

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 (Patent 8,129,431)¹

Filed: April 6, 2016

**Petitioner's Opposition to Patent Owner' Motion to Exclude
Under 37 C.F.R. § 42.64(c)**

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

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Pursuant to the Scheduling Order (Papers 17 at 4), Petitioner files its Opposition to Patent Owner’s Motion to Exclude under 37 C.F.R. § 42.64(c).

I. DR. LASKAR IS QUALIFIED TO OPINE AS AN EXPERT IN THIS PROCEEDING IN COMPLIANCE WITH FED. R. EVID. 702

This panel has already found that “Dr. Laskar has significant experience in the development and assessment of ophthalmic preparations” and that Dr. Laskar has “the requisite familiarity with ophthalmic preparations to opine on the views of a [POSA].” Decision to Institute, Paper 15 at 4, n.1. Furthermore, this panel has already found Dr. Laskar’s testimony “credible and persuasive.” *Id.*

Yet, Patent Owner asserts that Dr. Laskar is somehow not qualified, ignoring the fact that Dr. Laskar squarely falls within the definition of a *POSA*, including the definition offered by Dr. Davies— Patent Owner’s own expert. Given Dr. Laskar meets Dr. Davies’ definition, Patent Owner has completely failed to prove that Dr. Laskar is not a person “qualified in the pertinent art.” *Sundance, Inc. v. DeMonte Fabricating Ltd.*, 550 F.3d 1356, 1363-64 (Fed. Cir. 2008); *Captioncall, LLC v. Ultratec, Inc.*, IPR2013-00550, Paper No. 57, 10-11, n.4 (PTAB, Mar. 3, 2015) (distinguishing jury trials and stating the Board, “sitting as a non-jury tribunal with administrative and technical expertise, is well-positioned to determine and assign appropriate weight to evidence presented”).

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