United States District Court,
D. Massachusetts.

ARIAD PHARMACEUTICALS, INC,
v.
ELI LILLY CO.

No. Civ.A. 02-11280-RWZ

March 3, 2004.

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Andrew W. Williams, David M. Frischkorn, Grantland G. Drutchas, Nicole A. Fiorella, Paul H. Berhgoff, S. Richard Carden, McDonnell, Boehnen, Hulbert & Berghoff, Chicago, IL, Christopher S. Schultz, Lawrence R. Robins, Leslie A. McDonell, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP., Cambridge, MA, for Defendant.

MEMORANDUM OF DECISION AND ORDER

ZOBEL**, J.**

Plaintiffs Ariad Pharmaceuticals, Inc., Massachusetts Institute of Technology, the Whitehead Institute for Biomedical Research, and the President and Fellows of Harvard College allege that defendant Eli Lilly & Co. has infringed United States Patent No. 6,410,516 ("the '516 patent"), "Nuclear Factors Associated With Transcriptional Regulation." The parties disagree about the proper definition of four terms in the claims in issue.

The construction of patent claims is a matter of law for this Court to decide. Markman v. Westview Instruments, Inc., 517 U.S. 370, 388-89, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996). Normally, "there is a strong presumption that the ordinary and accustomed meaning of a claim term governs its construction." Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp., 320 F.3d 1339, 1347 (Fed.Cir.2003). However, the presumption may be overcome if the patent specification or prosecution history "clearly and deliberately set[s] forth" a different meaning. K-2 Corp. v. Salomon S.A., 191 F.3d 1356, 1363 (Fed.Cir.1999); Boehringer, 320 F.3d at 1347. Such a circumstance arises where "the patentee has chosen to be his or her own lexicographer by clearly setting forth an explicit definition for a claim term" or "where the term or terms chosen by the patentee so deprive the claim of clarity that there is no means by which the scope of the claim may be ascertained from the language used." Johnson Worldwide Associates, Inc. v. Zebco Corp., 175 F.3d 985, 990 (Fed.Cir.1999). If the intrinsic evidence fails to resolve ambiguity in the claim language, evidence extrinsic to the patent file and history such as expert and inventor testimony, dictionaries, and technical treatises and articles may be considered "to help the court come to the proper understanding of the claims; it may not be used to vary or contradict the claim language." Vitronics Corp. v. Conceptronic, Inc., 90 F.3d 1576, 1584 (Fed.Cir.1996).

Having considered in light of the applicable legal standard the parties' written submissions as well as the argument of counsel at a hearing held on January 13, 2004, the Court construes the disputed claim terms as

follows:

Term	Court's Construction
Reducing NF-kB Activity	Decreasing the function of NF-kB to act as an intracellular messenger that regulates transcription of particular genes, in response to certain stimuli
Reducing Binding of NF-kB to NF-kB Recognition Sites on Genes Which Are Transcriptionally Regulated by NF-kB	Decreasing binding of NF-kB to DNA sequences specifically recognized by NF-kB, where such DNA sequences are in genes whose transcription is regulated by increasing or decreasing NF-kB activity, and where binding denotes a chemical and/or physical interaction between NF-kB and specific DNA sequences.
So As to Reduce Bacterial Lipopolysaccharide-Induced Expression of Said Cytokines in the Cells	To decrease expression of cytokines in the cells, where expression of those cytokines is caused by bacterial lipopolysaccharide and where expression refers to the process by which the cell interprets its genetic information to make proteins
Immune Cells	Specialized cells that defend the body against infection. Immune cells are present in all body tissues, the blood stream, and the lymphatic system, and derive from a common precursor cell

	known as a hematopoietic stem cell. They include T cells, B cells, natural killer cells, monocytes and other monocyte derivatives, macrophages, neutrophils, eosinophils, mast cells, and basophils. Although these cells typically function to eliminate harmful foreign invaders, immune cells occasionally mistake the body's own tissues as non-self (causing autoimmune disease) or attack harmless foreign substances or donated organs
	(causing allergy or organ rejection).

The parties have agreed to the definitions of the following terms:

NF-kB	a protein factor that; (a) resides in the cytoplasm as an inactive precursor bound to an IkB inhibitor protein; (b) when released from the inhibitor, travels to the nucleus of the cell; (c) once in the nucleus, functions to turn on transcription of certain genes by binding to specific DNA recognition
	sequences in those genes
A method for ... in cells	These claims encompass methods wherein NF-kB is modulated in cells,
	regardless of where they are

	found.
NF-kB mediated intracellular signaling	Molecular communication within cells
	effected by, or conveyed through, NF-kB
Such that NF-kB-mediated effects of external influences are modified	Changing or altering effects that are both caused by an inducing substance outside
	the cell and are conveyed through NF-kB
Cytokines	Secreted polypeptides (proteins) that affect the functions of other cells, and which are important for the interactions between cells in the immune response. There are many different cytokines, one
	example of which is TNF-(alpha).
Activated by extracellular influences	Stimulated by one or more inducing
	substances outside the cell

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