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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

PLAINTIFF APPLIED MATERIALS, INC.'S MOTION TO STRIKE DEFENDANT DEMARAY LLC'S LETTER BRIEF FOR LEAVE TO AMEND ITS ANSWER

Hearing Date: June 30, 2022
Hearing Time: 9:00 a.m.

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on June 30, 2022, at 9:00 a.m., or as soon thereafter as the matter may be heard, Plaintiff Applied Materials, Inc. ("Applied") will and hereby does move the Court for an order striking Defendant Demaray LLC's ("Demaray") Discovery Letter Brief to Amend Demaray's Answer and add Affirmative Counterclaims, Dkt. No. 127. In the alternative, Pursuant to L.R. 7-1(b), Applied requests this motion to be decided on the papers, without a hearing. The Motion is based on the Civil Local Rules, this Notice of Motion, the Points and Authorities, and on other such evidence as may be presented in connection with this Motion.

Pursuant to Local Rule 37-1(a), counsel for Applied certifies that it has met and conferred with counsel for Demaray for purposes of attempting to resolve the dispute and the parties were unable to do so.

MEMORANDUM OF POINTS AND AUTHORITIES

Applied respectfully moves to strike Demaray's Discovery Letter Brief to Amend Demaray's Answer and add Affirmative Counterclaims, Dkt. No. 127 ("letter brief"). This Court's Local Rules make clear that Demaray must file a properly noticed motion under Local Rule 7-1(a) in order to seek leave to amend its answer to add infringement claims in this case. Demaray refused to do so, instead seeking an end-run to its requested relief by invoking Magistrate Judge Cousins' procedures for submitting discovery disputes for his Honor's resolution. But Demaray's requested relief is neither a discovery dispute nor an issue that has been referred to Magistrate Judge Cousins.[1] Nor are Applied's objections simply procedural in nature. Demaray's letter brief acknowledges that the factors governing amendment for the Court to consider include Demaray's bad faith and undue delay, as well as the prejudice to Applied. Yet through Demaray's self-help in invoking the letter brief process, Demaray improperly seeks to limit Applied's ability to respond to a two page letter with no declarations or exhibits absent leave of Court pursuant to Magistrate Cousins' discovery dispute procedures. Not only is Demaray's letter brief procedurally improper, but also highly prejudicial to Applied. For the reasons explained herein, the letter brief should be struck.

I. BACKGROUND

On December 24, 2020, Applied filed this action seeking declaratory relief that its products, including those used by its customers Intel and Samsung and that are accused of infringement in Demaray's customers suits in the Western District of Texas, do not infringe Demaray's patents. Dkt. No. 1. Demaray thereafter moved to dismiss, arguing the Court lacked subject matter jurisdiction. Dkt. No. 30. On September 16, 2021, the Court denied Demaray's challenge, noting the affirmative acts Demaray had taken against Applied, including "creating preliminary infringement contentions which included references to Applied's reactors, refusing to grant Applied a covenant not to sue, requesting discovery from Applied to determine if Applied allegedly

[1] Applied does not object to Magistrate Judge Cousins addressing Demaray's requested relief — and would consent to a proposed referral as part of an order instructing Demaray to file a properly noticed motion under the Local Rules that allows Applied to fully respond— in particular given the Court's referral of certain non-discovery motions to Magistrate Judge Cousins in the past, Dkt. Nos. 87 and 110.

infringes the Asserted Patents, and making representations about the need for discovery from Applied to determine which of Intel's and Samsung's reactors allegedly infringe." Dkt. No. 63 at 12:5-9. In finding an actual controversy, the Court reasoned that "***Demaray 'could just as easily have asserted a claim for direct infringement against [Applied], based on the same underlying circumstances in the customer suit.***'" *Id.* at 13:20-22.

