

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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CYTEK BIOSCIENCES, INC.,  
Petitioner,

v.

BECKMAN COULTER, INC.,  
Patent Owner.

U.S. Patent No. 12,174,106  
Case Nos. PGR2025-00084

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**PATENT OWNER'S OPPOSITION TO PETITIONER'S MOTIONS  
TO SEAL AND REQUEST FOR *IN CAMERA* REVIEW AND MOTIONS  
FOR ENTRY OF DEFAULT PROTECTIVE ORDER**

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<b>EX2002</b>	CytoFLEX Flow Cytometer ( <a href="https://www.beckman.com/flow-cytometry/research-flow-cytometers/cytoflex">https://www.beckman.com/flow-cytometry/research-flow-cytometers/cytoflex</a> )
<b>EX2003</b>	Beckman Coulter Patents ( <a href="https://www.beckman.com/patents">https://www.beckman.com/patents</a> )
<b>EX2004</b>	Cytek Form S-1 Registration Statement (2021)
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<b>EX2006</b>	Information Disclosure Statement for Application No. 15/942,430 to U.S. Patent No. 11,333,597 (June 17, 2021)
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<b>EX2013</b>	Transcript of Markman Hearing of September 17, 2024, Beckman Coulter, Inc. v. Cytek Biosciences, Inc., C.A. No. 24-945, D.I. 173 (D. Del. Sept. 17, 2025)
<b>EX2014</b>	U.S. Patent Pub. No. 2004/0165828 (“Capewell”)
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<b>EX2032</b>	Telecommunication Standardization Sector of ITU, Recommendation G.694.2, Spectral Grids for WDM Applications: CWDM Wavelength Grid (Dec. 2003)
<b>EX2033</b>	Telecommunication Standardization Sector of ITU, Recommendation G.694.1, Spectral Grids for WDM Applications: DWDM Frequency Grid (Dec. 2003)
<b>EX2034</b>	Order Denying Request for <i>Ex Parte</i> Reexamination, Application/Control Number: 90/015,441 (Oct. 6, 2025)

<b>EX2035</b>	M. Arumugam, <i>Optical Fiber Communication—An Overview</i> , 57 Pramana J. Physics 849 (2001)
<b>EX2036</b>	B.E.A. Saleh and M.C. Teich, <i>Fundamentals of Photonics</i> , 2d. Ed. 2007, Chapters 1, 24 (“Saleh”)
<b>EX2037</b>	Warren J. Smith, <i>Modern Optical Engineering</i> (3d ed. 2000, Chapter 9 (“Smith”)
<b>EX2038</b>	W.T. Welford, <i>Optics</i> (3d ed. 1990), Chapter 8 (“Welford”)
<b>EX2039</b>	Mohammad Azadeh, <i>Fiber Optics Engineering</i> (2009), Chapters 1, 2, 6 (“Azadeh”)
<b>EX2040</b>	Cytek’s 35 U.S.C. § 112 Contentions – Exhibit A U.S. Patent No. 10,330,582, <i>Beckman Coulter, Inc. v. Cytek Biosciences, Inc.</i> , C.A. No. 24-945, (D. Del. October 22, 2025)
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<b>EX2043</b>	U.S. Provisional Patent Application No. 61/715,819 (“5819 Prov.”)
<b>EX2044</b>	Reserved
<b>EX2045</b>	Reserved
<b>EX2046</b>	Reserved
<b>EX2047</b>	Xinjian Zhou et al., <i>Color Detection Using Chromophore-Nanotube Hybrid Devices</i> , 9 Nano Letters 1028 (2009)
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<b>EX2049</b>	December 8, 2025 Email from R. Chen to A. Cohen
<b>EX2050</b>	December 12, 2025 Email from A. Cohen to R. Chen
<b>EX2051</b>	December 16, 2025 Email from A. Cohen to R. Chen

**EX2052**

December 18, 2025 Email from A. Cohen to Director Squires

## I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.25, Patent Owner files this Opposition to Petitioner's Motion to Seal and Request for *In Camera* Review and Motion for Entry of the Default Protective Order (Paper 8).

