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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 APPLIED MATERIALS, INC.,
16 Plaintiff,
17 vs.
18 DEMARAY LLC,
19 Defendant.

CASE NO. 5:20-cv-05676-EJD

**APPLIED MATERIALS, INC.'S
UPDATED CASE MANAGEMENT
STATEMENT**

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1 Plaintiff Applied Materials, Inc. (“Applied”) submits this Updated Case Management
2 Statement pursuant to the Court’s December 2, 2020 Order. *Applied Materials, Inc. v. Demaray*
3 *LLC*, Case No. 5:20-cv-05676-EJD, Dkt. No. 41 (“*Applied I*”).

4 Defendant Demaray LLC (“Demaray”) refused to file a **joint** case management statement
5 because it contended that Applied’s position in Section 2 below (“How the Cases Should
6 Proceed”) “address[es] a separate case, raising separate issues, and contravening the Court’s
7 unambiguous order on these issues.” *See* Ex. A (E-mail Correspondence from counsel). Applied
8 disagrees with Demaray’s characterization, as Demaray ignores that the cases involve the same
9 parties, the same causes of action, and have been deemed related—the issues raised below are
10 necessarily related to this action and updating the Court since the last joint case management
11 statement. Disagreement aside, Applied proposed that Demaray state its position in its portion of
12 a joint submission rather than burdening the Court with separate filings from each party.
13 Demaray refused, contending separate filings were necessary. *Id.*

14 The Parties previously submitted a Joint Case Management Statement in *Applied I* on
15 November 30, 2020, in advance of the previously scheduled case management conference,
16 *Applied I*, Dkt. No. 40, which the Court continued to January 21, 2021, *Applied I*, Dkt. No. 41.
17 The Court stayed discovery until the next case management conference and ordered the parties to
18 provide an updated Joint Case Management Statement. *Id.* Despite the stay order, Demaray has
19 sought discovery from Applied through third-party subpoenas issued out of Demaray’s cases in
20 the Western District of Texas against Applied’s customers, Intel and Samsung. *Applied II*, Dkt.
21 No. 1, Exs. F, G (subpoenas). At the same time, Demaray seeks to have Applied’s declaratory
22 judgment causes of action that it and its products do not infringe, including based on a license
23 Applied has to the asserted patents, delayed as much as possible while Demaray’s lawsuits
24 against Applied’s customers, involving the same products and same defenses, proceed. Contrary
25 to the representations made to this Court about the nature of those cases, as explained in the new
26 complaint in *Applied II*, those actions are directed to Samsung and Intel’s use of Applied’s
27 reactors—not some phantom post-installation configuration by the customers on their own.

28 Applied incorporates by reference their prior Joint Case Management Statement and

1 provide an update below.

2 **1. Updates To The Procedural Posture**

3 Since the Court's Order continuing the previously scheduled case management
4 conference, on December 16, 2020, the Court denied Applied's Motion for Preliminary Injunction
5 in *Applied I*, finding that Applied failed to allege an actual controversy to support subject matter
6 jurisdiction under the Declaratory Judgment Act. *See Applied I*, Dkt. No. 46.

7 Thereafter, on December 24, 2020, Applied filed a new civil action in the Northern
8 District of California based upon the same causes of action. *See Applied Materials, Inc. v.*
9 *Demaray LLC*, Case No. 4:20-cv-09341-EJD, Dkt. No. 1 ("*Applied II*"). Applied added factual
10 allegations to support the existence of an actual controversy between Applied and Demaray,
11 including facts that have occurred since the filing of the operative complaint in this action. On
12 December 24, Applied filed an administrative request to lodge new declaratory judgment
13 complaint in *Applied I* requesting "(1) leave to lodge the concurrently filed declaratory judgment
14 complaint, (2) that the Court permit the new complaint to become the operative complaint in this
15 action, and (3) that the Court deny as moot Demaray's pending motion to dismiss." *See Applied I*,
16 Dkt. 53, at 2. Applied alternatively stated "with the Court's approval and guidance, Applied can
17 voluntarily dismiss the operative complaint in this action, proceed with a new-filed action based on
18 [the] concurrently filed complaint, and take appropriate action to relate the new action with this Court
19 under Local Rule 3-12. Under these circumstances, in the interest of judicial efficiency and avoiding
20 further delay of Applied's declaratory judgment cause of action, Applied respectfully requests that the
21 Court maintain the currently scheduled January 21, 2021 case management conference." *Id.*

22 On December 28, 2020, Applied filed an administrative motion to consider whether *Applied I*
23 and *Applied II* should be related. *Applied I*, Dkt. No. 52. On January 6, 2021, the Court denied
24 Applied's administrative motion lodge the concurrently filed declaratory judgment complaint,
25 *Applied I*, Dkt No. 53, and issued a Related Case Order, deeming this action and *Applied II* to be
26 related cases pursuant to Local Rule 3-12. *Applied I*, Dkt. No. 54.

