
From: Beavers, Timothy James
Sent: Tuesday, August 12, 2025 6:57 PM
To: Fletcher, Thomas
Cc: IDT-Tecan-IPRs; DG-Goodwin-Tecan
Subject: RE: IPR2025-00015 and IPR2025-00016

Hi Tom,

We have been following up with our client on your suggestion about submitting an alternative declarant to Dr. Matz. While we disagree with your concerns regarding Dr. Matz, we believe we may be able to provide a substitute declarant, specifically Dr. Eli Meyer. We propose that in exchange for IDT withdrawing its motion, Patent Owner would seek leave to file an unopposed motion to substitute the declaration and update the record to account for this new declaration. The substitute declaration would be substantially the same as Dr. Matz's declaration. This will eliminate the issues for the PTAB, address your concerns regarding Dr. Matz, and avoid significant prejudice to Tecan. Please let us know your position on this.

Given Tecan's Thursday deadline, we intend to seek a short extension on our opposition to your motion to disqualify until Tuesday so that we can confirm the viability of this proposed compromise. We will also hold off on further emailing the Board regarding the redacted Matz materials for now. Please let us know if you agree to this extension.

Thank you,
TJ

Timothy Beavers
he/him/his



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From: Fletcher, Thomas <TFletcher@wc.com>
Sent: Monday, August 11, 2025 9:02 PM
To: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Cc: IDT-Tecan-IPRs <IDT-Tecan-IPRs@wc.com>; DG-Goodwin-Tecan <DG-GoodwinTecan@goodwinlaw.com>
Subject: RE: IPR2025-00015 and IPR2025-00016

EXTERNAL

TJ,

If you wish to send this message to the Board, you can. We remain available to speak about any of these issues.

Regards,

Tom

Thomas S. Fletcher
Williams & Connolly LLP
680 Maine Ave. SW
Washington, DC 20024
(202) 434-5497

From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Monday, August 11, 2025 5:46 PM
To: Fletcher, Thomas <TFletcher@wc.com>
Cc: IDT-Tecan-IPRs <IDT-Tecan-IPRs@wc.com>; DG-Goodwin-Tecan <DG-GoodwinTecan@goodwinlaw.com>
Subject: RE: IPR2025-00015 and IPR2025-00016

Hi Tom,

On the privilege log issue, our concern is Petitioner has not clearly asserted the basis for withholding these materials. For example, your motion to seal asserts these materials are confidential but does not mention privilege or work product (or raise any allegations as to those protections). This is why we had previously discussed a privilege log. We continue to maintain our objections on this procedure and your assertions.

We will further consider your point regarding expanding Dr. Bustamante's declaration or some alternative declaration. That said, we do not agree that the context you have provided makes it such that Dr. Matz's declaration should be excluded, especially given the prejudice to Tecan. This is why again we seek more information.

Below are our additions to the message to the Board (along with your additions). We also correct the current date for our response, which you listed as Wednesday but is actually Thursday. If you have anything further, please let us know as we plan to send this message later today.

Thank you,
TJ

Dear Honorable Board,

Patent Owner's Request & Position:

Petitioner relies extensively on redacted materials in its Authorized Motion to Disqualify Dr. Mikhail Matz. *See e.g.* Paper 26 at 3-4 (citing Exs. 1091, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1101, 1103, 1105). However, these materials have not been provided to Patent Owner, whose response to this

motion is due on Thursday, August 14, 2025. As a result, Patent Owner cannot fully respond to Petitioner's arguments and Patent Owner respectfully requests that the Board:

1. Require Petitioner to provide unredacted copies of all the documents they rely upon in their motion or, alternatively, permit Patent Owner to file a motion seeking discovery of these materials. To the extent these are not produced, Petitioner should be precluded from relying on these materials. Patent Owner is prepared to treat these materials as highly confidential outside counsel eyes only and stipulate to a protective order to those ends.
2. Extend the deadline for Patent Owner's response to Petitioner's motion until 7 days after Petitioner's production of these materials (or the resolution of this issue).

