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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN JOSE DIVISION

18	APPLIED MATERIALS, INC.,)	Case No. 5:20-cv-09341-EJD
)	
19	Plaintiff,)	DEMARAY LLC'S UNOPPOSED
)	MOTION TO SHORTEN TIME FOR AN
20	vs.)	EARLIER HEARING
)	
21	DEMARAY LLC,)	
)	
22	Defendant.)	
)	
23	_____)		

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1 Pursuant to Local Rules 6-1 and 6-3, Defendant Demaray LLC ("Demaray") hereby moves
2 to shorten time for the hearing on Demaray's Motion to Amend Its Answer to Add Affirmative
3 Counterclaims for Infringement of U.S. Patent Nos. 7,544,276 and 7,381,657. Dkt. 133 ("Motion
4 to Amend"). Prior to filing the Motion to Amend, Demaray reserved the earliest possible hearing
5 date of September 29, 2022. Because the hearing is more than six months from now, Demaray
6 respectfully requests that the Court reschedule the hearing on the Motion to Amend to a date of the
7 Court's earliest convenience.¹

8 ***Plaintiff Applied Materials, Inc. ("Applied") has indicated that it will not oppose the***
9 ***request for an earlier hearing.***

10 The reason for Demaray's request is that Judge Cousins is presently deciding a case
11 schedule in this matter. *See* Dkt. 116. The parties have submitted competing schedules. *Id.*
12 However, the schedule requested by Applied would eliminate the requisite disclosure of
13 infringement and invalidity contentions required under Patent L.R. 3-3 and 3-4 because, as
14 Applied argues, no infringement claims have been asserted by Demaray against Applied, at least
15 until Demaray's Motion for Leave is granted. *Id.* at 1-2. The schedule submitted by Demaray
16 requests that Judge Cousins reset certain deadlines if affirmative infringement claims are allowed.
17 *Id.* at 1 n. 1, 1-2. In accordance with this approach and contemporaneously with this filing,
18 Demaray has requested that Judge Cousins either (a) hold in abeyance the Patent Local Rule
19 deadlines pending a ruling on the Motion to Amend from this Court, or (b) in the alternative, adopt

20 ¹ Demaray had previously requested that Judge Cousins address whether Demaray should
21 be allowed to amend its answer to assert counterclaims. Dkt. 127. Even though Applied had
22 previously stated that it "does not oppose Magistrate Judge Cousins addressing whether Demaray
23 should be allowed to amend its answer and make compulsory counterclaims of infringement"
24 (Dkt. 116 at 2 n.1), Applied opposed Demaray's request on substantive and procedural grounds
25 (Dkt. 128) and moved to strike Demaray's Motion (Dkt. 130). While Demaray believes that its
26 letter brief was procedurally proper, to avoid burdening the Court with deciding Applied's motion
27 to strike and the accompanying delay from that motion, Demaray withdrew its letter brief in favor
28 of the Motion to Amend. *See* Dkt. 134.

1 a schedule based upon Demaray's proposed schedule setting for deadlines that account for
2 affirmative infringement claims.

3 It is Demaray's position that such early disclosure of infringement and invalidity
4 contentions is intended to enable the parties to surface and identify claim construction issues prior
5 to the claim construction process. Otherwise, the parties would be shooting at moving targets,
6 briefing claim constructions without full disclosure of the infringement and invalidity issues that
7 are at play in this particular case, particularly those issues involving these two specific parties.²
8 Moreover, in the absence of such disclosures, it would be difficult for key aspects of the claim
9 construction disclosure process to play out (*e.g.*, identifying which claim terms require
10 construction, much less identifying the "most significant" claim terms). Patent L.R. 4-3.
11 Thus, resolution of the Motion to Amend will impact the scope of discovery, the case schedule in
12 this matter, and, most importantly, the scope and content of the briefing and argument during
13 claim construction before this Court.

14 Therefore, in consideration of judicial economy and conservation of the parties' resources,
15 and in order to promote the entry of a case schedule with deadlines that fully account for all claims
16 at issue in this case, Demaray respectfully requests the Court grant this *unopposed* request for an
17 earlier hearing and set a hearing date as soon as the Court is available.

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19 Dated: March 12, 2022

Respectfully submitted,
IRELL & MANELLA LLP

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21 By: */s/ Olivia L. Weber*

22 Olivia L. Weber
Attorneys for Defendant DEMARAY LLC

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24 ² Although Demaray has also sued Applied's customers in the Western District of Texas,
25 there is no indication, much a less a guarantee from Applied, that Applied will proffer the same
26 invalidity and/or claim construction positions as its customers. This is because Applied's
27 customers use and are therefore liable for their use of tools made by other manufacturers. Thus,
28 the invalidity and claim construction positions of Applied's customers likely diverge from those of
Applied.