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Filed on behalf of:
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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

Patent No. 11,865,287

PATENT OWNER'S SUR-REPLY TO REPLY IN SUPPORT OF REHEARING REQUEST

In their Reply (Paper 44), Petitioners continue to challenge the Director's Order (Paper 41) but identify no proper basis for rehearing. Petitioners' repeated arguments only confirm rehearing should be denied. As with their earlier briefing, Petitioners' Reply identifies no matter the Director's Order (Paper 41) overlooked or misapprehended under 37 C.F.R. § 42.71(d). Instead, it pivots to post-Order predictions and policy arguments: that this inter partes review ("IPR") would be a more "meaningful" validity assessment than the U.S. International Trade Commission ("ITC") action, that a newly filed appeal may later produce vacatur of the ITC determination, and that efficiency now favors continuing this IPR. Reply, 1-3. None establishes error in the February 12 Order.

First, Petitioners still do not dispute the facts the Order relied on—that the ITC had already adjudicated validity of the same patent based on the same prior art and asserted grounds, and that maintaining this IPR would create duplication, expense, and risk of inconsistent decisions. *See* Order, 2. The Order did not turn on issue preclusion or on the ITC record being "perfect." Petitioners' new assertion that they had greater "motivation" to litigate in this IPR is therefore irrelevant. Reply, 2. That is especially so because this Petition was filed as a verbatim copy of the earlier Eunsung petition, with no new facts, evidence, or arguments. Paper 3, 5-6. Patent Owner ("PO") waived a PO Preliminary Response on that representation. Paper 11, 2. Petitioners cannot transform a copycat petition into a distinct,

"meaningful" adjudication by claiming, after the fact, that they would have litigated harder than the ITC respondents.

Second, PO did not "concede" that the ITC action failed to provide a meaningful prior assessment of validity, as Petitioners now suggest. Request, 1-2. PO explained only that Petitioners' alleged differences in briefing choices, waiver positions, and the factual and evidentiary record on the merits do not undermine the Director's discretionary efficiency determination. Paper 43, 3. Petitioners' dissatisfaction with how the ITC respondents litigated does not change the overlap that matters under § 314(a). Nor is their premise correct that the ITC could not provide meaningful relief from the outset. Reply, 1. The ITC found a violation, issued remedial orders, and suspended enforcement only because the '287 patent expired during the Presidential-review period. Ex.1098, 1, 3-4.

Third, Petitioners' appeal/vacatur theory is no basis for rehearing. Reply, 3. The ITC appeal they now emphasize was filed after both the February 12 Order and the March 16 Rehearing Request (Paper 42). It therefore cannot show that the Director overlooked or misapprehended anything when he acted. And vacatur remains speculative and irrelevant. The ITC supplemented and affirmed the Initial Determination's violation finding, left the validity findings undisturbed, and denied the motion to terminate as untimely. Ex.1098, 2-4. A hoped-for future vacatur does not retroactively render the Director's February 12 assessment erroneous.

Finally, Petitioners' efficiency and district-court arguments merely restate a policy disagreement already rejected by the Order. *See* Reply, 2; Order, 2. The USPTO guidance expressly directs the Board to apply *Fintiv* when there is a parallel ITC proceeding and explains that, even absent preclusion, overlapping ITC adjudications can create duplication and expense where the ITC's final determination precedes the Board's deadline. Guidance on USPTO's Recission of "Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation" at 1-2 (Mar. 24, 2025). That is exactly this case. The possibility that other defendants may continue litigating in district court does not obligate the Board to preserve a duplicative IPR. Petitioners' new citations do not change the analysis. *Tesla* is inapposite, and Petitioners' citations to a proposed rulemaking and another family-member IPR are likewise beside the point. Reply, 1-2. None shows the Director overlooked or misapprehended any matter in this case.

In short, Petitioners' Reply adds nothing warranting rehearing. It repackages old arguments and asks the Director to speculate about future events. Rehearing should be denied.

Respectfully Submitted,

Dated: April 7, 2026

/ *Jacob L. Peterson* /
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e)(4), I certify that on April 7, 2026, a copy of this **PATENT OWNER'S SUR-REPLY TO REPLY IN SUPPORT OF REHEARING REQUEST** was served via the email correspondence address of record for Petitioner's counsel of record:

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Respectfully Submitted,

Dated: April 7, 2026

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