

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MEDA PHARMACEUTICALS INC. and)
CIPLA LTD.,)
)
Plaintiffs,)
) C.A. No. 14-1453-LPS
v.)
)
APOTEX INC. and APOTEX CORP.,)
)
Defendants.)

**PLAINTIFFS MEDA AND CIPLA'S RESPONSIVE
CLAIM CONSTRUCTION BRIEF**

Of Counsel:

H. Keeto Sabharwal
Dennies Varughese
Uma N. Everett
Rami Bardenstein
Dallin G. Glenn
Joshua I. Miller
Josephine J. Kim
STERNE, KESSLER, GOLDSTEIN &
FOX P.L.L.C.
1100 New York Ave., N.W., Suite 800
Washington, DC 20005-3934
(202) 371-2600

Steven J. Balick (#2114)
John G. Day (#2403)
Andrew C. Mayo (#5207)
ASHBY & GEDDES
500 Delaware Ave., 8th Floor
P.O. Box 1150
Wilmington, DE 19899
(302) 654-1888
sbalick@ashby-geddes.com
jday@ashby-geddes.com
amayo@ashby-geddes.com

*Attorneys for Plaintiffs
Meda Pharmaceuticals Inc. and Cipla Ltd.*

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TABLE OF CONTENTS

- INTRODUCTION 1
- ARGUMENT 2
- I. “[C]ondition(s)” Means “disease(s) or illness(es) resulting in or causing allergic reaction(s)” 2
 - A. Apotex’s Proposed Construction Disregards the Specification’s Description of the Invention 2
 - B. Apotex’s Construction Incorrectly Expands the Scope of the Claims to Include Myriad Diseases Outside of the Patent 4
- II. “[A]dministration” should be given its plain and ordinary meaning 6
 - A. The Claims of the ’620 and ’723 Patents are Limited to Single Formulation for Simultaneous Administration 7
 - B. The Prosecution History Prohibits Apotex’s Overly Broad Interpretation of the Scope of the Claims of the ’620 and ’723 Patents 9
- CONCLUSION..... 11



TABLE OF AUTHORITIES

Cases	Page(s)
<i>Acumed LLC v. Stryker Corp.</i> , 483 F.3d 800 (Fed. Cir. 2007).....	10
<i>Chimie v. PPG Indus., Inc.</i> , 402 F.3d 1371 (Fed. Cir. 2005).....	10
<i>In re Paulsen</i> , 30 F.3d 1475 (Fed. Cir. 1994).....	8
<i>Novo Nordisk of N. Am. v. Genentech, Inc.</i> , 77 F.3d 1364 (Fed. Cir. 1996).....	8
<i>Nystrom v. Trex Co., Inc.</i> , 424 F.3d 1136 (Fed. Cir. 2005).....	3
<i>Thorner v. Sony Computer Entm't Am. LLC</i> , 669 F.3d 1362 (Fed. Cir. 2012).....	9
<i>Trading Techs. Int'l Inc. v. eSpeed, Inc.</i> , 595 F.3d 1340 (Fed. Cir. 2010).....	9
<i>Verizon Servs. Corp. v. Vonage Holdings Corp.</i> , 503 F.3d 1295 (Fed. Cir. 2007).....	2

INTRODUCTION

In their opening Brief (“Pl. Br.”), Plaintiffs demonstrated that their constructions of **condition(s)** and **administration** follow the terms’ plain and ordinary meaning, according to the context of the patents-in-suit, U.S. Patent Nos. 8,163,723 and 8,168,620. Plaintiffs established that “condition(s)” means “*disease(s) or illness(es) resulting in or causing allergic reaction(s)*,” relying on the specification’s consistent description. The main purpose of the patents-in-suit and scope of the invention is to prevent or minimize “[a]llergic reactions.” And for “administration,” Plaintiffs established that the term should be accorded its plain and ordinary meaning, which is “application” or “to apply,” because nothing in the intrinsic record modifies the governing plain and ordinary meaning.

Apotex has not refuted Plaintiffs’ positions. Instead, Apotex’s opening brief (“Ap. Br.”) is no more than attorney argument that ignores both the patents’ express teachings and the amendments the patentees made during the prosecution of these patents. Apotex’s construction of “condition(s)” includes many diseases that are unrelated to allergic reactions, such as “motion sickness, ulcerative stomatitis, bee stings, snake bites, rheumatoid arthritis, lupus,” and many more unrelated diseases. (Ap. Br. at 3-4.) These “other” diseases have nothing to do with the patents—or with its teachings pertaining to *nasal* administration. And Apotex’s construction of “administration” is equally flawed. It seeks to import into the claims limitations (separate and sequential use) that were expressly removed from the scope of the issued claims of the patents-in-suit during prosecution.

As mentioned in Plaintiffs’ opening Brief, Apotex’s motive is transparent: under the guise of “claim construction,” Apotex seeks to expand the overall scope of the claimed inventions to bolster their non-infringement and invalidity strategies. But the time for that is at

trial, not by advancing unsupported claim constructions for terms that are clear on their face and readily understood.

ARGUMENT

I. “[C]ondition(s)” means “disease(s) or illness(es) resulting in or causing allergic reaction(s)”

Term	Plaintiffs’ Construction	Apotex’s Construction
condition(s)	disease(s) or illness(es) resulting in or causing allergic reaction(s)	Plain and ordinary meaning. To the extent that the Court determines that this term requires construction, Apotex proposes the following construction: “disease(s) or illness(es).”

A. Apotex’s Proposed Construction Disregards the Specification’s Description of the Invention

Plaintiffs’ opening Brief established, and Apotex has not refuted, that the patents’ specification explicitly defines the invention consistent with Plaintiffs’ construction: “the *present invention* relates to pharmaceutical products and formulations useful for preventing or minimising [*sic*] *allergic reactions*.” (Pl. Br. at 9.) And this description is dispositive: “[w]hen a patent thus describes the features of the ‘*present invention*’ as a whole, this description limits the scope of the invention.” *Verizon Servs. Corp. v. Vonage Holdings Corp.*, 503 F.3d 1295, 1308 (Fed. Cir. 2007) (emphasis added). Plaintiffs’ opening Brief confirmed that this description, coupled with the contextual use of “condition(s)” in the claims, limits the scope of the invention to allergic reactions, and does not extend to other diseases or illnesses. (Pl. Br. at 9-11.)

Apotex’s interpretation of “condition(s)” noticeably retreats from the specification’s teachings and, indeed, fails to even acknowledge the portions of the specification which recite this present invention. Remarkably, however, Apotex acknowledges “[t]he patentee ... ‘is not entitled to a claim construction divorced from the context of the written description and

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