

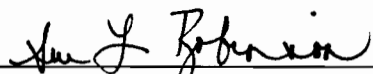
IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SMITHKLINE BEECHAM )  
CORPORATION, )  
 )  
Plaintiff, )  
 )  
v. ) Civ. No. 08-112-SLR  
 )  
BARR PHARMACEUTICALS, INC. )  
and BARR LABORATORIES, INC., )  
 )  
Defendants. )

**MEMORANDUM ORDER**

At Wilmington this 23<sup>rd</sup> day of September, 2009, having reviewed plaintiff's motion to strike, and the papers submitted in connection therewith;

IT IS HEREBY ORDERED that said motion (D.I. 77) is denied. The § 112 defense was timely pled. The evidentiary basis for the defense rests, in large part, on information within plaintiff's control. Plaintiff has the opportunity to respond within the context of expert discovery. To the extent plaintiff contends that there is fact discovery it needs to pursue concerning the knowledge of those of skill in the art in 1992, it may forward those requests to the court (and counsel for defendant) for the court's consideration.

  
United States District Judge