1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF DELAWARE

3 BECKMAN COULTER, INC.,)
)
4 Plaintiff,)
) C.A. No. 24-945-CFC
5 v.)
)
6 CYTEK BIOSCIENCES, INC.,)
)
7 Defendant.)
)
8

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10 Wednesday, November 6, 2024
12:59 p.m.
11 Teleconference

12

13 844 King Street
Wilmington, Delaware
14

15 BEFORE: THE HONORABLE COLM F. CONNOLLY
United States District Court Judge
16

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18 APPEARANCES:

19
RICHARDS, LAYTON & FINGER
20 BY: KELLY E. FARNAN, ESQ.

21 -and-

22
WILMER CUTLER PICKERING HALE AND DOOR
23 BY: OMAR A. KHAN, ESQ.
BY: ASHER S. MCGUFFIN, ESQ.
24

25 Counsel for the Plaintiff

APPEARANCES CONTINUED:

MORRIS NICHOLS ARSHT & TUNNELL
BY: KAREN JACOBS, ESQ.
BY: JEREMY A. TIGAN, ESQ.

-and-

COOLEY LLP
BY: ADAM PIVOVAR, ESQ.

Counsel for the Defendant

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P R O C E E D I N G S

(Proceedings commenced via teleconference beginning at 12:59 p.m.)

THE COURT: Good afternoon, Counsel.

Let's have a roll call. Let's start with Beckman.

MS. FARNAN: Good afternoon, Your Honor. Kelly Farnan from Richards, Layton & Finger for Beckman Coulter.

I'm joined with my cocounsel from WilmerHale, Omar Khan and Asher McGuffin. And Mr. Khan will address the issues today.

THE COURT: Great. Thank you.

How about for Cytek Biosciences?

MS. JACOBS: Good afternoon, Your Honor. It's Karen Jacobs and Jeremy Tigan from Morris Nichols.

We are joined by Adam Pivovar, and I will address the issues today, unless I need help from Mr. Pivovar.

THE COURT: Let's run through the disputes. So the first dispute, Paragraph 2.

All right. Defendant, you want to add a paragraph, right?

MS. JACOBS: Yes, Your Honor. So to explain what this dispute is, we are asking to deviate from the Court's form in one respect only, which is we found the infringement charts that were attached to the complaint to be very vague and not really put what aspects of the accused products allegedly satisfied the claim elements.

So what we're asking here is we would like to provide the core technical documents first in the hopes of getting some more meaningful infringement contentions; rather than, essentially, getting the same charts, in what plaintiff proposes to be, a month from now and then having a dispute after we produce core technical documents.

We're trying to cut that off at the pass by giving core technical documents first, so that they can

take those into account in its infringement contentions and, hopefully, avoid a dispute down the line.

It's a little bit of an unusual situation in that, here, we are trying to provide core technical documents, so that the plaintiff can take it into account, and the plaintiff doesn't want that. It wants to go forward with its infringement contentions without charts.

That sort of bleeds into some of the scheduling issues that I think the parties can work out once we settle down what the trial date should be.

Because the plaintiff is suggesting infringement contentions on December 6 and invalidity contentions, again, where there wouldn't be time there for the plaintiff to give us a chance to produce the core technical documents for them to review them and incorporate them into the infringement contentions. That's the nature of the dispute there.

THE COURT: All right. Let's hear from the plaintiff.

MR. KHAN: Good afternoon, Your Honor. This is Omar Khan from WilmerHale for the plaintiff.

We think under the circumstances, Your Honor, that the Court's proposed form order is the right approach here.

During the meet and confer process, we didn't

hear from Cytek about the alleged deficiencies in the charts that we are hearing about right now. Of course, those kind of disputes, Your Honor, are quite typical, and we would be happy to take that offline and work with the defendant to provide them the additional whatever it is they need, annotations or additional detail.

We do think that the additional steps in the Paragraph 4, Delaware Default Discovery Order, are not needed in this case.

We feel like we can provide fairly fulsome contentions in the first instance, avoid the additional steps and the delay associated with that.

