

# EXHIBIT AE

**From:** [Milvenan, Rick](#)  
**To:** [Hannah.Santasawatkul](#)  
**Cc:** [Joshua Yi](#); [Hattenbach, Ben](#); [Zhong, Annita](#); [Chu, Morgan](#); [steve.ravel@khh.com](#); [Hattenbach, Ben](#); [Zhong, Annita](#); [Chu, Morgan](#); [brian.nash@pillsburylaw.com](#); [Wells, Maclain](#); [Ou, Philip](#); [Soobert, Allan M.](#); [Rumpler, Joseph](#); [Chaikovsky, Yar R.](#); [Barton, Travis](#)  
**Subject:** [EXT] Demaray LLC (6:20-cv-00634, 636)  
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Hannah, Defendants Intel and Samsung have moved to transfer the pending actions brought by Demaray (*Demaray v. Intel* and *Demaray v. Samsung*) to the Northern District of California. After extensive meet and confer efforts, while the parties have reached agreement on a number of their differences, the parties have the disputes set forth below relating to transfer discovery. Demaray requests an oral hearing with the Court to resolve these remaining questions. Demaray has accused Intel and Samsung of using Demaray's patented configurations of physical vapor deposition (PVD) reactive magnetron sputtering (RMS) chambers in reactors for the deposition of thin film layers in an infringing manner to develop and manufacture their semiconductor products. The following discovery is necessary to determine which reactors are in dispute and where they, and materials and persons related thereto, are located.

- (1) **Demaray has sought discovery from Intel on its use of the accused reactor configurations for research and development purposes. Intel has refused to respond to these requests.** In its infringement contentions, Demaray accused Intel's use of the claimed reactor configurations "at its fabrication plants and **research facilities**, including but not limited to premises within the United States." There is no exception to infringement for research and development activities under the patent statute. This is particularly relevant in this case, as Intel maintains a 1700 person research facility in Austin, Texas and it is unclear to what extent Intel performs research with these reactors in this and other locations.
- (2) **Demaray has sought discovery on Intel's use of the accused reactor configurations for thin films. Intel refuses to respond to Demaray's discovery for any thin films besides TiN and TaN.** In its infringement contentions, Demaray accused Intel's use of the claimed reactor configurations for the deposition of "films having a wide variety of chemistries on insulating substrates in connection with its manufacture of a wide variety of semiconductor products." Demaray identified TiN and TaN as *examples* of such layers, because those were the types of layers for which publicly available Intel and Samsung information was available. It is clear from the asserted patents and other materials that the accused reactor configurations can be used for the deposition of other types of layers as well. *See, e.g.*, Dkt. 1 at 39 ('276 patent) (can be used with, for example, "oxides, fluorides, sulfides, nitrides, phosphates, sulfates, and carbonates"). Demaray needs discovery on the location of any possibly infringing reactors, not simply those reactors on which Intel chooses to respond.
- (3) **Demaray has sought discovery from Applied Materials, one of the vendors of Intel's and Samsung's reactors. Applied refuses to produce certain documents responsive to Demaray's document subpoena.** Applied is a supplier of reactors to Intel and Samsung and has been coordinating with Intel and Samsung in these matters. Applied maintains large customer support operations and equipment manufacturing in this district employing over 1,800 people that is responsible for the manufacture of parts used in the reactors supplied to Intel and Samsung. Applied is a third party to

this suit in name only. Applied has told this Court that it owes potential indemnity obligations to Intel/Samsung and filed a third-filed action in the Northern District of California seeking to enjoin this Court from proceeding with these first and second filed cases (the N.D. Cal. court recently denied Applied's injunction request). Applied is coordinating its litigation strategy with Intel and Samsung, including using the same litigation counsel in N.D. Cal. as Intel and Samsung are using here and has voluntarily produced documents in these actions at the request of Intel and Samsung.

