

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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.

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Case IPR2015-00902  
Patent 8,669,290

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Case IPR2015-00903  
Patent 8,129,431

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Case IPR2016-00089  
Patent 8,754,131 B2

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Case IPR2016-00090  
Patent 8,871,813 B2

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Case IPR2016-00091  
Patent 8,927,606 B1

1 UNITED STATES PATENT AND TRADEMARK OFFICE  
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3  
4 LUPIN LTD. and LUPIN PHARMACEUTICALS, INC.,  
5 Petitioner,

6 v.

7 SENJU PHARMACEUTICAL CO., LTD.,  
8 Patent Owner.

9 Case IPR2015-01097  
10 Patent 8,754,131 B2

11 Case IPR2015-01099  
12 Patent 8,669,290 B2

13 Case IPR2015-01100  
14 Patent 8,927,606 B1

15 Case IPR2015-01105  
16 Patent 8,871,813 B2

17 Case IPR2015-01871  
18 Patent 8,129,431

19 Telephonic Conference Call  
20 Before The Patent Trial And Appeal Board  
21 Washington, D.C.  
22 Friday, December 11, 2015, 2:01 p.m.

Reported by: Donna A. Peterson

1 A P P E A R A N C E S

2

3 ADMINISTRATIVE PATENT JUDGE GRACE KARAFFA

4 OBERMANN

5 ADMINISTRATIVE PATENT JUDGE ERICA A. FRANKLIN

6 ADMINISTRATIVE PATENT JUDGE FRANCISCO C. PRATS

7 PATENT TRIAL AND APPEAL BOARD

8 UNITED STATES PATENT AND TRADEMARK OFFICE

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C O N T E N T S

PAGE

Hearing: Global Schedule

6

1 P R O C E E D I N G S

2 JUDGE OBERMANN: Good afternoon.

3 This is Judge Obermann. I have Judge  
4 Franklin and Judge Prats on the phone with me.

5 This is a telephone conference in a series  
6 of ten IPR's. I'll read them into the record:

7 IPR2015-00902, IPR2015-00903, IPR2015-01097,  
8 IPR2015-01099, IPR2015-01100, IPR2015-01105,  
9 IPR2015-01871, IPR2016-00089, IPR2016-00090 and  
10 IPR2016-00091.

11 I understand we have a court reporter.  
12 Which party engaged the court reporter, please?

13 MR. DINER: That would be Senju, et al.,  
14 Your Honor.

15 JUDGE OBERMANN: Thank you. Is that  
16 Mr. Diner?

17 MR. DINER: Yes, it is, Your Honor. Good  
18 afternoon, by the way.

19 JUDGE OBERMANN: Good afternoon.

20 Mr. Diner, will you please file a copy of  
21 the transcript as an exhibit in due course?

22 MR. DINER: Yes, we will, Your Honor.

1 JUDGE OBERMANN: Thank you.

2 Mr. Diner, do you have anyone else  
3 appearing with you on behalf of Senju today?

4 MR. DINER: I do, Your Honor.

5 JUDGE OBERMANN: Okay.

6 MR. DINER: The first person is Justin  
7 Hasford.

8 JUDGE OBERMANN: Okay. Anyone else?

9 MR. DINER: Yes, Your Honor. Joshua  
10 Goldberg.

11 THE JUDGE: All right.

12 MR. DINER: And Elizabeth Ferrill, spelled  
13 F-E-double R-I-double L.

14 JUDGE OBERMANN: Okay, thank you,  
15 Mr. Diner.

16 Who's appearing today for Petitioner  
17 Lupin?

18 MS. YELLIN: Hello, Your Honor.

19 This is Deborah Yellin, from Crowell and  
20 Moring, here for Lupin, and with me is Jonathan  
21 Lindsay.

22 JUDGE OBERMANN: Thank you, Ms. Yellin.

1 And do we have someone here from  
2 Innopharma?

3 MR. MALIK: Yes, Your Honor. Good  
4 afternoon, Your Honor.

5 My name is Jitendra Malik, I'm counsel for  
6 Innopharma. With me is James Abe.

7 JUDGE OBERMANN: Thank you very much.

8 Okay, I understand that a conference call  
9 was requested regarding a proposed global schedule,  
10 and the e-mail came in from Mr. Diner on behalf of  
11 Senju, so I'll ask Mr. Diner to please proceed.

12 MR. DINER: Okay, Your Honor, thank you.

13 Well, Your Honor, we received the e-mail  
14 from Ms. Bignone on Wednesday, December 9th, and we  
15 see how you have things set out here.

