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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

NANJING NUTRABUILDING  
BIO-TECH CO., LTD.,

Plaintiff,

v.

BONERGE LIFESCIENCE (HUNAN)  
CO., LTD., et al.,

Defendants.

CASE NO. 5:25-cv-00271-JGB-SHK

[Hon. Judge Jesus G. Bernal]

**DEFENDANT BONERGE  
LIFESCIENCE (HUNAN) CO.,  
LTD.’S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF ITS MOTION TO  
STAY**

1 This is a patent lawsuit about a dietary supplement for managing blood sugar.  
2 The sole patent at issue claims that dihydroberberine, a derivative of berberine<sup>1</sup>, can  
3 manage blood glucose at a dosage range between 15 to 800 milligrams.<sup>2</sup> About two  
4 weeks ago, defendant filed a *Inter Partes Review* (“IPR”) petition with the USPTO,  
5 challenging the validity of all patent claims asserted in this lawsuit.

6 Defendant now moves the Court for a stay of the litigation. Staying this litigation  
7 is warranted here because (1) this case is in its nascent stage, (2) a decision by the  
8 PTAB<sup>3</sup> may ultimately moot this litigation or at a minimum narrow the issues in  
9 question, and (3) a stay does not present undue prejudice or clear tactical disadvantage  
10 to plaintiff considering the crowded marketplace for dihydroberberine.

## 11 I. RELEVANT BACKGROUND

### 12 A. Stage of the Litigation

13 Plaintiff Nanjing Nutrabuilding Bio-Tech Co., Ltd. (“NNB” or “Plaintiff”) is a  
14 Chinese company. ECF #1 at ¶1. NNB filed the Complaint on January 31, 2025. ECF  
15 #1. Defendant Bonerge Lifescience (Hunan) Co., Ltd. (“Bonerge” or “Defendant”) is  
16 also a Chinese company. *Id.* at ¶2. Bonerge answered the Complaint on April 4, 2025.  
17 ECF #14. An amended answer was filed on April 24, 2025. ECF #17. On August 20,  
18 2025, the Court entered an initial Civil Trial Scheduling Order. ECF #23. On  
19 September 23, 2025, the Court entered an amended scheduling order pursuant to  
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21 <sup>1</sup> Berberine is a natural compound used in China for centuries to treat diarrhea and other  
22 gastrointestinal infections. Berberine is also reported to help with lower blood sugar, weight loss, and  
23 heart health. See <https://health.clevelandclinic.org/berberine> (last visited Oct. 10, 2025). (A printout of  
24 the page is submitted as Exhibit 3 to the Declaration of Shruti Aggarwal ISO Defendant Bonerge  
25 Lifescience (Hunan) Co. Ltd.’s Motion to Stay (“Aggarwal Decl.”)).

26 <sup>2</sup> Claim 1 of the asserted patent recites the following: “A method of managing glucose tolerance in an  
27 individual, the method comprising: administering, to an individual, a pharmaceutically effective  
28 amount of dihydroberberine, wherein the pharmaceutically effective amount of dihydroberberine  
comprises approximately 25 mg to approximately 800 mg of dihydroberberine.” Aggarwal Decl., Ex.  
1 at 11:28-34.

<sup>3</sup> PTAB stands for Patent Trial and Appeal Board, a tribunal within the USPTO that, inter alia,  
adjudicates patentability disputes regarding issued patent claims challenged by third parties in trial  
proceedings under the America Invents Act (AIA). See <https://www.uspto.gov/about-us/organizational-offices/patent-trial-and-appeal-board>.

1 parties' joint stipulation. ECF #29. Under the operative scheduling order, the claim  
2 construction hearing for the patent is set for April 21, 2026. *Id.* Fact discovery cutoff is  
3 December 16, 2026, with expert discovery commencing afterwards. *Id.* The trial date  
4 is April 20, 2027. *Id.*

5 Plaintiff served an initial set of written discoveries on July 31, 2025. Aggarwal  
6 Decl., ¶4. Defendant responded on September 15, 2025. *Id.* at ¶5. Plaintiff served a  
7 third-party subpoena on October 2, 2025. *Id.* at ¶7. Per parties' agreement, Plaintiff  
8 disclosed the asserted patent claims and served its infringement contentions on  
9 September 22, 2025. *Id.* at ¶6. *See also* ECF #21(Joint Rule 26(f) Report) at 17. In the  
10 infringement contentions, Plaintiff contends that claims 1, 2, 5, and 7 of the asserted  
11 patent are infringed. Defendant's disclosure of its invalidity contentions is due on  
12 November 4, 2025. *Id.* at 17.

