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 (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**

PLAINTIFF DEMARAY LLC'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

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* Unless otherwise noted, internal citations and subsequent history are omitted, and emphasis is added.

U.S. Patent Nos. 7,381,657 is referred to as the "'657 patent."

Defendants are trying to manufacture non-infringement arguments by rewriting claim 2 of the '657 patent—directly contrary to settled law that claim interpretation is "a way of elaborating the normally terse claim language in order to understand and explain, ***but not to change***, the scope of the claims." *Embrex, Inc. v. Service Eng'g Corp.*, 216 F.3d 1343, 1347 (Fed. Cir. 2000).

I. "A method of depositing an insulating film on a substrate, comprising:" ('657 patent, cl. 2 preamble)

Demaray's Proposal	Defendants' Proposal
Preamble is not limiting, except for "insulating film on a substrate"	Preamble is limiting ("***depositing an*** insulating film on a substrate")

Demaray's construction, that the "insulating film on a substrate" portion of the preamble is limiting, tracks the Court's August 17, 2021 construction of the preamble to Claim 1 of the '657 patent. Claim 1's preamble reads "[a] method of depositing a film on an insulating substrate, comprising," and the Court construed it as the "***[p]reamble is not limiting, except for 'insulating substrate***.'" Intel Dkt. 106, 2; Samsung Dkt. 121, 2. The preamble to Claim 2 differs from Claim 1 only in that it recites an "*insulating* film" (as opposed to "film") and a "substrate" (as opposed to an "*insulating* substrate"). Demaray's construction of this closely similar language accordingly follows the Court's prior ruling, which, as described below, was and remains consistent with the intrinsic record. Defendants offer no valid basis to deviate from the Court's ruling here.

Defendants argue that the rest of the preamble language, including the term "depositing an," should also be limiting. But exactly as in Claim 1, this same additional language (1) merely states "a purpose or intended use for the invention," (2) the body of the claim recites a complete invention, and (3) the added language does not provide an antecedent basis for later claim limitations. It is black letter law that such language, just like the corresponding wording from Claim 1, is not limiting. *Catalina Mktg. Int'l, Inc. v. Coolsavings.com Inc.*, 289 F.3d 801, 808 (Fed.

Cir. 2002) ("preamble is not limiting where a patentee defines a structurally complete invention in the claim body and uses the preamble only to state a purpose or intended use for the invention.").

Defendants' attempt to tie the additional preamble language to the deposition of the "oxide material" in the claim body is not based on anything in the intrinsic record—it is attorney argument crafted from their non-infringement positions. *See* Op. Br. 1 (added language allegedly needed to "confirm[] that the 'oxide material' is part of the 'insulating film'"). The preamble makes no mention of an "oxide material," there are many possible insulating films other than oxide materials, and the process for depositing the insulating film is separately addressed from the oxide material in the body of the claim: "*the insulating film is formed by*…." '657 patent, 23:26-27.

II. "Insulating film" ('657 patent, cl. 2)

Demaray's Proposal	Defendants' Proposal
Plain and ordinary meaning	Insulating film ***comprising the oxide material***

Defendants argue that the claimed "insulating film" should be narrowed by adding the words "comprising the oxide material" to the claim. That is, of course, not what the claims says, and altering the meaning of the claim by adding narrowing words is not proper interpretation.

1. The Term Should Be Given The Full Scope Of Its Plain Meaning

"Insulating film" should be given its plain meaning, which encompasses insulating films like nitrides and other materials. Indeed, Defendants themselves acknowledge that the term needs no construction—their proposed construction repeats verbatim the language supposedly being interpreted, underscoring that there is no need for interpretation in the first instance. And in four recent *inter partes review* petitions filed by Defendants/Applied, they have not sought to construe this term. Intel Dkt. 46-3 ¶ 12; Samsung Dkt. 48-3 ¶ 12. "Because the plain and ordinary meaning of the disputed claim language is clear," there is no need to rewrite it. *See Summit 6, LLC v. Samsung Elecs. Co.*, 802 F.3d 1283, 1291 (Fed. Cir. 2015).

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