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

Proceeding	91247177
Party	Defendant Allogene Therapeutics, Inc.
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Signature	/Craig A. Beaker/
Date	07/22/2019
Attachments	190722 AUTOCAR T Reply in Support of Motion to Consolidate.pdf(192547 bytes)

I. ANALYSIS

The Trademark Trial and Appeal Board (“Board”) may order consolidation of cases where they involve common questions of law or fact. Fed. R. Civ. P. 42(a); TBMP § 511. “In determining whether to consolidate proceedings, the Board will weigh the savings in time, effort, and expense, which may be gained from consolidation, against any prejudice or inconvenience that may be caused thereby.” TBMP § 511. As set forth in detail below, the savings in time, effort, and expense resulting from consolidation outweigh the perceived or speculative prejudice or inconvenience alleged by Opposers.

1. Opposers’ claims involve the same set of underlying laws, facts, and asserted harm.

Opposers argue that consolidation is inappropriate because the Oppositions involve separate and distinct parties and causes of action. *See* CRISPR’s Opposition to Motion to Consolidate (“CRISPR Opp.”), p. 3; Atara’s Opposition to Allogene’s Motion to Consolidate (“Atara Opp.”), pp. 4-5. However, a side-by-side comparison of certain overlapping allegations set forth in Opposers’ Notices of Opposition are included below and demonstrate that the Oppositions contain the same set of underlying laws, facts, and asserted harm.

Atara Notice of Opposition	CRISPR Notice of Opposition
¶ 8: “Applicant is a direct competitor of Atara. Specifically, both Applicant and competitor develop autologous CAR T immunotherapies.”	¶ 10: “Opposer, either directly and/or through its wholly-owned U.S. subsidiary, is a competitor of Applicant...”
¶ 2: “Atara is a leading off-the-shelf, autologous T-cell immunotherapy company developing novel treatments for patients with cancer, autoimmune and viral diseases.”	¶ 8: “Opposer, CRISPR Therapeutics AG, either directly and/or through its wholly-owned U.S. subsidiary, is engaged in the research and development of immunology gene therapy treatments, including chimeric antigen receptor T cell therapy.”
¶ 16: “Applicant’s designation AUTOCAR T is merely descriptive of Applicant’s goods,	¶ 23: “The mark AUTOCAR T as sought to be registered by Applicant merely describes

namely, pharmaceutical preparations, including without limitation, preparations for use in the treatment of cancer and tumors and pharmaceutical and biological preparations for immunotherapy, including T Cell therapy.”	an ingredient, quality, characteristic, function, feature, purpose or use of the goods contained in Allogene’s Appl. No. 88/117,972 of the mark AUTOCAR T.”
¶ 18: “Further, if Applicant’s registration is granted, Atara will be unable to use the descriptive term ‘auto CAR T’ to describe its products and services by using such a commonly recognized indicator of immunotherapies and pharmaceutical preparations that incorporate or use autologous CAR T cells.”	¶ 25: “Registration of the mark AUTOCAR T contained in Appl. No. 88/117,972 will cause injury and damage to Opposer in that it will be prevented from using either AUTOCAR T or autologous CAR T to describe its research and development activities and products related to chimeric antigen receptor T-cell therapies in the United States and elsewhere.”

Opposers allege that: (1) Opposers are both Applicant’s competitors; (2) Opposers both research and develop immuno-oncology therapy treatments; (3) Opposers both would like to use the term AUTOCAR T, or a similar variation; (4) Opposers both argue that Applicant’s AUTOCAR T mark is merely descriptive, and (5) Opposers both contend that they will be harmed by Applicant’s registration of the mark AUTOCAR T. Consequently, Opposers’ allegations support Applicant’s position that Opposers’ claims involve common questions of law and fact.

Moreover, Opposers’ argument that Opposers are separate parties is not dispositive of the issue, particularly in situations where the opposers are similarly situated and consolidation will save the parties and the Board time, effort, and expense. If that were the case, the Board would never order consolidation where two co-pending oppositions involved separate parties. The Board has not taken that position. Instead, where two opposers are similarly situated and the cases involve common questions of law and fact, the Board and Federal Courts have ordered consolidation. *See, e.g., Datanational Corp. v. Bellsouth Corp.*, 18 U.S.P.Q.2d 1862, 1862 (TTAB 1991) (Board consolidated 12 oppositions filed by 24 opposers because there was “general uniformity” in the allegations raised); *Red Planet Mgm’t Corp. v. Fender Musical Instrus. Corp.*,

Opp. Nos. 91160180, et. al. (TTAB Jan. 27, 2005), sub nom. *Stuart Spector Designs, Ltd. v. Fender Musical Instrus. Corp.*, 94 U.S.P.Q.2d 1549 (TTAB 2009) (Board consolidated oppositions brought by unrelated parties against one application “in the interest of judicial economy, and to save both the parties and the Board time, effort, and expense”); *Townsley v. Hydro Int’l LLC*, Case Nos. CV2010-02212-AHM (RZx), CV2010-03870-AHM (RZx), CV 2010-04408-AHM(RZx), 2010 WL 3070387, at *2 (C.D. Cal. Aug. 2, 2010) (consolidated three trademark actions brought against different parties because—while two of the complaints included an additional cause of action —“the complaints in all three cases were extremely similar factually and legally,” and involved common questions of fact and law).

As demonstrated above, Opposers’ claims are based on the same set of underlying laws, facts, and asserted harm. Accordingly, this factor weighs heavily in favor of consolidation of the Oppositions.

