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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

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

CASE NO. 5:20-cv-9341

**COMPLAINT FOR DECLARATORY
JUDGMENT**

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NATURE OF THE ACTION

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2 1. This is an action for declaratory relief arising under the patent laws of the United States.
3 Applied Materials, Inc. (“Applied”) brings the instant action because there is a substantial
4 controversy between Applied and Defendant Demaray LLC (“Demaray”), two parties having
5 adverse legal interests, of sufficient immediacy and reality to require a judicial declaration of the
6 parties’ legal rights. On July 14, 2020, Demaray filed lawsuits alleging that certain of Applied’s
7 customers, Intel and Samsung, infringe United States Patent Nos. 7,544,276 (the ’276 patent) and
8 7,381,657 (the ’657 patent) (collectively, the “Asserted Patents”) by using “semiconductor
9 manufacturing equipment including reactive magnetron sputtering reactors” manufactured by
10 Applied. (“Customer Suits”). True and correct copies of these complaints are attached as Exhibits
11 A and B (“Customer Complaints”).
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13 2. The Asserted Patents are both entitled “Biased Pulse DC Reactive Sputtering of Oxide
14 Films” and share a common specification. The ’276 patent discloses only apparatus claims directed
15 to a reactor having certain hardware components (herein also, “the ’276 reactor patent”), and Intel
16 and Samsung’s alleged infringement is based on their use of Applied’s reactors to produce
17 semiconductor products. On information and belief, neither Samsung nor Intel makes, sells or
18 offers to sell reactors; the alleged infringement of the ’276 reactor patent by Samsung or Intel is
19 based on their *use* of the accused reactor supplied by the manufacturer, Applied. The ’657 patent
20 (herein also, “the ’657 process patent”) discloses method claims for depositing films, where again,
21 Intel and Samsung’s alleged *use* of the reactors supplied by Applied, allegedly infringes the claimed
22 methods. The Applied reactors identified and accused in the Customer Complaints are used for the
23 same applications by Applied in its own laboratories in the Northern District of California for
24 research and development and customer demonstrations.
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1 3. Thus, contrary to the arguments Demaray has made to this Court, this is “a case where one
2 entity [Applied] makes an [allegedly] infringing product [Applied’s accused reactors], and its
3 customers [Intel and Samsung] are then sued for nothing more than purchasing and using it [as a
4 practical matter based on the commercial realities] in the only way possible.” *Applied Materials,*
5 *Inc. v. Demaray LLC*, Case No. 5:20-cv-5676-EJD (“DJ Action”), Dkt. No. 25, p. 6:5-9. As John
6 Forster, Applied’s Senior Director, Process Engineer for Metal Deposition Products, who has
7 worked at Applied since October 1993, explained in his declaration submitted to the Court in
8 opposing Demaray’s motion to dismiss for lack of subject matter jurisdiction in the DJ Action:
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10 Customers like Intel and Samsung typically provide Applied with a set of
11 specifications for a type of film they would like to deposit, and based on those
12 specifications, Applied manufactures and configures the RMS reactors to deposit
13 films according to the customers’ specifications. Post-installation modifications,
14 such as modifying the power supply or adding an additional component, such as a
15 filter, to the system as installed by Applied, could, for example, cause the RMS
16 reactor to no longer meet the customers’ required specifications or impact the
17 warranty of the reactor.

18 DJ Action, Dkt. No. 42-1, ¶ 6 (also attached hereto as Exhibit Q)

19 4. On information and belief, Demaray is well aware of these commercial realities and the
20 relationships between an equipment supplier like Applied and its customers, like Samsung and
21 Intel, who use Applied’s customized equipment for material deposition processes to manufacture
22 its products. Demaray’s principal, Dr. Ernest Demaray, is a former employee of Applied Komatsu,
23 a joint venture of Applied in the 1990s, and claims to have over fifty years of experience working
24 with or in the semiconductor industry. DJ Action, Dkt. No. 23-1, ¶¶ 2, 4. A true and correct copy
25 of Dr. Demaray’s declaration is also attached as Exhibit M. On information and belief, Demaray
26 also has extensive knowledge regarding the semiconductor industry through its purported
27 consultant attorney hired to manage the Customer Suits, Scot Griffin. On information and belief,
28 Mr. Griffin has extensive knowledge about the semiconductor industry, having worked for over a
decade in-house at Intel, Spansion, Inc. (another semiconductor manufacturer) and Tessera, Inc. (a

1 company that purported to be a global leader in the development of semiconductor packaging
2 technology). A true and correct copy of Mr. Griffin’s LinkedIn profile is attached as Exhibit R.

