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1:23-cv-00198-CJB Agilent Technologies, Inc. v. Axion BioSystems, Inc.
 Christopher J. Burke, presiding
Date filed: 02/23/2023
Date of last filing: 09/10/2025

History

Doc. No.	Dates	Description
1	<i>Filed & Entered:</i> 02/23/2023	Complaint
	<i>Docket Text:</i> COMPLAINT FOR PATENT INFRINGEMENT filed with Jury Demand against Axion BioSystems, Inc. (Filing fee \$ 402, receipt number ADEDC-4074456.) - filed by Agilent Technologies, Inc. (Attachments: # (1) Exhibit A-EE, # (2) Civil Cover Sheet)(jfm)	
2	<i>Filed & Entered:</i> 02/23/2023	Magistrate Consent Forms
	<i>Docket Text:</i> Notice, Consent and Referral forms re: U.S. Magistrate Judge jurisdiction. (jfm)	
3	<i>Filed & Entered:</i> 02/23/2023	Patent/Trademark Report to Commissioner
	<i>Docket Text:</i> Report to the Commissioner of Patents and Trademarks for Patent/Trademark Number(s) 7,192,752 B2; 7,468,255 B2; 8,026,080 B2. (jfm)	
4	<i>Filed & Entered:</i> 02/23/2023	Disclosure Statement
	<i>Docket Text:</i> Disclosure Statement pursuant to Rule 7.1: No Parents or Affiliates Listed filed by Agilent Technologies, Inc. (jfm)	
5	<i>Filed & Entered:</i> 02/23/2023	Summons Issued
	<i>Docket Text:</i> Summons Issued as to Axion BioSystems, Inc. on 2/23/2023. (jfm)	
6	<i>Filed & Entered:</i> 02/24/2023	Summons Returned Executed
	<i>Docket Text:</i> SUMMONS Returned Executed by Agilent Technologies, Inc..Axion BioSystems, Inc. served on 2/24/2023, answer due 3/17/2023. (Egan, Brian)	
	<i>Filed & Entered:</i> 03/01/2023	Case Assigned/Reassigned
	<i>Docket Text:</i> Case Assigned to Judge Colm F. Connolly. Please include the initials of the Judge (CFC) after the case number on all documents filed. (rjb)	
7	<i>Filed & Entered:</i> 03/03/2023	Order
	<i>Docket Text:</i> STANDING ORDER REGARDING BRIEFING IN ALL CASES (nmf)	
	<i>Filed & Entered:</i> 03/09/2023	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, re [8] STIPULATION TO EXTEND TIME to Respond to the Complaint to April 17, 2023, filed by Axion BioSystems, Inc. Reset Answer Deadlines: Axion BioSystems, Inc. answer due 4/17/2023. Ordered by Judge Colm F. Connolly on 3/9/2023. (kmd)	
8	<i>Filed & Entered:</i> 03/09/2023	Stipulation to EXTEND Time
	<i>Terminated:</i> 03/09/2023	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to Respond to the Complaint to April 17, 2023 - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
	<i>Filed & Entered:</i> 03/17/2023	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, re [9] MOTION for Pro Hac Vice Appearance of Attorney David M. Maiorana, Ryan K. Walsh, Geoffrey K. Gavin, and Laura M. Kanouse, filed by Axion BioSystems, Inc.	

	Ordered by Judge Colm F. Connolly on 3/17/2023. (kmd)	
	<i>Filed & Entered:</i>	03/17/2023 Add Attorneys Pro Hac Vice
	<i>Docket Text:</i> Pro Hac Vice Attorney David M. Maiorana for Axion BioSystems, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (apk)	
	<i>Filed & Entered:</i>	03/17/2023 Add Attorneys Pro Hac Vice
	<i>Docket Text:</i> Pro Hac Vice Attorney Ryan K. Walsh for Axion BioSystems, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (apk)	
9	<i>Filed & Entered:</i>	03/17/2023 Motion for Leave to Appear Pro Hac Vice
	<i>Terminated:</i>	03/17/2023
	<i>Docket Text:</i> MOTION for Pro Hac Vice Appearance of Attorney David M. Maiorana, Ryan K. Walsh, Geoffrey K. Gavin, and Laura M. Kanouse - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
	<i>Filed & Entered:</i>	03/20/2023 Add Attorneys Pro Hac Vice
	<i>Docket Text:</i> Pro Hac Vice Attorney Geoffrey K. Gavin for Axion BioSystems, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (apk)	
	<i>Filed & Entered:</i>	03/20/2023 Add Attorneys Pro Hac Vice
	<i>Docket Text:</i> Pro Hac Vice Attorney Laura M. Kanouse for Axion BioSystems, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (jdb)	
	<i>Filed & Entered:</i>	04/06/2023 SO ORDERED
	<i>Docket Text:</i> SO ORDERED, re [10] MOTION for Pro Hac Vice Appearance of Attorney Peter J. Chassman and Hallie H. Wimberly, filed by Agilent Technologies, Inc. Ordered by Judge Colm F. Connolly on 4/6/2023. (kmd)	
10	<i>Filed & Entered:</i>	04/06/2023 Motion for Leave to Appear Pro Hac Vice
	<i>Terminated:</i>	04/06/2023
	<i>Docket Text:</i> MOTION for Pro Hac Vice Appearance of Attorney Peter J. Chassman and Hallie H. Wimberly - filed by Agilent Technologies, Inc.. (Egan, Brian)	
11	<i>Filed & Entered:</i>	04/17/2023 Motion to Dismiss for Failure to State a Claim
	<i>Terminated:</i>	05/15/2023
	<i>Docket Text:</i> MOTION to Dismiss for Failure to State a Claim - filed by Axion BioSystems, Inc.. (Attachments: # (1) Text of Proposed Order)(Mayo, Andrew)	
12	<i>Filed & Entered:</i>	04/17/2023 Opening Brief in Support
	<i>Docket Text:</i> OPENING BRIEF in Support re [11] MOTION to Dismiss for Failure to State a Claim filed by Axion BioSystems, Inc.. Answering Brief/Response due date per Local Rules is 5/1/2023. (Mayo, Andrew)	
13	<i>Filed & Entered:</i>	04/17/2023 Disclosure Statement
	<i>Docket Text:</i> Disclosure Statement pursuant to Rule 7.1: identifying Other Affiliate Pixel Midco, Inc. for Axion BioSystems, Inc. filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
14	<i>Filed & Entered:</i>	04/24/2023 Stipulation to EXTEND Time
	<i>Terminated:</i>	04/25/2023
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME for Plaintiff to file a brief in opposition to Defendant's Motion to Dismiss (D.I. 11) to May 15, 2023 - filed by Agilent Technologies, Inc.. (Egan, Brian)	
15	<i>Filed & Entered:</i>	04/25/2023 SO ORDERED
	<i>Docket Text:</i> SO ORDERED, re [14] STIPULATION TO EXTEND TIME for Plaintiff to file a brief in opposition to Defendant's Motion to Dismiss (D.I. 11) to May 15, 2023, filed by Agilent Technologies, Inc.	

	Reset Briefing Schedule: re [11] MOTION to Dismiss for Failure to State a Claim. Answering Brief due 5/15/2023. Signed by Judge Colm F. Connolly on 4/25/2023. (kmd)	
16	<i>Filed & Entered:</i> 05/15/2023	Amended Complaint
	<i>Docket Text:</i> First AMENDED COMPLAINT - against Axion BioSystems, Inc.- filed by Agilent Technologies, Inc.. (Attachments: # (1) Exhibits A - MM)(Egan, Brian)	
	<i>Filed & Entered:</i> 05/22/2023	Oral Order
	<i>Docket Text:</i> ORAL ORDER: It is HEREBY ORDERED that on or before June 5, 2023, the parties shall either (1) submit to the Clerk of Court an executed Form AO 85 Notice, Consent, and Reference of a Civil Action to a Magistrate Judge, indicating their consent to have a United States Magistrate Judge conduct all proceedings in this case including trial, the entry of final judgment, and post-trial proceedings; or (2) file a joint letter indicating that all the parties do not consent to a referral of this action to a Magistrate Judge. The letter should not indicate which party or parties did not consent. If all the parties consent, the case will be referred to Magistrate Judge Burke. Because of the Court's caseload, if the parties do not consent, the Court intends to assign the case to a visiting judge from another district. Ordered by Judge Colm F. Connolly on 5/22/2023. (nmf)	
	<i>Filed & Entered:</i> 05/24/2023	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, re [17] STIPULATION TO EXTEND TIME to Respond to the First Amended Complaint to June 13, 2023, filed by Axion BioSystems, Inc., Set/Reset Answer Deadlines: Axion BioSystems, Inc. answer due 6/13/2023. Ordered by Judge Colm F. Connolly on 5/24/2023. (kmd)	
17	<i>Filed & Entered:</i> 05/24/2023	Stipulation to EXTEND Time
	<i>Terminated:</i> 05/24/2023	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to Respond to the First Amended Complaint to June 13, 2023 - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
18	<i>Filed & Entered:</i> 06/02/2023	Letter
	<i>Docket Text:</i> Letter to The Honorable Colm F. Connolly from Brian P. Egan regarding the parties' consent to Magistrate Judge Burke's jurisdiction to conduct all proceedings. (Attachments: # (1) Magistrate Consent Form)(Egan, Brian)	
19	<i>Filed & Entered:</i> 06/05/2023	Consent to Jurisdiction by US Magistrate Judge
	<i>Docket Text:</i> CONSENT to Jurisdiction by U.S. Magistrate Judge filed by Agilent Technologies, Inc., Axion BioSystems, Inc.. Case reassigned to Magistrate Judge Christopher J. Burke. Signed by Judge Colm F. Connolly on 6/5/2023. (nmf)	
	<i>Filed & Entered:</i> 06/06/2023	Remark re Newer Attorneys
	<i>Docket Text:</i> REMARK: The parties should be aware that the Court encourages the participation of newer attorneys in courtroom proceedings and at oral argument. Please see the Court's Standing Order Regarding Courtroom Opportunities for Newer Attorneys, a link to which is provided here for the parties' convenience: http://www.ded.uscourts.gov/sites/ded/files/forms/StandingOrder2017.pdf (dlb)	
	<i>Filed & Entered:</i> 06/06/2023	Remark
	<i>Docket Text:</i> Remark: The parties should follow the Court's Standing Order Regarding Courtesy Copies, a copy of which is found on Judge Burke's portion of the District Court's webpage: https://www.ded.uscourts.gov/sites/ded/files/CJBCC2022.pdf (dlb)	
20	<i>Filed & Entered:</i> 06/06/2023	Oral Order
	<i>Docket Text:</i> ORAL ORDER: IT IS HEREBY ORDERED that the parties shall meet and confer and discuss, in person and/or by telephone, each of the matters listed on Judge Burke's Case Management Checklist ("Checklist"). Within thirty (30) days from the date of this Order, the parties shall jointly file the following: (i) a copy of the Checklist, indicating the names of Lead Counsel and Delaware Counsel for each party; (ii) a proposed Scheduling Order, which is consistent with Judge Burke's "Rule 16 Scheduling Order - Patent"; and (iii) a letter, not to exceed three pages, that contains the following: (a) a description of what this case is about; (b) the parties' positions regarding any disputes in the proposed Scheduling Order, and (c) a list of the	

	three most significant topics (other than Scheduling Order disputes) discussed during the parties' review of the Checklist items, along with a brief description as to what was discussed as to those topics. Thereafter, the Court may schedule a Case Management Conference/Rule 16 Scheduling Conference to be held with Judge Burke. The Checklist and Scheduling Order can be found on Judge Burke's portion of the District Court's website. Ordered by Judge Christopher J. Burke on 6/5/2023. (dlb)	
21	<p><i>Filed & Entered:</i> 06/06/2023</p> <p><i>Terminated:</i> 06/14/2023</p>	Motion for Leave to Appear Pro Hac Vice
	<i>Docket Text:</i> MOTION for Pro Hac Vice Appearance of Attorney Anna M. Targowska - filed by Agilent Technologies, Inc.. (Egan, Brian)	
22	<p><i>Filed & Entered:</i> 06/13/2023</p> <p><i>Terminated:</i> 12/13/2023</p>	Motion to Dismiss for Failure to State a Claim
	<i>Docket Text:</i> MOTION to Dismiss for Failure to State a Claim - filed by Axion BioSystems, Inc.. (Attachments: # (1) Text of Proposed Order)(Mayo, Andrew)	
23	<p><i>Filed & Entered:</i> 06/13/2023</p>	Opening Brief in Support
	<i>Docket Text:</i> OPENING BRIEF in Support re [22] MOTION to Dismiss for Failure to State a Claim filed by Axion BioSystems, Inc..Answering Brief/Response due date per Local Rules is 6/27/2023. (Mayo, Andrew)	
	<p><i>Filed & Entered:</i> 06/14/2023</p>	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I. [21] MOTION for Pro Hac Vice Appearance of Attorney Anna M. Targowska filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 6/14/2023. (dlb)	
24	<p><i>Filed & Entered:</i> 06/27/2023</p>	Answering Brief in Opposition
	<i>Docket Text:</i> ANSWERING BRIEF in Opposition re [22] MOTION to Dismiss for Failure to State a Claim (Agilent's Answering Brief in Opposition to Axion's Partial Motion to Dismiss Agilent's First Amended Complaint) - filed by Agilent Technologies, Inc..Reply Brief due date per Local Rules is 7/5/2023. (Egan, Brian)	
25	<p><i>Filed & Entered:</i> 06/29/2023</p> <p><i>Terminated:</i> 06/29/2023</p>	Stipulation to EXTEND Time
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME by which Defendant must file its reply brief in support of its motion to dismiss (D.I. 22) and for the parties to file a proposed scheduling order to July 12, 2023 - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
26	<p><i>Filed & Entered:</i> 06/29/2023</p>	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I. [25] STIPULATION TO EXTEND TIME by which Defendant must file its reply brief in support of its motion to dismiss (D.I. 22) and for the parties to file a proposed scheduling order to July 12, 2023 filed by Axion BioSystems, Inc. Ordered by Judge Christopher J. Burke on 6/29/2023. (mlc)	
	<p><i>Filed & Entered:</i> 07/06/2023</p>	Add Attorneys Pro Hac Vice
	<i>Docket Text:</i> Pro Hac Vice Attorney Anna M. Targowska for Agilent Technologies, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (mpb)	
27	<p><i>Filed & Entered:</i> 07/12/2023</p>	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Brian P. Egan regarding proposed Scheduling Order - re [20] Oral Order,,,,, (Attachments: # (1) Text of Proposed Order, # (2) Case Management Checklist)(Egan, Brian)	
28	<p><i>Filed & Entered:</i> 07/12/2023</p>	Reply Brief
	<i>Docket Text:</i> REPLY BRIEF re [22] MOTION to Dismiss for Failure to State a Claim filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
29	<p><i>Filed & Entered:</i> 07/13/2023</p>	Scheduling Order

	<i>Docket Text:</i> SCHEDULING ORDER: Joinder of Parties due by 8/31/2023. Amended Pleadings due by 8/31/2023. Fact Discovery completed by 10/16/2024. Opening Expert Reports due by 11/14/2024. Rebuttal Expert Reports due by 12/13/2024. Reply Expert Reports due by 1/13/2025. Status Report due by 6/12/2024. Dispositive Motions due by 3/10/2025. A Motion Hearing is set for 5/14/2025 at 11:00 AM in Chambers before Judge Christopher J. Burke Claim Construction Opening Brief due by 1/30/2024. Claim Construction Answering Brief due by 2/27/2024. Claim Construction Reply Brief due by 3/12/2024. Joint Claim Construction Brief due by 4/2/2024. A Markman Hearing is set for 5/2/2024 at 11:00 AM in Courtroom 2A before Judge Christopher J. Burke. A Pretrial Conference is set for 9/19/2025 at 10:00 AM in Courtroom 2A before Judge Christopher J. Burke. A Jury Trial is set for 9/29/2025 at 09:30 AM in Courtroom 2A before Judge Christopher J. Burke. Please see order for further details and deadlines. Signed by Judge Christopher J. Burke on 7/13/2023. (dlb) (Main Document 29 replaced on 7/13/2023) (dlb).	
30	<i>Filed & Entered:</i> 07/13/2023	Oral Order
	<i>Docket Text:</i> ORAL ORDER: With the parties having no disputes as to the form of the proposed Scheduling Order (D.I. 29), the Court has today entered that Order. To the extent that either party wishes the Court to schedule an in-person or telephonic Case Management Conference at this time, they should so inform the Court by letter. To the extent that the parties do not do so, the Court will not set a conference at this time. Ordered by Judge Christopher J. Burke on 7/13/2023. (dlb)	
31	<i>Filed & Entered:</i> 07/31/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of First Set of Requests for Production of Documents and Things to Axion Biosystems, Inc. filed by Agilent Technologies, Inc..(Egan, Brian)	
32	<i>Filed & Entered:</i> 07/31/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s First Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Day, John) Modified on 8/2/2023 (dlb).	
33	<i>Filed & Entered:</i> 08/03/2023 <i>Terminated:</i> 08/04/2023	Stipulation to EXTEND Time
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME for the parties to submit a proposed protective order to August 10, 2023 - filed by Agilent Technologies, Inc.. (Egan, Brian)	
	<i>Filed & Entered:</i> 08/04/2023	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I.[33] STIPULATION TO EXTEND TIME for the parties to submit a proposed protective order to August 10, 2023 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 8/4/2023. (dlb)	
34	<i>Filed & Entered:</i> 08/10/2023 <i>Terminated:</i> 08/11/2023	Stipulation to EXTEND Time
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to submit a proposed protective order to August 15, 2023 - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
	<i>Filed & Entered:</i> 08/11/2023	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I. [34] STIPULATION TO EXTEND TIME to submit a proposed protective order to August 15, 2023 filed by Axion BioSystems, Inc. Ordered by Judge Christopher J. Burke on 8/11/2023. (dlb)	
35	<i>Filed & Entered:</i> 08/14/2023 <i>Terminated:</i> 08/15/2023	Stipulation to EXTEND Time
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME for the parties to submit a proposed stipulation for discovery of electronically stored information ("ESI") to August 18, 2023 - filed by Agilent Technologies, Inc.. (Egan, Brian)	
36	<i>Filed & Entered:</i> 08/14/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Defendant Axion BioSystems, Inc.'s Rule 26(a)(1) Initial Disclosures filed by Axion BioSystems, Inc..(Mayo, Andrew)	

37	<i>Filed & Entered:</i>	08/14/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Initial Disclosures filed by Agilent Technologies, Inc..(Egan, Brian)		
	<i>Filed & Entered:</i>	08/15/2023	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I. [35] STIPULATION TO EXTEND TIME for the parties to submit a proposed stipulation for discovery of electronically stored information ("ESI") to August 18, 2023 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 8/15/2023. (dlb)		
38	<i>Filed & Entered:</i>	08/15/2023	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Brian P. Egan regarding request for the scheduling of a teleconference. (Egan, Brian)		
39	<i>Filed & Entered:</i>	08/15/2023	Motion for Miscellaneous Relief
	<i>Terminated:</i>	09/25/2023	
	<i>Docket Text:</i> Joint MOTION for Teleconference to Resolve Protective Order Dispute - filed by Agilent Technologies, Inc.. (Egan, Brian)		
40	<i>Filed & Entered:</i>	08/16/2023	Order Setting Videoconference
	<i>Docket Text:</i> ORAL ORDER Setting Videoconference: The Court has reviewed the parties' August 15, 2023 letter requesting a teleconference regarding one dispute relating to the proposed protective order. (D.I. 38) It hereby ORDERS that the procedures for resolving a protective order dispute set out in the Scheduling Order will be modified as follows with regard to these disputes: (1) A protective order dispute videoconference using the Microsoft Teams platform is set for September 11, 2023 at 2:00 p.m. before Judge Christopher J. Burke.; (2) By no later than August 23, 2023, each party shall file with the Court a letter, not to exceed two (2) pages, in no less than 12-point font, outlining the issues in dispute and its position on those issues, including the party's proposal as to how the content of the disputed portion(s) of the protective order should read. By no later than August 30, 2023, each party may file a letter, not to exceed two (2) pages, in no less than 12-point font, outlining that party's response to the opposing party's initial letter.; (3) The parties should also consult and follow Judge Burke's "Guidelines for Discovery Disputes," which is found in the "Guidelines" tab on Judge Burke's portion of the District Court's website.; (4) By no later than August 30, 2023, the parties shall send an e-mail to the Court's Courtroom Deputy, Ms. Benyo, indicating the names and e-mail addresses of all individuals who will participate in the hearing.; and (5) The Court may choose to resolve the dispute prior to the videoconference and will, in that event, cancel the conference (however, if any party advises the Court in advance that a newer attorney will argue the dispute, see Standing Order Regarding Courtroom Opportunities for Newer Attorneys, https://www.ded.uscourts.gov/sites/ded/files/StandingOrder2017.pdf , then the Court will go forward with the conference).Ordered by Judge Christopher J. Burke on 8/16/2023. (dlb)		
	<i>Filed & Entered:</i>	08/18/2023	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I. [41] Proposed Order for Discovery of Electronically Stored Information ("ESI") filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 8/18/2023. (mlc)		
41	<i>Filed & Entered:</i>	08/18/2023	Proposed Order
	<i>Docket Text:</i> PROPOSED ORDER for Discovery of Electronically Stored Information ("ESI") by Agilent Technologies, Inc.. (Egan, Brian)		
42	<i>Filed & Entered:</i>	08/21/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Identification of Accused Products, Asserted Patents, and Damages Model filed by Agilent Technologies, Inc..(Egan, Brian)		
43	<i>Filed & Entered:</i>	08/23/2023	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding protective order dispute. (Attachments: # (1) Exhibit A-D)(Mayo, Andrew)		
44	<i>Filed & Entered:</i>	08/23/2023	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Brian P. Egan regarding the August 15, 2023 Protective Order Dispute - re [40] Order Setting Videoconference,,,,,,. (Attachments: # (1) Exhibits A-		

	B)(Egan, Brian)	
45	<i>Filed & Entered:</i> 08/28/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion Biosystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s First Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Mayo, Andrew)	
46	<i>Filed & Entered:</i> 08/30/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Objections and Responses to Axion Biosystems, Inc.'s First Set of Requests for Production of Documents and Things filed by Agilent Technologies, Inc..(Egan, Brian)	
47	<i>Filed & Entered:</i> 08/30/2023	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding response to Plaintiff's August 23, 2023 letter - re [44] Letter. (Attachments: # (1) Exhibit A)(Mayo, Andrew)	
48	<i>Filed & Entered:</i> 08/30/2023	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Brian P. Egan regarding Protective Order Dispute - re [43] Letter. (Attachments: # (1) Exhibit 1)(Egan, Brian)	
49	<i>Filed & Entered:</i> 08/30/2023	Notice (Other)
	<i>Docket Text:</i> NOTICE of Intent to Have Newer Attorney Participate in Argument by Axion BioSystems, Inc. (Mayo, Andrew)	
50	<i>Filed & Entered:</i> 08/31/2023	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court, having considered Defendant's Notice of Intent to Have Newer Attorney Participate in Argument Regarding Protective Order Dispute, (D.I. 49), and pursuant to the Court's Standing Order Regarding Courtroom Opportunities for Newer Attorneys, hereby ORDERS that the Court will ensure that sufficient time is permitted for argument regarding the dispute, and will permit experienced counsel to provide assistance when appropriate. Ordered by Judge Christopher J. Burke on 8/31/2023. (dlb)	
51	<i>Filed & Entered:</i> 09/01/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Defendant Axion Biosystems, Inc.'s ESI Initial Disclosures filed by Axion BioSystems, Inc..(Mayo, Andrew)	
52	<i>Filed & Entered:</i> 09/01/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Initial Disclosures of ESI Custodians filed by Agilent Technologies, Inc..(Egan, Brian)	
	<i>Filed & Entered:</i> 09/11/2023	Discovery Conference
	<i>Docket Text:</i> Minute Entry for proceedings held before Judge Christopher J. Burke - Protective Order dispute videoconference hearing held on 9/11/23. The Court heard the parties' arguments regarding the Joint Motion to Resolve Protective Order Dispute. (D.I. 39) The Court ordered the parties to further meet and confer and submit a joint status report by September 15, 2023 indicating whether or not they have reached agreement. (Clerk: M. Crawford) Appearances: B. Egan and A. Targowska for Plaintiff; A. Mayo, R. Walsh and L. Kanouse for Defendant. (Court Reporter Deanna Warner) (dlb)	
53	<i>Filed & Entered:</i> 09/12/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s document production pursuant to Paragraph 6(a) of the Scheduling Order filed by Agilent Technologies, Inc..(Egan, Brian)	
54	<i>Filed & Entered:</i> 09/15/2023	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding request for resolution of protective order dispute. (Mayo, Andrew)	
55	<i>Filed & Entered:</i> 09/20/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Defendant Axion BioSystems, Inc.'s Core Technical Document Production filed by Axion BioSystems, Inc..(Day, John)	

56	<i>Filed & Entered:</i>	09/21/2023	Notice (Other)
	<i>Docket Text:</i> [SEALED] NOTICE of Subsequent Authority by Agilent Technologies, Inc. re [39] Joint MOTION for Teleconference to Resolve Protective Order Dispute (Attachments: # (1) Exhibit 1)(Egan, Brian)		
57	<i>Filed & Entered:</i>	09/22/2023	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding response to Agilent's September 21, 2023 submission. (Mayo, Andrew)		
58	<i>Filed & Entered:</i>	09/25/2023	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court, having reviewed the parties' protective order ("PO") dispute motion, (D.I. 39), and the parties' briefing relating thereto, (D.I. 43; D.I. 44; D.I. 47; D.I. 48; D.I. 54; D.I. 56; D.I. 57), and having heard argument on September 11, 2023, hereby ORDERS as follows: (1) The disputed issue here is about whether, as to "Confidential" documents produced pursuant to the PO, the two party employees who can access those documents may be competitive decision makers (Defendant's position) or may not be (Plaintiff's position). The Court ADOPTS Plaintiff's proposal. (D.I. 44, ex. A at 4); (2) The relevant standard of review requires the Court to balance two factors: (a) the risk of inadvertent disclosure or competitive misuse of a party's confidential information against (b) the potential harm the affected party would face, were it to be unable to share confidential information with the employees of its choosing. See <i>Bos. Sci. Corp. v. Cook Grp. Inc.</i> , Civil Action No. 15-980-LPS-CJB, 2016 WL 1601238, at *1 (D. Del. Apr. 25, 2016).; (3) As to the first factor, "Confidential" documents can include trade secret information pursuant to the PO, so this category implicates some very important party materials. Moreover, there is no dispute here that the parties are active, direct competitors--two of only a few entities competing in the impedance-based cell analysis technology space. (D.I. 44 at 2) And there is more on the competition front: Plaintiff has alleged that Defendant has hired away key Plaintiff employees in the recent past, and it appears that at least one such high-level hire retained some significant amount of Plaintiff's documents and stored them on Defendant's servers for one and a half years. (D.I. 16 at paras. 48-51; D.I. 56) Moreover, during the argument, Defendant's counsel indicated that counsel's primary client contacts were people who would likely be considered competitive decision makers here (though Defendant never provided any specificity about who those persons are, nor other information about what employees might or might not be candidates to have document access per the PO). So if Defendant's proposal were adopted, it seems likely that competitive decision makers at Defendant--a key competitor (and one that in recent years had hired Plaintiff's former key employees and housed Plaintiff's documents)--would gain access to, inter alia, Plaintiff's trade secrets. The Court can see why that prospect causes alarm for Plaintiff and suggests that the risk of inadvertent disclosure is real.; and (4) As to factor two, Defendant is a small company, but it does have approximately 160 employees, (D.I. 54 at 1), and it at least seems possible that there is a Defendant employee who is not a competitive decision maker but who might nevertheless be an appropriate designee for the litigation. At the time of the hearing, Defendant and its counsel did not seem to have explored whether such an employee exists. And, as noted above, Defendant provided few specifics on who its employees were, or why restricting access in the way Plaintiff suggests would harm Defendant (i.e., why certain named employees at Defendant really needed to have access to these documents, in light of their role or their position, even if they are competitive decision makers). So the Court does not have a great showing from Defendant as to the extent of the harm it would face if Plaintiff's more protective proposal was adopted. This further warrants in favor of adopting Plaintiff's request. Ordered by Judge Christopher J. Burke on 9/25/2023. (dlb)		
59	<i>Filed & Entered:</i>	09/27/2023	Order Setting Hearing on Motion
	<i>Docket Text:</i> ORAL ORDER Setting Videoconference: The Court hereby ORDERS that a videoconference to hear argument on Defendant's Partial Motion to Dismiss (the "Motion"), (D.I. 22), is set for October 23, 2023 at 4:00 PM before Judge Christopher J. Burke via the Microsoft Teams platform. By no later than October 16, 2023, the parties shall send an e-mail to the Court's Courtroom Deputy, Ms. Benyo, indicating the names and e-mail addresses of all individuals who will participate in the videoconference. The Court may choose to resolve the Motion prior to the videoconference and will, in that event, cancel the videoconference (however, if any party advises the Court in advance that a newer attorney will argue the Motion, see Standing Order Regarding Courtroom Opportunities for Newer Attorneys,		

