

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UPL NA, INC.,)	CV 19-1201-RSWL-KS
)	
Plaintiff,,)	ORDER RE: CLAIM
)	CONSTRUCTION HEARING
)	
v.)	
)	
TIDE INT'L (USA), INC.;)	
ZHEJIANG TIDE CROPSCIENCE)	
CO., LTD.; and NINGBO TIDE)	
IMP. & EXP. CO., LTD.,)	
)	
Defendants.)	

On March 10, 2020, this Court held a Markman Hearing to hear oral argument regarding the proposed claim construction of the terms: (1) low compact; (2) dispersing agent; (3) antifoaming agent; and (4) stabilizer contained in the United States Patent No. 7,473,685. The Court **NOW FINDS AND RULES AS FOLLOWS:**

1 (1) the preamble is not limiting and thus "low compact"
2 need not be construed; (2) the term "dispersing agent"
3 shall be construed as "an agent that assists with
4 dispersion"; (3) the term "antifoaming agent" shall
5 mean "an agent that reduces or prevents the formation
6 of foam"; and (4) the term "stabilizer" shall be "an
7 agent that promotes physical or chemical stability."

8 I. BACKGROUND

9 A. Factual Background

10 Plaintiff UPL NA, Inc., ("Plaintiff") is a supplier
11 of crop protection products and plant technologies
12 designed for agricultural, professional, and aquatics
13 markets in the United States. Compl. ¶ 8, ECF No. 1.
14 Defendant Tide International (USA), Inc.; Defendant
15 Zhejiang Tide CropScience, Co., Ltd.; and Defendant
16 Ningbo Tide Imp. & Exp. Co., Ltd., (collectively
17 "Defendants") comprise part of a group informally known
18 as the "Tide Group," which "has a strong sales network"
19 and "has established several companies or offices"
20 outside of China. Id. ¶ 9. In the United States,
21 Defendants' business includes the sale of pesticide
22 technical and formulate products, utilizing the
23 advantages of EPA registrations and localized
24 operations in the United States. Id. ¶ 11. Plaintiff
25 alleges that Defendants invested around \$1,000,000 to
26 improve their formulation for abamectin so that they
27 could market the product in California without the
28 warning statement that "the product contains organic

1 chemical composition, use of same in California may
2 cause physical deficiency or harm to birth," with the
3 expectation that farmers in California would naturally
4 choose more healthy products. Id. ¶ 15.

5 On January 6, 2009, the United States Patent and
6 Trademark Office duly and legally issued the Patent
7 Number 7,473,685, titled "Process for Preparation of
8 Chemically Stable, Dry-Flow, Low Compact, Dust Free,
9 Soluble Granules of Phosphoramidothioates" (the "'685
10 Patent"). Id. ¶ 24. The '685 Patent relates to, among
11 other things, a specific formula for a chemically
12 stable, dry flow, low compact, dust free soluble
13 phosphoramidothioate granule consisting of an active
14 ingredient, a dispersing agent, a wetting agent, an
15 antifoaming agent, a stabilizer, and fillers. Id. ¶
16 25. Plaintiff claims that the '685 Patent is valid and
17 enforceable, and Plaintiff is the owner and assignee of
18 the patent with full rights to pursue damages for
19 infringement of the '685 Patent. Id. ¶¶ 27-28.

20 Plaintiff alleges that Defendants use and sell or
21 import into the United States Tide Acephate 90 WDG,
22 Tide Acephate 90 WSG, and Tide Acephate 97 SG
23 (collectively the "Tide Acephate Products"). Id. ¶ 30.
24 On or about June 5, 2017, Plaintiff's counsel sent a
25 letter to Mr. Zhengyu Yang ("Yang"), the General
26 Manager of Ningbo Tide and Chairman of the Tide Group
27 notifying Defendants of three U.S. patents, including
28 the '685 Patent, in relation to the Tide Acephate

1 Products. Id. ¶ 31. Plaintiff alleges that one or
2 more of the Tide Acephate Products literally or
3 equivalently meet every limitation of at least claim 1
4 of the '685 Patent. Id. ¶ 33.

5 Plaintiff claims that Defendants have infringed and
6 will continue to infringe one or more claims of the
7 '685 Patent, including at least claim 1 of the '685
8 Patent, by making, using, selling, and/or offering to
9 sell in the United States and/or importing into the
10 United States the Tide Acephate Products in violation
11 of 35 U.S.C. §§ 271(a), (b), and/or (c). Id. ¶ 48.
12 Plaintiff states that it has been injured and will
13 continue to suffer additional irreparable harm unless
14 Defendants are enjoined from infringing the '685
15 Patent. Id. ¶ 50.

16 **B. Procedural Background**

17 Plaintiff filed its Complaint [1] on June 17, 2019,
18 alleging patent infringement. After the parties
19 stipulated to extend the time to answer the Complaint
20 [23], Defendants filed their Answer [24] on August 12,
21 2019. On December 3, 2019, Defendants filed a Motion
22 for Leave to File an Amended Answer [58], which this
23 Court granted on February 5, 2020 [64].

24 The Court's scheduling order set the Markman/Claim
25 Construction hearing ("Markman Hearing") for March 10,
26 2020 at 10:00 am [49]. The parties filed their Joint
27 Claim Construction and Prehearing Statement ("Joint
28 Markman Statement") on February 4, 2020 [63].

1 Subsequently, Plaintiff filed its Opening Claim
2 Construction Brief ("Plaintiff's Opening Brief") [66]
3 and Defendants filed their Opening Claim Construction
4 Brief ("Defendants' Opening Brief") [69]. On February
5 25, 2020, Plaintiff filed its Responsive Brief
6 ("Plaintiff's Responsive Brief") [71]. That same day,
7 Defendants filed their Rebuttal Claim Construction
8 Brief ("Defendants' Rebuttal Brief") [72].

9 Five days before the Markman Hearing, on March 5,
10 2020, the parties filed a Joint Stipulation to Stay
11 Case Pending Lifting of Travel Restrictions due to
12 Coronavirus [76], which this Court granted in part and
13 denied in part [77]. The Markman Hearing was held on
14 March 10, 2020.

15 II. DISCUSSION

16 A. Legal Standard

17 Claim construction of a patent, including terms of
18 art within claims, is exclusively within the province
19 of the court, not the jury. Markman v. Westview
20 Instruments, Inc., 517 U.S. 370, 388-89 (1996). Claim
21 construction usually involves resolving disputes about
22 the "ordinary and customary meaning" that the words of
23 the claim would have had "to a person of ordinary skill
24 in the art in question at the time of the invention" (a
25 "POSITA"). Phillips v. AWH Corp., 415 F.3d 1303, 1312-
26 13 (Fed. Cir. 2005) (internal quotations and citations
27 omitted).

28 Claim construction begins with an analysis of the

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.