

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHROMADEx, INC. and TRUSTEES OF)	
DARTMOUTH COLLEGE,)	
)	
Plaintiffs,)	
)	C.A. No. 18-1434-CFC
v.)	
)	
ELYSIUM HEALTH, INC.,)	
)	
Defendant.)	

**DEFENDANT ELYSIUM HEALTH, INC.’S RESPONSE TO PLAINTIFFS’
NOTICE OF INTER PARTES REVIEW DECISION**

As Plaintiffs state in their Notice of *Inter Partes* Review Decision (D.I. 23), the PTAB has now issued a written decision in its *inter partes* review proceedings regarding the ’086 patent, one of the two patents asserted in this case. That decision held that all but one of the claims of the ’086 patent are anticipated by the prior art and therefore are invalid. The PTAB upheld claim 2 of the patent based on a narrow construction of the term “isolated” in that claim, which Elysium believes is incorrect. Elysium intends to appeal the PTAB’s decision as to that claim, and Elysium presumes that Plaintiffs intend to appeal the PTAB’s invalidity rulings as the other claims. Accordingly, as was the case when Elysium filed its motion to stay this action (D.I. 13), the parties still do not yet have a final decision in the ’086 IPR.

As Elysium explained in its briefing (D.I.s 14 and 20) in support of its stay motion, a final decision in the ’086 IPR will narrow this case. If the Federal Circuit affirms the PTAB’s decision invalidating claims 1 and 3-5 of the ’086 patent, half of the claims of the two asserted patents will be eliminated from this case. If the Federal Circuit reverses the challenged claim construction of claim 2, the ’086 patent will be removed from this case altogether. In addition,

as explained in Elysium's stay briefing, an appellate ruling invalidating claim 2 would render the claims of the '807 invalid as well.

Importantly, the PTAB's ruling in the '086 IPR has no bearing on Elysium's request that this case be stayed pending resolution of Elysium's patent misuse counterclaim in the California Litigation, which was an independent ground for Elysium's stay motion, and Plaintiffs' Notice does not attempt to suggest otherwise. Elysium's patent misuse counterclaim is still scheduled for trial in July.

Plaintiffs previously requested oral argument on the pending stay motion. Elysium has no objection to Plaintiffs' request if the Court believes a hearing would be helpful.

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