#### UNITED STATES PATENT AND TRADEMARK OFFICE

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## BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLIED MATERIALS, INC. Petitioner,

v.

DEMARAY LLC Patent Owner.

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Case IPR2021-00104 Patent No. 7,381,657

### PATENT OWNER'S PRELIMINARY RESPONSE

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Advanced Bionics, LLC v. MED-EL Elektromedizinische Geräte GmbH, IPR2019-01469, Paper 6 (Feb. 13, 2020)61, 6	52, 64
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Apple Inc. v. Fintiv, Inc., IPR2020-00019, Paper 15 (P.T.A.B. May 13, 2020)	6
Arendi S.A.R.L v. Apple Inc., 832 F.3d 1355 (Fed. Cir. 2016)25, 2	27, 59
Becton, Dickinson & Co. v. B. Braun Melsungen AG, IPR2017-01586, Paper 8 (P.T.A.B. Dec. 15, 2017)	61
Belden Inc. v. Berk-Tek LLC, 805 F.3d 1064 (Fed. Cir. 2015)	58
Bentley Motors Ltd. v. Jaguar Land Rover Ltd., IPR2019-01539, Paper 16 (P.T.A.B. Oct. 2, 2020)	7
Cisco Sys., Inc. v. C-Cation Techs., LLC, IPR2014-00454, Paper 12 (PTAB Aug. 29, 2014)	13
Cont'l Intermodal Grp. – Trucking LLC v. Sand Revolution LLC, Case No. 7:18-cv-00147-ADA (July 22, 2020)	5
InTouch Techs., Inc. v. VGO Commc'ns, Inc., 751 F.3d 1327 (Fed. Cir. 2014)	49
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Monarch Knitting Mach. Corp. v. Sulzer Morat GmbH, 139 F.3d 877 (Fed. Cir. 1998)	51
Otsuka Pharmaceutical Co., Ltd. v. Sandoz, Inc., 678 F.3d 1280 (Fed. Cir. 2012)	55
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Shire LLC v. Amneal Pharm., LLC, 802 F.3d 1301 (Fed. Cir. 2015)	48
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