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Paper 14
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ELI LILLY AND COMPANY,
Petitioner,

v.

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

Case IPR2014-00693
Patent 8,133,903

Before LORA M. GREEN, FRANCISCO C. PRATS, and
SHERIDAN K. SNEDDEN, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

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I. INTRODUCTION

Eli Lilly and Company (“Lilly”) filed a Petition (Paper 1; “Pet.”) to institute an *inter partes* review of claims 1–5 of US 8,133,903 B2 (Ex. 1001; “the ’903 patent”). Los Angeles Biomedical Research Institute at Harbor-UCLA Medical Center (“LA BioMed”) filed a corrected Patent Owner Preliminary Response. Paper 12 (“Prelim. Resp.”).

We have jurisdiction under 35 U.S.C. § 314. The standard for instituting an *inter partes* review is set forth in 35 U.S.C. § 314(a), which states that an *inter partes* review may not be instituted unless “the information presented in the [Petition and Preliminary Response] shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Upon consideration of the above-mentioned Petition and Preliminary Response we conclude that Petitioner has established that there is a reasonable likelihood that it will prevail with respect to at least one of the challenged claims. We grant the petition to institute an *inter partes* review as to claims 1–5.

A. *Related Proceedings*

According to the parties, the ’903 patent is involved in the following co-pending case: *Los Angeles Biomedical Research Inst. v. Eli Lilly & Co.*, No. 2:13-cv-08567-JAK-JCG (C.D. Cal.). Papers 5, 11.

In addition, Lilly filed, concurrently with the instant Petition, a second petition for *inter partes* review of claims 1-5 of U.S. Patent No. 8,133,903 on different grounds. This second petition was assigned IPR2014-00752.

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B. The '903 Patent (Ex. 1001)

The '903 patent relates to methods of treating fibrotic conditions with a cyclic guanosine 3', 5'-monophosphate (cGMP) type 5 phosphodiesterase (PDE 5) inhibitors (*e.g.* sildenafil). Ex. 1001, 1:20-27. The PDE-5 inhibitor is administered at a dosage up to 1.5 mg/kg/day, which is roughly equivalent to the dose ingested by men with an on-demand single 100 mg tablet. *Id.* at 45:7–12.

Fibrotic conditions disclosed in the '903 patent include Peyronie's disease (PD), erectile dysfunction (ED), and arteriosclerosis. *Id.* at 1:29–2:41. The '903 patent discloses that the “long-term administration of nitrenergic agents, such as . . . sildenafil . . . may be of use to reduce PD plaque size and collagen/fibroblast ratio and may reverse or prevent the further development of the fibrosis observed in PD, ED, arteriosclerosis and other fibrotic conditions.” *Id.* at 3:4–14.

C. Challenged Claims

Challenged claims 1–5 are reproduced below:

1. A method comprising:

a) administering a cyclic guanosine 3', 5'-monophosphate (cGMP) type 5 phosphodiesterase (PDE 5) inhibitor according to a continuous long-term regimen to an individual with at least one of a penile tunical fibrosis and corporal tissue fibrosis; and

b) arresting or regressing the at least one of the penile tissue fibrosis and corporal tissue fibrosis, wherein the PDE-5 inhibitor is administered at a dosage up to 1.5 mg/kg/day for not less than 45 days.

2. The method of claim 1, wherein administering the PDE-5 inhibitor according to a continuous long-term regimen comprises oral administering of sildenafil, tadalafil or vardenafil.

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3. The method of claim 1, wherein the penile tissue fibrosis is Peyronie's disease plaque, or penile corporal veno-occlusive dysfunction.
4. The method of claim 1, wherein the PDE-5 inhibitor is administered orally, by injection, or by local administration to a penis.
5. The method of claim 1, wherein administering according to a continuous long-term regimen comprises administering for months or years.

D. The Prior Art and Supporting Evidence

Petitioner relies on the following prior art:

Giuliano et al. “Daily and on-demand IC351 [i.e., Tadalafil] treatment of erectile dysfunction.” 163(4) *J. UROL*. 201 (2000). Ex. 1035 (“Giuliano”).

