

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TAKEDA PHARMACEUTICAL	)	
COMPANY, LTD., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civ. No. 07-331-SLR
	)	
TEVA PHARMACEUTICALS USA,	)	
INC., et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

At Wilmington this 4th day of March, 2009, having reviewed the letter submissions of the parties (D.I. 122, 123) regarding a pretrial evidentiary dispute;

IT IS ORDERED that the European declaration at issue (DTX009) shall not be admitted, for the reasons that follow:

1. I recognize that M.P.E.P. 2001.6 requires applicants to disclose all material information "regardless of the source or how they become aware of the information. Materiality controls whether the information must be disclosed to the Office, not the circumstances under which or the source from which the information is obtained." The question remains, how material is a declaration disclosed in foreign patent proceedings, where neither the declarant nor the testing has not been vetted through the discovery process and where the declaration was not ultimately sufficient to invalidate the European counterpart?

2. I conclude that such a declaration is not material and, therefore, irrelevant, especially under the circumstances at bar, where Teva is not contesting at trial whether the embodiment of the '632 patent (prevacid Solutab) and Teva's product disintegrate within 60 seconds.

  
United States District Judge