

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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YANGTZE MEMORY TECHNOLOGIES COMPANY, LTD.

Petitioner

v.

MICRON TECHNOLOGY, INC.

Patent Owner

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IPR2025-00498

U.S. PATENT 8,803,214

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**PETITIONER'S OPPOSITION TO PATENT OWNER'S REQUEST FOR  
DISCRETIONARY DENIAL**

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EX1013	S. Wang <i>et al.</i> , “A High-Endurance (>100K) BE-SONOS NAND Flash With a Robust Nitrided Tunnel Oxide/Si Interface,” 2010 IEEE International Reliability Physics Symposium, Anaheim, CA, USA, 2010, pp. 951-955
EX1014	C. Sandhya <i>et al.</i> , “Nitride Engineering and the Effect of Interfaces on Charge Trap Flash Performance and Reliability,” 2008 IEEE International Reliability Physics Symposium, Phoenix, AZ, USA, 2008, pp. 406-411

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EX1019	U.S. Patent Application Publication No. 2010/0133598 in the Name of Chae <i>et al.</i>
EX1020	K. Joo <i>et al.</i> , “Novel Transition Layer Engineered Si Nanocrystal Flash Memory with MHSOS Structure Featuring Large $V_{th}$ Window and Fast P/E Speed,” IEEE International Electron Devices Meeting, 2005. IEDM Technical Digest., Washington, DC, USA, 2005, pp. 865-868
EX1021	S. Park <i>et al.</i> , “A New Operating Scheme by Switching the Polarity of Program/Erase Bias for Partially Oxidized Amorphous-Si-Based Charge-Trap Memory,” IEEE Transactions on Electron Devices, vol. 53, no. 11, Nov. 2006, pp. 2847-2849
EX1022	M. Rosmeulen <i>et al.</i> , “Silicon Rich Oxides as an Alternative Charge Trapping Medium in Fowler-Nordheim and Hot Carrier Type Non-Volatile-Memory Cells,” Digest. International Electron Devices Meeting, San Francisco, CA, USA, 2002, pp. 189-192
EX1023	Counterclaim Plaintiff Micron Technology’s Disclosure of Asserted Claims and Infringement Contentions and Document Production Accompanying Disclosure (Patent Local Rules 3-1 and 3-2), <i>Yangtze Memory Technologies Co. Ltd. v. Micron Technology, Inc. and Micron Consumer Products Group, LLC.</i> , No. 3:23-cv-05792-RFL (N.D. Cal.)
EX1024	J. Jang <i>et al.</i> , “Vertical cell array using TCAT (Terabit Cell Array Transistor) Technology for Ultra High Density NAND Flash Memory,” 2009 Symposium on VLSI Technology, Kyoto, Japan, 2009, pp. 192-193
EX1025	Defendant’s Answer To First Amended Complaint And Counterclaims, <i>Yangtze Memory Technologies Co. Ltd. v. Micron Technology, Inc. and Micron Consumer Products Group, LLC.</i> , No. 3:23-cv-05792-RFL, D.I. 35 (N.D. Cal. February 16, 2024)
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EX1030	Press Release, U.S. Department of Commerce, Department of Commerce Awards CHIPS Incentives to Micron for Idaho and New York Projects and Announces Preliminary Memorandum of Terms for Virginia DRAM Project to Secure Domestic Supply of Legacy Memory Chips (Dec. 10, 2024) available at: <a href="https://www.commerce.gov/news/press-releases/2024/12/departments-commerce-awards-chips-incentives-micron-idaho-and-new-york">https://www.commerce.gov/news/press-releases/2024/12/departments-commerce-awards-chips-incentives-micron-idaho-and-new-york</a> (last accessed Apr. 9, 2025)
EX1031	IPR2025-00245 ( <i>Micron Technology, Inc., v. Yangtze Memory Technologies Company, Ltd.</i> ), Paper 1 (excerpt)
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EX1033	Printout, Bureau of Industry and Security, Entity List FAQs (2024) available at: <a href="https://www.bis.doc.gov/index.php/component/fsj_faqs/cat/33-entity-list-faqs">https://www.bis.doc.gov/index.php/component/fsj_faqs/cat/33-entity-list-faqs</a> (last accessed Apr. 9, 2025)
EX1034	87 Fed. Reg. 77505 (December 19, 2022), Additions and Revisions to the Entity List and Conforming Removal From the Unverified List
EX1035	Printout, Yahoo Finance, Micron Technology Inc. (MU), available at <a href="https://finance.yahoo.com/quote/MU/holders/">https://finance.yahoo.com/quote/MU/holders/</a> (last accessed Apr. 9, 2025)
EX1036	Printout, Slashgear, The Real Owners Behind the World’s Biggest

<b>Exhibit</b>	<b>Description</b>
	Tech Companies, available at: <a href="https://www.slashgear.com/1669177/biggest-tech-companies-who-really-owns/">https://www.slashgear.com/1669177/biggest-tech-companies-who-really-owns/</a> (last accessed Apr. 11, 2025)

All emphases in quotations are added unless otherwise noted.

Direct quotations of claim language are italicized.

This paper includes color illustrations and should be viewed in color.

## I. INTRODUCTION

Discretionary denial of the instant Petition for *Inter Partes* Review (“IPR”) of U.S. Patent No. 8,803,214 (the “’214 patent”) is wholly unwarranted. Petitioner has presented grounds of unpatentability that are strong on the merits. In a related IPR, the Board has already determined that claims from a descendant patent of the ’214 patent—U.S. Patent No. 10,872,903 (“the ’903 patent”)—with similar limitations are likely unpatentable based on U.S. Patent Application Publication No. 2009/0146190 in the name of Fukuzumi *et al.* (“Fukuzumi,” EX1007), which is applied in this Petition as well. The institution of that related IPR is strong evidence that claims of the ’214 patent are also likely to be unpatentable.

Moreover, the Petition presents meritorious grounds based on multiple anticipation and single-reference obviousness challenges. As explained below and in the Petition, the claims of the ’214 patent are anticipated and rendered obvious by Fukuzumi and U.S. Patent Application Publication No. 2010/0140685 in the name of Kang *et al.* (“Kang,” EX1004). Both references independently, expressly, and undisputedly disclose every limitation of the challenged claims.

In addition, during prosecution, the examiner materially erred by overlooking relevant prior art—specifically, the teachings of Fukuzumi and Kang. As a result, the claims were allowed without recognition that the purportedly patentable subject matter was already disclosed in these references. It is therefore appropriate for the

Office to use its resources to correct this error through this IPR.

Discretionary denial is also inappropriate because no district court litigation currently involves the '214 patent. While Patent Owner attempted to assert the '214 patent in a pending litigation case, the motion to reassert counterclaims based on the '214 patent was dismissed after the litigation was stayed. Nonetheless, the '214 patent remains a live threat, as it is likely to be reasserted once the stay is lifted. The PTAB review now—when there is no parallel litigation—serves the core purpose of IPR: to provide an efficient, non-duplicative alternative to district court litigation. In these circumstances, no *Fintiv* analysis is required. But even if considered, as discussed below, the *Fintiv* factors weigh against discretionary denial.

