

# EXHIBIT C

**From:** [Wells, Maclain](#)  
**To:** [Ou, Philip](#); [Faasisila, Nikole](#); [Chu, Morgan](#); [Hattenbach, Ben](#); [Mueller, Mariandrea](#)  
**Cc:** [Demaray - AMAT](#); [LeGolvan, Andy](#); [Trevino, C. Daniel](#); [Lubarsky, Boris](#); [Faasisila, Nikole](#); [#Demaray Service \[Int\]](#)  
**Subject:** [EXT] RE: Applied Materials v. Demaray LLC - PI motion sur-reply / customer contentions  
**Date:** Thursday, October 22, 2020 5:08:19 PM

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Phil,

Article III standing is evaluated at the time of the filing of the complaint. As we have made clear, Applied lacked standing when it initiated this action. We do not see how Demaray's later-filed preliminary infringement contentions in a case in which Applied is not a party and Applied's reactors standing alone are not accused of infringement are relevant.

Please let us know whether Applied will provide a list of the models/model numbers of PVD reactors that Applied provided to Intel or Samsung prior to the filing of the complaint in this matter, including the date of purchase and date and location of installation. Please also let us know whether Applied will provide the full specifications for all such PVD reactors as supplied. We believe that this information is relevant to Applied's standing allegations at the time it filed suit.

If necessary, I am free to discuss tomorrow between 11-1. Let me know if a time in that time window works for you.

Regards,  
Maclain

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**From:** Ou, Philip <philipou@paulhastings.com>  
**Sent:** Thursday, October 22, 2020 12:43 PM  
**To:** Wells, Maclain <MWells@irell.com>; Faasisila, Nikole <nikolefaasisila@paulhastings.com>; Chu, Morgan <MChu@irell.com>; Hattenbach, Ben <BHattenbach@irell.com>; Mueller, Mariandrea <MMueller@irell.com>  
**Cc:** Demaray - AMAT <Demaray-AMAT@paulhastings.com>; LeGolvan, Andy <andylegolvan@paulhastings.com>; Trevino, C. Daniel <cdanieltrevino@paulhastings.com>; Lubarsky, Boris <borislubarsky@paulhastings.com>; Faasisila, Nikole <nikolefaasisila@paulhastings.com>; #Demaray Service [Int] <Demaray-Service@irell.com>  
**Subject:** RE: Applied Materials v. Demaray LLC - PI motion sur-reply / customer contentions

Maclain,

Following up on our request from last Wednesday that you provide Demaray's infringement contentions in the customer cases in WDTX against Samsung and Intel. As we explained, the contentions are relevant to the Article III issue that you raised in your opposition brief to our injunction motion. We asked that you provide them by COB Tuesday or explain the basis for refusing to provide them to Applied and the Court, but received neither.

Please get back to us before COB today.

We are generally available to meet and confer this afternoon if needed.

Thanks,  
Phil

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**From:** Ou, Philip  
**Sent:** Monday, October 19, 2020 4:33 PM  
**To:** 'Wells, Maclain' <MWells@irell.com>; Faasisila, Nikole <nikolefaasisila@paulhastings.com>; Chu, Morgan

<[MChu@irell.com](mailto:MChu@irell.com)>; Hattenbach, Ben <[BHattenbach@irell.com](mailto:BHattenbach@irell.com)>; Mueller, Mariandrea <[MMueller@irell.com](mailto:MMueller@irell.com)>  
**Cc:** Demaray - AMAT <[Demaray-AMAT@paulhastings.com](mailto:Demaray-AMAT@paulhastings.com)>; LeGolvan, Andy <[andylegolvan@paulhastings.com](mailto:andylegolvan@paulhastings.com)>;  
Trevino, C. Daniel <[cdanieltrevino@paulhastings.com](mailto:cdanieltrevino@paulhastings.com)>; Lubarsky, Boris <[borislubarsky@paulhastings.com](mailto:borislubarsky@paulhastings.com)>;  
Faasisila, Nikole <[nikolefaasisila@paulhastings.com](mailto:nikolefaasisila@paulhastings.com)>; #Demaray Service [Int] <[Demaray-Service@irell.com](mailto:Demaray-Service@irell.com)>  
**Subject:** RE: Applied Materials v. Demaray LLC - PI motion sur-reply / customer contentions

