

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DEMARAY LLC,

Plaintiff,

v.

INTEL CORPORATION

Defendant.

Case No. 6:20-CV-00634-ADA

JURY TRIAL DEMANDED

DEMARAY LLC,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD,
SAMSUNG ELECTRONICS AMERICA, INC.,
SAMSUNG SEMICONDUCTOR, INC., and
SAMSUNG AUSTIN SEMICONDUCTOR, LLC

Defendants.

Case No. 6:20-CV-00636-ADA

JURY TRIAL DEMANDED

DEFENDANTS' FIRST AMENDED PRELIMINARY INVALIDITY CONTENTIONS

Defendants Intel Corporation (“Intel”), Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor, LLC (collectively, “Samsung”) (together, “Defendants”), by their attorneys, make these First Amended Preliminary Invalidity Contentions concerning U.S. Patent Nos. 7,544,276 (“the ’276 patent”) and 7,381,657 (“the ’657 patent”) (collectively, the “Asserted Patents”) to Demaray LLC (“Plaintiff” or “Demaray”) in connection with the above-referenced action, pursuant to the parties’ proposed Scheduling Order (Intel Case Dkt. 30), and the Court’s Scheduling Order (Samsung Case

Dkt. 33) and the Court's Updated Order Governing Proceedings – Patent Case (Intel Case Dkt. 37, Samsung Case Dkt. 41). The citation of prior art herein and the accompanying exhibits are not intended to reflect Defendants' claim construction contentions, which will be disclosed in due course in accordance with the Scheduling Order, and may instead reflect Plaintiff's apparent (and potentially erroneous) claim constructions based on its Infringement Contentions.

Defendants' First Amended Preliminary Invalidity Contentions herein replaces Defendants' Preliminary Invalidity Contentions, which were served on December 11, 2020. Specifically, this cover pleading replaces Defendants' Preliminary Invalidity Contentions cover pleading, which was served on December 11, 2020. The Exhibits referenced herein correspond to the Exhibits previously served on December 11, 2020. For avoidance of doubt, Defendants' prior invalidity contentions with respect to 35 U.S.C. § 112 are withdrawn in view of Defendants' present understanding of Plaintiff's infringement contentions and the parties' respective claim construction positions.

Defendants' First Amended Preliminary Invalidity Contentions herein reflect Defendants' knowledge as of this early date in the present action. Defendants reserve the right, to the extent permitted by the Court and the applicable statutes and rules, including but not limited to the Court's Order Governing Proceedings – Patent Case, to modify and/or supplement the Preliminary Invalidity Contentions in response to becoming aware of additional prior art or information regarding prior art, any modification or supplementation of Plaintiff's Infringement Contentions, any claim construction by the Court, or as otherwise may be appropriate.

The Scheduling Order and the Order Governing Proceedings – Patent Case contemplate that these Preliminary Invalidity Contentions would be prepared and served in response to Plaintiff's Infringement Contentions. However, Plaintiff's Infringement Contentions served

October 9, 2020 are insufficient because they lack proper and complete disclosure as to how Plaintiff contends that Defendants infringe the Asserted Claims. For example, in its Preliminary Infringement Contentions served October 9, 2020, Plaintiff only purports to cite evidence in its infringement contentions in support of infringement allegations on claims 1-3 and 6-8 of the '276 patent, and claim 1 of the '657 patent. For other claims of the Asserted Patents, Plaintiff simply alleges that “[d]iscovery ... is currently believed to be required to determine whether [Defendants] practice[] this claims.” Therefore, Defendants address claims 1-3 and 6-8 of the '276 patent and claim 1 of the '657 patent in these preliminary invalidity contentions in light of the lack of notice regarding these “other claims.” Defendants reserve the right to amend the Preliminary Invalidity Contentions in response to any permissible supplementation or amendment of Plaintiff’s Infringement Contentions. Due to Plaintiff’s failure to provide proper and complete disclosure of its Infringement Contentions, under the Order Governing Proceedings – Patent Case, Defendants reserve the right to seek leave from the Court to amend these Invalidity Contentions should Plaintiff be allowed by the Court to amend its Infringement Contentions or its apparent claim constructions. Defendants also reserve the right to amend these Invalidity Contentions in light of positions that Plaintiff or its expert witnesses may assert concerning claim construction, infringement, and/or invalidity issues.

Plaintiff served Supplemental Preliminary Infringement Contentions on February 5, 2021. Defendants are in the process of reviewing these Supplemental Contentions, and reserve the right to further amend or supplement Defendants’ Preliminary Invalidity Contentions in response to Plaintiff’s Supplemental Contentions and/or any further supplementation, including in response to additional claims asserted in the February 5, 2021 Supplemental Preliminary Infringement Contentions.

Defendants' Exhibits attached hereto cite to particular teachings and disclosures of the prior art as applied to features of the asserted claims. However, persons having ordinary skill in the art generally may view an item of prior art in the context of other publications, literature, products, and understanding. As such, the cited portions of prior art identified herein are exemplary only. Defendants may rely on the entirety of the prior art references listed herein, including un-cited portions of those prior art references, and on other publications and expert testimony shedding light on those prior art references, including as aids in understanding and interpreting the cited portions, as providing context thereto and as additional evidence that the prior art discloses a claim limitation.

Defendants will also rely on documents, products, testimony, and other evidence to establish bases for and motivations to make combinations of certain cited references that render the asserted claims obvious. Defendants may rely upon corroborating documents, products, testimony, and other evidence including materials obtained through further investigation and third-party discovery of the prior art identified herein, that describes the invalidating features identified in these contentions; evidence of the state of the art in the relevant time period (irrespective of whether such references themselves qualify as prior art to the Asserted Patents), including prior art listed on the face of the Asserted Patents and/or disclosed in the specification ("Admitted Prior Art"); and/or expert testimony to provide context to or aid in understanding the cited portions of the identified prior art.

The references discussed in the Exhibits herein disclose the elements of the asserted claims explicitly or inherently, and/or they may be relied upon to show the state of the art in the relevant time frame. To the extent the attached claim charts cite to a reference for each element or limitation of an asserted claim, Defendants contend that such reference anticipates that claim and/or renders

that claim obvious in view of the state of the art and/or knowledge of a person of ordinary skill in the art. In addition, to the extent that the attached claim charts cite to additional references, Defendants contend, in addition and/or in the alternative, that the asserted claim is rendered obvious for the reasons set forth in the attached charts. To the extent suggested obviousness combinations are included in the attached claim charts, they are provided in addition to and/or in the alternative to Defendants' anticipation contentions and are not to be construed to suggest that any reference included in the combinations is not by itself anticipatory.

For purposes of these Preliminary Invalidity Contentions, Defendants identify prior art references and provide element-by-element claim charts based, in part, on the apparent claim constructions advanced by Plaintiff in its Infringement Contentions. Nothing stated herein shall be treated as an admission or suggestion that Defendants agree with Plaintiff regarding either the scope of any of the asserted claims or the claim constructions advanced in the Infringement Contentions. Moreover, nothing in these Preliminary Invalidity Contentions shall be treated as an admission that any Defendants' accused technology meets any limitations of the claims.

Pursuant to the Order Governing Proceedings – Patent Case, Defendants have provided disclosures and related documents pertaining only to the asserted claims as identified by Plaintiff in its Infringement Contentions. *See* production volumes AMAT-DEM-PA_001 and DEFTS-PA_001. Defendants will further supplement their document production should they later find additional, responsive documents, such as, for example, documents produced by third-parties. Much of the art identified in the attached Exhibits reflects common knowledge and the state of the art prior to the filing date of the Asserted Patents.

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