

1 IRELL & MANELLA LLP
 2 Morgan Chu (70446)
 3 MChu@irell.com
 4 Benjamin W. Hattenbach (186455)
 5 BHattenbach@irell.com
 6 Samuel K. Lu (171969)
 7 SLu@irell.com
 8 Olivia L. Weber (319918)
 9 OWeber@irell.com
 10 1800 Avenue of the Stars, Suite 900
 11 Los Angeles, California 90067-4276
 12 Telephone: (310) 277-1010
 13 Facsimile: (310) 203-7199

9 FOLIO LAW GROUP PLLC
 10 C. Maclain Wells (221609)
 11 Maclain@foliolaw.com
 12 2376 Pacific Ave.
 13 San Francisco, CA 94115
 14 (415) 562-8632

13 Attorneys for Defendant
 14 DEMARAY LLC

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

18	APPLIED MATERIALS, INC.,)	Case No. 5:20-cv-09341-EJD
19	Plaintiff,)	
20	vs.)	DEMARAY LLC'S SUR-REPLY CLAIM
21	DEMARAY LLC,)	CONSTRUCTION BRIEF
22	Defendant.)	
23	_____)	

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5 MPEP 21115

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

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1 **I. INTRODUCTION**

2 Applied's proposed "constructions" should be viewed for what they are: a thinly veiled
3 attempt by an accused infringer to re-litigate claim construction positions that it has already lost in
4 co-pending cases in the WDTX in the hopes of creating conflicting rulings and an avenue for
5 appeal. Applied's arguments were previously rejected by the WDTX court because Applied's
6 attorneys improperly sought to re-write claim terms having plain and ordinary meanings to add
7 limitations unsupported by the intrinsic record. By way of example only, Applied now asks the
8 Court here to adopt those rejected proposals and to issue conflicting constructions by:

- 9 • Re-writing "narrow band *rejection* filter" (which has a plain and ordinary meaning)
10 to a "filter that *passes*...frequencies..." thereby eliminating the "rejection"
11 requirement and adding an extraneous "passing" requirement;
- 12 • Re-writing the open "comprising" claim language that covers processing chambers
13 with the claimed narrow band rejection filter and additional, unclaimed filter
14 elements into a closed-ended "consisting" claim that would exclude the additional,
15 unclaimed filter elements;
- 16 • Ignoring the patentee's explicit definition for "pulsed DC power" ("Applicants...
17 *explicitly defined* pulsed DC power...") and importing a limitation that the term be
18 limited to "square waves," even though the phrase "square wave" appears nowhere
19 in the specification;
- 20 • Re-writing the claim term "insulating film" (which has a plain and ordinary
21 meaning) to an "insulating film *comprising the oxide material*" where (i) the patent
22 specification explicitly discloses insulating films other than oxide materials,
23 (ii) there was no lexicography and no clear and unmistakable disavowal by the
24 patentee of films other than oxide materials, and (iii) Applied's claim construction
25 would exclude a dependent claim; and,
- 26 • Re-writing the claim term "insulating substrate" (which has a plain and ordinary
27 meaning) in a manner that excludes preferred embodiments and the understandings
28

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