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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NEPTUNE GENERICS, LLC

Petitioner

vs.

ELI LILLY & COMPANY

Patent Owner

Case Nos. IPR2016-00237 and 00240

SANDOZ, INC.

Petitioner

vs.

ELI LILLY & COMPANY

Patent Owner

Case No. IPR2016-00318

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Conference Call Held: July 22, 2016

Before: MICHAEL P. TIERNEY and TINA
E. HULSE, Administrative Patent Judges

The above-entitled matter came
on for conference call hearing on Friday,
July 22, 2016 before the U.S. Patent and
Trademark Office, 600 Dulany Street,
Alexandria, Virginia

REPORTED BY:

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3	<p>1 P R O C E E D I N G S 2 VIA CONFERENCE CALL 3 (4:01 p.m.) 4 JUDGE TIERNEY: This is Judge 5 Tierney joining the call. And I also 6 have Judge Tina Hulse with me. 7 I have noticed there is a court 8 reporter on the line. Is that 9 correct? 10 THE REPORTER: That's correct, 11 Your Honor. It's Karen Brynteson. 12 JUDGE TIERNEY: And you are here 13 on behalf of which party? 14 THE REPORTER: I am here on 15 behalf of Eli Lilly. 16 JUDGE TIERNEY: Okay. Is there 17 a representative from Eli Lilly on the 18 phone? 19 MR. GROSSMAN: Yes, Your Honor. 20 This is Dov Grossman from Williams & 21 Connolly. And also with me is David 22 Krinsky. 23 JUDGE TIERNEY: Okay. Welcome 24 to the call. 25 MR. GROSSMAN: Thank you.</p>	5

6	<p>1 JUDGE TIERNEY: We have a number</p> <p>2 of inter partes reviews. Let me see</p> <p>3 if I have got all the different</p> <p>4 numbers.</p> <p>5 If I have missed one, please</p> <p>6 help me out there. They haven't</p> <p>7 updated our internal dashboard yet to</p> <p>8 assign certain cases.</p> <p>9 But the numbers I have under all</p> <p>10 IPRs 2016-00237, 00240, 00318, also</p> <p>11 01340 and 01429. Those are the</p> <p>12 numbers I have been given. And is</p> <p>13 there any others?</p> <p>14 MS. SPIRES: Yes. For the</p> <p>15 Petitioner, Neptune, there is also</p> <p>16 2016 for both of these, 01190 and</p> <p>17 01341.</p> <p>18 JUDGE TIERNEY: Could you repeat</p> <p>19 the last one, please?</p> <p>20 MS. SPIRES: 0134 -- I'm sorry,</p> <p>21 I gave you the wrong one. Those are</p> <p>22 two others. I think you have already</p> <p>23 got them. Apologies.</p> <p>24 JUDGE TIERNEY: Again, could you</p> <p>25 repeat those two numbers?</p>	8	<p>1 that you mentioned in the beginning --</p> <p>2 JUDGE TIERNEY: Yes.</p> <p>3 MR. GROSSMAN: -- there is also</p> <p>4 1191 and 1343. And there are</p> <p>5 actually, Your Honor, for each of the</p> <p>6 three main proceedings, there is one</p> <p>7 additional petition and motion for</p> <p>8 joinder in each of the proceedings</p> <p>9 from another party of Wockhardt, but</p> <p>10 they are not participating in today's</p> <p>11 call.</p> <p>12 JUDGE TIERNEY: Could you spell</p> <p>13 that party's name, just so I have it?</p> <p>14 MR. GROSSMAN: Sure. It is</p> <p>15 W-o-c-k-h-a-r-d-t.</p> <p>16 JUDGE TIERNEY: Thank you.</p> <p>17 MR. GROSSMAN: Would it be</p> <p>18 useful to give you the IPR numbers for</p> <p>19 those as well or is that --</p> <p>20 JUDGE TIERNEY: If you have</p> <p>21 them, I would like it to all be in the</p> <p>22 transcript so we have an idea of all</p> <p>23 the different parties. And I will see</p> <p>24 if they are going to be assigned to</p> <p>25 the same panel or how they are going</p>
7	<p>1 2016-01190?</p> <p>2 MS. SPIRES: Yes. Those are the</p> <p>3 two joinder motions.</p> <p>4 JUDGE TIERNEY: Okay. I have</p> <p>5 not been given on my docket these</p> <p>6 numbers yet. That's why I am asking</p> <p>7 it.</p> <p>8 MS. SPIRES: Okay.</p> <p>9 JUDGE TIERNEY: So that's the</p> <p>10 first one. The second one is?</p> <p>11 MS. SPIRES: 01341.</p> <p>12 JUDGE TIERNEY: 01341. Okay.</p> <p>13 And apologies, but we -- our --</p> <p>14 we have changed electronic docketing</p> <p>15 systems, and our electronic docketing</p> <p>16 system internally is still being</p> <p>17 updated, as we speak. So not</p> <p>18 everything is available to me at this</p> <p>19 moment.</p> <p>20 MR. GROSSMAN: And, Your Honor,</p> <p>21 Dov Grossman here. And just, I think,</p> <p>22 to completely update this, the numbers</p> <p>23 you were just given, 1190 and 1341, I</p> <p>24 think go with the 237 IPR.</p> <p>25 There is also for the 240 IPR</p>	9	<p>1 to assign the cases.</p> <p>2 MR. GROSSMAN: Sure. So those</p> <p>3 are, again, all IPR-2016. It is 1335,</p> <p>4 1337, and 1393.</p> <p>5 JUDGE TIERNEY: Thank you. Are</p> <p>6 there any additional cases we need to</p> <p>7 be aware of?</p> <p>8 Okay. Hearing nothing, we will</p> <p>9 now move on.</p> <p>10 All right. Thank you for</p> <p>11 everyone joining the conference call</p> <p>12 today. Obviously we have quite a few</p> <p>13 parties today. I would like to start</p> <p>14 off with the Patent Owner.</p> <p>15 And we will start on the cases</p> <p>16 237 and 240, which involve Neptune.</p> <p>17 And apologies in advance if I</p> <p>18 misstate something, please just</p> <p>19 correct me. We have quite a few cases</p> <p>20 and quite a few numbers and quite a</p> <p>21 few parties here. But I would like to</p> <p>22 start with the 237 and 240 and have</p> <p>23 the Patent Owner, Eli Lilly, give us a</p> <p>24 brief background of what needs to be</p> <p>25 taken care of in those particular</p>

