

**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

**ORAL ARGUMENT
REQUESTED**

**REDACTED
PUBLIC VERSION**

**PLAINTIFFS' TEVA PHARMACEUTICALS INTERNATIONAL GMBH
AND TEVA PHARMACEUTICALS USA, INC. MEMORANDUM IN SUPPORT
OF MOTION FOR SANCTIONS PURSUANT TO FED. R. CIV. P. 37(B)**

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Plaintiffs Teva Pharmaceuticals International GmbH and Teva Pharmaceuticals USA, Inc. (collectively, “Plaintiffs” or “Teva”) submit this memorandum in support of their concurrently-filed Motion for Sanctions Pursuant to Fed. R. Civ. P. 37(b). Sanctions are warranted because Defendant Eli Lilly and Company (“Lilly”) defied the Court’s March 8, 2021 Order requiring Lilly to perform a search for electronically stored information (“ESI”) as Teva requested. ECF No. 104.

INTRODUCTION

This is a patent case in which Teva alleges that Lilly’s product Emgality[®] infringes nine patents owned by Teva. The active ingredient in Emgality[®] is an antibody known as galcanezumab. That name, however, did not exist until April 22, 2016—long after Lilly began development of the product in 2007. Before April 2016, galcanezumab was known within Lilly by a number of code and project names such as “LY29551742” and [REDACTED]. Pursuant to the parties’ ESI Protocol, last year Teva proposed that Lilly use a search term to collect ESI that would capture documents regarding the development of galcanezumab: “Galca* OR gmab OR *2951742 OR L2951742 OR Y2951742 OR LY2951742 OR LLY2951742 OR LSN2951742 OR **[any internal project o[r] code names used by Lilly]**” (emphasis added) (hereafter referred to as “Search Term 1”). At the time, Lilly had yet to produce any documents in the litigation so Teva did not know all the internal names for galcanezumab. For months, Lilly refused to run Search Term 1, claiming it to be unduly burdensome to do so. Teva eventually moved to compel Lilly to conduct the search in February 2021. ECF No. 99. By that time, Lilly had produced a small number of documents indicating that [REDACTED] and [REDACTED] were earlier project names for galcanezumab. In its letter to the Court seeking to compel Lilly to run Search Term 1, Teva specified that the bracketed phrase “[any internal project o[r] code names used by Lilly]” includes at least [REDACTED] and [REDACTED]. *Id.* at 3, n.3. Thus, Teva’s letter to the Court requested

that Lilly run Search Term 1 with at least [REDACTED] and [REDACTED] as part of the search term.

Lilly's objection to Search Term 1 focused solely on the phrase "galca*," which Lilly argued would capture irrelevant documents about Lilly's drug product. ECF No. 103 at 2. Lilly represented to the Court and Teva that it "had already agreed to independently run **each of the above terms**, except for "galca*." *Id.* (emphasis added). Lilly never objected to searching for [REDACTED] and [REDACTED] in briefing to the Court or in any correspondence with Teva.

The Court rejected Lilly's argument in an ECF Order dated March 8, 2021, and held that:

Lilly is ordered to perform a search using the phrase 'galca,' as described in Teva's letter/request. [ECF No. [99]]. As Teva notes, this is not a product name (Emgality) but is the name of the active ingredient antibody in that product and is therefore **highly relevant to this litigation despite the relative burden** that running the search may impose on Lilly.

ECF No. 104 (emphasis added).

Lilly defied the Court's Order to run the search "as described in Teva's letter/request." Without telling Teva or the Court, Lilly decided not to search for known project and code names for galcanezumab, including [REDACTED] and [REDACTED] as requested by Teva in its letter to the Court. Lilly withheld this fact from Teva until July 27, 2021, four months after the Court's Order and less than one month before the close of fact discovery. Worse still, Lilly evaded questions from Teva on this issue for almost a month and obfuscated what searches it had done. Lilly's actions have deprived Teva of highly relevant discovery regarding the research and development of Lilly's accused galcanezumab antibody. Lilly's defiance of the Court's March 8, 2021 Order and the resulting prejudice caused to Teva warrant the imposition of sanctions under Fed. R. Civ. P. 37(b).

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