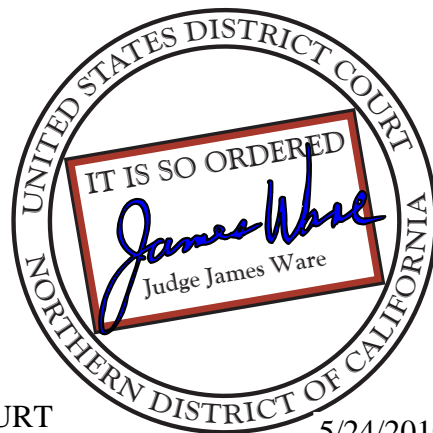


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8 Attorneys for defendant, EMCORE CORP.

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 AVAGO TECHNOLOGIES FIBER IP  
12 (SINGAPORE) PTE. LTD., *et al.*,

Case No.: C 08-3248-JW

13 Plaintiff,

**STIPULATION FOR FILING BY  
EMCORE CORPORATION OF FIRST  
AMENDED ANSWER TO FIRST  
AMENDED COMPLAINT**

14 vs.

15 EMCORE CORP., *et al.*,

16 Defendant.

17 IT IS HEREBY STIPULATED by and between the plaintiffs AVAGO TECHNOLOGIES U.S.,  
18 INC.; AVAGO TECHNOLOGIES INTERNATIONAL SALES PTE. LIMITED; AVAGO  
19 TECHNOLOGIES JAPAN, LTD.; and, AVAGO TECHNOLOGIES CANADA CORPORATION,  
20 on the one hand, and defendant EMCORE CORPORATION, on the other hand, that Emcore may  
21 file a First Amended Answer to the First Amended Complaint filed by plaintiffs on February 4,  
22 2009. A copy of the First Amended Answer, which incorporates a new Sixteenth Affirmative  
23 Defense, "Applicability of Foreign Law," is attached hereto as Exhibit 1.

24 It is so stipulated.

25 Date: 5/11/09

HOPKINS & CARLEY

26 \s\

27 By \_\_\_\_\_  
Erik P. Khoobyarian  
28 Attorneys for Plaintiffs

1 Date: 5/14/10

REDENBACHER & BROWN, LLP

2 |s|

3 By \_\_\_\_\_  
4 John C. Brown  
Attorneys for defendant, EMCORE CORP.

5  
6  
7 **ATTESTATION OF JOHN C. BROWN**

8 I, John C. Brown, am attorney of record for defendant EMCORE CORP. I have obtained  
9 concurrence in the filing of this document from Erik P. Khoobyarian, attorney of record for  
10 Plaintiffs AVAGO TECHNOLOGIES U.S., INC., AVAGO TECHNOLOGIES  
11 INTERNATIONAL SALES PTE. LIMITED, AVAGO TECHNOLOGIES JAPAN, LTD., and  
12 AVAGO TECHNOLOGIES CANADA CORPORATION, which shall serve in lieu of his  
13 signatures on the filed document. I have obtained and will maintain records to support this  
14 concurrence for subsequent production for the court if so ordered or for inspection upon request by  
15 a party until one year after final resolution of the action (including appeal, if any).  
16

17  
18 Dated: May 14, 2010

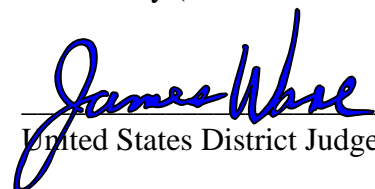
19 By: /s/

20 John C. Brown

21 IT IS SO ORDERED:

22 The parties have previously filed the attachment as a separate docket entry (Docket Item No. 89)

23 Dated: May 24, 2010

24  
25   
26 United States District Judge  
27  
28

# **EXHIBIT 1**

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8 Attorneys for Defendant, EMCORE CORPORATION

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 AVAGO TECHNOLOGIES U.S., INC., *et*  
13 *al.*,

14 Plaintiffs,

15 vs.