Hong et al. “Time dependent patient satisfaction with sildenafil for erectile dysfunction (ED) after nerve-sparing radical retropubic prostatectomy (RRP).” 11 (Suppl. 1) *INT J IMPOT RES* S15–22 (1999). Ex. 1038 (“Hong”).

Montorsi et al. “The ageing male and erectile dysfunction.” 20(1) *WORLD J UROL* 28–35 (2002). Ex. 1051 (“Montorsi”).

Rochira et al. “Effects of sildenafil on nocturnal penile tumescence and rigidity in normal men: randomized, placebo-controlled, crossover study.” 23(4) *J ANDROL* 566–71 (2002). Ex. 1064 (“Rochira”).

Frank Sommer, *Erectile Dysfunction Prevention Model Taking Into Account Regional Pelvic Muscle Activity, Penile Perfusion, The Role Of Oxygen Supply, And Erectile Compliance* (2001). Ex. 1071, the English translation of which is Ex. 1070 (“Sommer”).

Whitaker et al. “Daily treatment for erectile dysfunction using a PDE5 inhibitor.” WO 01/80860 A2 (2001). Ex. 1086 (“Whitaker”).

Zippe et al. “Management of erectile dysfunction following radical prostatectomy.” 2(6) *CURR UROL REP* 495–503 (2001). Ex. 1088 (“Zippe”).

Lilly further relies on declarations from the following technical expert: Irwin Goldstein, M.D. (Ex. 1002).

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E. The Asserted Grounds

Petitioner challenges claims 1–5 of the '903 patent on the following grounds. Pet. 18–55.

Reference[s]	Basis	Claims challenged
Zippe	§ 102(b)	1–5
Sommer	§ 102(a)	1–5
Whitaker	§ 102(b)	1–5
Zippe, Hong, Rochira, and Montorsi	§ 103(a)	1–5
Whitaker and Giuliano	§ 103(a)	1–5

II. ANALYSIS

A. The '903 Patent Priority Claim

In order to be entitled to the benefit of a parent application, one requirement is that the invention presently claimed must have been disclosed in the parent application in the manner provided by 35 U.S.C. § 112, first paragraph. See 35 U.S.C. § 120; *In re Lukach*, 442 F.2d 967, 968-69 (CCPA 1971). An *ipsis verbis* disclosure, however, is not necessary to satisfy the written description requirement. *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1563 (Fed. Cir. 1991). The disclosure need only reasonably convey to persons skilled in the art that the inventor had possession of the subject matter in question, even if every nuance of the claims is not explicitly described in the specification. *Id.*; see *Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010). For example, in the context of a priority claim, the written description requirement is met if a person of ordinary

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skill in the art could derive claim limitations from the parent's disclosure. *See Ralston Purina Co. v. Far-Mar-Co, Inc.*, 772 F.2d 1570, 1575 (Fed. Cir. 1985) (ranges found in applicant's claims need not correspond exactly to those disclosed in parent application; the issue is whether one skilled in the art could derive the claimed ranges from parent's disclosure)(citing *Pingree v. Hull*, 518 F.2d 624, 186 USPQ 248 (CCPA 1975) (claims with no explicit disclosure must find inherent support in the prior application)); *see also Waldemar Link GmbH & Co. v. Osteonics Corp.*, 32 F.3d 556, 558 (Fed. Cir. 1994) (one skilled in the art, reading the original disclosure, must "immediately discern the limitation at issue" in the claims).

The '903 patent claims the benefit of priority to PCT Application No. PCT/US2003/033400 (Ex. 2004), filed on October 21, 2003, which claims the benefit of U.S. Provisional Application No. 60/420,281 (Ex. 2003), filed on October 22, 2002. Lilly argues that claims 1–5 of the '903 patent are not entitled to the priority date of the provisional application because the provisional application fails to provide written description support for the dosage limitation of "up to 1.5 mg/kg/day." Pet. 11–12. Specifically, Lilly contends that the provisional application does not disclose an upper dosage limit of 1.5 mg/kg/day or otherwise contain any equivalent disclosure, such as a disclosure regarding conversion of the disclosed rat dosage to a human dosage. *Id.* Lilly notes that the inclusion of a disclosure related to the conversion of the disclosed rat dosage to a human dosage is first found in the subsequently filed PCT priority document. *Id.* ("When the 10 mg/kg/day dose is translated into the equivalent dose in humans by correcting for differences in the body weight/skin area (Freireich et al., 1966), it is roughly 1.5 mg/kg which is about the dose ingested by men with an on demand single 100 mg tablet.").

