United States District Court,
D. Delaware.

**In re BRIMONIDINE PATENT LITIGATION.**

MDL No. 07-md-1866 GMS

**Oct. 6, 2008.**

***ORDER CONSTRUING THE TERMS OF*** U.S. Patent No. 6,641,834

GREGORY M. SLEET**, Chief Judge.**

After considering the submissions of the parties and hearing oral argument on the matter, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that, as used in the asserted claims of U.S. Patent No. 6,641,834 (the "'834 patent"),

1. The term "a therapeutically effective aqueous ophthalmic composition comprising" in claims 1 and 10 of the '834 patent is construed to have its plain and ordinary meaning.

2. The term "up to about 0.15% (w/v) of 5-bromo-6-(2-imidozolin-2-ylamino) quinoxaline tartrate" in claim 1 of the '834 patent is construed as "up to approximately 0.15% brimonidine tartrate."

3. The term "composition having a pH of about 7.0 or greater" in claims 1 and 10 of the '834 patent is construed as "composition has a pH of approximately 7.0 or greater."

4. The term "up to about 0.15% (w/v) of a component selected from the group consisting of 5-bromo-6-(2-imidozolin-2-ylamino) quinoxaline, salts of 5-bromo-6-(2-imidozolin-2-ylamino) quinoxaline, esters of 5-bromo-6-(2-imidozolin-2-ylamino) quinoxaline and mixtures thereof" in claim 10 of the '834 patent is construed as "up to approximately 0.15% brimonidine, salts of brimonidine, esters of brimonidine, or mixtures of the foregoing."

5. The term "about" in claims 1 and 10 of the '834 patent is construed as "approximately." FN1

FN1. The court notes that it has previously construed the term "about" in claims 1 and 10 of this very patent. *See Allergan, Inc. v. Alcon, Inc.,* No. 04-968-GMS Order (D.Del. July 26, 2005). After reviewing the parties' briefing and hearing oral argument regarding the construction of this term, the court finds no reason to deviate from its prior determination.

D.Del.,2008.
In re Brimonidine Patent Litigation

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