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Filed on behalf of:
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SINCLAIR PHARMA LIMITED, SINCLAIR PHARMA US, INC., VIORA, INC., EMA AESTHETICS LTD., AND AESTHETIC MANAGEMENT PARTNERS, LLC AND AESTHETIC MANAGEMENT PARTNERS, INC.,

Petitioners,

v.

HYDRAFACIAL LLC

Patent Owner.

Case No. IPR2025-00145
U.S. Patent No. 11,865,287

PATENT OWNER MOTION TO SEAL AND FOR ENTRY OF A PROTECTIVE ORDER

Patent Owner HydraFacial LLC submits this unopposed Motion to Seal and for Entry of a Protective Order. HydraFacial's Patent Owner's Response ("POR") relies, in part, on objective evidence of nonobviousness, including confidential financial data, such as sales revenue for numerous products demonstrating the commercial success of commercial embodiments of the '287 patent, and, by comparison, confidential financial data of a HydraFacial product that does not embody the '287 patent but is otherwise comparable to the commercial embodiments of the '287 patent. HydraFacial maintains strict confidentiality of such financial data because it reflects highly sensitive information related to pricing, business strategy, and market positioning.

Similarly, HydraFacial's POR relies on confidential and proprietary technical information such as design files for numerous products demonstrating how the commercial products embody the claimed inventions of the '287 patent, and, by comparison, confidential and proprietary technical information of a HydraFacial product that does not embody the claimed inventions of the '287 patent but is otherwise comparable to the commercial embodiments of the '287 patent. HydraFacial maintains strict confidentiality of such technical information because it reflects highly sensitive information related to product design, internal technical strategies and implementations.

If such information were publicly accessible, HydraFacial's competitors could exploit it to obtain an unfair competitive advantage. Thus, HydraFacial moves to seal confidential versions of its POR and Exhibits 2003, 2009, 2010, 2141, 2145 containing its confidential financial and market data, and Exhibit 2004, Exhibit 2099, 2100, 2113, and 2114 containing its confidential technical information. HydraFacial has filed public versions, with confidential portions redacted, of its POR, Exhibit 2003, Exhibit 2004 and Exhibit 2009.

HydraFacial also proposes a modified version of the Default Protective Order. The proposed protective order and a redline version showing changes from the Default Protective Order are being filed as Exhibits 2024 and 2025, respectively. HydraFacial certifies that it accepts and agrees to the terms of the proposed protective order. HydraFacial conferred with Petitioners and they indicated they agree with the proposed modifications.

I. DOCUMENTS REQUESTED TO BE SEALED

Exhibit 2003 is the declaration of Pallavi Seth, Ph.D, HydraFacial's economic expert for this IPR. This exhibit summarizes confidential financial data related to global sales (revenue and units sold) for HydraFacial's Tower, Allegro, Elite, Syndeo, and Nectre products. HydraFacial has filed a confidential version of Exhibit 2003 and a public version of Exhibit 2003 with the references to HydraFacial's confidential sales data redacted.

Exhibit 2004 is the second declaration of Karl R. Leinsing, MSME, PE, HydraFacial's subject matter expert for this IPR. The exhibit includes confidential and proprietary technical information including product design documents, technical specifications, and other materials pertaining to HydraFacial's Tower, Allegro, Elite, Syndeo, and Nectre products. HydraFacial has filed a confidential version of Exhibit 2004 and a public version of Exhibit 2004 with HydraFacial's confidential and proprietary technical information redacted.

Exhibit 2010 is a PDF printout of a spreadsheet summarizing confidential financial data related to global sales (revenue and units sold) for HydraFacial's Tower, Allegro, Elite, Syndeo, and Nectre products. HydraFacial maintains the strict confidentiality of the information contained in Exhibit 2010.

Exhibit 2009 is the Declaration of Mr. Vipul Savsani, HydraFacial's Global Vice President of Financial Planning and Analysis. Paragraphs 7 and 8 (including footnote 1) summarize confidential financial data contained in Exhibit 2010. Paragraph 9 summarizes confidential market information contained in Exhibit 2145. HydraFacial has filed a confidential version of Exhibit 2009 and a public version of Exhibit 2009 with the summary of HydraFacial's confidential sales data redacted.

