

Filed on behalf of: Serendia, LLC

Entered: May 16, 2024

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JEISYS MEDICAL INC.,
Petitioner,

v.

SERENDIA, LLC,
Patent Owner.

Case IPR2024-00386
Patent 9,480,836

**PATENT OWNER'S SUR-REPLY
IN SUPPORT OF
PATENT OWNER'S PRELIMINARY RESPONSE**

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2001	[Proposed] Stipulated Protective Order
2002	Markup Comparison Showing Differences Between the [Proposed] Stipulated Protective Order and the Default Protective Order
2003	Complainant's July 24, 2023 Supplemental Validity Contentions, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. July 24, 2023) (PROTECTIVE ORDER MATERIAL AND REDACTED VERSIONS)
2004	Expert Report of Jean Woloszko, M.D., Ph.D., dated August 14, 2023 (PROTECTIVE ORDER MATERIAL AND REDACTED VERSIONS)
2005	Rebuttal Expert Report of Daniel W. van der Weide, dated August 28, 2023 (PROTECTIVE ORDER MATERIAL)
2006	Rebuttal Expert Report of David Goldberg, M.D., J.D., dated August 28, 2023 (PROTECTIVE ORDER MATERIAL)
2007	Deposition transcript of Jean Woloszko, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C.), taken September 14, 2023 (excerpt)
2008	Deposition transcript of Jean Woloszko, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C.), taken September 15, 2023 (excerpt)
2009	Deposition transcript of Daniel W. van der Weide, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C.), taken August 31, 2023 (excerpt)
2010	Deposition transcript of Daniel W. van der Weide, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C.), taken September 1, 2023 (excerpt)

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2011	Deposition transcript of David J. Goldberg, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C.), taken September 15, 2023 (excerpt)
2012	Hearing transcript, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C.), held November 7, 2023 (Jean Woloszko testimony excerpts) (“Woloszko Hr’g Tr.”)
2013	Hearing transcript, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C.), held December 12, 2023 (Daniel van der Weide testimony excerpts) (“VDW Hr’g Tr.”)
2014	Hearing transcript, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C.), held December 11, 2023 (David Goldberg testimony excerpts) (“Goldberg Hr’g Tr.”)
2015	Complainant’s Rebuttal Post-Hearing Brief, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. Jan. 5, 2024) (PROTECTIVE ORDER MATERIAL)
2016	Complainant’s Public Interest Statement & Complaint of Serendia, LLC, Under Section 337 of the Tariff Action of 1930, as Amended, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. Mar. 1, 2023)
2017	Parties’ Proposed Procedural Schedule and Notice of USPTO/PTO Proceedings and State and Federal Litigation Pursuant to Order No. 3, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. Apr. 24, 2023)
2018	Order No. 6: Adopted Procedural Schedule, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. Apr. 27, 2023)

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2019	Respondents' Joint Reply Post-Hearing Brief, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. Jan. 5, 2024) (excerpts)
2020	Response of Ilooda to the Complaint and Notice of Investigation, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. May 1, 2023)
2021	Jeisys Medical Inc.'s and Cynosure, LLC's Response to the Complaint and Notice of Investigation, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. May 1, 2023)
2022	Letter from Merle W. Richman, CKR Law, to Justin S. Cohen, Thompson & Knight LLP, Cutera, dated March 20, 2018
2023	Letter from Keith K. Im, SynKloud Technologies, LLC, to Todd Tillemans, Cynosure, LLC, dated Nov. 29, 2021
2024	Order No. 33: Granting Parties' Joint Motion to Amend the Amended Procedural Schedule [Motion Docket No. 1356-027], <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. Oct. 19, 2023)
2025	Exhibit A-02: Invalidity Claim Chart, U.S. Patent No. 9,480,836, Respondents' Invalidity Contentions, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. May 24, 2023)
2026	U.S. Patent No. 6,766,202 B2
2027	U.S. Patent No. 9,095,358 B2
2028	U.S. Patent No. 8,012,153 B2
2029	RESERVED
2030	Declaration of Daniel W. van der Weide, dated April 23, 2024 ("VDW Decl.") (PROTECTIVE ORDER MATERIAL AND REDACTED VERSIONS)

