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 IPR2018-01710
Patent 8,586,045

PATENT OWNER'S SURREPLY

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

TABLE OF CONTENTS

I. Introduction

Teva's Patent Owner Response ("POR") exposed multiple infirmities that defeat Lilly's obviousness case. Lilly's principal references—Olesen and Tan—would not have motivated a POSA to treat migraine with anti-CGRP antibodies. Olesen describes a migraine study with BIBN4096BS, which, contrary to Lilly's allegations, cannot be extended beyond small-molecule receptor antagonists. Tan is even further removed from the claimed methods: it is a basic research paper attempting to "prob[e] the role of CGRP as an endogenous vasodilator" in rats, reporting that a full-length anti-CGRP antibody failed to show immunoblockade *in vivo*.

Unable to overcome these and other fatal defects, Lilly instead argues that the claims "do not require clinical efficacy and do not mention safety," and Lilly does not have the burden of showing that "the claimed methods would be clinically effective and safe." Reply, 3. Lilly is wrong. First, the claims must be construed to require therapeutic efficacy. Second, it was Lilly who relied on an alleged "lower toxicity" of humanized antibodies as a reason to combine the art; Lilly cannot now retreat from the relevance of safety considerations on Reply. Teva rebutted Lilly by, *inter alia*, showing that Lilly failed to demonstrate *efficacy* and to fully consider *safety*.

Lilly's hindsight-driven argument selectively cherry-picks references Lilly

believes support its arguments, while ignoring references that undermine them. Even worse, on cross, Lilly's expert Dr. Charles and his replacement, Dr. Balthasar[1], distanced themselves from unfavorable portions of Lilly's *own* references. And they refused to consider teachings that highlight safety concerns associated with long-term inhibition of CGRP.

On Reply, Lilly pivots from its initial rationale, arguing instead that Lilly does not have to consider safety. But Lilly cannot re-craft its challenge to attempt to rehabilitate its Petition. *Henny Penny Corp. v. Frymaster LLC*, No. 18-1596 (Fed. Cir. 2019).

Lilly's new arguments that Covell's carcass studies support its speculation that Tan's antibody would eventually reach its site of action given more time fail, because "***assignment of a site*** … of antibody localization ***was not possible***."[2] Similarly, Lilly's speculation about "increased dose" goes against safety concerns regarding long-term CGRP ligand antagonism, which would remove CGRP's protective role during ischemic events, where the risk of stroke and heart attacks are elevated.

---

[1] On Reply, Lilly proffered testimony from new expert Dr. Balthasar to repair Dr. Charles' discredited opinions. POR, 3-4.

[2] Emphasis added throughout unless otherwise noted.

DOCKET ALARM

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.