

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

BAYER HEALTHCARE LLC and BAYER)	
HEALTHCARE PHARMACEUTICALS)	
INC.,)	
)	
Plaintiffs,)	
)	C.A. No. 16-1221 (LPS)
v.)	CONSOLIDATED
)	
TEVA PHARMACEUTICALS USA, INC.,)	
et al.,)	
)	
Defendants.)	

JOINT CLAIM CONSTRUCTION CHART

In accordance with Paragraph 11 of the Scheduling Order, Plaintiffs Bayer HealthCare LLC and Bayer HealthCare Pharmaceuticals Inc. (collectively, “Bayer”), and Defendants Teva Pharmaceuticals USA, Inc. (“Teva”), Apotex Inc. and Apotex Corp. (“Apotex”) respectfully submit this Joint Claim Construction Chart.

Attached as Exhibit A is a table identifying the parties’ proposed claim construction positions with respect to certain terms in the asserted claims of U.S. Patent Nos. 8,680,124 and 9,458,107. No claim term contained in any of the asserted claims of U.S. Patent No. 7,351,834 or 8,637,553 is proposed for construction.

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May 23, 2018

Exhibit A**Proposed Constructions for U.S. Patent No. 8,680,124 ('124 patent)¹:**

Claim Term/Phrase	Proposed Construction Agreed to By Bayer and Teva
All asserted claims Preambles	The preambles are limiting.
Claims 1, 2, 4, 29 “acquired resistance”	resistant and/or substantially less responsive to the effects of the drug compared to initial responsiveness

Claim Term/Phrase	Bayer's Proposed Construction and Supporting Intrinsic Evidence	Teva's Proposed Construction and Supporting Intrinsic Evidence
Claims 1, 29-31 “an effective amount”	<p>an amount which is effective to treat any symptom or aspect of the cancer or the tumor</p> <p><u>Intrinsic Evidence</u></p> <p>'124 Patent:</p> <ul style="list-style-type: none"> • col. 6, ll. 4-24 • claims 1, 29-31 <p>'124 Patent File History:</p> <ul style="list-style-type: none"> • originally filed specification and claims 	<p>an amount that is effective to combat, alleviate, reduce, relieve, or improve one or more of the symptoms associated with a cancer, including but not limited to amounts that cause tumor regression, cell death, apoptosis, necrosis; inhibit cell proliferation; tumor growth, tumor metastasis, tumor migration, tumor invasion; reduce disease progression; stabilize the disease; reduce or inhibit angiogenesis; prolong patient survival; enhance quality of life; and/or reduce the frequency, severity, intensity, and/ or duration of any adverse</p>

¹ This patent is not at issue in the cases against Apotex Inc. and Apotex Corp., C.A. No. 16-1222 and C.A. No. 17-334.

		<p>symptoms or activities.</p> <p><u>Intrinsic Evidence</u></p> <p>'124 Patent:</p> <ul style="list-style-type: none"> • col. 6, ll. 4-24 • claims 3 and 28
<p>Claims 30, 31 “a subject who has been treated with imatinib”</p>	<p>a subject who has been treated with imatinib (no construction necessary)</p> <p><u>Intrinsic Evidence</u></p> <p>'124 Patent:</p> <ul style="list-style-type: none"> • col. 1, l. 67 – col. 2, l. 4 • col. 4, ll. 51-54 • col. 6, ll. 25-27 • claims 1, 2, 4, 26-27, 29-31 <p>'124 Patent File History:</p> <ul style="list-style-type: none"> • originally filed specification and claims 	<p>a subject that is resistant and/or substantially less responsive to the effects of imatinib compared to that subject’s initial responsiveness to imatinib</p> <p><u>Intrinsic Evidence</u></p> <p>'124 Patent:</p> <ul style="list-style-type: none"> • Title • Abstract • col. 1, l. 64 – col. 2, l. 4 • col. 2, ll. 12-46 • col. 3, ll. 3-14 • col. 3, ll. 42-44 • col. 4, ll. 36-50 • col. 6, ll. 41-55 • col. 7, ll. 1-4 • col. 18, ll. 36-41

Proposed Constructions for U.S. Patent No. 9,458,107 ('107 patent):

Claim Term/Phrase	Proposed Construction Agreed to By All Parties
Claims 3, 4, 12, 13, 14, 18, 20 “A composition”	A pharmaceutical composition
Claims 1-4 “in an amount equal to or less than 0.05%”	in an amount from 0.0001% to a maximum of 0.05%