

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NIVAGEN, INC.,

Plaintiff

v.

SUN PHARMACEUTICALS INDUSTRIES,
INC.,

Defendant.

Case No.: 2:24-cv-36-RWS-RSP

JURY TRIAL DEMANDED

**DEFENDANT’S IDENTIFICATION OF PROPOSED CLAIM TERMS AND ELEMENTS
FOR CONSTRUCTION**

Defendant Sun Pharmaceuticals Industries, Inc. (“Sun”) hereby provides its list of claim terms, phrases, or clauses that Sun contends should be construed or found indefinite by the Court, including an identification of claim elements that Defendant contends should be governed by 35 U.S.C. § 112(f). Sun provides this list of terms based on the information it has received to date, including specifically based on Plaintiff’s complaint and infringement contentions. To the extent Plaintiff amends either of these disclosures, Sun reserves the right to request additional terms be construed or found indefinite by the Court. As Sun learns more about the substance of Plaintiff’s infringement disclosures, it reserves the right to request additional terms be construed or found indefinite by the Court. Sun also reserves the right to modify this list of terms during the process of the parties’ meet and confer related to claim construction and other claim construction related exchanges. Finally, to the extent fact or expert discovery illustrates that there is a fundamental dispute regarding the scope of any claim term, Sun reserves the right to raise those claim construction issues with the Court as required by the Federal Circuit’s decision in *O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351, 1362 (Fed. Cir. 2008).

Claim Terms, Phrases, or Clauses for Construction	Claims of the '076 patent
“composition”	1, 7, all dependent claims
“composition comprises no less than 98% phenobarbital sodium”	1, 7, all dependent claims
“aqueous solution to form a reconstituted composition”; “reconstituted for injection with 10 mL of an aqueous solution to form a reconstituted composition”	2-4, 6-11, 13-14, 18-19
“is stored”	2-4, 6-11, 13-14, 18-19
“amorphous”	5, 12, 15, 20
“the reconstituted composition contains no more than . . . % [PEAU/2EPMM/PBG],” “the reconstituted composition contains at most . . . % phenylethylacetylurea (PEAU)”	2-4, 6-11, 13-14, 18-19

Date: April 10, 2025

s/ Samuel T. Lockner

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on April 10, 2025, a true and correct copy of the foregoing document was served upon Nivagen via electronic mail.

By: s/ Samuel T. Lockner

From: [Yixin Tang](#)
To: [Justin Oakland](#); [Brent Batzer](#); [Shashank Upadhye](#); [Melissa Smith](#); [Tom Gorham](#)
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Subject: Nivagen, Inc. v. Sun Pharmaceutical Industries, Inc. - Claim Terms to Construe
Date: Thursday, April 10, 2025 4:42:00 PM
Attachments: [image002.png](#)

Sun Counsel,

In the above-referenced case, Plaintiff does not see a need to ask the Court to construe any claim terms in the asserted 076 patent. Please let us know if you agree. If so, we can draft a joint letter asking the Court to remove claim construction-related events from the case schedule, including the Aug. 14, 2025 Markman hearing.

Regards,

Yixin H. Tang, J.D., Ph.D.
Partner



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