

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTAS PHARMACEUTICALS LTD.,
Petitioner,

v.

ATOSSA THERAPEUTICS, INC,
Patent Owner.

PGR2025-00043
Patent 12,071,391 B2

Before SHERIDAN K. SNEDDEN, CHRISTOPHER C. KENNEDY, and
JAMIE T. WISZ, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

The Petition identifies Intas Pharmaceuticals Ltd. (“Intas”) and Accord Healthcare, Inc. (a U.S. subsidiary of Intas) as the real parties-in-interest to this proceeding. Pet. 1. The Petition also states that:

Other parties who may be interested in the outcome of this PGR include the National Cancer Institute/National Institutes of Health Clinical Center, Eli Lilly and Company, Pfizer Inc., Jina Pharmaceuticals Inc., Cheiljedang Corp., Alchem Laboratories Corporation, and Lambda Therapeutic Research Limited.

Id.

In an email sent to the Board on November 18, 2025, counsel for Patent Owner requested a conference call seeking authorization to file a motion for additional discovery related to the question of whether Jina Pharmaceuticals Inc. is a real party-in-interest (“RPI”) to this proceeding. The relevant portion of the email reads as follows:

Patent Owner Atossa requests a call regarding RPI issues in the above-captioned matters in view of the October 28, 2025 Precedential Designation of *Corning Optical Communications RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440 (March 2, 2015) as precedential.^[1] See PGR2025-00043, Pap.2, at 1 (“parties who may be interested... include... Jina Pharmaceuticals Inc.”) & EX2015; IPR2025-00799, Pap.2, at 2 (same). Specifically, Patent Owner seeks discovery regarding Jina’s interest and involvement in the proceedings in anticipation of a subsequent request for briefing seeking that the proceedings be terminated for failing to name all RPIS in the petitions. Intas opposes any request for RPI discovery and does not agree that a

¹ Patent Owner refers to our precedential decision in *Corning Optical Communications RF, LLC v. PPC Broadband Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (available at https://www.uspto.gov/sites/default/files/documents/IPR2014_00440_Paper_68.pdf).

call is appropriate.²

Upon consideration of Patent Owner’s request, we grant Patent Owner authorization to file a motion for additional discovery, limited to requests for the production of information relevant to the question of whether Jina Pharmaceuticals Inc. is a real party-in-interest to this proceeding. Should Patent Owner’s motion include a request for the production of documents, Patent Owner is instructed to provide a copy of its proposed production request as an appendix to its motion. Petitioner is authorized to file an opposition to Patent Owner’s motion for additional discovery.

The parties are reminded that the standard for granting additional discovery requests in an AIA trial varies with the proceeding. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019 (“CTPG”), 24.³ Unlike in *inter partes* reviews, where an “interests of justice” standard applies, discovery requests in a PGR are reviewed based upon a slightly more liberal “good cause” standard.

In deciding whether to grant additional discovery, the Board will be guided primarily by the same factors set forth in *Bloomberg Inc. v. Markets-Alert Pty Ltd.*, CBM2013-00005, Paper 32 (PTAB May 29, 2013) (precedential). Although that decision identifies the factors as “Discovery Factors for Covered Business Method Patent Review,” those factors essentially mirror the five factors set forth in *Garmin Int’l, Inc. v. Cuozzo*

² Patent Owner refers to our precedential decision in *Corning Optical Communications RF, LLC v. PPC Broadband Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015) (available at https://www.uspto.gov/sites/default/files/documents/IPR2014_00440_Paper_68.pdf).

³ Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

Speed Techs. LLC, IPR2012-00001, Paper 26 (PTAB Mar. 5, 2013) (precedential) for *inter partes* reviews, except that the *Bloomberg* factors refer to a “good cause” standard instead of an “interests of justice” standard. See *Bloomberg*, Paper 32, 5. As discussed above, the same modified standard is appropriate here. Accordingly, the motion and opposition shall reflect consideration and exemplification of the five discovery factors set forth in those precedential cases. See CTPG 25 (explaining that parties in PGR proceedings should refer to *Garmin* and *Bloomberg* for guidance when requesting additional discovery).

The parties are also reminded that the statute governing post-grant review proceedings sets forth certain requirements for a petition for post-grant review, including that “the petition identifies all real parties in interest.” 35 U.S.C. § 322(a); see also 37 C.F.R. § 42.8(b)(1) (providing a requirement to identify real parties-in-interest in mandatory notices). “Whether a party who is not a named participant in a given proceeding nonetheless constitutes a ‘real party-in-interest’ . . . to that proceeding is a highly fact-dependent question” with no “bright-line test,” and is assessed “on a case-by-case basis.” CTPG, 12–13, 16–17 (citing *Taylor v. Sturgell*, 553 U.S. 880, 893–95 (2008)). We further direct the parties to our precedential decision in *Adello Biologics LLC v. Amgen Inc.*, PGR2019-00001, Paper 11, 5 (PTAB Feb. 14, 2019) (precedential).

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner is authorized to file a Motion for Additional Discovery under 37 C.F.R. § 42.51(b)(2) within seven business

PGR2025-00043
Patent 12,071,391 B2

days of this Order, limited to 10 pages, along with any appendix that sets forth the proposed requests for production; and

FURTHER ORDERED that Petitioner is authorized to file an Opposition to Patent Owner's Motion for Additional Discovery within seven business days after Patent Owner's Motion for Additional Discovery is filed, limited to 10 pages.

FOR PETITIONER:

Alejandro Menchaca
Ben Mahon
Amanda Jackson
MCANDREWS, HELD & MALLOY, LTD.
amenchaca@mcandrews-ip.com
bmahon@mcandrews-ip.com
ajackson@mcandrews-ip.com

FOR PATENT OWNER:

Megan Raymond
Jon Baughman
GROOMBRIDGE, WU, BAUGHMAN & STONE LLP
megan.raymond@groombridgewu.com
steve.baughman@groom