

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MERCK SHARP & DOHME LLC,  
Petitioner

v.

HALOZYME INC.,  
Patent Owner

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PGR2025-00003 (11,952,600 B2) PGR2025-00046 (12,091,692 B2)  
PGR2025-00004 (12,018,298 B2) PGR2025-00024 (12,060,590 B2)  
PGR2025-00006 (12,152,262 B2) PGR2025-00030 (12,054,758 B2)  
PGR2025-00009 (12,123,035 B2) PGR2025-00052 (12,264,345 B2)  
PGR2025-00017 (12,110,520 B2) PGR2025-00042 (12,037,618 B2)  
PGR2025-00033 (12,049,652 B2) PGR2025-00050 (12,077,791 B2)  
PGR2025-00039 (12,104,185 B2) PGR2025-00053 (12,195,773 B2)

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**PATENT OWNER'S MOTION TO TERMINATE PROCEEDINGS FOR  
FAILURE TO NAME ALL REAL PARTIES-IN-INTEREST**

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Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450

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[REDACTED]

[REDACTED]

[REDACTED] Ms. Zachary has also signed multiple SEC filings on behalf of Merck & Co., the parent “Company,” including the Nov. 5, 2025 SEC Form 10-Q attributing the PGR filings to Merck & Co. EX2400 at 53. Taken together, this evidence shows, at the very least, a clear opportunity to direct and control these proceedings on behalf of Merck & Co.

Also through additional discovery, Patent Owner learned the names of people directly involved in providing instructions, strategy, and funding for these proceedings. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EX2401 at 9; EX2446 at Appendix 2a; EX2447; EX2448; EX2416; EX2449.

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<sup>1</sup> Applications for registration to practice before USPTO include a field titled “Employer, corporation, law firm, U.S. Government Agency.” It represents part of the “address ... used for official correspondence.” EX2450 at 1 (PTO form 158). Statements to OED are certified accurate under 18 U.S.C. § 1001. Applicants are “required to update the foregoing information promptly upon any change.” *Id.*

This and other evidence show the blurred lines between MSD and Merck & Co., as the corporations are such that one has difficulty telling one from the other. Indeed, there is a complete overlap in the companies' Executive Leadership (including their CEO and General Counsel) and Board of Directors, and they have an identical place of business. EX2407; EX2408; EX2409; EX2410; EX2451; EX2411; EX2412; EX2452; EX2453. Merck & Co. also has made clear in its SEC filings that it has a significant interest in, desires, and greatly benefits from these PGR proceedings. *See, e.g.*, EX2400 at 8 (last ¶) (discussing Merck & Co.'s exclusive license to a key component of KEYTRUDA QLEX<sup>TM2</sup>), 25, 37-38, 47-49 (discussing Merck & Co.'s planned revenue and liabilities related to KEYTRUDA QLEX<sup>TM</sup>); EX2468 at 4.

Because Merck & Co. is an RPI to these proceedings and has not been named, MSD had failed to comply with the statutory requirements and binding Board precedent for maintaining these PGRs. Moreover, MSD appears to be trying to circumvent estoppel rules on behalf of its parent company. The above-captioned PGRs should be terminated.

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<sup>2</sup> KEYTRUDA QLEX<sup>TM</sup> is the accused product in the parallel district court litigation involving the patents challenged in these PGRs.

## II. BACKGROUND AND LEGAL STANDARDS

After MSD filed several of its PGR Petitions, Halozyme sued MSD alleging that MSD's product, KEYTRUDA QLEX™, a subcutaneously administered KEYTRUDA® product, infringes 12 Halozyme patents involved in these 14 PGRs. EX2036. A 15<sup>th</sup> PGR proceeding (PGR2025-00087) is pending before the Director.

