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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

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

Case No. 5:20-cv-09341-EJD
**DEMARAY LLC'S REPLY
MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS**
Hearing Date: April 8, 2021
Hearing Time: 9:00 a.m.

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¹ Unless otherwise noted, internal citations, quotations and subsequent history are omitted, and emphasis is added unless otherwise indicated.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. PRELIMINARY STATEMENT**

3 Applied's new, duplicative declaratory judgment complaint should be entirely dismissed
4 under Federal Rule of Civil Procedure 12(b)(1) for lack of a case and controversy between
5 Demaray and Applied supporting subject matter jurisdiction. In its opposition, Applied
6 concedes—as it must—that a “[patent owners] actions must give reason to believe that it is
7 asserting its rights under the patents and [t]he *objective actions of the patentee are the subject of*
8 *that inquiry.*” Opp. at 12 (citing *Hewlett-Packard Co. v. Accelaron LLC*, 587 F.3d 1358, 1362–63
9 (Fed. Cir. 2009)). The Court has already determined that the Texas complaints show that
10 Demaray's focus is on the actual parties, *e.g.*, Intel and Samsung, using the infringing reactor
11 configurations to produce semiconductor products, not equipment suppliers like Applied. *See*
12 *Microsoft Corp. v. DataTern, Inc.*, 755 F.3d 899, 907 (Fed. Cir. 2014) (no jurisdiction when
13 “DataTern's litigation strategy appears to involve suing software users, not software suppliers”). It
14 is undisputed that the “Demaray patents ... do not cover all PVD reactor configurations.” Mot. at
15 8. And, Applied admits that in the Texas complaints and Demaray's October 9, 2020, preliminary
16 infringement contentions, Demaray did not rely on Applied information for several limitations,
17 *e.g.*, the narrow band-rejection filter. *See, e.g.*, Opp. at 3 (Applied documents not referenced). The
18 “new” objective actions of Demaray that Applied points to (*see id.* at 1 (citing Complaint ¶ 9
19 (“summar[y]” table listing “new” allegations))) actually establish that Demaray is not in a position
20 to determine one way or the other whether Applied infringes the Demaray patents at issue.

21 Unable to point to objective affirmative enforcement acts by Demaray against Applied,
22 Applied again relies on its self-servingly alleged subjective “belief” that “the Customer Suits
23 impliedly assert infringement against Applied.” *Id.* at 4. The Court has already rejected that
24 argument (Ex. 1 at 12) and it is undisputed that under the applicable legal standard “it is the
25 *objective words and actions of the patentee that are controlling.*” *See Hewlett-Packard*, 587 F.3d
26 at 1363. Applied next points to its own self-serving, cherry-picked “factual” allegations for the
27 proposition that Intel and Samsung have nothing to do with reactor configuration. But, these are
28 Applied's allegations, not Demaray's objective actions. Applied cannot manufacture subject

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