To the extent that there are some adjustments that we need to make in light of the later document productions, as the Court's form order contemplates, we can usually work with the other side to provide those supplements in a timely way that doesn't disturb the overall schedule.

To the extent the Court is inclined to go with the defendant's proposal on this, Your Honor, what we would say is we're prepared to provide sort of the Paragraph 4(a) disclosures today. So we can go ahead and get those served today. We don't need to wait 30 days for that. To the extent the Court is inclined to go with the defendant's proposal, we would ask for the document

1 production to be provided within a month.

2 **THE COURT:** Okay. By the "4(a) disclosures"

3 you mean what?

4 **MR. KHAN:** Under the Default Discovery Order,

5 Paragraph 4(a) requires the plaintiff to identify the

6 asserted claims and the accused products, but not provide

7 a claim-by-claim mapping of the claims to the accused

8 features.

9 And so the first step under the rule for

10 default disclosures would be for the plaintiff to provide

11 that list of asserted claims and list of accused products.

12 To the extent, you know, we don't think that's

13 necessary. We think we should proceed straight with the

14 Court's form order, which has plaintiff providing complete

15 infringement contentions, including the charts in 30 days.

16 We think that's the right approach.

17 To the extent the Court is inclined to go with

18 the defendant on this, we are prepared to do that first

19 step today.

20 **THE COURT:** Let me ask you this. I've got a

21 good cause standard, right, for you to amend your

22 infringement contentions.

23 So are you prepared to sit on your infringement

24 contentions without getting to see their materials?

25 Because if they've offered it and you don't want to get it

before you give me their infringement contentions, seems to me you're going to have a hard time arguing that good cause exists for you to amend the infringement contentions based on what they give you.

MR. KHAN: And I think we -- Your Honor, thanks for that clarification.

We think the good cause standard would be satisfied if we were looking to make adjustments based on the document production.

THE COURT: Then why don't you just agree to their proposal upfront then?

MR. KHAN: Because we think, Your Honor, we can provide very fulsome infringement contentions and put them on notice of the theories earlier in the case without avoiding -- and thereby avoiding sort of the four-step multi --

THE COURT: I'm just trying to figure out how you are hurt by their proposal. I'm having a hard time understanding it.

I will tell you what, let's do this. Show me. I've got the docket open. Show me where you lay out your theory of infringement to date.

MR. KHAN: So that would be, Your Honor, in the infringement charts that are in the complaint.

THE COURT: What exhibit? Just point me to the

right exhibit.

MR. KHAN: So that would be Exhibits 3 and 4. Where we cite --

THE COURT: Hold on a second. Let me pull it up, so I can be on the same page.

MR. KHAN: Yes.

THE COURT: Do you have a page number that would help me?

MR. KHAN: It would be Page 16 of the electronic version, Your Honor.

THE COURT: Page 16?

MR. KHAN: One, six.

THE COURT: Oh great. Let me just take a look at this, so I can get a better idea. Give me a good page. 167, okay, page 159, 160, exemplary evidence.

MR. KHAN: Apologize, Your Honor. I was saying 16.

THE COURT: Page 16, isn't that a patent?

MR. KHAN: Sorry. I'm looking at Exhibit 3, which is --

THE COURT: You are doing hard copy. I'm doing electronic copy. Let me get to Exhibit 3, which I think is like 160 or something close to that. Exhibit 3, 141.

MR. KHAN: Yes.

THE COURT: And then you want me to go to

Page 16?

MR. KHAN: Exhibit 3, Page 1, Your Honor, the first page of Exhibit 3.

THE COURT: All right. An optical subsystem for a flow cytometer, optical system comprising.

MR. KHAN: Correct.

And I think what Ms. Jacobs is saying they want to see more annotations than arrows in the evidence in the column on the right. If that's what we're talking about, we're happy to provide that in the kind of ordinary course additional, you know, detail that the parties provide, you know, plaintiff provides to the defendant all the time.

Maybe, Your Honor I can cut to the chase on this. The prejudice about this is really the additional time, you know, from the delay occasioned by the multi-step process of, you know, doing the Rule 4(a), 4(b), 4(c), 4(d) steps.