13 **B. The IPR Petition**<sup>4</sup>

14 On September 26, 2025, Bonerge filed an IPR petition challenging all asserted  
15 claims. A copy of the petition is submitted as Exhibit 2 to the Aggarwal Decl. The IPR  
16 petition was filed within eight months of the Complaint, and four months before the  
17 one-year statutory bar for filing. *See* 35 U.S.C. § 315(b). On or about October 7, 2025,  
18 the PTAB issued a notice that accords the IPR petition a September 26, 2025 filing date.  
19 The PTAB is required to determine whether to institute an IPR within three months  
20 after receiving patent owner's preliminary response to the petition, which must be filed  
21 no later than three months after the date of the notice of the accorded filing date. 35  
22 U.S.C. § 314(b); 37 CFR § 42.107(b). If NNB elects to file a preliminary response, the  
23 deadline for the institution decision is around April 7, 2026. Aggarwal Decl. at ¶10. If  
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26 <sup>4</sup> The statute, rules, and regulations governing the *inter partes* review procedure are expected to reduce  
27 duplication of efforts and costs between the district courts and the USPTO when a party opposes a  
28 patent's validity by providing a shorter timeline in comparison to what is known as the *inter partes*  
reexamination procedure. Changes to Implement Inter Partes Review Proceedings, Post-Grant Review  
Proceedings, and Transitional Program for Covered Business Method Patents, 77 Fed. Reg. 48680,  
48721 (Aug.14, 2012) (to be codified at 37 C.F.R. pt. 42).

1 the PTAB institutes the IPR, the PTAB must issue a final written decision within one  
2 year – around April 7, 2027. 35 U.S.C. § 316(a)(11).

3 After the IPR was filed, Bonerge emailed NNB and stipulated that Bonerge  
4 would not pursue in the district court case any grounds that were raised or reasonably  
5 could have been raised in the IPR, should the PTAB institute review the petition.  
6 Bonerge further stipulated that, should the IPR be instituted, it would not pursue in the  
7 district court case any invalidity grounds under 35 U.S.C. §§ 102 and 103 against the  
8 asserted patent—including those grounds with system prior art. Aggarwal Decl. at ¶12.

9 **C. The Dihydroberberine Market**

10 The asserted patent is U.S. Pat. No. 10,278,961 (the “’961 Pat.”). ECF #1 at ¶13.  
11 According to the Complaint, Bonerge “has intentionally marketed its dihydroberberine  
12 product to supplement sellers ... in order to induce them to formulate it into  
13 dihydroberberine-containing supplements in the form of capsules or tablets, for  
14 example, to then be sold to end users in the U.S. to enable them to manage their own  
15 glucose tolerance and/or reduce fasting glucose levels.” *Id.* at ¶31. The Complaint does  
16 not allege that Bonerge and NNB are direct competitors.

17 Dietary supplement merchants can readily purchase dihydroberberine from  
18 hundreds of vendors. *See* Aggarwal Decl. at ¶¶ 14-17. For example, the Chemical  
19 Book website – a business-to-business marketplace for chemical and pharmaceutical  
20 products – lists over a dozen dihydroberberine suppliers from the United States and  
21 over one hundred suppliers from China. *See id.* at ¶¶ 14-15, Exs. 4-5. Similarly, there  
22 are a multitude of Chinese suppliers offering dihydroberberine market in a raw power or  
23 crystal forms to the U.S. market on the business-to-business platform Alibaba.com. *Id.*  
24 at ¶16, Ex. 6. At least three of the Alibaba suppliers have touted their dihydroberberine  
25 products as having blood sugar control properties. *Id.* at ¶ 17, Ex. 7.

26 **II. Legal standard**

27 “A district court has the inherent power to stay its proceedings. The power to  
28 stay is ‘incidental to the power inherent in every court to control the disposition of the

1 causes on its docket with economy of time and effort for itself, for counsel, and for  
2 litigants.’ ” *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358, 1360 (C.D. Cal. 1997)  
3 (*quoting Landis v. N. Am. Co.*, 299 U.S. 248, 254, (1936)). *See also Nike, Inc. v.*  
4 *Skechers U.S.A., Inc.*, 2025 LEXIS 24909 (C.D. Cal. Feb. 4, 2025).

