

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,

Patent No. 11,865,287 to Ignon *et al.*

Issue Date: January 9, 2024

Title: DEVICES AND METHODS FOR TREATING SKIN

Inter Partes Review No.: IPR2025-00145

**PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION TO
SUBMIT SUPPLEMENTAL INFORMATION**

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EUNSUNG-1001	U.S. Pat. No. 11,865,287 to Ignon (“the ’287 patent”)
EUNSUNG-1002	Excerpts from the Prosecution History of the ’287 patent (“the Prosecution History”)
EUNSUNG-1003	Declaration of Mr. Eric Simon
EUNSUNG-1004	U.S. Patent Publication No. 2003/0212415 (“Karasiuk”)
EUNSUNG-1005	U.S. Patent No. 5,199,604 (“Palmer”)
EUNSUNG-1006	U.S. Patent Publication No. 2003/0093089 (“Greenberg”)
EUNSUNG-1007	U.S. Patent No. 6,390,815 (“Pond”)
EUNSUNG-1008	U.S. Patent No. 6,684,880 (“Trueba”)
EUNSUNG-1009	U.S. Patent No. 4,512,764 (“Wunsch 1982”)
EUNSUNG-1010	U.S. Patent Publication No. 2003/0018252 (“Duchon”)
EUNSUNG-1011	U.S. Patent No. 4,215,476 (“Armstrong”)
EUNSUNG-1012	Friedman, et al., Chemical peels, dermabrasion, and laser therapy, <i>Disease-a-Month</i> 55.4 (2009): 223-235 (“Friedman”)
EUNSUNG-1013	Burgess, Cheryl M., <i>Cosmetic dermatology</i> , Heidelberg, Germany: Springer, 2005 (“Burgess”)
EUNSUNG-1014	Pickering, J. A., Touch-sensitive screens: the technologies and their application, <i>International Journal of Man-Machine Studies</i> 25.3 (1986): 249-269 (“Pickering”)
EUNSUNG-1015	Friedman, Mark J. et al., The AMSA injection: A new concept for local anesthesia of maxillary teeth using a

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	computer-controlled injection system. Quintessence Int 29 (1998): 297-3 ("Friedman 1998")
EUNSUNG-1016	Lee, Woan-Ruoh, et al., Lasers and microdermabrasion enhance and control topical delivery of vitamin C, Journal of investigative dermatology 121.5 (2003): 1118-1125 ("Lee")
EUNSUNG-1017	U.S. Patent No. 9,550,052 ("the '052 patent")
EUNSUNG-1018	U.S. Patent No. 11,446,477 ("the '477 patent")
EUNSUNG-1019	U.S. Patent No. 6,428,518 ("Brengele")
EUNSUNG-1020	U.S. Patent No. 4,559,036 ("Wunsch")
EUNSUNG-1021	U.S. Patent No. 6,099,511 ("Devos")
EUNSUNG-1022	U.S. Patent No. 5,163,902 ("Lynn")
EUNSUNG-1023	U.S. Patent No. 5,190,525 ("Oswald")
EUNSUNG-1024	U.S. Patent No. 6,673,082 ("Mallett")
EUNSUNG-1025	Rajan, Poonam, et al., Skin barrier changes induced by aluminum oxide and sodium chloride microdermabrasion, Dermatologic surgery 28.5 (2002): 390-393 ("Rajan")
EUNSUNG-1026	Karimipour, Darius J., et al., Molecular analysis of aggressive microdermabrasion in photoaged skin, Archives of dermatology 145.10 (2009): 1114-1122 ("Karimipour")
EUNSUNG-1027	U.S. Patent No. 6,241,739 ("Waldron")
EUNSUNG-1028	Declaration of Harold Walbrink

I. INTRODUCTION

Patent Owner's motion to submit late supplemental information should be denied because it is not in the interests of justice and goes well beyond issues relevant to this trial record. *See* 37 C.F.R. §42.123(b). At this stage of the proceeding, Patent Owner has filed its Patent Owner's Response, deposed Petitioner's expert, and Petitioners are in the midst of preparing their Reply and are preparing to depose Patent Owner's experts. An expansion of the record *now*, for example adding a new non-analogous art argument—an argument the Patent Owner already chose to waive in the face of the warning of the Scheduling Order—prejudices the Petitioners¹. Paper 13 at 9.

