

From: [Daniel R. Evans](#)
To: [Fishwick, Laura](#)
Cc: [Trials](#); [Kallas, Nicholas](#); [#ZortressAfinitorIPR](#); [Jeffrey Blake](#); [Melissa M. Hayworth](#); [BreckenridgeAfinitor 131 IPR](#)
Subject: Re: IPR2017-01592 -- Petitioner requests permission to file motion for Board to grant authorization to file Declaration of Fu. L. Luan, M.D.
Date: Monday, January 22, 2018 8:20:37 PM

Dear Board,

Please be aware that Petitioner can be available for a conference call with the Board, if necessary, on an earlier date (such as 24-26 January), as well as the later dates proposed by Patent Owner.

Thank you for your consideration of Petitioner's request.

Sincerely,

Daniel Evans

Sent from my iPhone

On Jan 22, 2018, at 19:54, Fishwick, Laura <LFishwick@FCHS.COM> wrote:

Dear Board,

Patent Owner Novartis respectfully objects to Petitioner's email as an improper substantive communication to the Board without authorization.

Patent Owner also opposes Petitioner's request for permission to file a motion seeking authorization to file the Luan declaration after the deadline in the Board's January 3, 2018 Institution Decision (Paper 12).

Should the Board desire a conference call, Patent Owner is available on January 29 – January 31, 2018.

Respectfully submitted,

Laura Fishwick

Laura Fishwick
FITZPATRICK, CELLA, HARPER & SCINTO
1290 Avenue of the Americas
New York, NY 10104-3800
T 212-218-2318
F 212-218-2200
LFishwick@FCHS.COM
<http://www.fitzpatrickcella.com>
[Bio](#)

From: Daniel R. Evans [<mailto:DEvans@merchantgould.com>]
Sent: Monday, January 22, 2018 6:51 PM
To: Trials
Cc: Kallas,Nicholas; #ZortressAfinitorIPR; Jeffrey Blake; Melissa M. Hayworth; BreckenridgeAfinitor_131_IPR
Subject: IPR2017-01592 -- Petitioner requests permission to file motion for Board to grant authorization to file Declaration of Fu. L. Luan, M.D.

Dear Board,

I am lead counsel for Breckenridge Pharmaceutical, Inc. in *Inter Partes* Review No. IPR2017-01592. I respectfully request permission from the Board to file a motion seeking authorization to file the Declaration of Fu. L. Luan, M.D. ("the Luan Declaration").

As a point of reference, this IPR was instituted on January 3, 2018. (See Paper 12.) One of the references cited in instituted Grounds 3-5 is "Sirolimus Prevents Tumor Progression: mTOR Targeting For The Inhibition Of Neoplastic Progression," authored by Luan et al ("the Luan Abstract," see Ex. 1005 at Page 001). In its Patent Owner Preliminary Response, Patent Owner raised an issue as to the publication date of the Luan Abstract and the documents included in Petitioner's Ex. 1005. (See Paper 9 at 46-49.) In the Institution Decision, the Board stated its desire to evaluate the grounds involving Luan on the merits and authorized Breckenridge to "file one or more declarations explaining the relevance of the documents appended to the Luan abstract, which Patent Owner may address in the Patent Owner Response." (Paper 12 at 22-23, 35.) The declarations were due by January 18, 2018. (Paper 12 at 23, 35.)

After receiving the Institution Decision, Breckenridge timely sought a declaration from Dr. Luan to file as part of Breckenridge's response. (Breckenridge's response included two other declarations, see Exs. 1112-1118.) Dr. Luan ultimately agreed that he would provide a declaration, but he did not agree until the night of January 18, 2018 (the due date). Breckenridge received the Luan Declaration on January 19, 2018. Dr. Luan is the first named author of the Luan Abstract, and his declaration specifically addresses the publication date issue of the Luan Abstract raised by the Patent Owner.

Breckenridge therefore respectfully requests for permission from the Board to file a motion seeking authorization to file the Luan Declaration.

Breckenridge contacted Patent Owner with this request on January 19, 2018. Breckenridge followed up by sending Patent Owner a draft of this email and a copy of the Luan Declaration on January 22, 2018. Patent Owner opposes Breckenridge's request.

Respectfully submitted,

Daniel Evans
(Reg. No. 55,868)

Counsel for Breckenridge

Daniel R. Evans

Merchant & Gould P.C.
191 Peachtree Street, NE
Suite 3800
Atlanta, GA 30303
USA

Telephone (404) 954-5061

Mobile (404) 539-6995

Fax (612) 332-9081

www.merchantgould.com

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