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2031	Declaration of David J. Goldberg, dated April 20, 2024 (“Goldberg Decl.”) (PROTECTIVE ORDER MATERIAL AND REDACTED VERSIONS)
2032	Jongju Na et al., <i>Electromagnetic Initiation and Propagation of Bipolar Radiofrequency Tissue Reactions via Invasive Non-Insulated Microneedle Electrodes</i> , 5 NATURE SCI. REPS. 16735 (2015)
2033	Hearing transcript, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C.), held December 11, 2023 (Dany Bérubé testimony excerpts) (“Bérubé Hr’g. Tr.”)
2034	U.S. Patent Application Publication No. 2011/0288543 A1 (“Cheng”)
2035	Deposition transcript of Jongju Na, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C.), taken July 24, 2023 (“Na Dep. Tr.”) (excerpts)
2036	Letter from Long H. Chen-S, FDA, to Lisa Pritchard, Galvanize Therapeutics, dated June 17, 2022
2037	Brochure: Sylfirm X Dual Wave RF Microneedling System (2022) (“Brochure”)
2038	ViOL Patent List (Dec. 1, 2023), https://violmedical.com/about/patent
2039	Sylfirm X Video
2040	Transcript of Exhibit 2039 – Sylfirm X Video
2041	RESERVED
2042	Kevin A. Wilson, <i>Leading Regenerative Therapies Creating a Paradigm Shift in Aesthetic Medicine</i> , Aesthetic Guide 3–9 (Mar./Apr. 2022)
2043	Sylfirm X testimonials

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2044	ViOL, Sylfirm X Clinical Paper Summary (updated Jan. 2022)
2045	S.B. Cho et al., In Vivo Skin Reactions from Pulsed-Type, Bipolar, Alternating Current Radiofrequency Treatment Using Invasive Noninsulated Electrodes, SKIN RSCH. TECH. 1–8 (2018) (“Cho Study”)
2046	You Jin Jung et al., Therapeutic Effects of a New Invasive Pulsed-Type Bipolar Radiofrequency for Facial Erythema Associated with Acne Vulgaris and Rosacea, J. COSM. LASER THERAPY 1–5 (2021) (“Jung Study”)
2047	Shaun Wootten et al., An Evaluation of Electrocoagulation and Thermal Diffusion Following Radiofrequency Microneedling Using an In Vivo Porcine Skin Model, J. COSM. DERM. 1–7 (2020) (“Wootten Study”)
2048	Yoram Harth et al., <i>Depressed Acne Scars—Effective, Minimal Downtime Treatment with a Novel Smooth Motion Non-Insulated Microneedle Radiofrequency Technology</i> , 4 J. COSM. DERM. SCIS. APPLS. 212 (2014) (“Harth Study”)
2049	U.S. Patent No. 9,510,899 B2 (“Manstein ’899”)
2050	U.S. Patent No. 6,770,071 B2 (“Woloszko ’071”)
2051	U.S. Patent Application Publication No. 2008/0082090 A1 (“Manstein 090”)
2052	Email exchanges between SynKloud and Jeisys, transmitted December 6, 2021 through January 20, 2022, and Certified English Translations thereof (PROTECTIVE ORDER MATERIAL)
2053	Respondents’ Notice of Prior Art, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. May 24, 2023) (“1356 Investigation NOPA”)

