

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

Kowa Company, Ltd. et al.,

Plaintiffs,

v.

Aurobindo Pharma Limited et al.,

Defendants.

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

Kowa Company, Ltd. et al.,

Plaintiffs,

v.

Amneal Pharmaceuticals LLC,

Defendant.

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

Kowa Company, Ltd. et al.,

Plaintiffs,

v.

Mylan Inc. et al.,

Defendants.

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

Kowa Company, Ltd. et al.,

Plaintiffs,

v.

Orient Pharma Co., Ltd.,

Defendant.

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

Kowa Company, Ltd. et al.,

Plaintiffs,

v.

Zydus Pharmaceuticals (USA) Inc. et al.,

Defendants.

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

Kowa Company, Ltd. et al.,

Plaintiffs,

v.

Sawai USA, Inc. et al.,

Defendants.

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

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PLAINTIFFS' OPENING CLAIM CONSTRUCTION BRIEF¹

Pursuant to the Civil Case Management Plan and Scheduling Order entered by the Court on October 17, 2014 (“October 17, 2014 Order”), Plaintiffs Kowa Company, Ltd., Kowa Pharmaceuticals America, Inc. (“Kowa”) and Nissan Chemical Industries, Ltd. (“Nissan”) (collectively, “Plaintiffs”) hereby submit their Opening Claim Construction Brief.

I. SUMMARY

In accordance with the Court’s October 17, 2014 Order, the parties filed their Joint Disputed Claim Terms Chart on April 10, 2015. As noted in that submission, Plaintiffs do not believe that Defendants have identified any claim terms as to which claim construction is necessary or appropriate at this time. In the event that the Court believes that claim construction as to those terms is necessary and appropriate, Plaintiffs have proposed claim constructions that are more appropriate for the terms that Defendants identified.

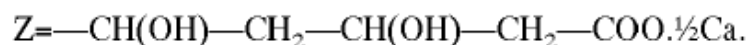
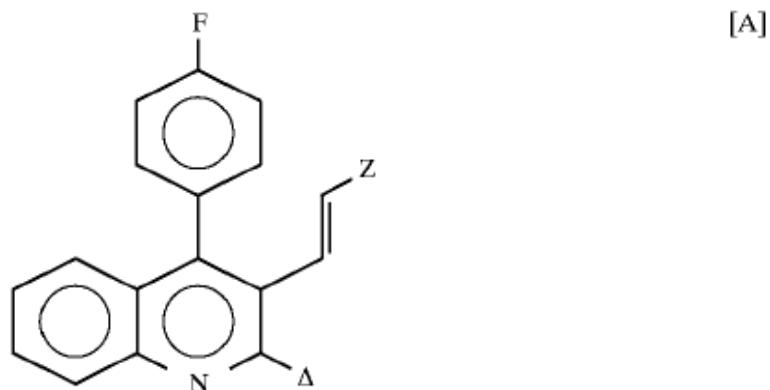
The parties’ claim construction submissions are directed to two claims, one claim from U.S. Patent No. 5,856,336 (“the ‘336 Patent”) (Exhibit 1), and one claim from U.S. Patent No. 6,465,477 (“the ‘477 Patent”) (Exhibit 2). The parties agree that no construction is necessary with respect to the terms of U.S. Patent No. 8,557,993 (“the ‘993 Patent”).

Plaintiffs believe that there is not much in dispute with regard to the proposed claim constructions. Defendants, however, have adopted a rather contorted approach with regard to their attempts at defining the two terms they have identified for construction. Simply put, Defendants’ attempts to define these terms are neither accurate nor consistent with the language of the claims.

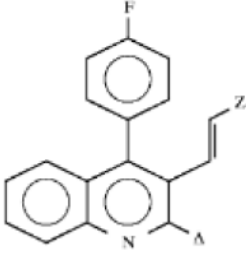
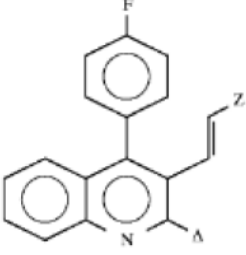
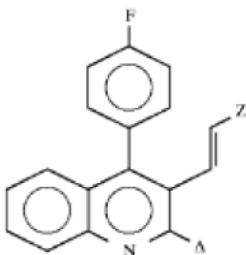
¹ The Apotex case caption is not included among the captions for this brief because only U.S. Patent No. 8,557,993 is at issue in that case, and there were no claim construction issues raised with respect to that patent.

Claim 1 of the '336 Patent provides as follows:

1. A compound of the formula,



The parties' positions with regard to claim construction for this claim are as follows:

Claim Term [applicable claims]	Plaintiffs' Position	Defendants' Proposed Construction
<p>“A compound of the formula,</p>  <p>Z=—CH(OH)—CH₂—CH(OH)—CH₂—COO.¹/₂Ca.”</p> <p>[claim 1]</p>	<p>No construction necessary, but to the extent the Court finds any construction necessary:</p> <p>“A compound having the following structure:</p>  <p>Z=—CH(OH)—CH₂—CH(OH)—CH₂—COO.¹/₂Ca.</p>	<p>“A genus including each optical isomer of the formula</p>  <p>Z=—CH(OH)—CH₂—CH(OH)—CH₂—COO.¹/₂Ca. and all mixtures thereof.”</p>

Defendants' proposed construction improperly changes “compound” to “genus” and inserts language relating to optical isomers and mixtures, rather than keeping consistent with

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