16 Would you like us to jump right to  
17 paragraphs number four, or is there a particular way  
18 that you would like us to -- would you like us to  
19 address anything up front, like the global  
20 consolidation, or I guess I'll ask you how you would  
21 like us to address the issues, based on your e-mail  
22 or what?



1 JUDGE OBERMANN: Well, we intentionally  
2 sent you the e-mail because we wanted to be able to  
3 focus today and, as you can see, we are not inclined  
4 to move the schedule in an IPR that is not the  
5 subject of a motion to join. We didn't see a reason  
6 to move the dates in the IPR 903. You're welcome to  
7 address that if all three parties disagree or even if  
8 one of you disagree, you can use the time as you  
9 like. We're open to hearing what you have to say,  
10 but we wanted to let you know sort of where we are,  
11 based on the record that's been developed so far.

12 We wanted to let you know that we didn't  
13 see a reason to roll those first two filed  
14 proceedings into this global schedule. Obviously if  
15 you're able to, you know, come up with a compelling  
16 reason why we should, we're opening to listening to  
17 you. So I will, you know, sort of let you, having  
18 hopefully absorbed where the board is at this stage,  
19 let you tell us what you think could be done at this  
20 point.

21 The other concern the board has is that  
22 you're asking us to -- it appeared that you seemed to

10

1 be asking us to enter a schedule in the last three  
2 IPR's, actually the last four, which haven't been  
3 instituted yet. So we'd like you to sort of address  
4 what you think can be done at this point to help us  
5 and the parties because we do want to, you know, get  
6 the parties, to the extent possible, on the same  
7 schedule so that you can work together. But, at the  
8 same time, we have to work within the constraints of  
9 the fact that these were, you know, filed in a  
10 staggered fashion.

11 So with that, if that helps at all,  
12 Mr. Diner, maybe you can proceed.

13 MR. DINER: Yeah, that's helpful, I think  
14 it does. Let me take a shot at the very first issue  
15 on the global coordination.

16 As you know, we did have a meet and confer  
17 and all the parties did agree on it. We recognize  
18 that the board was looking for a compelling reason.  
19 We weren't sure if all parties agreeing on it was  
20 compelling enough, but I think your e-mail perhaps  
21 addressed that, certainly if not directly,  
22 implicitly.

1                   But we did have another meet and confer,  
2                   and I think, if anything can be said about the  
3                   parties, I think we are kind of getting along and  
4                   trying to work things out and -- and cooperating with  
5                   one another. And pursuant to that meet and confer  
6                   that we had this morning, I think my colleague from  
7                   Innopharma, Mr. Malik, may want to, did you want to  
8                   take a first shot and talk about --

9                   MR. MALIK: Yes.

10                  MR. DINER: -- global coordination or how,  
11                  would you like me to proceed and then --

12                  MR. MALIK: Sure.

13                  MR. DINER: -- jump back in afterwards?

14                  MR. MALIK: Thank you, Bryan.

15                  Your Honor, this is Jitendra Malik,  
16                  counsel for Innopharma.

17                  As Mr. Diner mentioned, we did have a call  
18                  this morning to meet and confer basically before this  
19                  call so that the parties could try to come to some  
20                  kind of understanding as to how best to approach the  
21                  hearing today, in light of the board's guidance in  
22                  the e-mail that we received on Wednesday. What we --

1     what we talked about is obviously with the board  
2     deciding with the three seven -- deciding the 902,  
3     903 cases, leaving the schedule undisturbed, and then  
4     there are an additional seven that are still open,  
5     the time pressures are no longer quite there because  
6     the reason the parties wanted to bring it to the  
7     board's attention sooner, rather than later, was  
8     because the 902 and the 903 cases are on an earlier  
9     schedule, compared to the others. Being now that  
10    they are split, we don't have quite the time  
11    pressures in connection with the other three.

12                 Some of the points that raised in your  
13    e-mail in connection with point four are directly  
14    kind of related to Innopharma's exposition. We did  
15    inform the other parties that given Innopharma was  
16    not otherwise time barred in filing its later three  
17    IPR's, the ones that we filed on, I believe, November  
18    11th that we were not inclined to -- to not use our  
19    expert Dr. Laskar and go only with Dr. Lawrence. So  
20    in connection with point "A," we weren't inclined to  
21    take a backseat role and take understudy role, based  
22    on the fact that we weren't time barred.

