

United States District Court,
S.D. California.

SYNBIOTICS CORPORATION,
Plaintiff.

v.

AGEN BIOMEDICAL LIMITED,
Defendant.

No. 03-CV-1770-B (AJB)

Feb. 11, 2004.

Douglas E. Olson, Paul Hastings Janofsky and Walker, San Diego, CA, for Plaintiff.

John Arthur Scott, Morrison and Foerster, San Diego, CA, for Defendant.

ORDER CONSTRUING CLAIM 5 OF U.S. PATENT NUMBER 4,789,631

RUDI M. BREWSTER, Senior District Judge.

In the above-identified case, Plaintiff, Synbiotics Corp. ("Synbiotics"), brought suit against Agen Biomedical Limited ("Agen") for patent infringement of U.S. Patent Number 4,789,631 ('631 Patent).

Pursuant to *Markman v. Westview Instruments*, 52 F.3d 967 (Fed.Cir.1995), the Court conducted a hearing on January 27-28 to construe the disputed claim terms of Claim 5 of the '631 Patent. At the hearing, Plaintiff was represented by the law firm of Paul Hastings Janofsky & Walker LLP and Defendant was represented by the law firm of Morrison & Foerster LLP.

The Court, with the assistance of the parties, prepared jury instructions interpreting the claim terms at issue in Claim 5 of the '631 Patent. Additionally, a "Glossary" was prepared for terms found in the '631 Patent, considered to be technical in nature and which a jury of laypersons would not understand without a specific definition. As the case advances, the parties may request additional terms to be added to the glossary as may seem helpful to the jury.

After careful consideration of the parties' arguments and the applicable law, the Court **HEREBY CONSTRUES** all disputed claim terms in Claim 5 of the '631 Patent, attached as Exhibit A. Further, the Court **HEREBY DEFINES** all pertinent technical terms as written in exhibit B, attached hereto.

IT IS SO ORDERED

Claim 5 of U.S. Patent No. 4,789,631

CLAIM LANGUAGE	COURT'S INTERPRETATION
A monoclonal antibody reactive with an antigenic extract of <i>Dirofilaria immitis</i> and non-cross-reactive with an antigenic extract of <i>Toxocara canis</i> .	A monoclonal antibody that detectably reacts in an immunoassay with antigenic material from <i>Dirofilaria immitis</i> and does not detectably react in an immunoassay with antigenic material from <i>Toxocara canis</i> .

EXHIBIT A

Glossary of Terms for Claim 5 of U.S. Patent No. 4,789,631

CLAIM TERM	DEFINITION
<i>Dirofilaria immitis</i>	The scientific name for a species of heartworm found in dogs and other animals. (Abbreviated as <i>D. immitis</i>)
<i>Toxocara canis</i>	The scientific name for a parasitic roundworm found in dogs and other animals. (Abbreviated as <i>T. canis</i>)
A monoclonal antibody	A monoclonal antibody is one of a collection of identical antibodies.
	An antibody is a protein that binds to an antigen.
antigenic extract	Antigenic extract is a purified form of an antigen.
	An antigen is a substance that stimulates the production of an antibody
antigenic material	Antigenic material is material recognized as foreign by a host animal that stimulates the production of an antibody by the host animal.

EXHIBIT B

S.D.Cal.,2004.
Synbiotic Corp. v. Agen Biomedical Ltd.

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