

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

HERON THERAPEUTICS, INC.,	)	
	)	
Plaintiff,	)	C.A. No. 24-830 (WCB)
	)	
v.	)	C.A. No. 24-1363 (WCB)
	)	
AZURITY PHARMACEUTICALS, INC.,	)	
AZURITY PHARMACEUTICALS INDIA	)	
LLP f/k/a SLAYBACK PHARMA INDIA	)	
LLP, and SLAYBACK PHARMA LLC,	)	
	)	
Defendants.	)	

**JOINT STIPULATION AND
ORDER REGARDING CLAIM CONSTRUCTION**

Plaintiff Heron Therapeutics, Inc. (“Heron” or “Plaintiff”) and Defendants Azurity Pharmaceuticals, Inc., Azurity Pharmaceuticals India LLP f/k/a Slayback Pharma India LLP, and Slayback Pharma LLC (collectively, “Slayback” or “Defendants”), by and through their undersigned counsel, hereby stipulate and agree as follows:

WHEREAS, the Court asked that the number of Asserted Claims be narrowed (24-830, D.I. 96; 24-830, D.I. 98), and Heron has narrowed the Asserted Claims, including narrowing the patents-in-suit, and will continue to narrow the Asserted Claims;

WHEREAS, the Court asked the parties to identify potential terms for construction (24-830, D.I. 96; 24-830, D.I. 98) and Slayback identified multiple terms for construction (24-830, D.I. 107);

WHEREAS, the parties have narrowed the potential terms for construction to the term “about” appearing in the patents-in-suit;

WHEREAS, Slayback believes that the construction of “about” and Slayback’s arguments under 35 U.S.C. § 112 regarding lack of written description and lack of enablement

raised in their Invalidity Contentions depend on additional evidence that will be presented at trial;

WHEREAS Slayback proposed addressing any construction of “about” at trial at the same time that the parties address Slayback’s lack of written description and lack of enablement arguments raised in their Invalidity Contentions to further judicial economy;

WHEREAS, the parties, seeking to efficiently adjudicate this case, agree to forgo *Markman* proceedings and address, if necessary, the construction of “about” at trial;

WHEREAS, the parties have agreed to adopt the constructions from the Claim Construction Order (D.I. 54) in *Heron Therapeutics, Inc. v. Fresenius Kabi USA, LLC*, Civil Action No. 22-985 (WCB) for the terms “physically stable”, “preventing”, and “treating” that appear in the claims of the patents-in-suit.

IT IS HEREBY STIPULATED AND AGREED by the undersigned counsel for the parties, subject to the approval of the Court, that

1. The *Markman* proceeding deadlines in 24-830, D.I. 111 and 24-1363, D.I. 30 are moot;
2. In the event a party continues to seek construction of the term “about,” that construction will be addressed at trial;
3. The parties have agreed to the constructions of the terms “physically stable”, “preventing”, and “treating” that appear in the claims of the patents-in-suit as provided in the attached Joint Claim Construction Chart.

Dated: February 27, 2025

MORRIS, NICHOLS, ARSHT & TUNNELL
LLP

/s/ Jeremy A. Tigan

Jeremy A. Tigan (#5239)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jtigan@morrisnichols.com

OF COUNSEL:

Isaac S. Ashkenazi
Mark Russell Sperling
Justin T. Fleischacker
PAUL HASTINGS LLP
200 Park Avenue
New York, NY 10166
(212) 318-6000

Karthik R. Kasaraneni
PAUL HASTINGS LLP
2050 M Street NW
Washington, DC 20036
(202) 551-1700

*Attorneys for Plaintiff
Heron Therapeutics, Inc.*

MORRIS JAMES LLP

/s/ Kenneth L. Dorsney

Kenneth L. Dorsney (#3726)
Cortlan S. Hitch (#6720)
500 Delaware Avenue, Suite 1500
Wilmington, Delaware 19801
(302) 888-6800
kdorsney@morrisjames.com
chitch@morrisjames.com

OF COUNSEL:

Andrew J. Miller
Constance H. Huttner
Robyn Ast-Gmoser
Joanna G. Goldstein
Windels Marx Lane & Mittendorf, LLP
One Giralda Farms
Madison, NJ 07940
(973) 966-3200

*Attorneys for Defendants
Slayback Pharma LLC,
Azurity Pharma LLP f/k/a
Slayback Pharma India LLP,
and Azurity Pharmaceuticals, Inc.*

SO ORDERED this 28th day of February, 2025.



WILLIAM C. BRYSON
UNITED STATES CIRCUIT JUDGE

JOINT CLAIM CONSTRUCTION CHART

The parties have agreed to the constructions of the terms “physically stable”, “preventing”, and “treating” as they appear in the below Joint Claim Construction Chart.

Claim Term	Agreed Upon Construction
Physically Stable	meets the criteria under USP<729> for mean droplet size not exceeding 500 nm and PFAT5 not exceeding 0.05%, and no visible aprepitant crystals when viewed at magnification of 4x to 10x, after being stored either at 5° Celsius or at room temperature for a period of at least one week
Preventing	hindering the occurrence of
Treating	caring for and managing a patient to combat, ameliorate, or prevent