II. THE ID WOULD EXPAND THE RECORD OF THIS IPR BEYOND PO'S BRIEF

In its email to the Board, Patent Owner stated that, “[t]he Initial Determination construes claim language and provides the ITC’s opinion regarding the patentability

¹ In accordance with the Director Memo of September 16, 2025, entitled, *PTAB Consideration of Prior Findings of Fact & Conclusions of Law*, Petitioners would not oppose submission of the ID if limited in scope to the memo guidance of “substantially the same evidence and/or arguments” with respect to that presented in this record. *See infra* §IV.

of the claims over the same references at issue in this proceeding.” This is factually incorrect for several reasons.

A. The Nearly 300 Page ID Addresses Numerous Issues, Arguments, and Grounds Outside of This IPR Record

The ID addresses many different issues (including alleged infringement by a party different from Petitioners) (*see, e.g.*, Ex. 2161 at 1-9, 13-89, 93-99, 222-76); arguments (including anticipation by Greenberg, whether Trueba is non-analogous art, and whether Palmer is non-analogous art) (*see, e.g., id.* at 100-15, 140-43, 148-55); experts (including one party's technical expert, Dr. Jensen, *see, e.g., id.* at 24-25, 103, 107-09, 112-13, 115-17, 127-29, 134-35, 143-47, 156-58, 159-60, 195-96); and grounds (*see, e.g., id.* at 124-25, 161-83), than are raised or of record in this proceeding.

Patent Owner's Motion cites to a handful of passages in the nearly *three-hundred page* ID. *See* Paper 26 at 7-10 (citing Ex. 2161 at 107-09, 136, 140-43, 150-52, 157-61, 174-84). Most of these passages include analysis of different issues that are nowhere raised in this IPR record. *See, e.g., id.* at 107-09, 140-43, 150-52, 157-58. For example, Patent Owner offers no explanation of the relevance to this IPR of the ITC's analysis as to whether Trueba is analogous art and whether Palmer is analogous art, both of which are arguments not presented in the IPR. *See* Paper 24. As noted above, the Board already cautioned Patent Owner that, “any

arguments not raised in the response may be deemed waived.” Paper 13 at 9. Patent Owner ignored this warning and now seeks an opportunity to reshape its arguments based on the subsequently issued ID. Permitting Patent Owner more than one month into Petitioners’ period for preparing their Reply to alter its arguments would be improperly prejudicial.

B. Patent Owner’s Request Seeks to Improperly Incorporate New Arguments by Reference

It is indisputable that additional arguments were made in the 1408 ITC proceeding that could have been made by Patent Owner in this IPR, but that Patent Owner decided not to make. *These arguments have been waived*. It would be inappropriate for Patent Owner to use the ID as a vehicle to incorporate additional arguments by reference. *See, e.g., Cisco Systems, Inc. v. Netsocket, Inc.*, IPR2023-00607, Paper 11, at 2 (PTAB Sept. 26, 2023) (“Any arguments not raised by PO in a timely filed response may be deemed waived.”); Director Review Guidelines, 5.E (“The Director will not consider new evidence or new arguments not part of the official record.”); *see* 37 C.F.R. §42.6(a)(3) (prohibiting incorporating arguments by reference from one document into another).

