

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BIO-RAD LABORATORIES, INC.,
Petitioner,

v.

CALIFORNIA INSTITUTE OF TECHNOLOGY,
Patent Owner

Case No. IPR2025-01546

U.S. Patent No. 12,168,797 B2

**DECLARATION OF JESSE A. SALEN IN SUPPORT OF
PATENT OWNER'S REQUEST FOR DISCRETIONARY
DENIAL OF INSTITUTION**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

DECL. OF JESSE A. SALEN IN SUPPORT OF PATENT OWNER'S REQUEST
FOR DISCRETIONARY DENIAL OF INSTITUTION
IPR2025-01546

I, Jesse A. Salen, declare as follows:

1. I am an attorney duly admitted to practice before the United States Patent and Trademark Office. I am a partner with Sheppard, Mullin, Richter & Hampton LLP, attorneys of record for Patent Owner California Institute of Technology ("PO") in this matter.

2. If called as a witness, I could and would competently testify to all facts within my personal knowledge except were stated upon information and belief.

3. This declaration is submitted in support of PO's Request for Discretionary Denial of Institution.

4. On July 2, 2025, PO served its infringement contentions for the '797 Patent. *See* EX1009. On August 13, 2025, Petitioner served its invalidity contentions. The parties exchanged damages contentions in October 2025.

5. Fact discovery in the parallel litigation opened in January 2024 and has progressed significantly since then. The parties have produced more than 291,000 documents and deposed nine witnesses, with two more depositions scheduled for early December 2025.

6. PO and ChromaCode have served subpoenas on 25 third parties, resulting in third-party productions of almost 9,000 documents. The parties have

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deposed four third-party witnesses thus far, with two more scheduled for early December 2025. Petitioner deposed PO's technical expert on November 10, 2025.

7. Trial for the '797 Patent is expected to take place in March 2027. In the Northern District of California, the median time from a claim construction order to trial is about 14.0 months and the average is about 14.9 months. *See* EX2018. In the parallel action, the court indicated it would issue a claim construction order between January 1 and January 15, 2026. EX2014 at 2; EX2017, 29:11-18. 14 months from the expected claim construction decision would result in a trial date between March 1 and March 15, 2027.

8. Furthermore, in the parallel case, trial for Petitioner's patents is set for January 11, 2027. EX2014 at 6. The case schedule provides an indication of how staggered the first trial will be from the second trial. The motion for summary judgment hearing for Petitioner's patents is set for September 16, 2026. EX2014 at 4. Based on the Scheduling Order, the motion for summary judgment hearing for PO's patents will occur November 13, 2026, approximately 140 days from June 26, 2026, the deadline to serve opening expert disclosures for the party with burden. *Id.* at 4-6. This sets the two hearings approximately 59 days apart.

9. The same staggering can be calculated for expert discovery. The close of expert discovery in the Bio-Rad case is approximately June 26, 2026. EX2014 at

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3. The close of expert discovery in the Caltech case is approximately set for September 9, 2026, which is 75 days from June 26, 2026. EX2014 at 4-5. This sets the two expert discovery periods at approximately 76 days apart. Looking at 59-76 days from the first trial, this would put the second trial between March 11 and March 28, 2027.

10. Petitioner has never moved for a stay of the parallel litigation nor indicated it would do so.

11. In the district court litigation, PO and ChromaCode are also asserting infringement of U.S. Patent No. 11,827,921. In all, PO has asserted four patents in the district court litigation.

12. In the district court litigation, the parties completed claim construction briefing on November 17, 2025.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

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Executed on November 24, 2025, at San Diego, California.

SHEPPARD, MULLIN,
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/Jesse A. Salen/

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I hereby certify that on November 24, 2025, a copy of the foregoing **DECLARATION OF JESSE A. SALEN IN SUPPORT OF PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION** was served via E-Mail on the Petitioner at the following correspondence address provided by counsel of record for the Petitioner pursuant to 37 C.F.R. § 42.8(b)(4):

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