**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

---

**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

---

YANGTZE MEMORY TECHNOLOGIES COMPANY, LTD.,
Petitioner
v.

MICRON TECHNOLOGY, INC.
Patent Owner

---

Case No. IPR2025-00098
U.S. Patent No. 8,945,996
Issue Date: February 3, 2015

Title: METHODS OF FORMING CIRCUITRY COMPONENTS AND METHODS OF FORMING AN ARRAY OF MEMORY CELLS

---

# PATENT OWNER'S PRELIMINARY SUR-REPLY

**TABLE OF CONTENTS** **Page**

**I. YMTC'S ATTORNEY ARGUMENT IS UNSUPPORTED..... 2**

**II. YMTC IS NOT A "PERSON" ENTITLED TO FILE AN IPR..... 3**

**III. YMTC FAILED TO IDENTIFY ALL RPI'S..... 5**

**IV. THE BOARD SHOULD DISCRETIONARILY DENY INSTITUTION UNDER §314(a)..... 8**

# TABLE OF AUTHORITIES

**Page(s)**

## Cases

*Amazon.com, Inc. v. Appistry, Inc.*,
IPR2015- 00480, , Paper No. 18 at 5-6 (P.T.A.B. July 13, 2015).....3

*Bozeman Fin. LLC v. Fed. Rsrv. Bank of Atlanta*,
955 F.3d 971 (Fed. Cir. 2020) .....1, 5

*Icon Health & Fitness, Inc. v. Strava, Inc.*,
849 F.3d 1034 (Fed. Cir. 2017) .....3

*Microsoft Corp. v. Sci. Applications Int'l Corp.*,
IPR2019-01311, Paper No. 35 (P.T.A.B. Feb. 3, 2020).....10

*Return Mail, Inc. v. U.S. Postal Service*,
587 U.S. 618 (2019).....*passim*

*Saint Regis Mohawk Tribe v. Mylan Pharms. Inc.*,
896 F.3d 1322 (Fed. Cir. 2018) .....10

*Uniloc 2017 LLC v. Facebook Inc.*,
989 F.3d 1018 (Fed. Cir. 2021) .....7

*Worlds Inc. v. Bungie, Inc.*,
903 F.3d 1237 (Fed. Cir. 2018) .....3, 6

## Statutes

35 U.S.C. §314(a) .....8, 9

35 U.S.C. §325(d) .....8

## LISTING OF EXHIBITS

| Exhibit | Description |
|---|---|
| 2001 | Press Release, Micron, *Micron and Intel Unveil New 3D NAND Flash Memory* (Mar. 26, 2015) ("Micron '3D NAND Flash Memory' Press Release") |
| 2002 | Press Release, Micron, *Micron and WekaIO Win Best of Show Award at the Flash Memory Summit 2019* (Aug. 29, 2019) ("Micron 'Best of Show Award' Press Release") |
| 2003 | Micron Technology, Inc., Annual Report (Form 10-K) (Oct. 4, 2024) |
| 2004 | National Integrated Circuit Industry Development Promotion Outline (Ministry of Industry and Information Technology):<br><br>Ministry of Industry and Information Technology, *The Ministry of Industry and Information Technology Officially Announced the "National Integrated Circuit Industry Development Promotion Outline"* (Jun. 26, 2014) (https://www.cac.gov.cn/2014-06/26/c_1111325916.htm) ("National IC Development Promotion Outline") |
| 2005 | Certified English Translation of EX2004 (National IC Development Promotion Outline) |
| 2006 | KAREN M. SUTTER ET AL., CONG. RSCH. SERV., R47558, SEMICONDUCTORS AND THE CHIPS ACT: THE GLOBAL CONTEXT (2023) |
| 2007 | Alex He, *Case Study: From Paper Tiger to Real Tiger? The Development of China's Semiconductor Industry*, CENTRE FOR INT'L GOVERNANCE INNOVATION 14 (2021) |

