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APPLIED MATERIALS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

APPLIED MATERIALS, INC.,

Plaintiff,

vs.

DEMARAY LLC,

Defendant.

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

APPLIED MATERIALS, INC.'S OPPOSITION TO DEMARAY LLC'S MOTION TO ENLARGE TIME TO RESPOND (DKT. 140)

I. INTRODUCTION

Applied opposes Demaray's motion, Dkt. 140, which seeks an **indefinite** stay of claim construction under the guise of a motion to enlarge time under Local Rule 6-1(b). Demaray's motion, which relies on its motion to amend to add infringement claims ***twenty months*** after suing Applied's customers (Dkt. 133), is Demaray's latest tactic to delay this case from proceeding and stall "the potential impact the resolution of this case could have on Demaray's suits against Applied's customers" from occurring. Dkt. 63 at 14:11-13. But this Court's rules are clear, and the Court already ordered that Demaray "must comply with the Patent Local Rules." Dkt. 101 at 3:17. Likewise, the Court already rejected Demaray's prior stay request, finding that because "Demaray's stay request would allow its customer suits in Texas to proceed" "[t]he timing of Demaray's stay motion [] reveals gamesmanship." *Id.* at 2:25-27; *see also id.* at 2:19-20 ("[A] stay would unduly prejudice and present an overwhelming tactical disadvantage to Applied.").

Demaray's claim of "substantial prejudice" does not comport with the realities of this case and Demaray's customer suits in Texas. On the other hand, the Court has already recognized the prejudice to Applied in allowing further delay of this case from proceeding. Demaray's non-administrative motion for an indefinite stay of claim construction should be denied and Demaray should timely file its responsive claim construction brief pursuant to Patent Local Rule 4-5(b).

II. ARGUMENT

A. Demaray's Motion Would Unduly Prejudice Applied

Demaray's continued efforts to stall this case from proceeding has already unduly prejudiced Applied, as this motion is only the latest in a nearly two-year long effort by Demaray to halt this manufacturer case in favor of Demaray's customer suits. Demaray began by challenging this Court's jurisdiction over Applied's claims of non-infringement and license on the false premise that Demaray was accusing Intel and Samsung's post-installation configurations of Applied chambers, and thus was not accusing Applied's products "standing alone of infringement." Dkt. 30. Meanwhile, Demaray pressed forward with allegations against Applied's products in Texas, contradicting representations it made to this Court in challenging jurisdiction. This Court found jurisdiction, and rejected Demaray's plea for a discretionary denial in favor of its customer suits,

Dkt. 63 at 14:3-10, given "the potential impact the resolution of this case could have on Demaray's suits against Applied's customers." *Id.* at 14:11-13. But through its challenge, Demaray succeeded in delaying Applied's claims from moving forward for nearly a year.

Demaray's efforts to delay did not stop there. Rather, Demaray has continued its efforts to delay this case at every turn through self-help and non-compliance with the Patent and Local Rules. *See* Dkt. 142 at 4–8. Such delay is highly prejudicial to Applied considering it filed its complaint fifteen months ago in December 2020. For a patent case involving declaratory judgment claims where "the defendant serves an answer that does not assert a claim for patent infringement," Patent Local Rule 4-1 applies 14 days after the Answer (*i.e.,* like this case), and under a typical schedule following those rules, the parties would have expected to have their *Markman* last summer or fall.[1] But as a result of Demaray's jurisdiction challenge, prior non-compliance with the Patent Local Rules, and undue delay in seeking amendment to add infringement claims, compliance with Patent Local Rule 4-5(a)—*i.e.,* Applied filing its opening claim construction brief—did not occur until this month, ***sixteen months*** after Applied filed its declaratory judgment complaint in this case.

Desperate to stop the potential impact that a *Markman* could have on Demaray's allegations against Applied's customers, Demaray now seeks to indefinitely halt claim construction from proceeding with its responsive brief due this Friday. Indeed, under the guise of "plain and ordinary meaning" (the Texas court's construction of "narrow band rejection filter"), for some PVD chambers, Demaray continues to allege in Texas that this case dispositive claim term could effectively be anywhere or anything. Ou Decl. ¶ 2. Applied provided discovery on ***all*** of its PVD chambers potentially at issue in this case ***months*** ago. *Id.* For Cirrus, Applied's disclosures date back further and have been relied upon by Demaray in multiple supplementations to its contentions in Texas, including the Comet component's technical specification describing its use in the Cirrus chamber; the Cirrus PVD Chamber manual; and the deposition and declaration of Keith Miller, a

[1] Assumes that Demaray would have filed its Answer in early 2021 and the time between claim construction deadlines provided by the Patent Local Rules followed in a case schedule.

