

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 IPR2012-00007  
U.S. Patent 7,790,869

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Before SALLY G. LANE, RICHARD M. LEBOVITZ, and DEBORAH  
KATZ, *Administrative Patent Judges*.

LEBOVITZ, *Administrative Patent Judge*.

**DECISION ON REQUEST FOR REHEARING UNDER 37 C.F.R.  
§ 41.71(c) OF DECISION TO INSTITUTE INTER PARTES REVIEW  
& SCHEDULING ORDER**

## I. ILLUMINA REQUEST FOR REHEARING

Illumina requests rehearing of the decision under 35 U.S.C. § 311 (“the ‘869 Decision”) denying inter partes review of claims 15 and 16 of US 7,790,869 (“the ‘869 patent”) based on Tsien, Stemple II, and Dower as anticipatory publications (Illumina Request for Reconsideration under 37 C.F.R. 42.71(c), dated March 26, 2013 (“Illumina Req. Reh’g.”; Paper 40))

Under 37 C.F.R. § 42.71(c), “[w]hen rehearing a decision on petition, a panel will review the decision for an abuse of discretion.” An abuse of discretion occurs when a “decision was based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment.” *PPG Indus. Inc. v. Celanese Polymer Specialties Co. Inc.*, 840 F.2d 1565, 1567 (Fed. Cir. 1988). *See also* 37 C.F.R. § 42.71(d) (“The request must specifically identify all matters the party believes the Board misapprehended or overlooked”).

I.A. The Board erred in not authorizing inter partes review of claims 15 and 16 based on Tsien Stemple II, & Dower (Illumina Req. Reh’g 3)

Nucleotides comprise a sugar, phosphate, and nitrogen base (‘869 patent, Fig. 7). Claim 15 is drawn to a nucleotide which comprises a deazapurine as the base. Neither Tsien nor Stemple II is said by Illumina to describe a deazapurine base expressly in their written disclosures. Rather, Illumina contends the nucleotides are present by virtue of the incorporation by reference of the Prober I publication by Tsien, and of Anazawa by Stemple II, each of which are said to disclose nucleotides with deazapurine bases (Petition 23-24 & 50-51). The issue addressed in the ‘869 Decision with respect to these rejections was whether Illumina met its burden in

establishing whether either Prober I or Anazawa is incorporated into the host document in a manner that complies with the requirement of 35 U.S.C. § 102.

“To incorporate material by reference, the host document must identify with detailed particularity what specific material it incorporates and clearly indicate where that material is found in the various documents.” *Advanced Display Sys., Inc. v. Kent State Univ.*, 212 F.3d 1272, 1282 (Fed. Cir. 2000). When making such determination, the standard “of one reasonably skilled in the art should be” applied. *Id.* at 1283. Illumina contends that we erred by not using “the person of reasonable skill in the art” standard to evaluate whether Tsien (Exhibit 1002) sufficiently incorporated Prober I (Exhibit 1003) to disclose dNTP analogs including a 7-deazapurine base (Illumina Req. Reh’g 4). Specifically, Illumina contends that we “used a heightened standard that would require recitation of the exact word ‘deazapurine’ (or at least ‘deaza-substituted’) as used in claims 15 and 16” (*id.*). To support their argument, Illumina points to declarations by Dr. Weinstock and Dr. Blanchaud (*id.* at 5). Illumina made similar arguments for Stemple II’s incorporation by reference to Anazawa.

#### I.A.1. Tsien & Prober I

Contrary to Illumina’s contention, the ‘869 Decision did not ignore how a person of reasonable skill in the art would have viewed Tsien’s incorporation by reference to Prober I. The only evidence of how such a person would have understood the reference to Prober I in Tsien was the declaration of Dr. George Weinstock.

Dr. Weinstock stated in his declaration (Exhibit 1021):

In discussing sequencing by synthesis methods utilizing a dNTP in which the fluorescent label group is coupled to the base of the dNTP, Tsien references the disclosure of Prober I, Science 238, 336-341 (1987) for its teaching of preparing nucleotides with fluorescent tags that can be successfully incorporated by Tsien's preferred polymerase. See Tsien et al., page 5, lines 22- 23, page 19, lines 4-18; and page 28, lines 5-18. Tsien also states that Prober I, and the other references discuss in Tsien, are referenced "for their teaching of synthetic methods, coupling and detection methodologies, and the like." Tsien, p. 3, ll. 11-16 and p. 5, ll. 22-23.

