

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

ENZO LIFE SCIENCES, INC.,

Plaintiff,

v.

ILLUMINA, INC.,

Defendant.

Civil Action No. 12-cv-435-LPS

**PLAINTIFF’S SUPPLEMENTAL INFRINGEMENT CHARTS
FOR ILLUMINA**

Pursuant to the Court’s Scheduling Order, Plaintiff Enzo Life Sciences, Inc. ("Plaintiff") hereby provides its Supplemental Infringement Charts to Defendant Illumina, Inc. ("Illumina").

Plaintiff contends that Illumina, either alone or in conjunction with others, has directly infringed and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of U.S. Patent No. 7,064,197 (“the ’197 patent”) (the “Patent-in-Suit”) by making, using, offering to sell, selling, and/or importing in or into the United States certain nucleic acid array products, including without limitation:

- a) products based upon Direct Hybridization BeadChip technology, including without limitation, Human HT-12 v4 Expression Bead Chip, HumanWG-6 Expression BeadChip (all formats), HumanRef-8 Expression BeadChip (all formats), MouseRef-8 v2 Expression BeadChip (all formats), RatRef-12 Expression BeadChip (all formats), MouseWG-6 v2.0 Expression Bead Chip (all formats), and Whole-Genome DASL HT Assay, and all other products based upon Direct Hybridization BeadChip technology (collectively, “Direct Hybridization Assay Products”),

b) products based upon Infinium BeadChip technology, including without limitation, HumanOmni5-Quad (all formats) , HumanOmni2.5S (all formats), HumanOmni2.5-8 (all formats), HumanOmni1S (all formats), HumanOmniExpress BeadChip (all formats), HumanCytoSNP-12 (all formats), HumanOmni2.5S+ (all formats), HumanOmni5-Quad+ (all formats), HumanOmniExpress+ (all formats), HumanOmniExpress Multi-Use BeadChip, InfiniumDx CytoSNP-12 BeadChip Kit, HumanCytoSNP-12 BeadChip Kit, iSelect HD Custom BeadChip (all formats), iSelect Custom Add-On Content (all formats), Human Methylation 27 BeadChip (all formats), Human Methylation 450 BeadChip (all formats), BovineHD BeadChip (all formats), BovineSNP50 BeadChip (all formats), BovineLD BeadChip (all formats), CanineHD BeadChip (all formats), OvineSNP50 BeadChip (all formats), PorcineSNP60 BeadChip (all formats), MaizeSNP50 BeadChip (all formats), HumanCNV100W BeadChip Kit, HumanCardio-Metabo BeadChip Kit, HumanCVD Whole-Genome Genotyping Kit, HumanExome BeadChip (all formats), HumanExome+ BeadChip (all formats), HumanCore BeadChip (all formats), HumanCore Exome BeadChip (all formats), HumanCore DNA Analysis Kits, HumanHap550-Quad+ DNA Analysis Kit, HumanImmuno BeadChip (all formats), HumanOmniExpressExome BeadChip (all formats), HumanOmniExpressExome+ BeadChip (all formats), HumanLinkage BeadChip (all formats), HumanOmni5Exome BeadChip (all formats), HumanOmni5Exome+ BeadChip (all formats), HumanCytoSNP-FFPE-12 BeadChip, HumanOmniExpress-FFPE BeadChip, HumanMethylation450 BeadChip, HumanOmni2.5-Quad Multi-Use BeadChip Kit (all formats), HumanOmniZhonghua-8 BeadChip Kit (all formats), and all other products based upon Infinium BeadChip technology (collectively, “Infinium BeadChip Products”),

- c) products based upon VeraCode technology, including without limitation, VeraCode GPR Universal Capture Beads (all formats), VeraCode GPR Carboxyl Beads (all formats), VeraCode GoldenGate Methylation Analysis BeadPlate, VeraCode GoldenGate Genotyping Bead Plate, and all other products based upon VeraCode technology (collectively, “VeraCode Products”),
- d) products based upon TruSeq, HiSeq, MiSeq, MiSeqDx, Genome Analyzer, HiSeq X, and Next Seq sequencing technology, including without limitation, TruSeq Paired-End Cluster Kit v3-cBot-HS, TruSeq Single-Read Cluster Kit v3-cBot-HS, TruSeq Paired-End Cluster Kit v2-cBot-GA, TruSeq Single-Read Cluster Kit v2-cBot-GA, TruSeq Paired-End Cluster Kit v5-CS-GA, TruSeq Single-Read Cluster Kit v5-CS-GA, TruSeq Rapid Cluster Kit – Paired-End and Single-Read, TruSeq Rapid Duo cBot Sample Loading Kit, HiSeq X HD Reagent Kit, MiSeq Reagent Kit, MiSeqDx Universal Kit, NextSeq 500 Kits, TheraSeq Tumor Profiling Test, HiSeq PE Cluster Kit v4 cBot, HiSeq SR Cluster Kit v4 cBot, and all other products involving sequencing technology (collectively, “Sequencing Products”), and
- e) products based upon GoldenGate BeadChip Assay technology, including without limitation, GoldenGate Universal-12 BeadChip (all formats) GoldenGate Universal-32 BeadChip (all formats), and all other products based upon GoldenGate BeadChip Assay technology (collectively, “GoldenGate Assay Products”)

