

IPR2023-00955 (U.S. Patent No. 10,240,197) Paper No. 21
IPR2023-00958 (U.S. Patent No. 10,697,013) Paper No. 23

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PARSE BIOSCIENCES, INC.,
Petitioner,

v.

10X GENOMICS, INC.,
Patent Owner.

IPR2023-00955 (U.S. Patent No. 10,240,197)
IPR2023-00958 (U.S. Patent No. 10,697,013)

RECORD OF ORAL TELECONFERENCE
HELD: JULY 2, 2024

Before MICHAEL J. FITZPATRICK, SHERIDAN K. SNEDDEN, and DEVON
ZASTROW NEWMAN, *Administrative Patent Judges*

IPR2023-00955 (U.S. Patent No. 10,240,197)

IPR2023-00958 (U.S. Patent No. 10,697,013)

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10X In-House Counsel

The above-entitled matter came on for a teleconference on Tuesday, July 2, 2024 commencing at 4:05 PM, at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

In the Matter Of:

10 X GENOMICS, INC., vs

PARSE BIOSCIENCES, INC.,

IPR CONFERENCE

July 02, 2024



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

10X GENOMICS, INC. and THE BOARD
OF TRUSTEES OF LELAND STANFORD
JUNIOR UNIVERSITY,

Plaintiff,

vs.

Case No.
22-cv-1117-JHS

PARSE BIOSCIENCES, INC.,

Defendant.

** IPR CONFERENCE **

BEFORE: JUDGE MICHAEL J. FITZPATRICK
JUDGE SHERIDAN K. SNEDDEN
JUDGE DEVON ZASTROW NEWMAN

Tuesday, July 2, 2024

4:05 p.m. (EDT)

Reported by:

Joan Ferrara, RMR, FCRR

Job No. 2024-947561

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July 2, 2024

4:05 p.m. (EDT)

IPR Conference held before Judge
Michael J. Fitzpatrick, Judge Sheridan K.
Snedden and Judge Devon Zastrow Newman,
via teleconference, before Joan Ferrara,
a Registered Merit Reporter, Federal
Certified Realtime Reporter and Notary
Public.

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NICOLE WILLIAMS, 10X In-House

1 JUDGE FITZPATRICK: Good
2 afternoon. This is Judge Fitzpatrick.
3 With me on the line are Judges Zastrow
4 Newman and Snedden. This is for IPR
5 2023-00955 and 2023-00958.

6 It sounds like there's a lot of
7 people. I heard 10 people on the
8 phone. Let's start with petitioner.
9 Maybe who whoever is going to be
10 speaking can identify all the parties
11 that are on the line on behalf of
12 petitioner.

13 MR. WALTER: Thank you, your
14 Honor. This is Derek Walter of Weil
15 Gotshal & Manges. I'm also here with
16 Ed Reines.

17 One brief note. I'm calling in
18 from overseas. My connection has been
19 pretty stable. If for some reason I
20 lose my connection, I'll dial back in
21 as quickly as I can. And if for some
22 reason I can't get back in, Mr. Reines
23 will take over for me.

24 One other note. We do have a
25 court reporter who is also on the line

1 and is transcribing the proceeding.

2 JUDGE FITZPATRICK: Excellent.

3 Thank you.

4 And for the patent owner?

5 MS. RAYMOND: Thank you, your
6 Honor. This is Megan Raymond for
7 patent owner 10X. With me are Josh
8 Reich and Steven Baughman, also both
9 of Groombridge, Wu, Baughman & Stone
10 for patent owner.

11 In addition, I have Nicole
12 Williams on the line. She is a 10X
13 in-house counsel.

14 JUDGE FITZPATRICK: Thank you.

15 After this call, when the
16 transcript becomes available,
17 Mr. Walter, will you have it filed,
18 filed it as a paper?

19 MR. WALTER: Yes, I will.

20 JUDGE FITZPATRICK: Unless
21 otherwise instructed. It's possible
22 we may later ask you to file it as an
23 exhibit. I'm not sure if we have a
24 preference, but that's -- we would
25 like it filed as a paper, unless you

1 hear otherwise.

