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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
Before The Honorable Eumi K. Lee, District Judge

IN RE: CHROMACODE LITIGATION )  
 ) No. C 23-04823-EKL  
 )

San Jose, California  
Wednesday, August 27, 2025

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC  
SOUND RECORDING 1:58 - 3:08 = 1 HOUR, 10 MINUTES

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1 Wednesday, August 27, 2025

1:58 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: For our last case this afternoon, we  
5 have 5:23CV-4823-EKL, In Re: ChromaCode Litigation.

6 Counsel, please state your appearance on the record,  
7 starting with counsel for the Plaintiff.

8 MR. SALEN: Good afternoon, your Honor. This is  
9 Jesse Salen from Sheppard Mullin on behalf of the  
10 Plaintiffs, and with me is my partner, Martin Bader, and  
11 also on the line on behalf of Caltech are associate and  
12 general counsel, Chiemi Suzuki and Darren Franklin.

13 THE COURT: All right. Good afternoon, everybody.

14 MR. WALTER: Good afternoon, your Honor. This is  
15 Derek Walter from Jones Day for Bio-Rad, and here with me is  
16 Lexi Smith, also from Jones Day, and then I have John  
17 Cassingham and Louis Wai from Bio-Rad.

18 THE COURT: Okay. Good afternoon, everybody.

19 MR. FRANKLIN: Good afternoon.

20 THE COURT: So thank you for submitting another --  
21 and I realize it's another -- joint proposed order and  
22 schedule, and the Court has reviewed it. I have a series of  
23 questions for you all, and I'll share some initial  
24 observations. Let me get the right version of this.  
25 Correct me if I'm wrong, but my impression is that, through

1 the claim construction hearing, parties' schedules are  
2 incredibly close.

3 MR. WALTER: I think that's right. We're pretty  
4 close. I think it's only a few weeks off.

5 THE COURT: And, I mean, is there -- is this just  
6 people were tracking things differently, or is -- I mean, is  
7 there a reason which -- and I'll just begin with  
8 Plaintiffs -- that I should be using your dates through  
9 the -- I'm looking through the claim construction dates,  
10 versus Bio-Rad's. I mean, what is -- are there reasons that  
11 parties couldn't come to a resolution regarding those dates?

12 MR. SALEN: Your Honor, the short answer is no,  
13 with respect to those dates. I think the issue is, the  
14 schedules diverged, and they diverged so far apart with  
15 respect to fact discovery that we ended up submitting,  
16 basically, two schedules, because they were different, and I  
17 think we can easily agree on the short difference in dates  
18 between Bio-Rad and us.

19 We obviously are trying to move the case a little bit  
20 more quickly, and I think the reason we prefer to have the  
21 schedule move, one, in accordance with your Honor's  
22 direction at the June 18th hearing that we try to accelerate  
23 the case as fast as possible with respect to claim  
24 construction dates, even in advance of the local rules, but  
25 also just being aware that the holiday, the Thanksgiving

1 holiday, is sitting out there out there, and we thought it  
2 made sense to try to get the claim construction hearing  
3 done, of course depending on the Court's schedule and  
4 preference, before the holiday, if that were at all  
5 possible, and I think we're just trying to push to move  
6 things as fast as we can at this point, given we're doing  
7 another round of claim construction. That was --

8 THE COURT: Okay. I just wanted to make sure  
9 that, if I threw a dart at it, it would be okay. But, in  
10 reality, what's going to happen in terms of the different --  
11 well, let me hear from Mr. Walter before I tell Shegam  
12 (phonetic) where I'm thinking about that first set of dates.

13 MR. WALTER: Yes. I think the claim construction  
14 hearing schedule -- yes, we're very close. I think what was  
15 primarily driving us was trying to work around the holidays,  
16 and trying to do that more effectively.

17 THE COURT: Okay.

18 MR. WALTER: Yes. And I think that's right. We  
19 do have -- we do -- the big issue between us is how we're  
20 going to handle the deadline for the close of fact  
21 discovery. They want to do it in June, which is just -- I  
22 think, you know, it's going to effectively be a month after  
23 the claim construction hearing, when we take into account  
24 the holidays, and, for a variety of reasons, we think we  
25 need a little more time after claim construction. And I'm

1 going to stop there, and I'm going to --

2 THE COURT: You're going to stop there, because I  
3 want to tee up that conversation.

4 MR. WALTER: Yes, yes. I'm going to let you tee  
5 that up and ask what you need to ask.

6 THE COURT: So my November is horrible for a  
7 variety of reasons, and so, in terms of trying to schedule  
8 something on my calendar, so, in reality, it's going to end  
9 up being in December, probably closer -- even a little bit  
10 later, probably closer to mid-December. I'm going to have  
11 Laura work with you to confirm a claim construction date,  
12 but it will be in December, and likely in mid-December.

13 So let's assume that I can sort of push along what you  
14 all have here. There's no strong opinions. I can just go  
15 with a series of one of these sets of dates, or modify it  
16 slightly to make it work for the Court's calendar, and I'm  
17 going to have -- like I said, have Laura work with you to  
18 figure out a claim construction date, because that will be a  
19 special set, anyway, and Laura being our CRD.

20 And so now I'm going to turn us to the bigger issue,  
21 which is the second half of the schedule, and, again, let me  
22 make sure that I understand the parties' positions. So here  
23 is the one I was looking at. Well, if I understand it  
24 correctly, Caltech wants to separate out -- wants to have  
25 the fact discovery earlier, with the end being the end of

1 January, or 30 days after the claim construction order,  
2 tracking together the fact discovery and the expert  
3 discovery. I think that's right.

4 Well, Mr. Salen, give me a big picture of -- I have a  
5 bunch of notes for it right now, but I want to make sure I'm  
6 fulling understanding each party's positions in terms of the  
7 rest of the schedule.

8 MR. SALEN: Yes. So, for Plaintiffs -- and, your  
9 Honor, there were two other issues we'll get to later, but  
10 at least one was separating out the Bio-Rad case, which  
11 maybe plays into this a little bit, too.

12 THE COURT: That's where I was -- yes.

13 MR. SALEN: Yes, yes, but I know we'll get there.  
14 But, with respect to fact discovery, you know, our position  
15 is we've done most of this already, so written discovery is  
16 pretty much done. We -- documents -- we produced our  
17 documents not now, you know, a couple months ago, and I  
18 think Bio-Rad has produced most of their documents, and has  
19 committed to producing the rest of them by the middle of  
20 September.

21 We're off by a week there when that happens, but,  
22 basically, they've committed to do that by the middle of  
23 September. We don't see a reason to pause or stop, and  
24 depositions have been noticed already on both sides, and for  
25 non-party depositions, and we think we can get through fact

1 discovery relatively efficiently. There may obviously be  
2 some things that need to happen after the claim construction  
3 order, but we can get a lot of this done before we get  
4 there.

5 We already have a claim construction order in the case.  
6 We understand from your Honor's -- and today is the deadline  
7 to exchange claim terms. Plaintiffs are not going to  
8 propose any terms for construction. We don't know how many  
9 are coming from Bio-Rad, but your Honor had instructed  
10 during the June 18th hearing that that number be limited  
11 to -- well, I think you preferred three, on page 37 of the  
12 transcript from the June 18th hearing, but that you would  
13 accept up to -- potentially up to five, if there's a reason.  
14 But, you know, we don't think there's a reason to have a  
15 large dispute over claim construction.

16 So we think that, hopefully, the Court is -- if it's  
17 able to get an order out quickly, we'll be ready to close  
18 fact discovery in short order thereafter, and get -- and  
19 then the position is, right after that, we would then have  
20 expert discovery deadlines that would track after that.  
21 Obviously, if for some reason the Court's claim construction  
22 takes longer, then --

23 THE COURT: We're really -- that's not the plan.

24 MR. SALEN: Well, and -- but, you know, obviously  
25 not within our control. Then the dates would have to move a

1 little bit, but we don't think we should plan for that. We  
2 think we should try to plan to get the case done  
3 expeditiously at this point. So that's Plaintiff's  
4 position. I think we can do it, and we should.

