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To: [Precedential Opinion Panel Request](#)
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Subject: IPR2020-00770 Request for Precedential Opinion Panel Accompanying Panel Rehearing Request of FWD
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Patent Owner has concurrently filed a Request for Panel Rehearing of the FWD in the above-captioned IPR and hereby requests Precedential Opinion Panel Review. The detailed reasons for requesting Precedential Opinion Panel review are as follows. The FWD relies extensively upon the unsworn Winkler Declaration (EX1002) in concluding that Petitioner established obviousness of claims 1-5, 8, and 9 based on the combination of Moriarty and Phares. FWD at pp. 32-34, 36-38, 41, and 42. As noted in the Patent Owner Response (Paper No. 12) at pp. 1 and 60 and Motion to Exclude (Paper No. 31), Dr. Winkler's unsworn statements were not admissible as submitted. Patent Owner also timely objected to the Winkler Declaration for lacking authentication following institution (Paper No. 10), and Petitioner did not timely submit supplemental evidence in the form of a sworn Winkler Declaration or timely seek waiver or other accommodation that would have afforded Patent Owner an adequate opportunity to respond. See Paper 44, 22:8-24:17 (critiquing Liquidia's improper self-help remedy). For these reasons, the FWD conflicts with the precedent and statutes noted below.

Based on my professional judgment, I believe the Board panel decision is contrary to 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: *In re Mehta*, 347 F.2d 859, 866 (C.C.P.A. 1965); *FedEx Corp. v. Ronald A Katz Tech. Lisc.*, CBM2015-00053, Paper 9, pp. 7-8 (P.T.A.B. June 29, 2015).

Based on my professional judgment, I believe the Board panel decision is contrary to the following constitutional provision, statute, or regulation: 28 U.S.C. § 1746; 35 U.S.C. §§ 23, 25.

Based on my professional judgment, I believe this case requires an answer to one or more precedent-setting questions of exceptional importance: Whether the Board may rely in a final written decision on evidence that the Board itself acknowledges is not admissible, despite the opposing party's timely objection and the proponent's failure to comply with the Board's procedures for curing an evidentiary deficiency.

Respectfully submitted,

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