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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALLTECH, INC.,

Plaintiff,

vs.

CENZONE TECH, INC. and JUNG FU WU.

Defendants.

CASE NO. 06 CV 0153 JM (RBB)

**CLAIM CONSTRUCTION
ORDER FOR UNITED STATES
PATENT NUMBER 6,045,834**

CENZONE TECH, INC., and JUNG FU WU,

Counterclaimants,

vs.

ALLTECH, INC.,

Counterdefendant.

Pursuant to Markman v. Westview Instruments, Inc., 517 U.S. 370 (1996), on December 20, 2006 the court conducted a Markman hearing in the above-titled patent infringement action regarding construction of the disputed claim terms for U.S. Patent Number 6,045,834 (“the ‘834 patent”). Prior to the Markman hearing, on December 19, 2006, a tutorial was held during which the parties briefed the court on the science of animal feed additives.

I. BACKGROUND

The ‘834 Patent involves a method of removing mycotoxins from animal feeds wherein a composition of modified yeast cell wall extract and mineral clay is added to animal feeds and binds the mycotoxins contained therein upon consumption by the animal. Mycotoxins are toxins, or

JOINT CLAIM CONSTRUCTION WORKSHEET
Court's Claim Constructions
Alltech, Inc. v. Cenzone Tech, Inc., et al.
Case No. 06-CV-0153

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANTS' PROPOSED CONSTRUCTION	COURT'S CONSTRUCTION
<p>1. A composition for binding and thereby inactivating a mycotoxin in an animal feed, comprising a modified yeast cell wall extract and a mineral clay.</p>	<p>The term "animal feed" refers to any composition that is suitable for providing nutrition to any kind of animal.</p>	<p>The phrase "for binding and thereby inactivating a mycotoxin in an animal feed" is a limitation on the composition of claim 1.</p>	<p>The phrase "for binding and thereby inactivating a mycotoxin in an animal feed" is merely a statement of intent which does not limit the scope of the claim.</p>	<p>Parties no longer disagree on this construction and therefore the court need not construe it. <u>See</u> Defs. Initial Brief at 4.</p>
		<p>The term "animal" means any non-human mammal or bird.</p>	<p>"Animal" means any kind of non-human animal, including both vertebrate animals and invertebrate animals.</p>	<p>The term "animal" means any non-human mammal or bird.</p>
				<p>(cont'd next page)</p>

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANTS' PROPOSED CONSTRUCTION	COURT'S CONSTRUCTION
		<p>The term "mycotoxin" has its plain and ordinary meaning as used in the animal nutrition industry and means a toxin produced by fungi such as molds.</p>	<p>"Mycotoxin" means a poisonous substance produced by a fungus, e.g., a yeast, mold, smut, or mushroom.</p>	<p>"Mycotoxin" means a poisonous substance produced by fungi, such as molds.</p>
		<p>The term "modified yeast cell wall," means a yeast cell wall that has been altered to increase its ability to bind mycotoxins.</p>	<p>"Modified yeast cell wall" means cell wall altered by means of alcohol shocking.</p>	<p>"Modified yeast cell wall," means a yeast cell wall that has been altered to increase its thickness and surface area.</p>
	<p>The term "yeast cell wall extract" refers to a composition of yeast cell material, including yeast cell walls, where at least a portion of the yeast cell walls have been separated from their intracellular components.</p>			<p>(cont'd next page)</p>

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANTS' PROPOSED CONSTRUCTION	COURT'S CONSTRUCTION
	<p>The term "mineral clay" means a material that contains silicates and is suitable for inclusion in animal diets.</p>			

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANTS' PROPOSED CONSTRUCTION	COURT'S CONSTRUCTION
4. The composition of claim 1, wherein the yeast cell wall is modified prior to extraction.		The term " modified " means altered to increase the mycotoxin-binding ability.	" Modified " means altered by alcohol shocking.	" Modified " means altered to increase its thickness and surface area.

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANTS' PROPOSED CONSTRUCTION	COURT'S CONSTRUCTION
<p>5. The composition of claim 4, wherein the yeast cell wall is modified by an alcohol shocking of the yeast thereby increasing the mycotoxin-binding capacity of the yeast cell wall.</p>	<p>The term "mycotoxin-binding capacity" means the ability to bind mycotoxins.</p>	<p>The term "modified" means altered to increase the mycotoxin-binding ability.</p> <p>The term "alcohol shocking" means stress to the yeast organism resulting from exposure to an alcohol-containing environment during growth (e.g., during fermentation).</p>	<p>Same as for "modified" in Claim 4.</p> <p>"Alcohol shocking" means a single-step addition of an alcohol to a culture of yeast or other cell or organisms causing a very rapid increase in the alcohol concentration.</p>	<p>"Modified" means altered to increase its thickness and surface area.</p> <p>"Alcohol shocking" to mean stress to the yeast organism resulting from exposure to an alcohol-containing environment during growth wherein the alcohol is added from an external source.</p>

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANTS' PROPOSED CONSTRUCTION	COURT'S CONSTRUCTION
<p>15. An animal feed comprising a composition comprised of a modified yeast cell wall extract and a mineral clay in an amount effective to bind and thereby inactivate a mycotoxin present in the animal feed.</p>		<p>The phrase “amount effective to bind and thereby inactivate a mycotoxin present in the animal feed” means an amount sufficient to either adsorb and thereby reduce the absorption of mycotoxins by an animal or reduce the deleterious effects of mycotoxins in an animal.</p>	<p>The phrase “amount effective to bind and thereby inactivate a mycotoxin present in the animal feed” means an amount sufficient to either adsorb and thereby reduce the absorption of mycotoxins by an animal or reduce the deleterious effects of mycotoxins in an animal.</p>	<p>The phrase “amount effective to bind and thereby inactivate a mycotoxin present in the animal feed” means an amount sufficient to either adsorb and thereby reduce the absorption of mycotoxins by an animal or reduce the deleterious effects of mycotoxins in an animal.</p>
		<p>Alltech objects to Cenzone’s identification of the term “inactivate” as a term requiring the Court’s construction.</p>	<p>“Inactivate” means to make incapable of action.</p>	<p>This term does not require the court’s construction.</p>

PATENT CLAIM	AGREED PROPOSED CONSTRUCTION	PLAINTIFF'S PROPOSED CONSTRUCTION	DEFENDANTS' PROPOSED CONSTRUCTION	COURT'S CONSTRUCTION
<p>17. A method for reducing mycotoxin contamination of an animal consuming a feedstuff, comprising feeding to an animal an effective amount of a composition comprising a modified yeast cell wall extract and a mineral clay thereby binding and inactivating the mycotoxin in the animal feed.</p>		<p>The term "effective amount" means an amount sufficient to bring about the desired result of either adsorbing and inactivating a mycotoxin in an animal feed or reducing the deleterious effects of mycotoxins in an animal.</p>	<p>"An effective amount" means an amount which is sufficient to bind and inactivate mycotoxins present in an animal feed.</p>	<p>The term "effective amount" means an amount sufficient to bring about the desired result of either adsorbing and inactivating a mycotoxin in an animal feed or reducing the deleterious effects of mycotoxins in an animal.</p>