IRELL & MANELLA LLP
Morgan Chu (70446)
MChu@irell.com
Benjamin W. Hattenbach (186455)
BHattenbach@irell.com
C. Maclain Wells (221609)
MWells@irell.com
1800 Avenue of the Stars, Suite 900
Los Angeles, California 90067-4276
Telephone: (310) 277-1010
Facsimile: (310) 203-7199

Attorneys for Defendant
DEMARAY LLC

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 OPPOSITION TO APPLIED MATERIALS, INC.'S ADMINISTRATIVE MOTION FOR LEAVE TO LODGE NEW DECLARATORY JUDGMENT COMPLAINT**

Defendant Demaray LLC ("Demaray") opposes Applied Materials, Inc.'s ("Applied") Administrative Motion for Leave to Lodge New Declaratory Judgment Complaint, Dkt. 48. Applied's self-styled "administrative" motion is nothing of the sort. Applied asks the Court to (1) allow Applied to amend the pleadings in the current action by replacing the operative complaint with Applied's fourth-filed complaint from newly filed case number 5:20-cv-9341, (2) moot Demaray's pending motion to dismiss which addresses many issues raised in Applied's fourth-filed complaint (*e.g.*, Applied's reliance on unlawful assignment provisions for its license and ownership causes of action), and (3) expedite the case management conference for Applied's new fourth-filed case, before the complaint has even been served, to January 21, 2021. None of these requests is the type of minor administrative issue that the Local Rules contemplate being addressed in a five-page administrative motion. *See* L.R. 7-11.

The Court is well familiar with the declaratory judgment issues in this case. On December 23, 2020, the Court denied Applied's motion in its third-filed case for preliminary injunction of the first- and second-filed Texas actions because there was no subject matter jurisdiction. Dkt. 47 at 12. Applied's third-filed case has not been formally dismissed; Demaray's motion to dismiss, Dkt. 39, is pending. Applied nonetheless waited until Christmas Eve to file its "administrative motion," making Demaray's response to the numerous substantive issues it raises due just ***four days*** later—meaning this response had to be prepared over the Christmas holiday and the following weekend.

I. Applied's "Administrative" Motion Is Procedurally Improper

Applied's Christmas present was not merely unwelcome, but was procedurally improper on numerous grounds. Local Rule 7-11 administrative motions are for minor "miscellaneous administrative matters, not otherwise governed by a federal statute, Federal or local rule or standing order of the assigned judge." Applied's request to replace the operative third-filed complaint in this matter with a supplemental pleading, Applied's fourth-filed complaint in case number 5:20-cv-9341, should have been brought as a properly noticed motion under Fed. R. Civ. P. 15(a)(1)(B) ("[A] party may amend its pleading only with the opposing party's written consent or the court's leave."). Applied's requested remedy of not only allowing a supplemental pleading, but allowing that supplemental pleading to supplant the original complaint in this case cannot fairly be addressed

via an administrative motion over a holiday weekend.

Similarly, Applied's attempt to prevent the Court from ruling on Demaray's motion to dismiss via an "administrative" motion is improper. Applied has not voluntarily dismissed this action and, therefore, Applied's third-filed complaint remains operative as does Demaray's motion to dismiss. Applied's new, duplicative fourth-filed complaint merely clogs the Court's docket with duplicative pleadings. In addition, Applied's separate filing of a new civil action will necessitate a motion to strike under Rule 12(f) if the pending complaint is not withdrawn. Applied's approach is an abuse of the parties' and the Court's resources. Rather than wasting judicial and party resources by bringing its duplicative fourth-filed complaint, Applied should have sought to voluntarily dismiss this action and then refiled its new complaint with a Motion to Consider Whether Cases Should be Related pursuant to Civil L.R. 3-12. *See* L.R. 3-3(c).

Applied's attempt to expedite the case management conference in its new fourth-filed complaint to January 21, 2021, also runs afoul of the Civil Local Rules. Under L.R. 3-12(g), the Court sets the case management conference for a new related case after the ruling on the L.R. 3-12 motion. L.R. 3-12(g) ("The case management conference in any reassigned case will be rescheduled by the newly assigned Judge"). The timing of the conference is governed by L.R. 16-2(a). If a party wants to change that procedure, "[b]y serving and filing a motion with the assigned judge pursuant to Civil L.R. 7, a party … may seek relief from an obligation imposed by Fed. R. Civ. P. 16 or 26 or the Order Setting Initial Case Management Conference." L.R. 16-2(d). Courts in this district have made clear that Applied's attempts to circumvent the requirements of the Local Rules to expedite its fourth-filed case are improper and should be rejected. *See Raymat Materials, Inc. v. A & C Catalysts, Inc.*, 2014 WL 1647529, at *6 (N.D. Cal. Apr. 22, 2014) (concluding that administrative motion seeking "to modify the scheduling order" was improper because it sought "relief governed by the federal rules").

