

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Aurobindo Pharma Limited and
Aurobindo Pharma USA Inc.,

Defendants.

Civil Action No. 14-CV-2497 (PAC)

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Amneal Pharmaceuticals LLC,

Defendant.

Civil Action No. 14-CV-2758 (PAC)

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Mylan Inc. and Mylan Pharmaceuticals Inc.,

Defendants.

Civil Action No. 14-CV-2647 (PAC)

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Orient Pharma Co., Ltd.,

Defendant.

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Zydus Pharmaceuticals (USA) Inc., and Cadila
Healthcare Ltd. (dba Zydus Cadila),

Defendants.

Kowa Company, Ltd.,
Kowa Pharmaceuticals America, Inc., and
Nissan Chemical Industries, Ltd.,

Plaintiffs,

v.

Sawai USA, Inc., and
Sawai Pharmaceutical Co., Ltd.,

Defendants.

Civil Action No. 14-CV-2759 (PAC)

Civil Action No. 14-CV-2760 (PAC)

Civil Action No. 14-CV-5575 (PAC)

DEFENDANTS' JOINT OPENING CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
PRELIMINARY STATEMENT	1
BACKGROUND	4
I. The ‘336 Patent	5
II. The ‘477 Patent	6
ARGUMENT	10
I. Claim Construction Legal Standards	10
II. The Disputed Claim Term of the ‘336 Patent	11
A. Person of Ordinary Skill in the Art	13
B. Stereochemistry – Generally	14
C. Stereochemistry of the Compound Disclosed in Claim 1	14
D. The ‘336 Patent Specification Supports Defendants’ Proposed Construction	17
E. The Prosecution History Supports Defendants’ Proposed Construction	18
F. Plaintiffs’ Proposed Construction Is Ambiguous and Not Supported by the Evidence or the Plain Meaning	19
III. The Disputed Claim Term of the ‘477 Patent	19
CONCLUSION	25

TABLE OF AUTHORITIES

Federal Cases

<i>Aventis Pharma Deutschland GmbH v. Lupin, Ltd.</i> , 499 F.3d 1293 (Fed. Cir. 2007).....	14, 16
<i>Hockerson-Halberstadt, Inc. v. Converse Inc.</i> , 183 F.3d 1369 (Fed. Cir. 1999).....	23
<i>In re GPAC Inc.</i> , 57 F.3d 1573 (Fed. Cir. 1995).....	13
<i>Infosint, S.A. v. H. Lundbeck A/S</i> , 603 F. Supp. 2d 748 (S.D.N.Y. 2009).....	16
<i>K-2 Corp. v. Salomon S.A.</i> , 191 F.3d 1356 (Fed. Cir. 1999).....	10
<i>KSR Int'l Co. v. Teleflex Inc.</i> , 550 U.S. 398 (2007).....	13
<i>Kyocera Wireless Corp. v. Int'l Trade Comm'n</i> , 545 F.3d 1340 (Fed. Cir. 2008).....	23
<i>Linear Tech. Corp. v. Int'l Trade Comm'n</i> , 566 F.3d 1049 (Fed. Cir. 2009).....	21
<i>NeoMagic Corp. v. Trident Microsystems, Inc.</i> , 287 F.3d 1062 (Fed. Cir. 2002).....	21
<i>O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.</i> , 521 F.3d 1351 (Fed. Cir. 2008).....	12
<i>Pfizer, Inc. v. Ranbaxy Labs. Ltd.</i> , 457 F.3d 1284 (Fed. Cir. 2006).....	18
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005).....	passim
<i>Pitney Bowes, Inc. v. Hewlett-Packard Co.</i> , 182 F.3d 1298 (Fed. Cir. 1999).....	11
<i>Serrano v. Telular Corp.</i> , 111 F.3d 1578 (Fed. Cir. 1997).....	21
<i>TQP Dev., LLC v. Ticketmaster Entm't, Inc.</i> , No. 2:09-CV-00279, 2011 WL 4458430 (E.D. Tex. Sept. 23, 2011).....	12

Vitronics Corp. v. Conceptronic, Inc.,
90 F.3d 1576 (Fed. Cir. 1996)..... 10, 17, 20

...

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.