Nos. 2018-2198, -2303, -2305, -2306, -2317

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

VERINATA HEALTH, INC., ILLUMINA, INC.,

Plaintiffs – Appellants,

v.

ARIOSA DIAGNOSTICS, INC., ROCHE MOLECULAR SYSTEMS, INC.,

Defendants – Cross-Appellants.

Appeal from the United States District Court for the Northern District of California, Case Nos. 3:12-cv-05501-SI, 3:14-cv-01921-SI, and 3:15-cv-02216-SI, Judge Susan Illston

RESPONSE OF DEFENDANTS – CROSS-APPELLANTS ARIOSA DIAGNOSTICS, INC. AND ROCHE MOLECULAR SYSTEMS, INC. TO PETITION FOR PANEL REHEARING AND REHEARING *EN BANC*

THOMAS G. SAUNDERS
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue, NW
Washington, DC 20006
(202) 663-6000

ALAN J. HEINRICH
LISA GLASSER
IRELL & MANELLA LLP
1800 Avenue of the Stars
Suite 900
Los Angeles, CA 90067
(310) 277-1010

MARK C. FLEMING
TIMOTHY A. COOK
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

ROBERT J. GUNTHER, JR.
OMAR KHAN
CHRISTOPHER R. NOYES
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800

July 22, 2020

CERTIFICATE OF INTEREST

Counsel for Defendants – Cross-Appellants Ariosa Diagnostics, Inc. and Roche Molecular Systems, Inc. certifies the following:

1. Represented Entities. Fed. Cir. R. 47.4(a)(1). Provide the full names of all entities represented by undersigned counsel in this case.

Ariosa Diagnostics, Inc.

Roche Molecular Systems, Inc.

2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2). Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.

N/A

3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3). Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.

Roche Molecular Systems, Inc.

Roche Holdings, Inc.

Roche Holding Ltd.

Novartis AG

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

For Ariosa Diagnostics, Inc.
IRELL & MANELLA LLP: Casey M. Curran (former), Lauren N. Drake (former), David I. Gindler (former), Joshua B. Gordon (former), Molly J. Russell (former), David A. Schwarz (former), S. Adina Stohl, Arka Chatterjee (former), Sandra L. Haberny (former), Andrei Iancu (former), Cathy T. Moses (former), Amir A. Naini (former)

For Roche Molecular Systems, Inc.
WILMER CUTLER PICKERING HALE AND DORR LLP: Keith L. Slenkovich (former), Aaron S. Thompson, Elaine Zhong (former)

5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

Ariosa Diagnostics, Inc. v. Sequenom, Inc., No. 3:11-cv-06391-SI (N.D. Cal.)

Natera, Inc. v. Sequenom, Inc., No. 3:12-cv-00132-SI (N.D. Cal.)

Verinata Health, Inc. v. Sequenom, Inc., No. 3:12-cv-00865-SI (N.D. Cal.)

Illumina, Inc. v. Natera, Inc., No. 3:18-cv-01662-SI (N.D. Cal.)

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None.

Dated: July 22, 2020

/s/ Mark C. Fleming
MARK C. FLEMING
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

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INTRODUCTION

The panel correctly decided that the district court did not abuse its discretion in denying Illumina's request for a permanent injunction. Illumina colorfully expresses its dissatisfaction with that outcome—disparaging the unanimous panel decision as "myopic," "simplistic," and a "shortcut approach," Pet. 8-10, with a "blinkered" and "utterly misplaced" focus, *id.* 11-12—but it identifies no error of law or misapprehension of fact that would warrant any more of this Court's attention. The panel's non-precedential decision necessarily creates no conflict with precedent, and there is no question of "exceptional importance" raised by the panel's decision, which so far has not been cited by any other court. Instead, Illumina simply disagrees with the district court's and the panel's reasoning, and its petition just rehashes arguments that the panel soundly rejected.

But even if Illumina's arguments were reconsidered on the merits—which they should not be—Illumina would not be entitled to an injunction because the record shows that Illumina is not suffering irreparable harm. Ariosa and Illumina are not direct competitors. The Ariosa Harmony V2 test that was found to be infringing is a genetic testing service for doctors and patients. Illumina does not offer a competing test; Illumina sells products and licenses to clinical labs. To the extent Illumina suffers any harm from the infringing sales, it is lost revenue from its licensees. Such harm is readily quantifiable and can be compensated with

damages. Illumina admitted as much when it represented to the jury that it brought this case only because Ariosa would not "***take a license*** to the intellectual property of Illumina, and ***pay for*** the intellectual property ***it uses***." Appx1128.[1] Given that Illumina expressly told the jury it wanted a license and payment, it cannot complain that money is now insufficient.

