

*X ORDER **



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May 26, 2026

Honorable James B. Clark, III, U.S.M.J.
United States District Court
District of New Jersey
Martin Luther King Building & U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: *Pogona, LLC v. Merck Sharp & Dohme LLC*
Civil Action No.: 2:25-cv-15294 (BRM) (JBC)

Dear Judge Clark:

Our firm, together with O'Melveny & Myers LLP, represents Defendant Merck Sharp & Dohme LLC ("Defendant") in the above-referenced matter. We respectfully request that Your Honor accept this response to Pogona's responsive letter (ECF No. 37) concerning whether a stay should continue in this case.

Pogona's letter confuses two distinct issues: (1) Merck's Sotera stipulation on estoppel, which was relevant to the PTAB's decision on discretionary denial; and (2) the factors determining whether this court should continue its stay pending a decision on institution of Pfizer's IPR petition.

Contrary to Pogona's suggestion, the first issue does not inform the second. Merck's Sotera stipulation served a single, narrow purpose: it addressed whether Merck would be estopped from raising certain invalidity defenses in this court if the PTAB *instituted* Merck's IPR petition. The Director exercised his discretion to deny that petition, and the stipulation is now moot. This has no bearing on whether Pfizer's petition—which remains live—may ultimately invalidate the '757 patent and dispose of this case.

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Pfizer's petition remains pending before the PTAB and challenges every claim of the sole patent-in-suit. Pfizer may succeed in invalidating the '757 patent at the PTAB, which would resolve or substantially narrow this case regardless of whether estoppel applies to Merck. If the PTAB cancels the claims of the '757 patent, then there will be nothing left for Pogona to assert in this litigation.

With respect to both the law and the calendar, a continued stay is warranted:

- Pogona is incorrect when it indicates that no court would stay "litigation pending an IPR filed solely by a non-party under circumstances like these." ECF No. 37. In fact, that very circumstance was identified in Merck's Motion. In *Gesture*, the Court granted a stay in a patent infringement case brought by a non-practicing entity after the PTAB instituted IPRs filed by an unrelated non-party that challenged all asserted claims. ECF No. 30-1 at 2 (citing *Gesture Tech. Partners, LLC v. LG Elecs. Inc.*, No. 21-19234, 2022 WL 1002101, at *6 (D.N.J. Apr. 4, 2022)). The facts are analogous to the facts here. If the Pfizer IPR is instituted, Merck will similarly have the opportunity to seek to join that proceeding.
- The institution decision for the Pfizer IPR is expected by **July 6, 2026**—seven weeks from the date of Merck's original status letter. Pogona's assertion that "there is no precedent for requiring a patent owner to wait years for a non-party's challenge" thus ignores the reality of the calendar. Merck is not asking this court to stay the case for years. Merck asks only that the stay remain in effect until the PTAB renders its institution decision in less than seven weeks, at which point the parties can provide a further status report to the Court. This brief additional period imposes minimal burden on any party and preserves the significant possibility that the PTAB's proceedings will moot or narrow the issues in this case. Nor has Pogona identified any harm it will face from this additional brief stay.

Accordingly, Merck respectfully submits that the stay of proceedings, including the stay of discovery entered by the Court on February 25, 2026 (ECF No. 31), should remain in effect until after the PTAB renders its institution decision in the Pfizer IPR. The parties should be ordered to submit a status report three business days after the PTAB renders its decision.

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We thank the Court for its consideration and attention to this matter.

Respectfully submitted,

s/ Charles H. Chevalier
Charles H. Chevalier

cc: All counsel of record (via ECF and email)

* As previously ordered, this matter shall remain stayed pending disposition of the pending motion to stay.

* Within seven (7) days of the PTAB's decision, each party may submit a supplemental brief of five (5) pages or less.

SO ORDERED

s/James B. Clark

James B. Clark, U.S.M.J.

Date: 5/27/2026