

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Mailed: January 18, 2011

Opposition No. 91192781

Bayer HealthCare LLC

v.

Biogen Idec MA Inc. and  
Cardiokine Biopharma, LLC  
(joined as party defendant)

**George C. Pologeorgis,  
Interlocutory Attorney:**

On January 14, 2011, applicant filed a motion to substitute Cardiokine Biopharma, LLC as party defendant in this proceeding. In support of its motion, applicant contends that applicant Biogen Idec MA Inc. assigned all rights, title and interest in application serial no. 77701134, the subject application of this proceeding, to Cardiokine Biopharma, LLC following the commencement of this case.<sup>1</sup> In view thereof, applicant Biogen Idec MA Inc. requests that Cardiokine Biopharma, LLC be substituted as a party defendant.

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<sup>1</sup> Applicant's motion papers indicate that the assignment of the subject application was executed on December 15, 2010 and recorded with the USPTO's Assignment Branch on December 22, 2010. See Reel/Frame nos. 4439/0335.

When the assignment of a federal registration or application is recorded with the USPTO, the assignee may be substituted as a party if the assignment occurred prior to the commencement of the proceeding; otherwise, *the assignee will be joined, rather than substituted, to facilitate discovery.* (emphasis added). See, for example, 37 CFR §§ 2.113(c) and (d), 3.71 and 3.73(b); Fed. R. Civ. P. 17 and 25; *Pro-Cuts v. Schilz-Price Enterprises Inc.*, 27 USPQ2d 1224 (TTAB 1993); *Western Worldwide Enterprises Group Inc. v. Qingdao Brewery*, 17 USPQ2d 1137, 1138 n.4 (TTAB 1990) (assignee joined after filing copy of an assignment which occurred subsequent to commencement of proceeding); and *Tonka Corp. v. Tonka Tools, Inc.*, 229 USPQ 857, 857 n.1 (TTAB 1986) (assignee joined where papers filed by parties indicated registration had been assigned).

Accordingly, since the assignment of the underlying application in this case occurred after the commencement of this opposition proceeding, applicant's motion is granted to the extent that Cardiokine Biopharma, LLC is hereby joined as a party defendant to this proceeding.

Trial dates remain as reset by Board order dated January 12, 2011.