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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MLC INTELLECTUAL PROPERTY, LLC,

Plaintiff,

v.

MICRON TECHNOLOGY, INC., MICRON
CONSUMER PRODUCTS GROUP, INC.,
MICRON MEMORY TAIWAN CO., LTD.,
MICRON SEMICONDUCTOR ASIA PTE.
LTD., MICRON JAPAN, LTD., MICRON
SEMICONDUCTOR PRODUCTS, INC.,
MICRON SEMICONDUCTOR (XI'AN)
CO., LTD., MICRON EUROPE, LTD.,
LEXAR MEDIA, INC., IM FLASH
TECHNOLOGIES,

Defendants.

Case No. 3:19-cv-03345-EMC

**SECOND AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

Judge: Honorable Edward M. Chen

1 Plaintiff MLC Intellectual Property, LLC (“Plaintiff” or “MLC”) complains against
2 Defendants Micron Technology, Inc. (“MTI”), and its wholly-owned subsidiaries Micron
3 Consumer Products Group, Inc. (“MCPG”); Micron Semiconductor Products, Inc. (“MSP”); IM
4 Flash Technologies, LLC (“IMFT”); Lexar Media, Inc. (“Lexar”); Micron Semiconductor Asia
5 Pte. Ltd. (“MSAPL”); Micron Europe, Ltd. (“MEL”); Micron Japan, Ltd. (“MJL”); Micron
6 Memory Taiwan Co., Ltd. (“MMT”); and Micron Semiconductor (Xi’an) Co., Ltd. (“MSCL”)
7 (collectively, “Defendants,” “MTI Defendants” or “Micron Defendants”) for patent infringement
8 as follows:

9 **NATURE OF ACTION**

10 1. This is an action for patent infringement of United States Patent No. 5,764,571
11 (“the ’571 Patent”) under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

12 **PARTIES**

13 2. MLC is a limited liability company organized and existing under the laws of the
14 State of Delaware.

15 3. Micron Technology, Inc. is a U.S. corporation organized and existing under the
16 laws of the State of Delaware with its principal place of business at 8000 South Federal Way,
17 Boise, Idaho 83716. MTI is a global company operating facilities in at least 18 worldwide
18 locations, including at least 13 manufacturing sites and 13 customer labs. MTI also operates
19 several facilities throughout California. MTI has an established place of business at 570 Alder
20 Drive, Building 2, Milpitas, California 95035. Upon information and belief, MTI’s Milpitas
21 location designs NAND Flash solutions and products and also delivers administrative and sales
22 support. MTI also has an established place of business at 110 Holger Way, San Jose, California
23 95134. Upon information and belief, MTI’s San Jose location also designs NAND Flash
24 solutions and products, as well as provides administrative and sales support. MTI is also the
25 parent company of numerous wholly-owned and majority-owned subsidiaries located in the U.S.
26 and in other countries, including those named in this lawsuit.

27 4. Micron Consumer Products Group, Inc. (“MCPG”) is a Delaware corporation
28 with its principal place of business at 47300 Bayside Parkway, Fremont, California 94538.

1 MCPG's registered agent for service of process in the State of California is Corporation Service
2 Company, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833. MCPG is
3 registered as a "Foreign Corporation" in California, and thus, qualified to "transact" business in
4 California. On information and belief, MCPG is the consumer-facing entity of MTI allowing
5 MTI to offer products marketed under the brands, including but not limited to: Lexar Media,
6 Crucial Technology, Kodak, and SpecTek Select brands. On information and belief, MTI and its
7 subsidiaries direct the marketing and sale of products made under the brands Lexar Media,
8 Crucial Technology, Kodak and SpecTek Select to the state of California. On information and
9 belief, MCPG is based in Milpitas, California at 590 Alder Drive, Milpitas, California 95035.

10 5. Micron Semiconductor Products, Inc. ("MSP") is a U.S. corporation organized
11 and existing under the laws of the State of Idaho. Formed in 1996, MSP is a wholly-owned
12 subsidiary of MTI sharing its principal place of business with MTI at 8000 South Federal Way,
13 Boise, Idaho 83716. MSP manufactures, sells, and distributes electronic and semiconductor
14 products and components, including NAND Flash memory products based on multi-level cell
15 NAND Flash memory technologies. On information and belief, MSP does business as MCPG,
16 which has a principal place of business at 47300 Bayside Parkway, Fremont, California 94538
17 and is based at 590 Alder Driver, Milpitas, California 95035. *See* Dkt. 60-2 at 3 (MTI
18 representing that MSP does business as MCPG). On information and belief, MSP also does
19 business as Crucial Technology, which is a brand under which MTI and its subsidiaries market
20 and sell products, and which directs sales into the state of California. *See* Dkt. 60-3 at 13 (MTI
21 representing that MSP does business as Crucial Technology).

22 6. Lexar Media, Inc. ("Lexar") is a Delaware corporation with its principal office
23 located at 47300 Bayside Parkway, Fremont, California 94538. Lexar was a wholly-owned
24 subsidiary of MTI during the relevant time period. On information and belief, MTI acquired
25 Lexar in 2006 and merged Lexar with Crucial Technology. On information and belief, in 2012,
26 MTI merged or otherwise consolidated Lexar with MTI's wholly-owned subsidiary, Defendant
27 MCPG. Prior to selling Lexar to Longsys in 2017, MTI owned the IP rights to Lexar. *See*
28 <https://www.lexar.com/about-us/timeline/>.

1 7. Micron Semiconductor Asia Pte. Ltd. (“MSAPL”) is a wholly-owned subsidiary
2 of MTI, with its principal place of business at 990 Bendemeer Road, Singapore, 339942,
3 Singapore. MSAPL operates NAND manufacturing facilities at No. 1 Woodlands Industrial
4 Park D, Street 1, Singapore, 738799, and at 1 North Coast Drive, Singapore, 757432. MSAPL is
5 a manufacturing and fabrication facility that supplies MTI as well as MTI’s U.S.-based
6 subsidiaries with multi-level cell NAND flash products. On information and belief, MSAPL has
7 done and continues to do business in the United States and has knowingly sold multi-level cell
8 NAND Flash memory devices to the U.S. and to U.S. customers, including sales made to MTI
9 and MTI’s U.S.-based subsidiaries, such as MSP and MCPG. Additionally, during the relevant
10 time period, MSAPL conducted business in the U.S. and California (*e.g.*, sold multi-level cell
11 NAND flash products) and did so using the MCPG corporate identity and under the MCPG
12 brand. *See* Dkt. 60-2 at 5 (MTI representing that MSAPL does business as MCPG). Also on
13 information and belief, MSAPL has done and continues to do business in the U.S. as or under
14 Lexar Media and Crucial Technology, which are brands under which MTI and its subsidiaries
15 market and sell products. *See* Dkt. 60-3 at 7 (MTI representing that MSAPL did business as
16 Lexar Media); *id.* at 5 (MTI representing that MSAPL did business as Crucial Technology).

17 8. Micron Europe, Ltd. (“MEL”) is a wholly-owned MTI subsidiary with its
18 principal place of business and home office at 12 Redwood Crescent, Peel Park Campus, East
19 Kilbride, Scotland G74 5PA, U.K. MEL makes and sells multi-level cell NAND flash products.
20 On information and belief, MEL has done and continues to do business in the U.S. and has
21 knowingly sold multi-level cell NAND Flash memory devices to the U.S. and to U.S. customers,
22 including sales made to MTI and MTI’s U.S.-based subsidiaries, such as MSP and MCPG.
23 Additionally, during the relevant time period, MEL conducted business in the U.S. and
24 California (*e.g.*, sold multi-level cell NAND flash products) and did so using the MCPG
25 corporate identity and under the MCPG brand. *See* Dkt. 60-2 at 5 (MTI representing that MEL
26 did business as MCPG). Also on information and belief, MEL has done and continues to do
27 business in the U.S. as or under Lexar Media, which is a brand under which MTI and its
28 subsidiaries market and sell products. *See* Dkt. 60-3 at 13 (MTI representing that MEL did

1 business as Lexar Media).

2 9. Micron Japan, Ltd. (“MJL”) is a wholly-owned MTI subsidiary, with its principal
3 place of business and home office at 8th floor, Shinagawa Season Terrace, 1-2-70, Konan,
4 Minato-ku, Tokyo, 108-0075, Japan. MJL makes and sells multi-level cell NAND flash
5 products. On information and belief, MJL has done and continues to do business in the U.S. and
6 has knowingly sold multi-level cell NAND Flash memory devices to the U.S. and to U.S.
7 customers, including sales made to MTI and MTI’s U.S.-based subsidiaries, such as MSP and
8 MCPG. Additionally, during the relevant time period, MJL conducted business in the U.S. and
9 California (*e.g.*, sold multi-level cell NAND flash products) and did so using the MCPG
10 corporate identity and under the MCPG brand. *See* Dkt. 60-2 at 3 (MTI representing that MJL
11 did business as MCPG). Also on information and belief, MJL has done and continues to do
12 business in the U.S. as or under Lexar Media, which is a brand under which MTI and its
13 subsidiaries market and sell products. *See* Dkt. 60-3 at 13 (MTI representing that MJL did
14 business as Lexar Media).

15 10. Micron Memory Taiwan Co., Ltd. (“MMT”) is a wholly-owned MTI subsidiary,
16 with its principal place of business and home office at 369, Sanfeng Road, Section 4, Houli
17 Township, Taichung, Taiwan 42152. MMT makes and sells multi-level cell NAND flash
18 memory products, among other memory products. On information and belief, MMT has done
19 and continues to do business in the U.S. and has knowingly sold multi-level cell NAND Flash
20 memory devices to the U.S. and to U.S. customers, including sales made to MTI and MTI’s
21 U.S.-based subsidiaries, such as MSP and MCPG.