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2054	Complainant's Initial Validity Contentions, <i>In re Certain Dermatological Treatment Devices & Components Thereof</i> , No. 337-TA-1356 (U.S.I.T.C. June 16, 2023) (PROTECTIVE ORDER MATERIAL)
2055	<i>Curriculum Vitae</i> of David J. Goldberg, M.D., J.D.
2056	Hee Kyung Kim et al., <i>Immediate and Late Effects of Pulse Widths and Cycles on Bipolar, and Gated Radiofrequency-Induced Reactions in In Vivo Rat Skin</i> , 16 CLINICAL COSM. INVESTIGATIONAL DERM. 721 (2023)
2057	S. Tyler Hollmig & Basil M. Hantash, <i>Radiofrequency in Cosmetic Dermatology, Recent & Future Developments</i> , 24 COSM. DERM. 565 (2011)
2058	U.S. Patent No. 8,142,426 B2 ("Knopp '426")
2059	RESERVED
2060	Dany Berube et al, <i>A Predictive Model of Minimally Invasive Bipolar Fractional Radiofrequency Skin Treatment</i> , 41 LASERS SURG. MED. 473–478 (2009)
2061	Exclusive Distribution and License Agreement between ViOL Co., Ltd. and Serendia LLC, dated February 7, 2018 (PROTECTIVE ORDER MATERIAL)
2062	Presentation: Sylfirm X Clinical Training (2021) (PROTECTIVE ORDER MATERIAL)
2063	Sylfirm Video2
2064	Transcript of Exhibit 2063 - Sylfirm Video2
2065	Presentation: Koh Seikoh, <i>Skin Rejuvenation Treatment of Asian Skin Using Pulse Oscillation Needle RF</i> , 38TH ANN. MTG. JAP. SOC'Y AESTHETIC DERM. (Sept. 13, 2020) (PROTECTIVE ORDER MATERIAL)

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2066	Martin Braun, Sylfirm X Revolutionises [sic] the Clinical Applications of RF Microneedling, 12 PRIME INT'L J. AESTHETIC ANTI-AGEING [SIC] MED. 50 (2022)
2067	World-Class Product of Korea 2020, Certificate to ViOL Co., Ltd., dated December 9, 2020 ("Sylfirm X Award")
2068	RESERVED
2069	Baze Mpinja, <i>A New Filler for Laugh Lines & More Procedures That Are Safe for Dark Skin</i> , ALLURE (Mar. 20, 2023), https://www.allure.com/story/inclusive-skin-procedures
2070	<i>Curriculum Vitae</i> of Vincent A. Thomas
2071	Profit & Loss, January–December 2021 (Accrual Basis) (July 6, 2023, 2:31 PM) (PROTECTIVE ORDER MATERIAL)
2072	<i>Curriculum Vitae</i> of Daniel W. van der Weide
2073	Christopher L. Brace et al., <i>Microwave Ablation with a Triaxial Antenna: Results in Ex Vivo Bovine Liver</i> ," 53 IEEE TRANSACTIONS MICROWAVE THEORY TECHS. 215 (2005)
2074	Dieter Haemmerich et al., <i>Finite-Element Analysis of Hepatic Multiple Probe Radio-Frequency Ablation</i> , 49 IEEE TRANSACTIONS BIOMED. ENG'G 836 (2002)
2075	Luca Zilberti, <i>Charge Relaxation in Biological Tissues with Extremely High Permittivity</i> , 7 IEEE MAGNETICS LETTERS 1 (2016)
2076	Int'l Electrotechnical Comm'n Int'l Standard, <i>Medical Electrical Equipment - Part 2-2: Particular Requirements for the Basic Safety and Essential Performance of High Frequency Surgical Equipment and High Frequency Surgical Accessories</i> (IEC 60601-2-2) (6.0 ed. Mar. 2017)

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2077	Int'l Electrotechnical Comm'n Int'l Standard, <i>Medical Electrical Equipment - Part 2-2: Particular Requirements for the Basic Safety and Essential Performance of High Frequency Surgical Equipment and High Frequency Surgical Accessories</i> (IEC 60601-2-2:2009 Withdrawn) (5.0 ed. Feb. 2009)
2078	International Standard, <i>Medical Electrical Equipment - Part 2-2: Particular Requirements for the Basic Safety and Essential Performance of High Frequency Surgical Equipment and High Frequency Surgical Accessories</i> (IEC 60601-2-2:2009 Withdrawn), INT'L ELECTROTECHNICAL COMM'N WEBSTORE (5.0 ed.) (Feb. 23, 2009), https://webstore.iec.ch/publication/2624 (last visited Aug. 25, 2023) (Abstract only)
2079	Sylfirm X (product information), ViOL (2022), https://violmedical.com/for_providers/product?idx=10 (last visited Feb. 25, 2023)
2080	RESERVED
2081	RESERVED
2082	RESERVED
2083	ViOL, Sylfirm X User Manual (VO-UM-SFX-03), revised April 20, 2022
2084	Sylfirm X, Device Description (PROTECTIVE ORDER MATERIAL)
2085	RESERVED
2086	Sylfirm X Product Photographs
2087	Presentation: D. van der Weide, RF Microneedle Arrays: Thermal Results, dated July 26, 2023
2088	Photographs: Products at Issue Examinations (June–August 2023)
2089	Cirtec Medical System Drawings, Project: AW000083_A GTW RF PCB, including Certificate of Translation (PROTECTIVE ORDER MATERIAL)

