

Nos. 2019-2054, 2019-2081

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

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HOLOGIC, INC.,  
CYTYC SURGICAL PRODUCTS, LLC,  
Plaintiffs-Appellants,

v.

MINERVA SURGICAL, INC.,  
Defendant-Cross-Appellant.

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Appeals from the United States District Court for the District of Delaware  
In Case No. 1:15-cv-01031, Senior Judge Joseph F. Bataillon

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**PLAINTIFFS-APPELLANTS' RESPONSE  
TO DEFENDANT-CROSS-APPELLANT'S COMBINED PETITION  
FOR PANEL REHEARING AND REHEARING *EN BANC***

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Dated: June 18, 2020

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## CERTIFICATE OF INTEREST

Counsel for appellants Hologic, Inc., and Cytoc Surgical Products, LLC, certifies the following:

1. The full name of every party or amicus represented by me is:  
Hologic, Inc.  
Cytoc Surgical Products, LLC
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:  
N/A
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or *amicus curiae* represented by me are:  
The Vanguard Group, Inc. and T. Rowe Price Associates, Inc. each own more than 10 percent of the stock of Hologic, Inc.  
  
Cytoc Surgical Products, LLC is a wholly owned subsidiary of Hologic, Inc.
4. The names of all law firms and the partners or associates that appeared for the party or *amicus* now represented by me in the trial court or agency or are expected to appear in this court are:  
Karen Pascale and Pilar Kraman of Young, Conaway, Stargatt & Taylor LLP; Assad Rajani, David A. Caine, Philip W. Marsh, Ryan J. Casamiquela, William Z. Loudon, and William Young, Jr. of Arnold & Porter Kaye Scholer LLP; and Amie L. Medley and Peter Root, both formerly affiliated with Arnold & Porter Kaye Scholer LLP.
5. The title and number of any case known to me to be pending in this or any other court or agency that will directly affect or be directly affected by this Court's decision in the pending appeal are:  
N/A

Dated: June 18, 2020

/s/ Matthew M. Wolf  
Matthew M. Wolf  
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## INTRODUCTION

This is the rare case where both parties, along with the author of the panel opinion, have called for *en banc* review of the same question. For good reason: the panel decision marks a collision between two divergent lines of this Court’s precedent, creating what its author described as an “odd and seemingly illogical regime” in which an equitable doctrine led to an inequitable result. Op. 2 (Stoll, J., additional views). While Hologic and Minerva disagree on many things—most importantly, whether assignors may circumvent assignor estoppel through *inter partes* review (“IPR”) proceedings—their respective rehearing petitions reflect a consensus view that “it is time for this court to consider *en banc* the doctrine of assignor estoppel.” *Id.*

To facilitate such review, this Court should grant Hologic’s petition and deny Minerva’s. The questions presented by Hologic, which closely track Judge Stoll’s framing of the key issues, encompass all of Minerva’s arguments about abandoning assignor estoppel altogether. By contrast, while Minerva questions whether to “retain” assignor estoppel, *see* Minerva Pet. 7-12, its petition also asks the full Court to address two other issues—whether to “expand” assignor estoppel to the particular circumstances of this case, *id.* at 12-17, and whether the panel properly construed the term “applicator head” to cover non-permeable applicator heads, *id.* at 17-21. Those fact-bound, case-specific issues have little if any

relevance to future cases (or even this one) and would complicate the full Court's review of the central issue in this case.

Hologic's petition presents questions "of exceptional importance" that must be answered to maintain the "uniformity of the court's decisions," Fed. R. App. P. 35(a), whereas Minerva's petition strays from them. To ensure a streamlined *en banc* proceeding, this Court should grant only Hologic's petition for rehearing.

## ARGUMENT

### **I. THE COURT SHOULD GRANT HOLOGIC'S PETITION TO REVIEW THE CONTINUED VITALITY OF ASSIGNOR ESTOPPEL IN DISTRICT COURT AND IPR PROCEEDINGS**

Hologic and Minerva agree: it is time for the full Court to consider the continued vitality of assignor estoppel. As the panel acknowledged, its decision allowed Minerva to "circumvent" the doctrine through the IPR process. Op. 13. If allowed to stand, that "odd and seemingly illogical" outcome, Op. 2 (Stoll, J., additional views), will entrench an unfair regime applying different rules in different forums, and will substantially gut assignor estoppel's application even where the doctrine remains nominally untouched.

