

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. IPR2025-00498
U.S. Patent No. 8,803,214

PATENT OWNER'S DISCRETIONARY DENIAL BRIEFING

TABLE OF CONTENTS

	Page
LISTING OF EXHIBITS.....	iv
I. INTRODUCTION	1
II. FACTUAL BACKGROUND.....	2
A. Micron Is A Pioneer In NAND Flash Memory.....	2
B. The Chinese Government’s Control of Its Semiconductor Industry	3
C. YMTC Is China’s State-Owned NAND Memory Company	7
D. Bipartisan U.S. Policymakers And The U.S. Administration Agree That The Chinese Government Controls YMTC	10
III. PROCEDURAL BACKGROUND	13
IV. THE DIRECTOR SHOULD DENY INSTITUTION.....	15
A. Petitioner Is Not A “Person” Entitled To File An IPR Petition	16
B. Petitioner Failed To Identify All RPIs	20
1. YMTC Did Not Identify the Chinese Government as an RPI.....	21
2. YMTC Is Not Entitled to Its Original Filing Date.....	29
C. The Director Should Exercise Its Discretion To Deny Institution Under §314(a).....	32
V. CONCLUSION.....	37

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Aceto Agric. Chems. Corp. v. Gowan Co.</i> , IPR2015-01016, Paper 15 (PTAB Oct. 2, 2015).....	25
<i>Adello Biologics LLC v. Amgen Inc.</i> , PGR2019-00001, Paper 11 (PTAB Feb. 14, 2019).....	29, 30
<i>Amazon.com, Inc. v. Appistry, Inc.</i> , IPR2015-00480, Paper 18 (PTAB July 13, 2015).....	26, 27
<i>Applications in Internet Time, LLC v. RPX Corp.</i> , 897 F.3d 1336 (Fed. Cir. 2018)	<i>passim</i>
<i>Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.</i> , IPR2013-00453, Paper 88 (PTAB Jan. 6, 2015)	24
<i>Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.</i> , IPR2015-00826, Paper 39 (PTAB Dec. 6, 2016)	31
<i>Bozeman Fin. LLC v. Fed. Rsrv. Bank of Atlanta</i> , 955 F.3d 971 (Fed. Cir. 2020)	19, 20
<i>Charter Comms., Inc., v. Iarnach Techs. Ltd.</i> , IPR2024-01287, Paper 12.....	27
<i>Cisco Sys., Inc. v. Hewlett Packard Enter. Co.</i> , IPR2017-01933, Paper 9 (PTAB Mar. 16, 2018).....	22
<i>Copperweld Corp. v. Indep. Tube Corp.</i> , 467 U.S. 752 (1984).....	25
<i>Fasteners For Retail, Inc. v. RTC Industries, Inc.</i> , IPR2018-00742, Paper 32 (PTAB Nov. 15, 2018).....	31
<i>Harmonic Inc. v. Avid Tech., Inc.</i> , 815 F.3d 1356 (Fed. Cir. 2016)	32
<i>Icon Health & Fitness, Inc. v. Strava, Inc.</i> , 849 F.3d 1034 (Fed. Cir. 2017)	27

<i>Luminex Int’l Co. v. Signify Holdings B.V.</i> , IPR2024-00101, Paper 10 (PTAB May 9, 2024)	24
<i>Microsoft Corp. v. Science Applications Int’l Corp.</i> , IPR2019-01311, Paper 35 (PTAB Jan. 27, 2020)	32, 33, 36, 37
<i>Proppant Express Invs. LLC v. Oren Techs., LLC</i> , IPR2017-01917, Paper 86 (PTAB Feb. 13, 2019).....	29, 30
<i>Return Mail, Inc. v. U.S. Postal Service</i> , 587 U.S. 618 (2019).....	<i>passim</i>
<i>Saint Regis Mohawk Tribe v. Mylan Pharms. Inc.</i> , 896 F.3d 1322 (Fed. Cir. 2018)	32, 35, 37
<i>Uniloc 2017 LLC v. Facebook Inc.</i> , 989 F.3d 1018 (Fed. Cir. 2021)	28
<i>Ventex Co. v. Columbia Sportswear North America, Inc.</i> , IPR2017-00651, Paper 152 (PTAB Jan. 24, 2019)	23
<i>Worlds Inc. v. Bungie, Inc.</i> , 903 F.3d 1237 (Fed. Cir. 2018)	21, 27, 29
<i>Zoll Lifecor Corp. v. Philips Elecs. N.A. Corp.</i> , IPR2013-00606, Paper 13 (PTAB Mar. 20, 2014)	25
Statutes	
35 U.S.C. §311(a)	16
35 U.S.C. §312(a)(2).....	21
35 U.S.C. §316(b)	35
Other Authorities	
84 Fed. Reg. 64,280 (Nov. 21, 2019).....	21, 22
90 Fed. Reg. 1105 (Jan. 7, 2025)	12

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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): Ministry of Industry and Information Technology, <i>The Ministry of Industry and Information Technology Officially Announced the “National Integrated Circuit Industry Development Promotion Outline”</i> (Jun. 26, 2014) (https://www.cac.gov.cn/2014-06/26/c_1111325916.htm) (“National IC Development Promotion Outline”)
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2008	<p>What kind of enterprise is a state-owned enterprise? (State-owned Assets Supervision and Administration Commission of the State Council (SASAC)):</p> <p>State-Owned Assets Supervision and Administration Commission of the State Council (SASAC), <i>Definition of “State-Owned Enterprise”</i> (July 4, 2019) (https://www.sasac.gov.cn/n2588040/n2590387/n9854212/c11647665/content.html) (“SASAC Definition”)</p>
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2010	<p>Notice of the State Council on Issuing “Made in China 2025”:</p> <p>China’s State Council, <i>Notice of the State Council on Issuing “Made in China 2025”</i> (May 19, 2015) (https://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm) (“Made in China 2025”)</p>
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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) (“ <i>Yahoo!</i> Article”)
2019	<p>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):</p> <p>Baidu, <i>Yangtze Memory Increases Capital and Expands Capacity to RMB 100 Billion, Big Fund Phase II Forms a Partnership with Local Hubei State-owned Assets</i> (Mar. 2, 2023) (https://baijiahao.baidu.com/s?id=1759256650733024656&wfr=spider&for=pc) (“<i>Baidu</i> Article”)</p>
2020	Certified English Translation of EX2019 (<i>Baidu</i> Article)
2021	YMTC’s Rule 7.1 Corporate Disclosure Statement (Nov. 9, 2023), <i>Yangtze Memory Technologies Company, Ltd. v. Micron Technology, Inc.</i> , C.A. No. 5:23-cv-05792-VKD (N.D. Cal.)

