

Filed July 18, 2018

On behalf of:

**Illumina, Inc.**

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UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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**ILLUMINA, INC.**

Petitioner

v.

**THE TRUSTEES OF COLUMBIA UNIVERSITY**

**IN THE CITY OF NEW YORK**

Patent Owner

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Case No.: IPR2018-00322

U.S. Patent 9,708,358

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**PETITIONER ILLUMINA'S OBJECTIONS TO ADMISSIBILITY OF  
PATENT OWNER COLUMBIA'S EVIDENCE**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Illumina, Inc. (“Illumina”) hereby timely files its objections to the admissibility of evidence submitted with the Patent Owner Preliminary Response filed by The Trustees of Columbia University in the City of New York (“Columbia”) during the preliminary phase of this proceeding.

<b>Exhibit Number and Description</b>	<b>Objections</b>
Ex. 2007 – IPR2013-00517, Ex. 2011, Declaration of Floyd Romesberg, Ph.D. (May 5, 2014)	<b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citations to selected portions of this document are taken out of context and misleading.
Ex. 2008 – IPR2013-00517, Paper 32, Illumina’s Patent Owner Response (May 5, 2014)	<b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citations to selected portions of this document are taken out of context and misleading.
Ex. 2009 – Excerpts from the <i>Ex Parte</i> Reexamination History of U.S. Patent No. 5,808,045	<b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> The document does not stand for the proposition for which it is cited as supposed admissions made by Illumina. In addition, to the extent that Columbia is relying upon statements regarding supposed admissions made by Illumina, such reliance is misleading because Columbia has mischaracterized the statements made in this document and has taken statements out of context. Also, the excerpts provide an incomplete version of the reexamination proceeding that, when taken in isolation, are misleading in the manner in which they are used.

Exhibit Number and Description	Objections
Ex. 2015 – U.S. Patent No. 7,541,444 to Milton et al.	<p><b>Relevance, Misleading (FRE 401, 403):</b> The document does not stand for the proposition for which it is cited as supposed admissions made by Illumina. In addition, to the extent that Columbia is relying upon statements regarding supposed admissions made by Illumina, such reliance is misleading because Columbia has mischaracterized the statements made in this document and has taken statements out of context.</p> <p><b>Hearsay (FRE 802):</b> The exhibit includes out-of-court statements offered for the truth of the matter asserted.</p>
Ex. 2016 – U.S. Patent No. 7,771,973 to Milton et al.	<p><b>Relevance, Misleading (FRE 401, 403):</b> The document does not stand for the proposition for which it is cited as supposed admissions made by Illumina. In addition, to the extent that Columbia is relying upon statements regarding supposed admissions made by Illumina, such reliance is misleading because Columbia has mischaracterized the statements made in this document and has taken statements out of context.</p> <p><b>Hearsay (FRE 802):</b> The exhibit includes out-of-court statements offered for the truth of the matter asserted.</p>
Ex. 2017 – U.S. Patent Application Publication No. 2007/0166705 to Milton et. al.	<p><b>Relevance, Misleading (FRE 401, 403):</b> The document does not stand for the proposition for which it is cited as supposed admissions made by Illumina. In addition, to the extent that Columbia is relying upon statements regarding supposed admissions made by Illumina, such reliance is misleading because Columbia has mischaracterized the statements made in this document and has taken statements out of context.</p> <p><b>Hearsay (FRE 802):</b> The exhibit includes out-of-court statements offered for the truth of the matter asserted.</p>

