

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 _____
3 BEFORE THE PATENT TRIAL AND APPEAL BOARD

4 _____
5 LIQUIDIA TECHNOLOGIES, INC.,

6 Petitioner;

7 -v-

8 UNITED THERAPEUTICS CORPORATION,

9 Patent Owner.

10
11 The Remote Deposition of SYLVIA HALL-ELLIS, PH.D.,
12 having been called by the Patent Owner for
13 examination, taken pursuant to all applicable rules,
14 conducted via Zoom videoconference, and commencing at
15 the hour of 9:00 a.m. Mountain Time on the 11th day
16 of March, 2022.

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20
21
22
23 Reported By Beth Radtke, RPR, CRR

24 License No. 084-004561

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1 APPEARANCES

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3 WITNESS PAGE

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1 (Witness sworn.)

2 MR. HOUSTON: Good morning, Dr. Hall-Ellis.

3 My name is Mike Houston with the law firm of Foley &

4 Lardner, and I represent the patent owner, United

5 Therapeutics, in this proceeding, and I'll pause a

6 moment to give opposing counsel to introduce

7 themselves on the record.

8 MS. KANNAPPAN: This is Deepa Kannappan from

9 Cooley, LLP on behalf of petitioner, Liquidia

10 Technologies.

11 SYLVIA HALL-ELLIS, PH.D.,

12 having been first duly sworn, was examined and

13 testified as follows:

14 EXAMINATION

15 BY MR. HOUSTON:

16 Q. Would you just clearly identify yourself for

17 the record, stating your name and address, please?

18 A. I'm Dr. Sylvia Hall-Ellis. I live in

19 Denver, Colorado.

20 Q. Dr. Hall-Ellis, I'm sure you recall we did a

21 deposition earlier in this proceeding not too long

22 ago, so I presume you don't need me to go over the

23 ground rules again this morning; is that correct?

24 A. Yes.

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1 Q. Okay. I think the main one that I will just

2 remind you of is that because we have a court

3 reporter on this Zoom call who is trying to take down

4 everything we say, it's particularly important that

5 you allow me to finish asking my question, allow your

6 counsel to pose any objections they may want to pose,

7 and then try to answer my question as it was asked.

8 Do you understand that?

9 A. Yes.

10 Q. Okay, thank you.

11 And as a part of this proceeding, you

12 submitted a reply declaration that has been marked as

13 Exhibit 1112. Do you have that understanding,

14 Dr. Hall-Ellis?

15 A. I did write a second declaration to respond

16 to issues raised, yes.

17 Q. And do you have that declaration available

18 to you on your screen through the Exhibit Share

19 portal?

20 A. I have downloaded that, and I have it as a

21 PDF file on my computer.

22 Q. Okay. So we're going to be going through

23 parts of that declaration today, and I will presume

24 that you're able to scroll around your version of the

Page 6

1 declaration and find whatever passages we might be
2 discussing. If you have trouble doing that, I would
3 ask that you please let me know.
4 A. That's fine.
5 Q. Okay, great.
6 Dr. Hall-Ellis, I'd like to begin by asking
7 you to turn to paragraph 33 of that reply
8 declaration.
9 Would you let me know when you get there?
10 A. Okay. In paragraph 33, you say that you
11 have obtained date-stamped copies of Voswinckel JAHA,
12 J-A-H-A, all in caps, from The British Library, The
13 Library of Congress, The Lane Medical Library at the
14 Stanford University Medical Center, and the
15 University of California-Davis Health Sciences
16 Library.
17 Do you see that?
18 A. Yes.
19 Q. Did you yourself -- and you attached those
20 as Exhibits 1093 to 1096, correct?
21 A. Yes.
22 Q. Did you yourself go about photocopying those
23 copies of the Voswinckel JAHA abstract from those
24 libraries?

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1 A. No.
2 Q. Did you provide a citation to the Voswinckel
3 JAHA abstract and ask someone to provide those copies
4 to you?
5 A. Yes.
6 Q. Do you recall what citation you provided
7 when you asked for these?
8 A. Exact citation, I do not recall.
9 Q. What do you recall about what you provided
10 to the libraries when you asked for these copies?
11 A. When I am searching for any document, the
12 first step I take is to verify a complete citation,
13 and that citation is the one I provide to anyone who
14 is procuring an article or document for me.
15 Q. So Dr. Hall-Ellis, let me ask again: What
16 do you recall about what citation you provided in
17 this instance to obtain these exhibits that you
18 reference here at paragraph 33 of your declaration?
19 MS. KANNAPPAN: Objection to form.
20 BY THE WITNESS:
21 A. Looking at paragraph 33, I can tell you I
22 would have provided a list of each of the authors in
23 the order they appeared on the article itself, the
24 title of the article, the journal supplement in which

