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MICRON TECHNOLOGY, INC.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

MICRON TECHNOLOGY, INC.,

Plaintiff,

v.

UNITED MICROELECTRONICS  
CORPORATION, FUJIAN JINHUA  
INTEGRATED CIRCUIT CO., LTD., and  
DOES 1-10,

Defendants.

**Case No.**

**MICRON TECHNOLOGY, INC.'S  
COMPLAINT**

(1) Defend Trade Secrets Act  
(2) Civil RICO, 18 U.S.C. § 1962(c)  
(3) Civil RICO, 18 U.S.C. § 1962(d)  
(4) California Uniform Trade Secrets Act

**DEMAND FOR JURY TRIAL**

Plaintiff Micron Technology, Inc. ("Micron") brings this action against United Microelectronics Corporation ("UMC"), Fujian Jinhua Integrated Circuit Co., Ltd. ("Jinhua"), and Does 1-10 as follows.

**NATURE OF THE ACTION**

1. Micron brings this action under the Defend Trade Secrets Act, the civil provisions of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and California's Uniform Trade Secrets Act against UMC, Jinhua, and Does 1-10 for theft of Micron's trade secrets and other misconduct. The trade secrets relate to the design and manufacture of Dynamic Random Access Memory ("DRAM") integrated circuits – an industry with over \$50 billion in annual revenues worldwide.

2. Defendant UMC is a semiconductor foundry with operations centered in Taiwan, China, and Singapore. UMC's primary business is to mass produce integrated-circuit logic products based on designs and technology developed and provided by its customers. Although lacking any significant, independent intellectual property in advanced DRAM technology, UMC executed a deal with Defendant Jinhua – a start-up intending to manufacture DRAM products in Mainland China – to provide Jinhua with DRAM process technology and enable Jinhua to become a leading force in the DRAM business. How UMC could deliver such technology was a mystery until recent criminal indictments in Taiwan exposed the defendants' secret, illegal plan:

- a. Since at least the fall of 2015, UMC and the founders of Jinhua developed and set in motion a plan for UMC to recruit key personnel from Micron's Taiwanese affiliate – Micron Memory Taiwan Co., Ltd. ("MMT") – including MMT's former Site Director, Stephen Chen ("Chen");
- b. Working in concert, UMC and Jinhua conspired to induce former MMT employees to misappropriate electronic and paper files containing Micron trade secrets from MMT and to deliver those trade secrets to UMC;
- c. UMC then incorporated Micron's trade secrets into technologies that it transferred and/or plans to transfer to Jinhua to enable Jinhua to mass produce advanced DRAM products as early as 2018 – thus avoiding substantial, time-consuming and costly R&D efforts that UMC or Jinhua would have had to undertake to compete fairly.
- d. Aware that their trade secret theft was criminal, the participants in the conspiracy went to great lengths to hide and cover up their plan, including by: lying to human resources personnel when exiting Micron; lying to Taiwanese criminal investigators; using software tools to wipe electronic evidence; and even attempting to destroy or hide incriminating materials from Taiwanese criminal authorities while the authorities were in the middle of executing a search warrant at UMC.

1 The original and certified translations of the Indictment Decision of the Taiwan Taichung District  
2 Prosecutor's Office, Case No. 106-Zhen-Zi Nos. 11035, 4520, 5612, and 5613 (the "Indictment")  
3 are attached as Exhibits 1 and 2.

4 3. As the Indictment reflects, UMC and Jinhua orchestrated and executed one of the  
5 boldest schemes of commercial espionage in recent times. Defendants stand to profit handsomely  
6 from their scheme: UMC is prepared to make hundreds of millions of dollars for its purported  
7 "development work," and Jinhua plans to avoid hundreds of millions of dollars in costs and the  
8 many months of R&D effort that honest competition would require.

### 9 **THE PARTIES**

#### 10 ***Plaintiff Micron***

11 4. Founded in 1978, Micron is a global leader in advanced semiconductor systems and  
12 solutions. Micron's portfolio of high-performance memory technologies – including DRAM,  
13 NAND and NOR Flash – is the basis for solid-state drives, modules, multichip packages, and other  
14 system solutions. Micron's technologies enable the world's most innovative computing, consumer,  
15 enterprise storage, networking, mobile, embedded, and automotive applications. Marketing its  
16 products primarily to OEMs and retailers around the globe, Micron is ranked among the top five  
17 semiconductor-producing companies in the world. Its common stock is traded on the NASDAQ  
18 under the symbol "MU".

19 5. A Delaware corporation with its headquarters in the United States at 8000 South  
20 Federal Way, Boise, Idaho 83707-0006, Micron has numerous locations in the United States and  
21 around the world, including three locations in this District: (1) 2235 Iron Point Road, Folsom,  
22 California 95630; (2) Tasman Technology Park, 590 Alder Drive, Milpitas, California 95035; and  
23 (3) 3100 De La Cruz Blvd., Suite 300, Santa Clara, California 95054.

24 6. Micron employs over 30,000 people in eighteen countries worldwide, including  
25 Taiwan, where it acquired Rexchip Electronics Corp. ("Rexchip") – previously a joint venture  
26 between Elpida Memory, Inc. of Japan and Powerchip Technology Corporation. With its exclusive  
27 focus on DRAM production, Rexchip – now MMT – added breadth and depth to Micron's already  
28 world-class DRAM expertise. Micron is the sole owner of trade secrets in the Micron group of

1 companies. Micron in turn licenses its trade secrets to certain subsidiaries such as MMT to enable  
2 their business operations.

3 ***Defendant UMC***

4 7. Defendant UMC is a global semiconductor foundry with several manufacturing  
5 facilities worldwide, including in Taiwan and Mainland China. UMC has a significant sales  
6 presence in the Northern District of California through its wholly-owned subsidiary UMC Group  
7 (USA), located at 488 De Guigne Drive, Sunnyvale, California 94085. In its most recently filed  
8 SEC Form 20-F, UMC reported inter-party sales into the United States to UMC Group (USA) of  
9 approximately \$1.8 billion. UMC recently reported that 43% of its foundry sales are in North  
10 America, and those sales derive primarily from the United States. UMC is publicly traded on the  
11 New York Stock Exchange and the Taiwan Stock Exchange. In early 2016, UMC established the  
12 so-called New Business Development (“NBD”) group at the Second Factory Area of its Fab 12A in  
13 Tainan Science Park, which group was responsible for delivering DRAM technology to Jinhua.

14 ***Defendant Jinhua***

15 8. Defendant Jinhua is a limited liability company founded in Mainland China in early  
16 2016 with the goal to rapidly and aggressively enter the DRAM business. Its shareholders are  
17 commercial enterprises ultimately controlled by Fujian Province. With substantial government-  
18 funding, Jinhua announced a \$5.65 billion investment in its first 300mm fabrication facility, known  
19 in the industry as a “fab”, and broke ground on July 16, 2016. Jinhua plans to be in commercial  
20 DRAM production by 2018.

21 ***Co-Conspirators Chen, Rong, Ho, and Wang***

22 9. Co-Conspirator Chen is the former Chairman of Rexchip and former Site Director  
23 of MMT. Chen resigned from MMT on July 31, 2015, and officially joined UMC as a Senior Vice  
24 President less than two months later. Shortly after leaving MMT, Chen began to recruit ranking  
25 engineers and team leaders from MMT to UMC. Chen did so with the knowledge and intent that  
26 those MMT personnel would use Micron trade secrets obtained during their time at MMT for the  
27 benefit of UMC and Jinhua.



10. Co-Conspirator Leh-Tian Rong (“Rong”) is UMC’s Assistant Vice President, with oversight responsibility over four divisions and approximately sixty UMC employees. After Chen joined UMC as Senior Vice President, he assigned Rong to serve as Assistant Vice President of Project Technology Management Department 2 (“PM2”) – a critical division in UMC’s NBD group. Thereafter, Rong knowingly conspired with UMC and Chen and directed the misappropriation efforts of at least two other former MMT personnel in order to incorporate Micron’s trade secrets into the technology UMC was developing for Jinhua.

11. Co-Conspirator J.T. Ho (“Ho”) is a former Process Integration Engineering (“PIE”) Lead at MMT. Chen recruited Ho to work as a Process Integration Manager in UMC’s NBD group. Ho took MMT’s electronic files and paper records – which Taiwanese prosecutors have recognized to include Micron trade secrets – for use at UMC. Ho also took an active role in recruiting at least one other MMT employee to steal Micron trade secrets.

12. Co-Conspirator Kenny Wang (“Wang” or “KW”) is a former Process Integration/Device Section Manager at MMT. No later than January or February 2016, Ho began recruiting Wang to UMC. Wang quickly showed interest, and Ho began treating Wang as a UMC team member months before Wang had resigned from MMT. On the pretext that he would be joining his family’s business, Wang submitted a resignation letter to MMT on April 5, 2016 and asked to have April 26, 2016 be his last day. As described below, during the weeks leading up to his last day, Wang worked diligently to steal a massive amount of Micron trade secrets for use at UMC. Two days later, on April 28, 2016, Wang formally joined UMC and was assigned to the PM2 division of the New Business Development Unit.

*Doe Defendants*

13. Many facets of the conspiracy described herein likely remain unknown, and the complete list of Co-Conspirators likely extends beyond the individuals and entities identified here. At present, Micron is ignorant of the true names and capacities of such individuals and entities and, therefore, sues them herein under the fictitious names Does 1-10. Micron will amend its Complaint to identify and state applicable claims, as appropriate, against additional individuals or entities as relevant information becomes available through discovery.

14. Each of the Co-Conspirators referenced in this Complaint was an agent, conspirator, aider or abettor of UMC and/or Jinhua. The acts and omissions of each alleged Co-Conspirator were performed within the course and scope of that agency, conspiracy, aiding or abetting. At all relevant times, UMC and Jinhua were each acting with one or more of the Co-Conspirators pursuant to a common scheme, course of action, enterprise, or conspiracy.

15. As used in this complaint, the term “Co-Conspirators” refers collectively to the Defendants, Co-Conspirator Chen, Co-Conspirator Rong, Co-Conspirator Ho, Co-Conspirator Wang, and the Doe defendants.

### **JURISDICTION AND VENUE**

16. This Court has subject-matter jurisdiction of this case under 28 U.S.C. §§ 1331 and 1338: it is a civil action arising under the laws of the United States – specifically 18 U.S.C. § 1836(b), 18 U.S.C. § 1962(c), and 18 U.S.C. § 1962(d). While the amount in controversy has not yet been quantified, it greatly exceeds \$75,000. Accordingly, this Court also has subject-matter jurisdiction on the basis of diversity of citizenship pursuant to 28 U.S.C. § 1332(a)(2). The Court may also exercise supplemental jurisdiction under 28 U.S.C. § 1367(a).

17. This Court has specific personal jurisdiction over UMC and Jinhua because UMC and Jinhua have committed intentional acts of trade secret misappropriation and/or concrete acts in furtherance of its conspiracy to commit trade secret misappropriation in the Northern District of California. For example, Chen and other personnel from UMC joined a recruiting delegation by Jinhua to a job fair hosted by the Chinese American Semiconductor Professional Association (“CASPA”) in October 2016 in Santa Clara, California. In the course of that job fair, representatives of UMC and Jinhua actively solicited applications from potential hires relying on aggressive development roadmaps and assurances of technical capabilities that were in fact secretly based on Micron’s stolen technology. In addition, Wang, in furtherance of the conspiracy, stored a cache of stolen Micron trade secrets in the United States, when he uploaded them onto cloud storage hosted on U.S.-based servers.

18. In addition, on information and belief, UMC continually engages in other commercial activities in the United States, whereby it purposefully avails itself of the protections of

1 U.S. law. In fact, on August 14, 2014, Micron and UMC entered into a non-disclosure agreement  
2 to protect the parties' respective confidential information – none of which concerned DRAM  
3 technology. In that contract, the parties expressly agreed that the agreement should be governed by  
4 and construed under the laws of California. What is more, UMC reported roughly \$1.8 billion in  
5 sales into the United States through its U.S. subsidiary, UMC Group (USA), which is located in the  
6 Northern District of California. UMC recently noted that 43% of its foundry sales are in North  
7 America, and those sales are primarily in the United States.

8 19. Because Defendant Jinhua is only indirectly owned by Fujian Province in the  
9 People's Republic of China, it does not qualify as an agency or instrumentality of a foreign  
10 sovereign. Accordingly, the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602-1611 is not  
11 implicated in this action. Moreover, the claims made herein are based upon Jinhua's commercial  
12 activity carried out in the United States; upon its acts performed in the United States in connection  
13 with commercial activity elsewhere; and upon its commercial activity outside the United States  
14 which activity causes a direct effect in the United States.

15 20. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) or, alternatively,  
16 28 U.S.C. § 1391(b)(3).

### 17 **GENERAL ALLEGATIONS**

18 21. As Taiwanese prosecutors have recognized, Micron and its affiliates have  
19 implemented a robust and effective system for controlling access to Micron's proprietary  
20 information:

- 21 a. Micron stores its trade secrets on secure computers that require password-  
22 protected access; such access is only supplied to employees and consultants  
23 who have obligations of confidentiality to Micron including signed  
24 confidentiality agreements and similar additional measures.
- 25 b. Micron requires password protection for both on-site network access and  
26 off-site remote network access. Micron-issued laptops use industry-  
27 standard encryption protections, such as Bit Locker, to encrypt laptop  
28 content.

- c. All Micron personnel are required to protect Micron trade secrets according to Micron's Business Code of Conduct, and each Micron employee must certify adherence to that Code.
- d. Additional documents requiring that Micron's trade secrets be held in confidence include, but are not limited to, Micron employment agreements, Micron's employment handbooks (including Micron's Taiwan Employment Handbook), Micron's local work rules (including Micron's Taiwan Work Rules), and employee termination agreements.
- e. Micron personnel are required to complete a series of training courses addressing the confidentiality of Micron information. Such training courses include *Protecting Proprietary Information* and *Information Security at Micron*.
- f. Micron implements badge-controlled access to all Micron facilities.
- g. Micron routinely reminds employees of their confidentiality obligations and the importance of protecting trade secrets – including each time an employee accesses Micron's computer network.
- h. Micron marks documents with confidentiality notices such as "Micron Technology, Inc., Confidential and Proprietary" and "Micron Confidential / Do Not Duplicate."

22. Unfortunately, even those extensive protections could not prevent the concerted criminal conspiracy to steal Micron technology described in this complaint.

23. Beginning at least as early as 2015, UMC and the founders of Jinhua developed and set in motion a plan to induce former MMT employees to misappropriate Micron trade secrets and deliver those trade secrets to UMC, which UMC would then transfer to Jinhua. Under the UMC-Jinhua arrangement – to which they agreed in principle by January 2016 – UMC would provide Jinhua with advanced DRAM technology in exchange for \$300 million in R&D equipment, \$400 million in development fees, co-ownership of the resulting technology, and the potential for additional future licensing revenues.

24. However, as a semiconductor foundry with no advanced DRAM process, UMC had no realistic capability to fulfill its commitments under their agreement. Jinhua knew that UMC did not possess the technological resources to develop the promised technology by itself, and understood that the technology would be based substantially on Micron's DRAM designs and processes.

25. Under Chen's leadership, UMC targeted the Micron entity and fab that Chen knew best: Rexchip, now MMT. Chen had resigned from MMT on August 31, 2015, and officially joined UMC weeks later. In his role as Senior Vice President at UMC, Chen headed the NBD group and held ultimate responsibility for its three technology divisions, including PM2. With years at the helm of Rexchip and MMT, Chen had a wealth of knowledge on virtually every aspect of MMT's business – from technical details on Micron's DRAM design and process to Micron know how on manufacturing optimization, yield management, and product testing and quality. Chen quickly used his connections within MMT to recruit various MMT personnel with access to Micron trade secrets regarding many of the engineering and production challenges UMC's NBD group would inevitably face. Those recruits included Ho and Wang – both of whom would later work together on process integration problems at UMC's PM2.

26. Within weeks of Chen's official start date at UMC, Ho also resigned from MMT. Upon leaving, Ho took with him both electronic and hard copies of Micron's proprietary information, in clear and intentional violation of Micron and MMT's corporate policies. As Taiwanese authorities later explained, Ho then brought those trade secrets to UMC:

Because of his position as the section chief of MMT's mass production department, JT Ho logged into [MMT's] controlled server to access electronic records relating to the DRAM production process, which is MTI's trade secret ("Electronic Record A"). He copied the records to his own USB . . . and personal hard drive . . . for his reference any time during work, and possessed the hardcopy documents containing MTI's trade secrets . . . collectively referred to as "Paper Documents B[.]"

[//]

Subsequently on October 15, 2015 when JT Ho resigned from MMT, he did not destroy Electronic Record A and Paper Documents B in accordance with the agreements. JT Ho joined UMC in November 2015 and became the Process Integration1 Manager

under PM2 in April 2016. In January 2016, JT Ho was aware that UMC started to carry out the cooperation project with Jinhua and became MTI's competitor, and he was aware that the Electronic Record A and the Paper Document B he possessed could contribute to UMC's and Jinhua's mass production of DRAM in Mainland China. Instead of deleting or destroying Electronic Record A and Paper Documents B, JT Ho reviewed Electronic Record A using his UMC issued laptop . . . during the period from January 2016 to February 7, 2017 (the date when [Prosecutors] conducted the search). During this period, he also brought Paper Documents B to the PI1 office for use.<sup>1</sup>

27. In January or February 2016, Ho began efforts to recruit Wang, MMT's Process Integration/Device Section Manager. With help from Ho, Wang submitted his résumé to UMC. Wang later visited UMC, where Rong interviewed him. UMC and Wang agreed that Wang would be hired with the same salary and benefits as he had at MMT, but that if Wang impressed Jinhua and took a job in Mainland China, he would sign another contract with Jinhua and earn substantially more. As Taiwanese prosecutors would later explain:

Subsequently on March 25, 2016, Kenny Wang received an Offer Letter from UMC, and informed JT Ho. . . . JT Ho thus started treating Kenny Wang as a team member of UMC and discussed . . . the issues that UMC had in developing DRAM technologies. Kenny Wang submitted his resignation letter to MMT on April 5, 2016 and left the company on April 26, 2016 upon the company's approval. From April 16 to 23, 2017, being fully aware that MTI and UMC are competitors in the development and manufacturing of DRAM and with the intent to use the information in Mainland China and to damage MTI's interest, Kenny Wang abused his authorization as the Product Quality Integration Manager by using MMT's laptop . . . to log on to MMT's server and to access MTI's electronic information relating to the method, technology, process and design of DRAM ("Electronic Record C," including a total of 931 files), which are protected trade secrets and copyrighted works. He stored Electronic Record C onto the abovementioned laptop, transferred it to a USB storage device . . . and then to two of his own laptops . . . and also uploaded it to his Google Drive . . . .<sup>2</sup>

28. In short, Wang spent his last days at MMT in a frenzied dash to pillage as much of Micron's confidential data as possible. On information and belief, Wang did so at the direction of one or more of his Co-Conspirators. Wang copied stolen files to one or more removable drives, including by using his work-issued laptop. He also uploaded the stolen trade secrets to a Google

<sup>1</sup> Indictment (Exs. 1 and 2) at 4.

