



LISBON – LOCAL DIVISION

UPC_CFI_1920/2025

UPC_CFI_1060/2026

ORDER

**of the Court of First Instance of the Unified Patent Court
Local Division in Lisbon
delivered on 16 October 2026**

CLAIMANT

ILLUMINA, INC.

5200 Illumina Way, San Diego, CA 92122, USA

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

1. ELEMENT BIOSCIENCES, INC

10055 Barnes Canyon Road, Suite 100, San Diego, CA, 92121, USA

2. ELEMENT BIOSCIENCES NETHERLANDS B.V.

Keizersgracht 391 A, Amsterdam, North Holland, 1016 EJ, Netherlands

3. I.L.C. - INSTRUMENTOS DE LABORATÓRIO E CIENTÍFICOS LDA

Rua Dr. Álvaro de Castro 77, 1600-058 Lisbon, Portugal

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/DECIDING JUDGES:

Presiding judge and

Judge-rapporteur: Rute Lopes

Legally qualified judge: Stefan Johanssen

Legally qualified judge: Stefan Schilling

Technically qualified judge: Steen Wadskov-Hansen

Order issued by:

Judge-rapporteur: Rute Lopes

LANGUAGE OF THE PROCEEDINGS:

English

SUBJECT-MATTER OF THE PROCEEDINGS

Interim Conference - 105.5 RoP

INTERIM CONFERENCE

- 1 The Claimant and the Defendants are opposing parties with regard to the infringement (case 1920/2025) and validity (case 1060/2026) of EP3714978.

- 2 An interim conference was organised via video conference (Webex) on 16 October 2026 and was recorded (R. 105 RoP and R. 106).
- 3 The following persons attended:

Claimant

- Bethan Hopewell, UPC Representative, Powell Gilbert LLP
- Joel Coles, UPC Representative, Powell Gilbert LLP
- Peter FitzPatrick, UPC Representative, Powell Gilbert LLP
- Ellis King, UPC Representative, Powell Gilbert LLP
- Sian Hope, UPC Representative, Powell Gilbert LLP
- Sara Nazaré, UPC Representative, Nazaré, Lima, Piriquito Santos & Associados Sociedade de Advogados, SP, RL
- Joana Piriquito Santos, UPC Representative, Nazaré, Lima, Piriquito Santos & Associados Sociedade de Advogados, SP, RL

Defendants

- Dr. Marcus Grosch (UPC Representative, Quinn Emanuel Urquhart & Sullivan, LLP)
 - Dr. Katrin Gerstenberg (UPC Representative, Quinn Emanuel Urquhart & Sullivan, LLP)
 - Dr. Johannes Bukow (UPC Representative, Quinn Emanuel Urquhart & Sullivan, LLP)
 - Sebastian Scholz (UPC Representative, Quinn Emanuel Urquhart & Sullivan, LLP)
 - Kai Mütze (UPC Representative, Quinn Emanuel Urquhart & Sullivan, LLP)
 - Anton Noldenn (UPC Representative, Quinn Emanuel Urquhart & Sullivan, LLP)
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Court

- In addition to the JR, the TQJ was present.

- 4 The Interim Conference addressed the topics the parties and the JR had suggested in advance in accordance with Rule 104 of the Rules of Procedure.

Settlement and PMAC

- 5 Although the parties remain open to exploring a settlement and have had conversations in that regard, they have not yet reached a settlement. If a settlement prospect arises in the future, or if the parties decide to submit the dispute to the PMAC, they will promptly inform the Court.

Value of the case

- 6 The Parties agreed that the value of the infringement is set at EUR 8 000 000 and the Value of the Counterclaim for Revocation at EUR 12 000 000.
- 7 Accordingly, the value of the whole proceedings, for the purpose of applying the scale of ceilings for recoverable costs, is EUR 20 000 000.

Costs

- 8 According to the value of the case, the ceiling for recoverable costs is EUR 1 200 000.
- 9 The JR encouraged the parties to reach an agreement on costs, and both parties agreed to make such efforts. They further agreed to promptly inform the Court should an agreement be reached.
- 10 If the parties do not reach an agreement on costs, they further agreed to submit a cost estimate one week before the OH, with the other party having 5 days to respond.

Counterclaim conditional

- 11 The JR asked the Defendants whether they would consider the Counterclaim for Revocation conditional upon establishment of infringement. The Defendants agreed to consider this issue and to inform the Court of any developments.

Issues/facts in dispute.

