From: Yang, Christina Ji-Hye
To: Cassella, Christopher; Diner, Bryan; Hasford, Justin; O"Quinn, Ryan; Luneack, Matthew; Officer, Kassandra; McDonnell, Ryan; Judson, Kathryn; Patrick, Shannon; Deni, William P., Jr. (WDeni@gibbonslaw.com); J. Lower; sdonat@gibbonslaw.com; Goldberg, Joshua; Weingarten, M. David
Cc: extDG-Brimonidine; "lweinstein@windelsmarx.com"; Rodriguez, Frank
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement
Attachments: image007.png
image008.png
image009.png
image010.png
image011.png
image012.png
image013.png
image014.png

Chris,

We added the portions highlighted in yellow in the draft below. Please let us know if Petitioners have any further changes. If Petitioners do not have any further changes, you have Patent Owner's consent to send the draft below without any highlighting or bolding.

Regards,
Christina

++DRAFT++

Honorable Board,

Petitioners, Dr. Reddy's Laboratories S.A. and Dr. Reddy's Laboratories, Inc., respectfully request leave to move for additional discovery under 37 C.F.R. § 42.51(b)(2). The requested documents are relevant to objective indicia of non-obviousness that Patent Owner raised in its Responses, including but not limited to commercial success, unexpected results, industry praise, and nexus. All requested documents were produced by plaintiffs in the associated district court litigation, *In re Lumify*, 3:21-cv-16766-RK-RLS, and most were used as evidence during a preliminary injunction proceeding related to this patent family. All the documents are in Petitioners' counsel's possession, but these documents are subject to the provisions of a protective order, restricting their use in this proceeding. The parties have agreed to the cross use of some documents between these proceedings subject to the protective order in these IPR proceedings, but after over a month of discussions between the parties, no agreement has been reached related to these documents.

Petitioners submit that the additional discovery is necessary in the interest of justice. For example, many of the documents requested by Petitioners were exhibits to the district court depositions of Patent Owner's declarants in these IPR proceedings. Petitioners' motion would demonstrate that the factors set forth in *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 (PTAB Mar. 5, 2013) (precedential) favor granting discovery here.

Petitioners specifically request production of the following documents,:

1. Unredacted, native versions of the Bausch & Lomb financial spreadsheets from 2021 to

present, identified as Exhibits 213 (BAU_LUM00080128) and 212 (BAU_LUM00080129) to Docket Entry 283, *In re Lumify*, 3:21-cv-16766-RK-RLS.

2. Unredacted versions of the following Brand Health Trackers for Lumify:
    1. BAU-LUM00080130
    2. BAU-LUM00080376
    3. BAU-LUM00080690
    4. BAU-LUM00089020
    5. BAU-LUM00080904
    6. BAU-LUM00080205
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    1. The deposition transcript of John Ferris (Exhibit 295 to Docket Entry 283) and marked exhibits;
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    3. The deposition transcript of Bausch & Lomb's 30(b)(6) witness, John Ferris, and marked exhibits.
7. Unredacted versions of the following clinical study reports for IND No. 108,524:
    1. BAU_LUM00002744 (Study # 10-100-0008)
    2. BAU_LUM00001699 (Study # 11-100-0015)
    3. BAU_LUM00044972 (Study # 13-100-0005)

The parties have met and conferred. As an initial matter, Patent Owner objects to the argumentative nature of Petitioners' email. That said, Patent Owner is amenable to the use of the documents listed above in IPR2024-00467 and IPR2024-00563, provided that (1) Petitioners redact protected personal information and protected health information from the three clinical study reports before using any of these documents in depositions and/or as exhibits to Petitioner's replies, and (2) Petitioners agree that Patent Owner may file expert declaration(s) with its sur-replies to the extent Petitioners raise arguments in declarations with their replies based on the documents listed above that Patent Owner's experts have not yet had a chance to address. Petitioners had these documents well before they filed the petitions, but they are asking—for the first time in these proceedings—that these documents be used in support of Petitioners' replies on the issue of obviousness for which

Petitioners have the ultimate burden of proof, notwithstanding evidence of objective indicia being of record. Because Patent Owner cannot submit rebuttal expert declarations with its sur-replies as a matter of course, Patent Owner seeks the Board's authorization to submit sur-reply expert declaration(s) to address Petitioners' arguments based on the documents listed above that Patent Owner's experts have not yet had a chance to address to mitigate prejudice to Patent Owner caused by Petitioners' request.

