



Local Division Munich

**Provisional order
of the Court of First Instance of the Unified Patent Court in
proceedings for interim measures relating to EP 4 108 782
and EP 2 794 928 Case No UPC CFI 357/2023
issued on: 06.10.2023**

Date of receipt of the application: 05/10/2023

NanoString Technologies Inc.
(Applicant) - 530 Fairview Ave N - 98109 -
Seattle (WA) - US

Written procedure served on
06/10/2023

APPLICANT

1) **10x Genomics, Inc.**
(Applicant) - 6230 Stoneridge Mall
Road - 94588-3260 - Pleasanton - US

Represented by:
Tilman Müller-Stoy

2) **President and Fellows of Harvard
College**
(Applicant) - Suit 727E, 1350
Massachusetts Avenue - 02138 -
Massachusetts - US

Represented by:
Tilman Müller-Stoy

APPLICANT

- 1) **NanoString Technologies Inc** Represented by:
 (Respondent) - 530 Fairview Ave N - Oliver Jan Jüngst
 98109 - Seattle (WA) - US

PATENTS IN DISPUTE

<i>Patent no.</i>	<i>Holder</i>
EP4108782	President and Fellows of Harvard College
EP2794928	President and Fellows of Harvard College

DECISIVE JUDGES

COMPOSITION OF THE PANEL - COMPLETE COMPOSITION

Presiding Judge	Matthias Zigann
Rapporteur	Tobias Pichlmaier

This provisional order was issued by presiding judge Matthias Zigann. The full panel has not yet been compiled.

LANGUAGE OF PROCEDURE: German

Facts of the case:

The plaintiff filed an application for interim measures on 5 October 2023. It fears that the defendant could again file an application for an anti-suit injunction (ASI) and/or anti-enforcement injunction (AEI) in the United States of America. It justifies this fear on the one hand by the fact that the defendant had already filed such an application in connection with two infringement proceedings before the Regional Court of Munich I concerning EP 2794928. In this respect, an Anti-Anti-Suit-Injunction (AASI) or Anti-Anti-Enforcement-Injunction (AAEI) had been granted ex parte by the Regional Court Munich I and confirmed on appeal. The application before the US court was subsequently withdrawn. On the other hand, the plaintiff bases its motion on the fact that the defendant's legal representative, Attorney Jüngst, did not clearly and unambiguously state in the oral hearings concerning the two injunction patents before the Munich Local Chamber of the Unified Patent Court on 05/09/2023/06/09/2023 and 19/09/2023 in response to specific questions that the defendant would not request a renewed anti-suit injunction (ASI) and/or anti-enforcement injunction (AEI). Reference is made to the citations in the petition.

The Chairman informed the legal representative of the plaintiff, lawyer Müller-Stoy, by telephone at around 10.00 a.m. on 6 October 2023 that the Chamber would grant the defendant a hearing. He agreed with the procedure outlined above.

During a telephone conversation between the chairman and the legal representative of the defendant, lawyer Jüngst, on 6 October 2023 at around 11.50 a.m., lawyer Jüngst explained that he was not in the office today and that it would therefore be difficult to submit a written statement via CMS within a few hours. He requests a deadline of Monday for this. In this context, he assures that his statements made on behalf of the defendant are to be understood to mean that no ASI and/or AEI will be applied for. Nor would an ASI and/or AEI be applied for. He would explain this in writing on Monday.

Reasons:

The defendant is given the opportunity to clarify the above statements by its legal representative within a short period of time.

Applications for an AASI/AEF can regularly be issued ex parte because the warning effect associated with hearing the other party could frustrate the purpose of the measure. However, this is an exceptional situation. This requires the granting of a restricted right to be heard. The risk of frustration is averted by the short deadline.

In the view of the Chamber, the previous declarations of the defendant, made by its legal representative, are not sufficiently clear. Insofar as the previous declarations should be understood from the point of view of the defendant or its legal representative, Attorney Jüngst, to mean that the defendant will refrain from the actions evident from the application, this can easily be clarified or explained in writing by its legal representative, Attorney Jüngst, within the short period of time. Mr Jüngst has already made a statement to this effect by telephone today and has confirmed his statements in writing.

If such a written clarification/statement is not made at short notice, contrary to the telephone announcement, it is reasonable to assume that a renewed application for an anti-suit injunction and/or anti-enforcement injunction is imminent. In this case, it is to be expected that the requested measures will be issued immediately to avert this danger. The defendant would then have the opportunity to make further submissions in the context of the legal remedies available against this.

Arrangement:

1. The claimant should declare today that the application will be pursued further.
2. The defendant is given the opportunity to comment in writing on the application for interim measures by Monday, 9 October 2023, 11:00 a.m., to the extent described above.

INFORMATION ON THE DECISION AND THE ORDERS

Procedure number: UPC_CFI_357/2023

Number of the corresponding procedural request: ACT_578681/2023

Number of the order: ORD 578815/2023

Type of application: Application for interim measures

Dr Zigann

Presiding Judge

**Matthias
ZIGANN**

Digitally signed by
Matthias ZIGANN Date:
2023.10.06
12:35:46 +02'00'