1                   When we -- when we told Senju that, one of  
2     the discussions that we had was that Senju raised,  
3     perhaps if Innopharma was willing to only proceed on  
4     ground one and drop grounds two and three that they  
5     would not oppose using two experts in this case,  
6     Dr. Laskar and Dr. Lawrence, for Lupin, in connection  
7     with the -- Innopharma's case 89, 90 and 91. And  
8     what -- what, where we left it is given the time  
9     pressure's no longer there that we, in essence, would  
10    -- that we, that Innopharma would go back to our  
11    client with that proposal. And, perhaps, if our  
12    client agrees with just using ground one, maybe that  
13    would be a way to kind of resolve everything,  
14    bringing the last three Innopharma IPR's on the same  
15    schedule as the previously ones -- previous schedule  
16    proposed by Lupin, and that hopefully should -- and  
17    if the board obviously goes with that proposal,  
18    hopefully that should resolve things.

19                   JUDGE OBERMANN: Mr. Malik, I want to  
20    interrupt you for a second because I'm not completely  
21    following what you're proposing.

22                   You're proposing that in the -- in the

1 last three actions, 89, 90 and 91, that Innopharma  
2 trim its petition down to just one ground and retain  
3 their expert and do what?

4 MR. MALIK: In essence, move forward with  
5 that one ground with our expert.

6 JUDGE OBERMANN: So you would try to join  
7 the Lupin IPR's?

8 MR. MALIK: Yes.

9 JUDGE OBERMANN: And you would still want  
10 to have a separate expert?

11 MR. MALIK: Yes. And -- and, as I  
12 mentioned, the proposal was only put forward this  
13 morning, so --

14 JUDGE OBERMANN: Okay.

15 MR. MALIK: -- I'd have to go back to my  
16 client, but that's -- and if that, if Innopharma  
17 agrees, Senju has also agreed not to file a  
18 preliminary response and hopefully that would move  
19 things forward.

20 JUDGE OBERMANN: Okay. So we don't yet  
21 know Innopharma's ability to propose that because you  
22 haven't spoken to your client.

1 Do we know what Lupin's position is on  
2 that?

3 MS. YELLIN: Your Honor, this is Deborah  
4 Yellin, for Lupin.

5 We're certainly fine with Innopharma  
6 proceeding in that way, as long as we're, of course,  
7 allowed to use our original expert which we used in  
8 our original filing, Dr. Lawrence. If we're able to  
9 do that and take our leading role in the proceedings,  
10 we're fine with them joining in that fashion and  
11 we're fine with them using Dr. Laskar, as well.

12 JUDGE OBERMANN: Okay. Thank you,  
13 Ms. Yellin.

14 Going back to Mr. Malik. Under your  
15 proposal, you would basically still want to have  
16 seven pages additional briefing, or would you be  
17 taking seven pages of Lupin's briefing?

18 MR. MALIK: We haven't discussed logistics  
19 amongst the party, but if the board has a preference,  
20 obviously we can, you know, we certainly would defer  
21 to the board. But I think seven pages additional  
22 briefing, to the extent the issues are not

1 duplicative. Obviously if the issues are  
2 duplicative, and, you know, Innopharma and Lupin will  
3 work together. We're not here to give the board more  
4 briefing just for the sake of additional pages. But  
5 to the extent there's a unique issue for Innopharma,  
6 we certainly would be -- brief that on additional  
7 pages.

8 JUDGE OBERMANN: Okay. Well, it sounds  
9 maybe like this is maybe a little premature to  
10 discuss because we haven't gotten everything ironed  
11 out in that regard, especially since you haven't run  
12 it by your client. I'm a little confused about how  
13 it would look like.

14 I guess -- I guess this conference, this  
15 conference is on the record, so I guess we'll have to  
16 talk about that because we would need a way to modify  
17 the filing. You know, the petition has been filed  
18 and the motion to join has been filed, so we'll need  
19 to make, if it comes to fruition and you're able to  
20 get permission from your client to do it this way and  
21 all three parties agree, I guess the biggest concern  
22 I would have, I want to make sure Senju is totally on



1 board with the abbreviated discovery schedule,  
2 notwithstanding the fact there would be two extra  
3 experts and extra briefing. And then we would need  
4 to, you know, just come up with a mechanism so that  
5 Innopharma's intention is clear, so that we can rule  
6 on this sort of modified petition and motion to join  
7 in a way that makes the record clear. Because right  
8 now, what we have in the file is, you know, a full  
9 petition on everything.

10 Okay, unless you have something to add on  
11 that particular point, Mr. Malik, I will turn to  
12 Mr. Diner because usually when we -- when we face  
13 joiner, it's the patent owner who's really crunched.  
14 It seems here that Mr. Diner is on board with this,  
15 but I just want to make sure.