22 11. Micron Semiconductor (Xi’an) Co., Ltd. (“MSCL”) is a wholly-owned MTI
23 subsidiary, with its principal place of business and home office at Zone B of Shaanxi Xi’an
24 Export Processing Zone, Xin Xi Avenue, Xi’an, 710119, China (PRC). MSCL makes and sells
25 multi-level cell NAND flash memory products, among other memory products. On information
26 and belief, MSCL has done and continues to do business in the U.S. and has knowingly sold
27 multi-level cell NAND Flash memory devices to the U.S. and to U.S. customers, including sales
28 made to MTI and MTI’s U.S.-based subsidiaries, such as MSP and MCPG.

12. IM Flash Technologies, LLC (“IMFT”) is a U.S. corporation organized and existing under the laws of the State of Delaware with its principal place of business at IM Flash, 4000 North Flash Drive, Lehi, Utah 84043. IMFT is a joint venture formed in 2006 with Intel Technologies and MTI to manufacture NAND Flash memory products pursuant to which MTI owned 51% of IMFT. In or about October 2018, MTI announced that it intends to acquire Intel’s 49% share in IMFT, and, on information and belief, MTI has or will acquire Intel’s 49% stake in IMFT as of the date of this filing. On information and belief, IMFT manufactures NAND Flash memory products for its members, Intel and MTI. Intel has a principal and established place of business at 2200 Mission College Blvd., Santa Clara, CA 95054.

13. All Defendants are collectively referred herein as “Defendants,” “MTI Defendants” or “Micron Defendants.” MTI’s wholly-owned and majority-owned subsidiaries (including Defendants MCPG, MSP, IMFT, Lexar, MSAPL, MEL, MJL, MMT and MSCL) are collectively referred to herein as “MTI Subsidiaries” or “Micron Subsidiaries.” MTI’s multi-national wholly-owned subsidiaries (including MSAPL, MEL, MJL, MMT, and MSCL) are collectively referred to as “MTI Foreign Subsidiaries” or “Micron Foreign Subsidiaries.”

JURISDICTION

14. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1, et seq. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

15. Defendant MTI is subject to personal jurisdiction in this Court because MTI conducts extensive business in California and operates a physical and established place of business in this District, as alleged, for example, in paragraph 3.

16. Defendant MCPG (including Defendant Lexar) is subject to personal jurisdiction in this Court. MCPG is a registered “Foreign Corporation” in California and conducts business and operates a physical and established place of business in this District, as alleged, for example, in paragraphs 4 and 6.

17. Defendant MSP is subject to personal jurisdiction in this Court. MSP has conducted substantial business in California and, on information and belief, operates a physical and established place of business in this District. On information and belief, MSP not only

operates and conducts business from or through the same Northern California office or facility as Defendant MCPG, but for years has and continues to do business in California and in this District using the MCPG corporate name or identity. *See* Dkt. 60-2 at 3 (MTI representing that MSP does business as MCPG). As alleged above, MCPG has a principal place of business at 47300 Bayside Parkway, Fremont, California 94538 and is also based in Milpitas, California at 590 Alder Driver, Milpitas, California 95035—the same physical location as MTI’s corporate offices in California. Further, on information and belief, MSP has done and continues to do business as Crucial Technology, which is a brand under which MTI and its subsidiaries market and sell products, specifically multi-level cell NAND flash memory products, and which directs sales into the state of California. *See* Dkt. 60-3 at 13 (MTI representing that MSP does business as Crucial). Thus, on information and belief, MSP transacts business in California from and through those same facilities and avails itself of the same California operations sales/distribution channels as MTI and MCPG. MSP has placed goods into the stream of commerce knowing they would be sold and distributed in California, and in this District.

18. Defendant MSAPL is subject to personal jurisdiction in this Court. MSAPL has conducted substantial business in California and, on information and belief, operates a physical and established place of business in this District. On information and belief, MSAPL not only operates and conducts business from or through the same Northern California office or facility as Defendant MCPG, but for years has and continues to do business in California and in this District using the MCPG corporate name or identity. *See* Dkt. 60-2 (MTI representing that MSAPL does business as MCPG). As alleged above, MCPG has a principal place of business at 47300 Bayside Parkway, Fremont, California 94538 and is also based at 590 Alder Driver, Milpitas, California 95035—the same physical location as MTI’s corporate offices in California. Further, on information and belief, MSAPL has also done, and may continue to be doing business as, Lexar, which appears to be the same company that was acquired and absorbed into MCPG as well as a brand under which MTI and its subsidiaries market and sell products directly into the state of California. *See* Dkt. 60-3 at 7, 9, 11 (MTI representing that MSAPL does business as Lexar). Thus, on information and belief, MSAPL transacts business in California

1 from and through those same facilities and avails itself of the same California operations and
2 California sales/distribution channels as MTI and MCPG. MSAPL has placed goods into the
3 stream of commerce knowing they would be sold and distributed in California, and in this
4 District.

5 19. Defendant MEL is subject to personal jurisdiction in this Court. MEL has
6 conducted substantial business in California and, on information and belief, operates a physical
7 and established place of business in this District. MEL not only operates and conducts business
8 from or through the same Northern California office or facility as Defendant MCPG, but for
9 years has and continues to do business in California and in this District using the MCPG
10 corporate name or identity. *See* Dkt. 60-2 at 5 (MTI representing that MEL does business as
11 MCPG). As alleged above, MCPG has a principal place of business at 47300 Bayside Parkway,
12 Fremont, California 94538 and is also based at 590 Alder Driver, Milpitas, California 95035—
13 the same physical location as MTI's corporate offices in California. Further, on information and
14 belief, MEL has done and continues to do business as Lexar, which is a company that was
15 absorbed into MCPG as well as a brand under which MTI and its subsidiaries market and sell
16 products directly into the state of California. *See* Dkt. 60-3 at 13 (MTI representing that MEL
17 does business as Lexar). Thus, on information and belief, MEL transacts business in California
18 from and through those same facilities and avails itself of the same California operations and
19 sales/distribution channels as MTI and MCPG. MEL has placed goods into the stream of
20 commerce knowing they would be sold and distributed in California, and in this District.

21 20. Defendant MJL is subject to personal jurisdiction in this Court. MJL has
22 conducted substantial business in California and, on information and belief, operates a physical
23 and established place of business in this District. On information and belief, MJL not only
24 operates and conducts business from or through the same Northern California office or facility as
25 Defendant MCPG, but for years has and continues to do business in California and in this
26 District using the MCPG and Lexar corporate names or identities. *See* Dkt. 60-2 at 3 (MTI
27 representing that MJL does business as MCPG); Dkt. 60-3 at 13 (MTI representing that MJL did
28 business as Lexar). As alleged above, MCPG has a principal place of business at 47300 Bayside

1 Parkway, Fremont, California 94538 and is also based at 590 Alder Driver, Milpitas, California
2 95035—the same physical location as MTI’s corporate offices in California. Thus, on
3 information and belief, MJL transacts business in California from and through those same
4 facilities and avails itself of the same California operations and sales/distribution channels as
5 MTI and MCPG. MJL has placed goods into the stream of commerce knowing they would be
6 sold and distributed in California, and in this District.

7 21. Defendant MMT is subject to personal jurisdiction in this Court. MMT
8 manufactures and ships products from its manufacturing facilities in Taiwan to the United States
9 and the state of California. MMT has conducted, and continues to conduct, substantial business
10 in California from or through the same Northern California office or facility as Defendant MCPG
11 and through third party retailers under the brand names such as Ballistix. Thus, on information
12 and belief, MMT transacts business in California and avails itself of the same California
13 operations and sales/distribution channels as MTI and MCPG. MMT has placed goods into the
14 stream of commerce knowing they would be sold and distributed in California, and in this
15 District.

16 22. Defendant MSCL is subject to personal jurisdiction in this Court. MSCL
17 manufactures and ships products from its manufacturing facilities in China to the United States
18 and the state of California. MSCL has conducted, and continues to conduct, substantial business
19 in California from or through the same Northern California office or facility as Defendant MCPG
20 and through third party retailers under the brand names such as Ballistix. Thus, on information
21 and belief, MSCL transacts business in California and avails itself of the same California
22 operations and sales/distribution channels as MTI and MCPG. MSCL has placed goods into the
23 stream of commerce knowing they would be sold and distributed in California, and in this
24 District.

25 23. Defendant IMFT is subject to personal jurisdiction in this Court. IMFT has
26 conducted substantial business in California. As alleged above, IMFT was a joint venture
27 between MTI and Intel, both of which have principal places of business within this District, with
28 the purpose of manufacturing and supplying NAND flash memory products exclusively for its

1 members, MTI and Intel. On information and belief, IMFT makes and directs sales to California
2 and California-based customers through its sale of products to MTI and Intel—both with
3 established corporate operations and facilities in California, and specifically, in this District.
4 IMFT has placed goods into the stream of commerce knowing they would be sold and distributed
5 in California, and in this District.

6 24. The MTI Defendants are subject to this Court’s specific and general personal
7 jurisdiction pursuant to due process and/or the California Long Arm Statute, due at least to their
8 substantial business conducted in this forum through their direct and/or indirect presence and
9 physical locations in Santa Clara, Fremont, and Milpitas, California, directly and/or indirectly
10 through agents and intermediaries, including (i) having solicited and transacted business in the
11 State of California and in this District, and derived substantial financial benefit from residents of
12 the State of California and this District; (ii) having placed their products and services into the
13 stream of commerce throughout the United States knowing and expecting the products to be
14 purchased and used by consumers in California and in this District; (iii) having been actively
15 engaged in transacting business in California and in this District; and (iv) either alone or in
16 conjunction with others, having committed direct infringement in California or committed
17 indirect infringement based on acts of direct infringement in California and from MTI’s locations
18 in Santa Clara and Milpitas, California, and MCPG’s location in Fremont, California.

19 VENUE

20 25. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c),
21 1391(d) and 1400(b) because a substantial part of the events giving rise to MLC’s claim occurred
22 in the Northern District of California.

