No. 2024-1428

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Mr. Xiaohua Huang
Plaintiff-Appellant,
v.
Amazon.com, Inc.
Defendant- Appellee

Appeal from the United States District Court
for the District of Northern California
in Case No. 5:23-cv-04679-NC
Magistrate Judge NATHANAEL M. COUSINS

Mr. Xiaohua Huang' PETITION for Panel Rehearing and Hearing En Banc

Xiaohua Huang

P.O. Box 1639, Los Gatos CA95031
Email: xiaohua_huang@hotmail.com
Tel: 669 273 5633

CERTIFICATE OF INTEREST

Pro se Plaintiff-Appellant Xiaohua Huang certifies the following:

1. The full name of every party or amicus represented by me is:
Xiaohua Huang

2. The name of the real party in interest represented by me is:
Xiaohua Huang

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Statement of Issues

1. Defendant-Appellee Counsel Mr.Cruzen violated his Oath to the GOD

In California to become an attorney, he or she need to declare as " I solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of an attorney and counse1or at law to the best of my knowledge and ability."

Defendant-Appellee Counsel Mr.Cruzen took every and each factual material in the complaint as false because he himself has lied and cheated completely in this case, Mr.Cruzen used the very abusive language with false statement, his conducts violates his oath to the GOD, In fact Mr.Cruzen's conduct indicated that he have no sense of dignity and kindness. Magistrate Judge Cousin accepted and took whatever Mr.Cruzen said as true. Their conduct have increased the cost of plaintiff, defendant and the court. Mr.Cruzen's conduct violated his oath to the GOD at assuming his lawyer's duty, contaminated the US legal system. Cruzen's conduct may have his family and descendants suffer the consequence of his conduct as King David did.

2. The Magistrate and the Panel Judges violated their Oath to the GOD

28 U.S. Code § 453 - Oaths of Justices and Judges

Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: "I, ___ ___, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ___ under the Constitution and laws of the United States. So help me God."

In this case Magistrate Judge in local Court and Panel Judges only took what Defendant-Appellee Counsel Mr.Cruzen's false statements and completely ignored the facts and factual materials which Plaintiff-Appellant Mr. Xiaohua Huang produced, and further completely prejudiced *pro se* Plaintiff-Appellant to make wrongful decision. In the US legal system, all the Judges are immune from legal responsibility on their faults and mistakes they made, but the final justice and Judgment may be guaranteed by the GOD. As King David did something which GOD dislike, his descendants suffered his conducts.

Plaintiff- Appellant should be allowed to file third amended complaint because the content in the proposed third amended complaint proves the infringement

Under the Federal Rules of Civil Procedure, specifically Rule 15(a), a court "should freely give leave" to a plaintiff to file an amended complaint when "justice so requires," meaning that courts are generally inclined to allow amendments to pleadings when it is necessary to ensure a fair outcome in the case.

If a court grants a motion to dismiss, leave to amend should be granted unless the pleading could not possibly be cured by the allegation of other facts. Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000).

When reviewing a 12(b)(6) motion, a court "must accept as TRUE all factual allegations in the complaint and draw all reasonable inferences in favor of the non-moving party." Retail Prop. Trust v. United Bd. of Carpenters & Joiners of Am., 768 F.3d 938, 945 (9th Cir. 2014). Golden v. Intel Corp., 642 F. Supp. 3d 1066, 1070 (N.D. Cal. 2022) ("Golden I") (quoting Retail Prop. Trust v. United Bd. of Carpenters & Joiners of Am., 768 F.3d 938, 945 (9th Cir. 2014)). Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

In case 23-cv-04679 Plaintiff-Appellant filed complaint in middle Florida to against Meta Platform and first amended complaint to Meta, Walmart and Amazon for selling Meta's AR/VR products. Plaintiff-Appellant filed 2nd amended complaint against only Amazon for selling cell phone devices which are completely from the complaint and first amended complaint. The proposed third amended complaint completely fixed all the issues and defects which were in 2nd amended complaints. But defendant counsel Mr.Cruzen blindly lied, then the Magistrate Judge in local court and the panel Judges only took and copied what Mr.Cruzen presented and completely ignored all the facts and factual material which Plaintiff-Appellant Mr. Huang produced in the informal

brief and reply brief. Plaintiff respectfully asks the Court to rehear the case.

The following content were produced and presented in Plaintiff-Appellant's informal Brief and Reply Brief. Plaintiff-Appellant respectfully asks the Panel Judges to read it as Justice requires.

The following content is cited from page12 – page19 of D38-1 of case 24-1428:

2. 3rd amended complaint has state a claim.

The Exhibit X1 of 3rd amended complaint Dkt.No.87 and Dkt. No.86 contain the following content:

In cell phone EEPROM chips are used for camera control and calibration, which use 64K,128K and 256K EEPROM chip, each camera need one EEPROM chip; EEPROM chip is also used to control the access of CPU to memory storage, each CPU in cell phone use one EEPROM chip which density are 2K or 4K. The ID and password of cell phone is also stored in the EEPROM chip.

. The Figure 1(a) is the EEPROM chip packaging picture of Giantic Semiconductor, 1(b) is the package of Microchip Technology EEPROM chip.

