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

Proceeding	91247245
Party	Plaintiff CRISPR Therapeutics AG
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Attachments	2020-12-14 Stipulation for Remote Depositions-c - SIGNED by parties.pdf(118424 bytes )

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

CRISPR Therapeutics AG,

Opposer,

v.

Allogene Therapeutics, Inc.,

Applicant.

Application No. 88/117,993  
Opposition No. 91247245 (Parent)  
Mark: ALLOCAR T

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CRISPR Therapeutics AG,

Opposer,

v.

Allogene Therapeutics, Inc.,

Applicant.

Application No. 88/117,972  
Opposition No. 91247247 (Child)  
Mark: AUTOCAR T

**STIPULATION CONCERNING PROTOCOL FOR  
CONDUCTING REMOTE DEPOSITIONS**

**WHEREAS**, government orders and health concerns concerning the global COVID-19 pandemic have reduced or prohibited the parties' witnesses and their counsels' ability to travel to and within the United States;

**WHEREAS**, Opposer CRISPR Therapeutics AG ("Opposer") and Applicant Allogene Therapeutics, Inc. ("Applicant") have each served deposition notices under Fed. R. Civ. P. 30(b)(6) to the respective opposing party;

**WHEREAS**, Opposer and Applicant have agreed to produce for deposition by remote videoconference means their respective witnesses who will serve as corporate representatives pursuant to Fed. R. Civ. P. 30(b)(6);

**WHEREAS**, to the extent Opposer and/or Applicant serve deposition notices pursuant to Fed. R. Civ. P. 30(b)(1), to the extent a party produces such witness, the parties anticipate such witnesses will also be produced for deposition by remote videoconference means;

**WHEREAS**, Opposer and Applicant expect to produce their respective expert(s) for deposition by remote videoconference;

**WHEREAS**, pursuant to the current Scheduling Order (TTABVUE No. 32) at this time, expert disclosures are due February 27, 2021 and discovery closes March 29, 2021;

**WHEREAS**, Opposer and Applicant (each individually a “Party” and together the “Parties”) jointly stipulate pursuant to TBMP 404, TBMP 703.01, and Fed. R. Civ. P. 30(b)(4), and any other applicable rules, to the following protocol for conducting remote depositions in the above-captioned matter:

1. For the depositions pursuant to this Stipulation, the Parties each may select their own service provider for reporting, video recording, videoconference, and remote deposition services for this case (“Service Provider”), and, to the extent a Party disputes the Service Provider the other Party has selected, the Parties agree to work together in good faith to remedy any concerns or jointly select a new Service Provider. The Parties agree that one or more employees of any selected Service Provider, may attend, remotely, each remote deposition to video record the deposition, troubleshoot any technological issues that may arise, and/or administer the virtual breakout rooms, and that such persons are covered clerical persons under the Protective Order which applies to the Trademark Trial and Appel Board (“TTAB”) proceeding.

2. The Parties agree that video-enabled remote depositions conducted by agreement of the Parties or Order of the TTAB the transcripts of which<sup>1</sup> may be used during the TTAB proceeding to the same extent that an in-person deposition may be used during the TTAB proceeding. The Parties agree not to object to the transcripts of such remote deposition, on the basis that the deposition was taken remotely. The Parties reserve all other objections, consistent with the applicable Federal Rules of Civil Procedure, including Rules 30 and 32, and applicable TTAB Rules, to the use of any deposition testimony.

3. The witness, court reporter, and videographer (if any) will each participate in the videoconference deposition remotely and separately. If counsel for the party producing a witness participates in the deposition in-person with the witness, counsel for other parties may, but are not required to, participate in-person as well. But if counsel for the party producing a witness participates in the deposition remotely and separately from the witness, counsel for the other parties will also participate remotely and separately from the witness. Should counsel for the party producing a witness intend to appear in-person, notice to counsel for other parties must be provided at least 5 days prior to the scheduled deposition. In the event there are any in-person attendees with the witness at any deposition, each attendee will participate in the videoconference deposition separately, i.e. each attendee will login separately. The witness and each counsel attending a deposition shall be visible to all other participants and their statements shall be audible to all participants while the witness is on the record. All participants, whether counsel, consultants, or parties, will strive to ensure their environment is free from noise and distractions. If a video recording is created, subject to technology restrictions of the Service Provider, only the deponent shall appear on the video recording of the deposition, unless otherwise agreed to by the

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<sup>1</sup> The Parties understand the TTAB does not currently accept video testimony. 37 C.F.R. § 2.123(f)(2) and (g) (requiring submission of transcripts because the TTAB does not accept video testimony); TBMP § 703.01(i) (same).