THE COURT: Right. But see, I can address that. I can just tell you we'll have trial in May of 2026. And then you've got to work through it.

Does that take care of it?

MR. KHAN: That would take care of it, Your Honor.

THE COURT: Okay. Well, I like taking care of things.

Ms. Jacobs, you don't object to that, do you?

MS. JACOBS: I don't object to the idea of working. I would like an opportunity to address the timing overall.

THE COURT: Okay. Well, go ahead and address it because May 2026 is -- when was this case filed?

MS. JACOBS: It was filed in August of 2024, August 14th.

THE COURT: Okay.

Go ahead.

MS. JACOBS: So, Your Honor, this is a case involving two operating companies that Beckman Coulter alleges directly compete with each other, complex technology. The discovery issues in this case are going to be more involved than many cases.

I pointed out the compression on the front end was having, basically, you know, the infringement contentions and invalidity contentions on top of each other without having document production. We can work that in.

But I also want to point out on the back end of the schedule. There is a lot of compression there in terms of, for example, having a claim construction hearing in mid June and then close of fact discovery only nine months from now, reports only two weeks after that, expert

discovery and case dispositive motion schedule. That really doesn't leave any room for slippage and results in a compression that not only would make it difficult for the parties, but potentially can impact the court deadlines.

And I would like to point out that, although plaintiffs undoubtedly would like to go to trial quickly, really hasn't explained to us why this kind of schedule is needed.

The products that are at issue here have been on the market since 2017 and 2018, and one of the patents in this case has been around since June of 2019. The second one for about a year.

So really, you know, not an urgency to have this case on a compressed deadline when, you know, the issues have been out there for some time.

THE COURT: All right. Let me hear from the plaintiff on that.

MR. KHAN: Your Honor, it's not really that much of a compressed schedule, not moving all that fast.

Plaintiff's proposed schedule is 22, 23 months from when the dispute was ripe. I will talk about that in a second. It was 20, 21 months from the when the complaint was filed.

The dispute between the parties, Your Honor,

was ripe. This is a competitor case, just as a reminder. I think Ms. Jacobs referred to it as operating companies. These are direct competitors in the marketplace for flow cytometers.

The dispute was ripe in June. We sent them a letter attaching the claim charts, you know, very, very similar claim charts to the ones in the complaint, in June of this year. And so the parties had some discussions in July, and the complaint was filed in August.

Really, you know, the parties had a couple of additional months to think through their contentions and theories and how they might respond and their defenses in the case.

The case appears to be, Your Honor, somewhat focused. The patents relate to a discrete technology. The accused products all fall within the same category or family of products. The relevant accused component appears to be the same in every accused product. Both sides are fairly sophisticated competitors, sophisticated counsel on both sides.

For the plaintiff, Your Honor, for the case to move forward, the pleadings are closed. We've served some initial discovery, sent over a draft protective order, gathering materials for the initial disclosure of document production.

So under the circumstances, we feel, like I said, 20 to 23 months from the, you know, from the ripeness of the dispute in June and then 20 to 21 months from the complaint being filed is quite reasonable under the circumstances.

If there are certain areas where Ms. Jacobs feels we need a little bit more breathing room, we are happy to work with her on that. We don't think that's a particularly significant obstacle.

In terms of the timing of the suit, Your Honor, as the Court knows, the timing of the suit is not a relevant issue in the case, not relevant to infringement, not relevant to whether the patents are invalid. We disagree that --

THE COURT: Wait a second. I mean, look, it's relevant to if you're pressing for less than two years, it's relevant to get to trial.

Like if somebody has been sitting around for ten years, and not bringing a patent suit, it's relevant to whether they should get a trial in a month or two months or two years or three.

MR. KHAN: Yes, Your Honor. We agree with that, but I think we're saying, you know, trial in 20 to 21 months from the complaint and 20 to 23 months from the first time they got the claim chart, we think that's more

than enough time to litigate what we think is one family of accused products in a set of patents that are related to, essentially, very similar technology in the same area.

THE COURT: Yeah.

Tell me about your client, Beckman Coulter. Where is it located?

