UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff, v. ABRAXIS BIOSCIENCE, INC., Defendant.	Case No. 06-438-GMS

EXHIBIT 14: ABRAXIS'S PROPOSED VERDICT FORM

Abraxis objects to Elan's Proposed Verdict Form. Among other issues, Elan's proposal improperly seeks to include portions of jury instructions, including disputed jury instructions, into the verdict form, inviting the jury to ignore the complete instructions to be provided by the Court. Abraxis further objects that Elan's proposal is confusing and misleading to the jury because it is unduly long and repetitious. Abraxis objects that Elan's verdict form omits contested issues in this case, including invalidity of the '025 patent, obviousness-type double patenting, inequitable conduct and unclean hands. Abraxis objects to the presentation of doctrine of equivalents and willfulness verdicts to the jury, for the reasons described in Abraxis's objections to Elan's jury instructions, including that Elan is barred from presenting these issues by prosecution history estoppel (doctrine of equivalents), by the patentees' dedication to the public, and due to a lack of substantial evidence. Thus, presentation of these issues to the jury would be a waste of time, confusing and prejudicial. Abraxis includes verdicts on enablement, indefiniteness, and obviousness in its proposed verdict form, but objects to the extent Elan seeks a final verdict from the jury on those issues, which are questions of law for the Court. *See Auto.*

Techs. Int'l, Inc. v. BMW of N. Am., Inc., 501 F.3d 1274, 1281 (Fed. Cir. 2007) (enablement is a question of law); *Honeywell Int'l v. ITC*, 341 F.3d 1332, 1338 (Fed. Cir. 2003) (indefiniteness is a question of law); *Leapfrog Enters. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1160 (Fed. Cir. 2007) (obviousness is a question of law). Abraxis objects to Elan's proposed separate verdict on the level of ordinary skill in the art, which does not call for a separate verdict by the jury.

We, the jury, state that we have reached each of the following verdicts unanimously:

I. <u>As to the '363 Patent:</u>

A. Infringement:

1. Has Elan shown, by a preponderance of the evidence, that the particles in Abraxane® consist essentially of 99.9-10% by weight of a crystalline medicament and 0.1-90% by weight of a surface modifier that is essentially free of intermolecular cross linkages? (Answering "yes" to this question is a finding for Elan of infringement. Answering "no" to this question is a finding for Abraxis of noninfringement).

_____Yes (for Elan) _____No (for Abraxis)

2. Has Elan shown, by a preponderance of the evidence, that the particles in Abraxane® consist essentially of 99.9-10% by weight of a crystalline medicament under the doctrine of equivalents and 0.1-90% by weight of a surface modifier that is essentially free of intermolecular cross linkages? (Answering "yes" to this question is a finding for Elan. Answering "no" to this question is a finding for Abraxis).[1]

_____Yes (for Elan) _____No (for Abraxis)

3. If you answered "yes" as to either question 1 or 2 based on claims 3, 5, 10, or 11, has Elan shown, by a preponderance of the evidence, that Abraxis induced infringement of claims 3, 5, 10, or 11 by others? (Answering "yes" to this question is a finding for Elan of infringement. Answering "no" to this question is a finding for Abraxis of noninfringement).

_____Yes (for Elan) _____No (for Abraxis)

4. If you answered "yes" as to either question 1 or 2 based on claims 3, 5, 10, or 11, has Elan shown, by a preponderance of the evidence, that Abraxis contributorily infringed claims 3, 5, 10, or 11? (Answering "yes" to this question is a finding for Elan of infringement. Answering "no" to this question is a finding for Abraxis of noninfringement).

_____Yes (for Elan) _____No (for Abraxis)

[1] Abraxis objects to the jury being instructed on the doctrine of equivalents. If the jury is so instructed, Abraxis proposes this paragraph be included in the verdict form.

B. Willful Infringement

5. If you answered "yes" as to any of questions 1 through 4 for claims 3, 5, 10, or 11 do you find that Elan has shown by clear and convincing evidence that Abraxis willfully infringed the '363 patent?[2] (Answering "yes" to this question is a finding for Elan of willful infringement. Answering "no" to this question is a finding for Abraxis of no willful infringement)

_____Yes (for Elan) _____No (for Abraxis)

[2] Abraxis objects to the jury being instructed on willful infringement. If the jury is so instructed, Abraxis proposes this paragraph be included in the verdict form.

C. Validity

6. Has Abraxis shown by clear and convincing evidence that any of the following claims of the '363 patent is invalid due to obviousness? (Answering "yes" to this question is a finding for Abraxis. Answering "no" to this question is a finding for Elan.)

Claim 1 of the '363 Patent	_____ Yes	_____ No
Claim 3 of the '363 Patent	_____ Yes	_____ No
Claim 5 of the '363 Patent	_____ Yes	_____ No
Claim 10 of the '363 Patent	_____ Yes	_____ No
Claim 11 of the '363 Patent	_____ Yes	_____ No

7. Has Abraxis shown by clear and convincing evidence that any of the following claims of the '363 patent is invalid for failure to satisfy the enablement requirement? (Answering "yes" to this question is a finding for Abraxis. Answering "no" to this question is a finding for Elan).