Parties or ordered by the TTAB. However, as noted earlier, all in-person attendees shall be visible and audible to other participants in the videoconference deposition while the witness is on the record. In the event that there are no in-person attendees with the witness at any deposition, the first chair lawyer for each party attending the videoconference deposition remotely (i.e., the lawyer taking or defending the deposition) shall be visible to all other participants, their statements shall be audible to all participants, and they should each strive to ensure their environment is free from noise and distractions. Each other person (other than the first chair lawyers and the witness) attending the videoconference deposition remotely shall identify themselves and announce their presence on the record at the beginning of the deposition, but need not be visible to all other participants for the duration of the deposition. All participants shall take care to minimize background noise during the deposition. Participants other than the first chair lawyers for each party and the deponent shall mute their audio while the deposition is on the record, except when they intend to speak on the record. One or more employees of the Service Provider, may, at his or her discretion, or at the discretion of the court reporter, mute the audio of participants when those individuals are not speaking, provided that at no time shall the court reporter, first chair lawyers, or the deponent be muted. Participants who have been muted shall retain the ability to unmute themselves during times when they desire to speak on the record.

4. While the deponent is on the record, no counsel, party, or other individual involved in this case shall have private communications with the deponent (except for the sole purpose of determining whether a privilege should be asserted). Communication includes verbal speech and physical signs, text messages, electronic mail, written notes, and the chat feature in the videoconferencing system. While the deponent is on the record, the only window that the

deponent may have open or visible on his or her computer or other screen(s) is the videoconference webpage or software necessary to attend the deposition and view any deposition exhibits including any .zip file of documents received from Counsel noticing the deposition. The deponent shall not have any other electronic applications, webpages, communications, folders, or documents visible on his or her computer screen(s), including any real time feed of the transcript, while he or she is providing sworn testimony. There may be no private chats except between and among counsel on the same side or with any deposition technician for purposes of transmitting exhibits to be shown to the witness.

5. During breaks in the deposition, counsel for a party and that party's participants, including the deponent in the instance of defending counsel, may use the breakout room feature provided by the Service Provider, which simulates a live breakout room through videoconference (consistent with governing law applicable to in-person depositions in TTAB proceedings). Conversations in the breakout rooms shall not be recorded. The breakout rooms shall be established by the Service Provider prior to the deposition and controlled by the Service Provider. Counsel for a party may also communicate with that party's participants, including the deponent in the instance of defending counsel, during breaks (consistent with governing law applicable to in-person depositions in TTAB proceedings) via means other than the virtual breakout room provided by the Service Provider and such conversations shall not be recorded.

6. If documents and/or topics which are deemed to be "Confidential – Attorneys' Eyes Only (Trade Secret/Commercially Sensitive)" pursuant to the TTAB's Standard Protective Order applicable to this matter are addressed during a deposition, at the request of the first chair attorney for either party, any representative (other than their respective attorneys) from the opposing party whose confidential material is not being addressed at that time must leave the

deposition, either to move into the breakout room or by disconnecting from the deposition entirely. Those representative(s) may re-join the deposition after the examination regarding the “Confidential – Attorneys’ Eyes Only (Trade Secret/Commercially Sensitive)” information and/or material has concluded, upon notification by one of the opposing party’s attendees that such re-entry is permitted.

7. Remote depositions shall be recorded by stenographic means consistent with the requirements of Fed. R. Civ. P. 30(b)(3) of the Federal Rules of Civil Procedure, but given the COVID-19 pandemic, the court reporter will not be physically present in the room with the witness whose deposition is being taken.

