

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ALTANA PHARMA AG and WYETH,

Plaintiffs,

v.

TEVA PHARMACEUTICALS USA, INC., et al.

Defendants.

Honorable Jose Linares, U.S.D.J.
Honorable Claire Cecchi, U.S.M.J.

CIVIL ACTION NO. 04-2355 (JLL)

Consolidated with Civil Action Nos.
05-1966 (JLL)
05-3290 (JLL)
06-3672 (JLL)
08-2877 (JLL)

VERDICT FORM

When answering the following questions and filling out this Verdict Form, please follow the directions provided throughout the form. Your answer to each question must be unanimous. Some of the questions contain legal terms that are defined and explained in detail in the Jury Instructions.

We, the Jury, unanimously agree to the answers to the following questions and return them under the instructions of this court as our verdict in this case.

DEFENDANTS' DEFENSE OF INVALIDITY BASED ON COMPOUND 12

Differences between the claimed invention and Compound 12:

Have the defendants proven by clear and convincing evidence that a person of ordinary skill in the art would have:

- (1) had a reason or motivation to select Compound 12 as a starting point?

(A "YES" answer is a finding for Teva, Sun and KUDCo. A "NO" answer is a finding for Nycomed and Wyeth.)

Yes _____ No

- (2) had a reason or motivation to modify Compound 12 to arrive at pantoprazole?
(A "YES" answer is a finding for Teva, Sun and KUDCo. A "NO" answer is a finding for Nycomed and Wyeth.)

Yes _____ No

- (3) reasonably expected success? (A "YES" answer is a finding for Teva, Sun and KUDCo. A "NO" answer is a finding for Nycomed and Wyeth.)

Yes _____ No

Secondary Considerations

- (4) Which of the following factors, if any, has been established by the evidence with respect to the claimed invention – check any that apply:

commercial success of a product due to the merits of the claimed invention rather than due to advertising, promotion, salesmanship, or features of the product other than those known in the prior art or otherwise not attributable to the claimed invention

long felt need for a solution to the problem facing the inventors, which was satisfied by the claimed invention

others trying but failing to solve the problem solved by the claimed invention.

copying of the claimed invention by others.

unexpected and superior results from the claimed invention over Compound 12 with regard to pH5 stability.

unexpected and superior results from the claimed invention over Compound 12 with regard to sodium-potassium pump selectivity.

acceptance by others of the claimed invention as shown by the licensing of the claimed invention.

(5) If you answered yes to all of questions (1), (2) **and** (3), and considering your answers to question (4) above, do you find that Teva, Sun, and KUDCo have proven by clear and convincing evidence that claims 22 and 25 of the '579 patent would have been obvious in light of Compound 12 of the '518 patent to a person of ordinary skill in the art? (A "YES" answer is a finding for Teva, Sun and KUDCo. A "NO" answer is a finding for Nycomed and Wyeth.)
Yes _____ No

(6) If you answered yes to all of questions (2) **and** (3), and considering your answers to question (4) above, do you find that Teva, Sun, and KUDCo have proven by clear and convincing evidence that claims 22 and 25 of the '579 patent are invalid based on double patenting? (A "YES" answer is a finding for Teva, Sun and KUDCo. A "NO" answer is a finding for Nycomed and Wyeth.)
Yes _____ No

DEFENDANTS' DEFENSE OF INVALIDITY BASED ON COMPOUND 4

Differences between the claimed invention and Compound 4:

Have defendants proven by clear and convincing evidence that a person of ordinary skill in the art would have:

- (7) had a reason or motivation to modify Compound 4 to arrive at pantoprazole? (A "YES" answer is a finding for Teva, Sun and KUDCo. A "NO" answer is a finding for Nycomed and Wyeth.)

Yes No

- (8) reasonably expected success? (A "YES" answer is a finding for Teva, Sun and KUDCo. A "NO" answer is a finding for Nycomed and Wyeth.)

Yes No

Secondary Considerations:

- (9) Which of the following factors, if any, has been established by the evidence with respect to the claimed invention – check any that apply:

commercial success of a product due to the merits of the claimed invention rather than due to advertising, promotion, salesmanship, or features of the product other than those known in the prior art or otherwise not attributable to the claimed invention

long felt need for a solution to the problem facing the inventors, which was satisfied by the claimed invention

others trying but failing to solve the problem solved by the claimed invention.

copying of the claimed invention by others.

_____ acceptance by others of the claimed invention as shown by the licensing of the claimed invention.

- (10) If you answered yes to all of questions (7) **and** (8), and considering your answers to question (9) above, do you find that Teva, Sun, and KUDCo have proven by clear and convincing evidence that claims 22 and 25 of the '579 invalid based on double patenting? (A "YES" answer is a finding for Teva, Sun and KUDCo. A "NO" answer is a finding for Nycomed and Wyeth.)

Yes _____ No

You have now reached the end of the verdict form and should review it to ensure it accurately reflects your unanimous determinations. The Presiding Juror should then sign and date the verdict form in the spaces below and notify the Court Security Officer that you have reached a verdict. The Presiding Juror should retain possession of the verdict form and bring it when the jury is brought back into the courtroom.

Dated: 4.23.10


JURY FOREPERSON