



Andrea L. Martin, Partner
amartin@burnslev.com
617-345-3869

February 27, 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 second set of institution decisions, granting Lilly’s petitions for *inter partes* review (“IPR”) of three more of the patents-in-suit. With decisions on the three 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 25, 2019, the Board instituted an *inter partes* review of every claim of U.S. Patent No. 9,890,210 (“the ’210 patent”). A copy of the decision (Case No. IPR2018-01425, Paper No. 14) is attached hereto as Exhibit D. Specifically, the Board concluded that there is a reasonable likelihood that at least one of claims 1–15 of the ’210 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. D at 26.
- On February 25, 2019, the Board instituted an *inter partes* review of every claim of U.S. Patent No. 9,890,211 (“the ’211 patent”). A copy of the decision (Case No. IPR2018-01426, Paper No. 14) is attached hereto as Exhibit E. Specifically, the Board concluded that there is a reasonable likelihood that at least one of claims 1–15 of the ’211 patent is unpatentable as obvious (35 U.S.C. § 103) over the combined teachings of K.K.C. Tan, et

Honorable Allison D. Burroughs
Page 2

February 27, 2019

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. E at 31.

- On February 25, 2019, the Board instituted an *inter partes* review of every claim of U.S. Patent No. 8,597,649 (“the ’649 patent”). A copy of the decision (Case No. IPR2018-01427, Paper No. 14) is attached hereto as Exhibit F. Specifically, the Board concluded that there is a reasonable likelihood that claims 1–9 of the ’649 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; and U.S. Patent No. 6,180,370 to Queen. *See* Ex. F at 25.
- The Board further issued a common scheduling order for these three IPR proceedings and the three previously instituted IPR proceedings (Case Nos. IPR2018-01422, IPR2018-01423, and IPR2018-01424). Oral argument is scheduled for all six proceedings on November 22, 2019. As noted in Lilly’s February 22, 2019 letter (Dkt. 35), by statute, the Board is required to issue its final written decision in Case Nos. IPR2018-01422, IPR2018-01423, and IPR2018-01424 within one year, or by February 19, 2020. Similarly, the Board is required to issue its final written decision in Case Nos. IPR2018-01425, IPR2018-01426, and IPR2018-01427 within one year, or by February 25, 2020. A copy of the common scheduling order is attached as Exhibit G.

As noted in Lilly’s January 18, 2019 letter (Dkt. 34) and February 22, 2019 letter (Dkt. 35), the Board will issue its institution decisions on 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

Andrea L. Martin
Partner
amartin@burnslev.com
D 617-345-3869

cc: All Counsel of Record (by ECF)

4850-9618-1385.1