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Ramsey M. Al-Salam, CA Bar No. 109506
Jessica J. Delacenserie, *pro hac vice*
PERKINS COIE LLP
1201 Third Avenue, 49th Floor
Seattle, WA 98101
Tel: (206) 359-8000
Fax: (206) 359-9000
Email: RAISalam@perkinscoie.com
JDelacenserie@perkinscoie.com

Daniel T. Shvodian, CA Bar No. 184576
PERKINS COIE LLP
3150 Porter Drive
Palo Alto, CA 94304
Tel: (650) 838-4300
Fax: (650) 737-5461
Email: DShvodian@perkinscoie.com

Attorneys for Defendant L'Oreal USA, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

BRIGHTEX BIO-PHOTONICS, LLC,

Plaintiff,

v.

L'OREAL USA, INC.,

Defendant.

Case No. 3:24-cv-07919-JCS

**DEFENDANT L'OREAL USA, INC.'S
ANSWER TO PLAINTIFF'S
COMPLAINT AND COUNTERCLAIMS

DEMAND FOR JURY TRIAL**

1 Defendant L'Oreal USA, Inc. ("L'Oreal USA") answers the complaint of Plaintiff
2 Brightex Bio-Photonics, LLC ("BTBP") as follows:

3 1. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the
4 truth of the allegations, if any, contained in paragraph 1 and, on that basis, denies them.

5 2. L'Oreal USA denies that "BTBP pioneered the combined use of quantitative image
6 analysis, reproducible high-resolution 2D photography, and ultra-high resolution 3D models" and
7 that "BTBP has developed significant advancements in these fields." To the extent paragraph 2
8 alleges invention by BTBP or any BTBP personnel of any particular skin analysis or treatment
9 technology, or alleges a particular scope of any BTBP patent, denied. L'Oreal USA lacks
10 knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if
11 any, contained in paragraph 2 and, on the basis, denies them.

12 3. L'Oreal USA admits that it is a Delaware corporation with a regular and established
13 place of business at 10 Hudson Yards, 30th floor, New York, NY, 10001. L'Oreal USA admits
14 that Corporation Service Company, 80 State Street, Albany, NY 12207 is its registered agent in
15 the State of New York.

16 4. L'Oreal USA admits that this case purports to be an action for patent infringement.
17 L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's patents.
18 L'Oreal USA admits that this Court has subject matter jurisdiction over actions for patent
19 infringement. Except as expressly admitted, L'Oreal USA denies the remaining allegations, if any,
20 contained in paragraph 4.

21 5. L'Oreal USA consents, for purposes of this action only, to the personal jurisdiction
22 of this Court. L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
23 patents in this State or this District or anywhere else. L'Oreal USA admits that it does business in
24 this District and this State. L'Oreal USA lacks knowledge or information sufficient to form a belief
25 as to the truth of the remaining allegations, if any, contained in paragraph 5 and, on the basis,
26 denies them.

6. To the extent paragraph 6 alleges any actions taken by L’Oreal USA or caused by L’Oreal USA’s products that would be the basis for infringement of any valid claim of BTBP’s patents, L’Oreal USA denies that it has infringed or is infringing any valid claim of BTBP’s patents in this District or anywhere else. L’Oreal USA admits that on April 28, 2021, L’Oreal USA announced it would be opening, and did open, a second company headquarters at 888 North Douglas in El Segundo, California in early 2022. L’Oreal USA admits that, in this announcement, Stéphane Rinderknech, then President and CEO of L’Oreal USA, is quoted as saying “We are excited at the prospect of our brand teams coming together to build the future of beauty in the Los Angeles area.” Except as expressly admitted, L’Oreal USA denies the remaining allegations, if any, contained in paragraph 6.

7. To the extent paragraph 7 alleges any actions taken by L’Oreal USA or caused by L’Oreal USA’s products that would be the basis for infringement of any valid claim of BTBP’s patents, L’Oreal USA denies that it has infringed or is infringing any valid claim of BTBP’s patents in this District or anywhere else. L’Oreal USA admits that, as of May 2016, L’Oreal’s Technology Incubator located in San Francisco had spearheaded a number of game changing digital services, including the Makeup Genius virtual try-on tool. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if any, contained in paragraph 7 and, on the basis, denies them.

8. To the extent paragraph 8 alleges any actions taken by L’Oreal USA or caused by L’Oreal USA’s products that would be the basis for infringement of any valid claim of BTBP’s patents, L’Oreal USA denies that it has infringed or is infringing any valid claim of BTBP’s patents in this District or anywhere else. L’Oreal USA admits that on June 29, 2023, the L’Oreal Groupe “announced a partnership with the University of California (UC) Berkeley’s Bakar Labs, a leading biotech incubator,” stating that “[t]his collaboration opens up avenues for Bakar Labs’ incubated startups, to benefit from and gain access to L’Oréal’s 3D reconstructed skin models, for free,” and that “Bakar Labs, housed in the Bakar BioEnginuity Hub on the UC Berkeley campus, offers over

1 40,000 square feet of lab and office space to up to 50 startups at a time.” Except as expressly
2 admitted, L’Oreal USA denies the remaining allegations, if any, contained in paragraph 8.

3 9. To the extent paragraph 9 alleges any actions taken by L’Oreal USA or caused by
4 L’Oreal USA’s products that would be the basis for infringement of any valid claim of BTBP’s
5 patents, L’Oreal USA denies that it has infringed or is infringing any valid claim of BTBP’s patents
6 in this District or anywhere else. L’Oreal USA admits that it does business in this District. Except
7 as expressly admitted, L’Oreal USA denies the remaining allegations, if any, contained in
8 paragraph 9.

9 10. L’Oreal USA consents, for purposes of this action only, to the personal jurisdiction
10 of this Court. L’Oreal USA denies that it has infringed or is infringing any valid claim of BTBP’s
11 patents in this State or anywhere else. L’Oreal USA denies the remaining allegations, if any,
12 contained in paragraph 10.

13 11. L’Oreal USA admits that, in this case, venue is proper in this District pursuant to
14 28 U.S.C. § 1400(b). L’Oreal USA denies that it has infringed or is infringing any valid claim of
15 BTBP’s patents in this District or anywhere else. Except as expressly admitted, L’Oreal USA
16 denies the remaining allegations, if any, contained in paragraph 11.

17 12. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations, if any, contained in paragraph 12 and, on that basis, denies them.