Director of Engineering at Applied and corporate representative.[2] Mot. 142 at 8-9. While doing so, Demaray has represented to ***this*** Court that its own lack of Rule 11 basis excused its delay in seeking to bring infringement claims against Applied, even though it has been accusing Applied's products in Texas for the last ***twenty months***. Dkt. Nos. 130-2 at 7:12-8:2; 130-3 at 18:21-19:1. Under the proper construction of "narrow band rejection filter" Demaray has no basis to accuse Applied's products of infringement, whether before this Court or in Texas against Applied's customers. Demaray's continued efforts to delay this Court's adjudication of Applied's declaratory judgment claim of non-infringement is thus unduly prejudicial to Applied.

Finally, Demaray's argument that Applied's claim construction brief does not comport with the Patent Local Rules by briefing terms not designated "most significant" is both specious and irrelevant to its requested stay. Patent L.R. 4-3(c) requires parties to identify up to 10 terms whose construction "will be most significant to the resolution of the case. Parties shall *also* identify any term among the 10 whose construction will be case or claim dispositive." P.L.R. 4-3(c). Applied identified six claim terms that are "significant to the resolution" of the case, and further identified the most significant term, as well as two further case or claim dispositive terms. *See* Dkt. 126 at 39.

B. Demaray's Claim of "Substantial Prejudice" is Not Credible and Contradicted By its Own Statements Made Before this Court

On the other hand, Demaray's motion claims "undue prejudice" by having to "take positions in claim construction without the disclosures called for under the Patent Local Rules." Mot. at 3:9-11. But Demaray ignores its tactical decision to not file counterclaims of infringement that would have triggered those disclosures when it filed its answer six months ago. Under Patent L.R. 4-1, in such circumstances, claim construction disclosures begin no later than 14 days after. Demaray's claim of substantial prejudice is of its own choosing.

[2] Demaray's claim that its delay to amend is due to Applied refusing to disclose the details of the Cirrus chamber is not credible – Demaray has accused the same Cirrus chambers of infringement in Texas, including through ***five*** supplementations of its infringement contentions relying on disclosures regarding the Cirrus chambers that Applied provided over a year ago.

Nor are Demaray's claims credible. First, Demaray contends that "additional infringement issues are likely to be at issue in this case given the breadth of Applied's declaratory judgment claims." Mot. at 3:7-8. Demaray provides no explanation for how or why there will be "additional infringement issues", in particular when it has repeatedly told this Court that it may not even have a Rule 11 basis to bring infringement claims in this Court, and in its recent motion to amend, limited those claims to one Applied product—the Cirrus chamber. But allegations against Cirrus are not new; Demaray accused the Cirrus chamber in July 2020 and has continued to through five rounds of supplemental contentions in Texas. Moreover, in response to Demaray's subpoenas in Texas and requests in this case, Applied already produced details of all its PVD chambers that may fall under the "breadth of Applied's declaratory judgment claims." Ou Decl. at ¶ 3.

Next, Demaray claims that "Applied's invalidity contentions will likely diverge from those of its customers." Mot. at 3:8-9. Yet three months ago, Demaray sung a different tune in its continued efforts to delay. In the joint CMC statement, Demaray proposed "coordinated discovery" between this case and in Texas, relying on the fact that "Applied's counsel here is also handling Applied's IPRs and is counsel for both defendants and Applied in the Texas cases". Dkt. 106 at 13:11-12. In responding to Applied's Expedited Trial Procedure request, Demaray then argued:

> "The most obvious and convenient trial procedure in this case is to allow the invalidity arguments Applied chose to file in the Patent Office to proceed while the far-earlier-filed cases in Texas, which are scheduled for trial on July 11, 2022, proceed without interference from this fifth-filed action. ***Applied was right in its earlier statements to the Court that "the parties and counsel [and the Texas court] are already well familiar with the claim construction issues and key technical disputes*** … through discovery and the proceedings to-date in the [Texas] suits." *See* Dkt. 69 at 16-17.

Id. at 15:23-16:5.

Considering that Demaray has (1) supplemented its contentions ***five times*** in Texas; (2) received robust invalidity contentions in Texas; and (3) litigated two IPRs to near final written decision, it simply is not credible for Demaray to claim it lacks "disclosures called for under the Patent Local Rules." Mot. at 3:4-5. Rather, as it agreed with in its recent statement to the Court, "the parties and counsel are ***already well familiar with the claim construction issues*** and key technical disputes." Dkt. 106 at 13:2-4. Demaray's prejudice claims should be taken for what they truly are: another instance of what this Court has recognized as gamesmanship. Dkt. 101, 2:25-27.

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