Despite these findings, and having ample discovery that Applied provided in response to multiple subpoenas, on September 30, 2021, over a year into the customer suits, Demaray filed its Answer electing not to assert compulsory claims of infringement. Dkt. No. 66. Thereafter, in an effort to continue delaying this case from proceeding, Demaray, through numerous Court filings and hearings, continued to rely on its purposed indecision as to whether to bring infringement claims. *See, e.g.,* Dkt. No. 69 at 3:16-18 ("In addition, if the case proceeds, Demaray currently lacks details regarding Applied's products and processes sufficient to make a determination regarding whether it will assert affirmative infringement counterclaims against Applied…); Ex. A, December 15, 2021 Hr'g Tr. at 7:12-8:2 ("We know that their reactors have all of these other limitations, but we have this problem with the filter that is present… And so we're being very cognizant of our Rule 11 obligations here. And they have raised issues in the Texas cases where they said, hey we question your Rule 11. And in fact, in their briefing to you, they stated the exact same thing. We're being cognizant, respectful of it, and once we get filter details, we can make an affirmative determination, are there going to be affirmative infringement claims against Applied, standing alone, its reactors that it's supplying or not."); Ex. B, January 12, 2022 Hr'g Tr. at 18:21-19:1 ("And so we're trying to be really really cognizant of Rule 11 and respect the obligations here, and that's all we're doing. If the Plaintiffs [sic] want to admit that our contentions in Texas are sufficient to cover a Rule 11 basis for them, we will submit those to your Court, to your Honor tomorrow….").

On January 14, 2022 at the instruction of Magistrate Judge Cousins, the parties filed a proposed order with competing case schedules. Dkt. No. 116. Therein, Demaray proposed that claim construction deadlines be "reset… if affirmative infringement claims are allowed" seeking to delay the claim construction hearing to the end of August 2022. *Id.* at 2-3. In an apparent effort

to urge the Court to reset and further delay claim constructions deadlines based on belated affirmative infringement claims, on February 7, 2022, Demaray submitted a two-page letter brief to Magistrate Judge Cousins seeking leave to amend its Answer to accuse Applied's Cirrus chamber of infringement. Yet the Cirrus chamber has been accused of infringement in the customer suits since Demaray's preliminary infringement contentions in the customer suits, served *more than fourteen months ago*. Dkt. No. 1, Ex. C (October 9, 2020 Infringement Contentions) at 12 ("As a further example, Intel configures and uses, among other reactors, Intel Accused Products in the Endura product line from Applied Materials, Inc. for depositing such layers….For example, the Endura product line includes reactors that can be configured for deposition of… TiN layers (e.g., **Cirrus ionized PVD chamber**") (emphasis added).

The next day, Applied submitted a one-page responsive letter objecting to Demaray's procedurally improper letter, explaining that if Demaray sought leave to amend its answer to assert infringement claims, it needed to do so through a properly noticed motion pursuant to the Local Rules. Dkt. No. 128. Applied further reasoned that the matter, unlike other disputes raised in this case, had not yet been referred to Magistrate Judge Cousins.

II. LEGAL ARGUMENT

Demaray's letter brief should be stricken – as it is procedurally improper and prejudices Applied's ability to substantively respond.

A. Demaray's Letter Brief is Procedurally Improper

A request for leave to amend the pleadings must be filed as a separate *motion* in compliance with Local Rule 7-1 and not as a letter brief. *Doty v. City of Santa Clara*, No. 14-CV-03739-LHK, 2015 WL 9027727, at *10 (N.D. Cal. Dec. 16, 2015) (denying plaintiff's request to amend the complaint included in its opposition to defendant's motion for summary judgment as procedurally improper under L.R. 7-1 and finding it "should have been filed as a separate motion before the Court.") *See also Alatraqchi v. Uber Techs., Inc.*, No. C-13-03156 JSC, 2013 WL 12469668, at *1 (N.D. Cal. Oct. 4, 2013) (denying defendants letter brief requesting the Court strike portions of

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