Indeed, Patent Owner tips its hand as to its future plans for using the ID to incorporate new arguments by reference. Nowhere in Patent Owner’s Response (Paper 24) is a non-analogous art argument raised (the word “analogous” is not

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recited even a single time). Yet, the ID discusses whether Trueba (Ex. 2161 at 155-58) and Palmer are analogous art (*id.* at 163-70) (as well as Pond, not asserted in this IPR). Patent Owner attempts to tie the ID's conclusion as to analogous art to arguments previously made in its Patent Owner's Response. *See* Paper 26 at 8-9. However, it is impermissible for Patent Owner to now, after having already submitted its Patent Owner's Response, supplement its arguments in this fashion. The Board should decline to consider such new arguments at this stage. *See, e.g., Apple Inc. v. Masimo Corp.*, IPR2024-00294, Paper 66 at 31 (PTAB June 26, 2025); *InductEV Inc. f/k/a Momentum Dynamics Corp. v. WiTricity Corp.*, IPR2024-00105, Paper 40 at 29 (PTAB May 20, 2025); *Google LLC v. Proxense, LLC*, IPR2024-00233, Paper 35 at 40-41 (PTAB June 17, 2025); *Tesla, Inc. v. IQAR, Inc. f/k/a Invently Automotive, Inc.*, IPR2024-00630, Paper 24 at 27 (PTAB Sep. 18, 2025)².

² Indeed, Petitioners already objected to Patent Owner attempting to inappropriately incorporate reams of pages to its existing brief. *See* Paper 25. Given this, Petitioners request that, should the Board allow a further submission in accordance with the September 16, 2025 memo, or this motion, and should Patent Owner discuss the ID in its Sur-reply, Petitioner be granted a total of 16 pages for its previously-authorized response to Patent Owner's Sur-reply. *See* email from Board on September 30, 2025.

Moreover, Patent Owner's allegation that Petitioners' arguments derive from the 1408 ITC proceeding is categorically incorrect. Paper 26 at 1. While it is possible the "Eunsung Petition" (*Eunsung Global Corp. v. HydraFacial LLC*, IPR2024-01491, Paper 2 (PTAB Sep. 30, 2024)) may have presented some arguments akin to those initially conceived during the 1408 ITC proceeding, the Eunsung Petition was filed on September 30, 2024 which is long before even the Markman Hearing (January 14, 2025) in the 1408 ITC proceeding (Ex. 2161 at 2).

Patent Owner's related argument that "[t]he ID addressed, *inter alia*, the ITC's views on claim construction, the patentability of claims over the same prior art and arguments raised in the present IPR, and the same secondary considerations of non-obviousness currently before the Board" is also wrong. Paper 26 at 3. The ID does not address all the Challenged Claims³. Moreover, the ID addresses prior art not at issue (such as "Pond" and "Prior Use"), and not even possible to consider in this IPR. Finally, it is incorrect that the ID addresses "the same secondary

³ While some of the Challenged Claims are addressed in the ID (claims 11-12, 14, 16, 18-19, 22, 24-25), ***the vast majority of the Challenged Claims (including independent claims 1, 26, and 37) are not addressed in the ID*** (claims 1-10, 15, 17, 20, 23, 26, 28-37, and 39-45).

considerations of non-obviousness currently before the Board.” Specifically, the ID considered evidence of a third-party that is not of record in this IPR (Cartessa Aesthetics, LLC (“Cartessa”). Additionally, the ID repeatedly references the transcripts of the depositions of Dr. Seth and Vipuli Savsani that are not of record in this IPR. Paper 26 at 174, 176. Petitioners have had no opportunity to depose these witnesses, and Patent Owner has no power to produce witnesses of Cartessa (who is not a party to this IPR).

Additionally, while the ID also addresses a “Karasiuk” reference (U.S. Pat. No. 6,695,853), *it is different from* the Karasiuk at issue in this IPR (U.S. Pat. Pub. No. 2003/0212415). Indeed, Karasiuk (in this IPR) is a continuation-in-part of the application that became U.S. Pat. No. 6,695,853 (the “Karasiuk” from the ID). At least Figure 1B, Figures 7A-7C, and Figure 8, and description in paragraphs [0049], [0051]-[0052], [0055], [0061], and [0067] are included in Karasiuk (in this IPR) that are not included in U.S. Pat. No. 6,695,853 (the “Karasiuk” from the ID). At least some of these additional portions are referenced in the Petition. *See, e.g.*, Paper 2, 2-3, 9, 25, 27, 43-45. For at least these reasons, the ID’s discussion of “Karasiuk” does not involve the “same or substantially the same evidence and/or arguments” at issue in this IPR.

