

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 No. IPR2018-01711
Patent No. 9,884,907

PETITIONER'S NOTICE OF APPEAL

Pursuant to 35 U.S.C. §§ 141(c), 142 and 319 and 37 C.F.R. §§ 90.2(a) and 90.3, Petitioner Eli Lilly and Company hereby provides notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered March 31, 2020, (Paper 69) and from all underlying orders, decisions, rulings, and opinions regarding U.S. Patent No. 9,884,907 (“the ’907 patent”) set forth in Inter Partes Review No. IPR2018-01711.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), the issues on appeal are anticipated to include, but are not limited to:

- The Board’s failure to find that challenged claims 1-18 of the ’907 patent are unpatentable under 35 U.S.C. § 103;
- The Board’s legal error in claim construction;
- The Board’s application of an incorrect standard for reasonable expectation of success;
- Any Board finding decided adversely to Petitioner unsupported by substantial evidence; and
- The Board’s violation of the Administrative Procedure Act in rendering its Final Written Decision.

Petitioner further reserves the right to challenge any finding or determination supporting or relating to the issues above, and to challenge other issues decided

adversely to Petitioner in any order, decision, ruling, or opinion underlying or supporting the Final Written Decision.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), this Notice is being filed with the Director of the United States Patent and Trademark Office, and a copy of this Notice is being concurrently filed with the Patent Trial and Appeal Board. In addition, a copy of this Notice and the required docketing fees are being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit via CM/ECF.

Respectfully submitted,

Date: June 1, 2020

By: / William B. Raich /

William B. Raich (Reg. No. 54,386)

Erin M. Sommers (Reg. No. 60,974)

Pier D. DeRoo (Reg. No. 69,340)

Yieyie Yang (Reg. No. 71,923)

Finnegan, Henderson, Farabow, Garrett &
Dunner, L.L.P.

901 New York Avenue, N.W.

Washington, D.C. 20001-4413

Telephone: 202-408-4000

Facsimile: 202-408-4400

Sanjay M. Jivraj (Reg. No. 61,806)

Mark J. Stewart (Reg. No. 43,936)

Eli Lilly and Company Lilly Corporate
Center

Indianapolis, IN 46285

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.

IPR2018-01710 (Patent 8,586,045 B2)
IPR2018-01711 (Patent 9,884,907 B2)
IPR2018-01712 (Patent 9,884,908 B2)¹

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

Per Curiam

JUDGMENT
Final Written Decision
Determining No Challenged Claims Unpatentable
35 U.S.C. § 318(a)

¹ The proceedings have not been consolidated. The parties are not authorized to use a combined caption unless an identical paper is being entered into each proceeding and the paper contains a footnote indicating the same.

IPR2018-01710 (Patent 8,586,045 B2); IPR2018-01711 (Patent 9,884,907 B2); IPR2018-01712 (Patent 9,884,908 B2)

I. INTRODUCTION

This is a Final Written Decision addressing three *inter partes* reviews challenging claims 1, 3, 4, 8–17, 19, 20, and 24–31 of U.S. Patent No. 8,586,045 B2 (“the ’045 patent”) (IPR2018-01710), claims 1–18 of U.S. Patent No. 9,884,907 B2 (“the ’907 patent”) (IPR2018-01711), and claims 1–18 of U.S. Patent No. 9,884,908 B2 (“the ’908 patent”) (IPR2018-01712).² We have jurisdiction under 35 U.S.C. § 6(b). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). Having reviewed the arguments of the parties and the supporting evidence, we find that Petitioner has failed to demonstrate by a preponderance of the evidence that any of the challenged claims are unpatentable.

A. Procedural History

Eli Lilly and Company (“Petitioner” or “Lilly”) filed three Petitions (Paper 1,³ “Pet.”) requesting an *inter partes* review of the respective challenged claims of the ’045 patent, the ’907 patent, and the ’908 patent. Teva Pharmaceuticals International GmbH (“Patent Owner” or “Teva”) filed a Preliminary Response to each of the Petitions. Paper 8 (“Prelim. Resp.”).

² All of the respective challenged claims are referred to collectively as the “challenged claims,” and the ’045 patent, the ’907 patent, and the ’908 patent are referred to collectively as the “challenged patents.” IPR2018-01710 (“1710 IPR”), IPR2018-01711 (“1711 IPR”), and IPR2018-01712 (“1712 IPR”) are referred to herein as “the three *inter partes* reviews.”

³ Unless this Decision otherwise indicates, all citations are to the Papers and Exhibits in IPR2018-01710. Similar Papers and Exhibits were filed in each of the three *inter partes* reviews.

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.