

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d)

of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): May 16, 2024

EYENOVIA, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware

(State or other jurisdiction

of incorporation)

001-38365

(Commission

File Number)

47-1178401

(IRS Employer

Identification No.)

295 Madison Avenue, Suite 2400, New York, NY 10017

(Address of Principal Executive Offices, and Zip Code)

(833) 393-6684

Registrant's Telephone Number, Including Area Code

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

(Title of each class)	(Trading Symbol)	(Name of each exchange on which registered)
Common stock, \$0.0001 par value	EYEN	The Nasdaq Stock Market (Nasdaq Capital Market)

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 8.01 Other Events.

As previously announced, on April 8, 2024, Eyenovia, Inc. (the “Company”) notified Leerink Partners LLC (“Leerink Partners”) that it was suspending its use of and terminating the prospectus supplement (the “ATM Prospectus Supplement”), related to the potential issuance from time to time of the Company’s common stock pursuant to the Sales Agreement, dated December 14, 2021, by and between the Company and Leerink Partners (the “Sales Agreement”). Other than the termination of the ATM Prospectus Supplement, the Sales Agreement remained in full force and effect.

On May 16, 2024, in connection with the Company’s intent to resume sales of its securities (the “ATM Shares”) under the Sales Agreement, the Company will file a new prospectus supplement to its registration statement on Form S-3 (File No. 333-261638), which registration statement was previously filed with and declared effective by the Securities and Exchange Commission under the Securities Act of 1933, as amended.

In connection with the resumption of sales of its securities under the Sales Agreement, the Company is filing a legal opinion of its counsel, Covington & Burling LLP, regarding the validity of the ATM Shares, which opinion is attached as Exhibit 5.1 to this Current Report on Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
5.1	Opinion of Covington & Burling LLP.
23.1	Consent of Covington & Burling LLP (included in Exhibit 5.1).
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: May 16, 2024

EYENOVIA, INC.

/s/ John Gandolfo

John Gandolfo

Chief Financial Officer

COVINGTON

BEIJING BOSTON BRUSSELS DUBAI FRANKFURT
JOHANNESBURG LONDON LOS ANGELES NEW YORK
PALO ALTO SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

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Boston, MA 02110-2600
T +1 617 603 8800

May 16, 2024

Eyenovia, Inc.
295 Madison Avenue, Suite 2400
New York, New York 10017

Ladies and Gentlemen:

We have acted as counsel to Eyenovia, Inc., a Delaware corporation (the “*Company*”), in connection with the issuance and sale of the Company’s common stock, par value \$0.0001 per share, having an aggregate offering price of up to \$10,000,000 (the “*Shares*”), pursuant to the Sales Agreement (the “*Sales Agreement*”), dated December 14, 2021, between the Company and Leerink Partners LLC, as sales agent. The offer and sale of the Shares are being registered under the Securities Act of 1933 (the “*Securities Act*”) pursuant to the Company’s registration statement on Form S-3 (File No. 333-261638), which was filed with the Securities and Exchange Commission (the “*SEC*”) on December 14, 2021 (the “*Registration Statement*”).

We have reviewed the Sales Agreement, the Registration Statement and the prospectus, dated December 14, 2021, as supplemented by a prospectus supplement with respect to the offer and sale of the Shares, as filed with the SEC on May 16, 2024. We have also reviewed the notice of the Registration Statement’s effectiveness, dated December 23, 2021, posted on the website of the SEC at www.sec.gov, and such other corporate records, certificates and other documents, and such questions of law, as we have considered necessary or appropriate for the purposes of this opinion.

We have assumed that all signatures are genuine, that all documents submitted to us as originals are authentic and that all copies of documents submitted to us conform to the originals.

We have relied as to certain matters on information obtained from public officials, officers of the Company and other sources believed by us to be responsible.

Based upon the foregoing, we are of the opinion that the Shares have been duly authorized, and when issued and sold by the Company pursuant to the terms of the Sales Agreement and upon receipt by the Company of full payment therefor in accordance with the Sales Agreement, will be validly issued, fully paid and non-assessable.

We are members of the bar of the Commonwealth of Massachusetts. We do not express any opinion herein on any laws other than the Delaware General Corporation Law.

We hereby consent to the filing of this opinion as Exhibit 5.1 to the Company’s Current Report on Form 8-K dated the date hereof related to the offering of the Shares. We also hereby consent to the reference to our firm under the heading “Legal Matters” in the prospectus supplement constituting part of the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act.

Very truly yours,

/s/ Covington & Burling LLP
