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In the Matter of: Investigation No.

CERTAIN HYDRODERMABRASION SYSTEMS : 337-TA-1408

AND COMPONENTS THEREOF :

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Pages: 1 through 33

Place: Washington, D.C.

Date: December 17, 2024

1 UNITED STATES INTERNATIONAL TRADE COMMISSION
2 Washington, D.C.
3 BEFORE THE HONORABLE MARYJOAN MCNAMARA
4 Administrative Law Judge

5 -----X

6 In the Matter of: Investigation No.
7 CERTAIN HYDRODERMABRASION SYSTEMS : 337-TA-1408
8 AND COMPONENTS THEREOF :

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11 International Trade Commission
12 500 E Street, S.W.
13 Washington, D.C.

14

15 Tuesday, December 17, 2024

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17 CASE MANAGEMENT CONFERENCE -- REMOTE

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19 The conference commenced remotely, pursuant to
20 the notice of the Judge, at 2:00 p.m. Eastern.

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24 Reported by: Elizabeth Mingione, RPR

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A P P E A R A N C E S:

** All parties appearing via remote videoconferencing and/or telephonically. **

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(Appearances, continued)

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1 P R O C E E D I N G S

2 (2:00 p.m.)

3 JUDGE McNAMARA: All right. So we are having a
4 management conference this afternoon in the 1408
5 investigation. I know there are a number of motions that
6 have been filed that I need to resolve, but before I do
7 that, I would like to go through -- I see everybody is
8 online. So I'll start with the identification of counsel.
9 And I see for the Complainant, HydraFacial, that Mr. Laquer
10 is there. Good afternoon, Mr. Laquer.

11 MR. LAQUER: Good afternoon, Your Honor.
12 I'm joined by my colleague Ben Anger, also from my firm.

13 JUDGE McNAMARA: All right. Very good.
14 Good afternoon, Mr. Anger.

15 MR. ANGER: Good afternoon, Your Honor.

16 JUDGE McNAMARA: I also see that we have on
17 behalf of Respondent Eunsung, Lauren Degnan. Hi, Ms.
18 Degnan. How are you? You are muted.

19 MS. DEGNAN: (No audio)

20 JUDGE McNAMARA: That's all right. I know you
21 are there. You can chime in when you have got your mute
22 figured out there. Okay.

23 And I see you have with you your colleague, April
24 Park. Good afternoon, Ms. Park.

25 MS. PARK: Good afternoon, Your Honor.

1 JUDGE McNAMARA: All right. And then on behalf
2 of the Respondent Cartessa Aesthetics, LLC, to whom I will
3 refer as Cartessa, we have on as speaker Ms. Theresa Roozen.
4 Ms. Roozen, I see you are there. Good afternoon.

5 MS. ROOZEN: Good afternoon, Your Honor.

6 JUDGE McNAMARA: And as listener we have Mr. Ric
7 Macchiaroli. I think I got that right from -- I think I'm
8 still getting that right, I hope.

9 MR. MACCHIAROLI: You are, Your Honor. Good to
10 see you.

11 JUDGE McNAMARA: All right. Thank you.

12 Before I get started on motions that had been
13 filed that I know I need to resolve, I want to talk to you
14 briefly about the 1408 Markman hearing date. Now, we had
15 put in the schedule, I have an email from you all, and I
16 have read it, we were just about to send out a notice to you
17 that we could do it January 7th, which is a Tuesday.

18 And I know it looks as though all of the parties
19 have lawyers who are really active in other cases. So if
20 January 7th doesn't work, my fallback would be we have a
21 courtroom available the following week on January 14th. So
22 it would be January 7 or January 14. Those are the options.

23 I think my preference would be to keep it during
24 the week of January 10, but if you can't, you can't, but the
25 fallback again is January 14. There are no other courtrooms

1 open that week. And we only have one for the 14th. So I'm
2 reserving that just in case. So let me know.

3 Could you let me know by Friday whether -- which
4 of those days works? Again my preference would be for that
5 week. It didn't look as though anybody was conflicted out
6 for January 7, but let me know by Friday.

7 MR. LAQUER: Yes, Your Honor.

8 MS. ROOZEN: Yes, Your Honor.

9 JUDGE McNAMARA: All right. Good. Thank you.
10 So there is certainly some business to take care of about
11 discovery.

12 So would you first tell me, Mr. Laquer, what
13 happened with respect to the remote depositions that we
14 talked about during the last management conference? Were
15 they held? There was a motion with respect to that.

