

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

SHIRE LLC and
SHIRE US INC.,

Plaintiffs,

v.

ABHAI, LLC,

Defendant.

Civil Action No. 1:15-cv-13909

PLAINTIFFS' REPLY CLAIM CONSTRUCTION BRIEF

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I. INTRODUCTION

Abhai's argument that this Court is bound by collateral estoppel to accept the constructions adopted by the District of New Jersey in the ongoing *Amerigen* litigation is wrong. The *Amerigen* case is still pending, and claim construction may well be refined before final judgment is entered. Moreover, the disputed terms have been construed multiple times in prior Hatch-Waxman litigations relating to Adderall XR[®], and each Court has applied its own, different, set of claim constructions. See *Shire, LLC v. Neos Therapeutics, Inc.*, Case No. 3:13-cv-01452-N, D.I. 69 (N.D. Tex. Mar. 20, 2014); *Shire LLC v. Sandoz*, Case No. 1:07-cv-00197-PAB-CAS, D.I. 169 (D. Col. Sept. 24, 2008); *Shire Labs. Inc. v. Impax Labs., Inc.*, Case No. 03-cv-1164 GMS, D.I. 119, 2005 WL 319983 (D. Del. Feb. 9, 2005) (the "*Impax* case" or "*Impax*").¹ At the end of the day, Abhai is merely cherry-picking the prior constructions it prefers. But no prior court's construction can override the claim language, specification, and prosecution history of the '148 and '096 Patents.

Apart from its flawed collateral estoppel arguments, Abhai's proposed constructions fail on the merits. The Court should reject Abhai's attempts to shape the claims to suit its non-infringement positions.

¹ These previous constructions are in Appendices A and B to Shire's Preliminary Claim Construction Brief, D.I. 60 ("Op. Br."). The District of Maryland, in *Shire LLC v. Colony Pharm. et al.*, Case No. 1:07-cv-00718-CCB, also construed certain claims in its memorandum order on Colony's motion to summary judgment of noninfringement. See D.I. 109 (Feb. 1, 2008).

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