16 MR. DINER: Thank you for turning to me,  
17 Your Honor. This is Bryan Diner. Yeah, I'll handle  
18 it one by one.

19 So on the issue of the seven pages  
20 additional, of course, if they're gonna have seven  
21 pages, then we would like to have equal seven pages  
22 to respond to that. And I guess we can work that out

1 as to what you're proposing when we submit that to  
2 you.

3 JUDGE OBERMANN: Okay.

4 MR. DINER: On the issue of -- of aligning  
5 the Innopharma's last three petitions with Lupin's  
6 previous four, as Mr. Malik mentioned, we would like  
7 to see, subject, I guess, to his client's approval of  
8 that from his standpoint, we think it makes sense  
9 that their petition get aligned on the same grounds  
10 that you've instituted both in the previous four  
11 petitions on.

12 And then with regard to their use of  
13 Dr. Laskar, we're okay with Lupin having Dr. Lawrence  
14 and Innopharma having Dr. Laskar, just so long as  
15 it's understood that it will be on the single ground  
16 that the board has instituted Lupin's petition back  
17 in October of this year.

18 JUDGE OBERMANN: I have to say that I  
19 share your concern because what usually happens when  
20 we join, we get the parties into sort of, as we did  
21 with 1871, into a condition where we can grant the  
22 later-filed petition and immediately terminate it in

1 the same order, so that there's no confusion about  
2 what -- what constitutes the record at that point.  
3 The record is constrained to the earlier-filed  
4 petition.

5           What we're describing here is a little bit  
6 different. It doesn't mean it can't be done, we  
7 would have to give it some careful thought. But  
8 I'm -- because Innopharma is not time barred, I think  
9 what makes sense at this point is to make sure that,  
10 first of all, everyone's on board with this. But I  
11 don't think we can do it willy-nilly. I think we're  
12 going to need, if this comes to fruition, we're gonna  
13 need Innopharma, perhaps, to file a motion asking to  
14 file a modified petition. And we would want to see  
15 exactly what that petition looks like, so that we can  
16 determine how best, you know, if it's in condition  
17 for joinder, to actually join it, so that there's no  
18 confusion because I think that -- I think the  
19 declaration would need to change, as well, because  
20 you'd be trimming out -- you'd be trimming out part  
21 of that testimony that goes to grounds that are  
22 withdrawn.

1 MR. MALIK: Yes, Your Honor.

2 JUDGE OBERMANN: Alternatively, you could  
3 file -- I'm just throwing this out here, but perhaps  
4 Innopharma could file something in the three last,  
5 the three last proceedings, 89, 90 and 91, a paper  
6 that withdraws grounds. Maybe that would be a  
7 cleaner way to do it, if you're simply withdrawing  
8 grounds.

9 MR. DINER: Your Honor, this is Bryan  
10 Diner. I'm sorry to jump in on you, I just had a  
11 thought.

12 You raised a moment ago, you know, the  
13 fact that Dr. Laskar's declaration would be  
14 addressing those multiple grounds. How would you  
15 handle that? You can handle the petition easily  
16 enough with the paper that you suggested. Would it  
17 also work, as well, with Dr. Laskar's declaration  
18 that --

19 JUDGE OBERMANN: Yeah. I haven't looked  
20 at the declaration that carefully, but I would want  
21 to make sure that when we join this, we can do it  
22 very cleanly. And if we are moving -- this is very

1 unusual because usually we demand that the same  
2 declaration be used, so it's one of the reasons --  
3 and I'm not saying that we're gonna do it in this  
4 case. We're not going to rule on that today,  
5 obviously. I do want to talk this over, to the  
6 extent we can, so you have some direction going  
7 forward, figuring out what to do.

8 I will tell you, it's quite unusual to  
9 join where we're not dropping an expert. So we would  
10 want to be persuaded in some sort of filing that  
11 you've trimmed down that declaration in some fashion,  
12 either by -- I don't know what it looks like now,  
13 whether you can just file an unopposed motion to  
14 replace the declaration with something that's much  
15 more trimmed down. I think the parties need to get  
16 together and figure this out because what we would be  
17 doing would be granting the later-filed -- we would  
18 need to make sure that the petition in the  
19 later-filed actions warrant institution. And if  
20 you've put them in condition so that they basically  
21 repeat grounds, essentially repeat grounds that are  
22 stated in the earlier ones, it's very easy to do that

1 because we've already ruled on those earlier ones.

