APPENDIX TO THE
PETITION FOR A WRIT OF MANDAMUS

APPENDIX A

NOTE: This order is nonprecedential.
[February 26, 2025]

United States Court of Appeals
for the Federal Circuit

In Re MICRON TECHNOLOGY INC., MICRON CONSUMER PRODUCTS, GROUP, LLC.,

Petitioners

2025-117

On Petition for Writ of Mandamus to the United States District Court for the Northern District of California in No. 3:23-cv-05792-RFL, Judge Rita F. Lin.

ON PETITION

Before TARANTO, STOLL, and STARK, *Circuit Judges*. STARK, *Circuit Judge*.

O R D E R

Micron Technology Inc. and Micron Consumer Products Group, LLC (collectively, "Micron") petition for a writ of mandamus directing the United States

District Court for the Northern District of California to reverse its discovery order requiring Micron to produce in paper format 73 pages of what it characterizes as highly confidential source code. Yangtze Memory Technologies Company, Ltd. ("YMTC") and Yangtze Memory Technologies, Inc. (collectively, "respondents") oppose. We deny the petition.

BACKGROUND

YMTC filed this suit alleging Micron's 3D NAND products infringe YMTC's patents.[1] At the parties' request, the magistrate judge entered an agreed-upon protective order governing discovery. The order gives a limited group of people (including outside counsel, experts, and court personnel) access and review of source code. Appx269–70. Employees and officers of the parties are prohibited.

In addition to allowing for inspection on a secure computer, the order contemplated the ability to request and receive source code in paper copy format:

> At the request of the Receiving Party, and subject to any export control restrictions, the Producing Party shall provide paper copies ("Original Printouts") of portions of the materials on the Secure Computer that is requested by the Receiving Party and is reasonably necessary to facilitate the

[1] Micron asserted patent infringement counter-claims against respondents.

> Receiving Party's preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial.[2]

Several provisions facilitate access and limit risk of disclosure of such materials. Section 9(j) limits printing to no more than "1500 pages—including no more than 30 consecutive pages" and allows objections to be raised with the court. Appx276. Section 9(l) requires the receiving party to "maintain a record of any individual who has inspected any portion of the source code" and for any person receiving a copy to "maintain and store any paper copies of the material at their offices in a manner that prevents duplication of or unauthorized access." Appx276–77. And section 9(m) requires paper copies to be destroyed if no longer in use. Appx277.

Under the terms of the order, respondents requested paper copies of 73 pages of source code materials related to Micron's fabrication processes used to manufacture Micron's 3D NAND products and the arrangement of fabricated elements of the products. Appx335. In November 2024, Micron filed its objections at the district court to providing such printed materials, noting that the material was considered its "most secure and sensitive Source Code" and that the threat of theft was "very real," as evidenced by a prior theft of its technology by a Taiwanese company. *Id*. Micron argued that the

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[2] Appx275–76.

request was excessive and not reasonably necessary for case preparation. Appx336.

On December 12, 2024, the magistrate judge ordered Micron to provide the requested printouts to YMTC's outside counsel, concluding that the request, within the "presumptive limits" of the agreed-upon protective order, was "thoughtful and focused on materials needed for case preparation." Appx3. While recognizing the importance of the source code to Micron, the magistrate judge determined that the "strong protections" in the protective order were sufficient to safeguard against any risk of unauthorized disclosure. *Id*. Micron then moved the district judge for relief, arguing, among other things, the magistrate judge's order raised national security and foreign policy concerns given that YMTC is a Chinese state-owned company that the government has placed on a restricted export list. Appx363, 367. On January 14, 2025, the district court denied Micron's motion. This petition followed.

DISCUSSION

Although a writ of mandamus may be used to protect confidential and sensitive information, *see In re United States*, 669 F.3d 1333, 1336 (Fed. Cir. 2012), the remedy is available only in "exceptional circumstances amounting to a judicial usurpation of power…or a clear abuse of discretion," *see Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004) (cleaned up). The petitioner seeking the writ must generally show a clear and indisputable right to issuance of the writ, that it has no other adequate

method of attaining the desired relief, and that "the writ is appropriate under the circumstances." *Id.* at 380–81. Micron has not satisfied that standard.

The district court reasonably determined respondents' discovery request was not excessive or unreasonable and that the protective order is sufficient to prevent against duplication or unauthorized access. The request was for not more than 11 consecutive pages, well below the limit of 30 consecutive pages the parties agreed in the protective order YMTC could request, and was for a total of 73 pages, a small fraction of the limit of 1500 printed pages contemplated by that same order. Appx2–3.

Micron argues the district court failed to weigh the security concerns it raised to such access. We disagree. The record indicates both the magistrate judge and the district court judge considered the nature of the source code in question and potential risks. The magistrate judge's order, which the district judge described as well-reasoned, refers to Micron's own characterizations of the value of the information, and both judges gave plausible reasons for finding the threat of disclosure minimal. *See, e.g.*, Appx3 (noting "the strong protections in the protective order that will apply to the print outs"); Appx375 ("Moreover, the protective order includes sufficient procedures to prevent duplication or unauthorized access to the material.").

