

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIQUIDIA TECHNOLOGIES, INC.,))
Petitioner,))
vs.)	IPR2020-0070
UNITED THERAPEUTICS)	U.S. Patent No. 9,604,901
CORPORATION,))
Patent Owner.))
<hr/>)

REMOTE DEPOSITION OF SYLVIA HALL-ELLIS, Ph.D.
Wednesday, October 20, 2021
Volume I

Reported by:
NADIA NEWHART
CSR No. 8714
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PAGES 1 - 256



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 5 LIQUIDIA TECHNOLOGIES, INC.,)
 6)
 6 Petitioner,)
 7 vs.) IPR2020-0070
 8 UNITED THERAPEUTICS) U.S. Patent No. 9,604,901
 CORPORATION,)
 9)
 Patent Owner.)
 10 _____)
 11
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 14
 15 Remote deposition of SYLVIA HALL-ELLIS, Ph.D.,
 16 Volume I, taken on behalf of Patent Owner, with all
 17 participants appearing remotely via videoconference and
 18 the witness testifying from Denver, Colorado, beginning
 19 at 9:01 a.m. and ending at 4:01 p.m. on Wednesday,
 20 October 20, 2021, before NADIA NEWHART, Certified
 21 Shorthand Reporter No. 8714.
 22
 23
 24
 25

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1 APPEARANCES (Continued):
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 13 Hall-Ellis, Ph.D.; 194 pages
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 15 Exhibit 2037 Springer webpage excerpt; 74
 16 6 pages
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 18 Exhibit 2039 Herz Volume 30 webpage 91
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 22 Library webpage excerpt; 2 pages
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1 A Okay.
 2 Q -- and I'm an attorney with Foley & Lardner --
 3 A Uh-huh.
 4 Q -- and we are representing the patent owner,
 5 United Therapeutics in this proceeding.
 6 A Okay.
 7 Q I'd like to just begin the deposition by
 8 mentioning a few things that would be helpful to keep
 9 in mind for both of us.
 10 Let me start by asking you, though, have you
 11 ever been deposed before?
 12 A Yes.
 13 Q Okay. About how many times?
 14 A This is number 22.
 15 Q Okay. Great. So you understand quite well
 16 how this works, the back and forth with my questioning
 17 and the fact that we have a court reporter who is
 18 trying to record what we say?
 19 A I believe that to be true.
 20 Q Okay. Let me ask one other thing.
 21 Have you ever done a remote deposition like
 22 we're doing today where we're using video and we're
 23 not --
 24 A Yes.
 25 Q Okay.

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1 Wednesday, October 20, 2021
 2 9:01 a.m.
 3
 4 SYLVIA HALL-ELLIS, Ph.D.,
 5 having been first duly sworn, was examined and
 6 testified as follows:
 7
 8
 9 EXAMINATION
 10 BY MR. HOUSTON:
 11 Q Good morning.
 12 A Good morning.
 13 Q Would you mind stating your full name for the
 14 record, please.
 15 A My name is Sylvia Hall-Ellis.
 16 Q And would it be okay if I addressed you as
 17 Dr. Hall-Ellis for purposes of the deposition today?
 18 A That would be great.
 19 Q Okay. Dr. Hall-Ellis, let me quickly
 20 introduce myself.
 21 A Okay.
 22 Q I did so before we started, but I'll do so
 23 again for the record.
 24 A Uh-huh.
 25 Q I'm Michael Houston --

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1 A Yes.
 2 Q So you're familiar with that. Thank you.
 3 So I'll just cover a few things that,
 4 hopefully, you know by now, but let me just reiterate.
 5 A Okay.
 6 Q If at any time I ask you a question that maybe
 7 I don't state it very well or for some reason you don't
 8 understand it --
 9 A Uh-huh.
 10 Q -- I would ask that you speak up and let me
 11 know, and I'll do my best to clarify or re-ask the
 12 question in a way that you do understand it.
 13 Can you agree to do that for me?
 14 A Certainly.
 15 Q Okay. Is there anything about your health or
 16 well being today that would prevent you from testifying
 17 truthfully and accurately?
 18 A No.
 19 Q Are you taking any medications that might in
 20 any way impair your ability to give testimony today?
 21 A No.
 22 Q Have you brought any documents with you to the
 23 deposition today?
 24 A Yes.
 25 Q Can you tell me what those documents are,

