

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ILLUMINA INC.,
Petitioner,

v.

MOLECULAR LOOP BIOSCIENCES, INC.,
Patent Owner.

Case No. IPR2024-01419
U.S. Patent No. 11,840,730

PETITIONER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Illumina, Inc. (“Illumina”) hereby submits objections to evidence filed by Molecular Loop Biosciences, Inc. on July 18, 2025 in support of its Response (Paper 18). The discussion below identifies the evidence to which Illumina objects and summarizes Illumina’s objections, including the Federal Rules of Evidence (“FRE”) that form the basis for the objections.

1. Exhibit 2004

Illumina objects to paragraphs 10 to 21 as lacking foundation because Dr. Porreca lacks personal knowledge of the cited exhibits and is simply describing what the exhibits say. *See* FRE 602, 1002. Illumina further objects to the extent Dr. Porreca’s testimony is based on unproduced, privileged communications, and Patent Owner and Dr. Porreca are using privilege as both a sword and a shield. *See* FRE 401-403, 501-502; *In re Antitrust*, No. 2:18-MD-2836, 2022 WL 4354620, at *8 (E.D. Va. Aug. 15, 2022) (it is improper to use privilege as both a sword and a shield); *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. 1992) (“The privilege which protects attorney-client communications may not be used both as a sword and a shield.”).

Illumina objects to paragraphs 10 to 21 to the extent they comment on exhibits objected to below.

2. Exhibit 2005

Illumina objects to paragraph 9 as prejudicial, hearsay, incomplete, not the best evidence, and lacking foundation because Dr. Waller lacks personal knowledge of the subject matter and is testifying about the contents of unproduced documents that are allegedly privileged. *See* FRE 401-403, 501-502, 602, 801-807, 1002. Illumina objects to the extent Patent Owner and Dr. Waller are using privilege as both a sword and a shield. *See* FRE 501-502; *In re Antitrust*, No. 2:18-MD-2836, 2022 WL 4354620, at *8 (E.D. Va. Aug. 15, 2022) (it is improper to use privilege as both a sword and a shield); *Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162 (9th Cir. 1992) (“The privilege which protects attorney-client communications may not be used both as a sword and a shield.”).

Illumina objects to paragraph 11 as prejudicial, hearsay, incomplete, not the best evidence, and lacking foundation because Dr. Waller lacks personal knowledge of the subject matter and is testifying about the contents of unproduced documents that are allegedly privileged. *See* FRE 401-403, 501-502, 602, 801-807, 1002. Illumina objects to the extent Patent Owner and Dr. Waller are using privilege as both a sword and a shield. *See In re Antitrust*, 2022 WL 4354620, at *8 (it is improper to use privilege as both a sword and a shield); *Chevron*, 974 F.2d at 1162 (“The privilege which protects attorney-client communications may not be used both as a sword and a shield.”).

Illumina objects to paragraph 12 as prejudicial, hearsay, incomplete, not the best evidence, and lacking foundation because Dr. Waller lacks personal knowledge of the subject matter and is testifying about conversations between Dr. Porreca and Dr. Young to which he was not a party. *See* FRE 401-403, 501-502, 602, 801-807, 1002. Illumina objects to the extent Patent Owner and Dr. Waller are using privilege as both a sword and a shield. *See* FRE 501-502; *In re Antitrust*, 2022 WL 4354620, at *8 (it is improper to use privilege as both a sword and a shield); *Chevron*, 974 F.2d at 1162 (“The privilege which protects attorney-client communications may not be used both as a sword and a shield.”).

Illumina objects to paragraph 22 as not relevant, incomplete, not the best evidence, and lacking foundation because Dr. Waller talks about his general practices and fails to provide corroborating evidence with respect to the relevant applications. *See* FRE 401-403, 602, 801-807, 1002.

Illumina objects to paragraph 23 as hearsay and lacking foundation because Dr. Waller lacks personal knowledge of the subject matter to the extent he is testifying about conversations between Dr. Porreca and Dr. Young to which he was not a party. *See* FRE 602, 801-807, 1002.

Illumina objects to paragraphs 9 to 23 to the extent they comment on exhibits objected to below.

3. Exhibits 2006 to 2008

Illumina objects to Exhibits 2006 to 2008 as prejudicial and incomplete because they are part of an email for which Patent Owner did not produce all of the attachments. *See* Objections to Exhibits 2012 and 2014 to 2016, below. Illumina objects to these exhibits and unproduced attachments to the extent Patent Owner is using privilege as both a sword and a shield. *See* FRE 501-502; *In re Antitrust*, 2022 WL 4354620, at *8 (it is improper to use privilege as both a sword and a shield); *Chevron*, 974 F.2d at 1162 (“The privilege which protects attorney-client communications may not be used both as a sword and a shield.”).

4. Exhibits 2009 to 2011

Illumina objects to Exhibits 2009 to 2011 as hearsay offered for a hearsay purpose and to which no valid exception applies. *See* FRE 801-807.

5. Exhibits 2012 and 2014 to 2016

Illumina objects to Exhibits 2012 and 2014 to 2016 as prejudicial and incomplete because the attachments in the email chains were not produced. *See* FRE 401-403, 501-502, 1002. Illumina objects to Illumina objects to these exhibits and unproduced attachments to the extent Patent Owner is using privilege as both a sword and a shield. *See In re Antitrust*, 2022 WL 4354620, at *8 (it is improper to use privilege as both a sword and a shield); *Chevron*, 974 F.2d at 1162 (“The privilege which protects attorney-client communications may not be used both as a sword and a shield.”). Illumina objects to Exhibits 2012 and 2014 to

2016 as hearsay offered to prove the truth of the matter asserted and to which no valid exception applies. *See* FRE 801-807.

6. Exhibit 2021

Illumina objects to Exhibit 2021 as prejudicial and incomplete because all of the attachments were not produced. *See* FRE 401-403, 501-502, 1002. Illumina objects to this exhibit and unproduced attachments to the extent Patent Owner is using privilege as both a sword and a shield. *See* FRE 501-502; *In re Antitrust*, 2022 WL 4354620, at *8 (it is improper to use privilege as both a sword and a shield); *Chevron*, 974 F.2d at 1162 (“The privilege which protects attorney-client communications may not be used both as a sword and a shield.”).

Dated: July 25, 2025

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on this 25th day of July, 2025, I caused to be served a true and correct copy of the foregoing and any accompanying exhibits by electronic mail on the following counsel:

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