5 THE COURT: Let me -- talk to me more about  
6 discovery, and where Plaintiff thinks discovery -- the state  
7 of discovery now, some more details, if you'll elaborate.

8 MR. SALEN: Sure. With respect to party  
9 discovery -- and I think I mentioned documents are produced.  
10 I think we're ready to start. As soon as we get the rest of  
11 the Defendant's production, we hope to review that in short  
12 order, and start getting party depositions on calendar, and  
13 get them quickly.

14 With respect to third-party discovery -- and we're  
15 ready to make our witnesses available, you know, any time.  
16 We produced our documents, and we'll work with Defendants.  
17 We haven't -- you know, we're happy to start making  
18 witnesses available to get that done, and we have now --  
19 between now and January 30th, we have, you know, many months  
20 to get that done.

21 With respect to third-party discovery, I think there  
22 were some issues raised in the June 18th hearing, and  
23 concerns that we have a lot of third-party discovery. We  
24 certainly have -- we've served several subpoenas. We've  
25 received documents back from many of those third parties.

1 There may be a couple left that we need documents from, but  
2 we're not deposing all of those. We're only deposing the --  
3 you know, we're not going to waste third-party time with  
4 depositions that -- if we don't need to, if it turns out the  
5 documents don't show what we think is important.

6       So we're focusing in on the third-party discovery with  
7 respect to infringement issues, which are third-party  
8 infringement issues which relate to our indirect  
9 infringement claim against Bio-Rad. Those third parties we  
10 can -- we've already working to schedule those depositions.  
11 I think we have an important one scheduled for October 6th.

12               THE COURT: How many do you expect to do at this  
13 point?

14               MR. SALEN: I don't -- I mean, I'll -- we don't  
15 know for sure, but likely -- you know, we've already had --  
16 we have two that have been -- you know, one scheduled and  
17 one in the works of being scheduled, and I would imagine  
18 between two and four more after that.

19               THE COURT: Say that number again.

20               MR. SALEN: Between two and four more. It depends  
21 on what we see in some remaining documents, but we don't --  
22 I would say we don't expect, probably, more than six total.  
23 And, your Honor, we also have a cap on the number of  
24 depositions. You know, the parties have agreed to, I think,  
25 a total cap, which includes their party depositions. So I

1 think we've agreed, per side, there would be 100 hours, max,  
2 which includes party, and, you know, it's all fact  
3 deposition scheduling, and certainly with -- between now and  
4 January 30th, it seems like we can get most of that in, if  
5 not, I mean, all of it in.

6 THE COURT: And now talk to me -- and, Mr. Walter,  
7 I'll give you -- I will turn to you in one moment, but, Mr.  
8 Salen, talk to me about Caltech's or ChromaCode's position  
9 in terms of when to sever the Bio-Rad patents, because it  
10 seems as though everybody agrees that the Bio-Rad patents  
11 should be separate and apart. So when to do that?

12 MR. SALEN: Well, our position is now. The claim  
13 construction is done in that case, and with respect to, you  
14 know -- there's no reason to wait for a claim construction  
15 order at this point to move discovery along in that case.  
16 Frankly, we think that the case -- there is a real issue if  
17 that case really has any value to either party, and it's  
18 being -- from our position, it's being dragged along in the  
19 wake of the Caltech patent case.

20 The damage is maximum damage in that case, and we've  
21 presented this to Defendants as, you know, a few hundred  
22 thousand dollars if they win on their liability issue, and  
23 we think that the -- frankly, we've shown that there's no  
24 infringement in that case. We plan, if the case doesn't  
25 settle -- and we think it probably would, right after

1 severing -- we would imagine, if the case doesn't settle, we  
2 would move for summary judgment relatively quickly.

3       We don't plan on -- we don't really need much in the  
4 way of additional fact discovery in that case. Both  
5 sides -- ChromaCode has produced all of its documents, you  
6 know, months, I mean, probably five months ago now, and, you  
7 know, Bio-Rad has what it needs now to evaluate the case.  
8 We're ready to move forward. So we could propose a schedule  
9 that moves that case much more quickly than the Caltech  
10 patent case, and there's no reason to keep the two cases  
11 tied together at this point. There are also different --

12               THE COURT: I couldn't tell from your schedule  
13 that was proposed whether or not -- it seemed like, even  
14 though you had indicated that Caltech should sever -- that  
15 the declaratory judgment action should be severed right  
16 away -- the schedules still track together jointly, so I  
17 wasn't sure. That's the reason I was asking that question.

18       But let me get some reactions from Mr. Walter,  
19 because -- so, same scope, the outstanding discovery,  
20 whether or not -- where we are, and the idea of keeping them  
21 together, which Bio-Rad had suggested until -- basically  
22 until, like, for -- until the summary judgment motion, and  
23 I'd also like an update for my own purposes in terms of the  
24 claim construction terms that -- and how many Bio-Rad  
25 intends to do.

1 MR. WALTER: Right. Okay. So there's a lot to  
2 bite off there. Let me --

3 THE COURT: There's a lot.

4 MR. WALTER: Yes. Okay. So, in terms of where  
5 discovery is at, I think we have a very different view as to  
6 where discovery is at. Yes, the parties have started to  
7 produce documents. I don't know that their document  
8 production is complete. They've been making that  
9 representation.

10 I mean, it's probably the third CMC where they've said,  
11 "Hey. Our document production is complete." It was just  
12 three weeks ago that we got a pretty substantial production  
13 from them, so I'm not so sure about that. We have started  
14 producing documents, and we do want to get our document  
15 production complete in the mid-September time frame, and we  
16 are on track to do that.

17 Beyond that, I'm not sure that there's been much done  
18 in terms of discovery. There have been some interrogatories  
19 that have been exchanged. The parties are going to serve  
20 more interrogatories. That's not a big part of discovery,  
21 but the big thing that has to happen is there's going to be  
22 a lot of depositions that have to happen.

23 Between the parties, there's probably going to be  
24 roughly 30 party depositions that are going to happen,  
25 probably 15 on each side, and then, as Mr. Salen

1 acknowledged, they probably have six third-party depositions  
2 they want to take. Maybe it will be something less, but he  
3 said he's thinking that it could be -- first he said two to  
4 four, then he said six. I think it's probably going to be  
5 higher than six. There's a lot of depositions that need to  
6 happen in this case.

7         And so, in view of that, and also taking into account  
8 when claim construction is going to be -- we all agree that  
9 it's going to be near the end of the year -- in view of  
10 that, we felt like it made sense to have -- you know,  
11 probably what we're going to end up with is about three to  
12 four months to finish up discovery after claim construction.

13         For some of the more important depositions in the case,  
14 we're going to want to know what the claims -- how the  
15 claims are going to be construed before we start doing that,  
16 and before we start taking kind of the key depositions in  
17 the case. So we thought that made sense, the June 30th  
18 deadline. That actually is an accelerated deadline. That's  
19 not a dragged out deadline. That is an accelerated deadline  
20 relative to what you normally see in this district. What  
21 Mr. Salen is proposing -- and I'll come back to this a  
22 little bit more -- is highly, highly accelerated and, I  
23 think, highly unusual.

24         Now, in terms of claim construction, I don't know  
25 precisely how many terms are going to eventually be

1 presented to your Honor. What I can tell you is that we've  
2 identified -- and this is something Mr. Salen will see later  
3 today. We've identified six potential terms for  
4 construction, and which ones ultimately get presented to  
5 your Honor will depend on what things happen during the  
6 meet-and-confer. Okay?

7 That's where we're at right now. Okay? It will  
8 probably -- it will be less than six, I expect, but, you  
9 know, it's hard to say precisely what it's going to be,  
10 because we have to meet and confer with --

11 THE COURT: I would strongly encourage that it's  
12 closer to three.

13 MR. WALTER: Okay. I understand that, and I know  
14 your Honor has made that clear in the previous case  
15 management hearing, as well, you know, but I would say one  
16 thing on this. You know, there's got to be a little  
17 give-and-take on both sides on that.

