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Sent: Monday, April 27, 2020 10:06 PM
To: Precedential_Opinion_Panel_Request
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Subject: Guardian Alliance Technologies, Inc. v. Tyler Miller, IPR2020-00031 -- Request for Precedential Opinion Panel
Attachments: 24-Petitioner's Request for Rehearing (FINAL FOR FILING).pdf

To the Precedential Opinion Panel -

Petitioner Guardian Alliance Technologies, Inc. respectfully recommends the Precedential Opinion Panel's review of the non-institution decision (Paper No. 23) entered in the above-captioned *inter partes* review proceeding on March 26, 2020. Petitioner has just submitted the attached request for rehearing pursuant to 37 CFR § 42.71(d).

Based on my professional judgment, I believe the Board's non-institution decision is contrary to at least the following decision(s) of the Supreme Court of the United States, the United States Court of Appeals for the Federal Circuit, or the precedent(s) of the Board:

- *Genzyme Therapeutic Products Limited Partnership v. Biomarin Pharmaceutical Inc.*, 825 F.3d 1360 (Fed. Cir. 2016);
- *Trivascular, Inc. v. Samuels*, 812 F.3d 1056, 1068 (Fed. Cir. 2016);
- *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper No. 29 (PTAB Dec. 20, 2019);
- *Merck Sharp & Dohme Corp. v. Pfizer Inc.*, IPR2017-02138, Paper No. 16, slip op. at pp. 6–7 (PTAB May 4, 2018);
- *Vox International Corp. v. Johnson Safety, Inc.*, IPR2017-00554, Paper No. 9 (PTAB June 14, 2017); and
- *Rubicon Communications, LP v. Lego A/S*, IPR2016–01187, Paper No. 38 (PTAB Dec. 16, 2016).

Based on my professional judgment, I believe this case requires an answer to one or more precedent-setting questions of exceptional importance:

- What is required for a petitioner to show a reasonable likelihood and/or strong indicia of public accessibility of a non-traditional, electronic printed publication?
- What is required for a petitioner to show a reasonable likelihood and/or strong indicia of public accessibility of a printed publication when such evidence can only be obtained from a third party over whom there is no subpoena power until institution of an *inter partes* review?

Respectfully submitted,

/s/ Jordan A. Sigale

Attorney of Record for Petitioner Guardian Alliance Technologies, Inc.