Consistent with the protective order, the district court's discovery order requires protection of the

printed source code material to outside counsel, not to YMTC itself. The protective order prohibits YMTC from viewing the material. Micron's suspicion that counsel will fail to comply with the order and will instead allow the printouts to fall into the hands of its client is unsupported by anything other than speculation. In effect, Micron is arguing the district court should have given more weight to the security and foreign policy risks that its source code could "fall[] into the wrong hands" through unauthorized disclosure to YMTC. Pet. at 35. However, we are not prepared to disturb the trial court's balancing of the interests on limited mandamus review based merely on Micron's conjecture that an individual might violate the protective order and subject themselves to appropriate sanctions.[3]

Accordingly,

IT IS ORDERED THAT:

The petition is denied.

For the Court
[Signature and seal]
February 26, 2025 — Jarrett B. Perlow
Date — Clerk of Court

[3] Given YMTC's assertion that "Micron's petition does not show or even say that the source code at issue here is subject to the" Export Administration Regulations, YMTC Resp. at 18 n.4, we trust that, if YMTC comes to take the view that it is not so subject and plans to act on that view, it will provide appropriate notice to Micron in time to permit Micron to raise the issue to the district court before YMTC acts on that view.

APPENDIX B

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

YANGTZE MEMORY TECHNOLOGIES COMPANY, LTD., Case No. 23-cv-05792-RFL

Plaintiff,

v. **ORDER DENYING MOTION FOR RELIEF FROM NONDISPOSITIVE PRETRIAL ORDER OF MAGISTRATE JUDGE**

MICRON TECHNOLOGY, INC., et al., Re: Dkt. No. 191

Defendants.

Having reviewed Magistrate Judge Hixson's Discovery Order (Dkt. No. 186), the Motion for Relief from that Order (Dkt. No. 191), as well as the initial joint letter brief submitted about the discovery dispute (Dkt. No. 180), the Court finds that the Order is well-reasoned and is not clearly erroneous or contrary to law. The protective order states that when the Receiving Party requests paper copies of portions of the source code material, the party shall not request more than 1500 pages total, including no more than 30 consecutive pages. Here, Yangtze Memory Technologies Company ("YMTC") requested 73 pages total, and made no request for more than

30 consecutive pages. The Court agrees with Magistrate Judge Hixson's order that this "tends to demonstrate that YMTC's request is thoughtful and focused on materials needed for case preparation." (Dkt. No. 186 at 3.) Moreover, the protective order includes sufficient procedures to prevent duplication or unauthorized access to the material. Accordingly, the motion is denied.

IT IS SO ORDERED.

Dated: January 14, 2025

[Signature]
RITA F. LIN
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

YANGTZE MEMORY TECHNOLOGIES COMPANY, LTD., Case No. 23-cv-05792-RFL(TSH)

Plaintiff,

v. **DISCOVERY ORDER**

MICRON TECHNOLOGY, INC., et al., Re: Dkt. Nos. 180, 181

Defendants.

We are here on two discovery disputes. ECF Nos. 180, 181. The Court held a hearing on December 12, 2024 and now issues the following order.

A. ECF No. 180 (Source Code)

YMTC has requested a print out of 73 pages of Micron's source code. Micron argues this request is excessive and that 15 pages is reasonable instead.

The protective order has several provisions relating to source code. ECF No. 81 ¶¶ 9(a)-9(p). In general, "source code…produced in discovery shall be made available for inspection, in a format allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually agreeable

times, at an office of the Producing Party's counsel or another mutually agreed upon location. The source code shall be made available for inspection on a Secure Computer in a secured room without Internet access or network access to other computers (except such network connections may be made by the Producing Party to provide access to the Producing Party's Source Code Material), and the Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any recordable media or recordable device." *Id*. ¶ 9(c).

Paragraph 9(j) further provides that "[a]t the request of the Receiving Party, and subject to any export control restrictions, the Producing Party shall provide paper copies ('Original Printouts') of portions of the materials on the Secure Computer that is requested by the Receiving Party and is reasonably necessary to facilitate the Receiving Party's preparation of court filings, pleadings, expert reports, or other papers, or for deposition or trial. The Producing Party shall Bates number, copy, and label 'HIGHLY CONFIDENTIAL – SOURCE CODE' material on any Original Printouts. The receiving Party may print not more than 1500 pages—including no more than 30 consecutive pages. If the Producing Party objects that the portions requested to be printed are excessive and/or not reasonably necessary to any case preparation activity, the Producing Party shall make such objection known to the Receiving Party within five (5) days."

Paragraph 9(j) continues: "The Parties shall meet and confer within two (2) business days of any such

objection. If, after meeting and conferring, the Producing Party and the Receiving Party cannot resolve the objection, the objection may be jointly submitted to the Court for resolution within three (3) business days of the meet and confer. The Producing Party may challenge the amount of source code requested in hard copy form pursuant to the dispute resolution procedure set forth in Paragraph 6.3 whereby the Producing Party is the 'Challenging Party' and the Receiving Party is the 'Designating Party' for purposes of dispute resolution." Paragraph 6.3 says that "[t]he burden of persuasion in any such challenge proceeding shall be on the Designating Party."

