

ESTTA Tracking number: **ESTTA1313088**Filing date: **09/29/2023**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91247245
Party	Plaintiff CRISPR Therapeutics AG
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Date	09/29/2023
Attachments	2023-09-29 Response to Board Inquiry-c.pdf(17726 bytes)

**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

RESPONSE TO BOARD INQUIRY AND REQUEST TO PROCEED

On September 1, 2023, the Board issued an order asking Opposer to inform the Board whether it wishes to go forward in light of the Board’s decision in *Atara Biotherapeutics v. Allogene Therapeutics*, Opposition Nos. 91247175 and 91247177 (the “*Atara* proceeding”). In the *Atara* proceeding, the Board refused registration of each of the applications at issue in this proceeding on the basis that each is merely descriptive of the applied-for goods. The Board’s September 1, 2023 Order also explains that the result of the *Atara* proceeding does not dictate the judgment in this proceeding.

Opposer CRISPR Therapeutics requests that this proceeding continue forward because, in addition to its claims of merely descriptiveness, Opposer seeks judgment on its allegations of genericness, which was not decided in the *Atara* proceeding.

It is important that the Board allow this proceeding to go forward on these claims because a decision on genericness will promote judicial economy for the TTAB and reduce examination burdens for Trademark Examining Attorneys, and so that Opposer is not prejudiced.

I. APPLICANT ALLOGENE’S MULTIPLE FILINGS FOR IDENTICAL AND NEARLY IDENTICAL MARKS FOR THE SAME GOODS

While this proceeding was suspended,¹ Applicant filed two more applications: ALLOCAR and ALLOCAR T, each for goods identical to those in the applications subject to this proceeding. First, in March 2022, Allogene filed application serial no. 97324127 for ALLOCAR in class 5 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 March 2023, CRISPR Therapeutics filed a notice of opposition against Applicant’s ALLOCAR application alleging genericness, merely descriptiveness, and issue preclusion. *See* Opp. No. 91283879. The Board entered default judgment in CRISPR Therapeutics’ favor and refused the registration.

Next, in April 2023, one month after the final decision in the *Atara* proceeding, Allogene filed application serial no. 97889420 for ALLOCAR T in class 5 for “pharmaceutical preparations, namely, preparations for use in the treatment of cancer and tumors; pharmaceutical and biological preparations for immunotherapy, including T cell therapy.” The application is for an identical mark with identical goods to those at issue in the present opposition. Initially, Allogene appeared to file this application on the principal register, but in August 2023, in an apparent attempt to either circumvent the Board’s holding in the *Atara* proceeding and/or avoid a

¹ This proceeding was suspended in October 2021 pending resolution of a motion, and then again immediately re-suspended pending the disposition of the *Atara* proceeding on March 30, 2022.

letter of protest which was granted as to merely descriptiveness in June 2023, Allogene filed an amendment requesting the mark be placed on the Supplemental Register.²

Allogene's behavior demonstrates it will continue to file on the same or nearly the same marks unless restrained by the Board. The Board's determination on genericness in this proceeding will help prevent future repeated and frivolous filings.

II. GENERICNESS IS RIPE FOR ADJUDICATION

The time is right for the Board to determine genericness now. Opposer has alleged and produced evidence that ALLOCAR T and AUTOCAR T are generic. In addition, throughout the approximately 1.5-2 years that this proceeding was suspended, even more evidence of generic and descriptive use of ALLOCAR T and AUTOCAR T has accumulated through the widespread use of the terms by those in the industry. Opposer wishes to proceed on its allegations of genericness as included in the notices of oppositions³ and as evidenced in the discovery exchanged so far in this proceeding. Opposer also intends to proceed on the basis of the intervening new circumstances and evidence accumulated while the proceeding was suspended, including (1) the judgment in Opp. No. 91283879, and (2) the new, additional, and voluminous examples of the relevant consuming public using and understanding the generic nature of ALLOCAR T and AUTOCAR T in connection with the applied-for goods.

III. IF THE BOARD DOES NOT ALLOW THIS PROCEEDING TO CONTINUE ON GENERICNESS, CRISPR THERAPEUTICS WILL BE PREJUDICED

The Board and CRISPR Therapeutics has invested substantially in this proceeding over the last four years. In addition, Opposer has also been forced to spend time and resources

² See TSDR application file, *available at* https://tsdr.uspto.gov/#caseNumber=97889420&caseType=SERIAL_NO&searchType=statusSearch.

³ Including as set forth in at least paragraphs 18-20 of its Notice of Opposition of ALLOCAR T, Opposer alleges that the ALLOCAR T term is generic. Opp. No. 91247245 at 6 TTABVUE 4. And including as set forth in at least paragraphs 18-20 of its Notice of Opposition of AUTOCAR T, Opp. No. 91247247 at 7 TTABVUE 4.

combatting Applicant Allogene's multiple *other* attempts to circumvent adverse rulings in this and/or the *Atara* proceeding. If the Board does not allow CRISPR Therapeutics to proceed, then CRISPR Therapeutics will be forced to re-litigate and duplicate the efforts already complete in this proceeding. For example, all of the documents and evidence are the same, and if not allowed to proceed at this juncture, CRISPR Therapeutics will be forced to re-depose the same witnesses, re-introduce the same evidence, and re-litigate the same issues which would not be an effective use of Board or the parties' resources, and would prejudice CRISPR Therapeutics who has spent significant time and resources to get to this point in the proceedings. The issue is teed up and primed for a decision in front of the Board now.

IV. CONCLUSION

Opposer CRISPR Therapeutics requests that this proceeding go forward on its allegations of genericness. If, despite Opposer's allegations and Applicant's notice of the claim, the Board finds that genericness is not yet properly before the Board, then Opposer requests a briefing schedule for a motion for leave to amend its Notices of Opposition with respect to genericness. To be clear: such motion would purely be procedural to conform the pleadings to the evidence because Applicant was and continues to be on notice that Opposer has alleged ALLOCAR T and AUTOCAR T are generic. For all the reasons stated herein, Opposer CRISPR Therapeutics requests that the Board reset all remaining deadlines and resume the proceedings.

Respectfully submitted,

Dated: September 29, 2023

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CERTIFICATE OF SERVICE

The undersigned counsel affirms that this document was served on Applicant via email at the following address on the date below:

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