

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIQUIDIA TECHNOLOGIES, INC.,

Petitioner,

v.

UNITED THERAPEUTICS CORPORATION,

Patent Owner.

Case IPR2020-00770
Patent 9,604,901

**PATENT OWNER'S OBJECTIONS TO PETITIONER'S SUPPLEMENTAL
EVIDENCE SUBMITTED WITH PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE**

Patent Owner United Therapeutics Corporation (“Patent Owner”) hereby objects to the admissibility of certain evidence submitted on June 1, 2021 concurrently with Petitioner’s Opposition to Patent Owner’s Motion to Exclude (Paper 32). Patent Owner’s objections are based on the Federal Rules of Evidence (“FRE”), relevant case law, federal statute, and the Patent Trial and Appeal Board (“PTAB”) Rules. Patent Owner’s objections are set forth with particularity below.

EXHIBIT 1049

Exhibit 1049 is described as “Affidavit of Boris Levine certifying Translation of Japanese Patent App. No. 56-122328A to Kawakami, et al., previously submitted as Ex. 1011 in *Steadymed Ltd. v. United Therapeutics Corp.*, IPR2016-00006.” Patent Owner objects to Exhibit 1049 under FRE 802 without exception. Exhibit 1052 is declaration testimony that is being offered for its truth but is not subject to cross examination.

Patent Owner objects to Exhibit 1049 as unfairly prejudicial under FRE 403. On October 27, 2020, Patent Owner timely objected to Exhibit 1012, described as “Certified English translation of Japanese Patent App. No. 56-122328A to Kawakami, et al. (‘Kawakami’), for the following reasons: “Patent Owner objects to Exhibit 1012 under FRE 802, including to the extent Petitioner has asserted that the translation is a true and accurate representation of the original

Japanese-language patent....” (Paper 10 at page 9). Pursuant to 37 C.F.R. § 42.64(b)(2), Petitioner had the opportunity to “respond to the objection by serving supplemental evidence within ten business days of service of the objection.” Petitioner failed to respond within the allotted 10 business days and instead now seeks to belatedly cure this deficiency by introducing supplemental evidence in the form of Exhibit 1049 months after Patent Owner’s objections were served. Accordingly, Exhibit 1049 should not be admitted or considered because its filing is untimely, contravenes 37 C.F.R. § 42.64(b)(2), on which Patent Owner is entitled to rely in briefing the case, and would unfairly prejudice Patent Owner.

EXHIBIT 1052

Exhibit 1052 is described as “Supplemental Declaration of Sylvia Hall-Ellis, Ph.D.” Patent Owner objects to Exhibit 1052 under FRE 802 as hearsay without exception. Exhibit 1052 is declaration testimony that is being offered for its truth but is not subject to cross examination.

Patent Owner additionally objects to Exhibit 1052 as unfairly prejudicial under FRE 403. On October 27, 2020, Patent Owner timely objected to Exhibit 1015, described as “Declaration of Sylvia Hall-Ellis, Ph.D.” (see Paper 10 at pages 11-13) under, among other rules, FRE 702(b) as unreliable. Pursuant to 37 C.F.R. § 42.64(b)(2), Petitioner had the opportunity to “respond to the objection by

serving supplemental evidence within ten business days of service of the objection.” Petitioner failed to timely respond and instead now seeks to cure this deficiency by introducing supplemental evidence in the form of Exhibit 1052 months after Patent Owner’s objections were served. Accordingly, Exhibit 1052 should not be admitted or considered because its filing is untimely, contravenes 37 C.F.R. § 42.64(b)(2), and would unfairly prejudice Patent Owner.

Respectfully submitted,

Date: June 8, 2021

/Stephen B. Maebius/
Stephen B. Maebius
Registration No. 35,264
Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Patent Owner's Objections to Petitioner's Supplemental Evidence Submitted with Petitioner's Opposition to Patent Owner's Motion to Exclude was served on counsel of record on June 8, 2021, by filing this document through the PTAB E2E System as well as delivering a copy via email to the counsel of record for the Petitioner at the following addresses:

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Date: June 8, 2021

/Stephen B. Maebius/
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