19 13. L’Oreal USA denies that, in or around 2005, “there was an unfulfilled need to
20 improve the ability to scan facial skin features and help identify skin characteristics and conditions
21 that could be treated or otherwise remedied”; “the skincare industry was far behind in using
22 technology to improve its products and services”; and “the industry was still visually comparing
23 images before and after product application with no quantification of skin parameters.” L’Oreal
24 USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining
25 allegations, if any, contained in paragraph 13 and, on that basis, denies them.

26 14. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations, if any, contained in paragraph 14 and, on that basis, denies them.
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1 15. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations, if any, contained in paragraph 15 and, on that basis, denies them.

3 16. To the extent paragraph 16 alleges invention by BTBP or any BTBP personnel of
4 any particular skin analysis or treatment technology, or alleges a particular scope of any BTBP
5 patent, denied. Otherwise, L’Oreal USA lacks knowledge or information sufficient to form a belief
6 as to the truth of the allegations, if any, contained in paragraph 16 and, on that basis, denies them.

7 17. To the extent paragraph 17 alleges invention by BTBP or any BTBP personnel of
8 any particular skin analysis or treatment technology, or alleges a particular scope of any BTBP
9 patent, denied. Otherwise, L’Oreal USA lacks knowledge or information sufficient to form a belief
10 as to the truth of the allegations, if any, contained in paragraph 17 and, on that basis, denies them.

11 18. L’Oreal USA admits that Exhibit 1 to the Complaint purports to be a copy of U.S.
12 Patent No. 9,842,358 (“the ’358 Patent”). L’Oreal USA admits that the application resulting in the
13 ’358 Patent was filed in 2012. L’Oreal USA admits that the ’358 Patent issued in 2017. L’Oreal
14 USA admits that Exhibit 2 to the Complaint purports to be a copy of U.S. Patent No. 9,542,595
15 (“the ’595 Patent”). L’Oreal USA denies that the application resulting in the ’595 Patent was filed
16 in 2013. L’Oreal USA admits that the ’358 Patent issued in 2017. To the extent paragraph 18
17 alleges invention by BTBP or any BTBP personnel of any particular skin analysis or treatment
18 technology, or alleges a particular scope of any BTBP patent, denied. L’Oreal USA lacks
19 knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if
20 any, contained in paragraph 18 and, on that basis, denies them.

21 19. L’Oreal USA denies that, “[i]n 2007, L’Oreal USA and its affiliates had essentially
22 no experience with using software-based skin analysis and treatment technology.” L’Oreal USA
23 admits that BTBP provided L’Oreal USA a copy of BTBP’s Clarity Pro Clinical Research System.
24 L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of the
25 remaining allegations, if any, contained in paragraph 19 and, on that basis, denies them.

26 20. L’Oreal USA denies that, “[p]rior to 2007-time-frame, most skin analysis
27 cosmetologists used visual grading techniques.” L’Oreal USA admits that it tested BTBP’s Clarity
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1 Pro Clinical Research System. L'Oreal USA lacks knowledge or information sufficient to form a
2 belief as to the truth of the remaining allegations, if any, contained in paragraph 20 and, on that
3 basis, denies them.

4 21. L'Oreal USA admits that L'Oreal USA personnel visited BTBP facilities to attend
5 a demonstration of BTBP's Clarity Pro Clinical Research System. L'Oreal USA admits that
6 Exhibit 3 to the Complaint purports to be a copy of an email sent by Daniel Kung to Shefali Sharma
7 on July 14, 2009, and that the quoted language in paragraph 21 appears in Exhibit 3. L'Oreal USA
8 admits that, as of July 14, 2009, Mr. Kung was employed by L'Oreal USA and his title was Senior
9 Chemical Engineer. To the extent paragraph 21 describes any BTBP employee or product, L'Oreal
10 USA lacks knowledge or information sufficient to form a belief as to the truth of those allegations
11 and, on that basis, denies them. To the extent paragraph 21 alleges disclosure of any BTBP
12 confidential or proprietary information to L'Oreal USA, denied. L'Oreal USA lacks knowledge
13 or information sufficient to form a belief as to the truth of the remaining allegations, if any,
14 contained in paragraph 21 and, on that basis, denies them.

15 22. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the
16 truth of the remaining allegations, if any, contained in paragraph 22 and, on that basis, denies them.

17 23. To the extent paragraph 23 alleges disclosure of any BTBP confidential or
18 proprietary information to L'Oreal USA, denied. L'Oreal USA admits that it communicated with
19 BTBP personnel regarding BTBP's Clarity Pro System. L'Oreal USA admits that it tested BTBP's
20 Clarity Pro System. L'Oreal USA admits that BTBP performed demonstrations of BTBP's Clarity
21 Pro System for L'Oreal. To the extent paragraph 23 describes BTBP's Clarity Pro System, or any
22 other BTBP product or technology, L'Oreal USA lacks knowledge or information sufficient to
23 form a belief as to the truth of those allegations and, on that basis, denies them. Except as expressly
24 admitted, L'Oreal USA denies the remaining allegations, if any, contained in paragraph 23.

25 24. To the extent paragraph 24 alleges disclosure of any BTBP confidential or
26 proprietary information to L'Oreal USA, denied. L'Oreal USA admits that, in 2009, Dr. Germain
27 Puccetti visited BTBP's facilities in San Jose, California. L'Oreal USA admits that, as of 2009,
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1 Dr. Puccetti was a scientist employed by L’Oreal USA based in Clark, New Jersey. L’Oreal USA
2 admits that it tested BTBP’s Clarity Pro System. To the extent paragraph 24 describes BTBP’s
3 Clarity Pro System, or any other BTBP product or technology, L’Oreal USA lacks knowledge or
4 information sufficient to form a belief as to the truth of those allegations and, on that basis, denies
5 them. L’Oreal USA denies that it “verified that the Clarity Pro system was able to automatically
6 and accurately measure ‘before and after’ changes in the photographic images of the skin at a
7 quality level comparable to that performed by a professional visual grader of the skin,” or
8 “demonstrated that consumers could automatically find small variations in skin to see and prove
9 small improvements in skin conditions caused by active ingredients” using BTBP’s Clarity Pro
10 System, Clarity Pro Clinical Research System, or any other BTBP technology. L’Oreal USA lacks
11 knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if
12 any, contained in paragraph 24 and, on that basis, denies them.

13 25. To the extent paragraph 25 alleges disclosure of any BTBP confidential or
14 proprietary information to L’Oreal USA, denied. L’Oreal USA admits that, in or around June
15 2010, Fred Cervantes and Jean-Yves Kempf visited BTBP facilities to attend a demonstration of
16 BTBP’s Clarity Pro System. L’Oreal USA admits that, as of June 2010, Mr. Cervantes and Mr.
17 Kempf were employed by L’Oreal USA. L’Oreal USA lacks knowledge or information sufficient
18 to form a belief as to the truth of BTBP’s allegations regarding what one L’Oreal USA Senior
19 Engineer commented in June 2010 and, on that basis, denies them. Except as expressly admitted,
20 L’Oreal USA denies the remaining allegations, if any, contained in paragraph 25.