23 26. Venue is also proper because the MTI Defendants are either residents in, or
24 otherwise subject to personal jurisdiction in the Northern District of California. As alleged
25 above, Defendants MTI, MCPG, and MSP transact substantial business (*e.g.*, the sale of multi-
26 level cell NAND flash memory products accused of infringement) in this District and operate
27 (directly or indirectly) physical and established places of business in this District.
28

27. Venue is proper over IMFT because it has a physical place of business in this District that is regular and established. As set forth above, IMFT constitutes a joint venture of MTI and Intel which was formed in 2006 for the purpose of manufacturing and supplying NAND Flash memory products solely to MTI and Intel. Thus, IMFT's entire existence was and is to manufacture and supply NAND Flash memory products to and from MTI and Intel's physical locations in this District—*i.e.*, Milpitas, San Jose, and Santa Clara, California—and specifically depends on MTI, MCPG and Intel's locations in this District to accomplish its business purpose. Further, on information and belief, IMFT stores inventory, manufacturing supplies and design information and conducts demonstrations at the regular and established places of business in this District. In other words, the physical and principal places of business of MTI and Intel in this District are the physical places of business of IMFT. On information and belief, comparing the nature and activity of IMFT's place of business in this District with other alleged places of business of IMFT in other venues reveals that IMFT has a business model whereby the locations of IMFT's parents, principals, or joint venture partners are used by IMFT's business as its own places of businesses. Venue is therefore proper over IMFT since IMFT uses the locations of MTI and Intel in this District as its own place of business.

28. Venue is also proper in this District for the Micron Foreign Subsidiaries (MSAPL, MJL, MMT, and MSCL) pursuant to 28 U.S.C. § 1391(c)(3) because they are not residents in the United States, and therefore may be sued in any judicial district.

29. Venue is also proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), 1391(d) and 1400(b) as to the MTI Subsidiaries because, based on information and belief: (i) the MTI Subsidiaries are alter egos or agents of MTI, their parent company; (ii) the MTI Subsidiaries, under the control or at the direction of MTI, perform some or all of the steps of a patented method; (iii) the MTI Subsidiaries and MTI cooperate in a joint enterprise to perform the steps of a patented method; and (iv) MTI actively induced the MTI Subsidiaries to infringe certain patent claims as alleged herein. As such, venue with respect to MTI may be properly imputed onto the MTI Subsidiaries.

30. Joinder of the MTI Defendants is proper under 28 U.S.C. § 299(a) because the MTI Defendants are related parties which are jointly or severally liable for infringement, or which make, use, sell, offer for sale, or import the same or similar multi-level cell NAND Flash memory devices arising out of the same transaction, occurrence, or series of transactions relating to infringement, with questions of fact common to the MTI Defendants. Joinder of the MTI Defendants is also appropriate under Rule 20 and 21, as MLC's allegations against the MTI Defendants arise from the same import to the U.S., manufacture, design, use, or sale of the same accused multi-level cell NAND Flash memory devices.

INTRADISTRICT ASSIGNMENT

31. Pursuant to Local Rule 3-2(c), intellectual property cases are assigned on a district-wide basis

THE ASSERTED PATENT

32. The '571 Patent is entitled "Electronically alterable non-volatile memory with N-Bits per cell." A true and correct copy of the '571 Patent is attached hereto as Exhibit A and incorporated herein by reference. A true and correct copy of the *ex parte* reexamination certificate for the '571 Patent is attached hereto as Exhibit B and incorporated herein by reference.

33. The invention of the '571 Patent generally relates to a multi-level electrically alterable non-volatile memory device that includes memory cells with more than two predetermined memory states. The device can be programmed, in accordance with input information, to one of a predetermined number of memory states. Each memory state has associated with it a reference voltage. A reference voltage can be selected based upon the input information (i.e., desired memory state), and the reference voltage can be compared to a voltage of the memory cell. A control signal is generated that indicates whether the cell has been programmed to the desired memory state. A programming signal can be controlled by the status of the control signal. Controlling the application of the programming signal is based upon the selected reference signal.

34. The application that resulted in the '571 Patent was filed on February 27, 1995, as a continuation-in-part and later amended to be a divisional of an application that was filed on June 4, 1993, application serial number 08/071,816 (now U.S. Patent No. 5,394,362), which was a continuation of an application filed February 8, 1991, application serial number 07/652,878 (now U.S. Patent No. 5,218,569). The U.S. Patent and Trademark Office duly and legally issued the '571 Patent on June 9, 1998.

MTI AND THE MTI SUBSIDIARIES

35. MTI is a global company in the business of manufacturing and selling semiconductor solutions. MTI's products include infringing memory devices based on multi-level cell NAND Flash technologies. Multi-level cell (MLC) NAND Flash¹ is a popular memory device used in well-known consumer products such as tablet computers, personal music players, smart phones, and other devices. MTI has worldwide operations through which MTI made, used, offered for sale, and sold multi-level cell NAND Flash memory devices within the U.S., as well as imported and exported them to and from the U.S.

36. MTI is the parent company of Defendants MSP, MSAPL, MEL, MJL, MSCL, and MMT, which are wholly-owned subsidiaries, and MTI is the majority owner of Defendant IMFT. Upon information and belief, these MTI Subsidiaries manufacture MLC NAND Flash devices according to MTI designs and specifications, and then supply those devices to MTI and other MTI subsidiaries to be distributed and sold in the U.S. MLC NAND Flash devices manufactured by MTI as well as by each named MTI Subsidiaries both domestically and abroad, are sold in the U.S. under the "Micron" brand name or MTI-owned brands such as Lexar, Crucial Technology, Kodak and SpecTek Select.

37. As set forth above and below, each of the MTI Subsidiaries' infringing activities is not only for the benefit of MTI, but also under the direction and control of MTI. Each of the MTI Subsidiaries participates in MTI's infringing activities for the benefit of MTI as agents as well as alter egos of MTI. To the extent each of the MTI Subsidiaries separately benefit from

¹ 'MLC NAND Flash' and 'MLC x3 NAND Flash' are referred collectively herein as "multi-level cell NAND Flash memory devices".

1 their infringing activities, the MTI Subsidiaries and MTI act together in a joint enterprise for the
2 purpose of making, selling and distributing infringing products. On information and belief, MTI
3 receives, benefits, and shares the revenues and/or profits made by and/or generated from the
4 direct and indirect infringing activities of the MTI Subsidiaries.

5 38. MTI and each of the MTI Subsidiaries share a unity of interests and ownership,
6 where on information and belief, MTI directs and controls the activities and operations of the
7 MTI Subsidiaries.

8 39. On information and belief, MTI designs all of its MLC NAND flash devices in
9 the U.S. at MTI's Boise, Idaho headquarters, and in MTI's San Jose and Milpitas locations. For
10 instance, MTI's website specifies that MTI's San Jose and Milpitas locations "design NAND
11 products." On information and belief, MTI Subsidiaries, at the direction of MTI and/or in joint
12 enterprise with MTI, also participate in the testing and development of the infringing designs.
13 *See, e.g.*, MTI 2018 SEC 10-K at p. 8 ("Our process, design, and package development efforts
14 occur at multiple locations across the world, with our largest R&D center located in Boise, Idaho
15 and other R&D centers in Japan, China, Italy, Singapore, Taiwan, and other sites in the United
16 States."); *see also*, MTI 2014 SEC 10-K at p. 7.

17 40. On information and belief, MTI distributes the MLC NAND flash device designs
18 to its manufacturing facilities, including its wholly-owned manufacturing facilities located in
19 other countries. MTI relies on its wholly-owned manufacturing facilities in the U.S. and other
20 countries, specifically each of the MTI Subsidiaries, to supply MTI with MLC NAND Flash
21 devices for sale in the U.S., as well as to U.S.-based corporations. *See* MTI 2018 SEC 10-K at p.
22 4 ("We [MTI] manufacture our products at our worldwide, wholly-owned and joint venture
23 facilities located in Taiwan, Singapore, the United States, Japan, and China and also utilize
24 subcontractors to perform certain manufacturing processes."); *see also*, MTI 2014 SEC 10-K
25 Annual Report. MTI's manufacturing process involves a number of steps, including assembly
26 and testing, and MTI tests and assembles products "in-house," that is, at MTI and MTI
27 Subsidiaries. *See, e.g.*, MTI 2014 SEC 10-K at p. 5; MTI 2018 SEC 10-K at p. 5. Additionally,
28 on information and belief, the manufacturing, assembly, and testing procedures performed by

1 MTI and the MTI Subsidiaries are directed and controlled by MTI. MTI 2014 SEC 10-K at 5;
2 *see also*, MTI 2018 SEC 10-K at p. 4 (“Efficient production of semiconductor product requires
3 utilization of advanced semiconductor manufacturing techniques and effective deployment of
4 those techniques across multiple facilities. . . . we employ rigorous quality controls throughout
5 the manufacturing, screening, and testing processes.”)

6 41. MTI and the MTI Subsidiaries, separately and jointly under the direction and
7 control of MTI, market, offer for sale, and sell infringing products through their “internal sales
8 force, independent sales representatives, distributors, and e-tailers, primarily to original
9 equipment manufacturers and retailers located around the world.” *See* MTI 2018 SEC 10-K at 4.

10 42. For instance, MTI marketed infringing products through MTI’s direct sales force,
11 which include MTI sales or representative offices in markets around the world. *See* MTI 2018
12 SEC 10-K at p. 6. On information and belief, MTI’s worldwide sales or representative offices
13 through which MTI markets and sales infringing products, include the MTI Subsidiaries named
14 in this suit. On information and belief, MTI consolidated the marketing of infringing products
15 manufactured by MTI and the MTI Subsidiaries in its Parts Catalog available on MTI’s website,
16 which can be accessed at <https://www.micron.com/products/nand-flash/mlc-nand/part-catalog>.
17 The Parts Catalog markets products as MTI’s and does not distinguish whether MTI or a MTI
18 Subsidiary is the manufacturer.

