

1 YAR R. CHAIKOVSKY (SB# 175421)
 yarchaikovsky@paulhastings.com
 2 PHILIP OU (SB# 259896)
 philipou@paulhastings.com
 3 JOSEPH J. RUMPLER, II (SB# 296941)
 josephrumpler@paulhastings.com
 4 DAVID OKANO (SB#278485)
 davidokano@paulhastings.com
 5 BORIS LUBARSKY (SB# 324896)
 borislubarsky@paulhastings.com
 6 PAUL HASTINGS LLP
 1117 S. California Avenue
 7 Palo Alto, California 94304-1106
 Telephone: 1(650) 320-1800
 8 Facsimile: 1(650) 320-1900

9 MATTHIAS KAMBER (SB#232147)
 matthiaskamber@paulhastings.com
 10 PAUL HASTINGS LLP
 101 California Street, 48th Floor
 11 San Francisco, California 94111
 Telephone: 1(415) 856-7000
 12 Facsimile: 1(415)856-7100

IRELL & MANELLA LLP
 Morgan Chu (70446)
 MChu@irell.com
 Benjamin W. Hattenbach (186455)
 BHattenbach@irell.com
 1800 Avenue of the Stars, Suite 900
 Los Angeles, California 90067-4276
 Telephone: (310) 277-1010
 Facsimile: (310) 203-7199

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

Attorneys for Defendant
 DEMARAY LLC

13 Attorneys for Plaintiff
 14 APPLIED MATERIALS, INC.

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

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

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

**UPDATED CASE MANAGEMENT
 STATEMENT PURSUANT TO
 CLERK'S NOTICE (DKT. NO. 150)**

1 Plaintiff Applied Materials, Inc. (“Applied”) and Defendant Demaray LLC (“Demaray”)
2 (collectively, “the Parties”) submit this Updated Joint CMC Statement pursuant to the Court’s
3 May 5, 2022 Notice Setting Further Case Management Conference. Dkt. No. 150. The Parties
4 further incorporate by reference their prior Case Management Statements submitted on December
5 22, 2021, Dkt. No. 106, November 4, 2021, Dkt. No. 82, October 6, 2021, Dkt. No. 69, and
6 January 14, 2021, Dkt. No. 27, and, where appropriate for brevity, note below where their
7 positions have not changed.

8 **A. Applied’s Preliminary Statement**

9 As with the last joint CMC statement, Applied objects to Demaray’s lengthy rehash of
10 arguments in pending motions and repeated misrepresentations of Applied’s production. Noting
11 this Court’s standing order on Case Management Statements that “except in unusually complex
12 cases, [the statement] should not exceed ten pages,” Applied urged Demaray to reduce its lengthy
13 arguments, including its 4 page-long discussion regarding discovery (Section 8) below. Rather
14 than provide a “brief report on... any identified discovery disputes” as called for by the standing
15 order, Demaray lengthened its submission to 5 pages. Demaray’s lengthy submissions (10 pages
16 aggregating its positions in the “Disputed” Sections) appear designed to bury the critical issue
17 requiring further case management: the scheduling of a *Markman* hearing as claim construction
18 briefing completed six weeks ago. Applied proposes the *Markman* hearing be set in August 2022
19 or at the Court’s earliest convenience.

20 **B. Demaray’s Position**

21 In accordance with the Civil Local Rules and the Court’s Standing Orders, which require a
22 description of “any identified discovery disputes” as well as “the scope of any anticipated
23 discovery,” Demaray has endeavored herein to outline for the Court the issues between the Parties
24 relating to discovery and other matters that may impact the case schedule and the application of
25 disclosure sequencing and timelines in the Patent Local Rules. While Applied offers conjecture
26 as to Demaray’s motives, Demaray respectfully submits that the Court should fully consider the
27 issues identified herein, including opportunities to minimize burdens and inefficiencies on the
28 Court, the parties, and various third parties.

1 This case involves interplay with two earlier-filed pending cases in Texas, four co-
2 pending Applied IPRs, and unresolved issues relating to potential affirmative infringement
3 counterclaims and responsive invalidity affirmative defenses and potential declaratory judgment
4 claims—it is therefore a particularly complex case as contemplated by the Court’s standing order
5 on Case Management Statements. The parties both recognize the complexity of this action
6 having submitted four prior Joint CMC Statements (November 4, 2021, Dkt. No. 82, October 6,
7 2021, Dkt. No. 69, January 14, 2021, Dkt. No. 27, and December 22, 2021, Dkt. 106) that were of
8 similar length or longer. Applied tries to down-play the complexity of this case (and the
9 substantial discovery that this case will require), but the simple fact is that Applied has sought a
10 declaration that *all of its reactor configurations sold to its customers (including ones not at*
11 *issue in the parallel litigations) do not infringe the Demaray patents*, while, after almost seven
12 months, its production in this case comprises *just over forty generic bill of materials for its pre-*
13 *configured reactor offerings*. It should not be surprising to Applied that there are substantial
14 discovery issues to bring to the Court’s attention.

15 **1. Jurisdiction and Service (Joint)**

16 *See* Dkt. No. 69.

17 **2. Updated Facts Since The Last Case Management Statement (Joint)**

18 On December 29, 2021, the Court issued an order referring certain motions (Dkt. Nos. 92
19 and 108) relating to Demaray’s request for further case management to Magistrate Judge Cousins.
20 Dkt. No. 110. Magistrate Cousins held a hearing on January 12, 2022 and ordered the parties to
21 submit updated competing case schedules and confer regarding referral of the *Markman* to the
22 Magistrate. Dkt. No. 113. The parties submitted their then-proposed schedules and response on
23 January 14, 2022. Dkt. No. 116. The Court has not yet issued a case schedule.

