

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIQUIDIA TECHNOLOGIES, INC.,

Petitioner,

v.

UNITED THERAPEUTICS CORPORATION,

Patent Owner.

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Case IPR2021-00406

Patent 10,716,793

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**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<sup>[1]</sup>, ¶¶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**

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<sup>1</sup> 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 47<sup>2</sup>**
- **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**

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<sup>2</sup> 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**

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Respectfully submitted,

Dated: February 28, 2022

/Eric B. Milch/

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