- 12 The JR clarified with the parties that with regard to claim interpretation, the relevant issues relate to the interpretation of feature 1.4.2 ("an enclosure (1002) having a base shell (1004) and a top shell (1006) that are coupled together to define a system cavity (1008) therebetween) and feature 1.4.7.2 (said elevator mechanism (1024) further including structural supports (1041) and (1042), a lead screw (1044) that extends between the structural supports (1041) and (1042)). The interpretation of these features will also determine whether literal infringement of the Patent is met.
- 13 With regard to validity, it was clarified by the parties that the most relevant attacks to be addressed at the Oral Hearing are:

- 1) Added matter – location of the drive motor on the top shell
- 2) Added matter - omission of support beams
- 3) Novelty over D1
- 4) Inventive step over D1 in combination with CKG
- 5) Inventive step over HiSeq 2000 system (prior use) in combination with CGK
- 6) Inventive Step over HiSeq 2000 (prior use) system in combination with D11
- 7) Inventive Step over HiSeq 2000 (prior use) system in combination with D16

- 14** With regard to the Claimant's objection, arguing that the Defendants had submitted a new added-matter attack in their Reply to the Claimant's Defence to the Counterclaim regarding the location of the motor drive, adding to the previous added-matter attack over the same issue, the JR communicated that this will remain an open question for the panel to decide. The JR further noted that the added-matter attack is among the issues that may be relevant for assessing the patent's validity.
- 15** On inventive step, the parties agree on the definition of the objective problem and no longer dispute that the HiSeq 2000 constitutes prior use. However, the parties still dispute the Common General Knowledge of the Skilled Person, which is relevant for assessing obviousness. The TQJ suggested that the parties further elaborate at the Oral hearing on the Common General Knowledge of the Skilled Person in this case.
- 16** With regard to the Auxiliary requests, the Defendants argued that the number of 23 Auxiliary requests is unreasonable. However, the JR stated that, given how the requests are structured, the total number is not unreasonable. Specifically, requests 1 and 2 further limit Claim 1 by adding to it claim 3 and claim 10, respectively. All the other requests aim to introduce features A (location sensor), B (fluidic device), and C (support beams), alone or in combination. The Claimant added features A and B only for novelty/inventive step purposes, and feature C only for added matter. To facilitate the Oral Hearing, the parties agreed to mainly focus the debate on the features, rather than on the individual auxiliary request.
- 17** The Claimant was requested to clarify in two weeks how the Court should interpret its allegation of direct and indirect infringement, particularly in light of the Defendants' argument that the same acts seem to be argued for both direct and indirect infringement. The Defendants will have an equal period to respond.
- 18** In its submission, the Claimant drafted the injunction "the German way" (with repetition of the claims), but indicated that it also accepts an injunction drafted in a different way by the Court. The Defendants confirmed that either approach would likewise be acceptable to them.

Oral Hearing – practical issues

- 19 The Oral Hearing will take place in the Lisbon Local Division on 17 December at 9,30 am.
- 20 Both parties declared that they welcome either a preliminary opinion or an outline of the relevant points for discussion from the Court, at the beginning of the Oral Hearing.
- 21 The JR informed the parties that at the beginning of the Oral Hearing the panel will introduce and at least outline the relevant issues to the parties. The parties will then proceed with the pleadings after a break to prepare.
- 22 The agenda proposed for the Oral Hearing is as follows:
 - Introduction and claim interpretation (Claimant first) – 20 minutes each party, 5 minutes for rebuttals from each party (only two features).
 - Validity (Defendants first) – 60 minutes each party, plus 15 minutes for rebuttals from each party.
 - Infringement (Claimant first) – 30 minutes each party, plus 10 minutes for rebuttals from each party.
 - Relief, other legal issues, and final comments – 30 minutes each party, plus 10 minutes for rebuttals from each party.
- 23 The parties suggested submitting adjustments to the proposed agenda later, after discussion with the respective teams of the substantive topics highlighted in this conference. The JR granted a 2-week deadline for that.
- 24 The use of PowerPoint (PP) presentations (or a PDF) is allowed, if parties wish to submit them, to support oral pleadings, provided its content is limited to what is already in the written file. In any case, the PP or PDF must be submitted to the Court one week before the Oral Hearing, unless the parties agree to a shorter period, but no less than 48 hours before the date of the Oral Hearing.
- 25 The Oral Hearing will be conducted in person. Online attendance is possible. Parties shall submit the names and functions of the participants, in person and online, one week before the Oral Hearing. The sub-registry will send invitations to online attendees.

ORDER

1. The value of the infringement case is set at EUR 8 000 000, and the value of the Counterclaim is set at EUR 12 000 000.
2. If no agreement on costs is reached, the parties shall submit a cost estimate one week before the OH. The other party is allowed to comment within five days after the submission.

3. The Claimant must clarify its allegation of direct and indirect infringement (mn. 17) within two weeks. The Defendants will have an equal period to respond.
4. The parties may suggest adjustments to the proposed agenda (mn. 22 and 23) within two weeks.
5. The Parties shall submit the names and functions of the participants, in person and online, one week before the Oral Hearing. The sub-registry will send invitations to online attendees.
6. In case the parties decide to use PP presentations or a PDF at the Oral Hearing, these will have to be submitted one week before the Oral Hearing, unless both parties agree on a shorter period of time, but no later than 48 hours before the Oral Hearing.

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