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APPLIED MATERIALS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

APPLIED MATERIALS, INC.,

Plaintiff,

vs.

DEMARAY LLC,

Defendant.

CASE NO. 5:20-cv-09341-EJD

**THIRD UPDATED CASE
MANAGEMENT STATEMENT
PURSUANT TO ORDER [DKT. NO.
101]**

THIRD UPDATED JOINT CASE

1 Plaintiff Applied Materials, Inc. (“Applied”) and Defendant Demaray LLC (“Demaray”)
2 (collectively, “the Parties”) submit this Updated Joint CMC Statement pursuant to the Court’s
3 December 15, 2021 Order, Dkt. No. 101, ordering the Parties to confer and file an updated joint
4 case management statement with a proposed case schedule by December 22, 2021, setting forth
5 their case management proposal(s) for Judge Davila. The Parties further incorporate by reference
6 their prior Case Management Statements submitted on November 4, 2021, Dkt. No. 82, October
7 6, 2021, Dkt. No. 69, and January 14, 2021, Dkt. No. 27, and, where appropriate for brevity, note
8 below where their positions have not changed.

9 **A. Applied’s Position:**

10 Applied objects to Demaray’s lengthy and repeated arguments regarding its need for
11 additional discovery from Applied and indecision as to whether it will assert infringement claims
12 in the future. Noting this Court’s standing order on Case Management Statements that “except in
13 unusually complex cases, [the statement] should not exceed ten pages,” Applied proposed the
14 parties limit their respective positions in “Disputed” Section to no more than 5 pages. Demaray
15 refused, insisting on submitting its 10 pages of argument in the “Disputed” Sections below. As
16 explained herein, Demaray has waived any compulsory counterclaims of infringement.
17 Moreover, the case management statement is not a proper document to raise purported discovery
18 disputes or present arguments on a yet-to-be-filed motion to amend its answer to assert
19 infringement claims. Applied would oppose any such motion, and does not believe Demaray
20 would have good cause to add infringement claims later in the case.

21 **B. Demaray’s Position:**

22 Magistrate Judge Cousins ordered an updated CMC statement from the Parties. Dkt. No.
23 101. Consistent with the Civil Local Rules and the Court’s Standing Orders, Demaray has
24 endeavored herein to outline for the Court the issues between the Parties related thereto, including
25 potential infringement claims, related discovery and other issues that may impact the case
26 schedule and application of default timelines in the Patent Local Rules. Demaray respectfully
27 submits that the Court should fully consider the issues, including opportunities to minimize
28 burdens and inefficiencies. The fact is that this case involves interplay with two earlier-filed

1 pending cases in Texas, four co-pending Applied IPRs, and unresolved issues relating to potential
2 affirmative infringement and invalidity claims—*i.e.*, complex issues. The parties both recognize
3 the complexity of this action having submitted three prior Joint CMC Statements (November 4,
4 2021, Dkt. No. 82, October 6, 2021, Dkt. No. 69, and January 14, 2021, Dkt. No. 27) each of
5 which were longer than this statement.

6 **1. Jurisdiction and Service (Joint)**

7 *See* Dkt. No. 69.

8 **2. Updated Facts Since The Last Case Management Statement (Dkt. No. 82) (Joint)**

9 On November 19, 2021, Applied filed a Motion to Compel Compliance with Patent Local
10 Rules, Dkt. No. 83, and a Motion to Shorten Time for Earlier Hearing or Determination on the
11 Papers on its Motion to Compel Compliance with Patent Local Rules, Dkt. No. 84. On
12 November 23, 2021, Demaray responded to the Motion to Shorten Time. Dkt. No. 85. On
13 December 1, 2021, the parties filed a Joint Discovery Letter Brief before Magistrate Judge
14 Cousins regarding Applied's request for the deposition of Dr. Richard Earnest Demaray. Dkt.
15 No. 86.

16 On December 2, 2021, the Court issued an order referring Demaray's Motion to Stay
17 Pending *Inter Partes* Review (Dkt. No. 67), Applied's Motion to Compel Compliance with Patent
18 Local Rules (Dkt. No. 83) and Applied's Motion to Shorten Time (Dkt. No. 84) to Magistrate
19 Judge Cousins. Dkt. No. 87. The same day, the Court granted the Motion to Shorten Time,
20 setting hearing for the Motion to Compel Compliance with Patent Local Rules for December 15,
21 2021. Dkt. No. 88. The Court also set for hearing the other pending motions for the same day.
22 Dkt. No. 89.

23 On December 10, 2021, Demaray filed a Motion for Subsequent Case Management
24 Conference. Dkt. No. 92. Demaray's Motion is set for hearing on April 21, 2022, but Demaray
25 does not oppose the Court holding a further Case Management Conference at its earliest
26 convenience. Applied does not oppose the Court holding a further Case Management Conference
27 at its earliest convenience if it believes one is necessary.