21 26. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the
22 truth of the allegations, if any, contained in paragraph 26 and, on that basis, denies them.

23 27. L’Oreal USA admits that, in or around late 2010, Dr. Guive Balooch was employed
24 by L’Oreal USA and held the title of Senior Research Scientist. L’Oreal USA admits that, in or
25 around late 2010, Dr. Balooch worked at the L’Oreal U.S. Advanced Research facility in Clark,
26 New Jersey. L’Oreal USA admits that Dr. Balooch presently holds the title of Global Managing
27 Director of Augmented Beauty and Open Innovation, and leads a global team focused on
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1 uncovering and developing “disruptive innovations” through strategic partnerships, investments,
2 and acquisitions for the group. L’Oreal USA admits that, from approximately December 2014 to
3 October 2022, Dr. Balooch held the title of Global Vice President and was the head of the L’Oreal
4 Global Technology Incubator (GTI) and California Research Center (CRC), and that his work
5 included a focus on strategic partnerships with start-ups and digital/scientific innovations. Except
6 as expressly admitted, L’Oreal USA denies the remaining allegations, if any, contained in
7 paragraph 27.

8 28. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations, if any, contained in paragraph 28 and, on that basis, denies them.

10 29. To the extent paragraph 29 alleges disclosure of any BTBP confidential or
11 proprietary information to L’Oreal USA, denied. L’Oreal USA admits that, on or around July 1,
12 2011, Dr. Balooch visited BTBP’s facilities in San Jose to attend a demonstration of BTBP’s
13 Clarity Pro System. L’Oreal USA admits that, in 2011, BTBP provided L’Oreal USA a BTBP
14 Clarity LITE unit. Except as expressly admitted, L’Oreal USA denies the remaining allegations,
15 if any, contained in paragraph 29.

16 30. L’Oreal USA admits that it entered into a Mutual Non-Disclosure Agreement with
17 BTBP on April 30, 2013 (the “2013 Mutual NDA”). To the extent paragraph 30 alleges that
18 L’Oreal USA’s parent, subsidiaries, and/or affiliates were parties to the 2013 Mutual NDA,
19 denied. L’Oreal USA admits that the 2013 Mutual NDA states: “L’Oreal USA, Inc. or one of its
20 subsidiaries or affiliates is considering engaging or has engaged BRIGHTEX to perform certain
21 services or supply certain goods (the ‘Purpose’); and accordingly wish to disclose to and receive
22 from each other, from time to time during the term of such engagement, certain confidential and
23 proprietary information regarding their respective current and future scientific, technical, business,
24 strategic, marketing and creative affairs.” L’Oreal USA admits that the 2013 Mutual NDA states:
25 “Each party agrees that after the date of receipt of any Confidential Information, it will: (a) not
26 use, or authorize the use of, such Confidential Information for any purpose other than for the
27 Purpose ... (c) not disclose such Confidential Information to any person other than those of its
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employees, agents, parents, subsidiaries or affiliates who (i) need to know such Confidential Information to effectuate the Purpose, and (ii) are Information and bound by written confidentiality obligations prohibiting the further use and disclosure of such Confidential Information advised of the confidential and proprietary nature of such Confidential.” To the extent paragraph 30 alleges disclosure of any BTBP confidential or proprietary information to L’Oreal USA, denied. To the extent paragraph 30 describes any BTBP product or technology, L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them. L’Oreal USA admits that BTBP performed demonstrations related to its DeepTag technology. L’Oreal USA denies that BTBP disclosed any implementation details of its technology, including any specific analyses, algorithms, and/or methods performed by or used in such technology. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if any, contained in paragraph 30 and, on that basis, denies them.

31. L’Oreal USA admits that BTBP provided L’Oreal USA with sample applications to demonstrate certain purported capabilities of BTBP’s DeepTag technology. L’Oreal USA denies that it was “interested in understanding how to obtain skin measurements in order to recommend products in order to make sales directly from an application” from BTBP. To the extent paragraph 31 describes any BTBP product or technology, L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of those allegations and, on that basis, denies them. To the extent paragraph 31 alleges disclosure of any BTBP confidential or proprietary information to any L’Oreal entity, denied. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if any, contained in paragraph 31 and, on that basis, denies them.

32. L’Oreal USA admits that it entered into an agreement with BTBP effective November 21, 2013 (the “November 2013 Agreement”). L’Oreal USA admits that the quoted language in paragraph 32 at lines 12–18 appears in the November 2013 Agreement. To the extent paragraph 32 alleges that Schedule A of the November 2013 Agreement identifies any “LUSA

Brands,” denied. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if any, contained in paragraph 32 and, on that basis, denies them.

33. L’Oreal USA admits that BTBP developed applications under the November 2013 Agreement, including an application for the Garnier brand. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if any, contained in paragraph 33 and, on the basis, denies them.

34. L’Oreal USA admits that, of the applications BTBP developed under the November 2013 Agreement, the application for the Garnier brand was the first to go live and did so on September 23, 2014. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if any, contained in paragraph 34 and, on the basis, denies them.

35. L’Oreal USA admits that, as of April 20, 2015, Pritesh Davda was employed by L’Oreal USA and held the title of Assistance Vice President of Digital Marketing IT. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if any, contained in paragraph 35 and, on the basis, denies them.

36. L’Oreal USA admits that “the launch of the first connected beauty digital innovation called ‘Makeup Genius’ exclusively available through L’Oreal Paris” was announced in May 2014. L’Oreal USA admits that, in June 2014, PRNewswire described “Makeup Genius” as “a game-changing app that uses advanced facial mapping technology to turn the front-facing iPhone and iPad camera into a virtual mirror that allows women to try on products in real-time.” Except as expressly admitted, L’Oreal USA denies the remaining allegations, if any, contained in paragraph 36.

37. L’Oreal USA admits that, in June 2014, PRNewswire published an article that stated: “The virtual makeup app, Makeup Genius, was born out of L’Oreal USA’s Connected Beauty Incubator, a new business division based out of L’Oreal’s Research & Innovation labs in Clark, New Jersey, dedicated entirely to technology innovation.” Except as expressly admitted, L’Oreal USA denies the remaining allegations, if any, contained in paragraph 37.