10	<p>1 cases. And if there is any motions we 2 should be expecting that they would 3 like to file. 4 So, Eli Lilly, you are up. 5 MR. GROSSMAN: Sure. Thank you, 6 Your Honor. This is Dov Grossman. 7 I think at this point the only 8 thing that I would point out is that 9 the parties, the Patent Owner and 10 Petitioner, Neptune, have filed 11 stipulations regarding some of the due 12 dates. There was an original one and 13 then an updated one that I believe was 14 filed yesterday. 15 I don't believe at this point as 16 between us and Neptune there are any 17 issues for the Board. There are, of 18 course, the pending motions for 19 joinder in those proceedings, which 20 our time has not yet run on to respond 21 to. 22 I don't know whether the Board 23 wanted to address any of those today 24 or whether that would come later in 25 the proceeding, but I think that's --</p>	12	<p>1 discussion. 2 JUDGE TIERNEY: For purposes of 3 today, you can leave those petitions 4 and motions for joinder out of the 5 discussion. Just thank you for 6 identifying that there is an 7 additional set that we need to be 8 aware of. 9 MR. GROSSMAN: Sure. Not a 10 problem. 11 It is -- you are correct, Your 12 Honor, that they have raised the same 13 grounds of patentability. They have 14 submitted additional expert 15 declarations, in, I believe, perhaps 16 not all of them, but in the majority 17 of them or I think -- I'm sorry, I 18 should say for the Neptune IPRs, I 19 believe they have submitted separate 20 expert declarations. 21 So -- and I am happy to kind of 22 address the substantive issue as sort 23 of a preview of what our motions would 24 be if -- our oppositions would be if 25 now is the appropriate time, or if you</p>
11	<p>1 that's the only open issue with 2 respect to those two IPRs from our 3 perspective. 4 JUDGE TIERNEY: Okay. Before -- 5 before we move on to Neptune, I would 6 like to understand the brief I saw 7 or -- sorry -- I should say the 8 petitions that I have been able to 9 identify that have been filed and 10 requests for joinder, they appear to 11 have the same issues and the same 12 exhibits. 13 Are there any cases that you can 14 identify that have a different set of 15 exhibits, different set of challenges 16 to your clients before the 237 cases? 17 MR. GROSSMAN: Sure. And, Your 18 Honor, if I may just, just so it is 19 clear, because I don't want to step 20 over any bounds here, those motions 21 for joinder are from the Wockhardt 22 IPRs. And their counsel, of course, 23 is not on the line, so I want to flag 24 that to the Board to be clear about 25 that in terms of the scope of our</p>	13	<p>1 prefer to do that later. 2 JUDGE TIERNEY: What I would 3 like to at least get a sense of is do 4 you need a full three months to go 5 ahead and have a Patent Owner 6 preliminary response or is there a 7 chance we can expedite this and see if 8 issues are overlapping with the 9 underlying 237 and 240? 10 MR. GROSSMAN: Sure. I 11 understand, Your Honor. 12 I think our view is that to the 13 extent that, for these additional 14 parties who are on the call and who 15 are proposing to join the Neptune 16 proceeding, you know, to the extent 17 that their joinder would effectively 18 be as a silent understudy, meaning 19 that there wouldn't be any new issues 20 or new evidence that the attorneys for 21 Neptune would be handling all the 22 examination and deposition defense, 23 such that, you know, the parties would 24 be joined as a formal matter, but it 25 effectively would not change any of</p>

