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16 UNITED STATES DISTRICT COURT
 17 NORTHERN DISTRICT OF CALIFORNIA

19 APPLIED MATERIALS, INC.,
 20 Plaintiff,
 21 vs.
 22 DEMARAY LLC,
 23 Defendant.

CASE NO. 5:20-cv-09341-EJD

**PLAINTIFF APPLIED MATERIALS,
 INC.'S OPPOSITION TO DEMARAY
 LLC'S MOTION TO AMEND ITS
 ANSWER**

Hearing Date: September 29, 2022
Hearing Time: 9:00 a.m.

**UNREDACTED VERSION OF
 DOCUMENT SOUGHT TO BE
 SEALED**

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*Unless otherwise noted, internal citations and subsequent history are omitted, and emphasis is added.

1 **I. INTRODUCTION**

2 Demaray LLC's ("Demaray") motion to bring infringement claims against Applied
3 Materials, Inc.'s ("Applied") Cirrus chambers *twenty months* after Demaray first accused
4 Applied's customers of infringing the same patents in Texas based on their use of the *same Cirrus*
5 *chambers* is the latest maneuver in a series of dilatory tactics to delay this case from proceeding in
6 favor of the customer suits. Demaray cannot justify its undue delay, mask the bad faith behind its
7 tactics, or mitigate the clear prejudice to Applied.

8 In an attempt to do so, Demaray falsely accuses Applied of withholding discovery and
9 making misrepresentations to the Texas Court regarding the DC filter in its Cirrus chamber.
10 Demaray has twice told *this* Court that the purported lack of information prevented Demaray from
11 formulating a Rule 11 basis to accuse the Cirrus chamber of infringement in this case. Yet at the
12 same time, Demaray continued to press forward with its infringement claims in Texas against the
13 same Cirrus chamber, including based on (1) a Cirrus chamber manual and (2) a technical
14 specification for the component in Cirrus that Demaray alleges contains the claimed "narrow band-
15 rejection filter"—two documents it has had since January 2021, *fourteen months* ago. Demaray's
16 motion ignores its reliance on these documents through *five* rounds of supplemental infringement
17 contentions to accuse the Cirrus chambers in Texas, the first which occurred *thirteen months* ago.

18 Despite Demaray's repeated reliance on these Cirrus documents to prosecute its
19 infringement claims in Texas, Demaray now incredibly claims that only after recent third party
20 discovery from a component supplier (Comet) and an inspection, it formed a "good faith reasonable
21 basis for bringing infringement claims here." Mot. at 3:26. In other words, Demaray claims that
22 up until the Comet inspection, it lacked a good faith basis to bring infringement claims in this Court
23 against the same Cirrus chamber it has been accusing of infringement since July 2020 in Texas.
24 Whether an about-face between two tribunals or an apparent double-standard for its Rule 11
25 obligations in California versus Texas, Demaray's explanation is simply not credible and cannot
26 excuse its undue delay in bringing infringement claims.

27 What is worse, the recent discovery from Comet, including testing and inspection of the
28 component, did not reveal any new evidence supporting a claim of infringement. Rather, both the

1 documents and Demaray’s inspection corroborated what Demaray already knew from Applied’s
2 Cirrus manual and component specification produced in January 2021—that the Cirrus chamber
3 does not infringe. That was reinforced by Applied’s corporate testimony provided in February
4 2021 and measurements of the component provided by Comet and produced in September 2021.
5 Furthermore, the alleged “new” evidence relied upon by Demaray to support its motion to amend
6 is irrelevant to infringement because it either relates to protecting the RF (and not DC) power supply
7 in the Cirrus chamber or is duplicative of the information Demaray has had since last January. The
8 recent discovery and inspection are nothing more than a smokescreen for Demaray’s latest attempt
9 to delay the parties and this Court from moving forward with claim construction.¹

10 Demaray’s proposed Amended Answer raises even greater concerns regarding its claim
11 that it only now has a “good faith reasonable basis for bringing infringement claims.” As explained,
12 *infra*, the Amended Answer accuses the Cirrus chambers of infringing **both** the ’276 and ’657
13 patent, specifically identifying the deposition of titanium nitride (TiN) for the ’657 patent, which
14 requires reactive sputtering. But five days before its motion, Demaray supplemented its contentions
15 in Texas to **withdraw its claims against the Cirrus chamber for the ’657 patent** in the Intel case.
16 Ex. J. On the same day of Demaray’s motion, it did the same in the Samsung case, another
17 inexplicable contradiction between its Texas and California positions. How can Demaray *now* have
18 a Rule 11 basis to accuse Cirrus of infringing the ’657 patent in this Court, but no longer have one
19 in Texas? There is no credible explanation.

20
21 _____
22 ¹ Demaray has not shied away from its motive behind seeking to add infringement claims *twenty*
23 months after originally accusing the same Cirrus chamber in Texas. Three days after the instant
24 motion, Demaray submitted a letter brief requesting to either (1) “hold in abeyance the Patent Local
25 Rule deadlines” or (2) enter a schedule *assuming* Demaray is permitted to add infringement claims
26 such that *Markman* is further delayed by several months. Dkt. No. 135. Just hours ago, Demaray
27 doubled down on its delay efforts, seeking to indefinitely enlarge its time to file its responsive claim
28 construction brief due on April 1, 2022 under the Patent Local Rules. Dkt. No. 140.

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