

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIQUIDIA TECHNOLOGIES, INC.,)
)
Petitioner,)
)
vs.)
)
UNITED THERAPEUTICS CORPORATION,)
)
Patent Owner.)

TELEPHONE CONFERENCE
MARCH 1, 2022, 10:00 A.M. CST
CASE IPR2021-00406
U.S. PATENT NO. 10,716,793 B2
ISSUE DATE: July 21, 2020

BOARD:

Mr. Christopher Kaiser
Ms. Erica Franklin
Mr. David Cotta

PETITIONER:

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PATENT OWNER:

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1 (Whereupon the conference call
2 commenced at 10:01 a.m. cst.)

3 JUDGE KAISER: This is a call in
4 IPR2021-00406. I'm Judge Kaiser. With me on the
5 line are Judges Franklin and Cotta as well.

6 Before we get started can we do a
7 rollcall to see who all is here. Let's start
8 with anyone here on behalf of Petitioner.

9 MS. KANNAPPAN: Good morning, your Honor.
10 This is Deepa Kannappan from Cooley, LLP, on
11 behalf of the Petitioner and with me is Jonathan
12 Davies also from Cooley, LLP. I just wanted to
13 alert your Honor that there is a court reporter
14 on the line that is transcribing and taking down
15 our appearances.

16 JUDGE KAISER: Okay. Thank you. Before I
17 go to Patent Owner, let me just state for the
18 record that whoever provided the court reporter
19 if you would please file the transcript of the
20 call as an exhibit whenever you get the
21 transcript back we would appreciate that.

22 MS. KANNAPPAN: Yes, your Honor. Petitioner
23 has the court reporter so we will do that.

24 JUDGE KAISER: Okay. Thank you. And then

1 Patent Owner.

2 MR. HOUSTON: Good morning, your Honor.
3 This is Michael Houston on behalf of Patent
4 Owner, United Therapeutics, and I believe my
5 colleague, Steve Maebius, should have dialed in
6 as well. Steve, are you there?

7 MR. MAEBIUS: Yes. Hi, this is Steve
8 Maebius.

9 JUDGE KAISER: Okay. Thank you. Is there
10 anyone else on the line who I didn't call on?
11 Okay. Thank you.

12 All right. So as I recall this call
13 was requested by Patent Owner to request
14 authorization to submit evidence, new evidence,
15 along with its sur-reply. Assuming I have that
16 right, I guess I will open the floor up to Patent
17 Owner first.

18 MR. HOUSTON: Yes, thank you, your Honor.
19 And that is correct. We did make this request.
20 The reason being, your Honor, that as part of
21 Petitioner's reply filed in this case a few weeks
22 ago, they submitted a significant amount of new
23 evidence, some 5 declarations and 44 exhibits.

24 And while our initial position is that

1 much of that new evidence is improper reply
2 evidence and was the subject of our message to
3 the Board in our subsequent filing identifying
4 what we believe to be the new and improper reply
5 evidence, we are under the impression that that
6 issue is not likely to be decided, the propriety
7 of that evidence is not likely to be decided or
8 ruled upon until the final written decision stage
9 of the case. And, therefore, to protect the
10 prejudice against us in case some or all of that
11 evidence is not struck, we feel the need to be
12 able to submit our own evidence in response to
13 Petitioner's submissions.

14 The evidence topic wise, your Honor,
15 mostly focuses on this issue of public
16 accessibility of two abstracts that are at issue
17 in the proceeding. And your Honor may recall
18 that we also -- the parties had a call to discuss
19 this in the context of Petitioner's request to
20 file supplemental information. So it has to do
21 with that same topic. We feel like a lot of
22 these arguments, new arguments and new evidence,
23 should have been part of the petition and so
24 that's why we objected to it, but nonetheless

1 this is the first time that we have seen a lot of
2 this -- these arguments and this evidence. And
3 so if it's not going to be struck, then we feel
4 like we should have a chance to respond to it
5 more fully than simply being able to depose their
6 witnesses and submit those deposition
7 transcripts.

8 JUDGE KAISER: Okay. I have a couple of
9 questions there. One is just a clarification.
10 So is it the volume of the reply evidence that is
11 sparking this request or is it something in the
12 nature of the evidence itself that makes it
13 different from sort of typical reply evidence?

14 MR. HOUSTON: So, your Honor, it's very much
15 the latter. So, you know, you have heard us
16 mention the volume just to kind of alert the
17 Board to that. So, no, the request was not based
18 on the volume. It's based on the content which
19 is, simply put, they have raised new theories of
20 public accessibility for these two abstracts, new
21 legal theories, beyond what was in their petition
22 and I have them summarized here. I'm happy to go
23 through those just to highlight for your Honor if
24 you want to hear what those are; but unless you

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