<sup>2</sup> Indictment (Exs. 1 and 2) at 5.

1 drive. On information and belief, those stolen trade secrets stored on the Google drive were located  
2 on servers located in the United States.

3 29. The trade secrets Wang stole covered the gamut of technologies necessary for UMC  
4 to deliver its promised DRAM process to Jinhua. The stolen trade secrets included:

5 Information disclosing Micron's DRAM manufacturing and testing processes;

6 Wafer acceptance test files including test structures/data and layout regarding areas  
7 destroyed in processing;

8 Test programming files;

9 Probe performance and parametric tests showing testing and yield;

10 Test results;

11 Process information for 30nm, 25nm, 20nm, 1Xnm process nodes;

12 Metallization process and layout;

13 Failure-analysis information;

14 Reticle specification files; and many others.

15 30. With full knowledge of his wrongdoing, Wang also took a number of steps to try to  
16 deceive Micron and cover his tracks. Before returning his MMT-issued laptop, Wang attempted to  
17 wipe his laptop of any incriminating evidence. On April 23, 2016, he performed Google searches  
18 on such terms as "Clear computer data" and "Clear computer use records", and he accessed various  
19 blogs on how to permanently erase a computer system. Later he downloaded and ran software  
20 called "CCleaner" in an attempt to wipe his laptop. In addition, at his exit interview, on April 26,  
21 2016, Wang lied and reported that he was leaving MMT to go to his hometown to join the family  
22 business, when in fact he planned to formally join UMC only two days later.

23 31. Across the Taiwan strait, Jinhua laid the groundwork for its manufacturing  
24 operations. On July 16 and 17, 2016, Jinhua held a public groundbreaking event for its DRAM  
25 factory. The keynote speakers announced that the project was unique as the largest state-owned  
26 production base for specialty DRAM products. They highlighted that, in its early stages, the Jinhua  
27 project would mainly adopt technology obtained from UMC and that UMC had started talent  
28 acquisition work in Taiwan and other regions. In effect, Jinhua acknowledged that its partner,



1 UMC, lacked the technical wherewithal for the project and would have to “acquire” the necessary  
2 talent from other companies in Taiwan and elsewhere. Some participants expressed pessimism,  
3 fearing that the officials running Jinhua might underestimate the gap between China’s  
4 semiconductor industry and established semiconductor leaders with decades of investments in  
5 DRAM technology. In the view of some, the gap was too great to overcome.

6 32. UMC and its Co-Conspirators, however, lost little time trying to narrow that gap  
7 illegally – by incorporating the stolen Micron trade secrets. The Indictment issued by Taiwanese  
8 authorities captures at least part of the misappropriation scheme in graphic detail:

9 Subsequently one day in July or August 2016, when attending the  
10 PM2 morning meeting held by Leh-Tian Rong, Kenny Wang was  
11 asked to stay in the meeting room with Ming-De Wei (the manager  
12 of PI2) after the meeting and discuss the draft of the F32 DRAM  
13 design rules presented by Wei. Because UMC has specialized as a  
14 logic process foundry in the past and has no DRAM-related  
15 designer’s manual, PI2 had to use a 65nm logic process designer’s  
16 manual as its blueprint.

17 [//]

18 The abovementioned draft therefore lacked the necessary parameters  
19 of “Cell,” “Array” and “Periphery” in the DRAM design rules.  
20 Kenny Wang thus provided his comments on ion-implantation  
21 process parameters (a key process to control doping in  
22 semiconductor manufacturing). Leh-Tian Rong, albeit fully aware  
23 that Kenny Wang left MMT nearly six months previously and that  
24 the MMT information Kenny Wang possessed was likely obtained  
25 illegally, asked Kenny Wang to compare the F32 DRAM design  
26 rules of UMC with MMT’s materials (i.e. the DR25nmS design  
27 rules), circle out the differences between the two, write down  
28 [MMT’s] “stabilization data” on UMC’s draft design rules, fill in  
necessary parameters relating to ion-implantation which cannot be  
obtained through reverse engineering, and help complete the parts  
including “Cell”, “Array”, and “Periphery” for Rong’s review, so  
that UMC can complete the F32 DRAM design rules more quickly.

[//]

Two to three days after Kenny Wang received the said instructions  
from Rong, he downloaded UMC’s final version of the logic IC  
design rules, created columns for “Cell,” “Array” and “Periphery”  
and filled in parameters for “width” and “space” on more than 10  
pages of UMC’s final version of the design rules, using the  
DR25nmS design rules as a reference. Kenny Wang quickly  
completed the addition and revision of the parameters and handed in



1 the hard copies containing the parameters of the DR25nmS design  
2 rules to Leh-Tian Rong in person.<sup>3</sup>

3 33. The Micron trade secrets that Wang stole proved invaluable to UMC's development  
4 effort and critical to the timeline of the Jinhua DRAM project. As Taiwanese prosecutors have  
5 concluded:

6 Rong handed [the hard copies] to Wei and told Wei to discuss them  
7 with Kenny Wang. Wei, unaware of the foregoing, discussed the  
8 stability . . . parameters of UMC's F32 DRAM design and other  
9 parameters with Kenny Wang and Wu Kuo-How, an engineer of  
10 PI2, and completed UMC's F32 DRAM design rules. Originally  
11 UMC had no mask tape out team or ion-implantation specialists.  
12 After Kenny Wang provided the DR25nmS design rules production  
13 parameters, PI2 skipped processes such as the optical lithography  
14 adjustment, etching and yellow light processes when developing the  
15 F32 DRAM. The design rules were completed within only 2 months  
16 and handed to the chip design manufacturer for the next step. Kenny  
17 Wang was promoted to Device Manager in January 2017 for  
18 excellent performance in reducing the time, costs, equipment and  
19 labor in producing the design rules.<sup>4</sup>

20 34. These acts of misappropriation were encouraged and directed by UMC, Chen and  
21 Jinhua. Indeed, in July 2016 – the same period in which Rong and Wang were actively  
22 incorporating Micron's trade secrets into UMC's DRAM design rules – Chen is reported to have  
23 made a presentation to the Hefei Economic Development Board, the governance board for a  
24 Mainland development zone near where construction on Jinhua's DRAM project had recently  
25 begun. During that presentation, Chen reportedly told one or more members of the Development  
26 Board that he was using "Rexchip" (now Micron) technology at UMC. He reportedly admitted that  
27 UMC itself preferred not to have its name attached to Chen's presentation because of concerns over  
28 legal liability.

35. The Co-Conspirators took steps in furtherance of the conspiracy in the United  
States as well. In June 2016, Jinhua posted material on the U.S.-based organization CASPA's  
website advertising numerous Jinhua job openings in a variety of DRAM positions, including  
process and design R&D, manufacturing, DRAM yield and process optimization, and DRAM

<sup>3</sup> Indictment (Exs. 1 and 2) at 6.

<sup>4</sup> *Id.* at 6-7.

1 testing. In October 2016, UMC and Jinhua sent a travelling delegation to Silicon Valley, led  
2 personally by Chen, to recruit additional personnel for the DRAM project. Attended by upwards of  
3 30 guests, the job fair was hosted by CASPA and sponsored by Jinhua, which had over ten  
4 recruiters present. Because Micron is the only DRAM manufacturer in the world headquartered in  
5 the United States, the Co-Conspirators knew or expected that some or all of their recruits would  
6 come from Micron. On information and belief, the Co-Conspirators also knew and intended that  
7 the recruitment of top talent in Silicon Valley would enable UMC and Jinhua to make optimal use  
8 of Micron's trade secrets in the development and operation of Jinhua's DRAM project.

9       36. During the presentation, UMC and Jinhua emphasized that Jinhua's first fab would  
10 start its pilot run by the fourth quarter of 2017, with mass production of its first DRAM product  
11 beginning only one year later. This ambitious roadmap, which would tend to assuage any concerns  
12 of job candidates that the project was distant or speculative, would not be possible without the use  
13 of the stolen Micron trade secrets. In a shocking admission of their illegitimate intentions, the  
14 slides UMC and Jinhua presented that day openly referred to the venture's first two DRAM  
15 products as "F32" and "F32S", which are the exact internal codenames of DRAM products  
16 developed and designed by Elpida (later acquired and owned by Micron), which had been in  
17 production at the Rexchip fab (now Micron's Fab 16) where Co-Conspirators Chen, Ho, and Wang  
18 all previously worked.

19       37. At or about the same time that UMC and Jinhua organized their recruiting trip to  
20 California, they also continued to work together to poach additional MTT personnel in Taiwan for  
21 Jinhua's DRAM project in China. Recruiting efforts by Sandy Kuo ("Kuo") – a UMC Project  
22 Manager – provide a graphic example. Before joining UMC, Kuo had been the Manager of  
23 Communication and Talent Strategy at MMT, at which time she had reported directly to Co-  
24 Conspirator Chen (then, Site Director of MMT). After Chen left MMT for UMC, he recruited Kuo  
25 to follow him to UMC in February 2016. In her MMT employment agreement, Kuo had  
26 committed, for a period of 12 months after leaving MMT, "not to solicit, encourage or induce or  
27 assist any third party to solicit, encourage or induce" other MMT employees to take employment  
28 outside of MMT.

1           38.       Kuo wasted little time in breaching her non-solicit agreement. In late 2016, she  
2 actively helped Chen to recruit MMT employees for Jinhua – including S.Y. Chen, an MMT  
3 Process Manager with responsibilities in the key process areas of “diffusion” and “wet etch.” In an  
4 email to S.Y. Chen dated November 28, 2016, Kuo underscored how actively involved Jinhua was  
5 in UMC’s improper recruitment efforts: “Stephen [Chen] would like to have more description of  
6 your career in order to clarify your future position and provide to Jinhua investor from China side.”  
7 Kuo even attached a “Jinhua Personnel Sheet” for S.Y. Chen to fill out. Copied on Kuo’s email  
8 was Neil Lee, another former senior manager from MMT who had resigned within weeks of the  
9 resignation of Ho. S.Y. Chen subsequently resigned from Micron to join UMC/Jinhua.

10           39.       Meanwhile, UMC and Jinhua rewarded the individual Co-Conspirators for their  
11 contributions to the illegal scheme. After incorporating Micron trade secrets into UMC’s DRAM  
12 design rule, Wang was promoted to manager of UMC’s Device Department. On February 22, 2017  
13 – shortly after Taiwanese prosecutors raided UMC’s NBD facility – UMC promoted and  
14 transferred Chen to serve as President of Jinhua in Mainland China.

15           40.       The Taiwanese criminal authorities launched their first of two raids on UMC’s  
16 NBD facility on February 7, 2017. When the authorities arrived on site, UMC’s HR team alerted  
17 Rong, who immediately instructed Wang and Ho to delete and remove all information on their  
18 systems relating to Micron. Following Rong’s instruction, Wang and Ho handed anything  
19 containing incriminating materials, including Wang’s cellphone, to a UMC assistant. The assistant  
20 locked the materials in her personal locker and left the UMC facility with Wang’s cellphone.  
21 Unbeknownst to Wang, the criminal authorities had previously obtained a search warrant and had  
22 been monitoring Wang’s cellphone. When confronted with the fact that the criminal authorities  
23 knew about his missing cellphone, Wang lied and said that the assistant borrowed his phone that  
24 morning “because she wanted to see some photos.” At the criminal authorities’ insistence, UMC  
25 instructed the assistant to return to UMC and hand over the phone, which she then did. The  
26 assistant later confessed that she committed a crime in attempting to hide evidence. Because she  
27 later cooperated, and because she was pressured into committing the crime by her UMC superiors,  
28

1 the Taiwanese criminal authorities elected not to indict her (opting to issue a deferred indictment  
2 decision instead).

3 41. UMC itself admits that Wang's conduct constitutes a crime under Taiwanese law.  
4 In an act of apparent desperation, UMC filed *its own* criminal complaint against Wang, under the  
5 theory that UMC was somehow the victim, rather than the beneficiary and mastermind, of Wang's  
6 trade secret theft. The Taiwanese criminal authorities rejected UMC's complaint, ruling UMC was  
7 no victim here.

8 42. Finally, on August 8, 2017, after nearly a year of investigation, the Taiwanese  
9 criminal authorities indicted UMC, Rong, Ho, and Wang for conspiring to steal and misappropriate  
10 Micron trade secrets in order to deliver that technology to Jinhua to enable it to illegally and  
11 unfairly compete in the DRAM business.

12 43. The criminal investigation and subsequent indictments have not slowed the Co-  
13 Conspirators' efforts. On May 11, 2017, Jinhua announced a partnership with Air Products, a U.S.  
14 industrial gas supplier, for Air Products to provide gas supply for Jinhua's memory fab. Relying on  
15 Jinhua's aggressive DRAM forecasts, which depend on incorporating Micron's trade secrets, Air  
16 Products committed to build a state-of-the-art nitrogen plant to supply a broad range of ultra-high  
17 purity gases to Jinhua. In July 2017, Jinhua announced its fab construction was ahead of schedule  
18 and kicked off a second wave of recruitment. Even after UMC's indictment for trade secret theft  
19 became public, UMC announced that it was moving ahead full steam with Jinhua and that it was on  
20 track to complete the first stage of the project in 2018.

21 44. Micron seeks civil redress to the full extent of applicable law.

## 22 **COUNT I**

### 23 **Misappropriation of Trade Secrets under the Defend Trade Secrets Act**

#### 24 **18 U.S.C. § 1836(b)**

25 45. Micron repeats, realleges and incorporates herein by reference the allegations of  
26 paragraphs 1 through 44, inclusive, above.

27 46. The above alleged facts constitute actual and threatened misappropriation of  
28 Micron trade secrets by UMC and Jinhua under 18 U.S.C. §§ 1836 and 1839.

47. At all times relevant to this Complaint, Micron owned the Micron trade secrets as Micron was the entity in which rightful legal or equitable title to the Micron trade secrets is reposed.

48. The Micron trade secrets include scientific, technical, economic, and engineering information. The Micron trade secrets include plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, and/or codes, which are tangible and/or intangible.

49. Micron has taken reasonable measures to protect the secrecy of the Micron trade secrets.

50. The Micron trade secrets derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

51. The Micron trade secrets are related to and used in Micron products and services sold or intended for use in interstate or foreign commerce.

52. Micron derives significant economic benefits from owning the Micron trade secrets.

53. The Co-Conspirators improperly acquired, disclosed, used, appropriated, took, carried away, concealed, copied, duplicated, downloaded, replicated, transmitted, sent, uploaded, communicated, or conveyed the Micron trade secrets for the benefit of UMC and Jinhua. They performed such acts in furtherance of the trade secret misappropriation in at least Taiwan, Mainland China, and the Northern District of California.

54. The use of the Micron trade secrets by Co-Conspirators was without Micron's authorization. Micron did not consent to their acquisition, disclosure, or use of the Micron trade secrets.

55. The Co-Conspirators intended to convert the Micron trade secrets to the economic benefit of one other than their owner, Micron.

56. The Co-Conspirators knew and intended that Micron, as the owner of the Micron trade secrets, would be injured by their actions.

1           57.     As a result of the Co-Conspirators' misappropriation of Micron trade secrets,  
2 Micron has suffered actual damages in an amount to be proven at trial.

3           58.     As a result of the Co-Conspirators' misappropriation, UMC and Jinhua have been  
4 unjustly enriched.

5           59.     Micron further pleads entitlement to a reasonable royalty to compensate Micron for  
6 UMC's and Jinhua's misappropriation of trade secrets.

7           60.     Micron is informed and believes, and thereon alleges, that Defendants'  
8 misappropriation of Micron's trade secrets was willful and malicious based on the facts alleged  
9 herein. UMC and Jinhua acted with a purpose and willingness to commit the acts alleged, and  
10 UMC's and Jinhua's conduct was not reasonable under the circumstances. Micron is therefore  
11 entitled to exemplary damages and attorney fees and costs. Micron further seeks exemplary  
12 damages against UMC and Jinhua in an amount up to two times the amount of Micron's actual  
13 damages according to proof under 18 U.S.C. § 1836.

14           61.     The misappropriation of the Micron trade secrets has caused and will continue to  
15 cause Micron irreparable and substantial injury and therefore cannot be fully redressed through  
16 damages alone.

17           62.     If the Co-Conspirators were permitted to continue to use and disseminate the  
18 Micron trade secrets, Micron will be irreparably harmed and the economic damages to Micron will  
19 be difficult to quantify. An injunction prohibiting UMC and Jinhua from further acquisition,  
20 disclosure, use, and possession of the Micron trade secrets is necessary to provide Micron with  
21 complete relief.

22           63.     UMC's and Jinhua's wrongful conduct alleged herein by their misappropriation of  
23 Micron's trade secrets will continue unless enjoined and restrained by this Court, and will cause  
24 great and irreparable injury to Micron's business, and it could cause UMC and Jinhua to have  
25 improper advantages, positions, and rights in the marketplace to Micron's detriment. Absent  
26 injunctive relief, UMC's and Jinhua's further disclosure and use of Micron's trade secrets could  
27 irreparably harm Micron.

**COUNT II****Civil RICO****18 U.S.C. § 1962(c)**

64. Micron repeats, realleges and incorporates herein by reference the allegations of paragraphs 1 through 63, inclusive, above.

65. The Co-Conspirators formed an association-in-fact enterprise (the “Enterprise”) to engage in activities to affect interstate and foreign commerce by collaborating to misappropriate and use Micron’s trade secrets to manufacture advanced DRAM products in Mainland China for sale and distribution in China and around the world. The Enterprise operated by the Co-Conspirators includes UMC and Jinhua but is separate and distinct from either of them.

66. In furtherance of the Enterprise, the Co-Conspirators intended to and knowingly stole and, without Micron’s authorization, copied, downloaded, uploaded, photocopied, replicated, transmitted, delivered, communicated, or conveyed Micron’s trade secrets.

67. The Co-Conspirators also received, acquired, or possessed Micron’s trade secrets, knowing that they had been stolen, obtained, or converted without Micron’s authorization.

68. The Co-Conspirators intentionally engaged in these acts to benefit UMC and Jinhua, with the knowledge or intent that these acts would injure Micron. They did so at least in Taiwan, Mainland China, and the Northern District of California.

69. The actions of the Co-Conspirators abroad and in California constitute racketeering activities in violation of 18 U.S.C § 1832. This pattern of activity poses a threat of continuing because Jinhua and UMC are continuing to proceed with the production of DRAM products using Micron’s trade secrets.

70. UMC benefited from its employees’ and agents’ racketeering activities, and the racketeering activities of Chen, Rong, Ho, and Wang were committed within the scope of their employment while at UMC.

71. As a direct and proximate result of racketeering activities and violations of 18 U.S.C. § 1962(c) by the Co-Conspirators, Micron has suffered economic damages both

1 domestically and abroad, including, but not limited to, injuries in the Northern District of California  
2 and in Boise, Idaho, in an amount to be proven at trial.