2. The savings in time, effort, and expense outweigh any prejudice to the parties.

Opposers both argue that they will suffer undue prejudice if the Board consolidates the Oppositions. In particular, Atara argues that consolidation would unnecessarily delay the trial schedule in the Atara opposition because the proceedings are at different stages. *See* Atara Opp., pp. 5-6. CRISPR contends that the different claims raised by the parties could result in “real and prejudicial delays to CRISPR.” *See* CRISPR Opp., pp. 3-5. Applicant addresses each of Opposers’ arguments in turn below.

First, Atara’s claim that the proceedings are at different stages overstates the status of the two proceedings. The discovery period for the Atara proceeding just opened on June 3, 2019, and Atara only recently served discovery on July 2, 2019.¹ Copies of Atara’s discovery requests are

¹ Applicant notes that Atara filed a Notice of Correction with the Board on July 3, 2019, in which it clarified that it did not, in fact, serve discovery requests on Applicant on the date of filing Atara’s opposition to Applicant’s Motion

attached as Exhibit A. In the CRISPR proceeding, Applicant served its Answer on June 10, 2019. The Atara and CRISPR proceedings are now suspended pending the Board's decision on Applicant's Motion to Consolidate. Under similar circumstances, the Board has previously ordered consolidation where the two proceedings were at similar stages. *See Datanational Corp.*, 18 U.S.P.Q.2d at 1862 (noting that consolidation was granted after applicant filed answers to each notice of opposition); *Red Planet Mgm't Corp.*, Opp. Nos. 91160180, *et al.* (consolidation occurred after applicant filed answers to each notice of opposition). Given the early stages of the Oppositions and the fact that Atara has only just served discovery, Applicant submits that the time, effort, and expense saved by the Board and the parties outweighs any perceived prejudice incurred by Opposers in consolidating the two proceedings and resetting the trial dates.

Second, CRISPR raises five scenarios in which it could suffer a prejudicial delay if the Oppositions are consolidated. These scenarios include: (a) motion practice where either Atara or Applicant files a discovery or trial motion; (b) delays caused by suspension of the proceedings due to the pendency of motions brought by Atara or Applicant, which would enable Applicant to accumulate evidence of acquired distinctiveness; (c) delays caused by Atara electing a discovery strategy that would involve taking the depositions of numerous third parties, which would require CRISPR's presence; (d) dispositive motion practice addressing Atara's generic claim only; and (e) extensions of time to respond to discovery requests or for additional reasons that would extend the original discovery and trial testimony calendar dates. *See CRISPR Opp.*, pp. 3-5. Applicant addresses each of these scenarios below:

- a) Motion practice: CRISPR argues that if either Atara or Applicant elected to file a discovery or trial motion in the consolidated proceeding, the Board could elect to suspend the

to Consolidate, but rather one day after Atara's opposition was filed (and after Applicant brought the discrepancy to Atara's attention).

proceeding, which would result in additional delays. *Id.* at pp. 3-4. CRISPR's argument is speculative and assumes that no discovery or trial motions would be filed in the CRISPR proceeding (which is highly unlikely). Additionally, given the overlapping facts and issues in the two proceedings, it is likely that any discovery or trial motions brought in the Atara proceeding would also be brought in the CRISPR proceeding. Consequently, any purported prejudice that may be incurred by CRISPR would be outweighed by the convenience to the Board in not having to decide the same issue in two proceedings, not to mention avoiding the risk of inconsistent decisions on the same issue.

- b) Unfair advantage: CRISPR alleges that any delays in the proceeding would benefit Applicant because it would allow the company to gather more evidence of acquired distinctiveness. *Id.* at p. 4. Again, CRISPR has not provided any evidence to explain why the Atara proceeding would incur significant delays but the CRISPR proceeding would move forward without any such delays. As mentioned above, the overlapping facts and issues in the Oppositions suggest that the cases would move forward on a similar track. When weighed against the savings in time, effort, and expense to the parties and the Board, CRISPR's speculative harm in consolidating the Oppositions is greatly outweighed.
- c) Third-party discovery: CRISPR argues that Atara could elect a discovery strategy that involves taking the depositions of numerous third parties to support a finding that AUTOCAR T is generic, which would require CRISPR's presence. *Id.* at p. 4. This position lacks merit because: (1) both CRISPR and Atara would be subject to the same Board rules regarding the limitations for the number of depositions allowed, so the number of depositions that Atara could take would be limited by the Board's rules; (2) in a consolidated proceeding, CRISPR and Atara would have the benefit of sharing resources

in discovery and developing a common discovery strategy, thereby resulting in significant savings in time and expense for both parties; and (3) CRISPR could make a strategic decision not to attend a deposition pertaining to a generic claim only, so any costs it would incur in this regard would be voluntary.

- d) Dispositive motion practice: CRISPR contends that Atara or Applicant could file a dispositive motion on the issue of genericness, which would result in suspension of the proceeding. *Id.* at p. 3. It is also possible that Atara and/or Applicant could file a dispositive motion on the issue of descriptiveness, halting one proceeding while the other proceeding moves forward, with the potential for inconsistent results that could prejudice all of the parties. Therefore, it is difficult to fully understand how a speculative delay of a handful of months while the Board considers a dispositive motion on the issue of genericness could prejudice CRISPR, such that the prejudice would outweigh the benefits of consistent rulings by the Board through the consolidated proceeding.
- e) Extensions of time: CRISPR claims that parties in opposition proceedings often stipulate to extensions of time to respond to discovery requests or for additional reasons that would extend the original discovery and trial testimony dates, so consolidation of the Oppositions would not automatically result in savings of time, efficiencies, or expense to the parties. *Id.* at p. 5. Applicant respectfully disagrees with CRISPR's position. Consolidation of the two proceedings would enable Opposers to share resources with respect to discovery, and it would ensure the proceedings move forward on the same track and with consistent discovery and trial procedures. It is also possible that CRISPR and/or Applicant could stipulate to extensions of time, halting the CRISPR proceeding while the Atara proceeding moves forward. Consolidation will help to ensure consistency in the timing of the

proceedings and the Board's decision in both proceedings, which greatly outweighs any inconvenience that CRISPR may encounter if the proceedings are consolidated.