1 38. L’Oreal USA admits that, in March 2016, L’Oreal Paris and Image Metrics
2 announced that they had signed a new and exclusive partnership. Except as expressly admitted,
3 L’Oreal USA denies the remaining allegations, if any, contained in paragraph 38.

4 39. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the
5 truth of BTBP’s allegation that, in 2015, L’Oreal USA’s “affiliates announced a strategic
6 partnership with the L’Oreal entities, and the augmented reality technology company known as
7 Modiface to provide a smartphone application to certain L’Oreal branded products” and, on that
8 basis, denies it. L’Oreal USA admits that, in July 2017, L’Oreal SA and Perfect Corp. announced
9 a global partnership that integrates makeup collections from L’Oreal brands worldwide in
10 YouCam Makeup, an augmented reality beauty app. L’Oreal USA admits that, in March 2018,
11 L’Oreal SA announced its acquisition of ModiFace. Except as expressly admitted, L’Oreal USA
12 denies the remaining allegations, if any, contained in paragraph 39.

13 40. L’Oreal USA admits that L’Oreal SA corresponded with BTBP after March 2018.
14 L’Oreal USA admits that, in October 2019, L’Oreal SA entered into a Non-Disclosure Agreement
15 with BTBP. L’Oreal USA admits that BTBP provided L’Oreal USA with sample apps to
16 demonstrate certain purported capabilities of BTBP’s DeepTag technology. To the extent
17 paragraph 40 describes any BTBP product or technology, L’Oreal USA lacks knowledge or
18 information sufficient to form a belief as to the truth of those allegations and, on that basis, denies
19 them. To the extent paragraph 40 alleges disclosure of any BTBP confidential or proprietary
20 information to any L’Oreal entity, denied. Except as expressly admitted, L’Oreal USA denies the
21 remaining allegations, if any, contained in paragraph 40.

22 41. L’Oreal USA admits that no L’Oreal entity entered into an NDA with BTBP in
23 2021. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of
24 the remaining allegations, if any, contained in paragraph 41 and, on that basis, denies them.

25 42. L’Oreal USA denies that it has misappropriated any of BTBP’s intellectual
26 property. To the extent paragraph 42 describes any BTBP product or technology, L’Oreal USA
27 lacks knowledge or information sufficient to form a belief as to the truth of those allegations and,
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1 on that basis, denies them. To the extent paragraph 42 alleges invention by BTBP or any BTBP
2 personnel of any particular image acquisition or analysis technology, or alleges a particular scope
3 of any BTBP patent, denied. L'Oreal USA lacks knowledge or information sufficient to form a
4 belief as to the truth of the remaining allegations, if any, contained in paragraph 42 and, on that
5 basis, denies them.

6 43. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the
7 truth of the allegations, if any, contained in paragraph 43 and, on that basis, denies them.

8 44. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations, if any, contained in paragraph 44 and, on that basis, denies them.

10 45. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the
11 truth of the allegations, if any, contained in paragraph 45 and, on that basis, denies them.

12 46. L'Oreal USA admits that U.S. Patent Application No. 13/527,578 was filed on June
13 19, 2012, and issued as the '358 Patent on December 12, 2017. L'Oreal USA admits that the title
14 of the '358 Patent is "METHOD FOR PROVIDING PERSONALIZED
15 RECOMMENDATIONS." L'Oreal USA lacks knowledge or information sufficient to form a
16 belief as to the truth of the remaining allegations, if any, contained in paragraph 46 and, on that
17 basis, denies them.

18 47. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the
19 truth of the allegations, if any, contained in paragraph 47 and, on that basis, denies them.

20 48. L'Oreal USA admits that claim 16 of the '358 Patent is reproduced in paragraph
21 48 with one modification. Except as expressly admitted, L'Oreal USA denies the remaining
22 allegations, if any, contained in paragraph 48.

23 49. L'Oreal USA admits that a substantial portion of the quoted language in paragraph
24 49 appears in claim 18 of the '358 Patent. Except as expressly admitted, L'Oreal USA denies the
25 remaining allegations, if any, contained in paragraph 49.

26 50. L'Oreal USA admits that U.S. Patent Application No. 14/224,659 was filed on
27 March 25, 2014, and issued as the '595 Patent on January 10, 2017. L'Oreal USA admits that the
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1 title of the '595 Patent is "SYSTEMS AND METHODS FOR RECOMMENDING COSMETIC
2 PRODUCTS FOR USERS WITH MOBILE DEVICES." L'Oreal USA admits that U.S.
3 Provisional Patent Application No. 61/805,126 was filed on March 25, 2013, and is titled
4 "SYSTEMS AND METHODS FOR RECOMMENDING COSMETIC PRODUCTS FOR
5 USERS WITH MOBILE DEVICES." L'Oreal USA admits that the '595 Patent, on its face, claims
6 priority to U.S. Provisional Patent Application No. 61/805,126. Except as expressly admitted,
7 L'Oreal USA denies the remaining allegations, if any, contained in paragraph 50.

8 51. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations, if any, contained in paragraph 47 and, on that basis, denies them.

10 52. L'Oreal USA admits that claim 5 of the '595 Patent is reproduced in paragraph 52.
11 Except as expressly admitted, L'Oreal USA denies the remaining allegations, if any, contained in
12 paragraph 52.

13 53. Denied.

14 54. Denied.

15 55. Denied.

16 56. L'Oreal USA admits that claim 16 of the '358 Patent recites "the electronic device
17 comprises a camera and a display." Except as expressly admitted, L'Oreal USA denies the
18 remaining allegations, if any, contained in paragraph 56.

19 57. Denied.

20 58. Denied.

21 59. Denied.

22 60. L'Oreal USA admits that, during prosecution of the '358 Patent, the examiner
23 rejected the claims under 35 U.S.C. § 101 in multiple office actions. L'Oreal USA admits that the
24 '358 Patent issued in 2017. L'Oreal USA admits that *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208
25 (2014) was decided on June 19, 2014. Except as expressly admitted, L'Oreal USA denies the
26 remaining allegations, if any, contained in paragraph 60.
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1 61. L'Oreal USA admits that, during prosecution of the '358 Patent, the applicant
2 responded to the examiner's rejections under 35 U.S.C. § 101. Except as expressly admitted,
3 L'Oreal USA denies the remaining allegations, if any, contained in paragraph 61.

4 62. L'Oreal USA admits that, during prosecution of the '358 Patent, the applicant
5 responded to the examiner's rejections under 35 U.S.C. § 101. Except as expressly admitted,
6 L'Oreal USA denies the remaining allegations, if any, contained in paragraph 62.

