Filed on behalf of: Janssen Biotech, Inc.

Entered: July 15, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ACCORD BIOPHARMA, INC., INTAS PHARMACEUTICALS LTD., AND BIO-THERA SOLUTIONS, LTD.,
Petitioner,

v.

JANSSEN BIOTECH, INC.,
Patent Owner.

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IPR2026-00257
Patent No. 11,041,020

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**PATENT OWNER'S SURREPLY TO PATENT OWNER'S PRELIMINARY RESPONSE**

Petitioners bore the burden of proving that NCT673-V23 (Ex.1011) was "publicly accessible before the critical date" and could have been located by a POSA exercising reasonable diligence. *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29, 13, 16 (Dec. 20, 2019) (precedential). Yet the Petition devoted only one sentence to that key issue. Arguments first raised in Reply cannot cure Petitioners' failure to establish public accessibility in the Petition.

Petitioners' **Wayback Machine** arguments do not establish that NCT673-V23 was publicly accessible. Their assertion that the Wayback Machine does not archive "every page that ever existed" (Reply, 1) does not satisfy their burden to show public accessibility. Janssen is not required to prove the negative. Petitioners submitted no Wayback Machine evidence, despite the Board's regular reliance on such evidence to evaluate prior art status. *See OBM v. Lancium*, IPR2023-01407, Paper 9, 24-25 (Mar. 13, 2024). The only Wayback Machine evidence in the record (Ex.2059; Ex.2060) rebuts Petitioners' theory and remains undisputed.

Petitioners' "Last Update" evidence (Reply, 1) also does not establish public accessibility. By its own terms, the date is merely "Estimated" (Ex.1011, 3). Petitioners' allegations are also contradicted by the document itself (Ex.1011, 1 "Last Update Posted: 2017-12-21") and the Wayback Machine's archival history (Ex.2059, 1). Petitioners' Ex.1052 fares no better. It provides only generic marketing statements about the overall database's mission; it does not address when

NCT673-V23 became publicly accessible. Judicial notice is likewise inappropriate because the relevant date is subject to reasonable dispute. *Cf.* Fed. R. Evid. 201(b).

**Search Capabilities:** As Petitioners acknowledge, ClinicalTrials.gov contained "over 200,000 trials" as of November 2015. Reply, 2. The Board routinely relies on Wayback Machine evidence, like Janssen's Ex.2060, to assess search functionality at the critical date. *See BTL Indus., Inc. v. Inmode Ltd.*, IPR2024-00703, Paper 29, 33 (Oct. 1, 2025). Petitioners offer no competing contemporaneous evidence. Instead, they rely on attorney argument and unsupported, conclusory expert testimony that a POSA would have found NCT673-V23. That is insufficient to satisfy Petitioners' burden. *See Salesforce.com, Inc. v. WSOU Invs., LLC*, IPR2022-00428, Paper 10, 12-14 (July 13, 2022) (rejecting unsupported searching testimony); *ENS Labs Ltd. v. Unstoppable Domains Inc.*, IPR2024-00872, Paper 8, 21-22 (Nov. 22, 2024).

*Celltrion* is readily distinguishable. There, the record included testimony from a witness with "intimate knowledge of … ClinicalTrials.gov." IPR2022-00578, Paper 78, 27-28 (Aug. 29, 2023). No comparable evidence exists here. Likewise, in *Grunenthal*, the indicia of publication were undisputed. PGR2019-00003, Paper 22, 17 (May 5, 2020). Here, by contrast, the record raises substantial questions regarding the publication and public accessibility of NCT673-V23. POPR, 30-32.

Petitioners fail to show Ex.1011 is prior art. Institution should be denied.

Respectfully submitted,

Dated: July 15, 2026

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**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 15th day of July, 2026, a true and correct copy of the foregoing **Patent Owner's Surreply to Patent Owner's Preliminary Response** was served by electronic mail on Petitioners' lead and backup counsel at the following email addresses:

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