IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

PLAINTIFFS MEDA AND CIPLA'S SUPPLEMENTAL
CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

The parties previously submitted claim construction briefs regarding U.S. Patent Nos. 8,163,723 and 8,168,620, two of the patents-in-suit, and the Court has set a *Markman* Hearing for April 29, 2016. Plaintiffs' Opening and Responsive briefs argued, among other things, that the Court should adopt the plain and ordinary meaning for the term "administration"—as meaning "application" or "to apply" a single formulation with two active ingredients— based on the intrinsic record of both the '620 and '723 patents. Defendant Apotex disagreed, arguing that the term "administration" means "to administer simultaneously, either in the same or different pharmaceutical formulations, or separately or sequentially." (D.I. 43, Exh. A at 9.) But Apotex's argument ran counter to the intrinsic evidence. With the recent addition of U.S. Patent No. 9,259,428 (the "'428 patent") to this action,[1] the Court invited supplemental claim construction briefing on new terms or claim construction issues arising from the issuance of the '428 patent. (D.I. 82.)

In this brief, Plaintiffs address a single new claim construction issue: the '428 patent's claims support Plaintiffs' previously asserted construction of the term "administration" while at the same time controverting Apotex's tortured construction of this simple word. The Court should adopt Plaintiffs' construction of "administration" and apply that construction to all three patents-in-suit. First, each claim of the '428 patent recites the disputed term, and each claim further specifically recites a *single* formulation that includes *both* azelastine and fluticasone (the "active ingredients"). Second, the claims of the '428 patent support the prosecution history

[1] The '428 patent was added to this action (D.I. 90) because it issued from the same parent application and is in the same family as the two patents asserted in the original Complaint, the '723 patent and the '620 patent. All three patents share a largely identical specification, and a copy of the '428 patent is attached hereto as Exhibit A.

arguments that Plaintiffs raised in their opening brief. Third, the claims of the '428 patent refute both Apotex's proposed construction itself and Apotex's reliance on embodiments disclosed in the specification. Fourth, the Court should adopt Plaintiffs' construction for "administration" across the patents-in-suit because of the significant overlap in the intrinsic record for each patent.

II. THE COURT SHOULD ADOPT PLAINTIFFS' CONSTRUCTION FOR "ADMINISTRATION" FOR ALL THREE PATENTS-IN-SUIT

The well-settled principles of claim construction support Plaintiffs' construction. Claim construction begins with the language of the claims. *See Source Vagabond Sys. Ltd. v. Hydrapak, Inc.*, 753 F.3d 1291, 1299 (Fed. Cir. 2014). Equally well-settled, where different patents "derive from the same parent application and share many common terms, [courts] ***must*** interpret the claims consistently across all asserted patents." *SightSound Techs., LLC v. Apple Inc.*, 809 F.3d 1307, 1316 (Fed. Cir. 2015) (quoting *NTP, Inc. v. Research in Motion, Ltd.*, 418 F.3d 1282, 1293 (Fed. Cir. 2005)) (emphasis added). In their earlier briefs, when the case only involved the '723 and the '620 patents, Plaintiffs established that the intrinsic evidence of each patent supported Plaintiffs' construction. Further, while Apotex argued that the patentees acted as their own lexicographers, Plaintiffs explained that the patentees neither acted as lexicographers nor did they give the term "administration" any special meaning. Here, the '428 patent's claims further confirm the correctness of Plaintiffs' earlier plain-meaning construction of "administration" based on the intrinsic record of the '620 and '723 patents: "application" of, or "to apply," a single formulation.

The claims of the '428 patent explicitly recite that the two active ingredients are contained in *one* formulation, conclusively demonstrating that Plaintiffs' proposed construction is the correct construction. As further evidence that Plaintiffs' construction is correct, the claims of the '428 patent comport with the amendments to the claims that the inventors made during

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