

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

CELGENE CORPORATION AND
CELGENE INTERNATIONAL SÀRL,

Plaintiffs,

V.

ACCORD HEALTHCARE INC.,

Defendant.

Civil Action No. 21-cv-1795-RGA

JOINT CLAIM CONSTRUCTION CHART

Pursuant to Paragraph 7 of the Scheduling Order (D.I. 13), Plaintiffs Celgene Corporation and Celgene International Sàrl (collectively, “Plaintiffs”) and Accord Healthcare Inc. (“Defendant”) hereby file this Joint Claim Construction Chart for U.S. Patent Number 8,846,628 (the “’628 patent”). The agreed-upon claim construction is attached as Exhibit A, and the disputed claim construction is attached as Exhibit B. The ’628 patent is attached as Exhibit C. The excerpts from the prosecution histories cited herein are attached as Exhibit D. In addition to the disputed terms listed below, Defendant contends that several terms of the ’628 patent are indefinite; Plaintiffs disagree with Defendant’s contention, but the parties are in agreement that indefiniteness in this case is best addressed at trial, after the Court has had the benefit of the presentation of expert testimony.

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Respectfully submitted,

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EXHIBIT A – AGREED-UPON CONSTRUCTIONS

Claim Term	Agreed-Upon Construction
“test subject” (’628 Patent, claims 11, 18, 20-22, 38, 40, 42, and 43)	“a human or other animal who received the recited pharmaceutical composition in connection with a test of the recited parameter”

EXHIBIT B – DISPUTED CONSTRUCTIONS

Claim Term	Plaintiffs' Proposed Construction	Plaintiffs' Intrinsic Evidence	Defendant's Proposed Construction	Defendant's Intrinsic Evidence
“non-enteric coated tablet” ('628 Patent claims 1, 2, 6-8, 11, 13-18, 20-24, 28, 32-35, 38, 40, 42, and 43)	“tablet that does not comprise a coating intended to release the active ingredient(s) beyond the stomach”	'628 Patent at 5:52-55; 11:42-45 '628 Patent Prosecution History, Feb. 27, 2014 Response and Amendment at pp. 2, 4, 8, 11-12, 15-17 '628 Patent Prosecution History, Feb. 27, 2014 37 C.F.R. 1.132 Declaration at pp. 4, 6-7, 10 U.S. Pat. App. No. 14/788,606 Prosecution History, Apr. 6, 2017 Response and Amendment at pp. 2, 6, 7-8 U.S. Pat. App. No. 14/788,606 Prosecution History, Apr. 6, 2017 37 C.F.R.	“tablet that does not comprise a coating that allows at least about 10% of the active ingredient (i.e., cytidine analog) to be released in the stomach”; indefinite	'628 Patent at 5:49-8:5; 11:42-62 '628 Patent Prosecution History, Aug. 1, 2011 Office Action at p. 6 '628 Patent Prosecution History, Dec. 1, 2011 Response and Amendment at pp. at 5, 8, 19-24 '628 Patent Prosecution History, Feb. 28, 2012 Office Action at p. 9 '628 Patent Prosecution History, Aug. 3, 2012 Response and Amendment at pp. at 12-15 '628 Patent Prosecution History, Aug. 29, 2013 Office Action at p. 7-9

Claim Term	Plaintiffs' Proposed Construction	Plaintiffs' Intrinsic Evidence	Defendant's Proposed Construction	Defendant's Intrinsic Evidence
		1.132 Declaration at pp. 4, 6-7, 10		'628 Patent Prosecution History, Feb. 27, 2014 Response and Amendment at pp. at 11-23 Beach Declaration at pp. 1-10 Notice of Allowability at pp. 1-4