

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, UNIVERSITY
OF VIENNA, AND EMMANUELLE CHARPENTIER**
Junior Party

(Applications 15/947,680; 15/947,700; 15/947,718; 15/981,807;
15/981,808; 15/981,809; 16/136,159; 16/136,165; 16/136,168; 16/136,175;
16/276,361; 16/276,365; 16/276,368; and 16/276,374),

v.

**THE BROAD INSTITUTE, INC., MASSACHUSETTS INSTITUTE OF
TECHNOLOGY, and PRESIDENT AND FELLOWS OF HARVARD
COLLEGE,**
Senior Party

(Patents 8,697,359; 8,771,945; 8,795,965; 8,865,406; 8,871,445; 8,889,356;
8,895,308; 8,906,616; 8,932,814; 8,945,839; 8,993,233; 8,999,641,
9,840,713, and Application 14/704,551).

Patent Interference No. 106,115 (DK)
(Technology Center 1600)

Order – Miscellaneous Issues
37 C.F.R. §§ 41.104(a) and 41.121

Interference 106,115

1 Before, DEBORAH KATZ, *Administrative Patent Judge*.

2 Counsel for Junior Party (“CVC”) sent an e-mail to the Board on
3 18 September 2020, regarding matters related to the priority phase of this
4 interference. (*See Appendix.*)

5 CVC first requests that an appendix containing a diligence chart be excluded
6 from the page limit of the parties’ priority briefs and that the requirement for a
7 separate statement of material facts in an appendix in the parties’ priority briefs be
8 waived. (*See Appendix.*) According to CVC, Senior Party (“Broad”) does not
9 object to these requests.

10 It is ORDERED that an appendix containing a diligence chart is excluded
11 from the page limits of a priority motion.

12 It is further ORDERED that the requirement for a separate statement of
13 material facts is *not* waived and is included in the page limits.

14 CVC also requests guidance regarding remote or virtual depositions. (*See*
15 *Appendix.*) The parties are directed to 37 C.F.R. § 41.157 and are encouraged to
16 work together.

17 It is ORDERED that the parties may conduct virtual or remote depositions
18 for this interference.

19 Finally, CVC requests authorization to file a motion arguing that Broad’s
20 involved claims are unpatentable 35 U.S.C. § 102(f) for improper inventorship, as
21 proposed in Junior Party’s List of Intended Motion (*see Paper 19, 11:3–15:14*).

22 It is ORDERED that CVC is authorized to file a non-priority motion under
23 35 U.S.C. § 102(f), entitled “CVC SUBSTANTIVE MOTION 3” during Time
24 Period 1, as provided in Standing Order ¶ 121.2.

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cc (via e-mail):

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APPENDIX

From: David H. Holman <DHOLMAN@sternekessler.com>
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Subject: Interference 106,115

Dear PTAB:

Junior Party CVC respectfully requests authorization from the Board regarding the following matters. The parties have met and conferred on these issues.

- (1) CVC requests that the appendix containing the diligence chart be excluded from the 50 page limit of the parties' priority briefs set forth in the Standing Order ¶121.2. CVC further requests that the requirement for a separate statement of material facts in an appendix in the parties' priority briefs be waived. Broad informed CVC that Broad agrees that the statement of material facts and diligence chart be excluded from the 50 page limit for the priority motions and that Broad does not oppose omitting the statement of material facts unless the PTAB finds the statement helpful.
- (2) CVC requests guidance from the PTAB regarding remote/virtual depositions in light of the ongoing COVID-19 pandemic and associated domestic and foreign travel restrictions. Broad informed CVC that Broad is amenable to working with CVC toward a stipulation on remote depositions if the PTAB will allow such.
- (3) CVC respectfully renews its request for authorization to file a motion for judgment that all of Broad's involved patents and application are unpatentable under pre-AIA 35 U.S.C. § 102(f) or AIA 35 U.S.C. § 115(a), for failing to list proper inventorship. The PTAB initially deferred considering authorization of this motion until the priority phase. See Paper 22 at 10. Broad informed CVC that it opposes authorization of this motion.

Should the Board desire a conference call with the parties to discuss these matters, the parties are available for a call at the following times:

- Wednesday, September 23, between 12pm–1pm and 2pm–4pm ET; and
- Thursday, September 24, between 9am–10am, 12pm–1pm and 4pm–5pm ET

Interference 106,115

Best regards,
David Holman
Backup counsel for Junior Party CVC



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