United States District Court,
S.D. California.

ABBOTT LABORATORIES, an Illinois corporation,
Plaintiff.
v.
SYNTRON BIORESEARCH INC., a California corporation,
Defendant.

No. 98-CV-2359 H(POR)

Jan. 5, 2001.

Order Construing Remaining Disputed Claim Terms; Denying Abbott's Motion for Summary Adjudication of Infringement

HUFF**, Chief J.**

And related cross-claims

On November 16, 2000, the Court issued an Order denying Abbott's motion for summary adjudication on validity. The Court dismissed Abbott's motion for summary adjudication of infringement on all asserted claims as premature, stating that Abbott's motion for summary adjudication of infringement of the remaining claims would be addressed following the Court's reconsideration of "liquid permeable solid medium" and further claim construction, if necessary. During the briefing on the motion, Syntron asserted that several terms had to be construed before infringement could be determined. The Court gave Abbott an opportunity to submit a claim chart setting forth its construction of the following terms:

(1) "specific for" as found in claim 22 of the '162 patent, among others;

(2) "non-diffusively bound" as found in claim 1(c) of the '162 patent and claim 22(a) of the '484 patent;

(3) "non-diffusively immobilized" as found in claim 26 of the '484 patent;

(4) "well" as found in claims 14 and 15 of the '162 patent;

(5) "further comprising" as found in claim 28 of the '162 patent;

(6) "flowing ... through" as found in claims 22 and 23 of the '484 patent.

On November 27, 2000, Abbott submitted the requested claim chart, Abbott stated that it is not asserting claim 28 against Syntron, and thus, the Court need not construe "further comprising." It also appears the phrase "flowing ... through" is not disputed between the parties and thus, need not be construed.

A. ***Claim Construction Standard***

As noted in the Court's summary judgment and reconsideration orders, when construing the terms of a patent, the Court must first turn to "intrinsic evidence." Intrinsic evidence includes the claim itself, the

specification, and the prosecution history of the patent. Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1582 (Fed.Cir.1996). Established rules of claim interpretation require that the Court first consider the words of the claims themselves, "both asserted and unasserted, to define the scope of the patented invention." Id. at 1582. The words are generally given their customary and ordinary meaning. *Id*. The Court may resort to extrinsic evidence only if the intrinsic evidence is considered and there still remains some ambiguity as to the scope or meaning of the claim. *Id*. at 1583.

The Court has reviewed the claim construction chart submitted by Abbott. The Court has also reviewed the claim construction arguments made by Syntron in its Opposition to Abbott's Motion for Summary Adjudication of Issues for Trial. It was Syntron's argument in its Opposition that prompted the Court to engage in another round of claim construction.

During the summary adjudication proceedings Abbott argued that Syntron should be precluded from asserting that several terms remain to be construed because Syntron had not disputed the terms earlier in these proceedings. *See* Vivid Technologies, Inc. v. American Science & Engineering, Inc., 200 F.3d 795, 803 (Fed.Cir.1999) (noting that courts only need to construe those terms that are in controversy). Nevertheless, the Court will construe those terms raised by Syntron so that infringement of claims other than claim 22 of the '162 patent can be properly determined at trial.

1. *Specific for*

The term "specific for" appears in claim 22 FN1 of the '162 patent, among others. This Court thoroughly analyzed the terms in Claim 22, before ruling on the cross-motions for summary judgment on infringement and Syntron's motion for reconsideration of the Court's order granting summary judgment on infringement in favor of Abbott. Syntron did not raise an issue with the term "specific for" in either proceeding. However, in the interest of narrowing issues for trial the Court will construe the term. The ordinary and customary meaning of "specific for" is having a fixed relationship with or being particular to the object in question. In this case, the term "specific for" is used in the claims to describe the relationship between the labeled antibody (or reactant) and the analyte or a chemical moiety to which it is supposed to bind. Therefore, the Court construes "specific for" as "particular to and capable of binding with" the analyte or chemical moiety.

FN1. Claim 22 states in pertinent part:

A device for detecting the presence of an analyte in a carrier liquid suspected of containing said analyte, which device comprises a liquid permeable solid medium which defines a path for fluid flow capable of supporting capillary flow, along which are:

i) a site for application of the carrier liquid,

ii) a diffusively bound labeled antibody *specific for* the analyte or a chemical moiety which is itself the reaction product of the analyte with another chemical moiety, said antibody being capable of flow along the flow path, and

iii) one or more zones spaced along said flow path, each zone having a predetermined amount of a reactant bound to it which is *specific for* either the analyte or a chemical moiety which is itself the reaction product of the analyte with another chemical moiety ... (emphasis added).

The Court notes that this construction of the term "specific for" does not change the Court's previous determination that Abbott is entitled to summary judgment on infringement of claim 22 of the '162 patent,

except that there is a triable issue of fact as to whether Syntron's products used a "liquid permeable solid medium." Specifically, the Court determined that the labeled antibody and bound antibodies which Syntron uses are specific for the analyte (hCG) based on the deposition testimony of Lee and Trinh and the QuikPac II insert. *See* Amended Summary Judgment Order at 24.

2. ***Non-diffusively bound and non-diffusively immobilized***

The claim language makes clear that a "non-diffusively bound" reactant, as found in claim 1 of the '162 patent means a reactant immobilized in the reaction zone so as to provide a detectable signal indicating the presence or absence of analyte in the solution. A "non-diffusively bound" reactant is not capable of detaching from the medium, spreading out and moving along the test strip. *See* Reconsideration Order at 14 (construing "diffusively bound labeled antibody as bound to the solid medium in such a way that the labeled antibody is capable of detaching from the medium, spreading out and moving along the test strip). The specification also supports the construction of "non-diffusively bound" as immobilized on the test strip. *See* e.g., '162 patent, col. 15, Ins. 16-27. "Non-diffusively immobilized," as found in claims 22 and 26 of the '484 patent, means the same thing as "non-diffusively bound."

3. ***Well***

The term "well" is found in claims 14 and 15 of the '162 patent. Claim 14 reads "[a] method according to claim 9 wherein said site for application of said carrier liquid is a well into which said carrier liquid is placed." The customary and ordinary meaning of "well" is an indentation in the surface. In claim 14 the "well" is an indentation in the liquid permeable solid medium that is the application site for the carrier liquid. The claim language supports this ordinary and customary reading of the word "well."

B. ***Abbott's Motion for Summary Adjudication of Infringement***

In its motion for summary adjudication, Abbott asserted that Syntron infringes claims 22, 23, and 26 of the '484 patent and claims 1, 7-10, 14-18, 20-22, and 26-30 of the '162 patent. Previously, the Court granted Abbott's summary judgment motion for infringement of claim 22, but decided on reconsideration that there was a triable issue of fact as to whether Syntron's products used a "liquid permeable solid medium." On December 20, 2000, the Court denied Abbott's motion for reconsideration of the Court's Order regarding "liquid permeable solid medium." Consequently, the Court DENIES Abbott's motion for summary adjudication of infringement of all asserted claims.

IT IS SO ORDERED.

S.D.Cal.,2001.
Abbott Laboratories v. Syntron Bioresearch Inc.

Produced by Sans Paper, LLC.