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LA BioMed contends that the specification of the PCT application discloses that the 100 mg dose administered to rats is equivalent to a human dose of 1.5 mg/kg/day, and that the conversion from a rat dosage to a human dosage was well-known in the art. Prelim. Resp. 21–22(citing Ex 1004 ¶¶ 234, 333). LA BioMed argues that there is no requirement to disclose what is well known in the art. *Id.*

After careful review of both party’s arguments, we agree with Lilly that the dosage limitation of “up to 1.5 mg/kg/day” is not supported by the written description of the provisional application. The provisional application discloses an experiment in which sildenafil, a specific PDE-5 inhibitor, was administered orally to rats via their drinking water at a concentration of 100 mg/L for 45 days. Ex. 1003 ¶ 0138. However, there is no evidence on the record to support a conclusion that the rats drank a daily amount of water such that the dose they received was exactly 10 mg/kg/day. Thus, even assuming that the conversion from a rat dosage to a human dosage was well-known in the art, a person of ordinary skill in the art could not derive an upper dosage limit of 1.5 mg/kg/day, as recited in claim 1, from the disclosure of the provisional application. As such, claims 1–5 of the ’903 patent are not entitled to the priority date of the provisional application. Rather, on the current record, the ’903 patent’s claims are entitled only to the October 21, 2003 filing date.

B. Claim Interpretation

We interpret claims using the “broadest reasonable construction in light of the specification of the patent in which [they] appear[.]” 37 C.F.R. § 42.100(b); *see also Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012).

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Under the broadest reasonable construction standard, claim terms are given their ordinary and customary meaning, as would be understood by one of ordinary skill in the art at the time of the invention. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). “Absent claim language carrying a narrow meaning, the PTO should only limit the claim based on the specification . . . when [it] expressly disclaim[s] the broader definition.” *In re Bigio*, 381 F.3d 1320, 1325 (Fed Cir. 2004). “Although an inventor is indeed free to define the specific terms used to describe his or her invention, this must be done with reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

We interpret the following terms of the challenged claims as part of our analysis. Lilly’s Petition does not require explicit construction of any other claim term at this time.

1. “continuous long-term regimen”

Independent claim 1 recites administering a PDE-5 inhibitor according to “continuous long-term regimen.” Lilly argues that the broadest reasonable construction of the phrase “continuous long-term regimen” encompasses, but does not require, daily (or nightly) administration of a PDE-5 inhibitor. Pet. 14–15, citing Ex. 1002 ¶¶ 25–26.

LA Biomed proposes that the phrase “continuous long-term regimen” should be construed to mean “a regimen of sufficient duration and frequency to establish and maintain a constant level of the administered PDE-5 inhibitor.” Prelim. Resp. 8–12. For support of this construction, LA Biomed directs our attention to a portion of the ’903 patent where it distinguishes between an “on demand” treatment regimen and a “continuous” treatment regimen. *Id.* The passage of the ’903 patent relied on by LA Biomed provides as follows:

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A distinction exists between long-term (weeks, months, years) continuous treatment with, for example, a PDE5 inhibitor such as sildenafil to maintain a constant level of these agents in order to arrest or regress a fibrotic condition, versus on demand (prior to the sexual act) single pill, short-term treatment with sildenafil or other PDE5 inhibitors to obtain smooth muscle vasodilation in the penis . . . upon sexual stimulation.

Ex. 1001 at 10:59–67.

LA Biomed further asserts that their construction is consistent with the plain and ordinary meaning of the term “continuous,” which is defined as “without intermission” (Ex. 2012, 404) or as “characterized by uninterrupted extension in time or sequence” (Ex. 2013, 493–94). Prelim. Resp. 11.

