

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

ELI LILLY & COMPANY,  
Patent Owner.

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Case No: IPR2016-00240<sup>1</sup>  
Patent No. 7,772,209

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**PATENT OWNER'S OBJECTIONS TO EVIDENCE**

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

Patent Owner Eli Lilly & Company (“Lilly”) hereby objects pursuant to 37 C.F.R. § 42.64(b)(1) and the Federal Rules of Evidence (“FRE”) to the admissibility of certain purported evidence served by Petitioner Neptune Generics, LLC, on December 22, 2016 in connection with its Petition for *Inter Partes* Review. The exhibits objected to, and grounds for Lilly’s objections, are listed below. Lilly also objects to Petitioner’s reliance on or citations to any objected evidence in its papers.

Many of the exhibits served by Petitioner Neptune Generics, LLC, on December 22, 2016 were introduced at depositions in this proceeding, and Lilly objected to certain of those exhibits at the depositions as required by 37 C.F.R. § 42.64(a). Nothing contained herein shall be deemed to withdraw any of Lilly’s objections to deposition evidence or the requirement that evidence to cure those objections must have been provided during the deposition, *see id.*

**I. IDENTIFICATION OF CHALLENGED EVIDENCE AND GROUNDS FOR OBJECTIONS**

**A. Exhibit 1043**

Lilly objects to Exhibit 1043 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this compressed proceeding. Exhibit 1043 was published in 2002 and, therefore, bears no relevance to what the person of ordinary skill in the art would have known

by the relevant date. Therefore, Exhibit 1043 should be excluded under FRE 402 and 403.

**B. Exhibit 1044**

Lilly objects to Exhibit 1044 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this compressed proceeding. Exhibit 1044 was published in 2015 and, therefore, bears no relevance to what the person of ordinary skill in the art would have known by the relevant date. Therefore, Exhibit 1044 should be excluded under FRE 402 and 403.

**C. Exhibit 1045**

Lilly objects to Exhibit 1045 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this compressed proceeding. Exhibit 1045 was published in 2015 and, therefore, bears no relevance to what the person of ordinary skill in the art would have known by the relevant date. Therefore, Exhibit 1045 should be excluded under FRE 402 and 403. Lilly further objects to Exhibit 1045 as incomplete as it is missing pages, and it therefore should be excluded under FRE 106, 401, 402, and 403.

**D. Exhibit 1046**

Lilly objects to Exhibit 1046 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this compressed proceeding. Exhibit 1046 does not have a discernable publication

date and indicates that it was obtained on 11/15/2016, and Petitioner has not established that it is prior art. Absent such a showing, it bears no relevance to what the person of ordinary skill in the art would have known by the relevant date. Therefore, Exhibit 1046 should be excluded under FRE 402 and 403. Lilly further objects to Exhibit 1046 as incomplete as it is missing pages, and it therefore should be excluded under FRE 106, 401, 402, and 403. Lilly also objects to Exhibit 1046 because it has not been properly authenticated under FRE 901, is not self-authenticating under FRE 902, and is not a “duplicate” as defined by FRE 1001(e). Exhibit 1046 is therefore inadmissible under FRE 901, 1002, and 1003.

**E. Exhibit 1047**

Lilly objects to Exhibit 1047 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time in this compressed proceeding. Exhibit 1047 was published in 2001 and, therefore, bears no relevance to what the person of ordinary skill in the art would have known by the relevant date. Therefore, Exhibit 1047 should be excluded under FRE 402 and 403.

**F. Exhibit 1050**

Lilly objects to Exhibit 1050 under FRE 802 because it is inadmissible hearsay, specifically deposition testimony from Dr. Bruce Chabner in a different proceeding, *Sandoz Inc. et al. v. Eli Lilly*, IPR2016-00318. Lilly further objects to

Exhibit 1050 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time and needlessly presenting cumulative evidence in this compressed proceeding. Lilly also objects to Exhibit 1050 as incomplete because it does not include the relevant errata sheet served on the parties to IPR2016-00318 on December 12, 2016, and it therefore should be excluded under FRE 106, 401, 402, and 403.

**G. Exhibit 1051**

Lilly objects to Exhibit 1051 under FRE 802 because it is inadmissible hearsay, specifically trial testimony from Dr. Bruce Chabner in a different proceeding, *Eli Lilly v. Teva Parenteral Meds., Inc. et al.*, 1:10-cv-01376-TWP-DKL (S.D. Ind.). Lilly further objects to Exhibit 1051 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the danger of wasting time and needlessly presenting cumulative evidence in this compressed proceeding.

**H. Exhibit 1052**

Lilly objects to Exhibit 1052 under FRE 802 because it is inadmissible hearsay, specifically deposition testimony from Dr. Bruce Chabner in a different proceeding, *Eli Lilly v. Teva Parenteral Meds., Inc. et al.*, 1:10-cv-01376-TWP-DKL (S.D. Ind.). Lilly further objects to Exhibit 1052 under FRE 402 and 403 because it is irrelevant and its probative value is substantially outweighed by the

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