16 EMCORE CORPORATION, *et al.*,

17 Defendants.

Case No.: C08-3248 JW

**DEFENDANT EMCORE  
CORPORATION'S FIRST AMENDED  
ANSWER TO FIRST AMENDED  
COMPLAINT**

**(DEMAND FOR JURY TRIAL)**

18  
19 Emcore Corporation ("Emcore"), through its attorneys, hereby answers the First Amended  
20 Complaint of plaintiffs Avago Technologies US, Inc., Avago Technologies International Sales Pte  
21 Ltd., Avago Technologies Japan Ltd., and Avago Technologies Canada Corporation (collectively,  
22 "plaintiffs") as follows:

23 **PARTIES**

24 1. Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
25 the allegations contained in Paragraph 1 of the First Amended Complaint and, therefore, denies  
26 such allegations.

27 2. Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
28 the allegations contained in Paragraph 2 of the First Amended Complaint and, therefore, denies

1 such allegations.

2 3. Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
3 the allegations contained in Paragraph 3 of the First Amended Complaint and, therefore, denies  
4 such allegations.

5 4. Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
6 the allegations contained in Paragraph 4 of the First Amended Complaint and, therefore, denies  
7 such allegations.

8 5. Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
9 the allegations contained in Paragraph 5 of the First Amended Complaint and, therefore, denies  
10 such allegations.

11 6. Admitted.

## 12 JURISDICTION

13 7. Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
14 the allegations contained in Paragraph 7 of the First Amended Complaint regarding the plaintiffs'  
15 place of business and regarding the amount in controversy and, therefore, denies such allegations.  
16 The remaining allegations in paragraph 7 of the First Amended Complaint are legal conclusions to  
17 which no answer is required. To the extent an answer is required, Emcore denies such allegations.

## 18 INTRADISTRICT ASSIGNMENT

19 8. Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
20 the allegations contained in Paragraph 8 of the First Amended Complaint regarding the plaintiffs'  
21 place of business and regarding the amount in controversy and, therefore, denies such allegations.

## 22 VENUE

23 9. Emcore does not have sufficient information to form a conclusion as to the  
24 allegations relating to the Agreement. Emcore states that the remaining allegations in paragraph 9  
25 of the First Amended Complaint are legal conclusions to which no answer is required. To the  
26 extent an answer is required, Emcore denies such allegations.

27 10. Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
28 the allegations contained in Paragraph 10 of the First Amended Complaint regarding

1 whether events or omissions related to Avago’s allegations occurred in this district and, therefore,  
2 denies such allegations. Emcore denies that it negligently manufactured VCSEL die or other  
3 defective products as alleged by Avago and that it has otherwise caused any damages as alleged by  
4 Avago. The remaining allegations in paragraph 10 of the First Amended Complaint are legal  
5 conclusions to which no answer is required. To the extent an answer is required, Emcore denies  
6 such allegations.

### 7 **GENERAL ALLEGATIONS**

8 11. Emcore lacks sufficient knowledge or information to form a belief as to the  
9 allegations contained in Paragraph 11 of the First Amended Complaint and, therefore, denies such  
10 allegations.

11 12. Emcore lacks sufficient knowledge or information to form a belief as to the  
12 allegation that the “portfolio . . . supports all speeds” and, therefore, denies such allegations.

13 13. Emcore lacks sufficient knowledge or information to form a belief as to the  
14 allegations contained in Paragraph 13 of the First Amended Complaint and, therefore, denies such  
15 allegations.

16 14. Emcore admits that Venture issued purchase orders to Emcore for the manufacture  
17 of VCSEL die that Venture represented would be incorporated in fiber optics transceivers  
18 manufactured by it for Avago. Emcore denies that it negligently manufactured VCSEL die or  
19 other defective products as alleged by Avago and that it has otherwise caused any damages as  
20 alleged by Avago. Emcore lacks sufficient knowledge or information to form a belief as to the  
21 remainder of the allegations contained in Paragraph 14 of the First Amended Complaint and,  
22 therefore, denies such allegations.

