IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

10x GENOMICS, INC., Plaintiff, v. CELSEE, INC., Defendant.	Civil Action No. 19-862-CFC-SRF

MEMORANDUM ORDER

Plaintiff 10x Genomics alleges that Defendant Celsee infringes claims 1, 3, 4, 5, and 11 of U.S. Patent No. 10,392,662 (the #662 patent) "by making, using, and selling the Celsingle beads." D.I. 265 at 2. Pending before me is 10x's Motion for Summary Judgment of Direct Infringement of the #662 patent. D.I. 260.

The parties agree that resolution of the motion turns on whether the accused Celsingle beads are "covalently attached to a plurality of oligonucleotide tags," as required by the asserted claims. *See* #662 patent at claims 1, 3, 4, 5, and 11; D.I. 300 at 3–14. Although the parties originally disputed how "covalently attached" should be construed, they stipulated at the Markman hearing that "covalently attached" means "wherein the beads [are] attached to a plurality of oligonucleotide

tags by at least one covalent bond." D.I. 301, Ex. F at 49:12–15. Accordingly, I adopted that construction of the term.

It is undisputed that the accused Celsingle beads are attached to the oligonucleotide tags by a linker, and thus do not share a direct covalent bond. D.I. 265 at 23–24; D.I. 301 ¶¶ 5–7. 10x argues that the stipulated definition of "covalently attached" "does not require a direct attachment" and that the claim limitation is met where an oligonucleotide tag is connected to a linker with a covalent bond and the linker is connected to a bead with a covalent bond. D.I. 265 at 24. Celsee argues that "covalently attached" "requires that at least one atom of a tag share an electron pair with at least one atom of the bead." D.I. 300 at 5.

I agree with Celsee. As 10x's own expert explained: "A covalent bond is one in which pairs of atoms are strongly bound together by sharing electrons between them." D.I. 301, Ex I at 28. Thus, "covalently attached" requires that the bead be attached to the oligonucleotide tag "by at least one covalent bond."

10x has not put forth any evidence that at least one atom of an oligonucleotide tag shares an electron pair with at least one atom of the accused Celsingle bead. Accordingly, it has failed to demonstrate that the Celsingle beads meet every limitation of the asserted claims of the #662 patent, and I will deny its motion. *See Exergen Corp. v. Wal-Mart Stores, Inc.*, 575 F.3d 1312, 1320 (Fed.

Cir. 2009) ("Direct infringement requires a party to perform each and every step or element of a claimed method or product.").

NOW THEREFORE, at Wilmington this Sixth day of April in 2021, **IT IS HEREBY ORDERED** that Plaintiff's Motion for Summary Judgment of Direct Infringement of the #662 Patent (D.I. 260) is **DENIED**.

UNITED STATES DISTRICT JUDGE