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In an effort to assist the Board in evaluating Patent Owner's request, Petitioners identify below portions of the ID addressing the Grounds from the Petition. Petitioners request that to the extent it is determined that any portion of the ID warrants submission in this IPR, it is only the content contained within pages 100-17, 126-40, 143-48, and 155-61 (notwithstanding that this content addresses different claims and utilizes a vastly different evidentiary record, as discussed above).

Petition			ID		
Ground	Claims	Basis (Obviousness (§103))	Ground	Basis and Claim(s)	Page(s)
1A	1-3, 8-12, 14-16, 22-23, 26, 28-29, 34-37, 39-40, 45	Karasiuk, Palmer	"Karasiuk" (US6,695,853) ⁴ , Palmer	Obviousness (§103) (claims 11, 12, 14, 16, and 22)	147-48, 155-61
1B	1-10, 12, 17-20, 22-26, 28-36, 40-44	Karasiuk, Palmer, Trueba	"Karasiuk" (US6,695,853), Palmer, Trueba	Obviousness (§103) (claim 22)	161
2A	1-3, 8-12, 14-16, 22-23, 26,	Greenberg	Greenberg	Anticipation (§102) (claims 11, 12, 14, 16, 22, and 26)	100-17

⁴ Petitioners note that the Petition references portions of Karasiuk that are not included in U.S. Patent No. 6,695,853. *See, e.g.*, Paper 2, 2-3, 9, 25, 27, 43-45.

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	28-29, 34-37, 39-40, 45			Obviousness (§103) (claims 11, 12, 14, 16, and 22)	126-38
2B	1-10, 12, 17-20, 22-26, 28-36, 40-44	Greenberg, Trueba	Greenberg, Trueba	Obviousness (§103) (claims 11, 12, 14, 16, and 22)	139-40, 143-47

III. PATENT OWNER'S MOTION DOES NOT SATISFY PATENT OWNER'S BURDEN TO ESTABLISH THAT SUBMISSION IS IN THE INTERESTS-OF-JUSTICE

Patent Owner has not met its threshold burden for at least the following reasons.

A. Binding Petitioner to Findings in the ID Would be Highly Prejudicial

Petitioners were never a party to the 1408 ITC proceeding. As a result, submission of the ID is not akin to a submission of a finding of fact or conclusion of law from a parallel proceeding *between the parties*. Instead, Patent Owner seeks to admit the ID (from a proceeding in which Petitioners were not involved) to create a new form of estoppel not found in the law. It is fundamental that any such estoppel involve the same party. Here, Petitioners did not make arguments during the 1408 ITC proceeding and had no opportunity to rebut Patent Owner's arguments during the 1408 ITC proceeding. This IPR is particularly unique because Petitioners joined a prior IPR. To the extent expert testimony in the ID is not hearsay, Petitioners are

entitled to cross-examination of the associated experts. *See* 37 C.F.R. §42.51-.53. This requirement is important because if cross examination cannot be completed due to unavailability of an expert, that testimony must not remain in evidence. *See New World Medical, Inc. v. Microsurgical Tech., Inc.*, IPR2020-01573, Paper 49, 5-6 (PTAB Nov. 5, 2021). Patent Owner's sole cited authority, *Toshiba Corp., et al. v. Macronix Int'l Co.*, is inapposite because it addresses 37 C.F.R. §42.123(a), ***not*** 37 C.F.R. §42.123(b), ***which contains the critical interests-of-justice requirement*** and is at issue here. IPR2017-01864, Paper 20 at 2 (PTAB Aug. 27, 2018).

B. Patent Owner's Request is Unlimited

Patent Owner does not limit its request in any way. Based on its email to the Board, it is reasonable for the Board to expect Patent Owner to limit its request to submission of only: (i) a portion of the ID addressing claim construction, and (ii) providing the ITC's opinion regarding the patentability of the subset of the Challenged Claims at issue in the 1408 ITC proceeding. Patent Owner declined to do so and instead asks that the entirety of the ID be submitted.