Petitioners agree to Patent Owner's first condition. Petitioners do not believe that any modification of the rules regarding what is permitted in a Sur-Reply is appropriate at this time. Patent Owner disagrees.

The parties can be available for a teleconference on the following days:

1. Monday, 1/13: 12-3pm
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4. Friday, 1/17: 10-2pm

The parties can also provide their availability the following week should the Board desire.

Christina Jihye Yang
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Office +1 202 408 4465 | Mobile +1 202 339 2056 | Christina.Yang@finnegan.com | www.finnegan.com

---

From: Cassella, Christopher <CCassella@goodwinlaw.com>
Sent: Friday, January 10, 2025 3:07 PM
To: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Weingarten, M. David <M.David.Weingarten@finnegan.com>
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Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

External email

Christina,

We have made some changes to the draft email shown in **bold** below. Please let us know if we may proceed with sending to the Board. Thanks.

Chris

Honorable Board,

Petitioners, Dr. Reddy's Laboratories S.A. and Dr. Reddy's Laboratories, Inc., respectfully request leave to move for additional discovery under 37 C.F.R. § 42.51(b)(2). The requested documents are relevant to objective indicia of non-obviousness **that Patent Owner raised in its Responses**, including but not limited to commercial success, unexpected results, industry praise, and nexus. All requested documents were produced by plaintiffs in the associated district court litigation, *In re Lumify*, 3:21-cv-16766-RK-RLS, and most were used as evidence during a preliminary injunction proceeding related to this patent family. All the documents are in Petitioners' counsel's possession, but these documents are subject to the provisions of a protective order, restricting their use in this proceeding. The parties have agreed to the cross use of some documents between these proceedings subject to the protective order in these IPR proceedings, but after over a month of discussions between the parties, no agreement has been reached related to these documents.

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From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Friday, January 10, 2025 1:30 PM
To: Beavers, Timothy James <TBeavers@goodwinlaw.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Weingarten, M. David <M.David.Weingarten@finnegan.com>
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

EXTERNAL
TJ,

We disagree with your statements. As indicated in our earlier email, Patent Owner believes that the second condition is required to mitigate significant prejudice caused by Petitioner's request to Patent Owner. We have added Patent Owner's position below. If Petitioners have additional changes to the draft email to the Board, please send it to us for our review before sending it to the Board.

Regards,
Christina

++DRAFT++

Honorable Board,

Petitioners, Dr. Reddy's Laboratories S.A. and Dr. Reddy's Laboratories, Inc., respectfully request leave to move for additional discovery under 37 C.F.R. § 42.51(b)(2). The requested documents are relevant to objective indicia of non-obviousness, including but not limited to commercial success, unexpected results, industry praise, and nexus. All requested documents were produced by plaintiffs in the associated district court litigation, *In re Lumify*, 3:21-cv-16766-RK-RLS, and most were used as evidence during a preliminary injunction proceeding related to this patent family. All the documents are in Petitioners' counsel's possession, but these documents are subject to the provisions of a protective order, restricting their use in this proceeding. The parties have agreed to the

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Associate
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901 New York Avenue, NW, Washington, DC 20001-4413
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From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Friday, January 10, 2025 12:23 PM
To: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Weingarten, M. David <M.David.Weingarten@finnegan.com>
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<lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

Hi Christina,

We appreciate your email and your quick response. Petitioners can agree to the first condition that protected personal information and protected health information will be redacted from the three clinical study reports before their use.

