

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLUIDMASTER, INC.

Petitioner

v.

DANCO, INC.
Patent Owner

Case No. IPR2024-00634
U.S. Patent No. 9,103,105 B1

PETITIONER'S REQUEST FOR REHEARING

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EX1001	U.S. Patent No. 9,103,105 to Schuster et al.
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EX1004	Expert Declaration of Dr. Kimberly Cameron, Regarding Invalidity of the Challenged Claims of U.S. Patent No. 9,139,993 to Schuster et al.
EX1005	U.S. Patent No. 10,934,698 to Schuster et al.
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EX1009	Prosecution History of U.S. Patent No. 8,650,671 to Schuster et al. (Application No. 13/346,355, filed January 9, 2012)
EX1010	Prosecution History of U.S. Patent No. 8,104,105 to Schuster et al. (Application No. 12/786,904, filed on May 25, 2010)
EX1011	Prosecution History of U.S. Patent No. 7,743,436 to Schuster et al. (Application No. 10/958,797, filed October 5, 2004)
EX1012	Prosecution History of U.S. Patent No. 6,823,889 to Schuster (Application No. 10/798,606, filed on Mar. 11, 2004)
EX1013	Amended Complaint (Dkt. 35) in <i>Danco, Inc. v. Fluidmaster, Inc., et al.</i> , Case No. 8:23-cv-01156 (C.D. Cal.), filed October 2, 2023
EX1014	U.S. Patent No. 6,546,568 B1 to Schuster issued April 15, 2003 from Application No. 09/969,320 filed October 1, 2001, as a continuation of Application No. 09/634,249 filed August 8, 2000 (now U.S. Patent No. 6,295,660)

Exh. No.	Description of Exhibit
EX1015	Registered Utility Model Publication Number CN2447417Y to Guoxin published September 12, 2001
EX1016	Certified Translation (together with a statement that the translation is true and accurate) of Registered Utility Model Publication Number CN2447417Y to Guoxin published September 12, 2001
EX1017	U.S. Patent No. 5,926,868 to Bjerke issued July 27, 1999
EX1018	U.S. Patent No. 5,249,830 to Calmettes, et al. issued October 5, 1993
EX1019	U.S. Patent No. 989,251 to Hall issued April 11, 1911
EX1020	Canadian Patent No. 1,320,235 to Kimber granted and published July 13, 1993
EX1021	U.S. Patent No. 3,086,546 to Brown issued April 23, 1963
EX1022	U.S. Patent No. 5,862,538 to Ho issued June 26, 1999
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EX1028	U.S. Patent No. 6,219,856 to Alles issued April 24, 2001
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Exh. No.	Description of Exhibit
EX1033	Declaration of Ranjini Acharya in Support of Petitioner's Motion for Admission <i>Pro Hac Vice</i> of Ranjini Acharya
EX1034	Order Granting Defendant's Motion to Stay Case Pending IPR (Dkt. 48) in <i>Danco, Inc. v. Fluidmaster, Inc., et al.</i> , Case No. 8:23-cv-01156 (C.D. Cal.), entered April 3, 2024
EX1035	Comparison of Annotated Figures in Petition (Paper 1) and Expert Declaration (EX1004)
EX1036	Supplemental Expert Declaration of Dr. Kimberly K. Cameron, Ph.D., dated March 19, 2025
EX1037	Transcript of Deposition of Michael Jobin, taken March 11, 2025
EX1038	Demonstrative of Figure 7 of EX1022 (Ho), marked during deposition of Michael Jobin, taken March 11, 2025

GLOSSARY

Abbreviation	Term
'606 Application	U.S. Patent App. No. 10/798,606
'698 Patent	U.S. Patent No. 10,934,698
'904 Application	U.S. Patent App. No. 12/786,904
'105 Patent	U.S. Patent No. 9,103,105
'993 Patent	U.S. Patent No. 9,139,993
Board	USPTO Patent Trial and Appeal Board
Challenged Claims	Claims 1-24 of the '105 Patent
Danco, Patent Owner, or PO	Danco, Inc.
Fluidmaster or Petitioner	Fluidmaster, Inc.
FWD	Final Written Decision, IPR2024-00634 Paper 47
Parties	Danco and Fluidmaster, collectively
Petition	IPR2024-00634 Paper 1
POR	IPR 2024-00634 Paper 28 (Patent Owner Response)
POSITA	Person of Ordinary Skill in the Art
Reply	IPR 2024-00634 Paper 32 (Petitioner's Reply)
USPTO	United States Patent and Trademark Office