Patent Owner also has not established settled expectations that would justify discretionary denial. As detailed below, consistent with recent Director decisions, it is an efficient and appropriate use of Board resources to review the '214 patent, which is related to the descendant '903 patent that is already the subject of an instituted IPR and has not been in force for any significant period to create settled expectations.

Finally, arguments raised by Patent Owner's Request for Discretionary Denial ("DD Request") are unsupported, irrelevant, and contrary to law. Petitioner is a statutorily authorized "person" under 35 U.S.C. § 311(a) entitled to file an IPR. Patent Owner's allegations regarding real party-in-interest ("RPI") status are

baseless. There is no credible and reliable evidence that the “Chinese government” is the RPI or has control of any of Petitioner’s actions in this proceeding. Accepting Patent Owner’s theory would improperly extend RPI status to virtually every investor in any corporate petitioner. Further, there is no credible evidence that Petitioner’s parent company—Yangtze Memory Technologies Holding Co., Ltd. (“YMTH”)—should have been identified as an RPI. Patent Owner offers no evidence that YMTH directed or controlled this proceeding. Even assuming, *arguendo*, that the Chinese government or YMTH could be considered an unnamed RPI, Patent Owner has not shown that any such omission warrants discretionary denial. In fact, as detailed below, the law says otherwise.

## **II. DISCRETIONARY DENIAL IS INAPPROPRIATE GIVEN THE STRONG MERITS OF THE UNPATENTABILITY CHALLENGE**

Discretionary denial is unwarranted considering the strong merits of the unpatentability grounds set forth in the Petition, consistent with the Acting Director’s *Interim Processes for PTAB Workload Management* (“Director Memo”). Noably, Patent Owner did *not* dispute the underlying merits of the Petition in its DD Request. *See generally* DD Req. As discussed in detail below, the Petition presents particularly strong merits based on: (i) a previously instituted IPR against a similar claim of a descendant patent of the ‘214 patent, relying on the same prior art, (ii) multiple straightforward anticipation and single-reference obviousness grounds

presented in the Petition, and (iii) a material error made by the Office during prosecution of the '214 patent.

**A. The Petition Presents Particularly Strong Merits as the Board Has Already Instituted an IPR on a Related Descendant Patent with Similar Claims**

Although the validity of the '214 patent has not been adjudicated, the PTAB has already found a reasonable likelihood that the similar claim in its descendant '903 patent was unpatentable in a related IPR proceeding, IPR2025-00099 (“the '099 IPR”). *See* Pet. 2 (identifying the '099 IPR as a related matter); IPR2025-00099, Paper 15 at 14–19 (PTAB June 10, 2025).

This prior institution of a related patent with similar claims is strong evidence that the merits of the instant Petition are strong. *See Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00217, Paper 9 at 2 (Director June 13, 2025) (“*Tesla*”). In *Tesla*, the Director reasoned that “[t]he merits are strong because the Board previously determined there was a reasonable likelihood that similar claims of an ancestor patent were unpatentable in three separate proceedings.” *Id.* That rationale applies with equal force here.

In its Institution Decision of the '099 IPR, the Board determined that the petitioner had sufficiently shown that Fukuzumi discloses or suggests claim limitations in claim 1 of the '903 patent, including “*a first/second control gate,*” “*a first/second memory cell having a memory element formed in a cavity of the*

*first/second control gate,*” and “*a conductive channel.*” See IPR2025-00099, Paper 15 at 15–18 (determining that “Petitioner has sufficiently shown that Fukuzumi discloses or suggests each of these limitations, and thus shows a reasonable likelihood that it would prevail in showing that claim 1 is unpatentable over Fukuzumi”).

There is significant overlap in claimed subject matter between the challenged claims here and claim 1 of the ’903 patent. For example, each of the independent claims being challenged—claims 1, 9, and 15 of the ’214 patent—includes limitations corresponding to those in the ’903 patent (including the purportedly patentable feature of the ’214 patent related to “*a second control gate*”).<sup>1</sup> The present Petition relies on the same Fukuzumi reference, applies the same claim constructions, and advances substantially the same analysis that the Board previously found reasonably likely to anticipate or render obvious claim 1 of the ’903 patent. See Pet. 48–55, 64–66, 69–75.

Moreover, because the Board has already instituted the ’099 IPR, both Petitioner and the public have a reasonable expectation that the similarly challenged

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<sup>1</sup> Claim 1 of the ’903 patent recites additional limitations (*e.g.*, *conductive pillars*) that are *not* required by claims 1, 9, and 15 of the ’214 patent. Conversely, any additional limitations recited in claims 1, 9, and 15 of the ’214 patent but not present in claim 1 of the ’903 patent (*e.g.*, *date lines*) are also disclosed and rendered obvious by Fukuzumi. See Pet. 48–55, 64–66, 69–75.

claims of the '214 patent are likewise likely unpatentable. That expectation weighs heavily against discretionary denial.

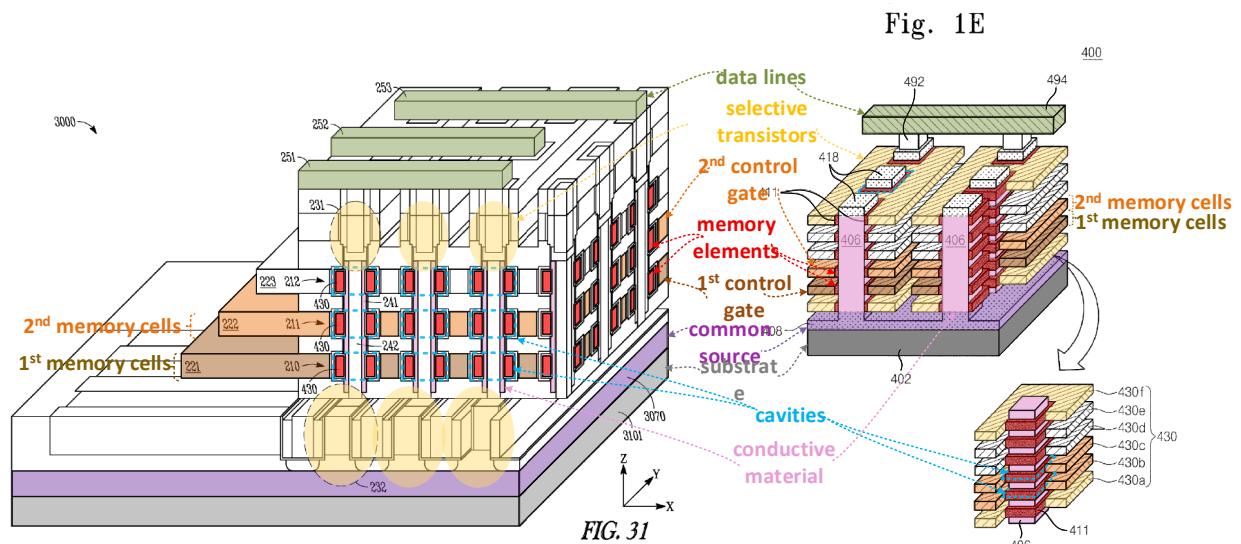
**B. The Petition Presents Strong Merits on Multiple Grounds Based on Anticipation and Single-Reference Obviousness**

The challenged claims recite features related to three-dimensional (3D) NAND memory devices, all of which were well-known and conventional before the filing date of the '214 patent. All elements of the challenged claims—including the purportedly patentable subject matter—are expressly and undisputedly disclosed in each of the two prior art references independently: Kang and Fukuzumi.

