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Transcript of Robert Noecker, M.D.

Date: November 13, 2022

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

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1 (1 to 4)

<p>1 UNITED STATES PATENT AND TRADEMARK OFFICE 2 ----- 3 BEFORE THE PATENT TRIAL AND APPEAL BOARD 4 -----X 5 SLAYBACK PHARMA LLC, : 6 Petitioner, : 7 v. : Case No.: 8 EYE THERAPIES LLC : IPR2022-00142 9 Patent Owner : U.S. Patent No. 10 -----X : 8,293,742 11 12 Deposition of Dr. Robert Noecker 13 Norwalk, Connecticut 14 Sunday, November 13, 2022 15 9:25 a.m. 16 17 18 19 20 Job No.: 468951 21 Pages 1-122 22 Reported by: Angela (Angie) Shaw-Crockett, CRR, RMR</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 LINNEA P. CIPRIANO, ESQUIRE 5 Goodwin Procter LLP 6 620 Eighth Avenue 7 New York, New York 10018 8 212-813-8800 9 lcipriano@goodwinlaw.com 10 11 ON BEHALF OF THE PATENT OWNER, EYE THERAPIES 12 LLC: 13 CHRISTINA YANG, ESQUIRE 14 BRYAN DINER, ESQUIRE 15 JASON ZHANG, ESQUIRE 16 Finnegan, Henderson, Farabow, Garrett & 17 Dunner LLP 18 901 New York Avenue NW 19 Washington, District of Columbia 20001-4413 20 202-408-4004 21 ALSO PRESENT: 22 Rocco Mercurio, The Videographer</p>
<p>1 Deposition of Dr. Robert Noecker, held at: 2 3 4 Residence Inn Norwalk 5 45 South Main Street 6 Norwalk, Connecticut 06845 7 8 9 10 11 Pursuant to Notice, before Angela (Angie) 12 Shaw-Crockett, CRR, RMR, Notary Public in and for the 13 states of New York, New Jersey and Connecticut. 14 15 16 17 18 19 20 21 22</p>	<p>1 I N D E X 2 Examination of: Page 3 Dr. Robert Noecker 4 5 C O N T E N T S 6 MS. CIPRIANO 6 7 MR. DINER 118 8 9 E X H I B I T S 10 (Retained by the court reporter) 11 DEPOSITION EXHIBIT PAGE 12 Exhibit 1046 Figure 2 of '742 patent 80 13 14 15 16 17 18 19 20 21 22</p>

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5	<p>1 THE VIDEOGRAPHER: We are now going on the 2 record. Today is November 13, 2022, and the time is 3 approximately 9:25. 4 This is media 1 of the video deposition of 5 Dr. Robert Noecker in the matter of Slayback Pharma 6 LLC v. Eye Therapies LLC, filed in the U.S. Patent and 7 Trademark Office, case number IPR2022-00142. 8 My name is Rocco Mercurio, and the court 9 reporter is Angie Shaw-Crockett, and we're with Planet 10 Depos. 11 Would counsel please introduce yourselves 12 and who you represent for the record. 13 MS. CIPRIANO: My name is Linnea Cipriano 14 of Goodwin, representing Petitioner. 15 MR. DINER: My name is Bryan Diner of the 16 Finnegan firm, representing the patent owner, with my 17 colleagues Christina Yang and Jason Zhang. 18 THE VIDEOGRAPHER: The court reporter will 19 now swear in the witness, and we can now proceed. 20 Dr. Robert Noecker, having been duly sworn, testified 21 as follows: 22 EXAMINATION</p>	7	<p>1 A It was for Combigan. 2 Q And was this the only time you served as an 3 expert witness in a patent case? 4 A No. 5 Q How many other times? 6 A About six. 7 Q Have you always represented the patent 8 owner in those proceedings? 9 A I've -- you know, these things come to 10 different levels. So it's -- sometimes it's -- 11 it's -- I've had all-different-level discussions with 12 defendants, plaintiffs, two branded product against 13 each other. 14 Q So this will probably proceed as your other 15 depositions, but I'd like to go over some ground rules 16 to make sure we're on the same page. 17 I'll be asking you questions, and you'll be 18 answering them today. Your answers will be -- you've 19 just been put under oath. You understand that your 20 answers are as if you were testifying in court. 21 Do you understand that? 22 A Yes.</p>
6	<p>1 BY MS. CIPRIANO: 2 Q Good morning. 3 A Good morning. 4 Q Would you please state your name for the 5 record? 6 A Robert Noecker. 7 Q Have you been deposed before? 8 A Yes. 9 Q How many times? 10 A Eight, ten. 11 Q Okay. And what was the most recent time? 12 A The most recent time was in conjunction 13 with a medicolegal thing. 14 Q Okay. How long ago was that? 15 A A year ago. During COVID. 16 Q Okay. Have you ever served as an expert 17 witness in a patent case before? 18 A Yes. 19 Q And when was that? 20 A The last one was two years ago. 21 Q And what product -- at a high level, what 22 product was that involved with?</p>	8	<p>1 Q During the course of the deposition, your 2 counsel may make objections, but unless you've been 3 instructed by your counsel not to answer, I will 4 expect you to answer my questions. 5 Do you understand that? 6 A Yes. 7 Q As you know, we have a court reporter here, 8 taking down everything we say. That means that you 9 and I both must make an effort to speak slowly and 10 clearly. And I'll try not to speak over you if you 11 try not to speak over me. 12 Do you understand? 13 A Yes. 14 Q We'll be taking breaks from time to time, 15 and if you can please let me know if you need a break 16 at any point. I'll just ask that we finish a question 17 and answer before we take a break. 18 Does that make sense? 19 A Yes. 20 Q Can you -- I will ask you today to listen 21 carefully to my questions, and if there's something 22 that you don't understand, please let me know. I'm</p>

