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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 YANGTZE MEMORY TECHNOLOGIES)
16 COMPANY, LTD.,)

17 Plaintiff,)

18 v.)

19 MICRON TECHNOLOGY, INC., and)
20 MICRON CONSUMER PRODUCTS)
GROUP, LLC,)

21 Defendants.)

Case No. 3:23-cv-05792-RFL

**COUNTERCLAIM DEFENDANTS' REPLY IN
SUPPORT OF THEIR MOTION TO DISMISS
COUNTERCLAIMS**

Hearing Date: April 30, 2024

Time: 10:00 a.m.

Place: Courtroom 15

Judge: The Hon. Rita F. Lin

22 MICRON TECHNOLOGY, INC.,)

23 Counterclaim Plaintiff,)

24 v.)

25 YANGTZE MEMORY TECHNOLOGIES)
26 COMPANY, LTD., and YANGTZE)
MEMORY TECHNOLOGIES, INC.,)

27 Counterclaim Defendants.)
28

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1 In its Opposition to YMTC’s and YMTI’s Motion to Dismiss Counterclaims (ECF 50,
2 “Opposition”), Micron asks the Court to ignore significant factual holes in the counterclaims’
3 conclusory allegations. The Court should not do so. Micron’s allegations do not have “enough heft”
4 to survive, so they should be dismissed. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007).

5 The factual paucity of Micron’s allegations is not surprising, as Micron *knows* that
6 YMTC/YMTI are not selling the accused 3D NAND products in the U.S. (or otherwise engaging in
7 conduct that would infringe). Micron is one of two reported funders of an “advocacy” group named
8 China Tech Threat, which masquerades “corporate messaging as grassroots advocacy,” “take[s] a
9 hard-line position on restriction of Chinese tech,” and has “taken a hard line on Chinese semiconductor
10 companies that compete with...Micron.”¹ It is such “advocacy” that helped catalyze YMTC’s
11 placement on the Department of Commerce’s Entity List in 2022. By prohibiting the “export” of
12 “technology” by anyone in the U.S. to YMTC, the Entity List designation makes it impossible for
13 YMTC to have technical discussions with potential U.S. customers about their products, effectively
14 preventing YMTC from doing business here.² While the U.S. is a desirable market for any global
15 company, but not every global company is able to sell its products in the U.S., or otherwise compete
16 in the U.S. market—particularly where competitors engage in Micron’s exclusionary brand of
17 “advocacy.” Having so effectively deployed such “advocacy” to prevent YMTC from competing
18 against it in the U.S. market, Micron should not now be permitted to feign ignorance about that reality,
19 asserting counterclaims based on the false premise that YMTC is engaging in the very U.S.-based
20 commercial activity that Micron’s “advocacy” has prevented.

21 **I. Micron’s Failure to Mark, Coupled with Its Failure to Provide Pre-Suit Notice of**
22 **Alleged Infringement, Moots its Claims of Pre-Filing Infringement**

23 ¹ Brody Ford, Bloomberg, “Dell, Micron Backed a Group Raising Alarms on Rivals’ China Ties,”
24 Bloomberg (Jan. 25, 2024, 4:00 AM), [https://www.bloomberg.com/news/articles/2024-01-25/dell-
micron-backed-a-group-criticizing-chinese-rivals](https://www.bloomberg.com/news/articles/2024-01-25/dell-micron-backed-a-group-criticizing-chinese-rivals) (attached as Exhibit A).

25 ² The Department of Commerce has also made clear that it views as “red flags” purchases from
26 listed entities, even if not a deemed “export,” further curtailing YMTC’s ability to do business here.
27 See [https://www.bis.doc.gov/index.php/component/fsj_faqs/faq/142-can-i-purchase-items-from-a-
company-that-is-listed-on-the-entity-list](https://www.bis.doc.gov/index.php/component/fsj_faqs/faq/142-can-i-purchase-items-from-a-company-that-is-listed-on-the-entity-list) (attached as Exhibit B).

