

1 UNITED STATES PATENT AND TRADEMARK OFFICE
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3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
4 _____
5 LUPIN, LTC. and LUPIN PHARMACEUTICALS, INC.,
6 Petitioners
7 v.
8 SENJU PHARMACEUTICAL CO. LTD., BAUSCH & LOMB, INC.,
9 and BAUSCH & LOMB PHARMA HOLDINGS CORP.
10 Patent Owner

11 _____
12 IPR2015-01087 (US Patent No. 8,751,131)
13 IPR2015-01099 (US Patent No. 8,669,290)
14 IPR2015-01100 (US Patent No. 8,927,606)
15 IPR2015-01105 (US Patent No. 8,871,813)

16
17 DEPOSITION OF:
18 JOHN C. JAROSZ
19 Wednesday, March 16, 2016

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21
22

IPR2015-01099
IPR2015-01097
IPR2015-01100
IPR2015-01105

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| <p>1 JOHN C. JAROSZ, called for cross-examination by</p> <p>2 counsel for Petitioners, pursuant to notice, at the</p> <p>3 office of Finnegan, Henderson, Farabow, Garrett &</p> <p>4 Dunner, LLP, 901 New York Avenue, N.W., Washington,</p> <p>5 D.C., before SUSAN L. CIMINELLI, CRR, RPR, a Notary</p> <p>6 Public in and for the District of Columbia,</p> <p>7 beginning at 9:08 a.m., when were present on behalf</p> <p>8 of the respective parties:</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> | <p>1 CONTENTS</p> <p>2</p> <p>3 EXAMINATION BY: PAGE</p> <p>4 Counsel for Petitioners 7, 203</p> <p>5 Counsel for Patent Owner 172</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> |
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| <p>1 APPEARANCES</p> <p>2 On behalf of Petitioners:</p> <p>3 CHIEMI D. SUZUKI, ESQUIRE</p> <p>4 Crowell & Moring, LLP</p> <p>5 590 Madison Avenue, 20th Floor</p> <p>6 New York, New York 10022-2524</p> <p>7 (212) 803-4050</p> <p>8 csuzuki@crowell.com</p> <p>9 -and-</p> <p>10 DEBORAH H. YELLIN, ESQUIRE</p> <p>11 Crowell & Moring, LLP</p> <p>12 1001 Pennsylvania Avenue, N.W.</p> <p>13 Washington, D.C. 20004-2595</p> <p>14 (202) 624-2947</p> <p>15 dyellin@crowell.com</p> <p>16 On behalf of Patent Owner:</p> <p>17 JUSTIN J. HASFORD, ESQUIRE</p> <p>18 Finnegan Henderson Farabow Garrett &</p> <p>19 Dunner, LLP</p> <p>20 901 New York Avenue, N.W.</p> <p>21 Washington, D.C. 20001-4413</p> <p>22 (202) 408-4000</p> <p>justin.hasford@finnegan.com</p> | <p>1 INDEX TO EXHIBITS</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Senju 2130 John C. Jarosz declarations in IPRs</p> <p>4 2015-01097, 01099, 01100, 01105 39</p> <p>5 Senju 2052 Alkharashi, et al. article 152</p> <p>6 Senju 2157 Management Science (01097) 137</p> <p>7 Senju 2142 September 2000 Journal of Industrial</p> <p>8 Economics (01099) 144</p> <p>9 Senju 2143 Ching, et al. article (01097) 146</p> <p>10 Senju 2119 Rajpal, et al. (01097) 148</p> <p>11 Senju 2221 Selecting an NSAID, Jackson</p> <p>12 PROL028722-748 (01100) 156</p> <p>13 Senju 2160 Ophthalmology Times Donnenfield</p> <p>14 (01100) 159</p> <p>15 Senju 2232 Guha, et al. (01100) 118</p> <p>16 Senju 2191 ASCRS EyeWorld (01097) 159</p> <p>17 Senju 2228 Bromfenac Ophthalmic Solution 0.07%</p> <p>18 Dosed Once Daily for Cataract</p> <p>19 Surgery (01097) 163</p> <p>20 Senju 2218 Bausch & Lomb Press Release</p> <p>21 (01100) 167</p> <p>22 Lupin 1076 Notice of Cross-Examination 172</p> |

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1 the firm, and I help in management of the firm.

2 Q. Did these engagements of the firm include

3 litigation consulting?

4 A. Sometimes.

5 Q. What percentage of your work involves

6 litigation consulting?

7 A. Are you putting that question to me

8 personally or as a representative of Analysis Group?