7 63. L'Oreal USA admits that, during the prosecution of the '358 Patent, the applicant
8 amended the pending independent claims, in part, to add "wherein said electronic device presents
9 on the display a photo guide indicating how the user's face should be positioned with respect to
10 the camera when the image data is obtained" on July 21, 2017. Except as expressly admitted,
11 L'Oreal USA denies the remaining allegations, if any, contained in paragraph 63.

12 64. L'Oreal USA admits that on August 4, 2017, the examiner issued a Notice of
13 Allowance allowing pending claims 20–23 and 26–41, which include the claims that ultimately
14 issued as claims 16 and 18, stating that, "[w]ith respect to 35 U.S.C. § 101, it is concluded that
15 while a photo guide in and of itself is a generic and conventional element, when used as claimed
16 to assist in obtaining image data for processing measurements to identify measurements to identify
17 skin characteristics, it constitutes a technological solution and significantly more than the abstract
18 idea. *See Bascom Global Internet Services v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir.
19 2016)." Except as expressly admitted, L'Oreal USA denies the remaining allegations, if any,
20 contained in paragraph 64.

21 65. Admitted.

22 66. L'Oreal USA admits that, during the prosecution of the '358 Patent, the applicant
23 responded to the examiner's rejection under pre-AIA 35 U.S.C. § 102(b) in view of U.S. Patent
24 No. 6,571,003. Except as expressly admitted, L'Oreal USA denies the remaining allegations, if
25 any, contained in paragraph 66.

26 67. L'Oreal USA admits that, during the prosecution of the '358 Patent, the applicant
27 responded to the examiner's rejection under pre-AIA 35 U.S.C. § 102(b) in view of U.S. Patent
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1 No. 6,571,003. L'Oreal USA admits that the quoted language in paragraph 67 appears in the
2 applicant's response. Except as expressly admitted, L'Oreal USA denies the remaining allegations,
3 if any, contained in paragraph 67.

4 68. L'Oreal USA admits that, during the prosecution of the '358 Patent, the examiner
5 withdrew its rejections under 35 U.S.C. § 102 "in light of applicant's amendments to the claims"
6 made in an office action dated December 31, 2014. Except as expressly admitted, L'Oreal USA
7 denies the remaining allegations, if any, contained in paragraph 68.

8 69. L'Oreal USA admits that, during the prosecution of the '595 Patent, the examiner
9 did not reject the claims under 35 U.S.C. § 101. Except as expressly admitted, L'Oreal USA denies
10 the remaining allegations, if any, contained in paragraph 69.

11 70. Denied.

12 71. Denied.

13 72. Denied.

14 73. Denied.

15 74. Admitted.

16 75. L'Oreal USA admits that, during prosecution of the '595 Patent, the applicant
17 amended the claims. L'Oreal USA admits that the examiner did not reject any of the claims, as
18 amended, under 35 U.S.C. § 102(a)(2). L'Oreal USA admits that the examiner rejected certain
19 claims, as amended, under 35 U.S.C. § 103 in view of U.S. Patent Nos. 8,693,768 and 7,577,310.
20 L'Oreal USA admits that the examiner stated that certain dependent claims, as amended, "would
21 be allowable if rewritten in independent form including all of the limitations of the base claim and
22 any intervening claims." Except as expressly admitted, L'Oreal USA denies the remaining
23 allegations, if any, contained in paragraph 75.

24 76. L'Oreal USA admits that, during prosecution of the '595 Patent, the applicant
25 amended claims 8, 11, and 17 to recite "dividing the display of the first digital image into two
26 sides, wherein one side of the first digital image is displayed with no cosmetic product applied,
27 and one side of the first digital image is displayed with a simulated application of a cosmetic
28

product.” L’Oreal USA admits that claim 5 of the ’595 Patent recites “dividing the display of the first digital image into two sides, wherein one side of the first digital image is displayed with no cosmetic product applied, and one side of the first digital image is displayed with a simulated application of a cosmetic product.” Except as expressly admitted, L’Oreal USA denies the remaining allegations, if any, contained in paragraph 76.

77. L’Oreal USA admits that, during prosecution of the ’595 Patent, the applicant amended certain claims for a second time. L’Oreal USA admits that the examiner allowed pending claims 1, 2, 4, 7–10, 12–16, and 18–20, as amended, including the claim that ultimately issued as claim 5. Except as expressly admitted, L’Oreal USA denies the remaining allegations, if any, contained in paragraph 77.

78. L’Oreal USA admits that it is a subsidiary of L’Oreal SA. L’Oreal USA admits that L’Oreal SA is a French company that is incorporated in France as a Société Anonyme, registered in Paris, France, and headquartered in Clichy, France. L’Oreal USA admits that L’Oreal SA has subsidiaries that manufacture and distribute beauty, cosmetic, and personal hygiene products in specified regions of the world. L’Oreal USA admits that it was incorporated in 1953 and is currently the largest subsidiary of L’Oreal SA. L’Oreal USA admits that in 2022, 2023, and 2024, global revenue for the entire L’Oreal organization exceeded \$40 billion and L’Oreal USA’s revenue exceeded \$9 billion. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, if any, contained in paragraph 78 and, on that basis, denies them.

79. L’Oreal USA admits that L’Oreal’s 2023 Annual Report – The Essentials identifies “37 global brands.” L’Oreal USA admits that <https://www.loreal.com/en/usa/> refers to “L’Oreal Group[e].” L’Oreal USA admits that <https://www.loreal.com/en/group/about-loreal/strategy-and-model/> states:

L’Oréal has chosen a unique strategy: Universalization. It means globalization that captures, understands and respects differences. Differences in desires, needs and traditions. To offer tailor-made beauty, and meet the aspirations of consumers in every part of the world. L’Oréal is driven by this vision of the world.

1 For L'Oréal, universalization is about having a truly global presence
2 through a unique organization. We are strategically concentrated yet
3 operationally decentralized. Local teams are empowered. They
4 ensure that in every country we are close and relevant to our
5 consumers.

6 That means also creating and producing cosmetics at a local level,
7 so that our formulations are perfectly adapted to the needs of our
8 consumers, wherever they live. To achieve that, we have developed
9 a worldwide network of Research & Innovation and marketing
10 hubs, one for each of our strategic markets: the United States, Japan,
11 Brazil, China, India and South Africa.

12 L'Oreal USA admits that it receives overall strategic guidance from L'Oreal SA. L'Oreal USA
13 admits that, for a period of time prior to the filing of the Complaint, it had an exclusive license to
14 sell and distribute L'Oreal products within the United States. Except as expressly admitted,
15 L'Oreal USA denies the remaining allegations, if any, contained in paragraph 79.

16 80. Denied.

