

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

EMPOWER CLINIC SERVICES, L.L.C.
(d/b/a EMPOWER PHARMACY),
Petitioner,

v.

ELI LILLY & CO.,
Patent Owner.

IPR2025-01024
Patent 9,474,780 B2

Before COKE MORGAN STEWART, *Deputy Under Secretary of
Commerce for Intellectual Property and Deputy Director of the United
States Patent and Trademark Office.*

DECISION
Denying Institution of *Inter Partes* Review

Eli Lilly & Co. (“Patent Owner”) filed a request for discretionary denial (Paper 6, “DD Req.”) in the above-captioned case, and Empower Clinic Services, L.L.C. (d/b/a Empower Pharmacy) (“Petitioner”) filed an opposition (Paper 11, “DD Opp.”). With authorization, Patent Owner filed a Reply (Paper 13) and Petitioner filed a Sur-reply (Paper 14).

After considering the parties’ arguments and the record, and in view of all relevant considerations, discretionary denial of institution is appropriate in this proceeding. This determination is based on the totality of the evidence and arguments the parties have presented.

Some considerations weigh against discretionary denial. For example, the parties are not currently engaged in a parallel proceeding involving the challenged patent. DD Opp. 62–63. As a result, there is no immediate concern of inconsistent outcomes or significant duplication of efforts resulting from two proceedings operating in parallel.

Other considerations, however, favor discretionary denial. In particular, the challenged patent has been in force for nearly nine years, creating strong settled expectations for Patent Owner. Further, Patent Owner explains that it has made, and continues to make, substantial investments of time, money, and resources in the research, development, and commercialization of drugs which embody the claimed invention. DD Req. 1–2; 15–16. In particular, Patent Owner has conducted 83 clinical trials involving tirzepatide. *Id.* at 15–16. Patent Owner also listed the challenged patent in the FDA’s Orange Book in 2022. *Id.* at 19.

Petitioner’s arguments that Patent Owner lacks settled expectations are not persuasive, and Petitioner does not otherwise provide persuasive reasoning why an *inter partes* review is an appropriate use of Board

resources. *Dabico Airport Sols. Inc. v. AXA Power ApS*, IPR2025-00408, Paper 21 at 2–3 (Director June 18, 2025). Additionally, Petitioner’s argument that the Office erred during examination of the challenged patent is not persuasive. *See* DD Opp. 7–13, 31–41; Paper13; Paper 14.

Although certain arguments are highlighted above, the determination to exercise discretion to deny institution is based on a holistic assessment of all of the evidence and arguments presented. Accordingly, the Petition is denied under 35 U.S.C. § 314(a).

In consideration of the foregoing, it is:

ORDERED that Patent Owner’s request for discretionary denial is *granted*; and

FURTHER ORDERED that the Petition is *denied*, and no trial is instituted.

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