As a result of Petitioner's heavy reliance on redacted communications, Patent Owner is unable to fully respond to Petitioner's contentions that Dr. Matz received confidential information relevant to the proceeding that would support the alleged basis for disqualifying him. See e.g. Paper 26 at 2-4. For example, Petitioner claims that its "discussions with Dr. Matz became the core of [the] petition" and invites the Board to compare its redacted exhibits to the Petition. Petitioner goes on to make various allegations about the subject matter of what was discussed in those communications and how it allegedly supports their motion for disqualification. Paper 26 at 4. Petitioner also challenges the accuracy of Dr. Matz's Declaration (EX2039) based on redacted materials. *Id.* However, none of the materials they rely upon have been provided to Patent Owner, despite several requests.

Patent Owner cannot fully respond to Petitioner's claims because the core parts of what Petitioner relies upon are redacted in their entirety. See e.g., Exs. 1093, 1096, 1097, 1098, 1105. As the Board found in *Agila*, a party cannot be permitted to use these confidential or privileged materials as both a sword and a shield. *Agila Specialties Inc. v. Cephalon, Inc.*, IPR2015-00503, Paper 13 at 5 (P.T.A.B. Aug. 19, 2015) ("[T]o the extent [a party] intends to wield a [] communication (or any other communication between [that party] and [an expert]) as a sword to support its disqualification motion, [that party] cannot hide behind the shield of attorney-client privilege and refuse to reveal the specifics of the communication."). Allowing the reliance on these materials without any disclosure to Patent Owner deprives Patent Owner of sufficient notice and the opportunity to be heard on the merits of the arguments. It deprives Patent Owner of due process including the ability to fairly test Petitioner's unilateral assertions. Moreover, to the extent Petitioner claims that this information is reflected in the public filings, Petitioner has waived any claim of privilege or confidentiality to the materials. It cannot selectively choose which materials to disclose and which to not. **Ultimately, it is Petitioner's burden to prove that Dr. Matz received confidential information and that the allegedly confidential information is related to this case. Dr. Matz's disclosure of information about his own public work is plainly insufficient to carry this burden. Without the actual documents or specific allegations, Patent Owner is deprived of due process and cannot directly respond to the allegations made by Petitioner.**

Patent Owner does not seek an indefinite extension but asks that the materials be produced no later than the end of this week (or sooner if possible). This will have no effect on the remaining schedule, where Petitioner's reply is due on October 10.

In addition, the only communications at issue here are those that the Petitioner has relied upon and made an issue by its arguments. This is for good reason as the standard for a motion to disqualify concerns the information he received from Petitioner – not Patent Owner.

Petitioner's position:

Petitioner opposes these requests.

Patent Owner ignores that the Board granted Petitioner's request to submit these exhibits *in camera*, Ex. 3003, making its request now effectively a request for reconsideration. The Board's Ex. 3003 decision was consistent with the Board's practice in *Galderma S.A. v. Medy-Tox, Inc.*, PGR2019-00062, Paper 56 at 4. Patent Owner ignores this authority. Patent Owner instead cites *Agila*, which is inapposite for several reasons, including that the consulting agreement was with a third party, related to a different case on different subject matter, and there was no request for *in camera* review. IPR2015-00503, Paper 13 at 5.

Patent Owner's request would exacerbate the exact prejudice Petitioner is trying to remedy by filing this motion: the disclosure of its confidential litigation strategy to its adversary. It would be highly prejudicial and contrary to law. Patent Owner has cited no case, and Petitioner is aware of none, that holds that a party must reveal to opposing counsel the substance of its confidential communications with an expert in support of a motion to disqualify. To the contrary, the Board and other tribunals routinely permit parties to submit such evidence *in camera*. *E.g.*, *Galderma*, PGR2019-00062, Paper 56 at 4; *King v. DePuy Orthopaedics*, 2023 WL 5624710, at *8 (D. Ariz. Aug. 31, 2023). As the cases cited in Petitioner's motion demonstrate, Patent Owner does not need to be in a position to pick apart the precise communications between Petitioner and Dr. Matz—the existence of the confidential relationship with Dr. Matz alone requires disqualification.