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1 please --
2 A I have --
3 Q -- or can you summarize them. Yeah.
4 A I have a notebook which is a printout of my
5 declaration with all of the exhibits and attachments.
6 Q Okay. So are those the -- is that the extent
7 of the documents that you have with you right now?
8 A Yes.
9 Q Okay.
10 A It's here and it is -- because on the screen,
11 some of the typeface gets pretty small, and this is a
12 little easier for me to read.
13 Q Yeah. And I actually suggested to counsel
14 that they have you print it out. So that -- I thought
15 that might be easier for everyone to go through if you
16 had a paper copy, so that's just fine.
17 A Okay.
18 Q Let me just ask, do you have any other
19 computer screen windows open that are somehow related
20 to this deposition today?
21 A Yes. I have that Exhibit Share open
22 because --
23 Q Okay. Anything else?
24 A No. Just that.
25 Q Okay.

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1 A I thought that it might be needed, so I opened
2 that.
3 Q It may be needed later today, so that's just
4 fine. Thank you.
5 Do you have any other devices or other
6 communication means that you intend to communicate with
7 people today about the deposition --
8 A No.
9 Q -- aside from the video that we're doing right
10 now?
11 A No.
12 Q Okay. Of course -- and I think you know this
13 since you've done many of these before, but if
14 there's -- if any technical issues arise during the --
15 A Uh-huh.
16 Q -- course of the deposition, I'd ask that you
17 please do speak up and let someone know so that we can
18 correct that.
19 A Sure.
20 Q Okay. And one more thing that I want to
21 mention is to remind you that now that the deposition
22 has started --
23 A Uh-huh.
24 Q -- the rules under the proceeding -- the rules
25 for this particular type of proceeding say that you're

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1 not allowed to discuss the substance of your
2 testimony --
3 A Uh-huh.
4 Q -- with anyone, your counsel or anyone else
5 until at least my questioning is over today.
6 So, you know, no discussions with your counsel
7 about your answers or things --
8 A Uh-huh.
9 Q -- you would do differently as long as the
10 floor is still open to me to ask my questions.
11 Do you understand that?
12 A Yes.
13 Q Okay. Thank you. So you have provided expert
14 opinions in this proceeding regarding your views as to
15 the public availability of certain documents at issue
16 in the IPR proceeding, correct?
17 A Yes.
18 Q Let me pause for one second.
19 (Discussion off the record.)
20 MR. HOUSTON: I apologize for that. On behalf
21 of patent owner in the proceeding, I am Michael Houston
22 of Foley & Lardner, and I have a colleague who's
23 listening in for observational purposes, Mr. Matt Turk.
24 MR. CHEEK: And on behalf of petitioner
25 Liquidia Technologies, my name is Doug Cheek and with

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1 me I have Deepa Kannapan, an associate of Cooley, LLP.
2 MR. HOUSTON: Okay. Thank you.
3 Q I'm sorry to interrupt you, Dr. Hall-Ellis. I
4 just realized that we stepped over that formality at
5 the very beginning, so I thank you for your patience.
6 Okay. Dr. Hall-Ellis, I believe you've
7 already mentioned that you have your declaration that
8 you submitted in this proceeding with you, correct?
9 A Yes.
10 Q Okay. Let's just see if this works. You also
11 said you have the Exhibit Share window open.
12 A Yes.
13 Q I'm going to try to populate that --
14 A Okay.
15 Q -- to get your declaration just in case we
16 decide that --
17 A Okay.
18 MR. HOUSTON: Let's see here. Just in case we
19 decide that we want to look at it electronically for
20 some reason.
21 THE WITNESS: Okay.
22 MR. HOUSTON: I believe I've moved it now into
23 the "Marked Exhibits" folder that you should be able to
24 see under your Exhibit Share window.
25 (Exhibit 1036 was marked for identification