1 Micron’s concessions that it did not (1) plead that its products were marked (Opp. 16), or (2)
 2 give YMTC/YMTI pre-filing notice of alleged infringement (Opp. 12), means that Micron has no
 3 claim for *pre-filing* infringement under at least 35 U.S.C. § 271(a), because failure to mark renders
 4 pre-filing damages unavailable, or § 271(b), because inducement requires knowledge of the asserted
 5 patent and alleged infringement. *See* Mot. 7-9, 13, 20. And so, Micron’s allegations about events that
 6 allegedly occurred years ago, in 2018 or 2020, cannot *plausibly* support a claim for infringement in
 7 2024—particularly given the significant intervening events that Micron’s own allegations reference,
 8 namely, the “export bans” imposed on YMTC in 2022 that have effectively prevented YMTC from
 9 undertaking U.S.-based commercial activity. Counterclaim Compl., Ex. 26 (YMTC’s “ascent has
 10 stalled since Washington announced broad, stringent curbs on exports of technology and gear for
 11 making advanced semiconductors, as well as restrictions on U.S. nationals providing support to
 12 Chinese chipmakers”). Especially given the severity of those intervening events, Micron’s allegations
 13 of years-old conduct are too attenuated to support a claim for alleged infringement today.

14 In its Opposition (at 16), Micron attacks a strawman. Contrary to Micron’s suggestion,
 15 YMTC/YMTI do not argue that the entirety of Micron’s claims must be dismissed because Micron
 16 failed to mark. Rather, Micron’s claim for *pre-filing* infringement must be dismissed. Micron’s
 17 attempt to distinguish *LiquidWeb* on the basis that the court did not dismiss the plaintiff’s claim “in its
 18 entirety” is therefore misplaced. *Id.*; *see Express Mobile, Inc. v. Liquid Web, LLC*, No. 1:18-cv-01177,
 19 2019 WL 1596999, at *2 (D. Del. Apr. 15, 2019) (dissing claim for pre-filing damages).³

20 **II. Micron Does Not Plead Plausible Direct Infringement Under § 271(a)**

21 Micron’s Opposition fails to demonstrate that its claims weave together a factually or legally

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 23 ³ Citing one out-of-district case that no other court cites, Micron incorrectly argues that past damages
 24 may be available for the ’974 patent, despite Micron’s assertion of an apparatus claim. Opp. 16
 25 n.10. In this District, any assertion of an apparatus claim triggers the marking requirement.
 26 *Unwired Planet, LLC v. Apple Inc.*, No. 13-cv-04134, 2017 WL 1175379, at *4 (N.D. Cal. 2017)
 27 (holding that it makes no “intuitive sense...to let the patentee’s marking requirement stand or fall
 28 based on the course of litigation”); *Mformation Techs., Inc. v. Research in Motion Ltd.*, 830
 F.Supp.2d 815, 837-38 (N.D. Cal. 2011) (“[I]n *Crown Packaging* the Federal Circuit clearly stated
 that the applicability of § 287(a) turns on which claims were asserted.”) (citation omitted). In any
 event, Micron has not “quickly withdrawn” its assertion of an apparatus claim.

1 plausible claim for direct infringement under § 271(a), particularly where Micron all but concedes that
2 it has no viable claim for pre-suit § 271(a) infringement due to its failure to mark.

3 As an initial matter, Micron does not address, let alone salvage, its factually and legally
4 deficient allegation of infringement under § 271(a) for the '996 patent. *See* Mot. at 11 (explaining
5 how the '996 patent claims only methods of making a product, and Micron concedes that the accused
6 products are made abroad). Accordingly, that claim should be dismissed with prejudice.

7 As to its remaining claims under § 271(a), none of Micron's allegations alone or together
8 plausibly—instead of merely possibly—suggests that YMTC or YMTI sells, offers for sale, imports,
9 or uses the accused products in the United States. Micron's Opposition does not patch those holes.