Given that unsustainable result, it is imperative that this Court answer the question identified by Judge Stoll: whether to "change the application of the doctrine in district court, or . . . revisit our construction of the America Invents Act and reevaluate our interpretation of the statute as prohibiting the doctrine of

assignor estoppel.” *Id.* Hologic and Minerva, unsurprisingly, offer different responses to that question. Minerva maintains that “this Court should abandon assignor estoppel” altogether. Minerva Pet. 7. Hologic, in contrast, argues that the Court should either reconsider the doctrine’s application in IPR proceedings or, more modestly, limit the ability of assignors to use IPR proceedings to outflank assignees in district court. *See* Hologic Pet. 10, 14-16. Despite their differences, however, Hologic and Minerva both agree that the doctrine’s continued vitality warrants rehearing *en banc*.

Hologic’s petition is the better vehicle for addressing that question. Hologic presents questions that will allow Minerva to argue fully for the doctrine’s repudiation. *Id.* at 10, 17. Hologic’s proposed questions also closely track the language used by Judge Stoll (and the panel) to frame the issues that warrant rehearing *en banc*. *See id.* at 1. By limiting *en banc* review to the questions presented in Hologic’s petition, this Court can ensure that it receives clean, straightforward briefing from both parties on the central issue in this case.

Granting Minerva’s petition, by contrast, would complicate the full Court’s review considerably. *First*, Minerva asks the Court to address not only the doctrine of assignor estoppel, but also an entirely unrelated issue of claim construction that, as explained below, is case-specific and unworthy of *en banc* review. *See* Minerva Pet. 1.

*Second*, even if the Court limited its grant to Minerva’s proposed assignor estoppel question, that would still bring in another separate issue—namely, whether the Court should create an exception to assignor estoppel for certain Section 112 invalidity defenses “when the assignee broadened claims after assignment.” *Id.* (emphasis omitted). That issue is at best tangentially related to the divergence that Judge Stoll highlighted between assignor estoppel’s application in district court and IPR proceedings. Moreover, as explained below, it does not warrant *en banc* review.

*Third*, Minerva’s proposed assignor estoppel question is too narrow. By focusing on the patent that the Patent Office declined to review because there was no reasonable likelihood of finding unpatentability (the ’348 patent), Minerva’s question is gerrymandered to *avoid* Judge Stoll’s proposed question regarding the divergence between the district court and Patent Office. Indeed, Minerva argues explicitly that its petition “presents an ideal vehicle for bringing consistency to the Court’s assignor estoppel precedents, but only if the Court wishes to do so by revising the doctrine’s application *in district court.*” Minerva Resp. 12. But the “predicament” the panel identified here, Op. 14, requires reevaluating how the doctrine “applies *both* in district court *and* in the Patent Office,” Op. 2 (Stoll, J., additional views) (emphasis added). Cutting out the IPR half of that equation, as



Minerva does, would defeat that objective and perpetuate the forum-specific analysis that contributed to the divergence in the first place.

Finally, this Court should not split the difference by granting both petitions. Granting only Hologic's petition will streamline the briefing process by avoiding a convoluted set of cross-briefs and focusing the parties on the question at the heart of this Court's divergent precedents. The Court should therefore deny Minerva's petition and grant only Hologic's petition.

**II. THE COURT SHOULD DENY REHEARING OF MINERVA'S CASE-SPECIFIC QUESTION ABOUT "EXPANDING" ASSIGNOR ESTOPPEL**

In addition to arguing that "this Court should abandon assignor estoppel" altogether, Minerva Pet. 7, Minerva also raises a second, far narrower issue: whether the doctrine "bars an inventor-assignor from asserting lack of enablement and lack of written description when the assignee broadened claims after assignment." *Id.* at 1 (emphasis omitted); *see id.* at 12-17. The Court should not review that separate, case-specific issue for several reasons.

