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February 22, 2019

Via ECF

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

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

Dear Judge Burroughs:

This firm, together with Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, represents Defendant Eli Lilly and Company ("Lilly"), in the above-captioned matter.

Lilly respectfully submits this letter to advise the Court that the Patent Trial and Appeal Board ("Board") has issued its first set of institution decisions, granting Lilly's petitions for *inter partes* review ("IPR") of three of the patents-in-suit. With decisions on the remaining patents-in-suit still forthcoming, the Board's decisions are directly relevant to Lilly's pending Motion to Transfer, or if not Transferred, then to Stay this Litigation Pending Inter Partes Review ("Motion"). Dkt. 18-20, 29-30. Specifically,

- On February 19, 2019, the Board instituted an *inter partes* review of every claim of U.S. Patent No. 9,340,614 ("the '614 patent") that was challenged in Lilly's IPR petition. A copy of the decision (Case No. IPR2018-01422, Paper No. 14) is attached hereto as Exhibit A. Specifically, the Board concluded that there is a reasonable likelihood that at least one of claims 1–7 and 15–20 of the '614 patent is unpatentable as obvious (35 U.S.C. § 103) over the combined teachings of K.K.C. Tan, et al., *Clin. Sci.* (1995) 89:565-573; S.J. Wimalawansa, *Endocrine Reviews* (1996) 17(5):533-585; and U.S. Patent No. 6,180,370 to Queen. *See* Ex. A at 27.

- On February 19, 2019, the Board instituted an *inter partes* review of every claim of U.S. Patent No. 9,266,951 ("the '951 patent") that was challenged in Lilly's IPR petition. A copy of the decision (Case No. IPR2018-01423, Paper No. 14) is attached hereto as Exhibit B. Specifically, the Board concluded that there is a reasonable likelihood that at least one of claims 1–6 and 14–19 of the '951 patent is unpatentable as obvious

(35 U.S.C. § 103) over prior art K.K.C. Tan, et al., *Clin. Sci.* (1995) 89:565-573; S.J. Wimalawansa, *Endocrine Reviews* (1996) 17(5):533-585; U.S. Patent No. 6,180,370 to Queen; and H. Doods et al., Br. J. Pharmacol. (2000) 129:420-423. *See* Ex. B at 28.

- On February 19, 2019, the Board instituted an *inter partes* review of every claim of U.S. Patent No. 9,346,881 ("the '881 patent") that was challenged in Lilly's IPR petition. A copy of the decision (Case No. IPR2018-01424, Paper No. 14) is attached hereto as Exhibit C. Specifically, the Board concluded that there is a reasonable likelihood that claims 1–6 and 14–19 of the '881 patent are unpatentable as obvious (35 U.S.C. § 103) over prior art K.K.C. Tan, et al., *Clin. Sci.* (1995) 89:565-573; S.J. Wimalawansa, *Endocrine Reviews* (1996) 17(5):533-585; U.S. Patent No. 6,180,370 to Queen; and H. Doods et al., Br. J. Pharmacol. (2000) 129:420-423. *See* Ex. C at 22.

- By statute, the Board is required to issue its final written decision in each case within one year, or by February 19, 2020. Lilly will provide the Court with a copy of the scheduling orders in each of these three IPR actions when issued by the Board.

As noted in Lilly's January 18, 2019 letter (Dkt. 34), the Board will issue its institution decisions on:

- three additional patents-in-suit by **February 27, 2019**, and
- the final three patents-in-suit by **April 4, 2019**.

For the reasons set forth in Lilly's moving papers, Lilly respectfully requests that the Court grant its Motion.

Respectfully submitted,

/s/ Andrea L. Martin

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cc: All Counsel of Record (by ECF)

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