

UNITED STATES PATENT AND TRADEMARK OFFICE

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

INTAS PHARMACEUTICALS LTD,
Petitioner,

v.

ATOSSA THERAPEUTICS, INC.,
Patent Owner.

PGR2025-00043 (Patent 12,071,391 B2)
IPR2025-00799 (Patent 11,261,151 B2)

Before KALYAN K. DESHPANDE,¹ *Acting Chief Administrative Patent Judge*.

DECISION
Referring the Petitions to the Board

¹ Coke Morgan Stewart, Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office, is recused and took no part in this decision. The Acting Director has delegated her authority in a Notice of Delegation. See <https://www.uspto.gov/sites/default/files/documents/deshpande-delegation-letter.pdf>.

PGR2025-00043 (Patent 12,071,391 B2)
IPR2025-00799 (Patent 11,261,151 B2)

Atossa Therapeutics, Inc. (“Patent Owner”) filed a request for discretionary denial (Paper 7², “DD Req.”) in the above-captioned cases, and Intas Pharmaceuticals Ltd. (“Petitioner”) filed an opposition (Paper 10, “DD Opp.”).³

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

In particular, the challenged patent in PGR2025-00043 issued August 27, 2024 and Petitioner filed its challenge on April 3, 2025—seven months from the grant of the challenged patent. Petitions for post-grant review are favored because they must be filed no later than nine months from the grant of the patent (35 U.S.C. § 321(c)), are close in time to examination, and occur before expectations in the patent rights are strongly settled. *LifeVac, LLC v. DCSTAR Inc.*, IPR2025-00454, Paper 11 at 2 (Director July 11, 2025). Additionally, the patent challenged in IPR2025-00799 has not been in force for a significant period of time (issued in 2022). Accordingly, Patent Owner has not developed strong settled expectations that favor discretionary denial. 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 patents. DD Opp. 3; Paper 4, 1. As a result, there is no concern of inconsistent outcomes or significant duplication of efforts

² Patent Owner’s Request was filed under seal. Paper 7. A public, redacted version of the Request was also filed. Paper 8.

³ Citations are to papers in PGR2025-00043. The parties filed similar papers in IPR2025-00799.

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resulting from two proceedings operating in parallel. Petitioner also provides persuasive reasoning, supported by evidence, that discretionary denial under 35 U.S.C. § 325(d) is not appropriate. DD Opp. 11–16. Patent Owner’s argument about its covenant to not sue Petitioner—whose scope the parties dispute—does not overcome the other factors weighing in favor of discretionary denial. DD Req. 14–15; DD Opp. 9–11; Ex. 2008.

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 Petitions are referred to the Board to handle the cases in the normal course, including by issuing a decision on institution addressing the merits and other non-discretionary considerations, as appropriate.

In consideration of the foregoing, it is:

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

FURTHER ORDERED that the Petitions are 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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