UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C.

In the Matter of **CERTAIN DERMATOLOGICAL TREATMENT DEVICES AND COMPONENTS THEREOF**	**Inv. No. 337-TA-1356**

ORDER NO. 65: **GRANTING IN-PART ENDYMED RESPONDENTS' [CORRECTED] MOTION TO DECLASSIFY PORTIONS OF DOCUMENTS DESIGNATED CONFIDENTIAL BUSINESS INFORMATION BY THE PRIOR ROHRER RESPONDENT [MOTION DOCKET NO. 1356-045]**

(April 1, 2025)

Pursuant to Commission Rules 210.20(a) and 201.6(a)(1), and Paragraphs 2(b) and 10 of the Protective Order (Order No. 1, "PO"), Respondents EndyMed Medical, Ltd. and EndyMed Medical Inc. ("EndyMed") moved to declassify portions of Appendix 6 to the opening expert report of Complainant Serendia, LLC's ("Serendia") technical expert Mr. Peter Crosby (RX-1306C, "Appendix 6") and Mr. Crosby's deposition transcript (RX-1280C, "Deposition Transcript"), which relates to Appendix 6 of his opening expert report ("Motion"). (Motion Docket No. 1356-045 (Mar. 11, 2025); Mot. at 1.). The relevant portions of Appendix 6 and Mr. Crosby's Deposition Transcript, with EndyMed's proposed redactions, are attached to EndyMed's Motion as Exhibits 1 and 2, respectively. (*Id.* at Exs. 1, 2.).

Serendia filed an opposition to the Motion ("Opposition"). (Doc. ID No. 846049 (Mar. 17, 2025).). Commission Investigative Staff, who was also a party to the Investigation, did not file a response.

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In its Motion, EndyMed contends that "Serendia has refused to allow Rohrer to give EndyMed permission to use these materials (even in redacted form and under seal) in a co-pending *inter partes* review ('IPR') before the U.S. Patent Trial and Appeal Board ('PTAB')" because Serendia "does not want the PTAB to see the blatantly inconsistent positions advanced by Serendia at the ITC versus its arguments in the IPRs." (Mot. at 1.). According to EndyMed, "without de-designation, EndyMed would be improperly precluded from presenting critical evidence to the PTAB." (*Id.*). In pages 8-11 of the Motion, EndyMed lists portions of Exhibits 1 and 2 that it submits do not contain confidential business information ("CBI") if unredacted and declassified.[1] (*Id.* at 7, 10.).

In its Opposition, Serendia argues that "EndyMed has ample publicly available information to show how Rohrer's product extends its needles, so EndyMed can examine Mr. Crosby about this based on public information; no de-designation is necessary." (Opp'n at 5.).

Whether such information is publicly available is not the issue here. EndyMed is entitled to build a fulsome record before the PTAB in accordance with Commission Rules 210.20(a) and 201.6(a)(1), and Paragraphs 2(b) and 10 of the PO. Having reviewed the portions of Appendix 6 (Exhibit 1) and Mr. Crosby's Deposition Transcript (Exhibit 2) listed in the Motion (Mot. at 8-11) that EndyMed seeks to declassify, none of the ***text*** EndyMed identifies contains CBI. Thus, those portions of Appendix 6 and the Deposition Transcript are ***declassified***.

Figure 6 of paragraph 48 of Appendix 6 shows a photograph of Rohrer's product from Mr. Crosby's ***confidential*** inspection report (SERENDIA-00082480). (Mot. at 9 (citing *id.*, Ex. 1 at ¶ 48, Fig. 6).). Figure 6 of paragraph 48 of Appendix 6 (Exhibit 1) is ***not*** declassified and

[1] Neither EndyMed nor HydrFacial dispute that the purported CBI at issue belongs to former Respondent Rohrer Aesthetics, Inc. ("Rohrer"). (Mot. at 1; Opp'n at 1.).

must be ***redacted***.

