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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

APPLIED MATERIALS, INC.,

Plaintiff,

vs.

DEMARAY LLC,

Defendant.

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

JOINT CASE MANAGEMENT STATEMENT

Honorable Edward J. Davila

Plaintiff and counterclaim defendant Applied Materials, Inc. ("Applied") and Defendant and counterclaim plaintiff Demaray LLC ("Demaray") (collectively, "the Parties") jointly submit this Joint Case Management Statement in connection with the Court's Case Management Conference scheduled for September 29, 2022. By way of overview, all pending motions before the Court have been resolved, and the parties are proceeding in accordance with the case schedule that was entered by the Court on August 5, 2022. (Dkt. 163). As set forth below, the parties provide a summary of case status, as well as key case management events they anticipate will arise in the near-term.

1. Preliminary Statements

Applied's Statement

Applied respectfully provides the following two status updates for the Court, neither of which requires the Court to take action at this time. First, in accordance with the Court's August 5, 2022 order granting Demaray's motion to amend its answer to add infringement counterclaims and adopting Judge Cousin's proposed schedule for this action (Dkt. 163), Applied and Demaray are moving forward cooperatively with their claims and counterclaims in accordance with the Court's schedule. Given the overlap between the patents and Applied products at issue in this action and those pending against two of Applied's customers (Intel and Samsung) in the Western District of Texas (the "Texas cases"), Applied has taken steps to discuss with Demaray what, if any, additional discovery is necessary beyond that provided in the Texas cases.[1]

The overlap in accused products between this case and the Texas customer cases allows for substantial efficiencies in this action. Specifically, Demaray's infringement contentions in the Texas cases identify products within two Applied product lines of allegedly infringing the two patents-in-suit: (1) Applied's Endura® Cirrus™ PVD products, and (2) Applied's non-Cirrus PVD products. Both categories of products are also covered by Applied's declaratory judgment claims

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[1] In the Texas cases, the parties have agreed to extend fact discovery as well as the remaining dates in the case schedule, with trial being moved from May 2023 to September 2023. At a recent hearing, the Court tentatively indicated that the Court would accept the parties' proposed schedule extension when submitted.

in this action. And while Demaray's infringement contentions in this action have not yet been served, Demaray's newly-filed infringement counterclaims here identify a product falling into only one of the two product lines at issue in Texas, the Endura® Cirrus™ HTX PVD products. Dkt. 174 ¶¶ 37-51, 64-80 (Counterclaims). As such, Applied anticipates that at least most of the discovery relevant to this case has been or will be provided in connection with the Texas cases. Importantly, regardless of what Applied products Demaray ends up accusing in this case, Applied has been diligently and proactively working with Demaray to determine what additional discovery is reasonably necessary here, and will promptly make necessary document productions and/or provide other discovery to address aspects of discovery that have not been covered in Texas in response to reasonable requests from Demaray.

Second, after ensuring that Demaray has been reasonably provided with adequate discovery relating to the Applied products in this case, Applied intends to seek early summary judgment of non-infringement of all asserted claims of the patents-in-suit. This case is well-suited for such proceedings. The patents-in-suit—which share the same specification and are nearly identical—relate to concepts developed over twenty years ago, and in that time, were never implemented in a commercial product by their originators, but instead sat on a shelf collecting dust for years. And while Demaray now, after that lengthy dormancy, contends that Applied's products infringe, they objectively do not: for example, as confirmed by Demaray's counterclaims here and its disclosures in the Texas actions, none of the Applied products at issue include either a "narrow-band rejection filter" or use "pulsed DC power"—requirements of all the asserted claims of the patents-in-suit which Demaray relies upon to distinguish its alleged invention from the prior art. *See, e.g.,* '276 patent at 22:40-50 (claim 1) (requiring, *inter alia*, "a pulsed DC power supply coupled to the target area" and "a narrow band-rejection filter . . . coupled between the pulsed DC power supply and the target area"); '657 patent at 23:2-15 (claim 1) (requiring, *inter alia*, a method "providing pulsed DC power to the target through a narrow band rejection filter").[2] Contrary to Demaray's

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[2] As set forth in Applied's complaint and in prior joint case management conference statements, other issues are suitable for summary adjudication as well. For example, Applied is

suggestion, summary judgment on the lack of "pulsed DC power" in Applied's accused products is warranted under the construction Demaray urged—and won—in the Texas cases.