Exhibit	Description
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2024	<p>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)):</p> <p>State-Owned Assets Supervision and Administration Commission of the State Council (SASAC), <i>Focusing on Key Points and Making Breakthroughs in Innovation, Hubei Solidly Promotes the Deepening and Improvement Actions to Go Deeper and More Concrete</i> (Mar. 25, 2024) (www.sasac.gov.cn/n4470048/n29955503/n30329277/n30329358/c30380577/content.html) (“Statement of China’s State Council”)</p>
2025	<p>Certified English Translation of EX2024 (Statement of China’s State Council)</p>
2026	<p>Yangtze Memory’s “Double 11 Performance” Surpassed Samsung’s for the First Time (Sina Finance):</p> <p>Sina Finance, <i>Yangtze Memory’s “Double 11 Performance” Surpassed Samsung’s for the First Time</i> (Nov. 12, 2024) (https://finance.sina.com.cn/roll/2024-11-12/doc-incvupap6483110.shtml) (“Sina Finance Article”)</p>
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Exhibit	Description
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2029	<p>Certified English Translation of EX2028 (Southeast Univ., YMTC 2024 Campus Recruitment)</p>
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2031	<p>Certified English Translation of EX2030 (Wuhan Univ. of Sci. and Tech., YMTC 2020 Campus Recruitment Introduction)</p>
2032	<p>Yangtze Memory 2025 Campus Recruitment (China University of Petroleum (Beijing)):</p> <p>China University of Petroleum, <i>Yangtze Memory 2025 Campus Recruitment</i> (Feb. 20, 2025) (https://career.cup.edu.cn/job/view/id/618140) (“China Univ. Of Petroleum, YMTC 2025 Campus Recruitment”)</p>
2033	<p>Certified English Translation of EX2032 (China Univ. Of Petroleum, YMTC 2025 Campus Recruitment)</p>

Exhibit	Description
2034	<p>U.S. Chip Equipment Suppliers Suspend Business Activities at Yangtze Memory (Wall Street Journal – China):</p> <p>Yoko Kubota et al., <i>U.S. Chip Equipment Suppliers Suspend Business Activities at Yangtze Memory</i>, 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”)</p>
2035	Certified English Translation of EX2034 (<i>WSJ China Article</i>)
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)
2037	Demetri Sevastopulo, <i>Bipartisan Group Urges US Blacklist for “Beijing-Directed” Chipmaker</i> , 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, <i>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</i> (Dec. 16, 2022) (“Schumer Statement”)
2039	<p>U.S. Department of Defense, <i>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</i> (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/)</p>

Exhibit	Description
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2041	<i>Intentionally Omitted</i>
2042	U.S. Postal Service, Postal Facts, USPS Fact #59 (Apr. 22, 2024)
2043	<i>Intentionally Omitted</i>
2044	<i>Oversight of the USPTO: Hearing Before the Subcomm. On Intellectual Property, 118th Cong. (2023)</i> (Testimony of Katherine Vidal, Undersecretary of Commerce for IP and Director of USPTO)
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: China’s State Council, <i>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</i> (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)

Exhibit	Description
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

Patent Owner Micron Technology, Inc. (“Micron”) opposes the petition for *Inter Partes* Review of U.S. Patent No. 8,803,214 (the “214 patent”), filed by Yangtze Memory Technologies Co., Ltd. (“YMTC” or “Petitioner”).¹

I. INTRODUCTION

The Director should deny institution for three reasons, each of which provides an independent basis for denial.

First, YMTC—an entity created, owned, and controlled by the Chinese government—is not a statutorily authorized “person” entitled to file an IPR petition under the Supreme Court’s holding in *Return Mail, Inc. v. U.S. Postal Service*, 587 U.S. 618 (2019).

Second, YMTC omitted the Chinese government as a real party-in-interest even though it has a substantial vested interest in the outcome of this proceeding, will benefit from any redress, and has an established relationship with YMTC. This omission was not a good-faith mistake but a strategic maneuver to shield the Chinese government (and its other state-owned entities) from, e.g., the statutory estoppel

¹ As Section III details, Patent Owner provides substantially identical arguments in its Preliminary Responses and Sur-replies in IPR2025-00098 and -00099, filed on March 12, 2025 and April 18, 2025 respectively, and in its Discretionary Denial Briefing in IPR2025-00500 and -00501, filed contemporaneously.

provisions of Title 35. Even if YMTC moved to amend its RPI identification to add the Chinese government, doing so now would be beyond the §315(b) one-year bar.

Third, the Director should exercise its discretion to deny institution because it should not provide the Chinese government with an opportunity to benefit from the outcome of this IPR proceeding based on the significant foreign policy and national security implications of allowing a foreign state actor to challenge U.S.-granted IP rights. Instituting review would set a dangerous precedent, enabling any foreign government to challenge U.S. patents through proxies and thereby threaten the economic and strategic interests of the United States.

The Director should deny institution of YMTC's IPR petition.

II. FACTUAL BACKGROUND

A. Micron Is A Pioneer In NAND Flash Memory

NAND flash memory is a crucial component in the semiconductor ecosystem. It is a type of memory that does not lose data when it loses power. Conventional NAND stores data in memory cells laid out in an array of rows and columns. Historically, NAND arrays were laid out two-dimensionally in a single layer. But, as demand for data storage grew, the semiconductor industry developed multi-layer NAND devices, in which layers of NAND memory cells are stacked vertically on top of each other. This is 3D NAND. By stacking layers vertically, 3D NAND dramatically increases memory storage capacity compared to conventional NAND.

Micron began its pioneering work in developing 3D NAND products over a decade ago. Micron invested billions of dollars and years of effort towards researching, developing, and manufacturing 3D NAND technology. As part of this effort, Micron filed for (and obtained) numerous U.S. patents on this technology no later than 2010. This culminated in Micron launching its first 3D NAND product on March 26, 2015. EX2001 (Micron “3D NAND Flash Memory” Press Release) at 1-2. Since then, Micron has continued to innovate its 3D NAND technology by developing memory products with more and more capacity and capabilities. Micron has received numerous awards and widespread recognition for its innovation (*see, e.g.*, EX2002 (Micron “Best of Show Award” Press Release) at 1), and it is a leading innovator—both in the U.S. and globally—of semiconductor memory devices, with over 57,000 patents (*see* EX2003 (Micron Form 10-K (2024)) at 2). In fact, Micron (headquartered in Boise, Idaho) remains the only U.S.-based manufacturer of semiconductor memory devices.

B. The Chinese Government’s Control of Its Semiconductor Industry

A close examination of the Chinese government’s strategic initiatives and investments in the semiconductor industry yields a clear understanding of Petitioner. For more than a decade, the Chinese government has invested heavily in the semiconductor industry within its borders and set policies for Chinese semiconductor companies. In June 2014, China’s State Council announced its

“National Integrated Circuit Industry Development Outline” with the “goal of establishing a world-leading semiconductor industry in all areas of the integrated circuit supply chain.” See EX2005 (Translation of EX2004 (National IC Development Promotion Outline)) at 1; EX2006 (Semiconductors and the CHIPS Act: The Global Context) at 19-20. It sought to “better play the role of the government,” remove “bottleneck[s] of industrial development,” establish “a national integrated circuit industry development leading group ... for the overall coordination of the integrated circuit industry,” and create “a financing platform and policy environment.” EX2005 at 1-2; EX2006 at 19-23.