2 But if you're adding much material to  
3 those later-filed ones and if you're not willing to  
4 let go of all your nuts, so to speak, if you're a  
5 squirrel and you don't want to let go of your nuts,  
6 Innopharma in the second-filed petition, that really  
7 complicates things because then the board has to look  
8 more carefully at whether your petition really  
9 warrants review because it brings forward different  
10 grounds. And then when we join, it's going to be a  
11 much more complicated record because we would have a  
12 second declaration.

13 But my concern is, I don't want to blur  
14 these proceedings, I don't want to just fold  
15 everything up together if what you're telling me is  
16 the sum of the material that's been filed in the 89,  
17 the 90 and the 91 action are now going to be  
18 basically withdrawn. We need to make that clear in  
19 the record.

20 MR. DINER: Your Honor, this is Bryan  
21 Diner again.

22 One of my colleagues just whispered to me

1     that one of the -- they were involved in a situation  
2     like this in District Court they did a  
3     strike-through. Maybe that's something we can work  
4     out with Innopharma and see how that works. We could  
5     work together and try --

6                 JUDGE OBERMANN: Yes. Well,  
7     strike-throughs are nice as an exhibit, but when I'm  
8     reading the briefs, I want to be able to look at  
9     something that's clean.

10                MR. DINER: I hear you. I hear you.

11                MR. MALIK: We will submit a clean and a  
12     strike-through copy, if that were amenable.

13                JUDGE OBERMANN: Sure, yes. Yes. We'll  
14     have to, you know, get our heads together. You know,  
15     if the parties have really reached this agreement,  
16     and especially if Senju wants to go forward in this  
17     fashion and doesn't mind complicating their very  
18     short discovery period with multiple experts, then I  
19     would like to find a way that we can do this, if  
20     possible. But I think the parties do need to get  
21     together and do some work on figuring out how it can  
22     be done efficiently and in a manner that's not going

1 to confuse the record.

2 MR. DINER: Okay.

3 You mentioned a couple things, Your Honor,  
4 that the parties still need to address. Can you just  
5 summarize them, so we're all on the same page going  
6 forward? Obviously it's what we just discussed in  
7 terms of the petition and the declaration, but what  
8 else was there? Was there the -- the page, extra  
9 pages?

10 JUDGE OBERMANN: The extra pages.  
11 Obviously we prefer not to have extra pages. Lupin  
12 would have to be willing -- what usually happens and  
13 what I've seen in the other cases is that the -- the  
14 second filer reserves, you know, the right to  
15 disagree with the first filer. So if there's a -- if  
16 they disagree with particular arguments made in a  
17 filing, they put in a couple extra pages, just  
18 pointing out the areas of disagreement.

19 If that's going to expand all of the  
20 filings, because I heard Mr. Diner say that he would  
21 want extra pages, as well, you know, that's not  
22 ideal. I really hope that the parties can get



1 together and figure out a way to avoid expanding the  
2 page lengths of the briefs.

3 MR. DINER: How about, then, if we took up  
4 your previous suggestion you mentioned, going the  
5 other way, which is the -- which would be that  
6 Innopharma takes seven pages within Lupin's allotted,  
7 within the 20 pages, 16, whatever it is.

8 JUDGE OBERMANN: It depends, it depends.  
9 If you have a -- it depends. If you have a motion,  
10 it's a certain page limit, replies have a certain  
11 page limit.

12 MR. DINER: Right, right.

13 JUDGE OBERMANN: So you would have to --  
14 you know, my ideal, if the parties can truly work  
15 together, if Lupin and Innopharma can work together,  
16 what would be ideal is if you can figure out a way to  
17 cough up a couple pages, if there's a disagreement,  
18 and keep it within the page limit. I understand if  
19 you can't do that.

20 The other thing I heard you mention,  
21 Mr. Malik, I think, was that there could be a  
22 circumstance where there would be an issue that

1 relates solely to Innopharma, and usually that is  
2 something that would require pre-authorization, where  
3 you would come to us and say, you know, something's  
4 arisen and it affects only us and we would like an  
5 opportunity to address it. I suppose it could arise  
6 in the context of -- well, it gets slippery because  
7 if you're not truly taking a backseat and the first  
8 petitioner comes in and starts talking about their  
9 own products, you could decide you want to talk about  
10 your products and you could want a whole bunch of  
11 pages on that.

12 I don't want to get into a situation where  
13 we're dealing with a great deal more material than we  
14 would be in the unjoined proceedings. You see what  
15 I'm saying?