27 Demaray's motion to dismiss the operative complaint in *Applied I* remains pending and
28 was set for hearing on March 4, 2021. *Applied I*. Dkt. Nos. 39, 42, 43.

2. How the Cases Should Proceed¹

In view of the new complaint filed in *Applied II*, which sets forth the same causes of action as in *Applied I*, and the Related Cases Order, Applied believes there is no need for the operative complaint in *Applied I* to proceed. Subject to further guidance from the Court regarding Demaray's motion to dismiss in *Applied I*, which remains pending, Applied intends to voluntarily dismiss that action and proceed with the same causes of action in related *Applied II*.

Applied's newly filed complaint alleges a substantial controversy between Applied and Demaray, thus conferring jurisdiction in this Court. *See, e.g., Applied II*, Dkt. No. 1 at ¶ 9 (table of affirmative acts taken by Demaray supporting jurisdiction). The newly filed complaint describes in detail the totality of the evidence and facts as they exist today, which include: (i) the commercial realities of the relationship between Applied and its customers using Applied's products; (ii) Demaray's exclusive reliance on Applied's products in the customer complaints; (iii) Demaray's infringement contentions in the customer suits; (iv) Applied's customers' confirmation that they do not perform the post-installation modifications to Applied's reactors that Demaray contended took place; (v) Demaray's refusal to grant Applied a covenant not to sue; (vi) Demaray's refusal to inform Applied or the Court in this action whether it will assert compulsory counterclaims against Applied; (vii) Demaray's requests to obtain discovery from Applied to determine if Applied allegedly infringes; (viii) Demaray's serving of subpoenas on Applied for discovery regarding the reactors it supplies to Intel and Samsung, including Applied's

¹ As of the time of Applied's filing of this case management statement, Demaray had yet to file its own case management statement, and only previously sought to strike all but the first paragraph of this section from the proposed joint filing (*i.e.*, Demaray did not provide notice of any substantive positions other than that discovery should continue to be stayed until the Court rules on Demaray's motion to dismiss). It is unclear what Demaray is waiting for, except to perhaps hide its positions from Applied so that Applied does not have the opportunity to address them. To the extent Demaray's submission provides any substantive response to this section, Applied was never provided the opportunity to consider Demaray's positions in advance of this filing.

1 configurations of the hardware components Demaray previously alleged that Intel and Samsung
2 configures on their own; and (ix) Demaray’s representations in the customer suits that the
3 discovery from Applied is necessary to determine which reactors allegedly infringe.

4 Demaray has been in possession of technical documents produced by Applied in the
5 customer suits since as early as November 18, 2020, when Applied voluntarily, at the request of
6 its customers, produced manuals for the power supplies provided with its reactors that are
7 manufactured and installed by Applied for its customers and accused of infringement. As noted
8 above, five days *after* the Court continued the prior case management conference and stayed
9 discovery in this case, Demaray issued subpoenas to Applied in the customer suits seeking
10 discovery regarding Applied’s configurations of the hardware components Demaray repeatedly
11 represented to this Court were allegedly configured by Applied’s customers in arguing lack of
12 subject matter jurisdiction. Notwithstanding the about-face of Demaray’s subpoenas, Applied
13 produced technical documents regarding the reactors it supplies to Intel and Samsung of which
14 their *use* (and not any purported post-installation configuration) form the basis of the alleged
15 infringement by Applied’s customers nearly a month ago. Applied has also made available for
16 inspection its “crown-jewel” documents for its reactors supplied to Intel and Samsung and
17 accused of infringement, and has agreed to make a witness available for deposition in response to
18 Demaray’s subpoenas. Thus, despite the Court’s prior order staying discovery in this action,
19 Demaray has in fact proceeded with discovery from Applied for over a month now. Demaray
20 knows that Intel and Samsung do not make the post-installation hardware configurations it
21 contended occurred in previously challenging this Court’s subject matter jurisdiction—thus, its
22 continued prosecution of its cases against Applied’s customers are either (i) necessarily
23 allegations against Applied or (ii) have no basis whatsoever.

24 Any continued refusal by Demaray to inform Applied or this Court as to whether it will
25 assert compulsory counterclaims against Applied, or another challenge to this Court’s subject
26 matter jurisdiction over *Applied II* (which Applied believes would be frivolous), will be for the
27 improper purpose of continued delay of this case as the customer suits proceed. Indeed, and as
28 reported in the parties’ prior case management statement, *Applied I*, Dkt. No. 40 at 9:28-10:4,

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