The Chinese government then created the “National Integrated Circuit Industry Investment Fund” (or “Big Fund”) and raised 138.7 billion yuan from multiple government and state-owned enterprises,² including China’s Ministry of

² According to China’s State Council, the term “state-owned enterprise” includes “state-owned enterprises, state-owned companies and state-owned capital holding companies that the State Council and local people’s governments respectively perform the duties of investors on behalf of the state, including enterprises supervised by central and local state-owned assets supervision and administration agencies and other departments at the same level and enterprises formed by their investment at each level.” EX2009 (Translation of EX2008 (SASAC Definition)).

Finance. EX2007 (Case Study: From Paper Tiger to Real Tiger?) at 5; *see id.* at 3-7. The Big Fund aimed to “*support[] the integrated circuit manufacturing field,*” “implement mergers,” and “*standardize corporate governance.*”³ EX2005 at 2.

In May 2015, China’s State Council launched its “Made in China 2025” initiative. EX2011 (Translation of EX2010 (Made In China 2025)). The initiative set an ambitious ten-year roadmap for China to become a global leader in high-tech industries and officially solidified the semiconductor industry as one of the Chinese government’s targets. EX2011 at 1-13 (e.g., “[W]e must seize the current rare strategic opportunities, actively respond to challenges, strengthen overall planning, highlight innovation-driven, formulate special policies, give full play to institutional advantages, mobilize the whole society to work hard, rely more on Chinese equipment and Chinese brands, ... and complete the strategic task of transforming Chinese manufacturing from big to strong.”), 30.

The “Made in China 2025” initiative also outlined a comprehensive set of strategic goals, emphasizing the government’s central role in control and financing.⁴

³ All emphases added unless otherwise noted.

⁴ *See also* EX2047 (Translation of EX2046 (State Council Notice on Policies to Promote Development of IC)) at 4-5 (“Strengthen services and guidance for the

Id. at 8-9 (e.g., “Market-led, **government-guided**. Comprehensively deepen reform, give full play to the decisive role of the market in resource allocation, strengthen the dominant position of enterprises, and stimulate the vitality and creativity of enterprises. **Actively transform government functions, strengthen strategic research and planning guidance**, improve relevant support policies, and create a good environment for enterprise development.”), 37, 39, 41-44 (e.g., “**Deepen the reform of state-owned enterprises [and] improve the corporate governance structure . . .**”). Indeed, the U.S. Congressional Research Service (CRS) explained:

China’s policies feature a substantial and central role for the government in directing and financing Chinese businesses to obtain foreign IP related to semiconductors. The Chinese government uses production targets; subsidies; tax preferences; trade and investment barriers (including pressure to engage in joint ventures); and discriminatory antitrust, IP, procurement, and standards practices. The policies seek to leverage China’s central role in global consumer electronics manufacturing and potential as a semiconductor production hub to incentivize and pressure foreign companies to localize production, share technology, and partner with the Chinese government and affiliated entities.

construction of major integrated circuit projects [and] orderly guide and regulate the development of the integrated circuit industry”), 8-9.

EX2012 (China’s New Semiconductor Policies: Issues for Congress) at 6; *see also id.* at 7-11.

C. YMTC Is China’s State-Owned NAND Memory Company

In pursuit of its “Made in China 2025” initiative, the Chinese government tasked Tsinghua Unigroup, a state-controlled company, with leading the country’s memory chip development. *See* EX2014 (Translation of EX2013 (*People’s Paper Article*)) at 2; EX2017 (Stephen Ezell Testimony) at 7. On July 26, 2016, Tsinghua Unigroup—jointly with the Big Fund and municipal governments—founded YMTC to develop NAND memory. EX2016 (Translation of EX2015 (YMTC Press Release)) at 1. This joint venture initially invested more than \$24 billion (USD) in YMTC. *See* EX2017 at 7. Since then, the Chinese government has continued to invest heavily in YMTC. In 2023, for example, the Chinese government invested another \$7 billion (USD) through various investment vehicles, such as the second phase of its Big Fund. EX2018 (*Yahoo!* Article) at 1; EX2020 (Translation of EX2019 (*Baidu* Article)) at 1-2.

The Chinese government not only invests heavily in YMTC, but it also owns and controls YMTC. YMTC is wholly owned by one parent corporation: Yangtze Memory Technologies Holding Co., Ltd. (“YMTC Holding”). *See* EX2021 (YMTC’s Corporate Disclosure Statement) at 2. And YMTC Holding is owned by the following state-owned enterprises (as of March 12, 2025):

Shareholder	Ownership
Hubei Changsheng Development Co., Ltd. (湖北长晟发展有限责任公司), a state-owned enterprise	~29%
Wuhan Xinfei Technology Investment Co., Ltd. (武汉芯飞科技投资有限公司), a state-owned enterprise	~27%
National IC Industry Investment Fund Co., Ltd. (国家集成电路产业投资基金股份有限公司), a state-owned enterprise	~13%
National IC Industry Investment Fund Phase II Co., Ltd. (国家集成电路产业投资基金二期股份有限公司), a state-owned enterprise	~12%
Hubei Science & Technology Investment Group Co., Ltd. (湖北省科技投资集团有限公司), a state-owned enterprise	~10%
Hubei Guoxin Industry Investment Fund Partnership (L.P.) (湖北国芯产业投资基金合伙企业(有限合伙)), a state-owned enterprise	~6%
Yangtze Industrial Investment Group Co., Ltd. (长江产业投资集团有限公司), a state-owned enterprise	~3%
Total	100%

See EX2023 (Translation of EX2022 (2024 Tracking Rating Report)) at 9-10; EX2027 (Translation of EX2026 (*Sina Finance* Article)) at 1 (“Yangtze Memory is a state-controlled enterprise ... [where] all seven shareholders of Yangtze Memory

Technologies Holdings Co., Ltd. are state-owned assets.”); EX2020 at 1-2 (“Hubei Changsheng Development Co., Ltd. is held by Hubei Integrated Circuit Industry Investment Fund, Wuhan Optics Valley Finance and Yangtze River Industrial Investment Group”—with the actual “controller behind the scenes [being the governmental] Administration of Wuhan East Lake High-tech Development Zone.... [The] actual controller of Yangtze River Industrial Investment Group is the Hubei Provincial State-owned Assets Supervision and Administration Commission.... [The] actual controller of Hubei Guoxin Industry Investment Fund Partnership (Limited Partnership) is the Wuhan State-owned Assets Supervision and Administration Commission, and the actual controller of Hubei Science [&] Technology Investment Group Co., Ltd. is the [governmental] Administration of Wuhan East Lake High-tech Development Zone.”). All shareholders (listed above) are state-owned enterprises and, therefore, YMTC Holding and YMTC are state owned. *See* EX2023 at 9-10; EX2027 at 1; EX2020 at 1-2.