On October 28, 2025, the USPTO Director designated *Corning* as precedential for its holding that petitions failing to identify all RPI “have not met the requirements” of 35 U.S.C. § 312(a)(2) (or § 322(a)(2)), “and, therefore, are incomplete and cannot be considered.” *Corning Optical Communications RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 at 24 (P.T.A.B. Aug. 18, 2015) (precedential, except for § II.E.1) (“*Corning*”). Such incomplete petitions “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.” 37 C.F.R. § 42.206; *Corning* at 24-25; 35 U.S.C. §§ 312, 322.

After *Corning* was designated, the Director also designated *Yangtze* as informative. *Yangtze Memory Techs., Ltd. v. Micron Tech., Inc.*, IPR2025-00098, Paper 38 (P.T.A.B. Jan. 15, 2026) (designated informative Jan. 16, 2026). As stated in *Yangtze*, “[o]nly precisely-identified real parties in interest are entitled to have their petitions considered, 35 U.S.C. 312(a),” and a “Petitioner’s failure to provide clarity as to its actual identity is fatal to its petitions.” *Id.* at 5-6.

A petitioner bears the burden of proof to establish that its petition complies with the statutory requirement to identify all RPI. *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1356 (Fed. Cir. 2018) (“*AIT*”); *RPX Corp. v. Applications in Internet Time, LLC*, IPR2025-01750, Paper 128 at 5 (P.T.A.B. Oct. 2, 2020) (designated precedential Dec. 4, 2020) (“*RPX*”). Whether an unnamed party is a RPI “is a highly fact-dependent question,” which may be shown through “direct or circumstantial” evidence. *Corning* at 14-15. Determining whether a non-party is an RPI “demands a flexible approach that takes into account both equitable and practical considerations, with an eye toward determining whether the non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.” *AIT* at 1351; *RPX* at 7-8.

On February 3, the Director de-designated as precedential two decisions, *Adello* and *Proppant*, likewise relevant here. *Adello Biologics LLC v. Amgen Inc.*, PGR2019-00001, Paper 11, (P.T.A.B. Feb. 14, 2019) (“*Adello*”); *Proppant Express Investments, LLC v. Oren Techs., LLC*, IPR2017-01917, Paper 86 (P.T.A.B. Feb. 13, 2019) (“*Proppant*”). Both decisions stood for the proposition that a petitioner may amend its RPI identification and still maintain its petition’s original filing date under certain circumstances. These cases are no longer precedential and, as a result, do not reflect current USPTO case law or policy.

The impact of the designation of *Corning* and *Yangtze* and de-designation of

*Adello* and *Proppant* is clear from a recent Director Review decision: *Aylo Freesites LTD v. Dish Techs. L.L.C.*, IPR2024-00940, Paper 75 at 2-4 (P.T.A.B. Feb. 3, 2026). In *Aylo*, the Director initiated *sua sponte* Director Review of a Final Written Decision after a Board panel denied a Motion to Dismiss the Petition for failing to name all RPI. *Id.* at 1-2. The panel applied *Proppant* when it accepted an updated mandatory notice to correct RPI while still maintaining the petition's original filing date. On Director Review, in view of his designation of *Corning* and de-designation of *Proppant* and *Adello*, the Director stated that "Petitioner's correction to disclose additional RPIs requires according the Petition a new filing date," which resulted in the Petition being time-barred under § 315(b). *Id.* at 3. On that basis, the Director dismissed the Petition and vacated the Board's Final Written Decision. *Id.* at 3-4. Thus, *Aylo* indicates that considerations presented in *Adello* and *Proppant*, as to whether a petition might maintain an original filing date after an RPI is corrected, no longer apply in view of *Corning*.

Determining whether an unnamed party is an RPI involves consideration of various factors. *Corning* at 14-16; *RPX* at 10-11. The factors as to whether Merck & Co. is an RPI in these PGR proceedings fall into four general categories.

The first and second categories relate to whether Merck & Co. actually or effectively did, does, or could have directed, controlled, and funded these proceedings. *Corning* at 14. These two categories consider Merck & Co.'s

relationship to the Petitions themselves, including the nature and/or degree of Merck & Co.'s involvement in the filings and the opportunity to control the proceedings. *See RPX* at 10; *Corning* at 14-16.

