

## Judge Tosses Teva Suit Over Generic Drug Patent Deal

By Elliot Weld

*Law360 (July 1, 2025, 6:46 PM EDT)* -- An Indiana federal judge has thrown out a lawsuit brought by generic-drug maker Teva Pharmaceuticals USA Inc. alleging Eli Lilly and Co. breached a settlement agreement over the osteoporosis drug Forteo, saying Eli Lilly's promise to waive exclusivity for Teva ended when its patents for the drug expired.

U.S. District Judge Matthew Brookman said in a Monday order that Teva's characterization of the relationship between the licensing agreement for the drug and covenants of the settlement between the companies was "implausible."

Eli Lilly obtained approval for Forteo from the U.S. Food and Drug Administration in 2002, and the company held four patents for the drug that expired in 2019, with a fifth patent set to expire this year, according to the order. Teva sought approval for a generic version in 2015, and Eli Lilly later sued for patent infringement, leading the companies to settle in January 2018, the order said.

That settlement contained covenants under which Teva would not challenge Eli Lilly on its intellectual property rights to Forteo, and Eli Lilly would not sue Teva for infringing its patents, according to the order. Once the patents expired, Eli Lilly submitted a supplement to Forteo's FDA application related to ongoing safety studies, and the agency approved a new three-year exclusivity period, the order said, but the FDA was not notified about the settlement with Teva.

Teva was then prevented from making a generic Forteo drug due to the new exclusivity period, which was set to run until November 2023, the order said. According to Teva, Eli Lilly should have notified the FDA about the settlement and should have given up its monopoly rights.

Judge Brookman said the key question is whether the covenants remained in effect following the expiration date of the patents, and found Eli Lilly was released from its obligations when the patents expired.

"Teva tries to sidestep the plain meaning of the settlement agreement by arguing that Lilly's interpretation frustrates the purpose of the settlement agreement and does not make business sense," the judge said. "But that is not the case. First, conflicting arguments about the purpose of a contract are unpersuasive in the face of clear, unambiguous contract language. Second, Teva's interpretation of the covenant provision would effectively constitute an agreement by Lilly not to take any action to interfere with Teva's [abbreviated new drug application] in perpetuity."

Without the 2019 expiration date to the patents, the settlement had no end date, the judge said, adding that the "only plausible reading" of the settlement is that it ended with the patents.

Counsel for Eli Lilly declined to comment Tuesday, and counsel for Teva did not immediately respond to requests for comment.

Teva is represented by Alicia Rubio-Spring, Andrew Hill, Christopher Holding and Katherine Foote of Goodwin Procter LLP, and Darren Craig and Kandi Hidde of Frost Brown Todd LLP.

Eli Lilly is represented by, Marc Zubick, Michelle Ernst and Michael Morin of Latham & Watkins LLP and Deborah Pollack-Milgate of Barnes & Thornburg LLP.

The case is Teva Pharmaceuticals USA Inc. v. Eli Lilly and Co., case number 1:24-cv-02008, in the U.S. District Court for the Southern District of Indiana.

--Editing by Melissa Treolo.