

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

Mailed: May 6, 2011

Opposition No. 91192781

Bayer HealthCare LLC

v.

Biogen Idec MA Inc. and
Cardiokine Biopharma, LLC

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

On March 24, 2011, opposer notified the Board that it made its required expert witness disclosure to applicants. By order dated March 25, 2011, the Board suspended this proceeding for the sole purpose of allowing applicants to take discovery regarding opposer's designated expert witness, as well as permitting opposer to conduct discovery of any rebuttal witnesses designated by applicants. Subsequent to the issuance of the Board's March 25, 2011 suspension order, applicant filed their own notification of their expert witness disclosure upon opposer.

Inasmuch as the Board's March 25, 2011 suspension order did not specifically provide time for opposer to take discovery regarding applicants' designated expert witness, both parties are allowed until June 30, 2011 in which to

complete discovery of any properly designated expert witnesses, including any rebuttal witnesses. To the extent either party has retained a rebuttal witness, such party must serve a rebuttal expert report upon applicants in accordance with Fed. R. Civ. P. 26(a)(2), as well as notify the Board of their intention of using a rebuttal witness by the June 30, 2011 deadline set herein.

To the extent either party requires an extension of the suspension period to complete expert witness discovery, such party may file a motion to extend the suspension period.

If all discovery regarding designated expert witnesses, including rebuttal expert witnesses, is completed prior to the June 30, 2011 deadline, the parties must notify the Board so that the Board may reset remaining trial dates. Otherwise, proceedings herein will resume on July 1, 2011 and all appropriate trial dates, including remaining discovery, will be reset by Board order at such time.¹

¹ By this order, the Board presumes that both parties have complied with all the requirements concerning an expert witness disclosure under Fed. R. Civ. P. 26(a)(2), including service of an expert witness report, concurrently with the expert witness disclosure.