The third category is whether the lines of corporate separation between MSD and Merck & Co. are so blurred, such that Merck & Co. has actually or effectively controlled the filing and participation in these PGR proceedings. This category takes into account factors such as the nature and business model of Petitioner MSD, its relationship with Merck & Co, whether MSD can be said to be representing Merck & Co.'s interest in these proceedings, whether, and under what circumstances, MSD has taken Merck & Co.'s interests into account when determining whether to file the PGR petitions, and the relevance of the fact that MSD and Merck & Co. had (and continue to have) identical executives and Board members. *See RPX* at 10 (citing *AIT*, 897 F.3d at 1353-55); *Corning* at 14, 16.

The fourth category is whether Merck & Co. is a clear beneficiary from these proceedings. This considers Merck & Co.'s "interest in" and "benefit from" the PGR proceedings and whether Merck & Co. "actually 'desire[d] review of the patent[s].'" *See RPX* at 10 (citing *AIT*, 897 F.3d at 1353-55).

As discussed below, all four categories of considerations make it clear that Merck & Co. is an RPI in these proceedings and should have been named. Because MSD has failed to list all RPI in its Mandatory Notices, the PGR Petitions in these

cases cannot be considered under § 322(a)(2) and these proceedings should be terminated under binding authority.

### **III. MERCK & CO. IS AN RPI TO THESE PROCEEDINGS.**

#### **A. Merck & Co. directed the filing of the PGR Petitions and controls these proceedings.**

Merck & Co.'s own SEC filings indicate it has directed the filings of all pending PGR Petitions, and continues to direct and control these proceedings, or at least has an unequivocal opportunity to do so. For example, Merck & Co.'s SEC Form 10-Qs, filed by its General Counsel, Jennifer Zachary, defines Merck & Co. as “the Company” or “Merck.” *See* EX2400 at 6, 53; EX2454 at 6, 47. As such, statements to the SEC and the investing public in these documents are statements by Merck & Co., about Merck & Co., and attributable to Merck & Co.

Merck & Co.'s recent 10-Q SEC filing expressly states that the “Company,” i.e., Merck & Co., has filed a series of PGRs against Halozyme. EX2400 at 25; EX2454 at 22. Specifically, as it relates to “Subcutaneous Pembrolizumab,” i.e., KEYTRUDA QLEX™, Merck & Co. states: “In November 2024, *the Company began filing a series of post grant review (PGR) petitions* before the PTAB alleging that certain patents in [Halozyme’s hyaluronidase] MDASE portfolio are invalid.”<sup>3</sup> EX2400 at 25 (emphasis added); EX2454 at 22. These public filings

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<sup>3</sup> The patents involved in these PGR cases are the only Halozyme patents any

also discuss institution of the PGRs “filed by the Company” and three related Halozyme patents involved in the parallel district court litigation but not challenged in PGR petitions. *Id.*

Notably, Jennifer Zachary signed these SEC filings as Merck & Co.’s “Executive Vice President and General Counsel.” EX2400 at 53; EX2454 at 47. When Ms. Zachary signed the SEC documents, she expressly did so on behalf of Merck & Co., in her capacity as an executive leader for Merck & Co., as indicated in the documents themselves. EX2400 at 53 (indicating Ms. Zachary signed on behalf of “MERCK & CO., INC.”); EX2454 at 47 (same); *see also* EX2415 at 142 (same), EX2456 (same); EX2462 at 12-13 (same). Moreover, corporate filings to the SEC are required to be accurate and there are severe penalties for inaccuracies. EX2457 at 35 (Sarbanes-Oxley Act of 2002, discussing corporate responsibility of officers signing SEC financial disclosures).