This ownership structure and the Chinese government’s significant investment (i.e., tens of billions of U.S. dollars) clearly show that YMTC serves the Chinese government’s semiconductor strategy and operates under the direction and control of the Chinese government. Indeed, China’s State Council has described YMTC as a “state-owned enterprise.” EX2025 (Translation of EX2024 (Statement of China’s State Council)) at 2. And Chinese media outlets and Chinese universities

identify YMTC as a “state-owned enterprise” or “state-controlled enterprise.” EX2027 at 1 (“*Yangtze Memory [Technologies, Inc.] is a state-controlled enterprise*”); *see also, e.g.*, EX2029 (Translation of EX2028 (Southeast Univ., YMTC 2024 Campus Recruitment)) at 1 (“*Nature of [YMTC]: State-owned enterprise*”); EX2031 (Translation of EX2030 (Wuhan Univ. of Sci. and Tech., YMTC 2020 Campus Recruitment Introduction)) at 1 (same); EX2033 (Translation of EX2032 (China Univ. Of Petroleum, YMTC 2025 Campus Recruitment)) at 1 (same); EX2035 (Translation of EX2034 (WSJ China Article)) at 1-2 (“*China’s state-owned enterprise Yangtze Memory Technologies Co. Ltd.... Yangtze Memory is controlled by the Hubei Provincial Government and the China National Integrated Circuit Industry Investment Fund.*”).

D. Bipartisan U.S. Policymakers And The U.S. Administration Agree That The Chinese Government Controls YMTC

U.S. policymakers consistently highlight the Chinese government’s ownership and control over YMTC. In July 2021, U.S. Senator Bill Hagerty and U.S. Representative Michael McCaul urged the U.S. Commerce Secretary to add YMTC to the Department of Commerce’s Entity List because it “has clear ties to the Party-state and military and plays a significant role in CCP plans to control the supply chain for a strategic dual-use sector.” EX2036 (July 12, 2021 Letter from McCaul and Hagerty) at 1-2. They explained that:

YMTC is the PRC's state-owned national champion for memory chips — a type of semiconductor with defense, artificial intelligence, and aerospace applications. YMTC was created as a joint-venture by the National Integrated Circuit (IC) Industry Investment Fund, Tsinghua Unigroup (a state investment firm that is one of the IC Fund's shareholders), the Hubei IC Industry Fund (a regional branch of the national IC Fund), and the Hubei Science and Technology Investment Group (an investment vehicle of the Wuhan Municipal Government that provides capital investment, infrastructure and services for the PRC's strategic industries, including semiconductors).

Id.; see also EX2037 (*Financial Times* Article) at 2 (“The White House has described YMTC as a Chinese ‘national champion.’”).

In April 2022, Mr. Stephen Ezell, Vice President of Global Innovation Policy at the Information Technology and Innovation Foundation, testified before the U.S.-China Economic and Security Review Commission (which is a bipartisan legislative commission created by the U.S. Congress) on “U.S.-China Innovation, Technology, and Intellectual Property Concern.” EX2017 at 1, 3. In his testimony, he explained:

[YMTC] is a Chinese state-controlled joint venture stood up from whole cloth by the National IC Industry Investment Fund, the state university-controlled fabless semiconductor firm Tsinghua Unigroup, and the Hubei Science and Technology Investment Group, supported by \$24 billion in initial government funding allocated for its initial Wuhan factory alone. In effect, YMTC is China's state-owned national champion for memory chips.

Id. at 7. Similarly, in September 2022, U.S. Senator Mark Warner stated it “has been clear for some time now that YMTC is ... a key part of the Chinese Communist party’s goal of shifting control of global microelectronics to the PRC.” EX2037 at 2. Similarly, in December 2022, U.S. Senator Charles E. Schumer called YMTC a “CCP-backed technology compan[y].” EX2038 (Schumer Statement) at 1.

The U.S. Administration further corroborates that YMTC is state-controlled. For example, pursuant to Section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act, the Secretary of Defense must identify entities that the Secretary “determines” to be a “Chinese military company” “based on the most recent information available.” H.R. 6395, 116th Cong. §1260H(a), (d) (2021). A “Chinese military company” refers to any entity that is “directly or indirectly owned, controlled, or beneficially owned by, or in an official or unofficial capacity acting as an agent of or on behalf of, the People’s Liberation Army or any other organization subordinate to the Central Military Commission of the Chinese Communist Party”—i.e., an entity that is owned and/or controlled by the Chinese government. *Id.* §1260H(d). On January 31, 2024, the Department of Defense identified YMTC as a “Chinese military compan[y].” EX2039 (DOD Press Release) at 1; EX2040 (List of Chinese Military Companies) at 1, 3; *see also* 90 Fed. Reg. 1105 (Jan. 7, 2025) (same).

III. PROCEDURAL BACKGROUND

YMTC sued Micron in the Northern District of California on November 9, 2023, alleging that certain Micron 3D NAND products infringe eight YMTC patents. C.A. No. 3:23-cv-05792, D.I. 1 (Nov. 9, 2023). YMTC concurrently filed a “Corporate Disclosure Statement,” in which YMTC represented that its sole parent corporation is YMTC Holding and that “no publicly held corporation owns 10 percent or more of its stock.” EX2021 at 2. YMTC subsequently filed a First Amended Complaint, maintaining its original allegations of infringement across the same eight patents.⁵ C.A. No. 3:23-cv-05792, D.I. 29 (Feb. 2, 2024).

On February 16, 2024, Micron served its Answer to the First Amended Complaint and Counterclaims against YMTC and Yangtze Memory Technologies, Inc. (“YMTI”), alleging infringement of the ’214 patent and four other Micron

⁵ YMTC filed a separate action against Micron on July 12, 2024, asserting an additional eleven patents. C.A. No. 3:24-cv-04223, D.I. 1 (July 12, 2024). The district court consolidated this second action with the first-filed action, bringing the total number of YMTC patents asserted against Micron to nineteen. C.A. No. 3:23-cv-05792-RFL, D.I. 106 (Aug. 21, 2024).

patents.⁶ *Id.*, D.I. 35 (Feb. 16, 2024). The §315(b) one-year period to file IPR petitions commenced on February 16, 2024 and expired February 16, 2025.

On February 14, 2025, YMTC filed two IPR petitions against the '214 patent. IPR2025-00498, Paper 1 (“Pet498.”); IPR2025-00499, Paper 1 (“Pet499.”). YMTC identified itself and YMTI as the only real parties-in-interest. Pet498. at 1-2; Pet499. at 2. Notably, in its Petitions, YMTC chose not to add as real parties-in-interest its sole parent corporation (YMTC Holding) or the Chinese government, which owns and controls both YMTC Holding and YMTC. The PTAB accorded a filing date on April 17, 2025. IPR2025-00498, Paper 6; IPR2025-00499, Paper 6.

Separate from its challenge to the '214 patent, YMTC also filed IPR petitions against the other four patents that Micron asserted through counterclaims. *See* IPR2025-00098, -00099, -00500, -00501. Again, YMTC lists only itself and YMTI (a subsidiary) as real parties-in-interest for these IPR petitions. It chose not to list YMTC Holding or the Chinese government.

