

**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

STIPULATION AND [PROPOSED] ORDER REGARDING ASSERTED CLAIMS

Plaintiffs Teva Pharmaceuticals International GmbH and Teva Pharmaceuticals USA, Inc. (collectively, “Teva”) and Defendant Eli Lilly and Company (“Lilly”) (all together, the “Parties”) have agreed to enter into this stipulation to streamline the issues in dispute in this matter, subject to the approval of the Court;

WHEREAS, Teva has asserted claims 17, 18, 19, 20, 21, 24, 27, and 30 of U.S. Patent No. 8,586,045 (“the ’045 patent”); claims 1, 4, 5, 6, 15, and 17 of U.S. Patent No. 9,884,907 (“the ’907 patent”); and claims 1, 4, 5, 6, 15, and 17 of U.S. Patent No. 9,884,908 (“the ’908 patent”) against Lilly; and

WHEREAS, on October 3, 2022, the Court entered a Memorandum and Order On Cross-Motions for Summary Judgment (ECF No. 513), granting Lilly’s motion for partial summary judgment of non-infringement with respect to claims 18 and 21 of the ’045 patent;¹

¹ Teva reserves all appellate rights with respect to the October 3, 2022 summary judgment decision, ECF No 513, and claims 18 and 21 of the ’045 patent.

WHEREAS, in view of the Court's order granting partial summary judgment of non-infringement with respect to claims 18 and 21 of the '045 patent, Lilly will agree to dismiss its counterclaims of invalidity with respect to claims 18 and 21 of the '045 patent without prejudice; and

WHEREAS, the Parties seek to further reduce the number of claims and defenses to streamline the issues for trial, and accordingly hereby agree to dismiss certain claims and certain corresponding counterclaims and defenses.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the Parties hereto, and subject to the approval of the Court, as follows:

1. Lilly stipulates that it voluntarily dismisses its counterclaims of invalidity pertaining to claims 18 and 21 of the '045 patent without prejudice.

2. Teva stipulates that it voluntarily dismisses its claims of infringement against Lilly of claims 17, 19, 20, 24, and 27 of the '045 patent; claims 1, 4, 15, and 17 of the '907 patent; and claims 1, 4, 15, and 17 of the '908 patent pertaining to Lilly's Emgality[®] (galcanezumab-gnlm) product with prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

3. Lilly stipulates that it voluntarily dismisses its defenses and counterclaims of invalidity and non-infringement pertaining to claims 17, 19, 20, 24, and 27 of the '045 patent; claims 1, 4, 15, and 17 of the '907 patent; and claims 1, 4, 15, and 17 of the '908 patent with prejudice pursuant to Fed. R. Civ. P. 41(a)(2).²

4. The Parties stipulate that they will continue to assert their respective claims (*see* ECF No. 1, Counts I, VI, VII, X, XV, and XVI), counterclaims (*see* ECF No. 277, Counterclaim

² For the avoidance of doubt, Lilly does not voluntarily dismiss its affirmative defenses and counterclaims of unclean hands and inequitable conduct, which apply to the entire patents, not individual patent claims.

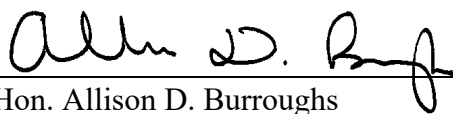
Counts I, II, XI–XIV, and XIX–XXI), and defenses (*see* ECF No. 277, Defenses 1, 2, 11–14, 20–25) with respect to only claims 30 of the '045 patent; claims 5 and 6 of the '907 patent; and claims 5 and 6 of the '908 patent.

5. Without prejudice to any other claim or defense Lilly has in this action, including as to invalidity, unenforceability, no indirect infringement, and no willful infringement, Lilly stipulates and agrees that the use of Lilly's Emgality® (galcanezumab-gnlm) product (described in BLA No. 761063) for the preventive treatment of migraine in the United States directly infringes under 35 U.S.C. § 271(a) claim 30 of the '045 patent; claims 5 and 6 of the '907 patent; and claims 5 and 6 of the '908 patent, under the Court's Memorandum and Order on Claim Construction (ECF No. 101).³

6. Without prejudice to any other claim or defense Lilly has in this action, including as to invalidity, unenforceability, no indirect infringement, and no willful infringement, Lilly stipulates and agrees that the use of Lilly's Emgality® (galcanezumab-gnlm) product (described in BLA No. 761063) for the treatment of episodic cluster headache directly infringes under 35 U.S.C. § 271(a) claim 30 of the '045 patent; claim 5 of the '907 patent; and claim 5 of the '908 patent, under the Court's Memorandum and Order on Claim Construction (ECF No. 101).

IT IS SO ORDERED

Dated: 10/17/22



Hon. Allison D. Burroughs
United States District Judge

³ For the avoidance of doubt, Lilly reserves all appellate rights with respect to the Memorandum and Order on Claim Construction (ECF No. 101).

Dated: October 17, 2022

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Respectfully submitted,

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