Petitioner failed to follow federal regulations and established procedures in submitting its motions. Petitioner has also indicated that it will not comply with the Default Protective Order that its motions seek to have entered. Finally, the late-filed redacted version of Petitioner's Search Disclosure Declaration ("SDD") demonstrates that Petitioner's SDD goes beyond information sought by the Director's Memorandum and poses due process issues. Patent Owner therefore respectfully opposes Petitioner's motions.

As an initial matter, Petitioner did not attempt to meet-and-confer with Patent Owner regarding its motions, as required by 37 CFR § 42.54. Instead, Petitioner filed an SDD under seal on the very last day that it could, accompanied by a request for *in camera* review and a motion to enter the Default Protective Order. Petitioner's failure to even attempt to confer with Patent Owner deprived Patent Owner of the ability to consider and take a position on Petitioner's motions, and left Patent Owner unable to respond accordingly in its discretionary denial briefing, which was filed less than two days before the SDD.

Further, Petitioner's motions seek entry of the Default Protective Order, but Petitioner either will not comply with the Default Protective Order or is actually seeking to enter a modified protective order without providing such an order to the Board. Unlike other petitioners who filed SDDs under seal with a protective order that limited access to PTAB personnel for training purposes only, Petitioner requests entry of the Default Protective Order that is included as Appendix B in the Trial Practice Guide and states the Search Disclosure Declaration is designated as "PROTECTIVE ORDER MATERIAL" which entitles access to both parties in the proceeding and to the Office without limitation on its use of that information (*e.g.*, for the merits of the proceeding or otherwise). *See* PTAB Consolidated Trial Practice Guide at 107-121 (Nov. 2019). Under this Default Protective Order, Patent Owner should be able to view a copy of the SDD if Patent Owner were to sign the Standard Acknowledgement for Access to Protective Order Material. Petitioner has refused to confirm whether it will allow Patent Owner access to the SDD and instead views the SDD as some category of material that is not specified in the Default Protective Order. Petitioner's motions should thus be denied because Petitioner will not comply with the Default Protective Order that it requests, and instead seeks to provide the Office unfettered access to review its SDD *in camera* without allowing Patent Owner to view an unredacted copy of the SDD under any terms.

Finally, even the unredacted portions of Petitioner’s SDD include arguments about Patent Owner’s actions and the challenged patents, which is information beyond that requested in the Director’s November 17, 2025 Memorandum that raise due process concerns. Petitioner—failing to comply with the Trial Practice Guide by not filing a redacted version of the SDD at the same time as filing the motions—filed and served redacted versions of its SDDs nearly two weeks later, after Patent Owner’s last discretionary denial brief was filed in PGR2025-00088. The redacted SDDs demonstrate that Petitioner did not simply voluntarily submit its search strategies for internal training as the Director encouraged, but instead argues about Patent Owner’s conduct and the challenged patents. Petitioner’s attempt to have the Director review merits-based arguments that Patent Owner cannot respond to, let alone review *in camera* additional arguments that Patent Owner cannot even see, raises significant due process concerns.

Petitioner’s requests to seal its SDD, have the Director review it *in camera*, and enter the Default Protective Order that Petitioner does not intend to follow should be denied.

## **II. BACKGROUND**

Patent Owner and Petitioner are actively engaged in a district court litigation in the District of Delaware, which has involved four patents. Petitioner filed an *inter*

*partes* review (IPR) against one of the asserted patents, an *ex parte* reexamination request against another asserted patent, and two post-grant challenges (PGRs) against the other two patents. Both Petitioner’s IPR petition and reexamination request were already denied by the USPTO, *see* IPR2025-01319, Paper 13; EX2034, and the two PGRs—the proceedings involving these motions—are currently subject to discretionary denial requests, *see* Paper 6; PGR2025-00088, Paper 10.

