

FAQs relating to Munich Court May 2023 Ruling

- 1. Q. I'm a customer outside of Germany. Does the outcome in Germany impact me?**
A. The ruling of the Germany court regarding CosMx is limited to Germany and therefore does not impact sales and use of CosMx outside of Germany.
- 2. Q. Are the other NanoString platforms (GeoMx, nCounter) impacted by this ruling?**
A. No, these instruments and all related products are not impacted by the ruling.
- 3. Q. Will NanoString appeal the Munich Court ruling? How long is the appeal process?**
A. Yes, NanoString will appeal the ruling. The appeal process will likely take another 18 months. NanoString is also challenging the patent's validity through a "nullity" action with the German Federal Patent Court. Such a ruling would lift the injunction in Germany on CosMx for RNA sequencing.
- 4. Q. Why should we expect the outcome in the US to be different than what happened in Germany?**
A. German case has no effect or authoritative value on the US case and is not "portable" to other jurisdictions. The patents claims are different. US law also affords NanoString different procedures, defenses, and approaches to challenge patent claims we believe to be erroneous.
- 5. Q. Will the decision in Germany impact any other European countries?**
A. No, we do not believe it will. The scope of this decision is limited to Germany and does not impact other markets.
- 6. Q. Is NanoString able to sell CosMx instrument in Germany?**
A. Yes, CosMx can be sold and used for protein analysis in Germany. The only limitation imposed by this ruling is on the use of CosMx for RNA sequencing and sale of RNA assays in Germany. NanoString will continue to offer customers a suite of best-in-class complimentary platforms: CosMx Spatial Molecular Imager (SMI) and our GeoMX Digital Spatial Profiler (DSP). Both instruments are integrated with our spatial informatics platform, AtoMx, a versatile storage and analysis cloud computing platform.
- 7. Q. Will NanoString still service my CosMx instrument in Germany?**
A. Yes. The ruling does not impact CosMx service plans.
- 8. Q. I am a German customer. May I send my samples for RNA analysis to NanoString for processing in a CosMx TAP lab or to a CRO/core lab outside of Germany?**
A. Yes, and we will be happy to assist you with coordinating that.
- 9. Q. I am a German customer. May I keep my CosMx system despite the injunction in Germany?**
A. Absolutely. The CosMx system may continue to be used for protein analysis and protein reagents remain available for purchase.

10. Q: Can customers in Germany still use AtoMx Spatial Informatics Platform (SIP) to analyze RNA data.

A: Yes

11. Q. Why is the process in Germany different than the US?

A. The main process difference is the separation of the nullity proceeding from the infringement proceeding. Since the parallel court proceeding evaluating the validity of this patent has not reached a final decision, the validity of the patent has not been fully evaluated by the German Court responsible for that decision. In this case, it will require an extra year for us to receive the invalidity ruling we believe should be issued.

12. Q. How has the difference in process impacted you in this case?

A. In addition to separating the nullity and infringement proceedings, the German legal system favors patent injunctions, which is a reason why non-German companies file patent lawsuits in Germany. Most countries do not have this favoritism towards injunctions in patent lawsuits.

13. Q. What is the basis of NanoString's confidence in the invalidity of the patent in the German case?

A. The German Federal Patent Court issued a preliminary opinion in the nullity action finding that the subject matter of the patent lacked novelty and lacked an inventive step over prior art. 10x has attempted to limit its claims to try to get around this problem for it and we believe will ultimately be unsuccessful in the final decision in May 2024.