

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

PALMETTO PHARMACEUTICALS LLC,

Plaintiff,

v.

ASTRAZENECA PHARMACEUTICALS LP,

Defendant.

C/A No. 2:11-cv-00807

**DEFENDANT ASTRAZENECA PHARMACEUTICALS LP'S
NOTICE OF CROSS-APPEAL**

Notice is hereby given that, pursuant to Federal Rule of Appellate Procedure 4(a)(3), Defendant AstraZeneca Pharmaceuticals LP hereby cross-appeals to the United States Court of Appeals for the Federal Circuit from the district court's Final Judgment (Dkt. 444), docketed on December 10, 2015, and from all opinions, orders, decisions, findings, conclusions, or rulings underlying the Final Judgment, including, but not limited to, the constructions of the following claim terms of U.S. Patent No. 6,465,516 ("the '516 patent"): (1) "amount effective [to increase Nitric Oxide production]," and (2) "irrespective of the subject's cholesterol level." *See* Order Adopting Master Dority's Report and Recommendation at 1, 13–17 (Dkt. 442). Both of these terms are relevant to AstraZeneca's affirmative defense and counterclaim for declaratory judgment of invalidity of the '516 patent, *see* Answer to First Amended Complaint for Patent Infringement and Counterclaims at 12–14 (Dkt. 82), which the Court dismissed without prejudice, Final Judgment (Dkt. 444). Specifically, the Court rejected AstraZeneca's arguments that the term "amount effective" is indefinite, Dkt. 442 at 15; *see also* 35 U.S.C. § 112, and that claim 1 of the '516 patent was improperly broadened during reexamination based on the removal

of the term “irrespective of the subject’s cholesterol level,” Dkt. 442 at 17; *see also* 35 U.S.C. § 305. If either of these terms is construed on appeal as AstraZeneca has argued, the Final Judgment can be affirmed on the alternative ground that the ’516 patent is invalid as a matter of law.

Included herewith is payment of the filing fee (\$5.00) and the docketing fee (\$500.00) as required by 28 U.S.C. § 1917 and Federal Circuit Rules 52(a)(2) and 52(a)(3)(A), respectively, and Federal Rule of Appellate Procedure 3(e).

Dated: January 19, 2016

/s/ Marguerite S. Willis

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