

TABLE OF CONTENTS

	<u>Page</u>
1	
2	
3 I. INTRODUCTION	1
4 II. DISPUTED CONSTRUCTIONS	2
5 A. "Narrow band rejection filter"	3
6 1. Applied Mischaracterizes Demaray's "Comprising" Argument	3
7 2. The Plain Language Of The Claims And The Specification Make Clear That The NBRF Is Focused On The Frequencies Rejected.....	4
8 3. Applied's "Centered On" Limitation Is Unsupported By the Claims	6
9 10 B. Pulsed DC power/Pulsed DC power supply	6
11 1. The Intrinsic Record Makes Clear Where The Oscillations Occur	7
12 13 C. "A method of depositing an insulating film on a substrate, comprising:"	7
14 15 D. "an RF bias power supply coupled to the substrate"/"an RF bias power supply coupled to provide an RF bias to the substrate"	8
16 1. Applied's Proposed Additions To The Claims Are Ambiguous	8
17 18 2. Applied's Flip-Flops On Whether Its New Claim Additions Would Require "Direct Coupling" And Preclude "Indirect Coupling"	9
19 20 3. Applied Seeks To Add Another New, Unsupported Limitation.....	9
21 22 4. Demaray Made No Clear And Unmistakable Disavowals In The IPRs.....	10
23 E. In Addition To The Arguments Above, The Providing Limitation Does Not Contain The Word "Coupled"	15
24 III. CONCLUSION	15
25	
26	
27	
28	

TABLE OF AUTHORITIES

	<u>Page(s)</u>
Cases¹	
<i>Aircraft Tech. Publishers v. Avantext, Inc.</i> , No. C 07–4154 SBA, 2009 WL 3817944 (N.D. Cal. Nov. 10, 2009)	2
<i>Avid Tech., Inc. v. Harmonic, Inc.</i> , 812 F.3d 1040 (Fed. Cir. 2016).....	8, 11
<i>Bio-Rad Labs., Inc. v. 10X Genomics Inc.</i> , 967 F.3d 1353 (Fed. Cir. 2020).....	8
<i>Biotec Biologische Naturverpackungen GmbH & Co. KG v. Biocorp, Inc.</i> , 249 F.3d 1341 (Fed. Cir. 2001).....	3
<i>Boss Control, Inc. v. Bombardier Inc.</i> , 410 F.3d 1372 (Fed. Cir. 2005).....	6
<i>CCS Fitness, Inc. v. Brunswick Corp.</i> , 288 F.3d 1359 (Fed. Cir. 2002).....	5
<i>CIAS, Inc. v. Alliance Gaming Corp.</i> , 504 F.3d 1356 (Fed. Cir. 2007).....	3
<i>Comaper Corp. v. Antec, Inc.</i> , 596 F.3d 1343 (Fed. Cir. 2010).....	10
<i>Conoco, Inc. v. Energy & Env't. Int'l., L.C.</i> , 460 F.3d 1349 (Fed. Cir. 2006).....	4
<i>Edwards Lifesciences LLC v. Cook Inc.</i> , 582 F.3d 1322 (Fed. Cir. 2009).....	5
<i>France Telecom, S.A. v. Marvell Semiconductor, Inc.</i> , No. 12–cv–04967–WHO, 2014 WL 1007449 (N.D. Cal. 2014)	6
<i>Martek Biosciences Corp. v. Nutrinova, Inc.</i> , 579 F.3d 1363 (Fed. Cir. 2009).....	5
<i>Mass. Inst. of Tech. v. Shire Pharms., Inc.</i> , 839 F.3d 1111 (Fed. Cir. 2016).....	9
<i>Mentor H/S, Inc. v. Med. Device Alliance, Inc.</i> , 244 F.3d 1365 (Fed. Cir. 2001).....	3

¹ Unless otherwise noted, internal citations and subsequent case history are omitted, and any emphasis is added. All exhibits unless otherwise noted were attached to the Declaration of Thomas Horn ("Horn Decl.") filed with Demaray's Opening Brief ("Br.").

	<u>Page</u>
1	
2	
3 <i>NTP Inc. v. Rsch. In Motion, Ltd.</i> ,	
4 418 F.3d 1282 (Fed. Cir. 2005).....	9
5 <i>O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co., Ltd.</i> ,	
6 521 F.3d 1351 (Fed. Cir. 2008).....	2
7 <i>Omega Eng'g, Inc. v. Raytek Corp.</i> ,	
8 334 F.3d 1314 (Fed. Cir. 2003).....	8
9 <i>Phillips v. AWH Corp.</i> ,	
10 415 F.3d 1303 (Fed. Cir. 2005).....	7
11 <i>Sinorgchem Co. v. Int'l Trade Comm'n</i> ,	
12 511 F.3d 1132 (Fed. Cir. 2007).....	6
13 <i>Teleflex, Inc. v. Ficosa N. Am. Corp.</i> ,	
14 299 F.3d 1313 (Fed. Cir. 2002).....	8
15 <i>TomTom, Inc. v. Adolph</i> ,	
16 790 F.3d 1315 (Fed. Cir. 2015).....	8
17 <i>Trading Techs. Intern., Inc. v. eSpeed, Inc.</i> ,	
18 595 F.3d 1340 (Fed. Circ. 2010).....	6
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

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 its attorneys and
4 former attorneys already lost in co-pending cases in the WDTX,² all in the hopes of creating
5 conflicting rulings and an avenue for appeal. Most of Applied's arguments were previously
6 rejected by the WDTX court because Applied's attorneys and former attorneys improperly sought
7 to re-write claim terms having plain and ordinary meanings to add limitations unsupported by the
8 intrinsic record. By way of example only, Applied now asks the Court here to adopt those rejected
9 proposals and to issue conflicting constructions by:

10 (1) Re-writing "narrow band rejection filter" (which has a plain and ordinary meaning) to a
11 "filter that passes...frequencies..." thereby eliminating altogether the "rejection" requirement and
12 substituting in its place an extraneous "passing" requirement;

13 (2) Re-writing the open "comprising" claim term that covers chambers with the claimed
14 narrow band rejection filter (but that would *not* exclude additional, unclaimed filter elements) into
15 a closed-ended "consisting" term that would exclude additional, unclaimed filter elements;

16 (3) Ignoring the context of the patentee's explicit definition for "pulsed DC power"; and

17 (4) Re-writing the claim term "insulating film" (which has a plain and ordinary meaning)
18 to an "insulating film comprising the oxide material" where (i) the patent specification explicitly
19 discloses insulating films other than oxide materials, (ii) there was no lexicography and no clear
20 and unmistakable disavowal by the patentee of films other than oxide materials, and (iii) Applied's
21 claim construction would exclude a dependent claim.

22 The arguments raised by Applied do not override the plain and ordinary meanings of the
23 claim terms, as confirmed by the teachings of the specification. Indeed, in four recent IPRs that
24 Applied filed and lost against the Demaray patents, each of which contained supporting
25 declarations from Applied experts claiming to be persons of skill in the art, neither Applied, nor its
26 experts, nor its attorneys proposed a single term for construction. This belies any claim that the
27

28 ² In the WDTX, WilmerHale also represents Intel, and Paul Hastings, Applied's former
counsel, represented both Intel and Samsung.

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.