

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

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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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