Figure 1

Figure 2 are the allocation EEPROM chip in iPhone A12, A13 and A14

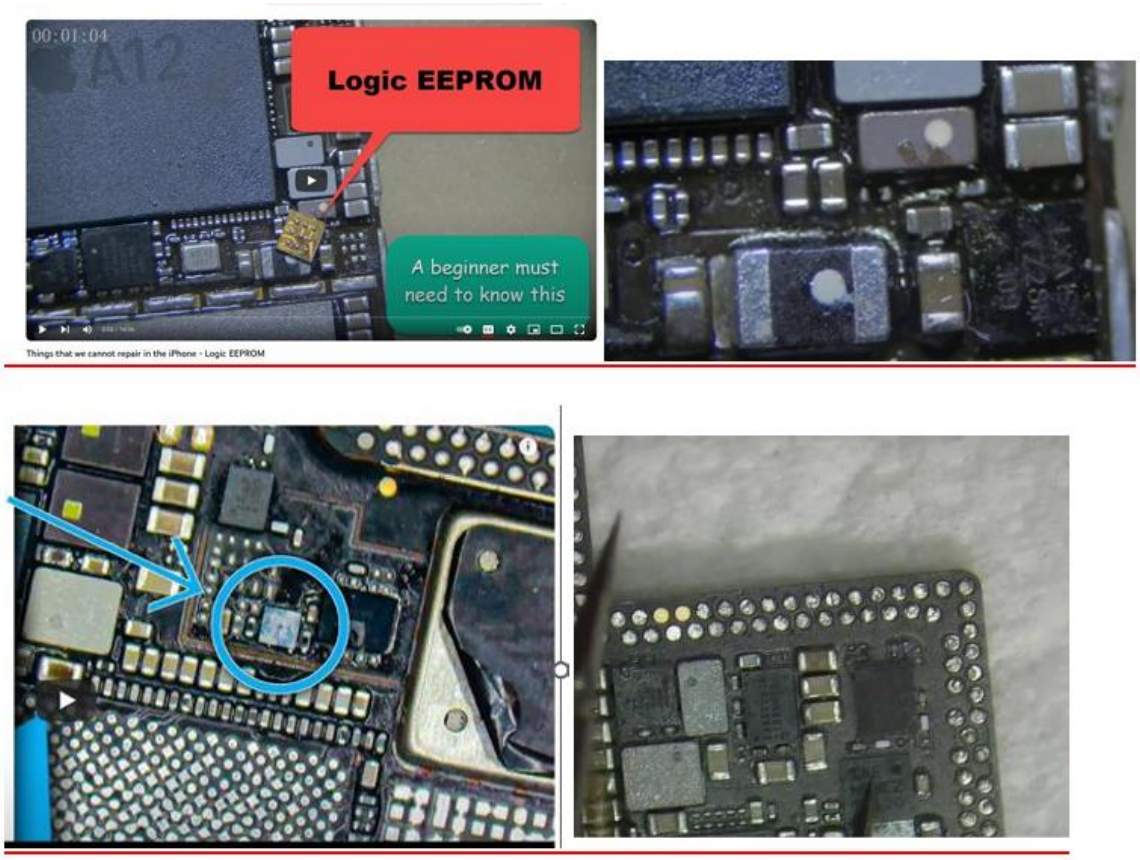

Figure 2

The reading logic of the of the 4K and 128K EEPROM chips of ST Microelectronics, Microchip Technology, Giantec Semiconductor and Fudan Microelectronics with model numbers GT24C04X, GT24C128X,GT24C256X, M24128XX, XX24C128XX, 24XX04X, AT24C04,24XX128,AT24X128 , FM24CXXX etc. all include the circuit shown in Figure3.

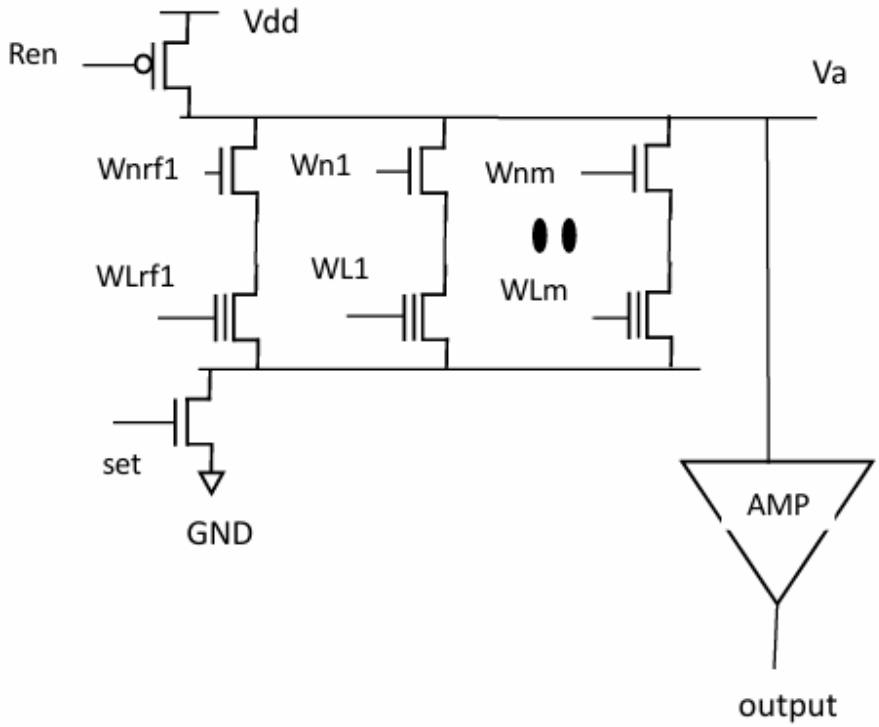

Figure 3 The read circuit of EEPROM chip

How the read circuit in Figure 3 works is explained in the following.

