

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 CHRISTOPHER BUTLER,
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. Pacific Time on the 10th day of
16 March, 2022.

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21
22
23 Reported By Beth Radtke, RPR, CRR

24 License No. 084-004561

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1 APPEARANCES

2

3 COOLEY, LLP

By Ms. Deepa Kannappan

4 1299 Pennsylvania Avenue NW

Suite 700

5 Washington, D.C. 20004-2400

dkannappan@cooley.com

6 (202)842-7800

Appeared on behalf of the Petitioner;

7

8 FOLEY & LARDNER LLP

By Mr. Michael R. Houston

9 321 North Clark Street

Suite 2800

10 Chicago, Illinois 60654-5313

mhouston@foley.com

11 (312)832-4378

Appeared on behalf of the Patent Owner.

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1 (Witness sworn.)

2 MR. HOUSTON: Good morning, Mr. Butler. My

3 name is Michael Houston, I'm an attorney with Foley &

4 Lardner representing the patent owner in an IPR

5 proceeding in front of the U.S. Patent Office, and

6 I'll pause for a minute to give opposing counsel a

7 chance to introduce themselves on the record if they

8 would like.

9 MS. KANNAPPAN: This is Deepa Kannappan from

10 Cooley, LLP, on behalf of Liquidia Technologies.

11 MR. HOUSTON: Great.

12 CHRISTOPHER BUTLER,

13 having been first duly sworn, was examined and

14 testified as follows:

15 EXAMINATION

16 BY MR. HOUSTON:

17 Q. Could you start by just stating your full

18 name and address for the record? And the address

19 could either be your work address or your home

20 address, whichever one you are comfortable with.

21 A. Sure. My name is Christopher Scott Butler,

22 and I work at the Internet Archive located at 300

23 Funston Avenue in San Francisco, California, 94118.

24 Q. Thank you.

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3 WITNESS PAGE

4 CHRISTOPHER BUTLER

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1 Mr. Butler, have you ever been deposed

2 before?

3 A. Yes.

4 Q. About roughly how many times would you say

5 you've been deposed?

6 A. Approximately 30 to 35 times.

7 Q. Okay. So you have sat through many

8 depositions, so I don't really need to go into a lot

9 of details about the ground rules, I presume. Of

10 course if you have any questions, let me know. I'll

11 just cover a few highlights very quickly.

12 We are conducting this deposition remotely

13 today. That means we have a court reporter sort of

14 in this Zoom meeting who is trying to write down

15 everything that everybody on the call says.

16 Do you understand that?

17 A. Yes.

18 Q. And because she's trying to get everything

19 down, one of the main sort of rules, if you will, is

20 for us to try to not talk over each other or --

21 including with opposing counsel, your counsel.

22 So all I would ask is that if you can try to

23 let me finish my question, let your counsel object if

24 there is an objection to be made, and then you can

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1 proceed with your answer, just to try to keep things
2 clean so the court reporter can get them down.
3 Do you understand that?
4 A. Yes.
5 Q. Are there any reasons, any medications you
6 might be on, any illnesses you have, anything at all
7 that you can think of that would prevent you from
8 giving complete and full and accurate testimony
9 today?
10 A. No.
11 Q. Okay, great. Thank you.
12 So, Mr. Butler, I believe you should have in
13 front of you -- well, let me back up.
14 You prepared an affidavit that was submitted
15 in this matter, and I believe you should have that
16 affidavit in front of you, and I would like you to
17 pull that up on your screen and confirm that this is
18 indeed of affidavit that you prepared.
19 Do you have what's been marked as
20 Exhibit 1087 in front of you?
21 A. Yes.
22 Q. And it looks like your affidavit, the
23 testimony covers two pages. On the second page, is
24 that your signature?

