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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

APPLIED MATERIALS, INC., Plaintiff, vs. DEMARAY LLC, Defendant.	Case No. 5:20-cv-05676-EJD **DEMARAY LLC'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS** **Hearing Date**: March 4, 2021 **Hearing Time**: 9:00 a.m.

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I. PRELIMINARY STATEMENT

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 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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