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

DEMARAY LLC, Plaintiff, v. **INTEL CORPORATION,** Defendant.	**Case No. 6:20-cv-00634-ADA** **JURY TRIAL DEMANDED**
DEMARAY LLC, Plaintiff, v. **SAMSUNG ELECTRONICS CO., LTD (A KOREAN COMPANY), SAMSUNG ELECTRONICS AMERICA, INC., SAMSUNG SEMICONDUCTOR, INC., and SAMSUNG AUSTIN SEMICONDUCTOR, LLC,** Defendants.	**Case No. 6:20-cv-00636-ADA** **JURY TRIAL DEMANDED**

JOINT CASE READINESS STATUS REPORT

Plaintiff Demaray LLC ("Demaray") and Defendants Intel Corporation ("Intel") and Samsung Electronics Co., LTD (a Korean company), Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor LLC (collectively, "the Samsung Defendants") hereby provide the following status report in advance of the initial Case Management Conference ("CMC").

Defendants believe the following disputes are ripe for discussion at the Case Management Conference:

ISSUE 1: ENTRY OF A SCHEDULE

PLAINTIFF'S POSITION: The Court should follow the normal procedure of entering a case schedule. There are no conflicts on either side with the Court's proposed March 26, 2021 Markman hearing or December 27, 2021 trial date.

DEFENDANT'S POSITION: Given the litigation in the Northern District of California described below, Defendants respectfully submit that it is premature to enter a scheduling Order at this time. If a scheduling order is ultimately entered, Defendants believe this case requires the default "one year Markman to trial" schedule to be prepared for trial properly.

ISSUE 2: CONFIDENTIALITY OF PLATINTIFF'S PRELIMINARY INFRINGEMENT CONTENTIONS

PLAINTIFF'S POSITION: Demaray's Preliminary Infringement Contentions ("PICs") are properly designated under the Court's October 5, 2020, interim protective order.

DEFENDANT'S POSITION: Demaray has designated its Preliminary Infringement Contentions "outside counsel of record only" in their entirety. Defendants challenge this designation.

The parties do not anticipate having other pre-*Markman* issues to raise at the CMC at this time.

FILING AND EXTENSIONS

Demaray's Complaints against Intel and the Samsung Defendants were filed on July 14, 2020. There has been one extension for a total of 47 days for Intel to file its Answer. There has been one extension for a total of 56 days for the Samsung Defendants to file their Answer.

RESPONSE TO THE COMPLAINT

Intel filed its Answer to the Complaint on September 21, 2020, and filed an Amended Answer on October 13, 2020. No counterclaims were filed.

The Samsung Defendants filed their Answer to the Complaint on September 29, 2020. No counterclaims were filed.

PENDING MOTIONS

There are no pending motions.

RELATED CASES IN THIS JUDICIAL DISTRICT

The two above captioned cases filed in this District involves the same plaintiff and the same asserted patents: *Demaray LLC v. Intel Corporation*, 6:20-CV-00634-ADA and *Demaray LLC v. Samsung Electronics Co., LTD, Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor LLC*, 6:20-CV-00636-ADA.

IPR, CBM, AND OTHER PGR FILINGS

A non-party to this action, Applied Materials, Inc. ("Applied") has indicated that it may file one or more IPR petitions relating to the patents-in-suit.

NUMBER OF ASSERTED PATENTS AND CLAIMS

Plaintiff has asserted two patents and the claims therein as described in Plaintiff's Preliminary Infringement Contentions.

APPOINTMENT OF TECHNICAL ADVISER

The parties do not request a technical adviser to be appointed to the case to assist the Court with claim construction or other technical issues.

MEET AND CONFER STATUS

On October 6, 2020, Plaintiff and Defendants conducted a meet & confer conference. In advance of the October 16, 2020 case management conference, the parties met and conferred again on October 13, 2020. The parties continue to confer regarding the issues below.

