

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CYTEK BIOSCIENCES, INC.,
Petitioner,

v.

BECKMAN COULTER, INC.,
Patent Owner.

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

**PATENT OWNER'S PRE-INSTITUTION SUPPLEMENTAL
RESPONSE**

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EX2004	Cytek Form S-1 Registration Statement (2021)
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EX2014	U.S. Patent Pub. No. 2004/0165828 (“Capewell”)
EX2015	File History for U.S. Patent No. 9,746,412
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EX2017	DocketNavigator, Time-to-Trial Statistics for District of Delaware (Sept. 2025)
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EX2028	Declaration of David Schaafsma, Ph.D.
EX2029	Shapiro, Practical Flow Cytometry (2003), Chapter 7
EX2030	U.S. Patent No. 10,330,582
EX2031	Marcus Nebeling, CWDM: Lower Cost for More Capacity in the Short-Haul, Fiber Network Engineering (July 3, 2002)
EX2032	Telecommunication Standardization Sector of ITU, Recommendation G.694.2, Spectral Grids for WDM Applications: CWDM Wavelength Grid (Dec. 2003)
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EX2034	Order Denying Request for <i>Ex Parte</i> Reexamination, Application/Control Number: 90/015,441 (Oct. 6, 2025)

EX2035	M. Arumugam, <i>Optical Fiber Communication—An Overview</i> , 57 Pramana J. Physics 849 (2001)
EX2036	B.E.A. Saleh and M.C. Teich, <i>Fundamentals of Photonics</i> , 2d. Ed. 2007, Chapters 1, 24 (“Saleh”)
EX2037	Warren J. Smith, <i>Modern Optical Engineering</i> (3d ed. 2000, Chapter 9 (“Smith”)
EX2038	W.T. Welford, <i>Optics</i> (3d ed. 1990), Chapter 8 (“Welford”)
EX2039	Mohammad Azadeh, <i>Fiber Optics Engineering</i> (2009), Chapters 1, 2, 6 (“Azadeh”)
EX2040	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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EX2043	U.S. Provisional Patent Application No. 61/715,819 (“5819 Prov.”)
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EX2057	Excerpts from Rebuttal Expert Report of James F. Leary, Ph.D. Regarding Non-Infringement of U.S. Patent Nos. 10,330,582; 11,703,443; and 12,174,107, <i>Beckman Coulter, Inc. v. Cytex Biosciences, Inc.</i> , C.A. No. 24-945, (D. Del. Jan. 20. 2026)
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EX2062	Excerpts from Transcript of James Leary, Ph.D, <i>Beckman Coulter, Inc. v. Cytex Biosciences, Inc.</i> , C.A. No. 24-945, (D. Del. Feb. 20, 2026)
EX2063	Defendant Cytex Bioscience's, Inc.'s Proposed Claim Constructions, served in <i>Beckman Coulter, Inc. v. Cytex Biosciences, Inc.</i> , C.A. No. 24-945, (D. Del. May 14, 2025)

Expert discovery in the district court litigation, which closed on February 24, 2026, has revealed that Petitioner is intent on taking inconsistent claim construction positions in the PGR and the district court litigation. Given the petition does not explain why the inconsistencies are warranted, the PGR should not be instituted.

Rule 104(b)(3) requires a petition to identify “[h]ow the challenged claim is to be construed.” 37 C.F.R. § 42.104(b)(3). If a petitioner advances different positions before the Board and a district court, that petitioner is **required** to explain why those different positions are warranted. *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 36, 2-4 (Jan. 26, 2026); *see also Revvo*, Paper 20, 3-5 (PTAB Nov. 3, 2025) (precedential); *Tesla, Inc. v. Intellectual Ventures II LLC*, IPR2025-00340, Paper 18, 3 (PTAB Nov. 5, 2025) (informative); *Cambridge Mobile Telematics, Inc. v. Sfara, Inc.*, IPR2024-00952, Paper 12 (PTAB Dec. 13, 2024) (informative).

In the PGR, Petitioner did not seek to construe “WDM” and contended that “‘WDM’ refers to the optical components that **demultiplex** light into those color bands.” Paper 2 at 1, 7-8, 14 (emphasis added). In their Grounds, Petitioner and Dr. Ilkov only identified prior art as disclosing a WDM because a POSA would have understood them to **separate** the light into color bands. *Id.* at 39-40, 68; EX1002, ¶¶45-49, 52, 73-76, 127-128, 180-181. In the litigation, Petitioner also previously proposed (but withdrew) a construction of “WDM” that required, in part, “at least

two optical elements that optically *separate* light into color bands.” EX2063, 11-12 (emphasis added). However, by the close of expert discovery, to argue non-infringement, Petitioner's experts testified the opposite—that the claimed WDM *multiplexes* light and does *not* encompass a *demultiplexer*. EX2056, ¶¶201-203, 207, 253, 272; EX2057, ¶¶157-158, 160, 171, 217; EX2061, 45:9-15; EX2062, 63:16-25.¹

Petitioner is trying to have it both ways—arguing certain constructions (*e.g.*, WDM means demultiplexing) to support unpatentability in the PGR, while proposing different constructions (*e.g.*, WDM means multiplexing) or indefiniteness to avoid liability in district court. Missing from the Petition is any rationale (much less an acceptable one) why inconsistent positions are warranted. This is exactly the conduct the Director recently held requires denial of institution. *Revvo*, Paper 36, 4.

Any waiver argument by Petitioner is fundamentally flawed. Rule 42.104 provides a non-waivable gatekeeping requirement of what must be in the Petition. *See* Director Memorandum (July 31, 2025). A POPR is an optional filing, failure to

¹ In PGR2025-00088 for U.S. Patent No. 12,174,107, Petitioner also takes additional inconsistent positions regarding the “flow cell” limitation, “multimode optical fiber” limitation, and indefiniteness, as explained in Patent Owner's Pre-Institution Supplemental Response filed therefor.

raise arguments in a POPR cannot trigger waiver, and the *Revvo* decision came after the POPR here. Nor can Patent Owner be punished for Petitioner's failure to update the Office; Petitioner's duty of candor required it to inform the Office of changes that affect the PGR proceeding. 37 C.F.R. §§ 11.303(a), 42.8, 42.11; *Facebook, Inc. v. Sound View Innovations, LLC*, IPR2017-00998, Paper 13 (PTAB Sept. 5, 2017). In any event, expert discovery closed *just one week ago*—Petitioner's experts had the opportunity to make their positions consistent with the PGR up until then, but instead offered conflicting opinions. Indeed, Dr. Ilkov confirmed he would not change anything in his PGR declaration. EX2061, 139:11-140:7. Petitioner's failure to explain why inconsistent positions are warranted here is fatal.

Respectfully submitted,

Dated: March 4, 2026

/Laura Macro/
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Registration No. 80,908

Counsel for Patent Owner

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2026, I caused a true and correct copy of the following materials:

- Patent Owner's Pre-Institution Supplemental Response
- Exhibit List
- Exhibits for Patent Owner's Pre-Institution Supplemental Response
(EX2056-EX2057, EX2061-2063)

to be served on Petitioner via electronic mail to:

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