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Transcript of John Jarosz

Date: November 11, 2022

Case: Slayback Pharma LLC -v- Eye Therapies LLC (PTAB)

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<p>1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 ----- 3 BEFORE THE PATENT TRIAL AND APPEAL BOARD 4 ----- 5 SLAYBACK PHARMA LLC, 6 Petitioner, 7 v. 8 EYE THERAPIES, LLC, 9 Patent Owner. 10 ----- 11 Case IPR2022-00142 12 Patent 8,293,742 13 ----- 14 Deposition of JOHN JAROSZ 15 Conducted Remotely 16 Friday, November 11, 2022 17 9:06 a.m. 18 19 20 Job No.: 468949 21 Pages: 1-111 22 Reported by: Matthew Goldstein, RMR, CRR</p>	<p>1 A P P E A R A N C E S 2 ON BEHALF OF THE PETITIONER, SLAYBACK PHARMA, 3 LLC: 4 ROBERT FREDERICKSON, ESQUIRE 5 CHRISTOPHER CASSELLA, ESQUIRE 6 GOODWIN PROCTER, LLP 7 100 Northern Avenue 8 Boston, Massachusetts 02210 9 617.570.1947 10 11 ON BEHALF OF THE PATENT OWNER, EYE THERAPIES, 12 LLC: 13 JUSTIN J. HASFORD, ESQUIRE 14 FINNEGAN HENDERSON FARABOW GARRETT & DUNNER, 15 LLP 16 901 New York Avenue, NW 17 Washington, D.C. 20001 18 202.408.4175 19 20 ALSO PRESENT: 21 EMILY DUNN - REMOTE TECHNICIAN 22 KYLAN BARRY - VIDEOGRAPHER</p>
<p>1 Deposition of JOHN JAROSZ, conducted 2 remotely: 3 4 5 6 7 8 9 Pursuant to Notice, before Matthew Goldstein, 10 RMR, CRR, Notary Public in and for the State of 11 Maryland. 12 13 14 15 16 17 18 19 20 21 22</p>	<p>1 C O N T E N T S 2 EXAMINATION OF JOHN JAROSZ PAGE 3 4 By MR. FREDERICKSON 7 5 By MR. HASFORD 105 6 E X H I B I T S 7 (Attached) 8 JAROSZ DEPOSITION EXHIBIT PAGE 9 Exhibit 1001 United States Patent No. 27 10 8,293,742 B2 11 Exhibit 2023 Declaration of John Ferris 46 12 Exhibit 2024 Declaration of John C. Jarosz 9 13 Exhibit 2043 Measuring the Informative and 88 14 Persuasive Roles of Detailing on Prescribing Decisions 15 Exhibit 2045 New Product Pacesetters 75 16 Innovation Before the "New Normal" Slide Deck 17 Exhibit 2068 Bausch+Lomb 1Q22 Financial 52 18 Results Slide Deck 19 Exhibit 2125 Nielsen's BASES Names LUMIFY® 93 20 Eye Drops To 2020 U.S. BASES 21 Top 25 Breakthrough Innovations 22 List</p>

