

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INNOPHARMA LICENSING, INC., INNOPHARMA LICENSING LLC,
INNOPHARMA INC., INNOPHARMA LLC,
MYLAN PHARMACEUTICALS INC., and MYLAN INC.,
Petitioner,

v.

SENJU PHARMACEUTICAL CO., LTD., BAUSCH & LOMB, INC., and
BAUSCH & LOMB PHARMA HOLDINGS CORP.
Patent Owner.

Case IPR2015-00902
Patent 8,669,290

Filed: March 18, 2016

Petitioner's Reply to Patent Owner's Response to Petition

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I. INTRODUCTION

Petitioner requests cancellation of claims 1-30 (“challenged claims”) of U.S. Patent No. 8,669,290 (“the ’290 patent”) (EX1001). The Board instituted IPR of the challenged claims based on obviousness over Ogawa and Sallmann under 35 U.S.C. § 103. (“Decision,” Paper 17). Nothing in Patent Owner’s Response (“Response,” Paper 34) should change the Board’s conclusion.

II. ARGUMENT

A. Patent Owner Fails to Consider the Full Scope of the Prior Art

Patent Owner does not dispute that the prior art disclosed the combination of bromfenac with tyloxapol, (*see* EX1005, 3:23-39), but asserts that only hindsight would provide a reason for that combination. Those arguments, however, are based on inaccurate recitations of the state of the prior art and clear mischaracterization of

██

██

██ (EX2114, 260:15-22).

1. Complexation of Acidic NSAIDs and BAC Was Known

Patent Owner suggests that there is no teaching in the prior art that bromfenac and BAC will form complexes. (Resp. at 5; EX2105, ¶ 41, 78; EX2082, ¶ 71). Not true, as the complexation problem between acidic NSAIDs (*e.g.*, bromfenac) and BAC was well known. Fu described the prior art as teaching “an insoluble complex was found to form between the NSAID and the BAC” and that “BAC has typically

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