



LISBON – LOCAL DIVISION

UPC_CFI_1920/2025

ORDER

of the Court of First Instance of the Unified Patent Court

issued on 1 April 2026

CLAIMANT:

ILLUMINA, INC.

represented by

Bethan Hopewell, Joel Coles, Peter FitzPatrick of Powell Gilbert (Europe) LLP, Dublin;

Ellis King of Powell Gilbert LLP, London;

Sara Nazaré of Nazaré, Lima, Piriquito Santos & Associados Sociedade de Advogados, SP, RL, Lisbon)

DEFENDANTS:

Element Biosciences, Inc

Element Biosciences Netherlands B.V.

I.L.C. - Instrumentos de Laboratório e Científicos LDA

represented by

Dr. Marcus Grosch, Dr. Johannes Bukow, Anton Noldenn, Kai Mütze

of

Quinn Emanuel Urquhart & Sullivan, LLP

PATENT AT ISSUE:

EUROPEAN PATENT NO EP3714978

PANEL:

Presiding judge and

Judge-rapporteur: Rute Lopes
Legally qualified judge: Stefan Johanssen
Legally qualified judge: Stefan Schilling

DECIDING JUDGE:

This order is issued by Judge Rute Lopes, acting as judge-rapporteur.

LANGUAGE OF THE PROCEEDINGS: English.

SUBJECT:

Request by the Claimant under R. 361 RoP;
Request by the Defendants under R. 9, alternatively, under R. 263 RoP.

SUMMARY OF PROCEDURAL FACTS AND PARTIES' REQUESTS

- 1 On 17 March, 2026, the Defendants requested that, under R. 361 RoP, the infringement action be dismissed.
- 2 They argued that the action manifestly lacks any foundation in law, because:
 - The Statement of Claim ("SOC") disregards that granted claim 1 of the Patent includes an additional feature, namely a sample deck "*that supports a fluidic device (300) thereon*" (Patent, column 60, line 26 et seq.).
 - The wording of the injunctive relief sought by Claimant omits the "*fluidic device*" limitation in claim 1 of the Patent (SoC, para. 188).
 - The Claimant omits this feature in its feature breakdown of claim 1 of the Patent (submitted as "Annex").
 - The Claimant does not account for the "*fluidic device*" limitation in feature 1.3 in its technical infringement analysis (SoC, part G):
- 3 The Defendants further argued that such omissions lead to the conclusion that the Claimant is seeking an injunction with a scope that extends beyond the extent of protection of the Patent.
- 4 On 27 March, 2026, the Claimant responded to the Defendant's submission, requesting that the R. 361 RoP Application be dismissed, stating that the requested dismissal by the Defendants relies on a minor clerical mistake that renders the request to dismiss the entire SOC without merit.
- 5 The Claimant explained that such mistake occurred because the SOC was prepared before the B1 specification of the Patent was published, and was based on the digitalised *Druckexemplar* published on the EPO register on 4 July 2025 - an image based PDF, and during the extraction and transcription of the claims, the segment of feature 1.3: "*that supports a fluidic device*" was accidentally omitted either from the "Claim Feature Breakdown" in the Annex at pages 84-86; from the heading above paragraph 87 of the SOC (the section addressing feature 1.3); and from the requests at paragraph 188(b) of the SOC. However, the Claimant further argued that every

part of claim 1, including the said part related to the “fluidic device”, was addressed in the Claimant’s technical infringement analysis of the SOC. Furthermore, the Defendants have had access to a copy of the *Druckexemplar* and to a copy of the A1 version of the Patent, both of which contain the correct version of the claims as granted, provided as Exhibits ILMN-6 and ILMN-7 to the SOC.

- 6 The Claimant also requested, pursuant to Rule 9, that the Court admit the SOC in a version corrected from the mentioned clerical mistakes contained in the initial SOC (submitted as Exhibit ILMN-31 to the 27 March submission). Alternatively, the Claimant requested that the Court grant permission for such correction to be filed pursuant to Rule 263 RoP.

GROUNDS FOR THE ORDER

Order by the JR

- 7 As the Court of Appeal has pointed out – order of 21 August 2024, UPC_CoA_454/2024 -, the order denying a R. 361 RoP request is a case management order and therefore not subject to R. 363.2 RoP, which only applies to an order dismissing manifestly inadmissible claims.
- 8 In that regard, the intervention of the panel at this moment is not required.

Rule 361 RoP: action “manifestly inadmissible”.