19 43. MTI offered for sale and sold infringing products under the Micron mark and a
20 myriad of brands, including but not limited to Crucial, Ballistix, Spectek, and Lexar. On
21 information and belief, MTI owned, and continues to own, the copyright and trademark rights to
22 the brands under which MTI and the MTI Subsidiaries offered for sale and sold infringing
23 products. For example, MTI owns the copyright for the Crucial website, www.crucial.com.
24 Further, MTI owns the trademarks for: (i) the Crucial mark, which was registered on February 8,
25 2000 and has the serial no. 2316486; (ii) the Ballistix mark, which was registered on December
26 6, 2005 and has the serial no. 78438331; and (iii) the Spectek mark, which was registered on
27 February 5, 2002 and has the serial no. 78293691.
28

44. MTI offered for sale and sold products through independent sales representations, distributors, and e-tailers, who, upon information and belief, “obtain orders subject to final acceptance by us [MTI], and we [MTI] make[s] shipments against the orders directly to our [MTI’s] customers.” *See* MTI 2018 SEC 10-K at p. 6 (“Our independent sales representatives obtain orders subject to final acceptance by us, and we make shipments against the orders directly to our customers.”); *see id.* (“Many of our [MTI] customers require a thorough review or qualification of semiconductor products, which may take several months.”) Through these third parties, MTI markets and directs sales of MTI’s infringing products to the state of California. For example, MTI products made under the Ballistix and Crucial brands can be purchased through the following vendors: Crucial; Amazon; Newegg; and Micro Center Computer & Electronics. The third party vendors through which MTI markets and directs sales have a presence in, and direct sales to, the state of California. For example, MTI products under the MTI brand, in addition to the Crucial and Ballistix brands, are marketed and sold by MTI through third party vendor, Micro Center Computers & Electronics, which has a store front in Tustin, California and stocks MTI products. *See* https://www.microcenter.com/search/search_results.aspx?Ntt=Ballistix&Ntk=all&sortby=match&N=4294821695&myStore=true; *see also*, https://www.microcenter.com/search/search_results.aspx?N=4294816175.

45. MTI and MTI Subsidiaries commingle funds and other assets. MTI filed and continues to file consolidated SEC 10-K Annual Reports on its behalf as well as on behalf of the MTI Subsidiaries, which report consolidated financial information on behalf of MTI and the MTI Subsidiaries, including consolidated sales and revenue data from sales of NAND Flash products made by MTI and the MTI Subsidiaries without segregating and/or differentiating sales and revenues among the different entities.

46. MTI wholly owns or owned the following MTI Subsidiaries: MCPG; MSP; Lexar; MSAPL; MEL; MJL and MMT. MTI owns a majority of IMFT.

47. MTI and the MTI Subsidiaries consolidate corporate records. On information and belief, MTI and the MTI Subsidiaries share and maintain integrated accounting books, records,

1 financial and tax-related documents. For example, MTI prepares and makes publicly available
2 consolidated financial statements that include financial information of the MTI Subsidiaries. *See*
3 *Micron I*, Dkt. 240 (Court Nov. 26, 2018 Order) at 4 (“Micron has not shown that it would be
4 burdensome to produce the foreign sales data, and indeed the Kearsley declaration indicates that
5 the information is readily available.”).

6 48. MTI holds itself out as liable for the debts of the MTI Subsidiaries. For example,
7 during the relevant time period and according to MTI’s 2014 SEC Annual 10-K Reports, MTI,
8 among other things, (i) guaranteed certain debt obligations of its subsidiaries; (ii) guaranteed
9 over \$600 million of debt obligations of its subsidiaries as of August 28, 2014; (iii) provided
10 various financial guarantees, including contracts and banking facilities, issued in the normal
11 course of business on behalf of its subsidiaries; (iv) entered into commercial transactions and
12 financial arrangements with and/or on behalf of its subsidiaries in order to enhance the value of
13 the transaction; (v) entered into agreements covering activities of its subsidiaries whereby MTI
14 would be obligated to perform under the guarantee and contracts if its subsidiaries were to
15 default; and (vi) guaranteed credit facilities for its subsidiaries that provide over \$400 million in
16 financing. Also, on information and belief, the majority of these commercial and financial
17 guarantees have no contractual expiration.

18 49. Further, on information and belief, MTI sets aside monies to finance litigation,
19 pay for liabilities and/or settlement obligations, including liabilities resulting from patent
20 infringement disputes. For example, according to MTI’s 2014 Annual 10-K Report, Micron
21 represents that it has “accrued a liability and charged operations for the estimated costs of
22 adjudication or settlement of various asserted and unasserted claims” that “Micron and its
23 subsidiaries’ products or manufacturing processes infringe [third-party] intellectual property
24 rights.”

25 50. MTI and the MTI Subsidiaries use the same offices and overlap in employees.
26 For example, MSP did and/or continues to do business as MCPG and thus shares MCPG’s
27 principal place of business at 47300 Bayside Parkway, Fremont, California 94538. MEL did
28 and/or continues to do business as Lexar during the relevant time period, and thus shared its

1 principal office located at 47300 Bayside Parkway, Fremont, California 94538. Lexar and
2 MCPG shared or continue to share a principal place of business at 47300 Bayside Parkway,
3 Fremont, California 94538.

4 51. MTI and the MTI Subsidiaries employ and recruit employees for overlapping
5 and/or shared positions. On information and belief, MTI recruits and hires employees and
6 engineers on behalf of MTI as well as on behalf of MTI Subsidiaries worldwide. For example,
7 MTI owns and controls the MTI corporate website which advertises that “Micron has locations
8 and employment opportunities globally,” including but not limited to NAND flash product
9 development and NAND flash engineering positions at worldwide offices and manufacturing
10 facilities purportedly owned by certain MTI Subsidiaries. Through MTI’s job portal, regardless
11 of whether the available position will be located at MTI or a MTI Subsidiary location, all
12 postings represent that that hiring company is “Micron.” *See e.g.*,
13 [https://jobs.micron.com/go/Jobs-in-](https://jobs.micron.com/go/Jobs-in-Singapore/389158/?q=&sortColumn=referencedate&sortDirection=desc)
14 [Singapore/389158/?q=&sortColumn=referencedate&sortDirection=desc](https://jobs.micron.com/go/Jobs-in-Singapore/389158/?q=&sortColumn=referencedate&sortDirection=desc).

15 52. MTI uses the MTI Subsidiaries as mere conduits for MTI’s affairs. On
16 information and belief, MTI acquired companies in other countries and converted them into
17 wholly-owned subsidiaries for tax purposes. For example, MTI opened its largest manufacturing
18 center in Singapore as MTI Subsidiary, MSAPL, because the country allows Micron to compute
19 tax provisions at below average rates. MTI then directs and oversees the products MSAPL
20 manufactures, in addition to the sale and shipment of these products to the United States, and the
21 state of California. MTI also created the Crucial brand, through which MTI Subsidiaries do
22 business as, such as MSP and MCPG, in order to allow “end users to buy memory direct from a
23 major manufacturer,” *i.e.*, MTI. *See* <https://www.crucial.com/usa/en/company-history>. At all
24 times MTI owns the legal and equitable to the IP used by the MTI Subsidiaries to design,
25 manufacture, market and sell products and all profits flow back to MTI. Further, on information
26 and belief, MTI incorporated and is the registered agent for the U.S.-based MTI Subsidiaries.
27 For example, MTI orchestrated and controlled the incorporation of MCPG and Lexar (which
28 were eventually merged). Currently, the registered agent for MCPG is Joel Poppen, who is

1 MTI's Senior Vice President, Legal Affairs, General Counsel and Corporate Secretary.²

2 Similarly, MTI also orchestrated and controlled the incorporation of MSP, the registered agent of
3 which is also Joel Poppen.³

4 53. Upon information and belief, MTI represents itself and its MTI Subsidiaries as a
5 single, world-wide, integrated company under the control and management of its parent, MTI.
6 For example, MTI publicly represents its global operations (*i.e.*, MTI Subsidiaries) using plural
7 pronouns to refer to a single integrated entity. According to MTI's 2018 SEC Annual 10-K
8 Report, "Micron Technology, Inc., including its consolidated subsidiaries, is an industry leader
9 in innovative and storage solutions." *See* MTI 2018 SEC 10-K ("As used herein, 'we,' 'our,'
10 'us,' and similar terms include Micron Technology, Inc. and our consolidated subsidiaries."); *see*
11 *also*, MTI 2014 SEC 10-K Annual Report.

12 54. Further, MTI and the MTI Subsidiaries share the same website,
13 <http://www.micron.com>. Upon information and belief, Micron's website is accessible nationally
14 and internationally, and is not only active in U.S. interstate commerce but also a recruiting
15 platform to recruit U.S. employees to work for MTI but at MTI's wholly-owned foreign
16 subsidiaries to make NAND Flash products – as discussed further below.

17 55. MTI Subsidiaries are inadequately capitalized absent the financial support of
18 MTI. On information and belief, MTI financially supports and provides credit and capital to the
19 MTI Subsidiaries, as well as guarantees loans and debt obligations for the MTI Subsidiaries. On
20 information and belief, the MTI Subsidiaries do not own equitable or legal title to any relevant
21 IP, all such title is owned by MTI, and therefore the MTI Subsidiaries lack capitalization to
22 satisfy debts accrued in the normal course of business absent MTI's financial support. On
23 information and belief, during the relevant time period, there were and remain no meaningful
24 restrictions on MTI's ability to access and use the cash and equivalent assets held by MTI's
25

26
27 ² The incorporation records are available at <https://sosbiz.idaho.gov/search/business>, by entering
the name "Micron Consumer Products Group" or file number "535110".

28 ³ The incorporation records are available at <https://sosbiz.idaho.gov/search/business>, by entering
the name "Micron Semiconductor Products" or file number "356845".

1 wholly-owned Subsidiaries to be used at MTI's discretion to, for example, finance other
2 operations or departments, and is not subject to approval or agreement by the MTI Subsidiaries.
3 *See* MTI 2017 SEC 10-K ("Restrictions on Net Assets"). Further, on information and belief, all
4 revenue generated by the MTI Subsidiaries flow back to MTI. Therefore the MTI Subsidiaries
5 are insufficiently capitalized to cover debts accrued in the normal course of business absent
6 MTI's approval and subject to MTI's discretion.

7 56. Further, on information and belief, the de facto officers and employees that work
8 at the MTI Subsidiaries' offices, and whom the MTI Subsidiaries rely upon for the running of
9 daily operations, are employed by, and paid by, MTI. Absent MTI's payment of payroll, the
10 MTI Subsidiaries would lack capital to make payroll and daily operations would cease. On
11 information and belief, as a result of the inadequate capitalization of the MTI Subsidiaries, the
12 MTI Subsidiaries would be insolvent but for the financial support and guarantees from MTI.

