

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 OBJECTIONS TO PETITIONER'S EXHIBITS

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner hereby submits the following objections to certain exhibits submitted by Patent Owner. Petitioner's objections apply equally to Patent Owner's reliance on these exhibits in any subsequently filed documents. Petitioner objects to the following exhibits:

Ex. No.	Description
1047	Declaration of Ivan T. Hofmann in Support of Petitioner's Reply (Hofmann Reply)
1048	Declaration of Paul Laskar, Ph.D In Support of Petitioner's Reply
1049	Declaration of Neal A. Sher, M.D. in Support of Petitioner's Reply (Sher Reply)
1059	Srinivasan, S. and Venkiteshwar, M., A Decade of Effective Dry Eye Disease Management with Systane Ultra (Polyethylene Glycol/Propylene Glycol with Hydroxypropyl Guar) Lubricant Eye Drops, Clinical Ophthalmology, vol. 15, pp. 2421-2435, June 9, 2021 (Srinivasan 2021)
1070	Bausch Fourth Quarter 2018 Earnings Call Transcript, dated February 20, 2019, available at https://seekingalpha.com/article/4242568-bausch-healthcompanies-inc-bhc-ceo-joseph-papa-on-q4-2018-results-earnings-calltranscript
1071	Bausch Second Quarter 2019 Earnings Call Transcript, dated August 6, 2019, available at https://seekingalpha.com/article/4282236-bausch-healthcompanies-inc-bhc-ceo-joseph-papa-on-q2-2019-results-earnings-calltranscript
1072	Bausch Fourth Quarter 2020 Earnings Call Transcript, dated February 24, 2021, available at https://seekingalpha.com/article/4408646-bausch-healthcompanies-inc-bhc-ceo-joe-papa-on-q4-2020-results-earnings-calltranscript
1073	Bausch Fourth Quarter 2021 Earnings Call Transcript, dated February 23, 2022, available at https://seekingalpha.com/article/4489552-bausch-healthcompanies-inc-bhc-ceo-joseph-papa-on-q4-2021-results-earnings-calltranscript
1074	MUSE Creative Awards, dated Apr. 11, 2019, https://www.hg.agency/news/muse-awards

1075	MUSE Creative Awards, https://museaward.com/
1076	Helen & Gertrude, https://www.hg.agency/
1077	2019 Silver Winner, Lumify® Redness Reliever Drops, https://museaward.com/winner-info.php?id=2187
1078	2019 Rose Gold Winner, Lumify® Redness Reliever Drops, https://museaward.com/winner-info.php?id=2186
1079	Wavemaker US wins two Gold Effie Awards, dated June 3, 2019, https://wavemakerglobal.com/usa/news-wavemaker-us-wins-two-goldeffie-awards
1080	Our Work, Wavemaker, https://wavemakerglobal.com/our-work
1081	Ben Adams, Bausch + Lomb kicks off TikTok challenge for Lumify, asking consumers to ‘dance with their eyes,’ FiercePharma (July 29, 2022), https://www.fiercepharma.com/marketing/bausch-lomb-kickstarts-tiktokcampaign-lumify-it-asks-consumers-dance-their-eyes
1082	Bausch + Lomb Launches the #LUMIFYEyeDance Challenge on TikTok, PRNewsWire (July 28, 2022), https://www.prnewswire.com/newsreleases/bausch--lomb-launches-the-lumifyeyedance-challenge-on-tiktok-301594922.html
1083	#lumifyeyedance, TikTok, https://www.tiktok.com/tag/lumifyeyedance?lang=en
1085	@Allenface, Tik Tok, https://www.tiktok.com/@allanface/video/7129967072628657454?is_from_webapp=v1&item_id=7129967072628657454
1086	@orionsisters, TikTok, https://www.tiktok.com/@orionsisters/video/7124396970558459179?is_copy_url=1&is_from_webapp=v1&lang=en
1087	Bausch + Lomb #LUMIFYEyeDance Challenge Wins 2022 Public Relations and Marketing Excellence Award for External Campaign of the Year from Business Intelligence Group, PRNewsWire (Nov. 1, 2022), https://www.prnewswire.com/news-releases/bausch--lomb-lumifyeyedancechallenge-wins-2022-public-relations-and-marketing-excellence-award-forexternal-campaign-of-the-year-from-business-intelligence-group-301664009.html
1099	Pink Eye (Conjunctivitis), Mayo Clinic, https://www.mayoclinic.org/diseases-conditions/pink-

	eye/symptomscauses/syc-20376355#:~:text=Pink%20eye%20(conjunctivitis)%20is%20an,to%20appear%20reddish%20or%20pink (last accessed Dec. 14, 2022) (Mayo Clinic 2022)
1100	Subconjunctival hemorrhage - American Academy of Ophthalmology, https://www.aaopt.org/image/subconjunctival-hemorrhage-7

Patent Owner objects to Exhibits 1070-1083, 1085-1087, 1099, and 1100 as lacking authentication under Federal Rules of Evidence (“FRE”) 901 because sufficient evidence has not been provided to authenticate these exhibits or to otherwise establish that they are what Petitioner claims them to be.

Patent Owner also objects to Exhibits 1070-1083, 1085-1087, 1099, and 1100 under FRE 801, 802, and 805 as containing hearsay and/or hearsay within hearsay. To the extent Petitioner relies on the content of these exhibits for the truth of the matter asserted, Patent Owner objects to such content as inadmissible hearsay and/or hearsay within hearsay that does not fall under any exceptions.

Patent Owner also objects to Exhibits 1059, 1070-1083, 1085-1087, 1099, and 1100 as irrelevant or, in the alternative, prejudicial, confusing, and a waste of time under FRE 401, 402, and 403. Petitioner does not cite Exhibits 1070-1083, 1085-1087, 1099, and 1100 in its Petition or Reply. Thus, the exhibits have minuscule probative value that is substantially outweighed by unfair prejudice, confusion, waste of time, and needless presentation of cumulative evidence. FRE 401-403.

Patent Owner objects to Exhibit 1047, paragraphs 33, 36-39, 41-42, 43, 45,

48 and footnotes 34-49, 51-54, 58, 63-64, Exhibit 1048, paragraph 22 and footnote 1, and Exhibit 1049, paragraphs 101-102 and footnotes 3-4 as containing hearsay and/or hearsay within hearsay under FRE 801, 802, and 805, and irrelevant or, in the alternative, prejudicial, confusing, and a waste of time under FRE 401, 402, and 403. The opinions stated in these paragraphs and footnotes cite Exhibits 1059, 1070-1083, 1085-1087, 1099, and 1100, which are objectionable for the reasons explained above. Thus, the above-identified paragraphs and footnotes in Exhibits 1047-1049 relying on these exhibits are objectionable for the same reasons.

Respectfully submitted,

Date: December 23, 2022

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