17 81. L'Oreal USA admits that, in 2022, it received a letter from Rajeshwar Chhibber
18 with the subject line "BrighTex Bio-Photonics' Patents Regarding Providing Skin Treatment
19 Recommendations" (the "2022 Chhibber Letter"). L'Oreal USA admits that the 2022 Chhibber
20 Letter listed the numbers of fifteen U.S. Patents, including U.S. Patent Nos. 9,842,358 and
21 9,542,595. L'Oreal USA admits that the quoted language in paragraph 81 appears in the 2022
22 Chhibber Letter. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the
23 truth of the remaining allegations, if any, contained in paragraph 81 and, on that basis, denies them.

24 82. L'Oreal USA admits that a substantial portion of the quoted language in paragraph
25 82 appears in the 2022 Chhibber Letter. L'Oreal USA admits that it did not respond to the 2022
26 Chhibber Letter. Except as expressly admitted, L'Oreal USA denies the remaining allegations, if
27 any, contained in paragraph 82.

28 83. Denied.

84. To the extent paragraph 84 alleges any actions taken by L'Oreal USA or caused by
L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's

1 patents. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of
 2 the remaining allegations, if any, contained in paragraph 84 and, on that basis, denies them.

3 85. To the extent paragraph 85 alleges any actions taken by L'Oreal USA or caused by
 4 L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
 5 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
 6 patents. L'Oreal USA admits that, for a period of time prior to the filing of the Complaint, L'Oreal
 7 USA had operated the following websites: www.vichyusa.com/skin-care-analysis-ai.html,
 8 www.lorealparisusa.com, www.yslbeautyus.com/makeup-virtual-try-on.html,
 9 <https://www.giorgioarmanibeauty-usa.com/face-maestro/face-maestro.html>,
 10 <https://www.maybelline.com/virtual-makeover-makeup-tools>, <https://www.lancome->
 11 usa.com/beauty-services.html, <https://www.valentino-beauty.us/services.html>, and
 12 <https://www.laroche-posay.us/find-your-routine/myroutine-ai-analysis.html>. Except as expressly
 13 admitted, L'Oreal USA denies the remaining allegations, if any, contained in paragraph 85.

14 86. Denied.

15 87. Denied.

16 88. Denied.

17 89. Denied.

18 90. To the extent paragraph 90 alleges any actions taken by L'Oreal USA or caused by
 19 L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
 20 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
 21 patents. To the extent paragraph 90 alleges invention by BTBP or any BTBP personnel of any
 22 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
 23 denied. L'Oreal USA admits that the L'Oreal Paris Skin Genius skin analysis tool can be accessed
 24 from certain electronic devices comprising a camera and a display, is capable of receiving an
 25 image of a user's face, and is capable of displaying instructions indicating how a user's face should
 26 be positioned with respect to the camera during image capture. L'Oreal USA admits that the figure
 27 referenced in paragraph 91 purports to be a screenshot of the L'Oreal Paris Skin Genius skin
 28

1 analysis tool. Except as expressly admitted, L'Oreal USA denies the remaining allegations, if any,
2 contained in paragraph 90.

3 91. To the extent paragraph 91 alleges any actions taken by L'Oreal USA or caused by
4 L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
5 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
6 patents. To the extent paragraph 91 alleges invention by BTBP or any BTBP personnel of any
7 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
8 denied. L'Oreal USA admits that the L'Oreal Paris Skin Genius skin analysis tool is capable of
9 processing image data and identifying one or more. L'Oreal USA admits that the figure referenced
10 in paragraph 91 purports to be a screenshot of the L'Oreal Paris Skin Genius skin analysis tool.
11 Except as expressly admitted, L'Oreal USA denies the remaining allegations, if any, contained in
12 paragraph 91.

13 92. To the extent paragraph 92 alleges any actions taken by L'Oreal USA or caused by
14 L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
15 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
16 patents. To the extent paragraph 92 alleges invention by BTBP or any BTBP personnel of any
17 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
18 denied. L'Oreal USA admits that the L'Oreal Paris Skin Genius skin analysis tool is capable of
19 using AI to process image data and identify one or more of the following skin challenges: fine
20 lines, eye wrinkles, wrinkles, deep wrinkles, firmness, pore quality, pigmentation, and radiance.
21 L'Oreal USA admits that the figure referenced in paragraph 92 purports to be a screenshot of the
22 L'Oreal Paris Skin Genius skin analysis tool. Except as expressly admitted, L'Oreal USA denies
23 the remaining allegations, if any, contained in paragraph 92.

24 93. Denied.

25 94. To the extent paragraph 94 alleges any actions taken by L'Oreal USA or caused by
26 L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
27 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
28

1 patents. To the extent paragraph 94 alleges invention by BTBP or any BTBP personnel of any
 2 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
 3 denied. L'Oreal USA admits that the figure referenced in paragraph 94 purports to be a screenshot
 4 of a description of the L'Oreal Paris Skin Genius skin analysis tool. Except as expressly admitted,
 5 L'Oreal USA denies the remaining allegations, if any, contained in paragraph 94.

6 95. Denied.

7 96. Denied.

8 97. Denied.

9 98. To the extent paragraph 98 alleges any actions taken by L'Oreal USA or caused by
 10 L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
 11 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
 12 patents. To the extent paragraph 98 alleges invention by BTBP or any BTBP personnel of any
 13 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
 14 denied. L'Oreal USA admits that the L'Oreal Paris Skin Genius skin analysis tool is capable of
 15 recommending products to address one or more skin challenges. L'Oreal USA admits that the
 16 figure referenced in paragraph 98 purports to be a screenshot of the L'Oreal Paris Skin Genius
 17 skin analysis tool. Except as expressly admitted, L'Oreal USA denies the remaining allegations,
 18 if any, contained in paragraph 98.

19 99. Denied.

20 100. To the extent paragraph 100 alleges any actions taken by L'Oreal USA or caused
 21 by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
 22 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
 23 patents. To the extent paragraph 100 alleges invention by BTBP or any BTBP personnel of any
 24 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
 25 denied. L'Oreal USA admits that the L'Oreal Paris Skin Genius skin analysis tool is capable of
 26 analyzing the following skin attributes: fine lines, eye wrinkles, wrinkles, deep wrinkles, firmness,
 27
 28

1 pore quality, pigmentation, and radiance. Except as expressly admitted, L’Oreal USA denies the
 2 remaining allegations, if any, contained in paragraph 100.

3 101. Denied.

4 102. Denied.

5 103. No response to paragraph 103 is required, but to the extent a response is deemed
 6 required, L’Oreal USA lacks knowledge or information sufficient to form a belief as to the truth
 7 of the allegations, if any, contained in paragraph 103 and, on that basis, denies them.