Here, YMTC has requested 73 pages from the 150 Series Traveler. Micron objects under paragraph 9(j) on the grounds that this request is excessive because the 150 Series Traveler is Micron's crown jewel material and because this many pages is not reasonably necessary for case preparation. Between paragraphs 9(j) and 6.3, it appears that YMTC as the receiving party is deemed to be the designating party in the challenge provision in paragraph 6.3, so it bears the burden of persuasion.

YMTC's request is for pages 107, 115, 122-127, 130-131, 141-146, 153, 156, 160-163, 174, 189-197, 200-201, 206-207, 209-214, 221, 224-232, 234-239, 260, 264-267, 272-279, so it has not asked for more than 30 consecutive pages. Nor does Micron state that YMTC has in total requested more than 1500 pages. Further, the parties are in agreement that the pages before and after the requested pages relate to features

not at issue in this case (such as title slides, summary slides, and background information). This tends to demonstrate that YMTC's request is thoughtful and focused on materials needed for case preparation.

As to the importance of this source code to Micron, YMTC points out that the protective order has important protections applicable here. For example, paragraph 9(l) provides that "[t]he Receiving Party shall maintain a record of any individual who has inspected any portion of the source code in electronic or paper form. The Receiving Party's outside counsel of record and any person receiving a copy of any HIGHLY CONFIDENTIAL—SOURCE CODE material (excluding the Court and court personnel) shall maintain and store any paper copies of the material at their offices in a manner that prevents duplication of or unauthorized access to the material, including, without limitation, storing the material in a locked room or cabinet at all times when it is not in use." And paragraph 9(m) provides that "[a]ll paper copies of HIGHLY CONFIDENTIAL—SOURCE CODE material shall be securely destroyed in a timely manner if they are no longer in use (*e.g.*, at the conclusion of a deposition). Copies of any such material that are marked as deposition exhibits shall not be provided to the court reporter or attached to deposition transcripts; rather, the deposition record will identify the exhibit by its production numbers. If the deposition exhibit has been marked up or altered in any way by the deponent, the receiving Party shall store the exhibit in the same way paper copies of the HIGHLY CONFIDENTIAL—SOURCE CODE material are stored."

Considering the volume of the requested source code, which is within the presumptive limits of paragraph 9(j), and the care YMTC has taken to request pages that both sides agree are relevant, and the strong protections in the protective order that will apply to the print outs, the Court finds that YMTC has carried its burden of persuasion and **ORDERS** Micron to provide the requested 73 pages of source code print outs.

B. ECF No. 181 (YMTC's Interrogatory 12)

YMTC's interrogatory ("rog") 12 seeks the "factual and legal basis for [Micron's] contention that [Micron] do[es] not infringe" the Asserted Patents. The dispute here is about the timing of a response. YMTC argues that Micron should be compelled to respond right away. But Micron argues that a response should be due after the claim construction order issues.

In the letter brief, YMTC asked the Court to order Micron to respond to rog 12 for all 228 claims from 19 patents that are currently asserted in the case. That would be wasteful, of course. Judge Lin has ordered YMTC to narrow its case down to 70 claims by January 14, 2025, and to 40 claims after the claim construction order. ECF No. 141. If Micron had to respond to rog 12 now as to all asserted claims, it would be providing non-infringement contentions for 188 claims that will be dropped from the case.

At the hearing, YMTC backed down from that position and argued that Micron should be ordered to answer rog 12 for the 39 independent claims it asserts. Micron disagreed. The Court thinks that

requiring Micron to answer rog 12 for the 39 independent claims after the January 14 narrowing makes sense. By January 14, YMTC will have done the vast bulk of the narrowing, moving from 228 asserted claims to 70 of them. True, there will be additional narrowing (down to 40 claims) by seven days after the claim construction order, so it may be that if Micron answers rog 12 for the 39 independent claims after January 14, some portion of its rog response will become moot if those claims are dropped. That doesn't mean, however, that there is no value in the mooted portions of the rog response because Micron's non-infringement contentions may influence which claims YMTC later drops. Further, because the phase 3 and phase 4 narrowing occur after the close of fact discovery, it is inevitable that some portion of Micron's rog 12 response will be mooted at some point, no matter when the deadline is to answer the rog. And as noted, those non-infringement contentions may influence which claims get dropped. Requiring Micron to answer rog 12 within 30 days after the January 14 narrowing strikes an appropriate balance between waiting until most (but not all) of the narrowing has occurred, without letting discovery get unnecessarily stalled, and giving Micron enough time after the January 14 narrowing to draft a good rog response.

Accordingly, the Court **ORDERS** Micron to answer rog 12 for the 39 independent claims YMTC asserts by 30 days after January 14, 2025. Of course, if YMTC drops any of the 39 independent claims by January 14, Micron's answer need not address any dropped claims.

IT IS SO ORDERED.

Dated: December 12, 2024

[Signature]
THOMAS S. HIXSON
United States Magistrate Judge