Maclain,

Regarding Demaray's infringement contentions in the customer cases, they are relevant to the Article III issue Demaray raised in its opposition brief and whether this Court has subject matter jurisdiction. See [Amazon.com, Inc. v. Straight Path IP Grp., Inc.](#), No. 5:14-cv-04561-EJD, 2015 U.S. Dist. LEXIS 69281, at \*17 (N.D. Cal. May 28, 2015) (infringement contentions in customer suits relevant to whether declaratory judgment jurisdiction exists in manufacturer's suit). Please provide them by COB tomorrow or explain the basis for refusing to provide them in response to our request and provide your availability to meet and confer. To the extent there are concerns regarding confidentiality, you may designate them in accordance with the N.D. Cal. Protective Order. See PLR 2-2.

Regarding Demaray's request for a sur-reply, first, we disagree that any of the evidence submitted in our reply brief was improper. Applied's evidence is not "new" because it "addressed the same set of facts supplied in [the] opposition to the motion," *Rayon-Terrell v. Contra Costa Cty.*, 232 F. App'x 626, 629 n.2 (9th Cir. 2007), and/or it was "submitted in direct response to evidence raised in the opposition," *Advanced Media Networks LLC v. Row 44 Inc.*, 2014 U.S. Dist. LEXIS 156649, 2014 WL 5760545, at \*1 (C.D. Cal. Nov. 4, 2014) (such evidence is "not new").

As an example, Demaray submitted a declaration and argued it never offered a license to Applied in support of Demaray's argument that the Court lacked subject matter jurisdiction. Subject matter jurisdiction was first raised by Demaray in its opposition. Applied's argument and evidence (*i.e.*, correspondence from Demaray to the contrary) was in response to the same set of facts and in direct response to the evidence submitted in Demaray's opposition. See *Laub v. Horbaczewski*, No. CV 17-6210-JAK (KSx), 2020 U.S. Dist. LEXIS 158171, at \*3-5 (C.D. Cal. June 24, 2020) (no sur-reply warranted where declaration submitted with reply brief "respond[ed] to arguments [movants] raised in their Opposition"). A similar analysis applies to the other evidence identified in the objections you filed on Friday.

To that end, please let us know if you oppose a motion for leave for Applied to respond to your objections. We have included our response that we will attach to the motion for leave for your review. We plan on filing them by noon tomorrow, so please let us know your position on the motion for leave before then.

We are still considering your request for a sur-reply, but your prior e-mail suggests that you intend to address arguments beyond the limited evidence that you have lodged objections to (which, if that is the intended scope of your planned sur-reply, we cannot agree to it). For example, your e-mail says "Applied raises new arguments on each of these issues as well as the issues of comity and the applicable legal standard for a preliminary injunction." We disagree – we responded to Demaray's arguments made in its opposition brief for which no sur-reply is warranted.

Will you agree that the sur-reply will be limited to (i) responding to the evidence that Demaray identified in its objections and (ii) no more than five pages? And will you allow us an opportunity to review the proposed sur-reply before you file it, as we are doing so now with our proposed response to your

objections?

For avoidance of doubt, general arguments relating to comity, subject matter jurisdiction, *Katz/eBay* standard, and the customer suits addressed in Demaray's opposition and responded to in Applied's reply are inappropriate for this conditional sur-reply, unless they are directly relate to the evidence from Applied's reply identified in Demaray's objections.

I am generally available the rest of today or tomorrow to confer if needed. It may be easier to walk through these moving parts by phone.