I. PRECISE RELIEF REQUESTED

Petitioner respectfully requests rehearing of the FWD under 37 C.F.R. § 42.71(d) as it relates to Ground 5 of the Petition.¹

The FWD misapprehends or overlooks Petitioner's arguments and the record evidence on the threshold issue that controls Ground 5: whether the '105 Patent is entitled to the March 11, 2004 filing date of the '606 Application. The FWD treats the '606 Application as disclosing not only an adjustable "bowl fill valve," but also the broader class of fixed, non-adjustable "bowl fill restrictions," and on that basis finds that the '105 Patent is entitled to the March 11, 2004 priority date. FWD at 40-44. That conclusion turns on three key errors.

First, the FWD misapprehends the concept of "regulated" flow as described in the '606 Application and overlooks the fact that the disclosure describes that solely as performed by an adjustable (not fixed) device. As Petitioner previously argued, and as explained again below, the '606 Application repeatedly identifies adjustability as a defining feature of the invention. Thus, even if one accepts that the '606 Application is directed to the function of a "regulated" flow, there is no disclosure of achieving that function through a non-adjustable or fixed device.

¹ Petitioner reserves the right, and does not waive, its right to raise any and all issues and challenges otherwise available to it in any appeal or other review of the FWD regarding any of Ground 5 or any of the other Grounds that are the subject of the Petition and the FWD.

Second, the FWD overlooks Petitioner’s explanations of how a POSITA would have understood the ’606 Application, based on the testimony of its expert Dr. Cameron. Dr. Cameron specifically addressed the same passages relied upon by the FWD and explained that a POSITA would have understood them to disclose only the species of an adjustable bowl fill valve, not the broader genus of fixed and adjustable water flow devices. The FWD criticizes Petitioner for failing to rebut PO’s expert on this point. To be clear, Petitioner does not seek rehearing based on a disagreement with the Board’s weighing of competing evidence. Rather, the FWD’s criticism overlooks Petitioner’s specific arguments on this point, as well as Dr. Cameron’s detailed explanation, drawn from the specification and prosecution history, that was cited by Petitioner in support.

Third, to bridge the gap from the discussion of an adjustable valve in ’606 Application to the later-claimed fixed devices, the FWD misapprehends the testimony of PO’s expert Mr. Jobin, which wrongly equates ***functional*** language (“the flow of water is regulated”) with the specific disclosure of a ***structure***. Mr. Jobin’s approach improperly reads the later-claimed term “bowl fill restriction” back into the ’606 Application, despite record evidence (including statements made by PO during prosecution) showing that the “restriction” terminology was later introduced in a continuation-in-part, to broaden the scope of the claim beyond the original ***adjustable-only*** “bowl fill valve.” Again, this argument is not new. Petitioner

previously presented these same arguments (*see, e.g.*, Petition at 1, 9-10, 84-86; Reply at 24-27), relying on the same evidence, including Dr. Cameron’s testimony (EX1004 ¶¶361-369; EX1036 ¶¶13-14) and Mr. Jobin’s deposition (EX1037 at 22:12-21, 58:20-62:13).

In sum, the FWD fails to address key arguments and evidence that demonstrates that the ’606 Application discloses only the species of *adjustable* valves, not the broader genus of *fixed and adjustable* devices. Taking the argument and evidence fully into account should compel the conclusion that claims 1-24 of the ’105 Patent are not entitled to the 2004 priority date, and that therefore the Board should have found in favor of Petitioner on Ground 5. Accordingly, Petitioner respectfully requests that the Board grant rehearing and modify the FWD to find all claims of the ’105 Patent unpatentable.