ADDITIONAL DETAILS REGARDING THE ISSUES LISTED ABOVE

(1) ISSUE 1: ENTRY OF A SCHEDULE

DEFENDANT'S POSITION: Defendants respectfully submit that it is premature to enter a scheduling order. The Complaint alleges infringement based on Defendants' use of equipment supplied by Applied. Applied filed an action for declaratory judgment in the U.S. District Court for the Northern District of California, *Applied Materials, Inc. v. Demaray LLC*, Case No. 5:20-cv-05676-EJD (N.D. Cal.), and moved for a preliminary injunction, seeking to enjoin Plaintiff from moving forward with this action against its customer based on the recognized "customer-

suit" exception. The motion for preliminary injunction has been fully briefed and will be heard on November 12, 2020. In support of Applied's motion, Defendants have agreed to be bound by the result of Applied's declaratory judgment causes of action, which include declaratory judgment of non-infringement of the asserted patents on the merits and non-infringement based on license and assignment defenses. Defendants have also agreed to be bound by the results of the specific invalidity grounds adjudicated in Applied's declaratory judgment action that Applied anticipates bringing in its declaratory judgment action after it files one of more IPR petitions (noted above).

Defendants respectfully submit that entry of the scheduling order here should be deferred in light of those proceedings.

PLAINTIFF'S POSITION: Plaintiff requests that the schedule attached to this response be entered. However, the Court indicated that it would like to try the case starting December 27, 2021. Plaintiff is agreeable to that timing and, if adopted, would work with Defendants to adjust the schedule accordingly.

Defendants improperly request that the Court stay this case indefinitely in light of a third-filed litigation brought by a third-party (Applied Materials) in California, a district in which patent cases commonly take many more years to reach trial than they do in this Court. It appears that the later-filed California case was brought to create a pretext for seeking transfer of the present cases to California and to otherwise attempt to interfere with the earlier-filed cases properly before this Court.

Instead of addressing the issue before this Court, home of the first-filed and second-filed suits, Applied is instead seeking the extraordinary remedy of asking a judge in California to enjoin this Court from proceeding with these cases. Demaray respectfully submits that this Court is fully capable to decide and should decide how s cases proceed.

Applied's request to have the California court enjoin this Court has no legitimate basis. Applied fails to even argue, let alone show, that it is likely to be successful on the defenses underlying its preliminary injunction request. Applied's principal argument to the California court is that an employment contract with one of the inventors prevents Demaray's claims. Applied

sought a preliminary injunction based on that argument without even mentioning to the California court that another judge from the same court already definitively ruled that the very provisions underlying Applied's argument are "unlawful non-compete provisions" that are void as a matter of public policy. That ruling did not address language that was merely similar – the pertinent language was identical, and Applied plainly knew of the decision because it was the party against which the decision was rendered. *See Applied Materials, Inc. v. Advanced Micro-Fabrication Equip., Inc.*, 630 F. Supp. 2d 1084, 1090 (N.D. Cal. May 20, 2009).

Applied's "customer suit exception" argument in the California court fares no better. These are not cases in which Intel and Samsung are mere resellers of Applied's products. Whether Intel and Samsung resell Applied products is expected to be nearly or entirely irrelevant to the issues here. The principal subject in the cases before this Court is expected to be the particular uses by Intel and Samsung of physical vapor deposition reactors – in specific configurations selected by Intel and Samsung – in the production of Intel and Samsung semiconductor chips. The defendants here, not Applied, make those chips. Indeed, Applied contends that it does ***not*** supply key elements of the claimed manufacturing methods and reactor configurations to either Samsung or Intel. Consequently, the California case would not resolve most of the issues here, *e.g.*, Intel's and Samsung's use of the infringing methods, Intel's and Samsung's configuration of their reactors as claimed in the patents-in-suit, Intel's and Samsung's use of reactors other than those provided by Applied, damages issues (which here are expected to depend heavily on the chips that Intel and Samsung make), and many others. In addition, none of the invalidity or unenforceability issues that Intel and Samsung have raised here have been raised by Applied in the California case. In sum, virtually every one of the prerequisites for application of the "customer suit exception" is absent. Although the defendants may prefer to have the claims against them adjudicated in a later-filed case in a far slower California court, not here in the earlier-filed cases, the "customer suit exception" simply does not permit such a result.

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