

THIS ORDER IS NOT A
PRECEDENT OF THE
TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

JMM

March 30, 2022

Opposition No. 91247245 (parent)
Opposition No. 91247247

CRISPR Therapeutics AG

v.

Allogene Therapeutics, Inc.

**Before Greenbaum, Heasley, and Lynch,
Administrative Trademark Judges.**

By the Board:

Applicant seeks registration of the standard character marks ALLOCAR T¹ and AUTOCAR T² for “pharmaceutical preparations, namely, preparations for use in the treatment of cancer and tumors; pharmaceutical and biological preparations for immunotherapy, including T Cell therapy,” in International Class 5. Opposer filed notices of opposition on the ground that the marks are merely descriptive pursuant to Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). In its answers, Applicant denied the salient allegations in the notices of opposition.

¹ Application Serial No. 88117993 was filed September 14, 2018 pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b); “t” disclaimed.

² Application Serial No. 88117972 was filed September 14, 2018 pursuant to Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b); “t” disclaimed.

These consolidated cases now come before the Board for consideration of Opposer's motion for summary judgment. The motion is fully-briefed.³

I. Applicable Legal Principles

Summary judgment is an appropriate method of disposing of cases in which there are no genuine disputes of material fact and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a). A party moving for summary judgment has the burden of demonstrating there is no genuine dispute of material fact remaining for trial and it is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The evidentiary record and all reasonable inferences to be drawn from the undisputed facts must be viewed in the light most favorable to the nonmoving party. *Olde Tyme Foods, Inc. v. Roundy's, Inc.*, 961 F.2d 200, 22 USPQ2d 1542, 1544 (Fed. Cir. 1992).

Section 2(e)(1) of the Trademark Act precludes registration of a mark on the Principal Register which, when used in connection with the applicant's goods or services, is merely descriptive of them. 15 U.S.C. § 1052(e)(1). A mark is "merely descriptive" within the meaning of Section 2(e)(1) if it immediately conveys knowledge of a quality, feature, function, characteristic or subject matter of the applicant's goods or services. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citing *In re Bayer AG*, 488 F.3d 960, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)).

³ We have carefully considered the parties' arguments and submissions and do not recount the facts or arguments here except as necessary to explain this decision. *See Guess? IP Holder LP v. Knowlux LLC*, 116 USPQ2d 2018, 2019 (TTAB 2015).

II. Analysis and Decision

Opposer contends that the Board should grant summary judgment in its favor because (i) “ALLOCAR T is readily understood by the relevant audience as an abbreviation for ‘allogeneic CAR T’ or allogeneic chimeric antigen receptor T cells . . . Likewise, AUTOCAR T is readily understood by the relevant audience as an abbreviation for ‘autologous CAR T’ or autologous chimeric antigen receptor T cells” (51 TTABVUE 5); (ii) “potential consumers include medical professionals such as researchers, physicians, oncologists, and others and also patients and caregivers for patients who will receive the CAR T cell therapy treatment” (*id.* at 21); and (iii) “[t]he terms ALLOCAR T and AUTOCAR T are merely descriptive of the allogeneic CAR T cell therapy and autologous CAR T cell therapy that [Applicant] offers or intends to offer in connection with the terms” (*id.* at 17).

In support of its motion, Opposer relies upon, inter alia, the following:

- The expert report from its retained expert, Dr. Jonathan Terrett. (*Id.* at 33–108);
- The expert reports from Applicant’s retained experts, Dr. Chantale Bernatchez, (*id.* at 111–256), and Nazy Zomorodian, NP, (52 TTABVUE 2–47), as well as excerpts from the transcripts of their respective depositions, (51 TTABVUE 257–68, 269–286);
- Excerpts from the transcript of Applicant’s Fed. R. Civ. P. 30(b)(6) deposition, (*id.* at 342–60), wherein the witness testified: (i) “We are in the business of developing allogeneic cell therapies for the purpose of hematologic and solid tumor cancers.” (*Id.* at 344); and (ii) “there might be allogeneic cell therapies out there that are in clinical trial, but an AlloCAR T therapy specific to us is very specific to what Allogene is doing and what we’re manufacturing.” (*Id.* at 349);
- Applicant’s responses to Opposer’s Third Set of Interrogatories, (*id.* at 466–73), wherein Applicant stated, inter alia, that: (i) “Applicant does not