5 “In deciding whether to stay an action pending IPR, a court’s discretion is  
6 typically guided by three factors: (1) whether discovery is complete and whether a trial  
7 date has been set; (2) whether a stay will simplify the issues in question and trial of the  
8 case; and (3) whether a stay would unduly prejudice or present a clear tactical  
9 disadvantage to the nonmoving party.” *Masimo Corp. v. Apple Inc.*, 2024 U.S. Dist.  
10 LEXIS 216889 at \*2 (C.D. Cal. Feb. 26, 2024) (citation and quotation mark omitted).

11 A stay pending an IPR proceeding may be “particularly justified where the  
12 outcome of the reexamination would be likely to assist the court in determining patent  
13 validity and, if the claims were cancelled in the reexamination, would eliminate the  
14 need to try the infringement issue.” *Cygnus Telecomms. Tech., LLC v. United World*  
15 *Telecomms., L.C.*, 385 F. Supp. 2d 1022, 1023 (N.D. Cal. 2005). Moreover, this district  
16 has “a liberal policy in favor of granting motions to stay proceedings pending the  
17 outcome of re-examination, especially in cases that are still in the initial stages of  
18 litigation and where there has been little or no discovery.” *Masimo Corp.*, at \*2-3 (C.D.  
19 Cal. Feb. 26, 2024) (*quoting Limestone v. Micron Tech.*, 2016 U.S. Dist. LEXIS 90742,  
20 at \*2 (C.D. Cal. Jan. 12, 2016).).

### 21 **III. ANALYSIS**

#### 22 **A. Factor 1: The Early Stages of the Litigation Favors a Stay.**

23 The “stage of the proceedings” factor evaluates procedural aspects of the lawsuit  
24 such as “the progress of discovery, the status of claim construction, and whether a trial  
25 date has been set.” *Masimo Corp. v. Apple Inc.*, 2020 U.S. Dist. LEXIS 217483, at \*3  
26 (C.D. Cal. Oct. 13, 2020). Where “there is more work ahead of the parties and the  
27 Court than behind,” this factor weighs in favor of granting a stay. *Id.* at \*3 (internal  
28 citation omitted). *See also Purecircle United States, Inc. v. SweeGen, Inc.*, 2019 LEXIS

1 124444, at \*3 (C.D. Cal. June 3, 2019). In *Purecircle*, for example, the court concluded  
2 the “stage of the proceedings” factor favors stay because the fact discovery cutoff was  
3 four months away, no depositions had been taken, no expert discovery had occurred,  
4 claim construction had begun but not yet complete, and trial date was set for the  
5 following year. *Id.* at \*\*3-4. The Court granted defendant’s motion to stay. *Id.* at \*9.

6 The “stage of proceedings” factor weighs strongly in favor of a stay here because  
7 this case is in its nascent stage. Discoveries have barely begun. In fact, the stage of the  
8 lawsuit here is much less advanced than the stage in *Purecircle*. In this case, fact  
9 discovery cutoff is the end of next year. Expert discovery will not commence until after  
10 the fact discovery cutoff. The April 2027 trial date is more than 18 months away. The  
11 parties have not done any work related to claim construction. The parties have not  
12 started any deposition discovery. In short, there is much “more work ahead of the  
13 parties and the Court than behind.”

14 **B. Factor 2: A Stay Will Simplify the Issues in This Case.**

15 All asserted claims of the ’961 Patent are currently challenged in Bonerge’s IPR  
16 petition. Aggarwal Decl. at ¶ 9; *see also supra* § I.B. Bonerge has further stipulated  
17 that if the PTAB institutes the IPR, Bonerge will not pursue any invalidity grounds  
18 based on any prior art references. Aggarwal Decl. at ¶12. Therefore, if the IPR is  
19 instituted, the issues in this case will be greatly simplified regardless of the IPR  
20 outcome. If the IPR is entirely successful, all asserted claims will be cancelled; there  
21 would be no need to proceed any further in this Court, saving both the Court and the  
22 parties significant time and money. If the IPR is partially successful, i.e., some of the  
23 asserted claims survive the challenge, the case would be simpler and more streamlined  
24 because the scope of infringement and invalidity analysis would be vastly narrowed,  
25 particularly in view of Bonerge’s stipulation. Lastly, if the PTAB rejects all of  
26 Bonerge’s arguments and affirms the validity of the ’961 Pat., the result would still  
27 assist in simplifying the issues because the scope of the validity arguments Bonerge is  
28 allowed to raise in the district court would be severely limited.

