



Press release dated April 15, 2020

## **BARDEHLE PAGENBERG navigates 10x Genomics to an extraordinary success against Bio-Rad Laboratories**

**By order of March 31, 2020, the German Higher Regional Court of Munich (Appeals Court; docket no. 6 U 7129/19) decided that, in utility model infringement proceedings initiated by Bio-Rad Laboratories, Inc. (Bio-Rad) against 10x Genomics Inc. (10x Genomics), the enforcement of the judgment of the Regional Court of Munich I (First Instance Court; docket no. 21 O 2631/18) was to be stayed against the provision of a security in the amount of EUR 2.8m. This is an exceptional decision based on exceptional procedural relief.**

It was the second time that Bio-Rad asserted intellectual property rights against 10x Genomics before the Munich Courts. While Bio-Rad had to withdraw its infringement complaint re. European Patent 2 635 840 filed in 2017 (docket no. 21 O 11308/17), now, in the infringement proceedings re. German utility model DE 20 2011 110 979, in which Bio-Rad initially succeeded at first instance, the Appeals Court clearly and unambiguously decided that the enforcement was to be stayed as the judgment will presumably not be maintained in the appeal proceedings. Bio-Rad cannot appeal the order of the Appeals Court of March 31, 2020.

10x Genomics, a highly innovative US life science company that designs and manufactures gene sequencing technology used in scientific research, was sued by Bio-Rad in Germany in 2018 based on the aforesaid German utility model. Bio-Rad alleged 10x Genomics to infringe the utility-model-in-suit by its “Chromium system”, and filed requests for injunction, recall and destruction, information and accounting, and damages. 10x Genomics filed a request for dismissal of the infringement complaint and a request for cancellation of the unexamined utility-model-in-suit with the German Patent and Trademark Office (GPTO). The 21st Civil Chamber of the First Instance Court was of the opinion that 10x Genomics infringed the utility-model-in suit with the attacked Chromium system and announced a decision in November 2019. 10x Genomics appealed this decision immediately and filed a request for provisional stay of the enforcement of this judgment according to Sec. 719 para. 1 sentence 1, Sec. 707 para. 1 of the German Code of Civil Procedure. 10x Genomics argued that the first instance judgment was obviously wrong as regards claim construction, the finding of infringement, validity and further procedural aspects.

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With its order of March 31, 2020, based on the applicable summary examination, the Appeals Court found that the First Instance Court's generalizing claim construction was not justifiable because it was incompatible with the teaching of the utility-model-in-suit and that the facts at hand did not provide a basis for a finding of infringement. Further, the Appeals Court left open whether the utility-model-in-suit was also invalid but pointed to the fact that, in the meantime, the GPTO had issued a preliminary opinion according to which the utility-model-in-suit was to be cancelled in its entirety. It remains to be seen whether Bio-Rad will be able to turn the Appeals Court's opinion around in the appeal proceedings on the merits.

This success of 10x Genomics is of particular interest these days as the products of 10x Genomics are currently used by many researchers in the United States, Germany and other countries to study the coronavirus to produce a vaccine or cure. These researchers rely on 10x Genomics' products to better understand the mechanism of Covid-19 infection and how the immune system responds to it. As soon as the security is provided, 10x Genomics will be allowed to provide its customers, reputable universities and research institutes in Germany, with its full product line again and to continue supporting them in their valuable work of understanding biology.

**Representatives of 10x Genomics: BARDEHLE PAGENBERG (Munich):**

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**Representatives of Bio-Rad Laboratories: Quinn Emanuel**

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Dr. Johannes W. Bukow (Attorney-at-Law)

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Dr. Johannes Druschel (Attorney-at-Law)

Regional Court of Munich I (21<sup>st</sup> Chamber):

**Presiding Judge Pichlmaier, Judge Schmitz and Judge Dr. Schacht**

Higher Regional Court of Munich (6<sup>th</sup> Senate):

**Presiding Judge Retzer, Judge Neumann and Judge Lehner**



**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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