| Exhibit | Description |
|---|---|
| 2008 | What kind of enterprise is a state-owned enterprise? (State-owned Assets Supervision and Administration Commission of the State Council (SASAC)):<br><br>State-Owned Assets Supervision and Administration Commission of the State Council (SASAC), *Definition of "State-Owned Enterprise"* (July 4, 2019) (https://www.sasac.gov.cn/n2588040/n2590387/n9854212/c11647665/content.html) ("SASAC Definition") |
| 2009 | Certified English Translation of EX2008 (SASAC Definition) |
| 2010 | Notice of the State Council on Issuing "Made in China 2025":<br><br>China's State Council, *Notice of the State Council on Issuing "Made in China 2025"* (May 19, 2015) (https://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm) ("Made in China 2025") |
| 2011 | Certified English Translation of EX2010 (Made in China 2025) |
| 2012 | KAREN M. SUTTER, CONG. RSCH. SERV., R46767, CHINA'S NEW SEMICONDUCTOR POLICIES: ISSUES FOR CONGRESS (2021) |
| 2013 | Accelerating the realization of high-level scientific and technological self-reliance (People):<br><br>Liu Yuanchun et al., *Accelerating the Realization of High-Level Scientific and Technological Self-Reliance*, PEOPLE (July 15, 2024) (http://paper.people.com.cn/zgjjzk/html/2024-07/15/nw.zgjjzk_20240715_1-05.htm) ("*People's Paper* Article") |
| 2014 | Certified English Translation of EX2013 (*People's Paper* Article) |
| 2015 | Yangtze Memory Technologies Co. Ltd. Officially Established (YMTC):<br><br>YMTC, *Yangtze Memory Technologies Co. Ltd. Officially Established* (Aug. 1, 2016) (https://www.ymtc.com/cn/news/28.html) ("YMTC Press Release") |

| Exhibit | Description |
|---|---|
| 2016 | Certified English Translation of EX2015 (YMTC Press Release) |
| 2017 | Testimony of Stephen Ezell (VP, Global Innovation Policy – Information Technology & Innovation Foundation) Before the U.S.-China Economic and Security Review Commission (Apr. 14, 2022) |
| 2018 | Yahoo! Finance, South China Morning Post, Tech War: China's Top Memory Chip Maker YMTC Gets US$7 Billion From State-Backed Investors (Mar. 2, 2023) ("*Yahoo!* Article") |
| 2019 | Yangtze Memory Increases Capital and Expands Capacity to RMB 100 Billion, Big Fund Phase II Forms a Partnership with Local Hubei State-owned Assets (Baidu):<br><br>Baidu, *Yangtze Memory Increases Capital and Expands Capacity to RMB 100 Billion, Big Fund Phase II Forms a Partnership with Local Hubei State-owned Assets* (Mar. 2, 2023) (https://baijiahao.baidu.com/s?id=1759256650733024656&wfr=spider&for=pc) ("*Baidu* Article") |
| 2020 | Certified English Translation of EX2019 (*Baidu* Article) |
| 2021 | YMTC's Rule 7.1 Corporate Disclosure Statement (Nov. 9, 2023), *Yangtze Memory Technologies Company, Ltd. v. Micron Technology, Inc.*, C.A. No. 5:23-cv-05792-VKD (N.D. Cal.) |
| 2022 | Wuhan Optics Valley Financial Holding Group Co., Ltd. 2024 Tracking Rating Report (Lianhe Credit Rating Co., Ltd.):<br><br>Lianhe Credit Rating Co., Ltd., Wuhan Optics Valley Financial Holding Group Co., Ltd., 2024 Tracking Rating Report (Jun. 28, 2024) ("2024 Tracking Rating Report") |
| 2023 | Certified English Translation of EX2022 (2024 Tracking Rating Report) |

