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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

APPLIED MATERIALS, INC.,
Plaintiff,
vs.
DEMARAY LLC,
Defendant.

CASE NO. 5:20-cv-09341-EJD-NMC
**[PROPOSED] ORDER REGARDING
CASE SCHEDULE**

PROPOSED ORDER

Pursuant to Magistrate Judge Cousins' directive during the January 12, 2022 hearing, the parties submit the following table of their respective proposals regarding case deadlines and the Court orders the following deadlines as indicated. Applied is amenable to proceeding with the claim construction hearing before Magistrate Judge Cousins. Demaray believes that Judge Davila should address any claim construction issues and respectfully declines to have the claim construction before Magistrate Judge Cousins.

<u>Event</u>	<u>Proposed Deadline</u>		<u>Court Ordered Deadline</u>
	<u>Applied's Proposal</u>	<u>Demaray's Proposal</u>	
Deadline to File Proposed ESI Order and Proposed Protective Order (AGREED)	January 26, 2022		
Demaray's Proposal for Applied to Provide Targeted Product Disclosures as detailed in Section 8 the 12/22/21 Joint CMC Statement ¹	N/A ²	January 31, 2022	
Applied's Proposed Deadline for Demaray to File Motion for Leave to Amend Answer to Assert Affirmative Infringement Claims ³	January 28, 2022	February 14, 2022	
Patent L.R. 3-1/3-2: Disclosure of Asserted Claims and Infringement Contentions and associated document production	N/A; <i>see</i> PLR 4-1; Dkt. No. 66 <u>or</u> TBD ⁴	February 14, 2022 (if applicable)	

¹ Demaray states that its proposed deadlines for Patent L.R. 3-1/3-2/3-3/3-4/3-8/3-9 and Applied's proposed deadline for Demaray to move for leave are contingent on Applied providing complete Targeted Product Disclosures by Jan. 31, 2022. Applied states it has already provided complete disclosures for Demaray to determine if it will assert infringement.

² Applied does not agree that this deadline is applicable as detailed during the 1/12/22 hearing and in Sections 3 and 8 of the 12/22/21 Joint CMC Statement.

³ Applied does not agree that leave should be granted if requested and will oppose the motion.

⁴ Applied does not agree that these deadlines are applicable to the case and believes that they will only be applicable if (1) Demaray files a motion for leave to amend its answer to assert affirmative claims of infringement and (2) the Court grants leave. Applied proposes that if the Court grants leave, the parties at that time should meet and confer regarding any applicable Patent

Event	Proposed Deadline		Court Ordered Deadline
	Applied's Proposal	Demaray's Proposal	
Patent L.R. 3-3/3-4: Invalidity Contentions and associated document production		March 31, 2022 (if applicable)	
Patent L.R. 3-8: Damages Contentions		May 20, 2022 (if applicable)	
Patent L.R. 3-9: Responsive Damages Contentions		June 20, 2022 (if applicable)	
Patent L.R. 4-1: Parties Served Proposed Terms for Construction on the Following Dates	October 14, 2021	December 27, 2021 (reset to April 4, 2022 if affirmative infringement claims are allowed)	
Patent L.R. 4-2: Parties Served Preliminary Claim Constructions and Extrinsic Evidence on the Following Dates	November 4, 2021	January 7, 2022 (reset to April 25, 2022 if affirmative infringement claims are allowed)	
Patent L.R. 4-3: Joint Claim Construction and Prehearing Statement (JCCPS)	January 21, 2022	February 1, 2022 (reset to May 30, 2022 if affirmative infringement claims are allowed)	
Patent L.R. 4-4: Completion of Claim Construction Discovery	January 28, 2022	March 3, 2022 (reset to June 29, 2022 if affirmative infringement claims are allowed)	

L.R. deadlines. Demaray proposes that the parties' file a discovery letter with Magistrate Judge Cousins on February 14, 2022, on this issue contingent on Applied providing complete Targeted Product Disclosures by Jan. 31, 2022 and Demaray making a determination that affirmative infringement claims are appropriate and requests that the motion be heard at the Court's earliest convenience. Applied does not oppose Magistrate Judge Cousins addressing whether Demaray should be allowed to amend its answer and make compulsory counterclaims of infringement, but does not agree that claim construction or other case deadlines should be further delayed pending resolution of that issue or that those deadlines should be reset if infringement claims are allowed.

Event	Proposed Deadline		Court Ordered Deadline
	Applied's Proposal	Demaray's Proposal	
Patent L.R. 4-5(a): Applied's Opening Claim Construction Brief ⁵	February 3, 2022	March 18, 2022 (reset to July 15 2022 if affirmative infringement claims are allowed)	
Patent L.R. 4-5(b): Demaray's Responsive Claim Construction Brief	February 17, 2022	April 1, 2022 (reset to July 28, 2022 if affirmative infringement claims are allowed)	
Patent L.R. 4-5(c): Applied's Reply Claim Construction Brief	February 24, 2022	April 8, 2022 (reset to Aug. 4, 2022 if affirmative infringement claims are allowed)	
Demaray's Sur-Reply Claim Construction Brief	March 3, 2022	April 15, 2022 (reset to Aug. 11, 2022 if affirmative infringement claims are allowed)	
Patent L.R. 4-6: Claim Construction Hearing and Tutorial	March 17, 2022 or at the Court's earliest convenience	April 29, 2022 or at the Court's earliest convenience (reset to August 25, 2022 or at the Court's earliest convenience if affirmative infringement claims are allowed)	

⁵ Patent L.R. 4-5 states that "... the party claiming patent infringement, or the party asserting invalidity if there is no infringement issue present in the case, shall serve and file an opening brief and any evidence supporting its claim construction." As neither circumstance applies to the current posture of the case, the parties met and conferred and propose, subject to Court approval, equal briefing with Applied filing an opening brief, Demaray filing a response, Applied filing a reply and Demaray filing a sur-reply. If the Court does not approve of this proposal, the parties have a dispute regarding the ordering of the briefing.

Event	Proposed Deadline		Court Ordered Deadline
	Applied's Proposal	Demaray's Proposal	
Post- <i>Markman</i> Status Conference (AGREED)	30 days after <i>Markman</i> order or at the Court's earliest convenience		
Patent L.R. 3-7: Advice of Counsel (AGREED)	30 days after <i>Markman</i> order		
Last Day to Move to Amend Pleadings or Add Parties (AGREED)	30 days after <i>Markman</i> order		
Joint Trial Setting Conference Statement (AGREED)	No later than 7 days before the Trial Setting Conference pursuant to Court's Standing Order For Civil Cases		
Trial Setting Conference	April 13, 2022	December 14, 2022	
Close of Fact Discovery	May 13, 2022	January 13, 2023	
Expert Disclosures (Initial)	May 20, 2022	February 17, 2023	
Expert Disclosures (Rebuttal)	June 3, 2022	March 17, 2023	
Close of Expert Discovery	June 17, 2022	April 21, 2023	
Last Day to File <i>Daubert</i> and Summary Judgment Motions	June 24, 2022	May 19, 2023	
<i>Daubert</i> and Summary Judgment Opposition Briefs	July 8, 2022	June 16, 2023	
<i>Daubert</i> and Summary Judgment Reply Briefs	July 15, 2022	June 30, 2023	
Serve Pretrial Disclosures (Witness List, Deposition Designations, and Exhibit List) (AGREED)	TBD at Trial Setting Conference		
Serve Objections to Pretrial Disclosures (AGREED)	TBD at Trial Setting Conference		
Last Day to Serve Motions In <i>Limine</i> (AGREED)	TBD at Trial Setting Conference		

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