

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. IPR2020-00770

Patent No. 9,604,901 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, that Patent Owner United Therapeutics Corporation hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on October 8, 2021 (Paper 45), the Decision on Request for Rehearing entered on June 14, 2022 (Paper 49), and from all underlying orders, decisions, rulings, and opinions, regarding the *inter partes* review of U.S. Patent No. 9,604,901 (“the ’901 Patent”) in Case No. IPR2020-00770.

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’s Final Written Decision is arbitrary and capricious and otherwise contrary to law because both the Petition and the Board’s Final Written Decision relied on an inadmissible, unsworn declaration in violation of 35 U.S.C. §§ 23, 25, and 312; 28 U.S.C. § 1746; and 37 C.F.R. §§ 42.104(b)(5), 42.2, and 42.63(a);
- (2) Whether the Board erred in construing the challenged claims;
- (3) Whether the Board erred in analyzing the knowledge and level of skill of a person of ordinary skill in the art of the invention;
- (4) 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;

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

(6) Whether the Board erred in concluding that claims 1-5, 8, and 9 are unpatentable as obvious over Moriarty¹ (Ex. 1009) and Phares² (Ex. 1008);

(7) 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.

Concurrently with this submission, 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.

¹ Moriarty et al., The Intramolecular Asymmetric Pauson-Khand Cyclization as a Novel and General Stereoselective Route to Benzindene Prostacyclins: Synthesis of UT-15 (Treprostinil), 69 J. Org. Chem. 1890 (2004).

² PCT Application No. WO2005/007081 A9, published Jan. 27, 2005.

Dated: August 15, 2022

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 August 15, 2022, 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 End to End (PTAB E2E) system on August 15, 2022, a true and correct copy of the foregoing **PATENT OWNER'S NOTICE OF APPEAL** was filed on August 15, 2022, 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 August 15, 2022, with the United States Court of Appeals for the Federal Circuit.

/Stephen B. Maebius/
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Counsel for Patent Owner