

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ALBAUGH, LLC,
Petitioner

v.

BASF SE,
Patent Owner

Case No. PGR2026-00026
Patent No. 12,305,206

**PATENT OWNER'S MOTION TO TERMINATE THE PROCEEDING
AND VACATE THE DECISION ON INSTITUTION**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	LEGAL STANDARDS.....	3
III.	ARGUMENT	5
A.	AFH is a real party-in-interest because AFH has the ability to control Petitioner’s participation in this proceeding.....	6
B.	The Director’s recent decision in <i>Viance</i> compels the conclusion that AFH is a real party-in-interest.	8
C.	Petitioner’s arguments based on actual control instead of ability to control are misplaced.	10
D.	This motion is timely.	11
E.	Identification of AFH as a real party-in-interest serves the underlying policy of enforcing statutory estoppel.	13
IV.	CONCLUSION	15

TABLE OF AUTHORITIES

CASES

<i>Applications in Internet Time, LLC v. RPX Corp.</i> , 897 F.3d 1336 (Fed. Cir. 2018).....	3, 14
<i>Askeladden LLC v. McGhie</i> , IPR2015-00122, Paper 38 (PTAB Mar. 6, 2015)	3, 14
<i>First Quality Baby Prods., LLC v. Kimberly-Clark Worldwide, Inc.</i> , IPR2014-01024, Paper 41 (PTAB July 16, 2015)	13
<i>Galderma S.A. v. Allergan Industrie, SAS</i> , IPR2014-01422, Paper 14 (PTAB Mar. 5, 2015)	3
<i>Reflectix, Inc. v. Promethean Insulation Tech. LLC</i> , IPR2015-00039, Paper 18 (PTAB Apr. 24, 2015).....	4
<i>Sun Pharm. Ind., Inc. v. Biofrontera Inc.</i> , PGR2026-00021, Paper 12 (PTAB May 26, 2026)	5, 11, 15
<i>Tianma Microelectronics Co., Ltd. v. LG Display Co., Ltd.</i> , IPR2025-01579, Paper 12 (PTAB Mar. 18, 2026)	5
<i>Viance, LLC v. Koppers Performance Chems., Inc.</i> , PGR2026-00023, Paper 32 (PTAB Aug. 19, 2026).....	passim
<i>Zoll Lifecor Corp. v. Philips Elec. N. Am. Corp.</i> , IPR2013-00606, Paper 13 (PTAB Mar. 20, 2014)	3

STATUTES

35 U.S.C. § 322	3, 6
35 U.S.C. § 325	13

TABLE OF EXHIBITS

No.	Description
2001	Prosecution history of U.S. Patent 12,305,206, U.S. Patent Application No. 18/435,340
2002	U.S. Patent No. 6,051,408 (“Bartsch”)
2003	U.S. Patent No. 10,888,095 (“Bhoge”)
2004	Memorandum from Coke Morgan Stewart to All PTAB Judges, Interim Process for PTAB Workload Management (Mar. 26, 2025)
2005	Declaration of Matt Malone
2006	U.S. Patent No. 9,834,802
2007	<i>BASF Acquires Glu-L Technology from AgriMetis</i> , News Release, BASF (Sept. 14, 2020)
2008	Liberty® ULTRA EPA Label
2009	<i>What type of Products Does Albaugh Offer?</i> , FAQs, Albaugh, https://www.albaugh.com/us/who-is-albaugh/about-us/faqs (last visited Apr. 10, 2026)
2010	Surmise 5, Albaugh, https://www.albaugh.com/us/agriculture/crop-protection/herbicides/listings/surmise--5 (last visited Apr. 10, 2026)
2011	Surmise Pro, Albaugh Specialty Products, https://www.albaugh.com/us/specialty-products/turf-ornamental/herbicides/listings/surmise-pro (last visited Apr. 10, 2026)
2012	Liberty® Safety Data Sheet
2013	Finale® XL T&O EPA Label
2014	Adam Mossoff, <i>The Patent System: America’s Innovation Engine</i> , The Heritage Foundation (Jan. 23, 2025)
2015	<i>CEO of Albaugh Group visits Nutrichem</i> , Nutrichem (Feb. 24, 2015)

