

From: [Director_PTABDecision_Review](#)
To: "Anger, Ben"; McKeown, Scott A.; Everton, Benjamin; Stein, Alexander B.; Peterson, Jacob; rfernandez@foley.com; [MLB-HydraFacial-IPR-287-2](#); [PTAB Scott McKeown](#); [PTAB Mike Rader](#); [Razai, Ali](#)
Subject: RE: IPR2025-00145 (Sua Sponte Director Review)
Date: Tuesday, January 27, 2026 10:26:00 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

Counsel,

While the parties have been directed to keep the Director apprised of any actions in the ITC proceeding while the Director Review is pending, those updates should consist of short factual statements. Substantive arguments are not authorized and will not be considered.

Thanks

IPR2025-00145
Ex. 3102

From: Anger, Ben <ben.anger@morganlewis.com>
Sent: Monday, January 26, 2026 6:14 PM
To: McKeown, Scott A. <Scott.McKeown@WolfGreenfield.com>; [Director_PTABDecision_Review](#) <Director_PTABDecision_Review@uspto.gov>; Everton, Benjamin <ben.everton@morganlewis.com>; Stein, Alexander B. <alexander.stein@morganlewis.com>; Peterson, Jacob <jacob.peterson@morganlewis.com>; rfernandez@foley.com; [MLB-HydraFacial-IPR-287-2](#) <MLB-HydraFacial-IPR-287-2@morganlewis.com>; [PTAB Scott McKeown](#) <SMcKeown-PTAB@WolfGreenfield.com>; [PTAB Mike Rader](#) <MRader-PTAB@WolfGreenfield.com>; [Razai, Ali](#) <ali.razai@morganlewis.com>
Subject: RE: IPR2025-00145 (Sua Sponte Director Review)

CAUTION: This email has originated from a source outside of USPTO. PLEASE CONSIDER THE SOURCE before responding, clicking on links, or opening attachments.

Dear Director Squires,

In an email dated January 7, 2026, the Director denied Petitioner's request to brief the potential relevance of the ITC's Initial Determination to this IPR and requested that the parties keep the Director apprised of any actions in the ITC.

Although Patent Owner updated the Director with a copy of the ITC's January 22 Notice, Petitioners have taken the opportunity to present substantive arguments regarding the ITC proceeding, directly contravening the Director's denial of Petitioners' request for additional briefing.

Patent Owner disagrees with Petitioners' positions and characterizations and would be prepared to provide a response should the Director find additional briefing helpful.

Best Regards,
Ben Anger
Counsel for Patent Owner HydraFacial LLC

Ben Anger**Morgan, Lewis & Bockius LLP**

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From: McKeown, Scott A. <Scott.McKeown@WolfGreenfield.com>

Sent: Friday, January 23, 2026 2:37 PM

To: Anger, Ben <ben.anger@morganlewis.com>; Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>; Everton, Benjamin <ben.everton@morganlewis.com>; Stein, Alexander B. <alexander.stein@morganlewis.com>; Peterson, Jacob <jacob.peterson@morganlewis.com>; rfernandez@foley.com; MLB-HydraFacial-IPR-287-2 <MLB-HydraFacial-IPR-287-2@morganlewis.com>; PTAB Scott McKeown <SMcKeown-PTAB@WolfGreenfield.com>; PTAB Mike Rader <MRader-PTAB@WolfGreenfield.com>; Razai, Ali <ali.razai@morganlewis.com>

Subject: RE: IPR2025-00145 (Sua Sponte Director Review)

[EXTERNAL EMAIL]

Honorable Director Squires,

Petitioners respectfully submit this responsive email because Patent Owner did not consult with Petitioners before sending their unilateral email below.

