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Attorneys for Defendant and Counter-
Plaintiff BIO-RAD
LABORATORIES, INC.

22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA

24 IN RE: CHROMACODE LITIGATION

CASE NO. 5:23-cv-04823-EKL
(Consolidated)

**JOINT PROPOSED CASE
SCHEDULE AND [~~PROPOSED~~]
ORDER**

****AS MODIFIED****

Judge: Honorable Eumi K. Lee

1 Plaintiffs California Institute of Technology (“Caltech”) and ChromaCode,
 2 Inc. (“ChromaCode”) and Defendant Bio-Rad Laboratories, Inc. (“Bio-Rad”) submit
 3 this Joint Proposed Case Schedule (“Schedule”) and [Proposed] Order pursuant to
 4 the Court’s August 29, 2025 Minute Order (Dkt. No. 141) and the August 27, 2025
 5 Case Management Conference.

6 **I. Schedule**

7 The parties propose that the Court enter the following schedule.

Event	Parties’ Proposal	Court’s Scheduling Order
Exchange of Preliminary Constructions (PLR 4-2(a)) ¹	September 12, 2025	September 12, 2025
Deadline for Bio-Rad to substantially complete its ESI production	September 22, 2025	September 22, 2025
Joint Claim Construction/Prehearing Statement (PLR 4-3) ²	October 1, 2025	October 1, 2025
Caltech’ Damages Contentions (PLR 3-8)	October 1, 2025	October 1, 2025

23 _____
 24 ¹ To streamline proceedings, the parties need not exchange the materials listed in
 25 Patent L.R. Rule 4-2(b).

26 ² To streamline proceedings, the parties need not include in the joint claim
 27 construction statement the identification of intrinsic and extrinsic evidence listed in
 28 Patent L.R. 4-3(b). The joint claim construction statement still must include the
 parties’ competing constructions.

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Event	Parties' Proposal	Court's Scheduling Order
Bio-Rad's Responsive Damages Contentions (PLR 3-9)	October 29, 2025	October 29, 2025
Parties' Opening Claim Construction	October 29, 2025	October 29, 2025
Deadline for Mediation	November 1, 2025	November 1, 2025
Parties' Responsive Claim Construction Brief	November 12, 2025	November 12, 2025
Claim Construction Tutorial	December 5, 2025 at 1:30 p.m. (via Zoom)	December 5, 2025 at 1:30 p.m. (via Zoom)
Claim Construction Hearing	December 18, 2025 at 1:30 p.m.	December 18, 2025 at 1:30 p.m.
Advice of Counsel (Patent L.R. 3-7)	30 days after service by the Court of its Claim Construction Ruling	30 days after service by the Court of its Claim Construction Ruling
Trial Setting Hearing (Caltech Patent Case)	March 11, 2026 at 1:30 p.m. (via Zoom)	March 11, 2026 at 1:30 p.m. (via Zoom)
Close of Fact Discovery	The latter of March 15, 2026 or 60 days after the Claim Construction Order	The latter of March 15, 2026 or 60 days after the Claim Construction Order
Deadline to Serve Opening Expert Disclosures for Party with Burden (Bio-Rad Patent Case)	The latter of April 24, 2026 or 30 days after the close of fact discovery	The latter of April 24, 2026 or 30 days after the close of fact discovery

Event	Parties' Proposal	Court's Scheduling Order
Deadline to Serve Rebuttal Expert Disclosures (Bio-Rad Patent Case)	The latter of May 29, 2026 or 45 days after the opening reports	The latter of May 29, 2026 or 45 days after the opening reports
Close of Expert Discovery (Bio-Rad Patent Case)	The latter of June 26, 2026 or 30 days after rebuttal reports	The latter of June 26, 2026 or 30 days after rebuttal reports
Deadline to File Summary Judgment and Daubert Motion Opening Briefs ³ (Bio-Rad Patent Case)	The latter of July 22, 2026 or 30 days after the close of expert discovery	The latter of July 22, 2026 or 30 days after the close of expert discovery

³ Plaintiff ChromaCode intends to seek leave to file an early motion for summary judgement for non-infringement in the Bio-Rad Patent Case well in advance of this deadline, and likely before fact discovery is closed, based on the fact that none of the five products Bio-Rad accused of infringing the Bio-Rad Patents actually infringe, i.e., ChromaCode's COVID assay, from which nearly all of ChromaCode's accused sales were made, does not multiplex (*i.e.*, detect more targets than color channels) as is required by all of the asserted patent claims, and although the other four accused assays do multiplex, they do not perform digital PCR and/or other required claim limitations. These facts are easily verifiable in documents ChromaCode has long since produced to Bio-Rad and were explained in a February 14, 2025 letter to which Bio-Rad never substantively responded. Further, ChromaCode no longer sells any commercial products (such that injunctive relief is no longer viable), and is on the cusp of going out of business if the Bio-Rad Patent Case is not promptly resolved. And, while Bio-Rad continues to contend that ChromaCode "started" this action, in reality, ChromaCode only filed suit for declaratory relief to defend itself against Bio-Rad's infringement allegations raised in a September 6, 2023 letter Bio-Rad sent to ChromaCode.