8 104. Denied.

9 105. Denied.

10 106. L’Oreal USA lacks knowledge or information sufficient to form a belief as to the
 11 truth of the allegations, if any, contained in paragraph 106 and, on that basis, denies them.

12 107. To the extent paragraph 107 alleges any actions taken by L’Oreal USA or caused
 13 by L’Oreal USA’s products that would be the basis for infringement of any valid claim of BTBP’s
 14 patents, L’Oreal USA denies that it has infringed or is infringing any valid claim of BTBP’s
 15 patents. L’Oreal USA admits that, for a period of time prior to the filing of the Complaint, L’Oreal
 16 USA had operated the following websites: www.lorealparisusa.com, [www.nyxcosmetics.com/try-](http://www.nyxcosmetics.com/try-it-on.html)
 17 [it-on.html](http://www.nyxcosmetics.com/try-it-on.html), www.yslbeautyus.com/makeup-virtual-try-on.html,
 18 <https://www.giorgioarmanibeauty-usa.com/face-maestro/face-maestro.html>,
 19 <https://www.maybelline.com/virtual-makeover-makeup-tools>, [https://www.lancome-](https://www.lancome-usa.com/beauty-services.html)
 20 [usa.com/beauty-services.html](https://www.lancome-usa.com/beauty-services.html), <https://www.urbandecay.com>, and [https://www.valentino-](https://www.valentino-beauty.us/services.html)
 21 [beauty.us/services.html](https://www.valentino-beauty.us/services.html). Except as expressly admitted, L’Oreal USA denies the remaining
 22 allegations, if any, contained in paragraph 107.

23 108. Denied.

24 109. Denied.

25 110. Denied.

26 111. Denied.

112. To the extent paragraph 112 alleges any actions taken by L'Oreal USA or caused by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's patents. To the extent paragraph 112 alleges invention by BTBP or any BTBP personnel of any particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent, denied. L'Oreal USA admits that each of the computing devices identified in paragraph 112 necessarily contains one or more processors and memory capable of storing one or more programs for execution by the one or more processors. Except as expressly admitted, L'Oreal USA denies the remaining allegations, if any, contained in paragraph 112.

113. To the extent paragraph 113 alleges any actions taken by L'Oreal USA or caused by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's patents. To the extent paragraph 113 alleges invention by BTBP or any BTBP personnel of any particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent, denied. L'Oreal USA admits that the Maybelline Virtual Try-On tool is capable of receiving and adjusting colors in an image of a user's face that includes a plurality of pixels. L'Oreal USA admits that <https://www.maybelline.com/virtual-try-on-makeup-tools>, after clicking "GET STARTED," states "If you elect to use the live camera or upload a photo, Your image is processed to provide you with the virtual try-on feature consistent with this consent." Except as expressly admitted, L'Oreal USA denies the remaining allegations, if any, contained in paragraph 113.

114. To the extent paragraph 114 alleges any actions taken by L'Oreal USA or caused by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's patents. To the extent paragraph 114 alleges invention by BTBP or any BTBP personnel of any particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent, denied. L'Oreal USA admits that the Maybelline Virtual Try-On tool is capable of receiving and adjusting colors in an image of a user's face. L'Oreal USA lacks knowledge or information

1 sufficient to form a belief as to the truth of the remaining allegations, if any, contained in paragraph
2 114 and, on that basis, denies them.

3 115. Denied.

4 116. To the extent paragraph 116 alleges any actions taken by L'Oreal USA or caused
5 by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
6 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
7 patents. To the extent paragraph 116 alleges invention by BTBP or any BTBP personnel of any
8 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
9 denied. L'Oreal USA admits that a user may provide an image of his or her face to the Maybelline
10 Virtual Try-On tool by taking a selfie or by uploading a photo, and that the provided image
11 includes a plurality of pixels. Except as expressly admitted, L'Oreal USA denies the remaining
12 allegations, if any, contained in paragraph 116.

13 117. To the extent paragraph 117 alleges any actions taken by L'Oreal USA or caused
14 by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
15 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
16 patents. To the extent paragraph 117 alleges invention by BTBP or any BTBP personnel of any
17 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
18 denied. L'Oreal USA admits that the Maybelline Virtual Try-On tool is capable of displaying an
19 image of a user's face. Except as expressly admitted, L'Oreal USA denies the remaining
20 allegations, if any, contained in paragraph 117.

21 118. To the extent paragraph 118 alleges any actions taken by L'Oreal USA or caused
22 by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
23 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
24 patents. To the extent paragraph 118 alleges invention by BTBP or any BTBP personnel of any
25 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
26 denied. L'Oreal USA admits that the figure referenced in paragraph 118 purports to be a screenshot
27
28

1 of the Maybelline Virtual Try-On tool. Except as expressly admitted, L'Oreal USA denies the
2 remaining allegations, if any, contained in paragraph 118.

3 119. To the extent paragraph 119 alleges any actions taken by L'Oreal USA or caused
4 by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
5 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
6 patents. To the extent paragraph 119 alleges invention by BTBP or any BTBP personnel of any
7 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
8 denied. L'Oreal USA admits that the Maybelline Virtual Try-On tool is capable of applying virtual
9 cosmetics to a portion of an image of a user's face. Except as expressly admitted, L'Oreal USA
10 denies the remaining allegations, if any, contained in paragraph 119.

11 120. To the extent paragraph 120 alleges any actions taken by L'Oreal USA or caused
12 by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
13 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
14 patents. To the extent paragraph 120 alleges invention by BTBP or any BTBP personnel of any
15 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
16 denied. L'Oreal USA admits that the Maybelline Virtual Try-On tool is capable of applying virtual
17 cosmetics to a portion of an image of a user's face. Except as expressly admitted, L'Oreal USA
18 denies the remaining allegations, if any, contained in paragraph 120.

19 121. To the extent paragraph 121 alleges any actions taken by L'Oreal USA or caused
20 by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
21 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
22 patents. To the extent paragraph 121 alleges invention by BTBP or any BTBP personnel of any
23 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
24 denied. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the truth of
25 the remaining allegations, if any, contained in paragraph 121 and, on that basis, denies them.