(Weinstock Decl. ¶ 63.)

Based on the cited disclosure in Tsien, Dr. Weinstock concluded that he understood "Tsien to incorporate the teachings of Prober I for its teachings regarding of fluorescent label attachment, and in particular, regarding its teaching regarding attachment of a linker to the 7 position in the 7-deazapurine" (id. at ¶ 64).

The '869 Decision did not find Dr. Weinstock's testimony persuasive because "Dr. Weinstock did not provide a factual basis for his testimony as to why this teaching would have been recognized by one of ordinary skill in the art." ('869 Decision 14.) In particular, it was noted in the Decision that "Illumina provided testimony by Dr. George Weinstock that Prober I is incorporated by Tsien for 'its teaching regarding attachment of a linker to the 7 position in the 7-deazapurine,' but these words do not appear in Tsien. Weinstock Decl. ¶ 63." (Id. at 13-14.) Dr. Weinstock's testimony was determined to be inadequate to make up for this deficiency.

Tsien does not indicate that Prober I is being referenced for its teaching of a deazapurine nucleotide. Tsien refers to Prober I for its teaching that fluorescent ddNTPs can be incorporated by two different

enzymes, but did not identify the fluorescent ddNTPs as comprising a deazapurine base as recited in claim 15. Dr. Weinstock's testimony did not bridge the gap. Thus, while the Decision addressed Tsien's failure to specifically identify the deazapurines in Prober I, the Decision found the incorporation defective for the purpose of establishing anticipation because Dr. Weinstock's testimony did not sufficiently explain why the reasonably skilled person would have understood the reference to Prober I to be a reference to deazapurines.

In the Request for Rehearing, Illumina attempts to remedy this deficiency, stating “[s]ignificantly, the only analogs of dATP and dGTP present in the Prober I reference are 7-deazapurines” and explains why this is the case (Req. Reh'g 5-6). However, as pointedly stated by Illumina, the determination of “incorporation by reference” for the purpose of establishing anticipation is from the viewpoint of one reasonably skilled in the art. The identification of where Prober I described deazapurines, and the explanation of why Tsien's disclosure “fluorescent ddNTPs” would be understood to be these deazapurines was not discussed in Dr. Weinstock's declaration, but rather is only described in this Request for Rehearing signed by Illumina's attorney. The argument of counsel cannot take the place of evidence lacking in the record. *Estee Lauder Inc. v. L'Oreal, S.A.*, 129 F.3d 588, 595 (Fed. Cir. 1997).

Moreover, 37 C.F.R. § 41.71(d) states a Request for Rehearing “must specifically identify . . . the place where each matter was previously addressed in a motion, an opposition, or a reply.” Illumina has not cited where in the '869 Petition it was argued that the only analogs of dATP and dGTP described in Prober I are 7-deazapurines.

### Blanchaud Declaration

Illumina also states that “Blanchaud understood certain features to be included in the incorporation of Prober and Anazawa based on the general description of the incorporated matter in Tsien and Stemple, respectively.” (Illumina Req. Reh’g 5.) In fact, Blanchaud only appears in the list of references cited on pages v-vi of the Petition, but was not mentioned in any other place in the Petition. Accordingly, we did not address Blanchaud in the Decision. It is therefore not a matter misapprehended or overlooked by the Board as required by 37 C.F.R. § 42.71(d).

### I.A.2. Stemple II and Anazawa

In the unpatentability challenge based on Stemple II as an anticipatory publication, Stemple II was said by Illumina to incorporate by reference Anazawa’s disclosure of a 7-deaza-guanine base, a deazapurine of claim 15. For the reasons stated in the Decision, we did not find this argument persuasive.

It does not appear that Dr. Weinstock provided testimony on how one of ordinary skill in the art would have understood that Stemple II’s reference to Anazawa was a reference to a linker attached to deazapurine as required by claims 15 and 16. In the Request for Rehearing, Illumina points to paragraph 83 of Dr. Weinstock’s declaration for such testimony (Illumina Req. Reh’g 7).

