

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 IPR2015-00903¹
Patent 8,129,431

Filed: March 18, 2016

Petitioner's Reply to Patent Owner's Response to Petition

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

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I. INTRODUCTION

Petitioner requests cancellation of claims 1-22 (“challenged claims”) of U.S. Patent No. 8,129,431 (“the ’431 patent”) (EX1001). The Board instituted IPR of Claims 1-5, 7-14, and 18-19 as obvious over Ogawa and Sallmann under 35 U.S.C. § 103, and Claims 6, 15-17, and 20-22 as obvious over Ogawa, Sallmann, and Fu under 35 U.S.C. § 103. (“Decision,” Paper 15). Nothing in Patent Owner’s Response (“Response,” Paper 34) should change the Board’s conclusion.

II. ARGUMENT

A. Patent Owner Fails to Consider the Full Scope of the Prior Art

Patent Owner does not dispute that the prior art disclosed the combination of bromfenac with tyloxapol, (*see* EX1005, 3:23-39), but asserts that only hindsight would provide a reason for that combination. Those arguments, however, are based on inaccurate recitations of the state of the prior art and clear mischaracterization of Dr. Laskar’s testimony as based on hindsight. Indeed, when asked whether he “use[d] the claimed invention as a blueprint in doing his analysis,” Dr. Laskar affirmatively testified, “[n]o, I did not.” (EX2114, 260:15-22).

1. Complexation of Acidic NSAIDs and BAC Was Known

Patent Owner suggests that there is no teaching in the prior art that bromfenac and BAC will form complexes. (Resp. at 5; EX2105, ¶¶37, 76; EX2082, ¶¶63). Not true: the complexation problem between acidic NSAIDs (*e.g.*, bromfenac) and BAC was well known. Fu described the prior art as teaching “an insoluble complex was

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