

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GILGAMESH PHARMACEUTICALS, INC.,
Petitioner

v.

ENVERIC BIOSCIENCES CANADA, INC.,
Patent Owner

Case PGR2025-00076
Patent No. 12,138,276

PETITIONER'S MOTION TO DISMISS PETITION

Pursuant to the Director's authorization by email on November 18, 2025, Petitioner moves to withdraw and dismiss the Petition filed in PGR2025-00076.

I. BACKGROUND

The Petition in this proceeding was filed on August 12, 2025, and received a notice of filing date on August 26, 2025. The Petition was filed by Gilgamesh Pharmaceuticals, Inc., but, subsequent to the filing of the Petition, Gilgamesh Pharmaceuticals, Inc. was acquired and became a wholly owned subsidiary of Warka Intermediate LLC, which in turn is a wholly owned subsidiary of AbbVie Inc. *See* Paper 8; *see also* Ex. 1017. The Petition identified various anticipatory references, Pet. at 14-55, as well as various issues under obviousness, lack of enablement, and indefiniteness, Pet. 55-65. In response, Patent Owner filed a discretionary denial brief on October 24, 2025. In Patent Owner's discretionary denial brief, Patent Owner did not address the underlying merits; rather, Patent Owner argued that the Petition had alleged defects in terms of (1) not being accompanied by expert testimony, and (2) allegedly not meeting the particularity requirement of 35 U.S.C. § 322(a)(3).

Petitioner first reached out to Patent Owner regarding the requested relief here on November 4, 2025. On November 10, Patent Owner indicated it needed more time to consider Petitioner's request. Ex. 1018. On November 13, Patent Owner inquired whether Petitioner would stipulate that Petitioner and any RPIs would never

file any other petition against the '276 patent. *Id.* On November 14, Petitioner indicated that it would not enter such a broad stipulation, but confirmed that it did “not currently have any plans to file another petition.” *Id.* On November 17, Patent Owner indicated that it would oppose Petitioner’s request, and Petitioner immediately contacted the Director the same day, who in turn authorized this motion on November 18. *Id.*; Ex. 3101.

II. ARGUMENT

The Director should allow Petitioner to withdraw and dismiss the Petition here. Permitting Petitioner to dismiss the Petition would be consistent with existing practice. *See, e.g., iRhythm Techs., Inc. v. Welch Allyn, Inc.*, IPR2025-01081, Paper 10 (Oct. 17, 2025). And permitting Petitioner to dismiss the Petition would not prejudice Patent Owner in any way, but rather would be the efficient path forward given both parties prefer that the proceeding be terminated.

In *iRhythm*, the Board considered a scenario that was notionally more favorable to the patent owner than the scenario here. In particular, in *iRhythm*, “[t]hree days after Petitioner filed its instant petition for the '699 Patent, the Acting Director ordered discretionary denials for five similarly situated petitions.” *Id.*, at 2. Because “[t]he '699 Patent petition suffer[ed] from the same fatal flaw as its five predecessors and, upon receiving the five Discretionary Denial decisions, Patent Owner requested that Petitioner withdraw its petition for the '699 Patent at that time

to save the parties’ and Board’s resources.” *Id.* Despite this request, “Petitioner ignored Patent Owner’s request, instead requiring Patent Owner to file its Discretionary Denial request ... and substantially prepare its Preliminary Patent Owner Response.” *Id.*

The Board in *iRhythm* granted the petitioner’s request to withdraw and dismiss the petition, and denied patent owner’s request for a discretionary denial: “Such a [discretionary] decision would not constitute a final decision under 35 U.S.C. § 318(a). And, granting Petitioner the relief it seeks—withdrawal of its Petition—produces the same practical effect as a discretionary denial of the Petition. In either case, no *inter partes* review against the ’699 patent will proceed on the Petition.” *Id.*, at 3. That same result is compelled here—in fact, in this PGR, in contrast to *iRhythm*, there is no decision that suggests any “fatal flaw” in the pending Petition, and it is Petitioner, rather than Patent Owner, that reached out regarding withdrawal of the Petition. *Supra* Section I. Thus, even if the equities are considered, they further compel granting Petitioner’s motion.