And even if the Court were to accept each of Illumina's arguments, it would not affect the outcome. Illumina cannot obtain an injunction for the independent reason that it has not shown a "causal nexus" between infringement of the '794 patent and Ariosa's sales. Illumina did not even attempt to show a causal nexus in the district court or in its appellate briefing. There is no reason for this Court or the panel to expend further resources rehearing this case when the district court and the panel have already reached the right—and inexorable—outcome: Illumina has not proven any entitlement to an injunction.

BACKGROUND

Illumina and Ariosa play different roles in the genetic-testing economy. Illumina is a supplier of ***systems and tools***: It "develops, manufactures, and markets integrated systems and tools for DNA analysis." Op. 2. Illumina sells these systems to laboratories, along with a license to the patent rights necessary to use them. *Id.* Illumina's licensees then perform their own genetic tests using those

[1] Emphases added unless otherwise noted.

systems as a service for their own customers, such as doctors' offices. Pet. 4. Illumina makes money when clinical labs buy and use its systems. Co-appellant Verinata previously sold DNA testing services directly to customers, but it has not done so since it was acquired by Illumina in 2013, Appx1251-1252—Illumina's chairman declared that, "immediately" after Illumina acquired Verinata, Illumina "announced" that it was going to "exit the retail market … and get rid of the sales force." Appx1615.

Ariosa's Harmony V2 test, like the test offered by Illumina's licensees (but not Illumina), is a genetic-testing ***service*** offered to customers such as doctors' offices. From a technical perspective, the current version of Ariosa's test (Harmony V2) differs from the tests performed by Illumina's licensees: Illumina's licensees perform their tests on DNA sequencers, but Ariosa performs Harmony V2 on an array. Pet. 5. Roche Molecular Systems, Inc. ("RMS") bought Ariosa in 2015, but Ariosa remains a separate company within the Roche family, Appx2528, and still offers and performs Harmony V2 tests.[2] Appx10278-10282, Appx15351, Appx10589.

[2] For Illumina's injunction request, "Ariosa is the relevant party." Appx62. Illumina named RMS in an underlying action, alleging that Ariosa was RMS's alter ego or agent. Appx11606. The parties stipulated to dismiss RMS, and it agreed to be a party to any judgment. Appx11607. Illumina never accused RMS of infringing other than through Ariosa, and the parties agreed that "Ariosa will be deemed the Defendant responsible for the conduct that Illumina has accused of infringing." Appx11606.

Today, neither Illumina nor its licensees practices the '794 patent. Illumina previously practiced the '794 patent with a product called "GoldenGate," but Illumina discontinued GoldenGate in 2015. Appx11370; Blue Br. 19.

Ariosa launched its original Harmony test in 2012, but Illumina did not sue Ariosa for infringing the '794 patent until 2014. Appx15411-15415. Later in 2014, an Ariosa patent application published describing a redesigned form of Harmony, Appx4653—Harmony V2, which is the product at issue for Illumina's injunction request. Illumina waited until May 2015 to accuse Harmony V2 of infringement. Appx15124. Illumina never sought a preliminary injunction. In 2018, a jury found that Harmony V2 infringed the '794 patent based on an unintended side reaction that occurs for a small percentage of DNA fragments generated in each test, Op. 12-13 (discussing steps (a) and (b)), and awarded damages. Consistent with this reaction being unintended, the jury did not find willful infringement. Appx11557.

The district court denied Illumina's motion for a permanent injunction, and the panel affirmed in a non-precedential opinion: "Because Illumina failed to establish irreparable injury and inadequacy of monetary relief," the panel concluded, "the district court did not abuse its discretion in denying Illumina's request for a permanent injunction." Op. 20-21.

ARGUMENT

I. NEITHER EN BANC NOR PANEL REHEARING IS WARRANTED.

A. Rehearing En Banc Is Unwarranted Because The Panel's Non-Precedential Decision Does Not Conflict With Any Supreme Court Or Circuit Authority.

Illumina urges a conflict between the panel's decision and *eBay*, *Continental Paper Bag*, and *ActiveVideo* that "devalues the core patent right to exclude." Pet. 10. The reality is more mundane: Illumina's petition raises only fact-bound and case-specific arguments that both the district court and the panel rejected. None warrants rehearing.

