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
SUR-REPLY 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."

I. "A method of depositing an insulating film on a substrate, comprising:" (preamble)

Defendants' argument that this Court is incorrect, and the entire preamble to Claim 2 must be limiting, is contrary to law. The Federal Circuit has endorsed the Court's reasoning regarding the preamble of Claim 1 that only necessary portions of the preamble are limiting. In *TomTom, Inc. v. Adolph*, 790 F.3d 1315, 1324 (Fed. Cir. 2015), the Federal Circuit held that the preamble language "[a] method for generating and updating data" was not limiting, while later preamble language was, because this introductory language did not provide an antecedent basis for any claim terms or recite essential structure or steps. *Id.*, 1323-24. That reasoning is equally applicable here; the added words are unnecessary given the description in the claim body. *See* Dkt. 134, 1-2.

Bio-Rad Labs., Inc. v. 10X Genomics Inc., 967 F.3d 1353, 1371-72 (Fed. Cir. 2020), does not lead to a different conclusion. The *Bio-Rad* court differentiated *TomTom* on the basis that "it is clear the claim drafters intended to limit the claimed methods to on-chip reactions, using both the preamble and the body of the claim to define the claimed invention." *Id.* Here, there is no such clear indication. Defendants' argument for the inclusion of the additional language is that the verb "depositing" found in the preamble is also used in the claim body: "oxide material is deposited." Reply, 1. Defendants ignore the preamble is plainly talking about "depositing an ***insulating film***" and does not address the "oxide material."

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

Defendants' attempt to rewrite Claim 2 to require the claimed "insulating film" to also "compris[e] the oxide material" should be rejected—even Defendants concede that is not what the claim says. Defendants argue (1) disclaimer of using a separate process to deposit the oxide material and (2) that the patentee acted as its own lexicographer and required the oxide material to be part of the insulating film. On disclaimer, Defendants do not point to any clear and unmistakable disavowal of using a separate process for depositing the oxide material. Defendants

instead argue that the Court should discount the express disclosure of depositing an oxide material by "a chemical vapor deposition process or by a thermal oxidation process." *See* Resp., 5 (citing '657 patent, 7:62-65). That argument is contrary to law. Defendants also argue that any oxide material deposited using a separate process would be part of the claimed "substrate," not "deposited on the substrate." Reply, 2. Defendants ignore that oxide materials deposited after the insulating film would not be part of the substrate for that insulating film.

Defendants' reliance on purported lexicography fares no better. Defendants argue that "poison mode" requires deposition of an oxide material. Reply, 2. But, "poison mode" is not the term in dispute, "insulating layer" is. The Court already ruled that "poison mode" should have its plain and ordinary meaning in addressing the term as part of Claim 1 and did not limit the term to oxidation processes. Intel Dkt. 106, 2. Defendants continue to point to discussions of ***certain tested embodiments*** involving oxide films, but ignore the introductory language stating that the discussion applied only to "some embodiments"—"Sputtered oxide films according to ***some embodiments*** of the present invention…." '657 patent, 10:41-44. And Defendants again ask the Court to improperly ignore the patent's teaching that the claimed processes are applicable to various "[o]ptically useful materials," including "fluorides, sulfides, nitrides, phosphates, sulfates, and carbonates" (*id.,* 7:47-50), including when the wafer is already "coated with a layer of silicon oxide" (*id.*, 7:62-65). Defendants' own case acknowledges that is not the law. *GPNE Corp. v. Apple Inc.,* 830 F.3d 1365, 1371 (Fed. Cir. 2016) ("consistent disclosure" required for lexicography). Finally, Defendants offer no meaningful response to the file history, which shows the patentee (1) intentionally changing "***an oxide***" to "***the insulating film***" to encompass materials beyond oxides and (2) used language such as "an oxide film is formed by reactive sputtering" to address the embodiments to which Defendants' point.

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