16 MR. LAQUER: So there were some in-person,
17 third-party depositions. There were some live depositions.
18 I don't believe there's any pending disputes regarding
19 deposition metrics --

20 JUDGE McNAMARA: Okay.

21 MR. LAQUER: -- still outstanding, but if anyone
22 disagrees, of course please let me know.

23 JUDGE McNAMARA: Yes. And could I hear from the
24 Respondents on that, first from Cartessa. Was that original
25 motion with respect to the dispute over whether the

1 depositions could be conducted remotely? Was that taken
2 care of? Was that resolved?

3 MS. ROOZEN: I think it has resolved itself in
4 that the depositions at issue have occurred. They
5 ultimately ended up being in person. I do feel we will have
6 expert depositions coming up, so there might end up being a
7 similar dispute forthcoming. I believe that expert
8 depositions will be occurring in January, possibly early
9 February.

10 JUDGE McNAMARA: Okay. Let me know as soon as
11 you can if there are any disputes over that so they can get
12 resolved. Again, I'm sorry that I didn't get to some of
13 these sooner. My attorneys are great. We have had a really
14 heavy summer and fall and I was out for a month on leave.
15 So we are catching up. So I apologize for that. Things
16 sort of fell behind.

17 All right. So the most recent motion that was
18 filed is Motion Docket Number 15, which was Cartessa's
19 motion to supplement its original motion to compel. Now, I
20 guess this involves again the tower, the issue of the public
21 use argument and documentation and evidence -- well,
22 evidence regarding the same.

23 So, Mr. Laquer, would you tell me please, and
24 then I'll ask Cartessa's attorney to step in, tell me where
25 things stand with respect to the motion to compel both the

1 interrogatories that Cartessa identified in its original
2 motion and reidentified in its supplemental motion, which
3 are Interrogatory Numbers 4, 68 to 74, and request for
4 production of documents, I think 5, 6 and 10 -- I'm sorry.
5 It's 5 and 6, and 105 to 512.

6 So, Mr. Laquer, would you kindly address that and
7 let me know where things stand.

8 (Audio disruption)

9 JUDGE McNAMARA: I don't know who User Number 2
10 is, but -- I'm sorry. Go ahead, Ms. Degnan. Is that you?

11 MS. DEGNAN: Yes. Can you hear me? I switched
12 to the phone because I wasn't confident --

13 JUDGE McNAMARA: Yes.

14 MS. DEGNAN: -- I had gotten my other audio done.
15 So I apologize for the feedback there, but I just switched
16 to the phone.

17 JUDGE McNAMARA: Okay. Good. Thank you. Then
18 you are in. Just everybody mute if you are not speaking,
19 please.

20 All right. So go ahead, Mr. Laquer. What's the
21 status of the issue on inspection and/or disassembly of the
22 tower?

23 MR. LAQUER: Yes, Your Honor. This is Alan
24 Laquer for Complainant.

25 Complainant has thoroughly searched for documents

1 and provided all information it believes it has in its
2 possession with regard to the interrogatories at issue. We
3 have continued searching archives that were offline. We
4 have searched through the production in other legal matters.

5 We do have a small additional production that we
6 expect to go out this week. For example, we found a filing
7 from a Chinese trademark opposition the Complainant was
8 involved in. The filing was from just -- it was 2016 --
9 several years after the 2004, 2005 time frame at issue, but
10 it may be relevant to the timing of when products were
11 renamed, which might bear on that issue.

12 So with respect to production, we don't feel that
13 there's anything further we really could do, given the
14 lengths that we have gone through. The inventors and
15 founders are no longer working at the company. They have
16 been deposed as third parties. They were subpoenaed.

17 And so to the extent there is items in those
18 individuals' possession, it's not things within
19 Complainant's possession. And this is going to a dispute or
20 question about what happened nearly two decades ago.

21 The company has changed ownership multiple times.
22 Email systems and other IT systems tend to change over the
23 period of nearly 20 years. And so we have produced, you
24 know, what we could find after very extensive searching.
25 So, you know, with respect to those items, that is the

1 status. We simply don't see what more could be done.

2 With regard to the disassembly question, there is
3 a unit that has a manufacture date that's well after the
4 identified critical date for prior art questions. So, we
5 simply don't see how the disassembly of what the Complainant
6 keeps in what's been referred to as sort of a Hall of Fame,
7 a historical collection of items from the company's history,
8 why some inspection of that device really could bear on this
9 question just doesn't seem appropriate, given the
10 uncontested status of its date as not being prior art.