II. THE FWD MISAPPREHENDED AND OVERLOOKED PETITIONER’S ARGUMENTS AND SUPPORTING RECORD EVIDENCE WHEN CONCLUDING THAT THE ’105 PATENT IS ENTITLED TO A 2004 PRIORITY DATE

The ’105 Patent claims a “bowl fill restriction,” a term that encompasses both adjustable and non-adjustable devices for regulating the flow of water into the bowl. *See* Petition at 84-86. As explained in the Petition, the ’105 Patent can therefore only claim priority back to the ’606 Application if the ’606 Application complies with the written description requirement of 35 U.S.C. § 112(a) for both adjustable and non-

adjustable water flow devices - that is, if the invention identified in the '606 Application as a "bowl fill valve" included both adjustable and non-adjustable water flow devices.² *Id.*

Petitioner squarely argued that the earlier applications to which the '105 Patent claims priority do not disclose the broader genus of fixed and adjustable flow devices. *See* Petition at 84-85. Petitioner specifically relied on Dr. Cameron's testimony and the prosecution history in support of this argument. *Id.* (*citing* EX1004, ¶¶ 361-369; EX1008 at 85); *see also* Reply at 24-27.

The FWD finds, contrary to Petitioner's argument, that the '606 Application encompassed fixed and adjustable devices, and concludes that the '105 Patent could therefore claim priority to the filing date of the '606 Application. FWD at 40-43. The FWD does not consider Petitioner's arguments or evidence in reaching this conclusion. Instead, in support, the FWD cites the following passage from the '606 Application, which also appears verbatim in the '105 Patent:

[W]hen the toilet fill valve 100 is open and water flows from the water inlet 103 to the water outlets 106 and into a toilet tank, an amount of

² On its face, the '105 Patent claims priority to several earlier parent applications, including Appl. No. 12/786,904 ("the '904 Application"), filed on May 25, 2010, now Pat. No. 8,104,105 (as a continuation) and Appl. No. 10/798,606 ("the '606 Application"), filed on Mar. 11, 2004, now Pat. No. 6,823,889 (as a continuation-in-part). *See* Petition at 3. Therefore, while Petitioner agrees with the FWD that there is some overlap between the '904 Application and the '606 Application (*see* FWD at 41, n. 13), Petitioner notes that the specifications of the '904 Application and the '606 Application are not identical.

water is also supplied to the bowl fill valve inlet 113 that flows through the bowl fill valve 109 and out the bowl fill valve outlet 116. By virtue of the manual setting of handle 119 of the bowl fill valve 109, the *flow of water* through the bowl fill valve 109 is *regulated*. In this manner, the flow of water is *regulated so that enough water flows out of the bowl fill valve 109 to fill a toilet bowl without wasting any water down a drain*.

FWD at 42-43 (quoting EX1012 at 47, ¶ 8; EX1001 at 2:28-39) (italics as in FWD).

The FWD relies on the italicized portions of this passage to conclude that “the ’606 Application discloses *regulating* an amount of water supplied to a toilet bowl using a valve (*i.e.*, [one type of] a water flow regulator).” *Id.* at 43 (*citing* EX2013, ¶ 288) (italics as in FWD). From this, the FWD concludes, the ’606 Application supports interpreting the later-claimed “bowl fill restriction” as encompassing both fixed and adjustable devices. *Id.*

That is incorrect. As Petitioner previously explained (Petition at 82-86), the relevant issue is whether the ’606 Application discloses the genus of regulators (adjustable valves **and** fixed restrictors) or the species of adjustable valves. *See also*, Petitioner’s Reply to Patent Owner’s Preliminary Response, Paper No. 18, at 2-3. Based on the record evidence, the invention described in the ’606 Application was directed solely to adjustable water flow devices and did not encompass both fixed and adjustable devices. In reaching the opposite conclusion, the Board has not simply determined to give greater weight to competing evidence. Rather, the FWD overlooks Petitioner’s arguments and evidence entirely. More specifically, the

FWD: (1) mistakenly fails to address portions of the record that establishes that the '606 Application was directed *only* to adjustable valves, (2) misapprehends the significance of the portions of the record on which the FWD relies, and in particular the declaration of Mr. Jobin as it relates to (a) a “regulator” and (b) the examples of valves provided in the '606 Application, and (3) fails to consider Petitioner’s evidence rebutting PO’s expert’s testimony.

