

IN THE 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.

IPR2015-00902 (Patent 8,669,290 B2)
IPR2015-00903 (Patent 8,129,431 B2)¹

BEFORE FRANCISCO C. PRATS, ERICA A. FRANKLIN, and GRACE
KARAFFA OBERMANN, *Administrative Patent Judges*

**CONSOLIDATED REPLY BRIEF IN SUPPORT OF MOTION FOR
JOINDER AND PROPOSED SCHEDULING ORDER**

¹ The word-for-word identical paper is filed in each proceeding identified in the heading.

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I. STATEMENT OF THE PRECISE RELIEF REQUESTED

InnoPharma Licensing Inc., InnoPharma Licensing LLC, InnoPharma Inc., InnoPharma LLC, Mylan Pharmaceuticals Inc., and Mylan Inc. (collectively “InnoPharma”) hereby respectfully requests that the Board grant joinder of IPR2015-00902 and 00903 (“InnoPharma IPRs”) with IPR2014-01043 and 01041 (“Metrics IPRs”), respectively.² InnoPharma does not raise new substantive issues and is willing to coordinate with Metrics, Inc. (“Metrics”). InnoPharma is also willing to accommodate a schedule that will not cause undue delay or undue prejudice and submits that the proposed schedule is reasonable. *See* Papers 11; 9.³

II. STATEMENT OF REASONS FOR RELIEF REQUESTED**A. Joinder will not cause undue prejudice or cause undue delay**

Senju Pharmaceutical Co., Ltd., Bausch & Lomb, Inc., and Bausch & Lomb Pharma Holdings Corp. (collectively “Senju” or “Patent Owner”) and Metrics both argue that they will be unduly prejudiced under the Proposed Scheduling Order.

² Courtesy copies are being served on counsel of record for Metrics. The Board has directed InnoPharma to file its consolidated reply in all four proceedings, but InnoPharma has been advised by PTAB support staff during a phone call on June 8, 2015 that it should file this paper in IPR2015-00902 and IPR2015-00903.

³ Unless otherwise specified, citations to the paper numbers and page numbers refer to filings and orders in IPR2015-00902 and IPR2015-00903, respectively.

Neither party, however, explains how their interests or rights are prejudiced. Senju and Metrics instead are arguing for schedules that will be convenient or advantageous to *their* interests, which does not constitute undue prejudice. The proposed schedule extends the proceeding by a mere two months and falls between those proposed by Senju and Metrics.

Senju asserts that both Senju *and Metrics* will be unduly prejudiced, because InnoPharma allegedly raises new arguments and substantive issues. Papers 14 at 11; 12 at 11 (collectively “Senju Oppositions”). Metrics does not seem to share Senju’s concern, raising no such objection to the substance of InnoPharma’s petition. The Grounds of invalidity asserted by InnoPharma are the same as those instituted in the Metrics IPRs. *See* Petition in IPR2015-00902, Paper 2 at 18; Decision to Institute in IPR2014-01043, Paper 19 at 16; Petition in IPR2015-00903, Paper 2 at 19; Decision to Insitute in IPR2014-01043, Paper 19 at 20.

Metrics’ Oppositions alleges that Metrics will be unduly prejudiced because InnoPharma’s modest extension will delay approval of its ANDA. Metrics Oppositions at 2-3; at 2-3. Any such prejudice is speculative. Metrics does not present evidence that an extension will directly impact its ANDA schedule, nor that approval without issue is guaranteed. Further, Metrics’ speculative financial loss due to a two-month delay does not rise to the level of undue prejudice.

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