First, Illumina's suggestion that the panel's ***non-precedential*** opinion caused a "dramatic and unwarranted anti-injunction shift," Pet. 9, is wrong. By definition, the panel's non-precedential decision does not create precedent, will not bind future panels of this Court, and cannot "shift" the law. En banc reconsideration is therefore not "necessary to secure or maintain uniformity of the court's decisions." Fed. R. App. P. 35(a); *see also* Fed. Cir. R. 35 Practice Note ("A petition for rehearing en banc is rarely appropriate if the appeal was the subject of a nonprecedential opinion by the panel of judges that heard it.").

Besides, the district court's and the panel's decisions are consistent with precedent. Illumina conjures a conflict with *eBay* by contending that the panel applied a "simplistic two-factor test," Pet. 10, but both the panel and the district

court expressly held that Illumina's motion was governed by the four-factor *eBay* test. Op. 19; Appx56. And in an 8-page analysis, the district court addressed each factor:

- ***Irreparable Harm.*** The district court found that Illumina derives its revenue from the sale of its systems (with licenses to use them); that "Ariosa sells the Harmony V2 test directly"; that Ariosa therefore "is not in direct competition with [Illumina]"; and that Ariosa "competes with Illumina's licensees, not with Illumina." Appx58. It further found that "Ariosa's use of Harmony V2 causes quantifiable harm to Illumina by taking away" Illumina's revenue from its licensees; accordingly, it concluded that the "harm to Illumina is not irreparable." Appx59. The court also rejected Illumina's argument that Ariosa competed directly with *both* Illumina and its licensees, finding that "only [Illumina's] third party licensees directly compete with Ariosa." *Id.*
- ***Adequacy of Legal Remedies.*** Citing Illumina's statements to the jury, the district court found that "it is clear that Illumina intended to license the '794 patent to Ariosa" and "that Illumina did not have an intention to retain market exclusivity" for the '794 patent. Appx61. Based on those findings, the court rejected Illumina's exclusivity and reputational-harm

arguments and concluded that "royalties are adequate forms of compensation." Appx60.

- ***Balance of Hardships.*** "At a minimum," the court found, "based on the specific facts in the present case," "the balance of the hardships is neutral and does not favor issuing an injunction." Appx62.
- ***Public Interest.*** "[G]ranting a permanent injunction," the court held, "could disserve the public interest or at the very most is neutral" because Illumina does not practice the '794 patent. Appx63.

Illumina expresses indignation that the panel, in its non-precedential opinion, did not discuss the balance of harms or the public interest, Pet. 10, 15, but no authority required the panel to do so. This Court has repeatedly held that "a district court order denying relief can be upheld based on negative findings on fewer than all of the four factors." *Apple, Inc. v. Samsung Elecs. Co.*, 678 F.3d 1314, 1333 (Fed. Cir. 2012); *see also Nichia Corp. v. Everlight Ams., Inc.*, 855 F.3d 1328, 1340-41 (Fed. Cir. 2017). Having concluded that "Illumina failed to establish irreparable injury and inadequacy of monetary relief," Op. 21, the panel correctly held that it "need not reach the district court's conclusions on balance of harms and public interest." Op. 19-20.

The "conflicts" that Illumina identifies are just quibbles with how the district court weighed the *eBay* factors. First, Illumina claims that "the ***panel*** improperly

discounted the harm of the ongoing violation," Pet. 11—but "weigh[ing] the evidence" is a "role [that] belongs exclusively to the district court." *Acumed LLC v. Stryker Corp.*, 483 F.3d 800, 811 (Fed. Cir. 2007). And to the extent Illumina seeks a thumb on the scale for injunctions in patent cases, it is Illumina's position—not the district court's or the panel's opinion—that would conflict with precedent. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 394 (2006) (principles governing injunctions apply "in patent disputes no less than in other cases governed by such standards").

Second, Illumina suggests that the district court and panel erred by treating Illumina's licensees as Ariosa's direct competitors because the licensees do not practice the '794 patent. Pet. 12, 15-16. Illumina cites nothing to support this position, and it certainly does not identify a conflict with precedent. Moreover, to the extent Illumina suggests that its harm is not related to lost revenue from its licensees (because they do not license the '794 patent), Illumina only reinforces the lack of a causal nexus between infringement of the '794 patent and the alleged irreparable harm. As discussed in Section II below, the absence of a causal nexus is an independent reason that Illumina is not entitled to an injunction.

