

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 _____
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 IPR2015-01097 (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 SHIROU SAWA
19 Friday, March 18, 2016

20
21
22

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

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1 SHIROU SAWA, called for cross-examination by
 2 counsel for Petitioners, pursuant to notice, at the
 3 office of Finnegan, Henderson, Farabow, Garrett &
 4 Dunner, LLP, 901 New York Avenue, N.W., Washington,
 5 D.C., before SUSAN L. CIMINELLI, CRR, RPR, a Notary
 6 Public in and for the District of Columbia,
 7 beginning at 10:07 a.m., when were present on behalf
 8 of the respective parties:
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 ALSO PRESENT:
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 Rika T. Mitrik, Japanese Interpreter
 Yuko Kashiwaga, Japanese Check
 Interpreter
 * * * * *

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 15 (Exhibits attached to transcript.)
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1 PROCEEDINGS
 2 Whereupon,
 3 RIKA T. MITRIK and YUKO KASHIWAGI,
 4 were first duly sworn to interpret the questions
 5 from English into Japanese and the answers from
 6 Japanese into English to the best of their knowledge
 7 and ability.
 8 Whereupon,
 9 SHIROU SAWA,
 10 was called as a witness by counsel for Petitioners,
 11 and having been duly sworn, was examined and
 12 testified as follows:
 13 CROSS-EXAMINATION
 14 BY MS. SUZUKI:
 15 Q. Good morning. Can you please state your
 16 name for the record.
 17 A. My name is Shirou Sawa.
 18 Q. What is your current address?
 19 A. Kosugadai, 5-Chome 9-9, Nishi-ku, Kobe,
 20 Hyogo Prefecture, Japan.
 21 Q. What is your current place of employment?
 22 A. Senju Pharmaceuticals.

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1 Q. What is your current title?
 2 A. I'm a manager.
 3 Q. In any particular department?
 4 A. Yes, it is.
 5 Q. What department?
 6 A. Ocular science laboratory. Formulation
 7 design group.
 8 INTERPRETER KASHIWAGI: The check
 9 interpreter for Senju says perhaps drug discovery
 10 design.
 11 INTERPRETER MITRIK: Discovery design
 12 group. The Japanese title is Senju manager. In
 13 English, it's simply a manager.
 14 (Recess.)
 15 MS. SUZUKI: I want to backtrack a little
 16 bit and just have everyone state their appearances
 17 for the record. I'm Chiemi Suzuki from Crowell &
 18 Moring here for the Lupin Petitioners and with me is
 19 Shannon Lentz also of Crowell & Moring.
 20 MS. LEBEIS: I'm Jessica Lebeis, I'm with
 21 Finnegan, on behalf of the Patent Owner. I'm here
 22 with Chiaki Fujiwara, Naoko Kishida of Senju, and

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1 Yuko Kashiwagi, the check interpreter for the Patent
 2 Owners.
 3 BY MS. SUZUKI:
 4 Q. Mr. Sawa, I just introduced myself on the
 5 record, but my name is Chiemi Suzuki, and I'm from
 6 the law firm of Crowell & Moring. We represent the
 7 Lupin Petitioners against Senju in IPR 2015-01097,
 8 regarding U.S. Patent Number 8,751,131; IPR
 9 2015-01099, regarding U.S. Patent Number 8,669,290;
 10 IPR 2015-01100, regarding U.S. Patent Number
 11 8,927,60; and IPR 2015-01105, regarding U.S. Patent
 12 Number 8,871,813. And if I refer to those IPRs, for
 13 1097, 1099, 1100 and 1105 IPRs today as these IPRs
 14 or this IPR, would you understand what I mean?
 15 A. Yes.
 16 Q. I'm going to ask you a number of
 17 questions today and you're to answer the questions
 18 to the best of your ability. Do you understand
 19 that?
 20 A. Yes.
 21 Q. Is there any reason you cannot testify
 22 truthfully today?

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1 A. No.
 2 Q. It's important that you understand each
 3 question that I ask you. If for any reason you do
 4 not understand the question, please let me know and
 5 I will rephrase the question into one that you can
 6 understand. Will you let me know if you do not
 7 understand a question that I ask?
 8 A. Yes.
 9 Q. It's also important that you finish your
 10 answer before I begin to ask my next question. Will
 11 you let me know if you have not finished an answer
 12 at the time that I ask my next question?
 13 A. Yes.
 14 Q. Please recognize that there is a court
 15 reporter here recording this deposition, and a
 16 translator, several translators here translating
 17 between English and Japanese. Please keep two
 18 things in mind. First, the reporter and translator
 19 must be able to hear you. Second, the reporter and
 20 translator can only record and translate one person
 21 at a time. So we should try to avoid cross-talking
 22 or more than one person speaking at the same time.

