UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CYTEK BIOSCIENCES, INC.,
Petitioner

v.

BECKMAN COULTER, INC.,
Patent Owner

Case No. PGR2025-00088
U.S. Patent No. 12,174,107 B1
Issue Date: December 24, 2024

Title: FLOW CYTOMETER

PETITIONER'S REPLY IN SUPPORT OF ITS MOTION TO SEAL AND REQUEST FOR *IN CAMERA* REVIEW AND ENTRY OF AN APPROPRIATE PROTECTIVE ORDER

(INCLUDING SDD PROTECTIVE ORDER)

Patent Owner's opposition seeks to convert a voluntary search disclosure declaration ("SDD") into a procedural and constitutional obstacle. But any procedural issues are readily resolved without denying Petitioner's motion to seal. And Patent Owner's constitutional concerns rest on a faulty premise. The Board should, thus, deny the opposition.

I. Patent Owner's Meet and Confer Objection Elevates Form Over Substance and Cannot Override the Director's SDD Framework

Petitioner does not dispute that its motion did not include a certification under 37 C.F.R. § 42.54(a). (Paper 8.) Given the short filing window for already-filed petitions, Petitioner acted promptly and in good faith in response to the Director's November 17, 2025 Memorandum ("SDD Memo") by filing its SDD and associated motion on November 26, 2025. (*See* EX1116; *see also* Papers 7, 8.) At the time, Petitioner reasonably understood the SDD Memo to authorize SDD submissions "as Filing Party and Board," with *in camera* review, to avoid disclosure of sensitive search methodology to opposing parties and to prevent waiver of privilege. (*See* EX2049 at 1; *see also* EX1116, 002.) Given that the relief sought did not contemplate adversarial access to the SDD, Petitioner reasonably believed that a meet and confer regarding material not intended for disclosure would not meaningfully resolve any dispute.

Patent Owner's reliance on other proceedings in which petitioners included conferral certifications is misplaced. (*See* Paper 15 ("Opp'n") at 7-8 (citing cases).) None of the cited cases involved an *opposed* motion to seal an SDD submitted for *in camera* review; nor did they address whether an SDD submitted "as Filing Party and Board" under the SDD Memo required adversarial conferral. (*Id.*) Thus, nothing in existing Board practice indicated that conferral was required in that context.

In any event, Patent Owner suffered no prejudice. (*See id.* at 8.) Petitioner filed a redacted SDD on December 9, 2025 (Papers 11, 12), well before Patent Owner's preliminary response (Paper 18). Patent Owner, thus, had ample opportunity to address the existence and nature of the SDD. It chose not to. It cannot now claim prejudice.

II. Petitioner's SDD-Specific Protective Order—Or, Alternatively, Board-Imposed Access Restrictions—Moot Patent Owner's Arguments

To eliminate any procedural dispute and ensure alignment with the SDD Memo, Petitioner respectfully submits a tailored, SDD-specific protective order governing the treatment of the SDD. (Exhibit A) The proposed protective order mirrors those entered in *BOE* and *DP Dream Pairs*—which Patent Owner itself identifies as proper PTAB practice (*see* Opp'n at 10-11 (citing cases))—because it: (i) does not permit access by the Patent Owner via a standard acknowledgment and

(ii) limits access to employees and representatives of the Office, while expressly permitting Office use of the SDD for internal training, improving examination processes, and analytics. Entry of Petitioner's proposed SDD-specific protective order therefore moots Patent Owner's objection to Petitioner's motion to seal.

Alternatively, should the Board determine that entry of the Default Protective Order is appropriate, Petitioner respectfully submits that it is within the Board's discretion to impose additional access restrictions pursuant to Appendix B, Section (d)(7) of the Consolidated Trial Practice Guide, which expressly authorizes "[o]ther [r]estrictions" on the disclosure and use of confidential material. (PTAB Consolidated Trial Practice Guide at 112 (Nov. 2019).) Consistent with the SDD Memo, such restrictions would limit access to the filing party and the Office, and permit Office use solely for internal training, improving examination processes, and analytics.

Under either approach, Patent Owner's arguments are moot.

III. Patent Owner's Due Process Objections Fail Because the SDD is Not Merits Evidence and Patent Owner Had an Opportunity to Respond

Patent Owner's due process argument hinges on the incorrect premise that the SDD supplies substantive patentability arguments. (*See* Opp'n at 11-12.) It does not. The paragraphs Patent Owner cites explain the context and conditions of Petitioner's

prior art search—including why certain references were difficult to identify through conventional prosecution review (because they were "buried among numerous references" (Paper 11, ¶4)), and why Petitioner consulted references from the optical communication industry when looking for flow cytometry optics (because the '107 patent expressly referenced this industry for fluorescence light detection (*id.*, ¶6)). That information directly responds to the Director's request that petitioners explain the databases searched, the search approaches used, and why non-routine search pathways were necessary. (EX1116, 001.) Because the SDD does not supply undisclosed merits evidence, there is no deprivation of a meaningful opportunity to respond and no *NuVasive*-style due process violation. (Opp'n at 12 (citing *In re NuVasive, Inc.*, 841 F.3d 966, 972 (Fed. Cir. 2016)).)

