

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ELI LILLY AND COMPANY,  
Petitioner,

v.

TEVA PHARMACEUTICALS INTERNATIONAL GMBH,  
Patent Owner.

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CASE IPR2018-01426  
Patent 9,890,211

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**PATENT OWNER'S NOTICE OF APPEAL**

via PTAB E2E  
Patent Trial and Appeal Board

via Certified U.S. Mail  
Director of the United States Patent and Trademark Office  
Office of the General Counsel  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

via CM/ECF  
United States Court of Appeals for the Federal Circuit

## INTRODUCTION

Teva Pharmaceuticals International GmbH's appeal stems from the Patent Trial and Appeal Board's Final Written Decision entered on February 18, 2020 (Paper 78) (the "Final Written Decision") in the above-captioned *inter partes* review of United States Patent No. 9,890,211. This notice is timely filed within 63 days of the Final Written Decision. 37 C.F.R. § 90.3(b)(1).

### TEVA PHARMACEUTICALS INTERNATIONAL GMBH'S APPEAL

Please take notice that under 35 U.S.C. §§ 141(c), 142, 319; 37 C.F.R. §§ 90.2(a), 90.3(a); and Federal Circuit Rule 15, Patent Owner Teva Pharmaceuticals International GmbH hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision based on the "Decision, Institution of *Inter Partes* Review" entered on February 25, 2019 (Paper 14) (the "Institution Decision").

### TEVA PHARMACEUTICALS INTERNATIONAL GMBH'S ISSUES ON APPEAL

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), Teva's issues on appeal include at least: (i) whether the Board erred in construing the challenged claims; (ii) whether the Board erred in failing to conduct a lead-compound analysis; (iii) whether the Board erred in failing to separately analyze the obviousness of each claim; (iv) whether the Board erred in holding that a skilled artisan would have been motivated to combine the asserted references with a reasonable

Case IPR2018-01426

Patent No. 9,890,211

expectation of success; (v) whether the Board erred in its analysis of Teva's proffered evidence of objective indicia of non-obviousness, including but not limited to its holdings that Teva was not entitled to a presumption of nexus and did not show an actual nexus; (vi) whether the Board erred in denying Teva's motions to strike and exclude evidence; (vii) whether the Board erred in its ultimate conclusion that the claims were unpatentable; (viii) whether the Board's decision was arbitrary and capricious, including because it held the parties to different standards with respect to argument preservation and waiver and because it permitted Petitioner to introduce new theories and new evidence in reply and in supplemental briefing; (ix) whether the Administrative Patent Judges of the panel were unconstitutionally appointed under the Appointments Clause; (x) whether the Board erred in refusing to allow Teva to move to stay the proceeding until it could be heard by a panel of Administrative Patent Judges constitutionally appointed under the Appointments Clause; and (xi) any finding or determination supporting or related to these issues and all other issues decided adversely to Patent Owner in any order, decision, ruling, phone conference decision, and/or opinion.

Simultaneously with this submission, Teva is filing (i) a true and correct copy of this Notice of Appeal with the Director of the United States Patent and Trademark Office and (ii) a true and correct copy of the same, along with the

Case IPR2018-01426

Patent No. 9,890,211

required docketing fee, with the Clerk of the United States Court of Appeals for the Federal Circuit as set forth in the accompanying Certificate of Filing.

Respectfully submitted,  
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Date: April 21, 2020  
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Deborah A. Sterling, Ph.D.  
Registration No. 62,732  
Lead Counsel for Patent Owner

Case IPR2018-01426  
Patent No. 9,890,211

### **CERTIFICATE OF FILING**

The undersigned hereby certifies that, in addition to being electronically filed through PTAB E2E, a true and correct copy of the above-captioned **PATENT OWNER TEVA PHARMACEUTICALS INTERNATIONAL GMBH'S NOTICE OF APPEAL** is being filed by certified U.S. mail with the Director on April 21, 2020, at the following address:

Director of the United States Patent and Trademark Office  
Office of the General Counsel  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

The undersigned also hereby certifies that a true and correct copy of the above captioned **PATENT OWNER TEVA PHARMACEUTICALS INTERNATIONAL GMBH'S NOTICE OF APPEAL** and the filing fee is being filed via CM/ECF with the Clerk's Office of the United States Court of Appeals for the Federal Circuit on April 21, 2020.

Respectfully submitted,  
STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Date: April 21, 2020  
1100 New York Avenue, N.W.  
Washington, D.C. 20005-3934  
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Deborah A. Sterling, Ph.D.  
Registration No. 62,732  
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