

From: [Director Discretionary Decision](#)
To: [Cousin, Jonathan](#); [Director Discretionary Decision](#)
Cc: : [Nate Luman](#); [Phillip Minnick](#); [Eric Furman](#); [BoxFalkPharma](#); [Agarwal, Isha](#); [Sukduang, Sanya](#)
Subject: RE: Dr. Falk Pharma GmbH v. Ellodi Pharmaceuticals, L.P. | PGR2025-00086 - Request for Authorization to File a Reply
Date: Wednesday, January 7, 2026 9:58:09 AM

Patent Owner is authorized to file a 4-page reply in PGR2025-00086, due no later than Friday, January 9, 2026, limited to addressing the discretionary arguments raised below. Petitioner is authorized a 4-page sur-reply, due no later than Tuesday, January 13, 2026.

In addition, Petitioner is authorized to file a 5-page reply in PGR2025-00086, due no later than Tuesday, January 13, 2026, limited to addressing Patent Owner's Preliminary Response. Patent Owner is authorized a 5-page sur-reply, due no later than Monday, January 19, 2026.

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Sent: Monday, January 5, 2026 5:40 PM
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Subject: Dr. Falk Pharma GmbH v. Ellodi Pharmaceuticals, L.P. | PGR2025-00086 - Request for Authorization to File a Reply

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Dear Honorable Director,

On December 29, 2025, Petitioner filed its opposition brief to Patent Owner's brief requesting discretionary denial in PGR2025-00086. The opposition brief contains new arguments and exhibits. Patent Owner requests authorization to file a reply to briefly address the following topics:

- **New Argument Regarding Material Error Under *Advanced Bionics*** - The opposition improperly attempts to shore up the Petition to show material error under the *Advanced Bionics*. Paper 9, 12-15. In its brief requesting discretionary denial, Patent Owner spent no more than two paragraphs addressing the fact that Petitioner did not show that the Office erred materially in allowing the challenged claims. Paper 6, 18. Petitioner addresses material error over more than 3 pages in its opposition. Paper 9, 12-15. Petitioner also addresses the '598 patent's prosecution history for the first time, after Patent Owner pointed out that the Petition did not consider the prosecution history in its analysis. Paper 6, 18. Such new argument is prejudicial to Patent Owner as attempting to backfill the Petition when Petitioner

should have made these arguments in the first place. Petitioner also raises the adverse judgment entered against the '729 patent for the first time, which Patent Owner has not had the opportunity to address. Paper 9, 14-15.

- **New Circumstances Regarding Certificate of Correction** - The Board had not yet stayed Patent Owner's Request for Certificate of Correction when Patent Owner submitted its brief requesting discretionary denial. Paper 7. The opposition summarily states that Patent Owner's Certificate of Correction would not apply retroactively to the PGR. Paper 9, 7-8. Petitioner only cites to one case regarding the application of a certificate of correction **after** a final written decision has issued. Paper 9, 7. Petitioner's argument does not apply to the current procedural posture and is speculative at best.

As such, Patent Owner seeks authorization to file a 4-page reply in PGR2025-00086. Patent Owner would not oppose a sur-reply by Petitioner of equal length. The parties have conferred via email, and Petitioner's position is provided below:

Petitioner disagrees with Patent Owner's characterization of the opposition brief. Nevertheless, Petitioner does not oppose the requested reply on discretionary denial so long as it is permitted to file a sur-reply of equal length due within 4 business days of Patent Owner's reply.

In addition, Petitioner requests authorization to file an 8-page reply to Patent Owner's 79-page Preliminary Response to address:

- Patent Owner's arguments regarding its request for Certificate of Correction and its alleged impact on the merits of Grounds 1-6 of the Petition;
- Patent Owner's expert declaration (Exhibit 2007) and new Exhibits 2032 and 2033 relating to the merits of Grounds 3-12 of the Petition; and
- The relationship between Patent Owner's arguments in this Preliminary Response and the arguments briefed by the parties in the related matters of IPR2024-01197 (where adverse judgment was entered against Patent Owner) and instituted IPR2025-00052, -00054, and -00055.

Petitioner submits that good cause exists for its requested reply briefing so that it can address Patent Owner's arguments and exhibits, and so the Board can benefit from hearing from both parties on the issues raised by Patent Owner and its exhibits in the Preliminary Response.

Petitioner would not oppose a sur-reply by Patent Owner of equal length. The parties have conferred via email.

Patent Owner opposes Petitioner's request to file a reply to Patent Owner's Preliminary Response for the following reasons:

Petitioner has already had the opportunity to address the certificate of correction in its opposition briefing

- Patent Owner's expert declaration (EX2007) and new exhibits EX2032 and EX2033 merely respond to Petitioner's arguments made in the Petition
- Petitioner has already had the opportunity to address the related proceedings, including the adverse judgment in IPR2024-01197, in its opposition for discretionary denial, which Petitioner did in fact already address in its opposition brief

Should the Board allow Petitioner to submit a reply to Patent Owner's POPR, Patent Owner requests authorization to file a sur-reply of equal length in response to Petitioner's reply.

The parties are available for a teleconference, if requested by the Board, on January 9 after 1pm ET, January 12 between 12-2pm ET and January 13 after 2pm ET.

Respectfully,

Jon Cousin

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