Petitioner also opposes Patent Owner's request for an indefinite extension of the briefing schedule. This dispute needs to be resolved in a timely matter so that any depositions can be taken and the Petitioner's Replies submitted on schedule. The prejudice to Petitioner from Dr. Matz working with Patent Owner is already great and compounding daily. Tellingly, Patent Owner still cites no case, and Petitioner is aware of none, permitting an expert to switch sides in the *same litigation*. To the contrary, courts routinely disqualify experts under far less egregious facts, as explained in the motion.

The Board should maintain its prior order, Ex. 3003, and require Patent Owner's response, if any, to be filed on **Thursday**.

To the extent that the Board is inclined to grant Patent Owner's request, Petitioner requests that the Board likewise require Patent Owner to provide Petitioner with unredacted versions of its agreements, communications with Dr. Matz, and notes thereof to permit an assessment of Dr. Matz's sharing of Petitioner's confidential information with Patent Owner.

Timothy Beavers
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From: Fletcher, Thomas <TFletcher@wc.com>
Sent: Monday, August 11, 2025 2:12 PM
To: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Cc: IDT-Tecan-IPRs <IDT-Tecan-IPRs@wc.com>; DG-Goodwin-Tecan <DG-GoodwinTecan@goodwinlaw.com>
Subject: RE: IPR2025-00015 and IPR2025-00016

EXTERNAL

Hi TJ,

I'm not sure we're joining issue on the log point, but yes, the Motion to Seal outlines why we think the materials that we redacted are appropriately redacted. Dr. Matz was a consultant for us. Communications with non-testifying experts are afforded substantial protection under the Federal Rules. The work he generated at our direction is attorney work product. Our notes of our conversations with him reflect attorney mental impressions, which is the most protected category of material under the law. If this is not what you're asking about, I'm available to discuss from 4 pm to 5:30 pm eastern.

As for your proposed outreach to the Board and your email below, we struggle to see how a narrowed or revised declaration from Dr. Matz could work because he is the problem. If you wanted to supplement Dr. Bustamente's declaration, I could imagine a world in which that might work, and we remain open to discussing it.

In the interim, if you maintain that you need to email the Board this afternoon, here is our position on the requests you shared this weekend:

Petitioner opposes these requests.

Patent Owner ignores that the Board granted Petitioner's request to submit these exhibits *in camera*, Ex. 3003, making its request now effectively a request for reconsideration. The Board's Ex. 3003 decision was consistent with the Board's practice in *Galderma S.A. v. Medy-Tox, Inc.*, PGR2019-00062, Paper 56 at 4. Patent Owner ignores this authority. Patent Owner instead cites *Agila*, which is inapposite for several reasons, including that the consulting agreement was with a third party, related to a different case on different subject matter, and there was no request for *in camera* review. IPR2015-00503, Paper 13 at 5.

Patent Owner's request would exacerbate the exact prejudice Petitioner is trying to remedy by filing this motion: the disclosure of its confidential litigation strategy to its adversary. It would be highly prejudicial and contrary to law. Patent Owner has cited no case, and Petitioner is aware of none, that holds that a party must reveal to opposing counsel the substance of its confidential communications with an expert in support of a motion to disqualify. To the contrary, the Board and other tribunals routinely permit parties to submit such evidence *in camera*. *E.g.*, *Galderma*, PGR2019-00062, Paper 56 at 4; *King v. DePuy Orthopaedics*, 2023 WL 5624710, at *8 (D. Ariz. Aug. 31, 2023). As the cases cited in Petitioner's motion demonstrate, Patent Owner does not need to be in a

position to pick apart the precise communications between Petitioner and Dr. Matz—the existence of the confidential relationship with Dr. Matz alone requires disqualification.

Petitioner also opposes Patent Owner’s request for an indefinite extension of the briefing schedule. This dispute needs to be resolved in a timely matter so that any depositions can be taken and the Petitioner’s Replies submitted on schedule. The prejudice to Petitioner from Dr. Matz working with Patent Owner is already great and compounding daily. Tellingly, Patent Owner still cites no case, and Petitioner is aware of none, permitting an expert to switch sides in the *same litigation*. To the contrary, courts routinely disqualify experts under far less egregious facts, as explained in the motion.

The Board should maintain its prior order, Ex. 3003, and require Patent Owner’s response, if any, to be filed on Wednesday.

