

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
U.S. Patent No. 8,597,649

**TEVA PHARMACEUTICALS INTERNATIONAL GMBH'S
OBJECTIONS TO EVIDENCE**

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Case IPR2018-01427

Patent No. 8,597,649

Patent Owner, Teva Pharmaceuticals International GmbH ("Teva"), objects under the Federal Rules of Evidence (FRE) and 37 C.F.R. § 42.64(b)(1) to the admissibility of Exhibits 1082, 1098, 1240, 1247, 1261-1279, 1281-1288, 1290-1297, 1308, 1309, 1311, 1313-1318, 1329, and 1330 (the "Challenged Evidence"), filed by Petitioner Eli Lilly and Company ("Lilly") on September 10, 2019, with Lilly's Reply. Teva's Objections are filed within five business days of the Reply; therefore, Teva's Objections to Evidence are timely under 37 C.F.R. § 42.64(b)(1). Teva files these Objections to provide notice to Lilly that Teva may move to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c), unless cured by Lilly.

IDENTIFICATION OF GROUNDS FOR OBJECTIONS

A. Exhibits 1329 and 1330

Exhibit 1329 purports to be the "Declaration of Dr. Joseph P. Balthasar, Ph.D." Teva objects to paragraphs 1-14, 79, and 80 in Exhibit 1329 under FRE 402 and FRE 403. Similarly, Exhibit 1330 purports to be the "Declaration of Dr. Andrew Charles, M.D." Teva objects to paragraphs 1-4, 95, and 96 of Exhibit 1330 under FRE 402 and 403. Lilly does not cite any of these paragraphs in its Reply, rendering Dr. Balthasar's and Dr. Charles' testimony in these paragraphs irrelevant under FRE 401. Teva therefore objects to these paragraphs under FRE 402. Teva also objects to these paragraphs under FRE 403 because they have no probative

Case IPR2018-01427

Patent No. 8,597,649

value, create unfair prejudice to Teva, and will only confuse the issues and waste the Board's time. Teva also objects to Exhibits 1325 and 1326 to the extent that they rely on evidence that is inadmissible under FRE 106, 402, 403, 901, 1001(e), and/or 1003, as described below.

B. Exhibits 1082, 1098, 1240, 1247, 1263-1271, 1281-1288, 1290-1297, 1308, 1309, 1311, and 1313-1318

Teva objects to exhibits 1082, 1098, 1240, 1247, 1263-1271, 1281, 1283-1288, 1290-1297, 1308, 1309, 1311, and 1313-1318 as lacking authentication under FRE 901. Collectively, these Exhibits are inadmissible under FRE 901 because Lilly has failed to provide sufficient evidence indicating the origin of the documents and has not provided sufficient information regarding their authenticity. Further, these Exhibits are not self-authenticating under FRE 902.

Teva also objects to exhibits 1082, 1098, 1240, 1247, 1263-1271, 1281-1288, 1290-1297, 1308, 1309, 1311, and 1313-1318 as incomplete. Each of these exhibits appears to be part of a larger work, rendering each exhibit inadmissible under FRE 106 and FRE 403.

Teva also objects to exhibits 1247, 1264, 1265, 1267-1271, 1281, 1286, 1293, 1296, 1311, 1313, 1314, 1316, and 1317 as irrelevant under FRE 401 through FRE 403. These exhibits are not cited in Lilly's reply, and several are published well after the filing date of the '649 patent. They are, therefore, irrelevant under FRE 401. Teva therefore objects to these exhibits under FRE 402.

Case IPR2018-01427

Patent No. 8,597,649

Teva also objects to these exhibits under FRE 403 because they have no probative value, create unfair prejudice to Teva, and will only confuse the issues and waste the Board's time.

C. Exhibits 1261, 1262, 1270-1279, 1284, 1287, 1308, and 1311

Teva objects to exhibits 1261, 1262, and 1272-1279 as irrelevant under FRE 401 through FRE 403. These exhibits are not cited in Lilly's reply, and several are published well after the filing date of the '649 patent. There are, therefore, irrelevant under FRE 401. Teva therefore objects to these exhibits under FRE 402. Teva also objects to these exhibits under FRE 403 because they have no probative value, create unfair prejudice to Teva, and will only confuse the issues and waste the Board's time.

Teva also objects to exhibits 1270, 1271, 1278, 1284, 1287, 1308 and 1311 under FRE 1001 through FRE 1003. For example, these documents have stray markings and other indicia that they are not original, or even clean copies of the original document. Accordingly, Teva objects to these exhibits for failure to comply with the best evidence rule.

Case IPR2018-01427

Patent No. 8,597,649

CONCLUSION

To the extent Lilly fails to correct the defects associated with the Challenged Evidence in view of Teva's objections herein, Teva may file a motion to exclude the Challenged Evidence under 37 C.F.R. § 42.64(c).

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



Date: September 17, 2019
1100 New York Avenue, N.W.
Washington, D.C. 20005-3934
(202) 371-2600

Deborah A. Sterling, Ph.D.
Registration No. 62,732
Lead Attorney for Patent Owner

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.