Bio-Rad disagrees that leave to file such an early summary judgment motion is appropriate and Bio-Rad reserves its rights to respond to any ChromaCode request for leave to amend if and when it is filed. Bio-Rad further objects to ChromaCode's insistence that this submission include ChromaCode's position as to the appropriateness of an early summary judgment motion, which is not in the scope of the Court's order requiring the parties to submit a joint proposed schedule. Bio-Rad notes here though that it disagrees with ChromaCode's position as to its

Event	Parties' Proposal	Court's Scheduling Order
Deadline to File Summary Judgment and Daubert Motion Opposition Briefs (Bio-Rad Patent Case)	The latter of August 5, 2026 or 14 days after the filing of opening briefs	The latter of August 5, 2026 or 14 days after the filing of opening briefs
Deadline to File Summary Judgment and Daubert Motion Reply Briefs (Bio-Rad Patent Case)	The latter of August 14, 2026 or 9 days after the filing of opposition briefs	The latter of August 14, 2026 or 9 days after the filing of opposition briefs
Hearing on Summary Judgment and Daubert Motions (Bio-Rad Patent Case)	August 26, 2026 or at least 35 days after filing of opening briefs (pursuant to Court's availability)	September 16, 2026 or at least 28 days after the close of briefing (pursuant to the Court's availability)
Deadline to Serve Opening Expert Disclosures for Party with Burden (Caltech Patent Case)	The latter of June 26, 2026 or the close of expert discovery on the Bio-Rad Patents ⁴	The latter of June 26, 2026 or the close of expert discovery on the Bio-Rad Patents

infringement of Bio-Rad's patents. Furthermore, Bio-Rad is entitled to take fact and expert discovery on its infringement claims. For instance, Bio-Rad seeks both past damages and an injunction preventing future infringement, and Bio-Rad is continuing to develop the facts to support those claims for relief. ChromaCode incorrectly claims that injunctive relief is "no longer viable" because ChromaCode is not selling any commercial products at the moment, while remaining silent as to ChromaCode's other accused infringing activities and ChromaCode's future sales plans. Injunctive relief is available "to prevent the violation of any right secured by a patent," not just current commercial sales. *See* 35 U.S.C. § 283. In short, Bio-Rad is entitled to discovery the extent of ChromaCode's infringement, and ChromaCode is not entitled summary judgment without that discovery simply because ChromaCode does not believe there is sufficient money at stake in an action that ChromaCode itself started.

⁴ Plaintiff's position is that, if the Bio-Rad Patent Case resolves prior to June 26, 2026, then the Caltech Patent Case opening expert report deadline should be reset to

Event	Parties' Proposal	Court's Scheduling Order
Deadline to Serve Rebuttal Expert Disclosures (Caltech Patent Case)	45 Days After the Deadline to Serve Opening Expert Reports in the Caltech Patent Case	45 Days After the Deadline to Serve Opening Expert Reports in the Caltech Patent Case
Close of Expert Discovery (Caltech Patent Case)	30 Days After the Deadline to Serve Rebuttal Expert Reports in the Caltech Patent Case	30 Days After the Deadline to Serve Rebuttal Expert Reports in the Caltech Patent Case
Deadline to File Summary Judgment and Daubert Motion Opening Briefs (Caltech Patent Case)	30 Days After the Close of Expert Discovery in the Caltech Patent Case	30 Days After the Close of Expert Discovery in the Caltech Patent Case
Deadline to File Summary Judgment and Daubert Motion Opposition Briefs (Caltech Patent Case)	14 Days After the Deadline to File Opening Briefs in the Caltech Patent Case	14 Days After the Deadline to File Opening Briefs in the Caltech Patent Case
Deadline to File Summary Judgment and Daubert Motion Reply Briefs (Caltech Patent Case)	9 Days After the Deadline to File Opposition Briefs in the Caltech Patent Case	9 Days After the Deadline to File Opposition Briefs in the Caltech Patent Case

the latter of 30 days after the close of fact discovery and the date the Bio-Rad Case resolves.

Bio-Rad disagrees. It is entirely premature to take any position on such a remote and unlikely possibility.

Event	Parties' Proposal	Court's Scheduling Order
Hearing on Summary Judgment and Daubert Motions (Caltech Patent Case)	12 Days After the Deadline to File Reply Briefs in the Caltech Patent Case (pursuant to Court's availability)	At least 28 days after the close of briefing (pursuant to the Court's availability)
Joint Pre-Trial Statement (Bio-Rad Patent Case)	October 21, 2026	November 9, 2026
Final Pre-Trial Conference (Bio-Rad Patent Case)	November 4, 2026 (pursuant to Court's availability)	December 9, 2026
Trial (5 days) (Bio-Rad Patent Case)	December 14, 2026; January 11, 2027; or January 25, 2027	January 11, 2027

II. Other Discovery Issues and Limits

The parties respectfully request that the Court adopt the following discovery limits for the consolidated case as follows:

- 50 interrogatories per Party;
- 50 requests for admission per Party; and
- 100 hours of individual fact witness depositions per side.

Dated: September 3, 2025

SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP

By: /s/Jesse A. Salen
 Jesse A. Salen
 Counsel for Plaintiffs

Dated: September 3, 2025

JONES DAY

By: /s/Derek Walter
 Derek Walter
 Counsel for Defendant

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Signature Certification

Pursuant to Local Rule 5-1(i)(3), I hereby certify that the content of this document is acceptable to Derek Walter counsel for Bio-Rad Laboratories, Inc. and that I have obtained Mr. Walter’s authorization to affix his electronic signature to this document.

Dated: September 3, 2025 /s/Jesse A. Salen
Jesse A. Salen

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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated: September 22, 2025



UNITED STATES DISTRICT JUDGE