

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

IN RE: HUMIRA (ADALIMUMAB)
ANTITRUST LITIGATION

Case No. 1:19-cv-01873

Hon. Manish S. Shah
Magistrate Judge Jeffrey Cummings

**PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY
IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

Plaintiffs respectfully submit a recent ruling from *Nuance Communications, Inc. v. Omilia Natural Language Solutions, Ltd.*, No. 19-1138, 2020 WL 2198362 (D. Mass. May 6, 2020) (Exhibit A), denying the defendant's motion to dismiss in pertinent part, as supplemental authority in further opposition to Defendants' motion to dismiss. ECF No. 123.

In *Nuance Communications*, the plaintiff asserted infringement claims regarding eight patents, and the defendant counterclaimed, asserting, among other claims, a violation of Section 2 of the Sherman Act. The counterclaim-plaintiff alleged that the counterclaim-defendant's strategy of acquiring competitors and patents and then "using its massive portfolio of acquired patents to drive its competitors out of the market," filing at least 17 patent infringement suits against its competitors, was anticompetitive and enabled the counterclaim-defendant to "maintain supra-competitive prices." Ex. A at *1-2 (internal quotations omitted)

Of particular relevance here, the motion to dismiss decision addresses the following issues:

- Whether acquiring and wielding a large number of patents can support a claim for violation of Section 2 of the Sherman Act (Ex. A at *4);

- Whether filing repeated patent infringement suits against would-be competitors can support a claim for violation of Section 2 of the Sherman Act (Ex. A at *4);
- Whether, in the antitrust context, individual acts which may be legal when considered alone become illegal when they are part of an unlawful scheme (Ex. A at *4); and
- Whether the overall effects of an accused monopolist’s conduct must be considered when evaluating whether the conduct violated Section 2 of the Sherman Act (Ex. A at *4); and
- Whether it is appropriate to decide, on a motion to dismiss, the applicability of Noerr-Pennington immunity. (Ex. A at *5.)

Dated: May 15, 2020

Respectfully submitted,

<p><u>/s/ Lauren G. Barnes</u></p> <p>Lauren G. Barnes HAGENS BERMAN SOBOL SHAPIRO LLP 55 Cambridge Parkway, Suite 301 Cambridge, MA 02142 Telephone: (617) 482-3700 Facsimile: (617) 482-3003 Email: lauren@hbsslw.com</p>	<p><u>/s/ Karin E. Garvey</u></p> <p>Karin E. Garvey LABATON SUCHAROW LLP 140 Broadway New York, NY 10005 Telephone: (212) 907-0700 Facsimile: (212) 818-0477 Email: kgarvey@labaton.com</p>	<p><u>/s/ Dena C. Sharp</u></p> <p>Dena C. Sharp GIRARD SHARP LLP 601 California Street, 14th Floor San Francisco, CA 94108 Telephone: (415) 981-4800 Facsimile: (415) 981-4846 Email: dsharp@girardsharp.com</p>
<p style="text-align: center;"><i>Interim Co-Lead Class Counsel for the Plaintiffs</i></p>		