

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EUNSUNG GLOBAL CORP.,
Petitioner,

v.

HYDRAFACIAL LLC,
Patent Owner.

Case No. IPR2024-01491

Patent No. 11,865,287

**PATENT OWNER'S AUTHORIZED RESPONSE TO PETITIONER'S
REQUEST FOR DIRECTOR REVIEW**

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I. INTRODUCTION

The Director should deny Petitioner Eunsung’s Request for Director Review (Paper 18, “Request”). The Board correctly applied a holistic analysis of the *Fintiv* factors in the Institution Decision (Paper 17, “ID”) and concluded that an IPR would be an inefficient use of the Board’s and parties’ resources. ID, 17. Eunsung’s Request presents no persuasive rationale to disturb the Board’s analysis.

Eunsung does not identify any legal or factual errors in the Institution Decision that would warrant Director Review. Nor does Eunsung contend that the Board abused its discretion. Instead, Eunsung asserts its Request is addressing “important issues of law or policy.” Request, 1. But the Request addresses neither. Contrary to the Director Review guidelines and PTAB regulations, Eunsung uses the Request solely as a vehicle to raise new arguments and introduce new evidence. Not only is this improper, the new arguments and evidence fail to disturb any basis for the Board’s decision to deny institution.

II. THE BOARD PROPERLY APPLIED THE *FINTIV* FACTORS

In denying institution, the Board evaluated the parties’ arguments and all submitted evidence as part of its *Fintiv* analysis. For example, it considered that the ITC will reach a final determination in December 2025—four months before the Board’s April 2026 deadline to issue a final written decision. ID, 12.

The Board further supported its decision by recognizing that Petitioner's exclusive distributor, Cartessa, had already raised the exact same prior art and arguments in the ITC proceeding that were also presented in this IPR. ID, 14. The Board observed that *Fintiv* favors denial of institution where "the same or substantially the same claims, grounds, arguments, and evidence [are] presented in the parallel proceeding." ID, 14 (citing *Fintiv*, 12). "[T]his fact has favored denial because *concerns of inefficiency and the possibility of conflicting decisions are particularly strong.*" *Id.* (quoting *Fintiv*, 12) (alterations omitted, emphasis added).

The Board also cited *Fintiv* in noting that denial may be appropriate "[e]ven when a petitioner is unrelated to a defendant, ... if the issues are the same as, or substantially similar to, those already or about to be litigated, or other circumstances weigh against redoing the work of another tribunal." ID, 15 (citing *Fintiv*, 14).

In sum, the Board properly applied the *Fintiv* factors by evaluating the relevant considerations, including the significant overlap between the issues presented in this IPR and the parallel ITC proceeding. "[A]fter weighing all of the factors and taking a holistic view of the relevant circumstances of this proceeding, [the Board] determine[d] that instituting an *inter partes* review would be an inefficient use of the Board's and parties' resources." ID, 17. The Institution Decision's well-reasoned determination should not be disturbed.

III. EUNSUNG IMPROPERLY RELIES ON NEW ARGUMENTS AND EVIDENCE INSTEAD OF ADDRESSING THE BOARD’S ANALYSIS

Eunsung contends in its Request that the Board made three errors related to “important issues of law or policy.” Yet, the Request addresses neither a legal nor policy issue. Instead, it attempts to use this process to submit new evidence and arguments, which is procedurally improper. The Director Review guidelines state that “[t]he Director will not consider new evidence or new arguments not part of the official record.” According to 37 C.F.R. § 42.75(c)(3), “[a]bsent Director authorization, a request for Director Review may not introduce new evidence.” The Board previously permitted Eunsung to submit briefing on *Fintiv* (*Fintiv* Brief (Paper 16)), which the Board reviewed and addressed in its Institution Decision (ID, 8-17). Dissatisfied with the outcome, Eunsung now presents new *Fintiv* arguments with new evidence. These are not only untimely and prejudicial but also fail to undermine the Board’s decision.

