

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIQUIDIA TECHNOLOGIES, INC.,  
Petitioner,

v.

UNITED THERAPEUTICS CORPORATION,  
Patent Owner.

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Inter Partes Review No. IPR2021-00406  
U.S. Patent No. 10,716,793 B2

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**PATENT OWNER'S REQUEST FOR REHEARING**

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Patent Owner United Therapeutics Corporation (UT) respectfully requests that the Board reconsider its Final Written Decision (Paper 78) (FWD) finding claims 1–8 of U.S. Patent No. 10,716,793 unpatentable.

## **I. Introduction and Background**

The Board ruled that all eight claims of the '793 patent are obvious, relying in part on two references: Voswinckel JESC (Ex. 1007) and Voswinckel JAHA (Ex. 1008). The Final Written Decision concluded that these references qualify as prior art under pre-AIA 35 U.S.C. §102(b) because research aids made them publicly accessible. FWD at 8–12. But that prior-art determination rests on a substantial legal error, because the supposed research aids were published *after* the critical §102(b) date of May 15, 2005.

Public accessibility prior to the critical date is the defining feature of a §102(b) “printed publication.” *See, e.g., Minnesota Min. & Mfg. Co. v. Chemque, Inc.*, 303 F.3d 1294, 1301 (Fed. Cir. 2002). The Board did not find that Liquidia proved that either Voswinckel abstract was *itself* publicly accessible, such as if they had been indexed and catalogued in public libraries more than a year before the priority date. Instead, the Board reasoned that two references the Board described as “research aids”—Ghofrani (Ex. 1010) and Sulica (Ex. 1104)—provided a skilled artisan with a roadmap to the Voswinckel abstracts. FWD at 10–12.

That ruling contravenes settled legal principles. Where a research aid is relied

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