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In the Matter of

Investigation No.

337-TA-1408

CERTAIN HYDRODERMABRASION SYSTEMS
AND COMPONENTS THEREOF

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Pages: 1 through 17

Place: Washington, D.C.

Date: September 18, 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.

7 337-TA-1408

8 CERTAIN HYDRODERMABRASION SYSTEMS

9 AND COMPONENTS THEREOF

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12 International Trade Commission

13 500 E Street, SW

14 Washington, D.C.

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16 Case Management Conference

17 Wednesday, September 18, 2024

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19 The parties met via videoconferencing pursuant to
20 notice of the Administrative Law Judge at 2:00 p.m. Eastern.

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23 Reported by: Linda S. Kinkade RDR CRR RMR RPR CSR

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

2 [All parties appeared via remote videoconferencing and/or
3 telephonically.]
4

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

2 (In session at 2:00 p.m.)

3 JUDGE MCNAMARA: We are here in the management
4 conference today in Certain Hydrodermabrasion Systems and
5 Components Thereof. It's the 1408 investigation.

6 Before we get started, I would like to make sure
7 that everybody who is on is identified.

8 Let me start first with the Complainant's
9 counsel, HydraFacial. And I think -- Mr. Alan Laquer, I see
10 that you're there.

11 MR. LAQUER: Yes, Your Honor. I'm Alan Laquer
12 from Knobbe Martens for Complainant HydraFacial, and I'm
13 joined by listener Ben Anger.

14 JUDGE MCNAMARA: Okay. Very good. And I think
15 he is -- he is not showing up on my video.

16 So, Mr. Anger, are you there?

17 MR. ANGER: Yes, I am, Your Honor. I apologize.
18 I am traveling today, and, if it's okay with you, I will
19 remain off video.

20 JUDGE MCNAMARA: No worries. That's fine. Thank
21 you.

22 For the Respondent Cartessa Aesthetics we have as
23 speaker Mr. Steven Tepera. I think you're there.

24 MR. TEPERA: Good afternoon, Your Honor. Pleased
25 to meet you. With me is Ric Macchiaroli, who is listener

1 for us.

2 JUDGE MCNAMARA: Yes, we have met.

3 Hello, Mr. Macchiaroli.

4 MR. MACCHIAROLI: Good afternoon, Your Honor.

5 Nice to see you.

6 JUDGE MCNAMARA: You too. All right. So you're
7 both there.

8 And then, of course, on behalf of Eunsung -- is
9 that how I pronounce it?

10 MS. DEGNAN: Eunsung.

11 JUDGE MCNAMARA: Okay. Good afternoon,
12 Ms. Degnan. Good to see you.

13 MS. DEGNAN: Yes. Lauren Degnan from Fish &
14 Richardson. I'm joined by April Park.

15 JUDGE MCNAMARA: All right. Good afternoon,
16 Ms. Park. I can see you there.

17 MS. PARK: Good afternoon, Your Honor.

18 JUDGE MCNAMARA: Good afternoon.

19 And with me are Mr. Alton Hare, he is the AH,
20 and, of course, the AA, and with us is Ty Williams, who is
21 working with my team as our PSS.

22 Okay. So I did receive your request for the
23 agenda for today, and let me just mention the easiest one
24 first.

25 I understand, Ms. Degnan, that Eunsung would like

1 to file a motion to terminate and would like a stay of the
2 proceedings.

3 MS. DEGNAN: Yes, Your Honor, that is our plan.
4 We started the meet-and-confer process yesterday, and we are
5 still to speak with HydraFacial's counsel later this
6 afternoon. I will say our client is finishing up Korean
7 Thanksgiving.

8 JUDGE MCNAMARA: Oh.

9 MS. DEGNAN: But I was authorized to let everyone
10 know that that is our plan. We strongly dispute the
11 allegations and we admit no liability whatsoever. We think
12 we can fight this dispute in a different forum. But we do
13 intend to promptly meet and confer and hopefully get a
14 motion to Your Honor in short order.

15 JUDGE MCNAMARA: Okay. Very good. Thank you.

16 And, obviously, as soon as we receive that, we'll
17 issue the stay and we'll start the paperwork to terminate.

18 MS. DEGNAN: Thank you, Your Honor. We
19 appreciate that.

20 JUDGE MCNAMARA: Okay. And then I know that from
21 reading the September 11th Discovery Committee Report and
22 your agenda for today that there are two other issues, at
23 least according to one of the parties, if not both.

24 First of all is the email production. So let me
25 ask, Mr. Laquer, how that is going so far and what the issue

1 might be.

2 MR. LAQUER: Yes, Your Honor. The parties have
3 continued to discuss proposals on that. It looks like we
4 are likely in agreement on that, so we're hopeful that
5 that's been resolved and the parties can proceed with a
6 specific scope of email requests for production rather than
7 have that sort of as a general production topic. So
8 hopefully that's off the slate.