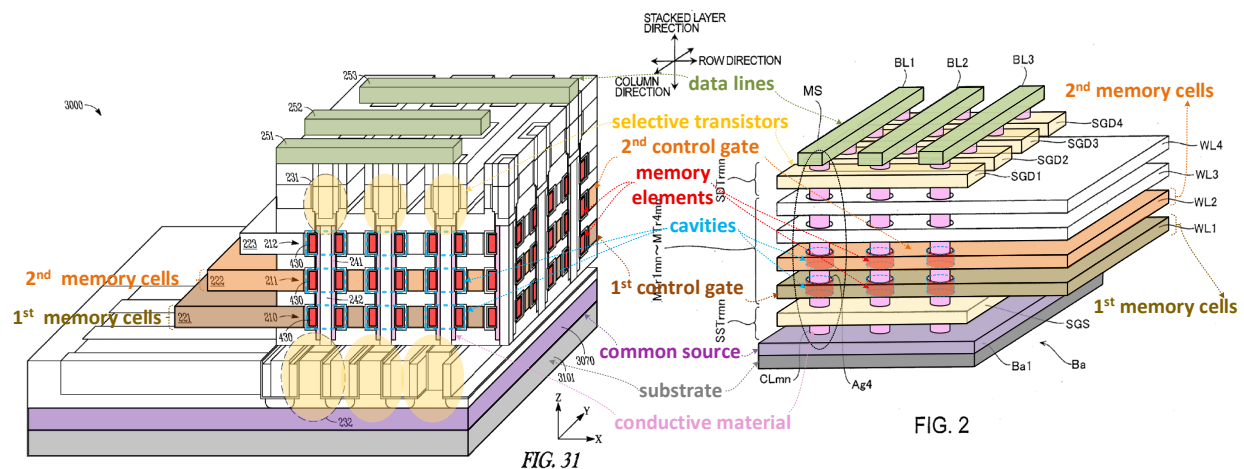
The Petition accordingly presents particularly strong unpatentability arguments on grounds based on anticipation and single-reference obviousness. Specifically, the Petition establishes that (i) claims 1-7, 9-12, and 14-20 are anticipated and rendered obvious by Kang (Grounds 1 and 2), and (ii) claims 1-7, 9-12, and 14-20 are anticipated and rendered obvious by Fukuzumi (Grounds 4 and 5). *See* Pet. 4. These straightforward and well-supported challenges further demonstrate that discretionary denial is inappropriate, and that institution should be granted.

For example, FIG. A below presents a side-by-side comparison of FIG. 31 of the '214 patent—which illustrates the claimed invention—with FIG. 1E of Kang. Pet. 5-6, 15 (citing EX1003 – FIGs. B and C with additional annotations). Similarly, FIG. B below provides a side-by-side comparison between FIG. 31 of the '214 patent

and FIG. 2 of Fukuzumi. Pet. 5-6, 46 (citing EX1003 – FIGs. B and E with additional annotations).



**FIG. A: Side-by-side Comparison of Annotated FIG. 31 of the '214 Patent and Annotated FIG. 1E of Kang**



**FIG. B: Side-by-side Comparison of Annotated FIG. 31 of the '214 Patent and Annotated FIG. 2 of Fukuzumi**

As illustrated in FIGs. A and B above, it is clear that each of Kang and Fukuzumi discloses a 3D NAND memory device that is substantially identical to the

one recited in challenged claim 1. In particular, the components of the 3D NAND memory device—namely, the “*substrate*” (highlighted in gray), “*first/second memory cells located in a first/second device level*” (in brown and orange, respectively), “*first/second control gate*” (in brown and orange, respectively), “*memory element*” (in red), “*cavity*” (in blue), “*data lines*” (in green), “*common source*” (in purple), and “*conductive material*” (in pink)—are consistently and expressly disclosed across these prior art references. *See* Pet. 11-20, 48-55.

**C. Discretionary Denial is Not Warranted Because a Material Error Was Committed During Patent Examination**

Discretionary denial is inappropriate because the Petition establishes that the Office committed a material error during examination of the '214 patent. As a result, it would be appropriate for the Office to use its resources to review that material error. *See Microsoft Corporation v. Partec Cluster Competence Center GMBH*, IPR2025-00318, Paper 9 at 3 (Director June 12, 2025) (“*Microsoft*”) (finding that “discretionary denial of institution is not warranted because of Petitioner’s showing of material error during patent examination” and that “it is an appropriate use of Office resources to review the potential error”); *Eunsung Global Corp. v. HydraFacial LLC*, IPR2025-00445, Paper 14 at 3 (Director July 10, 2025) (finding that “discretionary denial is not appropriate” because “Petitioner persuasively demonstrates that the patent examiner overlooked certain teachings in Karasiuk that

appear to disclose the allowable features of the claims”); *Anthony Inc. v. Controltec LLC*, IPR2025-00559, Paper 9 at 2 (Director July 16, 2025) (finding that “[a]lthough the challenged patents have been in force for approximately eighteen and seventeen years, Petitioner appears to show a material error by the Office, and it is an appropriate use of Office resources to review the potential error”).

During prosecution of the ’214 patent, the examiner allowed claim 1 because the prior art on the record did not teach the claim limitations related to “*a second control gate*” and “*data lines.*” Pet. 7 (citing EX1002, 102). However, the examiner overlooked relevant prior art, as both Fukuzumi and Kang clearly disclose the purportedly patentable allowable subject matter in claim 1. *See Microsoft*, IPR2025-00318, Paper 9 at 2-3 (finding that the examiner overlooked pertinent prior art references that were not previously before the examiner); *Anthony Inc.*, IPR2025-00559, Paper 9 at 2 (same); *Tesla, Inc. v. Charge Fusion Technologies, LLC*, IPR2025-00152, Paper 11 at 2-3 (Director June 12, 2025) (finding Office erred by overlooking prior art teachings that disclosed the purportedly allowable feature); *Microsoft Corporation v. XI Discovery, Inc.*, IPR2025-00253, Paper 13 at 2 (Director June 25, 2025) (same).

For example, regarding the “*a second control gate*” limitation, the Board of the ’099 IPR in the Institution Decision confirmed that the same claim limitation recited in claim 1 of the ’903 patent was disclosed by Fukuzumi, in substantially the

same manner as presented in this Petition. *See* IPR2025-00099, Paper 15 at 17 (discussing [1.d] “*a second control gate formed in a second device level, the memory cell string including a second memory cell having a memory element formed in a cavity of the second control gate*”); Pet. 50-53 (discussing [1.e] “*a second control gate formed in the second device level, ... wherein each of the second memory cells includes a memory element formed in a cavity of the second control gate*”).

Similarly, as shown in FIG. C (annotated FIG. 1E of Kang) below, Kang clearly and undisputedly discloses a second control gate 430c (in orange, “*a second control gate formed in the second device level*”) used to control access of the second groups of memory transistors (“*the second control gate to control access to the second memory cells*”), and the silicon nitride layer in charge storage layer 411 (in red, “*memory element*”) formed in a cavity (in blue) of second control gate 430c. *See* Pet. 14-17 (citing EX1003 — FIG. K with additional annotations).

