**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**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

----

* 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.

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.