

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.

Petitioners

v.

SENJU PHARMACEUTICAL CO., LTD., BAUSCH & LOMB,
INCORPORATED, and BAUSCH & LOMB PHARMA HOLDINGS CORP.

Patent Owners

Case IPR2015-00902

Patent 8,669,290

DECLARATION OF JOHN C. JAROSZ

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I, John C. Jarosz, do hereby declare, under penalty of perjury, as follows.

I. INTRODUCTION

1. I am over the age of eighteen (18) and otherwise competent to make this declaration.

A. Assignment

2. I have been retained as an expert on behalf of Bausch & Lomb Incorporated, Bausch & Lomb Pharma Holdings Corp. (collectively, “Bausch & Lomb”) and Senju Pharmaceutical Co. Ltd. (“Senju”) (collectively, with Bausch & Lomb, “Patent Owners”) in connection with the above captioned *inter partes* review (“IPR”) proceeding before the United States Patent and Trademark Office Patent Trial and Appeal Board (“PTAB”).

3. I understand that the PTAB has granted the petition of InnoPharma Licensing, Inc., InnoPharma Licensing LLC, InnoPharma Inc., InnoPharma LLC (collectively, “InnoPharma”), Mylan Pharmaceuticals Inc., and Mylan Inc. (collectively, “Mylan”) (collectively, with InnoPharma, “Petitioners”) to institute an IPR regarding claims 1-30 of U.S. Patent No. 8,669,290 (the “290 patent”) on obviousness grounds. That IPR was assigned Case IPR2015-00902.

4. I understand that the PTAB has granted the petition of the Petitioners

to institute a separate IPR regarding claims 1-22 of U.S. Patent No. 8,129,431 (the “’431 patent”) on obviousness grounds. That IPR was assigned Case IPR2015-00903.

5. I understand that Senju is the assignee of the ’290 patent and that Shirou Sawa and Shuhei Fujita are the named inventors of the patent.
6. I understand that the ’290 patent describes and claims compositions of the active ingredient bromfenac sodium (“bromfenac”) and the surfactant tyloxapol.¹ I further understand that Prolensa® embodies the compositions disclosed in the ’290 patent.
7. I have been asked by Counsel for Patent Owners to assess whether Prolensa® has been a marketplace success, and whether such success is attributable to the inventions claimed in the ’290 patent.

B. Qualifications

8. I am a Managing Principal of Analysis Group, Inc. (“Analysis Group”) and Director of the firm’s Washington, DC office. Analysis Group is an economic, financial, and strategy consulting firm with offices in Beijing, China; Boston, MA; Chicago, IL; Dallas, TX; Denver, CO; Los Angeles, CA; Menlo Park, CA; Montreal, Quebec; New York, NY; San

¹ I understand that a surfactant is a substance that, when added to a liquid, reduces the surface tension of that liquid.

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