

ELI LILLY AND COMPANY,  
Petitioner,

v.

TEVA PHARMACEUTICALS INTERNATIONAL GMBH,  
Patent Owner.

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Case IPR2018-01422 (Patent No. 9,340,614 B2)  
Case IPR2018-01423 (Patent No. 9,266,951 B2)  
Case IPR2018-01424 (Patent No. 9,346,881 B2)  
Case IPR2018-01425 (Patent No. 9,890,210 B2)  
Case IPR2018-01426 (Patent No. 9,890,211 B2)  
Case IPR2018-01427 (Patent No. 8,597,649 B2)  
Case IPR2018-01710 (Patent No. 8,586,045 B2)  
Case IPR2018-01711 (Patent No. 9,884,907 B2)  
Case IPR2018-01712 (Patent No. 9,884,908 B2)

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#### DECISION ON PETITION

This is a decision denying “PATENT OWNER’S PETITION UNDER 37 C.F.R. § 1.181(A)(3) INVOKING THE SUPERVISORY AUTHORITY OF THE DIRECTOR” filed November 21, 2019 (“petition”). In the petition, Patent Owner requests that the Director stay this *inter partes* review pending the mandate from the United States Court of Appeals for the Federal Circuit (“Federal Circuit”) in *Arthrex, Inc. v. Smith & Nephew, Inc.*,

941 F.3d 1320 (Fed. Cir. 2019).<sup>1</sup> Petition 1. The petition fee of \$400.00 pursuant to 37 C.F.R. § 1.17(f) was charged to Patent Owner's deposit account on February 18, 2020.

#### PROCEDURAL HISTORY

1. On August 8, 2018, Petitioner filed a Petition for *Inter Partes* Review.
2. On February 19, 2019, a Decision instituting *inter partes* review was mailed.
3. On November 15, 2019, the Board denied Patent Owner's request for authorization to file a motion to stay the *inter partes* review.
4. Patent Owner filed the instant petition on November 21, 2019.

#### RELEVANT AUTHORITY

**37 C.F.R. § 42.20(a) provides:**

(a) *Relief*. Relief, other than a petition requesting the institution of a trial, must be requested in the form of a motion.

**37 C.F.R. § 42.3(a) provides:**

(a) The Board may exercise exclusive jurisdiction within the Office over every involved application and patent during the proceeding, as the Board may order.

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<sup>1</sup> Patent Owner also filed a "PETITION TO EXPEDITE UNDER 37 C.F.R. § 1.182." That petition is denied as moot.

**37 C.F.R. § 42.7(b) provides:**

(b) The Board may vacate or hold in abeyance any non-Board action directed to a proceeding while an application or patent is under the jurisdiction of the Board unless the action was authorized by the Board.

**37 C.F.R. § 1.181(a)(3) provides:**

(a) Petition may be taken to the Director:

.....

(3) To invoke the supervisory authority of the Director in appropriate circumstances. For petitions involving action of the Patent Trial and Appeal Board, see § 41.3 of this title.

**37 C.F.R. § 41.3(b) provides:**

(b) *Scope.* This section covers petitions on matters pending before the Board (§§ 41.35, 41.64, 41.103, and 41.205); otherwise, see §§ 1.181 to 1.183 of this title. . . .

DISCUSSION

Patent Owner purports to “invoke[] the supervisory authority of the Director under 37 C.F.R. § 1.181(a)(3).” Petition 1. Patent Owner’s petition is **improper** pursuant to 37 C.F.R. § 1.181(a)(3), which allows such petitions only “in appropriate circumstances.” Patent Owner does not establish that the circumstances here are “appropriate,” nor can it. 37 C.F.R. § 42.20(a) provides that all “[r]elief, other than a petition requesting the

institution of a trial, must be requested in the form of a motion.” Patent Owner sought, but did not obtain, authorization to file a motion requesting the relief it desires. The Board typically exercises “exclusive jurisdiction” over a patent involved in an *inter partes* review, and it may take exclusive jurisdiction over related applications. 37 C.F.R. § 42.3(a). Likewise, “[t]he Board may vacate or hold in abeyance any non-Board action directed to a proceeding while an application or patent is under the jurisdiction of the Board unless the action was authorized by the Board.” *Id.* § 42.7(b). Relief therefore is not available under 37 C.F.R. § 1.181(a)(3) for actions not authorized by the Board.

Nevertheless, we address Patent Owner’s request on the merits. Patent Owner argues that we should “stay this IPR pending issuance of the mandate in *Arthrex*.” Petition 2. Patent Owner’s argument is premised on its theory that the remedy set forth in *Arthrex* “renders APJs unable to preside over IPR proceedings consistent with the Administrative Procedure Act (‘APA’).” *Id.* at 10. But, even if that were true, it is unclear how the issuance of the mandate in *Arthrex* would address the alleged APA defect. Patent Owner therefore has not established any justification for a stay.

Accordingly, Patent Owner’s petition is denied.

DECISION

In view of the foregoing, the petition is DENIED.



Scott C. Weidenfeller  
Vice Chief Administrative Patent Judge

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