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APPLIED MATERIALS, INC.

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA

19 APPLIED MATERIALS, INC.,

20 Plaintiff,

21 vs.

22 DEMARAY LLC,

23 Defendant.

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.¹

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 ¹ 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 days², 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 ² 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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