

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

10X GENOMICS, INC. and PRESIDENT AND
FELLOWS OF HARVARD COLLEGE,

Plaintiffs,

v.

BRUKER SPATIAL BIOLOGY, INC. AND
BRUKER NANO, INC.,

Defendants.

C.A. No. 22-261-MFK

BRUKER SPATIAL BIOLOGY, INC. AND
BRUKER NANO, INC.,

Plaintiffs,

v.

10X GENOMICS, INC.,

Defendant.

C.A. No. 22-1375-MFK

JUNE 28, 2024 JOINT STATUS REPORT

Pursuant to this Court's June 14, 2024 Oral Order, the parties jointly submit the following status report regarding case schedules, the deposition time dispute, and cross use of documents in the 261 and 595 cases.

If the Court sets a hearing on the cross-use issues raised in Section D, the parties respectfully request that Vizgen (Case No. 21-595-MFK) also be notified of the hearing.

A. 261 Case Schedule:

The parties to the 261 case (10x, Harvard, and Bruker) have not been able to reach agreement on a schedule for the 261 case. The parties' two proposed schedules for the 261 case are included in **Attachment A**.

1. 10x and Harvard's Position

10x and Harvard propose that the 261 case be tried in June of 2025 and have made minor modifications to the previously agreed schedule for the 261 case (261 Case D.I. 283-1) to allow for trial by June 2025. This follows the Court's instructions at the June 14 hearing that the Court wants to try one of these cases in June 2025 and that the Court is disinclined to change the sequencing of these cases from what it was before NanoString's bankruptcy.

2. Bruker's Position

Bruker proposes a July 2025 trial for the 261 case for the reasons addressed in Bruker's position statement re: the 1375 Case Schedule, below.

B. 1375 Case Schedule:

The parties to the 1375 case (10x and Bruker) have not been able to reach agreement on a schedule for the 1375 case. The parties' two proposed schedules for the 1375 case are also included in **Attachment A**.

1. 10x's Position Re: 1375 Case Schedule:

10x's proposed schedule for the Bruker/NanoString 1375 patent counterclaims case preserves the staging of the 261 and 1375 trials that existed prior to NanoString's bankruptcy and reflects the order that the two cases were filed. The earlier-filed 261 case will be tried in June, 2025, and the 1375 case (filed more than six months after the 261 case) would be tried a few months later in October, 2025. *See* 261 Case D.I. 231 (setting the 261 case for trial in September 2024) and 1375 Case D.I. 37 (setting the 1375 case for trial in December 2024). This follows the Court's guidance at the June 14 hearing that the 1375 counterclaim patent case should not leapfrog 10x and Harvard's earlier filed 261 case as a result of NanoString's bankruptcy.

Bruker continues to propose that its 1375 counterclaim case should leapfrog 10x and Harvard's earlier filed case, proposing a May 2025 trial date. Bruker's proposal remains doubly

prejudicial to 10x. Bruker offers no explanation for why its claims should now be heard before 10x and Harvard's earlier-filed infringement claims, particularly after NanoString repeatedly delayed 10x and Harvard's quest early in the case for earlier trial dates. Expediting Bruker's 1375 counterclaims at this late stage would also overload 10x's and Harvard's litigation counsel who will be deeply occupied in pre-trial and 10-day trial for the Vizgen 595 case at precisely the time when Bruker now proposes for expert discovery in its 1375 case. Bruker's proposal would also require both 10x and Bruker to try the 1375 case in May at the same time that 10x, Harvard, Bruker and their counsels will need to be briefing dispositive motions and preparing for the June trial of the 261 case.

10x understands the Court's guidance that a proposed trial date of October 2025 means that the 1375 case may be transferred back to a different judge in the District of Delaware. However, preserving the reasonable staging of these trials such that the later-filed counterclaim case is sensibly tried later than the earlier-filed initial case and the fact that the same parties will be trying the 261 case in June 2025 makes it logistically impractical to prepare for and try the 1375 case (and complete post-trial briefing) before this Court's target of August 1, 2025, for handing cases back to the District of Delaware. Moreover, the 1375 case involves only patent infringement claims on products that are not the products at issue in the 261 case (or in the Vizgen 595 case) such that trying the 1375 case to a different judge involves minimal loss of efficiency. 10x's proposed schedule acknowledges these realities and proposes a reasonable and expeditious schedule to trial for Bruker's counterclaim case.

2. Bruker's Position Re: 1375 Case Schedule:

Bruker objects to 10x's proposal because it disregards the wisdom of conducting both trials *before* August 1, 2025 in light of this Court's comments at the June 14, 2024 telehearing. The parties and their law firms have ample resources to complete these two trials by August 1, 2025.

Given that, Bruker proposes that the trials take place in May and July. Plaintiffs have refused to say they could be ready to try the 261 case in May 2025. That being the case Bruker proposes trying the simpler 1375 case in May and 261 case in July. If Plaintiffs are willing to try the 261 case in May 2025, Bruker would not oppose setting the 1375 trial for July – although given case complexity the opposite order makes sense for all involved.

10x's proposal to try the 1375 action in October 2025 is unjustified and creates complications. It requires case-reassignments and a real risk that the 1375 action gets delayed even further. This is inefficient and disregards judicial efficiency. Plaintiffs have been given ample opportunity for their trials to go forward promptly. In fairness, the Bruker trial should not be delayed to October 2025 where it will be subject to further rescheduling.