11 JUDGE McNAMARA: So here's the question I have
12 for you, Mr. Laquer. There were a number of depositions
13 that were held, including those -- I have them named here, I
14 went through. Let me see. The depositions -- let me see.
15 I have them in my notes.

16 There were several depositions that were held of
17 individuals who apparently received treatments from
18 HydraFacial. And the products that they identified
19 apparently appear to be similar to those of the tower. I
20 think there was information from Ms. Wang's testimony, from
21 -- let me see, I may get this wrong -- Ms. Wembley, I think
22 there was a Ms. Pangen and a Ms. Sevy.

23 There was testimony from each of them. And so
24 how do you deal with that testimony and some of their
25 recollections and identification of a product that seems to

1 be similar to the tower?

2 MR. LAQUER: So I attended those
3 depositions, Your Honor. I'm happy to speak to them. This
4 is still Alan Laquer.

5 The depositions, and in particular other
6 depositions which were of the third-party inventors who were
7 heavily involved in the development provided additional
8 information and confirmed that throughout 2004 and into 2005
9 the product was under continual development.

10 There are I think at least three reasons why the
11 identified use that those individuals you mentioned cannot
12 qualify as invalidating public use. The use has not been
13 shown to be of the invention, given that the product was
14 continually changing during that time frame. Even if some
15 of that use had been of the invention, it was not public.
16 It was experimental use.

17 Those individuals referred to themselves as test
18 subjects as being, you know, receiving free treatments and
19 not even knowing what the inner workings of the device were.
20 So it could not have been public use. And obviously if
21 that's an issue that the parties choose to dispute in
22 motions or the evidentiary hearing, we are very comfortable
23 from Complainant's position that the evidence is
24 overwhelmingly on our side on that point.

25 So there simply hasn't been testimony actually

1 linking the May 2005 product to any of those uses, but
2 again, even if it had been, it was something that the
3 individuals did not know the inner workings of and could not
4 have been invalidating.

5 JUDGE McNAMARA: Ms. Roozen, could you please
6 address that? And then I have a follow-up question also
7 about whether or not the inventors' notebooks have been --
8 could be compared against the product if it were to be
9 disassembled. Is there enough information in the inventors'
10 notebooks?

11 MS. ROOZEN: So to address the first question
12 about the inventor notebooks, I do not believe that they
13 have sufficient information. Part of the problem is the
14 inventor notebooks do not identify when these treatments
15 were being provided to whom and to when and where to be able
16 to link that information together.

17 Regarding the deposition testimony, I think Ms.
18 Wang and Ms. Pangen were pretty clear that they had
19 treatments in 2004. The priority date is December 30, 2004.
20 So there's only one date in 2004 that would be within their
21 one-year period. The other 364 days would not be. Both of
22 those witnesses identified a video that had an image of the
23 tower in it and indicated that that was what was used for
24 their treatment.

25 We have also, subsequent to that initial motion

1 we obtained a declaration from KPTV who produced a video,
2 again with the image of the tower in it. And they provided
3 a declaration indicating that that video was created, I
4 believe, in March of 2005, which predates this May 2005
5 prototype. We have been given no information to indicate
6 how this earlier prototype would differ from the May 2005.

7 So I think that based on the witnesses indicating
8 that this seems to be the same product that they created a
9 video that was then aired, also using the same product, I
10 think that there should be an inference that it is the same
11 product, unless they can provide information to show how it
12 differed from the prior products.

13 Additionally, we took some testimony of Mr.
14 Cohen, who indicated that any prior prototype would have
15 been the same with some marginal differences, such as the
16 wheels.

17 He indicated there was a console, although the
18 console may have differed. I believe there was one third
19 difference, but I can't recall what it was. But none of them
20 are -- I don't think affect the claims.

21 And then with regard to the experimental use, I
22 think that each of the witnesses were clear that if there
23 was experimentation, it was limited to things that were not
24 patented claims. So, for instance, the tip, whether it was
25 a small tip or a big tip, what serums were used or

1 combinations of serums. Again, those are not material to
2 the patented claims. And as we put into our motion, that
3 prevents them from claiming that that testing was
4 experimental. It was experimenting on things that were not
5 patented claims.

6 JUDGE McNAMARA: All right. Those are really
7 clear answers. I guess the next question is with respect to
8 the discovery that's been conducted thus far, and let me
9 just talk about the search for documents.

10 Ms. Roozen, would you be satisfied if Mr. Laquer
11 was -- and his team were to produce from their clients
12 unequivocal declarations that thorough searches have been
13 made and they cannot find any additional documents?