In light of the above, Applicant submits that Opposers have not provided sufficient arguments or evidence to establish that the purported prejudice or inconvenience would outweigh the savings in time, effort, and cost that would result from consolidation for both the Board and the parties.

II. CONCLUSION

Based on the foregoing arguments and evidence, Applicant respectfully requests that the Board consolidate the Oppositions and reset the corresponding trial dates and deadlines.

Respectfully submitted,

Dated: July 22, 2019

PERKINS COIE LLP

By: /Craig A. Beaker/
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**ATTORNEYS FOR APPLICANT
ALLOGENE THERAPEUTICS, INC.**

CERTIFICATE OF SERVICE

The undersigned affirms that the REPLY IN SUPPORT OF MOTION TO CONSOLIDATE OPPOSITIONS AND SUSPEND PROCEEDINGS was served on the following, as required pursuant to 37 CFR § 2.119 and TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE § 113.04, on the date set forth below:

Opposer Atara Biotherapeutics, Inc. by emailing a copy to Opposer’s attorney of record, Jesse A. Salen of Sheppard Mullin Richter & Hampton LLP, at docketing@sheppardmullin.com and jsalen@sheppardmullin.com

Opposer CRISPR Therapeutics, AG by emailing a copy to Opposer’s attorney of record, James R. Hastings of Collen IP Intellectual Property Law PC, at jhastings@collenip.com and docket@collenip.com

Dated: July 22, 2019

/Craig A. Beaker/
Craig A. Beaker

EXHIBIT A

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

In re Serial No. 88/117,972 for the mark AUTOCAR T
Filed September 14, 2018
Published in the Official Gazette on February 26, 2019

Atara Biotherapeutics, Inc.,

Opposer,

v.

Allogene Therapeutics, Inc.,

Applicant.

OPPOSITION NO.: 91247177

**ATARA BIOTHERAPEUTICS, INC.’S
FIRST SET OF REQUESTS FOR
PRODUCTION TO ALLOGENE
THERAPEUTICS, INC. (NOS. 1–14)**

Pursuant to Federal Rules of Civil Procedure 26 and 34, and 37 C.F.R. § 2.120(a)(1), Opposer Atara Biotherapeutics, Inc. (“Atara”), through its undersigned counsel, hereby serves its First Set of Requests for Production (Nos. 1–14) to Applicant Allogene Therapeutics, Inc. (“Allogene”). Atara requests that Allogene respond to the following Requests for Production of documents and things, and produce and permit the inspection and copying of all the responsive documents and tangible things. This demand requests compliance by the delivery of copies of the subject documents verified as true and correct to the undersigned at Sheppard Mullin Richter & Hampton LLP, 12275 El Camino Real, Suite 200, San Diego, California 92130, within 30 days of the date of service of these Requests. Atara requests that Allogene provide answers to these Requests, separately and fully, in writing, under oath, and within 30 days of the date of service, in accordance with the applicable provisions of the Federal Rules of Civil Procedure. Pursuant to Federal Rule of Civil Procedure 26(e), the responses to these Requests are to be supplemented promptly upon acquisition of additional requested information.

DEFINITIONS

1. As used herein, the terms “Allogene Therapeutics, Inc.,” “Allogene,” “You,” “Your,” or “Applicant” refer to Applicant Allogene Therapeutics, Inc., and include any and all of its past and present predecessors, successors, subsidiaries, divisions, parents, owners, and affiliates, and all past and present officers, directors, agents, trustees, employees, consultants, accountants, attorneys, representatives, and any other person or entity acting in whole or in part on behalf of any of the foregoing.
2. As used herein, the terms “Atara Biotherapeutics, Inc.,” “Atara,” or “Opposer” mean Opposer Atara Biotherapeutics, Inc.
3. As used herein, the term “the Present Proceeding” refers to Opposition No. 91247177 pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.
4. As used herein, the term “Opposition” means Opposer’s Notice of Opposition filed in the Present Proceeding on March 25, 2019.
5. As used herein, the term “Application” means and refers to the trademark application for the mark AUTOCAR T, Serial No. 88/117,972, filed by Allogene on September 14, 2018.
6. As used herein, the term “Applicant’s Mark” means and refers to the mark AUTOCAR T that is the subject of the Application.
7. As used herein, the term “Applicant’s Goods and Services” means and refers to services, goods, and/or products bearing, or sold or offered under, or intended to be sold or offered under, Applicant’s Mark.
8. As used herein, the term “AUTO CAR T Terms” means and collectively refers to the terms “CAR T,” “autologous CAR T,” and “auto CAR T.”

9. As used herein, the term “Mark(s)” means and includes any trademark, service mark, or trade name used to distinguish goods or services of one source from those of other sources, unless a contrary meaning is clear from the context.

10. As used herein, the term “Communication(s)” means any and all transmissions of information from one Person to another (in the form of facts, ideas, inquiries, or otherwise) and refers to any communication, including oral, vocal, written, and electronic communications, including communications transmitted by, through, or using a computer or computer network, or any other means, and includes conversations, discussions, memoranda, facsimile transmissions, letters, and electronic mail.