To the extent that the Board is inclined to grant Patent Owner’s request, Petitioner requests that the Board likewise require Patent Owner to provide Petitioner with unredacted versions of its agreements, communications with Dr. Matz, and notes thereof to permit an assessment of Dr. Matz’s sharing of Petitioner’s confidential information with Patent Owner.

Thomas S. Fletcher
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680 Maine Ave. SW
Washington, DC 20024
(202) 434-5497

From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Monday, August 11, 2025 1:08 PM
To: Fletcher, Thomas <TFletcher@wc.com>
Cc: IDT-Tecan-IPRs <IDT-Tecan-IPRs@wc.com>; DG-Goodwin-Tecan <DG-GoodwinTecan@goodwinlaw.com>
Subject: RE: IPR2025-00015 and IPR2025-00016

Hi Tom,

As we discussed during our prior meet-and-confer, our understanding was that you would provide a log on a document-by-document basis that identifies the reasons for withholding these materials (and the others that have been partly withheld). Ex. 1109 does not provide that. However, in the interest of time, please confirm the only basis for withholding these materials is set forth in your motion to seal in camera documents. If that is not true, please explain your position.

As we discussed previously, both at the prior meet-and-confer and by email, we continue to disagree on these issues.

- Petitioner relies on both its alleged engagement letter but also the substance of its alleged communications with Dr. Matz. For those communications, Petitioner has redacted the very material it purports to rely on. Having now put those materials as the basis for your motion and made numerous arguments as to the content and relevance of those materials, you cannot shield

those materials. This is the quintessential circumstances where materials are hidden and used as a sword and shield. It also raises fundamental due process concerns.

- As we previously discussed, we also disagree with your interpretation of *Agila* and its applicability here.
- We also continue to disagree that our communications with Dr. Matz are relevant to your motion, which concerns alleged information you shared with him and the communications you have identified.
- Our position remains the same that the parties should work to come up with an alternative remedy that does not deprive the PTAB of this clearly relevant information—we are looking into alternative measures to resolve this issue, but note, we are limited in doing so given the materials you have redacted. For example, we think that potential remedies could include narrowing or revising the declaration to address specific issues if needed.

We have now raised these concerns numerous times without resolution. Please provide your position for the Board by 2 PM ET so that we can assess whether the parties need to discuss the issues again at 4 PM ET.

Thank you,
TJ

Timothy Beavers
he/him/his



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From: Fletcher, Thomas <TFletcher@wc.com>
Sent: Monday, August 11, 2025 8:53 AM
To: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Cc: IDT-Tecan-IPRs <IDT-Tecan-IPRs@wc.com>; DG-Goodwin-Tecan <DG-GoodwinTecan@goodwinlaw.com>
Subject: RE: IPR2025-00015 and IPR2025-00016

EXTERNAL

TJ,

I write in response to your weekend email.

1. You asked about the log. We provided a log of our communications with Dr. Matz as Exhibit 1109. For the communications that were not produced in full, we provided redacted versions, which give all the to/from/date/subject information associated with a log. We do not understand what additional information you need.

We are available to confer at 4 pm. Please circulate a dial in.

2. We disagree that we must provide you those unredacted versions of our confidential communications with Dr. Matz. IDT has been and continues to be prejudiced by your consulting with Dr. Matz in this matter. As explained in our motion to disqualify, there is no basis to compound that prejudice by providing Tecan even more of IDT's confidential information.

Your reliance on *Agila* is misplaced for the reasons we explained previously. In *Agila*, the consulting agreement concerned an unrelated matter, unlike here, where Dr. Matz's consulting indisputably related to the same matter. In *Agila*, there was also a question of whether the relationship ran to the relevant entity, unlike here, where Dr. Matz's consulting agreement is with IDT and its counsel in this matter. In *Agila*, the movant provided no information or documents about the subject matter of the prior consulting, unlike here, where Dr. Matz's agreement clearly sets out the subject matter of the consulting as do the redacted documents we have provided. And finally, in *Agila*, there was no request to provide the Board the relevant information *in camera*, unlike here, that request has already been granted.