14 MS. ROOZEN: I think what our concern is what we
15 don't want to have happen is, you know, we get to the
16 hearing and we have all this evidence to show that this
17 person used this treatment, this machine. They have
18 identified it as such. And out of nowhere they come up with
19 some type of documentation or theory or story as to why they
20 aren't the same machine that we weren't able to explore
21 during discovery. So that's kind of our concern.

22 That's not necessarily that the problem is that
23 there are no documents. We just want to make sure we
24 understand what their positions are when it comes to the
25 product that was actually being used with these.

1 JUDGE McNAMARA: Okay. So let me come back again
2 to my question. And that is with respect to an unequivocal
3 declaration that they have searched for and found all of the
4 pertinent documents that would pertain either to the model,
5 the tower, if you will, and any and all prototypes that
6 would be consistent with the request for production of
7 documents and the interrogatory requests.

8 MS. ROOZEN: Yes.

9 JUDGE McNAMARA: Would you be satisfied with that
10 with respect at least to documentation?

11 MS. ROOZEN: Yes.

12 JUDGE McNAMARA: Okay. Now, the next question is
13 have you had any additional discussions with respect to
14 disassembly of the tower? I gather that you are at an
15 impasse on that?

16 MS. ROOZEN: I believe -- Mr. Laquer can correct
17 me if I'm wrong, but I believe that we are at an impasse.
18 Previously we thought we could inspect. They indicated we
19 could not. We thought we would be able to get to a
20 stipulation that the product practices all the claims.
21 Unfortunately we were unable to agree, because Complainants
22 would like to have a mutual stipulation.

23 JUDGE McNAMARA: I saw that.

24 MS. ROOZEN: And then they have charted some of
25 the claims, most but not all of the claims.

1 So, unfortunately, there's still a couple of claims that we
2 are kind of at an impasse on.

3 JUDGE McNAMARA: Okay. So my understanding from
4 what you are saying is that there's an impasse with respect
5 to both inspection and disassembly? Is that a yes?

6 MS. ROOZEN: Yes, we have inspected, but only
7 from that periphery. Yes. We can't disassemble.

8 JUDGE McNAMARA: Okay. Mr. Laquer, would you
9 kindly address that. And would you explain to me why they
10 would not be able to disassemble, especially if there could
11 be safeguards put into place with respect to the disassembly
12 that both sides could agree upon?

13 MR. LAQUER: Yes, Your Honor. So this is Alan
14 Laquer for Complainant. We have produced documents showing
15 the interior of the tower product. So that's already part
16 of the production.

17 Many of the statements that were addressed by
18 Cartessa, we don't believe there's factual record to support
19 that. And so obviously that can be addressed when the
20 merits of the dispute are weighed, but there was ample
21 information showing that there was change to the ongoing
22 prototype development throughout 2004 and into 2005 that
23 bear directly on the claims at issue including, for example,
24 some of the self-described test subjects believing that they
25 were being treated only with water, which is consistent with

1 the founder/inventor testimony that before there was the
2 ability to select amongst multiple serums that were tested
3 that were being conducted just with water. That does go to
4 claim issues.

5 Now, that said, going back to the question of
6 inspection and disassembly as we noted, we have made the
7 product available for inspection. There is other discovery
8 that identifies interior workings of the product. There
9 shouldn't be any surprise or missing information required
10 that would warrant that disassembly of what is again sort of
11 a historical and unique device.

12 JUDGE McNAMARA: Ms. Roozen, and then Ms. Degnan
13 also, I didn't ask you to chime in, but you are certainly
14 welcome to on this.

15 MS. DEGNAN: So, Your Honor, Eunsung's been
16 stayed pending resolution of our motion --

17 JUDGE McNAMARA: That's what I thought.

18 MS. DEGNAN: Yeah. So we don't take a position
19 on any of these issues, Your Honor. Frankly, we have not
20 been paying close attention to them, given our status as the
21 stayed Respondent, but thank you for asking.

22 JUDGE McNAMARA: Okay. Go ahead, Ms. Roozen.

23 MS. ROOZEN: I think the first item to address is
24 with regard to one of the witnesses indicating that water
25 was used with her HydraFacial. I don't know that that

1 necessarily precludes an inference that she used the same
2 tower that the other individuals used. Often with testing
3 of anything, there can be a placebo.

4 So it could have been that that particular person
5 was the placebo among the others who were getting tested
6 different serums, if the company was in fact trying to
7 determine which serum, which formulations, which
8 combinations of formulations worked best.

