

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

VERVAIN, LLC,	§	
	§	
Plaintiff,	§	C.A. No. 6:20-cv-00178-ADA
v.	§	
	§	JURY TRIAL DEMANDED
MICRON TECHNOLOGY, INC., MICRON	§	
SEMICONDUCTOR PRODUCTS, INC., and	§	
MICRON TECHNOLOGY TEXAS, LLC,	§	
	§	
Defendants.	§	

**MICRON’S PRELIMINARY INVALIDITY CONTENTIONS FOR
U.S. PATENT NOS. 8,891,298; 9,196,385; 9,997,240; AND 10,950,300**

Pursuant to the Agreed Scheduling Order (D.E. 26), Defendants Micron Technology, Inc., Micron Semiconductor Products, Inc., and Micron Technology Texas, LLC (together, “Micron”) hereby serve the following Preliminary Invalidity Contentions for the asserted claims of U.S. Patent Nos. 8,891,298 (the “298 Patent”), 9,196,385 (the “385 Patent”), 9,997,240 (the “240 Patent”), and 10,950,300 (the “300 Patent”) (collectively, “asserted patents”).

Plaintiff Vervain, LLC (“Vervain”) has asserted the following 26 claims of the asserted patents, which are collectively called the “asserted claims”:

- 298 Patent claims 1, 3-5, 11;
- 385 Patent Claim 1, 3-5, 11-13;
- 240 Patent claims 1-2, 6-7; and
- 300 Patent claims 1-5, 7-12.

I. INTRODUCTION

In accordance with the Agreed Scheduling Order (D.E. 24) and with paragraph 6 of the Order Governing Proceedings-Patent Case, Micron hereby provide: (1) charts setting forth where

in the prior art references each element of the asserted claims are found, (2) an identification of any limitations Micron contends are indefinite or lack written description under section 112, and (3) an identification of any claims Micron contends are directed to ineligible subject matter under section 101. In addition, based on its investigation to date, Micron hereby produces the prior art references on which these Preliminary Invalidity Contentions are based and technical documents sufficient to show the operation of the accused products. Subject to the issuance of a Protective Order the parties are negotiating regarding source code, Micron further makes available for inspection source code that, alone or in combination with the technical documents referenced above, is sufficient to show the operation of the accused products.

Micron also incorporates by reference Patent Trial and Appeal Board Case Nos. IPR2021-01547, IPR2021-01548, and IPR2021-01550, including the petitions, supporting declarations, and exhibits, into these Preliminary Invalidity Contentions.¹

Micron has not completed its investigation of the facts and documents relating to this action and has not completed its preparation for trial. Micron has not taken any depositions in this action, including, without limitation, any depositions of the named inventor of the asserted patents and/or other persons having potentially relevant information. As discovery in this action provides Micron with additional information, it is possible that Micron will discover additional prior art pertinent to the invalidity of the asserted claims of the asserted patents, and Micron reserves the right to supplement these contentions after becoming aware of additional prior art or information. *See* D.E. 24 (deadline to serve Final Invalidity Contentions is March 11, 2022). In

¹ Upon the filing of the IPR petitions IPR2021-01547, IPR2021-01548, and IPR2021-01550, Micron has stipulated in each that “it will not pursue any instituted grounds as invalidity defenses in the District Court” should the PTAB grant institution. As of this date, the PTAB has not rendered any institution decision.

particular, Micron reserves the right to rely on any invalidity position and any prior art reference included in the invalidity contentions of any defendant in a case brought by Plaintiff alleging any of the asserted patents, or any patents in the same family. Micron further reserves the right to introduce and use such supplemental materials at trial.