Patent Owner timely filed its discretionary denial brief in PGR2025-00084 on November 24, 2025. Paper 6. Less than two days later—and just six days after the Director discretionarily denied Petitioner’s first IPR (IPR2025-01319, Paper 13)—Petitioner filed SDDs in the two pending PGRs on the last day under the Director’s November 17, 2025 Memorandum. Paper 7 (sealed); PGR2025-00088, Paper 7 (sealed). Petitioner’s SDDs were each accompanied by a Motion to Seal and Request for *In Camera* Review and Motion for Entry of the Default Protective Order. *See* Paper 8; PGR2025-00088, Paper 8. Petitioner did not attempt to meet-and-confer with Patent Owner regarding these motions before they were filed. *See* Paper 8 (no certification of meet-and-confer); PGR2025-00088, Paper 8 (same). Nor did Petitioner file redacted copies of its SDDs at that time.

On December 2, 2025, Patent Owner timely filed its discretionary denial briefing in PGR2025-00088 and explained that “[s]ince Petitioner submitted its

declaration with an accompanying motion to seal (Paper 8), Patent Owner is unable to respond on the merits otherwise.” PGR2025-00088, Paper 10, at 18 n.5. Counsel for Patent Owner also e-mailed Petitioner’s counsel on December 4, 2025 to inform Petitioner that the “motions are defective under 37 CFR § 42.54(a) because they do not ‘include a certification that the moving party has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute.’” EX2048. Patent Owner’s counsel stated: “As you are aware, Petitioner did not attempt to meet-and-confer with Patent Owner before filing. That is improper.” *Id.* Patent Owner’s counsel further asked: “If Patent Owner were to agree to enter the Default Protective Order and sign the acknowledgment form, would Petitioner agree to providing us the search disclosure declaration?” *Id.*

On December 8, 2025, Petitioner’s counsel replied: “We were specifically authorized to file under seal for *in camera* review pursuant to Director Squires November 17, 2025 memorandum.” EX2049. Then, the next day, Petitioner filed redacted copies of the SDDs. *See* Paper 10; PGR2025-00088, Paper 11.

On December 12, 2025, Patent Owner’s counsel noted that Petitioner’s reply “is not responsive to [the] prior email” and explained that the Director’s memorandum “did not (and cannot) supersede codified federal regulations which outline the necessary procedures for filing protective orders, which [Petitioner] ha[s]

failed to undertake.” EX2050. Patent Owner’s counsel also noted that Petitioner “now filed untimely redactions that raise other concerns.” *Id.* Lastly, Patent Owner’s counsel again asked to “[p]lease confirm whether [Petitioner] will comply with the default protective order and provide the declaration to Beckman Coulter if it signs the acknowledgement form.” *Id.*

After days without response, on December 16, 2025, Patent Owner’s counsel again contacted Petitioner to “confirm whether Cytek will comply with the default protective order and provide the declaration to Beckman Coulter if it signs the acknowledgement form.” EX2051. Patent Owner’s counsel stated: “If we do not hear from you by close of business tomorrow, we will assume that Cytek is not complying with the default protective order and will oppose Cytek’s Motions to Seal and For Entry of the Default Protective Order.” *Id.* On December 18, 2025, Patent Owner contacted the Director accordingly. EX2052.

### **III. ARGUMENT**

#### **A. Petitioner’s Motions Are Procedurally Defective Because They Do Not Comply With 37 CFR § 42.54’s Requirement To Meet-and-Confer**

Section 42.54 of Title 37 of the Code of Federal Regulations provides that a motion for protective order “must include a certification that the moving party has in good faith conferred or attempted to confer with other affected parties in an effort

to resolve the dispute.” This regulation, like all regulations, was promulgated through notice-and-comment rulemaking and carries the force of law. *See United States v. Nixon*, 418 U.S. 683, 696 (1974) (“So long as this regulation remains in force, the Executive Branch is bound by it.”). Indeed, nothing in the Director’s November 17, 2025 Memorandum regarding SDDs abrogates or suspends this regulatory meet-and-confer requirement. Petitioner simply failed to follow that process here.