On March 12, 2025, Micron filed Patent Owner Preliminary Responses in IPR2025-00098 and -00099 (collectively, “POPRs”), making substantially identical

⁶ The other asserted Micron patents are U.S. Patent Nos. 10,475,737 (the “737 patent”), 10,872,903 (the “903 patent”), 8,945,996 (the “996 patent”), and 10,373,974 (the “974 patent”).

arguments to those herein. IPR2025-00098, Paper 8 (Mar. 12, 2025); IPR2025-00099, Paper 8 (Mar. 12, 2025). Thereafter, YMTC sought leave to file 10-page preliminary replies to address Micron’s arguments “with the option to submit additional evidence” but *not* to “submit any additional declarations.”⁷ EX2050 (Correspondence), 2. The Board granted YMTC’s request. *Id.*, 1.

On April 11, 2025, YMTC filed its Preliminary Replies (collectively, “Replies”) to Micron’s POPRs. IPR2025-00098, Paper 12 (Apr. 11, 2025); IPR2025-00099, Paper 12 (Apr. 11, 2025). In its Replies, YMTC argued that it “is a private company with independent control over its actions”—without providing any declaration in support. Replies, 2.⁸ Seven days later, on April 18, 2025, Micron filed its Preliminary Sur-replies (collectively, “Sur-replies”). IPR2025-00098, Paper 13 (Apr. 18, 2025); IPR2025-00099, Paper 13 (Apr. 18, 2025).

IV. THE DIRECTOR SHOULD DENY INSTITUTION

The Director should deny institution for three reasons: (A) Petitioner is not a “person” entitled to file an IPR petition, (B) Petitioner failed to identify all RPIs and

⁷ YMTC elected to forgo submitting a reply declaration shortly after Micron informed YMTC it would seek leave to depose any fact declarant.

⁸ YMTC filed identical Preliminary Replies in IPR2025-00098 and -00099, so Micron cites them herein collectively as “Replies.”

is not entitled to maintain its original filing date, and (C) the Director should exercise its discretion to deny.⁹

A. Petitioner Is Not A “Person” Entitled To File An IPR Petition

The Director should deny institution because YMTC is not statutorily authorized to file an IPR petition. Title 35 U.S.C. §311(a) allows only “person[s]” (other than the patent owner) to file a petition for *inter partes* review. “The patent statutes do not define the term ‘person,’” but in *Return Mail, Inc. v. U.S. Postal Service*, the U.S. Supreme Court held that the term “person” does not include the U.S. government based on “longstanding interpretive presumption[s]” that “the sovereign” is not a “person.” 587 U.S. at 626. The Supreme Court pointed to the

⁹ On March 26, 2025, the Director issued an “Interim Processes for PTAB Workload Management” Memorandum that, *inter alia*, bifurcated IPR institution “decisions . . . between (i) discretionary considerations, and (ii) merits and other non-discretionary statutory considerations.” Micron respectfully submits that the Director should consider all of Micron’s arguments herein at the discretionary denial phase, especially given the overlapping factual background. Regardless, to the extent the Director finds that any argument herein is non-discretionary, Micron reserves the right to incorporate such argument in its Preliminary Response on the merits if the Director declines to discretionarily deny institution.

“Dictionary Act,” which guides courts on “the meaning of any Act of Congress, unless the context indicates otherwise.” *Id.* at 627. The Dictionary Act defines “person” as including “corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals”—*but notably omits* any term suggesting that a government entity is a “person.” *See id.* Thus, the Supreme Court held the U.S. Postal Service (“USPS”)—a federal “agency”—was not a “person” and was not authorized to file an IPR petition. *Id.* at 626.

The Supreme Court’s reasoning in *Return Mail* applies with equal (if not more) force to foreign governments—and government agencies and entities under government control. The Dictionary Act identifies a broad range of entities as persons but does not include foreign or domestic governments. *Return Mail*, 587 U.S. at 627. And nothing suggests that Congress created a patent review process that prohibits U.S. federal agencies from challenging U.S. patents (as the Supreme Court held) but allows *foreign* governments (or government agencies) to do so. Thus, the Director should interpret this “express directive from Congress” to exclude foreign governments. *Id.*

Given the *Return Mail* reasoning, Petitioner is not an authorized “person.” The USPS (with respect to the U.S. government) is analogous to YMTC (with respect to the Chinese government). Unlike most federal agencies, Congress transformed the postal service in 1970 from a cabinet-level department (i.e., the Post

Office Department) into a self-sustaining “independent” enterprise (i.e., USPS), controlled by the U.S. government. *See* The Postal Reorganization Act, Pub. L. No. 91-375, 84 Stat. 720 §201 (1970). That means the USPS generally does not receive taxpayer dollars for operating expenses but relies instead on the services and products it provides to consumers. *See, e.g.*, EX2042 (USPS Postal Facts) at 1-2. It does, however, still receive investments from the U.S. government to, for example, upgrade its vehicle “infrastructure to support zero-emission delivery vehicles.” *See* Inflation Reduction Act, Pub. L. No. 117-169, 136 Stat. 2087 (2022).

Moreover, like any other private company, the USPS can borrow money, issue bonds, and own property in its own name. *See* The Postal Reorganization Act, Pub. L. No. 91-375, 84 Stat. 722-23, 740 §§401, 2005. A “Board of Governors,” similar to a board of directors, oversees the USPS. *Id.*, 84 Stat. 720 §202. And, importantly, the USPS competes with private companies (like FedEx and UPS) in an open marketplace. While not incorporated, it is clear that the USPS closely resembles any other private enterprise owned and controlled by a government.

YMTC is no different than the USPS. The Chinese government heavily invests in, owns, and controls YMTC. *See supra* §II.A-D. At the same time, however, YMTC (a) relies on the sales of products to cover expenses, (b) presumably can borrow money, issue bonds, and own property, (c) is overseen by a board, and importantly, (d) competes against private companies in the semiconductor industry.

In short, YMTC is the same type of government entity as the USPS.

In its Replies, YMTC faults Micron for relying “solely” on one case for its statutory interpretation argument. Replies, 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 Director) 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 YMTC sued Micron in district court, Micron’s assertion of counterclaims against YMTC, rather than naming the Chinese government, is unsurprising.¹⁰

In its Replies, YMTC also contends that *Bozeman Fin. LLC v. Fed. Rsrv. Bank of Atlanta*, 955 F.3d 971, 975-976 (Fed. Cir. 2020), counsels for a different result (Replies, 6-7), but *Bozeman* is, if not inapposite, readily distinguishable. In *Bozeman*, the Federal Circuit held that various banks were “distinct from the

¹⁰ This also disposes of YMTC’s argument that Micron took a “contrary” position (see Replies, 10) in district court. Micron took no position in the district court on any RPI issue or privity of the Chinese government.

government for purposes of the AIA” and thus qualified as “persons” authorized to file an IPR petition under the AIA. 955 F.3d at 975-976. 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 expressly 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.

