IBM with High Performance semiconductors, were false when made and false on the date of closing in July 2015.

62. However, GlobalFoundries' deception, and its true intentions, would not emerge until after the July 2015 closing and would not be fully revealed until 2018 - - after it received the \$1.5 billion in additional consideration and other payments.

III. THE TERMS OF THE PARTIES' AGREEMENTS

A. The Master Transaction Agreement (MTA)

63. The Master Transaction Agreement (the "MTA") dated as of October 18, 2014, established the contractual framework for forming the collaborative alliance between IBM (referred to as "Seller") and GlobalFoundries (referred to as "Acquiror") that was consummated on or about July 1, 2015.

64. The MTA (Ex. 1) expressly set forth the objective of the parties' multi-part business relationship and plan, including IBM's divestiture and sale of its Microelectronics business to GlobalFoundries: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] MTA Whereas Clause, 1.

65. To effectuate the transfer of the specified assets and liabilities of IBM's Microelectronics business to GlobalFoundries, and to establish the parties' long-term relationship, the MTA provided that the parties desired to enter into a series of "Ancillary Agreements," including:

(a) the TCA (Ex. 2), which governed GlobalFoundries' obligations to undertake and complete the development of both the 14nm and 10nm High Performance chips;

(b) the FSA (Ex. 3), which selected GlobalFoundries as [REDACTED], and the [REDACTED], and the included 14nm and 10nm Statements of Work (the “14 High Performance SOW” and “10 High Performance SOW,” respectively), which obligated GlobalFoundries to [REDACTED]; and

(c) the ACA (Ex. 4), which obligated GlobalFoundries to negotiate in good faith an agreement to [REDACTED]

66. [REDACTED] including the parties’ exchange of consideration and IBM’s obligation to pay additional consideration under the MTA (alleged below), [REDACTED]. MTA §§ 4.1, 4.2, 9.2(f).

67. The consummation of the MTA and IBM’s decision to close the Transactions did not take place until on or about July 1, 2015.

68. Article III of the MTA (“CONSIDERATION”) sets forth the consideration to be exchanged (upon closing) for the divestiture and sale of IBM’s microelectronics business and the series of arrangements forming the parties’ technology development and research alliance.

69. GlobalFoundries agreed to pay IBM [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] MTA § 3.1(b).

70. As [REDACTED]

[REDACTED]
[REDACTED] IBM agreed to pay GlobalFoundries \$1.5 billion, [REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

MTA § 3.2(a)

71. In exchange for that additional consideration, GlobalFoundries

agreed [REDACTED]
[REDACTED] Section 3.2(b) of the MTA provides:

[REDACTED]

72. In sum, if IBM decided to close the Transactions, GlobalFoundries

agreed that [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] MTA § 3.2(b) (emphasis added).

73. As a safeguard to protect IBM in the event of GlobalFoundries' insolvency, on or about July 1, 2015, IBM entered into a Further Assurances Agreement (the "FAA") with Mubadala, GlobalFoundries' ultimate parent company. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] FAA §§ 2(a), (b).

74. Pursuant to Article X of the MTA ("INDEMNIFICATION"), GlobalFoundries agreed to indemnify IBM for [REDACTED]

[REDACTED]
[REDACTED] MTA §§ 10.2(b)(i), (ii).

75. Indemnification by GlobalFoundries under Section 10.2(b)(i), [REDACTED]
[REDACTED] MTA
§ 10.5(b). Indemnification by GlobalFoundries under Section 10.2(b)(ii) [REDACTED]

[REDACTED]
[REDACTED]

76. Furthermore, there is no limit under the MTA, or any of the Ancillary Agreements, on the amount of damages arising from fraud by GlobalFoundries. MTA § 10.5(f). Nor is there a limit on equitable relief (including monetary equitable relief, such as restitution) or unjust enrichment.

B. The Technology Cooperation Agreement (TCA)

77. The TCA governed GlobalFoundries' obligations to conduct and complete the development of certain technologies for 14nm and 10nm High Performance chips for use in IBM's mainframes and other IBM servers.

78. The TCA states that IBM and GlobalFoundries [REDACTED]

[REDACTED]

[REDACTED] TCA Whereas Clause, 1 (emphasis added).

79. The TCA further states that [REDACTED]

[REDACTED]

[REDACTED] TCA Whereas Clause, 1.

80. The TCA defines [REDACTED]

[REDACTED]

[REDACTED] TCA § 1.1.

81. Accordingly, under the TCA, [REDACTED]

[REDACTED]

[REDACTED]

82. Specifically, the TCA provides that GlobalFoundries [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] TCA § 2.1

(emphasis added).

83. The TCA further provides that GlobalFoundries [REDACTED]

[REDACTED]

[REDACTED] and in accordance with the terms and subject to the conditions set forth in the TCA. TCA § 3.3 (emphasis added).

84. The TCA also provides that GlobalFoundries [REDACTED]

[REDACTED]

[REDACTED] TCA

§ 2.2.1 (emphasis added).

85. Annex B to the TCA defines the 14 High Performance Operational Plan and provides that, so long as IBM [REDACTED]

[REDACTED]

[REDACTED]

86. Annex B to the TCA defines the 14 High Performance Milestones with detailed assessment criteria and completion dates.

87. At the time of the closing, on or about July 1, 2015, IBM already had conducted a substantial amount of the development of the 14nm High Performance technology. GlobalFoundries' obligation merely was to complete that development based on IBM's technology and know-how.

