IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SANOFI-AVENTIS U.S. LLC, et al., Plaintiffs, v. ELI LILLY AND COMPANY, Defendant.	Civil Action No. 14-113-RGA-MPT

MEMORANDUM OPINION

Steven J. Balick, Esq., Tiffany Geyer Lydon, Esq., Andrew C. Mayo, Esq., ASHBY & GEDDES, Wilmington, DE; Mark A. Perry, Esq., GIBSON, DUNN & CRUTCHER LLP, Washington, D.C.; Joseph Evall, Esq. (argued), R. Scott Roe, Esq. (argued), GIBSON, DUNN & CRUTCHER LLP, New York, NY; Tracey Davies, Esq. (argued), GIBSON, DUNN & CRUTCHER LLP, Dallas, TX; Frederick Brown, Esq., GIBSON, DUNN & CRUTCHER LLP, San Francisco, CA; Y. Ernest Hsin, Esq. (argued), GIBSON, DUNN & CRUTCHER LLP, Palo Alto, CA.

Attorneys for Plaintiffs Sanofi-Aventis U.S. LLC, et al.

Brian E. Farnan, Esq., Michael J. Farnan, Esq., FARNAN LLP, Wilmington, DE; Bruce M. Wexler, Esq. (argued), Joseph M. O'Malley, Jr., Esq., David M. Conca, Esq. (argued), Young Park, Esq., Nicholas A. Tymoczko, Esq., PAUL HASTINGS LLP, New York, NY.

Attorneys for Defendant Eli Lilly and Company.

January 20, 2015

ANDREWS, U.S. DISTRICT JUDGE:

Pending before the Court is the issue of claim construction for the disputed terms found in U.S. Patent Nos. 7,476,652 and 7,713,930 (collectively, the "Formulation Patents") and 8,556,864; 8,603,044; and 8,679,069 (collectively, the "Device Patents").[1]

I. BACKGROUND

Plaintiff Sanofi-Aventis ("Sanofi") filed this action for patent infringement on January 30, 2014. The Court has considered the parties' joint claim construction brief (D.I. 137), joint appendix (D.I. 138), and oral argument (D.I. 178).[2]

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

[1] Except for the claims, the '044 patent and '069 patent are almost identical. For the sake of simplicity, all citations are to the '044 patent, unless specified otherwise.
[2] The parties did not argue all disputed terms. (D.I. 162).

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 quotation marks and citations omitted).

"[T]he 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 quotation marks and citations 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).

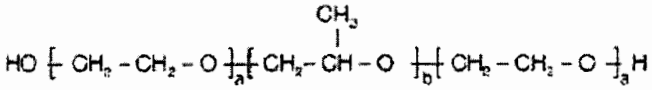
A court may consider extrinsic evidence, which "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises," in order to assist the court in understanding the underlying technology, the meaning of terms to one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

"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. AGREED-UPON CONSTRUCTIONS

1. "poloxamers" ('652 patent: claims 7, 24)

   a. *Agreed-upon construction*: Compounds with the following structure:



2. "a piston rod having a first external thread and a second external thread" ('864 patent: claim 3)

   a. *Agreed-upon construction*: A piston rod with two different external threads.

3. "said piston rod comprises a first thread and a second thread" ('044 patent: claims 7, 17)

   a. *Agreed-upon construction*: A piston rod with two different threads.

4. "where the first external thread is threadedly engaged with an insert" ('864 patent: claim 3)

   a. *Agreed-upon construction*: The first external thread of the piston rod interlocks with a threading of an insert.

IV. CONSTRUCTION OF DISPUTED TERMS

A. The Formulation Patents

1. "at least one chemical entity chosen from" ('652 patent: claims 1, 7, 24; '930 patent: claim 1)

   a. *Plaintiffs' proposed construction*: Plain and ordinary meaning.

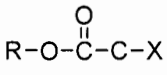
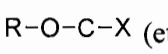
b. *Defendant's proposed construction*: At least one ingredient selected for inclusion in the claimed formulation from the set of specified ingredients.

c. *Court's construction*: No construction is necessary.

During oral argument, the parties agreed that no construction is necessary for this term. (D.I. 178 at 32:6–33:18). The Court has no trouble understanding this term, and thus adopts the term's plain and ordinary meaning.

2. "esters and ethers of polyhydric alcohols" ('930 patent: claim 1)

a. *Plaintiffs' proposed construction*: Chemical compounds in which one or more of the hydroxyl groups of a polyhydric alcohol has been replaced by or converted to an ester (RCOO-X) or ether (RC-O-X) group.

b. *Defendant's proposed construction*: Surfactant compounds with the following structures:  (esters); and  (ethers) where R is an alcohol with one or more OH groups, and X is unspecified.

c. *Court's construction*: Chemical compounds in which one or more of the hydroxyl groups of a polyhydric alcohol instead of being a hydroxyl group is an ester (RCOO-X) or ether (RC-O-X) group.[3]

Sanofi argues that Lilly's proposed construction "narrow[s] the scope of this claim term by requiring that the ester or ether of a polyhydric alcohol *also* be an alcohol." (D.I. 137 at 27). Lilly, on the other hand, objects to Sanofi's proposed construction because it defines the claimed product by reference to a synthetic process, *i.e.*, requiring that "one or more of the hydroxyl groups of a polyhydric alcohol has been replaced by or converted to an ester (RCOO-X) or ether

[3] Notwithstanding the different nomenclature in the proposed constructions, the parties claim to agree on the definitions of esters, ethers, alcohols, and hydroxyl groups. (D.I. 137 at 26 n.10 & 28).

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.