2 Okay. And then there was a lot
3 in e-mail. This call is -- I think
4 the request is by patent owner, right,
5 for the call?

6 MS. RAYMOND: That's correct,
7 your Honor.

8 JUDGE FITZPATRICK: Okay. First
9 of all, let me ask -- and we've read
10 this whole thing and we know what
11 happened at the last call -- has
12 anything happened in district court
13 since -- you know, that's not
14 reflected in this e-mail that came in
15 last week on June 25th?

16 MR. WALTER: Your Honor, who is
17 that question for? Is that to patent
18 owner, petitioner, or both of us? Who
19 would you like to handle that first?

20 JUDGE FITZPATRICK: Go ahead,
21 Mr. Walter. Why don't you start for
22 petitioner.

23 When I say has anything
24 happened, let's start with has
25 anything hit the docket in that case?

1 MR. WALTER: Yes.

2 JUDGE FITZPATRICK: That's
3 relevant?

4 MR. WALTER: Yes, something has
5 hit the docket that's relevant.

6 I think the thing that you're
7 most concerned about is has the
8 district court judge ruled on the
9 pending motion to move the trial date,
10 or the motion to strike, or set a
11 hearing date. I think that's what
12 you're most interested in.

13 Unfortunately, we haven't heard
14 anything from the judge on those
15 questions, but I think those are the
16 most important things.

17 JUDGE FITZPATRICK: Including
18 there's no -- the motion hasn't been
19 noticed for -- I forget how you
20 described it last time, I think you
21 said he likes to have a status call in
22 person and then he'll rule, typically?

23 MR. WALTER: That's what he did
24 last time. That's right, that's what
25 he did the last time, he had a status

1 call. And unfortunately hasn't
2 noticed that status call either.
3 That's what I was referring to when I
4 said he hasn't set a hearing.

5 JUDGE FITZPATRICK: Thank you.

6 MR. WALTER: So that hasn't
7 happened.

8 In terms of other developments
9 that have hit the docket, what you
10 might recall is from our last call
11 from two weeks ago, you proposed that
12 we file a couple of stipulations.

13 One of them is that we wouldn't
14 be pursuing the defense on the 9a1
15 patents, and we filed that
16 stipulation.

17 The other one was a proposed
18 stipulation that we wouldn't pursue
19 the defenses with regard to the '013
20 and '197 Patents if the district court
21 were to move the trial date. We filed
22 both of those stipulations.

23 The other thing that's happened
24 is 10X filed a letter criticizing the
25 stipulations that we filed as being

1 "empty promises," and that happened I
2 think late last week.

3 But other than that, those are
4 the only developments I can think of
5 in the district court.

6 JUDGE FITZPATRICK: Okay. Thank
7 you.

8 And then, Ms. Raymond, will you
9 add to that and include, obviously,
10 what the objections were? Is it to
11 the form of the stipulation, or is it
12 to the content of the stipulation, or
13 both?

14 MS. RAYMOND: Certainly, your
15 Honor.

16 And I just mention, I think
17 there were a couple -- there was a
18 little bit more than one brief
19 subsequent to the call with the Board.
20 Parse also filed a letter. So there's
21 been some letter briefing back and
22 forth on that.

23 With respect to the stipulation,
24 the 981 stipulation is not something
25 we are going to quibble with today.

1 The other stipulation, as
2 Mr. Walter indicated, you know, it's
3 really -- it's not a stipulation to
4 stop doing, you know, what they are
5 permitted from doing today. It's a,
6 you know, stipulation to stop doing
7 it, you know, under certain
8 circumstances in the future, you know,
9 if they would agree to stipulate to
10 not present in the district court its
11 defense if the trial date is extended
12 past the deadline for the final
13 written decision in the IPR for the
14 '013 and '197 Patents.

