

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTAS PHARMACEUTICALS LTD.,
Petitioner,

v.

ATOSSA THERAPEUTICS, INC.,
Patent Owner

Case PGR2025-00043
Patent 12,071,391

**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.37), 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.38, 7. 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.38, 3)) 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

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 this proceeding. *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. 38, 3. 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.

support 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 has presented evidence “sufficient to put into dispute whether the Petitions identified **all** RPIs.” *Id.* at 7; *see* Pap.19, 2–8; *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” because Intas has funded and controlled this Petition. Importantly, Intas does not refute that Jina serves to benefit from the outcome of this Petition. *See* Pap.19, 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. *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 thus must be terminated. *Yangtze*, Pap.38, 8–9.

II. The Board Must Terminate This Proceeding Because the Petition Is Time Barred.

If the Board does not terminate this proceeding based on *Yangtze* and the Petition not being in condition for consideration, and considers Jina's request to be added as an RPI, the Petition should nevertheless be terminated because correcting RPIs here would result in the Petition losing its filing date, causing the Petition to be time-barred under § 321(c). Indeed, “[u]nder *Corning Optical*, ‘any Petition corrected to disclose additional RPIs must be given a new filing date.’” *Curium US LLC v. Universität Heidelberg*, IPR2025-01582, Pap.11, 3 (Feb. 25, 2026) (designated informative Feb. 25, 2026); *see also* Pap.30, 4. Here, a new filing date would be more than 9 months after the '391 Patent issued (August 27, 2024), making the Petition time-barred under § 321(c). As such, the appropriate remedy is to vacate the Institution Decision and terminate this proceeding.

III. *Corning Optical* Does Not Permit Waiver of Rule 42.206 and Sufficient Reason Does Not Otherwise Exist to Waive Application of Rule 42.206.

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.⁴ 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) (or § 322(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.” § 42.206; *Corning Optical*, Pap.68, 24–25; §§ 312, 322.

⁴ This includes Intas's assertion that “Intas did not identify Jina as the [RPI] because Intas does not believe Jina is the [RPI].” Pap.38, 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 is relevant, Intas's belief that Jina was not an RPI is not substantiated, and mere attorney argument should not be credited.

Yet despite *Corning Optical*'s straightforward application, Intas still contends "sufficient reason exists to waive the application of Rule 42.206." Pap.38, 5. And—without any case law support—Intas provides the same three reasons that Atossa previously addressed, *see* Pap.30, 4–6: (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.38, 5; (2) Intas accuses Atossa of sitting on its hands, "never asking 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 6. 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.30, 4–6.

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 42.206.

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.28; Pap.30, 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 to address the recent designation of *Corning Optical* and de-designation of *Adello* and *Proppant*, Intas still 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.28, 2, 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, despite Intas’s contention otherwise, Jina is time-barred from challenging the ’391 Patent. See Pap.38, 6. The deadline for filing this PGR was May 27, 2025 and current case law compels termination. *Corning Optical* holds that a petitioner’s amended identification of RPIs requires according the petition a new

filing date. *Aylo*, Pap.75, 3 (citing *Corning Optical*, Pap.68, 23). Thus, a new filing date would be more than 9 months after the '391 Patent issued (August 27, 2024), making the Petition time-barred under § 321(c).

Separately, Intas's suggestion that this Petition "could be refiled as an IPR," oversimplifies the issue. What Intas might or might not do in the future, and what arguments Intas might make in any filing (and how Atossa might respond), cannot be determined in the present proceeding. Such speculation is misplaced and not grounds for waiving Rule 42.206. Moreover, whether Intas may file a future IPR does not excuse its failure to adhere to its statutory requirement of identifying all RPIs in its Petition. At bottom, regardless of administrative efficiency, case law compels consequences for a failure to name all RPIs in a petition. *See generally*, *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. 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 Motion for Additional Discovery.

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

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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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