Third, Illumina suggests that the panel created a new rule that denies injunctive relief if it finds competition between the infringer and the patentee's customers, Pet. 13, but the panel stated no such rule. Illumina's premise is that

Ariosa also competes with Illumina "in other ways," Pet. 13, but Illumina's alleged evidence on this point was disputed, and the district court found that "***only*** [Illumina's] third party licensees directly compete with Ariosa." Appx59.

Illumina's remaining arguments for en banc rehearing do not attempt to identify a conflict with precedent—they just note things that Illumina thinks "the panel overlooked." Pet. 14, 15. But such assertions do not justify rehearing en banc. And the arguments are meritless because the panel was not required to expressly discuss why every one of Illumina's arguments failed. "[W]hen a trial court addresses issues squarely and in detail, writes a persuasive opinion that faithfully applies the law to the facts, and reaches a correct result, there is no need for a reviewing court to write at length merely to hear its own words resonate." *R.I. Fishermen's All., Inc. v. R.I. Dep't of Envtl. Mgmt.*, 585 F.3d 42, 53 (1st Cir. 2009).

For example, Illumina contends that the panel overlooked the notion that damage to brand recognition can be irreparable, Pet. 14, 16. But the district court thoroughly addressed this issue, Appx60-61; the issue was briefed before the panel, *e.g.*, Blue Br. 32-33; and it was discussed at oral argument, *e.g.*, Oral Arg. Rec. 23:40-24:07, 25:01-17. Next, Illumina argues that "the panel overlooked evidence that Roche is threatening 'direct competition'" with the Ariosa cell-free DNA System ("AcfS") product, Pet. 15, which is a system that allows laboratories to run

their own Harmony V2 tests. But Illumina did not bring any claims against AcfS; on the contrary, Illumina agreed that "AcfS products are irrelevant to this case." Appx15161. And Illumina also ignores that the district court expressly found that "AcfS cannot be in direct competition" with Illumina's products for the same reasons that Harmony V2 is not in competition with Illumina's products. Appx59. Finally, Illumina faults the panel for "not even mention[ing] the right to exclude." Pet. 17. But again, no principle of law requires a panel to "mention" every argument invoked by an appellant. Besides, the bare assertion of a "right to exclude" does not justify an injunction where, as here, the patentee fails to prove irreparable harm or the inadequacy of money damages. *eBay*, 547 U.S. at 393-94.

B. Panel Rehearing Is Unwarranted Because The Panel's Decision Is Not Based On Any Oversight Or Misapprehension And Is Correct.

Illumina's request for panel rehearing makes the fact-bound nature of its complaints even clearer: Illumina lists eight bullet points of "facts" that it believes the panel overlooked. Pet. 17-18. But Illumina does not identify any factual inaccuracy in either the district court's or the panel's opinion—it simply does not like that the district court and the panel did not give certain of these facts more weight. That does not warrant panel rehearing.

A close review of the alleged "record evidence" in Illumina's eight-point list reveals that Illumina's actual disagreement is with the district court's and panel's

outcome, not their understanding of the evidence. For example, Illumina contends that "the only company that has ever competed with Illumina with respect to the '794 assay patent is Ariosa/Roche," Pet. 17, but the district court found no such competition. Appx58-59. Illumina also contends that "Roche" is "taking credit for Illumina's intellectual property and harming Illumina's brand," Pet. 17, but those too are conclusions that the district court rejected. Appx59-61. And Illumina contends that "Roche" will "compet[e] in Illumina's primary market" with AcfS, Pet. 18—which, again, has never been an accused product in this case—but that too is a proposition that the district court expressly found to be unsupported by the record. Appx59. Neither the panel nor the district court misapprehended the facts—the district court just rejected the inferences that Illumina urged it to draw, and the panel concluded that the district court acted within its discretion in doing so.

