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Sarah E. Spires
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Re: Pogona, LLC v. Merck Sharp & Dohme LLC, No. 25-cv-15294 (D.N.J.)

Dear Sarah:

We write regarding IPR2026-00374, in which petitioner Merck Sharp & Dohme LLC ("Merck") has filed a follow-on petition for *inter partes* review ("IPR") challenging the patentability of claims 1–19 of U.S. Patent No. 11,058,757. The Petition and expert declaration are substantially identical to those submitted in IPR2026-00189, which was instituted on May 26, 2026. A Motion for Joinder to join IPR2026-00189 was filed concurrently with the follow-on IPR petition.

Merck hereby stipulates that if the Patent Trial and Appeal Board ("PTAB") institutes IPR2026-00374 and grants the Motion for Joinder to join IPR2026-00189, then Merck will not pursue in the related district court case styled *Pogona, LLC v. Merck Sharp & Dohme LLC*, No. 25-cv-15294 (D.N.J.) any invalidity ground that was raised or reasonably could have been raised in the IPR. See *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 16-19 (PTAB Dec. 1, 2020). Additionally, if Merck's motion for joinder is granted and Merck's petition in IPR2026-00374 is instituted and joined to IPR2026-00189, Merck further stipulates that it will not assert invalidity based on any ground that it raised or reasonably could have raised in its original petition (IPR2026-00221).

Merck will additionally seek to file this stipulation as an exhibit in the IPR proceeding.

Sincerely,

/s/ Ben Haber

Ben Haber
Partner
of O'MELVENY & MYERS LLP