

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 IPR2021-00406

Patent 10,716,793

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**PETITIONER'S IDENTIFICATION OF EXHIBITS AND PORTIONS OF  
PATENT OWNER'S SUR-REPLY THAT EXCEED THE SCOPE OF  
ALLOWABLE SUR-REPLY EVIDENCE**

Pursuant to the Board's email dated March 25, 2022, Petitioner identifies the below Exhibits and portions of Patent Owner's Sur-Reply as beyond the scope of new evidence authorized by 37 C.F.R. § 42.23(b) and page 73 of the Trial Practice Guide, and in violation of the Board's March 3, 2022 Order denying Patent Owner's request for authorization to submit this type of evidence with its Sur-Reply. 37 C.F.R. § 42.23(b) (A "sur-reply . . . may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness."); Paper 50, 5 ("Patent Owner's request for authorization to submit evidence with its Sur-Reply beyond the limits placed on that evidence by 37 C.F.R. § 42.23(b) is *denied*."); *see also* Ex. 2104, 24:2-25:23 (the Board indicating that submitting new evidence through depositions instead provides an "opportunity for gamesmanship" to circumvent the Board's ruling).

### Exhibits

- 1) Ex. 2092 (attached to Ex. 2094 at 63-65<sup>1</sup>)

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<sup>1</sup> This is a different exhibit than what Patent Owner filed as Exhibit 2092, which is the "Biography of Mandy H. Kim." Patent Owner appears to have duplicated exhibit numbering and attached a different Exhibit 2092 to Exhibit 2094 (3/11/2022 Transcript of the Deposition of Dr. Hall-Ellis). Petitioner identifies the Exhibit 2092 attached to Exhibit 2094 as improper.

- 2) Ex. 2093 (attached to Ex. 2094 at 66-77<sup>2</sup>)
- 3) Ex. 2094, 20:22-24:7, 32:11-36:18 (discussing Exs. 2092 and 2093)
- 4) Ex. 2100 (entered as Tab 6 in Ex. 2099, 3/14/22 Gonda IPR deposition)
- 5) Ex. 2101 (entered as Tab 5 in Ex. 2099, 3/14/22 Gonda IPR deposition)
- 6) Ex. 2102 (entered as Tab 9 in Ex. 2099, 3/14/22 Gonda IPR deposition)
- 7) Ex. 2103 (entered as Tab 4 in Ex. 2099, 3/14/22 Gonda IPR deposition)
- 8) Ex. 2099, 163:23-176:5, 180:20-185:10, 198:8-201:6, 201:18-203:9  
(discussing Exs. 2100, 2101, 2102, and 2103)

Portions of Patent Owner's Sur-Reply Replying on the Above Exhibits

- 1) Relying on the portions of Ex. 2094 related to Exs. 2092 and 2093:
  - a. P.8: "another librarian at the British Library" to "the Abstracts themselves were not available unless patrons somehow had the specific citations."
  - b. P. 8-9: "Those printed indices" to "available (EX2094, 64)."

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<sup>2</sup> This is a different exhibit than what Patent Owner filed as Exhibit 2093, which is the "Declaration of Mandy H. Kim in Support of Motion for *Pro Hac Vice* Admission." Patent Owner appears to have duplicated exhibit numbering and attached a different Exhibit 2093 to Exhibit 2094 (3/11/2022 Transcript of the Deposition of Dr. Hall-Ellis). Petitioner identifies the Exhibit 2093 attached to Exhibit 2094 as improper.

- c. P. 10: "she admitted" to "Sulica (*see* EX2094, 30:19-36:16)."
  - d. P. 10-11: "Similarly, Sulica" to "in the TRIUMPH study group);"
- 2) Relying on Exs. 2100-2103:
- a. P.14: "EX2102, 27 (DeVilbiss manual: output rates of 3.0 and 2.5 mL/min)"
  - b. P.14: "EX2100, 28; EX2101, 28 (Multisonic manual: rates of 0.6 and 0.5 mL/min)"
  - c. P. 16: "But if the" to "EX2100, 28;"
  - d. P.16: "Lieberman 2006" to "respectively."

Dated: April 7, 2022

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing **PETITIONER'S IDENTIFICATION OF EXHIBITS AND PORTIONS OF PATENT OWNER'S SUR-REPLY THAT EXCEED THE SCOPE OF ALLOWABLE SUR-REPLY EVIDENCE** was served on counsel of record on April 7, 2022, by delivering a copy via email to the counsel of record for the Patent Owner at the following address:

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