Notably, other petitioners who filed SDDs under seal per the Director’s Memorandum understood and followed this protocol. *See, e.g., DP Dream Pairs Inc. v. Cole Haan LLC*, IPR2025-01395, Paper 11, 2-3 (PTAB Nov. 26, 2025) (“Pursuant to 37 CFR § 42.54(a), a motion to seal must be accompanied by a proposed protective order and a certification that the parties have met and conferred regarding the issue. Petitioners certify that they raised this motion to seal with Patent Owner’s counsel via email on November 25, 2025 and November 26, 2025.”); *Stanley Black & Decker, Inc. v. Howmet Aerospace Inc. f/k/a Arconic Inc. f/k/a Alcoa Inc.*, IPR2025-01581, Paper 7, (PTAB Nov. 26, 2025) (“Pursuant to 37 C.F.R. 42.54(a), the undersigned certifies that Petitioner has in good faith attempted to confer with Patent Owner in an effort to resolve the dispute. Petitioner emailed Patent Owner yesterday seeking consent to this Motion and/or a meet-and-confer

conference today.”); *see also Terumo BCT, Inc. v. Haemonetics Corp.*, PGR2026-00006, Paper 6, 2 (PTAB Nov. 25, 2025) (confirming petitioner conferred with patent owner); *BOE Technology Group Co., v. 138 East LCD Advancements Ltd.*, IPR2025-01413, Paper 7, 1 (PTAB Nov. 25, 2025) (same); *Accelight Techs., Inc. v. Applied Optoelectronics, Inc.*, IPR2025-01567, Paper 7, 1 (PTAB Nov. 24, 2025) (same).

Petitioner’s disregard of the meet-and-confer requirement under 37 C.F.R. § 42.54(a) is not a mere technical defect—it materially prejudices Patent Owner. The meet-and-confer process is designed to allow parties to resolve confidentiality issues without the USPTO’s intervention. In bypassing this step, Petitioner deprived Patent Owner of the chance to negotiate the scope of sealing or protective provisions, which could have avoided the very motion practice now occurring. *See Search Am., Inc. v. TransUnion Intelligence, LLC*, CBM2013-00037, Paper 55 (PTAB, Oct. 2, 2014) (denying eight motions to seal where the parties did not meet the procedural requirement to meet-and-confer before the motions were filed to discuss “whether there is a need to seal the documents”). Instead, Patent Owner is forced to respond to Petitioner’s motions, imposing burdens contrary to the USPTO’s efficiency goals.

Without dialogue, Petitioner’s proposed protective order and sealing request may be overinclusive, restricting Patent Owner’s and the public’s access to

information beyond what is justified, or underexclusive, allowing certain access to protected materials for unlimited use. But Patent Owner has no input on tailoring confidentiality measures, which undermines transparency and fairness. Petitioner's motions should thus be denied for their procedural deficiencies.

**B. Petitioner's Motions Should Be Denied Because Petitioner Will Not Comply With the Default Protective Order It Seeks**

Petitioner moves for "entry of the Default Protective Order as set forth in Appendix B of the Consolidated Trial Practice Guide" and seeks to have the SDD designated as "PROTECTIVE ORDER MATERIAL." Paper 8 at 6. Under the Default Protective Order, Patent Owner would be able to view a copy of the SDD, including all Protective Order Material, if Patent Owner signs the Standard Acknowledgement for Access to Protective Order Material. *See* PTAB Consolidated Trial Practice Guide at 121-122 (Nov. 2019) ("(k) Standard Acknowledgement of Protective Order. The following form may be used to acknowledge a protective order and gain access to information covered by the protective order. . . .").