88. By contrast, IBM had only begun development of the 10nm High Performance technology. Accordingly, the TCA provides that GlobalFoundries [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] TCA § 2.3.1 (emphasis added).

89. GlobalFoundries was obligated to develop the 10nm High Performance chip in accordance with the Technical Specifications set forth in Annex D and the 10 High Performance Operational Plan and 10 High Performance Milestones described in Annex E to the TCA. TCA § 2.3.2.

90. The 10 High Performance Milestones defined production benchmarks for the 10nm High Performance chip that GlobalFoundries was obligated to reach by certain dates and that were subject to IBM's quality review. TCA Annex E.

91. Annex E provides that GlobalFoundries [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] TCA Annex E (emphasis added).

92. Annex E to the TCA (as amended) [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

98. If GlobalFoundries complied with its obligations under the TCA and the other Ancillary Agreements, [REDACTED]

[REDACTED]

99. GlobalFoundries agreed in Section 9.1 of the TCA [REDACTED]

[REDACTED]

[REDACTED] GlobalFoundries further agreed that any rights and remedies under the TCA [REDACTED]

[REDACTED]

TCA § 9.1.

100. On or about March 24, 2016, the parties amended the TCA. The amended TCA provided that [REDACTED]

[REDACTED] See

TCA at Annex E [REDACTED]; TCA § 3.4.4

[REDACTED]

[REDACTED] IBM also agreed to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] TCA § 4.4, Annex B.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

102. GlobalFoundries' obligations under the amended TCA otherwise remained unchanged.

C. The Foundry Supply Agreement (FSA)

103. Pursuant to the FSA, GlobalFoundries agreed to manufacture 10nm and 14nm High Performance chips and supply them to IBM for use in IBM's mainframes and other IBM servers.

104. In return, IBM committed to use GlobalFoundries as its exclusive supplier of High Performance chips at the heart of IBM's servers for a 10-year period.

105. Specifically, the parties agreed that GlobalFoundries would be IBM's sole source for the fabrication of High Performance chips ranging from 180nm to 10nm, subject to technology-specific Statements of Work (SOWs). FSA § 2.1.

106. The 14 High Performance SOW and the 10 High Performance SOW obligated GlobalFoundries to manufacture and supply to IBM 14nm and 10nm High Performance chips.

107. IBM agreed to a [REDACTED] FSA § 5.7. IBM agreed to these terms in exchange for GlobalFoundries' long-term obligation to manufacture [REDACTED] the 14nm and 10nm High Performance chips [REDACTED]

108. GlobalFoundries' obligations with respect to its production of the 10nm High Performance technology are further defined in the 10 High Performance SOW, (Ex. 5), which states that GlobalFoundries [REDACTED]

109. GlobalFoundries agreed in Section 17.1 of the FSA that [REDACTED]

[REDACTED] GlobalFoundries further agreed that [REDACTED]

110. On or about March 24, 2016, the parties amended the FSA, [REDACTED]

[REDACTED], but otherwise leaving unchanged GlobalFoundries' obligations to manufacture and supply IBM with 10nm High Performance chips.

D. The Albany Cooperation Agreement (ACA)

111. The ACA governs the parties' collaboration at the Albany Research Facility jointly operated by IBM and The Research Foundation for the State University of New York.

112. The parties entered into the ACA for the purpose of [REDACTED]
[REDACTED]
[REDACTED] FSA

Whereas Clause, 1.

113. The purpose of the Albany Research Facility is to support advanced early-stage research into future generation semiconductor technology, which begins many years prior to commercial development and production.

114. Under the ACA, IBM and GlobalFoundries agreed to work collaboratively on research projects at the Albany Research Facility.

115. The ACA provides structures [REDACTED]
[REDACTED]

116. The ACA was structured to support joint research efforts between IBM and GlobalFoundries regarding future generation semiconductor technology beyond the 10nm chip. ACA §§ 2-5.

117. The results of that research were intended to support GlobalFoundries' development of post-10nm High Performance technologies.

118. Recognizing the long-term nature of the parties' planned collaboration, the ACA expressly contemplated [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ACA §§ 4(a), 5(d).

[REDACTED]

[REDACTED]

120. Specifically, the ACA provides that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] ACA § 4(a) (emphasis added).

121. The ACA further provides that, from the date on which [REDACTED]

[REDACTED]

[REDACTED] ACA § 5(d)

(emphasis added).

122. The ACA further provides that IBM and GlobalFoundries jointly

ACA § 5(e)(ii).

123. The ACA further grants GlobalFoundries

ACA

§ 5(e)(iv).

IV. GLOBALFOUNDRIES INTENTIONALLY BREACHES ALL THE PARTIES' AGREEMENTS AND REVEALS ITS FRAUDULENT CONDUCT

A. GlobalFoundries Intentionally Breaches the TCA, FSA and 10HP SOW By Not Developing, Manufacturing or Supplying the 10nm Technology and the 10nm Chip

124. By September 2015, a mere two months after the closing, GlobalFoundries began to indicate that it did not intend to develop, manufacture or supply the 10nm High Performance chip. By December 2015, just five months after the closing, GlobalFoundries declared for certain that it would not develop, manufacture or supply the 10nm High Performance chip.

125. As a result, in an intentional and uncured breach of the TCA (including but not limited to Sections 2.3.1, 2.3.2 & Annex E), the FSA (including but not limited to, Sections 2.1, 5.7), and the 10HP SOW, GlobalFoundries never developed, manufactured or supplied the 10nm High Performance chip.

