

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTAS PHARMACEUTICALS LTD.,
Petitioner,

v.

ATOSSA THERAPEUTICS, INC.,
Patent Owner

Case IPR2025-00799
Patent 11,261,151

**PATENT OWNER'S REPLY TO
PETITIONER'S AMENDED OPPOSITION TO
PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY**

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Pursuant to the Board's Order (Pap.39), Patent Owner Atossa Therapeutics, Inc. ("Atossa") respectfully submits this Reply to Intas's Amended Opposition to Patent Owner's Motion for Discovery.¹

I. The Petition Fails to Identify All RPIs, Thereby Necessitating its Termination.

Intas's offer to name Jina as an RPI is contingent on there being no consequences for doing so. Pap.40, 6. Because Intas's offer is not absolute, however, the case must still be terminated since Intas had the opportunity to demonstrate that it named all RPIs yet failed to carry that burden. *See Yangtze Memory Techs., Co. v. Micron Tech., Inc.*, IPR2025-00098, Pap.38, 7–9 (Jan. 15, 2026) (designated informative Jan. 16, 2026).

It is "Petitioner's burden to bring forth evidence or arguments demonstrating that it named all RPIs" in its Petition. *See Yangtze*, Pap.38, 8. But what the evidence shows is that Jina and Intas share counsel, and Jina (who is Intas's "development partner" (Pap.40, 2)) stands to benefit from this proceeding (*e.g.*, in connection with

¹ Sections are from 35 U.S.C./37 C.F.R. as context indicates, and emphases are added and internal quotations/citations omitted unless noted.

any settlement).² *See* EX2015. Further discovery is not necessary because Intas has set forth no evidence demonstrating that Jina was not an RPI. Indeed, Intas conditionally offers to add Jina as an RPI instead of providing RPI discovery or presenting evidence to the contrary.³ Because Intas did not carry its burden, the consequences for that failure are clear: this proceeding must be terminated. *Yangtze*, Pap.38, 6, 8; *Aylo Freesites Ltd. v. Dish Techs. L.L.C.*, IPR2024-00940, Pap.75, 2–4 (Feb. 3, 2026) (sua sponte Director Review decision).

The Director’s Order in *Yangtze* is instructive. There, as here, the patent owner disputed whether the petitioner identified all RPIs, introducing evidence to support

² Jina tacitly admits it has an interest in the outcome of this proceeding. In another proceeding in which it is the Patent Owner, Jina states “PO [*i.e.*, Jina] has challenged the validity of several patents owned by [Atossa]” and cites to PGR2025-00043, challenging a patent related to the ’151. *Atossa Therapeutics, Inc. v. Jina Pharms., Inc.*, PGR2026-00015, Pap.6, 1 n.1 (Feb. 12, 2026).

³ Intas’s argues, without support, that discovery “would show only that Intas has reasonably communicated with its development partner about the ongoing proceedings.” Pap.40, 2. But this is unsupported attorney argument that cannot be credited. And Intas’s characterization of Intas and Jina’s relationship does not square with Intas’s readiness to add Jina as an RPI.

its position. *Yangtze*, Pap.38, 6–7. And the petitioner there, like Intas here, had an opportunity to rebut the RPI arguments and set forth its own evidence that it had identified all RPIs in its briefing, but failed to do so. *Id.* at 7–8. The Director concluded that “[r]egardless of whether [the unnamed party] here is in fact an RPI, th[e] evidence was sufficient to put into dispute whether the Petitions identified **all** RPIs.” *Id.* at 7. Because the “Petitioner failed to carry [its] burden” to bring forth evidence and arguments demonstrating that it named all RPIs, the Director “still d[id] not have a sufficient answer to whether all RPIs ha[d] been identified,” and thus the Director could not conclude that the petitions identified all RPIs. *Id.* at 8. “The Petitions, therefore, [we]re not in condition for consideration.” *Id.* (citing *Corning Optical Commc’ns RF, LLC v. PPC Broadband Inc.*, IPR2014-00440, Pap.68, 23–25 (Aug. 18, 2015) (precedential)). The institution decisions were vacated and the proceedings terminated. *Id.* at 9.

