Director PTABDecision Review@uspto.gov
571.272.7822

Paper 38
Date: January 15, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

YANGTZE MEMORY TECHNOLOGIES CO., LTD.,
Petitioner,

v.

MICRON TECHNOLOGY, INC.,
Patent Owner.

IPR2025-00098 (Patent 8,945,996 B2)
IPR2025-00099 (Patent 10,872,903 B2)[1]

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

ORDER
Vacating the Decisions Granting Institution and
Denying Institution of *Inter Partes* Review

---

[1] This Order applies to each of the above-listed cases. All citations are to IPR2025-00098. Similar papers and exhibits were filed in IPR2025-00099.

I. BACKGROUND

Micron Technology, Inc. ("Patent Owner") filed a request for Director Review of the Decision granting institution ("Decision," Paper 15), and Yangtze Memory Technologies Company, Ltd. ("Petitioner" or "YMTC") filed an authorized response. *See* Paper 17 ("DR Request"); Paper 18. Director Review of the Board's Decision was granted. *See* Paper 29.

A. Show Cause Order

On November 10, 2025, Petitioner was ordered to show cause why adjudicating the Petitions is an appropriate use of the Office's limited resources when it is a designated entity on the Bureau of Industry and Security's (BIS) Entity List. Paper 33. Petitioner responded to the order to show cause arguing that its inclusion on the Entity List "was not based on any activity undertaken by YMTC, and instead was based on the alleged risk of YMTC 'becoming involved' in activities contrary to the interest of the United States." Paper 34, 7. Petitioner, however, has not argued its designation on the Entity List was in error, denied that its activities pose a significant risk of becoming involved in activities contrary to national security, or made any arguments addressing the BIS's concerns. Nor has Petitioner offered any clarity as to its real identity that may bear on the BIS-related inquiry.[2]

[2] Petitioner has not sufficiently explained why the Office should use its limited resources to adjudicate these Petitions where Petitioner is listed on the BIS's Entity List. The instant decision, however, does not rely on that listing to resolve Patent Owner's DR Request or discretionarily deny institution. Instead, as explained below, Petitioner did not meet its burden to identify all real parties in interest in the Petitions. *See* 35 U.S.C. § 312(a)(2).

B. Patent Owner's Director Review Request

In its DR Request, Patent Owner argued that: (1) Petitioner is controlled by a foreign government that is ineligible to file an IPR under the Supreme Court's ruling in *Return Mail, Inc. v. United States Postal Service*, 587 U.S. 618 (2019); and (2) the Board erred by failing to determine whether the Petitions identify all real parties in interest ("RPIs") as required under 35 U.S.C. § 312(a)(2). DR Request 4–6. The Board's Decision determined that *Return Mail* applied to U.S. federal agencies, not foreign governments, and declined to extend *Return Mail* to a foreign government. Decision 18–19. The Board also declined to resolve the RPI dispute in view of the now de-designated precedential decision, *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11 (PTAB Oct. 6, 2020) (de-designated Sept. 26, 2025), because adding the foreign government as an RPI would not create a time bar or estoppel under 35 U.S.C. § 315. *Id.* at 19–20.

For the reasons provided below, the Decisions granting institution of *inter partes* review are vacated, and the Petitions are denied.

II. ANALYSIS

Patent Owner's arguments are addressed below, beginning with the argument that *Return Mail* bars a foreign government from filing an IPR petition and then turning to Patent Owner's RPI arguments.

The Leahy-Smith America Invents Act ("AIA") provides that only "a person" other than the patent owner may file a petition for an IPR. 35 U.S.C. § 311(a); *see also* 35 U.S.C. § 321(a) (setting forth same requirement as to post-grant reviews). In *Return Mail*, the Supreme Court held that a U.S. "federal agency is not a 'person' who may petition for post-

issuance review under the AIA." *Return Mail*, 587 U.S. at 637. The Court, however, did not address, and has not addressed, whether this statutory prohibition extends to a *foreign* government. This is an issue of first impression, namely, whether a foreign government is statutorily eligible to file an IPR, which I need not decide today.[3]

Patent Owner argued that the Court's reasoning in *Return Mail* regarding federal agencies is applicable to a foreign government. DR Request 4–6. Patent Owner further argued that the IPR statute precludes governments and companies operating under government control from challenging the validity of issued patents. *Id.*

In response, Petitioner argued that *Return Mail* is not applicable to a foreign government because the Court's analysis "was based on factors specific to the U.S. government." Paper 18, 2. Petitioner further argued that Petitioner YMTC "is a company, which statutorily qualifies it as a 'person'" under § 311(a). *Id.* at 1–2.