Accordingly, because the USPS is not an authorized “person” under *Return Mail*, neither is YMTC, and the Director should deny institution.

B. Petitioner Failed To Identify All RPIs

The Director should deny institution because YMTC chose to omit the Chinese government as an RPI.¹¹ And YMTC cannot now add the Chinese government without losing its original filing date.

¹¹ While this section focuses on YMTC’s failure to name the Chinese government as an RPI, YMTC also failed to name its immediate parent company, YMTC Holding, as an RPI and similar arguments apply.

1. YMTC Did Not Identify the Chinese Government as an RPI

Title 35 U.S.C. §312(a)(2) requires that the petition identify “all real parties in interest” (“RPIs”). If a patent owner alleges that a petitioner omitted an RPI and produces *some* evidence in support, then the petitioner bears the ultimate burden of establishing that its petition names all RPIs and showing that the patent owner is incorrect. *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1242 (Fed. Cir. 2018).

According to the Federal Circuit, “[d]etermining whether a non-party is [an RPI] demands a flexible approach that takes into account both equitable and practical considerations, with an eye toward determining whether the non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.” *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1351 (Fed. Cir. 2018) (“*AIT*”). The Director should ask “who, from a ‘practical and equitable’ standpoint, will benefit from the redress” that resolution of the IPR proceeding may provide and should inquire “whether [the petitioner] can be said to be representing [the non-party’s] interest after examining its relationship.” *Id.* at 1349, 1353.

One “common consideration is whether the non-party ... could have exercised control over [the petitioner’s] participation in a proceeding.” Office Patent Trial Practice Guide, 84 Fed. Reg. 64,280 at 16 (Nov. 21, 2019) (“Trial Practice Guide”). Even without exercising actual control over the petitioner’s preparation of the IPR petition or participation in the IPR proceeding, a non-party may still be an RPI if it

has *an opportunity* to control based on a formal relationship with the petitioner. *Id.* The Director may also consider whether the non-party is funding or directing the proceeding. But the exact degree of funding or control necessary to support a finding that a non-party is an RPI depends on the totality of the evidence. *Id.* Indeed, the Trial Practice Guide indicates “that a non-party may be a real party-in-interest even in the absence of control or an opportunity to control.” *Cisco Sys., Inc. v. Hewlett Packard Enter. Co.*, IPR2017-01933, Paper 9 at 12 (PTAB Mar. 16, 2018). Ultimately, “Congress intended that the term ‘real party in interest’ have its expansive common-law meaning.” *AIT*, 897 F.3d at 1351.

Here, YMTC has failed to identify all RPIs. YMTC lists only itself and YMTI. IPR2025-00498, Paper 1 at 1-2 (Feb. 14, 2025). But that identification intentionally omits the Chinese government, which is a “clear beneficiary” of any redress that resolution of this IPR proceeding may provide and has a “preexisting, established relationship” with YMTC.

First, the Chinese government is a “clear beneficiary” because resolution of this IPR proceeding may have a direct impact on the value of, and the significant financial investments in, its “national champion”—YMTC—because Micron is asserting the challenged patent against YMTC in the related district court litigation. As explained above, the Chinese government has set ambitious initiatives and policies to become a global leader in the semiconductor industry. *See supra* §II.B-

C. It also owns and controls YMTC. *Id.* And it invested tens of billions of U.S. dollars in YMTC. *Id.*

The PTAB has determined that a non-party is an RPI on far less. For example, in *Ventex Co. v. Columbia Sportswear North America, Inc.*, the PTAB found that a non-party was an RPI when the parties had “mutual interest in the continuing commercial and financial success of each other” and where the non-party was the “clear beneficiary.” IPR2017-00651, Paper 152 at 7-8 (PTAB Jan. 24, 2019) (Precedential). In particular, the PTAB identified two agreements between the petitioner and non-party in which the petitioner agreed to exclusively manufacture products for the non-party in exchange for an exclusivity fee. *Id.* It is hard to imagine that two agreements would show that the non-party was a “clear beneficiary,” but the following would not: a non-party that has invested tens of billions of U.S. dollars in a company that it owns, controls, and promotes as a “national champion” in pursuit of its ambitious plan to become a global leader in the semiconductor industry.

In short, from a practical and equitable standpoint, the Chinese government clearly benefits from the IPR petition if any claims are found unpatentable and has a strong interest in establishing the unpatentability of the challenged patent for both its financial and political gain. *See, e.g., Ventex*, Paper 152 at 7-8; *AIT*, 897 F.3d at 1355 (finding “the evidence submitted indicates ... that the very challenges to

validity included in the IPR petitions were challenges [the non-party] would like to have made”); *Luminex Int’l Co. v. Signify Holdings B.V.*, IPR2024-00101, Paper 10 at 37-39 (PTAB May 9, 2024) (finding non-party “will benefit from the redress that the Board might provide” because a favorable determination “would relieve [the non-party] from liability” and has an “interest in establishing unpatentability”).

Second, the Chinese government has a “preexisting, established relationship” with Petitioner. The Chinese government created, funded, owns, and controls YMTC in pursuit of its ambitious semiconductor goals. *See supra* §II.B-C. Bipartisan U.S. policymakers agree that YMTC is a state-owned enterprise. *See supra* §II.D. The U.S. Administration has confirmed that YMTC is a state-owned enterprise. *Id.* China’s State Council has described YMTC as a “state-owned enterprise.” *See supra* §II.C. And Chinese media outlets and Chinese universities identify YMTC as “state-owned” or “state-controlled.” *Id.*

Where, like here, the facts show that a non-party has at least an *opportunity* to control (if not actual control), the PTAB has repeatedly held that the non-party is an RPI that the petitioner must name. For example, in *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, the petitioner only listed itself as an RPI, but the PTAB found that there was a significant amount of “corporate blurring” between the petitioner and its parent company. IPR2013-00453, Paper 88 at 3-6, 11 (PTAB Jan. 6, 2015). In particular, “[r]ather than maintaining well-defined corporate

boundaries,” the petitioner and its parent company “are so intertwined that it is difficult for both insiders and outsiders to determine precisely where one ends and another begins.” *Id.* at 11-12. The PTAB also noted that a “parent-subsidary relationship[] ... weighs heavily in favor of finding [the non-party parent] to be a real party in interest.” *Id.*; *see also Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 771-72 (1984) (explaining “in reality a parent and a wholly owned subsidiary always have a ‘unity of purpose or a common design.’ They share a common purpose whether or not the parent keeps a tight rein over the subsidiary; the parent may assert full control at any moment if the subsidiary fails to act in the parent’s best interests.”).