11. As used herein, the term “Document(s)” is used in its customary broad sense, and encompasses without limitation the original and each non-identical copy of all “writings” and “recordings,” regardless of whether they are privileged against discovery on any ground, or within the possession, custody, or control of Applicant—including: correspondence, letters, memoranda, notes, reports, papers, files, books, catalogs, labels, packaging, containers, advertisements or promotional materials in any form and whether draft or final, storyboards, press releases, studies, questionnaires, surveys, assignments, agreements and other official papers and legal instruments, annual or management reports, project reports, reports to shareholders and minutes and reports of meetings (including meetings of directors, officers, executive boards, and committees), reports tags, records, contracts, agreements, cables, wires, telegrams, electronic mail, and other communications sent or received, written, typed, printed, or otherwise visually or aurally reproduced; printouts, diaries and diary entries, and calendars; notebooks, operating and maintenance manuals, operating and product or service specifications or guidelines, data, drafts, tables, compilations, tabulations, charts, graphs, drawings, plans, sketches, recommendations, accounts, worksheets, logs, and work papers; minutes, notes, summaries, lists of people attending, and other written records or recordings of or relating to any conference, meeting, visit, interview, conversation, telephone conversation, or interoffice or intraoffice communications of any types; bills, statements, invoices, orders, and other records of

any obligation or expenditure; canceled checks, vouchers, receipts, and other videotapes and cassettes and transcripts thereof; affidavits, transcripts of testimony, statements, interviews, and conversations; printed matter (including published articles, speeches, newspaper clippings, press releases, photographs, and materials of any kind) and other records, including videos and movies regardless of storage mechanism; microfilm and microfiche (including of documents that may or may not have been destroyed); disks, computer files, electronically stored data, e-mails, film, tapes, and other sources from which information can be obtained, including materials used in electronic data processing and/or transmitted by electronic means, including ftp and network access, and any other form of stored information; and any original or copy of a document containing or having attached to it any alterations, notes, comments, or other material not included in the first document will be deemed a separate document for purposes of these Interrogatories. In addition, as used herein, the term Document(s) includes Communication(s) as defined previously.

12. As used herein, the term “Person” means and includes natural persons, corporations, partnerships, limited partnerships, associations, organizations, joint ventures, governmental units or entities, and any other kind of business or other entity (including Applicant), and the actions taken by a Person include the actions of directors, officers, owners, members, partners, joint venturers, employees, or agents acting on the Person’s behalf.

13. As used herein, the terms “relates” and “refers” and the like mean directly or indirectly mentioning, discussing, describing, pertaining to, or connected with, a stated subject matter.

14. As used herein, the term “identify” and the like means:

(A) As to Documents, give their dates, a detailed description of the document, the author thereof, the signee thereof, and specify the person having custody or control thereof;

(B) As to natural persons, give the full name, business address (or if not available home address) and telephone number, employer, and job title of the natural persons, and, if employed by Applicant, the dates and regular places of employment and general duties of the

natural persons;

(C) As to corporations and other entities, give the full name and present or last known address of the principal place of business, identify the officers, directors, managers, and/or principals, and the state of place of formation and/or place incorporation or organization;

(D) As to partnerships, state whether the partnership is a general or limited partnership, identify the limited and general partners of the partnership, and state the principal place of business of the partnership; and

(E) As to joint ventures or other associations, identify all joint venturers or members of the association and state the principal place of business of the joint venture or association.

INSTRUCTIONS

1. Answer each Request separately and completely as possible. The omission of any name, fact, or other item of information from the answers will be deemed a representation that such information is not known to You or Your agents, counselors, other representatives, or otherwise within Your possession, custody, or control, at the time of the service of the answers or thereafter.

2. If You cannot answer any Request fully within the time prescribed by the rules of the Board and the Federal Rules of Civil Procedure and Evidence despite the exercise of reasonable diligence, furnish as complete an answer as possible and explain in detail the reasons why a complete answer cannot be provided. If the reason You cannot give a complete response is due in whole or in part to inability to gather all responsive information within the time prescribed by the applicable rules, then answer within the time prescribed by the rules stating what additional efforts are necessary to answer fully and estimate when You will be able to complete those additional efforts and provide a complete response.

3. If You claim that a Request is in any way objectionable, respond to the portion of the Request believed to be unobjectionable and specifically identify that aspect of the Request that You claim to be objectionable and explain why such aspect is objectionable.

4. If You object to any Request on the ground that it is vague and/or ambiguous, identify the language You consider vague and/or ambiguous and state the interpretation You are using in answering the Request.

5. If You object to or disagree with any of the Definitions set forth in these Requests, or if You do not understand any term used in these Requests, explain in detail the nature of Your disagreement with the definition, or lack of understanding the term, and provide Your definition of the term.

6. If You object to a Request in part, state specifically which part of the Request You object to, and produce all Documents responsive to all other parts of the Request.

7. If a Request refers to a collectively defined term, but, in context, can refer only to certain aspects encompassed by the collective term, respond for the individual aspect(s) to which the Request applies.

8. These Requests are for Documents in Your possession, custody, or control, or in the possession, custody, or control of Your agents, servants, employees, present and former attorneys, and any other person acting, purporting to act, or who has acted, on Your behalf.

9. If You claim that information requested or required in response to a given Request is also responsive to another Request, You may not answer the Request by referring to the answer of another Request unless the answer to the Request being referred to supplies a complete and accurate response to the Request being answered.

10. If any portion of a Document is responsive to a Request, the entire Document will be produced, and only privileged material (if any) may be redacted.