There is no "sword vs. shield" issue. Our consulting agreement, which you have in full, provides the basis for Dr. Matz's disqualification. The communications have been submitted to the Board *in camera*, as authorized by the Board, to the extent that the Board seeks further evidence of the substantive nature of the relationship between Petitioner and Dr. Matz.

Over these past few weeks, you have not directed us to any case suggesting that the specific content of our communications with Dr. Matz is relevant to the scope of relief here. If you are aware of any such case, we would be happy to consider it.

We note that you have not provided the substance of any of your communications with Dr. Matz, and refused to provide a copy of your agreement with him for several days. To the extent you contend that the substantive content (as opposed to the substantive nature) of the parties' communications is relevant (it is not), the scope of your communications with Dr. Matz are equally relevant, and Goodwin and Tecan should provide all of their communications with Dr. Matz relating to this matter (including an unredacted retainer, any email or written communications, and the notes of any video- or teleconferences). Please let us know if you are willing to do that.

3. We trust that Goodwin and Tecan have not been continuing to consult with Dr. Matz since we raised this issue—to the extent that you have, please let us know immediately.

4. Your email mentions other proposals. We remain open to hearing them. As noted above, we can be available at 4 pm today. If you nevertheless insist in contacting the Board, we will provide an insert for the email stating our position opposing the request.

Regards,

Tom

Thomas S. Fletcher
Williams & Connolly LLP

680 Maine Ave. SW
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(202) 434-5497

From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Saturday, August 9, 2025 12:47 PM
To: Fletcher, Thomas <TFletcher@wc.com>
Cc: IDT-Tecan-IPRs <IDT-Tecan-IPRs@wc.com>; DG-Goodwin-Tecan <DG-GoodwinTecan@goodwinlaw.com>
Subject: Re: IPR2025-00015 and IPR2025-00016

Hi Tom,

We have not received the privilege log that you agreed to provide. Please provide that immediately.

In addition, we have reviewed your submission, which confirms our earlier concerns regarding IDT's reliance on redacted information in its Motion to Disqualify. As we discussed on the prior meet-and-confer, Tecan cannot properly assess nor defend against IDT's claims based on the information currently available to it. Moreover, your brief contains a variety of allegations that were not previously disclosed, nor can we assess the basis for these allegations given your refusal to provide unredacted versions of these materials. As we previously discussed, we remain willing to treat these materials as OCEO, but we will need access to these materials to respond to your brief. Given this, we plan to submit the below request to the Board to access the redacted materials filed with IDT's motion. Please let us know if you have anything further to add by 4 PM ET on Monday, August 11.

In addition, we continue to review your allegations and will let you know if we have further questions or proposals.

Thank you,
TJ

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Dear Honorable Board,

Petitioner relies extensively on redacted materials in its Authorized Motion to Disqualify Dr. Mikhail Matz. *See e.g.* Paper 26 at 3-4 (citing Exs. 1091, 1093, 1094, 1095, 1096, 1097, 1098, 1099, 1101, 1103, 1105). However, these materials have not been provided to Patent Owner, whose response to this motion is due on Thursday, August 14, 2025. As a result, Patent Owner cannot fully respond to Petitioner's arguments and Patent Owner respectfully requests that the Board:

1. Require Petitioner to provide unredacted copies of all the documents they rely upon in their motion or, alternatively, permit Patent Owner to file a motion seeking discovery of these materials. To the extent these are not produced, Petitioner should be precluded from relying on these materials. Patent Owner is prepared to treat these materials as highly confidential outside counsel eyes only and stipulate to a protective order to those ends.
2. Extend the deadline for Patent Owner's response to Petitioner's motion until 7 days after Petitioner's production of these materials (or the resolution of this issue).

As a result of Petitioner's heavy reliance on redacted communications, Patent Owner is unable to fully respond to Petitioner's contentions that Dr. Matz received confidential information relevant to the proceeding that would support the alleged basis for disqualifying him. See e.g. Paper 26 at 2-4. For example, Petitioner claims that its "discussions with Dr. Matz became the core of [the] petition" and invites the Board to compare its redacted exhibits to the Petition. Petitioner goes on to make various allegations about the subject matter of what was discussed in those communications and how it allegedly supports their motion for disqualification. Paper 26 at 4. Petitioner also challenges the accuracy of Dr. Matz's Declaration (EX2039) based on redacted materials. *Id.* However, none of the materials they rely upon have been provided to Patent Owner, despite several requests.

