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   DEMARAY LLC
                            UNITED STATES DISTRICT COURT
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                          NORTHERN DISTRICT OF CALIFORNIA
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                                   SAN JOSE DIVISION
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    APPLIED MATERIALS, INC.,
                                               Case No. 5:20-cv-05676-EJD
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                Plaintiff,
                                               DEMARAY LLC'S REPLY
14
                                               MEMORANDUM IN SUPPORT OF
15
                                               MOTION TO DISMISS
          VS.
16
    DEMARAY LLC,
                                               Hearing Date: March 4, 2021
                                               Hearing Time: 9:00 a.m.
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                Defendant.
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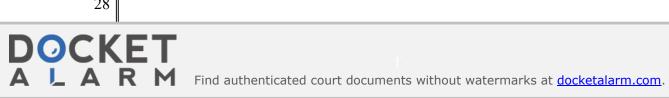


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27	¹ Unless otherwise noted, internal citations, quotations and subsequent history are omitted,		
28	and emphasis is added.		



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I. PRELIMINARY STATEMENT

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Applied's declaratory judgment First Amended Complaint ("FAC") should be entirely dismissed under Federal Rule of Civil Procedure 12(b)(1) for lack of a case and controversy between Demaray and Applied supporting declaratory judgment subject matter jurisdiction. The Texas complaints show that Demaray's focus is on the actual parties, e.g., Intel and Samsung, using the infringing reactor configurations to produce semiconductor products, not equipment suppliers like Applied. See Microsoft Corp. v. DataTern, Inc., 755 F.3d 899, 907 (Fed. Cir. 2014) (no jurisdiction because "DataTern's litigation strategy appears to involve suing software users, not software suppliers"). It is undisputed that the "Demaray patents ... do not cover all PVD reactor configurations" and that the "reactors provided by Applied Materials, Inc. have many configurations unrelated to bias pulsed DC sputtering." See Dkt. 23-1 ¶ 12. Further, Applied admits that in the Texas complaints Demaray did not rely on Applied information for several limitations, e.g., the narrow band-rejection filter. See Opp. at 4–5. Under the Federal Circuit's reasoning in DataTern, the Texas complaints did not create an objective risk that Demaray would sue Applied. See 755 F.3d at 905–06 (no jurisdiction where infringement allegations against purchasers did not rely upon supplier documentation for "key claim limitations"). Unable to point to affirmative enforcement acts by Demaray against Applied, Applied relies

Unable to point to affirmative enforcement acts by Demaray against Applied, Applied relies on its self-servingly alleged subjective "belief" that the Texas complaints "implicitly accused Applied of infringement." See Opp. at 5–6, 13. But it is black letter law that "[t]he test [for declaratory judgment jurisdiction in patent cases] ... is objective [and] it is the objective words and actions of the patentee that are controlling." Hewlett-Packard Co. v. Acceleron LLC, 587 F.3d 1358, 1363 (Fed. Cir. 2009). Applied's self-serving, subjective claims are not part of the analysis. See Innovative Therapies, Inc. v. Kinetic Concepts, Inc., 599 F.3d 1377, 1382 (Fed. Cir. 2010) (subjective belief does not create jurisdiction); see also OGD Equip. Co. v. Overhead Door Corp., 2019 WL 5390589, at *8 (E.D. Tex. July 15, 2019) (jurisdiction "requires a determination of whether there was an objective possibility of litigation, not a subjective belief."); W.L. Gore & Assocs., Inc. v. AGA Med. Corp., 2012 WL 924978, at *6 (D. Del. Mar. 19, 2012) ("Plaintiff's subjective belief, absent any action taken by Defendant, is insufficient to generate a substantial

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