15 And as we, you know, discussed
16 last time, that was insufficient given
17 the promise that they made in their
18 petition and given that we're still
19 continuing to have to litigate on
20 two fronts, or pursue -- you know, we
21 still have an issue on two fronts.

22 MR. WALTER: Your Honor, can I
23 add one thing?

24 You know, I thought you were
25 asking the letter. You know, the

1 e-mail that we sent to your Honors
2 also did include a summary of what we
3 informed the district court of.

4 We block quoted a passage to the
5 district court where we laid out what
6 we understood the Board's concerns
7 were from the last call, and that if
8 we were forced to choose one venue to
9 present our defenses, it would be with
10 PTAB. So that also is on the docket
11 as well.

12 I think your Honor is probably
13 aware of that based on our e-mail, but
14 I want to be sure.

15 JUDGE FITZPATRICK: I am. I see
16 it block quoted. It begins with the
17 word "finally."

18 This is a letter that is just
19 sent to chambers or filed? In
20 addition, has the judge responded in
21 any way to this letter?

22 MR. WALTER: So your first
23 question, it is not just a letter to
24 chambers. It's filed on the docket.

25 And to answer your second

1 question, no, we haven't heard any
2 response in any way from the judge,
3 unfortunately.

4 JUDGE FITZPATRICK: Okay.
5 Anything else to add? I'm going to
6 confer with my colleagues here once
7 you are satisfied -- okay, go ahead,
8 Mr. Walter, go ahead.

9 MR. WALTER: Yeah. I have a few
10 things to add on this.

11 You know, I think I'm trying to
12 simplify this whole thing.

13 One of the things I'm certain
14 that the Board stated in the parties'
15 last call when the subject of
16 termination came up was that this was
17 a train we'd be able to stop. Okay.
18 I think that was pretty much your
19 Honor's exact words.

20 Now --

21 JUDGE FITZPATRICK: Uh-huh.

22 MR. WALTER: At the end of that
23 call, the last call, I came away from
24 the call with uncertainty as to how
25 formed the Board's position was going

1 to be, as to whether we should be able
2 to present our defense both before the
3 district court and the PTAB.

4 Your Honor did present some
5 concerns about that. But it's not
6 clear to us how firm those concerns
7 are, okay.

8 Our position is that, you know,
9 we should have the opportunity to be
10 able to present this twice, be able to
11 change the circumstances. These are
12 circumstances that we tried to avoid,
13 wherein these circumstances not
14 because of a decision or our own
15 actions, but because of things that
16 were out of our control. So that's
17 our view.

18 But if the Board's position
19 hasn't softened and if the Board's
20 position isn't going to soft, if the
21 Board's position is going to be we
22 can't present our defense both in the
23 district court and the PTAB, our
24 position today, which is the same
25 position we presented during our last

1 call, is that we'll go to the district
2 court and say, hey look, this is what
3 the Board has told us, they've told us
4 that if we continue to present our
5 defense in the district court, they're
6 going to terminate our IPR, and so
7 therefore we're not going to pursue
8 the defense in the district court.

9 If that's what the Board's
10 position is, that's what we'll do.

11 So it's unclear. And we told
12 the Board that the last time on the
13 last call, and we told the district
14 court as much in a letter that's filed
15 on the docket.

16 So if that's where we're at,
17 it's a little unclear why a motion to
18 terminate would be authorized. It's
19 unclear what the purpose of that
20 motion would be.

21 If the Board authorizes --

22 JUDGE FITZPATRICK: Well, I'll
23 let -- yeah.

24 MR. WALTER: Sorry.

25 THE COURT: I was going to say,

1 I'll let Ms. Raymond speak to that.

2 But the purpose of that motion, I
3 imagine, would be to force you to make
4 your decision.

5 And if you don't file the
6 stipulation that patent owner says you
7 are obligated to file, then they're
8 going to move to seek to terminate the
9 IPR based on those same -- which is
10 based on those same grounds.

11 MR. WALTER: Well, right. But
12 they're asking to file the motion to
13 terminate right now. That's what
14 they're asking to file right now,
15 right.

