

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

TEVA PHARMACEUTICALS  
INTERNATIONAL GMBH and  
TEVA PHARMACEUTICALS  
USA, INC.,

Plaintiffs,

v.

ELI LILLY AND COMPANY,

Defendant.

Civil Action No.  
1:18-cv-12029-ADB

**JOINT MOTION TO AMEND SCHEDULING ORDER<sup>1</sup>**

Pursuant to Fed. R. Civ. P. Rule 29 and Local Rules 7.1 and 40.3, Plaintiffs Teva Pharmaceuticals International GmbH and Teva Pharmaceuticals USA, Inc. (collectively, “Teva”) and Defendant Eli Lilly and Company (“Lilly”) (together with Teva, “the parties”), respectfully move this Court to amend the case schedule set forth in the parties’ Joint Statement (Dkt. 46 at 4-6; Dkt. 47 (entered May 15, 2020)).

Through this Joint Motion, the parties’ proposed schedule and discovery-related stipulations herein are designed to (1) address the parties’ need for additional time to complete fact discovery, (2) ensure that fact discovery proceeds in an orderly fashion, and (3) allow the parties the opportunity to amend their respective L.R. 16.6(d) disclosures, provided that such amendments

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<sup>1</sup> By this motion, Lilly withdraws its pending Motion to Extend Fact Discovery by Ninety Days (Dkt. 107, 108).

(a) rely on information or materials produced by the opposing party in the litigation or (b) are made in view of the Court's February 24, 2021, Order on Claim Construction (Dkt. 101).

As grounds for this Joint Motion, the parties state as follows:

1. Pursuant to the Case Schedule in the parties' Joint Statement (Dkt. 46), all fact depositions and discovery are to be completed by March 31, 2021.

2. The parties have been working diligently through fact discovery.

3. The parties are still in the process of supplementing their document productions and written discovery responses and need additional time to review those materials before fact depositions are conducted and completed.

4. The parties agree that a 90-day extension of the fact discovery period would provide more time for the parties to substantively review each other's document productions, result in more fruitful depositions, and help develop claims and defenses in preparation for expert discovery.

5. The parties agree that a 60-day shift of the target trial date from December 2021 to February 2022, and of the remaining expert discovery, dispositive motion, and pretrial deadlines in the below Amended Case Schedule, are warranted in view of the 90-day extension of the fact discovery period.

6. The parties agree that there is good cause to allow for amendment of their respective L.R. 16.6(d) disclosures, provided that such amendments (a) rely on information or materials produced by the opposing party in the litigation or (b) are made in view of the Court's February 24, 2021, Order on Claim Construction (Dkt. 101).

7. Subject to the Court's approval, this will be the first amendment of the deadline for fact discovery and all subsequent deadlines in the Case Schedule entered on May 15, 2020 (Dkt. 47).

8. This Motion is sought in good faith and will not cause a material delay in this action and no party will be prejudiced by allowance of this Joint Motion.

9. The parties' proposed amended case schedule is as follows:

| <b>[Proposed] Amended Case Schedule</b>  |                               |                     |
|--|-------------------------------|---------------------|
| <b>Event</b>   | <b>Current Date (Dkt. 46)</b> | <b>Amended Date</b> |
| Deadline for Teva to serve amended L.R. 16.6(d) disclosures  | n/a                           | March 31, 2021      |
| Deadline for each party to serve a maximum of five (5) additional requests for document production | n/a                           | April 15, 2021      |
| Deadline for Lilly to serve amended L.R. 16.6(d) disclosures                                       | n/a                           | April 28, 2021      |
| Deadline to serve Rule 30(b)(1) and 30(b)(6) deposition notices                                    | n/a                           | May 5, 2021         |
| Substantial Completion of Document Production  | December 4, 2020              | May 28, 2021        |
| Fact Discovery Closes  | March 31, 2021                | June 30, 2021       |
| Parties' Opening Expert Reports Due on Issues Where the Party Bears the Burden of Proof            | May 5, 2021                   | August 4, 2021      |
| Parties' Rebuttal Expert Reports Due   | June 2, 2021                  | September 1, 2021   |
| Parties' Reply Expert Reports Due  | June 30, 2021                 | September 29, 2021  |
| Expert Discovery Closes  | August 11, 2021               | November 10, 2021   |
| Parties File Dispositive Motions (Including <i>Daubert</i> )                                       | September 15, 2021            | December 15, 2021   |
| Parties File Oppositions to Dispositive Motions  | October 6, 2021               | January 5, 2022     |
| Parties File Replies to Dispositive Motions  | October 20, 2021              | January 19, 2022    |