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1 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 and verbally at
 7 all times. Will you do so?
 8 A. Yes.
 9 Q. Mr. Sawa, you've had your deposition
 10 taken previously, correct?
 11 A. Yes.
 12 Q. On how many occasions have you had your
 13 deposition taken previously?
 14 A. What kind of deposition are you referring
 15 to? Are you referring to any and all depositions?
 16 Q. Why don't I ask you a different question.
 17 You've had your deposition taken previously
 18 regarding the Prolensa patents in another IPR and in
 19 a District Court litigation, is that right?
 20 A. I don't understand.
 21 Q. You had your deposition taken in an inter
 22 partes review proceeding regarding Prolensa several

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1 weeks ago, correct?
 2 MS. LEBEIS: Objection. Vague and
 3 ambiguous.
 4 THE WITNESS: Yes.
 5 BY MS. SUZUKI:
 6 Q. Have you also had your deposition taken
 7 in the United States District Court proceeding Senju
 8 v. Watson and other parties, regarding Prolensa
 9 patents?
 10 MS. LEBEIS: Objection. Vague and
 11 ambiguous.
 12 THE WITNESS: I don't know.
 13 BY MS. SUZUKI:
 14 Q. I'm going to ask you some questions about
 15 your preparation for today's deposition, and I am
 16 going to try to avoid asking anything that would be
 17 privileged, but yes or no, did you do anything to
 18 prepare for this deposition today?
 19 MS. LEBEIS: I would just caution the
 20 witness to answer yes or no.
 21 THE WITNESS: Yes.
 22 BY MS. SUZUKI:

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1 Q. Without revealing privileged information,
 2 what did you do to prepare for this deposition
 3 today?
 4 MS. LEBEIS: I would caution the witness
 5 that you can answer, but not to disclose any
 6 communications he might have had with counsel.
 7 THE WITNESS: I talked with Finnegan
 8 attorneys yesterday.
 9 BY MS. SUZUKI:
 10 Q. Which Finnegan attorneys did you speak
 11 with yesterday?
 12 A. I don't know the last name, but Jessica
 13 and Chiaki Fujiwara.
 14 Q. Other than Ms. Lebeis and Ms. Fujiwara,
 15 were there any other counsel present during your
 16 meetings yesterday?
 17 A. No, they were not present.
 18 Q. For how long did you meet with counsel
 19 yesterday?
 20 A. About eight hours.
 21 Q. During your meeting with Ms. Lebeis and
 22 Miss Fujiwara yesterday, was anyone else present?

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1 A. Yes. The interpreter Kashiwagi and
 2 employee Miss Kishida.
 3 Q. Is Miss Kashiwagi here as an interpreter
 4 today?
 5 A. Yes.
 6 Q. Is Miss Kashiwagi an attorney?
 7 MS. LEBEIS: Objection to the extent it
 8 calls for a legal conclusion and form of the
 9 question.
 10 THE WITNESS: I don't know.
 11 BY MS. SUZUKI:
 12 Q. In your preparation for the deposition,
 13 in addition to your meeting for about eight hours
 14 yesterday, did you have any other meetings with
 15 counsel to prepare?
 16 A. No.
 17 Q. In your preparation for this deposition,
 18 did you review any documents?
 19 MS. LEBEIS: I would caution the witness
 20 that he may answer yes or no, but not to disclose
 21 any documents that he might have reviewed.
 22 THE WITNESS: Yes.

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1 MS. SUZUKI: Counsel, can you represent
 2 that all of the documents that Mr. Sawa reviewed in
 3 preparation for this deposition have been produced
 4 as part of this IPR?
 5 MS. LEBEIS: I believe so. Yes.
 6 BY MS. SUZUKI:
 7 Q. Mr. Sawa, did you review any deposition
 8 transcripts in preparation for today's deposition?
 9 MS. LEBEIS: Again, I caution the witness
 10 that he may answer yes or no, but not to disclose
 11 any documents that he reviewed.
 12 INTERPRETER MITRIK: The witness asked to
 13 explain what the transcript is in Japanese.
 14 INTERPRETER KASHIWAGI: The check
 15 interpreter suggests shogenroku.
 16 THE WITNESS: No.
 17 BY MS. SUZUKI:
 18 Q. Have you ever at any time reviewed your
 19 own deposition transcripts from the InnoPharma v.
 20 Senju IPR proceeding?
 21 A. No.
 22 Q. And I have used this term probably

