

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MEDICINOVA, INC., a Delaware Corporation,

Plaintiff,

v.

GENZYME CORPORATION, a Massachusetts Corporation,

Defendant.

Case No.: 14-CV-2513-JLS (KSC)

ORDER SETTING STATUS CONFERENCE

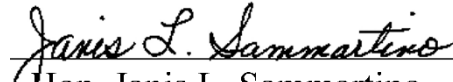
Presently before the Court is Defendant’s Motion for Summary Judgment, (ECF No. 70). At its core, this case is a breach of contract matter, and Defendant requests the Court find that Defendant is not liable under the contract at issue. However, in order to do this, Defendant seeks a claim construction of a term in claim 1 of the patent: “a stock of recombinant adeno-associated virus.” (See ECF No. 69, at 12, 23.) It is not clear exactly how Defendant would construe this phrase or if Defendant is requesting a construction of the entire phrase or only certain words within the phrase. Plaintiff believes a claim construction is improper and disagrees with Defendant’s construction, but does not propose a construction.

1 While the Court understands that a claim construction may occur within a summary
2 judgment, it is the Court's preference to construe the meaning of disputed terms before
3 determining summary judgment. *See Nesscap Co. v. Maxwell Tech., Inc.*, 07cv704 JLS
4 (BLM), 2007 WL 4277548, at *6 (S.D. Cal. Dec. 5, 2007) (finding summary judgment is
5 premature until the Court has construed the meaning of the debated term). This is not an
6 uncommon preference. *See Anticancer, Inc. v. Perry Scientific, Inc.*, 07cv0778 JAH
7 (BLM), 2008 WL 11337378 (S.D. Cal. Jan. 25, 2008) (holding the Court would not
8 entertain a summary judgment motion prior to a *Markman* hearing).

9 The Court understands the delay that a claim construction would impose on this
10 case.¹ Thus, the Court **SETS** a status conference for April 19, 2018 at 1:30 p.m. to discuss
11 the issue. Although Defendant's Motion for Summary Judgment is set for hearing on this
12 day, the Court will not be issuing a tentative ruling on the pending Motion at this time but
13 will be discussing the case in its entirety going forward.

14 **IT IS SO ORDERED.**

15 Dated: March 29, 2018


16 Hon. Janis L. Sammartino
17 United States District Judge

18
19
20
21
22
23
24
25
26 ¹ Plaintiffs state "a claim construction ruling by the Court would require an additional period of
27 supplemental expert discovery, including supplemental reports and depositions, as well as a claim
28 construction hearing, in order to allow both sides' experts to take the Court's adjudicated meaning of the
relevant claim terms into effect." (ECF No. 86, at 13.) The Parties are to confer on this issue and inform
the Court as to what will be needed if the Court determines a claim construction is necessary.