

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 B2)
Case IPR2018-01711 (Patent 9,884,907 B2)
Case IPR2018-01712 (Patent 9,884,908 B2)¹

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

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.

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The date set for oral argument in these three proceedings is January 8, 2020, if either party requests oral argument and the Board grants the request. IPR2018-01710, Paper 10, 8.² Both parties have requested oral argument pursuant to 37 C.F.R. § 42.70. Papers 44, 45. Both parties have requested a consolidated argument for the three 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 three cases will commence at **1:00 PM Eastern Time, on Wednesday, January 8, 2020** at the USPTO Headquarters on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia.³ The hearing will be open to the public for in-person attendance that will be accommodated on a first-come, first-served basis. The parties are directed to contact the Board at least 10 days in advance of the hearing if there are any concerns about disclosing confidential information. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. To facilitate planning, each party must send an email message to PTABHearings@uspto.gov five days prior to the hearing if the number

² Where the same or similar papers have been filed in multiple proceedings, we refer herein to the papers filed in Case IPR2018-01710.

³ We acknowledge Patent Owner's pending Request for Rehearing with respect to the request for a stay of this proceeding, and the request that the Precedential Opinion Panel review the same. *See* Papers 49, 50; Ex. 3002. The Precedential Opinion Panel has not yet issued any decision on this question. Unless something changes in this regard, the hearing will proceed as scheduled.

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planning to attend the hearing in-person for its side (attorneys and others) exceeds five people.

As there is significant commonality of issues in the three 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 reserve time to rebut Patent Owner's opposition and respond to any arguments by Patent Owner regarding its motions to strike and exclude. 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 January 2, 2020). **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

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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).

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.

The Board generally expects lead counsel for each party to be present in person at the oral hearing. *See Consolidated Trial Practice Guide 11* (Nov. 2019), available at

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<https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf>. 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. Any counsel of record may present the party's argument as long as lead counsel is present in person.

If a party requires a different arrangement, the party should contact the Board as directed below with their request. For example, a party may request that counsel be permitted to present arguments remotely from an alternative USPTO location. The available locations include the USPTO headquarters in Alexandria, Virginia; the Texas Regional Office in Dallas, Texas; the Rocky Mountain Regional Office in Denver, Colorado; the Elijah J. McCoy Midwest Regional Office in Detroit, Michigan; and the Silicon Valley Office in San Jose, CA. To request that counsel be permitted to present arguments from a remote location, a party should send an email message to PTABHearings@uspto.gov at least ten business days or as soon as practical prior to the hearing and provide a short statement of reasons for the request. The Board will notify the parties if the request is approved. Approval of the request does not guarantee that a panel member will be present at the remote location.

A party may also request remote video attendance for one or more of its other attendees to view the hearing from any USPTO location. To request remote video viewing, a party must send an email message to PTABHearings@uspto.gov ten business days prior to the hearing, indicating the requested location and the number planning to view the hearing from the remote location. The Board will notify the parties if the request for video

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