

ORAL ORDER: The Court has concluded that Plaintiff's proposed construction of "head group" ("a portion of the lipid molecule that is less hydrophobic than the hydrophobic tails") is not acceptable because it is undisputed that the claimed "primary group"-a group that is comprised in part of, and distinct from, the head group-is less hydrophobic than the hydrophobic tails. See *CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co.*, 224 F.3d 1308, 1317 (Fed.Cir.2000) (In the absence of any evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings.); *Bd. of Regents of Univ. of Texas Sys. v. BENQ Am. Corp.*, 533 F.3d 1362, 1371 (Fed. Cir. 2008) ("Different claim terms are presumed to have different meanings."). The Court was inclined to adopt Defendants' proposed construction of head group (i.e., "a group that may be protonated"), but in drafting its opinion, the Court realized that Defendants proposed construction suffers from the same defect that led the Court to reject Plaintiff's proposed construction, as it is undisputed that the claimed central moiety can have a nitrogen atom and that therefore it is also a group that may be protonated." The main problem the Court sees in Defendants' proposed construction is the word "may." Having reviewed the briefing and heard Dr. Whitehead testify, the Court wonders whether Defendants meant to say "must" instead of "may." In any event, consistent with its obligations under *O2 Micro*, the Court is considering construing "head group" to mean "a group that must be either permanently positively charged or protonatable." See D.I. 236 at 131:10-13 (Dr. Whitehead testifying that a POSA would have interpreted head group in 2011 to mean "the part of the cationic lipid that is positively charged or protonatable."); D.I. 236 at 133:12-15 (Dr. Whitehead testifying that "all of the intrinsic and extrinsic evidence that were considering in this case points to the head group requiring the permanent positive or the ionizable charge."(emphasis added)). The Court had hoped to issue its ruling on the head group term in advance of the August 15, 2024 claim construction hearing in the 23-580 action. Therefore, Defendants in both the 22-336 and 23-580 cases shall inform the Court by a letter filed no later than August 2, 2024 whether they agree to this proposed construction and, if they do not agree, why. The letter shall be no more than 500 words. Plaintiff shall have until August 6 to file a letter response (of no more than 500 words) to Defendants' letter. Signed by Judge Colm F. Connolly on 7/31/2024. (nmf) (Entered: 07/31/2024)

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*Alnylam Pharmaceuticals, Inc. v. Pfizer Inc. et al*  
1-22-cv-00336 (DDE), 7/31/2024, docket entry