18 You know, we're proposing terms for construction.  
19 There are technical terms, and it's a little hard for us if  
20 what we get from the patent owner in this case is "Yes. No  
21 term should be construed. The Court shouldn't look at it."  
22 They've got to give a little bit, too, and not just say,  
23 "Plain and ordinary meaning on everything." And so, you  
24 know, there's a little give-and-take on that, and I would  
25 just, you know, point that out to your Honor.

1           So that's where we're at. We do think June 30th makes  
2 sense, for reasons beyond just the state of fact discovery.

3           THE COURT: Well, let's -- maybe this goes back to  
4 the notion of, you know, should this be -- should these  
5 cases be severed earlier?

6           MR. WALTER: See, and I did not address that. So  
7 let me address that. We don't think they should, and let me  
8 tell you why. You know, a lot of the witnesses in this case  
9 are -- in Caltech's -- excuse me, in ChromaCode's  
10 declaratory judgment action -- are going to overlap with the  
11 witnesses in our case, the case where we're the Defendant,  
12 where we're the true Defendant, where we're the accused  
13 infringer. Okay?

14           And the reason is because the patents that Bio-Rad is  
15 accused of infringing were developed at Caltech. Okay? And  
16 they were developed by a group of individuals, some of whom  
17 were later affiliated with ChromaCode. Okay? So a lot of  
18 the people who developed the alleged inventions in this case  
19 at Caltech, they were later affiliated with ChromaCode, who  
20 is now the accused infringer in our case, and they were the  
21 principals who were developing the technology that was  
22 accused of infringing in that case.

23           So there's going to be a lot of overlap, not just in  
24 the technology, but also in terms of the financial and  
25 business people, because -- this is something you might not

1 know -- the Caltech patents that are being asserted against  
2 Bio-Rad, those were formerly controlled by ChromaCode. They  
3 were the exclusive licensee of those patents. In the last  
4 few months, they've given up that license, because  
5 ChromaCode has had some problems, but there's a lot of  
6 overtop, not just between the technology, but between the  
7 business and the financial side of things, between the  
8 ChromaCode case and the Caltech case, and so we think a lot  
9 of those witnesses are going to be the same. The same is  
10 true on the Bio-Rad side.

11       So, if you split this up now into two separate cases,  
12 what I think is going to happen is you're going to end up  
13 having multiple rounds of depositions, and you're going to  
14 have duplication of efforts. That doesn't make sense. We  
15 think what makes sense is to keep the cases together. When  
16 there is a witness that sits for deposition, he's deposed in  
17 connection with both cases. He sits once, and, you know,  
18 everything is kept together as a package until the close of  
19 fact discovery, and then we'll have separate summary  
20 judgment, and then they'll be bifurcated for trial.

21               THE COURT: How many witnesses are we talking  
22 about which you, Mr. Walter -- which you're saying that  
23 would overlap on the factual witnesses? And then I want to  
24 talk a little bit about expert discovery, and whether or not  
25 there's really any overlap in terms of that.

1 MR. WALTER: Well, I think, on the fact witness  
2 side, I actually think it's going to be most of them. So I  
3 think, you know, we've identified 11 party witnesses, and  
4 there's four non-party witnesses, and those non-party  
5 witnesses, they're inventors on the patents. They're just  
6 not affiliated with Caltech or ChromaCode anymore. But I  
7 think that those 11 party witnesses -- I think it's most of  
8 them, you know, given the overlap. I think that's what  
9 we're talking. We're not talking about one or two. We  
10 identified one in particular in our statement, and, you  
11 know --

12 THE COURT: That's the reason I was wondering.

13 MR. WALTER: Yes. And, as you'll notice, Mr.  
14 Salen, he didn't respond on that point, because it's -- you  
15 know, it's true. That's just the way it is, is there's a  
16 lot of overlap there.

17 Now, in terms of the experts, I think there's -- the  
18 technological subject matter is certainly very similar, no  
19 question about that, but I think it is accurate that the  
20 experts are probably going to be submitting separate reports  
21 in those cases. It's possible that you could see the expert  
22 depositions being coordinated, for convenience, but it's not  
23 the same situation as with the fact witnesses.

24 One thing I do think is true, though, is that the  
25 experts in both cases are going to want to have the full

1 complement of fact witness on the table before they start  
2 doing expert reports, which is another reason it makes sense  
3 to keep everything together throughout that fact discovery  
4 period.

5 THE COURT: Let me ask another follow-up question  
6 regarding discovery, and sort of these two -- the two  
7 actions. So Mr. Salen had stated that basically the fact  
8 discovery in terms of the Bio-Rad patents were done, like  
9 that that -- or close to done. Do you agree or disagree  
10 with that statement?

11 MR. WALTER: I'm sorry. You're asking me if the  
12 fact discovery with respect to the Bio-Rad patents is done?

13 THE COURT: Yes. Yes.

14 MR. WALTER: So, you know, he said a lot of things  
15 about those Bio-Rad patents that was, you know, a little bit  
16 surprising, right? I think he said it was being dragged  
17 along, one thing he said, and, you know, it was surprising  
18 to hear because, if you recall, it was ChromaCode that  
19 started this litigation by filing the declaratory judgment.

20 THE COURT: I recall.

21 MR. WALTER: Okay. So they started this, right?  
22 And I think they had some sort of business designs that  
23 they'd like to clear out, and so they started this  
24 litigation. If it wasn't important to them, they wouldn't  
25 have filed.

1           So I don't think the fact discovery is done with  
2 respect to that. We still have to take discovery and  
3 depositions of their witnesses to find out exactly what it  
4 is ChromaCode is doing, what their plans are, what products  
5 they might offer, what products they hope to offer. That's  
6 still something that needs to be out on the table, right?

7           And, you know, he's mentioned a lot that the damages  
8 here are small, and there's something to that, because it's  
9 true that, in the last few months, we haven't seen a lot of  
10 activity out of ChromaCode. It's not clear precisely what  
11 it is they're doing these days. But what's still  
12 potentially on the table is the question of injunctive  
13 relief. Okay? And that's something we still have to get  
14 sorted.

15           So I don't think that the fact discovery for that case  
16 is done. I think it's the same as everything else. The  
17 documents are starting to be put on the table. We're moving  
18 into claim construction. Claim construction is going to be  
19 done at the end of the year. I imagine the parties will  
20 start depositions this year. That makes sense.

21           And then I think the claim construction is going to  
22 happen in late December. We're going to get a ruling on  
23 that sometime early in the New Year, and then it would be  
24 nice to have three to four months to finish fact discovery.  
25 That's not unreasonable. That's not an extended, drawn-out

1 schedule. That's actually even an accelerated schedule, and  
2 that's fair and reasonable.

3 And, you know, there are some other reasons, if I may  
4 summarize real briefly why that makes sense. Can I state  
5 that?

6 THE COURT: Absolutely.

7 MR. WALTER: Thank you. I appreciate it. So one  
8 patent in this case has already been invalidated. That  
9 happened at claim construction. There's another one in this  
10 case that's subject to IPR. Okay. We're going to have a  
11 decision on that in March. All right. That's going to --  
12 and we're going to have a final written decision on that in  
13 March.

14 What Caltech's proposed schedule would call for is for  
15 the parties to finish fact discovery on January 30th, and  
16 then they want to do all of expert discovery in two and a  
17 half months. That includes all the reports, all the  
18 depositions. They want to do it all in two and a half  
19 months, and what would happen then is we'd end up having to  
20 prepare expert reports on a patent that the Patent Office  
21 might invalidate in the interim.