9 JUDGE MCNAMARA: I understand that that, just so
10 I'm clear too, I understand from reading the Discovery
11 Committee Report that the email search issue is also
12 connected to some extent with the cross-use of documents
13 issue.

14 MR. LAQUER: The parties have some different
15 views on that, but that is at least Respondents' view, yes.

16 For Complainant's view, they are fairly separate
17 and we believe the cross-use should be addressed apart from
18 email, but I'm happy to share more views on that.

19 JUDGE MCNAMARA: Okay. Let me ask you, then, is
20 it Mr. Tepera? Do I have it right?

21 MR. TEPERA: Tepera. The accent is on the second
22 syllable.

23 JUDGE MCNAMARA: Got it. So what is your view of
24 the combination of cross-use and the email issue?

25 MR. TEPERA: So the email issue, as Mr. Laquer

1 was saying, has been worked out. It is getting worked out
2 as recently as ten minutes ago, it looks like, the last
3 emails going back and forth between the parties. And I
4 think that we have identified the number of emails that can
5 be produced and are in the process to make sure that the
6 search results get a close figure to that.

7 With respect to cross-use, we have gone ahead and
8 produced the documents that are non-email documents from the
9 district court litigation. It was on a different set of
10 patents but one of them of the same family that's at issue
11 before Your Honor presently.

12 And there is a number of those documents that we
13 have just re-Bates labeled, reproduced here, and we're fine
14 with being a part of this, and there is a number of them
15 because it's in an entirely different family so the
16 relevance is going to be very attenuated, if not zeroed out.
17 And so that's our belief on how to appropriately produce and
18 then use those in this particular proceeding.

19 JUDGE MCNAMARA: If I understand also correctly
20 from what I read that you were considering or your client
21 was considering the cross-use relevance issue to be
22 burdensome, and I think you just used the words that
23 relevance was attenuated.

24 MR. TEPERA: Yes, Your Honor.

25 JUDGE MCNAMARA: Are you any closer with

1 Mr. Laquer's team on that issue?

2 MR. TEPERA: I think the answer is yes, because
3 the bigger issue was emails, because emails in a patent case
4 like this where the design is really what's at issue are
5 pretty far from core documents in any event, and that's
6 where a bulk of the Bates numbers come from.

7 And so with this 40,000 -- I don't even know if I
8 mentioned that -- but that was the number that has been
9 discussed right now is the number of emails produced. And
10 with that 40,000, we think that it's appropriate to be able
11 to, if we can identify those, to be able to cross-use those,
12 and we wouldn't have an issue with that. I think the
13 parties have it worked out, Your Honor.

14 JUDGE MCNAMARA: Good, because I generally, and
15 as I think Mr. Laquer's team mentioned, I am generally in
16 favor of the cross-use of documents where you can.
17 Sometimes it spares -- sometimes it doesn't, I suppose -- so
18 let me know if that remains an impasse issue.

19 MR. LAQUER: May I share -- sorry.

20 JUDGE MCNAMARA: Sure. Go ahead.

21 MR. LAQUER: Complainant has a different view on
22 the issue of burden and relevance. Given that these are
23 documents that have already been collected, they have
24 already been produced between the parties, the same parties,
25 the same counsel, related patent and overlapping accused

1 product, Complainant does not view burden as really a
2 meaningful issue for this cross-use.

3 We're not asking for a new search to be run in
4 the district court case that would then be carried over.
5 These are documents that are sitting in both sides'
6 electronic e-discovery databases, and we don't believe it's
7 appropriate to carve out emails that were produced
8 responsive in that related district court case and not make
9 those available here.

10 There simply is not a meaningful burden given
11 that they have already been processed and produced. They
12 could be, we offered, used with the pre-existing Bates
13 numbers or restamped with Bates numbers here.

14 JUDGE MCNAMARA: So apparently you don't agree
15 with the issue for Cartessa to go through and search those
16 documents and look for relevance, that that would be
17 burdensome to tie it? They would have to use some sort of
18 search term to tie them together, wouldn't they?

19 MR. LAQUER: Well, again, these are two cases
20 that are addressing the same product, related patents, and
21 so they have already been reviewed, of course, for
22 privilege, so there is not a need to screen for privilege
23 given that we have received those in the district court
24 case.

25 So I think that there is enough relevance for the

1 entire set that we provided to them in the district court
2 and that they have provided to us, both emails and
3 non-emails, to be usable here without needing to go through
4 any further relevance review.

5 JUDGE MCNAMARA: I saw your request for
6 production in which you indicated -- it's a very broad
7 question. It is just asking for all of the documents that
8 are relevant.

9 Are you prepared to get a big dump that might
10 require you to go through and read and figure out if they
11 are relevant?

12 MR. LAQUER: Yes, Your Honor. We have already
13 received that in the district court case. We're just asking
14 to be able to use the same documents in this case.

