

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 OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE**

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Rules

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Regulations

37 C.F.R. § 42.201
37 C.F.R. § 42.643

Patent Owner respectfully requests the Board deny Petitioner’s motion to exclude (Paper 57, “Mot.”)¹ because Petitioner failed to timely preserve its objections and show that the exhibits requested to be excluded are inadmissible under the Federal Rules of Evidence. *See* 37 C.F.R. § 42.20(c); *Smith & Nephew Inc. v. ConforMIS, Inc.*, IPR2017-00115, Paper 33 at 67 (P.T.A.B. Apr. 19, 2018) (“As movant, Patent Owner has the burden of showing that an exhibit is not admissible.”); *FLIR Sys., Inc. v. Leak Surveys, Inc.*, IPR2014-00411, Paper 113 at 5 (P.T.A.B. Sept. 3, 2015) (“In our proceedings it is the opponent [of the challenged evidence] who bears the burden of establishing inadmissibility of an exhibit.”).

I. EX-2023, ¶ 7 and Portions of Exhibit 1052 Should Not Be Excluded

Exhibit 2023 is a declaration of Mr. John Ferris, Senior Vice President, Global Consumer within the Bausch + Lomb family of companies (“Bausch”). EX-2023, ¶ 3. Paragraph 7 of his declaration discusses the market success of Lumify—a commercial embodiment of the ’742 patent—based on a third-party study

¹ Patent Owner will not be filing a motion to seal the portions of Petitioner’s motion to exclude and Patent Owner’s opposition thereto despite the fact that these papers address confidential exhibits and deposition testimony because these papers discuss such information at a sufficiently high level that the details of those confidential materials is not revealed.

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