

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NOVO NORDISK INC. and NOVO)	
NORDISK A/S,)	
)	
Plaintiffs,)	
)	
v.)	C.A. No. 17-227 (VAC) (MPT)
)	
TEVA PHARMACEUTICALS USA, INC.,)	
)	
Defendant.)	

JOINT CLAIM CONSTRUCTION CHART

Pursuant to paragraph 15 of the Scheduling Order (D.I. 17), as amended most recently on January 26, 2018 (D.I. 38), the parties respectfully submit the attached Joint Claim Construction Chart.

Copies of U.S. Patent Nos. 8,114,833 (the “’833 Patent”), 9,265,893 (the “’893 Patent”), and RE41,956 (the “RE ’956 Patent”) are attached hereto as Exhibits A, B, and C, respectively. Portions of the prosecution history of the ’893 Patent cited in the Joint Claim Chart are attached hereto as Exhibit D. Portions of the prosecution history of the RE ’956 Patent cited in the Joint Claim Chart are attached hereto as Exhibit E.

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Novo Nordisk Inc. et al. v. Teva Pharmaceuticals USA, Inc.
Civil Action No. 17-227-VAC-MPT
Joint Claim Construction Chart

CLAIM TERMS AT ISSUE IN U.S. PATENT NO. 8,114,833					
Term for Construction	Claims	Plaintiffs' Proposed Construction	Plaintiffs' Intrinsic Evidence ¹	Defendant's Proposed Construction	Defendant's Intrinsic Evidence
“replacing the isotonicity agent previously utilized in said formulation with propylene glycol”	23, 26, 29	“utilizing propylene glycol in lieu of another isotonicity agent evaluated for use in a GLP-1 agonist pharmaceutical	'833 Patent Specification: - col.1, ll.30-49 - col.1, ll.53-57 - col.2, ll.35-67 - col.3, ll.39-48 - col.13, ll.30-35	Plain and Ordinary meaning, but if to be construed: Having a first formulation that utilized an isotonicity agent	'833 Patent Specification - col.1, ll.30-49 - col.1, ll.53-57 - col.2, ll.35-67 - col.3, ll.39-48 - col.13, ll.30-35

¹ The parties reserve the right to rely on any intrinsic evidence on which the other relies, and any intrinsic evidence contradicting or otherwise rebutting any evidence on which the citing party relies. The parties reserve the right to rely on the prosecution history of related applications to the '833 Patent. The parties also reserve the right to rely on extrinsic evidence and/or expert declaration or testimony in support of their proposed constructions or to rebut the other party's arguments and/or any expert declaration or testimony submitted by the other party. For all asserted patents, Defendant's position is that notwithstanding anything contained herein, certain claims and claims term remain indefinite under either party's construction. Unless the Court directs otherwise, Defendant agrees to postpone consideration of this issue until expert discovery. Plaintiffs' position is that any claims or claim terms that Defendant may argue are indefinite should have been identified in Defendant's invalidity or non-infringement contentions, both of which were served prior to filing of this claim chart with the Court, or in the course of the parties' negotiations regarding claim terms needing construction.

“the propylene glycol-containing formulation . . . [and] the formulation containing the previously utilized isotonicity agent”	24, 27, 30	formulation”	<ul style="list-style-type: none"> - col.13, ll.43-47 - col.14, ll.16-40 - col.14, l.56 – col.15, l.13 - col.15, ll.28-48 - col.15, ll.57-60 - col.15, l.61 – col.22, l.21 - Figures 1-7 	other than propylene glycol and having a second formulation wherein the isotonicity agent used in the first formulation is substituted or replaced with propylene glycol.	<ul style="list-style-type: none"> - col.13, ll.43-47 - col.14, ll.16-40 - col.14, l.56 – col.15, l.13 - col.15, ll.28-48 - col.15, ll.57-60 - col.15, l.61 – col.22, l.21 - Figures 1-7
“isotonicity agent to be replaced by propylene glycol”	25, 28, 31				
CLAIM TERMS AGREED UPON					
Term for Construction	Claims		Parties’ Proposed Construction		
“about”	1, 5, 6, 7, 16, 20, 21, 22		When used in connection with pH, “+ or – 0.1 pH units from [the stated number]”		

CLAIM TERMS AT ISSUE IN U.S. PATENT NO. 9,265,893					
Term for Construction	Claims	Plaintiffs' Proposed Construction	Plaintiffs' Intrinsic Evidence ²	Defendant's Proposed Construction	Defendant's Intrinsic Evidence
"driving part"	1, 2, 5	plain meaning, which is "a part that transfers force from the push button"	'893 Patent Specification: <ul style="list-style-type: none"> - col.1, ll.24-34 - col.1, ll.46-50 - col.2, ll.50-54 - col.3, ll.37-45 - col.3, ll.46-51 File History of the '893 Patent: <ul style="list-style-type: none"> - Jan. 16, 2014 Reply Brief at 3 (NNVICT00008974) - July 25, 2013 Appeal Brief at 16 (NNVICT00008898) 	"component with a protrusion that inserts into the push button that is used to transfer axial force from the push button to the injector"	'893 Specification: <ul style="list-style-type: none"> - col.1, ll.46-50 - col.2, ll.27-29 - col.2, ll.50-54 - col.3, ll.37-45 - col.3, ll.46-51 - col.3, ll.65-66 - col.4, ll.6-7 - Figure 1 File History of the '893 Patent: <ul style="list-style-type: none"> - July 25, 2013 Appeal Brief at 11 (NNVICT00008893) - July 25, 2013 Appeal Brief at 12 (NNVICT00008894)

² The parties reserve the right to rely on any intrinsic evidence on which the other relies, and any intrinsic evidence contradicting or otherwise rebutting any evidence on which the citing party relies. The parties reserve the right to rely on the prosecution history of related applications to the '893 Patent. The parties also reserve the right to rely on extrinsic evidence and/or expert declaration or testimony in support of their proposed constructions or to rebut the other party's arguments and/or any expert declaration or testimony submitted by the other party. For all asserted patents, Defendant's position is that notwithstanding anything contained herein, certain claims and claims term remain indefinite under either party's construction. Unless the Court directs otherwise, Defendant agrees to postpone consideration of this issue until expert discovery. Plaintiffs' position is that any claims or claim terms that Defendant may argue are indefinite should have been identified in Defendant's invalidity or non-infringement contentions, both of which were served prior to filing of this claim chart with the Court, or in the course of the parties' negotiations regarding claim terms needing construction.

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