Vacatur of the ITC ALJ's ID remains a likely outcome in the near term, given that the Commission extended the 1408 Investigation target date to March 23, 2026, which is only 6 days before the asserted patent expires (making the asserted patent's expiration only 10% of the way into the 60-day Presidential review period). When faced with mootness occurring during the review process, the typical practice of the Commission (and, on appeal, that of the Federal Circuit) is to vacate the ALJ's ID under *United States v. Munsingwear* to avoid the ID spawning legal consequences. *Certain Radio Frequency Transmission Devices and Components Thereof*, Inv. No. 337-TA-1278, Comm'n Op. at 7 (Mar. 7, 2023) ("When such a finding of mootness occurs, as here, ordinarily the Commission will vacate its findings."); *Certain Intraoral Scanners and Related Hardware and Software*, Inv. No. 337-TA-1090, Notice of Commission Determination to Vacate the Final Initial Determination (Aug. 20, 2019) (vacating ALJ's ID and terminating the investigation where, because "[t]he '901 patent will expire on August 30, 2019, four days after the target date for completion of the investigation ... [Complainant] cannot obtain effective relief as to the '901 patent prior to its expiration."). The Federal Circuit also vacates Commission determinations on expired patents. See, e.g., *Tessera, Inc. v. ITC*, 646 F. 3d 1357, 1371 (Fed. Cir. 2011) ("Because the '977 and '627 patents have now expired, this court vacates that portion of the Final Determination and remands with instructions to dismiss as moot the portion of the complaint relating to those patents.").

Here the posture is almost identical to that of the 1090 Investigation, with the target date of March 23, 2026 being only six days before the patents' expiration on March 29, 2026. Thus, although the Commission yesterday indicated an intent to review the ID – just as the Commission initially indicated in the 1090 Investigation – the Commission is expected to ultimately vacate the ID, just as it did in the 1090 Investigation. Indeed, as the Commission's Notice submitted by PO yesterday makes clear, interested third parties are now invited to submit comments. Petitioners intend to do so to make clear to the

Commission that vacatur is the appropriate outcome given the impending mootness of the ITC investigation.

Further, as explained in Petitioners' Reply brief, Petitioners were not involved in the 1408 Investigation and thus had no opportunity to litigate any of the issues before the ALJ. The record before the ALJ was markedly different from the record in this IPR, including (a) in evaluating the Karasiuk-Palmer prior art combination, the ALJ (i) focused on the ITC Respondent's **waiver** of responsive arguments that Petitioners, by contrast, have not waived, and (ii) failed to address numerous additional arguments that are at issue in this IPR but were never argued by Respondent (Paper 39 at 7, 12, 14); and (b) regarding alleged commercial success, the ALJ credited Patent Owner's expert testimony that Patent Owner's sales are due to one feature, without considering that the inventors and co-founders of HydraFacial testified under oath in a previous case that a completely different feature – not claimed in the '287 patent (or in any of PO's related patents that are now subject to instituted IPRs) – in fact drives customer demand (Paper 39 at 26-27). The completely different, and incomplete, record before the ALJ is a critical reason why the PTAB should not de-institute this IPR or any other IPR involving PO's patents due to the failures of an unrelated party in a proceeding with a different evidentiary record.

Petitioners respectfully request that this IPR, and related IPRs, be permitted to proceed.



Scott McKeown

(Mik-Q-En)

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From: Anger, Ben <ben.anger@morganlewis.com>

Sent: Thursday, January 22, 2026 5:56 PM

To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>; McKeown, Scott A. <Scott.McKeown@WolfGreenfield.com>; Everton, Benjamin <ben.everton@morganlewis.com>; Stein, Alexander B. <alexander.stein@morganlewis.com>; Peterson, Jacob <jacob.peterson@morganlewis.com>; rfernandez@foley.com; MLB-HydraFacial-IPR-287-2 <MLB-HydraFacial-IPR-287-2@morganlewis.com>; PTAB Scott McKeown <SMcKeown-PTAB@WolfGreenfield.com>; PTAB Mike Rader <MRader-PTAB@WolfGreenfield.com>; Razai, Ali <ali.razai@morganlewis.com>

Subject: RE: IPR2025-00145 (Sua Sponte Director Review)

Dear Director Squires:

Patent Owner provides the following update regarding the ITC proceeding.

On December 15, 2025, the Commission (ITC) requested the parties' positions on the impact of

the expiration date of the '287 Patent on the final disposition of the Investigation. EDIS Doc. ID 866551. In its briefing to the Commission, Respondent Cartessa requested that “[r]ather than reviewing the final initial determination and issuing a decision, the Commission should preserve its resources, terminate this Investigation, and vacate as moot the final initial determination.” EDIS Doc. ID 867551 at 1.

