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**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'S PATENT L.R. 4-2
DISCLOSURE OF PRELIMINARY
CLAIM CONSTRUCTIONS AND
SUPPORTING EVIDENCE**

1 Pursuant to Patent Local Rule 4-2 and the schedule set by the Court in this case (Dkt. 34),
2 Defendant L'Oreal USA, Inc. ("L'Oreal") hereby discloses its preliminary claim constructions for
3 the below terms in U.S. Patent No. 9,542,595 ("the '595 Patent"), along with the intrinsic and
4 extrinsic evidence L'Oreal has identified to date that it may rely on to support such constructions.

5 This disclosure is based on L'Oreal's current understanding of the asserted claims and of
6 Plaintiff's apparent interpretation of the asserted claims, as set forth in Plaintiff's Infringement
7 Contentions, and is provided without prejudice to L'Oreal's right to supplement or amend its
8 proposed constructions in response to Plaintiff's preliminary constructions, evidence identified by
9 Plaintiff in support of its constructions, or for any other reason consistent with the Federal Rules
10 of Civil Procedure and the Court's rules. Nothing in this disclosure should be construed as an
11 admission or waiver of any arguments related to issues of noninfringement or invalidity of the
12 asserted claims.

Term	Proposed Construction	Evidence
“calibrating colors of a first digital image” Claims 5, 6, and 11	“adjusting colors in a first digital image based on color standards”	<u>'595 Patent Specification</u> 11:35–47 (“In some embodiments, the system, prior to transferring the digital image of at least the portion of the face of the subject, transfers (602) an image of one or more color standards. In some embodiments, the image of one or more color standards and the digital image of at least a portion of a face of the subject are captured in a same lighting environment. For example, client 102 acquires an image of one or more color standards (e.g., a color wheel, a color standard card that shows multiple standard colors, etc.) and sends the image to server 108. In another example, server 108 receives the image of one or more color standards. Typically, the one or more color standards are one or more preselected color standards.”). 12:5–36 (“In some embodiments, the digital image of the at least the portion of the face of the subject includes (608) an image of one or more color standards. For example, the one or more color standards are located adjacent to the portion of the face in the digital image. In some embodiments, this is achieved by placing the one or more color standards below the user's chin when the digital image is acquired. In some embodiments, the system correlates (610) one or more colors in the image of one or more color standards and one or more colors of the skin pixels. For example, a standard red color in the one or more color standards may not appear as a standard red color in the image. Thus, in some embodiments, the system determines that a color that matches a standard red color as shown in the image has a standard red color. At least one of the color space values is identified in accordance with a correlation between the one or more colors in the image of one or more color standards and the one or more colors of the skin pixels. For example, in some embodiments, colors in the digital image are calibrated based on the image of one or more color standards. In some embodiments, the system processes the image of one or more color standards. For example, the system processes the image of one or more color standards to

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		correlate colors that appear in the image of one or more color standards and one or more colors that the image of one or more color standards represents. In some embodiments, the system processes the image of one or more color standards. In some embodiments, the processing includes a shape recognition (e.g., identifying colors in the image of one or more color standards based on a location of the one or more color standards in the image). For example, a Macbeth color checker chart or any other color checker chart may be used.”). Claim 1 (“calibrating colors of a first digital image, wherein the first digital image depicts at least a portion of a face of the subject, and the first digital image includes a plurality of pixels, and wherein calibrating colors of the first digital image is based on a second digital image of one or more color standards”). Claims 7 & 12 (“calibrating colors of a first digital image is based on a second digital image of one or more color standards”). <u>Extrinsic Evidence</u> Calibrate, Merriam-Webster.com Dictionary (Jan. 16, 2013), https://web.archive.org/web/20130116043156/http://www.merriam-webster.com/dictionary/calibrate (“calibrate . . . 3: to standardize (as a measuring instrument) by determining the deviation from a standard so as to ascertain the proper correction factors”). S. Sunoj et al., <i>Color calibration of digital images for agriculture and other applications</i>, Int’l Soc’y for Photogrammetry and Remote Sensing (ISPRS) Journal of Photogrammetry and Remote Sensing, 1 (Oct. 21, 2018) (“Color calibration is broadly classified into two categories: (i) device-based and (ii) image-based. . . . Image-based color calibration is used to compensate for changes in the image due to illumination conditions. This is the most common method in professional photography to maintain the same color tone in all

