

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FRESENIUS KABI USA, LLC,

PETITIONER,

V.

ELI LILLY & COMPANY,

PATENT OWNER.

Case IPR2016-00318¹
Patent 7,772,209

PETITIONER'S NOTICE OF APPEAL

¹ IPR2016-01340, IPR2016-01393, and IPR2016-01429 were joined with this proceeding.

Office of the General Counsel
Patent and Trademark Office
Madison East
10B20 600 Dulany Street
Alexandria, VA 22314

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a), that Petitioner Fresenius Kabi USA, LLC (“Petitioner”) appeals under 35 U.S.C. §§ 139, 141 and 142 to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on October 5, 2017 (Paper No. 88 in IPR2016-00318²) (the “Final Written Decision”), and all underlying orders, decisions, rulings, and opinions. A copy of the Final Written Decision is attached.

For the limited purpose of providing the Director with the information requested in 37 C.F.R. § 90.2(a)(3)(ii), Petitioners anticipate that the issues on appeal may include the following as well as any underlying findings, determinations, rulings, decisions, opinions, or other related issues:

- Whether the Board erred in finding that claims 1-22 of U.S. Patent 7,772,209 are patentable, and any findings or determinations supporting or related to that issue, including the weight the Board

² The same decision was entered in IPR2016-01429 (Paper No. 13). This IPR was joined with IPR2016-00318 and terminated under 37 C.F.R. § 42.72 on October 4, 2016 (IPR2016-01429 at Paper No. 10) with an Order that “all further filings in the joined proceeding shall be made only in IPR2016-00318” (*see, e.g.*, IPR2016-01429, Paper No. 10 at 11).

gave to Petitioners' evidence, as well as all other issues decided adversely to Petitioners in any orders, decisions, rulings, and opinions.

Copies of this Amended Notice of Appeal are being filed simultaneously with the Director, the Patent Trial and Appeal Board, and the Clerk of the United States Court of Appeals for the Federal Circuit.

Dated: December 7, 2017

Respectfully Submitted,

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Counsel for Fresenius Kabi USA, LLC

CERTIFICATE OF FILING

I hereby certify that a true and correct copy of the foregoing “Petitioner’s Notice of Appeal,” was filed electronically through the Patent Trial and Appeal Board’s E2E on this 7th day of December, 2017 and deposited with Federal Express on December 7, 2017 to the Director of the United States Patent and Trademark Office at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
United States Patent and Trademark Office
10B20, Madison Building East
600 Dulany Street
Alexandria, VA 22314

I also hereby certify that a true and correct copy of the foregoing “Petitioner’s Notice of Appeal,” was filed electronically by CM/ECF on this 7th day of December, 2017, with the United States Court of Appeals for the Federal Circuit.

Dated: December 7, 2017

Respectfully Submitted,

/Cynthia Lambert Hardman/
Cynthia Lambert Hardman (53,179)

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served on the counsel for Patent Owner a true and correct copy of the foregoing “Petitioner’s Notice of Appeal,” on December 7th, 2017, by Federal Express to counsel for Patent Owner at the following addresses of record:

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Dated: December 7, 2017

Respectfully Submitted,

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