Paragraph 83 is Dr. Weinstock’s testimony about the combination of “the teachings of Stemple II with the teachings of Anazawa to provide a 7-deazapurine base feature, and attachment of a label to the 7 position of that

deazapurine base.” (Weinstock Decl. ¶ 83.) Dr. Weinstock explained that Stemple II provides “an express teaching, suggestion, and motivation to combine Stemple II with the disclosures of Anazawa with respect use of 7-deazapurine nucleotide analogues in methods for sequencing by synthesis,” citing specific disclosure in Anazawa where such teachings are supposedly found. This testimony does not address the issue of whether one reasonably skilled in the art would have understood Stemple II’s reference to Anazawa at page 31, lines 10-18, to be an incorporation of the teaching to attach a base at deazapurine as required by claims 15 and 16. Rather, paragraph 83 addresses the obviousness of combining Stemple II and Anazawa.

Illumina argues in the Request for Rehearing that the “only base-labeled purine nucleotide shown in Anazawa are 7-deazapurine analogs,” but aside from counsel’s arguments, Illumina did not provide evidence or testimony that one reasonably skilled in the art would have understood such disclosure to have been necessarily incorporated by reference into the Stemple II document (Req. Reh’g 6-7). Moreover, these are new arguments, and do not address what was overlooked or misapprehended in the ‘869 Decision, and therefore do not comply with 37 C.F.R. § 42.71(d).

### I.A.3. Wrong standard was applied in Tsien and Stemple II

Illumina contends we erred by requiring that the host publication point to a specific passage in the referenced Prober I and Anazawa publications for it to be an adequate incorporation by reference for purposes of establishing anticipation (Req. Reh’g 8). Illumina cites Federal Circuit cases other than *Advanced Display*, which they argue establish that identification

of a specific passage in the incorporated document is not a requirement for the material to be incorporated by reference (*id.* at 8-9).

The determination in the ‘869 Decision not to authorize a patentability challenge based on anticipation by the Tsien and Stemple II documents did not turn on the failure of the latter host documents to point to the passages in the incorporated document where the deazapurine disclosure could be found. Rather, the failure to do so was one factor in the analysis. Because neither Tsien and Stemple II publication identified deazapurines as the incorporated material, we turned to evidence that a person of ordinary skill in the art would have recognized the reference to Prober I and Anazawa to be a disclosure of a deazapurine base, evidence which was found to be lacking.

Illumina cites *Callaway Golf Co. v. Acushnet Co.*, 576 F.3d 1331 (Fed. Cir. 2009) for holding that “reference **to a general class of compositions** discussed in prior art is **sufficient to incorporate a specific composition** by reference. *Callaway*, 576 F.3d at 1346-47 (holding reference to a ‘foamable polymeric composition’ sufficient to specifically incorporate polyurethane as the foamable composition)” (Illumina Req. Reh’g 10).

*Callaway* is distinguishable from the present case. In *Callaway*:

Nesbitt [the cited anticipatory publication] states broadly that the layers of the golf ball disclosed therein may be made from a “natural or synthetic polymeric material.” [U.S. Patent No. 4,431,193 ] col.3 ll. 53–54. Nesbitt goes on to directly indicate that such materials include all of the foamable polymeric materials described in Molitor [U.S. Patent No. 4,274,637]: “Reference is made to [Molitor “637] which describes a number of foamable compositions of a character which may be employed for one or both layers ... for the golf ball of this invention.” *Id.* col.3 ll.56–61 (emphasis added). Polyurethane is

a foamable composition. Nesbitt incorporates the entire list of foamable compounds (“a number of foamable compositions”) disclosed by Molitor ’637 as appropriate materials for use in golf ball cover layers, including polyurethane and mixtures of ionomer resins.

*Callaway* 576 F.3d at 1347-48.

Unlike in *Callaway*, neither Tsien nor Stemple II disclosed that all the materials in Prober I are to be included in their sequencing methods. For example, Tsien does not refer to Prober I for disclosing fluorescent nucleotides that could be used in its method, but rather cited Prober I for “show[ing] enzymatic incorporation of fluorescent ddNTPs” using two different enzymes. Illumina did not direct us to factual evidence or testimony by one reasonably skilled in the art that such sentence serves to incorporate the specific ddNTPs described in Prober I. Likewise, Stemple II refers Anazawa for teaching a fluorochrome-photo labile linker conjugate attached directly to the base of the nucleotide.

