

1 Demaray opposes-in-part Applied's motion for an expedited hearing or a determination on
2 the papers ("Motion") (Dkt. 108) on Demaray's Motion for a Subsequent Case Management
3 Conference (Dkt. 92). Applied misstates Demaray's stated position during the meet and confer
4 process in its motion and supporting attorney declaration. During the meet and confer, Demaray
5 told counsel for Applied in writing via e-mail on December 27, 2021:

6 Demaray does not oppose Applied filing a motion to shorten time
7 for a CMC. Demaray's motion is set for hearing in April 2022. As
8 we have stated before, we think that a CMC as soon as the Court's
9 schedule permits would be appropriate.

10 ***Demaray believes that a CMC is necessary and does not agree that***
11 ***ruling on the papers is appropriate.***

12 Counsel for Applied's sworn statement that "Demaray did not oppose Applied's request that the
13 Court decide Demaray's motion on the papers and without oral argument" (Dkt. 108) directly
14 contradicts Demaray's stated position regarding the appropriateness of resolution on the papers
15 and is not accurate.¹ For avoidance of doubt, Demaray opposes-in-part Applied's Motion because,
16 given the complexity of the issues, Demaray believes that hearing from the parties would benefit
17 the Court and the Court should not enter a schedule on the papers.

18 Demaray agrees that the Court should hold a further CMC as soon as its schedule permits.
19 Last week, the parties submitted a fourth updated Joint CMC Statement (Dkt. 106) setting forth
20 their positions on a number of issues and competing proposed case schedules. The case
21 management issues before the Court are complex, involving not only this matter, but potential
22 coordination of co-pending cases in Texas and four IPRs (two now instituted) that Applied chose
23 to file in the Patent Office, all of which potentially impact an appropriate schedule here. In
24 addition, in the updated Joint CMC Statement, Demaray pointed out that "[i]t is still unclear ...
25 whether affirmative infringement claims against Applied or affirmative invalidity claims by

26 ¹ Counsel for Applied emailed after receiving Demaray's written position purporting to
27 restate and change Demaray's position. Applied relies on their restatement in the Motion as
28 opposed to what Demaray actually said. Demaray's position remains what it said, not Applied's
self-serving restatement.

1 Applied will be at issue in this case.” *Id.* at 4. As Demaray has consistently told this Court, it
2 needs targeted discovery on Applied’s reactors to make infringement determinations. *See* Dkt. 27
3 at 6-8 (Prior CMC Statement requesting targeted discovery); Dkt. 69 at 3-4 (Updated CMC
4 requesting the same), Dkt. 82 at 4-6 (Updated CMC requesting the same). Applied’s reactor
5 configurations are not publicly available, rendering Demaray presently unable to ascertain specific
6 details regarding filters or other protective mechanisms central to its determination of whether
7 Applied infringes. To that end, Demaray proposed that Applied “provide targeted product
8 disclosures ... detailing its use of the claimed reactor configurations by December 31 ... [and]
9 [o]nce Applied provides the required details on its products and processes ... Demaray will timely
10 make infringement determinations.” Dkt. 106 at 5-6. Demaray also addressed the need to modify
11 the default schedule in the Patent Local Rules stating: “it unclear how Applied proposes the parties
12 conduct claim construction disclosures before disclosures are made regarding affirmative claims
13 for infringement and invalidity—the order of disclosures under the Patent Local Rules.” *Id.* at 19.

14 Given the complexity of these issues, Demaray respectfully requests that the Court, at its
15 earliest convenience, either (1) hold a hearing on Demaray’s motion for a subsequent CMC or (2)
16 simply hold a subsequent CMC.

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18 Dated: December 28, 2021

Respectfully submitted,
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