To begin with, any resolution of that issue would constitute an impermissible advisory opinion because the validity of the relevant patent has already been conclusively determined. Minerva has long argued that the '348 patent is invalid because it fails Section 112's enablement and written-description requirements. Although the district court held that assignor estoppel barred

Minerva from even arguing invalidity, the court also held that, in any event, the patent *is valid*. Appx33-35. It therefore granted Hologic’s motions for summary judgment on both assignor estoppel *and* invalidity. Appx48.

On appeal, Minerva challenged both holdings. Once again, it lost on both. The panel “affirm[ed]” not only “the district court’s . . . summary judgment that assignor estoppel bars Minerva from challenging the validity of the asserted ’348 patent claim,” but *also* “the district court’s summary judgment of no invalidity.” Op. 28.

Minerva now asks this Court to revisit only the panel’s *first* holding—that assignor estoppel bars Minerva from challenging the ’348 patent’s validity. Even if Minerva were to prevail on that issue, however, it would be a Pyrrhic victory, as the panel has already affirmed the ’348 patent’s validity. Minerva understandably has not petitioned for review of that case-specific determination. The upshot is that Minerva is asking the full Court to offer a mere advisory opinion on an issue with no practical consequences for the outcome of this case. This Court “cannot issue an advisory opinion on such a theoretical dispute.” *In re Rudy*, 956 F.3d 1379, 1385 (Fed. Cir. 2020) (citation omitted).

*En banc* review of Minerva’s question about “expanding” assignor estoppel also would distract from the central issue. Even if Minerva wins, it will do nothing to address the fundamental divergence in this Court’s precedents identified by

Judge Stoll. Slightly narrowing the scope of assignor estoppel will not clarify the role of IPR proceedings in the many assignor estoppel cases that remain.

Minerva's second issue is thus essentially a sideshow.

It is also not “a question of exceptional importance.” Fed. R. App. P. 35(a)(2). By Minerva's own count, this case marks “the first time” this Court has ever “applied assignor estoppel to bar invalidity arguments based . . . on Section 112's written description and enablement requirements.” Minerva Pet. 2. It has been over 32 years since this Court upheld assignor estoppel in *Diamond Scientific Co. v. Ambico, Inc.*, 848 F.2d 1220 (Fed. Cir. 1988), and more than twice that long since Section 112 was enacted. If, in all those years, this is “the first time” this question has arisen, then it is far from a pressing matter requiring the full Court's attention.

Infrequent as Minerva's question is, Minerva also makes clear that it intends to argue for an extraordinarily narrow, case-specific answer. Notwithstanding its (already narrow) framing of the legal issue, *see* Minerva Pet. 1, Minerva largely urges this Court to grant *en banc* review on the theory that applying the doctrine here was “unjust, unfair, or . . . inequitable.” *Id.* at 13 (citation omitted). Minerva then mounts an equity-based argument that leans heavily on the specific facts of this case. *See, e.g., id.* at 13-14 (alleged reasons for broadened claims); *id.* at 14 (alleged change between claims assigned and patented); *id.* at 16 (representations

about value of assignment); *id.* (alleged profit on assignment); *id.* (difficulty developing new technology). Besides being wrong, that approach bodes ill for an *en banc* proceeding, in which the full Court will be considering legal issues with an eye to future cases, not the re-litigation of past ones. *Cf. Mentor Graphics Corp. v. EVE-USA, Inc.*, 870 F.3d 1298, 1304 (Fed. Cir. 2017) (Moore, J., concurring in denial of panel rehearing) (“[A]ssignor estoppel may arise in multiple fact patterns, each of which would result in a unique balancing of the equities.”). Minerva’s approach also drifts into case-specific issues that the Court could review only deferentially. *See* Op. 16 (application of assignor estoppel reviewed “for an abuse of discretion”).

Even if this Court wanted to reassess the equities of a particular application of assignor estoppel, this would be the wrong case to do so.<sup>1</sup> The panel agreed “with the district court that the equities weigh in favor of [assignor estoppel’s] application in this case.” *Id.* The only “seeming unfairness” came not from the doctrine’s application to the ’348 patent, but from the fact that Minerva “circumvent[ed]” the doctrine as to the ’183 patent. *Id.* at 13.

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<sup>1</sup> Likewise, this Court should decline *amici*’s invitation to give assignor estoppel a full makeover. *Amici* perceive many imperfections in the doctrine, but most of their desired nips and tucks are unrelated to its application here. *See, e.g.*, Brief for Intellectual Property Professors as *Amici Curiae* at 7 (unreasonable scope of privity); *id.* at 7-8 (involuntary or unknowing patent assignments).