No.	Description
2016	<i>Why Did Albaugh Acquire Rotam?</i> , FAQs, Albaugh, https://www.albaugh.com/us/who-is-albaugh/about-us/faqs (last visited Apr. 10, 2026)
2017	<i>Albaugh Closes on the Acquisition of Rotam</i> , Albaugh, https://www.albaugh.com/pl/en/news/news-detail/2024/10/30/albaugh-closes-on-the-acquisition-of-rotam (last visited Apr. 10, 2026)
2018	<i>Albaugh to Acquire Rotam AgroSciences</i> , AgriBusiness Global (Dec. 21, 2021)
2019	FAQs for Interim Processes for PTAB Workload Management (“FAQs”)
2020	Memorandum from Coke Morgan Stewart to Members of the Patent Trial and Appeal Board, Enforcement and Non-Waiver Of 37 C.F.R. § 42.104(B)(4) and Permissible Uses of General Knowledge in Inter Partes Reviews (July 31, 2025)
2021	Trial Practice Guide, USPTO (Nov. 2019)
2022	Meet the Global Executive Committee, Albaugh, https://www.albaugh.com/who-is-albaugh/about/global-executive-committee (last visited Apr. 10, 2026)
2023	Excerpt from Ex. 2022
2024	<i>About Huapont Life Sciences Co Ltd</i> , Reuters, https://reuters.com/markets/companies/002004.SZ (last visited Apr. 10, 2026)
2025	Albaugh, LLC's Corporate Disclosure Statement, <i>FMC Corp. v. Albaugh, LLC</i> , No. 4:24-cv-00055-SHL-HCA (S.D. Iowa May 23, 2024)
2026	<i>China-Based Firm Acquires 20% Stake in Albaugh</i> , AgriMarketing (Aug. 11, 2014)
2027	About Us, Albaugh, https://www.albaugh.com/ar/en/who-is-albaugh/about-us (last visited Apr. 10, 2026)

No.	Description
2028	Nutrichem Company Limited, 2024 Annual Report
2029	Declaration of Ingo Meiners under 37 C.F.R. § 1.132 in U.S. Patent App. 16/633,482
2030	International Publication No. WO 2019/020283
2031	Declaration of David A. Hunt, Ph. D.
2032	<i>Curriculum Vitae</i> of David A. Hunt, Ph.D.
2033	Declaration of Ingo Meiners
2034	Stuart Feldstein Deposition Transcript, dated September 25, 2026
2035	Memorandum from Director John A. Squires to all PTAB Judges regarding precedential designation of <i>Corning Optical</i> , dated October 28, 2025
2036	Email from Petitioner to the Patent Trial and Appeal Board, dated September 22, 2026

I. INTRODUCTION

Patent Owner BASF SE (“Patent Owner” or “BASF”) moves to terminate this post-grant review and vacate the decision on institution because Petitioner Albaugh, LLC (“Petitioner” or “Albaugh”) failed to identify its controlling member Albaugh Family Holdings, Inc. (“AFH”) as a real party-in-interest (“RPI”) in its Petition for Post-Grant Review.

AFH is an unnamed RPI because it “could have exercised control” over Albaugh’s participation in this proceeding under the precedential standard set forth in *Corning Optical*. Albaugh, LLC is governed by a Board of Managers that has five members. Ex. 1033, ¶ 4. AFH holds an 80% majority ownership stake in Albaugh and four of Albaugh’s five Board members “are appointed by and represent” AFH. *Id.* Before institution, Petitioner asserted that “[t]he Board of Managers does not ‘exercise control’ and ‘could [not] have exercised control’ over Albaugh’s participation in this PGR.” Paper 9 at 14-15. Subsequent discovery revealed that Albaugh’s assertion was inaccurate. Petitioner’s deputy CEO, Stuart Feldstein, admitted during deposition testimony after institution that AFH does, in fact, have the ability to control this PGR.

Mr. Feldstein admitted that AFH’s Board majority could have prevented the filing of the petition. Ex. 2034, 40:17-21 (“Q. If a majority of the Board had objected, could they have prohibited filing the PGR petition? . . . A. Yes, a

majority of the Board could have prevented that action.”). Mr. Feldstein likewise admitted that AFH’s Board majority still could control Albaugh’s participation. Ex. 2034, 40:23-41:3 (“Q. If the majority of the Board voted that the PGR should be terminated, could they control that decision? . . . A. A majority of the Board could take that action.”). This testimony unmistakably establishes that AFH could have controlled Albaugh’s participation in this PGR and thus, pursuant to controlling precedent, is an RPI.