Despite Patent Owner's repeated requests, Petitioner has refused to confirm whether it will allow Patent Owner access to the SDD in unredacted form if Patent Owner signs the Standard Acknowledgement for Access to Protective Order Material. *See* EX2049, 2050, 2051. Instead, Petitioner believes itself "specifically authorized to file under seal for *in camera* review pursuant to Director Squires

November 17, 2025 memorandum” (EX2049), and seeks *in camera* review under the supposition that it should not allow Patent Owner to view an unredacted copy of the SDD under any terms. Petitioner thus will not comply with the Default Protective Order when entered, viewing the SDD as some category of material that is not specified in the Default Protective Order. This is contrary to PTAB practice.

Indeed, other petitioners who voluntarily submitted SDDs under seal asked for a modified protective order that would not allow Patent Owner access via Standard Acknowledgement for Access to Protective Order Material, and limited the Office’s access for training purposes only. For example, in *BOE*, Petitioner submitted a “PROTECTIVE ORDER FOR PETITIONER’S SEARCH DISCLOSURE DECLARATION” which limits access to Petitioner’s SDD to “Employees and representatives of the United States Patent and Trademark Office who have a need for access to the confidential information” and indicated that such personnel “may use the information disclosed in Petitioner’s Search Disclosure Declaration for internal training, improving examination processes, and analytics.” IPR2025-01413, Paper 7; *see also, e.g., DP Dream Pairs*, IPR2025-01395, Paper 11, Ex. A at i-ii (“Access to Confidential SDD materials is limited to: a. The party and counsel filing the confidential SDD materials. b. Employees and representatives of the Office who have a need for access to the Confidential SDD materials. . . .

[T]he Office is permitted to use the information in any accompanying SDD for internal training, improving examination processes, and analytics.”).

Here by contrast, Petitioner refuses to share the SDD with Patent Owner even under the Default Protective Order or limit the Office’s use of the information to access for training purposes only. This is particularly troubling given Petitioner’s merits-based arguments in the unredacted portions of the SDD, as discussed further below. Petitioner’s motion to enter the Default Protective Order, which either will not be complied with or will impose additional obligations outside of the Default Protective Order, should be denied. *See Unified Patents, LLC v. Electronics & Telecomms. Res. Inst.*, IPR2020-01048, Paper 28, 2 (PTAB May 11, 2021) (“Good cause does not exist for entry of the proposed protective order because . . . the proposed order imposes obligations . . . that are not present in the Board’s default protective order.”).

**C. Petitioner’s Redacted SDD Raises Significant Due Process Issues and Was Procedurally Improper**

Petitioner’s redacted SDD raises two final issues that justify denying Petitioner’s motions: it includes substantive arguments to which Patent Owner cannot respond, raising due process concerns, and it was improperly filed two weeks too late.

Petitioner’s SDD includes information beyond search strategy that would help

examiner training, and is instead argumentative and raises merits issues. For example, the unredacted portion of Petitioner’s SDD states that the cited references are “buried among numerous references.” Paper 10, ¶4. Similarly, the SDD argues that: “For example, the ’106 specification indicates that ‘wavelength division multiplexers (WDMs)’ from the optical communication industry (e.g., telecommunications) can be ‘readily adapted for fluorescence light detection,’ as such a WDM is ‘almost identical in function and architecture’ to WDMs used in flow cytometry. (’106, 4:57-67, 44:39 47.)” *Id.* ¶6. Given Petitioner was only able to identify art that was largely already before the Patent Office, it is important that Patent Owner can review the redacted portions of the SDD, which likely also argue merits-based issues.