Minerva nonetheless claims that the equities run in its favor because part of the '348 patent was broadened after assignment. *See* Minerva Pet. 13-14. (Never mind that it is “very common . . . in patent prosecutions” for assignees to “amend[] the claims in the application process.” Op. 17-18 (quoting *Diamond Sci.*, 848 F.2d at 1226).) Minerva even accuses Hologic of *intentionally* broadening the patent to cover Minerva’s technology after learning about it through a non-disclosure agreement. *See* Minerva Pet. 2, 5, 13-14. But Minerva provides no evidence to support this insinuation. Worse yet, Minerva fails to mention that it tried this theory before the jury and *lost*. Minerva argued at trial that Hologic breached the non-disclosure agreement by misusing “Minerva’s confidential information . . . to pursue additional intellectual property rights.” Appx2220. The jury disagreed and found for Hologic. Appx98. That ends the matter.

Minerva’s petition demonstrates that Minerva wants to use its question about “expanding” assignor estoppel as a springboard to re-litigate case-specific issues that will not materially affect either this case or future ones. That does not warrant *en banc* review.

### **III. THE COURT SHOULD DENY REHEARING OF MINERVA’S CLAIM CONSTRUCTION ISSUE**

Minerva also asks for either panel or *en banc* rehearing on a third issue entirely unrelated to assignor estoppel: whether the panel properly interpreted one of the patent claims in this case. Minerva Pet. 17-21. Both the panel and district

court interpreted the relevant term—“applicator head”—correctly, and in any event that claim-specific question does not warrant review. *Minerva*, recognizing as much, tries to escalate this fact-bound dispute into a referendum on the principles of claim construction. Its effort, however, is belied by the record in this case.

**A. The Panel Construed the Relevant Claim Correctly**

Claim construction is “an art, not a science,” *Manzo*, Patent Claim Construction in the Federal Circuit § 1:9 (2019 ed.), requiring each court to examine a specific claim in light of broad principles. First and foremost, courts must apply the “bedrock principle” that “the claims of a patent define the invention.” *Innova/Pure Water, Inc. v. Safari Water Filtration Sys.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004). Every claim construction must therefore “begin and remain centered on the claim language itself.” *Id.* at 1116.

Claims are not interpreted in isolation, however. Claim terms “are generally given their ordinary and customary meaning,” as understood by “a person of ordinary skill in the art in question at the time of the invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (*en banc*) (citation omitted). Sometimes, that meaning will be so “readily apparent” that claim construction will involve “little more than the application of the widely accepted meaning of commonly understood words.” *Id.* at 1314. Other times, determining a term’s meaning will require considering a variety of intrinsic and extrinsic indicators of

the inventor's objective intent. *See id.* at 1314-19. Every case calls for its own, claim-specific application of these tools, so much so that the same term can mean different things across different patents. *See Medrad, Inc. v. MRI Devices Corp.*, 401 F.3d 1313, 1318 (Fed. Cir. 2005).

One of the most important tools of claim construction is the specification. This Court has stressed that claims “must be read in view of the specification, of which they are a part.” *Phillips*, 415 F.3d at 1315. The specification “may reveal a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess,” or it “may reveal an intentional disclaimer, or disavowal, of claim scope by the inventor.” *Id.* at 1316. Such “redefinition or disavowal” need not be “explicit,” but may be implied from the clear language of the specification. *Trustees of Columbia Univ. v. Symantec Corp.*, 811 F.3d 1359, 1363 (Fed. Cir. 2016). Courts, however, may not use the specification to “read a limitation into a claim.” *Innova*, 381 F.3d at 1117.

This Court has recognized the “inherent tension” in those directives, acknowledging that “there is sometimes a fine line between reading a claim in light of the specification, and reading a limitation into the claim from the specification.” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 904 (Fed. Cir. 2004) (citation omitted). The underlying principle, however, is clear: claims are not “like a nose of wax which may be turned and twisted in any direction, by merely referring to

the specification.” *Innova*, 381 F.3d at 1117 (citation omitted). The specification may be used “for the purpose of better understanding the meaning of the claim[,] but not for the purpose of changing it.” *Id.* (citation omitted).

