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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] PROTECTIVE ORDER

1 To expedite the flow of discovery material, to facilitate the prompt resolution of disputes
2 over confidentiality of discovery materials, to adequately protect information the parties are entitled
3 to keep confidential, to ensure that only materials the parties are entitled to keep confidential are
4 subject to such treatment, and to ensure that the parties are permitted reasonable necessary uses of
5 such materials in preparation for and in the conduct of trial, pursuant to Fed. R. Civ. P. 26(c), it is
6 hereby **ORDERED THAT:**

7 **A. Definitions**

8 1. “Party”: any party to this action, including all of its officers, directors, employees,
9 consultants, retained experts, and outside counsel (and their support staff).

10 2. “Material”: all information, testimony, documents, and things produced, served, or
11 otherwise provided in this action by the Parties or by non-parties.

12 3. “CONFIDENTIAL Material”: information, documents, and things the Designating
13 Party believes in good faith is not generally known to others, and which the Designating Party
14 (i) would not normally reveal to third parties except in confidence or has undertaken with others to
15 maintain in confidence, or (ii) believes in good faith is protected by a right to privacy under federal
16 or state law or any other applicable privilege or right related to confidentiality or privacy. This
17 designation includes all Material referring or relating to the foregoing, including but not limited to
18 copies, summaries, and abstracts of the foregoing.

19 4. “OUTSIDE COUNSEL EYES ONLY Material”: information, documents, and
20 things the Designating Party believes in good faith is not generally known to others and has
21 significant competitive value such that unrestricted disclosure to others would create a substantial
22 risk of serious injury, and which the Designating Party (i) would not normally reveal to third parties
23 except in confidence or has undertaken with others to maintain in confidence, or (ii) believes in
24 good faith is significantly sensitive and protected by a right to privacy under federal or state law or
25 any other applicable privilege or right related to confidentiality or privacy. The designation is
26 reserved for information that constitutes proprietary financial or technical or commercially
27 sensitive competitive information that the Designating Party maintains as highly confidential in its
28 business, including information obtained from a non-party pursuant to a Nondisclosure Agreement

1 (“NDA”), information relating to future products, strategic plans, non-public financial data,
2 documents that would reveal trade secrets, licensing documents or licensing communications, and
3 settlement agreements or settlement communications, the disclosure of which is likely to cause
4 harm to the competitive position of the Designating Party. This designation includes all Material
5 referring or relating to the foregoing, including but not limited to copies, summaries, and abstracts
6 of the foregoing.

7 5. “OUTSIDE COUNSEL EYES ONLY – SOURCE CODE”: C, C++, assembler,
8 digital signal processing (DSP) programming language, firmware source code, register transfer
9 language (RTL), hardware description language (HDL), circuit simulation files, non-programing
10 files that are part of the source code development suite (such as README, Release Note, log and
11 input files), **[Applied’s Proposal: design files (schematics, netlists, and layout files), or**
12 **schematics (i.e., representations of any silicon mask or circuit design, diagram, or blueprint**
13 **containing specific gate-level circuit design representations)]**, microcode, and/or similarly
14 sensitive computer code (collectively, “Source Code”) that the Designating Party believes in good
15 faith is not generally known to others and has significant competitive value such that unrestricted
16 disclosure to others would create a substantial risk of serious injury, and which the Designating
17 Party (i) would not normally reveal to third parties except in confidence or has undertaken with
18 others to maintain in confidence, or (ii) believes in good faith is significantly sensitive and protected
19 by a right to privacy under federal or state law or any other applicable privilege or right related to
20 confidentiality or privacy. This designation includes all Materials referring or relating to the
21 foregoing, including but not limited to copies, summaries, and abstracts of the foregoing. If a non-
22 Source Code document specifically refers or relates to Source Code (e.g., a copy, summary, or
23 abstract is included therein), upon request from the Receiving Party, the Producing Party will meet
24 and confer in good faith with the Receiving Party regarding whether the Producing Party will redact
25 the relevant portion of the document and make the redacted document available as non-Source
26 Code material subject to appropriate alternative designation. If the Parties are unable to agree
27 within 5 business days of the meet and confer, the Parties will jointly seek the Court’s assistance
28 in resolving the dispute. Any document designated as “OUTSIDE COUNSEL EYES ONLY –

