

IPR2015-00902 (Patent 8,669,290 B2)

IPR2015-00903 (Patent 8,129,431 B2)

## **EXHIBIT 3001**

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**Sent:** Thursday, April 14, 2016 12:20 PM

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**Subject:** IPR2015-00902,-00903, -01087, 01099, 01100, 01105

Dear PTAB:

On April 13, 2016, Patent Owner filed EX2277 in both IPR2015-00902 (IPR902) and IPR2015-00903 (IPR903). EX2277 is the transcript (over a thousand pages) from the recently concluded bench trial involving the validity of U.S. Patent No. 8,129,431, on which *inter partes* review has been instituted in the IPR903 action currently pending before the Board. Of particular note, the trial did not address the validity of U.S. Patent No. 8,669,290, on which *inter partes* review has been instituted in the IPR902 action. Petitioner objects to Patent Owner's filing of EX2277 for a number of reasons, including the direct violation of 37 C.F.R. § 42.123, requiring authorization to file a motion seeking leave to submit supplemental information. Petitioner did not and does not consent to the filing of EX2277 as supplemental information.

Petitioner submits that EX2277 is improper in that it introduces evidence that is not of record in either the IPR902 or IPR903 actions. The trial transcript of the district court litigation includes the testimony of witnesses that have offered no declarations in these actions, and therefore reflects a different evidentiary record. For example, the trial transcript includes the

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testimony of Drs. Heathcock, Lawrence, and Cykiert, none of whom testified or submitted declarations in the InnoPharma IPR actions currently pending before the Board. Moreover, Petitioner's expert in these actions, Dr. Laskar did not offer testimony in the district court litigation.

Petitioner believes this is another example of counsel for Patent Owner acting in contravention of the Board's rules and Orders. Respectfully, these continued actions continue to prejudice Petitioner's interests in these actions. In addition, and following the Board's denial of Patent Owner's request to file a sur-reply, Patent Owner's counsel improperly read into the record certain portions of an expert reply report of its expert Dr. Davies from the district court litigation, as well as the district court deposition testimony of other experts -- all in an apparent attempt to introduce sur-reply arguments where they were otherwise prohibited. (*See, e.g.*, Petitioner's Motion to Exclude , Paper 62 in IPR902 at 5-10). Further, in related IPR actions (IPR2015-01087, 01099, 01100, 01105), counsel for Patent Owner had its own expert read into the record during redirect examination portions of his reply report served in the related district court action. (*Id.* at n. 4). Patent Owner also recently submitted untimely supplemental evidence without seeking authorization of the Board. (*Id.* at 10-12).

As a result of these actions, and with the oral hearing scheduled to commence less than a week from now, Petitioner respectfully requests a brief conference with the Board to discuss these inappropriate actions. The disregard of the Board's rules and Orders by counsel for Patent Owner at this late stage of these actions has impeded Petitioner's ability to fairly and properly prepare for the oral hearing in these actions. Accordingly, Petitioner kindly requests a conference with the Board on Friday, April 15, 2016, or at the convenience of the Board's schedule.

Respectfully,  
Jitendra Malik  
Lead Counsel for InnoPharma