9 With regard to what has been produced, as far as
10 I am aware, I'm sure Mr. Laquer will correct me if I'm
11 wrong, but they have not identified which documents are
12 representative of the prototype that was around in 2004. So
13 it makes it hard to say yes, they have some documents from
14 2004 and 2005, if we don't know which ones were actually
15 representative of the product that was used on these
16 individuals in 2004.

17 JUDGE McNAMARA: Okay. Mr. Laquer, can you
18 respond to that. And perhaps there needs to be more of an
19 explanation by HydraFacial with respect to the documents
20 that you are talking about.

21 MR. LAQUER: Well, Your Honor, the documents that
22 I was referring to were referring to the 2005 commercial
23 product, which is not the 2004 alleged prior use product.
24 And, again, the disassembly is also going to 2005 commercial
25 product, not alleged prior use product.

1 So, the disassembly would be redundant of the
2 documents, neither of which go to the point of what any
3 prototype product was and -- or other questions that
4 preclude a prior use, which also must be shown by clear and
5 convincing evidence.

6 JUDGE McNAMARA: So if I understand what you are
7 saying correct -- if I understand correctly what you are
8 saying, Mr. Laquer, it's that there are no documents that
9 actually substantiate or support a prior use. There are no
10 documents of a prototype that suggest that.

11 And if I understand you correctly, the tower that
12 Cartessa has asked be disassembled is, in fact, a 2005
13 manufactured product.

14 MR. LAQUER: Both of those -- this is Alan Laquer
15 for Complainant, Your Honor. Yes, both of those are correct
16 statements. And, in fact, the evidence consistently shows
17 that there could not have been prior use due to ongoing
18 product development throughout 2004 into early 2005,
19 including based on information in the inventory notebooks.

20 JUDGE McNAMARA: Ms. Roozen, how do you address
21 that?

22 MS. ROOZEN: I don't agree with that. I think
23 that the witnesses are pretty clear that they are -- I
24 believe one witness said 90 percent certain that their
25 facials were occurring in 2004. There's a video with the

1 product from early March of 2005.

2 So it seems surprising to me that an entity would
3 have a segment on -- via news station in March of 2005, if
4 it just finally came to fruition and hadn't actually been
5 tested. It just doesn't seem credible.

6 JUDGE McNAMARA: Well, the other issue is what
7 would have -- I guess the other question I have certainly is
8 what would have preceded the 2005 commercial product that is
9 the tower that Cartessa requests be disassembled? It had to
10 come -- the 2005 product had to come from somewhere, had to
11 come from prototypes. It had to come from previous
12 renditions.

13 MR. LAQUER: This is Alan Laquer for Complainant,
14 Your Honor. And there's been extensive discovery including
15 the depositions of the inventors addressing that development
16 of prototype work throughout 2004 and into early 2005.

17 JUDGE McNAMARA: Right. But I think my question
18 is more specific, or the question that I have in my head is
19 more specific. If there were previous prototypes to the
20 2005 tower, how much would they have differed? And is 2005
21 an amalgam of previous prototypes that would have contained
22 -- well, it's two questions really -- that would have
23 contained some of the patented features?

24 MR. LAQUER: This is Alan Laquer, Your Honor. I
25 wasn't sure, did you say it was 2004 or was it 2005?

1 JUDGE McNAMARA: No. The 2005 tower.

2 MR. LAQUER: I see. So, was your question
3 whether the 2005 tower contained the patented features?

4 JUDGE McNAMARA: Well, I had two. Wouldn't there
5 have been previous prototypes of what became the 2005 tower
6 that would have been used on the people who have testified
7 about the -- about the treatments that they received? And
8 so wouldn't it also be entirely possible that that 2005
9 tower would contain patented features that were in use
10 previously?

11 MR. LAQUER: Well, the testimony, Complainant is
12 comfortable shows that the products including patented
13 aspects changed and developed and has not been shown to have
14 been in use, let alone publicly, because again all of the
15 use was nonpublic. It's been addressed in 2004. So,
16 there's -- you know, there's a lot of discussion here, but
17 frankly it really isn't being I think at this point grounded
18 so much in the evidence. And this is Cartessa's burden to
19 show.

20 So, even the question of a prototype, the
21 evidence shows that there was repeated change to products
22 that were being evaluated, tested. This was something that
23 had a rapid rate of change. And so even something that
24 happened in March can have a very significant change from
25 something that happened in November or December of the prior

1 year.