28 On December 15, 2021, Magistrate Judge Cousins held a hearing and issued an order

(Dkt. No. 101) denying Demaray's Motion to Stay Pending *Inter Partes Review* (Dkt. No. 67), granting Applied's Motion to Compel Deposition of Dr. Demaray (Dkt. No. 86), and granting-in-part Applied's Motion to Compel Compliance with Patent Local Rules (Dkt. No. 83).

3. Legal Issues (Disputed)

A. Applied's Response:

Applied believes that this case raises the following legal issues: (1) the construction of any disputed claim term in the Demaray Patents; (2) whether Applied or its products infringe the Demaray Patents; and (3) whether Applied has a license to the Demaray Patents.

Demaray's arguments that the legal issues in this case may expand to include issues of infringement, invalidity, damages, etc. are contrary to law and the Patent Local Rules. As a matter of Federal Circuit law, claims of patent infringement are compulsory counterclaims to a declaratory-judgment action seeking a declaration of noninfringement regarding the same patent and the same accused products. *Capo, Inc. v. Dioptics Med. Prods., Inc.*, 387 F.3d 1352, 1356 (Fed. Cir. 2004) ("In an action for declaration of noninfringement, a counterclaim for patent infringement is compulsory and if not made is deemed waived."). Demaray already waived its right to assert infringement claims by not filing compulsory counterclaims of infringement when it answered on September 30, 2021. Furthermore, the Patent Local Rules expressly provide for what happens in such cases: the exchange of PLR 4-1 disclosures 14 days after the defendant answers. Applied complied, but Demaray refused, necessitating a motion to compel Demaray to comply with the Patent Local Rules. Dkt. No. 83. The Court has since confirmed that Demaray must comply, Dkt. No. 101, yet Demaray continues to delay providing its disclosures.

Waiver aside, Demaray's assertion that it "lacks details regarding Applied's products and processes" cannot be reconciled with: (1) the substantial discovery Applied has provided in its responses to Demaray's subpoenas in the WDTX cases, *see, e.g.*, Dkt. No. 52, Exs. C, E and F; and (2) Demaray's continued prosecution of infringement claims against Applied's customers. In finding subject matter jurisdiction in this case, the Court reasoned "[w]hen considered along with Demaray's other affirmative acts, including its October 9, 2020 preliminary infringement contentions, the subpoenas requests demonstrate its intent to enforce its patents and the threat of

1 future injury facing Applied.” Dkt. No. 63 at 11:18-21. Demaray’s later supplemental
2 infringement contentions further confirm it alleges that Applied’s products infringe in the
3 customer suits. *See, e.g.*, Dkt. No. 37-11 (Feb. 5, 2021 Infringement Contentions to Intel). As
4 recently as an August 30, 2021 letter from Demaray to Intel, Demaray asserted: “The record in
5 this case overwhelmingly indicates that Intel has used, and continues to use, the claimed reactor
6 configurations without Demaray’s permission to churn out semiconductor products from which
7 Intel has obtained billions of dollars in revenue.” Demaray cannot make such allegations and
8 continue its claims against Applied’s customers in Texas while telling this Court that it lacked
9 sufficient information to decide whether to assert counterclaims of infringement when it answered
10 (and still lacks sufficient information today). In short, Demaray’s claim that it needs more
11 information is simply a delay tactic, which contravenes this Court’s exercise of discretionary
12 jurisdiction “[g]iven the affirmative acts and the potential impact the resolution of this case could
13 have on Demaray’s suits against Applied’s customers.” *Id.* at 14:11-14.

14 Moreover, this Court’s Patent Local Rules require disclosure of infringement contentions
15 (PLR 3-1) *prior to* the production by an accused infringer of confidential technical documents.
16 Demaray also purportedly had a basis to file complaints against Intel and Samsung in the Western
17 District of Texas based on their use of the same Applied products at issue in this declaratory
18 judgment action, and thereafter served infringement contentions, again, without the production of
19 any confidential technical documents from Intel, Samsung or Applied. On the other hand, by the
20 time Demaray chose not to file compulsory counterclaims of infringement, Demaray was in the
21 possession of hundreds of confidential technical documents from Applied and already deposed
22 Applied on its PVD configurations pursuant to a subpoena it served last December.

23 Demaray’s statements below that Applied has refused to provide technical details of its
24 products misrepresents the information provided to Demaray in the customer suits. Demaray
25 either has not reviewed Applied’s robust document production or simply refuses to accept what
26 the evidence shows. Indeed, last week during a discovery hearing in the Customer Suits in
27 WDTX, Demaray argued that Applied’s schematics (produced in May 2021) were insufficient,
28 representing that “schematics that Applied points to don’t even show an RF bias source for these

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