

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

FOREST LABORATORIES, LLC, FOREST)
LABORATORIES HOLDINGS, LTD.,)
MERCK KGAA and MERCK PATENT)
GESELLSCHAFT MIT BESCHRÄNKTER)
HAFTUNG,)
) C.A. No. 15-272-GMS
) (consolidated)
)
Plaintiffs,)
)
v.)
)
)
ACCORD HEALTHCARE, INC.,)
)
)
Defendant.)

DEFENDANTS' OPENING CLAIM CONSTRUCTION BRIEF

John C. Phillips, Jr. (#110)
David A. Bilson (#4986)
PHILLIPS, GOLDMAN MCLAUGHLIN
& HALL, P.A.
jcp@pgmhlaw.com
dab@pgmhlaw.com

*Attorneys for Defendant Accord Healthcare,
Inc.*

Neal C. Belgam (#2721)
Eve H. Ormerod (#5369)
SMITH, KATZENSTEIN, & JENKINS LLP
nbelgam@skjlaw.com
eormerod@skjlaw.com

*Attorneys for Defendants Alembic Global
Holdings SA, Alembic Pharmaceuticals, Inc.
and Alembic Pharmaceuticals Ltd.*

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1227150 / 42390 (cons.)

Kenneth Laurence Dorsney (#3726)
MORRIS JAMES LLP
kdorsney@morrisjames.com

*Attorneys for Defendants Apotex Corp. and
Apotex Inc.*

R Touhey Myer (#5939)
CAESAR RIVISE, PC
tmyer@crbcp.com

Attorneys for Defendant InvaGen

David E. Moore (#3983)
Bindu A. Palapura (#5370)
Stephanie E. O'Byrne (#4446)
POTTER ANDERSON & CORROON LLP
dmoore@potteranderson.com
bpalapura@potteranderson.com
sobyrne@potteranderson.com

*Attorneys for Defendant Teva Pharmaceuticals
USA, Inc.*

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I. INTRODUCTION

Defendants¹ in this Hatch-Waxman patent case seek approval from the U.S. Food and Drug Administration (“FDA”) to market generic versions of the drug Viibryd®. Forest² alleges that Defendants infringe four Orange Book-listed patents that relate to crystalline forms of the chemical vilazodone hydrochloride (“HCl”), and their use in treating depression and other disorders. Vilazodone HCl is an old compound, well known in the prior art and well known for the treatment of depression and other disorders. The patents-in-suit are U.S. Patent Nos. 7,834,020 (the “’020 patent”), 8,193,195 (the “’195 patent”), 8,236,804 (the “’804 patent”), and 8,673,921 (the “’921 patent”). While Forest maintains that nearly none of the terms in these patents’ claims require interpretation, the claims contain ambiguities that can be resolved only through review of the intrinsic evidence, including the patents’ specifications and prosecution histories before the U.S. Patent and Trademark Office (“PTO”).

II. LEGAL AUTHORITY

Claim language is given the meaning it would have to one of ordinary skill in the relevant art at the time the application was filed, in view of the patent specification. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc). “Each element contained in a patent claim is deemed material to defining the scope of the patented invention.” *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 29 (1997). “Like the specification, the prosecution history provides evidence of how the PTO and the inventor understood the patent” and “whether the inventor limited the invention in the course of prosecution, making the claim scope narrower

¹ The “Defendants” are Accord Healthcare, Inc., Alembic Global Holding SA, Alembic Pharmaceuticals Inc., Alembic Pharmaceuticals Ltd., Apotex Inc., Apotex Corp., Teva Pharmaceuticals USA, Inc., and InvaGen Pharmaceuticals Inc.

² The “Forest” plaintiffs are Forest Laboratories, LLC, Forest Laboratories Holdings, Ltd., Merck KGaA, and Merck Patent Gesellschaft mit beschränkter Haftung.

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