1 Plaintiff likely will contend it is speculative to determine whether a stay would  
2 simplify the issues now because the PTAB has yet to decide whether to institute the  
3 IPR. Many judges in this District, however, have ruled that the simplification factor  
4 favors at least a short stay while the institution decision is pending.<sup>5</sup> One reason is that  
5 the “record developed during the IPR even if institution is denied could inform the  
6 claim construction process.” *Masimo Corp.* at \*7 (C.D. Cal. Oct. 13, 2020) (Selna J.).  
7 *Accord Core Optical Techs., LLC v. Fujitsu Network Commc'ns, Inc.*, 2016 U.S. Dist.  
8 LEXIS 195061 (C.D. Cal. Sept. 12, 2016) (Guilford J.). In addition, statistics regarding  
9 IPR institution rate also justifies a pre-institution stay because of “the *potential* to save  
10 significant judicial resources.” *Masimo Corp.* at \*6 (C.D. Cal. Oct. 13, 2020) (emphasis  
11 added) (finding a 56% IPR institution rate favors a stay). *Accord Ep Family Corp. v.*  
12 *Office Kick, Inc.*, 2025 U.S. Dist. LEXIS 120138, \*9-10 (C.D. Cal. Feb. 4, 2025). The  
13 IPR institution rate has grown to just under 70% in 2024. Aggarwal Decl. ¶18, Ex. 8  
14 (<https://www.uspto.gov/sites/default/files/documents/ptabaia20250531.pdf>.) The IPR  
15 institution statistics sways this factor in favor of stay. Yet another rationale for granting  
16 a stay is because “the risk of delay attending an unnecessary stay [where the IPR is not  
17 instituted] is minimal relative to the risk of unnecessary expenditure of resources should  
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19 <sup>5</sup> Below is a non-exhaustive list of the judges and cases where the court granted a stay  
20 prior to the IPR institution. *Ep Family Corp. v. Office Kick, Inc.*, 2025 U.S. Dist. LEXIS  
21 120138 (C.D. Cal. Feb. 4, 2025) (Birotte J.); *Lian Li Indus. Co., Ltd. v. Thermaltake Tech.,*  
22 *Co., Ltd.* 2024 U.S. Dist. LEXIS 209668 (C.D. Cal. Oct. 4, 2024) (Vera J.); *RJ Tech. LLC*  
23 *v. Apple Inc.* 2023 U.S. Dist. LEXIS 216693 (C.D. Cal. Oct. 4, 2023) (Selna J.); *One-E-*  
24 *Way, Inc. v. Apple Inc.*, 2021 U.S. Dist. LEXIS 207538 (C.D. Cal. Mar. 16, 2021)  
25 (Kronstadt J.); *Olati LLC v. Haas Automation, Inc.*, 2020 U.S. Dist. LEXIS 249987 (C.D.  
26 Cal. Dec. 23, 2020) (Gutierrez J.); *Core Optical Techs., LLC v. Fujitsu Network*  
27 *Commc'ns, Inc.*, 2016 U.S. Dist. LEXIS 195061 at \*2 (C.D. Cal. Sept. 12, 2016) (Guilford  
28 J.); *Limestone v. Micron Tech.*, 2016 U.S. Dist. LEXIS 90742 (C.D. Cal. Jan. 12, 2016)  
(Carter J.). *But see Entropic Commc'ns, LLC v. DIRECTV, LLC*, 2023 U.S. Dist. LEXIS  
86017 (C.D. Cal. Apr. 17, 2023) (Holcomb J.) (denying defendants' Motion to stay  
without prejudice); *JBF Interlude 2009 Ltd. v. Quibi Holdings LLC*, 2020 U.S. Dist.  
LEXIS 196941 (C.D. Cal. Oct. 19, 2020) (Snyder J.) (denying Quibi's motion to stay but  
Quibi may renew the motion in the event that the PTAB grants its IPR petition).

1 the stay be denied and an IPR subsequently commence”— a view endorsed by several  
2 judges from this District. *Ep Family Corp.* (Birotte J.) (*quoting* Judge Philips from the  
3 *Wonderland Nurserygoods Co., Ltd. v. Baby Trend, Inc.*, 2015 U.S. Dist. LEXIS 53053  
4 at \*3 (C.D. Cal. Apr. 20, 2015)); *Limestone* at \*14-15 (Carter J.).

5 To conclude, as Bonerge is actively challenging all asserted patent claims  
6 through the IPR process, the second factor favors a stay under the prevailing view of  
7 this District.