22 So we'd end up wasting a lot of effort on that, and we  
23 just don't think that makes a lot of sense. It makes sense,  
24 you know, to -- we'll close the fact discovery on June 30th.  
25 We'll know what's happening in the Patent Office, and then

1 we can do our expert reports based on that. We can take  
2 that into account in how we manage the case. On top of  
3 that --

4 THE COURT: Remind me again when the petition for  
5 an IPR was filed on the '797.

6 MR. WALTER: March of -- the petition was filed  
7 sometime in late 2023. The thing that you have to know is  
8 that there will be a final written decision by March of  
9 2026. That's -- the IPR will be done as of March 2026.  
10 That we know because it has to be done one year after the  
11 institution date, and the institution date was March of  
12 2024. So we will have a decision in March of 2026.

13 We're going to be filing in the coming days another IPR  
14 on the one other patent that was asserted against us in  
15 February. We're going to have an institution decision on  
16 that before June 30th. That's something else we can take  
17 into account when we manage this case. If we do this on  
18 June 30th -- excuse me. If we do this on January 30th, have  
19 a close of fact discovery on January 30th, like they're  
20 calling for, we're not going to have that information.  
21 We're not going to be able to take that into account. We  
22 might waste efforts on a patent that's going to be invalid.

23 THE COURT: Which -- remind me -- I'm just looking  
24 through, because it's not clear. Remind me which patent has  
25 the IPR -- where the IPR has been instituted.

1 MR. WALTER: It's the '921 patent. That's the  
2 patent that's been instituted.

3 THE COURT: That's right. Okay. And then --

4 MR. WALTER: '921 patent.

5 THE COURT: And then one was --

6 MR. WALTER: Again, one other patent has been  
7 invalidated --

8 THE COURT: Yes.

9 MR. WALTER: -- and the other patent that's left  
10 in that case currently, it's the '170 patent, but the  
11 damages for the '170 patent are very small. There's very  
12 few damages in that patent, because of the way the claims  
13 are drafted.

14 THE COURT: All right. And then you have a '797  
15 which you -- are you planning to petition -- when are you  
16 planning to petition for that?

17 MR. WALTER: That -- we're in the final stages of  
18 putting the finishing touches on that draft. So that's  
19 going to happen very soon.

20 Now, again, you know, if we do a close of fact  
21 discovery on June 30th, we can take this into account, and  
22 that's not going to -- that's not a prejudicial,  
23 unreasonable time. That's just -- it's going to be a few  
24 months after the claim construction ruling. That's  
25 reasonable. That's fair.

1           On top of that, the other thing that's going on is,  
2 there's a pending motion to amend the contentions. I don't  
3 know if Caltech is going to win that motion or not, but, if  
4 they do win, everybody agrees there's going to be another  
5 round of invalidity contentions from us. That's been  
6 agreed. Okay?

7           So that's going to change the scope of the case some  
8 more, if we end up, you know, having another rounds of  
9 contentions. We don't know that. We're not going to know  
10 that until -- it's going to be argued before Judge DeMarchi  
11 sometime in late March, and then we'll get a decision on  
12 that, I assume, in --

13           THE COURT: It's going to be argued in front of  
14 Judge DeMarchi in March?

15           MR. WALTER: Sorry. I said -- I meant to say  
16 September.

17           THE COURT: Okay. I was like, I thought I saw --

18           MR. SALEN: September 16th, your Honor.

19           THE COURT: Thank you.

20           MR. WALTER: Yes. My colleague has ordered me to  
21 alerted me to other mistakes in the months that I stated  
22 during this teleconference. So, yes.

23           THE COURT: Anything I should be aware of?

24           MR. WALTER: No. I'm just -- we're just -- as Mr.  
25 Salen knows, I'm in the midst of preparing for trial. We're

1 leaving for trial next week, and so there's a lot going on.

2 THE COURT: Yes.

3 MR. WALTER: But, anyway, those are all the  
4 reasons why we think the June 30th date makes sense. It's a  
5 fair date. It's reasonable. It's not dragging it out.  
6 It's actually accelerating it.

7 THE COURT: Let me just check my notes to see if  
8 there's any other questions before I turn it back to Mr.  
9 Salen, and I have a couple follow-ups for Mr. Salen, as  
10 well.

11 All right. Mr. Salen.

12 MR. SALEN: Sure. Just to briefly respond to a  
13 few points, so, first of all, with respect to severing the  
14 Bio-Rad patents out of this case, I think there's -- one of  
15 the arguments made was that there's a large number of  
16 witnesses that overlap between the two companies. I don't  
17 know who those are.

18 I can tell you there's one, a Mr. Aditya Rajagopal, who  
19 was the founder of ChromaCode and one of the inventors on  
20 the Caltech patents. He's sort of the common link here  
21 between the two. Certainly I agree that he would be a  
22 common witness, and to the extent there are others, we do  
23 not object, and I think would agree that discovery -- it  
24 would be hard not to agree to this, that discovery from  
25 either case could be used for the other case.

1           So discovery that's already been taken for certain in  
2 the consolidated case should be able to be used in both  
3 cases, and if there is a common deposition, we would agree  
4 to coordinate the depositions so that, for example, Mr.  
5 Rajagopal only has to sit for one deposition, and we could  
6 agree to the same thing for Bio-Rad witnesses, as well.

7           Mr. Walter mentioned 30 witnesses, 15 per side. I  
8 don't know which 15 he's talking about, but I guess there's  
9 a lot. That seems like a large number of witnesses. Right  
10 now I think there's only eight total employees at  
11 ChromaCode, and, you know, certainly there are some  
12 third-party witnesses that were mentioned, four of them, but  
13 I don't know how you get to 11 that would be common at all  
14 between the parties. There's very -- in our view, very  
15 little overlap that --

16           THE COURT: And maybe I didn't get the point,  
17 because I just -- I'm really trying to get to the bottom of  
18 the fact of how much overlap there is, and what I'm hearing  
19 is just -- both in the papers and today are very disparate  
20 things. I'm not sure if it's -- Mr. Walter, put in the chat  
21 function all 11 of your witnesses you were saying overlap,  
22 but I will get to that in one moment.

23           Let me hear -- Mr. Salen, respond to the point raised  
24 by Mr. Walter regarding, you know, all experts would want to  
25 wait until the end of fact discovery to -- would want to

1 wait until fact discovery closes.

2 MR. SALEN: Well, I agree with that, but fact  
3 discovery in which case? I mean, if they close -- I would  
4 think that the expert witnesses for the Bio-Rad patent case  
5 can testify about whether or not ChromaCode's products  
6 infringed the Bio-Rad patents, and whether or not the  
7 Bio-Rad patents are invalid, without hearing all of the, you  
8 know, 15-plus witnesses.

9 You know, all of the extra work, fact discovery work,  
10 that Mr. Walter mentioned that needs to be done for the  
11 Caltech patent case, I don't think that's relevant to what  
12 the Bio-Rad experts, Bio-Rad patent experts, would need to  
13 know to write reports about that case.

14 And one other point, just to kind of further that  
15 along. There's already been claim construction in this  
16 case. So the point of whether or not an expert needs to  
17 wait for claim construction, or a fact witness or deposition  
18 needs to wait for claim construction to finish, that's been  
19 done in the Bio-Rad patent case. There are no Bio-Rad  
20 patent claim terms at issue anymore for construction.

21 The only patent -- there's only one patent that claim  
22 construction is being done on, and that's the '797 patent,  
23 and that -- and, you know, we agree, you know, three terms,  
24 max. That should be it. You know, some of the terms are --  
25 you know, the patents are based on the common

1 specifications, and all the reasons that your Honor agreed  
2 that the cases should be consolidated for in the June  
3 18th -- at the June hearing, and that Bio-Rad argued all the  
4 similarities between those patents, we don't see a reason  
5 why there needs to be a long delay at this point.

6         We know what's coming. We're going to get a claim  
7 construction order on maybe three terms, and the witnesses  
8 at that point can be -- if there are some that still need to  
9 be deposed, can finish their depositions quickly. We don't  
10 need months of time after that for that to happen.

11         So I guess two points here. One, what we need to do to  
12 move the Bio-Rad patent case along, we think that's been  
13 done, and your Honor may have misunderstood one thing I  
14 said. I think you said that I represented that fact  
15 discovery is done. I don't think that's true in the Bio-Rad  
16 patent case.