126. Therefore, in deliberate violation of Sections 3.2(a) and 3.2(b) of the MTA, GlobalFoundries did not use the \$1.5 billion that IBM had paid as additional

consideration in order to fulfill GlobalFoundries' obligations under the TCA, the FSA and the 10HP SOW, to develop or supply the 10nm High Performance chip.

127. Upon information and belief, GlobalFoundries had internal deliberations prior to the July 2015 closing about not proceeding with the development of the 10nm chip. Making such a major shift in corporate priorities, and a major change in the allocation of billions of dollars in corporate resources, could not have happened entirely in the few months after the closing. It would have required significant and time-consuming thought, analysis, debate, market intelligence gathering, and financial calculations. It is not plausible that discussions and decision-making about such a material change in GlobalFoundries' strategic and technological direction only began for the first time after July 1, 2015.

128. After a meeting on or about September 25, 2015, between IBM and GlobalFoundries, IBM became increasingly concerned that GlobalFoundries was preparing to walk away from its obligations with respect to the 10nm chip.

129. Those concerns intensified in October 2015, as IBM employees began to hear that GlobalFoundries was planning to cease its work on 10nm technology and, perhaps, develop a different chip technology at 7nm.

130. On or about October 31, 2015, IBM executives, including John Acocella, contacted senior GlobalFoundries executives, including Thomas Caulfield, then GlobalFoundries' SVP and General Manager of its Malta fab, and Michael Cadigan, GlobalFoundries' SVP of Global Sales and Business Development, to demand that GlobalFoundries confirm its intentions and assure IBM that GlobalFoundries would satisfy its contractual obligations with respect to the 10nm chip.

131. On or about December 15, 2015, during an in-person meeting between representatives of the parties, GlobalFoundries informed IBM that it had unilaterally decided not to develop, manufacture or supply the 10nm chip. GlobalFoundries made clear to IBM that its decision was final, and thus its breach of the TCA, FSA and 10HP SOW would not be corrected or cured.

132. GlobalFoundries had no contractual excuse or justification for its intentional and uncured breaches of the TCA, FSA and 10HP SOW. GlobalFoundries abandoned development of the 10nm chip not because it was technically infeasible or impracticable, but for its own self-interested commercial reasons at the expense of its partner IBM.

133. Although GlobalFoundries eventually supplied 14nm chips to IBM, GlobalFoundries' development and manufacturing efforts were delayed, plagued by quality problems, and never fully satisfied IBM's needs or requirements.

B. The March 24, 2016 Omnibus Agreement

134. In or around December 2015, GlobalFoundries started suggesting to IBM that GlobalFoundries was backing out of its obligation to develop the 10nm chip. GlobalFoundries wanted to explore the possibility of amending the parties' agreements to replace the 10nm chip GlobalFoundries had promised to develop and supply with a 7nm chip.

135. IBM would not and did not accede to GlobalFoundries' request, and IBM refused to release GlobalFoundries from its contractual obligations to develop the 10nm chip.

136. Consequently, effective March 24, 2016, GlobalFoundries and IBM entered into an “Omnibus Agreement” pursuant to which the parties agreed, *inter alia*, to amend the TCA, the FSA and both the 10HP SOW and the 14HP SOW.

137. The Omnibus Agreement stated that the amendments were made

[REDACTED]

[REDACTED] Omnibus Agreement Whereas Clause, 1 (emphasis added).

138. In particular, GlobalFoundries remained obligated to develop, manufacture and supply the 10nm High Performance chip. As set forth in Section 10 of the Omnibus Agreement [REDACTED]

[REDACTED]

[REDACTED]

139. Accordingly, the parties amended the TCA [REDACTED]

[REDACTED]

[REDACTED]

C. GlobalFoundries Promises to Develop the 7nm Technology and the 7nm Chip as Alternatives

140. Following execution of the Omnibus Agreement in March 2016, GlobalFoundries continued to represent to IBM that instead of developing the 10nm chip, it would develop a 7nm technology that would satisfy IBM’s technical specifications and needs.

141. GlobalFoundries promised IBM that it was committed to the development of the 7nm technology and that, although the change in its strategy might

delay the production schedule by a few months, GlobalFoundries would develop a chip that would meet IBM's needs, even if it did not satisfy the terms of the agreements.

142. While the parties discussed IBM supporting GlobalFoundries' development of the 7nm chip, IBM made clear that any effort to do so would not waive any of IBM's rights to the 10nm chips or any of GlobalFoundries' obligations under the TCA and FSA to develop, manufacture and supply 10nm chips.

143. To protect and preserve its contractual rights, on or about September 5, 2016, IBM notified GlobalFoundries by email that while IBM would cooperate with GlobalFoundries' development plans for a 7nm chip, IBM expressly reserved all of its rights under all the agreements, including, but not limited to, its rights relating to the performance and development milestones under the TCA, the FSA and the SOWs. (Ex. 6.)

144. GlobalFoundries was thus on notice that IBM was disputing GlobalFoundries' compliance with the MTA, TCA, FSA and the 10HP SOW, and was not waiving any of its rights with respect to that dispute.