On January 22, 2026, the Commission issued a Notice of a Commission Determination to Review In Part a Final Initial Determination Finding a Violation (“Notice”). In this Notice, the Commission did not terminate the Investigation nor vacate the Initial Determination. Instead, the Investigation is proceeding and the Commission stated it would review certain aspects of the Initial Determination: “(1) the construction, and findings on infringement and the technical prong of the domestic industry, for the claim limitations including the term ‘fluid communication’; (2) invalidity and non-infringement findings based on the finding that the term ‘block’ is indefinite, including review of any underlying related orders (e.g., Order Nos. 29 and 50); and (3) unenforceability based on prosecution laches.” Notice at 2.

The Commission did not indicate it would review the ID’s findings relating to the validity of the challenged claims over the same prior art references and combinations asserted in this IPR or the findings that secondary considerations of nonobviousness support the validity of the claims.

The Commission’s January 22, 2026 Notice is attached (posted on EDIS as Doc. ID 869766).

Respectfully,
Ben Anger
Counsel for Patent Owner HydraFacial LLC

Ben Anger

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From: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>

Sent: Wednesday, January 7, 2026 3:49 AM

To: Anger, Ben <ben.anger@morganlewis.com>; Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>; McKeown, Scott A. <Scott.McKeown@WolfGreenfield.com>; Everton, Benjamin <ben.everton@morganlewis.com>; Stein, Alexander B. <alexander.stein@morganlewis.com>; Peterson, Jacob <jacob.peterson@morganlewis.com>; rfernandez@foley.com; MLB-HydraFacial-IPR-287-2 <MLB-HydraFacial-IPR-287-2@morganlewis.com>; PTAB Scott McKeown <SMcKeown-PTAB@WolfGreenfield.com>; PTAB Mike Rader <MRader-PTAB@WolfGreenfield.com>; Razai, Ali <ali.razai@morganlewis.com>

Subject: RE: IPR2025-00145 (Sua Sponte Director Review)

[EXTERNAL EMAIL]

Counsel,

Petitioner's request for additional briefing is denied. The parties are directed to keep the Director apprised of any actions in the ITC proceeding while the Director Review is pending.

Thanks.

From: Anger, Ben <ben.anger@morganlewis.com>

Sent: Friday, January 2, 2026 7:24 PM

To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>; McKeown, Scott A. <Scott.McKeown@WolfGreenfield.com>; Everton, Benjamin <ben.everton@morganlewis.com>; Stein, Alexander B. <alexander.stein@morganlewis.com>; Peterson, Jacob <jacob.peterson@morganlewis.com>; rfernandez@foley.com; MLB-HydraFacial-IPR-287-2 <MLB-HydraFacial-IPR-287-2@morganlewis.com>; PTAB Scott McKeown <SMcKeown-PTAB@WolfGreenfield.com>; PTAB Mike Rader <MRader-PTAB@WolfGreenfield.com>; Razai, Ali <ali.razai@morganlewis.com>

Subject: RE: IPR2025-00145 (Sua Sponte Director Review)

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Dear Director Squires,

I am writing to correct minor typographical errors in the last line of the fourth paragraph of Patent Owner's responsive email, which should read: "But HydraFacial has not filed its Sur-Reply, and Petitioners have had ample opportunity with their original 15-page brief and Petitioner Reply to address the ID."

For completeness, I have included the complete corrected response below:

The Board previously denied institution of an identical IPR petition challenging the '287 Patent filed by one of the ITC Respondents, Eunsung Global Corp, because it relied on the same prior art and combinations in the ITC. See IPR2024-01491, Paper 17, at 17 (PTAB April 11, 2025). For joinder purposes, Petitioners in the present IPR filed an exact copy of this denied Eunsung IPR. See Paper 3, at 5 (joinder motion describing petition as "substantively identical" and "based on the same prior art combinations and supporting evidence."). Contrary to the institution decision in this IPR, Patent Owner did not waive its discretionary denial arguments and instead asked that the Board treat the Eunsung IPR and the present IPR consistently, precisely because "the present Petition raises no new challenges, grounds, or material differences from the Petition in IPR2024-01491." Paper 11, at 2.