3 72. The aforementioned acts of the Co-Conspirators were done willfully, with malice  
4 toward Micron, entitling Micron to treble damages, attorneys' fees, and costs.

5 73. The racketeering activities and violations of 18 U.S.C. § 1962(c) has caused and  
6 will continue to cause Micron irreparable and substantial injury and therefore cannot be fully  
7 redressed through damages alone. An injunction prohibiting UMC and Jinhua from further  
8 acquisition, disclosure, use, and possession of the Micron trade secrets is necessary to provide  
9 Micron with complete relief.

10 74. If the Co-Conspirators were permitted to continue to engage in their racketeering  
11 activities and violations of 18 U.S.C. § 1962(c), Micron would be irreparably harmed and the  
12 economic damages to Micron will be difficult to quantify.

13 **COUNT III**

14 **Civil RICO**

15 **18 U.S.C. § 1962(d)**

16 75. Micron repeats, realleges and incorporates herein by reference the allegations of  
17 paragraphs 1 through 74, inclusive, above.

18 76. The Co-Conspirators have intentionally conspired and agreed to directly and  
19 indirectly participate in the affairs of the Enterprise through a pattern of racketeering activities in  
20 violation of 18 U.S.C § 1832, as described in Count II.

21 77. The Co-Conspirators knew that their actions constituted a pattern of racketeering  
22 activities and agreed to those actions in furtherance of, and for the benefit of the Enterprise, as  
23 described in Count II.

24 78. The actions of the Co-Conspirators constitute a conspiracy to violate 18 U.S.C  
25 § 1962(c), in violation of 18 U.S.C § 1962(d).

26 79. As a direct and proximate result of racketeering activities and violations of  
27 18 U.S.C. § 1962(d) by the Co-Conspirators, Micron has suffered economic damages both  
28



1 domestically and abroad, including, but not limited to, injuries in the Northern District of California  
2 and in Boise, Idaho, in an amount to be proven at trial.

3 80. The aforementioned acts of the Co-Conspirators were done willfully, with malice  
4 toward Micron, entitling Micron to treble damages, attorneys' fees, and costs.

#### 5 **COUNT IV**

##### 6 **Trade Secret Misappropriation Under the California Uniform Trade Secrets Act**

##### 7 **Cal. Civ. Code § 3426**

8 81. Micron repeats, realleges and incorporates herein by reference the allegations of  
9 paragraphs 1 through 44, inclusive, above.

10 82. The Micron trade secrets constitute information, including compilations, programs,  
11 devices, methods, techniques, or processes that derive independent economic value from not being  
12 generally known to the public or other persons who can obtain economic value from the trade  
13 secrets' disclosure.

14 83. Micron has taken reasonable measures to protect the secrecy of the Micron trade  
15 secrets.

16 84. However, the Co-Conspirators intended to and knowingly stole and, without  
17 authorization, disclosed, acquired, used, copied, downloaded, uploaded, photocopied, replicated,  
18 transmitted, delivered, communicated, or conveyed Micron's trade secrets.

19 85. The Co-Conspirators acquired, used or disclosed Micron's trade secrets, knowing  
20 that they have been stolen, obtained, or converted without Micron's authorization. The Co-  
21 Conspirators intentionally engaged in these acts to benefit UMC and Jinhua, with the knowledge or  
22 intent that these acts would injure Micron.

23 86. As a direct and proximate result of violations of Cal. Civ. Code § 3426.1 by the Co-  
24 Conspirators, Micron has suffered economic damages both domestically and abroad, including, but  
25 not limited to, in the Northern District of California and in Boise, Idaho, in an amount to be proven  
26 at trial but exceeding \$75,000.

27 87. The aforementioned acts of the Co-Conspirators were done willfully, with malice  
28 toward Micron.

88. As a result of UMC's and Jinhua's misappropriation, Micron has suffered actual damages and UMC and Jinhua have been unjustly enriched. Micron pleads in the alternative that, if it is determined that neither actual damages nor unjust enrichment is provable, then Micron is entitled to a reasonable royalty to compensate Micron for misappropriation of trade secrets by UMC and Jinhua.

89. Micron further seek exemplary damages against UMC and Jinhua in an amount up to two times the amount of Micron's actual damages according to proof under Cal. Civ. Code § 3426.3.

90. Micron is informed and believes, and thereon alleges, that Defendants' misappropriation of Micron's trade secrets was willful and malicious based on the facts alleged herein. UMC and Jinhua acted with a purpose and willingness to commit the acts alleged, and their conduct was not reasonable under the circumstances. Micron is therefore entitled to exemplary damages, attorney fees, and costs under Cal. Civ. Code § 3426.4.

91. The wrongful conduct and misappropriation of Micron's trade secrets alleged herein will continue unless enjoined and restrained by this Court, and will cause great and irreparable injury to Micron's business, and it could cause UMC and Jinhua to have improper advantages, positions, and rights in the marketplace to Micron's detriment. Absent injunctive relief, further disclosure and use of Micron's trade secrets by UMC and/or Jinhua would irreparably harm Micron.

#### **PRAYER FOR RELIEF**

WHEREFORE, Micron respectfully requests that the Court enter judgment against all defendants as follows:

- a. For actual damages in an amount to be proven at trial;
- b. Restitution, unjust enrichment, and disgorgement of profits from UMC and Jinhua resulting from misappropriation of Micron's trade secrets;
- c. Royalties;
- d. Entry of an order that restrains and preliminarily enjoins, and a Final Order that permanently enjoins, UMC, Jinhua, and their agents, servants, employees,

1 attorneys, and all persons acting in active concert or participation with them, from the  
2 unauthorized acquisition, disclosure, use, duplication, or distribution of the Micron  
3 trade secrets;

4 e. Exemplary and punitive damages;

5 f. Treble damages as provided in 18 U.S.C. §§ 1964(c) and 1964(d);

6 g. Reasonable attorneys' fees and costs;

7 h. Prejudgment interest;

8 i. For such other and further relief as the Court deems just and proper.

9 Dated: December 5, 2017

JONES DAY

11 By: s/ Randall E. Kay

12 Randall E. Kay

13 Counsel for Plaintiff  
14 MICRON TECHNOLOGY, INC.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Micron demands a jury trial on all issues triable to a jury.

Dated: December 5, 2017

JONES DAY

By: s/ Randall E. Kay

Randall E. Kay

Counsel for Plaintiff  
MICRON TECHNOLOGY, INC.



2 1 1 0 6 1 3 0 3 7 6 官股

臺灣臺中地方法院檢察署檢察官起訴書

106年度偵字第11035號

106年度偵字第4520號

106年度偵字第5612號

106年度偵字第5613號

被 告 何建廷 男 41歲（民國64年11月5日生）  
住臺中市西屯區何厝街129號  
居臺南市新市區大順六路6號  
國民身分證統一編號：B121163317號

選任辯護人 賈俊益律師

被 告 王永銘 男 42歲（民國63年10月25日生）  
住臺中市南屯區文心南五路1段201號  
11樓之9

國民身分證統一編號：B121352878號

選任辯護人 莊婷聿律師

陳哲宏律師（106年2月7日終止委任關係）

被 告 戎樂天 男 53歲（民國52年9月19日生）  
住臺南市新市區大順七路50號8樓  
居臺南市新市區大順三路6號8樓之5  
國民身分證統一編號：H121305464號

選任辯護人 陳哲宏律師

黃恩旭律師

劉家昆律師（106年6月19日終止委任關係）

被 告 聯華電子股份有限公司

設新竹市力行二路3號

統一編號：47217677號

代 表 人 洪嘉聰 住同上

選任辯護人 黃恩旭律師

洪梅芬律師

上列被告等因違反營業秘密法等案件，業經偵查終結，認應該提



起公訴，茲將犯罪事實及證據並所犯法條分敘如下：

### 犯罪事實

- 一、何建廷、王永銘原為址設中部科學工業園區臺中市后里區三豐路4段369號瑞晶電子股份有限公司（下稱瑞晶公司）之員工。瑞晶公司係由日本Elpida Memory, Inc（下稱日本爾必達公司）與臺灣力晶科技股份有限公司合資設立之公司，從事動態隨機存取記憶體（下稱DRAM）晶圓之專業代工。美國Micron Technology, Inc（下稱美國美光公司）總部設在美國愛達荷州波伊西市，主要業務為製造與銷售DRAM、NAND flash及NOR flash 記憶體產品，以及封裝解決方案與半導體系統，於民國102年間收購日本爾必達公司、瑞晶公司之多數股權，乃將日本爾必達公司更名為Micron Memory Japan，並將瑞晶公司更名為台灣美光記憶體股份有限公司（下稱台灣美光公司），何建廷、王永銘因此成為台灣美光公司之員工。美國美光公司曾於100年9月2日，將屬於該公司所有之智慧財產權授權給新加坡美光公司（Micron Semiconductor Asia）使用，而台灣美光公司對於製造DRAM晶圓之方法、技術、製程、設計等資訊，經由文字、符號、圖示等方法予以表現後，成為著作，並以電磁紀錄方式保存在具有加密及管制存取功能之電腦伺服器；台灣美光公司員工登入電腦伺服器存取上開電磁紀錄，需輸入帳號及密碼，且自105年4月20日起即不得使用USB PORT（連接電腦與外部儲存設備之一種端口）進行存取，前述電磁紀錄所載資訊非一般涉及該類資訊之人所知，具有高度經濟價值，有合理之保密措施，亦屬營業秘密法第2條所稱之營業秘密。台灣美光公司於103年2月28日與美國美光公司簽訂名為MTI/MMT Design Engineering Services Agreement之合約，將簽約前或該合約存續期間因工作所取得之智慧財產權（包含營業秘密）轉讓予美國美光公司，並於同日經由新加坡美光公司之授權而得使用屬於美國美光公司之智慧財產權。



二、聯華電子股份有限公司（下稱聯電公司）為臺灣第一家提供積體電路（IC）晶圓專業代工服務的公司，早期曾從事DRAM之開發及製造，後來結束DRAM之製造業務，將相關技術人員移撥至該公司其他部門。直至105年1月間，聯電公司派員與大陸地區福建省晉華集成電路有限公司（下稱晉華公司）洽談，雙方協議進行32奈米DRAM及32S奈米DRAM相關製程技術開發，由晉華公司提供3億美元資金採購研發設備，並依開發進度陸續支付聯電公司4億美元，開發成果由雙方共同擁有，整體技術完成後將轉移至晉華公司進行32奈米DRAM及32S奈米DRAM之量產。聯電公司為執行前述技術合作案，於105年1月間在臺南市科學園區Fab12A第二廠區內成立「新事業發展中心」（New Business Developmnt，下稱NBD），由陳正坤（原台灣美光公司董事長，於104年7月31日離職，並於104年9月間轉任聯電公司資深副總經理，英文姓名Stephen）負責主導，並於NBD下成立專案技術一處（下稱PM1）、專案技術二處（下稱PM2）及專案技術三處（下稱PM3）等部門，陸續招募原在台灣美光公司任職之何建廷、王永銘等人，且由戎樂天擔任PM2部門之協理。PM2下設製程整合一部（下稱PI1）、製程整合二部（下稱PI2）、缺陷分析管理部（下稱DM）及元件部（下稱Device）。聯電公司於105年3月11日向經濟部投資審議委員會申請核可前述技術合作案，經該會於105年4月12日以經審二字第1050055030號函准許。聯電公司、晉華公司及日本Ultra Memory Inc.（下稱日本UMI公司）等三方，復於105年11月8日簽訂「F32奈米設計服務協議（F32nm Design Service Agreement）」，約定將聯電公司所制定之DRAM設計規則（英文名稱：Design Rule、Layout Rule，由於半導體製程技術係一門專業、精緻又複雜的技術，容易受到不同製造設備製程方法的影響，故在考慮各項產品如何成功地製造出來時，需有一套規範定義相關電性參數規格）轉換為程式碼後

，送交日本UMI 公司進行設計圖修訂、反饋、執行程式及晶片設計製作，總額378 萬3, 000美元之設計服務費用均由晉華公司分3 期支付予日本UMI 公司，日本UMI 公司測試完成並交付GDS （TV0 及TV1 ）檔案及TV1 芯片DDR4後，再把整體32/32S奈米DRAM開發技術交晉華公司進行DRAM成品量產。惟聯電公司之受雇人何建廷、王永銘、戎樂天為執行該公司業務，竟為後述犯行。

- 三、何建廷於103 年2 月24日在台灣美光公司任職時曾簽立「聘僱合約」及「保密及智慧財產合約」，雙方約定當何建廷與台灣美光公司之僱傭關係終止時，何建廷應將當時擁有或掌控之機密資訊（包含營業秘密）之文件、紀錄、筆記本或其他可存放機密資訊之物品留給公司，包括其複本與以紙本及電子方式保存之資訊；若何建廷在非台灣美光公司之財產上存有機密資訊，應將此等機密資訊返還，並銷毀任何其擁有或掌控之副本。何建廷因擔任台灣美光公司量產整合部課長職務，曾登入該公司有管制之電腦伺服器，讀取與DRAM製程有關、屬於美國美光公司營業秘密之電磁紀錄（下稱A 電磁紀錄），並複製至自己所有之隨身碟（即附表六贓物庫物品編號36所示物品）、個人硬碟（即附表七所示物品），以供工作時可隨時讀取，且持有美國美光公司營業秘密之紙本資料（即附表六贓物庫物品編號35之編號2,3,4,5,6,7,8,10, 11, 12,13,14紙本資料及編號15資料夾內名為ECD-DPB-1076、ECD-DPB-1111之文件，下稱B 紙本資料）。嗣於104 年10月15日，何建廷自台灣美光公司離職，惟其並未依照上開合約內容銷毀其所持有之A 電磁紀錄及B 紙本資料，復於104 年11月間至聯電公司任職，於105 年4 月間擔任PM2 部門下之PI1 經理。何建廷於105 年1 月間，已知悉聯電公司開始推動前開技術合作案，成為美國美光公司之競爭對手，而自己所持有之A 電磁紀錄及B 紙本資料，有助於聯電公司及晉華公司在大陸地區量產DRAM晶圓，竟意圖在大陸地區使用及



損害美國美光公司之利益，自105年1月至106年2月7日即法務部調查局新北市調查處執行搜索之日止，不為刪除、銷毀A 電磁紀錄及B 紙本資料，進而逾越台灣美光公司原授權何建廷使用該等資訊之範圍，在臺南市新市區大順六路63號657室即聯電公司宿舍、臺南市新市區南科三路57號之聯華公司Fab12A廠第二廠區PM2 辦公室，以聯電公司所配發並已解除USB PORT管制之公用筆記型電腦（即附表六贓物庫物品編號34所示物品）讀取A 電磁紀錄，且將B 紙本資料攜帶至PI1 辦公室而使用。

- 四、王永銘在台灣美光公司最後任職之職務為品質工程部副理，有權限查詢該公司所有成品的相關資料，以確認DRAM晶圓產品符合客戶要求的規格及品質，其於105年1、2月間，經由LINE通訊軟體，與已在聯電公司「新事業發展中心」任職之何建廷聯繫，得知聯電公司因與晉華公司合作研發DRAM計畫，需要懂得元件(device)之人才，雙方進一步接觸後，王永銘決定轉職至聯電公司，並透過何建廷交付履歷表給聯電公司。王永銘因此於105年2月底，前往聯電公司接受該公司人資部門主管與戎樂天之面試，議定薪資待遇比照台灣美光公司，若日後前往大陸地區工作，需另與晉華公司簽約，獲取額外獎金。嗣於105年3月25日，王永銘收到聯電公司所寄送之錄取通知書(Offer Letter)，遂透過LINE通訊軟體告知何建廷此事，何建廷因此將王永銘視為聯電公司之團隊成員，開始透過LINE通訊軟體與王永銘討論聯電公司研發DRAM所遇到之技術問題。王永銘於105年4月5日向台灣美光公司提出辭職申請，經該公司同意後，訂於105年4月26日離職，其明知聯電公司就DRAM晶圓研發、製造等業務，與美國美光公司有競爭關係，為使自己日後在聯電公司任職時可以解決所遭遇之DRAM技術問題，竟意圖在大陸地區使用及損害美國美光公司之利益，自105年4月16日起至同年4月23日止，濫用其擔任台灣美光公司品質工程部副理之權限

，接續使用該公司配發之公用筆記型電腦（員工編號：1132954、使用者名稱：KENNYW，即附表一所示物品），輸入帳號及密碼登入該公司電腦伺服器，大量讀取美國美光公司以營業秘密及著作保護、內容為製造DRAM晶圓之方法、技術、製程、設計之電磁紀錄（下稱C 電磁紀錄，檔案數量約931個），並儲存至上開筆記型電腦，接著將C 電磁紀錄搬移至連接該筆記型電腦之USB 隨身碟（即附表三贓物庫物品編號3 所示物品），無故取得C 電磁紀錄，致生損害於美國美光公司及台灣美光公司對於C 電磁紀錄之控制，再將C 電磁紀錄重製至自己所有之筆記型電腦2 部（即附表二及附表三贓物庫物品編號6 之物品）及Google Drive網路雲端硬碟（帳號：brh5476@gmail. com），擅自以重製之方法取得美國美光公司之營業秘密及侵害美國美光公司之著作財產權。

- 五、王永銘於105 年4 月28日前往聯電公司任職，擔任PM2 部門下之Device技術經理後，即承前述意圖及擅自重製他人著作之犯意，接續使用自己所有之門號0911-834291 號電話手機（即附表五贓物庫編號17之物品）、聯電公司配發之公用筆記型電腦（即附表五贓物庫編號18之物品），連接網際網路，讀取在Google Drive網路雲端硬碟（帳號：brh5476@gmail. com）所儲存之C 電磁紀錄，並下載台灣美光公司所使用之「DRAM設計規則」電磁紀錄（檔名「【DR25nmS】Temporary designrules Periphery Rev.06」，路徑：V90B/0.Design/ Design Rule，下稱DR25nmS 設計規則）及其他電磁紀錄，接著列印成紙本（即附表四扣押筆錄編號C-1-2 文件、附表六贓物庫物品編號22之紙本，下稱D 紙本資料），擅自以重製之方法侵害美國美光公司之著作財產權。嗣於105 年7 月至8 月間之某日，王永銘參加戎樂天所主持之PM2 部門早會，並應戎樂天之要求，於早會結束後與PI2 經理魏銘德留在會議室內，繼續討論魏銘德所提報之F32 DRAM「設計規則」初稿。因聯電公司過去主要營運項目



