No. _____

IN THE

Supreme Court of the United States

LIQUIDIA TECHNOLOGIES, INC.,

Applicant,

v.

UNITED THERAPEUTICS CORPORATION,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTORIARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

SANYA SUKDUANG
COOLEY LLP
1299 Pennsylvania Ave., Suite 700
Washington, DC 20004
(202) 842-7800

KATHLEEN R. HARTNETT
Counsel of Record
COOLEY LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
(415) 693-2000
khartnett@cooley.com

PATRICK J. HAYDEN
COOLEY LLP
55 Hudson Yards
New York, NY 10001
(212) 479-6000

ADAM S. GERSHENSON
ALEX ROBLEDO
COOLEY LLP
500 Boylston Street
Boston, MA 02116
(617) 937-2300

Counsel for Applicant Liquidia Technologies, Inc.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

1. Applicant Liquidia Technologies, Inc. was defendant in the district court and appellant before the court of appeals. Liquidia Technologies, Inc. is a wholly owned subsidiary of Liquidia Corporation, which is a publicly held corporation.

2. Respondent United Therapeutics Corp. was plaintiff in the district court and appellee and cross-appellant before the court of appeals.

APPLICATION FOR AN EXTENSION OF TIME

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FEDERAL CIRCUIT:

Pursuant to this Court's Rules 13.5, 22, and 30.3, Applicant Liquidia Technologies, Inc. respectfully requests a 30-day extension of time—to and including January 24, 2024—within which to file a petition for a writ of certiorari to the United States Court of Appeals for the Federal Circuit in this case. On September 9, 2022, the district court entered judgment for Respondent United Therapeutics Corp. as to its claim against Applicant for induced patent infringement. The district court's opinion is reported at 624 F. Supp. 3d 436 (D. Del. 2022) and attached as Exhibit A, and its final judgment is attached as Exhibit B. On appeal, the Federal Circuit affirmed and entered judgment on July 24, 2023. Its opinion, reported at 74 F.4th 1360 (Fed. Cir. 2023), is attached as Exhibit C. The court of appeals denied Applicant's petition for rehearing en banc on September 26, 2023, and a copy of its order is attached as Exhibit D. Unless extended, the deadline to file a petition for a writ of certiorari is December 26, 2023. This application is timely.

See Sup. Ct. R. 30.2. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. The court of appeals' affirmance of Respondent's judgment for induced patent infringement against Applicant, notwithstanding that Applicant had obtained a determination that the claims in the patent are unpatentable in *inter partes* review (IPR) before the Patent Trial and Appeal Board (PTAB), is contrary to this Court's recognition in *Commil USA, LLC v. Cisco Systems, Inc.*, 575 U.S. 632 (2015), that it is a defense to induced patent infringement if a patent is "invalid, and shown to be so under proper procedures," such as by "seek[ing] *inter partes* review at the Patent Trial and Appeal Board." *Id.* at 644–45. The court of appeals' ruling is also contrary to this Court's precedent that federal courts must generally give preclusive effect to the decisions of federal administrative agencies if the ordinary elements of issue preclusion are met. *See B & B Hardware, Inc. v. Hargis Indus., Inc.*, 575 U.S. 138, 141–42, 152 (2015). As this Court has stressed, "issue preclusion is not limited to those situations in which the same issue is before two *courts*." *Id.* at 148.

2. Both Applicant and Respondent are biotechnology or biopharmaceutical companies. Respondent sued Applicant in district

court for infringement and induced infringement of certain of Respondent's patents, including a patent for a method of treating pulmonary hypertension. In parallel, Applicant filed a petition with the PTAB for *inter partes* review of that patent on the ground that its claims are unpatentable as obvious over prior art. Ex. C at 4. On July 19, 2022, the PTAB agreed with Applicant and issued a Final Written Decision determining that the claims in Respondent's patent were obvious and thus unpatentable, which the agency later reiterated on rehearing. *Id.*

3. Applicant then argued in the instant litigation that the PTAB's determination meant that Applicant could not be liable for induced infringement of Respondent's patent. On August 31, 2022, the district court in this case issued its post-trial opinion. *See* Ex. A. The district court declined to give the PTAB decision preclusive effect as a defense to the claim of induced infringement, stating that the PTAB's decision "does not have collateral estoppel effect until that decision is affirmed or the parties waive their appeal rights." *Id.* at 36.

4. On July 24, 2023, while Respondent's appeal of the PTAB decision was pending, the Federal Circuit affirmed the district court's judgment. *See* Ex. C. With respect to Applicant's argument that the

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.