Here, as in *Yangtze*, Atossa presented evidence “sufficient to put into dispute whether the Petitions identified **all** RPIs.” *Id.* at 7; *see* Pap.20, 1–8; *supra* 1. And despite additional briefing, Intas still has not brought forth evidence and arguments demonstrating that it named all RPIs. Instead, Intas maintains its bare high-level assertion that “Intas does not believe Jina is the real party in interest.” Importantly, Intas does not refute that Jina serves to benefit from the outcome of this Petition. *See* Pap.20, 2–8. And at minimum, Intas’s belated offer to add Jina as an RPI raises

substantial doubt as to whether the Petition identifies all RPIs.⁴ *Yangtze*, Pap.38, 7–

8. Where, as here, Petitioner has failed to sufficiently address allegations that their RPI statement is insufficient, the Petition cannot be considered and must be terminated. *Yangtze*, Pap.38, 8–9.

II. If Intas’s Request to Add Jina is Considered, the Petition Should Still be Terminated

If the Board does not terminate this proceeding based on *Yangtze* and the Petition not being in condition for consideration, and considers Jina’s belated request to be added as an RPI, the Petition should nevertheless be terminated. As *Corning Optical* explains, “under 35 U.S.C. § 312(a)(2), [the Board] may consider a petition for *inter partes* review ‘only if . . . the petition identifies all real parties in interest.’” *Corning Optical Comms. RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Pap.68, 23 (Aug. 18, 2015) (precedential). And “‘any Petition corrected to disclose additional RPIs must be given a new filing date.’” *Curium US LLC v. Universität*

⁴ Intas could have corrected the RPI issue many months earlier because Atossa originally flagged a potential issue with Intas’s RPI disclosures in its May 2025 Request for Discretionary Denial, Pap.7, 8–9. Intas did not seek to correct the issue until December 12, 2025, Pap.30, 1, after the Board granted Atossa’s request for briefing related to RPI discovery.

Heidelberg, IPR2025-01582, Pap.11, 3 (Feb. 25, 2026) (designated informative Feb. 25, 2026) (quoting *Corning Optical*, Pap.68, 23).

Intas asserts that “Atossa does not identify any practical effect [a new filing date] would have, as there is no time-bar whatsoever for considering the Petition.” Pap.40, 4. But the RPI requirement is not conditional. And the Director’s Order in *Curium* shows there must be consequences for failing to meet the RPI requirements.

In *Curium*, Petitioner updated its mandatory notice to name additional entities. Petitioner there, like Intas here, stated it “d[id] not believe [the unnamed entity] [wa]s an RPI” but submitted an updated mandatory notice “to moot this issue.” *Curium*, Pap.11, 2. Regardless of Petitioner’s belief, however, the Director determined “Petitioner’s amendment of its RPI disclosures results in according the Petition a new filing date.” *Id.* at 3. But the Director noted, “according a new filing date to the Petition does not implicate a time-bar under 35 U.S.C. § 312(a)(2).” *Id.* The Director determined that in view of the new filing date, all Papers filed after the Petition and the accompanying exhibits “will be expunged.” *Id.* “All future deadlines for th[e] proceeding will be based on the new filing date accorded.” *Id.*

Although *Curium* makes clear that there must be a consequence for Intas’s failure to name all RPIs in its Petition, Atossa submits that consequence here should be termination rather than expungement of the papers given the late stage of the proceedings. Unlike *Curium*, here, Petitioner’s three experts have been deposed, *see*

EX2031, EX2032, EX2033, and the Patent Owner Response has been filed. The Director has terminated late-stage proceedings rather than start them over when all RPIs are not named. *See Yangtze*, Pap.38, 8–9; *Aylo*, Pap.75, 2–3. Again, Intas was on notice of the RPI issue as early as Atossa’s Request for Discretionary Denial, Pap.7, 8–9, yet did not provide its conditional offer to correct the issue until late in the proceedings. Simply put, Intas should not get a second shot at this proceeding because it failed to comply with its statutory requirement to name all RPIs.

