

EXHIBIT F

HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY

- Deposition testimony of Dora Gruner and all exhibits marked and used therein;
- Deposition testimony of Patrick Soon-Shiong and all exhibits marked and used therein.

NantWorks' investigation of this matter is ongoing, and its response to this Interrogatory will be supplemented as additional information becomes known to it, including through Defendants' supplementation of its responses to NantWorks' outstanding discovery requests and through depositions that have not yet occurred.

INTERROGATORY NO. 18:

Identify all factual and legal bases for NantWorks's contention that the Asserted Claims are not anticipated or rendered obvious by the prior art.

RESPONSE TO INTERROGATORY NO. 18 (Sep. 13, 2021):

NantWorks incorporates each of its General Objections by reference. NantWorks further objects to this Interrogatory to the extent that: (i) it is vague and ambiguous; (ii) it is overbroad and unduly burdensome and duplicative of other discovery including other Interrogatories; (iii) it seeks information that is not relevant; (iv) it is compound and consists of multiple interrogatories; (v) it seeks information in a format or at a level of detail other than that which is ordinarily kept and maintained by NantWorks in its regular course of business; (vi) it is premature because it seeks information and contentions that will be the subject of expert discovery, which has not occurred yet; (vii) it seeks information subject to attorney-client privilege, attorney work product immunity, or other privilege or immunity against disclosure.

Based on its investigation to date and subject to and without waiving its objections, NantWorks responds as follows:

This Interrogatory is both overbroad and premature. According to the schedule

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1 Asserted Claims and Defendants will still need to further reduce their asserted prior
2 art. This Interrogatory is overbroad and premature at least until after said reductions
3 take place. Furthermore, this Interrogatory is premature in that it requests information
4 that will be provided in expert discovery. NantWorks will provide expert report(s)
5 containing information responsive or relevant to this Interrogatory and its position on
6 the lack of anticipation or obviousness as relevant to the Asserted Claims at the
7 appropriate time and in accordance with applicable rules and the Case Schedule set in
8 this case.

9
10 **SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 18 (Dec. 20,**
11 **2023):**

12 Subject to and without waiving any Objections to Definitions and Instructions,
13 General Objections, or specific objections in its prior responses, NantWorks
14 supplements its response to this Interrogatory as follows based on its investigation to
15 date:

16 NantWorks also objects to Bank of America's attempt to use this interrogatory
17 to shift its burden regarding proof of invalidity. Bank of America has the burden of
18 proving that the patents-in-suit are invalid. This never shifts. *See SFA Systems, LLC*
19 *v. Amazon.com, Inc. et al, LLC*, No. 6:11-cv-052-LED (E.D. Tex. April 11, 2013) ("It
20 is premature to compel NantWorks to provide a substantive response to Interrogatory
21 No. 6. Defendant bears the burden of proving that the patents-in-suit are invalid for
22 failure to meet the written description requirement. Therefore, after Bank of America
23 has met its initial burden through its expert report, NantWorks may rebut Bank of
24 America's position, but not vice versa.") (cleaned up); *Tech Licensing Corp. v.*
25 *Videotek Inc.*, 545 F.3d 1316, 1327 (Fed. Cir. 2008); *Microsoft Corp. v. i4i Ltd.*
26 *Partnership*, 131 S. Ct. 2238, 2243 (2011) ("[T]he burden of proving invalidity [is]
27 on the attacker. That burden is constant and never changes.").

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1 Subject to, and without waiving, the foregoing Specific and General
2 Objections, NantWorks states that under 35 U.S.C. § 282, all the claims of the
3 Asserted Patents are presumed to be valid, including with respect to the requirements
4 of 35 U.S.C. § 101, 102, 103, and 112. *See* 35 U.S.C. § 282(a) and (b)(3)(A). This
5 presumption of validity is also fully supported by the presumption of administrative
6 correctness, as the Asserted Patents were all duly issued by the United States Patent
7 & Trademark Office (“USPTO”), and the USPTO would not have issued the Asserted
8 Patents if they failed to comply with the requirements of any of 35 U.S.C. §§ 101,
9 102, 103, and 112. Moreover, under 35 U.S.C. § 282, Defendants bear the burden of
10 establishing (by clear and convincing evidence) any invalidity, including invalidity
11 for failure to satisfy the requirements of 35 U.S.C. §§ 101, 102, 103, and 112. *See* 35
12 U.S.C. § 282(a) and (b)(3)(A). As the Supreme Court recently noted: Under the Patent
13 Act, and the case law before its passage, a patent is presumed valid. That presumption
14 takes away any need for a plaintiff to prove his patent is valid to bring a claim. *Commil*
15 *USA, LLC v. Cisco Sys., Inc.*, 135 S. Ct. 1920, 1929 (2015) (internal citations and
16 quotation marks omitted). Thus, NantWorks is not required to prove validity, which
17 this Interrogatory appears to seek.

18 Further, NantWorks’s position is that all issued claims of the Asserted Patents
19 are valid and are in full compliance with the requirements of 35 U.S.C. § 101, 102,
20 103, and 112. To the extent that Bank of America asserts a specific invalidity
21 challenge in its final invalidity contentions, NantWorks will provide a rebuttal to such
22 a challenge during the expert phase of this litigation.

23 **I. PRIOR ART REFERENCES**

24 NantWorks objects to the identification of the IBM QBIC and HP Cooltown
25 related prior art in Bank of America’s Final Election of Prior Art and in Bank of
26 America’s final invalidity contentions of September 8, 2023.

27 **A. IBM QBIC Related Prior Art**

28

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