16 MR. DINER: I do.

17 JUDGE OBERMANN: So we need to define  
18 exactly what the page limits are gonna be because  
19 that in itself is going to limit what you can do as  
20 far as presenting your own arguments. And we do want  
21 to rein in Innopharma to the extent that's possible  
22 because we respect that we have a first filer here

1 and they're really extending you a courtesy by  
2 allowing, you know, by not opposing adding you to  
3 this proceeding.

4 The other thing I want to keep in mind for  
5 Mr. Malik and Innopharma is that you have filed what  
6 appear to be, you know, three petitions that are  
7 essentially very much like the first filed petitions.  
8 And if you -- if you make a strategic decision that  
9 you are going to not join or not continue to try to  
10 join, I just want you to be aware that you will face  
11 the prospect of, perhaps, you know, there will be a  
12 consideration under Section 325 D, whether it's a  
13 good use of the board's resources to actually go  
14 forward on such similar claims, if they're not  
15 joined. Keep that in your calculus when you decide  
16 what you want to do at the end of the day.

17 I did have a question. Is there a request  
18 for additional pages in the motions to join that were  
19 filed in the 090 and 091 cases or was it only in the  
20 089 case?

21 MR. MALIK: There was no -- [inaudible]

22 JUDGE OBERMANN: I'm sorry, I can't tell

1     who is speaking and whoever it is is breaking up.   I  
2     can't hear you.

3                 MR. MALIK:   This is Mr. Malik, for  
4     Innopharma --

5                 JUDGE OBERMANN:   Mr. Malik, I'm sorry, I  
6     cannot hear what you're saying, the phone line is  
7     breaking up on my end.

8                 MR. MALIK:   Sorry.   Is this better?

9                 JUDGE OBERMANN:   No, I'm sorry.  
10                Am I the only one that can't hear  
11     Mr. Malik?

12                MR. DINER:   We can't hear him, either.

13                MS. YELLIN:   Same here, Your Honor.

14                MR. MALIK:   Let me call back in.   Hold on  
15     one second.

16                JUDGE OBERMANN:   Okay.   We'll all go  
17     silent until you come back.

18                MR. MALIK:   Okay.

19                (Silence.)

20                MR. MALIK:   Hello, this is Mr. Malik,  
21     again.

22                JUDGE OBERMANN:   Hello, Mr. Malik?   Yes.

1 MR. MALIK: Yes.

2 JUDGE OBERMANN: I can hear you now.

3 That's great, thank you.

4 MR. MALIK: I apologize for the phone  
5 difficulties on my end.

6 On IPR2016-0089, can you repeat the  
7 question? I'm sorry, I may have broken up.

8 JUDGE OBERMANN: There was a question. I  
9 know that you, I know that Innopharma was requesting  
10 seven extra pages, in the event of joinder, in the  
11 motion for joinder that was filed in the 089 action.

12 My question was, in 090 and 091, did you  
13 also include a request for seven extra pages?

14 MR. MALIK: It should have been similar,  
15 since the motions were, in effect, duplicate copies  
16 of each other, so the request should have been in  
17 there.

18 JUDGE OBERMANN: Okay.

19 Okay. Well, we'll look again.

20 Okay. That said, I think that -- I think  
21 that what we need at this point, unless -- I'm going  
22 to go around the room and I'm going to ask each party

1 if they have anything to add. But my feeling right  
2 now is that the parties, all three of you, should  
3 seek another conference with the board after you all  
4 have met and conferred regarding the proposal to  
5 basically redact or withdraw grounds. And if you can  
6 present the board with, you know, in your e-mail,  
7 perhaps a proposal for how that could be most  
8 effectively accomplished, that would help set up the  
9 next conference call.

10 I'll start with Mr. Diner. Do you have  
11 anything to add for Senju?

12 MR. DINER: Yes, Your Honor, just one  
13 point. It's more of an administrative point.

14 In the e-mail on November 4th, towards the  
15 bottom of the e-mail, there was a request that's  
16 actually from me. The date right now for the final  
17 hearing now is June 6th.

18 JUDGE OBERMANN: Yes.

19 MR. DINER: My daughter, my only daughter,  
20 is getting married June 4th. Since I told the  
21 parties I'll be paying for that wedding, I would like  
22 to enjoy it.

1 JUDGE OBERMANN: Sure.

2 MR. DINER: I'm wondering if we can push  
3 the hearing back a few days, just so --

4 JUDGE OBERMANN: Yes. Yes, we have no  
5 problem with that, unless there's an objection from  
6 any of the other parties.

7 That's fine. Just proceed with the  
8 understanding that the board will not object to a  
9 couple days' enlargement, under those circumstances.