Thanks,  
Phil

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**From:** Wells, Maclain <[MWells@irell.com](mailto:MWells@irell.com)>  
**Sent:** Monday, October 19, 2020 2:12 PM  
**To:** Ou, Philip <[philipou@paulhastings.com](mailto:philipou@paulhastings.com)>; Faasisila, Nikole <[nikolefaasisila@paulhastings.com](mailto:nikolefaasisila@paulhastings.com)>; Chu, Morgan <[MChu@irell.com](mailto:MChu@irell.com)>; Hattenbach, Ben <[BHattenbach@irell.com](mailto:BHattenbach@irell.com)>; Mueller, Mariandrea <[MMueller@irell.com](mailto:MMueller@irell.com)>  
**Cc:** Demaray - AMAT <[Demaray-AMAT@paulhastings.com](mailto:Demaray-AMAT@paulhastings.com)>; LeGolvan, Andy <[andylegolvan@paulhastings.com](mailto:andylegolvan@paulhastings.com)>; Trevino, C. Daniel <[cdanieltrivino@paulhastings.com](mailto:cdanieltrivino@paulhastings.com)>; Lubarsky, Boris <[borislubarsky@paulhastings.com](mailto:borislubarsky@paulhastings.com)>; Faasisila, Nikole <[nikolefaasisila@paulhastings.com](mailto:nikolefaasisila@paulhastings.com)>; #Demaray Service [Int] <[Demaray-Service@irell.com](mailto:Demaray-Service@irell.com)>  
**Subject:** [EXT] RE: Applied Materials v. Demaray LLC - PI motion sur-reply / customer contentions

Phil,

Please let us know by the close of business if Applied will stipulate to our request for a 10-page sur-reply.

Thanks,  
Maclain

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**From:** Wells, Maclain  
**Sent:** Thursday, October 15, 2020 2:47 PM  
**To:** 'Ou, Philip' <[philipou@paulhastings.com](mailto:philipou@paulhastings.com)>; Faasisila, Nikole <[nikolefaasisila@paulhastings.com](mailto:nikolefaasisila@paulhastings.com)>; Chu, Morgan <[MChu@irell.com](mailto:MChu@irell.com)>; Hattenbach, Ben <[BHattenbach@irell.com](mailto:BHattenbach@irell.com)>; Mueller, Mariandrea <[MMueller@irell.com](mailto:MMueller@irell.com)>  
**Cc:** Demaray - AMAT <[Demaray-AMAT@paulhastings.com](mailto:Demaray-AMAT@paulhastings.com)>; LeGolvan, Andy <[andylegolvan@paulhastings.com](mailto:andylegolvan@paulhastings.com)>; Trevino, C. Daniel <[cdanieltrivino@paulhastings.com](mailto:cdanieltrivino@paulhastings.com)>; Lubarsky, Boris <[borislubarsky@paulhastings.com](mailto:borislubarsky@paulhastings.com)>; Faasisila, Nikole <[nikolefaasisila@paulhastings.com](mailto:nikolefaasisila@paulhastings.com)>; #Demaray Service [Int] <[Demaray-Service@irell.com](mailto:Demaray-Service@irell.com)>  
**Subject:** RE: Applied Materials v. Demaray LLC - PI motion sur-reply / customer contentions

Phil,

The seven fact declarations and the new evidence should have been included in Applied's opening filing to allow Demaray to respond. The declarations and evidence appear to relate to the issues of subject matter jurisdiction, Applied's license/ownership defenses, Applied's arguments regarding the customer suit exception, and issues of comparative convenience. Applied raises new arguments on each of these issues as well as the issues of comity and the applicable legal standard for a preliminary injunction.

Please let us know if Applied opposes our request for a sur-reply.

Regarding Demaray's infringement contentions in the Texas matters, please explain why Applied needs confidential materials from those cases.

