

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

THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW
YORK and QIAGEN SCIENCES, LLC,

Plaintiffs,

v.

ILLUMINA, INC.,

Defendant.

C.A. No. 19-1681-CFC

JURY TRIAL DEMANDED

**DEFENDANT ILLUMINA, INC.'S ANSWER TO
PLAINTIFFS' MOTION FOR RECONSIDERATION OF THE
COURT'S CLAIM CONSTRUCTION ORDER**

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Illumina Ex. 1160

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
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


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I. INTRODUCTION

Plaintiffs' lengthy reconsideration motion violates two cardinal principles. Plaintiffs repeat losing arguments expressly rejected by this Court. They also rely on belated material they could have timely presented. To try to meet the steep reconsideration standard, Plaintiffs allege the Court "misunderstood their position with respect to linker." They also allege that the Court's construction of  is a manifest injustice.¹

In truth, the misunderstanding is Plaintiffs' and the injustice is Plaintiffs' attempt at a second-bite of the apple. Plaintiffs still refuse to grapple with their own clear-cut insistence in prior IPR proceedings that  **cannot** include a "double linker." JA0095. Indeed, for the IPR trial, Plaintiffs created an evocative slide precisely to depict an image of two linkers connected in series between the label and the base and emphasize that  **cannot** cover that "double linker." JA0133. The Court explained that Plaintiffs' admissions as to the meaning of  support its order. D.I. 63-2 at 56:6-11 ("we've got the patent owner expressly distinguishing a Y from a Y Y, and expressly distinguishing respectively a single linker to a double linker.").

Plaintiffs state that they "do not take issue with construing '' as a single linker directly connecting the base to the tag." D.I. 63 at 1. That should end the

¹ "Plaintiffs" refers to each plaintiff singularly or both together.

matter. But Plaintiffs seek to disfigure this Court's construction via "clarification" that multiple linkers in series somehow qualify as a single linker. This is inconsistent with their prior, unqualified position that $\sphericalangle Y$ *cannot* cover a double linker.

II. LEGAL STANDARD

"Motions for reargument or reconsideration may not be used 'as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided.'" *Drumgo v. Dutton*, Civ. A. No. 14-cv-1134-CFC (D. Del. May 10, 2019). "A motion for reconsideration is not properly grounded on a request that a court rethink a decision already made." *Id.*

III. ARGUMENT

A. Plaintiffs' Argument That The Court Committed Legal Error By Crediting Their IPR Statements Is A Meritless Retread

1. Plaintiffs Do Not Deny They Stated That $\sphericalangle Y$ Excludes Two Linkers In Series

The Court construed $\sphericalangle Y$ to be a single linker directly connecting the base to the tag. D.I. 60 at 1. Plaintiffs do not contest that. D.I. 63 at 1. The Court recognized that Plaintiffs definitively explained in the intrinsic evidence that $\sphericalangle Y$ does *not* encompass two shorter linkers connected in series:

- The "inventor in a surreply made it about as clear as can be that $\sphericalangle Y$ is a single linker"
- "on JA95 your patent owner writes that Illumina's double linker is excluded from the claim, which requires one linker, Y, not two linkers, Y Y."

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