Also significant, [REDACTED]

[REDACTED]

[REDACTED] EX2402 at 8; EX2403 at 8. That

Ms. Zachary [REDACTED] cannot wipe away the fact that she at all times has had the opportunity to “call the shots” in these PGRs

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Merck entity has challenged. Merck & Co. was certainly referring to these PGRs.

on behalf of Merck and Co. and has represented to the general public and the SEC that, in fact, it was Merck & Co. that filed and controls these PGRs. Additionally, as General Counsel of Merck & Co. and a Member of the New Jersey bar association (EX2458), Ms. Zachary at all times has a fiduciary duty to Merck & Co., regardless of whether she is also an employee of Petitioner. EX2459 at 17-19 (RPC 1.13). Ms. Zachary also “leads the company’s [i.e., Merck & Co.’s] office of general counsel and sets the company’s global legal strategy.” EX2458. She performs the identical functions for MSD. EX2460. Accordingly, she supervises, directly or indirectly, all in-house practitioners who worked on these PGRs. In short, she calls the shots.

**B. Merck & Co. funds these PGR proceedings.**

Merck & Co.’s SEC filings further indicate it (as the parent company) funds all of these PGR proceedings. For example, in its recent 10-Q SEC filing, under Section 8 entitled “Contingencies,” Merck & Co. states: “The Company is involved in various claims and legal proceedings of a nature considered normal to its business, including product liability, *intellectual property*, commercial litigation, and securities litigation, as well as certain additional matters including governmental and environmental matters.” EX2400 at 21 (emphasis added).

That 10-Q SEC filing also explains how Merck & Co. itself funds litigations and related proceedings, such as these PGRs. Within the “Contingencies” section is

a sub-section entitled “Patent Litigation,” which lists and describes different patent infringement lawsuits involving the “Company,” i.e., Merck & Co. *Id.* at 24-26. This sub-section discusses, among others, litigation involving KEYTRUDA<sup>®</sup> (same active ingredient as KEYTRUDA QLEX<sup>™</sup>) and Johns Hopkins, as well as IPRs related to that litigation. *Id.* at 25. Notably, Merck & Co. was listed as an RPI in each of those IPRs related to KEYTRUDA<sup>®</sup>. EX2417–EX2425).

The 10-Q SEC filing also discusses litigation involving “the Company’s subcutaneous pembrolizumab product” (i.e., KEYTRUDA QLEX<sup>™</sup>), as well as these PGR Petitions. EX2400 at 25 (under “*Subcutaneous Pembrolizumab*” stating “[o]n April 24, 2025, Halozyme, Inc. filed a complaint . . . alleging that the Company’s activities [infringe] patents . . . which are the subject of the Company’s already filed PGR petitions.”). In this context, as noted above, Merck & Co. expressly states to the SEC that it (the “Company”) filed these PGR Petitions. *Id.*

Thereafter, also in the “Contingencies” section, is another sub-section entitled “Legal Defense Reserves,” placed immediately after the descriptions of the different litigations. *Id.* at 26. Here, Merck & Co. refers to “[l]egal defense costs expected to be incurred with a loss contingency.” *Id.* The introduction in “8. Contingencies” clarifies that “contingencies” in this context refers to “possible loss” and “liability” as it relates to the litigations discussed in Section 8. *Id.* at 21. Thus, statements in the “Legal Defense Reserves” sub-section (in Section 8)

indicate that Merck & Co. expects that it will pay for the previously described litigations, including the PGR proceedings at issue here.

The “Legal Defense Reserves” sub-section further states:

Some of the significant factors considered in the review of these legal defense reserves are as follows: the actual costs incurred by the Company; the development of the Company’s legal defense strategy and structure in light of the scope of its litigation; the number of cases being brought against the Company; the costs and outcomes of completed trials; and the most current information regarding anticipated timing, progression, and related costs of pre-trial activities and trials in the associated litigation.