| Exhibit | Description |
|---|---|
| 2024 | Focusing on Key Points and Making Breakthroughs in Innovation, Hubei Solidly Promotes the Deepening and Improvement Actions to Go Deeper and More Concrete (State owned Assets Supervision and Administration Commission of the State Council (SASAC)):<br><br>State-Owned Assets Supervision and Administration Commission of the State Council (SASAC), *Focusing on Key Points and Making Breakthroughs in Innovation, Hubei Solidly Promotes the Deepening and Improvement Actions to Go Deeper and More Concrete* (Mar. 25, 2024) (www.sasac.gov.cn/n4470048/n29955503/n30329277/n30329358/c30380577/content.html) ("Statement of China's State Council") |
| 2025 | Certified English Translation of EX2024 (Statement of China's State Council) |
| 2026 | Yangtze Memory's "Double 11 Performance" Surpassed Samsung's for the First Time (Sina Finance):<br><br>Sina Finance, *Yangtze Memory's "Double 11 Performance" Surpassed Samsung's for the First Time* (Nov. 12, 2024) (https://finance.sina.com.cn/roll/2024-11-12/doc-incvupap6483110.shtml) ("*Sina Finance* Article") |
| 2027 | Certified English Translation of EX2026 (*Sina Finance* Article) |
| 2028 | Yangtze Memory Technologies Co., Ltd. 2024 Campus Recruitment (Southeast University):<br><br>Southeast University, *Yangtze Memory Technologies Co., Ltd. 2024 Campus Recruitment* (Mar. 13, 2024) (https://seu.91job.org.cn/sub-station/lectureDetail?xjhid=1000000000301932&xxdm=10286) ("Southeast Univ., YMTC 2024 Campus Recruitment") |
| 2029 | Certified English Translation of EX2028 (Southeast Univ., YMTC 2024 Campus Recruitment) |

| Exhibit | Description |
|---|---|
| 2030 | Yangtze Memory Technologies Co., Ltd. 2020 Campus Recruitment Introduction (Wuhan University of Science and Technology):<br><br>Wuhan University of Science and Technology, *Yangtze Memory Technologies Co., Ltd.* 2020 Campus Recruitment Introduction (Sept. 10, 2019) (https://wust.91wllm.cn/teachin/view/id/97310) ("Wuhan Univ. of Sci. and Tech., YMTC 2020 Campus Recruitment Introduction") |
| 2031 | Certified English Translation of EX2030 (Wuhan Univ. of Sci. and Tech., YMTC 2020 Campus Recruitment Introduction) |
| 2032 | Yangtze Memory 2025 Campus Recruitment (China University of Petroleum (Beijing)):<br><br>China University of Petroleum, *Yangtze Memory 2025 Campus Recruitment* (Feb. 20, 2025) (https://career.cup.edu.cn/job/view/id/618140) ("China Univ. Of Petroleum, YMTC 2025 Campus Recruitment") |
| 2033 | Certified English Translation of EX2032 (China Univ. Of Petroleum, YMTC 2025 Campus Recruitment) |
| 2034 | U.S. Chip Equipment Suppliers Suspend Business Activities at Yangtze Memory (Wall Street Journal – China):<br><br>Yoko Kubota et al., *U.S. Chip Equipment Suppliers Suspend Business Activities at Yangtze Memory*, WALL STREET JOURNAL CHINA (Oct. 13, 2022) (https://cn.wsj.com/articles/美国供应商暂停在中国长江存储科技的业务活动-11665617406) ("*WSJ China* Article") |
| 2035 | Certified English Translation of EX2034 (*WSJ China* Article) |
| 2036 | Letter from Michael T. McCaul, Member of Congress, and Bill Hagerty, U.S. Senator, to the Honorable Gina Raimondo, U.S. Commerce Secretary (July 12, 2021) |

| Exhibit | Description |
|---|---|
| 2037 | Demetri Sevastopulo, *Bipartisan Group Urges US Blacklist for "Beijing-Directed" Chipmaker*, FINANCIAL TIMES (Sept. 20, 2022) (https://www.ft.com/content/173eb5b7-c211-4fa8-af8e-93382ed12836) ("*Financial Times* Article") |
| 2038 | U.S. Senator Charles E. Schumer, *With Chinese Chip Companies Threatening National Security And Jobs, Schumer Announces President Has Heeded His Call And Will Add YMTC - One Of China's Leading Chip Makers - To A Trade Blacklist; Administration Action Will Strengthen National Security And Protect The Domestic Chip Industry* (Dec. 16, 2022) ("Schumer Statement") |
| 2039 | U.S. Department of Defense, *DOD Releases List of People's Republic of China (PRC) Military Companies in Accordance with Section 1260H of the National Defense Authorization Act for Fiscal Year 2021* (Jan. 31, 2024) (https://www.defense.gov/News/Releases/Release/article/3661985/dod-releases-list-of-peoples-republic-of-china-prc-military-companies-in-accord/) |
| 2040 | U.S. Department of Defense, *Entities Identified as Chinese Military Companies Operating in the United States in accordance with Section 1260H of the William M. ("Mac") Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283)* (https://media.defense.gov/2024/Jan/31/2003384819/-1/-1/0/1260H-LIST.PDF) |
| 2041 | *Intentionally Omitted* |
| 2042 | U.S. Postal Service, Postal Facts, USPS Fact #59 (Apr. 22, 2024) |
| 2043 | *Intentionally Omitted* |
| 2044 | *Oversight of the USPTO: Hearing Before the Subcomm. On Intellectual Property*, 118th Cong. (2023) (Testimony of Katherine Vidal, Undersecretary of Commerce for IP and Director of USPTO) |

