Case No. UNCT/14/2

Under the Arbitration Rules of the United Nations Commission on International Trade Law and the North American Free Trade Agreement

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ELI LILLY AND COMPANY

Claimant

v.

GOVERNMENT OF CANADA

Respondent

WITNESS STATEMENT OF ANNE NOBLES

I. Personal Background

1. My name is Anne Nobles. I am a citizen of the United States. I reside in Indianapolis, Indiana. I received a bachelor's degree in anthropology from Harvard College in 1978. I received a master's degree from Harvard University, Graduate School of Arts and Sciences in 1979. I received my law degree from Georgetown University in 1984.

2. From 1984 to 1986, I practiced as an attorney at the Indianapolis law firm of Bose, McKinney & Evans. I specialized in the area of corporate law. From 1987 until 1988, I served as Securities Commissioner for the Secretary of State of the State of Indiana. In 1989, I served as a fiscal policy advisor to the Governor of Indiana and from December 1989 until November, 1990, I served as Deputy Director and General Counsel of the Hoosier Lottery, the state lottery of Indiana.

3. I joined Eli Lilly in 1990. From 1990 to 1999, I worked in various capacities in the company, including corporate affairs, regulatory affairs, public policy, and as Team Leader (akin to Executive Director) of the business-to-business group in the United States. In

November 1999, when the Phase II clinical trials for Strattera were coming to an end, I was named to the position of team leader of the newly-formed Strattera product team. I served as head of the Strattera team until mid-2003, six months after the U.S. launch of the product.

4. After I left the Strattera product team in mid-2003, I moved to our corporate affairs department as Vice President of Corporate Affairs. There, I had worldwide responsibility for government affairs, media relations, communications, public policy, community relations, Lilly brand management, and access of Lilly products to government markets. The launch of major products like Strattera was part of my new job, and I continued to follow Strattera as it was launched in new markets. I retired from Lilly in 2012. I own stock in Lilly that I received as part of the standard compensation and retirement plans offered by the company.

II. Background of Strattera

A. ADHD and Initial Attempts at Treatment With Stimulants

5. Strattera (atomoxetine) is a revolutionary medicine developed by Lilly that treats attention-deficit hyperactivity disorder (ADHD). ADHD is a medical condition that is prevalent in children and adolescents. As its name suggests, the symptoms of ADHD include difficulties paying attention, hyperactivity, and impulsiveness. Children with ADHD often underachieve at school and have difficulties in their relationships with their families. Many children with ADHD continue to experience symptoms as adults, which can interfere with their careers and personal relationships.

6. Initial efforts to treat ADHD had focused on stimulants, such as the drug Ritalin. Doctors had some success prescribing stimulants to treat ADHD, but there were also serious drawbacks to the drugs. First, stimulants are ineffective in some patients. Second, even where they are effective, stimulants can cause significant side effects, such as insomnia and anxiety. Third, stimulants used to treat ADHD are classified by the U.S. Drug Enforcement Administration as a controlled substance (like amphetamines) due to their abuse potential. In fact, stimulants are among the most abused prescription drugs. This abuse potential (and record of actual abuse) made many physicians and parents concerned about using stimulants to treat ADHD.

B. The Discovery of Strattera as a Medicine for ADHD

7. As part of my responsibilities as team leader for Strattera, I became familiar with the drug's development and early phases of our research. Lilly began studying the properties of atomoxetine in the early 1980s. Originally, some hopeful research pointed in the direction of atomoxetine as a potential treatment for depression. Upon conclusion of this work, however, Lilly determined the results were not compelling enough to advance the molecule as a treatment agent for depression.

8. Two Lilly scientists, however, continued to see potential in atomoxetine. Those scientists — Dr. John Heiligenstein and Dr. Gary Tollefson — convinced Lilly to approach doctors at the Massachusetts General Hospital ("MGH") with a proposal that Lilly and MGH cooperate on a clinical trial testing the efficacy of atomoxetine in treating ADHD in adults. As a result of earlier research, Lilly had already determined that the drug was well-tolerated by adult patients and had relatively limited side effects.

9. Between January and April 1995, MGH conducted, with Lilly's support, a clinical trial on adult patients. The study was a success. Based on the MGH study, and the body of data Lilly had developed when studying atomoxetine as a potential medicine for depression, the company decided to move forward with the drug as a candidate for further clinical development in children and adults with the intention of seeking regulatory approval and commercial launch for the treatment of ADHD.

III. The Strattera Product Team and the Process of Bringing Strattera to Market

A. The Function of a Product Team

10. As I have noted, I started working on Strattera in 1999, when I was put in charge of a newly-formed product team for the drug. The product team was responsible for shepherding Strattera through commercial development, regulatory approval, and market launch. We use product teams at Lilly to facilitate coordination and accountability in a "start-up" oriented environment, as we move toward market launch.

11. Generally, each member of a product team has a functional responsibility. For example, there are members of the product team that focus on marketing, members that focus on

supervising clinical trials, and members who focus on compiling the information that goes into the regulatory submissions for the various countries where we are seeking regulatory approval.

