

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AQUESTIVE THERAPEUTICS, INC.,  
Petitioner,

v.

NEURELIS, INC.,  
Patent Owner.

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Case IPR2019-00451  
Patent 9,763,876

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**NEURELIS, INC. REQUEST FOR REHEARING**  
37 CFR §42.71(d)(1)

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## I. PRECISE REQUESTED RELIEF

The patent owner (“Neurelis”) requests rehearing of the institution decision and denial of institution.

## II. STATEMENT OF REASONS

### A. BACKGROUND

The Board instituted inter partes review (“IPR”) of the involved claims because it concluded that the involved claims are not entitled to their claimed priority for failure to comply with a prosecution formality. Paper 8, 8-9, citing 37 CFR §1.57 (“Rule 57”). Neither the petitioner (“Aquestive”) nor the decision provide any other theory why the asserted Gwozdz and Cartt’784 references would otherwise qualify as prior art. However, the decision (1) misapprehends the statutory requisites for claiming priority, (2) misapprehends the scope and applicability of the rule invoked in reaching this conclusion, and (3) overlooks the due-process requirements of the invoked rule. Because the merits of the priority claim are unchallenged and the decision’s *sua sponte* formal objection to priority is incorrect and improper, no reasonable likelihood of unpatentability consistent with any controlling law has been demonstrated and thus no basis for institution exists. 35 U.S.C. 314(a). The Board should replace its institution decision with a decision denying institution. To the extent the decision represents the new policy of the Office, the Director should promulgate a rule or at least issue a Precedential Order Panel decision to put patent owners on notice regarding this exceptional departure

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