We cannot, however, agree to your second condition. As we indicated on our call, Petitioners fully intend to follow the PTAB rules regarding the issues addressed in the Replies. As such, we see no reason to deviate from the rules governing Patent Owner's Sur-Replies at this point. After reviewing Petitioners' Replies, Patent Owner is free to raise any objections to the content of the Replies with the Board and seek leave to submit evidence with its Sur-Replies if it believes such a request is warranted.

Please confirm that Patent Owner will remove its second condition on the use of the documents listed in my January 8 email below in IPR2024-00467 and IPR2024-00563. To the extent Patent Owner does not agree, please provide Patent Owner's written position to the Board no later than 3 PM ET today.

Thank you,
TJ

Timothy Beavers
he/him/his

GOODWIN

Goodwin Procter LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018
o +1 212 459 7208
f +1 212 355 3333
TBeavers@goodwinlaw.com

From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Friday, January 10, 2025 11:50 AM
To: Beavers, Timothy James <TBeavers@goodwinlaw.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>;

Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Weingarten, M. David <M.David.Weingarten@finnegan.com>
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EXTERNAL
TJ,

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Regards,
Christina

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Counsel,

As discussed during the meet-and-confer today, please see below a revised email to the Board, which specifies which Brand Health Trackers (category 2) and Clinical Study Reports (category 7) are being sought by Petitioners. As we explained during the call, we intend to move forward with our request to the Board unless we can reach agreement this week. To the extent Patent Owner maintains its objection to any requested categories, please provide Patent Owner's position for the email to the Board and adjust the stated availability for a teleconference, as necessary, by noon on Friday.

Thank you,
TJ

Honorable Board,

Petitioners, Dr. Reddy's Laboratories S.A. and Dr. Reddy's Laboratories, Inc., respectfully request leave to move for additional discovery under 37 C.F.R. § 42.51(b)(2). The requested documents are relevant to objective indicia of non-obviousness, including but not limited to commercial success, unexpected results, industry praise, and nexus. All requested documents were produced by plaintiffs in the associated district court litigation, *In re Lumify*, 3:21-cv-16766-RK-RLS, and most were used as evidence during a preliminary injunction proceeding related to this patent family. All the documents are in Petitioners' counsel's possession, but these documents are subject to the provisions of a protective order, restricting their use in this proceeding. The parties have agreed to the cross use of some documents between these proceedings subject to the protective order in these IPR proceedings, but after over a month of discussions between the parties, no agreement has been reached related to these documents.

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   b. BAU_LUM00001699 (Study # 11-100-0015)
   c. BAU_LUM00044972 (Study # 13-100-0005)

The parties have met and conferred, and Patent Owner objects to use of these documents in this proceeding. Patent Owner's position is as follows:

INSERT.

The parties can be available for a teleconference on the following days:

- Monday, 1/13: 12-3pm
- Tuesday, 1/14: 9-12pm
- Wednesday, 1/15: 10-11am or 2-4pm
- Friday, 1/17: 10-2pm

The parties can also provide their availability the following week should the Board desire.

Timothy Beavers
he/him/his

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From: Beavers, Timothy James
Sent: Wednesday, January 8, 2025 10:27 AM
To: 'Yang, Christina Ji-Hye' <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Weingarten, M. David <M.David.Weingarten@finnegan.com>
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

Hi Christina,

We disagree with many of your positions below. We are available to meet today at 2pm ET. I will circulate a meeting invite shortly.

Thank you,
TJ

Timothy Beavers
he/him/his

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From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Wednesday, January 8, 2025 7:51 AM
To: Beavers, Timothy James <TBeavers@goodwinlaw.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Weingarten, M. David <M.David.Weingarten@finnegan.com>
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

EXTERNAL
TJ,

We disagree with your baseless remarks. The interests of justice do not support Petitioners' requested discovery. Moreover, any delay is Petitioners' fault, not ours.

We believe that a meet and confer would be useful here, so that the parties hopefully can resolve as many disputes as possible without unnecessarily burdening the Board. Please let us know whether Petitioners are available today at 2 p.m. ET for a meet and confer.