3 5. In considering the Customers Suits’ allegations with the commercial realities of Applied’s
4 relationships with its customers—including that Applied designs, manufactures and installs its
5 reactors at its customers’ fabrication facilities, and thereafter provides maintenance and support for
6 those reactors—Demaray’s affirmative act of filing the Customer Suits, which implicitly accused
7 Applied and Applied’s reactors of infringement, created a reasonable potential that infringement
8 claims could be brought against Applied based on the same allegations. As a result of Applied’s
9 reasonable apprehension of suit, on August 13, 2020, Applied filed a declaratory judgment action
10 of non-infringement of the Asserted Patents. *Applied Materials, Inc. v. Demaray LLC*, Case No.
11 5:20-cv-5676-EJD, Dkt. No. 1. On September 4, 2020, Applied moved for a preliminary injunction
12 to enjoin Demaray from proceeding with its Customer Suits during the pendency of the DJ Action.
13 *Id.*, Dkt. No. 13.

14 6. Demaray opposed by arguing that the Court did not have subject matter jurisdiction over
15 the DJ Action by representing that its allegations in the Customer Suits were directed at “particular
16 configurations” made by Intel and Samsung to Applied’s reactors such that “Demaray [did not]
17 accuse Applied PVD reactors standing alone of infringement in the Texas cases—Demaray
18 accused particular reactor configurations, and methods of depositing thin films using them, of
19 infringement in the Texas cases...”. DJ Action, Dkt. No. 23, p. 5:26-6:9 (emphasis added). But
20 nowhere in the Customer Complaints did Demaray allege that its accusations of infringement did
21 not accuse “Applied PVD reactors standing alone”. Nor did Demaray provide any evidence, let
22 alone allege in the Customer Complaints, that Intel and Samsung’s alleged infringement was based
23 on post-installation modifications to the hardware of the PVD reactors after the reactors were
24 manufactured, configured, and installed by Applied. On information and belief, Demaray’s subject
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1 matter jurisdiction challenge, including its arguments that the Customer Complaints were directed
2 to post-installation modifications by the customers, was simply a vehicle to slow down the DJ
3 Action while the Customer Suits proceeded. As explained below, Demaray’s representations that
4 it was not accusing “**Applied PVD reactors standing alone** of infringement” was not true, as
5 confirmed by Demaray’s recent statements that it may accuse Applied of infringement and
6 subsequently seeking discovery through subpoenas for documents and testimony directed to
7 *Applied’s configuration* of its reactors as supplied to the customers in order to determine “which
8 reactors are in dispute” (*i.e.*, which allegedly infringe).

10 7. On information and belief, although the Customer Complaints did not make an express
11 allegation of infringement against Applied, Demaray, in particular Dr. Demaray and Mr. Griffin,
12 understood and knew that their allegations against Intel and Samsung based on their use of
13 Applied’s reactors would be objectively and reasonably interpreted as an implied assertion against
14 Applied. While their knowledge is not required to establish a justiciable case or controversy, it
15 undermines Demaray’s characterization of the allegations in the Customer Suits in challenging this
16 Court’s subject matter jurisdiction and further evidences Demaray’s bad faith in bringing that
17 challenge. Setting aside Demaray’s after-the-fact representations to the Court and the veracity of
18 those statements when considering Dr. Demaray’s and Mr. Griffin’s intimate knowledge and
19 experience in this industry, Applied did in fact reasonably and objectively interpret the Customer
20 Complaints at the time the DJ Action was filed as affirmative acts by Demaray that created a
21 reasonable potential that infringement claims could be brought against Applied. DJ Action, Dkt.
22 No. 42-1, ¶¶ 5-9 (also at Ex. Q).

25 8. On information and belief, the implications of Demaray’s statements and arguments made
26 in challenging subject matter jurisdiction were that Intel and Samsung further “configured”
27 Applied’s reactors such that their use of the further configured reactors allegedly infringed the
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