

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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IPR2021-00406  
Patent 10,716,793 B2

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Before KATHERINE K. VIDAL, *Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office*, SCOTT R. BOALICK, *Chief Administrative Patent Judge*, and JACQUELINE WRIGHT BONILLA, *Deputy Chief Administrative Patent Judge*.

PER CURIAM.

ORDER

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The Office received a request for Precedential Opinion Panel (POP) review of issues raised in the Board’s Final Written Decision. Ex. 3003; *see* Paper 78. In the request, Patent Owner argues that the Board improperly determined that the Voswinckel JESC (Ex. 1007) and Voswinckel JAHA (Ex. 1008) references were publicly accessible and therefore qualify as prior art under pre-AIA 35 U.S.C. § 102(b) because a person of ordinary skill in the art would have been able to find them with the benefit of certain research aids. Paper 79, 1–3; *see* Paper 78, 8–12. The request was referred to the POP panel referenced above.

We have reviewed the request, the Board’s Final Written Decision, the Papers, and the Exhibits in the above-listed proceeding. We determine that the Board’s Final Written Decision did not address adequately whether the Voswinckel JESC and Voswinckel JAHA references qualify as prior art. *See* Paper 78, 8–12. Specifically, the Board’s analysis did not consider whether the research aids themselves were available prior to the critical date, such that a person of ordinary skill in the art would have used them to find Voswinckel JESC and Voswinckel JAHA. *Id.* at 12. Further, the Board’s analysis did not address whether the Voswinckel JESC and Voswinckel JAHA references were publicly accessible by way of their presentation and/or inclusion in distributed materials, such as at a conference or library. Paper 78, 8–12; *see In re Klopfenstein*, 380 F.3d 1345, 1350–52 (Fed. Cir. 2004) (“The determination of whether a reference is a ‘printed publication’ under 35 U.S.C. § 102(b) involves a case-by-case inquiry into the facts and circumstances surrounding the reference’s disclosure to members of the public.”).

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However, because the record has been fully developed on these issues, the Board panel is best suited to make the appropriate factual findings for this analysis in its decision on rehearing. Accordingly, we deny Patent Owner's request for POP review of the Final Written Decision. With this denial of POP review, authority over all issues in this case — including consideration of Patent Owner's pending rehearing request — is returned to the original panel. We direct the Board, in its consideration on rehearing, to clearly identify whether the Voswinckel JESC and Voswinckel JAHA references qualify as prior art. Such analysis shall clarify whether the relied upon research aids were available prior to the critical date and whether the Voswinckel JESC and Voswinckel JAHA references were publicly accessible by way of their presentation and/or inclusion in distributed materials, such as at a conference or library.

Accordingly, based on the foregoing, it is:

ORDERED that the request for POP review is denied;

FURTHER ORDERED that the original panel maintains authority over all matters, including considering the submitted rehearing request in view of the complete record; and

FURTHER ORDERED that the Board, on rehearing, shall clearly identify whether the Voswinckel JESC and Voswinckel JAHA references qualify as prior art.

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