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<p>1 THE REMOTE TECHNICIAN: Thank you to 2 everyone for attending this proceeding remotely 3 which we anticipate will run smoothly. And please 4 remember to speak slowly and do your best not to 5 talk over one another. And please be aware that 6 we are recording this proceeding for backup 7 purposes. 8 Any off-the-record discussions should be 9 had away from the computer. And please remember 10 to mute your mic for those conversations. Please 11 have your video enabled to help the reporter 12 identify who is speaking. If you are unable to 13 connect with video and are connecting via phone, 14 please identify yourself each time before 15 speaking. 16 I apologize in advance for any 17 technical-related interruptions. 18 Thank you. 19 THE VIDEOGRAPHER: Please stand by for 20 video. 21 Here begins Media No. 1 in the 22 videotaped deposition of John C. Jarosz, in the</p>	<p>1 PROCEEDINGS 2 Whereupon, 3 JOHN JAROSZ, 4 being first duly sworn or affirmed to testify to 5 the truth, the whole truth, and nothing but the 6 truth, was examined and testified as follows: 7 EXAMINATION BY COUNSEL FOR THE PETITIONER 8 BY MR. FREDERICKSON: 9 Q. Thank you. 10 Good morning, Mr. Jarosz. 11 A. Good morning. 12 Q. Have you been deposed before? 13 A. In other matters, yes. 14 Q. Approximately how many times? 15 A. Approximately 300 times over the years. 16 Q. Have you been deposed remotely before? 17 A. Yes. 18 Q. Okay. So you're familiar with the new 19 normal in the remote deposition world. And I'm 20 sure you're familiar with the ground rules of the 21 deposition. But if you have any questions, please 22 let me know, about the process or the procedure.</p>
6	8
<p>1 matter of Slayback Pharma LLC versus Eye Therapies 2 LLC, Case No. IPR 2022-00142. 3 Today's date is November 11th, 2022. 4 The time on the video monitor is 9:06 a.m. 5 The remote videographer today is Kylan 6 Barry, representing Planet Depos. 7 All parties of this video deposition are 8 attending remotely. 9 Would counsel please voice identify 10 themselves and state whom they represent. 11 MR. FREDERICKSON: Robert Frederickson 12 from Goodwin Procter representing the petitioner, 13 Slayback Pharma LLC. Also on the line is 14 Christopher Cassella from Goodwin Procter, as 15 well. 16 MR. HASFORD: Justin Hasford of Finnegan 17 on behalf of patent owner. 18 THE VIDEOGRAPHER: The court reporter 19 today is Matthew Goldstein, representing Planet 20 Depos. 21 Would the reporter please swear in the 22 witness.</p>	<p>1 A. I'm not sure if there's a question, but 2 I think I understand the process. 3 Q. Okay. Just because I'm not in the room 4 with you, can you let me know who else is present 5 in the room with you? 6 A. Justin Hasford. 7 Q. Anyone else? 8 A. No. 9 Q. I see you have a piece of paper in front 10 of you. I think we discussed off the record that 11 that's a copy of your declaration in this 12 proceeding; is that correct? 13 A. Yes, except it's not one piece of paper. 14 It's a copy of my declaration and appendices. 15 Q. Okay. Is there any notations or marking 16 in that document? 17 A. You can see that I'm just looking at it 18 very quickly, but there do not appear to be any 19 notations. 20 Q. Great. 21 And can you confirm that what you're 22 looking at is Exhibit 2024, the declaration of</p>