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1 A. Yes.
2 Q. And then it contains a few exhibits. I
3 believe D, E, and F that are also a part of this
4 affidavit; is that correct?
5 A. That's right.
6 Q. Okay, great.
7 As I understand it, Mr. Butler, the purpose
8 of this affidavit was essentially to authenticate a
9 number of screenshots or archived web pages, if you
10 will, that are found within the database of the
11 Internet Archive. Is that more or less an accurate
12 description?
13 MS. KANNAPPAN: Objection to form.
14 BY THE WITNESS:
15 A. This affidavit's purpose is to authenticate
16 records of archived web pages from the Wayback
17 Machine, our web archive service.
18 BY MR. HOUSTON:
19 Q. Okay, great. And I see that you've very
20 helpfully presented a description in your affidavit
21 of how the URLs correspond to the screenshots that we
22 see here.
23 I would just like to cover that in my own
24 words a little bit to make sure the record's clear

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1 and make sure I have a good understanding of what we
2 can ascertain from the URLs that we see, so I'm going
3 to step through that very briefly.
4 Let's just turn -- I'd like to use something
5 as an example that we can talk about. So if you
6 could please navigate to page 4 of your declaration.
7 A. Okay.
8 Q. And my understanding is that -- so on
9 page 4, you see that there is a URL there that begins
10 with the -- the root URL is for web.archive.org,
11 correct?
12 A. That's right.
13 Q. And that's referring to the Internet
14 Archive?
15 A. Yes. That's the URL for the Wayback
16 Machine.
17 Q. Okay, great.
18 And then if I understand your declaration
19 correctly, in that same URL, I see a string of
20 numbers that begins with 20050207, and then it has
21 some more numbers after that.
22 Do you see that?
23 A. Yes.
24 Q. And so my understanding, based on your

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1 affidavit, is that what that string of numbers that I
2 just recited, what it refers to, is that this is
3 capturing a screenshot of the web page as it existed
4 as of February 7, 2005 at the website that then is
5 shown towards the end of this URL; is that correct?
6 A. The 14 digit number in the extended Wayback
7 Machine URL to which you refer is the Internet
8 Archive's timestamp that denotes the date of
9 preservation of the archived record, and as you
10 mentioned, the date that this particular timestamp
11 denotes is February 7, 2005.
12 Q. And the -- and the web page that was
13 captured as of that date stamp and at the URL that
14 appears there on page 4 is what we see on page 5 of
15 your declaration?
16 MS. KANNAPPAN: Objection to form.
17 BY MR. HOUSTON:
18 Q. Is that correct?
19 A. The extended URL on page 4 is the extended
20 URL for the record that is screen-shotted and
21 depicted on page 5.
22 Q. Okay. And just so I have a clean record,
23 I'm just going to step through these other few ones.
24 So if you could turn and look at pages 6 and