Step 1: Switch “set” signal to Vdd, the N transistor controlled by “set” signal is ON, the node Va is set to voltage GND.

Step2: both Wn1 and WL1 is switched to Vr, Switch “Ren” to GND, the P transistor conduct current I, if the state(stored bit) in the “ storage transistor” controlled by WL1 is “0”, “ storage transistor” controlled by WL1 is OFF, the node Va1 is charged with current I, then node Va become significant higher voltage than GND; if the state in the “storage transistor” is “1”, “storage transistor” is ON and conduct most of the current I from P transistor to the ground, the node Va is charged with little current which is much less than I, the voltage of node Va1 does not change very much from GND. The amplifier AMP output the corresponding value which corresponds to the voltage of node Va.

Claim chart of Claim 29 of US Patent RE45259 read “The read circuit of EEPROM chip” of Figure 3

claim	**Accused device:** Xiaomi Redmi Note 11, Xiaomi Redmi Note 12, Xiaomi Redmi Note 13 etc.; OPPO Reno7, OPPO Reno8, OPPO Reno 10 etc.; Vivo 50, Vivo 51 etc.; ZTE Axon 40, ZTE blade, ZTE blade X etc.; Lenovo, ThinkPhone etc.; iPhone X, iPhone 11, , iPhone 12, iPhone 13, iPhone 14 and iPhone 15 etc.; Samsung Galaxy A11, Samsung Galaxy A12, Samsung Galaxy A23, Samsung Galaxy A54 etc.; Google Pixel 5, Google Pixel 6, Google Pixel 7 etc.; TCL 10, TCL 30 etc.; Dell PowerEdge R640, Dell Mx7000, HPE ML350, Lenovo ThinkPad etc.; Nintendo Switch, Latest Xbox, ZOTAC gaming, HTCVIVE Pro etc. which have the

	EEPROM chips which have the circuit shown in Figure 3
Claim 29 *of* US patent RE45259	This claim 29 reads on the schematics of FIG.3.
A content addressable memory (CAM) system, comprising:	This is preamble
(1) a circuit segment configured to generate a circuit segment output based on whether at least one of a plurality of circuit segment inputs received by the circuit segment corresponds to a first logic level,	The operation of Figure 3 is as explained in the above, which is cited below Step 1: Switch "set" signal to Vdd, the N transistor controlled by "set" signal is ON, the node Va is set to voltage GND. Step2: both Wn1 and WL1 is switched to Vr, Switch "Ren" to GND, the P transistor conduct current I, if the state(stored bit) in the " storage transistor" controlled by WL1 is "0", " storage transistor" controlled by WL1 is OFF, the node Va1 is charged with current I, then node Va become significant higher voltage than GND; if the state in the "storage transistor" is "1", "storage transistor" is ON and conduct most of the current I from P transistor to the ground, the node Va is charged with little current which is much less than I, the voltage of node Va1 does not change very much from GND. The amplifier AMP output the corresponding value which corresponds to

	the voltage of node Va. Voltage Vr in WL1 is the "first logic level". this section of claim read the read circuit in Figure 3, then read all the accused devices which use the EEPROM.
(2) the circuit segment configured to set a node to a second logic level in response to an input signal, and	(2) Node Va is set to GND in Figure 3 as " Step 1: …….the node Va is set to voltage GND." Here GND corresponds to "second logic level". This claim section (2) read the circuit in Figure 3 , then read the accused device**.**
(3) to subsequently change the node to a third logic level in response to the plurality of circuit segment inputs, the circuit segment output corresponding to said third logic level.	(3) Step2: both Wn1 and WL1 is switched to Vr, Switch "Ren" to GND, the P transistor conduct current I, if the state(stored bit) in the " storage transistor" controlled by WL1 is "0", " storage transistor" controlled by WL1 is OFF**, the node Va1 is charged with current I, then node Va become significant higher voltage than GND;** where "significant higher voltage than GND" corresponds to the " third logic level". "The amplifier AMP output the corresponding value which corresponds to the voltage of node Va." Is read by "the circuit segment output corresponding to said third logic level." Claim section (3) read the circuit in

	Figure 3 , then read the accused device**.**

The above analysis are understandable to any qualified memory IC designers. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "When reviewing a 12(b)(6) motion, a court 'must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the non-moving party.'".