We recognize that there is sometimes “a fine line between reading a claim in light of the specification, and reading a limitation into the claim from the specification.” *Comark Commc’ns v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998) (citations omitted); *see also Constant v. Advanced Micro–Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988) (“Although the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims.”). We also recognize, however, that the specification contains a written description that “can provide guidance as to the meaning of the claims, thereby dictating the manner in which the claims are to be construed, even if the guidance is not provided in explicit definitional format.” *SciMed Life Sys., Inc. v. Advanced Cardiovascular Sys., Inc.*, 242 F.3d 1337, 1344 (Fed. Cir. 2001).

In this case, the language in the specification does not explicitly inform us as to the meaning of the term “continuous” to one of skill in the art. The specification does not explicitly define the term “continuous” and we decline to rely on a single passage from the specification to construe “a continuous long-term regimen” to

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require drug to be maintained at a constant level. The specification of the '903 patent discloses that drug formulations are varied and administered “in a manner compatible with the dosage formulation” such that the formulations are therapeutically effective. Ex. 1001, 28:19–29. While the examples provided in the '903 patent discuss the administration via the drinking water to test animals (*see e.g., id.* at 36:48–52), and thus, might inherently result in a certain level of drug to be maintained in those animals, there is no clear or specific disclosure informing a person of ordinary skill in the art how to convert this form of administration to a dosing regimen used for the treatment of human patients.

After careful review of the specification of the '903 patent, the broadest reasonable construction of the phrase “a continuous long-term regimen” refers to the administration of drug over a certain period of time, without intermission, such that the treatment is therapeutically effective. With regard to claims of the '903 patent, the time period is not less than 45 days, as recited in claim 1.

C. Asserted Grounds of Unpatentability

1. Anticipation of Claims 1–5 by Whitaker

Lilly contends that claims 1–5 of the '903 patent are anticipated by Whitaker. Pet. 41–53. Upon review of Lilly’s analysis and supporting evidence, we determine that there is a reasonable likelihood that Lilly would prevail in demonstrating the unpatentability of claims 1–5 for anticipation by Whitaker. Our reasoning follows.

The Court of Appeals for the Federal Circuit summarized the analytical framework for determining whether prior art anticipates a claim as follows:

If the claimed invention was “described in a printed publication” either before the date of invention, 35 U.S.C. § 102(a), or more than one year before the U.S. patent application was filed, 35 U.S.C.

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§ 102(b), then that prior art anticipates the patent. Although § 102 refers to “the invention” generally, the anticipation inquiry proceeds on a claim-by-claim basis. *See Hakim v. Cannon Avent Group, PLC*, 479 F.3d 1313, 1319 (Fed. Cir. 2007). To anticipate a claim, a single prior art reference must expressly or inherently disclose each claim limitation. *Celeritas Techs., Ltd. v. Rockwell Int’l Corp.*, 150 F.3d 1354, 1361 (Fed. Cir. 1998). But disclosure of each element is not quite enough—this court has long held that “[a]nticipation requires the presence in a single prior art disclosure of all elements of a claimed invention *arranged as in the claim.*” *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed. Cir. 1983) (citing *Soundsciber Corp. v. United States*, 175 Ct.Cl. 644, 360 F.2d 954, 960 (1966) (emphasis added)).

Finisar Corp. v. DirecTV Grp., Inc., 523 F.3d 1323, 1334–35 (Fed. Cir. 2008). We must analyze prior art references as a skilled artisan would. *See Scripps Clinic & Res. Found. v. Genentech, Inc.*, 927 F.2d 1565, 1576 (Fed. Cir. 1991) (to anticipate, “[t]here must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention”).

