

IN THE SUPREME COURT OF THE UNITED STATES

THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA,

Petitioner,

v.

ELI LILLY AND COMPANY,

Respondent.

**APPLICATION FOR EXTENSION OF TIME TO
FILE A PETITION FOR A WRIT OF CERTIORARI**

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Counsel for Petitioner
The Trustees of the University of
Pennsylvania

Rule 29.6 Statement

Petitioner The Trustees of the University of Pennsylvania certifies that it is a private, non-publicly traded entity and that there is no parent or publicly held company that owns 10% or more of the stock of or interest in Petitioner.

TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE SUPREME COURT FOR THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FEDERAL CIRCUIT:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Petitioner respectfully requests a 60-day extension of time, up to and including May 11, 2019 to file a petition for a writ of *certiorari* to the United States Court of Appeals for the Federal Circuit to review that court's decision in *The Trustees of the University of Pennsylvania v. Eli Lilly and Company*, No. 17-2397 (Fed. Cir. Sept. 17, 2018) (attached as Exhibit A). In a *per curiam* judgment issued pursuant to Federal Circuit Appellate Rule 36, the court affirmed the decision of the Patent Trial and Appeal Board of the United States Patent and Trademark Office in an *inter partes* review regarding the patentability of certain challenged claims of U.S. Patent No. 7,625,558 (the '558 patent). In seeking review of this judgment, the jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

On December 12, 2018, following a request by the court for Appellee-Respondent to submit a response, the Federal Circuit denied Petitioner's request for a panel rehearing and rehearing *en banc* (attached as Exhibit B), and thus the time to file a petition for a writ of *certiorari* will expire without an extension on March 12, 2019. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

Good cause exists for the requested extension. While this case presents a substantial and important question of federal law (whether the Federal Circuit is permitted under 35 U.S.C. § 144 to enter a judgment of affirmance without opinion in an appeal of a decision made by the Patent and Trademark Office), a co-pending proceeding in federal district court involving the '558 patent complicates the necessity of seeking review by this Court of the Federal Circuit's decision. In particular, in the district court litigation, competing motions for leave to amend the infringement contentions to assert infringement of another (as yet unchallenged) claim of the '558 patent and for judgment on the pleadings, filed by Petitioner and Respondent, respectively, are currently pending. The outcome of each motion could be essentially dispositive on Petitioner's decision as to whether to file a petition for a writ of *certiorari*. An extension of time in which to petition this Court for a writ of *certiorari* would thereby serve to potentially preserve the resources of the parties (in drafting or responding to) and this Court (in reviewing) such a petition.

Accordingly, Petitioner respectfully requests that an order be entered extending the time to file a petition for a writ of certiorari for 60 days, up to and including May 11, 2019.

Dated: February 27, 2019

Respectfully submitted,

/s/ Jonathan G. Graves

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CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below, a copy of this Application was served on the following counsel for Respondent via the United States Postal Service and electronically via email:

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Dated: February 27, 2019

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