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9	<p>1 John C. Jarosz?</p> <p>2 A. That appears to be the case, yes.</p> <p>3 (Jarosz Deposition Exhibit 2024 was</p> <p>4 marked for identification and attached to the</p> <p>5 transcript.)</p> <p>6 BY MR. FREDERICKSON:</p> <p>7 Q. You understand that during the course of</p> <p>8 the deposition, particularly when we're on the</p> <p>9 record, like the court reporter is transcribing</p> <p>10 and I'm asking questions, you're not to</p> <p>11 communicate by anyone through any means that</p> <p>12 wouldn't be perceivable to me.</p> <p>13 Do you understand that?</p> <p>14 A. Yes.</p> <p>15 Q. And if someone does try to communicate</p> <p>16 with you via in the room that I can't see or via</p> <p>17 any electronic messages, will you let me know?</p> <p>18 A. Yes.</p> <p>19 Q. Great.</p> <p>20 When were you first retained to submit</p> <p>21 an expert declaration in this matter?</p> <p>22 A. Our firm was first retained to do an</p>	11	<p>1 about March. It could have been earlier than</p> <p>2 that. It might have been later than that.</p> <p>3 Q. Who wrote Exhibit 2024?</p> <p>4 A. I did in the sense that I was</p> <p>5 supervising and responsible for everything in it.</p> <p>6 I worked with a colleague or two of mine in doing</p> <p>7 the prose of the report and the underlying</p> <p>8 analysis.</p> <p>9 Q. Who are those colleagues?</p> <p>10 A. The one that comes to mind right now is</p> <p>11 Yao Lu. I think also involved was Su Jin Kim.</p> <p>12 And it's possible Jonas Blomberger was involved.</p> <p>13 Q. What was Yao Lu's role in drafting</p> <p>14 Exhibit 2024?</p> <p>15 A. She had responsibility for undertaking</p> <p>16 the analysis here. So her role was to</p> <p>17 conceptualize and oversee all the analyses and</p> <p>18 summaries of our conclusions.</p> <p>19 Q. What was Su Jin Kim's role in preparing</p> <p>20 Exhibit 2024?</p> <p>21 A. She's less senior than Yao Lu is. And</p> <p>22 she was involved in looking at much of the</p>
10	<p>1 analysis on commercial success issues some number</p> <p>2 of months ago. I've lost track of how many months</p> <p>3 ago, but my best current estimate was that it was</p> <p>4 six months ago, give or take two months. I could</p> <p>5 be wrong, however.</p> <p>6 Q. Would you say that it could have been as</p> <p>7 early as March 2022 and as late as July of 2022?</p> <p>8 MR. HASFORD: Object to the extent it</p> <p>9 mischaracterizes the witness' testimony.</p> <p>10 THE WITNESS: March 2022 is six months</p> <p>11 ago. It could have been more than that, in other</p> <p>12 words, earlier than that in time.</p> <p>13 BY MR. FREDERICKSON:</p> <p>14 Q. If you look at the last page of your</p> <p>15 declaration, page 66 of the text, you'll see that</p> <p>16 it's dated August 26th, 2022.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. How much in advance of August 26th,</p> <p>20 2022, were you retained to offer an expert</p> <p>21 declaration in this matter?</p> <p>22 A. As I said a few moments ago, it was in</p>	12	<p>1 underlying information assisting with the report</p> <p>2 production and probably having more day-to-day</p> <p>3 responsibility for the construction of the</p> <p>4 appendices.</p> <p>5 Q. I might have written down his last name</p> <p>6 wrong, but what was Jonas Bloomberg's role?</p> <p>7 A. Jonas Blomberger. His role was very</p> <p>8 similar to Su Jin Kim's. I would probably use the</p> <p>9 same words to the extent that he was involved.</p> <p>10 And I'm right now not clear who spent more time,</p> <p>11 whether it was Su Jin Kim or Jonas Blomberger.</p> <p>12 Q. Other than those three people that</p> <p>13 you -- those three people, are they all employees</p> <p>14 of Analysis Group?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Other than those three employees</p> <p>17 of Analysis Group, did anyone else contribute to</p> <p>18 the drafting of Exhibit 2024?</p> <p>19 A. Well, there were people that were</p> <p>20 involved in constructing the appendices and doing</p> <p>21 checks of the prose of the report. I don't think</p> <p>22 those people were as intimately involved in</p>