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	https://www.ded.uscourts.gov/sites/ded/files/StandingOrder2017.pdf , then the Court will go forward with the conference). Ordered by Judge Christopher J. Burke on 9/27/2023. (dlb)	
60	<i>Filed & Entered:</i> 09/28/2023	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [56] Notice (Other) by Agilent Technologies, Inc.. (Attachments: # (1) Exhibit 1)(Murray, Travis)	
61	<i>Filed & Entered:</i> 09/29/2023	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [57] Letter by Axion BioSystems, Inc.. (Mayo, Andrew)	
62	<i>Filed & Entered:</i> 10/04/2023	Proposed Order
	<i>Docket Text:</i> PROPOSED ORDER -- [Proposed] Protective Order Regarding the Disclosure and use of Discovery Materials -- by Agilent Technologies, Inc.. (Murray, Travis)	
63	<i>Filed & Entered:</i> 10/04/2023	Protective Order
	<i>Docket Text:</i> PROTECTIVE ORDER. Signed by Judge Christopher J. Burke on 10/4/2023. (dlb)	
64	<i>Filed & Entered:</i> 10/06/2023	Transcript
	<i>Docket Text:</i> Official Transcript of held on 9/11/23 before Judge Christopher Burke. Court Reporter Deanna Warner, Email: deanna_warner@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 10/27/2023. Redacted Transcript Deadline set for 11/6/2023. Release of Transcript Restriction set for 1/4/2024. (Warner, Deanna)	
65	<i>Filed & Entered:</i> 10/16/2023 <i>Terminated:</i> 10/18/2023	Motion for Leave to Appear Pro Hac Vice
	<i>Docket Text:</i> MOTION for Pro Hac Vice Appearance of Attorney Anna E. Raimer - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
	<i>Filed & Entered:</i> 10/18/2023	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I. [65] MOTION for Pro Hac Vice Appearance of Attorney Anna E. Raimer filed by Axion BioSystems, Inc. Ordered by Judge Christopher J. Burke on 10/18/2023. (dlb)	
66	<i>Filed & Entered:</i> 10/20/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Initial Infringement Contentions - filed by Agilent Technologies, Inc..(Murray, Travis)	
67	<i>Filed & Entered:</i> 10/23/2023	Terminate Hearings
	<i>Docket Text:</i> ORAL ORDER Setting Videoconference: At the request of counsel, the Court hereby ORDERS that the October 23, 2023 videoconference regarding Defendant's Partial Motion to Dismiss, (D.I. 22), is rescheduled for 11/2/2023 at 11:00 AM before Judge Christopher J. Burke. Ordered by Judge Christopher J. Burke on 10/23/2023. (mlc)	
68	<i>Filed & Entered:</i> 10/30/2023	Oral Order
	<i>Docket Text:</i> ORAL ORDER: Due to a scheduling conflict, the Court hereby ORDERS that the November 2, 2023 videoconference regarding Defendant's Partial Motion to Dismiss, (D.I. 22), is CANCELED. The Court will reschedule the videoconference at a later date to be determined. Ordered by Judge Christopher J. Burke on 10/30/2023. (dlb)	
69	<i>Filed & Entered:</i> 11/13/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s First Set of Interrogatories to Plaintiff filed by Axion BioSystems, Inc..(Mayo, Andrew)	
70	<i>Filed & Entered:</i> 11/20/2023	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Initial Invalidity Contentions filed by Axion BioSystems, Inc..(Mayo, Andrew)	
71	<i>Filed & Entered:</i> 11/21/2023	Order Setting Videoconference

	<p><i>Docket Text:</i> ORAL ORDER Setting Videoconference: The Court hereby ORDERS that a videoconference to hear argument on Defendant's Partial Motion to Dismiss (the "Motion"), (D.I. 22), is set for January 22, 2024 at 3:30 PM before Judge Christopher J. Burke via the Microsoft Teams platform. By no later than January 12, 2024, the parties shall send an e-mail to the Court's Courtroom Deputy, Ms. Benyo, indicating the names and e-mail addresses of all individuals who will participate in the videoconference. The Court may choose to resolve the Motion prior to the videoconference and will, in that event, cancel the videoconference (however, if any party advises the Court in advance that a newer attorney will argue the Motion, see Standing Order Regarding Courtroom Opportunities for Newer Attorneys, https://www.ded.uscourts.gov/sites/ded/files/StandingOrder2017.pdf, then the Court will go forward with the conference). Ordered by Judge Christopher J. Burke on 11/21/2023. (dlb)</p>	
72	<i>Filed & Entered:</i>	12/11/2023 Notice of Service
	<p><i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s List of Terms/Phrases for Construction and Proposed Constructions filed by Axion BioSystems, Inc..(Mayo, Andrew)</p>	
73	<i>Filed & Entered:</i>	12/11/2023 Notice of Service
	<p><i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Identification of Claim Terms to be Construed and Proposed Construction - filed by Agilent Technologies, Inc..(Murray, Travis)</p>	
74	<i>Filed & Entered:</i>	12/11/2023 Letter
	<p><i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Brian P. Egan regarding Stipulation and [Proposed] Order to File Second Amended Complaint, Renewed Motion to Dismiss, and Motion to Dismiss as to Newly Asserted Claims. (Egan, Brian)</p>	
75	<i>Filed & Entered:</i>	12/11/2023 Stipulation
	<p><i>Docket Text:</i> STIPULATION and [Proposed] Order to File Second Amended Complaint, Renewed Motion to Dismiss, and Motion to Dismiss as to Newly Asserted Claims re [74] Letter by Agilent Technologies, Inc.. (Attachments: # (1) Exhibit A - Second Amended Complaint, # (2) Exhibits A-S to Second Amended Complaint, # (3) Exhibits T-OO to Second Amended Complaint, # (4) Exhibit B - Redline)(Egan, Brian)</p>	
	<i>Filed & Entered:</i>	12/13/2023 SO ORDERED
	<p><i>Docket Text:</i> SO ORDERED D.I. [75] Stipulation to file Second Amended Complaint, Renewed Motion to Dismiss, and Motion to Dismiss as to Newly Asserted Claims filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 12/13/2023. (dlb)</p>	
76	<i>Filed & Entered:</i>	12/13/2023 Oral Order
	<p><i>Docket Text:</i> ORAL ORDER: The Court, having reviewed the parties' December 11, 2023 letter, (D.I. 74), hereby ORDERS that the Court will plan to proceed with the videoconference on January 22, 2024 regarding Defendants forthcoming renewed motion to dismiss Plaintiff's unfair competition claim. Ordered by Judge Christopher J. Burke on 12/13/2023. (dlb)</p>	
77	<i>Filed & Entered:</i>	12/13/2023 Amended Complaint
	<p><i>Docket Text:</i> Second AMENDED COMPLAINT FOR PATENT INFRINGEMENT filed with Jury Demand against Axion BioSystems, Inc.- filed by Agilent Technologies, Inc.. (Attachments: # (1) Exhibit Exhibits A to S, # (2) Exhibit Exhibits T to OO)(dlb)</p>	
78	<i>Filed & Entered:</i>	12/13/2023 Notice of Service
	<p><i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Objections and Responses to Axion Biosystems, Inc.'s First Set of Interrogatories (Nos. 1-9) - filed by Agilent Technologies, Inc..(Murray, Travis)</p>	
79	<i>Filed & Entered:</i>	12/15/2023 Notice of Service
	<p><i>Docket Text:</i> NOTICE OF SERVICE of Axion Biosystems, Inc.'s Second Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Mayo, Andrew)</p>	
80	<i>Filed & Entered:</i>	12/26/2023 Notice of Service

	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Second Set of Requests for Production of Documents and Things to Axion Biosystems, Inc. - filed by Agilent Technologies, Inc.. (Murray, Travis)	
81	<i>Filed & Entered:</i> 01/09/2024	Claim Construction Chart
	<i>Docket Text:</i> CLAIM Construction Chart by Agilent Technologies, Inc.. (Murray, Travis)	
82	<i>Filed & Entered:</i> 01/09/2024	Appendix
	<i>Docket Text:</i> Joint APPENDIX re [81] Claim Construction Chart by Agilent Technologies, Inc.. (Attachments: # (1) Exhibit 1 - '752 Patent, # (2) Exhibit 2 - '080 Patent, # (3) Exhibit 3 - '255 Patent, # (4) Exhibit 4 - '752 Patent File History_ Response Dated Sep. 16_ 2005, # (5) Exhibit 5 - '752 Patent File History_ Response Dated Apr. 10_ 2006, # (6) Exhibit 6 - '752 Patent File History_ Response Dated July 24_ 2006, # (7) Exhibit 7 - Application No. 10_ 705_ 447 File History_ Response Dated December 13_ 2007, # (8) Exhibit 8 - Application No. 10_ 705_ 447 File History_ Response Dated May 27_ 2008, # (9) Exhibit 9 - Application No. 11_ 055_ 639 File History_ Response Dated July 10_ 2008, # (10) Exhibit 10 - Application No. 11_ 055_ 639 File History_ Response Dated February 13_ 2009, # (11) Exhibit 11 - Application No. 11_ 055_ 639 File History_ Notice of Allowance Dated April 9_ 2009, # (12) Exhibit 12 - Application No. 11235938 File History_ Response Dated April 21_ 2008, # (13) Exhibit 13 - Application No. 11235938 File History_ Response Dated October 6_ 2008, # (14) Exhibit 14 - Application No. 11235938 File History_ Response Dated June 1_ 2009, # (15) Exhibit 15 - Application No. 11235938 File History_ Response Dated December 21_ 2009, # (16) Exhibit 16 - '255 File History excerpts, # (17) Exhibit 17 - '080 File History excerpts, # (18) Exhibit 18 - US Patent No 7459303, # (19) Exhibit 19 - US Patent No 7470533)(Murray, Travis)	
83	<i>Filed & Entered:</i> 01/09/2024 <i>Terminated:</i> 05/22/2024	Motion for Miscellaneous Relief
	<i>Docket Text:</i> MOTION for Claim Construction re [81] Claim Construction Chart - filed by Agilent Technologies, Inc.. (Murray, Travis)	
84	<i>Filed & Entered:</i> 01/09/2024 <i>Terminated:</i> 05/22/2024	Motion for Miscellaneous Relief
	<i>Docket Text:</i> MOTION for Claim Construction - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
85	<i>Filed & Entered:</i> 01/10/2024	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court, having reviewed the parties' Joint Claim Construction Chart, (D.I. 81), hereby ORDERS as follows: (1) The Court will accept claim construction briefing on no more than ten terms/term sets.; (2) At the Markman hearing, the Court will hear argument on no more than six terms/term sets.; and (3) By no later than January 17, 2024, Defendant shall provide Plaintiff with what it contends is the definition of term 2. By no later than January 19, 2024, the parties shall file an amended Joint Claim Construction Chart with respect to the ten terms/term sets that will be briefed. Ordered by Judge Christopher J. Burke on 1/10/2024. (dlb)	
86	<i>Filed & Entered:</i> 01/16/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Objections and Responses to Axion Biosystems, Inc.'s Second Set of Requests for Production of Documents and Things - filed by Agilent Technologies, Inc..(Murray, Travis)	
87	<i>Filed & Entered:</i> 01/17/2024 <i>Terminated:</i> 02/19/2025	Motion to Dismiss for Failure to State a Claim
	<i>Docket Text:</i> MOTION to Dismiss for Failure to State a Claim (<i>Partial Motion to Dismiss Second Amended Complaint</i>) - filed by Axion BioSystems, Inc.. (Attachments: # (1) Text of Proposed Order)(Mayo, Andrew)	
88	<i>Filed & Entered:</i> 01/17/2024	Opening Brief in Support
	<i>Docket Text:</i> OPENING BRIEF in Support re [87] MOTION to Dismiss for Failure to State a Claim (<i>Partial Motion to Dismiss Second Amended Complaint</i>) filed by Axion BioSystems, Inc..Answering Brief/Response due date per Local Rules is 1/31/2024. (Mayo, Andrew)	

89	<i>Filed & Entered:</i>	01/19/2024	Stipulation to EXTEND Time
	<i>Terminated:</i>	01/22/2024	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME for Plaintiff Agilent Technologies, Inc. to file its answering brief in response to Defendant Axion Biosystems, Inc.'s Partial Motion to Dismiss Second Amended Complaint (D.I. 87) to February 14, 2024 - filed by Agilent Technologies, Inc.. (Murray, Travis)		
90	<i>Filed & Entered:</i>	01/19/2024	Claim Construction Chart
	<i>Docket Text:</i> CLAIM Construction Chart by Agilent Technologies, Inc.. (Murray, Travis)		
	<i>Filed & Entered:</i>	01/22/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I. [89] STIPULATION TO EXTEND TIME for Plaintiff Agilent Technologies, Inc. to file its answering brief in response to Defendant Axion Biosystems, Inc.'s Partial Motion to Dismiss Second Amended Complaint (D.I. 87) to February 14, 2024 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 1/22/2024. (dlb)		
	<i>Filed:</i>	01/22/2024	Motion Hearing
	<i>Entered:</i>	01/23/2024	
	<i>Docket Text:</i> Minute Entry for proceedings held before Judge Christopher J. Burke - Hearing held via videoconference on 1/22/2024 regarding D.I. 87 Partial Motion to Dismiss. The Court heard the parties' arguments regarding the portion of the Motion dealing with Plaintiff's false advertising claim. The Court took the matter under advisement. (Clerk: M. Crawford)Appearances: B. Egan, P. Chassman and A. Targowska for Plaintiff; A. Mayo, R. Walsh, A. Raimer and L. Kanouse for Defendant (Court Reporter Heather Troizzi) (dlb)		
91	<i>Filed & Entered:</i>	01/25/2024	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court has reviewed the portion of Defendant's partial motion to dismiss Plaintiff's Second Amended Complaint ("SAC") (the "Motion"), (D.I. 87), via which Defendant renews its motion to dismiss Count IV of the SAC (which alleges a false advertising claim under the Lanham Act) on the ground that Plaintiff has not plausibly alleged any false or misleading statements of fact (a required element of a Lanham Act claim), (see id.; D.I. 23 at 3). The Court has also considered the parties' related briefing, (D.I. 23; D.I. 24; D.I. 28), and the parties' arguments during the January 22, 2024 videoconference hearing on the Motion. It hereby ORDERS that this portion of the Motion is DENIED for the reasons that follow: (1) As an initial matter, and as the Court discussed with the parties during the videoconference, the SAC's allegations did not make it entirely clear what was asserted to be false or misleading as to certain of the alleged statements at issue. (D.I. 77 at para. 69(b)-(c)) But at a minimum, there is one alleged false or misleading statement that is set out clearly enough in the SAC: the assertion that Defendant's website falsely advertises its product's ability to "accurately measure tumor grow[th] and immune cell killing of 3D cancer spheroid models." (Id. at para. 69(a) (internal quotation marks and citation omitted)) And Plaintiff does just enough in the SAC to plead facts plausibly explaining why it believes that statement to be false and misleading (i.e., that "the impedance measured by Axion's products reflects the impedance only of cells that are in contact with electrodes on a 2D surface, and thus Axion's products cannot accurately measure impedance of a 3D cancer spheroid[]"). (Id. at paras. 66-69) Thus, the Court's order is focused on this particular alleged false or misleading statement (hereafter, the "statement at issue"); and (2) As became clearer during the videoconference, the entirety of Defendant's argument for dismissal is that the statement at issue is a scientific conclusion, and that pursuant to the United States Court of Appeals for the Second Circuit's decision in <i>ONY, Inc. v. Cornerstone Therapeutics, Inc.</i> , 720 F.3d 490, 498 (2d. Cir. 2013) (" <i>ONY</i> "), a Lanham Act claim cannot be premised on statements amounting to scientific conclusions (unless the allegation is that the underlying data relating to the conclusion was fabricated or fraudulently created, which we do not have here). (D.I. 23 at 3-11; D.I. 28 at 1-6) With respect to this issue, however, the Court is not prepared to conclude that all statements made in advertising materials that might possibly be considered "scientific conclusions" are off limits for a Lanham Act claim. The Court so concludes for the following reasons: (a) The only other appellate court that has significantly analyzed <i>ONY</i> is the United States Court of Appeals for the Fifth Circuit. And it has concluded that the import of <i>ONY</i> is that while the First Amendment might prohibit a Lanham Act claim based on scientific conclusions that are set out in "peer-reviewed [scientific] journal[s]" or are "made within the academic literature and directed at the scientific		

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community[,"] it does not immunize statements made in "commercial advertisements... directed at customers" even if such statements "concern[] a topic of scientific debate." Eastman Chem. Co. v. Plastipure, Inc., 775 F.3d 230, 235-37 (5th Cir. 2014) (citing cases); cf. Torrey v. Infectious Diseases Soc'y of Am., 86 F.4th 701, 707 (5th Cir. 2023) (summarizing the holding of Eastman). Here, the allegation is that the statement at issue (even though it was presented along with some data from a study that Defendant conducted) was found on Defendant's website and was made in a commercial advertising context--not in a peer-reviewed scientific journal or the like. (D.I. 77 at para. 69(a); D.I. 24 at 5).; (b) The Court must follow the precedent of the United States Court of Appeals for the Third Circuit. The Third Circuit (albeit only briefly, and in a footnote) has recently taken note of how Eastman distinguished ONY in this way, without seeming to criticize Eastman's conclusion in that regard. Pacira BioScis., Inc. v. Am. Soc'y of Anesthesiologists, Inc., 63 F.4th 240, 246 n.10 (3d Cir. 2023).; (c) Many district courts that have considered Lanham Act claims--and in doing so have analyzed ONY and Eastman--have gone the way that Eastman did. See, e.g., PAX Water Techs., Inc. v. Medora Corp., Case No. LA CV18-09143 JAK (AGRx), 2019 WL 4390567, at *5-6 (C.D. Cal. Aug. 5, 2019) (finding Eastman persuasive in concluding that the plaintiff's Lanham Act claim was not barred as a matter of law, where it was based on a commercial advertisement that contained scientific statements); Solsys Med., LLC v. Organogenesis, Inc., Civil Action No. 4:18cv30, 2018 WL 10579659, at *4-5 (E.D. Va. Dec. 12, 2018) (denying a motion to dismiss a Lanham Act claim, where the complaint sought relief for advertisements and related marketing materials containing statements that amounted to the defendant's interpretation of the results of its scientific study); Mimedx Grp., Inc. v. Osiris Therapeutics, Inc., 16 Civ. 3645 (KPF), 2017 WL 3129799, at *6-8 (S.D.N.Y. July 21, 2017) (rejecting the defendant's argument that a press release and brochure that allegedly misrepresented conclusions in a comparative scientific study constituted protected scientific discourse, in part because the materials were designed to persuade customers to purchase defendant's product); OrthoAccel Techs., Inc. v. Propel Orthodontics, LLC, Civil Action No. 4:16-cv-00350-ALM, 2017 WL 1753376, at *3 (E.D. Tex. May 2, 2017) (citing with approval to Eastman for the proposition that the First Amendment does not immunize advertisements from the Lanham Act's purview, even where their claims are open to scientific debate); cf. CareDx, Inc. v. Natera, Inc., Civil Action No. 19-662-CFC-CJB, 2019 WL 7037799, at *9 (D. Del. Dec. 20, 2019), report and recommendation adopted, 2020 WL 401773 (D. Del. Jan. 24, 2020).; and (d) Here, there may well be a robust dispute about whether the nature of the statement at issue is akin to a statement of fact or a statement of opinion (in light of the manner in which it asserts that Defendant's scientific conclusions, set out in its study, are false or misleading). But that determination is "typically [] a question of fact that cannot be resolved in a motion to dismiss[,"] PAX Water Techs., Inc., 2019 WL 4390567, at *6 (internal quotation marks, brackets and citations omitted), and the Court concludes that this is so in this case too. Ordered by Judge Christopher J. Burke on 1/25/2024. (dlb)

92	<i>Filed & Entered:</i>	01/26/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Second Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Mayo, Andrew)		
93	<i>Filed & Entered:</i>	01/30/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff's Opening Claim Construction Brief - filed by Agilent Technologies, Inc..(Murray, Travis)		
94	<i>Filed & Entered:</i>	02/02/2024	Motion for Miscellaneous Relief
	<i>Terminated:</i>	01/02/2025	
	<i>Docket Text:</i> MOTION Defendant Axion Biosystems, Inc.'s Motion to Sever Counts V, VI, And VII of Agilent Technologies, Inc.'s Second Amended Complaint and Transfer them to the Northern District of California - filed by Axion BioSystems, Inc.. (Attachments: # (1) Text of Proposed Order)(Mayo, Andrew)		
95	<i>Filed & Entered:</i>	02/02/2024	Opening Brief in Support
	<i>Docket Text:</i> [SEALED] OPENING BRIEF in Support re [94] MOTION Defendant Axion Biosystems, Inc.'s Motion to Sever Counts V, VI, And VII of Agilent Technologies, Inc.'s Second Amended Complaint and Transfer them to the Northern District of California filed by Axion BioSystems, Inc..Answering		

	Brief/Response due date per Local Rules is 2/16/2024. (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E, # (6) Exhibit F)(Mayo, Andrew)	
96	<i>Filed & Entered:</i> 02/09/2024	Transcript
	<i>Docket Text:</i> Official Transcript of Motion Hearing held on 01/22/24 before Judge Christopher J. Burke. Court Reporter Heather M. Triozzi, Email: Heather_Triozzi@ded.uscourts.gov. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER. Redaction Request due 3/1/2024. Redacted Transcript Deadline set for 3/11/2024. Release of Transcript Restriction set for 5/9/2024. (Triozzi, Heather)	
97	<i>Filed & Entered:</i> 02/09/2024	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [95] Opening Brief in Support,, by Axion BioSystems, Inc.. (Mayo, Andrew)	
98	<i>Filed & Entered:</i> 02/09/2024 <i>Terminated:</i> 02/12/2024	Stipulation to EXTEND Time
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME for Plaintiff Agilent Technologies, Inc. to file its answering brief in opposition to Defendant Axion Biosystems, Inc.'s Motion to Sever Counts V, VI, and VII of Agilent Technologies, Inc.'s Second Amended Complaint and Transfer them to the Northern District of California (D.I. 94) to February 21, 2024 - filed by Agilent Technologies, Inc.. (Murray, Travis)	
	<i>Filed & Entered:</i> 02/12/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I. [98] STIPULATION TO EXTEND TIME for Plaintiff Agilent Technologies, Inc. to file its answering brief in opposition to Defendant Axion Biosystems, Inc.'s Motion to Sever Counts V, VI, and VII of Agilent Technologies, Inc.'s Second Amended Complaint. (Answering Brief due 2/21/2024.) Ordered by Judge Christopher J. Burke on 2/12/2024. (dlb)	
99	<i>Filed & Entered:</i> 02/14/2024	Answering Brief in Opposition
	<i>Docket Text:</i> ANSWERING BRIEF in Opposition re [87] MOTION to Dismiss for Failure to State a Claim (<i>Partial Motion to Dismiss Second Amended Complaint</i>) filed by Agilent Technologies, Inc.. Reply Brief due date per Local Rules is 2/21/2024. (Murray, Travis)	
100	<i>Filed & Entered:</i> 02/21/2024	Answering Brief in Opposition
	<i>Docket Text:</i> [SEALED] ANSWERING BRIEF in Opposition re [94] MOTION Defendant Axion Biosystems, Inc.'s Motion to Sever Counts V, VI, And VII of Agilent Technologies, Inc.'s Second Amended Complaint and Transfer them to the Northern District of California filed by Agilent Technologies, Inc.. Reply Brief due date per Local Rules is 2/28/2024. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4)(Murray, Travis)	
101	<i>Filed & Entered:</i> 02/21/2024	Reply Brief
	<i>Docket Text:</i> REPLY BRIEF re [87] MOTION to Dismiss for Failure to State a Claim (<i>Partial Motion to Dismiss Second Amended Complaint</i>) filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
102	<i>Filed & Entered:</i> 02/27/2024	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [100] Answering Brief in Opposition, by Agilent Technologies, Inc.. (Attachments: # (1) Exs. 1-4)(Murray, Travis)	
103	<i>Filed & Entered:</i> 02/27/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Answering Claim Construction Brief filed by Axion BioSystems, Inc..(Mayo, Andrew)	
104	<i>Filed & Entered:</i> 02/28/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Second Set of Interrogatories to Plaintiff, Axion BioSystems, Inc.'s Third Set of Requests for Production of Documents and Things, and Defendant Axion BioSystems, Inc.'s Supplemental Rule 26(a)(1) Initial Disclosures, filed by Axion BioSystems, Inc.. (Mayo, Andrew)	

