

SRX 2015

UNITED STATES PATENT AND TRADEMARK
OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

L'OREAL USA, INC.,

Petitioner

v.

BRIGHTEX BIO-PHOTONICS, LLC,

Patent Owner.

PTAB Case No. IPR2025-00971

Patent No. 9,542,595

Issue Date: January 10, 2017

Title: Systems and Methods for Recommending
Cosmetic Products for Users with Mobile
Devices

**DECLARATION OF RAJ CHHIBBER IN
SUPPORT OF PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL**

I, Raj Chhibber, declare the following:

1. I am the Chief Executive Officer (CEO) and founder of BrighTex Bio-Photonics Technologies (“Brightex”), based in San Jose, California. I have held that position since 2005, the year I founded the company.

2. I have over 40 years of experience with high-technology companies, such as Nanda Technologies; NanoMetrics, Phase-Metrics, Therma-Wave, Micro Lithography, Eastman Kodak and Brightex. I have held senior management positions, such as CEO, Chief Technology Officer and Director, involved with engineering, development, research and company operations. I am generally familiar with the patent acquisition process, and I understand the information requested and provided to L’Oreal regarding BrighTex’s patent filings, status and issuances.

3. Brightex is an industry leader in skin diagnostics and clinical research for the cosmetic industry including industrial surface inspection. We also conduct research and development, and produce applications and technologies, relating to surface and through-surface metrology equipment for the cosmetics and other industrial applications in 2d and 3d measurements with AI classifications.

4. Brightex has had an extended technology sharing partnership with L’Oreal USA (and its parent company, L’Oreal S.A), which I will collectively reference as “L’Oreal,” relating, in part, to visual face recognition technology

including “software and hardware solutions proposed by BrighTex Bio-Photonics for skin and fiber” diagnostics.

a. As part of that relationship between L’Oreal and Brightex, three Non-Disclosure Agreements were executed between those parties in 2009, 2013 and 2019, respectively.

b. I have reviewed SRX 2002, SRX 2003 and SRX 2004 being submitted with the Patent Owner’s Request for Discretionary Denial, and those exhibits are true and correct copies of the NDAs executed between the parties in 2009, 2013 and 2019, respectively.

c. Initial communications between L’Oreal and Brightex date back to the 2007 and 2008 time frame, and the last NDA executed in 2019 with L’Oreal expired in 2024 after expiration of its five year term.

5. On January 10, 2017, U.S. Patent No. 9,542,595 (“the ’595 Patent”) issued to BrighTex, and it was based on a provisional application filed on March 25, 2013. A non-provisional application was filed on March 25, 2014, and the subject patent application was published on October 23, 2014 at U.S. Publ. No. 2014/0314315.

6. During at least five meetings between L’Oreal and BrighTex after the 2013 provisional application filing date for the ’595 Patent, L’Oreal and its representatives requested information about the existence and status of BrighTex’s

patent filings, including any patent filings or issuances that would cover the product technology being discussed and delivered to L'Oreal. In response to these requests for information from 2013 to 2019, BrighTex repeatedly provided L'Oreal with information regarding its '595 Patent filing, status and issuance.

7. Namely, the following meetings between L'Oreal and Patent Owner on and after April 30, 2013 addressed the '595 Patent application filing, status and issuance, and provided notice to L'Oreal of these BrighTex patent filings, as follows:

a. On April 30, 2013, I met personally with Eric Bone and his team at L'Oreal's New York City office. Initially, we executed the April 30, 2013 NDA (SRX 2003); and, afterward, BrighTex presented information to L'Oreal on mobile skin care technology.



At that meeting at L'Oreal's New York office (after executing the NDA), I recall Eric Bone asking about the status of our patent filings and issuances during meetings. In response to that request for information from L'Oreal, BrighTex provided information on general status of our patent filings and

patent issuances; and, because the provisional filing of the ‘595 Patent application had just occurred in March 2013, I recall discussing the recent ‘595 patent application filing providing notice to L’Oreal of that filing. This information was provided under the terms of the 2013 NDA.

b. In the middle of May, 2013 (on or around May 15th), Brightex conducted an “on-site” demonstration at L’Oreal’s New York Office (15th Floor Conference Room). Apart from the demonstration of technology, a cost proposal was discussed with attendees, including Tamer Nasr and other members of L’Oreal’s US digital team project. During that meeting, BrighTex was asked to address, and provided information to L’Oreal, regarding its patent filings including the recent ‘595 Patent application filing in March 2013. This information was provided under the terms of the 2013 NDA.

c. Between 2013 to 2016, BrighTex provided application technology regarding visual face recognition technology for skin diagnostics and cosmetic applications to several L’Oreal brand representatives, including the L’Oreal Garnier brand, and separately, the L’Oreal La Roche-Posay brand. On multiple occasions, L’Oreal representatives associated with each of these brands separately requested information from BrighTex regarding its patent filings and status, because, as L’Oreal representatives stated, such information

would have an impact on development of an application using the BrighTex technology and the launch of an application program using the BrighTex technology. In response to this request for information, Brightex addressed its patent filings, including the '595 Patent filing and prosecution status. This information was provided under the terms of the 2013 NDA.

d. On or around November 12, 2019, BrighTex representatives met, and communicated with, Veronika Marck with L'Oreal's Bio-Photonics Engineering Instruments and Algorithm Group. Ms. Marck was very interested in understanding how BrighTex does its color correction and the Ai training for skin Care. During that meeting, Ms. Marck requested information from Brightex as to its patent filings and status. And, in response to this request for information, Brightex addressed its patent filings, including the '595 Patent filing and prosecution status, as well as other issued patents owned by Brightex. This information was provided under the terms of the 2019 NDA, which was executed in October 2019.

8. The above requests by L'Oreal for information on Brightex patent filings, status, and issuances all occurred on and after April 30, 2013, and all these communications were subject to the 2013 and 2019 NDAs executed between Brightex and L'Oreal. But, there was nothing unusual about these kinds of requests for information about BrighTex patent filings, status, and issuances. In fact, L'Oreal

previously requested information from Brightex on its patent filings, status, and issuances at least two times in 2011 (covered by the 2009 NDA).

a. On July 1, 2011, L'Oreal's Guive Balooch, a Senior Scientist Innovating Imaging Science and Technology met with BrighTex representatives at its San Jose office. Mr. Balooch was interested in Brightex's consumer market strategy algorithms, and how Brightex solved lighting and color correction for different mobile devices for skin care. Mr. Guive Balooch also requested information regarding BrighTex's patent filings, status, and issuances. In response, Brightex discussed its granted clinical research patents and its intellectual property acquisition strategy for the consumer market. This information was provided under the terms of the 2009 NDA.

b. On November 2, 2011, L'Oreal Christian Oresajo, Assistant Vice President of Innovation, met with Brightex representatives at L'Oreal's Clark, New Jersey office location. Mr. Oresajo requested information regarding BrighTex patent filings, status, and issuances. In response, BrighTex addressed its granted and pending patent filings and its intellectual property acquisition strategy in general, and that BrighTex has patents granted and pending in many different areas. This information was provided under the terms of the 2009 NDA.

The undersigned declares that all these statements made herein are true and are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under section 18 U.S.C. § 1001 of the United States Code.

08/05/2025
Date

R.chhibber
Raj Chhibber, CEO