23 15. Emcore denies that it negligently manufactured VCSEL die or other defective  
24 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
25 Otherwise, Emcore lacks sufficient knowledge or information to form a belief as to the truth of the  
26 allegations contained in Paragraph 15 of the First Amended Complaint and, therefore, denies such  
27 allegations.

28 16. Emcore admits that Avago, Venture, and Emcore attempted to ascertain the

1 reasons for failures in fiber optics transceivers through a process of reverse engineering and  
2 independent laboratory analysis. Emcore denies all remaining allegations of this paragraph.  
3 Emcore denies that it negligently manufactured VCSEL die or other defective products as alleged  
4 by Avago and that it has otherwise caused any damages as alleged by Avago.

5 17. Emcore denies that it negligently manufactured VCSEL die or other defective  
6 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
7 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the remainder  
8 of the allegations contained in Paragraph 17 of the First Amended Complaint and, therefore, denies  
9 such allegations.

10 18. Emcore states that the allegations in paragraph 18 of the First Amended Complaint  
11 are legal conclusions to which no answer is required. To the extent that the allegations are not  
12 legal conclusions, Emcore denies the allegations.

13 19. Emcore denies that Avago has made demands upon it for compensation. Emcore  
14 admits that it has declined to compensate Avago. Emcore denies that it negligently manufactured  
15 VCSEL die or other defective products as alleged by Avago and that it has otherwise caused any  
16 damages as alleged by Avago. Emcore lacks sufficient knowledge or information to form a belief  
17 as to the truth of the remainder of the allegations contained in Paragraph 19 of the First Amended  
18 Complaint and, therefore, denies such allegations.”

## 19 **FIRST CAUSE OF ACTION**

### 20 **(Breach of Contract; Non-conforming Goods Against Venture)**

21 20. Emcore incorporates its allegations in paragraphs 1 through 19, *supra*, in response  
22 to the allegations in paragraph 20.

23 21. Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
24 the factual allegations contained in Paragraph 21 of the First Amended Complaint and, therefore,  
25 denies such allegations.

26 22. Emcore states that the allegations in paragraph 22 of the First Amended Complaint  
27 are legal conclusions to which no answer is required. To the extent that the allegations are not  
28 legal conclusions, Emcore denies the allegations.

1           23.     Emcore admits that Avago purchased fiber optics transceivers from Venture.  
2 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the remainder  
3 of the allegations contained in Paragraph 23 of the First Amended Complaint and, therefore, denies  
4 such allegations.

5           24.     Emcore admits that Avago claimed that the fiber optics transceivers had problems.  
6 Emcore denies that it negligently manufactured VCSEL die or other defective products as alleged  
7 by Avago and that it has otherwise caused any damages as alleged by Avago. Emcore lacks  
8 sufficient knowledge or information to form a belief as to the truth of the allegations contained in  
9 Paragraph 24 of the First Amended Complaint and, therefore, denies such allegations.

10          25.     Emcore denies that it negligently manufactured VCSEL die or other defective  
11 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
12 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
13 contained in Paragraph 25 of the First Amended Complaint and, therefore, denies such allegations.

14          26.     Emcore denies that it negligently manufactured VCSEL die or other defective  
15 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
16 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
17 contained in Paragraph 26 of the First Amended Complaint and, therefore, denies such allegations.

18          27.     Emcore admits that the purported Agreement defines “product requirements” and  
19 the purported Agreement speaks for itself regarding same. Emcore denies that it negligently  
20 manufactured VCSEL die or other defective products as alleged by Avago and that it has otherwise  
21 caused any damages as alleged by Avago. Emcore lacks sufficient knowledge or information to  
22 form a belief as to the truth of the allegations contained in Paragraph 27 of the First Amended  
23 Complaint and, therefore, denies such allegations.

24          28.     Emcore denies that it negligently manufactured VCSEL die or other defective  
25 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
26 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
27 contained in Paragraph 28 of the First Amended Complaint and, therefore, denies such allegations.  
28





1 Complaint are legal conclusions to which no answer is required. To the extent this paragraph  
2 contains facts, Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
3 the allegations contained in Paragraph 35 of the First Amended Complaint and, therefore, denies  
4 such allegations.