9 Q. I'll put it to you personally.

10 A. It changes of course from time to time.

11 But over the last 20 years, something on the order

12 of 85 percent of my work has been in the context of

13 pending litigation, likely litigation, arbitration

14 or mediation.

15 Q. What is the other 15 percent?

16 A. It's outside the context of a dispute.

17 Q. Mr. Jarosz, I introduced myself to you

18 off the record, but my name is Chiemi Suzuki, and

19 I'm with the law firm of Crowell & Moring. We

20 represent the Lupin Petitioners against Senju in IPR

21 2015-01097 regarding U.S. Patent Number 8,751,131;

22 IPR 2015-01099 regarding U.S. Patent Number

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1 PROCEEDINGS

2 Whereupon,

3 JOHN C. JAROSZ,

4 was called as a witness by counsel for Petitioners,

5 and having been duly sworn, was examined and

6 testified as follows:

7 CROSS-EXAMINATION

8 BY MS. SUZUKI:

9 Q. Can you please state your name for the

10 record?

11 A. John C. Jarosz.

12 Q. And what is your address?

13 A. My work address is Analysis Group, 800

14 17th Street, Northwest, Washington, D.C., 20006. My

15 home address is 703 Ninovan, which is spelled

16 N-I-N-O-V-A-N, Road, Vienna, Virginia, 22180.

17 Q. What is your current place of employment?

18 A. Analysis Group.

19 Q. What is your title?

20 A. Managing principal.

21 Q. What do you do as a managing principal?

22 A. I help the firm conduct engagements of

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1 8,669,290; IPR 2015-01100 regarding U.S. Patent

2 Number 9 -- excuse me, 8,927,606; and IPR

3 2015-001105 regarding U.S. Patent Number 8,871,813.

4 If I refer to those IPR proceedings today as these

5 IPRs or this IPR, will you understand what I mean?

6 A. I think so, yes.

7 Q. I'm going to ask you a number of

8 questions today and you're to answer the questions

9 to the best of your ability. Do you understand

10 that?

11 A. Yes.

12 Q. Is there any reason that you cannot

13 testify truthfully today?

14 A. No.

15 Q. It's important that you understand each

16 question that I ask. If for any reason you do not

17 understand the question, please tell me and I will

18 rephrase the question into one you can understand.

19 Will you tell me if you do not understand the

20 question that I ask?

21 A. I'll tell you if I don't think I

22 understand your question, but in answering any

Page 10

1 question of yours, I'm not necessarily acknowledging
 2 that my understanding of your question is the same
 3 as your understanding of your question. If I think
 4 I understand it, I will answer it. If I think I
 5 need clarification, I'll ask for that, but of
 6 course, we are not one and the same person, and so
 7 I'm not sure that your understanding of a question
 8 will be equivalent to mine.

9 Q. It is also important that you finish your
 10 answer before I begin my next question. If I
 11 inadvertently cut you off before you've had a chance
 12 to finish your answer, I apologize in advance, but I
 13 do want you to have the chance to finish your
 14 answer. Will you tell me if you have not finished
 15 an answer at the time that I ask my next question?

16 A. I will attempt to.

17 Q. Now, please recognize there is a court
 18 reporter here recording the deposition. Please keep
 19 two things in mind. First, the reporter must be
 20 able to hear you. Secondly, the reporter can only
 21 record one person at a time so we should try to
 22 avoid cross talking of more than one person as much

Page 11

1 as possible. Do you understand that?

2 A. Yes.

3 Q. Also the reporter cannot take down nods
 4 of the head, hand gestures or any other non-verbal
 5 responses, so on behalf of the reporter and me,
 6 please respond loudly and clearly at all times.
 7 Will you do so?

8 A. I will respond to your questions
 9 verbally. I may occasionally nod my head or make a
 10 hand gesture, but I don't mean for any of those to
 11 be picked up on the transcript.

12 Q. Have you had your deposition taken
 13 before?

14 A. Yes.

15 Q. On how many occasions?

16 A. Over the years, I've probably been
 17 deposed on something like 220 occasions. I'm
 18 probably off, but reasonably close.

19 Q. How many of those depositions have been
 20 in your capacity as an expert witness?

21 A. All of those. Oh, no, there was one that
 22 I was a fact witness for, but all the others have

Page 12

1 been in my capacity as an expert witness.

2 Q. Without getting into details, what was
 3 the subject matter of the deposition where you were
 4 a fact witness?

5 A. I had done, alongside people at my firm,
 6 an evaluation of certain IP rights and wrote a
 7 report or white paper associated with that, and was
 8 asked fact questions about that report as I recall.

