

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

	X	
	:	
ILLUMINA, INC.,	:	
	:	
Plaintiff,	:	
v.	:	C.A. No. 22-334-VAC
	:	
GUARDANT HEALTH, INC.; HELMY ELTOUKHY; and AMIRALI TALASAZ,	:	
	:	
Defendants.	:	
	X	

**DEFENDANTS’ REPLY IN SUPPORT OF MOTION TO DISMISS
UNDER FEDERAL RULES OF CIVIL PROCEDURE 12(B)(1), 12(B)(2), AND 12(B)(6)**

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I. INTRODUCTION

Illumina’s opposition brief confirms this case should be dismissed. Illumina seeks ownership over 35 Guardant patents and nine pending applications, but it discusses just *seven* of them. For those, Illumina pleads no inventorship facts or even an ownership interest. Across the board, Illumina fails to identify any trade secrets, and asserts breach of contract without the contracts or their essential terms. Illumina’s complaint is an empty vessel it hopes to fill through discovery. But that is no surprise. This lawsuit—based on events allegedly occurring a decade ago—was not brought to pursue legitimate legal claims, but rather in retaliation for Guardant’s cooperation with antitrust enforcers in connection with their investigation of Illumina’s acquisition of Guardant’s main competitor.¹ Illumina has no timely or actionable claims, and its “discovery first, plead facts later” tactic cannot succeed. This Court should dismiss the complaint.

II. ARGUMENT

A. Illumina Fails to State an Inventorship and Ownership Claim

Illumina seeks ownership over 35 Guardant patents and nine pending patent applications—178 claims in total—but fails to even attempt to justify most of its request. *See* D.I. 30 at 10 & nn. 4-6. Illumina does not argue it can obtain relief under 35 U.S.C. § 256 for the yet-to-issue patents, and affirmatively represents it “seeks no such relief.” D.I. 41 at 21. The Court should summarily dismiss those claims.² For the 35 issued patents, Illumina does not address 28 of them. Those

¹ Illumina coyly notes that it raised its claims in pre-suit discussions with Guardant before Guardant’s executives publicly testified against Illumina’s proposed acquisition. D.I. 41 at 2. But Illumina was almost certainly aware of Guardant’s cooperation with the FTC before the public testimony, and Illumina never once raised these claims over the course of a near-decade-long business relationship until *after* Guardant began cooperating with the FTC. Illumina closed its acquisition over regulatory objections and now faces charges from the European Commission that it breached the EU Merger Regulation.

² Illumina tacks on a disclaimer, stating it “seeks such relief on those applications *only if issued as patents.*” D.I. 41 at 21 (emphasis added; citation omitted). To the extent Illumina is asking to

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