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		scenes. It used a standard color calibration chart to linearly map the pixel values obtained in the image to the standard color values of the calibration chart (Kagarlitsky et al., 2009). <i>A relationship was developed between the color values obtained in the image to the standard color values, which can then be applied to image pixels for standardization (calibration).</i>” (emphasis added) citing (Kagarlitsky et al., <i>Piecewise-consistent color Mappings of Images Acquired Under Various Conditions</i>, IEEE 12th International Conference on Computer Vision (ICCV) (2009)). Yves Vander Haeghen et al., <i>Consistent digital color image acquisition of the skin</i>, 20th Annual Int’l Conference of the IEEE Eng’g in Med. and Biology Soc’y, Vol. 20, No. 2, Abstract (1998) (“We propose a . . . color calibration procedure that results in a . . . color description in a standard device-dependent color space (sRGB). . . . The calibration procedure involves building a profile of the acquisition system based on 24 color targets with known characteristics. This profile is easily checked before a set of image acquisitions and remains valid for a long period. <i>The acquired images are transformed from the device-dependent RGB camera space to the gamma corrected sRGB (or ITU-R BT.709) space.</i>”) (emphasis added). Jim Adams et al., <i>Color Processing in Digital Cameras</i>, IEEE Micro, 24 (1998) (“So, to fix your CFA-interpolated image colors, you perform a color calibration based on the system just described. First, you gather the appropriate data. You begin by capturing an image of a color test chart. This test chart is nothing more than a collection of several small patches, each patch corresponding to a different color. Next, you perform CFA interpolation on your image to create a full-color RGB rendition. After that, you need to make sure that the pixel values scale linearly with scene exposure. . . . Now, you display a full-color image of the color test chart on the monitor. You next use a device called a colorimeter to directly measure the tristimulus values of the color patches on your video screen. . . . With the XYZ values of the monitor image in hand, you use the colorimeter to measure the tristimulus values of the original color test chart.

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		You now have all the data you need to perform your color calibration. Next you need to determine how to modify your interpolated image so that when you display it on the CRT, the colors on the screen will match the colors on the test chart. Our goal will be to calculate a 3x3 matrix . . . that will <i>convert the RGB values from your interpolated image . . . into color-calibrated RGB values.</i>”) (emphasis added). Kentarou Furusawa et al., <i>Color Appearance Evaluation of Agriculture Products Image Based on Spectral Information of Lighting</i>, SICE Annual Conference, 2449 (Aug. 18–21, 2010) (“The color calibration procedure was described in our previous studies [8, 9] as follows. The 3x3 matrices C and C’ in (6) denote the R, G and B values of the chart in the standard image and of the original or virtual image under the colored lighting condition, respectively. . . . The matrix A for each original or virtual images were determined by (6). The color calibration image was obtained by multiplying the matrix A to the column vector of R, G, and B values corresponding to each pixel that composes the sample image: . . . <i>Here, R, G and B are r, g, and b values of a picture element of the original or virtual image. R’, G’ and B’ are r, g, and b values of the picture element after the color calibration.</i>”) (emphasis added). Steve Davey, <i>Get more accurate color with camera calibration</i>, Dig. Photography Review, https://web.archive.org/web/20140430053530/http://www.dpreview.com:80/articles/6497352654/get-more-accurate-color-with-camera-calibration- (April 28, 2014) (“Whatever the device, the principle of calibration is the same. You create a custom profile for your device, so that color management capable software can make allowances for any variances. So when you calibrate a monitor, you’re measuring how it varies from an agreed standard in how it displays colors. . . . Calibrating a camera works in a similar way: essentially you are measuring any variance in how it sees the world, and creating a profile to correct these individual differences at the Raw processing stage.”).

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“dividing the display [of the first digital image]” Claims 5, 6, and 11	“separating the displayed image into parts”	<u>'595 Patent Specification</u> 7:41–51 (“In FIG. 4B, the graphical user interface shows a portion of the digital image. The displayed portion of the digital image includes a first portion of the face of the user. The first portion typically indicates a face without application of a cosmetic product. The graphical user interface shown in FIG. 4B also includes a portion of a modified image. The modified image includes a second portion of the face of the user. The second portion typically includes a face with application of a cosmetic product. In some embodiments, the second portion includes a face with simulated application of the cosmetic product.”). 7:54–8:16 (“Shown on the left side of FIG. 4C is an image of a face of a user. The image shown on the left side of FIG. 4C corresponds to the face of the user without application of a cosmetic product. The image shown on the left side of FIG. 4C also includes red and green vertical lines. The red and green lines may be moved horizontally based on a user input (e.g., a horizontal drag gesture on a touch-sensitive display). In some embodiments, the red line is used to change a portion of the image that represents a portion of the face without application of a cosmetic product. In some embodiments, the green line is used to change a portion of the image that represents a portion of the face with full application of the cosmetic product. Shown in the middle of FIG. 4C is an image of the face wherein a first portion of the face is shown without application of the cosmetic product, a second portion of the face is shown with sheer application of the cosmetic product, and a third portion of the face is shown with medium or full application of the cosmetic product. As shown in FIG. 4C, a portion of the face on a left-hand side of the red line is shown without application of the cosmetic product, a portion of the face between the red line and the green line is shown with sheer application of the cosmetic product, and a portion of the face on the right-hand side of the