Here, the district court and the panel applied these principles faithfully. Minerva proposed construing the term “applicator head” in claim 1 of the ’348 patent as “an applicator having a permeable or absorbent tissue contacting surface into which moisture is drawn.” Appx5 n.6. But the district court rightly observed that claim 1’s language did not mention *anything* about permeability or moisture absorption. Appx5-6. Turning to the specification, the district court found that it did occasionally refer to permeability or moisture removal. *See* Appx5 n.6; *see also* Appx8003-8006 (denying preliminary injunction after analyzing specification extensively). On balance, however, the court concluded that “such disclosures do not rise to the level of disclaimer,” and that they were not “sufficient to narrow the disputed claim limitation” beyond its ordinary meaning. Appx5 n.6 (citation omitted). “[C]onsistent with the tenets of claim construction set forth by . . . the Federal Circuit in *Phillips*,” Appx3, the district court concluded that the term “applicator head” was therefore best construed to mean “[a] distal end portion of an ablation device that applies energy to the uterine tissue.” Appx5.

The panel agreed with the district court’s interpretation. Op. 19. It observed that “[n]either the claim nor the specification describes the ‘applicator head’ as



being permeable or requiring moisture removal.” *Id.* Like the district court, the panel acknowledged that “the specification emphasizes the importance of moisture removal.” *Id.* But it correctly found that “neither the plain claim language ‘applicator head’ nor the specification includes a moisture removal requirement in the applicator head.” *Id.* at 20.

Minerva asks the full Court to make the extraordinary decision to step in and reverse that outcome. Minerva concedes that, by its terms, “[c]laim 1 of the ’348 patent recites an applicator head *without explicit permeability-related limitations.*” Appellee’s Red Br. 20 (emphasis added). But Minerva nonetheless argues that the specification is sufficiently clear to “constrain[] [the patent’s] unqualified claim terms,” Minerva Pet. 18, and make the claim term “applicator head” instead mean “permeable applicator head.”

Claim-specific questions like that do not warrant the full Court’s time or attention. Even if the district court and panel had erred—and they did not—Minerva would still be disputing only the application of a well-recognized legal standard to the specific language of one claim of one patent in one case. Such an alleged error would hardly need to be corrected “to secure or maintain uniformity” in this Court’s decisions, nor would it settle “a question of exceptional importance.” Fed. R. App. P. 35(a). One can characterize debates over the

permeability of ablation device applicator heads in many ways, but they surely are not the stuff of *en banc* review.

The narrowness of this dispute becomes even clearer when Minerva argues that the panel “misapprehends the facts by finding the ‘electrode carrying means’ may be permeable while the claimed ‘applicator head’ is not.” Minerva Pet. 1. That is a fact-bound question of the sort that panels of this Court decide routinely; it is unsuitable for the full Court’s review. But the issue does not even warrant the panel’s attention, because the specification is perfectly consistent with the panel’s ruling: the specification states that the electrode carrying means are only “*preferably*” made of a material “which is permeable.” Appx162 (emphasis added). This Court has “repeatedly held that it is ‘not enough that the only embodiments, or all of the embodiments, contain a particular limitation’ to limit claims beyond their plain meaning.” *Unwired Planet, LLC v. Apple Inc.*, 829 F.3d 1353, 1359 (Fed. Cir. 2016) (citation omitted). That is even more true when the dispute concerns the language in just *one* embodiment.

Minerva is also simply wrong about the meaning of the term “applicator head.” As Minerva concedes, the claim language itself—which “define[s] the invention,” *Phillips*, 415 F.3d at 1312 (citation omitted)—has no “explicit permeability-related limitations.” Appellee’s Red Br. 20. Nor does the ordinary meaning of the term “applicator head,” as understood by a person of ordinary skill

in the art. Minerva cherry-picks lines out of the specification to suggest an *implicit* limitation, but its interpretation relies on mischaracterizing both the specification and the panel’s decision. *See* Appellants’ Yellow Br. 24-31. For example, Minerva claims that the panel “holds that a patent whose title describes it as a ‘moisture transport system’ covers products that do not and cannot transport moisture.” Minerva Pet. at 17. But the panel held nothing of the sort. Simply because the *applicator head* does not necessarily transport moisture does not mean that other parts of the product cannot. For instance, the specification describes one embodiment with multiple lumens (*i.e.*, openings) in the walls of the product’s introducer sheath. *See* Appellants’ Yellow Br. 29. There is substantial record evidence showing that a person of ordinary skill would recognize that these lumens could be used to passively remove moisture from the uterine cavity during ablation, even if the applicator head itself is not permeable. *Id.*