Claims 1–5 encompass a method of administering a PDE5 inhibitor, at a dosage up to 1.5 mg/kg/day for not less than 45 days, to an individual with a corporal tissue fibrosis, for the purposes of arresting or regressing the fibrosis. Whitaker discloses methods of treating male erectile dysfunction involving the chronic administration of a PDE5 inhibitor at a dose of 1 mg/day to 10 mg/day. Ex. 1086, 4:13–23. Whitaker defines chronic as follows:

The term “chronic or chronically” refers to the regular administration of the product in intervals unrelated to the onset of sexual activity. To receive the full benefit of the present invention, chronic administration generally refers to regular administration for an extended period, preferably daily for three or more days, and still more preferably daily as long as the patient suffers from erectile dysfunction (in the absence

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of therapy). The term “chronic” administration encompasses other regimens in addition to daily dosing. For example, chronic administration encompasses administration of a sustained release formulation that provides sufficient PDE5 inhibitor on a regular basis and unrelated to the onset of sexual activity.

Id. at 7:10–25. Whitaker further discloses that tadalafil, sildenafil, and vardenafil are suitable PDE5 inhibitors. *Id.* at 16:3–30. An orally administered daily dose is disclosed. *Id.* at 4:6–28.

Whitaker Example 6 discloses the results of five clinical studies assessing the efficacy of daily oral dosing of a PDE5 inhibitor in males with erectile dysfunction. *Id.* at 34–37. One study lasted eight weeks, and the other four lasted twelve weeks, and therefore, all five studies lasted a period of greater than 45 days. *Id.* The daily dose was 5 mg and 10 mg. *Id.* Lilly contends that fifty-six patients took the drug for at least 70% of the time of the study. *Id.* at 36:9–20.

In support of its assertion that Whitaker teaches each element of claims 1–5, Lilly sets forth the foregoing teachings of Whitaker and provides a detailed claim chart explaining how each claim limitation is disclosed. Pet. 41–53. Lilly argues additionally that penile corporal tissue fibrosis is necessarily present in patients with ED, based on the common relationship of vascular risk factors linking certain conditions (*e.g.*, diabetes, atherosclerosis, smoking, and hypertension) with fibrosis. Pet. 47–53, citing Ex. 1002 at ¶¶ 72–73 (“[A] POSITA would have understood Whitaker to teach arresting or regressing penile fibrosis.”); *see also* Ex. 1002 ¶¶ 62–68 and 71–77. Other information provided by Lilly tends to suggest a link between the penile NO/cGMP pathway and fibrosis-induced ED. Pet. 48, n.31(citing, *e.g.*, Ex. 1058, 1328 (Corporal fibrosis [in ED patients] “most likely” results from “adverse local influences associated with chronic ischemia.”); Ex. 1026, 1016 (“Corporal veno-occlusive dysfunction appears to be the primary

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pathophysiologic feature of ischemia induced cavernosal fibrosis.”)); *see also* Ex. 1070, 157 (“All changes in tissue composition, which lead to a decrease in the proportion of smooth muscle go hand in hand with an increasing fibrosis of the cavernous body. This, in turn, leads to an adverse effect on cavernous body compliance and, in its further course, to the clinical picture of erectile dysfunction.”). Lilly additionally contends that “it was common general knowledge that these conditions are vascular risk factors that, at least in ED patients, commonly cause the chronic hypoxia and resulting fibrotic changes that underlie [corporal veno-occlusive dysfunction (CVOD)].” Pet. 47–48.

LA Biomed argues that Whitaker does not inherently disclose “corporal tissue fibrosis.” Prelim. Resp. 53. LA Biomed argues that Example 6 does not disclose the etiology of the subjects’ erectile dysfunction and “that an underlying penile fibrosis causes the symptoms suffered by a majority of erectile dysfunction patients in the overall population does not establish that such penile fibrosis is ‘necessarily present’ in the subjects selected for the clinical trials aggregated in Example 6 of Whitaker.” Prelim. Resp. 53–54. We are not persuaded, however, as the information presented by Lilly tends to suggest that fibrosis or CVOD is inherently part of the pathophysiology of ED.

