

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 No. IPR2021-00406  
U.S. Patent No. 10,716,793

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**PETITIONER'S OBJECTIONS TO EVIDENCE**  
**UNDER 37 C.F.R. § 42.64(b)(1)**

Pursuant to 37 C.F.R. §§ 42.61(a) and 42.64(b)(1), and the Federal Rules of Evidence (“FRE”), the Petitioner Liquidia Technologies, Inc. hereby serves and submits the following objections to evidence submitted by Patent Owner accompanying Patent Owner’s Sur-Reply filed and served on March 16, 2022. These objections are timely because they are filed within five business days of service of Patent Owner’s Sur-Reply.

**I. IDENTIFICATION OF CHALLENGED EXHIBITS**

**A. Appended Ex. 2092 to Hall-Ellis Deposition (Ex. 2094)**

For context, Patent Owner’s produced Ex. 2092 for the first time during the March 11, 2022 deposition of Petitioner’s expert librarian, Dr. Hall-Ellis, and then *appended* it to the Deposition Transcript (Ex. 2094) and then filed the Deposition Transcript as part of the Patent Owner Sur-Reply.<sup>1</sup> Appended Ex. 2092 is objected to as new evidence filed with the Patent Owner’s Sur-Reply in violation of Rule

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<sup>1</sup> Patent Owner appears to have filed two Exhibit 2092s. The first was filed as the “Mandy Kim Bio” on January 5, 2022. The other is a British Library email dated April 20, 2018 that was first produced during the March 11, 2022 deposition of Dr. Hall-Ellis. The Objection above is directed to the appended email and not the “Mandy Kim Bio.”

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42.23(b). Appended Ex. 2092 is also objected to as violating the Board’s March 3, 2022 Order, which expressly *denied* Patent Owner’s request for authorization to submit this same type of evidence with its Sur-Reply. (Order, 5.) The Order stated that “there is no right to submit additional evidence with Patent Owner’s Sur-Reply” and explained that the Board was “not persuaded that we should waive the limits imposed on the Sur-Reply by Rule 42.23(b).” (Order, 5-4; *see also* Ex. 2104 (Telephonic Hearing Transcript on 3/1/2022), 24:2-23 (the Board indicating that submitting new evidence in this manner provides an “opportunity for gamesmanship.”).)

Appended Ex. 2092 is objected to under Fed. R. Evid. 106 because it is an incomplete document. The email cuts off on page 2 – all of the prior email correspondence between the British Library contact and Patent Owner’s counsel’s research contact appear to be deleted.

Appended Ex. 2092 is objected to under Fed. R. Evid. 901 because there is insufficient evidence to support a finding that the exhibit is what Petitioner claims it is. For example, it is unclear how, why or in what context this email originated (in part because the email chain is incomplete) and in what capacity the British Library contact is responding.

To the extent appropriate, Petitioner also objects to any portion of Patent Owner’s Sur-Reply that discusses, references and/or relies on appended Ex. 2092

(*see, e.g.*, Sur-Reply, 7-9), and further objects to any portion of Dr. Hall-Ellis Deposition Transcript (Ex. 2094) discussing appended Ex. 2092 (*see, e.g.*, Ex.2094, 18:22-24:7).

**B. Appended Ex. 2093 to Hall-Ellis Deposition (Ex. 2094)**

Ex. 2093 was also produced for the first time during Dr. Hall-Ellis' March 11, 2022 deposition and was appended to and then filed with the Deposition Transcript (Ex. 2094) as part of the Patent Owner Sur-Reply.<sup>2</sup> Appended Ex. 2093 is objected to as new evidence filed with the Patent Owner's Sur-Reply in violation of Rule 42.23(b). It is further objected to as violating the Board's March 3, 2022 Order. (Order, 5.)

To the extent appropriate, Petitioner also objects to any portion of Patent Owner's Sur-Reply that discusses, references and/or relies on appended Ex. 2093 (*see, e.g.*, Sur-Reply, 10-11), and further objects to any portion of Dr. Hall-Ellis

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<sup>2</sup> Patent Owner also appears to have filed two Exhibit 2093s. The first was filed as the "Declaration of Mandy Kim" on January 5, 2022. The other is a journal article that was first produced during the March 11, 2022 deposition of Dr. Hall-Ellis. The Objection above is directed to the appended journal article and not the "Declaration of Mandy Kim."

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Deposition Transcript (Ex. 2094) discussing appended Ex. 2093 (*see, e.g.*, Ex.2094, 32:11-41:16).

### **C. Exs. 2100-2103**

Patent Owner produced Exs. 2100-2103 for the first time during the March 14, 2022 deposition of Petitioner's technical expert, Dr. Igor Gonda. Exs. 2100-2103 were then filed as part of the Patent Owner Sur-Reply and simply identified as exhibits to the deposition. Exs. 2100-2103 are objected to as new evidence filed with the Patent Owner's Sur-Reply in violation of Rule 42.23(b). Exs. 2100-2103 are also objected to as violating the Board's March 3, 2022 Order. (Order, 5.)

Exs. 2100-2103 are objected to as lacking authentication under Fed. R. Evid. 901, as there is no indication about the origins or dates of public availability for these documents.

To the extent appropriate, Petitioner also objects to any portion of Patent Owner's Sur-Reply that discusses, references and/or relies on Exs. 2100-2103 (*see, e.g.*, Sur-Reply, 14, 16), and further objects to any portion of Dr. Gonda's Deposition Transcript (Ex. 2099) discussing Exs. 2100-2103 (*see, e.g.*, Ex.2099, 164:1-203:11).

## **II. CONCLUSION**

For the foregoing reasons, Petitioner objects to Exhibits 2092 and 2093

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