Given Applied's involvement in the development, manufacture, assembly and installation of reactors which are then used by Intel/Samsung in an infringing manner, Demaray has sought from Applied certain "[m]aterials relating to Samsung/Intel reactors with RMS PVD chambers with the option of providing DC power to the target and a RF bias to the substrate" to determine Applied's involvement and the location of such activities. After meeting and conferring to narrow the requested materials to address Applied's concerns regarding breadth, Applied nevertheless still refuses to produce the following:

- i. **Transfer Request 2: Documents sufficient to identify the location of the sale, delivery, and installation of the reactors with a RMS PVD chamber with the option of providing DC power to the target and a RF bias to the substrate provided to Intel or Samsung.**
- ii. **Transfer Request 3: Documents sufficient to generally describe the manufacture, assembly and installation processes for such reactors and the location(s) at which those processes occur.**
- iii. **Transfer Request 4: Documents sufficient to generally describe the configuration process of the RMS PVD chambers and the location(s) at which the process occurs**
- iv. **Transfer Request 6: Documents sufficient to generally describe the development of such reactors and the location(s) at which such development occurred and the persons involved.**
- v. **Transfer Request 10: Documents sufficient to identify the location of development work related to the use of pulsed DC power to the target in RMS PVD chambers.**
- vi. **Transfer Request 11: Documents sufficient to identify the location of development work related to the use of RF bias on the substrate in RMS PVD chambers.**
- vii. **Transfer Request 12: Documents sufficient to identify the location of development work related to the use of a filter associated with the power sources to the target or substrate in such RMS PVD chambers.**

These documents are relevant to the location and extent of Applied's activities relating to Intel's and Samsung's infringing use of the reactors, persons involved therewith, and the location of relevant documents and sources of proof.

- (4) **Timing of Demaray's Opposition to Samsung's motion to transfer.** The Court's standing order on transfer discovery states that Demaray's opposition to Samsung's motion to transfer is due "two weeks after the completion of venue or jurisdictional discovery." In addition to outstanding discovery from Samsung, Demaray is seeking transfer discovery from Applied Materials. Once Samsung and Applied complete their

disclosures, Demaray will timely respond to Samsung's motion. Samsung has taken the position that the two-week deadline begins after the deposition of its corporate designee (scheduled for Dec. 23 (US)). Samsung ignores that Demaray still needs remote access to Samsung's reactor configurations (discussed in item (6) below) to determine the reactors in dispute and documents and testimony from Applied regarding the location of its efforts, employees and documents relating to those reactors.

- (5) **The Protective Order/Litigation Manager access.** The parties for the most part agreed upon a Protective Order in this matter, except for one provision. Demaray requests that the parties be allowed to designate one in-house attorney as a Litigation Manager allowed to see "Confidential" and "Attorneys' Eyes' Only" materials under the Protective Order. Demaray is a small company and has a consultant attorney hired to manage this litigation, among other duties unrelated to the technology of this case. There is no reason not to allow this person access to Intel's productions as he will agree to use the information only for this case, is not a competitive decision maker for any semiconductor products, and will agree to the prosecution and development bars. Preventing access will prejudice Demaray by needlessly increasing review costs by outside counsel. Under Demaray's proposal Intel likewise would be allowed a Litigation Manager with symmetric access to Demaray materials.
- (6) **Remote access to Intel/Samsung/Applied discovery on process recipes and best known methods.** Intel, Samsung and Applied have taken the position that their process recipes and best known method documents are the only readily available documents detailing the configurations of the reactors used by Intel and Samsung and have demanded stringent security for these types of documents. Demaray is willing to treat such materials under heightened security measures, but given issues associated with COVID-19 the proposed measures currently proposed by Defendants are not workable. The parties are working on agreement regarding remote access for Demaray to such materials and hope to reach a compromise. If they are unable to do so, Demaray asks for the Court to address the issue. The parties will update the Court on the status of the parties' discussions.

Thanks in advance for your help with this matter. Please let us know when the parties can discuss these issues with the Court. --Rick

*Richard Milvenan*

Partner

**McGINNIS LOCHRIDGE**

600 Congress Avenue, Suite 2100

Austin, TX 78701

o 512-495-6005 f 512-505-6305



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