In short, in view of YMTC’s status as a state-owned enterprise, the totality of the evidence establishes that the Chinese government has a preexisting, established relationship with YMTC and could, at any point, exercise control over YMTC’s participation in this IPR proceeding—or at the very least *has an opportunity to control*. *See Zoll Lifecor Corp. v. Philips Elecs. N.A. Corp.*, IPR2013-00606, Paper 13 at 9-11 (PTAB Mar. 20, 2014) (finding non-party is an RPI when it and the petitioner “have a very close parent and wholly-owned subsidiary relationship with aligned interests and sufficient opportunity [exists] for [the non-party] to control the challenge to the patentability of the patent-at-issue”); *Aceto Agric. Chems. Corp. v. Gowan Co.*, IPR2015-01016, Paper 15 at 8-9 (PTAB Oct. 2, 2015) (finding parent

is an RPI when, inter alia, it owns the petitioner and “appears to have its own vested interest in challenging” the patent); *Amazon.com, Inc. v. Appistry, Inc.*, IPR2015-00480, Paper 18 at 4-6 (PTAB July 13, 2015) (finding non-parties are RPIs when the evidence “strongly suggests that [the non-parties] ... are involved and controlling corporations representing the unified interests of themselves and [p]etitioner”).

In its Replies, YMTC alleges that Micron’s evidence of Chinese government ownership and control of YMTC is “unreliable and inaccurate.” Replies, §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 supra* §II.C. *Second*, YMTC does not dispute that the Chinese government has invested tens of billions of dollars into YMTC. *Id.* Indeed, YMTC provided no evidence to rebut Micron’s showing (including the detailed ownership structure above), notwithstanding that YMTC is in the best position to provide such information. *Third*, YMTC does not dispute that 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.*, Replies, 2. But, as

reflected by the dearth of citation to supporting evidence, 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); *Charter Comms., Inc., v. Iarnach Techs. Ltd.*, IPR2024-01287, Paper 12 at 33 (the “contrary argument is based on mere attorney argument, which is not evidence”). Indeed, despite Board authorization to submit additional evidence with its Replies (*see* EX2050) in the separate proceedings, 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) (“Petitioner was given the opportunity to provide additional evidence to rebut Patent Owner’s evidence and meet its burden, but ***Petitioner chose not to provide any such evidence. As a result, we determine, based on the record before us, Petitioner has not sufficiently***” shown that it has identified all RPIs). 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).

YMTC’s Replies also attempt 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.” Replies, 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. Replies, 7-8 (emphasis by YMTC).

Citing *Uniloc 2017 LLC v. Facebook Inc.*, 989 F.3d 1018, 1027-28 (Fed. Cir. 2021), YMTC contends in its Replies 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.’” Replies, 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. 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 supra* §IV.B (discussing *AIT*). Notably, YMTC does not dispute that the Chinese government

would “benefit from this proceeding” if it were instituted. *See* Replies, 7.

Finally, YMTC also attempts to distract with a lengthy discussion of the U.S. government’s alleged investment in Micron,¹² which is wholly irrelevant to whether the Chinese government is an RPI vis-à-vis YMTC. *See* Replies, 1, 3, 7-8. Whether or not Micron has any RPIs is simply not at issue. Regardless, unlike the Chinese government’s relationship with YMTC, the U.S. government does not own Micron.

Accordingly, because the Chinese government “is a clear beneficiary that has a preexisting, established relationship with the petitioner,” it is an unnamed RPI. *AIT*, 897 F.3d at 1351; *see also Worlds Inc.*, 903 F.3d at 1242, 1246.

2. YMTC Is Not Entitled to Its Original Filing Date

If a petition fails to identify all RPIs, the PTAB may permit the petitioner an opportunity to amend, but the PTAB must decide whether the petition maintains or loses its original filing date. *See, e.g., Adello Biologics LLC v. Amgen Inc.*, PGR2019-00001, Paper 11 at 2-3 (PTAB Feb. 14, 2019) (Precedential) (“*Adello*”); *Proppant Express Invs. LLC v. Oren Techs., LLC*, IPR2017-01917, Paper 86 at 6-8 (PTAB Feb. 13, 2019) (Precedential) (“*Proppant*”). The PTAB considers whether

¹² Of the seven exhibits YMTC submitted in its Replies, four (*E.g.*, IPR2025-00098, EX1028-1030 and EX1033) relate entirely to Micron, not YMTC. The other exhibit that mentions YMTC (EX1032) simply reflects that YMTC is on the entity list.

there have been: (1) attempts to circumvent §315(b) or the estoppel rules, (2) bad faith by the petitioner, (3) prejudice to the patent owner caused by the delay, or (4) gamesmanship by the petitioner. *Proppant*, Paper 86 at 6-7. In general, the PTAB maintains a petition's original filing date when the petitioner quickly corrects good-faith mistakes. *See, e.g., Adello*, Paper 11 at 2-5; *Proppant*, Paper 86 at 6-8.

Here, YMTC asserts in its Replies that it “is a private company with independent control over its actions.” Replies, 2. This is nothing more than attorney argument and “gamesmanship” because (a) the Chinese government owns and controls YMTC, and (b) the RPI analysis is not limited to parties that actually “control” the proceedings. RPIs also include non-parties that have *an opportunity to control* the petitioner in the proceeding. Indeed, YMTC chose not to provide any evidence or declaration contradicting Micron's showing that, for example, the Chinese government has an opportunity to control Petitioner in this proceeding.

YMTC intentionally made no attempt to add the Chinese government as an RPI so that the Chinese government can file additional IPR petitions through one of its many other state-owned semiconductor enterprises (e.g., Fujian Jinhua Integrated Circuit Co., Ltd.) if this petition is denied or unsuccessful. EX2045 (DOJ Press Release) at 1 (identifying another state-owned enterprise focusing on semiconductor technology). The Director should not permit these tactics, as YMTC's actions are precisely what the rule requiring identification of all RPIs seeks to avoid. *See Trial*

Practice Guide at 12-13 (“The core functions of the “real party-in-interest” [requirement] ... are to assist members of the Board in identifying potential conflicts, and to assure proper application of the statutory estoppel provisions. The latter, in turn, seeks to protect patent owners from harassment via successive petitions by the same or related parties, to prevent parties from having a ‘second bite at the apple[.]’”).

Moreover, the conduct against which the PTAB consistently inveighs surely includes YMTC’s conduct here. For example, in *Fasteners For Retail, Inc. v. RTC Industries, Inc.*, IPR2018-00742, Paper 32 at 2 (PTAB Nov. 15, 2018), the patent owner raised in its preliminary response that the petitioner had failed to identify a non-party as an RPI. Instead of adding the non-party as an RPI, the petitioner filed a reply brief arguing that the non-party was not an RPI. *Id.* Because the PTAB rejected the petitioner’s argument, it denied institution and declined to give the petitioner another opportunity to amend because doing so “would be unfair to Patent Owner and would encourage gamesmanship by allowing petitioners to refrain from naming all RPIs until if and after such unnamed RPI is the cause for denying institution.” *Id.* at 5; *Cf. Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2015-00826, Paper 39 at 6-7 (PTAB Dec. 6, 2016) (finding the petitioner harmed the PO through its failure to amend to identify all RPIs, in that the PO was forced to take action “to ensure that estoppel provisions would be correctly applied”).

