

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

Mailed: November 19, 2010

Opposition Nos. 91194218 (parent)
91194219

Illumina, Inc.

v.

Meridian Bioscience, Inc.

**Robert H. Coggins,
Interlocutory Attorney:**

These cases come up for consideration of a stipulated motion (filed August 12, 2010, in Opposition No. 91194218) to consolidate Opposition Nos. 91194218 and 91194219, and a stipulated motion to amend the protective agreement (filed September 24, 2010, in Opposition Nos. 91194218 and 91194219).

Consolidation

The Board has reviewed each case and agrees that consolidation is appropriate. Accordingly, the motion is granted. Fed. R. Civ. P. 42(a)(2). The Board file will be maintained in Opposition No. 91194218 as the "parent" case. The parties should no longer file separate papers in connection with each proceeding. Only a single copy of each paper should be filed by the parties in the "parent" case,

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and each paper should bear the case caption as set forth above. The consolidated oppositions may be presented on the same record and briefs.

Protective Agreement

The stipulated protective agreement is noted, and its use in this proceeding is approved. The parties are referred, as appropriate, to TBMP §§ 412.03 (2d ed. rev. 2004) (Signature of Protective Order), 412.04 (Filing Confidential Materials With Board), and 412.05 (Handling of Confidential Materials by Board).

The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of 37 CFR § 2.27, which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.

Schedule

It is noted that in each proceeding opposer filed (on May 18, 2010) a motion to suspend proceedings "to allow the parties to continue their settlement efforts." The motions, which were filed between applicant's answer and the deadline for the mandatory discovery conference, but did not include a statement that that the discovery conference had been

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held, were granted automatically by ESTTA on the same day they were filed.¹

While the Board is liberal in granting suspensions of time to answer, when requested to accommodate settlement talks, the Board is not liberal in granting suspensions of time to suspend for settlement talks after the answer is filed but prior to the parties' discovery conference. The "Miscellaneous Changes to Trademark Trial and Appeal Board Rules," 72 Fed. Reg. 42242, 42245 (August 1, 2007), provides:

if a motion to extend or suspend for settlement talks, arbitration or mediation is not filed prior to answer, then the parties will have to proceed, after the answer is filed, to their discovery conference, one point of which is to discuss settlement. It is unlikely the Board will find good cause for a motion to extend or suspend for settlement if the motion is filed after answer but prior to the discovery conference, precisely because the discovery conference itself provides an opportunity to discuss settlement.

Inasmuch as opposer's motion to suspend was filed after the answer but prior to the parties' discovery conference without an indication that the conference was held, the Board does not find good cause to suspend proceedings for settlement because the discovery conference itself provides an opportunity to discuss settlement. Moreover, because of

¹ Applicant filed another motion to suspend for thirty-days in each case on June 25, 2010. These motions were also granted automatically by ESTTA on the day they were filed.

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the timing of opposer's motions, the automatically generated ESTTA orders did not contemplate a new date for initial disclosures. Inasmuch as the motions did not provide any compelling reason for suspension, the automatically generated ESTTA orders granting the motions (and granting the subsequent motions of June 25) are hereby vacated.

Notwithstanding the vacating of the prior scheduling orders, dates are reset on the schedule below, which schedule reflects dates contemplated by the June 25th order. Since over four months have now passed since the June 25th motion to suspend was filed, and the parties have submitted a motion to amend the standard protective agreement, the Board presumes that the parties have since held the mandatory settlement and discovery conference and made initial disclosures.

Dates for the consolidated cases are reset as follows.

Expert Disclosures Due	12/24/2010
Discovery Closes	1/23/2011
Plaintiff's Pretrial Disclosures	3/9/2011
Plaintiff's 30-day Trial Period Ends	4/23/2011
Defendant's Pretrial Disclosures	5/8/2011
Defendant's 30-day Trial Period Ends	6/22/2011
Plaintiff's Rebuttal Disclosures	7/7/2011
Plaintiff's 15-day Rebuttal Period Ends	8/6/2011

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of

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the taking of testimony. Trademark Rule 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.