

Pre-Institution Supplemental Reply
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 PRE-INSTITUTION SUPPLEMENTAL REPLY

Patent Owner's supplemental response invokes *Revvo* to suggest that institution should be denied based on alleged inconsistencies between the Petition and positions taken during district court expert discovery. But *Revvo* does not apply here. The '106 patent is no longer asserted in district court, and, therefore, Patent Owner's arguments are irrelevant. Regardless, Petitioner's treatment of "Wavelength Division Multiplexer (WDM)" remains consistent across forums. Further, Patent Owner waived its argument by waiting to raise it at this stage.

I. *Revvo* Does Not Apply Because the '106 Patent Is No Longer Asserted

Patent Owner's *Revvo*-based objection fails at the outset because the '106 patent is no longer asserted in district court. (See EX1120, 001-002; EX1121.) *Revvo* concerns materially inconsistent claim construction positions advanced across parallel proceedings involving the same patent. 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). Because no live district court dispute remains and no experts have opined on invalidity or non-infringement of the '106 patent, there is no basis to deny institution under *Revvo*.

II. Petitioner's Invalidity Analysis of "WDM" Remains Consistent

No *Revvo*-style inconsistency exists as to "Wavelength Division Multiplexer (WDM)." 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 district 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.¹ (*See* EX2056, ¶¶201-203, 207, 253, 272; EX2057, ¶¶157-158, 160, 171, 217; EX2061, 45:9-15; EX2062, 63:16-25.)

Petitioner’s position on invalidity in district court is entirely consistent with the Petition’s prior art analysis because Petitioner may show that the asserted references satisfy the challenged claims under Patent Owner’s interpretation, without adopting that scope as the correct plain meaning. (*See* Pet. at 14; *see also* EX1119.) Nor do district court non-infringement opinions explaining that the

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 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.

accused products separate, rather than combine, wavelengths of light create a conflict because those opinions address whether the accused products satisfy the claim limitation—not whether the prior art renders the claims invalid.

Patent Owner identifies no unexplained shift in position that warrants denial.

III. Patent Owner's *Revvo* Argument Is Waived

Patent Owner waived its argument by failing to raise it in its POPR. *Revvo* Paper 20 issued on November 3, 2025 and explained that a petitioner must account for materially different claim construction positions across forums under Rule 42.104(b)(3). *Revvo*, Paper 20, 3-5. Whereas the Petition was filed before *Revvo*, Patent Owner's POPR was filed on December 23, 2025—nearly two months later—despite that precedential decision being available at the time. (*See* Paper 14.)

Patent Owner waited until supplemental briefing to invoke *Revvo* Paper 36, even though Paper 36 merely applied the same principle already articulated in Paper 20. *Compare Revvo* Paper 20, 3-5, *with Revvo* Paper 36, 4. Having failed to raise *Revvo* when Paper 20 was already available, Patent Owner cannot manufacture an institution defect through supplemental briefing.

Because Patent Owner identifies no *Revvo*-level inconsistency and failed to raise this theory when *Revvo* Paper 20 was already available, the Supplemental Response provides no basis to deny institution. The Board should institute review.

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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**, EXHIBITS 1118-1121 to be served via electronic mail on the 6th day of March, 2026, upon Patent Owner's counsel as follows:

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