10 Micron relies on just two allegations—a 2020 trademark registration, and a YMTI employee's
11 statements on LinkedIn summarizing his career since 1987—in a misguided attempt to show that
12 Micron plausibly pleads that YMTC/YMTI sells or offers to sell the accused products in the U.S. Opp.
13 9-10. YMTC's trademark registration does not list, identify, or otherwise refer anywhere to the
14 accused products, and Micron does not plead that it does (nor could it). *See* Counterclaim Compl., ¶
15 21. While the registration references "Xtacking," Micron's pleading confirms that Xtacking is a
16 technology, not a product. *Id.* Moreover, as Micron notes, *id.*, that registration was filed in 2020—
17 *four years* before Micron's filing of its counterclaims. A four-year-old trademark registration that
18 does not identify the accused products does not plausibly suggest that YMTC/YMTI have sold or
19 offered to sell the accused products in the U.S., let alone do so today—again, especially in light of the
20 severity of the intervening events referenced above. Adding Mr. Duffin's cited LinkedIn statements
21 does not change the outcome. *See* Opp. 10. Responsibility for "\$5B+ in shipments per year" and
22 being "used to" regularly "interacting" with customers, does not plausibly state a claim for
23 infringement.⁴ That is particularly so when none of those statements mentions sales of the accused

24 ⁴ That Mr. Duffin is in California does not make it more plausible from the cited allegations that
25 YMTC or YMTI have in fact sold or offered to sell (which requires at least price terms, as described
26 *infra*) an accused product in the United States. An attempt to serve the U.S. market does not
27 plausibly establish success, particularly where, as Micron knows, YMTC's 2022 addition to the
28 Entity List effectively prevented YTMTC's ability to do business here. Micron also knows that Mr.
Duffin's "\$5B+ in shipments per year" does not and *could not* refer to YMTC, but instead refers to
Mr. Duffin's prior role at SanDisk, where Mr. Duffin worked under Micron's now-CEO, who was at

1 products, sales in the U.S., interactions with U.S. customers, or interactions that constitute an offer to
 2 sell an accused product.⁵ In the words of *Twombly*, those actions would be “consistent with...a wide
 3 swath” of legitimate commercial behavior, and such allegations do not “possess enough heft” to
 4 suggest wrongdoing. *Twombly*, 550 U.S. at 554, 557.

5 Micron’s reliance on *CalTech*, Opp. 10, is also misplaced. While a U.S. sales cycle leading to
 6 a “design win” could trigger a U.S. sale, Micron *does not* allege that YMTC or YMTI engages in, let
 7 alone secured, any “design wins.” A “design win,” as explained in *Carnegie-Mellon*, generally refers
 8 to “a customer’s exclusive use of [a] designer’s customized chip for a certain period.” *Carnegie*
 9 *Mellon Univ. v. Marvell Tech. Grp., Ltd.*, 807 F.3d 1283, 1309 (Fed. Cir. 2015). Of course, “marketing
 10 alone does not constitute infringement under § 271(a).” *FutureLogic, Inc. v. TransAct Techs. Inc.*,
 11 No. 05-cv-03754, 2008 WL 11400763, at *26 n.185 (C.D. Cal. Mar. 3, 2008).

12 Micron’s arguments about the “use” prong fare no better. Again, Micron relies on just two
 13 allegations, which do not show plausible infringement. First, Micron argues that YMTC “launched
 14 and showed its products” at a 2018 trade show. Opp. 10. That allegation is impermissibly conclusory
 15 because the cited documents do not reference the accused products; they state that YMTC launched
 16 and displayed its innovative Xtacking “architecture” and “technology.” *See id.*, Exs. 25, 37. YMTC’s
 17 novel Xtacking architecture involves features built at the nanometer (i.e., billionths of a meter) scale,
 18 and is not perceptible from viewing a memory chip. It is, therefore, not reasonable to infer from a
 19 statement about launching a novel architecture, that YMTC displayed the products accused here—and
 20 it is not an act of infringement to display an architecture or discuss a technology. Moreover, that
 21 alleged 2018 act does not plausibly support any alleged use in the U.S. in 2024, which Micron must
 22 show in view of its failure to mark. Micron also relies on Mr. Duffin’s prior role, ending March 2019

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 24 that time the CEO of SanDisk. *See* Ex. 31 (identifying Mr. Duffin as VP at SanDisk from 2011-
 25 2016); https://en.wikipedia.org/wiki/Sanjay_Mehrotra (noting that Mr. Mehrotra, who is now CEO
 of Micron, was the President and CEO of SanDisk from 2011-2016).

26 ⁵ An offer to sell requires at least “a description of the allegedly infringing merchandise and the price
 27 at which it can be purchased.” *3D Sys., Inc. v. Aarotech Labs, Inc.*, 160 F.3d 1373, 1379 (Fed. Cir.
 1998).