### **B. The Panel Applied the Correct Standard**

Recognizing that claim-specific disputes like this one do not warrant *en banc* review, Minerva seeks to manufacture a dispute over the *standard* for claim construction. But there is no dispute about the correct law here.

*First*, Minerva asserts that the panel and district court essentially ignored the specification. Minerva styles the relevant part of its petition “The Panel Decision Construes Claim Terms in Isolation,” arguing that the panel “persistently

disregard[ed] the specification” in its analysis. *Minerva* Pet. 17; *see id.* at 3. But both the district court and the panel reviewed the relevant parts of the specification, considered *Minerva*’s “extensive argument[s]” about it, and rejected them. Appx5 n.6; *see* Appx8003-8006; Op. 19-20. It is simply untrue that the panel showed “complete disregard for the patent’s specification,” *Minerva* Pet. 3, when the panel expressly used the specification to contextualize the patent’s terms.

*Second*, *Minerva* argues that the district court and panel erred because they “looked to the specification *only* for an *express* disclaimer” of the claim term’s ordinary meaning. *Id.* (emphasis original). But neither the district court nor the panel ever suggested that they were looking for an “express” or “explicit” disclaimer. Both courts rightly observed that the claim’s terms did not mention permeability, and then reviewed the specification to see if, in context, the term “applicator head” was nevertheless somehow limited—implicitly or explicitly—to permeable applicator heads. Tellingly, *Minerva* uses the words “express” or “explicit” in conjunction with this argument a total of *nine* times in its petition, but in the relevant parts of their opinions the district court and panel did not use either word even once.

Furthermore, *Minerva*’s attempted rewrite of the panel decision rests on a series of omissions. *Minerva* argues that the courts below ignored the claim construction principles set out in *Phillips* and *Trustees of Columbia University*.

Minerva Pet. 1. Minerva fails to mention, however, that the district court specifically cited the former case, Appx3, and the panel the latter, Op. 19. Conversely, Minerva argues that “[c]ertain decisions of this Court persist in suggesting . . . that an explicit ‘disclaimer’ is required to narrow broad claim language.” Minerva Pet. 3. Minerva leaves out that none of those decisions were cited by either the panel or the district court.

\* \* \*

Claim construction is always case-specific, and this Court has cautioned that “there is no magic formula or catechism,” *Phillips*, 415 F.3d at 1324, instructing courts exactly how to walk this “fine line,” *Liebel-Flarsheim*, 358 F.3d at 904 (citation omitted). Here, the district court and panel stayed on the right side of the line, but even if they had not, it would be a misuse of this Court’s time and resources to police their steps. Neither panel rehearing nor rehearing *en banc* is warranted to review the panel’s straightforward application of agreed-upon principles to one specific patent claim.

### CONCLUSION

For the foregoing reasons, this Court should grant Hologic’s petition for rehearing *en banc* and deny Minerva’s petition for panel rehearing and rehearing *en banc*.

Dated: June 18, 2020

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Plaintiffs-Appellants' Response to Defendant-Cross-Appellant's Combined Petition for Panel Rehearing and Rehearing *En Banc* complies with the type-volume requirements of Federal Rule of Appellate Procedure 35(b)(2)(A) because it contains 3,891 words, excluding the portions exempted under Federal Rule of Appellate Procedure 32(f) and Federal Circuit Rule 35(c)(2).

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### **CERTIFICATE OF SERVICE**

I hereby certify that on June 18, 2020, I caused true and correct copies of the foregoing Plaintiffs-Appellants' Response to Defendant-Cross-Appellant's Combined Petition for Panel Rehearing and Rehearing *En Banc* to be served upon counsel of record via email through the Court's CM/ECF system.

/s/ Matthew M. Wolf  
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