10 MR. DINER: And so do we, we leave that  
11 open, like a to-be determined for to you fill that in  
12 based on the schedule and the ability of rooms and  
13 stuff like that or --

14 JUDGE OBERMANN: Well, we can, what we can  
15 do is, what I can do is just put out a very short  
16 order today. I was hoping to avoid one, since we  
17 have the court reporter on the line. But I can just  
18 put out a very short order changing the hearing date  
19 from June 6th to June 9th in those cases. So --  
20 unless we have an objection. I'll ask Mr. Malik --  
21 well, these are in the cases that were brought by  
22 Lupin, is that correct?

1 MR. MALIK: That's right.

2 JUDGE OBERMANN: Okay. So it's really Ms.  
3 Yellin.

4 Would Lupin objection?

5 MS. YELLIN: No, Your Honor, Lupin is fine  
6 with it.

7 JUDGE OBERMANN: Okay. So I'll just  
8 change the date of that hearing in those three. I  
9 guess it's three, right, or -- yeah, it would be the  
10 097, 099. Or there are four of them, 1100 and 1105,  
11 is that correct, they're all -- they're all set for  
12 the 6th? Do I have that right?

13 Yes. My notes have four of them  
14 proceeding on the 6th. Oh, I know why I'm confused,  
15 because 099 is not the subject of a joinder motion.  
16 So we do have that fourth one in there, is that  
17 correct? So I will do a little order, just enlarging  
18 the hearing date by three days.

19 MR. DINER: Okay. Thank you very much,  
20 Your Honor.

21 I have one other question. Since we're  
22 going back and we're going to try to work together on



1 the issues and the questions that you put today, we  
2 do have that outstanding motion for joinder to  
3 oppose, and I think we submitted a request for an  
4 extension. Yeah, I think the idea is that we're  
5 gonna reach an agreement and make that proposal to  
6 you.

7 What do we do about that outstanding  
8 opposition? Do we table that for now? How would you  
9 suggest that we proceed, instead of -- we keep coming  
10 back to you with e-mails and asking for another week  
11 because we're talking, so on, so forth. What would  
12 you suggest that we do at this point because I think  
13 we are gonna get close to something, but --

14 JUDGE OBERMANN: Oh, the December 18th?

15 MR. DINER: Yeah, exactly.

16 JUDGE OBERMANN: Yeah. Well, I guess in  
17 the same order, I can -- see, I'm not sure, you know,  
18 depending on how we do it, I'm not sure that we will  
19 actually be ruling on the global schedule. I would  
20 say, I particularly didn't say that we were gonna key  
21 our opposition to our ruling on the global schedule  
22 because we are not gonna issue a schedule until we

1 actually grant -- grant or, you know, if we grant the  
2 petitions in these later-filed ones. So when do you  
3 think you'll realistically, given the holidays, be  
4 able to get back to us on -- after your meet and  
5 confer?

6 MR. DINER: That's a good question. We --  
7 we have a lot going on in the federal district court  
8 proceedings.

9 MR. GOLDBERG: Your Honor, this is Josh  
10 Goldberg, for Senju.

11 I was wondering if maybe, if this is, if  
12 this date is actually something that given that the  
13 board can kind of adjust it, is it possible to just  
14 leave the date for opposition open and sort of blank  
15 right now?

16 JUDGE OBERMANN: You know, we've done  
17 that. I can put that in there. I can make the  
18 opposition due the same day as your preliminary  
19 response, if you'd like.

20 MR. DINER: Yeah, I think that works for  
21 us.

22 JUDGE OBERMANN: The only thing is do you

1 plan to file a preliminary response, if you know?

2 MR. DINER: We're not really intending to  
3 do one at this point, if we can reach an agreement on  
4 with Innopharma.

5 JUDGE OBERMANN: It would be helpful,  
6 then, if you could waive the preliminary response  
7 because then we can rule on whether these petitions  
8 warrant review and get everything, you know, going.  
9 So why don't we -- why don't I just put out a short  
10 order today that enlarges the -- it will be two  
11 little orders because they relate to different cases.  
12 But in 1097, 1099, 1100 and 1105, I'll put out a  
13 short order that enlarges the time for the final  
14 hearing to June 9th. And then in 089, 090 and 091,  
15 I'll put out a very short order that extends Senju's  
16 time for filing any opposition to Innopharma's motion  
17 for joinder to coincide with the date of the  
18 patent -- that the patent owner's preliminary  
19 response is due.