1 (i.e., five years ago), leading product, test, and assembly engineering. Opp. 10. But Mr. Duffin's cited
2 LinkedIn page nowhere states that such testing was in the U.S. (it was not), *see* Ex. 31, and Micron
3 does not plead that YMTC performs such product line testing in the U.S., thousands of miles from
4 where the products are fabricated, because it knows such allegation would be false.

5 Finally, Micron's arguments about "importation" of the accused products similarly have
6 insufficient heft for the same reasons described above. Micron relies on only its allegations about
7 YMTC's 2020 trademark registration, 2018 launch of its award-winning architecture, and Mr. Duffin's
8 role from 2016-2019, none of which alone or together establishes plausible importation of an accused
9 product (today or in the past).

10 **III. Micron Does Not Plead Plausible Infringement Under § 271(g)**

11 Micron's Opposition acknowledges that its claim for infringement under § 271(g) rises or falls
12 with the sufficiency of its "importation" allegations under § 271(a). Opp. 11. Because its importation
13 allegations lack requisite heft, Micron's claim for § 271(g) infringement must be dismissed.

14 **IV. Micron Does Not Plead Plausible Inducement Under § 271(b)**

15 As with direct infringement, Micron's Opposition fails to demonstrate that it pleaded facts that
16 support plausible induced infringement. Micron's cited cases are inapposite; none addresses whether
17 a plaintiff sufficiently pleaded that a defendant, who makes the accused products abroad, actively
18 induces acts in the U.S. that would infringe. On the other hand, Micron fails to address
19 YMTC/YMTI's analogous cases, instead attempting to avoid them by arguing that they concern a
20 different procedural posture—summary judgment. Opp. 16 n.9. But those cases cannot be so easily
21 dismissed. If the adduced *evidence* does not support a claim for inducement, making summary
22 judgment appropriate as a matter of law, then of course the same or similar *allegations* also cannot
23 support a claim for inducement, making dismissal appropriate. *See, e.g., Twombly*, 550 U.S. at 554,
24 557 (holding that where proof of parallel conduct would be inadequate to overcome summary
25 judgment of no liability on a Sherman Act claim, mere allegations of parallel conduct fail to state a
26 claim that is plausible). YMTC/YMTI's cases are directly on point, and they require dismissal.

27 **A. Micron Does Not Plead Plausible Requisite Knowledge**

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1 While the cases in this District are split on whether a complaint can provide requisite notice
2 for inducement, *compare* Mot. 13 *with* Opp. 12., YMTC/YMTI submit that requiring a party have an
3 actionable claim before filing that claim—as opposed to attempting to create a claim by filing suit—
4 is the better approach more consistent with other areas of the law. *See Trimble Inc. v. PerDiemCo*,
5 997 F.3d 1147, 1154 (Fed. Cir. 2021) (noting that the Supreme Court “has repeatedly rejected special
6 rules for patent litigation in [the] context of rules governing civil litigation generally”). But the Court
7 does not need to resolve this intra-district split because, regardless of which authority is followed,
8 Micron cannot establish that it pleaded plausible pre-filing knowledge, and thus cannot establish
9 plausible pre-filing inducement. As a result, its allegations about acts that occurred years ago, before
10 YMTC/YMTI allegedly were put on notice of their alleged infringement, are irrelevant.