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1 and is attached hereto.)
2 THE WITNESS: I see it. And it's --
3 BY MR. HOUSTON:
4 Q Do you see Exhibit 1036 there?
5 A Yes, I do.
6 Q Okay. Great.
7 A I see that.
8 Q Okay.
9 A Uh-huh.
10 Q So either there or in your paper copy --
11 A Okay.
12 Q -- would you just real quick flip to page 47
13 and confirm that that's your signature and that this
14 is, in fact, your declaration.
15 A Yes, that is my signature.
16 Q Okay. And so this is the declaration that
17 you've submitted in this proceeding, correct?
18 A Yes.
19 Q Okay. Thank you. Now I'd like to -- to ask
20 you to turn to page 4 of your declaration, and in
21 particular, paragraph 13. And you can take a minute to
22 review what's written there if you need to.
23 A Okay. I'm familiar with this paragraph.
24 Q Okay. In that paragraph, you state -- you say
25 (as read):

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1 "I also understand that a printed
2 publication is rendered 'publicly
3 accessible'" --
4 A Uh-huh.
5 Q (As read):
6 -- "if it is cataloged and indexed by
7 a library such that a person
8 interested in the relevant subject
9 matter could locate it."
10 Do you see that?
11 A I do.
12 Q Okay. Then you go on to say in parentheses
13 (as read):
14 "(I understand that cataloging and
15 indexing by a library is sufficient,
16 though there are other ways that a
17 printed publication may qualify as
18 publicly accessible)."
19 Do you see that?
20 A Yes.
21 Q Before we talk in a little more detail about
22 cataloging and indexing, I'd like to ask you, what
23 other ways can a printed publication qualify as being
24 publicly accessible that you know of?
25 MR. CHEEK: Objection to form.

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1 You can answer.
2 THE WITNESS: These days, there is a
3 perception by people, particularly people who are
4 younger than I am, that everything is online and that,
5 in fact, if I print something off from online, it is
6 printed. It certainly can be a way of accessing
7 information and articles and documents online is very
8 common these days.
9 There are a number of publications that are
10 published online and in print, and there are others
11 that are available only online that has no relationship
12 to cataloging and indexing but certainly availability.
13 Also, digital repositories have items as do
14 archives and offsite storage facilities that a number
15 of academic institutions have established and
16 maintained. So there are a number of places to get
17 documents.
18 BY MR. HOUSTON:
19 Q For purposes of the opinions expressed in your
20 declaration --
21 A Uh-huh.
22 Q -- regarding the references that are discussed
23 in your declaration being publicly accessible --
24 A Uh-huh.
25 Q -- do you rely on any of these other ways that

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1 something could be publicly accessible, or do you rely
2 on them being cataloged and indexed to show public
3 accessibility?
4 A Well, reading my declaration, you'll find that
5 Exhibit C comes from a database maintained by a federal
6 government agency. And that is indexed, and it does
7 not have the same characteristics as a journal article
8 or a book or some other kind of document, but certainly
9 a federally established and maintained database for the
10 purpose of sharing information with the public would in
11 my mind make that publicly accessible information. And
12 I did do that.
13 Q Okay. Fair enough, if we exclude that
14 Exhibit C --
15 A Uh-huh.
16 Q -- so the rest of the references I believe
17 would be characterized as Exhibit B like boy --
18 A Uh-huh.
19 Q -- and then C through F.
20 A Uh-huh.
21 MR. CHEEK: Objection to form.
22 You can answer.
23 MR. HOUSTON: I'm sorry, Doug. I wasn't
24 finished.
25 THE WITNESS: Yes, sir. Okay.

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