145. Having received no response to its September 5, 2016, notice, on or about September 14, 2016, IBM sent to GlobalFoundries another reservation of rights and dispute notice by letter. The September 14, 2016, notice made clear that IBM was not waiving any of its rights under any of the agreements between the companies. Further, IBM reiterated that it was reserving all of its rights under the TCA, the FSA, all the related agreements (including the MTA) and the SOWs. (Ex. 7.)

146. The September 5, 2016, notice and September 14, 2016, notice served, *inter alia*, as notice under Section 10.1 of the MTA of GlobalFoundries' breaches

of the MTA, TCA, FSA and the 10HP SOW, and of IBM's right to indemnification.

Although Section 10.5(e) of the MTA [REDACTED]

[REDACTED], GlobalFoundries did not at any time make any effort to cure or correct any of its breaches.

D. IBM Collaborates in Good Faith with GlobalFoundries to Develop the 7nm Chip

147. Based on GlobalFoundries' promise and representations that it would develop and supply a 7nm chip, and presuming GlobalFoundries would act in good faith, IBM worked with GlobalFoundries and invested substantial resources to support GlobalFoundries' development of a 7nm chip.

148. GlobalFoundries represented that it would complete development testing of a 7nm chip by the second quarter of 2017, with pilot production of a 7nm chip in the first quarter of 2018, and volume production of a 7nm chip in the third quarter of 2018. GlobalFoundries repeatedly represented to IBM that the 7nm chip GlobalFoundries would develop would be an adequate substitute for the 10nm chip it had promised.

149. On or about December 15, 2016, while relying on GlobalFoundries' promises to develop a 7nm chip on its promised timetable, IBM paid to GlobalFoundries its [REDACTED] of the \$1.5 billion in additional consideration [REDACTED]

[REDACTED].¹

¹ The amount of IBM's actual payments of [REDACTED] of the \$1.5 billion payment schedule was amended after the execution of the MTA. Pursuant to that amendment, IBM paid GlobalFoundries [REDACTED]. The sum total of \$1.5 billion remained unchanged.

150. By 2017, IBM had contributed, *inter alia*, significant technological know-how, substantial financial resources, and the time, effort and insights of hundreds of technologists, engineers and other employees to supporting GlobalFoundries' seeming development of the 7nm technology. Those resources amounted to an investment of at least \$188 million that IBM provided to GlobalFoundries to support development of the 7nm technology.

E. GlobalFoundries Unilaterally Abandons the 7nm Technology and the 7nm Chip and Repudiates Its Contractual Obligations to IBM

151. On or about December 15, 2017, in reliance on GlobalFoundries' promise and representation that it would develop and supply a 7nm chip, IBM paid to GlobalFoundries the last \$250 million of the \$1.5 billion in additional consideration.

152. During 2017 and the first quarter of 2018, GlobalFoundries continued to act as if, with the benefit of IBM's collaboration and substantial contribution of resources, it would actually complete development of a 7nm High Performance chip and then manufacture and supply it for IBM. GlobalFoundries gave IBM no indication that it would once again breach its obligations and betray its partner - - at least not until *after* it received the final installment of the \$1.5 billion in additional consideration [REDACTED].

153. In 2018, it began to emerge that executives of GlobalFoundries were going to make another unilateral change in strategic direction. The change this time would be an abandonment of development of all High Performance technology, other than completing delivery of the 14nm chip (which itself was subject to significant delays and issues regarding performance and quality). In so doing, GlobalFoundries revealed

that its assurances and representations prior to the closing in July 2015, that it was committed to High Performance technology for the long-term, were false and intended to deceive IBM.

154. By July 2018, under the leadership of its newly appointed CEO, Thomas Caulfield, GlobalFoundries had begun intimating to IBM that it might abandon the 7nm chip, this time with no proposed alternative next-generation chip for IBM.

155. IBM called a face-to-face meeting with Caulfield on or about July 20, 2018 to discuss GlobalFoundries' apparent abandonment of the 7nm chip. At that meeting with John Acocella and Wayne Howell of IBM, Caulfield suggested that GlobalFoundries might go forward with the development of a 7nm High Performance chip *if* IBM paid GlobalFoundries *another* \$1.5 billion. IBM would not agree.

156. By the end of July 2018, GlobalFoundries' leadership effectively ceased communicating with IBM and refused to discuss its development plans or the future of the parties' alliance.

157. On or about July 29, 2018, John Kelly of IBM wrote to the Managing Director and Group CEO of GlobalFoundries' parent company Mubadala, Khaldoon Al Mubarak, about rumors that GlobalFoundries was considering a major change in strategy. Khaldoon previously had described the parties' relationship as a "marriage, not a date." Kelly put GlobalFoundries on notice through Khaldoon that any unilateral shift in strategy would be a violation of that relationship and the parties' agreements.

158. Kelly requested Khaldoon's intervention to arrange a call or meeting with GlobalFoundries.

159. At Khaldoon's insistence, GlobalFoundries executives reached out to Kelly, but only to confirm that GlobalFoundries had unilaterally decided upon a course of action that would lead to the total breach of GlobalFoundries' obligations to IBM.

160. On or about August 10, 2018, Kelly wrote to Khaldoon again seeking to have a dialogue with GlobalFoundries about its apparent plan to break the alliance with IBM. Kelly pointed out to Khaldoon that GlobalFoundries was contractually required to deliver *both* the 14nm and the 10nm chips in exchange for the \$1.5 billion paid by IBM.

