JARED BOBROW (STATE BAR NO. 133712)
jbobrow@orrick.com
JASON LANG (STATE BAR NO. 255642)
jlang@orrick.com
DIANA M. RUTOWSKI (STATE BAR NO. 233878)
drutowski@orrick.com
ORRICK, HERRINGTON & SUTCLIFFE LLP
1000 Marsh Road
Menlo Park, CA 94025-1015
Telephone: +1 650 614 7400
Facsimile: +1 650 614 7401

Attorneys for Defendant and Counterclaim Plaintiff Micron Technology, Inc., and Defendant Micron Consumer Products Group, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

YANGTZE MEMORY TECHNOLOGIES COMPANY, LTD., Plaintiff, v. MICRON TECHNOLOGY, INC., et al., Defendants.	Case No. 3:23-cv-05792-RFL **MTI'S UNOPPOSED MOTION TO MODIFY THE CASE SCHEDULE TO PERMIT MTI TO REASSERT COUNTERCLAIMS** **REDACTED – PUBLIC VERSION** **DEMAND FOR JURY TRIAL** Date: March 11, 2025 Time: 10:00 a.m. PT Judge: Hon. Rita F. Lin Courtroom: 15, 18th Floor
MICRON TECHNOLOGY, INC., Counterclaim Plaintiff, v. YANGTZE MEMORY TECHNOLOGIES COMPANY, LTD., and YANGTZE MEMORY TECHNOLOGIES, INC., Counterclaim Defendants.	

Micron Ex. 2055, p. 1
YMTC v. Micron
IPR2025-00499

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. STATEMENT OF ISSUES TO BE DECIDED 3

III. STATEMENT OF FACTS 3

IV. LEGAL STANDARD 6

V. THE COURT SHOULD GRANT MTI LEAVE TO FILE SECOND AMENDED COUNTERCLAIMS 8

A. There Is Good Cause To Amend The Scheduling Order Under Rule 16 8

B. MTI's Proposed Amendment Is Permitted Under Rule 15 Because YMTC Provided Written Consent 9

VI. CONCLUSION 9

Micron Ex. 2055, p. 2
YMTC v. Micron
IPR2025-00499

TABLE OF AUTHORITIES

Page(s)

Cases

Atlas v. Arnold,
No. CV 15-01504 ..... 7, 9

Fern v. U.S.,
213 F.2d 674 (9th Cir. 1954) 8, 9

Finjan, Inc. v. Blue Coat Sys. Inc.,
No. 13-cv-03999-BLF, 2014 WL 6626227 (N.D. Cal. Nov. 20, 2014) 7

Fru-Con Constr. Corp. v. Sacramento Mun. Util. Dist.,
No. CIV.S-05-583LKK/GGH, 2006 WL 3733815 (E.D. Cal. Dec. 15, 2006) 7

Fujitsu Ltd. v. Nanya Tech. Corp.,
No. C 06-6613 CW, 2008 WL 962146 (N.D. Cal. Apr. 8, 2008) 7

Ivy v. Mayet,
No. 14-CV-04879-HSG, 2015 WL 8641144 (N.D. Cal. Dec. 14, 2015) 7

Johnson v. Mammoth Recreations, Inc.,
975 F.2d 604 (9th Cir. 1992) 7

Kamal v. Eden Creamery, LLC,
88 F.4th 1268 (9th Cir. 2023) 6

Lyon v. U.S. Immigr. & Customs Enf't,
308 F.R.D. 203 (N.D. Cal. 2015) 7

M.H. v. Cty. of Alameda,
No. 11-2868 CW, 2012 WL 5835732 (N.D. Cal. Nov. 16, 2012) 7

Srigley v. Monterey Peninsula Yacht Club, Inc.,
No. 22-CV-01589-PCP, 2024 WL 4143590 (N.D. Cal. Sept. 11, 2024) 7

Synchronoss Techs., Inc. v. Dropbox, Inc.,
Case No. 16-cv-00119-HSG-KAW, Dkt. 198 (Aug. 6, 2018) 7