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1 this appeared, the volume number, the number of the
2 issue, and the date.
3 Q. And I'm sorry, what was that last part? The
4 connection kind of broke up.
5 A. The date.
6 Q. The date, okay.
7 A. I would have given pages also, which I see a
8 page of -- I would have given the complete pagination
9 as well.
10 Q. And I'm sorry, you were looking at something
11 when you said "I see a page."
12 A. I'm looking at paragraph 33.
13 Q. Okay. Okay, so basically, you would have
14 provided -- I'm sorry, I'm still trying to find the
15 page that you're referring to. Am I just missing it?
16 Is there a page number? Oh, I see --
17 A. The pages here are the pages -- let me get
18 my glasses.
19 Q. Now I think I see what you mean.
20 A. You see? Okay.
21 Q. You're referring to that page number that
22 appears down towards the bottom of page 14 of your
23 declaration that says it's Roman numeral III-295?
24 A. That is correct.

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1 Q. So that would have been part of what you
2 provided to the libraries to seek these copies?
3 A. Mm-hmm.
4 Q. Okay. Let's skip ahead just a little bit in
5 your declaration to paragraph 36, if you could.
6 A. Okay. I'm there.
7 Q. And I think probably you have to scroll to
8 sort of the part of that paragraph 36 that's on
9 page 17 of your declaration where you say that a POSA
10 would have found Robert Voswinckel's name in the
11 author index and would have further found Voswinckel
12 JAHA.
13 Do you see that? That's down at the bottom
14 of that paragraph.
15 A. I do see that, two, four, six, seven lines
16 from the bottom of the paragraph.
17 Q. Okay. To your knowledge, have you provided
18 any evidence in this proceeding that the author index
19 that you're referring to there was available anywhere
20 other than within the supplement itself, the abstract
21 supplement itself?
22 MS. KANNAPPAN: Objection to form.
23 BY THE WITNESS:
24 A. I'm not sure I'm really understanding what

Page 10

1 you're asking me.
2 I have provided parts of the index from the
3 author index, so are you asking me if it's somewhere
4 else?
5 BY MR. HOUSTON:
6 Q. Yeah, sure, that's --
7 A. What are you asking me?
8 Q. No problem, Dr. Hall-Ellis, I'll try to ask
9 it more clearly, and thank you for clarifying when
10 you don't understand something. That's no problem.
11 What I'm asking is the author index that you
12 refer to in this paragraph --
13 A. Mm-hmm.
14 Q. -- that appears in the volume of the
15 supplement that is the same supplement in which the
16 abstract itself appears, correct?
17 A. Yes.
18 Q. And what I'm asking is, have you provided
19 any evidence that that author index was available
20 anywhere else besides the supplement itself?
21 A. You mean in lieu of or in addition to the
22 listing of the program for the conference?
23 Q. Right.
24 A. I'm not sure I can answer that question. I

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1 have provided excerpts from the conference
2 proceedings, the index from the publication. I -- I
3 have no other idea what else it would take. I don't
4 know the -- I don't know the answer.
5 Q. Well, the answer was just yes or no.
6 Have you provided any other evidence -- have
7 you provided any evidence that the author index was
8 available anywhere else?
9 MS. KANNAPPAN: Objection to form, asked and
10 answered.
11 She doesn't have to answer yes or no if
12 that's not what is going to answer the question.
13 Go ahead, Dr. Hall-Ellis.
14 MR. HOUSTON: Deepa, that was a speaking
15 objection, so please --
16 MS. KANNAPPAN: You are badgering the
17 witness. I'm allowed to defend her. I'm saying
18 objection, and I said form before, asked and
19 answered.
20 MR. HOUSTON: Deepa, that is a speaking
21 objection. No, that is a speaking objection. You
22 can object to form. Please leave it at that. Thank
23 you.
24 MS. KANNAPPAN: Counsel, please don't

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1 interrupt me when I'm speaking.
2 MR. HOUSTON: Please don't make speaking
3 objections.
4 BY MR. HOUSTON:
5 Q. Dr. Hall-Ellis, I understand that you have
6 provided excerpts from the author index from the
7 supplement itself, correct?
8 A. Yes.
9 Q. Okay. Have you shown that that author index
10 is available anywhere other than the supplement
11 itself?
12 MS. KANNAPPAN: Objection to form, all the
13 previous objections.
14 BY THE WITNESS:
15 A. I don't know.
16 BY MR. HOUSTON:
17 Q. You don't know if you've shown that?
18 A. I don't recall that I have written those
19 words specifically.
20 Q. Okay. As you sit here today, can you think
21 of any other evidence you have provided to show that
22 that author index was available somewhere besides the
23 supplement itself?
24 MS. KANNAPPAN: Objection to form.

