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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICRON TECHNOLOGY, INC.,
Plaintiff,
v.
UNITED MICROELECTRONICS
CORPORATION, et al.,
Defendants.

Case No. [17-cv-06932-MMC](#)

**ORDER GRANTING JINHUA'S
MOTION TO DISMISS; AFFORDING
PLAINTIFF LEAVE TO FILE
AMENDED COMPLAINT**

Re: Dkt. No. 106

Before the Court is defendant Fujian Jinhua Integrated Circuit Co., Ltd.'s ("Jinhua") "Motion to Dismiss for Insufficient Process and for Lack of Personal Jurisdiction," filed October 2, 2018. Plaintiff Micron Technology, Inc. ("Micron") has filed opposition, to which Jinhua has replied. Having read and considered the papers filed in support of and in opposition to the motion, the Court rules as follows.¹

BACKGROUND

In its complaint, Micron alleges it is a "semiconductor-producing compan[y]" with a "portfolio of high performance memory technologies" including "Dynamic Random Access Memory ('DRAM') integrated circuits" (see Compl. ¶¶ 1, 4, 5), that defendant United Microelectronics Corporation ("UMC") is a "semiconductor foundry" (see Compl. ¶ 2), and that Jinhua is a "company founded in Mainland China" that "plans to be in

¹By order filed November 20, 2018, the Court took Jinhua's motion under submission and deferred ruling thereon until December 10, 2018, to afford Micron an additional opportunity to effectuate service.

1 commercial DRAM production" (see Compl. ¶ 8).

2 According to Micron, UMC and Jinhua "executed a deal," under which UMC,
3 although it "lack[ed] any significant, independent intellectual property in advanced DRAM
4 technology," would "provide Jinhua with DRAM process technology and enable Jinhua to
5 become a leading force in the DRAM business." (See Compl. ¶ 2.) Micron alleges that
6 UMC and Jinhua "developed and set in motion a plan for UMC to recruit key personnel
7 from Micron's Taiwanese affiliate," Micron Memory Taiwan Co., Ltd. ("MMT"). (See
8 Compl. ¶ 2.a.) In particular, Micron alleges that "UMC and Jinhua conspired to induce
9 former MMT employees to misappropriate electronic and paper files containing Micron
10 trade secrets from MMT and to deliver those trade secrets to UMC" (see Compl.
11 ¶ 2.b), that UCM then "recruit[ed] various MMT personnel with access to Micron trade
12 secrets" (see Compl. ¶ 25), that two MMT employees, prior to resigning from MMT and
13 beginning employment with UMC, took from Micron trade secrets at the "direct[ion]" of
14 UMC (see Compl. ¶¶ 10-12), and that UMC "incorporated Micron's trade secrets into
15 technologies that it transferred and/or plans to transfer to Jinhua" (see Compl. ¶ 2.c).

16 Based on the above allegations, Micron alleges against UMC and Jinhua the
17 following four causes of action: (1) Count I, titled "Misappropriation of Trade Secrets
18 Under the Defend Trade Secrets Act[,] 18 U.S.C. § 1836(b)," (2) Count II, titled "Civil
19 RICO[,] 18 U.S.C. § 1962(c)," (3) Count III, titled "Civil RICO [,] 18 U.S.C. § 1962(d)," and
20 (4) Count IV, titled "Trade Secret Misappropriation Under the California Uniform Trade
21 Secrets Act[,] Cal. Civ. Code § 3426."

22 DISCUSSION

23 By the instant motion, Jinhua argues the complaint should be dismissed for
24 insufficient service of process and lack of personal jurisdiction.

25 A. Service of Process

26 Under the Federal Rules of Civil Procedure, a foreign corporation may be served
27 at "a place not within any judicial district of the United States" in the same manner as that
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1 by which an individual may be so served, see Fed. R. Civ. P. 4(h)(2),² including, inter alia,
2 the following: (1) "unless prohibited by the foreign country's law," by "using any form of
3 mail that the clerk addresses and sends to the [corporation] and that requires a signed
4 receipt," see Fed. R. Civ. P. 4(f)(2)(C); and (2) "by other means not prohibited by
5 international agreement, as the court orders," see Fed. R. Civ. P. 4(f)(3).

