

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

_____))
BRACCO DIAGNOSTICS INC.,))
Plaintiff,))
v.))
MAIA PHARMACEUTICALS, INC.,))
Defendant.))
_____))
MAIA PHARMACEUTICALS, INC.))
Counterclaimant,))
v.))
BRACCO DIAGNOSTICS INC.,))
Counterclaim Defendant.))
_____))

Case No. 3:17-cv-13151-PGS-TJB

[REDACTED]

**PLAINTIFF BRACCO DIAGNOSTICS INC.'S
OPENING MARKMAN CLAIM CONSTRUCTION SUBMISSION
PURSUANT TO LOCAL PATENT RULE 4.5(a)**

Table Of Contents

I.	Introduction To The Claim Construction Issues Raised By The Parties.....	1
II.	The Sincalide Formulation Inventions Of The Patent-In-Suit	3
III.	Legal Standards For Claim Construction.....	7
III.	The Person Of Skill In The Art.....	9
IV.	“Buffer” Term Construction.....	10
A.	The Intrinsic Evidence Provides Bracco’s Construction Of “A Buffer” ...	11
B.	The Extrinsic Evidence Supports Bracco’s Construction Of “A Buffer”...15	
C.	Maia’s Claim Construction Position For “A Buffer” Is Not Supported By The Intrinsic Or Extrinsic Evidence	16
V.	“Surfactant/Solubilizer” And “Surfactant” Term Constructions.	17
A.	The Intrinsic Evidence Provides Bracco’s Construction Of “A Surfactant/Solubilizer” And “A Surfactant”	18
1.	“A Surfactant/Solubilizer” Intrinsic Evidence	18
2.	“A Surfactant” Intrinsic Evidence.....	22
B.	The Extrinsic Evidence Supports Bracco’s Construction Of “A Surfactant/Solubilizer” And “A Surfactant”.....	25
C.	Maia’s Claim Construction Position Is Not Supported By The Intrinsic Or Extrinsic Evidence.....	26
VI.	Excipients And Amino Acids In Particular Can Have Multiple Functions In Formulations.....	30
VII.	Conclusion.....	32

Table Of Authorities

<i>14i Ltd. Partnership v. Microsoft Corp.</i> , 598 F.3d 831 (2010).....	28
<i>Abbott Labs. v. Sandoz, Inc.</i> , 566 F.3d 1282 (Fed. Cir. 2009).....	28
<i>Accent Packaging, Inc. v. Leggett & Platt, Inc.</i> , 707 F.3d 1318 (2013).....	12
<i>Burke, Inc. v. Burno Indep. Living Aids, Inc.</i> , 183 F.3d 1334 (Fed. Cir. 1999).....	12, 19, 23
<i>Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.</i> , 807 F.2d 955 (Fed. Cir. 1986).....	9
<i>Environmental Designs, Ltd. v. Union Oil Co.</i> , 713 F.2d 693 (Fed. Cir. 1983).....	9
<i>Finisar Corp. v. DirectTV Group, Inc.</i> , 523 F.3d 1323 (Fed. Cir. 2008).....	8
<i>In re GPAC</i> , 57 F.3d 1573 (Fed. Cir. 1995).....	9
<i>Kaneka Corp. v. Xiamen Kingdomway Grp. Co.</i> , 790 F.3d 1298 (Fed. Cir. 2015).....	16, 30
<i>Markman v. Westview Instruments, Inc.</i> , 52 F.3d 967 (Fed. Cir. 1995).....	8
<i>National Steel Car, Ltd. v. Canadian Pacific Railway, LTD.</i> , 357 F.3d 1319 (Fed. Cir. 2004).....	12
<i>O2 Micro Intern. Ltd. V. Beyond Innovation Technology Co., Ltd.</i> , 521 F.3d 1351 (Fed. Cir. 2008).....	7
<i>Philips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005).....	7, 8, 9, 14, 16, 22, 25, 30
<i>Vitronics Corp. v. Conceptronic</i> , 90 F.3d 1575 (Fed. Cir. 1996).....	16, 30

Plaintiff Bracco Diagnostics Inc. (“Bracco”), pursuant to L.Pat.R. 4.5(a) and the Court’s December 11, 2018 Letter Order, provides its Opening Markman Claim Construction Submission.

I. Introduction To The Claim Construction Issues Raised By The Parties

This is a patent infringement action brought under the Hatch-Waxman Act concerning one patent-in-suit, United States Patent No. 6,803,046 (the “’046 Patent”). Exh. 1.¹ For the Markman claim construction phase of the action, the parties are requesting that the Court construe three terms of the asserted claims, namely, “a buffer,” “a surfactant/solubilizer,” and “a surfactant.” The parties agree that the latter term, “a surfactant,” describes a subset of the “a surfactant/solubilizer” claim term.

The defendant in this action, Maia Pharmaceuticals, Inc. (“Maia”), contends that its proposed product that is accused of infringement does not infringe each of these three claim terms. [REDACTED]

[REDACTED]

[REDACTED] Exh. 2. This is not a colorable position to maintain because amino acids are defined in the claims and specification of the ‘046 Patent as examples of, and even preferred embodiments of, each of these claim terms. Furthermore, in the relevant extrinsic evidence of scientific research papers and patents that applies to peptide drugs, amino acids are often the “go to” “buffers,” “surfactants” and “solubilizers” used by the relevant persons of skill in the art. [REDACTED]

[REDACTED]

¹ The Exhibits (“Exh.” and “Exhs.”) cited herein are attached to the Declaration of Donald L. Rhoads, submitted herewith.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] E.g., Exh. 66. Thus, Maia can prevail on the issue of infringement only if it can convince the Court that the claims and the specification of the '046 Patent do not mean what they explicitly say to a person of skill in the art. Not surprisingly, no Court has ever made such a finding, as doing so would go against all applicable legal precedent.

For example, Maia is seeking to have the Court interpret claims 3, 6 and 44 of the '046 Patent (and others), and the corresponding portions of the '046 Patent specification,³ to not cover amino acids. In essence, Maia is seeking to have the Court hold that the claims do not mean what they explicitly recite:

² Maia ultimately produced at least some of the improperly withheld internal Maia documents only after Bracco discovered them when a few portions of them were disclosed during a recent document production. Prior to this production, Maia had repeatedly denied the documents existed. Even after being confronted with having withheld relevant documents with no proper basis, Maia continued to refuse to produce them until Bracco threatened to file a motion to compel production of the documents, and then Maia produced them only minutes prior to Bracco's filing of the motion to compel.

³ The specification also defines these terms to include amino acids (i.e., at col. 9, lines 44-65 ("Buffering agents ... include ... amino acids") and col. 11, lines 25-63 ("surfactants/solubilizers ... include ... glycine and other amino acids")).

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