| Exhibit | Description |
|---|---|
| 2045 | Press Release, DOJ Office of Public Affairs, Taiwan Company Pleads Guilty to Trade Secret Theft in Criminal Case Involving PRC State-Owned Company (Oct. 28, 2020) (https://www.justice.gov/archives/opa/pr/taiwan-company-pleads-guilty-trade-secret-theft-criminal-case-involving-prc-state-owned) ("DOJ Press Release") |
| 2046 | Notice of the State Council on Issuing Policies to Promote the High-quality Development of the Integrated Circuit Industry and Software Industry in the New Era:<br><br>China's State Council, *Notice of the State Council on Issuing Policies to Promote the High-quality Development of the Integrated Circuit Industry and Software Industry in the New Era* (Aug. 4, 2020) (https://www.gov.cn/zhengce/content/2020-08/04/content_5532370.htm) ("State Council Notice on Policies to Promote Development of IC") |
| 2047 | Certified English Translation of EX2046 (State Council Notice on Policies to Promote Development of IC) |
| 2048 | Declaration of Karen Lee, Translator (Mar. 10, 2025) |
| 2049 | Declaration of Fei-Xue Qian, Translator (Mar. 10, 2025) |
| 2050 | Email from Andrew Kellogg (PTAB) regarding IPR2025-00098 and IPR2025-00099: Request for Leave to File Preliminary Reply, dated April 7, 2025 |

YMTC's Preliminary Reply (Paper 12, "Reply") fails to address head-on Micron's three independent grounds for denying institution. Instead, the Reply attempts to distract from the actual issues with a narrative about the U.S. government's grant awards to Micron,[1] as if that has any bearing on whether YMTC is a Chinese state-owned entity. It does not. The reason for YMTC's deflection is clear—YMTC does not and cannot deny that it is a Chinese state-owned entity that the Chinese government created and funds for its own purposes.

***First***, as a Chinese state-owned entity, YMTC is not a statutorily authorized "person" entitled to file an IPR petition. The fact that Micron asserted district court counterclaims against YMTC does not change the Supreme Court's holding in *Return Mail* that sovereign entities are not authorized to file IPR petitions. Nor does the Federal Circuit's *Bozeman* decision—which allowed "no[n]-government-owned" banks to file IPR petitions—help YMTC, which is a state-owned entity.

***Second***, YMTC fails to acknowledge—let alone meet—its burden of proof to name all RPIs. YMTC does not dispute that it is a state-owned entity of the Chinese government, or that the Chinese government has the ability to control the IPR and has a substantial vested interest in the outcome of this proceeding. Instead, YMTC

[1] Of the seven exhibits YMTC submitted, four (EX1028-1030 and EX1033) relate entirely to Micron, not YMTC. The only other exhibit that mentions YMTC (EX1032) simply reflects that YMTC is on the entity list.

twists Micron's argument to mean that every passive, minority investor of a petitioner is an RPI. That strawman argument fails.

***Third***, the Board should reject YMTC's attempt to cabin the Board's discretion. Even if YMTC were authorized to file an IPR petition (it is not), and the Chinese government were not an RPI (it is), YMTC does not dispute that it is in privity with the Chinese government. As such, for sound policy reasons, the Board should not enable the Chinese government (or any foreign government) to challenge U.S. patents through proxies and threaten U.S. economic and strategic interests.