The following content is cited from page 19 to 20 of D38-1 of case 24-1428 :

3. In Dkt. No.90 Plaintiff argued for 3rd amended complaint

The EEPROM chips of Giantec Semiconductor, Fudan Microelectronics, Fremont Micro Devices (FMD), Hua Hong Semiconductor, Shanghai Belling, Puya Semiconductor, Microchip Technology and ST Microelectronics all have the reading circuit as shown in Figure 3. Each camera module of a cellphone has an EEPROM chip inside it, each cell phone has at least a camera module and an EEPROM chip which has the circuit schematic as shown in Figure 3. Xiaomi Redmi Note 11, Xiaomi Redmi Note 12, Xiaomi Redmi Note 13 etc.; OPPO Reno7, OPPO Reno8, OPPO Reno 10 etc.; Vivo 50, Vivo 51 etc.; ZTE Axon 40, ZTE blade, ZTE blade X etc.; Lenovo, ThinkPhone etc.; iPhone X, iPhone 11, , iPhone 12, iPhone 13, iPhone 14 and iPhone 15 etc.; Samsung Galaxy A11, Samsung Galaxy A12, Samsung Galaxy A23, Samsung Galaxy A54 etc.; Google Pixel 5, Google Pixel 6, Google Pixel 7 etc.; TCL 10, TCL 30 etc. all have a camera module, all have EEPROM chip inside it and all have the circuit shown in Figure 3.

https://stock.hexun.com/2019-05-06/197081741.html

In 2018 the EEPROM of Giantec Semiconductor take 42.72 % of the entire Market of EEPROM inside the camera module of cell phone world wide.

The following is the information that Giantec Semiconductor Co., Ltd have sold its EEPROM to Samsung, Huawei, vivo, Xiaomi, OPPO, etc.

m.chinaaet.com/article/3000115822

EEPROM chip supplier, Giantec Semiconductor Co., Ltd., its self designed EEPROM chips have been widely used in major mainstream mobile phone brands, such as Samsung, Huawei, vivo, Xiaomi, OPPO, etc.

The following content is cited from from: page 9 of D34 in case 24-1428

EEPROM inside the camera module of cell phone worldwide. The following is the information that Giantec Semiconductor Co., Ltd have sold its EEPROM to Samsung, Huawei, vivo, Xiaomi, OPPO, etc.

m.chinaaet.com/article/3000115822

EEPROM chip supplier, Giantec Semiconductor Co., Ltd., its self-designed EEPROM chips have been widely used in major mainstream mobile phone brands, such as Samsung, Huawei, vivo, Xiaomi, OPPO. More detailed information on the customers and EEPROM model numbers of Giantec Semiconductor could be found in

www.giantec-semi.com

such as the model number of EEPROM: GT24C02B, GT24C04A, … GT24C128D, GT24C256C … . Up to now the EEPROM of Giantec Semiconductor take much more than 42.72 % of the entire Market of EEPROM inside the camera module of cell phone worldwide, the EEPROM chips of Giantec Semiconductor, Fudan Microelectronics,

Hua Hong Semiconductor and Shanghai Belling take much more than 90% of the entire Market of EEPROM inside the camera module of cell phone worldwide. Based on the information EEPROM chips of Fudan Microelectronics, Hua Hong Semiconductor and Shanghai Belling all copied the read circuit of the EEPROM chips of Giantec Semiconductor. The read circuit of the EEPROM chips of Giantec Semiconductor read the claim 29 of US RE45259.

The following content is cited from the ARGUMENT of D38-1 of case 24-1428

ARGUMENT

1. 2nd amended complaint should not be dismissed.

2nd amended complaint accused the EEPROM chips used in the cell phones sold by Amzon.com, Inc. including Xiaomi Redmi Note 11, Xiaomi Redmi Note 12, Xiaomi Redmi Note 13 etc.; OPPO Reno7, OPPO Reno8, OPPO Reno 10 etc.; Vivo 50, Vivo 51 etc.; ZTE Axon 40, ZTE 21 Case: 24-1428 Document: 38-1 Page: 28 Filed: 10/29/2024 blade, ZTE blade X etc.; Lenovo, ThinkPhone etc.; iPhone X, iPhone 11, , iPhone 12, iPhone 13, iPhone 14 and iPhone 15 etc.; Samsung Galaxy A11, Samsung Galaxy A12, Samsung Galaxy A23, Samsung Galaxy A54 etc.; Google Pixel 5, Google Pixel 6, Google Pixel 7 etc.

Based on the information that all the cell phones contains the EEPROM chips, and all the EEPROM chips has the reading circuit as Figure 1 in page 9 and Figure 3 in page 15. The circuit in Figure 3 is half (block 1) of Figure 1. The circuit in Figure 1 read claim 29 of US patent RE45259 as explained in claim chart from page 10 to page12. No

matter what model number of EEPROM chips the internal reading circuit is all same as Figure 1 or Figure 3. The difference is the interface IO and the density and capacity of the EEPROM chips. The EEPROM chips of Giantec Semiconductor, Fudan Microelectronics, Fremont Micro Devices (FMD), Hua Hong Semiconductor, Shanghai Belling, Puya Semiconductor, Microchip Technology and ST Microelectronics all have the reading circuit as shown in Figure 3 or Figure 1. Figure3 is part of Figure 1.

