

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

AZURITY PHARMACEUTICALS, INC.,
Petitioner,

v.

EXELIXIS, INC.,
Patent Owner.

IPR2025-00427
Patent 12,128,039 B2

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

DECISION
Denying Institution of *Inter Partes* Review

Exelixis, Inc. (“Patent Owner”) filed a request for discretionary denial (Paper 8, “DD Req.”) in the above-captioned case, and Azurity Pharmaceuticals, Inc. (“Petitioner”) filed an opposition (Paper 9, “DD Opp.”). With authorization, Patent Owner filed a reply (Paper 11, “DD Reply”) and Petitioner filed a sur-reply (Paper 12, “DD Sur-reply”).

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is appropriate in this proceeding. This determination is based on the totality of the evidence and arguments the parties have presented.

In particular, Petitioner presents challenges here that are substantially similar to those raised against a related patent—containing substantially similar claim language—in a prior district court proceeding and a prior Board proceeding. DD Req. 14–15; *Azurity Pharma., Inc. v. Exelixis Inc.*, IPR2025-00210, Paper 2 (PTAB Nov. 18, 2024). Both the district court and the Board determined that the arguments Petitioner is presenting here were unpersuasive. DD Req. 14–15; *Azurity Pharma.*, IPR2025-00210, Paper 11 (PTAB June 4, 2025) (decision denying institution). Accordingly, it would not be an efficient use of Office resources to revisit substantially similar arguments that have already been adjudicated.

Although certain arguments are highlighted above, the determination to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petition is denied under 35 U.S.C. § 314(a).

In consideration of the foregoing, it is:

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

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FURTHER ORDERED that the Petition is *denied*, and no trial is instituted.

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