UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of	
CERTAIN HYDRODERMABRASION SYSTEMS AND COMPONENTS THEREOF	**Inv. No. 337-TA-1408**

ORDER NO. 19: **INITIAL DETERMINATION GRANTING RESPONDENT EUNSUNG GLOBAL CORP.'S UNOPPOSED MOTION TO TERMINATE THE INVESTIGATION BASED ON CONSENT ORDER [MOTION DOCKET NO. 1408-003]**

(December 19, 2024)

I. BACKGROUND

The Commission instituted this Investigation on July 17, 2024. 89 Fed. Reg. 58188-89 (July 17, 2024). The Investigation was instituted based upon a complaint ("Complaint") filed on June 11, 2024 by Complainant HydraFacial LLC f/k/a Edge System LLC ("HydraFacial") against, *inter alia*, Respondent Eunsung Global Corp ("Eunsung"). (*See, e.g.*, Compl. at ¶ 1.). HydroFacial accused Eunsung of violating Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), based upon the sale for importation into the United States, the importation into the United States, and/or the sale after importation into the United States of products alleged to infringe one (1) U.S. patent ("Asserted Patent"). (*Id.* at ¶ 2.).

On October 15, 2024, pursuant to Commission Rule 210.21(c)(1)(ii), Eunsung filed a motion to terminate this Investigation ("Motion") with respect to it based upon a consent order stipulation ("Stipulation") and proposed consent order ("Proposed Order"), which Complainant and remaining Respondent Cartessa Aesthetics, LLC ("Cartessa") do not oppose.[1] (Motion

[1] Eunsung's Motion to Stay the Investigation with respect to Eunsung was granted. (*See* Order No. 10

Exhibit 1109
Eunsung v. Hydrafacial
IPR2024-01491

Docket No. 1408-003 (Oct. 15, 2024); Mot. at 1.).

I. APPLICABLE LAW

Commission Rule 210.21(a)(2) provides that "[a]ny party may move at any time to terminate an investigation in whole or in part as to any or all respondents on the basis of a . . . consent order." 19 C.F.R. § 210.21(a)(2). A motion to terminate on the basis of a consent order must be submitted "with a stipulation that includes a proposed consent order." 19 C.F.R. § 210.21(c)(1)(ii). In addition, such a motion must include: (i) "copies of any licensing or other settlement agreement, any supplemental agreements;"[2] and (ii) "a statement that there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the investigation." 19 C.F.R. § 210.21(c).

Commission policy generally "favors settlement to avoid needless litigation and to conserve public resources." *Certain Access Control Sys. and Components Thereof*, Inv. No. 337-TA-1016, Order No. 36 at 3 (Oct. 17, 2017). Termination based on a consent order is routinely granted when the requirements for a consent order are satisfied by the participating parties. *See*, *e.g.*, *Certain Insect Traps*, Inv. No. 337-TA-498, Order No. 9 at 5 (Apr. 9, 2004).

Commission Rule 210.21(c)(3)(i) provides that a consent order stipulation must include the following:

> (A) An admission of all jurisdictional facts;
>
> (B) A statement identifying the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice, and whether the stipulation calls for cessation of importation, distribution, sale, or other transfers (other than exportation) of subject articles in the United States and/or specific terms relating to the disposition of existing U.S. inventories of subject articles;

(Oct. 15, 2024).).

[2] If the license or other settlement agreement contains confidential business information, a public version of the agreement must also be attached. 19 C.F.R. § 210.21(c).

> (C) An express waiver of all rights to seek judicial review or otherwise challenge or contest the validity of the consent order;
>
> (D) A statement that the signatories to the consent order stipulation will cooperate with and will not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of this part;
>
> (E) A statement that the enforcement, modification, and revocation of the consent order will be carried out pursuant to subpart I of this part, incorporating by reference the Commission's Rules of Practice and Procedure;
>
> (F) A statement that the signing thereof is for settlement purposes only and does not constitute admission by any respondent that an unfair act has been committed, if applicable; and
>
> (G) A statement that the consent order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in section 337 of the Tariff Act of 1930 and this part for other Commission actions, and the Commission may require periodic compliance reports pursuant to subpart I of this part to be submitted by the person entering into the consent order stipulation.