In sum, the determination that neither Tsien nor Stemple anticipated the subject matter of claims 15 and 16 was not solely based on their failure to identify specific passages of the disclosure needed to meet all elements of the claims, but also on Illumina’s inability to establish that the one reasonably skilled in the art would have found that the “the host document describes the material to be incorporated by reference with sufficient particularity.” *Advanced Display*, 212 F.3d at 1283.

#### I.A.4. Dower

Dower was said by Illumina to describe a nucleotide, *inter alia*, with the claimed requirement of “a base that is attached to a detectable label

through a cleavable linker.” Citing to Dower, col. 15, l. 62 to col. 16, l. 6 and col. 25, ll. 35-40, it was determined in the ‘869 Decision:

The cited disclosures in Dower do not expressly identify a “cleavable linker” as joining the “base” to the “detectable label.” Removal of a detectable label from a nucleotide is described, but such disclosure does not specify that removal occurs at cleavable linker which joins the label to the base.  
‘869 Decision, p. 15.

Illumina contends that the cleavable linker is found in Prober I, which is incorporated by reference (Illumina Req. Reh’g 12-13).

This argument does not appear to have been made in the petition. On pages 34 of the Petition, Illumina cites Dower as describing removable groups, but does not refer to Dower as incorporating Prober I by reference for its teaching of the claimed “cleavable linker.” Prober I is discussed on page 35 of the Petition, but in the context of claim 15 which recites that the nucleotide of claim 12 comprises a deazapurine base. In the latter discussion, Illumina did not argue that the linker in the deazapurine of Prober I is a cleavable linker.

A Request for Rehearing “must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.” 37 C.F.R. § 42.71(d). As Illumina did not identify where such argument was made in the Petition, it cannot be a matter “misapprehended or overlooked,” and therefore the argument does not comply with the rule.

### I.B. DUPLICATIVE REJECTIONS

Citing 37 C.F.R. § 42.108, we denied certain unpatentability challenges to the claims. Illumina contends that “the Board abused its

discretion by considering an improper factor when deciding whether to authorize inter partes review.” (Illumina Req. Reh’g 13.) Illumina contends that the Board’s “discretion is limited to determining whether, in fact, the references render the challenged patent unpatentable. The Patent Rules do not authorize the Board to exercise discretion based on whether or not certain references are cumulative or duplicative of each other.” (*Id.*)

Under 37 C.F.R. § 42.108(a), the Board has discretion to “authorize the review to proceed on all or some of the challenged claims and on all or some of the grounds of unpatentability asserted for each claim.” The Board also “may deny some or all grounds for unpatentability for some or all of the challenged claims.” 37 C.F.R. § 42.108(b). As stated in the ‘869 Decision, in making such determinations, the Board must also take into account 37 C.F.R § 42.1(b) which requires “the just, speedy, and inexpensive resolution of every proceeding.”

In this case, the decision not to authorize inter partes review on certain unpatentability challenges was based on the finding that the challenges appeared to rely on the same prior art facts as other challenges for which inter partes review had been authorized. The determination not to proceed on all of the proposed unpatentability challenges by Illumina was therefore grounded on the determination that the same facts were being applied to the claims, albeit using different publications to establish that a fact was prior art to the claims. The concern was that the redundant unpatentability challenges would impede “the just, speedy, and inexpensive resolution of every proceeding” as required under 37 C.F.R § 42.1(b). In other words, considering multiple rejections for the same unpatentability issue would unnecessarily consume the time and resources of all parties involved. As

Illumina did not provide a meaningful distinction between the different, redundant rejections, we perceived no unfairness by not authorizing what appeared to be redundant challenges because an inter partes review had been instituted on the same factual basis.

Illumina contends:

[A]lthough the references are used to support invalidity contentions regarding the same claims, the references themselves are not identical. Thus, the Patent Owner may assert that a claim element is not present, or would not be obvious to combine with another reference, when that same element is more clearly set forth in a different reference.

(Illumina Req. Reh'g 14.)

While it is true that the cited references are not identical, the cited references appear to have been cited for the same facts. Illumina speculates that in certain publications an element may be more clearly set forth in one publication rather than another, but has not provide a persuasive example of such a case.

