

Filed on behalf of: Yangtze Memory Technologies Company, Ltd.

Entered: April 30, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICRON TECHNOLOGY, INC.,
Petitioner,

v.

YANGTZE MEMORY TECHNOLOGIES COMPANY, LTD.,
Patent Owner.

Case IPR2025-00229
Patent 12,010,838

PATENT OWNER'S PRELIMINARY RESPONSE

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Exhibit List

Exhibit	Description
2001	Email from counsel for Petitioner to Board (Apr. 24, 2025)

I. Introduction

The '838 Patent was not eligible for *inter partes* review when this Petition was filed. In an email to the Board, Petitioner acknowledged the prematurity of its filing and requested that the Board withdraw the Petition. Ex. 2001. The Board has not responded to that request. Petitioner also filed a petition for post-grant review acknowledging that the '838 Patent is an AIA patent. *See* PGR2025-00021.

Because it is undisputed that the Petition was filed during within nine months of issuance of the '838 Patent, the Board should deny institution.

II. Argument

“A petition for inter partes review shall be filed after the later of either – (1) the date that is 9 months after the grant of a patent; or (2) if a post-grant review is instituted under chapter 32, the date of the termination of such post-grant review.” 35 U.S.C. § 311(c). Similarly, the PTAB's rules require that, for patents described in section 3(n)(1) of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284 (Sept. 16, 2011) (“AIA”), a petition for *inter partes* review must be filed no earlier than nine months after the date of the grant of the patent. 37 C.F.R. § 42.102(a)(1). Patents subject to the AIA first-inventor-to-file provisions are those that issue from applications “that contain or contained at any time—

- (A) a claim to a claimed invention that has an effective filing date as defined in section 100(i) of title 35, United States Code, that is on or after [March 16, 2013]; or
- (B) a specific reference under section 120, 121, or 365(c) of title 35, United States Code, to any patent or application that contains or contained at any time such a claim.

AIA § 3(n)(1).

The '838 Patent is subject to the AIA first-inventor-to-file provisions because its earliest effective filing date is after March 16, 2013. The filing date of the '838 Patent is September 13, 2021, and its earliest priority date is August 28, 2017—both of which are after the cutoff date for AIA governance. Ex. 1001 at 1-2. Indeed, Petitioner “assume[s]” for the purposes of its Petition that “the '838 Patent is entitled to the benefit of this August 28, 2017 date.” Pet. 9.

Because the '838 Patent is subject to the AIA first-inventor-to-file provisions, no *inter partes* review may be filed challenging the patent until nine months after issuance of the patent. 35 U.S.C. § 311(c). The '838 Patent issued on June 11, 2024 and was thus not eligible for *inter partes* review until March 11, 2025. However, the Petition was filed on November 29, 2024, just over five months after issuance, and received a Notice of Filing Date on January 30, 2025, just over seventh months

after issuance. Pet. at 1; Paper 6 at 1. Because the '838 Patent was not eligible for *inter partes* review at the time of filing, the Board should deny institution.

The Board should also deny institution on the merits, as Patent Owner will address in detail in its Patent Owner Preliminary Response to PGR2025-00021.

III. Conclusion

For the reasons set forth above, the Board should deny the Petition for *Inter Partes* Review.

Respectfully submitted,

Dated: April 30, 2025

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CERTIFICATE OF COMPLIANCE WITH 37 C.F.R. § 42.24

I hereby certify that this Patent Owner's Preliminary Response complies with the word count limitation of 37 C.F.R. § 42.24(b)(1) because the Patent Owner's Preliminary Response contains 525 words using Microsoft Word's counting feature, excluding the cover page, signature block, and the parts of the Patent Owner's Preliminary Response exempted by 37 C.F.R. § 42.24(b)(1).

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 30th day of April, 2025, a true and correct copy of the foregoing **Patent Owner's Preliminary Response and Exhibit 2001** were served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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