In a closely analogous case, the Director recently found the majority and controlling owner of a two-member LLC to be an RPI. *Viance, LLC v. Koppers Performance Chems., Inc.*, PGR2026-00023, Paper 32 (PTAB Aug. 19, 2026). In *Viance*, a 50.001% owner of an LLC controlled half of the LLC’s board of directors. Rejecting an argument that unilateral control is required, the Director found ability to control and denied institution. Here the facts are *even stronger* in view of AFH’s 80% majority ownership stake and control of four of five Board seats. AFH has the ability to control and is an RPI under *Viance*.

Petitioner failed to identify AFH as an RPI despite AFH’s 80% ownership stake and ability to control this proceeding. Because adding an RPI would require a new filing date that would place the Petition outside the 9-month window for filing a PGR, the decision on institution should be vacated and the trial terminated.

II. LEGAL STANDARDS

The governing statute, 35 U.S.C. § 322(a)(2) provides that “a petition . . . may be considered *only if . . . the petition identifies all real parties in interest.*” (emphasis added). This statutory requirement is a “‘threshold issue’ for substantive review of the merits of the challenges presented in the Petition.” *Galderma S.A. v. Allergan Industrie, SAS*, IPR2014-01422, Paper 14 at 5 (PTAB Mar. 5, 2015) (quoting *Zoll Lifecor Corp. v. Philips Elec. N. Am. Corp.*, IPR2013-00606, Paper 13 at 8 (PTAB Mar. 20, 2014)).

The requirement to identify all RPIs rests on important policy considerations, including application of estoppel to prevent attempts by closely related entities to bring serial challenges against patent owners. The Federal Circuit has underscored this policy concern: “a patent owner dragged into an IPR by a petitioner . . . should not be forced to defend against later judicial or administrative attacks on the same or related grounds by a party that is so closely related to the original petitioner as to qualify as a real party in interest.” *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336, 1350 (Fed. Cir. 2018); *see also Askeladden LLC v. McGhie*, IPR2015-00122, Paper 38 at 6 (PTAB Mar. 6, 2015) (“The identification of all real parties-in-interest assists the Board in identifying potential conflicts of interest, and assures proper application of the statutory estoppel provisions, protecting patent owners from harassment via successive

petitions by the same parties”). The Director, recognizing the policy considerations, de-designated *SharkNinja* and restored the Office’s “practice of requiring petitioners to identify the real parties in interest (‘RPIs’) to their petitions before institution” by designating *Corning Optical* as precedential on October 28, 2025. Ex. 2035 at 1.

Under *Corning Optical*, an entity is a real party-in-interest where it “exercised *or could have exercised control* over a party’s participation in a proceeding” or otherwise had a significant relationship to the petition or the petitioner. *Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, IPR2014-00440, Paper 68 at 14-15 (PTAB Aug. 18, 2015) (precedential, except § II.E.1) (emphasis added); *Reflectix, Inc. v. Promethean Insulation Tech. LLC*, IPR2015-00039, Paper 18 at 12 (PTAB Apr. 24, 2015) (“The proper RPI analysis focuses on the degree to which the related non-named entity exercised, or could have exercised, control over the Petitions.” (citation modified)).

Since designating *Corning Optical* precedential, the Director has consistently explained that “RPIs are not limited to entities that are actually funding and controlling the proceeding but include **entities that have the ability to control the proceeding.**” *Viance*, PGR2026-00023, Paper 32 at 3 (emphasis added) (citing *Tianma Microelectronics Co., Ltd. v. LG Display Co., Ltd.*, IPR2025-01579, Paper 12 at 9-10 (PTAB Mar. 18, 2026) (precedential)); *Sun*

Pharm. Ind., Inc. v. Biofrontera Inc., PGR2026-00021, Paper 12 at 2 (PTAB May 26, 2026) (same). In *Viance*, the Director considered whether a 50.001% owner of a two-member LLC was an unnamed RPI where voting power on the LLC’s Board was divided evenly between the two members. *Viance*, PGR2026-00023, Paper 32 at 2-3. The Director found that “control of Petitioner is vested solely in its two owners as members of the Board of Directors” and based on this ability to control, held that the petitioner had failed to identify the 50.001% owner as an RPI. *Id.* at 3-4.

The determination whether an unnamed entity is an RPI, including because it could have exercised control over a party’s participation, “is a highly fact-dependent question.” *Corning Optical*, IPR2014-00440, Paper 68 at 14. When a patent owner identifies an RPI in dispute, “it is Petitioner’s burden to bring forth evidence or arguments demonstrating it had named all RPIs.” *Tianma*, IPR2025-01579, Paper 12 at 9. The statutory requirement to identify all RPIs is an ongoing requirement that the Board may address after institution by terminating a proceeding and vacating a decision to institute. *Corning Optical*, IPR2014-00440, Paper 68 at 11 (collecting cases).

