

ESTTA Tracking number: **ESTTA1137397**

Filing date: **06/01/2021**

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

Proceeding	91247245
Party	Defendant Allogene Therapeutics, Inc.
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Date	06/01/2021
Attachments	2021-06-01 Reply to Motion for Extension.pdf(143443 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

CRISPR Therapeutics AG,

Opposer,

v.

Allogene Therapeutics, Inc.,

Applicant.

Application No. 88/117,972

Opposition No. 91247247 (Child)

Mark: AUTOCAR T

**APPLICANT’S REPLY IN SUPPORT OF ITS
MOTION FOR 60-DAY EXTENSION OF TIME**

Applicant Allogene Therapeutics, Inc. (“Applicant”), through its counsel Perkins Coie LLP, hereby respectfully submits this reply in support of its motion for an extension of all deadlines in Opposition No. 91247245 by sixty (60) days (the “Motion”). In support of this reply, Applicant states as follows:

ARGUMENT

Applicant has shown that, pursuant to TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (“TBMP”) § 509.01, good cause exists to extend all deadlines in this case by 60 days. Where a party requests an extension of time before the period to act has elapsed, as is the case here, the Board is liberal in granting extensions of time, provided the moving party has not been guilty of bad faith or negligence. *Backyard ATL LLC v. Backyard Homes LLC*, Opposition

No. 91255414, 2020 WL 5089304, at *1 (T.T.A.B. Aug. 26, 2020); *Miss Universe L.P., LLLP v. Grandia*, Opposition No. 91220573, 2018 WL 1557270, at *1 (T.T.A.B. March 28, 2018) (citing *Nat'l Football League v. DNH Mgmt. LLC*, 85 U.S.P.Q.2d 1852, 1854 (T.T.A.B. 2008)). Here, good cause exists for Applicant's requested extension of all deadlines because of the highly specialized and complex nature of the issues raised in Dr. Terrett's expert report, requiring additional time to both locate an appropriate rebuttal expert qualified to testify on these specialized issues and for the rebuttal expert(s) to generate her/their report(s). Opposer claims, disingenuously, that Applicant has had over "six months" to identify an expert in this case, conveniently neglecting to mention that Applicant has requested an extension of these deadlines to identify a *rebuttal* expert(s) to respond to testimony that was disclosed on March 29, 2021—not six months ago. 40 TTABVUE 4. It is unfortunate that, by asserting such arguments in opposition to Applicant's Motion, Opposer has forced Applicant and the Board to expend unnecessary time and resources to resolve this good faith and routinely granted request.

I. Good cause exists because the issues raised by Opposer's expert are numerous and complex

This case concerns Applicant's two state-of-the-art cancer therapies directed at blood cancers and solid tumors, autologous and allogeneic chimeric antigen receptor T cell therapies. According to his report, Dr. Terrett purports to be an expert in immunoncology, opining on issues including (a) the nature of the immunotherapies; (b) the oncology and BioPharma industries' respective usage of ALLOCAR T and AUTOCAR T; (c) the perception of the terms by clinicians, researchers, and medical professionals in these industries; and (d) clinician-patient interactions in the context of cell therapies. Under the current schedule, Applicant had only 30 days to process this report and Dr. Terrett's supporting materials, identify qualified rebuttal expert(s), engage those expert(s), and prepare report(s) addressing these wide-ranging issues. Despite Applicant's diligent

efforts, it was unable to do so and timely moved to extend all deadlines by 60 days. As stated in its Motion, Applicant and undersigned counsel “have been working diligently to identify, interview and retain an appropriate rebuttal expert.” 39 TTABVUE 2. Obviously, these efforts necessarily involve (i) evaluating potential expert candidates for the proper expertise, (ii) considering potential conflict of interest and competitive business issues in retaining certain experts, and (iii) identifying expert candidates who have the bandwidth to take on the significant time commitment of serving as an expert in this proceeding. These efforts are ongoing.

Good cause therefore exists in this case because of the nature of the technology and science at issue, the nature of Dr. Terrett’s expert report, and the extensive process involved in retaining an appropriate rebuttal expert(s).

II. Applicant had only one month to identify a rebuttal expert, not six, as Opposer claims

Contrary to Opposer’s disingenuous claim, Applicant has not had six months to identify its *rebuttal* expert(s). Opposer disclosed its expert on March 29, 2021. 38 TTABVUE. Opposer’s disclosure occurred less than four weeks before Applicant filed the Motion. 39 TTABVUE. Prior to Opposer’s disclosure, Applicant could not have been aware of the need to retain a rebuttal expert (or potentially multiple experts) in the first place, let alone what opinions that expert(s) would be asked to rebut and what qualifications such expert(s) would possess. Any search for rebuttal expert(s) prior to Applicant’s March 29, 2021 disclosure would have been little more than a guessing game. Certainly, Applicant has been aware of the *existence* of a rebuttal expert report deadline since October 2020, but Applicant could only have known it was operating under that deadline—and more importantly the circumstances making that deadline exceedingly difficult to meet—until March 29, 2021. 38 TTABVUE. Applicant has not unreasonably delayed.