## I. YMTC'S ATTORNEY ARGUMENT IS UNSUPPORTED

YMTC's Reply alleges that Micron's evidence of Chinese government ownership and control of YMTC is "unreliable and inaccurate." Reply, §I. But, in doing so, YMTC does not dispute any of the following underlying facts supporting Micron's argument. *First*, YMTC does not dispute that the Chinese government both instigated and effectuated YMTC's formation in furtherance of Chinese government priorities. *See* POPR, §II.C. *Second*, YMTC does not dispute it is a Chinese state-owned enterprise, funded with tens of billions of dollars from the Chinese government. *Id*. Indeed, YMTC provided no evidence to rebut Micron's showing (*e.g.*, the ownership structure in the POPR), notwithstanding that YMTC is best positioned to provide such information. *Third*, YMTC does not dispute its status as China's "national champion" for memory chips, established as part of the

Chinese government's "Made in China 2025" initiative, which featured a "central role for the government in directing and financing Chinese businesses." *Id*., §II.B, D.

Rather than dispute these facts, YMTC mischaracterizes the Chinese government's role as that of a mere "passive investor." *E.g.*, Reply, 2. But, as reflected by the dearth of citation to supporting evidence in the Reply, this is nothing more than attorney argument. "Attorney argument is not evidence." *Icon Health & Fitness, Inc. v. Strava, Inc.*, 849 F.3d 1034, 1043 (Fed. Cir. 2017). Despite Board authorization to submit additional evidence with its Reply (*see* EX2050 (4/7/2025 email from Board)), YMTC chose not to provide a declaration contradicting Micron's showing. *Amazon.com, Inc. v. Appistry, Inc.*, IPR2015- 00480, Paper No. 18 at 5-6 (P.T.A.B. July 13, 2015). This failure carries consequences as YMTC bears the burden of proving that it has named all RPIs. *See Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018).

Rather than engage on the relevant facts about its extensive relationship with the Chinese government, YMTC attempts to distract the Board by discussing U.S. government grant awards to Micron. Reply, 1, 3. Government grants to Micron have no relevance to the discretionary denial issues currently before the Board, which relate exclusively to YMTC as the petitioner, not Micron as the patent owner.

## II. YMTC IS NOT A "PERSON" ENTITLED TO FILE AN IPR

YMTC faults Micron for relying "solely" on one case for its statutory interpretation argument. Reply, 5. But the case on which Micron relies—*Return Mail*—is controlling Supreme Court precedent and constitutes the best case on which Micron (or the Board) could rely. YMTC attempts to distinguish itself from the Postal Service in *Return Mail* because the Court noted that non-government actors "face greater and more uncertain risks" in litigation (*e.g.*, the possibility of punitive damages and injunctive relief) than government entities. *Id.*, (citing *Return Mail*). But the Supreme Court's decision did not turn on this distinction, rendering irrelevant the fact that Micron counterclaimed against YMTC. *Id.*, 5-6. Moreover, given that Micron's district court claims are ***counterclaims***, it is unsurprising that Micron simply asserted them against YMTC (the named party which had sued Micron) instead of the Chinese government.[2]

The Supreme Court's *Return Mail* analysis centered on the traditional canons of statutory construction, including the context of surrounding language, comparison to other statutes, and the "longstanding interpretive presumption that 'person' does not include the sovereign." *Return Mail, Inc. v. U.S. Postal Service*, 587 U.S. 618, 626 (2019) (internal quotes omitted). Notwithstanding that the Postal Service has

[2] This also disposes of YMTC's argument that Micron took a "contrary" position (*see* Reply, 10) in district court. Micron took no position in the district court on any RPI issue or privity of the Chinese government.

some hallmarks of a private business entity, the Supreme Court nonetheless concluded that the Postal Service was not a "person" entitled to file an IPR. *Id.*, 626-627. The same result obtains here. *See* POPR, §IV.A.

YMTC contends that *Bozeman* counsels for a different result (Reply, 6-7), but *Bozeman* is, in not inapposite, readily distinguishable. In *Bozeman*, the Federal Circuit held that various banks were "distinct from the government for purposes of the AIA" and thus qualified as "persons" authorized to file an IPR petition under the AIA. *Bozeman Fin. LLC v. Fed. Rsrv. Bank of Atlanta*, 955 F.3d 971, 975-976 (Fed. Cir. 2020). But the Federal Circuit's rationale for this conclusion included that "[t]he Banks do not receive congressionally appropriated funds" and "are not government-owned," which is the opposite of YMTC's relationship with the Chinese government. *Id*. Moreover, the Federal Circuit noted that the "issue [being decided] is narrow," and its decision "is limited to the status of the Banks and does not prejudice other entities whose status as 'persons' under the AIA may separately be questioned." *Id.*, 975. Thus, YTMC's reliance on *Bozeman* is misplaced.

