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**CONFIDENTIAL**  
**SUBJECT TO PROTECTIVE ORDER**

# Transcript of John Ferris

**Date:** November 2, 2022

**Case:** Slayback Pharma LLC -v- Eye Therapies LLC (PTAB)

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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

Slayback Exhibit 1051, Page 1 of 52  
Slayback v. Eye Therapies - IPR2022-00142

November 2, 2022

<p>1 UNITED STATES PATENT AND TRADEMARK OFFICE</p> <p>2 -----</p> <p>3 BEFORE THE PATENT TRIAL AND APPEAL BOARD</p> <p>4 -----X</p> <p>5 SLAYBACK PHARMA LLC, :</p> <p>6 Petitioner, : : Case No. 7 v. : IPR2022-00142 8 EYE THERAPIES LLC : U.S. Patent No. : 8,293,742</p> <p>9 Patent Owner :</p> <p>10 -----X</p> <p>11</p> <p>12 ** CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER **</p> <p>13 Deposition of John Ferris</p> <p>14 Newark, New Jersey</p> <p>15 Wednesday, November 2, 2022</p> <p>16 9:40 a.m.</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Job No.: 468947</p> <p>21 Pages 1-90</p> <p>22 Reported by: Angela (Angie) Shaw-Crockett, CRR, RMR</p>	<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF THE PETITIONER, SLAYBACK PHARMA</p> <p>3 LLC:</p> <p>4 LINNEA P. CIPRIANO, ESQUIRE</p> <p>5 Goodwin Procter LLP</p> <p>6 620 Eighth Avenue</p> <p>7 New York, New York 10018</p> <p>8 212-813-8800</p> <p>9 lcipriano@goodwinlaw.com</p> <p>10</p> <p>11 ON BEHALF OF THE PATENT OWNER, EYE THERAPIES</p> <p>12 LLC:</p> <p>13 CAITLIN O'CONNELL, ESQUIRE</p> <p>14 BRYAN DINER, ESQUIRE</p> <p>15 Finnegan, Henderson, Farabow, Garrett &amp;</p> <p>16 Dunner LLP</p> <p>17 901 New York Avenue NW</p> <p>18 Washington, District of Columbia 20001-4413</p> <p>19 202-408-4004</p> <p>20</p> <p>21 ALSO PRESENT: Kristi McIntyre, In-House Counsel</p> <p>22 Bausch Enrique Casas, The Videographer</p>
<p>1 Deposition of John Ferris, held at:</p> <p>2</p> <p>3</p> <p>4 Gibbons, P.C.</p> <p>5 One Gateway Center</p> <p>6 Newark, New Jersey 07102-5310</p> <p>7 973-596-4500</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 Pursuant to Notice, before Angela (Angie)</p> <p>13 Shaw-Crockett, CRR, RMR, Notary Public in and for the</p> <p>14 states of New York, New Jersey and Connecticut.</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 I N D E X</p> <p>2 Examination of: Page</p> <p>3 John Ferris</p> <p>4</p> <p>5 C O N T E N T S</p> <p>6 MS. CIPRIANO 6</p> <p>7</p> <p>8 E X H I B I T S</p> <p>9 (Retained by the court reporter)</p> <p>10 DEPOSITION EXHIBIT PAGE</p> <p>11 Exhibit 1045 Earnings Call Transcript 54</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 THE VIDEOGRAPHER: Here begins media  2 number 1 in the videotaped deposition of John Ferris  3 in the matter of Slayback Pharma LLC v. Eye Therapies  4 LLC in the United States Patent and Trademark Office,  5 case number IPR-2022-00142.  6 Today's date is November 2, 2022, the time  7 on the video monitor is 9:40 a.m. The videographer  8 today is Enrique Casas, representing Planet Depos.  9 This video deposition is taking place at One Gateway  10 Center, Newark, New Jersey, 07102.  11 Would counsel please voice identify  12 themselves and state whom they represent?  13 MS. CIPRIANO: Linnea Cipriano,  14 representing petitioner.  15 MS. O'CONNELL: Good morning. This is  16 Caitlin O'Connell from Finnegan, representing the  17 patent owner and the witness, and with me is my  18 colleague, Bryan Diner, also from Finnegan, and Kristi  19 McIntyre from Bausch.  20 THE VIDEOGRAPHER: The court reporter today  21 is Angie Shaw-Crockett, representing Planet Depos.  22 Would the reporter please swear in the</p>	<p>1 company?  2 <b>A Yes, I was.</b>  3 Q So this will likely -- since it wasn't  4 virtual, obviously, in your last deposition, this will  5 likely go along the same lines as your last  6 deposition, but I'd like to go over some ground rules.  7 <b>A Okay.</b>  8 Q I'll be asking you questions today, and  9 your answers are going to be recorded by the court  10 reporter. I will try not to speak over you. I ask  11 that you try not to speak over me, so we make her life  12 a little bit easier. Your answers today will be under  13 oath as if you were testifying in court.  14 Do you understand that?  15 <b>A Yes.</b>  16 Q Is there any reason that you can't answer  17 my questions today truthfully and fully?  18 <b>A No.</b>  19 Q During the course of the deposition, your  20 counsel may make objections, but unless you've been  21 instructed not to answer, you'll need to answer my  22 questions.</p>
6	8
<p>1 witness.  2 John Ferris, having been duly REMOTELY sworn,  3 testified as follows:  4 EXAMINATION  5 BY MS. CIPRIANO:  6 Q Good morning.  7 <b>A Good morning.</b>  8 Q As I said, my name is Linnea. I'll be  9 asking you questions today.  10 Could you please state your name for the  11 record?  12 <b>A Sure. My name is John Ferris.</b>  13 Q Have you ever been deposed before?  14 <b>A I have.</b>  15 Q About how many times?  16 <b>A One time.</b>  17 Q And when was that?  18 <b>A That was about eight years ago.</b>  19 Q Was that in your position at Bausch?  20 <b>A It was at Bausch but in a different</b>  21 <b>position.</b>  22 Q Okay. Were you testifying on behalf of the</p>	<p>1 Do you understand that?  2 <b>A Yes.</b>  3 Q If you don't understand my questions, I ask  4 that you ask me to clarify. I'll do my best. I'm  5 sure I'll have some questions that are not the best,  6 but just ask me to clarify.  7 If you answer my question, I'm going to  8 assume that you understood it; is that fair?  9 <b>A Yes.</b>  10 Q We'll take breaks from time to time.  11 Please let me know if you need a break. But I do ask  12 that we finish a question and answer before we take a  13 break.  14 Does that make sense?  15 <b>A Yes, that's fine.</b>  16 Q And you understand that while I am asking  17 questions, you are not permitted to discuss the  18 substance of your testimony with your attorneys.  19 Do you understand that?  20 <b>A Yes.</b>  21 Q Did you prepare for today's deposition?  22 <b>A Yes.</b></p>

