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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Applied Materials, Inc.,

NO. C07-05248 JW

Plaintiff,

**FINAL PRETRIAL
CONFERENCE ORDER - JURY TRIAL**

v.

Advanced Micro-Fabrication Equipment
(Shanghai) Co., et al.,

Defendants.

On December 21, 2009, the Court conducted a Final Pretrial Conference. Counsel for the respective parties were present. In light of the discussion at the conference, the Court orders as follows:

(1) On or before **January 4, 2010**:

- (a) Plaintiff shall disclose to the Court and Defendants the order and methods of proof that it plans to present at trial. (*Pursuant to the Court's December 14, 2009 Order, Docket Item No. 841.*)
- (b) All parties shall disclose their final witness lists for trial, including which witnesses will be coming from China to testify.

The parties shall also meet and confer with the Special Master on January 4, 2010. The Master shall file a Report and Recommendation as to whether the parties' disclosures are sufficient.

1 (2) On or before **January 4, 2010**, Plaintiff shall file its Opposition to Defendants’
 2 Motion to Strike Plaintiff’s Jury Demand. No reply from Defendants is necessary at
 3 this time.

TRIAL SCHEDULE

Further Final Pretrial Conference	January 11, 2010 at 10 a.m.
Jury Selection	January 19, 2010 at 9 a.m.
Jury Trial Date and Sessions	
Session 1	Jan. 19, 2010, 1-4 p.m.
Sessions 2-7	Jan. 20-22, 2010, 9 a.m. - 12 p.m., 1 p.m. - 4 p.m.
Sessions 8-15	Jan. 26-29, 2010, 9 a.m. - 12 p.m., 1 p.m. - 4 p.m.
Sessions 16-23	Feb. 2-5, 2010; 9 a.m. - 12 p.m., 1 p.m. - 4 p.m.
Sessions 24-31	Feb. 9-12, 2010; 9 a.m. - 12 p.m., 1 p.m. - 4 p.m.
Sessions 32-35	Feb. 16-17, 2010; 9 a.m. - 12 p.m., 1 p.m. - 4 p.m.
NO COURT SESSION	Feb. 18-19, 2010
Session 36	Feb. 23, 2010, 9 a.m. - 12 p.m.
Argue & Submit	Feb. 23, 2010 at 1 p.m.
Jury Deliberations	Feb. 24-26, 2010 and Mar. 2-5, 2010, if necessary

Jury Selection

18 1. The entire panel will be sworn. The Court will inform the panel of the nature and
 19 duration of the case and ask any panel member to identify himself or herself if, due to the nature or
 20 duration of the case or any physical or personal problem, service would impose an extreme hardship.
 21 The Court will examine panel members claiming hardship and issue appropriate excuses.

22 2. The Clerk will call the names of all prospective jurors. Fourteen jurors will be seated in
 23 the jury box, and the others will be seated in the courtroom in the order in which their names are
 24 called.

25 3. The Court will conduct voir dire of the prospective jurors, including any Court-approved
 26 questions which have been previously submitted by counsel.

1 10. The proffering party shall retain custody of all exhibits, schedules, summaries, diagrams
2 or charts to be used at the trial.

3 **Trial Procedure**

4 11. In opening statements and in arguments to the jury, counsel shall not express personal
5 knowledge or opinion concerning any matter in issue; and shall not suggest to the jury directly or
6 indirectly, that it may or should request transcripts or the reading of any testimony by the reporter.

7 12. Counsel must question witnesses from the podium, using the microphone. Without
8 requesting permission, counsel may approach witnesses for any proper purposes.

9 13. Address all remarks to the Court, not to opposing counsel.

10 14. Refer to all persons, including witnesses, other counsel and the parties by their surnames
11 and not by their first or given names.

12 15. No demonstrative exhibits, charts, diagrams or enlargements shall be placed within sight
13 of the jury unless previously disclosed to opposing counsel.

14 16. In examining a witness, counsel shall not repeat or echo the answer given by the witness.

15 17. Counsel must stand when making an objection. Arguments on points of law or
16 evidentiary matters shall be made out of the presence of the jury. Thus, when objections or
17 responses to objections are made, only the legal basis of the objections and responses may be stated.

18 18. Offers of, or requests for, a stipulation should be made privately, not within the hearing
19 of the jury.

20 19. Conferences at the bench or sidebar are not favored by the Court. Counsel are
21 responsible for bringing any matters which require hearing out of the presence of the jury to the
22 attention of the Court during a time when the jury is not in session. Any sidebar conferences which
23 are allowed will be off the record. If any counsel wishes to place matters on the record, he or she
24 may so request, and the Court will make a responsive order.

25 20. Counsel have full responsibility to arrange for the appearance of witnesses during the
26 presentation of their case so as to eliminate delay caused by waiting for witnesses who have been
27 placed on call by counsel.

