

No. 19-1630, 19-1682

**United States Court of Appeals
for the Federal Circuit**

ELYSIUM HEALTH, INC.

Appellant,

v.

TRUSTEES OF DARTMOUTH COLLEGE,

Cross-Appellant.

Appeal from the United States Patent and Trademark Office,
Patent Trial and Appeal Board in proceeding No. IPR2017-01795

**UNOPPOSED MOTION FOR 30-DAY EXTENSION OF TIME TO FILE
CROSS-APPELLANT'S PRINCIPAL AND RESPONSIVE BRIEF**

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July 12, 2019

*Counsel for Cross-Appellant,
Trustees of Dartmouth College*

Pursuant to Fed. Cir. R. 26(b) and Fed. R. App. P. 26(b), Cross-Appellant, Trustees of Dartmouth College (“Cross-Appellant” or “Dartmouth”), by and through its counsel, respectfully requests that the Court enlarge the time within which Cross-Appellant may file its principal and responsive brief. Cross-Appellant contacted counsel for Appellant, Elysium Health, Inc., who confirmed that they do not oppose the extension request.

1. Cross-Appellant’s Principal and Responsive Brief currently is due on July 29, 2019.

2. Cross-Appellant respectfully seeks to extend the due date of its Principal and Responsive Brief by thirty (30) days, to August 28, 2019.

3. Cross-Appellant has not previously requested an extension to the due date of its Principal and Responsive Brief.

4. Cross-Appellant requests this extension because attorneys for Cross-Appellant have faced a number of deadlines and obligations over the past month since Appellant filed its Opening Brief that has impacted their availability. For instance, Cross-Appellant’s lead counsel, John Abramic, has had numerous filings in *Certain Unmanned Aerial Vehicles and Components Thereof*, Inv. No. 337-TA-1133 over the past month. For example, on June 14, 2019 the parties served five initial expert reports and on July 3, 2019 the parties served rebuttal expert reports. Mr. Abramic is also counsel for patent owner in five post-grant proceedings—

IPR2019-00249, IPR2019-00250, PGR2019-00014, PGR2019-00016, and IPR2019-00343—that were instituted in late May 2019, and in which Mr. Abramic has been working to depose Petitioner’s expert witnesses and to prepare Patent Owner Responses. Additionally, Mr. Abramic has had numerous business obligations over the past month. Similarly, Cross-Appellant’s counsel, Jamie Lucia has faced a number of deadlines and obligations over the past month that has impacted her availability. For example, on July 2, 2019, the parties served six initial expert reports in *Indivior, Inc., et al. v. Actavis Laboratories UT, Inc.*, Civil Action No. 18-497, D. Del.

5. Moreover, attorneys for Cross-Appellant face deadlines and obligations in other matters over the next several months. For example, in the next two weeks, and before July 23, 2019, Mr. Abramic is involved in the depositions of multiple expert witnesses in *Certain Unmanned Aerial Vehicles and Components Thereof*, Inv. No. 337-TA-1133. The Patent Owner Responses in the five post-grant proceedings identified in the previous paragraph are due in the month of August and Mr. Abramic will be continuing to work to depose Petitioner’s expert witnesses and to prepare Patent Owner Responses. Additionally, Mr. Abramic has multiple business obligations throughout the months of July and August and is on family vacation from July 26-August 2, 2019. Ms. Lucia faces similar deadlines and obligations. For example, on July 15, 2019, Ms. Lucia has an Opposition to Motion for Recovery on

Bond due in *Indivior, Inc., et al. v. Alvogen Pine Brook, Inc.*, Civil Action No. 17-7106, D.N.J.; on July 18, Ms. Lucia has a Case Management Conference in *Cyntec Company, Ltd. V. Chilisin Electronics Corp., et al.*, Civil Action No. 18-939, N.D. Cal.; on July 22, 2019, Ms. Lucia has an Opposition to Motion for Leave to File Amended Answer and Counterclaims due in *Indivior, Inc., et al. v. Dr. Reddy's Laboratories S.A., et al.*, Civil Action No. 17-7111, D.N.J.; and on August 21, 2019, Ms. Lucia has rebuttal expert reports due in *Indivior, Inc., et al. v. Actavis Laboratories UT, Inc.*, Civil Action No. 18-497, D. Del. Ms. Lucia is also on family vacation from August 3-10, 2019.

6. Cross-Appellant is diligently working on the Principal and Responsive Brief but requires additional time so as to account for these demands.

7. Cross-Appellant believes that the foregoing represents good cause for the requested extension of time and respectfully requests that it be granted.

8. This motion is not made for purposes of delay, but in good faith in light of the bases described in the attached Declaration.

CONCLUSION

For the foregoing reasons, Cross-Appellant respectfully requests that the Court grant its motion for extension.