為邏輯製程晶圓代工，沒有DRAM相關的設計者手冊，故PI2以聯電公司的65奈米邏輯製程設計者手冊為藍本，前述初稿缺乏DRAM設計規則必要之「Cell」、「Array」及「Periphery」三大類別參數，王永銘提出關於離子植入參數（用來控制半導體中雜質量的關鍵程序）之意見。戎樂天明知王永銘已從台灣美光公司離職近半年，其所持有之台灣美光公司資料應係以不正方法所取得，竟意圖在大陸地區使用及損害美國美光公司之利益，要求王永銘參考台灣美光公司之資料（即DR25nmS設計規則），與聯電公司F32 DRAM「設計規則」交互比對，將不同部分挑出，標上美國美光公司之DRAM設計規則之穩定數值，填寫包含無法以逆向工程回推之離子植入等相關必要參數，協助完成設計規則中「Cell」、「Array」及「Periphery」等部分，再交給戎樂天審閱，以使聯電公司加速完善F32 DRAM設計規則內容。王永銘接受戎樂天前開指示後之2至3日內，從聯電公司電腦伺服器下載公版邏輯IC設計規則定稿，自行新增「Cell」、「Array」及「Periphery」欄位，在聯電公司之十餘張設計規則定稿紙本上，參照DR25nmS設計規則，填上「width」、「space」等參數，迅速完成數據新增及修改，再將有使用到DR25nmS設計規則部分參數之紙本當面交付予戎樂天，戎樂天則將該等紙本轉交予魏銘德，囑咐魏銘德與王永銘商討，不知情之魏銘德及PI2工程師吳國豪因此與王永銘討論聯電公司F32 DRAM設計規則之參數穩定度及其他參數值，進而完成聯電公司F32 DRAM設計規則。聯電公司原未設置光照下線組（mask tape-out）及離子植入專業人員，俟王永銘提供DR25nmS設計規則製程參數予聯電公司後，PI2開發F32 DRAM設計規則時，即逕行跳過光學近接干擾修正、蝕刻及黃光等過程，僅2個月時間便將設計規則完成，交由晶片設計廠商進行下一階段製程，降低製作設計規則所需耗費之時間、金錢、設備及人力成本，王永銘亦因工作表現得力，

於106年1月間晉升Device經理。

六、台灣美光公司於王永銘離職後，經由內部清查，懷疑王永銘涉嫌擅自重製C 電磁紀錄，美國美光公司、台灣美光公司因此向法務部新北市調查處提出告訴，並提出附表一所示之筆記型電腦供扣押。本署檢察官據報後，向臺灣臺中地方法院聲請對王永銘所持用之門號0911-834291 門號電話執行通訊監察獲准，並指揮法務部新北市調查處調查官於106年2月7日，持臺灣臺中地方法院核發之搜索票，前往附表二至五所示之地點執行同步搜索，並扣得附表二至五所示之物品。惟法務部新北市調查處調查官於106年2月7日14時10分許，至臺南市新市區南科三路57號之聯電公司Fab1 2A 廠第二廠區執行搜索時，因聯電公司設有門禁管制，在聯電公司安全部主管邱清源等人陪同下前往PM2 部門，同時間聯電公司人資部通知戎樂天，檢調機關將對王永銘座位執行搜索一事。戎樂天竟分別告知王永銘及何建廷速將辦公座位內有關台灣美光公司之資料予以移除。王永銘及何建廷即依戎樂天指示，分別將附表六所示物品交予PM2 助理工程師黃書涵（所涉刑法第165 條之罪，另為緩起訴處分）保管，黃書涵遂將該等物品隱匿於個人置物鐵櫃中上鎖，並持王永銘交付之門號0911-834291 手機離開PM2 辦公室。調查官搜索王永銘辦公座位，僅發現聯電公司配發予王永銘持用之門號0965-702 303 號公務手機1 支，未見受通訊監察之門號0911-834291 門號手機，經追問王永銘該手機下落，王永銘辯稱係於上午借予同事黃書涵看照片，經洽聯電公司主管人員緊急聯繫黃書涵要求其立即返回辦公室，黃書涵始於105年2月7日15時25分許返回辦公室，並交出該門號0911-834291 門號之手機給調查官扣押。

七、嗣經本署檢察官於106年2月8日以證人身分訊問何建廷，何建廷於同日提出附表七所示物品供調查官扣押，黃書涵亦主動於106年2月9日提出附表六所示物品供本署檢察官扣



押。王永銘於106年2月7日至8日接受調查官詢問及檢察官訊問時，供出犯罪事實五部分，本署檢察官根據上開證據資料，再指揮法務部新北市調查處調查官持臺灣臺中地方法院核發之搜索票，於106年2月14日至附表八、九所示地點執行搜索，扣得如附表八、九所示物品；又徵得戎樂天同意，至附表十所示地點執行搜索，扣得如附表十所示物品。

八、案經台灣美光公司、美國美光公司提出告訴（委任情形及告訴對象如附表十二所示），以及聯電公司提出告發（委任情形及告發對象如附表十三所示），經本署檢察官指揮法務部調查局新北市調查處調查官調查後，由該處移送偵辦。

證據並所犯法條

一、認定犯罪事實所憑之證據：

（一）供述證據：

1. 被告何建廷於106年2月14日調查官詢問時之供述(C卷頁2-54)；於106年2月15日、106年6月9日檢察官偵訊時之供述(C卷頁78-87、A4卷頁87-91)。
2. 被告王永銘於106年2月7日、106年2月14日調查官詢問時之供述(B卷頁4-27、115-135)；於106年2月8日、106年2月15日檢察官偵訊時之供述及具結後證詞(B卷頁92-107、243-252)；於106年6月9日檢察官偵訊時之供述(B卷頁92-107、B卷頁243-252、A4卷頁83-91)。
3. 被告戎樂天於106年2月14日調查官詢問時之供述(D卷頁5-25)；於106年2月15日、106年6月15日檢察官偵訊時之供述(D卷頁41-55、115-125)。
4. 被告聯電公司之代理人劉家昆律師於106年3月14日調查官詢問時之陳述(A5卷頁14-24)。
5. 同案被告黃書涵於106年2月7日調查官詢問時之供述(E卷頁5-12)；於106年2月8日、106年2月9日、106年6月15日檢察官偵訊時之供述(E卷頁73-75)。
6. 告訴代理人即台灣美光公司法務經理陳希賢於105年8月

18日、105年9月1日調查官詢問時之陳述(A1卷頁132-147)；以證人身分於106年2月13日檢察官偵訊時之證詞(A2卷頁186-187)。

7. 證人即美國美光公司法務長David Alford Ashmore於105年9月1日、105年12月14日調查官詢問時之陳述(A1卷頁149-154、316-321)。
8. 證人即美國美光公司資訊安全部門人員J.R. Tietzsort於105年9月1日調查官詢問時之陳述(A1卷頁155-163)。
9. 證人即美國美光公司工程師Lucient Jan於105年11月22日、106年2月16日調查官詢問時之陳述(A1卷頁267-274、A2卷頁331-336)。
10. 被告何建廷於106年2月7日以證人身分接受調查官詢問之陳述(A1卷頁341-353)；於106年2月8日以證人身分接受檢察官訊問之證詞(A1卷頁357-365)。
11. 證人即聯電公司南科廠區專案經理郭佩姍於106年2月8日調查官詢問時之陳述(A1卷頁368-378)；於106年2月8日檢察官偵訊時之證詞(A1卷頁383-385)。
12. 證人即聯電公司資深副總經理陳正坤於106年2月8日調查官詢問時之陳述(A1卷頁387-393)；於106年2月8日檢察官偵訊時之證詞(A1卷頁396-401)。
13. 證人即台灣美光公司製程整合部經理洪伯昌於106年2月7日調查官詢問時之陳述(A2卷頁1-7)。
14. 證人即台灣美光公司製程整合部課長謝文浩於106年2月7日調查官詢問時之陳述(A2卷頁11-19)。
15. 證人即台灣美光公司製程整合部工程師林秀貞於106年2月7日調查官詢問時之陳述(A2卷頁74-82)。
16. 證人即台灣美光公司即時缺陷分析部經理陳佖菱於106年2月7日、106年2月13日調查官詢問時之陳述(A2卷頁85-93、118-124)；於106年2月13日、106年5月25日檢察官偵訊時之證詞(A2卷頁182-187、383-387)。



17. 證人即台灣美光公司PROVER部函數課工程師林宏益於106年2月7日調查官詢問時之陳述(A2卷頁95-101)。
18. 證人即台灣應用材料股份有限公司董事長余定陸於106年2月7日調查官詢問時之陳述(A2卷頁103-107)。
19. 證人即台灣智融科技股份有限公司總監王啟倫於106年2月13日調查官詢問時之陳述(A2卷108-111);於106年2月13日檢察官訊問時之證詞(A2卷頁113-116)。
20. 證人即聯電公司製程整合工程師吳國豪於106年2月14日調查官詢問時之陳述(A2卷頁230-241);於106年2月15日檢察官偵訊時之證詞(A2卷頁314-319)。
21. 證人即聯電公司之製程整合二部經理魏銘德於106年2月14日調查官詢問時之陳述(A2卷頁248-264);於106年2月15日檢察官訊問時之證詞(A2卷頁320-326)。

(二) 非供述證據：

1. 台灣美光公司之公司登記資料(A1卷頁17)。
2. 台灣美光公司制式「保密及智慧財產合約」1份(A1卷頁18-26)。
3. 台灣美光公司「團隊成員手冊」所載「機密資訊之保管」(A1卷頁32-36)。
4. 台灣美光公司之工作規則(A1卷頁37-41)。
5. 台灣美光公司於105年4月20日發布之個人電腦USB管控措施(A1卷頁54-56)。
6. 台灣美光公司員工閱覽電腦伺服器內屬於營業秘密電磁紀錄所會出現之警語(A1卷頁57)。
7. 被告王永銘於105年4月5日向台灣美光公司提出之離職申請單影本(A1卷頁73-74)。
8. 被告王永銘自105年3月20日至4月26日在台灣美光公司之出勤及門禁刷卡紀錄資料(A1卷頁78-81)。
9. 被告王永銘使用附表一所示筆記型電腦之檔案轉移紀錄(A1卷頁83-97)。

10. 被告王永銘與台灣美光公司於103 年2 月26日簽署之「聘僱合約與保密及智慧財產合約」影本(A1卷頁104-120)。
11. 被告王永銘在台灣美光公司任職期間之教育訓練紀錄 (A1 卷頁122-126)。
12. 被告王永銘於105 年4 月26日向台灣美光公司提出之辭職聲明(A1 卷頁127-131)。
13. 美國美光公司釋明被告王永銘以不正當方法所取得之電磁紀錄之用途 (A1卷頁186-198、A3卷頁325-492)。
14. 美國美光公司及台灣美光公司於103 年2 月28日簽訂之MTI/MMT Design Engineering Services Agreement1份(A1 卷頁206-216)、美國美光公司與新加坡美光公司於100 年9 月2 日簽訂之MSA/MTI Front-end Manufacturing Supply Agreement影本 (A1卷頁217-231 )、新加坡美光公司與台灣美光公司於103 年2 月28日簽署之Foundry Agreement 影本 (A1卷頁233-252)。
15. 美國美光公司對於被告王永銘所用附表一所示筆記型電腦之分析報告(A3 卷頁511-528)。
16. 被告王永銘、何建廷之勞工保險被保險人投保資料表(A3 卷頁536-537)。
17. 法務部調查局105 年10月5 日調資伍字第10514003270 號函所附鑑識報告 (A3卷頁543-544)。
18. 法務部調查局106 年2 月23日調資伍字第10614505100 號函所附鑑識報告(A3卷頁570-573)。
19. 被告王永銘所用雲端硬碟之檔案清單(A3卷頁576-678)。
20. 經濟部投資審議委員會所檢附之聯電公司申請與晉華公司從事技術合作之全卷資料影本(A3 卷頁682-725)。
21. 被告王永銘使用LINE通訊軟體之對話紀錄(A3 卷頁790-912)。
22. 台灣美光公司於105 年4 月19日寄送給被告何建廷之函文 (A2卷頁191-192)。



23. 台灣美光公司於103年2月24日與被告何建廷所簽屬之「聘僱合約與保密及智慧財產合約」影本(A2卷頁193-200、210-218)。
24. 台灣美光公司所留存之被告何建廷人事資料卡影本(A2卷頁203)。
25. 瑞晶公司與被告何建廷簽署之聘僱合約書影本(A2卷頁204-206)。
26. 法務部調查局新北市調查處106年2月7日執行搜索聯電公司王永銘辦公室座位現場報告(E卷頁16-17)。
27. 附表一之扣押筆錄(A1卷頁176-178之1)、附表二之搜索扣押筆錄(F1卷頁31-34)、附表三之搜索扣押筆錄(F1卷頁47-49)、附表四之搜索扣押筆錄(F1卷頁24-26)、附表五之搜索扣押筆錄(F2卷頁30-33)、附表六之扣押筆錄(E卷頁67-68)、附表七之扣押筆錄(C卷頁96-99)、附表八之搜索扣押筆錄(F4卷頁26-29)、附表九之搜索扣押筆錄(F3卷頁23-27)、附表十之搜索扣押筆錄(F3卷頁28-31)。
28. 扣押物品照片(A4卷頁53-75)。
29. 附表一至附表十之扣押物品。

## 二、對於本案之判斷：

- (一) 被害之是否直接，須以犯罪行為與受侵害之法益有無直接關係為斷，如就同一客體有二以上之法益同時並存時，苟其法益直接為犯罪行為所侵害，則兩法益所屬之權利主體，均為直接被害人，並不因另有其他之直接被害人而發生影響，此有最高法院30年上字第3416號判例可供參考。本案被告何建廷、王永銘所涉嫌侵害之客體，係由美國美光公司經由新加坡美光公司，授權台灣美光公司所使用、關於製造DRAM晶圓之方法、技術、製程、設計之資訊，該等資訊係以電磁紀錄方式儲存在台灣美光公司之具有保密措施之電腦伺服器內，屬於著作權法第3條第1項第1款所

定義之著作，亦屬營業秘密法第2條所定義之營業秘密。申言之，美國美光公司為該等電磁紀錄之所有人，台灣美光公司則為該等電磁紀錄之準占有人（民法第966條第1項規定參照），故美國美光公司、台灣美光公司就上開電磁紀錄遭侵害之犯罪事實，均得提出告訴。至於聯電公司雖於106年2月23日提出「刑事告訴狀」，指稱被告王永銘在聯電公司任職期間，隱瞞聯電公司而不法使用台灣美光公司之營業秘密，但因聯電公司並非上開電磁紀錄之所有人及準占有人，故該「刑事告訴狀」僅能認為係提出告發。

- (二) 著作權法與營業秘密法所保護者為「資訊」，此種資訊是有價值的資訊，與有體物一樣成為財產之一種，未獲同意之取得資訊行為，將構成資訊財產權利利益之侵害。另刑法第10條第6項所定義之電磁紀錄，指以電子、磁性、光學或其他相類之方式所製成，而供電腦處理之紀錄，電磁紀錄因非實體財產，具有不可分割、不會耗盡與一旦揭露就無所不在之特性，若載有著作權法或營業秘密法所保護之資訊，則未獲同意無權取得或持有該等電磁紀錄之行為，將使所有人失去對於營業秘密及著作之控制，必將侵害到所有人「資訊的專屬性或排他性使用」（exclusive use of information）及秘密之獨佔價值（monopoly value），此屬於財產上利益之侵害。被告何建廷、王永銘前往美國美光公司之競爭對手即聯電公司任職後，仍無故持有美國美光公司所有之營業秘密，且該等營業秘密有助於解決聯電公司開發DRAM產品所遇到之問題，而聯電公司開發完成之方法、技術、製程、設計，最終將移轉至大陸地區之晉華公司；又在無須參考任何實體文件或電磁紀錄，以及實施驗證之情形下，工程師僅憑記憶或經驗，幾乎不可能提供聯電公司F32 DRAM設計規則內之「Cell」、「Array」及「Periphery」等參數，此經證人LUCIENT JAN於



106 年2 月16日調查官詢問時證述明確，故被告戎樂天於105 年7 月至8 月間之某日，要求當時在Device部門任職之被告王永銘，提供設計規則參數給魏銘德，被告戎樂天主觀上應明知被告王永銘所持有之資訊係以不正方法從告訴人台灣美光公司取得（關於此點，從調查官於106 年2 月7 日至聯電公司PM2 部門搜索前，被告戎樂天曾告知被告王永銘、何建廷移除其等所持有之告訴人台灣美光公司資料，亦可獲得證明）。從而，被告何建廷、王永銘於偵查中辯稱其等取得犯罪事實欄所述之電磁紀錄及紙本，目的只是要供個人研究之用，以及被告戎樂天於偵查中辯稱只是要求部屬即被告王永銘發表對於聯電公司所訂設計規則F32 DRAM設計規則初稿之意見等情節，並不可採。被告何建廷、王永銘、戎樂天確實有損害告訴人美國美光公司利益、在大陸地區使用告訴人美國美光公司營業秘密之意圖。

- (三) 另營業秘密法第13條之4 但書所稱：「法人之代表人或自然人對於犯罪之發生，已盡力為防止行為」，所稱已盡力為防止行為，乃依當時情況，行為人已誠摯努力，「積極」盡其防止之能事，而實行與有效防止結果行為，具有相當性之行為而言。本件被告聯電公司雖提出被告何建廷、王永銘、戎樂天於任職時所簽屬之聘僱契約書影本、教育訓練資料，並表示該公司限制使用USB PORT，公發筆電不得連結該公司內部網路，用以證明該3 人任職時有承諾不得將前僱主之機密資料洩漏給聯電公司，且聯電公司有對該3 人實施智慧財產權之教育課程，已經採取杜絕他人營業秘密進入之措施。惟本案經檢察官實施搜索扣押後，發現在聯電公司PI2 辦公室內，存有被告王永銘、何建廷自告訴人台灣美光公司所取得之上開電磁紀錄及紙本，且被告王永銘、何建廷至聯電公司任職後，即持續參考使用該等資訊，可見被告聯電公司只是與被告何建廷、王永銘、

戎樂天簽訂制式之聘僱契約書，並實施職前教育訓練，而未於其等任職後積極採取防止侵害他人營業秘密之作為（舉例而言，在被告聯電公司所能控制之場所，可定期進行資訊資產盤點），故被告聯電公司所為辯解，自難採取。

### 三、所犯法條：

- （一）被告何建廷意圖在大陸地區使用及損害告訴人美國美光公司之利益，持有告訴人美國美光公司營業秘密，經告訴人台灣美光公司要求應刪除、銷毀後，不為刪除、銷毀該營業秘密，進而逾越授權範圍而使用該營業秘密，係犯營業秘密法第13條之2 第1 項之意圖在大陸地區使用而犯同法第13條之1 第1 項第2 款、第3 款之罪嫌。被告何建廷以單一犯意，接續為上開犯行，僅論以一罪。又告訴代理人王仁君律師雖於106 年2 月13日偵訊時，表示被告何建廷上開行為亦涉犯刑法第359 條之無故取得他人電磁紀錄致生損害罪嫌，惟證人陳侶菱於106 年2 月13日偵訊時證稱：台灣美光公司於105 年4 月以前，並無有限制工程師將公司檔案存放在隨身碟內等語，故本案尚無積極證據認定被告何建廷係於任職告訴人台灣美光公司期間，「無故」取得該公司之電磁紀錄。
- （二）被告王永銘意圖在大陸地區使用及損害告訴人美國美光公司之利益，擅自重製及以不正方法取得營業秘密，同時侵害告訴人美國美光公司之著作財產權，取得營業秘密後進而使用、洩漏，係犯營業秘密法第13條之2 第1 項之意圖在大陸地區使用而犯同法第13條之1 第1 項第1 款、著作權法第91條第1 項之擅自以重製之方法侵害他人之著作財產權等罪嫌。被告王永銘基於單一犯意，以一接續行為同時觸犯上開數罪名，為想像競合犯，請依刑法第55條規定，從一重論以營業秘密法第13條之2 第1 項之罪。告訴人台灣美光公司、美國美光公司雖認為被告王永銘同時觸犯刑法第317 條之洩漏業務上知悉工商秘密罪、刑法第318