13 57. On information and belief, MTI and the MTI Subsidiaries disregard corporate
14 formalities. For example, MTI and MTI Subsidiaries disregard the corporate formality of being
15 represented by and advised by separate legal counsel.

16 58. On information and belief, MTI's in-house counsel legal department advises and
17 owes a fiduciary obligation to MTI, and also advises, oversees and acts on behalf of the MTI
18 Subsidiaries. On information and belief, MTI's in-house legal department therefore represent
19 and advise both MTI and the MTI Subsidiaries regarding any intercompany contracts or
20 business, customers or trade contracts, legal disputes, as well as governmental securities and tax
21 regulations.

22 59. On information and belief, MTI had and continued to provide such legal support
23 and oversight to the MTI Subsidiaries during the relevant time period. For example, during the
24 relevant time period, Mr. David Westergard served as both MTI's in-house counsel and director
25 of patent licensing, while also serving as the director of European litigation in which he has "led
26 or played a major role in virtually every major IP litigation naming Micron as plaintiff or
27 defendant since 1995." *See* Dkt. 84-3 (Westergard LinkedIn Profile). On information and belief,
28 because MTI acts through the MTI Subsidiaries internationally, including MEL, Mr. Westergard

1 and MTI's legal department has overseen and advised litigations involving MEL and other MTI
2 Subsidiaries.

3 60. On information and belief, MTI and the MTI Subsidiaries employ the same
4 outside litigation counsel to represent and advise MTI and the MTI Subsidiaries in litigation. For
5 example, MTI and MSP have been represented by the same outside litigation counsel. *See*
6 *Rambus Inc. v. Micron Technology, Inc., and Micron Semiconductor Products, Inc.*, Case No 06-
7 CV-00244 (RMW) (N.D.Cal.). MTI and Lexar (who MEL does business as in the U.S. and the
8 state of California) have been represented by the same outside litigation counsel. *See*
9 *Technology Properties Limited, LLC, v. Lexar Media, Inc. and Micron Technology, Inc.*, 6:12-
10 cv-00211 (E.D. TX). MTI and MCPG have been represented by the same outside litigation
11 counsel. *See E.Digital Corporation, v. Micron Technology, Inc.*, No. 13-CV-2944-H (BGS)
12 (S.D.Cal.). In the instant litigation, the same outside litigation counsel represent all of the MTI
13 Subsidiaries that have made an appearance, including IMFT, MSP, MCPG and MEL. On
14 information and belief, MTI pays the legal fees accrued by outside litigation counsel on behalf of
15 the MTI Subsidiaries, and MTI approves and pays the ultimate settlements reached. *See* MTI's
16 2014 Annual 10-K Report (MTI has "accrued a liability and charged operations for the estimated
17 costs of adjudication or settlement of various asserted and unasserted claims.").

18 61. On information and belief, MTI brings litigation on behalf of its subsidiaries. For
19 example, MTI brought suit against United Microelectronics Corporation ("UMC") in the
20 Northern District of California for trade secret misappropriation on behalf of the MTI Subsidiary,
21 MMT, alleging that UMC induced a former MMT employee to misappropriate MTI trade
22 secrets. *See Micron Tech., Inc. v. United Microelectronics Corp.*, No. 17-CV-06932-JSW (N.D.
23 Cal.).

24 62. On information and belief, MTI and the MTI Subsidiaries disregard corporate
25 formalities on the basis that based upon publicly available documents, six of the MTI
26 Subsidiaries— MSP, MCPG, IMFT, Lexar, MEL and MJL—do not have any board of directors,
27 and thus do not conduct board meetings, do not maintain corporate minutes or otherwise
28 maintain records reflecting adherence to corporate formalities. As a result, on information and

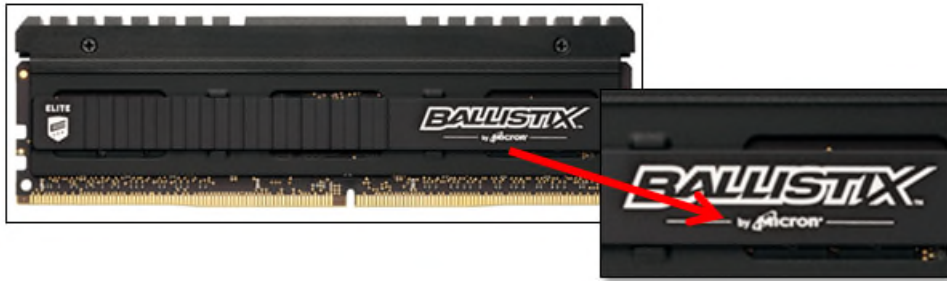
1 belief, MTI sets the policies for corporate management and otherwise controls the six MTI
 2 Subsidiaries. On information and belief, based upon publicly available documents, the two MTI
 3 Subsidiaries which do appear to have boards— MSAPL and MMT—are not independent of
 4 MTI, and provide MTI with a board majority to control the MTI Subsidiary. For example,
 5 MSAPL appears to have one board member, Wayne Allan, who serves as MTI’s Vice-President
 6 of Global Manufacturing, and therefore provides MTI with a board majority of MSAPL. On
 7 information and belief, MSAPL and MMT also fail to conduct board meetings, do not maintain
 8 corporate minutes or otherwise maintain records reflecting adherence to corporate formalities.

9 63. On information and belief, MTI and the MTI Subsidiaries jointly represent
 10 themselves to the public as a single entity operating under the auspices and brand of MTI, the
 11 parent company. On information and belief, MTI uses the website www.micron.com to direct
 12 and control the marketing of the MTI Subsidiaries, and MTI Subsidiaries do not operate
 13 independent websites. To the extent that MTI and MTI Subsidiaries market and sell goods under
 14 MTI-owned brand names, such as Crucial and Ballistix, MTI owns the legal and equitable rights
 15 to the copyright and trademark, including the website through which the goods are marketed and
 16 sold. *See e.g.*, www.crucial.com.

17 64. On information and belief, the MTI mark is used without distinction or separation
 18 on products and marketing collateral materials, regardless of whether the product was designed,
 19 made and/or sold by MTI or a MTI Subsidiary. For example, MTI and the MTI Subsidiaries,
 20 including MCPG and MSP, market and sell the manufactured products under the Crucial and
 21 Ballistix brands, the labels for which prominently display that it is “by Micron,” and does not
 22 disclose the MTI Subsidiaries.



Available at https://www.amazon.com/Crucial-Bx500-480Gb-Client-Drive/dp/B07GSYR24T?ref_=ast_bbp_dp.



Available at <https://ballistixgaming.com/products/dram/elite/ballistix-elite-ddr4.html>.

65. On information and belief, the MTI mark is used for the offices and facilities of both MTI and the MTI Subsidiaries worldwide, without any other clear signage suggesting to the public that MTI and its subsidiaries are separate or distinct entities. For example, MSP is located at the same address as MTI's Boise, Idaho location and does not appear to reflect signage independent of MTI's mark. *See also:*



66. MTI and the MTI Subsidiaries have overlapping directors and officers who have management authority over MTI Subsidiaries and make decisions on behalf of, and otherwise control, the MTI Subsidiaries. MTI files consolidated SEC 10-K Annual Reports on its behalf as well as on behalf of the MTI Subsidiaries, and those consolidated annual reports identify a single set of executive officers and directors for both MTI and the MTI Subsidiaries. On information and belief, there is an overlap in legal directors and officers who represent MTI and MTI Subsidiaries and provide counsel. For example, David Westergard serves as both MTI's in-house counsel and the director of European Litigation, which encompasses IP litigation where

MTI or an MTI Subsidiary is a party. On information and belief, there is overlap in directors and officers who oversee and control intercompany asset and cash flow. For example, Roger Kearsley is an international tax manager at MTI and is currently MTI's Director of global transfer pricing, and oversees and controls the intercompany pricing and product flows between MTI and the MTI Subsidiaries. *MLC I*, Dkt. 255-3 at ¶ 4.

67. On information and belief, there is an overlap in directors and officers who oversee and control global manufacturing by MTI's Subsidiaries. For example, Wayne R. Allan is MTI's Vice-President of Global Manufacturing and "is responsible for managing all wafer fabrication operations at Micron's global locations," which includes the MTI Subsidiaries, and appears to serve as the sole board member of MSAPL, and thus forms a board majority. *See e.g.*, <https://www.bloomberg.com/profile/person/18748106>; <https://www.bloomberg.com/profile/company/0177484D:SP>; <https://www.crunchbase.com/person/wayne-r-allan>.

68. The adherence to the fiction of a separate existence between MTI and the MTI Subsidiaries would promote an injustice on the following bases. For example, MTI's commingling of funds with those of the MTI Subsidiaries make it difficult to trace the funds which are attributable to MTI's infringing conduct. Further, MTI's funneling of the marketing and sale of the infringing products made by MTI and MTI Subsidiaries through MCPG, and the MTI-owned brands such as Crucial, Ballistix, and Lexar, make it difficult to trace which infringing product was made by which party, even though all profits flow back to MTI. Additionally, an inequitable result will follow if alter ego is not recognized since MTI will be unfairly rewarded for its creation of MTI Subsidiaries which merely serve as conduits through which MTI directs and controls the design, manufacture and sale of the infringing products.

RELATED LITIGATION: MICRON I

69. On August 12, 2014, MLC filed a suit against MTI for the direct infringement of the '571 Patent. The case is pending in the Northern District of California at *MLC Intellectual Property, LLC v. Micron Technology, Inc.*, Case No. 14-cv-03657-SI ("*Micron I*").

70. As discussed below, MTI, and by extension, the MTI Defendants have had knowledge of the '571 Patent and their infringement as early as November 2006.

71. *Micron I*, involved a single party, MTI, and thirteen accused products.