Fig. 1E

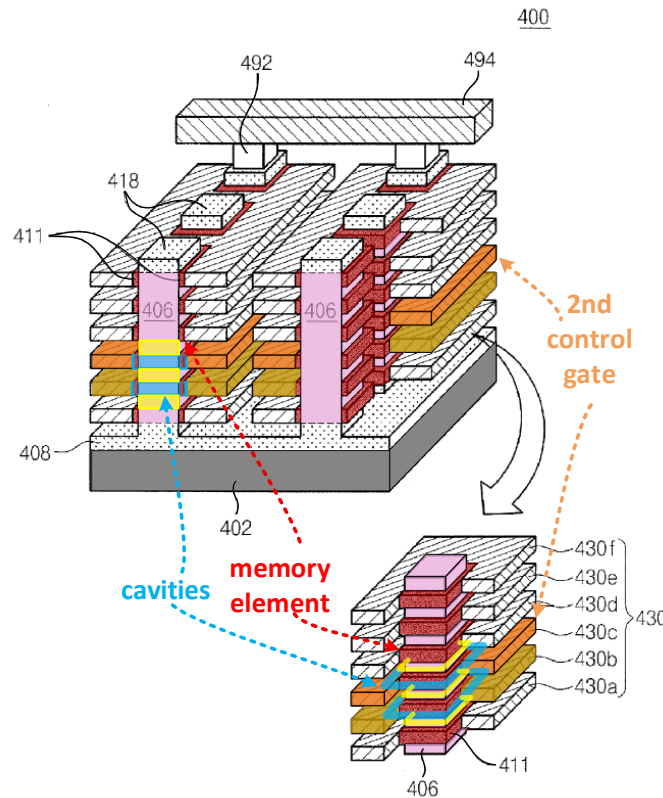


FIG. C: Annotated FIG. 1E of Kang (EX1003 — FIG. K)

Both Kang and Fukuzumi also undisputedly disclose the limitation related to “data lines” ([1.f]) in claim 1, as detailed in the Petition. *See* Petition, 17-20, 53-55.

Therefore, the examiner overlooked relevant prior art by not having considered Kang and Fukuzumi’s teachings, demonstrating that the Office erred in a manner material to the patentability of at least claim 1.

In sum, the examiner erred materially by overlooking teachings of relevant prior art, *i.e.*, Kang and Fukuzumi’s express disclosure of the purported patentable subject matter of claim 1, as confirmed by the Board in a related proceeding. In

view of this material error, discretionary denial is not warranted. *See, e.g., Microsoft*, IPR2025-00318, Paper 9 at 3.

### **III. DISCRETIONARY DENIAL UNDER FINTIV IS INAPPROPRIATE BECAUSE THE '214 PATENT IS NOT CURRENTLY INVOLVED IN ANY PARALLEL PROCEEDING**

#### **A. The '214 Patent is Not Currently Asserted in any Pending Civil Action**

As pointed out in the Petition, the '214 patent was initially asserted as counterclaims in Patent Owner's February 16, 2024 Answer and Counterclaim in *Yangtze Memory Technologies Co. Ltd. v. Micron Technology, Inc. et al.*, No. 3:23-cv-05792-RFL (N.D. Cal.) ("NDCA case"), but the district court dismissed it under Federal Rule of Civil Procedure 12(b)(6), with leave to amend. *See* Pet. 2, n. 1 (citing EX1025-EX1026).

Subsequently, on January 29, 2025, Patent Owner filed an unopposed motion for leave to amend its counterclaims to reassert the '214 patent. *Id.* (citing EX1028). This Petition was filed on February 14, 2025, about two weeks after the motion was filed. That motion was later denied as moot on March 14, 2025 in view of the current stay of the NDCA case. EX1029, 2–3.

Accordingly, the '214 patent is *not* presently asserted in the NDCA case or in any other pending civil action. As a result, there is no parallel proceeding involving the '214 patent that would justify discretionary denial under *Fintiv* or related

guidance. *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6 (PTAB March 20, 2020) (precedential).

**B. The '214 Patent Remains an Imminent Obstacle for Petitioner as Patent Owner is Highly Likely to Reassert it Once the Stay is Lifted**

Although the '214 patent is not currently asserted in any pending civil action, it continues to pose an imminent threat to Petitioner as the '214 patent was not dismissed with prejudice. Patent Owner previously sought leave to amend its counterclaims to reassert the '214 patent in the NDCA case, and that motion was unopposed. Given the procedural history and the posture of the case, it is highly likely that Patent Owner will renew its efforts to assert the '214 patent against Petitioner after the stay is lifted (*e.g.*, through a renewed motion).

This case is readily distinguishable from prior decisions in which the Director found that dismissal of a patent from parallel district court litigation weighed in favor of discretionary denial. In each of those cases, the patent at issue *no longer posed a threat* to the petitioner—either because it was dismissed *with prejudice* (*see* IPR2024-01453 (Paper 15 at 2), IPR2025-00415, -00417, and -00418 (Paper 10 at 2-3)), dismissed pursuant to a *joint motion* by the parties (*see* IPR2025-00290, -00291, and -00317 (Paper 18 at 4)), or subject to a *stipulation* by the patent owner *not* to assert the challenged claims against the petitioner (*see* IPR2025-00227 (Paper 13 at 4, DD Req. 10), IPR2025-00313 and -00314 (Paper 18 at 2, DD Opp. 1)).

By contrast, here, the '214 patent remains at the center of a live and unresolved dispute between the parties. Petitioner faces a real and ongoing risk of future litigation involving the '214 patent, which strongly supports institution and weighs against discretionary denial. Having the PTAB resolve the patentability issues without any overlap with the litigation—especially given that the litigation is stayed—would serve the very purpose for which IPR was created: to provide an efficient alternative to district court litigation.

**C. Discretionary Denial under *Fintiv* Would Still be Inappropriate Even If the Potential Reassertion of the '214 Patent Warrants a *Fintiv* Analysis**

As stated in Section III.A, the '214 patent is not asserted in the currently stayed NDCA case, and there is no other pending parallel litigation involving the '214 patent. To the extent the '214 patent is later allowed to be reasserted in the NDCA case, discretionary denial would still be inappropriate under *Fintiv* analysis.

The NDCA case is presently stayed pending resolution of other IPR proceedings, and no trial date has been set (*Fintiv* Factor 1). *See generally* EX1029. As the court noted in its stay order, “the litigation is in an early stage.” *Id.* 1. If new patents, including the '214 patent, are asserted after the stay is lifted, the case schedule will likely be further extended to accommodate those additional claims. Therefore, even after the stay is lifted, it is highly unlikely that a trial would occur before a Final Written Decision (FWD) is issued in this IPR (*Fintiv* Factor 2).

Furthermore, the parties have made minimal investment with respect to the '214 patent in the NDCA case before the '214 patent was dismissed (*Fintiv* Factor 3). Patent Owner's original counterclaims concerning the '214 patent were dismissed under Rule 12(b)(6) for failure to adequately plead infringement. EX1026, 1. Invalidity contentions for the '214 patent have not yet been served. Petitioner was diligent in filing the Petition just about two weeks after Patent Owner's motion for leave to amend its counterclaims to reassert the '214 patent was filed.

