UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 12-60704-CIV-SEITZ/SIMONTON (as consolidated)

APOTEX, INC. and APOTEX CORP.,
Plaintiffs,
v.
MYLAN PHARMACEUTICALS INC.,
Defendant.
/

CASE NO. 12-60704-CIV
SEITZ/SIMONTON

APOTEX, INC. and APOTEX CORP.,
Plaintiffs,
v.
PFIZER INC., and GREENSTONE LLC,
Defendants.
/

CASE NO. 12-60705-CIV
SEITZ/SIMONTON

APOTEX, INC. and APOTEX CORP.,
Plaintiffs,
v.
LUPIN PHARMACEUTICALS, INC. and LUPIN LTD.,
Defendants.
/

CASE NO. 12-60708-CIV
SEITZ/SIMONTON

APOTEX, INC. and APOTEX CORP.,
Plaintiffs
v.
TEVA PHARMACEUTICAL INDUSTRIES, LTD, et al.,
Defendants.
/

CASE NO. 13-60601-CIV
SEITZ/SIMONTON

PLAINTIFFS APOTEX, INC. AND APOTEX CORP.'S RESPONSE TO DEFENDANT TEVA PHARMACEUTICAL INDUSTRIES LTD. AND TEVA PHARMACEUTICAL USA, INC.'S NOTICE OF SUPPLEMENTAL AUTHORITY

Apotex respectfully responds to Teva's notice of supplemental authority submitting *SkinMedica, Inc. v. Histogen, Inc,*. No. 2012-1560, 2013 WL 4487603 (Fed. Cir. Aug. 23, 2013), in connection with its claim construction briefing. Teva argues that *SkinMedica* rebuts Apotex's argument that Teva's claim construction "tacks on a highly detailed limitation completely unrelated to the claim language." D.E. 147. Teva does not argue the *SkinMedica* decision supports their disclaimer argument and the case adds no new law for the court to consider.

The additional language in *SkinMedica*, unlike here, was added to define claim terms. The Court in *SkinMedica* was asked to determine whether the use of beads should be excluded from the phrase "culturing…cells in three-dimensions." 2012-1560, 2013 WL 4487603 at *5. The ordinary meaning of "culturing ...cells in three-dimensions" included the use of beads. *Id* at *7. However, the Court found the "inventors clearly redefined the scope" of the claim. *Id* at *8. "[T]he patentees plainly and repeatedly distinguished culturing with beads from culturing in three-dimensions. They expressly defined the use of beads as culturing in two-dimensions." *Id*. The court then upheld the construction of "culturing ...cells in three-dimensions" to mean "growing…cells in three-dimensions (excluding growing in monolayers or on microcarrier beads). *Id* at *22. In other words, the added language was necessary to clarify the patentee defined the use of beads as a two-dimensional system.

Contrary to the *SkinMedica* case, the lengthy phrase Teva tacks on to the claim is completely unrelated to the claim language. Teva is attempting to read non-existent limitations into the claim. The claim is not directed to a ratio of active ingredient to excipients, but to a process of manufacturing pharmaceutical compositions. *SkinMedica* is neither new law, nor does it support Teva's construction.

Dated: September 10, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 10th day of September 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record on the attached service list via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: s/ Joshua D. Martin

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