Synchronoss Techs., Inc. v. Dropbox Inc.,
No. 16-CV-00119-HSG, 2019 WL 95927 (N.D. Cal. Jan. 3, 2019) 7

Other Authorities

Federal Rule of Civil Procedure
15(a)(2) 6, 7, 9
16(b)(4) ..... *passim*

Micron Ex. 2055, p. 3
YMTC v. Micron
IPR2025-00499

https://nvmexpress.org/education/faqs/ 6

https://www.iol.unh.edu/registry/nvme 6

Local Rule 3-4(d) 1, 2, 4, 8

Steven S. Gensler, Federal Rules of Civil Procedure,
Rules and Commentary at 539 (2024) 6

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on March 11, 2025 at 10:00 am in the courtroom of the Honorable Rita F. Lin, 450 Golden Gate Avenue, Courtroom 15, 18th Floor, San Francisco, California, Defendant and Counterclaim plaintiff Micron Technology, Inc. ("MTI") and defendant Micron Consumer Products Group, LLC (collectively, "Micron") hereby move the Court under Fed. R. Civ. P. Rule 16(b)(4) to modify the case schedule to permit MTI to file Second Amended Counterclaims.

Plaintiff and Counterclaim defendant Yangtze Memory Technologies Company, Ltd. ("YMTC") and Counterclaim defendant Yangtze Memory Technologies, Inc. (collectively, "YMTC Entities") do not oppose this Motion and consent to MTI filing its Second Amended Counterclaims.

This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities below, the Declaration of J. Jason Lang ("Lang Decl.") filed concurrently herewith, the pleadings and papers on file in this case, and any other matters of which the Court may take judicial notice.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On February 16, 2024, MTI asserted patent infringement counterclaims against the YMTC Entities based on five MTI patents. Dkt. 35. On March 12, 2024, the YMTC Entities moved to dismiss those counterclaims based on MTI's alleged failure to plead marking and post-complaint infringing activity. Dkt. 49. The YTMC Entities repeatedly represented to this Court that they were no longer committing infringing activity in the United States, *i.e.*, post-complaint activity. For example, the YMTC Entities stated that "Micron knows that YMTC/YMTI are not selling the accused 3D NAND products in the U.S. (or otherwise engaging in conduct that would infringe)." Dkt. 53 at 1. In short, the YMTC Entities represented to the Court that MTI had no basis to assert infringement theories that require post-complaint infringement.

While the motion was under submission, the YMTC Entities made their L.R. 3-4(d) production, which requires "[d]ocuments sufficient to show the sales, revenue, cost, and profits for

accused instrumentalities … for any period of alleged infringement." *See* N.D. Cal. Patent L.R. 3-4(d). Although this production [redacted], it did not disclose any post-complaint sales or importations of the accused products in the United States. Nor did it disclose any sales or importations of a particular accused product type, namely, its 232-Layer 3D NAND memory products.

On July 16, 2024, the Court dismissed MTI's counterclaims with leave to amend. Dkt. 78. On August 1, 2024—in reliance on the YMTC Entities' representations to the Court and their Patent L.R. 3-4(d) production—MTI amended its counterclaims, dropping three patents and its allegation of willful infringement. Without the ability to show that YMTC engaged in infringing activity in 2024, MTI could not allege infringement as to apparatus claims that it practiced or willfulness under the Court's order of dismissal. And without documents showing that YMTC had imported 232-Layer 3D NAND memory products into the United States, MTI had to drop its infringement allegations against 232-Layer products as well.

[redacted]

From December 2024 to the filing this Motion, MTI has acted diligently to request relief. [redacted] and then meeting and conferring with the YMTC Entities' counsel, MTI timely brings this Motion seeking leave to modify the schedule to amend its counterclaims to reassert the three patents that it dropped and to reassert its willfulness claim in view of its reliance on the YMTC Entities' misstatements about their infringing activity and their incomplete Patent L.R. 3-4(d) production. The YMTC Entities do not oppose this Motion. The parties agree that no other adjustment to Court's schedule is necessary.