6 In August 2018, Micron sought to effectuate service under Rule 4(f)(2)(C),
7 specifically, by causing the Clerk of Court to mail a copy of the summons and complaint
8 to Stephen Chen, the President of Jinhua (see Doc. Nos. 89, 90), which method of
9 service Jinhua, by the instant motion, then challenged. After the motion was filed,
10 however, the Court, pursuant to Rule 4(f)(3), granted Micron leave to serve Jinhua by
11 other means, specifically, service by email sent to Jinhua's United States counsel of
12 record (see Order, filed November 20, 2018), which service was accomplished on
13 November 21, 2018 (see Proof of Service, filed November 21, 2018).

14 Accordingly, as Jinhua has now been properly served pursuant to Rule 4(f)(3),
15 Jinhua's challenge to Micron's earlier attempt to effectuate service is moot.

16 **B. Personal Jurisdiction**

17 Jinhua contends Micron cannot establish the Court's personal jurisdiction over
18 Jinhua.

19 Personal jurisdiction may be "general" or "specific." See Bancroft & Masters, Inc.
20 v. Augusta Nat'l Inc., 223 F.3d 1082, 1086 (9th Cir. 2000). Here, Micron alleges the
21 Court has specific jurisdiction over Jinhua. (See Compl. ¶ 17.) A court has specific
22 jurisdiction over a defendant if "(1) the defendant has performed some act or
23 consummated some transaction within the forum or otherwise purposefully availed [itself]
24 of the privileges of conducting activities in the forum, (2) the claim arises out of or results
25 from the defendant's forum-related activities, and (3) the exercise of jurisdiction is

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²The one exception is personal delivery.

1 reasonable." See Bancroft & Masters, 223 F.3d at 1086.³

2 Micron argues that Jinhua has engaged in three forum-related activities that
3 suffice to support a finding that Jinhua is subject to personal jurisdiction. As set forth
4 below, however, the Court finds Micron has failed to allege sufficient facts to support a
5 finding that any of those activities supports a finding of specific jurisdiction. See
6 Butcher's Union Local No. 498 v. SDC Investment, Inc., 788 F.2d 535, 539-40 (9th Cir.
7 1986) (holding plaintiff must "allege and eventually prove" facts to support finding of
8 personal jurisdiction; further holding plaintiff, in opposing motion to dismiss for lack of
9 personal jurisdiction, may not rely on factual assertions not pleaded in complaint).

10 First, Micron argues, and offers evidence it asserts supports a finding, that Jinhua
11 has applied to and obtained from the United States Patent and Trademark Office
12 ("USPTO") patents that are based on Micron's trade secrets. Although a defendant that
13 applies for and obtains a patent from the USPTO is deemed to have "purposefully
14 directed its activities at the United States," see Touchcom, Inc. v. Bereskin & Parr, 574
15 F.3d 1403, 1416 (Fed. Cir. 2009), Micron has not based any of its claims on those
16 activities, and, consequently, any such contacts cannot support a finding of specific
17 jurisdiction here, see Butcher's Union Local No. 498, 788 F.2d at 540; see also Bancroft
18 & Masters, 223 F.3d at 1086 (holding "second requirement for personal jurisdiction is that
19 the contacts constituting purposeful availment must be the ones that give rise to the
20 current suit"); see, e.g., American Wave Machines, Inc. v. Surf Lagoons, Inc., 2014 WL
21 10475281, at *8 (S.D. Cal. November 12, 2014) (holding plaintiff's evidence that
22 defendant obtained patent from USPTO did not support finding of personal jurisdiction
23 where plaintiff's claims did "not arise out of or relate to [defendant's] patent").

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25 ³Micron argues, and the Court agrees, that the relevant forum here is the United
26 States, as Micron has alleged federal claims, specifically, claims under 18 U.S.C.
27 §§ 1836(b), 1962(c), and 1962(d), and Jinhua has not identified a state in which it would
28 be subject to jurisdiction. See Holland America Lina Inc v. Wartsila North America, Inc.,
485 F.3d 450, 461-62 (9th Cir. 2007) (holding where plaintiff alleges federal claim and
defendant does not identify state in which it would be subject to jurisdiction, court may
consider defendant's "contacts with the nation as a whole").

1 Second, Micron argues, and offers evidence it asserts supports a finding, that
 2 Jinhua employees, while in California in October 2016, met with "crucial equipment
 3 suppliers" from which Jinhua "purchas[ed] equipment to manufacture DRAM technology."
 4 (See Micron's Opp. at 7:1, 16:18, 18:13.) Although such activities would appear to
 5 constitute purposeful availment of the privilege of doing business in the United States,
 6 see Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-76 (1985) (holding defendant
 7 who "has created continuing obligations between himself and residents of the forum" has
 8 "availed himself of the privilege of conducting business there"), Micron has not based any
 9 claim thereon, and, as discussed above, such contacts thus do not support a finding of
 10 specific jurisdiction, see Butcher's Union Local No. 498, 788 F.2d at 540; Bancroft &
 11 Masters, 223 F.3d at 1086.

