

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CELGENE CORPORATION, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 21-1795-RGA
	:	
ACCORD HEALTHCARE, INC.,	:	
	:	
Defendant.	:	

MARKMAN ORDER

There is one term in dispute. (D.I. 38).

I construe the disputed term “non-enteric coated tablet” as proposed by Celgene: “tablet that does not comprise a coating intended to release the active ingredient(s) beyond the stomach.” (*Id.* at 2). The specification defines the term by express lexicography. ’628 Patent at 11:42-45.

I reject Defendant’s proposed construction. Defendant relies on lexicography of a different term that is not part of the disputed term, and that is not part of the lexicographic definition of the disputed term either. Defendant cites the prosecution history but does not argue that it constitutes clear and unmistakable disclaimer. Defendant’s construction purports to resolve a dispute between the parties, but it resolves the dispute erroneously.

The argument scheduled for February 16th is CANCELLED.

IT IS SO ORDERED this 13 day of February 2023.



United States District Judge