11. Separately with respect to each piece of information called for by these Requests that You withhold under a claim of privilege, work product immunity, or otherwise, for each identification, Document, or portion thereof withheld, state the following: (a) the type of Document (*e.g.*, letter, memorandum, contract, etc.); (b) its title; (c) its date; (d) the number of pages of the Document; (e) its subject matter; (f) the name, title, address, and employer at the time of preparation of the individual(s) who authored, drafted, or prepared it; (g) the name, title, address, and employer at the time of dissemination of the individual(s) to whom it was directed, circulated, or copied, or who had access thereto; (h) the grounds on which the Document or portion thereof is being withheld (*e.g.*, “attorney–client privilege,” “work product immunity,” etc.); and (i) for each Document withheld under a claim for attorney work product, also state whether the Document was prepared in anticipation of litigation or for trial.

12. If a Document responsive to a Request was, but no longer is, in Your possession, custody, or control, state precisely what disposition was made of it (including its present location and the Person(s) who possesses or controls it) and identify the name and address of the Person(s) who authorized or ordered such disposition.

13. In the event that any Document called for by these Requests has been destroyed or discarded, that Document is to be identified by stating: (a) the date of the Document; (b) the subject matter of the Document; (c) the person(s) who prepared the Document; (d) all Persons to whom the Document was distributed, shown, or explained; (e) the date of destruction, manner of destruction (including the name and address of the Person(s) who has personal knowledge of such destruction), and reason for destruction; (e) the Persons who were authorized to carry out such destruction; and (f) whether any copies of the Document presently exist and, if so, the name of the custodian of each copy of the Document.

14. Documents produced in response to these Requests should be produced as they are kept in the usual course of business or should be organized and labeled to correspond with the categories herein. Documents should be produced in electronic format. Unless otherwise specified in a Request, the deliverable format should contain load files, namely, “.dat” files with all metadata including ocr for full text searching, “.opt”, and branded “PDF” images.

15. These Requests are continuing in nature and require You to seasonably amend and/or supplement Your responses, including by producing responsive Documents, when You learn that a response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the parties to the Present Proceeding during the discovery process or in writing, and/or if You become aware of further or different Documents responsive to these Requests. These Requests will be deemed continuing, so as to require Your further and supplemental response in accordance with the Federal Rules of Civil Procedure and Evidence. Applicant is hereby requested to amend and/or supplement its responses immediately, including by producing responsive Documents, whenever it acquires additional requested information.

16. In construing these Requests: (a) the singular includes the plural and the plural includes the singular wherever such dual construction will serve to bring within the scope of these Interrogatories any Document or other requested information that would otherwise not be brought within their scope; (b) masculine, feminine, or neuter pronouns do not exclude other

genders, whenever the context permits; (c) the conjunctions “and” and “or” should be read either disjunctively or conjunctively so as to bring within the scope of these Requests any Document or other requested information that would otherwise not be brought within their scope; (d) each of the words “all,” “each,” “any,” and “every” includes each of the other functional words, so as to bring within the scope of these Interrogatories any Document or other requested information that would otherwise not be brought within their scope; (e) the definition of each term defined above is to be used regardless of whether the term is capitalized; (f) the past tense of a verb used herein includes the present tense and the present tense includes(ing) the past tense; (g) except where the context does not permit, the term “including” is without limitation; (h) where applicable, Documents will be identified by Bates range, among other means, regardless of whether or not identification by Bates range is expressly requested.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All Documents demonstrating, providing a description of, and/or otherwise providing information about each and every type of Applicant's Goods and Services.

REQUEST FOR PRODUCTION NO. 2:

Representative samples of all website pages, promotions, brochures, fliers, sales meeting materials, broadcast publications (including video and audio), and descriptive materials in general relating to each of Applicant's Goods and Services, from the earliest alleged date of first use of Applicant's Mark to the present.

REQUEST FOR PRODUCTION NO. 3:

All Documents relating to the selection, adoption, and availability of Applicant's Mark, including any trademark search reports.

REQUEST FOR PRODUCTION NO. 4:

All Documents and/or Communications relating to Your preparation of and/or intention to file the Application.

REQUEST FOR PRODUCTION NO. 5:

All Documents and/or Communications that include, disclose, imply, recite, describe, and/or relate to the definition, meaning, connotation, and/or intended connotation of Applicant's Mark or a portion thereof, or association or intended association of Applicant's Mark or a portion thereof.

REQUEST FOR PRODUCTION NO. 6:

All Documents in which Applicant's Goods and Services have been marketed, advertised, promoted, or featured, including magazines, newspapers, trade publications, and catalogs.

REQUEST FOR PRODUCTION NO. 7:

All Documents relating to the channels of distribution and intended channels of distribution for each of Applicant's Goods and Services.

REQUEST FOR PRODUCTION NO. 8:

All Documents that relate to or identify the market (*i.e.*, type of purchaser) that Applicant expects or intends to purchase and/or use Applicant's Goods and Services.

REQUEST FOR PRODUCTION NO. 9:

All Documents that identify any particular consumer group, demographic, or persons toward which any marketing or advertising for Applicant's Goods and Services is or will be directed.

REQUEST FOR PRODUCTION NO. 10:

All Documents that You contend demonstrate, mention, or discuss Your first use or intended use of Applicant's Mark.