Also, nothing in the rules or statute prohibits a Petitioner from withdrawing a Petition prior to institution. And Patent Owner itself has argued for a discretionary denial because “it would waste the **Board’s** time, effort, and resources to consider [the Petition] for institution at all.” Paper 6 at 1 (emphasis added). Requiring the Director to consider Patent Owner’s discretionary denial arguments would constitute

a waste of the **Director**'s time, effort, and resources given Petitioner is no longer interested in maintaining the PGR. The recent change in ownership of the Petitioner further shows that there is no gamesmanship at play. *See* Paper 8; *supra* Section I.

In opposing Petitioner's request to withdraw the Petition, Patent Owner argued that it "has already expended significant funds and resources defending the '276 patent" by "fil[ing] its Request for Discretionary Denial" and "preparing its Patent Owner Preliminary Response." Ex. 3101. But the same was true in *iRhythm*, where the Board "recognize[d] that Patent Owner expended resources," *iRhythm* at 3, but granted withdrawal of the petition because, just as is the case here, "the Board ... has not decided the merits of the Petition," "[g]ranted the Motion will conserve the resources of the Board," and "neither party wants us to institute an inter partes review," *id.* at 4. And here circumstances favor Petitioner even more than in *iRhythm*. First, it is Petitioner that reached out to Patent Owner regarding withdrawal of the Petition on November 4 and noted at that time that Patent Owner would save resources in not having to prepare its Preliminary Response if Petitioner withdraws its petition. Second, some of Patent Owner's efforts for its Preliminary Response (to the extent Patent Owner is still spending those efforts despite knowing Petitioner will be seeking to withdraw the Petition) are due to Patent Owner's own choice and delay in responding to Petitioner's request. *Supra* Section I. In any event, if the Director grants Petitioner's request, Patent Owner is getting all that it

can reasonably expect and exactly what it asked for with its discretionary denial brief—no instituted PGR against the '276 patent.

Patent Owner further argued in opposing Petitioner's request that "[i]t would be manifestly unfair for such a well-resourced Petitioner to withdraw the current Petition while retaining the right to file another petition at some unknown date in the future, presumably correcting the significant and pervasive mistakes in the original petition that Patent Owner highlighted in its Request for Discretionary Denial and effectively giving Petitioner two bites at the apple, as Petitioner has refused to stipulate that it will not file a subsequent IPR petition." Ex. 3101. This overlooks several things. **First**, setting aside future discretionary issues that Petitioner and/or its RPIs may need to overcome, in a world where Petitioner never requested to withdraw the Petition, and Patent Owner's pending request for discretionary denial were granted, there is no estoppel that would take effect precluding Petitioner and/or its RPIs from filing an IPR. Currently, the '276 patent is not asserted in any litigation, and Petitioner (and any RPIs Petitioner is aware of) has no current intention to challenge the '276 patent in another proceeding. But circumstances can change (e.g., if Patent Owner asserts the '276 patent), and it would make no sense for Petitioner to enter a stipulation that would not apply if Petitioner allowed the PGR to proceed to an institution decision. **Second**, while Patent Owner focuses on AbbVie's indirect ownership of the Petitioner, that ownership interest did not exist

when the Petition was filed. *Third*, while Patent Owner argues “significant and pervasive mistakes in the original petition,” its discretionary denial brief does not dispute the underlying strength of, for example, the many anticipatory references identified in the Petition. *Compare* Pet. at 14-55, *with* Paper 6.

III. CONCLUSION

Petitioner is no longer interested in maintaining the pending Petition. It would thus not be a good use of the Director’s resources to consider it. To the extent this motion is not granted, however, Petitioner notes that it is not abandoning this proceeding, and would request that the Director proceed to enter a decision on Patent Owner’s pending request for discretionary denial.

Respectfully submitted,

Dated: November 20, 2025

/Naveen Modi/

Naveen Modi (Reg. No. 46,224)
Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2025, a copy of the foregoing Petitioner's Motion to Dismiss Petition was served by electronic means upon Counsel for Patent Owner at the following address of record:

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Dated: November 20, 2025

Respectfully submitted,

/Naveen Modi/

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