Exhibit Number and Description	Objections
Ex. 2022 – Excerpts from the <i>Ex Parte</i> Reexamination History of U.S. Patent No. 6,232,465	<p><b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b>  The document does not stand for the proposition for which it is cited as supposed admissions made by Illumina. In addition, to the extent that Columbia is relying upon statements regarding supposed admissions made by Illumina, such reliance is misleading because Columbia has mischaracterized the statements made in this document and has taken statements out of context. Also, the excerpts provide an incomplete version of the reexamination proceeding that, when taken in isolation, are misleading in the manner in which they are used.</p>
Ex. 2025 – Litosh, et al., Nucleic Acids Research, 39:1-13 (2011)	<p><b>Relevance (FRE 401, 403):</b>  The date markings on this document are after the asserted priority date of Columbia’s patent. Columbia’s reliance on this document is misleading because the document does not represent the knowledge of a person of ordinary skill in the art at the time of Columbia’s alleged invention.</p> <p><b>Hearsay (FRE 802):</b>  The exhibit includes out-of-court statements offered for the truth of the matter asserted.</p>
Ex. 2026 – IPR2017-02172, Paper 6, Preliminary Response of Patent Owner Illumina Cambridge Ltd. (January 23, 2018)	<p><b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b>  This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citations to selected portions of this document are taken out of context and misleading.</p>
Ex. 2027 – IPR2017-02174, Paper 6, Preliminary Response of Patent Owner Illumina Cambridge Ltd. (January 23, 2018)	<p><b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b>  This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citations to selected portions of this document are taken out of context and misleading.</p>

Exhibit Number and Description	Objections
Ex. 2028 – U.S. Patent No. 7,566,537 to Balasubramanian et al.	<p><b>Relevance (FRE 401, 403):</b> The document does not stand for the proposition for which it is cited. Illumina does not infringe the challenged claim from Columbia’s U.S. Patent No. 9,718,852.</p> <p><b>Hearsay (FRE 802):</b> The exhibit includes out-of-court statements offered for the truth of the matter asserted.</p>
Ex. 2029 – No. 2015-1123 (CAFC), Brief of Patent Owner-Appellant Illumina Cambridge Ltd., D.I. 27 (March 10, 2015)	<p><b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> This document, when taken in isolation, provides an incomplete version of the previous proceeding. In addition, Columbia’s citation to a selected portion of this document is taken out of context and misleading.</p>
Ex. 2030 – IPR2013-00266, Paper 39, Patent Owner Illumina’s Reply to Petitioner’s Opposition to Illumina’s Motion to Amend (March 21, 2014)	<p><b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citation to a selected portion of this document is taken out of context and misleading.</p>
Ex. 2032 – IPR2013-00517, Paper 84, Oral Hearing Transcript (February 2, 2015)	<p><b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citation to a selected portion of this document is taken out of context and misleading.</p>
Ex. 2033 – IPR2013-00517, Paper 64, Illumina’s Motion for Observations on the Cross-Examination Testimony of Bruce Branchaud, Ph.D. and Michael Metzker, Ph.D. (September 2, 2014)	<p><b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citation to a selected portion of this document is taken out of context and misleading.</p>

<b>Exhibit Number and Description</b>	<b>Objections</b>
Ex. 2034 – IPR2012-00007, Paper 5, Petition for <i>Inter Partes</i> Review of U.S. Pat. No. 7,790,869 (September 16, 2012)	<b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citation to a selected portion of this document is taken out of context and misleading.
Ex. 2035 – IPR2013-00517, Exhibit 1025, Deposition of Floyd Romesberg, Ph.D. (July 28, 2014)	<b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citation to a selected portion of this document is taken out of context and misleading.
Ex. 2036 – IPR2012-00007, Paper 38, Decision on Petition for <i>Inter Partes</i> Review (March 12, 2013)	<b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citation to a selected portion of this document is taken out of context and misleading.
Ex. 2042 – IPR2013-00517, Paper 68, Illumina’s Opposition to IBS Motion To Exclude Evidence	<b>Incomplete, Relevance, Misleading (FRE 106, 401, 403):</b> This document, when taken in isolation, provides an incomplete version of the previous IPR proceeding. In addition, Columbia’s citations to selected portions of this document are taken out of context and misleading.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: July 18, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **PETITIONER ILLUMINA'S OBJECTIONS TO ADMISSIBILITY OF PATENT OWNER COLUMBIA'S EVIDENCE** is being served on July 18, 2018 via e-mail, pursuant to agreement of the parties, to counsel for The Trustees of Columbia University in The City of New York, at the addresses below:

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