A. The FWD Overlooks Petitioner’s Prior Arguments and the Record Evidence Showing that the '606 Application Discloses Only Adjustable Devices

Earlier in the same passage of the '606 Application that the FWD identifies, the claimed invention of the '606 Application (the “bowl fill valve 109”) is described as having a “handle 119” that can be manually set. *See* EX1012 at 47, ¶ 6. Petitioner’s expert explained that the presence of this handle (described as being manually set to change the flow of fluid moving through the claimed bowl fill valve) demonstrates that the function (regulation of water flow) described in the '606 Application is achieved through a structure that is an *adjustable*, not fixed, bowl fill valve. *See* EX1004, ¶ 365. Petitioner previously presented this argument (*see* Petition at 1, 84-86) and specifically cited evidence from Dr. Cameron, who confirmed the same. *See id.* (*citing* EX1004, ¶¶ 363-366). Petitioner also reiterated this in the Reply, explaining further that PO’s expert Mr. Jobin *agreed* with Dr. Cameron that the valve remains adjustable after installation. *See* Reply at 25 (*citing*

EX1012 at 47, ¶ 9, 49, ¶ 16; EX1037, 22:12-21). The FWD does not address these arguments. It also fails to address the absence of any disclosure in the '606 Application describing a fixed device.

B. The FWD Overlooks or Misapprehends Petitioner's Prior Challenges to Mr. Jobin's Unreliable Testimony

1. The FWD Misapprehends Petitioner's Prior Argument that Mr. Jobin's Testimony as it Relates to a "Regulator" Does Not Support Genus Disclosure

In reaching the conclusion that the '606 Application contains disclosures sufficient to interpret "bowl fill restriction" of the '105 Patent as claiming the genus of fixed and adjustable devices, the FWD also relies on the testimony of PO's expert, Mr. Jobin, regarding water regulators. *See* FWD at 43 (*citing* EX2013, ¶ 288). Again, Petitioner does not challenge the Board's weighting of Mr. Jobin's testimony relative to Dr. Cameron's. Rather, as shown below, the FWD misapprehends Petitioner's prior arguments challenging Mr. Jobin's testimony, and fails to address the corresponding rebuttal evidence presented by Petitioner. *See* Reply at 24-25 (*citing* EX2013, ¶¶ 266-273 and EX1037).

Mr. Jobin's declaration included specific definitions of "valve," "restrictor," and "regulator." *See* Reply at 24-25 (*citing* EX2013, ¶¶ 266-273). He began by expressly characterizing a "valve" as "an *adjustable* device." *Id.*, ¶ 267 (emphasis added). He then conceded that the term "restrictor," which he described as a

“typically static (i.e. non-adjustable) device,” does not appear anywhere in the ’606 Application or the ’105 Patent. *Id.*, ¶ 270. Mr. Jobin also acknowledged PO’s position during prosecution, in replacing “bowl fill valve” with “bowl fill restriction” (which it did for the first time in the ’105 Patent), that PO intended to capture something that was ***broader*** than the claimed “bowl fill valve” of the ’606 Application, and that he agreed with this characterization. *Id.*, ¶ 272 (“I understand during prosecution...the patentee explained that a bowl fill restriction is broader in scope than a bowl fill valve, in that it includes both adjustable and static devices. This is consistent with my understanding of the term.”).

That point is significant. As Petitioner pointed out, the prosecution history (which the FWD does not address) demonstrates that the later-claimed “bowl fill restriction” of the ’105 Patent seeks to capture a genus (fixed and adjustable devices) that is broader than the originally-claimed “bowl fill valve” (the species of adjustable-only devices). *See* Petition at 1 (“PO sought to broaden the scope of its claims in later applications in order to cover non-adjustable restrictions as well as valves.”); 85 (“PO has to recast its invention in broader terms with claims that encompass the original invention along with the broader embodiments of the invention not described in the original application.”); *see also* Reply at 24-25. The FWD does not consider this evidence, even though it directly bears on whether the earlier applications disclose the full scope of the challenged claims.

