

From: [Director Discretionary Decision](#)
To: [James, Colleen Tracy](#); [Director Discretionary Decision](#)
Cc: ["PH-Xencor-Merus-IPR@paulhastings.com"](mailto:PH-Xencor-Merus-IPR@paulhastings.com); [Armenio, Peter J.](#)
Subject: RE: IPR2025-00604 and IPR2025-00605 Xencor, Inc. v. Merus N.V. - Request for Reply in Support of Discretionary Denial
Date: Monday, July 7, 2025 3:32:27 PM

Patent Owner is authorized to file a 3-page reply in IPR2025-00604 and -00605, due no later than Wednesday, July 9, 2025, limited to addressing the arguments raised below.

Petitioner is authorized to file a 3-page sur-reply in IPR2025-00604 and -00605, due no later than Friday, July 11, 2025, limited to addressing arguments made in Patent Owner's reply brief.

From: James, Colleen Tracy <CTracyJames@cahill.com>
Sent: Thursday, July 3, 2025 6:47 PM
To: Director_Discretionary_Decision <Director_Discretionary_Decision@uspto.gov>
Cc: 'PH-Xencor-Merus-IPR@paulhastings.com' <PH-Xencor-Merus-IPR@paulhastings.com>; Armenio, Peter J. <PARmenio@cahill.com>
Subject: IPR2025-00604 and IPR2025-00605 Xencor, Inc. v. Merus N.V. - Request for Reply in Support of Discretionary Denial

CAUTION: This email has originated from a source outside of USPTO. **PLEASE CONSIDER THE SOURCE** before responding, clicking on links, or opening attachments.

Dear Honorable Acting Director Coke Morgan Stewart and the Honorable Board:

Patent Owner, Merus, N.V., respectfully requests permission to file a reply brief in support of its Request for Discretionary Denial in each of the subject proceedings (*See* IPR2025-00604, Paper 6 and IPR2025-00605, Paper 6) to address the recent orders from the Acting Director regarding settled expectations of the parties, including among others, *iThytm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-00363 (et al.) Paper 6 (June 6, 2025) and *Dabico Airport Solutions Inc. v. AXA Power ApS*, IPR2025-00408, Paper 12 (June 18, 2025), how those recent orders support Patent Owner's requests for discretionary denial, and Petitioner Xencor's discussion of those orders in its oppositions to Merus' discretionary denial briefs.

Patent Owner submits that good cause exists because the recent orders addressing settled expectations of the parties issued after Patent Owner submitted its opening briefs supporting its requests for discretionary denial but before Petitioner's opposition. Patent Owner's requested reply briefs would be limited to discussing the recent orders and addressing Petitioner's discussion of some of the orders as they relate to the settled expectation of the parties. Absent the requested reply briefs, Petitioner would have the unfair advantage of being the only party able to discuss the recent orders, which Petitioner seeks to compound by including its further characterization of the recent orders below.

IPR2025-00605
Ex. 3101

The parties conferred, and Petitioner requested that its position be included as follows: Petitioner opposes Patent Owner’s request for a reply to further brief the “settled expectations” factor—which was already addressed in each of Patent Owner’s discretionary denial briefs (and Petitioner’s responses thereto). Patent Owner suggests recent cases discussing settled expectations, such as *iRhythm*, justify additional briefing, but those cases do not involve the unique facts here relating to Petitioner’s (as opposed to Patent Owner’s) settled expectations, which were already briefed. And *iRhythm* issued almost a month ago, yet Merus delayed in making any request for additional briefing. To the extent the Director is nonetheless inclined to allow a reply, Petitioner requests an equal-length sur-reply.

Respectfully,

Counsel for Merus

Colleen Tracy James (*she/her/hers*) | **Partner**
Cahill Gordon & Reindel LLP
32 Old Slip, New York, NY 10005
t: +1.212.701.3793 | CTracyJames@cahill.com
www.cahill.com

* * * * *

The information contained in this e-mail message is confidential and may be privileged. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and no privilege is waived. If you believe you have received this communication in error, please notify the sender immediately by replying to this email and then delete this email from your system. Thank you.