- 9 The interest in ensuring expeditious decisions and proceedings to be conducted most efficiently justifies that, where it is clear that the Court has no jurisdiction to take cognisance of an action or of certain of the claims therein or where the action or defence is, in whole or in part, manifestly inadmissible or manifestly lacking any foundation in law, the Court may give a decision by way of order – R. 361 RoP.
- 10 For an action or a claim thereof to be considered manifestly inadmissible, the lack of grounds must be evident, clear, and obvious even upon preliminary review, resulting in the claim being doomed to failure without the need for in-depth analysis, as it conflicts with the law or established case law, or is legally impossible. Such an assessment allows the Court to reach a quick initial conclusion without examining the merits in depth.
- 11 This understanding is consistent with the literal wording of the provision. It is also consistent with the principle of proportionality, according to which the Court must give due consideration to the nature and complexity of each action and its importance, and to the principle of fairness and equity, according to which the Court must have regard to the legitimate interests of all parties (CD Paris, 16/9/2024, UPC_CFI_164/2024).
- 12 The arguments that the Defendants put forward that the SOC disregards and omits an additional feature of claim 1, particularly from the infringement analysis, from the feature breakdown of claim 1 submitted as “Annex” to the SOC, and from the injunction relief, are neither accurate nor correct.

- 13** Particularly, the Court notes that the alleged omitted feature regards the “fluidic device” and is addressed in par 28 SOC (when explaining the steps of the typical sequencing workflow used by the Applicant); in par. 42 et seq. SOC (under the title “Description of the invention”); and in par. 78, 89, 90, 91, 130, 131 SOC (under the title “Technical infringement”). That is, the feature related to the “fluidic device” is sufficiently and unambiguously addressed in the SOC and clearly understood as one of the features of the inventions that the Claimant argues is being infringed by the Defendants. This is clear either when the SOC explains the invention or when it addresses the technical infringement analysis, arguing why and in what sense the feature must be understood in the context of the invention, or how it is infringed.
- 14** As said, the Defendants acknowledge that the SOC and annex with the feature breakdown contain a clerical mistake, by omitting the reference to the “fluidic device” in:
- the Claim Feature Breakdown” in the Annex at pages 84-86;
 - the heading above paragraph 87 of the SOC (the section addressing feature 1.3); and
 - the relief at paragraphs 174(b) and 188(b) of the SOC.
- 15** Although, in fact, such omissions do exist, they only refer to partial and very specific aspects of the SOC. Furthermore, they do not affect the clarity of the disclosure of the feature throughout the SOC, as already stated.
- 16** It is therefore evident that this is not a case where the action is bound to fail. The omissions found must be regarded as a manifest error not justifying the dismissal of the action without any possibility of redress. Given the obvious mistakes found, dismissing the entire action would be contrary to the principles of proportionality and fairness.
- 17** Furthermore, in light of the foregoing, the Court can certainly not find any obvious *prima facie* inadmissibility.
- 18** The request under R. 361 RoP must therefore be dismissed.

Correction of the SOC

- 19** The correction of the obvious mistake of the SOC is admissible.
- 20** The Court agrees with the Claimant that the requested correction does not qualify as a change of the motion of the claim in light of R. 263 RoP. As the CoA has stated, an amendment of a case occurs when the nature or scope of the dispute changes. For example, in an infringement case, this occurs if the plaintiff invokes a different patent or objects to a different product - CoA, 21/11/2024_UPC_CoA_456/2024 APL_44633/2024. A mere clarification or correction of a mistake does not qualify as a change in the motion of the claim.
- 21** In light of the obvious mistake of the SOC, the application that the Claimant has submitted under R. 9 RoP, for the admission of the corrected version of the SOC, must be admitted. Correcting the mistakes does not unreasonably prejudice the other party, as it must have been clear to the Defendant, as it is to the Court, based on the overall context of the SOC, that an obvious mistake occurred. The Court further finds that the clarity of the disclosure regarding the omitted feature has, nevertheless, enabled the Defendants to defend themselves against the infringement

accusations, as the mistakes were clearly evident. The Defendants were not prejudiced in their defence, as the SOD shows.

- 22** Since, however, in the said SOD, the Defendants raised as a defence the referred omissions, the corrections now submitted may be subject to the Defendants' response, strictly limited to such corrections.

ORDER

1. The request filed by the Defendants for the infringement action to be dismissed under R. 361 RoP is rejected.
2. The Claimant's request under R. 9, RoP is granted. In that regard, the corrected Statement of Claim annexed to its request, as Exhibit ILMN-31, is now to replace the SOC as filed.
3. The Defendants are allowed to respond to the specific corrections of the SOC within 10 days.

This order may be reviewed under R. 333 RoP.