條之1 之洩漏利用電腦知悉之他人秘密罪、刑法第342 條第1 項之背信、刑法第359 條之無故取得他人電磁紀錄致生損害等罪嫌，惟營業秘密法於102 年1 月31日增訂公布第13條之1 至13條之4 等條文，其立法理由在於刑法第317 條、第318 條之1 、第318 條之2 、第342 條、第359 條等規定對於營業秘密保護有所不足，始予以增訂（立法院第8 屆第2 會期第14次會議議案關係文書參照），足見前述營業秘密法之增訂條文，係上開刑法條文之特別法，依特別法優於普通法之原則，自應適用營業秘密法。又被告王永銘於偵查中供述與本案案情有重要關係之待證事項，因而使檢察官得以追訴本案必要共犯即被告戎樂天所涉如犯罪事實欄五所示犯行，且經本檢察官事先同意，請依證人保護法第14條第1 項規定，就被告王永銘所涉營業秘密法第13條之2 第1 項之罪，減輕或免除其刑。

（三）被告戎樂天意圖在大陸地區使用及損害告訴人美國美光公司之利益，明知被告王永銘所持有之營業秘密以不正方法所取得，仍使用之，係犯營業秘密法第13條之2 第1 項之意圖在大陸地區使用，而犯同法第13條之1 第1 項第4 款之罪嫌。

（四）被告聯電公司之受雇人即被告何建廷、王永銘、戎樂天，因執行業務，犯營業秘密法第13條之2 第1 項之罪，請依營業秘密法第13條之4 前段規定，對被告聯電公司科同法第13條之2第1 項之罰金刑。

#### 四、沒收：

被告何建廷因犯罪所取得之A 電磁紀錄及B 紙本資料，以及被告王永銘因犯罪所取得之C 電磁紀錄及D 紙本資料，請依刑法第38條之1 第1 項前段規定，宣告沒收。附表二，附表三贓物庫物品編號3 、6 ，附表五贓物庫物品編號16，附表六贓物庫物品編號20所示物品，係被告王永銘所有供犯罪所用之物；另附表六贓物庫物品編號36、附表七所示物品，係

被告何建廷所有供犯罪所用之物，請依刑法第38條第2項規定，宣告沒收。

五、依刑事訴訟法第251條第1項提起公訴。

此 致

臺灣臺中地方法院

中 華 民 國 106 年 8 月 8 日

檢察官 陳立偉

正本正 本證明與原本無異

106 年 8 月 31 日

書記官 陳一青 陳一青

執行時間：105 年 9 月 29 日

執行處所：新北市調查處

受執行人：台灣美光公司

執行依據：刑事訴訟法第133 條第3 項

扣押筆 錄編號	贓物庫 扣押物 品編號	扣押物品名稱	數量	備註
A-1	1	王永銘使用之筆記型 電腦	1臺	本電腦係王永銘在美國美光公司任職期 間所用之電腦。

附表二

執行時間：106 年 2 月 7 日

執行處所：臺中市南屯區和成巷18號及相通連之處所受

執行人：王永銘

執行依據：臺灣臺中地方法院106 年度聲搜字第372 號搜索票

扣押筆 錄編號	贓物庫 扣押物 品編號	扣押物品名稱	數量	備註
F-1	2	筆記型電腦（含電源	1臺	1.調查局鑑識後之將該筆記型電腦內之



(續上頁)

		線)		<p>電磁紀錄複製至贓物庫物品編號48隨身硬碟\106030-25-10\目錄下。</p> <p>2. 證人陳侶菱於106年2月13日檢視後，認為下列路徑下所存放之電磁紀錄屬於美國美光公司之營業秘密：</p> <p>①106030-25-10\106030-25-10-FUJITSU-NW9XT682R86A,P1\Documents and Settings\elaine\桌面\20nm</p> <p>②106030-25-10\106030-25-10-FUJITSU-NW9XT682R86A,P1\Documents and Settings\elaine\桌面\Micron</p> <p>③106030-25-10\106030-25-10-FUJITSU-NW9XT682R86A, P2</p>
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## 附表三

執行時間：106年2月7日

執行處所：臺中市南屯區文心南五路1段201號11樓之9及相通連之處所

受執行人：王永銘

執行依據：臺灣臺中地方法院106年度聲搜字第372號搜索票

扣押筆錄編號	贓物庫物品編號	扣押物品名稱	數量	備註
D-1	3	隨身碟	1支	<p>1. 調查局鑑識後將該隨身碟之電磁紀錄複製在贓物庫物品編號48隨身硬碟\106030-25-06\目錄下。</p> <p>2. 證人陳侶菱於106年2月13日調查官詢問時檢視後，認為下列檔案屬於美國美光公司之營業秘密：</p> <p>①4G3D Bin-z v(1).s WAT paramcorrelation.xls</p> <p>②Fab11_twr_materials_for_25nm_task_force_V6.pptx</p> <p>③WAT param check for 1RF746 3E.</p>

(續上頁)

				WWC1 split.xls
D-2	4	隨身硬碟	1個	調查局鑑識後將該扣押物之電磁紀錄複製在贓物庫物品編號48隨身硬碟\106030-25-07\目錄下。
D-3	5	隨身硬碟	1個	調查局鑑識後將該扣押物之電磁紀錄複製在贓物庫物品編號48隨身硬碟\106030-25-08\目錄下。
D-4	6	Acer筆記型電腦(含電源線)	1組	1.調查局鑑識後將該扣押物之電磁紀錄複製在贓物庫物品編號48隨身硬碟\106030-25-09\目錄下。 2.證人陳侶菱於106年2月13日調查官詢問時檢視後，認為下列目錄下所存放檔案屬於美國美光公司之營業秘密： \106030-25-09\106030-25-09-WD-WXL1A61D6393-250GB, P2\USB\YFA POOL\
D-5	7	聘僱契約書	1本	
D-6	8	存摺(永豐銀行新竹分行帳號01800400155741,戶名:王永銘)	1本	

## 附表四

執行時間：106年2月7日

執行處所：臺南市善化區龍目井路428、430號1至9樓內限於王永銘個人套房部分

受執行人：王永銘

執行依據：臺灣臺中地方法院106年度聲搜字第372號搜索票

扣押筆錄編號	贓物庫物品編號	扣押物品名稱	數量	備註
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C-1-1 至 C-1-3	9	王永銘資料	3本	證人陳佖菱、LUCIENT JAN 於調查官詢問時檢視後，認C-1-2 文件（標題：Peripheral Design Rules for DR25nm）係美國美光公司之營業秘密。
C-2	10	USB	1個	調查局鑑識後發現該隨身碟已毀損無法讀取，故無相關資料。

附表五

執行時間：106 年2 月7 日

執行處所：臺南市新市區南科三路57號及其相通連之處所（王永銘位於聯華電子股份有限公司Fab12A第二廠區之產品經理辦公室）

受執行人：王永銘

執行依據：臺灣臺中地方法院106 年度聲搜字第375 號搜索票

扣押筆 錄編號	贓物庫 物品編 號	扣押物品名稱	數量	備註
A-1	11	PM2組織表	1張	
A-2-1 A-2-2 A-2-3	12	文件資料	3本	1. 證人陳佖菱於調查官詢問時檢視後，認非台灣美光公司文件。 2. 證人LUCIENT JAN 於106 年2 月16日調查官詢問時，檢視A-2-2 文件後，認為該文件內所載參數與C-1-2 文件所載參數有相同之處。
A-3	13	UMC人事資料表	1本	
A-4	14	王永銘筆記本	1本	證人陳佖菱檢視後，認無台灣美光公司之營業秘密。
A-5	15	手寫札記	1本	陳佖菱檢視後，認無台灣美光公司之營

(續上頁)

				業秘密。
A-6	16	王永銘手機(門號0911-834291)	1支	1.調查局鑑識後之報告存放在贓物庫物品編號48隨身硬碟\106030-25-01\ 2.王永銘供稱內有儲存台灣美光公司之資料。
A-7	17	王永銘手機(門號0965702303)	1支	調查局鑑識後之電磁紀錄存放在贓物庫物品編號48隨身硬碟\106030-25-02\
A-8	18	聯華電子股份有限公司配發給王永銘之公用筆電(含電源線)	1臺	1.調查局鑑識後之電磁紀錄存放在贓物庫物品編號48隨身硬碟\106030-25-03\ 2.證人陳侶菱於106年2月13日檢視後,認下列目錄存有台灣美光公司營業秘密之電磁紀錄: \\106030-25-03\106030-25-0- -INTEL-CVTR548103WR240CGN-240GB , P1\Users\00046685\Downloads\教材-20161223T111122Z
A-9	19	隨身碟	1支	調查局鑑識後將電磁紀錄複製在贓物庫物品編號48隨身硬碟\106030-25-04\

## 附表六

執行時間:106年2月9日

執行處所:臺灣臺中地方法院檢察署第三偵查庭

受執行人:黃書涵

執行依據:刑事訴訟法第133條第3項

扣押筆錄編號	贓物庫物品編號	扣押物品名稱	數量	備註
1	34	HP牌筆記型電腦(聯電標籤:UMC030761)	1臺	聯電公司所有,調查局鑑識後之電磁紀錄複製在贓物庫物品編號48隨身硬碟\106030-25-12\



(續上頁)

2	20	隨身碟( 銀色PNY128 GB)	1個	1.王永銘所有，調查局鑑識後之電磁紀錄複製在物庫物品編號48隨身硬碟 \\106030-25-13\ 2.陳侶菱於調查官詢問時檢視後，認存有美國美光公司營業秘密之電磁紀錄。
	36	隨身碟 (Kingston廠牌)	1個	1.何建廷所有，調查局鑑識後之電磁紀錄存放在贓物庫物品編48隨身硬碟\\106030-25-14\ 2.證人陳侶菱於調查官詢問時檢視後，認存有美國美光公司營業秘密之電磁紀錄。
3	21	紙本資料	1本	王永銘所有，紙本上之貼紙編號1。
	22	紙本資料	1本	王永銘所有，紙本上之貼紙編號9。證人陳侶菱於調查官詢問時檢視後，認係美國美光公司之營業秘密。
	35	紙本資料	13本	1.何建廷所有，紙本上之貼紙編號分別為2,3,4,5,6,7, 8,10,11,12,13,14,15。 2.編號2,3,4,5,6,7, 8,10,11,12,13,1紙本資料及編號15資料夾內之ELPIDA ECD-DPB-1111、ECD-DPB-1076，陳侶菱於調查官詢問時檢視後，認係美國美光公司之營業秘密。
4	23	筆記本	1本	王永銘所有
5	37	爾必達- 瑞晶后里技術研發中心營運計畫書	1本	

附表七

執行時間：106 年2 月8 日

執行處所：臺南市新市區大順六路63號657 室

受執行人：何建廷

2.3

Exhibit 1

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執行依據：刑事訴訟法第133 條第3 項				
扣押筆 錄編號	贓物庫 扣押物 品編號	扣押物品名稱	數量	備註
1	25	行動硬碟	1顆	1. 調查局鑑識後之電磁紀錄存放在贓物庫物品編號48隨身硬碟\106030-25-11\ 2. 證人陳侶菱於調查官詢問時檢視後，認存有美國美光公司營業秘密之電磁紀錄。

附表八

執行時間：106 年2 月14日

執行處所：臺南市新市區南科三路57號（聯華電子股份有限公司Fab1  
2A廠第二廠區新事業發展中心專案技術二處PM2 何建廷個人辦公室）

受執行人：何建廷

執行依據：臺灣臺中地方法院106 年度聲搜字第421 號搜索票

扣押筆 錄編號	贓物庫 物品編 號	扣押物品名稱	數量	備註
2B-1-1 至 2B-1-4	26	何建廷筆記本	4本	
2B-2	27	美光公司函文	1份	
2B-3	28	勞動合約	1份	
2B-4	29	何建廷手機( 門號 0910411131、 0965280938)	1支	調查局鑑識後之電磁紀錄存放在贓物庫 物品編號48隨身硬碟\106030-25-15\
2B-5	30	何建廷雜記	1張	
2B-6	31	何建廷筆電(Asus牌)	1臺	調查局鑑識後之電磁紀錄存放在贓物庫

2 4

Exhibit 1

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(續上頁)

				物品編號48隨身硬碟\106030-25-16\
2B-7	32	聯電資料	2張	
2B-8	33	何建廷電子郵件隨身碟	1個	調查局鑑識後之電磁紀錄存放在贓物庫 物品編號48隨身硬碟\106030-25-17\

## 附表九

執行時間：106 年2 月14日

執行處所：臺南市新市區南科三路57號（聯華電子股份有限公司Fab12A廠第二廠區新事業發展中心專案技術二處PM2 戎樂天個人辦公室）

受執行人：戎樂天

執行依據：臺灣臺中地方法院106 年度聲搜字第416 號搜索票

編號	贓物庫 物品編 號	扣押物品名稱	數量	備註
2A-1-1	39	iphone手機	1支	調查局鑑識後之電磁紀錄存放在贓物庫 物品編號48隨身硬碟\106030-25-18\
2A-1-2	40	iphone手機	1支	調查局鑑識後之電磁紀錄存放在贓物庫 物品編號48隨身硬碟\106030-25-19\
2A-2	41	硬碟	1個	調查局鑑識後之電磁紀錄存放在贓物庫 物品編號48隨身硬碟\106030-25-20\
2A-3	42	隨身碟	1個	調查局鑑識後之電磁紀錄存放在贓物庫 物品編號48隨身硬碟\106030-25-21\
2A-4	43	行動硬碟	1個	調查局鑑識後之電磁紀錄存放在贓物庫 物品編號48隨身硬碟\106030-25-22\
2A-5-1 2A-5-2	44	記事本	2本	
2A-6-1	45	文件	2本	

(續上頁)

2A-6-2				
2A-7		保密合約	1本	檢察官認無扣押必要，指示新北市調查處於106年2月14日發還戎樂天
2A-8	46	戎樂天ACER筆電	1臺	調查局鑑識後之電磁紀錄存放在贓物庫物品編號48隨身硬碟\106030-25-23\
2A-9		座位表	1張	檢察官認無扣押必要，指示新北市調查處於106年2月14日發還戎樂天
2A-10	47	戎樂天公務資料隨身碟	1支	1.調查局鑑識後之電磁紀錄存放在贓物庫物品編號48隨身硬碟\106030-25-24\ 2.檢察官認鑑識完畢，已無扣押必要，於106年4月25日以處分命令發還戎樂天。

## 附表十

執行時間：106年2月14日

執行處所：臺南市新市區大順三路6號8樓之5

受執行人：戎樂天

執行依據：依刑事訴訟法第131條之1經受搜索人同意執行搜索

編號	贓物庫物品編號	扣押物品名稱	數量	備註
2C	38	HTC手機	1支	調查局鑑識後之電磁紀錄存放在贓物庫物品編號48隨身硬碟\10603-25-25\

附表十一

法務部調查局提供之隨身碟

贓物庫物品編號	物品名稱	數量	備註
24	隨身碟(黑色 64GB)	1支	1. 新北市調查處於106年2月14日詢問王永銘時，從王永銘google帳號即雲端硬碟下載所得資料 2. LUCIENT JAN 於調查官詢問時檢視後，雲端硬碟內之GDS檔案與美國美光公司之25nm DRAM 產品 Design Rule 有相同之處。 3. 該隨身碟內之檔案另附製至贓物庫物品編號48隨身硬碟106030-25-26 \目錄下
48	隨身硬碟(1TB 黑色)	1個	內含法務部調查局106030案件鑑識報告之電磁紀錄

附表十二

告訴人	受委任人	告訴對象
台灣美光公司	王仁君律師 林良蓉律師(105年9月2日委任關係終止) 李汝民律師 陳希賢	王永銘 何建廷 聯電公司
美國美光公司	王仁君律師 林良蓉律師(105年9月2日委任關係終止) 彭建仁律師	

附表十三		
告發人	受委任人	告發對象
聯電公司	陳哲宏律師 劉家昆律師（106 年6 月19日委任關係終止） 黃恩旭律師	王永銘

所犯法條：

營業秘密法第13條之1

意圖為自己或第三人不法之利益，或損害營業秘密所有人之利益，而有下列情形之一，處五年以下有期徒刑或拘役，得併科新臺幣一百萬元以上一千萬元以下罰金：

一、以竊取、侵占、詐術、脅迫、擅自重製或其他不正方法而取得營業秘密，或取得後進而使用、洩漏者。

二、知悉或持有營業秘密，未經授權或逾越授權範圍而重製、使用或洩漏該營業秘密者。

三、持有營業秘密，經營業秘密所有人告知應刪除、銷毀後，不為刪除、銷毀或隱匿該營業秘密者。

四、明知他人知悉或持有之營業秘密有前三款所定情形，而取得、使用或洩漏者。

前項之未遂犯罰之。

科罰金時，如犯罪行為人所得之利益超過罰金最多額，得於所得利益之三倍範圍內酌量加重。

營業秘密法第13條之2

意圖在外國、大陸地區、香港或澳門使用，而犯前條第一項各款之罪者，處一年以上十年以下有期徒刑，得併科新臺幣三百萬元以上五千萬元以下之罰金。

前項之未遂犯罰之。

科罰金時，如犯罪行為人所得之利益超過罰金最多額，得於所得



利益之二倍至十倍範圍內酌量加重。

營業秘密法第13條之4

法人之代表人、法人或自然人之代理人、受雇人或其他從業人員，因執行業務，犯第十三條之一、第十三條之二之罪者，除依該條規定處罰其行為人外，對該法人或自然人亦科該條之罰金。但法人之代表人或自然人對於犯罪之發生，已盡力為防止行為者，不在此限。