105	<i>Filed & Entered:</i>	02/28/2024	Reply Brief
	<i>Docket Text:</i> [SEALED] REPLY BRIEF re [94] MOTION Defendant Axion Biosystems, Inc.'s Motion to Sever Counts V, VI, And VII of Agilent Technologies, Inc.'s Second Amended Complaint and Transfer them to the Northern District of California filed by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit A, # (2) Exhibit B)(Mayo, Andrew)		
106	<i>Filed & Entered:</i>	02/28/2024	Request for Oral Argument
	<i>Docket Text:</i> REQUEST for Oral Argument by Axion BioSystems, Inc. re [94] MOTION Defendant Axion Biosystems, Inc.'s Motion to Sever Counts V, VI, And VII of Agilent Technologies, Inc.'s Second Amended Complaint and Transfer them to the Northern District of California , [87] MOTION to Dismiss for Failure to State a Claim (<i>Partial Motion to Dismiss Second Amended Complaint</i>). (Mayo, Andrew)		
107	<i>Filed & Entered:</i>	03/01/2024	Motion for Leave to File
	<i>Terminated:</i>	01/02/2025	
	<i>Docket Text:</i> MOTION for Leave to File a <i>Sur-Reply in Opposition to Axion's Motion to Sever and Transfer Counts V, VI, And VII of Agilent's Second Amended Complaint</i> - filed by Agilent Technologies, Inc.. (Attachments: # (1) Proposed Order)(Murray, Travis)		
	<i>Filed & Entered:</i>	03/06/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I. [108] STIPULATION TO EXTEND TIME to file a redacted version of Defendant Axion Biosystems, Inc.'s Sealed Reply Brief in Support of Defendant's Motion to Sever and Transfer Counts V-VII of Agilent Technologies, Inc.'s Second Amended Complaint filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 3/6/2024. (dlb)		
108	<i>Filed & Entered:</i>	03/06/2024	Stipulation to EXTEND Time
	<i>Terminated:</i>	03/06/2024	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to file a redacted version of Defendant Axion Biosystems, Inc.'s Sealed Reply Brief in Support of Defendant's Motion to Sever and Transfer Counts V-VII of Agilent Technologies, Inc.'s Second Amended Complaint (D.I. 105) to March 8, 2024 - filed by Agilent Technologies, Inc.. (Murray, Travis)		
109	<i>Filed & Entered:</i>	03/12/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Defendant Axion BioSystems, Inc.'s Supplemental ESI Initial Disclosures filed by Axion BioSystems, Inc..(Mayo, Andrew)		
110	<i>Filed & Entered:</i>	03/13/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of (1) Plaintiff's Reply Claim Construction Brief and (2) Rebuttal Expert Declaration of A. Bruno Frazier, Ph.D. in Support of Agilent's Reply Claim Construction Brief - filed by Agilent Technologies, Inc..(Murray, Travis)		
111	<i>Filed & Entered:</i>	03/14/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s First Amended Objections and Response to Axion Biosystems, Inc.'s Interrogatory No. 3 filed by Agilent Technologies, Inc..(Murray, Travis)		
112	<i>Filed & Entered:</i>	03/15/2024	Answering Brief in Opposition
	<i>Docket Text:</i> ANSWERING BRIEF in Opposition re [107] MOTION for Leave to File a <i>Sur-Reply in Opposition to Axion's Motion to Sever and Transfer Counts V, VI, And VII of Agilent's Second Amended Complaint</i> filed by Axion BioSystems, Inc..Reply Brief due date per Local Rules is 3/22/2024. (Mayo, Andrew)		
113	<i>Filed & Entered:</i>	03/21/2024	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [105] Reply Brief, by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit A, # (2) Exhibit B)(Mayo, Andrew)		
	<i>Filed & Entered:</i>	03/22/2024	SO ORDERED

	<i>Docket Text:</i> SO ORDERED D.I.[114] Stipulation filed by Axion BioSystems, Inc. Ordered by Judge Christopher J. Burke on 3/22/2024. (dlb)
114	<i>Filed & Entered:</i> 03/22/2024 Stipulation <i>Docket Text:</i> STIPULATION Extending Technology Tutorial Deadlines, by Axion BioSystems, Inc.. (Mayo, Andrew)
115	<i>Filed & Entered:</i> 03/22/2024 Reply Brief <i>Docket Text:</i> REPLY BRIEF re [107] MOTION for Leave to File <i>a Sur-Reply in Opposition to Axion's Motion to Sever and Transfer Counts V, VI, And VII of Agilent's Second Amended Complaint</i> filed by Agilent Technologies, Inc.. (Murray, Travis)
	<i>Filed & Entered:</i> 03/25/2024 Add Attorneys Pro Hac Vice <i>Docket Text:</i> Pro Hac Vice Attorneys Peter J. Chassman and Hallie H. Wimberly for Agilent Technologies, Inc. added for electronic noticing. Pursuant to Local Rule 83.5 (d)., Delaware counsel shall be the registered users of CM/ECF and shall be required to file all papers. (mpb)
116	<i>Filed & Entered:</i> 03/26/2024 Notice of Service <i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Sur-Reply Claim Construction Brief filed by Axion BioSystems, Inc..(Day, John)
117	<i>Filed & Entered:</i> 03/28/2024 Notice of Service <i>Docket Text:</i> NOTICE OF SERVICE of (1) Plaintiff Agilent Technologies, Inc.'s Amended and Supplemental Initial Disclosures and (2) Plaintiff Agilent Technologies, Inc.'s Supplemental Disclosures of ESI Custodians - filed by Agilent Technologies, Inc..(Murray, Travis)
118	<i>Filed & Entered:</i> 03/29/2024 Notice of Service <i>Docket Text:</i> NOTICE OF SERVICE of (1) Agilent Technologies, Inc.'s Objections and Responses to Axion Biosystems, Inc.'s Third Set of Requests for Production of Documents and Things and (2) Agilent Technologies, Inc.'s Objections and Responses to Axion Biosystems, Inc.'s Second Set of Interrogatories (Nos. 10-19) - filed by Agilent Technologies, Inc..(Murray, Travis)
119	<i>Filed & Entered:</i> 03/29/2024 Notice of Service <i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Corrected Supplemental Disclosures of ESI Custodians filed by Agilent Technologies, Inc..(Murray, Travis)
120	<i>Filed & Entered:</i> 04/02/2024 Joint Claim Construction Brief <i>Docket Text:</i> JOINT CLAIM CONSTRUCTION BRIEF filed by Agilent Technologies, Inc.. (Egan, Brian)
121	<i>Filed & Entered:</i> 04/02/2024 Appendix <i>Docket Text:</i> APPENDIX re [120] Joint Claim Construction Brief -- <i>Volume I</i> -- by Agilent Technologies, Inc.. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7, # (8) Exhibit 8, # (9) Exhibit 9, # (10) Exhibit 10, # (11) Exhibit 11, # (12) Exhibit 12, # (13) Exhibit 13, # (14) Exhibit 14, # (15) Exhibit 15, # (16) Exhibit 16)(Egan, Brian)
122	<i>Filed & Entered:</i> 04/02/2024 Appendix <i>Docket Text:</i> APPENDIX re [120] Joint Claim Construction Brief by Agilent Technologies, Inc.. (Attachments: # (1) Exhibit 17, # (2) Exhibit 18, # (3) Exhibit 19, # (4) Exhibit 20, # (5) Exhibit 21, # (6) Exhibit 22, # (7) Exhibit 23, # (8) Exhibit 24, # (9) Exhibit 25, # (10) Exhibit 26, # (11) Exhibit 27, # (12) Exhibit 28)(Egan, Brian)
123	<i>Filed & Entered:</i> 04/02/2024 Letter <i>Docket Text:</i> Joint Letter to The Honorable Christopher J. Burke from Brian P. Egan regarding the claim construction hearing - re [85] Oral Order,,. (Egan, Brian)
124	<i>Filed & Entered:</i> 04/03/2024 Oral Order <i>Docket Text:</i> ORAL ORDER: The Court, having reviewed the parties' April 2, 2024 letter (the "April 2 letter") regarding the Markman hearing, (D.I. 123), HEREBY ORDERS as follows: (1) The Court hereby

Ex. 2023

	ADOPTS the parties' proposal regarding time allocation. Three hours will be allocated for argument, to be split equally between the parties.; (2) With respect to the order of the terms and which side will present argument first for each term, the Court ADOPTS the parties' proposal set out in the April 2 letter.; and (3) On or before April 19, 2024, Delaware and lead counsel for the parties shall meet and confer and file an amended joint claim construction chart that sets forth the terms/issues that remain in dispute. The meet and confer shall focus on an attempt to reach agreement on any remaining disputed terms/issues where possible and on an attempt to focus the dispute over the remaining terms/issues in light of the parties' claim construction briefing. In a joint letter that the parties shall submit by April 19, 2024, the parties shall: (a) identify by name each individual who participated in this meet and confer, when and how that meet and confer occurred and how long it lasted; and (b) list, for each term remaining to be argued, what they understand the parties' remaining disputes about the construction of that term to be (i.e., "The parties' [first/only] dispute as to this term is whether [describe dispute]."), including no more than one sentence to describe each dispute. If no agreements on constructions have been reached or if no dispute has been narrowed on the meet and confer, the letter shall so state and the parties need not file an amended joint claim construction chart. Ordered by Judge Christopher J. Burke on 4/3/2024. (dlb)	
125	<i>Filed & Entered:</i>	04/04/2024 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Third Set of Requests for Production of Documents and Things to Axion Biosystems, Inc. filed by Agilent Technologies, Inc..(Egan, Brian)	
126	<i>Filed & Entered:</i>	04/05/2024 Notice of Filing Multi Media Materials
	<i>Docket Text:</i> NOTICE of filing the following Non-Paper material(s) in multi media format: Defendant Axion Biosystems, Inc.'s technology tutorial. Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by Andrew Colin Mayo on behalf of Axion BioSystems, Inc. (Mayo, Andrew)	
127	<i>Filed & Entered:</i>	04/05/2024 Notice (Other)
	<i>Docket Text:</i> NOTICE of Lodging of Plaintiff Agilent Technologies, Inc.'s Technology Tutorial by Agilent Technologies, Inc. (Murray, Travis)	
128	<i>Filed & Entered:</i>	04/08/2024 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Amended Objections and Responses to Axion BioSystems, Inc.'s Interrogatories Nos. 1,2,5, and 6 filed by Agilent Technologies, Inc..(Murray, Travis)	
	<i>Filed & Entered:</i>	04/09/2024 Deficiency Notice
	<i>Docket Text:</i> DEFICIENCY NOTICE by the Court issued to Axion BioSystems, Inc. regarding [126] Notice of Filing Multi Media Materials. Pursuant to Judge Burke's Standing Order as previously referenced, "Unless a specific Order to the contrary is entered in a case, all parties shall provide to the Court two (2) courtesy copies of all briefs (including letter briefs), as well as any documents filed in support of such briefs (i.e., appendices, exhibits, declarations, affidavits, tutorials, etc.)." Counsel is advised to submit a second copy of their technology tutorial as soon as possible. (smg) Modified on 4/9/2024 to correct whom the deficiency is issued to.(smg).	
129	<i>Filed & Entered:</i>	04/09/2024 Multi Media Document
	<i>Docket Text:</i> MULTI MEDIA DOCUMENT filed by Axion BioSystems, Inc. in the form of 1 Thumb Drive containing Axion's technology tutorial. Filing related to [126] Notice of Filing Multi Media Materials. (Media on file in Clerk's Office). (dlb)	
130	<i>Filed & Entered:</i>	04/09/2024 Multi Media Document
	<i>Docket Text:</i> MULTI MEDIA DOCUMENT filed by Agilent Technologies, Inc. in the form of 2 USB thumb drives containing Agilent's technology tutorial. Filing related to [127] Notice (Other). (Media on file in Clerk's Office). (dlb)	
131	<i>Filed & Entered:</i>	04/10/2024 Oral Order
	<i>Docket Text:</i> ORAL ORDER: In light of a scheduling conflict, the Court hereby ORDERS that the Markman hearing scheduled for May 2, 2024 is hereby rescheduled to July 30, 2024 at 11:00 a.m. in Courtroom 2A. Ordered by Judge Christopher J. Burke on 04/10/2024. (smg)	

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132	<i>Filed & Entered:</i>	04/12/2024	Statement
	<i>Docket Text:</i> STATEMENT re [129] Multi Media Document, [130] Multi Media Document, [127] Notice (Other) -- <i>Comments on Axion BioSystems, Inc.'s Technology Tutorial</i> -- by Agilent Technologies, Inc.. (Egan, Brian)		
	<i>Filed & Entered:</i>	04/18/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I.[133] STIPULATION TO EXTEND TIME for the parties to file their Joint Claim Construction Letter and Amended Joint Claim Construction Chart to April 26, 2024 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 4/18/2024. (dlb)		
133	<i>Filed & Entered:</i>	04/18/2024	Stipulation to EXTEND Time
	<i>Terminated:</i>	04/18/2024	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME for the parties to file their Joint Claim Construction Letter and Amended Joint Claim Construction Chart to April 26, 2024 - filed by Agilent Technologies, Inc.. (Murray, Travis)		
134	<i>Filed & Entered:</i>	04/26/2024	Claim Construction Chart
	<i>Docket Text:</i> CLAIM Construction Chart by Agilent Technologies, Inc.. (Murray, Travis)		
135	<i>Filed & Entered:</i>	04/26/2024	Letter
	<i>Docket Text:</i> Joint Letter to The Honorable Christopher J. Burke from Travis J. Murray regarding Claim Construction - re [124] Oral Order and [134] Claim Construction Chart. (Murray, Travis) Modified on 5/6/2024 (smg).		
	<i>Filed & Entered:</i>	05/06/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [136] STIPULATION TO EXTEND TIME for the Substantial Completion of Document Production to June 6, 2024 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 05/06/2024. (smg)		
136	<i>Filed & Entered:</i>	05/06/2024	Stipulation to EXTEND Time
	<i>Terminated:</i>	05/06/2024	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME for the Substantial Completion of Document Production to June 6, 2024 - filed by Agilent Technologies, Inc.. (Murray, Travis)		
137	<i>Filed & Entered:</i>	05/06/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion Biosystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Third Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Mayo, Andrew)		
138	<i>Filed & Entered:</i>	05/16/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s First Set of Interrogatories to Axion Biosystems, Inc. - filed by Agilent Technologies, Inc..(Murray, Travis)		
139	<i>Filed & Entered:</i>	05/21/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion Biosystems, Inc.'s Amended Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Requests for Production Nos. 89, 94, and 95 from Agilent's Second Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Mayo, Andrew)		
140	<i>Filed & Entered:</i>	05/22/2024	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court notes that since the scheduling order was entered in this case, (D.I. [29]), the Court has changed its policies regarding when parties must file their motions for claim construction; it now requires parties to file those motions concurrently with the Joint Claim Construction Brief. See Judge Burke's "Rule 16 Scheduling Order--Patent" found on Judge Burke's portion of the District Court's website. In light of this, in light of the fact that the Joint Claim Construction Brief was filed in April 2024, (D.I. [120]), and in light of the fact that the Markman hearing is now set for July 30, 2024, the Court hereby ORDERS that the parties shall re-file their respective motions for claim construction by no later than		

	July 23, 2024, so as to better align those motions with the timing of the Markman hearing and the resolution of the claim construction process in this case. Ordered by Judge Christopher J. Burke on 05/22/2024. (smg)	
141	<i>Filed & Entered:</i>	06/11/2024 Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Travis Murray regarding Joint Status Report - re [29] Scheduling Order,,,,. (Murray, Travis)	
142	<i>Filed & Entered:</i>	06/11/2024 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s First Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatories Nos. 13-18 - filed by Agilent Technologies, Inc.. (Murray, Travis)	
143	<i>Filed & Entered:</i>	07/01/2024 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s First Set of Interrogatories filed by Axion BioSystems, Inc..(Mayo, Andrew)	
144	<i>Filed & Entered:</i>	07/12/2024 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Second Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatories Nos. 13-18 filed by Agilent Technologies, Inc.. (Murray, Travis)	
145	<i>Filed & Entered:</i>	07/22/2024 Notice (Other)
	<i>Docket Text:</i> NOTICE of Subpoenas (Summa Equity Advisory, LLC) - by Agilent Technologies, Inc. (Murray, Travis)	
146	<i>Filed & Entered:</i>	07/22/2024 Motion for Miscellaneous Relief
	<i>Terminated:</i>	08/13/2024
	<i>Docket Text:</i> MOTION for Claim Construction re [134] Claim Construction Chart, [140] Oral Order,,, - filed by Agilent Technologies, Inc.. (Murray, Travis)	
147	<i>Filed & Entered:</i>	07/23/2024 Motion for Miscellaneous Relief
	<i>Terminated:</i>	08/13/2024
	<i>Docket Text:</i> MOTION for Claim Construction - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
148	<i>Filed & Entered:</i>	07/25/2024 Motion for Miscellaneous Relief
	<i>Terminated:</i>	07/26/2024
	<i>Docket Text:</i> Unopposed MOTION for Exemption of Persons from the District of Delaware's Standing Order on Personal Devices - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
149	<i>Filed & Entered:</i>	07/26/2024 SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [148] Unopposed Motion for Exemption of Persons from the District of Delaware's Standing Order on Personal Devices filed by Axion BioSystems, Inc. Signed by Judge Christopher J. Burke on 7/26/2024. (smg)	
	<i>Filed & Entered:</i>	07/30/2024 Markman Hearing
	<i>Docket Text:</i> Minute Entry for proceedings held before Judge Christopher J. Burke - Markman Hearing held on 7/30/2024. The Court heard argument from the parties regarding the disputed terms. (D.I. [146]; D.I. [147]) The Court took the matter under advisement. (Court Reporter K. Bursner. Clerk: M. Crawford) Appearances: B. Egan, T. Murray, H. Wimberly and P. Chassman for Plaintiff; A. Mayo, D. Maiorana, R. Walsh and G. Gavin for Defendant. (mlc)	
150	<i>Filed & Entered:</i>	07/30/2024 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Third Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatories Nos. 13-18 filed by Agilent Technologies, Inc.. (Murray, Travis)	
151	<i>Filed & Entered:</i>	08/01/2024 Oral Order

Docket Text: ORAL ORDER: The Court, having reviewed the parties' motions for claim construction, (D.I. [146]; D.I. [147]), and the briefing related thereto, (D.I. [120]), having considered the legal standards related to claim construction, *see Vytacera Bio, LLC v. CytomX Therapeutics, Inc.*, Civil Action No. 20-333-LPS-CJB, 2021 WL 4621866, at *2-3 (D. Del. Oct. 7, 2021), and having held a *Markman* hearing on July 30, 2024, hereby addresses the construction of term 1—"at least two of the multiple wells comprise an electrode array at the bottom of the well" (080 Patent, claim 1) / "at least two of the multiple wells of said device comprise an electrode array at the bottom of the well" (752 Patent, claims 11, 14)—as follows: (1) In the beginning of the briefing, the parties had a dispute as to whether, as Plaintiff advocated, the construction should clarify that the electrode array is "*fabricated on the bottom surface of the well.*" (D.I. [120] at 5-6, 8-9 (emphasis added)) But by the end of the briefing, Plaintiff agreed that "fabricated" could be removed from its proposed construction, (*id.* at 9), and during the *Markman* hearing, Defendant agreed that it could live with Plaintiff's "bottom surface of the well" language. The Court will therefore include the "bottom surface of the well" language, which has support in the intrinsic record, in its construction of this term.; (2) The parties' remaining dispute is over whether each electrode array must correspond to only one well, as Plaintiff asserts (i.e., the "each of at least two of the multiple wells [of the device] *has its own distinct electrode array*" language of its proposal), or whether wells could possibly have shared electrode arrays (as Defendant argues). (*Id.* at 4-9 (emphasis added)) While it is undisputed that all embodiments in the asserted patents disclose a single, distinct electrode array corresponding to one well, (*id.* at 4-5, 9), it is well-settled that "[e]ven when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope using words or expressions of manifest exclusion or restriction." *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371-72 (Fed. Cir. 2014) (internal quotation marks and citation omitted); *see also Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 913 (Fed. Cir. 2004) ("[I]t is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited."). The patentee has not demonstrated such a clear intent here. Neither the claim language nor the specification of the asserted patents uses the word "distinct" in relation to the array/well relationship. (D.I. [120] at 6-7) Moreover, though the patents' specifications discuss how the inventions are meant to support screening in a high-throughput manner, (*see, e.g.*, 752 patent, col. 3:1-3; D.I. [120] at 5), the Court has been pointed to no evidence (as opposed to attorney argument) that adopting Defendant's proposal here would unduly frustrate that goal. Additionally, even the key passage in the specification that Plaintiff points to in support of its position makes clear that it is discussing a "preferred embodiment[]"—not concepts that are absolutely required to be part of the invention. (752 patent, col. 21:24-31 ("In preferred embodiments.... [t]he device is assembled such that a single array of the substrate is at the bottom of a receptacle or well.") (*cited in* D.I. [120] at 4)) Indeed, Plaintiff does not point to any place in the specification that *excludes* a scenario in which a well could share an electrode array with other well(s). (*See* D.I. [120] at 9) And it seems undisputed that it is physically/technically *possible* for a system like the claimed invention to share arrays between wells. (*See id.* at 7 (Defendant citing D.I. [82], ex. 15 at AGILE0066071 and asserting that it is an example of this)) In the end, Plaintiff is the party seeking the narrower construction here, but the cumulative effect of the intrinsic evidence does not support that reading. The claims should be interpreted to give effect to the full breadth of their scope as written. *See Tonal Sys., Inc. v. iFit Inc.*, Civil Action No. 20-1197-GBW-CJB, 2023 WL 3089920, at *6 (D. Del. Apr. 26, 2023) (citing cases).; and (3) For these reasons, the Court hereby ORDERS that "at least two of the multiple wells comprise an electrode array at the bottom of the well" / "at least two of the multiple wells of said device comprise an electrode array at the bottom of the well" be construed to mean "each of at least two of the multiple wells includes an electrode array at the bottom surface of the well." Ordered by Judge Christopher J. Burke on 8/1/2024. (smg)

152 *Filed & Entered:* 08/01/2024 Oral Order

Docket Text: ORAL ORDER: With regard to the parties' motions for claim construction, (D.I. [146]; D.I. [147]), the Court now addresses the construction of term 2: "each of said two or more arrays is associated with one of said two or more wells" (255 Patent, claim 10). Both parties agree that this term implicates the same dispute that the parties had with regard to term 1 (i.e., whether each array must be associated with its own distinct well or whether the array can span multiple wells). (D.I. [120] at 9-12) Thus, both sides agreed during the *Markman* hearing that resolving term 1 would also resolve term 2. Based on the Court's

	resolution of term 1, (D.I. [151]), the Court hereby ORDERS that “each of said two or more arrays is associated with one of said two or more wells” be construed to mean “each of said two or more arrays is associated with a well.” Ordered by Judge Christopher J. Burke on 8/1/2024. (smg)	
153	<i>Filed & Entered:</i> 08/01/2024	Oral Order
	<i>Docket Text:</i> ORAL ORDER: With regard to the parties' motions for claim construction, (D.I. [146]; D.I. [147]), the Court now addresses the construction of term 3: “electrode array” (080 Patent, claim 1; 255 Patent, claim 10; 752 Patent, claims 11, 14). While in the briefing, Plaintiff argued that the construction should make clear that each electrode structure has “multiple electrode elements,” (D.I. [120] at 12-14), it ultimately gave up on this dispute by the time of the <i>Markman</i> hearing, (D.I. [135] at 2); therefore, the Court will not include this proposed language in its construction. Otherwise, the dispute here is similar to that at issue in term 1—i.e., whether “electrode array” means that the electrode structures must be operating as a <i>distinct</i> unit. (D.I. [120] at 14-15, 16) During the <i>Markman</i> hearing, the parties seemed to agree that the Court’s resolution of term 1 would also resolve this term. For the same reasons as discussed with respect to term 1, (D.I. [151]), and for the additional reason that the patents expressly define “electrode array” as “two or more electrode structures that... operate as a unit” (but not a “distinct” unit), (752 patent, col. 10:60-63; <i>see also</i> D.I. [120] at 17), the Court hereby ORDERS that “electrode array” be construed to mean “two or more electrode structures that operate as a unit.” Ordered by Judge Christopher J. Burke on 8/1/2024. (smg)	
154	<i>Filed & Entered:</i> 08/02/2024 <i>Terminated:</i> 08/05/2024	Motion for Leave to Appear Pro Hac Vice
	<i>Docket Text:</i> MOTION for Pro Hac Vice Appearance of Attorney Allison M. Haas, Paul J. McDonnell, and Jacob M. Stone - filed by Agilent Technologies, Inc.. (Murray, Travis)	
155	<i>Filed & Entered:</i> 08/02/2024	District Court Pro Hac Vice - Credit Card Payment for three
	<i>Docket Text:</i> Pro Hac Vice Fee - Credit Card Payment received for Allison M. Haas, Paul J. McDonnell, and Jacob M. Stone. (re [154] MOTION for Pro Hac Vice Appearance of Attorney Allison M. Haas, Paul J. McDonnell, and Jacob M. Stone)(Payment of \$ 150, receipt number ADEDC-4467441).(Murray, Travis)	
	<i>Filed & Entered:</i> 08/05/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [154] MOTION for Pro Hac Vice Appearance of Attorney Allison M. Haas, Paul J. McDonnell, and Jacob M. Stone filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 8/5/2024. (smg)	
156	<i>Filed & Entered:</i> 08/05/2024	Oral Order
	<i>Docket Text:</i> ORAL ORDER: With regard to the parties' motions for claim construction, (D.I. [146]; D.I. [147]), the Court now addresses the construction of term 4: “is individually addressed” / “electrode array is individually addressed” (080 patent, claim 1; 752 patent, claims 11, 14). By the end of the briefing regarding this term, Defendant’s revised proposed construction was as follows: “the electrical traces and connection pads of the arrays are configured such that an array can be connected to an impedance analyzer in such a way that (i) a measuring voltage can be applied across a single array at a given time by using switches, and (ii) during application of the measuring voltage to the single array, no current is conducted in any portion of any other electrode array[.]” (D.I. [120] at 35; D.I. [135] at 2) The parties have two disputes regarding this term. That is, they dispute: (1) whether the initial portion of Defendant’s proposal (requiring “electrical traces and connection pads” and the use of “switches”) is required; and (2) whether when a measuring voltage is applied to a single array, no current can be conducted in any other electrode array (i.e., whether the language following “(ii)” in Defendant’s proposal is required). With regard to the first dispute, the Court agrees with Defendant that the asserted patents dictate that each array being individually addressed requires the use of electrical traces, connection pads and switches. (D.I. [120] at 22, 33) Indeed, the patent specification expressly defines what it means for an array to be individually addressed, and it includes these requirements: “Preferably, each array of a device is individually addressed, <i>meaning that the electrical traces and connection pads</i> of the arrays are configured such that an array can be connected to an impedance analyzer in such a way that a measuring voltage can be applied across a single array at a given time by <i>using switches</i> (such as electronic switches).” (752 patent, col. 16:23-29 (emphasis added)) While Plaintiff contends that this passage is not definitional and merely describes a preferred embodiment (in light of the use of the term “[p]referably”), that is not a common sense reading of the passage. (D.I. [120] at 21, Ex. 2023	