II. STATEMENT OF ISSUES TO BE DECIDED

Given that (1) MTI was diligent in seeking leave to amend the case schedule after learning that YMTC's representations that it was not currently engaging in infringing activity were incorrect and that YMTC withheld disclosure of such activity, (2) YMTC does not oppose MTI's motion, and (3) MTI's amendments will not impact the case schedule, should the Court modify the case schedule to allow MTI to amend its counterclaims to reassert the three patent infringement counterclaims and the willfulness claim that it dropped in reliance on YMTC's statements and Patent Local Rule production?

III. STATEMENT OF FACTS

On February 16, 2024, MTI asserted patent infringement counterclaims against the YMTC Entities for their infringement of U.S. Patent Nos. 10,475,737 (the "'737 patent"), 8,945,996 (the "'996 patent"), 8,803,214 (the "'214 patent"), 10,872,903 (the "'903 patent"), and 10,373,974 (the "'974 patent") (collectively, the "Originally Asserted MTI Patents"). Dkt. 35. MTI based these counterclaims on information in public sources about the YMTC Entities' infringing activities related to their 128-layer and 232-layer 3D NAND products ("128-Layer Products" and "232-Layer Products," respectively). *Id.* ¶¶ 14-21. MTI alleged that the YMTC Entities, both individually and together as a joint enterprise: (1) directly infringed at least by importing the 128-Layer and 232-Layer Products into the United States, (2) infringed by making the 128-Layer and 232-Layer Products overseas and importing them into the United States, and (3) willfully infringed MTI's patents. *Id.* ¶¶ 14-83.

On March 12, 2024, the YMTC Entities moved the Court to dismiss MTI's counterclaims. Dkt. 49. Notably, the YMTC Entities repeatedly represented that they were no longer committing infringing activity in the United States. For example, the YMTC Entities stated that "Micron knows that YMTC/YMTI are not selling the accused 3D NAND products in the U.S. (or otherwise engaging in conduct that would infringe)." Dkt. 53 at 1. The YMTC Entities further argued that MTI "cannot plausibly support a claim for infringement in 2024—particularly given … the 'export bans' imposed on YMTC in 2022 that have effectively prevented YMTC from undertaking U.S.-based commercial activity." *Id.* at 2. And the YMTC Entities asserted that "as Micron knows,

YMTC's 2022 addition to the Entity List effectively prevented [YMTC's] ability to do business here." *Id.* at 3 n.4.

While YMTC's motion to dismiss was pending, on June 27, 2024, the YMTC Entities made their Patent L.R. 3-4(d) production. Patent L.R. 3-4(d) required that the YMTC Entities produce "[d]ocuments sufficient to show the sales, revenue, cost, and profits for accused instrumentalities … for any period of alleged infringement." Patent L.R. 3-4(d). [redacted] *See* YMTC-MICRON_0009683. [redacted]

On the July 16, 2024, the Court dismissed all of MTI's counterclaims. Dkt. 78. The Court based its decision on two grounds that are relevant here. First, the Court found that MTI's "factual allegations do not provide a sufficient basis for the Court to plausibly infer that Yangtze Memory was selling, offering to sell, importing, or using the accused products in the United States, let alone that Yangtze Memory did so or was likely to do so after February 16, 2024." Dkt. 78 at 3. Second, the Court found that MTI had not alleged that it marked its products, which meant that MTI had to plausibly allege post-complaint (post February 16, 2024) infringing acts. *Id.* at 2. The Court dismissed MTI's counterclaims with leave to amend. *Id.* at 5.

