

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

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

**DECLARATION OF NEAL A. SHER, MD, FACS
IN SUPPORT OF PETITIONER'S REPLY**

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I. INTRODUCTION

1. I am the same Neal A. Sher, M.D., who submitted the Declaration of Neal A. Sher, MD, FACS (EX-1002, “Opening Declaration”) dated November 4, 2021, in support of Petitioner’s petition for *inter partes* review of U.S. Patent No. 8,293,742 (EX-1001, “the ’742 patent”). I understand that the Board has instituted *inter partes* review of claims 1–6 of the ’742 patent and that Patent Owner has filed a Patent Owner’s Response (“POR”), together with the Declaration of Robert J. Noecker, MD, MBA (EX-2020, “the Noecker Declaration”) in support of the POR. I submit this reply expert declaration in support of Petitioner’s reply to the POR and to respond to the Noecker Declaration.

2. I provided in my Opening Declaration the details of my compensation for my work on this matter. My compensation is not contingent upon, and in no way related to, the outcome of this litigation or the testimony that I give.

3. I also provided in my Opening Declaration a summary of my qualifications and background, including my education and experience, as well as a copy of my *curriculum vitae*.

4. I discussed in my Opening Declaration my understanding of the relevant legal standards as provided by counsel. My understanding of these legal standards has not changed since I submitted my Opening Declaration.

II. MATERIALS CONSIDERED

5. In preparing this reply declaration, I considered the Board's Institution Decision, the POR, the Noecker Declaration and materials cited therein, and the materials identified in this reply declaration. I have listed the materials I considered in **Exhibit C** to this reply declaration. I also considered my Opening Declaration and the materials listed in Exhibit B to my Opening Declaration.

III. PERSON OF ORDINARY SKILL IN THE ART

6. In paragraph 26 of my Opening Declaration, I provided my opinion regarding the qualifications of the person of ordinary skill in the art ("POSA") with respect to the '742 patent. In paragraph 31 of his declaration, Dr. Noecker provides a definition the POSA, which differs from mine in that Dr. Noecker's POSA appears to be less skilled. Although I disagree with Dr. Noecker's definition, my opinions expressed in my Opening Declaration and in this reply declaration would not change if Dr. Noecker's definition were applied.

IV. CLAIM CONSTRUCTION

A. **There Is No Clinical Difference Between "About 0.025%" and "0.03%" Brimonidine**

7. In my Opening Declaration, I relied on Dr. Laskar's opinion that "about 0.025%" as recited in claims 2 and 3 of the '742 patent includes "0.03%." Opening Declaration (EX-1002) ¶ 45 (citing Laskar Declaration (EX-1003) ¶ 73). In his declaration, Dr. Noecker opines that "about 0.025%" does not include "0.03%" in

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