In addition, Petitioner has stipulated that if this IPR is instituted and the '214 patent is reasserted in the NDCA case, Petitioner will *not* pursue the same grounds of invalidity in the district court litigation (*Fintiv* Factor 4). Pet. 83, n. 12 (citing *Sand Revolution II, LLC v. Continental Intermodal Group – Trucking LLC*, IPR2019-01393, Paper 24 at 11-12 (PTAB June 16, 2020) (informative)).

Finally, as discussed above in Section II, the Petition presents strong unpatentability grounds and compelling merits (*Fintiv* Factor 6). It is also worth noting that the same PTAB merits panel has already been assigned to a number of IPR proceedings between the parties, all of which involve similar 3D NAND memory technologies as those at issue in the '214 patent. *See, e.g.*, IPR2025-00098, -00099, -00189, -00117, -00118, -00034, IPR2024-00911, -00909, -00791, -00788, -00792, -00790, -00789, -00794, -00795. Given the complexity of the technologies underlying the '214 patent, as well as the panel's technical background and its

familiarity with the subject matter through these related proceedings, it would be far more efficient for the PTAB—particularly the same merits panel—to adjudicate the validity of the '214 patent. Moreover, PTAB adjudication will help ensure consistent and predictable invalidity determinations across these related proceedings involving similar technologies.

Accordingly, even if a *Fintiv* analysis were deemed appropriate, almost all *Fintiv* factors weigh against discretionary denial.

#### **IV. PATENT OWNER HAS NOT DEVELOPED SETTLED EXPECTATIONS THAT FAVOR DISCRETIONARY DENIAL**

As discussed above, the '099 IPR, which involves the '214 patent's descendant '903 patent, has been instituted. IPR2025-00099, Paper 15. The '903 patent issued at the end of 2020 (December 22, 2020) and thus, has not been in force for a significant period of time to create settled expectations. *See Cambridge Industries USA Inc., v. Applied Optoelectronics, Inc.* IPR2025-00434 Paper 11 at 2-3 (Director June 26, 2025) (finding Patent Owner has not developed strong settled expectations that favor discretionary denial for patents issued in 2020 and 2019”); *Berkshire Hathaway Energy Company et al. v. Birchtech Corp.*, IPR2025-00274, Paper 23 at 3 (Director July 2, 2025) (same).

Moreover, the Director in *Embodly, Inc. et al. v. LifeNet Health* further held that discretionary denial was not warranted in IPRs respecting two patents where

“one of the challenged patents has not been in force for a significant period of time” and “the other patent is a parent of the first one,” which has been in force for about four years longer. IPR2025-00248, Paper 13 at 2–3 (Director June 26, 2025). The Director concluded that it was “an efficient use of Board resources to address *the related patent.*” *Id.* at 3. The same rationale and conclusion are also made by the Director in *Padagis US LLC v. Neurelis, Inc.*, IPR2025-00464, Paper 12 at 3-4 (Director July 16, 2025).

Likewise, in *POSCO Co., Ltd. v. ArcelorMittal*, the Director found that where the Board had previously determined related claims to be unpatentable, and the challenged claims were “highly vulnerable to invalidation based on prior art,” those factors weighed against discretionary denial with respect to patent owner’s settled expectations. IPR2025-00370, Paper 10 at 2-3 (Director June 25, 2025). The Director further explained that “[i]t is an appropriate use of Office resources to provide consistency and predictability to the public, and to ensure that a patent applicant or owner does not take action inconsistent with the judgment in a prior Office proceeding.” *Id.* at 3 (citing 37 C.F.R. § 42.73(d)(3)).

Here, too, Patent Owner has not established settled expectations with respect to the ’903 patent, and addressing the related ’214 patent in this proceeding represents an efficient and appropriate use of the Board’s resources. Doing so promotes consistency and predictability across proceedings involving the same prior

art and related patents with similar claims—especially where, as here, the prior art was not considered during prosecution, and similar claims in the related '099 IPR have already been found to present a reasonable likelihood of unpatentability in view of the same Fukuzumi reference in a prior Office proceeding. *See* Sections II.A and II.C.

Even if the Director were to consider Patent Owner's settled expectations regarding the '214 patent without regard to the '903 patent, discretionary denial remains unwarranted given the material error made by the Office during examination (*see* Section II.C), consistent with recent Director decisions in *Eunsung* and *Anthony Inc.*. *See Eunsung*, IPR2025-00445, Paper 14 at 2-3 (finding discretionary denial unwarranted despite the patent having issued in 2017 because the examiner overlooked prior art that appeared to disclose the allowable features of the claims); *Anthony Inc.*, IPR2025-00559, Paper 9 at 2 (finding discretionary denial unwarranted despite the patent having being in force for about 17 and 18 years because the examiner overlooked prior art of a new reference).

Here, as in *Eunsung*, the allegedly distinguishing features—the “*second control gate*” and “*data lines*” limitations—are disclosed in prior art, even in two separate references: Kang and Fukuzumi. *See* Section II.C. The examiner's failure to consider these references constitutes a material error that directly affects the patentability of the claims. Accordingly, the rationale in *Eunsung* applies equally

here, and discretionary denial remains inappropriate. IPR2025-00445, Paper 14 at 2-3.

Also, as in *Anthony Inc.*, the examiner erred by overlooking the teachings of newly cited references—Kang and Fukuzumi—which directly impact the patentability of the claims. *See* Sections II.A, II.B. Thus, even considering the '214 patent's own term of about 11 years, which is shorter than the 17 and 18 years at issue in *Anthony Inc.*, the rationale in *Anthony Inc.* applies equally here, and discretionary denial remains inappropriate. IPR2025-00559, Paper 9 at 2.

In sum, whether Patent Owner's expectations regarding the '214 patent are considered in conjunction with the related '903 patent or in isolation, those expectations do not justify discretionary denial. As detailed in Sections II–IV above, Petitioner has provided detailed, compelling reasons why institution of this IPR is an appropriate and efficient use of Board resources. *See Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 2–3 (Director June 18, 2025). This conclusion is fully aligned with the Director's reasoning in numerous recent, analogous decisions, such as *Microsoft*, *Eunsung*, *Anthony Inc.*, *Embody*, *Padagis*, *POSCO*, and *Tesla*. Accordingly, discretionary denial is not warranted.

**V. PATENT OWNER’S ARGUMENTS FOR DISCRETIONARY DENIAL SHOULD BE REJECTED**

Patent Owner in its DD Request raises three arguments about whether Petitioner can file a petition and whether the Director should discretionarily deny the Petition due to alleged Chinese government investment in Petitioner.<sup>2</sup> These arguments should be rejected.

