

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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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.

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Case IPR2015-00902 (Patent 8,669,290 B2)

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Filed: March 31, 2016

**PETITIONER'S MOTION TO EXCLUDE UNDER 37 C.F.R. § 42.64(c)**

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## I. INTRODUCTION

Patent Owner repeatedly and improperly attempts to introduce evidence into the record by failing to observe this Board’s procedural rules and by taking actions contrary to this Board’s Order. Accordingly, pursuant to 37 C.F.R. § 42.64(c) and the Scheduling Order (Paper 20) as modified by stipulation (Paper 29), InnoPharma Licensing, Inc., InnoPharma Licensing LLC, InnoPharma Inc., InnoPharma LLC, Mylan Pharmaceuticals Inc., and Mylan Inc. (collectively, “Petitioner”) respectfully moves to exclude (1) Exhibits 2266–2268, (2) Exhibits 2247-2263, and (3) Exhibits 2126 and 2128 submitted by Senju Pharmaceutical Co., Ltd., Bausch & Lomb, Inc., and Bausch & Lomb Pharma Holdings Corp. (collectively “Patent Owner”).<sup>1</sup>

Patent Owner’s Exhibits 2266, 2267, and 2268 were introduced during the cross-examination of Dr. Paul Laskar, Petitioner’s expert, on March 25, 2016 in an effort to backdoor alleged sur-reply evidence into the record, even though this

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<sup>1</sup> Petitioner notes that Patent Owner has not yet filed Patent Owner’s Exhibits 2266-2268 and 2247-2263 as of the filing of this motion. The transcript of Dr. Laskar’s cross-examination on March 25, 2016 has not been filed yet as of the filing of this motion, however, Patent Owner has stated that it will be filed as EX2272.

Board had already denied Patent Owner's request to file a sur-reply.<sup>2</sup> See EX2272 at 119:19–22, 134:20–22, 138:9–12, 141:15–18. Notwithstanding the disregard of the Board's rules and Order, Patent Owner's Exhibits 2266, 2250, and 2268 must be excluded as hearsay.

Patent Owner's Exhibits 2247–2257 were untimely served on Petitioner on February 12, 2016, and Patent Owner's Exhibits 2258–2263 were untimely served

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<sup>2</sup> The same Patent Owner in the related joinder proceedings perpetrated this egregious behavior showing that Patent Owner has no regard for the Board's rules and Order by defying them when it suits its purpose. See *Lupin, Ltd. v. Senju Pharma. Co., Ltd.*, IPR2015-01087, IPR2015-01099, IPR2015-01100, IPR2015-01105, EX1087 at 178:9–203:6 (counsel for Patent Owner handing Patent Owner's expert his reply expert report from the district court litigation and asking him to read his Reply onto the IPR record during Patent Owner's redirect). Petitioner Lupin and InnoPharma will file the appropriate motion to exclude when the time is ripe in proceedings IPR2015-01087, -01099, -01100, -01105. Nevertheless, Patent Owner's conduct shows a repeated pattern of abuse, consistent with its actions at the cross-examination of Dr. Laskar. Patent Owner's conduct during Dr. Laskar's cross-examination is not the only instance of abusive conduct.

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