Claim 1 of the '363 Patent	_____ Yes	_____ No
Claim 3 of the '363 Patent	_____ Yes	_____ No
Claim 5 of the '363 Patent	_____ Yes	_____ No
Claim 10 of the '363 Patent	_____ Yes	_____ No
Claim 11 of the '363 Patent	_____ Yes	_____ No

8. Has Abraxis shown by clear and convincing evidence that any of the following claims of the '363 patent is invalid for failure to satisfy the written description requirement? (Answering "yes" to this question is a finding for Abraxis. Answering "no" to this question is a finding for Elan).

Claim 1 of the '363 Patent	_____ Yes	_____ No
Claim 3 of the '363 Patent	_____ Yes	_____ No
Claim 5 of the '363 Patent	_____ Yes	_____ No
Claim 10 of the '363 Patent	_____ Yes	_____ No
Claim 11 of the '363 Patent	_____ Yes	_____ No

9. Has Abraxis shown by clear and convincing evidence that any of the following claims of the '363 patent is invalid for failure to satisfy the definiteness requirement? (Answering "yes" to this question is a finding for Abraxis. Answering "no" to this question is a finding for Elan).

Claim 1 of the '363 Patent	_____ Yes	_____ No
Claim 3 of the '363 Patent	_____ Yes	_____ No
Claim 5 of the '363 Patent	_____ Yes	_____ No
Claim 10 of the '363 Patent	_____ Yes	_____ No
Claim 11 of the '363 Patent	_____ Yes	_____ No

10. Has Abraxis shown by clear and convincing evidence that any of the following claims of the '363 patent is invalid due to obviousness-type double patenting? (Answering "yes" to this question is a finding for Abraxis. Answering "no" to this question is a finding for Elan).

Claim 1 of the '363 Patent	_____ Yes	_____ No
Claim 3 of the '363 Patent	_____ Yes	_____ No
Claim 5 of the '363 Patent	_____ Yes	_____ No
Claim 10 of the '363 Patent	_____ Yes	_____ No
Claim 11 of the '363 Patent	_____ Yes	_____ No

D. Damages

11. If you have found at least one of claims 3, 5, 10, or 11 of the '363 patent is infringed and valid, what amount of damages in the form of a reasonable royalty do you find Elan has proven by a preponderance of the evidence that it is entitled to receive from Abraxis?

If from October 26, 2007 Amount $_____

If from February 2005 Amount $_____

E. Inequitable Conduct

12. Has Abraxis shown by clear and convincing evidence that the '363 patent is unenforceable due to inequitable conduct?

_____Yes (for Abraxis) _____No (for Elan)

F. Unclean Hands

13. Has Abraxis shown by clear and convincing evidence that the '363 patent is unenforceable due to unclean hands?

_____Yes (for Abraxis) _____No (for Elan)

II. As to the '025 Patent:

A. Invalidity

14. Has Abraxis shown by clear and convincing evidence that any of the following claims of the '025 patent is invalid for failure to satisfy the enablement requirement? (Answering "yes" to this question is a finding for Abraxis. Answering "no" to this question is a finding for Elan).

Claim 1 of the '025 Patent	_____ Yes	_____ No
Claim 2 of the '025 Patent	_____ Yes	_____ No
Claim 3 of the '025 Patent	_____ Yes	_____ No
Claim 13 of the '025 Patent	_____ Yes	_____ No
Claim 14 of the '025 Patent	_____ Yes	_____ No
Claim 15 of the '025 Patent	_____ Yes	_____ No

15. Has Abraxis shown by clear and convincing evidence that any of the following claims of the '025 patent is invalid for failure to satisfy the written description requirement? (Answering "yes" to this question is a finding for Abraxis. Answering "no" to this question is a finding for Elan).

Claim 1 of the '025 Patent	_____ Yes	_____ No
Claim 2 of the '025 Patent	_____ Yes	_____ No
Claim 3 of the '025 Patent	_____ Yes	_____ No
Claim 13 of the '025 Patent	_____ Yes	_____ No
Claim 14 of the '025 Patent	_____ Yes	_____ No
Claim 15 of the '025 Patent	_____ Yes	_____ No

16. Has Abraxis shown by clear and convincing evidence that any of the following claims of the '025 patent is invalid for failure to satisfy the definiteness requirement? (Answering "yes" to this question is a finding for Abraxis. Answering "no" to this question is a finding for Elan).

Claim 1 of the '025 Patent	_____ Yes	_____ No
Claim 2 of the '025 Patent	_____ Yes	_____ No
Claim 3 of the '025 Patent	_____ Yes	_____ No
Claim 13 of the '025 Patent	_____ Yes	_____ No
Claim 14 of the '025 Patent	_____ Yes	_____ No
Claim 15 of the '025 Patent	_____ Yes	_____ No

B. Inequitable Conduct

17. Has Abraxis shown by clear and convincing evidence that the '025 patent is unenforceable due to inequitable conduct?

_____Yes (for Abraxis) _____No (for Elan)

Dated: _____ By: _____
Foreperson

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Jury Member

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Jury Member

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Jury Member

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Jury Member

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