8 C. Factor 3: NNB Will Not Be Unduly Prejudiced or at a Clear Tactical  
9 Disadvantage If the Case is Stayed.

10 The third factor likewise favors a stay because NNB will not suffer unduly  
11 prejudice or a clear tactical disadvantage if the Court stays the case pending resolution  
12 of the IPR.

13 The undue prejudice analysis examines whether a stay would cause irreparable  
14 harm to the patentee in the market. *Masimo Corp.* at \*8 (C.D. Cal. Oct. 13, 2020)  
15 (*quoting Core Optical Techs.* at \*2 (Guilford J.)) (“[A] primary issue in an undue  
16 prejudice analysis is whether the parties are competitors such that a stay would cause  
17 irreparable harm to the patentee in the market.”). The delay of the litigation caused by a  
18 stay does not in and of itself constitute undue prejudice. *Lian Li Indus. Co., Ltd. v.*  
19 *Thermaltake Tech., Co., Ltd.* 2024 U.S. Dist. LEXIS 209668 at \*6 (C.D. Cal. Oct. 4,  
20 2024); *PersonalWeb Techs., LLC v. Facebook, Inc.*, 2014 U.S. Dist. LEXIS 4095 at \*20  
21 (N.D. Cal. Jan. 13, 2014).

22 NNB has not pleaded in the Complaint that Bonerge is its direct competitor.  
23 NNB has not sought preliminary injunctive relief to enjoin Bonerge from selling the  
24 dihydroberberine products. *UPL NA, Inc. v. Tide Int’l (USA), Inc.*, 2021 U.S. Dist.  
25 LEXIS 31467, at \*10 (C.D. Cal. Feb. 19, 2021) (“Plaintiff’s failure to seek a  
26 preliminary injunction belies its claims of undue prejudice in the marketplace.”). In fact,  
27 there are dozens if not hundreds of manufacturers offering to sell dihydroberberine  
28 products to other businesses. Aggarwal Decl. at ¶¶ 15-16; *see also supra* § I.C. Among  
those suppliers, at least some have explicitly marketed the dihydroberberine product for

1 its blood sugar control properties. Aggarwal Decl. at ¶17; *see also supra* § I.C. To the  
2 extent that NNB claims that Bonerge directly competes with NNB in the  
3 dihydroberberine dietary supplement marketplace, the marketplace is crowded. Staying  
4 the case pending resolution of the IPR therefore would not unduly prejudice NNB. *See*  
5 *Masimo Corp.* at \*8 (C.D. Cal. Oct. 13, 2020) (“The existence of other competitors in  
6 the relevant market ‘undermines the weight that should be afforded Plaintiffs  
7 contentions of undue harm.’”) (internal citation omitted).

8 Finally, NNB will not suffer tactical disadvantages from a stay because Bonerge  
9 did not delay its filing of the IPR petition or moving for a stay. NNB served its  
10 infringement contentions on September 22, 2025. Bonerge filed the IPR petition the  
11 same week it received the infringement contentions after gaining a clear understanding  
12 of what claims Plaintiff asserts; the filing is timely and without delay. Moreover, NNB  
13 may not claim surprise because Bonerge has advised counsel as well as the Court of its  
14 intention to file an IPR and to seek stay of the case in the joint Rule 26(f) report. *See*  
15 ECF #21 at 5.

16 Because Plaintiff cannot identify any prejudice or harm resulting of a stay of the  
17 case, and such stay would provide no tactical advantage to Bonerge, the third factor also  
18 favors a stay.

#### 19 **IV. CONCLUSION**

20 The totality of the circumstances in this case favors a stay of the case here  
21 because all three of the most relevant factors weigh in favor of such as stay.  
22 Accordingly, for the forgoing reasons, Defendant Bonerge respectfully requests that the  
23 Court stay the case pending resolution of its IPR petition.  
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**CERTIFICATE OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 12th day of October, 2025, a true and correct copy of the foregoing DEFENDANT BONERGE LIFESCIENCE (HUNAN) CO., LTD.’S NOTICE OF MOTION AND MOTION TO STAY alongside the accompanying DEFENDANT BONERGE LIFESCIENCE (HUNAN) CO., LTD.’S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO STAY was filed electronically via the Court’s CM/ECF system. Notice of filing will be served on all parties by operation of the Court’s EM/ECF system, and parties may access this filing through the Court’s CM/ECF system.

Dated: October 12, 2025

By: /s/ Hua Chen

Hua Chen