First, Petitioner is a “person” that can file an IPR consistent with binding precedent. Second, Petitioner is a private company, not a state-owned enterprise, and mere investment by certain Chinese government entities does not render Chinese government an RPI. Indeed, the U.S. government has invested in Patent Owner, but was not identified as an RPI in any of Patent Owner’s own IPRs. Third, the U.S. government has not alleged that Petitioner operates on behalf of the Chinese government. Petitioner’s 2022 inclusion on the U.S. Commerce Department’s “Entity List” was exclusively based on the U.S. government’s perceived risk that Petitioner’s products could be “diver[ted]” to another entity on the list, not on any allegation of Chinese government ownership or control. In sum, Patent Owner’s arguments are specious and unsupported by its alleged evidence and adopting them

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<sup>2</sup> As noted by Patent Owner, the arguments for discretionary denial in its DD Req. are “substantially identical” to those in its Preliminary Responses and Sur-replies in the ’099 IPR. DD Req. 1, n. 1. Those arguments, however, have been rejected by the Board of the ’099 IPR in the Institution Decision. *See* IPR2025-00099, Paper 15 at 19-27 (PTAB June 10, 2025).

would require the Director to make drastic holdings that are contrary to law and precedent.

**A. Patent Owner’s Allegations Are Unsupported and Irrelevant**

Patent Owner’s allegation that the Chinese government controls Petitioner is unsupported by its alleged evidence, which is unreliable and inaccurate. Petitioner is a private company with independent control over its actions, including this Petition. No other party played a role in Petitioner’s decision to pursue this IPR, or exercised control over the arguments. None of Patent Owner’s alleged evidence shows otherwise.

The sum total of the alleged evidence provided in Patent Owner’s DD Request is that: (1) the Chinese government has a fund that invests in the integrated circuit field (DD Req. 3-7); (2) Petitioner’s parent company YMTH has a series of minority investors, and Patent Owner alleges that these investors have taken investment from a diverse range of interests that includes local government branches in China and the integrated circuit investment fund (DD Req. 7-10); and (3) Petitioner has been added to the U.S. Bureau of Industry and Security’s (“BIS”) Entity List and to the U.S. Department of Defense’s (“DOD”) Chinese Military Company List (“CMC List”) (DD Req. 10-12). Even if true, Patent Owner never explains how any of these allegations support its conclusory argument that the Chinese government is an RPI.

Patent Owner cannot support its argument because it is wrong. That Petitioner’s parent company allegedly has a series of minority investors, including various government entities, does not imply control, nor is such an investment structure unusual for private Chinese companies. Patent Owner does not purport to explain how this set of entities exercises any level of control over Petitioner’s actions. Indeed, Patent Owner’s briefing cites no case in which the Director or Board has held that a passive investor in any company (let alone one three levels removed) should prevent a party from being able to file an IPR petition, and Petitioner knows of no such case. Moreover, in the NDCA case, Patent Owner chose to sue Petitioner—not the Chinese government or any alleged investors that it argues are state-owned entities. Assuming *arguendo* that Patent Owner truly believes that Petitioner is “an entity created, owned, and controlled by the Chinese government” and is therefore “not a statutorily authorized ‘person,’” it should have named the Chinese government, not Petitioner, in the NDCA case. DD Req. 1. Petitioner similarly identified RPIs at the NDCA case, and Patent Owner never challenged the fact that Petitioner did not name the Chinese government in that forum. EX2021.

Following Patent Owner’s own argument, the U.S. government would be an RPI when Patent Owner files IPR petitions, at least because Patent Owner took a \$6.165 billion U.S. government investment as part of the 2022 CHIPS Act. EX1030. Like the Chinese integrated circuit fund, the CHIPS Act constitutes state investment

in Patent Owner and was intended to “help the U.S. grow its share of advanced memory manufacturing” and to “strengthen U.S. economic resiliency by bolstering a reliable domestic supply of leading-edge DRAM chips.” *Id.* If taking passive investment from a government source makes the government an RPI, then Patent Owner’s direct investment from the U.S. government would mean that it should identify the U.S. government as an RPI when it files or defends against IPRs—something that it has never done in its 30+ IPRs filed since the CHIPS Act passed. *See, e.g.*, Paper 4; *see also* EX1031; EX1032.

Patent Owner’s Entity List and CMC List allegations (both of which Petitioner disagrees with and is currently disputing through the entities tasked with those determinations) are similarly misleading. The Entity List identifies entities “subject to specific license requirements for the export, reexport and/or transfer (in-country) of specified items.” EX1033. Petitioner’s inclusion on the Entity List does not state or suggest that it is owned or controlled by the Chinese government—rather, BIS explained that the reason for Petitioner’s inclusion is exclusively the alleged “risk of diversion to [other] parties on the Entity List.” EX1034, 77506. Neither ownership nor control are a reason for inclusion on the Entity List. *See* 15 C.F.R. § 744.11 (listing criteria). With respect to the CMC List, Patent Owner inaccurately argues that inclusion means that a company is an alleged “entity that is owned and/or controlled by the Chinese government.” DD Req. 12. Patent Owner strategically

omits that there is an alternative reason for inclusion on the list that is unrelated to ownership or control. *See* H.R. 6395, 116th Cong. § 1260H(d)(1)(B)(II) (2021). For example, a company may be added to the CMC List on a finding that it is “affiliated with the Chinese Ministry of Industry and Information Technology, including research partnerships and projects.” *Id.* § 1260H(d)(2)(B). The DOD has not specified the reason for Petitioner’s inclusion on the CMC List, which may be wholly unrelated to any alleged ownership/control by the Chinese government, and thus irrelevant to this IPR.

In aggregate, Patent Owner’s allegations are not only unsupported, but irrelevant. Patent Owner’s evidence does not suggest that the Chinese government has control over Petitioner or that it has any involvement at all except as a passive investor in the investors in Petitioner’s parent. Because Petitioner functions as an independent, private company, with sole control over how it conducts itself in this proceeding, and there is no evidence to the contrary, Patent Owner’s arguments should be rejected.

**B. Patent Owner’s Arguments Are Contrary to Law**

**1. Petitioner is a “person” entitled to file an IPR**

Patent Owner asserts that Petitioner is not a statutorily authorized “person” under 35 U.S.C. § 311(a) 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). DD Req.

16-20. Notably, the Board in the related '099 IPR expressly rejected this same argument, finding that “it does not disprove that YMTC is a company, and therefore a ‘person’ under § 311 regardless of whether it is also a government entity.” IPR2025-00099, Paper 15 at 19-20. Patent Owner does not dispute that YMTC is a company. *See, e.g.*, DD Req. 7 (stating that “YMTC is China’s State-Owned NAND Memory *Company*”). Thus, as a company, YMTC constitutes a “person” under the express language of the Dictionary Act, which is eligible under 35 U.S.C. § 311(a) to file a petition for IPR. 1 U.S.C. § 1. Patent Owner has not provided any binding precedent, nor any persuasive argument, that the holding of *Return Mail* should be extended to exclude a “company”—even if such company were under the control of a foreign government—from the express definition of a “person” under 1 U.S.C. § 1. *See* IPR2025-00099, Paper 15 at 21.

Moreover, Patent Owner’s argument that Petitioner is not a “person,” based on *Return Mail*, is misguided. *Return Mail* was largely based on statutory restrictions against suing the U.S. government for infringement that do not apply to Petitioner, and Patent Owner’s argument was rejected by the Federal Circuit in analogous circumstances.