20 Does that make sense?

21 MR. DINER: That works for us, Your Honor.  
22 This is Senju.

1 JUDGE OBERMANN: Okay. Any objections  
2 from Mr. Malik?

3 MR. MALIK: None, Your Honor.

4 JUDGE OBERMANN: From Ms. Yellin?

5 MS. YELLIN: No, Your Honor.

6 JUDGE OBERMANN: I'll go back to  
7 Mr. Diner, then.

8 Is there anything else to discuss on  
9 behalf of Senju?

10 MR. DINER: Thank you for coming back to  
11 me, Your Honor, and no further point from Senju.

12 JUDGE OBERMANN: Mr. Malik, do you have  
13 anything to add?

14 MR. MALIK: Nothing further, Your Honor.

15 JUDGE OBERMANN: Okay, thank you.

16 Ms. Yellin, for Lupin?

17 MS. YELLIN: Yeah, just one more real  
18 quick point.

19 On Lupin's motion to join put in their IPR  
20 1871, seeking to join Innopharma's IPR's 903, that  
21 motion to join is still outstanding because Senju has  
22 not yet waived its right to file a preliminary

1 response or filed their preliminary response.

2 JUDGE OBERMANN: True.

3 MS. YELLIN: It would be useful if Senju  
4 was willing to waive it, otherwise -- just so we can  
5 get to closure on that issue.

6 JUDGE OBERMANN: That's true. Mr. Diner,  
7 would Senju be willing to either waive or file an  
8 early preliminary response?

9 MR. DINER: We would be willing to waive  
10 the preliminary response.

11 JUDGE OBERMANN: Could you file something?

12 MR. DINER: Yes, Your Honor, we will.

13 JUDGE OBERMANN: Okay, that's fabulous.

14 Okay. When do you think you can file that?

15 MR. DINER: Tuesday?

16 JUDGE OBERMANN: Tuesday. Okay, we'll  
17 look for it then.

18 Okay, anything else from anybody?

19 Mr. Diner?

20 MR. DINER: I'm sorry, Your Honor, I  
21 didn't hear your question.

22 JUDGE OBERMANN: Is there anything else

1 from Mr. Diner?

2 MR. HASFORD: Your Honor, this is Justin  
3 Hasford.

4 We have -- we have an agreement in place  
5 with Lupin on the -- one the 09, 7099 100 and 105  
6 IPR's to extend due dates 1, 2, 4 and 5. We're gonna  
7 get Your Honors that shortly. We have that draft to  
8 go over to Lupin so they can look at. Just so you  
9 all know that that's coming along the way.

10 JUDGE OBERMANN: I appreciate that.  
11 Do we have anything else from any party?

12 MR. DINER: Nothing more from Senju.

13 JUDGE OBERMANN: Okay. Anything from  
14 Innopharma?

15 MR. MALIK: No, Your Honor.

16 JUDGE OBERMANN: Okay. Anything from  
17 Lupin?

18 MS. YELLIN: No, Your Honor. Thank you.

19 JUDGE OBERMANN: Okay. Well, thank you,  
20 counsel, have a great day and this telephone call is  
21 adjourned. Thank you.

22 MR. DINER: Thank you.

1 MS. YELLIN: Thank you.

2 (Thereupon, the hearing was concluded at  
3 2:35 p.m., December 11, 2015.)

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1 CERTIFICATE OF REPORTER

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3 I, DONNA A. PETERSON, Notary Public in and  
4 for Washington, District of Columbia, the officer  
5 before whom the proceedings were taken, do hereby  
6 certify that the foregoing transcript is a true and  
7 accurate record of these proceedings; that said  
8 proceedings were taken in stenotype note by me on the  
9 11th day of December, 2015, commencing at 2:01 p.m.,  
10 and ending at 2:35 p.m.

11

12 I further certify that present on behalf  
13 of Party Innopharma were Jitendra Malik, Attorney at  
14 Law, and Hidetada James Abe, Attorney at Law, of  
15 Alston & Bird, LLP, and on behalf of Party Senju were  
16 Bryan Diner, Attorney at Law, Justin Hasford,  
17 Attorney at Law, Joshua Goldberg, Attorney at Law,  
18 Elizabeth Ferril, Attorney at Law, of Finnegan,  
19 Henderson, Farabow, Garrett & Dunner, LLP, and on  
20 behalf of Party Lupin were Deborah H. Yellin,  
21 Attorney at Law, and Jonathan Lindsay, Attorney at  
22 Law, of Crowell and Moring, LLP.



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1 Dated this 12th day of December, 2015, at  
2 Washington, District of Columbia.

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5 Donna A. Peterson

6 Notary Public

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