



Press release dated May 17, 2023

## **BARDEHLE PAGENBERG paves way to successful infringement proceedings for 10x Genomics with anti-anti-suit-injunction**

**By two judgements of May 17, 2023, the German Regional Court of Munich I held in favor of 10x Genomics that Nanostring Technologies Inc. and Nanostring Technologies GmbH infringe European patent EP 2 794 928 B1 by offering and distributing their products CosMx Spatial Molecular Imager and CosMx reagents in Germany (docket no. 7 O 2693/22 and 7 O 5812/22). Nanostring Technologies Inc. initially tried to prevent the judgement by means of an anti-suit/enforcement injunction in the US shortly before the date for pronouncement but had to withdraw the corresponding request after the Munich court issued the first anti-anti-suit/enforcement injunction ever in a German life sciences case upon request by 10x Genomics (docket No. 7 O 5416/23).**

10x Genomics, a highly innovative US life science company that designs and manufactures life science technology used in basic scientific research, filed two patent infringement lawsuits against Nanostring in March 2022 with the Regional Court of Munich to protect ground-breaking intellectual property that underlies its Xenium platform. 10x Xenium platform allows analyses of gene expression in tissues and distinguishes itself in characteristics that matter most to scientists. The German patent infringement action against Nanostring was based on indirect infringement of claim 1 of European patent EP 2 794 928 B1 restricted particularly to in-situ detection of RNA molecules (the patent). 10x Genomics obtained an exclusive license to that patent from the patent owner President and Fellows of Harvard College (Harvard Corporation).

With two judgements of May 17, 2023, the Munich Regional Court found that Nanostring Technologies Inc. and Nanostring Technologies GmbH indirectly infringe the patent in Germany by offering for sale and distributing their products CosMx Spatial Molecular Imager and CosMx reagents for detection of RNA. The court granted claims for injunctive relief, found that Nanostring is liable for damages, and ordered Nanostring to render accounts for all infringing activities since February 14, 2023.

In addition to the Munich litigation, 10X Genomics has asserted six US patents, including US counterparts of EP 2 794 928 B1, against Nanostring Technologies Inc. in the U.S

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District Court for the District of Delaware alleging that Nanostring's products CosMx Spatial Molecular Imager and associated instruments and reagents infringe those patents. 10x has also asserted seven further US patents against Nanostring's GeoMx Digital Spatial Profiler and associated instruments and reagents in a separate litigation in the U.S. District Court for the District of Delaware.

The German success of 10x Genomics is of particular interest since Nanostring Technologies Inc. tried to prevent the pronouncement and enforcement of the German judgement by filing an anti-suit/enforcement injunction in the US proceedings with the U.S. District Court for the District of Delaware on April 28, 2023. In return, upon request of 10x Genomics the Munich Court granted an anti-anti-suit/enforcement injunction and, subsequently, Nanostring withdrew their request with the U.S. Court. This anti-anti-suit/enforcement injunction of the Munich Court is particularly relevant, as it was granted within less than a day and – as far as publicly known – is the first anti-anti-suit/enforcement injunction in a German life sciences patent case.

Nanostring Technologies GmbH filed a nullity action against the German part of EP 2 794 928 B1 (3 Ni 20/22 (EP)). However, pursuant to the written preliminary opinion of the Federal Patent Court of February 7, 2023, the patent is valid in the form asserted in the infringement proceedings. A trial was scheduled for May 7, 2024.

#### **Representatives of 10x Genomics:**

**BARDEHLE PAGENBERG** (Munich, Germany):

Prof. Dr. Tilman Müller-Stoy (Lead Attorney-at-Law (Rechtsanwalt), Certified IP Lawyer, Commercial Mediator (MuCDR), Partner)

Dr. Tobias Wuttke (Attorney-at-Law (Rechtsanwalt), Certified IP lawyer, Partner)

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Dr. Kerstin Galler (Attorney-at-law (Rechtsanwältin), Associate)

#### **Representatives of Nanostring Technologies:**

**Bird&Bird** (Duesseldorf/Munich, Germany)

Oliver Jüngst, LL.M. (Attorney-at-Law)

Dr. Daniela Kinkeldey (German and European Patent Attorney)

Dr. Jan Van Dieck (German and European Patent Attorney)



**Regional Court of Munich I, 7th Chamber**

Judge Dr. Schön (Presiding Judge at the Regional Court)

Judge Dr. Schacht (Judge at the Regional Court)

Judge Dr. Straub (Judge at the Regional Court)

**BARDEHLE PAGENBERG** combines the professional expertise of attorneys-at-law, patent attorneys, professional representatives before the European Patent Office, specialized trademark lawyers and qualified technical consultants. Our consulting services are tailored to our clients' individual needs and the specific circumstances of each case.

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