Thanks,  
Maclain

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**From:** Ou, Philip <[philipou@paulhastings.com](mailto:philipou@paulhastings.com)>  
**Sent:** Wednesday, October 14, 2020 5:11 PM  
**To:** Wells, Maclain <[MWells@irell.com](mailto:MWells@irell.com)>; Faasisila, Nikole <[nikolefaasisila@paulhastings.com](mailto:nikolefaasisila@paulhastings.com)>; Chu, Morgan <[MChu@irell.com](mailto:MChu@irell.com)>; Hattenbach, Ben <[BHattenbach@irell.com](mailto:BHattenbach@irell.com)>; Mueller, Mariandrea <[MMueller@irell.com](mailto:MMueller@irell.com)>  
**Cc:** Demaray - AMAT <[Demaray-AMAT@paulhastings.com](mailto:Demaray-AMAT@paulhastings.com)>; LeGolvan, Andy <[andylegolvan@paulhastings.com](mailto:andylegolvan@paulhastings.com)>; Trevino, C. Daniel <[cdanieltreviso@paulhastings.com](mailto:cdanieltreviso@paulhastings.com)>; Lubarsky, Boris <[borislubarsky@paulhastings.com](mailto:borislubarsky@paulhastings.com)>; Faasisila, Nikole <[nikolefaasisila@paulhastings.com](mailto:nikolefaasisila@paulhastings.com)>; #Demaray Service [Int] <[Demaray-Service@irell.com](mailto:Demaray-Service@irell.com)>  
**Subject:** RE: Applied Materials v. Demaray LLC - PI motion sur-reply / customer contentions

Maclain,

Thanks for your e-mail. We disagree that Applied submitted new arguments in its reply brief. The arguments and supporting evidence (e.g., the declarations) were submitted in direct response to arguments made by Demaray in its opposition brief.

That said, as a matter of equity, we are willing to consider not opposing a limited sur-reply. Can you please identify what you specifically contend are "new arguments and supporting evidence" that you believe warrant a sur-reply? Is it limited to the declarations and exhibits, and the arguments they support?

Separately, we understand that Demaray has served infringement contentions on Intel and Samsung in the customer cases in WDTX. Applied believes that the scope of your infringement allegations in those cases is relevant to the pending injunction motion. Will you provide those contentions to us if we treat them as confidential? If not, can you explain why?

Happy to confer about both issues tomorrow or Friday at your convenience.

Thanks,  
Phil

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**From:** Wells, Maclain <[MWells@irell.com](mailto:MWells@irell.com)>  
**Sent:** Wednesday, October 14, 2020 1:03 PM  
**To:** Ou, Philip <[philipou@paulhastings.com](mailto:philipou@paulhastings.com)>; Faasisila, Nikole <[nikolefaasisila@paulhastings.com](mailto:nikolefaasisila@paulhastings.com)>; Chu, Morgan <[MChu@irell.com](mailto:MChu@irell.com)>; Hattenbach, Ben <[BHattenbach@irell.com](mailto:BHattenbach@irell.com)>; Mueller, Mariandrea <[MMueller@irell.com](mailto:MMueller@irell.com)>  
**Cc:** Demaray - AMAT <[Demaray-AMAT@paulhastings.com](mailto:Demaray-AMAT@paulhastings.com)>; LeGolvan, Andy <[andylegolvan@paulhastings.com](mailto:andylegolvan@paulhastings.com)>; Trevino, C. Daniel <[cdanieltreviso@paulhastings.com](mailto:cdanieltreviso@paulhastings.com)>; Lubarsky, Boris <[borislubarsky@paulhastings.com](mailto:borislubarsky@paulhastings.com)>; Faasisila, Nikole <[nikolefaasisila@paulhastings.com](mailto:nikolefaasisila@paulhastings.com)>; #Demaray Service [Int] <[Demaray-Service@irell.com](mailto:Demaray-Service@irell.com)>  
**Subject:** [EXT] RE: Applied Materials v. Demaray LLC - inadvertently omitted declarations to reply brief

Phil,

We do not believe that it is appropriate for Applied to submit new arguments and supporting evidence in a reply brief. Doing so is manifestly unfair as Demaray has no opportunity for a written response. Given the seven declarations and additional exhibits attached to Applied's reply, we intend to request permission from the Court to file a 10-page sur-reply. Please let us know if Applied will oppose this request.

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