著作權法第91條

擅自以重製之方法侵害他人之著作財產權者，處 3 年以下有期徒刑、拘役，或科或併科新臺幣 75 萬元以下罰金。

意圖銷售或出租而擅自以重製之方法侵害他人之著作財產權者，處 6 月以上 5 年以下有期徒刑，得併科新臺幣 20 萬元以上 2 百萬元以下罰金。

以重製於光碟之方法犯前項之罪者，處 6 月以上 5 年以下有期徒刑，得併科新臺幣 50 萬元以上 5 百萬元以下罰金。

著作僅供個人參考或合理使用者，不構成著作權侵害。

Indictment Decision of Taiwan Taichung District Prosecutors Office

Case No: 106-Zhen-Tzu No. 11035

106-Zhen-Tzu No. 4520

106-Zhen-Tzu No. 5612

106-Zhen-Tzu No. 5613

Defendant	JT Ho	(Personal information omitted)
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Attorney	Jun-Yi Jia
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Defendant	Kenny Wang
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Attorney	Ting-Lu Zhuan Che-Hung Chen (terminated on Feb 7, 2017)
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Defendant	Leh-Tian Rong
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Attorney	Che-Hung Chen; En-Xu Huang; Jia-Kun Liu (terminated on June 19, 2017)
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Defendant	United Microelectronics Corporation
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Legal Representative	Stan Hung
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Attorney	En-Xu Huang; Mei-Fen Hung
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Regarding the above defendants' violation of the Trade Secret Act , the investigation has been closed and the prosecutor has decided to indict the defendants. The prosecutor hereby describes the facts of the



committed crime and presents the evidence as well as the violated laws as follows:

### **Facts of the Committed Crime**

- I. JT Ho and Kenny Wang were the employees of Rexchip Electronics Corp., located at No. 369, Sec.4, San Feng Rd., Houli District, Central Taiwan Science Park, Taichung (“Rexchip”). Rexchip was jointly formed by Elpida Memory, Inc. of Japan (“Elpida Japan”) and Powerchip Technology Corporation (“Powerchip”) to conduct business as a DRAM foundry. Micron Technology, Inc. (“MTI”) has its headquarters at Boise, Idaho of the USA. MTI’s main business includes manufacture and sale of DRAM, NAND flash and NOR flash, and assembly resolutions and semiconductor systems. In 2013, MTI acquired most of Elpida Japan’s and Rexchip’s shares and renamed Elpida Japan to Micron Memory Japan, and Rexchip to Micron Memory Taiwan Co., Ltd. (“MMT”). JT Ho and Kenny Wang became the employees of MMT as a result of the acquisition. On September 2, 2011, MTI authorized Micron Semiconductor Asia to use its IP rights. MMT made information relating to the method, technology, process and design for manufacturing DRAM into copyrighted works in the form of words, symbols and graphics. This information is saved on MMT’s server with encryption and limited access: MMT’s employees need to log onto the server by entering user names and passwords before accessing the abovementioned electronic records. In addition, access by USB PORT (a port connecting computers and external storage devices) has been banned since April 20, 2016. The abovementioned electronic records are information not known to the industry and highly economically valuable with reasonable protection, and they constitute “trade secrets” under Article 2 of the Trade Secret Act. On February 28, 2014, MMT entered into the MTI/MMT Design Engineering Services Agreement with MTI and transferred to MTI the IP rights it had obtained before and during the period covered by the Agreement. On the same date, MMT obtained the right to continuously use MTI’s IP rights from Micron Semiconductor Asia.
- II. United Microelectronics Corporation (“UMC”) was the first company in Taiwan to provide integrated circuit (IC) wafer foundry OEM service. It used to conduct DRAM development and manufacturing, but then it closed the DRAM manufacturing business and transferred relevant technical employees to other departments of UMC. In January 2016, UMC entered into an agreement with Fujian Jinhua Integrated Circuit Co., Ltd. of Mainland China (“Jinhua”) to develop 32nm DRAM and 32Snm DRAM technologies. Under the agreement, Jinhua will provide US\$300 million for purchasing necessary equipment for the

DRAM development and will pay US\$400 million to UMC based on the progress of development. The results of development shall be jointly owned by both parties. After the development is completed, the technology will be transferred to Jinhua for mass production of 32nm DRAM and 32Snm DRAM. To carry out the abovementioned agreement, UMC established the New Business Development (“NBD”) at the Second Factory Area of its Fab 12A in Tainan Science Park in January 2016. Zheng-Kun Chen (Stephen Chen, Former chairman of MMT, who left MMT on July 31, 2015 and joined UMC as senior VP in September 2015) was in charge of NBD, and UMC established several departments under NBD named “Project Technology Management Department 1” (“PM1”), “Project Technology Management Department 2” (“PM2”) and “Project Technology Management Department 3” (“PM3”). Stephen Chen then recruited people from MMT, including JT Ho and Kenny Wang, and appointed Leh-Tian Rong to head PM2 as Assistant Vice President. Under PM2 there are Process Integration Unit 1 (“PI1”), Process Integration Unit 2 (“PI2”), Defect Analysis Management Unit (“DM”) and Device Unit (“Device”). UMC filed an application for approval of the above technology cooperation with the Investment Commission of the Department of Economics on March 11, 2016, and the Commission approved the application on April 14, 2016 per the approval letter of Jin-Shen-Er No. 10500055030. Subsequently, UMC, Jinhua and Ultra Memory Inc. of Japan (“UMI Japan”) signed the “F32nm Design Service Agreement” on November 8, 2016. Because semiconductor manufacture process is a professional, sophisticated and complex technology which is often affected by different manufacturing equipment and methods, it is necessary to have a set of rules in place to define the relevant electrical parameters when considering how to manufacture the products successfully. Thus, the parties agreed that, after the DRAM design rules (also called the Layout Rule) were converted into source code, UMI Japan shall be responsible for revising the design rules, giving feedback, executing the program and designing and manufacturing the chips, and Jinhua will pay the design and service fees of US\$3,783,000 to UMI Japan in 3 installments. After UMI Japan has completed testing and delivered the GDS files (TV0 and TV1) and DDR4 chip of TV1, it will transfer the entire 32/32S nm DRAM development technology to Jinhua for Jinhua’s mass production. However, to conduct business for UMC, UMC’s employees, namely JT Ho, Kenny Wang and Leh-Tian Rong, committed the following crimes.

- III. On February 24, 2014, JT Ho signed the Employment Agreement and the “Confidentiality and Intellectual Property Agreement” (“CIPA”) with MMT.

Under the CIPA, JT Ho shall, upon the termination of his employment with MMT, leave with MMT all documents, records, notebooks or other repositories containing confidential information (including trade secrets), including copies thereof and information maintained in hardcopies and electronic form then in his possession or control; if JT Ho has any confidential information on non-MMT property, he shall immediately return such confidential information to MMT and destroy any copies in his possession or control. Because of his position as the section chief of MMT's mass production department, JT Ho logged into the company's controlled server to access electronic records relating to the DRAM production process, which is MTI's trade secret ("Electronic Record A"). He copied the records to his own USB (item 36 in Confiscated-Property Storage in Table 6) and personal hard drive (item shown in Table 7) for his reference any time during work, and possessed the hardcopy documents containing MTI's trade secrets (Paper Documents nos. 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13 and 14 of item 35 in Confiscated-Property Storage in Table 6 and documents named ECD-DPB-1076 and ECD-DPB-1111 in File 15, collectively referred to as "Paper Documents B.") Subsequently on October 15, 2015 when JT Ho resigned from MMT, he did not destroy Electronic Record A and Paper Documents B in accordance with the agreements. JT Ho joined UMC in November 2015 and became the Process Integration1 Manager under PM2 in April 2016. In January 2016, JT Ho was aware that UMC started to carry out the cooperation project with Jinhua and became MTI's competitor, and he was aware that the Electronic Record A and the Paper Document B he possessed could contribute to UMC's and Jinhua's mass production of DRAM in Mainland China. Instead of deleting or destroying Electronic Record A and Paper Documents B, JT Ho reviewed Electronic Record A using his UMC issued laptop (Item No. 34 of Confiscated-Property Storage in Table 6), with USB PORT control removed, in his UMC staff dormitory (Rm 657, No. 63 Dashun 6th Rd, Xinshi Dist., Tainan City), and in his UMC office in the Second Factory Area of UMC's Fab 12A (57 Nanke 3rd Rd, Xinshi Dist., Tainan City) during the period from January 2016 to February 7, 2017 (the date when [Prosecutors] conducted the search). During this period, he also brought Paper Documents B to the PI1 office for use. JT Ho's access to Electronic Record A and Paper Documents B exceeded MMT's authorized scope of use for such information, and he intended to use the information in Mainland China contrary to MTI's interest.

- IV. Kenny Wang's last position at MMT was Product Quality Integration Manager, which gave him the right to access information relating to all final products to

ensure that the final DRAM products met client specifications and quality requirements. In January and February 2016, Kenny Wang contacted JT Ho, who was then working at NBD of UMC, through the communication application LINE, and became aware that UMC was looking device specialists for its DRAM project with Jinhua. After further discussion, Kenny Wang decided to join UMC and submitted his resume to UMC through JT Ho. Consequently, at the end of February 2016, Kenny Wang visited UMC and was interviewed by UMC's HR team leader and Leh-Tian Rong. UMC and Kenny Wang agreed that Kenny Wang would be hired with the same salary and benefits as he had at MMT but that, if he is relocated to Mainland China, he will sign another contract with Jinhua and be entitled to an additional bonus. Subsequently on March 25, 2016, Kenny Wang received an Offer Letter from UMC, and informed JT Ho through the LINE communication application. JT Ho thus started treating Kenny Wang as a team member of UMC and discussed through the LINE communication application the issues that UMC had in developing DRAM technologies. Kenny Wang submitted his resignation letter to MMT on April 5, 2016 and left the company on April 26, 2016 upon the company's approval. From April 16 to 23, 2017, being fully aware that MTI and UMC are competitors in the development and manufacturing of DRAM and with the intent to use the information in Mainland China and to damage MTI's interest, Kenny Wang abused his authorization as the Product Quality Integration Manager by using MMT's laptop (Staff number: 1132954, User name: KENNYW, items shown in Table 1) to log on to MMT's server and to access MTI's electronic information relating to the method, technology, process and design of DRAM ("Electronic Record C," including a total of 931 files), which are protected trade secrets and copyrighted works. He stored Electronic Record C onto the abovementioned laptop, transferred it to a USB storage device (Item 3 in Confiscated-Property Storage of Table 3), and then to two of his own laptops (Table 2 and item No. 6 in Table 3 of the Confiscated-Property Storage) and also uploaded it to his Google Drive (account number: brh5476@gmail.com).. Kenny Wang's unauthorized copying of Electronic Record C violated MTI's and MMT's control over the records, and infringed MTI's trade-secret right and copyright in the records.

- V. After joining UMC on April 28, 2016, as Device Technology Manager of PM2, with the abovementioned intent and also the criminal intent to reproduce another's works, Kenny Wang used his phone (number: 0911-834291, i.e. Item No. 17 of the Confiscated-Property Storage in Table 5) and the laptop issued by UMC (i.e. Item No. 18 of the Confiscated-Property Storage in Table 5) to access



Electronic Record C stored on Google Drive (account number: brh5476@gmail.com) and downloaded MMT's "DRAM design rules" (file name: [DR25nmS] Temporary design rules Periphery Rev. 6; location path: V90B/0.Design/Design rules, hereafter "DR25nmS Design rules") and other electronic records. Kenny Wang then printed out the above electronic records (i.e. Paper documents No. C-1-2 in Table 4 and Item No. 22 of the Confiscated-Property Storage in Table 6, collectively referred to as "Paper Documents D"), thereby infringing MTI's copyright. Subsequently one day in July or August 2016, when attending the PM2 morning meeting held by Leh-Tian Rong, Kenny Wang was asked to stay in the meeting room with Ming-De Wei (the manager of PI2) after the meeting and discuss the draft of the F32 DRAM design rules presented by Wei. Because UMC has specialized as a logic process foundry in the past and has no DRAM-related designer's manual, PI2 had to use a 65nm logic process designer's manual as its blueprint. The abovementioned draft therefore lacked the necessary parameters of "Cell," "Array" and "Periphery" in the DRAM design rules. Kenny Wang thus provided his comments on ion-implantation process parameters (a key process to control doping in semiconductor manufacturing). Leh-Tian Rong, albeit fully aware that Kenny Wang left MMT nearly six months previously and that the MMT information Kenny Wang possessed was likely obtained illegally, asked Kenny Wang to compare the F32 DRAM design rules of UMC with MMT's materials (i.e. the DR25nmS design rules), circle out the differences between the two, write down MTI's "stabilization data" on UMC's draft design rules, fill in necessary parameters relating to ion-implantation which cannot be obtained through reverse engineering, and help complete the parts including "Cell," "Array", and "Periphery" for Rong's review, so that UMC can complete the F32 DRAM design rules more quickly. Two to three days after Kenny Wang received the said instructions from Rong, he downloaded UMC's final version of the logic IC design rules, created columns for "Cell," "Array" and "Periphery" and filled in parameters for "width" and "space" on more than 10 pages of UMC's final version of the design rules, using the DR25nmS design rules as a reference. Kenny Wang quickly completed the addition and revision of the parameters and handed in the hard copies containing the parameters of the DR25nmS design rules to Leh-Tian Rong in person. Rong handed them to Wei and told Wei to discuss them with Kenny Wang. Wei, unaware of the foregoing, discussed the stability of the parameters of UMC's F32 DRAM design and other parameters with Kenny Wang and Wu Kuo-How, an engineer of PI2, and completed UMC's F32 DRAM design rules. Originally UMC had no mask tape out team or ion-

implantation specialists. After Kenny Wang provided the DR25nmS design rules production parameters, PI2 skipped processes such as the optical lithography adjustment, etching and yellow light processes when developing the F32 DRAM. The design rules were completed within only 2 months and handed to the chip design manufacturer for the next step. Kenny Wang was promoted to Device Manager in January 2017 for excellent performance in reducing the time, costs, equipment and labor in producing the design rules.

- VI. After Kenny Wang left, MMT through its internal investigation suspected that Kenny Wang had copied Electronic Record C without authorization. MTI and MMT thus filed a criminal complaint with MJIB New Taipei Branch and provided the laptop (as in Table 1) to MJIB for its custody. After receiving the complaint, the prosecutor of this Office filed an application to monitor Kenny Wang's phone (Number: 0911-834291) with the Taichung District Court, which was approved. After the grant of the search warrant by the Taichung District Court, the prosecutor led the investigation officers of MJIB New Taipei Branch to search the places as shown in Tables 2 to 5 simultaneously and seized the items as shown in Tables 2 to 5 on February 7, 2017. At around 14:10 on February 7, 2017, the MJIB officers arrived at the Second Factory Area of UMC's Fab 12A (address: No.57, Nan-Ke-San Rd., Xin-Shi District, Tainan) to conduct searches. When the officers were heading to PM2 accompanied by UMC's Security Team Manager Ching-Yuan Chiu and others, UMC's HR team informed Leh-Tian Rong that the MJIB officers were about to search Kenny Wang's work area. Rong immediately asked Kenny Wang and JT Ho respectively to delete and remove all the information relating to MMT. Following Rong's instructions, Kenny Wang and JT Ho handed the items listed in Table 6 to Shu-Han Huang, an assistant engineer of PM2, for her custody (Huang was subject to deferred indictment due to her violation of Article 165 of Criminal Code). Huang locked the items in her personal locker and left the office with Kenny Wang's phone (Number: 0911-834291). As a result, when the MJIB officers searched Kenny Wang's workplace, they only found his UMC issued phone (Number: 0965-702303); his personal phone under surveillance (Number: 0911-834291) was missing. When questioned, Kenny Wang claimed that Shu-Han Huang borrowed the phone in the morning because she wanted to see some photos. After the supervisors of UMC were asked to contact Huang demanding that she return to the office immediately, Huang came back to the office and handed over Kenny Wang's personal phone (Number: 0911-834291) to MJIB officers for their custody at 15:25 on February 7, 2016 (sic) [2017].

VII. After being questioned by the prosecutor as a witness, JT Ho submitted the items listed in Table 7 for MJIB officers' custody on February 8, 2017. Shu-Han Huang also spontaneously submitted the items listed in Table 6 for the prosecutors' custody on February 9, 2017. On February 7 and 8, 2017, when Kenny Wang was questioned by the MJIB officers and the prosecutor, he confessed to the facts stated in Section 5 above. Based on the above evidence, the prosecutor obtained another search warrant from the Taichung District Court and led officers of the MJIB New Taipei Branch to search the places listed in Tables 8 and 9, seizing the items listed in Tables 8 and 9 on February 14, 2017. The prosecutor and the MJIB officers further searched the places listed in Table 10 with Leh-Tian Rong's consent and seized the items listed in Table 10.

VIII. MMT and MTI filed the criminal complaint (please see Table 12 for the attorney authorization and the defendants to be named); UMC also filed a report of the crime (please see Table 13 for the attorney authorization and the defendant to be named). The MJIB New Taipei Branch officers investigated the case under the supervision of the prosecutor of this Office, and sent the case to this Office for further handling.

### **Evidence and Statutes Violated**

I. The evidence serving as the basis for Criminal Findings:

(I) Testimonial evidence:

1. Defendant JT Ho's testimony when questioned by MJIB officers on February 14, 2017 (pages 2-54 in File C); his testimony when questioned by the prosecutor on February 15 and June 9, 2017 (pages 78-87 in File C, pages 87-91 in File A4);
2. Defendant Kenny Wang's testimony when questioned by MJIB officers on February 7 and 14, 2017 (pages 4-27, 115-135 in File B); his testimony both before and after being placed under oath when questioned by the prosecutor on February 8 and 15, 2017 (pages 92-107, 243-252 in File B); and his testimony when questioned by the prosecutor on June 9, 2017 (pages 92-107 and 243-252 in File B, and pages 83-91 in File A4);
3. Defendant Leh-Tian Rong's testimony when questioned by MJIB officers on February 14, 2017 (pages 5-25 in File D); his testimony when questioned by the prosecutor on February 15 and June 15, 2017 (pages 41-55, 115-125 in File D);
4. The statements of Jia-Kun Liu, Esq. (i.e. Defendant UMC's lawyer) when questioned by MJIB on March 14, 2017 (pages 14-24 in File A5);
5. Co-Defendant Shu-Han Huang's testimony when questioned by MJIB officers on

- February 7, 2017 (pages 5-12 in File E); her testimony when questioned by the prosecutor on February 8-9 and June 15, 2017 (pages 73-75 in File E);
6. Complainant MMT's legal manager Siesen Chen's statements when questioned by MJIB officers on August 18 and September 1, 2016 (pages 132-147 in File A1); his testimony as a witness when questioned by the prosecutor on February 13, 2017 (pages 186-187 in File A2);
  7. The testimony of Witness David Alford Ashmore (MTI's general counsel) when questioned by MJIB officers on September 1 and December 14, 2016 (pages 149-154, 316-321 in File A1);
  8. The testimony of Witness J. R. Tietz (MTI's IT security department personnel) when questioned by MJIB officers on September 1, 2016 (pages 155-163 in File A1);
  9. The testimony from Witness Lucient Jan (MTI's engineer) when questioned by MJIB officers on November 22, 2016 and February 16, 2017 (pages 267-274 in File A1, pages 331-336 in File A2);
  10. Defendant JT Ho's testimony as witness when questioned by MJIB officers on February 7, 2017 (pages 341-353 in File A1); and his testimony as witness when questioned by the prosecutor on February 8, 2017 (pages 357-365 in File A1);
  11. The testimony from Witness Sandy Kuo (UMC's project manager in the Southern Taiwan Science Park) when questioned by MJIB officers on February 8, 2017 (pages 368-378 in File A1); and her testimony when questioned by the prosecutor on February 8, 2017 (pages 383-385 in File A1);
  12. The testimony of Witness Stephen Chen (UMC's senior VP) when questioned by MJIB officers on February 8, 2017 (pages 387-393 in File A1); and his testimony when questioned by the prosecutor on February 8, 2017 (pages 396-401 in File A1);
  13. The testimony of Witness Bo-Chang Hung (MMT's process-integration department manager) when questioned by MJIB investigator on February 7, 2017 (pages 1-7 in File A2);
  14. The testimony of Witness Wen-How Hsieh (MMT's process-integration department section manager) when questioned by MJIB officers on February 7, 2017 (pages 11-19 in File A2);
  15. The testimony of Witness Shiu-Jan Lin (MMT's process-integration department engineer) when questioned by MJIB officers on February 7, 2017 (pages 74-82 in



File A2);

16. The testimony of Witness Yi-Ling Chen (MMT's real-time defect-analysis department manager) when questioned by MJIB investigator on February 7 and February 13, 2017 (pages 85-93, 118-124 in File A2); the testimony when questioned by the prosecutor on February 13 and May 25, 2017 (pages 182-187, page 383-387 in File A2);
17. The testimony of Witness Hung-Yi Lin (MMT's PROVER department function section engineer) when questioned by MJIB officers on February 7, 2017 (pages 95-101 in File A2);
18. The testimony of Witness Ding-Lu Yu (chairman of Applied Materials Taiwan) when questioned by MJIB officers on February 7, 2017 (pages 103-107 in File A2);
19. The testimony of Witness Chi- Lun Wang (Chief Director of Techinsights Taiwan) when questioned by MJIB officers on February 13, 2017 (pages 108-111 in File A2); and his testimony when questioned by the prosecutor on February 13, 2017 (pages 113-116 in File A2);
20. The testimony of Witness Kuo-How Wu (UMC's process-integration engineer) when questioned by MJIB officers on February 14, 2017 (pages 230-241 in File A2); and his testimony when questioned by the prosecutor on February 15, 2017 (pages 314-319 in File A2);
21. The testimony of Witness Ming-De Wei (second manager of UMC's process-integration department) when questioned by MJIB officers on February 14, 2017 (pages 248-264 in File A2); and his testimony when questioned by the prosecutor February 15, 2017 (pages 320-326 in File A2).

