

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,)	
)	
Plaintiffs,)	
)	C.A. No. 15-272 (GMS)
v.)	CONSOLIDATED
)	
ACCORD HEALTHCARE INC.,)	
)	
Defendant.)	

STIPULATION AND ORDER

IT IS HEREBY STIPULATED by the parties, subject to the approval of the Court, that the following constructions shall be given to the claim terms in the listed patents below:

Claim Term	Patent/Claim	Stipulated Construction
“administer” “administered” “administering”	’020 patent, claim 2; ’195 patent, claims 1-2; ’804 patent, claim 1; ’921 patent, claims 10, 12-14	“deliver[ed/ing] into the body”
“corresponding to”	’804 patent, claims 1-3	“matching the values recited in the claims, including the error ranges stated therein”
“exhibits the following XRD data”	’020 patent, claim 1	“show all the following peaks and intensities, including an error range of +/- 0.1° for the two-theta values”
“A method of treating a patient suffering from a depressive disorder, an anxiety disorder, a bipolar	’020 patent, claim 2 ’921 patent, claims 10, 12-14	Entire preamble is limiting

Claim Term	Patent/Claim	Stipulated Construction
disorder, mania, dementia, a substance-related disorder, a sexual dysfunction, an eating disorder, obesity, fibromyalgia, a sleeping disorder, a psychiatric disorder, cerebral infarct, tension, side-effects in the treatment of hypertension, a cerebral disorder, chronic pain, acromegaly, hypogonadism, secondary amenorrhea, premenstrual syndrome, undesired puerperal lactation, or combinations thereof ...”		

IT IS FURTHER STIPULATED by the parties, pursuant to Exhibit A to the Joint Claim Construction Chart (D.I. 80), and subject to the approval of the Court, that the following constructions shall be given to the claim terms in the listed patents below:

Terms for which the parties agree on claim construction

Claim Term	Patent/Claim	Stipulated Construction
“treating”	‘020 patent, claim 2; ‘195 patent, claim 1 ‘804 patent, claim 1 ‘921 patent, claims 10, 12-14	“attempting to cause a therapeutic effect on”
“is treated in the patient”	‘195 patent, claims 1 ‘804 patent, claim 1	“an attempt is made to cause a therapeutic effect in the patient”

Terms for which the parties agree no construction is required and plain and ordinary meaning should be applied

Claim Term	Patent/Claim
“hydrate”	‘195 patent, claims 4-6; ‘921 patent, claims 1, 5
“anhydrate”	‘020 patent, claim 1 ‘195 patent, claims 3, 7 ‘804 patent, claim 1 ‘921 patent, claims 1-3, 5, 11
“solvate”	‘921 patent, claims 1, 4
“dihydrochloride”	‘921 patent, claim 1
“conventional” ¹	‘195 patent, claim 2 ‘804 patent, claim 1 ‘921 patent, claims 11, 15

Clauses the parties agree are limiting

Clause	Patent/Claim
“wherein said patient is suffering from a depressive disorder”	‘020 patent, claim 4
“wherein said patient is suffering from a major depressive disorder”	‘020 patent, claim 5
“wherein the major depressive disorder is treated in the patient”	‘804 patent, claim 1
“wherein a depressive disorder is treated in the patient”	‘195 patent, claim 1
“wherein the depressive disorder is major depressive disorder”	‘195 patent, claim 16

Clauses the parties agree are not limiting

Clause	Patent/Claim
“A method of treating a depressive disorder”	‘195 patent, claim 1
“A method of treating a major depressive disorder”	‘804 patent, claim 1

The parties agree that these stipulated constructions apply only to the patents-in-suit, and have no bearing on the construction of claim terms in any other patent. Further, the stipulated constructions cannot be used as evidence against any party in any other pending or future suit.

¹ Defendants reserve the right to contend that this term is indefinite under 35 U.S.C. § 112.

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