

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

HYDRAFACIAL LLC,
Patent Owner.

IPR2025-00145
Patent 11,865,287 B2

Before ERIC C. JESCHKE, CYNTHIA M. HARDMAN, and
JAMIE T. WISZ, *Administrative Patent Judges*.

WISZ, *Administrative Patent Judge*.

ORDER
Granting Patent Owner's Motion to Submit Supplemental Information
37 C.F.R. § 42.123(b)

I. INTRODUCTION

Sinclair Pharma Limited, Sinclair Pharma US, Inc., Viora, Inc., EMA Aesthetics, Ltd., Aesthetic Management Partners, LLC, and Aesthetic Management Partners, Inc. (collectively “Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review of claims 1–12, 14–20, 22–26, 28–37, and 39–45 of U.S. Patent No. 11,865,287 B2 (Ex. 1001, “the ’287 patent”). We instituted trial on June 2, 2025. Paper 12. Hydrafacial LLC (“Patent Owner”) filed a Response on August 25, 2025. Paper 24. On September 10, 2025, the Board received an e-mail from Patent Owner requesting authorization to file a motion to submit supplemental information under 37 C.F.R. § 42.123(b). Ex. 3001. In the e-mail, Patent Owner indicated that Petitioner opposed the request. *Id.* We authorized Patent Owner to file a motion to submit supplemental information and Petitioner to file an opposition to Patent Owner’s motion. *Id.*

In its Motion to Submit Supplemental Information, Patent Owner moves to submit the public Initial Determination (Ex. 2161, “ID”) from the U.S. International Trade Commission (“ITC”) in Investigation No. 337-TA-1408 (“the 1408 ITC proceeding”). Paper 26 (“Mot.”). According to Patent Owner, in the ID, “the ITC found that the claims of the ’287 patent are patentable over the same prior art and arguments raised in [this IPR].” *Id.* at 1. Patent Owner also cites to the September 16, 2025 Memorandum titled *PTAB Consideration of Prior Findings of Fact and Conclusions of Law* (“PTAB Memo”),¹ in which then-Acting Director Stewart instructed that the “Board shall consider relevant materials submitted by the parties from . . .

¹ Available at https://www.uspto.gov/sites/default/files/documents/Memo_re_prior_findings_of_fact_and_conclusions_of_law_9_16_25.pdf.

other proceedings,” including prior findings or conclusions issued by the ITC. Mot. 1. Petitioner filed an Opposition to Patent Owner’s Motion. Paper 29 (“Opp.”). For the reasons set forth below, we *grant* Patent Owner’s Motion.

II. ANALYSIS

To succeed, a motion to submit supplemental information pursuant to 37 C.F.R. § 42.123(b) must meet two requirements. First, the motion must show why the supplemental information reasonably could not have been obtained earlier. 37 C.F.R. § 42.123(b). Second, the motion must show that consideration of the supplemental information would be in the interests-of-justice. *Id.* As the moving party, Patent Owner bears the burden of proof that it is entitled to the relief requested in the motion. 37 C.F.R. § 42.20(c).

Patent Owner asserts that it could not reasonably have submitted the supplemental information earlier because the ID did not issue until August 26, 2025, and a public version of the ID was not entered until September 16, 2025. Mot. 4–5; Ex. 2161, 1. With respect to the second requirement of Rule 42.123(b), Patent Owner contends that considering the supplemental information would be in the interests-of-justice for many reasons, including ensuring a complete and accurate record, fairness and lack of prejudice, efficient and timely case management, and promoting consistency across tribunals. Mot. 5. Specifically, Patent Owner argues that the ITC’s ID provides relevant information that the Board should consider relating to claim construction, overlapping prior art arguments, and secondary considerations. *Id.* at 5–11.

Petitioner argues that submission of the ITC’s ID would improperly expand the record of this IPR because the ID addresses many issues that are

not relevant to this trial record and were not previously raised by Patent Owner. *See* Opp. 1–3. Petitioner also argues that Patent Owner has not established that submission of the ID is in the interests-of-justice because it would be highly prejudicial to bind Petitioner to the findings in the ID when Petitioner is not a party to the ITC proceeding. *Id.* at 8–9. Further, Petitioner asserts that Patent Owner’s request to submit the entire ID is overly broad and should be limited 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 Challenged Claims at issue in the 1408 ITC proceeding.” *Id.* at 9. Lastly, Petitioner contends that any “overlap” between this IPR and the 1408 ITC proceeding is minimal and Patent Owner should be required to identify relevant portions of the ID consistent with the PTAB Memo. *Id.* at 14–15.

We are persuaded that Patent Owner has met its burden of satisfying the requirements of 37 C.F.R. § 42.123(b). We agree that Patent Owner could not have submitted the supplemental information earlier (i.e., until the issuance of the ID) and that consideration of the supplemental information is in the interests-of-justice. Consideration of the ITC’s ID is also consistent with the PTAB Memo, which instructs us to “consider relevant materials submitted by the parties” from prior ITC proceedings in which “the same or substantially the same evidence and/or argument” were previously presented. As acknowledged by Petitioner, there is at least some overlap between the issues raised in the ITC proceeding and this IPR. To the extent that there is not a complete overlap of the claims and issues between these two proceedings, Petitioner is free to make such arguments in response to any reliance by Patent Owner on the ID. In this regard, if Patent Owner

discusses the ID in its Sur-reply, Petitioner may file a response to Patent Owner's Sur-reply, in order to respond to Patent Owner's discussion of the ID. We previously authorized Petitioner the ability to file a response of 8 pages to Patent Owner's Sur-reply if Patent Owner discussed Exhibits 2165 and 2166 in the Patent Owner Sur-reply. *See* Ex. 3002. We now grant Petitioner an additional 8 pages in response to Patent Owner's Sur-reply if the ID is discussed, for a potential total of 16 pages if Exhibits 2165, 2166, and 2161 (ID) are discussed in the Patent Owner Sur-reply, as requested by Petitioner. Opp. 4 n.2.

III. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner's Motion to Submit Supplemental Information is *granted* and Exhibit 2161 is deemed filed; and

ORDERED that, if Patent Owner discusses Exhibit 2161 in its Sur-reply, Petitioner may file a response to Patent Owner's Sur-reply, limited to an additional 8 pages.

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