Dower

Illumina contends there is Dower is not duplicative to Tsien, and cites one such difference (Req. Reh'g 15). However, Illumina did not provide an adequate explanation as to how this difference would impact the unpatentability challenge.

#### I.C. STEMPLE REJECTIONS

We authorized inter partes review of claims 12, 13, 17, 20-23, 25, 26, 28, 29, and 31 under 35 U.S.C. § 102(a) as anticipated by Stemple II; and of claims 15 and 16 under 35 U.S.C. § 103(a) as obvious in view of Stemple II

and Anazawa, but did not authorize review based on Stemple III as an anticipatory reference or on Stemple III and Anazawa (Petition 54 & 55).

It was explained in the Decision that Stemple II is a PCT application published September 14, 2000 having an international filing date of March 10, 2000 and claiming priority to U.S. Application Serial No. 09/266,187, filed March 10, 1999. Stemple III is US 7,270,951 B1, which issued from a national phase Application of Stemple II. It was found in the '869 Decision that Illumina relies on substantially the same disclosure for Stemple III as they did for Stemple II, and therefore inter partes review was not authorized for the unpatentability challenges based on Stemple III because they are redundant ('869 Decision 22 & 32).

However, Illumina identifies a difference between the two publications:

[T]he effective filing date of the references under 35 U.S.C. § 102(a) for Stemple II (September 14, 2000), and under 35 U.S.C. § 102(e) for Stemple III (March 10, 1999). Although both references antedate the priority date accorded the '869 patent, the Patent Owner may attempt to establish that the invention was conceived prior to the current priority date.

(Illumina Req. Reh'g 14-15.)

We agree with Illumina that this distinction is reason to authorize review based on the Stemple III publication. Columbia has no objection to Stemple III being substituted for Stemple II (Columbia Opposition to Illumina's Request for Rehearing 1, dated April 26, 2013 (Paper 49)). Consequently, we modify that '869 Decision as follows:

III. Claims 12, 13, 17, 20-23, 25, 26, 28, 29, and 31 under 35 U.S.C. § 102(a) as anticipated by Stemple III. See Grounds 10 and 11 which

individually cited Stemple II and Stemple III, respectively, as anticipatory publications (Petition iii).

IV. Claims 15 and 16 under 35 U.S.C. § 103(a) as obvious in view of Stemple III and Anazawa. See Grounds 12 and 13 which individually cited Stemple II and Stemple III, respectively, in obviousness challenges (Petition iii).

## II. COLUMBIA'S REQUEST FOR REHEARING

Columbia contends the Board erred in instituting inter partes review of claims 12, 13, 17, 20-26, 28, 29, 31 and 33 of the '869 patent on the ground of anticipation under 35 U.S.C. §102(b) based on Tsien (Columbia Req. Reh'g; Paper 41). Columbia's arguments are addressed below.

### II.A. Tsien's preferred embodiments were overlooked

Columbia contends that in reaching the determination to institute inter partes review based on Tsien as an anticipatory reference, the Board overlooked Tsien's preferred embodiments (Columbia Req. Reh'g 6). As they argued in the Preliminary Response, "Tsien does not teach the required selections and combinations, and in fact they are contrary to Tsien's preferred selections and combinations. One does not "at once envisage" the claimed nucleotide from the Tsien disclosure. Therefore, Tsien does not anticipate claim 12." (Prelim. Resp. 14.)

The '869 Decision acknowledged Columbia's identification of other disclosures in Tsien where the detectable label could be attached, in addition to the claimed 3'-hydroxyl position ('869 Decision 11). The argument was found not to be persuasive.

Columbia characterizes Tsien's disclosure of incorporating a detectable label (also known as a "reporter group") into the '3-OH hydroxyl group as a "preferred embodiment," pointing to disclosures, e.g., at page 13, lines 14-16; page 14, lines, 19-23; page 26, lines 13-15; and page 27, lines 33-35 (Prelim. Resp., pp. 13 & 9). Even if it is true, that the 3'-hydroxyl is the preferred location for the detectable label, Tsien also expressly teaches coupling label to the base as we found in Finding 1 reproduced below ('869 Decision 9):

While the above-described approaches to labeling focus on incorporating the label into the 3'-hydroxyl blocking group, there are a number of alternatives - particularly the formation of a 3'-blocked dNTP analogue containing a label such as a fluorescent group coupled to a remote position such as the base. This dNTP can be incorporated and the fluorescence measured and removed according to the methods described below.