26 122. To the extent paragraph 122 alleges any actions taken by L'Oreal USA or caused
27 by L'Oreal USA's products that would be the basis for infringement of any valid claim of BTBP's
28

1 patents, L'Oreal USA denies that it has infringed or is infringing any valid claim of BTBP's
 2 patents. To the extent paragraph 122 alleges invention by BTBP or any BTBP personnel of any
 3 particular skin analysis or treatment technology, or alleges a particular scope of any BTBP patent,
 4 denied. L'Oreal USA admits that the Maybelline Virtual Try-On tool is capable of applying virtual
 5 cosmetics to a portion of an image of a user's face and that certain virtual cosmetics are offered in
 6 different shades. L'Oreal USA lacks knowledge or information sufficient to form a belief as to the
 7 truth of the remaining allegations, if any, contained in paragraph 122 and, on that basis, denies
 8 them.

9 123. Denied.

10 124. Denied.

11 125. No response to paragraph 125 is required, but to the extent a response is deemed
 12 required, L'Oreal USA lacks knowledge or information sufficient to form a belief as to the truth
 13 of the allegations, if any, contained in paragraph 125 and, on that basis, denies them.

14 126. Denied.

15 127. No response is required to the Demand for Jury Trial, but to the extent a response
 16 is deemed required, L'Oreal USA admits that the Complaint seeks a jury trial.

17 128. No response is required to the Prayer for Relief, but to the extent a response is
 18 deemed required, L'Oreal USA denies the BTBP is entitled to any relief whatsoever.

19 **GENERAL DENIAL**

20 Except as expressly admitted above, L'Oreal USA denies each and every allegation in
 21 BTBP's Complaint.

22 **ADDITIONAL DEFENSES**

23 Without assuming any burden not imposed by law, L'Oreal USA asserts the following
 24 defenses in further response to BTBP's Complaint. L'Oreal USA reserves the right to assert
 25 different and additional legal or equitable defense that may now exist or in the future become
 26 available based on discovery and further investigation in this case.

First Defense

129. L’Oreal USA has not directly infringed, and is not directly infringing, any claims of the ’358 Patent or the ’595 Patent (collectively, the “Asserted Patents”), either literally or under the doctrine of equivalents. L’Oreal USA has not induced or contributed to, and is not inducing or contributing to, infringement of the Asserted Patents either literally or under the doctrine of equivalents.

Second Defense

130. The claims of the Asserted Patents are invalid for failure to satisfy one or more of the requirements and/or conditions for patentability set forth in Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

Third Defense

131. BTBP is estopped from construing any claim of the Asserted Patents to cover or include, either literally or under the doctrine of equivalents, any of the products, systems, or processes provided by L’Oreal USA due to statements made, amendments made, and/or positions taken during the prosecution of the applications of the Asserted Patents and/or any related patents or patent applications.

Fifth Defense

132. BTBP’s claims are barred, in whole or in part, by the equitable doctrines of waiver and unclean hands.

Sixth Defense

133. BTBP’s claim for damages, if any, against L’Oreal USA is statutorily limited, in whole or in part, by the provisions of 35 U.S.C. §§ 287 and/or 288.

Seventh Defense

134. L’Oreal USA has not willfully infringed either of the Asserted Claims.

L’OREAL USA’S COUNTERCLAIMS

L’Oreal USA, for its counterclaims against BTBP, alleges as follows:

1. L’Oreal USA is a Delaware corporation with its principal place of business in New York, New York.

2. L'Oreal USA is informed and believes, and thereon alleges, that BTBP is a California limited liability company with its principal place of business in San Jose, California.

3. This is an action for declaratory relief regarding United States patents. This Court has jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, and 28 U.S.C. §§ 2201, 2202.

4. The Court has personal jurisdiction over BTBP based on its filing of its Complaint and its presence in this District.

5. Venue is proper in this District based on BTBP's filing of its Complaint and its presence in this District.

FIRST COUNTERCLAIM

Declaration of Noninfringement

6. L'Oreal USA incorporates herein by reference each allegation set forth in paragraphs 1–5, above.

7. BTBP has alleged, and continues to allege, infringement of the '595 Patent by L'Oreal USA, which L'Oreal USA denies. Thus, an actual and justiciable controversy exists between L'Oreal USA and BTBP concerning the '595 Patent.

8. L'Oreal USA has not infringed and does not infringe, directly or indirectly, literally or under the doctrine of equivalents, any valid and enforceable claim of the '595 Patent.

9. Declaratory relief is both appropriate and necessary to establish that L'Oreal USA has not infringed, and does not infringe, any of BTBP's patents, including any valid and enforceable claim of the '595 Patent.

SECOND COUNTERCLAIM

Declaration of Invalidity

10. L'Oreal USA incorporates herein by reference each allegation set forth in paragraphs 1–9, above.

11. The '595 Patent is invalid for failure to meet one or more of the requirements and/or conditions for patentability set forth in Title 35 of the United States Code, including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

12. An actual and justiciable controversy exists between L'Oreal USA and BTBP concerning the validity of the '595 Patent based on BTBP having filed its Complaint against L'Oreal USA alleging, and continuing to allege, infringement of at least one claim of the '595 Patent that is invalid.

13. Declaratory relief is both appropriate and necessary to establish that the claims of the '595 Patent are invalid.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, L'Oreal USA demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

Wherefore, L'Oreal USA requests the following relief:

- A. Dismissal of BTBP's Complaint with prejudice;
- B. Denial of all remedies and relief sought by BTBP;
- C. Entry of judgment declaring that the L'Oreal USA does not infringe any valid and enforceable claim of the '595 Patent;
- D. Entry of judgment declaring that the claims of the '595 Patent are invalid;
- E. Injunction precluding BTBP from representing to others, including customers and suppliers of L'Oreal USA and its affiliates, that any L'Oreal entity has infringed any of BTBP's patent rights, including with respect to the '595 Patent;
- F. Entry of judgment awarding L'Oreal USA its reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and
- G. Any further relief that the Court may deem just and proper.

1 Dated: April 18, 2025

By: /s/ Ramsey M. Al-Salam

Ramsey M. Al-Salam, CA Bar No. 109506

Jessica J. Delacenserie, *pro hac vice*

PERKINS COIE LLP

1201 Third Avenue, 49th Floor

Seattle, WA 98101

Tel: (206) 359-8000

Fax: (206) 359-9000

Email: RAISalam@perkinscoie.com

JDelacenserie@perkinscoie.com

7 Daniel T. Shvodian, CA Bar No. 184576

PERKINS COIE LLP

3150 Porter Drive

Palo Alto, CA 94304

Tel: (650) 838-4300

Fax: (650) 737-5461

Email: DShvodian@perkinscoie.com

Attorneys for Defendant L'Oreal USA, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2025, I caused the foregoing document to be filed with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing to the email addresses indicated on the Court's Electronic Mail Notice List.

/s/ Ramsey M. Al-Salam
Ramsey M. Al-Salam