Exhibit 2099 is the design history file of the HydraFacial Elite. The exhibit includes confidential and proprietary technical information including product design documents, technical specifications, and other materials pertaining to HydraFacial's

Elite product. HydraFacial maintains strict confidentiality of the information contained in Exhibit 2099.

Exhibit 2100 is an overview of HydraFacial's Devices. The exhibit includes confidential and propriety technical information including technical specifications and other materials pertaining to HydraFacial's Syndeo, Elite, and Allegro products. HydraFacial maintains strict confidentiality of the information contained in Exhibit 2100.

Exhibit 2113 is the Syndeo Engineering Report. The exhibit includes confidential and proprietary technical information including product design documentation, technical specifications and other materials pertaining to HydraFacial's Syndeo product. HydraFacial maintains strict confidentiality of the information contained in Exhibit 2113.

Exhibit 2114 is the schematic of the Syndeo product. The exhibit includes confidential and proprietary technical information including product design documentation, technical specifications and other materials pertaining to HydraFacial's Syndeo product. HydraFacial maintains strict confidentiality of the information contained in Exhibit 2114.

Exhibit 2141 is a PDF of sales information for HydraFacial products. The exhibit includes confidential market data related to HydraFacial's Tower, Allegro, and Nectre among other products. HydraFacial maintains the strict confidentiality of

the information contained in Exhibit 2141.

Exhibit 2145 is a PDF printout of a spreadsheet summarizing market research for HydraFacial. The exhibit includes confidential market data related to sales of HydraFacial's products. HydraFacial maintains the strict confidentiality of the information contained in Exhibit 2145.

The POR itself references the confidential financial and market data contained in Exhibit 2010 and Exhibit 2145 and summarized in Exhibit 2009, and contained in Exhibit 2010, Exhibit 2141, and Exhibit 2145 and summarized in Exhibit 2003. HydraFacial has filed a confidential version of the POR and a public version of the POR with the references to HydraFacial's confidential sales data redacted.

None of these confidential financial data and confidential technical information contained in the redacted portions of Exhibit 2003, the redacted portions of Exhibit 2004, Exhibit 2010, the redacted versions of Exhibit 2009, Exhibit 2099, Exhibit 2100, Exhibit 2113, Exhibit 2114, Exhibit 2141, Exhibit 2145, the redacted portions of Exhibit 2009, or the redacted portions of the POR, have been made public.

II. GOOD CAUSE EXISTS TO SEAL

Argentum Pharms. LLC v. Alcon Res., Ltd., IPR2017-01053, Paper 27 at 3–4 (PTAB Jan. 19, 2018) (informative) sets forth four factors for showing that good cause exists to seal confidential information. The four factors are satisfied here.

First, the information sought to be sealed is "truly confidential." HydraFacial has not publicly disclosed the information it requests to be sealed.

Second, "concrete harm" to HydraFacial would result if the documents were accessible to Petitioners or the public. The confidential financial data HydraFacial seeks to seal reflects highly sensitive information related to pricing, business strategy, and market positioning. The confidential technical information HydraFacial seeks to seal reflects highly sensitive proprietary information related to product design, internal technical strategies and implementations. If such information were publicly accessible, HydraFacial's competitors, including Petitioners, could exploit it to obtain an unfair competitive advantage. Disclosure or use of that information outside this proceeding would substantially harm HydraFacial and its ability to compete in the market. To prevent such disclosure and the resultant harm to commercial interests, the evidence submitted by HydraFacial under seal as confidential is precisely the type of information to be protected pursuant to 37 C.F.R. § 42.54(a)(7).

Third, HydraFacial has a "genuine need" to rely on the documents. HydraFacial asserts that commercial success of its commercial products is among the objective evidence of nonobviousness of the '287 patent claims. Financial data such as that HydraFacial relies upon is necessary to establish commercial success. The financial data related to products that do not embody the claims provide a

comparison to show that the products that do not embody the claims have not enjoyed the commercial success of the products that do embody the claims. Similarly, HydraFacial asserts that certain commercially successful products embody the claimed inventions of the ’287 patent. Technical information such as that HydraFacial relies upon is necessary to establish how the commercial products embody the patented features. The technical information related to products that do not embody the claims provide a comparison to show that the products that do not embody the claims have not enjoyed the commercial success of the products that do embody the claims.

