

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEPTUNE GENERICS, LLC,
APOTEX INC., APOTEX CORP., TEVA PHARMACEUTICALS,
FRESENIUS KABI USA, LLC, and WOCKHARDT BIO AG
Petitioners,

v.

ELI LILLY & COMPANY,
Patent Owner.

Case No. IPR2016-00240¹
Patent No. 7,772,209

**PATENT OWNER ELI LILLY AND COMPANY'S
OPPOSITION TO MOTION TO EXCLUDE EVIDENCE**

¹ Cases IPR2016-01191, IPR2016-01337, and IPR2016-01343 have been joined with the instant proceeding.

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Patent Owner Eli Lilly and Company (“Lilly”) respectfully submits this Opposition to the Motion to Exclude (Paper 56, “Mot.”) filed by Petitioner Neptune Generics, LLC (“Neptune”). Neptune’s motion is a transparent attempt to garner additional pages within which to make merits arguments. Nothing it argues justifies the exclusion of evidence, and its motion should be denied.

I. DR. CHABNER’S TESTIMONY SHOULD NOT BE EXCLUDED

Neptune seeks to exclude in its entirety the declaration of Dr. Bruce Chabner (Ex. 2120), Lilly’s principal expert witness, on the grounds that his testimony is “unreliable.” Mot. at 1-7. Dr. Chabner is the former Clinical Director of the Massachusetts General Hospital Cancer Center, former Director of the Division of Cancer Treatment at the National Cancer Institute at NIH, a Professor of Medicine at Harvard Medical School, and a recognized expert in antifolates. Ex. 2120 ¶¶ 1, 10-20. During a two-week bench trial against Joinder-Petitioners Teva and Fresenius, Dr. Chabner expressed substantially the same opinions about the same issues about the same patent as are at issue here. Far from finding this testimony so “unreliable” that it should be excluded wholesale, the district court expressly relied on this testimony, and, moreover, expressly found Dr. Chabner to be “more credible with respect to [his] opinions on how a POSA would view the teachings of Worzalla and Hammond than Defendants’ experts.” *Eli Lilly & Co. v. Teva Parenteral Medicines, et al.*, Case No. 1:10-cv-1376-TWP-DKL, ECF No. 336 at

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