C. Deposition Hours:

The parties have not yet reached an agreement about how Bruker's deposition hours time limit should be adjusted. in view of the depositions already conducted in the Vizgen 595 case.

1. 10x and Harvard's Position:

Bruker has not yet made any proposal for how its deposition hours time limit should be adjusted in view of the depositions already conducted in the Vizgen 595 case.

10x and Harvard propose that by July 8 Bruker will make its proposal regarding how its deposition hours time limit should be adjusted based on the party deposition transcripts that Bruker has received. The parties will then meet and confer about that proposal that week, and the parties will submit a joint statement on July 12.

As to third-party deposition transcripts, those transcripts were designated for protection under the 595 case Protective Order and that Order *prevents* 10x and Harvard (and their counsel) from providing those transcripts to Bruker without permission from the third party (including in some cases those party's personal counsel). That is one reason why 10x and Harvard have been

working since May to get agreement from Bruker and Vizgen on cross-use of party and non-party materials between the 261 and 595 cases and to amend the protective order accordingly so that the affected third parties can be notified and assured that their confidential materials are protected.

2. Bruker's Position:

On June 14, 2024, the Court “directed 10x and Harvard to produce the existing deposition transcripts to Bruker pursuant to an understanding (to be reached) regarding cost-sharing and then to meet and confer further to attempt to resolve the dispute.” *See* June 14, 2024 Oral Order, *10x Genomics, Inc. and President and Fellows of Harvard College v. Bruker Spatial Biology, Inc. and Bruker Nano, Inc.*, C.A. No. 22-261-MFK.

Rather than simply provide Bruker with the transcript as stated in the Court's Order, 10x and Harvard sent Bruker to the different court reporters to buy their own copies of the transcripts. But Plaintiffs only approved Bruker's purchase of a partial set of deposition transcripts from the 22-595 matter, on the condition that the transcripts be designated Outside Attorneys' Eyes Only. On June 20, 2024, Bruker agreed in writing to 10x's and Harvard's condition. Bruker did not receive the partial set of transcripts until June 26, 2024 in the evening.

Bruker has yet to receive the full set of transcripts from the 22-595 matter. 10x and Harvard are withholding deposition transcripts for “nonparty” witnesses—including witnesses that Foley & Lardner (counsel for Harvard) and Tensegrity (counsel for 10x) represent, and including former employees of ReadCoor and Harvard and a designated 10x document custodian. 10x and Harvard have indicated two separate bases for withholding. First, 10x and Harvard would like an unspecified amount of time for nonparties to review the transcripts for personally confidential information. Second, neither 10x nor Harvard will share deposition transcripts for nonparty witnesses until the parties completely resolve any issues with the proposed amended PO regarding cross use. 10x and Harvard fail to explain why addressing cross-use in a protective order is

necessary before this set of deposition transcripts may be shared. Nevertheless, Bruker and Vizgen conferred and have proposed amended protective orders. The parties will meet and confer on the deposition time dispute once Bruker has received the relevant universe of deposition transcripts and has had adequate time to review them.

As can be seen, 10x and Harvard have not made it easy for Bruker to obtain the existing deposition transcripts. Bruker requests a week from receipt of the transcripts to resolve the deposition hours issue. Bruker also requests that the Court direct 10x and Harvard to provide any transcripts for which Bruker has not yet had access by July 8. Bruker long ago agreed to treat all such transcripts as marked under the relevant protective orders.

D. Cross-Use of Documents in the 261 and 595 Cases:

10x, Harvard, Bruker, and Vizgen have continued to discuss 10x and Harvard's proposal for the cross use of party and third-party materials in the 261 and 595 cases.

1. 10x and Harvard's Position

More than a month ago, 10x and Harvard proposed amending the Protective Order in the 595 and 261 Cases to permit documents produced by Vizgen and Bruker to be used in the other case. 10x and Harvard have already been producing documents responsive to either defendant's request in the cross-litigation. Given the large overlap of Bruker and Vizgen's antitrust counterclaims against 10x and Harvard involving substantial party discovery relating to alleged antitrust markets and Bruker/NanoString and Vizgen's information, substantial discovery has been produced that is relevant to the cross case. It is hugely inefficient to require 10x and Harvard to use subpoena procedures to obtain relevant information from Bruker for cross-use in the Vizgen 595 case when that information has already been produced by Bruker in the 261 case. Vizgen has agreed to the cross-use of certain identified Vizgen materials in the 261 Bruker case, and 10x and Harvard are hopeful about continuing discussions. Bruker has not yet agreed to the cross use of

any of its materials in the 595 case, even while insisting on immediate production of Vizgen and 10x deposition materials to be cross-provided to Bruker, as well as immediate production of the deposition transcripts of third-party witnesses who are not within the control of 10x or Harvard. 10x and Harvard expect to seek a briefing schedule within the coming week if Bruker and Vizgen do not cooperate in cross-use of party information and in negotiating adequate protective order amendments and reasonable procedures for the protection and cross-use of third party information. Bruker and Vizgen's tactical delays on this issue are starting to threaten the fact cutoff in the 595 Case.

2. Bruker's Position

Bruker agreed at the outset to a broad cross-use arrangement between these cases and the Vizgen case. The problem is that Vizgen objects to its production to 10x and Harvard broadly also going to Bruker, even under the Protective Order. This creates the situation where, under 10x and Harvard's proposal, they can cherry pick documents to use from the Vizgen production and Bruker will not even have that full production to select documents, much less to identify related documents to those 10x and Harvard plan to use. That is unreasonable.

Respectfully submitted,

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