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Paper 9
Date: March 5, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ATOSSA THERAPEUTICS, INC.,
Petitioner,

v.

JINA PHARMACEUTICALS, INC.,
Patent Owner.

PGR2026-00015
Patent 12,245,997 B2

Before KALYAN K. DESHPANDE, *Chief Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

Jina Pharmaceuticals, Inc. ("Patent Owner") filed a request for discretionary denial (Paper 6, "DD Req.") in the above-captioned case. Atossa Therapeutics, Inc. ("Petitioner") notified the Office that Patent Owner's request exceeded the 20-page limit for requests for discretionary denial and failed to comply with other formatting requirements. *See* Ex. 3101. With authorization, Patent Owner filed a motion for good cause for additional pages (Paper 7, "Motion"), and Petitioner filed an opposition to the Motion (Paper 8, "Opp.").

Patent Owner argues in its Motion that it requires additional pages to "provide 'a through explanation' of the 'the strength of the unpatentability challenge[s]'" based on Petitioner's "112 Grounds." Mot. 2–3. Patent Owner further argues that the additional pages will enhance the record of the proceeding and will aid the Board in deciding the matter. *See id.* at 3.

Patent Owner's arguments are not persuasive. Patent Owner uses numerous pages to argue the merits of the case, including addressing unpatentability under 35 U.S.C. §112, rather than focusing on discretionary considerations. *See* DD Req. 10–24; *see* Opp. 2. Although the "strength of the unpatentability challenge" is a discretionary consideration, the Interim Director Discretionary Process Guidelines explain that "[a] patent owner . . . should briefly explain why the merits are relevant. A patent owner should not treat a discretionary denial brief as an additional opportunity for merits briefing." *See* Interim Director Discretionary Process Guidelines §§ I.C., II.C.(i).[1] Instead, Patent Owner should make its arguments on the merits in its preliminary response, and any authorized reply or sur-reply. *See id.*

[1] Available at: https://www.uspto.gov/patents/ptab/interim-director-discretionary-process

Accordingly, Patent Owner's Motion is denied. Petitioner's proposal to strike Patent Owner's entire brief, however, is not the appropriate remedy. Rather, the appropriate remedy is for Patent Owner to file a discretionary denial brief compliant with the required page limit. Patent Owner's brief may not include any new arguments and Patent Owner may not present any new evidence.

In consideration of the foregoing, it is:

ORDERED that Patent Owner shall file a compliant brief for discretionary denial not to exceed 20 pages within **two days** of this Order; and

FURTHER ORDERED the deadline to file the Patent Owner preliminary response and Petitioner's brief opposing Patent Owner's request for discretionary denial shall be extended by **two weeks** from the original due date.

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