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11
12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14
15 APPLIED MATERIALS, INC.,
16 Plaintiff,
17 vs.
18 DEMARAY LLC,
19 Defendant.

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

**APPLIED MATERIALS, INC.'S
OPPOSITION TO DEMARAY LLC'S
MOTION TO DISMISS**

**Hearing Date: April 8, 2021
Hearing Time: 9:00 a.m.**

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1 **I. INTRODUCTION**

2 Crediting Demaray's repeated representations that its lawsuits against Applied's customers,
3 Intel and Samsung, in the Western District of Texas ("WDTX") were *not* directed at Applied's
4 products, but rather "*specific configurations*" of those products purportedly performed *by the*
5 *customers* (and not Applied), *see* Dkt. No. 1 ("DJ Compl.") at ¶ 42, the Court denied Applied's
6 motion for preliminary injunction after concluding it did not have subject matter jurisdiction over
7 Applied's related declaratory relief action. *Applied Materials, Inc. v. Demaray LLC*, Case No. 5:20-
8 cv-05676-EJD ("*Applied I*"), Dkt. No. 46 at 12. The Court reasoned that "*Demaray alleges Intel*
9 *and Samsung configure the reactors* such that they are comprised of a pulsed DC power supply
10 coupled to the target area, a RF bias power supply coupled to the substrate, and a narrow band
11 rejection filter placed between the DC power supply and the target area in order to deposit the thin
12 layer films in its semiconductor products" and that "[a]lthough Applied is a supplier of the reactors
13 capable of this configuration and deposition method, *Demaray does not allege in the WDTX*
14 *Actions that Applied itself configures the reactors.*" *Id.* at 7, 8 (emphasis added).

15 Applied, Intel and Samsung have always known that no such post-installation
16 "configurations" occur. The Applied reactors accused in the customers suits are designed,
17 configured, manufactured, and installed *by Applied* at the customers' fabrication facilities, where
18 thereafter Applied continues to provide on-site engineering, maintenance and support. Thus,
19 contrary to Demaray's arguments in *Applied I*, this is "a case where one entity [Applied] makes an
20 [allegedly] infringing product [Applied's accused reactors], and its customers [Intel and Samsung]
21 are then sued for nothing more than purchasing and using it [as a practical matter based on the
22 commercial realities] in the only way possible." *Applied I*, Dkt. No. 23, p. 6:5-9; DJ Compl. at ¶ 3.
23 Accordingly, when considering Demaray's allegations with the commercial realities of Applied's
24 relationships with its customers, and the numerous affirmative acts taken by Demaray after filing
25 the Customer Suits, Applied filed its new DJ Complaint based on a reasonable and objective
26 interpretation of Demaray's allegations and affirmative acts as an implied assertion of infringement
27 against Applied. The new DJ Complaint, which includes a table, *see* DJ Compl. at ¶ 9, summarizing
28 "Demaray's Representations (in red) / Affirmative Acts Supporting Subject Matter Jurisdiction

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