LA Biomed further argues that Whitaker also does not disclose “arresting or regressing” penile fibrosis. *Id.* at 55. LA Biomed contends that Whitaker discloses that administration of a PDE5 inhibitor improves the conditions the vasculature, but says nothing about arresting or regressing penile fibrosis. *Id.* at 55–56. Whether or not Whitaker acknowledges that the fibrosis is treated is not relevant to the inherency analysis. *See, e.g., MEHL/Biophile Int'l Corp. v. Milgraum*, 192 F.3d 1362, 1365 (Fed. Cir. 1999) (“Inherency is not necessarily coterminous with the knowledge of those of ordinary skill in the art. Artisans of

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ordinary skill may not recognize the inherent characteristics or functioning of the prior art.”); *see also Perricone v. Medicis Pharm. Corp.*, 432 F.3d 1368 (Fed. Cir. 2005) (“[T]he anticipation doctrine examines the natural and inherent results in [a prior art method] without regard to the full recognition of those benefits or characteristics within the art field at the time of the prior art disclosure.”).

Upon review of Lilly’s information and argument set forth in the Petition, as well as LA Biomed’s arguments, we determine that Lilly has demonstrated that, on this record, there is a reasonable likelihood that it would prevail in showing that claims 1–5 of the ’903 patent are anticipated by Whitaker.

2. Anticipation of Claims 1–5 by Zippe

Zippe discloses the use of sildenafil to promote the early return of erectile function in patients undergoing a radical prostatectomy. Ex. 1088. Specifically, Zippe states that “[e]arly sexual rehabilitation after radical prostatectomy may enhance earlier recovery of nocturnal erections, as treatments enhance oxygenation of the corpora cavernosa and prevent formation of collagen and fibrosis, a cofactor in smooth relaxation and erectile function.” *Id.* at 496.

In support of its assertion that Zippe anticipates claims 1–5, Lilly sets forth the foregoing teachings of Zippe and provides a detailed claim chart explaining how each claim limitation is disclosed in the reference. Pet. 19–25. The claims of the ’903 patent, however, require the administration of a PDE5 inhibitor “to an individual with at least one of a penile tunical fibrosis and corporal tissue fibrosis,” which is not disclosed in Zippe. As argued by LA BioMed, Lilly has not demonstrated that the prostatectomy patients disclosed in Zippe are individuals with penile tunical fibrosis and corporal tissue fibrosis. Prelim. Resp. 25–26. Nor does Lilly adequately explain why one skilled in the art would view Zippe’s

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disclosure regarding the prevention of penile fibrosis to be encompassed by the scope of the claims, which require the “arresting or regressing the at least one of the penile tissue fibrosis and corporal tissue fibrosis.”

Accordingly, we are not persuaded that there is a reasonable likelihood that Lilly would prevail at trial with respect to at least one claim of the '903 patent, based on anticipation of claims 1–5 by Zippe.

3. Other Grounds of Unpatentability Asserted by Lilly

In the petition, Lilly also asserts the follow grounds of unpatentability:

- (i) Claims 1–5 under 35 U.S.C. § 102(b) over Sommer;
- (ii) Claims 1–5 under 35 U.S.C. § 103(a) over the combination of Zippe, Hong, Rochira, and Montorsi; and
- (iii) Claims 1–5 under 35 U.S.C. § 103(a) over the combination of a Whitaker and Giuliano.

Having reviewed the other grounds of unpatentability asserted by Lilly under 35 U.S.C. § 102 and 35 U.S.C. § 103 in the Petition and in the petition of Case IPR2014-00752, we exercise our discretion and decline to institute on the other grounds in the Petition in light of the determination that there is a reasonable likelihood that the challenged claims are unpatentable based on the grounds of unpatentability for which we already institute an *inter partes* review. See 37 C.F.R. § 42.108(a); 35 U.S.C. § 325(d).

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III. CONCLUSION

For the foregoing reasons, we determine that the information presented in the petition establishes that it is more likely than not that claims 1–5 are unpatentable under 35 U.S.C. § 102(b) over Whitaker.

IV. ORDER

For the reasons given, it is

ORDERED that the Petition is granted with regard to the following asserted ground:

Claims 1–5 of the '903 patent under 35 U.S.C. § 102 as anticipated by Whitaker.

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(a), *inter partes* review of the '903 patent is hereby instituted commencing on the entry date of this Order, and pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial.

FURTHER ORDERED that the trial is limited to the grounds listed in the Order. No other grounds are authorized.

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