IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ALLERGAN, INC., and ALLERGAN SALES, LLC, Plaintiffs, v. ALCON INC., ALCON LABORATORIES, INC., and ALCON RESEARCH, LTD., Defendants.	)	Civil Action No. 04-968 (GMS)

ORDER

Presently before the court is the defendants' "Motion *In Limine* to Exclude Opinions of Dr. Valentino Stella Pertaining to the Alleged Infringement of Claim 6 of the '337 Patent." (D.I. 155 at 11-15.) At issue is dependent claim 6 of U.S. Patent No. 6,673,337 ("the '337 patent"):

> The composition of claim 1 wherein the solubility enhancing component is effective to increase the solubility in *a biological environment* of the alpha-2-adrenergic agonist component relative to the solubility in *a biological environment* of an identical alpha-2-adrenergic agonist component in a similar composition without the solubility enhancing component.

'337 patent, col. 16, l. 65 - col. 17, l. 4 (emphasis added). Although claim 6 is worded in terms of "a biological environment," the defendants point out that the opinion of the plaintiffs' expert, Dr. Stella, is limited to the effectiveness of certain solubility enhancing component ("SEC") within particular pH ranges. According to the defendants, a biological environment such as the human eye is far more complex than a mere pH range. Therefore, the defendants contend, Dr. Stella's testimony will not be helpful to the court as the trier of fact, and therefore, should be excluded.

The defendants' argument relies on the premise that the complexities of the human eye other than its pH range are material to the effectiveness of SECs. However, this is a lay court without

expertise in the biology of the human eye and its interaction with chemicals. Thus, the court is unable to conclude, without the aid of expert testimony, that the defendants' premise is correct. At trial, the defendants will have ample opportunity to test Dr. Stella's theory both through cross examination and through their own expert witness.

IT IS HEREBY ORDERED THAT:

The defendants' "Motion *In Limine* to Exclude Opinions of Dr. Valentino Stella Pertaining to the Alleged Infringement of Claim 6 of the '337 Patent" (D.I. 155 at 11-15) be DENIED.

Dated: March 6, 2006

UNITED STATES DISTRICT JUDGE