5 36. Emcore admits that the purported Agreement includes warranty provisions and  
6 states that it speaks for itself regarding same. Emcore lacks sufficient knowledge or information to  
7 form a belief as to the truth of the allegations contained in Paragraph 36 of the First Amended  
8 Complaint and, therefore, denies such allegations.

9 37. Emcore denies that it negligently manufactured VCSEL die or other defective  
10 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
11 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
12 contained in Paragraph 37 of the First Amended Complaint and, therefore, denies such allegations.

13 38. Emcore denies that it negligently manufactured VCSEL die or other defective  
14 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
15 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
16 contained in Paragraph 38 of the First Amended Complaint and, therefore, denies such allegations.

17 39. Emcore denies that it negligently manufactured VCSEL die or other defective  
18 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
19 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
20 contained in Paragraph 39 of the First Amended Complaint and, therefore, denies such allegations.

21 40. Emcore denies that it negligently manufactured VCSEL die or other defective  
22 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
23 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
24 contained in Paragraph 40 of the First Amended Complaint and, therefore, denies such allegations.

25 41. Emcore denies that it negligently manufactured VCSEL die or other defective  
26 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
27 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
28 contained in Paragraph 41 of the First Amended Complaint and, therefore, denies such

1 allegations.

2 42. Emcore states that the allegations in paragraph 42 of the First Amended Complaint  
3 are legal conclusions to which no answer is required. To the extent this paragraph contains facts,  
4 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
5 contained in Paragraph 42 of the First Amended Complaint and, therefore, denies such allegations.

6 43. Emcore denies that it negligently manufactured VCSEL die or other defective  
7 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
8 Emcore states that the allegations in paragraph 43 of the First Amended Complaint are legal  
9 conclusions to which no answer is required. To the extent this paragraph contains facts, Emcore  
10 lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
11 contained in Paragraph 43 of the First Amended Complaint and, therefore, denies such allegations.

### 12 **THIRD CAUSE OF ACTION**

#### 13 **(Negligent Interference With Prospective Economic Relations Against Emcore)**

14 44. Emcore incorporates its allegations in paragraphs 1 through 43, *supra*, in response  
15 to the allegations in paragraph 44.

16 45. Emcore lacks sufficient knowledge or information to form a belief as to the truth of  
17 the allegations contained in Paragraph 45 of the First Amended Complaint and, therefore, denies  
18 such allegations.

19 46. Emcore admits that Emcore contracted to supply to Venture VCSEL die and that  
20 Venture advised Emcore that this VCSEL die would be incorporated in fiber optics transceivers  
21 manufactured by Venture for Avago. Emcore denies the remainder of the allegations of paragraph  
22 46.

23 47. Emcore denies that it negligently manufactured VCSEL die or other defective  
24 products as alleged by Avago and that it has otherwise caused any damages as alleged by Avago.  
25 Emcore lacks sufficient knowledge or information to form a belief as to the truth of the remainder  
26 of the allegations contained in Paragraph 47 of the First Amended Complaint and, therefore, denies  
27 such allegations.

28



1 the plaintiffs' failures to use reasonable diligence to mitigate them.

2 **SIXTH AFFIRMATIVE DEFENSE--MISUSE OF PRODUCT**

3 If plaintiffs were injured and/or damaged as alleged in plaintiffs' complaint, then said injuries  
4 and/or damages were the direct and proximate result of plaintiffs' misuse of the subject property.

5 **SEVENTH AFFIRMATIVE DEFENSE--UNFORESEEABLE USE OF PRODUCT**

6 Any injury, damage or loss, was sustained by and solely caused by and attributable to the  
7 unreasonable, unforeseeable and totally inappropriate purpose and improper use made by plaintiffs  
8 of the product alleged in the Complaint.

9 **EIGHTH AFFIRMATIVE DEFENSE--COMPARATIVE NEGLIGENCE**

10 Plaintiffs were comparatively at fault, and Emcore prays that any and all damages sustained by  
11 said plaintiffs be reduced by the percentage of their negligence.