In view of YMTC's representations and its Patent L.R. 3-4(d) production, MTI could only assert: (1) apparatus patents that MTI did not practice (and thus no marking obligation would apply) and (2) patents that cover methods of making the accused products (and thus no marking obligation would apply). [redacted]

On August 1, 2024—in reliance on the YMTC Entities' representations to the Court and their Patent L.R. 3-4(d) production—MTI amended its counterclaims, dropping three Originally Asserted MTI Patents and all its allegations against YMTC's 232-Layer products. Specifically, MTI amended its counterclaims to assert infringement against YMTC's 128-Layer products (1) only under Section 271(g) for the '996 patent (as there is no marking requirement), and (2) only

under Section 271(a) for the '903 patent (as MTI was able to allege compliance with any marking obligations for that patent). Dkt. 93; *see also* Dkt. 110 (answering, as opposed to moving to dismiss, MTI's First Amended Counterclaims). For the '737, '214, and '974 patents, however, MTI was unable to assert similar infringement theories. In short, without being able to allege current infringing activities, MTI had no choice but to drop these three patents as well as its allegations that YMTC willfully infringed.

Subsequently, MTI discovered evidence suggesting that the YMTC Entities' production of sales and importation information was incomplete. After much correspondence and meeting and conferring, on October 4, 2024, Micron moved to compel YMTC to produce information and documents related to its importation, sales, offers for sale, sampling, testing, qualification, and related activities in the U.S. *See* Dkt. 147. On October 18, 2024, the Court ordered YMTC to produce information and documents related to YMTC's manufacturing, worldwide sales, importation, intercompany transfers, prototyping, testing, qualification, marketing, and related activity. *See* Dkt. 163 at 1-7.

As demonstrated below, YMTC's belated Court-ordered productions reveal that YMTC's representations to the Court about its infringing activities were incorrect and that its earlier disclosures about its sales and importation activities were, at best, incomplete.

[redacted]

Ex. A.

[redacted]

[redacted] YMTC-MICRON_0010167 (truncated). [redacted] *See* YMTC-MICRON_0010851 [redacted][1] *See* YMTC-MICRON_0010551, 10583-84; YMTC-MICRON_0010851. For the products to be added to the NVMe Integrator's List, YMTC needed to import the products into the United States for validation and testing.[2]

IV. LEGAL STANDARD

"[C]ircuits have consistently held that the requirements of both Rule 16 and Rule 15 must be met" when a party files a "motion seeking leave to amend filed after the scheduling order deadline has passed." STEVEN S. GENSLER, FEDERAL RULES OF CIVIL PROCEDURE, RULES AND COMMENTARY at 539 (2024).

Under Federal Rule of Civil Procedure 16(b)(4), "[a] schedule may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "The good cause standard primarily considers the diligence of the party seeking the amendment." *Kamal v. Eden Creamery,*

[1] https://www.iol.unh.edu/registry/nvme

[2] https://nvmexpress.org/education/faqs/

LLC, 88 F.4th 1268, 1277 (9th Cir. 2023) (internal citation removed). "Though prejudice to the opposing party is relevant, diligence is Rule 16(b)'s primary focus." *Srigley v. Monterey Peninsula Yacht Club, Inc.*, No. 22-CV-01589-PCP, 2024 WL 4143590, at *1 (N.D. Cal. Sept. 11, 2024) (citing *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)). For example, a court in this District held that good cause to amend a scheduling order exists where a party discovered new information and filed its motion to modify a month later. *See Synchronoss Techs., Inc. v. Dropbox Inc.*, No. 16-CV-00119-HSG, 2019 WL 95927, at *1 (N.D. Cal. Jan. 3, 2019);[3] *M.H. v. Cty. of Alameda*, No. 11-2868 CW, 2012 WL 5835732, at *3 (N.D. Cal. Nov. 16, 2012) ("Courts routinely allow parties to amend their pleadings after new information comes to light during discovery."); *see also Lyon v. U.S. Immigr. & Customs Enf't*, 308 F.R.D. 203, 216 (N.D. Cal. 2015) ("[C]ourts often find good cause when the motion to amend the scheduling order is based upon new and pertinent information."); *Ivy v. Mayet*, No. 14-CV-04879-HSG, 2015 WL 8641144, at *2 (N.D. Cal. Dec. 14, 2015) (finding good cause exists when a party moves for leave to file amended pleadings two months after learning of new information); *Fru-Con Constr. Corp. v. Sacramento Mun. Util. Dist.*, No. CIV.S-05-583LKK/GGH, 2006 WL 3733815, at *5 (E.D. Cal. Dec. 15, 2006) (finding good cause where Defendant sought leave to amend pleading two months after learning new information through discovery); *Fujitsu Ltd. v. Nanya Tech. Corp.*, No. C 06-6613 CW, 2008 WL 962146, at *2 (N.D. Cal. Apr. 8, 2008) (finding good cause to amend more than one year after the amendment deadline because discovery revealed new information); *Finjan, Inc. v. Blue Coat Sys. Inc.*, No. 13-cv-03999-BLF, 2014 WL 6626227, at *1-2 (N.D. Cal. Nov. 20, 2014) (finding good cause to amend nine months after the amendment deadline because defendants could not have uncovered new facts underlying their new asserted defenses before the deadline).

