IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RECKITT BENCKISER PHARMACEUTICALS, INC., RB PHARMACEUTICALS LIMITED, and MONOSOL RX, LLC Plaintiffs, v. WATSON LABORATORIES, INC., Defendants.	Civil Action No. 13-1674-RGA Consolidated
RECKITT BENCKISER PHARMACEUTICALS, INC., RB PHARMACEUTICALS LIMITED, and MONOSOL RX, LLC Plaintiffs, v. PAR PHARMACEUTICAL, INC., and INTELGENX TECHNOLOGIES CORP. Defendants.	Civil Action No. 14-422-RGA

MEMORANDUM OPINION

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December 12, 2014

ANDREWS, U.S. DISTRICT JUDGE:

Before this Court is the issue of claim construction of disputed terms found in three U.S. Patents, 8,017,150 ("the '150 patent"), 8,475,832 ("the '832 patent"), and 8,603,514 ("the '514 patent").

I. BACKGROUND

Plaintiffs assert that Defendants' ANDAs infringe the '150 patent, the '832 patent, and the '514 patent. (D.I. 106). The Court has considered the parties' claim construction briefing (D.I. 106, 107, 108) and held a *Markman* hearing on December 3, 2014.

II. LEGAL STANDARD

"It is a bedrock principle of patent law that the claims of a patent define the invention to which the patentee is entitled the right to exclude." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (internal quotation marks omitted). "'[T]here is no magic formula or catechism for conducting claim construction.' Instead, the court is free to attach the appropriate weight to appropriate sources 'in light of the statutes and policies that inform patent law.'" *SoftView LLC v. Apple Inc.*, 2013 WL 4758195, at *1 (D. Del. Sept. 4, 2013) (quoting *Phillips*, 415 F.3d at 1324). When construing patent claims, a matter of law, a court considers the literal language of the claim, the patent specification, and the prosecution history. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 977–80 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). Of these sources, "the specification is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term." *Phillips*, 415 F.3d at 1315 (internal quotations and citations omitted).

Furthermore, "the words of a claim are generally given their ordinary and customary meaning . . . [which is] the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention, i.e., as of the effective filing date of the patent application." *Phillips*, 415 F.3d at 1312–13 (internal citations and quotation marks omitted). "[T]he ordinary meaning of a claim term is its meaning to [an] ordinary artisan after reading the entire patent." *Id.* at 1321 (internal quotation marks omitted). "In some cases, the ordinary meaning of claim language as understood by a person of skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words." *Id.* at 1314 (internal citations omitted).

A court may consider extrinsic evidence, which "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises," in order to assist the court in understanding the underlying technology, the meaning of terms to one skilled in the art and how the invention works. *Id.* at 1317–19 (internal quotation marks and citations omitted). However, extrinsic evidence is less reliable and less useful in claim construction than the patent and its prosecution history. *Id.*

Moreover, "[a] claim construction is persuasive, not because it follows a certain rule, but because it defines terms in the context of the whole patent." *Renishaw PLC v. Marposs Societa' per Azioni*, 158 F.3d 1243, 1250 (Fed. Cir. 1998). It follows that "a claim interpretation that would exclude the inventor's device is rarely the correct interpretation." *Osram GmbH v. Int'l Trade Comm'n*, 505 F.3d 1351, 1358 (Fed. Cir. 2007) (internal quotation marks and citation omitted).

III. CONSTRUCTION OF DISPUTED TERMS

A. The '150 Patent

Claim 1 of the '150 patent is representative:

> A mucosally-adhesive water-soluble film product comprising:
>
> an analgesic opiate pharmaceutical active; and
>
> at least one water-soluble polymer component consisting of polyethylene oxide in combination with a hydrophilic cellulosic polymer;
>
> wherein:
>
> the water-soluble polymer component comprises greater than 75% polyethylene oxide and up to 25% hydrophilic cellulosic polymer;
>
> the polyethylene oxide comprises one or more low molecular weight polyethylene oxides and one or more higher molecular weight polyethylene oxides, the molecular weight of the low molecular weight polyethylene oxide being in the range 100,000 to 300,000 and the molecular weight of the higher molecular weight polyethylene oxide being in the range 600,000 to 900,000; and
>
> the polyethylene oxide of low molecular weight comprises about 60% or more in the polymer component.

('150 patent, claim 1).

1. "the polyethylene oxide comprises one or more low molecular weight polyethylene oxides and one or more higher molecular weight polyethylene oxides, the molecular weight of the low molecular weight polyethylene oxide being in the range of 100,000 to 300,000 and the molecular weight of the higher molecular weight polyethylene oxide being in the range of 600,000 to 900,000; and the polyethylene oxide of low molecular weight comprises about 60% or more in the polymer component" (claims 1, 10)

a. *Plaintiffs' proposed construction*: The plain and ordinary meaning is a polyethylene oxide component comprising polyethylene oxide within the molecular weight range

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