

Paper No. _____
Filed: May 26, 2015

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

IPR2015-00903
Patent 8,129,431

OPPOSITION TO MOTION FOR JOINDER

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I. PRELIMINARY STATEMENT OF RELIEF REQUESTED

Senju Pharmaceutical Co., Ltd., Bausch & Lomb, Inc., and Bausch & Lomb Pharma Holdings Corp. (collectively “Senju” or “Patent Owner”) respectfully submit this Opposition to the Motion for Joinder filed with the petition for *inter partes* review (“IPR”) of U.S. Patent No. 8,129,431 (“the ’431 Patent”) under 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b) by InnoPharma Licensing, Inc., InnoPharma Licensing LLC, InnoPharma Inc., and InnoPharma LLC and Mylan Pharmaceuticals Inc., and Mylan Inc. (collectively “Petitioners”). As discussed below, the Board should deny Petitioners’ motion because joinder will incorporate new factual and legal arguments that will require a burdensome amount of additional discovery and expert testimony and will unduly prejudice Senju and unduly burden the Board. In the alternative, should the Board grant joinder, the Board should exercise its discretion under 35 U.S.C. § 316(a)(11) and extend the schedule in the joined proceedings to account for the additional complexity in these proceedings.

Metrics, Inc. (“Metrics”) initiated IPR2014-01041 challenging the ’431 patent (“the Metrics IPR”) by petitioning the Board on June 26, 2014; the Board instituted the Metrics IPR on February 19, 2015. *Metrics, Inc. v. Senju Pharm. Co., Ltd.*, IPR2014-01041, Papers 1, 19. On the last day under the Board’s rules, and despite that concurrent Hatch-Waxman litigation on the ’431 patent had long

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