29, 33-34) Rather, a plain reading tells us that *preferably*, each array is individually addressed, and then it defines what it means for each array to be individually addressed, full stop. (*Id.* at 29, 33-34); *see also Edwards Lifescis. LLC v. Cook Inc.*, 582 F.3d 1322, 1334 (Fed. Cir. 2009) (rejecting plaintiff’s argument that where a term was defined in a part of the specification that was describing a preferred embodiment, this did not limit the term, and explaining that “the specification’s use of ‘i.e.’ signals an intent to define the word to which it refers, ‘malleable,’ and that definition was not limited to the embodiment being discussed”). As to the parties’ second dispute, Plaintiff contends that for an electrode array to be “individually addressed,” that means that a measuring voltage is applied to an array, and that same measuring voltage cannot be applied to another array at the same time—but that nothing prevents application of *another* measuring voltage to a *different* array at the same time. (D.I. [120] at 30; Plaintiff’s *Markman* Slides Presentation at Term 4, Slide 14) Defendant, meanwhile, argues that “individually addressed” requires that during application of a measuring voltage to any array, no electrical current can be conducted in any different array at that same time. (D.I. [120] at 34-35) The Court sides with Plaintiff here. In support of their respective positions, both sides point to the portion of the definition of “individually addressed” in the specification that states that the arrays are configured “such that an array *can be* connected to an impedance analyzer in such a way that a measuring voltage *can be* applied across a single array at a given time[.]” (752 patent, col. 16:24-29 (emphasis added)) Even if this passage is about the concept of only applying a measuring voltage to one array at a time (and the Court is not so sure that it is), the use of the words “can be” signals that this would not be *required* at *all* times. Both sides also point to the prosecution history as supporting their respective positions. (D.I. [120] at 20, 25-28) Plaintiff cites a portion of the prosecution history in which, in distinguishing a prior art reference known as “Chan,” the patentee explained that in Chan, if one activates an element, the current travels through “two additional passages” such that “one is activating not only electrode array No 2 but also additional electrode arrays.... it does not allow a single electrode array to be individually addressed.” (D.I. [82], ex. 9 at AGILE0063158-59) Defendant, meanwhile, points to a portion of the prosecution history in which the patentee argued that electrode arrays would not be individually addressed in a scenario in which, “[w]hen an electrical voltage is applied to the selected electrode array No 3, electrical current would flow not only through the electrode arrays in the selected array No 3 but also through the right-side electrode buses for array No 1 and No 2 since such electrode buses of No 1 and No 2 are located on or within the electrical trace of the selected array No 3.” (*Id.*, ex. 10 at AGILE0063220) In the Court’s view, while these portions of the prosecution history make clear that “individually addressed” requires you to apply one single measuring voltage to one array at a time (i.e., you cannot apply one measuring voltage and take a measurement from more than one array at a time), they do not seem to speak to whether you could apply multiple (different) measuring voltages to multiple arrays at a time. Thus, with Defendant failing to point to persuasive evidence that the invention precludes a scenario in which you are applying two measuring voltages, respectively, to two separate arrays at a given time, the Court will not adopt the language from Defendant’s proposal after “(ii).” Therefore, the Court hereby ORDERS that “is individually addressed” be construed to mean “the electrical traces and connection pads of the arrays are configured such that an array can be connected to an impedance analyzer in such a way that a measuring voltage can be applied to the electrode array independent of any measuring voltage applied to another electrode array, at a given time, by using switches” and “electrode array is individually addressed” be construed to mean “electrode array [as construed by the Court] is individually addressed, which means that the electrical traces and connection pads of the arrays are configured such that an array can be connected to an impedance analyzer in such a way that a measuring voltage can be applied to the electrode array independent of any measuring voltage applied to another electrode array, at a given time, by using switches[.]” Ordered by Judge Christopher J. Burke on 8/5/2024. (smg)

157 Filed & Entered: 08/05/2024 Oral Order

Docket Text: ORAL ORDER: With regard to the parties' motions for claim construction, (D.I. [146]; D.I. [147]), the Court now addresses the construction of term 5: “electronic circuitry capable of engaging said device and selecting and connecting electrode arrays within any of the multiple wells to the impedance analyzer” (080 patent, claim 1) / “electronic circuitry that can engage said device and selectively connect said two or more electrode arrays of said device to said impedance analyzer” (752 patent, claims 11, 14). During the *Markman* hearing, at least Defendant’s counsel indicated that other than the second dispute that the parties had with regard to term 4, (i.e., whether the invention allows for the application of multiple

measuring voltages to multiple arrays at the same time), there was no longer any live, additional dispute regarding term 5. From the briefing, this appears correct to the Court. (*See, e.g.*, D.I. [120] at 39)

Defendant's counsel also noted that if the "same time" dispute was resolved with the construction of term 4, then there really was no need to separately construe term 5. The Court agrees with this as well. In light of this, and because the Court has now resolved the "same time" dispute in connection with construing term 4, (D.I. [156]), the Court does not understand there to currently be a clear, ripe dispute regarding term 5. Therefore, the Court HEREBY ORDERS that no construction is needed for term 5 at this time. Ordered by Judge Christopher J. Burke on 8/5/2024. (smg)

158 *Filed & Entered:* 08/05/2024 Notice of Service

Docket Text: NOTICE OF SERVICE of Axion Biosystems, Inc.'s Fourth Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Mayo, Andrew)

159 *Filed & Entered:* 08/07/2024 Oral Order

Docket Text: ORAL ORDER: With regard to the parties' motions for claim construction, (D.I. [146]; D.I. [147]), the Court now addresses the construction of term 6: "electrode array has an approximately uniform electrode resistance distribution across said electrode array so that the electrode resistances between two locations on said array do not differ by more than 30%" (752 patent, claims 11, 14) / "electrode array has an approximately uniform electrode resistance distribution across the entire array" (255 patent, claim 10) (the "uniform distribution" terms). The key dispute regarding the uniform distribution terms is whether they are indefinite under Section 112. (D.I. [120] at 40, 43) The relevant question with respect to definiteness is whether the claims would inform a person of ordinary skill in the art ("POSITA") about the scope of the invention with reasonable certainty. *Virco Mfg. Corp. v. SSI Liquidating, Inc.*, Civil Action No. 20-906-LPS-CJB, 2022 WL 1184060, at *7 (D. Del. Apr. 21, 2022). The Court will take up the uniform distribution terms separately, and in this Oral Order, it will address the uniform distribution term as it appears in the 752 patent. Here the Court concludes that Defendant has failed to show, by the required clear and convincing evidence, that the term is indefinite. Defendant's position is that the term is indefinite because: (a) the specification does not explain how to measure whether "the electrode resistances between two locations on said array do not differ by more than 30%[;]" (b) a POSITA would have multiple ways of measuring the claimed difference; and (c) these different methods produce materially different results as to whether the claim limitation is satisfied. (D.I. [120] at 44 (citing D.I. [122], ex. 23 at paras. 53-76); *id.* at 58) Defendant's expert, Dr. Fair, backs this up by opining that as a POSITA, he is "aware of multiple ways to measure whether two values differ by no more than a certain percentage (here, 30%)" and that these different methods "provide[] different results as to whether such an electrode array is within the scope of the claim limitation[;]" and that the "patent specification does not point to any way to measure the % difference in resistance." (D.I. [122], ex. 23 at paras. 63-67, 69) Plaintiff's expert Dr. Frazier, meanwhile, opines that: (a) there is one well-known "mathematical approach" to calculate whether the 30% limitation is met; (b) "there was no need to clarify how to calculate a percentage difference between two resistances [in the specification] as it was a well know[n] concept" to the POSITA; and (c) Dr. Fair's opinions are wrong because they rely on calculating a percentage *change* instead of a percentage *difference*, and it is the latter that is required by the claim term. (*Id.*, ex. 24 at paras. 72, 75, 79, 84; *see also* D.I. [120] at 51-52, 54-58) The Court did not see either expert testify live (it has simply had declarations from the experts provided on these points), and neither expert cited to extrinsic evidence in the art in support of their position. As of now, neither expert's position strikes the Court as clearly right or clearly wrong. And so, on this record, it is hard for the Court to know which expert's position is the correct one. Therefore, Defendant has not met its burden of showing that the uniform distribution term in the 752 patent is indefinite. *See, e.g., Chugai Pharm. Co. v. Alexion Pharms., Inc.*, C.A. No. 18-1802 (MN), 2020 WL 1875480, at *5 (D. Del. Apr. 15, 2020) ("Here, I have competing declarations and no real cross-examination of the positions; thus, at this time [during the claim construction phase of the case], the Court finds that Defendant has not met its burden to show that this term is indefinite. Should there still be a disagreement regarding definiteness in the future that involves the ambiguity that Defendant asserts exists, Defendant may raise the issue later, if appropriate, after full fact and expert discovery."). Therefore, the Court hereby ORDERS that this term be construed to mean (as Plaintiff suggests) "electrode array where the difference between resistances for two selected locations on the bottom surface of the well is not greater than 30%, regardless of the selected location, when resistance at a selected location is measured from one connection pad to the selected location and from the

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	selected location to an opposing connection pad, excluding the gap between electrode structures of the electrode array[.]” Ordered by Judge Christopher J. Burke on 8/7/2024. (smg)	
160	Filed & Entered:	08/07/2024 Oral Order
	<p>Docket Text: ORAL ORDER: With regard to the parties' motions for claim construction, (D.I. [146]; D.I. [147]), the Court now addresses the construction of term 6 as it relates to the uniform distribution term found in the 255 patent. Here, the issue is different than the term in the 752 patent because this term does not include an explicit 30% limitation. (See D.I. [120] at 42, 49) Nevertheless, Plaintiff's position is that the absence of this language in the claim term does not render the claim indefinite “in light of the disclosure of an upper boundary [i.e., 30%] in the specification and related prosecution history of the 752 [p]atent.” (Id. at 42, 52; see also D.I. [122], ex. 24 at para. 64) In other words, Plaintiff asserts that the 30% limitation in the uniform distribution term in the 752 patent is implicitly present in claim 10 of the 255 patent. Defendant does not seem to strongly fight back against that proposition. (See D.I. [120] at 49; D.I. [122], ex. 23 at para. 96) Indeed, it was only in its sur-reply brief that Defendant contended that “neither the [752 file history nor any authority Plaintiff cites dictates amending [255 claim 10 to add” the 30% limitation. (D.I. [120] at 60) Instead, Defendant's main argument in the briefing as to this term in the 255 patent is that the term is indefinite for the <i>very same reason</i> as it was for the 752 patent—i.e., that “there are multiple ways to measure whether resistances do not differ by more than 30%, and thus a person of ordinary skill in the art would not be informed of the scope of claim 10's limitation.” (D.I. [122], ex. 23 at para. 94; see also D.I. [120] at 49) The Court has already determined that this argument, in light of the current record, is not enough to demonstrate by clear and convincing evidence, that these claim terms are indefinite. (D.I. [159]) And since Defendant did not make a strong case for any other type of indefiniteness argument regarding the 30% limitation, the Court similarly finds that Defendant has not met its burden on indefiniteness as to this term in the 255 patent either. From there, the Court concludes that the term should be construed in the manner Plaintiff suggests. The specification of the 255 patent tells us that “[e]ach electrode array of the device has an approximately uniform electrode resistance distribution across the entire array” and then explains that “[p]referably, the electrode resistance at a first location on an array of the device and the electrode resistance at a second location on the same array does not differ by more than 30%. More preferably, the electrode resistance at a first location on an array of the device and the electrode resistance at a second location on the same array does not differ by more than 15%. Even more preferably, the electrode resistance at a first location on an array of the device and a second location on the same array does not differ by more than 5%. More preferably yet, the electrode resistance at a first location on an array of the device and a second location on the same array does not differ by more than 2%.” (255 patent, col. 25:4-23) This evidence, along with the fact that in the related 752 patent, the patentee explicitly added the 30% limitation to similar claims, see <i>Biovail Corp. Int'l v. Andrx Pharms., Inc.</i>, 239 F.3d 1297, 1301 (Fed. Cir. 2001), together provides indication that the POSITA would understand the uniform distribution term in claim 10 of the 255 patent to mean that the electrode resistance between two locations must not differ by more than 30%. See, e.g., <i>Godo Kaisha IP Bridge 1 v. Broadcom Ltd.</i>, CASE NO. 2:16-CV-134-JRG-RSP, 2016 WL 6611490, at *19-20 (E.D. Tex. Nov. 9, 2016) (concluding that the term “small dielectric constant” was not indefinite, where the specification provided sufficient objective boundaries for the claim term). Therefore, with Defendant having failed to meet its burden regarding a showing of indefiniteness, the Court hereby ORDERS that (as Plaintiff suggests) “electrode array has an approximately uniform electrode resistance distribution across the entire array” be construed to mean “electrode array where the difference between resistances for two selected locations on the bottom surface of the well is not greater than 30%, regardless of the selected location, when resistance at a selected location is measured from one connection pad to the selected location and from the selected location to an opposing connection pad, excluding the gap between electrode structures of the electrode array[.]” Ordered by Judge Christopher J. Burke on 8/7/2024. (smg)</p>	
161	Filed & Entered:	08/08/2024 Oral Order
	<p>Docket Text: ORAL ORDER: With regard to the parties' motions for claim construction, (D.I. [146]; D.I. [147]), the Court now addresses the construction of term 7: “calculating cell index values” (080 patent, claim 1) / “calculating a cell index” (752 patent, claim 18) and term 8: “cell index” (255 patent, claim 9). The dispute regarding these terms is whether they are indefinite under Section 112. (D.I. [120] at 61-75) Each side points to expert testimony in support of its position. (Id. at 63 (citing D.I. [122], ex. 23 at paras. 153-55); id. at 70 (citing D.I. [122], ex. 24 at paras. 87, 92, 95, 96, 101, 108)) The parties did not reach</p>	

Ex. 2023

these terms at the *Markman* hearing, so the Court does not have the benefit of oral argument regarding them. In light of this, and because indefiniteness is an issue that can sometimes be better suited for resolution at the summary judgment stage, the Court will defer ruling on these terms at this time. *See, e.g., Datacore Software Corp. v. Scale Computing, Inc.*, C.A. No. 22-535-GBW, 2023 WL 5207928, at *5-6 (D. Del. Aug. 14, 2023) (deferring ruling on whether term was indefinite at the claim construction stage of the case until the case dispositive motion stage where, *inter alia*, the parties' experts offered dueling opinions and the Court would benefit from a more robust evidentiary record on the issue). Defendant may re-raise its definiteness challenge regarding these terms at summary judgment if it wishes. Ordered by Judge Christopher J. Burke on 8/8/2024. (smg)

162 Filed & Entered: 08/09/2024 Notice of Service

Docket Text: NOTICE OF SERVICE of Second Set of Interrogatories to Axion Biosystems, Inc. filed by Agilent Technologies, Inc..(Murray, Travis)

163 Filed & Entered: 08/12/2024 Notice to Take Deposition

Docket Text: [SEALED] NOTICE to Take Deposition of Axion BioSystems, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6) on August 28, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)

164 Filed & Entered: 08/13/2024 Oral Order

Docket Text: ORAL ORDER: With regard to the parties' motions for claim construction, (D.I. [146]; D.I. [147]), the Court now addresses the construction of term 9: "optionally determining a cell index from said cell impedance" (255 patent, claim 9). The dispute regarding this term is whether the step of "determining a cell index from said cell impedance" is optional and does not limit the claim (Defendant's position), or whether the term is limiting such that the claim requires that an option to determine a cell index from cell impedance must be provided (Plaintiff's position). (D.I. 120 at 75-81) The intrinsic record supports Defendant's position. First, the plain language of the claim supports Defendant's reading that determining a cell index from said impedance is an optional step in the claimed method of measuring cytolytic activity. (*Id.* at 78, 80-81; 255 patent, col. 99:42-43) As Defendant points out, the patentee could have chosen to claim "providing an option of determining a cell index from said cell impedance" (similar to its choice elsewhere in claim 9 to recite "providing a device capable of monitoring cell-substrate impedance"), but it did not--instead, it chose to claim "optionally determining a cell index...[,]" which indicates that this is, indeed, an optional step. (D.I. 120 at 81) The specification also supports Defendant's position, as it repeatedly uses the same language of claim 9--"optionally determining a cell index[.]" (255 patent, Abstract, cols. 6:38-40, 6:57, 7:9-10, 7:29-30, 7:49-50, 72:47-48, 79:30-31, 81:22-23; *see also id.*, col. 69:23-36 ("Various approaches may be used in comparing the cytotoxic responses of the compounds. A cell index... can optionally be calculated using the impedance values obtained.)) And the prosecution history of a related patent (a child continuation-in-part of the 255 patent) also supports Defendant's reading. (D.I. 120 at 79) There, a method claim recited the step of "determining the change in impedance and optionally a cell index... of said test portion and the change in impedance and optionally a cell index... of said control portion[,]" which is similar to our language here. (D.I. 82, ex. 14 at AGILE0066024) The patentee had argued that while determination of a cell index and its comparison between a test portion and a control portion "are provided as optional in the claims, for completeness" a prior art reference did not teach these elements. (*Id.* at AGILE0066030) The Examiner noted this argument and responded that "[a]s the claimed limitations are not required by the claims and are optional, there is no requirement that they be examined or that the cited reference meet these limitations" and declined to consider this argument. (*Id.*, ex. 15 at AGILE0066051 (emphasis added)) The patentee said nothing more on this issue thereafter. (*Id.* at AGILE0066062-80) With the intrinsic record thus indicating that "determining a cell index from said cell impedance" is an optional step, the Court hereby ORDERS that term 9 is an optional step and does not limit the scope of claim 9 and its dependent claims. (D.I. 120 at 75); *see also, e.g., Cadence Pharms., Inc. v. Exela Pharma. Scis., LLC*, C.A. No. 11-733-LPS, 2013 WL 11083853, at *3, *20 (D. Del. Nov. 14, 2013) (explaining with respect to a step in a method claim of "optionally" completing the deoxygenation of the solution by addition of an antioxidant that, consistent with the plain meaning of the term "optionally," this was an optional step such that it "makes no difference when that step is performed. For purposes of claim scope, it is as if the optional step does not exist."). Ordered by Judge Christopher J. Burke on 8/13/2024. (mlc)

165	<i>Filed & Entered:</i>	08/14/2024	Notice (Other)
	<i>Docket Text:</i> NOTICE of Subpoena to David Ferrick by Agilent Technologies, Inc. (Murray, Travis)		
166	<i>Filed & Entered:</i>	08/14/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Daniel Millard on August 26, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)		
167	<i>Filed & Entered:</i>	08/14/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Andrew Willsie on August 27, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)		
168	<i>Filed & Entered:</i>	08/14/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of James Ross on August 28, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)		
169	<i>Filed & Entered:</i>	08/14/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Stacie Chvatal on August 29, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)		
170	<i>Filed & Entered:</i>	08/14/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of William Deacon on September 17, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)		
171	<i>Filed & Entered:</i>	08/14/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Deborah Hurtado on September 20, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)		
172	<i>Filed & Entered:</i>	08/14/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Jim Filippini on September 27, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)		
173	<i>Filed & Entered:</i>	08/14/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Alp Aras on September 30, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)		
174	<i>Filed & Entered:</i>	08/14/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s First Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory Nos. 11 and 12 - filed by Agilent Technologies, Inc.. (Murray, Travis)		
175	<i>Filed & Entered:</i>	08/16/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Fourth Set of Requests For Production of Documents and Things to Axion Biosystems, Inc. filed by Agilent Technologies, Inc..(Murray, Travis)		
176	<i>Filed & Entered:</i>	08/16/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s First Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatories (Nos. 7-9) filed by Agilent Technologies, Inc.. (Murray, Travis)		
177	<i>Filed & Entered:</i>	08/19/2024	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [163] Notice to Take Deposition by Agilent Technologies, Inc.. (Murray, Travis)		
178	<i>Filed & Entered:</i>	08/27/2024	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Travis Murray regarding Agilent's request for an extension of the case schedule. (Murray, Travis)		

179	<i>Filed & Entered:</i> <i>Terminated:</i>	08/27/2024 09/03/2024	Motion for Miscellaneous Relief
	<i>Docket Text:</i> MOTION for Expedited Teleconference to Resolve Discovery Dispute on Case Schedule re [178] Letter - filed by Agilent Technologies, Inc.. (Murray, Travis)		
180	<i>Filed & Entered:</i>	08/28/2024	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court has reviewed the parties' August 27, 2024 letter requesting a discovery dispute teleconference regarding one discovery dispute. (D.I. 178) It hereby ORDERS as follows with regard to this dispute: (1) In light of the parties' request for the dispute to be considered on an expedited basis, the Court will plan to resolve the dispute on the papers.; (2) By August 30, 2024, the party seeking relief shall file with the Court a letter, not to exceed one (1) single-spaced page, in no less than 12-point font, outlining the issues in dispute and its position on those issues.; (3) By September 4, 2024, the party opposing the application for relief may file a letter, not to exceed one (1) single-spaced page, in no less than 12-point font, outlining that party's reasons for its opposition.; (4) By September 6, 2024, the party seeking relief shall file with the Court a reply letter brief, not to exceed one (1) single-spaced page, in no less than 12-point font.; and (5) The parties should also consult and follow Judge Burke's "Guidelines for Discovery Disputes," which is found in the "Guidelines" tab on Judge Burke's portion of the District Court's website. Ordered by Judge Christopher J. Burke on 8/28/2024. (mlc)		
181	<i>Filed & Entered:</i>	08/30/2024	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Travis J. Murray regarding resolution of case schedule dispute - re [179] MOTION for Expedited Teleconference to Resolve Discovery Dispute on Case Schedule re [178] Letter , [180] Oral Order,,,,,. (Murray, Travis)		
182	<i>Filed & Entered:</i>	08/30/2024	Stipulation
	<i>Docket Text:</i> STIPULATION and [Proposed] Order to Modify Case Scheduling Order by Agilent Technologies, Inc.. (Murray, Travis)		
	<i>Filed & Entered:</i>	09/03/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [182] Stipulation and Order to Modify Case Scheduling Order filed by Agilent Technologies, Inc. Motion at D.I. [179] has been terminated. Ordered by Judge Christopher J. Burke on 9/3/2024. (smg)		
183	<i>Filed & Entered:</i>	09/03/2024	Transcript
	<i>Docket Text:</i> Official Transcript of Markman Hearing held on 7/30/2024 before Judge Christopher J. Burke. Court Reporter/Transcriber Kimberly Bursner,Email: Kbursner@verizon.net. Transcript may be viewed at the court public terminal or order/purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date, it may be obtained through PACER Redaction Request due 9/24/2024. Redacted Transcript Deadline set for 10/4/2024. Release of Transcript Restriction set for 12/2/2024. (rlr)		
184	<i>Filed & Entered:</i>	09/03/2024	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court, having entered the parties' Stipulation to Modify Case Scheduling Order, (D.I. [182]), hereby ORDERS that by no later than September 6, 2024, the parties shall submit a proposed Amended Scheduling Order that includes a trial date of either January 12, 2026 (with a pretrial conference on January 2, 2026 at 10:00 am) or January 26, 2026 (with a pretrial conference on January 16, 2026 at 10:00 am). Ordered by Judge Christopher J. Burke on 9/3/2024. (smg)		
185	<i>Filed & Entered:</i>	09/03/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s First Supplemental Response to Plaintiff Agilent Technologies, Inc.'s Interrogatory No. 3 filed by Axion BioSystems, Inc..(Mayo, Andrew)		
186	<i>Filed & Entered:</i>	09/04/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Objections and Responses to Axion Biosystems, Inc.'s Fourth Set of Requests for Production of Documents and Things - filed by Agilent Technologies, Inc..(Murray, Travis)		

187	<i>Filed & Entered:</i>	09/06/2024	Stipulation
	<i>Docket Text:</i> STIPULATION and [Proposed] Order Amending Scheduling Order - by Agilent Technologies, Inc.. (Murray, Travis)		
188	<i>Filed & Entered:</i>	09/06/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [187] Stipulation and Order Amending Scheduling Order filed by Agilent Technologies, Inc. (Fact Discovery completed by 2/12/2025, Opening Expert Reports due by 3/13/2025, Rebuttal Expert Reports due by 4/11/2025, Reply Expert Reports due by 5/7/2025, Expert Discovery due by 6/4/2024, Dispositive Motions due by 7/2/2025, Proposed Pretrial Order due by 1/9/2026, A Pretrial Conference is set for 1/16/2026 at 10:00 AM in Courtroom 2A before Judge Christopher J. Burke, A 6-Day Jury Trial is set for 1/26/2026 at 09:30 AM in Courtroom 2A before Judge Christopher J. Burke. See Stipulation for further deadlines.) Signed by Judge Christopher J. Burke on 9/6/2024. (smg)		
189	<i>Filed & Entered:</i>	09/09/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Second Set of Interrogatories filed by Axion BioSystems, Inc..(Mayo, Andrew)		
190	<i>Filed & Entered:</i>	09/09/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Fifth Set of Requests for Production of Documents and Things to Axion Biosystems, Inc. - filed by Agilent Technologies, Inc.. (Murray, Travis)		
191	<i>Filed & Entered:</i>	09/16/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc's Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Fourth Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Mayo, Andrew)		
192	<i>Filed & Entered:</i>	09/26/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Third Set of Interrogatories to Plaintiff and Axion BioSystems, Inc's First Supplemental Response Plaintiff Agilent Technologies, Inc.s Interrogatory No. 1 filed by Axion BioSystems, Inc..(Mayo, Andrew)		
193	<i>Filed & Entered:</i>	10/03/2024	Notice (Other)
	<i>Docket Text:</i> NOTICE of Amended Subpoena (David Ferrick) - by Agilent Technologies, Inc. (Murray, Travis)		
194	<i>Filed & Entered:</i>	10/04/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Notice of Subpoena to David Ferrick filed by Axion BioSystems, Inc..(Mayo, Andrew)		
195	<i>Filed & Entered:</i>	10/08/2024	Letter
	<i>Docket Text:</i> Joint Letter to The Honorable Christopher J. Burke from Travis J. Murray regarding Request for Discovery Dispute Teleconference. (Murray, Travis)		
196	<i>Filed & Entered:</i>	10/09/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Fifth Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Mayo, Andrew)		
197	<i>Filed:</i> <i>Entered:</i>	10/09/2024 10/10/2024	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court has reviewed the parties' October 8, 2024 letter requesting a discovery dispute teleconference regarding three discovery disputes. (Civil Action No. 23-198-CJB, D.I. 195; Civil Action No. 24-300, D.I. 55) It hereby ORDERS as follows with regard to these disputes: (1) By October 15, 2024, any party seeking relief shall file a letter, not to exceed two (2) single-spaced pages, in no less than 12-point font, outlining the issues in dispute and its position on those issues.; (2) By October 21, 2024, any party opposing the application for relief shall file a letter, not to exceed two (2) single-spaced		