1 21. Unless an agreement to the contrary is entered into by opposing counsel, all nonparty or
2 nonexpert witnesses will be excluded from the courtroom when not testifying. When a witness has
3 completed his or her testimony, the witness is excused unless counsel indicates that he or she wishes
4 the witness to remain subject to being recalled. Any witness who has been excused from further
5 testimony may remain as a spectator. It will be the responsibility of counsel to make an
6 announcement at the time the witness steps down that he or she should remain in the environs of the
7 Court for a reasonable time to permit such counsel an opportunity to secure and serve a subpoena
8 upon the witness and assume responsibility for his or her per diem and other expenses as provided
9 by governing rule or statute.

10 22. Counsel shall admonish all persons at counsel table that gestures, facial expressions,
11 audible comments, or the like, as manifestations of approval or disapproval during the testimony of
12 witnesses, or at any other time, are prohibited.

13 23. Counsel should never, in the presence of the jury, ask the Court reporter to mark or flag
14 a witness's answer to a particular question. Instead, make a note of the time and subject matter of
15 the testimony you want marked, and inform the reporter unobtrusively at the next recess. This is to
16 avoid the use of "marking" as a device for attracting the jury's attention to certain testimony.

17 24. Witness examination shall consist of direct examination, cross-examination and re-direct
18 examination. No recross-examination will be allowed without prior approval of the Court
19 specifically indicating the area for recross-examination. When there are multiple defense counsel,
20 they are directed to confer and designate to the Court the sequence in which they wish to be
21 recognized during trial for purposes of presenting opening statements and conducting cross-
22 examination of witnesses. If one counsel conducts the direct examination of a witness, that same
23 counsel must make objections when the witness is cross-examined. Counsel who will conduct the
24 cross-examination should object while the witness is on direct.

25 25. From and after the moment the case is called for trial, any objection, motion or other
26 application for relief made by any defense counsel, orally or in writing, shall be deemed to be
27 adopted and joined in by every other defendant, without announcement by counsel to that effect, and
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1 the rulings of the Court shall be deemed applicable to each defendant unless otherwise stated at the
2 time the ruling is made. Accordingly, it shall be regarded as unnecessary and improper for counsel
3 to rise to "join in" an objection or motion. Rather, counsel should rise to be heard only for the
4 purpose of expressly opting out of an objection or motion if that is his or her position.

5 26. Counsel are directed to deliver to opposing counsel at the end of each trial day (if not
6 earlier) a list of witnesses counsel anticipates calling the next trial day.

7 27. Counsel calling a non-client witness to testify should have no further discussions with
8 that witness concerning the case or any aspect of his or her testimony after the witness has been
9 tendered for cross-examination and until such time as the witness has been tendered back for redirect
10 examination. At all other times, within the bounds of governing ethics and the law, counsel may
11 engage in discussions with witnesses during trial.

12 28. Counsel are directed to schedule any matters to be heard out of the presence of the jury
13 at a time other than that set for the presentation of evidence. Any time taken away from presentation
14 of evidence to the trier of fact due to, for example, lengthy legal motions made during the time
15 allocated to the presentation of evidence, or delays in the commencement of proceedings due to
16 circumstances within the control of counsel, will be deducted from the time allocated for the
17 presentation of evidence. Upon timely application based upon good cause, the Court may relieve a
18 party of its stipulation to the agreed schedule.

19 29. It is the practice of the Court periodically to inform counsel of the Court's record of how
20 much time each side has remaining for the presentation of evidence based upon the stipulated trial
21 schedule.

22 30. In an effort to heighten juror comprehension and to sharpen the issues in dispute, after
23 each witness has been excused, counsel may request permission to address the jury for purposes of
24 commenting on the significance of the evidence. Commentary shall be limited to 5 minutes for each
25 party. Commentary shall be opened by the side calling the witness (unless waived) and closed by
26 the side cross-examining the witness. No rebuttal to commentary shall be allowed. Commentary
27 must conform to the rules of evidence with respect to closing argument. Counsel are cautioned to
28 avoid any appearance of stating principles of law which apply to the case or expressing any personal

1 opinion concerning the credibility of witnesses. Time taken for commentary shall be deducted from
2 the time allocated to each side for the presentation of evidence.

3 **Instructing the Jury**

4 31. The Court pre-instructs the jury as to preliminary matters immediately before opening
5 statements, and finally instructs before arguments of counsel. Written instructions are provided to
6 the jury upon retiring for deliberation.

7 **Jury Deliberations**


8 32. Counsel and litigants are not required to remain in the courtroom during jury
9 deliberations; however, it is counsel's responsibility to keep the clerk fully informed as to counsel's
10 whereabouts at all times, including the noon hour. Counsel are expected to return to the courtroom
11 within five minutes after being notified to do so. Failure to be available will be deemed waiver of
12 the right to be present.

13 33. The jury will be permitted to take a noon recess or other rest breaks without the
14 necessity of reconvening, and to retire for the evening and resume their deliberations the next
15 morning without reconvening.

16 **Daily Trial Transcript**

17 34. Any counsel desiring daily or expedited transcripts during trial should make immediate
18 arrangements with the court reporter and should inform the Court and other counsel of such
19 intentions.

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21 Dated: December 21, 2009



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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Dated: December 21, 2009

Richard W. Wieking, Clerk

**By: /s/ JW Chambers
Elizabeth Garcia
Courtroom Deputy**