

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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**PATENT OWNER'S NOTICE OF APPEAL**

2023 JUL 14 8:13:51  
UNITED STATES PATENT AND TRADEMARK OFFICE

Pursuant to 35 U.S.C. §§ 141(c) and 319 and 37 C.F.R. § 90.2(a), Patent Owner Eye Therapies LLC (“Eye Therapies”) hereby provides notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision in *Inter Partes* Review IPR2022-00142, entered on May 15, 2023, (Paper 77 (Ex. A)), and from all underlying orders, decisions, rulings, and opinions relating to U.S. Patent No. 8,293,742 (“the ’742 patent”) set forth in *Inter Partes* Review IPR2022-00142.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), the issues on appeal include, but are not limited to, whether the Patent Trial and Appeal Board of the United States Patent and Trademark Office (“the Board”) erred in determining that claims 1-6 of the ’742 patent are unpatentable under 35 U.S.C. § 103, including, without limitation:

- the Board’s determination that claims 1-6 of the ’742 patent would have been obvious under 35 U.S.C. § 103 over the instituted ground III (the

combination of Gil<sup>1</sup>, Norden<sup>2</sup>, Dean<sup>3</sup>, Alphagan® Label 1998<sup>4</sup> and Federal Register<sup>5</sup>);

- the Board’s construction of claim limitations set forth in claims 1-6 of the ’742 patent;
- the Board’s consideration of Patent Owner’s evidence, including objective indicia of non-obviousness; and
- all other issues decided adversely to Patent Owner in any order, decision, ruling, or opinion by the Board in this proceeding.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), this Notice is being filed with the Director of the United States Patent and Trademark Office, and a copy of this Notice is being concurrently filed with the Board. In addition, a copy of this Notice and the required docketing fees are being filed with the Clerk’s Office for the United States Court of Appeals for the Federal Circuit via CM/ECF.

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<sup>1</sup> U.S. Patent No. 6,294,553 (EX-1004, “Gil”).

<sup>2</sup> Norden, Richard A. “Effect of Prophylactic Brimonidine or Bleeding Complications and Flap Adherence after Laser in Situ Keratomileusis.” *Journal of Refractive Surgery*, vol. 18, no. 4, 2002, pp. 468–471 (EX-1006, “Norden”).

<sup>3</sup> U.S. Patent No. 6,242,442 (EX-1007, “Dean”).

<sup>4</sup> “Alphagan® (brimonidine tartrate ophthalmic solution) 0.2%.” Physicians’ Desk Reference, 52th ed., Medical Economics Company, Inc., 1998, p. 487 (EX-1008, “Alphagan® Label 1998”).

<sup>5</sup> 53 Fed. Reg. 7076-7093 (Mar. 4, 1988) (EX-1009, “Federal Register”).

Respectfully submitted,

Dated: July 14, 2023

/Bryan C. Diner/

Bryan C. Diner, Reg. No. 32,409

*Counsel for the Patent Owner*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th of July, 2023, a copy of this PATENT OWNER'S NOTICE OF APPEAL was filed and served via the Board's P-TACT system, and a copy was also filed by hand with the Director of the United States Patent and Trademark Office, at the following address:

Director of the United States Patent and  
Trademark Office  
c/o Office of the General Counsel, 10B20  
Madison Building East  
600 Dulany Street  
Alexandria, VA 22314

I also hereby certify that on this 14th of July, 2023, a copy of this PATENT OWNER'S NOTICE OF APPEAL and the filing fee, were filed with the Clerk's Office of the United States Court of Appeals for the Federal Circuit, via CM/ECF.

I also hereby certify that on this 14th of July, 2023, a true and correct copy of this PATENT OWNER'S NOTICE OF APPEAL was served via email on counsel of record for the Petitioner at the following:

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