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	pages, in no less than 12-point font, outlining that party's reasons for its opposition.; (3) By October 25, 2024, the party seeking relief shall file a reply letter brief, not to exceed one (1) single-spaced page, in no less than 12-point font.; (4) By October 25, 2024, the parties shall jointly file a Motion To Resolve Discovery Dispute.; (5) The parties should also consult and follow Judge Burke's "Guidelines for Discovery Disputes," which is found in the "Guidelines" tab on Judge Burke's portion of the District Court's website.; (6) The Court will plan to resolve the disputes on the papers, unless: (a) it determines after reviewing the briefing that oral argument is needed; or (b) any party advises the Court in advance that, were argument to be set, a newer attorney will argue the disputes, see Standing Order Regarding Courtroom Opportunities for Newer Attorneys, https://www.ded.uscourts.gov/sites/ded/files/StandingOrder2017.pdf . If either of those circumstances, occurs, then the Court will schedule oral argument on the disputes in the future. Ordered by Judge Christopher J. Burke on 10/9/2024. Associated Cases: 1:23-cv-00198-CJB, 1:24-cv-00300-CJB(smg)	
198	<i>Filed & Entered:</i> 10/15/2024	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding response to October 10, 2024 Oral Order to resolve discovery disputes. (Attachments: # (1) Exhibit A, # (2) Exhibit B) (Mayo, Andrew)	
199	<i>Filed & Entered:</i> 10/15/2024	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Brian P. Egan regarding Discovery Dispute - re [197] Oral Order,. (Attachments: # (1) Exhibits A-H)(Egan, Brian) Modified on 10/16/2024 to reflect correct filing attorney.(smg).	
	<i>Filed & Entered:</i> 10/16/2024	Notice re Courtesy Copies
	<i>Docket Text:</i> NOTICE: Per Magistrate Judge Burke's Standing Order Regarding Courtesy Copies, which requires two (2) courtesy copies of all briefs (including letter briefs), as well as any documents filed in support of such briefs (i.e., appendices, exhibits, declarations, affidavits, tutorials, etc.) and one (1) copy of any other document filed (e.g., letters and stipulations), please submit to the Clerk's Office a copy of D.I. # [198] Letter brief. (smg)	
200	<i>Filed & Entered:</i> 10/21/2024	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding Axion's response to Agilent's October 15, 2024 letter. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3)(Mayo, Andrew)	
201	<i>Filed & Entered:</i> 10/21/2024	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Travis J. Murray regarding Regarding Partial Opposition of Axion's Request to Modify the Protective Order - re (195 in 1:23-cv-00198-CJB) Letter. (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Text of Proposed Order)(Murray, Travis)	
202	<i>Filed & Entered:</i> 10/22/2024	Stipulation to EXTEND Time
	<i>Terminated:</i> 10/23/2024	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to file a redacted version of Agilent's Opening Letter (D.I. 199) to October 25, 2024 - filed by Agilent Technologies, Inc.. (Murray, Travis)	
	<i>Filed & Entered:</i> 10/23/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [202] STIPULATION TO EXTEND TIME to file a redacted version of Agilent's Opening Letter (D.I. [199]) to October 25, 2024 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 10/23/2024. (smg)	
203	<i>Filed & Entered:</i> 10/25/2024	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding reply to Agilent's October 21, 2024 letter - re (201 in 1:23-cv-00198-CJB, 59 in 1:24-cv-00300-CJB) Letter,. (Mayo, Andrew)	
204	<i>Filed & Entered:</i> 10/25/2024	Motion for Miscellaneous Relief
	<i>Terminated:</i> 03/06/2025	

	<i>Docket Text:</i> Joint MOTION to Resolve Discovery Disputes re (56 in 1:24-cv-00300-CJB, 197 in 1:23-cv-00198-CJB) Oral Order,,,,,, - filed by Agilent Technologies, Inc.. (Murray, Travis)	
205	<i>Filed & Entered:</i> 10/25/2024	Stipulation to EXTEND Time
	<i>Terminated:</i> 10/28/2024	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME for Plaintiff Agilent Technologies, Inc. to File a Redacted Version of Agilent's Opening Letter (D.I. 199) and for Defendant Axion BioSystems, Inc. to File a Redacted Version of Axion's Responsive Letter (D.I. 200) to October 30, 2024 - filed by Agilent Technologies, Inc.. (Murray, Travis)	
206	<i>Filed & Entered:</i> 10/25/2024	Notice to Take Deposition
	<i>Docket Text:</i> [SEALED] NOTICE to Take Deposition of Axion BioSystems, Inc. Pursuant to Fed. R. Civ. P. 30(b)(6) on November 11, 2024 filed by Agilent Technologies, Inc..(Egan, Brian)	
207	<i>Filed & Entered:</i> 10/25/2024	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Travis Murray regarding Discovery Dispute - re [195] Letter. (Attachments: # (1) Exhibit G)(Murray, Travis)	
	<i>Filed & Entered:</i> 10/28/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [205] STIPULATION TO EXTEND TIME for Plaintiff Agilent Technologies, Inc. to File a Redacted Version of Agilent's Opening Letter (D.I. [199]) and for Defendant Axion BioSystems, Inc. to File a Redacted Version of Axion's Responsive Letter (D.I. [200]) filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 10/28/2024. (smg)	
208	<i>Filed & Entered:</i> 10/28/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of William Deacon on November 8, 2024 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)	
209	<i>Filed & Entered:</i> 10/28/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Objections and Responses to Axion Biosystems, Inc.'s Third Set of Interrogatories (Nos. 20-22) filed by Agilent Technologies, Inc..(Murray, Travis)	
210	<i>Filed & Entered:</i> 10/30/2024	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [199] Letter - by Agilent Technologies, Inc.. (Attachments: # (1) Exs. A-H)(Murray, Travis)	
211	<i>Filed & Entered:</i> 10/30/2024	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [200] Letter by Axion BioSystems, Inc.. (Mayo, Andrew)	
212	<i>Filed & Entered:</i> 11/01/2024	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [207] Letter by Agilent Technologies, Inc.. (Attachments: # (1) Exhibit G)(Murray, Travis)	
213	<i>Filed & Entered:</i> 11/01/2024	Stipulation to EXTEND Time
	<i>Terminated:</i> 11/06/2024	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to file a redacted version of Agilent's Amended Notice of 30(b)(6) Deposition of Axion BioSystems, Inc. (D.I. 206) to November 6, 2024 - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
214	<i>Filed & Entered:</i> 11/01/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Stacie Chvatal on November 12, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)	
215	<i>Filed & Entered:</i> 11/01/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Daniel Millard on November 14, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)	

216	<i>Filed & Entered:</i>	11/01/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of James Ross on November 21, 2024 filed by Agilent Technologies, Inc..(Murray, Travis)		
217	<i>Filed & Entered:</i>	11/05/2024	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [206] Notice to Take Deposition - by Agilent Technologies, Inc.. (Murray, Travis)		
218	<i>Filed & Entered:</i>	11/05/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Amended Notice of Deposition of Defendant Axion BioSystems, Inc. Pursuant to Federal Rule of Civil Procedure 30(b)(6) filed by Axion BioSystems, Inc..(Mayo, Andrew)		
	<i>Filed & Entered:</i>	11/06/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [213] STIPULATION TO EXTEND TIME to file a redacted version of Agilent's Amended Notice of 30(b)(6) Deposition of Axion BioSystems, Inc. (D.I. [206]) to November 6, 2024 filed by Axion BioSystems, Inc. Ordered by Judge Christopher J. Burke on 11/6/2024. (smg)		
	<i>Filed & Entered:</i>	11/18/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [219] STIPULATION TO EXTEND TIME for the parties to engage in mediation to December 11, 2024 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 11/18/2024. (smg)		
219	<i>Filed & Entered:</i>	11/18/2024	Stipulation to EXTEND Time
	<i>Terminated:</i>	11/18/2024	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME for the parties to engage in mediation to December 11, 2024 - filed by Agilent Technologies, Inc.. (Murray, Travis)		
220	<i>Filed & Entered:</i>	11/20/2024	Notice to Take Deposition
	<i>Docket Text:</i> [SEALED] NOTICE to Take Deposition of Axion BioSystems, Inc. on November 21, 2024 (Second Amended) filed by Agilent Technologies, Inc..(Murray, Travis)		
221	<i>Filed & Entered:</i>	11/22/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Jim Filippini on December 5, 2024 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)		
222	<i>Filed & Entered:</i>	11/22/2024	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Alp Aras on December 6, 2024 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)		
223	<i>Filed & Entered:</i>	11/25/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Defendant Axion Technologies, Inc.'s Notice of Rule 30(b)(6) Deposition of Plaintiff Agilent Biosystems, Inc. filed by Axion BioSystems, Inc..(Mayo, Andrew)		
224	<i>Filed & Entered:</i>	11/25/2024	Stipulation
	<i>Docket Text:</i> STIPULATION to Stay C.A. No. 24-300-CJB and [Proposed] Order by Agilent Technologies, Inc.. (Murray, Travis)		
	<i>Filed & Entered:</i>	11/26/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, re (65 in 1:24-cv-00300-CJB, 224 in 1:23-cv-00198-CJB) Stipulation to Stay C.A. No. 24-300-CJB and Order filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 11/26/2024. Associated Cases: 1:23-cv-00198-CJB, 1:24-cv-00300-CJB(smg)		
225	<i>Filed & Entered:</i>	11/26/2024	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [220] Notice to Take Deposition - by Agilent Technologies, Inc.. (Murray, Travis)		
226	<i>Filed & Entered:</i>	11/26/2024	Notice of Service

	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Third Set of Interrogatories to Axion Biosystems, Inc. filed by Agilent Technologies, Inc..(Murray, Travis)	
227	<i>Filed & Entered:</i>	11/27/2024 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatories Nos. 2 and 22 - filed by Agilent Technologies, Inc..(Murray, Travis)	
228	<i>Filed & Entered:</i>	12/06/2024 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Deborah Hurtado on January 9, 2025 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)	
229	<i>Filed & Entered:</i>	12/06/2024 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of William Deacon on January 10, 2025 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)	
230	<i>Filed & Entered:</i>	12/06/2024 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Thomas O'Brien on January 13, 2025 filed by Agilent Technologies, Inc..(Murray, Travis)	
231	<i>Filed & Entered:</i>	12/06/2024 Notice (Other)
	<i>Docket Text:</i> NOTICE of Subpoena to Thomas O'Brien by Agilent Technologies, Inc. (Attachments: # (1) Exhibit 1)(Murray, Travis)	
232	<i>Filed & Entered:</i>	12/09/2024 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s First Supplemental Response to Plaintiff Agilent Technologies, Inc.'s Interrogatory No. 17 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
233	<i>Filed & Entered:</i>	12/10/2024 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Leyna Zhao on January 9, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
234	<i>Filed & Entered:</i>	12/10/2024 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Nancy Li on January 10, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
235	<i>Filed & Entered:</i>	12/10/2024 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Xiaobo Wang on January 13, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
236	<i>Filed & Entered:</i>	12/10/2024 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of David Tugwell on January 22, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
237	<i>Filed & Entered:</i>	12/10/2024 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Ryan Raver on January 23, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
238	<i>Filed & Entered:</i>	12/10/2024 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Maureen Joseph on January 24, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
239	<i>Filed & Entered:</i>	12/13/2024 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Sixth Set of Requests for Production of Documents and Things to Axion Biosystems, Inc. filed by Agilent Technologies, Inc..(Murray, Travis)	
240	<i>Filed & Entered:</i>	12/13/2024 Motion for Issuance of Letters Rogatory
	<i>Terminated:</i>	01/16/2025

	<i>Docket Text:</i> [SEALED] MOTION for Issuance of Letters Rogatory - filed by Agilent Technologies, Inc.. (Attachments: # (1) Ex. A - Letter of Request, # (2) Ex. B, # (3) Ex. C, # (4) Ex. D)(Egan, Brian)	
241	<i>Filed & Entered:</i> 12/20/2024 <i>Terminated:</i> 12/26/2024	Stipulation to EXTEND Time
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to file a redacted version of Agilent's Motion for Issuance of Letter of Request for International Judicial Assistance (D.I. 240) to December 27, 2024 - filed by Agilent Technologies, Inc.. (Murray, Travis)	
242	<i>Filed & Entered:</i> 12/20/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Objections and Responses to Axion Biosystems, Inc.'s Notice of Deposition of Agilent Technologies, Inc. Pursuant to Federal Rule of Civil Procedure 30(b)(6) - filed by Agilent Technologies, Inc..(Murray, Travis)	
	<i>Filed & Entered:</i> 12/26/2024	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [241] STIPULATION TO EXTEND TIME to file a redacted version of Agilent's Motion for Issuance of Letter of Request for International Judicial Assistance (D.I. [240]) to December 27, 2024 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 12/26/2024. (smg)	
243	<i>Filed & Entered:</i> 12/26/2024	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Third Set of Interrogatories (Interrogatory No. 21) filed by Axion BioSystems, Inc..(Mayo, Andrew)	
244	<i>Filed & Entered:</i> 12/27/2024	Answering Brief in Opposition
	<i>Docket Text:</i> [SEALED] ANSWERING BRIEF in Opposition re [240] MOTION for Issuance of Letters Rogatory filed by Axion BioSystems, Inc..Reply Brief due date per Local Rules is 1/3/2025. (Attachments: # (1) Exhibit 1)(Mayo, Andrew)	
245	<i>Filed & Entered:</i> 12/31/2024	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [240] MOTION for Issuance of Letters Rogatory by Agilent Technologies, Inc.. (Attachments: # (1) Ex. A, # (2) Ex. B, # (3) Ex. C, # (4) Ex. D)(Murray, Travis)	
246	<i>Filed & Entered:</i> 01/02/2025	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Travis J. Murray regarding request for the scheduling of a discovery dispute teleconference. (Murray, Travis)	
247	<i>Filed & Entered:</i> 01/02/2025	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court, having reviewed Defendant's motion to sever Counts V-VII ("Counts V-VII" or "the claims at issue") of the operative Second Amended Complaint ("SAC") and transfer them to the United States District Court for the Northern District of California ("Northern District"), (D.I. [94] (the "motion to sever")), and the briefing related thereto, (D.I. 95; D.I. 100; D.I. 105), as well as Plaintiff's motion for leave to file a sur-reply brief regarding the motion to sever, (D.I. [107] (the "motion for leave")), and the briefing related thereto, (D.I. 107; D.I. 112; D.I. 115), hereby ORDERS that the motion to sever is DENIED without prejudice to Defendant's ability to re-raise the issue of bifurcation at a later date, and that the motion for leave is DENIED as MOOT. It does so for the reasons that follow: (1) With the motion to sever, Defendant had originally sought to sever Counts V-VII (to the extent that those counts survive the pending motion to dismiss filed at D.I. 87) and then transfer them to the Northern District. But by the end of the briefing on the motion to sever, subsequent events had caused Defendant to drop its transfer request. (D.I. 105 at 1-2 & n.3) That said, Defendant still asks the Court to sever the claims at issue from the remaining counts in the SAC (i.e., the patent infringement and Lanham Act claims found in Counts I-IV), pursuant to Fed. R. Civ. P. 21. However, the Court does not see how it would make logistical and practical sense at this point to take this path (as that would mean splitting this case up into two civil actions, instead of one). This is especially so in that: (a) at the time the motion to sever was filed, this case had been pending for a year; and (b) the operative pleading in the case (i.e., the SAC) contains Counts I-VII, and the parties had been (and still are) moving forward with one joint schedule regarding all of those claims. Even if	

	<p>Defendant's arguments about how Counts I-IV are very different from Counts V-VII end up ringing true, it just does not seem sensible to the Court at this stage to create two civil actions in this District (as opposed to just proceeding forward with one civil action that is already fairly far along).; (2) With all of that said, the Court acknowledges that Defendant makes some strong arguments in the motion to sever briefing about why--even though there might be some evidentiary or witness overlap between Counts I-IV and Counts V-VII, (D.I. 100 at 6-8, 10-12)--those sets of respective counts relate to "multiple, unrelated, and complex bodies of law" and will, to a great degree, implicate different factual inquiries (e.g., whether certain aspects of Defendant's accused products infringe the claims of Plaintiff's asserted patents, or whether a particular representation that Defendant made about certain of its products amounts to false advertising, or whether certain actions taken by Defendant's employees amount to misappropriation of materials that might be considered trade secrets, or whether Defendant took actions that interfered with an economic relationship between Plaintiff and a third party), (D.I. 105 at 3-7; <i>see also</i> D.I. 95 at 7-9). The Court is also concerned about how one jury would be able to capably try, in a reasonable period of time, "seven disparate claims involving distinct fact patterns and different, complex areas of law[.]" (D.I. 105 at 8) For these reasons, if some or all of Counts V-VII survive the motion to dismiss, it seems like it could make sense to bifurcate those counts from Counts I-IV for trial purposes, pursuant to Fed. R. Civ. P. 42(b).; (3) But this is not the right time to finally resolve the bifurcation issue. That is because Defendant did not raise the concept of Rule 42(b) bifurcation until its reply brief on the motion to sever, (<i>id.</i> at 2 n.4 & 10), and then it later withdrew that request (reserving its right to pursue bifurcation later in this case if warranted)--in light of the fact that Plaintiff had not had a fair chance to address the issue during the briefing process. (D.I. 112 at 3); (4) So with severance out of the question, and with the bifurcation issue tabled for now: (a) the motion to sever is denied; and (b) depending upon future case events, the parties can re-address bifurcation as we get closer to trial.; and (5) In light of the fact that the Court is denying the motion to sever based on the current briefing, the motion for leave is denied as moot. Ordered by Judge Christopher J. Burke on 1/2/2025. (mlc)</p>	
249	<p><i>Filed:</i> 01/02/2025 <i>Entered:</i> 01/03/2025</p>	Oral Order
	<p><i>Docket Text:</i> ORAL ORDER: The Court has reviewed Plaintiff's January 2, 2025 letter requesting a discovery dispute conference as to one new dispute, (D.I. [246]); this will mean that the parties have now brought 6 different discovery-related disputes to the Court for resolution in this case. (<i>See</i> D.I. [40]; D.I. [195]; D.I. [240]; D.I. [246]) The Court wants to ensure that the parties have sufficiently attempted to resolve their disputes before bringing them to the Court. In light of this, the Court hereby ORDERS that the parties shall have one further meet and confer that specifically deals with the issue listed in the letter, in order to see if they can resolve this dispute before the Court will set a briefing schedule. The meet and confer should include: (1) Delaware counsel for each side; (2) outside counsel involved with the dispute; and (3) the attorney on each side who is leading the trial team. By no later than January 8, 2025, the parties shall file a joint letter of no longer than one page indicating whether the parties have resolved the new dispute or whether it remains ripe for a discovery dispute motion. Ordered by Judge Christopher J. Burke on 1/2/2025. (smg)</p>	
248	<p><i>Filed & Entered:</i> 01/03/2025</p>	Redacted Document
	<p><i>Docket Text:</i> REDACTED VERSION of [244] Answering Brief in Opposition by Axion BioSystems, Inc.. (Mayo, Andrew)</p>	
250	<p><i>Filed & Entered:</i> 01/03/2025</p>	Reply Brief
	<p><i>Docket Text:</i> REPLY BRIEF re [240] MOTION for Issuance of Letters Rogatory - filed by Agilent Technologies, Inc.. (Attachments: # (1) Exhibit A)(Murray, Travis)</p>	
251	<p><i>Filed & Entered:</i> 01/06/2025</p>	Notice of Service
	<p><i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Final Infringement Contentions filed by Agilent Technologies, Inc..(Murray, Travis)</p>	
252	<p><i>Filed & Entered:</i> 01/07/2025</p>	Notice of Service
	<p><i>Docket Text:</i> NOTICE OF SERVICE of Plaintiff Agilent Technologies, Inc.'s Seventh Set of Requests for Production of Documents and Things to Axion Biosystems, Inc. - filed by Agilent Technologies, Inc.. (Murray, Travis)</p>	

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	<i>Filed & Entered:</i>	01/08/2025	SO ORDERED
	<i>Docket Text:</i> SO ORDERED D.I. [253] STIPULATION TO EXTEND TIME to submit a joint letter in response to the Court's January 2, 2025 Oral Order to January 10, 2025 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 1/8/2025. (mlc)		
253	<i>Filed & Entered:</i>	01/08/2025	Stipulation to EXTEND Time
	<i>Terminated:</i>	01/08/2025	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to submit a joint letter in response to the Court's January 2, 2025 Oral Order to January 10, 2025 - filed by Agilent Technologies, Inc.. (Murray, Travis)		
254	<i>Filed & Entered:</i>	01/10/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Maureen Joseph on January 16, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)		
255	<i>Filed & Entered:</i>	01/10/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Nathan Griffith on January 17, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)		
256	<i>Filed & Entered:</i>	01/10/2025	Stipulation to EXTEND Time
	<i>Terminated:</i>	01/13/2025	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to submit a joint letter in response to the Court's January 2, 2025 Oral Order (D.I. 249) to January 14, 2025 - filed by Agilent Technologies, Inc.. (Murray, Travis)		
	<i>Filed & Entered:</i>	01/13/2025	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [256] STIPULATION TO EXTEND TIME to submit a joint letter in response to the Court's January 2, 2025 Oral Order (D.I. 249) to January 14, 2025 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 01/13/2025. (smg)		
257	<i>Filed & Entered:</i>	01/13/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Sixth Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Mayo, Andrew)		
258	<i>Filed & Entered:</i>	01/13/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of (1) Plaintiff Agilent Technologies, Inc.'s Eighth Set of Requests for Production of Documents and Things to Axion Biosystems, Inc. and (2) Plaintiff Agilent Technologies, Inc.'s First Set of Requests for Admission to Axion Biosystems, Inc. (Nos. 1-39) filed by Agilent Technologies, Inc..(Murray, Travis)		
259	<i>Filed & Entered:</i>	01/14/2025	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Travis Murray regarding the Court's January 2, 2025, Oral Order. (Murray, Travis)		
260	<i>Filed & Entered:</i>	01/14/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Fourth Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatories Nos. 13-16 filed by Agilent Technologies, Inc.. (Murray, Travis)		
261	<i>Filed & Entered:</i>	01/15/2025	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court has reviewed the parties' January 14, 2025 letter requesting judicial assistance regarding their discovery dispute concerning Topic Nos. 36 and 53. (D.I. [259]) It hereby ORDERS as follows with regard to this dispute: (1) By January 21, 2025, Plaintiff shall file a letter, not to exceed two (2) single-spaced pages, in no less than 12-point font, outlining the issues in dispute and its position on those issues.; (2) By January 27, 2025, Defendant shall file a letter, not to exceed two (2) single-spaced pages, in no less than 12-point font, outlining that party's reasons for its opposition.; (3) By January 30, 2025, Plaintiff shall file a reply letter brief, not to exceed one (1) single-spaced page, in no less than 12-point font.; (4) By January 30, 2025, the parties shall jointly file a Motion To Resolve Discovery Dispute.;		

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	(5) The parties should also consult and follow Judge Burke's "Guidelines for Discovery Disputes," which is found in the "Guidelines" tab on Judge Burke's portion of the District Court's website.; (6) The Court will plan to resolve the disputes on the papers, unless: (a) it determines after reviewing the briefing that oral argument is needed; or (b) any party advises the Court in advance that, were argument to be set, a newer attorney will argue the disputes, see Standing Order Regarding Courtroom Opportunities for Newer Attorneys, https://www.ded.uscourts.gov/sites/ded/files/StandingOrder2017.pdf . If either of those circumstances, occurs, then the Court will schedule oral argument on the disputes in the future. Ordered by Judge Christopher J. Burke on 01/15/2025. (smg)	
	<i>Filed & Entered:</i>	01/16/2025 Remark
	<i>Docket Text:</i> Remark: D.I. [240] MOTION for Issuance of Letters Rogatory filed by Agilent Technologies, Inc. TERMINATED per D.I. [262] Notice of Withdrawal. (smg)	
262	<i>Filed & Entered:</i>	01/16/2025 Notice (Other)
	<i>Docket Text:</i> NOTICE of Withdrawal of Plaintiff's Motion by Agilent Technologies, Inc. re [240] MOTION for Issuance of Letters Rogatory (Murray, Travis)	
263	<i>Filed & Entered:</i>	01/16/2025 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Thomas O'Brien on January 24, 2025 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)	
264	<i>Filed & Entered:</i>	01/17/2025 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s First Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory No. 20 - filed by Agilent Technologies, Inc..(Murray, Travis)	
265	<i>Filed & Entered:</i>	01/21/2025 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of David Tugwell on January 22, 2025 (AMENDED) filed by Axion BioSystems, Inc..(Mayo, Andrew)	
266	<i>Filed & Entered:</i>	01/21/2025 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Fifth Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory No. 14 filed by Agilent Technologies, Inc..(Murray, Travis)	
267	<i>Filed & Entered:</i>	01/21/2025 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of William Deacon on January 25, 2025 filed by Agilent Technologies, Inc..(Murray, Travis)	
268	<i>Filed & Entered:</i>	01/21/2025 Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Travis J. Murray regarding discovery dispute. (Attachments: # (1) Exhibits A-D, # (2) Text of Proposed Order)(Murray, Travis)	
269	<i>Filed & Entered:</i>	01/22/2025 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Second Amended Objections and Response to Axion Biosystems, Inc.'s Interrogatory No. 11 - filed by Agilent Technologies, Inc..(Murray, Travis)	
270	<i>Filed & Entered:</i>	01/23/2025 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Chris Braun on January 28 & 29, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
271	<i>Filed & Entered:</i>	01/23/2025 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Leyna Zhao on January 31, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
272	<i>Filed & Entered:</i>	01/23/2025 Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Todd Christian on February 3 & 4, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	

273	<i>Filed & Entered:</i>	01/23/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Xiaobo Wang on February 6 & 7, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)		
274	<i>Filed & Entered:</i>	01/23/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Ryan Raver on February 7, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)		
275	<i>Filed & Entered:</i>	01/27/2025	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding response to Agilent's January 21, 2025 letter - re [268] Letter. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3)(Mayo, Andrew)		
276	<i>Filed & Entered:</i>	01/27/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Second Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory No. 1 filed by Agilent Technologies, Inc..(Murray, Travis)		
277	<i>Filed & Entered:</i>	01/28/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Leyna Zhao on January 31, 2025 (Second Amended) filed by Axion BioSystems, Inc..(Mayo, Andrew)		
278	<i>Filed & Entered:</i>	01/28/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Todd Christian on February 3 & 4, 2025 (Amended) filed by Axion BioSystems, Inc..(Mayo, Andrew)		
279	<i>Filed & Entered:</i>	01/28/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Xiaobo Wang on February 6 & 7, 2025 (Second Amended) filed by Axion BioSystems, Inc..(Mayo, Andrew)		
280	<i>Filed & Entered:</i>	01/28/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Ryan Raver on February 7, 2025 (Second Amended) filed by Axion BioSystems, Inc..(Mayo, Andrew)		
281	<i>Filed & Entered:</i>	01/28/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Nan Li on February 13, 2025 (Amended) filed by Axion BioSystems, Inc..(Mayo, Andrew)		
282	<i>Filed & Entered:</i>	01/28/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [268] Letter - by Agilent Technologies, Inc.. (Attachments: # (1) Exhibits A-D, # (2) Proposed Order)(Murray, Travis)		
283	<i>Filed & Entered:</i>	01/28/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Second Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatories No. 6 filed by Agilent Technologies, Inc..(Murray, Travis)		
284	<i>Filed & Entered:</i>	01/29/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Andrew Willsie on February 11, 2025 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)		
285	<i>Filed & Entered:</i>	01/29/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Deborah Hurtado on February 12, 2025 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)		
286	<i>Filed & Entered:</i>	01/30/2025	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Travis J. Murray regarding Discovery Dispute - re [275] Letter. (Attachments: # (1) Exhibits A-E)(Murray, Travis)		