The Exhibit X1 of 2nd amended complaint clearly stated that the accused cellphones in the above contains the EEPROM chips, EEPROM chips has the internal reading circuits as shown in Figure 1, Figure 1 infringes the claim 29 as shown in claim chart from page 10 to page 12. So the accused cell phones infringes the claim 29 of US patent RE45259. 2nd amended complaint "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). When 22 reviewing a 12(b)(6) motion, a court "must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the non-moving party." The questions which the trial court use to dismissed the 2nd amended complaint, such as the model numbers of the EEPROM, or the connection or relation to TCAM/CAM, should not be the causes to dismiss the 2nd amended complaint because of "must accept as true for all the factual allegations."

2nd amended complaint should not be dismissed. Plaintiff asks this court to reverse and vacate the order No. 95 entered by this magistrate judge.

2. 3rd amended complaint should be allowed to file.

No.	filed date	US district court	Defendant	Asserted patents	Accused devices
1	Original complaint ECF.No.1on Jan.13,2023	Middle Florida	Meta	RE45259	Meta QuestPro, Oculus Quest 2
2	First Amended complaint ECF.No. 33 on June7, 2023	Middle Florida	Meta Amazon, Target, Best Buy	RE45259	Meta QuestPro, Oculus Quest 2
			Amazon	6744653 6999331	Cisco ASR1000 Routers etc.
3	2nd Amended complaint ECF No.71 on Nov.7, 2023	North Cali	Amazon	RE45259	cell phone such as model: Xiaomi Redmi Note 11etc.; OPPO Reno 10 etc.; Vivo 50, etc.; ZTE blade X etc.; Lenovo, ThinkPhone etc.; iPhone 15 etc.; Samsung Galaxy A54 etc.; Google pixel 7 etc.; TCL 10, TCL 30 etc.
4	3rd **proposed** amended complaint ECF No. 86 On December 10, 2023	North Califor nia	Amazon	RE45259	cell phone such as model: Xiaomi Redmi Note 11etc.; OPPO Reno 10 etc.; Vivo 50, etc.; ZTE blade X etc.; Lenovo, ThinkPhone etc.; iPhone 15 etc.; Samsung Galaxy A54 etc.;

The above table listed the content of each and every complaint.). Although I filed voluntary dismissal of Meta in Dkt. No.40) on July 20, 2023 in US district court of middle Florida. After transferred to US district of Northern California the case was assigned to magistrate judge Nathanael M. Cousins on September 12, 2023 with No. 23-cv-

04679-NC. (Dkt.No. 49), and Meta's counsels Michael J. Sacksteder and Jonathan T. McMichael continue to file brief with Amazon.com, Inc. and file the case management statement etc. Judge still use the case title as Huang v. Meta-NC. (see Dkt.No. 49).

On November 7, 2023 I have to file 2nd amended complaint only against Amazon.com, Inc. for selling cell phone products, the 2nd amended complaint is a completely new complaint for only Amazom.com for selling the new products in the new court. 2nd amended complaint is completely different and independent from the complaint and first amended complaint in the US Court of middle Florida.

The 2nd amended complaint as a fact is the first complaint against Amazon.com for selling cell phone products. The Court should allow Plaintiff to file 3rd amended complaint.

Plaintiff filed Dkt.No.83 to move for leave to file 3rd amended complaint. Defendant filed Dkt. No. 84 to against plaintiff's request to file 3rd amended complaint.

Magistrate judge Nathanael M. Cousins started to trap me and requested me to file a proposed red line 3rd amended complaint in Dkt.No.85 on December 8, 2023. Magistrate judge Nathanael M. Cousins' order Dkt.No 85 violates Fed. R.C.P 15(a)(2) which requires the court should freely give leave when justice so requires. See Dkt.No.134 of Case 4:21-cv-09527-HSG.

Magistrate judge Nathanael M. Cousins requested me to file proposed red line 3rd amended complaint in Exhibit X1 of Dkt. No. 87 and the supporting argument in Dkt.No.90, some of which is cited in page 12 to page 20. I explained that the EEPROM chips are also used in the camera module for camera control and calibration of the cell phones and as logic control for cell phone storage as well as the photos, I provides the popular models of EEPROM chips.

Also I provide : EEPROM chips are used for camera control and calibration, which use 64K,128K and 256K EEPROM chip, each camera need one EEPROM chip; EEPROM chip is also used to control the access of CPU to memory storage, each CPU in cell phone use one EEPROM chip which density are 2K or 4K. The ID and password of cell phone is also stored in the EEPROM chip.the evidence that The EEPROM chips of Giantec Semiconductor, Fudan Microelectronics, Fremont Micro Devices (FMD), Hua Hong Semiconductor, Shanghai Belling, Puya Semiconductor, Microchip Technology and ST Microelectronics all have the reading circuit as shown in Figure 3.

Xiaomi Redmi Note 11, Xiaomi Redmi Note 12, Xiaomi Redmi Note 13 etc.; OPPO Reno7, OPPO Reno8, OPPO Reno 10 etc.; Vivo 50, Vivo 51 etc.; ZTE Axon 40, ZTE blade, ZTE blade X etc.; Lenovo, ThinkPhone etc.; iPhone X, iPhone 11, , iPhone 12, iPhone 13, iPhone 14 and iPhone 15 etc.; Samsung Galaxy A11, Samsung Galaxy A12, Samsung Galaxy A23, Samsung Galaxy A54 etc.; Google Pixel 5, Google Pixel 6, Google Pixel 7 etc.; TCL 10, TCL 30 etc. all have a camera

module, all have EEPROM chip inside it and all have the circuit shown in Figure 3.

https://stock.hexun.com/2019-05-06/197081741.html In 2018 the EEPROM of Giantec Semiconductor take 42.72 % of the entire Market of EEPROM inside the camera module of cell phone world wide.

