

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

DEMARAY LLC * March 4, 2021
*
VS. * CIVIL ACTION NOS.
*
INTEL CORPORATION * W-20-CV-634
SAMSUNG ELECTRONICS, ET AL * W-20-CV-636

BEFORE THE HONORABLE ALAN D ALBRIGHT
TELEPHONIC DISCOVERY HEARING

APPEARANCES:

For the Plaintiff: Crawford Maclain Wells, Esq.
Irell & Manella LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067

Richard D. Milvenan, Esq.
McGinnis Lochridge and Kilgore
600 Congress Avenue, Suite 2100
Austin, TX 78701

For Defendant Intel: J. Stephen Ravel, Esq.
Kelly Hart & Hallman LLP
303 Colorado Street, Suite 2000
Austin, TX 78701

Claire M. Specht, Esq.
WilmerHale
60 State Street
Boston, Massachusetts 02109

For Samsung Defendants: Brian Christopher Nash, Esq.
Austin Michael Schnell, Esq.
Pillsbury Winthrop Shaw Pittman LLP
401 Congress Avenue, Suite 1700
Austin, TX 78701-3797

Philip Ou, Esq.
Yar R. Chaikovsky, Esq.
Paul Hastings LLP
1117 South California Avenue
Palo Alto, CA 94304

1 Court Reporter: Kristie M. Davis, CRR, RMR
2 PO Box 20994
3 Waco, Texas 76702-0994
4 (254) 340-6114

5 Proceedings recorded by mechanical stenography, transcript
6 produced by computer-aided transcription.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 DEPUTY CLERK: Discovery hearing in Civil Action
2 6:20-CV-634, styled Demaray LLC versus Intel Corporation, and
3 Case No. 6:20-CV-636, styled Demaray LLC versus Samsung
4 Electronics Company, LTD and others.

5 THE COURT: If I could hear announcements from counsel,
6 and while you're doing that, I'm going to grab a tablet real
7 quick.

8 MR. WELLS: Your Honor, for the plaintiffs Demaray we have
9 Maclain Wells from Irell & Manella and Rick Milvenan from
10 McGinnis Lochridge.

11 THE COURT: Welcome both.

12 MR. RAVEL: Your Honor, for defendant Intel our client
13 representative today is John Edwards. From Paul Hastings we
14 have Phil Ou and Yar Chaikovsky. From WilmerHale we have
15 Claire Specht. And Mr. Ou will be our primary speaker today.

16 THE COURT: Good morning, Mr. Ou.

17 MR. OU: Good morning, Your Honor.

18 THE COURT: And anyone else?

19 MR. NASH: Your Honor, sorry about that. This is Brian
20 Nash with Pillsbury here on behalf of the Samsung defendants.
21 I'm also joined by my colleague Austin Schnell of Pillsbury.
22 And we will also be deferring to Mr. Ou on behalf of Samsung
23 for the speaking role today.

24 THE COURT: Very good. I'm happy to take up your issues.

25 MR. OU: Thank you, Your Honor. Philip Ou for Intel and

1 Samsung.

2 Your Honor, just to begin, I know the parties submitted
3 quite a lengthy submission in terms of background. Hopefully
4 that's at least helpful in framing the issues.

5 THE COURT: Yes, sir.

6 MR. OU: I just wanted to orient Your Honor kind of how we
7 got here. Intel and Samsung, as you may remember from our
8 January hearing -- discovery hearing -- we had filed transfer
9 motions back in November. And over the last few months we've
10 been dealing with venue discovery that Demaray has been
11 seeking. That's included, discovery from Applied Materials
12 who's the supplier to Intel and Samsung.

13 And we finally completed that process at the beginning of
14 February when we took the deposition of Applied Materials. And
15 so the day after that Mr. Wells and I and Mr. Ravel and
16 Mr. Nash actually met and conferred to come up with a schedule
17 to make sure we finished venue briefing since we had claim
18 construction deadlines coming up as well. They committed to
19 filing their responsive brief on February 23rd.

20 And on that same day I asked Mr. Wells to look into the
21 availability of Dr. Demaray, who is, as far as I know, the
22 principal of Demaray LLC. But more importantly there's a long
23 history between Dr. Demaray, his predecessor company,
24 Symmorphix, and Applied Materials. Dr. Demaray used to work at
25 Applied Materials' joint venture Applied Komatsu over 20 years

1 ago.

2 And there's a host of defenses that Intel and Samsung have
3 raised relating to Dr. Demaray and others' involvement in
4 Applied Materials and the predecessor company. I won't get
5 into the details of the merits of those disputes, but there are
6 those defenses. And we expect there's likely going to be
7 significant and crucial third-party witnesses that were
8 involved in the activities that happened 20 years ago.

9 And so for that reason we noticed, and we asked Mr. Wells
10 to look into availability of Dr. Demaray shortly after they
11 filed their responsive brief so that we can take that
12 deposition and get our reply brief in and get the issue
13 submitted for Your Honor.

14 It's been nearly a month and they've refused to even look
15 into Dr. Demaray's availability. Instead, they've offered at
16 least what we view as a proxy or consultant for Demaray, Brian
17 Marcucci. We don't know what Mr. Marcucci's going to say in
18 the deposition, but we do know that Dr. Demaray has likely
19 significant knowledge, and many instances probably the only
20 relevant knowledge about the relevant witnesses, their
21 involvement and things of that nature.

22 And respectfully, Your Honor, we don't believe it's proper
23 for Demaray to dictate the discovery that we take or the
24 discovery that we seek. They've made an objection. They said
25 that Dr. Demaray's an apex witness. We actually think he's

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.