287	<i>Filed & Entered:</i> <i>Terminated:</i>	01/30/2025 05/02/2025	Motion for Miscellaneous Relief
	<i>Docket Text:</i> MOTION to Resolve Discovery Dispute re [259] Letter, [286] Letter, [268] Letter, [261] Oral Order,,,,,, [275] Letter - filed by Agilent Technologies, Inc.. (Murray, Travis)		
288	<i>Filed & Entered:</i>	01/30/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Third Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory No. 11 - filed by Agilent Technologies, Inc..(Murray, Travis)		
289	<i>Filed & Entered:</i>	01/31/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion BioSystems, Inc.'s Final Invalidity Contentions filed by Axion BioSystems, Inc..(Mayo, Andrew)		
290	<i>Filed & Entered:</i>	02/03/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Second Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory No. 12 - filed by Agilent Technologies, Inc..(Murray, Travis)		
291	<i>Filed & Entered:</i>	02/03/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [275] Letter by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3)(Mayo, Andrew)		
292	<i>Filed & Entered:</i>	02/03/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of David Stahl on February 11, 2025 filed by Agilent Technologies, Inc..(Murray, Travis)		
293	<i>Filed & Entered:</i>	02/04/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [286] Letter by Agilent Technologies, Inc.. (Attachments: # (1) Exs. A-E)(Murray, Travis)		
294	<i>Filed & Entered:</i>	02/05/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of (1) Plaintiff Agilent Technologies, Inc.'s Second Amended and Supplemental Initial Disclosures and (2) Agilent Technologies, Inc.'s Third Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory No. 1 filed by Agilent Technologies, Inc..(Murray, Travis)		
295	<i>Filed & Entered:</i>	02/05/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of (1) Agilent Technologies, Inc.'s Corrected Third Amended Objections and Response to Axion Biosystems, Inc.'s Interrogatory No. 11; and (2) Agilent Technologies, Inc.'s Corrected Second Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatories No. 6 filed by Agilent Technologies, Inc..(Murray, Travis)		
296	<i>Filed & Entered:</i>	02/06/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Corrected Third Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory No. 1 - filed by Agilent Technologies, Inc.. (Murray, Travis)		
297	<i>Filed & Entered:</i>	02/06/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion Biosystems, Inc's Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Seventh Set of Requests for Production of Documents and Things filed by Axion BioSystems, Inc..(Mayo, Andrew)		
298	<i>Filed & Entered:</i>	02/10/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Deborah Hurtado on February 12, 2025 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)		
299	<i>Filed & Entered:</i>	02/10/2025	Oral Order

Docket Text: ORAL ORDER: The Court has reviewed the portion of Defendant’s partial motion to dismiss Plaintiff’s Second Amended Complaint (“SAC”) (the “Motion”), (D.I. [87]), via which Defendant has moved to dismiss Count V of the SAC (which alleges a trade secret misappropriation claim under the federal Defend Trade Secrets Act, or “DTSA”), and the briefing related thereto, (D.I. [88]; D.I. [99]; D.I. [101]). Having done so, it hereby ORDERS that this portion of the Motion is GRANTED for the reasons and in the manner that follows: (1) In order to sufficiently plead trade secret misappropriation under the DTSA, a plaintiff must demonstrate the existence of a trade secret, which is defined generally as information with independent economic value that the owner has taken reasonable measures to keep secret. *See Oakwood Lab’ys LLC v. Thanoo*, 999 F.3d 892, 905 (3d Cir. 2021). In order to do that, a plaintiff must identify the trade secret(s) at issue “with enough specificity to place a defendant on notice of the bases for the claim being made against it[,]” and while it “need not spell out the details of the trade secret” it has to describe the trade secret “with sufficiently particularity to separate it from matters of general knowledge in the trade or special knowledge of those persons who are skilled in the trade, and to permit the defendant to ascertain at least the boundaries within which the secret lies.” *Id.* (internal quotation marks and citations omitted).; (2) Determining whether a plaintiff in trade secret litigation has satisfied this pleading standard can be one of the more difficult calls a judge has to make in intellectual property litigation. *See DeRubeis v. Witten Techs., Inc.*, 244 F.R.D. 676, 681 (N.D. Ga. 2007). But as a general matter, a plaintiff in such cases typically fails this test when it describes the asserted trade secrets in “broad terms[,]” such as by making high-level references to a product, system or process without explaining what more granular aspects of that product, system or process are really at issue, *see Lithero, LLC v. AstraZeneca Pharms. LP*, Civil Action No. 19-2320-RGA, 2020 WL 4699041, at *2 (D. Del. Aug. 13, 2020), or by lumping together broad categories of information or document types with no further specificity, *see Power Integrations, Inc. v. Silanna Semiconductor N. Am., Inc.*, C.A. No. 19-1292-LPS, 2020 WL 3508078, at *3 (D. Del. June 29, 2020). On the other hand, when the plaintiff adds additional levels of specificity, such as by identifying not just a product name but also specific aspects of that product that are asserted to be trade secrets, *see Progressive Sterilization, LLC v. Turbett Surgical LLC*, Civil Action No. 19-627-CFC, 2020 WL 1849709, at *6 (D. Del. Apr. 13, 2020), *report and recommendation adopted*, 2020 WL 3071951 (D. Del. June 10, 2020), or by identifying the (fairly specific) method at issue by name and then also pinpointing documents in which that particular method/trade secret is disclosed, *see Illumina, Inc. v. Guardant Health, Inc.*, Civil Action No. 22-334-GBW-CJB, 2023 WL 1407716, at *9 (D. Del. Jan. 31, 2023), *report and recommendation adopted*, 2023 WL 2867219 (D. Del. Mar. 29, 2023), it is typically on safer ground.; (3) Here, it is clear enough to the Court that Plaintiff has not met the relevant pleading bar, as its identification of the asserted trade secrets at issue are more like those in the first set of cases referenced above. In explaining why it thinks it *has* alleged enough on this front, Plaintiff points to its disclosure in paragraph 103 of the SAC (also mirrored in paragraph 192, found in Count V itself). (D.I. [99] at 8 (citing D.I. [77] at para. 103)) But there, Plaintiff largely points to broad categories of documents/information or overarching “strategies” (i.e., “intellectual property strategies, licensing agreements, material transfer documents and agreements...” or “documents addressing Agilent’s overall market strategy for cell analysis and gene therapy”) or those documents relating to a product line or category (i.e., “how Agilent’s... xCELLigence line of products[] operate” or “COVID-19 test development by Agilent” or certain broad-sounding categories of “documents concerning liquid biopsy diagnostics”).; (4) The Court also rejects Plaintiff’s assertion that its pleading is sufficient because it told Defendant that the trade secrets at issue are found somewhere in the 200 files (with approximately 4,000 accompanying data files) that Defendant returned to it (after Defendant learned that those files had been taken from Plaintiff by Defendant’s new hire, Plaintiff’s former employee Dr. Ferrick). (*Id.* at 7, 9) This amounts to telling Defendant that it should discern where a needle is located somewhere in a haystack. *See Illumina, Inc.*, 2023 WL 1407716, at *9 (citing cases). Indeed, Plaintiff’s failure to sufficiently identify the relevant trade secrets here is more egregious than in the typical case, in that here (unlike in the typical case) Plaintiff actually has access to the particular documents taken by its former employee wherein the alleged trade secrets are said to be located. *See DeRubeis*, 244 F.R.D. at 680 (noting that for many trade secret plaintiffs, prior to discovery, they “have no way of knowing what trade secrets have been misappropriated”); *see also* (D.I. [101] at 3).; and (5) Because Plaintiff may well be able to fix these deficiencies in an amended pleading (indeed, Plaintiff, in a footnote, says that it can do better if the Court will permit it to), (D.I. [99] at 7 n.2), and in light of Fed. R. Civ. P. 15(a)’s admonition that a court should give leave to amend “freely... when justice so requires[,]” dismissal on this ground will be WITHOUT PREJUDICE. The Court will give

	Plaintiff instructions regarding amending its pleading once it finishes resolving the Motion. If Plaintiff does amend, it would be well advised to also be more specific regarding how the alleged trade secrets derive independent economic value from being secret—another asserted basis for dismissal here that the Court has not had to reach. (D.I. [88] at 10-11) Ordered by Judge Christopher J. Burke on 02/10/2025. (smg)	
300	<i>Filed & Entered:</i>	02/12/2025 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of (1) Agilent Technologies, Inc.'s Second Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory No. 5, (2) Agilent Technologies, Inc.'s Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory No. 22, (3) Agilent Technologies, Inc.'s Fourth Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatories Nos. 17-18, and (4) Agilent Technologies, Inc.'s Fifth Amended Objections and Responses to Axion Biosystems, Inc.'s Interrogatory Nos. 13-16 - filed by Agilent Technologies, Inc..(Murray, Travis)	
301	<i>Filed & Entered:</i>	02/12/2025 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of (1) Axion BioSystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s First Set of Requests for Admission; (2) Axion BioSystems, Inc.'s Objections and Responses to Plaintiff Agilent Technologies, Inc.'s Eighth Set of Requests for Production of Documents and Things; (3) Axion BioSystems, Inc.'s First Supplemental Response to Plaintiff Agilent Technologies, Inc.'s Interrogatory Nos. 3, 5-6, 9-11, and 13-15; and (4) Axion BioSystems, Inc.'s Supplemental Responses to Plaintiff Agilent Technologies, Inc.'s Interrogatory Nos. 17, 18, and 20 filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
302	<i>Filed & Entered:</i>	02/14/2025 Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court has reviewed the portion of Defendant's partial motion to dismiss Plaintiff's Second Amended Complaint ("SAC") (the "Motion"), (D.I. [87]), via which Defendant moves to dismiss Counts VI and VII of the SAC (which allege California state law claims for intentional interference with prospective economic advantage (or "IIPEA") and negligent interference with prospective economic advantage (or "NIPEA"), respectively) on the ground that those claims are preempted by the California Uniform Trade Secrets Act ("CUTSA"). It has also reviewed the briefing related to this Motion. (D.I. [88]; D.I. [99]; D.I. [101]) Having done so, the Court hereby ORDERS that this portion of the Motion is DENIED for the reasons and in the manner that follows: (1) The parties are in agreement that pursuant to California state law, when a party brings non-contractual common law or statutory claims that are "based on the same nucleus of facts as [a claim for] the misappropriation of trade secrets" then those other non-misappropriation claims are preempted by CUTSA (even if the pleading at issue does not itself assert a CUTSA claim). (D.I. [88] at 11; D.I. [99] at 12-13); <i>see also K.C. Multimedia, Inc., v. Bank of Am. Tech. & Operations, Inc.</i> , 171 Cal. App. 4th 939, 955, 958-62 (Cal. Ct. App. 2009) (explaining that CUTSA requires that other claims that are "based upon misappropriation" are preempted, that a court must examine the conduct alleged in such claims to determine whether this is so, and that preemption is required where the other claims "hinge[]" on trade secret misappropriation allegations, or where "the conduct at the heart" of those other claims is the asserted disclosure of trade secrets, or where the "gravamen" of the wrongful conduct in those other claims relates to trade secret misappropriation, or where the other claims "rest[] squarely" on allegations of trade secret misappropriation) (internal quotation marks and citations omitted).; (2) Sometimes it is easy to discern whether the "same nucleus of facts" test is met, such as where "identical" facts are pleaded in the non-trade secret misappropriation ("TSM") claims as are pleaded in the TSM claim. <i>See, e.g., Digit. Envoy, Inc. v. Google, Inc.</i> , 370 F. Supp. 2d 1025, 1035 (N.D. Cal. 2005).; (3) The instant SAC is a bit more challenging on this front, however. That is because, on the one hand, the IIPEA and NIPEA claims in Counts VI and VII do draw in part on some of the same factual allegations relating to TSM that fuel Count V's claim for a violation of the federal Defend Trade Secrets Act (i.e., allegations regarding how Plaintiff's former employee Dr. Ferrick allegedly transferred numerous files containing Plaintiff's trade secrets to Defendant's computers), and they do allege that this misappropriation-related activity is also one of the types of economic "disrupt[ion]" or interference at issue in Counts VI and VII. (<i>Compare</i> D.I. [77] at paras. 196 & 198 (Count V), <i>with id.</i> , at paras. 215-16 & 218 (Count VI), <i>and with id.</i> at para. 231 (Count VII)) But on the other hand, Counts VI and VII <i>also</i> plead that Defendant "disrupt[ed]" or interfered with Plaintiff's economic relationships in ways that seem distinct from the TSM-related or misuse-of-confidential information-related allegations found in Count V (i.e., simply by hiring away Dr. Ferrick from Plaintiff, or	

by causing Dr. Ferrick to breach certain agreements with Plaintiff). (*See id.* at paras. 212, 217-20); (4) The cases the Court found most helpful were ones that dealt with complaints involving similar facts to what we have here—i.e., cases where a complaint pleaded a TSM claim and California law-based IIPEA or NIPEA claim, and where the IIPEA or NIPEA at least made some reference to alleged economic disruption that did not directly have to do with misappropriating trade secrets. These cases suggested that where the IIPEA or NIPEA claims were not entirely dependent on TSM-related allegations in order to try to make out the necessary case of economic disruption, then such claims should not be deemed preempted by CUTSA. *See, e.g., Remedi8, LLC v. Alliance Env't Grp., LLC*, CV 23-05669 TJH (JPRx), 2024 WL 1829617, at *3, *5 (C.D. Cal. Feb. 5, 2024) (finding that non-contractual claims are not preempted by CUTSA if they also have a factual basis independent of the misappropriation of a trade secret, and concluding that an IIPEA claim was not preempted where it was primarily based on the allegation that defendant had interfered with plaintiff's relationships with its customers) (citing *Angelica Textile Servs., Inc. v. Park*, 220 Cal. App. 4th 495, 506 (Cal. Ct. App. 2013)); *Cutera, Inc. v. Lutronic Aesthetics, Inc.*, No. 2:20-CV-00235-KJM-DB, 2020 WL 4937129, at *8 (E.D. Cal. Aug. 24, 2020) (finding that a claim for tortious interference with prospective economic advantage was not preempted by a CUTSA claim, where the interference claim was premised on the defendant's alleged hand in prompting several of plaintiff's employees to leave the company and work for a competitor); *Aavid Thermalloy LLC v. Cooler Master Co.*, Case No. 17-cv-05363-JSW, 2018 WL 11348438, at *3 (N.D. Cal. June 15, 2018) (finding that an IIPEA claim was not preempted by a CUTSA claim, where while the plaintiff did allege wrongful acts in the IIPEA claim that amounted to TSM, it also alleged wrongful acts distinct from such misappropriation, and where if the TSM-related conduct were removed from the IIPEA claim, the factual allegations therein could still "support other causes of action"); *see also* (D.I. [99] at 13).; and (5) In line with the decisions in those cases, which the Court finds persuasive, the Court will deny this portion of the Motion here. More specifically, the Court concludes that Counts VI and VII should not be dismissed on preemption grounds because they are premised, at least in part, on alleged acts of economic disruption that do not directly sound in TSM. The Court will assess Defendant's remaining basis for dismissal of Counts VI and VII, (D.I. [88] at 13-18), separately and in a forthcoming order. *See Cutera, Inc.*, 2020 WL 4937129, at *8 (going on to assess whether the tortious interference claim, even if not preempted by CUTSA, was nevertheless not well-pled on other grounds). Ordered by Judge Christopher J. Burke on 02/14/2025. (smg)

303 Filed & Entered: 02/19/2025 Oral Order

Docket Text: ORAL ORDER: The Court has reviewed the portion of Defendant's partial motion to dismiss Plaintiff's Second Amended Complaint ("SAC") (the "Motion"), (D.I. [87]), via which Defendant moves to dismiss Counts VI and VII of the SAC (which allege California state law claims for intentional interference with prospective economic advantage (or "IIPEA") and negligent interference with prospective economic advantage (or "NIPEA"), respectively) on the ground that Plaintiff failed to plead facts alleging that Defendant committed a "wrongful act" independent of the interference itself (or an act grounded in tort). (D.I. [88] at 13-18) It has also reviewed the briefing related to this portion of the Motion. (D.I. [88]; D.I. [99]; D.I. [101]) Having done so, the Court hereby ORDERS that this portion of the Motion is GRANTED for the reasons and in the manner that follows: (1) As an initial matter, the Court agrees with Defendant, (D.I. [101] at 7), that in order to successfully plead both an IIPEA claim and a NIPEA claim, the plaintiff must allege that the defendant engaged in an act that was wrongful by some measure beyond the fact of the interference itself (the "wrongful act" or the "wrongful act requirement"), as both California state courts and federal courts interpreting California law have consistently noted that the wrongful act requirement applies to both types of claims. *See Redfearn v. Trader Joe's Co.*, 230 Cal. Rptr. 3d 98, 111 (Cal. Ct. App. 2018); *Contemp. Servs. Corp. v. Staff Pro Inc.*, 61 Cal. Rptr. 3d 434, 449 (Cal. Ct. App. 2007); *see also Soil Retention Prods., Inc. v. Brentwood Indus., Inc.*, 521 F. Supp. 3d 929, 961 (S.D. Cal. 2021); *Oumere LLC v. Zarpas*, Case No. 8:21-cv-00224-DOC(JDEx), 2021 WL 2894643, at *5 (C.D. Cal. June 29, 2021). In this context, an act is independently wrongful if it is unlawful; that is, if it was proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard. *See Redfearn*, 230 Cal. Rptr. 3d at 111; (2) In its briefing, Plaintiff at times suggests that the relevant pleaded independent wrongful act(s) as to these claims are Defendant's alleged acts of trade secret misappropriation ("TSM"). (D.I. [99] at 17, 20) But for reasons the Court has previously explained, (*see* D.I. [302]), Plaintiff cannot rely on TSM-related activity in order to make out its claims in Counts VI and VII. That is because were

Plaintiff to do so, these claims would be preempted by CUTSA. (*Id.*) Instead, in such a circumstance, the Court must “remove[]” the factual allegations relating to TSM from Counts VI and VII and ask: Is there still a viable claim for IIPEA or NIPEA here? *See Aavid Thermalloy LLC v. Cooler Master Co.*, Case No. 17-cv-05363-JSW, 2018 WL 11348438, at *3 (N.D. Cal. June 15, 2018); *see also Arthur J. Gallagher & Co. v. Tarantino*, 498 F. Supp. 3d 1155, 1176 (N.D. Cal. 2020).; (3) Plaintiff next argues that it has sufficiently pleaded the wrongful act requirement in light of its allegations that “Axion recruited Dr. Ferrick for the role of Chief Scientific Officer, knowing that he was a high-level employee of [a] direct competitor, Agilent.” (D.I. [99] at 17 (additionally referencing Defendant’s “recruitment of Dr. Ferrick” as being relevant here)) But as Defendant points out, (D.I. [101] at 8-9), California law makes clear that merely extending a job offer that induces another party’s employee to terminate their at-will employment cannot amount to a qualifying wrongful act. *See Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130, 1148 (Cal. 2020); *Reeves v. Hanlon*, 95 P.3d 513, 520 (Cal. 2004); *see also Aclate, Inc. v. Eclipse Mktg. LLC*, Civil Action No. 20-576-RGA, 2020 WL 6158579, at *6 (D. Del. Oct. 21, 2020). So Defendant’s acts in hiring Dr. Ferrick away from its competitor, Plaintiff, cannot meet the wrongful act requirement either.; (4) In a final effort to explain why it has pleaded the required wrongful act, Plaintiff notes that it has alleged that “through Dr. Ferrick, Axion interfered with Agilent’s contractual relationship with Dr. Ferrick.” (D.I. [99] at 18) But this allegation is also insufficient, as California law does not “recognize a breach of contract as a ‘wrongful act’ predicate” for IIPEA or NIPEA claims, *New Box Sols., LLC v. Davis*, CV 18-5324-RSWL-KSx, 2018 WL 4562764, at *8 (C.D. Cal. Sept. 18, 2018), which would include any assertion that a party (like Defendant) aided and abetted or induced such a breach of contract, *cf. In re Mark One Corp.*, 619 B.R. 423, 438 (Bankr. E.D. Cal. 2020); *AMN Healthcare, Inc. v. Aya Healthcare Servs., Inc.*, 239 Cal. Rptr. 3d 577, 598 (Cal. Ct. App. 2018). Nor was Plaintiff’s response on this point persuasive. (D.I. [99] at 19 n.7); (5) Plaintiff’s pleading and briefing does not suggest—nor can the Court discern—how it can possibly plead the requisite wrongful act in any subsequent complaint. Therefore, dismissal of Counts VI and VII shall be with prejudice.; and (6) With the Motion now fully resolved, to the extent that Plaintiff seeks to further amend the SAC to re-allege Count V, (*see* D.I. [299]), it shall file a motion for leave to amend along with a proposed new complaint by no later than 14 days from today’s date. Ordered by Judge Christopher J. Burke on 02/19/2025. (smg)

304	<i>Filed & Entered:</i>	02/20/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion Biosystems, Inc.'s Second Supplemental Response to Plaintiff Agilent Technologies, Inc.'s Interrogatory No. 13 filed by Axion BioSystems, Inc..(Mayo, Andrew)		
305	<i>Filed & Entered:</i>	02/21/2025	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Brian P. Egan regarding trade secret claims - re [299] Oral Order,[303] Oral Order. (Egan, Brian) Modified on 2/24/2025 (sam).		
306	<i>Filed & Entered:</i>	02/21/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Notice of Identification of Deposition Testimony and Exhibits Thereto in Support of Agilent Technologies, Inc.'s Final Infringement Contentions - filed by Agilent Technologies, Inc..(Murray, Travis)		
307	<i>Filed & Entered:</i>	02/26/2025	Stipulation to EXTEND Time
	<i>Terminated:</i>	02/27/2025	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME for certain case deadlines to various dates - filed by Agilent Technologies, Inc.. (Egan, Brian)		
	<i>Filed:</i>	02/27/2025	SO ORDERED
	<i>Entered:</i>	02/28/2025	
	<i>Docket Text:</i> SO ORDERED, D.I. [307] STIPULATION TO EXTEND TIME for certain case deadlines to various dates filed by Agilent Technologies, Inc. (Opening Expert Reports due by 3/20/2025, Rebuttal Expert Reports due by 4/25/2025, Reply Expert Reports due by 5/21/2025, Expert Discovery due by 6/16/2025, Dispositive Motions due by 7/10/2025.) Ordered by Judge Christopher J. Burke on 02/27/2025. (sam)		
308	<i>Filed & Entered:</i>	03/05/2025	Answer to Amended Complaint

	<i>Docket Text:</i> ANSWER to Amended Complaint, re: [77] Amended Complaint with Jury Demand by Axion BioSystems, Inc..(Mayo, Andrew)	
309	<i>Filed & Entered:</i> 03/05/2025	Motion for Leave to File
	<i>Docket Text:</i> MOTION for Leave to File <i>Third Amended Complaint</i> - filed by Agilent Technologies, Inc.. (Murray, Travis)	
310	<i>Filed & Entered:</i> 03/05/2025	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Travis J. Murray - re [309] MOTION for Leave to File <i>Third Amended Complaint</i> . (Attachments: # (1) Ex. A - Third Amended Complaint, # (2) Exhibits A-S to Third Amended Complaint, # (3) Exhibits T-OO to Third Amended Complaint, # (4) Exhibits PP-QQ to Third Amended Complaint, # (5) Ex. B - Redline)(Murray, Travis) (Attachments 1, 4, and 5 replaced on 3/17/2025) (sam).	
311	<i>Filed & Entered:</i> 03/06/2025	Order on Motion for Miscellaneous Relief
	<i>Docket Text:</i> ORAL ORDER: The Court, having reviewed Plaintiff's discovery dispute motion ("Motion"), (D.I. [204]), and the briefing related thereto, (D.I. [199]; D.I. [200]; D.I. [207]), hereby ORDERS as follows: (1) Because the Motion seeks discovery regarding Plaintiff's trade secret misappropriation claim, and because there is no such claim that is part of a currently operative complaint, (<i>see</i> D.I. [299]), the Motion is DENIED as MOOT.; and (2) That said, the Court offers the parties the following guidance with respect to the Motion: (a) These disputes really never should have reached the Court. For example, Defendant's bare bones response to Interrogatory ("ROG") No. 17 was obviously insufficient, (D. I. 199, ex. A at 7-8), and the parties should have been able to work out a date for supplementation of that ROG (mindful of the timing of relevant productions of trade secret misappropriation-related discovery) that was mutually acceptable, without requiring Court intervention.; and (b) Additionally, after Defendant proposed a compromise as to the dispute over RFPs No. 133 and 134, (D.I. [200] at 2), the parties should have gotten on the phone and worked out a deal as to the right starting date (Plaintiff should have done its best to try to get Defendant to do a little better, and if it couldn't, it should have taken Defendant's 2020 proposal and moved on, because that proposal was reasonable—in light of the fact that Dr. Ferrick, whose arrival at Defendant is the triggering event for the trade secret misappropriation claim, didn't start working at Defendant until January 2022).; and (3) Mindful of the above, if the parties encounter further fact or expert discovery disputes in this case, they should work harder on the front end than they did here to see if they can resolve them, so as to avoid (for example) a fees and costs order pursuant to Fed. R. Civ. P. 37 when the Court ends up resolving any such dispute later on. Ordered by Judge Christopher J. Burke on 03/06/2025. (sam)	
312	<i>Filed & Entered:</i> 03/12/2025	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding Opposition to Motion for Leave to Amend - re [310] Letter, [309] MOTION for Leave to File <i>Third Amended Complaint</i> . (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7)(Mayo, Andrew)	
	<i>Filed & Entered:</i> 03/13/2025	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [313] STIPULATION TO EXTEND TIME to file a public version of Agilent's Sealed Letter in Support of its Motion for Leave (D.I. [310]) to March 14, 2025 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 03/13/2025. (sam)	
313	<i>Filed & Entered:</i> 03/13/2025	Stipulation to EXTEND Time
	<i>Terminated:</i> 03/13/2025	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to file a public version of Agilent's Sealed Letter in Support of its Motion for Leave (D.I. 310) to March 14, 2025 - filed by Agilent Technologies, Inc.. (Murray, Travis)	
	<i>Filed & Entered:</i> 03/14/2025	Notice re Courtesy Copies
	<i>Docket Text:</i> NOTICE: Per Magistrate Judge Burke's Standing Order Regarding Courtesy Copies, which requires two (2) courtesy copies of all briefs (including letter briefs), as well as any documents filed in	

	support of such briefs (i.e., appendices, exhibits, declarations, affidavits, tutorials, etc.) and one (1) copy of any other document filed (e.g., letters and stipulations), please submit to the Clerk's Office two copies of D.I. # [312]. (sam)	
314	<i>Filed & Entered:</i> 03/14/2025 <i>Terminated:</i> 03/17/2025	Stipulation to EXTEND Time
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME To File Redacted Version of D.I. 310 to March 18, 2025 - filed by Agilent Technologies, Inc.. (Murray, Travis)	
	<i>Filed & Entered:</i> 03/17/2025	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [314] STIPULATION TO EXTEND TIME To File Redacted Version of D.I. [310] to March 18, 2025 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 03/17/2025. (sam)	
	<i>Filed & Entered:</i> 03/17/2025	CORRECTING ENTRY:
	<i>Docket Text:</i> CORRECTING ENTRY: Attachments 1, 4, and 5 to D.I. [310] have been replaced per request of filing counsel, without objection from opposing counsel, to correct improper citation. (sam)	
315	<i>Filed & Entered:</i> 03/17/2025	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Travis J. Murray regarding Reply in Support of Motion for Leave to File Third Amended Complaint - re [312] Letter,. (Attachments: # (1) Exs. C-F)(Murray, Travis)	
	<i>Filed & Entered:</i> 03/19/2025	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [317] STIPULATION TO EXTEND TIME to file a public version of Axion's Sealed Letter in Opposition to Agilent's Motion for Leave (D.I. [312]) to March 24, 2025 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 03/19/2025. (sam)	
316	<i>Filed & Entered:</i> 03/19/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [310] Letter, by Agilent Technologies, Inc.. (Attachments: # (1) Ex. A - Third Amended Complaint, # (2) Exhibits A-S to Third Amended Complaint, # (3) Exhibits T-OO to Third Amended Complaint, # (4) Exhibits PP-QQ to Third Amended Complaint, # (5) Ex. B - Redline) (Murray, Travis)	
317	<i>Filed & Entered:</i> 03/19/2025 <i>Terminated:</i> 03/19/2025	Stipulation to EXTEND Time
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to file a public version of Axion's Sealed Letter in Opposition to Agilent's Motion for Leave (D.I. 312) to March 24, 2025 - filed by Agilent Technologies, Inc.. (Murray, Travis)	
318	<i>Filed & Entered:</i> 03/20/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Opening Expert Report on Invalidity of Agilent Patents by Richard B. Fair, Ph.D. filed by Axion BioSystems, Inc..(Mayo, Andrew)	
319	<i>Filed & Entered:</i> 03/20/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of (1) Opening Expert Report of Dr. A. Bruno Frazier, Volumes I, II, and III, (2) Opening Expert Report of Logan Blue, Ph.D. and (3) Opening Expert Report of Brian W. Napper - filed by Agilent Technologies, Inc..(Murray, Travis)	
320	<i>Filed & Entered:</i> 03/24/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [312] Letter, by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7) (Mayo, Andrew)	
321	<i>Filed & Entered:</i> 03/24/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [315] Letter by Agilent Technologies, Inc.. (Attachments: # (1) Exs. C-F)(Murray, Travis)	