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2090	ViOL, Sylfirm X RF Waveform, R&D (May 22, 2023) (PROTECTIVE ORDER MATERIAL)
2091	Product photograph (CX-3378C.1)
2092	Product photograph (CX-3379C.1)
2093	Product photograph (CX-3380C.1)
2094	Product photograph: Bi-Polar Electrodes, Consumable Tip
2095	Jae Min Shin & Jeong Eun Kim, <i>Radiofrequency in Clinical Dermatology</i> , 2 MED. LASERS 49 (2013)
2096	Tae Hwan Ahn & Sung Bun Cho, <i>Invasive Pulse-Type, Bipolar, Alternating Current Radiofrequency Treatment Using Microneedle Electrodes for Nasal Rosacea</i> , 6 MED. LASER 32 (2017)
2097	Sylfirm X Introduction Video 1
2098	Transcript of Exhibit 2097 - Sylfirm X Introduction Video 1
2099	Sylfirm X Introduction Video 2
2100	Transcript of Exhibit 2099 - Sylfirm X Introduction Video 2
2101	Press Release, BENEV Co., Inc., <i>BENEV Launches Sylfirm X Ultimate Edition, a Novel Radiofrequency Micro-needling Device, in the U.S. as the Exclusive Distributor</i> (Apr. 26, 2021, 14:51 ET), https://www.prnewswire.com/news-releases/benev-launches-sylfirm-x-ultimate-edition-a-novel-radiofrequency-micro-needling-device-in-the-us-as-the-exclusive-distributor-301277036.html
2102	Presentation: Jiehoon Kim, ViOL / Sylfirm, <i>Pigmentary and Vascular Treatment with Pulsed RF “Sylfirm,”</i> including Certificate of Translation (PROTECTIVE ORDER MATERIAL)
2103–2138	RESERVED

Exhibit	Description
2139	Declaration of Vincent A. Thomas, dated April 23, 2024 ("Thomas Decl.") (PROTECTIVE ORDER MATERIAL AND REDACTED VERSIONS)

I. The *General Plastic* Factors Support Discretionary Denial

A. Factor 1

Petitioner Jeisys asserts that there is no “significant relationship” between itself and prior petitioner Cartessa because they are “competitors who sell different products.” Paper 15 (“Reply”), 1. Specifically, Petitioner Jeisys relies on *Ford Motor Co. v. Neo Wireless LLC* to assert that “the Board does not recognize a ‘significant relationship’ between parties having different accused products that merely engage in court-ordered pretrial coordination.” *Id.* (quoting *Ford*, IPR2023-00763, Paper 28 at 3 (P.T.A.B. Mar. 22, 2024)). But as the Director explained in that case, pretrial coordination paired with “***other relevant or extenuating facts or circumstances***” may evidence said “significant relationship.” *Ford*, IPR2023-00763, Paper 28 at 10-11 (emphasis added).

