March 22, 2022

Honorable Magistrate Judge Nathaniel M. Cousins
United States District Court Northern District of California
San Jose Courthouse, Courtroom 7, 4th Floor
280 South 1st Street, San Jose, CA 95113

Re: *Applied Materials, Inc. v. Demaray LLC*, 20-cv-09341-EJD (NC) (N.D. Cal.)

Dear Judge Cousins,

Applied Materials, Inc. ("Applied") objects to and opposes Demaray LLC's ("Demaray") procedurally improper letter brief submitted March 12, 2022, Dkt. No. 135, seeking yet another tactical attempt to delay this action from moving forward in favor of Demaray's customer suits in the Western District of Texas. Last month, over Applied's procedural objections, Demaray filed a letter brief to Your Honor seeking leave to amend its answer to add infringement claims—five months after Demaray chose not to assert infringement against Applied (despite its lawsuits against Applied's customers) when it answered. Dkt. No. 127. Applied responded, Dkt. No. 128, and thereafter filed a motion to strike the letter brief as Demaray needed to file a noticed motion under Local Rule 7-1(a). Dkt. No. 130. Without a reasonable basis to oppose, Demaray withdrew its letter brief, Dkt. No. 134, and filed a noticed motion to amend its answer. Dkt. No. 133.

Just days later, Demaray attempted yet again to bypass this Court's procedures with another improper letter brief that asks Your Honor to either (1) "hold in abeyance the Patent Local Rule deadlines" or (2) enter a schedule ***assuming*** Demaray is permitted to add infringement claims. Demaray's request is, again, neither a discovery dispute nor a motion that has been referred to your Honor by Judge Davila. Both requests are procedurally and substantively improper and directly contradict this Court's prior rulings. *See* Dkt. No. 101. Whether on procedure, the merits, or both, Demaray's requested relief should be denied.

Demaray's Request to Stay the Patent Local Rule Deadlines Should be Denied

Demaray's request to "hold in abeyance the Patent Local Rule deadlines" is nothing more than a poorly veiled attempt to obtain a ***stay*** of the case while its customer suits in Texas proceed. Indeed, in counsel's e-mail to Applied regarding this issue, Demaray requested the parties "meet and confer regarding ***staying all*** deadlines under the Patent Local Rules." Applied explained that however creatively Demaray framed the issue, it was a motion to stay that needed to be filed in compliance with Local Rule 7-1(a). Despite the fact that Demaray had just forced Applied to unnecessarily file a motion to strike its earlier letter brief, Demaray proceeded to file another one instead of a properly noticed motion.

Demaray's disregard for this Court's rules cannot continue to be countenanced. As Your Honor knows, Demaray already delayed complying with the Patent Local Rules for months, forcing Applied to file a motion to compel. Dkt. No. 83. In ordering compliance, Your Honor found that *"Demaray essentially has granted itself a further stay of the case even after Judge Davila ordered and end to the discovery stay*". Dkt. No. 101 at 2. Under Court order, Demaray had no choice but to provide its Patent L.R. 4-1 and 4-2 disclosures. To no surprise, after months of delay, Demaray (1) did not propose any additional claim terms for construction and (2) for Applied's proposed terms (each of which were proposed in the Texas customer suits), proposed "plain and ordinary meaning" (for four terms) and the Texas Court's constructions (for the other two). In other words, after months of delay, Demaray merely repeated its positions advanced in Texas. Demaray's

argument in its letter that absent contentions, "it would be difficult for key aspects of the claim construction disclosure process to play out"—when Demaray has (1) supplemented its infringement contentions five times in Texas over the last sixteen months, (2) received robust invalidity contentions and supplemental invalidity contentions as recently as December 2021 (when final contentions were originally due), and (3) litigated two IPRs to near final written decision—should be taken for what it truly is: yet another instance of what this Court has recognized as gamesmanship in seeking to delay this case while the customers suits in Texas proceed. Dkt. No. 101, 2:25-27 ***("Demaray's stay request would allow its customer suits in Texas to proceed. The timing of Demaray's stay motion [] reveals gamesmanship."***).

As aptly stated by this Court: "a stay would unduly prejudice and present an overwhelming tactical disadvantage to Applied." *Id.* at 2:19-20. Accordingly, Demaray's latest attempt to stay this case should be denied.

Demaray's Request to Enter a Schedule that Assumes the Court Will Permit Demaray to Add Infringement Claims Should be Denied

Demaray's alternative request, that this Court "adopt a schedule based upon Demaray's proposed schedule setting forth deadlines that account for Demaray's affirmative infringement claims," likewise should be denied. Dkt. No. 135 at 1. This request asks Your Honor to adopt a case schedule that assumes Judge Davila has granted Demaray's motion for leave to amend before Applied has even had an opportunity to substantively respond. This puts the cart before the horse. The motion for leave has not been granted (nor should it be), let alone been fully briefed.

In pleading for a schedule that resets claim construction deadlines, Demaray simply seeks another form of delay. The parties filed their Joint Claim Construction and Prehearing Statement under Patent L.R. 4-3 over six weeks ago, Dkt. No. 126, and last Friday, Applied filed its Opening Claim Construction brief. Dkt. No. 138. Under the Patent Local Rules, Demaray's Responsive Brief is due April 1, 2022. Demaray cannot continue to delay this case from proceeding, in particular where the Court has noted "the potential impact the resolution of this case could have on Demaray's lawsuits against Applied's customers." Dkt. No. 63 at 14:11-13.

Finally, Demaray's insinuation that Applied "sought to introduce [delay] through the motion to strike" its improper letter brief is without merit. Demaray can only blame itself for its own delay and failure to follow the local rules.[1]

Applied's Proposal

The Court should decline to address Demaray's letter brief as procedurally improper and in noncompliance with the Court's Local Rules. To the extent the Court addresses the letter as properly related to the entry of a case schedule (that is before Your Honor), Demaray's requested relief (either a stay or further delay of claim construction deadlines) should be denied.

---

[1] Nor can Demaray follow its own deadlines. In the parties' competing case schedules, Demaray set its own deadline for leave to amend as February 14, 2022. Dkt. No. 116 at 1:16. But Demaray filed its motion on March 9, 2022 – three weeks after *its own proposed deadline*, and a week *after* Applied's motion to strike. *See* Dkt. No. 133. Now Demaray seeks to rely on its own delay to delay the case even further. These tactics should not be rewarded.

Respectfully submitted,

/s/ Yar R. Chaikovsky

Yar R. Chaikovsky

of PAUL HASTINGS LLP

Counsel for Plaintiff
Applied Materials, Inc.