

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELI LILLY AND COMPANY,
Petitioner,

v.

TEVA PHARMACEUTICALS INTERNATIONAL GMBH,
Patent Owner.

Case IPR2018-01427
Patent 8,597,649 B2

DECLARATION OF ROBERT D. STONER, PH.D.

*Inter Partes Review of USPN 8,597,649
Declaration of Robert D. Stoner, Ph.D. (EX2123)*

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Declaration of Robert D. Stoner, Ph.D. (EX2123)*

I, Robert D. Stoner, Ph.D., declare as follows.

I. Introduction

A. Background and Qualifications

1. I am a Principal at Economists Incorporated, and an expert in industrial organization, with more than thirty years of experience in consulting, antitrust, and economic research. I provide expert witness testimony and consulting services in a variety of areas, including reasonable royalties, commercial success, damages estimation, and business strategy.

2. My expertise and experience encompass a variety of topics, including intellectual property, competition, antitrust, utility regulation, international trade, commercial litigation, and class action. My work in intellectual property spans the life sciences (with specific industry expertise in pharmaceuticals, medical devices and drug wholesaling) as well as electronics (including computer memory, digital music, smart phones, text messaging and telecommunications). I have worked on projects in a diverse range of other industries (such as pharmaceutical data, electric utilities, grocery stores, casinos, hospital beds, automobiles and oil refining and marketing). I frequently provide expertise and analysis in evaluating commercial success in the pharmaceutical industry.

3. I earned my Ph.D. and M.A. in Economics from Berkeley, University of California in 1978 and 1976, respectively, and my B.A. in Economics from

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Santa Cruz, University of California in 1970. At Santa Cruz, I received both General Honors and Honors in Economics. I have also published research in several peer-reviewed academic journals.

4. I am educated and experienced in economics, as detailed in this Declaration. My qualifications and credentials are also fully set forth in my *curriculum vitae*, provided as EX2256. I understand that my declaration will be included in Patent Owner's Exhibit List as EX2123.

B. Scope of Work

5. I have been retained as an expert witness on behalf of Teva Pharmaceuticals International GmbH ("Teva") for the above-captioned inter partes review ("IPR"). I am being compensated for my time in connection with this IPR at my standard consulting rate, but my compensation is not contingent upon my opinions or the outcome of this or any other proceeding.

6. I understand that this Declaration accompanies Teva's response to an IPR petition involving U.S. Patent No. 8,597,649 ("the '649 patent") (EX1001). I understand that the petition was filed by Eli Lilly and Company ("Lilly"). I understand that the '649 patent resulted from U.S. Patent Application No. 13/870,871 ("the '871 application"). I understand that the '871 application is a continuation application that relates to a series of previous applications. I also understand that the earliest possible priority date of the '649 patent is the

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November 14, 2005 filing date of U.S. Patent Application No. 60/736,623. The '649 patent issued on May 24, 2016.

7. I understand that the Patent Trial and Appeal Board ("PTAB") instituted review on claims 1-9 of the '649 patent.

8. For this declaration, I was asked to evaluate commercial acquiescence through licensing.

9. This declaration is a statement of my opinions in this matter and the basis and reasons for those opinions. In forming the opinions expressed in this declaration, I have relied upon my education, experience, and knowledge of the subjects discussed, as well as the cited documents and materials I have reviewed specifically in conjunction with this proceeding.

10. This declaration summarizes only my current opinions, which are subject to change depending upon additional information, and related analysis, that comes to light as this or related proceedings progress. The entirety of my declaration, including attachments and referenced materials, supplies the basis for my analysis and conclusions. The organizational structure of the declaration is for convenience. To the extent that facts, economic analysis, and other considerations overlap, I generally discuss such issues only once for the sake of brevity. Neither the specific order in which each issue is addressed nor the organization of my declaration or attachments affects the ultimate outcome of my analysis.

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