

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

UNIVERSITY OF MASSACHUSETTS
and CARMEL LABORATORIES, LLC,

Plaintiffs,

v.

L'ORÉAL USA, INC.,

Defendant.

Case No. 17-cv-868-CFC-SRF

JOINT CLAIM CONSTRUCTION CHART

Pursuant to Paragraph 15 of the Court's Scheduling Order (D.I. 46) (as amended), Plaintiffs University of Massachusetts and Carmel Laboratories, LLC (together "Plaintiffs") and Defendant L'Oréal USA, Inc. ("Defendant") (collectively, the "Parties") jointly provide this Joint Claim Construction Statement identifying for the Court the term/phrase of the claims in issue the Parties have identified for construction, and setting forth each Party's proposed construction with citations only to intrinsic evidence.

The Parties attach a separate text-searchable PDF of each of the patents in suit. Below is a key for such materials:

Exhibit	Document Description
1.	U.S. Patent No. 6,423,327 B1 (Dobson, et al.), dated July 23, 2002 ¹
2.	U.S. Patent No. 6,645,513 B2 (Dobson, et. al.), dated November 11, 2003

I. Disputed Claim Constructions

The following term/phrase is in dispute²:

“wherein the adenosine concentration applied to the dermal cells is”: ’327 Patent, claim 1; ’513 Patent, claim 1

Plaintiffs’ Construction:	Defendant’s Construction:
Plain and ordinary meaning. Alternatively, if construed, “wherein the adenosine concentration that reaches the dermal cell layer is”	“wherein the adenosine concentration applied to the skin containing the dermal cells is”
Intrinsic Evidence: ’327 Patent at 1:19-24; 1:44-67; 2:1-8; 2:38-40; 2:49-60; 2:67-3:20; 5:10-43; 6:5-10; 6:15-9:50; Figs 1A, 1B, 2A, 2B, Tables 1, 2, 3, 4; Claim 1. ’513 Patent at Claim 1. ’327 Patent File History at UMASS_00000442 at 553-55; 559. Plaintiffs reserve the right to rely on any	Intrinsic Evidence: The claims of the ’327 patent, including, for example, claims 1, 3, 5-7, and 9 The claims of the ’513 patent, including, for example, claims 1, 3, 5-7, and 9 The written description of the ’327 patent, including, for example, Abstract, 1:20-25, 1:35-2:17, 2:30-34,

¹ Because the two asserted patents share a nearly identical specification, for the Court’s convenience, the Parties cite the specification of the ’327 Patent.

² By providing the below proposed construction, L’Oréal USA does not waive any claims or defenses of patent invalidity, including under 35 U.S.C. § 112. (*See, e.g.*, Defendant’s Initial Invalidity Contentions.) Further, L’Oréal USA reserves the right to assert that the language of the claims and their meaning still fail to inform, with reasonable certainty, those skilled in the art about the scope of the claimed invention. (*See, e.g., id.*)

<p>intrinsic evidence cited by Defendant.</p>	<p>2:38-40, 2:57-60, 4:51-5:39, 6:5-13, and 6:15-9:51</p> <p>The prosecution history of U.S. Pat. Appl. No. 09/179,006 (“006 application”), including, for example, Oct. 26, 1998 Original Application, Dec. 22, 1999 Office Action, Mar. 9, 2000 Response to Dec. 22, 1999 Office Action, and May 30, 2000 Final Rejection</p> <p>The prosecution history of U.S. Pat. Appl. No. 09/672,348 (“348 application”), including, for example, Sept. 28, 2000 Original Application and Preliminary Amendment, Apr. 20, 2001 Office Action, July 20, 2001 Response to Apr. 20, 2001 Office Action, Oct. 10, 2001 Office Action, Feb. 11, 2002 Response to Oct. 10, 2001 Office Action, Feb. 13, 2002 Submission of Signed Declaration, Mar. 21, 2002 Notice of Allowance, and May 17, 2002 Comments on Statement of Reasons for Allowance</p> <p>The prosecution history of U.S. Pat. Appl. No. 10/184,810 (“810 application”), including, for example, June 28, 2002 Original Application and Preliminary Amendment, Oct. 28, 2002 Office Action, January 9, 2003 Response to Oct. 28, 2002 Office Action, Apr. 22, 2003 Notice of Allowance, and July 7, 2003 Comments on Statement of Reasons for Allowance</p> <p>The prosecution history of U.S. Pat.</p>
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	<p>Appl. No. 10/680,370, including, for example, Oct. 7, 2003 Original Application and Preliminary Amendment, Dec. 8, 2004 Office Action, June 8, 2005 Response to Dec. 8, 2004 Office Action, and Sept. 23, 2005 Office Action</p> <p>The prosecution history of U.S. Pat. Appl. No. 11/473,512, including, for example, June 23, 2006 Original Application and Preliminary Amendment</p> <p>The prosecution history of U.S. Pat. Appl. No. 11/804,904, including, for example, May 21, 2007 Original Application and Preliminary Amendment, July 22, 2008 Office Action, Dec. 22, 2008 Response to July 22, 2008 Office Action, and March 3, 2009 Office Action</p> <p>The prior art cited during prosecution of the above-referenced applications, including, for example, German Patent Application DE 195 45 107 A1 and Hartzshtark et al., “The Use of Indentometry to Study the Effect of Agents Known to Increase Skin c-AMP Content,” <i>Experientia</i> 41 (1985): 378, Birkhauser Verlag, CH 4010 Basel/Switzerland</p> <p>Any evidence cited by Plaintiffs</p>
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DATED: December 27, 2019

Respectfully submitted,

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