

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

DEMARAY LLC,

Plaintiff

v.

**SAMSUNG ELECTRONICS CO., LTD (A
KOREAN COMPANY), SAMSUNG
ELECTRONICS AMERICA, INC.,
SAMSUNG SEMICONDUCTOR, INC.,
and SAMSUNG AUSTIN
SEMICONDUCTOR, LLC,**

Defendants.

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

JURY TRIAL DEMANDED

PUBLIC VERSION

**PLAINTIFF DEMARAY LLC'S REPLY IN SUPPORT OF MOTION FOR LEAVE TO
FILE SUR-REPLY TO SAMSUNG'S MOTION TO TRANSFER VENUE**

Samsung's response to Demaray's motion for leave to file a sur-reply confirms that Samsung cannot show that NDCA is a "clearly more convenient" forum. The primary issue in this case is Samsung's use of infringing PVD reactor configurations in development and production of semiconductor products. ***Samsung concedes that "accused reactors are manufactured in Texas and that Samsung Austin uses the reactors in Texas."*** Resp. 1. While Samsung argues that the "location of any alleged infringement ... does not equate to the location of relevant witnesses and evidence" (*id.*), the configured reactors themselves are indisputably present in this District. *See XY, LLC v. Trans Ova Genetics, LC*, No. W-16-CA-00447-RP, 2017 WL 5505340, at *14 (W.D. Tex. Apr. 5, 2017) ("documents and physical evidence relating to Defendant's ***alleged infringing activities*** are located in Texas") (emphasis added)). In addition, Applied manufactures its PVD chambers here [REDACTED]

[REDACTED] Unlike Samsung, Demaray has tethered its arguments to concrete, relevant facts that favor this forum.

Samsung on the other hand focuses on legally flawed and unpled defenses, contested facts, and a laundry list of questionable witnesses. These have, at best, tangential ties to the primary issues in this case. For example, Samsung dredges up 15 "witnesses," but most are listed as relevant to Samsung's licensing defense based upon demonstrably unlawful assignment provisions or speculative inequitable conduct defenses. *See* Resp. 2 (citing *Ou Ex. AW*). ***Samsung's self-serving list does not even mention Samsung's infringement—the primary issue in the case.*** *See id.* Samsung then compounds its error by arguing that Demaray must "substantiate why the individuals ... are not likely witnesses" (Resp. 3), but Samsung cannot

meet its burden by simply listing a bunch of former Symmorphix and AKTA employees. Simply put, Samsung's reliance on speculative defenses, evidence and witnesses forecloses transfer. *See Fintiv, Inc. v. Apple Inc.*, No. 6:18-cv-00372-ADA, 2019 WL 4743678, at *2 (W.D. Tex. Sept. 13, 2019) ("A court ... must draw all reasonable inferences and resolve all factual conflicts in favor of the non-moving party.") (internal quotations omitted)). And even if considered, Demaray has demonstrated (1) the speculative nature of Samsung's defenses¹ and (2) that the only living signatory and primary negotiator for either party to the SRA on which Samsung hinges its transfer request lives in North Carolina (closer to this district). *Ou Ex. AL* (Marcucci Dep. II), 487:25–488:9.

Demaray's sur-reply properly points out the errors of fact and law included in Samsung's reply and addresses the 24 new exhibits and new witness declaration Samsung submitted therewith. For example, Demaray identified *more essential licensing witnesses* outside of NDCA for whom a Texas forum would be more convenient. Dkt. 91-1 (Sur-Reply) 3 (identifying Bob Conner and Howard Neff as primary negotiators). As another example, Samsung raised a new argument that an Applied employee, John Forster, has "unique knowledge regarding Applied's prior art ... system." Reply 1. Demaray merely provided responsive evidence showing that other Applied Austin personnel also likely have knowledge of such systems and that Advanced Energy personnel at its headquarters likely have knowledge of other prior art

¹ Samsung admits no inequitable conduct claim has been pleaded. Dkt. 88 (Reply) 2–3. As for its licensing/ownership claims, Samsung's theory that the SRA "stands on its own" (*id.*, 5) was not alleged in its operative answer. *See* Dkt. 29 ¶¶ 107 ("the Sale and Relationship Agreement ... explains that it applies '[t]o the extent required by existing [Applied Komatsu] Employee Agreements with any Symmorphix personnel."), 100 (similar). Those employee agreements have been declared void as unlawful. *See* Dkt. 50 (Opp.) 15.

systems.² Sur-Reply 3–4.

Given the speculative nature of Samsung’s transfer “evidence,” it is unsurprising that it wants it to go to the Court unchallenged, but fairness dictates that Demaray be allowed to respond to Samsung’s one-sided presentation on venue. Accordingly, Demaray respectfully requests that the Court consider its sur-reply.

Dated: April 5, 2021

/s/ C. Maclain Wells

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² Samsung attempts to dismiss the relevance of these individuals (Resp. 4). But the evidence contradicts Samsung’s insistence that all Applied development work occurs in NDCA. Samsung also mischaracterizes Applied reactors as being “configured” at Applied’s headquarters (*id.*), [REDACTED]

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CERTIFICATE OF SERVICE

A true and correct copy of the foregoing instrument and its attachments were served electronically via email upon all counsel of record on this 5th day of April, 2021.

By: /s/ C. Maclain Wells

C. Maclain Wells