

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.

IPR2015-00902 (Patent 8,669,290 B2)
IPR2015-00903 (Patent 8,129,431 B2)¹

BEFORE FRANCISCO C. PRATS, ERICA A. FRANKLIN, and GRACE
KARAFFA OBERMANN, *Administrative Patent Judges*

**CONSOLIDATED REPLY BRIEF IN SUPPORT OF MOTION FOR
JOINER AND PROPOSED SCHEDULING ORDER**

¹ The word-for-word identical paper is filed in each proceeding identified in the heading.

TABLE OF CONTENTS

I. STATEMENT OF THE PRECISE RELIEF REQUESTED..... 1

II. STATEMENT OF REASONS FOR RELIEF REQUESTED 1

 A. Joinder will not cause undue prejudice or cause undue delay 1

 B. InnoPharma does not raise material new substantive issues that preclude joinder 4

 C. InnoPharma has offered to coordinate with Metrics to promote efficiency, avoid duplicate efforts, and preventing inconsistencies 8

III. CONCLUSION 10

CERTIFICATION OF SERVICE 11

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>ABB Inc. v. ROY-G-BIV Corp.</i> , IPR2013-00282	5
<i>Apotex, Inc. v. Novartis AG</i> , IPR2015-00518.....	7
<i>Ariosa Diagnostics v. Isis Innovation Ltd.</i> , IPR2013-00250	5
<i>Dell, Inc. v. Network-1 Security Solutions, Inc.</i> , IPR2013-00385	5-6, 8, 9
<i>Enzymotech Ltd. v. Neptune Techs.</i> , IPR2014-00556.....	5, 9
<i>Medtronic, Inc. v. Norred</i> , IPR2014-00823	4-5
<i>Motorola Mobility LLC v. SoftView LLC</i> , IPR2013- 00256	8-9
<i>NetApp, Inc. v. Personal Web Techs., LLC</i> , IPR2013-00319	3
<i>Samsung Electronics Co., Ltd. v. Black Hills Media LLC</i> , IPR2014-00740.....	9
<i>SAP Am. Inc. v. Clouding IP, LLC</i> , IPR2014-00306	9
<i>Sony Corp. of Am. v. Network-1 Security Solutions, Inc.</i> , IPR2013-00386	3
<i>Standard Innovation Corp. v. Lelo, Inc.</i> , IPR2014-00907.....	3
STATUTES	
35 U.S.C. § 314	5
35 U.S.C. § 315	3, 4, 5
35 U.S.C. § 316	4
REGULATIONS	
37 C.F.R. § 42.22	4
37 C.F.R. § 42.100(c).....	4
37 C.F.R. § 42.122(b)	4

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”) hereby respectfully requests that the Board grant joinder of IPR2015-00902 and 00903 (“InnoPharma IPRs”) with IPR2014-01043 and 01041 (“Metrics IPRs”), respectively.² InnoPharma does not raise new substantive issues and is willing to coordinate with Metrics, Inc. (“Metrics”). InnoPharma is also willing to accommodate a schedule that will not cause undue delay or undue prejudice and submits that the proposed schedule is reasonable. *See* Papers 11; 9.³

II. STATEMENT OF REASONS FOR RELIEF REQUESTED**A. Joinder will not cause undue prejudice or cause undue delay**

Senju Pharmaceutical Co., Ltd., Bausch & Lomb, Inc., and Bausch & Lomb Pharma Holdings Corp. (collectively “Senju” or “Patent Owner”) and Metrics both argue that they will be unduly prejudiced under the Proposed Scheduling Order.

² Courtesy copies are being served on counsel of record for Metrics. The Board has directed InnoPharma to file its consolidated reply in all four proceedings, but InnoPharma has been advised by PTAB support staff during a phone call on June 8, 2015 that it should file this paper in IPR2015-00902 and IPR2015-00903.

³ Unless otherwise specified, citations to the paper numbers and page numbers refer to filings and orders in IPR2015-00902 and IPR2015-00903, respectively.

Neither party, however, explains how their interests or rights are prejudiced. Senju and Metrics instead are arguing for schedules that will be convenient or advantageous to *their* interests, which does not constitute undue prejudice. The proposed schedule extends the proceeding by a mere two months and falls between those proposed by Senju and Metrics.

Senju asserts that both Senju *and Metrics* will be unduly prejudiced, because InnoPharma allegedly raises new arguments and substantive issues. Papers 14 at 11; 12 at 11 (collectively “Senju Oppositions”). Metrics does not seem to share Senju’s concern, raising no such objection to the substance of InnoPharma’s petition. The Grounds of invalidity asserted by InnoPharma are the same as those instituted in the Metrics IPRs. *See* Petition in IPR2015-00902, Paper 2 at 18; Decision to Institute in IPR2014-01043, Paper 19 at 16; Petition in IPR2015-00903, Paper 2 at 19; Decision to Insitute in IPR2014-01043, Paper 19 at 20.

Metrics’ Oppositions alleges that Metrics will be unduly prejudiced because InnoPharma’s modest extension will delay approval of its ANDA. Metrics Oppositions at 2-3; at 2-3. Any such prejudice is speculative. Metrics does not present evidence that an extension will directly impact its ANDA schedule, nor that approval without issue is guaranteed. Further, Metrics’ speculative financial loss due to a two-month delay does not rise to the level of undue prejudice.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.