Under Federal Rule of Civil Procedure 15(a)(2), "a party may amend its pleading [] with the opposing party's written consent." Fed. R. Civ. P. 15(a)(2). "Where the opposing party consents to the filing of an amended pleading, the amendment should be allowed." *Atlas v. Arnold*,

[3] Dropbox filed its motion on August 6, 2018, after Synchronoss disclosed new information that formed the basis for the motion in a 10-K filing on July 2, 2018. Ex. C (*Synchronoss Techs., Inc. v. Dropbox, Inc.*, Case No. 16-cv-00119-HSG-KAW, Dkt. 198 (Aug. 6, 2018)).

Micron Ex. 2055, p. 11
YMTC v. Micron
IPR2025-00499

No. CV 15-01504 RSWL (RAO), 2016 WL 11521727, at *3 (C.D. Cal. Oct. 31, 2016) (citing *Fern v. U.S.*, 213 F.2d 674, 677 (9th Cir. 1954)).

V. THE COURT SHOULD GRANT MTI LEAVE TO FILE SECOND AMENDED COUNTERCLAIMS

A. There Is Good Cause To Amend The Scheduling Order Under Rule 16

Good cause exists to amend the Scheduling Order (Dkt. 141) to permit MTI to file its Second Amended Counterclaims (reasserting three Originally Asserted MTI Patents and its willfulness claim) because (1) MTI only dropped those patents due YMTC's incorrect representations and YMTC's incomplete production, and (2) MTI acted diligently in seeking leave after discovering YMTC's misrepresentations. In addition, YMTC consents to MTI's amendment, and the amendment will not otherwise affect the schedule. MTI is attaching a redline of the proposed Second Amended Counterclaims to this motion. *See* Ex. B. The Second Amended Counterclaims only reassert the three dropped patents, reassert MTI's claims for willful infringement, and add factual pleadings as to the YMTC Entities' post-complaint sales. *Id.*

First, as Section III demonstrated in detail, MTI dropped the three patents from its counterclaims based on the YMTC Entities' representations about its infringing activities and their production pursuant to Patent L.R. 3-4(d). Specifically, MTI relied on YMTC's statements that it had not sold or imported any 232-Layer products in the United States and that it had not sold or imported any 128-Layer or 232-Layer products in the United States after MTI filed its counterclaims in February 2024. For example, the YMTC Entities stated that "Micron knows that YMTC/YMTI are not selling the accused 3D NAND products in the U.S. (or otherwise engaging in conduct that would infringe)." Dkt. 53 at 1. Consistent with these statements, the YMTC Entities' Patent L.R. 3-4(d) production did not include any recent infringing activity or any activity relating to its 232-layer 3D products. Based on the YMTC Entities' statements and production, MTI had no basis—at that time—to maintain three infringement counterclaims or its willful infringement claim. Dkt. 93.