MR. KHAN: Beckman Coulter, I would say, it's in New Jersey and in California. The primary sites are in those two states, and we also have sites in Florida as well.

THE COURT: Is it a public company?

MR. KHAN: It is a subsidiary, Your Honor, of Danaher Corporation, which is a publicly traded company.

THE COURT: Sorry. Who is the owner?

MR. KHAN: Danaher Corporation.

THE COURT: How do you spell that?

MR. KHAN: D-A-N-A-H-E-R.

THE COURT: Does Danaher wholly own this entity?

MR. KHAN: It does, Your Honor.

THE COURT: I see on the Internet -- I don't know if it's right, but you can tell me -- the revenue for 2023 was $24 billion.

So Beckman Coulter has a lot of assets and resources behind it; is that right?

MR. KHAN: Correct, Your Honor.

THE COURT: Tell me about Cytek Biosciences. What kind of company is it?

MR. KHAN: So Cytek is a competitor to Beckman Coulter, and, you know, it's been in the marketplace, as Ms. Jacobs said, for quite some time, well resourced. It is not as large as Beckman Coulter is.

THE COURT: Is it a public company?

MR. KHAN: Ms. Jacobs would know for sure. I think it is a public company.

THE COURT: Ms. Jacobs, tell me about it.

MS. JACOBS: For that, Your Honor, I'm going to defer to Mr. Pivovar.

THE COURT: Okay.

(Pause.)

Hello?

MS. JACOBS: I guess I will not.

MR. KHAN: I believe, Your Honor --

MR. PIVOVAR: I apologize. I was on mute, Your Honor.

Yes, it is a publicly traded.

THE COURT: Cytek is?

MR. PIVOVAR: Cytek is, yes, but it is substantially smaller than Danaher and Beckman Coulter.

THE COURT: All right. But it's almost a

billion dollar company, right?

All right. Look, here's what I think. I like the idea that when cases are filed here, they are tried within two years. That's kind of optimal.

This case was filed in August of 2026. So I'm going to give you a trial date of August 17th.

It is a jury trial, right?

MR. KHAN: Correct, Your Honor.

THE COURT: Do you dispute how long? We mostly try cases in five days. We'll aim for five days. If there's good cause to go beyond that, we can do that. Let's start with that.

If I give you that trial date of August 17th, do I need to resolve any other disputes or at that point, can you work it out?

MR. KHAN: From the plaintiff's perspective, Your Honor, we think we can work it out.

MS. JACOBS: I agree, Your Honor.

THE COURT: All right. Then why don't we do that. So that's going to be the trial date. All right. And I do think you can work it out. I think it's more efficient than me going through the rest of the disputes individually.

So can you work it out in a week and get us a readvised proposed schedule?

MR. KHAN: This is Omar Khan.

Yes, Your Honor, for the plaintiff.

MS. JACOBS: Yes, Your Honor.

THE COURT: Ms. Farnan and Ms. Jacobs have appeared before me many times. They know that if you can't work it out and there's still stuff, just keep in mind like if I get the sense that one party is not being cooperative, what I typically do is I rule against that party for all the disputes.

So please, and I suspect, especially with Ms. Farnan and Ms. Jacobs on the line, I've got reasonable counsel here.

All right. So we'll issue an oral order just setting the trial date for August 17, 2026, and that the parties are going to submit, no later than next Wednesday, a readvised proposed scheduling order. All right.

MR. KHAN: For the plaintiff, thank you, Your Honor. Really appreciate your time today.

THE COURT: Anything from the defendant?

MS. JACOBS: No, Your Honor. Thank you.

THE COURT: All right. Thanks everybody. Have a good day.

(The proceedings concluded at 1:19 p.m.)

CERTIFICATE OF COURT REPORTER

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in the proceeding.

/s/ Bonnie R. Archer
Bonnie R. Archer, RPR, FCRR
Official Court Reporter
U.S. District Court

MR. KHAN: [30]
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MS. JACOBS: [10] 3/3 3/12 10/2 10/7 10/11 15/12 15/17 16/18 17/3 17/20
THE COURT: [40]

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