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<p>1 Q And at a high level, what did you do to 2 prepare?</p> <p>3 A I reviewed my declaration and had some 4 meetings yesterday with my lawyers.</p> <p>5 Q Did you speak with anyone besides lawyers 6 about your deposition?</p> <p>7 A No.</p> <p>8 Q About how long did you prepare?</p> <p>9 A About five hours.</p> <p>10 Q Did you review documents other than your 11 declaration in preparation for this deposition?</p> <p>12 A I reviewed the one market research study 13 that was submitted along with my declaration, the 14 Ipsos.</p> <p>15 Q Okay. Do you recall any other documents?</p> <p>16 A No.</p> <p>17 Q Let's -- I'm going to hand you -- the court 18 reporter is going to hand you a copy your declaration, 19 which is Exhibit 2023 in the IPR.</p> <p>20 A Okay.</p> <p>21 Q Do you recognize this as the declaration 22 that you prepared in connection with IPR2022-00142?</p>	<p>1 responsibilities?</p> <p>2 A So I'm primarily responsible for leading 3 the commercial organization for our consumer health 4 care products.</p> <p>5 Q Other than Lumify, what products does that 6 cover?</p> <p>7 A It includes many products around the globe, 8 but some of them are our eye vitamin business, 9 PreserVision and OcuVite eye vitamins. 10 (Reporter requests clarification.)</p> <p>11 A PreserVision and OcuVite are two of the 12 brand names, our contact lens solution business, other 13 OTC eye drops.</p> <p>14 BY MS. CIPRIANO:</p> <p>15 Q So your declaration sets forth information 16 based on your personal knowledge about Bausch's 17 marketing and commercial efforts related to Lumify, 18 correct?</p> <p>19 A Yes.</p> <p>20 Q And you're not providing any testimony in 21 this case as an expert, right?</p> <p>22 MS. O'CONNELL: Objection, vague.</p>
10	12
<p>1 A Yes, I do.</p> <p>2 Q And at a high level, how did you prepare 3 your declaration?</p> <p>4 A So it was a collaborative process within 5 Bausch, with our legal team and with some of the 6 content owners, market research, and other groups.</p> <p>7 Q What do you mean by "content owners"?</p> <p>8 A So, for example, a market research study, 9 I'm not considered the content owner of that at 10 Bausch--Lomb. So the market research department 11 would be. So if we asked for a market research study, 12 they are the ones who would provide that.</p> <p>13 Q Did you draft the words in the document?</p> <p>14 A I drafted many of the words in the 15 document. I did not type the entire document.</p> <p>16 Q Are there any corrections that you'd like 17 to make in your declaration?</p> <p>18 A At this time, no.</p> <p>19 Q What is your current title?</p> <p>20 A I am the senior vice president for the 21 global consumer health business at Bausch--Lomb.</p> <p>22 Q And in your role, what are your</p>	<p>1 A Can you clarify what you mean by "expert"?</p> <p>2 BY MS. CIPRIANO:</p> <p>3 Q Sure.</p> <p>4 Are you an expert economist?</p> <p>5 A I'm not, but I have an M.B.A.</p> <p>6 Q And you're not providing -- you're not 7 holding yourself out as an expert in this case as an 8 economist, right?</p> <p>9 A As an economist, no. As a person very 10 familiar with and understanding of the marketing and 11 commercialization of OTC nonprescription products like 12 Lumify, yes.</p> <p>13 Q You're not an ophthalmologist?</p> <p>14 A I'm not an ophthalmologist.</p> <p>15 Q You're not a chemist?</p> <p>16 A I'm not a chemist.</p> <p>17 Q You're not an expert in the formulation of 18 eye drops?</p> <p>19 A I'm not an expert in the formulation of 20 eye drops.</p> <p>21 Q Your role in this case is not as an expert 22 in marketing, overall, right?</p>