- currently intend to provide any offerings other than allogeneic CART cell therapy in connection with the ALLOCAR T Mark.” (*Id.* at 469); and (ii) “Applicant does not currently intend to provide any offerings other than autologous CART cell therapy in connection with the AUTOCAR T Mark.” (*Id.*);
- Applicant’s responses to Opposer’s First Set of Interrogatories, (52 TTABVUE 48–72), wherein Applicant stated, inter alia, that: (i) “Applicant derived the trademark ALLOCAR T from its use of the term ‘ALLO’ to uniquely identify Allogene’s brand.” (*Id.* at 52); (ii) “Applicant derived the trademark AUTOCAR T to uniquely identify the process through which the goods offered under the mark were created, as differentiated from the processes used by others in the field.” (*Id.*); (iii) “The goods covered under the trademark application Serial No. 88/117,993 for ALLOCAR T include . . . allogeneic chimeric antigen receptor T Cell therapies for cancer.” (*Id.* at 54); and (iv) “The goods covered under the trademark application Serial No. 88/117,972 for AUTOCAR T include . . . autologous chimeric antigen receptor T Cell therapies for cancer.” (*Id.*);
 - Copies of brochures and Internet materials from Applicant which discuss Applicant’s products. (51 TTABVUE 109–10);
 - Copies of conference and earnings call transcripts, as well as corporate presentations, that make use of the abbreviations “allo CAR T,” and/or “auto CAR T.” (*Id.* at 287–341, 361–418);
 - Copies of scientific articles regarding t-cells that use the abbreviations “auto” and/or “allo” in relation to autologous and/or allogeneic CAR T cells. (*Id.* at 419–437);
 - A copy of a brochure from Applicant which provides, “Allogene is attempting to overcome the limitations of autologous CAR T (AutoCAR T™) therapies by creating allogeneic CAR T cell therapies (AlloCAR T™ or AlloCARs™).” (*Id.* at 475); and
 - Copies of print-outs from Applicant’s website and other printed materials showing its use of the terms “allocar T” and/or “autocar T.” (*Id.* at 477–589; 52 TTABVUE 73–110).

In response, Applicant argues, inter alia, that (i) “there is a genuine dispute of material fact regarding whether ALLOCAR T and AUTOCAR T are generally understood abbreviations for certain scientific terms,” as “Allogene created the coined

term ALLOCAR T as part of its overall branding strategy to identify Allogene—which uses the stock ticker ALLO—as the source of the therapies it intends to offer under that mark because the therapies are created using Allogene’s unique manufacturing process. AUTO in the AUTOCAR T mark serves a similar function, identifying Allogene’s unique manufacturing process.” (54 TTABVUE 6); (ii) “genuine disputes of material fact exist regarding whether the relevant audience for Allogene’s applied-for goods—patients, their caregivers, and healthcare and medical professionals—would both recognize Allogene’s Marks as abbreviations and also understand the meaning of the allegedly descriptive terms that these alleged abbreviations represent.” (*Id.*); and (iii) “There is a dispute of material fact regarding the competitive need for others in the cancer therapy field to use ALLOCAR T and AUTOCAR T to describe their offerings.” (*Id.* at 20).

In support, Applicant relies upon, inter alia, the following:

- Copies of print-outs from Applicant’s website showing its use of the terms “allocar T” and/or “autocar T.” (*Id.* at 29–31, 55–74);
- Additional excerpts from the transcript of Applicant’s Fed. R. Civ. P. 30(b)(6) deposition, (*id.* at 32–54), wherein the witness testified “the ALLO actually is very specific as an identifier to Allogene, as you look at it kind of in totality of the materials we were creating in the formation of the company.” (*Id.* at 47);
- Applicant’s responses to Opposer’s Second Set of Interrogatories, (*id.* at 75–87), wherein Applicant stated, inter alia, that “Allogene’s mark ALLOCAR T was coined by Allogene to refer to Allogene’s applied-for goods (i.e., pharmaceutical preparations). The letters ‘ALLO’ in the mark ALLOCAR T are intended to refer to Allogene, as reflected by Allogene’s stock ticker symbol ‘ALLO’.” (*Id.* at 83); and
- Copies of scientific articles and Internet evidence regarding t-cells that use the terms “off-the-shelf” and/or “universal.” (*Id.* at 235–61, 496–604).

