UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIQUIDIA TECHNOLOGIES, INC.,

Petitioner

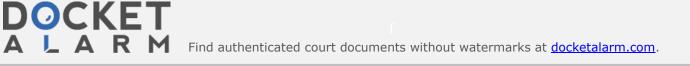
v.

UNITED THERAPEUTICS CORPORATION,

Patent Owner

Inter Partes Review No. IPR2020-00770 U.S. Patent No. 9,604,901

PETITIONER'S NOTICE OF CROSS-APPEAL



NOTICE OF APPEAL TO THE FEDERAL CIRCUIT

Pursuant to 35 U.S.C. §§ 141, 143, and 319, and 37 C.F.R. § 1.983, Petitioner, Liquidia Technologies, Inc., hereby cross-appeals to the United States Court of Appeals for the Federal Circuit from the Order entered by the Patent Trial and Appeal Board ("Board") on October 8, 2021 (Paper 45), the Decision on Request for Rehearing entered on June 14, 2022 (Paper 49), and from all orders, decisions, rulings, and opinions related thereto. Patent Owner filed an initial notice of appeal on August 15, 2022. This cross-appeal is timely under 37 C.F.R. § 90.3(a) and Rule 4(a)(3) of the Federal Rules of Appellate Procedure.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner states that the issues for cross-appeal include, but are not limited to:

- 1. Whether the Board erred in construing "storing/storage" as recited in U.S. Patent No. 9,604,901 as "storing or storage for a period of at least three months," particularly when that construction was not offered by either party.
- 2. Whether the Board erred in concluding that claims 6 and 7 of the U.S. Patent No. 9,604,901 were not invalid as obvious over either the combination of prior art Moriarty¹ and Phares², or Phares alone.

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. 1890–1902 (2004) (Ex. 1009).

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

A copy of this Notice of Cross-Appeal is being filed simultaneously with the Board and the Clerk's Office for the United States Court of Appeals for the Federal Circuit along with the required docketing fee.

Dated: August 29, 2022

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COOLEY LLP ATTN: Patent Group 1299 Pennsylvania Ave., NW, Suite 700 Washington, DC 20004 Tel: (212) 479-6840 Fax: (212) 479-6275 Respectfully submitted,

COOLEY LLP

By: <u>/Ivor Elrifi/</u> Ivor Elrifi Reg. No. 39,529 *Counsel for Petitioner*

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 90.2(a)(1) and 104.2(a), the undersigned hereby certifies that, in addition to being filed electronically through the Patent Trial and Appeal Board's E2E system, the foregoing **PETITIONER'S NOTICE OF CROSS-APPEAL** was filed on this 29th day of August 2022, the same day as the filing of the above-identified documents in the United States Patent and Trademark Office (USPTO), with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and Trademark Office Office of the General Counsel United States Patent and Trademark Office Madison East, 10B20, 600 Dulany Street Alexandria, Virginia 22314

CERTIFICATE OF SERVICE (Fee)

Pursuant to 37 C.F.R. §§ 90.2(a) and Federal Circuit Rule 15(a)(1), the undersigned hereby certifies that on this 29th day of August 2022, the requisite fee for appeal of the foregoing **PETITIONER'S NOTICE OF CROSS-APPEAL** was filed by CM/ECF in the United States Court of Appeals for the Federal Circuit.

CERTIFICATE OF SERVICE

I hereby certify, pursuant to 37 C.F.R. §§ 42.6 and 42.105, that a complete

copy of the attached PETITIONER'S NOTICE OF CROSS-APPEAL is being

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served via electronic mail on the 29th day of August 2022, the same day as the filing of the above-identified document in the United States Patent and Trademark Office Patent Trial and Appeal Board, upon the Patent Owner at the following addresses:

smaebius@foley.com jmock@foley.com gquillin@foley.com ssnader@unither.com dcarsten@mwe.com rtorczon@wsgr.com aweisbruch@mwe.com jmohr@mwe.com UTC-901@foley.com

Dated: August 29, 2022

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Cooley LLP ATTN: Patent Docketing 1299 Pennsylvania Ave. NW, Suite 700 Washington, D.C. 20004 Tel: (212) 479-6840 Fax: (212) 479-6275 By: <u>/Ivor Elrifi/</u> Ivor Elrifi Reg. No. 39,529 *Counsel for Petitioner*

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