For its part, the Board declined to extend *Return Mail*'s holding to a foreign government. Decision 16–19. The Board also reasoned that Petitioner YMTC is a company eligible to file an IPR, even if it "were under the control of a foreign government." *Id.* at 17.

[3] While not the basis of today's decision, I note that *inter partes* review may be discretionarily denied on the basis that a petitioner is a sovereign. *See, e.g., Saint Regis Mohawk Tribe v. Mylan Pharms. Inc.*, 896 F.3d 1322, 1327 (Fed. Cir. 2018) ("The Director bears the political responsibility of determining which cases should proceed. While he has the authority not to institute review on the merits of the petition, he could deny review for other reasons such as administrative efficiency or based on a party's status as a sovereign.").

Before issuing its Decision, the Board authorized briefing to address Patent Owner's *Return Mail* and RPI arguments. Rather than explain who, exactly, is seeking these IPRs, Petitioner argued that Patent Owner's arguments were unsupported and irrelevant and that Patent Owner's evidence was not sufficient to place RPI in dispute or to establish that the RPI, in reality, is a foreign government. Paper 12, 1–5, 7–9. In other words, Petitioner's briefing did little to provide clarity in support of its statutory obligation set forth in 35 U.S.C. 312(a)(2).

After granting Director Review, I issued an Order to Show Cause (Paper 33) why adjudicating the petitions could be an appropriate use of the Office's limited resources. Petitioner's response (Paper 34), however, failed to address the purpose of the Order. Petitioner could have clarified its identity (for real party in interest purposes) and explained why it therefore should not be on the BIS Entity List, including any efforts it undertook to be removed from the Entity List, or why (based on its actual identity) *Return Mail* does not preclude its petitions in the first instance. Instead, Petitioner offered a mini-treatise on the non-controversial assertion that good patent policy seeks to invalidate bad patents. The only other "argument" set forth by Petitioner was no argument at all; rather, it was a grievance against Patent Owner's alleged "weaponiz[ing]" the BIS Entity List in a district court litigation. Finally, Petitioner urged that the "public interests do not wane or wax based on ***who*** facilitates removal of a bad patent." Paper 34, 3 (emphasis in original). Congress holds a different view: Only precisely-identified real parties in interest are entitled to have their petitions considered, 35 U.S.C. 312(a); and, of course, there are multiple avenues in which to challenge bad patents.

In short, Petitioner's failure to provide clarity as to its actual identity is fatal to its petitions. Even as to the related issue—namely, can a foreign government be an RPI with the ability to control a proceeding that is otherwise filed by a "person"—Petitioner's briefing did little to move the needle on that score as well.

Putting the *Return Mail* and related issues aside, the central factual question remains whether Patent Owner at least put the RPI question into dispute and, if so, whether Petitioner sufficiently rebutted that argument by showing that it had identified all RPIs.

Patent Owner argued that a foreign government was an RPI, and supported its argument with the following evidence: (1) articles explaining that the foreign government invests in, sets policy for, and controls Petitioner's industry (semiconductor manufacturing) within its borders; (2) articles explaining that the foreign government owns a controlling interest in Petitioner through ownership in Petitioner's parent corporation; (3) statements from U.S. lawmakers that Petitioner is owned and backed by the foreign government; and (4) statements by the Department of Defense that the foreign government owns or controls Petitioner. Paper 8, 3–12 (citing Exs. 2004–2040, 2046, 2047).