*Id.* at 26. In other words, as it relates to all litigation listed in the “Patent Litigation” sub-section, Merck & Co.’s expected legal defense costs include “actual costs incurred,” the development of “legal defense strategy and structure,” and “the outcome of completed trials.” *Id.* Thus, this sub-section indicates that the “Company,” i.e., Merck & Co, expects to pay costs and is involved in litigation strategy, including in these PGR proceedings.

Moreover, this sub-section goes on to state that the “amount of legal defense reserves as of September 30, 2025 and December 31, 2024 of approximately \$220 million and \$225 million, respectively, represents the Company’s best estimate of the minimum amount of defense costs to be incurred in connection with its outstanding litigation.” *Id.* Thus, this statement similarly indicates that Merck &

Co. has reserves in place to pay for all litigations described in the “Patent Litigation” sub-section, including these PGRs. *See also id.* (stating that “[t]he Company will continue to monitor its legal defense costs and review the adequacy of the associated reserves and may determine to increase the reserves at any time in the future if, based upon the factors set forth, it believes it would be appropriate to do so.”). In sum, Merck & Co. told the SEC that it pays for, and is involved in, strategy in relation to all litigation listed in its SEC documents, including all of these PGR proceedings.

**C. Blurred lines of corporate separation between Merck & Co. and Petitioner indicate Merck & Co. effectively controls the PGR proceedings.**

Merck & Co. and Petitioner are closely intertwined. In fact, lines between the two companies are “so intertwined that it is difficult for both insiders and outsiders to determine precisely where one ends and another begins.” *Atlanta Gas Light Co. v. Bennett Regulator Giards, Inc.*, IPR2013-00453, Paper 88 at 2-6 (P.T.A.B. Jan. 6, 2015), 11 (also noting that “[a]lthough parent-subsidary relationships are not among those expressly identified by the Supreme Court in the second *Taylor* factor, this factor weighs heavily in favor of finding [the parent company] to be a real party in interest in this proceeding”) (citing *Taylor v. Sturgell*, 553 U.S. 880, 894 (2008)). As such, consistent with evidence discussed above, Merck & Co. controls, or at least has ample opportunity to control, all 14

PGR proceedings at issue here.

In response to Halozyme’s request for additional discovery, MSD’s counsel stated the following people have been directly involved in the PGR proceedings on behalf of Petitioner [REDACTED] (1) “Mark Stewart, Vice President, Global Intellectual Property Litigation” [REDACTED]

[REDACTED]

[REDACTED]

Notably, a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Mark Stewart has previously submitted

information to USPTO OED indicating that his “Firm Name” is “Merck Sharp &

Dohme, LLC” and “Merck and Co.” EX2416.<sup>4</sup>

Additional evidence of the blurred lines of corporate separation between Merck & Co. and its subsidiary Petitioner MSD is presented in the table below.

<b>Blurred lines</b>	<b>Evidence</b>
Exact same Executive Leadership (11 members), including Robert M. Davis as “Chairman and Chief Executive Officer” and Jennifer Zachary as “Executive Vice President and General Counsel”	EX2407; EX 2408; EX2400 at 53; EX2462 at 12-13 (indicating Ms. Zachary works for Merck & Co.); EX2463 at 66 (indicating Ms. Zachary is compensated by Merck & Co.)
Exact same Boards of Directors (BOD) (13 members)	EX2409; EX2410
Exact same physical location, business hours, and phone number	EX2411; EX2412; EX2452; EX2453
Merck & Co. invests in, makes financial and investment decisions, and reports to the SEC	EX2452; EX2453; <i>see also</i> EX2464

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<sup>4</sup> Mr. Stewart apparently modified his employer information with the USPTO OED after Patent Owner raised the issue. *Compare* EX2416 (search conducted on Oct. 30, 2025) and EX2461 (search conducted on Feb. 13, 2025).