In any event, the record shows that the district court's and panel's decisions were correct. Ample evidence supports the district court's conclusion that Ariosa and Illumina are not direct competitors. For example, Illumina's own expert testified that "during 2013, Verinata exited the retail market and ***no longer acted in direct competition with Ariosa***." Appx2200. According to its chairman, Illumina "began working directly" on "exit[ing] the retail market … and get[ting] rid of [Verinata's] sales force" after acquiring Verinata, specifically so as ***not*** to be "in

competition with … Ariosa." Appx1615. And the evidence bears that out: Today, Ariosa's customers are largely doctors' offices that send samples to Ariosa's labs for testing, whereas Illumina sells systems and tools to labs that market their own tests. Pet. 3-4. The equipment that Illumina sells is not a market substitute for a send-away genetic test. For example, if doctors' offices could not use Ariosa's send-away test service, they would use another send-away test service; they would not build their own labs using Illumina's systems. Harmony V2 therefore competes with tests offered by Illumina's licensees, not Illumina—just as the district court found.

That finding makes this case substantively the same as *ActiveVideo Networks, Inc. v. Verizon Communications, Inc.*, in which this Court vacated an injunction because the defendant did not directly compete with the patentee, but only with the patentee's customers. 694 F.3d 1312, 1338 (Fed. Cir. 2012). ActiveVideo sold hardware and software, as well as the patent rights necessary to use them, to providers of video services at a per-customer rate. *Id.* Cablevision, which provided cable services to customers, was one of ActiveVideo's customers. *Id.* Verizon infringed ActiveVideo's patents and took some of Cablevision's customers, costing ActiveVideo the per-customer payments that it would have received from Cablevision had the customers used Cablevision instead of Verizon. *Id.* Because the harm to ActiveVideo was indirect, this Court concluded that

ActiveVideo's loss was "[s]traight-forward monetary harm" and "certainly not irreparable." *Id.*; *see also Edwards Lifescis. AG v. CoreValve, Inc.*, 699 F.3d 1305, 1315 (Fed. Cir. 2012) (affirming "the grant of a royalty-bearing license instead of imposing an injunction in situations where the patentee would experience no competitive injury").

Illumina (analogous to ActiveVideo) sells systems and tools for DNA analysis, and the rights required to use them, to providers of genetic-testing services (analogous to Cablevision) at rates commensurate with test volume. Illumina alleges, but has not shown, that the "Harmony V2 test reduces demand for labs or providers to purchase Illumina's platforms," "driving down Illumina's prices." Pet. 13.[3] But even if that were true, Illumina's harm would be readily quantifiable, just as in *ActiveVideo*. Illumina argues that Ariosa's "infringement competes with Illumina for the same health-care dollars," Pet. 13, but if so, those dollars can be proven and counted, and thus Illumina's alleged harm is quantifiable and compensable with damages.

The district court and panel were also right to reject Illumina's assertion that it sought to keep the '794 patent exclusive, such that Ariosa's infringement caused it incalculable financial and reputational harm. These arguments are based on

[3] Illumina's petition also alleges that sales of Harmony V2 "reduc[e] demand for clinical labs or providers to purchase Illumina's sequencers," Pet. 6, but Illumina has developed no such evidence.

Illumina's assertion that it has not sought to license the '794 patent, Pet. 6, 12, but the district court found that inconsistent with the trial record: "Illumina did not have an intention to retain market exclusivity" because "Illumina intended to license the '794 patent to Ariosa." Appx61. Notably, Illumina's counsel even stated that intention at trial, telling the jury that Illumina brought suit only because Ariosa would not "***take a license*** to the intellectual property of Illumina, and ***pay for*** the intellectual property ***it uses***." *Id.* (citing Appx1128). This statement could only have referred to the '794 patent because that was the only patent Illumina accused Ariosa of "using." Having claimed willingness at trial to "***license everyone***," Appx1481, Illumina cannot cry abuse of discretion when the district court held it to its word.

Illumina's delay in seeking injunctive relief also shows that damages are adequate. Ariosa first launched the allegedly infringing Harmony test in 2012, and the technical design for Harmony V2 was first published in 2014. Appx4653. But Illumina never sought a preliminary injunction, and it did not move for a permanent injunction until March 2018. Appx10001-10018. Illumina's failure to act with urgency is further evidence that Illumina's harm is not irreparable and can be adequately compensated by damages. *Polymer Techs., Inc. v. Bridwell*, 103 F.3d 970, 976 (Fed. Cir. 1996); *Genband US LLC v. Metaswitch Networks Corp.*, 861 F.3d 1378, 1385 (Fed. Cir. 2017).

The district court found that Illumina did not identify any harm from Ariosa's sales other than potentially losing fees that Illumina's licensees might have otherwise paid it. Such fees are quantifiable. The district court was well within its discretion to deny an injunction on these grounds, and nothing suggests that the panel misapprehended or overlooked anything in so concluding.

