

Multiple Documents

Part	Description
1	399
2	Text of Proposed Order
3	Rule 7.1.1. Certification

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAZZ PHARMACEUTICALS, INC., Plaintiff, v. AVADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-691-GBW
JAZZ PHARMACEUTICALS, INC., et al., Plaintiffs, v. AVADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-1138-GBW
JAZZ PHARMACEUTICALS, INC., et al., Plaintiffs, v. AVADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-1594-GBW

**AVADEL CNS PHARMACEUTICALS, LLC’S MOTIONS FOR SUMMARY
JUDGMENT AND TO EXCLUDE EXPERT TESTIMONY**

Defendant Avadel CNS Pharmaceuticals, LLC (“Avadel”) respectfully moves this Court for an Order granting summary judgment in its favor pursuant to Federal Court Civil Rule 56, and to exclude certain opinions of Jazz Pharmaceutical, Inc.’s (“Jazz”) experts, as follows:

Summary Judgment

Avadel respectfully requests summary judgment in its favor as follows:

1. The asserted claims of U.S. Patent Nos. 10,758,488 (the “488 Patent”), 10,813,885 (the “885 Patent”), 10,959,956 (the “956 Patent”), and 10,966,931 (the “931 Patent”) (together, the “Sustained Release Patents”) are invalid because the undisputed facts show that those claims lack written description support for failure to provide “blaze marks” that would lead a person of ordinary skill in the art through the broad genus disclosed in the specification to the narrower sub-genus claimed. *See* 35 U.S.C. § 112.

2. The asserted claims of U.S. Patent Nos. 11,077,079 (the “079 Patent) and 11,147,782 (the “782 Patent) are invalid because the undisputed facts show that those claims are not enabled by the specification.

3. Avadel does not infringe the asserted claims of the Sustained Release Patents, the ’079 Patent, or the ’782 Patent because under Avadel’s proposed construction of “gamma-hydroxybutyrate”/“oxybate” the undisputed facts show that the accused Lumryz™ product does not meet the claim limitations.

Exclusion of Certain Opinions of Jazz’s Experts

In addition, pursuant to Federal Rule of Evidence 702 and *Daubert v. Merrel Dow Pharm., Inc.*, 509 U.S. 579 (1993), Avadel hereby moves to exclude expert testimony as follows:

1. Jazz’s damages expert, Dr. Mark Rainey, should be precluded from presenting opinions concerning 27% and 13% royalty rates.
2. Jazz’s technical expert, Dr. Christian Moreton, should be precluded from presenting opinions on written description support for the asserted claims of the Sustained Release Patents.
3. Jazz’s technical expert, Dr. Steven Little, should be precluded from testifying that the non-resinate embodiments of the asserted claims are enabled.

The grounds for these motions are further set forth in Avadel's contemporaneously-filed Opening Brief in Support of its Motions for Summary Judgment and to Exclude Expert Testimony and supporting papers.

Dated: November 30, 2023

MCCARTER & ENGLISH, LLP

Of Counsel:

/s/ Daniel M. Silver

Kenneth G. Schuler
Marc N. Zubick
Alex Grabowski
Sarah W. Wang
LATHAM & WATKINS LLP
330 North Wabash Avenue, Suite 2800
Chicago, IL 60611
(312) 876-7700
kenneth.schuler@lw.com
marc.zubick@lw.com
alex.grabowski@lw.com
sarah.wang@lw.com

Daniel M. Silver (#4758)
Alexandra M. Joyce (#6423)
Renaissance Centre
405 N. King Street, 8th Floor
Wilmington, Delaware 19801
(302) 984-6300
dsilver@mccarter.com
ajoyce@mccarter.com

Counsel for Defendant

Herman Yue
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200
Herman.Yue@lw.com

Audra M. Sawyer
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, D.C. 20004
(202) 637-2200
Audra.sawyer@lw.com

Daralyn J. Durie
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, CA 94105
(415) 268-6055
ddurie@mofo.com

Kira A. Davis
Katherine E. McNutt
MORRISON & FOERSTER LLP
707 Wilshire Boulevard
Los Angeles, CA 90017
(213) 892-5200
kiradavis@mofocom
kmcnutt@mofocom

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAZZ PHARMACEUTICALS, INC., Plaintiff, v. A VADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-691-GBW
JAZZ PHARMACEUTICALS, INC., et al., Plaintiffs, v. A VADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-1138-GBW
JAZZ PHARMACEUTICALS, INC., et al., Plaintiffs, v. A VADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-1594-GBW

**[PROPOSED] ORDER GRANTING A VADEL CNS PHARMACEUTICALS, LLC’S
MOTIONS FOR SUMMARY JUDGMENT AND TO EXCLUDE EXPERT TESTIMONY**

IT IS HEREBY ORDERED this _____ day of _____, 20____, that Defendant Avadel CNS Pharmaceuticals, LLC’s (“Avadel”) Motions for Summary Judgment and to Exclude Expert Testimony is hereby GRANTED. The Court hereby orders that:

1. The asserted claims of U.S. Patent Nos. 10,758,488 (the “488 Patent”), 10,813,885 (the “885 Patent”), 10,959,956 (the “956 Patent”), and 10,966,931 (the “931 Patent”) (together, the “Sustained Release Patents”) are invalid because the undisputed facts show that those claims lack written description support for failure to provide “blaze marks” that would lead a person of ordinary skill in the art through the broad genus disclosed in the

specification to the narrower sub-genus claimed. *See* 35 U.S.C. § 112.

2. The asserted claims of U.S. Patent Nos. 11,077,079 (the “’079 Patent) and 11,147,782 (the “’782 Patent) are invalid because the undisputed facts show that those claims are not enabled by the specification.

3. Avadel does not infringe the asserted claims of the Sustained Release Patents, the ’079 Patent, or the ’782 Patent because under Avadel’s proposed construction of “gamma-hydroxybutyrate”/”oxybate” the undisputed facts show that the accused Lumryz™ product does not meet the claim limitations.

4. Jazz’s damages expert, Dr. Mark Rainey, is precluded from presenting opinions concerning 27% and 13% royalty rates.

5. Jazz’s technical expert, Dr. Christian Moreton, is precluded from presenting opinions on written description support for the asserted claims of the Sustained Release Patents.

6. Jazz’s technical expert, Dr. Steven Little, is precluded from testifying that the non-resinate embodiments of the asserted claims are enabled

The Honorable Gregory B. Williams

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAZZ PHARMACEUTICALS, INC., Plaintiff, v. AVADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-691-GBW
JAZZ PHARMACEUTICALS, INC., et al., Plaintiffs, v. AVADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-1138-GBW
JAZZ PHARMACEUTICALS, INC., et al., Plaintiffs, v. AVADEL CNS PHARMACEUTICALS, LLC, Defendant.	C.A. No. 21-1594-GBW

RULE 7.1.1 CERTIFICATION

Pursuant to D. Del. LR 7.1.1, Delaware counsel for the parties met and conferred, verbally via teleconference, regarding Defendant's *Daubert* motions to exclude expert testimony, and the parties were unable to reach an agreement on the relief sought therein.

Dated: November 30, 2023

MCCARTER & ENGLISH, LLP

/s/ Daniel M. Silver

Daniel M. Silver (#4758)

Alexandra M. Joyce (#6423)

Renaissance Centre

405 N. King Street, 8th Floor

Wilmington, Delaware 19801

(302) 984-6300

dsilver@mccarter.com

ajoyce@mccarter.com

Counsel for Defendant