

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX INC. and APOTEX CORP.,
Petitioners,

v.

ELI LILLY & COMPANY,
Patent Owner.

Case No: IPR2016-01190
Patent No. 7,772,209

JOINT NOTICE OF STIPULATION CONCERNING JOINDER

Three petitions for *inter partes* review have been filed seeking to join IPR2016-00237: IPR2016-01190 (filed by Apotex Inc. and Apotex Corp.); IPR2016-01341 (filed by Teva Pharmaceuticals USA, Inc. and Fresenius Kabi USA, LLC); and IPR2016-01335 (filed by Wockhardt Bio AG). The Board held an initial telephonic conference in IPR2016-00237 on July 22, 2016, in which the petitioners in IPR2016-01190 and IPR2016-01341 participated. During that conference, the Board encouraged the parties to meet and confer regarding conditions for an agreed-upon joinder. The Petitioners in IPR2016-01190, IPR2016-01341, and IPR2016-01335 (collectively, the “Joinder Petitioners”), Petitioner Neptune Generics, LLC (“Neptune” or “Lead Petitioner”), and Patent Owner Eli Lilly and Company (“Lilly”) have conferred, and hereby stipulate and agree as follows, subject to the Board’s approval of joinder on the parties’ agreed-upon terms:

1. Neptune and Lilly will not oppose the joinder of Joinder Petitioners to IPR2016-00237 (the “Joined Proceeding”).
2. Lilly waives its right to file a Patent Owner Preliminary Response in IPR2016-01190, IPR2016-01341, and IPR2016-01335.
3. So long as Lead Petitioner is not terminated as a party, Lead Petitioner will retain control over petitioners’ side of the Joined Proceeding, will conduct all argument and examination of witnesses for that side, and will submit all

substantive written submissions for that side. Joinder Petitioners will act as silent understudies in the proceedings, and thus will not (1) file any papers or exhibits in the Joined Proceeding, except for *pro hac vice* motions, updated mandatory notices, and similar administrative filings that do not constitute argument or evidence relating to the merits; (2) serve objections or discovery requests in connection with the Joined Proceeding; however, these restrictions do not apply to any discovery requests Lilly may serve on a Joinder Petitioner; (3) participate in the questioning of any witness or the defense of any witness deposition in the Joined Proceeding; (4) participate in a speaking role in any telephonic conference before the Board in the Joined Proceeding; or (5) participate in oral argument in the Joined Proceeding. Joinder Petitioners may, however, attend all depositions, telephonic conferences, and oral argument in the Joined Proceeding, and will be served with all papers and exhibits served by Lead Petitioner on Patent Owner or by Patent Owner on Lead Petitioner. Notwithstanding the above, Joinder Petitioners may speak or otherwise respond if there is an argument, question, or inquiry directed specifically to one or more Joinder Petitioners, or that is about one or more Joinder Petitioners specifically or the position of one or more Joinder Petitioners specifically.

4. The parties agree that the arguments and evidence presented in Joinder Petitioners' petitions is duplicative of the arguments and evidence

presented in Lead Petitioner's petition. The Joined Petitioners agree to proceed in the instant IPR based only upon the arguments and evidence advanced by Lead Petitioner. Subject to the provisions of paragraph 6 below, the Joinder Petitioners agree that they will not rely on any declarants (such as expert witnesses) proffered by the Joinder Petitioners with their Petitions that were not proffered by Lead Petitioner, and such declarants shall not be subject to cross-examination.

5. The presence of Joinder Petitioners in the Joined Proceeding shall not be a basis for any alteration of the schedule, nor shall Joinder Petitioners be allocated time or otherwise affect the times allocated for cross-examination, redirect, or re-cross examination of any witness.

6. In the event that Lead Petitioner is terminated from the Joined Proceeding by settlement or for any other reason, the remaining parties agree to confer in good faith regarding a fair and efficient framework for completing the remainder of the Joined Proceeding, including whether Petitioners may rely on the additional expert declarations filed by the Joinder Petitioners with their Petitions (such as in the event that Lead Petitioner's expert is unavailable to the Joinder Petitioners).

Date: August 22, 2016

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