(II) Non-testimonial evidence:

1. MMT's corporate registration records (page 17 in File A1);
2. MMT's standard confidentiality and IP agreement (pages 18-26 in File A1);
3. "The Maintenance of Confidential Information" in MMT's "Team Member Manual" (pages 32-36 in File A1);
4. MMT's work rules (page 37-41 in File A1);
5. The USB control measure for personal computers issued by MMT on April 20, 2016 (pages 54-56 in File A1);
6. The warning language that would appear while MMT's employees access to the

- electronic records containing trade secrets in the computer server (page 57 in File A1);
7. Defendant Kenny Wang's resignation letter submitted to MMT on April 5, 2016 (pages 73-74 in File A1);
  8. Defendant Kenny Wang's attendance and entrance records in MMT from March 20 to April 26, 2016 (page 78-81 in File A1);
  9. Defendant Kenny Wang's file-transfer records in the laptop he used shown in Table 1 (pages 83-97 in File A1);
  10. The Employment Agreement cum Confidentiality and Intellectual Property Agreement between Defendant Kenny Wang and MMT signed on February 26, 2014 (pages 104-120 in File A1);
  11. Defendant Kenny Wang's training records during his service at MMT (pages 122-126 in File A1);
  12. Defendant Kenny Wang's resignation agreement on April 26, 2016 (pages 127-131 in File A1);
  13. MTI's written explanation of the importance of the electronic records that Defendant Kenny Wang illegally obtained (pages 186-198 in File A1, pages 325-492 in File A3);
  14. MTI/MMT Design Engineering Service Agreement on February 28, 2014 (pages 206-216 in File A1); MSA/MTI Front-end Manufacturing Supply Agreement on September 2, 2011 (pages 217-231 in File A1); Foundry Agreement between Micron Singapore and MMT on February 28, 2014 (pages 233-252 in File A1);
  15. MTI's analysis report of the laptop used by Defendant Kenny Wang shown in Table 1 (pages 511-528 in File A1);
  16. Defendants Kenny Wang and JT Ho's labor-insurance records (pages 536-537 in File A3);
  17. Forensic report attached in MJIB's 2016-10-05 Letter Diao-Zi-Wu-Zi No. 10514003270 (pages 543-544 in File A3);
  18. Forensic report attached in MJIB's 2017-02-23 Letter Diao-Zi-Wu-Zi No. 10614505100 (pages 570-573 in File A3);
  19. The file list of the cloud drive used by Defendant Kenny Wang (pages 576-678 in File A3);
  20. The complete file of UMC's investment application for UMC's cooperation

project with Jinhua provided by the Investment Commission (pages 682-725 in File A3);

21. Defendant Kenny Wang's chat history in Line communication application (pages 790-912 in File A3);
22. MMT's letter to Defendant JT Ho on April 19, 2016 (pages 191-192 in File A2);
23. The Employment Agreement cum Confidentiality and Intellectual Property Agreement between Defendant JT Ho and MMT signed on February 24, 2014 (pages 193-200, 210-218 in File A2);
24. Photocopy of Defendant JT Ho's personnel data card kept by MMT (page 203 in File A2);
25. The employment agreement between Rexchip and Defendant JT Ho (pages 204-206 in File A2);
26. MJIB's on-site report on the search over Defendant Kenny Wang's office on February 7, 2017 (pages 16-17 in File E);
27. The seizure record in Table 1 (pages 176-178.1 in File A1), the search and seizure record in Table 2 (pages 31-34 in File F1), the search and seizure record in Table 3 (pages 47-49 in File F1), the search and seizure record in Table 4 (pages 24-26 in File F1), the search and seizure record in Table 5 (pages 30-33 in File F2), the seizure record in Table 6 (pages 67-68 in File E), the seizure record in Table 7 (pages 96-99 in File C), the search and seizure record in Table 8 (pages 26-29 in File F4), the search and seizure record in Table 9 (pages 23-27 in File F3), and the search and seizure record in Table 10 (pages 28-31 in File F3);
28. Photos of articles seized (pages 53-75 in File A4);
29. Articles seized listed in Tables 1 to 10.

II. Determination for the case:

- (I) Whether an offence constitutes direct harm should be decided by whether the criminal conduct has directly led to infringement upon a legal interest. When more than one legal interest simultaneously exist in one object and are directly infringed by the criminal conduct, the right holders of both legal interests are the direct victims, and it does not matter if there are other direct victims. *See* Supreme Court precedent Year 1941 Shang-Zi 3416. Defendants JT Ho and Kenny Wang are suspected to have infringed the information regarding the methods, technology, process, and design of manufacturing DRAM wafers, which has been licensed to MMT by MTI through Micron Semiconductor Asia.

The said information is stored in the form of electronic records in MMT's computer server which is protected by confidential protection measures, and constitutes the Work under Article 3(1)(1) of the Copyright Act, and the Trade Secret under Article 2 of the Trade Secrets Act. To elaborate, MTI is the owner of said electronic records, and MMT is the quasi-possessor of said electronic records (please refer to Article 966(1) of the Civil Code). Therefore, both MTI and MMT are entitled to file a criminal complaint for the facts of the crime relating to infringement of electronic records. As to UMC, it filed a "criminal complaint" on February 23, 2017 accusing Defendant Kenny Wang of concealing the facts of his illegal use of MMT's trade secrets from UMC while working for UMC. However, since UMC is neither the owner nor the quasi-possessor of said electronic records, the "criminal complaint" UMC submitted can only be deemed as reporting the criminal conduct.

- (II) The Copyright Act and the Trade Secrets Act protect "information". Such information is valuable and is a kind of property like other tangible goods. Obtaining such information without the owner's consent would constitute infringement upon the owner's interest in information property. In addition, "electronic record" mentioned under Article 10(6) of the Criminal Code is defined as records made through the use of electronic, magnetic, optical or other similar means for computer processing. An electronic record is intangible property, and its characteristics include that it is inalienable, inexhaustible and ubiquitous once disclosed. If the information protected under the Copyright Act and the Trade Secrets Act is obtained or possessed without the owner's consent, the owner loses its control of such trade secret and copyrighted work. And it would definitely impair the owner's exclusive use of the information and the monopoly value of the trade secret, hence constituting infringement of a property interest. After Defendant JT Ho and Kenny Wang commenced work for MTI's competitor, i.e. UMC, they still possessed MTI's trade secrets without justification. Such trade secrets allowed UMC to solve problems when developing DRAM products, and the methods, technologies, processes, and designs developed by UMC would be eventually transferred to Jinhua in Mainland China. Besides, without referring to any physical documents and electronic records and conducting a verification process, it would be almost impossible for an engineer to provide UMC with parameters like "Cell", "Array" and "Periphery" in the F32 DRAM design rules merely based on memory or experience. Such can be supported by Witness Lucient Jan's testimony while answering MJIB officer's questions on February 16, 2017. Therefore, when Defendant Leh-Tian Rong requested on a certain day in



July or August 2016 that Defendant Kenny Wang (who worked in the Device Department) provide the parameters of design rules to Ming-De Wei, Defendant Leh-Tian Rong subjectively should have known that the information possessed by Defendant Kenny Wang was illegally obtained from MMT. This point can also be proved by the fact that before MJIB officers searched UMC's PM2 department on February 7, 2017, Defendant Leh-Tian Rong instructed Defendants Kenny Wang and JT Ho to dispose of the MMT information in their possession. Defendants Kenny Wang and JT Ho argued that the documents and electronic records and paper documents listed in the Criminal Facts column were for their personal research. Defendant Leh-Tian Rong argued that he only asked his subordinate (i.e. Defendant Kenny Wang) to comment on the draft F32 DRAM design rules enacted by UMC. None of their arguments is credible. Defendants Kenny Wang, JT Ho and Leh-Tian Rong did have the intent to infringe upon MTI's interest and use MTI's trade secrets in Mainland China.

(III) A provision of Article 13-4 of the Trade Secrets Act requires that "the representative of a juristic person or natural person has made his/her best efforts to prevent a crime from being committed", which means the person has made sincere efforts to "actively" prevent wrong doings, and its efforts would reasonably prevent the unwanted result. In this case, in order to prove that the three Defendants had promised that they would not disclose their former employer's confidential information to UMC, and that they had taken the IP education courses provided by UMC to prevent another company's trade secrets from being brought into UMC, Defendant UMC submitted the photocopies of employment agreements and training materials of Defendants Kenny Wang, JT Ho and Leh-Tian Rong during their employment with UMC. UMC further stated that UMC prohibited use of USBs and that laptops issued by the company cannot connect with the company's intranet. However, after search and seizure, the prosecutor found out that the above-mentioned electronic records and paper documents obtained by Kenny Wang and JT Ho from MMT were kept in UMC's PI2 office. In addition, Kenny Wang and JT Ho had continuously used and took said information as reference after resigning from UMC. This shows that apart from executing standard employment agreements with JT Ho, Kenny Wang, and Leh-Tian Rong and conducting regular orientation training, Defendant UMC has not adopted any positive measures to prevent the Defendants from infringing upon other companies' trade secrets after joining UMC (for example, UMC could periodically audit the information assets in places under its control). Therefore, Defendant UMC's argument cannot be adopted.

### III. Laws violated

(I) Defendant JT Ho possessed MTI's trade secrets with the intention to use the trade secrets in Mainland China and to damage Complainant MTI's interests. Having failed to delete and destroy such trade secrets upon MTI's request, JT Ho exceeded the authorization and used such trade secrets. Ho has thus committed the crime prohibited in Article 13-2(1) of the Trade Secrets Act, *i.e.* violating Subparagraphs 2 and 3 of Paragraph 1 of Article 13-1 with the intent to use in Mainland China. As Defendant JT Ho continuously committed the crime with a single criminal intent, he shall be deemed as committing one crime. Complainant's attorney Jeanne Wang Esq. stated in the investigation hearing on February 13, 2017 that JT Ho's misconduct also constituted the crime prohibited under Article 359 of the Criminal Code, *i.e.* retrieving another's electronic records without justification and causing harm. However, Witness Yi-Ling Chen testified in the same hearing that MMT did not prohibit an engineer from storing company files in USB drive. Therefore, there is no positive evidence to support the finding that JT Ho obtained the company's electronic records "without justification" while working for MMT.

(II) Defendant Kenny Wang reproduced and obtained the trade secrets by illegal means with the intent to use the trade secrets in Mainland China and to damage Complainant MTI's interests. He further used and disclosed such trade secrets after obtaining the same. He also infringed MTI's copyright. He thus has committed the crime prohibited Paragraph 1 of Article 13-2 of the Trade Secrets Act, *i.e.* violating Subparagraphs 2 and 3 of Paragraph 1 of Article 13-1 with the intent to use in Mainland China, and also the crime prohibited under Paragraph 1 of Article 91 of the Copyright Act. As Defendant Kenny Wang committed the above crimes with a single criminal intent and single continuous misconduct, he shall be punished for the crime with the harsher penalties, which is the crime of Paragraph 1 of Article 13-2 of the Trade Secrets Act. Complainants MTI and MMT also asserted that Defendant Kenney Wang has committed the crime prohibited under Article 317 (disclosing industrial and commercial secrets acquired in the course of business), Article 318-1 (disclosing secret know-how via computer), Paragraph 1 of Article 342 (critical breach of trust), and Article 359 (obtaining another's electronic records without justification and causing harm) of the Criminal Code. However, Articles 13-1 to 13-4 of the Trade Secret Act were newly enacted on January 31, 2013, and the legislative reason is that Articles 317, 318-1, 318-2, 342, 359 are insufficient to protect trade secrets (please refer to the related legislation documents of the 14<sup>th</sup> meeting of the second

session of the 8<sup>th</sup> Legislative Yuan). Therefore, the articles in the Trade Secret Act shall take priority over those articles in the Criminal Code. Based on the principle that special laws should take priority over general laws, the Trade Secret Act shall be applied. In addition, Defendant Kenny Wang made critical statements related to the case while being interrogated, which led the prosecutor to be able to indict Co-Defendant Leh-Tian Rong for the crime described in Item 5 of the Criminal Facts Section. With the prosecutor's advanced consent, please reduce or waive Defendant Kenny Wang's punishment for committing the crime under Paragraph 1 of Article 13-2 of the Trade Secrets Act pursuant to Article 14(1) of the Witness Protection Act.

(III) Defendant Leh-Tian Rong intended to use the trade secrets in Mainland China and damage the complainant MTI's interests. Although he knew that the trade secrets possessed by Defendant Kenny Wang were illegally obtained, he still used said trade secrets. Defendant Leh-Tian Rong committed the crime prohibited under Paragraph 1 of Article 13-2 of the Trade Secrets Act, *i.e.* violating Subparagraph 4 of Paragraph 1 of Article 13-1 of the Trade Secrets Act with the intent to use in Mainland China.

(IV) Because Defendant UMC's employees, *i.e.* JT Ho, Kenny Wang and Leh-Tian Rong committed the crime prohibited under Article 13-2(1) of the Trade Secrets Act in the course of performing their job duties, please punish by imposing on Defendant UMC the criminal fine mentioned under Article 13-2(1) of the Trade Secrets Act pursuant to the former part of Article 13-4 of the Trade Secrets Act.

#### IV. Confiscation:

Please confiscate the Electronic Record A and Paper Document B illegally obtained by Defendant JT Ho and the Electronic Record C and Paper Document D illegally obtained by Defendant Kenny Wang pursuant to the former part of Article 38-1(1) of the Criminal Code. Pursuant to Article 38(2) of the Criminal Code, please confiscate the articles listed in Table 2, Items 3 & 6 of the Confiscated-Property Storage in Table 3, Item 16 of the Confiscated-Property Storage in Table 5, and Item 20 of the Confiscated-Property Storage in Table 6, which were articles owned and used by Defendant Kenny Wang for committing the crime. Pursuant to Article 38(2) of the Criminal Code, please confiscate the articles listed in Item 36 of the Confiscated-Property Storage in Table 6 and items shown in Table 7, which were articles owned and used by Defendant JT Ho for committing the crime.

V. The prosecutor hereby indicts the Defendants in accordance with Article 251(1) of the Code of Criminal Procedures.

Respectfully submitted to Taiwan Taichung District Court

August 8, 2017

The Prosecutor: Li-Wei Chen

August 31, 2017

Clerk: Yi-Qing Chen (Signature: Yi-Qing Chen)

Table 1 Date of action: September 29, 2016 Place of action: Investigation Bureau, Taipei city Subject of action: Micron Memory Taiwan Co., Ltd Basis of action: Article 133(3) of the Criminal Code				
Item no. of seized record	Item no. of Confiscated-Property Storage	Name of seized item	Quantity	Remark
A-1	1	Laptop computer used by Kenny Wang	1 unit	This is the computer used by Kenny Wang during his service in MTI

Table 2 Date of action: February 7, 2017 Place of action: Premises at Nantun District and 18 Cheng Lane and surrounding area Acted by: Kenny Wang Basis of action: Search warrant ShengSouZi No. 372 of 2017 issued by Taichung District Court, Taiwan				
Item no. of seized record	Item no. of Confiscated-Property Storage	Name of seized item	Quantity	Remark
F-1	2	Laptop computer (including cable)	1 unit	1. After reviewing, the Investigation Bureau copied the electronic records in the laptop computer as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-10 \ . 2. After review on 13 February 2017, witness Yi-Ling Chen confirmed that the electromagnetic records stored in the path below are



				③106030-25-10\106030-25-10-FUJITS U-NW9XT682R86A, P2
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Table 3

Date of action: February 7, 2017

Place of action: Premises at 9 of 11<sup>th</sup> floor, No. 201 Section 1, Wenxin South 5<sup>th</sup> Road, Nantun District, Taichung and surrounding area

Subject of action: Kenny Wang

Basis of action: Search warrant ShengSouZi No. 372 of 2017 issued by Taichung District Court, Taiwan

Item no. of seized record	Item no. of Confiscated-Property Storage	Name of seized item	Quantity	Remark
D-1	1	USB	1 unit	<p>1. After reviewing, the Investigation Bureau copied the electronic records in the USB as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-06 \ .</p> <p>2. After review on 13 February 2017, witness Yi-Ling Chen confirmed that the electronic records stored in the path below are MTI's trade secrets:</p> <p>①4G3D Bin-z v(1).s WAT paramcorrelation.xls  ②Fab11_twr_materials_for_25nm_tas k_force_V6.pptx  ③WAT param check for 1RF746 3E.</p>

(continued)

				WWCI split.xls
D-2	4	USB	1 unit	After reviewing, the Investigation Bureau copied the electronic records in the seized item as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-07 \ .
D-3	5	USB	1 unit	After reviewing, the Investigation Bureau copied the electronic records in the seized item as Item 48 in the Confiscated-Property Storage

				under USB \ 106030-25-08 \ .
D-4	6	Acer laptop computer (including cable)	1 set	<p>1. After reviewing, the Investigation Bureau copied the electronic records in the seized item as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-09 \ .</p> <p>2. After review on 13 February 2017, witness Yi-Ling Chen confirmed that the electronic records stored in the path below are MTI's trade secrets:</p> <p style="margin-left: 40px;">\106030-25-09\106030-25-09-WD-1 XL1A61D6393-250GB, P2\USB\YFA POOL\</p>
D-5	7	Employment Agreement	1 copy	
D-6	8	Passbook (Bank SinoPac Hsinchu branch, account number: 018004001551741, name of account holder: Kenny Wang)	1 copy	

Table 4

Date of action: February 7, 2017

Place of action: Limited to premises which are Kenny Wang's personal apartment on 1-9/F Nos. 428 and 430 Longmujing Road, Shanhua District, Tainan City

Subject of action: Kenny Wang

Basis of action: Search warrant Sheng Sou Zi No. 372 of 2017 issued by Taichung District Court, Taiwan

Item no. of seized record	Item no. of Confiscated-Property Storage	Name of seized item	Quantity	Remark
C-1-1 to C-1-3	9	Information about Kenny Wang	3 copies	After review in the course of being interviewed by the investigator, witnesses Yi-Ling Chen and Lucient Jan confirmed that document C-1-2 (Title: Peripheral Design Rules for DR25nm) comprises MTI's trade secrets.
C-2	10	USB	1 unit	After reviewing, the Investigation Bureau found that the USB could not be read due to damage, so no related information is available.