Additional relevant or extenuating facts or circumstances exist here, including that: (i) this second Petition is directed to the same claims as the prior petition; (ii) Petitioner Jeisys had notice of potential infringement of the '836 Patent, and knew of litigation against other RF microneedling manufacturers and distributors, before the prior petition's filing; (iii) Petitioner Jeisys and prior petitioner Cartessa worked closely together—*beyond court-ordered pretrial coordination*—to assert the same claim construction and invalidity positions, and to rely on the same expert (that Petitioner Jeisys now relies on in this second

Petition) to present the same invalidity positions at the evidentiary hearing; and (iv) Petitioner Jeisys tactically delayed in filing this second Petition for ***more than seven months*** after indisputably being aware of the prior art asserted in this Petition, until after completing its coordinated efforts in litigation. Paper 13 (“POPR”), 7-11.

Petitioner Jeisys does not dispute the above facts. Instead, Petitioner proposes that no “significant relationship” can be found where different products are accused of infringement, disregarding that “***other relevant or extenuating facts or circumstances***” may evidence said “significant relationship.” *Ford*, IPR2023-00763, Paper 28 at 10-11 (emphasis added). Petitioner further ignores the other factors enumerated in the precedential opinion in *Valve I* and its progeny. *See, e.g., Valve Corp. v. Elec. Scripting Prods., Inc.*, IPR2019-00062, Paper 11 at 2, 9 (P.T.A.B. Apr. 2, 2019) (precedential) (“*Valve I*”); *Mitek Sys., Inc. v. United Servs. Auto. Ass’n*, IPR2020-00882, Paper 29 at 17 (P.T.A.B. Nov. 6, 2020); *Ericsson Inc. v. Uniloc 2017, LLC*, IPR2019-01550, 2020 WL 1285387, at *4-5 (P.T.A.B. Mar. 17, 2020).

Petitioner Jeisys’s cited case law is also inapposite. While Petitioner cites *Illumina, Inc. v. Ravgen, Inc.*, as an example where the Board found no “significant relationship” due to petitioners purportedly selling different products (Reply 2), the Board ***also*** considered the fact that “unlike *Valve*, [petitioners] [we]re not co-

defendants in the same case,” and “Valve had clearly used the Board’s denial of HTC’s earlier petition as a roadmap for Valve’s follow-on petition.” *Illumina*, IPR2021-01271, Paper 12, at 16-17, 20 (P.T.A.B. Jan. 26, 2022). Here, Petitioner Jeisys and prior petitioners Cartessa **were** co-defendants, and Petitioner Jeisys **did** use the prior petitions (and Patent Owner’s disclosures in the parallel litigation), as a roadmap for this second Petition. *See* POPR 7-28.

Likewise, while Petitioner Jeisys cites to *Unified Patents, LLC, v. Torchlight Technologies LLC*, for the statement that “*Valve* does not apply” when a patent owner does not contend that petitioners are accused of infringement based on the same products (Reply 3), there the patent owner’s **only** basis for asserting that there was a “significant relationship” was that petitioners were “co-defendants in litigation.” *Unified Patents*, IPR2022-01500, Paper 15 at 17-18 (P.T.A.B. May 4, 2023). As the Board explained, being litigation co-defendants does not “necessarily” create a significant relationship that would justify discretionary denial. *Id.* Here, there are additional facts and circumstances evidencing a “significant relationship.” *Supra* pp. 1-2.

B. Factors 2 through 5

Petitioner Jeisys does not address, let alone dispute, the majority of the facts and case law raised by Patent Owner with respect to Factors 2 through 5, each of which **strongly** weigh in favor of denying institution. For example, Petitioner

Jeisys does not dispute that it knew or should have known of the prior art asserted in this second Petition at the time of the filing of the first petition. POPR 12-15 (Factor 2). Petitioner Jeisys further does not dispute that it reviewed the prior Patent Owner's Preliminary Response and the Board's prior decision on institution, as well as Patent Owner's full validity case in the related ITC action, *and* that it adjusted its arguments in this second Petition in view of these prior disclosures. *Id.* 15-23 (Factor 3). Nor does Petitioner Jeisys dispute that it was aware of the currently asserted prior art references *at least seven months* before filing this second Petition. *Id.* 23-26 (Factors 4-5).