In particular, Patent Owner submitted evidence suggesting that Petitioner's parent corporation, Yangtze Memory Technologies Holding Co., Ltd. ("YMTC Holding"), is wholly owned by state-owned enterprises. Paper 8, 7–9 (describing YMTC Holding's ownership by state-owned enterprises). Indeed, Patent Owner's evidence further includes statements from the foreign government referring to Petitioner as a "state-owned enterprise." *Id.* at 9 (citing Ex. 2025). Patent Owner's evidence also

included public statements from multiple U.S. lawmakers characterizing Petitioner as a "state-owned national champion for memory chips" and requesting that Petitioner be added to the BIS's Entity List. Exs. 2036, 1, Ex. 2037. These lawmakers have stated that Petitioner is "violating US export controls," playing a key part in "shifting control of global microelectronics" to foreign governments, and "continu[ing] to break US law." Ex. 2037, 2–3. As noted above, Petitioner has not disputed its inclusion on the Entity List or disputed that its activities pose a significant risk of becoming involved in activities contrary to the national security. *See generally* Paper 34.

Regardless of whether the foreign government here is in fact an RPI, this evidence was sufficient to put into dispute whether the Petitions identified ***all*** RPIs. *See Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1244 (Fed. Cir. 2018) ("[A] patent owner must produce *some* evidence that tends to show that a particular third party should be named a real party in interest."). We still do not have a sufficient answer to whether all RPIs have been identified. Where, as here, a petitioner does not sufficiently fulfill its statutory duty to identify all RPIs, the USPTO's mandate to protect the public interest is especially compelling. As the Federal Circuit has stated:

> In *Oil States Energy Services v. Greene's Energy Group, LLC*, – – U.S. —, 138 S. Ct. 1365, 200 L. Ed. 2d 671 (2018), the [Supreme] Court emphasized the government's central role in IPR and the role of the USPTO in protecting the public interest. It held that IPR is a matter "which arise[s] between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments." 138 S. Ct. at 1373 (quoting *Crowell v. Benson*, 285 U.S. 22, 50, 52 S. Ct. 285, 76 L. Ed. 598 (1932)).

Saint Regis Mohawk Tribe, 896 F.3d at 1326–27. As these important public interests are implicated, a key question then is whether the Petitions identify all RPIs.

With its identification of RPIs in dispute, it was Petitioner's burden to bring forth evidence or arguments demonstrating that it named all RPIs. *Worlds*, 903 F.3d at 1242 ("[B]ecause the IPR petitioner is the party seeking an order [i.e., a final decision of unpatentability] from the Board, [5 U.S.C.] § 556(d) requires the petitioner to bear the burden of persuasion."). Here, Petitioner failed to carry that burden. Petitioner argues, without sufficient evidentiary support, that Patent Owner's evidence demonstrates only that the foreign government is an investor in Petitioner's parent company. Paper 12, 7–8. Petitioner further fails to sufficiently address the admissions by the foreign government's representatives and findings by U.S. lawmakers and government agencies. *See* Paper 12, 7–9. Petitioner has spent its briefing arguing what it is not.

Under these circumstances, and despite the additional briefing the Board authorized, I cannot conclude that the Petitions identify all RPIs. The Petitions, therefore, are not in condition for consideration. *See Corning Optical Commc'ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68, at 23–25 (PTAB Aug. 18, 2015) (precedential, except § II.E.1) (holding that "[u]nder 35 U.S.C. § 312(a)(2), an IPR petition may be considered 'only' if it identifies 'all' real parties-in-interest," granting the patent owner's motion to dismiss the petitions, and terminating the proceedings). Further, Petitioner cannot correct its identification of RPIs to include the foreign government because it would be time-barred. *See id.* at 25 (explaining that the petitions would be time-barred if accorded a new filing

date). Accordingly, the Decisions granting institution are vacated, the Petitions are denied, and these proceedings are terminated.

Based on the foregoing, it is:

ORDERED that the Board's Decisions granting institution of *inter partes* review are vacated; and

FURTHER ORDERED that the Petitions are denied, and no trials are instituted.

For PETITIONER:

Heather E. Takahashi
Kevin Yang
MUNGER, TOLLES, & OLSON LLP
heather.takahashi@mto.com
kevin.yang@mto.com

For PATENT OWNER:

Jeremy Jason Lang
Travis Jensen
Jared Bobrow
Josue Guerra
ORRICK, HERRINGTON & SUTCLIFFE LLP
ptabdocketjjl2@orrick.com
t61ptabdocket@orrick.com
ptabdocketj3b3@orrick.com
ptabdocketj5g3@orrick.com