Instead, the FWD focuses on Mr. Jobin’s testimony regarding a “regulator,” an unclaimed term that he opined covers the genus of fixed devices (restrictors) and adjustable devices (valves). *See* FWD at 43; EX2013, ¶ 287. To be clear, Mr. Jobin did not suggest that the claim term “bowl fill restriction” appears in the ’606 Application. (It does not). In the absence of that specific disclosure, Mr. Jobin instead pointed to a passage that states that “the *flow of water* through the bowl fill valve 109 is *regulated*.” EX2013, ¶¶ 274 (emphasis in original). Based on this, Mr. Jobin concluded that the ’606 Application contains “sufficient disclosure” to show that the patentee was also in possession of the broader “water flow regulator,” which encompasses both restrictors and valves. *Id.*

Petitioner previously addressed the problem with Mr. Jobin’s approach. *See* Reply at 25; Petition at 82. As Petitioner explained, Mr. Jobin’s description of the *function* of the species is not sufficient to support a disclosure of its *structure*. Reply at 25 (*citing Regents of the Univ. of California v. Eli Lilly & Co.*, 119 F.3d 1559, 1568 (Fed. Cir. 1997) (“The description requirement of the patent statute requires a description of an invention, not an indication of a result that one might achieve if one made that invention.”))); *see also* Petition at 82 (*citing Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1350 (Fed. Cir. 2010) (*en banc*) (in requiring that the written disclosure must identify either a representative number of species or common structural features, the reviewing court noted “[m]erely drawing a fence

around the outer limits of a purported genus is not an adequate substitute for describing a variety of materials constituting the genus and showing that one has invented a genus and not just a species.”)). The FWD erroneously relies on Mr. Jobin’s testimony, while overlooking the prosecution history, to conclude that the ’606 Application discloses both the species (adjustable bowl fill valve) and the genus (fixed or adjustable water flow regulators). *See* FWD at 43. In so doing, the FWD overlooks Petitioner’s arguments and evidence on this very issue, and thus misapprehends the record.

**2. The FWD Overlooks Petitioner’s Prior Argument that the
’606 Application Discloses Only Adjustable Valves (Not
Both Fixed and Adjustable Devices)**

The ’606 Application discloses several types of valves, namely, “a ball valve, a gate valve, a globe valve, a plug valve, a diaphragm valve, a butterfly valve, a needle valve, a sliding gate, a quick turn valve, a knife valve or *any other appropriate type of valve as can be appreciated by those with ordinary skill in the art.*” FWD at 43 (quoting EX1012 at 48) (italics as in FWD). The FWD also relies on this disclosure, to conclude that a POSITA would have understood the phrase “or any other appropriate type of valve” in the ’606 Application to include static, non-adjustable devices with no moving parts. FWD, 49 (*citing* EX2013, ¶¶ 290, and “Ex. 2009 (disclosing a static flow control valve)”).

That reliance is misplaced, as Petitioner previously addressed. *See* Reply at 25, n. 16 (*citing* EX1037 at 58:20-62:13). In his declaration, Mr. Jobin opined that a “valve” is understood as an adjustable (not fixed) device. *See* EX2013, ¶ 281. Accordingly, it should have been undisputed that the list does not provide any examples of fixed devices. Nevertheless, he opined, a POSITA would have understood the ’606 Application to disclose both adjustable and non-adjustable flow control structures. *Id.*, ¶ 290. As his only support, Mr. Jobin offered one example: a “flow control valve” (which is ***not*** one of the embodiments listed in the disclosure of the ’606 Application), which he opined are “static (*i.e.* non-adjustable) devices that restrict the flow rate through the device.” *Id.* But neither Mr. Jobin nor PO offered any evidence that a POSITA would have known of a “flow control valve” in 2004, much less have understood the ’606 Application to encompass it. Indeed, during his deposition, Mr. Jobin conceded that EX2009 was provided to him by PO’s counsel and that he did not know the date, author, or provenance of EX2009. *See* Reply at 25, n. 16 (*citing* EX1037 at 58:20-62:13). Petitioner previously pointed to this testimony and argued that there is thus ***no evidence*** that that a POSITA, in 2004, would have understood “any other appropriate type of valve” to encompass both fixed and adjustable devices. *Id.* at 25.

Thus, the FWD's reliance on Mr. Jobin's testimony as to the types of valves disclosed in the '606 Application overlooks Petitioner's prior arguments and supporting evidence, and again reflects a misapprehension of the record evidence.