The ID is nearly ***three-hundred pages***, much of which addresses additional arguments and evidence (including from different experts) not of record in this IPR. Compounding the issues associated with submitting such a lengthy document from a proceeding in which Petitioners were uninvolved, Patent Owner provides no

explanation as to why these additional arguments and evidence are even relevant to this IPR, much less how the required interests-of-justice are met by submission.

While the burden of identifying portions of the ID that are relevant to this IPR is on the moving party (Patent Owner) (*see* 37 C.F.R. §42.20(c)), Patent Owner failed to make such an identification. It is improper for Patent Owner to force the Board and Petitioners to independently locate from the nearly three-hundred page ID the portions which Patent Owner may at some point in the future argue are relevant to an argument it wishes to raise in this IPR. *See, e.g., DeSilva v. DiLeonardi*, 181 F.3d 865, 866-67 (7th Cir. 1999) (“A brief must make all arguments accessible to the judges, rather than ask them to play archaeologist with the record.”); *Netflix, Inc. v. DivX, LLC*, 80 F.4th 1352, 1377 (Fed. Cir. 2023) (“[T]he Board should also not have to decode a petition to locate additional arguments beyond the ones clearly made.”). The rationale for the prohibition is clear in this case—it forces judges to “play archeologist with the record” and “piece together a coherent argument on the movant’s behalf.” *See, e.g., Novartis AG v. Torrent Pharms.*, 853 F.3d 1316, 1326 n.2 (Fed. Cir. 2017) (explaining that a motion’s “superficial treatment amounts to little more than a request that the Board peruse the cited evidence and piece together a coherent argument on [the movant’s] behalf”).

For all the above reasons, Patent Owner falls well short of sufficiently showing that submission of the ID is in the “Interests-of-Justice.”

IV. PATENT OWNER'S ALLEGATION OF OVERLAP LACKS ANY MEANINGFUL GUIDANCE

Patent Owner alleged that, “the Board should recognize that the overlap between the AMP Petition and the ITC proceeding compels incorporation of the ID into the record.” Paper 26 at 6-7. The Eunsung Petition was denied on April 11, 2025 as a matter of discretion. In the days just before, there were significant developments in the 1408 ITC proceeding. On March 15, 2025, the claim term “block” was found to be indefinite. Ex. 2161 at 2. “Block” is recited in independent claims 1, 26, and 37, which are included in the Challenged Claims. On March 20, 2025, HydraFacial filed an unopposed motion to withdraw claims 1-10, 15, 17, 20, 23, 26, 28-31, 33-37, and 39-45, *all of which are included in the Challenged Claims*. Ex. 2161 at 19. This motion was granted on April 11, 2025. *Id.*

Thus, when the Board stated, “the only evidence of record shows the same claims being asserted in the ITC as being challenged in the Petition” (*Eunsung Global Corp. v. HydraFacial LLC*, IPR2024-01491, Paper 17 at 14 (PTAB Apr. 17, 2025), the Board was incorrect because it was unfortunately unaware of what had occurred in the 1408 ITC proceeding.

Predictably, the 1408 ITC proceeding subsequently progressed such that there now is substantial divergence with the Petition. Notably, the 1408 ITC proceeding analyzed only some of the Challenged Claims, did not consider certain elements (such as “block” recited in many Challenged Claims), and developed a different evidentiary record (including the use of different experts). For example, below is a comparison between independent claims 1 (not included in the 1408 ITC proceeding) and independent claim 11 (included in the 1408 ITC proceeding), with a few differences highlighted.

Independent Claim 1 (Not Included in the 1408 ITC proceeding)	Independent Claim 11 (Included in the 1408 ITC proceeding)
1. A system for treating skin, the system comprising: a console configured to receive a first container and at least one additional container; a handpiece configured to contact skin tissue of a subject; and <i>a block in the console, wherein the block is:</i> <i>configured to selectively receive fluid from the first container when the first container is connected to the console;</i> <i>configured to selectively receive fluid from the at least one additional container when the at least one additional container is connected to the console; and,</i> <i>configured to selectively be in fluid communication with the handpiece</i>	11. A skin treatment apparatus comprising: a console <i>that includes a fluid control member that is configured to be in fluid communication with</i> at least a first container and a second container <i>when the first container and the second container are connected to the fluid control member;</i> a handpiece assembly configured to contact a skin surface of a subject; a waste conduit configured to be in fluid communication with the handpiece assembly and a vacuum source to move waste away from the handpiece assembly when the waste conduit and the handpiece assembly are each connected to the console; and wherein when each of the first container and the second container are

