UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of
CERTAIN NANOPORES AND
PRODUCTS CONTAINING SAME

Investigation No. 337-TA-991

CONSENT ORDER

The International Trade Commission (the "Commission") has instituted the above-captioned investigation under Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), based upon the allegations in a complaint filed by Complainants Illumina, Inc., the University of Washington, and the UAB Research Foundation (collectively, "Complainants") on February 23, 2016, as supplemented, that alleged violations of Section 337 of the Tariff Act of 1930 as amended (19 U.S.C. § 1337), by Respondents Oxford Nanopore Technologies Ltd. and Oxford Nanopore Technologies, Inc. (collectively, "ONT" or "Respondents") in the importation into the United States, sale for importation into the United States, and/or sale after importation into the United States of certain nanopores and products containing same, including the Subject Articles (as defined below), that Complainants allege infringe claims 2-4, 7-9, 13-15, 17-18, 20-22, 24, 26-28, 31-33, 35-36, and 38-40 of U.S. Patent No. 8,673,550 ("the '550 Patent"); and claims 1-31 of U.S. Patent No. 9,170,230 ("the '230 Patent") (collectively, the "Asserted Claims").

ONT and Complainants have executed a Consent Order Stipulation and Settlement Agreement ("Settlement Agreement") in which these parties agree to the entry of this Consent Order and to all waivers and other provisions as required by Commission Rule of Practice and
Procedure 210.21(c) (19 C.F.R. § 210.21(c)). Complainants and Respondents have filed a Joint Motion for Termination of the Investigation based upon the Consent Order Stipulation.

**IT IS HEREBY ORDERED THAT:**

1. The Complainants in this Investigation are Illumina, Inc., a Delaware corporation having a principal place of business at 5200 Illumina Way, San Diego, CA 92122; the University of Washington, a public institution of higher education having its principal campus in Seattle, WA; and the UAB Research Foundation, a non-profit corporation organized under the laws of the State of Alabama having its principal place of business at 701 20th Street South, Administration Building 770, Birmingham, AL 35233.

2. The Respondents covered by this Consent Order are Oxford Nanopore Technologies Ltd., a corporation organized under the laws of England and Wales that has a principal place of business at Edmund Cartwright House, 4 Robert Robinson Avenue, Oxford Science Park, OX4 4GA, United Kingdom, and Oxford Nanopore Technologies, Inc., a corporation organized under the laws of Delaware with its principal place of business at 1 Kendall Square, Building 200, Cambridge, MA 02139.

3. This Consent Order shall be applicable to and binding upon ONT and its officers, directors, agents, servants, employees and all persons, firms, corporations, successors, assigns or other entities under the direction or authority of ONT.

4. Upon entry of this Consent Order, ONT will not import into the United States, sell for importation into the United States, or sell or offer for sale within the United States after importation any Stipulated Nanopore (as defined below) or any products containing a Stipulated Nanopore (together, the “Subject Articles”), directly or indirectly, except (i) under consent or license from one or more of the Complainants or (ii) as permitted by 19 U.S.C. § 1337(l). For
the avoidance of doubt, the Subject Articles consist only of (a) a Stipulated Nanopore, and
(b) products containing a Stipulated Nanopore.

5. Applicable definitions:

(a) “Stipulated Nanopore” refers to a nanopore comprising one or more polypeptides having an
amino acid sequence at least 68% Identical to the full length amino acid sequence of the wild-
type *Mycobacterium smegmatis* porin A (MspA) or to the amino acid sequence of a MspA
Paralog. For the avoidance of doubt, a Stipulated Nanopore does not include a CsgG Nanopore;
(b) “MspA Paralog” refers to a polypeptide which is encoded by a gene from *Mycobacterium
smegmatis* and which has similar structure and function as MspA, such as MspB, MspC, and
MspD;
(c) “Identical” means, with respect to any position within an amino acid sequence, that a position
in the first sequence is occupied by the same amino acid as the corresponding position in the
second sequence; and
(d) “CsgG Nanopore” refers to a nanopore that (i) comprises five or more polypeptides where
each such polypeptide has an amino acid sequence at least 75% Identical to the full length amino
acid sequence of the wild-type *Escheridia coli* outer membrane lipoprotein CsgG and (ii) has no
insertions or replacements of 20 contiguous amino acids or more with an amino acid sequence at
least 68% Identical to the amino acid sequence of the wild-type *Mycobacterium smegmatis porin
A* (MspA) or to the amino acid sequence of a MspA Paralog.

6. Upon entry of this Consent Order, ONT shall not aid, abet, encourage, participate
in, or induce the sale for importation, the importation, or the sale after importation into the
United States of the Subject Articles, except (i) under consent or license from one or more of the
Complainants or (ii) as permitted by 19 U.S.C. § 1337(l).
7. Upon entry of this Consent Order, to the extent that ONT has any inventory of the Subject Articles in the United States intended for sale in the United States, ONT will destroy such commercial inventory, except as permitted by 19 U.S.C. § 1337(l).

8. Upon entry of this Consent Order, ONT shall cease and desist from importing into the United States and distributing in the United States the Subject Articles, except (i) under consent or license from one or more of the Complainants or (ii) as permitted by 19 U.S.C. § 1337(l).

9. ONT shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of this Consent Order.

10. ONT shall cooperate with and shall not seek to impede by litigation or other means the Commission’s efforts to gather information under subpart I of the Commission’s Rules of Practice and Procedure, 19 C.F.R. Part 210.

11. ONT and its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority, shall not seek to challenge the validity or enforceability of the Asserted Claims in any administrative or judicial proceeding to enforce this Consent Order.

12. When the ’550 or ’230 patents expire, this Consent Order shall become null and void as to such expired patent.

13. This Consent Order shall not apply with respect to any claim of any intellectual property right that has been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction or as to any article that has been found or adjudicated not to infringe the asserted right, provided that such finding or judgment has become final and no longer subject to appeal.
14. This Investigation is hereby terminated in its entirety; provided, however, that enforcement, modification, or revocation of the Consent Order will be carried out pursuant to subpart I of the Commission’s Rules of Practice and Procedure, 19 C.F.R. Part 210.

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: August 18, 2016
CERTAIN NANOPORES AND PRODUCTS CONTAINING SAME

PUBLIC CERTIFICATE OF SERVICE

I, Lisa R. Barton, hereby certify that the attached ORDER has been served by hand upon the Commission Investigative Attorney, Monica Bhattacharyya, Esq., and the following parties as indicated, on August 19, 2016.

[Signature]
Lisa R. Barton, Secretary
U.S. International Trade Commission
500 E Street, SW, Room 112
Washington, DC 20436

On Behalf of Complainants Illumina, Inc., University of Washington, and UAB Research Foundation:

Christian A. Chu
FISH & RICHARDSON, P.C.
1425 K Street, NW, 11th Floor
Washington, DC 20005

☐ Via Hand Delivery
☐ Via Express Delivery
☒ Via First Class Mail
☐ Other: ______________

On Behalf of Respondents Oxford Nanopore Technologies Ltd. and Oxford Nanopore Technologies, Inc.:

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