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9	<p>1 sure that I will not be as clear as I intend to be at 2 times during the day. But if you do answer my 3 question, I'll assume that you understood the 4 question. 5 Does that make sense? 6 A Yes. 7 Q And you understand that while I'm asking 8 you questions today, you're not to permitted to 9 discuss the substance of your testimony with your 10 counsel. 11 Do you understand that? 12 A Yes. 13 Q Is there any reason that you will not be 14 able to answer my questions fully and truthfully 15 today? 16 A No. 17 Q Did you prepare for today's deposition? 18 A Yes. 19 Q So without revealing any privileged 20 communications with your counsel, at a high level, 21 what did you do to prepare for today's deposition? 22 A I read my expert report multiple times, and</p>	11	<p>1 looked at in preparation for the deposition? 2 A None specifically. Most that are related 3 to the expert report. 4 Q I'm going to hand you a copy of your 5 declaration, which is marked Exhibit 2020 in the IPR. 6 Do you recognize this as being the 7 declaration that you submitted in IPR2022-00142. 8 A Yes, it appears to be. 9 Q And at a high level, how did you prepare 10 your declaration? 11 A Basically, read the issues at hand in the 12 case, reviewed the literature, started composing the 13 document, met, at times, with the attorneys to fill in 14 the blanks, edited extensively. 15 Q Did you review any of the declarations from 16 the other experts in this case? 17 A Yes. 18 Q At what point did you review those in your 19 preparation? 20 A At some point in the last year. 21 Q Before you signed your declaration? 22 A I believe so. The time is a little vague</p>
10	<p>1 related materials, and met with the attorneys. 2 Q With whom did you speak concerning this 3 deposition? 4 MR. DINER: Vague. 5 A What do you mean by that? 6 BY MS. CIPRIANO: 7 Q Who did you talk to in preparation for the 8 deposition? 9 A So in preparation, I met with the three 10 attorneys here. 11 Q Anyone else? 12 A No. 13 Q Have you had conversations with any of the 14 other people who submitted declarations in this IPR? 15 A No. 16 Q Did you review any documents other than 17 your expert declaration to prepare for this 18 deposition? 19 A Well, as I always do, I review my own 20 personal experiences as well as the relevant 21 literature. 22 Q Do you recall any specific documents you</p>	12	<p>1 at this point. 2 Q Are there any corrections or changes you'd 3 like to make to this declaration at this point? 4 A No. 5 Q You're currently employed, correct? 6 A That's correct. 7 Q What is to your current title? 8 A I'm an ophthalmologist with Ophthalmic 9 Consultants of Connecticut. 10 Q And you understand you're being presented 11 as an expert in this proceeding, correct? 12 A That's correct. 13 Q What is your area of expertise? 14 A It's treatment of conditions of the -- 15 diagnosis and treatment of conditions of the eye. 16 Q And you're not a chemist, right? 17 A I'm not a chemist myself. 18 Q You're not an expert in the formulation of 19 eye drops? 20 A I'm familiar and I've done formulation 21 work, but I'm not an expert. 22 Q What do you mean by "done formulation</p>

