

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

MALLINCKRODT HOSPITAL PRODUCTS IP)
LTD., INO THERAPEUTICS LLC and IKARIA,)
INC.)

C. A. No.: 15-170-GMS

Plaintiffs,)

v.)

PRAXAIR DISTRIBUTION, INC. and)
PRAXAIR, INC.,)

Defendants.)

PRAXAIR'S OPENING CLAIM CONSTRUCTION BRIEF
REGARDING U.S. PATENT NO. 8,846,112

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Mallinckrodt Hosp. Prods. IP Ltd.
Exhibit 2034
Praxair Distrib., Inc. et al., v. Mallinckrodt Hosp. Prods. IP Ltd.
Case IPR2016-00779

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND SUMMARY OF THE ARGUMENT	1
II. OVERVIEW OF THE '112 PATENT	2
III. LEGAL STANDARD.....	3
IV. ARGUMENT	5
1. “pharmaceutically acceptable”	5
a. The Preamble Is Non-Limiting	6
b. The Term “Pharmaceutically Acceptable” Should Carry Its Plain And Ordinary Meaning	7
c. Plaintiff’s Proposed Construction Improperly Imports Limitations Into The Claims And Is Ambiguous	10
V. CONCLUSION.....	11

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Allen Eng'g Corp. v. Bartell Indus.</i> , 299 F.3d 1336 (Fed. Cir. 2002).....	6
<i>ALM Holding Co. v. Akzo Nobel Surface Chem. LLC</i> , C.A. No. 13-1069 (GMS) (D. Del. Nov. 4, 2014)	8, 10
<i>Am. Bioscience, Inc. v. Baker Norton Pharm., Inc.</i> , No. CV 00-09589MRP(AJWX), 2001 WL 36170997 (C.D. Cal. Aug. 31, 2001)	7
<i>Bell Commc'ns Research, Inc. v. Vitalink Commc'ns Corp.</i> , 55 F.3d 615 (Fed. Cir. 1995).....	6
<i>Catalina Mktg. Int'l, Inc. v. Coolsavings.com, Inc.</i> , 289 F.3d 801 (Fed. Cir. 2002).....	6, 7
<i>Chef Am., Inc. v. Lamb-Weston, Inc.</i> , 358 F.3d 1371 (Fed. Cir. 2004).....	10
<i>Evolutionary Intelligence, LLC v. Sprint Nextel Corp.</i> , No. C-13-03587, 2014 WL 4802426 (N.D. Cal. Sept. 26, 2014)	5
<i>Gart v. Logitech</i> , 254 F.3d 1334 (Fed. Cir. 2001).....	3
<i>Intirtool, Ltd. v. Texar Corp.</i> , 369 F.3d 1289 (Fed. Cir. 2004).....	6
<i>LG Philips LCD Co. v. Tatung Co.</i> , 434 F. Supp. 2d 292 (D. Del. 2006).....	4
<i>Markman v. Westview Instruments, Inc.</i> , 52 F.3d 967 (Fed. Cir. 1995).....	3, 5
<i>Merck Sharp & Dohme Corp. v. Xellia Pharm. ApS</i> , No. CV 14-199-RGA, 2015 WL 82386 (D. Del. Jan. 6, 2015)	10
<i>Nystrom v. TREX Co., Inc.</i> , 424 F.3d 1136 (Fed. Cir. 2005).....	4

<i>O2 Micro Int'l Ltd. v. Beyond Innovation Tech. Co.</i> , 521 F.3d 1351 (Fed. Cir. 2008).....	11
<i>Omega Eng'g, Inc. v. Raytek Corp.</i> , 334 F.3d 1314 (Fed. Cir. 2003).....	5
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005) (en banc).....	3, 4, 5, 11
<i>PSC Computer Products, Inc. v. Foxconn Int'l, Inc.</i> , 355 F.3d 1353 (Fed. Cir. 2004).....	11
<i>Purdue Pharma L.P. v. Endo Pharms. Inc.</i> , 438 F.3d 1123 (Fed. Cir. 2006).....	5
<i>S. Snow Mfg. Co. v. Snowizard Holdings, Inc.</i> , 567 FApp'x 945 (Fed. Cir. 2014)	6
<i>Spectrum Pharm., Inc. v. Sandoz Inc.</i> , No. 2:12-CV-000111-GMN, 2013 WL 6865692 (D. Nev. Dec. 31, 2013).....	10
<i>Teleflex, Inc. v. Ficosa N Am. Corp.</i> , 299 F.3d 1313 (Fed. Cir. 2002).....	4, 8
<i>Teva Pharm. USA, Inc. v. Sandoz, Inc.</i> , 135 S. Ct. 831 (2015).....	3
<i>Vitronics Corp. v. Conceptoronic, Inc.</i> , 90 F.3d 1576 (Fed. Cir. 1996).....	4
OTHER AUTHORITIES	
Oxford English Dictionary.....	8

I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Although this case involves ten patents, the parties only dispute the meaning of one term: “pharmaceutically acceptable,” found in the preamble of claims 1-11 of U.S. Pat. No. 8,846,112 (“the ’112 patent”). While Mallinckrodt Hospital Products IP Ltd., INO Therapeutics LLC and Ikaria Inc. (collectively “Plaintiffs”) request construction of this straightforward phrase, Defendants Praxair Distribution, Inc. and Praxair, Inc. (collectively, “Defendants”) submit that no construction is necessary.

Not surprisingly, Plaintiff’s request for construction of a clear term like “pharmaceutically acceptable” is motivated by a desire to undercut an unfavorable ruling from the Patent Trial and Appeal Board (the “Board”).¹ In instituting an *Inter Partes* Review proceeding, the Board found that several limitations of the claims of the ’112 patent contain printed matter, without a functional relationship to other claim elements. *See* Ex. A, Institution of *Inter Partes* Review, Paper No. 12 at 9 (July 29, 2015). Therefore, the Board did not give those limitations any patentable weight. *Id.* Plaintiffs now seek a ruling that 1) finds the preamble of claims 1-11 to be limiting; and 2) construes the term “pharmaceutically acceptable,” found in the preamble, to have an unnecessarily narrow meaning. As is apparent from Plaintiff’s briefing in front of the Board, Plaintiff seeks such a ruling in order to bolster its argument that the printed matter claim limitations are *functionally related* to the “pharmaceutically acceptable” preamble such that these limitations should be given patentable weight. *See* Ex. B, Patent Owner’s Response to Petition for *Inter Partes* Review, Paper No. 22 at 23-33 (Nov. 5, 2015).

¹ The ’112 patent is currently being reviewed in an *Inter Partes* Review proceeding. *See Praxair Distribution, Inc. v. INO Therapeutics LLC*, IPR2015-00529.

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