II. RESERVATIONS

This document, and the information and documents that Micron produces in connection with these Preliminary Invalidity Contentions, are provisional and subject to further revision. In addition to these contentions being “Preliminary” (*see* D.E. 24), Micron expressly reserves the right to amend, supplement, or modify these contentions should Plaintiff amend, supplement, or modify its Infringement Contentions, provide any new or additional information or documents that relate to its Infringement Contentions, or seek to modify or amend the accused products at issue in this case or the theories on which it is alleging infringement. Further, because Micron has not yet completed its search for and analysis of relevant prior art, Micron reserves the right to revise, amend, and/or supplement the information provided herein, including identifying and relying on additional prior art patents, publications, products, systems, or uses, should Micron’s further search and analysis yield additional information. Moreover, Micron reserves the right to revise its contentions concerning the invalidity of the asserted claims depending upon the Court’s construction of the asserted claims, any findings as to the priority date of the asserted claims, and/or positions that Plaintiff or its expert witness(es) may take concerning claim construction, infringement, and/or invalidity issues. Micron further reserves the right to modify, amend, or supplement these contentions as discovery proceeds. For example, Micron has not yet deposed the named inventor of the asserted patents and Plaintiff has not produced any documents relating to the conception or actual reduction to practice, if any, of the alleged inventions claimed in the

patents-in-suit.

Moreover, Plaintiff's deficient Complaint and Infringement Contentions do not provide the specificity necessary to allow Micron to adequately respond. In fact, Micron moved to dismiss the Complaint for failure to allege any facts that plausibly suggest infringement of either the Hot Blocks or Data Integrity Test Limitations found in each of the asserted patents. *See* D.E. 17. Plaintiff's briefing on the motion to dismiss did not meaningfully clarify Plaintiff's theory of infringement. *See* D.E. 21. Nor do Plaintiff's Infringement Contentions provide reasonable notice of Plaintiff's infringement theory. For example, as Micron explained in its motion to dismiss, Plaintiff's Complaint fails to plausibly allege how Micron SSDs move frequently written blocks to SLC, how Micron SSDs move data to SLC in response to a "data integrity test" failure, or how a data integrity test failure in a Micron SSD "results in" the transfer of data to a different physical range of addresses. *See* generally D.E. 17. Despite having notice of this deficiency, Plaintiff's Infringement Contentions merely repeat—essentially verbatim—the Complaint's implausible contentions that Micron practices these limitations.

Prior art not included in these Preliminary Invalidity Contentions, whether known or not known to Micron, may become relevant. In particular, Micron is currently unaware of the extent, if any, to which Plaintiff will contend that limitations of the asserted claims are not disclosed in the prior art identified by Micron. To the extent that such an issue arises, Micron reserves the right to identify additional teachings or disclosures in the same references or in other references that disclose or teach the allegedly missing limitation or that would have made the addition of the allegedly missing limitation to the disclosed method and/or apparatus obvious.

Micron's claim charts in Exhibits A-1 through D-24 cite to particular teachings and disclosures in the prior art and apply them to the limitations of the asserted claims. Where

Micron cites to a particular figure in a prior art reference, the citation should be understood to encompass, in addition to the figure itself, the caption and description of the figure as well as any text relating to a figure. Conversely, where a cited portion of text refers to a figure, the citation should be understood to include the figure as well.

However, persons having ordinary skill in the art generally may view an item of prior art in the context of other publications, literature, products, and understanding. As such, the cited portions are only examples of teachings and disclosures, and Micron reserves the right to rely on uncited portions of the prior art references and on other publications and expert testimony as aids in understanding and interpreting the cited portions, as providing context thereto, and as additional evidence that a claim limitation was known, disclosed, or obvious. Micron further reserves the right to rely on uncited portions of the prior art references, other publications, other products, systems, and uses, and testimony to establish the bases and motivations for combinations of certain cited references that render the asserted claims obvious.

The references discussed in the claim charts in Exhibits A-1 through D-24 or elsewhere identified may disclose the elements of the asserted claims explicitly, impliedly, and/or inherently, and/or may be relied upon to show the state of the art in the relevant time frame. Micron's proposed obviousness arguments or obviousness combinations are provided in the alternative to Micron's anticipation contentions and are not to be construed to suggest that any reference included in the combinations is not by itself anticipatory or by itself obvious rendering.

To the extent that these Preliminary Invalidity Contentions reflect constructions of claim terms that may be consistent with or implicit in Plaintiff's Preliminary Infringement Contentions, no inference is intended or should be drawn that Micron agrees with such claim constructions.

These Preliminary Invalidity Contentions are not intended to reflect Micron's claim construction

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