Second, as demonstrated in Section III, after a Court order compelling production from YMTC, the YMTC Entities began to produce information and documents in late December 2024

[redacted] MTI has acted diligently since then, including investigating those productions, conferring with YMTC, and filing this Motion on January 29, 2025. Courts commonly find good cause exists under Rule 16 to amend a pleading where a party learns of new supporting facts in discovery and diligently moves to make amendment accordingly. *See* § IV, *supra.*

Third, YMTC consents to MTI's requested amendments, and both parties agree that no other adjustments to the Court's case schedule are necessary (other than the modifying the date to allow MTI to amend its pleadings). This is because MTI has already provided infringement contentions on these patents, and the YMTC Entities have already provided invalidity contentions. The opening claim construction briefs are due on March 17, 2025. To the extent that YMTC selects a term for construction from these three patents, sufficient time exists for the parties to present that term to the Court in the opening briefs.

B. MTI's Proposed Amendment Is Permitted Under Rule 15 Because YMTC Provided Written Consent

Under Rule 15, "[w]here the opposing party consents to the filing of an amended pleading, the amendment should be allowed." *Atlas*, 2016 WL 11521727, at *3 (citing *Fern*, 213 F.2d at 677). Here, the YMTC Entities have provided written consent to MTI filing its Second Amended Counterclaims. Ex. B. Accordingly, Rule 15 permits MTI to file its Second Amended Counterclaims.

VI. CONCLUSION

For the foregoing reasons, MTI respectfully requests that the Court grant Micron's motion and modify the case schedule to permit MTI to file its Second Amended Counterclaims.

Dated: January 29, 2025

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: */s/ Jason Lang*
Jason Lang
Attorneys for Defendant and Counterclaim Plaintiff Micron Technology, Inc., and Defendant Micron Consumer Products Group, LLC

PROOF OF SERVICE

I am employed in the County of San Mateo, State of California. I am over the age of 18 years old and not a party to this action. My business address is Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, California 94025. On January 29, 2025, I served the **MTI'S UNOPPOSED MOTION TO MODIFY THE CASE SCHEDULE TO PERMIT MTI TO REASSERT COUNTERCLAIMS [FILED UNDER SEAL]** on all interested parties to this action in the manner described as follows:

☒ **(VIA EMAIL)** On January 29, 2025, via electronic mail in Adobe PDF format the document(s) listed above to the electronic address(es) set forth below.

☐ **(VIA OVERNIGHT-FED EX)** I caused the within document(s) to be delivered by overnight courier to the address(es) set forth below.

Allen S. Cross (DCB No. 252687) allen.cross@ropesgray.com James R. Batchelder (Bar No. 136347) james.batchelder@ropesgray.com Andrew T. Radsch (Bar No. 303665) andrew.radsch@ropesgray.com James F. Mack (Bar No. 322056) james.mack@ropesgray.com Nancy N. Attalla (Bar No. 341070) nancy.attalla@ropesgray.com Rachael S. Bacha (NYB No. 4817938) rachael.bacha@ropesgray.com Stepan Starchenko (Bar No. 318606) stepan.starchenko@ropesgray.com ymtc-micron-ropes-service@ropesgray.com ROPES & GRAY LLP 1900 University Avenue, 6th Floor East Palo Alto, CA 94303-2284	Kevin C. Wheeler (Bar No. 261177) kevin.wheeler@lw.com Clement Naples (Pro Hac Vice) clement.naples@lw.com Brenda L. Danek (Pro Hac Vice) brenda.danek@lw.com Thomas W. Yeh (Bar No. 287118) thomas.yeh@lw.com Brett M. Sandford (Bar No. 302072) brett.sandford@lw.com Benjamin Behrendt (Pro Hac Vice) benjamin.behrendt@lw.com Brent Thomas Watson (Bar No. 301274) thomas.watson@lw.com Elliott Greb (Bar No. 347483) elliott.greb@lw.com Richard Lowry (Pro Hac Vice) richard.lowry@lw.com ymtcmicron.lwteam@lw.com LATHAM & WATKINS LLP
Counsel for Plaintiff and Counterclaim Defendants, Yangtze Memory Technologies Company, Ltd. and Yangtze Memory Technologies Company, Inc.	

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 29, 2025, at San Jose, California.

/s/ Gabrielle Van Vleck
Gabrielle Van Vleck

Micron Ex. 2055, p. 15
YMTC v. Micron
IPR2025-00499