Instead, Petitioner Jeisys simply asserts that it: (i) presents different invalidity grounds than those in the prior petition; and (ii) "Patent Owner's own litigation strategy resulted in the number and timing of petitions filed against the patent at issue." Reply 5-6. But Petitioner's proposing different invalidity grounds evidences improper road-mapping (*see* POPR 15-16), and Petitioner does not—*and cannot*—use "Patent Owner's own litigation strategy" to excuse waiting *at least seven months* after it became aware of the currently asserted prior art to file this second Petition.

C. Factors 6 and 7

Petitioner Jeisys does not dispute that "multiple, staggered petition filings ... are an inefficient use of the *inter partes* review process and the Board's resources."

Shanghai Lunion Info. Techs., Ltd v. Telefonaktiebolaget LM Ericsson, IPR2018-00995, Paper 12 at 20 (P.T.A.B. Nov. 13, 2018) (quoting *Gen. Plastic Indus. Co. v. Cannon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 21 (P.T.A.B. Sept. 6, 2017)). Moreover, Petitioner Jeisys's argument that the ITC lacks authority to invalidate a patent is irrelevant to whether the Board's resources would be wasted by considering multiple tactically staggered petitions challenging the same patent claims, which "allow[s] petitioners the opportunity to strategically stage their prior art and arguments in multiple petitions, using our decisions as a roadmap, until a ground is found that results in the grant of review." *Gen. Plastic*, IPR2016-01357, Paper 19 at 17 (footnote omitted).

D. Factor 8

Finally, Petitioner Jeisys asserts that "Petitioner and Cartessa were not similarly-situated defendants facing the same-in-time hazard" Reply 6-7. But this is wrong, as both Petitioner Jeisys and prior petitioner Cartessa were "co-respondents in the ITC litigation and filed their invalidity contentions at the same time." *Shenzhen Silver Star Intelligent Tech. Co. v. iRobot Corp.*, IPR2018-00897, 2018 WL 4773439, at *5 (P.T.A.B. Oct. 1, 2018). "Accordingly, Petitioner [Jeisys] and [prior petitioners Cartessa and ABM] both faced a similar-in-time hazard regarding the '[836] patent.'" *Id.*

II. Objective Indicia Support Non-Obviousness

Even if the Board were to reach the merits, objective indicia of non-obviousness—and *Petitioner Jeisys's inability to rebut them*—strongly support denial of institution on the merits. Petitioner does not dispute that: (i) it was required to address objective indicia supporting non-obviousness; (ii) it failed to do so in its Petition or in the ITC Investigation (despite being on notice of such evidence since at least June 16, 2023, when Patent Owner served its initial validity contentions in the ITC Investigation); and (iii) its expert similarly failed to address objective indicia supporting non-obviousness in his expert declaration (despite admitting that he needed to consider such evidence (Ex. 1003 ¶21)).

Instead, having failed to present any contrary evidence despite having every opportunity to do so, Petitioner Jeisys belatedly relies on attorney argument that “Patent Owner ... did not demonstrate a nexus between its claims and its evidence of commercial success and industry praise[.]” because: (i) Patent Owner asserts that commercial success is, at least partially, attributable to features of U.S. Patent No. 9,775,774; (ii) the “Na Effect” was purportedly “known in the prior art;” (iii) Patent Owner purportedly “failed to demonstrate that the Sylfirm X practices the claims[;]” and (iv) Patent Owner’s expert, Dr. Goldberg, previously co-authored an article which stated that ““partially denatured collagen is more effective at inducing

neocollagenesis' than is 'fully denatured collagen' (i.e., coagulation)." Reply 7-9.

Petitioner's attorney argument is devoid of merit.

