

ESTTA Tracking number: **ESTTA1069442**

Filing date: **07/20/2020**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91247175
Party	Plaintiff Atara Biotherapeutics, Inc.
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Date	07/20/2020
Attachments	Motion to Oppose Extension of Time.pdf(30772 bytes )

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Atara Biotherapeutics, Inc.,

Opposer,

Allogene Therapeutics, Inc.,

Applicant.

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Opposer,

Allogene Therapeutics, Inc.,

Applicant.

Application No. 88/117,993

Opposition No. 91247175 (parent)

Mark: ALLOCAR T

Application No. 88/117,972

Opposition No. 91247177 (child)

Mark: ALLOCAR T

**OPPOSITION TO ALLOGENE’S MOTION FOR EXTENSION OF TIME**

Atara Biotherapeutics, Inc., (“Atara” or “Opposer”) respectfully requests that the Trademark Trial and Appeals Board (“Board”) deny Allogene Therapeutics, Inc.’s (“Allogene” or “Applicant”) Motion for Extension of Time (“Motion”).

**BACKGROUND**

On April 3, 2020, the Parties agreed to a 60-day suspension of proceedings to discuss the possibility of settlement. After it became apparent that the Parties were at an impasse, and in view of the looming June 23, 2020 deadline to disclose experts and delays caused by COVID-19 restrictions, on June 2, 2020, Atara conferred with Allogene to request a 30-day extension of the

deadline to disclose expert witnesses. A week later, on June 9, Allogene declined Atara's request. Thus, in accordance with the controlling trial schedule, on June 23, 2020, Atara served an opening expert report of its expert, Dr. Scott Burger. Two weeks later, on July 7, 2020, Allogene requested a 30-day extension to its deadline to disclose its rebuttal expert reports, and a 60-day extension to the discovery deadline for purposes of completing expert depositions. With respect to Allogene's rebuttal expert report, Atara declined to grant Allogene's request because Allogene had ample time to prepare an expert report. Furthermore, affording Allogene more time when Allogene refused the same courtesy to Atara would be inequitable and prejudice Atara. Such an extension would also unnecessarily delay trial dates. Notwithstanding the foregoing, Atara does not oppose Allogene's other request, to extend the deadline to complete expert depositions.

### **ARGUMENT**

The Board should "scrutinize carefully" Allogene's motion to extend time, to determine whether the requisite good cause has been shown. TBMP §509.01(a); *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760-61 (TTAB 1999). A motion to extend may be granted upon a showing of good cause as long as the facts establishing good cause are "set forth with particularity." TBMP §509.01(a). Further, the party moving to extend time must demonstrate that the requested extension "is not necessitated by the party's own lack of diligence or unreasonable delay." TBMP §509.01(a); *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008) ("the Board is liberal in granting extension of time before the period to act has elapsed so long as the moving party has not been guilty of negligence or bad faith"). Here, Allogene cannot meet its burden of demonstrating good cause for such an extension, and

such an extension would prejudice Atara. *See* Fed. R. Civ. P. (6)(b); TBMP §509.01(a).

Allogene's request should therefore be denied.

First, although Allogene has had ample notice to engage a rebuttal expert and prepare a report, it failed to make any showing of good cause for its request. Atara notified Allogene of its intent to submit an affirmative expert report in early June when Allogene refused to consent to a modest extension of time for Atara to prepare such a report. Allogene argues that it "identified a number of suitable candidates" and its delay stems from "reduced work schedules and limited availability related to the current state of affairs in the workplace." (Motion at 3.) But, Allogene failed to provide any details of their reduced work schedules or limited availability that would justify a delay. Further, Allogene cannot explain how their "reduced work schedules" impacts their search for an expert given that they have already "identified a number of suitable candidates." Nor does Allogene explain how it was diligent in its search for a rebuttal expert, or even when such a search started. Instead, Allogene delayed until two weeks after Atara's disclosure of its affirmative expert testimony before requesting an extension.

Second, Allogene's request for extension was made in bad faith given the timing of the Motion and their refusal to consider an extension for Atara in early June, when Atara faced similar COVID-19-related issues. Allogene filed its Motion ten days prior to the deadline to disclose its rebuttal expert, knowing that its delay in filing its Motion would effectively pushing out the rebuttal expert disclosure deadline where there is no right to assume that extensions of time will always be granted. *See Chesebrough-Pond's Inc. v. Faberge, Inc.*, 618 F.2d 776 (CCPA 1980). Extending the deadline to disclose Allogene's rebuttal expert will have a snowball effect on other deadlines and delay resolution of this dispute.

Finally, granting Allogene's Motion would prejudice Atara by inequitably providing more time to Allogene to prepare its expert disclosures than what Allogene was willing to provide to Atara. Indeed, Allogene's request for an extension is a byproduct of its own unwillingness to cooperate with Atara's June 2<sup>nd</sup> request for a similar extension to expert disclosure deadlines. After rejecting Atara's request, Allogene now comes to the Board asking for its own inequitable extension. Allogene's request should therefore be denied.

### **CONCLUSION**

For the foregoing reasons, Atara requests that that Allogene's request for a 30-day extension to the deadline to disclose rebuttal expert reports be denied. However, Atara does not oppose Allogene's request for a 60-day extension of the discovery period for the limited purpose of completing expert depositions. However, the remaining trial dates should be left unchanged.

July 20, 2020

By: */Jesse A. Salen/*

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**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that the foregoing “**OPPOSITION TO ALLOGENE’S MOTION FOR EXTENSION OF TIME**” is being transmitted electronically to Commissioner of Trademarks, Attn: Trademark Trial and Appeal Board through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 20<sup>th</sup> day of July, 2020.

*/Nicole Hyatt/*

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Nicole Hyatt

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing “**OPPOSITION TO ALLOGENE’S MOTION FOR EXTENSION OF TIME**” has been electronically served on Jason S. Howell for Perkins Coie LLP, Attorneys for Applicant, by forwarding said copy via email to: [pctrademarks@perkinscoie.com](mailto:pctrademarks@perkinscoie.com), [JHowell@perkinscoie.com](mailto:JHowell@perkinscoie.com), [AJAGarcia@perkinscoie.com](mailto:AJAGarcia@perkinscoie.com), [SDanielson@perkinscoie.com](mailto:SDanielson@perkinscoie.com), [CGanin@perkinscoie.com](mailto:CGanin@perkinscoie.com), [Cbeaker@perkinscoie.com](mailto:Cbeaker@perkinscoie.com), [tbrandon@perkinscoie.com](mailto:tbrandon@perkinscoie.com)

on this 20<sup>th</sup> day of July, 2020.

*/Nicole Hyatt/*

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