

Case Update: Agilent v. Twist Litigation

Judge Rejects Agilent's Request to Stay Entire Case During Appeal; Discovery and Trial to Proceed

- On June 28, 2019, the Court denied a truly extraordinary request from Agilent. Attempting an extremely unusual legal maneuver, ***Agilent asked the Court to put its own affirmative claims in its three-plus year old lawsuit against Twist on indefinite hold.***
- Agilent's unprecedented request arises from its appeal of **the Court's May 10, 2019 order rejecting Agilent's motion** to strike Twist's cross-claims against Agilent. Those include cross-claims for defamation, defamation per se, libel, libel per se, slander and slander; intentional interference with prospective economic advantage; and unfair competition.
- Twist's cross-claims relate to Agilent's calculated, deliberate attempt on the eve of the Twist's October 31, 2018 IPO, to undermine the IPO and derail Twist from raising important funding. Agilent made knowingly false and damaging public statements about Twist and its employees, intending to injure Twist's business and its reputation in the marketplace, and tarnish the careers of former Agilent employees who went to work for Twist.
- Twist's cross-claims will be stayed automatically by statute while the appeal is pending.
- Agilent's failed motion to stay its own claims is the latest example of Agilent's unwillingness to prosecute the case it filed against Defendants years ago.
- Despite more than a year of discovery, Agilent has no evidence of misappropriation of any valid trade secret, and continued delay is the only alternative it has left to continue to attempt to interfere with Twist's business.
- **To this end, Agilent, despite being the plaintiff in the litigation, had argued for an expanded stay that encompassed not just Twist's cross-claims but its own affirmative claims.** In its briefing Agilent did not—because it could not—cite any case where a court exercised its discretion to stay a ***plaintiff's own claims*** under circumstances anywhere close to those here. Unsurprisingly, the ***Court agreed with Twist*** that this was highly unusual and that there was no legal basis for Agilent ***to delay the proceedings on its own claims*** based on the pending appeal.

- Of course, it was Agilent who chose to assert claims in bad-faith against Twist and Emily Leproust and then two and a half years later to make false, defamatory statements about Twist and Leproust to the public and media in an attempt to interfere with Twist's IPO.
- The Court's denial of Agilent's motion to stay the whole case means that, despite Agilent's best efforts, **discovery in the case will continue as scheduled, and the trial date of February 24, 2020 remains unaffected.**
- Now that the case may finally be proceeding to trial – after three years of Agilent's unsuccessful maneuvering in court and flailing performance in the marketplace – Twist and Leproust very much look forward to their day in court.
- Twist also expects to prevail on appeal. Twist is confident that the Court's ruling rejecting Agilent's motion to strike its cross-claims will be affirmed and that those claims too will ultimately be decided in its favor.