Patent Owner's timing-based due process argument also fails. (Opp'n at 13-14.) Patent Owner erroneously treats the PTAB Consolidated Trial Practice Guide's statement that a party "shall" file confidential and non-confidential versions concurrently as a mandatory rule rather than non-binding guidance. (*Id.* at 14.) And the *Stanley* and *Terumo* cases Patent Owner cites are inapposite because they confirm that due process depends not on concurrent filing, but on whether patent owner had a meaningful opportunity to address the public content of an SDD—which it did in both cases through subsequent institution-stage briefing. *Compare*

Stanley Black & Decker, IPR2025-01581, EX1023 (PTAB Nov. 26, 2025) (redacted SDD, filed Nov. 26, 2025), *with id.*, Paper 9 (Patent Owner's Request for Discretionary Denial of Institution, filed Dec. 29, 2025); *compare Terumo BCT, Inc. v. Haemonetics Corp.*, PGR2026-00006, EX1013 (PTAB Nov. 25, 2025) (redacted SDD, filed Nov. 25, 2025), *with id.*, Paper 8 (Patent Owner's Request for Discretionary Denial of Institution, filed Dec. 22, 2025). The same is true here. *Compare* Paper 11 (redacted SDD, filed Dec. 9, 2025), *with* Paper 18 (Patent Owner's Preliminary Response, filed Jan. 2, 2026). Due process requires no more.

Finally, Patent Owner's assertion that *in camera* review of SDDs is "unprecedented" is contradicted by both the SDD Memo and Patent Owner's own cited authorities. (Opp'n at 12.) The Director expressly authorized SDDs to be filed under seal with a request for *in camera* review. (EX1116, 002.) And the very cases Patent Owner cites as exemplars of proper SDD practice—such as *Stanley* and *Terumo*—included requests for *in camera* review of SDDs submitted under seal pursuant to the SDD Memo. (Opp'n at 14 (citing cases).)

Accordingly, the Board should deny Patent Owner's opposition.

Dated: January 26, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. § 42.6 that I caused a true and correct copy of the foregoing **PETITIONER'S REPLY IN SUPPORT OF ITS MOTION TO SEAL AND REQUEST FOR *IN CAMERA* REVIEW AND ENTRY OF AN APPROPRIATE PROTECTIVE ORDER (INCLUDING SDD PROTECTIVE ORDER),** EXHIBIT A to be served via electronic mail on the 26th day of January, 2026, upon Patent Owner's counsel as follows:

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EXHIBIT A

PROTECTIVE ORDER

This Search Disclosure Declaration ("SDD") Protective Order governs the filing, access to, and treatment of Petitioner's voluntary Search Disclosure Declaration, submitted pursuant to the Director of the United States Patent and Trademark Office's Memorandum titled "Voluntary Search Disclosure Declarations as a Favorable Factor in Institution Decisions," issued on November 17, 2025 ("SDD Memorandum").

1. Designation of Confidential Material

Confidential SDD materials shall be clearly marked "CONFIDENTIAL."

2. Access to Confidential SDD Materials

Access to Confidential SDD materials is limited to the following:

a. The filing party and its counsel. The party submitting the confidential SDD materials and its counsel of record.

b. The Office. Employees and representatives of the United States Patent and Trademark Office ("Office") who have a need for access to the Confidential SDD materials. Such employees and representatives include the Director, members of the Board and their clerical staff, other support personnel, court reporters, and other

persons acting on behalf of the Office. No Acknowledgement is required for such access.

3. Confidentiality Obligations

Persons receiving Confidential SDD materials shall use reasonable efforts to maintain their confidentiality, including:

a. Maintaining such information in a secure location to which persons not authorized to receive the information do not have access;

b. Using efforts to maintain confidentiality that are no less rigorous than those used to protect the recipient's own confidential information;

c. Ensuring that support personnel with access understand and abide by the obligation to maintain confidentiality; and

d. Limiting copying to a reasonable number of copies necessary for the conduct of the proceeding and maintaining a record of the locations of such copies.

4. Permitted Use by the Office

In accordance with the SDD Memorandum, the Office may use the information disclosed in the SDD solely for internal training, improving examination processes, and analytics.

5. Nature of the SDD

The Search Disclosure Declaration is submitted as a non-adversarial, non-dispositive filing and is not relied upon as evidence of patentability or unpatentability in this proceeding.