First, Petitioner's arguments are erroneous because it is black letter law that "[i]t is not necessary ... that the patented invention be **solely** responsible for the commercial success, in order for this factor to be given weight." *Cont'l Can Co. USA, Inc. v. Monsanto Co.*, 948 F.2d 1264, 1273 (Fed. Cir. 1991) (emphasis added) (citations omitted). Where, as here, the evidence shows that a product practices the claimed invention, there is a presumption "that any commercial success of these products is due to the patented invention[]" and "[t]his is **true even when the product has additional, unclaimed features.**" *PPC Broadband, Inc. v. Corning Optical Commc'ns RF, LLC*, 815 F.3d 734, 747 (Fed. Cir. 2016) (emphasis added) (citing *J.T. Eaton & Co., Inc. v. Atl. Paste & Glue Co.*, 106 F.3d 1563, 1571 (Fed. Cir. 1997) and *Ecolochem, Inc. v. S. Cal. Edison Co.*, 227 F.3d 1361, 1378 (Fed. Cir. 2000)). Put simply, the fact that the Sylfirm X has other features contributing to commercial success—in addition to those claimed in the '836 Patent—does not impact the nexus analysis.

Second, Petitioner Jeisys's attorney argument that the "Na Effect" was "known in the prior art" is wrong. Reply 8. As discussed in Patent Owner's Preliminary Response, the claimed "Na Effect" specifically distinguishes treatment methods such as those disclosed in Ganz which ablate and remove tissue. POPR

32-39. Similarly, Ganz distinguishes treatment methods like those claimed in the '836 Patent which do not ablate and remove tissue, but rather “merely impart[] coagulations into the skin.” *Id.* Moreover, “[w]hile objective evidence of nonobviousness lacks a nexus if it **exclusively** relates to a feature that was ‘known in the prior art,’ ... the obviousness inquiry centers on whether ‘the claimed invention as a whole’ would have been obvious[.]” *Rambus Inc. v. Rea*, 731 F.3d 1248, 1257 (Fed. Cir. 2013) (emphasis added) (citations omitted). And here, the '836 Patent claims include additional claimed features beyond the Na Effect, including the use of bipolar electrodes, and the use of Alternating Current (AC) Radio Frequency (RF) signals. *See, e.g.*, Ex. 1001 ('836 Patent), cl. 1.

Third, Petitioner Jeisys's bald attorney argument that Patent Owner purportedly “failed to demonstrate that the Sylfirm X practices the claims[]” (Reply 9), simply disregards that Patent Owner provided expert testimony that the Sylfirm X practices at least claim 1 of the '836 Patent. Ex. 2030 (VDW Decl.)

¶¶35-47. Nor does Petitioner dispute that: (i) the Sylfirm X's marketing materials **explicitly** cite the '836 Patent (*see, e.g.*, Ex. 2037 (Brochure), 2-3; Ex. 2038 (ViOL Patent Marking), 1); (ii) advertisements for the Sylfirm X, as well as numerous medical providers, have praised the claimed “Na Effect” as a distinguishing feature (*see, e.g.*, POPR 63-65); or (iii) prior art treatments were known to cause burns, blisters, scarring, longer downtime, and pain (*see, e.g.*, Ex. 2031 (Goldberg Decl.)

¶¶57-58; Ex. 2049 (Manstein '899), 3:31-59; Ex. 2050 (Woloszko '071), 2:35-50; Ex. 2051 (Manstein 090), [0040]). Petitioner's bald attorney argument fails as a matter of law. *WBIP, LLC v. Kohler Co.*, 829 F.3d 1317, 1329-31 (Fed. Cir. 2016) ("a patent challenger cannot successfully rebut the presumption with argument alone—it must present evidence.") (citation omitted).

Finally, Petitioner Jeisys's argument that Dr. Goldberg previously co-authored an article suggesting coagulation may not be the most desired skin treatment result is irrelevant. As Dr. Goldberg explained, this article predates modern RF Microneedling devices, and it would not have been safe or practical to use the prior devices to cause coagulation at the time, as they could cause burns, blisters, or scarring. Ex. 2014 (Goldberg Hr'g Tr.), 1333:20-1334:8. Indeed, Dr. Goldberg, a practicing dermatologist, explained that the technology claimed in the '836 Patent "radically revolutionized the way practitioners use RF microneedling devices and made treatments more effective, reduced patient pain and downtime, and increased the patient compliance." Ex. 2031 (Goldberg Decl.) ¶36.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 16th day of May, 2024, a true and correct copy of the foregoing **Patent Owner's Sur-Reply in Support of Patent Owner's Preliminary Response** were served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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