

Pre-Institution Supplemental Reply
U.S. Patent No. 12,174,107 B1

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 PRE-INSTITUTION SUPPLEMENTAL REPLY

I. No *Revvo* or *Tesla* Conflict Exists Because the Petition Did Not Adopt a Single Controlling Construction or Foreclose Additional § 112 Theories

The Board denied institution in *Revvo* because the petitioner affirmatively advanced one construction before the district court and a materially different construction before the Board without explanation. *See Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 36, 4 (PTAB Jan. 26, 2026) (Director Review) (“*Revvo*”); *see also Revvo*, Paper 20, 5 (PTAB Nov. 3, 2025) (precedential). This is not *Revvo*. The Petition did not adopt a single controlling construction for “WDM,” “flow cell,” or “multimode optical fiber.” (*See Pet.* at 14.)

Nor is this *Tesla*, where the petition relied on a claim for prior art invalidity and later asserted indefiniteness of that same claim without explanation. *See Tesla, Inc. v. Intell. Ventures II LLC*, IPR2025-00340, Paper 18, 3-4 (PTAB Nov. 5, 2025) (“*Tesla*”). Consistent with petition word-count constraints, the Petition advanced selected § 112 grounds as to claims 9 and 29, and Petitioner remains free to assert additional § 112 theories in district court without creating a *Tesla*-style conflict.

II. Petitioner’s Invalidity Analysis Is Consistent Even Where District Court Non-Infringement Positions Address Accused Product Architecture

No *Revvo*-style inconsistency exists as to “Wavelength Division Multiplexer (WDM),” “flow cell,” or “multimode optical fiber.” The Petition explained that invalidity does not depend on any single disputed construction. (*See Pet.* at 14.) This

is accurate with respect to “WDM” both at the time of the petition and today, as the parties have not raised any claim construction dispute with the court. Petitioner maintains its position on the *plain and ordinary* meaning of “WDM”, which Petitioner’s experts explained is a component that combines wavelengths of light. (See EX2056 ¶¶201-203, 207, 253, 272; EX2057 ¶¶157-158, 160, 171-172, 217; EX2061, 45:9-15; EX2062, 63:16-25.)¹ That does not conflict with the prior art analysis in both forums, which both showed that the asserted references satisfy the challenged claims even under the interpretation Patent Owner advances. (See Pet. at 14; *see also* EX1119.)

¹ Patent Owner’s cited May 14, 2025 disclosure was preliminary and quoted language from the specification. (See Pre-Institution Suppl. Resp. at 1-2 (citing EX2063, 11-12).) It was superseded during the claim construction process and was not presented to the district court in the operative joint claim construction charts. Notably, Patent Owner has never argued that it acted as its own lexicographer in using the term “WDM.” (See EX1018, 001 n.1; EX1118, 001 n.1.) To the contrary, both parties have advanced their plain meanings.

Nor do Patent Owner's cited district court expert opinions regarding "flow cell" and "multimode optical fiber" create inconsistency. (*See* Pre-Institution Suppl. Resp. at 2.) Those opinions similarly take a consistent approach on invalidity when applying Patent Owner's interpretation.

III. Patent Owner Waived this Argument Because *Revvo* Paper 20 and *Tesla* Issued *Before* the POPR

Patent Owner waived its argument. *Revvo* Paper 20 issued on November 3, 2025, and *Tesla* issued on November 5, 2025—both before Patent Owner filed its POPR on January 2, 2026. *Revvo*, Paper 20, 3-5; *Tesla*, Paper 18, 3-4. Yet Patent Owner raised neither *Revvo* nor *Tesla* in its POPR, despite both decisions being available at the time. Instead, Patent Owner waited until supplemental briefing to invoke *Revvo* Paper 36, even though Paper 36 merely applied the same principle already articulated in *Revvo* Paper 20. *Compare Revvo* Paper 20, 3-5, with *Revvo* Paper 36, 4. Having failed to raise these authorities when *Revvo* Paper 20 and *Tesla* were already available, Patent Owner cannot now manufacture an institution defect through supplemental briefing.

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Dated: March 6, 2026

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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 PRE-INSTITUTION SUPPLEMENTAL REPLY**, EXHIBIT 1118 and EXHIBIT 1119 to be served via electronic mail on the 6th day of March, 2026, upon Patent Owner's counsel as follows:

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