After institution of this IPR, the ITC issued a 278-page Initial Determination ("ID"), upholding validity of the '287 Patent over the same prior art. After extensive litigation, the 5-day ITC trial culminated in HydraFacial's expert witnesses—Mr. Karl Leinsing (mechanical engineer), Dr. Elliot Dubois (plastic surgeon), and Dr. Pallavi Seth (economist)—offering testimony supported by evidence regarding, e.g., the state of the art of skin treatment, deficiencies in the prior art, lack of

motivation to combine references, and the tremendous commercial success of the HydraFacial products practicing the '287 Patent. Respondent declined to even seek Commission review of the ALJ's findings on the prior art and validity of the '287 Patent, choosing to challenge only a single narrow claim construction issue.

Contrary to Petitioners' statement, the ITC has never indicated it is "considering whether to vacate the ID." Rather, the ITC requested briefing from the parties to address the impact of the expiration date of the '287 Patent on the final disposition of the 1408 Investigation. As HydraFacial explained, the Commission's review of the ID is discretionary; thus, if the Commission declines review, which it should, the '287 Patent will still be in force at the end of the 60-day Presidential review period. Indeed, as mentioned above, Respondent petitioned for review of only a single discrete claim construction issue and failed to meet the "clearly erroneous" standard to overturn the ALJ's decision. Thus, for at least this reason, Petitioners' additional statement that the "'287 patent is expiring [] before the Commission can possibly provide any relief to the Complainant in the 1408 Investigation" is plainly wrong. But regardless of whether the expiration date of the '287 Patent prevents an Exclusion Order, there is no question that the ITC determined that the '287 Patent is valid over the same art in this IPR.

Further, Petitioners' request for additional briefing should be denied. Petitioners argue that additional briefing to address the ITC's findings is warranted "particularly since the Board already awarded Petitioners 16 pages of briefing to address the ID and related determinations by the ALJ." First, Petitioners already submitted a 15-page brief addressing the ID on September 30, 2025, filed in opposition to HydraFacial's brief seeking to lodge the ID with the PTAB over Petitioners' objections. See Paper 29. Second, the Board authorized an additional 8-page brief "if Patent Owner discusses [the ID] in its Sur-reply." Paper 32, at 5. But HydraFacial has not filed its Sur-Reply, and Petitioners have had ample opportunity with their original 15-page brief and Petitioner Reply to address the ID.

But Petitioners' challenges to the ID are without merit. For example, beyond just non-analogous art, the ID includes extensive findings on, e.g., no motivation to combine the prior art and the art's failure to disclose all claim limitations. See, e.g., Ex. 2161 (ID), at 129-137, 143-147, 155-158, 158-161. And contrary to Petitioners' contention, the ALJ did perform express and extensive claim construction analysis on the limitation in question. See *id.* at 109-114 (construing "treatment material" and "treatment fluid" to exclude solid particles in view of specification disclosure and prosecution history). And the ALJ's conclusions on secondary consideration are fully supported by extensive citations to the evidentiary record, including Dr. Seth's testimony and Mr. Leinsing's testimony, as well as numerous supporting admitted exhibits. See *id.* at 174-184. But nonetheless and more importantly, Petitioners' request to relitigate the identical art adjudicated by the ITC on the same patent undermines the September 16, 2025 Directive and the Director's and Board's goal of a predictable patent system. This is especially true when Petitioners' arguments were simply copied from a litigant in the ITC proceeding.

