

Dec 31 09 09:45a
12/31/2009 11:17 FAX 212 805 7925
DEC-31-2009 11:31 FROM:

Robert W. Sweet
JUDGE ROBERT W. SWEET

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December 31, 2009

VIA FACSIMILE (212) 805-7925

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Honorable Robert W. Sweet
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Association for Molecular Pathology, et al. v.
United States Patent and Trademark Office, et al.
Civil Action No. 09-4515 (RWS)

The requested submission schedule is approved. Argument will be held February 2 at 10 AM. So ordered.
Spont
USDC
12/31/09

Dear Judge Sweet:

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION
WOMEN'S RIGHTS PROJECT
NATIONAL OFFICE
115 NASSAU STREET, 18TH FL.
NEW YORK, NY 10038-2400
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OFFICERS AND
DIRECTORS
SUSAN H. NEWMAN
PRESIDENT

ANTHONY D. BONERIO
EXECUTIVE DIRECTOR

RICHARD ZACK
TREASURER

I write to request a revised schedule in the above-captioned case. We represent all of the Plaintiffs. On August 26, 2009, Plaintiffs filed motions for summary judgment. On December 23, Myriad Genetics and the University of Utah defendants filed their opposition papers, along with a motion for summary judgment. On December 24, the U.S. Patent and Trademark Office ("PTO") filed its opposition papers, along with a motion for judgment on the pleadings.

Currently, Plaintiffs' reply and opposition to Defendants' motions are due on January 8, 2010. While we have been working diligently on our submissions, given the volume of paper submitted by the Defendants (over 1700 pages, including declarations and exhibits) and the unavailability of experts during the holiday season, we respectfully seek an extension of time. We also have begun to receive amici filings supporting the Defendants and understand that additional briefs will be filed next week. An extension would give us an opportunity to address those to the extent necessary.

This is the first request by Plaintiffs for an extension of time regarding briefing on this set of motions. Defendants previously requested and were granted an extension of time to December 23 to oppose the Plaintiffs' motion. The PTO subsequently received a one-day extension due to weather conditions in Washington D.C.

We have spoken with counsel for the Defendants, who consent to Plaintiffs' request. The parties have agreed to a new briefing schedule: Plaintiffs' papers would be due by noon on January 20, 2010; Defendants' reply papers would be due on January 29; and oral argument would be held sometime between February 2 and 5, 2010, preferably February 4th or 5th subject, of course, to the court's availability. If the court is not available for argument any day between February 2 and 5, then the parties request that argument be scheduled for sometime in April because of prior commitments. Counsel for the plaintiffs is

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DATE FILED: 1-5-10

Dec 31 09 09:46a
12/31/2009 11:18 FAX 212 805 7925
DEC-31-2009 11:31 FROM:

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unavailable the week of February 8 due to a scheduled trial in Louisiana, counsel for the PTO is unavailable the week of February 15, and counsel for the Myriad defendants is unavailable the rest of February and all of March due to a scheduled trial out-of-state. We therefore respectfully request that the argument be held sometime between February 2nd through 5th if the court can accommodate us.

Very truly yours,



Sandra S. Park

Encl.

cc: (all via e-mail)
Counsel for Defendants
Ross Morrison
Barry R. Satine
Brian M. Poissant