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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

13	APPLIED MATERIALS, INC.,)	Case No. 5:20-cv-09341-EJD
)	
14	Plaintiff,)	DEMARAY LLC’S REPLY RE: MOTION
)	FOR A SUBSEQUENT CASE
15	vs.)	MANAGEMENT CONFERENCE
)	
16	DEMARAY LLC,)	Hearing Date: April 21, 2022
)	Hearing Time: 9:00 a.m.
17	Defendant.)	
18)	

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1 Both the parties and the Magistrate agree that the Court should schedule—at its earliest
2 convenience—a further CMC to put a case schedule in place. At the December 15, 2021 discovery
3 hearing, Magistrate Judge Cousins stated “I assume, yes, you will have a case management
4 conference sometime soon with Judge Davila” (12/15/21 Transcript at 3:3-5) and ordered the
5 parties to meet and confer and file an updated Joint CMC Statement “setting forth their case
6 management plan(s)” (Dkt. 101 at 3), which they have now done (Dkt. 106). And, while Applied
7 refused originally to join Demaray in making a stipulated request for a further CMC conference
8 under Civil Local Rule 16-10(c) necessitating this Motion, Applied now “does not oppose the
9 Court holding a further case management conference (‘CMC’)” (Resp. at 1) and has sought to
10 expedite the hearing on Demaray’s CMC request (Dkt. 108). Demaray continues to believe that a
11 CMC is necessary to enter a schedule reflecting the complexity of this case and respectfully
12 requests that the Court schedule—at its earliest convenience—a further CMC to address the case
13 schedule in light of the issues raised in the parties’ updated Joint CMC Statement.

14 Applied spends most of its self-styled “response” casting unsupported and improper
15 aspersions that Demaray is somehow delaying the case because of a lack of a case schedule. This
16 is objectively false. The fact is that Demaray timely sought a further CMC conference to set a case
17 schedule in the first place, not Applied. *See* Dkt. 92. Applied refused to join a stipulated request
18 for a CMC that would have streamlined this process necessitating motion practice. Below,
19 Demaray briefly responds to Applied’s mischaracterizations of the record.

20 **I. DEMARAY HAS FOLLOWED MAGISTRATE JUDGE COUSINS’ GUIDANCE**

21 In arguing that Demaray is somehow delaying in contravention of Magistrate Judge
22 Cousins’ guidance, Applied mischaracterizes the record. On December 15, 2021, Magistrate Judge
23 Cousins ordered:

24 Both parties must comply with the Patent Local Rules. This requires
25 communication and cooperation. The parties are ordered to confer
26 and file an updated joint case management statement by December
27 22, 2021, setting forth their case management plan(s) for Judge
28 Davila. I do not adopt the unilateral case schedule proposed at ECF
98 by Applied.

Dkt. 101 at 3. Demaray has followed, and will continue to follow, this guidance.

1 Demaray understands from Magistrate Judge Cousins' order that the parties should follow
2 the default disclosure requirements and timelines under the Patent Local Rules until otherwise
3 directed by the Court. After Magistrate Judge Cousins issued his order, the parties promptly met
4 and conferred on the case management issues, including the case schedule, as called for under this
5 Court's rules. As part of the parties' December 22, 2021 updated Joint CMC Statement, Demaray
6 proposed that it make claim construction disclosures under Patent L.R. 4-1 within just five days of
7 filing the updated Joint CMC Statement and provide its constructions and intrinsic evidence at the
8 end of the first week back after the holidays, on January 7, 2022. *See* Dkt. 106 at 21-22. This is
9 well short of the January 17, 2022, date called for using the default timelines under Patent Local
10 Rule 4-2. The remainder of Demaray's proposed timeline for claim construction disclosures
11 follows the default timelines under the Patent Local Rules, but notes that if after Applied provides
12 the required targeted disclosures on its reactor configurations, Demaray brings affirmative
13 infringement claims, the default timelines under the Patent Local Rules for cases involving
14 affirmative infringement claims should then apply.

15 On December 27, 2021, Demaray did not to propose any further claims under Patent Local
16 Rule 4-1 for construction. The next morning, December 28, 2021, counsel for Demaray reached
17 out to Applied to meet and confer pursuant to Patent Local Rule 4-1. The parties held that meet
18 and confer the next day, December 29, 2021. This is not delay.

19 Demaray intends to continue to work cooperatively with Applied as Magistrate Judge
20 Cousins directed and will provide its Patent Local Rule 4-2 disclosures on January 7, 2022 (*see*
21 Dkt. 106 at 21-22)—well short of the January 17, 2022 date called for using the default timelines
22 under Patent Local Rule 4-2. Demaray will then follow the default timelines for claim construction
23 disclosures under the Patent Local Rules until the Court order a different schedule. This also is not
24 delay.

25 Applied's assertion that "Demaray continues to ignore the deadlines that th[e] rules
26 mandate" (Resp. at 2) ignores these disclosures and appears to be predicted on the erroneous
27 assumption that its proposed schedule (Dkt. 98) is somehow operative—but Magistrate Judge
28 Cousins specifically rejected Applied's proposed schedule: "*I do not adopt the unilateral case*

1 *schedule proposed at ECF 98 by Applied.*” Dkt. 101 at 3 (emphasis added).

2 Applied’s rejected schedule called for (1) Demaray to be limited to its claim construction
3 positions for Patent Local Rules 4-1 through 4-2 from Texas and (2) an expedited (and
4 unworkable) schedule for the rest of the claim construction disclosures under the Patent Local
5 Rules asking that claim construction disclosures/briefing be shortened from five months as called
6 for under Patent L.R. 4-1 through 4-5 to just over two months. Applied offers no reasonable basis
7 for its proposed drastic cuts to the time allotted under the Patent Local Rules. And, as discussed in
8 the updated Joint CMC Statement, Applied’s schedule is based upon its assumption that
9 affirmative infringement claims will not be part of the case, but as Demaray has stated all along, it
10 needs targeted discovery on Applied’s reactor configurations to make such determinations and it is
11 unclear how Applied proposes the parties take claim construction positions before disclosures are
12 made regarding affirmative claims for infringement or its own claims for invalidity—the order of
13 disclosures under the Patent Local Rules.

14 **II. CONCLUSION**

15 Given the outstanding issues as outline in the parties’ Updated Joint CMC Statement, the
16 most logical and efficient way for this case to proceed is for the Court to hold a further CMC as
17 Demaray requests to address the various intertwined issues and the case schedule. For the
18 foregoing reasons, the Court should grant Demaray’s motion for a subsequent CMC and thereby
19 hold a case management conference to set a case schedule in this case at the Court’s earliest
20 convenience.

21 Dated: January 3, 2021

Respectfully submitted,
IRELL & MANELLA LLP

23 By: /s/ C. Maclain Wells

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25 Attorneys for Defendant DEMARAY LLC
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