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		green line is shown with medium or full application of the cosmetic product. Shown in the right side of FIG. 4C is an image of the face wherein red and green are moved to the left side of the face. The image of the face is shown with simulated medium or full application of the cosmetic product.”). Figs. 4B, 4C, 5, 6. <u>Extrinsic Evidence</u> Divide, Merriam-Webster.com Dictionary (Mar. 9, 2013), https://web.archive.org/web/20130309175134/http://www.merriam-webster.com/dictionary/divide (defining “divide” as “1 a: to separate into two or more parts, areas, or groups”). Divide – Cambridge Online English Dictionary (Aug. 18, 2015), https://web.archive.org/web/20150818065418/http://dictionary.cambridge.org:80/us/dictionary/english/divide (defining “divide” as “to separate into parts or groups, or to cause something to separate in such a way”). Divide, Dictionary.com (June 2025), https://www.dictionary.com/browse/divide (defining “divide” as “1 to separate into parts, groups, sections, etc.”). Goat Cloud Communications, <i>Split the monitor screen in two in Windows 7</i>, Blog (Nov. 2, 2012), http://web.archive.org/web/20131005225049/http://goatcloud.com/2012/11/02/split-the-monitor-screen-in-two-in-windows-7/ (“Below is a quick video demonstration on how you can split your monitor into two equal halves, and work on two programs running next to each other, or just have two windows of the same program open next to each other.”). Microsoft Surface, <i>How to Use a Split Screen</i> (Feb. 6, 2024), https://www.microsoft.com/en-us/surface/do-more-with-surface/how-to-use-a-split-screen (“Do you ever need to work in two apps simultaneously or want to

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		show two apps side by side during a presentation? Split-screen functionality allows you to divide your monitor's display into multiple sections, so you can use two or more apps at the same time.”).
“color space values” Claims 5, 6, and 11	“numerical values that describe a color”	<u>’595 Patent Specification</u> 8:40–49 (“Server 108 identifies (508) color space values from the skin pixels. A respective skin pixel in the digital image typically includes multiple color values, such red (R), green (G), and blue (B) values. In some embodiments, server calculates L, a, and b values (values in a Lab color space, such as a Lab color space specified by the International Commission on Illumination) as color space values. In some embodiments, the L, a, and b values are referred to as Lab values. The methods for converting the RGB values to Lab values are well known.”). <u>Extrinsic Evidence</u> Apple Developer, <i>About Color Spaces</i> (August 8, 2013), https://developer.apple.com/library/archive/documentation/Cocoa/Conceptual/DrawColor/Concepts/AboutColorSpaces.html (“A color model is a geometric or mathematical framework that attempts to describe the colors we see. It uses numerical values pinned to dimensions of the model to represent the visible spectrum of color. A color model gives us a method for describing, classifying, comparing, and ordering colors. A color space is a practical adaptation of a color model that specifies a gamut of colors that can be produced using that model. The color model determines the relationship between values, and the color space defines the absolute meaning of those values as colors. These values, called components, are in most instances floating-point values between 0.0 and 1.0.”). Andreas Koschan & Mongi Abidi, <i>Color Spaces and Color Distances</i>, Dig.

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		Color Image Processing, John Wiley & Sons (2008) (“Color spaces indicate color coordinate systems in which the image values of a color image are represented.”). Pixel Values, <i>The Univ. of Edinburgh</i> (Jan. 10, 2013), https://web.archive.org/web/20130110100023/http://homepages.inf.ed.ac.uk:80/rbf/HIPR2/value.htm (“To represent color images, separate red, green and blue components must be specified for each pixel (assuming an RGB colorspace), and so the pixel ‘value’ is actually a vector of three numbers. Often the three different components are stored as three separate ‘grayscale’ images known as <i>color planes</i> (one for each of red, green and blue), which have to be recombined when displaying or processing.”).
“the cosmetic product is identified at least based on the color space values” Claims 5, 6, and 11	“the cosmetic product is selected at least based on comparing the space color values of the skin pixels and space color values of the cosmetic product”	<u>’595 Patent Specification</u> 9:55–10:13 (“Server 108 identifies (512) a cosmetic product at least based on the color space values. In some embodiments, server 108 compares the Lab values of the skin pixels to Lab values of cosmetic products. In some embodiments, server 108 retrieves Lab values of cosmetic products from cosmetics database 118 (FIG. 1). In some embodiments, server 108 selects a cosmetic product that has a color that most closely matches the color of the skin pixels. In some embodiments, server 108 identifies a cosmetic product that has a color with a shortest Euclidean distance to a color of the skin pixels. In other embodiments, server 108 selects a cosmetic product that has a color that is close to the color of the skin pixels in accordance with the following equations: ...”).

1 Dated: June 23, 2025

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