161. On or about August 16, 2018, GlobalFoundries responded with a one-sentence, unilateral announcement: "[GlobalFoundries] is hereby providing notice under section 11.6 of the IBM-[GlobalFoundries] Amended and Restated Technology Cooperation Agreement that [GlobalFoundries] will not be proceeding with further development of our 7nm process technology 7LP." (Ex. 8.)

162. GlobalFoundries provided no explanation, no reason and no justification for its intentional breach of its promises and agreements, or for fracturing its long-term alliance with IBM.

163. GlobalFoundries admitted that it had no legal justification or excuse for its breaches. In an August 27, 2018 article, then-GlobalFoundries CTO Gary Patton was quoted as saying, "the decision was made not based on technical issues that the company faced, but on a careful consideration of business opportunities the company had with its 7LP platform as well as financial concerns."

164. Contrary to all its assurances and representations to IBM about having a long-term strategic commitment to High Performance technology,

GlobalFoundries was not so committed and, instead, continued its pursuit of Low Power technology. According to a published report on August 27, 2018, Patton admitted that GlobalFoundries “*never planned* to be a leading producer of 7-nm chips in terms of volume.”

165. GlobalFoundries revealed its true intentions to IBM when it sent its terse August 16, 2018 letter. John Kelly of IBM responded immediately that same day by notifying GlobalFoundries CEO Caulfield that GlobalFoundries was not complying with the parties’ contracts. Kelly demanded that GlobalFoundries return to IBM the \$1.5 billion it had paid as the additional consideration for GlobalFoundries’ agreement to comply with, not violate, its contractual obligations.

166. On August 17, 2018, Caulfield refused to return any part of the \$1.5 billion.

167. GlobalFoundries also made clear that it had no intention to cure its breach, honor its contractual obligations, or stand by the false representations it had made to induce IBM to enter into the Transactions.

168. On August 27, 2018, GlobalFoundries publicly announced it was suspending its 7nm chip development. GlobalFoundries stated that it was putting its 7nm development “on hold indefinitely” and that it had “no plans to pursue it.”

F. GlobalFoundries Breaches the ACA

169. In an intentional and uncured breach of the ACA, GlobalFoundries never engaged IBM in good faith negotiations [REDACTED]

[REDACTED]

[REDACTED].

170. During the relevant period established by the ACA, IBM was ready, willing and able [REDACTED], and asked GlobalFoundries to meet its obligation to do so.

171. On or about October 11, 2018, following its repudiation of its obligation to develop the 10nm or 7nm chip, GlobalFoundries informed IBM that GlobalFoundries expected the parties would be [REDACTED] [REDACTED] regarding the Albany Research Facility in the timeframe required by the ACA and, [REDACTED]. Upon information and belief, GlobalFoundries had no intent to comply with its obligation to negotiate [REDACTED] [REDACTED] in good faith.

172. Accordingly, on or about December 16, 2018, IBM sent GlobalFoundries a notice informing GlobalFoundries that, in light of its “decision to cease all work on the 10HP Technology and public announcement that it will not proceed with further development of the 7nm process technology,” IBM was: (i) terminating the 10HP Operational Plan based on GlobalFoundries’ breach of the TCA; and (ii) commencing the wind-down of any pending GlobalFoundries’ projects or work at the Albany Research Facility subject to the terms of the ACA based on GlobalFoundries’ breach of the TCA.

173. GlobalFoundries was thus again on notice of its material breaches, the parties’ dispute over those breaches, and IBM’s right to seek indemnification. Nonetheless, GlobalFoundries did nothing to cure or correct its breaches.

174. To the contrary, GlobalFoundries terminated hundreds of GlobalFoundries employees who had been working on the 7nm chip development and sold off over \$1 billion worth of GlobalFoundries' assets - - including patents, other IP and facilities GlobalFoundries had acquired from IBM - - that GlobalFoundries had been using for development of the 7nm chip technology.

G. Summary of GlobalFoundries' Intentional and Uncured Breaches

175. Taken together, GlobalFoundries' material breaches represent a total repudiation of the essential terms of GlobalFoundries' obligations to IBM under the MTA, each of the TCA, FSA and SOWs as amended, and the ACA. Other than supplying the 14nm chip (with significant delays and performance and quality issues), GlobalFoundries intentionally breached all of its most significant contractual obligations. Those intentional and uncured breaches include:

Provision	GlobalFoundries' Obligation	Compliance Date
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Provision	GlobalFoundries' Obligation	Compliance Date
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

V. GLOBALFOUNDRIES CAUSED SUBSTANTIAL DAMAGES TO IBM AND UNJUSTLY ENRICHED ITSELF

176. GlobalFoundries' knowingly false representations and intentional (and uncured) breaches of the parties' agreements caused, *inter alia*, monetary damages to IBM and unjust enrichment of GlobalFoundries.

177. But for GlobalFoundries' false representations and assurances, IBM, *inter alia*, would not have entered into and consummated the Transactions with GlobalFoundries in July 2015; would not have transferred its Microelectronics assets, technology, know-how and employees to GlobalFoundries; and would not have paid more than \$1.5 billion to GlobalFoundries for the fulfillment of GlobalFoundries' obligations to IBM under the MTA and the Ancillary Agreements.

178. As alleged above, GlobalFoundries used fraud to form the parties' alliance; intentionally breached its agreements with IBM; and despite receiving notice from IBM on multiple occasions, never cured any of its breaches.

