No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Agilent Technologies, Inc,

Applicant,

v.

Synthego Corp,

Respondent.

APPLICATION TO JUSTICE ROBERTS FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Applicant Agilent Technologies, Inc. states that it has no parent corporation and that no publicly held company owns 10% or more of Applicant's stock.

OPINIONS BELOW

The Opinion of the U.S. Court of Appeals for the Federal Circuit in consolidated case nos. 23-2186 and 23-2187, dated June 11, 2025, is included at App.1. and the entry of judgment is included at App.22.

JURISDICTION

The final judgment of the Federal Circuit was entered on June 11, 2025. Petitioner plans to file a petition for writ of certiorari within 90 days from the date of

judgment plus any extension granted by the Circuit Justice, and invoke the jurisdiction of this Court under 28 U.S.C. § 1254.

EXTENSION REQUEST

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the Federal Circuit:

Pursuant to Supreme Court Rules 13.5, Applicant Agilent Technologies, Inc. ("Agilent") respectfully requests an extension of sixty (60) days to file a petition for a writ of certiorari in this Court to and including Monday, November 8, 2025.

The Federal Circuit issued its opinion on June 11, 2025. Without an extension, the original 90 day deadline to file a petition is September 9, 2025. With an additional 60 days, the deadline extends to November 8, 2025. That date being a Saturday, the effective deadline would roll over to Monday, November 10, 2025.

This application is filed more than 10 days prior to the original deadline.

Respondent does not oppose Petitioner's requested extension.

CASE BACKGROUND

1. Each of these cases presents important issues regarding how the Federal Circuit has interpreted and failed to consistently apply the enablement requirement of the Patent Act when considering whether the claims of an issued patent are enabled, and when considering enablement of prior art that is alleged to invalidate duly issued patent claims.

2. In the underlying Inter Partes Review proceedings, a panel of administrative law judges invalidated the claims of two related Agilent patents directed to modified guide RNA for use in the CRISPR system. More particularly, Agilent's patents claimed certain chemical modifications that, when applied to CRISPR guide RNA, did not disrupt the guides' functionality within the CRISPR system. Given the unpredictability of the art and limitless potential modifications, Agilent's inventors undertook systematic and painstaking synthesis and laboratory testing of hundreds of guide RNA modifications—both of the types and locations thereof—to ascertain what worked, and what did not. The results of those efforts were claimed in the issued patents, which described the inventors' methodology, testing, and results, enabling skilled artisans to make and use their claimed inventions—and to further build on Agilent's contributions. This groundbreaking work was also the subject of a June 2015 collaborative research paper published in *Nature Biotechnology*; publications citing the paper called the work "pioneering," "seminal," and "a major contribution." Synthego itself called it "landmark" work that "set the bar … as the method of choice for CRISPR-Cas9 in primary human immune cells." All of this was necessary because, as was understood in the art, it was impossible to predict which modifications to guide RNA would be beneficial, or which would render them non-functional.

3. Notwithstanding the unpredictability of the art and the need for a skilled artisan to actually make and test whether a chemically modified guide would actually

work in the CRISPR system, the Federal Circuit held that a prior art publication is *presumed to be enabling*. On that basis, Agilent's issued claims, which were enabled only because they were synthesized and tested, were invalidated based on an abandoned patent publication that simply listed a litany of possible modifications, while suggesting that someone else would need to manufacture and test whether they *actually* worked. This dichotomy, created and applied by the Federal Circuit, effectively allows anyone to create invalidating prior art simply by offering untested and unverified pronouncements, thus dedicating subject matter to the public since they are simply presumed enabling. This outcome creates perverse disincentives to undertake expensive and time consuming research in the unpredictable arts—including the research and development of life-saving therapeutics.

REASONS FOR REQUESTING AN EXTENSION

1. Good cause exists for an extension of time to file the petition for writ of certiorari. The issues to be presented are of significant importance to academic and industry participants in the life sciences, biotechnology, and pharmaceutical sectors, and whether meaningful patent protection is available in exchange for substantial investments in research and development. Applicant and its counsel require time to secure amicus curiae in support of this petition.

2. There is also the press of business on other matters, for which counsel requires additional time to diligently serve several clients of a (relatively) small litigation boutique. The Federal Circuit's opinion and judgment in these matters were issued

just three days prior to the final pretrial conference in *ToT Power Control, S.L. v. Apple, Inc.*, No. 21-1302 (D. Del.), which proceeded through a jury trial that concluded on June 30, 2025, and for which post-trial briefing only just concluded on August 18, 2025. The undersigned was lead trial counsel for that matter. In addition, the firm has two patent infringement trials that are scheduled to begin on November 3, 2025: *Cisco Systems, Inc. et al. v. Ramot At Tel Aviv University Ltd.*, No. 21-1365 (D. Del.); and *Secure Wi-Fi LLC v. Samsung Electronics Co. Ltd. et al.*, No. 2:24-cv-47 (E.D. Tex.). The preparation of pre-trial submissions for these matters is a substantial undertaking for the firm, and for the undersigned, who is lead counsel for Ramot, and the managing partner of the firm.

CONCLUSION

WHEREFORE, for the foregoing reasons, Applicant respectfully requests that an order be entered extending the Applicant's time to file a petition for a writ of certiorari for sixty (60) days to and including Monday, November 8, 2025.

Respectfully Submitted,

/s/ Denise M. De Mory
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