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VIA ECF

The Honorable Allison D. Burroughs
United States District Court Judge
John Joseph Moakley U.S. Courthouse
1 Courthouse Way
Boston, MA 02210

Re: *Teva Pharmaceuticals Int'l GmbH et al. v. Eli Lilly and Company*, Civil Action No. 1:18-cv-12029-ADB

Dear Judge Burroughs:

We write on behalf of Plaintiffs Teva Pharmaceuticals Int'l GmbH and Teva Pharmaceuticals USA, Inc. ("Teva"), concerning the schedule for trial in the above-captioned matter, and in particular, the deadline for the parties to close the presentation of evidence in the jury trial. Teva had proposed that the parties close their presentation of evidence to the jury on November 4, with the jury charge and the parties' closings scheduled for November 7. Lilly has not made a formal proposal, but recently suggested that closings and the jury charge could take place on November 9. In Teva's view, Lilly's proposal would cut the window available for jury deliberations too short. At the latest, the parties should close and the jury should be charged by November 8.

The Court set the length of this jury trial long ago at three weeks, to be followed by a short bench trial regarding Lilly's equitable defenses. During the January 20, 2022, Status Conference, the Court instructed the parties to select a four week block in the period beginning with the last week of September and running through November for the Court to set the trial date. The Court noted that having a four-week block of time would enable the Court to accommodate any necessary scheduling adjustments. ECF No. 258 at 18:19–19:4. The Court confirmed that three week trial period would encompass the entire jury trial, "all in counting jury selection," and the bench trial, which should "be contiguous with the jury trial." ECF No. 258 at 15:22–16:5, 19:23–20:2. The parties conferred and proposed October 17, 2022 through November 11, 2022. On January 25, 2022, the Court set the start date for trial as October 18, 2022. ECF No. 256.

At the first summary judgment hearing, on August 15, 2022, the Court asked the parties again if four weeks was "going to be enough" trial time for the parties' full presentations of their evidence. Both parties confirmed it would be enough. ECF No. 465 at 93:11–22.



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Pursuant to agreement of the parties, the allotted time available to trial is to be split equally between the parties. In the parties' Corrected Stipulation Regarding Trial Procedures, the parties agreed that (1) the jury trial and bench trial is to be timed; (2) the time for the jury trial and bench trial are to (separately) be split evenly between Teva and Lilly; and (3) the Court has the authority to terminate a party's trial presentation if all of the allotted time was used. ECF No. 536 ¶¶ 51–57.

Recent representations from counsel for defendant Eli Lilly and Company (“Lilly”) regarding the amount of time Lilly claims to need to present its defensive case suggest that Lilly intends to renege on the parties' agreement and consume more than its equal share of trial time. Lilly's proposal would have the effect of depriving Teva a sufficient opportunity to present Teva's rebuttal case. Teva conducted its case-in-chief and its cross-examinations of Lilly's witnesses in reliance on the schedule the Court set and the parties' stipulation that trial time would be split evenly between the parties. Teva would be gravely prejudiced if it were not permitted to put in its rebuttal evidence on validity while Lilly is permitted to present its rebuttal on infringement, willfulness, and damages.

The Court permitted Teva to present its evidence in the order following the burden of proof. The parties have proceeded to date with the understanding that presentation of evidence would be as follows: (1) Teva shall present its case first on the issues of infringement, willfulness, and damages; (2) Lilly may then present its response on infringement, willfulness, and damages and its case-in-chief on validity; and (3) Teva will then present its rebuttal case regarding invalidity. See Final Pretrial Conf. Tr. at 20:1–23:1 (“THE COURT: I told you I'm going to let you try your case. So try your case the way you want to try it, and then you can respond the way you want to.”). The Court instructed the jury that the trial would proceed following this order of evidence in the preliminary jury instructions. Teva then presented evidence and rested its case-in-chief in reliance on the established order of proofs and the Court's schedule, which gave the parties until November 10, 2022 to try both the jury trial and bench trial portions of this case.

With fewer than two weeks remaining in the four-week period to try this case, Teva seeks clarity from the Court regarding the schedule for the remainder of trial. Teva's counsel has raised the same issue with Lilly daily since October 26 (the day before Teva rested its case-in-chief), particularly in view of the amount of time Lilly chose to dedicate to cross-examination during Teva's case-in-chief and Lilly's claim on October 26 that its case could take ten business days. However, Lilly has yet to commit to closing its evidence with sufficient time remaining for Teva's rebuttal case or the bench trial.

Teva respectfully requests that the Court confirm that the trial must conclude (including jury deliberations) by November 10, 2022. To meet this deadline, Teva proposes that the parties close and the jury be charged no later than November 8 (and consequently that the bench trial occur on November 9 and 10). Teva does not agree to extend trial in a way that impacts juror availability.



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Respectfully submitted,

/s/ Elaine Herrmann Blais
Elaine Herrmann Blais

cc: Counsel of Record (by ECF)