

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTAS PHARMACEUTICALS LTD.,
Petitioner,

v.

ATOSSA THERAPEUTICS, INC,
Patent Owner.

IPR2025-00799 (Patent 11,261,151 B2)
PGR2025-00043 (Patent 12,071,391 B2)¹

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

¹ This order addresses issues that are common to both cases. We, therefore, exercise our discretion and issue a single order that has been entered in each case. The parties may use this style caption when filing a single paper in multiple proceedings, provided that such caption includes a footnote attesting that “the identical paper is filed in each proceeding identified in the caption.” Citations are made to papers filed in IPR2025-00799.

I. INTRODUCTION

A. *Background*

With our authorization (Paper 18), Patent Owner filed a motion for additional discovery requesting information relevant to the question of whether Jina Pharmaceuticals Inc. (“Jina”) is an RPI to these proceedings. Paper 21 (“Mot.”). Petitioner filed an opposition (Paper 22, “Opp.”). In its opposition, Petitioner maintained that it identified the proper real party-in-interests but nonetheless offered to add Jina as an RPI “to resolve any dispute or need for further discovery.” Opp 1. To that end, Petitioner sought to amend its mandatory notices to add Jina as an RPI. Paper 30. Patent Owner opposed and requested permission to file a motion to terminate based on Petitioner not naming Jina as an RPI. *Id.* Thereafter, with our authorization (*id.*), Patent Owner filed a reply to Petitioner’s opposition (Paper 22; “Reply”) and Petitioner filed a sur-reply (Paper 33; “Sur-reply”) related to the question of whether Petitioner may update its mandatory notices to add Jina Pharmaceuticals as an RPI under the circumstance of these proceedings thereby resolving the dispute and need for further discovery.

B. *The Parties’ Contentions*

In its Reply, Patent Owner directs our attention to the Director’s de-designation of *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11 (PTAB Oct. 6, 2020) (“*SharkNinja*”), as precedential, and the Director’s October 28, 2025, memorandum (“*Corning Optical Memo*,” Ex. 3001) designating *Corning Optical Communications RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 (PTAB Aug. 18, 2015)

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(“*Corning Optical*”), as precedential (except for § II.E.1). Patent Owner further directs our attention to the *Corning Optical* Memo, which states: “Under *Corning Optical*, the Office will now enforce § 312(a)(2)’s requirement that a *petition* must ‘identif[y] all real parties in interest.’” Reply 2 (quoting *Corning Optical* Memo, 4). Thus, according to Patent Owner, the Petition cannot be considered because the Petition failed to name Jina as an RPI. *Id.* Patent Owner acknowledged our formerly precedential cases of *Proppant Express Invests., LLC v. Oren Techs., LLC*, IPR2017-01917, Paper 86 (PTAB Feb. 13, 2019) (“*Proppant*”) and *Adello Biologics LLC v. Amgen Inc.*, PGR2019-00001, Paper 11 (PTAB Feb. 14, 2019) (“*Adello*”) permitting updates to Mandatory Notices to add RPIS, but characterizes these cases as “old law” and “inconsistent with the Director’s directive set forth in the *Corning Optical* Memo.” Reply 5. Consequently, Patent Owner “requests that the Board terminate this proceeding, consistent with the Director’s mandate to enforce § 312(a)(2) and the estoppel-carrying identification requirement of § 315(e).” *Id.* at 3–4.

In its Sur-reply, Petitioner contends that Patent Owner gives no reason for why *Proppant* and *Adello* were implicitly de-designated by the designation of *Corning Optical*. Sur-reply 2. To the contrary, according to Petitioner, *Corning Optical* recognizes that Rule § 42.8(b)(1), which requires the identification of each RPI for a party, may be waived thereby allowing correction of the RPIS where circumstance permit, consistent with *Proppant* and *Adello*. *Id.* at 3 (citing *Corning Optical*, Paper 68 at 25); *see also id.* at 6 (quoting *Adello* at 3–4 (“[N]either the statute nor the rule governing RPI disclosures is designed to award a patent owner . . . a windfall” such as a denial of institution.)). Petitioner therefore contends that

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the precedential status of *Proppant* and *Adello* remains unchanged, and that Petitioner may update its identification of RPIs so long as it meets the requirements outlined in *Proppant*. Petitioner also provides a detailed discussion relevant to the question of whether there has been (1) attempts to circumvent the § 315(b) bar or estoppel rules, (2) bad faith by the petitioner, (3) prejudice to the patent owner caused by the delay, or (4) gamesmanship by the petitioner, the requirements outlined in *Proppant*. Sur-reply 3–7. For example, Petitioner contends that “there were no time-bars or estoppels to evade” and that “Jina was identified as a party who may have an interest.” *Id.* at 3–4.

C. *Recent Changes to the Treatment of Law Governing Mandatory Identification of RPIs*

The *Corning Optical* Memo makes clear that “[t]he integrity of PTAB proceedings depends on knowing who is behind a petition—who funds it, directs it, and/or benefits from it.” *Id.* at 4. Consequently, the *Corning Optical* Memo and the designation of *Corning Optical* ended the practice of permitting the Board to avoid engaging in the “extensive analysis” required to determine whether a party is an unnamed RPI if the result of that analysis would have no material impact on the proceeding. *SharkNinja*, Paper 11 at 19–20.

On February 3, 2026, the Director also de-designated the *Proppant* and *Adello* decisions as precedential, thereby making clear that those decisions are indeed “old law,” as argued by Patent Owner. *Aylo Freesites Ltd. v. Dish Technologies LLC*, IPR2024-00940, Paper 75 (PTAB Feb. 3, 2026). *Proppant* and *Adello* permitted a petitioner to amend its identification of RPIs while maintaining the petition’s original filing date

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after considering: (1) whether the petitioner has attempted to circumvent the time bar or estoppel rules; (2) petitioner bad faith; (3) prejudice to a patent owner from the delay; and (4) petitioner gamesmanship. The Director determined, however, that those cases conflict with the decision in *Corning Optical*, which holds that a petitioner's amended identification of RPIs requires according the petition a new filing date.

D. Additional Briefing

In view of the recent changes to the precedential cases governing mandatory identification of RPIs in our proceedings and Petitioner's heavy reliance on *Proppant* and *Adello* in its Sur-reply, the panel requested a call with the parties to discuss options for additional briefing. On February 11, 2026, a conference call was held among Administrative Patent Judges Snedden, Kennedy and Wisz and respective counsel for the parties. During the call, the parties agreed that Petitioner will refile its opposition to Patent Owner's motion for additional discovery and Patent Owner will have an opportunity for reply.

II. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner is authorized to refile its opposition to Patent Owner's motion for additional discovery, limited to 10 pages and due February 25, 2026; and

FURTHER ORDERED that Patent Owner is authorized to file a reply, limited to 10 pages and due March 6, 2026.

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