Party At Issue In <i>Micron I</i>	Products At Issue In <i>Micron I</i>
MTI (Micron Technology, Inc.)	L52a, L63b, L72a, L73a, L74a, L83a, L84a, L84c, L85a, L85c, L95b, B75a, and N85a. <i>Micron I</i> , Dkt. 193 (Aug. 20 Order); Dkt. 546-3 at 10 n. 6 (Mot. for Summary Judgment).

72. On November 13, 2018, MLC moved to amend the complaint in *Micron I* based on MTI's then-recent statements and admissions regarding infringing sales by MTI's subsidiaries.

73. On January 11, 2019, the Court denied MLC's motion to amend, stating that "[i]f MLC wishes to pursue claims against the subsidiaries. . . , MLC may do so in a separate lawsuit or lawsuits." *Micron I*, Dkt. No. 288 at 2-3.

74. *Micron I* remains pending in the Northern District of California. The Court has denied MTI's motions for summary judgment of invalidity and non-infringement.

75. In *Micron I*, MTI represented to the court in *Micron I* that it was not in privity with the MTI Subsidiaries for purposes of that lawsuit. For example, MTI argued that MLC was incorrect to assert "that MTI, the sole defendant in th[e] case, would be liable for its subsidiaries' acts" because "[a] parent company such as MTI is liable for a subsidiary's infringement under 35 U.S.C. § 271(a) only when the evidence justifies disregarding the corporate structure and piercing the corporate veil," but there was "no justification for piercing the corporate veil to hold MTI liable for subsidiary/affiliate activities." *Micron I*, Dkt. No. 226 at 12-13.

76. MTI stated in *Micron I* that its "subsidiaries and affiliates (past and present),... have had no opportunity to prepare or develop any defense in this case. For example, they have not been involved in the preparation of Micron's invalidity contentions or claim construction positions. Nor have they been involved in litigating this case by (for example) participating in

1 discovery (e.g., by exchanging interrogatories or other requests), depositions, or in Markman
2 proceedings (of which there have been two). *Micron I*, Dkt. No. 226 at 15 (Opp’n for
3 Sanctions).

4 77. MTI also stated in *Micron I* that “Micron subsidiaries and affiliates are
5 presumed to be separate and distinct legal entities from Micron,” and that MLC could not
6 “show that Micron *controls* litigation involving its subsidiaries. Thus, it does not satisfy the
7 requirements for (for example) alter ego liability under the law of this Circuit.” *Micron I*, Dkt.
8 No. 226 at 1920.

9 78. In addition, MTI further stated in *Micron I* that “any financial control over
10 Micron’s subsidiaries (which MLC has not shown), absent more, is also an insufficient basis to
11 disregard the corporations’ individual corporate forms. . .” *Micron I*, Dkt. No. 226 at 20.

12 79. In addition, Micron represented in a motion *in limine*, that its “subsidiaries are
13 independent entities that are liable for their own actions.” *Micron I*, Dkt. No. 445 at 4 (Mot. *in*
14 *Limine* No. 2) (“Micron, the only named defendant in this case, bears no liability for those
15 independent entities or their sales.”). Micron also argued that none of the activities of the MTI
16 Subsidiaries rose “to the level sufficient to satisfy the high bar for vicarious liability. . . , such
17 as the ‘alter ego exception.’” *Id.*

18 80. The Court adopted Micron’s argument, concluding, “based upon the briefing
19 and the arguments of counsel,” that MLC could not show that “as a factual matter” and “as a
20 matter of law” that the MTI Subsidiaries and MTI Foreign Subsidiaries are alter egos of MTI.
21 *Micron I*, Dkt. No. 596 at 2-3.

22 81. Thus, while the MTI Subsidiaries were the alter egos of MTI during the
23 relevant time period of notice and infringement, the MTI Subsidiaries and the MTI Foreign
24 Subsidiaries were not privies of MTI for purposes of *Micron I*, and Micron is estopped from
25 asserting privity in the current lawsuit. On information and belief, the MTI Subsidiaries are the
26 alter egos and/or agents of MTI for purposes of this lawsuit.

1 82. The claims of infringement in this First Amended Complaint differ from those
2 in *Micron I*. For example, MLC accuses products that were not accused in *Micron I*, along with
3 parties that were not at issue in *Micron I*.

4 83. MTI itself admitted that certain claims that MLC sought to include in *Micron I*
5 through an amended complaint would constitute entirely new claims of infringement. *Micron I*,
6 Dkt. No. 226 at 16 (“MLC’s new claims of infringement (for example, for the manufacture and
7 sales of all the accused products listed in MLC’s complaint) against all nine Micron present and
8 past subsidiaries/affiliates can be expected to require extensive discovery and other efforts.”).

9 **NOTICE OF THE '571 PATENT AND INFRINGEMENT**

10 84. Even prior to the filing of the complaint in *Micron I*, the MTI Defendants had
11 actual notice that they infringed the '571 Patent, or the notice provided to MTI was imputed to
12 the other MTI Defendants. As discussed below, MTI received actual notice of the '571 Patent
13 as well as actual notice of infringement as early as November 2006. Further, given the
14 relationship between MTI and the wholly-owned MTI Subsidiaries, including the in-house
15 counsel for MTI and the other MTI Defendants, each of the MTI Subsidiaries and MTI Foreign
16 Subsidiaries received actual notice of the '571 Patent as well as actual notice of infringement
17 as early as November 2006, and again in 2007, 2011, and 2013.

18 85. On information and belief, MTI, namely, MTI’s Legal Department, provides
19 not only legal services and support to the MTI Subsidiaries, but is also responsible for and has
20 oversight over the entire Micron corporation, both domestically and globally and on behalf of
21 its MTI Subsidiaries, regarding, *inter alia*, intellectual property related matters.

22 86. On or about November 29, 2006, BTG (the assignee of the '571 Patent at the
23 time) sent to MTI’s Legal Department correspondence addressed to MTI’s then-Director of
24 Patent Licensing and European Litigation, Mr. David Westergard. The 2006 letter identified,
25 *inter alia*, the '571 Patent and specific claims to the '571 Patent, MTI’s multi-level cell NAND
26 Flash memory devices as products affected by the '571 Patent, and stating that MTI should
27 study the '571 Patent. The communication also included an offer to license the '571 Patent. On
28 information and belief, subsequent to that letter, BTG’s representatives and MTI

1 representatives communicated on multiple occasions, including telephonically, regarding the
2 multi-level cell patents, including the '571 Patent, as well as the offer to license.

3 87. On or about June 29, 2007, BTG sent a follow-up letter to notify MTI of
4 BTG's successes in licensing the multi-level cell patents, including the '571 Patent, to major
5 NAND Flash manufacturers that compete with MTI in the memory market. Additionally, in
6 that June 29, 2007 letter, BTG reiterated its offer to license to MTI and included an amount
7 based on very conservative forecast of Micron's future sales and a heavily discounted royalty
8 rate.

9 88. In or about February 2008, representative of BTG, Christine Soden, followed-up
10 with Micron regarding taking a license to the multi-level cell patents, including the '571 Patent
11 on terms consistent with terms BTG had offered to earlier major NAND flash licensees.

12 89. On or about September 13, 2011, Muir Patent Consulting, PLLC, on behalf of
13 the patent owner, sent MTI a package that included a letter to Micron regarding Micron's
14 unauthorized use of MLC's patented technology in Micron's multi-level cell or "MLC" and
15 triple-level cell or "TLC" NAND Flash devices and offered Micron a non-exclusive license to
16 the '571 Patent. The letter to Micron identified exemplary claims of the '571 Patent and the
17 applicability of those claims to Micron's "MLC" and "TLC" products. Further, the package
18 from Muir Patent Consulting, PLLC also included several enclosures including a copy of
19 BTG's ITC Complaint against entities, including Samsung – one of Micron's competitors in
20 the flash memory market.

21 90. In 2013, Epicenter Law, also on behalf of the patent owner, reached out to
22 Micron to discuss MTI's multi-level cell NAND Flash memory devices, licensing
23 opportunities, and reminded MTI that it received notice to its infringement at least in
24 November 2006 and in June 2007 when BTG notified MTI of its infringement.

25 91. These communications were sent to MTI's Legal Department located at MTI's
26 global headquarters in Boise, Idaho, who also serve as legal counsel to the MTI
27 Subsidiaries. Sending the notifications to MTI and the MTI Subsidiaries' legal counsel, who
28 reside at MTI's corporate headquarters, and identifying the group and/or specific infringing

1 products, which are marketed on MTI's corporate website via MTI's Parts Catalog which
2 consolidates all products designed, manufactured and/or distributed by MTI and the MTI
3 Subsidiaries, these notice communications were consistent with the way that MTI and the MTI
4 Subsidiaries hold themselves out to the public as a single entity. Legal counsel for MTI and
5 the MTI Subsidiaries were therefore on notice and had an obligation to inform all its clients—
6 MTI and the MTI Subsidiaries—of the communications notifying them of their
7 infringement. Separately and taken together, these communications put MTI and the MTI
8 Subsidiaries on notice of infringement.

9 92. Despite knowledge of the '571 Patent, and knowledge of infringement, the
10 MTI Defendants took no steps to end its infringement either by ceasing the production and
11 sale, or by taking a license to the '571 Patent. Over the course of several years, the MTI
12 Defendants misled representatives of the patent holder through perfunctory licensing
13 negotiations. Even up through the expiration of the '571 Patent, the MTI Defendants continued
14 to infringe the '571 Patent, and continued to direct, control, and knowingly and actively induce
15 acts of infringement by the MTI Subsidiaries.

16 93. Notwithstanding actual notice, MLC is entitled to pre-suit damages extending
17 back prior to expiration of the '571 Patent. Neither MLC nor BTG (the prior owner of the '571
18 Patent) has made or sold products covered by the '571 Patent and, as such, the requirements
19 under 35 U.S.C. Code § 287 are not applicable. Further, upon information and belief, licensees to
20 the '571 Patent not only denied infringement of the '571 Patent during licensing negotiations, but
21 MLC is unaware of any evidence that any licensee has sold products after the date of their
22 respective licenses that required marking during the damages period.

