

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SLAYBACK PHARMA LLC,  
Petitioner,

v.

EYE THERAPIES, LLC,  
Patent Owner.

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IPR2022-00142  
Patent 8,293,742 B2

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Before TINA E. HULSE, ROBERT A. POLLOCK, and RYAN H. FLAX,  
*Administrative Patent Judges.*

HULSE, *Administrative Patent Judge.*

ORDER  
*Conduct of the Proceeding*  
37 C.F.R. § 42.5

On February 27, 2023, oral argument was held in this proceeding. After the hearing, the panel has decided further briefing would be helpful on the following issues:

1. Should the preamble of the claims, “A method for reducing eye redness,” be construed as limited to a “statement of the intentional purpose for which the method must be performed,” *see Jansen v. Rexall Sundown, Inc.*, 342 F.3d 1329, 1333 (Fed. Cir. 2003), and, if so, what impact does that construction have on inherent anticipation?
2. What impact does the transitional phrase “consisting essentially of” have on the claims? Is there a temporal aspect to the term (e.g., for drugs that are administered before or after brimonidine, but not together)? Is there an intent aspect to the term (e.g., for drugs that are administered for a different purpose)?

In addition to the claim construction issues above, the parties may address the impact of either or both of these issues on the substantive grounds of this proceeding. However, no additional evidence shall be permitted without prior authorization from the Board.

#### ORDER

Accordingly, it is

ORDERED that the parties shall file simultaneous opening briefs on the issues set forth in this Order by no later than 5 p.m. ET on March 20, 2023;

FURTHER ORDERED that the opening briefs shall be no longer than 15 pages;

FURTHER ORDERED that the parties may file simultaneous responsive briefs by no later than 5 p.m. ET on March 27, 2023;

FURTHER ORDERED that the responsive briefs shall be no longer than 10

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pages; and

FURTHER ORDERED that no additional evidence shall be permitted with any briefing without prior authorization from the Board.

FOR PETITIONER:

Linnea P. Cipriano  
Louis H. Weinstein  
Patrick G. Pollard  
WINDELS MARX LANE & MITTENDORF, LLP  
lcipriano@goodwinlaw.com  
lweinstein@windelsmarx.com  
ppollard@windelsmarx.com

FOR PATENT OWNER:

Bryan C. Diner  
Justin J. Hasford  
Caitlin E. O'Connell  
Christina Ji-Hye Yang  
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, L.L.P.  
bryan.diner@finnegan.com  
justin.hasford@finnegan.com  
caitlin.o'connell@finnegan.com  
christina.yang@finnegan.com