11 While Micron briefly tries to justify its allegations of pre-filing knowledge, Opp. 12, that effort
12 falls short. Micron relies on allegations that YMTC/YMTI knew of Micron’s patent portfolio
13 generally, not the asserted patents specifically, *see id.*, but fails to distinguish the law holding such
14 allegations inadequate. *See* Mot. 8; *see also MasterObjects, Inc. v. Amazon.com, Inc.*, No. C 20-08103
15 WHA, 2021 WL 4685306, at *3 (N.D. Cal. Oct. 7, 2021) (“Allegations of general knowledge of a
16 patent family, or a patent portfolio, are insufficient to allege specific knowledge of a particular
17 patent.”). Micron also cites its allegations that YMTC hired ex-Micron employees, but Micron’s own
18 cited case shows that Micron’s pleading is inadequate. In *Lifetime*, the Federal Circuit held that a
19 plaintiff adequately pleaded knowledge for inducement where plaintiff pleaded that defendant hired
20 two of plaintiff’s employees who had actual knowledge of the specific asserted patent and its scope.
21 *Lifetime Indus.*, 869 F.3d 1372, 1380 (Fed. Cir. 2017). Here, in contrast, Micron does not allege (let
22 alone allege with facts) that the alleged ex-Micron engineers knew of the asserted patents and their
23 scope. Moreover, in *Lifetime*, plaintiff alleged that defendant began to allegedly infringe, by use of a
24 new design, only after gaining knowledge from those two new hires. *Id.* at 1375, 1380. Micron makes
25 no similar allegation here. Far from supporting Micron’s position, the detailed allegations in *Lifetime*
26 stand in sharp relief to the conclusory and factually bereft allegations here. Micron’s failure to plead
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1 plausible pre-suit knowledge is critical because none of the pre-suit acts that Micron alleges YMTC
2 or YMTI engaged in could possibly—let alone plausibly—indirectly infringe.

3 **B. Micron Does Not Plead Plausible Encouragement or Intent**

4 Micron also fails to show that it pleaded a plausible affirmative act coupled with specific intent
5 to encourage another to directly infringe by, e.g., importing into, or using in, the U.S. the accused
6 products, as required for inducement. *See* Mot. 15. While, as Micron notes (Opp. 13), it need not
7 prove its case at the pleading stage, it must plead facts that make it plausible that YMTC or YMTI
8 induced infringement—not that it is merely possible. Micron has not done so. It is not enough, as
9 Micron suggests, to plead that YMTC or YMTI has encouraged customers to integrate the accused
10 memory chips into their own products generally, because any such use of the accused products outside
11 the United States would not infringe. Micron was required to plead facts showing it is plausible that
12 YMTC or YMTI specifically encouraged or instructed customers to do so *in the United States*—an
13 allegation that Micron’s pleading carefully avoids. *See* Mot. 16-18.

14 Micron again relies on Mr. Duffin’s LinkedIn—but that allegation (alone or together with other
15 allegations) does not establish plausible inducement. Mr. Duffin’s alleged responsibility for \$5B+ in
16 shipment per year (which Micron knows does not pertain to YMTC) and regular “interact[ion]s” with
17 customers, does not plausibly suggest that he encourages customers to import, sell, etc. (a) the specific
18 accused products, (b) specifically in the U.S.—when such activity is equally consistent with non-
19 accused behavior (e.g., encouraging customers to buy YMTC’s products generally, for use anywhere).
20 Allegations merely consistent with the alleged “wrongdoing” are, without more, insufficient.
21 *Twombly*, 550 U.S. at 557. And extrapolating from an allegation that Mr. Duffin regularly interacts
22 with customers and manages international sales, to an inference that he encourages customers to use
23 the specific accused products specifically in the U.S.—and further that such customers in fact did so—
24 is not reasonable. At best, that is one of many *possible* inferences—but mere possibilities are
25 inadequate; plausibility is required.⁶ *Twombly*, 550 U.S. at 557. A foreign company selling products

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27 ⁶ Micron does not allege that Lexar is a U.S. brand, since Micron sold it to Chinese company
28 Longsys in 2017. *See* <https://sg.micron.com/legal>.

1 to a foreign customer, even if at some later point those products are imported into the U.S., is
2 insufficient to establish induced infringement—and Micron does not plead specific facts to infer more.
3 *See* Mot. 17-19. Nor does the fact that Mr. Duffin resides in California reasonably suggest that he
4 knows that the accused products are incorporated by customers into products that are allegedly later
5 sold in the United States. *Opp.* 12-13. Micron pleads no facts about the supply chain for 3D NAND,
6 let alone YMTC’s accused products, that would reasonably suggest such omniscience. Indeed, that
7 sort of inference is contrary to the court’s holding in *Viavi*, a case that Micron fails to distinguish. *See*
8 Mot. 18, 19.

