

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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IPR2021-00406  
Patent 10,716,793 B2

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Before ERICA A. FRANKLIN, CHRISTOPHER M. KAISER,  
and DAVID COTTA, *Administrative Patent Judges*.

KAISER, *Administrative Patent Judge*.

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

On May 11, 2022, Patent Owner contacted the Board by email to request authorization to file a motion to submit supplemental information. Ex. 3002. Specifically, Patent Owner sought to submit a post-trial brief filed by Petitioner in the parallel proceeding in District Court. *Id.* On May 12, 2022, Petitioner contacted the Board by email, arguing that, if Patent Owner were permitted to submit its proposed supplemental information, Petitioner should be likewise be permitted to submit its own supplemental information. *Id.* Specifically, Petitioner sought to submit the District Court testimony of expert witnesses who testified on Patent Owner’s behalf, as well as a not-yet-filed post-trial brief scheduled to be filed soon by Patent Owner. *Id.* In addition to each party seeking authorization to move to submit its own supplemental information, both parties indicated that they opposed the other party’s request for authorization. *Id.*

During the final trial hearing on May 13, 2022, Judges Franklin, Cotta, and Kaiser heard brief arguments from both parties on the issue of whether to authorize the parties’ requested motions to submit supplemental information. The transcript of those arguments will be entered into the record in due course. For the reasons explained below, we do not authorize either party to move to submit its supplemental information.

#### PATENT OWNER’S REQUEST FOR AUTHORIZATION

Patent Owner requests authorization to file a motion to submit supplemental information under 37 C.F.R. § 42.123(b). Ex. 3002. To prevail on such a motion, Patent Owner would need to show that “the supplemental information reasonably could not have been obtained earlier,” as well as that “consideration of the supplemental information would be in

the interests-of-justice.” 37 C.F.R. § 42.123(b). Based on the circumstances involved, it would be futile for Patent Owner to attempt to make the requisite showing with respect to the latter requirement.

First, according to Patent Owner, the District Court post-trial brief is intended to bolster or corroborate the present record testimony of Petitioner’s expert witness, Dr. Gonda, on the issue of enablement of claims 4, 6, and 7 of the challenged patent. During the hearing, however, Patent Owner admitted that enablement was not at issue in the present proceeding. Because the present proceeding does not involve the issue on which Patent Owner argues the proposed supplemental information would be helpful, we are not persuaded that Patent Owner’s proposed motion could show that the submission of Patent Owner’s proposed supplemental information would be in the interest of justice.

Moreover, there is no further briefing or argument on any issue scheduled in the present proceeding, so neither party would have any opportunity to present arguments based on the supplemental information Patent Owner seeks to submit. The absence of any way for either party to make use of the proposed supplemental information in supporting its arguments is another reason why Patent Owner could not show that the submission of that information would be in the interest of justice.

Because Patent Owner has not persuaded us that it could show in its proposed motion that submission of its proposed supplemental information would be in the interest of justice, we do not authorize Patent Owner’s motion to submit that information.

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PETITIONER'S REQUEST FOR AUTHORIZATION

Petitioner conditions its request for authorization on the Board's entertaining Patent Owner's request for authorization. Ex. 3002. As discussed above, we do not grant Patent Owner's request. Thus, Petitioner's request is rendered moot.

For the foregoing reasons, it is

ORDERED that Patent Owner is not authorized to file its proposed motion to submit supplemental information; and

FURTHER ORDERED that Petitioner's request for authorization is moot.

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