179. The damages to IBM caused by GlobalFoundries' above alleged conduct include, but are not limited to, the following:

(a) GlobalFoundries failed to use the \$1.5 billion in additional consideration, as required by the MTA, to satisfy GlobalFoundries' obligations to develop, manufacture and supply to IBM a 10nm High Performance chip. GlobalFoundries also has not accounted for what it did with those funds. IBM is entitled to, *inter alia*, a recovery of the \$1.5 billion and an accounting.

(b) GlobalFoundries intentionally breached the TCA, FSA and 10HP SOW by not developing, manufacturing or supplying a 10nm High Performance chip, and has not compensated IBM for the resources IBM expended to support GlobalFoundries' development of a 10nm chip, in an amount to be determined at trial.

(c) GlobalFoundries intentionally breached its promise to develop, manufacture and supply a 7nm High Performance chip, and has not compensated IBM for the resources IBM expended to support GlobalFoundries' development of a 7nm chip, in an amount to be determined at trial.

(d) By breaching the TCA, FSA and 10HP SOW, and by failing to fulfill its promise to develop a 7nm High Performance chip, GlobalFoundries caused IBM to incur expenses to secure an alternative source of High Performance chips and to modify its systems to run on chips other than the 10nm High Performance chips

GlobalFoundries had agreed and promised to deliver, in an amount to be determined at trial.

(e) By its false representations and intentional breaches of the TCA, FSA and 10HP SOW, GlobalFoundries caused IBM to purchase, under the FSA, 14nm chips at certain volumes and on certain pricing terms that were conditioned on GlobalFoundries' obligation to develop, manufacture and supply a 10nm chip. GlobalFoundries has not compensated IBM for the differential in volume and pricing terms that IBM would have agreed to absent GlobalFoundries' obligation to supply 10nm chips, in an amount to be determined at trial.

(f) By intentionally breaching the ACA by failing to negotiate a CSR Successor Agreement, GlobalFoundries never provided its share of the capital expenditures and operating expenses relating to joint programs conducted at the Albany Research Facility. GlobalFoundries has not compensated IBM with GlobalFoundries' required share of those expenditures and expenses, in an amount to be determined at trial.

180. In addition, although the long-term collaborative alliance was intended to benefit *both* parties, GlobalFoundries unjustly enriched itself by using the money and other assets (tangible and intangible) it received from IBM for its own purposes. Among other things, GlobalFoundries received the benefit of IBM's decades of investment in industry-leading semiconductor fabrication capacity and technology, IBM's highly skilled personnel and state-of-the-art facilities, and additional cash consideration of \$1.5 billion.

181. As described by GlobalFoundries, the assets IBM provided to GlobalFoundries in the Transactions reflected "not just IBM's facilities and personnel,

but also the fruits of IBM's decades of industry-leading investment in U.S. semiconductor fabrication capacity and technology," including "numerous world-class technologists; decades of experience and expertise in semiconductor development, device expertise, design, and manufacturing; and an expanded manufacturing footprint."

182. Further, rather than devoting the acquired assets to fulfilling its long-term contractual obligations to IBM, GlobalFoundries monetized those assets through third-party sales, including, but not limited to, the following:

(g) In or about September 2017, GlobalFoundries sold (for an undisclosed amount) approximately 300 acres of land, two million square feet of building space and infrastructure it received from IBM in connection with the East Fishkill fab.

(h) In or about April 2019, GlobalFoundries sold the East Fishkill fab to a company called ON Semiconductor for \$430 million.

(i) In or about May 2019, GlobalFoundries sold its Application Specific Integrated Circuit (ASIC) business, which it had acquired from IBM, for \$650 million and potentially an additional \$90 million if certain business conditions were satisfied.

(j) In or about August 2019, GlobalFoundries sold (for an undisclosed amount) certain of the operations and related intellectual property from the Essex Junction fab.

183. The value of all the above benefits will be determined at trial, but is no less than \$1 billion.

**FIRST CAUSE OF ACTION
(Fraud)**

184. IBM repeats and realleges each allegation above, as though fully set forth herein.

185. GlobalFoundries knowingly made materially false representations of a long-term commitment and strategy to the development of High Performance semiconductor technology, knowing that IBM would not enter into the Transactions unless it was assured by GlobalFoundries that GlobalFoundries had made a strategic decision and commitment to expand its presence, capacity and investment in High Performance semiconductor technology.

186. GlobalFoundries made those false representations and assurances to IBM prior to and wholly apart from the terms of the MTA and the Ancillary Agreements.

187. GlobalFoundries made those false representations and gave those assurances to IBM to induce IBM to enter into the TCA, FSA, 10HP SOW and ACA, to consummate the MTA and close the Transactions on or about July 1, 2015; to transfer the defined assets and liabilities of IBM's Microelectronics business to GlobalFoundries; and to pay to GlobalFoundries the \$1.5 billion in additional consideration and make other payments to GlobalFoundries.

188. GlobalFoundries' false representations and assurances that it was strategically committed to the development of High Performance technology for the long-term, and its representation and agreement that it would use the \$1.5 billion in additional consideration to develop and supply IBM with 14nm, 10nm and successive generations

of High Performance chips, were false when made and false on the date of closing in July 2015.

189. IBM reasonably and detrimentally relied on those false representations and assurances.

190. GlobalFoundries presented itself (initially) as a trusted partner, trustworthy collaborator and faithful steward of IBM's technology. Yet GlobalFoundries intentionally concealed from and failed to disclose to IBM material information that GlobalFoundries had a duty to disclose, including information about its true plans for High Performance technology and its actual intentions for manufacturing (or not manufacturing) a 10nm chip and, later, a 7nm chip.

