

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE  
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE  
UNITED STATES PATENT AND TRADEMARK OFFICE

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CSPC MEGALITH BIOPHARMACEUTICAL CO., LTD.,  
Petitioner,

v.

SHANGHAI MIRACOGEN INC.,  
Patent Owner.

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IPR2025-00685  
Patent 10,792,370 B2

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Before COKE MORGAN STEWART, *Acting Under Secretary of  
Commerce for Intellectual Property and Acting Director of the United States  
Patent and Trademark Office.*

DECISION  
Referring the Petition to the Board

Shanghai Miracogen Inc. (“Patent Owner”) filed a request for discretionary denial (Paper 6, “DD Req.”) in the above-captioned case, and CSPC Megalith Biopharmaceutical Co., Limited. (“Petitioner”) filed an opposition (Paper 7, “DD Opp.”).

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is not appropriate in this proceeding. This determination is based on the totality of the evidence and arguments the parties have presented.

In particular, the challenged patent has not been in force for a significant period of time (issued in 2020). Accordingly, Patent Owner has not developed strong settled expectations that favor discretionary denial. Additionally, early challenges favor robust, predictable patent rights and weigh against discretionary denial. Furthermore, the parties are not involved in a parallel proceeding involving the challenged patent. Paper 1, 3; Paper 3, 2. As a result, there is no concern of inconsistent outcomes and duplication of efforts resulting from two proceedings operating in parallel. In addition, Petitioner provides persuasive reasoning, supported by evidence, that discretionary denial under 35 U.S.C. § 325(d) is not appropriate.

DD Opp. 28–40.

Although certain arguments are highlighted above, the determination not to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petition is referred to the Board to handle the case in the normal course, including by issuing a decision on institution addressing the merits and other non-discretionary considerations, as appropriate.

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In consideration of the foregoing, it is:

ORDERED that Patent Owner's request for discretionary denial is *denied*;

FURTHER ORDERED that the Petition is referred to the Board; and

FURTHER ORDERED that neither party shall file a request for rehearing or Director Review of this decision until the Board issues a decision on institution.

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