United States District Court,
D. New Jersey.

DAIICHI PHARMACEUTICAL CO., LTD. and Daiichi Pharmaceutical Corporation,
Plaintiffs.
v.
APOTEX, INC. and Apotex Corp,
Defendants.

Civ. No. 03-937 (WGB)

Aug. 8, 2005.

James P. Flynn, Epstein, Becker & Green, PC, Newark, NJ, for Plaintiffs.

Steven Gerber, Adorno & Yoss, LLP, Wayne, NJ, for Defendants.

ORDER

WILLIAM G. BASSLER**, District Judge.**

This matter having come before the Court on the motions of DAIICHI PHARMACEUTICAL CO., LTD. and DAIICHI PHARMACEUTICAL CORPORATION ("Plaintiffs") and APOTEX, INC. and APOTEX CORP. ("Defendants") to construe certain disputed claim terms in U.S. Patent No. 5,401,741 (the "741 patent"); and

The Court having considered the submissions of the parties; and

The Court having conducted a hearing pursuant to Markman v. Westview Instr., 52 F.3d 967 (Fed.Cir.1995) (en banc), *aff'd,* 517 U.S. 370, 116 S.Ct. 1384, 134 L.Ed.2d 577 (1996); and

For the reasons set forth in the Opinion issued this day; and

For good cause shown;

It is on this 5th day of August 2005 ORDERED that:

(1) the term "otopathy" as used in the claims of U.S. Patent No. 5,401,741 is properly construed to mean "bacterial ear infection;"

(2) the term "effective to treat as used in the claims of U.S. Patent No. 5,401,741 is properly construed to mean "safe and efficacious;" and

(3) the term "intratympanically injected through a puncture of the tympanic membrane" as used in the claims of U.S. Patent No. 5,401,741 is properly construed to mean "introduced into the middle ear with an instrument such as a syringe."

D.N.J.,2005.
Daiichi Pharmaceutical Co., Ltd. v. Apotex, Inc.

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