23 **MTI DEFENDANTS' INFRINGING PRODUCTS AND METHODS**

24 94. This suit involves new Micron products that infringe the '571 Patent in a new
25 way than those products accused of infringement in *Micron I*. The "New Micron Products" are
26 MLC NAND Flash based on designs (e.g., L94) different from the thirteen products at issue in
27 *Micron I*; the New Micron Products include multi-level NAND Flash cell flash that was made,
28 use, offered, sold or imported following the filing of the complaint in *Micron I*, but prior to the

1 expiration of the '571 patent; on information and belief, some of the New Micron Products
2 were made, used, offered for sale, sold or imported into the United States after MLC served its
3 infringement contentions, on December 5, 2014, in *Micron I*. The New Micron Products are
4 based on “new schematics”. *Micron I*, Dkt. 274-3 at 11 (Opp’n to Mot. To Compel). Each
5 “encompass many different kinds of products.” *Micron I*, Dkt. 318-3 at 29 (Opp’n to Mot. To
6 Amend).

7 95. MLC’s Infringement Contentions in *Micron I* identified thirteen product
8 designs “based on the information presently known and reasonably available to MLC.” *Micron*
9 *I*, Dkt. 27-7. The New Micron Products are multi-level cell NAND Flash based on designs that
10 were not issue in *Micron I*, not discovered in *Micron I*, and not litigated in *Micron I*. For
11 example, MPNs based on Micron’s L94 design. The New Micron Products were discovered
12 after the close of discovery in *Micron I* when it was revealed by Micron that it had not
13 disclosed all releases of its multi-level cell NAND flash, only the thirteen available at the time
14 of the filing of MLC’s complaint and infringement contentions.

15 96. At the close of discovery in *Micron I*, Micron admitted that there were
16 additional NAND flash products that it had not disclosed or produced beyond the thirteen
17 products accused. *Micron I*, Dkt. 257-3 at 16 (Mot. to Compel). When MLC moved to compel,
18 Micron opposed the motion on the basis that the new, undisclosed NAND flash products were
19 unaccused and not within the scope of *Micron I*. *Micron I*, Dkt. 274-3 (Opp’n to Mot. To
20 Compel). Micron stated that it understood the complaint and infringement contentions in *Micron*
21 *I* to accuse certain MLC NAND Flash, and not all MLC NAND Flash. *Id.* Micron further
22 admitted after the close of fact discovery that “[*Micron I*] is not about all Micron MLC and TLC
23 products”. *Id.* at 10.

24 97. Micron conceded the New Micron Products were “never accused” in *Micron I*.
25 *Id.* at 14. Micron confirmed that it was its understanding that “MLC’s Infringement
26 Contentions (which is the pleading that governs the scope of the accused products in this case)
27 unequivocally defines the accused products as 174 Micron MPNs, not once accusing a broad
28 category of products such as MLC and TLC NAND.” *Id.* at 15.

1 98. Micron further argued that assertion of infringement of the New Micron
2 Products in *Micron I* was “foreclosed by the operation of the Patent Local Rules”. *Id.* at 14.
3 According to Micron, products not specifically identified by name or model number were not
4 accused. *Id.* The name/model number of the New Micron Products was not discovered until
5 after the close of fact discovery in *Micron I*, and as noted, on information and belief, some of
6 the New Micron Products were made, used, offered, sold, and/or imported after MLC served
7 its infringement contention in *Micron I*, but prior to expiration of the ‘571 Patent.

8 99. A month prior to the filing of the complaint in the current suit, Micron
9 confirmed again in *Micron I* that “The [*Micron I*] ‘Accused Products’ correspond to Design IDs
10 L52A, L63A, L63B, L72A, L73A, L74A, L83A, L84A, L84C, L85A, L85C, L95B, and
11 B74A.” *Micron I*, Dkt. 546-3 at 10 n. 6 (Mot. For Summary Judgment). The New Micron
12 Products (e.g. L94) are not the same as the thirteen products at issue in *Micron I*.

13 100. As shown in the table below, MTI is accused of infringing the ‘571 Patent for
14 making, using, selling, offering, and/or importing the New Micron Products.

15 101. The MTI U.S. Subsidiaries are accused of infringing the ‘571 patents for
16 making, using, selling, offer, and/importing the New Micron Products, and L52a, L63b, L72a,
17 L73a, L74a, L83a, L84a, L84c, L85a, L85c, L95b, and B75a products. The MTI U.S.
18 Subsidiaries were not at issue in *Micron I*, and MTI represented in *Micron I* that the MTI U.S.
19 Subsidiaries were not in privity with Micron for that litigation.

20 102. The MTI Foreign Subsidiaries are accused of infringing the ‘571 patents, for
21 example, selling, offering, and/importing the New Micron Products, and L52a, L63b, L72a,
22 L73a, L74a, L83a, L84a, L84c, L85a, L85c, L95b, and B75a products. The MTI Foreign
23 Subsidiaries were not at issue in *Micron I*, and MTI represented in *Micron I* that the MTI
24 Foreign Subsidiaries were not in privity with Micron for that litigation.

Part(y/ies)	Accused Products
MTI (Micron Technology, Inc.)	New Micron Products (e.g., L94)
MTI U.S. Subsidiaries (i.e., MCPG, MSP, IMFT, Lexar)	New Micron Products (e.g. L94) and L52a, L63b, L72a, L73a, L74a, L83a, L84a, L84c, L85a, L85c, L95b, B75a.
MTI Foreign Subsidiaries (i.e., MSAPL, MEL, MJL, MMT, and MSCL)	New Micron Products (e.g., L94) and L52a, L63b, L72a, L73a, L74a, L83a, L84a, L84c, L85a, L85c, L95b, B75a.

103. The Defendants make, use, sell, offer for sale, and/or import into the United States multi-level cell NAND Flash memory devices and products incorporating such devices.

104. The Defendants' embedded multi-level cell NAND Flash based storage devices are utilized in mobile phones, tablets, computers, industrial and automotive applications, networking and other personal and consumer applications. The Defendants' multi-level cell NAND Flash memory devices are also incorporated into, among other things removable storage devices, such as USB and Flash memory cards used with applications such as PCs, digital still cameras, and mobile phones.

105. The Defendants infringed the '571 Patent literally and/or through equivalence by directly and indirectly making, using, offering to sell, selling, and importing, in or into this district and elsewhere in the United States, multi-level cell NAND Flash memory devices, which include but are not limited to products the MTI Defendants refer to as "MLC NAND Flash" or "TLC NAND Flash" memory products and parts. While the underlying designs of the multilevel cell NAND Flash memory devices infringe the '571 Patent, the Defendants make, market for sale, sell, , and/or distribute infringing multi-level cell NAND Flash memory devices under a variety of names, brands, and marketing part numbers such as (for illustrative purposes only and without limitation) MT29F32G08CBAAA, MT29F32G08CBAA, MT29E256G08CMCABJ2-10Z, MT29F64G08CBEFBL94C3WC1, and MT29F64G08EBAA⁴.

⁴ In *Micron I*, MTI identified some, but not multi-level cell NAND Flash memory devices made and/or sold by it or by its wholly-owned subsidiaries, the MTI Subsidiaries. As a result, any product(s) or design(s) not subject to infringement in or under *Micron I* are accused of infringing the '571 Patent in this suit.

1 106. The Defendants also infringed the '571 Patent literally and/or through
2 equivalence by directly and indirectly making, using, offering to sell, selling, and importing, in
3 or into this district and elsewhere in the United States multi-level cell NAND Flash memory
4 devices sold and/or marketed under a myriad of different brands, including but not limited to:
5 Lexar, Crucial, Kodak, Ballistix, and SpecTek Select brands.

6 107. Based on non-confidential and publicly available information presently known
7 and reasonably available to MLC, the Defendants make, offer for sale, and sell devices that
8 infringe at least the following claims of the '571 Patent: 1, 9, 12, 15, 16, 17, 30, 42, and 45.

9 108. For example, independent claim 9 claims a multi-level memory apparatus
10 comprising (a) an electrically alterable non-volatile memory cell having more than two
11 predetermined memory states; (b) a selecting device which selects one of a plurality of
12 predetermined reference signals in accordance with information indicating a memory state to
13 which the memory state is to be programmed, each reference signal corresponds to a different
14 memory state of said memory cell; (c) a programming signal source which applies a
15 programming signal to said memory cell; and (d) a comparator which compares a signal
16 corresponding to the state of said memory cell with the selected reference signal to verify
17 whether said memory cell is programmed to the state indicated by said information.

18 109. Another example is independent claim 30 which claims an apparatus for
19 programming an electrically alterable non-volatile memory cell having more than two
20 predetermined memory states, comprising (a) a selecting device which selects one of a plurality of
21 reference signals in accordance with information indicating a memory state to which said memory
22 cell is to be programmed, each reference signal corresponding to a different memory state of said
23 memory cell; (c) a programming signal source to apply a programming signal to said memory
24 cell; and (d) a control device to said memory cell based on the selected reference signal.

25 110. The Defendants make and sell multi-level cell NAND Flash devices (e.g.,
26 MT29F32G08CBAAA, MT29F32G08CBAA, MT29E256G08CMCAJ2-10Z,
27 MT29F64G08CBEFBL94C3WC1, and MT29F64G08EBAA) which infringes claim 9 because
28 the devices contain electrically alterable non-volatile memory cells having more than two

1 predetermined memory states. *See, e.g.*, TechInsights Internal Waveform Analysis of the
2 Micron MT29F32G08CBAAA 34nm 32 Gbit MLC NAND Flash Micron produced in Micron I
3 as MLC00000025- MLC00000089. The multi-level cell NAND Flash device selects a
4 predetermined reference signal where each reference signal corresponds to a different memory
5 state of the memory cell. Further, the multi-level cell NAND Flash device programs the
6 memory cell and compares a signal corresponding to the state of the memory cell with the
7 selected reference signal to verify whether the memory cell is programed to the desired state.
8 For instance, the accused multi-level cell NAND Flash device compares a voltage of the
9 memory cell to verify reference voltage to determine whether the memory cell has been
10 properly programmed.