C. The FWD Overlooks Petitioner's Prior Rebuttal Arguments and Evidence Regarding a POSITA's Understanding

The FWD criticizes Petitioner for failing to "sufficiently rebut Mr. Jobin's testimony [.]” FWD at 43 (*citing* “*generally* Pet. Reply.” and EX1004, ¶¶ 360-369). To the contrary, the record shows that Petitioner expressly presented rebuttal arguments and evidence that the FWD does not address. *See, e.g.*, Petition at 85 (*citing* EX1004, ¶¶ 363-368); Reply at 25 (*citing* EX1036, ¶¶ 13-14). Thus, this is not a case where Petitioner takes issue with the weighting of Mr. Jobin's testimony; rather, the FWD's criticism overlooks the detailed arguments and evidence previously presented by Petitioner on this issue.

In fact, Dr. Cameron specifically described what a POSITA would have understood from the '606 Application - namely, that the flow of water into the bowl was regulated by an *adjustable* valve. Specifically, Dr. Cameron pointed to the same list of embodiments listed in the '606 Application and explained that this disclosure identifies only types of valves (which are adjustable) and not the genus of fixed and adjustable devices. EX1004, ¶ 368. Petitioner expressly relied on this testimony to argue that a POSITA would thus not have understood the inventors to have had

possession of the genus of regulators, beyond the species of adjustable valves that had been specifically disclosed. *See* Petition at 85 (*citing* EX1004 ¶ 368-369). *See also id.* at 85 (*citing* EX1004, ¶ 363-364 (prior to the filing for the '993 Patent, all the applications, including the '606 Application, were titled “Toilet Fill Valve ***with Adjustable Bowl Fill Flow***” with an Abstract stating “***The bowl fill valve is configured to supply an adjustable flow of water*** out the bowl fill outlet port for filling a toilet bowl during a flush cycle of a toilet.”); ¶¶ 365-365 (quoting several statements in the specifications making it clear that adjustability of the bowl fill valve is a desirable and indeed essential feature of the invention))).

Petitioner also argued that a POSITA would have understood the '606 Application to disclose only the species and not the genus because PO later asserted that “bowl fill restriction” was a broader category of “fixed or adjustable” devices, as opposed to the original (adjustable) “bowl fill valve.” In support, Petitioner specifically relied on Dr. Cameron’s testimony on this point. *See* Reply at 25 (*citing* EX1036, ¶¶ 13-14 (confirming that a POSITA would have understood the '606 Application to disclose and claim only the species and not the genus)). Petitioner also pointed to Mr. Jobin’s testimony as well. *Id.* (*citing* EX2013, ¶ 267 (Mr. Jobin agreeing that a POSITA would generally understand “valves” to refer to only to adjustable (non-fixed) devices)).

Finally, Petitioner argued that because a restrictor (a static fixed device) is not capable of being adjusted once installed, replacing the bowl fill valve with a non-adjustable restricting mechanism would defeat the purpose of the invention of the '606 Application; again, relying on Dr. Cameron's testimony in support. *See* Petition at 85 (*citing* EX1004, ¶ 366). Petitioner also pointed out that Mr. Jobin conceded as much in his deposition as well. *See* Reply at 25 (*citing* EX1037 at 22:12-21).

The FWD overlooks the arguments, evidence, and testimony that confirm the disclosures in the '606 Application are limited to adjustable valves, and thus again misapprehends the record, warranting rehearing.

III. CONCLUSION

As shown above, Petitioner's arguments were previously presented in the Petition and Reply and supported by citations to evidence in the record. The Board overlooked this material record evidence when denying Ground 5. When the arguments and record are properly considered, the '606 Application discloses only an adjustable bowl fill valve and does not support the priority determination adopted in the FWD. Petitioner therefore respectfully requests that the Board grant rehearing and modify the FWD to find all claims of the '105 Patent unpatentable as anticipated by Schuster (Ground 5).

Dated: April 3, 2026

Respectfully submitted,

By: / Carolyn S. Toto /

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 3, 2026, a true copy of the foregoing **PETITIONER’S REQUEST FOR REHEARING** and all exhibits/attachments thereto were served in their entirety via electronic mail on the following attorneys of record:

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