II. Applied Cannot Correct The Lack Of Subject Matter Jurisdiction In The Pending Matter

Applied's suggestion that it can avoid the requirements for subject matter jurisdiction by replacing the operative complaint in this matter with its new fourth-filed complaint in case number

5:20-cv-9341 is contrary to black letter law. Applied admits that "subject matter jurisdiction is determined by the facts as they existed at the time of the operative complaint." Mot. at 2. Applied cannot avoid that requirement by providing a supplemental complaint.

The Federal Circuit dealt with this issue in *Innovative Therapies, Inc. v. Kinetic Concepts, Inc.*, 599 F.3d 1377, 1383 (Fed. Cir. 2010). In that case, the district court concluded that it lacked jurisdiction at the time of the original declaratory judgment complaint. *Id.* Although the district court also concluded that later acts alleged in a supplemental complaint showed an actual controversy, *id.*, it declined to "permit[] premature (i.e., pre-actual controversy) declaratory judgment patent actions to be saved by a supplemental pleading incorporating events that occurred after the filing of the original complaint," *Innovative Therapies, Inc. v. Kinetic Concepts, Inc.*, 2008 WL 2746960, at *9 (D. Del. July 14, 2008). The Federal Circuit affirmed the district court's dismissal of "the declaratory action including the supplemental complaint," *Innovative Therapies*, 599 F.3d at 1385, because "to hold otherwise 'would invite a declaratory judgment plaintiff in a patent case to file suit at the earliest moment it conceives of any potential benefit to doing so, confident that it will either draw an infringement suit in response (thereby retroactively establishing jurisdiction over their first-filed declaratory judgment suit) or will suffer no adverse consequence other than having its suit dismissed,'" *id.* at 1384 (quoting *Innovative Therapies*, 2008 WL 2746960, at *10). Like in *Innovative Therapies*, Applied's attempt to retroactively establish jurisdiction should be rejected.

III. Applied's "New Facts" Should Not Impact The Court's Determination That Subject Matter Jurisdiction Is Lacking

Applied's motion is also futile as Demaray still has not taken any affirmative actions against Applied. In concluding that there is no subject matter jurisdiction for Applied's action, the Court addressed Demaray's Texas allegations and other record evidence, and concluded that "Demaray does not allege in the WDTX Actions that Applied itself configures the reactors or promotes the patented configuration and method." Dkt. 47 at 8. This was after acknowledging that "[t]he Applied publications Demaray references do not discuss the specific configuration or method covered under Demaray's Asserted Patents." *Id.* As to any potential indirect infringement claims, the Court

concluded "there is no evidence apparent to the Court that Demaray provides a lengthy presentation of infringement contentions in the WDTX Actions that use of Applied's reactors is central to Demaray's infringement claims against Intel and Samsung." *Id.* at 11; *see also id.* at 12 (Demaray's "claims do not speak to the reactors themselves or many other non-infringing uses described in Applied's publications … As Applied has not alleged its reactors could not be used without infringing the Asserted Patents, there is no indication that Applied contributed to the alleged infringement by its customers.").

Applied's fourth-filed declaratory judgment complaint does nothing to address these fatal deficiencies. It appears that Applied's only allegations that the Court has not already considered are discovery proceedings in the Texas cases related to motions to transfer filed by the defendants in those cases. *See* Mot. at 1. That discovery is expected to include certain information about Intel's and Samsung's infringing use of the reactor configurations, which is not publicly available. Once Demaray has such information, Demaray will evaluate it. Demaray obviously cannot do so before receiving the information. Those discovery events are entirely consistent with the Court's conclusion "at this stage in the litigation, the Court sees no way to tell definitively whether the references to Applied's Endura reactors are intended as required parts of the accused configurations and methods, or whether they are simply offered as illustrations or as part of the background of the accused reactor configuration and method." Dkt. 47 at 11; *see also* Dkt. 43 at 4 (Demaray's representation to the Court that "Demaray does not have the information necessary to determine whether Applied's reactors standing alone can be accused of infringing the Demaray patents"). Thus, even today, there is no actual case or controversy between Demaray and Applied.[1]

IV. CONCLUSION

Applied is not entitled to an exception from the Federal and Local Rules. Applied's

[1] The Texas cases with Intel and Samsung are well underway. The parties have already exchanged claim terms for claim construction under the Texas schedule. Applied's continued attempt to burden Demaray with duplicative litigation before this Court, particularly when there is still no jurisdiction for it, amounts to a further waste of party and judicial resources.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.