1 SOURCE CODE” information is automatically designated as SUBJECT TO PROSECUTION
2 BAR in Section H.

3 6. “OUTSIDE COUNSEL EYES ONLY – PROCESS RECIPE”: especially sensitive
4 semiconductor fabrication processes documentation (process flow specifications, operating
5 specifications, process sequence documents, die layout files, and process recipes) (collectively
6 “Process Recipes”) which the Designating Party believes in good faith is not generally known to
7 others, which has significant competitive value such that unrestricted disclosure to others would
8 create a substantial risk of serious injury, and which the Designating Party, in the ordinary course
9 of business, takes precautions to protect, and, further, which the Designating Party (i) would not
10 normally reveal to third parties except in confidence or has undertaken with others to maintain in
11 confidence, or (ii) believes in good faith is significantly sensitive and protected by a right to privacy
12 under federal or state law or any other applicable privilege or right related to confidentiality or
13 privacy. This designation includes all Materials referring or relating to the foregoing, including but
14 not limited to copies, summaries, and abstracts of the foregoing. If a non-Process Recipe document
15 specifically refers or relates to Process Recipe Material (e.g., a copy, summary, or abstract is
16 included therein), upon request from the Receiving Party, the Producing Party will meet and confer
17 in good faith with the Receiving Party regarding whether the Producing Party will redact the
18 relevant portion of the document and make the redacted document available as non-Process Recipe
19 material subject to appropriate alternative designation. If the Parties are unable to agree within 5
20 business days of the meet and confer, the Parties will jointly seek the Court’s assistance in resolving
21 the dispute. Applied states that it treats Process Recipe Material in a manner that is at least as
22 protective as Source Code. Any document designated as “OUTSIDE COUNSEL EYES ONLY –
23 PROCESS RECIPE” information is automatically designated as SUBJECT TO PROSECUTION
24 BAR in Section H.

25 7. “Producing Party”: a Party or non-party that produces Material in this action.

26 8. “Receiving Party”: a Party that receives Material from a Producing Party.
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1 9. “Designated Material”: Material that is designated “CONFIDENTIAL”,
2 “OUTSIDE COUNSEL EYES ONLY”, “OUTSIDE COUNSEL EYES ONLY – SOURCE
3 CODE” or “OUTSIDE COUNSEL EYES ONLY – PROCESS RECIPE” under this Order.

4 10. “Designating Party”: a Party or non-party that designates Material as
5 “CONFIDENTIAL”, “OUTSIDE COUNSEL EYES ONLY”, “OUTSIDE COUNSEL EYES
6 ONLY – SOURCE CODE” or “OUTSIDE COUNSEL EYES ONLY – PROCESS RECIPE”.

7 11. “Counsel of Record”: (i) outside counsel who appears on the pleadings as counsel
8 for a Party; (ii) partners, associates, and employees of such outside counsel to whom it is reasonably
9 necessary to disclose the information for this litigation, including supporting personnel employed
10 by the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks, and shorthand
11 reporters; (iii) independent legal translators retained to translate in connection with this action, or
12 independent shorthand reporters retained to record and transcribe testimony in connection with this
13 action. “Counsel of Record” does not include any person who is an employee, director, or officer
14 of a Party or a Party’s affiliates even if that person appears on the pleadings as counsel for a Party.

15 12. “Litigation Manager”: an employee or consultant in a Party’s legal department or
16 intellectual property division whose responsibilities include overseeing this litigation, who is not a
17 competitive decisionmaker regarding equipment for physical vapor deposition of thin films in
18 semiconductor integrated circuit products and who is not a Board member or Board-appointed
19 officer of that Party. For the avoidance of doubt, an individual is not a competitive decisionmaker
20 solely by virtue of participating in the negotiation of settlement agreements. Each Party may have
21 a maximum of two Litigation Managers. Either party may substitute its Litigation Managers with
22 reasonable notice to the other party.

23 13. “Outside Consultant”: a person with specialized knowledge or experience in a
24 matter pertinent to the action who has been retained by a Party or its Counsel of Record to serve as
25 an expert witness or as a consultant in this action and who is not a current employee, officer, or
26 director of a Party or of a competitor of a Party and who, at the time of retention, is not anticipated
27 to become an employee, officer, or director of a Party or of a competitor of a Party.
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