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APPLIED MATERIALS, INC.

15  
16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18

19 APPLIED MATERIALS, INC.,

20 Plaintiff,

21 vs.

22 DEMARAY LLC,

23 Defendant.  
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26  
27  
28

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

**APPLIED MATERIALS, INC.'S  
RESPONSE TO DEMARAY LLC'S  
MOTION FOR A SUBSEQUENT CASE  
MANAGEMENT CONFERENCE**

**Hearing Date:** April 21, 2022

**Hearing Time:** 9:00 a.m.

1           **I. ARGUMENT**

2           Applied does not oppose the Court holding a further case management conference  
3 (“CMC”) if the Court believes one is necessary, but objects to Demaray’s continued reliance on  
4 the fact that the Court has not yet set a further CMC as ‘justification’ for its ongoing efforts to  
5 delay this case from moving forward. Specifically, Demaray’s motion requests “the Court—at its  
6 earliest convenience—hold a further CMC *to set the initial case schedule in this case* and  
7 address the parties’ various issues raised in their updated Joint CMC Statement (Dkt. No.82),  
8 including their competing proposed schedules”, Dkt. No. 92 at 1:3-5, such that until that time,  
9 Demaray can continue to delay compliance with discovery and Patent Local Rule deadlines.  
10 Demaray should not be permitted to continue its self-help tactics.<sup>1</sup>

11           Two weeks ago, Magistrate Judge Cousins addressed three motions in Applied’s favor, all  
12 centered around the same core dispute: whether Demaray could continue to delay this case from  
13 proceeding in view of “the potential impact the resolution this case could have on Demaray’s  
14 suits against Applied’s customers” Dkt. No. 63, 14:11-14. The Court denied Demaray’s motion  
15 to stay pending IPR, ordered the deposition of Demaray’s principal, Dr. Demaray, to occur by  
16 January 21, 2022, and made clear that Demaray must comply with the Patent Local Rules after  
17 Demaray had failed to do so for two months. Dkt. No. 101. Magistrate Judge Cousins concluded  
18 that “Demaray essentially has granted itself a further stay of the case even after Judge Davila  
19 ordered an end to the discovery stay on October 15, 2021” and Demaray “must comply with the  
20 Patent Local Rules.” *Id.* at 3:14-17. Magistrate Judge Cousins also ordered the parties “to confer  
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23 <sup>1</sup> Demaray has repeatedly wielded the purported need for a further CMC to suit its litigation goal  
24 of delaying this case from proceeding in favor of its lawsuits against Applied’s customers. *See*,  
25 *e.g.*, Dkt. No. 86 at 3-5 (arguing Magistrate Judge Cousins should not address the deposition of  
26 Dr. Demaray because “Judge Davila should address the issue of coordination of overlapping  
27 discovery as part of the pending CMC process”); Dkt. No. 90 at 1:1-5 (opposing motion for  
28 compliance with Patent Local Rules because “the Court has not yet entered a case schedule”).

1 and file an updated joint case management statement by December 22, 2021, setting forth their  
2 case management plan(s) for Judge Davila.” *Id.* at 3:18-20. The parties did so. Dkt. No. 106.

3       Therein, despite the Court confirming that Demaray must comply with the Patent Local  
4 Rules, which “requires communication and cooperation”, Demaray continues to ignore the  
5 deadlines that those rules mandate. Demaray failed to comply with its Patent L.R. 4-1 disclosures  
6 on October 14, 2021 and Patent L.R. 4-2 disclosures on November 4, 2021, despite already  
7 exchanging the same information in its customer suits in Texas *months* ago for certain terms and  
8 actively exchanging the same disclosures around the same time for other terms. As a result, the  
9 November 30, 2021 deadline for filing a Joint Claim Construction Statement also passed without  
10 Demaray’s cooperation. Despite Magistrate Judge Cousins’ order, Demaray refused to propose  
11 claim terms for another twelve days<sup>2</sup>, does not propose filing the Joint Claim Construction  
12 Statement until February 1, 2022, or having a *Markman* hearing until late April 2022 or early  
13 August 2022 if it is allowed to make infringement claims. Dkt. No. 106 at 21-22 (Proposed  
14 Schedule). Unless the Court enters a case schedule, Demaray will undoubtedly continue its self-  
15 help tactics and make disclosures on its own terms and deadlines. In doing so to-date, Demaray  
16 has already delayed its disclosures required by the Patent Local Rules by two months.

17       Accordingly, Applied respectfully requests that the Court enter a case schedule at its  
18 earliest convenience in view of the parties’ updated CMC statement. To the extent the Court  
19 believes a further CMC is necessary, Applied welcomes the opportunity to further address any of  
20 the issues raised in the updated CMC. However, Demaray should not be permitted to continue  
21 relying on the lack of CMC or entered case schedule to further delaying this case from moving  
22 forward and setting its own rules and deadlines as they fit its litigation goals.

## 23       **II. CONCLUSION**

24       Applied respectfully requests the Court enter a case schedule based on the parties’ updated  
25 CMC statement, Dkt. No. 106.

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27       <sup>2</sup> As of the filing of this response, Demaray had not yet served its Patent L.R. 4-1 disclosures  
28 despite agreeing to do so under its own proposed schedule. Dkt. No. 106 at 21.

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2 DATED: December 27, 2021

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