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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
Correspondence Address	TIFFANY D GEHRKE MARSHALL GERSTEIN & BORUN LLP 233 S WACKER DRIVE STE 6300 CHICAGO, IL 60606 UNITED STATES Primary Email: tgehrke@marshallip.com Secondary Email(s): mbolos@marshallip.com, mgbtmlitdocket@marshallip.com, kgordon@marshallip.com 312-474-6300
Submission	Other Motions/Submissions
Filer's Name	Michelle Bolos
Filer's email	mbolos@marshallip.com, tgehrke@marshallip.com, mgbtmlitdock-et@marshallip.com, mgblitdocket@marshallip.com
Signature	/Michelle Bolos/
Date	09/15/2021
Attachments	Opposer Opposition to Motion to Suspend.pdf(191693 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

OPPOSER'S OPPOSITION TO
APPLICANT'S MOTION TO SUSPEND

Opposer CRISPR Therapeutics AG ("Opposer") opposes applicant Allogene Therapeutics, Inc.'s ("Applicant") Motion to Suspend filed August 26, 2021 and in support thereof states as follows:

I. BACKGROUND

Applicant has repeatedly used delay tactics throughout this proceeding and in particular over the past five months to delay resolution of this proceeding. Now, Applicant seeks to capitalize on that delay to further postpone this proceeding. Previously, in February 2021, Applicant's 30(b)(6) company witness was unprepared for her deposition, causing the parties to extend proceedings to accommodate the additional time needed to receive information from

Applicant. Next, in April, Applicant sought and received, over Opposer's objection, a 60-day extension of time to provide its expert disclosures, claiming that it needed additional time to identify and retain an appropriate rebuttal expert, then Applicant again asked for 30 additional days, ultimately delaying its expert disclosures by three months and taking 120-days total to provide rebuttal disclosures.[1] However, though Allogene apparently needed additional time to find rebuttal expert witnesses, it turns out that both of Allogene's expert witnesses were known to Allogene throughout the entire period of delay. Specifically, Allogene's first expert witness was the same individual that it used as an expert in the *Atara v. Allogene* proceeding, but for a modified scope, and its second expert witness is and has been a consultant for Allogene. Now, Applicant seeks to capitalize on its delay and argues that these proceedings should be suspended because "expert discovery remains open." However, expert discovery closed on September 11, 2021. Expert depositions took place on September 7 and 8, 2021.[2] Therefore, expert discovery is complete. Further, Opposer intends to move for summary judgment shortly, which could then resolve this proceeding in a matter of months, and long before the *Atara* case is complete.

II. ARGUMENT

The Board seldom grants a motion to suspend a particular proceeding pending disposition of other opposition proceedings brought by unrelated plaintiffs against the same application absent the consent of the other parties. *New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1551 (TTAB 2011) (emphasis added). Although the Board has the power to stay proceedings on its docket, the Board typically only does so if the parties both agree to stay the

[1] Strangely, Applicant did not use this long delay to depose Opposer's expert.
[2] After Opposer served deposition notices for Applicant's experts, Applicant sought to depose Opposer's expert on September 10, 2021. However, the day before the deposition was scheduled to occur, Applicant informed Opposer that they no longer intended to depose Opposer's expert and the deposition was cancelled.

proceedings because each proceeding is decided on its own merits. Here, Opposer does not agree to suspend because Opposer has invested significant time and resources in this proceeding to develop its own record and arguments, such that a different evidentiary record with different legal theories now exists in this case than that in the *Atara* case. In addition, Opposer will be prejudiced if it has to wait for the *Atara* proceeding to conclude before it may proceed with this litigation. Further, this case may reach final judgment before the *Atara* case, and finally, even if Allogene is successful in the *Atara* proceeding, such outcome does not impact this proceeding or render this proceeding moot.

III. Both proceedings do not contain "identical" descriptiveness claims.

Applicant inaccurately argues that the *Atara* proceeding "raises identical descriptiveness claims against the same trademark applications at issue." (48 TTABVUE 1, 3). This is not true. Although both proceedings include allegations that the purported marks at issue should be refused because each are merely descriptive of the goods for which the registrations are sought, both proceeding involve different evidence and arguments as to why the marks are merely descriptive. The parties have presented different evidence, introduced different expert disclosures, and are primed to offer different legal arguments and theories. These differences require the proceeding to be decided on its own merits. Further, Allogene and Atara have agreed to their own specific ACR proceedings, including evidentiary rules and admissions, witness disclosures, and scheduling. (48 TTABVUE 2). Opposer has not agreed to the same rules, admissions, or schedule. Even if the Board finds in favor of Applicant Allogene in the *Atara* proceeding, it has no impact on this proceeding. The Board has different evidence and arguments before it in each proceeding and the Board must make each determination based on the record before it.

