

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MERCK SHARP & DOHME LLC,
Petitioner,

v.

HALOZYME, INC.,
Patent Owner.

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 B1)
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)

Before JEFFREY N. FREDMAN, SUSAN L. C. MITCHELL,
CYNTHIA M. HARDMAN, and MICHAEL A. VALEK,
*Administrative Patent Judges.*¹

PER CURIAM

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

¹ This Order addresses issues in each of the identified proceedings. We exercise our discretion to issue one Order to be filed in each proceeding. This is not a decision by an expanded panel of the Board. Rather, the listed judges are paneled on various of the listed cases.

With our authorization, Patent Owner Halozyme Inc. filed a motion to terminate these proceedings because of the alleged failure of Petitioner Merck Sharp & Dohme LLC to name its corporate parent Merck & Co., Inc. (“MCI”) as a real party-in-interest (the “RPI issue”), hereinafter “the Motion.” Paper 84.²

Petitioner opposes the Motion, urging that MCI is not an RPI based on certain factual assertions relating to MCI and Petitioner’s corporate structure; the role played by their common general counsel, Jennifer Zachary, and others within their internal legal department; and the extent to which (if at all) MCI has controlled or has the ability to control Petitioner’s activities in these PGR proceedings. *See* Paper 93 (“Opposition”), 1, 5–7 (§ II.A.1), 9–11 (discussing Ms. Zachary), 17–19 (§ II.C.2). Patent Owner disputes those assertions and offers a conflicting view of MCI’s role in these proceedings. *See* Paper 100, 1–4. Both sides cite documentary exhibits they contend support their respective assertions. *See, e.g.*, Exs. 1244, 2400, 2401, 2415. Petitioner further requests the opportunity to file a declaration “addressing the operative facts, including the corporate structure of Petitioner and MCI” should the Board find it would be helpful in resolving the issues presented in the Motion. Paper 93, 1 n. 1.

We heard argument on the Motion on March 2, 2026. At the hearing, it became apparent that the parties continue to dispute certain material facts, including, e.g., MCI’s ability to exert control over the activities of Petitioner and the personnel attributed to each corporation, and that our resolution of the RPI issue would be aided by authorizing Petitioner to offer the requested

² We cite Papers and Exhibits in PGR2025-00003. Similar papers and exhibits were filed in all other captioned proceedings.

declaration. Moreover, the fact that the Motion was filed relatively late in these proceedings also demonstrates good cause for allowing Petitioner's declaration. The RPI issue was not raised in Patent Owner's Response, and Patent Owner first sought authorization to file the Motion less than a month before the previously-scheduled March 2, 2026 hearing addressing the merits in the first four PGRs. *See* Paper 48, 2 (discussing timing). We thank the parties for their effort to complete the briefing in time for that hearing, but believe it is in the interest of justice to allow a declaration (and cross-examination) to complete the record so that both sides can be fully heard on the RPI issue.

With that in mind, Petitioner is authorized to file, as an exhibit in each of these proceedings, a declaration from a single witness on the RPI issue. That declaration shall be the same for each proceeding and filed no later than March 12, 2026. It shall not raise new arguments, but rather focus on providing support for the factual assertions previously presented in Petitioner's Opposition to the Motion.

Petitioner must also provide Patent Owner a fair opportunity to cross-examine its declarant. The transcript from that deposition should be filed as an exhibit in these proceedings no later than March 27, 2026, and preferably earlier if possible. Each side is further authorized to file an additional brief of no more than five pages, directing our attention to particular testimony, whether on direct or cross, each party contends is relevant to the RPI issue. Those briefs are due no later than April 2, 2026. Counsel should work together to coordinate the logistics for the deposition consistent with these deadlines.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner may file a declaration, which shall be the same in all fourteen of the above-captioned cases, from a single witness addressing factual assertions in Petitioner's Opposition (Paper 93). That declaration must be filed as an exhibit in all fourteen cases by March 12, 2026.

ORDERED that Petitioner will coordinate with Patent Owner to promptly present its declarant for deposition. The parties shall coordinate the filing of the transcript from that deposition as in exhibit in all fourteen cases by March 27, 2026.

ORDERED each side is authorized to file a brief of no more than 5 pages, addressing the declarant's testimony and its relevance to the RPI issue. Each side's brief shall be the same in all fourteen cases and is due by April 2, 2026. No additional exhibits are authorized.

FURTHER ORDERED, the parties are authorized to use the common style heading in this order for any papers authorized by this order.

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