UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLAYBACK PHARMA LLC

Petitioner

v.

EYE THERAPIES LLC

Patent Owner

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

PETITIONER'S OBJECTIONS TO PATENT OWNER'S EVIDENCE SUBMITTED WITH PATENT OWNER'S RESPONSE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Slayback Pharma LLC ("Petitioner") objects to the admissibility of the following evidence filed by Patent Owner Eye Therapies LLC ("Patent Owner") on August 29, 2022, with its Patent Owner's Response.

Petitioner's objections are timely under 37 C.F.R. § 42.64(b)(1) because they are being filed and served within five business days of the filing of Patent Owner's Response. Petitioner's objections provide notice to Patent Owner that Petitioner may move to exclude these exhibits under 37 C.F.R. § 42.64(c).

In this Paper, objection "R" is for lack of relevance or causing undue prejudice, pursuant to Federal Rules of Evidence ("FRE") 401, 402, and/or 403.

In this Paper, Petitioner's objections to Patent Owner's exhibits for hearsay ("H"), pursuant to FRE 802, apply to the extent Patent Owner seeks to rely on such exhibits for the truth of any matters stated in such exhibits and do not fall into any hearsay exception.

In this Paper, objection "A" is for lack of authenticity, pursuant to FRE 901.

In this Paper, objection "F" is for lack of foundation, pursuant to FRE 602.

In this Paper, objection "I" is for improper expert testimony, pursuant to FRE 701, 702, and/or 703.

In this Paper, objection "L" is for calling for a legal conclusion.

In this Paper, objection "NP" reflects that the exhibit was not published or

publicly available prior to the earliest filing date of the challenged patent, and therefore cannot be considered prior art. Petitioner objects to these exhibits to the extent Patent Owner relies on them for the knowledge of a POSA.

Exhibit descriptions provided in the below table are taken from Patent Owner's Updated Exhibit List and are used for identification purposes only. Petitioner's use of Patent Owner's exhibit descriptions does not indicate that Petitioner agrees with Patent Owner's descriptions or any other characterizations of such exhibits.

OBJECTIONS

Exhibit	Description	Objections
2001	*Bausch & Lomb, Inc., et al.* v. *Slayback Pharma LLC, et al.* , C.A. 21-16766 (D.N.J.), Joint Discovery Plan submitted Feb. 3, 2022	R
2002	*Bausch & Lomb, Inc., et al.* v. *Slayback Pharma LLC, et al.* , C.A. 21-16766 (D.N.J.), Defendants' First Set of Requests for Production to Plaintiffs Nos. 1-2 served on Dec. 29, 2021	R
2003	*Bausch & Lomb, Inc., et al.* v. *Slayback Pharma LLC, et al.* , C.A. 21-16766 (D.N.J.), ECF No. 15, Scheduling Order signed by the Honorable Douglas E. Arpert, U.S.M.J. on Feb. 15, 2022	R
2004	*Bausch & Lomb, Inc., et al.* v. *Slayback Pharma LLC, et al.* , C.A. 21-16766 (D.N.J.), ECF No. 11, Order Setting the Initial Scheduling Conference dated Dec. 15, 2021	R
2005	Notice of Paragraph IV Certification Re: Slayback Pharma LLC's Brimondine Tartrate Ophthalmic Solution, 0.025%, U.S. Patent Nos. 8,293,742 and 9,259,425 dated Aug. 13, 2021	R
2006	*Bausch & Lomb, Inc., et al.* v. *Slayback Pharma LLC, et al.* , C.A. 21-16766 (D.N.J.), ECF No. 1, Complaint for Patent Infringement filed Sept. 10, 2021	R, H
2007	Louis B. Cantor, "Brimondine in the treatment of glaucoma and ocular hypertension," Therapeutics & Clinical Risk Mgmt., 2(4):337-346 (2006)	
2008	U.S. Patent No. 6,982,079 B2, Compositions For Treating Hyperemia	
2009	Ji Hoon Lee, et al., "Efficacy of brimonidine tartrate 0.2% ophthalmic solution in reducing halos after laser in situ keratomileusis," J. of	

	Cataract & Refractive Surgery, 34:963-967 (2008)	
2010	U.S. Patent No. 5,021,416, Method for Using (2-Imidazolin-2-Ylamino) Quinoxalines to Reduce or Maintain Intraocular Pressure	
2011	Press Release, "New Survey From Bausch + Lomb and Glaucoma Research Foundation Reveals Emotional and Social Impact of Hyperemia on Glaucoma Patients" (Jan. 4, 2022), https://www.bausch.com/our-company/recentnews/artmid/11336/articleid/683	R, H, A, NP
2012	Alphagan® (brimonidine tartrate ophthalmic solution) 0.5% and 0.2%, Alphagan® P (brimonidine tartrate ophthalmic solution) 0.15%, Highlights of Prescribing Information (Dec. 20, 2001)	
2013	Visine-A Label (June 14, 2002)	H, A
2014	Alphagan® P (brimonidine tartrate ophthalmic solution) 0.1 % and 0 .15%, Highlights of Prescribing Information (Aug. 19, 2005)	
2015	Alphagan™ (brimonidine tartrate ophthalmic solution) 0.2% Sterile, Approval Letter (Sept. 6, 1996)	
2016	Drugs@FDA Approved Drug Information, Alphagan 0.5%, https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm?event=overview.process&ApplNo=020490	R, H, A
2017	Drugs@FDA Approved Drug Information, Alphagan 0.15%, https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm?event=overview.process&ApplNo=021262	R, H, A
2018	Press Release, “Allergan to focus on Alphagan-P, discontinue Alphagan (July 8, 2002),	R, H, A

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