17         I think what's been done -- documents have been  
18 produced. Written discovery is done, and now it's time to  
19 finish depositions, but, again, there's only eight total  
20 employees at ChromaCode, and, as far as I know, just one  
21 common. There's only a couple of those that are really  
22 important to the case. It should be a relatively small task  
23 to get through the Bio-Rad case against ChromaCode. So,  
24 with that said, I think that case can be efficiently  
25 handled, and then we can move on to handling the Caltech

1 patent case. And --

2 THE COURT: So --

3 MR. SALEN: Sorry. Go ahead, your Honor.

4 THE COURT: So what I'm trying to decide is where  
5 the breaking point is between where they diverge, where the  
6 schedules start to diverge, and, just big picture-wise, this  
7 helps give shape to parties' arguments, because I'm trying  
8 to get -- keeping the front side of the schedule pretty  
9 closely in line, aiming for a mid-December claim  
10 construction.

11 Assuming that that order is going to come out, I'm  
12 hoping to do a tentative -- send it out earlier, so that  
13 basically you all -- so, if there's anything which anyone  
14 strongly disagrees with, that I can hear from you, or order  
15 some briefing in tandem, but claim construction order out,  
16 you know, within two to four weeks after that, that  
17 basically then we are -- or possibly even very close in  
18 time.

19 And I am trying to decide whether or not that close of  
20 fact discovery is where the schedules separate, or if it's  
21 the close of expert discovery. So, under one scenario, the  
22 close of fact discovery for both cases would have it at the  
23 same time. I'm saying "both cases" just meaning  
24 Bio-Rad/ChromaCode patents. So say that that was somewhere  
25 two to three months out, so we're looking at March or April,

1 and then, after that, schedules separate.

2           So the close of discovery would occur in terms of the  
3 Bio-Rad patents. The motion for summary judgment would  
4 proceed in terms of those patents. While those -- while the  
5 motion for summary judgment and such is being heard on those  
6 patents and getting briefed, the expert discovery regarding  
7 the ChromaCode patents was happening. The summary judgment  
8 motion would then follow in terms of the ChromaCode patents,  
9 while we were gearing up for the trial in the Bio-Rad  
10 patents.

11           MR. WALTER: I see. It sounds like this is good.  
12 It sounds like what you're suggesting is, in March or April,  
13 there's a common close of fact discovery, and then we do  
14 expert discovery, maybe start staggering things, with the  
15 Bio-Rad patents going first, and then the Caltech patents.

16           THE COURT: Yes. That's what I loosely had in  
17 mind, with, like, moving dates, of whether or not that date  
18 would be a February close of discovery, it would be March,  
19 it would be April. Like, that's what I loosely had in mind,  
20 based on your papers, and which continues to be shaped now  
21 while we're talking.

22           MR. WALTER: Yes. I think that kind of a proposal  
23 might work. I just -- I really feel strongly that it  
24 would -- you know, Mr. Salen sounds like it's not a lot.  
25 There is a lot. There is a lot to do, and, you know, Mr.

1 Salen might be right that we can all get this done in just a  
2 few months, but that's only if this is the only case we work  
3 on.

4 Now, the other thing is, the issue with the IPR is  
5 real. It would be nice to know that IPR was over before we  
6 really start getting into expert reports, and so that's --

7 THE COURT: What is the IPR date, the actual --  
8 the specific? Like, not to be --

9 MR. WALTER: I can tell you when that is, if you  
10 give me just one moment. If you give me just moment, I can  
11 tell you exactly when it's going to be.

12 THE COURT: Great. Because was that in the joint  
13 status -- I saw the '747 update. I didn't see the specific  
14 date for the IPR, the one for the -- yes.

15 MR. WALTER: March 27th.

16 MR. SALEN: That's the deadline for -- yes. But  
17 PTAB normally doesn't wait until the last day. But that's  
18 the last day, yes.

19 MR. WALTER: Actually, they normally do.

20 THE COURT: They've been -- that's -- at least my  
21 experience this last year has been it's been coming out  
22 pretty much --

23 MR. SALEN: I've seen them come out usually, you  
24 know, a week or so in advance, but, yes.

25 THE COURT: So March 27th. So that would put us

1 around -- so --

2 MR. SALEN: Your Honor, I --

3 THE COURT: Well, let me hear reactions to that  
4 proposal, assuming that -- like, let's say I hear what Mr.  
5 Walter is -- I'm hearing Bio-Rad, but clearly express  
6 somewhere in the April time frame in terms of that close of  
7 fact discovery.

8 Mr. Salen, I'm guessing that Caltech is about to tell  
9 me that it would be much -- make more sense to do it closer  
10 to February or March, but let's hear reactions to the  
11 proposal and to that first -- to have that be the breaking  
12 point, fact discovery versus expert discovery, like breaking  
13 off then and tracking, big picture, the way, and then you  
14 could give me a pitch for two months, three months, four  
15 months.

16 MR. SALEN: Sure, your Honor. I mean, the IPR  
17 deadline is -- one, that deadline -- we understand why  
18 Bio-Rad wants the delay, and they have another IPR they want  
19 to file, and they want to try to slow the case down as much  
20 as they can, so that those --

21 THE COURT: Yes, but, Mr. Salen, ChromaCode  
22 decided to bring another patent.

23 MR. SALEN: Well, right. Well, I mean -- and the  
24 patent issue -- yes. So, you know, all of these deadlines,  
25 unfortunately, are controlled by when the things happen,

1 but, yes, when the Patent Office, you know, issues the  
2 patent, but I understand that, and, I mean, there is --

3 THE COURT: We have a schedule.

4 MR. SALEN: Yes, yes. But I would say that the  
5 fact of when the IPR -- for example, even in the '921,  
6 you're right. That -- I mean, that IPR could have been  
7 filed much sooner. Even the '797 patent IPR, like, hasn't  
8 been filed yet. That patent was added to the case back in,  
9 you know, the beginning of the year. So we're talking about  
10 delaying the case because, you know, an IPR petition  
11 hasn't -- you know, based on the deadline or timing of when  
12 Bio-Rad filed their IPR petition.

13 With respect to at least one of the patents, the '170,  
14 that patent is moving forward. It's already survived the  
15 IPR.

16 THE COURT: Yes.

17 MR. SALEN: That case is moving forward, and I  
18 guess we don't see it as different from the '921, as there's  
19 going to be issues. Maybe there's different claims,  
20 obviously, but the specifications are the same. There's a  
21 lot of similarity between the patents. There's common --  
22 you know, we've done claim construction for both of those.

23 Experts are going to have to deal -- we don't think  
24 that it's that inefficient to have experts start working on  
25 their reports before we get the IPR decision, you know, and

1 that's assuming, obviously, that Bio-Rad wins the IPR.  
2 Obviously, we don't think they're going to, so we have that  
3 going, you know, for us, as well. We're sort of  
4 hypothetically trying to plan a schedule around when we  
5 think something might happen, but the case will move on past  
6 the IPR, regardless of what the PTAB does with the '921.

7       And with respect to the damages comment that Mr. Walter  
8 brought up, we disagree that there's a big -- I mean,  
9 there's a difference in what those patents cover, but we  
10 think that the damages case is large for both of them, and  
11 so we just don't see a reason to delay having experts start  
12 working on the case, just to wait for the PTAB to do  
13 something with one of the patents that's in the case, when  
14 there's other -- there's two other patents involved. So we  
15 think it makes sense to start moving forward on expert  
16 reports as soon as possible.

17       The case has been going on for -- I know Mr. Walter  
18 made the observation this is a really fast schedule that  
19 we're proposing. I don't think that's the case. This case  
20 has been pending for a long time. We've finished claim  
21 construction on most of the issues. We've got just a few  
22 more left. It's time to -- we see that as time to move the  
23 case and get -- and if we can finish fact discovery, there's  
24 no reason to wait, artificially, for -- you know, insert a  
25 delay for experts to start working. Let's finish fact

1 discovery and get experts working on the case, and get to  
2 summary judgment, and try to get this thing resolved, you  
3 know, as quickly as possible.