19 C.F.R. § 210.21(c)(3)(i).

In addition, when alleged unfair acts relate to intellectual property rights, a consent order stipulation must also include the following:

> (A) A statement that the consent order shall not apply with respect to any claim of any intellectual property right that has expired or been found or adjudicated invalid or unenforceable by the Commission or a court or agency of competent jurisdiction, provided that such finding or judgment has become final and nonreviewable; [and]
>
> (B) A statement that each signatory to the stipulation who was a respondent in the investigation will not seek to challenge the validity of the intellectual property right(s), in any administrative or judicial proceeding to enforce the consent order.

19 C.F.R. § 210.21(c)(3)(ii).

Finally, a consent order stipulation must include a proposed consent order that, pursuant to Commission Rule 210.21(c)(4), includes the following:

> (i) A statement of the identity of complainant, the respondent, and the subject articles, and a statement of any allegation in the complaint that the respondents sell for

importation, import, or sell after importation the subject articles in violation of section 337 by reason of asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice;

(ii) A statement that the respondents have executed a consent order stipulation (but the consent order shall not contain the terms of the stipulation);

(iii) A statement that the respondent shall not sell for importation, import, or sell after importation the subject articles, directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation except under consent, license from the complainant, or to the extent permitted by the settlement agreement between complainant and respondent;

(iv) A statement, if applicable, regarding the disposition of existing U.S. inventories of the subject articles[;]

(v) A statement, if applicable, whether the respondent would be ordered to cease and desist from importing and distributing articles covered by the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice;

(vi) A statement that respondent shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of the Consent Order;

(vii) A statement that respondent shall cooperate with and shall not seek to impede by litigation or other means the Commission's efforts to gather information under subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210;

(viii) A statement that [r]espondent and its officers, directors, employees, agents, and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of the claims of the asserted patent claims, copyright, trademark, mask work, boat hull design, or unfair trade practice in any administrative or judicial proceeding to enforce the Consent Order;

(ix) A statement that when the patent, copyright, trademark, mask work, boat hull design, or unfair trade practice expires the Consent Order shall become null and void as to such;

(x) A statement that if any claim of the patent, copyright, trademark, mask work, boat hull design, or other unfair trade practice is held invalid or unenforceable by a court or agency of competent jurisdiction or as to any articles that has been found or adjudicated not to infringe the asserted right in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable claim or adjudicated article;

(xi) An admission of all jurisdictional facts; and

> (xii) A statement that the investigation is hereby terminated with respect to the respondent; provided, however, that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

19 C.F.R. § 210.21(c)(4).

The proposed consent order may not include terms beyond or inconsistent with those set forth by Commission Rule 210.21(c)(4). *Id*.

II. ANALYSIS

The Motion requesting termination of the Investigation with respect to all asserted claims against Eunsung should be granted because Eunsung has satisfied the requirements set forth in Commission Rules 210.21(c)(3) and 210.21(c)(4).

Eunsung has executed a Stipulation, attached as Exhibit B to the Motion, that complies with Commission Rule 210.21(c)(3). (Mot. at Ex. B.). The Stipulation incorporates a Proposed Order, attached as Exhibit C to the Motion, that complies with Commission Rule 210.21(c)(4). (*Id*. at Ex. C.). The Proposed Order does not appear to have terms beyond, or materially inconsistent with, those provided for in Commission Rule 210.21(c)(4). (*Id*.). Eunsung states in its Motion that "there are no other agreements, written or oral, express or implied, between Eunsung and HydraFacial concerning the subject matter of this Investigation." (Mot. at 2.).

A. The Stipulation Complies with Commission Rule 210.21(c)(3)

In compliance with 19 C.F.R. § 210.21(c)(3)(i)(A), Eunsung stipulates that the Commission has statutory authority to hear the Investigation, and Eunsung admits all jurisdict ional facts pertinent to the Investigation for the purposes of this Stipulation and the Consent Order only. (Stipulation at ¶ 4.).