Respectfully,

Ben Anger
Counsel for Patent Owner HydraFacial LLC

Ben Anger

Morgan, Lewis & Bockius LLP

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From: Anger, Ben <ben.anger@morganlewis.com>

Sent: Friday, January 2, 2026 2:47 PM

To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>; McKeown, Scott A. <Scott.McKeown@WolfGreenfield.com>; Everton, Benjamin <ben.everton@morganlewis.com>; Stein, Alexander B. <alexander.stein@morganlewis.com>; Peterson, Jacob <jacob.peterson@morganlewis.com>; rfernandez@foley.com; MLB-HydraFacial-IPR-287-2 <MLB-HydraFacial-IPR-287-2@morganlewis.com>; PTAB Scott McKeown <SMcKeown-PTAB@WolfGreenfield.com>; PTAB Mike Rader <MRader-PTAB@WolfGreenfield.com>; Razai, Ali <ali.razai@morganlewis.com>

Subject: RE: IPR2025-00145 (Sua Sponte Director Review)

Dear Director Squires:

The Board previously denied institution of an identical IPR petition challenging the '287 Patent filed by one of the ITC Respondents, Eunsung Global Corp, because it relied on the same prior art and combinations in the ITC. See IPR2024-01491, Paper 17, at 17 (PTAB April 11, 2025). For joinder purposes, Petitioners in the present IPR filed an **exact copy of this denied Eunsung IPR**. See Paper 3, at 5 (joinder motion describing petition as “substantively identical” and “based on the same prior art combinations and supporting evidence.”). Contrary to the institution decision in this IPR, Patent Owner did not waive its discretionary denial arguments and instead asked that the Board treat the Eunsung IPR and the present IPR consistently, precisely because “the present Petition raises no new challenges, grounds, or material differences from the Petition in IPR2024-01491.” Paper 11, at 2.

After institution of this IPR, the ITC issued a 278-page Initial Determination (“ID”), upholding validity of the '287 Patent over the same prior art. After extensive litigation, the 5-day ITC trial culminated in HydraFacial’s expert witnesses—Mr. Karl Leinsing (mechanical engineer), Dr. Elliot Dubois (plastic surgeon), and Dr. Pallavi Seth (economist)—offering testimony supported by evidence regarding, e.g., the state of the art of skin treatment, deficiencies in the prior art, lack of motivation to combine references, and the tremendous commercial success of the HydraFacial products practicing the '287 Patent. Respondent declined to even seek Commission review of the ALJ’s findings on the prior art and validity of the '287 Patent, choosing to challenge only a single narrow claim construction issue.

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But Petitioners' challenges to the ID are without merit. For example, beyond just non-analogous art, the ID includes extensive findings on, e.g., no motivation to combine the prior art and the art's failure to disclose all claim limitations. See, e.g., Ex. 2161 (ID), at 129-137, 143-147, 155-158, 158-161. And contrary to Petitioners' contention, the ALJ did perform express and extensive claim construction analysis on the limitation in question. See *id.* at 109-114 (construing "treatment material" and "treatment fluid" to exclude solid particles in view of specification disclosure and prosecution history). And the ALJ's conclusions on secondary consideration are fully supported by extensive citations to the evidentiary record, including Dr. Seth's testimony and Mr. Leinsing's testimony, as well as numerous supporting admitted exhibits. See *id.* at 174-184. But nonetheless and more importantly, Petitioners' request to relitigate the identical art adjudicated by the ITC on the same patent undermines the September 16, 2025 Directive and the Director's and Board's goal of a predictable patent system. This is especially true when Petitioners' arguments were simply copied from a litigant in the ITC proceeding.

Respectfully,

Ben Anger

Counsel for Patent Owner HydraFacial LLC

Ben Anger

Morgan, Lewis & Bockius LLP

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From: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>
Sent: Tuesday, December 30, 2025 8:15 AM
To: McKeown, Scott A. <Scott.McKeown@WolfGreenfield.com>; Anger, Ben <ben.anger@morganlewis.com>;
Everton, Benjamin <ben.everton@morganlewis.com>; Stein, Alexander B.
<alexander.stein@morganlewis.com>; Peterson, Jacob <jacob.peterson@morganlewis.com>;
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Scott McKeown <SMcKeown-PTAB@WolfGreenfield.com>; PTAB Mike Rader <MRader-PTAB@WolfGreenfield.com>; Razai, Ali <ali.razai@morganlewis.com>
Subject: RE: IPR2025-00145 (Sua Sponte Director Review)

[EXTERNAL EMAIL]
Counsel,

Patent Owner may respond with its position as to Petitioner's request via email by Friday,
January 2, 2026.

Thank you.