<p style="text-align: right;">Page 10</p> <p>1 7 of your affidavit, please.</p> <p>2 A. Okay.</p> <p>3 Q. So that's a screenshot -- on page 7 is a</p> <p>4 screenshot of the web page that was captured by the</p> <p>5 Internet Archive's procedures as of February 12,</p> <p>6 2005, correct?</p> <p>7 A. The screenshot on page 7 is of an archived</p> <p>8 web page. The time of capture for which the Internet</p> <p>9 Archive is recorded is February 12, 2005 for an</p> <p>10 original URL nebu-tec.de/uk/home.html.</p> <p>11 Q. And, Mr. Butler, I'm not trying to change</p> <p>12 your words; I'm sorry it's taking me a little time to</p> <p>13 use the exact terminology that you use. So when I</p> <p>14 ask my questions, please accept my apologize if I</p> <p>15 don't capture your exact language, but feel free to</p> <p>16 continue using your preferred language. I'm not</p> <p>17 trying to change that, unless I'm very clear about</p> <p>18 that. So I apologize if I'm not saying it quite the</p> <p>19 way you would. So thank you for being precise.</p> <p>20 Let's just real quick go through these other</p> <p>21 two or three. So if we turn to pages 8 and 9.</p> <p>22 A. Okay.</p> <p>23 Q. What's seen on page 9 is corresponding to a</p> <p>24 capture that occurred again on February 12th -- I'm</p>	<p style="text-align: right;">Page 12</p> <p>1 I want to try to understand a little bit</p> <p>2 about what -- how the Internet Archive works and what</p> <p>3 these dates mean in this context.</p> <p>4 So we have certain dates as we've just</p> <p>5 walked through that represent the capture date</p> <p>6 corresponding to those web pages. And I guess let me</p> <p>7 start it this way, if I put it kind of in my own</p> <p>8 words, and let me know if I understand this</p> <p>9 correctly.</p> <p>10 If I had a time machine, and I could go back</p> <p>11 in time to that exact time that's listed in each one</p> <p>12 of these URLs, so for this last one to use it as an</p> <p>13 example, we said July 18, 2004, and I believe there's</p> <p>14 even the -- the last six digits represent an even</p> <p>15 more precise time capture, like the time of day that</p> <p>16 the web page was captured.</p> <p>17 If I had a time machine and I could go back</p> <p>18 in time to that exact day and time, then presumably</p> <p>19 -- and I clicked on that link, then presumably,</p> <p>20 that's the page that was present at that time; is</p> <p>21 that correct?</p> <p>22 MS. KANNAPPAN: Objection to form.</p> <p>23 BY THE WITNESS:</p> <p>24 A. What I can say is that I have a very high</p>
<p style="text-align: right;">Page 11</p> <p>1 sorry, actually -- did I read that right? Yes,</p> <p>2 February 12, 2005, correct?</p> <p>3 A. The screenshot on page 9 has a capture date</p> <p>4 in the Internet Archive's records of February 12,</p> <p>5 2005.</p> <p>6 Q. And similarly, if we look at pages 10 and 11</p> <p>7 of your declaration, that screenshot corresponds to a</p> <p>8 capture that occurred on February 25, 2005; is that</p> <p>9 right?</p> <p>10 A. The screenshot on page 11 corresponds to an</p> <p>11 archive date of February 25, 2005.</p> <p>12 Q. And then the last one is the document that</p> <p>13 appears in Exhibit E.</p> <p>14 Now Exhibit E doesn't have the same URL sort</p> <p>15 of -- in the same place of your declaration, but I</p> <p>16 believe you address that in paragraph 7 of your</p> <p>17 declaration.</p> <p>18 So I just want to confirm, so the document</p> <p>19 that we see in your Exhibit E is a capture of the</p> <p>20 designated web page as of June -- I'm sorry, July 18,</p> <p>21 2004; is that correct?</p> <p>22 A. The capture in my Exhibit E has a</p> <p>23 corresponding archive date of July 18, 2004.</p> <p>24 Q. Okay, thank you.</p>	<p style="text-align: right;">Page 13</p> <p>1 level of trust in the electronic processes that</p> <p>2 preserve these records to issue a standard request</p> <p>3 for a web file associated with a specific URL,</p> <p>4 receive a file in response to that standard request</p> <p>5 from a web server, save that file, and also note the</p> <p>6 time at which that transfer occurred, as well as the</p> <p>7 URL associated with that transfer and file, and then</p> <p>8 to incorporate that information into the Wayback</p> <p>9 Machine service that lets you access and view the</p> <p>10 records.</p> <p>11 BY MR. HOUSTON:</p> <p>12 Q. Okay, thank you for that.</p> <p>13 I guess I was just trying to -- trying to</p> <p>14 make sure I understand in maybe it would be my own</p> <p>15 layman's terms.</p> <p>16 But in general, the point here is to say</p> <p>17 that each one of these should correspond to the web</p> <p>18 page that existed and was captured at the day and</p> <p>19 time that we see in these URLs; that's all I was</p> <p>20 trying to understand. And I appreciate that you</p> <p>21 weren't there at the time, you're just relying on the</p> <p>22 processes of the Internet Archive.</p> <p>23 But in general, is that the takeaway that we</p> <p>24 should get from these URLs and the date stamps?</p>