8. The court reporter will stenographically record the testimony, and the court reporter’s transcript shall constitute the official record, subject to right of a deponent or party to request correction as set forth in Fed. R. Civ. P. 30(e). If requested by the noticing party, the Service Provider will simultaneously videotape the deposition and preserve the video recording. If the deposition is videotaped, the Service Provider will provide a raw video recording of the entire remote deposition but that raw video recording will not constitute the official record of the deposition. All audio feeds will be recorded (except those in breakout rooms), but only the witness’s video feed will be recorded. No chat logs, except for the chat log to all attendees, will be retained. The court reporter may be given a copy of the video recording and may review the video recording to improve the accuracy of any written transcript.<sup>2</sup>

9. The Parties agree that the court reporter is an “Officer” as defined by Fed. R. Civ. P. 28(a)(2) and shall be permitted to administer the oath to the witness via the videoconference.

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<sup>2</sup> The terms “videotape” and “tape,” as used herein, are intended to cover the recording of video images and the files or media on which the video images are recorded, regardless to the manner and mechanism of recording and storing.

The Parties agree not to challenge the validity of any oath administered by the court reporter, even if the court reporter is not a notary public in the state or country where the deponent resides, so long as the court reporter is a notary public in the United States. Upon request, the deponent will be required to provide state or federal government-issued photo identification satisfactory to the court reporter, and this identification must be visible and legible on the video record.

10. The Party that noticed the deposition shall be responsible for arranging a court reporter to generate a written transcript and, to the extent a video is recorded, the Service Provider to generate a video record of the remote deposition. The Parties shall bear their own costs in obtaining a transcript and/or video record of the deposition.

11. The Party that noticed the deposition shall provide the Service Provider with a copy of this Stipulation and Order at least forty-eight hours in advance of the deposition.

12. At the beginning of each deposition, consistent with Fed. R. Civ. P. 30(b)(5)(A), the employee of the Service Provider responsible for video-recording the deposition or the notary public shall begin the deposition with an on-the-record statement (i) the employee's name, company affiliation, and business address, (ii) the Officer's (i.e., the court reporter's) name, company affiliation, and business address; (iii) the date, time, and place of the deposition;<sup>3</sup> (iv) the deponent's name and the caption of the action; (v) the Officer's administration of the oath or affirmation to the deponent; (vi) the identity of all persons participating in the deposition; and (vii) the identity of the party on whose behalf the deposition is being taken.

13. At the beginning of each unit of recording medium, consistent with Fed. R. Civ. P. 30(b)(5)(B), the employee of the Service Provider responsible for video-recording the deposition, if a video-recording is performed, shall recite: (i) the employee's name and company affiliation,

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<sup>3</sup> As with an in-person deposition, the place of the deposition is the physical location of the witness.



(ii) the Officer's name and company affiliation; (iii) the date, time, and place of the deposition; and (iv) the deponent's name. Pursuant to Fed. R. Civ. P. 30(b)(5)(C), at the end of the deposition, the Officer or employee shall state on the record that the deposition is complete.

14. The Parties agree to work collaboratively and in good faith with the Service Provider to assess each counsel and deponent's technological abilities and to troubleshoot any issues ideally 48 hours, but at least a day, in advance of the deposition so any necessary adjustments can be made. Counsel for a deponent may request and be provided with an opportunity to test the technological systems with the deponent in advance of the deposition. The Parties also agree to work collaboratively to address and troubleshoot technological issues that arise during a deposition and make such provisions as are reasonable under the circumstances to address such issues. This provision shall not be interpreted to compel any Party to proceed with a deposition where (1) the deponent cannot hear or understand the other participants, (2) where the participants cannot see, hear, or understand the deponent, or (3) where the participants cannot hear or understand any counsel who are participating in the deposition.