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1 several times now. IPR. If I refer to IPR, meaning
 2 inter partes review, will you understand what I
 3 mean?
 4 A. Yes.
 5 Q. Have you discussed this IPR with anyone
 6 besides counsel?
 7 MS. LEBEIS: I would caution the witness
 8 he can answer yes or no.
 9 THE WITNESS: No.
 10 BY MS. SUZUKI:
 11 Q. In addition to your meeting with counsel
 12 yesterday and your review of documents, have you
 13 done anything else to prepare for today's
 14 deposition?
 15 MS. LEBEIS: Same caution to the witness,
 16 not to reveal any communications with counsel.
 17 THE WITNESS: No.
 18 BY MS. SUZUKI:
 19 Q. Mr. Sawa, I handed you a document
 20 labelled Petitioner's Notice of Cross-examination of
 21 Shirou Sawa. I understand that has been filed in
 22 this IPR. Do you have that in front of you?

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1 MS. LEBEIS: Counsel, Mr. Sawa has
 2 testified previously that he doesn't read English,
 3 so if you have a translation of this document, but I
 4 don't think he is going to be able to answer based
 5 on this English copy.
 6 MS. SUZUKI: So he cannot even -- I did
 7 not ask him anything substantive about the document.
 8 MS. LEBEIS: But he won't be able to
 9 identify the English title.
 10 MS. SUZUKI: Why don't we just strike
 11 that question, and I'll just ask counsel, can we
 12 stipulate that Mr. Sawa is here pursuant to this
 13 notice of cross-examination?
 14 MS. LEBEIS: Yes.
 15 MS. SUZUKI: Mr. Sawa, you can put that
 16 document aside. Counsel, can we also stipulate that
 17 the questions I ask today, unless otherwise stated,
 18 apply equally to IPR 2015-01097, IPR 2015-01099, IPR
 19 2015-01100 and IPR 2015-01105?
 20 MS. LEBEIS: Yes.
 21 (Senju Exhibit No. 2098 was
 22 marked for identification.)

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1 BY MS. SUZUKI:
 2 Q. Mr. Sawa, I handed you a document that
 3 has previously been marked as Exhibit Senju Exhibit
 4 2098, which if you will turn to page 15 of 613,
 5 appears to be your declaration and the appendices to
 6 that declaration. Do you have that in front of you?
 7 A. Yes.
 8 Q. Is Exhibit 2089 your declaration
 9 concerning U.S. patent numbers 8,669,290, 8,754,131,
 10 8,871,813 and 8,927,606?
 11 A. Yes.
 12 Q. Mr. Sawa, I'll represent to you that this
 13 is the version of your declaration that counsel
 14 provided to us as part of these IPRs. It includes a
 15 declaration and Appendices 1 through 3 to the
 16 declaration in Japanese, and also an English
 17 translation of the declaration and Appendices 1
 18 through 3. And also some certificates of
 19 translation.
 20 MS. LEBEIS: Counsel, I believe it's
 21 Appendices A, B and C.
 22 BY MS. SUZUKI:

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1 Q. I apologize. Let me say that again.
 2 I'll represent to you that this is the version that
 3 counsel provided to us as part of these IPRs, and
 4 that it includes a declaration and Appendices A, B
 5 and C to the declaration in Japanese, and an English
 6 translation of the declaration and Appendices A, B
 7 and C, and some certificates of translation.
 8 And I'll just note for the record that
 9 page 1 of 613 of Senju Exhibit 2098 is an affidavit
 10 of translation. Page 29 of 613 is a certificate of
 11 translation. And that is for what is referred to in
 12 page 29 as Exhibit A, Exhibit B, and Exhibit C.
 13 MS. SUZUKI: Counsel, can we stipulate
 14 that those exhibits, exhibits A, B and C correspond
 15 to Appendices A, B and C to Mr. Sawa's declaration.
 16 MS. LEBEIS: Yes.
 17 MS. SUZUKI: And it appears that that
 18 same certificate of translation at page 29 occurs
 19 two other times in this volume, at page 379 and page
 20 387. Counsel, do you know if those are the exact
 21 same copies of that certificate of translation?
 22 MS. LEBEIS: Yes. They are the same

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