

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**TEVA PHARMACEUTICALS INTERNATIONAL
GMBH,**
Appellant

v.

ELI LILLY AND COMPANY,
Appellee

**ANDREW HIRSHFELD, PERFORMING THE
FUNCTIONS AND DUTIES OF THE UNDER
SECRETARY OF COMMERCE FOR
INTELLECTUAL PROPERTY AND DIRECTOR OF
THE UNITED STATES PATENT AND TRADEMARK
OFFICE,**
Intervenor

2020-1749, 2020-1751, 2020-1752

Appeals from the United States Patent and Trademark
Office, Patent Trial and Appeal Board in Nos. IPR2018-
01424, IPR2018-01426, IPR2018-01427.

Decided: August 16, 2021

WILLIAM M. JAY, Goodwin Procter LLP, Washington, DC, argued for appellant. Also represented by ELAINE BLAIS, EDWINA CLARKE, ALEXANDRA LU, Boston, MA; NATASHA ELISE DAUGHTREY, Los Angeles, CA; WILLIAM MILLIKEN, DEBORAH STERLING, Sterne Kessler Goldstein & Fox, PLLC, Washington, DC.

WILLIAM BARRETT RAICH, Finnegan, Henderson, Farabow, Garrett & Dunner, LLP, Washington, DC, argued for appellee. Also represented by CHARLES COLLINS-CHASE, PIER DEROO, ERIN SOMMERS, YIEYIE YANG; SANJAY M. JIVRAJ, MARK STEWART, Eli Lilly and Company, Indianapolis, IN.

MONICA BARNES LATEEF, Office of the Solicitor, United States Patent and Trademark Office, Alexandria, VA, for intervenor. Also represented by THOMAS W. KRAUSE, FARHEENA YASMEEN RASHEED, MEREDITH HOPE SCHOENFELD.

Before LOURIE, BRYSON, and O'MALLEY, *Circuit Judges*.

LOURIE, *Circuit Judge*.

Teva Pharmaceuticals International GmbH (“Teva”) appeals from a combined final written decision of the U.S. Patent and Trademark Office Patent Trial and Appeal Board (“Board”) holding that the claims of U.S. Patents 9,346,881 (“881 patent”), 9,890,211 (“211 patent”), and 8,597,649 (“649 patent”) are unpatentable because they would have been obvious over the cited prior art. *Eli Lilly and Company v. Teva Pharmaceuticals International GmbH*, Nos. IPR2018-014242, IPR2018-014264, IPR2018-01427, 2020 WL 808240 (P.T.A.B. Feb. 18, 2020) (“*Board Decision*”). For the following reasons, and for the reasons set forth in our opinion in Appeal Nos. 2020-1747, 2020-1748, and 2020-1750 issued this day, we *affirm*.

This appeal pertains to three *inter partes* reviews (“IPR”). Eli Lilly and Company (“Lilly”) filed petitions challenging claims in ’881, ’211, and ’649 patents directed to humanized antagonist antibodies that target calcitonin gene-related peptide (“CGRP”). On February 18, 2020, the Board issued a combined final written decision holding the challenged claims in all three patents unpatentable. On the same day, the Board issued a combined final written decision in three other IPRs between the same parties, holding unpatentable the claims in three related patents, all directed to humanized antagonist antibodies that target CGRP. *See Eli Lilly and Company v. Teva Pharmaceuticals International GmbH*, Nos. IPR2018-01422, IPR2018-01423, IPR2018-01425, 2020 WL 806932 (P.T.A.B. Feb. 18, 2020).

Teva filed six appeals from the Board’s two combined final written decisions. We consolidated the six appeals into two sets of three, in line with the Board’s two combined final written decisions. In the two consolidated appeals, the parties made substantively identical arguments, mostly copied and pasted verbatim from one case to the other. Teva included the following footnote in its opening brief:

In a second decision issued the same day, the Board also held unpatentable the challenged claims of three related composition patents. That decision, ***which is materially identical in reasoning***, is the subject of Teva’s companion appeal no. 20-1747. ***Teva’s arguments in the two appeals are the same. . . .***

Teva Opening Br. at 13 n.6. A corresponding footnote appears in Teva’s opening brief in Appeal No. 2020-1747. Lilly did not dispute that the parties’ arguments in the two appeals are the same. During the combined oral argument in the two consolidated appeals, neither party argued that

any one of the six appeals should be decided differently from the others.

Accordingly, for the reasons set forth in our opinion in Appeal Nos. 2020-1747, 2020-1748, and 2020-1750 issued this day, we *affirm* the Board's combined final written decision holding unpatentable the challenged claims in the '881, '211, and '649 patents.

AFFIRMED