

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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SANDOZ INC.,  
APOTEX INC., APOTEX CORP.,  
EMCURE PHARMACEUTICALS LTD.,  
HERITAGE PHARMA LABS INC.,  
HERITAGE PHARMACEUTICALS INC.,  
GLENMARK PHARMACEUTICALS, INC., USA,  
GLENMARK HOLDING SA,  
GLENMARK PHARMACEUTICALS, LTD., MYLAN  
LABORATORIES LIMITED, TEVA PHARMACEUTICALS USA, INC.,  
FRESENIUS KABI USA, LLC, and WOCKHARDT BIO AG,

Petitioners

v.

ELI LILLY AND COMPANY,

Patent Owner.

Case IPR2016-00318<sup>1</sup>  
U.S. Patent 7,772,209

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**PETITIONER SANDOZ INC.'S REQUEST FOR ORAL ARGUMENT**

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<sup>1</sup> Cases IPR2016-01429, IPR2016-01393, and IPR2016-01340 have been joined with the instant proceeding.

Pursuant to 37 C.F.R. § 42.70(a), and the Scheduling Order entered on June 17, 2016, Paper 15 at 6, Petitioner Sandoz Inc. (“Sandoz”) respectfully requests the oral argument as scheduled for March 7, 2017.<sup>2</sup>

Without intending to waive any issue not specifically identified, Sandoz identifies below the issues to be argued:

1. The first ground of unpatentability instituted in IPR2016-00318: Claims 1-22 of U.S. Patent No. 7,772,209 (“the ’209 patent”) as being obvious under 35 U.S.C. § 103 over Calvert (Ex. 1007), Niyikiza I (Ex. 1006), Worzalla (Ex. 1013), European Patent Application No. 0 595 005 (“EP 005”) (Ex. 1033), and the ’974 Patent (Ex. 1005), together with the knowledge of the person of ordinary skill (“POSA”). Paper 14 at 21; Paper 2 at 7.

2. The second ground of unpatentability instituted in IPR2016-00318: Claims 1-22 of the ’209 patent as being obvious under 35 U.S.C. § 103 over Calvert (Ex. 1007), Niyikiza I (Ex. 1006), Hammond I (Ex. 1015), EP 005 (Ex. 1033), and the ’974 Patent (Ex. 1005), together with the knowledge of the POSA. Paper 14 at 21; Paper 2 at 7.

3. Any issues, exhibits, or factual matters raised in Petitioner’s Petition

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<sup>2</sup> On February 14, 2017, we received correspondence from the Board indicating that the date for the oral hearing would need to change. Sandoz will work with the Board and Lilly to reschedule the hearing date.

for an IPR of the '209 patent. Paper 2.

4. Any issues, exhibits, or factual matters raised in the Board's Decision to institute the present proceeding. Paper 14.

5. Any issues, exhibits, or factual matters raised in Patent Owner's Response. Paper 36.

6. Any issues, exhibits, or factual matters raised in Sandoz's Reply. Paper 49.

7. Sandoz's Motion To Exclude and any opposition by Patent Owner Eli Lilly and Company ("Lilly") thereto.

8. Pursuant to the teleconference held January 25, 2017, any issues, exhibits, or factual matters raised in Lilly's Sur-Reply, which is due on February 14, 2017.

9. Any issues specified by Lilly in a Request for Oral Argument, but only to the extent the Board grants Lilly's Request on those issues.

The '209 patent is also at issue in IPR2016-00237 and IPR2016-00240, which were filed by Neptune Generics, LLC ("Neptune") and also have oral arguments scheduled for March 7, 2017. IPR2016-00237, Paper 15 at 3; IPR2016-00240, Paper 15 at 3. Sandoz requests that the arguments for the Sandoz IPR and Neptune IPRs be scheduled as separate sequential arguments rather than as a combined oral hearing. Sandoz believes the arguments should be treated

separately because Sandoz is not a party to IPR2016-00237 and IPR2016-00240.

Further, the Neptune IPRs were instituted on different grounds, specifically, obviousness of claims 1-22 based on: (i) Niyikiza I in view of the '974 patent, and further in view of EP 005 (IPR2016-00237, Paper No. 13 at 19); and (ii) Rusthoven in view of EP 005 (IPR2016-00240, Paper No. 14 at 19). The Neptune IPRs also involve different evidence, including testimony from three different experts who did not present testimony in the Sandoz IPRs. Thus, given the differences in the parties, grounds, and evidence between IPR2016-00318 on one hand and IPR2016-00237 and -00240 on the other, Sandoz believes that separate sequential arguments are appropriate.

Because of the technical complexity of the issues in dispute, Sandoz, individually, requests sixty (60) minutes of time to address the issues. Should Lilly be granted more time for those IPRs, Sandoz requests an equal amount of time as Lilly be allocated for Sandoz.

Sandoz reserves the right for rebuttal. Sandoz will inform the Board of its specific allocation of time for its opening and rebuttal at the beginning of the oral argument.

Sandoz also requests the ability to use computers at counsel's table to display demonstrative exhibits, and respectfully requests that PTAB provide a projector with VGA and HDMI connections for that purpose.

Dated: February 14, 2017

Respectfully submitted,

/s/ Ralph J. Gabric

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