REQUEST FOR PRODUCTION NO. 11:

All Documents pertaining to Applicant's ownership and/or use of any other Mark(s) featuring or using any AUTO CAR T Terms.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing “Atara Biotherapeutics, Inc.’s First Set of Requests for Production to Allogene Therapeutics, Inc. (Nos. 1-14)” has been served on Jason S. Howell for Perkins Coie LLP, Attorneys for Applicant, by forwarding said copy on July 2, 2019, via email to: pctrademarks@perkinscoie.com, JHowell@perkinscoie.com, AJAGarcia@perkinscoie.com, SDanielson@perkinscoie.com, CGanin@perkinscoie.com, Cbeaker@perkinscoie.com.

July 2, 2019

/Jennifer Lee/

Jennifer Lee

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

In re Serial No. 88/117,972 for the mark AUTOCAR T
Filed September 14, 2018
Published in the Official Gazette on February 26, 2019

Atara Biotherapeutics, Inc.,

Opposer,

v.

Allogene Therapeutics, Inc.,

Applicant.

OPPOSITION NO.: 91247177

**ATARA BIOTHERAPEUTICS, INC.’S
FIRST SET OF INTERROGATORIES
TO ALLOGENE THERAPEUTICS, INC.
(NOS. 1–18)**

Pursuant to Federal Rules of Civil Procedure 26 and 33, Opposer Atara Biotherapeutics, Inc. (“Atara”), through its undersigned counsel, hereby serves its First Set of Interrogatories (Nos. 1–18) to Applicant Allogene Therapeutics, Inc. (“Allogene”). Atara requests that Allogene provide answers to these Interrogatories, separately and fully, in writing, under oath, and within 30 days of the date of service, in accordance with the applicable provisions of the Federal Rules of Civil Procedure. Pursuant to Federal Rule of Civil Procedure 26(e), the responses to these Interrogatories are to be supplemented promptly upon acquisition of additional requested information.

DEFINITIONS

1. As used herein, the terms “Allogene Therapeutics, Inc.,” “Allogene,” “You,” “Your,” or “Applicant” refer to Applicant Allogene Therapeutics, Inc., and include any and all of its past and present predecessors, successors, subsidiaries, divisions, parents, owners, and affiliates, and all past and present officers, directors, agents, trustees, employees,

consultants, accountants, attorneys, representatives, and any other person or entity acting in whole or in part on behalf of any of the foregoing.

2. As used herein, the terms “Atara Biotherapeutics, Inc.,” “Atara,” or “Opposer” mean Opposer Atara Biotherapeutics, Inc.

3. As used herein, the term “the Present Proceeding” refers to Opposition No. 91247177 pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.

4. As used herein, the term “Opposition” means Opposer’s Notice of Opposition filed in the Present Proceeding on March 25, 2019.

5. As used herein, the term “Application” means and refers to the trademark application for the mark AUTOCAR T, Serial No. 88/117,972, filed by Allogene on September 14, 2018.

6. As used herein, the term “Applicant’s Mark” means and refers to the mark AUTOCAR T that is the subject of the Application.

7. As used herein, the term “Mark(s)” means and includes any trademark, service mark, or trade name used to distinguish goods or services of one source from those of other sources, unless a contrary meaning is clear from the context.

8. As used herein, the term “Communication(s)” means any and all transmissions of information from one Person to another (in the form of facts, ideas, inquiries, or otherwise) and refers to any communication, including oral, vocal, written, and electronic communications, including communications transmitted by, through, or using a computer or computer network, or any other means, and includes conversations, discussions, memoranda, facsimile transmissions, letters, and electronic mail.

9. As used herein, the term “Document(s)” is used in its customary broad sense, and encompasses without limitation the original and each non-identical copy of all “writings” and “recordings,” regardless of whether they are privileged against discovery on any ground, or within the possession, custody, or control of Applicant—including: correspondence, letters,

memoranda, notes, reports, papers, files, books, catalogs, labels, packaging, containers, advertisements or promotional materials in any form and whether draft or final, storyboards, press releases, studies, questionnaires, surveys, assignments, agreements and other official papers and legal instruments, annual or management reports, project reports, reports to shareholders and minutes and reports of meetings (including meetings of directors, officers, executive boards, and committees), reports tags, records, contracts, agreements, cables, wires, telegrams, electronic mail, and other communications sent or received, written, typed, printed, or otherwise visually or aurally reproduced; printouts, diaries and diary entries, and calendars; notebooks, operating and maintenance manuals, operating and product or service specifications or guidelines, data, drafts, tables, compilations, tabulations, charts, graphs, drawings, plans, sketches, recommendations, accounts, worksheets, logs, and work papers; minutes, notes, summaries, lists of people attending, and other written records or recordings of or relating to any conference, meeting, visit, interview, conversation, telephone conversation, or interoffice or intraoffice communications of any types; bills, statements, invoices, orders, and other records of any obligation or expenditure; canceled checks, vouchers, receipts, and other videotapes and cassettes and transcripts thereof; affidavits, transcripts of testimony, statements, interviews, and conversations; printed matter (including published articles, speeches, newspaper clippings, press releases, photographs, and materials of any kind) and other records, including videos and movies regardless of storage mechanism; microfilm and microfiche (including of documents that may or may not have been destroyed); disks, computer files, electronically stored data, e-mails, film, tapes, and other sources from which information can be obtained, including materials used in electronic data processing and/or transmitted by electronic means, including ftp and network access, and any other form of stored information; and any original or copy of a document containing or having attached to it any alterations, notes, comments, or other material not included in the first document will be deemed a separate document for purposes of these Interrogatories. In addition, as used herein, the term Document(s) includes Communication(s) as defined previously.

10. As used herein, the term “Person” means and includes natural persons, corporations, partnerships, limited partnerships, associations, organizations, joint ventures, governmental units or entities, and any other kind of business or other entity (including Applicant), and the actions taken by a Person include the actions of directors, officers, owners, members, partners, joint venturers, employees, or agents acting on the Person’s behalf.

