

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIQUIDIA TECHNOLOGIES, INC.,

Petitioner,

v.

UNITED THERAPEUTICS CORPORATION,

Patent Owner.

Case IPR2021-00406

Patent 10,716,793

**PETITIONER'S IDENTIFICATION OF PORTIONS OF PATENT
OWNER'S RESPONSE TO WHICH IDENTIFIED REPLY EVIDENCE
AND ARGUMENTS ARE RESPONSIVE**

Pursuant to the Board's email dated February 15, 2022, and in compliance with page 74 of the Trial Practice Guide, Petitioner identifies by page number and exemplary language the portions of Patent Owner's Response to which the objected-to exhibits and arguments (identified by Patent Owner in Paper 47) are responsive.

1) The following are responsive to Patent Owner Response pages 12-14, *e.g.*:

Petitioner has failed to show that either Voswinckel JAHA (EX1008) or Voswinckel JESC (EX1007) were received by a library before the priority date. Neither reference contains a "received by" or "accepted" stamp or notation EX2041^[1], ¶¶13, 18-19, 33. [. . .] Importantly, supplements compiling conference abstracts can sometimes publish years after the conference in question, putting the *Circulation* and *EHJ* Supplements' availability (if any) past the priority date. EX2041, ¶¶10-11, 30-31. . . . Accordingly, Petitioner has not provided any evidence showing if or when *Circulation* and *EHJ* Supplements were actually received by a library. *Id.* at ¶¶14, 27, 33; *see also* EX2043, 150:16-151:7, 157:6-11, 217:11-13, 222:1-10.

- **EX1089-1096, 1116, 1119, 1123-1129**
- **Reply citations Nos. 1-3, 5-8 in Paper 47**

¹ EX2041 is the Declaration of Ms. Pilar Wyman, to which the objected-to exhibits and arguments also respond.

- **EX1106 citations Nos. 1-3, 5-8 in Paper 47²**
- **EX1112 citations to EX1089-1096, 1116, 1119, 1123-1129**

2) The following are responsive to Patent Owner Response pages 14-16, *e.g.*:

Petitioner has not offered any evidence that Voswinckel JAHA and Voswinckel JESC were meaningfully catalogued or indexed at a library or in a database before the priority date, or why and how a POSA would search for or find the *Circulation* and *EHJ* Supplements. *See* EX2041, ¶¶16-17, 34-37. Even if a POSA found the Supplements, Voswinckel JAHA shares the page with three-and-a-half other abstracts and is just one of many thousands of abstracts spanning 1,102 pages in the full version of the *Circulation* Supplement. *Id.* at ¶10. Petitioner has not submitted any evidence that the *Circulation* Supplement contained a table of contents or subject matter index through which the cited abstract (number 1,414) could be located. *Id.* at ¶¶7-8, 25-26. Similarly, Voswinckel JESC cited by Petitioner shares the page with three other abstracts and is just one of 3,850 abstracts spanning over 700 pages in the full version of the *EHJ* Supplement. *Id.* at ¶28. Although there is a list of “Contents” included within Voswinckel JESC, it is not organized alphabetically or otherwise ordered by subject. *Id.* at ¶35. As a result, Petitioner has not shown that the POSA could locate either Voswinckel JAHA or JESC using reasonable diligence.

- **EX1092, 1095, 1113**

² Other than footnote 4, all identified citations to EX1091 and EX1093 are accompanied by identical citations to EX1007 and EX1008 filed with the Petition.

- **Reply citations Nos. 4, 7, 11 in Paper 47**
- **EX1106 citations Nos. 4, 7, 11 in Paper 47**
- **EX1112 citations to EX1092, 1095, 1113**

3) The following are responsive to Patent Owner Response pages 12 and 14-17, *e.g.*:

[A] reference is considered publicly accessible only if it was “disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art exercising reasonable diligence[] can locate it.” [. . .] Petitioner has not shown that the POSA could locate either Voswinckel JAHA or JESC using reasonable diligence. [. . .] It is undisputed that Voswinckel JAHA and Voswinckel JESC remain difficult to find even today. [. . .] Ms. Wyman searched all of the databases cited by Dr. Hall-Ellis (*see id.* at 41:1-42:4; 242:11-243:18 (listing Ovid, PubMed, MEDLINE, Index Medicus, and Chemical Abstracts)), but neither abstract is listed in any of these databases today[.] . . . EX2041, ¶¶5, 16-17, 37.

- **EX1104-1105, 1117-1118, 1120-1122**
- **Reply citations Nos. 9-10 in Paper 47**
- **EX1106 citation No. 9-10 in Paper 47**
- **EX1112 citations to EX1104, 1117-1118, 1120-1122**

4) The following are responsive to Patent Owner Response pages 16-17, *e.g.*:

Moreover, the *Circulation* Supplement cannot be found on the *Circulation* Journal’s website, AHA online archives, or even in a list of supplements to the journal. [EX2041] at ¶¶12, 15.

- **EX1114-1115**
- **EX1112 citations to EX1114-1115**

IPR2021-00406
Patent 10,716,793 B2

Respectfully submitted,

Dated: February 28, 2022

/Eric B. Milch/

Erik B. Milch
Registration No. 42,887
Counsel for Petitioner

COOLEY LLP
ATTN: Patent Group
1299 Pennsylvania Avenue NW
Suite 700
Washington, D.C. 20004
Tel: (703) 456-8573
Fax: (703) 338-4684

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.