III. ARGUMENT

Albaugh Family Holdings, Inc. has majority control of the Board of Managers (“Board”) of Petitioner Albaugh, LLC. AFH, through its Board majority,

had the ability to control Petitioner Albaugh's filing of its PGR petition and continues to have the ability to control Petitioner's participation in this proceeding. These facts are established by the pre-institution declaration (Ex. 1033) and post-institution cross examination (Ex. 2034) of Stuart Feldstein, Albaugh's deputy CEO. Indeed, Mr. Feldstein candidly admitted AFH's ability to control when asked directly. Ex. 2034, 40:17-41:7. Accordingly, AFH should have been named as an RPI as required by 35 U.S.C. § 322(a)(2). Petitioner's failure to name AFH as an RPI requires termination of this proceeding and vacatur of the institution decision.

A. AFH is a real party-in-interest because AFH has the ability to control Petitioner's participation in this proceeding.

Albaugh, LLC is a limited liability company with two members, Albaugh Family Holdings, Inc. and Nutrichem USA, Inc. Ex. 2034, 16:17-17:1. "Albaugh is governed by a Board of Managers." Ex. 1033 ¶ 4. "The Board of Managers consists of five members." *Id.* Four of the members of Albaugh's governing Board "are appointed by and represent Albaugh Family Holdings, Inc. ("AFH"), which holds an 80% majority ownership stake in Albaugh." Ex. 1033 ¶ 4. The fifth Board member "is appointed by and represents Nutrichem USA, Inc. ("Nutrichem"), a 20% minority investor in Albaugh." Ex. 1033 ¶ 4.

Dennis Albaugh is "the sole voting shareholder and director of AFH." Ex. 2034, 30:3-18. The four members of Albaugh's Board that are appointed by and represent AFH are Dennis Albaugh himself along with Tara Meredith, Kurt

Pedersen Kaalund, and Spencer Vance. Ex. 2034, 18:14-20; Ex. 2022. Mr.

Albaugh serves in dual roles as sole voting director of AFH and chairman of Albaugh's Board. Ex. 2034, 18:23-25, 30:15-18. Tara Meredith is Mr. Albaugh's daughter, Kurt Kaalund is Albaugh's global CEO, and Spencer Vance is Albaugh's former president for North America. Ex. 2034, 19:1-20.

AFH has the ability to control Albaugh through its four AFH-appointed members of the Board of Managers, as only a majority vote is required for the Board to act in the ordinary course of business. Ex. 2034, 25:8-26:10 (testifying that only "actions that would dilute Nutrichem's interest" would require Nutrichem's vote). And as Mr. Feldstein stated, decisions about proceedings before the USPTO are "made in the ordinary course" and thus are subject to control by AFH's Board majority. Ex. 1033, ¶ 6.

With regard to this PGR, Mr. Feldstein admitted during cross examination that AFH's Board majority could have controlled Albaugh's participation in this PGR and still has that ability to control. Ex. 2034, 40:17-41:7.

Q. If a majority of the Board had objected, could they have prohibited filing the PGR petition?

A. Yes, a majority of the Board could have prevented that action.

Q. If a majority of the Board voted that the PGR should be terminated, could they control that decision?

A. A majority of the Board could take that action.

Q. And that would be by majority vote?

A. Correct.

Ex. 2034, 40:17-41:7 (form objections removed). Mr. Feldstein further testified that the Board could revoke delegated authority (*id.* at 24:15-18, 41:16-19), direct how delegated authority is exercised (*id.* at 42:5-8), prohibit actions (*id.* at 38:6-13) and require actions (*id.* at 38:15-22).

Albaugh's officers act only according to powers delegated by the Board, and the Board could revoke or alter its delegation of powers at any time. Ex. 2034, 24:9-23. Because AFH appoints four of the five members of Albaugh's Board, AFH's representatives can carry any majority vote. Ex. 2034, 25:8-26:10. Indeed, Mr. Feldstein confirmed that the Board has the ability to control the officers' exercise of their delegated authorities. Ex. 2034, 42:10-43:5. As such, officers' delegated authority existed only because the Board granted it and the Board retained the authority to revoke it at any time. Accordingly, AFH is a real party-in-interest under *Corning Optical* and such a conclusion here would be consistent with the Director's application of the rule that "RPIs are not limited to entities that are actually funding and controlling the proceeding but include entities that have the *ability* to control the proceeding." *Viance*, PGR2026-00023, Paper 32 at 3.

