

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.

U.S. Patent No. 8,129,431 to Sawa *et al.*

Issue Date: March 6, 2012

Title: Aqueous Liquid Preparation Containing 2-Amino-3-(4-
bromobenzoyl) Phenylacetic Acid

Inter Partes Review No.: IPR2015-00903

MOTION FOR JOINDER PURSUANT TO
35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22 AND 42.122(b)

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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") respectfully submits this Motion for Joinder, together with a Petition for *Inter Partes* Review of U.S. Patent No. 8,129,431 (the "'431 Patent") ("Petition"). Pursuant to 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22 and 42.122(b), InnoPharma requests institution of an *inter partes* review and joinder with the *inter partes* review concerning the same patent in *Metrics, Inc., Mayne Pharma, and Johnson Matthey, Inc. v. Senju Pharmaceutical Co., Ltd., Bausch & Lomb, Inc., and Bausch & Lomb Pharma Holdings Corp.*, Case No. IPR2014-01041 (the "Metrics IPR"), which was instituted on February 19, 2015.

In accordance with the Board's Representative Order identifying matters to be addressed in a motion for joinder (Paper No. 15, IPR2013-00004, April 24, 2013), InnoPharma submits that: (1) joinder is appropriate because it will promote efficient determination of the validity of the '431 Patent without prejudice to Metrics, Inc., Mayne Pharma, and Johnson Matthey, Inc. (collectively, "Metrics") or Senju Pharmaceutical Co., Ltd., Bausch & Lomb, Inc., and Bausch & Lomb Pharma Holdings Corp. (collectively "Senju") (*See, e.g.*, Paper No. 10, IPR2013-00256, June 20, 2013 (granting motion for joinder under similar circumstances));

(2) InnoPharma's Petition raises the same grounds of unpatentability as Metrics IPR; (3) joinder would not affect the pending schedule in the Metrics IPR nor increase the complexity of that proceeding, minimizing costs; and (4) InnoPharma is willing to agree to consolidated filings with Metrics to minimize burden and schedule impact.

This Motion for Joinder is timely under 37 C.F.R. §§ 42.22 and 42.122(b), as it is submitted within one month of February 19, 2015, the date on which the Metrics IPR was instituted.

II. STATEMENT OF MATERIAL FACTS

1. Senju Pharmaceutical, Co., Ltd., is the owner of the '431 Patent.
2. On November 3, 2014, Senju Pharmaceutical, Co., Ltd., et al. filed a complaint against Innopharma for infringement of the '431 Patent (the "Underlying Litigation").
3. On June 26, 2014, Metrics filed its petition for *inter partes* review of claims 1-22 of the '431 Patent.
4. On February 19, 2015, a decision instituting *inter partes* review of claims 1-22 of the '431 Patent was entered in the Metrics IPR (Paper No. 19, IPR 2014-01041) on the grounds that (i) claims 1-5, 7-14, and 18-19 were unpatentable over U.S. Patent No. 4,910,225 ("Ogawa") and U.S. Patent No. 6,107,343 ("Sallmann") under 35 U.S.C. § 103; and (ii) claims 6, 15-17, and 20-22 are

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