

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



**PLAINTIFFS TEVA PHARMACEUTICALS INTERNATIONAL GMBH  
AND TEVA PHARMACEUTICALS USA, INC.’S MOTION FOR PARTIAL  
SUMMARY JUDGMENT REGARDING JUDICIAL ESTOPPEL**

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, Plaintiffs Teva Pharmaceuticals International GmbH and Teva Pharmaceuticals USA, Inc. (together, “Teva”) move for partial summary judgment that Lilly is judicially estopped from taking positions in this case that directly conflict with position Lilly took in *inter parties* review proceedings and that were accepted by the Patent Trial and Appeal Board. *See Eli Lilly & Co. v. Teva Pharms. Int’l GmbH*, 2020 WL 806932 (PTAB Feb. 18, 2020); *Eli Lilly & Co. v. Teva Pharms. Int’l GmbH*, 2020 WL 808240 (PTAB Feb. 18, 2020). Pursuant to Fed. R. Civ. P. 56(g), Teva also moves to have the following facts be deemed established for purposes of this case:

1. Anti-CGRP antagonist antibodies were well-known in the art as of 2005.
2. By 2005, a POSA would have considered the techniques for generating anti-CGRP antagonist antibodies to be “routine” and “conventional.”
3. By 2005, the techniques for preparing humanized antibodies from non-human antibodies were well-established and conventional to a POSA.

4. By 2005, conventional humanization techniques that were routinely used preserved the affinity and specificity of the donor antibody.
5. By 2005, assays that measured antagonism, such as cAMP activation assays and radioligand binding assays, were conventional and routine means of evaluating whether an anti-CGRP antibody was in fact able to antagonize CGRP.

In addition to the Memorandum, this Motion is supported by Teva's Statement of Uncontested Material Facts and the Declaration of Elaine Herrmann Blais.

### **REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), Teva respectfully requests oral argument.

Dated: March 28, 2022

Respectfully Submitted,

/s/ Elaine Herrmann Blais

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

I, Elaine Herrmann Blais, hereby certify that Plaintiffs' counsel conferred with Defendant's counsel regarding this motion and attempted in good faith to resolve or narrow the issues presented in this motion. Lilly opposes this motion.

*/s/ Elaine Herrmann Blais*  
Elaine Herrmann Blais

**CERTIFICATE OF SERVICE**

I, Elaine Herrmann Blais, 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 July 27, 2022.

*/s/ Elaine Herrmann Blais*

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