9 Micron’s next argument—that it was not required to plead any facts supporting its allegation
10 that YMTC/YMTI “publish and provide technical materials, product specifications, and promotional
11 literature”—is contrary to law. *Opp.* 14. Conclusory allegations are entitled no weight, and a
12 complaint must recite sufficient “factual matter.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Garrett*
13 *v. TP-Link Research Am. Corp.*, No. 20-cv-03491-SI, 2020 WL 5517202, at *2 (N.D. Cal., Sept. 14,
14 2020). Micron cites *Bot M8*, *Opp.* 14, but that decision does not address induced infringement and
15 provides no support for Micron’s argument that it was not required to plead supporting facts for its
16 otherwise conclusory averment.⁷ Micron also cites its Exhibit 38 (a YMTC webpage), apparently in
17 the attempt to show that Micron pleaded some supporting facts. *See Opp.* 14. But even in its
18 Opposition, Micron cannot explain how that YMTC webpage allegedly encourages customers to use
19 the accused products specifically in the U.S., as would be required to infringe. And Micron does not
20 dispute that mere product marketing is insufficient to state a claim. *See* Mot. 15-16.

21 _____
22 ⁷ Micron’s assertion that it is plausible that Mr. Duffin provided “such materials” in his “sales
23 meetings with customers,” or that YMTC provided “such materials” when it “launches” and “shows
24 its products at trade shows,” *Opp.* 14, is broken for many reasons. First, Micron fails to identify
25 what “such materials” are, beyond its impermissibly conclusory allegation that lacks any factual
26 detail. Second, Micron cites nothing to support its attorney argument that Mr. Duffin engages in
27 “sales meetings with customers” in the U.S. And third, Micron attempts in its Opposition to expand,
28 without support, its averment of a single trade show in 2018—six years before Micron provided
notice of alleged infringement to YMTC/YMTI and therefore six years before YMTC/YMTI could
have induced infringement—to plural “trade shows” where plural “products” were launched and
displayed. Such un-pleaded attorney argument is entitled to no weight.

1 Contrary to Micron’s argument, Opp. 14, YMTC/YMTI do not attempt to “downplay” either
2 YTMC’s website, or Micron’s conclusory allegation of compliance with unidentified U.S. safety
3 standards. Micron’s sole basis for arguing that the YMTC website encourages customers to use, sell,
4 or import products into the U.S. specifically, is that the website is in English. But that is not a
5 *reasonable* inference when English is so widely spoken worldwide. And taking Micron’s argument
6 to its logical conclusion would mean that YMTC specifically intended customers to infringe in every
7 country where English is spoken. *Twombly* was clear that allegations of standard business practice
8 are inadequate to suggest wrongdoing. *Twombly*, 550 U.S. at 557. As to the pleaded compliance with
9 U.S. safety standards, Micron argues that it was not required to identify any—but without such factual
10 support, Micron is left with only a conclusory assertion that is entitled to no weight. *Iqbal*, 556 U.S.
11 at 678; *Garrett*, 2020 WL 5517202, at *2.

12 Finally, Micron’s attempts to infer inducement from YMTC’s having participated in a 2018
13 “Flash Memory Summit” and maintenance of ties with Silicon Valley, also fall short. Opp. 15.
14 Participating in a trade show six years ago does not reasonably suggest the requisite specific intent as
15 of the filing of the Counterclaims, which is when Micron first provided the requisite notice for there
16 to be inducement. Nor does Micron allege that such participation in fact resulted in a customer who
17 used an accused product in the U.S. Moreover, even if somehow relevant today, that such trade show
18 was held in the U.S., and not elsewhere, does not speak to YMTC’s or YMTI’s intent to serve a
19 particular market; Micron does not, for example, allege that YMTC or YMTI organized that
20 conference or selected its location. And finally, maintaining ties to Silicon Valley, where so many
21 global technology companies have headquarters or significant offices, does not, without more,
22 reasonably suggest that YMTC took active steps to encourage use of the accused products in the U.S.,
23 and that such efforts resulted in such use. Such “ties” are bereft of any specific allegation of “an
24 affirmative act” to encourage another party to infringe. *Power Integrations, Inc. v. Fairchild*
25 *Semiconductor Int’l, Inc.*, 843 F.3d 1315, 1332 (Fed. Cir. 2016). Instead, Micron’s generic allegations
26 of YMTC’s “commercial efforts stay[] in neutral territory” and fail to plausibly suggest inducement.
27 *Twombly*, 550 U.S. at 557. This is all the more so where the only facts Micron pleads about the
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