4 THE COURT: Okay.

5 MR. WALTER: May I respond briefly to some of  
6 those points?

7 THE COURT: Yes. I'm going to have you also, Mr.  
8 Walter, list some of the witnesses you're saying are going  
9 to be overlapping between the two, just because I'd like to  
10 hear Mr. Salen's response, when he was saying, "No, no.  
11 It's only the one."

12 MR. WALTER: Sure.

13 THE COURT: So --

14 MR. WALTER: I think my colleague wants -- she has  
15 a -- we have a list of the ChromaCode witnesses we can -- I  
16 can provide.

17 And maybe if you can put that in our TEAMS chat for me,  
18 if you're able. Are you able to do that, Lexi? Thank you.  
19 I appreciate that very much.

20 So, you know, with the one patent that's not subject to  
21 an IPR proceeding, that is different, and the reason it's  
22 different -- this is really easy to understand -- that  
23 particular patent requires that you have a minimum of five  
24 targets that you analyze, and the number of products that  
25 analyze five or more targets is very small. That's just the

1 way it is, so it's different.

2 Mr. Salen says the case is going to go forward no  
3 matter what. Okay? And I think what I'm saying is that,  
4 you know, the case might not keep going forward. If what  
5 ends up happening is the '921 patent is invalidated by the  
6 Patent Office, there wouldn't be a good reason to plow ahead  
7 on that patent, and if the Patent Office needs a  
8 (indiscernible) IPR on the '797 patent, it might not make  
9 sense to plow ahead.

10 And what I'm suggesting is that we would have that  
11 information. We would have that information if we waited  
12 until the March deadline and, you know, we set close of fact  
13 discovery for sometime in April. Then we could have that  
14 information, and we could work it out in a sensible way. It  
15 might not make sense to go forward at that point. It might  
16 make sense to do a stay at that point.

17 Now, with regard to Mr. Salen's --

18 THE COURT: But I think that -- couldn't that  
19 point also happen at the close of fact discovery? It's  
20 not -- I mean, because fact discovery is going to have to be  
21 happening anyway, and so, if that decision comes in, let's  
22 say, at the very beginning of expert discovery, maybe that  
23 works just as well.

24 MR. WALTER: Well, so what I'm suggesting is, if  
25 the beginning of expert discovery is sometime in April, then

1 we'll have all that information. That's what I'm  
2 suggesting. So, if the close of fact discovery, beginning  
3 of expert discovery, is sometime in April, we'll have that  
4 information. If we set the beginning of expert discovery  
5 early in the process, then we're going to have to spend some  
6 effort and weigh some effort doing expert reports on patents  
7 that might be invalidated.

8 THE COURT: But not if the close of expert  
9 discovery is just on the Bio-Rad patents, right? So let's  
10 say the close of fact discovery is the end of February, or  
11 60 days or so after the Court's order, or early March.

12 MR. WALTER: Okay.

13 THE COURT: IPR happens. Bio-Rad -- during this  
14 time period, the Bio-Rad expert discovery expert is going --

15 MR. WALTER: I think that might be a sensible  
16 solution, if you stagger the close of fact discovery. We  
17 still have to make sure we coordinate the depositions,  
18 because that is a real concern --

19 THE COURT: Yes.

20 MR. WALTER: -- which brings up the next point  
21 that you asked, which is, you know, what are these  
22 overlapping witnesses? Now, what you've got to remember is  
23 that the technology, the ChromaCode commercialized, that was  
24 developed at Caltech. Okay? So there's that connection  
25 there.

1           So, with that in mind, the witnesses where there's  
2 going to be at least some overlap, Brett Brown, vice  
3 president of finance information of ChromaCode. He would  
4 have been responsible for commercializing the ChromaCode  
5 technology. So that commercialization of that ChromaCode  
6 technology, that's going to matter not just to potential  
7 infringement by ChromaCode, but also the alleged value of  
8 these Caltech patents.

9           Stephen Chapman, the licensing of Caltech's patents,  
10 that's going to be related to both cases. Fred Farina, the  
11 chief innovation and corporate partnership officer at  
12 Caltech, ownership and licensing of the patents, that's what  
13 he's been designated to testify on. Paul Flook, chief  
14 research and development officer. In the initial  
15 disclosures, also, it's Jeffrey Gole, director of genomics  
16 at ChromaCode.

17           Aditya Rajagopal. Axel Scherer, he's one of the named  
18 inventors. Alex Dickinson, even the third parties who are  
19 involved. He was one of the founders of ChromaCode, one of  
20 the founders of ChromaCode. He's one of the individuals who  
21 took this Caltech technology and started trying to  
22 commercialize it. So he would have been involved in,  
23 potentially, the infringement, and also information  
24 regarding the value and importance of these alleged Caltech  
25 patents. Greg Gosh, is another one.

1           Given the circumstances here, it's really hard to see  
2 how there's not going to be overlap. It's just, it's very  
3 simple. The Caltech technology was eventually  
4 commercialized by ChromaCode. They licensed it. That's not  
5 disputed. Given that, it's just -- it's hard to see how  
6 there's not going to be overlap.

7           MR. SALEN: May I respond, your Honor?

8           THE COURT: Yes, just about the witness points,  
9 and then I'm going to give --

10          MR. SALEN: Just about the witness points.

11          THE COURT: -- I'm going to give counsel some  
12 homework, but we're going to figure -- we're going to shake  
13 this out.

14          MR. SALEN: So there were several witnesses that  
15 were just mentioned that have absolutely nothing to do with  
16 ChromaCode's development of technology that's being accused  
17 of infringing the Bio-Rad patents. The Bio-Rad patent case  
18 does not involve -- it would stretch the realms of  
19 imagination to believe how Stephen Chapman, who is in charge  
20 of licensing technology from Caltech, somehow helped  
21 ChromaCode develop a product that's being accused of  
22 infringing a Bio-Rad patent. He didn't work for ChromaCode.  
23 He didn't have anything to do with development. Same thing  
24 with Fred Farina. Same thing with Alex Scherer, who is an  
25 inventor on the Caltech patents, but never once worked for

1 ChromaCode and has nothing to do with ChromaCode.

2           So there's -- I think there's some sort of  
3 argument that Bio-Rad is trying to make here that, just  
4 because Caltech invented some technology, and licensed that  
5 technology to ChromaCode, that somehow the products that  
6 ChromaCode developed on its own now practice the Bio-Rad  
7 patents, and the inventors or the individuals who were in  
8 charge of licensing that technology from Caltech had  
9 something to do with it. There is no evidence of that.  
10 There's no -- it's just making things up, frankly, your  
11 Honor. Those witnesses have nothing to do with the Bio-Rad  
12 infringement case.

13           And just -- and I'll leave it there, because your Honor  
14 told me to limit my answer to just the witnesses, but I'll  
15 tell you, the one that's mentioned that I know is common is  
16 Aditya Rajagopal. He definitely is an inventor on the  
17 patents, and he definitely helped with the development and  
18 founding of ChromaCode and development of products there.

19           There are several other witnesses there that maybe  
20 Bio-Rad somehow is trying to make some sort of connection  
21 between the two cases. Fine. There may be some overlap,  
22 and if there is some overlap with a few -- with a handful of  
23 witnesses, like we mentioned, we have no problem with  
24 sharing the -- you know, coordinating the depositions and  
25 sharing that testimony, but there should be no reason why we

1 have to hold up one case or the other dependent on -- for  
2 example, the '797 patent claim construction order should  
3 have nothing to do with whether or not the Bio-Rad patent  
4 case moves forward. There's no reason.

5           THE COURT: All right. So here's how I'm going to  
6 suggest we move this forward. I'm just looking at the  
7 calendars right now. I actually have some sense of dates  
8 which might work for a claim construction date. In terms of  
9 the close of fact discovery, we're going to keep the fact  
10 discovery together, and it's going to be the later of either  
11 March 15th or 60 days after the claim construction order.