Blurred lines	Evidence
all investment holdings, on behalf of MSD	
Individuals directly involved in these PGR proceedings on behalf of Petitioner [REDACTED] and [REDACTED] and back-up counsel Mark Stewart, serve both MSD and Merck & Co.	EX2402 at 8; EX2403 at 8; EX2451; EX2401 at 9 (Dec. 23, 2025 email); EX2446 at Appendix 2a; EX2447; EX2448; EX2449; EX2416.
Back-up counsel Mark Stewart's [REDACTED] [REDACTED] [REDACTED]	EX2401 at 5 (Dec. 30, 2025 email from MSD counsel)
MSD's and Merck & Co.'s websites are nearly identical.	EX2411; EX2412; EX2413; EX2414
MSD listed Merck & Co. as an RPI in other IPRs involving patents relevant to a related product, KEYTRUDA <sup>®</sup>	EX2417–EX2425 ( <i>MSD v. Johns Hopkins University</i> IPRs); IPR2016-01217, -1218, -01219, -01221 (Papers 1 at i-ii) ( <i>MSD v. Ono Pharm.</i> IPRs)

Patent practitioners from the Merck companies also seem to have difficulty understanding the lines between the two entities. [REDACTED]

[REDACTED] EX2401 at

11. But a search of the OED’s “register of active patent practitioners” webpage indicates otherwise. Searching simply “Merck” in the “business/firm” field yields five results for Merck, Sharp, & Dohme and 12 results for Merck & Co. EX2465. Thirty-two practitioners just generically list “Merck.” [REDACTED] [REDACTED] then the lines between the entities are so blurred that even many patent practitioners inside the Merck organizations have trouble understanding which entity they work for.

Indeed, the corporate lines are so blurred between MSD and Merck & Co. that Merck & Co. has the opportunity to, and in fact does, control these PGR proceedings. *See Corning* at 15 (citing *Zoll Lifecor Corp. v. Philips Elec. N. Am. Corp.*, IPR2013-00606, Paper 13 at 10 (P.T.A.B. Mar. 20, 2014); *Galderma S.A. v. Allergan Industries, SAS*, IPR2014-01422, Paper 14 at 12 (P.T.A.B. Mar. 5, 2015) (finding the same person serving as both President and CEO of both Petitioner and the parent company “implies ‘an involved and controlling parent corporation representing the unified interests of itself and Petitioner.’”).

As stated in *Galderma*, relevant to the complete overlap in executive leadership at MSD and Merck & Co., including their CEO, “[w]e need not consider whether [the President and CEO of both the parent and subsidiary] did or did not, directly or indirectly, exercise this control. It is sufficient that he had, in the words of *Gonzales*, ‘the power— . . . to call the shots’”). *Id.* at 12 (citing

*Gonzalez v. Banco Cent. Corp.*, 27 F.3d 751, 758 (1st Cir. 1994)); 8 (noting *Gonzalez* refers to “the power—*whether exercised or not*—to call the shots”).

**D. Merck & Co. has a large interest in, desires, and greatly benefits from the PGR proceedings, and MSD is representing that interest.**

Merck & Co. benefits directly from the sale of KEYTRUDA QLEX™ and reports its sales and revenue KEYTRUDA QLEX (EX2400 at 8 (last ¶), 37-38, 47-49; EX2466 at 3 (referring to press release (Exhibit 99.1) issued by Merck & Co.); EX2467 at 1, 5 (Exhibit 99.1 referring to KEYTRUDA QLEX™ “Sales of \$40 Million”); EX2468 at 4. Not only that, Merck & Co.’s recent SEC 10-Q filing indicates it pays royalties and carries the liability regarding milestone payments under an exclusive license relating to a key component of KEYTRUDA QLEX™ (i.e., berahyaluronidase). EX2400 at 8 (last ¶). Operating under that license, Merck & Co. sells, and generates revenue from, the KEYTRUDA QLEX™ product accused in the parallel district court litigation. An earlier SEC filing in 2025 by Merck & Co. also states that “Other Assets” include millions of dollars “of inventories produced in preparation for product launches (primarily MK-3475A, subcutaneous pembrolizumab),” i.e., KEYTRUDA QLEX™. EX2454 at 18.