2 JUDGE McNAMARA: Well, the problem is at least
3 based on what I've seen so far, and I'm sure there would be
4 other testimony on this, is that no one knows one way or the
5 other. The only actual product that exists is the tower.

6 So, my question is could there be -- or could the
7 parties agree on safeguards for the disassembly of the tower
8 to see how the features or components match to any of the
9 patented features?

10 MR. LAQUER: Well, if the disassembly were to be
11 ordered, Your Honor -- this is Alan Laquer for Complainant
12 -- then Complainant would, of course, request that its
13 personnel be responsible for performing that, being able to
14 reassemble it soon thereafter while they remember, you know,
15 what screw went where, for example.

16 We believe that that's appropriate, but just to
17 answer your question of could there be safeguards, we
18 believe that would be the safest of the options in place;
19 but we have provided design history files, we have provided
20 other discovery of that commercial product. So we don't see
21 how opening that particular unit sheds additional light --
22 it's not redundant on what's been produced, let alone bears
23 on the question of 2004. So that is Complainant's view.

24 JUDGE McNAMARA: Okay. Ms. Roozen, can you
25 explain your thinking on that? What if I were to order a

1 disassembly, how would that assist in clarifying matters?

2 MS. ROOZEN: I think that would help, because we
3 could see that at least the May 2005 tower practices the
4 patents and allow us to take a position with regard to the
5 claim language itself. Again, we don't have information
6 about the 2004 prototype, but we do have some inventor
7 testimony from Mr. Cohen that indicates any tower would have
8 been functionally the same.

9 So I think it would be helpful to be able to see
10 what the May 2005 tower looks like. And we can use Mr.
11 Cohen's testimony to help us figure out how that would be
12 the same as the earlier versions.

13 JUDGE McNAMARA: Okay. Is there anything else
14 you'd like to mention on these questions, Mr. Laquer, before
15 I go to rulings on these, on some of these motions?

16 MR. LAQUER: No, Your Honor.

17 JUDGE McNAMARA: Ms. Roozen, is there anything
18 more that you would like to say or address with respect to
19 the motions to compel or some of the questions that have
20 been raised today and previously?

21 MS. ROOZEN: I don't think so. Thank you, Your
22 Honor.

23 JUDGE McNAMARA: Okay. All right. Then what I
24 am going to do, I'm going to allow Motion Docket Number 15,
25 which is Cartessa's motion to supplement the original motion

1 to compel.

2 I will also allow the motion to file a reply,
3 which is Motion Docket Number 11 that was filed on November
4 27, 2024. And I was not here, so I -- we would have ruled
5 on that. Again, I've been brought up to date in the last
6 week or so, but I was -- I was out of the country.

7 I am going to allow Cartessa's motion to amend
8 its prior art statement. That was filed on December 13.
9 And that's Motion Docket Number 14.

10 Then the question becomes the issue of the
11 original motion to compel, which is Motion Docket Number 7.
12 Let me see.

13 And on the motions to compel, Mr. Laquer, what I
14 would like you to do with respect to the -- the search for
15 documents is to just file an unequivocal statement from your
16 client that all documents have -- within its possession,
17 custody, and control have been produced with respect to the
18 request for production of documents and the interrogatories
19 identified in Cartessa's motion to compel and supplement.
20 And I think that should satisfy at least the documents
21 issue.

22 MR. LAQUER: This is Alan Laquer. I assumed
23 there would be some language about based on the extensive
24 search to date, everything that's been --

25 JUDGE McNAMARA: Yes. However you want to

1 structure it, yes, is fine. And as long as -- again, if
2 it's unequivocal, that should do it. And that would
3 represent the good faith. That would essentially verify or
4 certify to the good faith efforts that have been made and
5 that there's really nothing more.

6 MR. LAQUER: Understood, Your Honor. Yes. Thank
7 you.

8 JUDGE McNAMARA: Okay. Good. Ms. Roozen, are
9 you satisfied with that at least with respect to the
10 documents?

11 MS. ROOZEN: Yes.

12 JUDGE McNAMARA: Okay. What I would like you to
13 do, I'm going to also order that Cartessa be given an
14 opportunity to view a disassembled tower, the tower. And I
15 would like you both to come up with protocols and safeguards
16 for when that can be done and to ensure that the tower's
17 integrity is maintained.

18 And so, Mr. Laquer, I'm sure that your client
19 would want to be in charge of that disassembly. And I
20 respect that. I think that's right.