Dated: July 12, 2019

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*Counsel for Cross-Appellant,
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CERTIFICATE OF INTEREST FOR APPELLANTS

Pursuant to Federal Circuit Rules 26.1 and 47.4, counsel for Cross-Appellant hereby certifies the following:

1. The full name of every party represented by me is:

Trustees of Dartmouth College

2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented by me is:

None

3. All parent corporations and any publicly-held companies that own 10% or more of the stock of any party represented by me are:

None

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court (and who have not or will not enter an appearance in this case) are:

Harold H. Fox
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

James R. Nuttall
STEPTOE & JOHNSON LLP
115 South LaSalle Street, Suite 3100
Chicago, IL 60603

5. The title and number of any case known to counsel to be pending in this or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal:

ChromaDex, Inc. v. Elysium Health, Inc., Case No. 16-cv-02277-CJC (C.D. Cal.);
ChromaDex, Inc. et al v. Elysium Health, Inc., Case No.18-cv-01434-CFC (D.DE)

Dated: July 12, 2019

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DECLARATION OF JOHN L. ABRAMIC

1. I am an attorney at law and partner at Steptoe & Johnson LLP, attorney of record for Cross-Appellant Trustees of Dartmouth College (“Cross-Appellant” or “Dartmouth”). I am lead counsel for Cross-Appellant. I submit this declaration in support of Cross-Appellant’s Unopposed Motion To Extend The Due Date For Filing Cross-Appellant’s Principal and Responsive Brief. I have personal knowledge of the matters set forth herein and if called and sworn as a witness, I could and would testify competently thereon.

2. Cross-Appellant’s Principal and Responsive Brief is currently due on July 29, 2019. Jamie L. Lucia and I share responsibility for the preparation of Cross-Appellant’s Principal and Responsive Brief and have exercised, and will continue to exercise, diligence in preparing the Principal and Responsive Brief.

3. Both Ms. Lucia and myself have faced a number of deadlines over the past month since Appellant filed its opening brief that have impacted our availability. For instance, I have had numerous filings in *Certain Unmanned Aerial Vehicles and Components Thereof*, Inv. No. 337-TA-1133 over the past month. For example, on June 14, 2019 the parties served five initial expert reports and on July 3, 2019 the parties served rebuttal expert reports. I am counsel for patent owner in five post-grant proceedings—IPR2019-00249, IPR2019-00250, PGR2019-00014, PGR2019-00016, and IPR2019-00343—that were instituted in late May 2019. I am

principally responsible for the Patent Owner Responses in these proceedings and I have been working to depose Petitioner's expert witnesses and to prepare Patent Owner Responses. Additionally, I have had numerous business obligations over the past month. Similarly, my co-counsel, Jamie Lucia has faced a number of deadlines and obligations over the past month that has impacted her availability. For example, on July 2, 2019, the parties served six initial expert reports in *Indivior, Inc., et al. v. Actavis Laboratories UT, Inc.*, Civil Action No. 18-497, D. Del.

4. Moreover, Ms. Lucia and myself face deadlines and obligations in other matters over the next several months. For example, in the next two weeks, and before July 23, 2019, I am involved in deposing and/or defending multiple witnesses in *Certain Unmanned Aerial Vehicles and Components Thereof*, Inv. No. 337-TA-1133. Additionally, I have multiple business obligations throughout the months of July and August and am on family vacation from July 26-August 2, 2019. Ms. Lucia faces similar deadlines and obligations. For example, on July 15, 2019, Ms. Lucia has an Opposition to Motion for Recovery on Bond due in *Indivior, Inc., et al. v. Alvogen Pine Brook, Inc.*, Civil Action No. 17-7106, D.N.J.; on July 18, Ms. Lucia has a Case Management Conference in *Cyntec Company, Ltd. V. Chilisin Electronics Corp., et al.*, Civil Action No. 18-939, N.D. Cal.; on July 22, 2019, Ms. Lucia has an Opposition to Motion for Leave to File Amended Answer and Counterclaims due in *Indivior, Inc., et al. v. Dr. Reddy's Laboratories S.A., et al.*,

Civil Action No. 17-7111, D.N.J.; and on August 21, 2019, Ms. Lucia has rebuttal expert reports due in *Indivior, Inc., et al. v. Actavis Laboratories UT, Inc.*, Civil Action No. 18-497, D. Del. Ms. Lucia is also on family vacation from August 3-10, 2019.

5. Given these conflicting commitments, Cross-Appellant needs additional time to consult with its client and complete its Principal and Responsive Brief. Cross-Appellant believes that an additional 30 days are needed to prepare its Principal and Responsive Brief.

6. Accordingly, Cross-Appellant respectfully requests that the due date for Cross-Appellant's Principal and Responsive Brief be extended thirty (30) days, to August 28, 2019.

7. I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: July 12, 2019

/s/ John L. Abramic

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*Counsel for Cross-Appellant,
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CERTIFICATE OF SERVICE

I hereby certify that, on the 12th day of July, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which thereby served a copy upon all counsel of record via email or electronic means.

Dated: July 12, 2019

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CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-volume limitations of Fed. R. App. P. 27(d)(2) and Fed. Cir. R. 27(d). This motion contains 645 words, excluding the parts of the brief exempted by Fed. R. App. P. 27(d)(2) and 32(f), and Fed. Cir. R. 27(d), as counted by Microsoft® Word 2016, the word processing software used to prepare this brief.

This motion complies with the typeface requirements of Fed. R. App. P. 27(d)(1)(E) and 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6). This motion has been prepared in a proportionally spaced typeface using Microsoft® Word 2016, Times New Roman, 14 point.

Dated: July 12, 2019

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