

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLAYBACK PHARMA LLC,

Petitioner,

v.

EYE THERAPIES, LLC,

Patent Owner.

Case IPR2022-00142
U.S. Patent No. 8,293,742

DECLARATION OF JOHN FERRIS

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I, John Ferris, declare as follows:

I. INTRODUCTION

1. I have been asked to submit this declaration on behalf of Bausch's partner, Eye Therapies, LLC ("Eye Therapies" or "Patent Owner"), which I understand is being submitted in support of the Patent Owner's Response in connection with IPR2022-00142.

2. I have personal knowledge of the facts set forth herein.

3. I am currently Senior Vice President, Global Consumer within the Bausch + Lomb family of companies ("Bausch"). My employment at Bausch began in 2011 in a role related to marketing of over-the-counter (OTC) eye vitamins. Over the years, I have held various roles and titles, with my current responsibilities starting in January 2022. Prior to joining Bausch, I held marketing, sales, and commercial leadership positions of increasing responsibility over 15 years with Wyeth Consumer Health and Pharmaceuticals and Becton Dickinson.

4. In my capacity of SVP, I have 6 direct reports, with a total of 1,100 total reports. I oversee all marketing and commercial efforts related to Lumify and have responsibility for the same. In this capacity, I have personal knowledge related to Lumify-related finances, marketing, sales, and promotional material, among other things. For example, I have actively participated in meetings of the Bausch

promotional review committee (“PRC”)¹ for products within my responsibility, such as Lumify eye drops.

II. DISCUSSION

A. Lumify Is a #1 Doctor Recommended and Award-Winning Brand

5. Lumify (brimonidine tartrate ophthalmic solution, 0.025%) is the first and only OTC eye drop developed with low-dose brimonidine tartrate for the treatment of ocular redness due to minor eye irritation. It is backed by multiple clinical trials with hundreds of patients, and works differently than other redness relievers.

6. Lumify’s success speaks for itself: It is the #1 doctor recommended redness relieving drop, and has received multiple awards and recognitions since launch, including:

- 2018:
 - The Zoe Report: Best Affordable Beauty Winner
 - New You: The Eyes Have It
 - NACDS Product of the Year
- 2019:
 - Brides: The Best of Beauty (Eyes)
 - New Beauty: Best Innovations

█ [REDACTED]

[REDACTED]

[REDACTED]

- 2020: “Superstar” category of Nielsen BASES’ Top 25 Breakthrough Innovations List.
- 2021: Into the Gloss: Top 25: Cheap Thrills
- 2022:
 - New Beauty Magazine Beauty Awards: “Never Knew We Needed”
 - Glamour: “Best Beauty Innovators of 2022”

(See EX-2100, EX-2101, EX-2114, EX-2125, EX-2144, EX-2152, EX-2153, EX-2154, EX-2155.)

7. Lumify has been and continues to be a groundbreaking redness relieving option for a variety of patients, effectively setting a new standard of care in the field. Among Eye Care Professionals (ECPs), including Optometrists and Ophthalmologists, as stated above, Lumify very quickly became their #1 recommended brand of redness reliever. Prior to Lumify, existing redness relievers were known to have common side effects, which made ECPs hesitant to recommend them—in fact, *less than 10%* of ECPs recommended *any* redness relievers to their patients. Since the launch of Lumify, that number has grown to *50% of ECPs recommending redness relievers* with *85% of those recommendations being for Lumify*.

B. Lumify’s Commercial Strategy Centers on Redness Reduction Using Low-Dose Brimonidine

8. Since its launch, the commercial strategy for Lumify has consistently centered on the product’s unique ability to reduce eye redness, helping eyes look

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