IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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

DEFENDANT ELI LILLY AND COMPANY'S REPLY IN SUPPORT OF ITS MOTION TO TRANSFER, OR, IF NOT TRANSFERRED, THEN TO STAY THIS LITIGATION PENDING *INTER PARTES* REVIEW

[Leave to file granted on December 13, 2018]

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I. INTRODUCTION

This patent infringement suit should be transferred to Indiana. Neither Teva entity can claim Massachusetts as its home. The vast majority of potentially relevant witnesses reside in Indiana. The named inventors of the patents-in-suit similarly reside *outside* Massachusetts. Further, the corporation responsible for discovering, manufacturing, marketing, and selling the accused product—Lilly—is incorporated and headquartered in Indiana.

Teva does not dispute these facts. Instead, it focuses on the nominal development work on Lilly's galcanezumab product performed by Arteaus Therapeutics, which has been described as a "virtual company without a physical headquarters." Teva, however, overstates the company's role in the development work, most of which was performed by Lilly. Teva points to a Phase II clinical study that Arteaus ran on galcanezumab, but Teva ignores that Arteaus did so in coordination with Lilly Chorus, an Indiana entity. Teva also ignores that Lilly discovered the galcanezumab molecule, identified it for further development, and performed the key studies required to initiate human clinical studies. Perhaps more importantly, Teva fails to establish any connection between Arteaus's work and the issues in this case. Notably, Teva fails to explain how the Phase II clinical trial Arteaus conducted (with Lilly Chorus) has any connection to the issue of whether Lilly's final drug product falls within the scope of Teva's patent claims.

If the case is not transferred, it should be stayed pending the resolution of *inter partes* review ("IPR") proceedings. All the factors weigh in favor of granting a stay. Lilly promptly filed its petitions on the patents-in-suit and now seeks a stay at such an early stage that the Court has yet to set a case schedule. Courts within and outside this district grant stays based on the filing of IPR petitions, often due to the extremely high rate of IPR institution and claim cancellation. Here, regardless of whether the PTAB institutes on *every* patent-in-suit, a stay would simplify the issues because the asserted patents share a common specification. Further, a stay will not unfairly

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