However, if the Board does not terminate this proceeding, then, like in *Curium*, the Board should expunge all papers and accompanying exhibits that were filed after the Petition. *Id.* All future deadlines for this proceeding would be based on the new filing date. *Id.*

III. *Corning Optical* Does Not Permit Waiver of Rule 42.106 and Sufficient Reason Does Not Otherwise Exist to Waive Application of Rule 42.106.

Intas misunderstands *Corning Optical* and its application to cases like this one. There is not room to argue that a petition’s filing date should be maintained.⁵

⁵ This includes Intas’s assertion that “Intas did not identify Jina as the [RPI] because Intas does not believe Jina is the [RPI].” Pap.40, 2. Intas’s belief that Jina is an RPI is not relevant. *See Reflectix, Inc. v. Promethean Insulation Tech. LLC*, IPR2015-00039, Pap.18, 14 (April 24, 2015). To the extent that the Board thinks it

The Director de-designated *Adello* and *Proppant*, which permitted a petitioner to amend its mandatory notices while keeping its filing date, and has since made clear that this prior approach is no longer permitted under *Corning Optical. Aylo*, Pap.75, 3. Instead, a strict application of *Corning Optical* controls. *Id.* at 3–4.

Corning Optical holds that petitions failing to identify all RPIs “have not met the requirements” of § 312(a)(2), “and, therefore, are incomplete and cannot be considered.” *Corning Optical*, Pap.68, 24–25. These incomplete petitions, like Intas’s Petition here, “will not be accorded a filing date” and will be dismissed unless corrected before “the expiration of the statutory deadline in which to file a petition for post-grant review.” § 42.106; *Corning Optical* Pap.68, 24–25; § 312.

Yet despite *Corning Optical*’s straightforward application, Intas still contends “sufficient reason exists to waive the application of Rule 42.206.” Pap.40, 4. And—without any case law support—Intas provides the same three reasons that Atossa previously addressed, *see* Pap.31, 4–5: (1) Intas satisfied the core function of identifying RPIs—identifying potential conflicts and any future questions of estoppel—because “Intas identified Jina as a party potentially interested in the proceeding,” Pap.40, 4; (2) Intas accuses Atossa of sitting on its hands, “never asking

is relevant, Intas’s belief that Jina was not an RPI is not substantiated, and mere attorney argument should not be credited.

Jina to be named as an RPI or seeking such discovery until it could seek termination,” *id.* at 5; and (3) Jina was “not time-barred at the time of filing the petition” and “Jina is not time-barred now,” *id.* at 5. While no waiver is permitted under *Corning Optical* and *Aylo*, for the sake of completeness, Atossa reiterates not one reason above weighs in favor of waiver. *See* Pap.31, 4–5.

First, Intas carefully crafted its disclosure to indicate Jina “may” have an interest without binding Jina to RPI estoppel to avoid the exact consequence it contends to have satisfied now. And Intas’s incorrect RPI determination is far from the “accidental omission” in *Adello Biologics LLC v. Amgen Inc.*, PGR2019-0001, Pap.11, 5 (Feb. 14, 2019), a mistake which is no longer an excuse for maintaining a petition’s filing date. Rather, counsel for Intas (who also represents Jina, *see* EX2024, EX2026) carefully crafted Intas’s disclosure to indicate Jina “may” have an interest without binding Jina to RPI estoppel. If Intas wanted to satisfy the core functions of identifying RPIs, it should have properly named Jina as an RPI. Either a party is an RPI or it is not. Anything short of proper RPI identification is best understood here as gamesmanship. And gamesmanship does not weigh in favor of waiving the application of Rule 42.106.