12 Lastly, Micron relies on allegations in its complaint that Jinhua, in June 2016,
 13 "posted material on the U.S.-based organization CASPA's website advertising numerous
 14 Jinhua job openings in a variety of DRAM positions" and, in October 2016, "sent a
 15 travelling delegation to Silicon Valley . . . to recruit additional personnel for the DRAM
 16 project" at a "job fair," during which Jinhua stated it would begin "mass production of its
 17 first DRAM product beginning only one year later." (See Compl. ¶¶ 35-36.)⁴ According to
 18 the complaint, said activities were "steps in furtherance of the [above-described]
 19 conspiracy" between UMC and Jinhua. (See Compl. ¶ 35.) There is no dispute that a
 20 misappropriation claim under § 1836 can be based on "conduct occurring outside the
 21 United States" where "an act in furtherance of the offense was committed in the United
 22 States," see 18 U.S.C. § 1837,⁵ nor has Jinhua disagreed that attempts within the United
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24 ⁴Additionally, Micron has offered evidence that Jinhua did, in fact, attend and make
 25 presentations at the job fair, and that Jinhua also obtained resumes from attendees.
 26 (See, e.g., Clark Decl. Exs. 23 {Doc. No. 88}, 26 at 22:2-4 [Doc. No. 95-5], 27 [Doc. No.
 75-57].)

27 ⁵As noted, Count I asserts a claim under § 1836. Counts II and III, which assert
 28 RICO claims, are based on the alleged violations of § 1836. (See Compl. ¶¶ 64-66, 75-
 76.)

1 States to recruit employees for work overseas can constitute purposeful avilment. As
2 Jinhua points out, however, the complaint here does not include facts to support a finding
3 that Jinhua's recruitment efforts in the United States were made in furtherance of any act
4 of misappropriation identified in the complaint. Rather, to the extent the complaint makes
5 reference to such recruitment efforts, it includes only general, conclusory allegations as
6 to furtherance (see Compl. ¶¶ 17, 35), which allegations are insufficient to support a
7 finding of personal jurisdiction. See Butcher's Union Local No. 498, 788 F.2d at 540
8 (finding insufficient "nonspecific conclusory statement" in complaint offered to establish
9 personal jurisdiction; observing "complaint must include something more than mere
10 conclusory statements unsupported by specific facts").⁶

11 Accordingly, the complaint is subject to dismissal.⁷

12 **C. Leave to Amend**

13 In its opposition, Micron requests leave to amend to plead additional jurisdictional
14 facts.

15 A "court should freely give leave [to amend] when justice so requires." Fed. R.
16 Civ. P. 15(a)(2). In the instant case, it appears Micron, at the time it filed its complaint,
17 was not aware of various events it has described in its opposition, in particular, Jinhua's
18 obtaining patents from the USPTO and meeting with and ordering products from
19 suppliers in California. Further, it appears Micron may be able to plead facts to support
20 its conclusory assertion that Jinhua's recruitment efforts in the United States were in
21 furtherance of one or more acts of misappropriation.

22 Accordingly, Micron's request will be granted.

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25 ⁶In its opposition, Micron argues, in essence, that Jinhua sought to recruit
26 employees in the United States who, if hired, would assist it in producing products that
27 incorporated Micron's trade secrets. The complaint, however, includes no such
28 allegations.

⁷In light of such ruling, the Court does not address herein Jinhua's additional
arguments in support of dismissal.

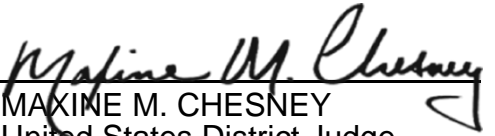
1 **CONCLUSION**

2 For the reasons stated above, Jinhua's motion to dismiss is hereby GRANTED,
3 and the complaint, to the extent asserted against Jinhua, is hereby DISMISSED.

4 Micron's request for leave to amend is hereby GRANTED, and Micron shall file
5 any amended complaint no later than February 8, 2019.⁸

6 **IT IS SO ORDERED.**

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8 Dated: January 18, 2019


MAXINE M. CHESNEY
United States District Judge

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United States District Court
Northern District of California

⁸In so amending, Micron is not limited to adding allegations to support the factual assertions made in its opposition and may add any facts it believes support its claims.