B. The Director's recent decision in *Viance* compels the conclusion that AFH is a real party-in-interest.

The Director's decision in *Viance* is instructive and involves many similar

relevant facts to those present in this proceeding. The petitioner Viance, LLC—like Albaugh, LLC—was a limited liability company with two members. *Id.* And in that case, the petitioner’s member Venator—like AFH—owned a majority interest in the petitioner LLC. *Id.* at 2. Just as control of Albaugh, LLC is vested in the Board of Managers, control of Viance was vested in “its two owners as members of the Board of Directors.” *Id.* at 3. In determining whether those owners should have been identified as RPIs, the Director concluded that whether any owner had unilateral control was not dispositive, but rather, that the member’s ability to control required identifying it as an RPI. Relying on the fact that Viance’s Board governed the LLC and could have controlled the proceedings, the Director found that the petitioner failed to identify all RPIs and denied institution on that ground. *Id.* at 3-4.

The same result should hold here. In fact, the evidence of AFH’s ability to control is even stronger than the record in *Viance* because AFH appoints four of the five members of Albaugh’s governing Board and can carry any ordinary-course Board vote. Indeed, Albaugh admitted that the Board of Managers has the power to control virtually every aspect of Albaugh, LLC’s conduct. Ex. 2034, 38:11-13 (“I would say the Board, acting with the appropriate amount of voting power, can prohibit anything that it would choose to prohibit.”). Such plenary control is precisely the type of “ability to control” that compels a finding that AFH is an RPI.

C. Petitioner's arguments based on actual control instead of ability to control are misplaced.

Petitioner has argued that Patent Owner attempts to create a bright-line rule under which “any majority shareholder is necessarily a real party-in-interest.” *See* Paper 19 at 2. This is incorrect. The test under *Corning Optical* focuses on ability to control participation and not percent of ownership. Patent Owner does not attempt to set forth any new bright-line test but rather applies this existing precedent. This is “a highly fact-dependent question.” *Corning Optical*, IPR2014-00440, Paper 68 at 14. The answer to this question depends, at least in part, on the particular governance structure of the entities in question. Here, Patent Owner obtained evidence regarding Petitioner's governance through cross examination. Mr. Feldstein's testimony establishes that AFH, through its Board majority, could have controlled the filing of the PGR petition and still has the ability to control Albaugh's participation in this proceeding. Under *Corning Optical*, the facts here establish that AFH is an unnamed RPI.

Petitioner also has argued that decision-making authority was delegated to Petitioner's officers and that the Board of Managers did not know about, fund, or exercise control over the Petition. Paper 19 at 2. Petitioner argued that the Board of Managers would have to change how the company operates to exercise control over the proceeding. *Id.* These arguments are incorrect and misplaced because they focus on whether the Board *actually* exercised control rather than whether it *could*

have exercised control. *See Sun Pharm.*, PGR2026-00021, Paper 12 at 3 (explaining a petitioner's misfocused evidence on actual control rather than ability to control by its parent company). Mr. Feldstein testified in no uncertain terms that AFH's Board majority could have controlled Albaugh's participation in this PGR including that it could have prevented the filing of the PGR and could control termination of the PGR. Ex. 2034, 40:17-41:7. Under Petitioner's existing governance structure, AFH had the ability to control through the four members it appoints to Petitioner's five-member Board of Managers and should have been named as an RPI.

D. This motion is timely.

Petitioner suggested during the hearing on Patent Owner's request for authorization to file this motion that Patent Owner could have raised this RPI issue earlier. Paper 19 at 2-3. This is incorrect. Patent Owner brings this motion to terminate at the earliest possible time, only two weeks after cross examining Petitioner's declarant, one week after receiving the transcript and authorization from the Board to file the motion, and over three weeks before the deadline for the Patent Owner Response. Paper 19. Patent Owner was not in possession of the evidence required to raise this issue until now.

Before discretionary denial briefing, Patent Owner had no evidence of Petitioner's corporate governance. Petitioner is a private company, and Patent

Owner had no insight into AFH's ability to control Albaugh, LLC and no way to know about AFH's control over the Board of Managers or the Board of Managers' ability to control the PGR.

Based on its investigation of the public record, Patent Owner initially raised the possibility that Petitioner's minority owner Nutrichem was an RPI in its discretionary denial brief. Paper 8 at 18-20. Petitioner opposed because Nutrichem only has one of five votes on Albaugh's Board of Managers and no ability to control. Paper 9 at 14. Petitioner supported its opposition with the Feldstein declaration (Ex. 1033), which the Board correctly noted was filed after Patent Owner's discretionary denial briefing and contemporaneous with Patent Owner's Preliminary Response. Paper 19 at 3.