As such, an early summary judgment proceeding is in order to clear the cloud that Demaray's claims have placed over Applied's products. There are no fact disputes, as several claim elements are entirely missing from the Applied products at issue. For example, as all of the party and third-party discovery produced thus far has demonstrated, Applied's products do not in any way implement the fundamental "narrow-band rejection filter" aspect of the patents.[3] Moreover, none of the Applied products that Demaray has accused in any action use pulsed DC power. *See* Dkt. 174 ¶¶ 30, 37-51, 64-80; Dkt. 1-3; Dkt. 1-4 (alleging infringement of Applied's "Cirrus" products, which do not use pulsed DC power). Critically, to date, Demaray has provided no specific explanation for how it can meet both of these requirements.

Given the complete absence of the "narrow-band rejection filter" or "pulsed DC power" in the Applied PVD reactors accused of infringement, no further claim constructions are expected to be necessary for summary judgment.[4] Moreover, in view of the voluminous party and third-party discovery that has already been provided in the Texas cases and here, little if any additional discovery will be necessary. Although Demaray appears to complain that it will need discovery to make its accusations, it fails to acknowledge Applied's past and ongoing efforts to provide

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licensed to the patents-in-suit as a result of an agreement between one of Demaray's predecessors and an Applied affiliate. Dkt. 1 ¶¶ 18-23, 68-90, 101-108; Dkt. 69 at 5-6, 12-13, 16-17; Dkt. 151 at 15-17. Demaray has indicated that it plans to pursue additional discovery on this issue, and Applied will work with Demaray on that issue. Applied, however, disagrees that the licensing issue implicates privilege waiver in any way.

[3] Demaray suggests that significant third-party discovery is required to determine whether Applied's products meet the "narrow band rejection filter" limitation. In fact, third parties have already made substantial productions in the Texas cases that clearly demonstrate no such filter is present, and Applied will ensure that any such relevant productions are made available in this proceeding. Applied does not anticipate that other significant third-party discovery is necessary.

[4] To the extent further claim construction relating to these two terms is necessary, such issues are expected to be narrow, and can be addressed in the context of the summary judgment briefing. Should the case proceed past early summary judgment, the parties may require resolution of additional claim construction disputes by the Court, to be presented at the Claim Construction Hearing.

Demaray with appropriate discovery, which will put this case in a position to allow for targeted, case-dispositive early summary judgment proceedings. For example, Demaray is incorrect that Applied has previously "refused" to provide "targeted product disclosures detailing its use of the reactor configurations." Applied has already produced significant discovery on its reactor configurations, including for products that are not accused in the co-pending Texas cases against Applied's customers. Across this case and the Texas cases,[5] Applied has produced hundreds of documents, made a corporate representative available for deposition, provided declarations regarding schematics and inspections of its products, and facilitated discovery from Applied's suppliers of potentially relevant components. This discovery was not limited to just the products Demaray accuses in the co-pending Texas cases, but also includes other Applied reactors/chambers as well. Indeed, Judge Cousins' denied Demaray's request for this additional discovery, finding that Demaray failed to demonstrate "how the information Applied has already supplied is insufficient." Dkt. 155 at 1-2. Regardless, as set forth above, Applied is working to diligently and proactively address Demaray's requests by investigating what, if any, additional information it is able to provide and will promptly provide that discovery in order to put this case in a near-term position for focused and efficient summary judgment proceedings.

Lastly, proceeding with an early summary judgment at the appropriate time in this case will avoid undue prejudice to Applied associated with proceeding through the entire claim construction and discovery period on all aspects of this matter, and any undue burden on the Court. If Applied prevails, a judgment of non-infringement will dispose of Demaray's claims in this case in their entirety, and eliminate or substantially narrow all other issues.

Applied believes that the parties and the Court will be well-positioned to engage in streamlined summary judgment proceedings to quickly, efficiently, and economically adjudicate the merits of this dispute as well as disputes in the Western Texas customer cases.

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[5] Per the parties' agreement, Applied productions in the co-pending Texas cases are deemed crossed produced in this matter.

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