12           So that starts teeing up, and then I am going to  
13 sequence it so that the expert discovery regarding the  
14 Bio-Rad patents opens first, and then, after that, the  
15 expert discovery for the ChromaCode patents can happen  
16 during the time period of the summary judgment briefing on  
17 the Bio-Rads.

18           That way, the concerns in terms of getting that further  
19 information regarding the IPRs will be there. Getting  
20 Bio-Rad moving, the patents moving, will be there. We'll  
21 have the MSJ happen with that, and we'll set trial with  
22 that, because, at some point, to get the benefit of having  
23 these cases go separate, I need to -- I would like to have  
24 that trial happen in terms of Bio-Rad, the Bio-Rad patents,  
25 so that way those are moving forward.

1           And in terms of claim construction, let me run a few  
2 dates by you, and then we'll -- and then I can get parties'  
3 reactions, because what I'm going to do is then have you all  
4 finalize the schedule with these parameters in mind. So, in  
5 terms of the claim construction hearing, let's say it's  
6 going to be the week of -- let's talk about counsel's  
7 availability the week of December 15th.

8           MR. SALEN: That works.

9           MR. WALTER: We're fine. We're fine right now  
10 during that week.

11          THE COURT: Okay. How about December 18th? It's  
12 a Thursday.

13          MR. SALEN: That works for us, your Honor.

14          THE COURT: Mr. Walter, that works?

15          MR. WALTER: Yes, that works. Yes.

16          THE COURT: So let's plan on December 18th. We've  
17 already had a tutorial. Is there anything in terms of the  
18 new patents that I need -- well, is there a -- are we going  
19 to need a mini-tutorial of anything in terms of this -- I  
20 doubt it -- in terms of the new patent? But do we?

21          MR. WALTER: I think what that boils down to is  
22 how well you think you're going to remember the technology  
23 by the time we get to December. If you want a refresher,  
24 that might make sense. It's up to you, I think. We can  
25 certainly fold it into the hearing, if we need to. That

1 would be my suggestion.

2 THE COURT: I like that idea, but let me -- Mr.  
3 Salen, what are you thinking?

4 MR. SALEN: We -- that works for us, your Honor,  
5 if that's helpful for you and you want to have a brief  
6 refresher. We could either do that as part of a hearing or,  
7 you know, find a way to fold it in.

8 THE COURT: Just in case, because I do have new  
9 staff, let's also take a look at -- I'm just going to put a  
10 backup date, but I feel -- your technology is fresh with me.  
11 I feel really good about it, but, just in case, let's put it  
12 back up, and we'll -- just to have it on calendar.

13 So let's do December 4th. This will be remote.  
14 Actually, you know what? Let's do Friday, December 5th, and  
15 let's do it in the morning -- in the afternoon. Sorry. I  
16 just dropped a criminal matter on my calendar for that day.  
17 Remote on December 5th at 1:30, one hour, just a quick  
18 refresher. We still have your old tutorial from 1:30 to  
19 2:30, if we happen to need it, and we'll vacate it if I want  
20 you to fold it in.

21 So what I'm hoping is, with those parameters, does  
22 counsel think they can go back to the well and just hammer  
23 out the rest of the schedule? I also want to talk to you  
24 about ADR, because your ADR dates were very far apart.

25 MR. WALTER: I think we can. I just want to make

1 sure I understand. The Bio-Rad case will have a close of  
2 expert discovery, then SJ, and the idea is that, in the  
3 ChromaCode case, the expert discovery will be completing  
4 when the SJ is going on in the Bio-Rad case, and then the SJ  
5 in the ChromaCode case will happen after. Is that right?

6 THE COURT: That's correct. And I think the one  
7 thing I'm going back and forth on is "Do we have the trial  
8 first on the Bio-Rad case, before we have the SJs in the  
9 ChromaCode case?," is one. I'm open to suggestions with  
10 that, but that's one -- that which I do have in mind.

11 MR. SALEN: Should we try to schedule through now  
12 that we -- with these dates, and schedule through to trial?

13 THE COURT: Not on the ChromaCode case, I don't  
14 think, but I think keeping in mind of sequencing would be  
15 helpful, of knowing -- in the ChromaCode case trial, I don't  
16 think that necessarily makes sense to calendar, but just  
17 where it falls in, if it falls in before where the summary  
18 judgment falls in, if it falls in before or after the  
19 Bio-Rad trial. But yes, Mr. Salen, I'm happy if you start  
20 thinking -- if you all also propose dates for the trial  
21 dates on -- for the trial dates on the Bio-Rad patent.

22 MR. SALEN: Thank you. But, just to clear, on  
23 that patent and the sequence, you don't want us to propose a  
24 sequence date after that for the Caltech patent case?

25 THE COURT: I'm sorry, Mr. Salen. Can you repeat

1 that one more time?

2 MR. SALEN: For the -- I think we've been calling  
3 them the "ChromaCode patent case" or "Caltech patent," but  
4 you don't -- for the second case, you don't want us to then  
5 sequence the trial, to try to propose trial dates for that  
6 one? Since we're all meeting now, should we just not try to  
7 hammer out the whole schedule?

8 THE COURT: Well, let me ask you all what would  
9 make more sense between having the trial on Bio-Rad first,  
10 versus the summary judgment in the ChromaCode patents. What  
11 do you all think?

12 MR. SALEN: We don't -- from our perspective, we  
13 don't think we need to stagger those dates. At that point,  
14 the cases are unrelated to each other. So we -- in other  
15 words, Bio-Rad patent summary judgment can happen, and we --  
16 whether or not that case involves ChromaCode and Bio-Rad,  
17 those are different -- that's a different case, and there's  
18 no reason for us to stagger out or worry about when that  
19 decision comes in. We should just move forward with the  
20 summary judgment proceedings in the Caltech patent case  
21 independently. There's no -- there should be no dependency  
22 at that point on -- between the two cases. I guess, from  
23 our standpoint, there's no need to worry about it.

24 THE COURT: Right.

25 MR. SALEN: There's no -- we don't need --

1 THE COURT: I don't disagree with that, per se.

2 MR. SALEN: Yes.

3 MR. WALTER: Well, I think it's a scheduling  
4 issue, right? We have a --

5 THE COURT: Right.

6 MR. WALTER: That's what it's about. It's not  
7 about whether they're related. It's what makes the most  
8 sense from a logistics and scheduling standpoint. You know,  
9 I would think, if Mr. Salen wants to have his trial on the  
10 ChromaCode case, it makes sense to do the trial on the  
11 Bio-Rad case and get that out of the way, and so it would  
12 probably be, you know, Bio-Rad trial, then SJ on ChromaCode.

13 MR. SALEN: Yes. We don't understand why you  
14 would have to -- we can do a summary judgment on the Caltech  
15 case right after expert reports close. There's no reason --  
16 and we could make -- well, obviously, we can worry about --  
17 you know, we could figure out a schedule that works, so that  
18 we're not in court, in trial, when we submit, you know, and  
19 arguing summary judgment at the same time. Obviously, we  
20 don't expect those things to happen on, like, co-extensive  
21 dates, but there's no reason -- there's going to be trial  
22 prep and things like that that we have to do.

23 We both have -- we're both at large law firms. I  
24 understand, Mr. Walter. You guys are going to trial next  
25 week, too, in another case. But, you know, this isn't just

1 about us. This is about our clients, and our clients want  
2 to have their day in court, and don't want to wait for our  
3 schedules. So I think --

4 THE COURT: Well, I mean, but there is also just  
5 one judge. So, I mean, I would just be mindful about that  
6 when you're scheduling that. I agree that these can be --  
7 that there's not -- one does not preclude the other, that  
8 these can't be happening at the same time, but you all can  
9 brief while we're in trial. I can leave that up to you.  
10 But, if you're suddenly giving me a schedule where the  
11 summary judgment motion is happening in the middle of your  
12 trial dates, not going to happen.