<p>Table 5</p> <p>Date of action: February 7, 2017</p> <p>Place of action: No. 57 Nanke 3<sup>rd</sup> Road, Xinshi District, Tainan City and surrounding area (Kenny Wang's product manager office in UMC's Second Factory Area of Fab 12A)</p> <p>Subject of action: Kenny Wang</p> <p>Basis of action: Search warrant Sheng Sou Zi No. 375 of 2017 issued by Taichung District Court, Taiwan</p>				
Item no. of seized record	Item no. of Confiscated-Property Storage	Name of seized item	Quantity	Remark
A-1	11	Organization Chart of PM2	1 sheet	
A-2-1 A-2-2 A-2-3	12	Documents	3 copies	<p>1. After review in the course of interviewed by the investigator, witness Yi-Ling Chen confirmed that they are not MMT's documents.</p> <p>2. After reviewing document A-2-2 in the course of being interviewed by the investigator on 16 February 2017, witness Lucient Jan confirmed that the parameters contained in the documents bear similarities to the parameters contained in document C-1-2.</p>
A-3	13	UMC personnel data card	1 copy	
A-4	14	Kenny Wang's notebook	1 copy	After review, witness Yi-Ling Chen confirmed that they contain no trade secrets of MMT.
A-5	15	Handwritten notes	1 copy	After review, witness Yi-Ling Chen confirmed that they contain no trade secrets of MMT.

(continued)

A-6	16	Kenny Wang's mobile phone (No.: 0911-834291)	1	<p>1. The Investigation Bureau's report of review is included as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-01 \ .</p> <p>2. Kenny Wang confessed that it contains MMT's information.</p>
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A-7	17	Kenny Wang's mobile phone (No.: 0965702303)	1	After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-02 \ .
A-8	18	The office-use laptop computer (including cable) distributed by United Microelectronics Corporation to Kenny Wang	1	<ol style="list-style-type: none"> <li>1. After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-03 \ .</li> <li>2. After review on February 13, 2017, witness Yi-Ling Chen confirmed that the path below contains MTI's trade secrets:  \106030-25-03\106030-25- 0  -INTEL-CVTR548103WR240CGN- 240GB  , P1\Users\00046685\Downloads\教  材- 20161223T111122Z</li> </ol>
A-9	19	USB	1	After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-04 \ .

Table 6 Date of action: February 9, 2017 Place of action: Third investigation court of Taiwan Taichung District Prosecutors Office Subject of action: Shu-Han Huang Basis of action: Article 133(3) of the Criminal Code				
Item no. of seized record	Item no. of Confiscated-Property Storage	Name of seized item	Quantity	Remark
1	34	Laptop computer of the HP brand (UMC label: UMC030761)	1 unit	Owned by UMC. After reviewing, the Investigation Bureau copied the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-12 \ .

(continued)

2	20	USB (Silver PNY128GB)	1 unit	<ol style="list-style-type: none"> <li>1. Owned by Kenny Wang. After reviewing, the Investigation Bureau copied the electronic</li> </ol>
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				<p>records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-13 \ .</p> <p>2. After review in the course of being interviewed by the investigator, witness Yi-Ling Chen confirmed that they contain electronic records of trade secrets of MTI.</p>
	36	USB (Kingston brand)	1 unit	<p>1. Owned by Kenny Wang. After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-14 \ .</p> <p>2. After review in the course of being interviewed by the investigator, witness Yi-Ling Chen confirmed that they contain electronic records of trade secrets of MTI.</p>
3	21	Paper materials	1 copy	Owned by Kenny Wang, with sticker depicting no. 1 on the paper.
	22	Paper document	1 copy	Owned by Kenny Wang, with sticker depicting no. 9 on the paper. After review in the course of interviewed by the investigator, witness Yi-Ling Chen confirmed that they are trade secrets of MTI.
	35	Paper document	13 copies	<p>1. Owned by Kenny Wang, with stickers depicting nos. 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15 on the paper.</p> <p>2. Paper documents numbered 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 1 and ELPIDA ECD-DPB-1111 and ECD-DPB-1076 in archive numbered 15. After review in the course of being interviewed by the investigator, Yi-Ling Chen confirmed that they are trade secrets of MTI.</p>
4	23	Laptop computer	1 unit	Owned by Kenny Wang.

5	37	Operation plan of Elpida – RGM Houli Technology R&D Center	1 copy	
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<p>Table 7</p> <p>Date of action: February 8, 2017</p> <p>Place of action: Room 657 No. 63 Dashun 6<sup>th</sup> Road., Xinshi District, Tainan City</p> <p>Subject of action: JT Ho</p> <p>Basis of action: Article 133(3) of the Criminal Code</p>				
Item no. of seized record	Item no. of Confiscated-Property Storage	Name of seized item	Quantity	Remark
1	25	USB	1 unit	<p>1. After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-11 \ .</p> <p>2. After review in the course of being interviewed by the investigator, witness Yi-Ling Chen confirmed that they contain electronic records of trade secrets of MTI.</p>

<p>Table 8</p> <p>Date of action: February 14, 2017</p> <p>Place of action: No. 57 Nanke 3<sup>rd</sup> Road, Xinshi District, Tainan City (Kenny Wang's personal office in PM2 of New Business Development Center in UMC's Second Factory Area of Fab 12A)</p> <p>Subject of action: JT Ho</p> <p>Basis of action: Search warrant Sheng Sou Zi No. 421 of 2017 issued by Taichung District Court, Taiwan</p>				
Item no. of seized record	Item no. of Confiscated-Property Storage	Name of seized item	Quantity	Remark
2B-1-1 to 2B-1-4	26	Notebook of JT Ho	4 copies	
2B-2	27	MMT letters	1 copy	
2B-3	28	Employment Agreement	1 copy	
2B-4	29	Mobile phone of JT Ho (Nos: 0910411131, 0965280938)	1 unit	After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-15 \ .
2B-5	30	Miscellaneous record of JT Ho	1 sheet	
2B-6	31	Laptop computer of JT Ho	1 unit	After reviewing, the

		(Asus brand)		Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-16 \ .
2B-7	32	Contact information	2 sheets	
2B-8	33	USB of JT Ho	1 unit	After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-17 \ .

Table 9

Date of action: February 14, 2017

Place of action: No. 57 Nanke 3<sup>rd</sup> Road, Xinshi District, Tainan City (Leh-Tian Rong's personal office in PM2 of New Business Development Center in UMC's Second Factory Area of Fab 12A)

Subject of action: Leh-Tian Rong

Basis of action: Search warrant Sheng Sou Zi No. 416 of 2017 issued by Taichung District Court, Taiwan

Item no. of seized record	Item no. of Confiscated-Property Storage	Name of seized item	Quantity	Remark
2A-1-1	39	iPhone handset	1 unit	After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-18 \ .
2A-1-2	40	iPhone handset	1 unit	After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-19 \ .
2A-2	41	USB	1 unit	After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-20 \ .
2A-3	42	USB	1 unit	After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-21 \ .
2A-4	43	USB	1 unit	After reviewing, the

				Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-22 \ .
2A-5-1 2A-5-2	44	Notebooks	2 copies	
2A-6-1	45	Documents	2 copies	

(continued)

2A-6-2				
2A-7		Confidentiality Agreement	1 copy	The prosecutor considered no need of seizure, and instructed the New Taipei City Investigation Bureau to return it to Leh-Tian Rong on February 14, 2017.
2A-8	46	Leh-Tian Rong's ACER laptop computer	1 unit	After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-23 \ .
2A-9		Seating plan	1 sheet	The prosecutor considered no need of seizure, and instructed the New Taipei City Investigation Bureau to return it to Leh-Tian Rong on February 14, 2017.
2A-10	47	Leh-Tian Rong's USB which contains business information	1 unit	<ol style="list-style-type: none"> <li>1. After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-24 \ .</li> <li>2. The prosecutor considered no need of seizure after the inspection, and returned it to Leh-Tian Rong on April 25, 2017 in the form of disposal order</li> </ol>

Table 10

Date of action: February 14, 2017

Place of action: 5 of 8<sup>th</sup> floor, No. 6 Dashun 3rd Road 112, Xinshi District, Tainan City

Subject of action: Leh-Tian Rong

Basis of action: Search conducted pursuant to Article 131-1 of the Criminal Code with consent of the target of search

Item no.	Item no. of	Name of seized item	Quantity	Remark
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of seized record	Confiscated-Property Storage			
2C	38	HTC handset	1 unit	After reviewing, the Investigation Bureau included the electronic records as Item 48 in the Confiscated-Property Storage under USB \ 10603-25-25 \ .

Table 11 USB provided by MJIB			
Item no. of seized record	Name of seized item	Quantity	Remark
24	USB (Black 64GB)	1 unit	<ol style="list-style-type: none"> <li>These are information obtained from Kenny Wang's Google Drive account during his interrogation by the Investigation Bureau of New Taipei City on February 14, 2017.</li> <li>After review in the course of interview by the investigator, Lucient Jan confirmed that the GDS file in the Google Drive bears similarities to MTI's Design Rules of 25nm DRAM products.</li> <li>The file in the USB has been copied as Item 48 in the Confiscated-Property Storage under USB \ 106030-25-26 \ .</li> </ol>
48	USB (ITB Black)	1 unit	It contains the electronic records to be reviewed by MJIB for the case 106030.

Table 12		
Complainant	Agents	Accused
Micron Memory Taiwan Co., Ltd	Lawyer Jeanne Wang Lawyer Lin Liang Rong (terminated on 2 September 2016) Lawyer Max Lee Lawyer Chen Xi Xian	Kenny Wang JT Ho UMC
Micron Technology, Inc.	Lawyer Jeanne Wang Lawyer Lin Liang Rong (terminated on September 2,	

	2016) Lawyer Peng Jian Ren	
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Table 13		
Complainant	Agents	Accused
UMC	Lawyer Che-Hung Chen Lawyer Jia-Kun Liu (terminated on June 19, 2017) Lawyer En-Xu Huang	Kenny Wang

Laws violated:

#### Article 13-1 of the Trade Secrets Act

Anyone who has one of the following circumstances done with the intent to obtain illegal gains for oneself or third persons, or damage interests of trade-secret owners shall be liable to imprisonment or detention of no more than 5 years and a fine more than TWD1 million but less than TWD 10 million for:

1. Obtaining trade secrets by stealing, infringement, fraud, threat or unauthorized copying or other illegal means or using and disclosing the same after obtaining them.
2. Copying, using, or disclosing known trade secrets or possessing trade secrets without authorization or beyond the scope of authorization.
3. Failure to delete, destroy or conceal trade secrets after being instructed by the trade-secret owners to have them deleted or destroyed.
4. Obtaining, using, or disclosing trade secrets from another person knowing that the person knows or possesses the trade secrets from the above three circumstances.

Any attempt of the above shall be subject to penalty.

For fines, if the perpetrator obtains gains which exceed the maximum amount of fine, discretion should be exercised to increase the fine to an amount not greater than three times the gains obtained.

#### Article 13-2 of the Trade Secrets Act

Anyone who attempt to use trade secrets in foreign countries, Mainland China, Hong Kong or Macau in violation of one of the said crimes of Paragraph (1) of the preceding Article shall be liable to imprisonment of more than one year but less than 10 years and a fine above TWD3 million but less than TWD 50 million.

Any attempt of the above shall be subject to penalty.

For fines, if the perpetrator obtains gains which exceed the maximum amount of the fine, discretion should be exercised to increase the fine to an amount not greater than two to ten times the gains obtained.

Article 13-4 of the Trade Secrets Act

If a representative of a legal entity, or an agent of a legal entity or a natural person, an employee or other contractors violate Article 13-1 or 12-2 for purposes of conducting business, besides punishing the perpetrator pursuant to the related Article, the legal entity or natural person shall also be subject to a fine unless the representative of the legal entity or natural person has done their utmost to stop the perpetrator's act.

Article 91 of the Copyright Act

Anyone who infringes IP rights of others by unauthorized copying of a work shall be liable to imprisonment or detention of less than 3 years and optional or compulsory fine of no more than TWD750,000.

Anyone who infringes upon IP rights of others by copying the work unauthorized with an intent to sell or lease the same shall be liable to imprisonment of more than 6 months but less than 5 years and optional or compulsory fine of no more than TWD200,000 but less than TWD2 million.

Anyone who commits the said crime by copying the data on CDs shall be liable to imprisonment of more than 6 months but less than 5 years and compulsory fine of more than TWD500,000 but less than TWD5 million.

Personal reference or reasonable use of the works shall not constitute infringement upon copyrights.

UNITED LANGUAGE GROUP

legaltranslations@ulgroup.com

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*[Signature]*

November 2017

Self

**SELIN CAYIRLI**  
Notary Public, State of New York  
No. 01CA6275260  
Qualified in New York County  
Commission Expires Jan 22, 2027

JS-CAND 44 (Rev. 06/17)

**CIVIL COVER SHEET**

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

Micron Technology, Inc.

(b) County of Residence of First Listed Plaintiff Santa Clara, CA  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Randall E. Kay (SBN 149369), Jones Day, 4655 Executive Drive,  
Suite 1500, San Diego, CA 92121, Tel: 858.314.1200

**DEFENDANTS**

United Microelectronics Corporation, Fujian Jinhua Integrated Circuit Co., Ltd,  
and Does 1-10

County of Residence of First Listed Defendant  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff ☒ 3 Federal Question  
(U.S. Government Not a Party)
- 2 U.S. Government Defendant ☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<b>PERSONAL INJURY</b>	625 Drug Related Seizure of Property 21 USC § 881	422 Appeal 28 USC § 158	375 False Claims Act
120 Marine	310 Airplane	690 Other	423 Withdrawal 28 USC § 157	376 Qui Tam (31 USC § 3729(a))
130 Miller Act	315 Airplane Product Liability	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>	400 State Reapportionment
140 Negotiable Instrument	320 Assault, Libel & Slander	710 Fair Labor Standards Act	820 Copyrights	410 Antitrust
150 Recovery of Overpayment Of Veteran's Benefits	330 Federal Employers' Liability	720 Labor/Management Relations	830 Patent	430 Banks and Banking
151 Medicare Act	340 Marine	740 Railway Labor Act	835 Patent—Abbreviated New Drug Application	450 Commerce
152 Recovery of Defaulted Student Loans (Excludes Veterans)	345 Marine Product Liability	751 Family and Medical Leave Act	840 Trademark	460 Deportation
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	790 Other Labor Litigation	<b>SOCIAL SECURITY</b>	<input checked="" type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations
160 Stockholders' Suits	355 Motor Vehicle Product Liability	791 Employee Retirement Income Security Act	861 HIA (1395ff)	480 Consumer Credit
190 Other Contract	360 Other Personal Injury	<b>IMMIGRATION</b>	862 Black Lung (923)	490 Cable/Sat TV
195 Contract Product Liability	362 Personal Injury -Medical Malpractice	462 Naturalization Application	863 DIWC/DIWW (405(g))	850 Securities/Commodities/ Exchange
196 Franchise	<b>CIVIL RIGHTS</b>	465 Other Immigration Actions	864 SSID Title XVI	890 Other Statutory Actions
<b>REAL PROPERTY</b>	440 Other Civil Rights		865 RSI (405(g))	891 Agricultural Acts
210 Land Condemnation	441 Voting		<b>FEDERAL TAX SUITS</b>	893 Environmental Matters
220 Foreclosure	442 Employment		870 Taxes (U.S. Plaintiff or Defendant)	895 Freedom of Information Act
230 Rent Lease & Ejectment	443 Housing/ Accommodations		871 IRS—Third Party 26 USC § 7609	896 Arbitration
240 Torts to Land	445 Amer. w/Disabilities— Employment			899 Administrative Procedure Act/Review or Appeal of Agency Decision
245 Tort Product Liability	446 Amer. w/Disabilities—Other			950 Constitutionality of State Statutes
290 All Other Real Property	448 Education			
	<b>PERSONAL INJURY</b>			
	365 Personal Injury — Product Liability			
	367 Health Care/ Pharmaceutical Personal Injury Product Liability			
	368 Asbestos Personal Injury Product Liability			
	<b>PERSONAL PROPERTY</b>			
	370 Other Fraud			
	371 Truth in Lending			
	380 Other Personal Property Damage			
	385 Property Damage Product Liability			
	<b>PRISONER PETITIONS</b>			
	<b>HABEAS CORPUS</b>			
	463 Alien Detainee			
	510 Motions to Vacate Sentence			
	530 General			
	535 Death Penalty			
	<b>OTHER</b>			
	540 Mandamus & Other			
	550 Civil Rights			
	555 Prison Condition			
	560 Civil Detainee— Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    2 Removed from State Court    3 Remanded from Appellate Court    4 Reinstated or Reopened    5 Transferred from Another District (specify)    6 Multidistrict Litigation—Transfer    8 Multidistrict Litigation—Direct File

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

18 U.S.C. § 1836(b), 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d).

Brief description of cause:

Defend Trade Secrets Act misappropriation and RICO.

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
UNDER RULE 23, Fed. R. Civ. P.

DEMAND \$

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S), IF ANY** (See instructions):

JUDGE

DOCKET NUMBER

**IX. DIVISIONAL ASSIGNMENT** (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE 12/05/2017

SIGNATURE OF ATTORNEY OF RECORD

s/ Randall E. Kay



**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44**

**Authority For Civil Cover Sheet.** The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
  - b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
  - c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)."
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
  - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
  - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
  - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
  - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
  - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
  - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
  - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
  - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
  - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket.
- Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Federal Rule of Civil Procedure 23.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: "the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated."

**Date and Attorney Signature.** Date and sign the civil cover sheet.