Figure 11 of paragraph 181 of Appendix 6 shows a photograph that EndyMed describes in the Motion as "a screenshot of the user interface from YouTube." (*Id.* at 9-10.). EndyMed states that this screenshot "was included in the public version of the infringement charts filed with the Complaint in this case." (*Id.* at 9-10 (citing *id.* at Exs. 10-12).). The screenshot in Figure 11 and the screenshot included in the infringement charts have different numbers for "Power Level," "Time" and "Delay." (*Compare id.*, Ex. 1 at ¶ 181, Fig. 11 *with id.* at 10.). However, there appear to be no meaningful differences between the two. Thus, Figure 11 of paragraph 181 of Appendix 6 (Exhibit 1) is ***declassified***.

Moreover, based on the email correspondence between counsel for EndyMed and Rohrer, and between counsel for EndyMed and Serendia, attached to the Motion as Exhibits 3, 7, 8, and 9, it appears that EndyMed made good-faith efforts to resolve the matter at issue in the Motion, but that Serendia, through its counsel, intentionally evaded EndyMed's requests and perhaps "instruct[ed] Rohrer not to engage with EndyMed on this issue," as EndyMed suggests. (Mot. at 14.).

For example, when EndyMed's counsel contacted Rohrer's counsel on January 29, 2025 requesting "Rohrer's permission to submit the materials at issue (i.e., Exhibits 1-2 hereto) to the PTAB with two-fold protections – 1. Redacting all names and identifiers associated with Rohrer or its products, as reflected in the attached and 2. Submitting this material filed under seal and in accordance with the PTAB protective order" (Mot., Ex. 3 at 1), Rohrer's counsel responded as follows:

> We will need to take a look at our settlement agreement to see if there is any provision that would prohibit Rohrer giving that consent. If not, I don't believe Rohrer will have any objection to this but will confirm with them and get back to you.

(*Id.*, Ex. 7 at 3.).

On February 5, 2025, EndyMed also contacted Serendia, to which, according to EndyMed, Serendia's counsel did not reply. (*Id.*, Ex. 8.). EndyMed emailed Serendia's counsel again on February 13, 2025, to which Serendia's counsel responded, "[w]e cannot speak for Rohrer, but would expect EndyMed's request to be denied." (*Id.* at 2-3.). When EndyMed contacted Rohrer's counsel again on February 26, 2025, Rohrer's counsel stated that "they "conferred with Serendia's counsel regarding this request and Rohrer is not in a position to provide the requested permission." (*Id.*, Ex. 7 at 1-2.). On February 28, 2025, EndyMed replied to Rohrer's counsel:

> Our understanding is that Serendia has instructed Rohrer that they cannot provide the requested permission regarding Rohrer's putative CBI. As such, EndyMed intends to file, next week, an emergency motion asking the ITC to de-designate the material attached, so that we may use it at the PTAB. Please let us know if you want to meet and confer regarding the motion.

(*Id.*, Ex. 7 at 1.).

EndyMed states that Rohrer did not respond to that message. (*Id.* at 14.).

For good cause shown, EndyMed's Motion, Motion Docket No. 1356-045, is hereby *granted in-part*. In sum, the text of Appendix 6 and the Deposition Transcript that EndyMed identified in pages 8-11 of the Motion are ***declassified***. Figure 11 of paragraph 181 of Appendix 6 is also ***declassified***. Figure 6 of paragraph 48 of Appendix 6 is ***not declassified***.

Within fourteen (14) days of the date of this document, each party shall submit to the Office of the Administrative Law Judges through McNamara337@usitc.gov a statement whether it seeks to have any confidential portion of this document redacted. That is the courtesy copy pursuant to Ground Rule 1.3.2. Any party seeking redactions to the public version must submit to this office through McNamara337@usitc.gov a copy of a proposed public version of this

document pursuant to Ground Rule 1.10 with yellow highlighting clearly indicating any portion asserted to contain confidential business information.

SO ORDERED.

MaryJoan McNamara
Administrative Law Judge