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13	15
<p>1 work"?</p> <p>2 A I've performed research in which we need to</p> <p>3 formulate compounds.</p> <p>4 Q Have you ever manufactured a formulation of</p> <p>5 an eye drop?</p> <p>6 A I have not.</p> <p>7 Q Have you ever been involved in determining</p> <p>8 which excipients will be used in the formulation of an</p> <p>9 eye drop?</p> <p>10 A For experimental purposes, not for</p> <p>11 commercial purposes.</p> <p>12 Q And when was that?</p> <p>13 A Several years ago at the</p> <p>14 University of Arizona.</p> <p>15 Q And what product was that for?</p> <p>16 A We were -- well, several glaucoma</p> <p>17 medications.</p> <p>18 Q What drugs?</p> <p>19 A One called "latanoprost," another one</p> <p>20 called "latanoprost 1," another one for some</p> <p>21 antibiotics.</p> <p>22 Q And what was your role in?</p>	<p>1 so just so we're on the same page.</p> <p>2 You are not an expert in commercial</p> <p>3 marketing, correct?</p> <p>4 A That's correct.</p> <p>5 Q So throughout your declaration, you make</p> <p>6 statements that refer to what you understand other</p> <p>7 experts or declarants in this proceeding will say.</p> <p>8 Do you recall that?</p> <p>9 A Yes.</p> <p>10 Q And when you make those statements, you're</p> <p>11 not offering independent opinions on what those other</p> <p>12 experts said, correct?</p> <p>13 A Correct.</p> <p>14 Q So you're relying on the expertise of</p> <p>15 others?</p> <p>16 A That's correct.</p> <p>17 Q I'd like to turn now to some vocabulary to</p> <p>18 make sure that we're speaking the same language.</p> <p>19 So let's turn to page 14 of your</p> <p>20 declaration.</p> <p>21 A (Witness complies.)</p> <p>22 Q Are you there?</p>
14	16
<p>1 A We were doing experiments, so we were</p> <p>2 basically developing these drugs to look at stability</p> <p>3 and things like that.</p> <p>4 Q And your input was on the clinical side?</p> <p>5 A Well, some of these are rabbit studies, so</p> <p>6 I was the guy who did stuff to the rabbits.</p> <p>7 Depended -- yeah, I was basically the clinical</p> <p>8 advisor, had to put things in clinical perspective.</p> <p>9 Q You're not an economist, right?</p> <p>10 A I am not.</p> <p>11 Q And you're not an expert in commercial</p> <p>12 marketing, correct?</p> <p>13 THE VIDEOGRAPHER: Hold on. Your mic just</p> <p>14 went out.</p> <p>15 We're now going off the record. The time</p> <p>16 is now 9:35.</p> <p>17 (Recess.)</p> <p>18 THE VIDEOGRAPHER: Now going back on the</p> <p>19 record. The time is 9:44.</p> <p>20 BY MS. CIPRIANO:</p> <p>21 Q I might repeat some of the questions. I'm</p> <p>22 not sure we got all of the answers to my last round,</p>	<p>1 A Yes.</p> <p>2 Q Okay. And here you have a diagram of two</p> <p>3 pictures of the eye, right?</p> <p>4 A Yes.</p> <p>5 Q And the bottom diagram, it's a</p> <p>6 cross-section, and the front of the eye is facing</p> <p>7 left, correct?</p> <p>8 A Yes.</p> <p>9 Q And that front section is called the</p> <p>10 "anterior portion" of the eye, correct?</p> <p>11 MR. DINER: Objection, vague.</p> <p>12 A You have to be more specific.</p> <p>13 BY MS. CIPRIANO:</p> <p>14 Q Okay. Can you explain to me what's</p> <p>15 referred to as the anterior portion of the eye?</p> <p>16 A Well, it will depend on the context, but we</p> <p>17 frequently refer to the "anterior chamber," so talking</p> <p>18 about the inside of the eye, the anterior chamber is</p> <p>19 divided from the post chamber -- in the side view,</p> <p>20 we're speaking.</p> <p>21 So everything kind of from the iris, the</p> <p>22 colored part, forward, to the front -- toward the</p>

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