Second, Atossa timely sought to terminate this proceeding in accordance with the recent changes to the precedential cases governing mandatory identification of RPIs in PTAB proceedings. And instead of addressing the issue as soon as it was

raised to Intas, Intas never asked to correct its RPI identification until after institution when the Board granted briefing on the issue. *See* Pap.30; Pap.31, 1. Moreover, “[w]ith its identification of RPIs in dispute, it was Petitioner’s burden to bring forth evidence or arguments demonstrating that it named all RPIs.” *Yangtze*, Pap.38, 8. Here, Intas failed to carry that burden. And, despite additional briefing addressing the recent designation of *Corning Optical* and de-designation of *Adello* and *Proppant*, Intas fails to sufficiently address whether the Petition identifies all RPIs.

Intas also contends that Atossa “waited until the Director designated *Corning [Optical]* and then sought the windfall of termination.” Pap.38, 5. But the Director’s designation of *Corning Optical* as precedential only clarified the consequences of an incomplete petition. It did not alter Intas’s statutory duty to identify all RPIs in its Petition. And a change in law does not excuse Intas from this duty. *See Reflectix*, Pap.18, 14–15. In fact, Atossa flagged a potential issue with Intas’s RPI disclosures in its Request for Discretionary Denial, Pap.7, 8–9, and Intas still did not seek to correct the issue until December 12, 2025, Pap.30, 1, after the Board granted Atossa’s request for briefing related to RPI discovery.

Moreover, Intas’s reliance on *College Products* is misplaced. Contrary to Petitioner’s suggestion (Pap.7, 4–5), *College Products* is not about the timing of RPI challenges and whether Rule 42.206 can be waived. Rather, it is a non-precedential case about the timing of discovery seeking authorization for a third-party subpoena

to prove prior art status. *College Prods., Inc. v. Intirion Corp.*, PGR2024-00003, Pap.27, 2 (Sept. 9, 2024) (“Denying Petitioner’s Motion for Additional Discovery”). Indeed, RPI issues can be raised pre-institution (*Curium, Yangtze*) and post-institution (*Corning Optical, Aylo*). See *Curium*, Pap.11, 2; *Yangtze*, Pap.38, 5; *Corning Optical*, Pap.68, 2; *Aylo*, Pap.75, 2. Also, each Petition in *Aylo, Curium* and *Yangtze*, like the Petition here, was filed before *Corning Optical* was designated precedential and the Director took no issue with the timeliness of the RPI issue when deciding to terminate those proceedings.

Third, while Jina is not time-barred from challenging the ’151 Patent under § 315(b), *Curium* indicates that at minimum, the Board must accord the Petition a new filing date and expunge all Papers and accompanying exhibits filed after the Petition. *Curium*, Pap.11, 3–4.

IV. Conclusion

For the foregoing reasons, Atossa respectfully requests that the Board terminate this proceeding and vacate its Decision on Institution, or in the alternative, accord the Petition a new filing date and strike the post-Petition filings. To the extent that the Board does not terminate the proceeding and does not add Jina as an RPI, Atossa respectfully requests that the Board grant Atossa’s Discovery Motion.

Respectfully Submitted by:

Dated: March 6, 2026

/s/ Megan Raymond (Reg. No. 72,997)

CERTIFICATE OF PAGE COUNT

The undersigned certifies that the foregoing PATENT OWNER'S
REPLY TO PETITIONER'S AMENDED OPPOSITION TO PATENT
OWNER'S MOTION FOR ADDITIONAL DISCOVERY complies with the
Board's February 12, 2026 Order (Pap.37) limiting this motion to 10 pages.

Dated: March 6, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of PATENT OWNER'S
REPLY TO PETITIONER'S AMENDED OPPOSITION TO PATENT
OWNER'S MOTION FOR ADDITIONAL DISCOVERY has been served in
its entirety by causing the aforementioned document to be electronically
mailed to the following attorneys of record for the Petitioner listed below:

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Dated: March 6, 2026

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