## III. YMTC FAILED TO IDENTIFY ALL RPI'S

Micron provided extensive evidence that the Chinese government is an RPI. *See* POPR, §§II.B-D (detailing, *e.g.*, the creation of YMTC at the behest of the Chinese government to be its "national champion" memory company and the Chinese government's specific ownership interest and ability to control YMTC).

Even on far weaker facts—*e.g.*, where the patent owner merely produces *some* evidence of an omitted RPI—the petitioner bears the ultimate burden of establishing that its petition names all RPIs and showing that the patent owner is incorrect. *Worlds Inc.*, 903 F.3d at 1242. Here, YMTC fails to acknowledge its burden, let alone meet it. *See generally* Reply. Rather than dispute that the Chinese government owns YMTC (which it cannot plausibly deny), YMTC attempts to distract with a lengthy discussion of the U.S. government's alleged investment in Micron, which is wholly irrelevant to whether the Chinese government is an RPI vis-à-vis YMTC. *See* Reply, 1, 3, 7-8. Whether or not Micron has any RPIs is simply not at issue in this proceeding. Regardless, unlike the Chinese government's relationship with YMTC, the U.S. government does not own Micron.

YMTC also attempts to reframe Micron's argument as broadly applying to every instance where a petitioner merely "ha[s] investors," which would then purportedly extend IPR estoppel to "hundreds of other companies." Reply, 7-8. This framing fundamentally distorts Micron's position. YMTC incorrectly conflates its situation (*viz*. a state-owned entity formed at the behest of the Chinese government, which provides ongoing financial support) with situations where a government (or governmental entity) merely holds a small minority ownership stake in, or provides grant awards to, a petitioner. Basic corporate law demands recognition of the distinction between majority and minority ownership, as that distinction determines

the ability to control an entity. Here, Micron showed, and YMTC failed to rebut, that the Chinese government owns YMTC. This readily disposes of YMTC's slippery slope argument that "***every investor***"—or even every "major investor"—would necessarily be an RPI. POPR, 7-8 (emphasis by YMTC).

Citing *Uniloc 2017 LLC v. Facebook Inc.*, 989 F.3d 1018, 1027-28 (Fed. Cir. 2021), YMTC contends that "Micron never explains how the Chinese government controlled or could have controlled this proceeding, or how this petition was 'filed at another party's behest.'" Reply, 7. YMTC's reliance on *Uniloc* is misplaced. Uniloc addressed a totally different fact pattern involving two ***otherwise unrelated entities***—*viz.*, whether LG Electronics, Inc. was an RPI of Facebook Inc. *Uniloc*, 989 F.3d at 1025. Here, by contrast, YMTC exists only because of the Chinese government, which owns YMTC and funds it (with tens of billions of dollars) for its own purposes. The most applicable guidance from *Uniloc* lies in its emphasis that the RPI determination "demands a flexible approach." *Id*., 1027-28. In this respect, an important consideration is who would benefit from the IPR. *See* POPR, 19 (discussing *AIT*). Notably, YMTC does not dispute that the Chinese government would "benefit from this proceeding" if it were instituted. *See* Reply, 7.

YMTC's assertion that "Micron never argues nor provides evidence that YMTH controlled or could control this proceeding" is baseless. Reply, 8. As the POPR explains, YMTC admitted that it is wholly owned by Yangtze Memory

Technologies Holding Co., Ltd. ("YMTH"). POPR, 7 (citing EX2021, 2). YMTC's failure to name YMTH is another reason the Board should deny institution.

YMTC's assertion that "Micron has long been on notice of YMTH's interest, at least from YMTC's November 2023 disclosure in district court," is both irrelevant and self-defeating. Reply, 9. It simply does not matter whether Micron knew of YMTH's ownership of YMTC. And if Micron knew that YMTH was an RPI since November 2023, then YMTC itself certainly did too. YMTC's belated offer to "amend its identification of RPIs" yet again (*id.*, 8) further confirms YMTC's gamesmanship and is a tacit acknowledgement that YMTH should have been named in the first instance, or at least when YMTC amended its RPI disclosure (Paper 7).