24 On January 20, 2022, the parties submitted a joint discovery letter to Magistrate Cousins
25 regarding Demaray’s request for targeted discovery on Applied’s products. Dkt. No. 118.

26 On January 24, 2022, the parties submitted a joint discovery letter to Magistrate Cousins
27 regarding the deposition of Demaray’s principal, Dr. Ernest Demaray. Dkt. No. 120.

28 On January 26, 2022, the parties filed a joint motion for entry of protective order, subject

1 to one disputed provision. Dkt. No. 123. The parties submitted the disputed provision in a joint
2 discovery letter to Magistrate Cousins the next day. Dkt. No. 125.

3 On February 1, 2022, the parties filed their Joint Claim Construction and Pre-Hearing
4 Statement. Dkt. No. 126.

5 On February 7, 2022, Demaray submitted a letter brief to Magistrate Judge Cousins to
6 amend its answer to add infringement claims. Dkt. No. 127. Applied filed a responsive letter the
7 next day. Dkt. No. 128. On March 2, 2022, Applied filed a motion to strike Demaray's letter
8 brief to amend its answer to add infringement claims, Dkt. No. 130, and a motion to shorten to
9 time for an earlier hearing or determination on the papers. Dkt. No. 131.

10 On March 9, 2022, Demaray filed a motion with this Court to amend its answer to add
11 infringement claims. Dkt. No. 133. On March 10, 2022, Demaray filed a notice of withdrawal of
12 its February 7, 2022 letter brief. Dkt. No. 134. On March 12, 2022, Demaray filed a motion to
13 shorten time for an earlier hearing on its motion to amend. Dkt. No. 136. The same day,
14 Demaray submitted a letter brief to Magistrate Judge Cousins requesting the Court hold in
15 abeyance the Patent Local Rule deadlines pending resolution of its Motion to Amend or to adopt
16 a proposed schedule setting forth deadlines that account for Demaray's affirmative infringement
17 claims as set forth in Dkt. No. 116. Dkt. No. 135. Applied submitted a responsive letter to
18 Magistrate Judge Cousins on March 22, 2022. Dkt. No. 139.

19 On March 18, 2022, Applied filed its Opening Claim Construction Brief. Dkt. No. 138.
20 On March 23, 2022, Demaray filed a motion to enlarge time to respond to Applied's opening
21 claim construction brief, which Demaray states was to accommodate Patent Local Rule
22 disclosures regarding its proposed affirmative infringement claims. Dkt. No. 140. The same day,
23 Applied filed its response to Demaray's motion to amend its answer to add infringement claims.
24 Dkt. No. 142. On March 28, 2022, Applied responded to Demaray's motion to enlarge time,
25 which Applied states was filed to indefinitely delay claim construction briefing to the prejudice of
26 Applied. Dkt. No. 143. On March 30, 2022, Demaray filed its reply brief to its motion to amend
27 its answer. Dkt. No. 144. On April 1, 2022, Demaray filed its Responsive Claim Construction
28 Brief. Dkt. No. 145. On April 8, 2022, Applied filed its Reply Claim Construction Brief. Dkt.

1 No. 147. On April 15, 2022, Demaray filed its Sur-Reply Claim Construction Brief. Dkt. No.
2 148.¹ No *Markman* date has been set.

3 On May 4, 2022, the Court issued an order granting Demaray's motion to shorten time for
4 its motion to amend its answer, setting a hearing for August 11, 2022. Dkt. No. 149.

5 **3. Legal Issues (Disputed)**

6 **A. Applied's Position**

7 This case raises the following legal issues: (1) the construction of six disputed claim terms
8 in the Demaray Patents; (2) whether Applied or its products infringe the Demaray Patents; and (3)
9 whether Applied has a license to the Demaray Patents.

10 Nearly six months after Demaray filed its answer, but chose not assert counterclaims of
11 infringement, and twenty months after accusing the very same Applied products in its customer
12 suits, Demaray filed an opposed motion to amend its answer to assert infringement claims to try
13 and stop claim construction from moving forward, as evidenced by multiple filings thereafter
14 (Dkt. Nos. 135 and 140) and Demaray's proposal on the case schedule below. If Demaray's
15 motion to amend is granted (it should not be), the case will involve additional legal issues,
16 including at least damages sought by Demaray for Applied's alleged infringement.

17 Demaray's continued misrepresentations below that Applied has not provided the details
18 of its reactor configurations is belied by the fact that Demaray's **final** infringement contentions in
19 the customer suits (which accuse the same Applied reactors at issue in this case) are due in less
20 than three weeks. If Demaray genuinely believed Applied was withholding relevant discovery,
21 Demaray would have long ago moved to enforce the subpoenas it served on Applied out of those
22 customer suits. Demaray has not. Demaray's complaints are nothing more than its vehicle to
23 continue to seek delay in this case. Notably, last month the Texas Court held a discovery hearing
24 on Demaray's motion to compel (1) production of documents sufficient for Demaray to evaluate
25 the presence of any filter circuitry in certain components of certain Applied reactors; (2)
26 inspection of those reactors and certain components thereof; and (3) for an adverse inference that

27
28 ¹ The parties previously proposed (Dkt. No. 116 n.5) and later stipulated to equal briefing for
claim construction. Dkt. No. 146.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.