Upon review of the arguments and evidence presented by the parties, and drawing all reasonable inferences in favor of Applicant as the nonmoving party, we find there are genuine disputes of material fact with regard to Opposer's mere descriptiveness claims that preclude disposition of these cases by way of summary judgment. At a minimum, genuine disputes of material fact exist with respect to whether the marks ALLOCAR T and AUTOCAR T immediately convey information concerning an ingredient, quality, characteristic, function, feature, purpose, or use of Applicant's identified goods.⁴

In particular, for an abbreviation to be merely descriptive of an applicant's goods or services, the Board must find the following: (i) the abbreviation is generally understood to be a shortened form for certain words in the relevant field; (ii) the words represented by the abbreviation are merely descriptive of the goods or services listed in the application; and (iii) a relevant consumer viewing the abbreviation in connection with the applicant's goods or services would recognize it as such. *In re BetaBatt, Inc.*, 89 USPQ2d 1152, 1154 (TTAB 2008) (citing *In re Harco Corp.*, 220 USPQ 1075, 1076 (TTAB 1984)). Moreover, when two or more merely descriptive terms are combined, the determination of whether the combined mark also has a merely descriptive significance turns on whether the combination of terms evokes a

⁴ The fact that we have identified certain genuine disputes of material fact as a sufficient basis for denying Opposer's motion for summary judgment should not be construed as a finding that these are necessarily the only disputes that remain for trial. In addition, the parties are reminded that evidence submitted in connection with a motion for summary judgment is of record only for consideration of that motion. Any such evidence to be considered at final must be properly introduced in evidence during the appropriate trial period. *See Levi Strauss & Co. v. R. Joseph Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993).

non-descriptive commercial impression. Generally, if each component retains its merely descriptive significance in relation to the goods or services, the combination results in a composite that is itself merely descriptive. *DuoProSS Meditech Corp. v. Inviro Med. Devices, Ltd.*, 695 F.3d 1247, 103 USPQ2d 1753 (Fed. Cir. 2012). Here, the evidence of record, including the expert reports, scientific materials, discovery responses, and deposition testimony from the parties, establishes that there are genuine disputes of material fact as to whether the average purchaser would perceive the marks ALLOCAR T and AUTOCAR T, as a whole, i.e., the combination of the individual parts, as merely a combination of descriptive components.

Accordingly, Opposer's motion for summary judgment is DENIED.

III. Proceedings Suspended

“Whenever it shall come to the attention of the Trademark Trial and Appeal Board that a party or parties to a pending case are engaged in . . . another Board proceeding which may have a bearing on the case, proceedings before the Board may be suspended until termination of the civil action or the other Board proceeding.” Trademark Rule 2.117(a), 37 C.F.R. § 2.117(a). As noted in the Board's October 26, 2021 order, suspension of a Board proceeding pending the final determination of another proceeding is solely within the discretion of the Board. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 510.02(a) (2021).

Although the Board previously denied Applicant's motion to suspend this consolidated proceeding pending the outcome of Opposition Nos. 91247175 and 91247177, the circumstances of these cases have changed. In particular, expert

Opposition No. 91247245 (parent)
Opposition No. 91247247

discovery is closed, and Opposer's pending motion for summary judgment has been denied. Moreover, the parties have submitted their Accelerated Case Resolution briefs in Opposition Nos. 91247175 and 91247177. Accordingly, upon further review of the relevant circumstances, the Board finds that judicial economy will be better served by suspension, and that the savings in time and costs to both the parties and the Board outweigh the risk of prejudice to Opposer.

In view of the foregoing, proceedings herein are SUSPENDED pending disposition of Opposition Nos. 91247175 and 91247177. Trademark Rule 2.117(a).

Within TWENTY (20) DAYS of the Board issuing its final decision in Opposition Nos. 91247175 and 91247177, Applicant must notify the Board, in writing, so that these proceedings may be called up for appropriate action.⁵

⁵ In the interim, the parties must notify the Board of any changes to their email or physical correspondence addresses.