In *Return Mail*, the Supreme Court held a U.S. government agency (the U.S. Postal Service) was not a “person” and thus could not file an IPR because “federal agencies face lower risks [so] it is reasonable for Congress to have treated them

differently” than an individual or a private party. 587 U.S. 618, 625, 635-636 (2019). Non-government actors “face greater and more uncertain risks if they misjudge their right to use technology” including because 28 U.S.C. § 1498 places several restrictions on patent owners suing the Government, which are not applicable to shield non-government actors from patent infringement claims. *Id.* (listing restrictions). None of these restrictions applies to Patent Owner’s infringement counterclaim against Petitioner, which faces all of the same potential liability as any other private company, particularly given Patent Owner’s decision to bring its allegations of Chinese control at the PTAB but not at the NDCA case.

Patent Owner improperly equates YMTC—a private company with multiple shareholders—with the U.S. Postal Service—a federal agency. The Supreme Court held that the USPS is a federal agency. *See Return Mail*, 587 U.S. at 637 (“a federal agency is not a ‘person’ who may petition for post-issuance review under the AIA”); *Id.* at 627 (statutory definition of person includes “companies” but not the Federal Government). Patent Owner does not contest that the U.S. Postal Service is a federal agency and that YMTC is a company.

Beyond this textual analysis (which is itself dispositive), Patent Owner’s arguments also fail to address the U.S. government-specific analysis set forth in *Return Mail*. As the Board in the ’099 IPR explained, *Return Mail* was based on factors specific to the U.S. government (such as limitations on patent owners’ rights

when bringing claims against the U.S. and on problems with inter-agency proceedings), which do not apply to YMTC. IPR2025-00099, Paper 15 at 21-22. As noted in *Tik Tok Inc. v. Cellspin Soft, Inc*, the “overarching notion underlying *Return Mail*’s analysis is that the U.S. Government is treated differently than private parties in adversarial, adjudicatory patent proceedings.” IPR2024-00757, Paper 33 at 12-13 (PTAB June 2, 2025), Director review granted, Paper 34 (PTAB June 5, 2025);<sup>3</sup> *see also, e.g., Return Mail*, 587 U.S. at 634–636 (stating how the U.S. government is “in a unique position among alleged infringers given that 28 U.S.C. § 1498 limits patent owners to bench trials before the Court of Federal Claims”), 636 n.10 (discussing estoppel procedures that may not be applicable to the U.S. government), 636 (discussing the “awkward situation” that might arise as a result from a civilian patent owner defending their patent in “an adversarial proceeding initiated by one federal agency (such as the Postal Service) and overseen by a different federal agency (the Patent Office).” Patent Owner does not address that these same considerations apply to a foreign government or foreign government entity, such that we should extend

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<sup>3</sup> Director Review was granted in the *TikTok* proceedings due to “novel issues presented.” IPR2024-00757, Paper 34 at 3. This matter is distinguishable from *TikTok* at least because it involves different parties, a different procedural posture, and a different record. Additionally, unlike in *TikTok*, Patent Owner has filed its own IPRs against Petitioner relating to the NDCA case such that denying Petitioner the same opportunity would be inequitable. *See, e.g.,* IPR2024-00788 to -00795, -00909 to -00912; IPR2025-00034 to -00035, -00117 to -00119, -00189-00191, -00228 to -00229, -00244 to -00245, and -00294.

*Return Mail's* holding to foreign governments or foreign government entities. *See* IPR2025-00099, Paper 15 at 21-22.

A more apt comparison is *Bozeman Fin. LLC v. Fed. Rsrv. Bank of Atlanta*, in which the Federal Circuit determined that Federal Reserve banks were “persons” under the AIA in the aftermath of the *Return Mail* decision:

It is significant that the Banks are subject to suit for patent infringement in any court. The Supreme Court recognized that federal agencies face less risk for patent infringement than do private entities, and recognized that lessened risk as a reason for Congress to treat federal agencies differently. A patent owner’s remedy is limited when it sues the government rather than private entities. Patent owners’ ability to sue the Banks in any district court, and to seek remedies they would be prohibited from in a suit against the government, favors a finding that the Banks are separate from the government and Congress intended the Banks have access to post-issuance proceedings.

955 F.3d 971, 975-76 (Fed. Cir. 2020) (citations omitted). *Bozeman* thus counsels that Petitioner, a private entity subject to suit in district court (as shown by the lawsuit that Patent Owner filed against Petitioner), is a “person” entitled to file an IPR petition.

The Federal Circuit’s reasoning is even more applicable to Petitioner than it was to the banks in *Bozeman*. There plaintiff argued that the banks were “operating members of the nation’s Federal Reserve System, which is a federal agency,

meaning they are government entities” and that they “implement the monetary and fiscal policies of the United States, conduct important governmental functions, and any profit generated by the Banks is transferred to the United States Treasury.” *Id.* at 975. Petitioner is not a government entity and does not have any of the advantages that the U.S. government enjoys defending itself in court.

Because *Return Mail* is distinguishable and *Bozeman* counsels that Petitioner is a statutory “person,” Patent Owner’s argument is legally flawed and should be rejected.

## **2. The Chinese government is not an RPI**

Patent Owner never explains how the Chinese government<sup>4</sup> controlled or could have controlled this proceeding, or how this petition was “filed at another party’s behest.” *Uniloc 2017 LLC v. Facebook Inc.*, 989 F.3d 1018, 1027–28 (Fed. Cir. 2021). To identify RPIs, “[r]elevant considerations may include, whether a party exercises [or could exercise] control over a petitioner’s participation in a

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<sup>4</sup> Patent Owner refers to the “Chinese government” as an unnamed RPI but does not identify what the “Chinese government” is. *See, e.g.*, DD Req. 3–5 (referring to “China’s State Council”), 7 (municipal governments), 7–9 (identifying the seven shareholders of YMTC Holding as “state-owned enterprises”), 9 (stating the actual controller of the Yangtze River Industrial Investment Group is the “administration of Wuhan East Lake High-tech Development Zone”), 9 (stating the actual controller of the Yangtze River Industrial Group is the “Hubei Provincial State-owned Assets Supervision and Administration Commission”). *See* IPR2025-00099, Paper 15 at 22, n. 6.

proceeding, or whether a party is funding the proceeding or directing the proceeding.”

*Id.* (cleaned up).

Patent Owner’s bare allegations that Petitioner’s parent company has investors that took investment from the Chinese government do not suggest that the government specifically funded this proceeding or that it had an opportunity to control Petitioner’s filing of these IPR petitions against Patent Owner. At most, Patent Owner argues that the Chinese government gets a benefit from this proceeding because it has investors in the company. DD Req. 22-24. But having investors has never been the standard for identifying RPIs. Accepting this argument would mean that every investor (or at least every major investor) in a company is an RPI, and therefore that the estoppel from a one-year bar or final written decision would infect dozens of companies that had nothing to do with the lawsuit or the IPR. For example, Patent Owner would be an RPI with its investors, which in turn would be RPIs with many of the biggest public technology companies in the U.S. EX1035; EX1036 (Patent Owner’s biggest investors also invest in many other tech companies). Worse yet, under Patent Owner’s argument, when a state invests in a company, every company that the state has invested in would have the same estoppel profile as the state—impacting hundreds of other companies.

Because the Chinese government is not an RPI, and because Patent Owner’s argument would drastically expand the definition of RPI and the corresponding

requirement to identify RPIs, the Director should reject that argument.

