

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

TEVA PHARMACEUTICALS	)	
INTERNATIONAL GMBH and	)	
TEVA PHARMACEUTICALS USA, INC.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 1:18-cv-12029-ADB
v.	)	
	)	
ELI LILLY AND COMPANY,	)	
	)	
Defendant.	)	
	)	

**DEFENDANT ELI LILLY AND COMPANY’S  
MOTION FOR MODIFIED SUMMARY JUDGMENT BRIEFING LIMITS**

Pursuant to Local Rule 7.1(b)(4), Defendant Eli Lilly and Company (“Lilly”) respectfully moves for leave to file memoranda in support of two summary judgment motions in excess of the page limits set forth by the Local Rules. Lilly intends to file, inter alia, a motion for summary judgment that all of Teva’s asserted claims are invalid as a matter of law for lack of enablement, and a motion for summary judgment that all of Teva’s asserted claims are invalid as a matter of law for lack of written description. Either motion, if granted, would fully dispose of this case and avoid a trial by jury. To ensure that these two modestly longer briefs do not unduly burden or prejudice Plaintiffs Teva Pharmaceuticals International GmbH and Teva Pharmaceuticals USA, Inc. (“Teva”), Lilly further requests that the Court grant reciprocal leave for Teva to file similarly expanded opposition briefs to these two motions, and that the Court set a maximum page limit for each round of briefing.<sup>1</sup>

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<sup>1</sup> As of the filing of this Motion, opening summary judgment and *Daubert* motions are due March 24, 2022; opposition briefs are due April 28, 2022; and reply briefs are due May 19, 2022 (ECF Nos. 264, 265).

Each of Teva's asserted claims (31 in total) contain a variety of broad functional limitations. For its enablement motion, Lilly must analyze the broad limitations of each claim under the binding precedent of *In re Wands*, 858 F.2d 731 (Fed. Cir. 1988), which sets forth a non-exhaustive eight-factor test for undue experimentation. For its written description motion, Lilly must review a significant body of recent Federal Circuit case law invalidating analogous antibody claims on written description grounds. Lilly believes that a modest 10-page expansion of the 20-page limit set forth in the Local Rules for opening and opposition briefs would aid the Court in fully reviewing the potentially dispositive legal issues implicated by each of these two motions.<sup>2</sup>

Lilly approached Teva for the first time regarding these issues on January 27, 2022, in an effort to present a joint motion to the Court to expand briefing page limits. Ex. A. Teva refused to join such a motion, and "counter-proposed" the 20-page limit already provided by the Local Rules. Ex. B. Lilly continued to pursue a compromise agreement on these issues over the next three weeks, but the parties unfortunately reached an impasse on February 17, 2022. Ex. C.

Lilly's requested relief would not prejudice Teva or burden the Court. This motion has been brought promptly to the Court for resolution—within 24 hours of the parties reaching an impasse and after nearly three weeks of conferring. *See id.* And unlike in this Court's prior *Astellas* case,<sup>3</sup> where the movant sought leave on the eve of the summary judgment deadline, this motion is being brought five weeks prior to the deadline for opening briefs, so there is no surprise or prejudice to Teva. Lilly also proposes that Teva be given an equal number of pages for its opposition briefs on the issues of enablement and written description, so Teva will be at no

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<sup>2</sup> Lilly respectfully requests that reply briefs for its proposed 30-page summary judgment briefs be set at 15 pages.

<sup>3</sup> *See* Order (ECF No. 124), *Astellas Inst. for Regenerative Med. v. Imstem Biotech., Inc.*, No. 1:17-cv-12239-ADB (D. Mass. Dec. 18, 2019); *see also id.*, Opposition Brief (ECF No. 122) (D. Mass. Dec. 17, 2019).

disadvantage. As for the Court, Lilly's proposal seeks to minimize and streamline the amount of briefing that the Court would potentially need to review. Even with two briefs of 30 pages, the total number of motions before the Court will necessarily be limited by the imposition of a 110-page overall limit for each party in the first two rounds of briefing.<sup>4</sup> In addition to providing predictability to the parties and the Court, Lilly's proposal would also provide the Court with the benefit of full argument on two separate motions that could resolve this litigation.

Therefore, Lilly respectfully requests that the Court enter an order granting leave for Lilly to file a 30-page Motion for Summary Judgment for Lack of Written Description and a 30-page Motion for Summary Judgment for Lack of Enablement, with Teva granted leave to file 30-page oppositions, and Lilly granted leave to file 15-page replies. Lilly further requests that the Court's Order also impose a 110-page limit on all briefs filed by the parties in the opening round of briefing (excepting statements of fact and cover motions), a 110-page limit on all briefs filed by the parties in the opposition round of briefing (excepting statements of fact), and a 55-page limit on all briefs filed by the parties in the reply round of briefing (excepting statements of fact).

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<sup>4</sup> Any summary judgment or *Daubert* briefs other than the enablement and written description motions described above would remain subject to the Local Rules' 20-page limit, and Lilly for its part would endeavor to come in under that limit for any further motions.

Dated: February 18, 2022

/s/Andrea L. Martin

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**LR 7.1(a)(2) CERTIFICATION**

I, Andrea L. Martin, hereby certify that Lilly's counsel met and conferred with Plaintiffs' counsel regarding this motion by telephone on January 26, 2022, February 3, 2022, and February 15, 2022; and by email on January 27, 2022, February 1, 2022, February 2, 2022, February 4, 2022, February 5, 2022, February 7, 2022, February 9, 2022, February 10, 2022, February 16, 2022, and February 17, 2022. The parties agreed that they were at an impasse on this motion on February 17, 2022.

/s/Andrea L. Martin

Andrea L. Martin, Esq.

**CERTIFICATE OF SERVICE**

I, Andrea L. Martin, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 18, 2022.

/s/Andrea L. Martin

Andrea L. Martin, Esq.

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