

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

<p>ELI LILLY AND COMPANY,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>UROPEP BIOTECH GbR,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">JURY TRIAL DEMANDED</p> <p style="text-align: center;">CAUSE NO. 15-cv-1222</p>
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COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Eli Lilly and Company (“Eli Lilly”) alleges as follows:

PARTIES

1. Plaintiff Eli Lilly and Company (“Eli Lilly”) is a corporation organized and existing under the laws of the State of Indiana, having its corporate offices and principal place of business at Lilly Corporate Center, Indianapolis, Indiana 46285. Eli Lilly is in the business of, among other things, the manufacture and sale of various pharmaceuticals including a drug known as *Cialis*® or its generic name tadalafil. *Cialis*® is available for sale and use in the State of Indiana.

2. Upon information and belief, Defendant Uropep Biotech GBR (Uropep Biotech”) is a German company located in Garbsen, German organized and existing under the laws of Germany with its principal place of business and offices located at Ehrich-Ollenhauer-Str 3, 30827 Garbsen, Germany.

JURISDICTION

3. This case arises under the patent law of the United States, 35 U.S.C. § 1 *et seq.*, and under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

4. This Court has subject matter jurisdiction over this complaint pursuant to 28 U.S.C. §§ 1331 and 1338 and 35 U.S.C. § 293.

5. On information and belief, this Court has personal jurisdiction over defendant Uropep Biotech in that Uropep Biotech has sufficient contacts with this venue related to the Plaintiff and the accused drug so as to render exercise of jurisdiction consistent with due process.

VENUE

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(c) and (d).

BACKGROUND

7. U.S. Patent No. 8,791,124 entitled “Use of Phosphodiesterase Inhibitors in the Treatment of Prostatic Diseases” issued on July 29, 2014 to defendant Uropep Biotech (hereinafter, “the ‘124 patent”). A true and correct copy of the ‘124 patent is attached hereto as Exhibit A.

8. On information and belief, defendant Uropep Biotech acquired all right, title and interest to the ‘124 patent by virtue of a series of assignments recorded with the United States Patent and Trademark Office.

9. On July 1, 2015, a company by the name of Erfindergemeinschaft UroPep GbR (“Erfindergemeinschaft”) filed suit in the Eastern District of Texas charging Eli Lilly with infringement of the ‘124 patent. A copy of the Texas Complaint is attached hereto as Exhibit B.

10. In the Complaint, Erfindergemeinschaft alleges, among other things, that the manufacture and sale of Cialis® infringes the ‘124 patent and seeks an injunction against any

infringement of the '124 patent and a damages award of no less than a reasonable royalty. Erfindergemeinschaft holds itself out as a "Gesellschaft buegerlichen Rechts" organized and existing under the laws of Germany, having its offices and principal place of business at Erfindergemeinschaft UroPep GbR, Feodor-Lynen-Str. 31, 30625 Hannover, Germany. Upon information and belief, Erfindergemeinschaft is related to defendant Uropep Biotech.

11. Upon information and belief, the Texas court lacks subject matter jurisdiction over the Complaint as Uropep Biotech owns the '124 patent and not Erfindergemeinschaft. Due to the allegations set forth in the Texas Complaint by an entity related to defendant Uropep Biotech, and the allegations in the Texas Complaint itself, there is an actual and justiciable controversy between plaintiff Eli Lilly and defendant Uropep Biotech, the actual owner of the '124 patent, as to whether the '124 patent is valid and/or infringed. Further, plaintiff Eli Lilly has a reasonable apprehension of suit from defendant Uropep Biotech, the actual owner of the '124 patent. Eli Lilly is moving to dismiss the Texas action for lack of standing.

COUNT I
Declaratory Judgment of Non-Infringement
of United State Patent No. 8,791,124

12. The allegations of paragraphs 1 through 11 are incorporated by reference as though fully set forth herein.

13. Eli Lilly has not infringed and is not infringing, directly, indirectly, contributorily, by active inducement, or otherwise, any valid claim of the '124 patent.

COUNT II
Declaratory Judgment of Invalidity
of United State Patent No. 8,791,124

14. The allegations of paragraphs 1 through 13 are incorporated by reference as though fully set forth herein.

15. One or more claims of the '124 patent are invalid for failure to comply with one or more of the requirements of Title 35, United States Code, including, but not limited to, 35 U.S.C. § 101 et seq.

REQUEST FOR RELIEF

WHEREFORE, Eli Lilly prays for judgment against defendant Uropep Biotech as follows:

- (a) Declaring that the '124 patent is not infringed by Eli Lilly's products asserted to infringe;
- (b) Declaring that one or more claims of the '124 patent are invalid;
- (c) Awarding Eli Lilly reasonable attorney fees pursuant to 35 U.S.C. § 285;
- (d) Awarding Eli Lilly its costs pursuant to Rule 54(d), Fed. R. Civ. P.; and
- (e) Granting Eli Lilly such other relief as the Court deems just and proper.

Dated: August 5, 2015

By: s/Todd G. Vare

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