

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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**PATENT OWNER'S MOTION TO EXPUNGE  
UNDER 37 C.F.R. § 42.56**

## **I. Statement of Relief Requested**

Pursuant to 37 C.F.R. § 42.56, Patent Owner requests that the Board expunge from the record the confidential versions of Paper Nos. 33, 34, and 91 and Exs. 1082, 1081, 1079, 1150, 2082, 2096, 2102, 2103, 2110, 2116, 2130, 2249-54, 2258-2263, and 2273, for the reasons stated herein.

## **II. Background**

On July 29, 2016, Patent Owner filed a Renewed Motion to Seal concerning a number of Patent Owner's exhibits, listed below (*see* Paper No. 96), and on August 1, 2016, Patent Owner filed a Second Renewed Motion to Seal concerning additional exhibits, also listed below, (*see* Paper No. 98). On August 29, 2016, the Board granted Patent Owner's two motions to seal (*see* Paper Nos. 99, 101), sealing all or portions of the following papers and exhibits:

- Patent Owner's Response (citing to confidential exhibits), Paper Nos. 33 and 34 (filed December 28, 2015), and 91 (filed July 29, 2016).<sup>1</sup>

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<sup>1</sup> Paper 91 was a revised, confidential version of the Patent Owner's Response, filed on July 29, 2016, to conform with the marking requirements of the Default Protective Order, which the parties requested that the Board enter on July 29, 2016, and to remove redactions to information (specifically expert testimony) which Patent Owner no longer sought to seal.

- Excerpts to Patent Owner's New Drug Application: Ex. 2096 (filed July 29, 2016); Ex. 2102 (filed July 29, 2016); Ex. 2103 (filed July 29, 2016); Ex. 2110 (filed July 29, 2016)<sup>2</sup>.
- Materials related to third-party BioScience's testing procedures: Exs. 2249-54, 2258-2263 (filed April 6, 2016).
- Expert Declarations: Williams (Ex. 2082) (filed July 29, 2016); Trattler (Ex. 2116) (filed July 29, 2016); and Jarosz (Ex. 2130) (filed July 29, 2016).<sup>3</sup>
- Transcripts of Expert Cross Examinations: Mr. Hofmann (Ex. 2273) (filed July 29, 2016); Dr. Paulson (Ex. 1082) (filed March 18, 2016); Dr. Trattler (Ex. 1081) (filed March 18, 2016); and Dr. Williams (Ex. 1079) (filed March 18, 2016).

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<sup>2</sup> Revised, confidential versions of Exs. 2096, 2102, 2103, and 2110 were filed on July 29, 2016 to conform with the marking requirements of the Default Protective Order.

<sup>3</sup> Revised, confidential versions of Exs. 2082, 2116, and 2130 were filed on July 29, 2016 to conform with the marking requirements of the Default Protective Order and to remove redactions to information (specifically expert testimony) which Patent Owner no longer sought to seal.

As outlined in the Joint Stipulation filed herewith, in its Final Written Decision of July 28, 2016, the Board referred to paragraphs containing sealed, confidential information, in the following papers and exhibits:

- Patent Owner's Response (Paper No. 34),
- Hofmann Declaration (Ex. 1150),
- Williams Declaration (Ex. 2082),
- Trattler Declaration (Ex. 2116), and
- Jarosz Declaration (Ex. 2130).

As also noted in the Joint Stipulation, the parties will file revised, public versions of Patent Owner's Response and Exs. 1150, 2082, 2116, and 2130, leaving unredacted the portions of those papers and exhibits cited by the Board in the Final Written Decision.

### **III. Reasons for the Relief Requested**

In the Board's Order of September 19, 2016, the Board authorized an extension of time to file this Motion to Expunge. (*See* Paper No. 103.) In that same Order, the Board noted that it would not entertain a motion to expunge with respect to confidential information cited in the Board's Final Written Decision. *Id.* at 3. Accordingly, Patent Owner requests the following papers and exhibits containing confidential information sealed by the Board, but not referred to in the Board's Final Written Decision, be expunged from the record:

- Patent Owner's Response (citing the confidential information), Paper Nos. 33 and 34 (filed December 28, 2015), and 91 (filed July 29, 2016).
- Excerpts to Patent Owner's New Drug Application: Ex. 2096 (filed July 29, 2016); Ex. 2102 (filed July 29, 2016); Ex. 2103 (filed July 29, 2016); Ex. 2110 (filed July 29, 2016).
- Materials related to third-party BioScience's testing procedures: Exs. 2249<sup>4</sup>-54, 2258-2263 (filed April 6, 2016).<sup>5</sup>
- Confidential versions of Expert Declarations: Hofmann (Ex. 1150); Williams (Ex. 2082); Trattler (Ex. 2116); and Jarosz (Ex. 2130).
- Confidential versions of transcripts of Expert Cross Examinations: Mr. Hofmann (Ex. 2273) (filed July 29, 2016); Dr. Paulson (Ex. 1082) (filed March 18, 2016); Dr. Trattler (Ex. 1081) (filed March 18, 2016); and Dr. Williams (Ex. 1079) (filed March 18, 2016).

Because the public has access to all the materials relevant to the merits of this proceeding, either through publicly filed papers and exhibits or through redacted, public versions of Patent Owner's Response (Paper No. 34), Hofmann

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<sup>4</sup> Only the confidential version of Ex. 2249 should be expunged.

<sup>5</sup> Patent Owner has been authorized by third party BioScience to make this request on its behalf. *See* Ex. 2279 at ¶ 9.

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