(Tsien, p. 27, l. 33-p. 28, l. 4.) (Emphasis added.) (See Petition, page 23, lines 1-5.)

## II. B. Illumina's failure to cite disclosure in Tsien of limitations of claim 12 combined in the same way as the claims was overlooked

Columbia contends that Illumina has failed to cite to any portion of Tsien to indicate that a skilled person would "at once envisage" the features of claim 12 disclosed in Tsien arranged as in the claim (Req. Reh'g 7).

Illumina provided a claim chart on pages 22-23 of the Petition, and accompanying figures, identifying where each feature of the nucleotide of claim 12 could be found. In the Preliminary Response, Columbia argued that

Illumina's Petition fails to cite any disclosure in Tsien of a nucleotide which combines all the features recited in claim 12.

Illumina's arguments rely on picking different features from different lists in different sections of Tsien and combining those features without any explanation why one skilled in the art would do so.

(Prelim. Resp. 8.) However, the only specific element clearly challenged by Columbia was of the requirement of a nucleotide with "a base that is attached to a detectable label through a cleavable linker" (Preliminary Response, pp. 8-10.)

We found based on Illumina's specific references to Tsien's disclosure, that Tsien describes a nucleotide with a capped and cleavable group at the 3'-OH position as recited in claim 12 (Petition 21-22). Columbia failed to convincingly argue otherwise. Claim 12 additionally requires a label attached to the base by a cleavable linker. It was recognized in the '869 Decision that a nucleotide with such a feature is not described *ipsis verbis* in Tsien. But, it was found that this is the only "choice" to be made from Tsien to have made the claimed nucleotide. All other elements are described in Tsien in the same way as in claim 12. We gave a reason, based on the citations to Tsien provided by Illumina, why the skilled worker would have chosen a label attached to a base by a cleavable linker. Columbia has not identified an error in this reasoning.

The fact that the '869 Decision, in reaching this determination, cited legal principles that were not expressly set forth by Columbia, does not mean that the Board considered arguments not raised by Illumina ("the Board inappropriately constructed on Illumina's behalf an argument that does not appear in Illumina's petition, namely that Columbia erroneously required a single working example in order for Tsien to anticipate")

(Columbia '869 Req. Reh'g 9). It is the duty of the Board to apply the pertinent law to the facts before us.

### II.C. Claims 13, 17, 20-26, 28, 29, 31, and 33

Columbia contends that the Board overlooked that Illumina failed to identify specifically where each limitation discussed is found in Tsien combined as recited in claims 13, 17, 20-26, 28, 29, 31 and 33 of the '869 patent (Req. Reh'g 10).

This argument is not persuasive. On pages 23-26, Illumina described where each element of the dependent claims could be found in Tsien. Columbia did not identify a deficiency in Illumina's facts, and we found none. Moreover, Illumina did not "specifically identify all matters the party believes the Board misapprehended or overlooked" in finding claims 13, 17, 20-26, 28, 29, 31 and 33 anticipated by Tsien.

### III. SCHEDULING ORDER

In the conference call on April 16, 2013 between Illumina, Columbia, and the PTAB panel, Columbia requested a change in the Scheduling Order (Paper 39) to provide more time, depending on the outcome of the decision on Illumina's Request for Rehearing. While the '869 Decision on Petition has been modified, the modification is not deemed sufficient to warrant a time extension on any of the dates in the Scheduling Order. Columbia's request is therefore DENIED.

#### IV. SUMMARY

##### I. Illumina Request for Rehearing

The '869 Decision is modified as follows:

Pursuant to 35 U.S.C. § 314, inter partes review was instituted on challenges III and IV. We modify III and IV by substituting Stemple III for Stemple II:

III. Claims 12, 13, 17, 20-23, 25, 26, 28, 29, and 31 under 35 U.S.C. § 102(a) as anticipated by Stemple III.

IV. Claims 15 and 16 under 35 U.S.C. § 103(a) as obvious in view of Stemple III and Anazawa.

##### II. Columbia Request for Rehearing

Columbia's request for rehearing has been considered, but is denied. We decline to modify the '869 Decision on the basis set forth by Columbia.

GRANTED-IN-PART

Case IPR2012-00007  
U.S. Patent 7,790,869

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