From: McKeown, Scott A. <Scott.McKeown@WolfGreenfield.com>
Sent: Monday, December 29, 2025 7:41 PM
To: John A. Squires, Under Secretary and Director <Director@uspto.gov>; Director_PTABDecision_Review
<Director_PTABDecision_Review@uspto.gov>
Cc: ben.anger@morganlewis.com; ben.everton@morganlewis.com; alexander.stein@morganlewis.com;
jacob.peterson@morganlewis.com; rfernandez@foley.com; MLB-HydraFacial-IPR-287-2@morganlewis.com;
PTAB Scott McKeown <SMcKeown-PTAB@WolfGreenfield.com>; PTAB Mike Rader <MRader-PTAB@WolfGreenfield.com>; Razai, Ali <ali.razai@morganlewis.com>
Subject: IPR2025-00145 (Sua Sponte Director Review)

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Honorable Director Squires,

On December 22, 2025, you ordered a stay of the above-captioned IPR for the review of an Initial Determination ("ID") of the ITC relating to the subject patent (*i.e.*, the '287 patent) in the ITC's 1408 Investigation, which does not involve any of the Petitioners. Paper 40. However, this decision appears to have been based on incorrect and outdated information. Because the '287 patent is expiring imminently, before the Commission can possibly provide any relief to the Complainant in the 1408 Investigation (*i.e.*, Patent Owner HydraFacial), the ITC is presently considering whether to **vacate** this ID.

On December 15, 2025, the Commission issued a Notice extending the Target Date for the Commission's Final Determination to February 17, 2026. 2025 WL 3700760, *2. Because the Target

Date is less than 60 days before the '287 patent will expire on March 29, 2026, the Commission explained in the December Notice that “even if the Commission were to issue remedial orders, the patent would likely expire before the end of the 60-day Presidential review period.” *Id.* The briefing on whether the ID should be vacated was just recently completed and a decision is likely to issue in January. Petitioners respectfully suggest that the Director lift the stay until such time as it becomes clear that the ID will not, in fact, be vacated.

If the Director is nevertheless inclined to consider the ID to this IPR, Petitioners respectfully request that they be heard (including as an exception to the stay if the stay is not lifted) on that issue – particularly since the Board already awarded Petitioners 16 pages of briefing to address the ID and related initial determinations by the ALJ. Paper 32, 5. Petitioners should be provided a full and fair opportunity to address the relevance – or lack thereof – of the ID to this IPR in accordance with the Administrative Procedure ACT (APA), including after Patent Owner has made any arguments for the ID’s relevance, as the Board’s earlier order (Paper 32) anticipated. Petitioners will address at least several reasons why the ID is of limited if any relevance to this IPR, including the following.

1. The ID’s conclusion regarding the Karasiuk and Palmer invalidity grounds was based almost entirely on an argument (so-called “non-analogous art”) that Patent Owner does not even make in this IPR, and thus **waived** in this IPR – and that did not include different evidence presented in this IPR;
2. The ID’s conclusion regarding the Greenberg invalidity grounds was based almost entirely on a narrow reading of key claim limitations that directly contradicts the broad definition provided by the inventors in the specification. The ALJ read the key limitations narrowly without ever performing a claim construction analysis, thus providing no meaningful guidance with respect to this IPR (Paper 32, 17-21); and
3. The ALJ’s conclusion on secondary considerations was based on conclusory “nexus” testimony from HydraFacial’s technical expert that the multiple-container feature of the claims drives customer demand for HydraFacial’s patented consoles. In reaching that conclusion, the ALJ failed even to consider the earlier sworn testimony by both co-founders of HydraFacial, who are also co-inventors of the '287 patent, that a totally different feature, not claimed in the '287 patent, in fact drives customer demand for the consoles. Paper 32, 26-27.

In conclusion, given that the ID is likely to be vacated, and further given the incongruencies between the ID and the arguments in this IPR as well as the incomplete record before the ALJ that led to the ID, Petitioners respectfully request that the Director lift the stay at least until the ITC declines vacatur, and further request that, if the Director is inclined to consider the ID regardless, they be permitted the briefing they were previously awarded to fully and fairly address the potential relevance of the ID to this IPR.



Scott McKeown

(Mik-Q-En)

Shareholder

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