At bottom, YMTC has known all along that it is a state-owned enterprise. And any argument to the contrary fails the red-face test. *See supra* §§II.A-D. Despite this, YMTC elected not to identify the entity that owns and controls YMTC (the Chinese government), hoping to avoid the estoppel effects that doing so would incur. While to date YMTC has made no attempt to add the Chinese government as an RPI, the Director should not allow YMTC to amend without losing its original filing date, which is the natural consequence of a calculated decision to name fewer than all RPIs. In turn, because Micron served YMTC with counterclaims alleging patent infringement of the challenged patent on February 16, 2024, any new filing date would be time-barred under §315(b). *See supra* §III.

C. The Director Should Exercise Its Discretion To Deny Institution Under §314(a)

The Director “is permitted, but never compelled, to institute an IPR proceeding.” *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1367 (Fed. Cir. 2016). The Federal Circuit has confirmed that the Director has “broad” and “complete discretion” in its decision and “bears the political responsibility of determining which cases should proceed.” *Saint Regis Mohawk Tribe v. Mylan Pharms. Inc.*, 896 F.3d 1322, 1327 (Fed. Cir. 2018). It may deny institution for “whatever reason” at all, including “based on a party’s status as a sovereign.” *Id.* For example, in *Microsoft Corp. v. Science Applications Int’l Corp.*, the PTAB denied institution because the petitioner was in privity with the U.S. government

which had been served with a complaint more than one year before Microsoft filed its IPR petition. IPR2019-01311, Paper 35 at 13-14 (PTAB Jan. 27, 2020) (“*Microsoft*”).¹³ But the PTAB explained that, “[e]ven if Petitioner and the government were not in privity,” and thus the petition would not have been time-barred, “*we would exercise our discretion to deny review to avoid any concerns that the government is obtaining a benefit to which it is not permitted under Return Mail.*” *Id.*

Like the U.S. government in *Microsoft*, “the only filed [petition] from which the [Chinese] government could benefit” is YMTC’s petition “because the [Chinese] government could not file its own petition in light of” *Return Mail*. See *Microsoft*, Paper 35 at 12. The Chinese government thus seeks to obtain a benefit to which it is not entitled through a petition that its proxy filed. Indeed, the Chinese government has strong reasons to challenge patents asserted against its state-owned enterprises and patents that put its technological initiatives in jeopardy. See *supra* §§II.B-D.

The Chinese government clearly receives a benefit if YMTC succeeds in

¹³ The §315(b) one-year bar was applicable in *Microsoft*, notwithstanding the Supreme Court’s *Return Mail* decision, because the PTAB held that the corporate *petitioner* (not the government which could not file an IPR petition) was the time-barred entity.

challenging Micron’s patent, even if the Director does not find that the Chinese government is an RPI, because it is still in privity with YMTC. Privity is “[t]he connection or relationship between two parties, each having a legally recognized interest in” something. *AIT*, 897 F.3d at 1359 (concurrency) (citing *Privity*, Black’s Law Dictionary (10th ed. 2014)). The Supreme Court has provided a non-exhaustive list of factors for determining whether a legal relationship between two parties establishes that one is the privy of the other, including whether any “pre-existing substantive legal relationships [exist] between the parties” and whether the non-party is litigating through a proxy. *Id.* at 1360-61 (citing *Taylor v. Sturgell*, 553 U.S. 880, 894-95 (2008)). “A common character of [privity or proxy] relationships is that the two parties share a high degree of commonality of proprietary or financial interest”—even if there is “little to do with ‘control.’” *Id.* at 1362 (concurrency).

Here, as explained above, the Chinese government (a) has a significant financial interest in YMTC; (b) owns and controls YMTC and other companies in the semiconductor industry; and (c) aims to be a global leader in this industry through its national champion (YMTC). *See supra* §§II.B-D. Thus, a legal relationship exists between YMTC and the Chinese government such that a high degree of commonality and financial interest exists. In essence, the Chinese government is using YMTC as its proxy to challenge U.S. patents that impede its significant financial investments in YMTC and its strategic objectives in the

semiconductor industry. The Director 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).

The Director is also well within its broad discretion to deny institution based on the foreign policy and national security concerns at play. In fact, doing so is consistent with the policies of the USPTO and U.S. policymakers. For example, the America Invents Act (“AIA”) itself prescribes that the USPTO’s regulations governing IPR proceedings “shall consider the effect of any such *regulation on the economy, the integrity of the patent system*, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under this chapter.” 35 U.S.C. §316(b). As the former USPTO Director further explained to Congress in 2023, “the USPTO is committed to *an all-of-Government approach to leveraging IP rights to catalyze U.S. economic competitiveness and national security*.” EX2044 (Director Testimony) at 9. She further testified, “[t]he USPTO is working globally to strengthen the innovation, creativity, and entrepreneurship ecosystem, to hold competitors to their agreements, *to curb abuses and unfair practices*, and to directly assist stakeholders facing IP issues abroad.” *Id.*; *see also Saint Regis*, 896 F.3d at 1327 (“The Director bears the political responsibility of determining which cases should proceed ... [and can] deny review for other reasons such as administrative efficiency *or based on a party’s status as a sovereign*.”).

Here, instituting review would signal to any foreign government that it may challenge U.S. patents through filing an IPR petition so long as that government uses a company that it owns and controls. It would allow foreign governments to insert themselves into a process that affects the U.S. economy (by aggressively challenging patents owned by U.S. companies) and the integrity of the patent system (by giving foreign governments greater rights than the U.S. government). Indeed, if unsuccessful in one IPR proceeding, the foreign government could turn to another company it owns and controls to file another IPR petition. This would be antithetical to the Supreme Court’s reasoning in *Return Mail* and to the policies of the USPTO.

Accordingly, even if YMTC is an authorized “person” and is allowed to add the Chinese government as a real party-in-interest, the Director should exercise its discretion to deny institution—following the reasoning in *Microsoft* and in support of the U.S. government’s stated policy objectives.

In its Replies, 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 supra* §IV.C; POPR at 28-29) that the Chinese government is in privity with YMTC.

Nor do YMTC’s Replies address the case law that the PTAB “may deny institution for “whatever reason” at all, including “based on a party’s status as a

sovereign.” *See supra* §IV.C; 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.” Replies, 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 “Director 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 above and in the POPRs at 30-31.

YMTC spills most of its ink in its Replies trying to factually distinguish the *Microsoft* case. Replies, 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 “exercise[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*, IPR2019-01311, Paper 35 at 13-14.

V. CONCLUSION

For these reasons, Micron respectfully requests that the Director deny institution.

Respectfully submitted,

Dated: April 21, 2025

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing PATENT OWNER'S DISCRETIONARY DENIAL BRIEFING complies with the type volume limitation in 37 C.F.R. §42.24(c)(1). According to the utilized word-processing system's word count, the petition—excluding the caption, table of contents, table of exhibits, mandatory notices, certificate of word count, and certificate of service—contains 8,415 words.

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The undersigned certifies that on April 21, 2025, a copy of the following was served in its entirety via electronic mail, upon the following attorneys of record for Petitioner:

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