16 JUDGE FITZPATRICK: Yeah.

17 MR. WALTER: And so I'm telling
18 you now that the Board's position is
19 not going to soften on that.

20 If the Board's position is going
21 to be you can only present this in one
22 venue, then I'm telling you now that
23 we'll go to the district court, we'll
24 file the stipulation.

25 And it would be unclear why we

1 would then proceed based on what I've
2 just told you with a motion to
3 terminate.

4 Now, on the other hand, if
5 there's some possibility that the
6 Board's position will soften and if
7 through briefing we can have an
8 opportunity to try to convince the
9 Board that we should be able to
10 produce some forums, then fine, we're
11 happy to do that.

12 But like I said earlier, your
13 Honor stated in the last call, this is
14 a train we'll be able to stop.

15 We'd like to stop the train,
16 okay. We don't want to have IPRs
17 terminated because of this.

18 And so if the Board's position
19 isn't going to change, it's not going
20 to soften, it's not going to move, I
21 don't see why we'd have a motion to
22 terminate. We'll just go to the
23 district court and take this off the
24 table.

25 JUDGE FITZPATRICK: I'm sure

1 Ms. Raymond would have loved for you
2 to do that, but let's hear from her.

3 MS. RAYMOND: Yes, your Honor.

4 You know, if it's Parse's wishes
5 to stop this train, then they
6 obviously can go ahead and file the
7 stipulations in the district court.

8 Indeed, the purpose of this
9 motion is so that they decide, you
10 know, again, if Parse is continuing to
11 litigate these patents in two venues,
12 they still haven't chosen which forum
13 to move forward in. You know, while
14 they're waiting, taking depositions,
15 developing the record in both and
16 then, you know, down the road sometime
17 later they seem to say they'll make
18 their choice as to venue.

19 But, you know, I think based on
20 their promises, we're entitled to be
21 litigating this in just one venue
22 rather than two.

23 You know, this is, of course,
24 entirely contrary to the promise they
25 made in their petitions in the form of

1 the stipulation in which they promised
2 to stop pursuing the grounds in the
3 IPRs upon institution.

4 And the relevance of the
5 stipulations, of course, is whether to
6 institute and the petitioner is asking
7 litigation as if the stipulations
8 don't exist. So if a stipulation no
9 longer exists and you think it's
10 appropriate, you know, to file a
11 motion here, to go back to the IPRs.

12 And we're seeking this now, of
13 course, because the longer we have to
14 litigate in both venues, you know, the
15 more harm there is, the more multiple
16 proceedings, costs, et cetera.

17 MR. WALTER: Can I respond very
18 briefly?

19 JUDGE FITZPATRICK: Sure.

20 MR. WALTER: So, first off, we
21 still believe this whole motion to
22 terminate issue -- let's not forget,
23 it's premature. The judge hasn't
24 ruled.

25 The next paper that's going to

1 be filed is our paper. That's not
2 going to be until August 2nd. Their
3 next paper is not until September
4 13th.

5 So in these proceedings, they're
6 not going to have to do anything until
7 at least the early August timeframe,
8 which is still a month from now.

9 So there's still plenty of time
10 to wait for the district court to
11 decide what to do, which might moot
12 this whole thing. That's the first
13 point.

14 The second point is --

15 JUDGE FITZPATRICK: Mr. Walter,
16 Mr. Walter, I have to interrupt you.

17 I am so sorry. Something
18 happened on my end. Right when you
19 began to speak this last time, my
20 audio went out.

21 So do you mind repeating your
22 first point? It sounds like you were
23 just about to start a second point.
24 Could you repeat that?

25 MR. WALTER: Yes. Can you hear

1 me now, your Honor?

2 JUDGE FITZPATRICK: Yes, I can.

3 Thank you.

4 MR. WALTER: Okay. I'm sorry.

5 So my point was that we still
6 believe this whole motion to terminate
7 is premature.

8 Let's not forget the district
9 court hasn't ruled. There's still
10 plenty of time to wait for the
11 district court to rule.