IV. *Atara* case may not be closer to issuance of a final decision.

Expert disclosures in this proceeding closed on September 11, 2021. Opposer intends to file for summary judgment before the October 25, 2021 deadline. Despite Allogene's contentions to the contrary, this dispositive filing may resolve this entire proceeding before the *Atara* proceeding is fully briefed in February 2022 at the earliest. Of course, Allogene and Atara may even stipulate to extend those deadlines sometime between now and that final deadline. Nonetheless, even once the *Atara* proceeding is fully briefed, it will take the Board some time to review all of the submissions and issue a decision. Therefore Opposer would have to wait at least 10-11 months[3] before it could even *continue* its proceeding, let alone reach a decision.

V. A suspension of the proceedings will prejudice Opposer.

Opposer will be prejudiced should the Board grant the suspension pending outcome of the *Atara v. Allogene* case. Opposer has invested significant time, resources, and energy in this proceeding and intends to seek summary judgment resolution of this matter. Applicant, on the other hand, has repeatedly delayed and prolonged this proceeding. Applicant should not now be able to capitalize on that delay tactic. As noted above, this proceeding may be resolved before the briefing is even complete in the *Atara v. Allogene* case. Nonetheless, even if this case is not resolved on summary judgment, the proceeding should still proceed because the record is different in this proceeding than in the *Atara v. Allogene* case. Different facts and evidence are of record, different experts have been disclosed, and while both cases involve the merely descriptive nature of Applicant's purported marks, that is where the similarities end. Each case is decided on its own merits, and Opposer would be unfairly prejudiced should it have to wait

[3] The ACR case proceeding is set to conclude briefing in February 2022. According to recent statistics available through USPTO.gov, the average time to decision after briefing is complete was nearly 4 months in 2019 and nearly 5 months in 2020.

nearly a year before it could even *continue* its proceeding, let alone reach a decision. Further, if Allogene or Atara decided to appeal the decision in their proceeding, then Opposer would have to wait even longer. Opposer should not be unfairly delayed by the unrelated *Atara* proceeding as a suspension would rob Opposer of time and resources and an efficient, equitable decision based on this proceeding's own merits. This proceeding is ready for summary judgment and should proceed.

VI. CONCLUSION

Applicant orchestrated a multiple-month delay of this proceeding and should not be allowed to capitalize on that unreasonable delay to further prejudice Opposer and delay this proceeding by potentially a year or more. Accordingly, the Board should deny Applicant's motion to suspend.

Dated: September 15, 2021

By:/Michelle Bolos/
Tiffany D. Gehrke
Michelle Bolos
Kelley Gordon
Marshall, Gerstein & Borun LLP
233. S. Wacker Drive
6300 Willis Tower
Chicago, IL 60606
Tel: (312) 474-6300
Facsimile: (312) 474-0448

Attorneys for Opposer
CRISPR Therapeutics AG

CERTIFICATE OF SERVICE

The undersigned affirms that the foregoing OPPOSITION TO SUSPENSION was filed with the Trademark Trial and Appeal Board via the ESTTA electronic filing system on the date below, and served on Applicant's counsel of record as follows:

Craig Beaker
Jason S. Howell
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101

Emails: pctrademarks@perkinscoie.com, JHowell@perkinscoie.com, cbeaker@perkinscoie.com, tbrandon@perkinscoie.com, tholt@perkinscoie.com, jdini@perkinscoie.com

Dated: September 15, 2021

By:/Michelle Bolos/
Tiffany D. Gehrke
Michelle Bolos
Kelley Gordon
Marshall, Gerstein & Borun LLP
233. S. Wacker Drive
6300 Willis Tower
Chicago, IL 60606
Tel: (312) 474-6300
Facsimile: (312) 474-0448

Attorneys for Opposer
CRISPR Therapeutics AG