In compliance with 19 C.F.R. § 210.21(c)(3)(i)(B), the Stipulation identifies the asserted patent rights and provides that:

> Eunsung shall not sell for importation, import, or sell after importation the Subject Articles, either directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation except under consent or license from HydraFacial or as necessary to provide wananty repair and/or replacement part or products for a product sold by Eunsung prior to the date that the Consent Order is entered.

(*Id.* at ¶ 6.).

Eunsung "agrees that it will export or destroy any existing U.S. inventories of the Subject Articles within 30 days of its execution of this Stipulation." (*Id.* at ¶ 7.).

In compliance with 19 C.F.R. § 210.21(c)(3)(i)(C), Eunsung stipulates that it "expressly waives all rights to seek judicial review or otherwise challenge or contest the validity of the Consent Order." (*Id*. at ¶ 8.).

In compliance with 19 C.F.R. § 210.21(c)(3)(i)(D), Eunsung stipulates that it "shall cooperate with and shall not seek to impede[] by litigation or other means the Commission's efforts to gather information under Subpart I of 19 C.F.R. Part 210." (*Id*. at ¶ 9.).

In compliance with 19 C.F.R. § 210.21(c)(3)(i)(E), Eunsung stipulates that "[e]nforcement, modification, or revocation of the Consent Order will be carried out pursuant to Subpart I of 19 C.F.R. Part 210, incorporating by reference the Commission's Rules of Practice and Procedure." (*Id*. at ¶ 10.).

In compliance with 19 C.F.R. § 210.21(c)(3)(i)(F), Eunsung stipulates that "[t]he signing of this Stipulation . . . does not constitute an admission by Eunsung that an unfair act has been committed." (*Id*. at ¶ 11.).

In compliance with 19 C.F.R. § 210.21(c)(3)(i)(G), Eunsung stipulates that "[t]he Consent Order shall have the same force and effect and may be enforced, modified, or revoked in the same manner as is provided in Section 337 of the Tariff Act of 1930 and 19 C.F.R. Part 210 for other Commission actions" and that "the Commission may require periodic compliance reports pursuant to Subpart I of 19 C.F.R. Part 210 to be submitted by the person entering into this Consent Order Stipulation." (*Id*. at ¶ 12.).

In compliance with 19 C.F.R. § 210.21(c)(3)(ii)(A), Eunsung stipulates that "[i]f any of the Asserted Patent Claims have expired or are held invalid or unenforceable by a court or agency of competent jurisdiction, or if any of the Subject Articles have been found or adjudicated not to infringe any of the Asserted Patent Claims in a final decision, no longer subject to appeal, the Consent Order shall become null and void as to such expired, invalid, or unenforceable Asserted Patent Claim(s) or such adjudicated Subject Article(s)." (*Id*. at ¶ 13.).

In compliance with 19 C.F.R. § 210.21(c)(3)(ii)(B), Eunsung stipulates that it "will not seek to challenge the validity of the intellectual property rights at issue in this Investigation in any administrative or judicial proceeding to enforce the Consent Order." (*Id*. at ¶ 14.).

The Stipulation thus meets the requirements of Commission Rule 210.21(c)(3). 19 C.F.R. § 210.21(c)(3).

B. The Proposed Order Complies with Commission Rule 210.21(c)(4)

In compliance with 19 C.F.R. § 210.21(c)(4)(i), the Proposed Order identifies: (i) Complainant HydraFacial LLC f/k/a Edge Systems; (ii) Respondent Eunsung Global Corp.; and (iii) the subject articles as certain hydrodermabrasion systems and components thereof that are alleged to infringe claims s 1, 2-10, 11, 12, 14-20, 22, 23-25, 26, 28-36, 37, and 39-45 of U.S. Patent No. 11,865,287 (the "Asserted Claims" of the "Asserted Patent"). (*See* Proposed Order,

pp. 1-2.). The Proposed Order also states that "the Complaint alleges that Eunsung imports into the United States, sells for importation, and/or sells within the United States after importation certain hydrodermabrasion systems and components thereof that infringe the Asserted Patent Claims." (*Id.*, p. 2. at ¶ 4.).

In compliance with 19 C.F.R. § 210.21(c)(4)(ii), the Proposed Order provides that Eunsung has executed a consent order stipulation. (*Id*. at ¶ 6.).