12 **NINTH AFFIRMATIVE DEFENSE--CONTRIBUTORY NEGLIGENCE**

13 Plaintiffs were actively careless and negligent in and about the matters alleged in the Complaint,  
14 and said acts of carelessness and negligence on plaintiffs' own part proximately contributed to the  
15 happening of the incident and to the loss and damage, if any there were. Plaintiffs' contributory  
16 negligence shall reduce any and all damages sustained by said plaintiffs.

17 **TENTH AFFIRMATIVE DEFENSE--RESPONSIBILITY OF OTHERS (NEGLIGENCE**  
18 **OF OTHERS)**

19 The damages complained of, if any there were, were proximately contributed to or caused by the  
20 carelessness, negligence, fault or defects created by the remaining parties in this action, or by other  
21 persons, corporations or business entities, unknown to Emcore at this time, and were not caused in  
22 any way by Emcore, or by persons for whom Emcore is legally liable. Should Emcore be found  
23 liable to plaintiffs, which liability is expressly denied, Emcore is entitled to have this award against  
24 it abated, reduced or eliminated to the extent that the negligence, carelessness, fault or defects  
25 created by the remaining parties in this action, or by said other persons, corporations or business  
26 entities, contributed to plaintiffs' damages, if any.

27 **ELEVENTH AFFIRMATIVE DEFENSE--ASSUMPTION OF RISK**

28 Plaintiffs knew, or in the exercise of ordinary care should have known, of the risks and

1 hazards involved in the undertaking in which it was engaged, but nevertheless and knowing these  
2 things, did freely and voluntarily consent to assume all the risks and hazards involved in the  
3 undertaking.

4 **TWELFTH AFFIRMATIVE DEFENSE--SUPERVENING FACTORS**

5 Any alleged acts or omissions of Emcore were superseded by the acts or omissions of others,  
6 including plaintiffs, other defendants, and/or other yet unnamed individuals or entities that were  
7 the independent, intervening, and proximate cause of the damage or loss complained of by  
8 plaintiffs, if any there were.

9 **THIRTEENTH AFFIRMATIVE DEFENSE--LACK OF SUBJECT MATTER**

10 **JURISDICTION**

11 This Court lacks subject matter jurisdiction to adjudicate the causes of action alleged by plaintiffs.

12 **FOURTEENTH AFFIRMATIVE DEFENSE--WAIVER**

13 Plaintiffs have waived their rights to maintain the action filed in this case.

14 **FIFTEENTH AFFIRMATIVE DEFENSE--ESTOPPEL**

15 The plaintiffs are estopped by action of law or by conduct from maintaining the action filed in this  
16 case.

17 **SIXTEENTH AFFIRMATIVE DEFENSE—APPLICABILITY OF FOREIGN LAW**

18 Plaintiffs' claims against Emcore are not governed by the law of the forum, California, but rather  
19 by the law of a foreign state and/or foreign country, possibly including but not limited to the laws  
20 of Japan, Canada, Malaysia, and other countries, which state or country will be determined based  
21 on information and/or documents in the possession of plaintiffs and sought by Emcore through  
22 discovery.

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**PRAYER FOR RELIEF**

WHEREFORE, defendant Emcore Corporation prays:

1. That plaintiffs take nothing by the Complaint;
2. That any damages sustained by plaintiffs be reduced by the percentage of its own negligence;
3. That plaintiffs' First Amended Complaint be dismissed with prejudice;
4. That the Court award defendant Emcore its costs and attorneys' fees incurred in this action;
5. That the Court award such further relief to defendant Emcore as deemed just and proper.

Dated: November 18, 2009

REDENBACHER & BROWN, LLP

*John C. Brown*

By: \_\_\_\_\_  
JOHN C. BROWN  
Attorneys for defendant  
EMCORE CORPORATION

**DEMAND FOR JURY TRIAL**

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Emcore Corporation hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: November 18, 2009

By John C. Brown  
JOHN C. BROWN  
Attorneys for defendant, EMCORE CORPORATION