The following is the information that Giantec Semiconductor Co., Ltd have sold its EEPROM to Samsung, Huawei, vivo, Xiaomi, OPPO, etc.

m.chinaaet.com/article/3000115822

EEPROM chip supplier, Giantec Semiconductor Co., Ltd.,its self designed EEPROM chips have been widely used in major mainstream mobile phone brands, such as Samsung, Huawei, vivo, Xiaomi, OPPO, etc.

From page 15 to page 20 with Figure 3 and the claim chart, the circuit of Figure 3 was explained to infringe the claim 29 of US patent RE45259.

Proposed 3rd amended complaint "state a claim to relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). When reviewing a 12(b)(6) motion, a court "must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the non-moving party." Plaintiff's proposed 3rd amended complaint should be allowed to file.

The following content is from magistrate judge's order Dkt.No. 95 *"Leave to amend should be freely granted unless amendment would be futile. Fed. R. Civ. P. 15. Having carefully considered the record, the Court concludes that leave to amend would be futile. Starting with Meta's motion to dismiss the first amended complaint, Plaintiff has been on notice of the confusing and disconnected nature of his pleadings. See ECF 54 at 6-7. However, at every opportunity, Plaintiff has failed to meaningfully engage with either Meta or Amazon's critiques. While proceeding without an attorney, other courts have noted Plaintiff "is a sophisticated pro se litigant, an engineer, and a business owner." Xiaohua Huang v. Huawei Techs. Co., No. 15-cv-01413-JRG (RSP), 2017 WL 1133201, at *4 (E.D. Tex. Mar. 27, 2017), aff'd, 735 F. App'x 715 (Fed. Cir. 2018). Thus, the Court construes Plaintiff's refusal to clarify his pleadings, in light of his prior experience in patent litigation, to mean any further amendment would be futile."*

All what magistrate judge wrote in the above is mainly personal attack, especially citing case Xiaohua Huang v. Huawei Techs. Co., No. 15-cv-01413-JRG (RSP), magistrate judge is imitating Huawei's case to abuse pro se Plaintiff. Magistrate judge completely ignored what Plaintiff filed in proposed 3rd amended complaint and its supporting argument in Dkt.No.90.

Plaintiff asks this court to reverse the Order Dkt. No 95 entered by Magistrate judge and allow Plaintiff to file 3rd amended complaint.

The opinion of the Panel Judges are completely wrong because the Brief and reply brief well explained how the EEPROM are used in

the accused cell phone devices and how the EEPROM read the claim of US patent RE45259.

Plaintiff-Appellant respectfully request to rehear and rehear en banc this case as Justice requires.

Dated: Feb. 27, 2025

Respectfully Submitted,

Xiaohua Huang

P.O. Box 1639, Los Gatos, CA 95031
Email: xiaohua_huang@hotmail.com
Tel: 669 273 5633

CERTIFICATE OF COMPLIANCE

1. This petition for rehearing en banc complies with the type-volume limitations of Federal Rule of Appellate Procedure 35(b)(2)(A) because it contains 3,890 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word in Century Schoolbook 14-point font.

/s/ xiaohua huang

NOTE: This disposition is nonprecedential.

United States Court of Appeals for the Federal Circuit

XIAOHUA HUANG,
Plaintiff-Appellant

v.

AMAZON.COM, INC.,
Defendant-Appellee

2024-1428

Appeal from the United States District Court for the Northern District of California in No. 5:23-cv-04679-NC, Magistrate Judge Nathanael M. Cousins.

Decided: January 28, 2025

XIAOHUA HUANG, Los Gatos, CA, pro se.

ROBERT CRUZEN, Klarquist Sparkman, LLP, Portland, OR, for defendant-appellee. Also represented by SARAH ELISABETH JELSEMA.

Before LOURIE, REYNA, and CHEN, *Circuit Judges*.

PER CURIAM.

Xiaohua Huang appeals from a decision by the United States District Court for the Northern District of California, which dismissed his Second Amended Complaint (SAC) and denied him leave to file his proposed Third Amended Complaint (TAC). *See Huang v. Amazon.com Inc.*, No. 23-CV-04679, 2024 WL 413355 (N.D. Cal. Jan. 26, 2024) (*Order*). For the following reasons, we *affirm*.

BACKGROUND

Mr. Huang owns U.S. Patent Nos. 6,744,653, 6,999,331, and RE45,259 ('259 patent). These patents relate to ternary content addressable memory technology in the field of semiconductor chips.

Mr. Huang initially filed suit against Meta Platforms, Inc. (Meta) in the United States District Court for the Middle District of Florida, alleging direct infringement and indirect infringement of the '259 patent. Appx. 3–4.[1] He then filed a First Amended Complaint (FAC), asserting all three patents and adding Walmart, Inc., Best Buy Co., Inc., and Amazon.com, Inc. (Amazon) as defendants. Appx. 6–7. The United States District Court for the Middle District of Florida transferred the case to the United States District Court for the Northern District of California (district court), and Meta moved to dismiss the FAC. S.A. 13.[2] Meta argued that Mr. Huang's FAC (1) identified the accused products too broadly and (2) alleged only conclusory statements. *Id.* at 23.