## IV. THE BOARD SHOULD DISCRETIONARILY DENY INSTITUTION UNDER §314(a)

YMTC begins by faulting Micron for not burdening the Board with additional merits-based arguments against institution. Reply, 9. On that basis, YMTC contends that "the petition should be instituted." *Id.* But such an approach would eviscerate the entirety of the Board's discretion—provided by Congress under 35 U.S.C. §314(a), §325(d), and other statutes—to deny institution. Not only has the Federal Circuit repeatedly affirmed the Board's authority to discretionarily deny institution, but the PTO Director has also recently announced a new procedure for evaluating discretionary denial, which closely matches Micron's approach here (*i.e.*, focusing on discretionary issues at the outset). *See* Interim Processes for PTAB

Workload Management issued March 26, 2025 (the "Interim Procedure"). In particular, the Director's Interim Procedure bifurcates discretionary denial and merits briefing so that merits issues only need to be addressed if institution is not discretionarily denied. *Id*. ("to facilitate this bifurcated approach, the USPTO will permit parties to file separate briefing on [discretionary denial]"). *Id*., 1-2.

With respect to the substance of Micron's §314(a) argument, YMTC has little to say. *See* Reply, 9-10. To begin, YMTC does not dispute that the Chinese government is not a "person" entitled to file an IPR. *See generally* Reply. Nor could it do so in view of *Return Mail*. Instead, YMTC attempts to conflate Micron's independent, separate arguments which do not rise or fall together (*compare* POPR, §IV.A with §IV.C). *See* Reply, 10. Rather, the crux of Micron's third argument is that, even if YMTC is a "person" allowed to file an IPR, the Board should deny institution because the Board should not allow the Chinese government to do through the backdoor (file an IPR petition using YMTC as a proxy) what it plainly cannot do through the front door (file an IPR petition in its own name). POPR, 28-31. Significantly, YMTC does not deny that the Chinese government (as the entity that owns, founded, funded, and finances YMTC) has a substantial vested interest in the outcome of this proceeding and will benefit from any redress. Indeed, putting aside any RPI issues, YMTC does not attempt to rebut Micron's showing (*see* POPR at 28-29) that the Chinese government is in privity with YMTC.

Nor does YMTC address the case law that the Board "may deny institution for "whatever reason" at all, including "based on a party's status as a sovereign." POPR, 27 (citing *Saint Regis Mohawk Tribe v. Mylan Pharms. Inc.*, 896 F.3d 1322, 1327 (Fed. Cir. 2018)). Instead, YMTC accuses Micron of "inject[ing] its political biases into this IPR." Reply, 10. That suggestion is not well-taken because Micron's arguments would apply equally to other sovereigns. Regardless, the Federal Circuit has held that the Board "bears the political responsibility of determining which cases should proceed." *Saint Regis*, 896 F.3d at 1327. And the Director's recent Interim Guidance reaffirmed that "the parties are permitted to address all relevant considerations," including "[c]ompelling economic, public health, or national security interests." Interim Guidance, 2. In this regard, YMTC does not contest the foreign policy and national security concerns discussed in the POPR at 30-31.

YMTC spills most of its ink trying to factually distinguish the *Microsoft* case. Reply, 9-10. But in doing so, YMTC makes Micron's point—to wit, that both discretion and prudence demand avoiding the deep dive into highly factual issues and simply "exercis[ing] [] discretion to deny review to avoid any concerns that the [Chinese] government is obtaining a benefit to which it is not permitted under *Return Mail*." *Microsoft Corp. v. Sci. Applications Int'l Corp.*, IPR2019-01311, Paper No. 35 at 13-14 (P.T.A.B. Feb. 3, 2020).

Patent Owner respectfully requests that the Board deny institution.

Respectfully submitted,

Dated: April 18, 2025

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: */Travis Jensen /*

Travis Jensen, Reg. No. 60,087
Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025-1015
*Counsel for Patent Owner*

## CERTIFICATE OF SERVICE

The undersigned hereby confirms that the foregoing Patent Owner Preliminary Sur-reply and associated exhibit were caused to be served on April 18, 2025 via electronic mail, upon the following attorneys of record for Petitioner:

James L. Davis (James.L.Davis@ropesgray.com)
Christopher M. Bonny (Christopher.Bonny@ropesgray.com)
YMTC-Micron-IPRs-Ropes-Service@ropesgray.com

/*Karen Johnson*/
Karen Johnson