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1 MS. KANNAPPAN: Objection to form.
2 BY THE WITNESS:
3 A. The underlying files comprised of HTML code
4 or other media types like images, I have a very high
5 level of trust in the accuracy of the timestamps and
6 the original URLs in association with those discrete
7 files and the code within those files.
8 And so apart from that, there is -- are
9 processes of a browser's putting the files together
10 for display, rendering them for display, and those
11 aspects of the page, those aspects of the process can
12 combine elements in different ways. And so I'm
13 coming back to the integrity of the relationship of
14 the timestamp and the URL with the discrete files,
15 and that is what I have a very high level of trust
16 in.
17 Q. Okay, thank you.
18 Let me ask a slightly different question,
19 and again, I'll focus on the document that's your
20 Exhibit E and your description of it in paragraph 7
21 of your declaration.
22 As we mentioned, the month, day, and year
23 associated with that was July 18, 2004. My question
24 would be, does the document -- does the information

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1 you've presented here tell us anything about what
2 existed at that URL, say the day after this date, or
3 the day before this date?
4 MS. KANNAPPAN: Objection to form.
5 BY THE WITNESS:
6 A. I don't have any specific records of -- that
7 I have accessed before the -- for the date before or
8 the date after that specific date.
9 One might decide to draw a conclusion about
10 the likelihood that that file may have remained up
11 for more than one day. That would be -- that would
12 be up to the particular observer who is trying to
13 make that assessment.
14 BY MR. HOUSTON:
15 Q. Maybe I could ask it this way: The way that
16 the Internet Archive's archiving process works, does
17 it go and try to capture the content from a given URL
18 when it senses or otherwise detects a change in that
19 content?
20 A. There can be systems that, for specific
21 URLs, do their best to attempt when changes are made
22 and update, create new captures whenever a change is
23 indicated. That is not performed across all URLs and
24 all files which are archived in the Wayback Machine.

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1 Q. As you sit here today, do you know if that
2 process or system for sensing and then capturing
3 changes was in place for any of the particular pages
4 that appear in your declaration?
5 A. No, I do not.
6 Q. So again, using this Exhibit E as an
7 example, the fact that the capture date here was
8 July 18, 2004, that doesn't automatically suggest
9 that something at that URL changed that day or the
10 day before or the week before; in other words, we
11 can't really read anything into that capture date
12 about there having been changes to that URL around
13 that time?
14 MS. KANNAPPAN: Objection --
15 BY MR. HOUSTON:
16 Q. Is that correct?
17 MS. KANNAPPAN: Objection to form.
18 BY THE WITNESS:
19 A. That's correct.
20 BY MR. HOUSTON:
21 Q. And similarly, it's at least possible that
22 the content might have changed a day later or a week
23 later or a month later, and the Internet Archive
24 might not immediately capture such changes; is that

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1 also correct?
2 MS. KANNAPPAN: Objection to form.
3 BY THE WITNESS:
4 A. That is possible.
5 BY MR. HOUSTON:
6 Q. Is it fair to say that your declaration
7 addresses these five URLs, that those were provided
8 to you by counsel? The URLs were provided to you by
9 counsel, and so you were simply authenticating the
10 web pages associated with those URLs, or did you do
11 your own investigation to come up with these for some
12 reason?
13 A. I don't recall with complete certainty, but
14 I believe at least some of the URLs were provided to
15 me, and I may have -- I may have obtained some of the
16 URLs in the course of accessing and making --
17 accessing the archives and making the screenshots.
18 Q. Do you have any recollection of which URLs
19 were provided to you by counsel?
20 A. I am about 90 percent confident that, at a
21 minimum, the first URL was provided, the first URL --
22 Q. That's the one --
23 A. -- under Exhibit D, pages 4 and 5.
24 Q. Thank you.

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