191. GlobalFoundries' concealment of material information from IBM was made knowingly and was intended to and did mislead IBM.

192. IBM suffered damages as a direct and proximate result of GlobalFoundries' fraudulent conduct alleged above in an amount to be determined at trial.

**SECOND CAUSE OF ACTION
(Breach of Contract – MTA)**

193. IBM repeats and realleges each allegation above, as though fully set forth herein.

194. IBM and GlobalFoundries are parties to the MTA.

195. The MTA is a valid and binding contract governed by New York law.

196. IBM has performed its obligations under the MTA in all material respects.

197. Pursuant to Sections 3.2(a) and 3.2(b) of the MTA, GlobalFoundries agreed, in exchange for additional consideration of \$1.5 billion, to satisfy all of its undertakings and obligations in the MTA and the Ancillary Agreements.

198. GlobalFoundries breached Section 3.2(a) by failing to satisfy those undertakings and obligations, including but not limited to GlobalFoundries' agreement to

[REDACTED]

199. In Section 3.2(b) of the MTA, GlobalFoundries agreed that, if IBM decided to close the transaction, GlobalFoundries

[REDACTED]

GlobalFoundries breached Section 3.2(b) of the MTA by not using the \$1.5 billion to satisfy its obligations to IBM.

200. IBM is entitled to

[REDACTED]

because GlobalFoundries was not committed to developing High Performance semiconductor technology and was not committed to using the \$1.5 billion in additional consideration for its agreed upon use.

201. IBM is entitled to

[REDACTED] for GlobalFoundries' breach of its agreement to use the \$1.5 billion in

additional consideration to develop, manufacture and supply 10nm High Performance chips as required by the TCA, FSA and the 10HP SOW.

202. As alleged above and incorporated herein, IBM gave GlobalFoundries notice of GlobalFoundries' breaches and IBM's entitlement to indemnification. GlobalFoundries had the opportunity to cure its breaches, but did not.

203. As a result of GlobalFoundries' above breaches of the MTA, IBM incurred damages and indemnifiable Losses in an amount to be determined at trial.

**THIRD CAUSE OF ACTION
(Breach of Contract – TCA)**

204. IBM repeats and realleges each allegation above, as though fully set forth herein.

205. IBM and GlobalFoundries are parties to the TCA.

206. The TCA is a valid and binding contract governed by New York law.

207. IBM has performed its obligations under the TCA in all material respects.

208. Under the TCA (including, but not limited to, Sections 2.3.1, 2.3.2 and Annex E), GlobalFoundries was contractually obligated to develop 10nm High Performance chips. GlobalFoundries intentionally breached this agreement when it unilaterally decided that it would not develop 10nm High Performance chips.

209. As alleged above and incorporated herein, IBM gave GlobalFoundries notice of GlobalFoundries' breaches and IBM's entitlement to indemnification. GlobalFoundries had the opportunity to cure its breaches, but did not.

210. IBM suffered damages as a direct and proximate result of GlobalFoundries' breaches in an amount to be determined at trial.

**FOURTH CAUSE OF ACTION
(Breach of Contract – FSA)**

211. IBM repeats and realleges each allegation above, as though fully set forth herein.

212. IBM and GlobalFoundries are parties to the FSA.

213. The FSA is a valid and binding contract governed by New York law.

214. IBM has performed its obligations under the FSA in all material respects.

215. Under the FSA (including, but not limited to, Sections 2.1 and 5.7), GlobalFoundries was contractually obligated to manufacture and supply to IBM 10nm High Performance chips. GlobalFoundries intentionally breached this agreement when it unilaterally decided that it would not manufacture and supply to IBM 10nm High Performance chips.

216. As alleged above and incorporated herein, IBM gave GlobalFoundries notice of GlobalFoundries' breaches and IBM's entitlement to indemnification. GlobalFoundries had the opportunity to cure its breaches, but did not.

217. IBM suffered damages as a direct and proximate result of GlobalFoundries' breaches in an amount to be determined at trial.

**FIFTH CAUSE OF ACTION
(Breach of Contract – 10HP SOWs)**

218. IBM repeats and realleges each allegation above, as though fully set forth herein.

219. IBM and GlobalFoundries are parties to each of the 10HP SOWs.

220. Each of the 10HP SOWs is a valid and binding contract governed by New York law.

221. IBM has performed its obligations under the 10HP SOWs in all material respects.

222. Under the 10HP SOWs, GlobalFoundries was contractually obligated to manufacture and supply to IBM 10nm High Performance chips. GlobalFoundries intentionally breached these agreements when it unilaterally decided that it would not manufacture or supply to IBM 10nm High Performance chips.

223. As alleged above and incorporated herein, IBM gave GlobalFoundries notice of GlobalFoundries' breaches and IBM's entitlement to indemnification. GlobalFoundries had the opportunity to cure its breaches but did not.

224. IBM suffered damages as a direct and proximate result of GlobalFoundries' breaches in an amount to be determined at trial.

**SIXTH CAUSE OF ACTION
(Breach of Contract – ACA)**

225. IBM repeats and realleges each allegation above, as though fully set forth herein.

226. IBM and GlobalFoundries are parties to the ACA.

227. The ACA is a valid and binding contract governed by New York law.

228. IBM has performed its obligations under the ACA in all material respects.

229. Under Sections 4(a) and 4(c) of the ACA, GlobalFoundries was

[REDACTED]

[REDACTED]

[REDACTED] In an intentional breach of the ACA, GlobalFoundries never engaged IBM in any good faith negotiations.

