

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ATOSSA THERAPEUTICS, INC.,

Petitioner,

v.

JINA PHARMACEUTICALS, INC.,

Patent Owner.

Case PGR2026-00015

Patent No. 12,245,997

**PATENT OWNER'S MOTION FOR ADDITIONAL PAGES
FOR ITS REQUEST FOR DISCRETIONARY DENIAL OF INSTITUTION**

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I. Introduction

Patent Owner (PO) filed a paper, hereinafter the “DD Paper,” requesting discretionary denial of institution of PGR of U.S. Patent No. 12,245,997 (Ex. 1001). *See* Paper 6, February 12, 2026. Petitioner asked the Board to strike the DD Paper in its entirety because it “exceeds the 20-page limit set forth at Section II.C.iii of the Interim Director Discretionary Process and fails to comply with 37 C.F.R. § 42.6(a)(2)(iii)’s requirement that footnote text be double spaced.” *See* February 17 Email from Petitioner to Board. The Director authorized Patent Owner (PO) to file a 3-page motion demonstrating good cause for the additional pages. For the reasons set forth below, PO submits that good cause exists for the additional pages.

II. The Interim Director Discretionary Process (IDDP)

“On March 26, 2025, the United States Patent and Trademark Office (USPTO or Office) issued a memorandum on interim processes for PTAB workload management (Process Memorandum)” wherein “decisions on whether to institute . . . post-grant reviews (PGR) are bifurcated between (i) discretionary considerations and (ii) merits and other non-discretionary considerations.” <https://www.uspto.gov/patents/ptab/interim-director-discretionary-process>, (last visited February 20, 2026). The IDDP “provides information on the discretionary considerations process and serves as a guide to parties on when and how to file discretionary briefing[.]” *Id.*

Since its inception, IDPP permitted the patent owner to “file a brief that explains the facts and circumstances that warrant discretionary denial of the petition.” *Id.*, § I.C. And while concededly effective September 1, 2025, “a patent owner’s discretionary denial brief [was] limited to 20 pages,” (*id.*, § II.C.iii), the Office has always emphasized that “[t]he brief should provide a thorough explanation of the outcome that the party is advocating for, supported with facts and evidence.” *Id.*, § I.C. Assumedly, consistent with this request for a thorough explanation, the IDPP, permits the patent owner “to request additional pages” upon “demonstrat[ing] good cause for the additionally requested pages.” *Id.*, § II.C.iii.

III. Good Cause Exists for the Additional Pages

Petitioner challenges the two independent claims, claim 1 and 6, and eight dependent claims, claims 2-5 and claims 7-10 on four distinct grounds – lack of written description, lack of enablement, indefiniteness, collectively the “112 Grounds,” and anticipation by Ahmad 2016, Ex. 1001. See Paper 1 at 26. Each of the 112 Grounds implicates unique legal and factual considerations – considerations that the Petition ignores or overlooks. See DD Paper. To provide “a through explanation” of the “the strength of the unpatentability challenge[s]” for each of the 112 Grounds, the DD Paper devotes 15 pages to addressing the 112 Grounds. Accordingly, an extension to the page limit is warranted. See *Apple Inc. v. Masimo Corp.*, IPR2024-00294, Paper 49 at 4 (March 13, 2025) (In a different context,

finding that “an extension of pages allotted for Petitioner’s opposition [was] warranted” when there were “multiple issues presented under 35 U.S.C. § 112.”); *See also Fox Factory, Inc. v. SRAM, LLC.*, IPR2016-01876, Paper 49 (October 4, 2017) (finding good cause to expand word limit from 5,600 words to 10,000 words because of the complexity and volume of evidence.).

Further, “the records of these proceedings will be enhanced” and “will aid the Board in rendering [] decisions on these matters[.]” *Dr. Falk Pharma GmbH. v. Ellodi Pharma., L.P.*, IPR2025-00052, Paper 23 at 3 (November 4, 2025) (finding that “good cause exists to extend word count for each of Petitioner’s Replies by 1000 words and similarly, extend the word count for Patent Owner[.]”).

As for the anticipation ground, Ground 4, the DD Paper sets out a full picture, with extensive quotes from both the Petition and the prosecution history, to demonstrate fully the Petition’s overlap with the prosecution. PO submits that this full picture sets out for the Board the complete basis for discretionary denial pursuant to 35 U.S.C. § 325(d).

IV. Conclusion

For the foregoing reasons, PO submits that good cause exists to grant the requested additional pages and accept the DD Paper, as filed.

Dated: February 20, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the Patent Owner's Request for Additional Pages in connection with Post Grant Review Case PGR2026-00015 was served on February 20, 2026 by electronic mail to:

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CERTIFICATE OF COMPLIANCE

Pursuant to 37 C.F.R. § 42.24(d), the undersigned attorney for the Patent Owner, Jina Pharmaceuticals, Inc., declares that Patent Owner's Motion for Additional Pages for its Request for Discretionary Denial of Institution complies with the 3-page limit provided by the Board in its direction of February 18, 2026 (Exhibit 3101).

Dated: February 20, 2026

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