

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.,
AZURITY PHARMA INDIA LLP, and
SLAYBACK PHARMA LLC,
Petitioner,

v.

HERON THERAPEUTICS, INC.,
Patent Owner.

PGR2025-00035 (Patent 12,115,254 B2)
PGR2025-00036 (Patent 12,115,255 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

Heron Therapeutics, Inc. (“Patent Owner”) filed a request for discretionary denial (Paper 6, “DD Req.”) in the above-captioned cases, and Azurity Pharmaceuticals, Inc., Azurity Pharma India LLP, and Slayback Pharma LLC (collectively, “Petitioner”) filed an opposition (Paper 10, “DD Opp.”).¹

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

Some considerations weigh against discretionary denial. For example, petitions for post-grant review are favored because they must be filed no later than nine months from the grant of the patent (35 U.S.C. § 321(c)), are close in time to examination, and occur before expectations in the patent rights are strongly settled. *LifeVac, LLC v. DCSTAR Inc.*, IPR2025-00454, Paper 11 at 2 (Director July 11, 2025).

Other considerations, however, favor discretionary denial. In particular, the projected final written decision due date in these proceedings is October 14, 2026. *See* DD Req. 16. The district court’s scheduled trial date is November 17, 2025. *Id.*; Ex. 2002, 2–3. Additionally, both parties agree that the district court is unlikely to stay its proceeding. DD Req. 15–16; DD Opp. 12. As such, it is unlikely that a final written decision in these proceedings will issue before the trial in the district court, resulting in significant duplication of effort, additional expense for the parties, and a risk

¹ Citations are to papers in PGR2025-00035. The parties filed similar papers in PGR2025-00036.

of inconsistent decisions.² Furthermore, there has been substantial investment by the parties in the district court proceeding. DD Req. 18. For example, the parties have exchanged invalidity and infringement contentions, conducted all fact depositions, completed all document production, and expert discovery will close prior to the due date for an institution decision in these proceedings. *Id.*; Ex. 2002, 2–3. On balance, the circumstances in these cases favor discretionary denial.

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 Petitions are 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

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

² If, within 30 days of this Decision, circumstances in district court change, such that a final written decision in these proceedings will issue before the conclusion of the district court proceeding, Petitioner may file a request for rehearing or Director Review.

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