Paper No. __

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., MYLAN INC., LUPIN LTD., and LUPIN PHARMACEUTICALS, INC.
Petitioner,

v.

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

Case IPR2015-00903[1]
Patent 8,129,431

Filed: March 18, 2016

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

[1] IPR2015-01871 has been joined with IPR2015-00903.

SENJU EXHIBIT 2271

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 1

A. Patent Owner Fails to Consider the Full Scope of the Prior Art 1

1. Complexation of Acidic NSAIDs and BAC Was Known 1

2. Ethoxylated Octylphenols Were Known to Solve the Complexation Problem 5

3. BAC Was Commonly Used for Ophthalmic Products 9

B. The Claims are Obvious under Patent Owner's Theory that a POSA Would Have Used Antioxidants to Stabilize Bromfenac 11

1. Tyloxapol is in the Class of Alkylphenols Disclosed in Doi 12

2. Tyloxapol's General Antioxidant Properties Were Known 12

C. A POSA Would Have Expected Tyloxapol to Improve Stability and Preservative Efficacy 14

D. A POSA Would Have Considered Ogawa Example 6 and Sallmann Example 2 16

1. Bromfenac Was an NSAID with Superior Efficacy and a POSA Would Have Considered Ogawa Example 6 17

2. A POSA Would Have Considered Sallmann Example 2 18

E. A POSA Would Have Arrived at the Appropriate Concentration of Tyloxapol through Routine Optimization 18

F. Patent Owner's Evidence of Alleged Objective Indicia is Not Probative of Patentability 20

1. Patent Owner Did Not Compare to the Closest Prior Art 20

2. Patent Owner's Evidence of Secondary Considerations are Not Commensurate with the Scope of the Claims 20

3. Evidence of Commercial Success Lacks Factual Support and Nexus with the Claims 23

4. Patent Owner's Arguments Regarding Licensing and Copying are Misplaced 25

III. CONCLUSION 25

CERTIFICATION OF SERVICE 1

TABLE OF AUTHORITIES

Page(s)

CASES

Apple Inc. v. Samsung Elecs. Co., Ltd.,
No. 2015-1171, 2016 WL 761884 (Fed. Cir. Feb. 26, 2016) 7, 10

Bayer Healthcare Pharm., Inc. v. Watson Pharm., Inc.,
713 F.3d 1369 (Fed. Cir. 2013) 25

Bristol-Myers Squibb v. Teva Pharm. USA,
752 F.3d 967 (Fed. Cir. 2014) 20

In re Harris,
409 F.3d 1339 (Fed. Cir. 2005) 21

In re Peterson,
315 F.3d 1325 (Fed. Cir. 2003) 21

Iron Grip Barbell Co. v. USA Sports, Inc.,
392 F.3d 1317 (Fed. Cir. 2004) 25

ISTA Pharms., Inc. v. FDA,
898 F. Supp. 2d 227 (D.D.C. 2012) 24

Wyers v. Master Lock Co.,
616 F.3d 1231 (Fed. Cir. 2010) 23

STATUTES

35 U.S.C. § 103 1

OTHER AUTHORITIES

37 C.F.R. 42.65(a) 16

I. INTRODUCTION

Petitioner requests cancellation of claims 1-22 ("challenged claims") of U.S. Patent No. 8,129,431 ("the '431 patent") (EX1001). The Board instituted IPR of Claims 1-5, 7-14, and 18-19 as obvious over Ogawa and Sallmann under 35 U.S.C. § 103, and Claims 6, 15-17, and 20-22 as obvious over Ogawa, Sallmann, and Fu under 35 U.S.C. § 103. ("Decision," Paper 15). 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 Dr. Laskar's testimony as based on hindsight. Indeed, when asked whether he "use[d] the claimed invention as a blueprint in doing his analysis," Dr. Laskar affirmatively testified, "[n]o, I did not." (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, ¶37, 76; EX2082, ¶63). Not true: 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

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