In its recent SEC 10-Q filing, Merck & Co. discusses how litigations and AIA cases relevant to both KEYTRUDA® and KEYTRUDA QLEX™ may impact the “Company,” and discusses Merck & Co.’s expectations in winning relevant cases. EX2400 at 25, 21 (“Contingencies”). Merck & Co. discusses such cases as

potential risks and benefits to Merck & Co. itself. *Id.* at 25, 21 (“Contingencies”).

Both MSD and Merck & Co. benefit from the sales of both KEYTRUDA<sup>®</sup> and KEYTRUDA QLEX<sup>™</sup>, as well as any positive outcome in litigation (in district court or at PTAB) related to the sale of either KEYTRUDA<sup>®</sup> product. Merck & Co. has a large interest in, desires, and greatly benefits from all PGR proceedings. Its subsidiary, Petitioner MSD represents that interest. Accordingly, Merck and Co. is an RPI to these proceedings.

#### **IV. IF PETITIONER TRIES TO CORRECT ITS RPI STATEMENT, IT CANNOT MAINTAIN ITS ORIGINAL PETITION FILING DATES**

Under *Corning* and *Zangtze*, “[o]nly precisely-identified” RPI “are entitled to have their petitions considered” and “Petitioner’s failure to provide clarity as to its actual identity is fatal to its petitions.” *Yangtze* at 5. Because Petitioner has not even attempted to correct its RPI here, none of the Petitions can be considered under 35 U.S.C. § 322(a)(2). In addition, the de-designation of *Adello* and *Proppant* clarifies that any attempt to cure Petitioner’s RPI defect now will require a resetting of the PGR Petitions’ filing dates, which renders all of the Petitions ineligible for PGR review because any such date will be past the expiration of the statutory deadline in which to file a petition for post-grant review. 37 C.F.R. §§ 42.202(a), 42.206(b); *Corning* at 23-25; 35 U.S.C. § 321(c); *Yangtze* at 8-9. Consequently, the Board should dismiss the Petitions for failure to name all RPI, vacate the Institution Decisions, and terminate these proceedings.

## V. HALOZYME TIMELY RAISED THE ISSUE OF RPI

Prior to *Corning's* designation, consistent with *SharkNinja*,<sup>5</sup> the Board did not engage in an RPI analysis in AIA cases absent an allegation that the petition would be time-barred or a petitioner would be estopped based on an unnamed RPI as of the petition's original filing date. Since October, however, RPI is an issue the Board can, and must, address if a Patent Owner brings the matter into dispute, even if no bar or estoppel existed when a petition was filed. *Aylo* at 2-4.

After *Corning* was designated, Halozyme immediately began a review of publicly available documents to investigate whether MSD had identified all RPIs in its Petitions. Based on public information uncovered, Halozyme requested additional discovery from Petitioner relating to RPI on November 11, 2025. Halozyme was also diligent in pursuing that discovery through motion practice. Thus, Halozyme has been as timely as possible in raising the RPI issue after the change in PTAB policy and binding case law.

## VI. CONCLUSION

For the foregoing reasons, Patent Owner respectfully asks the Board to grant Patent Owner's Motion to Terminate these PGRs.

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<sup>5</sup> *SharkNinja Operating LLC v. iRobot Corp.*, IPR2020-00734, Paper 11 (P.T.A.B. Oct. 6, 2020) (de-designated on September 26, 2025).

Respectfully submitted,

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**CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))**

I certify that the above-captioned **PATENT OWNER'S MOTION TO TERMINATE PROCEEDINGS FOR FAILURE TO NAME ALL REAL PARTIES-IN-INTEREST** and Exhibits 2446-2454 and 2456-2468 as served in its entirety on February 16, 2026, upon the following parties via electronic mail:

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