230. As alleged above and incorporated herein, IBM gave GlobalFoundries notice of GlobalFoundries' breach. GlobalFoundries had the opportunity to cure its breach, but did not.

231. IBM suffered damages as a direct and proximate result of GlobalFoundries' breach of the ACA in an amount to be determined at trial.

**SEVENTH CAUSE OF ACTION
(Unjust Enrichment)**

232. IBM repeats and realleges each allegation above, as though fully set forth herein.

233. GlobalFoundries obtained and retained substantial benefits from IBM's transfer of tangible and intangible assets, including its Microelectronics business, technology, know-how, facilities, personnel and intellectual property, which were intended for the benefit of both parties. Instead, GlobalFoundries used these assets and

funds (including, but not limited to, the \$1.5 billion) to advance its own economic interests and maximize its own profits, at the expense of IBM.

234. Subsequent to the July 2015 closing of the Transactions, and separate and apart from the obligations set forth in the MTA and Ancillary Agreements, IBM transferred additional value to GlobalFoundries that was intended to benefit both parties but that, in fact, was used by GlobalFoundries exclusively for its own benefit, to enrich itself at the expense of IBM.

235. As GlobalFoundries failed to provide IBM with value given GlobalFoundries' failure to deliver a 10nm or 7nm chip, GlobalFoundries unjustly retained for itself the benefits of IBM's contributions to GlobalFoundries' abandoned development efforts in order to enhance its own processes and advance its own development and manufacturing of products it could offer to *other* customers.

236. It would be unjust for GlobalFoundries to retain these benefits at the expense of IBM. IBM lacks a sufficient remedy at law for GlobalFoundries' unjust enrichment and is entitled to recover the amount of the benefits unjustly retained by GlobalFoundries at the expense of IBM, in an amount to be determined at trial.

**EIGHTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)**

237. IBM repeats and realleges each allegation above, as though fully set forth herein.

238. There is implied in every contract a covenant of good faith and fair dealing such that no party to such contract may act to deprive the other of the benefits and bargains of the agreement. GlobalFoundries was thus bound to perform its

obligations under the MTA and Ancillary Agreements and not take any action that might deprive IBM of the benefits of the bargain under those agreements.

239. GlobalFoundries instead acted for its own benefit, taking steps that it knew would deprive IBM of the benefits of the bargain that had been struck.

240. IBM suffered damages as a direct and proximate result of GlobalFoundries' breaches of the implied covenant of good faith and fair dealing, in an amount to be determined at trial.

**NINTH CAUSE OF ACTION
(Promissory Estoppel)**

241. IBM repeats and realleges each allegation above, as though fully set forth herein.

242. After abandoning development of a 10nm High Performance chip, GlobalFoundries promised IBM it would develop, manufacture and supply to IBM a 7nm chip.

243. GlobalFoundries knew or should have known that IBM would reasonably and foreseeably rely on GlobalFoundries' promise.

244. IBM reasonably and foreseeably relied on GlobalFoundries' promise with respect to a 7nm chip, and GlobalFoundries was legally obligated to fulfill that promise.

245. As a direct and proximate result of GlobalFoundries' breach of that promise, IBM has suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, IBM demands judgment against GlobalFoundries as follows:

- a) Awarding IBM its compensatory and consequential damages, as well as full restitution, in an amount to be established at trial, but in no event less than the \$1.5 billion IBM paid to GlobalFoundries in connection with the Transactions, together with punitive or exemplary damages under applicable law, as a result of GlobalFoundries' fraud and such other facts established at trial;
- b) Awarding IBM compensatory and consequential damages for GlobalFoundries' intentional and uncured breaches of the MTA and the Ancillary Agreements in an amount to be determined at trial;
- c) Declaring that IBM is entitled to indemnification for the full amount of all Losses pursuant to Sections 10.2(b)(i) and 10.2(b)(ii) of the MTA in an amount to be determined at trial;
- d) Awarding IBM disgorgement of GlobalFoundries' ill-gotten gains and unjustly obtained money and assets, including all money and other assets received by GlobalFoundries in connection with the Transactions, and all money and other assets GlobalFoundries has received in connection with its exploitation and monetization of assets, including intellectual and real property, that GlobalFoundries received from IBM;
- e) Awarding IBM compensatory and consequential damages for GlobalFoundries' breach of its promise to develop, manufacture and supply a 7nm chip in an amount to be determined at trial;
- f) Awarding IBM full restitution, in an amount to be established at trial, but in no event less than the \$1.5 billion IBM paid to GlobalFoundries in connection with the Transactions, together with punitive or exemplary damages under applicable law, as a result of GlobalFoundries' fraud and such other facts established at trial;
- g) Awarding an equitable accounting regarding GlobalFoundries' use of the \$1.5 billion IBM paid to GlobalFoundries in connection with the Transactions;
- h) Awarding IBM pre-judgment and post-judgment interest on its actual damages at the rates prescribed by applicable law;
- i) Awarding IBM its costs and expenses in this litigation, including its attorneys' fees, expert fees, and other costs and disbursements; and

- j) Awarding IBM such other and further relief as this Court may deem just and proper under the circumstances.

Dated: June 8, 2021
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Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON
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