In compliance with 19 C.F.R. § 210.21(c)(4)(iii), the Proposed Order provides that:

> Eunsung shall not sell for importation, import, or sell after importation the Subject Articles, directly or indirectly, and shall not aid, abet, encourage, participate in, or induce the sale for importation, the importation, or the sale after importation except under consent or license from HydraFacial, or as necessary to provide warranty repair and/or replacement parts or products for a product sold by Eunsung prior to the date of this Consent Order.

(*Id.*, p. 3 at ¶ 7.).

In compliance with 19 C.F.R. § 210.21(c)(4)(iv), the Proposed Order states that "Eunsung shall export or destroy any existing inventories of the Subject Articles in the United States within 30 days of its execution of the Consent Order Stipulation." (*Id.* at ¶ 8.).

In compliance with 19 C.F.R. § 210.21(c)(4)(v), the Proposed Order states that "Eunsung shall cease and desist from importing and/or distributing the Subject Articles into and/or in the United States." (*Id.* at ¶ 9.).

In compliance with 19 C.F.R. § 210.21(c)(4)(vi), the Proposed Order provides that "Eunsung shall be precluded from seeking judicial review or otherwise challenging or contesting the validity of the Consent Order." (*Id*. ¶ 10.).

In compliance with 19 C.F.R. § 210.21(c)(4)(vii), the Proposed Order provides that "Eunsung shall cooperate with and shall not seek to impede by litigation or other means the

Commission's efforts to gather information under Subpart I of 19 C.F.R. Part 210." (*Id*. at ¶ 11.).

In compliance with 19 C.F.R. § 210.21(c)(4)(viii), the Proposed Order provides that "Eunsung and its officers, directors, employees, agents and any entity or individual acting on its behalf and with its authority shall not seek to challenge the validity or enforceability of any of the Asserted Patent Claims in any administrative or judicial proceeding to enforce the Consent Order." (*Id*. at ¶ 12.).

In compliance with 19 C.F.R. § 210.21(c)(4)(ix), the Proposed Order provides that upon expiration of the Asserted Patent, the Consent Order "will become null and void." (*Id*., p. 4 at ¶ 13.).

In compliance with 19 C.F.R. § 210.21(c)(4)(x), the Proposed Order provides that "if any of the Asserted Patent Claims are held invalid or unenforceable by a court or agency of competent jurisdiction, or if any of the Subject Articles have been found or adjudicated not to infringe any of the Asserted Patent Claims in a final decision, no longer subject to appeal, this Consent Order shall become null and void as to such invalid or unenforceable Asserted Patent Claim(s) or such adjudicated Subject Article(s)." (*Id*. at ¶ 14.).

In compliance with 19 C.F.R. § 210.21(c)(4)(xi), the Proposed Order states "the Commission has statutory authority to hear the Investigation, and Eunsung admits all jurisdictional facts pertinent to the Investigation." (*Id.* at ¶ 15.).

In compliance with 19 C.F.R. § 210.21(c)(4)(xii), the Proposed Order states that the Investigation is terminated with respect to Eunsung, provided, however, that enforcement, modification, or revocation of the Consent Order shall be carried out pursuant to Subpart I of 19 C.F.R. Part 210. (*Id*. at ¶ 16.).

The Proposed Order thus meets the requirements of Commission Rule 210.21(c)(4). 19 C.F.R. § 210.21(c)(4).

III. RECOMMENDATION

Because I know of no extraordinary circumstances that would prevent termination of this Investigation with respect to Eunsung, it is my Initial Determination that for good cause shown, and because it is in the public interest, that this Investigation be terminated with respect to Eunsung, and that Motion Docket No. 1408-003 should be *granted*.

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.

This Initial Determination is hereby certified to the Commission. Pursuant to 19 C.F.R. § 210.42(h), this Initial Determination shall become the determination of the Commission unless a party files a petition for review of the Initial Determination pursuant to 19 C.F.R. § 210.43(a), or the Commission orders on its own motion a review of the Initial Determination or certain issues herein pursuant to 19 C.F.R. § 210.44.

SO ORDERED.

MaryJoan McNamara
Administrative Law Judge