12 Our next paper isn't due until
13 August 2nd. That's a month from now.
14 Their next paper isn't due until
15 September 13th.

16 They're not going to have to do
17 any more work on these IPR proceedings
18 until at least the early August
19 timeframe.

20 So there's plenty of time to
21 still wait for the district court to
22 rule, which may well moot this whole
23 issue. That's the first point. This
24 is premature.

25 The second point that I want to

1 make is, I want to reiterate this
2 again. There still hasn't been any
3 response to what we told the Board
4 last time and told the district court,
5 which is that if the Board's position
6 isn't going to soften, you can tell me
7 that the Board's position isn't going
8 to soften and that that's where the
9 Board is going to come out, it's going
10 to say, hey, you can only present this
11 in one venue, then we'll make the
12 choice.

13 But we need to know whether the
14 Board's position is going to soften or
15 not. If the Board's position isn't
16 going to soften, then we'll make the
17 choice. But if there's a possibility
18 for the Board's position to soften, if
19 there is a possibility that the Board
20 may still allow us to present this in
21 two venues, which we think is
22 appropriate under the circumstances,
23 we need to know that as well.

24 We can't just go to the district
25 court and make a decision on this

1 unless we have some idea where the
2 Board is going to come out.

3 And I'll remind your Honor
4 again, your Honor said this is a train
5 that we'd be able to stop. We'd like
6 to stop the train if the Board's
7 direction isn't going to soften.

8 JUDGE FITZPATRICK: We're going
9 in circles here.

10 Ms. Raymond, do you have
11 anything else to add? I want to
12 confer with my colleagues once you're
13 done, but I don't want to hear any
14 repetition, please.

15 MS. RAYMOND: The only thing I'd
16 mention quickly, your Honor, is that
17 there are upcoming deadlines in the
18 district court. The only ones that
19 Parse's counsel mentioned are IPR
20 deadlines. So there's deadlines for
21 depositions in early August and
22 various other deadlines going on.

23 So, you know, it's not the case
24 that we would only be proceeding, you
25 know, with efforts in one venue,

1 especially when we don't know which
2 venue we're going to ultimately be
3 proceeding in.

4 JUDGE FITZPATRICK: Okay.
5 Please stand by.

6 (Pause)

7 JUDGE FITZPATRICK: Mr. Walter
8 and Ms. Raymond, are you still there?

9 MR. WALTER: Yes.

10 MS. RAYMOND: I'm here, your
11 Honor. This is Megan Raymond.

12 JUDGE FITZPATRICK: Okay, great.
13 We're going to authorize briefing.
14 We're just finalizing some details
15 here. So please continue to stand by.

16 MS. RAYMOND: Thank you, your
17 Honor.

18 (Pause)

19 JUDGE FITZPATRICK: Okay.
20 Here's what we're going to do.

21 First of all, Mr. Walter, you'll
22 want to hear this probably first
23 before the briefing schedule.

24 The motion is going to be
25 styled -- we're going to put out an

1 order, first of all. It's a unique
2 situation. We'll put out an order
3 that will memorialize the briefing
4 schedule and also this point.

5 The relief will be the motion to
6 terminate the IPR subject -- it will
7 be subject to a failure to file the
8 stipulations within 5 business days of
9 our ruling.

10 So what's going to happen is
11 patent owner is going to get to file
12 its motion. Petitioner will be able
13 to oppose it, and then a reply.

14 We will rule. The ruling will
15 either be the motion is denied or the
16 motion is granted.

17 And patent owner has -- I'm
18 sorry, and petitioner has 5 business
19 days to file those stipulations in
20 court and show us that they've done
21 that, or we will terminate the
22 respective proceeding.

23 So that's your train stopping
24 mechanism.

25 And it's going to be -- we're

1 going to do 10 pages for the principal
2 briefs and 3 pages for the reply.

