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

DEMARAY LLC'S REPLY BRIEF IN SUPPORT OF ITS MOTION TO AMEND FINAL INFRINGEMENT CONTENTIONS

I. INTRODUCTION

Recently produced information, which confirms that Defendants have [redacted] in their [redacted] and [redacted] families of chambers that can be used to [redacted], presents good cause for Demaray to amend its FICs. Demaray has drastically streamlined this case for trial with proposed infringement contentions focused on Defendants' use of just two [redacted] chamber families—[redacted]. These two families have similar base configurations in which both [redacted] and a [redacted] is used to [redacted]. When so configured, the [redacted]. In some models, [redacted] directly connected to the [redacted] (an alternative infringing configuration).

In the last few weeks [redacted] has produced documents confirming that (1) the [redacted] supplied to Defendants all have an [redacted] and (2) [redacted] on the [redacted] in the [redacted] chambers. In addition, Defendants recently produced testing and qualification materials confirming that the [redacted]. These new disclosures belie the assertion Defendants and [redacted] have taken throughout these cases (and resisted discovery on) that [redacted] Moreover, since this motion's filing, a Samsung corporate witness testified that its [redacted] (an alternative basis for infringement).

At the last discovery hearing in July, the Court denied Demaray's request for [redacted] after hearing Defendants' [redacted] arguments that the [redacted], but the Court carefully noted: "***if there is information that, as you put it, comes out during discovery that…is inconsistent with representations that [Defendants] made or*** [redacted] ***made… I'm always open***." Dkt. 272-13, 38:21-39:1. Such information has now been revealed in discovery. As the Court previously indicated, Demaray should be allowed to present its infringement case against these five chambers—all of which share the same infringement read whereby the [redacted]

[redacted] Given the overlap in theories directed at the [redacted] chambers (already at issue) and the additional chambers at issue on this motion, there is ample room in the schedule to accommodate any additional discovery and no good reason for Demaray to be required to litigate a separate infringement suit on the [redacted] or [redacted] chambers.

II. RECENT DISCOVERY CONFIRMS THAT DEFENDANTS' PRIOR DISCLOSURES WERE INACCURATE

The discovery that Demaray just received from [redacted] and not from Defendants, confirms that the [redacted] chambers all include an [redacted] in addition to the [redacted] *See* Mot. at 6-7. Additionally, recent documents from [redacted] and Defendants indicate that the [redacted] Ex. E, 3:64-67; *see also* Exs. F-G.

Second, Demaray has been seeking depositions since the July 29, 2022 hearing in which Defendants argued that they should not be compelled to provide the information sought because, "obviously, certainly…we expect there will be depositions of the persons knowledgeable, and ***[Demaray] can ask questions there***." Dkt. 187, 14:11-13. That same day, Demaray began noticing depositions—but because of Defendants' delays, technical fact depositions just started on November 10 (the day before Demaray's motion). [redacted] On November 22, a Samsung corporate representative confirmed the use of [redacted] Ex. Y, 95:6-9. This recent deposition testimony from Defendants' witnesses is directly at odds with the position so forcefully stated earlier in the case that an [redacted]

III. DEMARAY HAS NOT ABANDONED INFRINGEMENT THEORIES BASED ON [redacted]

Defendants incorrectly argue that Demaray abandoned infringement contentions relating to [redacted]. Intel Opp. at 5-6; Samsung Opp. at 6-7. Demaray's contentions regarding the [redacted] chambers encompass any [redacted] For the [redacted] chambers, for the [redacted] Demaray's FICs pointed not only to the [redacted] but to [redacted] witness testimony (Miller Depo. at 80:7-16) identifying the [redacted] (Ex. K at 38) and the associated [redacted] citing [redacted] (excerpted below):

9.	[redacted]	[redacted]

Demaray's contentions for [redacted], consistent with the claims, thus cover [redacted] regardless whether an [redacted]

Defendants ignore these disclosures and selectively excerpt/mischaracterize prior discovery hearing transcripts to argue that Demaray has not accused [redacted] or has somehow waived infringement theories involving any [redacted] *See* Intel Opp. 10-11, Samsung Opp. 10-11. This is not the case. First, it is undisputed that the patent claims do not require the [redacted] *See* Mot. 2 (claims require [redacted]). Second, Defendants agreed at the beginning of discovery that they would [redacted] Exs. A-B (Resp. Rog. 1). Defendants are trying to walk back that agreement (and their failure to adhere to it) by now arguing for their undisclosed, unilateral "*connected* to" limitation—a dubious proposition given that even in the chambers to which Defendants point, the [redacted] Third, the parties have been before the Court repeatedly making clear that the issue is whether there is [redacted] not whether the [redacted]

and the Court already ordered discovery on chambers where there is [redacted] Mot. 3 (citing transcript/order). Finally, Demaray noted this very issue in its FICs and stated that if an [redacted]) is present and used, the chambers will be at issue:

[redacted]

The Samsung FICs contain similar language. It is hard to see how this constitutes a waiver.

Defendants have cherry-picked hearing transcript excerpts and taken them out of context to distort their meaning. The surrounding transcript context makes clear that an [redacted] not the only way. For example, in the 9/27/21 transcript Demaray counsel stated: [redacted] Dkt. 272-11, 32:9-16. Counsel's later discussion of [redacted] was in the context of questioning Defendants' word-smithing: [redacted] *Id.,* 34:2-8. The 11/17/21 transcript addressed Defendants' attempts to compel discovery on all chambers with [redacted] even those without a [redacted] (a claim element) and counsel properly noted that [redacted] are [redacted] Dkt. 272-12, 11:19-12:2. None of these statements can be transformed into some kind of waiver of the infringement contentions set forth in the proposed amended FICs.

IV. DEFENDANTS' PROSECUTION ESTOPPEL THEORY IS WITHOUT MERIT

Defendants "estoppel" theory is also without merit, both procedurally and substantively. First, the argument is essentially a disguised summary judgment motion. While Demaray strenuously disagrees with Defendants, if Defendants choose to pursue an estoppel defense, it should be presented in a summary judgment motion or in an appropriate context on a complete record, not in connection with a case management or discovery dispute. Substantively, Defendants have mischaracterized the underlying assertions on which they rely. Defendants admit the cited

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