

Mot. to Seal & Req. for *In Camera* Review & Mot. For Entry of Protective Order
U.S. Patent No. 12,174,106 B2

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. PGR2025-00084
U.S. Patent No. 12,174,106 B2
Issue Date: December 24, 2024

Title: FLOW CYTOMETER

**PETITIONER'S MOTION TO SEAL AND REQUEST FOR *IN*
CAMERA REVIEW AND MOTION FOR ENTRY OF DEFAULT
PROTECTIVE ORDER**

Petitioner Cytek Biosciences, Inc. (“Cytek”) respectfully submits this Motion to Seal and Request for *In Camera* Review and Motion for Entry of the Default Protective Order as set forth in Appendix B of the Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) (“Consolidated Trial Practice Guide”).

I. Introduction

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, and for the reasons set forth below, Cytek respectfully requests that the Director seal and conduct *in camera* review of the Search Disclosure Declaration for U.S. Patent No. 12,174,106 B2 (“SDD”) submitted herewith, in accordance with the Director’s November 17, 2025 Memorandum *re* Voluntary Search Disclosure Declarations as a Favorable Factor in Institution Decision (“SDD Mem.”). *See* SDD Mem. at 2 (“A petitioner may file its SDD as Filing Party and Board, with a motion to seal and an accompanying request for *in camera* review under 37 C.F.R. § 42.14.”).

Below, Petitioner explains that good cause exists for maintaining this content under seal and reviewing it *in camera* because the SDD discloses highly confidential, competitively sensitive business information for Cytek, which Cytek designated as “PROTECTIVE ORDER MATERIAL” under the Default Protective Order, and this information comprises privileged, attorney work product conducted

by Cytek's attorney in response to litigation. Petitioner further moves for entry of the Board's Default Protective Order.

II. Applicable Legal Principles for Sealing Confidential Information

There is a strong public policy for making all information filed in an administrative proceeding open to the public, especially in an *inter partes* or post grant review which determines the patentability of claims in a patent and therefore affects the rights of the public. *See St. Jude Med., Cardiology Div., Inc. v. Volcano Corp.*, IPR2013-00258, Paper 28 at 2 (PTAB Aug. 12, 2013). Under 35 U.S.C. § 326(a)(1), the default rule is that all papers filed in a post grant review are open and available for access by the public, and a party may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. 35 U.S.C. § 326(a)(1).

However, "confidential information" may be protected from disclosure. 35 U.S.C. § 326(a)(7) ("The Director shall prescribe regulations . . . providing for protective orders governing the exchange and submission of confidential information[.]"). In that regard, the Consolidated Trial Practice Guide provides:

The rules aim to strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information.

* * *

Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information. 37 C.F.R. § 42.54.

Consolidated Trial Practice Guide at 19.

The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54.

The Board has applied a four-pronged test in assessing motions to seal:

a movant to seal must demonstrate adequately that (1) the information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

Argentum Pharms. LLC v. Alcon Rsch., Ltd., IPR2017-01053, Paper 27 at 4 (PTAB Jan. 19, 2018) (informative) (citing to 37 C.F.R. § 42.54(a)).

III. Good Cause Exists for Sealing the Entirety of the Petitioner’s SDD & Granting Petitioner’s Request for *In Camera* Review

The entirety of the SDD comprises highly confidential, competitively sensitive business information for Cytek because it reveals search strategies and databases employed by Cytek to evaluate the validity of a competitor’s patent. As

foreseen by the SDD Memo, a party's "sophisticated search methodologies, repository knowledge, and/or analytics" may comprise the very type of competitively sensitive information that a party may seek to maintain under seal. *See* SDD Mem. at 1-2.

The SDD also discloses privileged, attorney work product conducted by Cytek's attorney in response to litigation. Indeed, the entirety of the SDD focuses on the search methodologies, strategies, and databases used by Cytek's attorneys to evaluate the validity of a competitor's patent asserted in ongoing litigation against Cytek. As indicated by the SDD Memo, a party may seek to have such information not only filed under seal, but also subject to *in camera* review to prevent disclosure to third parties (including opposing parties in PTAB proceedings) and avoid waiver of applicable privileges.

Moreover, the content of the SDD has no substantive bearing on the merits of these proceedings or the public's interest in these proceedings. Indeed, as the SDD Memo acknowledges, the public interest is served by a party's submission of "sophisticated search methodologies, repository knowledge, and/or analytics not routinely used by the Office" because "[c]apturing such information has the potential to meaningfully improve Office search practices and, over time, improve examination quality." SDD Mem. at 1. Thus, Cytek's interests in maintaining

confidentiality and avoiding waiver of applicable privileges outweigh the strong public interest in having an open record, including to the extent that maintaining the confidentiality and privileges of the disclosures in Cytek's SDD encourages other parties to submit similar declarations detailing confidential and privileged search methodologies, strategies, and uses of certain databases. For the foregoing reasons, Cytek seeks to maintain the entirety of the SDD under seal, and requests *in camera* review thereof.

Should the Director be inclined to deny the present Motion to Seal and/or Request for *In Camera* Review, Cytek respectfully requests a conference call with the Director to discuss any concerns prior to the Director issuing a decision on the Motion.

IV. Certification of Non-Publication

To the best of Petitioner's knowledge, the information sought to be sealed has not been published or otherwise made public and the confidentiality of this information has been consistently maintained.

V. Motion for Entry of the Default Protective Order

Pursuant to 37 C.F.R. § 42.54, Petitioner respectfully requests entry of the Default Protective Order as set forth in Appendix B of the Consolidated Trial Practice Guide.

Under the Default Protective Order, the information sought to be sealed herein has been designated as “PROTECTIVE ORDER MATERIAL” information for the reasons described above, with the understanding that “the Office may use the information in a SDD for internal training, improving examination processes, and analytics.” SDD Mem. at 2; *see also* Consolidated Trial Practice Guide at 118 (“Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information shall have such access without the requirement to sign an Acknowledgement. Such employees and representatives shall 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.”).

To the extent that the Default Protective Order limits the Office’s use of the SDD as required under the SDD Memo, Cyttek respectfully requests a conference call with the Director to discuss any concerns prior to the Director issuing a decision on the Motion.

VI. Conclusion

For the above reasons, Petitioner respectfully request that the above-described be treated as confidential information and maintained under seal.

Mot. to Seal & Req. for *In Camera* Review & Mot. For Entry of Protective Order
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Dated: November 26, 2025

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 MOTION TO SEAL AND REQUEST FOR *IN CAMERA* REVIEW AND MOTION FOR ENTRY OF DEFAULT PROTECTIVE ORDER** to be served via electronic mail on the 26th day of November, 2025, upon Patent Owner’s counsel as follows:

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DATED: November 26, 2025

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