15. Counsel for the party producing a deponent shall ensure that the deponent has all technology necessary to allow the deponent to appear for a videotaped deposition (e.g., a webcam, computer, and telephone audio), and bandwidth sufficient to sustain the remote deposition. Counsel for the party noticing the deposition and counsel for the party producing a deponent shall consult with the Service Provider prior to the deposition to ensure the deponent has the required technology. In the case of non-party witnesses, counsel noticing the deposition shall supply any necessary technology that the deponent does not have.

16. Time will be counted on the record in the same manner as it would be counted for a fully in-person deposition, as long as the witness, the witness's counsel defending the

deposition, the noticing party's counsel taking the deposition, the videographer (if any), and the court reporter are "on the record" and connected through the video-conferencing platform, and notwithstanding any intermittent connectivity issues that other participants may experience during the deposition. If any participant experiences connectivity issues, they shall notify the other participants to the extent feasible (e.g., through the audio conference line set up for the deposition or email), and that will be noted on the record. All questioning of the witness shall stop if the first-chair defending attorney experiences connectivity issues for the duration of any such issue.

17. The Parties shall work together in good faith to ensure that the deponent, defending attorney, and all participants have access to the exhibits during the deposition. For example, Counsel may introduce exhibits electronically during the deposition, by using the document-sharing technology of the Service Provider or by sending the exhibit to the deponent and all individuals on the record via electronic mail. Documents must be shared electronically in a manner that permits the deponent and all counsel to scroll through each document individually and to refer back to previously marked exhibits as the deposition progresses. This same procedure shall apply to any documents any other counsel intends to use for examining the witness.

18. Access to a complete electronic copy of the deposition exhibit shall be deemed equal to hardcopy access. The fact that a witness was provided with an electronic copy of an exhibit will be an insufficient basis, by itself, to object to the admissibility of that exhibit in this proceeding. The Parties reserve all other objections (specifically including objections related to image quality or legibility of any electronic exhibit(s)), consistent with the applicable Federal Rules of Civil Procedure, to the use of any exhibit either during the proceeding.

19. Counsel for the Parties may keep and retain any exhibit marked during the deposition in accordance with the TTAB's Standard Protective Order applicable to this proceeding. Inadvertent disclosure of a document that is not marked as an exhibit shall be treated in accordance with Fed. R. Civ. P. 26(b)(5), Fed. R. Evid. 502, and the TTAB's Standard Protective Order.

20. The Parties agree that this Stipulation applies to remote depositions of non-parties under Fed. R. Civ. P. 45 and the Parties shall work in a collaborative manner in attempting to schedule remote depositions of non-parties. The Party noticing any non-party deposition shall provide this Stipulation to counsel for any non-party under Fed. R. Civ. P. 45 within a reasonable time before the date of the deposition. Counsel for any non-party deponent may keep any physical document or exhibit marked during the deposition, in accordance with the TTAB's Standard Protective Order applicable to this case, and shall return any physical document (if any) not used during the deposition to the counsel who sent them originally, within two business days following the completion of the deposition, and shall not retain them in any manner. Counsel for any non-party deponent may keep any electronic copies of documents that were marked as exhibits, in accordance with the TTAB's Standard Protective Order, and shall destroy all electronic copies of documents provided (if any) that were not marked as exhibits during the deposition within two business days following the completion of the deposition and shall not retain them in any manner.

21. To the extent a deponent reviews the transcript or video recording and provides a listing of errata, the Parties agree to waive notarization requirements, if any, for the deposition errata. The deposition errata still must be signed under penalty of perjury by the deponent.

22. The Parties agree that they will abide by this Stipulation with respect to any depositions (including non-party depositions) taken prior to the date this Stipulation is entered by the TTAB.

23. The Parties agree to work together in good faith to supplement or adjust these guidelines as needed to accommodate changing circumstances or address unforeseen issues.

24. The Parties may mutually agree to modify or eliminate any restriction, requirement, or deadline defined herein as needed without the need for any Board intervention.

Respectfully submitted,

December 14, 2020

/ Tiffany D. Gehrke/

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SO ORDERED this \_\_\_\_ day  
of December, 2020.

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Jill M. McCormack, Interlocutory Attorney  
Trademark Trial and Appeal Board