

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ELI LILLY AND COMPANY,)
) Cause No.
 Plaintiff,) 1:10-CV-01376-TWP-DKL
) Indianapolis, Indiana
 vs.) **August 22, 2013**
) 9:04 a.m.
 TEVA PARENTERAL MEDICINES,)
 INC., APP PHARMACEUTICALS,)
 LLC, PLIVA HRVATSKA D.O.O.,)
 TEVA PHARMACEUTICALS USA,)
 INC., BARR LABORATORIES, INC.,)
 Defendants.)
)

V O L U M E IV

**Before the Honorable
TANYA WALTON PRATT**

OFFICIAL REPORTER'S TRANSCRIPT OF
BENCH TRIAL

Court Reporter: David W. Moxley, RMR, CRR, CMRS
United States District Court
46 East Ohio Street, Room 340
Indianapolis, Indiana 46204

PROCEEDINGS TAKEN BY MACHINE SHORTHAND
TRANSCRIPT CREATED BY COMPUTER-AIDED TRANSCRIPTION

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1 (The witness is sworn.)

2 THE COURT: You may have a seat.

3 And I'm going to go ahead and make a brief ruling on
4 the Rule 52 motion. In a bench trial, the Court may decline
5 to render a judgment until the close of the evidence, and
6 that's what the Court is going to do in this matter.

7 With respect to the best-mode defense, since that
8 defense was withdrawn, the Court does not believe it needs to
9 render a judgment on that one. We all are of the
10 understanding that it's no longer to be litigated.

11 Okay. Mr. Genderson, I assume you're going to
12 examine the next witness.

13 MR. GENDERSON: I am, Your Honor.

14 THE COURT: Okay.

15 MR. GENDERSON: Thank you.

16 Your Honor, Eli Lilly calls as its first witness,
17 Dr. Clet Niyikiza.

18 THE COURT: Okay.

19 **DR. CLET NIYIKIZA, PLAINTIFF'S WITNESS, SWORN**

20 **DIRECT EXAMINATION**

21 BY MR. GENDERSON:

22 Q. Dr. Niyikiza, could you please introduce yourself to Judge
23 Pratt?

24 THE WITNESS: Good morning, Judge Pratt.

25 THE COURT: Good morning, Doctor.

1 A. My name is Clet Niyikiza. And it's spelled C-L-E-T for
2 the first name, and the last name is N-I-Y-I-K-I-Z-A.

3 And I'm the executive vice president of development
4 for Merrimack Pharmaceuticals based in Cambridge,
5 Massachusetts, and I live just outside Philadelphia.

6 THE COURT: Okay.

7 BY MR. GENDERSON:

8 Q. Dr. Niyikiza, do you hold a Ph.D.?

9 A. Yes.

10 Q. In what subject?

11 A. I hold a Ph.D. in mathematics and in statistics.

12 Q. Are you the inventor of the '209 patent that's been
13 talked about in this case?

14 A. Yes, I am.

15 Q. Where were you employed at the time that you -- of your
16 work that led to that patent?

17 A. I was employed by Eli Lilly and Company here in
18 Indianapolis.

19 Q. Have you ever testified in a courtroom before?

20 A. No.

21 Q. Have you ever testified in deposition other than in this
22 case?

23 A. No.

24 Q. Have you ever been inside this courthouse before?

25 A. Yes, I have. Some years back when I was being sworn in as

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