In response to Meta's motion to dismiss, Mr. Huang filed his SAC, naming Amazon as the sole defendant, and asserting only the '259 patent. Appx. 16–20. Unlike the FAC, the SAC included Exhibit X1. Appx. 22–29. This

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[1] Appx. refers to the appendix submitted with the Appellant's Informal Opening Brief.

[2] S.A. refers to the supplemental appendix submitted with the Appellee's Response Brief.

exhibit contained a description of EEPROM chips,[3] three figures, and a claim chart. *Id.* The description and claim chart alleged that most EEPROM chips infringe claim 29 of the '259 patent. *See id.* at 23, 27–29. The description stated that EEPROM chips appear in a variety of consumer electronics, such as cell phones and computers. *Id.* at 23. It further provided a list of accused products that allegedly contain EEPROM chips. *Id.* The exhibit further stated that Figure 1 is a schematic of a circuit Mr. Huang claimed he "extracted from the EEPROM chips of most major EEPROM providers since the year of 2017." *Id.* But this figure is almost entirely redacted. Figure 3 shows a waveform (i.e., voltage vs. time) for different nodes of the EEPROM circuit depicted in Figure 1, and it too is largely redacted. The subsequent claim chart maps each claim element of claim 29 to the allegedly infringing EEPROM chip depicted in redacted Figure 1.

Amazon moved to dismiss Mr. Huang's SAC. S.A. 28. Amazon argued that the heavily redacted figures in Exhibit X1, coupled with vague statements about the EEPROM chip illustrated in Figure 1, failed to provide "fair notice" of Mr. Huang's claims. *Id.* at 40. Amazon relatedly argued that the SAC "does not plausibly allege with any specificity that any of [the accused] products when sold or offered for sale by Amazon included infringing memory systems." *Id.* The SAC, according to Amazon, offered only a conclusory statement that the three-dozen-plus accused

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[3] EEPROM chips, short for electrically erasable programmable read-only memory chips, are a type of memory chip that can retain data without power. *What Is EEPROM and How Does it Work?*, Giantec Semiconductor, https://en.giantec-semi.com/Newsroom/What-Is-EEPROM-and-How-Does-it-Work (last visited Jan. 8, 2025).

products contained the allegedly infringing EEPROM chip. *Id.* at 39–40.

Mr. Huang, in response, sought permission to file a third amended complaint. Appx. 30. The district court ordered Mr. Huang to first submit a redlined version highlighting his proposed changes. His proposed TAC updated Exhibit X1 and added a new exhibit, Exhibit 2. Appx. 37–46. In the updated version of Exhibit X1, Mr. Huang replaced the figures entirely and provided a new description. *See id.* The updated description, among other things, alleged that EEPROM chips were "widely used" in the accused products, *id.* at 39, and that most consumer electronics manufacturers obtained their EEPROM chips from a select few EEPROM providers. *Id.* at 40. The description indicated that Mr. Huang reverse engineered the 4K and 128K EEPROM chips from various providers. In doing so, he concluded that certain model numbers infringed. *Id.* at 41. Figure 1 in the amended Exhibit X1 shows general pictures of Giantec Semiconductor's EEPROM chips. Figure 2 shows snapshots of an opened-up iPhone in a how-to-repair video accompanied by an arrow pointing to the alleged location of the EEPROM chip.

The district court granted Amazon's motion to dismiss the SAC and denied Mr. Huang permission to file his TAC. *Order*, 2024 WL 413355, at *1. The district court explained that the SAC "fails to specify which particular products are at issue." *Id.* at *3. The district court also noted that Mr. Huang's SAC simply concluded the accused products have the EEPROM chip in Figure 1 of Exhibit X1 without providing any factual allegations. *Id.*

The district court then denied Mr. Huang leave to file his TAC. It explained that granting leave to amend "would be futile" because of Mr. Huang's persistent failure to cure defects, despite having a chance to do so. *Id.* at *4. The district court also observed that, even if his TAC were operative, Mr. Huang still failed to state a claim. It

reiterated that Mr. Huang continued to append a catch-all "etc." in the accused list of products, which made it impossible to define the products at issue. *Id.* at *3. The district court also noted that Mr. Huang's TAC failed to tie any allegedly infringing EEPROM chip model number to a specific accused product. *Id.*

Mr. Huang appeals both the district court's dismissal of his SAC and refusal to let him file his proposed TAC. We have jurisdiction under 28 U.S.C. § 1295(a)(1).

DISCUSSION

We review a district court's decisions on motions to dismiss and motions for leave to amend according to applicable regional circuit law. *Mobile Acuity Ltd. v. Blippar Ltd.*, 110 F.4th 1280, 1288 (Fed. Cir. 2024).