For example, Eunsung’s Request raises new arguments and evidence regarding the number of claims asserted in the ITC proceeding. As the Institution Decision notes, Eunsung previously argued that “the Petition covers claims that are not being addressed in the ITC.” ID, 14. The Board, however, observed that Eunsung did not “cite to anything to support this contention and the only evidence of record shows the same claims being asserted in the ITC as being challenged in

the Petition.” *Id.* Eunsung now attempts to cure this deficiency with new ITC-related evidence. Request, 9-10. This untimely effort should be disregarded. Moreover, the Board has already considered and rejected Eunsung’s argument: “[E]ven if fewer claims are pursued in the ITC proceeding than in the IPR, if the art and arguments substantially overlap, ***there would still be a substantial duplication of efforts.***” ID, 14 (emphasis added). Eunsung’s new evidence fails to address this core reasoning.

Eunsung’s Request also newly characterizes HydraFacial’s IP enforcement efforts as an “aggressive litigation campaign” (Request, 1-2)—a framing absent from its *Fintiv* Brief. It specifically alleges that HydraFacial has “asserted patents against essentially the entire industry of companies doing business in hydrodermabrasion technology.” *Id.*, 2; *see also id.*, 8 (“vast assertion”), (“several unnecessary litigations”), 9 (“different district courts”), 3 (“HydraFacial recently added to its campaign”). These newly raised arguments should be excluded. Even if they had been timely, they do not address the Board’s concern that an IPR would require “a substantial duplication” of the ITC’s work. ID, 14. And the Director should ignore Eunsung’s dismissive characterization of HydraFacial’s lawsuits as “unnecessary litigations.” Request, 1. HydraFacial is enforcing legitimate patent rights against Eunsung and other infringing entities.

Additionally, Eunsung raises new claims regarding the ITC litigation and Cartessa, including for the first time alleging that “Cartessa copied Eunsung’s validity arguments at the ITC.” *Id.*, 7-8; *see also id.*, 8 (“Cartessa copied those challenges before the ITC.”). Eunsung also alleges it entered into the consent order “[t]o avoid unnecessary litigation expense” (*id.*, 4), and that it “is not presently distributing allegedly infringing products to Cartessa” (*id.*, 7). These new assertions are improper and irrelevant. They ignore that Cartessa has long acted as Eunsung’s exclusive distributor of the accused product and that both parties were co-respondents at the ITC. This reflects more than a “mere business relationship,” as Eunsung contends. *Id.*, 6. Further, these new contentions do nothing to alleviate the Board’s concerns regarding inefficiency and the potential for conflicting decisions.

IV. CONCLUSION

The Institution Decision sets forth a clear and persuasive rationale under *Fintiv* for denying institution. Eunsung’s new arguments and evidence are untimely and improper, and they fail to undermine the Board’s Institution Decision. Accordingly, the Director should deny Eunsung’s Request.

Respectfully Submitted,

Dated: May 20, 2025

/ Jacob L. Peterson /
Jacob L. Peterson (Reg. No. 65,096)
Attorney for Patent Owner
HydraFacial LLC

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), I certify that on May 20, 2025, a copy of this **PATENT OWNER'S AUTHORIZED RESPONSE TO PETITIONER'S REQUEST FOR DIRECTOR REVIEW** was served via the email correspondence address of record for Petitioner's counsel of record:

Jeremy J. Monaldo
Fish & Richardson P.C.
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402
Tel: 202-783-5070
Fax: 877-769-7945
IPR58484-0001IP1@fr.com

Sangki Park
Jay Zhu
Fish & Richardson P.C.
60 South Sixth Street, Suite 3200
Minneapolis, MN 55402
Tel: 202-783-5070
Fax: 877-769-7945
PTABInbound@fr.com

Respectfully Submitted,

Dated: May 20, 2025

/ Jacob L. Peterson /
Jacob L. Peterson (Reg. No. 65,096)