

United States District Court,
D. New Jersey.

CHURCH & DWIGHT CO., INC,
Plaintiff.

v.

ABBOTT LABORATORIES,
Defendant.

Civil Action No. 05-2142 (GEB)

Aug. 28, 2007.

Judson L. Hand, Wanda L. Ellert, Proskauer Rose, LLP, Newark, NJ, for Plaintiff.

James S. Richter, Melissa Steedle Bogad, Winston & Strawn, LLP, Newark, NJ, for Defendant.

MARKMAN ORDER

BROWN, Chief Judge.

This matter having come before the Court upon the parties' motions for claim construction; and the Court having considered the parties' written submissions; and the Court having conducted a *Markman* hearing in connection with the instant motions;

IT IS THIS *27th* day of August, 2007;

ORDERED that the disputed claims have the following meanings:

1. As agreed by the parties in the joint claim construction statement, the claim term "specific", as used in the claims of the '389 Patent, means "the ability to recognize an epitope ligand in the liquid sample and bind with that epitope."
2. The parties also agree that the claim term "immobilized", as used in the claims of the '389 Patent, means "fixed in place or position."
3. The claim term "test strip", as found in Claims 1, 5, 6, 7, 9 and 10 of the '389 Patent, Claims 8 and 9 of the '921 Patent and Claims 7 and 19 of the '982 Patent, means "a strip-shaped object that is used to perform a test."
4. The claim term "dispose within a housing", as found in Claims 1, 5, 6, 7, 9 and 10 of the '389 Patent, means "placed in a housing that completely surrounds a substantial portion of the longitudinal axis of the test strip, such that the housing can delineate a flow path."

5. The claim term "a sorbent material", as found in Claims 1, 5, 6, 7, 9 and 10 of the '389 Patent, Claims 8 and 9 of the '921 Patent and Claims 7 and 19 of the '982 Patent, means "material that is absorbent (taking in or drawing in) and/or adsorbent (accumulating on the surfaces)."
6. The claim term "epitope", as found in Claims 1, 5, 6, 7, 9 and 10 of the '389 Patent, means "a molecular region on the surface of an antigen capable of eliciting an immune response and of combining with a specific antibody produced by such a response."
7. The claim term "test site", as found in Claims 1, 5, 6, 7, 9 and 10 of the '389 Patent, Claims 8 and 9 of the '921 Patent, and Claims 7 and 19 of the '982 Patent, means "a location on a test strip where the presence or absence of a ligand can be detected,"
8. The claim term "separate control site", as found in Claims 1, 5, 6, 7, 9 and 10 of the '389 Patent, means "a location on a test strip, set apart from the test site, that, through chemical and/or biological reaction, indicates whether the development of color at the test site is a true indication of the presence or absence of the ligand or an artifact caused by non-specific sorbtion ."
9. The claim term "conjugate", as found in Claims 1, 5, 6, 7, 9 and 10 of the '389 Patent, Claims 8 and 9 of the '921 Patent and Claim 19 of the '982 Patent, means "substances that are joined."
10. The claim term "comprising", as found in Claims 1, 5, 6, 7, 9 and 10 of the '389 Patent, Claims 8 and 9 of the '921 Patent and Claims 7 and 19 of the '982 Patent, means "including, but not limited to."
11. The claim term "colored particulate material", as found in Claims 1, 5, 6 and 10 of the '389 Patent, Claims 8 and 9 of the '921 Patent, and Claims 7 and 19 of the '982 Patent, means "a small colored object greater than molecular size that is not soluble in the liquid sample being tested."
12. The claim term "color indicative of valid test result", as found in Claims 1, 5, 6, 9 and 10 of the '389 Patent and Claims 8 and 9 of the '921 Patent, requires no construction.
13. The claim term "solution consisting essentially of said conjugate", as found in Claim 5 of the '389 Patent and in the language "consisting essential [sic] of a conjugate" in claim 10 of the '389 Patent, means "a solution, including the conjugate and any other materials that do not materially affect the basic and novel properties of the invention."
16. The claim term "is applied at a location in said flow path upstream of said test site and dried on said test strip", as found in Claim 5 of the '389 Patent, requires no construction.
17. The claim term "metal sol particle", as found in Claim 9 of the '389 Patent, means "a metal particle greater than molecular size that is not soluble in the liquid sample being tested."
18. The claim term "casing", as found in Claims 8 and 9 of the '921 Patent, means "a housing that completely surrounds a substantial portion of the longitudinal axis of the test strip such that the housing can delineate a flow path."
19. The claim term "control site", as found in Claims 8 and 9 of the '921 Patent, means "a location on a test

strip that, through chemical and/or biological reaction, indicates whether the development of color at the test site is a true indication of the presence or absence of the ligand."

20. The claim term "wherein said inlets at test site and said control site are in lateral flow of fluid communication along said flow path", as found in Claims 8 and 9 of the '921 Patent, requires no construction.

21. The claim term "flow path, guiding there along transport of the conjugate and a liquid suspected to contain a ligand", as found in Claim 7 of the '982 Patent, requires no construction.

22. The claim term "wherein the conjugate is disposed in the flow path upstream of the test site and is mobilizable along the flow path with passing liquid", as found in Claim 7 of the '982 Patent, means "wherein the conjugate is placed in the flow path upstream of the test site and is capable of being put in movement along the flow path with passing liquid."

23. The claim term "wherein the conjugate is in dry form", as found in Claim 7 of the '982 Patent, requires no construction.

24. The claim term "wherein the conjugate is dried in the flow path upstream of the test site", as found in Claim 19 of the '982 Patent, requires no construction.

25. The claim term "the liquid sample is applied upstream with a dried conjugate", as found in Claim 19 of the '982 Patent, requires no construction.

D.N.J.,2007.

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