**UNITED STATES DISTRICT COURT**
**NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| **BONE CARE INTERNATIONAL LLC and GENZYME CORPORATION,**<br><br>***Plaintiffs,***<br><br>**v.**<br><br>**PENTECH PHARMACEUTICALS, INC. and COBREK PHARMACEUTICALS, INC.,**<br><br>***Defendant.*** | **Civil Action No.: 08-cv-1083**<br><br>**Honorable Robert M. Dow Jr.**<br>**Magistrate Judge Martin C. Ashman** |

**MOTION FOR LEAVE TO SUPPLEMENT AUTHORITY IN SUPPORT OF BRIEFING REGARDING TIMING OF CLAIM CONSTRUCTION**

Plaintiffs Bone Care International LLC and Genzyme Corporation, by and through their counsel, seek leave to supplement the authority in support of their Brief Regarding Timing of Claim Construction (Docket Entry No. 39). In support of their motion, plaintiffs state as follows:

1. On April 23, 2008, the Court ordered the parties to submit short briefs regarding their positions concerning the timing of claim construction in this matter. (Docket No. 25.)

2. On May 23, 2008, the parties filed opening briefs. Plaintiffs proposed that claim construction follow the close of fact discovery (currently set for February 20, 2009). (Docket No. 39.) Defendant Pentech Pharmaceuticals, Inc. ("Pentech"), on the other hand, proposed that claim construction coincide with fact discovery, with the exchange of a preliminary claim construction chart occurring August 8, 2008. (Docket Entry No. 38.) On May 30, 2008, the parties filed responsive briefs. (Docket Entry Nos. 46 and 47.)

3. On May 28, 2008, Pentech filed a Motion for Holding Patent Claim Construction Proceedings Concurrently With Discovery in the case captioned *Connetics Corp. v. Pentech*

*Pharmaceuticals, Inc.*, Case No. 07 C 6297, pending before Judge Gottschall and involving another Pentech Abbreviated New Drug Application ("ANDA"). In its memorandum in support (Docket Entry No. 46), Pentech made substantially the same arguments as it did in the opening brief it filed in this case. Pentech sought an exchange of preliminary claim construction charts on August 15, 2008, with a claim construction hearing to occur shortly prior to the close of fact discovery (there set for December 15, 2008).

4. On July 14, 2008, Judge Gottschall entered an Order denying Pentech's motion for claim construction concurrent with fact discovery. A copy of that order is attached hereto as Exhibit A. Judge Gottschall concluded:

> Neither party has yet precisely or sufficiently defined for the court the issues of claim construction that they seek to develop for, and define at, the *Markman* hearing. The court will therefore entertain a motion for scheduling the *Markman* hearing after the close of fact discovery, but prior to the opening of expert discovery. At that time, the court expects the parties to provide the court with the nature of each claim in dispute, as well as the nature of each dispute, so that, in the interests of judicial economy, the court can efficiently allocate time and resources for the scheduling of the hearing.

WHEREFORE, Plaintiffs Bone Care International LLC and Genzyme Corporation respectfully request leave to supplement the authority in support of their Brief Regarding Timing of Claim Construction with the Order entered by Judge Gottschall in the *Connetics* case, attached hereto as Exhibit A.

Dated: July 25, 2008

Respectfully submitted,

*/s/ Jennifer Yule DePriest*

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**ATTORNEYS FOR PLAINTIFFS**

**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2008, a copy of the foregoing **Motion For Leave To Supplement Authority In Support Of Briefing Regarding Timing Of Claim Construction** was filed electronically. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

*/s/ Jennifer Yule DePriest*
Jennifer Yule DePriest

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