322	<i>Filed & Entered:</i>	04/25/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Rebuttal Expert Report on Non-Infringement of Agilent Patents by Richard B. Fair, Ph.D., Expert Report of Ambreen Salters, and Axion BioSystems, Inc.'s Rule 26(a)(2)(C) Disclosures filed by Axion BioSystems, Inc..(Mayo, Andrew)		
323	<i>Filed & Entered:</i>	04/25/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Rebuttal Expert Report of Dr. A. Bruno Frazier - Validity of U.S. Patent Nos. 8,026,080, 7,192,752, and 7,468,255 - filed by Agilent Technologies, Inc..(Murray, Travis)		
324	<i>Filed & Entered:</i>	05/02/2025	Order on Motion for Miscellaneous Relief
	<i>Docket Text:</i> ORAL ORDER: The Court, having reviewed Plaintiff's discovery dispute motion ("Motion"), (D.I. [287]), and the briefing related thereto, (D.I. [268]; D.I. [275]; D.I. [286]), hereby ORDERS as follows: (1) Because the Motion seeks discovery regarding Plaintiff's trade secret misappropriation ("TSM") claim, and because there is no such claim that is part of a currently operative complaint, (<i>see</i> D.I. [299]), the Motion is DENIED as MOOT.; and (2) That said, the Court offers the parties the following guidance with respect to the Motion (so that, after resolution of D.I. [309], if the TSM claim comes back into the case, the Court won't see this dispute again): (a) The Court cannot say (as Defendant suggests) that the topics at issue are so massive that it would be unfair to require Defendant to prepare a witness on them. (<i>See</i> D.I. [275] at 2; [286] at 1); and (b) As to the reality that the deposed witness will have to review Plaintiff's asserted trade secret material and will likely have to discuss that material with various other Defendant employees, Plaintiff says that it will "work with [Defendant] to establish a protocol on the preparation of a witness using [Plaintiff's] confidential information that would not violate the Protective Order."(D.I. [286] at 1) The Court accepts that representation, which (so long as the parties work together cooperatively) should allow for a deposition to occur. Indeed, parties to TSM cases are typically able to deal with issues like these, so long as they exhibit some level of cooperation and care. <i>See, e.g., Weidman v. Ford Motor Co.</i> , 340 F.R.D. 106, 110-11 (E.D. Mich. 2021). If this deposition ever happens, but if Plaintiff ends up being very restrictive in what it says Defendant's witness can and can't do to prepare for it, then that will just mean that the deposition will be a short one. Ordered by Judge Christopher J. Burke on 05/02/2025. (sam)		
325	<i>Filed & Entered:</i>	05/14/2025	Motion to Strike
	<i>Docket Text:</i> MOTION to Strike - filed by Axion BioSystems, Inc.. (Attachments: # (1) Text of Proposed Order)(Mayo, Andrew)		
326	<i>Filed & Entered:</i>	05/14/2025	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding Motion to Strike - re [325] MOTION to Strike . (Attachments: # (1) Exhibit A, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E, # (6) Exhibit F)(Mayo, Andrew)		
327	<i>Filed & Entered:</i>	05/19/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Ambreen Salters on May 30, 2025 filed by Agilent Technologies, Inc..(Murray, Travis)		
328	<i>Filed & Entered:</i>	05/19/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Daniel Millard on June 6, 2025 filed by Agilent Technologies, Inc..(Murray, Travis)		
329	<i>Filed & Entered:</i>	05/20/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Richard B. Fair, Ph.D. on May 28, 2025 filed by Agilent Technologies, Inc..(Murray, Travis)		
330	<i>Filed & Entered:</i>	05/20/2025	Stipulation to EXTEND Time
	<i>Terminated:</i>	05/21/2025	
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to file a public version of Axion's Sealed Letter in Support of Axion's Motion to Strike (D.I. 326) to May 23, 2025 - filed by Agilent Technologies, Inc..(Murray, Travis)		
	<i>Filed & Entered:</i>	05/21/2025	SO ORDERED

	<i>Docket Text:</i> SO ORDERED, D.I. [330] STIPULATION TO EXTEND TIME to file a public version of Axion's Sealed Letter in Support of Axion's Motion to Strike (D.I. [326]) to May 23, 2025 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 05/21/2025. (sam)	
331	<i>Filed & Entered:</i> 05/21/2025	Notice (Other)
	<i>Docket Text:</i> NOTICE of Withdrawal of Counsel by Agilent Technologies, Inc. (Egan, Brian)	
332	<i>Filed & Entered:</i> 05/21/2025	Letter
	<i>Docket Text:</i> [SEALED] Letter to The Honorable Christopher J. Burke from Travis J. Murray regarding Response to Axion's April 14, 2025 Opening Letter Brief - re [326] Letter, [325] MOTION to Strike . (Attachments: # (1) Exs. A-F)(Murray, Travis)	
333	<i>Filed & Entered:</i> 05/21/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Reply Expert Report on Invalidity of Agilent Patents by Richard B. Fair, Ph.D. filed by Axion BioSystems, Inc..(Mayo, Andrew)	
334	<i>Filed & Entered:</i> 05/21/2025	Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of (1) Reply Expert Report of Brian W. Napper and (2) Reply Expert Report of Dr. A. Bruno Frazier - filed by Agilent Technologies, Inc..(Murray, Travis)	
335	<i>Filed & Entered:</i> 05/22/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Brian W. Napper on June 5, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
336	<i>Filed & Entered:</i> 05/22/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Dr. A. Bruno Frazier on June 10 and 11, 2025 filed by Axion BioSystems, Inc..(Mayo, Andrew)	
337	<i>Filed & Entered:</i> 05/22/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [332] Letter, by Agilent Technologies, Inc.. (Attachments: # (1) Exs. A-F)(Murray, Travis)	
338	<i>Filed & Entered:</i> 05/23/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [326] Letter, by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit A-F)(Mayo, Andrew)	
339	<i>Filed & Entered:</i> 05/23/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Richard B. Fair, Ph.D. on May 28, 2025 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)	
340	<i>Filed & Entered:</i> 05/23/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Ambreen Salters on May 30, 2025 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)	
341	<i>Filed & Entered:</i> 05/23/2025	Notice to Take Deposition
	<i>Docket Text:</i> NOTICE to Take Deposition of Daniel Millard on June 6, 2025 (Amended) filed by Agilent Technologies, Inc..(Murray, Travis)	
342	<i>Filed & Entered:</i> 05/27/2025	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding reply letter brief in connection with Motion to Strike - re [332] Letter,. (Mayo, Andrew)	
343	<i>Filed & Entered:</i> 05/27/2025	Letter
	<i>Docket Text:</i> Letter to The Honorable Christopher J. Burke from Andrew C. Mayo regarding Axion's Motion to Strike. (Mayo, Andrew)	
344	<i>Filed & Entered:</i> 05/28/2025	Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court, having reviewed Defendant's May 27, 2025 letter, (D.I. [343]), hereby ORDERS that the Court will plan to resolve Defendant's Motion to Strike Portions of Dr. Frazier's Ex. 2623	

	<p>Rebuttal Report ("Motion"), (D.I. [325]), on the papers, unless: (a) it determines after reviewing the briefing that oral argument is needed; or (b) any party advises the Court in advance that, were argument to be set, a newer attorney will argue the Motion, see Standing Order Regarding Courtroom Opportunities for Newer Attorneys, https://www.ded.uscourts.gov/sites/ded/files/StandingOrder2017.pdf. If either of those circumstances occurs, then the Court will schedule oral argument on the Motion in the future. Ordered by Judge Christopher J. Burke on 05/28/2025. (sam)</p>	
345	<i>Filed & Entered:</i>	06/05/2025 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Supplemental Schedules to Reply Expert Report of Brian W. Napper - filed by Agilent Technologies, Inc..(Murray, Travis)	
346	<i>Filed & Entered:</i>	06/16/2025 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Agilent Technologies, Inc.'s Narrowed Selection of Asserted Claims Pursuant to Scheduling Order - filed by Agilent Technologies, Inc..(Murray, Travis)	
347	<i>Filed & Entered:</i>	06/20/2025 Notice of Service
	<i>Docket Text:</i> NOTICE OF SERVICE of Axion Biosystems, Inc.'s Identification of Prior Art Bases filed by Axion BioSystems, Inc..(Mayo, Andrew)	
348	<i>Filed & Entered:</i>	07/10/2025 Motion for Summary Judgment
	<i>Docket Text:</i> MOTION for Summary Judgment <i>That Use Of Axion's CYTOVIEW-Z 96-Well Plates Did Not Infringe The '752 And '255 Patent Claims</i> - filed by Axion BioSystems, Inc.. (Day, John)	
349	<i>Filed & Entered:</i>	07/10/2025 Motion for Summary Judgment
	<i>Docket Text:</i> MOTION for Summary Judgment <i>That Claims Reciting "Calculating Cell Index Values" And "Cell Index" Are Invalid As Indefinite</i> - filed by Axion BioSystems, Inc.. (Day, John)	
350	<i>Filed & Entered:</i>	07/10/2025 Motion for Summary Judgment
	<i>Docket Text:</i> MOTION for Summary Judgment <i>That Agilent Is Not Entitled To Pre-Suit Damages For The '752 Patent</i> - filed by Axion BioSystems, Inc.. (Day, John)	
351	<i>Filed & Entered:</i>	07/10/2025 Motion for Summary Judgment
	<i>Docket Text:</i> MOTION for Summary Judgment <i>That Agilent Is Not Entitled To Monetary Damages Or Damage Control Costs On Agilent's False Advertising Claim</i> - filed by Axion BioSystems, Inc.. (Day, John)	
352	<i>Filed & Entered:</i>	07/10/2025 Motion for Summary Judgment
	<i>Docket Text:</i> MOTION for Summary Judgment <i>On Agilent's False Advertising Claim</i> - filed by Axion BioSystems, Inc.. (Day, John)	
353	<i>Filed & Entered:</i>	07/10/2025 Opening Brief in Support
	<i>Docket Text:</i> [SEALED} OPENING BRIEF in Support re [350] MOTION for Summary Judgment <i>That Agilent Is Not Entitled To Pre-Suit Damages For The '752 Patent</i> , [352] MOTION for Summary Judgment <i>On Agilent's False Advertising Claim</i> , [349] MOTION for Summary Judgment <i>That Claims Reciting "Calculating Cell Index Values" And "Cell Index" Are Invalid As Indefinite</i> , [348] MOTION for Summary Judgment <i>That Use Of Axion's CYTOVIEW-Z 96-Well Plates Did Not Infringe The '752 And '255 Patent Claims</i> , [351] MOTION for Summary Judgment <i>That Agilent Is Not Entitled To Monetary Damages Or Damage Control Costs On Agilent's False Advertising Claim</i> filed by Axion BioSystems, Inc..Answering Brief/Response due date per Local Rules is 7/24/2025. (Day, John) Modified on 7/31/2025 (sam).	
354	<i>Filed & Entered:</i>	07/10/2025 Statement
	<i>Docket Text:</i> STATEMENT - <i>Axion Biosystems, Inc.'s Concise Statement Of Uncontested Facts In Support Of Its Motion For Summary Judgment That Use Of Axion's CYTOVIEW-Z 96-Well Plates Did Not Infringe The '752 And '255 Patents</i> by Axion BioSystems, Inc.. (Day, John)	
355	<i>Filed & Entered:</i>	07/10/2025 Statement
	<i>Docket Text:</i> STATEMENT - <i>Axion Biosystems, Inc.'s Concise Statement Of Uncontested Facts In Support Of Its Motion For Summary Judgment That Claims Reciting "Calculating Cell Index Values" And "Cell Index" Are Invalid As Indefinite</i> by Axion BioSystems, Inc.. (Day, John)	

Ex. 2023

356	<i>Filed & Entered:</i>	07/10/2025	Statement
	<i>Docket Text:</i> STATEMENT - Axion Biosystems, Inc.'s Concise Statement Of Uncontested Facts In Support Of Its Motion For Summary Judgment That Agilent Is Not Entitled To Pre-Suit Damages For The '752 Patent by Axion BioSystems, Inc.. (Day, John)		
357	<i>Filed & Entered:</i>	07/10/2025	Statement
	<i>Docket Text:</i> [SEALED] STATEMENT - Axion Biosystems, Inc.'s Concise Statement Of Uncontested Facts In Support Of Its Motion For Summary Judgment On Agilent's False Advertising Claim by Axion BioSystems, Inc. (Day, John) Modified on 7/31/2025 (sam).		
358	<i>Filed & Entered:</i>	07/10/2025	Statement
	<i>Docket Text:</i> STATEMENT - Axion Biosystems, Inc.'s Concise Statement Of Uncontested Facts In Support Of Its Motion For Summary Judgment That Agilent Is Not Entitled To Monetary Damages Or Damage Control Costs On Agilent's False Advertising Claim by Axion BioSystems, Inc.. (Day, John)		
359	<i>Filed & Entered:</i>	07/10/2025	Motion to Preclude
	<i>Docket Text:</i> MOTION to Preclude Certain Opinions Of Agilent's Experts Dr. Bruno Frazier And Mr. Brian Napper - filed by Axion BioSystems, Inc.. (Day, John)		
360	<i>Filed & Entered:</i>	07/10/2025	Opening Brief in Support
	<i>Docket Text:</i> [SEALED] OPENING BRIEF in Support re [359] MOTION to Preclude Certain Opinions Of Agilent's Experts Dr. Bruno Frazier And Mr. Brian Napper filed by Axion BioSystems, Inc.. Answering Brief/Response due date per Local Rules is 7/24/2025. (Day, John)		
361	<i>Filed & Entered:</i>	07/10/2025	Declaration
	<i>Docket Text:</i> [SEALED] DECLARATION of Laura K. Vining - Volume I of II (Exhibits 1-26) re [353] Opening Brief in Support,, [360] Opening Brief in Support, by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7, # (8) Exhibit 8, # (9) Exhibit 9, # (10) Exhibit 10, # (11) Exhibit 11, # (12) Exhibit 12, # (13) Exhibit 13, # (14) Exhibit 14, # (15) Exhibit 15, # (16) Exhibit 16, # (17) Exhibit 17, # (18) Exhibit 18, # (19) Exhibit 19, # (20) Exhibit 20, # (21) Exhibit 21, # (22) Exhibit 22, # (23) Exhibit 23, # (24) Exhibit 24, # (25) Exhibit 25, # (26) Exhibit 26)(Day, John)		
362	<i>Filed & Entered:</i>	07/10/2025	Motion to Preclude
	<i>Docket Text:</i> MOTION to Preclude Expert Testimony of Dr. Fair on Non-Infringement Relating to the Individually Addressed Claim Term (Daubert Motion #1) - filed by Agilent Technologies, Inc.. (Murray, Travis)		
363	<i>Filed & Entered:</i>	07/10/2025	Declaration
	<i>Docket Text:</i> [SEALED] DECLARATION of Laura K. Vining - Volume II of II (Exhibits 27-54) re [360] Opening Brief in Support, [353] Opening Brief in Support,, by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit 27, # (2) Exhibit 28, # (3) Exhibit 29, # (4) Exhibit 30, # (5) Exhibit 31, # (6) Exhibit 32, # (7) Exhibit 33, # (8) Exhibit 34, # (9) Exhibit 35, # (10) Exhibit 36, # (11) Exhibit 37, # (12) Exhibit 38, # (13) Exhibit 39, # (14) Exhibit 40, # (15) Exhibit 41, # (16) Exhibit 42, # (17) Exhibit 43, # (18) Exhibit 44, # (19) Exhibit 45, # (20) Exhibit 46, # (21) Exhibit 47, # (22) Exhibit 48, # (23) Exhibit 49, # (24) Exhibit 50, # (25) Exhibit 51, # (26) Exhibit 52, # (27) Exhibit 53, # (28) Exhibit 54)(Day, John)		
364	<i>Filed & Entered:</i>	07/10/2025	Motion to Preclude
	<i>Docket Text:</i> MOTION to Preclude Dr. Fair's Expert Testimony on Non-Infringement Based on Use of Belated Proposed Construction of the "Cell Index" Claim Terms (Daubert Motion #2) - filed by Agilent Technologies, Inc.. (Murray, Travis)		
365	<i>Filed & Entered:</i>	07/10/2025	Motion to Preclude
	<i>Docket Text:</i> MOTION to Preclude Expert Testimony of Dr. Fair on Issues Knowledge and Intent (Daubert Motion #3) - filed by Agilent Technologies, Inc.. (Murray, Travis)		
366	<i>Filed & Entered:</i>	07/10/2025	Motion to Preclude

	<i>Docket Text: MOTION to Preclude Improper Expert Testimony of Dr. Danial Millard Beyond His Personal Knowledge and Experience (Daubert Motion #4) - filed by Agilent Technologies, Inc.. (Murray, Travis)</i>	
367	<i>Filed & Entered:</i>	07/10/2025 Motion for Summary Judgment
	<i>Docket Text: MOTION for Summary Judgment as to Asserted Claims of U.S. Patent No. 7,192,752, and Partial Summary Judgment, as to Asserted Claims of U.S. Patent Nos. 7,468,255 and 8,026,080, of No Anticipation and No Obviousness of Asserted Claims Thereof over Ehret and Ehret in View of Other Art (MSJ #1) - filed by Agilent Technologies, Inc.. (Murray, Travis)</i>	
368	<i>Filed & Entered:</i>	07/10/2025 Motion for Summary Judgment
	<i>Docket Text: MOTION for Summary Judgment of No Obviousness of Claim 10 of U.S. Patent No. 7,468,255 (MSJ #2) - filed by Agilent Technologies, Inc.. (Murray, Travis)</i>	
369	<i>Filed & Entered:</i>	07/10/2025 Motion for Summary Judgment
	<i>Docket Text: MOTION for Summary Judgment (Partial) of No Obviousness of Asserted Claims of U.S. Patent Nos. 8,026,080 and 7,192,752 in View of Certain Alleged Invalidity Bases for Lack of Motivation to Combine the Prior Art References as Applied (MSJ #3) - filed by Agilent Technologies, Inc.. (Murray, Travis)</i>	
370	<i>Filed & Entered:</i>	07/10/2025 Motion for Summary Judgment
	<i>Docket Text: MOTION for Summary Judgment -- Agilent's Motion for Entry of Claim Construction of 'Cell Index' Terms, and Summary Judgment of No Indefiniteness of Asserted Claims of U.S. Patent Nos. 8,0026,080, 7,192,752 and 7,468,255 (MSJ #4) -- - filed by Agilent Technologies, Inc.. (Murray, Travis)</i>	
371	<i>Filed & Entered:</i>	07/10/2025 Opening Brief in Support
	<i>Docket Text: [SEALED] OPENING BRIEF in Support re [369] MOTION for Summary Judgment (Partial) of No Obviousness of Asserted Claims of U.S. Patent Nos. 8,026,080 and 7,192,752 in View of Certain Alleged Invalidity Bases for Lack of Motivation to Combine the Prior Art References as Applied (MSJ #3) Dr. Fair's Expert Testimony on Non-Infringement Based on Use of Belated Proposed Construction of the "Cell Index" Claim Terms (Daubert Motion #2), [368] MOTION for Summary Judgment of No Obviousness of Claim 10 of U.S. Patent No. 7,468,255 (MSJ #2), [362] MOTION to Preclude Expert Testimony of Dr. Fair on Non-Infringement Relating to the Individually Addressed Claim Term (Daubert Motion #1), [366] MOTION to Preclude Improper Expert Testimony of Dr. Danial Millard Beyond His Personal Knowledge and Experience (Daubert Motion #4), [370] MOTION for Summary Judgment -- Agilent's Motion for Entry of Claim Construction of 'Cell Index' Terms, and Summary Judgment of No Indefiniteness of Asserted Claims of U.S. Patent Nos. 8,0026,080, 7,192,752 and 7,468,255 (MSJ #4), [367] MOTION for Summary Judgment as to Asserted Claims of U.S. Patent No. 7,192,752, and Partial Summary Judgment, as to Asserted Claims of U.S. Patent Nos. 7,468,255 and 8,026,080, of No Anticipation and No Obviousness of Asserted Claims Thereof over E, [365] MOTION to Preclude Expert Testimony of Dr. Fair on Issues Knowledge and Intent (Daubert Motion #3) , [364] MOTION to Preclude Dr. Fair's Expert Testimony on Non-Infringement Based on Use of Belated Proposed Construction of the "Cell Index" Claim Terms (Daubert Motion #2) filed by Agilent Technologies, Inc.. Answering Brief/Response due date per Local Rules is 7/24/2025. (Murray, Travis)</i>	
372	<i>Filed & Entered:</i>	07/10/2025 Notice of Filing Multi Media Materials
	<i>Docket Text: NOTICE of filing the following Non-Paper material(s) in multi media format: Exhibits 38, 39, and 48 to the Declaration of Laura K. Vining (D.I. 363). Original Non-paper material(s) to be filed with the Clerk's Office. Notice filed by John G. Day on behalf of Axion BioSystems, Inc. (Day, John)</i>	
373	<i>Filed & Entered:</i>	07/10/2025 Statement
	<i>Docket Text: [SEALED] STATEMENT re [367] MOTION for Summary Judgment as to Asserted Claims of U.S. Patent No. 7,192,752, and Partial Summary Judgment, as to Asserted Claims of U.S. Patent Nos. 7,468,255 and 8,026,080, of No Anticipation and No Obviousness of Asserted Claims Thereof over E by Agilent Technologies, Inc.. (Murray, Travis)</i>	
374	<i>Filed & Entered:</i>	07/10/2025 Statement

	<i>Docket Text:</i> [SEALED] STATEMENT re [368] MOTION for Summary Judgment of <i>No Obviousness of Claim 10 of U.S. Patent No. 7,468,255 (MSJ #2)</i> by Agilent Technologies, Inc.. (Murray, Travis)	
375	<i>Filed & Entered:</i> 07/10/2025	Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [369] MOTION for Summary Judgment (<i>Partial</i>) of <i>No Obviousness of Asserted Claims of U.S. Patent Nos. 8,026,080 and 7,192,752 in View of Certain Alleged Invalidity Bases for Lack of Motivation to Combine the Prior Art References as Applied (MSJ #3)</i> by Agilent Technologies, Inc.. (Murray, Travis)	
376	<i>Filed & Entered:</i> 07/10/2025	Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [370] MOTION for Summary Judgment -- <i>Agilent's Motion for Entry of Claim Construction of 'Cell Index' Terms, and Summary Judgment of No Indefiniteness of Asserted Claims of U.S. Patent Nos. 8,0026,080, 7,192,752 and 7,468,255 (MSJ #4)</i> by Agilent Technologies, Inc.. (Murray, Travis)	
377	<i>Filed & Entered:</i> 07/10/2025	Declaration
	<i>Docket Text:</i> [SEALED] DECLARATION of Peter J. Chassman re [371] Opening Brief in Support,,,,,, by Agilent Technologies, Inc.. (Attachments: # (1) Exhibits A-W)(Murray, Travis) (Attachment 1 replaced on 7/28/2025) (sam).	
378	<i>Filed & Entered:</i> 07/11/2025	Multi Media Document
	<i>Docket Text:</i> MULTI MEDIA DOCUMENT filed by Axion BioSystems, Inc. in the form of a 2 USB Drives. Filing related to D.I. [372] Notice of Filing Multi Media Materials. (Media on file in Chambers). (sam)	
379	<i>Filed & Entered:</i> 07/16/2025 <i>Terminated:</i> 07/22/2025	Stipulation to EXTEND Time
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to file redacted versions of the opening summary judgment and Daubert papers to July 29, 2025 - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
	<i>Filed & Entered:</i> 07/22/2025	SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [379] STIPULATION TO EXTEND TIME to file redacted versions of the opening summary judgment and Daubert papers to July 29, 2025 filed by Axion BioSystems, Inc. Ordered by Judge Christopher J. Burke on 07/22/2025. (sam)	
	<i>Filed & Entered:</i> 07/28/2025	CORRECTING ENTRY:
	<i>Docket Text:</i> CORRECTING ENTRY: Attachment 1 to D.I. [377] has been replaced per request of filing counsel without objection from opposing counsel. The document has been corrected to include missing paragraphs and incorrect excerpts in Exhibit E. (sam)	
380	<i>Filed & Entered:</i> 07/29/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [371] Opening Brief in Support,,,,,, by Agilent Technologies, Inc.. (Murray, Travis)	
381	<i>Filed & Entered:</i> 07/29/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [373] Statement, by Agilent Technologies, Inc.. (Murray, Travis)	
382	<i>Filed & Entered:</i> 07/29/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [374] Statement by Agilent Technologies, Inc.. (Murray, Travis)	
383	<i>Filed & Entered:</i> 07/29/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [375] Statement, by Agilent Technologies, Inc.. (Murray, Travis)	
384	<i>Filed & Entered:</i> 07/29/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [376] Statement, by Agilent Technologies, Inc.. (Murray, Travis)	
385	<i>Filed & Entered:</i> 07/29/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [377] Declaration by Agilent Technologies, Inc.. (Attachments: # (1) Exhibits A-W)(Murray, Travis)	

