

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MYLAN PHARMACEUTICALS INC.,
Petitioner,

v.

MERCK SHARP & DOHME CORP.,
Patent Owner.

Case IPR2020-00040
U.S. Patent 7,326,708

**JOINT NOTICE REGARDING DISTRICT COURT
CLAIM CONSTRUCTION PROCEEDINGS**

Pursuant to the Board's instructions during the conference call conducted on March 4, 2020, *see* EX1017 at 23:14–24:15, Petitioner Mylan Pharmaceuticals Inc. and Patent Owner Merck Sharp & Dohme Corp. submit as attached **Appendix A** the Proposed Constructions for Disputed Terms in U.S. Patent No. 7,326,708 (Chart 1) filed in *In re Sitagliptin Phosphate ('708 & '921) Patent Litigation*, No. 1:19-cv-02902-RGA (D. Del. Feb. 14, 2020), ECF No. 58. Pursuant to the scheduling order in the MDL, EX2006 at 7–9, claim construction briefing is ongoing and a hearing on claim construction is scheduled for August 18, 2020.

Date: April 6, 2020

Respectfully submitted,

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Merck Sharp & Dohme Corp.

APPENDIX A

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

IN RE: SITAGLIPTIN PHOSPHATE ('708
& '921) PATENT LITIGATION

MDL No. 19-2902-RGA

C.A. Nos. 19-310-RGA,
19-311-RGA,
19-312-RGA,
19-313-RGA,
19-314-RGA,
19-316-RGA,
19-317-RGA,
19-318-RGA,
19-319-RGA,
19-320-RGA,
19-321-RGA,
19-347-RGA,
19-872-RGA,
19-1489-RGA,
19-2192-RGA

JOINT CLAIM CONSTRUCTION CHART

Pursuant to Paragraph 7 of the Court's July 1, 2019 Scheduling Order and Paragraph 7 of the Court's August 23, 2019 Scheduling Order, Plaintiff Merck Sharp & Dohme Corp. ("Merck"), and Defendants Alvogen Pine Brook LLC f/k/a, Alvogen Pine Brook, Inc. and Alvogen Malta Operations Ltd. (collectively, "Alvogen"), Anchen Pharmaceuticals, Inc. and Par Pharmaceutical, Inc. (collectively, "Anchen"), Sandoz, Inc. ("Sandoz"), Apotex Inc. and Apotex Corp. (collectively, "Apotex"), Zydus Pharmaceuticals (USA) Inc. and Cadila Healthcare Ltd. (collectively "Zydus"), Macleods Pharmaceuticals Limited and Macleods Pharma USA, Inc. (collectively, "Macleods"), Teva Pharmaceuticals USA, Inc. ("Teva"), Watson Laboratories, Inc. and Teva Pharmaceuticals USA, Inc. (collectively, "Watson"), Sun Pharmaceutical Industries Ltd. ("Sun"), Torrent Pharmaceuticals Limited and Torrent Pharma Inc. (collectively, "Torrent"),

Wockhardt Bio AG and Wockhardt USA LLC (collectively, “Wockhardt”), Lupin Limited and Lupin Pharmaceuticals, Inc. (collectively, “Lupin”), Mylan Pharmaceuticals Inc. (“Mylan”),¹ and Accord Healthcare, Inc. (“Accord”) (all collectively, “Defendants”) respectfully file this Joint Claim Construction Chart identifying the parties’ proposed claim construction positions with respect to certain terms in the asserted claims of U.S. Patent No. 7,326,708 (“the ’708 patent”) (Chart 1), and the parties’ proposed claim construction positions with respect to certain terms in the asserted claims of U.S. Patent No. 8,414,921 (“the ’921 patent”) (Chart 2).²

EXHIBITS

Exhibit No.	Document Description
A	International Patent Publication No. WO 2005/003135
B	U.S. Patent No. 7,326,708
C	U.S. Patent No. 8,414,921
D	U.S. Application No. 12/085,722, 4/6/12 Response
E	U.S. Application No. 12/085,722, 9/7/11 Response
F	U.S. Application No. 12/085,722, 6/7/12 Final Rejection
G	U.S. Application No. 12/085,722, 8/6/12 Response
H	U.S. Application No. 12/085,722, 8/9/12 Notice of Allowance
I	U.S. Application No. 10/874,992, 6/11/2007 Non-Final Rejection
J	U.S. Application No. 10/874,992, 8/6/2007 Response

¹ Defendant Mylan does not join any of the proposed constructions herein.

² Each Defendant only joins to the extent the claims are asserted against them respectively at this time, unless otherwise stated. Defendants reserve their rights to modify, amend, or otherwise supplement these Charts with respect to any additional claims Plaintiff may seek to assert later.

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