11 111. Similarly, the accused multi-level cell NAND Flash devices also infringe claim
12 30 because accused devices also include a programming signal source which applies a
13 programming signal to the memory cell. In particular, the accused multi-level cell NAND Flash
14 device applies programming voltage pulses (or signals) to the memory cell until it verifies that
15 the cell has been programmed to the desired state.

16 112. Yet another example is independent claim 45 which claims a method of
17 programming an electrically alterable non-volatile memory cell having more than two
18 predetermined memory states, said method comprising: (a) selecting one of a plurality of
19 reference signals in accordance with information indicating a memory state to which said
20 memory is to be programmed, each reference signal corresponding to a different memory state
21 of said memory cell; (b) applying a programming signal to said memory cell; and (c)
22 controlling the application of said programming signal to said memory cell based on the
23 selected reference signal.

24 113. The accused multi-level cell NAND Flash devices also infringe claim 45 because
25 each device programs an electrically alterable non-volatile memory cell having more than two
26 predetermined memory states by selecting one of a plurality of reference signals where each
27 reference signal corresponds to a different memory state of the memory cell, and by applying
28 and controlling a programming signal to the memory cell based on the selected reference signal.

114. Each of the accused multi-level cell NAND Flash devices practice the limitations found in at least the foregoing claims, as well as the method of programming the multi-level memory cells of the accused multi-level cell NAND Flash devices, whether they are MLC or TLC NAND Flash devices.

CAUSE OF ACTION – WILLFUL INFRINGEMENT OF THE '571 PATENT

115. MLC incorporates by reference the foregoing paragraphs and re-alleges the facts and allegations of said paragraphs as though fully restated herein.

116. MLC owns all rights, title, and interest in the '571 Patent, including the right to recover damages for infringement of the '571 Patent throughout the period of infringement complained of herein.

117. MLC notified MTI of the '571 Patent and its infringement of the '571 Patent before the filing of this lawsuit, and at least as early as November 2006.

118. MTI has directly and indirectly (by and through their subsidiaries, affiliates, agents, and/or business partners) infringed, either literally or under the doctrine of equivalents, the '571 Patent, pursuant to 35 U.S.C. § 271(g) by practicing the methods claimed in the '571 Patent in the manufacture of New Micron Products within the United States.

119. MTI has directly and indirectly (by and through their subsidiaries, affiliates, agents, and/or business partners) infringed, either literally or under the doctrine of equivalents, the '571 Patent, pursuant to 35 U.S.C. § 271(a) by importing, using, selling, or offering to sell New Micron Products in the United States.

120. The MTI Subsidiaries have directly and indirectly (by and through its parent company, MTI, and through its agents, trade partners, affiliates and/or other subsidiaries of MTI) infringed, either literally or under the doctrine of equivalents, the '571 Patent, pursuant to 35 U.S.C. § 271(g) by practicing the methods claimed in the '571 Patent in the manufacture of multi-level cell NAND Flash⁵ memory devices within the United States.

⁵ As described above, 'MLC NAND Flash' and 'MLC x3 NAND Flash' are referred collectively herein as "MLC NAND Flash".

1 121. The MTI Subsidiaries have directly and indirectly (by and through its parent
2 company, MTI, and through its agents, trade partners, affiliates and/or other subsidiaries of
3 MTI) infringed, either literally or under the doctrine of equivalents, the '571 Patent, pursuant to
4 35 U.S.C. § 271(a) by importing, using, selling, or offering to sell multi-level cell NAND Flash
5 memory devices in the United States.

6 122. MTI has also indirectly infringed the '571 Patent, pursuant to 35 U.S.C. § 271(b)
7 by actively inducing acts of direct infringement performed by others, including the MTI
8 Subsidiaries. As explained above, MTI and the MTI Subsidiaries received actual notice of the
9 '571 Patent as early as 2006, as well as on subsequent dates in 2007, 2011, and 2013.
10 Furthermore, MTI and the MTI Defendants also received actual notice of the '571 Patent upon
11 the service of the complaint filed on August 12, 2014, in the *Micron I* Action.

12 123. Upon gaining knowledge of the '571 Patent, it was, or became, apparent to MTI
13 that the manufacture, sale, importation, offer for sale, and use of New Micron Products resulted in
14 infringement of the '571 Patent. Upon information and belief, despite having knowledge of the
15 '571 Patent or willful blindness thereto, MTI continued to engage in activities with the specific
16 intent to encourage and/or induce the MTI Subsidiaries to infringe the '571 Patent by directing
17 and controlling the design and manufacture of infringing products, including setting forth
18 rigorous quality controls throughout the manufacturing, screening, and testing processes for the
19 infringing product, as well as directing and controlling the marketing and sale of the infringing
20 products.

21 124. In addition to MTI's direct infringement, MTI has also contributed to the direct
22 infringement by the MTI Subsidiaries as well as customers of MTI and the MTI Subsidiaries.
23 The MTI Defendants make and sell multi-level cell NAND Flash memory products in
24 unpackaged forms (i.e., as "bare die") and packaged forms (e.g., memory modules, SSDs, multi-
25 chip packages (MCPs), managed NAND, memory card and USB devices). As discussed above,
26 while some multi-level cell NAND Flash memory products are integrated into enterprise and
27 consumer products known to have been sold widely in the United States, the multi-level cell
28 NAND Flash memory products made, offered for sale, and/or sold by the MTI Defendants are

1 not staple articles of commerce suitable for any non-infringing use. Multi-level cell NAND
2 Flash memory products do not have any substantial, non-infringing uses and are specifically
3 designed to provide the benefits of multi-level cell NAND Flash memory technologies claimed
4 by the '571 Patent.

5 125. The MTI Defendants make multi-level cell NAND Flash memory devices using
6 methods claimed in the '571 Patent, which devices infringed when they were imported into, or
7 sold, used, or offered for sale in, the United States.

8 126. The MTI Defendants have also indirectly infringed by inducing customers (such
9 as makers of mobile devices, desktop computers, and other devices that use NAND Flash
10 memory) to import products that integrate NAND Flash semiconductor devices made using the
11 methods claimed in the '571 Patent, or to sell or use such products, or offer them for sale, in the
12 United States. The MTI Defendants have encouraged customers, resellers, OEMs, or others to
13 import into the United States and sell and use in the United States the multi-level cell NAND
14 Flash memory devices made using the methods claimed in the '571 Patent with knowledge and
15 the specific intent to cause the acts of direct infringement performed by these third parties.

16 127. The MTI Defendants have directly benefitted from and have actively and
17 knowingly encouraged customers', resellers', and users' importation of these products into the
18 United States and sell and use within the United States. The MTI Defendants have actively
19 encouraged customers and downstream users, OEMs, and resellers to import, use, and sell in the
20 United States the multi-level cell NAND Flash memory devices that they manufacture and
21 supply, including through advertising, marketing, and sales activities directed at United States
22 sales.

23 128. The MTI Defendants have also provided OEMs, manufacturers, importers,
24 resellers, customers, and end users instructions, user guides, and technical specifications on how
25 to incorporate the multi-level cell NAND Flash memory devices into electronic products that are
26 made, used, sold, offered for sale in, and/or imported into the United States. The MTI
27 Defendants routinely marketed their infringing NAND Flash memory products to third parties
28 for inclusion in products that were sold to customers in the United States, as well as directly to

1 end user customers. The MTI Defendants' marketing efforts show that they have specifically
2 intended to induce and have induced direct infringement in the United States.

3 129. The MTI Defendants' extensive sales and marketing efforts, sales volume, and
4 partnerships all evidence their intent to have induced companies to infringe one or more claims
5 of the '571 Patent by, using, offering to sell, selling, or importing products that incorporate the
6 multi-level cell NAND Flash memory devices in the United States. The MTI Defendants have
7 had specific intent to induce infringement or have been willfully blind to the direct infringement
8 they are inducing.

9 130. The MTI Defendants' direct and indirect infringement of the '571 Patent has
10 injured MLC, and MLC is entitled to recover damages adequate to compensate for such
11 infringement pursuant to 35 U.S.C. § 284.

12 131. On information and belief, MTI and the MTI Defendants, acted egregiously and
13 with willful misconduct in that their actions constituted direct and indirect infringement of a
14 valid patent, and this was either known or so obvious that MTI and the MTI Defendants should
15 have known such conduct were infringing the '571 Patent.

16 132. The MTI Defendants continued to infringe the '571 Patent by making, using,
17 selling, offering for sale, and importing in the United States the multi-level cell NAND Flash
18 memory devices and to induce and contribute to the direct infringement of others performing these
19 acts for years, or they have acted at least in reckless disregard of MLC's patent rights.

20 133. On information and belief, the MTI Defendants continued their infringement
21 notwithstanding actual knowledge of the '571 Patent, actual notice of its infringement since at
22 least November 2006, prior negotiations during 2006-2007 to abate infringement through an
23 offer to license, and without a good faith basis to believe that their activities did not infringe any
24 valid claim of the '571 Patent. All infringement of the '571 Patent following MTI and the MTI
25 Defendants' knowledge of the '571 Patent is willful and MLC is entitled to treble damages and
26 attorneys' fees and costs incurred in this action under 35 U.S.C. §§ 284 and 285.

PRAYER FOR RELIEF

WHEREFORE, MLC prays for relief as follows:

1. Judgment that Micron has infringed the '571 Patent as alleged herein;
2. Compensatory damages in an amount according to proof, and in no event less than a reasonable royalty;
3. Judgment that the damages so adjudged be trebled in accordance with 35 U.S.C. § 284;
4. An award of reasonable attorneys' fees pursuant to 35 U.S.C. § 285 because this is an exceptional case;
5. Pre-suit damages awarded pursuant to 35 U.S.C. § 287;
6. Prejudgment interest on all damages awarded to MLC;
7. Post-judgment interest on all sums awarded to MLC from the date of judgment;
8. Costs for suits incurred herein; and
9. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

MLC requests a trial by jury for all issues so triable.

Dated: November 7, 2019

POLSINELLI, LLP

By: /s/ Fabio E. Marino
Fabio Marino

Attorneys for Plaintiff
MLC INTELLECTUAL PROPERTY, LLC