

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 IPR2018-01422 (Patent No. 9,340,614)  
Case IPR2018-01423 (Patent No. 9,266,951)  
Case IPR2018-01424 (Patent No. 9,346,881)  
Case IPR2018-01425 (Patent No. 9,890,210)  
Case IPR2018-01426 (Patent No. 9,890,211)  
Case IPR2018-01427 (Patent No. 8,597,649)<sup>1</sup>

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Before JENNIFER MEYER CHAGNON, JAMES A. WORTH, and  
RICHARD J. SMITH, *Administrative Patent Judges*.

WORTH, *Administrative Patent Judge*.

ORDER  
Granting Requests for Oral Argument  
*37 C.F.R. § 42.70*

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<sup>1</sup>This Order addresses issues that are common to all six cases. We, therefore, issue a single Order that has been entered in each case. The parties may use this style caption when filing a single paper in multiple proceedings, provided that such caption includes a footnote attesting that “the word-for-word identical paper is filed in each proceeding identified in the caption.”

The date set for oral argument in these six proceedings is November 22, 2019, if either party requests oral argument and the Board grants the request. IPR2018-01422, Paper 15, 8.<sup>2</sup> Both parties have requested oral argument pursuant to 37 C.F.R. § 42.70. Papers 52, 53. Both parties have requested a consolidated argument for the six proceedings, in which each side is allotted 60 minutes for its arguments. *Id.* The parties' requests are *granted* to the extent set forth below.

A single combined oral argument for all six cases will commence at **1:00 PM Eastern Time, on Friday, November 22, 2019**. The oral argument will be conducted on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The oral argument will be open to the public for in-person attendance, which will be accommodated on a first-come, first-served basis. The Board will provide a court reporter for the oral argument, and the reporter's transcript will constitute the official record of the oral argument.

As there is significant commonality of issues in the six proceedings, we believe that it would be appropriate to have a combined hearing with each party presenting its arguments in all cases in a single argument, and to allocate each party a total of **60 minutes** to present arguments. Because Petitioner bears the ultimate burden of proof that the claims at issue are unpatentable, Petitioner will begin the oral argument by presenting its case regarding the challenged claims at issue and any pending motions that it may have filed. Thereafter, Patent Owner will argue its opposition to Petitioner's case, and can present on its motions to strike and exclude. Petitioner may

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<sup>2</sup> Where the same or similar papers have been filed in multiple proceedings, we refer herein to the papers filed in Case IPR2018-01422.

reserve time to rebut Patent Owner's opposition and on any pending motions. Finally, Patent Owner may reserve time to present a brief sur-rebuttal to Petitioner's rebuttal.

Pursuant to 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven (7) business days before the hearing date. The demonstrative exhibits shall be filed with the Board no later than five (5) business days before the hearing date (i.e., no later than Nov. 15, 2019).

**Demonstrative exhibits are not evidence, but merely a visual aid for use at the hearing, and should be clearly marked as such. For example, each slide of the demonstratives may be marked with the words "DEMONSTRATIVE EXHIBIT – NOT EVIDENCE" in the footer.**

Demonstrative exhibits shall not introduce new arguments or evidence. The parties shall meet and confer in good faith to discuss any objections to demonstrative exhibits at least three (3) business days before the hearing. If any issues regarding demonstratives remain unresolved after the parties meet and confer, the parties shall jointly file a one-page list of objections to the demonstrative exhibits with the Board at least two (2) business days before the hearing. For each objection, the list must identify with particularity the demonstratives subject to the objection and include a short, one-sentence statement explaining the objection. We will consider the objections and schedule a conference call if necessary. Regardless of whether either party disputes the propriety of any demonstrative exhibit, we consider demonstrative exhibits only to the extent (1) they elucidate the parties' arguments presented during the hearing *and* (2) they include only arguments and/or evidence already of record in the proceedings. For further guidance on what constitutes an appropriate demonstrative exhibit, the

parties are directed to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, Paper 118 (PTAB Oct. 23, 2013).

We expect lead counsel for each party to be present at the hearing; however, any backup counsel may make the actual presentation, in whole or in part. *See* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,758 (Aug. 14, 2012). If lead counsel for either party is unable to attend the hearing, the parties shall request a joint telephone conference call no later than two (2) days prior to the hearing date to discuss the matter.

At least one member of the panel may be attending the hearing electronically from a remote location and, if so, will have access only to the courtesy copy of the demonstratives provided in advance, as referenced above, and will not be able to view the projection screen in the hearing room. We take this opportunity to remind the parties that each presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript, and to enable any judge that is attending the hearing from a remote location to follow the presentation.

Requests for special accommodations or audio-visual equipment are to be made at least five (5) business days in advance of the hearing date. Such requests must be sent to [Trials@uspto.gov](mailto:Trials@uspto.gov). If the requests are not received timely, requested accommodations and/or equipment may not be available on the day of the hearing.

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