21 So why don't you come up with a protocol and file
22 that. And how much time would you need to -- I know we are
23 at the middle of the holidays here, so when would you think
24 that you could get together and discuss this, and come up
25 with a protocol, and then conduct the discovery or the

1 disassembly?

2 MR. LAQUER: Alan Laquer here for
3 Complainant, Your Honor. I would expect that we can have a
4 protocol together within a week and provide dates. I can't
5 speak to the holiday availability of individuals of the
6 client.

7 JUDGE McNAMARA: Sure.

8 MR. LAQUER: We will work on identifying the
9 soonest availability for those dates when the actual
10 disassembly would occur once the protocol is in place.

11 JUDGE McNAMARA: Okay.

12 MR. LAQUER: And I also don't view that as likely
13 to be a challenge. We are happy to work with the other
14 side's counsel on it.

15 JUDGE McNAMARA: Okay. Ms. Roozen, does that
16 satisfy you? You'll have discussions with Mr. Laquer and
17 his team?

18 MS. ROOZEN: It does. The only thing I would
19 like to flag just for the record is depending on when the
20 disassembly occurs, initial expert reports are due on
21 January 10. So if the disassembly occurs immediately
22 before, we may ultimately need to supplement that expert
23 report with any new information.

24 JUDGE McNAMARA: Fair enough. Both sides would
25 have an opportunity. I already extended fact discovery. So

1 why don't you come up with a proposed schedule, but be fair
2 to yourselves and your clients.

3 I expect that a lot of people are going to be out
4 of the office starting tomorrow, the next day. People, you
5 know, people take time off during the New Year and holiday.
6 And it also coincides with Hanukkah. So, you know, I think
7 you are going to have to extend the dates on the expert
8 reports.

9 So just come up with a proposal and get something
10 filed. I think maybe by January 4th would -- does that
11 sound reasonable?

12 MS. ROOZEN: Yes, Your Honor.

13 MR. LAQUER: Yes, Your Honor.

14 JUDGE McNAMARA: Okay. And let me know if you
15 run into a problem. You can always get a hold of us through
16 McNamara337. Let me know. Again, I know that I'm a little
17 behind on this. We are trying to catch up on some of the
18 cases.

19 Again, we are filing two IDs this week. We are
20 trying to get a lot of stuff out. And I was gone for a
21 month, and that's a long time to be gone, so -- and they've
22 been great, but we are trying to catch up this week. So
23 there we are. All right.

24 So that takes care of just about everything that
25 I can see. Is there anything -- is there anything that I

1 missed, Ms. Roozen?

2 MS. ROOZEN: I don't believe so with regard to
3 anything pending. I think that's all covered.

4 JUDGE McNAMARA: Okay. Anything that you can
5 think of or anything coming up, Mr. Laquer, that you might
6 need some help with?

7 MR. LAQUER: No, Your Honor. I would imagine
8 with respect to Respondent Eunsung there's some question
9 just on the exit from the case and just to confirm that --

10 JUDGE McNAMARA: Sure.

11 MR. LAQUER: -- expert reports or other dates
12 wouldn't affect any contentions as it relates to that
13 Respondent.

14 JUDGE McNAMARA: Okay. Ms. Degnan, anything on
15 that that you can think of?

16 MS. DEGNAN: No, Your Honor. We -- we are
17 stayed. We are actually quite happy being stayed. And we
18 are hopeful that will be the end of it, once Your Honor
19 processes her docket.

20 So, at this time we are I think exempted from any
21 of those deadlines and that's fine with --

22 JUDGE McNAMARA: You are.

23 MS. DEGNAN: Thank you.

24 JUDGE McNAMARA: All right. So it seems as
25 though we are possibly caught up here then, Mr. Laquer, from

1 what I'm hearing?

2 MR. LAQUER: Yes, Your Honor.

3 JUDGE McNAMARA: Okay. Very good. Ms. Roozen?

4 MS. ROOZEN: One question for Your Honor.

5 As we are getting further to closing out discovery and
6 getting closer to the evidentiary hearing, I just wanted to
7 ask if you had any proposals for streamlining the case, or
8 if there's a number of claims that you would prefer to hear
9 as --

10 JUDGE McNAMARA: Yes. I've been pretty
11 consistent about this throughout the years. And I think by
12 the time you get to close of fact discovery there should
13 already have been a winnowing of claims. My general
14 guideline -- and it's a guideline, but I -- people have been
15 pretty good about this -- is that it's very difficult to try
16 in five days, unless you ask for additional time. And,
17 again, my scheduling orders always say if you want more
18 time, let me know.