11. As used herein, the terms “relates” and “refers” and the like mean directly or indirectly mentioning, discussing, describing, pertaining to, or connected with, a stated subject matter.

12. As used herein, the term “identify” and the like means:

(A) As to Documents, give their dates, a detailed description of the document, the author thereof, the signee thereof, and specify the person having custody or control thereof;

(B) As to natural persons, give the full name, business address (or if not available home address) and telephone number, employer, and job title of the natural persons, and, if employed by Applicant, the dates and regular places of employment and general duties of the natural persons;

(C) As to corporations and other entities, give the full name and present or last known address of the principal place of business, identify the officers, directors, managers, and/or principals, and the state of place of formation and/or place incorporation or organization;

(D) As to partnerships, state whether the partnership is a general or limited partnership, identify the limited and general partners of the partnership, and state the principal place of business of the partnership; and

(E) As to joint ventures or other associations, identify all joint venturers or members of the association and state the principal place of business of the joint venture or association.

INSTRUCTIONS

1. Answer each Interrogatory separately and as completely as possible. The omission of any name, fact, or other item of information from the answers will be deemed a representation that such information is not known to You or Your agents, counselors, other representatives, or otherwise within Your possession, custody, or control, at the time of the service of the answers or thereafter.
2. If You cannot answer any Interrogatory fully within the time prescribed by the rules of the Board and the Federal Rules of Civil Procedure and Evidence despite the exercise of reasonable diligence, furnish as complete an answer as possible and explain in detail the reasons why a complete answer cannot be provided. If the reason You cannot give a complete response is due in whole or in part to inability to gather all responsive information within the time prescribed by the applicable rules, then answer within the time prescribed by the rules stating what additional efforts are necessary to answer fully and estimate when You will be able to complete those additional efforts and provide a complete response.
3. If You claim that an Interrogatory is in any way objectionable, respond to the portion of the Interrogatory believed to be unobjectionable and specifically identify that aspect of the Interrogatory that You claim to be objectionable and explain why such aspect is objectionable.
4. If You object to any Interrogatory on the ground that it is vague and/or ambiguous, identify the language You consider vague and/or ambiguous and state the interpretation You are using in answering the Interrogatory.
5. If You object to or disagree with any of the Definitions set forth in these Interrogatories, or if You do not understand any term used in these Interrogatories, explain in detail the nature of Your disagreement with the definition, or lack of understanding the term, and provide Your definition of the term.

6. If You object to an Interrogatory in part, state specifically which part of the Interrogatory You object to, and fully respond to all other parts of the Interrogatory.

7. If an Interrogatory refers to a collectively defined term, but, in context, can refer only to certain aspects encompassed by the collective term, respond for the individual aspect(s) to which the Interrogatory applies.

8. To the extent these Interrogatories call for Documents, the Interrogatories are directed to Documents in Your possession, custody, or control, or in the possession, custody, or control of Your agents, servants, employees, present and former attorneys, and any other person acting, purporting to act, or who has acted, on Your behalf.

9. If You claim that information requested or required in response to a given Interrogatory is also responsive to another Interrogatory, You may not answer the Interrogatory by referring to the answer of another Interrogatory unless the answer to the Interrogatory being referred to supplies a complete and accurate response to the Interrogatory being answered.

10. If any portion of a Document is responsive to an Interrogatory, the entire Document will be produced, and only privileged material (if any) may be redacted.

11. Separately with respect to each piece of information called for by these Interrogatories that You withhold under a claim of privilege, work product immunity, or otherwise, for each identification, Document, or portion thereof withheld, state the following: (a) the type of Document (*e.g.*, letter, memorandum, contract, etc.); (b) its title; (c) its date; (d) the number of pages of the Document; (e) its subject matter; (f) the name, title, address, and employer at the time of preparation of the individual(s) who authored, drafted, or prepared it; (g) the name, title, address, and employer at the time of dissemination of the individual(s) to whom it was directed, circulated, or copied, or who had access thereto; (h) the grounds on which the Document or portion thereof is being withheld (*e.g.*, “attorney–client privilege,” “work product immunity,” etc.); and (i) for each Document withheld under a claim for attorney work product, also state whether the Document was prepared in anticipation of litigation or for trial.

12. If a Document responsive to an Interrogatory was, but no longer is, in Your possession, custody, or control, state precisely what disposition was made of it (including its present location and the Person(s) who possesses or controls it) and identify the name and address of the Person(s) who authorized or ordered such disposition.

13. In the event that any Document called for by these Interrogatories has been destroyed or discarded, that Document is to be identified by stating: (a) the date of the Document; (b) the subject matter of the Document; (c) the Person(s) who prepared the Document; (d) all Person(s) to whom the Document was distributed, shown, or explained; (e) the date of destruction, manner of destruction, and reason for destruction; (e) the Person(s) who were authorized to carry out such destruction; and (f) whether any copies of the Document presently exist and, if so, the name of the custodian of each copy of the Document.

14. Documents produced in response to these Interrogatories should be produced as they are kept in the usual course of business or should be organized and labeled to correspond with the categories herein. Documents should be produced in electronic format. Unless otherwise specified in an Interrogatory, the deliverable format should contain load files, namely, “.dat” files with all metadata including ocr for full text searching, “.opt”, and branded “PDF” images.

15. These Interrogatories are continuing in nature and require You to seasonably amend and/or supplement Your responses when You learn that a response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the parties to the Present Proceeding during the discovery process or in writing. These Interrogatories will be deemed continuing, so as to require Your further and supplemental response in accordance with the Federal Rules of Civil Procedure and Evidence. Applicant is hereby requested to amend and/or supplement its responses immediately whenever it acquires additional requested information.

