

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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ELI LILLY AND COMPANY,  
Petitioner,

v.

LOS ANGELES BIOMEDICAL RESEARCH INSTITUTE AT  
HARBOR UCLA MEDICAL CENTER,  
Patent Owner.

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Case IPR2014-00752  
Patent 8,133,903 B2

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Record of Oral Hearing  
Held: September 4, 2019

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Before FRANCISCO C. PRATS, SHERIDAN K. SNEDDEN, and  
SUSAN L. C. MITCHELL, *Administrative Patent Judges*.

Case IPR2014-00752  
Patent 8,133,903 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Wednesday, September 4, 2019, commencing at 2:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia, before Julie Souza, Notary Public.

P R O C E E D I N G S

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2 JUDGE SNEDDEN: Please be seated. Good  
3 afternoon. This is the hearing in IPR 2014-00752. I'm Judge  
4 Snedden. I have with me on the panel Judges Mitchell and Prats.  
5 So we'll begin with appearances starting with Petitioner. Please  
6 stand and introduce yourself and who you have with you today.

7 MR. FELDSTEIN: Thank you, Your Honor. Mark  
8 Feldstein with Finnegan Henderson on behalf of the Petitioner  
9 Eli Lilly. With me today is my co-counsel Drew Christie from  
10 Finnegan Henderson, Josh Goldberg from Finnegan Henderson  
11 and co-counsel Mark Stewart from Eli Lilly.

12 JUDGE SNEDDEN: Thank you. Welcome.

13 MR. TELLEKSON: Good afternoon, Your Honor.  
14 I'm David Tellekson from Fenwick & West and I represent Los  
15 Angeles Biomedical Research Institute, and with me is Liz  
16 Hagan, also of Fenwick & West.

17 JUDGE SNEDDEN: Welcome. Per our order  
18 granting this oral hearing, each party will have 60 minutes of  
19 total time to present its arguments. Petitioner will open the  
20 hearing by presenting its case regarding the claims for which we  
21 instituted at trial. Patent Owner will then respond to Petitioner's  
22 argument. Each side may reserve time for rebuttal. Patent  
23 Owner is limited to five minutes of rebuttal time. I also note

1 that Judge Prats is joining us remotely today and so if the parties  
2 could remember to speak the slide number for both the benefit of  
3 the record and also for Judge Prats. Okay. Mr. Feldstein, you  
4 may begin when you're ready.

5 MR. FELDSTEIN: Thank you, Your Honor. Can we  
6 hand out some hard copies of the demonstratives?

7 JUDGE SNEDDEN: Sure.

8 MR. FELDSTEIN: Can we do that here?

9 JUDGE SNEDDEN: Yes, you may, and will you be  
10 reserving any rebuttal time today?

11 MR. FELDSTEIN: My intent is to reserve 20 minutes  
12 of rebuttal time, Your Honor.

13 JUDGE SNEDDEN: Mr. Feldstein, if you could pause  
14 and wait for Judge Prats to join us again.

15 MR. FELDSTEIN: Sure.

16 JUDGE PRATS: I'm back. Can you all hear me?

17 JUDGE MITCHELL: Yes.

18 JUDGE SNEDDEN: We can hear you.

19 JUDGE PRATS: Thank you. Sorry about that.

20 JUDGE SNEDDEN: All right, Mr. Feldstein. You  
21 may begin.

22 MR. FELDSTEIN: Thank you. We'll start on slide 1.  
23 I'd just like to note this is a relatively unique case that we have.  
24 We have the Federal Circuit decision with claim construction.

1 We have the Board's decision for ground one on remand and in  
2 view of those prior decisions, we are able to focus our argument  
3 today to really hone in on what's undisputed or minimize  
4 disputes at least, and so we're going to hone in, we're going to  
5 focus on the obviousness of treating Peyronie's disease plaque is  
6 one of the three populations that are addressed in the petition  
7 and by doing so I think we can avoid a lot of argument, a lot of  
8 Patent Owner's argument relating to claim construction, a lot of  
9 Patent Owner's argument related to the populations of the  
10 Rochira and Zippe petitions references.

11 So if we go to slide 3, I'd like to start with just a little  
12 background on the patent and the NO/cGMP pathway as well as  
13 PDE5 inhibitors. Going to slide 4, slide 4 is a quote from Patent  
14 Owner response paper 20 where Patent Owner early in the case  
15 admitted that the discovery at the heart of their invention, the  
16 903 patent, was that iNOS, inducible nitric oxide synthase,  
17 serves too protect penile tissue from fibrosis and that this  
18 discovery paved the way for the invention itself.

19 So we think that that was actually a true statement,  
20 that that was the heart of the invention and it did pave the way.  
21 If we go to slide 6. That discovery however is fully disclosed in  
22 Ferrini reference 1091, which is one of the four references in the  
23 ground, that is confirmed 102(b) prior art at this point, the patent  
24 having lost its claim to the provisional filing date.

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