Notably, Petitioner asserted in its discretionary denial opposition brief that "[t]he Board of Managers does not 'exercise control' and '**could [not] have exercised control' over Albaugh's participation in this PGR.**" Paper 9 at 14-15 (emphasis added). Patent Owner had no opportunity to test this assertion or submit briefing in response. It turns out this assertion is inaccurate. After institution, Patent Owner had the opportunity to cross-examine Mr. Feldstein and elicited the testimony cited above that the Board of Managers does have the ability to exercise control over Albaugh's participation in this PGR. That evidence and the other cited testimony were not available before now.

The statutory requirement to identify all RPIs is an ongoing requirement that the Board may address after institution by terminating a proceeding and vacating a decision to institute. *Corning Optical*, IPR2014-00440, Paper 68 at 11 (collecting cases). It is proper to raise an RPI issue after institution, particularly where, as here, it was “precipitated by the discovery of new information.” *Id.* at 12 (quoting *First Quality Baby Prods., LLC v. Kimberly-Clark Worldwide, Inc.*, IPR2014-01024, Paper 41 at 6 (PTAB July 16, 2015)). This motion is timely and should be granted.

E. Identification of AFH as a real party-in-interest serves the underlying policy of enforcing statutory estoppel.

The requirement for petitioners to identify all RPIs serves important policy goals, including application of statutory estoppel to guard against serial challenges. If this proceeding were to result in a final written decision, statutory estoppel would prohibit Petitioner from asserting invalidity on any ground that Petitioner raised or reasonably could have raised during this PGR. 35 U.S.C. § 325(e). Statutory estoppel also would extend to and prohibit subsequent validity challenges by real parties in interest, thereby preventing serial challenges by closely related entities. *Id.*

The Federal Circuit recognized that patent owners should not be forced to defend against later attacks “by a party that is so closely related to the original petitioner as to qualify as a real party in interest.” *Applications in Internet Time*,

897 F.3d at 1350. The Board also recognized that “identification of all real parties-in-interest . . . assures proper application of the statutory estoppel provisions, protecting patent owners from harassment via successive petitions by the same parties.” *Askeladden*, IPR2015-00122, Paper 38 at 6.¹

If AFH were deemed not to qualify as an RPI, the door could open to serial challenges and “harassment via successive petitions.” *Askeladden*, IPR2015-00122, Paper 38 at 6. Failure to identify AFH as an RPI creates uncertainty with respect to the scope of estoppel and the ability to ensure that estoppel applies to all entities sufficiently connected to the petitioner. The RPI requirement exists precisely to prevent closely related entities from avoiding or disputing the extent of statutory estoppel.

The Patent Office has restored a strict approach to the RPI issue. The Director’s de-designation of *SharkNinja* explicitly prevents the Board from declining to decide RPI issues. Ex. 2035. And the Director’s designation of *Corning Optical* as precedential underscores the holistic and expansive approach to determining RPIs. The Director’s application of *Corning Optical* to facts like ours in *Viance* demonstrates how and why entities with sufficient interest on a

¹ Petitioner noted the importance of mandatory notices “for the PTAB to correctly apply statutory estoppel rules,” albeit in the context of related matters. Ex. 2036.

managing board must be identified as RPIs. Petitioner should have named AFH as an RPI. It did not, and the 9-month window for filing a PGR petition has closed. The Board should terminate this proceeding and vacate the decision on institution.

IV. CONCLUSION

Because adding an RPI would require a new filing date that would place the Petition outside the 9-month window for filing a PGR, the PGR should be terminated and the institution decision vacated. *See Viance*, PGR2026-00023, Paper 32 at 4; *Corning Optical*, IPR2014-00440, Paper 68 at 11; *Sun Pharm.*, PGR2026-00021, Paper 12 at 3-4 (denying PGR petition because Petitioner did not meet the requirement to name all RPIs within the 9-month window). Accordingly, Patent Owner respectfully requests that the Board terminate the proceeding and vacate the decision on institution.

Dated: October 9, 2026

By: /Matias Ferrario/
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Reg. No. 51,082
Lead Counsel for Patent Owner

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PATENT OWNER'S MOTION TO TERMINATE THE PROCEEDING AND VACATE THE DECISION ON INSTITUTION has been served electronically by email upon the following:

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