

ESTTA Tracking number: **ESTTA1164069**

Filing date: **10/05/2021**

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

|                        |   |
|------------------------|---|
| Proceeding             | 91247245  |
| Party                  | Defendant<br>Allogene Therapeutics, Inc.  |
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| Submission             | Reply in Support of Motion  |
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| Date                   | 10/05/2021  |
| Attachments            | 2021-10-05 Allogene Reply ISO Mot. to Suspend Proceedings.pdf(129630 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

**APPLICANT’S REPLY IN SUPPORT OF ITS MOTION TO SUSPEND**

Applicant Allogene Therapeutics, Inc. (“Applicant”), through its counsel Perkins Coie LLP, hereby respectfully submits this reply in support of its motion to suspend the above-captioned proceedings (collectively, the “CRISPR Proceeding”) pending the disposition of *Atara Biotherapeutics, Inc. v. Allogene Therapeutics, Inc.*, Opposition No. 91247175 (parent) and 91247177 (child) (the “Atara Proceeding”). In support of this reply, Applicant states as follows:

**I. ARGUMENT**

Applicant’s suspension is sought in good faith to preserve the Board’s and the parties’ resources and facilitate the efficient resolution of disputes concerning the exact same legal claims asserted against the exact same trademark applications. Indeed, these are the exact circumstances in which the Board has held that a departure from its ordinary practice is warranted; specifically, when a suspension would further the “Board’s interest in consistency and economy.” *New Orleans*

*Louisiana Saints LLC v. Who Dat?, Inc.*, 99 U.S.P.Q.2d 1550, 1551 (T.T.A.B. 2011). Instead of focusing on these interests, Opposer uses its opposition as an opportunity to levy accusations of “delay tactics” and an “orchestrated multiple-month delay” of the CRISPR Proceeding that are inaccurate, unnecessary, and wholly irrelevant to the legal standard for the suspension articulated by the Board.

**A. The Atara and CRISPR Proceedings Contain Common Claims and the Atara Proceeding is Closest to a Final Decision**

As explained by the Board, when there are separate proceedings involving “common claims” against the same applications, the Board may “order suspension of the other proceedings pending disposition of the proceeding that appears closest to issuance of a final decision.” TBMP § 510.02(a); *see also New Orleans Louisiana Saints*, 99 U.S.P.Q.2d at 1551. Importantly, the Board asks whether there are “common claims” between the oppositions, and not whether the “evidence and arguments” concerning those claims are common, as Opposer suggests. Of course, the proofs and arguments between the two proceedings may vary, but ultimately the threshold question that must be answered in both the CRISPR and Atara Proceedings is the same; namely, whether ALLOCAR T and AUTOCAR T are merely descriptive of the applied-for goods and services. Opposer acknowledges, as it must, that the CRISPR and Atara 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.” 49 TTABVUE 3. In other words, the proceedings contain common claims of mere descriptiveness concerning the same trademark applications.

Opposer’s argument that the CRISPR Proceeding “may” resolve prior to the Atara Proceeding is entirely conjecture, relying on potential extensions of deadlines in that proceeding, speculating as to the amount of time it may take the Board to issue a decision, and optimistically

assessing its own prospects that the CRISPR Proceeding, which involves highly fact-intensive issues, will be resolved on summary judgment.<sup>1</sup> But the Atara Proceeding is “furthest and closest to issuance of a Board final decision,” *New Orleans Louisiana Saints*, 99 U.S.P.Q.2d at 1551, because the Atara Proceeding has already completed summary judgment (with the denial of Atara’s summary judgment motion), and it has in place an Accelerated Case Resolution procedure, as recommended by the Board, that will expedite a final decision. The Board should therefore grant Applicant’s suspension request.

**B. Applicant’s Requested Suspension Will Not Prejudice Opposer**

Contrary to Opposer’s suggestion, Applicant is not arguing that Opposer should be (or even can be) denied the opportunity to have its case heard. Applicant merely seeks a *suspension* of this proceeding pending a final decision in a procedurally advanced proceeding concerning common claims against identical applications. Furthermore, Applicant’s request for a suspension is not part of an “orchestrated” attempt to delay this proceeding. *See* 49 TTABVUE 1–2, 5. In fact, any delay in this proceeding is almost entirely of Opposer’s own doing, including the breadth of Opposer’s expert testimony (necessitating the retention of two rebuttal experts by Applicant) and Opposer’s opposition to a routine discovery extension, which frustrated the orderly and efficient completion of expert discovery. *See* 43 TTABVUE.

**II. CONCLUSION**

Applicant therefore respectfully requests that the Board grant its motion to suspend the CRISPR Proceedings pending the disposition of the Atara Proceedings.

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<sup>1</sup> Indeed, the fact-intensive nature of the descriptiveness claims in the Atara Proceeding—the same claims here in the CRISPR Proceeding—led the Board to deny Atara’s motion for summary judgment. *See Atara Biotherapeutics, Inc. v. Allogene Therapeutics, Inc.*, Opposition No. 91247175, 33 TTABVUE 8–9 (T.T.A.B. June 1, 2021) (“[W]e find there are genuine disputes of material fact with regard to Opposer’s mere descriptiveness claim that preclude disposition of these cases by way of summary judgment.”).

Dated: October 5, 2021

Respectfully submitted,

By: /Thomas L. Holt/

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**ATTORNEYS FOR APPLICANT  
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**CERTIFICATE OF SERVICE**

The undersigned affirms that APPLICANT REPLY IN SUPPORT OF ITS MOTION TO SUSPEND 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 tgerhke@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: October 5, 2021

/Thomas L. Holt/  
Thomas L. Holt