

From: [Milch, Erik](#)
To: SMAebius@foley.com; [Trials](#); [zLiquidiaIPR](#); [Elrifi, Ivor](#); [Kannappan, Deepa](#); UTC-901@foley.com; ssnader@unither.com; wjackson@bsfilp.com; [Torczon, Richard \(External\)](#); dcarsten@mwe.com; aweisbruch@mwe.com; jmohr@mwe.com
Subject: RE: Time sensitive response RE: IPR2021-00406 || request for conference call to request authorization for motion to extend due date for POPR
Date: Friday, April 9, 2021 3:55:09 PM

Mr. Kellogg,

Petitioner opposes Patent Owner's request, because Petitioner has not shown good cause for delaying the "just, speedy, and inexpensive resolution" of the proceeding. 37 CFR § 42.1.

Although Patent Owner has not yet identified Lead and Backup counsel, it is clear from Patent Owner's request that they have engaged no less than 6 attorneys and three separate law firms. The counsel that moved to a new law firm, Mr. Douglas Carsten, has been listed as counsel in the parties' district court and other *inter partes* review litigations since early 2020, and has been extensively involved in those proceedings, including knowledge and understanding of Petitioner's grounds for institution of the instant petition. Finally, Mr. Carsten's law firm switch did not prevent him from taking a deposition in another *inter partes* review between the parties earlier this week (Monday, 4/5). Accordingly, Petitioner disagrees that this counsel changing law firms affects Patent Owner's ability to meet its deadline three weeks from now and forms a "good cause" basis for its requested extension.

As for accessing medical doctors overseas in a pandemic, Patent Owner received a copy of the Petition on January 7 and has been aware of Petitioner's intention to rely on the prior art in question since at least November 13, when Liquidia identified them in the parallel district court litigation. The pandemic was present then and is now. There is no excuse for the Patent Owner waiting three months to identify the need for an extension based on expert schedules during the pandemic—especially in light of the fact that one of Petitioner's experts was a critical care pulmonologist managing ICUs at the height of the pandemic during the winter holidays and was still able to file a declaration in support of the instant Petition. Further, Patent Owner is apparently already in possession of the "testimony" it seeks regarding the prior art status, as Patent Owner already submitted such testimony with its Patent Owner's Preliminary Response in IPR2017-01621, which was nonetheless instituted on January 11, 2018. *Watson Laboratories, Inc. v. United Therapeutics Corp.*, IPR2017-01621, Paper No. 10 (P.T.A.B. January 11, 2018). To the extent Patent Owner has chosen to find experts (separate from prior art authors) in a foreign country and is having difficulty accessing them, Patent Owner assumed the logistical challenges that come with that. Neither is good cause for extension of a regulatory deadline.

Sincerely,
Erik Milch
Counsel for Petitioner
Reg. No. 42887

IPR2021-00406
Ex. 3001

From: SMAebius@foley.com <SMAebius@foley.com>

Sent: Friday, April 9, 2021 1:55 PM

To: Trials <Trials@USPTO.GOV>; zLiquidialPR <zLiquidialPR@cooley.com>; Elrifi, Ivor <ielrifi@cooley.com>; Milch, Erik <emilch@cooley.com>; Kannappan, Deepa <dkannappan@cooley.com>; UTC-901@foley.com; ssnader@unither.com; wjackson@bsfillp.com; rtorczon@wsgr.com; dcarsten@mwe.com; aweisbruch@mwe.com; jmohr@mwe.com

Subject: RE: Time sensitive response RE: IPR2021-00406 || request for conference call to request authorization for motion to extend due date for POPR

[External]

Dear Mr. Kellogg,

The reason Patent Owner seeks the extension of time for the POPR is based on the difficulties of accessing medical doctors in a foreign country who are busy treating patients in the midst of a pandemic (and whose testimony relates to a threshold question in the IPR of whether certain of Petitioner's references qualify as prior art), as well as the transfer of our co-counsel in the IPR to a new firm.

Sincerely,
Steve Maebius

Counsel for Patent Owner
Reg. No. 35,264

From: Trials <Trials@USPTO.GOV>

Sent: Friday, April 9, 2021 11:05 AM

To: zLiquidialPR@cooley.com; ielrifi@cooley.com; emilch@cooley.com; dkannappan@cooley.com; UTC - 901 <UTC-901@foley.com>; Shaun Snader <ssnader@unither.com>; William Jackson <wjackson@bsfillp.com>; Richard Torczon <rtorczon@wsgr.com>; dcarsten@mwe.com; aweisbruch@mwe.com; jmohr@mwe.com; Maebius, Steve <SMAebius@foley.com>

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**** EXTERNAL EMAIL MESSAGE ****

Counsel,

A conference call has been scheduled for 1 pm on Monday (4/12/21).

The dial in number is: 877-934-8037
The passcode is: 9450035

We instruct Patent Owner to email the Board before 2 pm today to briefly describe the reason for its request of an extension. Petitioner may respond by briefly describing the reason for its opposition before COB today.

Regards,

Andrew Kellogg,
Supervisory Paralegal
Patent Trial and Appeal Board
USPTO
andrew.kellogg@uspto.gov
(571)272-7822

From: SMaebius@foley.com <SMaebius@foley.com>

Sent: Thursday, April 8, 2021 4:03 PM

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Subject: IPR2021-00406 || request for conference call to request authorization for motion to extend due date for POPR

Dear Board,

Patent Owner requests a conference call with the Board to request authorization for a motion to extend the due date for the Patent Owner Preliminary Response under 37 CFR 42.5(c) by 2 weeks (from May 3, 2021 until May 17, 2021). Patent Owner conferred with Petitioner, and Petitioner has stated it will oppose.

Counsel for Patent Owner and Petitioner are available on April 12, 2021 (Monday).

Sincerely,

Steve Maebius
Counsel for Patent Owner
Reg. No. 35,264

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