Regards,
Christina

Christina Jihye Yang
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From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Tuesday, January 7, 2025 5:09 PM
To: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com;

Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Weingarten, M. David <M.David.Weingarten@finnegan.com>
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

Counsel,

As you know, the standard for additional discovery is whether the discovery is in the interest of justice, so your objections are largely misplaced. You have not articulated any reason that cross use of the requested documents in the IPRs would prejudice Bausch.

As these discussions have been ongoing for over a month now without resolution, below is a draft email to the Board requesting leave to file a motion for additional discovery. If the level of detail provided below is sufficient for Bausch to consent to the requested cross use, please let us know. Otherwise, please provide Patent Owner's position no later than close of business tomorrow. To the extent another meet-and-confer would be productive, we can be available tomorrow, but we cannot continue to delay this issue with depositions quickly approaching.

Thank you,
TJ

Honorable Board,

Petitioners, Dr. Reddy's Laboratories S.A. and Dr. Reddy's Laboratories, Inc., respectfully request leave to move for additional discovery under 37 C.F.R. § 42.51(b)(2). The requested documents are relevant to objective indicia of non-obviousness, including but not limited to commercial success, unexpected results, industry praise, and nexus. All requested documents were produced by plaintiffs in the associated district court litigation, *In re Lumify*, 3:21-cv-16766-RK-RLS, and most were used as evidence during a preliminary injunction proceeding related to this patent family. All the documents are in Petitioners' possession, but these documents are subject to the provisions of a protective order, restricting their use in this proceeding. The parties have agreed to the cross use of some documents between these proceedings subject to the protective order in these IPR proceedings, but after over a month of discussions between the parties, no agreement has been reached related to these documents.

Petitioners submit that the additional discovery is necessary in the interest of justice. For example, many of the documents requested by Petitioners were exhibits to the district court depositions of Patent Owner's declarants in these IPR proceedings. Petitioners' motion would demonstrate that the factors set forth in *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 (PTAB Mar. 5, 2013) (precedential) favor granting discovery here.

Petitioners specifically request production of the following documents,:

1. Unredacted, native versions of the Bausch & Lomb financial spreadsheets from 2021 to present, identified as Exhibits 213 (BAU_LUM00080128) and 212 (BAU_LUM00080129) to Docket Entry 283, *In re Lumify*, 3:21-cv-16766-RK-RLS.
2. Unredacted versions of all quarterly Brand Health Trackers for Lumify, as identified in Docket Entry 389 at 8, *In re Lumify*, 3:21-cv-16766-RK-RLS.
3. Unredacted Declaration of Annelise Riebling and the documents cited therein (Exhibit 155 to Docket Entry 279, *In re Lumify*, 3:21-cv-16766-RK-RLS).
4. Unredacted Declaration of John Ferris and the documents cited therein (Exhibit 162 to Docket Entry 279, *In re Lumify*, 3:21-cv-16766-RK-RLS).
5. Unredacted Second Declaration of John Ferris and the documents cited therein (Exhibit 108 to Docket Entry 284, *In re Lumify*, 3:21-cv-16766-RK-RLS).
6. Unredacted transcripts and corresponding exhibits from the depositions taken in the district court litigation, *In re Lumify*, 3:21-cv-16766-RK-RLS, including:
    a. The deposition transcript of John Ferris (Exhibit 295 to Docket Entry 283) and marked exhibits;
    b. The deposition transcript of Annelise Riebling (Exhibit 298 to Docket Entry 283) and marked exhibits; and
    c. The deposition transcript of Bausch & Lomb's 30(b)(6) witness, John Ferris, and marked exhibits.
7. Unredacted versions of all clinical study reports for IND No. 108,524, including:
    a. BAU_LUM00002744 (Study # 10-100-0008)
    b. BAU_LUM00001699 (Study # 11-100-0015)
    c. BAU_LUM00044972 (Study # 13-100-0005)

The parties have met and conferred. Patent Owner requested that its position be included as follows:

INSERT.

The parties can be available for a conference call next week on Monday from 12-3pm, Tuesday from 9-12pm, Wednesday from 10-11am and 2-4pm, and Friday from 10-2pm. The parties can also provide their availability the following week should the Board desire.