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1 BY THE WITNESS:
2 A. I can't answer that question.
3 BY MR. HOUSTON:
4 Q. I'm just asking if you can think of anything
5 else. So is the answer no, you can't think of
6 anything else?
7 MS. KANNAPPAN: Objection to form.
8 BY THE WITNESS:
9 A. I have -- I have no further response at this
10 time for that question. I cannot answer further.
11 BY MR. HOUSTON:
12 Q. Why can't you answer the question?
13 A. Because I can't remember.
14 Q. Okay. All right, fair enough. That -- you
15 can just answer that way, if that's the case. That's
16 fine.
17 Have you provided any evidence, to your
18 recollection, Dr. Hall-Ellis, have you provided any
19 evidence that this author index was available online
20 somewhere?
21 A. The journal is available online, the
22 supplements are available online. I do not know the
23 date they were online.
24 Q. So let's talk about that statement just a

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1 little bit, or the next to last statement.
2 You said the supplements are available
3 online?
4 A. Mm-hmm, I did say that.
5 Q. Okay. Have you provided evidence of where
6 the supplement is available online in your
7 declaration?
8 A. No.
9 Q. The one that's in front of you?
10 A. No.
11 Q. Okay. I would ask you to flip forward in
12 your declaration to paragraph 49, please.
13 A. 49. I see that. It is on page 26, is that
14 correct?
15 Q. That is correct, yes. And perhaps -- mostly
16 on page 26, that's correct.
17 A. Okay. I see that.
18 Q. And there you discuss a copy of the JAHA
19 supplement containing the Voswinckel JAHA abstract
20 that was obtained from The British Library and
21 attached as Exhibit 1093.
22 Do you see that?
23 A. Yes.
24 Q. Now if we flip the page and go to your

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1 paragraph 50, let me know when you're able to do
2 that.
3 A. I have that.
4 Q. In paragraph 50, you mention -- you mention
5 that you have obtained a research librarian's
6 declaration regarding the Voswinckel JAHA's public
7 availability from The British Library.
8 Do you see that?
9 A. Yes.
10 Q. Did you yourself obtain this declaration?
11 A. No.
12 Q. Why do you say "I obtained a research
13 librarian's declaration"?
14 A. I read the declaration from the librarian at
15 The British Library.
16 Q. So I'm going to try to -- well, I'm going to
17 share that exhibit. That exhibit there you refer to
18 as 1116, correct? The declaration --
19 A. That's what it says. Okay, now I'm going to
20 have to go to Exhibit Share, is that correct?
21 Q. Dr. Hall-Ellis, yes, that is correct, but
22 just give me one moment. It takes me a moment to
23 introduce it, so just let me do my thing on my end
24 and then --

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1 A. Let's see here. Window. Document share.
2 Okay.
3 Q. Just one moment, Dr. Hall-Ellis, it's still
4 uploading, it looks like.
5 Okay, Dr. Hall-Ellis. If you are in Exhibit
6 Share under the folder that says Marked Exhibits, you
7 should now see one that is labeled Exhibit 1116.
8 A. I do see that.
9 Q. Okay. Let me know when you're able to
10 download that and view it.
11 A. Let me see here. I see that here. I have
12 it in front of me. It's all of two pages mm-hmm.
13 Q. To begin with, Dr. Hall-Ellis, do you have
14 an understanding of what -- what the legal term
15 "declaration" refers to?
16 MS. KANNAPPAN: Objection to form.
17 BY THE WITNESS:
18 A. Why don't you tell me.
19 BY MR. HOUSTON:
20 Q. Dr. Hall-Ellis, I -- I'm not here to testify
21 for you. I just would like to understand what your
22 understanding is of the term "declaration," if you
23 have one.
24 MS. KANNAPPAN: Objection to form.

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1 BY THE WITNESS:
2 A. I believe I understand what they are.
3 BY MR. HOUSTON:
4 Q. Okay. What is your understanding of what
5 the term "declaration" means?
6 A. This is a statement which is true, based on
7 evidence, and written for a specific purpose.
8 Q. Okay. So that's why you refer to this as a
9 declaration then, I take it?
10 A. Yes. It is signed by the individual who
11 prepared it.
12 Q. Okay. So if we look at the top of this
13 document at Exhibit 1116, it appears to be addressed
14 to a Robert Minn at Cooley.
15 Do you see that?
16 A. Yes, I do.
17 Q. Would it be your understanding that that is
18 who obtained this document?
19 A. My understanding is he is the person to whom
20 this was addressed.
21 Q. Okay, fine. And this appears to be a
22 statement or a document from a Ms. S. Rampersad. I'm
23 not sure if I'm pronouncing that correctly, but do
24 you see that?

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