9 Q. Were the IP rights patent rights?

10 A. I'm not remembering exactly, but it's
 11 possible.

12 Q. What year was that deposition?

13 A. It was probably 10 years ago. It might
 14 have been a little bit more. It might have been a
 15 little bit less.

16 Q. I'd like to ask you a few questions about
 17 your preparation for this deposition. And I'm going
 18 to attempt not to tread into privileged territory.
 19 Yes or no. Did you do anything to prepare for
 20 today's deposition?

21 A. Yes.

22 Q. Without revealing privileged information,

Page 13

1 what did you do to prepare?

2 A. Everything I've done in this matter was
 3 with the thought that I may eventually give
 4 deposition testimony, so everything I've done on
 5 this matter is in some sense in preparation for this
 6 deposition.

7 Q. Did you meet with counsel?

8 A. Over the course of our engagement, yes.

9 Q. Did you meet with counsel specifically
 10 regarding this deposition in the last several days
 11 up to today's deposition?

12 A. Yes. Over the phone.

13 Q. How many phone conversations?

14 A. Over the last few days, have I had with
 15 counsel? Is that the question?

16 Q. Yes.

17 A. I think one. Although I should mention
 18 that there was one in-person meeting.

19 Q. When was the in-person meeting?

20 A. It started about 40 minutes ago.

21 Q. Do you recall when the phone conversation
 22 was?

Page 14

1 A. Yes.

2 Q. When was that?

3 A. Yesterday.

4 Q. How long was your phone conversation?

5 A. About an hour.

6 Q. Who was present on your phone

7 conversation with counsel?

8 A. Mr. Hasford and Ms. Lebeis.

9 Q. Who is Ms. Lebeis?

10 A. Jessica Lebeis is a lawyer for Finnegan

11 who is working on this matter on behalf of the

12 patentors.

13 Q. And in addition to Mr. Hasford and

14 Ms. Lebeis, was anyone else present on that phone

15 conversation other than yourself?

16 A. No. Not that I know of.

17 Q. In the in-person meeting that was about

18 40 minutes ago or started about 40 minutes ago, who

19 was present at that meeting?

20 A. Mr. Hasford and myself.

21 Q. Anyone else in addition to you two?

22 A. No.

Page 15

1 Q. Did you review documents in preparation

2 for today's deposition?

3 A. Again, everything I've done on this

4 matter has been with the thought that I would be

5 deposed, so yes, I have reviewed many documents.

6 Q. During your telephone conference of, I

7 believe it was yesterday, did you review documents?

8 A. I don't know quite how to answer that

9 besides saying during the call, we did make

10 reference to my deposition transcript from a couple

11 of weeks ago.

12 Q. Do you recall what case that deposition

13 transcript was a part of?

14 A. I generally think of it as the PTAB

15 matter and I think it was this case or set of cases

16 in which InnoPharma took the lead in deposing me.

17 Q. In addition to the deposition transcript,

18 during that phone conversation, did you review to

19 any other documents?

20 A. No. Not that I recall.

21 Q. In your in-person meeting today with

22 counsel, did you review documents?

Page 16

1 A. No. Not that I recall.

2 Q. Did you review deposition transcripts in

3 advance of today's deposition in preparation for

4 today's deposition?

5 A. Yes.

6 Q. Were those your own deposition

7 transcripts?

8 A. Yes.

9 Q. Did you review any deposition transcripts

10 of other people in preparation for today's

11 deposition?

12 A. We have looked at deposition transcripts

13 over the course of our engagement, but over the last

14 several days, the only transcripts that I've looked

15 at are my two transcripts.

16 Q. In answering the previous question, you

17 said we have looked at deposition transcripts. Who

18 is we?

19 A. People at Analysis Group and myself that

20 have worked on this matter.

21 Q. What people at Analysis Group?

22 A. The person who has been most intimately

Page 17

1 involved in working with me has been Mike Nolan.

2 Asula Belacova has been an important part of our

3 team.

4 Q. What is Mr. Nolan's position at Analysis

5 Group?

6 A. His title is manager.

7 Q. What is Ms. Belacova's position at

8 Analysis Group?

9 A. Senior analyst.

10 Q. You said that you have reviewed your two

11 deposition transcripts. Which two deposition

12 transcripts were you referring to?

13 A. The one that was taken in the federal

14 case and the one that was taken in the PTAB matter

15 where I was questioned by a lawyer from InnoPharma.

16 Q. The federal case you're talking about, is

17 that Senju v. Watson and others?

18 A. That sounds right to me.

19 Q. And that's a case that's pending in New

20 Jersey?

21 A. Yes, I believe that's correct.

22 Q. Other than counsel and your colleagues,

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