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TBeavers@goodwinlaw.com

From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Thursday, January 2, 2025 3:59 PM
To: Beavers, Timothy James <TBeavers@goodwinlaw.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Weingarten, M. David <M.David.Weingarten@finnegan.com>
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

EXTERNAL
TJ,

The categories of documents listed in your December 18, 2024 email are overly broad and vague for us to meaningfully assess Petitioners' request. For example, B+L produced hundreds of pages of "Lumify Brand Health monitor documents," documents cited in Ms. Riebling's and Mr. Ferris's preliminary injunction declarations, and "clinical study reports for Lumify," many of which are simply not relevant to any of the issues before the Board.

As you know, Petitioner's replies should only address the arguments raised in Patent Owner's Responses. 37 C.F.R. § 42.23(b). Given that the documents Petitioners are seeking to introduce in the IPR proceedings have not been included in the Petitions, Parties' pre-institution papers, and Patent Owner's Responses, Petitioners need to articulate with specificity what B+L documents they need and why they need them at this stage in the IPR proceedings. As an initial step, please provide the Bates numbers of all the documents that Petitioners are seeking to introduce in the IPR proceedings. As you will appreciate, we need this specific information—which you will otherwise have to provide the Board to support a motion for additional discovery—to make an informed decision on whether to consent to your request.

Regards,
Christina

Christina Jihye Yang
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From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Monday, December 23, 2024 2:18 PM
To: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Weingarten, M. David <M.David.Weingarten@finnegan.com>
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

Hi Christina,

To be clear, the only portions of these documents that are the subject of this discussion are those that contain B&L's confidential information. These are documents that were already produced by B&L in the district court litigation and would continue to be subject to the confidentiality provisions to which the parties agreed. The only additional disclosure we are contemplating is disclosure to the PTAB.

The parties have been discussing the cross-use of documents since December 3. If Plaintiffs cannot agree to such cross-use by January 3, DRL will seek leave to move the Board for access to such documents in the IPR proceedings. As we have explained numerous times, we would prefer to save both of our clients' resources through a simple cross-use agreement; however, further delay only prejudices DRL, especially with upcoming depositions.

Thank you,
TJ

Timothy Beavers
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TBeavers@goodwinlaw.com

From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Monday, December 23, 2024 1:22 PM
To: Beavers, Timothy James <TBeavers@goodwinlaw.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com; Goldberg, Joshua <Joshua.Goldberg@finnegan.com>; Weingarten, M. David <M.David.Weingarten@finnegan.com>
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

EXTERNAL
TJ,

We are looking into this. As you know, many of these are B+L's confidential documents and require our client's approval. We will endeavor to get back to you as soon as we can after the holidays.

Regards,
Christina

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From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Monday, December 23, 2024 10:55 AM
To: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

Counsel, we are following up on the below.

Thank you,
TJ

Timothy Beavers
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From: Beavers, Timothy James
Sent: Wednesday, December 18, 2024 11:00 AM
To: 'Yang, Christina Ji-Hye' <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

Counsel,

Thank you again for meeting with us yesterday to discuss cross-use of district court documents in the IPR proceedings. As discussed, Defendants would like Plaintiffs' agreement that use of the following categories of documents in the IPR proceedings would not violate the protective order entered in the district court litigation. These categories are:

1. Financial spreadsheets from 2021 to present (e.g., BAU_LUM00080128, BAU_LUM00080129)
2. Lumify Brand Health Monitor documents
3. Transcripts from the depositions taken in the district court litigation
4. Exhibits marked during depositions taken in the district court litigation

5. Declarations of Riebling and Ferris in support of Plaintiffs' Motion for a Preliminary Injunction and the documents cited therein
6. Clinical study reports for Lumify

Please let us know by December 20 whether Plaintiffs agree to the use of these documents in the IPR proceedings, pursuant to the protective order the parties agreed to in the IPRs. As we discussed, to the extent Plaintiffs will not agree, we intend to seek this additional discovery in the IPRs.