Moreover, Applicant's experience in parallel TTAB proceedings with Atara Biotherapeutics is entirely irrelevant in this case. Although Applicant submitted rebuttal expert testimony in *Atara Biotherapeutics, Inc. v. Allogene Therapeutics, Inc.*, Opposition No. 91247175, Applicant could not predict whether the same would be necessary here. The cases are between different parties, with different legal counsel where each is pursuing different legal strategies.¹ There was simply no way Applicant could have known that in this case Opposer would rely on the expert report of Dr. Terrett or the content of Dr. Terrett's opinions prior to the day it was served on Applicant, regardless of what occurred in parallel TTAB proceedings. In fact, Applicant's position in this case is entirely consistent with its request for an extension in the parallel proceeding. In that case, as in this one, the subject matter is highly specialized. *Atara*, Opposition No. 91247175, 21 TTABVUE. In complex cases, it is not uncommon for a party to seek additional time to identify properly qualified rebuttal expert(s). Applicant's request for an extension of time is due to the difficulty of locating qualified expert(s) who has/have the time, qualifications, and practical experience to properly respond to Dr. Terrett's opinions in a timely manner, and not the result of Applicant's lack of diligence or unreasonable delay.

III. A 60-day extension would cause little, if any, prejudice to Opposer

Opposer argues that it would suffer prejudice if the extension is granted primarily because Applicant would be more likely to have the benefit of studying the Board's decision on the motion for summary judgment in the parallel *Atara v. Allogene* proceeding. 40 TTABVUE 5.² To the extent there is prejudice as alleged by Opposer, this is a direct result of Opposer's own making.

¹ And further, as noted below, it was Opposer itself who opposed Applicant's motion to consolidate this proceeding and the parallel *Atara* proceeding.

² On June 1, 2021, the Board in the *Atara v. Allogene* proceeding issued an order denying Atara's motion for summary judgment. *Atara*, Opposition No. 91247175, 33 TTABVUE (T.T.A.B. June 1, 2021).

Applicant previously moved to consolidate this proceeding and the *Atara v. Allogene* proceeding. 11 TTABVUE. In its reply in support of that motion, Applicant raised the possibility that if the proceedings were not consolidated, “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.” 14 TTABVUE 7. Nevertheless, Opposer opposed the motion to consolidate and now finds itself in the very position Applicant sought to help all parties avoid by consolidating. Opposer cannot complain of the prejudice that it brought upon itself by opposing Applicant’s request for a justifiable extension.

Opposer also argues that a 60-day extension would result in a disproportionate amount of time for Applicant to rebut Opposer’s expert report, which is “longer than is customary” in Board proceedings. As explained above, this case does not involve the “customary” complexity of subject matter as in the typical proceeding. The therapies at issue in this case are highly specialized, and experts in this field are difficult to identify, particularly to rebut the opinions proffered by Opposer’s purported expert. *See Promart Brands Inc. and H.J. Heinz Co. v. GFA Brands, Inc.*, Opposition No. 91194974, 29 TTABVUE (T.T.A.B. March 16, 2012). Therefore, an extension is warranted in this case. Unlike Opposer, who has had since the initiation of the case over two years ago to identify and develop primary expert testimony, Applicant was given only 30 days to identify and retain rebuttal expert(s), and then develop expert report(s). Given the subject matter of the dispute, that time is insufficient and disproportional to Opposer’s time to generate an expert report on the same issues.

CONCLUSION

Applicant submits that good cause is shown for the present Motion, as set forth above and in its Motion, and the request is not necessitated by Applicant’s own lack of diligence or

unreasonable delay. Accordingly, Applicant respectfully requests that the Board grant its request for a 60-day extension of its deadline to serve its rebuttal expert report(s) and that the trial schedule be reset accordingly. Applicant further requests suspension of the present proceeding and all discovery and trial dates pending a decision on the present Motion.

Respectfully submitted,

Dated: June 1, 2021

By: /Thomas L. Holt/

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CERTIFICATE OF SERVICE

The undersigned affirms that APPLICANT’S REPLY IN SUPPORT OF ITS MOTION FOR 60-DAY EXTENSION OF TIME was served on Opposer CRISPR Therapeutics AG by emailing a copy to Opposer’s attorney of record, Tiffany G. Gerhke of Marshall, Gerstein & Borun LLP at tgehrke@marshallip.com, mbolos@marshallip.com, mgbtmlitdocket@marshallip.com, and kgordon@marshallip.com as required pursuant to 37 C.F.R. § 2.119 and TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE § 113.04, on the date set forth below.

Dated: June 1, 2021

/Thomas L. Holt/

Thomas L. Holt