Fourth, the prejudicial effect that disclosure would have on HydraFacial far outweighs the public’s interest in accessing this information for the purposes of understanding the file history and the Board’s patentability decisions. HydraFacial has made sufficient information available to the public to understand the nature of the objective evidence and why it supports patentability. The information HydraFacial seeks to seal is a small fraction of the information HydraFacial relies on to argue patentability in its POR. Moreover, the information HydraFacial seeks to seal relates solely to financial data and select proprietary technical documentation. The public will be able to understand that HydraFacial’s products embody the ’287 patent and have enjoyed commercial success without accessing CBI containing the precise sales data and the limited proprietary technical information. Moreover,

HydraFacial has submitted redacted versions of its POR and supporting declarations, appropriately balancing the public's interest in an open record with HydraFacial's interest in protecting its confidential information. However, in addition to HydraFacial's strong interest in protecting its intellectual property in this IPR, HydraFacial also has a strong interest in maintaining the confidentiality of its highly sensitive financial and data and technical information. HydraFacial should not be required to sacrifice either interest.

III. GOOD CAUSE EXISTS TO ENTER THE PROTECTIVE ORDER

HydraFacial proposes the following changes to the Default Protective Order's "Protective Order Material" designation: (1) expanding the designation to also include a "Confidential Business Information" ("CBI") designation, (2) limiting access by party representatives to outside counsel of record and attorneys within the same law firms, (3) eliminating access by in-house counsel, (4) eliminating access by employees and consultants of the parties (except retained experts), and (5) including a process to resolve objections to the disclosure of CBI to a particular expert.

Good cause exists for these proposed CBI provisions. As explained above, the disclosure or use of HydraFacial's confidential sales data and confidential technical information would substantially harm HydraFacial. *See supra* II (Second). Disclosure to or use by Petitioners would be particularly damaging because

Petitioners and HydraFacial are competitors in the field of hydrodermabrasion devices. Thus, good cause exists to prevent Petitioners' employees and in-house counsel from accessing HydraFacial's CBI. *Bio-Rad Labs., Inc. v. 10X Genomics, Inc.*, IPR2019-00565, Paper 21 at 3-5 (PTAB July 22, 2019) (finding good cause, despite opposition, to enter protective order tracking ITC protective order provisions prohibiting the non-producing party and its in-house counsel from seeing CBI); *Brunswick Corp. v. Volvo Penta of the Ams., LLC*, IPR2020-01512, Paper 27 at 3 (PTAB June 2, 2021) (finding good cause to prohibit in-house counsel from seeing CBI when the parties are competitors); *T-Max (Hangzhou) Tech. Co. v. T-Max Indus. (H.K.) Co.*, IPR2018-01636, Paper 28 at 3-4 (PTAB Mar. 12, 2020). HydraFacial proposes a process for resolving objections to experts' seeing CBI to avoid intractable disputes.

The Consolidated Trial Practice Guide indicates that the "[t]he Board will consider changes [to the Default Protective Order] agreed to by the parties, and generally will accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings." CTPG, 115. Here, the parties have agreed to the proposed changes, and HydraFacial believes they are consistent with the integrity and efficient administration of this IPR. Hydr

IV. 37 C.F.R. § 42.54(A) CERTIFICATION OF CONFERENCE

HydraFacial certifies the parties conferred via email regarding this Motion. Petitioners do not oppose HydraFacial's Motion to Seal and they do not object to HydraFacial's proposed modifications to the Default Protective Order.

V. CONCLUSION

For the foregoing reasons, HydraFacial respectfully requests that the Board grant this Motion and also enter HydraFacial's proposed protective order (Exhibit 2024).

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: August 25, 2025

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Attorneys for Patent Owner
HydraFacial LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PATENT OWNER MOTION TO SEAL AND FOR ENTRY OF A PROTECTIVE ORDER** is being served on August 25, 2025, via email pursuant to 37 C.F.R. § 42.6(e), to counsel for Petitioner as addressed below:

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