The Ninth Circuit applies de novo review of a district court's grant of a motion to dismiss, accepting as true all plausible factual allegations in the complaint. *Holt v. Cnty. of Orange*, 91 F.4th 1013, 1017 (9th Cir. 2024). The court must treat well-pleaded factual allegations as true but can discount conclusory statements. *Recinto v. U.S. Dep't of Veterans Affs.*, 706 F.3d 1171, 1177 (9th Cir. 2013). A court likewise is "not bound to accept as true a legal conclusion couched as a factual allegation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Although pro se pleadings get liberally construed, "a plaintiff must still present factual allegations sufficient to state a plausible claim for relief." *Gonzalez v. Bank of Am., N.A.*, 643 F. App'x 665, 665 (9th Cir. 2016) (citing *Hebbe v. Pliler*, 627 F.3d 338, 341–42 (9th Cir. 2010)).

The Ninth Circuit reviews a denial of leave to amend for abuse of discretion. *Design Data Corp. v. Unigate Enter., Inc.*, 847 F.3d 1169, 1172 (9th Cir. 2017). "In assessing the propriety of a motion for leave to amend, [the Ninth Circuit] consider[s] five factors: (1) bad faith; (2) undue

delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether the plaintiff has previously amended his complaint." *Nunes v. Ashcroft*, 375 F.3d 805, 808 (9th Cir. 2004). A district court has particularly broad discretion to deny leave when it has already given leave to amend. *Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d 1112, 1116 (9th Cir. 2014).

I

The district court properly dismissed Mr. Huang's SAC.[4] As an initial matter, though Mr. Huang offers some examples of accused products, his usage of "including but not limited to" and repeated usage of "etc." fails to place Amazon "on notice of what activity is being accused of infringement." *Bot M8 LLC v. Sony Corp. of Am.*, 4 F.4th 1342, 1352 (Fed. Cir. 2021) (cleaned up).

The SAC, moreover, falls short because it merely alleges that the unbounded list of accused products "contains the IC chip" that infringes claim 29 of the '259 patent. Appx. 18. This allegation simply concludes, with no factual basis, that the supposedly infringing circuit in Figure 1 of Exhibit X1 exists in each of the accused products. Even if the illustrated EEPROM chip plausibly infringes claim 29, the complaint fails to include factual allegations linking the allegedly infringing chip to the accused products.

Mr. Huang contends that, because all the cell phones in his list of accused products have EEPROM chips, and because all such EEPROM chips (or, at the very least, the EEPROM chips of major providers) have the infringing circuit in Figure 1 of Exhibit X1, all cell phones thus infringe claim 29 of the '259 patent. Appellant's Informal Opening

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[4] Mr. Huang challenges only the district court's dismissal of direct infringement of claim 29. We thus limit our review of the Second Amended Complaint to only direct infringement of claim 29.

Br. 22. But these allegations do not appear in the SAC. *See* Appx. 16–29; *Friedman v. AARP, Inc.*, 855 F.3d 1047, 1051 (9th Cir. 2017) ("Our review is confined to the complaint's face because, as a general rule, we may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." (citation omitted)). In any event, these statements fall short. They simply assume that either all or a majority of cell phones have the infringing circuit.

II

The district court did not abuse its discretion by denying Mr. Huang leave to file his TAC. The district court correctly observed that Mr. Huang had consistently refused to fix certain defects in his pleadings, despite having notice of these issues. *Order*, 2024 WL 413355, at *4. The FAC, for example, identified the accused products as "including but not limited to Meta Quest Pro, Oculus Quest 2 etc." Appx. 9. Meta's motion to dismiss argued that such a list "identifies only broad, vague categories" of accused products. S.A. 23. Yet the proposed TAC's list of accused products suffers from these same defects. *See* Appx. 35. In light of Mr. Huang's repeated failures to cure this defect, the district court did not abuse its discretion in denying leave to file the TAC. *See United States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1183 (9th Cir. 2016) ("As a general rule, leave to amend may be denied when a plaintiff has demonstrated a 'repeated failure to cure deficiencies by amendments previously allowed.'" (citation omitted)).

The district court additionally concluded that Mr. Huang's TAC would still fail on the merits, and we see no abuse of discretion here. *Order*, 2024 WL 413355, at *3; *see Finsa Portafolios, S.A. de C.V. v. OpenGate Cap., LLC*, 769 F. App'x 429, 432 (9th Cir. 2019) ("The district court has discretion to deny leave to amend if the amended complaint would be 'subject to dismissal.'" (quoting *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991))). As discussed above, the TAC creates a virtually limitless list of accused

products, which fails to place Amazon "on notice of what activity . . . is being accused of infringement." *Bot M8*, 4 F.4th at 1352 (omission in original) (citation omitted); *see* Appx. 33–34. Moreover, the TAC still fails to tie the allegedly infringing EEPROM chip to any accused product. Mr. Huang alleges that Samsung, Xiaomi, Lenovo, and other brands all "are end users of Giantec Semiconductor's [infringing] EEPROM," based only on "public information." Appx. 40. But the TAC offers no other detail or explanation of the "public information."

Mr. Huang also contends that we should treat his TAC as a new first amended complaint because his SAC was the first complaint to be filed in the Northern District of California and name Amazon as the sole defendant. *See* Appellant's Informal Opening Br. 24–25. He cites no authority for this principle, and we decline to adopt such a principle here.

CONCLUSION

We have considered Mr. Huang's remaining arguments and find them unpersuasive. We therefore *affirm* the district court.

AFFIRMED

COSTS

No costs.