# UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SLAYBACK PHARMA LLC,

Petitioner,

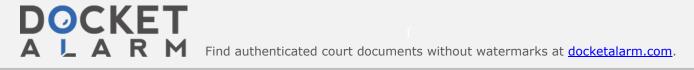
v.

EYE THERAPIES, LLC,

Patent Owner.

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

# PATENT OWNER'S SECOND MOTION TO SEAL



### I. Introduction

Patent Owner Eye Therapies, LLC ("Patent Owner") renews its request to seal the confidential version of its Patent Owner Response, exhibits containing excerpts of regulatory documents related to the commercial product Lumify, and certain exhibits filed with Petitioner's Reply, pursuant to the Board's February 1, 2023, Order, which denied without prejudice the portion of Patent Owner's motion to seal related to these documents, each of which contain Bausch & Lomb's (Patent Owner's RPI) confidential information. As requested by the Board, this motion specifically addresses the *Argentum* factors, including how and why public disclosure of the information sought to be sealed would cause concrete harm to Patent Owner and Bausch & Lomb.

### II. Governing Rules: The Argentum Factors

A party moving to seal a document must show "good cause" for the relief requested. 37 C.F.R. §§ 42.20(c), 42.54. The "good cause" standard "reflects the strong public policy for making all information in an inter partes review open to the public." *See Argentum Pharms. LLC v. Alcon Research, Ltd.*, IPR2017-01053, Paper 27 at 3 (PTAB Jan. 19, 2018) (informative). The moving party must show that:

(1) the information sought to be sealed is truly confidential,

(2) a concrete harm would result upon public disclosure,

(3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and

(4) on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.

*Id.* at 4.

### **III. Identification of Confidential Information**

This motion refers to confidential information in two categories, both of which relate to sensitive, confidential information of Bausch & Lomb. Bausch & Lomb is the exclusive licensee of the '742 patent, the registered holder of the IND and NDA for the commercial product Lumify, and a real-party-in interest in this proceeding. The categories are summarized below:

(1) Non-public Bausch & Lomb regulatory documents and discussions thereof, reflecting Bausch & Lomb's confidential research and development. This information is contained in the following documents:

- Patent Owner's Response, pages 43, 63-65
- Exhibit 2020 (Declaration of Robert J. Noecker), ¶¶ 149, 172, 190, 198, 245, 275, 287-301, 304, 305, 309, 312
- Exhibit 2021 (Declaration of Robert O. Williams, III, Ph.D.), ¶ 43

• Documentary Exhibits 2028, 2166-2168, 2196<sup>1</sup>

(2) Non-public discussion of Bausch & Lomb's sensitive commercial and financial information. This information is contained in the following documents:

- Exhibit 1047 (Declaration of Ivan T. Hofmann), ¶¶ 25, 33, 44-47 (including footnote 55), 52
- Exhibit 1051 (Deposition Transcript of John Ferris), 22:14-22:15, 22:18-23:7, 24:10-27:18, 27:21-29:2, 29:7-29:11, 29:13-29:21, 30:4-8, 30:11-31:2, 31:4-31:17, 31:20-32:3, 32:5-32:16, 32:19, 32:21-35:16, 40:10-40:13, 40:16-40:17, 40:19-40:20, 41:2-41:5, 41:8-41:17, 43:2-43:4, 43:6-43:7, 43:12-43:17, 43:19-44:19, 44:22-45:9, 45:12-45:22, 46:2-46:5, 46:7-46:8, 46:11-47:8, 47:10-47:16, 47:18, 48:3-48:6, 48:9-48:12, 48:14-48:15, 48:18-48:22, 49:2-50:17, 50:19-52:4, 54:11-53:6, 53:18-54:12, 59:5-59:6, 59:9-60:16, 60:18-61:2, 61:5-61:10, 61:12, 61:15-62:22, 63:10-63:12, 63:15-63:18, 63:20-64:13,

<sup>&</sup>lt;sup>1</sup> In the related district court proceeding, Patent Owner designated these documents "COUNSEL'S EYES ONLY – SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER." Patent Owner provided an unstamped version of the documents in this proceeding for legibility purposes.

64:17-65:5, 67:5-67:8, 67:17-67:21, 68:11-68:18, 68:20-70:4, 70:7-71:19, 72:1-72:10, 72:13-72:14, 72:16-72:19, 72:21-74:7, 75:11-75:14, 76:7-78:9, 79:7-79:9, 79:12-79:15, 79:17-79:20, 80:1, 80:3-80:5, 80:8-81:17, 81:20-82:4, 82:7-82:11, 82:13-82:14, 82:19-83:18, 83:21, 84:3-84:19, 85:1-85:4, 85:6-85:7, 85:9-85:20, 86:2-86:9, 86:11-87:2, 87:11-13

## **IV.** Good Cause Exists for Sealing the Confidential Information

Good cause exists for sealing all of the above, as all four *Argentum* factors are met. Each category of documents is addressed below.

# A. Good Cause Exists for Sealing the Regulatory Documents and Discussions Thereof (Category 1)

*First*, there is no question that the Lumify regulatory documents (i.e., *Investigational New Drug* (IND) and *New Drug Application* (NDA) files) are truly confidential. They were confidentially submitted to the FDA, and that confidentiality has been maintained since submission.

*Second*, concrete harm would result upon public disclosure. As background, Lumify is a patent-protected commercial product, which was approved in late 2018 and launched in 2019—just about four years ago. Thus, although some of the referenced documents are seemingly a decade old, the reality is that they relate to the approval of a relatively new commercial product. Moreover, Bausch & Lomb has publicly announced that it has Lumify-related products in its pipeline that likely

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