| <b>[Proposed] Amended Case Schedule</b> |  |  |
|---|--|--|
| <b>Event</b>                            | <b>Current Date (Dkt. 46)</b>                                  | <b>Amended Date</b>  |
| Pretrial Conference                     | November 2021  | January 28, 2022   |
| Trial                                   | December 2021 or at a time otherwise convenient for the court. | February 2022 or at a time otherwise convenient for the court. |

To help relieve any prejudice caused by the extended schedule and ensure that fact discovery proceeds in an orderly fashion, the parties agree to stipulate as follows:

### **DISCOVERY LIMITATIONS**

10. Pursuant to Local Rule 26.1(c), the parties agree that the limits for interrogatories and requests for admission set forth in the parties' Joint Statement (Dkt. 46 at 3) are each increased by five (5), allowing for a total of thirty-five (35) interrogatories and thirty (30) requests for admission.<sup>2</sup>

11. Regardless of how many requests for document production a party has served to date, Teva and Lilly are each permitted to serve a single set of no more than five (5) requests for document production no later than April 15, 2021, narrowly tailored to address any deficiencies either party has identified upon review of the opposing party's documents. The parties reserve any and all rights to object to these requests for document production, including rights to object to burdensome and/or irrelevant requests.

### **L.R. 16.6(d) DISCLOSURES**

12. Any amendment or supplement by either party to its L.R. 16.6(d) disclosures pursuant to the Amended Case Schedule shall be limited to those (a) relying on information or

<sup>2</sup> This limit does not apply to requests for admission for authentication of documents and things and/or whether a document qualifies as a printed publication under 35 U.S.C. § 102.

materials produced by the opposing party in the above-captioned litigation or (b) in view of the Court's February 24, 2021, Order on Claim Construction (Dkt. 101). The parties may object to any amendments to L.R. 16.6(d) disclosures that do not comply with the foregoing.

13. The deadlines for service of amended L.R. 16.6(d) disclosures in the Amended Case Schedule are without prejudice to the ability of either party to seek to further amend or supplement its L.R. 16.6(d) disclosures, pursuant to L.R. 16.6(d)(5), by leave of court upon a timely showing of good cause, including to the extent necessary or appropriate to account for materials or information later provided by the opposing party (e.g., subsequent document productions, responses to written discovery requests, or deposition testimony).

#### **DOCUMENT PRODUCTION**

14. To facilitate timely identification of potential deponents and deposition topics pursuant to Fed. R. Civ. P. 30(b), the parties agree to produce documents on a rolling basis in advance of the revised deadline in the Amended Case Schedule for substantial completion of document production of May 28, 2021, to the extent practicable.

#### **RULE 30(b)(6) DEPOSITION NOTICES**

15. Responses and objections to Rule 30(b)(6) deposition notices must be served within thirty (30) days of either (a) the responding party's receipt of said notice, or (b) the Court's entry of the Amended Case Schedule as set forth above, whichever is later.

16. Responses and objections to Rule 30(b)(6) deposition notices shall include the name(s) of any witness(es) the responding party provisionally intends to designate on each topic.

WHEREFORE, Teva and Lilly respectfully request that the Court enter an order allowing this Joint Motion and amending the current case schedule as set forth above.

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