14	<p>1 our burden in addressing the main 2 Neptune petition, that under those 3 circumstances we would be willing to 4 waive our POPR for those proceedings 5 and proceed with those parties, again, 6 joined as a formal matter but sort of 7 effectively as if they weren't there 8 from a substantive perspective. 9 I don't know that the parties 10 proposing to join the Apotex petitions 11 and the Teva/Fresenius petitions are 12 really that -- really in disagreement 13 with that position. 14 They have tried to sort of 15 reserve some potential, if there is a 16 unique issue that comes up or reserve 17 their own expert, if they sort of need 18 it, but I would submit, Your Honor, 19 that to the extent that it is the same 20 issue, then it is the same grounds of 21 patentability, that there wouldn't be 22 any need for their expert or any need 23 for separate ability on their part to 24 address any issues, the fact that they 25 are well represented by Neptune in the</p>	16	<p>1 237 and 240? 2 MR. GROSSMAN: I don't think so, 3 Your Honor. 4 JUDGE TIERNEY: Okay. Now I am 5 going to turn to Neptune on the 237 6 and 240. Counsel for Neptune, are 7 there any motions that you contemplate 8 filing or anything that you need to 9 address? 10 And we understand there is a 11 joinder issue, but let's start with 12 particularly your filing, your case 13 right now, absent joinder, are there 14 any issues we need to discuss? 15 MS. SPIRES: This is Sarah 16 Spires from Skiermont Derby on behalf 17 of Neptune. 18 No, I think counsel for Eli 19 Lilly, we agree with ^ them there 20 that there are no real issues between 21 the parties. The stipulations have 22 been filed. And we will have a pro 23 hac motion or two that we will file 24 coming up here in a little bit. We 25 don't expect that to be any major</p>
15	<p>1 case. 2 JUDGE TIERNEY: Have you been 3 able to reach out and have a 4 discussion with the parties seeking 5 joinder that you mentioned in 6 particular, Apotex and Teva, to see if 7 they would be willing to enter into a 8 joint stipulation? 9 MR. GROSSMAN: We have not had 10 that opportunity yet, Your Honor, in 11 part because the timing for motions to 12 join just ran last week. And so we 13 were sort of waiting for everything 14 before we could sort of try to address 15 any parties' stipulations on this 16 issue. 17 JUDGE TIERNEY: But I take it 18 you are willing to reach out and have 19 such a discussion? 20 MR. GROSSMAN: We would be happy 21 to do so, Your Honor. 22 JUDGE TIERNEY: I would 23 appreciate it. 24 Is there anything else we need 25 to discuss from the Patent Owner on</p>	17	<p>1 issue. 2 I will note quickly that the 3 Wockhardt, I believe, IPR joinder 4 motions, we have not been served with 5 those. This is the first I have 6 actually heard of them. 7 So if they are attempting to 8 join the Neptune IPRs, if anyone has 9 information about that, that would be 10 great. I am not able -- I have tried 11 to pull up those three numbers on the 12 portal system, and it is not showing 13 anything. So this one is new to us. 14 JUDGE TIERNEY: Okay. Well, if 15 you can have that conversation 16 off-line because Wockhardt is not 17 actually present and, yeah, I am not 18 even sure I will be assigned those 19 cases at this point in time. 20 MS. SPIRES: Okay. 21 JUDGE TIERNEY: So I would 22 rather not get too far into the 23 substance or any details on those 24 cases. 25 MS. SPIRES: Sure.</p>

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