Leaving Patent Owner without opportunity to meaningfully respond to the SDD’s arguments and assertions of fact violates due process. Under the Administrative Procedure Act (APA), Patent Owner is “entitled to an adequate opportunity to respond to th[e] asserted fact[s].” *In re NuVasive, Inc.*, 841 F.3d 966, 972 (Fed. Cir. 2016). That entitlement is “not lessened . . . by virtue of the opportunity [Patent Owner] had to respond to *other* factual assertions.” *Id.*

Petitioner’s attempt to use *in camera* review to affect the merits of the decisionmaker is unprecedented. *In camera* review is generally used to assess

claims of privilege privately and ensure that only *non-privileged* content reaches the decisionmaker—not the privileged content.<sup>1</sup> *In re Grand Jury Investigation*, 974 F.2d 1068, 1074 (9th Cir. 1992) (“[I]n camera review is a[] . . . means to determine whether disputed materials fit within the privilege.”). In fact, *in camera* review is often conducted by a Special Master, Discovery Referee, or magistrate judge rather than the ultimate decisionmaker (such as the trial judge) to avoid tainting the decisionmaker with potentially inadmissible but prejudicial information. *See, e.g., CWCapital Cobalt VR Ltd. v. CWCapital Investments LLC*, No. 653277/2018, 2024 WL 228022, (N.Y. Sup. Ct. Jan. 20, 2024) (order by trial judge directing a discovery referee to conduct an *in camera* review of 35 documents); *Consumer Fin. Prot. Bureau v. Carnes*, No. 23-CV-2151-DDC-TJJ, 2024 WL 1051602 (D. Kan. Mar. 11, 2024) (discovery order by magistrate judge performing *in camera* review). Thus, Petitioner’s motion to have the Director review its merits-based arguments *in camera* frustrates the purpose of *in camera* review and should be denied.

Additionally, Petitioner waited nearly *two weeks* to file its redacted SDD, only after Patent Owner’s last discretionary denial brief was complete. *See* Paper 10. Its

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<sup>1</sup> Patent Owner reserves the right to argue that Petitioner, by voluntarily submitting this SDD, waived any attorney-client, work-product, or other related protections.

long delay in filing a redacted version of the SDD, rather than concurrently with the sealed SDD, was procedurally improper. *See* PTAB Consolidated Trial Practice Guide at 111 (Nov. 2019) (“(ii) Where confidentiality is alleged as to some but not all of the information submitted to the Board, the submitting party shall file confidential and non-confidential versions of its submission, *together* with a Motion to Seal the confidential version setting forth the reasons why the information redacted from the non-confidential version is confidential.”) (emphasis added). Indeed, other petitioners following the Director’s SDD procedure filed an exhibit with a redacted version concurrently with their motion to seal. *E.g., Stanley Black & Decker*, IPR2025-01581, EX1023 (PTAB Nov. 26, 2025); *Terumo*, PGR2026-00006, EX1013 (PTAB Nov. 25, 2025). Petitioner’s failure to follow the PTAB’s procedures to timely file redactions again prejudiced Patent Owner, leaving Patent Owner unable to address in its discretionary denial briefing the substantive arguments made in the SDDs regarding Patent Owner’s conduct—not Petitioner’s search strategy. Petitioner’s motions should be denied for this independent basis as well.

Patent Owner respectfully requests that Petitioner’s motions be denied.

Respectfully submitted,

Dated: December 24, 2025

/Alexis R. Cohen/  
Alexis R. Cohen (Reg. No. 76,998)

**CERTIFICATE OF SERVICE**

I hereby certify that on December 24, 2025, I caused a true and correct copy of the following materials:

- Patent Owner's Opposition to Petitioner's Motion to Seal and Request For *In Camera* Review and Motions For Entry of Default Protective Order (Paper 8)
- Exhibit List
- Exhibits for Patent Owner's Opposition to Motions to Seal and Protective Order (EX2048-2052)

to be served on Petitioner via electronic mail to:

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1299 Pennsylvania Ave. NW, Suite 700  
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