386	<i>Filed & Entered:</i>	07/29/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [360] Opening Brief in Support, by Axion BioSystems, Inc.. (Mayo, Andrew)		
387	<i>Filed & Entered:</i>	07/29/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [361] Declaration,, by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit 1, # (2) Exhibit 2, # (3) Exhibit 3, # (4) Exhibit 4, # (5) Exhibit 5, # (6) Exhibit 6, # (7) Exhibit 7, # (8) Exhibit 8, # (9) Exhibit 9, # (10) Exhibit 10, # (11) Exhibit 11, # (12) Exhibit 12, # (13) Exhibit 13, # (14) Exhibit 14, # (15) Exhibit 15, # (16) Exhibit 16, # (17) Exhibit 17, # (18) Exhibit 18, # (19) Exhibit 19, # (20) Exhibit 20, # (21) Exhibit 21, # (22) Exhibit 22, # (23) Exhibit 23, # (24) Exhibit 24, # (25) Exhibit 25, # (26) Exhibit 26)(Mayo, Andrew)		
388	<i>Filed & Entered:</i>	07/29/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [363] Declaration,, by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit 27, # (2) Exhibit 28, # (3) Exhibit 29, # (4) Exhibit 30, # (5) Exhibit 31, # (6) Exhibit 32, # (7) Exhibit 33, # (8) Exhibit 34, # (9) Exhibit 35, # (10) Exhibit 36, # (11) Exhibit 37, # (12) Exhibit 38, # (13) Exhibit 39, # (14) Exhibit 40, # (15) Exhibit 41, # (16) Exhibit 42, # (17) Exhibit 43, # (18) Exhibit 44, # (19) Exhibit 45, # (20) Exhibit 46, # (21) Exhibit 47, # (22) Exhibit 48, # (23) Exhibit 49, # (24) Exhibit 50, # (25) Exhibit 51, # (26) Exhibit 52, # (27) Exhibit 53, # (28) Exhibit 54)(Mayo, Andrew)		
	<i>Filed & Entered:</i>	07/31/2025	CORRECTING ENTRY:
	<i>Docket Text:</i> CORRECTING ENTRY: D.I. [353], [357], and [358] placed under seal per request of filing counsel and opposing counsel. Filing counsel is advised to supplement the docket with redacted versions of the now sealed filings. (sam)		
389	<i>Filed & Entered:</i>	08/01/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [353] Opening Brief in Support,, by Axion BioSystems, Inc.. (Mayo, Andrew)		
390	<i>Filed & Entered:</i>	08/01/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [357] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)		
391	<i>Filed & Entered:</i>	08/01/2025	Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [358] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)		
392	<i>Filed & Entered:</i>	08/08/2025	Answering Brief in Opposition
	<i>Docket Text:</i> [SEALED] ANSWERING BRIEF in Opposition re [350] MOTION for Summary Judgment <i>That Agilent Is Not Entitled To Pre-Suit Damages For The '752 Patent</i> , [352] MOTION for Summary Judgment <i>On Agilent's False Advertising Claim</i> , [349] MOTION for Summary Judgment <i>That Claims Reciting "Calculating Cell Index Values" And "Cell Index" Are Invalid As Indefinite</i> , [348] MOTION for Summary Judgment <i>That Use Of Axion's CYTOVIEW-Z 96-Well Plates Did Not Infringe The '752 And '255 Patent Claims</i> , [351] MOTION for Summary Judgment <i>That Agilent Is Not Entitled To Monetary Damages Or Damage Control Costs On Agilent's False Advertising Claim</i> filed by Agilent Technologies, Inc..Reply Brief due date per Local Rules is 8/15/2025. (Murray, Travis)		
393	<i>Filed & Entered:</i>	08/08/2025	Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [354] Statement, -- <i>Agilent's Response to Axion's Concise Statement of Uncontested Facts in Support of Its Motion for Summary Judgment That Use of Axion's Cytoview-Z 96 Well Plates Did Not Infringe the '752 and '255 Patents (D.I. 354) and Counter-Statement of Material Facts</i> -- by Agilent Technologies, Inc.. (Murray, Travis)		
394	<i>Filed & Entered:</i>	08/08/2025	Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [355] Statement, -- <i>Agilent's Response to Axion's Concise Statement of Uncontested Facts in Support of Its Motion for Summary Judgment That Claims Reciting "Calculating Cell Index Values" and "Cell Index" are Invalid as Indefinite (D.I. 355) and Counter-Statement of Material Facts</i> -- by Agilent Technologies, Inc.. (Murray, Travis)		

395	Filed & Entered:	08/08/2025	Answering Brief in Opposition
	<i>Docket Text:</i> [SEALED] ANSWERING BRIEF in Opposition re [369] MOTION for Summary Judgment (Partial) of No Obviousness of Asserted Claims of U.S. Patent Nos. 8,026,080 and 7,192,752 in View of Certain Alleged Invalidity Bases for Lack of Motivation to Combine the Prior Art References as Applied (MSJ #3) Dr. Fair's Expert Testimony on Non-Infringement Based on Use of Belated Proposed Construction of the "Cell Index" Claim Terms (Daubert Motion #2), [368] MOTION for Summary Judgment of No Obviousness of Claim 10 of U.S. Patent No. 7,468,255 (MSJ #2), [362] MOTION to Preclude Expert Testimony of Dr. Fair on Non-Infringement Relating to the Individually Addressed Claim Term (Daubert Motion #1), [366] MOTION to Preclude Improper Expert Testimony of Dr. Danial Millard Beyond His Personal Knowledge and Experience (Daubert Motion #4), [370] MOTION for Summary Judgment -- Agilent's Motion for Entry of Claim Construction of 'Cell Index' Terms, and Summary Judgment of No Indefiniteness of Asserted Claims of U.S. Patent Nos. 8,0026,080, 7,192,752 and 7,468,255 (MSJ #4), [367] MOTION for Summary Judgment as to Asserted Claims of U.S. Patent No. 7,192,752, and Partial Summary Judgment, as to Asserted Claims of U.S. Patent Nos. 7,468,255 and 8,026,080, of No Anticipation and No Obviousness of Asserted Claims Thereof over E, [365] MOTION to Preclude Expert Testimony of Dr. Fair on Issues Knowledge and Intent (Daubert Motion #3) filed by Axion BioSystems, Inc.. Reply Brief due date per Local Rules is 8/15/2025. (Mayo, Andrew)		
396	Filed & Entered:	08/08/2025	Statement
	<i>Docket Text:</i> STATEMENT re [356] Statement, -- Agilent's Response to Axion's Concise Statement of Uncontested Facts in Support of Its Motion for Summary Judgment That Agilent is not Entitled to Pre-Suit Damages for the '752 Patent (D.I. 356) and Counter-Statement of Material Facts -- by Agilent Technologies, Inc.. (Murray, Travis)		
397	Filed & Entered:	08/08/2025	Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [357] Statement, -- Agilent's Response to Axion's Concise Statement of Uncontested Facts in Support of Its Motion for Summary Judgment on Agilent's False Advertising Claim (D.I. 357) and Counter-Statement of Material Facts -- by Agilent Technologies, Inc.. (Murray, Travis)		
398	Filed & Entered:	08/08/2025	Declaration
	<i>Docket Text:</i> [SEALED] DECLARATION of Laura Kanouse Vining re [395] Answering Brief in Opposition,,,,, by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit 55, # (2) Exhibit 56, # (3) Exhibit 57, # (4) Exhibit 58, # (5) Exhibit 59, # (6) Exhibit 60, # (7) Exhibit 61, # (8) Exhibit 62, # (9) Exhibit 63, # (10) Exhibit 64, # (11) Exhibit 65)(Mayo, Andrew)		
399	Filed & Entered:	08/08/2025	Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [358] Statement, -- Agilent's Response to Axion's Concise Statement of Uncontested Facts (D.I. 358) in Support of Its Motion for Summary Judgment That Agilent is not Entitled to Monetary Damages or Damage Control Costs on Agilent's False Advertising Claim -- by Agilent Technologies, Inc.. (Murray, Travis)		
400	Filed & Entered:	08/08/2025	Answering Brief in Opposition
	<i>Docket Text:</i> [SEALED] ANSWERING BRIEF in Opposition re [359] MOTION to Preclude Certain Opinions Of Agilent's Experts Dr. Bruno Frazier And Mr. Brian Napper filed by Agilent Technologies, Inc.. Reply Brief due date per Local Rules is 8/15/2025. (Murray, Travis)		
401	Filed & Entered:	08/08/2025	Declaration
	<i>Docket Text:</i> [SEALED] DECLARATION of Peter J. Chassman re [392] Answering Brief in Opposition,,, [400] Answering Brief in Opposition, by Agilent Technologies, Inc.. (Attachments: # (1) Exhibits A-AI) (Murray, Travis)		
402	Filed & Entered:	08/08/2025	Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [373] Statement, (Axion BioSystems, Inc.'s Response to Agilent Technologies, Inc.'s Concise Statement of Facts in Support of Agilent's Motion for Summary Judgment of No		

	<i>Anticipation and No Obviousness of Certain Asserted Claims Over Ehret and Ehret in View of Other Art (Agilent's MSJ #1))</i> by Axion BioSystems, Inc.. (Mayo, Andrew)	
403	<i>Filed & Entered:</i>	08/08/2025 Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [374] Statement (<i>Axion BioSystems, Inc.'s Response to Agilent Technologies, Inc.'s Concise Statement of Facts in Support of Agilent's Motion for Summary Judgment of No Obviousness of Claim 10 of U.S. Patent No. 7,468,255 (Agilent's MSJ #2))</i> by Axion BioSystems, Inc.. (Mayo, Andrew)	
404	<i>Filed & Entered:</i>	08/08/2025 Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [375] Statement, (<i>Axion BioSystems, Inc.'s Response to Agilent Technologies, Inc.'s Concise Statement of Facts in Support of Agilent's Motion for Partial Summary Judgment of No Obviousness of Asserted Claims of U.S. Patent Nos. 8,026,080 and 7,192,752 in View of Certain Alleged Invalidity Bases for Lack of Motivation to Combine the Prior Art References as Applied (Agilent's MSJ #3))</i> by Axion BioSystems, Inc.. (Mayo, Andrew)	
405	<i>Filed & Entered:</i>	08/08/2025 Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [376] Statement, (<i>Axion BioSystems, Inc.'s Response to Agilent Technologies, Inc.'s Concise Statement of Facts in Support of Agilent's Motion for Summary Judgment of No Indefiniteness of Asserted Claims of U.S. Patent Nos. 8,026,080, 7,192,752, and 7,468,255 (Agilent's MSJ #4))</i> by Axion BioSystems, Inc.. (Mayo, Andrew)	
406	<i>Filed & Entered:</i>	08/08/2025 Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [395] Answering Brief in Opposition,,,,, (<i>Axion BioSystems, Inc.'s Concise Statement of Facts in Support of its Opposition to Agilent's MSJ #1)</i> by Axion BioSystems, Inc.. (Mayo, Andrew)	
	<i>Filed & Entered:</i>	08/14/2025 SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [407] STIPULATION TO EXTEND TIME the deadline to file redacted versions of the responsive summary judgment and Daubert papers to August 22, 2025 filed by Axion BioSystems, Inc. Ordered by Judge Christopher J. Burke on 08/14/2025. (sam)	
407	<i>Filed & Entered:</i>	08/14/2025 Stipulation to EXTEND Time
	<i>Terminated:</i>	08/14/2025
	<i>Docket Text:</i> Joint STIPULATION TO EXTEND TIME the deadline to file redacted versions of the responsive summary judgment and Daubert papers to August 22, 2025 - filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
408	<i>Filed & Entered:</i>	08/21/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [392] Answering Brief in Opposition,,, by Agilent Technologies, Inc.. (Egan, Brian)	
409	<i>Filed & Entered:</i>	08/21/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [393] Statement, by Agilent Technologies, Inc.. (Egan, Brian)	
410	<i>Filed & Entered:</i>	08/21/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [394] Statement, by Agilent Technologies, Inc.. (Egan, Brian)	
411	<i>Filed & Entered:</i>	08/21/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [397] Statement, by Agilent Technologies, Inc.. (Egan, Brian)	
412	<i>Filed & Entered:</i>	08/21/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [399] Statement, by Agilent Technologies, Inc.. (Egan, Brian)	
413	<i>Filed & Entered:</i>	08/21/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [400] Answering Brief in Opposition, by Agilent Technologies, Inc.. (Egan, Brian)	
414	<i>Filed & Entered:</i>	08/21/2025 Redacted Document

Ex. 2023

	<i>Docket Text:</i> REDACTED VERSION of [401] Declaration by Agilent Technologies, Inc.. (Attachments: # (1) Exhibits A-AI)(Egan, Brian)	
415	<i>Filed & Entered:</i>	08/22/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [395] Answering Brief in Opposition,,,,,, by Axion BioSystems, Inc.. (Mayo, Andrew)	
416	<i>Filed & Entered:</i>	08/22/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [398] Declaration, of <i>Laura Kanouse Vining</i> by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit 55, # (2) Exhibit 56, # (3) Exhibit 57, # (4) Exhibit 58, # (5) Exhibit 59, # (6) Exhibit 60, # (7) Exhibit 61, # (8) Exhibit 62, # (9) Exhibit 63, # (10) Exhibit 64, # (11) Exhibit 65) (Mayo, Andrew)	
417	<i>Filed & Entered:</i>	08/22/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [402] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)	
418	<i>Filed & Entered:</i>	08/22/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [403] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)	
419	<i>Filed & Entered:</i>	08/22/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [404] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)	
420	<i>Filed & Entered:</i>	08/22/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [405] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)	
421	<i>Filed & Entered:</i>	08/22/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [406] Statement by Axion BioSystems, Inc.. (Mayo, Andrew)	
422	<i>Filed & Entered:</i>	08/29/2025 Reply Brief
	<i>Docket Text:</i> [SEALED] REPLY BRIEF re [369] MOTION for Summary Judgment (<i>Partial</i>) of <i>No Obviousness of Asserted Claims of U.S. Patent Nos. 8,026,080 and 7,192,752 in View of Certain Alleged Invalidity Bases for Lack of Motivation to Combine the Prior Art References as Applied (MSJ #3)</i> Dr. Fair's Expert Testimony on Non-Infringement Based on Use of Belated Proposed Construction of the "Cell Index" Claim Terms (<i>Daubert Motion #2</i>), [368] MOTION for Summary Judgment of <i>No Obviousness of Claim 10 of U.S. Patent No. 7,468,255 (MSJ #2)</i> , [362] MOTION to Preclude Expert Testimony of Dr. Fair on Non-Infringement Relating to the Individually Addressed Claim Term (<i>Daubert Motion #1</i>), [366] MOTION to Preclude Improper Expert Testimony of Dr. Danial Millard Beyond His Personal Knowledge and Experience (<i>Daubert Motion #4</i>), [370] MOTION for Summary Judgment -- <i>Agilent's Motion for Entry of Claim Construction of 'Cell Index' Terms, and Summary Judgment of No Indefiniteness of Asserted Claims of U.S. Patent Nos. 8,0026,080, 7,192,752 and 7,468,255 (MSJ #4)</i> , [367] MOTION for Summary Judgment as to Asserted Claims of U.S. Patent No. 7,192,752, and Partial Summary Judgment, as to Asserted Claims of U.S. Patent Nos. 7,468,255 and 8,026,080, of <i>No Anticipation and No Obviousness of Asserted Claims Thereof over E</i> , [365] MOTION to Preclude Expert Testimony of Dr. Fair on Issues Knowledge and Intent (<i>Daubert Motion #3</i>) filed by Agilent Technologies, Inc.. (Murray, Travis)	
423	<i>Filed & Entered:</i>	08/29/2025 Declaration
	<i>Docket Text:</i> [SEALED] DECLARATION of Peter J. Chassman re [422] Reply Brief,,,,,, by Agilent Technologies, Inc.. (Attachments: # (1) Exhibits Y-Z)(Murray, Travis)	
424	<i>Filed & Entered:</i>	08/29/2025 Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [406] Statement -- <i>Agilent's Response to Axion's Concise Statement of Facts in Support of Its Opposition to Agilent's MSJ #1</i> -- by Agilent Technologies, Inc.. (Murray, Travis)	
425	<i>Filed & Entered:</i>	08/29/2025 Reply Brief
	<i>Docket Text:</i> [SEALED] REPLY BRIEF re [350] MOTION for Summary Judgment <i>That Agilent Is Not Entitled To Pre-Suit Damages For The '752 Patent</i> , [352] MOTION for Summary Judgment <i>On Agilent's False Advertising Claim</i> , [349] MOTION for Summary Judgment <i>That Claims Reciting "Calculating Cell</i>	

	<i>Index Values" And "Cell Index" Are Invalid As Indefinite</i> , [348] MOTION for Summary Judgment <i>That Use Of Axion's CYTOVIEW-Z 96-Well Plates Did Not Infringe The '752 And '255 Patent Claims</i> , [351] MOTION for Summary Judgment <i>That Agilent Is Not Entitled To Monetary Damages Or Damage Control Costs On Agilent's False Advertising Claim</i> filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
426	<i>Filed & Entered:</i>	08/29/2025 Declaration
	<i>Docket Text:</i> [SEALED] DECLARATION of Laura Kanouse Vining re [425] Reply Brief,, by Axion BioSystems, Inc.. (Attachments: # (1) Exhibit 66, # (2) Exhibit 67, # (3) Exhibit 68, # (4) Exhibit 69, # (5) Exhibit 70)(Mayo, Andrew)	
427	<i>Filed & Entered:</i>	08/29/2025 Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [393] Statement, (<i>Axion's Response To Agilent's Counter Statement Of Facts (D.I. 393) Relating To Axion's Motion For Summary Judgment That Use Of Axion's Cytoview-Z 96-Well Plates Did Not Infringe The '752 And '255 Patents</i>) by Axion BioSystems, Inc.. (Mayo, Andrew)	
428	<i>Filed & Entered:</i>	08/29/2025 Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [394] Statement, (<i>Axion's Response To Agilent's Counter Statement Of Facts (D.I. 394) Relating To Axion's Motion For Summary Judgment That Claims Reciting Calculating Cell Index Values And Cell Index Are Invalid As Indefinite</i>) by Axion BioSystems, Inc.. (Mayo, Andrew)	
429	<i>Filed & Entered:</i>	08/29/2025 Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [396] Statement, (<i>Axion's Response To Agilent's Counter Statement Of Facts (D.I. 396) Relating To Axion's Motion For Summary Judgment That Agilent Is Not Entitled To Pre-Suit Damages For The '752 Patent</i>) by Axion BioSystems, Inc.. (Mayo, Andrew)	
430	<i>Filed & Entered:</i>	08/29/2025 Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [397] Statement, (<i>Axion's Response To Agilent's Counter Statements Of Facts (D.I. 397) Relating To Axion's Motion For Summary Judgment On Agilent's False Advertising Claim</i>) by Axion BioSystems, Inc.. (Mayo, Andrew)	
431	<i>Filed & Entered:</i>	08/29/2025 Statement
	<i>Docket Text:</i> [SEALED] STATEMENT re [399] Statement, (<i>Axion's Response To Agilent's Counter Statements Of Facts (D.I. 399) Relating To Axion's Motion For Summary Judgment On Agilent's False Advertising Damages</i>) by Axion BioSystems, Inc.. (Mayo, Andrew)	
432	<i>Filed & Entered:</i>	08/29/2025 Reply Brief
	<i>Docket Text:</i> [SEALED] REPLY BRIEF re [359] MOTION to Preclude <i>Certain Opinions Of Agilent's Experts Dr. Bruno Frazier And Mr. Brian Napper</i> filed by Axion BioSystems, Inc.. (Mayo, Andrew)	
433	<i>Filed & Entered:</i>	09/02/2025 Stipulation to EXTEND Time
	<i>Terminated:</i>	09/03/2025
	<i>Docket Text:</i> STIPULATION TO EXTEND TIME to file redacted versions of the reply summary judgment and Daubert papers filed on August 29, 2025 (D.I. 422-432) to September 12, 2025 - filed by Agilent Technologies, Inc.. (Murray, Travis)	
	<i>Filed & Entered:</i>	09/03/2025 SO ORDERED
	<i>Docket Text:</i> SO ORDERED, D.I. [433] STIPULATION TO EXTEND TIME to file redacted versions of the reply summary judgment and Daubert papers filed on August 29, 2025 (D.I. [422]-[432]) to September 12, 2025 filed by Agilent Technologies, Inc. Ordered by Judge Christopher J. Burke on 09/03/2025. (sam)	
434	<i>Filed & Entered:</i>	09/05/2025 Request for Oral Argument
	<i>Docket Text:</i> REQUEST for Oral Argument by Agilent Technologies, Inc. re [369] MOTION for Summary Judgment (Partial) of No Obviousness of Asserted Claims of U.S. Patent Nos. 8,026,080 and 7,192,752 in View of Certain Alleged Invalidity Bases for Lack of Motivation to Combine the Prior Art References as Applied (MSJ #3) , [364] MOTION to Preclude Dr. Fair's Expert Testimony on Non-Infringement Based on	

	Use of Belated Proposed Construction of the "Cell Index" Claim Terms (Daubert Motion #2) , [368] MOTION for Summary Judgment of No Obviousness of Claim 10 of U.S. Patent No. 7,468,255 (MSJ #2) , [367] MOTION for Summary Judgment as to Asserted Claims of U.S. Patent No. 7,192,752, and Partial Summary Judgment, as to Asserted Claims of U.S. Patent Nos. 7,468,255 and 8,026,080, of No Anticipation and No Obviousness of Asserted Claims Thereof over E, [365] MOTION to Preclude Expert Testimony of Dr. Fair on Issues Knowledge and Intent (Daubert Motion #3) , [362] MOTION to Preclude Expert Testimony of Dr. Fair on Non-Infringement Relating to the Individually Addressed Claim Term (Daubert Motion #1) , [366] MOTION to Preclude Improper Expert Testimony of Dr. Danial Millard Beyond His Personal Knowledge and Experience (Daubert Motion #4) , [348] MOTION for Summary Judgment That Use Of Axion's CYTOVIEW-Z 96-Well Plates Did Not Infringe The '752 And '255 Patent Claims , [370] MOTION for Summary Judgment -- Agilent's Motion for Entry of Claim Construction of 'Cell Index' Terms, and Summary Judgment of No Indefiniteness of Asserted Claims of U.S. Patent Nos. 8,0026,080, 7,192,752 and 7,468,255 (MSJ #4). (Murray, Travis) Modified on 9/8/2025 (sam).	
435	<i>Filed & Entered:</i>	09/05/2025 Request for Oral Argument
	<i>Docket Text:</i> REQUEST for Oral Argument by Axion BioSystems, Inc. re [369] MOTION for Summary Judgment (Partial) of No Obviousness of Asserted Claims of U.S. Patent Nos. 8,026,080 and 7,192,752 in View of Certain Alleged Invalidity Bases for Lack of Motivation to Combine the Prior Art References as Applied (MSJ #3), [350] MOTION for Summary Judgment That Agilent Is Not Entitled To Pre-Suit Damages For The '752 Patent, [364] MOTION to Preclude Dr. Fair's Expert Testimony on Non-Infringement Based on Use of Belated Proposed Construction of the "Cell Index" Claim Terms (Daubert Motion #2), [352] MOTION for Summary Judgment On Agilent's False Advertising Claim , [368] MOTION for Summary Judgment of No Obviousness of Claim 10 of U.S. Patent No. 7,468,255 (MSJ #2) , [362] MOTION to Preclude Expert Testimony of Dr. Fair on Non-Infringement Relating to the Individually Addressed Claim Term (Daubert Motion #1) , [349] MOTION for Summary Judgment That Claims Reciting "Calculating Cell Index Values" And "Cell Index" Are Invalid As Indefinite , [359] MOTION to Preclude Certain Opinions Of Agilent's Experts Dr. Bruno Frazier And Mr. Brian Napper , [366] MOTION to Preclude Improper Expert Testimony of Dr. Danial Millard Beyond His Personal Knowledge and Experience (Daubert Motion #4) , [348] MOTION for Summary Judgment That Use Of Axion's CYTOVIEW-Z 96-Well Plates Did Not Infringe The '752 And '255 Patent Claims , [370] MOTION for Summary Judgment -- Agilent's Motion for Entry of Claim Construction of 'Cell Index' Terms, and Summary Judgment of No Indefiniteness of Asserted Claims of U.S. Patent Nos. 8,0026,080, 7,192,752 and 7,468,255 (MSJ #4), [367] MOTION for Summary Judgment as to Asserted Claims of U.S. Patent No. 7,192,752, and Partial Summary Judgment, as to Asserted Claims of U.S. Patent Nos. 7,468,255 and 8,026,080, of No Anticipation and No Obviousness of Asserted Claims Thereof over E, [351] MOTION for Summary Judgment That Agilent Is Not Entitled To Monetary Damages Or Damage Control Costs On Agilent's False Advertising Claim , [365] MOTION to Preclude Expert Testimony of Dr. Fair on Issues Knowledge and Intent (Daubert Motion #3) . (Mayo, Andrew) Modified on 9/8/2025 (sam).	
436	<i>Filed & Entered:</i>	09/08/2025 Oral Order
	<i>Docket Text:</i> ORAL ORDER: The Court, having reviewed the parties' requests for oral argument on the pending summary judgment and <i>Daubert</i> motions, (D.I. [434]; D.I. [435]), hereby ORDERS as follows: (1) It has become clear to the Court that for a hearing on summary judgment and/or <i>Daubert</i> motions to be most fruitful and focused, it makes best sense to require the parties to each select one motion that they will offer argument on to the Court. This will allow for a detailed and focused argument regarding what the parties believe to be their most important motion (one that, ideally, involves approximately 30 pages of briefing or less in total), so as to permit the Court the ability to meaningfully prepare for argument. Accordingly, the Court hereby ORDERS that by no later than September 22, 2025, the parties shall submit a joint letter advising the Court of the motion that each respective side selects to be argued, and the pages of the briefing that relate to that motion.; and (2) The Court will hold a hearing on the parties' selected summary judgment and/or <i>Daubert</i> motions on December 4, 2025 at 11:00 a.m. Three hours will be allocated for argument, to be split equally between the sides. Ordered by Judge Christopher J. Burke on 09/08/2025. (sam)	
437	<i>Filed & Entered:</i>	09/10/2025 Redacted Document

	<i>Docket Text:</i> REDACTED VERSION of [422] Reply Brief,,,,, by Agilent Technologies, Inc.. (Murray, Travis)
438	<i>Filed & Entered:</i> 09/10/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [423] Declaration by Agilent Technologies, Inc.. (Attachments: # (1) Exhibits Y-Z)(Murray, Travis)
439	<i>Filed & Entered:</i> 09/10/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [424] Statement by Agilent Technologies, Inc.. (Murray, Travis)
440	<i>Filed & Entered:</i> 09/10/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [425] Reply Brief,, by Axion BioSystems, Inc.. (Mayo, Andrew)
441	<i>Filed & Entered:</i> 09/10/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [426] Declaration of <i>Laura Kanouse Vining</i> by Axion BioSystems, Inc.. (Mayo, Andrew)
442	<i>Filed & Entered:</i> 09/10/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [427] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)
443	<i>Filed & Entered:</i> 09/10/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [428] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)
444	<i>Filed & Entered:</i> 09/10/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [429] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)
445	<i>Filed & Entered:</i> 09/10/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [430] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)
446	<i>Filed & Entered:</i> 09/10/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [431] Statement, by Axion BioSystems, Inc.. (Mayo, Andrew)
447	<i>Filed & Entered:</i> 09/10/2025 Redacted Document
	<i>Docket Text:</i> REDACTED VERSION of [432] Reply Brief by Axion BioSystems, Inc.. (Mayo, Andrew)

PACER Service Center			
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