Filed: May 13, 2025

Filed on behalf of:
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EUNSUNG GLOBAL CORP.,

Petitioner,

v.

HYDRAFACIAL LLC

Patent Owner.

Case No. IPR2025-00445
U.S. Patent No. 9,550,052

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 POPR relies, in part, on objective evidence of non-obviousness, including confidential financial data, such as sales revenue for numerous products demonstrating the commercial success of commercial embodiments of the '052 patent, and, by comparison, confidential financial data of a HydraFacial product that does not embody the '052 patent but are otherwise comparable to the commercial embodiments of the '052 patent. HydraFacial maintains strict confidentiality of such financial data because it reflects highly sensitive information related to pricing, business strategy, and market positioning. 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 POPR and Exhibits 2009 and 2010 containing its confidential financial data. HydraFacial has filed public versions, with confidential portions redacted, of its POPR and Exhibit 2009.

HydraFacial also proposes a modified version of the Default Protective Order to provide protection similar to the Confidential Business Information designation in a protective order entered in a pending ITC Investigation to which Eunsung was a party. While Eunsung has been dismissed from the ITC Investigation, Eunsung agreed to the ITC protective order while it was a party to the ITC Investigation. 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.

In the ITC Investigation, HydraFacial designated as CBI the same or similar financial data that it has now submitted with the POPR. With that designation, Eunsung's outside ITC counsel had, or would have had, access to this evidence, but its in-house counsel and employees would not have. HydraFacial seeks a protective order here with the same level of protection that the parties already agreed to in the ITC Investigation.

I. DOCUMENTS REQUESTED TO BE SEALED

Exhibit 2010 is 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. 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.

The POPR references the confidential financial data contained in Exhibit 2010

and summarized in Exhibit 2009. HydraFacial has filed a confidential version of the POPR and a public version of the POPR with the references to HydraFacial's confidential sales data redacted.

None of these confidential financial data contained in Exhibit 2010, the redacted portions of Exhibit 2009, or the redacted portions of the POPR, 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. HydraFacial produced the information in the ITC Investigation as CBI under a protective order.

Second, "concrete harm" to HydraFacial would result if the documents were accessible to Eunsung or the public. The confidential financial data HydraFacial seeks to seal reflects highly sensitive information related to pricing, business strategy, and market positioning. If such information were publicly accessible, HydraFacial's competitors, including Eunsung, 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 CBI evidence submitted by HydraFacial 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 non-obviousness of the '052 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.

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 POPR. Moreover, the information HydraFacial seeks to seal relates solely to financial data, not the technical aspects of its products cited in the exhibits. The public will be able to understand that HydraFacial's products embody the '052 patent and have enjoyed commercial success without accessing

CBI containing the precise sales data. Moreover, HydraFacial has submitted redacted versions of its POPR and supporting declarations, appropriately balancing the public's interest in an open record with HydraFacial's interest in protecting its CBI. 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 data. 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) including a specific and relatively narrow definition of the scope of CBI, (3) limiting access by party representatives to outside counsel of record and attorneys within the same law firms, (4) eliminating access by in-house counsel, (5) eliminating access by employees and consultants of the parties (except retained experts), and (6) 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 would substantially harm HydraFacial. *See supra* II (Second). Disclosure to or use by Eunsung would be particularly damaging because it would facilitate an attempt to compete with

HydraFacial in the field of hydrodermabrasion devices. Thus, good cause exists to prevent Eunsung's 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.

Further demonstrating that HydraFacial's proposal is reasonable, the parties agreed to and operated under similar provisions in the ITC Investigation. The Consolidated Trial Practice Guide indicates that the "Board will presumptively accept agreed-to changes that provide additional categories of confidentiality as long as they are reasonable and adequately define what types of materials are to be included in the additional categories." CTPG, 115-116. Here, the proposed protective order specifically defines the types of materials included in the CBI designation. EX2024 ¶ 2. The definition is not "overly inclusive" and does not "encourage the parties to categorize all or most of their discovery materials" as CBI.

See CTPG, 116. Indeed, HydraFacial has publicly filed many exhibits and the vast majority of its POPR and supporting declarations. HydraFacial designates as CBI confidential sales data only.

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

HydraFacial certifies the parties conferred via email regarding this Motion. Eunsung indicates that it does not oppose HydraFacial's Motion to Seal and does not object to HydraFacial's proposed modifications to the Default Protective Order.

V. CONCLUSION

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

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: May 13, 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 May 13, 2025, via email pursuant to 37 C.F.R. § 42.6(e), to counsel for Petitioner as addressed below:

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