

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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SLAYBACK PHARMA LLC,

Petitioner,

v.

EYE THERAPIES, LLC,

Patent Owner.

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

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## I. Introduction

Petitioner continues to assert an overly simplistic view of the art and relies on cherry-picked statements to the exclusion of the most pertinent prior art, all to advance meritless, litigation-driven positions. But as set forth herein and in Patent Owner's prior responses, when viewed correctly from the perspective of a person of ordinary skill in the art ("POSA"), the prior art neither inherently anticipated nor rendered obvious the claims of the '742 patent.

## II. Claim Construction

### A. "ocular condition"

Petitioner argues that Patent Owner's construction of "ocular condition," improperly narrows the definition set forth in the specification. Reply § II.A. Petitioner further argues that "LASIK is an ocular condition of the claims," so radial keratotomy must also be. *Id.* Petitioner misinterprets the passage in column 12 because LASIK is not an "ocular condition." Instead, consistent with Patent Owner's construction, the specification indicates LASIK is a procedure giving rise to an ocular condition (i.e., hyperemia). *See*, EX-1001 at 12:14-16 ("ocular conditions include...ocular vascular congestion *after* Lasik surgery") (emphasis added).

A POSA, moreover, would construe "ocular condition" in light of the claim as a whole, including specifically, the limiting preamble, which sets forth the objective of the invention: reducing eye redness, defined as hyperemia. EX-1001 at

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