

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. IPR2021-00406
U.S. Patent No. 10,716,793

PETITIONER'S UNOPPOSED MOTION TO FILE UNDER SEAL

Pursuant to 37 C.F.R. § 42.54, Petitioner Liquidia Technologies, Inc. hereby submits this Motion to Seal Exhibit 1132 filed in support of Petitioner's Reply to Petition filed concurrently herein.

I. Good Cause Exists for Sealing Certain Confidential Information

The Patent Trial and Appeal Board, Consolidated Trial Practice Guide November 2019 ("Guide") provides that "the rules aim to strike a balance between the public's interest in maintaining a complete and understandable file history and the parties' interest in protecting truly sensitive information." Guide at 19; 77 Fed. Regs. 48756, 48760 (Aug. 14, 2012). These rules "identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information." *Id.* (citing 37 C.F.R. § 42.54).

Exhibit 1132 includes excerpts from a deposition transcript generated on January 15, 2022 in the *United Therapeutics Corp. v. Liquidia Tech. Inc.*, Case No. 1:20-cv-00755 (D. Del.) litigation. The transcript was designated as "Highly Confidential" in its entirety by United Therapeutics Corporation, Patent Owner in this proceeding and plaintiff in the Delaware litigation. (Ex. 1132, 2.) Accordingly, Petitioner Liquidia files these excerpts under seal in this proceeding per its obligations under the district court protective order, and per Patent Owner's lack of objection to Petitioner doing so. Patent Owner is the party with knowledge as to

IPR2021-00406

U.S. Patent No. 10,716,793

why good cause exists for the confidentiality designation and why the “highly confidential nature of” the information contained in those documents makes it ‘impossible to reasonably redact [them] for public disclosure.’ *Purdue Pharma L.P. v. Depomed, Inc.*, IPR2014-00377, Paper No. 62, at 4 (PTAB March 17, 2015).

II. Certification of Non-Publication

On behalf of Petitioner, the undersigned counsel certifies that, to the best of their knowledge, the information sought to be sealed by this Motion to Seal has not been published or otherwise made public. Efforts to maintain the confidentiality of this information have been undertaken by Petitioner in the related proceeding noted above.

III. Certification of Conference with Opposing Party Pursuant to 37

C.F.R. § 42.54

Petitioner has conferred with Patent Owner about both the PTAB’s Default Protective Order and this Motion to Seal relating to Patent Owner’s confidential information. The parties have agreed to be bound by the PTAB’s Default Protective Order, and agreed to the filing of Ex. 1132 under the Default Protective Order. Per Appendix B of the Guide, the Default Protective Order is not being separately filed.

IV. Protective Order

The confidential information will be subject to the Default Protective Order from the Guide, to which the parties have agreed to be bound in this proceeding.

IPR2021-00406
U.S. Patent No. 10,716,793

V. Conclusion

For the reasons stated above, Petitioner respectfully requests that Exhibit 1132 remain under seal.

Dated: February 10, 2022

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

Respectfully submitted,

By: *Ivor R. Elrifi*
Ivor R. Elrifi
Reg. No. 39,529
Counsel for Petitioner

IPR2021-00406
U.S. Patent No. 10,716,793

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§42.6(e)(4)(i) *et seq.*, a complete copy of the attached **PETITIONER'S UNOPPOSED MOTION TO SEAL** is being served via electronic mail on the 10th day of February 2022, upon Patent Owner's attorneys of record:

Stephen B. Maebius (smaebius@foley.com)
UT-793@foley.com
UTCvLiquidia-IPR@mwe.com

Dated: February 10, 2022

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

By: /Ivor R. Elrifi/
Ivor R. Elrifi
Reg. No. 39,529
Counsel for Petitioner