Thank you,
TJ

Timothy Beavers
he/him/his

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From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Monday, December 16, 2024 2:12 PM
To: Beavers, Timothy James <TBeavers@goodwinlaw.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

EXTERNAL
TJ,

We are available tomorrow, December 17 at 2 p.m. ET. If that works for DRL, please circulate a dial in.

Regards,

Christina

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---

From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Monday, December 16, 2024 11:40 AM
To: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

Hi Christina,

We are just following up on Plaintiffs' availabilities to meet. Please let us know your availabilities for today, tomorrow, and Wednesday.

Thank you,
TJ

Timothy Beavers
he/him/his

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From: Beavers, Timothy James
Sent: Friday, December 13, 2024 10:23 AM

To: 'Yang, Christina Ji-Hye' <Christina.Yang@finnegan.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

Hi Christina,

We think it may make sense for the parties to discuss this further during a call to see how best to proceed. Do you have any availability today to discuss? If so, I can circulate a call invite.

Thank you,
TJ

Timothy Beavers
he/him/his

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TBeavers@goodwinlaw.com

From: Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>
Sent: Monday, December 9, 2024 4:01 PM
To: Beavers, Timothy James <TBeavers@goodwinlaw.com>; Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

EXTERNAL
TJ,

Defendants asked for a stay of the district court case. The Magistrate Judge granted Defendants' requested stay. As a result, the district court case, on Defendants' motion and over our objection and opposition, has been administratively terminated at this juncture. There accordingly is no basis -- let alone proper procedural mechanism -- for Defendants to ask the district court for any amendment to the Discovery Confidentiality Order at this stage. So please let us know what your thinking is in that regard.

Also, can you please let us know exactly what materials from the district court case Defendants intend to use in the IPR proceedings? We need to know these details to meaningfully evaluate your request.

Regards,
Christina

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---

From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Monday, December 9, 2024 1:01 PM
To: Diner, Bryan <bryan.diner@finnegan.com>; Hasford, Justin <Justin.Hasford@finnegan.com>; O'Quinn, Ryan <Ryan.O'Quinn@finnegan.com>; Luneack, Matthew <Matthew.Luneack@finnegan.com>; Officer, Kassandra <Kassandra.Officer@finnegan.com>; Yang, Christina Ji-Hye <Christina.Yang@finnegan.com>; McDonnell, Ryan <Ryan.McDonnell@finnegan.com>; Judson, Kathryn <Kathryn.Judson@finnegan.com>; Patrick, Shannon <Shannon.Patrick@finnegan.com>; Deni, William P., Jr. (WDeni@gibbonslaw.com) <WDeni@gibbonslaw.com>; J. Lower <JLower@gibbonslaw.com>; sdonat@gibbonslaw.com
Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: RE: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

Counsel,

We are following up on the below request.

Thank you,

TJ

Timothy Beavers
he/him/his

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From: Beavers, Timothy James <TBeavers@goodwinlaw.com>
Sent: Tuesday, December 3, 2024 5:11 PM
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Cc: extDG-Brimonidine <extDG-Brimonidine@goodwinlaw.com>; 'lweinstein@windelsmarx.com' <lweinstein@windelsmarx.com>; Rodriguez, Frank <frodriguez@windelsmarx.com>
Subject: In Re Lumify, C.A. No. 21-16766 (RK) (RLS) - Cross Use Agreement

Counsel,

Please let us know if Plaintiffs will agree to an amendment of the protective order in the district court litigation (D.I. 17) to allow the parties to use documents produced in the district court litigation under the "Counsels' Eyes Only" designation in the pending IPR proceedings (IPR2024-00467 and IPR2024-00563). The entered protective order contemplates agreement to such cross use. *See* Paragraph 2. To the extent Plaintiffs are amenable, Defendants will circulate a draft stipulation reflecting this agreement. To the extent Plaintiffs do not agree, Defendants intend to move the PTAB for additional discovery in the IPR proceedings.

Thank you,
TJ

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