

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
Patent 8,293,742

DECLARATION OF JOHN C. JAROSZ

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I, John C. Jarosz, hereby declare:

I. INTRODUCTION

A. Assignment

1. I have been retained as an expert on behalf of Eye Therapies, LLC (“Eye Therapies” or “Patent Owner”) as well as Bausch & Lomb, Inc. and Bausch & Lomb Ireland Limited (collectively, “Bausch & Lomb”) in connection with the above-captioned *inter partes* review (“IPR”) proceeding before the U.S. Patent and Trademark Office Patent Trial and Appeal Board (“PTAB”).
2. I understand that this IPR proceeding concerns claims 1–6 of U.S. Patent No. 8,293,742 B2 (“the ’742 patent”). (EX-1001.) I understand that the Lumify (brimonidine tartrate ophthalmic solution, 0.025%) product that Bausch & Lomb markets and sells in the U.S is an embodiment of certain claims of the ’742 patent. (EX-2020, ¶¶266, 301, 311; Patent Owner’s Preliminary Response (IPR2022-00142) at 31-32.)
3. I understand that the PTAB has instituted a trial in response to Slayback Pharma LLC’s (“Slayback”) petition. I have been asked by counsel for Patent Owner and Bausch & Lomb to assess whether Lumify has been a marketplace success, and whether such success is attributable to the inventions claimed in the ’742 patent. According to Dr. Robert J. Noecker (“Dr. Noecker”), whose opinions I have reviewed and considered, the use of Lumify is covered by certain of the claims of the ’742 patent. Further, I understand that the ’742

patent is listed in the U.S. Food and Drug Administration's ("FDA's") Orange Book in connection with Lumify. (EX-2079.)

4. This declaration summarizes the opinions that I have formed to date. I may modify or supplement my opinions, if necessary and allowed, based on my review and analysis of information provided to me subsequent to the filing of this declaration.

B. Qualifications

5. I am a Managing Principal of Analysis Group, Inc. ("AG") and Director of the firm's Washington, DC office. AG is an economic, financial, strategy, and health care consulting firm with offices in Beijing, China; Boston, MA; Brussels, Belgium; Chicago, IL; Dallas, TX; Denver, CO; London, UK; Los Angeles, CA; Menlo Park, CA; Montreal, Quebec; New York, NY; Paris, France; San Francisco, CA; and Washington, DC. AG provides research and analysis in a variety of business, litigation, and regulatory settings.
6. I received my B.A. in Economics and Organizational Communications, *summa cum laude*, from Creighton University in Omaha, NE. Thereafter, I was a fellowship student in the Ph.D. program in Economics at Washington University in St. Louis, MO. I completed most of the degree requirements but left before finishing my Ph.D. degree. I ultimately was awarded an M.A. in Economics. I worked for some period after that and then enrolled in law

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