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<p>13</p> <p>1 MS. O'CONNELL: Objection, vague.</p> <p>2 A Can you clarify what you mean by "expert in</p> <p>3 marketing," please?</p> <p>4 BY MS. CIPRIANO:</p> <p>5 Q All of the information that you are</p> <p>6 providing is based on what you know in your job at</p> <p>7 Bausch, correct?</p> <p>8 A And through my career, which includes</p> <p>9 20 years of marketing -- direct marketing experience.</p> <p>10 So I do believe I have significant expertise in the</p> <p>11 field of marketing, especially as related to OTC</p> <p>12 health care products.</p> <p>13 Q Is the information in your declaration</p> <p>14 based on your opinions about the market -- the</p> <p>15 marketing of OTC health care products?</p> <p>16 MS. O'CONNELL: Objection, vague.</p> <p>17 A No. I would not say it's based on my</p> <p>18 opinion. It's based on my knowledge and expertise,</p> <p>19 both directly with this product and then, again, over</p> <p>20 20-plus years of experience directly marketing,</p> <p>21 including official roles in marketing, vice president</p> <p>22 of marketing, product manager, et cetera.</p>	<p>15</p> <p>1 BY MS. CIPRIANO:</p> <p>2 Q In publications in the scientific</p> <p>3 literature.</p> <p>4 Are you aware that low-dose brimonidine has</p> <p>5 been discussed in the scientific literature?</p> <p>6 MS. O'CONNELL: Same objections.</p> <p>7 A So I'm not well-versed in all of the</p> <p>8 scientific literature. And no, I'm not specifically</p> <p>9 aware of that.</p> <p>10 BY MS. CIPRIANO:</p> <p>11 Q Okay. And you didn't search for that when</p> <p>12 you were preparing your declaration, right?</p> <p>13 A No, I did not.</p> <p>14 Q So this comparison in paragraph 5 of your</p> <p>15 declaration is not comparing Lumify with any known</p> <p>16 redness reliever, just the commercially available</p> <p>17 redness relievers, right?</p> <p>18 MS. O'CONNELL: Objection, vague.</p> <p>19 A Yes. And -- and as understood as eye</p> <p>20 doctors and what they are currently recommending or</p> <p>21 prescribing to their patients, yes.</p> <p>22</p>
<p>14</p> <p>1 BY MS. CIPRIANO:</p> <p>2 Q Okay. Let's turn to paragraph 5 in your</p> <p>3 declaration.</p> <p>4 A (Witness complies.)</p> <p>5 Q So at the end of paragraph 5, here you</p> <p>6 state that -- the last paragraph, or the last sentence</p> <p>7 in paragraph 5, "It is backed by multiple clinical</p> <p>8 trials with hundreds of patients and works differently</p> <p>9 than other redness relievers."</p> <p>10 Do you see that?</p> <p>11 A Yes, I do.</p> <p>12 Q The "other redness relievers" that you were</p> <p>13 referring to in this paragraph are other commercially</p> <p>14 available redness relievers, right?</p> <p>15 A That is correct.</p> <p>16 Q Are you aware that formulations of low-dose</p> <p>17 brimonidine other than Lumify have been described in</p> <p>18 the literature?</p> <p>19 MS. O'CONNELL: Objection. Outside the</p> <p>20 scope, vague.</p> <p>21 A Can you clarify what literature you're</p> <p>22 referring to?</p>	<p>16</p> <p>1 BY MS. CIPRIANO:</p> <p>2 Q And those would be the commercially</p> <p>3 available drops, right?</p> <p>4 MS. O'CONNELL: Same objection.</p> <p>5 A It would include commercially available</p> <p>6 drops. I would -- you know, doctors always have the</p> <p>7 right to prescribe any product they want for any</p> <p>8 purpose, off-label. So, you know, when we use that</p> <p>9 term with -- you know, within Bausch -- and you'll see</p> <p>10 it in many of the marketing materials -- it's in the</p> <p>11 context of, yes, approved products in the marketplace,</p> <p>12 but, you know, doctors, I think, understand it to be</p> <p>13 there are other options as well.</p> <p>14 BY MS. CIPRIANO:</p> <p>15 Q And the last phrase of that sentence we</p> <p>16 were just talking about "works differently than other</p> <p>17 redness relievers," what is your understanding about</p> <p>18 why Lumify works differently than other redness</p> <p>19 relievers?</p> <p>20 MS. O'CONNELL: Objection to the extent it</p> <p>21 calls for expert testimony or it's outside the scope</p> <p>22 of his declaration.</p>

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