<i>through a first conduit when the handpiece is connected to the console;</i> a vacuum source, wherein the console comprises the vacuum source; and wherein the handpiece is configured to be in fluid communication with the vacuum source through a second conduit when the handpiece is connected to the console; wherein when the handpiece, the first container, the at least one additional container and a waste container are each connected to the console, the first container <i>contains a first treatment fluid</i>, and the at least one additional container <i>contains an additional treatment fluid</i>, the handpiece is in fluid communication with the vacuum source and the waste container through the second conduit; and the system is configured to deliver the first treatment fluid contained in the first container and the additional treatment fluid contained in the at least one additional container to the handpiece sequentially.	connected to the console, the fluid control member is configured to be in fluid communication with each of the first container and the second container; wherein when the handpiece assembly is connected to the console, the fluid control member is configured to be in fluid communication with the handpiece assembly; wherein when (i) each of the first container and the second container <i>contains treatment material</i>, (ii) the first container and the second container are connected to the console, and (iii) the handpiece assembly is connected to the console, the skin treatment apparatus is configured to selectively draw treatment material from the first container or the second container to the handpiece assembly using, at least in part, a vacuum created along a distal end of the handpiece assembly by the vacuum source.
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A. Many of the Claims at Issue in this IPR Recite Features Not Adjudicated in the ID

Patent Owner's email to the Board incorrectly insinuates that the ID addresses ***all*** the Challenged Claims (*see* email from Patent Owner's Counsel to Board stating, "[t]he Initial Determination construes claim language and provides the ITC's opinion regarding the patentability of the claims over the same references at issue in

this proceeding.”). However, the vast majority of the Challenged Claims (including independent claims 1, 26, and 37) are not addressed in the ID. Patent Owner provides no explanation of why any portion of the ID is relevant to the vast majority of the Challenged Claims that are not at issue in the 1408 ITC proceeding. For example, Patent Owner could have assisted the Board and Petitioners in determining the relevance of the ID by providing a comparison between one or more of the claims addressed in the ID and one or more of the Challenged Claims that are not addressed in the ID. Patent Owner declined to do so.

B. Any “Overlap” is Minimal

Any “overlap” between this IPR and the 1408 ITC proceeding is minimal. Regardless, the Board should require Patent Owner to: (i) identify what, if anything, in the ID constitutes the “same or substantially the same evidence and/or arguments” presented in this IPR, and (ii) identify common evidence and/or arguments in the ID by page number with a cross-reference to corresponding page number(s) of Paper(s) in this IPR before deciding to authorize submission of the ID. *See PTAB Consideration of Prior Findings of Fact and Conclusions of Law*, USPTO, September 16, 2025. While such a requirement is not typically necessary in newly filed cases, it is necessary here to guard against improper expansion of the record in view of the particular facts of this case.

V. CONCLUSION

Patent Owner has failed to sufficiently establish that consideration of the ID in its entirety, as proposed, is in the interests-of-justice as belated supplemental information. 37 C.F.R. §42.123(b). Petitioners respectfully request that the Board deny Patent Owner's motion and instruct Patent Owner to work with Petitioners to identify relevant portions of the ID consistent with the recent Director Memorandum on related adjudications having the "same or substantially the same evidence and/or arguments."

Respectfully submitted,

Dated: September 30, 2025

By: /Scott A. McKeown/
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WOLF, GREENFIELD & SACKS, P.C.

Counsel for Petitioners

CERTIFICATE OF SERVICE

I certify that on September 30, 2025, a copy of the foregoing document, including any exhibits or appendices filed therewith, is being served via electronic mail, as previously consented to by Patent Owner, upon the following:

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Date: September 30, 2025

/MacAulay Rush/
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