

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIQUIDIA TECHNOLOGIES, INC.,

Petitioner,

v.

UNITED THERAPEUTICS CORPORATION,

Patent Owner.

Case No. IPR2021-00406

Patent No. 10,716,793 B2

PATENT OWNER'S NOTICE OF APPEAL

NOTICE OF APPEAL TO THE FEDERAL CIRCUIT

Notice is hereby given, pursuant to 35 U.S.C. §§ 141, 142, and 319 and 37 C.F.R. §§ 90.2 and 90.3(a)(1) that United Therapeutics Corporation (“Patent Owner”) hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on July 19, 2022 (Paper 78), the Decision on Request for Rehearing entered on February 2, 2023 (Paper 82), and from all underlying orders, decisions, rulings, and opinions, regarding the *inter partes* review of U.S. Patent No. 10,716,783 (“the ’793 Patent”) in Case No. IPR2021-00406. This appeal is timely under 35 U.S.C. § 142 and 37 C.F.R. § 90.3.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner further states that the issues on appeal are anticipated to include, but are not limited to:

(1) Whether the Board erred in concluding that two references, Voswinckel JESC (Ex. 1007)¹ and Voswinckel JAHA (Ex. 1008)², qualify as prior art under 35 U.S.C. § 102(b);

¹ Voswinckel, R., et al., Abstract 218: “Inhaled treprostinil is a potent pulmonary vasodilator in severe pulmonary hypertension,” *European Heart Journal* 25:22 (2004).

² Robert Voswinckel, Beate Enke, Andre Kreckel, Frank Reichenberger, Stefanie Krick, Henning Gall, Tobias Gessier, Thomas Schmehl, Markus G. Kohstall, Friedrich Grimminger, Hossein A. Ghofrani, Werner Seeger, and Horst Olschewski, Abstract 1414: “Inhaled Treprostinil Sodium (TRE) For the Treatment of Pulmonary Hypertension,” Abstracts from the 2004 Scientific Sessions of the American Heart Association, *Circulation*, 110(17 Suppl.):III-295 (October 26, 2004).

(2) Whether the Board erred in analyzing whether a skilled artisan would have been motivated to combine the asserted references in the manner recited in the challenged claims, and whether a skilled artisan would have had a reasonable expectation of success in doing so;

(3) Whether the Board erred in rejecting objective indicia of nonobviousness;

(4) Whether the Board erred in concluding that claims 1-8 are unpatentable as obvious over Voswinckel JESC, Voswinckel JAHA, and U.S. Patent No. 6,521,212 B1 (Ex. 1006);

(5) Whether, in arriving at its decisions, the Board acted in a manner that was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, was in excess of statutory limitations and without observance of procedure required by law, or was based on findings unsupported by substantial evidence;

(6) Whether the Board erred in any finding or determination supporting or related to those issues, as well as all other issues decided adversely to Patent Owner in any orders, decisions, rulings, and opinions;

(7) Whether the Board violated the Administrative Procedure Act in rendering its Final Written Decision.

Concurrently with this submission, in accordance with 37 C.F.R. § 90.2(a) and Federal Circuit Rule 15(a)(1), a copy of this Notice of Appeal is being filed with

the Patent Trial and Appeal Board, and a copy is being filed electronically with the United States Court of Appeals for the Federal Circuit along with the required docketing fee.

Dated: April 5, 2023

Respectfully submitted,

By: /Stephen B. Maebius/
Stephen B. Maebius
Registration No. 35,264

Counsel for Patent Owner

CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that a true and correct copy of the foregoing **PATENT OWNER'S NOTICE OF APPEAL** was served on April 5, 2023, via email, to attorneys for Petitioner at the following addresses:

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The undersigned certifies that, in addition to being filed electronically through the Patent Trial and Appeal Board Case Tracking System (P-TACTS) system on April 5, 2023, a true and correct copy of the foregoing **PATENT OWNER'S NOTICE OF APPEAL** was filed on April 5, 2023, with the Director of the United States Patent and Trademark Office at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
Madison Building East, 10B20
600 Dulany Street
Alexandria, VA 22314-5793

The undersigned also certifies that a true and correct copy of the foregoing **PATENT OWNER'S NOTICE OF APPEAL** was filed electronically on April 5, 2023, with the United States Court of Appeals for the Federal Circuit.

/Stephen B. Maebius/
Stephen B. Maebius
Registration No. 35,264
Counsel for Patent Owner