

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

ELI LILLY AND COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:10 cv-1376 TWP-DKL
)	
TEVA PARENTERAL MEDICINES, INC.,)	
APP PHARMACEUTICALS, LLC,)	
PLIVA HRVATSKA D.O.O.,)	
TEVA PHARMACEUTICALS USA, INC., and)	
BARR LABORATORIES, INC.,)	
)	
Defendants.)	
<hr style="border: 0.5px solid black;"/>		

AMENDED JOINT CLAIM CONSTRUCTION STATEMENT

Pursuant to the Court’s April 12, 2012, Entry in Preparation for *Markman* Hearing (ECF No. 109), Plaintiff Eli Lilly and Company (“Lilly”) and Defendants Teva Parenteral Medicines, Inc., APP Pharmaceuticals, LLC, Pliva Hrvatska d.o.o., Teva Pharmaceuticals USA, Inc., and Barr Laboratories, Inc. (collectively “Defendants”) hereby submit the following Amended Joint Claim Construction Statement.

(a) The parties have exchanged lists of the claim terms, phrases, or clauses which they believe require construction, as well as proposed constructions. The parties have agreed upon the following constructions:

Claim Term/Phrase	Construction
“an effective amount of folic acid and an effective amount of a methylmalonic acid lowering agent”	“amounts of folic acid and a methylmalonic acid lowering agent that are capable of reducing the prevalence or severity of one or more toxicities associated with the administration of pemetrexed disodium”

“methylmalonic acid lowering agent”	“an agent such as vitamin B12 which can be used to lower the concentration of methylmalonic acid in a mammal”
“an effective amount of pemetrexed disodium”	“an amount of pemetrexed disodium that is capable of providing a therapeutic benefit to the patient in need thereof”

The parties have also agreed that the preambles of claims 1 and 12 are limiting.

(b) The following chart reflects Plaintiff’s and Defendants’ proposed constructions for the claim terms, phrases, or clauses identified by one or more of the parties as requiring construction:

Claim Term/Phrase	Plaintiff’s Proposed Construction	Defendants’ Proposed Construction
“patient”	“patient (i.e., a human under medical care)”	“mammal”
“vitamin B12”	“vitamin B12 (i.e., cyanocobalamin)”	Indefinite

(c) The parties anticipate that less than one day will be needed for the *Markman* hearing.

(d) The parties will not call any witnesses at the *Markman* hearing.

(e) The parties will first address the “patient” claim term (with a background introduction) and then will address the “vitamin B12” claim term, with Plaintiff going first for each issue.

Respectfully submitted,

/s/ Jan M. Carroll

Jan M. Carroll, No. 4187-49
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
(317) 236-1313
jan.carroll@btlaw.com

OF COUNSEL:

Bruce R. Genderson
Adam L. Perlman
Ellen E. Oberwetter
Dov P. Grossman
David M. Krinsky
Megan A. Hughes
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000 (telephone)
(202) 434-5029 (facsimile)

*Attorneys for Plaintiff
Eli Lilly and Company*

/s/ Kandi Kilkelly Hidde (w/permission)

David O. Tittle, # 857-49
Kandi Kilkelly Hidde, #18033-49
BINGHAM McHALE LLP
2700 Market Tower
10 W. Market Street
Indianapolis, Indiana 46204-4900
Phone: (317) 635-8900
Fax: (317) 236-9907
dtittle@binghammchale.com
khidde@binghammchale.com

OF COUNSEL:

Daryl L. Wiesen
Emily L. Rapalino
GOODWIN PROCTER LLP
53 State Street
Boston, MA 02109
Tel: (617) 570-1000
dwiesen@goodwinprocter.com
erapalino@goodwinprocter.com

Michael B. Cottler
Jonathan E. Grossman
Eric H. Yecies
GOODWIN PROCTER LLP
620 Eighth Avenue
New York, NY 10018
Tel: (212) 813-8800
mcottler@goodwinprocter.com
jgrossman@goodwinprocter.com
eyecies@goodwinprocter.com

*Attorneys for Defendants Teva Parenteral
Medicines, Inc., APP Pharmaceuticals, LLC,
Pliva Hrvatska d.o.o., Teva Pharmaceuticals
USA, Inc. and Barr Laboratories, Inc.*

INDS02 JMC 1216665v1