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<p style="text-align: right;">13</p> <p>1 helping draft the prose of the report.</p> <p>2 Q. What about individuals not employed by</p> <p>3 Analysis Group, were there any individuals that</p> <p>4 contributed to the drafting of the declaration</p> <p>5 other than employees of Analysis Group?</p> <p>6 A. I think there were people at Finnegan</p> <p>7 Henderson who took a look at some drafts and</p> <p>8 helped us with understanding if there was a</p> <p>9 misunderstanding we had of any of the facts. It's</p> <p>10 possible that one or more people at Bausch+Lomb</p> <p>11 looked at it for similar reasons.</p> <p>12 Q. Other than attorneys employed by</p> <p>13 Finnegan and individuals employed by Analysis</p> <p>14 Group, did you speak with anyone else in the</p> <p>15 preparation of your declaration?</p> <p>16 A. Yes.</p> <p>17 Q. Who did you speak with?</p> <p>18 A. Ms. Kristi McIntyre.</p> <p>19 Q. Who is Kristi McIntyre?</p> <p>20 A. She's in-house counsel at Bausch+Lomb.</p> <p>21 I forget the precise entity. I don't know her</p> <p>22 precise title.</p>	<p style="text-align: right;">15</p> <p>1 MR. HASFORD: Same caution.</p> <p>2 THE WITNESS: I don't have anything in</p> <p>3 particular in mind.</p> <p>4 BY MR. FREDERICKSON:</p> <p>5 Q. What about underlying data, what</p> <p>6 underlying data did you seek further understanding</p> <p>7 of?</p> <p>8 MR. HASFORD: Same caution.</p> <p>9 THE WITNESS: I think I can generally</p> <p>10 say it was sought to understand the IRI data and</p> <p>11 the difference between the point-of-sale and panel</p> <p>12 data. In the process of doing that, we might have</p> <p>13 had a conversation with somebody else at</p> <p>14 Bausch+Lomb to understand those data.</p> <p>15 BY MR. FREDERICKSON:</p> <p>16 Q. Do you know who that was?</p> <p>17 A. Sitting here right now, I don't recall.</p> <p>18 It's possible it was Mr. Ferris, but I'm not very</p> <p>19 confident of that. But it's possible.</p> <p>20 Q. Sitting here today, do you have a</p> <p>21 recollection of having a conversation with</p> <p>22 Mr. Ferris?</p>
<p style="text-align: right;">14</p> <p>1 Q. And what was the subject matter of</p> <p>2 those -- how many conversations did you have with</p> <p>3 Kristi McIntyre?</p> <p>4 A. Something on the order of two or three.</p> <p>5 Q. How long were those conversations?</p> <p>6 A. I don't have a very sharp recollection</p> <p>7 of those, but my best guess is something on the</p> <p>8 order of half an hour to 45 minutes.</p> <p>9 Q. Each or in total?</p> <p>10 A. Each, although each one may have been</p> <p>11 appreciably shorter than that.</p> <p>12 Q. What was the subject matter of those</p> <p>13 conversations?</p> <p>14 MR. HASFORD: And I'll just caution you</p> <p>15 not to disclose any specific conversations that</p> <p>16 you may have had with Kristi McIntyre.</p> <p>17 THE WITNESS: The conversations were</p> <p>18 oriented to understanding some of the underlying</p> <p>19 facts and the underlying data.</p> <p>20 BY MR. FREDERICKSON:</p> <p>21 Q. What underlying facts did you seek to</p> <p>22 further understand from Kristi McIntyre?</p>	<p style="text-align: right;">16</p> <p>1 A. Not a very sharp recollection. I would</p> <p>2 only say with medium confidence that I had a</p> <p>3 conversation with him.</p> <p>4 Q. And just to make sure I have the name,</p> <p>5 that was Kristi McIntyre? Is that the attorney</p> <p>6 that you spoke with?</p> <p>7 A. Yes.</p> <p>8 Q. Other than Kristi McIntyre and possibly</p> <p>9 John Ferris, did you speak with anyone else to</p> <p>10 prepare your declaration?</p> <p>11 A. As I said a moment ago, there might have</p> <p>12 been another person at Bausch+Lomb that we talked</p> <p>13 to in the context of understanding the data. And</p> <p>14 I'm not sure whether it was in the context of the</p> <p>15 PTAB matter or the district court matter. So I'm</p> <p>16 a little bit unclear -- or uncertain whether it</p> <p>17 was specifically having to do with the PTAB</p> <p>18 matter.</p> <p>19 Q. In the course of preparing your</p> <p>20 declaration, did you speak with anyone employed by</p> <p>21 Eye Therapies?</p> <p>22 A. I don't think so.</p>

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