Patent Owner's alternative argument that Petitioner should have identified YMTH as an RPI lacks merit because Patent Owner never argues nor provides evidence that YMTH controlled or could control this proceeding. *See VirnetX Inc. v. Mangrove Partners Master Fund, Ltd.*, 778 F. App'x 897, 903 (Fed. Cir. 2019) (investment manager of petitioner was not an RPI, even after transmitting money to finance the proceedings).

Even assuming, *arguendo*, that the "Chinese government" or YMTH could be considered an unnamed RPI, Patent Owner has not shown that any such omission warrants discretionary denial. As the Board already held in the related '099 IPR, Patent Owner "does not sufficiently show that the failure to identify the RPI is a reason to decline to institute this proceeding." IPR2025-00099, Paper 15 at 23. Patent Owner has not asserted that a statutory bar or other estoppel would apply to either the Chinese government or YMTH in this proceeding. *Id.* (citing 35 U.S.C. § 315(b)). Precedential PTAB decisions hold that Petitioner could add an RPI without necessitating a new filing date. *See SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11, 18 (PTAB October 6, 2020) (precedential); *Lumentum Holdings, Inc. v. Capella Photonics, Inc.*, IPR2015-00739, Paper 38 at 6 (PTAB March 4, 2016) (precedential) (stating that a petition may be corrected, including adding a real party in interest, without assigning a new filing date).

Indeed, in *Unified Patents, LLC v. MemoryWeb, LLC*, the Director reaffirmed the *SharkNinja* precedent, emphasizing that it “best serves the Office’s interests in cost and efficiency to not resolve an RPI issue when it would not create a time bar or estoppel under 35 U.S.C. § 315 in that proceeding.” *Unified Patents, LLC v. MemoryWeb, LLC*, IPR2021-01413, Paper 76 at 4 (PTAB May 22, 2023) (vacating the Board’s RPI determination in the Final Written Decision as not necessary to resolve the proceeding, such as a time bar under § 315(b) or estoppel under 35 U.S.C. § 315(e)). Here, Patent Owner has not alleged—and cannot show—that either the Chinese government or YMTH has been sued for patent infringement. Accordingly, Patent Owner has not demonstrated that any determination as to whether the Chinese government or YMTH is an RPI, or in privity with Petitioner, would impact this proceeding or give rise to a time bar or estoppel. IPR2025-00099, Paper 15 at 24.

Nonetheless, to the extent that the Director determines that YMTH should be identified, Petitioner is willing to amend its identification of RPIs to include YMTH. Such an amendment should not change the filing date afforded to the petition. *See Wi-Fi One v. Broadcom Corp*, 878 F.3d 1364, 1374, n.9 (Fed. Cir. 2018) (*en banc*) (“[I]f a petition fails to identify all real parties in interest under § 312(a)(2), the Director can, and does, allow the petitioner to add a real party in interest.”); *Adello Biologics LLC v. Amgen Inc*, PGR2019-00001, Paper 11 (precedential). Patent Owner has long been on notice of YMTH’s interest, at least from Petitioner’s

November 2023 disclosure in the NDCA case. EX2021; *see Mayne Pharma Int'l Pty. Ltd. v. Merck Sharp & Dohme Corp.*, 927 F.3d 1232, 1239 (Fed. Cir. 2019) (allowing amendment of RPIs to include a party identified in parallel district court litigation).

As to Patent Owner's contention that the Chinese government may file additional IPR proceedings through other Chinese semiconductor companies if this Petition is denied or unsuccessful and that RPI provisions seek to protect patent owners from harassment via "successive petitions by the same or related parties" (DD Req. 30-31)—such concerns are unfounded and speculative. The PTAB has already established mechanisms to prevent abusive or duplicative proceedings if they arise. *See* IPR2025-00099, Paper 15 at 24-25 (citing Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019) ("Consolidated TPG"), 55–63; *General Plastic Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 15–18 (PTAB September 6, 2017) (precedential) (recognizing the "potential for abuse of the review process by repeated attacks on patents" and setting forth factors to consider in exercising discretion on instituting inter partes review as to "follow-on" petitions challenging the same patent previously challenged in an *inter partes* review proceeding).

**3. The Director should not exercise discretion to deny the Petition**

Patent Owner (DD Req. 32-34) relies on *Microsoft Corp. v. Science Applications Int'l Corp.* to argue that the Director should discretionally deny this Petition, but that case is inapposite. IPR2019-01311, Paper 35 (PTAB January 27, 2020). There, the patent owner initially sued the U.S. government (not a private company) at the Court of Federal Claims. *Id.* at 3. Microsoft had a contract with the government to produce the allegedly infringing technology, and therefore filed IPR petitions, but these petitions were not filed until more than one year after the lawsuit against the government was filed. *Id.* at 7-8. The Board concluded that Microsoft would have “no interest” in “seeking invalidity of the challenged claims but for the Contract” and that “the Petition and the infringement claims against the government are intertwined.” *Id.* at 9. The Board also pointed to “evidence of at least some pre-filing communication” and of the relationship between the parties. *Id.* at 1.

In contrast, here the related district court litigation is not a suit against the Chinese government (but directly against Petitioner), there is no similar estoppel issue, and there are no allegations, let alone evidence, of any coordination between the Chinese government and Petitioner as to this IPR. *See* IPR2025-00099, Paper 15 at 26 (finding that “[u]nlike in *Microsoft*, in which the statutory bar under 35 U.S.C. § 315(b) applied because the U.S. government had been sued more than one year

prior, there is no argument in the present proceeding that the Chinese government has been sued for patent infringement or is otherwise subject to a statutory bar under § 315(b)"). Instead, Petitioner has a clear interest in the district court lawsuit by virtue of being accused there of patent infringement.

Patent Owner's additional arguments for discretionary denial (DD Req. 34-37) rely again on its conclusory allegation that the Chinese government owns and controls Petitioner, which is unsupported by its alleged evidence, and which is contrary to the position that Patent Owner took at the NDCA case. Appealing to xenophobic fears, Patent Owner further urges the Director to make a political decision—discretionarily denying any IPR petition that is filed by a company that has Chinese (or any other state) investment, no matter how far removed from its day-to-day operations. DD Req. 35-36. The Director should reject Patent Owner's attempt to inject its political biases into this IPR.

## VI. CONCLUSION

For the above reasons, Petitioner respectfully requests that the Director refrain from exercising discretion to deny this Petition, and instead pass it to a merits panel for consideration.

Respectfully submitted,

BAYES PLLC

/Zhiwei Zou/

Zhiwei (Wayne) Zou

Registration No. 66,041

Lead Counsel for Petitioner

Date: July 17, 2025  
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**CERTIFICATION UNDER 37 C.F.R. § 42.24**

This Petitioner's Opposition to Patent Owner's Request for Discretionary Denial complies with the requirements of 37 C.F.R. § 42.24. As calculated by the word count feature of Microsoft Word, it contains 7,936 words, excluding the parts exempted by § 42.24.

/Zhiwei Zou/

Zhiwei (Wayne) Zou

Registration No. 66,041

Lead Counsel for Petitioner

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing **Petitioner's Opposition to Patent Owner's Request for Discretionary Denial and Exhibits 1029-1036** were served on July 17, 2025, via email, as agreed to by counsel of record for the Patent Owner, at the following.

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**ORRICK, HERRINGTON & SUTCLIFFE LLP**

Dated: July 17, 2025

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