12. The product team also works closely with the in-house patent attorney responsible for prosecuting patents for the drugs at issue. Patent prosecution is often underway already when a product team is created — this was the case for Strattera — and it continues to be managed by the Legal Department in close coordination with the product team. The patent attorney is responsible for advising the product team about any issues that emerge in the prosecution of the patent — as well as any potential risks to the validity of the patent if and when it is granted. At the same time, the product team is responsible for keeping the patent attorney updated about the expected timing of regulatory approval and market launch.

13. The amount of time and effort the product team devoted to a particular market depended on its size. For Strattera, we had four major markets: the United States, the EU, Canada, and Japan. Launching in these major markets was a very substantial undertaking. In addition to seeking regulatory approval, coordinating clinical trials, and preparing marketing plans, we also had many "ground level" tasks to complete, including coordinating infrastructure for distribution and sales and hiring sales representatives to educate physicians about the new product.

B. Patent Issues Faced by the Strattera Product Team

14. Patent protection was an extremely important consideration in determining whether and how to launch Strattera in a particular market. Accordingly, when I joined the Strattera product team in 1999, part of my job was to familiarize myself with the status of Lilly's applications for patent protection for the drug. By 1999, we had already filed widely for patent protection for Strattera, including in the United States and Canada, and we had already received a U.S. patent in 1997. Once on the team, I received regular updates about the prosecution of the Strattera patent in the jurisdictions where the patent had not already been granted, such as Canada.

15. The patent-related issue that we were focused on for Strattera was the fact that Lilly had applied for method-of-use patents for the drug. I am not a patent lawyer, as I have explained above, but my general understanding is that a method-of-use patent allows the patent-holder to secure exclusivity for a particular compound only for a particular clinical use —

ADHD, in the case of our Strattera patent. This is in contrast with a compound patent, which entitles the patent-holder to exclusivity with respect to all uses of a chemical compound.

16. Accordingly, a generic manufacturer could get regulatory approval for a different indication (such as depression), sell the atomoxetine molecule, and we could not enforce our patent against them if it were marketed for another indication. Meanwhile, a doctor could prescribe that generic version off-label to treat ADHD. In this manner, the exclusivity to which we were legally entitled for the treatment of ADHD with Strattera could be undercut.

17. Apart from this issue, however, I can recall no other patent-related concerns about Strattera. We certainly did not have any concern that the Strattera patent would be invalidated because it was not "useful." In fact, I do not recall any discussions about the "utility" criterion for patentability at all. If utility had been an issue, it certainly would have been flagged for my team by our patent attorney, and my team would have brought it to my attention.

C. The Launch of Strattera in Canada

18. As I noted above, I left the Strattera product team in mid-2003, after we launched Strattera in the United States in early 2003. I continued to follow Strattera's launch from my position in corporate affairs after Strattera received regulatory approval from Health Canada in December 2004.

19. As I have also mentioned, Canada was a major market and we devoted significant time and effort to developing our plan for the Canadian market. Ultimately, the process unfolded relatively smoothly.

20. From the perspective of foreign launches, the main issue we needed to contend with was the lack of recognition in some countries that ADHD was a medical condition in the first place. Particularly in southern Europe and Japan, there was reluctance in many quarters to recognize ADHD as a medical condition, as well as skepticism that ADHD could be successfully treated with medicine. We worked hard to educate opinion leaders in these countries about ADHD and Strattera, and this outreach occupied a significant portion of my time. In contrast with Europe, Canada did not present significant concerns about recognition of ADHD as a medical condition.

21. Our Canadian patent application was granted on December 1, 2002. We were confident that we would obtain regulatory approval from Health Canada and continued with our pre-launch plans for the Canadian market after the Strattera patent was granted.

22. The only country-specific issue I can recall about Canada related to the pricing for Strattera. But this was an issue that we regularly deal with when we do business in Canada, and it was something that we were accustomed to managing. Aside from this pricing issue, I do not recall any problems or concerns leading up to our launch in Canada.

23. Specifically, I do not recall any concerns at all about our Canadian patent application. Given the lack of concerns that had been raised, we were confident that the Strattera patent would be granted by the Canadian Intellectual Property Office. This confidence was central to our decision to take all the steps necessary to secure regulatory approval in Canada and to prepare to launch Strattera in the Canadian market. Once we received the Strattera patent, moreover, we had a legal entitlement to exclusivity, which provided us with additional confidence in planning for launch.

IV. The Success of the Strattera Launch

24. The launch of Strattera was a major success. Strattera was approved for use in all of our major markets, including the United States, Canada, Japan, and EU Member States. It was the first non-stimulant approved for use in the treatment of ADHD.

25. There was very rapid uptake of Strattera in the first year after it was launched in the United States, which we considered as validation of our market research that parents and doctors were looking for a non-stimulant alternative to treat ADHD. Stimulants continued to be prescribed, but Strattera has provided doctors with an important additional option, one that has particularly benefitted patients at risk for substance abuse and those that were experiencing side effects from stimulants.

26. It came as a complete surprise to me when I learned many years later that our Canadian patent for Strattera had been invalidated on the ground that it was not useful, because it was an important treatment option for patients.

Signed at Indianapolis, Indiana on September 25, 2014

[Signed]
Anne Nobles