

ROBERT A. ARMITAGE  
SENIOR VICE PRESIDENT AND GENERAL PATENT COUNSEL  
ELI LILLY AND COMPANY  
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Eli Lilly and Company believes significant reforms to the U.S. patent system should be a priority for Congress and is committed to working with all interested constituencies to assure that a broad consensus can be developed on the content of the needed reforms. In our view, the following may be ripe for congressional consideration:

- Adopt the first-inventor-to-file principle as part of U.S. patent law. Do so by maintaining the traditional inventor-focused features of U.S. patent law, including the inventor's 1-year "grace period" and so-called "self-collision" protections.
- Enact the consensus "best practices" for implementing a first-inventor-to-file system that include eliminating certain conditions for patentability that will be rendered unnecessary. Assure prior art is not diminished by clarifying that publicly accessible knowledge of an invention, whether through use, sale, offers for sale or otherwise, is all that is necessary to qualify as prior art.
- Increase the effectiveness of the "duty of candor" by creating an incentive for inventors to work with patent examiners to obtain wholly valid patents. Do so by barring any pleading of the "inequitable conduct" defense unless the court has found at least one patent claim is not valid.
- Repeal the "best mode" requirement, relying instead on the requirements for a complete written description and sufficient enabling details to permit the full scope of the claimed invention to be readily carried out.
- Limit the ability to plead that the infringement of a patent was willful except in cases that meet an appropriate standard for reprehensible conduct.
- If fair and balanced structure can be defined and if accompanied by facilitating first-inventor-to-file and "inequitable conduct" reforms, open a 9-month window for post-grant opposition of an issued patent. Permit all mistakes in issuing a patent to be corrected in the proceeding.
- If pre-grant opposition prohibitions are maintained in force, provide a mechanism for consideration of third-party submissions of prior art and concise descriptions of the relevance of the submitted prior art.
- If an inventor's right to take reasonable steps to fully protect the invention can be maintained, eliminate the potential for abuse of the patent laws arising from the unlimited right to file continuing applications for patent.
- If a compelling policy basis is determined to exist, consider repeal (or other reform) to the so-called "off-shore" infringement provisions in the patent law.

At the same time, we urge Congress to reject calls for reforms that would:

- Prevent courts from stopping the continued infringement of valid patents.
- Limit any patent owner's damage award to an amount less than adequate to compensate for the infringement.
- Change the judicial burden of persuasion at trial for proving a patent is invalid.



Answers That Matter.

Robert A. Armitage  
Eli Lilly and Company  
Lilly Corporate Center  
Indianapolis, Indiana 46285

[rarmitage@lilly.com](mailto:rarmitage@lilly.com)  
Telephone: +1 317 433 5499  
Facsimile: +1 317 433 3000

Robert A. Armitage has served Senior Vice President and General Counsel for Eli Lilly and Company since January 1, 2003. He joined Lilly in 1999 as Vice President and General Patent Counsel. Prior to joining Lilly, he was a partner in the Washington, D.C. office of Vinson & Elkins LLP (1993-1999). Among other positions, he has served as an adjunct professor of law at George Washington University Law School (1996-2000), a member of the board of directors of Human Genome Sciences, Inc. (1995-1999) and as chief intellectual property counsel for The Upjohn Company (1983 to 1993).

He has served in a variety of leadership positions in the intellectual property bar, including as a president of both the American Intellectual Property Law Association (AIPLA) and the Association of Corporate Patent Counsel (ACPC). His other leadership positions include service as chair of the following organizations: National Council of Intellectual Property Law Associations (NCIPLA), the Fellows of the American Intellectual Property Law Association, the Patent Committee of the Pharmaceutical Research & Manufacturers of America (PhRMA), the Intellectual Property Committee of the National Association of Manufacturers (NAM), and the Intellectual Property Law Section of the State Bar of Michigan.

He has also served as a member of the board of directors of both Intellectual Property Owners (IPO) and the National Inventors Hall of Fame Foundation (NIHFF), and as a member of the Advisory Board for the Patent, Trademark & Copyright Journal of the Bureau of National Affairs, Inc. He is currently serving as a member of the Council for the Intellectual Property Law Section of the American Bar Association (ABA IPL Section) and co-chairs the AIPLA Special Committee on Patent Legislative Strategies.

Mr. Armitage has lectured and written on a wide range of intellectual property subjects and testified before the United States Congress on IP policy issues. He has also testified as an expert in patent law and practice in a substantial number of patent litigation matters.