15 JUDGE MCNAMARA: So, I guess, Mr. Tepera, why
16 would this be burdensome given Mr. Laquer's explanation?

17 MR. TEPERA: The collection and gathering of them
18 alone is not the only cost that ends up being incurred by my
19 client. We are not authorized to produce nonrelevant
20 documents in a different case from our client. Our client
21 doesn't want their materials spread out that much.

22 So you have to do a relevance review for this.
23 And there are both a different patent family at issue at the
24 district court and all the sort of different things that are
25 at issue in district court litigation that aren't at issue

1 at the ITC. You have a lot of damages related and documents
2 that are produced as well.

3 And so I think that this is all effectively
4 mooted by the 40,000 email agreement that I think is
5 occurring anyway. And so if Mr. Laquer disagrees with that,
6 I'd like to understand why that is, but the mere gathering
7 of these documents is not the cost. There are business
8 costs and there are litigation costs with making sure that
9 we confine this dispute to what's actually at issue before
10 Your Honor.

11 JUDGE MCNAMARA: Let me just say that,
12 undoubtedly, the damages issues are quite segregatable from
13 what goes on at the ITC from our remedy issues. So it seems
14 to me that that one is not a big issue. Those documents
15 really are different. They could be segregated by word
16 search, it would seem to me. I may be wrong, but that is
17 part of my thinking, and you may rebut that, but that is
18 just one part of my thinking.

19 MR. LAQUER: Well, emails and other documents are
20 often useful for topics of secondary considerations. They
21 may come up in bonding here.

22 And so Complainant's view is that there is a
23 close-enough relevance of that entire set that they should
24 be provided here. The 40,000 number that's been discussed
25 for email-specific search results in this investigation is

1 really so that the parties can target specific dispute
2 issues in this case. That's given that these other
3 documents have already been previously collected, reviewed
4 for privilege and exchanged, Complainant believes that those
5 should simply be usable here.

6 JUDGE MCNAMARA: Well, I understand that. I
7 think we have two sets of views, but I understand that they
8 are being worked out.

9 Why don't you just keep talking, and, if you
10 truly reach an impasse, if you have resolved some parts of
11 this and that's done but you still are at impasse on other
12 parts of this, just let us know as soon as possible and we
13 will reconvene and I will issue an order on this, find out
14 where you are and take care of it. Okay?

15 MR. LAQUER: Yes, Your Honor, understood.

16 JUDGE MCNAMARA: All right. I want to keep this
17 short. I'm not going to break the record here, but -- these
18 have been short at times.

19 Is there anything else that you would like me to
20 address?

21 Let me start -- Mr. Laquer?

22 MR. LAQUER: No. We would just note for the
23 Court's information that Complainant has supplemented some
24 discovery responses provided to Respondents to correct a few
25 statements as we have continued to investigate the full

1 scope of domestic manufacturing.

2 So we had some information, as we're continuing
3 to build our economic domestic industry contentions, we
4 wanted to note that we've provided full information to
5 Respondents and we will continue to do so. But we believe
6 the complaint had a few statements that absolutely
7 everything in a certain category may have been domestic,
8 it's been very close, and so we just wanted to clarify for
9 the record that we are making sure all information is
10 accurate and will be updated in contentions.

11 JUDGE MCNAMARA: All right. I can appreciate
12 that.

13 Is there anything more, Mr. Tepera, that you
14 would like to mention, or anything more I can address?

15 MR. TEPERA: Nothing from Respondents at this
16 time. We appreciate Your Honor.

17 JUDGE MCNAMARA: Ms. Degnan, is there anything
18 more?

19 MS. DEGNAN: No, Your Honor, not at this time.

20 JUDGE MCNAMARA: All right. Very good. If
21 that's it, we are finished for today. Thank you, everybody,
22 for your time. Just keep us all posted on how you are doing
23 with the discovery and get back to us if you need any help.
24 Okay?

25 MR. TEPERA: Thank you, Your Honor.

1 MR. LAQUER: Thank you, Your Honor.

2 JUDGE MCNAMARA: All right. Take care,
3 everybody.

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5 (Whereupon, the proceedings concluded at
6 2:16 p.m.)

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1 C E R T I F I C A T E

2 TITLE: IN THE MATTER OF CERTAIN HYDRODERMABRASION SYSTEMS
3 AND COMPONENTS THEREOF

4 INVESTIGATION NO.: 337-TA-1408

5 HEARING DATE: September 18, 2024

6 LOCATION: Remote

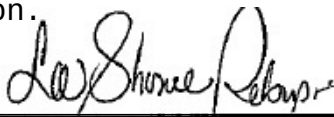
7 NATURE OF HEARING: Case Management Conference

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10 Date:

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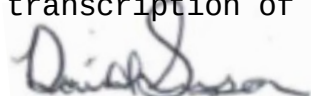


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13 Representative

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21 Commission and caused to be prepared from my record media
and notes of the proceedings a true, correct and complete
22 verbatim recording of the proceedings.

23 Signed:

September 18, 2024



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