16. In construing these Interrogatories: (a) the singular includes the plural and the plural includes the singular wherever such dual construction will serve to bring within the scope

of these Interrogatories any Document or other requested information that would otherwise not be brought within their scope; (b) masculine, feminine, or neuter pronouns do not exclude other genders, whenever the context permits; (c) the conjunctions “and” and “or” should be read either disjunctively or conjunctively so as to bring within the scope of these Interrogatories any Document or other requested information that would otherwise not be brought within their scope; (d) each of the words “all,” “each,” “any,” and “every” includes each of the other functional words, so as to bring within the scope of these Interrogatories any Document or other requested information that would otherwise not be brought within their scope; (e) the definition of each term defined above is to be used regardless of whether the term is capitalized; (f) the past tense of a verb used herein includes the present tense and the present tense includes(ing) the past tense; (g) except where the context does not permit, the term “including” is without limitation; (h) where applicable, Documents will be identified by Bates range, among other means, regardless of whether or not identification by Bates range is expressly requested.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify and describe in detail all Your services and products bearing, or sold or offered under, or intended to be sold or offered under, Applicant’s Mark.

INTERROGATORY NO. 2:

State the first date, and where applicable the last date, on which Applicant’s Mark was used, in commerce, for or on each of services and products identified in Response to Interrogatory No. 1, and identify all Persons most knowledgeable about the foregoing, and identify (by Bates range) all Documents You rely upon to support the foregoing.

INTERROGATORY NO. 3:

Identify all Persons who were involved in, participated in, decided upon, or offered suggestions for, the selection and/or adoption of the Applicant's Mark, and identify (by Bates range) all Documents relating to the foregoing.

INTERROGATORY NO. 4:

Identify the Person(s) most knowledgeable about the marketing, sale, and/or creation of the products and services identified in response to Interrogatory No. 1.

INTERROGATORY NO. 5

Identify and describe any and all meanings and/or definitions known to You for the term AUTO CAR T, and state all facts, and identify all Documents (by Bates range), in support thereof.

INTERROGATORY NO. 6:

State separately the annual and monthly amount spent by You or on Your behalf for advertising the products and services identified in response to Interrogatory No. 1, from the earliest alleged or intended date of first use of Applicant's Mark to the present. If You do not maintain records of the amounts spent on the advertisement and promotion of such products and services, state the annual and monthly amount spent or budgeted by You or on Your behalf for the advertisement and promotion of all of Your products and services, from the earliest alleged date of first use of Applicant's Mark to the present, regardless of the Mark or name applied to such products or used with such services.

INTERROGATORY NO. 7:

Describe in detail the method of marketing and advertising of the products and services identified in response to Interrogatory No. 1, including the mediums used to advertise and the circulation, or, if applicable, the number of viewers, listeners, or recipients, of each identified medium.

INTERROGATORY NO. 8:

Identify every facility, including the name and address of the facility, that offers or intends to offer the products or services identified in response to Interrogatory No. 1.

INTERROGATORY NO. 9:

Identify the Person(s) employed by You who has or had primary responsibility for selection, maintenance, registration, and protection of Your Marks, including trademarks, service marks, or trade names, and including Applicant's Mark.

INTERROGATORY NO. 10:

Identify all policies, guidelines, procedures, and manuals, You use in the selection, maintenance, registration, and protection of Your Marks, including trademarks, service marks, or trade names, and including Applicant's Mark.

INTERROGATORY NO. 11:

Identify all types of media used to run or publish any advertisements bearing or featuring Applicant's Mark, and for each media identified, state: the number of times each such advertisement was run or published; if a radio or television advertisement, the time of day or night each such advertisement was run; if a print advertisement, the location and size of each

such advertisement in each publication or medium identified; and whether each such advertisement is currently being run or published.

INTERROGATORY NO. 12:

Identify and describe in detail all cross-marketing agreements or other marketing or advertising arrangements between You and any third party relating to Applicant's Mark and/or the products and services identified in response to Interrogatory No. 1, including by stating the date of each such agreement or arrangement, the term of each such agreement or arrangement, a description of the right licensed or marketed, and the types of goods, products, or services relating to each such arrangement or arrangement.

INTERROGATORY NO. 13:

State all facts, and identify all Documents (by Bates range), supporting and/or negating Your denial of the allegations contained in Paragraph 16 of the Opposition, and identify all Persons most knowledgeable regarding the stated facts.

INTERROGATORY NO. 14:

State all facts, and identify all Documents (by Bates range), supporting and/or negating Your denial of the allegations contained in Paragraph 18 of the Opposition, and identify all Persons most knowledgeable regarding the stated facts.

INTERROGATORY NO. 15:

State all facts, and identify all Documents (by Bates range), supporting and/or negating Your denial of the allegations contained in Paragraph 19 of the Opposition, and identify all Persons most knowledgeable regarding the stated facts.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing “Atara Biotherapeutics, Inc.’s First Set of Interrogatories to Allogene Therapeutics, Inc. (Nos. 1-18)” has been served on Jason S. Howell for Perkins Coie LLP, Attorneys for Applicant, by forwarding said copy on July 2, 2019, via email to: pctrademarks@perkinscoie.com, JHowell@perkinscoie.com, AJAGarcia@perkinscoie.com, SDanielson@perkinscoie.com, CGanin@perkinscoie.com, Cbeaker@perkinscoie.com.

July 2, 2019

/Jennifer Lee/

Jennifer Lee