Patent Owner cannot fully respond to Petitioner's claims because the core parts of what Petitioner relies upon are redacted in their entirety. See e.g., Exs. 1093, 1096, 1097, 1098, 1105. As the Board found in *Agila*, a party cannot be permitted to use these confidential or privileged materials as both a sword and a shield. *Agila Specialties Inc. v. Cephalon, Inc.*, IPR2015-00503, Paper 13 at 5 (P.T.A.B. Aug. 19, 2015) ("[T]o the extent [a party] intends to wield a [] communication (or any other communication between [that party] and [an expert]) as a sword to support its disqualification motion, [that party] cannot hide behind the shield of attorney-client privilege and refuse to reveal the specifics of the communication."). Allowing the reliance on these materials without any disclosure to Patent Owner deprives Patent Owner of sufficient notice and the opportunity to be heard on the merits of the arguments. It deprives Patent Owner of due process including the ability to fairly test Petitioner's unilateral assertions. Moreover, to the extent Petitioner claims that this information is reflected in the public filings, Petitioner has waived any claim of privilege or confidentiality to the materials. It cannot selectively choose which materials to disclose and which to not.

Petitioner opposes this request.

Timothy Beavers

he/him/his

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On Aug 4, 2025, at 11:32, Fletcher, Thomas <TFletcher@wc.com> wrote:

EXTERNAL

TJ,

We see no need to email the Board.

IDT will file redacted versions of all confidential exhibits it files in camera in support of its motion on Wednesday, August 6. Although you have identified no basis to request any further information or articulated why a "log" of these

documents is not duplicative of the redacted versions of the exhibits, to avoid burdening the Board with a dispute, IDT also will provide a log of its communications with Dr. Matz on Wednesday, August 6.

If you have any questions about any of this, please give me a call,

Tom

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From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Friday, August 1, 2025 4:31 PM
To: IDT-Tecan-IPRs <IDT-Tecan-IPRs@wc.com>
Cc: DG-Goodwin-Tecan <DG-GoodwinTecan@goodwinlaw.com>
Subject: IPR2025-00015 and IPR2025-00016

Counsel,

As the parties discussed on July 25, 2025, Patent Owner continues to have concerns with the *in camera* submission on these issues. As a result, we intend to send the Board the following request. Please let us know if you have anything to add by COB Monday.

Thank you,
TJ

Dear Honorable Board,

In light of the Board's grant of Petitioner's request to file exhibits *in camera* to support its motion to disqualify, Patent Owner requests that Petitioner be required to provide Patent Owner by August 6 with a privilege log and redacted copies of all documents filed *in camera*.

Despite several requests, Petitioner has not identified to Patent Owner the allegedly confidential information or documents it contends were shared with the expert. Allowing these materials to be submitted to the Board *in camera*, without any disclosure to Patent Owner, would not provide Patent Owner sufficient notice or the opportunity to be heard on the merits of the arguments, and it would deprive Patent Owner of due process in this dispute and any ability to fairly test Petitioner's unilateral assertions. As the Board found in *Agila*, a party cannot be permitted to use these confidential and privileged materials as both a sword and a shield. *Agila Specialties Inc. v. Cephalon, Inc.*, IPR2015-00503, Paper 13 at 5 (P.T.A.B. Aug. 19, 2015) ("[T]o the extent [a party] intends to wield a [] communication (or any other communication between [that party] and [an expert]) as a sword to support its disqualification motion, [that party] cannot hide behind the shield of attorney-client privilege and refuse to reveal the specifics of the communication.").

Patent Owner is prepared to treat these materials as highly confidential outside counsel eyes only and stipulate to a protective order to those ends. Patent Owner also reserves the right to seek more materials if Petitioner's submission appears incomplete.

Petitioner opposes this request.

Timothy Beavers
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[<image001.png>](#)

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[<image004.png>](#)

[<image005.png>](#)

[<image006.png>](#)

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