C. Illumina Exaggerates The Decision's Implications.

Illumina also attempts to manufacture a question of "exceptional importance," but it can only do so by resorting to hyperbole: The panel's decision, Illumina contends, "marks a dramatic and unwarranted anti-injunction shift" that upsets "the proper balance," "conflicts with *eBay*," and "marks a dramatic departure" from *ActiveVideo*. Pet. 9, 10, 15. The facts disprove Illumina's rhetoric. In the nearly three months since this allegedly "dramatic" decision issued, no case has cited it. The one treatise that has cited the panel's injunction decision recognizes that it is merely a "see also" for the well-settled proposition that "the patentee itself … must show that they personally suffered irreparable harm." Robert A. Matthews, Jr., 4 *Annotated Patent Digest* § 32:159.05 (July 2020 update) (citing the panel decision in a "see also" clause alongside cases including *Voda v. Cordis Corp.*, 536 F.3d 1311, 1329 (Fed. Cir. 2008), and *ActiveVideo*). The panel's factbound affirmance was not of "exceptional

importance"; it simply found no abuse of discretion in the district court's straightforward and correct application of settled law to established facts.

II. REHEARING WOULD BE FUTILE BECAUSE IT WOULD NOT AFFECT THE ULTIMATE OUTCOME.

Illumina's petition should also be denied because Illumina would not be entitled to an injunction even if the Court were to reverse on each of the issues that Illumina raises. For an injunction to issue, there must be "a sufficiently strong causal nexus [that] relates the alleged harm to the alleged infringement." *Apple Inc. v. Samsung Elecs. Co.*, 695 F.3d 1370, 1374 (Fed. Cir. 2012). Illumina failed to demonstrate a causal nexus to the district court, failed to address this issue in its opening brief before the panel (thereby waiving it), and makes no reference to causal nexus in its petition. Illumina's inability to show a causal nexus between the infringement and the alleged harm is an independent reason to affirm the district court's order.

The accused infringing conduct in this case is an unintended side reaction that nobody has ever observed and that supposedly occurs for a small fraction of DNA molecules in some Harmony V2 tests performed in Ariosa's labs. Op. 12-13. There is no evidence that the infringing side reaction "impact[s] consumers' decisions" about which test to purchase, is "important to product sales," or is a feature that "customers sought." *Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 642-44 (Fed. Cir. 2015); *cf.* Pet. 13 (alleging only that "[t]he Harmony V2 test"—

not the infringing side reactions—"reduces demand for labs or providers to purchase Illumina's platforms"). Illumina offered no evidence or argument that the doctors who purchase Harmony V2 even know about the accused side reaction or that the side reaction—which nobody hypothesized even occurred until Illumina's litigation theory in this case—makes Harmony V2 superior to tests performed by Illumina's licensees or has any impact on cost. Apart from Ariosa's accidental use in a small percentage of reactions, which the jury found non-willful, no one has used or even expressed interest in the '794 patent in the last five years. That is the antithesis of a causal nexus.

Thus, even if there were errors in the panel's decision—and there are not—their correction would not change the case's outcome. Further proceedings about Illumina's injunction request—whether before this Court or the district court—would be a waste of judicial resources.

CONCLUSION

The petition for rehearing should be denied.

Respectfully submitted,

/s/ Mark C. Fleming

MARK C. FLEMING
TIMOTHY A. COOK
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

THOMAS G. SAUNDERS
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue NW
Washington, DC 20006
(202) 663-6000

ROBERT J. GUNTHER, JR.
CHRISTOPHER R. NOYES
OMAR A. KHAN
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8800

Counsel for Defendants – Cross-Appellants Ariosa Diagnostics, Inc, and Roche Molecular Systems, Inc.

LISA S. GLASSER
ALAN J. HEINRICH
IRELL & MANELLA LLP
1800 Avenue of the Stars, Suite 900
Los Angeles, CA 90067
(310) 277-1010

Counsel for Defendant – Cross-Appellant Ariosa Diagnostics, Inc.

July 22, 2020

CERTIFICATE OF SERVICE

I hereby certify that, on this 22nd day of July, 2020, I filed the foregoing with the Clerk of the United States Court of Appeals for the Federal Circuit via the CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

/s/ Mark C. Fleming
MARK C. FLEMING
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

CERTIFICATE OF COMPLIANCE

The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets the following:

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MARK C. FLEMING
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

July 22, 2020