(collectively, the “Accused Products”). Plaintiff further contends that Illumina has actively induced, and continues to induce, the infringement of one or more claims of the ’197 patent under 35 U.S.C. § 271(b). At all relevant times, Illumina actively, knowingly, and intentionally induced others, including without limitation Illumina’s customers to use, make, sell, offer for

sale, and/or import the Accused Products, in a way that Illumina knew or should have known infringes one or more claims of the '197 patent. Plaintiff further contends that Illumina's infringement of the '197 patent has been, and continues to be, willful.

Plaintiff's infringement contentions are provided herein without the benefit of full discovery. The claim charts attached herein as Exhibits A through E identify where each limitation of the asserted claims of the '197 patent is found within the Accused Products. Plaintiff contends that each element of each asserted claim is literally present in the Accused Products unless otherwise indicated. But to the extent that any claim element is found not to be literally embodied in the accused instrumentalities, Plaintiff contends that the Accused Products embody such claim elements under the doctrine of equivalents because there are no substantial differences for each claim element, and the Accused Products perform substantially the same function, in substantially the same way, to achieve substantially the same result. To date, Illumina has not provided non-infringement contentions in this case. Plaintiff reserves the right to supplement its infringement contentions, including doctrine of equivalents contentions, in response to Illumina's non-infringement contentions.

Where a claim element is implemented in the same or substantially the same way for each product of an Accused Product family (*e.g.*, Direct Hybridization Assay Products), Plaintiff provides an exemplary illustration or description setting forth specifically where the limitation is found in the Accused Products, without repeating the same illustration or description for each version of each Accused Product in the family.

Plaintiff provides these infringement contentions before fulsome discovery and before the Court's claim construction ruling. Plaintiff's infringement contentions are not an admission,

adoption, or waiver of any particular claim construction; Plaintiff reserves all rights with respect to claim construction.

These infringement charts are based upon information reasonably and presently available to Plaintiff through publicly-available information and Illumina’s production of documents to date. Moreover, depositions are ongoing, and Plaintiff reserves the right to supplement its contentions based on additional relevant information disclosed during depositions and through other means of discovery. And to the extent that Plaintiff receives relevant discovery from third parties, Plaintiff reserves the right to supplement its contentions accordingly. Plaintiff reserves the right, consistent with its obligations under the Federal Rules of Civil Procedure, the Local Rules, the Court’s Scheduling Order, and the Default Standard for Discovery, including Discovery of Electronically Stored Information, to modify, amend, retract, and/or supplement the infringement charts made herein as additional evidence and information becomes available or as otherwise appropriate, including the issuance of the Court’s claim construction ruling.

Plaintiff identifies the following asserted claims of the Patent-in-Suit and accused products, as further explained in Exhibits A through E.

Asserted Claims of the '197 Patent	Illumina – Accused Products
1-22, 24, 27-32, 34, 35, 38, 43, 46, 47, 49, 51, 55-57, 59, 61-63, 65, 68-72, 74, 75, 78, 81, 84-88, 90, 94-96, 98, 102, 105, 107, 108, 109, 113, 116, 120, 122, 124, 127-129, 131, 132, 136-138, 140, 144-146, 148, 192-194, 197, 199, 200, 204, 206, 210, 211, 213, 214, 218, 220, 222, 226-228, 230, 234	Direct Hybridization Assay Products. <i>See Ex. A.</i>
1-22, 24, 27-32, 34, 35, 38, 43, 44, 46, 47, 51, 55-57, 59, 61-63, 65, 68-70, 72, 74, 75, 78, 81, 82, 84-86, 90, 94-96, 98, 100, 102, 105, 107, 108, 109, 113, 116, 120, 122-124, 128, 129, 131, 132, 136, 140, 144-146, 148, 191-194, 196, 197, 199, 206, 210, 211, 213, 214, 218, 220, 222, 226, 227, 230, 234	Infinium BeadChip Products. <i>See Ex. B.</i>
3, 5, 10, 11, 17-22, 29, 30, 32, 38, 39, 43, 44, 46, 47, 51, 55-57, 59, 65, 72, 78, 80-82, 84-86, 90, 94-96,	VeraCode Products. <i>See Ex. C.</i>

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