19 I'm absolutely amenable to that. And I've given
20 it even as you are winnowing the case, because I would
21 rather have experts who are testifying given their
22 reasoning. That said, you -- and by the time you get to
23 even the close of fact discovery, you should be down to no
24 more than four patents and three to five claims per patent,
25 if that.

1 Same thing would be true in terms of prior art.
2 There should be no more than, you know, three to five pieces
3 of prior art and combinations thereof. It just gets too
4 unwieldy to try.

5 So you really should be coming down to that by
6 the close of fact discovery so that your experts aren't
7 overly burdened. And then if there needs to be -- depending
8 again on the number of patents and claims, you really should
9 be down to that by the time you get to expert discovery.
10 So, you should be windowing during fact discovery, and then
11 getting down to what I've given you as sort of the guidance
12 by the time you are writing expert reports.

13 It's not fair to winnow or to leave the numbers
14 of patents and claims that you start out with up to the
15 evidentiary hearing and, you know, eliminating the week
16 before the hearing is not fair. It just isn't. It's too
17 hard on everybody. So just bear that in mind. You should
18 be winnowing down.

19 MR. LAQUER: Your Honor, this is Alan Laquer for
20 Complainant. Given that there is a single patent here,
21 would Your Honor's general guidelines allow for a larger
22 number of claims?

23 JUDGE McNAMARA: It does. Yes. Yes, for sure.
24 And I think -- and, again, these are general guidelines, and
25 it depends also in part on the complexity of the patents.

1 I think these patents are understandable.
2 Or let me put it this way, they lend themselves to
3 understanding sometimes more readily than certainly some of
4 the other patents that I've had over time. So use the
5 guidelines and then go from there.

6 MR. LAQUER: That's helpful, Your Honor.

7 JUDGE McNAMARA: Okay. The other thing I wanted
8 to mention for the Markman hearing, I saw the Markman
9 proposals had been filed together with the proposed list of
10 exhibits. So before -- well, the parties had each listed
11 exhibits that they plan to submit. So what you should do
12 the week before the Markman hearing is try and submit the
13 exhibits that you have agreed upon. Try and do that before
14 the Markman hearing. And then, you know, if you can a week
15 before agree upon the exhibits that each side can submit,
16 have one joint list and then submit the exhibits.

17 And I would prefer that you all submit the
18 exhibits, because we are still having a problem with Box and
19 with getting the exhibits from Box onto EDIS so that you
20 know, and I will put this in the orders we send out on the
21 Markman hearing once I know whether you want the 7th or the
22 14th, but remember that the docket's exhibits can only be 25
23 megabytes. And for us, we have five -- 25 characters to
24 fill in.

25 So you need the exhibit number and then an alpha

1 description of what the exhibit is. For example, if it's
2 going to be the declaration of someone, DECL, period, of
3 whoever the witness is, but we have to have an alpha
4 description so that we can get through the exhibits quickly
5 and know what they are.

6 MR. LAQUER: Understood, Your Honor.

7 JUDGE McNAMARA: Okay? Yeah. And we'll put that
8 into the Markman instruction. But you are going to get back
9 to me on Friday with a date whether the 7th or the 14th is
10 the better date for you. Okay?

11 So I think that's it then. I think that's all I
12 have. So, I gather there's nothing more from Complainant,
13 Mr. Laquer?

14 MR. LAQUER: Correct, Your Honor. Thank you.

15 JUDGE McNAMARA: Okay. And nothing more, Mr.
16 Roozen, from Cartessa?

17 MS. ROOZEN: No, Your Honor. Thank you.

18 JUDGE McNAMARA: All right. Well, listen, have a
19 happy holiday. And I guess I'll be hearing from you -- to
20 all of you and your families -- and I will be hearing from
21 you on the date for the Markman hearing and we'll go from
22 there. And I'll see what's coming in.

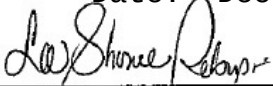
23 (The proceedings were concluded at 2:40 p.m.)

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1 CERTIFICATE OF REPORTER
 2 TITLE: Certain Hydrodermabrasion Systems
 3 INVESTIGATION NO: 337-TA-1408
 4 HEARING DATE: December 17, 2024
 5 LOCATION: Washington, D.C. - Remote
 6 NATURE OF HEARING: Case Management Conference

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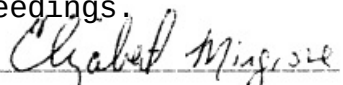
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