3 There's a holiday that's coming
4 up. But, Ms. Raymond, it sounds like
5 that probably wouldn't bother you.
6 You're anxious here.

7 Do you want to do 2 weeks from
8 today?

9 MS. RAYMOND: That would be
10 great, your Honor. If we can -- if
11 you'd be open to it, if we can get it
12 in earlier, then we could potentially
13 key the other deadlines off of when
14 this is filed, if it's a preference to
15 have --

16 JUDGE FITZPATRICK: I get that,
17 but I'd rather have Mr. Walter be able
18 to predict when his obligation will
19 kick in for his team, so he has a hard
20 deadline, not a deadline that --

21 MS. RAYMOND: I understand.

22 JUDGE FITZPATRICK: Yeah. So
23 let's do 2 weeks from today for you.
24 Then it will be 2 weeks from that date
25 for Mr. Walter.

1 Here, let me get some dates out
2 here so I'm not just saying that. I'm
3 pulling up my calendar.

4 So July 16th, the motion would
5 be due. July 30th, the opposition.
6 And then August 6th would be the reply
7 brief.

8 The motion would not be for
9 sanctions. You know, I was looking at
10 that rule. I don't know that that
11 would be directly on point.

12 So I think, you know, I would
13 cite to 4220, just motions in general,
14 but also it might be 4274 or 4272, the
15 one about termination of a trial, and
16 also maybe 42.5 conduct of a
17 proceeding.

18 I'll leave that up to you to
19 what you want to cite, but I wouldn't
20 get too hung up on the form of the
21 motion.

22 But we will not grant relief in
23 the following -- we won't rule on the
24 motion and terminate the trials on the
25 same date. That won't happen. The

1 termination would be, at minimum, one
2 week later, 5 business days later.

3 MS. RAYMOND: Understood, your
4 Honor.

5 JUDGE FITZPATRICK: Any
6 questions?

7 MR. WALTER: No, your Honor.

8 MS. RAYMOND: No, your Honor.
9 No questions here.

10 JUDGE FITZPATRICK: Okay, great.
11 Thank you.

12 MR. WALTER: I guess one point
13 is, you know, I assume your Honors
14 want us to update you if, in the
15 meantime, we do get movement from the
16 district court, correct?

17 JUDGE FITZPATRICK: Let's say
18 you file your opposition brief on --
19 what did I just say, was it July 30th?
20 You know, and then something happens
21 on July 31st. You know, e-mail us
22 like normal. But we don't want these
23 dense e-mails. Don't send us these
24 dense e-mails again.

25 MR. WALTER: Understood. It's

1 just, let's say in the next couple of
2 days the Court moved the trial date,
3 I'd assume you'd want to know that,
4 right? You wouldn't want us to inform
5 you about it, correct?

6 JUDGE FITZPATRICK: Sure. But
7 if that were to happen, I would reach
8 out to Ms. Raymond. Maybe you guys
9 can come to an agreement based on
10 whatever just happened in the district
11 court, if that happens, before you
12 involve us. That's a possibility. So
13 seek that out first.

14 MR. WALTER: Understood.

15 JUDGE FITZPATRICK: Okay. And
16 then just remember, please file that
17 transcript into the record. If you
18 could file it in both, just so it's in
19 both cases, that would be great.

20 We're adjourned.

21 Happy 4th of July to everybody.

22 (Time noted 4:32 p.m.)

23 * * *

24

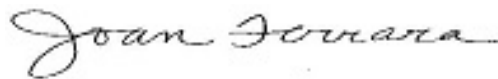
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REPORTER CERTIFICATE

I, Joan Ferrara, a Notary Public within
and for the State of Delaware, do hereby
certify that the within is a true and
accurate transcript of the proceedings taken
on the 2nd day July, 2024.

I further certify that I am not related
to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 2nd of July, 2024.

A handwritten signature in cursive script that reads "Joan Ferrara". The signature is written in dark ink and is positioned above a horizontal line.

JOAN FERRARA, RMR, FCRR

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