13 MR. SALEN: Yes.

14 THE COURT: So --

15 MR. SALEN: We understand the hearing date, your  
16 Honor. We won't, obviously, do that, but yes, we don't see  
17 a reason that we need to build in some sort of artificial  
18 delay so that -- based on the attorneys' schedules.

19 THE COURT: But, in terms of whether or not we  
20 should set the ChromaCode trial right now, we have some  
21 time. That's fine. I'm not opposed to doing that, but  
22 right now I would just like to get the rest of the schedule  
23 going. So, if you want to propose a trial date, you all can  
24 reach an agreement with that, fine. I think a lot can  
25 happen in this time period between the IPRs and between

1 everything else, and between, you know --

2 MR. SALEN: Yes.

3 THE COURT: So, up to you all. You all can  
4 propose a trial date for the ChromaCode -- I'm not -- it's  
5 fine. But, for me, I want everything else set, and that's  
6 going to take plenty of meeting and conferring.

7 Mr. Walter.

8 MR. WALTER: I'm sorry. I want to be very  
9 up-front about that. We do not want to propose a ChromaCode  
10 trial date now, and the reason is, is because -- I don't  
11 know if you're aware, the way things are with PTAB. There's  
12 a trial date, we may not even be able to get an IPR off the  
13 ground.

14 THE COURT: I did hear about this. So, actually,  
15 I agree with that, as well. So we're going to hold off on  
16 that, just because -- we can revisit the ChromaCode trial  
17 date, because we will have a case management conference  
18 after the claim construction hearing, per normal, even  
19 though the schedule has pretty much been set for much of  
20 this, but why don't we plan on doing it that way.

21 MR. SALEN: Your Honor, I'm sorry. They haven't  
22 filed an IPR yet, so we're kind of hypothetically -- I  
23 don't -- I just, you know --

24 THE COURT: Well, there's one IPR which has been  
25 instituted, correct?

1 MR. SALEN: There is, but that's already  
2 instituted. So that's not --

3 THE COURT: Right.

4 MR. SALEN: Setting a trial date will not affect  
5 that one, but setting a trial date -- and to the extent it  
6 affects some IPR that hasn't even been filed yet, I don't  
7 know why we're -- like, I mean, that seems like it's not --  
8 you know, obviously, it helps Bio-Rad out. I agree that's a  
9 very favorable thing to do for the Defendants, but I don't  
10 think that it necessarily makes sense to worry about that  
11 date, right, or about the institution decision as a factor  
12 as to why we wouldn't set a trial date.

13 THE COURT: Well, (Zoom glitch) fair, but for me,  
14 for right now, I'm just trying to get through our schedule  
15 with everything else, and I am saying I'm more than happy to  
16 revisit the ChromaCode patent trial date after the claim  
17 construction order, which is being caused by ChromaCode  
18 bringing another patent.

19 So why don't we do that. We'll set the trial date, and  
20 I can even set a trial-setting conference for one month  
21 after or two months after the claim construction hearing.  
22 That's all fine, but I really want to hammer out the rest of  
23 the schedule, and because of various reasons, including -- I  
24 want to make sure the order was out, like -- and I  
25 appreciate parties had sent that to me in June. I just want

1 to make sure now that we have a schedule set within the next  
2 couple weeks.

3       So let's go through -- and I will include a  
4 trial-setting conference for March or whenever, but let's go  
5 ahead and make sure we get the rest of this done. So I'm  
6 going to ask the parties to meet and confer. I'm just  
7 looking through your -- you have your proposed dates. Today  
8 is the date for proposed claim construction terms. You all  
9 will continue with your proposed -- you have September 12th  
10 in common. Then you have the deadline for Bio-Rad to  
11 substantially complete its ESI production.

12       I feel like those, the joint claim construction  
13 statement, we can probably go with Defendant's proposal of  
14 October 1st, given -- but I will let you all meet and confer  
15 about the dates -- up through claim construction, with the  
16 claim construction being scheduled now for December 18th at  
17 1:30, as well as the tutorial two weeks beforehand. You  
18 have your -- the deadline for mediation is a big swing  
19 between September 22nd and November 1st. I'm going to let  
20 you all meet and confer about that. You're going to do --

21               MR. SALEN: We can go with November 1st, if  
22 that's -- and we can always do it sooner, if the parties  
23 want to do it sooner, obviously.

24               THE COURT: Right. So we'll put the ADR deadline  
25 for November 1st, 2025.

1 MR. WALTER: I just want to be clear this isn't a  
2 situation where the parties have never talked. We actually  
3 did to a mediation. I think it was with Judge Van Keulen,  
4 when we were in the case, and so, you know, this wouldn't be  
5 the first time the parties have done a mediation, as your  
6 Honor is aware.

7 THE COURT: Thank you.

8 And so, then, from that point, I think you have my --  
9 so the close of fact discovery, the later of 60 days after  
10 the claim construction order, but I -- yes -- or March 15th,  
11 and then you will sequence the close of expert discovery  
12 beginning with the Bio-Rad patents, and then going into the  
13 summary judgment motions as to the Bio-Rad patents, once  
14 those summary judgment motions and such are underway,  
15 picking up then on the ChromaCode expert discovery, but,  
16 like, you see where I'm trying to go with that.

17 So basically the cases will run on different tracks  
18 beginning with the expert discovery, and they will -- you  
19 will sever the cases at that point. They will remain  
20 related.

21 In and around March 15th, I'm happy to set a trial --  
22 sometime in March or April, I'm more than happy to set a  
23 trial-setting conference for the ChromaCode patents, Mr.  
24 Salen, if you would like. If you just want to put a date on  
25 calendar, I can do that now.

1 MR. SALEN: Okay. I don't know -- whenever the  
2 Court is available. That week is fine for us.

3 THE COURT: I'm looking at my calendar. So we're  
4 going to set that for -- we're either looking at March --  
5 just looking at the rest of my calendar, claim construction.  
6 Let's do March 11th, in the afternoon.

7 MR. WALTER: You said March 11th?

8 THE COURT: Yes, at 1:30.

9 So I'm going to order the parties to meet and confer,  
10 and submit a proposed schedule within seven days to the  
11 Court, including these dates, after having met and  
12 conferred, and this schedule should incorporate through the  
13 MSJ on the ChromaCode patents, as well as should include  
14 proposed trial dates for the Bio-Rad patents.

15 Propose at least three different trial dates, beginning  
16 on a Monday. If you want to confirm dates which the Court  
17 is dark, you can double-check with Laura. If you need  
18 additional time for the schedule -- I think you all are set  
19 right now in your schedule through September, through  
20 mid-September. If you need additional time, let me know,  
21 but I assume that within a week will probably work.

22 MR. SALEN: Thank you, your Honor. That works for  
23 us.

24 THE COURT: Okay. And, Ms. Smith, my apologies.  
25 I realized, when I said, "Drop it in the chat," there

1 weren't -- the chat function is down. I forgot about that,  
2 that we disabled that. So thank you for quickly sending  
3 them to Mr. Walter, so he had his names.

4 MS. SMITH: No problem.

5 THE COURT: Any questions regarding the Court's  
6 orders, or any concerns regarding the Court's proposal,  
7 other than the ones you've already stated? I know you have  
8 concerns, but other than the ones you've stated?

9 MR. SALEN: Not from us, your Honor.

10 THE COURT: Okay. Mr. Walter?

11 MR. WALTER: I have nothing more. Thank you.

12 THE COURT: All right. Thank you, everybody.

13 Good luck with trial, Mr. Walter. I will see you all, my  
14 guess is plenty of times, this fall. Aim for three, but  
15 we'll see what happens. I gave you my range. So, fair  
16 enough. All right. Take care, everybody.

17 MR. WALTER: You, too.

18 THE COURT: So the court is now adjourned.

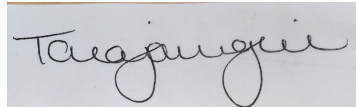
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I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



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Thursday, September 25, 2025